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*Death by a Thousand Cuts: Assessing the Need for  
Anti-Strategic Lawsuit Against Public Participation (SLAPP)  
Protections in the Philippines*

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in partial fulfillment of the requirements of Law 119  
SECTION LAW 119 G  
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## **ABSTRACT**

Strategic Lawsuits Against Public Participation, more commonly known as SLAPPs, have emerged as a growing threat to freedom of expression both domestically and internationally. Simply put, SLAPPs are suits filed with the intent of stifling freedom of expression. Compared to ordinary lawsuits, SLAPPs have unique economic considerations that make the latter more difficult to regulate using traditional legal remedies. While SLAPPs have been the subject of extensive discussion and regulation in other legal jurisdictions, the phenomenon has rarely been tackled in the Philippines. Thus, this Paper seeks to determine if the Philippine legal system is ready to face the threat posed by SLAPPs and, if not, what can be done to prepare it for such.

This Paper explores the possibility of introducing anti-SLAPP protections in the Philippines. First, it details the origins of the concept of SLAPP, the evolution of the definition of SLAPP over time, and the unique considerations of SLAPPs compared to ordinary lawsuits. Next, it will explore how the anti-SLAPP laws of other jurisdictions have attempted to address the phenomenon through targeted legislation on the issue. It will then determine the factual and legal bases for anti-SLAPP protections in the Philippines. The Paper will then assess the existence and sufficiency of anti-SLAPP protections in the Philippines as well as previous Congressional attempts at enacting a national anti-SLAPP law. Finally, the Paper will present recommendations on the enactment of anti-SLAPP legislation, as learned from the experiences of other legal jurisdictions and adapted to the Philippine legal system.

## OUTLINE

### Chapter I

I.1. This Chapter introduces SLAPP as an emerging threat to the right to freedom of expression. Originally, SLAPP was narrowly defined and included only a limited range of cases. However, its definition has expanded over time and now, as defined under modern anti-SLAPP statutes, includes a much broader range of activities.

I.2. Unlike ordinary lawsuits, SLAPPs are primarily filed to stifle freedom of expression. SLAPPs achieve this by forcing the target to undertake burdensome litigation which often results in financial, psychological, and other costs. SLAPP filers do not need to win the case to succeed in their goal. In the end, the costs associated with SLAPPs dissuade people from speaking out, thereby creating a chilling effect on the exercise of freedom of expression. The unique intention and economic considerations of SLAPPs have made them difficult to address through traditional legal remedies.

### Chapter II

II.1. This Chapter examines the anti-SLAPP laws of two legal jurisdictions with modern and robust anti-SLAPP protections — the US States of New York and Washington. These anti-SLAPP laws are then studied to determine why the protections found under said laws are effective at combatting SLAPPs.

II.2. In New York, the State's anti-SLAPP law provides extensive protections that are crafted to specifically address the unique threats posed by SLAPPs. The State's anti-SLAPP law contains protections such as an automatic stay of proceedings, a broad definition of SLAPP and covered activities, and the mandatory award of costs and attorney's fees to assuage the deleterious effects of SLAPPs.

II.3. The protections under the current anti-SLAPP law of Washington are similar to those of NY. While there are some differences, these protections are all geared towards the expeditious dismissal of SLAPPs and the guarantee of protection and compensation on the part of the SLAPP target.

### **Chapter III**

III.1. This Chapter details the rise of SLAPPs in the Philippines. Recently, opposition candidates, journalists, news organizations, and human rights advocates have all been the subjects of harassment suits. While the lawsuits discussed in this Chapter are not explicitly described as SLAPPs, they are notably all lawsuits filed in relation to the defendants' exercise of constitutional freedoms. These are SLAPPs in all but name.

### **Chapter IV**

IV.1. This Chapter assesses the existing legal foundations for the creation of an anti-SLAPP law. First, it determines the statutory bases for the enactment of anti-SLAPP protections, particularly the codification of the right to freedom of expression under the 1987 Philippine Constitution, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights.

IV.2. Anti-SLAPP protections are also in conformity with existing Philippine jurisprudence which provides for the extensive protection of the right to freedom of expression. Philippine jurisprudence has acknowledged the importance of freedom of expression in all its manifestations.

IV.3. The Chapter then examines the existing SLAPP protections under the law. The only direct reference to SLAPPs under Philippine statutes and rules is under the Rules of Procedure for Environmental Cases. While the Rules provide a basic definition of SLAPPs and some protections for litigants, the anti-SLAPP provisions of the Rules come with several significant weaknesses. Foremost among these shortcomings is the fact that the anti-SLAPP protections are only applicable to environmental cases. Thus, many potential targets are left without anti-SLAPP protections under the law.

IV.4. A review of the other potential legal remedies existing under the law reveals that there is presently no direct and effective solution to SLAPPs. None of the existing potential remedies address the threats posed by SLAPPs, and SLAPP targets remain exposed to lengthy and costly litigation. Targets are not guaranteed protection and compensation for costs even if they have the SLAPP dismissed.

IV.5. In 2010 and 2011, two Congressional bills proposing anti-SLAPP laws were filed in the Philippines. While neither of these were passed into law, these were still significant developments as these were the first attempts at proposing a national anti-SLAPP law. However, an examination of the two bills reveals that their proposed protections can still be improved and modernized.

## **Chapter V**

V.1. This Chapter forwards recommendations regarding the enactment of anti-SLAPP legislation. First, anti-SLAPP protections should provide a mechanism for the immediate dismissal of a SLAPP so baseless suits can be dismissed at the earliest possible opportunity. An anti-SLAPP law should also require the broad interpretation of anti-SLAPP protections so that all persons are protected regardless of how they exercise their freedom of expression.

V.2. Such a law should also contain provisions that minimize the financial burden created by SLAPPs through protections such as the mandatory awarding of costs and an automatic stay of proceedings. A burden-of-proof-shifting provision will also prevent the target from incurring further costs. Additionally, any prospective anti-SLAPP law should provide for specific statutory exemptions such as a commercial speech exemption and a public interest exemption to prevent the misuse of anti-SLAPP protections.

V.3. Lastly, this Chapter emphasizes the need to temper the potent protections created by anti-SLAPP laws. Anti-SLAPP protections should be crafted in such a way that only baseless and frivolous suits shall be dismissed. In all instances, such protections should balance the interest of the State in protecting freedom of expression and the interest of litigants seeking judicial relief for meritorious claims.

## **Chapter VI**

VI.1. This Chapter concludes the Paper by providing a general overview of the issues discussed. It emphasizes the need for SLAPP-specific protections due to the observed insufficiency of existing legal remedies. Moreover, the Chapter reiterates the need to protect the right to freedom of expression since this freedom is an inviolable foundation of democracy and necessary for the attainment of a just and prosperous society.

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## I. INTRODUCTION

*“Short of a gun to the head, a greater threat to [freedom of] expression can scarcely be imagined.”* — Gordon v. Marrone<sup>1</sup>

Freedom of expression has long been a foundation of prosperous democracies. The inalienable right to speak out, especially when what is uttered is against popular opinion, remains an essential check on majoritarian power and an indispensable safeguard for personal liberties.

The exercise of this right has not been without risk. In the past, dictators and despots have tried to silence dissidents through violent means. This freedom was imperiled by guns and other coercive means. However, today’s strongmen have changed tactics, preferring more nuanced methods. One means of silencing critics that has grown rapidly in usage is through litigation. The battlefield for freedom of expression has now shifted to the courtroom.

It is under this milieu that the concept of a Strategic Lawsuit Against Public Participation (“SLAPP”) rose to prominence. Put simply, SLAPPs are lawsuits intended to stifle political expression.<sup>2</sup> While SLAPPs masquerade as ordinary lawsuits, they are actually meant to send a clear message: that there is a steep price to pay for exercising one’s freedom of expression.<sup>3</sup>

SLAPPs are today’s equivalent of a death by a thousand cuts, as the burdensome litigation that ensues has the potential to slowly bleed targets dry of their resources and their will to speak out.

As the arena for public participation has grown larger and more open than ever before, the courts must take up the activist and libertarian position<sup>4</sup> constitutionally intended for it. In this sense, robust legal protections against SLAPPs will affirm the court’s role as the protectorate of inalienable civil and political rights.

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<sup>1</sup> Gordon v. Marrone, 155 Misc. 2d 726, 736 (N.Y. Sup. Ct. 1992).

<sup>2</sup> George W. Pring & Penelope Canan, *Strategic Lawsuits Against Public Participation*, 35 SOC. PROBS. 506 (1988).

<sup>3</sup> George W. Pring, *SLAPPs: Strategic Lawsuits against Public Participation*, 7 PACE ENVTL. L. REV. 3, 6 (1989).

<sup>4</sup> Artemio V. Panganiban, *Judicial activism in the Philippines*, INQUIRER.NET, April 10, 2023, at <https://opinion.inquirer.net/162259/judicial-activism-in-the-philippines>.

While SLAPPs have been extensively studied in other jurisdictions, comparatively little ink has been spilled on the topic in the Philippines.

This Paper will explore SLAPPs in relation to the Philippine legal system. First, this Paper will discuss the definition of SLAPP and how this definition has expanded in relation to the evolution of anti-SLAPP protections. The Paper will also identify what differentiates SLAPPs from ordinary lawsuits and how these differences have made the former more difficult to address using traditional legal remedies. Next, it will discuss the legal protections present in other jurisdictions with modern anti-SLAPP laws and how these protections effectively address the threats posed by SLAPPs. The Paper will then provide a brief overview of the factual and legal antecedents for the enactment of anti-SLAPP protections in the Philippines. Afterwards, the Paper will examine the existing legal remedies to SLAPPs in the Philippine legal system and their effectiveness in addressing the issue. It will also examine previous attempts at legislating more expansive anti-SLAPP protections in the Philippines. Lastly, the Paper will propose recommendations for the enactment of future anti-SLAPP legislation.

## **A. Definition and History of SLAPPs**

The term SLAPP was coined by Penelope Canan & George Pring in 1988 in their seminal work on the issue, *Strategic Lawsuits Against Public Participation*.<sup>5</sup> In the article, Canan & Pring described a concerning increase in the use of lawsuits to prevent citizens from exercising certain political rights or to punish them for doing so.<sup>6</sup>

The authors initially tried to characterize the phenomenon, and in doing so they identified several key attributes that were common to SLAPPs:

1. The case must have been a civil claim for monetary damages;
2. The case must have been filed against nongovernmental individuals and organizations;

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<sup>5</sup> Pring & Canan, *supra* note 2, at 507. “We call these cases ‘strategic lawsuits against public participation’ or SLAPPs: attempts to use civil tort action to stifle political expression. It is this political retaliation, through the law, that distinguishes SLAPPs from the commonly observed intimidation and retaliation in litigation between commercial competitors, business partners, labor and management, and regulatory agencies and licensees. Strategic lawsuits against public participation claim injury from citizen efforts to influence a government body or the electorate on an issue of public significance.”

<sup>6</sup> *Id.*

3. The case must have been based on advocacy before a government branch official or the electorate; and
4. The case must be about a substantive issue of some public or societal significance.<sup>7</sup>

Pring & Canan's initial definition of a SLAPP was limited to "a retaliatory lawsuit against speech to the government within the ambit of the First Amendment's Petition Clause."<sup>8</sup> One author noted that this definition was too restrictive since it limited the application of SLAPPs to cases where the target was petitioning the government regarding a public issue.<sup>9</sup> Rather, he suggested that a SLAPP should be identified by the intent of the filer. So long as a suit was filed to intimidate or deny citizens freedom of expression, such a suit should be characterized as a SLAPP.<sup>10</sup>

This expansive definition of SLAPP became more widely adopted in the proceeding decades. In fact, many anti-SLAPP statutes today also cover speech that is not directed at the government, so long as such speech was made in relation to a matter of public interest. And public interest is usually defined in equally broad terms.<sup>11</sup> Thus, as presently understood, SLAPP protections apply to a much broader range of activities. Some of these anti-SLAPP laws and their expanded definitions shall be discussed further in Chapter II.

Broad definitions of SLAPP and public interest are necessary when considering the significant changes in how freedom of expression is exercised in modern society. The advent of the internet and social media, in particular, have made public participation more achievable and commentary on public issues more accessible.<sup>12</sup> Today, the power to exercise one's freedom of expression by commenting on a public matter can be done from the comfort of one's phone, and there is no need to directly interact with any governmental body. Thus, an expansive definition of SLAPP recognizes that the spheres of public and private interest intersect now more than ever.

Pring & Canan also noted that certain causes of actions are commonly associated with SLAPPs, as they found that a majority of SLAPPs tend to be framed in terms of

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<sup>7</sup> Pring, *supra* note 3, at 7.

<sup>8</sup> Lori Potter and W. Cory Hailer, *SLAPP 2.0: Second Generation of Issues Related to Strategic Lawsuits Against Public Participation*, 45 ENVTL. L. REP. NEWS & ANALYSIS 10136, 10137 (2015).

<sup>9</sup> Victor J. Cosentino, *Strategic Lawsuits Against Public Participation: An Analysis of the Solutions*, 27 CAL. W. L. J. 399, 401 (1991).

<sup>10</sup> *Id.*

<sup>11</sup> *See, e.g.*, WASH. REV. CODE. § 4.105.010 (2023); N.Y. CIV. RIGHTS LAW § 76-a(1)(a) (2023).

<sup>12</sup> Lauren Merk, *Strategic Lawsuits against Public Participation in the Age of Online Speech: The Relevance of Anti-SLAPP and Anti-CyberSLAPP Legislation*, 5 U. CIN. INTELL. PROP. & COMPUT. L. J. [i], [xxiv] (2021).

defamation or an economic tort. Nevertheless, there is no express limitation as to what actions can be used as a SLAPP.<sup>13</sup> The amorphous and indeterminate nature of SLAPPs is what has made the problem so difficult to resolve. SLAPPs essentially transform a political dispute into a legal one, and in transforming the issue the filer cloaks the true intention and cause of litigation.<sup>14</sup>

SLAPPs also take advantage of traditional judicial attitudes toward litigation to avoid dismissal and achieve their goal. One author noted how SLAPPs render ordinary legal remedies nugatory:

“In general, then, the **courts tend to be very conservative in striking out claims without a full trial on the merits.** As a result, while the courts may have the tools to deal with SLAPP lawsuits, **judicial attitudes towards motions to dismiss cases renders it very difficult for the targets of SLAPPs to make use of these remedies.** Indeed, it is ironic that opponents of anti-SLAPP legislation point to the availability of these remedies as an argument against the need for more proactive regulation. The fact that these remedies exist, but have done little to prevent SLAPPs from being launched, should indicate their inadequacy as a mechanism for deterring SLAPPs and protecting political expression.”<sup>15</sup>

Existing legal remedies are ineffective at dealing with SLAPPs because they differ from traditional lawsuits in some key respects. While it may seem like an ordinary lawsuit at first glance, a SLAPP differs from a traditional lawsuit in the intention of the suit. Ordinary suits seek the vindication of a legal right that has been violated. SLAPPs are filed to harass and intimidate people for a legitimate exercise of their freedom of speech and expression.<sup>16</sup> This distinction means that SLAPPs function within a very different framework of considerations compared to ordinary lawsuits:

“The economics of a lawsuit, in most instances, means that plaintiffs will rarely carry forward with cases that they know are groundless and will likely lose. In SLAPP cases, however, this logic is turned on its head. Consequently, regulations

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<sup>13</sup> BYRON M. SHELDICK, BLOCKING PUBLIC PARTICIPATION: THE USE OF STRATEGIC LITIGATION TO SILENCE POLITICAL EXPRESSION 15 (2014).

<sup>14</sup> *Id.* at 94.

<sup>15</sup> *Id.* at 95-96. (Emphasis supplied.)

<sup>16</sup> Timothy D. Biche, *Thawing Public Participation: Modeling the Chilling Effect of Strategic Lawsuits against Public Participation and Minimizing Its Impact*, 22 S. CAL. INTERDISC. L.J. 421, 426 (2013).

need to address the underlying reasons for SLAPPs and create a different set of incentive structures than normally exists in the judicial system.”<sup>17</sup>

The malicious purpose and unique economic considerations of a SLAPP mean that winning the lawsuit is not a primary or even an important consideration.<sup>18</sup> A SLAPP can achieve its goal of draining the target’s resources even if the case is eventually thrown out of court.

A SLAPP primarily achieves this by forcing targets to expend their resources to defend themselves against a baseless suit.<sup>19</sup> These types of suits often lead to protracted litigation. Eventually, the target is forced to muzzle themselves for fear of further retaliatory and exhaustive litigation.<sup>20</sup>

The danger of SLAPPs lies in the significant burdens they can potentially impose on targets. Most apparent are the financial and temporal burdens caused by SLAPPs, as targets are forced to spend thousands in attorney’s fees and litigation expenses and hundreds of hours in defending themselves in court. SLAPPs cause several other collateral effects on targets, as they are forced to deal with ancillary issues such as “lost wages, potential credit problems, insurance cancellations, and extreme psychological insecurity” as a result of the suit.<sup>21</sup>

More alarmingly, the effects of SLAPPs extend far beyond the parties involved. They cause “additional societal costs” since they result in the unnecessary overloading of the courts and the undercutting of government programs.<sup>22</sup> However, the most damaging effect of SLAPPs is their chilling effect on the exercise of freedom of expression. The burdensome costs of SLAPPs are often so onerous that the target and their peers will most likely be deterred from exercising the same right in the future. Even if the court eventually rules in the target’s favor, the sheer amount of time, effort, and money expended because of the suit means that any success amounts to a mere

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<sup>17</sup> SHELDICK, *supra* note 13, at 90.

<sup>18</sup> SHELDICK, *supra* note 13, at 24.

<sup>19</sup> Annalisa Ciampi, SLAPPs and FoAA rights, *available at*

<https://www.ohchr.org/Documents/Issues/FAssociation/InfoNoteSLAPPsFoAA.docx> (last checked Mar. 2023) (Info Note by the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association).

<sup>20</sup> Public Participation Project, *What is a SLAPP?*, *available at* <https://anti-slapp.org/what-is-a-slapp> (last checked Mar. 2023).

<sup>21</sup> George W. Pring, *Strategic Lawsuits Against Public Participation*, 12 U. BRIDGEPORT L. REV. 937, 942 (1992).

<sup>22</sup> *Id.*

Pyrrhic victory.<sup>23</sup> The SLAPP filer will have succeeded regardless of the outcome of the case.

The threat SLAPPs pose to democratic societies cannot be understated. As one American jurist put it:

“[W]e shudder to think of the chill [...] were we to allow this lawsuit to proceed. The cost to society in terms of the threat to our liberty and freedom is beyond calculation[.] To prohibit robust debate on these questions would **deprive society of the benefit of its collective thinking** and [...] **destroy the free exchange of ideas which is the adhesive of our democracy.**”<sup>24</sup>

In light of the potential individual and societal threats posed by SLAPPs, many legal jurisdictions have enacted anti-SLAPP statutes to address this type of litigation. These statutes are specifically crafted to address the economic effects of SLAPPs and to protect citizens in exercising their freedom of expression.

## II. ANTI-SLAPP LEGISLATION IN OTHER JURISDICTIONS

In its most basic sense, anti-SLAPP laws are laws that discourage SLAPPs by shifting the economic burden of the suit to the filer and creating protections that address the potentially deleterious effects of the suit.

Anti-SLAPP legislation is most commonly found in the United States, the jurisdiction where the phenomenon has been most extensively researched and discussed. As of the time of writing, 32 US states and the District of Columbia have adopted some form of anti-SLAPP legislation.<sup>25</sup> While the extent of protections and penalties afforded to litigants vary greatly from state to state, this Paper will focus on two US states that, comparatively, have modern and extensive anti-SLAPP laws—New York (“NY”) and Washington.

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<sup>23</sup> Gordon v. Marrone, 155 Misc. 2d 726, 736.

<sup>24</sup> Webb v. Fury, 282 S.E.2d 28 (W. Va. 1981), *cited by*, GEORGE W. PRING AND PENELOPE CANAN, SLAPPS: GETTING SUED FOR SPEAKING OUT (1996). (Emphasis supplied.)

<sup>25</sup> Reporters Committee for Freedom of the Press, *Anti-SLAPP Legal Guide*, available at <https://anti-slapp.org/what-is-a-slapp> (last checked Apr. 2023).

## A. New York

While the US State of NY already had an anti-SLAPP law which was passed in 1993, this was considered by scholars as one of the weakest anti-SLAPP laws in the US.<sup>26</sup> The application of the old anti-SLAPP statute was limited due to the narrow scope of protected activities<sup>27</sup> and the relatively conservative protections that it afforded defendants.<sup>28</sup> In 2020, NY passed a new law<sup>29</sup> that significantly improved anti-SLAPP protections.

First, the new statute expanded the coverage of the anti-SLAPP law. Specifically, the law defined “action involving public petition and participation” as any claim based upon “any communication in a place open to the public or a public forum in connection with an issue of public interest” or “any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest[.]”<sup>30</sup>

This new definition is in stark contrast to the old law which was merely limited to situations where the plaintiff has “applied for or obtained a permit, zoning change, lease, license, certificate or other entitlement for use or permission to act from any government body[.]”<sup>31</sup>

In relation to this new definition, the law also instructs the courts to construe the term “public interest” broadly to “mean any subject other than a purely private matter[.]”<sup>32</sup>

The amendments now extend SLAPP protections to a broader range of activities and thereby correct one of the most significant weaknesses of the old law. The broad definition of SLAPP and covered activities under the NY anti-SLAPP follows the trend noted in the previous Chapter.

Another key feature of the statute is its burden-shifting provision. Once the defendant has shown that the suit is covered by the anti-SLAPP law, the burden then shifts to the plaintiff to prove that the suit has “substantial basis in law or is supported

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<sup>26</sup> Julio Sharp-Wasserman, *New York's Anti-SLAPP Law Is Only a Slap on the Wrist: Will New Legislation Make It Sting*, 91 N.Y. ST. B.A. J. 20, 21 (2019).

<sup>27</sup> See N.Y. CIV. RIGHTS LAW § 76-a(1)(a) (2018).

<sup>28</sup> Reporters Committee for Freedom of the Press, *New York*, available at <https://anti-slapp.org/what-is-a-slapp> (last checked Apr. 2023); See N.Y. C.P.L.R. § 3211(g) (2018).

<sup>29</sup> 2020 N.Y. Senate Bill No. 52-A/Assembly Bill No. 5991A (2020).

<sup>30</sup> N.Y. CIV. RIGHTS LAW § 76-a(1)(a) (Westlaw 2023).

<sup>31</sup> § 76-a(1)(a) (2018).

<sup>32</sup> § 76-a(1) (Westlaw 2023).

by a substantial argument for an extension, modification or reversal of existing law[.]”<sup>33</sup> While the term “substantial basis” is not explicitly defined in the statute, this has been construed as a heightened standard compared to the traditional motion to dismiss under US law.<sup>34</sup>

The NY anti-SLAPP statute provides for the dismissal of the case and the mandatory awarding of costs and attorney’s fees if the filer fails to meet the “substantial basis” standard.<sup>35</sup> Additionally, punitive and other compensatory damages may be awarded if the defendant can prove that the only purpose of the suit was “harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights[.]”<sup>36</sup>

The “substantial basis” standard helps ease the burden placed on the SLAPP target since it is now the filer who must primarily prove the validity of the suit. On the part of the filer, this is meant to disincentivize unscrupulous litigants from pursuing frivolous suits since the filer of the SLAPP will automatically be required to reimburse the defendant if the former fails to meet the “substantial basis” standard. On the part of the target, the mandatory award of costs addresses one of the primary goals of a SLAPP, which is exhausting the financial resources of the defendant. A guaranteed award lightens the target’s projected financial burden since there is an assurance that the target will at least be compensated for the financial costs of the suit.

Lastly, the law provides for a stay of all further proceedings during the pendency of the SLAPP defense.<sup>37</sup> However, it allows for limited discovery if necessary for the adjudication of the defense.<sup>38</sup> The automatic stay of proceedings protects the target from the potential economic burden of litigation, especially costs resulting from the trial and discovery process.

While the provisions of the NY anti-SLAPP law provide extensive protections to the defendant, the rules are tailored in such a manner that valid claims of action against SLAPP defendants should not be affected. Filers of meritorious claims need not

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<sup>33</sup> § 3211(g)(1) (Westlaw 2023).

<sup>34</sup> Daniel Novack & Christina Lee, *What Is a 'Substantial Basis' Under New York's Anti-SLAPP Law?*, NEW YORK LAW JOURNAL, Nov. 17, 2020, available at <https://www.law.com/newyorklawjournal/2020/11/17/what-is-a-substantial-basis-under-new-yorks-anti-slapp-law/>.

<sup>35</sup> § 3211(g)(1) (Westlaw 2023); § 70-a(a) (Westlaw 2023).

<sup>36</sup> § 70-a(c) (Westlaw 2023).

<sup>37</sup> § 3211(g)(3) (Westlaw 2023).

<sup>38</sup> *Id.*

fear unjustified dismissal since so long as they can overcome the standard of proof required under the anti-SLAPP law, the suit will proceed like a conventional lawsuit.

## **B. Washington**

The US State of Washington originally had an anti-SLAPP statute<sup>39</sup> which was passed into law in 2010. However, the Washington Supreme Court struck down this law in 2015 for violating the right to a trial by jury.<sup>40</sup>

In its place, the State passed an anti-SLAPP statute<sup>41</sup> in 2020 which was mainly based on the Uniform Public Expression Protection Act (“UPEPA”).<sup>42</sup> The UPEPA is a model anti-SLAPP act developed by the Uniform Law Commission. Due to the high degree of variance in the anti-SLAPP statutes of US states, the UPEPA was an attempt at creating a clearly defined procedure that could be used to dispose of SLAPPs efficiently.<sup>43</sup>

Notably, the Washington anti-SLAPP statute shares many similarities with that of NY.

The Washington statute also covers a broad range of activities. It contains a catch-all provision including any “[e]xercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association [...] on a matter of public concern.”<sup>44</sup> Like the NY statute, it contains a construction provision requiring courts to construe its provisions broadly to protect “the exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association[.]”

The Washington anti-SLAPP statute likewise directs an automatic stay of proceedings during the pendency of the SLAPP motion and provides for the mandatory

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<sup>39</sup> WASH. REV. CODE. § 4.24.525 (2010).

<sup>40</sup> *Davis v. Cox*, 351 P.3d 862 (Wash. 2015).

<sup>41</sup> WASH. REV. CODE. § 4.105 (2023).

<sup>42</sup> Uniform Law Commission, Uniform Public Expression Protection Act (2020), at [https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/06e6be81-b718-4286-1be9-a93a49cc7ea7\\_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1681384958&Signature=LWVAbZkUxDBjRQuN1zKdjpFh4sI%3D](https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/06e6be81-b718-4286-1be9-a93a49cc7ea7_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1681384958&Signature=LWVAbZkUxDBjRQuN1zKdjpFh4sI%3D).

<sup>43</sup> Uniform Law Commission, A Few Facts About the Uniform Public Expression Protection Act (2020), at <https://apps.legislature.ky.gov/CommitteeDocuments/89/13972/UPEPA%20-%20Fact%20Sheet.pdf>.

<sup>44</sup> WASH. REV. CODE. § 4.105.010(2)(c) (2023).

awarding of costs, attorney’s fees, and reasonable litigation expenses if the motion is granted.<sup>45</sup>

The Washington statute differs from the NY statute in its burden-shifting procedure. In resolving SLAPP motions, the former utilizes a three-phase procedure<sup>46</sup> that is directly adopted from the UPEPA.

In the first phase of the procedure, the moving party carries the burden of proving that the responding party’s cause of action arises from the former’s exercise of freedom of expression in connection with a matter of public concern.<sup>47</sup> Significantly, this burden is more easily met than the one found in older anti-SLAPP statutes since the movant no longer needs to prove the responding party’s intent. If the moving party meets this burden, the analysis moves on to the next phase. If not, the motion is dismissed.<sup>48</sup>

In the second phase, the burden is now shifted to the responding party. The responding party must now establish a *prima facie* case for each essential element of the cause of action being challenged.<sup>49</sup> If the responding party meets this standard, the analysis moves on to the third phase. If not, the motion is granted and the suit is dismissed.<sup>50</sup>

Lastly, in the third phase, the burden shifts back to the moving party. In order to have the motion granted, the moving party must be able to establish that “the responding party failed to state a cause of action upon which relief can be granted or that there is no genuine issue as to any material fact and the party is entitled to judgment as a matter of law[.]”<sup>51</sup> Failure to do so will result in the denial of the motion.

It should be noted, however, that the *prima facie* standard used in the Washington statute’s three-phase procedure is a legal burden that can be discharged without a factual determination by the court.<sup>52</sup> It is a legal standard that must be established by the responding party. Some states in the US utilize this standard, which is the same as the standard required in an ordinary motion to dismiss and does not require a factual

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<sup>45</sup> § 4.105.901 (2023).

<sup>46</sup> Uniform Law Commission, *supra* note 42, at 3.

<sup>47</sup> *Id.* at 17.

<sup>48</sup> *Id.* at 3.

<sup>49</sup> *Id.* at 19.

<sup>50</sup> *Id.* at 4.

<sup>51</sup> *Id.* at 19.

<sup>52</sup> *Id.* at 18.

determination, to avoid the risk that the anti-SLAPP law will be invalidated for violating the right to a trial by jury found in the US Constitution.<sup>53</sup>

While the Washington statute differs from the NY statute in some aspects, the frameworks of protections instituted by the two laws are largely the same. In general, these laws enacted protections that seek (1) to minimize the burden placed on targets by SLAPPs and (2) to expeditiously dismiss SLAPPs. While both laws institute broader protections for SLAPPs, the protections are not so onerous that all claims arising from the exercise of freedom of expression are thrown out. Filers are still given the opportunity to prove that their claims are meritorious, and there are protections in place to prevent the abuse of anti-SLAPP provisions to frustrate valid causes of action.

As such, these rules effectively balance the interest of the State in protecting the constitutional right to freedom of expression and the right of litigants with valid causes of action to protection under the law.

### **III. SLAPP IN THE PHILIPPINES**

To recall, a SLAPP is a frivolous lawsuit filed against an individual or organization in relation to some exercise of their freedom of expression.<sup>54</sup> SLAPPs drain the resources of the target through burdensome litigation and seek to intimidate and discourage them from exercising their freedom of expression.<sup>55</sup> While the term SLAPP is not commonly used in the Philippines, the country has recently seen a rise in the use of lawsuits to harass individuals and organizations, the most common targets of which are political dissidents and journalists. Such cases are SLAPPs in all but name. Like the SLAPP trends observed in other jurisdictions, while the types of suits varied greatly, the common characteristic among all of them was that they were filed in relation to the exercise of civil and political rights.<sup>56</sup>

As early as 2010, Amnesty International identified SLAPPs as an emerging threat to freedom of expression in the Philippines. Activists at the time were accused of being

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<sup>53</sup> Eric Simpson, *Slapp-ing down the Right to a Jury Trial: Anti-Strategic Lawsuits against Public Participation and the Seventh Amendment*, 48 U. TOL. L. REV. 169, 180 (2016).

<sup>54</sup> Maria Diaz Crego & Micaela Del Monte, *Strategic lawsuits against public participation (SLAPPs)*, at 1, PE 733.668 (September 2022).

<sup>55</sup> *Id.*

<sup>56</sup> Harris Blum, *SLAPPING Back in Federal Court: Florida's Anti-SLAPP Statute*, 76 U. MIAMI L. REV. 345, 347 (2021).

communist supporters and were being targeted with criminal lawsuits.<sup>57</sup> This trend has only increased over time.

In 2011, a suit against 9 Ifugaos was dismissed by a Municipal Trial Court in Nueva Vizcaya. The defendants, who were leaders and members of a local organization resisting a large-scale mining operation in the area, were charged with being “illegal forest occupants” under the Revised Forestry Code despite the law’s explicit exclusion of cultural minorities from prosecution for the same. Atty. Minerva Quintela, counsel of the accused and lawyer for the Legal Rights & Natural Resources Center, described the case as a SLAPP and stated that it was “designed to chill the opposition against large-scale mining[.]”<sup>58</sup>

More recent examples of suits that may be considered SLAPPs are far more frequent and alarming.

Arguably the most high-profile string of SLAPPs in the country is the continuing legal saga of journalist Maria Ressa. Ressa, the co-founder and CEO of the digital news company Rappler, was a staunch critic of former President Rodrigo Duterte even before his election into office. During Duterte’s incumbency, Ressa and her company have faced a slew of legal cases,<sup>59</sup> including complaints for tax evasion, cyber-libel, and violation of the Anti-Dummy Law. Ressa has already been convicted of one count of cyber-libel<sup>60</sup> and her conviction is currently on appeal with the Philippine Supreme Court.<sup>61</sup> International organizations have denounced the “legal harassment” of Ressa as a violation of freedom of expression and freedom of the press.<sup>62</sup>

In 2021, Ressa was once again the target of a cyber-libel complaint filed by Department of Energy Secretary Alfonso Cusi for Rappler’s reporting on the sale of a large-scale energy facility. This complaint has been decried as a “clear harassment suit[]

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<sup>57</sup> *ANNUAL REPORT: PHILIPPINES 2010*, AMNESTY INTERNATIONAL WEBSITE, Mar. 19, 2011, *available at* <https://www.amnestyusa.org/reports/annual-report-philippines-2010/>.

<sup>58</sup> *SLAPP Suit Against Ifugaos In Didipio Dismissed*, SOLIDARITY PHILIPPINES AUSTRALIA NETWORK WEBSITE, Sept. 9, 2011, *available at* <https://cpcabrisbane.org/Kasama/2011/V25n3and4/Didipio.htm>.

<sup>59</sup> *Philippines: Maria Ressa’s ‘cyber libel’ conviction appeal denied by court*, INTERNATIONAL PRESS INSTITUTE WEBSITE, Mar. 19, 2011, *available at* <https://ipi.media/philippines-maria-ressas-cyber-libel-conviction-appeal-denied-by-court/>.

<sup>60</sup> Jason Gutierrez & Alexandra Stevenson, *Maria Ressa, Crusading Journalist, Is Convicted in Philippines Libel Case*, NEW YORK TIMES, Oct. 8, 2021, *at* <https://www.nytimes.com/2020/06/14/business/maria-ressa-verdict-philippines-rappler.html>.

<sup>61</sup> Karen Lema, *Philippines’ Nobel laureate Ressa to fight conviction at Supreme Court*, REUTERS, Oct. 11, 2022, *at* <https://www.reuters.com/world/asia-pacific/philippines-nobel-laureate-ressa-fight-conviction-supreme-court-2022-10-11/>.

<sup>62</sup> *Philippines: Cyber-libel conviction of Maria Ressa and Reynaldo Santos a blow to freedom of expression and media online*, INTERNATIONAL COMMISSION OF JURISTS WEBSITE, June 16, 2020, *available at* <https://www.icj.org/philippines-cyber-libel-conviction-of-maria-ressa-and-reynaldo-santos-a-blow-to-freedom-of-expression-and-media-online/>.

meant to intimidate and chill the press.”<sup>63</sup> Former Senator Leila de Lima has even denounced the charge as a “press-directed version[] of textbook SLAPP suits.”<sup>64</sup>

Even Leni Robredo, the former Philippine Vice President, was not safe from these types of suits. In 2019, the Philippine National Police-Criminal Investigation and Detection Group (PNP-CIDG) filed a sedition complaint against Robredo, then-Vice President and highest-ranking member of the opposition, and several other members of the opposition slate. The complaint was based on the testimony of a single individual who was apprehended for producing a video series accusing then-President Rodrigo Duterte of involvement in illegal activities.<sup>65</sup> Amnesty International denounced the suit as a “politically-motivated probe” intended to “intimidate, harass and threaten the president’s perceived opponents, particularly those who have vocally criticized the country’s ongoing human rights violations.”<sup>66</sup> Butch Alano, Amnesty International Philippines Section Director, noted that the “timing and targets of [the] complaint bear all the hallmarks of judicial harassment.”<sup>67</sup> The charges were eventually dismissed for lack of probable cause.<sup>68</sup>

Other journalists, news organizations, and activists continue to be active targets of these harassment suits as well.

In 2020, two staff members of Northern Dispatch (“Nordis”), a local news organization, were charged with cyber-libel by the director of the Police Regional Office of Cordillera in connection with reports published by the organization. Nordis stated that the suit was aimed to intimidate and discredit them seeing as they were also previously accused of being a front for communist rebels.<sup>69</sup>

*Bulatlat*, one of the oldest alternative media outlets in the Philippines, was also recently the subject of legal action. *Bulatlat*’s website was one of more than 20 news websites that the National Telecommunications Commission (“NTC”) ordered to be

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<sup>63</sup> Xave Gregorio, *Journalist groups decry Cusi and Uy’s libel suits over Malampaya reports*, PHIL. STAR., Dec. 4, 2021, at <https://www.philstar.com/headlines/2021/12/04/2145698/journalist-groups-decry-cusi-and-uys-libel-suits-over-malampaya-reports>.

<sup>64</sup> *Sen. Leila M. de Lima on Cusi’s suit vs media outfits on Malampaya reporting*, SENATE OF THE PHIL. WEBSITE, at [http://legacy.senate.gov.ph/photo\\_release/2021/0901\\_27.asp](http://legacy.senate.gov.ph/photo_release/2021/0901_27.asp).

<sup>65</sup> *Philippines: Drop malicious case against government critics*, AMNESTY INTERNATIONAL WEBSITE, Sept. 13, 2019, available at <https://www.amnesty.org/en/documents/asa35/1049/2019/en/>.

<sup>66</sup> *Id.*

<sup>67</sup> *Philippines: 36 people face sedition charges as authorities bid to silence critics*, AMNESTY INTERNATIONAL UK WEBSITE, July 19, 2019, available at <https://www.amnesty.org.uk/press-releases/philippines-36-people-face-sedition-charges-authorities-bid-silence-critics>.

<sup>68</sup> Tetch Torres-Tupas, *DOJ dismisses sedition raps vs Robredo, 2019 opposition bets*, INQUIRER.NET, Feb. 10, 2020, at <https://newsinfo.inquirer.net/1226468/doj-dismisses-sedition-raps-vs-robredo-opposition>.

<sup>69</sup> Sherwin De Vera, *Libel charges filed against Nordis staff by Cordillera police chief*, NORTHERN DISPATCH, Oct. 5, 2020, at <https://nordis.net/2020/10/05/article/news/car/libel-charges-filed-against-nordis-staff-by-car-ppn-chief/>.

blocked due to alleged ties to communist rebels. While the blocking was based on the request of National Security Adviser (NSA) Hermogenes Esperon, the Anti-Terrorism Act of 2020 does not empower the NTC to block cybertraffic or content data.<sup>70</sup> A Quezon City Regional Trial Court has since ordered the NTC to stop blocking access to the website as it constituted “a violation or curtailment of [Bulatlat’s] right to free speech and of the press[.]”<sup>71</sup>

More recently, former Representative Walden Bello, a vice presidential candidate of the opposition in the 2022 Philippine national elections and a staunch critic of the outgoing administration at the time, was also charged with a cyber-libel complaint for his comments on a former press officer of now-vice president Sara Duterte. Bello asserted that the case filed against him was “political persecution” and an “abridgement of freedom of speech[.]”<sup>72</sup>

The issue has gotten so serious that the UN Human Rights Committee has expressed concern regarding the “persistent violation of the freedom of expression within the [Philippines]” and the “widespread harassment and intimidation of journalists[.]”<sup>73</sup> As can be readily observed, individuals and organizations, regardless of their notoriety and status, have been victims of legal harassment for their political expressions.

If defendants with a plethora of resources have not been safe from these types of attacks, then ordinary persons and organizations who lack the resources to effectively combat SLAPPs are in far more danger. These alarming developments should be enough reason to legislate a comprehensive anti-SLAPP law.

#### **IV. ANTI-SLAPP PROTECTIONS IN THE PHILIPPINES**

##### **A. Legal Bases for Anti-SLAPP Protections**

Before discussion regarding an anti-SLAPP law in the Philippines is tackled, it is important to first understand the statutory and jurisprudential bases for such

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<sup>70</sup> Beatrice Pinlac, *QC court orders NTC to stop blocking Bulatlat website*, INQUIRER.NET, Aug. 11, 2022, at <https://newsinfo.inquirer.net/1645198/qc-court-orders-ntc-to-stop-blocking-bulatlat-website-2>.

<sup>71</sup> Id.

<sup>72</sup> Germelina Lacorte, *Walden Bello: Cyber libel case is not about me, it's about press freedom*, INQUIRER.NET, Oct. 27, 2022, at <https://newsinfo.inquirer.net/1685822/walden-bello-cyber-libel-case-is-not-about-me-its-about-press-freedom>.

<sup>73</sup> United Nations Human Rights Committee [hereinafter “UN HRC”], Concluding observations on the fifth periodic report of the Philippines, at 11, CCPR/C/PHL/CO/5 (Nov. 30, 2022).

protections. Foremost, such a law would be consistent with the principles found under the 1987 Philippine Constitution.

The core of any anti-SLAPP law is the protection of freedom of expression, of the press, and of assembly.<sup>74</sup> These freedoms are the foundations of a functioning democracy and "among the most precious of the liberties guaranteed by the Bill of Rights."<sup>75</sup>

Specifically, these rights are enshrined in Section 4, Article III of the 1987 Constitution, which reads:

“No law shall be passed abridging the **freedom of speech, of expression**, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.”<sup>76</sup>

Under Philippine jurisprudence, the protection of these freedoms is affirmed in equally broad terms. The Supreme Court itself acknowledges that freedom of expression occupies a preferred position in the hierarchy of constitutional rights due to its importance to democracy:

“In the hierarchy of civil liberties, **the rights of free expression and of assembly occupy a preferred position** as they are **essential to the preservation and vitality of our civil and political institutions**; and such priority ‘gives these liberties the sanctity and the sanction not permitting dubious intrusions.’”<sup>77</sup>

In the seminal case of *Chavez v. Gonzales*,<sup>78</sup> the court further expounded on the scope of freedom of expression:

“The scope of **freedom of expression is so broad that it extends protection to nearly all forms of communication**. It protects speech, print and assembly regarding secular as well as political causes, and is not

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<sup>74</sup> FCF Min. Corp. v. Lunag [hereinafter “*FCF Min.*”], G.R. No. 209440, Feb. 15, 2021.

<sup>75</sup> Id.

<sup>76</sup> CONST. art. VIII, § 4. (Emphasis supplied.)

<sup>77</sup> Phil. Blooming Mills Emp’t Org. v. Phil. Blooming Mills Co., Inc., G.R. No. 31195, 51 SCRA 189, 202, June 5, 1973. (Emphasis supplied.)

<sup>78</sup> [Hereinafter “*Chavez*”], G.R. No. 168338, 545 SCRA 441, Feb. 15, 2008. (Emphasis supplied.)

confined to any particular field of human interest. The protection covers myriad matters of public interest or concern embracing all issues, about which information is needed or appropriate, so as to enable members of society to cope with the exigencies of their period. **The constitutional protection assures the broadest possible exercise of free speech and free press** for religious, political, economic, scientific, news, or informational ends, inasmuch as **the Constitution's basic guarantee of freedom to advocate ideas is not confined to the expression of ideas that are conventional or shared by a majority.**<sup>79</sup>

Nevertheless, it should be noted that the exercise of this freedom does have its limits. In the same case, the Supreme Court reined in the broad language it used in describing freedom of expression:

“From the language of the specific constitutional provision, it would appear that the right to free speech and a free press is not susceptible to any limitation. But the realities of life in a complex society preclude a literal interpretation of the provision prohibiting the passage of a law that would abridge such freedom. **For freedom of expression is not an absolute, nor is it an ‘unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom.’**”<sup>80</sup>

Thus, the Supreme Court qualified that freedom of expression is only protected when exercised within the bounds of the law. In fact, the law expressly regulates and punishes expression that is injurious to the rights of others, of the community, or of society.<sup>81</sup>

Nevertheless, so long as the exercise of this freedom does not violate any of the limitations imposed under Philippine law, it enjoys full legal protection.

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<sup>79</sup> *Id.* at 485. (Emphasis supplied.)

<sup>80</sup> *Id.* at 486. (Emphasis supplied.)

<sup>81</sup> *Id.*

Aside from its constitutional basis, the enactment of an anti-SLAPP law would be consistent with the principles of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

The UDHR is a seminal document in the evolution of human rights. Adopted in 1948 by the United Nations, the UDHR was the first document to set out fundamental human rights which were entitled to legal protection.<sup>82</sup> The Philippines was one of the original signatories of the UDHR. While the UDHR was originally merely a declaration of principles with no legally binding effect, this does not apply to the Philippines. The Supreme Court has previously declared “the [UDHR] as part of the generally accepted principles of international law and binding on the State.”<sup>83</sup>

Notably, freedom of expression is also protected under the UDHR. Article 19 of the Declaration reads:

“Everyone has the right to **freedom of opinion and expression**; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>84</sup>

This protection is also present under the ICCPR. The ICCPR is a multilateral international convention that was created to operationalize the enforceability of the human rights principles under the UDHR.<sup>85</sup> The Philippines is also one of the original signatories of the ICCPR. But unlike the UDHR, all States which ratify the ICCPR are legally bound to comply with the provisions of the Convention.

Similar to the UDHR, freedom of expression is explicitly protected under Article 19(2) of the ICCPR, which reads:

“Everyone shall have the **right to freedom of expression**; this right shall include **freedom to seek, receive and impart information and ideas of all kinds, regardless of**

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<sup>82</sup> *Universal Declaration of Human Rights*, United Nations Website, *available at* <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last checked Mar. 2023).

<sup>83</sup> Republic v. Sandiganbayan, G.R. No. 104768, 407 SCRA 10, 57, July 21, 2003.

<sup>84</sup> G.A. res. 271A (III), Universal Declaration of Human Rights [hereinafter "UDHR"] (Dec. 10, 1948). (Emphasis supplied.)

<sup>85</sup> Nancy Flowers, *The Universal Declaration of Human Rights: 50 Years Old but Still Coming of Age*, 22 UPDATE ON L. RELATED EDUC. 6, 7 (1998).

**frontiers**, either orally, in writing or in print, in the form of art, or through any other media of his choice.”<sup>86</sup>

The UN Human Rights Committee later expounded on the nature of this right. It held that freedom of opinion and expression are entitled to broad protections under the ICCPR because they are the cornerstones of a free and democratic society.<sup>87</sup> In particular, freedom of expression is protected for a wide range of subjects, such as “political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse.”<sup>88</sup>

Thus, States have an obligation to protect and promote freedom of expression.<sup>89</sup> This includes the obligation to “establish and maintain an enabling environment for civil society to operate freely”.<sup>90</sup> Under the ICCPR, freedom of expression can only be limited if such limitation is (1) provided for under State law, and (2) necessary for the protection of the rights and reputations of others, or the protection of national security, public order, public health, or morals.<sup>91</sup>

Clearly, the chilling effect created by SLAPPs on the freedom of expression falls under none of the valid restrictions on freedom of expression. The fact that SLAPPs are inimical to the principles espoused under the Constitution, UDHR, and ICCPR makes the absence of a comprehensive anti-SLAPP law even more inexplicable.

## **B. Anti-SLAPP Protections Under the Rules of Procedure for Environmental Cases**

There is no greater evidence of the necessity of an anti-SLAPP law than the fact that the Supreme Court itself has acknowledged SLAPP as a defense, albeit in a limited capacity.

As of the writing of this Paper, there is no comprehensive anti-SLAPP law in the Philippines, but previous attempts to do so shall be further discussed later in this Chapter. Currently, the only substantial reference to SLAPPs in the Philippine legal

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<sup>86</sup> International Covenant on Civil and Political Rights [hereinafter “ICCPR”] art. 19(2), Dec. 19, 1966, 999 U.N.T.S. 171. (Emphasis supplied.)

<sup>87</sup> United Nations Human Rights Committee, General comment No. 34, at 1, CCPR/C/GC/34 (Sept. 12, 2011).

<sup>88</sup> *Id.*

<sup>89</sup> Office of the High Commissioner for Human Rights, FREEDOM OF OPINION AND EXPRESSION, *available at* [https://www.ohchr.org/sites/default/files/Documents/Issues/Expression/Factsheet\\_1.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Expression/Factsheet_1.pdf) (last checked Mar. 2023).

<sup>90</sup> Ciampi, *supra* note 19, at 1.

<sup>91</sup> ICCPR art. 19(3).

system is under the *Rules of Procedure for Environmental Cases* (RPEC), a procedural issuance of the Philippine Supreme Court promulgated in 2010. The RPEC provided for the first definition of SLAPP under Philippine law and rules.

The RPEC defines a SLAPP as follows:

*“SEC. 1. Strategic lawsuit against public participation (SLAPP). – A legal action filed to harass, vex, exert undue pressure or stifle any legal recourse that any person, institution or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights shall be treated as a SLAPP and shall be governed by these Rules.”*<sup>92</sup>

In the *Annotations to the Rules of Procedure for Environmental Cases*, the Supreme Court Sub-committee on the RPEC explained that the inclusion of anti-SLAPP provisions was a response to the threat posed by SLAPPs to environmental defenders:

“The Rules recognize that formidable legal challenges may be mounted against those who seek to enforce environmental law, or to assert environmental rights. These legal challenges may be preemptive in character and may be done in order to “chill” the latter. In light of this, the Rules make available a formidable defense in these provisions.

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The constitutional rights to freedom of speech, expression and assembly (and in certain cases, the right to petition the government for redress of grievances) in relation to the right to a balanced and healthful ecology are affected by a SLAPP.”<sup>93</sup>

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<sup>92</sup> ENV'TL PROC. RULE, § 1.

<sup>93</sup> ANNOTATION TO THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES 130 (2010).

The anti-SLAPP provisions of the RPEC cover both civil<sup>94</sup> and criminal<sup>95</sup> cases. Considering that a SLAPP is essentially a harassment suit,<sup>96</sup> the SC crafted the anti-SLAPP provisions of the RPEC to dispose of these cases expeditiously.

In civil environmental cases, a defendant can raise SLAPP as an affirmative defense in their answer. This is because a motion to dismiss is a prohibited pleading for civil cases under the RPEC.<sup>97</sup> However, the RPEC's rules on criminal cases do not carry this same prohibition on pleadings. Thus, in criminal cases, SLAPP can be raised as a defense in a motion to dismiss.<sup>98</sup>

Once a SLAPP defense has been alleged, the court shall conduct a summary hearing, and both parties shall be directed to present evidence to prove whether the suit is a SLAPP.<sup>99</sup>

First, the defendant is required to prove by substantial evidence that “his acts for the enforcement of environmental law is a legitimate action for the protection, preservation and rehabilitation of the environment.”<sup>100</sup> Under Philippine law, substantial evidence is lower than the quantum of evidence ordinarily used to prove allegations in civil cases, which is preponderance of evidence.<sup>101</sup> If the defendant is able to prove his SLAPP defense, the plaintiff must then prove by preponderance of evidence “(1) that the case is not a SLAPP; and (2) the merits of the case.”<sup>102</sup> The court is then mandated to issue a resolution on the defense within 30 days after the summary hearing.<sup>103</sup>

If the court denies the SLAPP defense, the case shall proceed in accordance with the RPEC and any evidence adduced during the hearing shall be treated as evidence on the merits of the case. On the other hand, if the court grants the SLAPP defense, the case shall be dismissed with prejudice, and the court may award such damages, attorney's fees, and costs of suit deemed merited.<sup>104</sup>

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<sup>94</sup> ENVT'L PROC. RULE, Rule 6.

<sup>95</sup> Rule 9.

<sup>96</sup> ANNOTATION TO THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES 130 (2010).

<sup>97</sup> ENVT'L PROC. RULE, Rule 6, § 2.

<sup>98</sup> Rule 19, § 1.

<sup>99</sup> Rule 6, § 3; Rule 19, § 2.

<sup>100</sup> Rule 6, § 3.

<sup>101</sup> *Miro v. Mendoza*, G.R. Nos. 172532 & 172544-45, 710 SCRA 371, 386-387, Nov. 20, 2013. “Substantial evidence is defined as such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. [...] It need not be overwhelming or preponderant, as is required in an ordinary civil case[.]”

<sup>102</sup> ANNOTATION TO THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES 132 (2010).

<sup>103</sup> ENVT'L PROC. RULE, Rule 6, § 4.

<sup>104</sup> Rule 6, § 4.

An analysis of the RPEC’s anti-SLAPP provisions reveals that it shares several similarities with the US anti-SLAPP statutes.

The primary consideration of the RPEC’s anti-SLAPP provisions is to expedite proceedings.<sup>105</sup> The summary nature of proceedings and the prioritization of the hearing and resolution are all intended for the speedy resolution of the SLAPP defense. Doing so reduces the burden imposed by the SLAPP on the target and prevents the defendant from expending excessive costs and time because of protracted court proceedings. As mentioned previously, the depletion of the defendant’s resources, not winning the case, is the actual purpose of filing a SLAPP.

Another important characteristic of the RPEC anti-SLAPP provisions is that if the court grants the defense, the original action shall be dismissed with prejudice.<sup>106</sup> This, coupled with the option to file for damages, attorney’s fees, and costs of the suit through a counterclaim, provide the target with a mechanism to prevent future harassment on the same ground and seek recompense for the costs accrued as a result of the litigation. However, it should be noted that the award of damages and other costs is subject to the discretion of the judge.

While the RPEC anti-SLAPP provisions share some similarities to the modern anti-SLAPP laws of other jurisdictions, the RPEC provisions fall short in several key protections. First, the RPEC anti-SLAPP protections lack the mandatory award of costs present in modern anti-SLAPP statutes, so the target is not guaranteed to be made whole even if they prevail on the SLAPP motion. Moreover, some experts have noted that the discretionary awarding of costs could create a safe haven for abusive litigants.<sup>107</sup> Another notable weakness of the RPEC is the failure to include a provision directing the automatic stay of other proceedings during the pendency of the SLAPP defense. Nevertheless, the prioritization and expedited schedule of SLAPP proceedings could potentially offset the risk of omitting an automatic stay on proceedings. In discussing the weaknesses of the RPEC anti-SLAPP provisions, one should note its most significant caveat—SLAPP can only be raised as a defense in environmental suits. This limitation was emphasized in the court’s ruling in *Mercado v. Lopena*.<sup>108</sup>

In *Mercado*, a certain Ma. Sugar Mercado was one of the petitioners. Mercado’s estranged husband, Kristofer Go, was the private respondent along with several of his relatives. Following a domestic dispute between the estranged spouses, Go and his

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<sup>105</sup> ANNOTATION TO THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES 132 (2010).

<sup>106</sup> ENVTL PROC. RULE, Rule 6, § 4.

<sup>107</sup> Uniform Law Commission, *supra* note 42, at 22.

<sup>108</sup> [Hereinafter “*Mercado*”], G.R. No. 230170, 865 SCRA 509, June 06, 2018.

relatives filed 10 cases against the Mercado for various causes of action.<sup>109</sup> Mercado alleged that the cases filed against her by the respondents were SLAPPs intended to harass, intimidate, and silence her.<sup>110</sup> These cases were allegedly filed with the ultimate goal of draining her resources and forcing her to give up custody of their children.<sup>111</sup> Thus, Mercado sought to have the cases filed against her recognized as SLAPPs and alleged that these SLAPPs constituted “abuse” and “violence against women” under R.A. 9262, or the Anti-Violence Against Women and Their Children Act.<sup>112</sup>

The court ruled against Mercado and reiterated that SLAPPs are inapplicable to non-environmental suits, including cases under R.A. 9262. The court explained its decision as such:

**“SLAPP, as a defense, is a mere privilege borne out of procedural rules; accordingly, it may only be exercised in the manner and within the scope prescribed by the Court as a rule-making body.** Here, petitioners cannot, under the guise of substantial justice, rely on a remedy that is simply not available to them. [...] The Court takes this occasion to remind petitioners that rules of procedure are not a "one-size- fits-all" tool that may be invoked in any and all instances at the whim of the litigant as this would be anathema to the orderly administration of justice.”<sup>113</sup>

Thus, even though the RPEC itself recognizes that a SLAPP is essentially a harassment suit,<sup>114</sup> SLAPP can only be invoked as a defense in cases involving the “enforcement of environmental laws, protection of the environment or assertion of environmental rights.”

This application of SLAPPs is a narrower interpretation of the concept than even the one originally posited by Pring and Canan. Historically, SLAPPs were never understood as exclusive to environmental laws.<sup>115</sup> The dangers outlined by the Supreme Court as the rationale for the creation of the RPEC anti-SLAPP provisions are not limited to environmental law. The same chilling effect that harassment suits may cause is equally likely, if not more likely, to occur in other fields of public interest. A wide

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<sup>109</sup> *Id.* at 517-518.

<sup>110</sup> *Id.* at 520.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 530. (Emphasis supplied.)

<sup>114</sup> ANNOTATION TO THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES 131 (2010).

<sup>115</sup> *Dayrit v. Norquillas*, G.R. No. 201631, Dec. 7, 2021 (Leonen, J., *dissenting*).

range of persons and organizations can become potential SLAPP targets—human rights defenders, journalists, and all other activists and dissidents are equally at risk. Previous authors have noted that targets can range from citizens opposing real-estate developers, consumers who rate online merchants, watchdog organizations against political corruption, or even parents concerned regarding a school’s educational standards.<sup>116</sup>

Unfortunately, under the current legal framework, even when one is faced with a suit that falls under the definition of a SLAPP, SLAPP cannot be raised as a defense if the suit does not involve any environmental laws or rights. Targets are left without a safeguard that directly addresses SLAPPs and must resort to utilizing other remedies available under the law. Thus, it is critical to understand what other legal remedies currently exist under Philippine law and determine if these remedies effectively address the dangers posed by SLAPPs.

## C. Other Existing Legal Remedies

### i. Demurrer to Evidence

A possible existing remedy to a SLAPP is a demurrer to evidence. A demurrer to evidence is a remedy provided under the Rules of Court (“ROC”) and can be availed of in both civil and criminal cases.

Demurrer to evidence in civil cases is found under Rule 33 of the Rules of Court. Section 1 of said Rule reads:

*Section 1. Demurrer to evidence.* — After the plaintiff has completed the presentation of his or her evidence, the defendant may move for dismissal on the ground that upon **the facts and the law the plaintiff has shown no right to relief**. If his or her motion is denied, he or she shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed, he or she shall be deemed to have waived the right to present evidence.<sup>117</sup>

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<sup>116</sup> Simpson, *supra* note 53, at 172; Biche, *supra* note 16, at 426-427.

<sup>117</sup> RULES OF COURT, Rule 33, § 1.

While demurrer to evidence in criminal cases is found under Section 23, Rule 119 of the Rules of Court, which reads:

*Section 23. Demurrer to evidence.* — After the prosecution rests its case, the court may dismiss the action on **the ground of insufficiency of evidence** (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.<sup>118</sup>

As can be observed, a demurrer to evidence in both civil and criminal cases may be granted if the evidence presented by the prosecution fails to establish a *prima facie* case. In the case of *Republic v. De Borja*,<sup>119</sup> the Supreme Court elaborated upon the nature of a demurrer to evidence:

“A demurrer to evidence is **a motion to dismiss on the ground of insufficiency of evidence**. It is a remedy available to the defendant, to the effect that the evidence produced by the plaintiff is insufficient in point of law, whether true or not, to make out a case or sustain an issue. The question in a demurrer to evidence is whether the plaintiff, by his evidence in chief, had been able to establish a *prima facie* case.”<sup>120</sup>

Several legal scholars have noted that the true intent of filing a SLAPP is oftentimes not actually winning the case. Rather, it is to harass the defendant and exhaust their resources through costly and lengthy litigation proceedings.<sup>121</sup> Thus, SLAPPs that do not have any factual or legal basis may be dismissed through a timely demurrer.

While this is a legitimate option to extinguish a SLAPP before the conclusion of the trial, this fails to address the threats posed by SLAPPs. First, the demurrer is only available as a remedy once the prosecution or plaintiff has rested their case.<sup>122</sup> So even if the case is eventually dismissed as a result of the demurrer, the defendant will already have expended more costs and time than if the suit was dismissed before trial had begun. In the context of SLAPP litigation, the damage to the target would have already

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<sup>118</sup> Rule 119, § 23.

<sup>119</sup> *Republic v. De Borja*, G.R. No. 187448, Jan. 9, 2017.

<sup>120</sup> *Id.* at 5. This pinpoint citation refers to the copy of this decision uploaded to the Supreme Court website.

<sup>121</sup> Jack B. Harrison, *Erie SLAPP Back*, 95 WASH. L. REV. 1253 (2020).

<sup>122</sup> RULES OF COURT, Rule 33, § 1; Rule 119, § 23.

been done. Moreover, there is no certainty that the defendant will recoup the expenses incurred as a result of the SLAPP. While the defendant may file a counterclaim for damages and costs, awarding the same is still left to the discretion of the judge.

## ii. Article 32 of the Civil Code

One seldom-invoked legal provision that a SLAPP target may invoke for judicial relief is Article 32 of the Civil Code. Under the Article, a person can file an independent civil action for damages for the violation of civil liberties. The relevant portions of the Article read:

“Article 32. Any public officer or employee, or any private individual, who **directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:**

XXXXXX

(2) **Freedom of speech;**

XXXXXX

(13) The right to take part in a peaceable assembly to petition the Government for redress of grievances;

XXXXXX

In any of the cases referred to in this article, **whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief.** Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.

The indemnity shall include moral damages. Exemplary damages may also be adjudicated.”<sup>123</sup>

According to the Code Commission, this Article was purposefully created for the effective protection of individual rights.<sup>124</sup> It was intended to operationalize the enforceability of the civil and political liberties enshrined in the Constitution.<sup>125</sup>

The Article provides broad protections for the enumerated constitutional liberties, such that a person may be held liable regardless of whether the violator is a public official or private citizen and regardless of whether the action constitutes an offense under some other law.<sup>126</sup> Malice or bad faith does not even need to be proven to hold a person liable under the provision.<sup>127</sup> The plaintiff merely needs to prove by preponderance of evidence that the defendant violated one of the rights enumerated under the Article.

This provision may be used to hold SLAPP filers accountable since it was specifically enacted to address violations of civil liberties that may not be punishable under some other law. As explained by the Code Commission:

“Direct and open violations of the Penal Code trampling upon the freedoms named are not so frequent as those subtle, clever and indirect ways which do not come within the pale of the penal law. **It is in these cunning devices of suppressing or curtailing freedom, which are not criminally punishable, where the greatest danger to democracy lies.** The injured citizen will always have, under the new Civil Code, **adequate civil remedies before the courts** because of the independent civil action, **even in those instances where the act or omission complained of does not constitute a criminal offense.**”<sup>128</sup>

One significant caveat of the provision is that because it is rarely invoked, there is sparse jurisprudence regarding its application. In the times it has been utilized, it is most commonly used to hold persons liable for tangible violations of rights, such as

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<sup>123</sup> CIVIL CODE, art. 32. (Emphasis supplied.)

<sup>124</sup> *Lim v. Ponce de Leon* [hereinafter “*Lim*”], G.R. No. 22554, 66 SCRA 299, 309, Aug. 29, 1975.

<sup>125</sup> Perry L. Pe, THE PHILIPPINE CIVIL CODE CHAPTER ON HUMAN RELATIONS AND CONTEMPORARY CHALLENGES, *available at* <https://www.eumed.net/libros-gratis/2015/1458/1458.pdf> (2015).

<sup>126</sup> CIVIL CODE, art. 32.

<sup>127</sup> *Lim*, 66 SCRA at 309.

<sup>128</sup> *Silahis Int’l Hotel, Inc. v. Soluta*, G.R. No. 160087, 482 SCRA 660, 668, Feb. 20, 2006. (Emphasis supplied.)

blatant violations of property rights.<sup>129</sup> If the provision were to be utilized against SLAPPs, targets may find it difficult to establish violations of freedom of expression which are less direct and tangible, especially if the filer disguises the SLAPP as a different cause of action.

Another problem regarding this legal remedy is that since this is a civil action for damages, this remedy does not provide for the expedited dismissal of the SLAPP. The SLAPP target is not protected from undergoing the lengthy and financially-burdensome litigation process. In fact, the target will have to undertake litigation and win the case if he or she seeks compensation under this provision.

And even if the target wins the civil action, there is no certainty as to the amount of damages he or she will receive as a result of the complaint. The provision does not specify a specific basis for the amount of damages to be awarded, so it can be assumed that such award shall be determined by the facts and circumstances of each case. Thus, targets would have no way of estimating the amount of damages they may receive as a result of litigation and the provision does not even guarantee the reimbursement of attorney's fees and litigation costs.

### **iii. Rule 7, Section 3 of the Revised ROC**

Another possible alternative remedy is found under ROC. Before a pleading or written submission may be submitted to the court, Section 3, Rule 7 of the ROC requires the counsel on record to sign the pleading, and this signature certifies that the counsel has made an inquiry into the contents of the pleading and has determined that the claim sought is warranted under the law.<sup>130</sup> In particular, Section 3(b), Rule 7 of the ROC states that the signature of the counsel certifies the following:

“(b) The signature of counsel constitutes a certificate by him or her that he or she has read the pleading and document; that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

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<sup>129</sup> *See Id.; Lim*, 66 SCRA 299; *MHP Garments, Inc. v. CA*, G.R. No. 86720, 236 SCRA 227, Sept. 02, 1994; *Vinzons-Chato v. Fortune Tobacco Corp.*, G.R. No. 141309, 525 SCRA 11, June 19, 2007.

<sup>130</sup> RULES OF COURT, Rule 7, § 3(c). (Emphasis supplied.)

(1) It is **not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;**

(2) The claims, defenses, and other legal contentions are **warranted by existing law or jurisprudence, or by a non-frivolous argument** for extending, modifying, or reversing existing jurisprudence;

(3) The **factual contentions have evidentiary support** or, if specifically so identified, **will likely have evidentiary support** after availment of the modes of discovery under these rules; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are **reasonably based on belief or a lack of information.**<sup>131</sup>

If the Court determines that there has been a violation of this rule, it is empowered, whether upon motion of one of the parties or *motu proprio*, to sanction the erring counsel or to refer the same to the proper office for appropriate disciplinary action.<sup>132</sup> The court is given the latitude to determine the imposable sanction, as this can range from anything from a simple non-monetary directive to an order to pay a monetary penalty.<sup>133</sup> If the sanction was imposed upon motion of one of the parties and for effective deterrence, the court can even direct the payment of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation, including the fee for filing the motion for sanction.<sup>134</sup>

Considering that SLAPPs are frivolous suits primarily intended to harass defendants with costly and burdensome litigation, SLAPPs are violative of Section 3(b), Rule 7 of the ROC. As such, SLAPP defendants can use this ROC provision to hold the counsel of SLAPP plaintiffs accountable.<sup>135</sup>

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<sup>131</sup> Rule 7, § 3(b).

<sup>132</sup> Rule 7, § 3(c).

<sup>133</sup> Rule 7, § 3(c).

<sup>134</sup> Rule 7, § 3(c).

<sup>135</sup> See Francis Lim, [ANALYSIS | Point of Law] *The lawyer's oath and frivolous cases*, Rappler, Sept. 2, 2019, at <https://www.rappler.com/voices/thought-leaders/239041-analysis-point-of-law-lawyers-oath-frivolous-cases/>.

Consistent with this utilization of the provision, Former Chief Justice Diosdado Peralta previously stated that Section 3, Rule 7 of the ROC was purposefully revised so that judges were given greater power to dismiss frivolous suits from the outset.<sup>136</sup>

However, this ROC provision is likewise insufficient to address SLAPPs. While the provision can theoretically be used to dismiss frivolous suits, there remain serious apprehensions regarding whether this provision will be used in practice. The questionable practicability of this provision is supported by the experience of other legal jurisdictions. In the US, before the enactment of anti-SLAPP laws, a provision similar to Section 3, Rule 7 of the ROC, specifically Rule 11 of the 1937 Federal Rules of Civil Procedure, was present.<sup>137</sup> However, this provision proved ineffective at combatting SLAPPs and was rarely invoked due to "soft standards and meaningless sanctions."<sup>138</sup> The discretionary nature of the sanctions and the difficulty of proving bad faith on the part of the counsel meant that the provision was not a reliable defense against harassment suits.<sup>139</sup> Section 3, Rule 7 of the ROC could face the same problems with respect to enforcement.

Moreover, one being punished under the provision is the counsel and not the party who filed the suit. The provision even explicitly states that any monetary penalty imposed pursuant to the provision cannot be passed by the erring counsel to their client.<sup>140</sup> Effective anti-SLAPP protections should address the problem at its source. The potential SLAPP filers themselves, not the counsel contracted by them, are the ones that should be discouraged from filing baseless suits through the imposition of corresponding economic disincentives.

As can be seen from this discussion, there is presently a lacuna in the law that needs to be addressed. None of the current legal remedies sufficiently address the threats posed by SLAPPs. The Philippine experience mirrors that of the US, in that the unique intent and economic considerations of SLAPPs frustrate traditional legal remedies. None of these remedies address the primary danger posed by a SLAPP—its potential to exhaust the resources of the defendant. SLAPP targets, even if they eventually have the case dismissed, would still have suffered the negative effects of SLAPPs. The existing gap must therefore be addressed through legislation that creates

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<sup>136</sup> Benjamin Pulta, *SC sees revised court rules to reduce frivolous suits*, Philippine News Agency, Sept. 2, 2019, at <https://www.pna.gov.ph/articles/1112940/>.

<sup>137</sup> See *FCF Min.*, G.R. No. 209440, Feb. 15, 2021.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> RULES OF COURT, Rule 7, § 3(c).

safeguards that reflect the protections present in the anti-SLAPP laws of other jurisdictions.

#### **D. Previous Congressional Anti-SLAPP Bills**

The present absence of a comprehensive anti-SLAPP law cannot be said to be for lack of trying. The promulgation of the RPEC in 2010 was soon followed by several attempts to legislate more extensive anti-SLAPP protections. Two bills were filed to address SLAPPs—House Bill No. 3593 (“HB 3593”)<sup>141</sup> and Senate Bill No. 3080 (“SB 3080”).<sup>142</sup> The former was filed by members of the House of Representatives’ Makabayan bloc in 2010 while the latter was filed by Senator Ramon Bong Revilla, Jr. in 2011. The two bills are identical as to their content.

The bills sought to introduce several notable anti-SLAPP protections.

First, the bill utilized a broad definition of activities covered by SLAPP protections. The bill described SLAPPs as suits filed “by reason or arising out of [the defendant’s] exercise of freedom of speech, expression, or of the press, or of the right of the people peaceably to assemble, or petition the government for redress of grievances in matters of public concern[.]”<sup>143</sup> Public concern is likewise broadly defined under the bills as “anything that involves matters of public, social, or community issue, significance, interest, importance, or welfare.”<sup>144</sup>

With respect to the specific protections afforded to SLAPP defendants, the most important is the right to file a SLAPPback against the plaintiff. A SLAPPback is an action for damages that the defendant may file after the final and executory dismissal of a SLAPP.<sup>145</sup> Through a SLAPPback, the SLAPP defendant can then seek recovery of damages, litigation costs, attorney’s fees, and any other reliefs that may be warranted as a result of the SLAPP.<sup>146</sup> However, such awards shall be subject to the discretion of the judge.

However, HB 3593 and SB 3080 lack several of the updated protections found in modern anti-SLAPP laws. The proposed bills lack an automatic stay of proceedings during the pendency of the SLAPP defense. Moreover, the award of damages, litigation costs, and attorney’s fees remains contingent on the filing of a SLAPPback and,

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<sup>141</sup> H. No. 3593, 15th Cong., 1st Sess. (2010). Anti-SLAPP Bill of 2010.

<sup>142</sup> S. No. 3593, 15th Cong., 2nd Sess. (2011). Anti-SLAPP Bill of 2011.

<sup>143</sup> H. No. 3593, § 4(1); S. No. 3593, § 4(1).

<sup>144</sup> H. No. 3593, § 4(2); S. No. 3593, § 4(2).

<sup>145</sup> H. No. 3593, § 4(2), ¶ 1; S. No. 3593, § 4(2), ¶ 1.

<sup>146</sup> H. No. 3593, § 4(2), ¶ 2; S. No. 3593, § 4(2), ¶ 2.

ultimately, the discretion of the judge. As discussed previously, the discretionary award of costs could be abused by SLAPP filers.

While the introduction of an anti-SLAPP law similar to HB 3593 and SB 3080 would be a welcome development, the protections afforded by these bills need updating and a modern anti-SLAPP law should implement protections similar to those discussed under Chapter II.

## V. RECOMMENDATIONS

Future attempts at crafting anti-SLAPP legislation should take note of the experiences of other legal jurisdictions in order to create laws that will better address the threats posed by SLAPPs. As mentioned previously, SLAPPs are intended to harass persons by draining their resources through protracted litigation; thus, anti-SLAPP statutes should protect the target not only from the ultimate judgments of liability, but also from the burdens of trial.<sup>147</sup> The proceeding discussion will identify common protections found in modern anti-SLAPP legislation that may be adopted in a future anti-SLAPP law in the Philippines.

### A. Mechanism for Early Dismissal

An effective anti-SLAPP law should provide for a procedural mechanism that allows targets to raise SLAPP as a defense at the earliest possible opportunity. In other jurisdictions, this is most commonly embodied in a special motion to dismiss or a similar procedural tool.<sup>148</sup> In line with this objective, the procedural tool could also use expedited proceedings to ensure the speedy resolution of the motion, similar to how a SLAPP defense under the RPEC utilizes summary procedure.

Like the RPEC,<sup>149</sup> an anti-SLAPP law could expedite the dismissal of SLAPP by requiring courts to prioritize the hearing and resolution of a SLAPP defense. While some anti-SLAPP statutes require the court to hear and resolve a SLAPP defense within a set period from filing,<sup>150</sup> such a requirement should be tempered by the consideration that doing so could be excessively burdensome to courts with overloaded dockets. Nevertheless, it should be noted that some authors have observed that requiring the court to hear and resolve the defense within a set period could also prevent the abuse

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<sup>147</sup> *Batzel v. Smith*, 333 F.3d 1018, 1025 (9th Cir. 2003).

<sup>148</sup> *Biche*, *supra* note 16, at 460.

<sup>149</sup> ANNOTATION TO THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES 132 (2010).

<sup>150</sup> *See, e.g.*, ENVT'L PROC. RULE, Rule 6, §§ 2, 4.

of anti-SLAPP provisions to merely delay proceedings.<sup>151</sup> If the Court is able to quickly dispose of unmeritorious suits, then the financial and other effects of the suit on the target can be minimized.

The creation of unique procedural mechanisms is not without precedent. In the past, the Supreme Court itself has created special procedural protections in response to pressing threats to fundamental civil and political liberties. Examples of these include the Writ of Amparo which was created to address threats to the right to life, liberty and, security, especially those caused by extrajudicial killings and enforced disappearances;<sup>152</sup> the Writ of Habeas Data which was created to address threats to the right to informational privacy;<sup>153</sup> and the Writ of Kalikasan which was created to address threats to the right to a balanced and healthful ecology.<sup>154</sup>

The Supreme Court previously characterized the Writ of Amparo in particular as preventive and curative in nature since it prevents violations by breaking the expectation of impunity and ensures the subsequent punishment of any offense.<sup>155</sup> Similarly, anti-SLAPP protections should also be preventive and curative with respect to threats to the right to freedom of expression. Such protections should be preventive by discouraging unscrupulous litigants from filing SLAPPs due to the certainty that any frivolous suits will be promptly identified and punished. And curative in the sense that targets are protected from the burdensome effects of SLAPPs and guaranteed compensation at the end of litigation.

## **B. Construction Provision**

To ensure that the right to freedom of expression is protected in all its manifestations, an anti-SLAPP law should include a provision explicitly directing the courts to interpret the provisions of the law broadly. Such a provision exists in the NY<sup>156</sup> and Washington<sup>157</sup> anti-SLAPP laws. The UPEPA drafting committee likewise asserts that such a construction provision is essential to prevent judicial discretion from limiting the scope and application of an anti-SLAPP statute.<sup>158</sup> To further prevent judicial discretion from limiting of the applicability of the anti-SLAPP statute, the law

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<sup>151</sup> Nina Golden, *SLAPP Down: The Use (and Abuse) of Anti-SLAPP Motions to Strike*, 12

RUTGERS J. L. & PUB. POL'Y 426, 457 (2015).

<sup>152</sup> AMPARO WRIT RULE, § 1; *In re Rodriguez*, G.R. No. 191805, 696 SCRA 390, 395, Apr. 16, 2013.

<sup>153</sup> HABEAS DATA WRIT RULE, § 1; *In re Roxas*, G.R. No. 189155, 630 SCRA 211, 239, Sept. 07, 2010.

<sup>154</sup> ENV'TL PROC. RULE, Rule 7, § 1.

<sup>155</sup> *In re Rodriguez*, 696 SCRA at 395.

<sup>156</sup> N.Y. CIV. RIGHTS LAW § 76-a(1)(a) (Westlaw 2023).

<sup>157</sup> WASH. REV. CODE. § 4.105.901 (Westlaw 2023).

<sup>158</sup> Uniform Law Commission, *supra* note 42, at 22.

could have a provision stating that public interest or public concern should also be interpreted broadly.

Any interpretation of an anti-SLAPP law should be done in furtherance of the intended purpose of the statute—the protection of the right to freedom of expression. A narrow interpretation of public interest could unintentionally leave certain persons and groups without directly needed anti-SLAPP protections.<sup>159</sup> Moreover, construction provisions could help “rein in judicial discretion, instill confidence in practitioners, provide consistency for the courts, and quiet much of the judicial and scholarly [] criticism.”<sup>160</sup>

### **C. Mandatory Awarding of Costs**

An effective anti-SLAPP law should also provide for the mandatory award of costs, attorney’s fees, and reasonable litigation expenses. If the target is forced to shoulder the financial burden of a SLAPP, then the filer will have succeeded in his goal of exhausting the target’s resources even if the case is dismissed.

A provision on the mandatory award of costs would shift the financial burden of SLAPPs to the plaintiffs and would be an economic disincentive for pursuing frivolous suits. The anti-SLAPP laws of NY and Washington seem to follow this rationale as both include provisions directing the mandatory award of costs to successful SLAPP defendants.

### **D. Stay of Proceedings**

Anti-SLAPP legislation should provide for an automatic stay of proceedings during the pendency of the SLAPP defense. This minimizes the burden on the target since the target will not be forced to continue with litigation until the court has finally determined that the suit is not a SLAPP.

However, considering that there may be cases that can only be resolved through the presentation of additional evidence, a stay provision should include an exception that allows specific discovery if there is a need for such.<sup>161</sup>

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<sup>159</sup> Andy Black, *Anti-Anti-SLAPP: How the Judiciary's Narrowing of California's Anti-SLAPP Law Could Thwart Legislative Intent*, 94 S. CAL. L. REV. POSTSCRIPT 144, 157 (2020-2021).

<sup>160</sup> *Id.*, at 156.

<sup>161</sup> WASH. REV. CODE. § 4.24.030 (2023).

Considering the delay this could cause with respect to proceedings, prospective legislators could also consider granting the right to file a counterclaim for costs against the SLAPP movant if it is found that the SLAPP defense was merely frivolous or invoked to delay proceedings.<sup>162</sup>

Any provision imposing a stay on proceedings pending the resolution of the SLAPP defense should be compliant with the parties' right to speedy disposition<sup>163</sup> of their cases. With respect to criminal cases, the stay on proceedings should also comply with the constitutional right to speedy trial<sup>164</sup> of the accused.

## **E. Burden-shifting Provision**

Many anti-SLAPP statutes also contain burden-of-proof-shifting provisions. Such provisions are necessary since placing the burden of proof squarely on the SLAPP target could compel the target to expend further resources and worsen the chilling effect caused by the suit.<sup>165</sup> Thus, prospective anti-SLAPP legislation could employ a two-phase procedure such as the one utilized in the NY law or a three-phase procedure such as the one found in the Washington law.

While the Washington statute<sup>166</sup> utilized the *prima facie* standard to avoid violating the right to a trial by jury found under the US Constitution, other jurisdictions such as the Philippines do not carry the same limitation. In fact, the RPEC<sup>167</sup> requires the responding party to prove that assailed lawsuit is not a SLAPP by “preponderance of evidence”, a standard that requires the judge to make a factual determination on the evidence presented by the parties. Other jurisdictions also use a variety of heightened standards such as the “substantial basis” standard<sup>168</sup> and the “likelihood of success” standard<sup>169</sup> to strengthen anti-SLAPP protections and deter frivolous suits. Considering that SLAPPs affect preferred constitutional rights, prospective legislation could impose a standard such as “preponderance of evidence” or even a heightened standard to ensure the protection of freedom of expression.

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<sup>162</sup> See, e.g., WASH. REV. CODE. § 4.24.090 (2023).

<sup>163</sup> CONST. art. VIII, § 16.

<sup>164</sup> Art. VIII, § 14.

<sup>165</sup> Crego & Del Monte, *supra* note 54, at 8.

<sup>166</sup> WASH. REV. CODE. § 4.105.060 (2023).

<sup>167</sup> ENVT'L PROC. RULE, Rule 6, § 3.

<sup>168</sup> N.Y. C.P.L.R. § 3211(g)(1) (2021).

<sup>169</sup> D.C. CODE ANN. § 16-5502 (2021).

## F. Statutory Exemptions

The law may also provide for additional exemptions which can prevent unscrupulous defendants from misusing anti-SLAPP provisions for malicious purposes.<sup>170</sup>

Two examples of these exemptions are the commercial speech exemption and the public interest exemption.

The former is an exemption found in some anti-SLAPP statutes that prevents corporate defendants from using anti-SLAPP protections to quash class-action suits arising from deceptive business practices.<sup>171</sup> Normally, a commercial speech exemption prohibits defendants from availing of anti-SLAPP protections if the lawsuit arises from any statement or conduct by the defendant while the defendant was primarily engaged in the business of selling or leasing goods or services.<sup>172</sup> By instituting a commercial speech exemption, the law will better protect the rights of ordinary consumers and will prevent the dismissal of meritorious claims arising from fraudulent business practices.

On the other hand, the public interest exemption is an exemption present in some legal jurisdictions that prevents the use of anti-SLAPP protections to stifle public interest litigation. Under such an exemption, anti-SLAPP protections cannot be invoked against an action "brought solely in the public interest or on behalf of the general public."<sup>173</sup> However, such an exemption should be construed in such a way that private claims for relief are not unduly frustrated. In California, this exemption has been construed narrowly such that a lawsuit does not fall under the exemption "if any part of [the plaintiff's] complaint seeks relief to directly benefit the plaintiff[.]"<sup>174</sup>

While these exemptions are not mandatory, such exemptions would help ensure that the anti-SLAPP protections shall be used in accordance with the purpose of the law.

## G. Additional Policy Considerations

Though the policy rationale behind anti-SLAPP laws cannot be understated, legislators should keep in mind that anti-SLAPP protections should not be enacted at

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<sup>170</sup> Tanvi Valsangikar, The Need for Uniform Exemptions in State Anti-SLAPP Statutes, 49 RUTGERS L. REC. 1, 18 (2021-2022).

<sup>171</sup> *Id.* at 22.

<sup>172</sup> *Id.* at 18.

<sup>173</sup> *Id.* at 19.

<sup>174</sup> *Id.*

the expense of litigants with legitimate causes of action. The balancing of these two interests is the crux of crafting effective anti-SLAPP legislation. These protections, much like the freedoms they seek to protect, should not be absolute. Meritorious claims should be given their day in court, and the application of these protections should only be limited to the claims which were filed in retaliation to exercises of freedom of expression.

Rather than using anti-SLAPP provisions as a blunt tool to be invoked whenever the right to freedom of expression is involved, it should be considered more like a precise instrument that can be used to excise and eliminate unmeritorious suits.<sup>175</sup> Modern anti-SLAPP laws grant potent protections that, when used indiscriminately, could themselves become the source of abuse and delay. An effective anti-SLAPP law should be crafted in such a way that the abuse of its provisions is equally discouraged.

An effective anti-SLAPP law should be an effective filtering mechanism in that it should be able to protect legitimate interests worthy of adjudication while also protecting legitimate exercises of speech and expression.<sup>176</sup>

## VI. CONCLUSION

*“The freedom of expression is a means of assuring individual self-fulfillment, of attaining the truth, of securing participation by the people in social and political decision-making, and of maintaining the balance between stability and change.” — ABS-CBN Broadcasting Corp. v. COMELEC<sup>177</sup>*

This Paper has traced the considerable evolution of SLAPPs as a weapon against the right to freedom of expression. The prescinding discussions have also revealed how anti-SLAPP protections have likewise evolved to meet the threat posed by SLAPPs. In the Philippines, however, there is a dearth of legal remedies that effectively address this phenomenon despite the increase in suits that fall under the definition of SLAPPs. Thus, the lacuna in the law with respect to effective anti-SLAPP protections can only be resolved through the creation of targeted and purposeful legislation. Such legislation

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<sup>175</sup> See Golden, *supra* note 151, at 454.

<sup>176</sup> SHELDICK, *supra* note 13, at 26.

<sup>177</sup> ABS-CBN Broad. Corp. v. COMELEC, G.R. No. 133486, 323 SCRA 811, 823 Jan. 28, 2000.

needs to create an expansive framework of protections that ensures that citizens are protected from the chilling effect SLAPPs produce on free expression.

Even if the protections introduced by anti-SLAPP laws may seem overly accommodative or unnecessary to some, society stands to lose much if the right to freedom of expression is restricted. From this freedom flows many other inalienable liberties.<sup>178</sup> Freedom of expression is indispensable to the full development of the person<sup>179</sup> and, by extension, the development of society.

In connection with this, a plurality of opinions and criticism, in particular, should not be perceived negatively. The solution to dissent is not its elimination. It is the correction of dubious conduct and fallacious ideologies such that these are finally able to withstand critical thought. Critical speech exists to improve society and its institutions, and democracy will wilt if dissenting voices are cowed into silence.

Discussion is essential to the ascertainment of truth and the triumph of reason. And justice can only flourish when these principles are the cornerstones of a society. A just and prosperous democracy can only be achieved if liberty, in all its manifestations, can be exercised without fear of retribution.

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<sup>178</sup> UN HRC, *supra* note 73.

<sup>179</sup> *Id.*