

RICHELLE BUSQUE ORDOÑA, PETITIONER, VS. THE LOCAL CIVIL REGISTRAR OF PASIG CITY AND ALLAN D. FULGUERAS, RESPONDENTS.

G.R. No. 215370. November 09, 2021

Ponente: INTING, J.

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INTING, J.:

This is a Petition[1] for Review on Certiorari under Rule 45 of the Rules of Court seeking to annul the Decision[2] dated April 10, 2014 and the Resolution[3] dated October 14, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 99381. The CA affirmed the Decision[4] dated April 25, 2012 and the Order[5] dated July 26, 2012 of Branch 166, Regional Trial Court (RTC), Pasig City in SP Proc. No. 12335 which denied the verified Petition[6] for Correction of Entries (Rule 108 petition) in the Certificate of Live Birth of Alrich Paul Ordoña Fulgueras (Alrich Paul).

The Antecedents

Richelle Busque Ordoña (petitioner) was married to a certain Ariel O. Libut (Ariel) on October 10, 2000 in Las Piñas City. In December 2005, petitioner went to Qatar for work until 2008 when she discovered that Ariel had an illicit relationship. This prompted her to return to the Philippines and separate from him. Despite their eventual separation, petitioner has not yet filed a petition for annulment of her marriage to Ariel.[7]

Thereafter, in April 2008, petitioner applied for another work in Abu Dhabi, United Arab Emirates (UAE) where she met Allan D. Fulgueras (Allan), her former colleague in Qatar. She and Allan engaged in an intimate relationship which resulted in petitioner's pregnancy with Allan as the purported father. Thus, petitioner went back to the Philippines sometime in September 2009. On January 26, 2010, petitioner gave birth to a son in a hospital in Pasig City. In the Certificate of Live Birth,[8] the child was given the name "Alrich Paul Ordoña Fulgueras" with "Allan D. Fulgueras" as the purported father.[9]

Thus, on September 7, 2011, petitioner filed before the RTC the Rule 108 petition seeking the following corrections: (1) change of last name of Alrich Paul in Item No. 1 from "Fulgueras" to "Ordoña," petitioner's maiden name; and (2) deletion of entries in the paternal information as provided in Item Nos. 13 to 17. She alleged that it was not Allan who signed the Affidavit of Acknowledgment/Admission of Paternity[10] attached to the Certificate of Live Birth (Affidavit of Acknowledgment) considering that Allan was not in the Philippines when she gave birth to Alrich Paul.[11]

In its Order[12] dated September 14, 2011, finding the petition to be sufficient in form and in substance, the RTC (1) set the hearings on December 12, 2011, and February 6, 2012, and enjoined all persons interested to be present and show adverse cause, if any, to the granting of the petition; (2) directed the publication of the Order once a week for three consecutive weeks in a newspaper of general circulation; and (3) directed the Court Sheriff to furnish a copy of the Order to the Solicitor General (OSG), the National Statistics Office, the City Prosecutor's Office, the Civil Registrar of Pasig City, petitioner, and Allan.[13]

Thus, the Order dated September 14, 2011 was published in the Manila Times newspapers on November 5, 12, and 19, 2011.[14]

Further, the Sheriff served a copy of the Order dated September 14, 2011 and a copy of the petition to the Office of the City Civil Registrar, the City Prosecutor, the Office of the Solicitor General, the National Statistics Office, and Allan.[15]

On February 6, 2012, Allan, the Local Civil Registrar of Pasig City, and the OSG were the oppositors to the petition. They were called in open court, but none of them appeared. Further, no opposition to the petition was filed in the RTC.[16]

Consequently, petitioner was allowed to present her evidence.

Petitioner's testimony included the above-stated matters, i.e., from her separation with her husband, Ariel, in 2008, to her subsequent relationship with Allan in Abu Dhabi, UAE, to giving birth to Alrich Paul on January 26, 2010, and the recording of Alrich Paul's birth before the civil registry. Petitioner emphasized that Allan could not have signed the Affidavit of Acknowledgment/Admission of Paternity because Allan was not in the Philippines at that time. Petitioner further testified that it was she who supplied the information pertaining to the child's father in the Certificate of Live Birth.[17]

To bolster her allegations that Allan did not sign the Affidavit of Acknowledgment, petitioner presented Engineer Michael Mantes (Michael), her and Allan's co-employee. Michael testified as follows: (1) he personally knew Allan because during the term of his (Michael's) employment contract from January 2006 to March 2008, he worked with Allan who was a land surveyor in the same department in a company in Qatar; (2) he personally saw Allan affix his signature on the "as built data" documents that Allan submitted to him and also during their meetings for attendance; (3) he met Allan on January 26, 2010 in UAE; and (4) the signature which contained "A" and "Fulgueras" that appears in the Affidavit of Acknowledgment is different from the real signature of Allan which is illegible and does not contain any initial.[18]

The RTC Ruling

On April 25, 2012, the RTC rendered its Decision[19] denying the petition for lack of merit.

The RTC ruled that there is no dispute that Alrich Paul is an illegitimate child considering that he was conceived and born outside a valid marriage. Per his Certificate of Live Birth, his mother is petitioner married to Ariel, but his alleged father is Allan.[20]

The RTC declared that under Article 176 of the Family Code of the Philippines (Family Code), as amended by Republic Act No. (RA) 9255,[21] illegitimate children shall use the surname and be under the parental authority of their mother, and shall be entitled to support in conformity with the Family Code; however, illegitimate children may use the surname of their father if their filiation has been expressly recognized by the father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is made by the father.[22]

The RTC noted that the Certificate of Live Birth of Alrich Paul shows that his alleged father, Allan, expressly recognized him as his illegitimate child when he affixed his signature in the Affidavit of Acknowledgment/Admission of Paternity.[23]

The RTC further noted that petitioner presented Michael to prove that it was physically impossible for Allan to sign the Certificate of Live Birth because he was abroad. Thus, petitioner wanted to delete the entries in Item Nos. 13 to 17 in Alrich Paul's Certificate of Live Birth to do away with an embarrassing situation when he comes of

age and attends school where he can be the object of ridicule and discriminatory remarks from his peers.[24]

Still, the RTC explained that it must protect the child by giving the best interest in his favor. It declared that if the entries in Item Nos. 13 to 17 were deleted, Alrich Paul would be considered to have no father at all; that it would be more embarrassing for Alrich Paul if he, in effect, will have no father; that the intended correction was only for the convenience of petitioner, who is legally married to Ariel, but gave birth to Alrich Paul whose alleged father is Allan; and that the legitime of Alrich Paul might be affected if Item Nos. 13 to 17 were to be deleted.[25]

The RTC also denied petitioner's prayer for the deletion of the surname of Alrich Paul in his Certificate of Live Birth. It explained that the Affidavit of Acknowledgment/Admission of Paternity at the dorsal portion of the Certificate of Live Birth was subscribed and sworn to before a notary public; that as such, it had become a public instrument which enjoys the presumption of validity; and that following Article 176 of the Family Code, as amended by RA 9255, Alrich Paul may use the surname of his alleged father.[26]

Petitioner filed a Motion for Reconsideration[27] of the Decision dated April 25, 2012. The OSG then filed its Comment (Re: Motion for Reconsideration dated May 10, 2012)[28] dated July 6, 2012 on the motion. Thereafter, the RTC denied the motion in its Order[29] dated July 26, 2012.

The CA Ruling

The CA denied the petition in its Decision[30] dated April 10, 2014.

The CA explained that under Article 164 of the Family Code, "children conceived or born during the marriage of the parents are legitimate." It then noted that when Alrich Paul was born, petitioner was still married to Ariel.[31]

While the CA was aware of petitioner's admission that Allan, and not her husband, Ariel, was the father of the child Alrich Paul, it pointed out that Article 167 of the Family Code mandates that "the child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress." Thus, contrary to what the RTC declared, it ruled that Alrich Paul cannot be deemed the illegitimate child of petitioner and Allan based solely on petitioner's admission; that the law requires that every reasonable presumption be made in favor of legitimacy; and that the status and filiation of the child cannot be compromised.[32]

The CA further explained that the law sets who may dispute the legitimate status of the child, and that specifically, impugning the legitimacy of a child is a strictly personal right of the husband, or in exceptional cases, his heirs.[33]

The CA noted that the RTC held that the presumption of legitimacy in favor of Alrich Paul had been sufficiently defeated because of the physical impossibility of sexual intercourse between petitioner and Ariel.[34] However, it ruled that the RTC relied on the testimony of petitioner regarding the physical impossibility of sexual intercourse between the latter and Ariel, misapplying the ruling in *Concepcion v. Court of Appeals*[35] and disregarding the law altogether. It added that the RTC's act of giving credence to petitioner's testimony was tantamount to allowing petitioner to make a declaration against the legitimacy of her son, Alrich Paul, which is prohibited under Article 167 of the Family Code.[36]

The CA added that it was not for the RTC to rule on the matter: should Ariel or his heirs file an action impugning the status of Alrich Paul as a legitimate child of Ariel, it should be threshed out in a different proceeding. It explained that the well settled rule is that the issue of legitimacy cannot be attacked collaterally.[37]

Thus, the CA declared that the presumption that Alrich Paul is the legitimate child of the legal and subsisting marriage between petitioner and Ariel stands.[38]

The CA further noted the RTC's reliance on the presumption of validity of the Affidavit of Acknowledgment/Admission of Paternity at the dorsal portion of Alrich Paul's Certificate of Live Birth which was subscribed and sworn to before a notary public. However, the CA ruled that a record of birth is merely prima facie evidence of the facts stated therein. As prima facie evidence, the statements in the record of birth may be rebutted by mere preponderant evidence. It explained that it is not conclusive evidence with respect to the truthfulness of the statements made therein by the interested parties. Thus, between the Certificate of Live Birth which is prima facie evidence of Alrich Paul's illegitimacy and the quasi-conclusive presumption of law (rebuttable only by proof beyond reasonable doubt) of his legitimacy, the CA held that the latter shall prevail. Further, it explained that not only does it bear more weight, it is also more conducive to the best interests of the child and in consonance with the purpose of the law.[39]

Thus, in upholding the presumption of legitimacy in favor of Alrich Paul, the CA ruled that he shall have the right to bear the surnames of Ariel and petitioner, subject to the action which may be filed by Ariel or his heirs to impugn his legitimate status within the period allowed by law.[40]

The dispositive portion of the CA Decision provides:

WHEREFORE, premises considered, the instant appeal is DENIED. However, the assailed Decision and Order are hereby REVERSED and SET ASIDE. In view of the discussion above, the Civil Registrar of Pasig City is DIRECTED to enter the surname "Libut" as the surname of Alrich Paul in his Certificate of Live Birth. Accordingly, the name of the father should be changed from "Allan D. Fulgueras" to "Ariel O. Libut". From the foregoing, the Affidavit of Acknowledgment appearing at the back of Alrich Paul's Certificate of Live Birth shall now be disregarded.

SO ORDERED.[41]

Petitioner filed a Motion for Reconsideration,[42] but the CA denied it in its Resolution[43] dated October 14, 2014.

Hence, the instant petition.[44]

The OSG filed its Comment[45] to the petition. Thereafter, petitioner filed her Reply to the OSG's Comment.[46] On the other hand, no comment was filed by Allan.

The Court's Ruling

The Court denies the petition.

In resolving the petition, the Court is guided by the Court's pronouncements on the parameters in seeking relief under Rule 108 of the Rules of Court. Rule 108 governs the proceedings for the cancellation or correction of entries in the civil registry.

Associate Justice Alfredo Benjamin S. Caguioa aptly pointed out the Court's pronouncement in *Miller v. Miller*[47] (*Miller*). In that case, the Court, speaking through Associate Justice Marvic M.V.F. Leonen and relying on *Braza v. The City Civil Registrar of Himamaylan City, Negros Occ.*,[48] categorically ruled that the legitimacy and filiation of children cannot be collaterally attacked in a petition for correction of entries in the certificate of live birth, the action filed in that case.[49] The Court ruled:

Here, petitioners sought the correction of private respondent's surname in her birth certificate registered as Local Civil Registrar No. 825. They want her to use her mother's surname, Espenida, instead of Miller, claiming that she was not an acknowledged illegitimate child of John.

What petitioners seek is not a mere clerical change. It is not a simple matter of correcting a single letter in

private respondent's surname due to a misspelling. Rather, private respondent's filiation will be gravely affected, as changing her surname from Miller to Espenida will also change her status. This will affect not only her identity, but her successional rights as well. Certainly, this change is substantial.

In *Braza v. The City Civil Registrar of Himamaylan City, Negros Occidental*, this Court emphasized that "legitimacy and filiation can be questioned only in a direct action seasonably filed by the proper party, and not through collateral attack[.]" Moreover, impugning the legitimacy of a child is governed by Article 171 of the Family Code, not Rule 108 of the Rules of Court.[50]

Article 164[51] of the Family Code provides that "children conceived or born during the marriage of the parties are legitimate." Here, petitioner admitted to being in a valid and subsisting marriage with Ariel when she conceived and gave birth to Alrich Paul. Thus, Alrich Paul is presumed to be a legitimate child of petitioner and Ariel. However, looking at the Rule 108 petition in this case, petitioner, mother of Alrich Paul, in effect declared against her child's legitimacy when she alleged that Alrich Paul was the child of Allan.

Following the pronouncement in *Miller*, petitioner's collateral attack of Alrich Paul's filiation cannot be allowed in a Rule 108 proceeding. Thus, on this ground alone, the RTC should have dismissed the Rule 108 petition.

Further, assuming arguendo that the Rule 108 petition filed in the case is considered as the direct action to impugn Alrich Paul's presumed legitimacy, the Rule 108 petition must still fail.

It must be emphasized that the direct action to impugn the legitimacy of a child must be brought by the proper parties and within the period limited by law.[52]

Here, as correctly opined by Associate Justice Estela M. Perlas-Bernabe, petitioner is barred from impugning Alrich Paul's presumed legitimacy considering the prohibition under Article 167 of the Family Code.[53] Article 167 provides that "[t]he child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress."

To elucidate, the presumption of legitimacy under Article 164 of the Family Code is not conclusive. It may be disputed based on the grounds and manner provided under Articles 166, 170, and 171 of the same law.

In *Concepcion v. Court of Appeals*,[54] the Court ruled that the presumption of legitimacy is "quasi-conclusive" and may be rebutted or overthrown. The Court ruled:

The presumption of legitimacy proceeds from the sexual union in marriage, particularly during the period of conception. To overthrow this presumption on the basis of Article 166 (1)(b) of the Family Code, it must be shown beyond reasonable doubt that there was no access that could have enabled the husband to father the child. Sexual intercourse is to be presumed where personal access is not disproved, unless such presumption is rebutted by evidence to the contrary.

The presumption is quasi-conclusive and may be refuted only by the evidence of physical impossibility of coitus between husband and wife within the first 120 days of the 300 days which immediately preceded the birth of the child.

To rebut the presumption, the separation between the spouses must be such as to make marital intimacy impossible. This may take place, for instance, when they reside in different countries or provinces and they were never together during the period of conception. Or, the husband was in prison during the period of conception, unless it appears that sexual union took place through the violation of prison regulations.[55]

Still, the rule is that the mother is barred from impugning or declaring against the legitimacy of her child, and only the father,[56] or in exceptional instances, his heirs,[57] can contest in an appropriate action the legitimacy of a child born to his wife based on any of the grounds enumerated under Article 166 of the Family Code.

The pertinent rules provide:

Art. 166. Legitimacy of a child may be impugned only on the following grounds:

(1) That it was physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child because of:

(a) the physical incapacity of the husband to have sexual intercourse with his wife;

(b) the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible; or

(c) serious illness of the husband, which absolutely prevented sexual intercourse;

(2) That it is proved that for biological or other scientific reasons, the child could not have been that of the husband, except in the instance provided in the second paragraph of Article 164; or

(3) That in case of children conceived through artificial insemination, the written authorization or ratification of either parent was obtained through mistake, fraud, violence, intimidation, or undue influence.

x x x x

Art. 170. The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded.

If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier.

Art. 171. The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding article only in the following cases:

(1) If the husband should die before the expiration of the period fixed for bringing his action;

(2) If he should die after the filing of the complaint without having desisted therefrom; or

(3) If the child was born after the death of the husband.

Significantly, in *Liyao, Jr. v. Tanhoti-Liyao*[58] (*Liyao, Jr.*), William Liyao, Jr. (William), represented by his mother Corazon G. Garcia (Corazon), filed an action for compulsory recognition as "the illegitimate (spurious) child of the late William Liyao." [59] William alleged that he was in continuous possession and enjoyment of the status of the child of William Liyao. Such was the case considering that he was recognized and acknowledged as such child by William Liyao during his lifetime.[60]

However, the pertinent facts in *Liyao, Jr.* are as follows: (1) Corazon gave birth to William on June 9, 1975; (2) Corazon was legally married to but living separately from Ramon M. Yulo for more than 10 years at the time of the institution of the action or in 1976; and (3) Corazon cohabited with the late William Liyao from 1965 up to the time of William's demise on December 2, 1975.[61]

The trial court rendered a decision declaring William as the illegitimate child of the deceased William Liyao. However, the CA reversed the RTC.[62]

On appeal, the Court denied the petition and affirmed the ruling of the CA. The Court ruled that the petition

initiated by Corazon as guardian ad litem of the then minor William as the illegitimate son of the late William Liyao could not prosper. The Court, applying Article 256[63] of the Civil Code, the counterpart provision of Article 167 of the Family Code, ruled that a child born within a valid marriage is presumed legitimate even though the mother may have declared against its legitimacy or may have been sentenced as an adulteress. The Court explained that only the husband, or in exceptional circumstances, his heirs, could impugn the legitimacy of a child born in a valid and subsisting marriage and the child cannot choose his own filiation.[64]

In effect, the presumption of legitimacy of William subsisted absent any impugnation by the proper party.

Here, petitioner's declaration in the birth certificate and in the Rule 108 petition that Alrich Paul is illegitimate cannot be countenanced as it runs counter to Article 167 of the Family Code. The presumption that Alrich Paul is legitimate stands in the absence of a direct action timely filed by the proper party.

Further, even assuming *arguendo* that petitioner may effectively declare against or impugn Alrich Paul's legitimacy and that she may do so in a Rule 108 petition, her petition before the trial court must still fail for failure to satisfy the requirements under Sections 3 and 4, Rule 108 of the Rules of Court. This is considering that what petitioner seeks are substantial corrections, i.e., corrections in the entries pertaining to Alrich Paul's father as well as Alrich Paul's surname; hence, an adversarial proceeding is required.[65]

In *Barco v. Court of Appeals*,[66] the Court ruled that "[s]ince the promulgation of the [*Republic v. Valencia*] ruling in 1986 the Court has repeatedly ruled that even substantial errors in a civil registry may be corrected through a petition filed under Rule 108, with the true facts established and the parties aggrieved by the error availing themselves of the appropriate adversarial proceeding." [67]

Further, in *Rep. of the Phils. v. Olaybar*,[68] the Court ruled that "the procedure laid down in Rule 108 is not a summary proceeding *per se*" [69] and "as long as the procedural requirements in Rule 108 are followed, it is the appropriate adversary proceeding to effect substantial corrections and changes in entries of the civil register." [70]

Section 3, Rule 108 requires that "all persons who stand to be affected by a substantial correction of an entry in the civil registrar must be impleaded as indispensable parties" and "failure to implead the indispensable parties renders all proceedings subsequent to the filing of the complaint including the judgment ineffectual." [71]

Section 4, Rule 108 also provides for the requirement of publication and notice.

Sections 3 and 4, Rule 108 state:

SEC. 3. Parties. — When cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding.

SEC. 4. Notice and publication. — Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the petition. The court shall cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

In the case, Ariel, the presumed father of Alrich Paul was not impleaded as a party. Being the presumed father of Alrich Paul, Ariel has an interest that would be affected if the trial court were to grant the reliefs sought by petitioner. His hereditary rights would be adversely affected if the Court were to declare that Alrich Paul is not his legitimate child but Allan's illegitimate child.

Admittedly, there are instances where failure to implead and to notify the affected or interested parties are cured by the publication of the notice of hearing.[72] These special circumstances are "when earnest efforts were made

by petitioners in bringing to court all possible interested parties; the interested parties themselves initiated the corrections proceedings; there was no actual or presumptive awareness of the existence of the interested parties; or when the party was inadvertently left out." [73]

However, petitioner failed to establish the presence of any of the above exceptions. There is likewise no indication in the records that Ariel, although not impleaded, was made aware of the petition and the status of the proceedings.

Given the foregoing, the Court must ultimately dismiss the Rule 108 petition filed by petitioner and need not discuss the sufficiency of her evidence to justify the corrections sought in Alrich Paul's birth certificate.

As a result, there is now an absurd and unremedied situation that Alrich Paul remains to be illegitimate in the birth certificate and will use the surname of Allan while possessing, at the same time, a legitimate status, one that is conferred on him by law.

Giving clarity to Alrich Paul's situation is attended by a scarcity of remedies.

First, the mother who was in a valid and subsisting marriage at the time of conception or giving birth to her child is prohibited under Article 167 of the Family Code from impugning the legitimacy of her child. The proscription remains even if the mother is an estranged wife.

Second, the child who was conceived or born during a valid and existing marriage has no right to impugn his own legitimacy under the Family Code. He cannot choose his own filiation. [74]

Third, it is only the father, or in exceptional circumstances, his heirs, who may impugn the child's legitimacy on grounds provided under Article 166 of the Family Code within the periods provided under Article 170 in relation to Article 171 of the Family Code. Upon the expiration of the periods, the status conferred by the presumption becomes fixed and can no longer be questioned. [75]

Noted civilist Arturo M. Tolentino discussed:

The prescriptive period begins to run either from the knowledge of the plaintiffs of the birth of the child, or from the date of the registration of such birth, whichever is earlier.

The period of prescription is one year if the husband or anyone of the heirs resides in the city or municipality where the birth took place or was recorded.

The period is two years if the husband or all of the heirs do not reside in the city or municipality of birth or registration but somewhere else in the Philippines; and three years if they reside abroad.

These periods apply whether the plaintiff is the husband or any of the heirs. If they acquire knowledge of the birth at different dates before it is recorded, the period of prescription shall be counted from the date on which the plaintiff had knowledge of such birth.

If the husband should die before the expiration of the period within which he could bring the action, without having filed the same, an heir could bring the action. Within what time? We believe the period applicable to him personally would apply, not the period applicable to the husband. The plaintiff heir would not be merely representing the predeceased husband, but would be acting in his own right.

If the husband dies after filing the action and it is pending, the action being personal, the case may be dismissed. The heirs can file another action in their own right, subject to the prescriptive periods applicable to them. [76]

The hands of the Court are tied as it may only entertain the impugnation of a child's presumed legitimacy in a

direct action filed by the proper party and within the prescribed period under the law.

In light of these, the Court finds the present case as an opportune moment to highlight the absence of a remedy in favor of a mother in establishing the true filiation of her child. Ultimately, the Court's observations are directed to the Legislature inasmuch as the Court is careful not to tread on the realm of judicial legislation.

One of the grounds for impugning the legitimacy of a child is that found in Article 166(1)(b) of the Family Code, i.e., "that it was physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child because of x x x" "x x x the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible."

Here, petitioner maintained that Ariel, her husband, could not have been Alrich Paul's father considering that upon learning of the latter's illicit relationship, she separated from him and went to Abu Dhabi, UAE to work sometime in April 2008, stayed there, and engaged in an intimate relationship with Allan. Thereafter, she became pregnant, went back to the Philippines sometime in September 2009, and gave birth to Alrich Paul on January 26, 2010.

However, there is no remedy under the law available to petitioner to dispute the presumption of legitimacy accorded to Alrich Paul—not in a Rule 108 petition which must be dismissed primarily for being a collateral attack and not in any other action by reason of her being the mother of Alrich Paul.

It must be emphasized that the scenario under Article 166(1)(b) is a factual matter personally known not only to the husband, but also the wife. And yet, Article 167 of the Family Code prohibits the mother from impugning or declaring against the legitimacy of her child. Further, the right to impugn belongs only to the husband, or in exceptional circumstances, his heirs. Certainly, there is, in the words of Associate Justice Estela M. Perlas-Bernabe, "[an] apparent disparity between the mother's and the father's legal standing in assailing the legitimacy and/or filiation of a child." [77] This runs counter to the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to which the Philippines is a state party. The Philippines ratified the CEDAW on August 5, 1981. [78] Thus, it is now a part of the Philippine legal system.

As a state party to the CEDAW, the Philippines is bound by the obligations imposed therein:

Article 2.

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, and to this end, undertake:

x x x

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular, shall ensure, on a basis of equality of men and women:

x x x

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

x x x

The CEDAW mandates States Parties to eliminate discrimination against women particularly in all matters relating to marriage and family relations. Thus, consistent with the CEDAW, the States Parties must take all the appropriate measures to ensure that all rights available to husbands and/or fathers must, in matters involving their children, be available to wives and/or mothers. Further, in eliminating discrimination as to the rights and obligations of parents, the States Parties must consider the paramount interest of the child.

Thus, consistent with the Philippines' obligations under the CEDAW, Section 14, Article II of the 1987 Constitution embodied the State's commitment to ensure gender equality, thus:

SECTION 14. The State recognizes the role of women in nation-building and shall ensure the fundamental equality before the law of women and men.[79]

Here, petitioner's declaration against the legitimacy of Alrich Paul is in conformity with the provisions of the CEDAW but is regrettably prohibited under our national law.

To be sure, matters of legitimacy and filiation involve not only rights in the child's favor, but also obligations or burdens to which he or his estate may be subjected to. The obligations, or burdens which translate to rights in favor of what the law considers as his or her family members include support of family members[80] and those arising from succession.[81] No doubt, the child or his estate need not be unduly and erroneously burdened by obligations in favor of persons who turn out to be not related to him by blood. Thus, it would be to the best interest of the child if even the mother who has personal knowledge of the circumstances surrounding her pregnancy will be allowed to prove that her husband could not have fathered her child.

However, with the current state of the laws, an illegitimate child's true filiation may never be recognized by law because the husband, who is already living separately from the wife, may have no interest in filing the appropriate action even if he knows that his wife gave birth to a child with another man.

Nevertheless, while there is a lacuna in the law, this is an opportune moment to signal to the Legislature the incongruity between our domestic law and our international obligation to eliminate the discrimination against women particularly in all matters relating to marriage and family relations. Ultimately, the Legislature should be given the opportunity to perform its primordial role of lawmaking.[82]

WHEREFORE, the petition is DENIED. The Decision dated April 10, 2014 and the Resolution dated October 14, 2014 of the Court of Appeals in CA-G.R. CV No. 99381 are REVERSED AND SET ASIDE. A new judgment is hereby entered DISMISSING the verified petition for correction of entries in the Certificate of Live Birth of Alrich Paul Ordoña Fulgueras.

Let a copy of this Decision be furnished to the President of the Senate and to the Speaker of the House of Representatives.

SO ORDERED.

Hernando, Carandang, Zalameda, M. Lopez, Rosario, J. Lopez, and Dimaampao, JJ., concur.

Gesmundo, C.J., please see separate concurring opinion.

Perlas-Bernabe, J., please see Concurring Opinion.

Leonen, J., see dissenting opinion.

Caguioa, J., see Concurring Opinion.

Lazaro-Javier, J., see dissent.

Gaerlan, J., no part.

[1] Rollo, pp. 21-32.

[2] Id. at 6-14; penned by Associate Justice Samuel H. Gaerlan (now a Member of the Court) with Associate Justices Remedios A. Salazar-Fernando and Apolinario D. Bruselas, Jr., concurring.

[3] Id. at 15.

[4] Id. at 34-38; penned by Presiding Judge Rowena De Juan-Quinagoran.

[5] Id. at 39-42.

[6] Records, pp. 3-7.

[7] Rollo, p. 7.

[8] Records, pp. 8-9.

[9] Rollo, p. 7.

[10] Id. at 9.

[11] Id. at 4-5.

[12] Id. at 14-15; penned by Presiding Judge Rowena De Juan-Quinagoran.

[13] Id.

[14] See Affidavit of Publication dated November 21, 2011 of Evelyn S. Arevalo, id. at 25.

[15] Id. at 13.

[16] Rollo, pp. 34-35.

[17] TSN, February 6, 2012, records, pp. 37-45.

[18] Id. at 47-51.

[19] Rollo, pp 34-38.

[20] Id. at 36.

[21] Entitled, "An Act Allowing Illegitimate Children to Use the Surname of Their Father, Amending for the Purpose Article 176 of Executive Order No. 209, Otherwise Known as the 'Family Code of the Philippines,'" approved on February 24, 2004.

[22] Rollo, pp. 36-37.

[23] Id. at 37.

[24] Id.

[25] Id.

[26] Id. at 37-38.

[27] Records, pp. 60-67.

[28] Id. at 75-82.

[29] Rollo, pp. 39-42.

[30] Id. at 7-14.

[31] Id. at 10.

[32] Id.

[33] Id.

[34] Id. at 11.

[35] 505 Phil. 529 (2005).

[36] Rollo, p. 12.

[37] Id.

[38] Id.

[39] Id. at 13.

[40] Id.

[41] Id.

[42] CA rollo, pp. 64-69.

[43] Rollo, p. 15.

[44] Id. at 21-31.

[45] Id at 65-74.

[46] Id. at 84-93.

[47] G.R. No. 200344, August 28, 2019.

[48] 622 Phil. 654 (2009).

[49] Id. at 659. See also *Tison v. CA*, 342 Phil 550 (1997), the Court herein discussed the well settled rule that the issue of legitimacy cannot be attacked collaterally.

[50] *Miller v. Miller*, supra note 47. Citations omitted.

[51] Article 164 of the family Code of the Philippines (Family Code) provides:

Art. 164. Children conceived or born during the marriage of the parents are legitimate.

Children conceived as a result of artificial insemination of the wife with the sperm of the husband or that of a donor or both are likewise legitimate children of the husband and his wife, provided, that both of them authorized or ratified such insemination in a written instrument executed and signed by them before the birth of the child. The instrument shall be recorded in the civil registry together with the birth certificate of the child.

[52] *Tison v. CA*, 342 Phil. 550, 558-559 (1997), citing Tolentino, A., *Civil Code of the Philippines, Commentaries and Jurisprudence*, Vol. I, 1990 ed., pp. 535-537.

[53] Concurring Opinion of Senior Associate Justice Estela M. Perlas-Bernabe, p. 1.

[54] *Concepcion v. Court of Appeals*, supra note 35.

[55] Id. at 539. Citations omitted

[56] Id. at 538-539.

[57] Id., citing Article 171 of the Family Code.

[58] 428 Phil. 628 (2002).

[59] Id. at 630.

[60] Id. at 631.

[61] Id. at 631-632.

[62] Id. at 369.

[63] Article 256 of the Civil Code of the Philippines (Civil Code) provides:

Article 256. The child shall be presumed legitimate, although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.

[64] Id.

[65] Republic v. Timario, G.R. No. 234251, June 30, 2020.

[66] 465 Phil. 39 (2004).

[67] Id. at 58.

[68] 726 Phil. 378 (2014).

[69] Id. at 386.

[70] Id.

[71] Id.

[72] Republic v. Manda, G.R. No. 200102, September 18, 2019.

[73] Republic v. Timario, supra note 65. Citations omitted.

[74] Liyao, Jr. v. Tanhoti-Liyao, supra note 58 at 642.

[75] Tison v. CA, supra note 52.

[76] Tolentino, A., Civil Code of the Philippines, Commentaries and Jurisprudence, Vol. I, 2004 ed., 538.

[77] Concurring Opinion of Senior Associate Justice Estela M. Perlas-Bernabe, p. 1.

[78] See United Nations Human Rights Treaty Bodies Database, <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN> (last accessed February 16, 2020).

[79] Alanis III v. Court of Appeals, G.R. No. 216425, November 11, 2020.

[80] Article 199 of the Family Code provides:

Art. 199. Whenever two or more persons are obliged to give support, the liability shall devolve upon the following persons in the order herein provided:

- (1) The spouse;
- (2) The descendants in the nearest degree;
- (3) The ascendants in the nearest degree; and
- (4) The brothers and sisters. (294a)

[81] Article 887 of the Civil Code provides:

Art. 887. The following are compulsory heirs:

- (1) Legitimate children and descendants, with respect to their legitimate parents and ascendants;
- (2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;
- (3) The widow or widower;
- (4) Acknowledged natural children, and natural children by legal fiction;
- (5) Other illegitimate children referred to in Article 287.

Compulsory heirs mentioned in Nos. 3, 4, and 5 are not excluded by those in Nos. 1 and 2; neither do they exclude one another.

In all cases of illegitimate children, their filiation must be duly proved.

The father or mother of illegitimate children of the three classes mentioned, shall inherit from them in the manner and to the extent established by this Code. (807a)

[82] Corpuz v. People, 734 Phil. 353, 425 (2014).

SEPARATE CONCURRING OPINION

GESMUNDO, C.J.:

Before this Court is a petition for review on certiorari under Rule 45 of the Rules of Court seeking to annul the Decision[1] dated April 10, 2014 and the Resolution[2] dated October 14, 2014 of the Court of Appeals (CA) docketed as CA-G.R. CV No. 99381. The CA affirmed the Decision[3] dated April 25, 2012 and Order[4] dated July 26, 2012 of the Regional Trial Court of Pasig City, Branch 66, in SP Proc. No. 12335, which dismissed the petition filed under Rule 108 of the Rules of Court.

The ponencia essentially states that legitimacy and filiation cannot be collaterally attacked under Rule 108; that there is a presumption of legitimacy; that the petition did not comply with Sections 3 and 4 of Rule 108 because of the failure to implead a proper party; that there is an absence of remedy in favor of a mother in establishing the true filiation of her child; that the Philippines is bound by the obligations under the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW); and that there is a State commitment to ensure gender equality.

I concur with the ponencia insofar as declaring that petitioner did not comply with Rule 108 of the Rules of Court, hence, the need to deny the petition.

Rule 108 of the Rules of Court sets forth the rules on cancellation or correction of entries in the civil registry, to wit:

SEC. 1. Who may file petition. — Any person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the Regional Trial Court of the province where the corresponding civil registry is located.

SEC. 2. Entries subject to cancellation or correction. — Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriages; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) changes of name.

SEC. 3. Parties. — When cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding.

SEC. 4. Notice and Publication. — Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

SEC. 5. Opposition. — The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto.

SEC. 6. Expediting proceedings. — The court in which the proceedings is brought may make orders expediting the proceedings, and may also grant preliminary injunction for the preservation of the rights of the parties pending such proceedings.

SEC. 7. Order. — After hearing, the court may either dismiss the petition or issue an order granting the cancellation or correction prayed for. In either case, a certified copy of the judgment shall be served upon the civil registrar concerned who shall annotate the same in his record.

In the early cases of *Ty Kong Tin v. Republic*[5] and, as hereunder cited, in *Republic v. Medina*,[6] only corrections of clerical errors were allowed under Rule 108 in a summary procedure, to wit:

From the time the New Civil Code took effect on August 30, 1950 until the promulgation of the Revised Rules of Court on January 1, 1964, there was no law nor rule of court prescribing the procedure to secure judicial authorization to effect the desired innocuous rectifications or alterations in the civil register pursuant to Article 412 of the New Civil Code. Rule 108 of the Revised Rules of Court now provides for such a procedure which should be limited solely to the implementation of Article 412, the substantive law on the matter of correcting entries in the civil register. Rule 108, like all the other provisions of the Rules of Court, was promulgated by the Supreme Court pursuant to its rule-making authority under Sec. 13 of Art. VIII of the Constitution, which directs that such rules of court "shall not diminish or increase or modify substantive rights." If Rule 108 were to be extended beyond innocuous or harmless changes or corrections of errors which are visible to the eye or obvious to the understanding, so as to comprehend substantial and controversial alterations concerning citizenship, legitimacy of paternity or filiation, or legitimacy of marriage, said Rule 108 would thereby become unconstitutional for it would be increasing or modifying substantive rights, which changes are not authorized under Article 412 of the New Civil Code.[7]

However, in *Republic v. Valencia*[8] (*Valencia*), the Court eventually ruled that when a correction involves substantial matters, such as civil status, nationality, or citizenship, a petition for correction or cancellation of entries in the civil registry under Rule 108 may still be availed of provided that there is an adversarial proceeding:

It is undoubtedly true that if the subject matter of a petition is not for the correction of clerical errors of a harmless and innocuous nature, but one involving nationality or citizenship, which is indisputably substantial as well as controverted, affirmative relief cannot be granted in a proceeding summary in nature. However, it is also true that a right in law may be enforced and a wrong may be remedied as long as the appropriate remedy is

used. This Court adheres to the principle that even substantial errors in a civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail themselves of the appropriate adversary proceeding.[9]

It was further discussed in Valencia that in the adversarial proceeding regarding a substantial correction of error, the trial court must conduct proceedings where all relevant facts have been fully and properly developed, where opposing counsel have been given opportunity to demolish the opposite party's case, and where the evidence has been thoroughly weighed and considered.[10]

Thus, the persons who must be made parties to a proceeding concerning the cancellation or correction of an entry in the civil register are — (1) the civil registrar, and (2) all persons who have or claim any interest which would be affected thereby. Upon the filing of the petition, it becomes the duty of the court to — (1) issue an order fixing the time and place for the hearing of the petition, and (2) cause the order for hearing to be published once a week for three consecutive weeks in a newspaper of general circulation in the province. The following are likewise entitled to oppose the petition: (1) the civil registrar, and (2) any person having or claiming any interest under the entry whose cancellation or correction is sought.[11]

If all these procedural requirements have been followed, a petition for correction and/or cancellation of entries in the record of birth, even if filed and conducted under Rule 108 of the Rules of Court, can no longer be described as "summary." There can be no doubt that when an opposition to the petition is filed either by the Civil Registrar or any person having or claiming any interest in the entries sought to be cancelled and/or corrected and the opposition is actively prosecuted, the proceedings thereon become adversary proceedings.[12]

Evidently, the rationale under Sec. 3 of Rule 108, which requires that the Civil Registrar and all persons who have or claim any interest, which would be affected thereby and who shall be made parties to the proceeding, is to ensure that there will be an appropriate adversarial proceeding for a substantial correction of error in the entries in the civil registry. It is in such adversarial proceeding that the interested parties shall be given an opportunity to oppose the petition and protect their interests.

Likewise, Sec. 4 thereof requires reasonable notice to be given to the persons named in the petition so that they will be given an opportunity to participate or oppose the petition for correction of errors. At the same time, there must be publication of the notice once a week for three consecutive weeks in a newspaper of general circulation in the province. As a petition for correction or change of entry is an in rem action, strict compliance with the requirements of publication is essential, for it is by such means that the court acquires jurisdiction.[13]

In this case, when petitioner filed the petition for correction of entries in the Certificate of Live Birth of her son, Alrich Paul, under Rule 108, she only named the following parties therein: Allan, the alleged father of Alrich Paul, the Local Civil Registrar of Pasig City, and the Office of the Solicitor General.[14] Glaringly, petitioner did not include Ariel Libut (Ariel), with whom petitioner still has a subsisting and valid marriage.

To my mind, it is imperative for Ariel to have been included in the petition as the husband of petitioner. Absence of his name in the petition should have resulted to the outright dismissal of the case due to the failure to include an indispensable party therein under Sec. 3 of Rule 108. Indeed, Ariel is considered as an indispensable party. An indispensable party is one whose interest in the controversy is such that a final decree will necessarily affect his rights. The court cannot proceed without his presence. If an indispensable party is not impleaded, any judgment is ineffective.[15]

In *Arcelona v. Court of Appeals*,[16] the Court stated that:

Rule 3, Section 7 of the Rules of Court defines indispensable parties as parties-in-interest without whom there

can be no final determination of an action. As such, they must be joined either as plaintiffs or as defendants. The general rule with reference to the making of parties in a civil action requires, of course, the joinder of all necessary parties where possible, and the joinder of all indispensable parties under any and all conditions, their presence being a sine qua non for the exercise of judicial power. It is precisely "when an indispensable party is not before the court (that) the action should be dismissed." The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.[17] (emphasis supplied)

Indeed, Ariel is an indispensable party because as the husband of petitioner, under a valid and subsisting marriage, the child of petitioner is presumed to also be the child of Ariel. Accordingly, since the petition for correction of entries in the Certificate of Live Birth of Alrich Paul will affect the filiation between Alrich Paul and Ariel, then he should have been included therein as a party.

Further, under Sec. 4 of Rule 108, Ariel should have been given reasonable notice thereof being an indispensable party to the petition. However, the records are bereft of any indication that he was indeed notified. In an in rem action, such as a petition under Rule 108, there must be notice sent to the parties so that they may be given an opportunity to defend themselves. While publication is undertaken to acquire jurisdiction over the res, service of notice to the parties is undertaken to comply with the requirement of due process.

In *Civil Service Commission v. Rasuman*,[18] the Court discussed the requirement of service of notice with respect to in rem actions:

The phrase, "against the thing," to describe in rem actions is a metaphor. It is not the "thing" that is the party to an in rem action; only legal or natural persons may be parties even in in rem actions. "Against the thing" means that resolution of the case affects interests of others whether direct or indirect. It also assumes that the interests – in the form of rights or duties – attach to the thing, which is the subject matter of litigation. In actions in rem, our procedure assumes an active vinculum over those with interests to the thing subject of litigation.

Due process requires that those with interest to the thing in litigation be notified and given an opportunity to defend those interests. Courts, as guardians of constitutional rights, cannot be expected to deny persons their due process rights while at the same time be considered as acting within their jurisdiction.[19]

In *Lee v. Court of Appeals*,[20] the Court clarified that when a petition for correction of entry under Rule 108 does not include the indispensable parties, then the case must be dismissed, to wit:

At the outset, it should be pointed out that in the cited case of *Labayo-Rowe vs. Republic*, the reason we declared null and void the portion of the lower court's order directing the change of Labayo-Rowe's civil status and the filiation of one of her children as appearing in the latter's record of birth, is not because Rule 108 was inappropriate to effect such changes, but because Labayo-Rowe's petition before the lower court failed to implead all indispensable parties to the case.

x x x x

Far from petitioners' theory, this Court's ruling in *Labayo-Rowe vs. Republic* does not exclude recourse to Rule 108 of the Revised Rules of Court to effect substantial changes or corrections in entries of the civil register. The only requisite is that the proceedings under Rule 108 be an appropriate adversary proceeding as contra-distinguished from a summary proceeding.[21]

Accordingly, as Ariel was not included as a party in the petition under Sec. 3 of Rule 108 and was not served notice as required under Sec. 4 of Rule 108, then the case should have been dismissed by the trial court.

As to the other matter raised, such as the lack of remedy on the part of the mother to assail the filiation of her child, or whether the existing laws are sufficient to safeguard and promote the rights of women under the

CEDAW, I believe these issues are not ripe to be tackled by the present petition. Since the petition did not comply with the mandatory requisites under Rule 108, then it is unnecessary to discuss them on the substantive merits.

x x x [B]y "ripening seeds," it is meant, not that sufficient accrued facts may be dispensed with, but that a dispute may be tried at its inception before it has accumulated the asperity, distemper, animosity, passion, and violence of a full blown battle that looms ahead. The concept describes a state of facts indicating imminent and inevitable litigation provided that the issue is not settled and stabilized by tranquilizing declaration.[22] Indeed, if the seeds of adjudication are not yet ripe, as there is no actual case or controversy yet, then the Court must not act on the judicial review of an assailed law.

While procedural rules may be relaxed in the interest of justice, it is well-settled that these are tools designed to facilitate the adjudication of cases. The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity. Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances. While litigation is not a game of technicalities, every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.[23]

The bare invocation of "the interest of substantial justice" line is not some magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. It cannot be gainsaid that obedience to the requirements of procedural rules is needed if we are to expect fair results therefrom and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction.[24]

Only when there is a valid petition filed, with the court having jurisdiction over such petition, which complies with the Rules of Court, includes the necessary parties, and proper notices and publications are conducted, should the Court dwell into the substantive merits of the case, especially when it involves the issues on the constitutionality of laws.

WHEREFORE, I vote to DENY the petition.

[1] Rollo, pp. 6-14; penned by Associate Justice Samuel H. Gaerlan (now a Member of the Court), with Associate Justices Remedios A. Salazar-Fernando and Apolinario D. Bruselas, Jr., concurring.

[2] Id. at 15.

[3] Id. at 34-38; penned by Presiding Judge Rowena De Juan-Quinagoran.

[4] Id. at 39-42.

[5] 94 Phil. 321 (1954).

[6] 204 Phil. 615 (1982).

[7] Id. at 625.

[8] 225 Phil. 408 (1986).

[9] Id. at 413.

[10] Id. at 417-418.

[11] Id. at 418.

[12] Id. at 418-419.

[13] In the Matter of the Change of Name of Hermogenes Diangkinay, 150-A Phil. 962, 967 (1972).

[14] Ponencia, p. 3.

[15] Villanueva v. Nite, 528 Phil. 867, 874 (2006).

[16] 345 Phil. 250 (1997).

[17] Id. at 267-268.

[18] G.R. No. 239011, June 17, 2019, 904 SCRA 352.

[19] Id. at 360-361.

[20] 419 Phil. 392 (2001).

[21] Id. at 408-409.

[22] Republic v. Roque, 718 Phil. 294, 305 (2013).

[23] Fortune Tobacco Corp. v. Commissioner of Internal Revenue, 762 Phil. 450, 464 (2015).

[24] Miranda v. Social Security Commission, G.R. No. 238104, February 27, 2019, 894 SCRA 427, 440-441.

CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur.

As a brief background, petitioner Richelle Busque Ordoña (petitioner) is married to a certain Ariel O. Libut (Libut), but their estrangement led to their separation de facto. While their marriage was still subsisting, petitioner worked abroad. There, she met Allan V. Fulgueras (Fulgueras), and had an intimate relationship with him, resulting in her pregnancy with the latter as the putative father. When petitioner went back to the Philippines, she gave birth to a son, whom she named "Alrich Paul Fulgueras" (Alrich Paul), as evinced in his Certificate of Live Birth. The said certificate also reflected Fulgueras as the child's father. Later on, petitioner filed a Rule 108 petition before the court a quo seeking the following corrections in her son's Certificate of Live Birth: (1) change of Alrich Paul's surname from Fulgueras (his supposed biological father's surname) to Ordoña (his mother's maiden surname); and (2) deletion of the entries in the paternal information therein pertaining to Fulgueras.[1]

However, in seeking such corrections, it is discerned that petitioner effectively attacked the legitimacy and filiation of Alrich Paul through a Rule 108 petition. To my mind, this cannot be allowed, considering that the Family Code fixes a civil status for a child born in wedlock, and concomitant thereto, the well-settled rule that the civil status of a person cannot be attacked collaterally.[2] Indeed, the legitimacy of the child can be impugned only in a direct action brought for that purpose, by the proper parties, and within the period limited by law.[3] As aptly pointed out by the ponencia, case law categorically provides that "the legitimacy and filiation of children cannot be collaterally attacked in a petition for correction of entries in the certificate of live birth." [4]

In any event, even assuming arguendo that what was filed was a direct action to impugn Alrich Paul's legitimacy and filiation, the same must still fail as it was not filed by the proper party, and within the limited period provided by law.

To expound, Articles 170 and 171 of the Family Code respectively read:

Art. 170. The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded.

If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier.

Art. 171. The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding article only in the following cases:

- (1) If the husband should die before the expiration of the period fixed for bringing his action;
- (2) If he should die after the filing of the complaint without having desisted therefrom; or
- (3) If the child was born after the death of the husband.

Based on the foregoing provisions, it is only the husband – or in proper cases, his heirs – who may file a direct action impugning the legitimacy and filiation of a child born within a valid and subsisting wedlock, and such action must be brought within one (1), two (2), or three (3) years, from knowledge of the child's birth or its recording in the civil register, depending on the attendant circumstances. As worded, these provisions' enumeration as to who may properly file such direct action appears to be exclusive, and hence, precludes any other person outside of the same to make such filing. A basic principle in statutory construction - which applies here – is "expressio unius est exclusio alterius" – where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. This rule and its variations are canons of restrictive interpretation, which are based on the rules of logic and the natural workings of the human mind. It necessarily proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.[5]

In *Geronimo v. Santos*,[6] the Court explained the operation of Article 171 of the Family Code:

Upon the expiration of the periods provided in Article 170 the action to impugn the legitimacy of a child can no longer be brought. The status conferred by the presumption, therefore, becomes fixed, and can no longer be questioned. The obvious intention of the law is to prevent the status of a child born in wedlock from being in a state of uncertainty for a long time. It also aims to force early action to settle any doubt as to the paternity of such child, so that the evidence material to the matter, which must necessarily be facts occurring during the period of the conception of the child, may still be easily available.

x x x x

Only the husband can contest the legitimacy of a child born to his wife. He is the one directly confronted with the scandal and ridicule which the infidelity of his wife produces; and he should decide whether to conceal that infidelity or expose it, in view of the moral and economic interest involved. It is only in exceptional cases that his heirs are allowed to contest such legitimacy. Outside of these cases, none – even his heirs – can impugn legitimacy; that would amount to an insult to his memory.[7]

Applying the foregoing to this case, only Libut (or in proper cases, his heirs), as petitioner's legal husband, may file a direct action to impugn Alrich Paul's legitimacy and filiation. Even petitioner herself, as the child's mother, could not do so in light of Article 167[8] of the Family Code, which expressly prohibits mothers from impugning

the legitimacy and filiation of their own children.[9]

Indeed, there is a seeming unfairness in the law insofar as allowing only the husband to impugn legitimacy and/or filiation. However, the Court is constrained to apply and interpret the law as it is, unless and until it is declared unconstitutional in a direct action for such purpose, or it is amended by remedial legislation. Thus, in the latter respect, Congress' attention must be called to this apparent disparity between the mother's and the father's legal standing in assailing the legitimacy and/or filiation of a child.

On a related matter, it deserves clarification that while the Court, in the 2020 case of *Alanis III v. Court of Appeals (Alanis III)*,^[10] ruled that a legitimate child is entitled to use the surname of either parent as his/her surname, such holding finds no application in this case. A closer reading of *Alanis III* would reveal that it involved a petition for change of name under Rule 103 and was filed by the concerned individual himself, Anacleto Ballaho Alanis III, who wanted to have his name changed to Abdulhamid Ballaho. The ground invoked in that case was the risk of confusion because therein petitioner (who was then already an adult) had been using the name Abdulhamid Ballado since he was a child and all documents relevant to him, from school records to government documents, referred to him as Abdulhamid Ballaho, not Anacleto Ballaho Alanis III. More importantly, the petition for change of name filed in that case did not have any effect on therein petitioner's status of legitimacy and/or filiation. In contrast to this case, the instant petition is one for Rule 108 and was filed by herein petitioner, purportedly on behalf of her minor child, Alrich Paul. As earlier intimated, the latter petition does not only seek to change Alrich Paul's name to avoid confusion as in *Alanis III*, but its grant would effectively affect the filial tie between Alrich Paul and his putative biological father, respondent Fulgueras.

There are fundamental differences between petitions filed under Rule 103 and those filed under Rule 108. As per the rules, a petition for change of name under Rule 103 must be filed by the "person desiring to change his name."^[11] A Rule 103 petition stands on one's own personal right to bring an action to change his name based on reasonable grounds, e.g., to avoid confusion, to change a ridiculous name or one tainted with dishonor, or to change a name that is very difficult to pronounce. On the other hand, a petition for cancellation or correction of entry under Rule 108 can be filed by "[a]ny person interested in any act, event, order or decree concerning the civil status of persons."^[12] Thus, a change of name effected under Rule 108 is only a consequence or by-product of another act, event, order or decree; a Rule 108 petition is not an action brought for the very purpose of changing one's name. Necessarily, therefore, the issues tried in a Rule 108 petition revolve around the act, event, order or decree upon which the correction or change in entry is sought, and not on the reasonableness of the change in name sought as in a Rule 103 petition. Given these differences, a Rule 108 petition cannot be simplified and resolved based on the parameters of a Rule 103 petition. The two petitions are different and a Rule 108 petition must establish the act, event, order or decree upon which it is based.

Here, it bears reiterating that petitioner filed a Rule 108 petition, citing as basis, inter alia, the act or event that it was only made to appear that respondent Fulgueras signed the Affidavit of Acknowledgement/Admission of Paternity attached to Alrich Paul's Certificate of Live Birth, when in truth, he could not have done so as he was abroad when the latter was born. As such, *Alanis III*, which involved a Rule 103 petition, cannot be made to apply here.

Finally, it should be pointed out that case law has already settled that petitions affecting the names of minor children filed by their parents – as in this case – should be dismissed on the ground of prematurity. It is ratiocinated that since it will be the minor child who will be ultimately affected by a change of name, then he/she should be given the opportunity to decide for himself/herself upon reaching adulthood.^[13] In *Wang v. Cebu City Civil Registrar*,^[14] the Court ruled:

In addition, petitioner is only a minor. Considering the nebulous foundation on which his petition for change of

name is based, it is best that the matter of change of his name be left to his judgment and discretion when he reaches the age of majority. As he is of tender age, he may not yet understand and appreciate the value of his name and granting of the same at this point may just prejudice him in his rights under our laws.[15] (Emphasis and underscoring supplied)

Following settled case law on the matter, I respectfully submit that the instant petition should be dismissed, without prejudice to Alrich Paul filing a Rule 103 petition – based on, inter alia, his personal right to choose his surname between that of his father or his mother, pursuant to Alanis III – once he reaches adulthood.

In view of the foregoing, I vote to DENY the present petition.

[1] See ponencia, p. 2.

[2] See *Tison v. Court of Appeals*, 342 Phil. 550, 558 (1997).

[3] See *id.* See also Articles 170 and 171 of the Family Code and *Geronimo v. Santos*, 770 Phil. 364, 377-378 (2015).

[4] Ponencia, p. 9, citing *Miller v. Miller*, G.R. No. 200344, August 28, 2019, and *Braza v. The City Civil Registrar of Himamaylan City, Negros Occidental*, 622 Phil. 654, 659 (2009).

[5] See *Romualdez v. Marcelo*, 529 Phil. 90, 106 (2006); citation omitted.

[6] 770 Phil. 364 (2015).

[7] *Id.* at 378, citing *Tison v. Court of Appeals*, *supra* note 2, at 558-559.

[8] Article 167 of the Family Code reads:

Art. 167. The child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.

[9] "The fact that Florencia's husband is living and there is a valid subsisting marriage between them gives rise to the presumption that a child born within that marriage is legitimate even though the mother may have declared against its legitimacy or may have been sentenced as an adulteress. The presumption of legitimacy does not only flow out of a declaration in the statute but is based on the broad principles of natural justice and the supposed virtue of the mother. The presumption is grounded on the policy to protect innocent offspring from the odium of illegitimacy." (*Cabatania v. Court of Appeals*, 484 Phil. 42, 51-52 [2004]; See also *Liyao, Jr. v. Tanhoti-Liyao*, 428 Phil. 628, 640-641 [2002])

[10] G.R. No. 216425, November 11, 2020.

[11] See Section 1, Rule 103 of the Rules of Court.

[12] See Section 1, Rule 108 of the Rules of Court.

[13] See *Wang v. Cebu City Civil Registrar*, 494 Phil. 149, 163 (2005); See also *Republic v. Marcos*, 261 Phil. 319, 326-327 (1990); *Padilla v. Republic*, 199 Phil. 226, 230 (1982), and *Moore v. Republic*, 118 Phil. 285, 288 (1983).

[14] See *id.*

[15] See *id.* at 163.

SEPARATE CONCURRING AND DISSENTING OPINION

LEONEN, J.:

The provisions of the Constitution are part of any reading of any statute. The entire legal order is part of one whole and we betray our duty as judges when we fail to interpret a provision of a statute—no matter how seemingly orthodox—in the light of the provisions of the Constitution that protect the rights of women and the dignity of every human being qua human being.

We also fail our duties as judges—and betray our label as justices—when we succumb to the long abandoned legal philosophy of formalism, that is, reading the legal text separate from its contemporary realities or protecting old doctrines simply because they are old doctrines.

If we are truly to enable and empower women and mothers, it is time that we abandon the notion that fathers—and therefore patriarchy—have veto power over names and filiation.

Further, we do not do justice when we protect procedure over substantive rights. I urge that this Court act not as the passive entity it was before 1987, but as the protector of constitutional rights it was envisioned to be. We balance political power not by upholding an anachronistic doctrine but by doing what is right and just.

We are more than automatons that invoke technical procedural and antiquated doctrine rather than advance the rights of our mothers and children.

The rule of law is meaningless unless it is also the rule of just law.

The Constitution itself provides:

"Sec. 14. The State. . . shall ensure the fundamental equality before the law of women and men.[1]

The provision is clear. It is mandatory and it contains a judicial obligation to ensure the fundamental equality before the law of women and men. This constitutional duty cannot be defeated by a very restrictive and narrow reading of a statute that will ensure that mothers and women continue to suffer a status lesser than husbands or men.

The constitutional provision cannot be amended by a statute.

It uses the verb "shall."

It commands that we "shall ensure." It contains a positive duty, not a passive one.

Its object is not only to ensure equality; it is to ensure "fundamental equality before the law of women and men."

It is more than simply the passive equal protection clause.[2] It adds more to our judicial duties.

With these fundamental premises, I regret that I cannot fully concur with the ponencia.

I partially concur that the failure to implead Ariel Libut in the Rule 108 Petition may limit the reliefs that can be granted to petitioner. However, I dissent as to the extent of the effect of this failure. I also respectfully but emphatically dissent to the majority's reading of Article 167 of the Family Code.

The majority maintains that under Article 167 of the Family Code, petitioner, as a mother, is absolutely proscribed from establishing Alrich Paul's true filiation.

The majority recognizes that this reading of Article 167 perpetuates the "disparity between the mother's and

father's legal standing in assailing the legitimacy and/or filiation of a child." The majority also recognizes that this disparity contravenes state obligations under the Convention on the Elimination of All Forms of Discrimination Against Women.[3] Notwithstanding these recognitions, the majority maintains that the correct course of action is to suggest that the legislature amend the law.[4]

I respectfully disagree.

The fundamental equality of women and men before the law is guaranteed by the Constitution, statute, as well as international convention to which the Philippines is a party.[5]

The duty to ensure this fundamental equality of women and men is an active one.[6] This is especially evident when juxtaposed with the equal protection clause. Article III, Section 1 of the Constitution passively states that no person shall "be denied the equal protection of the laws," whereas Article II, Section 14 mandates that the State "shall ensure the fundamental equality." [7]

Saudi Arabian Airlines (Saudia) v. Rebesencio[8] explained:

Article II, Section 14 of the 1987 Constitution provides that "[t]he State . . . shall ensure the fundamental equality before the law of women and men." Contrasted with Article II, Section 1 of the 1987 Constitution's statement that "[n]o person shall . . . be denied the equal protection of the laws," Article II, Section 14 exhorts the State to "ensure." This does not only mean that the Philippines shall not countenance nor lend legal recognition and approbation to measures that discriminate on the basis of one's being male or female. It imposes an obligation to actively engage in securing the fundamental equality of men and women.

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), signed and ratified by the Philippines on July 15, 1980, and on August 5, 1981, respectively, is part of the law of the land. In view of the widespread signing and ratification of, as well as adherence (in practice) to it by states, it may even be said that many provisions of the CEDAW may have become customary international law. The CEDAW gives effect to the Constitution's policy statement in Article II, Section 14. Article I of the CEDAW defines "discrimination against women" as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

The constitutional exhortation to ensure fundamental equality, as illumined by its enabling law, the CEDAW, must inform and animate all the actions of all personalities acting on behalf of the State. It is, therefore, the bounden duty of this court, in rendering judgment on the disputes brought before it, to ensure that no discrimination is heaped upon women on the mere basis of their being women. This is a point so basic and central that all our discussions and pronouncements — regardless of whatever averments there may be of foreign law — must proceed from this premise.[9] (Emphases added, citations omitted)

This duty to ensure the fundamental equality must not be brushed aside.

In *Yasin v. Honorable Judge Shari'a District Court*, [10] this Court confirmed a woman's right to resume using her maiden name after a divorce. In her separate concurring opinion, [11] Associate Justice Florida Ruth Romero explained the significance of Article II, Section 14 of the Constitution as necessarily affecting the reading of Article 370 of the Civil Code in accord with the fundamental equality of men and women:

[Article 370] provides:

"ART. 370. A married woman may use:

(1)

Her maiden first name and surname and add her husband's surname, or

(2)

Her maiden first name and her husband's surname, or

(3)

Her husband's full name, but prefixing a word indicating that she is his wife, such as 'Mrs.'"

. . . .

In recognition of the increasing clamor of women worldwide for equality, the 1987 Constitution laid down the basic policy with respect to the standing of women and men in the eyes of the law, thus:

"Sec. 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men."

If it means anything at all, it signifies that women, no less than men, shall enjoy the same rights accorded by law and this includes the freedom of choice in the use of names upon marriage. To give substance and meaning to the policy, laws have been enacted by Congress, and rules and regulations issued by administrative agencies, notably Republic Act No. 7192 "promoting the integration of women as full and equal partners of men in development and nation building. . .

Whatever rights or opportunities used to be denied to women in categorical language or due to ambiguity or implied from long-continued practice or custom, are now clearly granted to them, such as the right to "enter into contracts which shall in every respect be equal to that of men under similar circumstance," equal membership in clubs admission to military schools, voluntary PAG-IBIG, GSIS and SSS Coverage and others.[12] (Emphases supplied)

In consonance with this duty to ensure the fundamental equality of women and men, the legislature enacted Republic Act No. 9710, or the Magna Carta of Women. The Magna Carta mandates the "State [to] take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations." [13] The Magna Carta of Women also provides that the State, as the primary duty-bearer, shall refrain from discriminating against women, and shall

fulfill these duties through law, policy, regulatory instruments, administrative guidelines, and other appropriate measures, including temporary special measures.

Recognizing the interrelation of the human rights of women, the State shall take measures and establish mechanisms to promote the coherent and integrated implementation and enforcement of this Act and related laws, policies, or other measures to effectively stop discrimination against and advance the rights of women.

The State shall keep abreast with and be guided by progressive developments in human rights of women under international law and design of policies, laws, and other measures to promote the objectives of this Act.[14]

The constitutional duty to ensure the fundamental equality of women and men before the law belongs just as much to this Court[15] as it does to the legislature. Of course, it would be ideal for the legislature to update the laws to ensure their texts are unequivocally aligned with principles of equality. Until this occurs, this Court can find room in the text to update its reading of the laws so that they are more in consonance with contemporary normative provisions in treaty and contemporary understanding of what equality means in the Constitution.

It is true that the Family Code, wherein the contentious provisions on filiation are found, was enacted after the Philippines ratified the Convention on the Elimination of All Forms of Discrimination Against Women in 1980 and the ratification of the 1987 Constitution. Nonetheless, the Convention on the Elimination of All Forms of Discrimination Against Women is a treaty with operative effects as law even after its ratification. Further, the Magna Carta of Women was enacted in 2008. All these should qualify any reading of the decades-old Article 167.

With this in mind, this Court can easily fulfill its duty to ensure the fundamental equality of women and men before the law by finding ways to construe laws in a way more aligned with this equality.

Although Article 167 states that "[t]he child shall be considered legitimate although the mother may have declared against [their] legitimacy or may have been sentenced as an adulteress," this does not have to operate as an ironclad rule, proscribing the mother from having personality to raise the issue of legitimacy before the court. It leaves ample room to allow a mother to establish the grounds for impugning the legitimacy of a child.

The text does not explicitly prohibit a mother from impugning her child's legitimacy in court. There is space to read Article 167 as merely stating the effect of a declaration against legitimacy, that is, a mother's act of declaring against legitimacy per se is not sufficient to detract from her child's legitimacy. Just as the sentence of adultery does not automatically affect the legitimacy of a child, her declaration against the legitimacy does not also affect the same.

The provision in and of itself does not forever silence the mother from claiming, from her own knowledge, the paternity of her own child. By reading constitutional provision, treaty, and law together, we are duty bound not to read the law to enable the continued inequality between the mother and the alleged father. We cannot, while acknowledging the content of the Constitution, emasculate our competence to do what the Constitution empowered us to do—to read the law properly.

It is true that Articles 170 and 171 of the Family Code specifically recognize that actions to impugn the legitimacy of a child may be brought by a husband or, in the proper cases, his heirs:

ARTICLE 170. The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded.

If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier. (263a)

ARTICLE 171. The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding article only in the following cases:

(1)

If the husband should die before the expiration of the period fixed for bringing his action;

(2)

If he should die after the filing of the complaint, without having desisted therefrom; or

(3)

If the child was born after the death of the husband. (262a)

Nonetheless, neither provision states that it contains an exclusive enumeration of who may bring the case. None of the provisions on legitimacy expressly prohibit the mother from doing so.

Moreover, the law does not even suggest any compelling reasons to allow a husband and his heirs to impugn filiation yet prevent the wife from doing the same.

For this Court to insist on denying a wife a right clearly bestowed on a husband and his heirs, notwithstanding the absence of a clear legislative prohibition, substantial distinctions must exist.

In *Garcia v. Drilon*,^[16] we recognized that there could be an identification of difference and an accommodation thereof in pursuit of fundamental equality:

I. R.A. 9262 rests on substantial distinctions.

The unequal power relationship between women and men; the fact that women are more likely than men to be victims of violence; and the widespread gender bias and prejudice against women all make for real differences justifying the classification under the law. As Justice McIntyre succinctly states, "the accommodation of differences... is the essence of true equality."

A. Unequal power relationship between men and women

According to the Philippine Commission on Women (the National Machinery for Gender Equality and Women's Empowerment), violence against women (VAW) is deemed to be closely linked with the unequal power relationship between women and men otherwise known as "gender- based violence". Societal norms and traditions dictate people to think men are the leaders, pursuers, providers, and take on dominant roles in society while women are nurturers, men's companions and supporters, and take on subordinate roles in society. This perception leads to men gaining more power over women. With power comes the need to control to retain that power. And VAW is a form of men's expression of controlling women to retain power.

The United Nations, which has long recognized VAW as a human rights issue, passed its Resolution 48/104 on the Declaration on Elimination of Violence Against Women on December 20, 1993 stating that "violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into subordinate positions, compared with men."^[17] (Emphasis supplied, citations omitted)

Thus, in her separate concurring opinion,^[18] Justice Teresita Leonardo-De Castro pointed out that treating men and women differently due to differences between them may be resorted to in pursuit of the goal of substantive equality:

Verily, the classification made in Republic Act No. 9262 is substantially related to the important governmental objectives of valuing every person's dignity, respecting human rights, safeguarding family life, protecting children, promoting gender equality, and empowering women.

The persistent and existing biological, social, and cultural differences between women and men prescribe that they be treated differently under particular conditions in order to achieve substantive equality for women. Thus, the disadvantaged position of a woman as compared to a man requires the special protection of the law, as gleaned from the following recommendations of the CEDAW Committee:

8. [T]he Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will

be required in order to address such differences. Pursuit of the goal of substantive equality also calls for an effective strategy aimed at overcoming underrepresentation of women and a redistribution of resources and power between men and women.

9. Equality of results is the logical corollary of de facto or substantive equality. These results may be quantitative and/or qualitative in nature; that is, women enjoying their rights in various fields in fairly equal numbers with men, enjoying the same income levels, equality in decision-making and political influence, and women enjoying freedom from violence. (Emphases in the original)

The government's commitment to ensure that the status of a woman in all spheres of her life are parallel to that of a man, requires the adoption and implementation of ameliorative measures, such as Republic Act No. 9262. Unless the woman is guaranteed that the violence that she endures in her private affairs will not be ignored by the government, which is committed to uplift her to her rightful place as a human being, then she can neither achieve substantive equality nor be empowered.

The equal protection clause in our Constitution does not guarantee an absolute prohibition against classification. The non-identical treatment of women and men under Republic Act No. 9262 is justified to put them on equal footing and to give substance to the policy and aim of the state to ensure the equality of women and men in light of the biological, historical, social, and culturally endowed differences between men and women.[19] (Emphases in the original, citations omitted)

However, this recognition that the law may under certain circumstances treat men and women differently cannot operate in favor of prohibiting a woman from impugning filiation in this case.

Indeed, even assuming that men and women have essential biological differences that justify different treatment under the law, or even seen from the view of traditional religious teachings that gender roles are complementary and not identical, no compelling reason has been advanced to justify allowing husband and his heirs to impugn filiation, but not the wife.

Again, if we are true to our duty to "ensure the fundamental equality between men and women"[20] and our conscience that it is not only the husband who is the parent, we should not be blind to the proper interpretations of these provisions.

Thus, a mother is not barred from establishing the grounds for impugning legitimacy provided for under Article 166 of the Family Code. What is not prohibited may be done, except when it violates "morals, customs[,] and public order." [21]

To hold otherwise will impede the progress of gender equality for which this Court has been known so far.

Nonetheless, while I believe petitioner has the right to establish the grounds for impugning legitimacy, I agree that it would be procedurally unsound to grant the petition with regard to the deletion of the entries regarding paternity given petitioner's failure to implead Ariel.

Still, the name change should be allowed.

The majority denied even the change of name because of the failure to implead Ariel in the initial petition.

Rule 108 requires that "persons who have or claim any interest which would be affected thereby" be made parties to the proceeding.[22] In this case, even if Alrich Paul is considered to be Ariel's legitimate child, Ariel does not have any interest that would be affected by Alrich Paul's change of name.

The correction requested is for Alrich Paul to use his mother's name as his surname. Under the law, legitimate children are entitled to use the name of their mother as their surname.[23] Ariel's status as presumptive father does

not entitle him to compel Alrich Paul to adopt his last name. Thus, as regards this correction, Ariel is not an indispensable party.

With this, I submit that, although the question of paternity has legal effects as to both Alrich Paul and Ariel and should thus involve Ariel as a matter of procedure, there is no legal obstacle to allowing Alrich Paul to use his mother's surname.

As a final note, the tradition of taking the father's last name is not quintessentially Filipino. The convention of families sharing a last name was merely imposed by a governor-general on the people of the Philippines in 1849.

Even in the West, the tradition is not as old as one might assume:

As Deborah Anthony, a professor of legal studies at the University of Illinois at Springfield, outlined in a 2018 paper, surnames in England prior to the 17[th] century weren't standardized. Many signified a profession (such as Potter) or place of residence (such as Hilton, short for "hill town"). Surnames also changed over time: A person named Hilton, for instance, might take up the last name Potter after beginning their vocation in ceramics.[24]

To be sure, a certain amount of history is reflected in a person's last name. However, there is nothing so sacred about taking a father's last name that we cannot question the tradition. To assume that it is in the child's best interest to take on a father's surname is highly speculative.

In this day of data-keeping, tracking a person's familial lines, even without the convention passing down a father's surname, is easy enough, and can accommodate traditions that respect a mother as much as they respect a father.

ACCORDINGLY, I vote that the petition be **PARTIALLY GRANTED** and that the Civil Registrar of Pasig City be **DIRECTED** to delete the surname "Fulgueras" and enter "Ordoña" as the surname of Alrich Paul in his certificate of live birth.

[1] CONST., art. II, sec. 14.

[2] CONST., art. III, sec. 1.

[3] Ponencia, pp. 17-18.

[4] Id. at 20.

[5] Alanis III v. Court of Appeals, G.R. No. 216425, November 11, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66846>> [Per J. Leonen, Third Division].

[6] Racho v. Tanaka, 834 Phil. 21 (2018) [Per J. Leonen, Third Division].

[7] Id. at 36.

[8] 750 Phil. 791 (2015) [Per J. Leonen, Second Division].

[9] Id. at 830-831.

[10] 311 Phil. 696 (1995) [Per J. Bidin, En Banc].

[11] J. Romero, Concurring Opinion in Yasin v. Honorable Judge Shari'a District Court, 311 Phil. 696 (1995) [Per J. Bidin, En Banc].

[12] Id. at 710-712.

[13] Republic Act No. 9710 (2009), sec. 19.

[14] Republic Act No. 9710 (2009), sec. 5.

[15] Alanis III v. Court of Appeals, G.R. No. 216425, November 11, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66846>> [Per J. Leonen, Third Division].

[16] 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].

[17] Id. at 91-92.

[18] J. Leonardo-De Castro, Concurring Opinion in Garcia v. Drilon, 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].

[19] Id. at 136-137.

[20] CONST., art. II, sec. 14.

[21] Manila Electric Co. v. Public Service Commission, 60 Phil. 658, 661 (1934) [Per J. Villa-Real, En Banc].

[22] Rules of Court, Rule 108, sec. 3.

[23] Alanis III v. Court of Appeals, G.R. No. 216425, November 11, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66846>> [Per J. Leonen, Third Division].

[24] Michael Waters, A Patriarchal Tradition That Just Won't Budge. THE ATLANTIC, October 28, 2021, <<https://www.theatlantic.com/family/archive/2021/10/patrilineal-surnames/620507/>> (last accessed on November 4, 2021).

CONCURRING OPINION

CAGUIOA, J.:

I concur with the ponencia's denial of the petition based on the following premises: (1) the instant petition for correction of entries under Rule 108 of the Rules of Court constitutes a collateral attack of the legitimacy and filiation of Alrich Paul Fulgueras (Alrich Paul), child of petitioner Richelle Busque Ordoña (petitioner), which is prohibited in light of *Miller v. Miller*[1] (*Miller*); (2) Article 167 of the Family Code similarly bars petitioner from declaring against the legitimacy of her child; and (3) even assuming *arguendo* that petitioner may effectively declare against or impugn her child's legitimate status, she may still not do so through the instant petition since she seeks substantial corrections which necessitate an adversarial proceeding which cannot be had in this case for failure to implead the presumed father of the child and legal husband of petitioner, Ariel O. Libut.

My concurrence with the ponencia finds anchor on the following points which shall be discussed *ad seriatim*: first, the petition is a collateral attack on the child's legitimacy which is procedurally prohibited; second, petitioner's impugning of her own child's legitimacy is substantively precluded by categorical provisions of the Family Code; and third, even if the Court were to grant that the petition under Rule 108 is the very action to impugn a child's legitimacy, petitioner remains prohibited from being the proper party who may file the same.

Preliminarily, it is important to observe that if herein petitioner now claims that the paternal biographical details are incorrect, details which she presumably supplied herself when she caused the registration of the Certificate of Live Birth of her child, then this may be considered an admission of petitioner having previously committed the crime of falsification of a public document. Particularly, her admission that the acknowledgment of paternity

made by Allan V. Fulgueras is invalid may be an effective admission that she herself introduced a falsified document as an attachment to the Certificate of Live Birth in question. This cannot be overlooked without militating against the foundational principle that "he who comes to equity must come with clean hands."^[2]

And yet, even if the Court were prepared to rule out the implicit disclosure and admission of what may have been a knowing and purposeful falsification, I agree with the ponencia's full denial of the instant petition, owing to the insurmountable substantive and procedural obstacles before it.

First, as correctly found by the ponencia, to grant the instant petition would amount to no less than allowing a collateral attack on the legitimacy and filiation of a child through a petition for correction of entries in a certificate of live birth — which the Court has pronounced to be prohibited. Specifically, in *Miller*, a ponencia of Associate Justice Marvic Leonen, which similarly involved a child's legitimacy effectively impugned through a petition for correction of entries in a certificate of live birth, the Court categorically reminded that legitimacy and filiation cannot be subject to a collateral attack, viz.:

Here, petitioners sought the correction of private respondent's surname in her birth certificate registered as Local Civil Registrar No. 825. They want her to use her mother's surname, *Espenida*, instead of *Miller*, claiming that she was not an acknowledged illegitimate child of John.

What petitioners seek is not a mere clerical change. It is not a simple matter of correcting a single letter in private respondent's surname due to a misspelling. Rather, private respondent's filiation will be gravely affected, as changing her surname from *Miller* to *Espenida* will also change her status. This will affect not only her identity, but her successional rights as well. Certainly, this change is substantial.

In *Braza v. The City Civil Registrar of Himamaylan City, Negros Occidental*, this Court emphasized that "legitimacy and filiation can be questioned only in a direct action seasonably filed by the proper party, and not through collateral attack[.]" Moreover, impugning the legitimacy of a child is governed by Article 171 of the Family Code, not Rule 108 of the Rules of Court.^[3]

In the ponencia, the initiatory pleading before the Regional Trial Court of Pasig City is a Petition for Correction of Entries in the Certificate of Live Birth of *Alrich Paul*. Resembling the facts in *Miller*, although petitioner here only filed a petition for correction of entries, where she seeks to change the surname of her son from the surname of Allan V. Fulgueras, the purported father, to her maiden surname, what she effectively does is to impugn her son's legitimacy.

Following *Miller*, the Court cannot grant this petition without violating the longstanding rule that the legitimate status cannot be collaterally impugned by way of an expedient correction of entry in a certificate of birth. As the Court aptly recalled, the impugning of a child's legitimate status is not governed by Rule 108 of the Rules of Court (Correction of Entries in the Civil Registry) but Article 171 of the Family Code. Hence, even if the Court may be predisposed to carve out an exception from Article 171, it cannot be done in the instant petition which case law already establishes as being the improper remedy. Accordingly, the petition here should be denied, without prejudice to the filing of the proper action in the appropriate court.

Second, it was raised during the deliberations that petitioner's predicament is inherently unfair, with its resulting dual status of petitioner's child as both a product of love as well as legal fiction. With all due respect, I must express my vehement objection to this framing of the present controversy, as it completely misses both the history of conception and the correct way of revising Articles 167, 170 and 171 of the Family Code. Contrary to the considered submission of some justices during the deliberations, and as the ponencia recognizes, if any legal provision is demonstratively antiquated as it is unequivocal, or otherwise plays out in consequence in a manner that is unyielding to the realities on the ground, the way forward in revisiting and changing it is in the halls of

Congress, not within the chambers of this Court.

To be sure, the issue here, as squarely and correctly framed by the ponencia, involves not only the policy of protecting the child, or only affording men and women with equal remedies under the law; rather, also at stake in the instant proposition, as far as Articles 167, 170 and 171 are concerned, is the stability of the family as an institution, as its contours and constitutions have been defined by our domestic law. On this particular point, given the current phraseology of Articles 167, 170 and 171 of the Family Code, petitioner's prayer may not be given due course without carving out an indefensible exception therefrom because what petitioner seeks to undertake in the instant petition is textually precluded under Article 170.

Furthermore, and quite opposite to the suggestion that Articles 170 and 171 of the Family Code are not applicable to petitioner in this case, since said provisions refer only to the husband or his heirs, these provisions actually squarely apply to petitioner in this case, as they categorically preclude her from the right to impugn her child's legitimate status. Article 170 explicitly provides that the ability to impugn the legitimate status of a child is given only to the husband or his heirs, in a proper case. The deliberations of the drafting of said provision likewise reveal that the mother's lack of any right to impugn the legitimate status was affirmed and mentioned as an unquestioned premise — one that was categorically expressed in the provision itself.

Illustratively, during the deliberations of the Family Code provisions on the impugning of a child's legitimate status, the mother's lack of right to impugn the legitimate status was affirmed and mentioned as an unquestioned premise, thus:

A. Article (9) —

The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding article only in the following cases:

(1)

If the husband should die before the expiration of the period fixed for bringing his action;

(2)

If he should die after the filing of the complaint, without having desisted therefrom;

(3)

If the child was born after the death of the husband.

Dean Gupit observed that the above provision is limited to the heirs of the husband. He then posed the question: Should not the heirs of the wife be also given the right to impugn the filiation of the child since there can be instances when they would also be prejudiced if they feel that the child is not legitimate? Judge Diy replied that it should be the wife herself and not the heirs of the wife, who belong to another line. Dean Carale stated that the wife herself is an heir of the husband so it is not necessary to expressly include her in this provision. Judge Diy, however, pointed out that it would be better to be specific by saying "the surviving spouse x x x".

Dean Gupit explained that his point is that if there is no legitimate child[,] the heirs of the wife will inherit. Judge Diy stated that this is only true if the wife is already dead. Prof. Baviera remarked that under the law, the wife cannot really question the legitimacy of the child even if she admits that she committed adultery. Dean Gupit pointed out that the situation he was thinking of is that the wife is not really questioning the legitimacy of the child. He added that there are instances when the wife would say "this is really my legitimate child", when actually she did not bear the child. Prof. Baviera remarked that this would be inconsistent with the principle that

the wife herself cannot question. Dean Gupit raised the question: If the wife herself cannot question, how can her heirs question?

x x x x

Prof. Baviera stated that the only ground for the heirs of the wife to question the legitimacy of the child is simulation of birth, but they have to prove it by other evidence and not on the ground of legitimacy.

Dean Gupit reiterated that his inquiry is whether the heirs of the wife have the right to impugn the legitimacy of the child. Justice Reyes replied that they have but only after the death of the wife. x x x Justice Reyes clarified that the controversy should come after the death of both husband and wife. Judge Diy added that the article assumes that the mother of the child is the wife and not someone else.[4]

Furthermore, when the deliberations ventured into the matter of a legitimate child's use of surname as provided for by Article 364 of the Civil Code, the exchanges further revealed that the use of a surname is imbued with clear policy considerations that go beyond paternity and filiation, but also go into a more socio-cultural sense of belongingness and family, viz.:

Justice Caguioa commented that there is a difference between the use by the wife of the surname and that of the child because the father's surname indicates the family to which he belongs, for which reason he would insist on the use of the father's surname by the child but that, if he wants to, the child may also use the surname of the mother.

Justice Puno posed the question: If the child chooses to use the surname of the mother, how will his name be written? Justice Caguioa replied that it is up to him but that his point is that it should be mandatory that the child uses the surname of the father and permissive in the case of the surname of the mother.

Prof. Baviera remarked that Justice Caguioa's point is covered by the present Article 364, which reads:

Legitimate and legitimated children shall principally use the surname of the father.

x x x x

Justice Caguioa suggested that the proposed Article (12) be modified to the effect that it shall be mandatory on the child to use the surname of the father but he may use the surname of the mother by way of an initial or a middle name. x x x

Justice Puno remarked that there is logic in the simplification suggested by Justice Caguioa that the surname of the father should always be last because there are so many traditions like the American tradition where they like to use their second given name and the Latin tradition, which is also followed by the Chinese, wherein they even include the clan name.

x x x x

Justice Puno suggested that they agree in principle that in the Chapter on Use of Surnames, they should say that initial or surname of the mother should immediately precede the surname of the father so that the second name, if any, will be before the surname of the mother. Prof. Balane added that this is really the Filipino way. The Committee approved the suggestion.[5]

With reference to renowned Civil Law authorities and their take on the application of Article 364 of the Civil Code, it similarly appears that the primary use of the father's surname is colored by filiation and legitimacy considerations. Justice Edgardo Paras opined that the evident purpose of the principal use of the father's surname is to avoid confusion with respect to the paternity of the child.[6] More, Justice Alicia V. Sempio-Diy, herself a

member of the Joint Committee which deliberated and drafted the provisions of the Family Code, concluded that it is mandatory for the legitimate child to use his father's surname, and that he/she may use his/her mother's surname as a middle initial or a middle name, but that his surname must still be that of his/her father's.[7]

More, the text of the provision is clear, plain, and free from ambiguity, and must be given its literal meaning and applied without attempted interpretation.[8] In the inverse, even if the provision did require statutory construction, then the rule is *expressum facit cessare tacitum*. [9] What is expressed puts an end to what is implied, and with Article 170 expressly allowing only the husband or, in certain instances, his heirs, to impugn the legitimate status of the child in question, that must be understood, as it has always been understood, to mean to the exclusion of others, even the mother.

The exclusion of the mother from those who may impugn the legitimate status of a child is also echoed in Article 167, with its affirmation of the legitimate status of the child even in the event of the mother's declaration against it.

Article 167. The child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.

If at all, Article 167 in relation to Article 170 only demonstrate that the presumption of legitimacy of the child goes beyond just an iteration of the biological parentage of the child, but finds its moorings on ensuring that as much as is practicable under the existing laws, the child shall be given the legitimate status as opposed to an illegitimate one. The rationale for this protected presumption runs deep, as the Court elucidated in the case of *Geronino v. Santos*: [10]

Petitioner is correct that proof of legitimacy under Article 172, or illegitimacy under Article 175, should only be raised in a direct and separate action instituted to prove the filiation of a child. The rationale behind this procedural prescription is stated in the case of *Tison v. Court of Appeals*, viz.:

x x x [W]ell settled is the rule that the issue of legitimacy cannot be attacked collaterally.

The rationale for these rules has been explained in this wise:

The presumption of legitimacy in the Family Code x x x actually fixes a civil status for the child born in wedlock, and that civil status cannot be attacked collaterally. The legitimacy of the child can be impugned only in a direct action brought for that purpose, by the proper parties, and within the period limited by law.

The legitimacy of the child cannot be contested by way of defense or as a collateral issue in another action for a different purpose. The necessity of an independent action directly impugning the legitimacy is more clearly expressed in the Mexican Code (Article 335) which provides: ["]The contest of the legitimacy of a child by the husband or his heirs must be made by proper complaint before the competent court; any contest made in any other way is void.["] This principle applies under our Family Code. Articles 170 and 171 of the [C]ode confirm this view, because they refer to "the action to impugn the legitimacy." This action can be brought only by the husband or his heirs and within the periods fixed in the present articles.

Upon the expiration of the periods provided in Article 170, the action to impugn the legitimacy of a child can no longer be brought. The status conferred by the presumption, therefore, becomes fixed, and can no longer be questioned. The obvious intention of the law is to prevent the status of a child born in wedlock from being in a state of uncertainty for a long time. It also aims to force early action to settle any doubt as to the paternity of such child, so that the evidence material to the matter, which must necessarily be facts occurring (hiring the period of the conception of the child, may still be easily available.

x x x x

Only the husband can contest the legitimacy of a child born to his wife. He is the one directly confronted with the scandal and ridicule which the infidelity of his wife produces; and he should decide whether to conceal that infidelity or expose it, in view of the moral and economic interest involved. It is only in exceptional cases that his heirs are allowed to contest such legitimacy. Outside of these cases, none — even his heirs — can impugn legitimacy; that would amount to an insult to his memory.[11]

Even with a retracing of the historical and socio-cultural conditions that underpin the Family Code and the policies it contains, it is demonstrably clear that the narrow allowance of who may impugn a child's legitimate status precisely rises from policy considerations that are protective of the welfare of the child — by way of the conclusive presumptions of legitimacy.

The entire body of literature, studies and deliberations that have colored the articulation of Articles 167, 170 and 171 of the Family Code are reasonably presumed to be encompassing, the breadth and depth of which are not within the province or mandate of the Court to speculate on. What is clear as a vested duty upon this Court is to assume the existence of the wisdom that informed said provisions, and to uphold the clear expression and application of the same until and unless these provisions are amended by a new public wisdom forged in the halls of Congress.

It is all too understandable how Articles 167, 170 and 171 as written may be seen as operatively unduly restrictive to the extent that it discriminates against the rights of women. However, the Court cannot infuse and read into these provisions, whether by rationale or by way of consequence, the compassion and empathy towards the plight of mothers without defeating their clearest import as written.

In the case of *Republic v. Alarcon Vergara*[12] where the issue was a liberality in the interpretation of adoption laws in the Philippine jurisdiction with the end in view that of finding a family for a child, the Court nevertheless held that until and unless the law on said matter was amended, the Court may not apply the concept of liberality and read into the law what it clearly does not purport to say:

We are not unmindful of the main purpose of adoption statutes, which is the promotion of the welfare of children. Accordingly, the law should be construed liberally, in a manner that will sustain rather than defeat said purpose. The law must also be applied with compassion, understanding and less severity in view of the fact that it is intended to provide homes, love, care and education for less fortunate children. Regrettably, the Court is not in a position to affirm the trial court's decision favoring adoption in the case at bar, for the law is clear and it cannot be modified without violating the proscription against judicial legislation. Until such time however, that the law on the matter is amended, we cannot sustain the respondent-spouses' petition for adoption.[13]

When even in a case of liberality for purposes of enabling a child's adoption the Court chose to stay its hand, with more reason should the Court here find restraint from the perceived inclination to judicially legislate into Articles 167, 170 and 171 an exceptional circumstance that it clearly precludes, or otherwise grant the relief which is substantively premised on the exceptional circumstance which is unavailable.

It is important here to add the observation that the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) was signed by the Philippines on July 15, 1980, and ratified by it on August 5, 1981.[14] And yet, even with the country's accession to it, nearly six years later, the Family Code was nevertheless signed into law by then President Corazon B. Aquino on July 6, 1987, as the culmination of the work that began in 1979, from the drafts of two successive committees, chaired by Supreme Court Justice Florida Ruth Romero, and Supreme Court Justice J.B.L. Reyes, respectively. What is more, the purpose of the creation of the Family Code was to create a body of law that was designed to supplant certain provisions in the Civil Code and update the law with the changing of the tides in the Filipino culture and sensibility.[15]

Given the foregoing, it is therefore imprecise to imply that Articles 167, 170 and 171 of the Family Code, in relation to Article 364 of the Civil Code, were embodied without regard for the state obligations the country took upon itself when it signed the CEDAW six years prior, so that the above provisions now merit a carve-out in order to comply with the state obligations under the CEDAW. On the contrary, what appears to stand to reason more, given the chronological introduction of both the CEDAW and the Family Code, is that even with the state obligation of the country under the CEDAW, the Family Code was nevertheless articulated so, perceptively as a result of the balancing of interests and public policies at the time of its promulgation.

To draw a clearer picture of how state parties such as the Philippines can be bound to comply with its treaty and convention obligations without a wholesale negation of its municipal law, further illustration of the interplay between the two spheres of law is in order.

The primary source of the determination of the Philippine laws towards the international laws is encapsulated in the 1987 Philippine Constitution, specifically under the Declaration of Principles and State Policies in Article 11, paragraph (2) thereof which provides:

SECTION 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.[16]

It is discernible from the above constitutional provision that the Philippines ascribes to the dualistic framework in the determination of the status and importance given to international instruments vis-à-vis municipal law as two distinct systems of law,[17] which consequently acknowledges the distinctions with respect to the jurisdictions, enforcement mechanisms, and subject matter and sources of the international law and the municipal law,[18] with the international laws mainly governing relationships between sovereigns, and domestic laws governing the rights and obligations of individuals within a sovereign state.[19] It is similarly recognizable from the above provision that the Philippines adheres to the application of the "doctrine of incorporation," which the Court, in *Secretary of Justice v. Lantion*[20] (Lantion), explained thus:

x x x Under the doctrine of incorporation, rules of international law form part of the law of the land and no further legislative action is needed to make such rules applicable in the domestic sphere (Salonga & Yap, *Public International Law*, 1992 ed., p. 12). The doctrine of incorporation is applied whenever municipal tribunals (or local courts) are confronted with situations in which there appears to be a conflict between a rule of international law and the provisions of the constitution or statute of the local state. Efforts should first be exerted to harmonize them, so as to give effect to both since it is to be presumed that municipal law was enacted with proper regard for the generally accepted principles of international law in observance of the Incorporation Clause in the above-cited constitutional provision (Cruz, *Philippine Political Law*, 1996 ed., p. 55). In a situation, however, where the conflict is irreconcilable and a choice has to be made between a rule of international law and municipal law, jurisprudence dictates that municipal law should be upheld by the municipal courts (*Ichong vs. Hernandez*, 101 Phil. 1155 [1957]; *Gonzales vs. Hechanova*, 9 SCRA 230 [1963]; *In re: Garcia*, 2 SCRA 984 [1961]) for the reason that such courts are organs of municipal law and are accordingly bound by it in all circumstances (Salonga & Yap, *op. cit.*, p. 13).[21]

On this score in the case of *Philip Morris, Inc. v. Court of Appeals*,[22] the Court had the occasion to expound on the interplay between treaties and municipal law, thus:

x x x Withal, the fact that international law has been made part of the law of the land does not by any means imply the primacy of international law over national law in the municipal sphere. Under the doctrine of incorporation as applied in most countries, rules of international law are given a standing equal, not superior, to national legislative enactments.[23]

Furthermore, the Court had also previously made clear qualifications and effective circumscriptions on the breadth and scope of treaties vis-à-vis municipal law. In the case of *Ichong v. Hernandez*,^[24] the Court ruled that the provisions of a treaty are always subject to qualification or amendment by a subsequent law, and that it is similarly subject to the police power of the State, thus:

The Treaty of Amity between the Republic of the Philippines and the Republic of China of April 18, 1947 guarantees equality of treatment to the Chinese nationals "upon the same terms as the nationals of any other country". But the nationals of China are not discriminated against because nationals of all other countries, except those of the United States, who are granted special rights by the Constitution, are all Prohibited from engaging in the retail trade. But even supposing that the law infringes upon the said treaty, the treaty is always subject to qualification or amendment by a subsequent law (*U.S. vs. Thompson*, 258, Fed. 257, 260), and the same may never curtail or restrict the scope of the police power of the State (*Palston vs. Pennsylvania* 58 L. ed., 539).^[25]

Relatedly, in *Gonzales v. Hechanova*,^[26] the Court affirmed the primacy of the Constitution and the possibility of invalidating a treaty that runs counter to an act of Congress, to wit:

As regards the question whether an international agreement may be invalidated by our courts, suffice it to say that the Constitution of the Philippines has clearly settled it in the affirmative, by providing, in Section 2 of Article VIII thereof, that the Supreme Court may not be deprived "of its jurisdiction to review, revise, reverse, modify, or affirm on appeal, certiorari, or writ of error as the law or the rules of court may provide, final judgments and decrees of inferior courts in — (1) All cases in which the constitutionality or validity of any treaty, law, ordinance, or executive order or regulation is in question." In other words, our Constitution authorizes the nullification of a treaty, not only when it conflicts with the fundamental law, but, also, when it runs counter to an act of Congress.^[27]

Still, and most categorically, in the case of *Lantion*, the Court settled and disabused the notion of the primacy of international law over domestic law:

x x x The fact that international law has been made part of the law of the land does not pertain to or imply the primacy of international law over national or municipal law in the municipal sphere. The doctrine of incorporation, as applied in most countries, decrees that rules of international law are given equal standing with, but are not superior to, national legislative enactments. Accordingly, the principle *lex posterior derogat priori* takes effect — a treaty may repeal a statute and a statute may repeal a treaty. In states where the constitution is the highest law of the land, such as the Republic of the Philippines, both statutes and treaties may be invalidated if they are in conflict with the constitution.^[28]

To be sure, in accord with the general principle of international law that is *pacta sunt servanda*,^[29] the Philippines remains bound to ensure that the end of eliminating forms of discrimination against women is carefully considered in all its executive, legislative and judiciary efforts.^[30] However, the Philippines' treaty obligations under the CEDAW notwithstanding, this is by no means a *carte blanche* license for the Court to rewrite municipal law concerning who may impugn the legitimate status of a child. Veritably, treaties create rights and duties among States and a state party may not invoke its municipal law as justification for any breach thereof.^[31] That said, in the event of a conflict between municipal law and a treaty obligation, the state party is still held accountable, but only insofar as it does not run aground or nullify or modify the municipal law to conform to the treaty obligation.^[32]

As further elucidated upon by referred literature on the interaction between the international law and municipal law:

International law does not entirely ignore municipal law. For instance, as we have seen, municipal law may be

used as evidence of international custom or of general principles of law, which are both sources of international law. Moreover, international law leaves certain questions to be decided by municipal law; thus, in order to determine whether an individual is a national of state X, international law normally looks first at the law of state X, provided that the law of state X is not wholly unreasonable.

x x x x

In other words, all that international law says is that states cannot invoke their internal laws and procedures as a justification for not complying with their international obligations. States are required to perform their international obligations in good faith, but they are at liberty to decide on the modalities of such performance within their domestic legal systems. Similarly, there is a general duty for states to bring domestic law into conformity with obligations under international law. But international law leaves the method of achieving this result (described in the literature by varying concepts of 'incorporation', 'adoption', 'transformation' or 'reception') to the domestic jurisdiction of states. They are free to decide how best to translate their international obligations into internal law and to determine which legal status these have domestically. On this issue in practice there is a lack of uniformity in the different national legal systems.

x x x x

The attitude of municipal law to international law is much less easy to summarize than the attitude of international law to municipal law. For one thing, the laws of different countries vary greatly in this respect. If one examines constitutional texts, especially those of developing countries which are usually keen on emphasizing their sovereignty, the finding is that most states do not give primacy to international law over their own municipal law. However, this does not necessarily mean that most states would disregard international law altogether. Constitutional texts can form a starting point for analysis. What also matters is internal legislation, the attitude of the national courts and administrative practice, which is often ambiguous and inconsistent. The prevailing approach in practice appears to be dualist, regarding international law and internal law as different systems requiring the incorporation of international rules on the national level. Thus, the effectiveness of international law generally depends on the criteria adopted by national legal systems.[33]

In other words, state parties are given sufficient agency, and afforded due respect owing to its sovereignty, in its determination of the manner on how it can comply with its treaty obligations domestically.[34] As such, it is common for States to enact necessary legislation or amend existing ones to comply with their treaty obligations. In all these instances, however, the amending or revisiting of the municipal laws, orders or measures is undertaken through Executive policies or the exercise of the plenary law-making powers of the Legislature.

Illustrative of this state party's agency to comply with obligations derived from international law is the case of *Government of the United States of America v. Puruganan*,[35] where the Court mentioned that the lack of universally cohesive standards of extradition is borne of the fact that state parties enjoy the liberty to integrate extradition measures into the nuanced context of their varying domestic laws, viz.:

Not finding basis in customary law and failing to qualify as a generally-accepted principles (sic) of international law, the present state of international law on the return of fugitives for trial is hypothesized by Brownlie: "With the exception of alleged crimes under international law, surrender of an alleged criminal cannot be demanded of right in the absence of treaty." The result has been a failure of consistency in extradition practice among states. Indeed, the reality is that there is to date no uniform standard applicable to all states. D.W. Gregg attributes this lack of "universal" and cohesive standards in the extradition process to the adoption of a variety of procedures which can be as diverse as the contracting states would want them to be. In formulating their extradition treaties, contracting states insert particular provisions and stipulations to address specific particularities in their relationships. Thus, extradition under American law is different from that under English law; to illustrate, the English Extradition Act of 1870 requires that the offense, for which a fugitive is to be extradited, be also considered a crime under English law. No such requirement, upon the other hand,

exists under the US Extradition Act, which limits "extraditable crimes" to those enumerated under the treaty, regardless of whether the same are considered crimes under its laws. While both England and the United States are amenable to extraditing their own nationals, France and Belgium absolutely refuse to do so. This refusal to surrender one's own nationals is likewise adopted by most states in Continental Europe which, under their own municipal laws, are obliged to unconditionally reject any request for the surrender of their own nationals, preferring to try them under their own laws even though the offense is committed abroad. While Common Law countries require a prima facie showing of guilt before they surrender a fugitive, almost all other legal systems require only that the offense be committed in the jurisdiction of the demanding state. In the United States, extradition is demanded with an opportunity for a judicial hearing, while in other countries, extradition is exclusively an administrative function. It may also happen that a single state may have as many extradition processes as the number of extradition treaties it has with other countries. Thus, while the general extradition process with England is governed by the Extradition Act of 1870, any extradition it may undertake with member states of the British Commonwealth is governed by the Fugitive Act of 1967. Fenwick, another recognized authority in international law, concludes — "Since extradition is effected as the result of the provisions of treaties entered into by the nations two by two, it is impossible to formulate any general rule of law upon the subject." [36]

Resultantly, and far from engendering the weakening of international obligations in the municipal situ, this sobering recognition only submits, as it reminds, that the remedy for a perceived conflict between international obligations and domestic lies not with the courts. The fact that the Philippines is a signatory to the CEDAW cannot therefore translate to a license for the Court to realign domestic laws, through "interpretation," in an effort to comply with the country's obligation under the same. Instead, what entering into the treaty creates is a burden for the legislature or the executive branch to craft new laws or decrees that revisit existing ones in order to comply with the State obligation to reorient the domestic laws to the international conventions. Until and unless the existing laws are re-examined and amended by Congress, and not a moment before, the Court must continue to dispense with its duty to interpret and apply the laws as they are written, and not as it wishes they'd be recast. Until and unless Congress deems it wise to come out with a new iteration of public policy, the Court may not hint at the proposition that its wisdom is more in touch with the tide of public sensibilities, with the end of either inducing or otherwise preempting the legislative's own.

Faithful to the animus of the unmistakable separation of powers, the Court, as an institution, remains far more limited and restrained, and its progressive aspirations, no matter how lofty they may be, must remain grounded on and confined within its clear powers. In the words of Associate Justice Marvic Leonen in his Separate Opinion in the case of *Gios-Samar, Inc. v. Department of Transportation and Communications*, [37] the Court cannot ascribe upon itself the power to "express policy," thus:

Angara v. Electoral Commission imbues these rules with its libertarian character. Principally, Angara emphasized the liberal deference to another constitutional department or organ given the majoritarian and representative character of the political deliberations in their forums. It is not merely a judicial stance dictated by courtesy, but is rooted on the very nature of this Court. Unless congealed in constitutional or statutory text and imperatively called for by the actual and non-controversial facts of the case, this Court does not express policy. This Court should channel democratic deliberation where it should take place.

When interpretations of a constitutional provision are equally valid but lead to contrary results, this Court should exercise judicial restraint and allow the political forces to shed light on a choice. This Court steps in only when it discerns clear fallacies in the application of certain norms or their interpretation. Judicial restraint requires that this Court does not involve itself into matters in which only those who join in democratic political deliberation should participate. As magistrates of the highest court, we should distinguish our role from that of an ordinary citizen who can vote.

Judicial restraint is also founded on a policy of conscious and deliberate caution. This Court should refrain from speculating on the facts of a case and should allow parties to shape their case instead. Likewise, this Court should avoid projecting hypothetical situations where none of the parties can fully argue simply because they have not established the facts or are not interested in the issues raised by the hypothetical situations. In a way, courts are mandated to adopt an attitude of judicial skepticism. What we think may be happening may not at all be the case. Therefore, this Court should always await the proper case to be properly pleaded and proved.[38]

By denying the instant petition, by no means does the Court consent to say that Article 167 is a perfect provision, and that it does not translate to a limitation or other on the role of mothers in family life. The denial of the instant petition by no means seeks to say that Articles 167, 170 and 171 of the Family Code are perfect. The instant denial only admits that any perceived changes in the social persuasions that provide moorings for these provisions, or any emerging flaws in their wisdom, may only be winnowed by Congress, and may not be construed by or speculated upon by this Court. What the Court only seeks to reiterate is the limits of its own powers, and the peculiar position with which it must await affirmative action, if any, on the part of the Legislature or the Executive branch.

At best, calls for judgments of unconstitutionality of discriminatory laws have rung, but these judgments, in turn, require a direct action to assail the constitutionality of an allegedly discriminatory law, as astutely suggested by Senior Associate Justice Estela Perlas-Bernabe,[39] which the instant petition does not purport to be.

In any case, this awareness of where its powers begin and where they end is by no means a concession or consent on the part of the Court with respect to gender-slanted laws. Gender sensitivity and judicial restraint are not mutually exclusive, in much the same way that judicial legislation cannot be the mechanism for the creation of more progressive laws. Gender equality and gender awareness are potent and true, but may not be used as the vehicles with which the Civil Code is amended through judicial interpretation.

Relatedly, with respect to the point raised during the deliberations pertaining to the provisions of the Convention on the Rights of the Child (CRC), particularly Articles 8 and 9 thereof, it is worth observing that these provisions recognize the child's right to preserve family relations and contact with both parents, but these provisions do not strain themselves to the point of amending the categorical provisions in the Family Code on who may impugn the legitimate status of a child. Neither these provisions in the CRC rewrites Articles 167, 170 and 171 of the Family Code to afford mothers with the right to challenge their own children's presumed legitimate status. In fact, it may even be argued that the very driving principles of the CRC on the promotion of the growth and welfare of the children, and the provision of legal safeguards for their benefit, are consistent with the underpinnings of presumptive legitimacy of children in our jurisdiction.

No doubt, there exists a sizeable body of legislation that moves in the singular direction of ensuring that women are substantively afforded equal rights, in the same way that there is a wealth of municipal laws that ensure that children are safeguarded and afforded protection in their vulnerabilities. However, it is equally clear that none of these existing laws, progressive as they may be, straightforwardly revise or amend the Family Code and Civil Code provisions on who may impugn the presumed legitimate status of a child. One can only surmise that perhaps a reason is that this issue of impugning one's legitimacy no longer only involves the right of a mother to do what a father or his heirs could. Instead, this issue involves the primordial consideration of how a legitimate status of a child can be preserved as his or her best interests may require, and the narrowest of instances wherein said legitimate status may be challenged.

I submit, therefore, that in light of this, and in the absence of a piece of legislation that pointedly reworks the proscriptions under Article 167, in relation to 170 and 171 of the Family Code, and Article 364 of the Civil Code,

neither should the Court.

The Court, by refraining from judicially legislating its sensibilities in place of the Legislative's own, is not sitting idly by or licensing any partiality or inequity in the laws. Far from it. It is, instead, simply acknowledging that it cannot uphold one principle by substantively and procedurally running roughshod over another. Once more, it bears repeating that essentially, the relief that petitioner here seeks, and the reason that underlies it are both substantively foreclosed by Articles 167, 170 and 171 of the Family Code, as well as procedurally prohibited as a form of collateral attack on her child's legitimacy, and I am hard-pressed to discern a defensible way by which the Court can grant the change of surname as prayed for without giving its imprimatur to a circumvention of both prohibitions.

Third, the particular point raised by Associate Justice Lazaro-Javier during the deliberations, about how prevailing procedural laws do not presently provide for the direct action that is contemplated by Article 170 in relation to Article 171, is well-taken but must nevertheless amount to a denial of the present petition.

As was sharply observed, since there is presently no action under the rules that provide for the remedial route for the direct impugning of a legitimate child's legitimacy, the petition under Rule 108 may be considered as the direct action if all indispensable parties are impleaded and the other requisites as provided for under Article 170 are met, i.e., that it is filed by the persons allowed, within the period so prescribed, and on the grounds as stated in substantive law.

On this point, Article 170 prescribes that an action to impugn the legitimacy of a legitimate child may only be filed by either the husband or his heirs within the one, two or three-year period, as the case may be. Particularly, the action to impugn the legitimate status of a child must be filed (i) by the husband or, in a proper case, any of his heirs; (ii) within one year from the knowledge of the birth or its recording in the civil register, or within two years if those who may impugn reside outside the city or municipality where the birth took place but within the Philippines, or three years if they are residing abroad; and (iii) if the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier.

Given the foregoing, even if the Court were to grant that Rule 108 is the remedial route which is contemplated under Article 170 of the Family Code, petitioner still does not meet the requisite party to file the action, she being neither the husband nor an heir that may impugn in his behalf, as provided under Article 171.^[40] In addition, as correctly held by the ponencia, the substantial corrections that petitioner seeks through the instant petition require an adversarial proceeding which was not had in this case, given the failure to implead Ariel O. Libut, petitioner's husband and Alrich Paul's presumed father.

Finally, I wish to offer a larger context within which the doctrine of stare decisis must be situated in, in light of the issues posed by the instant petition. Specifically, the invocation of adherence to precedents and refraining from unsettling things that are unsettled is not conjured from a vacuum but, as applied to the instant case, is only a part of the legal anchorage that must predispose the Court to deny the instant petition. To be sure, the Court here, in denying the petition, is not blindly cleaving to the prevailing jurisprudence, but is taking precedents on the matter of impugning the legitimacy of a child alongside straightforward preclusion as provided in the Family Code.

Stated differently, there is no elbow room that will permit the Court to grant the instant petition because stare decisis and the pertinent law both clearly rule it out, and to grant this petition just the same would not just amount to a revisit of a precedent but a rewriting of the law. The former, the Court has been known to undertake when the legal basis so warrants; the latter, the same Court has never been allowed to engage in without militating against

the fundamental constitutional system of apportionment and separation of powers of the three co-equal branches of government.

Indeed, the push for a more gender-equal legal schema is one that cuts across all branches of government, and the commitment for gender fair laws is as much an obligation of the Legislative and Executive branches, as it is the Court's. In the sincerity and zeal to fight for meaningful legal reforms, however, the Court must be ever watchful that it does not overstep the constitutionally established bounds around it, and must take perhaps even greater care in auto-limiting itself when the ends it seeks to see are as virtuous as they are ultra vires.

Bearing the above in mind, I agree with the ponencia and vote to DENY the instant petition.

[1] *Miller v. Miller*, G.R. No. 200344, August 28, 2019, 915 SCRA 286.

[2] *North Negros Sugar Co. v. Hidalgo*, 63 Phil. 664, 680 (1936); the Court here had the occasion to define said maxim as thus:

Coming into Equity with Clean Hands. — The maxim that he who comes into equity must come with clean hands is, of course, applicable in suits to obtain relief by injunction. Injunction will be denied even though complainant shows that he has a right and would otherwise be entitled to the remedy in case it appears that he himself acted dishonestly, fraudulently or illegal in respect to the matter in which redress is sought, or where he has encouraged, invited or contributed to the injury sought to be enjoined. However, the general principle that he who comes into equity must come with clean hands applies only to plaintiff's conduct relation to the very matter in litigation. The want of equity that will bar a right to equitable relief for coming into court with unclean hands must be so directly connected with the matter in litigation that it has affected the equitable relations of the parties arising out of the transaction in question. (32 C. J. pp. 67, 68.) (Id. at 681)

[3] *Supra* note 1, at 297-298. Emphasis supplied.

[4] Minutes of the Joint Civil Code and Family Law Committee Meeting Held on Saturday, 3 August 1985, pp. 3-4. Emphasis supplied.

[5] Minutes of the Joint Meeting of the Civil Code and Family Law Committees Held on Saturday, 10 August 1985, pp. 16-18. Emphasis supplied.

[6] Edgardo L. Paras, CIVIL CODE OF THE PHILIPPINES ANNOTATED, VOLUME ONE (ARTICLES 1-413) (18th Edition, 2016) p. 869.

[7] Alicia V. Sempio-Diy, HANDBOOK ON THE FAMILY CODE OF THE PHILIPPINES, p. 248.

[8] *Bustamante v. NLRC*, G.R. No. 111651, November 28, 1996, 265 SCRA 61, 71, citing *R.E. Agpalo*, STATUTORY CONSTRUCTION (1990), p. 94.

[9] See *Malinias v. COMELEC, et al.*, G.R. No. 146943, October 4, 2002, 390 SCRA 480, 491; *De La Salle Araneta University v. Bernardo*, 805 Phil. 580, 601 (2017).

[10] 770 Phil. 364 (2015).

[11] *Id.* at 377-378. Emphasis supplied.

[12] G.R. No. 95551, March 20, 1997, 270 SCRA 206.

[13] *Id.* at 210. Emphasis supplied.

[14] What is the CEDAW?, PHILIPPINE COMMISSION ON WOMEN, accessed at

<<https://pcw.gov.ph/convention-on-the-elimination-of-all-forms-of-discrimination/>>.

[15] An Act to Ordain and Institute the Civil Code of the Philippines (sub-portion: The Family Code of 1987), THE CORPUS JURIS, accessed at <<https://thecorpusjuris.com/legislative/republic-acts/ra-no-386.php>>.

[16] Emphasis supplied.

[17] See Malanczuk, Peter, AKEHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW, (Seventh Revised Ed., 2002), pp. 63-64.

[18] Id.

[19] Id.

[20] G.R. No. 139465, January 18, 2000, 322 SCRA 160.

[21] Id. at 197. Emphasis supplied.

[22] G.R. No. 91332, July 16, 1993, 224 SCRA 576.

[23] Id. at 593.

[24] 101 Phil. 1155 (1957).

[25] Id. at 1190-1191. Emphasis supplied.

[26] G.R. No. L-21897, October 22, 1963, 9 SCRA 230.

[27] Id. at 243. Emphasis supplied.

[28] Supra note 20 at 197.

[29] VIENNA CONVENTION ON THE LAW OF THE TREATIES, Art. 26:

Every treaty in force is binding upon the parties to it and must be performed by them in good faith. (accessed at <https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf>)

[30] UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, Art. 3 (1):

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. (accessed at <<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>)

[31] VIENNA CONVENTION ON THE LAW OF THE TREATIES, Art. 27:

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46. (accessed at <https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf>)

[32] Id.

[33] Malanczuk, Peter, AKEHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW, supra note 17, at 64-65.

[34] Vereschetinn, V.S., New Constitutions and the Old Problem of the Relationship Between International Law and National Law, EUROPEAN JOURNAL OF INTERNATIONAL LAW (Vol. 7, 1996), pp. 29-41.

[35] G.R. No. 148571, December 17, 2002. (Unsigned Resolution)

[36] Id. Emphasis supplied.

[37] G.R. No. 217158, March 12, 2019, 896 SCRA 213.

[38] Id. at 302-303. Emphasis supplied.

[39] See Concurring Opinion of Senior Associate Justice Estela Perlas-Bernabe, p. 1.

[40] Worth noting, as well, is the fact that the husband in the instant petition is presumably alive (given no mention of his death) and so the right of his heirs to impugn the child's legitimate status in this case has not arisen.

DISSENTING OPINION

LAZARO-JAVIER, J.:

I dissent.

Facts

Petitioner has been married since 2000 to one Ariel Libut. After the wedding, she left the Philippines to work in Qatar. While abroad, she learned that her husband was having a romantic relationship with another woman. She returned to the Philippines. The spouses later separated in fact but not in law.

In 2008, petitioner left again to work in Abu Dhabi, United Arab Emirates. There, she met one Alan Fulgueras. They were intimately involved. She got pregnant. She flew back to the Philippines and gave birth to Alrich Paul Fulgueras (Alrich) in 2010.

The birth certificate of the child indicates his last name as "Fulgueras," and the name of his father as Allan Fulgueras. His birth certificate is supported by an Affidavit of Acknowledgment/Admission of Paternity of Allan Fulgueras. Petitioner was herself the informant who supplied these details for recording in the child's birth certificate. The spaces for the place and date of marriage were left blank.

Thus, from the beginning, the birth certificate already characterized the child's filiation as non-marital or illegitimate.

Petitioner filed with the trial court a petition for correction, deletion, and cancellation of entries in the child's birth certificate under Rule 108, Rules of Court. She sought, and continues to seek, the following forms of relief:

i.

Correction of Alrich's last name from "Fulgueras" (the last name of the child's alleged biological father) to "Ordoña" (petitioner's maiden name);

ii.

Deletion of entries in the paternal information as stated in Item Nos. 13 to 17 of the birth certificate; and

iii.

Cancellation of the Affidavit of Acknowledgment/Admission of Paternity alleged to have been falsely executed to make it appear that it was executed by the biological father of Alrich.

Petitioner claimed that the child's paternal biographical details had been falsified. Her own evidence intended to prove that the child's biological father was not in the Philippines when she gave birth and did not actually

acknowledge the child's paternity.

Clearly, the petition under Rule 108 did not seek to impugn the legitimacy of Alrich because he was already declared a non-marital or illegitimate from the time the birth certificate was entered. The confusion arose when the ponencia held that the child's birth certificate cannot determine conclusively the child's filiation because his mother was and still is married when he was conceived and born and therefore he is presumably legitimate.

Thus, instead of helping settle the child's status, the ponencia brought about an invisible watermark of legitimacy on the illegitimate status ostensibly shown by the child's birth certificate. I maintain my stand that this case could have been decided justly and legally by granting the petition and allowing the corrections in the child's birth certificate to be made and entered.

Overview of the Dissent

I dissent because the outcome in this case, to put it simply, is unfair, if not inhumane to petitioner who for all intents and purposes is a solo mother, and of course, to her child who will suffer most from the lack of clarity regarding his status.

Both the trial court and the Court of Appeals endeavoured to put clarity on the child's status – in the decision of the trial court, the truth prevailed – he is illegitimate or non-marital and without mentioning the presumption of legitimacy; in the Court of Appeals' ruling, the powerful patriarchal legal fiction of presumed legitimacy triumphed.

But here, before this Court of last resort, there is no clarity. There has been, in my mind, a retrogression in the substantive equality between women and men. This does not augur well with the Court's own advocacy for substantive gender equality. We even have institutionalized our very own Committee on Gender Responsiveness in the Judiciary and yet we cannot usher in gender equality in the way we decide cases that speak directly to gender bias and patriarchal interpretations of our civil laws.

Why do we have to ask our co-equal branch for salvation when salvation is within our reach to do? Besides this institutional contradiction is the child's best interests that the ruling has opted to cast aside. In his search for his identity, have we done him justice? As a result of the ponencia, what and who he is remain especially elusive.

On one hand, the child's birth certificate fixes his illegitimate or non-marital status. According to the ponencia, his birth certificate cannot be corrected to reflect his own mother's surname, a legal option which applies otherwise to a legitimate and an illegitimate child alike. His birth certificate identifies his father though is silent as regards the date and place of his parents' marriage. This silence publicly announces that he is an illegitimate or non-marital child.

The child's birth certificate is a tangible fact. Unless corrected or cancelled and replaced, this birth certificate is the first and best evidence of the child's filiation. This is the first document that the public will encounter when dealing with the child's filiation and other birth details.

On the other hand, the ponencia acts like an invisible watermark on his birth certificate that he is strongly presumed to be legitimate. This is the second document that speaks to the child's presumed legitimate filiation. But, unlike the birth certificate, the ponencia is more difficult to understand especially to those who barely have relevant encounters with the law.

In practical terms, since there is no order from this Court that his existing birth certificate be amended to show his presumed legitimate status, and there are these two documents which speak to the child's filiation, both petitioner and her child will have to explain his status – is he legitimate or illegitimate – every time he is asked about it.

The ponencia makes the child simultaneously the product of the love (perhaps at the wrong time) of two lonely individuals, one of whom, the father, may now possibly be regretting the tryst, and the modern and legal version of the immaculate conception, the human being sired by the copulation of Article 164 and Article 167 of the Family Code.

While I appreciate the ponencia's referral of the present conundrum to Congress for its rightful action, I believe we are not powerless to correct here and now the legal fiction we are taking to the extreme – the extreme being the reality that, with both our feet closest to ground, we have just created a human being born out of this legal fiction. I can only describe this outcome as being incredible and surreal.

Besides, if I were the child, I cannot and will not be willing to wait for the settlement of my identity as a person and human being – knowing how thorough Congress must be in vetting new legislations as legislations affect broader segments of society than case law would.

As Chair of the Committee on Gender Responsiveness in the Judiciary, I cannot sit idly by to wait for miracles to happen.[1] Because if I do, I will not ever be a part of the process of worthy changes and my Committee's advocacies on gender sensitivity will all look artificial and never get any closer to reality.

In gist, beyond the generalities, what I propose in this Opinion is closer to but short of the original version of the ponencia.

I do not think we have to carve out an exception. I am not fond of exceptions especially when my ground for objection is based on the equality of all human beings in the eyes of the law. I abhor the idea of one gendered class having more rights than other gender classifications. This is discriminatory and therefore unconstitutional.

The only thing we have to do is, first, to recognize that our jurisprudence on Article 170 of the Family Code is gender insensitive and outrightly patriarchal.

The next step is to say that Article 170 is not and could not have been meant to be exclusive because –

(i)

Its text does not say explicitly that only the husband or his heirs have such right (*verba legis non est recedendum* – from the words of a statute there should be no departure).

(ii)

Article 170 should be understood in light of the surrounding provisions, which are Articles 167, 168, 169, and 171, which equally contain no text signifying patriarchal exclusivity (*noscitur a sociis*).

(iii)

Statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion. Indeed, courts are not to give words meanings that would lead to absurd or unreasonable consequences. Had petitioner been compelled to follow the presumption of legitimacy, she would have committed offenses punishable by the Domestic Adoption Act of 1998 and The Revised Penal Code. There would have been other absurd and unreasonable consequences as well.

(iv)

The rule on standing or personality to file suits is a rule of procedure rather than substantive law. While Congress is by and large the author of causes of action, in the sense of creating or affirming rights that if violated must give rise to remedies, it is the Supreme Court that has the authority to say who has the right to go to courts, avail of its services, and obtain relief.

The Court should not be tied down by precedents and the rule on stare decisis if the jurisprudence we are affirming is antiquatedly oppressive. As eloquently observed by then Associate Justice Delos Santos in his opinion in *Almonte v. People*,^[2] the Court should abandon a rule that has proved to be intolerable and defying practical workability, where the old rule is no more than a remnant of an abandoned doctrine, and where facts have so changed or come to be seen differently, as to have robbed the old rule of significant application or justification.

The third step is to affirm and confirm, once and for all, consistent jurisprudence that says Rule 108 of the Rules of Court,^[3] in the absence of a governing special rule of procedure that has specific remedial safeguards, is the direct action (i.e., procedure) for all matters that have to be recorded in the civil registry, including particularly when the correction sought would alter the legitimate status of the child to one of illegitimacy.

This is because Rule 108 has been uniformly recognized as the procedure for ascertaining the truth about the facts recorded therein.

This is also because the purpose of establishing the true legal status of a person is the object of a special proceedings like Rule 108 and not an action as this has been technically defined.^[4]

Under Section 1 of Rule 108, "[a]ny person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the Court of First Instance of the province where the corresponding civil registry is located." This interested person includes, obviously, the mother of the child whose birth certificate is sought to be amended or corrected,^[5] including the change in the status of a child from legitimate to illegitimate.

The fourth and last step is to adjudicate whether the mother of the child has adduced adequate evidence to overcome the presumption of legitimacy accorded by Articles 164 and 167 of the Family Code. If she has, then the amendment or correction of the child's birth certificate should be decreed. Otherwise, if she fails to do so, then the presumption of legitimacy must prevail over the contrary entries in the birth certificate.

Either way, we give clarity to the child's status. In this specific instance where the child is born while the mother is married to another, unless there are rules that would prevent a decision on the merits, the result would be the correction of the child's birth certificate. This is to give clarity to the status of the child and not to leave the child hanging, let alone, begging for answers.

Where a decision on the merits is rendered, and though the presumption of legitimacy prevails, at least the mother was given the opportunity to contest the presumption but on the basis of pure facts and pure science on human reproduction, it is determined that the child could not have been but the child of the marriage. The child does not become the child merely of legal fiction, but based on evidence as to facts, circumstances, and science, the child is the offspring of some real life legally recognized couple.

In all these steps, our analytical framework should consider not only the text and jurisprudence directly relevant to petitioner's claims by tradition but also equity and new rights-based developments in law, such as the child's best interests, a woman's personal liberty to make binding decisions and choices central to individual dignity and autonomy, and the ensuing discriminatory and unequal treatment of a woman in terms of rights she may exercise

if such right to privacy is violated. We must account as well for developments in technology that have allowed paternity to be established with absolute degree certainty such as DNA testing.

The context in which petitioner's action and proposed action have taken and are taking place is also important.

Here, the context is as follows: Petitioner's impugnation of her child's legitimacy occurred at two (2) instances: (i) at the first instance, when she supplied basically correct details about her child's paternity; and (ii) now, by seeking to correct the child's birth certificate owing to apparent second thoughts about the father's relationships to petitioner and their child himself.

From the perspective of the birth certificate and petitioner's claims, petitioner is not really focused on impugning the legitimacy of her child, though it has this effect. Rather, she is merely correcting in good faith the details about his illegitimacy already recorded in the civil registry.

From a practical perspective, petitioner has both the right and duty to declare the illegitimacy of her child at the first instance through the child's birth certificate and pursue her Rule 108 petition to correct this birth certificate.

This is demanded by criminal statutes that criminalize false declarations about a child's parentage. This would have happened had petitioner literally abided by the child's presumed legitimacy and declared falsely her husband as the child's father and other entries pertinent to a legitimate child.

By compelling her not to disclose the truth because she cannot allegedly impugn the legitimacy of her child, she is being forced to commit offenses under the Domestic Adoption Act of 1998 and The Revised Penal Code.

Let me expound on this overview below.

Issues

In order to provide correct or at least reasonable answers, we must first identify the issues, viz.:

1)

In filing the Rule 108 petition, is petitioner impugning her child's legitimacy?

a)

Does the child's illegitimate status in the birth certificate prevail over the presumption of legitimacy?

b)

Does this presumption pierce the prima facie truthfulness of the facts stated in the birth certificate?

c)

Is there a need to seek a judicial order to enforce the presumption?

2)

Is petitioner barred from impugning her child's legitimacy?

3)

Is Rule 108 the proper remedy for correction, deletion, and cancellation of entries in the birth certificate of petitioner's child?

4)

Should the petition be granted? Has petitioner been able to prove her factual assertions beyond a shadow of doubt?

I.

Petitioner is impugning her child's legitimacy because this is the truth and it must be so even if we cannot handle the truth.

Petitioner registered her child as illegitimate. She included the name and other details of the child's father and the father's alleged consent through an Affidavit of Acknowledgment/Admission of Paternity where his signature was forged.

She then filed a Rule 108 petition to correct entries in the child's birth certificate – not to change his status from legitimate to illegitimate, or vice-versa, but merely to correct entries to conform to the truth of the father's participation in the execution of the birth certificate.

In these two instances, petitioner impugned the legitimacy of her child. What is clear though from her act is that this is the truth – the child is not a child of petitioner's failed marriage.

Concepcion v. Court of Appeals[6] held that the status of a child accrues to the child from the moment of birth.

Concepcion further ruled that the child's illegitimate status in the birth certificate cannot prevail over the presumption of legitimacy. The presumption pierces the prima facie truthfulness of the facts stated in the birth certificate, thus:

The reliance of Gerardo on Jose Gerardo's birth certificate is misplaced. It has no evidentiary value in this case because it was not offered in evidence before the trial court. The rule is that the court shall not consider any evidence which has not been formally offered.

Moreover, the law itself establishes the status of a child from the moment of his birth. Although a record of birth or birth certificate may be used as primary evidence of the filiation of a child, as the status of a child is determined by the law itself, proof of filiation is necessary only when the legitimacy of the child is being questioned, or when the status of a child born after 300 days following the termination of marriage is sought to be established.

Here, the status of Jose Gerardo as a legitimate child was not under attack as it could not be contested collaterally and, even then, only by the husband or, in extraordinary cases, his heirs. Hence, the presentation of proof of legitimacy in this case was improper and uncalled for.

In addition, a record of birth is merely prima facie evidence of the facts contained therein. As prima facie evidence, the statements in the record of birth may be rebutted by more preponderant evidence. It is not conclusive evidence with respect to the truthfulness of the statements made therein by the interested parties. Between the certificate of birth which is prima facie evidence of Jose Gerardo's illegitimacy and the

quasi-conclusive presumption of law (rebuttable only by proof beyond reasonable doubt) of his legitimacy, the latter shall prevail. Not only does it bear more weight, it is also more conducive to the best interests of the child and in consonance with the purpose of the law.[7]

And, there is no need to seek a judicial order to enforce the presumption of legitimacy. The filiation of a child is presumptively fixed from birth regardless of what the birth certificate states.

As held in *Treyes v. Larlar*,^[8] if a status has been declared by law to exist from a certain moment onwards (i.e., in that case, status of being an heir; in the case at bar, the presumed legitimacy of the child), the law itself has already made the declaration and there is no more need to obtain a judicial order to confirm that declaration.

While admittedly the presumption of legitimacy is the law on the matter, this rule does not conclude this case. This presumption, while quasi-conclusive, is subject to rebuttal. My assessment of petitioner's evidence leads me to conclude that she was able to rebut the presumption. More on this later.

Also, while the presumption subsists as it is strongly upheld by the ponencia, there is the contrary statement of the child's filiation in the birth certificate itself that still exists. While legally the birth certificate is no longer prima facie probative of the child's filiation, the mere fact that it still exists, as in fact it was actually allowed to stand according to the present ponencia, is a cause of confusion and embarrassment not only to petitioner's husband, but more especially to petitioner herself, and indeed, most especially to the child whose status has become unstable and ill-defined.

This reality of confusion and embarrassment makes it imperative for us not to rest upon the presumption of legitimacy but to go further in justly and equitably resolving this case. For all we know, given the prevalence of overseas employment and divided families, petitioner's problematic situation may not be unique but too common to be continuously ignored.

II.

Rule 108, Rules of Court is the proper procedure for the claims in the instant case.

The ponencia ruled that petitioner's recourse to Rule 108 is erroneous because her child's legitimacy could not be impugned collaterally but only directly.

I most respectfully disagree.

One. To begin with, it is not true, as suggested by others, that there is a catena of cases prohibiting the change of a child's marital or legitimate to non-marital or illegitimate to status through Rule 108 of the Rules of Court. On the contrary, Rule 108 has always been the procedure to correct a child's status from legitimate to illegitimate provided that the proceedings are made adversarial in nature. To be sure, if there was such catena of cases, it would have already been easy to point out what exactly this proper procedure is or has been and under what rule this procedure could be found – but to this date no such procedure or rule has been identified except to refer to the ambiguous phrase direct action.

Two. Applying *Treyes v. Larlar*,^[9] petitioner's factual assertions cannot be threshed out in an action. This is because these factual assertions involve the correction of entries in the birth certificate of her child. This ultimate relief is predicated upon facts established by evidence she adduced at the trial court. She is not claiming any relief against any person, natural or juridical. She has no claim against any person. What she wants is to correct entries in her child's birth certificate and to establish facts only towards that end. This is the purview not of an action but of a special proceeding.

Treyes explained the difference between an action and a special proceeding:

In the main, Ypon, citing certain earlier jurisprudence, held that the determination of a decedent's lawful heirs should be made in the corresponding special proceeding, precluding the RTC in an ordinary action for cancellation of title and reconveyance from making the same.

According to Rule 1, Section 3 (c) of the Rules, the purpose of a special proceeding is to establish a status, right, or particular fact. As held early on in *Hagans v. Wislizenus*, a "special proceeding" may be defined as "an application or proceeding to establish the status or right of a party, or a particular fact." In special proceedings, the remedy is granted generally upon an application or motion.

In *Pacific Banking Corp. Employees Organization v. Court of Appeals*, the Court made the crucial distinction between an ordinary action and a special proceeding:

Action is the act by which one sues another in a court of justice for the enforcement or protection of a right, or the prevention or redress of a wrong while special proceeding is the act by which one seeks to establish the status or right of a party, or a particular fact. Hence, action is distinguished from special proceeding in that the former is a formal demand of a right by one against another, while the latter is but a petition for a declaration of a status, right or fact. Where a party-litigant seeks to recover property from another, his remedy is to file an action. Where his purpose is to seek the appointment of a guardian for an insane, his remedy is a special proceeding to establish the fact or status of insanity calling for an appointment of guardianship.

Hence, the main point of differentiation between a civil action and a special proceeding is that in the former, a party sues another for the enforcement or protection of a right which the party claims he/she is entitled to, such as when a party-litigant seeks to recover property from another, 74 while in the latter, a party merely seeks to have a right established in his/her favor.

Applying the foregoing to ordinary civil actions for the cancellation of a deed or instrument and reconveyance of property on the basis of relationship with the decedent, i.e., compulsory or intestate succession, the plaintiff does not really seek to establish his/her right as an heir. In truth, the plaintiff seeks the enforcement of his/her right brought about by his/her being an heir by operation of law.

Restated, the party does not seek to establish his/her right as an heir because the law itself already establishes that status. What he/she aims to do is to merely call for the nullification of a deed, instrument, or conveyance as an enforcement or protection of that right which he/she already possesses by virtue of law.

Indeed, it has been held that an action is fundamentally different from the special proceedings in Rule 108 such that the former cannot substitute for the latter.[10]

Petitioner does not seek the enforcement of a right against someone. Hence, she has no need for an action. Instead, petitioner wants to correct entries in the birth certificate of his illegitimate or non-marital child. Of course, she is required to prove facts showing the errors in the existing entries and the correctness of the details she wants to enter. This is the domain of special proceedings.

Three. We have to distinguish between the grounds justifying petitioner's factual assertions and the procedure for pursuing her claims.

The grounds are found in Article 166[11] in relation to Article 170[12] of the Family Code. To be relevant, the evidence to be adduced by petitioner would have to prove these grounds. The grounds themselves under Article 166 and Article 170, however, do not ordain the procedure by which the grounds are to be established. We cannot determine the procedure from reading Articles 166 and 170. In fact, if we are to rely only upon these provisions we would be misled into believing that impugning legitimacy requires an "action" – a formal demand of a right by the presumed father against the child when this is not the case.

What happens when impugning legitimacy is that the presumed father endeavours to obtain a declaration of a status, right or fact of illegitimacy of the child, but not to enforce a right against this child. The essence of this type of claim is the essence of special proceedings.

Four. Since petitioner has to initiate special proceedings, the only logical choice for her is the rule of procedure prescribed by Rule 108 of the Rules of Court. This is because a Rule 108 proceeding will not just be about correcting entries in the subject birth certificate, but more important, ascertaining the truth about the facts recorded therein. The what, why, how, where and when as regards the child's birth will necessarily be inquired into and litigated before a declaration and registration of a status, right, or fact could be made.

These are the twin purposes of Rule 108 so it cannot be said that this rule of procedure is not a direct proceeding for impugning the legitimacy of the child.

Five. Case law has consistently held that "even substantial errors in a civil registry may be corrected through a petition filed under Rule 108, with the true facts established and the parties aggrieved by the error availing themselves of the appropriate adversarial proceeding." [13] This includes the unearthing of facts and correction of entries in the civil register pertaining to one's filiation.

There is no other procedure as direct as Rule 108 in the impugnation of legitimate filiation. In past cases involving filiation and Rule 108 as the remedy resorted to, the fact-patterns were the same.

This template could be illustrated, thus: a petitioner seeks to correct filiation, for example, from legitimate to illegitimate, because the petitioner's circumstances call for such correction, such as there really was no marriage or the petitioner was sired by another man. The rule used is Rule 108. Evidence is presented to prove the claims.

In these past cases, except for requiring adversarial proceedings, the Court has consistently accepted Rule 108 as the proper procedure for such purpose.

Republic v. Coseteng-Magpayo [14] is one of these template cases.

In Coseteng-Magpayo, the issue was the proper procedure to be followed when the change sought to be effected in the birth certificate affects the civil status of the respondent therein from legitimate to illegitimate. The respondent therein claimed that his parents were never legally married; he filed a petition to change his name from "Julian Edward Emerson Coseteng Magpayo," the name appearing in his birth certificate, to "Julian Edward Emerson Marquez-Lim Coseteng."

The notice setting the petition for hearing was published and, since there was no opposition, the trial court issued an order of general default and eventually granted the petition of the respondent therein by, inter alia, deleting the entry on the date and place of marriage of his parents and correcting his surname from "Magpayo" to "Coseteng."

The Supreme Court reversed the trial court's decision since the proper remedy would have been to file a petition under Rule 108 of the Rules of Court, and not a petition for change of name. The Court ruled that the change sought by the respondent therein involved his civil status as a legitimate child; it may only be given due course through an adversarial proceeding under Rule 108.

Five. In Treyes v. Larlar, [15] the Court through Justice Caguioa held that there is no need to file a separate special proceeding to declare a status that a person already has by operation of law. In Treyes, heirship accrues from the decedent's time of death. No declaration to this effect is necessary for that heir to recover property as an heir. This status can be established in the civil action for recovery of property.

Following this ruling in Treyes, it is true that a child born to a mother who is married to another is deemed legitimate and this presumed status accrues from the moment of birth. No judicial declaration is required to obtain

legitimate status because this status is given by operation of law.

On the other hand, the change of status whether from legitimacy to illegitimacy or vice-versa is not presumed by law. One has to work for this change. It is not something that comes about by operation of law, unlike legitimacy or illegitimacy or heirship.

How does one go about seeking the declaration of a change in status? As Treyes itself explained, this is done through special proceedings and not an action.

Rule 1, Section 3 of the Rules of Court provides that "[a] special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact." Rule 108 creates a remedy to rectify facts of a person's life which are recorded by the State pursuant to Act No. 3753, the Civil Register Law. These are facts of public consequence that include one's birth, which the State has an interest in recording.

Thus, a Rule 108 proceeding is the proper procedure, a direct proceeding to establish a child's status, since the object of special proceedings (such as that in Rule 108 of the Rules of Court) is precisely to establish the status or right of a party or a particular fact.

Six. I am aware of the rulings in *Miller v. Miller*[16] and *Braza v. City Civil Registrar of Himamaylan City*.[17] These cases make the broad statement that Rule 108 is inappropriate for declaring the nullity of one's marriage for being bigamous and impugning the illegitimate status of an alleged half-sibling by changing the surname in the birth certificate from the surname of the purported father to the surname of the mother.

These cases are not on all-fours with the case here.

Braza involved a petition that brazenly sought to declare a marriage void for being bigamous through a Rule 108 proceeding. This the Supreme Court did not allow because there is a specially dedicated rule of procedure for this claim – A.M. No. 02-11-10-SC.[18]

As explained in *Fujiki v. Marinay*,[19] Rule 108 cannot substitute for A.M. No. 02-11-10-SC because the latter has procedural and substantive safeguards in place before a marriage may be declared a nullity. Hence, *Braza* was held in *Fujiki* to be inapplicable in cases that do not involve the use of rules of procedure specially dedicated to the particular claim.

Thus:

To be sure, a petition for correction or cancellation of an entry in the civil registry cannot substitute for an action to invalidate a marriage. A direct action is necessary to prevent circumvention of the substantive and procedural safeguards of marriage under the Family Code, A.M. No. 02-11-10-SC and other related laws. Among these safeguards are the requirement of proving the limited grounds for the dissolution of marriage, support pendente lite of the spouses and children, the liquidation, partition and distribution of the properties of the spouses, and the investigation of the public prosecutor to determine collusion. A direct action for declaration of nullity or annulment of marriage is also necessary to prevent circumvention of the jurisdiction of the Family Courts under the Family Courts Act of 1997 (Republic Act No. 8369), as a petition for cancellation or correction of entries in the civil registry may be filed in the Regional Trial Court "where the corresponding civil registry is located."

This is the reason why a petitioner cannot dissolve their[20] marriage by the mere expedient of changing their entry of marriage in the civil registry – because of the existence of the rule of procedure and its safeguards especially dedicated to the nullification of marriages – A.M. No. 02-11-10-SC. There is therefore no reason to resort to Rule 108 for the purpose of declaring a marriage void.

But a declaration of change of status from legitimate to illegitimate is not covered by the ruling in Braza. The reason is that there is no especially dedicated rule of procedure for this declaration. As explained above, Article 166 and Article 170 only state the grounds for impugning legitimacy but not the procedure for pursuing these grounds.

With no dedicated procedure for changing filiation, Rule 108 fills in the void. The Supreme Court has recognized this for a long time now.

On the other hand, Miller has key differences with the present case.

For one, the petitioner in Miller did not have personal knowledge of the actual intimacies between his father and the respondent's mother to be able to conclude that his father is not also respondent's father. Here, petitioner has personal knowledge of facts for her to credibly conclude about the circumstances surrounding her child's birth.

For another, Miller is based on the ruling in Braza which does not apply to the case at bar because Braza pertained to the declaration of a marriage as a bigamous marriage that is governed not by Rule 108 but by A.M. No. 02-11-10-SC.

III.

Petitioner is not barred from impugning her child's legitimacy.

The bar against petitioner from impugning her child's legitimacy is said to be founded upon Article 170 of the Family Code –

The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded.

If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier. (263a)

The jurisprudence on Article 170 construed this provision as giving the husband and only exceptionally his heirs the exclusive right to impugn the legitimacy of a child. The rule has been expressed thus:

x x x Impugning the legitimacy of the child is a strictly personal right of the husband, or in exceptional cases, his heirs for the simple reason that he is the one directly confronted with the scandal and ridicule which the infidelity of his wife produces and he should be the one to decide whether to conceal that infidelity or expose it in view of the moral and economic interest involved. It is only in exceptional cases that his heirs are allowed to contest such legitimacy. Outside of these cases, none — even his heirs — can impugn legitimacy; that would amount to an insult to his memory. x x x

x x x x

x x x It is settled that a child born within a valid marriage is presumed legitimate even though the mother may have declared against its legitimacy or may have been sentenced as an adulteress. We cannot allow petitioner to maintain his present petition and subvert the clear mandate of the law that only the husband, or in exceptional circumstances, his heirs, could impugn the legitimacy of a child born in a valid and subsisting marriage. The child himself cannot choose his own filiation. If the husband, presumed to be the father does not impugn the legitimacy of the child, then the status of the child is fixed, and the latter cannot choose to be the

child of his mother's alleged paramour. On the other hand, if the presumption of legitimacy is overthrown, the child cannot elect the paternity of the husband who successfully defeated the presumption.[21]

As I have stated, in understanding this rule, especially its rationale, we should consider not only the text and jurisprudence directly relevant to petitioner's claims by tradition but also according to—

- (i) equity,
- (ii) factual context,
- (iii) new rights-based developments in law, such as the child's best interests, a woman's personal liberty to make binding decisions and choices central to individual dignity and autonomy, and the ensuing discriminatory and unequal treatment of a woman in terms of rights she may exercise if such right to privacy is violated, and
- (iv) developments in technology for proving paternity such as DNA testing.

I most respectfully submit that the rationale for the rule is gender insensitive and utterly patriarchal.

The rationale presupposes the wife's fault. Regardless of fault, it conceals but dignifies the implicit silencing of the wife on choices central to her dignity and autonomy. One such choice that is denied her is her volition to make a declaration as regards her child's paternity.

True, unrequited love and failed relationships are painful and stressful for the abandoned, either the woman or the man. But both of them have the equal right to fall in and out of love. It is not only the husband who falls and fails; the wife does too and she should not be punished more than the husband would be. Denying her the standing to impugn the legitimacy of her own child is one punishment over and above that meted upon a husband who sires a child outside of marriage.

While the community holds value judgments, the law ought to be neutral and to hold both of them to be equal possessors of the right to establish truthfully the child's paternity. This is especially true, and actually we must be more solicitous, to the wife because the child, before evidence is even presented on paternity, is first and foremost already her child.

The rationale for the jurisprudence on Article 170 also accepts as taken for granted and natural the moral and economic power of the husband over the wife. This may be true in some instances but this has been the product of gender roles that society has nurtured for so long. Now, that power must be equally shared. The moral and economic compass is for both the husband and the wife to share as regards the rights and privileges and the duties and responsibilities appurtenant thereto. It is no longer the husband who decides by his lonesome. He is expected to share at least the decision-making power to the wife.

So there is every reason to disown now the rationale for the rule of exclusivity in favour of the husband.

Contrary to some favoured opinions, the doctrine of gender equality does not arise only from the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). While an important of international social legislation, CEDAW is not the only binding legal document on gender equality. We do not have to bother ourselves about judicially legislating the provisions of CEDAW into our municipal law – this is because we do not have to look far for authoritative precedents on gender equality. We have ample supply of local laws that await implementation in actual cases.

The following list is not exhaustive but illustrative:

- Constitution, Article II, Section 14: "The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men."

- Constitution, Article XIII, Section 14: "SECTION 14. The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation."
- RA 9710 (2009) "The Magna Carta of Women"
- RA 11313 (2019) "An Act Defining Gender-Based Sexual Harassment In Streets, Public Spaces, Online, Workplaces, And Educational Or Training Institutions, Providing Protective Measures And Prescribing Penalties Therefor"
- RA 9995 (2010) "An Act Defining And Penalizing The Crime Of Photo And Video Voyeurism, Prescribing Penalties Therefor, And For Other Purposes"
- RA 9262 (2004) "An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And For Other Purposes"
- RA 8505 (1998), "An Act Providing Assistance And Protection For Rape Victims, Establishing For The Purpose A Rape Crisis Center In Every Province And City, Authorizing The Appropriation Of Funds Therefor, And For Other Purposes"
- RA 8353 (1997) "An Act Expanding The Definition Of The Crime Of Rape, Reclassifying The Same As A Crime Against Persons, Amending For The Purpose Act No. 3815, As Amended, Otherwise Known As The Revised Penal Code And For Other Purposes"
- RA 7877 (1995) "An Act Declaring Sexual Harassment Unlawful In The Employment, Education Or Training Environment, And For Other Purposes"
- RA 7192 (1992) "An Act Promoting The Integration Of Women As Full And Equal Partners Of Men In Development And Nation Building And For Other Purposes"
- PD 633 (1975) "Creating A National Commission On The Role Of Filipino Women"
- RA 11210 (2019) "An Act Increasing The Maternity Leave Period To One Hundred Five (105) Days For Female Workers With An Option To Extend For An Additional Thirty (30) Days Without Pay, And Granting An Additional Fifteen (15) Days For Solo Mothers, And For Other Purposes"
- RA 10398 (2013) "An Act Declaring November Twenty-Five Of Every Year As "National Consciousness Day For The Elimination Of Violence Against Women And Children"
- RA 8972 (2000) "An Act Providing For Benefits And Privileges To Solo Parents And Their Children, Appropriating Funds Therefor And For Other Purposes"
- PCW BR 001-10 (2010) "Approving And Adopting The Implementing Rules And Regulations Of Republic Act No. 9710 Otherwise Known As The "Magna Carta Of Women"
- EO 77 (2002) "Approving And Adopting The Framework Plan For Women [2001-2004] And Intensifying The Implementation Of The 5% Budget Provision For Gender And Development Programs And Projects"
- DPWH DO 130-16(2016) "Subject: Guidelines for the Implementation of the Provisions of Republic Act No. 6685 and Republic Act No. 9710 or the Magna Carta of Women)"

Clearly, the Philippines has enough set of local laws that demand substantive equality between men and women. While these laws could have better been expanded to equality among all genders and non-genders alike, for

purposes of the present case, suffice it to state that we have enough laws on gender equality that ought to be reflected in the way this Court and other courts interpret legal provisions.

Laws are living trees. Seen this way, narrow technical approaches to understanding the laws are to be eschewed.[22] This also suggests that the past plays a critical but non-exclusive role in determining the content of the rights and obligations outlined by our laws.[23] The laws as living trees though rooted in past and present institutions must be capable of growth to meet the future.[24] Laws are intended to set a standard upon which the present as well as future conduct is to be tested.[25]

Therefore, the meaning of Article 170 of the Family Code is not to be determined solely by the degree to which this provision was understood by the framers of this provision in the Family Code since their deliberations were prior to the enactment of laws meant to provide affirmative relief on gender equality.

This admonition is as apt in defining the standing of a mother to challenge the legitimacy of her child as it is in abandoning jurisprudence requiring separate special proceedings to declare the heirs of a deceased.[26] The mother's standing to do so, while rooted in and hence to some extent defined by historical and existing practices, cannot be viewed as frozen by particular historical anomalies.[27] What must be sought is the broader philosophy underlying the historical development of the mother's standing on this matter – a philosophy which is not only capable of explaining the past but also of animating the future. This underlying philosophy is that our society and jurisprudence have long been under the yoke of patriarchy which legal developments in our country have deigned to reject to achieve gender equality.

This method of interpreting provisions in our civil laws has been accepted as the way to go by the Supreme Court.

In *Alanis III v. Court of Appeals*[28] the Court interpreted Article 364 of the Civil Code in a manner that speaks to the constitutional value and mandate of gender equality. The Court invoked the CEDAW as it did the same legal developments referred to above. The Court found no issue respecting the direct application of CEDAW to actual cases.

Illustrative of this enlightened method of statutory construction, which is adopted in this Opinion to support the jettisoning of the jurisprudence on Article 170 of the Family Code, *Alanis III* expounded:

The fundamental equality of women and men before the law shall be ensured by the State. This is guaranteed by no less than the Constitution, a statute, and an international convention to which the Philippines is a party.

In 1980, the Philippines became a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women, and is thus now part of the Philippine legal system. As a state party to the Convention, the Philippines bound itself to the following:

Article 2

(f) to take all appropriate measures, including legislation: to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

Article 5

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women[.]

Non-discrimination against women is also an emerging customary norm. Thus, the State has the duty to actively modify what is in its power to modify, to ensure that women are not discriminated.

Accordingly, Article II, Section 14 of the 1987 Constitution reiterated the State's commitment to ensure gender equality:

SECTION 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

In keeping with the Convention, Article II, Section 14 of the Constitution requires that the State be active in ensuring gender equality. This provision is even more noticeably proactive than the more widely-invoked equal protection and due process clauses under the Bill of Rights. In *Racho v. Tanaka*, this Court observed:

This constitutional provision provides a more active application than the passive orientation of Article III, Section 1 of the Constitution does, which simply states that no person shall "be denied the equal protection of the laws." Equal protection, within the context of Article III, Section 1 only provides that any legal burden or benefit that is given to men must also be given to women. It does not require the State to actively pursue "affirmative ways and means to battle the patriarchy — that complex of political, cultural, and economic factors that ensure women's disempowerment."

Article II, Section 14 implies the State's positive duty to actively dismantle the existing patriarchy by addressing the culture that supports it.

With the Philippines as a state party to the Convention, the emerging customary norm, and not least of all in accordance with its constitutional duty, Congress enacted Republic Act No. 7192, or the Women in Development and Nation Building Act. Reiterating Article II, Section 14, the law lays down the steps the government would take to attain this policy:

SECTION 2. Declaration of Policy. — The State recognizes the role of women in nation building and shall ensure the fundamental equality before the law of women and men. The State shall provide women rights and opportunities equal to that of men.

To attain the foregoing policy:

(1) A substantial portion of official development assistance funds received from foreign governments and multilateral agencies and organizations shall be set aside and utilized by the agencies concerned to support programs and activities for women;

(2) All government departments shall ensure that women benefit equally and participate directly in the development programs and projects of said department, specifically those funded under official foreign development assistance, to ensure the full participation and involvement of women in the development process; and

(3) All government departments and agencies shall review and revise all their regulations, circulars, issuances and procedures to remove gender bias therein.

Courts, like all other government departments and agencies, must ensure the fundamental equality of women and men before the law. Accordingly, where the text of a law allows for an interpretation that treats women and men more equally, that is the correct interpretation.

We must also appraise technological developments that have made paternity determinations exact and foolproof. One such progress is DNA testing. When Article 170 of the Family Code was deliberated upon, the advantages that we now have of resorting to DNA testing to establish paternity were not available. The framers of Article 170 were clearly and convincingly not cognizant of this scientific testing because, otherwise, they would have mentioned or referred to it. But with DNA testing, it has become illogical and contrary to reason to continue denying to the wife the standing to question or challenge her own child's legitimacy.

Technological developments have made the overarching power of presumptions such as the presumption of legitimacy and its concomitant bar-rule or preclusion rule anachronistic and arbitrary because the presumptions these doctrines hold can already be easily debunked by science. The situation is akin to putting premium to form over undeniable substance should we continue to restrict the standing to impugn legitimacy to the husband and only exceptionally his heirs and deny this same personality to the wife despite the availability of infallible means to establish the wife's claim of illegitimacy.

Further, in addition to the foregoing factors that the interpretation of Article 170 should weigh in, the Court could resort to the traditional analytical tools of statutory construction to reach the ineluctable conclusion that Article 170 is not and could not have been meant to exclude the wife.

Thus:

(i)

Its text does not say explicitly that only the husband or his heirs have such right (*verba legis non est recedendum* – from the words of a statute there should be no departure).

The text identifies the husband and his heirs as parties to impugn the legitimacy of a child. It does not say however that only they could do so. So the *verba legis* cannot justify the rule of exclusivity that jurisprudence has ruled to be the case.

(ii)

Article 170 should be understood in light of the surrounding provisions, which are Articles 167, 168, 169, and 171, which equally contain no text signifying patriarchal exclusivity (*noscitur a sociis*).

Neither can we point to Articles 167, 168, 169 and 171 to justify the rule of exclusivity.

In fact, Article 167 mentions that the wife may impugn the legitimacy of her child – but the child is nonetheless presumed to be legitimate.[29] So Article 167 establishes the presumption of legitimacy but does not exclude the mother from being able to impugn the child's legitimacy. In fact, it says that the mother may declare against the child's legitimacy.

Speaking to the termination of a marriage and the birth of a child within 300 days after such termination, Article 168 is not relevant to the issue because it says nothing about the mother not being able to impugn the legitimacy of her child.

Article 169 refers to Article 168 – but the important takeaway from Article 169 is that "whoever alleges such legitimacy or illegitimacy" is bound to prove the claim if the child is born after 300 days from the termination of marriage. Article 169 does not impose a rule of exclusivity but recognizes the right of "whoever" to impugn a child's legitimacy.

Finally, Article 171 imposes no rule that only the heirs may impugn the legitimacy of a child. It says "the heirs of the husband may impugn..." Of course, the wife is an heir but it is irrelevant to this case because petitioner's husband is still alive.

As the surrounding provisions themselves show, there is nothing sacrosanct about this rule of exclusivity as the jurisprudential rationale for Article 170 makes it appear to be so. The provisions around Article 170 are not indicative of an intention to impose a rule of exclusivity.

(iii)

Statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion. Indeed, courts are not to give words meanings that would lead to absurd or unreasonable consequences. Had petitioner been compelled to follow the presumption of legitimacy, she would have committed offenses punishable by the Domestic Adoption Act of 1998 and The Revised Penal Code. There would have been other absurd and unreasonable consequences as well.

We cannot impose the rule of exclusivity here because it would compel petitioner to commit crimes punishable by the Domestic Adoption Act of 1998 and The Revised Penal Code. Consider these statutes:

1.

Section 21, RA 8552 (2019), Domestic Adoption Act of 1998: "Violations and Penalties. — ... (b) Any person who shall cause the fictitious registration of the birth of a child under the name(s) of a person(s) who is not his/her biological parent(s) shall be guilty of simulation of birth and shall be punished by prision mayor in its medium period and a fine not exceeding Fifty thousand pesos (P50,000.00)."

2.

Article 347, The Revised Penal Code: "Simulation of Births Substitution of On Child for Another and Concealment or Abandonment of a Legitimate Child. — The simulation of births and the substitution of one child for another shall be punished by prisión mayor and a fine of not exceeding 1,000 pesos...."

3.

Article 172, The Revised Penal Code: "Falsification by Private Individuals and Use of Falsified Documents. — The penalty of prision correccional in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon... 1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document.... Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree."

Another absurd result if the right to impugn is withheld from the mother of the subject child is to foster an illusion or a false reality upon the child. If unrebutted by the person who is in the most unique position to know, the presumption of the child's legitimacy would run counter to the actual facts of his being.

Not only is the child being rejected by the father whom the law through the presumption is foisting upon him to be his father. Still, the law says he is the child's father. But his public record in the form of his birth certificate introduces a different father or no father to the world. In real life situations, the child will be required to explain the discrepancy in his situation – why his father in the birth certificate is either unknown or different from the father whom he is forced to introduce as his father by legal fiction.

This is a traumatic scenario for a child. He has no clarity as to his being. He is forced to publicly announce his illegitimacy every time the presumption compels him to declare otherwise. The only solution to avoid this trauma is to give the mother the liberty to declare the true facts behind the child's status. To rule otherwise is to subvert the best interests of the child.

Additionally, the rule of exclusivity deprives the wife of her right to make personal choices on matters central to her dignity and autonomy. No doubt, the paternity of the child she carried for nine months and will be rearing by

her lonesome is central to her dignity and autonomy. There is no debate on this. No husband has the credibility to argue otherwise since he was not the one who carried the child for nine months and neither will he have the opportunity to rear the child who is not his own.

Denying the wife her standing to challenge her child's legitimacy is most acutely oppressive when the wife finds herself in abusive situations. It is a strong public policy to protect the wife and her child from all forms of criminal abuse. This protection is constant and absolute – it is not diminished by the wife's justified or unjustified infidelity. It is both for the child's best interests and the wife's fundamental privacy right that she or the child be allowed to prove the child's true paternity and in the process challenge the child's legitimacy. A wife who has a pedophile for a husband or an abuser for a spouse, and who finds happiness and dignity with some other male partner, is entitled to seek relief from the courts to prove her child's true provenance. To continue to refuse her this standing and relief is abusing her twice over, initially by her husband and soon after by the interpretation of Article 170. I rebuff any suggestion that the framers of Article 170 intended to be instruments of abuse for all of eternity who would never wish to change their minds amidst the continuing awareness and dedication of the law to gender equality and technological advancements.

As then Justice Reyes stressed in his opinion in *Spouses Imbong v. Ochoa Jr.*,^[30] the wife/mother is a woman, an individual, a human being, and a possessor of rights on her own accord. Her person and dignity are defined not only by her association to another or others but also if not more by her own self-worth and self-image –

Yet the marital couple is not an independent entity, with a mind and heart of its own, but an association of two individuals, each with a separate intellectual and emotional makeup. While the law affirms that the right of privacy inheres in marital relationships, it likewise recognizes that a spouse, as an individual per se, equally has personal autonomy and privacy rights apart from the right to marital privacy guaranteed by the Constitution. A spouse's personal autonomy and privacy rights, as an individual per se, among others, necessitates that his/her decision on matters affecting his/her health, including reproductive health, be respected and given preference.

Indeed, to keep the right to impugn exclusive to the male spouse in the family is to perpetuate the discriminatory practice against women in general.

There are practical considerations as well. If petitioner's husband would be the only person who could set right the child's paternity, what incentive would he have to act to impugn the child's legitimacy?

The child's birth certificate still enters him as an illegitimate or non-marital child. True, there is the presumption of legitimacy fictionally watermarked on his birth certificate. Nonetheless the birth certificate remains silent on the child's date of marriage, name of father, and surname. Would this presumption of legitimacy still matter at all to the husband when his name is not even implicated in the birth certificate?

More, assuming that petitioner's husband is minded to act, in practical terms, what document will be the object of his direct action so petitioner's husband can impugn the presumed legitimacy of the child? Will it be the ponencia that confirmed the presumption of legitimacy even if the ponencia towards the end of its discussion itself suggested the alternative that the child may after all be illegitimate? Will the object document be the child's birth certificate though it still says that the child is illegitimate?

Lastly, it will not be for the best interests of the child to compel the father to disown the child repeatedly in public and at a forum that would be distressing and scarring to the latter. In contrast, we actually now have the perfect legal scenario to avoid this public and cruel embarrassment to petitioner, her husband, petitioner's non-marital partner, and most especially the child.

The present proceeding is this option. Given the arguments in this Opinion, what petitioner did and what she is

now seeking from the Court, taken collectively, will be the most discreet legal action that could be taken to avoid the distress and scars to the child.

These are considerations that warrant a review and reversal of the rule of exclusivity that Article 170 has been forced to signify by jurisprudence.

(iv)

The rule on standing or personality to file suits is a rule of procedure rather than substantive law. While Congress is by and large the author of causes of action, in the sense of creating or affirming rights that if violated must give rise to remedies, it is the Supreme Court that has the authority to say who has the right to go to courts, avail of its services, and obtain relief.

In any event, the rule on standing or personality to sue is the Court's duty and authority to establish. This is a procedural rule that the Constitution has textually committed to the Court to ordain. It is not a substantive rule that emanates from Article 170, which as argued above, does not anyway say so. This Court is duty-bound to correct an error in the interpretation of Article 170. This Court must not perpetuate a discriminatory and flawed interpretation of Article 170.

We also do not have to wait for Congressional action, which though helpful, is not necessary. The issue is one of standing or personality to start a suit. The Court owns that power.

In fact, Section 1 of Rule 108 already gives the mother the standing to file a petition thereunder:

Who May File Petition. — Any person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the Court of First Instance of the province where the corresponding civil registry is located.

Obviously, the mother is an interested party to seek the correction of the birth certificate of her child.

In sum, as I have said, the Court should reject antiquatedly oppressive precedents. Then Justice Delos Santos in his opinion in *Almonte v. People*[31] said as much:

As to the legal effect of case laws, the Philippines exercises a unique brand of the common law doctrine of stare decisis. Up to a certain degree, this Court will uphold an established precedent and, if need be, evaluate such prior ruling by: (a) determining whether the rule has proved to be intolerable simply in defying practical workability; (b) considering whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation; (c) determining whether related principles of law have so far developed as to have the old rule no more than a remnant of an abandoned doctrine; and, (d) finding out whether facts have so changed or come to be seen differently, as to have robbed the old rule of significant application or justification.

The above-discussions clearly illustrate each of the highlighted instances why a precedent should be abandoned. And we ought not to forget, here, we are not just talking about lifeless legal provisions but principles of law infused by real lives of existing individuals.

The Court is respectfully implored to act now. It has the power to make a difference in real peoples' lives. We must grant the right to the mother of a child to impugn the legitimacy of her child. There are no adverse consequences to this but only beneficial ones. There is nothing to fear because she still has to prove the merits of her claims beyond a shadow of doubt.

IV.

Petitioner's factual assertions and prayer should be granted because she was able to prove the same beyond a shadow of doubt.

Petitioner's factual assertions are based on Article 166 (1) (b), which states:

(1) That it was physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child because of... (b) the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible x x x

Hence, Petitioner, therefore, was able to rebut the presumption of legitimacy and prove beyond reasonable doubt her child's illegitimacy.

As for the surname of petitioner's child, petitioner was also able to prove clearly and convincingly, more than preponderantly, that the child's father did not sign the birth certificate and did not execute the Affidavit of Acknowledgment/Admission of Paternity.

Conclusion

ACCORDINGLY, I vote to grant the present petition and declare petitioner's child Alrich Paul Fulgueras a non-marital or illegitimate child, and order the correction of entries in the child's birth certificate as prayed for by his mother, herein petitioner.

[1] Attributed to Dr. Prem Jagyasi, Good Reads at <https://www.goodreads.com/quotes/tag/idle> (last accessed July 8, 2021).

[2] G.R. No. 252117, July 28, 2020.

[3] Cancellation or correction of entries in the Civil Registry.

[4] *Treyes v. Larlar*, G.R. No. 232579, September 8, 2020.

[5] See also Rule 3 of the Implementing Rules and Regulations of RA No. 9048.

[6] See 505 Phil. 529, 542 (2005).

[7] *Id.*

[8] *Supra* note at 4.

[9] *Id.*

[10] *Republic v. Ontuca*, G.R. No. 232053, July 15, 2020; *Onde v. The Local Civil Registrar*, 742 Phil. 691 (2014); *Spouses Cerulla v. Delantar*, 513 Phil. 237, (2005); *Barco v. Court of Appeals*, 465 Phil. 39 (2004).

[11] ARTICLE 166. Legitimacy of a child may be impugned only on the following grounds:

(1)

That it was physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child because of:

(a)

the physical incapacity of the husband to have sexual intercourse with his wife;

(b)

the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible; or

(c)

serious illness of the husband, which absolutely prevented sexual intercourse;

(2)

That it is proved that for biological or other scientific reasons, the child could not have been that of the husband, except in the instance provided in the second paragraph of Article 164; or

(3)

That in case of children conceived through artificial insemination, the written authorization or ratification of either parent was obtained through mistake, fraud, violence, intimidation, or undue influence. (255a)

[12] ARTICLE 170. The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded. If the husband or, in his default all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier. (263a)

[13] Supra note 10 at 55; see also Republic v. Ontuca, GR. No. 232053, July 15, 2020; Republic v. Manda, G.R. No. 200102, (2019); Onde v. The Local Civil Registrar of Las Piñas City, 742 Phil. 691, 696 (2014).

[14] See 656 Phil. 550 (2011).

[15] Supra note 4.

[16] G.R. No. 200344, August 28, 2019.

[17] 622 Phil. 654, 659 (2019).

[18] RE: PROPOSED RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES.

[19] See 712 Phil. 524 (2009).

[20] I use "their" to indicate gender neutrality, indeterminacy or non-affiliation with traditional gender categories.

[21] Liyao v. Tanhoti-Liyao, 428 Phil. 628, 641 (2002).

[22] See Reference re Provincial Electoral Boundaries, 1991 CarswellSask 188, 1991 CarswellSask 403, [1991] 2 S.C.R. 158, [1991] (Supreme Court of Canada).

[23] Id.

[24] Id.

[25] Id.

[26] Supra note 4.

[27] Supra note 22.

[28] G.R. No. 216425, November 11, 2020.

[29] The child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress. (256a)

[30] See 732 Phil. 1, 531 (2014).

[31] G.R. No. 252117, July 28, 2020.

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