



RESOLUTION ON CRIMINAL DEFAMATION AND STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION (SLAPPS)

The Assembly of Delegates of PEN International, meeting virtually at its 89th annual Congress, 26 to 28 September 2023, expresses serious concern over the growing use of criminal defamation charges and Strategic Lawsuits Against Public Participation (SLAPPs) to silence and harass writers and journalists worldwide.

Although international and regional human rights bodies and mechanisms have repeatedly called for the decriminalisation of defamation – as it infringes the fundamental right to freedom of expression – the prosecution of writers and journalists under criminal defamation and insult laws has increased in recent years. According to a 2022 report by UNESCO, the gradual trend toward the decriminalisation of defamation is slowing down, with 160 states still not having decriminalised defamation. The use of criminal defamation offences to restrict online expression has increased across regions, and several states have harshened or reintroduced provisions on libel, defamation, and insult by enacting new laws intending to address cybersecurity, ‘fake news’ and hate speech.ⁱ

PEN International opposes criminal defamation in all cases. Criminalising defamation, whether of public figures or private individuals, is a disproportionate and unnecessary response to the need to protect reputations. It has a chilling effect and undermines freedom of expression. Criminal defamation lawsuits exhaust their victims. They rob them of their time, of their money, of their vital energy. Crucially, they are punitive and can lead to self-censorship and discourage the investigative journalism that is so necessary in a healthy and functioning democracy.

Writers and journalists around the world face prosecution under criminal defamation and insult laws including in:

- **Brazil**, where writer **João Paulo Cuenca**, has been subjected to a wave of online harassment and legal action since 2020 after writing a tweet that alluded to links between the Jair Bolsonaro government and the evangelical organisation Universal Church of God’s Kingdom. Although federal public prosecutors ruled in Cuenca’s favour, more than 140 slander and defamation lawsuits were filed against him by pastors from the Universal Church.ⁱⁱ
- **Colombia**, where three separate writ petitions (*‘acción de tutela’*) were filed against writer **Juan Pablo Barrientos** in 2019 following the publication of his book investigating alleged sexual abuse of minors in the Catholic Church. The court initially ordered the suspension of the ‘reproduction, commercialisation and sale of the book’ before lifting the injunction.ⁱⁱⁱ
- **Egypt**, where poet and lyricist **Galal El-Behairy** was sentenced to three years in prison in July 2018 over his poetry collection that was deemed insulting to the Egyptian army. El-Behairy remains in arbitrary pre-trial detention on trumped-up ‘fake news’ and ‘terrorism’ charges.^{iv}
- **Italy**, where writer and journalist **Roberto Saviano** has been on trial since November 2022 on criminal defamation charges brought by Italy’s Prime Minister, Giorgia Meloni, after Saviano called out her anti-immigration rhetoric. A second criminal defamation case against him by Deputy Prime Minister Matteo Salvini opened in February 2023. Saviano faces up to three years in prison in each case if convicted.^v
- **Mexico**, where author, academic and columnist **Sergio Aguayo** was sued by a former Coahuila state governor after Aguayo wrote an opinion piece in 2016 accusing him of

corruption. Aguayo was ordered to pay a fine of 10 million pesos (USD500,000) in moral damages in January 2020. Proceedings before the Supreme Court – which ruled in Aguayo’s favour in March 2022 – did not serve as a deterrent. The governor filed a second civil proceeding in February 2022.^{vi}

- **Myanmar**, where the military junta has used the legal system to punish anyone who criticises the military or the coup, with sentences of up to three years’ imprisonment, per charge, for those convicted. Since the coup took place on 1 February 2021, the military junta has detained dozens of journalists, writers, poets, and activists for their critical expression.
- **Peru**, where writer and journalist **Paola Ugaz** has faced a campaign of harassment, threats, and at least five defamation lawsuits, including allegations of crimes, due to her investigations into the Peruvian religious organisation Sodalicio de Vida Cristiana; where author and investigative journalist **Christopher Acosta** and editor **Jerónimo Pimentel** were convicted of aggravated defamation in January 2022 for publishing an unauthorised biography of a politician and businessman, and sentenced to two years’ suspended imprisonment and the payment of civil damages of PEN400 000, (USD100,000). The sentences were dismissed in June 2022.
- **The Philippines**, where journalist, writer, and Nobel laureate **Maria Ressa**, is currently on bail while she appeals to the Supreme Court to reverse a 2020 ‘cyber libel’ conviction against her and a former colleague. If her conviction is upheld by the Supreme Court, Ressa faces a maximum sentence of over six years’ imprisonment.^{vii}
- **Spain**, where Rapper **Valtònc** was sentenced to three years and six months prison in February 2017 for ‘grave insults to the Crown’ and ‘glorification of terrorism and humiliation of its victims’. Valtònc remains in exile in Belgium after Spain’s Supreme Court upheld his sentence.^{viii}
- **Thailand**, where the country’s deeply problematic lèse-majesté law has been used to target those who criticise the royal family, with those convicted facing up to 15 years’ imprisonment, per charge.^{ix}
- **Türkiye**, where writer and opposition politician **Selahattin Demirtaş** – who has been held in pre-trial detention since November 2016 on dubious terrorism charges – was handed a three years and six months prison sentence in March 2021 for ‘insulting’ President Erdoğan.^x
- **Uganda** where since 2014 writer, journalist and activist **Norman Tumuhimbise** has faced persecution, including arbitrary arrest, incommunicado detention, and torture for writing non-fictional books critical of the president. In 2022, Norman was arrested together with journalist and researcher **Farida Bikobere** ahead of the launch of his latest book. They face up to one year in prison under section 25 of the Computer Misuse Act for the offence of using their online platform to relay offensive communication directed against the president. Although the Constitutional Court declared this section of the law unconstitutional in January 2023, the authorities continue to act with impunity.

PEN International further condemns the growing use of SLAPPs, which have become a significant threat to media freedom and advocacy rights.^{xi} SLAPPs are abusive lawsuits filed by powerful individuals and companies as a means of silencing critical expression. They typically use long and costly legal procedures, or the threat thereof, to intimidate and harass critics into silence. Malta’s leading investigation journalist and anti-corruption campaigner **Daphne Caruana Galizia** was facing at least 47 SLAPPs when she was killed in October 2016. Some cases passed posthumously to her family. PEN International welcomes ongoing efforts to adopt an EU anti-SLAPP directive – ‘Daphne’s Law’ – which would set up minimum standards for anti-SLAPP legislation in all EU member states and urges legislators to work towards the strongest possible set of rules.

The Assembly of Delegates of PEN International calls on all governments to:

- Repeal criminal defamation and insult laws;

- Drop all existing charges against writers and journalists under criminal defamation and insult laws;
- Release all writers and journalists currently detained or imprisoned on criminal defamation charges.

Specifically in relation to SLAPPs, all governments should adopt as a minimum:

- Procedural rules to allow courts to early dismiss SLAPP claims;
- Procedural rules ensuring a fair award of costs and relief to rebalance the position of the parties;
- Rules providing for the possibility to impose penalties and/or punitive damages as deterrent, also to counter libel tourism;
- Provisions on assistance, support, and protection for SLAPP targets, including legal advice free of charge.

ⁱ UNESCO, The ‘misuse’ of the judicial system to attack freedom of expression, trends, challenges and responses, December 2022, available at: <https://unesdoc.unesco.org/ark:/48223/pf0000383832>

ⁱⁱ PEN International, Brazilian Filmmaker Subjected to Wave of Harassment After Satirical Tweet, October 2020, available at: <https://pen.org/press-release/brazilian-filmmaker-subjected-to-wave-of-harassment-after-satirical-tweet/>

ⁱⁱⁱ PEN International, Colombia: end the harassment of journalist Juan Pablo Barrientos, November 2019, available at <https://www.pen-international.org/news/sfv30udyj4xs9ilwe2qrexwp4qv091>

^{iv} PEN International, Egypt: Poet Galal El-Behairy is at risk after 80 days on hunger strike, 25 May 2023, available at: <https://www.pen-international.org/news/galal-el-behairy-is-at-risk-after-80-days-on-hunger-strike>

^v PEN International, Italy: Open letter to Prime Minister Giorgia Meloni in support of Roberto Saviano, 8 November 2022, available at: <https://www.pen-international.org/news/italy-open-letter-to-prime-minister-giorgia-meloni>

^{vi} Columbia University. How are courts responding to SLAPPs? Analysis of selected court decisions from across the globe, 2023, available at: <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2023/04/GFoE-Article19-SLAPPs-paper.pdf>

^{vii} Al Jazeera, Philippine Nobel laureate Maria Ressa appeals to Supreme Court, 11 October 2022, available at: <https://www.aljazeera.com/news/2022/10/11/philippine-nobel-laureate-maria-ressa-appeals-to-supreme-court>

^{viii} PEN International, 2022 Case List, available at: <https://www.pen-international.org/news/impunity-reigns-writers-resist-pen-international-case-list-2022>

^{ix} PEN International, Thailand: PEN International releases booklets of speeches by Thailand’s protest leaders, 29 July 2021, available at: <https://www.pen-international.org/news/5yopucfuc5cth8hbpepffdr158b7h9>.

^x Reuters, Turkish court sentences Demirtaş to jail for insulting president: lawyer, 22 March 2021, available at: <https://www.reuters.com/article/us-turkey-security-demirtas-idUSKBN2BE2NT>

^{xi} CASE, SLAPPs in Europe: How the EU can protect watchdogs from abusive lawsuits, January 2022, available at: <https://www.the-case.eu/s/CASE-Report-on-SLAPPs-in-Europe.pdf>