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By Avner Pinchuk, adv., January 2013

Executive Summary

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האגודה לזכויות האזרח בישראל
جمعية حقوق المواطن في إسرائيل
The Association for Civil Rights in Israel

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Executive Summary

In recent years, a phenomenon already familiar in other countries has been growing in Israel: libel litigation or threats thereof in response to expressions or actions regarding public issues. These lawsuits are generally filed by people or entities with power and financial capabilities. The suits are based on weak or borderline causes and in some cases, completely unfounded ones. Their primary effect is not legal but rather public: silencing criticism of the plaintiffs and harming anyone impeding the plaintiffs' ability to advance their interests. In addition to harming the specific critic, the lawsuits are also intended to deter others ("the chilling effect") from participating in free and public discourse on issues of public importance, and particularly from criticizing those with power.

This is the source of the name "silencing lawsuits" which we have chosen in Hebrew for the phenomenon. The recognition of a lawsuit as "silencing" does not derive from the attitudes of the plaintiff; neither does it intend to hint at them. The important thing here is the results of the lawsuit – its effect on freedom of expression and democratic discourse.

These types of lawsuits emerged in the United States during the 1970s and 80s as a backlash to the social activism that increased during the 1960s, and there they are called SLAPP – Strategic Lawsuits Against Public Participation. The phenomenon also exists in other places around the world.

In Israel, the SLAPP phenomenon has become more and more prevalent over the past decade, and ACRI has received many complaints from citizens and organizations who were faced with threats and SLAPPs centered around the expression of opinions on public issues. In most cases, the threats and lawsuits induce feelings of fear and distress, and the burdensome experience – both mental and financial – that goes along with managing a legal defense affects many aspects of the lives of defendants.

In this report, we will survey the various arenas in which the phenomenon of threats and SLAPPs has become widespread. We will discuss the characteristics of SLAPPs and the severe social consequences that SLAPPs have on freedom of expression. In the legal chapter, we will analyze the reasons why defamation suits under Israeli law are such an effective instrument for silencing criticism. In the recommendations chapter, we will present a number of steps that may be taken in the legal arena as well as the public arena in order to decrease the chilling effect of SLAPPs on freedom of expression.

Chapter One: SLAPPs in Israel – Typical Arenas

The phenomenon of threats of defamation suits, and the execution of those threats, is widespread and takes place in various arenas of public discourse.

Labor relations: SLAPPs have become a strategic tool to use against employees struggling against exploitation and deprivation, demanding their rights or attempting to organize a union. These employees and in particular their leaders are likely to be brought to court to face defamation lawsuits. The submission of the lawsuit is a trivial matter for many employers, who, for a relatively minor sum, can create a threatening effect that silences the employee who has come out against the employer, as well as fellow employees. This arena is characterized by enormous power disparities between the plaintiffs (the employers) and the defendants (the employees).

Examples: The Coffee To-Go Company's lawsuit against waitresses who attempted to unionize, and the Automation Technologies Group's lawsuit against its union Chairperson.

Activists and organizations for social change and environmental protection: Officials in the public and private sectors attempt to settle public controversies through threats and lawsuits against social and environmental activists and against organizations with limited resources. This phenomenon appears following protest movements on various issues – against a grassroots environmental activist, a local committee activist, a human rights organization, etc. Often, the power gap between the two sides is enough to determine the result of the legal conflict before it even begins. The silencing effect is made possible as a result of the weakness of solitary activists or small organizations compared to the wealthy, and can distort the public discourse to the benefit of the latter.

Examples: The recycling corporation threatened to sue an organization that gave it a "prize" for harming the environment; a resident of Rehovot who hung a protest sign from his balcony against a high-rise building being built opposite his home received a letter threatening a lawsuit; a contractor trying to gain control of the Gazelle Valley in Jerusalem sued a coordinator at the Society for the Protection of Nature in Israel who alerted the public regarding his actions.

The internet: Posting on the internet, and particularly on blogs and social networks, allows direct uncensored contact with the public at large, activism, and influence on public opinion. However, workers, consumers, and other citizens who use the internet in order to distribute information, express an opinion, complain, or report abuses and deficiencies, find themselves exposed to threats and lawsuits. SLAPPs are a very common response to the publication of information and opinions on blogs, and most writers on the internet are not able to raise public support and are left alone to face the threats.

Examples: The Mayor of Tiberias sued the managers of a Facebook group criticizing him; a blogger was threatened with a defamation suit from a service-providing company after posting a ridiculing critique of their services; a "spiritual leader" who declared himself "Buddha" and encouraged the members of his community to leave their wives sued the blogger who criticized him.

Newspapers and media: Publication is a central part of the work and purpose of journalists and the traditional media, and thus they are naturally more exposed to defamation suits. Even strong, established media entities may shy away from publicizing or preparing an investigation about something, when they are threatened with a lawsuit which would rob them of vast resources and significantly harm their abilities to fulfill their purpose. Alongside the main national media entities, there are hundreds of local and industry newspapers, student or workers' newsletters, and social and cultural journals. Their distribution is small, many are not for profit, and they can be adversely affected by a lawsuit filed by a strong entity in the same manner as a regular citizen can be affected.

Examples: the independent journalist Miki Rosenthal was sued by the Ofer brothers for his movie "The Shakshuka System" which covers the transfer of public assets to families in the country's richest 0.1%; the airline Israir sent a threatening letter in an attempt to prevent the broadcast of an investigation of a near-accident on the TV show "Uvda."

Politics in local government: Lawsuits and threats of defamation lawsuits are especially common among public representatives and senior office-holders in local government. It seems that many local politicians expand political power struggles into the legal arena. Lawsuits and threats have often been used to pressure and influence the municipality and its leaders' relationships with the community's local newspapers.

Examples: A defamation lawsuit that the Mayor of Kiryat Bialik filed against a member of the opposition during elections was thrown out after the defendant joined the city coalition; the head of the Ramat Efal Regional Council filed a defamation lawsuit against a political opponent and revoked it after the local elections; the Rehovot municipality filed a giant lawsuit against the local newspaper "Three Plus" due to their criticism of the mayor.

Academic research: Academic work – study, teaching, writing and research – is based on questioning, disagreements and voicing criticism. But even the ivory tower of academia is not immune to SLAPPs. Expanding disagreements to the legal arena undermines academic freedom and silences it.

Examples: A lecturer who criticized a research report published by a university was threatened with a lawsuit; Theodore Katz, a graduate student, was sued for his thesis in which he claimed that soldiers from the Alexandroni Brigade, who conquered the village Tantura in 1948, killed approximately 200 unarmed villagers; a Haifa Chemicals factory sent warning letters to scientists who published a report warning of the danger to human life in the event of an attack on the facility.

Consumers: Customers who criticize faulty products, defective service, etc. In many cases, the threat of a defamation lawsuit is directed at consumers who expressed their criticism on the internet after the seller or company ignored them. Due to concerns about entering into an expensive legal battle, they are forced to "compromise": the story is taken down from the internet and the seller is finally inclined to deal with their complaint. The specific problem is solved, but the disappearance of the post hides important information about a faulty product or defective service from consumers.

Examples: A gym filed a defamation suit against a man who sued it claiming that it defrauded him; a marketing company that ignored all complaints from a customer sued her after she posted a warning to consumers on the internet.

What happens to the lawsuits in the end?

Even though many SLAPPs end in nothing or almost nothing, they still manage to create a negative effect and "chill" freedom of expression. From the very beginning, the defendant is required to hire costly legal representation. Many SLAPPs cast a heavy shadow on defendants for a long period of time. Sometimes, the plaintiff decides at the end of the day to withdraw the lawsuit; sometimes arduous litigation ends in a ruling that accepts only a small part of the claims. In other cases, litigation which began with a claim for compensation of millions or hundreds of thousands of shekels ends with a small amount of compensation which is sometimes even only symbolic or negligible. Many of the lawsuits end with some kind of arrangement between the plaintiff and the defendant in a manner that achieves the goal of silencing the defendant or other critics of the plaintiff.

Chapter Two: Characteristics of a SLAPP

There are different variations of the definition of a SLAPP, but there are basic characteristics that appear in all or most of them. Two characteristics are necessary conditions for classifying a lawsuit as a SLAPP:

- Public interest: A lawsuit or threat that comes in the wake of participation in public discourse on a topic of public interest. That is to say, the threat is against an expression or act on a topic beyond that of personal disagreements between two individuals, and the social interest obligates publicizing the information or holding a public discussion. For example: deprivation of workers, pollution, taking over public lands or a call for consumer boycott.

- Chilling effect – intimidation: A lawsuit is considered a SLAPP if the very fact of it being filed is likely to impose a chilling effect on the willingness of the defendant or others to participate in the public discourse. The lawsuit's chilling effect is not measured by the plaintiff's goals, subjective intentions or motivations, but rather by the likely damage to the public's willingness to participate in public discourse whether the plaintiff's intentions are malicious or pure.

There are a number of additional characteristics that do not have to be present in order to define a SLAPP, but are present in the majority of cases:

- Defamation: The vast majority of SLAPPs in Israel are based on grounds contained in the Anti-Defamation Law.

- Power imbalances, primarily economic, in favor of the plaintiff: The defendant is usually an ordinary person, in contrast to the plaintiff who is sometimes an entity with great economic power that can easily absorb the heavy cost of a lawsuit. The power imbalance is

a central factor in the great ability of SLAPPs to negatively influence public discourse: while arguments in the public arena do not necessarily require the investment of resources, pushing an opponent into the legal arena, where litigation has substantial costs, is often more than enough to banish the opponent from public discourse.

- "Local" disputes: Oftentimes, SLAPPs are connected to public debates that are local or occur within a geographic area, community or organization. In general, the more local the issue is, the smaller the number of people willing to volunteer as the driving force of public action, and silencing the lone activist or organization is likely to eliminate the opposition and public criticism. Though it does happen, it is more difficult to stifle public debate through the courts when the issue attracts widespread public attention.

- Absurd claim amounts: Sometimes the claim amounts in SLAPPs have no connection with the alleged damage caused by the publication, have no basis in law, and significantly exceed the amounts set in rulings.

- Baseless, borderline or negligible lawsuits: In general, SLAPPs rest on shaky foundations, and their chances of being accepted by the court at the end of the day are low. In the vast majority of cases, it is difficult to realize the futility of the suit at the beginning. This is also the silencer's secret weapon – the very fact of the lawsuit's filing requires the defendant to defend him/herself with all it entails.

- The plaintiff's refusal to accept an apology or correction: Sometimes the defendant is willing to accept the plaintiff's conditions and take back his/her statements, but the plaintiff continues to drag the defendant and fight a total legal war. This behavior sometimes indicates that the desire is not to correct the problem, but rather the desire to take revenge and the attempt to exploit judicial processes for the purpose of silencing criticism.

- Warning and threat letters: As the SLAPP phenomenon becomes more common and more intimidating, the very fact of threatening a lawsuit is enough to intimidate and silence. The cost-benefit balance from the plaintiff's perspective is particularly worthwhile: the cost of the warning letter is negligible, and in sending the letter there aren't even the few risks involved in filing a lawsuit. In contrast, for the person receiving the warning letter, who fears being dragged into burdensome litigation, the threat is real and tangible and usually ends in backing down. Because they are cheap, simple, risk-free, and efficient, letters threatening a lawsuit are much more common than lawsuits actually filed in court. They are no less damaging to freedom of expression, and their prevalence is particularly difficult to evaluate as there are no public records of these attempts.

Chapter Three: The Social Cost of SLAPPs

SLAPPs threaten freedom of expression and citizens' participation in democracy on a number of levels. First of all, there is the damage to the specific defendant's freedom of expression, which is likely to stop his/her voicing of views and public activity. This damage to the defendant is also linked to his/her community or the community on whose behalf s/he is working – coworkers, neighbors, activists in the same struggle, etc. – the lesson that is supposed to be learned is to be careful, otherwise your fate could be like the defendant's. This circle of deterrence can also be even wider and cause many participants in the public discourse, potential or actual, not to come out against the plaintiff in that specific issue, or in all public issues in which they will be involved in the future. The message sent to all journalists, researchers, social activists, etc. is: Don't mess with us.

The final circle of deterrence acts upon the general public. A SLAPP sends a message that is not limited to the specific issue or defendant: that participation in public discourse is dangerous and likely to exact a heavy personal price. It's better to sit quietly or act very cautiously, select words carefully and lower your tone, especially when dealing with powerful entities or serial plaintiffs.

The damage to free public discourse – deterring critical expression, the free sharing of information and independent and investigative journalism – makes it less likely that all the information, considerations and relevant interests of the topic at issue will be present in the public discourse, and thereby prevents the public from forming an informed opinion and making decisions on social and political issues. There is also a serious danger in the field of research and scientific knowledge, where the fear of defamation lawsuits from financially or publicly powerful entities may bias the research and deter researchers from publishing criticism of these entities. The chilling effect does not only influence sensitive issues of public importance. For example it is clear that the public is harmed by instances in which consumers fear reporting on defective products they have purchased or problematic behavior they have encountered at a business.

SLAPPs are an instrument accessible mainly to those with political or economic power, and help reinforce the unequal power relations that already exist. Thus the public stage is surrendered to those who already enjoy prejudiced, one-sided means of propaganda such as public relations and commercial advertisements.

The effect of excluding topics from the public discourse does not apply uniformly or evenly. The first to be harmed are precisely those with particular difficulty making their voices heard – individuals and groups from a low socio-economic status, located far from the media stage and centers of influence.

Chapter Four: The Secret of SLAPPs Power

SLAPPs divert arguments from the public arena to the legal arena, where ordinary people are at a disadvantage vis-à-vis the plaintiff. Several characteristics of Israeli law make it difficult for the defendant to deal with this kind of lawsuit – even if it is baseless, and sometimes, even when it is obvious that the primary goal or effect of the lawsuit is to silence criticism.

1. Balance between basic rights and the "flow chart" of defamation suit hearings

Defamation suit hearings arise at the meeting point (or collision point) of two basic rights: freedom of expression and the right to one's good name. The goal of the Anti-Defamation Law is to regulate the balance between these two rights and allow them to co-exist. The "flow chart" of Israeli defamation suit hearings (fully detailed in the report) is such that the court conducts most of the balancing act not at the beginning of the trial but rather in its final stages. As a result, the burden of defense is forced upon the defendant, even in lawsuits in which it is clear from beginning that the freedom of expression will prevail.

2. The burden involved in litigation is a "blind spot" for the justice system

Civil suits take years, and defending oneself from a suit takes a heavy toll, economically and psychologically. Statements made, sometimes in the heat of the argument, are evaluated according to rigid rules different from those the defendant is used to in daily life. The defendant experiences feelings of anxiety, fear and distress; most of all, the defendant faces the risk, even if small, that s/he may have to pay a considerable sum as compensation. Even if at the end of the day compensation is not awarded, or the compensation is only symbolic, the trial itself involves heavy expenses that increase as the trial lengthens.

The result is that many defendants prefer to back down at the beginning of the trial and reach a settlement with the plaintiff, even if this involves conceding their right to express themselves and take action. There are also the many potential defendants who prefer to save themselves the visit to the court, and concede their freedom of expression or their participation in a public debate immediately when threatened with a lawsuit.

3. The lack of a specific law dealing with the SLAPP phenomenon

Around the world, and especially in the United States, substantive and procedural laws known as "anti-SLAPP laws" have been developed to enable effective handling of the SLAPP phenomenon, to deter people from filing SLAPPs, and to attenuate their effect by enabling them to be dismissed outright or quickly clarified. In the 18th Knesset, a private bill to this effect was submitted, but was not advanced.

Today, courts have vast authority that is meant to assist in dealing with SLAPPs. In rulings from recent years, there are some signs that the legal system is beginning to recognize the phenomenon, and sometimes even designate it as dangerous. But in these same rare instances, there is no recognition of the need to halt SLAPPs and their negative effect through new judicial rulings: the

courts tend towards the opinion that "the existing laws include the necessary balances for dealing with false suits." Even in the few cases where the tone is different, there is still aversion to taking concrete steps.

4. SLAPPs and the right of access to the courts

The courts' aversion to dismissing SLAPPS out of hand and any other diversion from regular court proceedings is based on the right of access to the courts. Thus, freedom of expression is subordinated to the almost complete protection given to the right of access to the courts. This approach is not dictated by reality or law. Like other rights, the right of access to the courts is not absolute and it is possible to claim that it must be balanced against the rights of the respondents.

5. Dismissal out of hand – only as a last resort

Dismissal out of hand of SLAPPs, at least in the most prominent and serious cases, could reduce instances of the phenomenon and its chilling effect. But because of the status of right of access to the courts, judges narrowly interpret their authority to dismiss a lawsuit out of hand that seems "vexatious or frivolous" or a suit that does not show cause. In general, as long as there is a chance, however slim, that the plaintiff will win the suit, the courts do not dismiss it even if a quick examination of the facts at the early stages would be likely to undermine the lawsuit and end the litigation at the outset

In addition to the ability to dismiss a lawsuit out of hand, the courts have many powers in the pre-trial stage, including the ability to conduct a short factual clarification. These powers, along with the ability to dismiss a lawsuit out of hand, might have blocked SLAPPs or at least enabled their quick conclusion and thus a great reduction in the threat that they generate.

6. Heavy burden of proof on the defendant

As explained above, one of the difficulties in dealing with SLAPPs is that they are easy to file: the law does not place a heavy burden on the plaintiff – it is sufficient that defamation about the plaintiff was allegedly published. The plaintiff does not even have to claim that damage was done. From the moment the publication of defamation is proven, the burden of proof is transferred to the defendant, who is required to prove the truth of the publication or assert the defense of fair comment in "good faith".

7. A delicate balance, inconsistent rulings, and much uncertainty

Defamation suit rulings are characterized by inconsistency and lack of uniformity. Important legal issues in the field are under continuous controversy among judges, and there are critical questions that are very difficult to rule on (for example, whether a slanderous statement is a personal opinion or a statement of fact). Another major unknown relates to the amount of compensation that can be awarded against the plaintiff. As a result, it is difficult for the defendant to estimate prior to the trial how the litigation will be decided, and even skilled and experienced attorneys in the field find it difficult to predict the outcome of the trial they are participating in. The uncertainty that the

defendant experiences throughout the many years of litigation increases the pressure to raise the white flag and go silent, as long as s/he can be extricated from the trial.

8. Lack of a "margin of error" – small factual errors and inflammatory opinions

Government agencies and powerful corporations can hide information from the public and ignore questions asked of them. The citizen, social activist or journalist who attempts to report on their activities or bring them to public debate has limited information and expertise, and in some cases lacks the skill to carefully craft his/her words. S/he is likely to make some small error or use imprudent wording – sufficient mistakes to become entangled in a legal quagmire. The rest of the statements with their careful and precise wording will not help, and neither will the public importance of the publications. The plaintiff is the one who chooses what to focus on and how to frame the hearing, and a small mistake can become the main point. Defamation laws have little tolerance for mistakes, even if made in good faith.

The law allows the defendant a substantial truth defense, if s/he was mistaken regarding a "slight detail that caused no substantial harm," but the courts make sparing use of this defense and interpret it narrowly. Even the good faith defense is interpreted narrowly and sometimes the defendant is found liable because s/he exaggerated in the descriptions or style.

The strict standards created in the law in order to decide if a publication is defamation, or in order to assess the reasonableness or good faith of the speaker, do not differentiate between different types of publications or speakers. Tests developed in the wake of hearings on articles or investigations by the mainstream press are also used by the courts in hearings on spontaneous statements made in the heat or an argument or written casually on a social networking site. Though courts emphasize that they assess a publication from the perspective of an ordinary person, it often seems that the precise, meticulous, and restrained legal discourse does indeed influence the manner in which the fate of a publication – written and read under completely different circumstances – is decided.

9. The apology and clarification trap

The existing legal situation not only discourages attempts at dialogue and understanding between the sides, it can also escalate the conflict. The defendant or receiver of a threatening letter finds him/herself in a trap: if s/he expresses willingness to correct the publication or apologize, not only is that not enough to prevent the filing of the lawsuit or its continuation, but it may be interpreted as an admission of guilt and be detrimental at a later stage.

10. Awarding compensation without damage

Another factor that exacerbates the chilling effect is of course the amount of compensation that the defendant may be required to pay. The threat and fear intensify because this risk is not even conditional on damage: the law, which allows the court to rule that the injured party receive compensation "without proof of damage," in practice allows suing for compensation even if no damage at all was caused. The plaintiff is not even required to claim that damage was caused. Even though courts are reluctant to award the full compensation allowed by law, it is very difficult to

estimate in advance the amount of compensation that will be awarded. Even a weak lawsuit or trivial matter can turn into an ongoing threat to the defendant.

11. Lack of deterrence against SLAPPs in apportioning court costs

Only rarely does a court rule that the defendant be compensated for reasonable expenses incurred by the trial, not to mention the harassment and distress caused to the defendant. In contrast, in cases where the plaintiff "wins" the trial, courts tend to find the defendant liable for court costs, even if most of the plaintiff's claims were denied or if the defendant was found liable for only a small amount of compensation relative to the amount claimed by the plaintiff.

12. Dealing with lawsuits by government agencies and corporations

Libel law, which protects a person's reputation and dignity as a human being, also applies to government agencies and to corporations. Government agencies, primarily in local authorities, sometimes file SLAPPs using resources that come from tax-payers. Even worse, on more than one occasion, a government agency has filed a defamation lawsuit funded by public coffers in order to silence criticism not directed at it, but rather at the behavior of officeholders – a mayor, directors of government companies, or other officials. From the outset, these officials enjoy vast public resources which allow them to influence public opinion and to deal with criticism through public relations without utilising SLAPPs.

This rationale also applies to for-profit corporations operating in the private sector. Many of them concentrate vast power and have great influence on the public agenda, human rights and the environment. They employ image, advertising and public relations consultants, and enjoy easy access to the media stage in order to deal with criticism.

The limitations that libel suits place on freedom of expression are based primarily on the need to defend human dignity. However, the Anti-Defamation Law and associated judgments apply equally to plaintiffs with vast power – government agencies and commercial corporations – which have no "human dignity" and against which the defendant is at a great disadvantage.

Conclusion

Existing laws encourage filing SLAPPs and using them as a threat, and increases their power to intimidate. The definitions and burden of proof set by law regarding libel, and the way in which they are applied by the courts, benefit the plaintiff, particularly at the beginning of the process. Even a suit whose chances are negligible and which is filed under questionable circumstances will easily pass the low threshold. The defense of freedom of expression will occur during the trial, but will not save the defendant from having to conduct one.

From the plaintiff's perspective, the risk is low. Even if the suit is denied, it is almost certain that the plaintiff will be obligated to pay only minimal expenses. In contrast, the defendant is dragged into long and expensive proceedings and s/he is obligated with the burden of proof. The vagueness of the law, narrow interpretation of defense, and excessive claim amounts create risks that the defendant becomes afraid to undertake. Fees that the defendant must pay for legal representation

are high and almost certain not to be returned, even if the lawsuit is completely rejected. The defendant almost certainly will not be compensated for psychological anguish and anxiety. All these impose heavy pressure on the defendant to back down and recant, and turn the lawsuit, and even the threat of a lawsuit, into a mechanism to silence criticism.

Chapter Five: Conclusions and Recommendations

Looking at each lawsuit on its own while ignoring the significance of the phenomenon as a whole is what allows the SLAPP phenomenon to continue and to grow. The courts, legislators and the public must recognize the existence of this phenomenon, discuss it and begin to develop new legal and social mechanisms to identify and eradicate it.

In this report we provide a list of recommended actions to adopt or consider, in order to create a toolbox for grappling with the SLAPP phenomenon and the damage it causes without forsaking the right to one's good name. These are proposed with the understanding that the complex nature of the phenomenon and the tension between basic rights involved in it do not allow for magical solutions: there is no one mechanism that could alone solve all the problems that we have indicated. The proposed mechanisms are not meant to replace existing considerations and balances in libel laws, but rather to add an additional layer.

1. The changing reality and the proliferation of SLAPPs require a renewed examination of basic assumptions and an adjustment of laws and legal procedures to these new circumstances. Libel law and public discourse on the issue developed within the paradigm of the relationship between individuals and the all-powerful media: an ordinary citizen who was unjustifiably slandered by institutional journalism. But during the past few decades, the players have changed as well as the power relations between the sides: the rate of lawsuits filed against journalistic outlets is dwindling, while the number of lawsuits filed by powerful entities against small groups and organizations, social activists, and lone citizens is proliferating.

2. Re-examine the strict rule that prevents out-of-hand dismissal of suits, as well as developing the grounds that already exist in law for dismissing suits out-of-hand.

3. Adopt special legislation against SLAPPs, such as the legislation introduced in the United States and other countries.

4. Make use of existing legal procedures to allow speedy preliminary clarification of SLAPPs. Preliminary examination of the sides' claims is likely to help courts evaluate the lawsuit's chances and the motives for its filing, and accordingly to recommend to the parties an appropriate way to conclude the litigation.

5. Aspire towards legal procedures that encourage dialogue between the parties and that help them reach agreement on publishing a correction or clarification, and thus reduce as much as possible the number of defamation disputes that end up in court.

6. Examine ways to reduce legal uncertainty and widen defenses for statements on public issues through interpretation by the courts, including:

- Statements on public issues should be interpreted more leniently when examining if they involve libel, while extending application of the *de minimis* rule.

- Emphasis should be placed on the plaintiff's public status and on the means available other than legal proceedings against critics for defending his/her/its reputation.

- Adapt the "slight detail that caused no substantial harm" defense to the context of public discourse.

- The expression of opinion defense must also apply in cases where the defendant failed to precisely separate between opinion and fact – a separation which is blurry in any case. This is especially applicable when the defendant is an ordinary person participating in public discourse, as opposed to a "professional" writer or publisher.

- Expand the applicability of the defense afforded to those who acted out of a "legal, moral or social obligation" and give them more "breathing space" when it comes to small errors made in good faith.

- There is room for an approach that would differentiate between different categories of publication (for example, investigate newspaper articles versus internet users' posts) and would apply various tests according to the circumstances of their actions and the manner in which the public was exposed to them.

7. Creating a deterrent financial risk for the plaintiff and a chance for the defendant to obtain court costs would be an important step towards reducing the incentive for SLAPPs. Costs should be determined not only in clear cases in which the suit is dismissed in its entirety, but also in cases in which only a minority of the suit is accepted.

8. In order to curb SLAPPs, judicial or legislative development of independent causes of action for SLAPP victims is required. Even letters threatening baseless SLAPPs should constitute cause to find the sender liable for damages.

9. Consider imposing sanctions on attorneys who knowingly assist clients in exploiting the legal process – "accomplices to silencing."

10. Deny government agencies the right to sue, including corporations under government or city ownership. At the same time, increase enforcement of Interior Ministry regulations that are meant to limit the ability of local authorities to fund office-holders' defamation suits. In light of the flood of defamation suits conducted between local politicians, we recommend considering giving members of local councils immunity from libel suits based on utterances and publications made in fulfillment of their duties, in particular during council meetings.

    Deny for-profit corporations the right to sue for libel or at least make it conditional upon special permission from the court. As long as they have the right to sue for libel, for-profit corporations must be prevented from suing for compensation without proving damage. We

recommend that corporations should only be allowed to sue if direct material damage was caused to them.

11. Abolish the institution of the private criminal complaint which allows private individuals – rather than the state – to file criminal complaints on the grounds of libel.

12. Conduct empirical studies that will integrate methodology and paradigms from the fields of law and sociology to enrich the discussion on the SLAPP phenomenon.

13. In addition to legal mechanisms that can be enacted against SLAPPs, public action to eliminate them is also very important. Social mechanisms to eliminate the SLAPP phenomenon, such as publicity and recruiting public support may help address the power imbalance and turn a supposedly "personal" or "local" interest between the plaintiff and the defendant into an issue in the public domain.