

# ANTI-SLAPP AND PRO-WOMEN: A STUDY ON THE APPLICABILITY OF THE CONCEPT OF STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION TO CASES INVOLVING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN\*

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## ABSTRACT

Domestic abuse, particularly those committed against women, is not an uncommon topic in Filipino households. To address this problem, Congress has passed Republic Act No. 9262, or the Anti-Violence Against Women and Their Children Act of 2004 (“Anti-VAWC Act”). Since the passing of this landmark legislation, women have had an easier time reporting the abuse and violence committed against them; over the years, however, we have seen that this law no longer suffices. As a response to the many women speaking up about their abuse, the abusers themselves have found a way to use the justice system against the survivors by filing baseless and costly cases, often defamation suits, against these women-survivors, with the goal of silencing them. Given this change in circumstance, our laws should likewise adapt and provide women-survivors with more remedies than before. One way to do this is by making the concept of Strategic Lawsuit Against Public Participation (“SLAPP”) applicable to violence against women and their children (“VAWC”) cases, both substantively and procedurally. This Article argues that SLAPP as a concept should be made applicable to VAWC-related cases in two ways—*first*, substantively, as a cause of action for filing a case under the Anti-VAWC Act, and *second*, procedurally, as a defense that may be interposed within the very same case filed against them.

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## INTRODUCTION

Domestic abuse is not an uncommon topic in Filipino households; news on various kinds of abuse committed in the safety of the home is reported daily.<sup>1</sup> This holds true despite the widespread knowledge that these acts are criminal acts punishable by fine, imprisonment, or both. In recent years, such abuse has evolved from brute force violence to more nuanced forms, such as economic and financial abuse. Furthermore, abuse has even transcended the physical space, as more and more online or cyber-abuse cases occur.<sup>2</sup> Certainly, other forms of domestic violence remain unrecorded, unidentified, and unnoticed to this day.

In the Philippines, acts considered as abuse or violence against women and their children are codified and criminalized in the *Anti-Violence Against Women and Their Children Act of 2004* (“*Anti-VAWC Act*”).<sup>3</sup> Since its signing on March 8, 2004, the *Anti-VAWC Act* has been a refuge for women and children who are survivors of abuse.

### I. VIOLENCE AGAINST WOMEN AND THEIR CHILDREN (VAWC)

The *Anti-VAWC Act* was enacted with the goal of protecting women and children from violence and threats to their personal safety and security.<sup>4</sup> This legislation is also in keeping with the fundamental freedoms guaranteed under the Philippine Constitution, as well as international treaties and obligations to which the Philippines is a party such as the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination

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<sup>1</sup> See Pia Ranada, *During coronavirus lockdown: Abused women, children more vulnerable*, RAPPLER, May 9, 2020, at <https://www.rappler.com/newsbreak/in-depth/during-coronavirus-lockdown-abused-women-children-more-vulnerable>; Christia Marie Ramos, *Over 3,600 cases of violence against women, children reported since lockdown – Duterte report*, INQUIRER.NET, June 8, 2020, at <https://newsinfo.inquirer.net/1288275/over-3600-cases-of-violence-against-women-children-reported-since-lockdown-duterte-report>.

<sup>2</sup> See RG Cruz, *House OKs bill protecting women, children from online abuse, harassment*, ABS-CBN NEWS, Feb. 6, 2020, at <https://news.abs-cbn.com/news/02/06/20/house-oks-bill-protecting-women-children-from-online-abuse-harassment>. Realizing the need to update the law to account for other forms of abuses, particularly abuses that occur in cyberspace, the House of Representatives passed House Bill No. 5869 expanding Republic Act No. 9262 in February 2020. See also S. No. 1632, 18<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2020). This is the Expanded Anti-Violence Against Women and their Children Bill. Despite the approval of its counterpart in the House of Representatives, the bill remained pending in the Senate.

<sup>3</sup> Rep. Act No. 9262 (2004).

<sup>4</sup> § 2.

of all Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (“CRC”).

The Anti-VAWC Act classifies the types of violence against women and their children (“VAWC”) into four, namely: physical violence, sexual violence, psychological violence, and economic abuse.<sup>5</sup> Physical violence refers to acts that involve bodily or physical harm,<sup>6</sup> while sexual violence pertains to those acts that are sexual in nature, as when the abuse involves the reproductive organs.<sup>7</sup> Psychological violence are those “acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and marital infidelity.”<sup>8</sup> Finally, economic abuse refers to acts that attempt to or successfully make a woman financially dependent, as when their partner diminishes their capacity to support themselves.<sup>9</sup>

Section 5 further enumerates the various acts of violence that may be committed against women and their children.<sup>10</sup> Acts of VAWC under this provision include “[c]ausing mental or emotional anguish [...] to the woman

<sup>5</sup> § 3(a).

<sup>6</sup> § 3(a)(A).

<sup>7</sup> § 3(a)(B). “It includes, but is not limited to:

a) rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim’s body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;

b) acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;

c) Prostituting the woman or child.”

<sup>8</sup> § 3(a)(C). “It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.”

<sup>9</sup> § 3(a)(D). “[It] includes, but is not limited to the following:

1. withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;

2. deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;

3. destroying household property;

4. controlling the victims’ own money or properties or solely controlling the conjugal money or properties.”

<sup>10</sup> § 5.

or her child,”<sup>11</sup> “attempting to restrict or restricting the woman’s or her child’s freedom of movement,”<sup>12</sup> and “[e]ngaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress,”<sup>13</sup> among others.<sup>14</sup>

The Anti-VAWC Act is a landmark piece of legislation. It is comprehensive, accounting for various types and acts of violence. However, the law has limited applicability. In particular, it can only be utilized against persons who have committed any of the aforementioned acts of violence “against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode.”<sup>15</sup> Thus, relationship is an essential element that triggers the application of the Anti-VAWC Act. Nonetheless, the law has been immensely helpful to women who have experienced various types of violence.

For instance, in *Dinamling v. People*,<sup>16</sup> a woman-survivor of abuse defined under Section 5(i) of the Anti-VAWC Act filed a complaint against Dinamling, the man with whom she had been in a five-year relationship and had two common children. Section 5(i) provides that the crime of VAWC may be committed through “[c]ausing mental or emotional anguish, public ridicule or humiliation to the woman or her child.”<sup>17</sup> In *Dinamling*, Dinamling publicly humiliated complainant AAA by, among others, punching her, shouting at her, and even throwing her out of the house. The same case listed the elements of Section 5(i) as follows:

1. That the offended party is a woman and/or her child or children;
2. That, pursuant to Section 3 of the Anti-VAWC Act, the woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child; while the woman’s child or children may be legitimate or illegitimate, or living within or without the family abode;

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<sup>11</sup> § 5(i).

<sup>12</sup> § 5(e).

<sup>13</sup> § 5(h).

<sup>14</sup> § 5.

<sup>15</sup> § 3.

<sup>16</sup> [Hereinafter “*Dinamling*”], G.R. No. 199522, 760 SCRA 27, June 22, 2015.

<sup>17</sup> § 5(i).

3. That the offender causes mental or emotional anguish on the woman and/or her child or children; and
4. That the anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support, denial of custody of or access to the children, or similar such acts or omissions.<sup>18</sup>

The case likewise clarified that psychological violence and mental or emotional anguish are both elements of Section 5(i)—psychological violence is the perpetrator’s means of abuse, while mental or emotional anguish is the effect on the survivors.

*Dinamling* further mentioned that “to establish psychological violence as an element of the crime, it is necessary to show proof of commission of any of the acts enumerated in Section 5(i) *or similar such acts*.”<sup>19</sup> Thus, the enumeration in Section 5(i) is not exclusive, and psychological violence includes acts akin to those listed therein. The non-exclusivity of the list is confirmed in *AAA v. People*,<sup>20</sup> where the Supreme Court found the accused guilty of violating Section 5(i) of the Anti-VAWC Act, and stated that “private complainant’s anguish was clearly caused by acts of petitioner *parallel* to those provided by the law.”<sup>21</sup> The act of violence committed in *AAA v. People* was the denial of the use of the appliances and furniture commonly owned by the family.

Harassment through psychological violence can also fall under Section 5(h), which may be committed by “[e]ngaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child.”<sup>22</sup> This provision was discussed in *Ang v. Court of Appeals*.<sup>23</sup> In this case, *Ang* sent the private respondent a message containing a picture of her face pasted on the body of a naked woman. Due to the anguish, psychological distress, and humiliation she suffered, private respondent filed a complaint under Section 5(h) of the Anti-VAWC Act. In ruling for the private respondent, the Supreme Court enumerated the elements of the crime of VAWC through harrassment under Section 5(h) of the Act as follows:

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<sup>18</sup> *Dinamling*, 760 SCRA 27, 45.

<sup>19</sup> *Id.* at 29–30. (Emphasis supplied.)

<sup>20</sup> [Hereinafter “*AAA*”], G.R. No. 229762, 887 SCRA 432, Nov. 28, 2018.

<sup>21</sup> *Id.* at 444. (Emphasis supplied.)

<sup>22</sup> Rep. Act No. 9262 (2004), § 5(h).

<sup>23</sup> [Hereinafter “*Ang*”], G.R. No. 182835, 618 SCRA 592, Apr. 20, 2010.

1. That the offender has or had a sexual or dating relationship with the offended woman;
2. That the offender, by themselves or through another, commits *an act or series of acts of harassment against the woman*; and
3. That the harassment alarms or causes substantial emotional or psychological distress to her.<sup>24</sup>

Accordingly, the photo sent by Ang was deemed to be an act of harassment that caused distress to the private respondent. Further, the Supreme Court clarified that, in keeping with the policy of protecting women, a single act of harassment can already constitute a violation of Section 5(h).

Other VAWC cases involve economic abuse under Section 5(e). This provision considers as VAWC the act of “[a]ttempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman’s or her child’s freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child.”<sup>25</sup>

The most common form of economic abuse cited is the deprivation of financial support under Section 5(e)(2) of the Anti-VAWC Act. For instance, the case of *Melgar v. People*<sup>26</sup> was instituted by AAA because Melgar refused to give support to AAA and their common child, BBB, despite his capacity to do the same as evidenced by his lavish lifestyle. Worse, Melgar conveyed to another person a parcel of land that was supposed to answer for the support-in-arrears of BBB. In his defense, Melgar alleged that his denial of support did not cause AAA and BBB mental or emotional anguish. However, the Supreme Court did not find this explanation meritorious and declared that “the deprivation or denial of support, by itself and even without the additional element of psychological violence, is already specifically penalized [by Section 5(e) of the Anti-VAWC Act].”<sup>27</sup> Thus, the Supreme Court clarified in this case that economic abuse under Section 5(e) need not result in mental anguish. The mere commission of any of the enumerated or similar acts is sufficient to trigger the application of the provision.

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<sup>24</sup> *Id.* at 600. (Emphasis supplied.)

<sup>25</sup> Rep. Act No. 9262 (2004), § 5(e).

<sup>26</sup> [Hereinafter “*Melgar*”], G.R. No. 223477, 855 SCRA 522, Feb. 14, 2018.

<sup>27</sup> *Id.* at 534.

Clearly, what the Supreme Court enunciated in *Garcia v. Drilon*<sup>28</sup> holds true: “Physical violence is only the most visible form of abuse. Psychological abuse, particularly forced social and economic isolation of women, is also common.”<sup>29</sup> The Anti-VAWC Act has been, and still is, a very helpful tool in bringing such abuses out in the open. But could there be other forms of harassment not yet recognized and sufficiently addressed by Philippine laws?

## II. STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION (SLAPP)

Strategic Lawsuit Against Public Participation (“SLAPP”) is a term first coined by researchers Penelope Canan and George Pring in 1988 to label cases that attempt “to use civil tort action to stifle political expression.”<sup>30</sup> Their paper *Strategic Lawsuit Against Public Participation*<sup>31</sup> sampled 100 cases and studied the commonalities among these SLAPP suits. They noticed that the typical configuration of these cases is simple: One party complains to a government body or entity, then the other party initiates a lawsuit as a form of retaliation.

According to Canan and Pring, a SLAPP suit is:

1. [A] civil complaint or counterclaim (for monetary damages and/or injunction);
2. [F]iled against non-governmental individuals and/or groups;
3. [B]ecause of their communications to a government body, official, or the electorate;
4. [O]n an issue of some public interest or concern.<sup>32</sup>

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<sup>28</sup> G.R. No. 179267, 699 SCRA 352, June 25, 2013. This case started when Garcia’s wife filed for a temporary protection order (TPO) against him pursuant to the Anti-VAWC Act. The wife claimed to be a victim of physical abuse as well as emotional, psychological, and economic violence as a result of marital infidelity. Before the Supreme Court, petitioner Garcia questioned the constitutionality of the Anti-VAWC Act. He claimed, among others, that the law is discriminatory, unjust, violative of the equal protection clause, and runs counter to the due process clause of the Constitution.

<sup>29</sup> *Id.* at 415.

<sup>30</sup> Penelope Canan & George Pring, *Strategic Lawsuits against Public Participation*, 35 SOC. PROBL. 506, 506 (1988).

<sup>31</sup> *Id.*

<sup>32</sup> George Pring, *SLAPPs: Strategic Lawsuits against Public Participation*, 7 PACE ENVTL. L. REV. 3, 8 (1989). See also Penelope Canan & George Pring, *Studying Strategic Lawsuits Against Public Participation: Mixing Quantitative and Qualitative Approaches*, 22 LAW SOC. REV. 385, 387 (1988).

Researchers Dwight Merriam and Jeffrey Benson<sup>33</sup> add another characteristic of SLAPP suits: that the suits are without merit and contain an ulterior political or economic motive. For indeed, SLAPP suits are baseless and lack a legitimate cause of action.

At its inception, a SLAPP was a means to prevent political participation in particular, rather than public participation as a whole. It was initially characterized as a suit concerning an issue of some political interest.<sup>34</sup> Over the years, SLAPP's usage has grown and expanded; it did not remain confined in the political arena. Today, SLAPP suits are instituted even with respect to personal actions or private interests.

Retaliation, prevention, and intimidation are all at the very core of SLAPP cases.<sup>35</sup> SLAPP suits are intended to harass and intimidate the other party. At the same time, they are intended to be an economic burden on those who may not have the money and resources to defend or maintain several suits at a time. As Pring puts it, "[t]he price is a multimillion-dollar lawsuit and the expenses, lost resources, and emotional stress such litigation brings."<sup>36</sup>

Other jurisdictions have noted the dilatory effects of SLAPP suits on their citizens and have crafted legislation to combat these baseless and expensive suits. For instance, in the United States, 27 out of 50 states have their own Anti-SLAPP laws.<sup>37</sup> In Australia, following the infamous *Gunns 20*<sup>38</sup> case, the government introduced the Protection of Public Participation Act 2008, which imposed financial penalties on persons who bring suits for an improper purpose as defined in the law.<sup>39</sup> In 2009, the Quebec National Assembly adopted Bill 9, or An Act to amend the Code of Civil Procedure, to prevent improper use of the courts and promote freedom of expression and citizen participation in public debate.<sup>40</sup> These Anti-SLAPP laws, among

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<sup>33</sup> Dwight Merriam & Jeffrey Benson, *Identifying and Beating a Strategic Lawsuit Against Public Participation*, 3 DUKE ENVTL. L. POL'Y F. 17 (1993).

<sup>34</sup> Pring, *supra* note 32; Canan & Pring, *supra* note 32.

<sup>35</sup> Brenda Wells & Chad Marzen, *Getting SLAPPed: A 21st Century Business Risk*, 12 SMALL BUS. INST. J. 28, 30 (2016).

<sup>36</sup> Pring, *supra* note 32, at 6.

<sup>37</sup> Reporters Committee for Freedom of the Press, *Anti-SLAPP Legal Guide*, available at <https://www.rcfp.org/anti-slapp-legal-guide/> (last checked June 2022).

<sup>38</sup> *Gunns Ltd. v. Marr* [2005] VSC 251 (18 July 2005) (Austl.).

<sup>39</sup> Greg Ogle, *Anti-SLAPP Law Reform in Australia*, 19 REV. EUR. COMP. & INT'L ENVTL. L. 35 (2010). The author nonetheless points out that the law passed was weak.

<sup>40</sup> Normand Landry, *From the Streets to the Courtroom: The Legacies of Quebec's Anti-SLAPP Movement*, 19 REV. EUR. COMP. & INT'L ENVTL. L. 58, 58 (2010).



others, allow SLAPP defendants to allege in their defenses that the case was instituted against them merely as a harassment suit.

Because the main purpose of SLAPP cases is to harass and vex the adverse party or the SLAPP defendant, it is not normally the intention of the SLAPP plaintiff to win. In fact, most plaintiffs try to drag the case out for as long as possible in order for it to be a continuing burden on the defendant.<sup>41</sup> Where the cases are eventually decided, the defendants almost always win. Canan and Pring's study showed that 68% or over two-thirds of the cases were dismissed as early as the first court appearance.<sup>42</sup> But the SLAPP defendant's victory in court does not matter, for the SLAPP plaintiff has already achieved their goal: to distract, intimidate, and possibly silence the defendant.<sup>43</sup>

SLAPP suits are problematic not only because they are baseless and unfounded, but also because they limit public participation and threaten free communication.<sup>44</sup> While SLAPP suits come in different forms, the most common allegation made therein is defamation.<sup>45</sup> This was true in as early as 1989, when Pring sampled 228 SLAPP cases and found that 53% involved charges for defamation.<sup>46</sup> Because of this, SLAPP suits are notorious for their "chilling effect" on free speech.<sup>47</sup> The act of filing—or sometimes even just the threat of filing—a SLAPP suit is enough to discourage an individual from speaking up. Nonetheless, the right to free speech and to petition are common arguments used by SLAPP defendants to fortify their defenses. In the United States, the Petition Clause in the First Amendment is a popular recourse for defendants facing SLAPP suits, and more often than not, this argument prevails.<sup>48</sup>

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<sup>41</sup> Wells & Marzen, *supra* note 35, at 5.

<sup>42</sup> Canan & Pring, *supra* note 30, at 514.

<sup>43</sup> Merriam & Benson, *supra* note 33, at 35.

<sup>44</sup> Pamela Shapiro, *SLAPPs: Intent or Content: Anti-SLAPP Legislation Goes International*, 19 REV. EUR. COMP. & INT'L ENVTL. L. 14, 16 (2010).

<sup>45</sup> Wells & Marzen, *supra* note 35, at 3.

<sup>46</sup> Pring, *supra* note 32, at 9. "In the 228 cases we have studied, the typical legal charges are defamation (53%), business torts (32%), judicial torts (20%), conspiracy (18%), constitutional-civil rights violations (13%), and nuisance/other (32%)."

<sup>47</sup> See Shine Tu & Nicholas Stump, *Free Speech in the Balance: Judicial Sanctions and Frivolous SLAPP Suits*, 54 LOY. L.A. L. REV. 623, 629 (2020). This article advocates for heavier judicial sanctions and penalties on unfounded suits due to the researchers' finding that SLAPP plaintiffs often think that the benefits of suppressing critical speech through the filing of a SLAPP suit outweigh the current costs of monetary sanctions.

<sup>48</sup> U.S. CONST. amend. I. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

### A. SLAPP in Foreign Jurisdictions

To gain a deeper understanding of SLAPP suits, it is proper to look at cases that have utilized and tackled this concept. As mentioned, most SLAPP suits come in the form of defamation suits. It is no surprise then that most SLAPP targets are people in the public sphere, particularly media icons.

Possibly the most popular SLAPP case is that filed by the Texas Cattle Ranchers against Oprah Winfrey in 1996.<sup>49</sup> In the case, the Texas Cattle Ranchers sued Winfrey due to her statement in the program *Dangerous Food* that she would not eat hamburgers again. This statement was uttered after Winfrey had interviewed experts on the Mad Cow Disease. The Texas Cattle Ranchers claimed that *Dangerous Food* is falsely suggesting that U.S. beef is highly dangerous because of the Mad Cow Disease, and that a horrible epidemic worse than AIDS could occur from eating them. They contend that after the show's broadcast, the beef market crashed. Thus, they alleged a whopping amount of more than USD 12 million in damages. The jury ruled in Winfrey's favor, and the ruling was affirmed by the U.S. Fifth Circuit Court in 2000. The Fifth Circuit Court decision reiterated that the defendants failed "to meet their burden of establishing the 'of and concerning' element of the defamation cause of action."<sup>50</sup> In other words, the Court found the charge of defamation against Winfrey baseless.

Another popular SLAPP case involved celebrity Sacha Baron Cohen, US television network Channel 4, and HBO's *Da Ali G Show*.<sup>51</sup> In that case, the complainant alleged that while playing the role of Ali G, Cohen had libeled her name during a spoof interview with historian Gore Vidal. The case was finally dismissed in 2009, with the court holding that "[n]o reasonable person could consider the statements made by Ali G on the program to be factual."<sup>52</sup> Simply put, the suit was unfounded.

However, journalists and celebrities are not the only targets of SLAPP suits. Unfortunately, women-survivors of abuse who courageously speak up about their experiences are often silenced, or at least attempted to be silenced, by baseless and expensive cases filed against them.<sup>53</sup>

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<sup>49</sup> Texas Beef Group v. Winfrey, 201 F.3d 680 (2000).

<sup>50</sup> *Id.* at 686.

<sup>51</sup> Doe v. Home Box Office, Inc., SC092739 (Cal. Super. Ct. 2009).

<sup>52</sup> *Id.* at 3.

<sup>53</sup> Ken Armstrong & T. Christian Miller, *When Sexual Assault Victims are Charged with Lying*, N.Y. TIMES, Nov. 24, 2017, at <https://www.nytimes.com/2017/11/24/opinion/sunday/sexual-assault-victims-lying.html>.

In 2002, Catholic priest Msgr. Lawrence Baird sued a woman who publicly accused him of making sexual advances toward her.<sup>54</sup> The judge threw out Baird's case for being a SLAPP suit and even ordered him to pay the woman's legal fees. In 2004, another Catholic priest, Msgr. Joseph Alzugaray, filed a libel suit against a girl who accused him of molesting her, as well as against national support group Survivors Network for those Abused by Priests.<sup>55</sup> The cases he filed were likewise dismissed by the Los Angeles County Superior Court.<sup>56</sup>

In 2018, former US senatorial candidate Roy Moore filed defamation charges against women who publicly accused him of sexual misconduct.<sup>57</sup> Leigh Corfman, Beverly Nelson, and Debbie Gibson claimed that Moore made sexual advances toward them when they were teenagers. Moore vehemently denied their accusations, so Corfman sued Moore and his campaign team for defamation.<sup>58</sup> After Moore's defeat for a Senate seat, he filed a countersuit against Corfman, Nelson, and Gibson for allegedly being part of a political conspiracy to undermine his campaign. Moore's defamation suit has been suspended pending resolution of Corfman's case.<sup>59</sup>

The most popular SLAPP case filed against a woman alleged to be a survivor of harassment is that involving Hollywood celebrities Johnny Depp and Amber Heard. Depp and Heard got married in 2015. In 2016, Heard filed for divorce, claiming that Depp had been physically abusive. Heard also obtained a temporary restraining order against him. Their divorce was finalized in 2017, and in 2018, Heard wrote an op-ed for the Washington Post as an alleged survivor of domestic abuse.<sup>60</sup> Depp was not mentioned by name in the op-ed, but nonetheless sued Heard for defamation three months after

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<sup>54</sup> Jean Guccione, *Some Priests are Suing Their Accusers*, L.A. TIMES, Mar. 5, 2004, at <https://www.latimes.com/archives/la-xpm-2004-mar-05-me-priests5-story.html>.

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

<sup>56</sup> Jean Guccione, *Priest's Libel Suit is Dismissed*, L.A. TIMES, May 13, 2004, at <https://www.latimes.com/archives/la-xpm-2004-may-13-me-priest13-story.html>.

<sup>57</sup> *Roy Moore sues women who accused him of sexual misconduct*, BBC NEWS, May 1, 2018, at <https://www.bbc.com/news/world-us-canada-43964909>.

<sup>58</sup> Chris Kenning, *Alabama woman who accused Roy Moore of sexual abuse sues for defamation*, REUTERS, Jan. 5, 2018, at <https://www.reuters.com/article/us-usa-election-alabama-idUSKBN1EU03Q>.

<sup>59</sup> Kim Chandler, *Roy Moore defamation lawsuit against accusers is paused*, AP NEWS, Aug. 17, 2019, at <https://apnews.com/article/07ae4a2c8e8a4cb793e3ad42003185cb>.

<sup>60</sup> Amber Heard, *Opinion: Amber Heard: I spoke up against sexual violence — and faced our culture's wrath. That has to change*, WASHINGTON POST, Dec. 18, 2018, available at [https://www.washingtonpost.com/opinions/ive-seen-how-institutions-protect-men-accused-of-abuse-heres-what-we-can-do/2018/12/18/71fd876a-02ed-11e9-b5df-5d3874f1ac36\\_story.html](https://www.washingtonpost.com/opinions/ive-seen-how-institutions-protect-men-accused-of-abuse-heres-what-we-can-do/2018/12/18/71fd876a-02ed-11e9-b5df-5d3874f1ac36_story.html).

the article was published.<sup>61</sup> On June 1, 2022, the Virginia Court ruled in favor of Depp, found Heard guilty of defamation, and awarded Depp USD 10,350,000 in damages. On the other hand, Heard was awarded only USD 2,000,000 for her countersuit.<sup>62</sup> Whether Heard herself was likewise abusive is beside the point; the very filing of the defamation case is enough to confirm that attempts to silence and stifle women-survivors who are speaking up about their abuse are made through multimillion SLAPP suits. Worse, the Depp case has shown that alleged abusers have a chance of winning, notwithstanding concrete proof of the acts of violence and abuse they have caused the survivors.<sup>63</sup>

It is apparent from the cases presented that filing a SLAPP suit is a very effective intimidation tactic. The cost and emotional burden that come with such suits deter people from speaking up about their abuse. Worse, they discourage women-survivors from reporting the abuse they experienced. Not only do SLAPP suits have the potential to silence survivors, but they also increase their anguish by causing unnecessary expenses and added emotional, mental, and psychological burdens. Thus, in 2018, the Seattle Times published an article advocating for better Anti-SLAPP laws to protect “#MeToo” survivors from retaliatory suits.<sup>64</sup>

## B. SLAPP in the Philippines

In the Philippines, the term SLAPP has only been allowed and utilized in relation to environmental cases. It was first introduced by the Supreme Court in A.M. No. 09-6-8-SC, or the Rules of Procedure for Environmental Cases (“RPEC”). Rule 1, Section 4(g) defines SLAPP as “an action whether civil, criminal or administrative, brought against any person, institution or any government agency or local government unit or its officials and employees, with the intent to harass, vex, exert undue pressure or stifle any legal recourse that such person, institution or government agency has taken or may take in

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<sup>61</sup> *Johnny Depp seeks delay to US defamation trial due to *Fantastic Beasts 3* filming*, BBC NEWS, Sept. 1, 2020, at <https://www.bbc.com/news/entertainment-arts-53983386>.

<sup>62</sup> Bill Chappell & Jaclyn Diaz, *Depp is awarded more than \$10M in defamation case against Heard and she gets \$2M*, NPR, June 1, 2022, at <https://www.npr.org/2022/06/01/1102118755/depp-heard-trial-verdict>.

<sup>63</sup> See *Depp v. News Group Newspapers Ltd.*, [2020] EWHC (QB) 2911, [575], [585] (Eng.).

<sup>64</sup> Bruce Johnson & Antoinette Bonsignore, *Protect #MeToo victims from retaliatory lawsuits*, SEATTLE TIMES, Jan. 23, 2018, available at <https://www.seattletimes.com/opinion/protect-metoo-victims-from-retaliatory-lawsuits/>.

the enforcement of environmental laws, protection of the environment or assertion of environmental rights.”<sup>65</sup> Likewise, Rule 6<sup>66</sup> and Rule 19<sup>67</sup> of the

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<sup>65</sup> ENV'TL PROC. RULE, Rule 1, § 4(g).

<sup>66</sup> Section 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.

Section 2. *SLAPP as a defense; how alleged*. - In a SLAPP filed against a person involved in the enforcement of environmental laws, protection of the environment, or assertion of environmental rights, the defendant may file an answer interposing as a defense that the case is a SLAPP and shall be supported by documents, affidavits, papers and other evidence; and, by way of counterclaim, pray for damages, attorney's fees and costs of suit.

The court shall direct the plaintiff or adverse party to file an opposition showing the suit is not a SLAPP, attaching evidence in support thereof, within a non-extendible period of five (5) days from receipt of notice that an answer has been filed.

The defense of a SLAPP shall be set for hearing by the court after issuance of the order to file an opposition within fifteen (15) days from filing of the comment or the lapse of the period.

Section 3. *Summary hearing*. - The hearing on the defense of a SLAPP shall be summary in nature. The parties must submit all available evidence in support of their respective positions. The party seeking the dismissal of the case must prove by substantial evidence that his act for the enforcement of environmental law is a legitimate action for the protection, preservation and rehabilitation of the environment. The party filing the action assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP and is a valid claim.

Section 4. *Resolution of the defense of a SLAPP*. - The affirmative defense of a SLAPP shall be resolved within thirty (30) days after the summary hearing. If the court dismisses the action, the court may award damages, attorney's fees and costs of suit under a counterclaim if such has been filed. The dismissal shall be with prejudice.

If the court rejects the defense of a SLAPP, the evidence adduced during the summary hearing shall be treated as evidence of the parties on the merits of the case. The action shall proceed in accordance with the Rules of Court.

<sup>67</sup> Section 1. *Motion to dismiss*. - Upon the filing of an information in court and before arraignment, the accused may file a motion to dismiss on the ground that the criminal action is a SLAPP.

Section 2. *Summary hearing*. - The hearing on the defense of a SLAPP shall be summary in nature. The parties must submit all the available evidence in support of their respective positions. The party seeking the dismissal of the case must 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. The party filing the action assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP.

Section 3. *Resolution*. - The court shall grant the motion if the accused establishes in the summary hearing that the criminal case has been filed with intent 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.

If the court denies the motion, the court shall immediately proceed with the arraignment of the accused.

RPEC mention SLAPP and expound on its application as a defense available in both civil and criminal environmental litigation.

Pursuant to the RPEC, “the allegation of the lawsuit being a SLAPP removes the immediate need to challenge the suit based on the merits of the case.”<sup>68</sup> In other words, the RPEC allows a swift dismissal of the SLAPP case without the necessity and burden of undergoing a full-blown trial. Consequently, it protects two vital resources of the SLAPP defendant—time and money.<sup>69</sup>

Other than in the RPEC, SLAPP has not been made applicable to other matters in this jurisdiction, whether through national legislation by Congress or through procedural rules by the Supreme Court.

### C. The Case of *Mercado v. Lopeña*<sup>70</sup>

Despite the limited applicability of the concept of SLAPP in the Philippines, there was an attempt to introduce and apply it to VAWC-related suits in the case of *Mercado v. Lopeña*. The case, a petition for certiorari and prohibition under Rule 65 of the Rules of Court, arose from domestic disputes between estranged spouses, petitioner Sugar Mercado and private respondent Kristofer Jay Go.

In 2015, petitioner Mercado filed a civil case for the issuance of a protection order against respondent Go. In that civil case, Mercado also complained of Go’s acts allegedly constituting domestic violence. At the same time, Mercado filed a criminal complaint for a violation of the Anti-VAWC Act against Go. The Regional Trial Court (RTC) of Quezon City ruled in favor of Mercado in the civil case, and issued a Permanent Protection Order (PPO) in her favor. Mercado’s criminal complaint, however, was dismissed.

Subsequently, Mercado filed four more cases against Go. On the other hand, Go filed 10 cases against Mercado. Of the 10 cases filed against Mercado, two were for libel. Other cases filed against her included physical injuries, oral defamation, slander by deed, unjust vexation, grave threats, indirect contempt, and violations under Republic Act No. 7610.<sup>71</sup>

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<sup>68</sup> Numeriano Anton C. Rodriguez III, *Expanding the Boundaries of Legal Protection for the Environment: The PEISS as a Tool for Environmental Litigation*, 93 PHIL. L.J. 1313, 1325 (2020).

<sup>69</sup> *Id.* at 1326.

<sup>70</sup> [Hereinafter “*Mercado*”], G.R. No. 230170, 865 SCRA 509, Jun. 6, 2018.

<sup>71</sup> Rep. Act No. 7610 (1992). This is the Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

It is with this factual background that Mercado instituted the case before the Supreme Court. Mercado averred that the cases filed against her are in fact forms of SLAPP intended to harass, intimidate, and silence her. Mercado claimed that the cases were ultimately filed to pressure her to give up custody of their minor children. Mercado further argued that this should fall under “abuse” and “violence against women” as defined under the Anti-VAWC Act. She prayed for the Court to declare the cases filed by Go as SLAPP suits, and for the Court to amend A.M. No. 04-10-11-SC,<sup>72</sup> which provides the Rule on Violence Against Women and Children (“VAWC Rule”), by including a provision that would address SLAPP cases filed against women-survivors of abuse.

Mercado’s petition was dismissed by the Supreme Court in 2018. The Court held that Mercado availed of the wrong procedure, and explained that its rule-making power cannot be invoked through a Rule 65 petition. Further, the Court stated that the concept of SLAPP is inapplicable to cases of domestic violence against women and children, as the concept in this jurisdiction has only been made to apply in environmental cases thus far.

While it is admitted that Mercado’s petition may have been procedurally flawed, the petition nonetheless presented a good and valid point with respect to the application of the concept of SLAPP in non-environmental cases. In other words, Mercado’s position—that SLAPP is a concept that should be applied to VAWC cases—does have a legal and sound basis.

### III. APPLICATION OF SLAPP TO VAWC-RELATED CASES

Given the definition and usage of SLAPP, as well as the definition and enumeration of acts that constitute violence or abuse against women and their children, it is respectfully argued that, substantively, filing a SLAPP case against a woman is an act that should be considered VAWC. In particular, SLAPP can fall under two types of violence as defined under the Anti-VAWC Act, namely psychological violence and economic abuse. Additionally, there is a need to amend the VAWC Rule in order to recognize and address SLAPP cases filed against women-survivors of violence for the sole purpose of harassing or intimidating them.

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<sup>72</sup> VAWC RULE.

In other words, this Article argues that SLAPP as a concept should be made applicable to VAWC-related cases in two ways—*first*, substantively, as a cause of action for filing a case under the Anti-VAWC Act, and *second*, procedurally, as a defense that may be interposed within the very same case filed against them.

## A. Substantive Application: SLAPP as a Form of VAWC

### 1. SLAPP as Psychological Violence

First, a SLAPP suit can be considered a form of psychological violence under the Anti-VAWC Act. In particular, psychological violence under Section 5(i) is applicable because filing a SLAPP suit against a woman has the effect of intimidating, humiliating, and psychologically manipulating her.<sup>73</sup> To reiterate, the elements of Section 5(i), as enunciated in *Dinamling*, are:

1. That the offended party is a woman and/or her child or children;
2. That, pursuant to Section 3 of the Anti-VAWC Act, the woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child; while the woman's child or children may be legitimate or illegitimate, or living within or without the family abode;
3. That the offender causes mental or emotional anguish on the woman and/or her child or children; and
4. That the anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support, denial of custody of or access to the children, or similar such acts or omissions.<sup>74</sup>

Regarding the third element of mental or emotional anguish, it has been established that SLAPP suits cause significant mental and emotional toll on SLAPP defendants.<sup>75</sup> Emotional and psychological distress are among the primary effects of a SLAPP suit on the targets thereof. In fact, they are among the primary objectives or motives of SLAPP plaintiffs as well. In like manner,

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<sup>73</sup> Rep. Act No. 9262 (2004), §5(i). “Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child [.]”

<sup>74</sup> *Dinamling*, 760 SCRA 27, 45. (Emphasis supplied.)

<sup>75</sup> Pring, *supra* note 32, at 6.



the mere threat of filing a SLAPP suit against women-survivors of abuse can already cause psychological distress as they become discouraged to come forward and express their truth.

As to the fourth element, having to litigate a case, baseless as it may be, is still intimidating and overwhelming, both financially and mentally. Likewise, to be confronted with a suit can cause humiliation and embarrassment to the defendants, and opens them up to public ridicule, as seen in the highly publicized defamation case against Amber Heard. Clearly then, SLAPP falls under the acts enumerated in the provision. Even if it does not strictly fall under an enumerated act, it still constitutes a similar act and is thus covered by Section 5(i) following the rule of *ejusdem generis*<sup>76</sup> in statutory construction. Indeed, the cases of *Dinamling* and *AAA* have confirmed that the list in Section 5(i) is not exclusive and admits of acts similar to those enumerated.

Another provision in the Anti-VAWC Act that may apply to SLAPP suits is Section 5(h), which considers as harassment the act of “[e]ngaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child.”<sup>77</sup> The elements of Section 5(h), as stated in *Ang*, are as follows:

1. That the offender has or had a sexual or dating relationship with the offended woman;
2. That the offender, by themselves or through another, commits *an act or series of acts of harassment against the woman*; and
3. That the harassment alarms or causes substantial emotional or psychological distress to her.<sup>78</sup>

To reiterate, filing a SLAPP suit against a woman, or the threat of such filing, is more than enough to cause her emotional or psychological distress. Thus, pursuant to the ruling in *Ang*, this single act of harassment is sufficient to constitute a violation of Section 5(h).

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<sup>76</sup> DANTE GATMAYTAN, LEGAL METHOD ESSENTIALS 2.0 246 (2014). “Where a statute describes things of a particular class or kind accompanied by words of a generic character, the generic word is usually limited to things of a similar nature with those particularly enumerated.”

<sup>77</sup> Rep. Act No. 9262 (2004), § 5(h).

<sup>78</sup> *Ang*, 618 SCRA 592, at 600. (Emphasis supplied.)

Given the foregoing, it is clear that in one way or another, the act of filing a SLAPP suit against a woman survivor of abuse, or even the threat thereof, is in itself a form of harassment through psychological violence. Consequently, it should be recognized as a substantive cause of action for a violation of the Anti-VAWC Act.

## 2. *SLAPP as Economic Abuse*

Moreover, filing a SLAPP suit against a woman can constitute economic abuse as defined under the Anti-VAWC Act. As previously discussed, maintaining a suit can be economically and financially burdensome. It costs a lot of money and can easily drain one's resources.<sup>79</sup> Hence, while a SLAPP suit does not necessarily make a woman financially dependent on her partner, it adds some level of economic struggle, especially if the woman has no resources to begin with.

Economic abuse under the Anti-VAWC Act is governed by Section 5(e). It must be emphasized that the enumeration in the provision is not exclusive. Under Section 5(e), an act of VAWC includes:

Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. *This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct[.]*<sup>80</sup>

Thus, following the rule of *ejusdem generis*<sup>81</sup> in statutory construction, economic abuse includes acts that are similar to or of the same kind as those enumerated in the law. Accordingly, the acts listed in the Anti-VAWC Act are as follows:

- (1) Threatening to deprive or actually depriving the woman or her child of custody to her/his family;

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<sup>79</sup> Pring, *supra* note 32, at 6.

<sup>80</sup> Rep. Act. No. 9262 (2004), § 5(e). (Emphasis supplied.)

<sup>81</sup> Gatmaytan, *supra* note 76, at 246. "Where a statute describes things of a particular class or kind accompanied by words of a generic character, the generic word is usually limited to things of a similar nature with those particularly enumerated."

- (2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
- (3) Depriving or threatening to deprive the woman or her child of a legal right; [and]
- (4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties[.]<sup>82</sup>

A SLAPP suit is akin to deprivation of support in the sense that the woman, in defending the suit, becomes less able to support herself financially. Furthermore, filing a SLAPP suit against a woman somewhat restricts her movement because she would have to be present in the place where the action is instituted in order for her to defend the case properly. Because the woman's movement is restricted, it can also be said that a SLAPP suit prevents the woman from engaging in legitimate employment, or at least prevents her from seeking or pursuing some employment opportunities. Thus, in many ways, a SLAPP suit can be an act of or an attempt to restrict a woman's freedom of movement or conduct through intimidation and imposition of additional financial burden, among others.

Again, the Supreme Court declared in *Melgar* that economic abuse under Section 5(e) need not result in mental anguish.<sup>83</sup> The mere commission of the enumerated or similar acts is enough to trigger the provision's application. Given this, a SLAPP suit intended to intimidate, harass, and restrict a woman is, by itself, an act of VAWC. As such, it should also be recognized as another substantive cause of action for a violation of the Anti-VAWC Act.

## **B. Procedural Application: SLAPP as an Allegation in the Defense**

Additionally, or in the alternative, the concept of SLAPP as a defense should be made applicable to VAWC cases in the same way that it is allowed in environmental litigation. Women-survivors of abuse should be permitted to allege or interpose in their defenses that the cases filed against them is for the sole purpose of harassing or intimidating them, or in other words, that the case filed against them is a SLAPP. This was the thrust of the *Mercado* petition.

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<sup>82</sup> Rep. Act No. 9262 (2004), § 5(e).

<sup>83</sup> *Melgar*, 855 SCRA 522, 534.

As previously discussed, other jurisdictions have recognized that women-survivors of abuse and violence can also be targets and victims of SLAPPs. Often, women are charged with crimes of defamation when they speak up about the abuse they experienced. For instance, the case filed by Catholic priest Msgr. Baird against the woman who publicly accused him of making sexual advances toward her was immediately thrown out by the judge for being a SLAPP suit.<sup>84</sup>

Women-survivors of abuse in this jurisdiction should be allowed this speedy disposition of harassment cases as well. Following the earlier discussion on SLAPP as a form of both psychological violence and economic abuse, women should be afforded better protection by giving them the power to have a case dismissed immediately for being a SLAPP. In this way, they are saved from the additional and unwarranted economic, psychological, and emotional burden that would arise from defending such a case.

When SLAPP is interposed as a defense in environmental cases, the claim is disposed of quickly. The hearing on the defense is summary, wherein “[t]he party filing the action assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP and is a valid claim.”<sup>85</sup> Further, the resolution must be issued within 30 days after the hearing, and if the decision results in a dismissal, it shall be a dismissal with prejudice.<sup>86</sup> Thus, under the RPEC, it is the SLAPP plaintiff who shall prove that they have a legitimate claim. Furthermore, the courts are mandated to resolve the matter swiftly. The same rules should be made applicable to SLAPP cases filed against women-survivors of violence in order to provide them with quick and less burdensome remedies. Allowing women-survivors to interpose SLAPP as a defense would save them both time and money.<sup>87</sup>

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<sup>84</sup> Guccione, *supra* note 56.

<sup>85</sup> ENVTL PROC. RULE, Rule 6, § 3. “The hearing on the defense of a SLAPP shall be summary in nature. The parties must submit all available evidence in support of their respective positions. The party seeking the dismissal of the case must prove by substantial evidence that his act for the enforcement of environmental law is a legitimate action for the protection, preservation and rehabilitation of the environment. The party filing the action assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP and is a valid claim.”

<sup>86</sup> Rule 6, § 4. “The affirmative defense of a SLAPP shall be resolved within thirty (30) days after the summary hearing. If the court dismisses the action, the court may award damages, attorney’s fees and costs of suit under a counterclaim if such has been filed. The dismissal shall be with prejudice.

If the court rejects the defense of a SLAPP, the evidence adduced during the summary hearing shall be treated as evidence of the parties on the merits of the case. The action shall proceed in accordance with the Rules of Court.”

<sup>87</sup> Rodriguez, *supra* note 68, at 1326.

Likewise, women-survivors should be allowed to file a “SLAPP-Back.” A “SLAPP-Back” is a counterclaim or countersuit for damages initiated by the SLAPP defendant.<sup>88</sup> In other jurisdictions, counterclaim “SLAPP-Backs” have been observed to be the best rebuttal to a SLAPP case. Mechanisms that would allow this quick remedy should be established in this jurisdiction as well. With this, women-survivors would be able to institute a counterclaim in the very same case, instead of waiting for the SLAPP suit to come to its end before filing a case for malicious prosecution.

It is undeniable that filing a malicious prosecution suit can be a viable and effective remedy for women-survivors of violence. However, the amount of time that would be wasted on first litigating the SLAPP suit and filing a new case altogether could deplete and exhaust their resources in the interim. Hence, giving them the option to interpose SLAPP as a defense early on in the proceedings would save them time, energy, and money. Additionally, this would have the effect of easing the burden on court dockets as well.

Finally, the dismissal of a SLAPP suit, or the success of a defendant’s “SLAPP-Back,” should result in considerable amounts of damages against the SLAPP plaintiff. Actual, if any, and moral damages should be awarded to compensate the women for the added psychological and mental anguish they experienced, as well as for the expenses of litigation. At the same time, courts should be encouraged to impose exemplary damages against the SLAPP plaintiff, which could serve as an example and discourage others from filing more of these baseless and expensive cases.

### CONCLUSION

This Article tackled the Anti-VAWC Act as a landmark piece of legislation for cases relating to VAWC. It briefly analyzed the different types of VAWC, while focusing on the forms pertinent to the discussion, namely, psychological violence and economic abuse. Jurisprudence was likewise provided to better explain the elements and application of these VAWC concepts as discussed by the Supreme Court.

Further, this Article explored the concept of SLAPP suits from its inception in the 1980s to its usage today. SLAPP cases, as seen in both foreign and local jurisdictions, have been examined to present the adverse emotional, psychological, and financial effects of SLAPP suits on SLAPP defendants. This Article also discussed how SLAPP is procedurally applied in the Philippines, particularly in environmental cases. It focused on the 2018

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<sup>88</sup> Merriam & Benson, *supra* note 33, at 28.

Supreme Court case of *Mercado*, which attempted to apply the concept of SLAPP to VAWC-related cases. From the foregoing discussion, several conclusions emerged.

First, SLAPP suits constitute psychological violence on the women-survivors against whom they are filed. They fall under Section 5(i) of the Anti-VAWC Act because of the mental and emotional anguish they cause. In fact, SLAPP suits satisfy the elements of Section 5(i) as established in *Dinamling*.<sup>89</sup> At the same time, they also fall under Section 5(h) because a SLAPP suit “alarms or causes substantial emotional or psychological distress to the woman.”<sup>90</sup> As such, a SLAPP suit should be recognized as a form of psychological violence and thus be considered as a substantive cause of action that would support the filing of a VAWC case.

Second, filing a SLAPP suit is also a form of economic abuse under Section 5(e) of the Anti-VAWC Act because of its likeness and similarity to other acts enumerated in the provision. Hence, following the doctrine in *Melgar*,<sup>91</sup> the mere filing of a SLAPP suit should already be considered an act of abuse, even absent the element of mental anguish. Consequently, it should also be considered an offense punishable under the Anti-VAWC Act, and a cause of action separate and distinct from psychological violence under Sections 5(i) and 5(h).

Third, SLAPP as an allegation in the defense should be made available to women-survivors of abuse. In so doing, these women would be afforded a quick remedy within the very same case filed against them. This would minimize the suit’s adverse effects on them and their resources. Furthermore, considerable damages, in the form of actual and moral damages, should be awarded to victorious SLAPP defendants to somewhat compensate them for the financial and emotional burdens they experienced. The imposition of exemplary damages against the SLAPP plaintiffs should also be considered as this could have the effect of deterring others from filing SLAPP suits.

As acts of abuse and violence become more nuanced and sophisticated, so too should our laws and rules. Therefore, the concept of SLAPP should be made applicable to VAWC-related cases. Substantively, it should be considered as an act constituting “harassment” or “abuse” under the Anti-VAWC Act. Procedurally, it should be a defense available to women who are being stifled by their abusers through baseless and expensive

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<sup>89</sup> *Dinamling*, 760 SCRA 27, 45.

<sup>90</sup> Rep. Act No. 9262 (2004), § 5(h).

<sup>91</sup> *Melgar*, 855 SCRA 522, 534.

litigation. As observed from foreign laws and jurisprudence, the defense of SLAPP is a very powerful tool. But before Filipino women can wield this power, its applicability beyond environmental cases must first be confirmed and allowed. It is time to give these courageous women the power and protection they deserve.

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