

# **Children's Rights Specifically on Legitimation and Acknowledgment**

Presentation delivered by

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Administrator and Civil Registrar General Carmelita N. Ericta, my Fellow Speakers, the Solemnizing Officers in our country, the Officials and Staff of the National Statistics Office (NSO) who made this convention possible, good morning.

The topic assigned to me is "*Children's Rights Specifically on Legitimation and Acknowledgment.*" It has a soft spot in my heart for two reasons. One, I am a professor of *Persons and Family Relations*, one of the subjects I handle at the University of the East-College of Law. I discuss at length with my class the *Family Code*, which includes important provisions on the rights of children. And two, I am a mother of two lovely girls, my inspiration, my source of pride and joy. I consider both my class and my daughters as my babies. I do my best in helping them equip themselves with their needs, which they may apply in law or in life or both. So, I thank the organizers for like my babies, this topic is close to my heart.

## **Named and called .... children**

Painful was the scene that I had seen. A man, gigantic in stature, his body distorted in its proportion, was standing on a large fragment of ice floating on the ocean. He had long locks of ragged hair and his face, in color and texture, like that of a mummy was full of bitterness. He was going to drown himself in the freezing waters. But before he submerged himself to death, mournfully he cried, "*He did not even give me a name.*"

What I have narrated was a scene in the movie Frankenstein. Victor Frankenstein's creation was shouted at with these words: "vile insect, abhorred

monster, fiend, wretched.”<sup>1</sup> Hideous may his countenance be, but like any creature, he craved to be called by his first name, by his surname. But both – he did not have...

Just how important is a name? “Naming things was the first task and privilege given to human beings in the Garden of Eden. ‘*So from the soil Yahweh God fashioned all the wild animals and all the birds of heaven. These he brought to the man to see what he would call them; each one was to bear the name the man would give it. (Genesis 2:19)*’ ”<sup>2</sup>

We are not God nor are we playing God, like Frankenstein. We are ordinary yet responsible mortals who give birth or sire children worthy of our names (specifically our family names).

A person’s name consists of one or more Christian name and one family name. Family name or surname is that which identifies the family to which the individual belongs and is continued from parent to child.<sup>3</sup>

Use of surnames of the father and the mother is one of the rights enjoyed by the fortunate ones among the children in our country. I said fortunate ones because not all of them enjoy the right to bear the surnames of both of their parents.

There are two kinds of children: legitimate and illegitimate. The Family Code defines said children, thus:

- **Legitimate** – Those conceived or born during a valid marriage of the parents, or within lawful wedlock. (Article 164)
- **Illegitimate** – Those conceived and born outside a valid marriage or outside lawful wedlock. (Article 165)

Herein under are the kinds of children :<sup>4</sup>

1. Legitimate -

a) Those conceived or born within lawful wedlock –

Children conceived and born during the marriage of the parents are necessarily legitimate. But a child, although conceived before marriage, but born already during the marriage, is likewise legitimate; and so with a

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<sup>1</sup> Mary Shelley, Frankenstein, (First published in 1818; Bantam reissue edition, USA: Bantam Books, 1991), p.83.

<sup>2</sup> Laurie Beth Jones, The Power of Positive Prophecy, (New York: Hyperion, 1999) p. 14.

<sup>3</sup> Federico B. Moreno, Moreno’s Law Dictionary (Quezon City: Rex Printing Co., Inc., 2000) p. 304.

<sup>4</sup> Alicia V. Sempio-Diy, Handbook on the Family Code, (Quezon City: Joer Printing Services, 1999) pp. 85, 255, 257-259, 262.

child who, although born outside the marriage, was conceived during the marriage.

Examples:

- 1) Suppose a child was conceived out of pre-marital relations between a man and a woman, but the two got married before the child was born, so that when the woman gave birth to the child, she is already married to the child's father. The child is legitimate, having been born during the marriage of the parents.
  - 2) On the other hand, let us take the case of a wife who was pregnant when her husband suddenly died in an accident. Thus, when the child was born, the father was already dead. The child is legitimate, since it was conceived during the marriage of the parents.
- b) Those conceived and born as a result of artificial insemination – Paragraph 2 of Article 164 gives the status of a legitimate child to a child conceived by artificial insemination under the following conditions:
- 1) The artificial insemination is made on the wife, not on another woman;
  - 2) The artificial insemination of the wife is done with the sperm of the husband or of a donor or both the husband and a donor;
  - 3) The artificial insemination has been authorized or ratified by the spouses in a written instrument executed and signed by them before the birth of the child; and
  - 4) The written instrument aforementioned is recorded in the civil registry together with the birth certificate of the child.
- c) Children conceived while the parents were still living under a voidable marriage but born after the marriage of the parents had been annulled are still legitimate, having been conceived during the marriage of the parents;
- d) Children conceived of parents who, being lawfully married, later separated, whether *de facto* or legal, so that when the children were born, the parents are already separated, are legitimate, because they were conceived and born during the marriage of the parents;
- e) Those conceived or born of void marriages under Article 36 because of the psychological incapacity of one of the spouses ;

- f) Those conceived or born of the subsequent marriage under Article 54, shall be legitimate, although said subsequent marriage is null and void;
  - g) Those conceived or born before the judgment of annulment of marriage (This is because voidable or annulable marriages are valid until annulled);
  - h) Adopted;
  - i) Legitimated.
- 2) Illegitimate –
- a) Those born of couples who are not legally married, or of common-law marriages;
  - b) Those born of bigamous marriages;
  - c) Those born of adulterous relations between the parents;
  - d) Those born of couples below 18, whether they are married (which marriage is void) or not;
  - e) Those born within marriages that are void from the beginning under Article 35 of the Family Code, except where the marriage of the parents is void for lack of authority on the part of the solemnizing officer, but the parties or either of them had believed in good faith that the solemnizing officer had authority, in which case the marriage will be considered valid and the children will be considered legitimate. (Article 35, par. (2));
  - f) Those born of marriages that are incestuous and void from the beginning under Article 37;
  - g) Those born of void marriages for reasons of public policy under Article 38.

While the legitimate children have the right to bear the surnames of their father and mother,<sup>5</sup> the illegitimate can only use the surname of their mother.<sup>6</sup>

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<sup>5</sup> Family Code of the Philippines, Article 174.

<sup>6</sup> *Ibid.*, Article 176.

## **Support and Legitimate**

The legitimate children also have the right:

- To receive support from their parents, their ascendants, and in proper cases their brothers and sisters, in conformity with the provisions of the Civil Code on Support;<sup>7</sup> and
- To be entitled to the legitimate and other successional rights granted to them by the Civil Code.<sup>8</sup>

The benefits that I have mentioned for the legitimate children are provided by the Family Code. A Code that is not selfish, according to Dean Ernesto L. Pineda. In his speech delivered last January 7 at the Faculty of Canon Law in the University of Santo Tomas, he said that the Family Code *“does not only care for legitimate families but even those which are not. While the Code does not give premium or encouragement to illegitimate relationships, it, however, recognizes certain legal consequences arising out of such illegitimate relationships.”*<sup>9</sup> To prove the concern of the Code to those born out of wedlock, Dean Pineda mentioned the following benefits as among the benefits and advantages provided by the Family Code for the illegitimate children :

- It gives recognized illegitimate children the right to be supported by their acknowledging parents, as well as brothers and sisters;
- It gives successional rights to the illegitimate children so long as they have been duly recognized by their putative parents (Art. 176, Family Code in relation to Article 887, New Civil Code).

The **support** that we are talking about here comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education, and transportation, in keeping with the financial capacity of the family.<sup>10</sup>

The education of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority. Transportation shall include expenses in going to and from school, or to and from place of work.<sup>11</sup>

Sen. Hillary Rodham-Clinton said that it takes a village to raise a child. Literally bigger than a village, the State, as *parens patriae* is the parent of all children for all times. It takes care of their present needs through the provisions

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<sup>7</sup> Ibid., Article 174, paragraph 2.

<sup>8</sup> Ibid., paragraph 3.

<sup>9</sup> Dean Ernesto L. Pineda, “The Family as Envisioned in the Family Code,” Lawyer’s Review, February 28, 2003, p. 78.

<sup>10</sup> Supra, Note 5, Article 194.

<sup>11</sup> Ibid., paragraph 2.

of law on support. The future though distant, is not dark and dismal for the children because the State provides them a legitime.

**Legitime** is that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs.<sup>12</sup> The purpose of the legitime is to protect the children and the surviving widow or widower from the unjustified anger or thoughtlessness of the other spouse.<sup>13</sup>

### **Legitimation , Acknowledgment: Bridges to Legitimacy**

Legitimation and acknowledgment give rise to the rights of children that I have mentioned.

**Legitimation** is a remedy by means of which those who in fact were not born in wedlock and should, therefore, be considered legitimate, it being supposed that they were born when their parents were already married.<sup>14</sup> Legitimation takes place by the subsequent valid marriage of the parents of the child.<sup>15</sup>

Legitimated children are originally illegitimate but later considered legitimate by legal fiction because of the subsequent marriage of the parents who, at the time of the child's conception, had no legal impediment to marry each other. Legitimated children enjoy the rights of legitimate children,<sup>16</sup> as to the use of surname of both parents, support and legitime which I have mentioned earlier.

A married couple who would want to file for legitimation has to execute a joint affidavit of legitimation. Attached to it are the couple's marriage certificate and birth certificate of the child, who is to be legitimated. The affidavit together with the attached documents shall be submitted to the local civil registry where the birth of the child is registered. The upper right corner of the certificate of live birth is reserved for remarks/annotation. The local civil registrar shall place there *legitimated*, the new status of the child. The documents pertaining to the legitimated child shall then be submitted to the National Statistics Office (NSO).

The effects of legitimation shall retroact to the time of the child's birth.<sup>17</sup> Legitimation may be impugned by "those who are prejudiced in their rights, which means those who would suffer economic or material injury by the legitimation like testamentary or intestate heirs. Creditors are excluded, because they step into the picture only when there is repudiation of inheritance by the heirs.

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<sup>12</sup> Civil Code of the Philippines Volume III, Article 886.

<sup>13</sup> Edgardo L. Paras, Civil Code of the Philippines Annotated Volume III, (Manila: Rex Bookstore, 1999) p. 271.

<sup>14</sup> Supra, Note 4, p. 284.

<sup>15</sup> Supra, Note 5, Article 178.

<sup>16</sup> Ibid., Article 179.

<sup>17</sup> Ibid., Article 180.

Legitimation may be impugned within five (5) years from the time the cause of action accrues, which is from the death of the putative parent because before that, the heirs of the child have no personality to bring the action.”<sup>18</sup>

Now let’s talk about acknowledgment.

**Acknowledgment**, also known as **recognition** is defined as the process of declaring legally that a certain person is one’s own child.<sup>19</sup>

Children are given their status from the moment of their birth. Thus, there is no need for them to file an action against their parents for recognition. Such status may, however, be questioned. Hence, the need for Article 172 which states the evidences that legitimate children may present to establish or prove their status or filiation and in the absence thereof alternative means are provided therein.

Article 172 provides:

“Article 172. The filiation of legitimate children is established by any of the following:

- (1) The record of birth appearing in the civil register or a final judgment; or
- (2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

- (1) The open and continuous possession of the status of a legitimate child; or
- (2) Any other means allowed by the Rules of Court and special laws.”

“As far as asserting their status is concerned, illegitimate children are placed on the same footing as legitimate children.”<sup>20</sup> Article 175 clearly states that illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

Article 173 states that the action to claim legitimacy may be brought by the legitimate children during their lifetime. What about the illegitimate children, are they also entitled to file said action within the same period?

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<sup>18</sup> Supra, Note 4, p. 288.

<sup>19</sup> Supra, Note 3, p. 9.

<sup>20</sup> Ruben F. Balane, “Family Courts and Significant Jurisprudence in Family Law,” Journal of the Integrated Bar of the Philippines, Vol. XXVII, No. 1, 2001, p. 49.

Justice Alicia V. Sempio-Diy enlightens us by providing the following answers:

*“If the action is based on the record of the birth of the child , a final judgment, or an admission by the parent of the child’s filiation in a public document or in private handwritten, signed document, **Yes**, because there is no longer any question that the child is really the illegitimate child of his putative parent. He can, therefore, claim his rights as such even after the death of his parent, including his share in the latter’s estate as heir.*

*“But if the action is based on the open and continuous possession by the child of the status of an illegitimate child, or on other evidences allowed by the Rules of Court and special laws, **No**. In these cases, the action must be brought during the lifetime of the alleged parent.”<sup>21</sup> (Emphases supplied).*

What about the illegitimate children who were still minors at the time the Family Code took effect and whose putative parent died during their minority? Have they already lost the right to file an action for recognition? Apparently, no. Article 285 of the Civil Code comes to their rescue. It provides the period for filing an action for recognition as follows:

“Article 285. The action for the recognition of natural children may be brought only during the lifetime of the presumed parents, except in the following cases:

- (1) If the father or mother died during the minority of the child, in which case the latter may file the action before the expiration of four years from the attainment of his majority;
- (2) If after the death of the father or of the mother a document should appear of which nothing had been heard and in which either or both parents recognized the child.  
In this case, the action must be commenced within four years from the finding of the document.”

In ***Ernestina Bernabe vs Carolina Alejo as guardian ad litem for the minor Adrian Bernabe*** (G.R. No. 140500, January 21, 2002), the Supreme Court ruled in favor of the minor. In a Justice Panganiban-penned decision it stated that *“Xxx illegitimate children who were still minors at the time Family Code took effect and whose putative parent died during their minority are thus given the right to seek recognition (under Article 285 of the Civil Code) for a period of up to four years from attaining majority age. This vested right was not impaired or taken away by the passage of the Family Code.”*

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<sup>21</sup> Supra, Note 4, p.282.

Justice Artemio Panganiban echoed the overriding consideration of the magistrates, which he said was *“to protect the vested rights of minors who could not have filed suit, on their own, during the lifetime of their putative parents. Xxx the State as parens patriae should protect a minor’s right. Born in 1981, Adrian was only seven years old when the Family Code took effect and only twelve when his alleged father died in 1983. The minor must be given his day in court.”*

Illegitimate children like Adrian, once recognized, are entitled to their share of the estate of their parent who earlier failed to acknowledge them. However, as I have said earlier they are barred from using the surname of their father.

In the case of ***Marissa A. Mossesgeld versus Court of Appeals and Civil Registrar General*** (G. R. No. 111455) the putative father was denied registration of the certification of live birth of his illegitimate child using his surname, for it is contrary to law, specifically, Article 176. On December 23, 1998, the Supreme Court made a ruling, the pertinent portion of which reads:

*“Article 176 of the Family Code of the Philippines provides that ‘illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code.’ This is the rule regardless of whether or not the father admits paternity. Consequently, the Local Civil Registrar correctly refused to register the certificate of live birth of petitioner’s illegitimate child using the surname of the alleged father, even with the latter’s consent. Of course, the putative father, though a much married man, may legally adopt his own illegitimate child. In case of adoption, the child shall be considered a legitimate child of the adopter, entitled to use his surname.”*

In the ***Republic versus Abadilla*** (G. R. No. 133054, January 28, 1999) the magistrates also cited Article 176 as the applicable provision in the case of illegitimate children, Emerson and Rafael. Through Justice Quisumbing, the *ponente* of the case, they said:

*“During the birth of Emerson and Rafael, the Family Code was already the governing law and Article 176 of which provides as follows: ‘Art. 176. Illegitimate children shall use xxx the surname xxx of their mother xxx.’ Thus, as illegitimate children, Emerson and Rafael should bear the surname of their mother, Luzviminda Celestino. Resultingly, with the correction of the entries in their birth certificates which deleted the entry in the date and place of marriage of parents, corresponding correction with respect to their surname should have also been made and changed to Celestino, their mother’s surname.”*

How many more children would be denied of their father’s surname? This is a question which calls for an answer from the men and women who are in a relationship that produces illegitimate offsprings.

In his book, *The Prophet*,<sup>22</sup> Kahlil Gibran said:

*“You are the bows from which your children as living arrows are sent forth.  
The Archer sees the mark upon the path of the infinite, and He bends you  
with His might that His arrows may go swift and far.*

*Let your bending in the Archer’s hand be for gladness;*

*For even as He loves the arrow that flies, so He loves also the bow that is  
stable.”*

We parents are the bows of the Good Lord, the Archer. We are needed to set forth our children, the arrows to a bright future. But before we can even think of the future we need to look into their present needs. And their needs could very well start with having a name... a full name they can truly be proud of. *Ecclesiastes 7: 1* reminds us, *“Better a good name than a costly oil.”*

There are lawmakers in our country who agree with this biblical reminder. They are Representatives Cynthia Villar, Joaquin Chipeco Jr., Roque Ablan Jr., Orlando Fua Jr., Eladio “Boy” Jala and Roberto Cajit and Senators Sergio Osmeña III, Robert Barbers, Manuel Villar Jr., Ramon Revilla, Blas Ople, Loren Legarda, Edgardo Angara and Luisa Ejercito Estrada. The representatives are the authors of **House Bill No. 4437**, entitled ***An Act Providing that Illegitimate Children may Use the Surname of their Father, Amending for the Purpose of Article 176 of the Family Code of the Philippines*** and the senators are the proponents of **Senate Bill No. 2510**, entitled ***An Act Allowing Illegitimate Children to Use the Surname of their Father, Amending for the Purpose of Article 176 of Executive Order 209, Otherwise Known as the “Family Code of the Philippines.”*** While **House Bill No. 4437** has already been approved, its counterpart in the Senate is still pending for approval.

Yours truly humbly opines that **Senate Bill No. 2510** needs all the help it can get for it to be made into a law. I believe that illegitimate children should not be denied of their father’s surname. Illegitimate children have the misfortune of being born into a relationship frowned upon in our society, a relationship that is neither moral nor legal. They are identified with the misdeed of their father and mother, yet they are not given the right to be similarly identified with one of their parents for they are refused with their father’s surname. Their innate right to be respected as human beings is prejudiced, especially so when they are subjected to name calling. They are called bastards, *putok sa buho*. *“It is hardly unfair,”* says Justice Panganiban, *“to stigmatize children who had no fault in nor control over the marital impediments which bedeviled their parents. Why then should*

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<sup>22</sup> Kahlil Gibran, *The Prophet*, (Great Britain: William Heinemann, 1926; Senate 1997 edition, United Kingdom: Senate Press Limited) pp. 20, 21.

*they suffer the consequences? In the final analysis, there are no illegitimate children; there are only illegitimate parents.”<sup>23</sup>*

The filing of **Senate Bill No. 2510** is timely; just what the aforesaid children need. Thus, I trust that it would become a law. It would not be ignored for as one philosopher had said, *“Nothing is more powerful than an idea whose time has come.”*

Now, well, it is also time for me to end my sharing about legitimation and acknowledgment.

I thank the organizers for giving me the opportunity to be with the solemnizing officers in our country, the ones who seal unions that bring forth the future of our nation. To the solemnizing officers themselves, it’s an honor to be with all of you in this morning’s session of this informative and well-planned convention.

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<sup>23</sup> Maria Rosario de Santos vs. Hon. Adoracion G. Angeles, Judge, Regional Trial Court of Caloocan City, Branch 121 and Conchita Talag de Santos, G. R. No. 105619, December 12, 1995.