Response to the call for inputs to inform the United Nations’ Special Rapporteur on the Situation of Human Rights Defenders’ report on “Human Rights Defenders working on Anti-corruption”

Submission by the UK anti-SLAPP Coalition\(^1\), 15 October 2021

Background

Human rights defenders (HRDs) focused on fighting corruption are increasingly coming under threat, creating a chilling effect on their ability to raise matters of public interest and hold power to account\(^2\). While physical threats and attacks are the most egregious violations, a growing body of evidence has identified abusive legal threats and strategic lawsuits against public participation (SLAPPs) as a key tactic to suppress information about corruption and financial crime\(^3\).

SLAPPs have been gaining wider recognition as an issue in several jurisdictions, with the former United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Annalisa Ciampi stating “SLAPPs have seen a significant increase worldwide, with certain legal frameworks proving to be particularly fertile ground for [their] proliferation”\(^4\). This submission is based on the recently published joint policy paper entitled ‘On Countering Legal Intimidation and SLAPPs in the UK’, and accompanying explanatory note, endorsed by 22 members of an informal UK anti-SLAPP coalition in July 2021\(^5\).

Legal intimidation and SLAPPs in the UK

The UK has been identified as a more plaintiff-friendly jurisdiction for legal intimidation and SLAPPs as mounting a defence is a particularly costly and lengthy process, with the burden of proof falling on

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\(^1\) The UK Anti-SLAPP Coalition is an informal working group established in January 2021, co-chaired by the Foreign Policy Centre (FPC), Index on Censorship and English PEN. It comprises a number of freedom of expression, whistleblowing, anti-corruption and transparency organisations, as well as media lawyers, researchers and academics, who are researching, monitoring and highlighting cases of legal intimidation and SLAPPs, and seeking to develop remedies for mitigation and redress. FPC’s contribution to the working group is based on the findings of the Unsafe for Scrutiny research programme and any views expressed are those of its Project Director, Susan Coughtrie.

\(^2\) The UN Office of the High Commissioner for Human Rights refers to journalists as HRDs as follows “many journalists do act as defenders, for example when they report on human rights abuses and bear witness to acts that they have seen” [link]

\(^3\) SLAPPs are abusive lawsuits pursued with the purpose of shutting down acts of public participation such as public interest journalism, advocacy, or peaceful protest. These legal actions are directed against individuals and organisations - including journalists, media outlets, whistleblowers, activists, academics and NGOs - that speak out on matters of public interest, including corruption. See, for example, Unsafe for Scrutiny: How the misuse of the UK’s financial and legal systems to facilitate corruption undermines the freedom and safety of investigative journalists around the world, Foreign Policy Centre, December 2020, [link]

\(^4\) For more details of SLAPPs in Europe, see the research compiled by the Coalition Against SLAPPs in Europe (CASE): [link]

\(^5\) Policy Paper: On Countering Legal Intimidation and SLAPPs in the UK - [link]; Explanatory Note: Approaches to Countering Legal Intimidation and SLAPPs in the UK - [link]
The defendant\textsuperscript{6}. The Financial Times, in a recent statement, highlighted the on-going attractiveness of the English libel system: "Rich claimants are not put off by costs, and can ratchet them up by drawing out proceedings in another intimidatory tactic. By contrast, the prospect of a big legal bill can chill freedom of expression, particularly among freelancers and small outlets, even if there is a public interest in publishing."\textsuperscript{7}

A global survey conducted by the Foreign Policy Centre (FPC) in 2020, with the participation of 63 investigative journalists in 41 countries working on financial crime and corruption, found that:

- 73\% of all respondents experiencing threats had received communication(s) threatening legal action as a result of information they had published. More than half of those stated that it made them more cautious as a result.
- The UK was the leading international source for legal threats, almost as frequently as those emanating from the European Union (EU) countries and the United States combined.
- At least 61\% of respondents reported their investigations had uncovered a link (directly or indirectly) with UK financial and legal jurisdictions.
- Defamation pursued as a civil case was by far the most frequently given reason behind legal communication(s) to respondents (91\%).
- Legal threats were identified, by those respondents experiencing threats, to have the most impact on investigative journalists' ability to continue working (48\%), followed by psychosocial (22\%), then physical and digital threats (each at 12\%).

These findings underscore concerns regarding the extent of the ‘hidden problem’ of UK law firms sending threatening letters prior to any official filings, which can have a similar effect to SLAPPs\textsuperscript{8}. Due to the significant financial pressure of even potential legal threats, media outlets may decide to concede even if they believe what they have written to be accurate and in the public interest. If successful these threats may never come to light, creating a vacuum of information both about what was initiating being investigated as well as the fact a threat took place.

**Examples of Legal Intimidation and SLAPPs emanating from the UK**

- **Paul Radu**, co-founder of the Organised Crime and Corruption Project (OCCRP), was pursued through the UK courts for two years by an Azerbaijani politician. This was despite the fact that OCCRP’s investigation related to the politician’s business dealings in Azerbaijan and Radu is a Romanian citizen. The case was ultimately discontinued in January 2020, with the articles in question remaining online with a disclaimer. However, the pre-trial proceedings had cost OCCRP hundreds of thousands of dollars, even with pro/low-bono legal support, as well as significant time, effort and stress diverting them from other investigations\textsuperscript{9}.

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\textsuperscript{7} The Editorial Board, The Financial Times, 10 May 2021, London, libel and reputation management: The English courts attract those with deep pockets and much to lose, [https://www.ft.com/content/e37f3349-479f-42c6-85fe-11b5a29bdee0](https://www.ft.com/content/e37f3349-479f-42c6-85fe-11b5a29bdee0)


\textsuperscript{9} Paul Radu, How to Successfully Defend Yourself In Her Majesty’s Libel Courts, 26 February 2020, GIJN,
- **Clare Rewcastle Brown**, an UK journalist, has been subject to significant legal challenges, while investigating Malaysia’s 1MDB corruption scandal. Her reporting led to the imprisonment of former Malaysian Prime Minister and the believed mastermind, businessman Jho Low, currently on the run. From 2017-19, Rewcastle Brown was pursued through the UK courts by a Malaysian politician before the case was withdrawn and a settlement was made in her favour. In May 2021, Rewcastle Brown received legal threats from the London law firm Taylor Wessing on behalf of Hamad Al Wazzan, an investment advisor, currently on bail in Kuwait accused of brokering a deal believed to be linked to 1MDB. After an alert was filed to the Council of Europe’s Media Freedom Platform, there was no further attempt to pursue this case. Rewcastle Brown has also been subject to legal threats in Malaysia. In September 2020 a warrant was issued for her arrest, provoking concerns the country would seek an Interpol notice, which was previously attempted unsuccessfully in 2015.

- **Dan McCrum**, a UK reporter with The Financial Times, reported being subject to “some of London’s most expensive lawyers” while investigating Wirecard, a German financial technology firm. He noted that almost all the external professionals hired by the company to protect its reputation were based in London. His investigation brought to light what has been referred to as ‘biggest accounting fraud case since the Enron scandal in 2011’ and Wirecard’s ultimate demise.

- **Realtid**, a Swedish business publication, is fighting legal action in London brought as a result their investigations into the business affairs of the Monaco-based Swedish businessman, Svante Kumlin. Along with the outlet, two of the journalists, Per Agerman and Annelie Östlund, and the editor-in-chief, Camilla Jonsson, are being sued personally. They are awaiting the outcome of a jurisdictional hearing held in March 2021. Realtid was investigating Kumlin’s group of companies, Eco Energy World (EEW), ahead of an impending stock market launch in Norway. Realtid publishes in Swedish for a Swedish readership.

- **Catherine Belton**, a British journalist and her publisher HarperCollins have faced several legal cases since March 2021. These are in connection to Belton’s book ‘Putin’s People: How the KGB Took Back Russia and Then Took on the West’, published last year. Four Russian oligarchs and the Russian state owned oil company Rosneft stated their intention to sue. Of these five cases, four reached court with a primary hearing held in July 2021. During the hearing, HarperCollins settled two cases (which were only against them). The initial judgement in the cases brought by Roman Abromovich and Rosneft are pending.

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11 Council of Europe Media Alert Platform, Journalist Clare Rewcastle Brown Subject to Legal Harassment from London Law Firm on behalf of Kuwait Investment Advisor, 17 June 2021, https://go.coe.int/W3mDc


13 Dan McCrum, Wirecard and me: Dan McCrum on exposing a criminal enterprise: Intimidation, surveillance and conspiracy theories: inside the FT’s five-year investigation of a billion-dollar fraud, 3 September 2020, https://www.ft.com/content/745e34a1-0ca7-342c-b062-950c20e41f03


15 Twenty-four organisations express solidarity with the Swedish media outlet Realtid, 23 March 2021, https://www.indexoncensorship.org/2021/03/organisations-express-solidarity-with-the-swedish-media-outlet-realtid
Tom Burgis, a British journalist, is subject to legal action relating to the publication of his book, Kleptopia, and connected articles. In September 2020, the Eurasian Natural Resources Corporation Limited (ENRC) initiated a case in US courts against Burgis’ publisher HarperCollins seeking disclosure of wide-ranging information relating to the book. As of August 2021, ENRC’s lawyers have initiated legal action in the UK against Tom Burgis, HarperCollins UK and the Financial Times. ENRC has initiated more than 18 legal proceedings in the US and the UK, against journalists, lawyers, investigators and the Serious Fraud Office.

Carole Cadwalladr, a journalist with The Observer, is being sued by Arron Banks, the businessman who co-founded the pro-Brexit Leave.EU campaign. In July 2019, Banks launched action against Cadwalladr individually for comments made as part of a public TED talk and tweets rather than against The Observer, which published her original investigation. In December 2019, a preliminary judgment clarified the context of the comments forming the basis of the lawsuit, noting that aspects of the claimant’s argument were “far-fetched and divorced from the specific context in which those words were used.” In January 2020, Banks dropped two of the four libel claims.

openDemocracy, a UK based media outlet, fought a two-year legal challenge brought by Jeffrey Donaldson, the now leader of Northern Ireland’s Democratic Unionist Party. In 2018, after openDemocracy had published several articles on his political and business affairs, Donaldson began sending legal letters and ultimately filed proceedings against the media outlet in Belfast. openDemocracy described how this led them to “[burn] through thousands of pounds and precious time that would otherwise have been spent on our journalism. The psychological toll was even higher.” The case never ended up in court – instead the ‘ordeal’ was dragged out until the legal timeframe for the case to proceed ran out in May 2020.

Daphne Caruana Galizia, a Maltese journalist, who at the time of her murder in October 2017, was facing 47 civil libel suits most of them brought by Maltese politicians and their business associates, which she described ‘as an intimidation strategy as they retreat[ed] under siege’ from her reporting into their corrupt practices. After her murder, Caruana Galizia’s family accused the UK based law firm Mishcon de Reya of ‘hounding’ their mother.

The Shift (Malta), an independent outlet setup in 2017 after Caruana Galizia’s murder has been subject to several legal threats facilitated by UK law firms. The Shift has remained resolute to fight back, refusing to remove the articles which they published on investigations in the public interest and publishing the legal threats. Defence lawyers in London advised The Shift that mounting a

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21 Peter Geoghegan and Mary Fitzgerald, Jeffrey Donaldson sued us. Here’s why we’re going public, openDemocracy, May 2021, https://www.opendemocracy.net/en/opendemocracyuk/jeffrey-donaldson-sued-us-heres-why-were-going-public/
defence against the latest threat, in July 2020 initiated by a Azerbaijani-British national, would require €50,000 to €100,000 even if the grounds are weak.\(^{23}\)

- **Global Witness**, an international NGO focused on ending the exploitation of natural resources and corruption, and their partners have been subject to legal threats. In 2020, they documented the attempts to intimidate them and the Platform for the Protection of Whistleblowers in Africa (PPLAAF) into dropping their joint investigation into how a mining magnate seemingly used an alleged international money laundering network to avoid the US sanctions. Global Witness received letters from a London based law firm, Carter Ruck, threatening legal action, however complaints were subsequently filed in France.\(^{24}\)

**SLAPPs and the United Nations**

UN special procedures have made clear that the state's obligation to protect the rights of HRDs - including rights to assembly, association and speech - entails protections against SLAPPs. According to a joint report by two UN special rapporteurs, for example, “*states have an obligation to ensure due process and to protect people from civil actions that lack merit*”\(^{25}\). Other UN special procedures and resolutions have noted the impact of SLAPPs on rights to free association\(^{26}\), free expression\(^{27}\), and the ability of human rights defenders to discharge their functions without impediments\(^{28}\).

General Comment No. 24 of the UN Committee on Economic, Social and Cultural Rights, for example, highlighted the need for sanctions where business activities undermine the rights guaranteed under the ICESCR - including where “*the introduction by corporations of actions to discourage individuals or groups from exercising remedies, for instance by alleging damage to a corporation’s reputation*” is “*abused to create a chilling effect on the legitimate exercise of such remedies*”\(^{29}\). For the same reason, where SLAPPs are used to block the efforts of HRDs to expose and advance accountability for the violation of political rights, SLAPPs threaten the obligation States Parties have under Article 2 to ensure an effective remedy for such violations.

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26 See the Info Note of the UN Special Rapporteur on the Rights of Freedom of Peaceful Assembly and of Association, Annalisa Ciampi, ‘SLAPPs and FoAA rights’: https://www.ohchr.org/Documents/Issues/FAssociation/InfoNoteSLAPPsFoAA.docx


Given the extent to which they undermine the specific protections accorded to HRDs under the Universal Declaration of Human Rights, SLAPPs have been recognised as presenting a particular threat to HRDs. In her report to the 25th Session of the UN Human Rights Council, the UN Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, noted that “the misuse of the judicial system to criminalize and stigmatise [the] activities” of HRDs “not only endanger[s] the physical integrity and undermine the work of human rights defenders, but also impose[s] a climate of fear and send an intimidating message to society at large.”

Intergovernmental efforts to address SLAPPs

Council of Europe (CoE)

Several texts adopted at the CoE, explicitly refer to the problem of SLAPPs, and other forms of legal intimidation, including the Committee of Ministers 2018 Recommendation on the roles and responsibilities of internet intermediaries and the 2012 Declaration on the desirability of international standards dealing with forum shopping in respect of defamation, to ensure freedom of expression. In October 2020, CoE Human Rights Commissioner Dunja Mijatović outlined a threefold approach she argues is needed as part of a comprehensive response to effectively counter SLAPPs, including:

- preventing the filing of SLAPPs by allowing the early dismissal of such suits.
- introducing measures to punish abuse, particularly by reversing the costs of proceedings;
- minimising the consequences of SLAPPs by giving practical support to those who are sued.

Mijatović noted that the European Court of Human Rights has already stressed that States are required to create a favourable environment for participation in public debate by all, enabling everyone to express their opinions and ideas without fear.

European Union

SLAPPs are often cross-border, meaning that HRDs resident in one jurisdiction may be threatened with a lawsuit or have legal action filed against them in another. This is done in an effort to further bleed HRDs of time and money, by forcing them to familiarise themselves with a foreign legal system, look for a lawyer in another country, and pay for any travel and translation costs. This is the case for UK journalist and anti-corruption expert Oliver Bullough, who is currently being sued in Portugal in relation to his book, Moneyland. Bullough has never set foot in Portugal, yet the vice-president of Angola has successfully filed a lawsuit seeking more than half a million euro against him there.

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32 Dunja Mijatović, Time to take action against SLAPPs, 27 October 2020, https://www.coe.int/en/web/commissioner/-/time-to-takeaction-againstångslapps
According to a study commissioned by the European Commission, SLAPPs are “increasingly used across EU member states, in an environment that is getting more and more hostile towards journalists, human rights defenders and various NGOs.” A broad coalition of civil society organisations have been advocating for the EU to undertake a number of complimentary steps, including through the adoption of an EU Directive on SLAPPs. On 1 December 2020, 60+ organisations from across Europe endorsed a Model EU Anti-SLAPP Directive. The European Commission has committed to “take action to protect journalists and civil society against strategic lawsuits against public participation” in its 2021 work programme.

Recommendations to States

- Domestic law and courts should offer strong protection against SLAPP suits by, among other things, allowing the early dismissal (with an award of costs) of such suits and sanctions for their use;
- Domestic courts should require public figures, including corporations and politicians, to tolerate a greater degree of criticism, especially when the criticism contributes to a debate of general interest;
- States should ensure equality of arms by providing financial support to public watchdogs targeted by SLAPPs, whether by legal aid or other mechanisms.

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