Common basis for a SLAPP suit

In Thailand, these legal provisions have been used for SLAPP suits, including:

- criminal defamation;
- civil defamation;
- tort provisions;
- the Computer-Related Crime Act;
- a sedition-like offense; and
- the Emergency Decree on Public Administration in Emergency Situation.

What are SLAPPs ?

Strategic Lawsuit Against Public Participation (SLAPP) are lawsuits aimed at curtailing or deterring public criticism or opposition to certain activities of the plaintiffs.

SLAPP lawsuits have a **"chilling effect" on the exercise of freedom of expression, information, association, political participation, and other rights,both online as well as offline,** that Thailand is bound to protect pursuant to its international legal obligations.

Most of these legal provisions do not comply with Thailand's international human rights law obligations. They contain **vague and overbroad provisions,** wrongly **criminalize free expression** and prescribe **disproportionately harsh penalties.**

For more information

What is Thailand's current protective framework against SLAPP lawsuits?

- Articles 161/1 of the Criminal Procedure Code: The court can dismiss a case if a private complainant has **"filed the lawsuit in bad faith** or **distorted facts in order to harass or take undue advantage of a defendant, or to procure any advantage to which the complainant is not rightfully entitled."**
- Article 165/2 of the Criminal Procedure Code: Defendants can submit and test evidence to demonstrate that the case "lacks merit" during the preliminary hearing.

However, these laws are inadequate. They **do not articulate a clear definition for "bad faith"** or explicitly **protect the free exercise of human rights.** They also allow a case to be adjudicated upon **entirely up to judicial discretion.** They are **limited only to private criminal complainants,** and not civil complaints or public prosecutions.

What is Thailand's current protective framework against SLAPP lawsuits?

- Section 21 of the Public Prosecution Organ and Public Prosecutors Act: This law can protect against SLAPP lawsuits in theory. If a public prosecutor finds that a "criminal prosecution will be of **no use to the general public, will affect the national safety or security, or will impair a significant interest of the State,"** the prosecutor shall refer their opinion to the Attorney-General "who may then render an order of non-prosecution."

However, this provision is difficult to apply in reality. Only the Attorney-General can issue the non-prosecution decision. This is a time-consuming process.

- The Bill on Anti-Strategic Lawsuits Against Public Participation (SLAPP) for Corruption and Misconduct Cases: This Bill will allow inquiry officers, public prosecutors, and judges to identify and dismiss SLAPP suits as soon as they are filed.

However, the law only applies to corruption and misconduct cases under the jurisdiction of the National Anti-Corruption Commission.

Who are the targets of SLAPPs?

Human rights defenders/ political activists

Journalists

Academics

Union members

Recommendations on approaches to combat SLAPPs

01 **The Parliament and the government should act to formulate anti-SLAPP legislation and policies, and review and strengthen the current protective framework against SLAPP lawsuits.** The law should effectively prevent any stakeholders from filing SLAPPs in the first place. It should allow courts to identify, call out and dismiss them as soon as they are filed, with due process guarantees for both complainant and defendant;

02 **The Parliament and the government should act to substantially restrict the kinds of individual causes of action that presently commonly form the basis of SLAPPs.** They should repeal or substantially amend legal provisions that serve to criminalize or unduly restrict the rights to freedom of expression and other fundamental freedoms;

03 **The parties should be provided with alternatives in resolving disputes without recourse to traditional litigation,** such as arbitration, conciliation and meditation, either in- or out-of-court. Any such alternative procedures would have to be administered by independent agents, guarantee the human rights of both parties and ensure that there is appropriate equality in "arms" and resources between the parties; and

04 **All branches of government should act to raise awareness about the concept of SLAPP, its dangers, and the possibility of defense,** among justice sector actors and the general public who may not be fully informed about this pernicious practice.

ADVOCACY NOTE

STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION (SLAPP) IN THAILAND