EN BANC

G.R. No. 215370 – RICHELLE BUSQUE ORDOÑA, *petitioner*, ***versus*** **THE LOCAL CIVIL REGISTRAR OF PASIG CITY and ALLAN V. FULGUERAS,** *respondents*.

Promulgated:

November 9, 2021

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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

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

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.
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> **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.**
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> 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

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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.

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:

> B. Article (9) —
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> > 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.
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> 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".
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> 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?
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> x x x x
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> 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.**
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> 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.
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> **Prof. Baviera remarked that Justice Caguioa's point is covered by the present Article 364, which reads:**
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> > **Legitimate and legitimated children shall principally use the surname of the father.**
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> 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
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> 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.
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> x x x x
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> **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.**

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

> **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/hermother'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 *Geronimo v. Santos*:[10]

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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).

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

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11 Id. at 377-378. Emphasis supplied.

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

> **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 C. Aquino on July 6, 1987, as the culmination of the work that began it in 1979, from the drafts of two successive committees, chaired by Supreme Court Justice Flerida 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,

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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>.

specifically under the Declaration of Principles and State Policies in Article II, 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:

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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.

> 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**

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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.

> **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.**
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> 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**

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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.

> **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.
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> 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**

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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)

> **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**

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[36] Id. Emphasis supplied.

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.**
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> 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.**
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> **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

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

38 Id. at 302-303. Emphasis supplied.

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

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

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.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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[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.