

Silencing Justice: Battling Systematic SLAPP Attacks on Women and Human Rights Defenders in Thailand

Protection International (PI) along with many other organizations and agencies has been working for almost a decade to report and fight against the criminalization, harassment and intimidation of Women and Human Rights Defenders (WHRDs). Since the 2015 report on the matter¹ PI observed an increased use of the justice systems against opponents of the *status quo*, this is, how through different practices, governments around the world were -directly or indirectly- intimidating and persecuting HRDs in order to prevent them from doing their jobs.

Within the context of Thailand and the Association of Southeast Asian Nations (ASEAN), the growing prevalence of SLAPP cases has ignited significant concerns. Particularly distressing is the exploitation of defamation laws as a systematic tool to intimidate

¹ Protection International, “Criminalisation of Human Rights Defenders”, December 2015.

Available at: <https://www.protectioninternational.org/wp-content/uploads/2022/12/Criminalisation-of-Human-Rights-Defenders-Criminalisation-Series-1-2.pdf>

and silence WHRDs. The legal system's inherent selectiveness, coupled with the biases of its operators, further exacerbates the challenges faced by WHRDs

One of the observed practices was the use of Strategic Lawsuits Against Public Participation (SLAPP) consistent of lawsuits filed by enterprises or governments against HRDs who express concerns about issues affecting their communities or realities on the grounds of defamation and slander.

WHRDs are particularly vulnerable² since the punishment they receive at the hands of the criminal justice system may be influenced by the prejudices of its operators concerning the role they should play in society. There is a certain selectiveness in the criminal justice system, to which may be added the rebukes that can result from the fact WHRDs defend certain rights against cultural, social and religious practices.

Therefore, SLAPP is a legal maneuver aiming to silent opposition and criticism and when left unchecked, leaves business and state power unrestricted before already marginalized groups and can create serious harms to communities and human rights. Facing

² Of criminalization in general, but also of SLAPP.

legal charges is not just time consuming and costly for WHRDs but has a tremendous impact on their emotional well-being. These attacks are deliberate and strategic and they can also affect other WHRDs who may become more fearful, wary and less effective in their work for human rights and justice. The calculated and strategic nature of these attacks not only impacts individual defenders but also fosters an atmosphere of fear and apprehension among other HRDs. This pervasive fear hampers their effectiveness, leading to hesitancy in carrying out their essential work. Consequently, the fabric of democratic society is indirectly undermined, posing a significant threat to its stability and progress.

In the last 15 years, we have witnessed how new stakeholders - such as enterprises- have gotten more involved in SLAPP, how the systems have significantly deteriorated -incapable to control the judicial harassment but also imposing disproportionated consequences- and how hundreds of W/HRDs have faced intimidation and harassment to fulfill their activities as defenders. Even though this is happening globally, the situation in Thailand stands out, where the most common complaint lodged against WHRDs is defamation, considered a criminal offense.³

³ Under Thailand's Penal Code: Offence Against Liberty and Reputation Section: 0326 – 0333

Most countries have defamation laws that aim to protect people when damaging information is spread and are punishable mainly through the imposition of fines, but due to Thailand's legal system, public criticism could and have led to jail time. It is important to note, that according to reports of various CSOs⁴ up to 90% of SLAPP cases where criminally charged, 59 cases out of 212 analyzed were brought by private corporations and two-thirds of the affected were HRDs, community groups and political activists. It is specially worrying that 25% of the SLAPP cases happened because of expressing views online, 15% for attending to rallies, 4% for sharing news and articles, 23% for other activities, like bringing evidence to show officials and 1% for publishing research. In accordance with a recent report of UNDP⁵ of the cases filed from 2001 to 2022, 34% were filed by mining industry, 21% from livestock companies and 14% from the energy sector.

Moreover, in Thailand WHRDs are exposed to unique challenges and are targeted by SLAPP to undermine their work of protecting rights to land, housing, environment and local natural resources,

⁴ HRLA (Human Rights Lawyers Association) analyzed SLAPP cases between Jan 1997 through May of 2019 in Thailand in its document "Overview of SLAPP cases collected from 1997 to 31 May 2019," Recommendations on the Protection of Those who Exercise Their Rights and Freedoms from Strategic Lawsuits Against Public Participation. See: <https://freedom.ilaw.or.th/sites/default/files/AGO%20-%20SLAPP%20Factsheet%20-%20ENG%20-%202011.11.2019.pdf>

⁵ UNDP "Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights", 2023. Available at: <https://www.undp.org/thailand/publications/laws-and-measures-addressing-strategic-lawsuits-against-public-participation-slapps-context-business-and-human-rights>

which seems strategic since by charging one woman, the whole family and often an entire community is affected as they carry the responsibility for caring for the family.

WHRDs under court orders find their lives consumed with preparing and travelling for court appearances and the time taken up defending these lawsuits is time taken away from the work of caring for others. Many also face continuous intimidation via random visits by authorities, surveillance, and threats. Aside from interfering in the practical needs of the family, their frequent absences can result in women being accused of “neglecting their duties”. The stigma borne by women judged to be failing to take care of the family is very serious, especially in the rural communities. The added economic burden of childcare, travel and legal support increases stress and hardship. Judicial harassment of community WHRDs increases the possibility of silencing these crucial voices that most importantly need to be heard.

Grassroot WHRDs persistently voice the challenges they encounter in their tireless work. These dedicated defenders face significant hurdles, primarily stemming from their exclusion in prior and informed consultation processes. Their valuable perspectives

and expertise are often disregarded, denying them the opportunity to contribute effectively to decision-making processes that directly impact their communities and the issues they advocate for. Moreover, even after human rights violations occur, they confront persistent barriers when seeking access to justice. These barriers further impede their ability to protect and promote human rights, perpetuating a cycle of impunity and reinforcing the marginalization experienced by grassroots WHRDs.

Since 1997, there has been a significant increase in SLAPP cases in Thailand, with a notable surge following the 2014 military coup. Protection International (PI) Thailand reported that as of December 2022, more than 570 cases of grassroots Women Human Rights Defenders (WHRDs) facing charges have been documented. In the period between 2014 and 2020 alone, over 200 WHRDs were targeted by such cases. The numbers continue to rise, with currently over 570 cases and grassroots mothers experiencing judicial harassment and SLAPP lawsuits. Due to restrictive regulations, out of the hundreds of women charged, only 28 grassroots WHRDs have been able to access the designated Justice Fund for legal assistance from the Thai Ministry of Justice.

These cases predominantly originate from mining corporations, palm oil companies, and other entities, including state-run agencies. Urban poor women facing eviction and women defending land and natural resources in their communities have been particularly targeted. The severity of the situation underscores the urgent need for action to address the rampant abuse of SLAPP as a tool to suppress the voices of WHRDs and infringe upon their rights to advocate for their communities and protect their land and resources.

Frequently instead of supporting and protecting Women and HRDs the Thai government seems to enable companies to engage in judicial and other forms of harassment and intimidation. For example, a gold mining company with the involvement of some Thai authorities committed serious human rights violations; including mounting a violent attack in 2014, against members of the women-led community group Khon Rak Ban Kerd (KRBKG), Loei Province. After, they -the company and the State- initiated 22 legal cases against the W/HRDs. Authorities charged the community leaders with violating the Peaceful Assembly Act simply for gathering to peacefully protest the damage project was causing in their area.

Furthermore, several criminal charges of defamation have been lodged against Ms Angkhana Neelapaijit⁶ by the same company that has lodged at least 37 complaints against 22 Human Rights Defenders⁷. The defamation charges they face carry penalties ranging between prison of 8 to 42 years, and fines for up to US\$133,000. Most of the complaints involve things like the simple act of sharing tweets in support of migrant workers pursuing their struggle for labor rights. Luckily not all SLAPP cases end up silencing these relevant voices. In 2020, the residents of various districts in Prachin Buri Province reported the presence of toxic smells, and Sumeth -Khon Rak Kroksomboon group- and his community group filed a complaint with the Provincial Governor and after an official inspection, it was found that local water had dangerously elevated levels of arsenic. Nonetheless, the company sued Sumeth twice for defamation and asked for compensation of 50 million baht (approx. US\$1.6m).⁸

From 2020-2023⁹ over 1,900 people have been prosecuted for participating in the largely non-violent protests. There have been at

⁶ A prominent advocate for human rights and justice 2019 Magsaysay Award recipient and former Thailand National Human Rights Commissioner.

⁷ Puttanee Kangkun, Thanaporn Saleephol, Sutharee Wannasiri, Suchanee Cloitre, Suthasinee Kaewleklai, Ngamsuk Ruttanasatian and many other prominent W/HRDs.

⁸ <https://www.protectioninternational.org/news/industrial-waste-management-company-to-withdraw-slapp-lawsuit-against-environmental-w-hrd-sumeth-rainpongnam-as-public-pressure-mounts/>

⁹ Also, COVID19 restrictions were used to further hamper human rights defenders. In April 2020 W/HRDS and community members who belong to the Network of People Who Own Mineral Resources read a statement that said “even though the draconian Emergency Decree is being enforced to prevent citizens from public activities and gatherings, mining companies are

least 271 cases where people were charged with royal defamation over the same period¹⁰. One of the youngest to be charged is a girl 17 years of age, Ms Benchamaporn “Ploy” Niwat. She is part of the girl-led movement ‘Bad Students’ that emerged in August 2021 to demand reforms to the education curriculum, equality in schools and an end to draconian school rules. Moreover, rural WHRDs and their communities protesting lack of consultation and absence of “free, prior and informed consent” to land seizures and natural resource extraction face intimidation and judicial harassment. Of the 500 cases filed for alleged “forest encroachment” until 2020, only ten are against large business owners while the rest have targeted small-scale farmers, many of whom are women.¹¹ Similarly, in May 2021 the Supreme Court upheld a judgment against WHRDs and community members, who stood up for their land rights and faced charges for intrusion, destroying, occupying, taking possession and making use of a national park’s. The Court

free to continue their activities including mining surveys, operations and approval processes during this pandemic. These activities all affect community rights and participation, as well as health concerns”. They called for the suspension of all mining activities in the same manner community activities had been ordered to suspend. Within hours, WHRD Ms Sunthorn Duangnarong who read out the Statement was taken to the police station and threatened with being charged for violating: 1) the Public Assembly Act 2) the Emergency Decree, and/or 3) the Communicable Diseases Act. She was kept for hours and felt, as a trans woman, particularly vulnerable and intimidated.

¹⁰ See report of Thai Lawyers for Human Rights available at: <https://tlhr2014.com/en/archives/57290>

¹¹ See 2020 CEDAW Progress Report Card available at: https://www.protectioninternational.org/wp-content/uploads/2020/03/CEDAW-Progress-Report-Card-2020_Thai.pdf

ruled in favor of the government understanding that the villagers had damaged the ecological system, the environment and contributed to climate change.¹²

Considering this complex scenario where judicial harassment remains a significant barrier to the work of Women and HRDs in Thailand, several international organizations have raised their concerns. In 2017 CEDAW Committee expressed serious concern that WHRDs have increasingly become targets of lawsuits, harassment, violence and intimidation by authorities and business enterprises due to their human rights work and issued concrete recommendations consistent on the adoption and implementation of effective measures to protect WHRDs to enable them to freely undertake their work and to investigate, prosecute and punish all cases of harassment, violence and intimidation and provide effective remedies. Also, during the Universal Periodic Review in 2016 there were eight recommendations made on HRDs, some addressing judicial harassment. Said recommendations were upheld by the UN Working Group on Business and Human Rights in 2018 which also urged the government to address misuse of the judicial system and to strengthen protections for HRDs. In 2021

¹² <https://www.protectioninternational.org/news/thailand-six-years-after-the-committee-for-the-international-convention-on-economic-social-and-cultural-rights-icescr-recommendations/>

and 2022, the Working Group reiterated their concern regarding the systematic use of SLAPP cases by businesses.

To address all the aforementioned challenges, in 2019 after adopting the UN Guiding Principles of Business and Human Rights, Thailand launched its first National Action Plan on Business and Human Rights, according to which protection of HRDs was one of four priority areas. The Ministry of Justice published a [draft 2nd NAP](#) (2023-2027) in May 2022. ¹³

There was no suitable evaluation of the 1st NAP. Evaluation of the first NAP was concerned only with quantitative indicators. For example, how many meetings were held, how many people participated etc. rather than who participated and what was the level of participation in decision making. The draft of the 2nd NAP has still not outlined a thorough evaluation method.

In 2019, amendments were made to the Criminal Procedure Code, introducing Articles 161/1 and 165/2, aimed at addressing SLAPP lawsuits and other forms of judicial harassment. These

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changes empower the court to dismiss a complaint filed by a private individual if it is deemed to be "in bad faith or with misrepresentation of facts in order to harass or take advantage of a defendant." Unfortunately, these legal modifications have not proven effective in practice.

The lack of clear definitions within the law, particularly regarding terms like "bad faith," has left considerable discretion to the courts. As a result, most applications by Women Human Rights Defenders to invoke Article 161/1 have been denied. Despite these legal amendments, SLAPP cases and judicial harassment persist, thus violating all three pillars of the United Nations Guiding Principles on Business and Human Rights.

As long as the government permits unchecked judicial harassment to persist, the vital task of defending human rights will become increasingly perilous and unsustainable. This, in turn, will ultimately undermine both business and human rights.

In light of the above, we reiterate the urge to raise the following points with the Thai Government and relevant companies and corporations:

1. Thai authorities must immediately end the violence, intimidation, harassment, and arrests of women and others who use and care for the land and natural resources in their communities, as well as those who are defending human rights. The government must support communities' right to continue managing their areas and ensure that all people can exercise their rights to defend human rights.

2. We call on the Thai government to report on their compliance with the Guiding Principles on Business and Human Rights and the recommendations made by the United Nations Working Group on Business and Human Rights in 2018.

3. There must be a thorough, impartial, and urgent judicial review of convictions against communities and HRDs with a view to overturning any rulings not compatible with the

UN Covenant on Economic, Social and Cultural Rights and/or other UN Human Rights treaties.

4. The Action Plan for Human Rights Defenders is one of four key areas of the National Action Plans on Business and Human Rights; yet there have been no concrete moves to effectively protect or recognize the work of WHRDs. The NAP and subsequent Articles regarding judicial protections do not have the status of law. It is merely a resolution by the executive branch of the Thai government and is considered a “by-law” pursuant to section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999). It carries no judicial weight or enforcement capacity.
5. Urgently review Section 161/1 of the Thai Criminal Procedure Code to provide clearer direction do it can be used such as defining “bad faith’
6. Under Section 21 of the 2010 Public Prosecutor Organ and Public Prosecutors Act, complaints, including those brought to harass, intimidate, or retaliate against human rights

defenders or others are to the Attorney-General alone. This is a lengthy procedure and it's not clear whether adequate resources and support have been provided to the Attorney General's Office to exercise their powers effectively and efficiently.

7. There is also no clear procedure or provision for fining or otherwise penalizing businesses or authorities who have been found guilty of trying to resort to judicial harassment of WHRDs. There must be political, financial, and judicial consequences for those responsible for attacks on HRDs or those who neglect their duty of care to prevent such attacks, including judicial harassment.

8. We urge the State to prevent all threats and harassment. Those responsible for attacks on defenders including judicial harassment must be held accountable. Those found to fail the duty of care to support and protect WHRDs must face political, financial, and judicial consequences.

9. Defamation, even when proven, should not be treated as a criminal offense that carries imprisonment or large fines. We strongly encourage the UNWG and other relevant agencies to advocate for the decriminalization of defamation in Thailand, aligning with international standards and best practices.

10. We urge the Thai government to provide a comprehensive report on their progress in complying with the recommendations made by the Committee on the Elimination of Discrimination against Women (CEDAW) and the United Nations Working Group on Business and Human Rights. This transparency will help ensure accountability and promote meaningful action. The most urgent action is to comply with the recommendation regarding easier access to justice funds for Women Human Rights Defenders.

11. All stakeholders working on business and human rights should actively invest their resources and leverage their

influence to compel the Thai government and relevant businesses to immediately cease the judicial harassment of WHRDs. There should be a special focus on addressing the differentiated impact of SLAPP cases on women HRDs. Additionally, concrete steps must be taken to promote responsible business practices with a genuine commitment to human rights.

12. The United Nations Working Group on Business and Human Rights should independently evaluate the outcomes, strengths, and weaknesses of Thailand's first National Action Plan (NAP) on Business and Human Rights, which was hailed as the first in Asia. This evaluation will provide valuable insights for the Thai government and other governments in the Asia-Pacific region considering the development of their own NAPs.

Annex

Statistics of SLAPP cases and the use of judicial harassment against grassroots Women Human Rights Defenders based on documentation by the Protection International (Thailand) from the year of the coup in 2014-2022

Legal offence	North	Northeast	South	Central Plain	Total (cases)
Defamation / defamation by publication / Computer Crime Act	12	11	2	16	41
Public Assembly Act	21	9	1	2	33
Encroachment of Forest Reserve/National Park, and Forest Reclamation Policy	83	74	2		159
Mischief	8				8
Wrongful act / damages claim / eviction case	3	14	15	185	217
Being complicit in compelling the other person to do or not to do any act	8	8			16
Obstruction of public way		11			11

Violation of the NCPO Order no. 3/2558	5	3		25	33
Drug related offence	2				2
Violation of the Emergency Decree				47	47
Offence against the Immigration Act B.E. 2522 and the Royal Ordinance Concerning Management of Employment of Foreign Workers B.E. 2560				3	3
All offences(cases)	142	130	20	278	570