Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights
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By
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Cases of judicial harassment abusing human rights defenders and activists through the form of Strategic Lawsuits Against Public Participation (SLAPP) are many in Thailand. These lawsuits are increasingly being used to intimidate citizens who are merely exercising their fundamental rights. SLAPP suits are civil or criminal lawsuits brought by business actors, which divert time, energy and resources away from the vital work of these human rights defenders, and which often themselves violate a wide range of human rights, including freedom of expression, guaranteed by the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a signatory.

The work of human rights defenders is essential for the advancement of human rights, democracy and the rule of law, which underpin the achievement of the Sustainable Development Goals (SDGs). SLAPP lawsuits thus pose a threat to the sustainable development agenda as a whole.

This situation is worrying, but not hopeless. Key stakeholders, including policymakers, are becoming more aware of the problem, and protection of human rights defenders has been identified as one of the four priority areas in Thailand’s First National Action Plan on Business and Human Rights (NAP), adopted in December 2019. As part of the implementation of this plan, Thailand has taken several actions in recent years to address SLAPP, for example by amending relevant regulations, including the Criminal Procedure Code and the 2010 Public Prosecutor Organ and Public Prosecutors.

The Royal Thai Government is currently developing measures to prevent SLAPP and to further enhance protection for human rights defenders. To support these efforts, the Thai Ministry of Justice requested UNDP to conduct this study on laws and measures to prevent SLAPP in the context of Business and Human Rights. The study will be submitted to the National Committee on Implementation of the National Action Plan on Business and Human Rights for consideration and further action to address SLAPP, for better protection of human rights defenders.

This study analyses data from 1997 to 2022 with a specific focus on SLAPP practices by businesses and state-owned enterprises. This allowed the research team to discover patterns in SLAPP cases, and to present an overview of the human rights defenders most affected, the business sectors most involved, the types of proceedings most commonly brought and most common charges. In addition, the study highlights the social and economic impact and psychological burden on SLAPP victims when faced with lengthy trials, especially in criminal cases that are punishable by imprisonment.

UNDP supports the implementation of the 2030 Agenda for Sustainable Development and the achievement of its 17 Sustainable Development Goals both globally and in Thailand, and the realization of human rights for all is a prerequisite to success. To achieve this, UNDP promotes a human rights-based approach to development.
and is committed to assisting member states in strengthening their national human rights systems to fulfill their obligations. This study will thus stimulate collective action from governments, business communities, human rights defenders and civil society actors to ensure that victims of SLAPP suits are protected and that human rights are protected for all, paving the way for the advancement of human rights in Thailand.

The findings in this study point to the need for programmes and interventions to prevent SLAPP and support victims of SLAPP suits. One finding is the need for reform in the justice system, especially criminal justice, to prevent or dismiss SLAPP cases at the beginning of the investigation process. Here it appears critical to engage judicial actors and law enforcement officers, including lawyers, investigating officers, prosecutors and judges, to build their understanding of the concepts and context of SLAPP cases. This should happen in conjunction with the amendment of relevant laws and case management mechanisms to assist SLAPP victims in these lawsuits and to safeguard human rights defenders.

UNDP is committed to working with its partners, including government agencies, business communities, human rights defenders and civil society, to translate the results of this study into concrete action and to further ensure the full realization of human rights for all and successful implementation of the 2030 Agenda for Sustainable Development in Thailand.

Renaud Meyer
UNDP Resident Representative to Thailand
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List of acronyms

B.E. Buddhist Era*
BHR Business and human rights
CASE Coalition Against SLAPPs in Europe
CEDAW Committee on the Elimination of Discrimination against Women
CRC Community Resource Centre Foundation
EGAT Electricity Generating Authority of Thailand
EHIA Environmental Health Impact Assessment
EU European Union
GCNT Global Compact Network Thailand
HRD Human rights defender
HRDD Human rights due diligence
HRIA Human Rights Impact Assessment
HRLA Human Rights Lawyers Association (Thailand)
ICJ International Commission of Jurists
ILO International Labour Organization
MOU Memorandum of Understanding
NACC National Anti-Corruption Commission
NAP Thailand National Action Plan on Business and Human Rights
NGO Non-governmental organization
NHRCT National Human Rights Commission of Thailand
OECD Organisation for Economic Co-operation and Development
OHCHR Office of the United Nations High Commissioner for Human Rights
PTT PTT Public Company Limited
RLPD Rights and Liberties Protection Department of Thailand’s Ministry of Justice
SEC Securities and Exchange Commission, Thailand
SLAPP Strategic Lawsuit Against Public Participation
SDGs Sustainable Development Goals
SRT State Railway of Thailand
TOT Telephone Organization of Thailand Public Company Limited
UNGPs United Nations Guiding Principles on Business and Human Rights
UNDP United Nations Development Programme
UPEPA Uniform Public Expression Protection Act
UPR Universal Periodic Review
US United States of America

* The Thai year is 543 years ahead of the Gregorian calendar year, hence the current year (2023) is B.E. 2566.
Executive summary

Background

Thailand adopted its first National Action Plan on Business and Human Rights (NAP) in 2019, becoming the first Asia-Pacific nation to have developed a specific plan of this nature. The document serves as a vital blueprint that delineates the duties of the Government and the business sector to protect, and promote respect for, human rights; and their responsibilities to provide effective remedies for human rights violations.

Human rights defenders (HRDs) are instrumental in the promotion, protection and defence of human rights. It is therefore apt (and essential) that the protection of HRDs is one of four priority areas in the NAP.

Despite Thailand’s efforts to safeguard HRDs, human rights violations perpetrated by the business sector continue unabated in many forms, including the mounting use of Strategic Lawsuits Against Public Participation (SLAPPs). In recognition of this escalation, the Rights and Liberties Protection Department of Thailand’s Ministry of Justice (RLPD) requested that the United Nations Development Programme (UNDP) embark on a study of SLAPPs. This study, spearheaded by Assistant Professor Ms. Saovanee Kaewjullakarn and Mr. Bandit Homket, aims to explore the trend of SLAPPs in the context of business and human rights (BHR) in Thailand, and to recommend measures to address and prevent SLAPPs by businesses and state-owned enterprises. The implementation of the research outcomes will reinforce the Government’s commitment to human rights, and underpin Thailand’s endeavour to accelerate its attainment of the Sustainable Development Goals (SDGs).
Methodology

Two research methodologies were employed for data collection:

1. Documentary research, in which data were acquired from:
   - academic work relating to SLAPPs;
   - Human Rights Lawyers Association (Thailand) (HRLA)’s case database;
   - iLaw;
   - Community Resource Centre Foundation (CRC);
   - EnLAW Thai Foundation; and
   - court judgements.

2. Field research, utilizing a semi-structured questionnaire developed by experts, conducted through in-depth interviews on-site, as well as online interviews via Zoom.

Findings

There are two parts to this study.

The first part of the study focuses on statistics relating to SLAPPs from 1997 to June 2022, and discovered that approximately 109 SLAPPs had been initiated by the business sector and state-owned enterprises during that period. SLAPPs are prosecuted as either civil or criminal cases in Thailand, with their differing judicial processes and management mechanisms. A civil case is generally initiated by filing a lawsuit directly with the court, while criminal cases can be initiated in two ways: by lodging a complaint or accusation with an inquiry officer, or by exercising the right to file a lawsuit directly with the court. The study found that mining companies accounted for the majority of filers who initiated litigation (34 percent), followed by those in the livestock industry (21.1 percent) and the energy sector (13.8 percent).

SLAPP targets in this study were largely villagers who are local advocates or whose rights had been violated (78 percent), activists and non-governmental organizations (NGOs) (10 percent), trade unionists (6 percent) and media personnel (3 percent).

Actions found to be most at risk of SLAPPs included disseminating information/expression online (28 percent), followed by holding rallies and assemblies (21 percent), giving media interviews (15 percent), reporting news and facts (10 percent), and submitting complaints to relevant agencies (9 percent). Other actions, such as the presentation of evidence through the media or the dissemination of reports on human rights violations, were also targeted.

The second part of the study presents an overall picture of existing measures against SLAPPs, and of gaps in their implementation. One finding is that Thailand still lacks comprehensive laws and measures to prevent and address SLAPPs. For instance, there is no provisions in law to expedite the settlement of cases. Moreover, the lack of of legal provisions holding SLAPP filers to account when their cases are unsuccessful allows them to continue acting with impunity. Thailand has mechanisms to handle SLAPPs, such as the prosecutor’s power to order screening or non-prosecution, or even the mechanism under section 161/1 of the Criminal Procedure Code that empowers the court to dismiss cases filed by private individuals who act in bad faith or distort facts. However, the study found that none of these state actors has exerted its power to prevent SLAPPs.
Key recommendations

Law reforms and establishment of effective measures

1. The Government should repeal the criminal defamation laws. Case studies have shown that most SLAPPs stem from defamation charges. As such, legislative reform is necessary in order to decriminalize defamation, thus limiting defamation claims to civil cases.

2. The Government should consider amending the applicable laws and mechanisms to make them more effective and practical in order to settle cases swiftly. This will relieve SLAPP targets of the burden of a lengthy judicial process.

Mechanisms in the administration of justice

1. The Office of the Attorney General should issue guidelines; and/or amend its Regulation on criminal cases that do not serve the public interest or will affect the security, safety or other significant interests of the country B.E. 2554 (2011), and amendment.

2. Courts should issue clear guidelines for the use of section 161/1 of the Criminal Procedure Code to dismiss accusations. These guidelines must include definitions of legal terms, and specific details with regard to when and how the provision can be invoked.

Business sector and state-owned enterprises

1. Business associations should take the lead in creating an open space for constructive dialogue to foster understanding between the private sector, Government, civil society and HRDs; and to reduce the incidence of SLAPPs as well as conflicts that may lead to violence.

2. Businesses should adopt the United Nations Guiding Principles on Business and Human Rights (UNGPs) in their day-to-day operations in order to reduce adverse impacts and conflicts arising from their business activities and supply chains. This will include implementation of a human rights policy and of human rights due diligence (HRDD).

3. As government entities, state-owned enterprises should be open to scrutiny and criticism, and should also avoid using the legal system as a tool to initiate lawsuits against critics.
Introduction

Background of the study

Striking a balance between a plaintiff’s right to file a lawsuit and the protection of the public interest is a challenge faced by the judicial system. Plaintiffs have the right to seek justice and obtain redress for injuries suffered. At the same time, defendants should be shielded for actions taken in the public interest.
The dynamics of globalization and increasing economic growth have led to escalating risks relating to violations of human rights, labour rights and environmental rights. These violations occur in both public sector enterprises (including state-owned enterprises) and private sector enterprises, due to the lack of effective monitoring measures and the absence of rigorous enforcement of existing measures.

The business and human rights (BHR) agenda is thus now high on the list of priorities both in Thailand and internationally, as evidenced by the development of several laws and regulations governing the human rights obligations of the business sector. The United Nations Guiding Principles on Business and Human Rights (UNGPs)\(^1\) have become one of the key standards outlining the human rights responsibilities of States and businesses.\(^2\)

The UNGPs contain three pillars: a State’s duty to protect human rights; a corporation’s responsibility to respect human rights; and access of affected parties to an effective remedy, including through both State-based and non-State-based mechanisms of either a judicial or non-judicial nature. One example is the National Human Rights Commission of Thailand (NHRCT) which is an independent State-based institution.

Over the last three years, the COVID–19 pandemic significantly impacted economies as numerous business entities shut down, causing widespread unemployment. This may have, in turn, spurred an increase in abuses of human rights, labour rights and environmental rights. According to a February 2021 report by the World Benchmarking Alliance titled ‘COVID–19 and human rights: Assessing the private sector’s response to the pandemic across five sectors’, most companies in its study failed to respect human rights during the pandemic,\(^3\) particularly in terms of conducting human rights due diligence (HRDD). The report further revealed that companies in specific corporate sectors misused the legal system to sue individuals or organizations that they perceived had harmed their image or impeded their operations.

However, businesses have been cited for abusing human rights since long before the onset of the COVID–19 pandemic. Some instances have been documented by the Business & Human Rights Resource Center, in a March 2020 report titled ‘Strategic Lawsuits against Public Participation: Southeast Asia cases & recommendations for governments, businesses, & civil society’,\(^4\) and its June 2021 report titled ‘SLAPPed but not silenced: Defending human rights in the face of legal risks’.\(^5\) According to these two studies, between February 2015 and May 2021 there were over 3,100 cases globally in which human rights defenders (HRDs), including human rights organizations, faced physical threats and judicial harassment stemming from SLAPPs against them. One of the most notable findings was that SLAPP practices occur most frequently in Latin American countries, followed by Asia and the Pacific.

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1 Although UNGPs have no legal force, in foreign countries such principles have been used in domestic courts, for example, Lungowe v Vedanta, to convince judges to interpret and understand the link between domestic law and business relating to business versus human rights to highlight how the treaty to which the British government is bound by the court’s ruling that the Vedanta case is bound by the duty of care under the UK government’s domestic law. See also DRAFT STATEMENT IN INTERVENTION. Case No: A1/2016/2502 & 2504.


Most targets of SLAPP are community leaders, or environmental and human rights advocates. Due to concerns that these individuals are deliberately targeted, the United Nations General Assembly passed a resolution on 28 July 2022 recognizing the right to a clean, healthy and sustainable environment as a human right. This resolution is expected to lead to a greater emphasis on environmental protection, and to provide activists with a solid ground to oppose policies and projects that might harm the environment.⁶

The only three Southeast Asian nations with anti-SLAPP laws or mechanisms are Indonesia, the Philippines and Thailand. In Indonesia and the Philippines, anti-SLAPP laws are used exclusively for environmental cases.⁷ Conversely, Thailand uses anti-SLAPP measures only in criminal cases, where the plaintiff is an individual. Notably, only the Philippines has a precise definition of SLAPP.⁸

On an international level, the Office of the United Nations High Commissioner for Human Rights (OHCHR) expressed concern regarding SLAPP practices in Thailand as part of its review of Thailand’s human rights record in August 2021 during the third Universal Periodic Review (UPR) cycle.

Clause 24 of the report states, “The Human Rights Committee expressed concern about reports of the severe and arbitrary restrictions imposed on the right to freedom of opinion and expression in the legislation of Thailand, including in the Criminal Code, the Computer-Related Crime Act B.E. 2550 (2007), Order 3/2015 ... It also expressed concern about criminal proceedings, especially criminal defamation charges, brought against human rights defenders, activists, journalists and other individuals under the above-mentioned legislation, ...”.⁹

Clause 49 of the same report refers to the serious concern of the Committee on the Elimination of Discrimination against Women (CEDAW) that “women human rights defenders, in particular those advocating for land rights, protection of the environment and the rights of indigenous women, rural women, lesbian women, bisexual women, transgender women and Muslim women in the southern border provinces, had increasingly become targets of lawsuits, harassment, violence and intimidation by authorities and business enterprises.”

Other recommendations relating to BHR issues were provided during the UPR session on 10 November 2021. Overall, Thailand received 217 recommendations from UN Member States. Some of these recommendations specifically concerned SLAPP issues, such as the recommendation from Belgium that Thailand consider strengthening legal protection to address a growing number of SLAPPs.¹⁰

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6 While the resolution is not legally binding on the 193 UN Member States, it is a beacon of hope for international campaigns in UN Member States on the right to a better environment at the regional and national levels, see UN Environment Program (UNEP). In historic move, UN declares healthy environment as a human right. https://www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right [accessed 09 May 2023].

7 Article 66 of 2009 Environmental Protection and Management law “Everyone who fights for the right to a good and healthy environment cannot be prosecuted criminally or sued civilly”.

8 SLAPP is defined by the law of the Philippines, The Rule of Procedure for Environmental case of Philippines (A.M. No. 09-68-SC) as “a civil suit, counterclaim, counterclaim… or a criminal or administrative lawsuits against persons, groups of people or labor unions, villagers groups or other similar groups due to the exercise of the right to freedom of speech, expression or freedom of the press or filing a complaint with the government to raise concerns over the public interest and with the intent to intimidate, harass or silence any of the individuals described above. This will create an unreasonable pressure or ultimately deplete resources.” See Anti-Strategic Lawsuits Against Public Participation Act of 2011 or the Anti-SLAPP Act of 2011. https://legacy.senate.gov.ph/lisdata/12543106021.pdf [accessed 01 February 2022].


10 Countries that have raised concerns include: 1. Belgium “Recommend legal protection in case of SLAPP lawsuits”; 2. Brazil Addressing the issue “Consideration of the amendment of the law on freedom of expression and peaceful assembly to be in line with international human rights standards”; 3. Bahrain “Recommendations Promote Compulsory Measures for Companies to Conduct Human Rights Due Diligence” ; 4. The State of Latvia provides for “Promotion and protection of the rights to freedom of expression and freedom of the press including the safety of journalists.” 5. United Kingdom Addressing the issue of “Ensuring the protection of space for civil society and human rights defenders, including youth civil society members, lawyers, media and academics to enable such groups to operate freely and fully exercise their rights to freedom of expression. This includes online forms and freedom of peaceful assembly and association”; and 6. Italy refers to “Creating a safe and conducive environment for the exercise of the right to peaceful assembly and freedom of expression and preventing attacks and intimidation against human rights defenders,” see Ministry of Foreign Affairs. Recommendations that Thailand has voluntarily accepted and committed under the UPR Round 3. https://humanrights.mfa.go.th/upload/pdf/UPR218-8.pdf [accessed 01 February 2022].
At the national level, concerns about Thailand’s BHR issues are reflected in the National Action Plan on Business and Human Rights (NAP) adopted on 29 October 2019.\(^{11}\)

The NAP lists the physical and legal harassment of HRDs as one of four priority areas that needs urgent attention.\(^{12}\) In this regard, the Ministry of Justice was mandated to be a leading agency responsible for examining the possibility of developing laws, regulations and measures to prevent SLAPPs and therefore strengthen the protection of HRDs.\(^{13}\) The Rights and Liberties Protection Department of Thailand’s Ministry of Justice (RLPD) is currently developing the second phase of the NAP, and all four priority areas remain the same for 2023 to 2027.

This study aims to present an overview of SLAPPs in the context of BHR in Thailand and to provide recommendations for developing legislation and measures to address and prevent SLAPPs. The implementation of the research outcomes will reinforce the Government’s commitment to human rights, and accelerate Thailand’s attainment of the Sustainable Development Goals (SDGs).

**Scope of the study**

In addition to focusing on SLAPPs in Thailand in the context of BHR, this study examines the practice of SLAPPs in other countries — particularly the United States of America (US), which is the first country to have addressed and voiced concerns regarding SLAPP issues — as well as European Union (EU) member countries. The study explores SLAPP patterns in Southeast Asia, including Indonesia, the Philippines and Thailand, and also analyses efforts of these nations to combat SLAPP practices.

For Thailand, the research team delved into the development, patterns and impact of various dimensions of SLAPP litigation initiated by the business sector and state-owned enterprises, either by lodging complaints or accusations with an alternatively, or by filing a lawsuit directly with the court. The data from 1997 to June 2022 offer greater insight regarding the overall situation. The Constitution of Thailand that was promulgated in B.E. 2540 (1997) safeguards public freedoms and participation comprehensively, and recognizes community and environmental rights explicitly for the first time, hence the rationale behind setting the scope of the study to date back to the beginning of 1997. Civil society seeking to engage in discourse and activities relating to public interest issues, including issues relating to BHR, frequently rely on the constitutional provisions regarding freedoms and rights.

The research team also strove to investigate the effectiveness of the existing legal framework and measures dealing with SLAPP-related litigation, particularly sections 161/1 and 165/2 of the Criminal Procedure Code, section 21 of the Public Prosecutor Organization and Public Prosecution Act B.E. 2553 (2010), and the Regulation of the Office of the Attorney General on criminal cases that do not serve the public interest or will affect the security, safety or other significant interests of the country B.E. 2554 (2011), and amendment. In addition, the study contains an analysis of other relevant laws, remedial measures through the assistance mechanisms under the Justice Fund prescribed by the Justice Fund Act B.E. 2558 (2015), and the use of a dispute resolution procedure through the Dispute Mediation Act B.E. 2562 (2019).

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11 Thailand took the Voluntary Pledge and accepted Sweden’s proposal to hold a meeting to review the human rights situation in Thailand according to the Universal Periodic Review (UPR). Round 2. On 31 January 2017 the Rights and Liberties Protection Department of Thailand’s Ministry of Justice was assigned as the primary body responsible for the development of the National Business and Human Rights Action Plans (NAPs).


Methodology of the study

The study employed the following two methodologies for data collection:

1. Documentary research, in which data were acquired from:
   - academic work relating to SLAPPs;
   - Human Rights Lawyers Association (Thailand) (HRLA)’s case database;
   - iLaw;
   - Community Resource Centre Foundation (CRC);
   - EnLAW Thai Foundation; and
   - court judgements.

2. Field research conducted through in-depth interviews — some on-site, but mostly online via Zoom or by telephone — that utilized a semi-structured questionnaire developed by experts. Each key informant was requested to complete a consent form prior to the interviews. Appendix A contains the consent form and sample questionnaire.

The key informants were affected individuals, representatives of non-governmental organizations (NGOs), lawyers, government officials and corporate actors, academics, media personnel, and politicians, totalling 58 persons. Details are shown in Figure 1.

![Figure 1. Key informants](image-url)
Limitations of the study

Limitations in documentary research

The research team faced challenges in locating data from long-standing cases, particularly those before B.E. 2540 (1997). Those cases were barely systematically documented, and media reports provided scant details, thus statements from lawyers or SLAPP targets and other source materials had to be relied upon.

Limitations in field research

As the field research was conducted during the COVID-19 pandemic, most in-depth interviews were done online via Zoom or by telephone. In addition, with most state agencies adopting the work-from-home approach, communication with relevant state officials was also constrained. Furthermore, attempts to engage with corporate actors prosecuting individuals (including HRDs) proved futile, partly due to the lack of trust. As a result, in-depth interviews were only possible with key informants within the research team’s network of contacts.
Key findings from the literature review

Definition of SLAPP

In the book *SLAPPs: Getting Sued for Speaking Out*, Professor George W. Pring and Assistant Professor Penelope Canan describe a Strategic Lawsuit against Public Participation (SLAPP) as “a civil procedure based on the exercise of a claim against a government regarding a matter of public interest or concern”.  

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14 The study found that between the 1970s and 1990s, Americans were most likely to face SLAPP as a result of submitting letters opposing the appointment of politicians or witnessing against the development of large-scale development projects. This includes reporting environmental law violations to federal agencies, for example.
Pring and Canan’s definition of a SLAPP limits it to a civil procedure, as their study was conducted in the US where the First Amendment of the US Constitution guarantees freedoms of speech, peaceable assembly, and the right to petition the government for a redress of grievances. This context makes it difficult to limit individuals’ freedom of speech and expression by using any criminal legislation. Therefore, the charges most commonly used to file SLAPPs in the USA are usually civil in nature. In contrast, speech, expression, and assembly are, in some circumstances, considered criminal offences in Thailand. Consequently, most SLAPPs in Thailand are criminal cases, instituted in particular under the criminal defamation provisions in sections 326 and 328 of the Criminal Code.

As the concept of SLAPP expanded to other countries, the definition began to evolve according to each local context. For example, in Ontario, Canada, SLAPP is defined in the Protection of Public Participation Act, 2015 as “a tactic used by an individual or company to silence critics wherein the plaintiffs or the parties starting the lawsuit use these lawsuits against weaker opponents in the hope that they will exhaust themselves and eventually surrender to the case. In addition, in Canada the grounds used to file a SLAPP are often defamation offences, and most of the time, the plaintiff withdraws the lawsuit before the proceedings begin”.15

In Thailand, several organizations have attempted to define SLAPPs. For instance, according to HRLA, SLAPPs as lawsuits that threaten the exercise of constitutional rights in relation to public concerns, or threaten actions or other proceedings in support of the exercise of such constitutional rights.16 SLAPPs have been characterized by the International Commission of Jurists (ICJ) as “lawsuits undertaken with the principal objective of curtailing or deterring public criticism or opposition to certain activities of the entity of those initiating the legal action”.17 Although definitions may vary, the common element of a SLAPP is an abuse or misuse of a judicial procedure by a filer to retaliate against a target who exercises rights, which are protected under constitutional law or international human rights law, to participate in public issues, or to protect the public interest. In this study, a SLAPP is any lawsuit that threatens or hinders the exercise of rights and freedoms recognized under the Constitution of Thailand or any international human rights treaty to which Thailand is a State Party.

Key terms

In this report:

- ‘Filer’ generally refers to an individual, legal person, state-owned enterprise or corporation, but is limited to a state-owned enterprise or business for the purpose of this study;
- ‘Target’ refers to an individual or a legal person; and
- ‘Action’ refers to all prosecutions, including complaints, accusations and lawsuits resulting from the exercise of the right to freedom of participation in public interest issues that is guaranteed by the Constitution of Thailand or any international human rights treaty to which Thailand is a State Party.
- ‘Matters of public interest’ pertains to any issue or concern — whether political, social, economic or environmental — relating to the public interest, such as the protection of human rights, community rights, and investigations of corrupt practices; and promotion of transparency and good governance.

Note

The meaning of the term ‘filers’ is limited to a state-owned enterprise or corporation for the purpose of this study.

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Differences between SLAPPs and ordinary lawsuits

Pring and Canan’s study highlights the distinction between SLAPPs and ordinary lawsuits, namely that SLAPPs are generally aimed at threatening, retaliating against, or punishing targets for speaking out; halting particular acts; or opposing political activities. It should be emphasized that SLAPPs are more strategic than tactical, as filers set their sights on causing adverse consequences for the targets, rather than on winning the cases. SLAPPs are political by nature, as they transform political disputes into legal ones; transfer the arena from the public forum, where problems can be resolved through political decisions, to the judicial; and shifts the focus from damage to the public, to damage to the plaintiff.

In general, SLAPP filers do not seek justice or to win the lawsuit. Rather, they aim to threaten, muzzle or provoke their targets and discourage continued public participation by imposing financial burdens such as litigation costs and diminished work efficiency; jeopardizing advocacy work; and causing emotional stress. As a result, the targets are silenced and stop exercising their political rights. In addition, the chilling effect of SLAPPs serves as a significant deterrent to future citizen involvement or public participation in public affairs.

SLAPPs are often described as lawsuits filed in bad faith or to harass, intimidate or threaten the targets; or to obstruct them from talking about, or being involved in an investigation regarding, the operations of the filers. Nevertheless, proving the motive behind a SLAPP is challenging, as the filers are not known to indicate that they are using SLAPP litigation, choosing instead to conceal the nature of the lawsuit. Whether a lawsuit constitutes a SLAPP or was in fact filed in good faith is a matter of intent. Although the nature of a lawsuit can be assumed from certain facts — such as the filer choosing a jurisdiction far from the target’s domicile, or suing for excessive damages — proving mala fide is difficult in many cases.

In this regard, Pring and Canan outlined a number of factors to help determine whether a lawsuit is a SLAPP, based on whether:

- the target’s action is constitutionally protected;
- the target is a politically active citizen engaged in public participation;
- an attempt is being made by the filer to use economic advantage or state power to exert pressure on the target;
- a filer has had a history of filing lawsuits to threaten critics or activists;
- a filer is requesting inflated damages or a disproportionate claim;
- a filer has provided any factual evidence to show that the target was involved in the commission of the offence; and
- a filer attempts to delay the case as long as possible.

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18 George W. Pring and Penelope Canan. SLAPPs. Getting sued for speaking out, page 8.
19 George W. Pring and Penelope Canan. SLAPPs. Getting sued for speaking out, pages 10, 11.
21 George W. Pring and Penelope Canan. SLAPPs. Getting sued for speaking out, pages 150 – 151.
Managing SLAPPs

Pring and Canan’s study identified various factors that contribute to how conducive an environment is for SLAPPs, such as how high the legal costs are, how flexible the laws relating to freedom of speech or expression (particularly defamation) are, and whether there are legal safeguards such as anti-SLAPP legislation or penalties for abuse of process.  

Pring and Canan’s study introduces the three cardinal rules for managing SLAPPs (3Ds), including:

1. ‘Detour’ — avoid SLAPPs before they are filed, which means that potential targets should be informed and have an understanding of the risks, laws and related human rights principles;
2. ‘Dismiss’ — when a lawsuit is filed, it must be terminated as soon as possible; and
3. ‘Deter’ — prevent future filings by making filers accountable for their actions. SLAPP filers are generally required to indemnify the targets for expenses incurred and for damages, including punitive damages.

When focusing on legal management, Pring and Canan point out that the ultimate purpose of anti-SLAPP legislation is to dismiss or settle frivolous or baseless lawsuits before the cost of litigation increases and before the target is severely affected.

In general, anti-SLAPP laws have three main objectives:

1. Creating a more equitable balance to enhance and protect the rights of individuals to file complaints, speak out and associate, which are constitutionally protected in matters of public concern or public interest. At the same time, it is essential to protect the right of an aggrieved party to file a lawsuit in good faith to obtain a remedy based on actual loss.
2. Discouraging and preventing the improper use of legal proceedings, which is a tactic designed to impede the right to public participation. The main principle is that a baseless case should be dismissed promptly.
3. Promoting access to justice for all, which relates to expenses and damages arising from litigation, particularly determining the filer’s liability when a case is dismissed on the ground that it is a SLAPP.

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22 SLAPPs and FoAA rights, Info Note of the UN Special Rapporteur on the Rights to Freedom Assembly and of Association (Ms. Annalisa Ciampi), https://www.ohchr.org/Documents/Issues/FAssociation/InfoNoteSLAPPsFoAA.docx [accessed 10 February 2022].
23 George W. Pring and Penelope Canan. SLAPPs. Getting sued for speaking out, pages 143 – 167.
24 George W. Pring and Penelope Canan. SLAPPs. Getting sued for speaking out, pages 201 – 205.
Based on Figure 2, SLAPPs arise from the conflict between the target’s exercise of the right to protect the public interest and the filer’s right to access justice to seek remedy for alleged damages caused by the target’s actions. This clash of rights illustrates the ambiguous nature of SLAPPs, which gives rise to challenges in handling these cases.

When confronted with a SLAPP, the authorities — including an inquiry officer, a prosecutor or a court — should balance the rights of the parties by allowing both parties equal opportunity to prove all allegations before the court makes a decision. In reaching a decision, emphasis must be given to the exercise of rights to protect the public interest. Therefore, where a target’s action was aimed at protecting the public interest and it is likely to cause only minor or insignificant harm to a filer, but it substantially serves and promotes the public interest, the relevant authority should dismiss, i.e. halt, the lawsuit against the target. This dismissal would restore the dispute to the public sphere, to allow it to be addressed through political means.
Mechanisms for managing SLAPP-related issues in other countries

Anti-SLAPP legislation is designed to settle a lawsuit as immediately as possible while maintaining the balance of each party’s rights, providing compensation for the target, and restraining future SLAPPs. The research team examined case studies from countries with anti-SLAPP mechanisms, including the US, Canada, the United Kingdom, and EU member countries.

The US

From 1990 to the present, 32 US states and the District of Columbia enacted anti-SLAPP and ‘SLAPP-back’ legislation. Although anti-SLAPP provisions vary significantly from state to state, the fundamental objectives of anti-SLAPP statutes are to prevent these lawsuits from being brought in the first place, sanction those who file them, and ensure that they are resolved expeditiously. They also allow the court to provide an automatic stay of discovery once the filers have filed a SLAPP motion, and allow targets to immediately appeal a trial court’s denial of an anti-SLAPP motion. For instance, California anti-SLAPP law is effective because it allows targets to seek the dismissal of a SLAPP at the outset, and trial will only begin if filers can prove that their claim will prevail. Filers must pay the target’s attorney’s fees and other costs if the lawsuit is determined to be a SLAPP. The law also underscores the protection of the freedom of speech and expression pertaining to a public issue.

Although there has been no comprehensive definition of what constitutes a SLAPP, since 2000, defamation, privacy infringement, interference in business contracts or another’s economic profits, and trespassing on private land have been the most common allegations in SLAPPs. The Citizen Participation Act of 2020 states, “SLAPPs are an abuse of the judicial process that waste judicial resources”. This definition highlights that by distorting the use of justice, SLAPPs squander resources not only in terms of the officials in the judicial process, but also the costs of legal proceedings, which are mainly derived from taxpayers’ money.

In May 2021, Washington promulgated legislation called the Uniform Public Expression Protection Act (UPEPA). In April 2022, Kentucky followed as a result of efforts by the Uniform Law Commission to enact legislation against SLAPP litigation. UPEPA’s essence is based on the summary of existing judgements relating to standards for dismissal, such as allowing defendants to file requests to dismiss the SLAPP from the beginning. This is to create an anti-SLAPP legal model for states dealing with SLAPPs.

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26 Code of Civil Procedure – section 425.16 California’s Anti-SLAPP Law. [accessed 10 February 2022].
28 Protect the Protest. HISTORY OF SLAPPS. [accessed 10 February 2022].
**Observation**

Since the most common SLAPPs in the USA are based on allegations of defamation, US law has an additional requirement if the filer is a public figure.\(^{30}\) The US Supreme Court considers public figures, such as politicians and government officials, to be of public interest. As a result, the degree of protection for public figures is far lower than for a private individual.

In addition, the law requires the filer to prove four aspects: (1) the target’s publication of a false statement about the filer; (2) the dissemination of this false statement to third parties; (3) the act was the target’s fault, at least through negligence; and (4) the false statement caused damage to the filer.

There are no criminal defamation or insult laws in the US. Defamation is now predominantly a civil claim, because the First Amendment of the US Constitution is widely seen as protecting the right to free speech and expression. There is no investigation mechanism comparable to a criminal case. Anti-SLAPP measures therefore focus on court challenges.

**Canada**

SLAPP was identified and debated in Canada for the first time in the early 1990s when corporations in British Columbia causing significant environmental harm intimidated or sued individuals, including environmental activists. However, awareness of SLAPP litigation had already emerged in the 1950s when Daishowa, a Japan-based logging multinational company, sued NGOs for a considerable amount of damages. Much later, in 2001, British Columbia became the first province in Canada to have an anti-SLAPP law, but the short-lived law was repealed five months later.\(^{31}\)

Québec then enacted an anti-SLAPP law in 2009 to end lawsuits violating the freedom of expression of individuals or groups that advocate the public interest. The law permits the courts to promptly dismiss an improper proceeding early on, particularly when the facts prove that there is a restriction on freedom of expression and citizen participation in public debate. This pertains to litigation or testimony that is baseless, frivolous or distorted, as well as acts committed in bad faith or that may cause damage, conflicts and disputes. In this model, the filer is responsible for proving that the judicial process is appropriate and legitimate with reasonable evidence.\(^{32}\)

In 2015, Ontario enacted its Protection of Public Participation Act to stop SLAPPs. The law aims to protect civil rights to freedom of expression, create a space for debate and criticism on matters of public interest, and discourage SLAPPs. It has given the court power to dismiss cases if the target files a petition and satisfies the court that the filer’s allegations arise from issues concerning the protection of the public interest. The court

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\(^{30}\) Public figures can be divided into two groups, the first group is civil servants such as police officers and politicians, etc. The second group includes those involved in controversial issues related to public concerns or interests. For this reason, owners of various development projects related to approval or conventions from government agencies to use in the area are classified as the second group of public figures. See also DWIGHT H. MERRIAM and Jeffrey A. Benson. Identifying and Beating a Strategic Lawsuit Against Public Participation.


must consider the petition within 60 days of receipt. The court may continue to prosecute if the filer can demonstrate that the process is of substantial merit, the target has no valid defence in the proceeding, and damage is likely to be done to the filer as a result of the target’s over-exercise of rights, which cumulatively lead to a finding that the legal proceeding against the target carries more weight than the protection of the public interest. For cases where the court orders dismissal of the lawsuit, the target is entitled to litigation costs unless the reimbursement is not appropriate in the circumstances.33

The United Kingdom

In 2013, the United Kingdom passed a law called the Defamation Act 2013, intended to reform defamation law, strike a balance between the exercise of freedom of expression and the protection of reputation rights, as well as to enhance protections for the media and journalists. One process of amending this law is to make litigation more stringent. For example, the law requires that the allegedly defamatory wording must cause, or be likely to cause, serious harm to the reputation of the filer.

In addition, the law stipulates that commercial damage to reputation must be actual, or likely to cause severe damage to the filer’s business.34 It is interesting to note that this amendment to the law adds the term ‘serious harm’, as well as revises terms such as ‘fair comment’ to ‘honest opinion’.

As such, if the speaker expresses an opinion based on the belief that it is an honest opinion, that opinion would inevitably result in protection.35 Publication on matters of public interest is also protected under the provisions of the amended law.36

EU member countries

The Coalition Against SLAPPs in Europe (CASE) has compiled a list of SLAPPs in EU member countries, along with an analysis of the cases, in conjunction with the Amsterdam Law Clinics of the Faculty of Law at the University of Amsterdam. There were approximately 570 cases between 2010 and 2021, and the data have shown an upward trend in the occurrence of SLAPPs across Europe year on year. The number of SLAPPs peaked in 2020, followed by 2021 and 2019, with the most common targets being journalists, newspapers, activists, campaigners and informants.37 Three cases are summarized below.

Case No. 1: Daphne Caruana-Galizia, a journalist, was killed in a car bomb explosion as a result of her work on exposing corruption networks of influential people in Malta. Before her assassination, she had been a target in 47 civil and criminal defamation claims in several jurisdictions. Even after her death, her family still defended 34 remaining cases.

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35 The Act does not apply to offences outside the UK, EU or Lugano Convention unless proven to the satisfaction of the courts of the UK and Wales. See Brett Wilson LLP’s media law department. Defamation Act 2013: A summary and overview six years on. https://www.brettwilson.co.uk/blog/defamation-act-2013-a-summary-and-overview-six-years-on/ [accessed 10 February 2022].
36 In May 2022, the UK Government is considering reforming the law that gave rise to SLAPP, with options related to reforming the Defamation Act 2013. This is to promote the protection of the public interest of journalists and campaigners as a reason for dissemination of personal information.
Case No. 2: A subsidiary of the Bolloré Group filed lawsuits against journalists, lawyers, activists and NGOs investigating human rights abuses in the corporation’s oil palm plantations in Africa.

Case No. 3: McDonald’s filed a defamation case against British Greenpeace activists for libel, due to allegations about labour exploitation and sales of unhealthy food. As a result of this prosecution, the activists spent seven years entangled in a court battle and ultimately lost over 481.5 million baht.

In Europe in general, journalists and media personnel continue to face SLAPPs, which are most commonly based on civil and criminal defamation charges. The fact that the EU currently lacks sufficient mechanisms to defend journalists has resulted in fresh efforts to develop guidelines to protect them and guarantee efficient investigation of harassment and abuse against them. This is reflected in the ‘Recommendation of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors’ in April 2016.

Nevertheless, these recommendations have not seen much progress because EU member countries have rarely adopted these guidelines in their own countries. In 2021, the Council of Europe Commissioner for Human Rights acknowledged that while SLAPPs were not a new phenomenon, they continued to occur, and it was thus necessary to propose legislation to counter them.

The enactment of anti-SLAPP legislation would provide domestic courts with the authority to dismiss cases promptly, and to prevent any collateral damage that SLAPPs may cause to access to justice. In addition, the provisions must inhibit the misuse of civil processes. There have been attempts to enact the European Media Freedom Act to protect the independence of the media.

Summary of key findings from the USA, Canada and EU members countries

Anti-SLAPP legislation is considered the most advanced in the USA. Nonetheless, each country’s laws differ depending on the context and challenges. Most laws seek to protect activities associated with the constitutionally recognized right to freedom of expression and the submission of complaints, such as news reports concerning matters of public interest. Often, the essence of the law is the protection of targets through the establishment of mechanisms for the rapid dismissal of unfounded lawsuits, such as a ‘fast track’ process that allows targets to submit a request for dismissal at the outset, and requires filers to prove that the lawsuit is well-founded and deserves a trial. Filers would be responsible for the costs associated with the legal proceedings in cases where the court issues an order of dismissal. In some cases, punitive damages may also be imposed on SLAPP filers.

One of the key challenges facing the USA and the EU is the ever-increasing number of SLAPPs against the media.

Southeast Asia

Only three countries in Southeast Asia have laws that guard against SLAPPs, namely Indonesia, the Philippines and Thailand.

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39 The European Parliament’s Policy Department for Citizen’s Rights and Constitutional Affairs committee analysed SLAPP’s legal definitions and assessed its compatibility with EU law under the heading “the Use of SLAPPs to Silence Journalists, NGOs and Civil Society”.
**Indonesia**

Article 66 of Indonesian Law No. 32/2009 on Environmental Protection and Management addresses SLAPPs in relation to environmental issues, and provides that "everyone who fights for the right to a proper and healthy living environment cannot be charged with a criminal or civil offence". In addition, article 78 (1) of the Prevention and Eradication of Forest Destruction Law protects individuals from being sued, specifying that "reporters and informants cannot be sued legally, either by the penal code or civil code, for the reports and testimonies they will provide, are providing, or have provided".

In 2021, Law No. 32/2009 on Environmental Protection and Management, regarded as a provision for anti-SLAPP measures, was cited in a number of environmental disputes. For example, Indonesia’s High Court acquitted six villagers on the island of Bangka charged with impersonating officials to organize a meeting concerning protection of the residents’ rights to clean air and a healthy environment, in the wake of pollution caused by a cassava factory operated by PT Bangka Asindo Agri. The court ruled that the villagers’ right to fight for a clean environment was protected under the 2009 Environmental Protection Act. The court also stated that the villagers’ actions were undertaken only to allow the public to participate in activities to protect the public interest, in light of the adverse impact of the pollution.\(^{40}\)

SLAPPs against journalists continue in Indonesia, and are directed particularly at journalists who report on environmental issues. Although there is a Memorandum of Understanding (MOU) between the Indonesian National Police and the Press Council to ensure protection of journalists from criminal charges, the MOU has not helped reduce the incidence of SLAPPs against journalists.

**The Philippines**

The Philippines’ Rules of Process for Environmental Matters (A.M. No. 09-6-8-SC)\(^{41}\) took effect in April 2010 as an anti-SLAPP statute pertaining to protection of the environment and defence of environmental rights. This legislation applies to civil, criminal, and administrative matters, and the mechanisms and procedures are the same as those in the US. The burden of proof is on both parties. One option available to the target is to file a petition for the case to be settled as soon as possible. Within five days, the filer must prove that the lawsuit is not a SLAPP. The onus is then on the target to prove that the action undertaken was a legitimate action to conserve or restore the environment. An expeditious investigation must be completed within 30 days, and the filer is required to pay for damages incurred, attorney’s fees and litigation expenses for the target in case of dismissal by the court.

However, the statute only applies to environmental proceedings. The Constitution of the Philippines guarantees “the right of the people to a balanced and healthful ecology”, which encompasses the right to the freedoms of expression and assembly, and the right to seek redress, concerning abuses inflicted on the health of the ecosystem.

Leaving aside the fact that the anti-litigation statute applies narrowly to environmental cases, the anti-SLAPP laws of the Philippines are regarded as highly evolved as they encompass SLAPPs for civil, criminal and administrative proceedings against individuals, organizations and government agencies, including officers who enforce environmental laws.

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\(^{41}\) Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC). [https://www.lawphil.net/courts/supreme/am/am_09-6-8-sc_2010.html][accessed 18 December 2022].
Thailand

In Thailand, SLAPPs can take the shape of civil or criminal proceedings, each with its distinct legal forms and procedures. While civil cases are generally initiated by filing a lawsuit directly with the court, criminal cases can be initiated in two ways: by lodging a complaint or accusation with an inquiry officer, or by exercising the right to file a lawsuit directly with the court. The applicable management mechanisms are:

**Civil cases:** There are no explicit legal provisions to settle SLAPPs quickly.

**Criminal cases:** There are mechanisms for scrutinizing cases in order to dispose of them as soon as possible, as follows:

- **Screening to resolve cases at the prosecution level**, which is only applicable in cases of complaints and accusations. In most cases, the prosecutor has the discretion to not prosecute criminal cases because, based on findings of fact and of law, the target is not an offender or the target's actions are not considered an offence under the law. Even if those actions are considered an offence, the prosecutor is still able to order non-prosecution if prosecution would not be in the public interest under section 21 of the Public Prosecutor Organization and Public Prosecution Act B.E. 2553 (2010), together with the Regulation of the Office of the Attorney General on criminal cases that do not serve the public interest or will affect the security, safety or other significant interests of the country B.E. 2554 (2011), and amendment. It was noted, however, that prosecutors have seldom exercised their authority to order non-prosecution of SLAPPs on the basis that those cases were not in the public interest.

- **Two primary phases in screening cases to settle in court are:**
  - **Cases settled during the court review of the indictment** align with section 161/1 of the Criminal Procedure Code, which was added in 2019 and stipulates that in a case filed by a private complainant, if it appears to the court — or through examination of evidence called at trial — that the complainant has filed the lawsuit in bad faith or distorted facts to harass or take undue advantage of a target, or to procure any advantage to which the complainant is not rightfully entitled to, the court shall order dismissal of the case, and forbid the complainant to refile such a case. This clause has given judges the authority to dismiss accusations, but lacks specificity with regard to when and how the provision can be invoked. This may be a factor hindering this legislative provision from being applied to effectively prevent SLAPPs.
  
  - **Termination of the case at the preliminary hearing** shall also comply with section 162 of the Criminal Procedure Code. The law provides that when there has been an indictment and a lawsuit has been filed, the court must conduct a preliminary hearing if the plaintiff is an individual or a private person. In cases where the prosecutor is the plaintiff, the law does not require a preliminary hearing. Therefore, the court can exercise its discretion on whether to conduct an investigation. Thus far, the court has not conducted a preliminary investigation in any case where the prosecutor was the plaintiff.

As with section 161/1, section 165/2 of the Criminal Procedure Code is a new provision added in 2019. This clause permits the target to present evidence in a preliminary hearing to show that the case lacks merit. Specifically, it provides that “the [target] may submit to the court a significant fact or law which may bring the court to the conclusion that the case before it lacks merit, and may include in the
submission as evidence, persons, documents or materials to substantiate the [target’s] claims ... In such case, the court may call such persons, documents or materials to provide evidence in its deliberation of the case as necessary and appropriate.”

Regarding redress and remedy, in criminal cases none of the laws require the court to order the filer to be responsible for the legal expenses, attorney’s fees, damages or other punitive measures for filers when the case is proven to be a SLAPP. In civil cases, the court will order the losing party to pay for the winning party’s court fees and attorney’s fees, but not including other expenses incurred in litigation such as travel expenses, costs ‘thrown away’ (economic loss), etc. If the target wants the filer to bear these expenses, a civil lawsuit claiming damages has to be filed separately, which makes it burdensome for the target to seek compensation and remedy. For this reason, claims for damages arising from SLAPPs do not usually occur.

**Summary of approach in three Southeast Asia nations**

As indicated, Thailand, Indonesia and the Philippines all have anti-SLAPP legislation. However, since Indonesia and the Philippines only offer legal protection for environmental problems, public participation in other matters of public interest remains unprotected by the law. Thailand has only stipulated measures to deal with SLAPPs filed as criminal complaints by private entities, excluding instances in which the prosecutor is the filer. Nevertheless, the prosecutor’s discretion in deciding whether to order prosecution — based on whether it would be in the public interest to do so — can significantly influence the settlement of SLAPPs.
Key findings for SLAPPs in Thailand

Statistical overview of SLAPPs in Thailand

As mentioned in Chapter 1, from 1997 to June 2022 there were a total of 109 SLAPPs in Thailand with over 400 targets⁴⁴ (based on the definition of a SLAPP and the scope of work in this study),⁴⁵ filed by the business sector and state-owned enterprises. Among these, more than 10 cases were against groups of individuals with over 10 targets, such as a mining company that sued 33 villagers from Sam Muang and Pha Sam Yod sub-districts for civil violations against mining operations. Similarly, a sugar company sued 21 Rak Nam Oon group members for defamation when they raised concerns about the company’s business operations. In another example, a mining company sued 14 individuals from Khon Rak Ban Kerd in Loei Province for civil defamation when they protested against mining in the zones granted by the Thai authority, and sought up to 150 million baht in damages. In yet another instance, the State Railway of Thailand (SRT) prosecuted 13 leaders of the State Railway Union who protested about the workers’ safety conditions.

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⁴⁴ Since some defendants were prosecuted in several cases, the research team counted them multiple times. For example, if Mr. A was prosecuted in five cases, he was counted as five separate defendants. Please see overview information at https://datastudio.google.com/u/1/reporting/ShtscsQ9n6h-41Rh-4k-mhC-201512722020/jRCD/3/page/su0fC.

⁴⁵ These figures do not include lawsuits that arose from disputes with the business sector, but instead relate to prosecutions that resulted from breaches of government regulations, such as cases relating to protests.
Since 2013, the incidence of SLAPPs has increased significantly in Thailand, with the highest number being 13 cases in 2014, followed by 11 cases each in 2016 and 2019, and 10 cases in 2017.

**Figure 3. BHR-related SLAPPs in Thailand from 2001 to 2022**

Since 2014, Thailand’s political atmosphere and public space for exercising freedoms have been progressively constrained due to the Coup and the repeal of the 2007 Constitution. Nevertheless, the research team could not find a direct correlation between the political environment and the upward trend in SLAPPs. There were, however, many prosecutions by only a handful of companies in the last nine years, which explains the upsurge. A mining company in Loei Province and a poultry company are among the businesses that filed numerous cases in 2016, 2017 and 2019.

**Figure 4. Business sectors of SLAPP filers**
Mining companies were the most likely to initiate legal proceedings (34 percent of cases), followed by businesses in the livestock industry (21 percent) and the energy sector (14 percent). For the livestock industry, it was found that one single poultry company had filed 39 criminal and civil lawsuits against 23 targets. The majority of those cases were filed directly with the court, and the primary charge was criminal defamation by publication. That company had lodged complaints with inquiry officers in two cases as well, but the prosecutor ruled that neither case should be prosecuted. The filer filed the complaints directly with a court, which they were dismissed during the preliminary hearing.

Since 2016, more than half of the cases filed by the poultry company have been resolved, with the vast majority being dismissed during the preliminary hearing or during trial. The prosecutor decided not to prosecute in some instances, while other cases were resolved by conciliation or by withdrawal of the lawsuit. Only two cases ultimately reached trial, including one against a former human rights expert for defamation arising from a tweet of a short video alleging rights violations by the company. That lawsuit was rejected by both the court of first instance and the Court of Appeal, both of which deemed the tweeted criticism to be reasonable. In the second case, which involved a former journalist who was sued for defamation, the Court of Appeal and the Supreme Court rejected the lawsuit, reasoning that the target’s conduct demonstrated good faith.

This poultry company’s action clearly illustrates that mass SLAPP litigation is intended to burden and impede the work of human rights advocates and the media. In certain instances, the legal proceedings lasted over five years.

The people most targeted for prosecution are villagers involved in local activities or whose rights were violated (78 percent), followed by activists/NGO representatives (10 percent), trade unionists (6 percent) and media personnel (3 percent).

**Figure 5. Categories of SLAPP targets**
Most of the targeted villagers have been environmental and community rights activists, or opponents against community development projects that adversely affect the livelihoods of those in the community, and the environment. As previously mentioned, some organizations and communities have been sued by the same companies many times. For instance, the group from Khon Rak Ban Kerd in Loei Province that strongly opposes gold mining has faced more than 20 SLAPPs by mining corporations.

Although SLAPPs against the media account for only 3 percent of the cases studied, the institution of SLAPPs against this sector reflects a disturbing downward trend in media freedom.

The bulk of the data in this study was collected exclusively from the research team’s network of contacts. In addition, the media organizations studied work mainly on environmental and labour issues only, leaving out other public interest issues.

**Figure 6. Actions at risk of SLAPPs**

The actions most frequently targeted are the dissemination of information and expression of views online, including broadcasting evidence of human rights violations in the media (28 percent); followed by participation in rallies or assemblies (21 percent); engagement in media interviews (15 percent); performance of media duties (10 percent); and submission of complaints to authorities (9 percent).
The issues litigated in the SLAPPs revolved mostly around natural resources and the environment (53 percent), in which mining was the most prevalent; followed by labour rights (26 percent). These high percentages were caused by a single corporation having filed numerous allegations against several targets. Good governance in business operations, especially the energy sector (14 percent) came in third; and there has been a rise in consumer rights issues (5 percent).

Charges and penalties

Of the 109 cases (involving 122 charges) reviewed, 81 cases (74 percent) involved criminal proceedings; and the remaining 28 cases (26 percent) were civil proceedings. Of the 81 criminal cases, 22 of them (27 percent) were grievances or accusations lodged with inquiry officers. In comparison, 59 cases (73 percent) were filed directly with the court.46

In two cases, the corporations had filed lodged complaints with inquiry officers but the prosecutor subsequently ordered that no prosecution be undertaken. The corporations themselves then commenced litigation directly in court, such as when the mining company sued Khon Rak Ban Kerd leaders for slander, and the poultry company accused two Myanmar migrant labourers of offences of theft and robbery.

46 According to the Criminal Procedure Code, a criminal case can be initiated in two ways: by lodging a complaint or accusation with an inquiry officer (which can lead to a case that is prosecuted by a prosecutor), or by a plaintiff exercising the right to file a lawsuit directly with the court.
Table 1. Summary of prosecution outcomes for SLAPPs, by charge and prosecution procedure

<table>
<thead>
<tr>
<th>Charge**</th>
<th>Litigation cases</th>
<th>Prosecution outcomes</th>
<th>Case dismissal</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Non-prosecution</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Criminal defamation (52 charges or 43%)</strong></td>
<td>Complaints 11</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Lawsuit by the victim 41</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
<td><em><em>Computer crimes (16 charges</em> or 13%)</em>*</td>
<td>Complaints 1</td>
<td>1**</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Lawsuit by the victim 15</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
<td><strong>Trespassing/property damage (9 charges or 7%)</strong></td>
<td>Complaints 4</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Lawsuit by the victim 5</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>False information/false court testimony (8 charges or 7%)</strong></td>
<td>Complaints 1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Lawsuit by the victim 7</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td><strong>Theft/robbery (4 charges or 3%)</strong></td>
<td>Complaints 2</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Lawsuit by the victim 2</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td><strong>Others (5 charges or 4%)</strong></td>
<td>Complaints 4</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Lawsuit by the victim 1</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td><strong>Civil defamation (14 charges or 11%)</strong></td>
<td>Complaints 14</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Wrongful act (12 charges or 10%)</strong></td>
<td>Complaints 12</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Other civil charges (2 charges or 2%)</strong></td>
<td>Complaints 2</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

* A total of 12 criminal defamation cases were prosecuted simultaneously.

** Case brought in conjunction with criminal defamation.

*47 The number of charges may be greater than the number of cases because there may be several charges in a single case.
The research team found that general understanding of SLAPP appears to be limited to defamation charges. As shown in Table 1, however, these cases result from a range of allegations that can be categorized as follows, from the most to the least frequent in occurrence.48

**Criminal defamation charges**: Targets have been charged under section 326 (defamation) and section 328 (defamation by publication) of the Criminal Code. Based on the data collected, 52 charges (43 percent of all charges) relied on sections 326 and 328, with the majority being charges of defamation by publication.

More than 12 of the remaining cases were prosecuted for defamation and for charges under section 14 of the Computer-Related Crime Act B.E. 2550 (2007) (Computer Crime Act). However, there is no record of such prosecutions since the promulgation of an amendment in 2017 — the Computer-Related Crime Act B.E. 2560 (2017) (No. 2) — which stipulated that section 14 (1) does not apply to defamation offences under the Criminal Code.

**Outcome of criminal defamation charges**

Based on the data collected regarding completed cases only, the majority of cases (18) were dismissed by the court.49 The key reason for dismissal stemmed from the court’s finding that the target had, in good faith, expressed an opinion for the purpose of self-justification or self-defence; for the protection of legitimate and relevant interests; and/or as fair comment on any person or thing that is subject to public criticism, which is an exception, under section 329 of the Criminal Code, to the offence of defamation. In addition, there were two cases where the prosecutor ordered that the cases not be prosecuted, and more than 14 cases where the filer withdrew.

This information demonstrates that the exception in section 329 of the Criminal Code is also a provision that the targets can rely on when defending a SLAPP. However, fighting the case until the end would require considerable time, and incur economic and social costs. These could reduce the productivity of and impose psychological pressure on the targets. As a result, they may withdraw from participating in controversial public matters.

The defamation suit brought by a canned fruit company against Andy Hall, a British labour rights activist and researcher, illustrates the impacts of SLAPPs. Even though the court action was ultimately dropped, Hall had to endure eight years of stress and anxiety, including overcoming barriers when going abroad, not to mention bearing a financial burden of almost seven million baht for his defence.50 This case also reflects how court resources are wasted in cases such as SLAPPs, where disputes relating to the public interest are transformed into personal disputes.

The analysis so far shows that most defamation charges end after a certain period in court, or when they have reached the Supreme Court. There are cases in which the prosecutor orders that no prosecution be undertaken (in the case of complaints or accusations), or the court dismisses the case at the preliminary hearing (if a company is the filer), which is deemed appropriate to bring the case to an early end.

However, the proportion of cases that are dismissed is still extremely low compared to the total number of cases that reached the court. In addition, some cases would only be dismissed at the preliminary hearing, after almost

48 Based on the charges used in the prosecution, the number of charges may be greater than the number of cases because there may be several charges in a single case.

49 In some cases, the court handed down a verdict of wrongdoing in the first instance or on appeal. However, when the case reached the Supreme Court, it was dismissed.

three years of investigation, which is considered a long time. This presents a challenge for developing a mechanism for dealing with SLAPPs, where the primary principle is to settle the case as soon as possible.

Section 329 of the Criminal Code stipulates an exception to the defamation offence, stating that:

**Whoever, in good faith, expresses any opinion or statement:**

1. By way of self-justification or self-defence, or for the protection of a legitimate interest;
2. While exercising his/her functions as an official;
3. By way of fair comment on any person or thing subjected to public criticism; or
4. By way of fair reporting on the open proceeding of any court or meeting;

**Shall not be guilty of defamation.**

Courts have adopted exceptions to such violations in successful prosecutions in most SLAPPs, such as the mining company’s accusation against the media and young citizen journalists for criminal defamation citing ‘publication’, as well as a violation of the Computer Crime Act. The court of first instance rejected the defamation claim because “the defendant, as media, presented the news informing the public about the issue through investigated facts rather than invented information ... therefore this is considered a criticism in good faith, which is like one to do so and not outside the norm. Hence, it is not an offence of defamation by publication”.

However, applying the exception to such offences requires an entire judicial proceeding, which may be time-consuming. This could pose harm or have a negative impact on the accused or target, whether the cost of travelling to court, cost of multiple litigations, psychological impact or time investment.

The Computer Crime Act section 14(1) is frequently used as the basis for alleged infringements relating to dissemination of information and expression of views online. The information in Table 1 demonstrates that the charge was used in 16 cases, representing 13 percent of the total number of charges. Of these, 15 cases were filed directly by filers, and one was a complaint. Moreover, in the past, charges under the Computer Crime Act were often used alongside charges of defamation by publication under section 328 of the Criminal Code. Violations under the Computer Crime Act were repeatedly combined with criminal defamation charges under section 328 of the Criminal Code. However, after the promulgation of the Computer–Related Crime Act B.E. 2560 (2017) (No. 2) in 2017, which stipulated that section 14(1) does not apply to defamation offences under the Criminal Code, there have been no prosecutions under section 14(1) or defamation charges, based on the data collected in this study.

Additionally, since 2017 there have been no prosecutions under section 14 by the business sector. As for pending charges under section 14(1) of the Computer Crime Act, it was found that in respect of cases after 2017, prosecutors, or the courts themselves, tended to consider such charges very cautiously and settle them with a non-prosecution order (in the case of a prosecutor) or a decision to dismiss (in the case of a court).

The outcome of these cases is similar to those involving criminal defamation. According to the information obtained, 10 cases were resolved through dismissal, with 3 cases dropped at the preliminary hearing, and 7 cases dropped at the court hearing. Aside from those cases, the prosecutor ordered one case, which had been a complaint lodged with an inquiry officer, to not be prosecuted, that being a case that. Four suits were also withdrawn.

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Section 423 of the Civil and Commercial Code was relied upon to bring 14 charges of civil defamation in 10 cases, accounting for 11 percent of all charges. Some filers sued for damages totalling 400 million baht, as in the cases of telecommunications corporations suing the media; and others for 300 million baht, as in the case of an energy company suing environmental activists and the media, and that of the canned fruit company suing Andy Hall.

Six of these cases were resolved through mediation, and the filers withdrew the lawsuits. The court dismissed the other four.

Based on section 420 of the Civil and Commercial Code, the charge of wrongful act was applied in 12 charges, representing 10 percent of total charges. There were some cases where the filers claimed up to 500 million baht in damages, such as when a pig farm sued 28 protestors; followed by a claim for 150 million baht, where a mining company sued the Khon Rak Ban Kerd group in Loei Province. However, counting all four civil actions brought by the mining company against the Khon Rak Ban Kerd group, the total damages claimed exceeded 320 million baht.

Considering the case outcomes from the available data on concluded cases only, most cases (five) were resolved either through mediation or the filer’s withdrawal of the lawsuit. Two cases were dismissed by the court. In another case, in which a potash mining company sued nine people from the Rak Narathiwat group and sought damages of 3.6 million baht, the court found the targets guilty. In this case, the court of first instance ordered 1.5 million baht to be paid but the Court of Appeal reduced the sum to 40,000 baht. The case was eventually concluded as the court did not accept the appeal submitted to the court by the filer.

Charges of false information to officials under section 137 of the Criminal Code and false court testimony under section 177 of the Criminal Code were bought concurrently in at least 8 cases, accounting for 7 percent of all charges. Use of these charges is of great concern, as they relate directly to the right to complain and access justice. However, based on the information gathered, no cases prosecuted under these charges resulted in a conviction of the target.

Charges for offences relating to property under the Criminal Code was applied in 13 cases, or 10 percent of all compiled cases. The following charges were used in this category:

1. The allegation of trespassing under sections 362, 364 and 365 of the Criminal Code were identified in eight cases, and was frequently coupled with the allegation of property damage. This commonly occurred when the targets held a gathering or activity requiring access to corporate grounds. The court found the targets guilty in two cases. In the first one, a power plant company prosecuted ‘Jintana’, Chairman of Ban-Krut Conservation Group, claiming that the group had entered the company’s property while a party was being held and had thrown rotten food. In the second case, a steel business sued Witoon for collecting samples of factory-discharged effluent for analysis. The prosecutor has ordered the dismissal of other cases. In addition, one case was dismissed during the preliminary hearing, while three others were withdrawn.

2. Charges of theft and robbery under sections 334 and 335 of the Criminal Code, were brought in four cases involving poultry farms that took legal action against migrant workers who were former employees, and challenged human rights campaigners. The prosecutor ordered non-prosecution of two cases, and the court rejected the other two cases at their preliminary hearings.

It is clear here that property-related charges, unlike defamation charges, are quite challenging to defend in a SLAPP because there are no exceptions to the offences. Moreover, for such charges, it is more complex to determine the intent. This makes it more likely for courts to convict targets of such charges compared to defamation charges.
Key statistical findings

1. Criminal defamation charges are the most common charges exploited by corporations to prosecute SLAPP targets. Previous data revealed that the legal system could handle these matters competently, and most cases were resolved by non-prosecution orders or through dismissal. However, defamation claims continue to present obstacles, as many cases are resolved only after court proceedings over an extended period of time, which demonstrates that the methods for handling and resolving such claims are not effectively applied. If the current conditions persist, allegations of defamation will continue to be a potent weapon to silence targets, since, as discussed in Chapter 2 of this report, the premise of SLAPPs is that filers’ primary objective is not a win in the case, but rather to exert pressure and impose a burden on the target, and thus compel the target to cease criticizing or opposing the filer’s activities.

2. Mining businesses are the most active companies in utilizing SLAPPs. It is thus essential to collaborate with them, including establishing a more stringent oversight framework and improving the license approval process. Factors to consider during the licensing process include a company’s human rights record, including any breaches of community rights; and the company’s policies, including its perception of obligations in respect of the rights of HRDs. Such an approach will help incentivize the company to operate in a way that is more in line with human rights principles.

3. The filers in several criminal proceedings are state-owned enterprises, namely SRT, Electricity Generating Authority of Thailand (EGAT), PTT Public Company Limited (PTT), and Telephone Organization of Thailand Public Company Limited (TOT). Most of the targets are those who criticized these companies. Only the SLAPP by SRT was a criminal case, brought against the 13 leaders of the State Railway Union who jointly campaigned for employees to refuse to work on a train with allegedly broken safety equipment. The leaders had convinced the employees to participate in a train safety campaign after the train derailed in October 2009. SRT filed a lawsuit against the union officials in the Central Labour Court for violating section 33 of the State Enterprise Labor Relations Act, which forbids strikes. SRT asked the court for permission to terminate employment contracts with the trade unionists and to compel them to compensate SRT.

In the SRT case, the Supreme Court announced in 2018 that the targets had intentionally caused damage to the business and abandoned their duties, and allowed SRT to terminate their employment. Damages of 15 million baht are still owed by the targets, along with interest at a rate of 7.5 percent per year.52 SRT also petitioned the National Anti-Corruption Commission (NACC) to prosecute the union leaders, alleging that they had abandoned their posts.53 In 2019, NACC filed criminal charges against the leaders for neglecting their duties under section 166 of the Criminal Code.

On 21 October 2020, the Central Criminal Court for corruption and misconduct found the targets guilty and sentenced them to four years’ imprisonment without parole. On 23 December 2021, the Court of Appeal reduced the sentence to three years after determining that the targets’ testimony was of some help to the trial. Two individuals are due to receive a reprieve, and their sentences suspended.54 On 13 June 2022, however, NACC voted to adopt a resolution opposing the Attorney General’s decision not to challenge the Court of Appeal’s ruling.

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53 Section 166 of the Criminal Code states that an official that is negligence of his or takes any action to cause the work to be interrupted or damaged with the action being committed together with five people or more, shall be liable to imprisonment for a term not exceeding five years, or to a term not exceeding ten years and to a fine.

This situation is remarkable not only because SRT, a state-owned enterprise — which is a state agency — initiated litigation against trade unionists, but also because of NACC’s involvement in prosecuting trade unionists who exercised their rights to freedom of association and assembly. In fact, NACC’s primary responsibility is to investigate and prosecute corruption and wrongdoing by politicians and high-ranking government employees. This SLAPP thus serves as a fascinating case study.

The research team also observed that this case has led to a clash regarding the exercise of rights and freedoms to protect the public interest. From the perspective of the sued union leaders, they were exercising their right to freedom of association and assembly in order to protect the public interest, namely by ensuring the safety of public services. On the other hand, SRT could use ‘protecting public interest regarding public transportation’ as a basis for its lawsuit. It is for the court to consider the evidence presented, and to weigh any competing interests.

In some instances, it may be possible to restrict strikes at state-owned enterprises. The International Labour Organization (ILO)’s Committee on Freedom of Association determined that the freedom of workers and their organizations to strike is a helpful way of safeguarding economic and social interests. In addition, the Committee ruled that a ban on strikes can only be imposed in two circumstances: “(1) in public service for civil officials exerting power on behalf of the state or (2) public service that is significantly important and narrowly defined, meaning a service that, if interrupted, would be life-threatening to personal safety or the health of all or part of the population”.

However, transportation is not considered an essential service, according to this limited context. The exception is therefore not applicable to the railway service, because it is not a public service that falls within the above circumstances.

4. Most SLAPP targets are human rights advocates, or victims of human rights violations who stand up for their rights. It is therefore necessary to equip them with knowledge and understanding that is adequate to protect them from prosecution. SLAPPs against the media appear to be more prevalent, yet being able to work freely as a media professional is crucial in a democratic society, especially considering the media’s autonomous role in addressing public issues or concerns. In addition, immediate protection is required for the activities of independent media and citizen journalists, because of the increasing number of media professionals who face precarious situations.

5. The absence of adequate safeguards is evident, in that certain companies have filed multiple suits against specific target groups, most cases were unsuccessful and, in several instances, the prosecutor declined to file charges or the court dismissed the case. Deterrents are necessary, particularly a ‘responsibility mechanism’ for SLAPP litigation such as the anti-SLAPP laws enacted and enforced in some nations, which require the filer to pay the winning target’s expenses, including punitive damages if necessary.

6. In Thailand, SLAPPs frequently use criminal justice processes (criminal lawsuits), which impose more overwhelming burdens and demands on the targets than do civil cases. This results in needless depletion of government resources — whether human resources or legal expenses — in the process of administration of justice.

7. Criminal defamation is the most typical allegation in SLAPPs, partly because criminal lawsuits are more convenient and less expensive for the filer than civil litigation. Another feature in respect of criminal

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56 Ibid. para 830.
57 Ibid. para 842.
59 See details in Chapter 2.
defamation is the availability of legal mechanisms that filers can utilize, including provision of assistance by inquiry officers and prosecutors. In addition, criminal processes are complex for the targets, and since criminal defamation is punishable by imprisonment (for not more than one year), targets face greater anxiety and more significant hardship than in a civil case. The spectre of incarceration and the possibility of a criminal record also weigh heavily on them.

For these reasons, the offence of defamation should be decriminalized, as this would be effective in stopping SLAPPs. This approach is favoured for, among others, economic reasons, as a previous study indicated that if defamation were no longer a crime, the State would save 8,000 baht per case. In terms of human rights, United Nations human rights experts have repeatedly emphasized that the offence of criminal defamation is not a reasonable restriction on freedom of expression, and called for its abolition. It may, if necessary, be replaced by an appropriate civil defamation law.

Civil sanctions should also respect the principle of proportionality, and prioritize the use of other remedies. In addition, since defamation is an offence that generally arises from a personal dispute, the use of civil law provisions would be more appropriate, and should suffice. Gaps in access to justice in civil cases for low-income groups can be tackled through a case-by-case assistance mechanism under the Justice Fund.

8. Explicit exemptions from criminal charges such as defamation must be provided by substantive legislation, in order to protect rights and the public interest. Other offences that are a common feature in SLAPPs do not have apparent exceptions to offer protection. Examples are the offence of trespassing, which may arise when targets encroach on a company’s premises when they exercise their right to freedom of assembly, and the offences of theft and robbery, which may occur as a result of attempts by the targets to seek evidence to prove the facts of an existing dispute. The lack of exceptions means that the targets often face limitations or difficulties in defending their cases, because they can only rely on proofs that accord with the law. Nevertheless, in the past, the judicial process was able to deal with cases like this to a certain extent. As shown in Table 1, for theft and robbery, two lawsuits were dismissed by the prosecutor and two by the court of first instance during the preliminary hearing, all of which arose from a complaint filed by the poultry company against migrant workers and labour rights advocates. In these cases, the company’s time card was used as evidence. However, explicit exemptions from liability are still necessary.

9. An expedited settlement mechanism is crucial to any approach to countering the use of SLAPPs. An exemption from liability alone may not be sufficient for addressing SLAPPs since, as discussed in Chapter 2, SLAPPs are used primarily to impose excessive burdens on targets, rather than to secure a victory as the actual outcome of litigation. As a result, the longer the legal process drags on and the more it is permitted to progress, the heavier the burden and pressure on the targets. The filers will inevitably succeed in pursuing their goals since the longer a SLAPP takes to conclude, the higher the costs for the targets, whether it be the financial expenses, absence from work, or psychological pressures. Eventually, the targets will be left with no choice but to give up and withdraw from involvement in contentious public matters. It is thus essential to provide procedural protection through laws or mechanisms that can identify and deal with SLAPPs effectively so that they can be settled expeditiously.

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Interviews with key informants

Key informants were chosen by purposive sampling, a non-probabilistic random sampling method. Insights were gathered through interviews with 58 participants from the public and private sectors. NGO representatives, media personnel, attorneys, members of the Thai House of Representatives, and specific groups of HRDs — such as migrant workers, women academics, youths and members of ethnic minorities — contributed their input.
Key findings from interviews

Before a SLAPP: Role of BHR

Although corporations regard litigation as a justifiable recourse to safeguard their rights, bringing legal action against those who disagree with their business practices may not be the best course of action, especially considering the long-term repercussions, and that such corporate entities must sometimes coexist with the local community.

According to UNGP Principle 11, “Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.” The responsibility of businesses to respect human rights is also highlighted in Principle 11, which implies (1) not violating human rights, which includes refraining from making physical threats or filing SLAPPs, and (2) preventing or mitigating any adverse human rights impacts.

The primary means of preventing or mitigating any potential adverse impact could be through the development of a company’s human rights policy and the implementation of HRDD. Although there is no law in Thailand requiring businesses to perform HRDD, the Securities and Exchange Commission (SEC) has increased the requisite level of disclosure and reporting of listed companies to promote business sustainability through the Form 56-1 One Report, which came into effect in 2022. Human rights, good governance, and environmental and social aspects also form part of this reporting requirement.

In addition, efforts are being made by the Global Compact Network Thailand (GCNT), a business association, to promote the implementation of HRDD, including capacity building on HRDD for companies.

The research team discovered that there have been attempts by many corporations, including those in the PTT Group, to incorporate human rights into their policies, such as PTT’s Sustainability Management Policy. These companies also have specific human rights statements addressing issues relating to employees, local communities and the supply chains. They have established channels for receiving complaints, to ensure that the voices of those affected by the operations or related sectors of the company are heard and addressed.

In addition, the research team interviewed representatives of the Thai Tuna Industry Association and found that the association had set 10 ethics standards on labour for their members to follow, and were encouraging their members to comply with ethical standards and requirements of buyers.

Note

Many EU member countries have enforced regulations requiring companies to undertake HRDD. For instance:

1. **France**: The law requires large enterprises with French registration to establish, publish and implement an annual vigilance plan to identify and prevent serious harm to human rights, the environment, health and safety. The plan must apply to the operations of the company as well as of its subsidiaries, subcontractors and suppliers. As a result, any person affected or harmed by the company’s activities can bring civil tort claims in the French courts. This includes claims for damages if the company’s vigilance plan failed to prevent breaches, even if the harm occurred in other countries.

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63 Human Rights Due Diligence is a process for companies to identify risks and address negative human rights impacts related to their business activities and supply chains.

64 [https://www.pttplc.com/uploads/4About/%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%81%E0%B8%B3%E0%B8%81%E0%B8%B1%E0%B8%AF%20(%20Compliance%20Policy%20).pdf](https://www.pttplc.com/uploads/4About/%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%81%E0%B8%B3%E0%B8%81%E0%B8%B1%E0%B8%AF%20(%20Compliance%20Policy%20).pdf)
2. **The Netherlands:** The Dutch Child Labour Due Diligence Law requires that companies registered in the Netherlands, including foreign companies that deliver products or services to the Dutch market more than twice a year, submit a statement to a supervisory authority declaring that they have investigated risks of child labour in their activities and supply chains.

3. **The UK Modern Slavery Act 2015** makes slavery, forced labour and human trafficking crimes. Large businesses in the UK are required by law to provide yearly reports on slavery and human trafficking, including measures taken to affirm that human trafficking and slavery are not practised across the companies’ supply chains.

**Challenges for Thailand**

1. The conduct of HRDD is one of the best ways to prevent and mitigate human rights violations at the source. The United Nations Working Group on Business and Human Rights as well as the United Nations Economic and Social Council proposed that the business sector be compelled to perform HRDD, rather than HRDD being optional. In Thailand, there has been an effort to examine the feasibility of developing mandatory HRDD measures, including efforts to create a body of knowledge to enable companies to understand the importance of HRDD. There have also been endeavours to support, and instil knowledge and understanding in, small- and medium-sized businesses to carry out this process, because UNGPs stipulate that businesses of all types and sizes must respect human rights.

   Although the Thai-listed companies have to produce the Form 56-1 One Report, each company’s reporting on environmental and human rights is still limited in scope due to the lack of clear standards and indicators to assess or ensure that investments will not cause environmental and human rights risks. Where non-listed companies are concerned, the Government has to impose the requirement of disclosure of information, as such disclosure is not mandatory.

2. The business sector lacks clear guidelines relating to human rights in business operations, such as the principle of meaningful participation, and standards for HRDD. Consequently, the business sector is unable to adhere to the relevant BHR principles.

3. Although collaboration between the business sector, community and civil society is seen as a means to prevent, mitigate and resolve conflict, some interviewees were of the view that the business sector is apprehensive when working with these stakeholders. Likewise, the community and civil society are often suspicious of the business sector.

**During a SLAPP: Dealing with disputes through mediation**

Mediation is one of the avenues that targets may resort to when resolving their disputes. Mediation can be conducted outside court proceedings or as part of a court-supervised process. In general, out-of-court mediation must comply with the rules and procedures specified in the Dispute Mediation Act B.E. 2562 (2019), which allows for mediation in civil disputes and certain types of criminal disputes.

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66 On 8 October 2021, the United Nations Human Rights Council recognized a clean, healthy and sustainable environment is a human right.

67 Information from the interview.
For example, in principle, mediation in criminal disputes can be done in cases involving compoundable offences and misdemeanours.68 An exception is the mediation of criminal disputes at the level of investigation, which can be carried out for offences where the maximum length of imprisonment is not more than three years.69

Additionally, mediation can be done at the investigation, prosecution or court levels by the respective agencies of each level or by civil dispute mediation centres, supervised by RLPD. Consequently, certain SLAPPs, such as those alleging defamation, may be dealt with through the mechanisms under the Dispute Mediation Act B.E. 2562 (2019).

Furthermore, mediation for some civil or criminal cases, especially compoundable offences, can be conducted in courts. In the first few court appointments, the court will generally ask the parties about their willingness to resolve the dispute through mediation, before proceeding to the next level.

Mediation is therefore another constructive approach to settle SLAPPs without delay, provided that there are assurances that the mediation is genuinely voluntary for all parties, and provided that there is a level playing field. The mediation process should not be undertaken to persuade or force the targets to silence their criticisms or withdraw their actions in exchange for settlement of the dispute. This is a distinct concern, because the research team has found that mediation led, in some cases, to the target pleading guilty or issuing an apology. In such circumstances, mediation becomes another tool to silence critics, not unlike SLAPPs.

**During a SLAPP: Case management through the justice system**

This section presents an overview of judicial barriers to dealing with SLAPPs, focusing primarily on the criminal justice system since the civil justice process does not have a precise mechanism for dealing with SLAPPs.

As mentioned in Chapter 2, the public or the private sector can bring cases into the criminal justice process through two main channels. The first is by filing complaints or accusations with inquiry officers, which may subsequently be filed in court by a prosecutor. Alternatively, a plaintiff can file a case directly with the court.

Measures to deal with criminal SLAPPs can be undertaken during the main stages of the criminal justice process, as follows.

**Investigation and prosecution procedures**

Judicial procedures allow inquiry officers and prosecutors to screen and settle SLAPPs.

1. **Inquiry officers:** The Criminal Procedure Code provides that inquiry officers shall, insofar as possible, collect every kind of evidence for the purpose of ascertaining all facts and circumstances in respect of the alleged offence, identifying the offender and proving the guilt or innocence of the accused.70 Therefore, inquiry officers play a vital role in acquiring facts and evidence to establish the truth, and not merely to prove the innocence or guilt of the accused. If inquiry officers prove that the accused is not an offender, or that the accused’s actions do not constitute an offence, they can submit a recommendation of non-prosecution to the prosecutor.71

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68 Dispute Mediation Act B.E. 2562 (2019), section 35.
69 Dispute Mediation Act B.E. 2562 (2019), section 41.
70 Criminal Procedure Code, section 131.
71 Criminal Procedure Code, sections 141 and 142.
In addition, if inquiry officers see that the facts and evidence presented are in line with the Regulation of the Office of the Attorney General on criminal cases that do not serve the public interest or will affect the security, safety or other significant interests of the country B.E. 2554 (2011), and amendment, they may find that the accused should not be prosecuted. They would therefore submit a recommendation, together with a report of the investigation, to their supervisors or the head of the agency who directly reports to the headquarters or a government agency equivalent to the headquarters, to consider a non-prosecution order.72

However, the interview data suggest that although the inquiry officers have the authority to recommend a non-prosecution order and thus simplify the process of resolving a SLAPP, the process remains complicated. Additionally, such a recommendation may place the inquiry officers at risk of a complaint or even a lawsuit against them by the 

filer

who could accuse them of misconduct or negligence, jeopardizing their subsequent career advancement. In some cases, inquiry officers were pressured by their superiors to advise that prosecution be undertaken,73 despite their own views to the contrary. This reflects a severe limitation in the ability of inquiry officers to exercise their independent judgement.

2. Prosecutors: Upon examination of the report of the investigation and comments from inquiry officers, prosecutors will use their discretion as to how to proceed with the case. There are three possible orders that prosecutors can issue at this stage: to prosecute; to not prosecute; or to conduct further investigation in cases where the determination of the facts, or the available evidence, are insufficient.74

A non-prosecution order can be issued in two instances: (1) because the accused is not considered to be an offender; or (2) because prosecution would not be in the public interest. The first instance arises when, after considering the facts and the law, the prosecutor deems that the accused is not an offender, or the actions committed by the accused are not an offence. In the second, although the accused is found to be an offender and his action to be an offence, the prosecutor can determine that prosecution would not contribute to the public interest, or would affect the national security, safety, or important national interests. The prosecutor can submit a recommendation to the Attorney General for a non-prosecution decision, or withdrawal of the lawsuit. This process has been spelled out in section 21 of the Public Prosecutor Organization and Public Prosecution Act B.E 2553 (2010); and the Regulation of the Office of the Attorney General on criminal cases that do not serve the public interest or will affect the security, safety or other significant interests of the country B.E. 2554 (2011), and amendment.75

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72 Order of the Royal Thai Police No. 419/2556 on the administration of Justice in Criminal Cases investigation and measures to control, inspect, expedite the investigation of criminal cases, dated July 1, 2013. Chapter 3 Investigation File, clause 3 Investigation File, subclause 3.9.2.
73 Information from the interview.
74 Criminal Procedure Code, section 143.
75 Section 21 of the Public Prosecutor Organization and Public Prosecution Act B.E. 2553 (2010), together with articles 5 and 9 from the Regulation of the Office of the Attorney General (No. 2), B.E. 2561 (2018), on criminal cases that do not serve the public interest or will affect the security, safety or other significant interests of the country.
Of the 21 cases that were complaints/accusations, the prosecutor ordered 13 cases to go to court. Of these, five (38 percent) received prosecution orders. Eight (62 percent) received non-prosecution orders, because the accused’s actions were not an offence. There have been no cases as yet where a non-prosecution order was issued because the case was not in the public interest.

There have been some cases where a prosecutor ordered prosecution but a court subsequently dismissed the case, as in the SLAPP against Andy Hall in respect of an interview he had given to Al Jazeera in Myanmar in 2013 regarding labour rights abuses by a canned fruit company. The Supreme Court dismissed the case because the prosecutor had no power to sue in this instance, since the interview had taken place abroad.

The research team also noted that criminal non-prosecution orders benefiting the public interest have rarely been used, because the issuance of such orders is a matter of individual discretion. This type of non-prosecution order differs from a general non-prosecution order because, in the latter, the accused is not the offender or the accused’s actions are not an offence, which means that the prosecutor can order non-prosecution based on the evidence and the law alone. If the non-prosecution order is disputed, the prosecutor can rely on the evidence and the law for the necessary justification.
When ordering prosecution of criminal cases that do not benefit the public interest, the prosecutor must provide strong reasons — in addition to evidence and witnesses — why the prosecution should nonetheless be undertaken. The scope of the term ‘public interest’, however, is not clearly defined in the relevant regulations.

This ambiguity may be one reason why a prosecutor in charge of a case would be reluctant to offer recommendations in criminal cases that are not in the public interest, as they may face questions from the chief prosecutor and other higher-ranking officials, including the Attorney General. There may also be questions and grievances from those filing the complaints or accusations, or from the public. It must be noted that when the inquiry officer has ordered a prosecution, but the prosecutor subsequently orders a non-prosecution, the latter must provide clear evidence to justify the conflicting order. In some cases, an inquiry officer submits the case too close to the deadline, and a prosecutor must then hastily order prosecution because there is not enough time to conduct screening. This is especially true for community rights issues, as they entail a considerable amount of documentary evidence, making it impossible to scrutinize a case thoroughly within the time limit.

The research team also noted that filers who lodge a complaint or accusation with an inquiry officer that is subsequently prosecuted by the prosecutor, have a much lighter burden to bear because they can rely on these legal processes within the system of administration of justice, as opposed to filers who commence a case directly with the court. The target, on the other hand, often has to bear several burdens, such as travelling to report to the prosecutor regularly, facing pressure from the risk of arrest or detention, and seeking guarantees of release during interrogation. The burdens are even greater for targets who are foreign nationals being sued by employers, because they would face greater difficulties in applying for release pending trial, and have no specific residence.

**Court Proceedings**

Criminal cases can be brought to court by prosecutors or alleged victims. The court will then play a screening role to settle the case in two steps, namely through review of the indictment, and preliminary hearing.

1. Court review of the indictment

The newly amended section 161/1 of the Criminal Procedure Code stipulates as follows:

“In cases where an individual is the plaintiff, or if there is evidence that the court considers that the plaintiff has filed the case in bad faith or by misrepresenting the facts to harass or take advantage of the defendant or by pursuing other benefits than the legitimate benefits, the court shall dismiss the lawsuit and prohibit the plaintiff from filing a lawsuit on the same matter again.

Filing a lawsuit in bad faith under paragraph 1 shall include the plaintiff intentionally violating the order or judgement of the court in other criminal cases which has reached the end without reasonable grounds as well.”

Section 161/1 is a new mechanism that was mooted by the Office of the Judiciary. It passed parliamentary review and was promulgated in 2019. One of its main objectives is to prevent SLAPPs, as laid out in the memorandum of principles and reasons accompanying the draft Amendment Act to the Criminal Procedure Code (No. ...), B.E. ..., which states as follows:

76 Information from the interview.
77 Information from the interview.
78 See the Criminal Procedure Code, section 28.
79 Effective on March 21, 2019.
“It appears that the right to prosecute criminal cases is exercised in bad faith or by misrepresentation of facts to persecute or take advantage of the defendant in many cases or file lawsuits with the expectation of other benefits than ordinary benefits, such as filing a lawsuit in courts in remote areas to make the defendant have difficulty in travelling to fight the case; or suing the defendant on charges that are heavier than reality so that the defendant must agree to act or not act in a wrong way, especially suing to threaten the defendant’s exercise of fundamental rights and liberties in self-defence or public interest. Therefore, it is necessary to amend section 161/1 of the Criminal Procedure Code to require that the criminal prosecution be done in good faith.”

The rejection of criminal prosecution instituted in bad faith guarantees that one who comes to equity comes with clean hands.

**Challenges**

Implementing section 161/1 still poses several challenges, as evident three years after the amendment came into force. This section of the law has never been applied to SLAPPs. Although lawyers sought its application to SLAPPs, courts have often refused to exercise such powers, stating that preliminary hearings are necessary in order to permit the filer and the target to present evidence to fully prove their respective rights.

In addition, it is difficult to determine which cases are brought in bad faith or misrepresent the facts. Sufficient facts and evidence are required for this determination. Moreover, since the law does not specify clear criteria or procedures, it is generally understood that determining whether a lawsuit has been brought in good faith depends solely on the court’s discretion. This can affect the right to access the court or the judicial process, as courts can exercise their discretion broadly. However, the existing ambiguities may be one reason that courts tend to avoid exercising their jurisdiction, as there is a risk that its decision will be disputed by the filer.

2. Preliminary hearing

After examination, if a case has been filed legitimately, the court will proceed as follows:

- In cases where the plaintiff is an individual or a private person, the court will conduct a preliminary hearing.
- If the prosecutor in that case has sued the accused on the same charge, the court does not require a preliminary hearing, unless it is deemed appropriate.

In 2019, an amendment to the Criminal Procedure Code added section 165/2, which stipulates as follows:

> “In the preliminary investigation, the defendant may declare to the court important facts or legal issues for the court to rule that the case has no merit. Also, it may be specified in the statement of persons, documents, or objects supporting the facts of the defendant’s statement. In such a case, the court may summon such persons, documents, or objects as witnesses to support the case’s decision as necessary and appropriate. The plaintiff and the defendant may question court witnesses when authorized by the court.”

**Notes:**


81 Criminal Procedure Code, section 162.

82 Effective on February 20, 2019.
Section 165/2 allows the defendant or the accused to have more opportunities to defend the case during the preliminary hearing, through the statement of facts or legal issues to the court, along with a statement of evidence supporting such facts. It is within the court’s discretion to call for such evidence to be further examined during the proceeding. In contrast, prior to the enactment of section 165/2, the court heard the plaintiff’s evidence unilaterally, and there was little that the defendant could do. Therefore, the addition of this procedure has increased the efficiency of the entire process — particularly in verifying the truth from the beginning — and may enable a SLAPP to be terminated quickly. It also allows the court to have more comprehensive facts, when determining whether to issue a dismissal order or to permit a lawsuit to proceed based on maintaining an appropriate balance between protecting the defendant’s political rights and the plaintiff’s right of access to an effective remedy. This is one of the main principles of anti-SLAPP legislation in many countries.

**Challenges**

The preliminary hearing still has some limitations, especially in cases where the prosecutor is the plaintiff. Although the law allows the court to exercise discretion in the preliminary hearing, the court often does not undertake investigation of the lawsuit, because this would duplicate the prosecutor’s earlier work in investigating and issuing an order on the case. As a result, a SLAPP that comes to court through this channel may not undergo an additional tier of screening (i.e. by the court) to bring the case to an end during the preliminary hearing. The court is more likely to rely on the screening that the prosecutor already conducted, and thus would regretfully skip this step where the defendant is asked to present facts and evidence during the preliminary hearing.

The duration of preliminary hearings can be an additional obstacle, as they are occasionally too lengthy, and it becomes overwhelming and exhausting for targets to bear the tremendous burdens of defending the SLAPP.

**Loopholes in state legal aid systems**

Legal assistance in Thailand comes in many forms. The most prominent takes the form of the Justice Fund, which was established under the Justice Fund Act B.E. 2558 (2015) to assist people entangled in litigation and protect the rights and liberties of the people comprehensively, equally, and fairly. The mission of the Justice Fund is to serve the people in four main ways:

1. Assist people facing litigation
2. Request the temporary release of the accused or defendant
3. Provide aid to victims or those affected by human rights violations
4. Enhance legal awareness of the public

Interviews with SLAPP targets revealed that they still face difficulties in obtaining assistance from the Justice Fund. The main reasons were the complexity of the process, which makes it difficult for ordinary people to access the assistance; and provincial judicial mechanisms that often play the role of judges and rule that those seeking help are the wrongful party, and also lack understanding regarding the problems faced by targets. In addition, some interviewees were entirely unaware of the Justice Fund, while others lacked confidence in it. Consequently, when cases arose against them, they sought help from human rights lawyers and raise funds within their own networks or via social media. These factors reflect how and why several targets did not put state aid mechanisms as their first resort.

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83 On 25 October 2019, Thamnakaset, a poultry company, filed a lawsuit against human rights defenders and former National Human Rights Commissioner for the offences of defamation under the Criminal Code, sections 326 and 328 which are criminal cases before the Bangkok Southern Criminal Court. The preliminary hearing began on February 24, 2020. The latest status of the case is that the court has accepted the prosecution and examined witnesses for both the prosecution and the defendant in March 2023. https://www.fidh.org/Thai/thailand-thammakaset-watch#ancre3.
85 Information from the interviews.
Figure 9. Overview of the relevant criminal justice procedures for SLAPPs

Initiation of litigation

Complaint/accusation

Inquiry officer

Prosecutor

Order of prosecution

Court

Order of non-prosecution

Optional hearing

Charge accepted (section 161/1 of Criminal Procedure Code)

Preliminary hearing stage

Charge accepted

Full prosecution commences

Dismissal

Dismissal

Case resolved
Negative impact of judicial process on SLAPPs

One underlying cause of the exacerbation of SLAPPs in Thailand is the inefficiency in the judicial process. Despite continuous efforts by many sectors to drive judicial reforms, there has been no progress, especially where the criminal justice process is concerned. Many SLAPPs would have been handled effectively, had there been sufficient advances in this regard.

Not only are many SLAPPs not dealt with properly, in some cases the judicial process has also aggravated the prosecution. One example is the case of a former environmental journalist who was issued a warrant of arrest for marching with villagers to protest against the adverse impact of a gold mine’s operations on the affected community and the environment. Two years earlier, the court had already dismissed a case where the villagers had been prosecuted for exactly the same charge of trespassing. Immigration officials detained the target as she was about to leave the country, because the warrant was recorded in their database. This episode reflects the lack of data linkages and coordination among the relevant agencies.

Negligence and tardiness in prosecution also pose obstacles. In the case of the same former journalist, an inquiry officer had submitted a recommendation of prosecution, to a prosecutor. Although there were facts as well as a court verdict on similar cases where villagers were charged, the prosecutor took almost one year to issue a non-prosecution order. Moreover, while the former journalist was waiting for the prosecutor’s order, she faced difficulties in her life and her work, such as having to travel to report to the prosecutor regularly, and being prohibited from leaving the country. The prohibition was caused by a warrant for arrest that had not been deleted from the Personal Identification Blacklist Immigration Control System in spite of the arrest having taken place. This holdup in the deletion of her criminal record caused her application for employment to be rejected because the prospective employer found the criminal record, and she had to undertake burdensome measures to rectify the problem. To top it off, even though there was a non-prosecution order, she did not receive any restitution for damages incurred as a consequence of these faulty processes in the administration of justice.
Summary and recommendations

Summary

The information presented in Chapter 3 emphasized the troubling trend of SLAPPs brought by businesses. Most of these lawsuits target villagers fighting to defend human rights and their communities. While most SLAPPs were filed by mining companies, some were filed by state-owned enterprises, which are government agencies operating for profit, akin to the private sector. The most common allegation in the SLAPPs is criminal defamation.
Thailand does have a legal framework, evident particularly in its Constitution, that protects human rights comprehensively, including the freedom of expression, freedom of association, freedom to file complaints, freedom of public participation and freedom to enjoy community rights. Nevertheless, both the Government and businesses still lack awareness of these rights guaranteed by the Constitution.

This gap in awareness is evident in the SLAPPs stemming from actions by government agencies and businesses, which do not allow individuals or communities to participate in matters of public interest, resulting in critical disputes. Instead of seeking solutions based on the principle of peaceful participation, in several cases physical harassment and SLAPPs were the weapons of choice to target those who stand up to, criticize, or oppose policies or actions that negatively impact the community and the environment. The Khon Rak Ban Kerd mining case in Loei Province exposes the nature of SLAPPs.

These lawsuits impose social, economic and psychological burdens on targets. The more extended a trial, especially for criminal cases that are punishable by imprisonment, the weightier the pressures and fears faced by the targets and others striving to safeguard their rights, their communities’ rights, and other public interests.86

SLAPPs not only directly threaten targets and their communities, but also indirectly threaten democratic society through their chilling effect. When people are apprehensive about speaking up, the space for public debate, which is essential in a democratic society, is inevitably undermined.

Yet these issues may go unrecognized by the public and private sectors.87 This may be in part because SLAPPs are cloaked as law and justice, making them appear legitimate. The use of SLAPPs as a tool of persecution presents fewer risks than opting for physical harassment — be it in the form of physical harm, murder or even forced disappearance — which is often apparent and easily perceived as an offence.

The research team observed that ambiguity in the system of administration of justice, and laws that facilitate the use of SLAPPs in prosecution, are among the main factors contributing to the incidence of SLAPPs. For example, in civil as well as criminal defamation cases, the filer can choose whether to resort to the state’s mechanism by filing a complaint with an inquiry officer, or to file a lawsuit directly with the court.

At the international level, the most appropriate and commonly used measure against SLAPPs is to extricate the case from the judicial system as rapidly as possible, mitigate its impact on the target, and restore the dispute to the public sphere where it can be resolved through political means rather than through legal and judicial measures.

The findings regarding mechanisms for handling SLAPPs in Thailand point to the country not yet having adequate anti-SLAPP legislation. Channels for the prompt resolution of these cases have not been created. There is also a lack of mechanisms to impose responsibility on filers upon dismissal of a case, as filers are still not liable to the targets for litigation costs and damages.

Thailand does have some avenues to handle SLAPPs, however, such as using the prosecutor’s power to screen cases and order non-prosecution because the target is not considered to be an offender or because prosecution would not be in public interest. Prosecutors have used this route to dismiss SLAPPs speedily when the targets are clearly not guilty. However, there have been no cases where prosecution was dismissed because it was not in the public interest. The researchers expect that prosecutors will continue to play an increasing role in screening and helping to settle SLAPPs.

86 Information from the interviews.
87 Information from the interviews.
Another meaningful tool is the mechanism under section 161/1 of the Criminal Procedure Code, which allows the court to dismiss lawsuits, including SLAPPs, filed by a private person who does so in bad faith or by misrepresenting facts. However, based on the data gathered, in reality this mechanism has never been applied to any SLAPP despite requests by lawyers for the court to use it. According to the data, these attempts occurred in at least eight cases, but did not receive an appropriate response from the courts, which is partly attributable to the ambiguous rules and practices in court rulings.

During this study, NACC was in the midst of proposing a draft bill on measures to prevent SLAPPs for offences of malpractice and misconduct B.E. ... The draft bill, which the cabinet had approved in principle, is intended to protect people from SLAPPs that arise when their participation in public affairs, such as through whistleblowing, leads to investigations for corruption. However, the research team noted that although the draft bill encompasses lawsuits aimed at curbing public participation in the defence of ‘public interest’, its name and original purpose of addressing corruption-related issues, coupled with the lack of a clear definition concerning the scope of public interest, may limit its applicability to SLAPPs in the areas of anti-corruption and malfeasance. The draft bill may also not cover other kinds of SLAPPs, such as those arising from expressions of opinion about the environmental impact caused by business operations, and complaints about violations of labour rights. It is hoped that the agency responsible for drafting and reviewing this bill will consider expanding its scope to be clearer and more comprehensive.

**Recommendations**

**Recommendations for law reforms and establishment of effective measures**

1. **The criminal defamation laws, such as section 326 and section 328 of the Criminal Code, should be repealed.** Case studies have shown that most Strategic Lawsuits Against Public Participation (SLAPPs) stem from defamation charges, and lawmakers should thus review this legislation and decriminalize defamation.

2. **Provisions such as section 423 of the Civil and Commercial Code, which impose civil liability for freely expressing views in public,** should be amended to exclude liability for actions “in connection with the public interest” or that pertain to “public concerns”, and when the defendant “reasonably believes that the alleged dissemination of the message is in the public interest”.

3. **The applicable laws and case management mechanisms should be amended to be more comprehensive and practical, with priority given to ensuring a speedy and efficacious resolution of the case from the outset.** Measures should be aimed at speeding up the preliminary investigation process and developing clear parameters for determining the burden of proof for each party. This will relieve SLAPP targets of the burden of a lengthy judicial process.

4. **Targets must be provided a remedy (by filers or by the State, as the case may be) in the form of compensation,** if the SLAPPs against them are ultimately dismissed. The court should order filers to indemnify targets for total litigation costs as well as damages incurred from the prosecution, without requiring targets to file a separate lawsuit. The imposition of such liability will make filers aware of the adverse consequences they will face as a result of SLAPPs that they file in bad faith, and will thus serve as a deterrent for similar SLAPPs in future. On the other hand, when SLAPPs filed by prosecutors are ultimately dismissed, this occurrence should be regarded as a failure of the State. The State, therefore, has to provide redress to the target, by granting compensation. As a starting point, amends in the form of compensation may be channelled from the Justice Fund.
5. A specific fund should be set up to support and provide redress to SLAPP targets if, in the longer term, anti-SLAPP laws, or other laws akin to Ontario’s Protection of Public Participation Act, 2015, are developed.

6. Clear and effective measures should be adopted to protect the independence the media, as media personnel have inevitably become targets of SLAPPs. Such protection should also be extended to citizen journalists, who are playing an increasingly crucial role, especially in situations of conflict.

**Recommendations for mechanisms in the administration of justice**

1. All relevant agencies in the system of administration of justice should provide training for their personnel, namely inquiry officers, prosecutors and judges, to enhance their understanding of the context, concepts, principles and challenges relating to human rights and SLAPPs.

2. The Office of the Attorney General and the Royal Thai Police should develop a mechanism for collaboration whereby prosecutors and inquiry officers immediately begin working together on cases where a SLAPP target pleads for justice. Such a procedure would hasten the processes of investigation, screening, and issuance of orders.

3. The Office of the Attorney General should issue guidelines and/or amend the Regulation of the Office of the Attorney General on criminal cases that do not serve the public interest or will affect the security, safety or other significant interests of the country B.E. 2554 (2011), and amendment, to provide prosecutors with clear guidance in ordering non-prosecution of SLAPPs.

4. Courts should issue clear guidelines for the use of section 161/1 of the Criminal Procedure Code. These guidelines must include definitions of legal terms, and specific details with regard to when and how the provision can be invoked.

5. The judicial authorities that play a role in dispute mediation should take steps to ensure that the mediation is genuinely voluntary for all parties, and that there is a level playing field in the SLAPP conciliation process. They should make certain that the mediation process is not being undertaken to persuade or force the targets to silence their criticisms or withdraw their actions in exchange for settlement of the dispute. Appropriate safeguards may include transparency in the mediation process, and the presence of an independent and respected mediation body.

**Recommendations for other government agencies**

1. Agencies involved in approving private sector licensing for development projects with environmental implications should foster a process of early and meaningful participation of stakeholders, especially the people and communities in the areas that may be affected. This includes stakeholder involvement in the Environmental Health Impact Assessment (EHIA) process, which should place emphasis on a Human Rights Impact Assessment (HRIA) component.

2. The Ministry of Justice should promote the protection of human rights defenders (HROs) through the National Committee on the Implementation of the National Action Plan on Business and Human Rights (NAP).

3. The Ministry of Justice should amend the Justice Fund Act B.E. 2558 (2015) in order to facilitate access by SLAPP targets to the Justice Fund. In addition, information about the Justice Fund, and how to access it, should be widely publicized.

4. Training to raise awareness within, and build capacity of, the business sector — especially small- and medium-sized enterprises — on human rights issues should be provided free of charge.
5. Governments should urgently ratify the International Labour Organization (ILO)’s Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and ILO’s Right to Organise and Collective Bargaining Convention (No. 98), to protect and guarantee the rights of employees in both public and private sectors.

6. Incentive schemes, and favourable measures such as tax reductions and investment assistance, should be established for business enterprises that respect human rights.

Recommendations for the business sector and state-owned enterprises

1. Business associations should take the lead in creating an open space for constructive dialogue to foster understanding between the private sector, Government, civil society and HRDs; and to reduce the incidence of SLAPPs as well as conflicts that may lead to violence.

2. Businesses should regard civil society actors as partners to support the corporate sector’s social and environmental sustainability efforts, and strive to increase the degree of consultation and collaboration.

3. Businesses should devise a grievance mechanism that rights holders who are harmed by the company’s operations can resort to, whether they be employees, or external individuals or communities who are impacted. The accessibility, security and effectiveness of such a mechanism should be taken into account.

4. The business sector should organize training to provide companies with knowledge and understanding about good labor practices, and their applicability for business operations and supply chains.

5. Businesses should adopt United Nations Guiding Principles on Business and Human Rights (UNGPs) into their day-to-day operations in order to reduce adverse impacts and conflicts arising from their business activities and supply chains. This will include implementation of a human rights policy and of human rights due diligence (HRDD).

6. Businesses should abide by environmental, social and governance principles for disclosure of germane information to comply with international principles and standards. The business sector should continually disseminate such information, which should also be easily accessible.

7. Provincial chambers of commerce should continue to engage with and consult the affected communities to instil awareness of development plans for the area.

8. As government entities, state-owned enterprises, should be open to scrutiny and criticism, and not institute SLAPPs against detractors. Instead of resorting to using the legal system as a tool to silence critics, a more transparent approach should be prioritized, including engaging in meaningful and effective dialogue.

Recommendations for the Lawyers Council in Thailand

1. Training for lawyers regarding SLAPPs should be offered free of charge to continually advance the level of knowledge and understanding. Peer learning sessions should be organized with lawyers from other countries with experience in SLAPP litigation and anti-SLAPP measures, such as the USA, Canada, Indonesia and the Philippines.

2. Lawyers should be encouraged to take on more pro bono cases in the public interest, including cases relating to human rights and SLAPPs.

3. Human rights education should be promoted among lawyers, and incentives should be developed to encourage lawyers to play a more significant role in human rights, labour rights and environmental rights.
Recommendations for civil society and academia

1. Affected local communities should establish a forum to exchange experiences and lessons learned, as a tool of empowerment and to build capacity and confidence. Based on the interviews with local communities, a community’s strength is a vital element in fighting SLAPPs.

2. Civil society actors should introduce avenues of constructive collaboration with businesses in order to create safe spaces for communication and cooperation.

3. Academics should undertake a more prominent role and assume greater responsibility for raising awareness on SLAPPs, and their impact on human rights.

Recommendations for the National Human Rights Commission of Thailand (NHRCT)

1. NHRCT should be proactive in finding solutions to fundamental and pressing issues relating to BHR and SLAPPs. This would be done through cooperation among the public and private sectors.

2. NHRCT should formulate more robust working standards in an effort to gain greater public trust and confidence in its independence, in order to promote and protect the rights and liberties of the people. These standards should be consistently maintained, and not be subject to revision merely because of, for example, changes in the composition of its key personnel.
Appendix A. Consent form and sample questionnaire

Sample questionnaire for interviews
Topic: Strategic Lawsuit Against Public Participation (SLAPP)

Name
Title
Department and organization

Introductory questions
- Do you know, or have you ever heard, of the term ‘Strategic Lawsuit Against Public Participation (SLAPP)’?
- If you have heard of this term, what is a SLAPP, in your view?
- Do you think that SLAPPs frequently occur in Thailand? Please give some examples of cases that you consider to be SLAPPs.
- In your opinion, what are some of the reasons for SLAPPs?

Questions for all respondents
- Are you or your organization currently involved in a SLAPP? If so, please provide some details.
- Have you or your organization ever been involved in a SLAPP? If so, please provide some details.

Sample questions for the private sector
- In your opinion, what are the motives or reasons for a SLAPP, and its objectives?
- If your company is involved, or becomes involved, in a SLAPP, please elaborate on the impact that this involvement would have on the company.
- What actions will you take if your subsidiaries, affiliates or business partners initiate a SLAPP?
- What measures does your company have in place to prevent SLAPPs?
Appendix B. References


Dwight H. Merriam and Jeffrey A. Benson. Identifying and Beating a Strategic Lawsuit Against Public Participation. [https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1214&context=delpf](https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1214&context=delpf) [accessed 10 February 2022].


Protect the Protest. HISTORY OF SLAPPS. https://protecttheprotest.org/history/ [accessed 10 February 2022].


# Appendix C. List of key informants

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<tr>
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<th>Key informants</th>
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<td>Expert-level officer (1)</td>
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<td>2.</td>
<td>Academics</td>
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<tr>
<td>2.1</td>
<td>Dr. Wichian An-prasert – Faculty of Liberal Arts, Ubon Ratchathani University</td>
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<tr>
<td>2.2</td>
<td>Sawitree Suksri – Faculty of Law, Thammasat University</td>
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<tr>
<td>2.3</td>
<td>Dr. Chainarong Setthachua – Faculty of Humanities and Social Sciences, Mahasarakham University</td>
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<td>2.4</td>
<td>Asst. Prof. Dr. Teethat Chawitjinda – Faculty of Law, National Institute of Development Administration</td>
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