

# LAW AS AN INSTRUMENT OF POPULATION CONTROL: THE PHILIPPINE APPROACH

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## INTRODUCTION

A quarter of a century ago, the First Conference on Population was convened to discuss and analyze the Philippine population problem.<sup>1</sup> At that time, the population was estimated to be roughly 32 million.<sup>2</sup> The proceedings of that gathering of social scientists sufficiently conveyed, even then, the seriousness of the problem and the urgent need for appropriate responses.

Today, there are, as of last official count, 60,684,887 Filipinos.<sup>3</sup> Against this background of a burgeoning population looms the overwhelming problems of widespread poverty, unemployment, pollution and depletion of our natural resources - to name only a few. The population issue is still being debated, and even as we move closer to the 21st century, the specter of rapid population growth and its disturbing consequences on the nation's social and economic development continue to haunt us.

It is particularly striking that the legal component of the population issue, a decidedly multidimensional phenomenon, was not in

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<sup>1</sup>The conference was sponsored by the Population Institute of the University of the Philippines.

<sup>2</sup>See Concepcion, *Demographic Factors in Philippine Development*, in FIRST CONFERENCE ON POPULATION 80 (1966).

<sup>3</sup>Proclamation No. 688, which was issued on February 12, 1991, declared as official the 1990 population count of the Philippines by province, city, municipality and barangay as obtained from the 1990 Census of Population conducted by the National Statistics Office. The Stated figure is the total population of the Philippines as of May 1, 1990. This proclamation is pursuant to Batas Pambansa Blg. 72 which was approved on June 11, 1980. This law requires the taking of an integrated census of population every ten years beginning in the year 1980. Under Section 8 of this law, the final population count shall be considered official for all purposes upon proclamation by the President.

the agenda of that 1965 conference.<sup>4</sup> In a way, this merely reflects the late entry of the law in this field. Indeed, fertility control is a relatively new legal concern. It was only in 1971 that Congress passed a law<sup>5</sup> which established a national population policy and conferred statutory recognition to a Population Commission which was earlier created by Executive Order.<sup>6</sup>

While it is now recognized that the law has an important role to play in fertility control, the participation of the legal profession in the critical search for solutions to the population problem leaves much to be desired. At the moment, there appears to be little interest in the problem among the members of the profession. Even the legal literature on law and population is scarce.<sup>7</sup>

And yet, the law can be held partly responsible for the emergence of the problem. It has been aptly observed that:

The legal world is responsible, in large measure, for many of the population-related problems, because the laws have been to this point in time remarkably pro-natalist in nature. Moreover, legal value systems of world-wide scope have been anti-communicative in terms of the dissemination of information dealing with sexual and contraceptive matters. Surely, legal codes have had a profound impact upon the current population and the magnitude of the problem which we now face.<sup>8</sup>

If it is true that part of the responsibility for the population problem can be ascribed to the law, then it becomes imperative that the

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<sup>4</sup>It is interesting to note that in the 1965 United Nations World Population Conference in Belgrade, there was only one lawyer among the numerous participants and observers. Like what happened in the Philippine conference, none of the papers presented in the Belgrade conference dealt with the legal dimension of the population problem. See Lee and Larson (Eds.), *POPULATION AND LAW - A STUDY OF THE RELATIONS BETWEEN POPULATION PROBLEMS AND LAW*, Rule of Law Press, Durham, North Carolina, 1971, Preface.

<sup>5</sup>REP. ACT NO. 6365, approved August 16, 1971.

<sup>6</sup>Exec. Order No. 174, 65 O.G. 2296 (March, 1969).

<sup>7</sup>Among the notable ones are: Cortes, *Population and Law: The Fundamental Rights Aspects in the Philippine Setting*, 48 PHIL. L. J. 303 (1973); Cortes, *Legal Aspects of World Population: Southeast Asia*, 53 PHIL. L. J. 42 (1978); Bulatao and Lee, *The Impact of Law on Fertility Behavior: Perspectives of Philippine Influentials*, 48 PHIL. L.J. 324 (1973); Sison, *Population Laws of the Philippines*, 48 PHIL. L. J. 356 (1973).

<sup>8</sup>Ravenholt, *Policy Technology and the Control of Fertility*, in *THE WORLD POPULATION CRISIS: POLICY IMPLICATIONS AND THE ROLE OF LAW*, the University of Virginia School of Law 12 (1971).

search for solutions engage the active involvement of the legal profession. . .

Sufficient time has lapsed since the adoption of the national population program and the advent of legal intervention in the regulation of fertility. It should now be the interest of all concerned, especially the members of the legal profession, to evaluate the performance of the program and to inquire into the role of Philippine law as an instrument of population control in the light of recent developments.

### THE PHILIPPINE POPULATION POLICY

#### *Historical Background*

The legal dimension of the Philippine population problem can be better appreciated if viewed in the light of the historical developments which led to the adoption of the current population policy.

There was, to begin with, no policy on population enunciated in the 1935 Constitution. Although it would have been a wise anticipatory move on the part of the constitutional convention to have included a provision that would establish even at that early date a state policy on population, its failure to do so is quite understandable. The population explosion in the sixties and the problems spawned by it were many years away and the idea of drafting a provision that would enunciate a policy on population was probably not in the consciousness of the delegates to the 1935 Constitutional Convention.

The importance of the population issue was constitutionally recognized for the first time in the 1973 charter. Under Article XV, Section 10 of the 1973 Constitution, "It shall be the responsibility of the State to achieve and maintain population levels most conducive to the national welfare." As worded, the provision spells out a policy that is not pro-natalist or anti-natalist. On the other hand, it conveys the idea of flexibility that would enable the State to take appropriate measures to encourage either the decrease or increase of fertility depending on the requirements of the national welfare.<sup>9</sup>

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<sup>9</sup>See Cortes, *Population and Law: The Fundamental Rights Aspects in the Philippines Setting*, 48 PHIL. L. J. 307 (1973).

Several significant developments preceded the adoption of the 1973 constitutional policy on population. It is noteworthy that as early as 1964, a Population Institute was established as an academic unit in the University of the Philippines to undertake population studies. It was, however, only in 1967 when the first government action which eventually led to the establishment of a national population program was taken. In that same year, the Philippines signed the United Nations Declaration on Population which emphasized that "the population problem must be recognized as a principal element in long-range national planning if governments are to achieve their economic goals and fulfill the aspirations of their people."<sup>10</sup> It can be said, in this regard, that the Philippine government has faithfully observed the injunction of this UN declaration. Since the early 1970's, the government has consistently taken into consideration the problem of rapid population growth in all of its development plans. In fact, population growth rate targets have been fixed in these development plans.<sup>11</sup>

The year following the signing of the UN Declaration on Population, the Teheran International Conference on Human Rights came out with a Proclamation on Human Rights which was likewise signed by the Philippines. This significant document recognizes family planning as a basic human right. Its declaration is emphatic: "Parents have a basic human right to determine freely and responsibly the number and spacing of their children."<sup>12</sup> Realizing the adverse impact of rapid population growth on human rights, the conference noted in a resolution that "the present rapid rate of population growth in some areas of the world hampers the struggle against hunger and poverty and in particular reduces the possibilities of rapidly achieving adequate standards of living, including food, clothing, housing, medical care, social security, education and social services, thereby impairing the full realization of human rights."<sup>13</sup> More than twenty years after its

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<sup>10</sup>See AN OVERVIEW OF THE PHILIPPINE DEMOGRAPHIC SITUATION AND POPULATION PROGRAM DEVELOPMENTS 9 (1990), Department of Health, Manila.

<sup>11</sup>*Id.*, at 8. Concerning the experience of the Philippines in population-development planning integration, see Pante, *Population and Development Planning Integration: The Case of the Philippines*, 1 PHILIPPINE POPULATION JOURNAL 94 (1985).

<sup>12</sup>Proclamation, par. 16, U.N. DOC. A/CONF. 32/41 (1968), cited in Cortes, *supra* note 9, at 305.

<sup>13</sup>Res. No. XVIII dated May 12, 1968, cited in Cortes, *op. cit.*, *supra* note 9, at 30.

adoption, the resolution surprisingly still has a contemporary tone and has not lost its urgency or validity.

Not long after the signing of the UN Declaration on Population and the Teheran Proclamation on Human Rights, a Commission on Population (POPCOM) was created through the issuance in 1969 of Executive Order No. 174. POPCOM's primary task was to conduct population studies and recommend policies and programs in line with the social and economic development plan of the government. Upon the recommendation of POPCOM, the Philippine population program was officially launched in 1970 through Executive Order No. 233. Its main thrust was the reduction of fertility. The Commission was, at the same time, reorganized and mandated to act as the central coordinating, planning and policy-making body on matters pertaining to population and family planning.<sup>14</sup>

The creation of POPCOM in 1969 and the adoption of a population program in the following year were all effected at the level of the executive branch. Obviously, there was a need for a legislative response to the population problem. Thus, in 1971, Congress enacted Republic Act No. 6365, otherwise known as the Population Act of the Philippines, which established a national population policy and gave legislative statutory recognition to POPCOM. Shortly after the declaration of martial law, Presidential Decree No. 79 was issued to revise the Population Act of 1971 and strengthen POPCOM's organizational structure.

Under this decree, the powers and functions of the POPCOM are vested in a Board of Commissioners composed of the Secretary of Education and Culture, Secretary of Health, Secretary of Social Welfare, Dean of the University of the Philippines Population Institute and the Director-General of the National Economic Development Authority.<sup>15</sup> Its declared purposes and objectives are as follows:

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<sup>14</sup>See AN OVERVIEW OF THE PHILIPPINE DEMOGRAPHIC SITUATION AND POPULATION PROGRAM DEVELOPMENTS, *supra* note 10, at 9.

<sup>15</sup>PRES. DECREE NO. 79, sec. 6, issued on December 8, 1972. To give importance to the involvement of the private sector in the development and formulation of policy and plans, Presidential Decree No. 803 was issued on September 25, 1975 to amend sec. 6 and expand the membership of the Board. In addition to those already mentioned in Presidential Decree No. 79, under Section 1 of Presidential Decree No. 803, membership in the Board includes the "... Executive Director of the Population Center Foundation, Inc., and two other members from the private sector who possess the necessary expertise in the field of population and who are not recipients of

- (a) To formulate and adopt coherent, integrated and comprehensive long-term plans, programs and recommendations on population as it relates to economic and social development consistent with and implementing the population policy which shall be submitted to and approved by the President;
- (b) To make comprehensive studies of demographic data and expected demographic trends and propose policies that affect specific and quantitative population goals;
- (c) To organize and implement programs that will promote a broad understanding of the adverse effects on family life and national welfare of unlimited population growth;
- (d) To propose policies and programs that will guide and regulate labor force participation, internal migration and spatial distribution of population consistent with national development;
- (e) To make family planning a part of a broad educational program;
- (f) To encourage all persons to adopt safe and effective means of planning and realizing desired family size so as to discourage and prevent resort to unacceptable practices of birth control such as abortion by making available all acceptable methods of contraception to all persons desirous of spacing, limiting or preventing pregnancies;
- (g) To establish and maintain contact with international public and private organizations concerned with population problems;
- (h) To provide family planning services as a part of over-all health care;
- (i) To make available all acceptable methods of contraception, except abortion, to all Filipino citizens desirous of spacing, limiting or preventing pregnancies.<sup>16</sup>

The policy of undertaking a national family planning program which was earlier enunciated in Republic Act No. 6365 was reiterated in the presidential decree, this time emphasizing the involvement of both public and private sectors. The decree states:

The government of the Philippines hereby declares that for the purpose of furthering the national development, increasing the

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Population Commission program money, each to be appointed by the President of the Philippines for a term of three years."

<sup>16</sup>PRES. DECREE NO. 79, sec. 4.

share of each Filipino in the fruits of economic progress and meeting the grave social and economic challenge of high rate of population growth, a national program of family planning involving both public and private sectors which respects the religious beliefs and values of the individuals involved shall be undertaken.<sup>17</sup>

Two points must be highlighted in this declaration of policy. First of all, the government recognizes the adverse impact of rapid population growth on national development. This is precisely the reason why, since 1971, the government has consistently taken into consideration the population dimension in its development plans. Secondly, to curb rapid population growth, fertility control must be resorted to and family planning is the chosen strategy to attain the desired objective. It must be stressed that, although the family planning program so adopted is voluntary or non-coercive in character and expressly guarantees respect for religious beliefs and values, the declared policy clearly encourages efforts to reduce fertility when it adverts to family planning, as a means to meet "the grave social and economic challenge of high rate of population growth." Thus, under the law, POPCOM is mandated to make available all medically and legally approved methods of contraception, except abortion, to all Filipinos who want to engage in family planning.<sup>18</sup>

#### *Policy and Program Developments After the 1973 Constitution*

Certain notable developments have taken place since the adoption of a population policy in the 1973 Constitution.

The family planning program which was from the beginning predominantly clinic-based shifted to a combined clinic-based and community-based approach in 1976 as to meet the needs of the rural communities. This development was bound to happen since it is easy to see that for the program to yield better results, family planning services should be extended to the rural areas and non-medical personnel should be utilized to maximize the delivery of such services. It must be pointed out that although there were, by 1975, about 2,500 family planning clinics scattered all over the country, the level of participation of rural communities in the family planning program was quite low compared to that of the urban areas. In view of this, the National Population and Family Planning Outreach Project was launched in 1976. This project

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<sup>17</sup>PRES. DECREE NO. 79, sec. 2(emphasis supplied).

<sup>18</sup>PRES. DECREE NO. 79, sec. 4, par. (i).

has enlisted the services of more than 3,000 outreach personnel and more than 50,000 barangay service point officers to motivate married couples of reproductive age to engage in family planning, provide contraceptive materials, and refer clients to the clinics.<sup>19</sup>

Subsequent to the adoption of the combined clinic-based and community-based approach, a Special Committee to Review the Philippine Population Program was created. In 1978, upon the recommendation of the committee, the family planning program was reoriented to stress on family welfare rather than just contraception or fertility control. At the same time, a closer integration of population concerns into development plans was emphasized.<sup>20</sup>

#### *The New Population Policy*

The historic events at EDSA in 1986 ushered in a new administration and with it a new constitution which was ratified in February, 1987. The provision on population in the 1973 Charter, was discarded in favor of two new provisions that markedly differ from the previous formulation which, as noted earlier, was sufficiently flexible and neither pro-natalist nor anti-natalist in tone. In the Declaration of Principles and State Policies, the 1987 constitution provides:

The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. *It shall equally protect the life of the mother and the life of the unborn from conception.* The natural and primary right and duty of parents in the rearing of the youth for the civic efficiency and the development of moral character shall receive the support of the government. <sup>21</sup> (Emphasis supplied)

On the other hand, in the Article on The Family, the State is mandated to defend "the right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood."<sup>22</sup>

The policies introduced by these provisions of the 1987 Constitution are not really novel. The policy against abortion as a

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<sup>19</sup>See Jamias, *The Philippine Population Program: An Overview*, 1 PHILIPPINE POPULATION JOURNAL 11 (1985).

<sup>20</sup>See AN OVERVIEW OF THE PHILIPPINE DEMOGRAPHIC SITUATION AND POPULATION PROGRAM DEVELOPMENTS, *supra* note 10, at 10.

<sup>21</sup>CONST., Art. II, sec. 12.

<sup>22</sup>CONST., Art. XV, sec. 3, par. (1).



method of birth control, after all, is not new. Neither is the recognition of the right of parents to determine freely and responsibly the number and spacing of their children in accordance with their religious beliefs. What is new, however, is that these policies have been elevated into the constitutional level. In particular, the new constitutional protection given to the "life of the unborn from conception" has the practical effect of foreclosing the possibility, at least within the foreseeable future, of legalizing abortion as a method of fertility control.

There are, in addition to those already mentioned, other provisions in the new constitution which have a bearing on population. These pertain to the state guarantee of full respect for human rights;<sup>23</sup> the adoption of policies that will provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all Filipinos;<sup>24</sup> the recognition of the role of women in nation-building;<sup>25</sup> the protection and promotion of the right to health and the need to instill health consciousness among the people;<sup>26</sup> and the participation of families or family associations in the planning and implementation of policies and programs affecting them.<sup>27</sup>

Although the policies embodied in these provisions may be perceived as not having a dramatic or direct impact on the population problem, it can be reasonably asserted that, if such policies are properly implemented, they are likely to exert a positive influence on the overall effort to reduce fertility. In support of this assertion one need only point out the widely known fact that, in many third world countries having low standards of living, population growth rates are quite high compared to those of developed nations whose citizens enjoy higher standards of living. To put it differently, the problem of excessive fertility thrives best under conditions which usually afflict underdeveloped nations such as poverty, unemployment, malnutrition and illiteracy.

The most recent policy and program developments took place shortly after the ratification of the 1987 Constitution. A new population policy was adopted by the government in April, 1987 which is based mainly on the present constitution and on the Medium-Term Philippine Development Plan covering the period from 1987 to 1992.

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<sup>23</sup>CONST., Art. II, sec. 11.

<sup>24</sup>CONST., Art. II sec. 9.

<sup>25</sup>CONST., Art. II, sec. 14.

<sup>26</sup>CONST., Art. II, sec. 15.

<sup>27</sup>CONST., Art. XV, sec. 3, par. (4).

Then in August, 1988, the POPCOM Board designated the Department of Health as the lead agency in the implementation of the family planning program, thus facilitating a closer integration of the family planning and health programs. Finally, in June, 1989, the POPCOM board approved a Five-Year Directional Population Plan for 1989-1993. This plan covers the major areas of the Philippine Population Program: (1) integrated population and development, and (2) family planning.<sup>28</sup>

It might well be asked, at this point, whether or not the new population policy significantly differs from the policy of the previous administration. A cursory look at the salient features of this new policy reveals that, while there are notable changes, the main thrust of the new policy does not radically differ from the previous one. It may be that the new population policy broadened the scope of population concerns "beyond fertility reduction to concerns about family formation, the status of women, maternal and child health, child survival, morbidity and mortality, population distribution and urbanization, internal and international migration, and population structure."<sup>29</sup> But even this new orientation can be said to be only a logical consequence of the broadening of the family planning program in 1978 which was, as noted earlier, made to emphasize family welfare, rather than just fertility reduction.

As it was before, the present policy is still anchored on the following: (1) free choice or non-coercion through the recognition of the right of parents to determine freely and responsibly the number and spacing of their children in accordance with their moral convictions and religious beliefs, (2) rejection of abortion as a method of birth control, (3) an orientation which emphasizes family welfare, not just fertility reduction, (4) promotion of self-reliance, and (5) integration of population concerns into the development plans of the government. It is, however, pointed out that in comparison to the old policy, the new one places more emphasis on free choice or non-coercion, family welfare, child survival, the role and status of women, consultative and participative approaches, an integrated information, education, communication campaign and the need to coordinate the efforts of participating agencies.<sup>30</sup>

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<sup>28</sup>See AN OVERVIEW OF THE PHILIPPINE DEMOGRAPHIC SITUATION AND POPULATION PROGRAM DEVELOPMENTS, *supra* note 10, at 13-16.

<sup>29</sup>*Id.*, at 14.

<sup>30</sup>*Id.*, at 14-15.

### FAMILY PLANNING AND THE ROLE OF LAW IN POPULATION CONTROL

Three decades have elapsed since the adoption of the Philippine Population Program. There are many questions which should now be asked regarding the population problem. For our purposes, however, two inter-related questions must be addressed. First, has the program made significant gains in fertility control? Secondly, how was law utilized in the implementation of the population policy?

In 1985 or fifteen years after the launching of the program, the first question was answered in this manner:

Though hardly noticed, the program has made significant gains in its fertility and development goals. Less children are now being born to Filipino families. The country's total fertility rate has dropped from an average of six children in the mid 60s to five in the late 70s. The crude birth rate dropped from 40 in 1970 to 34 in 1983 and is expected to decline further to 31 in 1987.

From 1971 to 1983, about 2.3 million births were averted. Another 700,000 more births are expected to be averted in 1984 and 1985. Over 3.5 million births are therefore expected to have been prevented in 15 years (1971-1985). This will considerably lessen the country's dependency ratio.

These achievements have been largely attributed to the four major program activities: information, education, communication (IEC), training, service delivery, and research.<sup>31</sup>

The Department of Health, which is now the lead agency in the implementation of the family planning program, came out in 1990 with its own assessment of the program's performance over the years. Its own interesting appraisal is that the program's achievements have been "modest and limited." As observed by the Department:

On the whole, an assessment of the program's performance indicates that its achievements have been modest and limited, partly because its effectiveness has been hampered by such factors as the lack of political support, discontinuities in program implementation resulting from changes in the leadership of both the POPCOM Board and the POPCOM Secretariat, the lack of

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<sup>31</sup>Jamias, *The Philippine Population Program: An Overview*, 1 PHILIPPINE POPULATION JOURNAL 12 (1985).

coordination among participating agencies, and problems in program implementation at the field level. From a broader perspective, the poor performance of the program reflects the inability to substantially reduce poverty and inequity, create more productive employment opportunities, achieve a significant structural change in the economy, and improve the educational, health and nutrition status of the population. It is interesting to note in this regard that the population target set forth in the Philippine Development Plan for 1978 - 1982 was to attain a net reproduction rate (NRR) of one in the year 2000. This target appeared to be achievable at the time that the 1978 - 1982 Development Plan was being prepared in 1977, considering the performance in the first half of the 1970s. However, by 1983, it became obvious that the original target could no longer be reached. The earliest year in which replacement level could be achieved was 2010.<sup>32</sup>

There is no doubt that some measure of success was attained by the family planning program. However in the light of the rather candid assessment of the agency in charge of the implementation of the program, one may question the characterization of the achievements of the program as "significant." The opinion of the Department of Health regarding the "poor performance of the program" seems more persuasive, especially when one considers the well known fact that the Philippine has one of the highest population growth rates in Asia.

One way of gauging the progress of government efforts in fertility control is to compare its family planning program performance with that of its Asian counterparts. A comparison that is particularly enlightening, yet disheartening, is the case of Thailand and the Philippines. Comparing the achievements of these two countries in their respective family planning programs clearly shows how poorly the Philippine program has performed for the last twenty years. Rapid population growth was a common problem in both countries in the 1960s. At that time, the growth rate in Thailand and the Philippines was around 3.0 percent per year. Since then, the family planning program of Thailand has performed impressively. Its population growth rate today is around 1.5 percent. On the other hand, the annual growth rate of the Philippines is a high 2.4 percent. According to the 1985 NEDA population projections premised on optimistic assumptions concerning reduction in fertility, the annual Philippine population growth rate by the year 2000 will still be roughly around 1.8 percent. This projected figure is even higher than the population growth rate of Thailand

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<sup>32</sup>AN OVERVIEW OF THE PHILIPPINE DEMOGRAPHIC SITUATION AND POPULATION PROGRAM DEVELOPMENTS, *supra* note 10, at 8.

today.<sup>33</sup> The following table on population projections gives a rough idea of Philippine population growth from 1990 to the year 2030.

POPULATION PROJECTIONS, 1990 - 2030

Year	High Assumption	Medium Assumption	Low Assumption
1990	61.89	61.48	60.67
1991	63.38	62.87	61.86
1992	64.88	64.26	63.04
1993	66.39	65.65	64.20
1994	67.91	67.04	65.32
1995	69.45	68.42	66.42
1996	70.99	69.80	67.48
1997	72.54	71.17	68.50
1998	74.09	72.54	69.48
1999	75.65	73.89	70.42
2000	77.21	75.22	71.32
2005	84.87	81.59	75.86
2010	92.52	87.21	80.65
2015	99.61	92.43	85.47
2020	105.95	97.68	89.99
2025	111.70	102.69	93.91
2030	117.10	107.12	97.10

Source: Population Studies Division, National Statistic Office as cited in *An Overview of the Philippine Demographic Situation and Population Program Developments*, Department of Health Manila, Philippines, 1990.

The second question regarding the role of the law in the implementation of population policy brings into focus the various laws which bear directly or indirectly on fertility. Classifying these laws is useful in analyzing the impact of law as an instrument of population control. Accordingly, these laws may be roughly classified into the following categories: (1) laws which have a direct effect on fertility by intervening at some point in the reproductive process, such as the laws pertaining to abortion, contraception and sterilization, (2) laws which have an indirect effect on fertility by way of regulating social relationships related to fertility, such as the laws on marriage, succession, sex status, and (3) laws which have an indirect effect on

<sup>33</sup>*Id.*, at 1-2.

fertility through economic incentives or disincentives, such as the laws granting tax deductions for dependents and maternity benefits.<sup>34</sup>

There is no need to go deeply into the laws indirectly affecting fertility control. Laws such as those concerning marriage, legal separation, paternity and filiation, descent and inheritance, tax deductions on dependents, and maternity benefits are so uncertain in so far as their effect on population control is concerned. In the light of Philippine experience, these laws do not seem to have an appreciable impact on the effort to curb rapid population growth. It must be stressed that many of them have been enacted for distinct purposes without any consideration at all as to their possible effect on population growth. In fact, most of them were enacted long before there was a population policy. And for those which were intended to encourage birth control, such as the law limiting tax deduction to only four dependents, or the law extending maternity benefits only to the first four deliveries,<sup>35</sup> it is still has to be demonstrated that such laws do exert significant influence on fertility behavior.

However, when the law intervenes at some point in the procreation process, it assumes an important role in population control. The laws that have the most significant impact on population growth are those directly affecting fertility such as the laws regulating abortion, contraception, and sterilization. Perhaps, the most dramatic case is that of Japan which experienced a sharp decline in population growth after it liberalized abortion in 1948.<sup>36</sup> In the case of the Philippines, however, since abortion is treated as a crime and is expressly rejected by the family planning program as a method of fertility control, the range of legally permitted measures has been strictly limited to contraception and sterilization.

The crime of abortion, defined as the killing or expulsion of the foetus from the maternal womb, is stiffly penalized in the Revised Penal Code. Varying penalties ranging from *prision correccional* to *reclusion temporal* are imposed under certain conditions and depend on whether the abortion is intentional,<sup>37</sup> unintentional,<sup>38</sup> practiced by the

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<sup>34</sup>Hoogenboom, *Population Policy and Law*, in THE WORLD POPULATION CRISIS: POLICY IMPLICATIONS AND THE ROLE OF LAW 94 (1971).

<sup>35</sup>PRES. DECREE NO. 69, issued on November 24, 1972; REP. ACT No. 679, commonly known as the Woman and Child Labor Law, as amended by PRES. DECREE NO. 148, issued on March 13, 1973.

<sup>36</sup>Hoogenboom, *supra* note 34, at 99-100.

<sup>37</sup>REV. PEN. CODE, art. 256.

woman herself or by her parents,<sup>39</sup> or practiced by a physician or midwife.<sup>40</sup>

An intriguing question has arisen concerning the scope of the abortion law. Is therapeutic abortion covered by its prohibition? In *Geluz v. Court of Appeals*,<sup>41</sup> the Supreme Court made the following though-provoking statement: "It is unquestionable that the appellant's act in provoking the abortion of appellee's wife, *without medical necessity to warrant it*, was a criminal and morally reprehensible act that cannot be too severely condemned; and the consent of the woman or that of her husband does not excuse it."<sup>42</sup> The phrase "without medical necessity to warrant it" seems to imply that if a physician is able to discharge the burden of proving that there has been such necessity, then a therapeutic abortion may not be considered a criminal act.<sup>43</sup> This view appears to be supported by the Revised Penal Code which exempts from criminal liability "Any person who, in order to avoid an evil or injury, does an act which causes damage to another provided that the following requisites are present: First, that the evil to be avoided actually exists; Second, that the injury feared be greater than that done to avoid it; Third, that there be no other practical and less harmful means of preventing it."<sup>44</sup> Under this provision, the person claiming exemption from criminal liability must prove that all the requisites mentioned are present.

However, even if abortions for therapeutic reasons can be legally justified, still this type of abortion has no impact on fertility control. The fact remains that abortion is legally prohibited as a method of birth control. There is, of course, the possibility that sometime in the future, perhaps when the problem of overpopulation becomes so acute as to seriously threaten the general welfare, the policy against abortion might be abandoned. However, this possibility appears to be remote, at least within the foreseeable future. As noted earlier, the policy against abortion has been given even more emphasis when it was elevated into the 1987 Constitution. As things stand now, cultural, moral and religious beliefs pose a seemingly insurmountable obstacle against any attempt to liberalize the abortion law.

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<sup>38</sup>REV. PEN. CODE, art. 257.

<sup>39</sup>REV. PEN. CODE, art. 258.

<sup>40</sup>REV. PEN. CODE, art. 259.

<sup>41</sup>112 Phil. 696; 2 SCRA 801 (1961).

<sup>42</sup>*Id.*, at 805 (emphasis supplied).

<sup>43</sup>See Cortes, *supra* note 9, at 316.

<sup>44</sup>REV. PEN. CODE, art. 11.

Although the law has virtually closed its door to abortion, the legal developments concerning contraception and sterilization have greatly aided the implementation of the population program. These developments have considerably liberalized the law on those concededly sensitive areas. Although the results, so far, of this liberalization in terms of fertility reduction are not dramatic nevertheless recent figures show a substantial increase in the number of persons using contraceptives and the figures on tubal ligation and vasectomy are steadily rising.<sup>45</sup>

The enactment of Republic Act No. 4729 on June 18, 1966 regulating the sale, dispensation or distribution of contraceptive drugs and devices <sup>46</sup>marked the radical shift in the law's orientation towards contraception. This legislative measure can be considered as the first significant law which eventually paved the way for the adoption of the population program. Prior to this law, the importation of contraceptive materials and their transmission or distribution through the mails were prohibited by the Tariff and Customs Code and the previous Revised Administrative Code. It is noteworthy that Republic Act No. 4729 did not expressly repeal the anti-contraceptive provisions of these two laws. However, following the opinion of the Secretary of Justice issued on April 28, 1969 that Republic Act No. 4729 impliedly repealed these provisions, Presidential Decree No. 34, issued on October 27, 1972, and Presidential Decree No. 495, issued on June 28, 1974, amended the Tariff and Customs Code and the previous Revised Administrative Code, respectively, to allow the importation of contraceptives and the use of the mails for their transmission or distribution.

In the case of sterilization, its legality was initially under a cloud of doubt because of the provision in the Revised Penal Code on Mutilation. This provision reads:

Art. 262. *Mutilation* - The penalty of *reclusion temporal* to *reclusion perpetua* shall be imposed upon any person who shall

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<sup>45</sup>See AN OVERVIEW OF THE PHILIPPINE DEMOGRAPHIC SITUATION AND POPULATION PROGRAM DEVELOPMENTS; *supra* note 10, at 34.

<sup>46</sup>Under Section 1 of this law, "It shall be unlawful for any person, partnership, or corporation, to sell, dispense or otherwise distribute whether for or without consideration, any contraceptive drug or device, unless such sale, dispensation or distribution is by a duly licensed drug store or pharmaceutical company and with the prescription of a qualified medical practitioner." A similar prohibition can be found in Republic Act No. 5921 (1969), otherwise known as the Pharmacy Law.



intentionally mutilate another by depriving him, either totally or partially, of some essential organ for reproduction.

Any other intentional mutilation shall be punished by *prision mayor* in its medium and maximum periods.

To resolve the doubt, the Executive Director of the Commission on Population requested for an opinion from the Secretary of Justice. The Secretary's opinion is that "sterilization for both sexes by tubal ligation and vasectomy are not mutilations within the contemplation of Article 262 of the Revised Penal Code and are acceptable methods of contraception *as long as the subject's consent thereto is given intelligently with full knowledge that they are irreversible.*"<sup>47</sup> (Emphasis supplied) Citing Viada's commentary on intentional mutilation, the Secretary stated that intentional mutilation should be understood to mean the "lopping or clipping off (*cerenamiento*) of some part of the body." It was stressed that tubal ligation and vasectomy do not involve lopping or clipping off of sexual organs.

There is no doubt that sterilization is now an acceptable method of fertility control in the Philippines. As a matter of fact, the law encourages it. Presidential Decree No. 1013 issued on September 22, 1976 expressly states in its preamble that "sterilization is now an acceptable procedure of fertility control in the population program" and that it would be economically rational and consistent with the population policy to reimburse sterilization expenses of GSIS and SSS members.<sup>48</sup>

It must be emphasized, however, that the kind of sterilization that is countenanced is one that is voluntary and based on an intelligent or informed consent of the person who desires sterilization. This means that aside from actually wanting it, there is a necessity to fully explain to the person who wants to be sterilized the consequences, especially the aspect of irreversibility. If there is no full disclosure of facts, there can be no intelligent or informed consent. Consequently, the sterilization cannot be considered "voluntary." On the other hand, if the decision is arrived at freely and with full knowledge of the consequences, there can be no impediment to the surgical operation, and its denial can be viewed

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<sup>47</sup>OPINION NO. 131, s. 1973 issued on September 17, 1973.

<sup>48</sup>PRES. DECREE NO. 1013 was an amendment to REP. ACT NO. 6111, otherwise known as the PHILIPPINE MEDICAL CARE ACT OF 1969.

as an infringement of a basic human right<sup>49</sup> or the constitutional right to privacy.<sup>50</sup>

### CONCLUSION

The population problem is a complex and multidimensional one that cuts across varied disciplines. Although fertility control is a relatively recent legal concern, it is now widely accepted that the law has an important role to play in curbing rapid population growth.

The law's potential as an instrument of population control, however, is not without limitations. The Philippine experience demonstrates that it is limited by social, economic, religious and even political considerations. Thus, moral and religious convictions have dictated the formulation of a constitutional policy on population that emphasizes free choice<sup>51</sup> but, at the same time, subjecting this free choice policy to another constitutional prescription that the State "shall equally protect the life of the mother and the life of the unborn from the time of conception."<sup>52</sup> This is really just another way of declaring that our moral and religious beliefs forbid the legalization of abortion as a method of birth control.

Concerning the political factor as a limitation to the law's potential will is needed to effectively implement a population program. Even if the law has liberalized its orientation on contraception and sterilization, the program cannot perform satisfactorily if there is no full support from the executive branch and the legislators who wield budgetary power. In this regard, it is noteworthy that the lead agency in the implementation of the population program has precisely identified lack of political support as one of the causes for the poor performance of the program over the years.

On the whole, it can be said that the law has not been unresponsive to the population challenge. But the law can only do so much. Even if the necessary laws and the required political support are there, if the people do not understand and accept the need for fertility control, any population program is bound to fail.

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<sup>49</sup>See Pilpe, *Voluntary Sterilization: A Human Right*, in THE SYMPOSIUM ON LAW AND POPULATION, United Nations Fund for Population Activities, 1975, at 116.

<sup>50</sup>See Cortes, *supra* note 9, at 314.

<sup>51</sup>CONST., art. XV, sec. 3, Par. (1).

<sup>52</sup>CONST., art. II, sec. 12.

Ultimately, therefore, the success or failure of a population program is determined by the attitudes and values of the people concerning the regulation of fertility. For it to succeed, the individuals concerned must actually want a small family. And the surest way to motivate them is to convince them that a small family means better food, clothing, housing and better opportunities for advancement for all members of the family. In short, it means a better quality of living.

It goes without saying that the development of positive attitudes and values related to fertility control requires a massive and sustained education or information campaign. To be sure, this aspect of the population program is being attended to. However, the effort in this direction should be intensified and steps should be taken to ensure a more active participation from the private sector, notably the media. From the legal side, the law has already laid down the foundation for this educational drive. Aide from the Revised Population Act which mandated POPCOM to undertake a broad education program that includes family planning,<sup>53</sup> a General Order and Letter of Instruction have been issued early in the program along this line.<sup>54</sup> Moreover, under a later Presidential Decree, applicants for a marriage license are required to receive instructions and information on family planning and responsible parenthood.<sup>55</sup>

The continuing effort to strengthen the population program cannot be unduly insensitive to the fact that fertility control in this country is a contentious and emotional issue. The population program has elicited strong emotional responses from the different sectors of Philippine society. The population being predominantly Roman

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<sup>53</sup>PRES. DECREE NO. 79, sec. 4, Par. (e).

<sup>54</sup>GEN. ORDER NO. 18 which was issued on December 8, 1972 enjoins "all citizens of the Philippines, all universities, colleges and schools, government offices, mass media, civic and voluntary organizations, religious organizations of all creeds, and business and industrial enterprises to promote the concept of family welfare, responsible parenthood, and family planning." On the other hand, LETTER OF INSTRUCTIONS NO. 47, which was issued on the same day, directed the Department of Education and Culture "to inform all schools of medicine, nursing, midwifery, allied medical professions, and social work to prepare, plan and implement the integration of family planning in their curricula and to require from their graduates sufficient instruction in family planning as a prerequisite to qualifying for the appropriate licensing examination."

<sup>55</sup>PRES. DECREE NO. 965, issued on July 20, 1976. A positive evaluation of the premarriage counselling program under this law can be found in Bautista, *An Evaluation of the Philippine Premarriage Counselling Program*, 1PHILIPPINE POPULATION JOURNAL 47 - 77 (1985).

Catholic, the official position of the Church on fertility control has to be reckoned with in the building of a wider consensus on the population program. As everyone knows, the position of the Church on the issue radically differs from that espoused by the government through its family planning program. This serves only to heighten the debate.

Notwithstanding the differences in the position of the Church and the government, it is widely agreed that the problem is getting to be more critical. With a current population of around 61,000,000 and with an annual growth rate of about 2.4 percent, *almost a million and a half people are added annually to the population. This means an additional million and a half people yearly who will have to be provided with food, clothing, housing, medical care, and other basic social services.* With our scarce resources and with the serious economic crisis the country is facing, this becomes a tremendous burden on the part of government. The immediate future, indeed, does not appear promising. As it is, current financial resources are hardly sufficient to provide adequate social services.

Excessive fertility has been a problem for the last three decades. The problem persists and it continues to hamper the effort of the government to effect rapid socioeconomic development and improve the living standards of the people. However, there are positive signs pointing to its eventual solution. We have seen that, over the years, figures on fertility reduction have not been as dramatic as those in other Asian countries. Yet, it must be conceded that the population program has yielded positive albeit modest results. It is encouraging to know that recent statistics indicate a steadily rising number of Filipinos regulating their fertility. Moreover, the recent policy and program developments seem to indicate a reinvigorated population program and there appears to be a firmer resolve on the part of the agencies involved to move ahead with deliberate speed and vigorously implement the population program. With all these developments, there is reason to hope that the years ahead will see a substantial decline in the rate of fertility.