

Greenpeace International: Developing resilience to SLAPP suits through joint action

Greenpeace uses non-violent, creative action to pave the way towards a greener, more peaceful world, and to confront the systems that threaten our environment. It is a global network of 27 independent national and regional Greenpeace organisations, and Greenpeace International is the coordinating body for this network. Greenpeace International's Legal Unit consists of a team of specialised lawyers that provide independent legal advice to the global Greenpeace Network on risk management and strategic defence of campaigns, organisation and staff.

Overview

Risk-taking is part of Greenpeace's identity and therefore central to their usual risk-management processes. However, over the last decade, a series of emergencies in different national contexts (India, Russia, Hungary) has highlighted that work was needed to ensure all local offices were aligned in their approach to 'smart risk-taking'. In order to build the capacity of the independent national/regional Greenpeace Organisations (NROs) to mitigate threats – or to be resilient enough to deal with their negative impacts – Greenpeace International has developed and invested in mechanisms such as:

- **Compliance Checklists**, to be used by NROs to test that they are compliant *vis a vis* local legislation, and not vulnerable to the kind of 'back door' attacks used by tax or other government authorities in their attempts to shut them down. This is still in the development phase.
- **Network Solidarity**, whereby the global network puts other work on hold in order to focus all of their attention on an NRO at high risk, campaigning collectively to ensure its safety and legitimacy.
- **Critical Incident Management**, whereby Greenpeace International shares resources such as risk mechanisms and guides with NROs and conducts training on resilience techniques. In times of crisis, the International team can set up 'mirror support teams' for NROs in need of sustained support, so that individuals at the national level have someone specific to turn to for advice and solidarity.

These tactics have helped the Greenpeace network to become better prepared; they have raised awareness of the challenges, and critical incident management structures are now present in many NROs.

This case study focuses on a uniquely proactive response from the Greenpeace offices, in relation to the threat and damage of SLAPPs – **Strategic Lawsuits against Public Participation** – in the US and beyond. Here, proactive work by Greenpeace International and Greenpeace USA (GPUSA) led to an active cross-organisational coalition on key tactics to tackle a particularly challenging closing civic space issue in the US, and inspired research into solutions to similar challenges in other jurisdictions where Greenpeace is active. Greenpeace International incubated the coalition

alongside GPUSA, who ultimately represented Greenpeace after Greenpeace International withdrew in August 2019. GPUSA led on submitting grant requests, along with EarthRights International; funds were set aside to compensate the work and time of other members, and a part-time coordinator, housed at International Corporate Accountability Roundtable (ICAR), was brought in to support the network and its campaigns.

(i) The organisation takes action

What triggered the policy response? On 31st May 2016 the SLAPP suit '*Resolute Forest Products Inc et al. v Greenpeace International et al.*' was filed. One of the largest logging companies in Canada was suing Greenpeace and others, using the anti-mafia law RICO (Racketeer Influenced and Corrupt Organisations Act) in an attempt to silence their campaign to raise awareness about Resolute's destructive logging practices. The company was using the RICO Act to equate environmental and social justice activism to mafia-like racketeering, alleging that the environmental groups named had been illegally conspiring to extort the company's customers and to defraud their own donors.

A SLAPP – a Strategic Lawsuit Against Public Participation – is a lawsuit that is intended to censor, intimidate and silence criticism, by harassing, intimidating and draining the resources of its target(s). They masquerade as standard civil lawsuits, but their true goal is to silence free speech. The use of SLAPPs has been growing, particularly by corporations. In this way the courts are being used as a tool of harassment by the rich and powerful.

Figure 5: Still from Greenpeace video explaining the SLAPP cases and their impact



This video gives a clear explanation of a SLAPP and how it was used in this instance:
<https://www.youtube.com/watch?v=PlhVHiWM4yk>

The response: The Legal Unit at Greenpeace International had been familiar with the use of SLAPPs for some time, and had previously supported national

offices in fighting these cases, recognising that it is a tactic designed to derail campaigning and push resources towards legal defense. However, the hugely significant case filed against them in 2016 motivated Greenpeace International to look at this issue above and beyond their support to the US office, and to develop a **SLAPP Resilience Strategy**.

This strategy recognised that:

1. **Legislative solutions alone are not enough**, and legal strategies alone would never be enough; they would not stop lawsuits from being filed and draining resources, and harassing staff and activists.
2. **They could not tackle this issue alone:**
 - If a Greenpeace office has a lawsuit filed against it, which it believes to be a SLAPP, i.e. they believe that it is designed to repress their free speech as opposed to being a genuine civil lawsuit designed to vindicate legal rights, they will say so, and push back against the legitimacy of the case.
 - The organisation or individual who has filed the case, the plaintiff, will obviously deny that characterisation, and say that it is *not* a SLAPP. They will stick to the story in the lawsuit they have filed.
 - This quickly turns into he said/she said.
 - Third party validation is needed in order to amplify and endorse the SLAPP characterisation, to endorse Greenpeace's claim that their free speech is being threatened, and to push that message out to a wider audience in order to maximise the possibility of a PR backlash for the corporate plaintiff. SLAPPs work by exploiting power disparities, and so the only way to discourage their use is to address that imbalance, by making them too high-risk and costly to be considered a viable tactic by corporations. Working in coalition with others, with a unified message, increases the reach of that message and in turn the potential backlash.

Connecting with the national level: A key part of Greenpeace International's strategy for the Resolute Forest case and beyond was to reach out to other representatives from CSOs and public watch-dogs in the US, to build connections and awareness of this issue, and to create solidarity in the face of these attacks. Greenpeace International carried out this engagement work alongside GPUSA.

(ii) The response in practice

What triggered the response? A second SLAPP suit was filed on the 22nd of August 2017, '*ETP et al. v Greenpeace International et al.*'; Energy Transfer Partners is the company behind the Dakota Access Pipeline. They filed a lawsuit claiming nearly \$1 billion in damages, in response to a powerful alliance of Indigenous communities and climate activists who stood in opposition to the Dakota Access Pipeline at Standing Rock. They sought to misrepresent what happened on the ground, claiming that large CSOs like Greenpeace International had orchestrated the Indigenous-led movement. They claimed that Greenpeace International had participated in a criminal conspiracy to disrupt business, defraud donors, and even support 'eco-terrorism'.

The response – Arguably, this lawsuit backfired more dramatically than any SLAPP in US history, insofar as it mobilised two dozen advocacy groups to unite together in response. This impact was a result, in part, of the outreach work conducted by Greenpeace International and GPUSA between 2016 and 2017 with peer organisations on this very topic, and because this second lawsuit named many other advocacy groups as co-conspirators in a “criminal enterprise” alongside Greenpeace.

Figure 6: Protect The Protest rally



In addition to challenging the case, GPUSA hosted a conference in early 2018 to bring together those groups concerned and motivated to take joint action. This initial meeting involved information-sharing, general brainstorming and the identification of different tactics in three key areas: legal response, communications and campaigning. From this, the coalition **Protect the Protest** was established, and launched in September 2018. 25 social justice, environmental and civil liberties organisations came together to combat the threat of SLAPPs and to reduce the impact caused by this legal bullying tactic. They included the Freedom of the Press Foundation, Amnesty International, Human Rights Watch, ACLU, EarthRights International, the Center for Constitutional Rights, International Corporate Accountability Roundtable (ICAR), the Electronic Frontier Foundation, and many more. Today, Protect the Protest is 29 organizations strong.

GOVERNANCE STRUCTURE

The coalition has:

- A Leadership Team responsible for top line decisions, and a part-time Coordinator
- A Legal Committee, Campaigns and Communications Committee, and a Policy Committee, all of which work autonomously
- Crisis Response Teams are formed by existing members when needed to ensure an integrated and coordinated response.

Protect the Protest aims to:

- **Raise awareness** of the issue amongst civil society
- **Build the resilience** of the groups at risk
- And **push back against specific cases** with collective campaigning and communications.

Outcomes

- Protect the Protest lawyers helped defeat both the Resolute Forest and Energy Transfer RICO claims; which the court dismissed in both lawsuits. This clearly exposed the use of RICO against advocacy groups to be a bogus and abusive litigation strategy, sending a clear message to companies trying to muzzle civil society; indeed in the Resolute Forest case, the company was ordered to pay a portion of Greenpeace International's legal costs. Meanwhile the response from civil society showed that SLAPPs could no longer be used without provoking considerable backlash.
- There hasn't been another large SLAPP suit filed against a Protect the Protest member since the creation of the coalition. With their message of *"An attack on one is an attack on all"* the network has demonstrated that any company or individual using this tactic will provoke a much larger reaction, increasing the reputational cost and risk to corporations.
- Protect the Protest has also helped to build community resilience to SLAPPs, by releasing guides for activists and conducting workshops and trainings. They are now taking up the fight for federal and state anti-SLAPP legislation.

(iii) Organisational Learning

Outcomes – Greenpeace International helped incubate Protect the Protest for 12 months, and then withdrew, leaving their Greenpeace USA office as an active member. A separate anti-SLAPP coalition has been established in France – 'On ne se taira pas' (We will not be silenced) – to which the Greenpeace France legal counsel has contributed. Through these collective actions and their strategies, Greenpeace as a whole is much better prepared to deal with future SLAPP suits. They are now looking to take their experience and expertise and develop similar networks in other regions, thereby continuing to strengthen their own resilience to this tactic, and that of wider civil society.

Challenges

How to communicate civil litigation in an interesting and engaging way; not many people know about SLAPP suits, and so basic awareness raising has been difficult for this technical, legal issue.

Figure 7: example of comms work highlighting SLAPP



When Greenpeace International and GPUSA were conducting the initial outreach work with US CSOs, there was interest from others and a desire to know more, but **it was hard to incentivize commitment without a more formalized structure** in place. Transitioning from an informal support network to a formal structure is difficult and takes time.

Members of a coalition have many differences; there are different risk appetites, different priorities and agendas, and different appetites for 'political' work or stances, all of which makes joint planning and action challenging.

Lessons

Coordination is key: although the initial conference in 2018 was helpful in terms of brainstorming and building connections, the work was slow to progress until a coordinator was brought on. The project itself was ambitious, due to its multiple functions (legal, communications, campaigns); the governance structure worked well, but the key element was a coordinator who could spot links and ensure things were done.

Enabling easier participation: it's important early on in the life of a coalition to establish mechanisms and structures that facilitate contributions from members, for example templates for sign-ons (advocacy campaigns). Member representatives are often busy with day-to-day work, so building structures that make their participation quick and straightforward makes for easier collaboration.

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