

Freedom of expression under threat, new campaign warns

By [John Yeld](#)

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South Africa's hard-won constitutional rights to freedom of expression and of legitimate political protest are under mounting pressure from both the state and private companies, and the courts are being increasingly used in this form of "lawfare" to stifle criticism and dissent.



These are the defendants in defamation suits brought by Australian mining company MRC. From left to right: Corrac Oullinan, Davine Cloete, John GI Clarke, Tracey Davies, Raan Oberholzer, Mzamo Dlamini, Tossie Beukes and Christine Reddell. The claims against Beukes, a journalist and Oberholzer, her publisher, have been dropped.

This was emphasised on Tuesday, 28 May, at the Cape Town launch of a new joint advocacy campaign called Asina Loyiko (We do not fear): United Against Corporate Bullying.

One of the campaign's aims is to counter the increasing use of SLAPP lawsuits – an acronym for strategic litigation against public participation – in which corporates with big budgets bring defamation cases involving huge damages claims against usually much smaller opponents and critics, in order to intimidate them and/or commit them to long and expensive litigation that exhaust their resources.

“It’s a horrible, horrible process,” says attorney Tracey Davies, formerly of the Centre for Environmental Rights (CER) and one of six defendants facing a combined total of R9.25m in damages in what are widely regarded as SLAPP suits. “And one of the most pernicious elements of such cases is how they single you out – that makes you feel very lonely!”

The defamation cases against Davies and the others were instituted by controversial Australian venture capitalist Mark Caruso, his companies Mineral Commodities Ltd (MRC) and South African subsidiary Mineral Sands Resources (MSR), and one of their black empowerment partners Zamile Qunya.

Davies's co-defendants are:

- Christine Reddell, an attorney and also a former CER staffer,
- Davine Cloete, a community activist from Lutzville on the West Coast where MSR mines mineral sands from the beaches,
- Mzamo Dlamini, a community activist from Xolobeni, where MRC's attempts to mine the titanium-rich coastal dunes

have been strongly resisted by the Amadiba community for more than a decade,

- Cormac Cullinan, an environmental lawyer who has worked with the community, and
- John GI Clarke, a social worker, writer and human rights activist, who has been advising the community since 2006.

On Wednesday the first salvo in these lawsuits will be fired in the Cape High Court where Davies, Breddell and Cloete are bringing a “discovery” application against MSR and Quyna to force the mining company to provide a large number of internal documents that they believe are crucial to their defence against the defamation charges. The application is being defended.

This case stems from alleged defamatory remarks that they made in January 2017 at UCT’s Summer School, where they spoke about MSR’s environmental impacts on the West Coast beaches and the mining company’s failure to comply with environmental laws.

Dlamini’s defamation case is based on remarks he made in a radio interview. He said he was “not too worried” because he was “fighting for a good cause”.

“But I am very frustrated,” he added. “This [the defamation suit] is not for justice. It’s to keep us quiet, to shut us down. And if the case was to go against us, I guess it would be very difficult.

“Just by looking at this land [Xolobeni] you can see it’s not suitable for mining. It’s a very beautiful area. This is where my home is, where my forefathers are buried. That’s why I’m defending this land.”

Other supporters of Asina Loyiko include civil society organisations Right2Know, Open Secrets, Global Environmental Trust, Oxfam South Africa and groundWork.

Introducing the campaign, CER director Melissa Fourie said constitutional rights and freedom of speech were extremely important.

“Civil society organisations and community activists are a vital part of our democracy and crucial in keeping corporates accountable. This is particularly so when it comes to defending our natural resources, and particularly where our regulatory agencies are under-resourced or politically compromised. We will not be silenced, and we will defend the right to speak the truth, freely, and in the public interest,” she said.

“And of course, we will not forget Comrade Bazooka Rhadebe, who paid the ultimate price for his activism at Xolobeni in 2016. Still, as we stand here today, no-one has been arrested for his murder.”

GroundUp sent an emailed request for comment about Wednesday’s case to Caruso and MRC on 21 May. There was no response or acknowledgment of receipt.

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