

Corporate SLAPP actions against human rights defenders in Switzerland must end to respect their right to freedom of expression

Amnesty International, along with members of civil society in the CASE coalition and Corporate Crimes Network, welcome the decision of the High Court of the Canton of Bern to acquit the three individual authors of a report alleging that Kolmar Group AG (“Kolmar”) may have violated international law upon purchasing fuel from an international smuggling network at the height of the second Libyan civil war. Kolmar’s filing of criminal and civil action against these human rights defenders¹ bears the hallmarks of a Strategic Lawsuit Against Public Participation (“SLAPP”) intended to silence critical voices. Following their acquittal today, Kolmar should stop inhibiting the right to freedom of expression of human rights defenders, including by not appealing the verdict and withdrawing a related civil lawsuit, the undersigned organizations said today.

In 2020, the NGOs Public Eye and TRIAL International published a report entitled, “Libyan fuel smuggling: a Swiss trader sailing through troubled waters,” which found that Kolmar purchased fuel sourced from a network of middlemen who were accused of smuggling gasoil from the Zawiya refinery during the civil war in Libya.² Kolmar has denied knowledge of any illegal activity associated with its procurement of fuel from Libya in response to the report.³

After Kolmar filed a criminal complaint and appealed its dismissal by the Bern-Mittelland Public Prosecutor’s Office, the report authors faced criminal sanctions on charges of defamation until a court of law found them not guilty.⁴ In September 2023, Kolmar also filed a civil claim against Public Eye, TRIAL International, and the three authors of the report. Kolmar is seeking damages of USD 1.8 million due to harm they allegedly caused to the company’s professional reputation, which it believes has violated its personality rights.⁵

The undersigned organizations regard Kolmar’s legal actions to be SLAPPs that seek to intimidate and silence human rights defenders and other critical voices from the legitimate exercise of their right to freedom of expression, which protects reporting on corporate human rights abuses. SLAPP suits are vexatious legal actions brought to intimidate, deter or punish persons who seek to

¹ In accordance with international human rights law, a human rights defender is a person who, individually or in association with others, acts to defend and/or promote human rights at the local, national, regional or international levels. *See* UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, <http://tinyurl.com/4t7rjsds>.

² Public Eye and TRIAL International, “Libyan fuel smuggling: A Swiss trader sailing through troubled waters,” March 2020, <https://tinyurl.com/yc8pkxyn>.

³ Kolmar Group, Right of Reply to the Public Eye / TRIAL International Report Published on March 1st, 2020, 2 April 2020, <http://tinyurl.com/3dxearfa>.

⁴ In the interest of full transparency and assurance of impartiality, Amnesty International acknowledges that one of the authors of the 2020 report is currently employed by the organization, albeit not at the time of publication of the report. The authors of the report did not have any decision-making authority with respect to this statement or Amnesty International’s engagement with this matter.

⁵ Switzerland, Civil Code, 10 December 1907, Article 28 (as amended on 16 December 1983).

participate and express themselves on matters of public interest. SLAPPs can often be identified by their partially or fully unfounded claims, the aggressive or disproportionate remedies sought, and/or the use of dilatory or selective tactics to deplete the resources of their target and restrict or penalize the exercise of human rights in the civic space. The cost of fighting these legal actions can put extreme financial and other pressure on human rights defenders that force them to repurpose their limited resources to defend the lawsuit.

The SLAPPs brought against Public Eye, TRIAL International, and the human rights defenders who authored the report unduly infringe on their right to freedom of expression enshrined in Article 19 of the International Covenant on Civil and Political Rights and Article 10 of the European Convention of Human Rights.⁶ These conventions guarantee the right to freely express ideas and opinions of all kinds, including the right to seek, receive and impart information and ideas. The UN Declaration on Human Rights Defenders further affirms that all States must protect the right to seek, obtain, receive and hold information in relation to human rights, to impart that information to others and to ensure that human rights defenders can exercise this right without fear of reprisals.⁷ States have an obligation not only to respect the right to freedom of expression but to ensure that the rights of all individuals subject to their jurisdiction will be protected from arbitrary interference by private parties.

While the right to freedom of expression is not absolute, restrictions may be permissible so long as they are provided by law and demonstrably necessary and proportionate to a legitimate aim, including the protection of the rights and reputations of others. However, criminal defamation laws have been increasingly deemed inconsistent with international human rights law as there are less intrusive measures that could still redress harm to an individual's reputation.⁸

Kolmar's legal actions appear to have exploited an imbalance of power as a well-resourced corporation that has directed its legal team to use multiple means at their disposal to intimidate civil society organizations and human rights defenders who have been critical of their operations. The use of criminal defamation charges to address allegations of harm to a corporation's reputation is an unnecessary and disproportionate measure that inhibits the exercise of the right to freedom of expression. Moreover, the company's aggressive demand for USD 1.8 million in compensation exacts an exorbitant price from Public Eye and TRIAL International for legitimate human rights reporting that was conducted in good faith and in the public interest. As such, the SLAPP action not only threatens the continued operations of Public Eye and TRIAL International but has a

⁶ International Covenant on Civil and Political Rights (ICCPR), Article 19; European Convention on Human Rights (ECHR), Article 10.

⁷ UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Article 6.

⁸ UN Human Rights Committee, General Comment 34, Article 19: Freedoms of Opinion and Expression, para. 47; Parliamentary Assembly of the Council of Europe, Resolution 1577, Towards decriminalisation of defamation, 4 October 2007; Recommendation of the Committee of Ministers to Member States on the Protection of Journalism and Safety of Journalists and other Media Actors, 13 April 2016, paras. 6, 34.

broader chilling effect on civil society and human rights defenders working to end corporate misconduct, including the undersigned organizations.

All companies have a responsibility to respect human rights, including the right to freedom of expression, as reflected in the UN Guiding Principles on Business and Human Rights. Kolmar has acknowledged this responsibility in the 2022 statement of its CEO Ruth Sandelowsky expressing “continued support” for the company’s participation in the UN Global Compact.⁹ The undersigned organizations urge Kolmar to abide by its responsibility to respect human rights and stop inhibiting the freedom of expression of its critics, including by not appealing the acquittal of the human rights defenders announced today and withdrawing its related civil complaint.

The undersigned organizations also urge the Swiss government to amend its criminal code to ensure that defamation is solely treated as a civil matter. With respect to civil proceedings, Switzerland should establish a comprehensive legal framework to provide structural and procedural safeguards for the prevention of SLAPPs, as well as mechanisms that provide full and fair remedy for the harm caused to their targets. Among other measures, the undersigned organizations recommend that Switzerland consider instituting an early dismissal procedure whereby judicial authorities can urgently evaluate whether a legal complaint constitutes a SLAPP and, if so, counter its harmful impact. Furthermore, the undersigned organizations suggest that Switzerland extends the right to legal aid beyond individuals to civil society organizations and other legal persons that can be targeted by SLAPP actions to ensure equality of arms and mitigate against their impact.

Amnesty International
Agent Green Association
Al-Haq
Blueprint for Free Speech
Centro de Estudios Legales y Sociales (CELS)
Civil Rights Defenders
Community Resource Centre Foundation (CRC)
The Daphne Caruana Galizia Foundation
European Center for Constitutional and Human Rights (ECCHR)
Foundation Atelier for Community Transformation (ACT)
Frente Cívica

Global Legal Action Network (GLAN)
Greenpeace Switzerland
International Federation for Human Rights (FIDH)
Justice for Journalists Foundation
Libera
OBC Transeuropa (OBCT)
Rettet den Regenwald
Sherpa
Southern Africa Resource Watch (SARW)
Syria Justice and Accountability Centre
Transparency International
Xnet

⁹ United Nations Global Compact, Kolmar Group AG, Communication on Progress, 28 October 2022, <https://tinyurl.com/5893fzh3>.