

LAW ON PATERNITY, MATERNITY, AND FILIATION



REPUBLIC OF HAITI

Ministry of Women's Affairs and Rights (MCFDF)

The **Law on Paternity, Maternity, and Filiation** was voted by the Chamber of Deputies on May 10, 2010, then by the Senate of the Republic on April 12, 2012. It was enacted by the Executive Branch on May 28, 2014, and published in the official gazette *Le Moniteur* (#105) on June 4, 2014.

THIS PUBLICATION REPRODUCES THE CONTENTS OF THE OFFICIAL DOCUMENT.

August 2014

A WORD FROM THE MINISTER

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Opening Address of the Minister of Women's Affairs and Rights

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The primary mandate of the Ministry of Women's Affairs and Rights, which was established on November 8, 1994, is to promote women's rights, work to promote the strategic interests of the most vulnerable, and work toward the emergence of an egalitarian society for both sexes. Therefore, since its inception, the successive ministers have identified and reviewed discriminatory laws and proposed improvements.

To this end, from 2001 to 2004 the ministry, under the leadership of Dr. Ginette Rivière Lubin, developed a proposed bill on "Responsible Parenthood." Despite its highly controversial history, this initiative finally gave the country a law on paternity, maternity, and filiation. It passed on May 10, 2010 in the Chamber of Deputies and on April 12, 2012 in the Senate.

As minister of Women's Affairs and Rights, I am very proud that this legislation was finally enacted under President Michel Martelly and Prime Minister Laurent Salvador Lamothe and published in the 105th issue of the Republic's official gazette (*Le Moniteur*) on June 4, 2014.

In view of the aforesaid, the Ministry of Women's Affairs and Rights believes that there is an urgent need to raise public awareness about this legislation, which is of the greatest humanitarian importance and affects all social classes in all 10 departments of the Republic.

I hope that this legislation will help repair the Haitian social fabric, improve the status of women, and put all children in Haiti on equal footing before the law, both in dignity and rights.

Ms. Marie Yanick Mézile



Published
Monday through Friday

OFFICIAL GAZETTE OF THE REPUBLIC OF HAITI

GENERAL DIRECTOR
Fritzner Beuzile

Year 169, No. 105

PORT-AU-PRINCE

Wednesday, June 4, 2014

Summary

Promulgation of the Law on Paternity, Maternity, and Filiation

Decree ratifying the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Decree ratifying the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography

REPUBLIC OF HAITI

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LAW ON PATERNITY, MATERNITY, AND FILIAION

In consideration of Articles 136, 259, 260, and 261 of the Haitian Constitution;

In consideration of the United Nations Convention on the Rights of the Child, ratified by Haiti;

In consideration of the International Covenant on Civil and Political Rights, ratified by Haiti;

In consideration of the Decree of January 16, 1979, endorsing the Declaration of the Rights of the Child;

In consideration of the provisions of Act No. 8 of the Haitian Civil Code on Paternity and Filiation amended by the Decree-Law of December 22, 1944, and the Decree of January 27, 1959;

In consideration of the provisions of Act No. 16 of the Haitian Civil Code dealing with succession;

In consideration of the Decree of September 14, 1983, establishing and regulating the procedure for recovery of maintenance payments and child custody procedures;

Considering that, because of significant social changes and the dynamics of today's world, it is of vital importance to positively change the law of parentage to promote the child's best interests;

Considering that, based on the principle of equality before the law, equality in dignity and rights, any difference of treatment between children based on different kinds of filiation should cease;

Considering that the principle of equal filiations prescribed by the Constitution implies that filiation through an adulterous relationship of a legally married parent may be established;

Considering that filiation is intended to ensure biological and social perpetuation, family reproduction, and the transfer of property and intangible assets;

Considering that legal principles such as enjoyment of a recognized status and voluntary acknowledgment are not enough to resolve problems relating to parentage, and that advances in medical science, biology, and blood group analysis enable establishment of the legal relationship between a child and his or her biological parents;

Considering that, in order to eliminate any form of discrimination against women and children, it is necessary to regulate the establishment of all types of filiation, to allow investigation of paternity or maternity, and to define a procedure that can ensure legal security for all children;

Considering that it is necessary to develop standards that effectively protect all children;

Considering that it is important to harmonize the articles of the Civil Code with the human rights conventions ratified by Haiti;

The Parliament has voted on the following law:

Article 1

Article 1 of the Decree of January 27, 1959, establishing equal rights for legitimate and illegitimate children, is amended as follows:

The principle is established of equality of legitimate, natural, adoptive, or other filiations, which necessarily implies the equality of all children, whether born in or out of wedlock.

Filiation creates a set of moral and financial rights and obligations on the part of parents and their children.

Article 2

Filiation is established by recording a birth with a vital records officer in Haiti or with the Haitian consul in a foreign country. To do this, either both parents must appear or one of them must appear with an authenticated document or power of attorney granted by the other parent, or a court decision that has the force of *res judicata*, resulting from legal proceedings to establish paternity or maternity.

In the case of a decision confirming paternity or maternity, the surname of the parent, married or not, regardless of the group to which he or she belongs, will be given, among others, to the child.

Article 3

Article 293 of the Civil Code on paternity and filiation is amended as follows:

Article 293. When a child is conceived in wedlock, the mother's husband is the father. However, the latter is entitled to disclaim paternity of the child at any time if he legitimately suspects that there is no biological relationship between him and the child in question. In that case, nonpaternity can only be validated by a DNA (deoxyribonucleic acid) test and enshrined by a judgment delivered as a matter of urgency and with the status of *res judicata*.

Article 4

Articles 294 and 295 of the Civil Code are and remain repealed.

Article 5

If the parent, married or not, denies any biological relationship with the child claiming filiation and refuses to recognize the child, he or she will be presumed to be the parent, pending the result of the test and

the outcome of the action to determine paternity or maternity brought by the child's guardian.

Any action or case to determine paternity or maternity will be subject to a permissive order from the Chief Justice. It will be entered in a nonpublic registry or roll and heard calmly in camera, in order to safeguard the best interests of the child and preserve the image of the family. This ruling will always be served by a bailiff and not announced publicly in newspapers since it is deemed adversarial.

Article 6

Any woman or man who falsely identifies someone as the alleged biological father or mother of his or her child shall be punished under the provisions of Articles 318 and 319 of the Penal Code on malicious accusation, without prejudice to any damages and interests.

Article 7

The action to determine paternity or maternity shall be brought by the child's guardian before an interim relief judge. In this matter, the principle that both parties must be heard is considered a cardinal rule. The parent who has denied any biological relationship with the petitioning child adduces counterevidence by submitting to a DNA test that the court may automatically order. In such cases, the judge must appoint one or three clinical pathologists who, after taking an oath, will conduct one or more tests to confirm or refute the biological relationship. The decision to appoint the experts is not subject to appeal.

Action to determine paternity or maternity involving members of diplomatic and consular staff accredited in Haiti, including those of the Holy See, can only be undertaken in accordance with the laws pertaining to diplomatic, consular, and canonical personnel.

An annual budget allocation will be earmarked to cover the cost of DNA testing for those with little money. An implementing decree will deal with the establishment of a fund in this regard.

If the alleged parent refuses to submit to medical examinations, he or she will be imprisoned by the government commissioner pursuant to the decision of the judge handling the case. In paternity or maternity investigations, the decision of the interim relief judge can only be appealed to the Supreme Court.

The appeal will be carried out within eight days from the date of notification in accordance with the procedure stipulated by the Code of Civil Procedure for urgent matters. If the appeal is prepared properly, the substance is decided on by the court without referral to another tribunal, in accordance with Article 426 of the Code of Civil Procedure.

Article 8

Articles 302, 303, 304, 306, 308, and 309 of the Civil Code are and remain repealed.

Article 9

Article 311 of the Civil Code is amended as follows:

Article 311. Paternity or maternity investigations are permitted for both the parent and his or her child, regardless of the latter's age. In this case, they will be conducted in accordance with the procedures set forth in Article 7 of the present law. This provision shall apply to all children born under the aegis of the present law.

Article 10

Article 313 of the Civil Code is and remains repealed.

Article 11

Article 606 of the Civil Code is amended as follows:

Article 606. In accordance with the principle of equality of filiations enshrined in Article 1 of this law, all children have the same rights. They enjoy the same prerogatives in all matters.

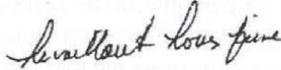
Article 12

Article 611 of the Civil Code is and remains repealed.

Article 13

This law repeals all laws or provisions of laws, all decree-laws or provisions of decree-laws, and all decrees or provisions of decrees that are inconsistent with it. It shall be published and enforced upon the request of the ministries of Women's Affairs and Rights, Justice and Public Security, Social Affairs and Labor, National Education and Vocational Training, and Culture and Communication, each in those matters that concern them.

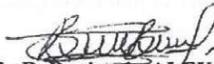
Signed in the Senate of the Republic, on Thursday, April 12, 2012,
the 209th year of Independence.



Levaillant LOUIS-JEUNE
Président de la Chambre des Députés
Levaillant LOUIS-JEUNE
President of the Chamber of Deputies



Jude Charles FAUSTIN
Premier Secrétaire
Jude Charles FAUSTIN
First Secretary

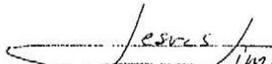


Guerda B. Benjamin ALEXANDRE
Deuxième Secrétaire
Guerda B. Benjamin ALEXANDRE
Second Secretary

Signed in the Chamber of Deputies on May 10, 2010, the 207th year
of Independence.



Steven Irvenson BENOIT
Premier Secrétaire
Steven Irvenson BENOIT
First Secretary



Simon Dieuseul DESRAS
Président du Sénat
Simon Dieuseul DESRAS
President of the Senate



Joseph Joël JOHN
Deuxième Secrétaire
Joseph Joël JOHN
Second Secretary

REPUBLIC OF HAITI

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On behalf of the Republic

The President of the Republic hereby orders that the Law on Paternity, Maternity, and Filiation, voted by the Chamber of Deputies on Monday, May 10, 2010, and by the Senate on Thursday, April 12, 2012, be stamped with the seal of the Republic, printed, published, and enforced.

Signed at the National Palace, Port-au-Prince, on Monday, May 28, 2014, the 211th year of independence.

By the President:

A handwritten signature in black ink, appearing to be 'MJM', written over a faint, circular official seal or stamp.

MICHEL JOSEPH MARTELLY

Published with support from the Health Policy Project (HPP) AKSE “Aksyon Kolektif pou Sekirite kont Eksplowatasyon” (Collective Action for Security against Exploitation), funded by USAID and implemented by Futures Group.

The contents of this publication do not necessarily reflect the views of the U.S. government or the U.S. Agency for International Development (USAID).

The Health Policy Project is a five-year cooperative agreement funded by the U.S. Agency for International Development under Agreement No. AID-OAA-A-10-00067, beginning September 30, 2010. It is implemented by Futures Group, in collaboration with Plan International USA; Futures Institute; Partners in Population and Development, Africa Regional Office (PPD ARO); the Population Reference Bureau (PRB); RTI International; and the White Ribbon Alliance for Safe Motherhood (WRA).