



SARW
Southern Africa Resource Watch

Anti-SLAPP Toolkit



CALS
Centre for Applied
Legal Studies



TWNAfrica

PART 1

Introduction

Activists challenging the might of the state or corporations often do so at great risk as both often benefit from the status quo and can use their power and resources to repress any challenges. The mining and extractives sector on the African continent which remains based on the colonial model of extracting cheap raw materials at the expense of communities and workers land, environmental and labour rights is a case in point. As will be shown in the 'Context' section of this toolkit, women often pay an especially heavy price for mining including in disregard of land rights, loss of livelihoods and increasing crime.

“Repression of environmental justice activists takes many forms in different contexts but is a common problem across the African continent. There is therefore a need for a toolkit that can be used by communities, activists, lawyers and other environmental rights defenders not just in one country but across the continent.”

The process of developing the anti-SLAPP suit toolkit (“toolkit”) involved extensive research, consultation, and collaboration with stakeholders from diverse backgrounds and geographical regions. This includes engaging with environmental rights defenders, especially those in communities impacted by extractive activities, across Anglophone, Francophone, and Lusophone jurisdictions. Through a participatory approach, the toolkit is tailored to address the specific needs and challenges faced by these defenders, incorporating their insights, experiences, and expertise.

This toolkit is tailored for use by environmental rights defenders (in particular women from communities impacted by extractive activities) across the continent including Anglophone, Francophone and Portuguese-speaking jurisdictions. It will provide practical guidance, case studies, and tools for advocates and lawyers.

The toolkit includes a range of resources, guidance, and tools designed to support environmental rights defenders, particularly women defenders in their advocacy efforts. This includes practical strategies for identifying and responding to SLAPP suits, case studies illustrating successful resistance tactics, legal resources outlining relevant laws and precedents, and advocacy tools for raising awareness and mobilizing support. By offering accessible and user-friendly resources, the toolkit aims to equip defenders with the knowledge and tools needed to effectively challenge legal repression and advance environmental justice.

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Glossary

Benefits sharing agreement	A contract for the sharing of benefits of mining often concluded between mining companies, government and the community. Often traditional leadership are the only community representatives and there is little participation and access to information for the broader community
Blasting	The generation of controlled explosions to remove rocks as part of the mining process.
Community	Individuals and households who have a common identity as a collective whether due to ancestral ties to the land or commonality of interests and living conditions e.g. communities impacted by mining.
Environmental justice	Environmental justice requires that the harms and benefits of activities impacting on the physical environment be equitably distributed and that vulnerable groups play a central role in decision-making regarding the environment.
Environmental justice movement	Activists, organisations, and communities that challenge environmental injustices.
Environmental racism	The injustice groups and societies who are at the receiving end of systemic racial discrimination are also burdened with the environmental costs of developments such as mining. This intersects with gendered injustice with Black women, for example, experiencing the greatest harms from mining
Extractivism	'Activities which remove large quantities of natural resources that are not processed (or processed only to a limited degree), especially for export.'
Gender-based violence	"Any act of gender-based violence that results in, or is likely to result in, physical, sexual, or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."
Neo-colonialism	A term to describe how colonial relationships of exploitation and domination, especially in the economy, have continued despite the achievement of formal national independence by African countries and other former colonies. This includes extractivism (see above for definition).
SLAPP Suit	A SLAPP suit, or Strategic Lawsuit Against Public Participation, is a lawsuit that is intended to censor, intimidate, and silence critics by burdening them with the cost of a legal defence until they abandon their criticism or opposition
Social and Labour Plan	A document that consists of legally binding commitments for companies' employees and communities which is a requirement for mining under South African law.



Context: Environmental and socio-economic issues around extractives in Africa

1. Neo-colonial extractivism

The historical crime of colonialism, particularly its intensification in the 19th century is deeply linked to the emergence of capitalism in the United Kingdom and continental Europe, as capitalists sought cheap land, raw materials (such as diamonds and gold), labour and markets in non-capitalist societies including Africa and their states assisted them through brutal conquests. By the late 19th century, nearly all of the African continent was divided between European colonial powers including Britain, France, Belgium, Portugal, the Netherlands and Germany. The local population were denied self-determination and democratic rights as the colonial state was designed to enforce land dispossession, extreme labour exploitation and the extraction of raw materials at the lowest possible costs to western corporations. In some countries, including South Africa, Kenya and Zimbabwe the colonists encouraged settlement of their nationals and a privileged cast of white settler colonists was created.

The costs of World War II for colonial powers plus the growing power of anti-colonial movements in the colonial world led to the waves of decolonisation with the result that by the time of the end of apartheid in South Africa (1994) all countries on the African Continent (with the exception of Western Sahara) had obtained independence. However, while Africa is no longer under colonial rule, its place in the global economy remains basically the same. Africa is still mostly a supplier of cheap labour and raw materials to global corporations despite some changes such as the emergence of African political elites and domestic capitalist classes. The term for this is 'neo-colonialism' and was first applied to the situation of Africa by the former Ghanaian President Kwame Nkrumah.



2. Land dispossession and loss of livelihoods

Minerals are located on land on which communities have lived for generations. In the drive to maximise profits companies seek to gain access to this land at the lowest possible cost.

For communities this often means that they are removed from ancestral land without their consent and with very short notice. Where its provided, the compensation is usually not enough to restore them to the standard of living they enjoyed on their land. The legal frameworks governing communal land and environmental impact assessment vary across Africa. In some cases, the state administers the land, in others the community directly; some legal systems require more attention to the human impacts in environmental impact assessment than others. Lack of state recognition of security of tenure of those living on communal land is a common challenge. Usually in practice impacted households have little say (or even access to information) in negotiations between the mining company and (depending on the context) the government and/or traditional leadership.

The harm done to communities is profound: communities lose their homes, their agricultural and other livelihoods from land. Sometimes households are only offered housing in urban or semi-urban areas not suitable for the subsistence and/or small-scale agriculture that provided food security and in some cases livelihoods. Oftentimes, the land that communities are removed from is sacred to them as it holds their indigenous identity and connection to their ancestors.

Forced resettlement can have severe impacts on the economic position of women in communities where women have traditionally played a role in agriculture. For example in Ghana 95% of those relocated due to gold mining on their land were farmers and the majority of small-holder farmers in Ghana are women. While some countries such as South Africa have put in place measures to promote the participation of women, men remain the majority of mines' workforce. Women in mining face barriers including sexual violence , unsuitable equipment and an overall sexist work culture . This leads to decline in the economic power and status of women. The arrival of mining is therefore often linked to the gender balance being disrupted with men outnumbering women. Extractives globally and not only in Africa are linked to gendered impacts including teenage pregnancies, women being pushed towards sex work, spread of communicable diseases and increased violence against women.

Despite paying the price for mining on or near their land, communities usually do not enjoy the economic benefits and usually live in poverty. The bulk of the wealth flows outside of the community, much of it offshore but also to domestic economic centres away from mining communities. Multinational companies often take advantage of their complex organisational structures and ties to political elites to avoid paying their fair share of tax with the result being a massive outflow of capital far greater than what is invested. The mechanisms governments have put in place to ensure some localisation of benefits (benefits sharing agreements, social and labour plans etc.) are generally seen by communities and civil society organisations working with them as ineffective.

3. Environmental impacts of mining

The activity of mining, involving the disturbance of the earth and water systems to extract minerals from the ground, is environmentally impactful by its nature. Across the African continent, mining brings degradation of communities' environment.

Mining has many impacts on water. These include the disruption of water systems to make way for mining, the large quantities of water consumed for mining activities, and water pollution. Therefore, communities experience challenges both access to and quality of water. Communities are sometimes forced to travel further to access water. The impacts can be particularly felt by women. Firstly, the time and energy spent on domestic care work is far greater. Second, in travelling long distances (sometimes under darkness) to fetch water women are vulnerable to gender-based violence and other crime.

Air pollution from a range of sources including blasting, deposits and stockpiles is often reported. Communities report rises in respiratory illnesses (illnesses that affect breathing) but independent studies investigating these links are very rare which means companies can easily deny responsibility. Women from mining-affected communities such as Mokopane, South Africa report having to care for family members who are ill due to pollution.


Damage due to blasting, which means the generation of controlled explosions to remove rocks, is a widespread issue. Communities frequently report damage to houses and other buildings, trauma and noise pollution.

Weak enforcement of environmental law has been raised by activists and lawyers as a common problem across the continent including in countries such as Zambia, Kenya, South Africa, Zimbabwe, Zambia, and Ghana, Cameroon and DRC. Lack of transparency, repression of environmental defenders, and close (and sometimes corrupt) relationships between mining companies and the state are some of the reasons that have been suggested for this. Finally, not all countries on the continent have environmental justice movements, especially at a community level, to hold companies and government accountable to their environmental obligations.

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Communities frequently report damage to houses and other buildings, trauma and noise pollution.”





Threats of defamation action are probably far more common than actual defamation suits.

4. SLAPP Suits

Activists often face many hardships for challenging the conduct of mining companies and the state. While repression of activists is a problem that cuts across different African regions, the most common form this takes varies a lot according to local context. Many countries, including Zimbabwe, Kenya, Cameroon, Mozambique and Angola, do not have a free political space and activists are targeted just for being critical of the government. In some of these countries, courts are not viewed as a safe and independent route for seeking relief. In many of these countries both political dissent and environmental activism is repressed, however in some countries the lack of visible environmental activism means environmental activists are not a particular target of repression. However, repression of activists is an ongoing challenge throughout, even in countries such as South Africa which enjoy relative protection of civil and political rights.

4.1. Defamation

A common form of SLAPP is to make use of defamation. In some countries such as Kenya criminal defamation is utilised to silence critics of governments in particular. Defamation has also been used to silence critics of mining companies. For example, in the DRC, a company sued employees exposing a corrupt business person who fraudulently obtained shares in a company. Following pressure domestically and abroad, the lawsuit was eventually dropped. In South Africa defamation suits have been used in several instances to silence environmental activists, including in the case of *Mineral Sands Resources (Pty) Ltd and Others v Reddell and Others* 2023 (2) SA 68 (CC) where a mining company sued several environmental activists and lawyers for statements made regarding unlawful conduct and harmful environmental impacts of its operation. Importantly the court found that a SLAPP suit defence is available in South African common law. Threats of defamation action are probably far more common than actual defamation suits. Threats may include formal 'cease and desist' letters of demand to activists to stop making defamatory statements about the company but may also be communicated less formally.

4.3. Interdicts

Protest is one of the tools available to communities and others seeking to apply pressure on mining companies. Forms of protest include marches but also direct and disruptive actions such as blocking the gates of mines and/or roads from where the mined minerals are transported to be processed and sold. It is common for governments and mining companies to seek interdicts to make protests unlawful. An interdict means a court order to forbid/instruct the stopping of a course of action. Interdicts are granted where it is shown irreparable harm will result to a legal right if the order is not granted, there is no alternative remedy and that less harm will result from granting the order. Interdicts are often granted by courts even to prevent peaceful protests and are often worded very broadly (for example prohibiting the whole community from protesting).

4.4. Criminal charges

In addition to abuse of civil remedies, in some countries on the African continent criminal charges are used against environmental justice and other activists. Several forms of criminal prohibitions are used to silence activists – these are very wide-ranging. A common area of law often used to silence activists are laws pertaining to security such as national security and counter-terrorism legislation as well as cyber security

legislation. For example, Kenya's Computer Misuse and Cybercrime Act (2018) contains provisions that have been used to limit freedom of expression online – for example journalists and whistleblowers have been accused of harassment or false reporting in terms of this law. Secrets legislation can also be used against activists. For example Kenya's Official Secrets Act (as amended in 2012) which criminalises possession or sharing of government documents without authorisation is used in practice to prosecute journalists and whistleblowers using leaked documents to expose wrongdoing.

4.5. Unlawful arrests

In some instances, especially in countries where civil and political rights are routinely violated such as Cameroon, activists are abducted and detained without trial and even charges. There have even been instances of arrests just for conducting independent research into mining impacts.

5. Violence against activists by the state and corporations

5.1. Assassinations

Those standing up for environmental justice and all forms of human rights are too often globally made to pay the ultimate price – death. For example, in South Africa this has included the assassinations of community activists opposing mining projects at the expense of the community (including Sikhosphi 'Bazooka' Radebe in Eastern Cape and Fikile Ntshangase in KwaZulu Natal); social movement leaders (e.g. members of the Abahlali baseMjondolo movement) and whistleblowers.

5.2. Intimidation

In some countries such as Mozambique and Angola, it has been observed that both violence and intimidation of activists are more common than use of the law to repress activists. This has also been identified as a common problem in countries such as Cameroon where security and police forces often intimidate activists.

5.3. Raids

Examples of raids and confiscation of recording equipment such as cameras of activists and researchers have also been reported against people conducting research on mines in countries such as Cameroon.

6. Lack of transparency and access to information

Mining and environmental information, including license conditions and compliance reports, is difficult to obtain across the continent. Some countries do not have access to information legislation or requirements in environmental and mining law. In some countries certain information is more readily accessible e.g. environmental authorisations are easier to obtain than compliance and/or monitoring reports. Even where there is a constitutional right to information, processes in access to information laws are used by companies and governments to delay and obstruct the release of information. Comprehensive and voluntary disclosure by governments, for example in searchable online databases, is absent. Companies take advantage of communities' lack of access to information by denying responsibility for impacts. Further the lack of transparency may be even weaponised against environmental rights defenders (i.e. threatening or undertaking litigation relying on the lack of evidence produced by activists).

PART 3

What is a SLAPP and how to identify it

1. What is a SLAPP suit and what are the elements of a SLAPP?

“Public participation or citizen involvement in governance is an axiom of representative democracies”

A SLAPP suit, or Strategic Lawsuit Against Public Participation, is a lawsuit that is intended to censor, intimidate, and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition. This type of lawsuit is often filed against individuals or groups who speak out on matters of public interest. SLAPP suits are generally considered an abuse of the legal system and are designed to stifle free speech and public participation. These lawsuits can have a chilling effect on freedom of expression and can be detrimental to democratic processes .

The prevalence of SLAPP suits differs from country to country, amidst such prevalence or non-thereof, Countries, or States international legal standards obligate states and corporations to promote fundamental human rights and freedoms, i. e freedom of expression, assembly, and association as paramount. As such, states are obligated to facilitate the exercise of the rights of freedom of expression, peaceful assembly and association includes, among others, the duty to establish and maintain an enabling environment for civil society to operate freely. Regarding the right to freedom of association, it is crucial that individuals exercising this right can operate freely, without fear that they may be subjected to any threats, acts of intimidation or violence

Extending these obligations to corporations, they should not misuse actions intended to discourage individuals or groups from seeking remedies, such as by claiming damage to the corporation’s reputation, to unfairly suppress legitimate exercise of these remedies .

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2. Scenarios and what to respond

Scenario 1

In Zimbabwe, an environmental justice community was apprehended for protesting during an elections year. They were however released after post elections. They argued that this arrest was to deter them from speaking against the environmental degradation that was taking place in their community. In such instances, it is important that activists familiarise themselves with the organisations that work with activists in fighting against SLAPP lawsuits. These organisations are found in Annexure B.

Scenario 2

In the DRC, The community protested against corruption in the community. They argued that government officials were corrupt in how they allocated certification in the mining that happened in the community. They were in turn threatened by the company to stop their protest action. In dealing with this intimidation, they then quickly realised that , activists do not have enough information about the legal processes against SLAPPs, additionally, they are not united in fighting big companies. They then proposed that activist, in fighting big corporations must be united and informed. In their unity, they are able to combat intimidation that they face usually as individuals.

Scenario 3

In Mozambique, activists speak of big corporations that come to their soil from Western countries to tell them of laws in big English terms that they do not understand. This is common for multi international companies where they threaten activists with legalese so they do not take any legal action against the exploitation of their land. They further complained on how the law was used to unfairly silent them from practising their rights.

"I mean, How can you come to a Portuguese speaking country and impose your big English laws?"

It is then imperative that communities are trained and there are educational programs that are run around the issues that affect their communities. It is also important that this is done in simple and plain language and that legal terms are explained in a manner that best suits these communities.

Are you SLAPPED?

Here is a check list to find out if you are:

Anti-SLAPP Checklist

- ✓ **Is the legal action an abuse of court process?**
- ✓ **There is no violation of rights stated by the court process.**
- ✓ **The legal action seek to achieve an improper end.**
- ✓ **The legal action is causing you a financial strain.**
- ✓ **The legal action is violating the right to freedom of expression.**

PART 4



Remember, dealing with a SLAPP suit can be highly stressful, but with the right legal support and a proactive approach, you can effectively navigate through the challenges and protect your rights.

Practical remedies

1. Obtaining legal representation

It's crucial to obtain legal representation as soon as possible when facing a SLAPP suit. Finding a lawyer who specializes in anti-SLAPP laws and has experience in defending against such suits is essential. Make sure to choose a lawyer who understands the complexities of the case and can provide sound legal guidance to navigate through the legal proceedings. Additionally, having a knowledgeable legal team will help in formulating a strong defense strategy and protecting your rights to ensure the best possible outcome. Your attorney can assist in gathering evidence, preparing your defence, and representing you in court if necessary. They will also guide you through the process of filing a motion to dismiss the SLAPP suit, which is a crucial step in defending against these kinds of legal actions.

In addition to legal representation, it's important to document all communications and interactions related to the SLAPP suit. This includes keeping copies of any correspondence, recording details of conversations, and preserving any relevant documentation. These records will be valuable in building your defense and demonstrating the merit of your position.

Legal cases usually take a toll on the activists, and so, it is important that one finds a legal practitioner that is understanding of the effects that the case have had on the activist. Activists are normally in need of psychological support when they face SLAPP suits and other victimisation tactics. It is then important that the activists ask for psychological support and emotional support services that may be available to them during this time.

Remember, dealing with a SLAPP suit can be highly stressful, but with the right legal support and a proactive approach, you can effectively navigate through the challenges and protect your rights. (please see annexure B for useful public interest law organizations).

2. Coalitions and solidarity

The importance of solidarity in environmental activism

Environmental activists across the continent have been operating under great threat for many years, having been labelled as anti-development, anti-state and not patriotic in their activism. This includes the growing narrative of civil society organisations and coalitions compromising state security and destabilising communities through their work. These contentious issues have caused further barriers between civil society organisations, activists, and the states over the years. The tensions are evident in the hostility towards public interest litigation in courts, the criminalisation of the freedom to assembly and expression, lastly the strong pursuit to implement legislation that seeks to further regulate their operations.

This has had a negative impact on environmental activism, calling for solidarity against growing repression tactics against activists. Solidarity has become essential to the survival of activism in the current political landscape, to counter narratives that are not productive towards the promotion and protection of human rights. The forming of strategic partnerships has become essential to spotlighting environmental human rights violations and the plight of activists across the African continent.

Tools of Solidarity

Coalitions - Coalitions are a formation of different organisations and individuals who have the same interest in the promotion and protection of environmental rights. The purpose of coalitions is to formulate a coordinated response towards repression tactics through collective participation in advocacy campaigns, fundraising and litigation. The coalition helps prevent state or private actors from isolating individual activists, improves the visibility of the campaigns and achieves goals more efficiently.

Digital Campaigns - Digital platforms such as Twitter and Facebook have provided environmental activists with tools to educate and bring awareness about their plights to the rest of the world. Online

engagements have become one of the most important tools in mobilising support towards the plight of environmental justice. Digital campaigns allow for those who have interest to partner with coalitions, organisations, or activists through. Innovative tools and accessible tools are available online to assist us with our digital campaigning beyond social media platforms.

Digital tools for Online Campaigning:

- **Infographics** – These are short and easy to read posters that inform the public about your organisation, how it impacts your community, how the public can best support your call to action. You can use different websites for free to create infographics, please kindly see annexure c for links.
- **Newsletter** – Giving updates to your partners, donors, and community members helps with building a following, educates the general public and can be a successful mobilisation strategy for resources towards the campaign.
- **Online petition** - A petition is a recognised legal document that formally requests the court for an order and sets out the petitioner's version of facts based on existing facts or evidence. Online petitions can be used for various purposes including litigation in a public interest matter, can be presented in a national assembly or local municipality to intervene in a public interest matter.

Digital Security

However, the internet is not always a safe space for activists as the state and cooperations use the same tools we use for awareness to track activist movements, whereabouts, protests and opinions to pursue SLAPP-suits against activists. We must always be safe and cautious when using the internet to communicate our message, communicate plans with our organisation's members or partners.

Activists must use digital tools that are encrypted and have stronger safety mechanisms that protect you from being watched and surveilled online by third parties.



Activist groups would resort to using VPN to send communication to the rest of the world, about any arrests, injuries, fatal casualties, and other human rights violations.

Here are a few tools to use communicate with each other safely online:

- **Signal instead of WhatsApp.** Signal is a messaging app where you can communicate via messages. You are able to create groups, send videos and pictures safely. Once a video or picture is sent on signal it cannot be screenshot. You can also send time sensitive messages in the case of emergency on signal or find yourself in a compromising situation. Signal is best when communicating sensitive information, especially if you believe you are at risk or being watched online by third parties. It has more effective encryption that protect you from third partners. It is cost effective and are available on both android and apple systems.
- **Thunderbird instead of Gmail.** As activist we send overly sensitive information to each other via email, but our emails can also be used against us under repressive laws if found online by third party. Thunderbird is a free email software to use to ensure more safer in email communication and exchange. It available on both android and apple systems. (Please kindly see annexure c for organisation who can assist for training and workshops to train on how to use the software)
- **Firefox instead of Google Chrome.** Activists rely on the internet to search for more information about the law, new policies, and other tools to protect themselves. However, someone is always watching what you search and for what reasons. This again can be used to prosecute you in court or build a case against you. To protect your privacy as you search or do research online its best to use Firefox instead of google chrome. Both search engines are strong in their functions and features, however Firefox focuses more on protecting their client information than google chrome.
- **VPN.** Activist across the African continent are often subjected to internet shutdown or having certain websites blocked in the country. This results into many activists not being to use certain sites, social media tools or communicate during emergencies due to them being blocked. Internet providers like Telecom, MTN, Vodaphone are also bound to adhere to cooperations regulations when asked to switch off their connection in different countries. However, there are mechanisms activist can use to navigate the internet safely and bring awareness to human rights violations to stakeholders outside of their borders for assistance and call for solidarity. One of the tools we can use are Virtual Private Network, best known as VPN's.

In Swaziland in there was an unrest after national protests began calling for reform and change in government. The government of Swaziland order MTN to shut down its services in the country after videos of soldiers and police using excessive force on protesters started circulating across the world. Those circulating the videos were traced and arrested for charges such as treason and compromising national security. If many had learnt earlier about VPN information about the unrest would have been shared safely and faster to the outside world. These networks can be used to protect one's identity on the internet by providing users with anonymity, protecting users from cyberattacks and providing passages for exploring the internet.

Here are a few examples of how communities are successfully using VPNs to use the internet safely and wisely for their activist activities:

In Senegal internet showdowns often took place in the country during protest demanding government to solve unemployment, political instability, and other social issues. Often the government would resort to shutting down the internet when using excessive force against protesters or effecting arrests of activists. Activist groups would resort to using VPN to send communication to the rest of the world, about any arrests, injuries, fatal casualties, and other human rights violations. This helped the world keep informed, brought awareness about Senegalese struggles to help put pressure on relevant stakeholders to hold the government of Senegal accountable.

Uganda has banned certain sites and social media application like Facebook to be used in the country. Facebook is platform used vastly by activist to communicate meetings, activities for organisations and community groups, advertise their petitions for signatures. This does prevent millions of internet users from exercising their right to privacy, free use of digital platforms. Many activists in Uganda use VPNs to use Facebook as a platform to spread awareness on human rights issues, report unlawful arrests and organise amongst each other for protests, community meetings and other activities.

Digital Security

- ✓ Safer Messaging Apps
- ✓ Safer Internet Search Engines
- ✓ Safer Email Systems
- ✓ Safe Virtual Private Networks

STAY SAFE!
Someone is always watching online!

Amicus - Litigation is a very common and effective strategy for solidarity. Improving legal frameworks is imperative to the work and protection of activists. This strategy also assists in improving legal frameworks in the best interest of communities, particularly in issues regarding land, mining, and waste management. keep those accountable for human rights violations in society. In countries which activists are not given fair trial or hearings, partner organisations applying as amicus assist with protecting the integrity of court process, rule of law and human rights.

3. Public advocacy to pressure governments and companies

In order to deal with the growing SLAPP suit in the African region it is important that everyone knows their rights. The Constitutions of the different countries provide for legal remedies in instances where individual rights are violated, this is often done during SLAPP suits. What advocacy strategies can then be utilised in circumventing SLAPPs?

Know your rights

It is important that activists know their rights in order to fight repression. This means that activists can:

- attend workshops where they learn about the different ways of fighting repression.
- Have toolkits in where they can share lessons within the activism space on how to fight against repression
- Attend short courses on repression
- Keep informed about the development of the law on repression through the media and other digital platforms

Speak the truth

Speaking the truth forms a huge part of fighting repression. This includes knowing the facts around the case. In this instance, it is important that activists;

- Conduct research about the cases that they are protesting against
- Spread the information with the media, other activists and the affected government officials which can be municipalities or other affected local government officials

Keep your records

- To keep abreast with the developments of the law on repression across different regions, activists need to use the resources at their disposal in accessing information regarding activities that may be taking place in their mist.
- In South Africa, activists can use the Promotion of Access to Information Act to have access to the records of for instance mining companies that would like to conduct businesses in their area.

Commenting on Bills and Harmful legislations once they have had access to these pieces of information

For example last year just before Zimbabwe elections CSO groups spent most time discussing advocacy against the PVO Bill. Part of those efforts resulted in a meeting with the President. Its effects were felt throughout the build up to elections. Before that, there was speculation that the list of the affected organisations would be targeted before PVO Bill became law. However, this was circumvented by the intervention of the president.



4. Suggestions on responding to SLAPPs in different scenarios

4.1. What do I do if I receive a warning to stop speaking out or a cease and desist letter?

A cease-and-desist letter is a document sent by one party, often a business, to warn another party that they believe the other party is committing an unlawful act. In the case of Environmental activism this would be against social media post, release of documentary, book or report that could cause potential harm to the reputation or profits of the company. In this event, the affected party will pursue legal action companies if the other party continues the alleged unlawful activity.

Repression tactics such as these are aimed at keeping activists silent and intimidated enough to not pursue further advocacy strategists towards human rights violators. It is common for mining companies of their various kinds to use this strategy on community members or leaders, coordinators of coalitions and organisations.

4.2. What do I do if I am sued for civil defamation?

- Get legal representation: In an instance where an activist is sued for the civil defamation, the first point of recourse would be to get legal representation. The legal practitioner would then be able to guide the activists of all the legal proceedings that will ensue and also assist them to succeed in the legal proceedings.
- Collect Evidence: In order to be successful against civil defamation legal proceedings, it is important that one gathers evidence in an instance that they must prove that they in fact did not commit any act of defamation.

What do I do if I receive a warning to stop speaking out of a cease and desist letter?

STEP 1: Check Authenticity of Letter

STEP 2: Inform your organisation immediately of the letter

STEP 3: Access public interest law organisation for legal assistance

STEP 4: It may be advisable not to further speak on the particular company in question, however, to continue advocating for challenges surrounding environmental justice



Interdicting activists and limiting their right to protest is a violation of their fundamental human rights.

4.3. What do I do if I am charged criminally for my activism?

- **Presumption of Innocence:** Activists, like all individuals charged with an offense, have the right to be presumed innocent until proven guilty in a court of law.
- **Prima Facie Case:** Charges against activists should be substantiated with a prima facie case, and prosecution without such a case may constitute malicious prosecution.
- **Rights to Silence and Legal Representation:** Activists should exercise their right to remain silent and seek legal representation. They should not disclose information regarding the merits of the charges against them without consulting with their legal representative.
- **Avoid Self-Incrimination:** Activists should be cautious about self-incriminating statements and should consult with legal practitioners regarding any statements made to the police or prosecution.
- **Conditions of Detention:** Activists have the right to humane conditions of detention, access to medical care, and access to their prescriptive medical records.
- **Court Appearance and Legal Consultation:** Activists should be aware of their right to a court appearance within a reasonable time after their arrest and should alert their legal practitioner during their first consultation.
- **Assertiveness About Rights:** Activists should be assertive about their rights and seek legal advice to ensure their rights are protected during legal proceedings.

4.4. What do I do if my organisation/community is interdicted from protesting?

The right to freedom of assembly is guaranteed internationally, even though not absolute it should not be subjected or limited without just and equitable reasons that are in accordance with human rights standards. Interdicting activists and limiting their right to protest is a violation of their fundamental human rights. It undermines democracy and stifles dissent, preventing the peaceful expression of grievances and the pursuit of social change. Interdicts have been used across the continent by both corporations and government institutions to interdict activists from engaging in peaceful protests and advocating for social change. As such, it is crucial to monitor and document instances where activists are interdicted from protesting, as well as the potential consequences of such restrictions. Interdicts are obtained on urgent basis henceforth organisations and communities should act swiftly to challenge these interdicts legally and ensure that their right to protest is protected.

4.5. What do I do if my organisation/community is interdicted from protesting?

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Interdicts - Once communities and organisations are served with interdict papers, the following steps should be adopted:

STEP 1: Seek legal representation as soon as possible

STEP 2: Gather evidence to support your case

STEP 3: File opposition papers with the Court and relevant parties to the interdict application

STEP 4: Make public statements and raise awareness about the interdict, highlighting the violation of the right to protest and the importance of peaceful activism.

While the legal processes are taking place to challenge the interdict, it is also important to engage in strategic advocacy and mobilization efforts!

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Thus, engage with local and international human rights organizations to raise awareness about the interdict and seek their support in advocating for your right to protest. Utilize social media and other communication channels to garner public support and rally allies to your cause.

Simultaneously, consider exploring alternative forms of protest and advocacy that may not be restricted by the interdict, such as online campaigns, artistic expressions, or public discussions. While challenging the interdict legally is crucial, maintaining visibility and momentum for your cause is equally important.

In the long term, work towards building strong coalitions and alliances with other activist groups, legal experts, and civil society organizations to collectively address the broader issue of limitations on the right to protest.

Aspect	Details
Legal Representation	<ul style="list-style-type: none"> • Obtain legal representation as soon as possible. • Find a lawyer specializing in anti-SLAPP laws with experience in defending against such suits. • Choose a lawyer who understands the complexities of the case and can provide sound legal guidance. • A knowledgeable legal team will help formulate a strong defense strategy and protect your rights. • Your attorney will assist in gathering evidence, preparing your defense, and representing you in court if necessary. • Your attorney will guide you through filing a motion to dismiss the SLAPP suit.
Documentation	<ul style="list-style-type: none"> • Document all communications and interactions related to the SLAPP suit. • Keep copies of any correspondence. • Record details of conversations. • Preserve any relevant documentation. • These records will be valuable in building your defense and demonstrating the merit of your position.
Emotional and Psychological Support	<ul style="list-style-type: none"> • Seek psychological and emotional support services available to you during this time. • Access counseling, peer support groups, and stress management resources. • Addressing the emotional impact of the case can help manage stress, anxiety, and burnout.
Holistic Approach	<ul style="list-style-type: none"> • Combine strong legal support with proactive emotional and psychological care. • A holistic approach ensures effective navigation through challenges and protection of your rights and well-being.
Public Interest Law Organizations	<ul style="list-style-type: none"> • Reach out to public interest law organizations for legal and emotional support. • These organizations often provide resources and networks for human rights defenders facing legal challenges. • (Please see Annexure B for a list of useful public interest law organizations.)

Templates

1. Petition template

Petition for [Cause/Issue]

We, the undersigned residents of [City/State], hereby present this petition to address a matter of utmost importance that directly affects our community.

Issue: [State the Cause/Issue Clearly and Concisely] We believe that taking action on this issue is crucial for the betterment of our community. The signatories below have joined together in support of this cause, seeking your assistance in enacting the necessary changes.

Our Requests: [List Request 1] [List Request 2] [List Request 3] [Continue listing requests if necessary] We are determined to create a positive impact and strongly believe that your involvement can make a significant difference. This petition is a result of door-to-door signature collection, ensuring that a diverse range of community voices is represented. Enclosed with this petition are [number of pages] pages of signatures, symbolizing the widespread support garnered for this cause.

We kindly request an opportunity to meet with you to discuss the matter in more detail. Your collaboration and support will contribute greatly to achieving our shared objectives. Thank you for your attention. We eagerly anticipate a favorable response and the chance to collaborate towards the advancement of our community.

Sincerely, [Your Name - Printed] [Your Signature]

Enclosures: [Number of Signature Pages] pages of signatures

Note: Copy and paste into a fresh Google doc so you can edit. Adapt the provided content to suit your specific cause, issue, and local context. Customize the requests and details as needed, and ensure compliance with any relevant petitioning regulations or guidelines.

Printed Name	Zip Code	Email address	Signature

Printed Name	Zip Code	Email address	Signature

2. Open letter template

Dear [name of recipient]

We, the undersigned, are a group/coalition/organisation/concerned community member [explain who you are and your background].

We are extremely concerned about [outline the challenges you are facing in your community/organisation or region].

This comes at a time when governments around the world are trying to intimidate human rights defenders by [give relevant details to provide wider context, do not forget to include examples of recent events or on-going scenarios. This also should be accompanied by an explanation of negative impact the challenges have had on society].

We ask you to [explain the specific actions you want the recipient to take and how this will solve the problem].

Yours sincerely, [List of signatories]

List of contacts of where assistance can be obtained

1. Legal organisations

Southern Africa Litigation Centre

SALC promotes and advances human rights and the rule of law in Southern Africa, primarily through strategic litigation and capacity-strengthening support to lawyers and grassroots organisations. SALC also provides small grants to community-based organisations. SALC works in the following countries: Angola, Botswana, Democratic Republic Congo, Lesotho, Malawi, Mozambique, Namibia, Eswatini, Tanzania, Zambia and Zimbabwe. In addition, SALC supports litigation in South African courts that advances human rights in the southern African region.

<https://www.southernafricalitigationcentre.org/>

Lawyers for Human Rights

We are an independent, non-profit, non-governmental human rights organisation, started by a group of activist lawyers in 1979. Our programmes do strategic work in six areas of human rights law. Specialist legal practitioners, activists, staff and programmes. LHR employs a holistic approach to social justice and human rights enforcement that includes strategic litigation, advocacy, law reform, human rights education, and community mobilisation and support.

<https://www.lhr.org.za/>

Centre For Applied Legal Studies

The Centre for Applied Legal Studies was founded in 1978 by Professor John Dugard as a legal research unit within Wits University. The purpose of the Centre was to encourage law reform and improve access to justice during apartheid. While much has changed over the years since then, our organisation remains committed to promoting human rights and challenging systems of power in South Africa and the region. Our vision is a society where historical and social justice are achieved, state institutions are strengthened and powerful entities are held to account by marginalised actors. We work towards our vision by undertaking research, advocacy and strategic litigation organised according to our five intersecting programmes, namely: Business & Human Rights; Civil & Political Justice; Environmental Justice; Gender Justice and Home, Land & Rural Democracy.

<https://www.wits.ac.za/cals/>

Right2Protest Project

<https://www.r2p.org.za/>

Natural Justice

Natural Justice is an organisation rooted in the struggles of communities in Africa. As a team of pioneering lawyers and legal experts, we specialise in human rights and environmental law in pursuit of social and environmental justice. Natural Justice strives to enhance the collective rights of people and protect the sacred relationships that indigenous peoples and local communities have with nature. Our work is informed by the values, knowledge and self-determination of the communities whom we stand in solidarity with. Through legal empowerment, research, policy influencing and litigation, and as part of coalitions and campaigns, we support communities to know the law, use the law and shape the law.

<https://naturaljustice.org/>

Land and Accountability Centre

LARC is a research and advocacy unit within the Law Department of the University of Cape Town concerned with power relations, and the impact of national laws and policy in framing the balance of patriarchal and autocratic power within which rural women and men struggle for democratic change at the local level. There has recently been a push from government to introduce laws and policies giving traditional leaders unaccountable powers over “subjects” living in the former homeland areas of South Africa. The objective is to hold back traditional leadership laws that threaten rural democracy and propose alternative laws and policies that promote rural democracy and are consistent with living law.

LARC grew out of the Rural Women’s Action Research unit (RWAR) of the Centre for Law and Society (CLS).

<https://landportal.org/node/61640>

2. Organisations and Coalitions**African Defenders Emergency contact and Safe Chat**

DefendDefenders was established in 2005 as the East and Horn of Africa Human Rights Defenders Project and registered as a foreign Non-Governmental Organisation (NGO) in Uganda. DefendDefenders exists to strengthen the work of human rights defenders (HRDs) in the Sub region by reducing their vulnerability to the risk of persecution and by enhancing their capacity to effectively defend human rights. The core mandate of DefendDefenders is to promote the safety, security and wellbeing of HRDs. To achieve this, DefendDefenders’ work has to date focused on protection and security management, capacity building, technology development, as well as advocacy, research, and communications.

<https://defenddefenders.org/get-help/>

Amnesty International Africa Office

Amnesty International is a global movement of more than 10 million people who are committed to creating a future where human rights are enjoyed by everyone. United by our shared humanity, we know that the power to create positive change is within all of us. We are funded by members and people like you. We are independent of any political ideology, economic interest or religion. We stand with victims of human rights violations whoever they are, wherever they are. No government is beyond scrutiny. We uncover the truth. We hold human rights violators to account.

<https://www.amnesty.org/en/location/africa/>

Annexure B

Southern Human Rights Defenders network guide

The Southern Defenders embodies an ironclad commitment to protecting human rights defenders (HRDs) in the face of attacks and shrinking civic space, both offline and online. It coordinates regional efforts to provide rapid, practical, comprehensive, and inclusive protection support to HRDs at high risk, defend civic space, and empower HRDs to mitigate the effects of repression. To this end, the Southern Defenders contribute to the respect and recognition of HRDs as legitimate actors and agents of social change with universally recognized and constitutionally guaranteed rights. Southern Defenders is a registered non-profit organization in South Africa and is governed by a constitution which establishes a secretariat and a management committee composed of members largely drawn from Steering Committee members and representatives of vulnerable groups such as persons with disabilities and under-represented communities.

<https://southerndefenders.africa/resources/#holisticsecurity>

Frontline Defenders Emergency Line and Safe Chat

The emergency call number gives human rights defenders an option to be forwarded to someone speaking Arabic, English, French, Russian or Spanish and who will help determine how to best support in the urgent situation. Due to time differences, poor connectivity, and the significant amount of detail in the urgent case, it is good, if possible, to send us a message via secure and encrypted channel using the contact form below. <https://www.frontlinedefenders.org/en/emergency-contact-human-rights-defenders>

Centre For Studies of Violence and Reconciliation (Trauma Clinic) and active citizenship.

<https://www.csvr.org.za/>

Southern African Resource Watch

<https://securesustain.org/abstract/southern-africa-resource-watch-sarw/>

Bench Marks Foundation

The Bench Marks Foundation can truly be counted as one of the first organisations in South Africa that set out to examine corporations from top to bottom on their social, economic and environmental performance within a sustainability framework. We began to work according to an agreed set of principles, criteria, and benchmarks that would measure business social responsibility performance according to the Bench Marks Principles for Global Corporate Responsibility.

<https://www.bench-marks.org.za/>

Climate Justice Coalition

The Climate Justice Coalition (CJC) is a South African coalition of trade unions, civil society, grassroots, and community-based organisations. Together we are taking on the climate crisis by advancing a transformative climate justice agenda, which works to overcome the deep inequality, poverty and multiple injustices that South Africa faces.

<https://climatejusticecoalition.org/>

350.org

We're an international movement of ordinary people working to end the age of fossil fuels and build a world of community-centred renewable energy for all. We are calling for a deeper transition, one which places energy justice at the beating heart of its values. We are moving forward into the world we want to see, leaving no one behind. And we are doing this with the urgency the climate crisis demands of us.

<https://350.org/>

#STOPECOP

Local environmental activists, human rights defenders and journalists who express criticism of the project have faced harassment and threats. Some have even been arrested on dubious charges. Despite the dangers, local groups and communities have continued to publicly oppose EACOP and have assembled an alliance of African and international organizations to help amplify their message and bring new allies – like you – to the #StopEACOP campaign. Over 260 civil society organizations are supporting the campaign with public mobilizations, legal actions, research, shareholder activism, and media advocacy.

<https://www.stopeacop.net/>

Fair Finance Coalition Southern Africa

Fair Finance Southern Africa is a civil society coalition working towards ensuring Development Finance Institutions invest in a socially and environmentally responsible manner in South Africa and Africa. The coalition focuses on issues of climate change and transparency.

<https://www.fairfinancesouthernafrica.org/>

African Coalition for Corporate Accountability

ACCA's mission is facilitating an alliance that crosses borders and creates a strong and united African network of civil society organisations and communities. The coalition seeks the protection and promotion of human rights in relation to business activity. The ACCA provides a regional platform to share information and knowledge among its Members and communities and between ACCA and other coalitions and organisations.

<http://accahumanrights.org/en/>

Coalition for Human Rights in Development

The Coalition for Human Rights in Development is a global coalition of social movements, civil society organizations, and grassroots groups working together to ensure that development is community-led and that it respects, protects, and fulfills human rights. We do so by making sure that communities have the information, power and resources to determine their own development paths and priorities and to hold development finance institutions, governments, and other actors accountable for their impacts on people, peoples and the planet.

<https://rightsindevelopment.org/>

Detention Justice Forum / Just Detention International

Just Detention International-South Africa is a health and human rights organisation that seeks to end sexual abuse in all forms of detention. JDI-SA works to: hold government officials accountable for prisoner rape; promote public attitudes that value the dignity and safety of people in detention; and ensure that survivors of this violence get the help they need. Contrary to popular opinion, sexual abuse in detention is preventable. Facilities with committed leaders, good policies, and sound practices can keep people safe. JDI-SA works with policymakers, activists, and corrections officials to ensure the basic human rights of all people in detention. All of JDI-SA's work is informed by the wisdom and experiences of prisoner rape survivors. When the government removes someone's freedom, it takes on an absolute responsibility to keep that person safe. No matter what crime someone may have committed, rape is not part of the penalty.

<https://southafrica.justdetention.org/>

Legal Resources (anti-SLAPP Legislation and cases)

1. Anti-Slapp Model Law

<https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/rule-of-law/resources/Draft%20for%20public%20comment-%2013Dec2023-%20Anti-SLAPP%20model%20law-%20Draft%202023.pdf>

2. model law on human rights defenders

https://ishr.ch/wp-content/uploads/2016/06/ISHR_resource_modellaw_2017_english.pdf (Also available in French/Portugues/Spanish)

3. protest guides

Right2Protest Protest guide

<https://protestguide.org.za/>

Right2Protest Private Security Guide

<https://twitter.com/ProtestZa/status/1595355297446518784/photo/1>

4. Social and Labour Plan toolkit

Centre For Applied Legal Studies Social and Labour Plan Toolkit

<https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/environment/resources/SLP%20Community%20Toolkit%20English%20updated%2010%20May%202022%20for%20web.pdf>

5. AU and international mechanisms for reporting repression

- <https://achpr.au.int/en/guidelines-submitting-complaints>
- <https://au.int/en/organs/aprm>

ⁱ Acosta, A Extractivism and neoextractivism: two sides of the same curse. https://www.tni.org/files/download/beyonddevelopment_extractivism.pdf

ⁱⁱ The United Nations Definition. https://www.who.int/health-topics/violence-against-women#tab=tab_1

ⁱⁱⁱ WoMin. Women, Gender and Extractivism in Africa: Paper Three - Land and Food Sovereignty Undermined, page 9. <https://womin.africa/download/paper-three/>

^{iv} GIZ & Womens' Rights & Mining (2020), Sexual and Gender-Based Violence in the Mining Sector in Africa: Evidence and reflections from the DRC, South Africa, Tanzania & Uganda. <https://www.kit.nl/wp-content/uploads/2020/09/SGBV-in-the-Mining-Sector-in-Africa.pdf>

^v Benya, A Women in Mining: A Challenge to Occupational Culture in Mines' dissertation submitted to the Faculty of Social Science and Humanities of the University of the Witwatersrand, Johannesburg, South Africa, in partial fulfilment of the requirements for the degree of Master of Arts (Industrial Sociology) At 127.

^{vi} IUCN (2021) Gender-based violence and environmental linkages – summary for policy makers Pages 11,16. <https://portals.iucn.org/library/sites/library/files/documents/2020-002-En-Summ.pdf>

^{vii} <https://cer.org.za/news/how-mining-erodes-the-rights-of-women-2>

^{viii} <https://cer.org.za/news/how-mining-erodes-the-rights-of-women-2>.

^{ix} Canan, P., & Pring, G. W. (1988). Studying Strategic Lawsuits against Public Participation: Mixing Quantitative and Qualitative Approaches. *Law & Society Review*, 22(2), page 385

^x Barker, J. C. (1993). Common-law and statutory solutions to the problem of slapps. *Loyola of Los Angeles Law Review*, 26(2), 395-454.

^{xi} Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/20/27, 21 May 2012. Paras 63 a and b

^{xii} General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of Business Activities (2017) para 44

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SARW
Southern Africa Resource Watch

CALS
Centre for Applied
Legal Studies



TWNAfrica