

# POPULATION LAWS OF THE PHILIPPINES\*

by

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## I. BACKGROUND

### A. *Character of the Population Problem*

The Philippines, an archipelago of 7,100 islands with a land area of 114,830 square miles is 57th in territorial size but 15th in population among the countries in the world. It contains 1 per cent of the world's population and 0.2 per cent of the world's total land area. In the Western Hemisphere, only Brazil, Mexico and the United States surpass the Philippines in population size. Its population in 1960 was 27.1 million. As of May, 1970, the population was estimated to be 36,684,480 with an increase of 9.5 million. The people-to-land ratio is 123 persons per square kilometer, a ratio considerably above the Asian average.<sup>1</sup> However, the population is very unevenly distributed, with major concentrations on the larger islands, and in urban areas.

The current rate of population growth in the Philippines is 3 per cent a year. This high rate of growth is a recent phenomenon as most of the country's population history has been characterized by slight increases over long periods of time punctuated by periods of sharp decline.<sup>2</sup> When Ferdinand Magellan landed in 1521, thus paving the way for the Spanish colonization of the islands, it was estimated that half a million people, mostly Malays, lived in the Philippines. From 1591 to the end of the eighteenth century, the population gradually grew from about 664,000 to 1,600,000. During this period, war, disease and violence kept the population increase in check. A century later, when the first census under the American regime was taken in 1903, about 7.5 million people were reported. After World War II, from 1948 to 1960, the population increased over 40 per

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<sup>1</sup> UNIVERSITY OF THE PHILIPPINES POPULATION INSTITUTE, PHILIPPINE POPULATION: PROFILES, PROSPECTS, PROBLEMS, 11 (1970).

<sup>2</sup> Concepcion, *The Population of the Philippines*, in FIRST CONFERENCE ON POPULATION, 1955, 185 (1966).

cent, from 19.2 million to 27 million.<sup>3</sup> Table I shows the population and intercensal rate of growth of the Philippines from 1799 to 1960.

Table I. — POPULATION OF THE PHILIPPINES  
1799 — 1960

| Year              | Population | Average annual rate of increase over previous date (per cent) | Source of Data     |
|-------------------|------------|---|--------------------|
| 1799 <sup>1</sup> | 1,502,574  | —   | Buzeta             |
| 1800 <sup>1</sup> | 1,561,251  | 3.9   | Zuñiga             |
| 1812 <sup>1</sup> | 1,933,331  | 1.79727   | Cedulas            |
| 1819 <sup>1</sup> | 2,106,230  | 1.23119   | Cedulas            |
| 1829 <sup>1</sup> | 2,593,287  | 2.10204   | Church             |
| 1840 <sup>1</sup> | 3,096,031  | 1.62391   | Local officials    |
| 1850 <sup>1</sup> | 3,857,424  | 2.22312   | Buzeta             |
| 1858 <sup>1</sup> | 4,290,381  | 1.33859   | Bowring            |
| 1870 <sup>1</sup> | 4,712,006  | 0.78419   | Guia official      |
| 1877 <sup>1</sup> | 5,567,685  | 2.41243   | Census             |
| 1887 <sup>1</sup> | 5,984,727  | 0.72492   | Census             |
| 1896 <sup>1</sup> | 6,261,339  | 0.50329   | Plehn <sup>2</sup> |
| 1903              | 7,635,426  | 2.87489   | Census             |
| 1918              | 10,314,310 | 1.89735   | Census             |
| 1939              | 16,000,303 | 2.21955   | Census             |
| 1948              | 19,234,182 | 1.90601   | Census             |
| 1960              | 27,087,685 | 3.05710   | Census             |

<sup>1</sup> Excludes non-Christian population

<sup>2</sup> Professor Plehn's estimate based on census records.

SOURCE: II, CENSUS OF THE PHILIPPINES: 1960 SUMMARY REPORT, 2.

The estimate and projection of the population by the University of the Philippines Population Institute is shown in Table II, below.

It has been observed that while it took a little more than 90 years from the first census to the 1960 census to have a 386 per cent increase in the population, it will only take 20 years to have a 100 per cent increase.<sup>4</sup>

<sup>3</sup> *Ibid.* at 186.

<sup>4</sup> *Ibid.* at 23.

Table II. — POPULATION AND INTERCENSAL RATE  
OF GROWTH OF THE PHILIPPINES  
1877 — 1980

| Year | Population<br>(thousand) | Intercensal<br>Rate of Growth<br>(Per cent) | Source                     |
|------|--------------------------|---|----------------------------|
| 1877 | 5,568                    | 0.8   | Census under Spanish Adm.  |
| 1887 | 5,985                    | 1.6   | Census under Spanish Adm.  |
| 1903 | 7,635                    | 1.9   | Census under American Adm. |
| 1918 | 10,314                   | 2.2   | Census under American Adm. |
| 1939 | 16,000                   | 1.9   | Census under American Adm. |
| 1948 | 19,234                   | 3.1   | Census under Phil. Adm.    |
| 1960 | 27,088                   | 3.4   | Census under Phil. Adm.    |
| 1965 | 31,846                   |   |                            |
| 1970 | 37,671                   | 3.4   | Projections of Dr. F.W.    |
| 1975 | 44,776                   | 3.5   | Lorimer High Assumption    |
| 1980 | 53,415                   | 3.5   |                            |

SOURCE: Concepcion, *Population Growth Implications in the Seventies*, in PHILIPPINE POPULATION IN THE SEVENTIES, 23.

Since 1903, the population has been growing younger. The median age has changed from 20.2 years in 1903 to 16.8 years in 1960 and 18.4 in 1970.<sup>5</sup> Table III is a comparative table of the population distribution by age group in the 1960, 1948 and 1939 censuses.

Table III. — POPULATION DISTRIBUTION BY AGE  
GROUP: 1960, 1948 and 1939

| Age group      | Total      | 1 9 6 0<br>Per Cent | Cumulative |
|----------------|------------|---------------------|------------|
| Total          | 27,087,685 | 100.0%              |            |
| Under 5 years  | 4,275,541  | 16.9                | 16.9       |
| 5 to 9 years   | 4,572,415  | 16.1                | 33.0       |
| 10 to 14 years | 4,369,398  | 12.7                | 45.7       |
| 15 to 19 years | 3,435,427  | 10.4                | 56.1       |
| 20 to 24 years | 2,814,306  | 9.1                 | 65.2       |
| 25 to 34 years | 2,458,623  | 13.0                | 78.2       |
| 35 to 44 years | 3,509,800  | 9.3                 | 87.5       |
| 45 to 54 years | 2,527,452  | 6.4                 | 93.9       |

<sup>5</sup> UNIVERSITY OF THE PHILIPPINES POPULATION INSTITUTE, THE FILIPINO YOUTH, 1 (1972).

|                          |            |          |            |
|--------------------------|------------|----------|------------|
| 55 to 64 years           | 1,742,782  | 3.4      | 97.3       |
| 65 years and over        | 738,902    | 2.7      | 100.0      |
|                          |            | 1 9 4 8  |            |
| Age group                | Total      | Per Cent | Cumulative |
| Total                    | 19,234,182 | 100.0%   |            |
| Under 5 years            | 2,991,654  | 15.6     | 15.6       |
| 5 to 9 years             | 2,941,567  | 15.3     | 30.9       |
| 10 to 14 years           | 2,560,113  | 13.3     | 44.2       |
| 15 to 19 years           | 2,064,304  | 10.7     | 54.9       |
| 20 to 24 years           | 1,767,494  | 9.2      | 64.1       |
| 25 to 34 years           | 2,614,972  | 13.6     | 77.7       |
| 35 to 44 years           | 1,883,718  | 9.8      | 87.5       |
| 45 to 54 years           | 1,127,214  | 5.9      | 93.4       |
| 55 to 64 years           | 676,008    | 3.5      | 96.9       |
| 65 years and over        | 606,636    | 3.2      | 100.0      |
| Age unknown              | 502        | *        |            |
| * Less than .01 per cent |            |          |            |

|                   |            |          |            |
|-------------------|------------|----------|------------|
|                   |            | 1 9 3 9  |            |
| Age group         | Total      | Per Cent | Cumulative |
| Total             | 16,000,303 | 100.0%   |            |
| Under 5 years     | 2,602,746  | 16.3     | 16.3       |
| 5 to 9 years      | 2,493,678  | 15.6     | 31.9       |
| 10 to 14 years    | 1,784,618  | 11.2     | 43.1       |
| 15 to 19 years    | 1,657,112  | 10.4     | 53.5       |
| 20 to 24 years    | 1,523,997  | 9.5      | 63.0       |
| 25 to 34 years    | 2,260,886  | 14.1     | 77.1       |
| 35 to 44 years    | 1,475,147  | 9.2      | 86.3       |
| 45 to 54 years    | 983,629    | 6.1      | 92.4       |
| 55 to 64 years    | 662,760    | 4.1      | 96.5       |
| 65 years and over | 553,782    | 3.5      | 100.0      |
| Age unknown       | 1,948      | *        |            |

\* Less than .01 per cent.

SOURCE: 2 CENSUS OF THE PHILIPPINES: 1960 SUMMARY REPORT, xiii.

At present, 47 per cent of the population are under 15 years. Persons aged 18 belong to the "older half" of the population. Persons 65 years or more comprise only 3 per cent of the population.<sup>6</sup>

The population growth rate of 3 per cent from 1948 to 1960 is considered high compared with previous rates in the country or with population growth in most countries. This is attributed to a relatively high fertility rate, a decline in the mortality rate and an increasing life expectancy.

In 1960, 5.8 million of the 13.4 million females in the population were in the child bearing years—15 to 41. Women between 20

<sup>6</sup> *Supra*, note 1 at 21.

and 30 numbered 2.2 million. Between ages 15 to 44, 3 out of every 4 women were already married. Forty-seven per cent of all brides in 1960 were 20 years old or younger.<sup>7</sup> The median marriage age was 19.3 years.<sup>8</sup> The statistics on the marital status of persons in 1960 are shown in Table IV. Those who married below twenty years had on the average 2 more children than those who married later. The average Filipino couple is now estimated to raise 7 children. The present birth rate is 45.0 per thousand while the death rate is 11.0 per thousand.<sup>9</sup>

The decline in the death rate is due largely to improved medical, health and sanitation facilities, the introduction of modern drugs, and better nutrition. Table V shows the total deaths from all causes and the crude death rates of the Philippines from 1920 to 1963.

#### B. *Cultural, Social and Economic Elements.*

The population of the Philippines reflects an admixture of both Eastern and Western cultural traits which have been assimilated into its original Malay culture. This is due mainly to its centuries of interaction with the countries of Asia and its colonization by Western powers, namely, Spain, whose rule extended for more than three centuries (1565-1898) and the United States, whose regime spanned 50 years (1898-1946). The colonizers contributed heavily to Philippine religion, law and politics. The institutions in these fields now obtaining in the Philippines, most historians and sociologists agree, are mainly derived from the West.

Aside from the Spanish legal system, Spain introduced Catholicism, which supplanted primitive and disorganized animism then prevalent in the Islands. In the 1960 census, 22,686,096 or 83.8 per cent of the population were reported to be Catholics.<sup>10</sup> Spain also organized scattered communities called *barangays* into municipalities, provinces and cities, and instituted centralized control of both Church and State over the inhabitants.

The United States, on the other hand, sought and succeeded in transplanting some of her own social and political institutions, before withdrawing her sovereignty in 1946. She instilled into the body politic the ideals of a republican democracy and the

<sup>7</sup> Concepcion, *op. cit.*, *supra*, note 2 at 190-191.

<sup>8</sup> Concepcion & Hendershot, *Prospects of a Fertility Decline in the Seventies*, in PHILIPPINE POPULATION IN THE SEVENTIES; PROCEEDINGS OF THE SECOND CONFERENCE ON POPULATION, November 27-29, 1967, 367 (1969).

<sup>9</sup> *Supra*, note 1 at 27, 58.

<sup>10</sup> 2 CENSUS OF THE PHILIPPINES: 1960 SUMMARY REPORT, xxiii.

Table IV. MARITAL STATUS OF PERSONS 10 YEARS OLD AND OVER BY SEX AND AGE FOR THE PHILIPPINES: 1960

| Sex and age       | Total 10 years old and over | Never married | Married   | Widowed | Separated or |              |
|-------------------|-----------------------------|---------------|-----------|---------|--------------|--------------|
|                   |                             |               |           |         | Divorced     | Not Reported |
| Both sexes        | 18,145,872                  | 8,323,157     | 8,918,738 | 822,412 | 81,175       | 390          |
| 10 to 14 years    | 3,435,427                   | 3,426,272     | 8,093     | 562     | 386          | 114          |
| 15 to 19 years    | 2,814,306                   | 2,591,265     | 217,837   | 1,874   | 3,236        | 94           |
| 20 to 24 years    | 2,458,623                   | 1,342,630     | 1,093,292 | 10,763  | 11,870       | 68           |
| 25 to 29 years    | 1,953,349                   | 454,043       | 1,464,822 | 21,074  | 13,394       | 16           |
| 30 to 34 years    | 1,556,451                   | 178,906       | 1,335,038 | 31,379  | 11,111       | 17           |
| 35 to 39 years    | 1,428,474                   | 102,108       | 1,267,930 | 48,115  | 10,308       | 13           |
| 40 to 44 years    | 1,098,978                   | 64,407        | 962,836   | 63,728  | 7,999        | 8            |
| 45 to 49 years    | 1,032,683                   | 52,796        | 889,844   | 82,903  | 7,126        | 14           |
| 50 to 54 years    | 710,099                     | 37,524        | 576,811   | 90,629  | 5,128        | 7            |
| 55 to 59 years    | 487,930                     | 22,986        | 383,148   | 78,840  | 3,450        | 6            |
| 60 to 64 years    | 430,904                     | 19,103        | 303,353   | 105,383 | 3,057        | 8            |
| 65 years and over | 738,648                     | 31,117        | 415,734   | 287,662 | 4,110        | 25           |
| Male              | 9,054,265                   | 4,346,663     | 4,435,609 | 242,830 | 28,988       | 175          |
| 10 to 14 years    | 1,765,992                   | 1,761,351     | 4,044     | 297     | 244          | 56           |
| 15 to 19 years    | 1,384,759                   | 1,343,195     | 40,041    | 542     | 937          | 44           |
| 20 to 24 years    | 1,194,182                   | 782,347       | 404,568   | 3,491   | 3,739        | 37           |
| 25 to 29 years    | 952,368                     | 258,364       | 681,740   | 7,547   | 4,711        | 6            |
| 30 to 34 years    | 764,978                     | 87,012        | 664,209   | 10,085  | 3,667        | 5            |
| 35 to 39 years    | 702,568                     | 43,104        | 641,106   | 14,751  | 3,601        | 6            |

Table IV—Continued

| Sex and age       | Total 10 years<br>old and over | Never<br>married | Married   | Widowed | Separated or<br>Divorced | Not Reported |
|-------------------|--------------------------------|------------------|-----------|---------|--------------------------|--------------|
| 40 to 44 years    | 546,393                        | 22,496           | 503,087   | 18,028  | 2,778                    | 4            |
| 45 to 49 years    | 524,638                        | 16,938           | 482,199   | 22,934  | 2,561                    | 6            |
| 50 to 54 years    | 365,354                        | 10,856           | 327,860   | 24,676  | 1,961                    | 1            |
| 55 to 59 years    | 252,394                        | 6,691            | 222,329   | 21,942  | 1,431                    | 1            |
| 60 to 64 years    | 231,786                        | 5,606            | 194,659   | 30,175  | 1,342                    | 4            |
| 65 years and over | 368,853                        | 8,703            | 269,767   | 88,362  | 2,016                    | 5            |
| Female            | 9,091,607                      | 3,976,494        | 4,483,129 | 579,582 | 52,187                   | 215          |
| 10 to 14 years    | 1,669,435                      | 1,664,921        | 4,049     | 265     | 142                      | 58           |
| 15 to 19 years    | 1,429,547                      | 1,248,070        | 177,796   | 1,332   | 2,299                    | 50           |
| 20 to 24 years    | 1,264,441                      | 560,283          | 688,724   | 7,272   | 8,131                    | 31           |
| 25 to 29 years    | 1,000,981                      | 195,679          | 783,082   | 13,527  | 8,683                    | 10           |
| 30 to 34 years    | 791,472                        | 91,894           | 670,829   | 21,294  | 7,444                    | 12           |
| 35 to 39 years    | 725,906                        | 59,004           | 626,824   | 33,364  | 6,707                    | 7            |
| 40 to 44 years    | 552,585                        | 41,911           | 459,749   | 45,700  | 5,221                    | 4            |
| 45 to 49 years    | 508,045                        | 35,858           | 407,645   | 59,969  | 4,565                    | 8            |
| 50 to 54 years    | 344,745                        | 26,668           | 248,951   | 65,953  | 3,167                    | 6            |
| 55 to 59 years    | 235,536                        | 16,295           | 160,819   | 56,398  | 2,019                    | 5            |
| 60 to 64 years    | 199,118                        | 13,497           | 108,694   | 75,208  | 1,715                    | 4            |
| 65 years and over | 369,795                        | 22,414           | 145,967   | 199,300 | 2,094                    | 20           |

SOURCE: 2 CENSUS OF THE PHILIPPINES: 1960 SUMMARY REPORT, 9.

Table V—LIVE BIRTHS, TOTAL DEATHS: 1920-1970

| Year        | Births    |             | Total Deaths |             |
|-------------|-----------|-------------|--------------|-------------|
|             | Number    | Crude Rate* | Number       | Crude Rate* |
| 1921 - 1925 | 378,471   | 34.2        | 209,376      | 18.9        |
| 1926 - 1930 | 419,145   | 33.5        | 231,827      | 18.5        |
| 1931 - 1935 | 451,186   | 32.1        | 235,423      | 16.8        |
| 1936 - 1940 | 513,765   | 32.5        | 260,463      | 16.5        |
| 1941 - 1945 | ***       | —           | ***          | —           |
| 1946        | 533,283   | 28.9        | 278,546      | 15.1        |
| 1947        | 572,226   | 30.5        | 238,527      | 12.7        |
| 1948        | 602,415   | 31.5        | 234,467      | 12.7        |
| 1949        | 609,138   | 30.9        | 231,151      | 11.8        |
| 1950        | 642,472   | 31.6        | 226,505      | 11.1        |
| 1951        | 637,264   | 30.4        | 237,937      | 11.4        |
| 1952        | 648,725   | 30.0        | 241,020      | 11.1        |
| 1953        | 661,939   | 29.7        | 239,988      | 10.8        |
| 1954        | 702,662   | 30.5        | 217,650      | 9.5         |
| 1955        | 734,761   | 30.9        | 219,798      | 9.0         |
| 1956        | 757,794   | 30.9        | 219,719      | 9.0         |
| 1957        | 748,331   | 29.6        | 241,469      | 9.5         |
| 1958        | 766,562   | 29.4        | 218,186      | 8.4         |
| 1959        | 809,086   | 30.0        | 197,423      | 7.3         |
| 1960        | 810,904   | 29.6        | 212,688      | 6.6         |
| 1961        | 782,857   | 27.6        | 213,587      | 7.5         |
| 1962        | 832,204   | 28.4        | 213,439      | 7.3         |
| 1963        | 851,459   | 28.2        | 215,743      | 7.1         |
| 1964        | 880,871   | 28.2        | 214,904      | 6.9         |
| 1965        | 871,715   | 27.0        | 241,305      | 7.5         |
| 1966        | 908,826   | 27.1        | 240,865      | 7.2         |
| 1967        | 911,872   | 26.3        | 241,548      | 7.0         |
| 1968        | 961,646   | 26.8        | 253,841      | 7.1         |
| 1969        | 1,015,784 | 27.3        | 255,785      | 6.9         |
| 1970        | 1,008,504 | 27.4        | 248,251      | 6.7         |

\* per 1,000 population.

\*\*\* no data available.

SOURCE: Department of Health, Disease Intelligence Center, 1970 Philippine Health Statistics.

concept of separation of church and state; moreover, she established a public school system based on the American model with English as the medium of instruction. The educational system produced a relatively high rate of literacy, and an orientation towards the United States rather than to Asia or Spain. The American administrators also promoted a system of local self-government. By 1907 the Philippines had the first popularly-elected legislature in Southeast Asia.<sup>11</sup> Besides the public school system, and a system of infrastructure, modern public health measures and facilities were introduced, resulting in a sharp decline in the death rate. The population increase created a corresponding pressure on the economy and this problem has persisted to the present. Rapid population increase has been identified as one of the major causes of pressure on the agricultural resources of the nation, fragmentation of landholdings and the increase of tenancy, destructive farming methods, migration, urbanization, unemployment, pressure in the educational system and other public service.<sup>12</sup> Graphically presented, in order to maintain current levels of services and facilities, which are still painfully inadequate, it has been estimated that provision must be made (for the period 1965 to 1975) for almost 8.5 million additional jobs, 12,000 more hospital beds, 9,000 primary schools, 3,500 new churches, 4,700 restaurants and cafeterias, 1,900 more barber shops, 850 new cockpits, more than 20,000 automobiles, 1.3 million extra carabaos, and over 1.5 million cavans of rice.<sup>13</sup>

The Philippines is a predominantly rural country. In 1956, 59.0 per cent of employed persons were in agriculture. In 1965, 56.7 per cent were so engaged, producing 32.9 per cent of the national income, while 10.9 per cent were in manufacturing, producing 19.3 per cent of the national income. Major export crops are coconut products, sugar, abaca, fiber, tobacco and pineapple. These, combined, constitute 60 per cent of total export values.<sup>14</sup>

<sup>11</sup> Carroll, *The Filipino Heritage*, in PHILIPPINE INSTITUTIONS, 2 (1970).

<sup>12</sup> Carroll, *The Family in Time of Change*, in PHILIPPINE INSTITUTIONS, 12. See also Madigan, *Problems of Growth—The Future of Population of the Philippines*, 16 PHILIPPINE STUDIES 3-31 (1968); Concepcion, *Population Growth Implications in the Seventies*, *op. cit.*, *supra*, note 8 at 3-11; CORPUZ, THE PHILIPPINES, 9, 130-131 (1965).

<sup>13</sup> Regudo & Murphy, *The Philippine Population in the Seventies*, *op. cit.*, *supra*, note 8 at 21.

<sup>14</sup> Carroll, *The Economy: Rising Expectations, Limited Fulfillment*, in PHILIPPINE INSTITUTIONS, 21 citing BCS SURVEY OF HOUSEHOLD BULLETIN, series no. 3 (June, 1958) and no. 19 (October, 1965); 11 STATISTICAL REPORT 2 (1957); and *A Basic Report on the Economy of the Philippines*, in AGENCY FOR INTERNATIONAL DEVELOPMENT, INVESTMENT IN SOUTHEAST ASIA 6-7 (1966).

Only about 15 per cent of the population is urban but, compared to some of her neighbors in Southeast Asia, the Philippines is more urbanized. The urban population is unevenly distributed, and its greatest concentration is around the Metropolitan Manila area, where one-third of the urban population live.<sup>15</sup> In terms of social and economic patterns and values, urban residents are employed in manufacturing and service industries, have a higher standard of living and are geographically and socially mobile. In contrast, rural residents are tied to an agricultural economy, live at subsistence levels and maintain a traditional way of life.<sup>16</sup>

A bilateral kinship system obtains in the Philippines. Socially, the child is related equally to his father's and mother's kin. The family includes relatives by consanguinity as far as the second and third cousin. It is further extended through the incorporation, by ritual, of friends into the kinship group, when they stand as godparents at the baptism of children, or as sponsors in weddings.<sup>17</sup> The sponsors in baptism of a child become *compadres* of the father and the mother and are regarded in many respects as members of their family. Family obligations are thus widely spread: a Filipino looks to many people for aid and support, and as many will seek his help and influence.

In traditional Philippine society, children are highly valued. They are regarded as gifts of God, as constituting the family's wealth and as security for old age, since they are expected to care for their parents in their old age. The child grows in an atmosphere of love and protection and maintains strong familial ties not only with his nuclear family but also with other relatives, including friends who by ritual are considered part of the kinship group. Because of the Philippines' predominantly Christian orientation, marriage has remained strictly monogamous, a structure which the law recognizes and mandates. However, temporary consensual unions are not unknown, and the keeping of a mistress or *querida* has been noted in both urban and rural areas. It has been pointed out that the entire history of the Filipino people — from the pre-Spanish period of warring *barangays* through the centuries of foreign colonial subjugation — has been marked by

<sup>15</sup> Hendershot, *The Challenge to Urbanization in the Seventies*, in PHILIPPINE POPULATION IN THE SEVENTIES, 252. See also Concepcion, *110 Millions by the Year 2001*, 18 PHILIPPINE SOCIOLOGICAL REV. 215-218 (1970).

<sup>16</sup> GROSSHOLTZ, POLITICS IN THE PHILIPPINES 81 (1964).

<sup>17</sup> Carroll, *supra*, note 12 at 10. See also Eggan, *Philippine Social Structure*, in GUTHRIE (ED.), SIX PERSPECTIVES ON THE PHILIPPINES 25-27 (1968); CORPUZ, *supra*, note 12 at 22-23; and AGONCILLO, A SHORT HISTORY OF THE PHILIPPINES, 11, 21 (1969).

a climate of insecurity, and the Filipino has had no source of security except his nuclear family and extended kinship group.<sup>18</sup> Hence, the Filipino family has become the strongest unit of society, evoking the profound loyalties of its members and influencing all facets of social and political activity.

The Philippine legal system is a combination of the Roman (civil law) and the common law systems. Spain extended her laws to the Philippines and these were enforced in the Islands until the inception of American rule, following the Treaty of Paris in December, 1898. The political laws of the Philippines, (which were of Spanish origin) were abrogated upon the establishment of American sovereignty. But such municipal laws as affected private rights of persons and property and provided for the punishment of crime were considered as continuing in force. The Spanish Civil Code, the Penal Code and the Code of Commerce, for instance, remained operative during the American occupation. However, all Spanish laws, customs and rights of property inconsistent with the United States Constitution and with American principles and institutions were superseded.<sup>19</sup>

The legal system thus has a nucleus of Spanish law which was later expanded with Anglo-American law and jurisprudence. The Roman (Spanish) element has since remained static; but laws enacted under American influence have steadily grown even after the attainment of Philippine independence. Importations from Anglo-American law are evident in public administration, trade and commerce, social welfare and procedure. Much of the legislation enacted after the attainment of Philippine independence is of American origin: labor relations, social insurance, taxation, banking and currency.<sup>20</sup>

On August 30, 1950, four years after Philippine independence, the New Civil Code, Republic Act No. 386, went into effect. This replaced the Spanish Civil Code of 1889, which was extended to the Philippines on December 7, 1898. The New Civil Code, which is the basic law governing family and property relations in the Philippines was based mainly on the Spanish Civil Code of 1889. The old Code was revised in order to make it conform to the

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<sup>18</sup>Ramirez, *The Paradox of the Filipino Family*, *FOOKIEN TIMES YEARBOOK*, 1971, 303.

<sup>19</sup>Alvarez Sanchez v. U.S., 216 U.S. 167, 54 L.Ed. 432, 30 S.Ct. 361 (1910); *In re Shoop*, 41 Phil. 213 (1920); See also GAMBOA, *INTRODUCTION TO PHILIPPINE LAW* 72 (7th Ed., 1969).

<sup>20</sup>Fernandez, *Sixty Years of Philippine Law*, 35 *PHIL. L. J.* 1396 (1960).

"customs, traditions and idiosyncracies of the Filipino people." Two of the fundamental principles adopted in the New Civil Code were the liberalization of women's rights,<sup>21</sup> and the consolidation of the family.<sup>22</sup>

Prior to 1932, the criminal law of the Philippines was principally the Spanish Penal Code of 1870. In 1927, this Code was revised by a Committee of five criminal law experts, whose draft was enacted by the Philippine legislature on December 8, 1930 (Act No. 3815), as the Revised Penal Code. It took effect on

<sup>21</sup> PHILIPPINES (REPUBLIC) CODE COMMISSION, REPORT ON THE PROPOSED CIVIL CODE 13 (1948). According to the Code Commission, the following articles in the New Civil Code liberalize the rights of women: Art. 39 declaring a woman, at least 21 years of age, qualified for all acts of civil life, except in cases specified by law; Art. 97 allowing legal separation on the ground of concubinage on the part of the husband or adultery on the part of the wife; Art. 112 allowing a wife to administer the conjugal partnership if so agreed upon in the marriage settlements; Arts. 212-215 providing for a system of complete separation of property whereby the wife absolutely owns and administers her own property and earnings; Art. 115 providing that the wife manages the affairs of the household; Art. 117 allowing a wife to exercise a profession or occupation or engage in business; Art. 130 increasing the amount which may be given by future spouses to each other by way of donation; Art. 161 providing that only obligations contracted by the husband for the benefit of the family are enforceable against the conjugal partnership; Art. 166 prohibiting alienation by the husband of real property of the conjugal partnership without the consent of the wife; Arts. 167, 173, 178 and 191 protecting the wife against abuses of the husband in the management of the conjugal partnership; Art. 311 vesting parental authority over children jointly upon the father and mother; Art. 363 providing that a mother shall not be separated from her child under 7 years of age except for compelling reasons; Arts. 283 and 289 liberalizing the investigation of paternity; Art. 1047 allowing a wife to repudiate an inheritance without her husband's consent; Art. 114 subjecting to less restrictions a wife's acceptance of a donation; and Art. 1327 omitting the provision that married women cannot give consent to a contract in cases provided by law.

<sup>22</sup> *Ibid.* at 17. The following articles in the New Civil Code are aimed at the consolidation of the family: Arts. 216-222 establishing the family as a basic social institution which public policy cherishes and protects; Arts. 223-251 providing for the judicial or extrajudicial constitution of a family home; Arts. 252-254 providing for the establishment of a family council; Art. 52 providing that marriage is an inviolable social institution not subject to stipulations except in specified cases; Art. 98 imposing upon the Court the duty to take steps toward the reconciliation of the spouses before granting legal separation; Art. 116 authorizing the Court, upon petition, to take such measures as may be proper when one of the spouses neglects his or her duties to the conjugal union or brings danger, dishonor or material injury upon the other; Art. 312 providing that grandparents shall be consulted in all important family questions; Arts. 101 and 88 designed to prevent collusion in proceedings for annulment of marriage or legal separation; Art. 313 prohibiting the renunciation or transfer of parental authority except in cases of guardianship or adoption approved by the Court, or emancipation by concession; Arts. 26 and 2219 providing for the recovery of damages in case of meddling with or disturbance of the private life and family relations of the aggrieved party; Art. 2219 likewise providing for recovery of moral damages by the parents of a female who is seduced, abducted, raped or abused; Art. 62 obliging males above twenty but below twenty-five, and females above eighteen but below twenty-three years of age, to ask their parents or guardian for advice upon their intended marriage; and Arts. 198-211 allowing a system of absolute community of property between husband and wife.

January 1, 1932, repealing the Spanish Penal Code of 1870 and related special penal laws which were passed by the legislative body during the American regime.<sup>23</sup> Laws bearing on family planning and population which are chiefly found in the Civil Code and in the Revised Penal Code are rooted in the civil law tradition. As can be seen in succeeding discussions, these are largely pro-natalist in orientation. The extent to which they have contributed to the rapid population growth has not been the object of intensive study. What perhaps can be stated as a generalization is that the norms found therein certainly encourage the existence of large families, and these were in effect during periods of population increase.

### C. *Brief History of Government Policies and Actions*

It was only in the late sixties that the Government exhibited concern over the rapid population growth of the Philippines. In 1967, the President signed the United Nations Human Rights Day Declaration on Population<sup>24</sup> which acknowledged the population problem as a principal element in long-range national planning. In 1968, the Philippines was a signatory to the Teheran Proclamation on Human Rights declaring family planning as a basic human right.<sup>25</sup> Previously, in 1964, a Population Institute was established in the University of the Philippines to provide a comprehensive analysis of characteristics and trends of the population and to train demographers. Official government participation in population control activities commenced with the creation in 1968 of a Project Office for Maternal and Child Health pursuant to an agreement entered into by the National Economic Council and the United States Agency for International Development. In February, 1969, the President, recognizing *inter alia* that the growth rate of the Philippine population is adversely affecting economic and social development, issued Executive Order No. 174,<sup>26</sup> creating the Population Commission to undertake and disseminate studies on the population problem in all its aspects and to formulate policy and program recommendations for the Government. By Executive Order No. 233, issued on

<sup>23</sup> GAMBOA *op. cit.*, *supra*, note 19 at 401.

<sup>24</sup> STUDIES IN FAMILY PLANNING 1, no. 16 (Jan., 1967).

<sup>25</sup> Res. XVIII on Human Rights Aspects of Family Planning, U.N. CONFERENCE ON HUMAN RIGHTS, TEHERAN, 1968, 14-15, U.N. Doc. A/CONF. 32/41 (1968), reprinted in 63 A.J.I.L. 678 (1969).

<sup>26</sup> 65 O.G. 2296 (March, 1969).

May 15, 1970,<sup>27</sup> both the composition and some of the functions of the Commission on Population were expanded. The Commission was then composed of Department Secretaries and heads of private and religious agencies,<sup>28</sup> concerned with population and family planning.

To place the family planning program on a permanent and sustained basis, the Congress of the Philippines enacted Republic Act No. 6365<sup>29</sup> which established a policy on population, provided a statutory basis for the Population Commission and defined its functions.

On September 21, 1972, the President of the Philippines placed the country under martial law.<sup>30</sup> By virtue of his martial law proclamation and as commander-in-chief of the Armed Forces, he presently governs the nation and directs the operation of the entire government, including all its agencies and instrumentalities.<sup>31</sup> While still under martial law, the Filipino people, through the Citizens' Assemblies created by Presidential Decree No. 86, ratified a Constitution on January 17, 1973.<sup>32</sup> This Constitution declared as a policy that "[i]t shall be the responsibility of the State to achieve and maintain population levels most conducive to the national welfare."<sup>33</sup> Proclamation No. 1104, issued by

<sup>27</sup> 66 O.G. 5187 (May, 1970).

<sup>28</sup> The members were:

1. Secretary of Education
2. Secretary of Health
3. Secretary of Social Welfare
4. Chairman of the National Economic Council
5. Presidential Assistant on Community Development
6. Chairman of the National Manpower & Youth Council
7. Commissioner on National Integration
8. Director of Bureau of Census and Statistics
9. Director of the Philippine Press Institute
10. Director of the U.P. Population Institute
11. Representative of the Asian Social Institute - Institute of Social Order
12. President of the Philippine Rural Reconstruction Movement.
13. President of the Philippine Medical Association
14. President of the Philippine Nurses Association
15. President of the National League of Puericulture Center
16. President of the Family Planning Organization of the Philippines
17. President of the Catholic Bishops Conference of the Philippines
18. Chairman of the Philippine National Youth Welfare Coordinating Council
19. Executive Secretary of National Council of Churches
20. Executive Director of Institute of Maternal and Child Health
21. Executive Director of the Association of Philippine Medical Colleges

<sup>29</sup> Approved, August 16, 1971.

<sup>30</sup> Proc. No. 1081, s. 1972, 68 O.G. 7624 (Sept. 1972).

<sup>31</sup> Gen. Order No. 1, dated September 22, 1972, 68 O.G. 7777 (Oct., 1972).

<sup>32</sup> Proc. No. 1102, s. 1973, 69 O.G. 592 (Jan., 1973).

<sup>33</sup> Art. XV, sec. 10.

the President on the same day, declared the continuation of martial law.

Presidential Decree No. 79<sup>34</sup> revised the Population Act of 1971. Section 2 of this Decree states:

*"Sec. 2. Declaration of Policy.*—The Government of the Philippines hereby declares that for the purpose of furthering the national development, increasing the 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 respect the religious beliefs and values of the individuals involved shall be undertaken."

The powers of the Population Commission 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, Director-General of the National Economic Development Authority, and two other members from the private sector who possess the necessary expertise.<sup>35</sup>

The purposes and objectives for which the Population Commission has been established are as follows:

- 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, considered 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 education 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 practice of birth con-

<sup>34</sup> Issued on December 8, 1972, 68 O.G. 9896 (Dec., 1972).

<sup>35</sup> Pres. Decree No. 79 (1972), sec. 6.

trol 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>36</sup>

As defined in the Decree, the specific powers and duties of the Commission include:

a) to employ physicians, nurses, midwives to provide, dispense and administer all acceptable methods of contraception to all citizens of the Philippines desirous of spacing, limiting or preventing pregnancies: *Provided*, That the above mentioned health workers, except physicians, for the purpose of providing, dispensing and administering acceptable methods of contraception, have been trained and authorized by the POPCOM in consultation with the appropriate licensing bodies;

b) to undertake such action projects as may be necessary to promote the attainment of this Decree and to enter, in behalf of the Republic of the Philippines, into such contracts, agreements or arrangements with government or private agencies as will be necessarily contributory or desirable in the implementation thereof;

c) to undertake, promote and publish information, studies and investigations of Philippine population in all its aspects;

d) to utilize clinics, pharmacies as well as other commercial channels of distribution for the distribution of family planning information and contraceptives;

e) to call upon and utilize any department, bureau, office, agency or instrumentality of the Government for such assistance as it may require in the performance of its functions.

The President has, likewise, by General Order No. 18, dated December 8, 1972, enjoined all citizens of the Philippines, all universities, colleges and schools, government offices, mass media, civic and voluntary organizations, religious organizations of all creeds,

<sup>36</sup> *Ibid.*, sec. 4.

TABLE VI. Estimated number of Philippine family planning acceptors by month &amp; year (1966-1972).

| Month                 | Total     | Year  |        |        |        |         |         |         |  |  |  |  |
|-----------------------|-----------|-------|--------|--------|--------|---------|---------|---------|--|--|--|--|
|                       |           | 1966  | 1967   | 1968   | 1969   | 1970    | 1971    | 1972    |  |  |  |  |
| <b>A. Frequencies</b> |           |       |        |        |        |         |         |         |  |  |  |  |
| All months            | 1,382,337 | 8,498 | 23,470 | 42,821 | 85,185 | 191,662 | 408,805 | 621,896 |  |  |  |  |
| January               | 93,510    | 627   | 2,570  | 3,087  | 5,794  | 10,148  | 25,888  | 45,396  |  |  |  |  |
| February              | 100,480   | 632   | 2,218  | 3,379  | 5,709  | 10,300  | 28,574  | 49,663  |  |  |  |  |
| March                 | 112,953   | 681   | 2,201  | 3,195  | 6,531  | 12,406  | 35,307  | 52,632  |  |  |  |  |
| April                 | 104,418   | 498   | 1,801  | 3,003  | 6,162  | 12,515  | 23,737  | 50,702  |  |  |  |  |
| May                   | 109,331   | 512   | 2,082  | 2,866  | 6,450  | 13,396  | 30,993  | 53,032  |  |  |  |  |
| June                  | 107,727   | 684   | 1,682  | 2,877  | 6,736  | 13,470  | 30,582  | 51,696  |  |  |  |  |
| July                  | 108,199   | 690   | 1,770  | 3,511  | 6,370  | 15,414  | 33,555  | 46,889  |  |  |  |  |
| August                | 118,947   | 771   | 1,829  | 2,649  | 7,313  | 17,313  | 36,475  | 52,364  |  |  |  |  |
| September             | 125,997   | 827   | 1,968  | 3,063  | 7,836  | 19,275  | 39,523  | 53,505  |  |  |  |  |
| October               | 133,559   | 1,003 | 1,961  | 4,476  | 8,770  | 22,349  | 39,236  | 55,764  |  |  |  |  |
| November              | 133,061   | 808   | 1,680  | 4,962  | 9,242  | 21,253  | 38,592  | 56,524  |  |  |  |  |
| December              | 134,155   | 765   | 1,708  | 5,753  | 8,272  | 23,590  | 40,343  | 53,724  |  |  |  |  |
| <b>B. Percentages</b> |           |       |        |        |        |         |         |         |  |  |  |  |
| All months            | 100.0     | 100.0 | 100.0  | 100.0  | 100.0  | 100.0   | 100.0   | 100.0   |  |  |  |  |
| January               | 6.8       | 7.4   | 10.9   | 7.2    | 6.8    | 5.3     | 6.3     | 7.3     |  |  |  |  |
| February              | 7.3       | 7.4   | 9.4    | 7.9    | 6.7    | 5.4     | 7.0     | 8.0     |  |  |  |  |
| March                 | 8.2       | 8.0   | 9.3    | 7.5    | 7.7    | 6.5     | 8.6     | 8.5     |  |  |  |  |
| April                 | 7.5       | 5.9   | 7.7    | 7.0    | 7.2    | 6.5     | 7.3     | 8.2     |  |  |  |  |
| May                   | 7.9       | 6.0   | 8.9    | 6.7    | 7.6    | 7.0     | 7.6     | 8.5     |  |  |  |  |
| June                  | 7.8       | 8.0   | 7.2    | 6.7    | 7.9    | 7.0     | 7.5     | 8.3     |  |  |  |  |
| July                  | 7.8       | 8.1   | 7.5    | 8.2    | 7.5    | 8.0     | 8.2     | 7.5     |  |  |  |  |
| August                | 8.6       | 9.1   | 7.8    | 6.2    | 8.6    | 9.2     | 8.9     | 8.4     |  |  |  |  |
| September             | 9.1       | 9.7   | 8.4    | 7.2    | 9.2    | 10.0    | 9.7     | 8.6     |  |  |  |  |
| October               | 9.7       | 11.9  | 8.4    | 10.5   | 10.3   | 11.7    | 9.6     | 9.0     |  |  |  |  |
| November              | 9.6       | 9.5   | 7.2    | 11.6   | 10.8   | 11.0    | 9.4     | 9.1     |  |  |  |  |
| December              | 9.7       | 9.0   | 7.3    | 13.3   | 9.7    | 12.4    | 9.9     | 8.6     |  |  |  |  |

SOURCE: POPULATION COMMISSION, Annual Report on Family Planning Acceptors at Philippine Program Clinics, January-December, 1972 (1973).

and business and industrial enterprises to promote the concept of family welfare, responsible parenthood, and family planning.<sup>37</sup>

In 1970, the Commission administered 28 projects through some 32 government and private agencies, among which were the Department of Health, the Family Planning Organization of the Philippines, the Institute of Maternal and Child Health, the Province of Laguna, the Province of Nueva Ecija, the University of the Philippines Population Institute, the Presidential Economic Staff, the Department of National Defense, the Social Communications Center, the National Media Production Center, the Responsible Parenthood Council and the Asian Social Institute.<sup>38</sup> As of December, 1972, family planning program clinics totalled 1,786. By the end of 1972, the family planning program had 26 member organizations offering nationwide family planning services.<sup>39</sup>

Table VI shows the monthly distribution of acceptors from 1966 to 1972. The pill has been the most popular contraceptive method as shown by statistics for a period of seven years. Since 1970 percentages of IUD and rhythm acceptors have declined. Table VII presents the number of family planning acceptors by method from 1964 to 1972.

The Commission has reported that, as of November 1973, 19 hospitals had administered 3,487 sterilization services, of which 839 were vasectomies, 1,675 were tubal ligations, and 973 were other similar services.

Table VII. Estimated number of Philippine family planning acceptors by method and year (1964-65 — 1972).

| Year           | Total     | M e t h o d |         |         |         |        |
|----------------|-----------|-------------|---------|---------|---------|--------|
|                |           | Pills       | IUD     | Rhythm  | Condom  | Others |
| A. Frequencies |           |             |         |         |         |        |
| All years      | 1,384,625 | 782,769     | 247,924 | 182,617 | 109,245 | 62,070 |
| 1964-65        | 2,288     | 309         | 448     | 392     | a       | 1,139  |
| 1966           | 8,498     | 3,049       | 1,815   | 886     | a       | 2,748  |
| 1967           | 23,470    | 9,276       | 8,745   | 1,846   | a       | 3,603  |
| 1968           | 42,821    | 22,580      | 12,334  | 3,983   | a       | 3,924  |
| 1969           | 85,185    | 43,275      | 15,127  | 17,588  | a       | 9,195  |
| 1970           | 191,662   | 102,041     | 41,408  | 31,413  | a       | 16,800 |
| 1971           | 408,805   | 245,602     | 80,537  | 55,151  | 16,628  | 10,887 |
| 1972           | 621,896   | 356,637     | 87,510  | 71,358  | 92,617  | 13,774 |

a—Included in Others.

<sup>37</sup> Dated December 8, 1972, 68 O.G. 9883 (Dec., 1972).

<sup>38</sup> POPULATION PROGRAM FY 1972-76, p. 3-4 (1970).

<sup>39</sup> POPULATION COMMISSION, ANNUAL REPORT ON FAMILY PLANNING ACCEPTORS AT PHILIPPINE PROGRAM CLINICS, January—December 1972.

Table VII (continued)

| B. Percentages |       |      |      |      |      |      |
|----------------|-------|------|------|------|------|------|
| All years      | 100.0 | 56.5 | 17.9 | 13.2 | 7.9  | 4.5  |
| 1964-65        | 100.0 | 13.5 | 19.6 | 17.1 | a    | 49.8 |
| 1966           | 100.0 | 35.9 | 21.4 | 10.4 | a    | 32.3 |
| 1967           | 100.0 | 39.5 | 37.3 | 7.9  | a    | 15.3 |
| 1968           | 100.0 | 52.8 | 28.8 | 9.3  | a    | 9.1  |
| 1969           | 100.0 | 50.8 | 17.8 | 20.6 | a    | 10.8 |
| 1970           | 100.0 | 53.2 | 21.6 | 16.4 | a    | 8.8  |
| 1971           | 100.0 | 60.0 | 19.7 | 13.5 | 4.1  | 2.7  |
| 1972           | 100.0 | 57.3 | 14.1 | 11.5 | 14.9 | 2.2  |

SOURCE: POPULATION COMMISSION, ANNUAL REPORT ON FAMILY PLANNING ACCEPTORS AT PHILIPPINE PROGRAM CLINICS, January—December, 1972 (1973).

## II. LAWS DEALING DIRECTLY WITH BIRTH

### A. *Birth Control and Dispensation of Abortive Drugs*

1. Importation, manufacture, sale or dispensation of contraceptives, and drugs producing abortion.

Section 102(d) of the Customs and Tariff Code<sup>40</sup> prohibits the importation into the Philippines of the following items:

Articles, instruments, drugs, and substances designed, intended, or adapted for producing unlawful abortion, any printed matter which advertises or describes or gives directly or indirectly information where, how and by whom unlawful abortion is produced.

This provision was partly taken from Section 1954 (c) and (d) of the Revised Administrative Code<sup>41</sup> dealing with absolutely non-mailable matter, and Section 305 of the United States Tariff Act of 1930. The importation of these prohibited articles would result in their forfeiture to the Government pursuant to Section 2530(f) of the same Code. Before the amendment of Section 102 of the Code by Presidential Decree No. 23, articles, instruments or drugs for preventing conception were included among the articles of prohibited importation. However, the later enactment of Republic Act No. 4729 on June 18, 1966, according to an opinion rendered by the Secretary of Justice, repealed, by necessary

<sup>40</sup> Rep. Act. No. 1937 (1957).

<sup>41</sup> Act No. 2711 (1917).

implication, the provisions of the Tariff and Customs Code, as well as other laws and regulations which prohibit the entry of contraceptives into the Philippines.<sup>42</sup>

This subsequent law makes it 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.<sup>43</sup> The question as to the continued applicability of Section 102(d) of the Customs and Tariff Code arose because of the family planning programs being undertaken by various private organizations, requiring the importation of contraceptives. Earlier, the Commissioner of Customs and the Secretary of Finance (officers concerned with the enforcement of the Customs and Tariff Code) affirmatively ruled that a repeal had indeed taken place. The Secretary of Justice, as Chief Legal Adviser of the Government, stated that the later law had the effect of making contraceptives legitimate articles of commerce provided that they are handled by qualified persons; and that there is an irreconcilable conflict between the two statutes since one seeks to prohibit the importation of an article because its use is considered injurious to public health and morals, while the other allows the sale or distribution thereof to the public because its use or distribution is no longer deemed detrimental *per se* to public health and morals.

The Pharmacy Law,<sup>44</sup> passed later, similarly prohibits the delivery or sale to any person without a proper prescription by a duly licensed physician of any drug or chemical product or device capable of preventing conception. Under the same condition, it prohibits the delivery or sale of drugs or devices capable of inducing abortion. It also requires a pharmacist in charge of a drug store or pharmacy after filling a prescription containing abortive or anticonceptional substances or devices to record in a

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<sup>42</sup> Opinion dated April 28, 1969.

<sup>43</sup> A "contraceptive drug" is defined as "any medicine, drug, chemical or potion which is used exclusively for the purpose of preventing fertilization of the female ovum", while "contraceptive device" is "any instrument, device, material, or agent introduced into the female reproductive system for the primary purpose of preventing conception." (Sec. 2) The penalty for violating this law is a fine of not more than five hundred pesos or imprisonment of not less than six months nor more than one year or both such fine or imprisonment in the discretion of the court. (Sec. 3).

<sup>44</sup> Rep. Act. No. 5921 (1969).

separate register book for abortives and anticonceptionals, the following data:

- (a) number and date of the prescription;
- (b) name and address of the physician;
- (c) name, quantity and manufacturer of the drug;
- (d) name and address of the purchaser;
- (e) date of filling the prescription; and
- (f) signature of the pharmacist filling the prescription.<sup>45</sup>

A violation of this provision entails a fine of not less than one hundred pesos but not exceeding five hundred pesos, or imprisonment of not less than thirty days but not more than four months, in the discretion of the court.<sup>46</sup> Under the Revised Penal Code, on the other hand, any pharmacist who, without the proper prescription from a physician, shall dispense any abortive shall suffer the penalty of *arresto mayor* and a fine not exceeding ₱1,000.00.<sup>47</sup> Thus it would seem that the sale or delivery of abortives by pharmacists is allowed both by the Pharmacy Law and the Revised Penal Code provided it is done upon proper prescription by a qualified physician.

The Pharmacy Law also provides that aiding or abetting the commission of criminal abortion or sex crimes through illegal compounding, dispensing or sale of abortive or sex drugs is sufficient ground for reprimand of a pharmacist or for suspension or revocation of his certificate of registration.<sup>48</sup> Any pharmacist who continues to engage in the practice of pharmacy after his certificate of registration has been lawfully suspended or revoked shall, upon conviction, be sentenced to the same penalty as that provided for the sale of abortive or contraceptive drugs without prescription.

## 2. Dissemination of Birth Control Information

The Postal Law, which is contained in the Revised Administrative Code,<sup>49</sup> classifies as absolutely non-mailable matter, contraceptive drugs or devices, including all printed matters or photographs which give information on abortion and contraception.

<sup>45</sup> Sec. 37.

<sup>46</sup> Sec. 41.

<sup>47</sup> REV. PENAL CODE, Art 259, par. 2. *Arresto mayor* is imprisonment ranging from 1 month and 1 day to six months.

<sup>48</sup> Sec. 13.

<sup>49</sup> Act No. 2711 (1917), chapter 52.

Absolutely non-mailable matter which is deposited in any post office for transmission or delivery by mail shall be forfeited to the Government.<sup>50</sup> Section 1954 of the Revised Administrative Code specifically provides:

"No matter belonging to any of the following classes, whether sealed as first-class matter or not, shall be imported into the Philippines through the mails, or be deposited in or carried by the mails of the Philippines, or be delivered to its addressee by any officer or employee of the Bureau of Posts:

x x x

"(c) Articles, instruments, drugs and substances designed, intended or adapted for preventing conception or producing abortion, or for any indecent or immoral use, or which are advertised or described in a manner calculated to lead another to use or apply them for preventing conception or producing abortion, or for any indecent or immoral purpose.

"(d) Written or printed matter and photographs, engravings, lithographs, and other representations of an obscene, lewd, lascivious, filthy, indecent, or libelous character, including all such matter which advertises or describes or gives directly or indirectly, information where, how, from whom, or by what means any article, instrument, drug, or substance enumerated in the preceding subsection hereof may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means conception may be prevented or abortion produced."

x x x x

The commission of any act covered by this prohibition is punished by a fine of not more than three hundred pesos or by imprisonment for not more than six months or both.<sup>51</sup>

From the provisions of the Postal Law the impression generated is that information on contraception and abortion is considered by public policy as a species of obscene publications. Obscene publications in general are, however, dealt with in the Revised Penal Code, but nowhere is the publication of information on contraception or abortion specifically penalized. Article 201 reads:

"The penalty of *prision correccional*<sup>52</sup> in its minimum period, or a fine ranging from 200 to 2,000 pesos, or both, shall be imposed upon:

<sup>50</sup> Sec. 1956.

<sup>51</sup> REV. ADM. CODE, sec. 2757.

"1. Those who shall publicly expound or proclaim doctrines openly contrary to public morals;

"2. The authors of obscene literature, published with their knowledge in any form, and the editors publishing such literature;

"3. Those who in theaters, fairs, cinematographs, or any other place open to public view, shall exhibit indecent or immoral plays, scenes, acts, or shows; and

"4. Those who shall sell, give away, or exhibit prints, engravings, sculptures, or literature which are offensive to morals."

By judicial interpretation, the word "obscene" as used in this article means something offensive to chastity, decency or delicacy. The test is whether the tendency of the matter charged as obscene, is to deprave or corrupt those whose minds are open to such immoral influences, and into whose hands such a publication may fall, and also whether or not its publication or act shocks the ordinary and common sense of men as an indecency.<sup>53</sup> Information on birth control or abortion with the obvious purpose of educating the reader would not, under the present state of the law, be prohibited under this provision, unless, of course, a showing is made that it is being used as subterfuge for the dissemination of hardcore pornography. It would also seem to follow that, under the opinion of the Secretary of Justice, that portion of the Postal Law relating to contraceptives has been impliedly repealed by Republic Act No. 4729. By the same token, the portion relating to abortion may be taken to have been repealed by the Pharmacy Law, inasmuch as the delivery and sale of abortives are prohibited only if without a proper prescription by a physician. Be this as it may, the President, by Letter of Instruction No. 47-A<sup>54</sup> dated December 8, 1972, has directed the Secretary of the Department of Public Information and the Postmaster General to help implement the programs of the Commission on Population by disseminating information on family planning.

#### B. *Abortion*

Abortion constitutes a class of felonies under the Revised Penal Code.<sup>55</sup> While it is not defined in the Code, commentators are of the opinion that it is the willful killing of the foetus in the uterus, or

<sup>52</sup> *Prision correccional* in its minimum period is imprisonment ranging from six months and 1 day to 2 years and 4 months (Art. 76).

<sup>53</sup> *U.S. v. Kottinger*, 45 Phil. 352 (1923).

<sup>54</sup> 68 O.G. 9885 (Dec., 1972).

<sup>55</sup> Act No. 3815 (1980), arts. 256-259.

the violent expulsion of the foetus from the maternal womb which results in the death of the foetus.<sup>56</sup> The Penal Code has classified abortion into several kinds, according as to whether it is intentional<sup>57</sup> or unintentional,<sup>58</sup> or whether it is practiced by the woman herself, her parents,<sup>59</sup> a physician or a midwife.<sup>60</sup>

In intentional abortion, the severity of the penalty is graduated depending on whether the person who caused it acted with violence (actual physical force) or with or without the consent of the woman. If the offender who intentionally caused an abortion used any violence on the person of the pregnant woman, he shall suffer the penalty of *reclusion temporal*,<sup>61</sup> if he acted without using violence but without the consent of the woman, he shall suffer the penalty of *prision mayor*<sup>62</sup> and if he acted without using violence with the consent of the woman,<sup>63</sup> the penalty shall be that of *prision correccional* in its medium and maximum periods.<sup>64</sup>

Unintentional abortion is committed if violence is inflicted on a pregnant woman, resulting in an abortion, but the offender did not intend to cause the abortion.<sup>65</sup> This crime carries with it the penalty of *prision correccional* in its minimum and medium periods.<sup>66</sup> Thus a person who struck a woman—three months pregnant—on her hip with a bottle, causing hemorrhage and miscarriage, was held guilty of unintentional abortion.<sup>67</sup>

A woman who practices abortion upon herself or consents that any other person should do so shall suffer the penalty of *prision correccional* in its medium and maximum periods.<sup>68</sup> Her liability is, however, mitigated if her purpose is to conceal her dishonor, in which case, the law provides that she shall only suffer

<sup>56</sup> CARRARA, cited in G.B. GUEVARA, COMMENTARIES ON THE REVISED PENAL CODE OF THE PHILIPPINES 510 (4th ed., 1946.)

<sup>57</sup> Art. 256.

<sup>58</sup> Art. 257.

<sup>59</sup> Art. 258.

<sup>60</sup> Art. 259.

<sup>61</sup> *Reclusion temporal* is imprisonment ranging from 12 years and 1 day to 20 years, (Art. 76).

<sup>62</sup> *Prision Mayor* is imprisonment ranging from 6 years and 1 day to 12 years.

<sup>63</sup> Art. 256.

<sup>64</sup> Art. 76. *Prision correccional* in its medium and maximum periods is imprisonment ranging from 2 years, 4 months and 1 day to 6 years.

<sup>65</sup> Art. 257.

<sup>66</sup> *Prision correccional* in its minimum and medium periods is imprisonment ranging from 6 months and 1 day to 4 years and 2 months.

<sup>67</sup> U.S. v. Jeffrey, 15 Phil. 391 (1910).

<sup>68</sup> *Prision correccional* in its medium and maximum periods is imprisonment ranging from 2 years, 4 months and 1 day to 6 years, (Art. 76).

the penalty of *prision correccional* in its minimum and medium periods.<sup>69</sup> Should the abortion be committed by the parents of the pregnant woman or either of them, and they act with her consent, they shall suffer the penalty of *prision correccional* in its medium and maximum periods.<sup>70</sup>

The penalties provided for intentional abortion are imposed in their maximum period on physicians or midwives who, taking advantage of their scientific knowledge or skill, shall cause an abortion or assist in causing the same. The law is silent on the specific manner in which abortion is caused or assistance is rendered thereto (for instance by an operation or by the prescription or administration of abortives). The reason for the imposition of the maximum penalty in this case, according to some commentators, is that physicians or midwives incur a heavier guilt in making use of their knowledge for the destruction of human life, whereas it should be used only for preservation.<sup>71</sup> Whether or not there has been a criminal conviction, a physician who has performed an abortion may lose his license to practice medicine, under paragraph 8, section 24, of Republic Act No. 2382. The performance of or aiding in, any criminal abortion is a ground for reprimand, suspension or revocation of his registration certificate under this law.

Under the Revised Population Act, abortion is considered an unacceptable method of birth control. Section 4(f) of the law enjoins the Commission 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 practice of birth control such as abortion . . ." Section 4(i) directs it to "make available all acceptable methods of contraception except abortion to all Filipino citizens . . ."

### C. Sterilization

Sterilization as such is not denominated as a crime in the Penal Code. The Code, however, penalizes mutilation, commonly known as castration, which may result in sterilization. A penalty

<sup>69</sup> Art. 76. *Prision correccional* in its minimum and medium periods is imprisonment ranging from 6 months and 1 day to 4 years and 2 months.

<sup>70</sup> Art. 258. *Prision correccional* in its medium and maximum periods is imprisonment ranging from 2 years, 4 months and 1 day to 6 years.

<sup>71</sup> ALBERT, REVISED PENAL CODE 582 (1948), cited in 2 REYES, REVISED PENAL CODE; CRIMINAL LAW 420 (9th ed., 1971).

ranging from *reclusion temporal* to *reclusion perpetua*<sup>72</sup> is imposed on any person who shall intentionally mutilate another by depriving him, either totally or partially, of some essential organ of reproduction.<sup>73</sup> This crime consists in the amputation of whatever organ is necessary for reproduction. It is named first among the class of physical injuries, and ranks gravest in the order of severity of punishment. As observed by commentators on the Penal Code: "The law could not fail to punish with the utmost severity such a crime, which, although not destroying life, deprives a person of means to transmit it."<sup>74</sup> There has been no Supreme Court decision as yet on the question of whether a vasectomy or salpinxectomy voluntarily procured comes within the purview of this article of the Code. There is therefore some doubt as to whether these are punishable. In the first place, the article appears to assume that the mutilation was done intentionally and against the will or without the consent of the party mutilated, like all other kinds of physical injuries defined in the Penal Code. Second, if the law wished to penalize consented mutilation, it could have said so, as it did in intentionally consented abortion. Third, the notion of mutilation, as commonly understood in the Penal Code, involves normally the removal of the sex glands — i.e., ovaries of the female or the testicles of the male. This does not occur in these two sterilization operations.

The Secretary of Justice in an opinion<sup>75</sup> maintains that surgical sterilization for both sexes (tubal ligation and vasectomy) cannot be regarded as mutilation within the contemplation of Article 262 of the Penal Code because (1) mutilation involves the lopping or clipping off of some part of the body<sup>76</sup> which is not involved in these operations; (2) there can be no offense committed where the subject consents knowingly to the operation in the same manner that no offense is committed by a surgeon who intentionally removes, for instance, an eye or a kidney from a person who consents thereto for the purpose of transplanting it to another; and (3) national policy expressed in the Revised Population Act would be thwarted if these two methods are considered illegal.

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<sup>72</sup> *Reclusion temporal* to *reclusion perpetua* is imprisonment ranging from 12 years and 1 day to 30 years.

<sup>73</sup> Art. 262.

<sup>74</sup> 3 VIADA, CODIGO PENAL 70 cited in 2 REYES, *op. cit.*, *supra*, note 71 at 562.

<sup>75</sup> Opinion No. 131, S. 1973.

<sup>76</sup> U.S. v. Bogel, 7 Phil. 285 (1907).

#### D. *Infanticide*

Infanticide has been defined as the killing of any child less than three days of age, whether by a parent or grandparent, any other relative of the child, or a stranger.<sup>77</sup> The father or mother or legitimate grandparent who commits infanticide shall suffer the same penalty as that imposed for parricide<sup>78</sup> which is *reclusion perpetua* to death.<sup>79</sup> If the offender is not so related to the child, the penalty corresponding to murder shall be imposed<sup>80</sup> which is *reclusion temporal* in its maximum period to death.<sup>81</sup> However, should the mother of the child commit the crime for the purpose of concealing her dishonor, she shall suffer the penalty of *prision correccional* in its medium and maximum periods.<sup>82</sup> The penalty of *prision mayor* shall be imposed on the maternal grandparents or either of them if they perpetrated the crime for the same purpose.<sup>83</sup> The reason for mitigating the offense, as stated by a commentator<sup>84</sup> is as follows:

"We understand that the responsibility of the mother is mitigated when, right after giving birth to a baby born out of an illicit relationship, without time to reflect, excited and obfuscated solely by the fear of her dishonor being made public, she desires to erase the traces of her mistake. Within that same day, we understand that obfuscation, but on the day following, or on the third day, when that disgraced child has been taken by the mother on her lap, when the warmth of maternal love from the mother's breast has been communicated to it, when it has been given a kiss on its innocent cheek, honor cannot overcome filial love, a love which has no equal on earth."

### III. LAW ON FAMILY PLANNING EDUCATION AND SERVICES

Republic Act No. 6365 (otherwise known as the Population Act of 1971 prior to its amendment by Presidential Decree No.

<sup>77</sup> 2 REYES, *op. cit.*, *supra*, note 71 at 411.

<sup>78</sup> REV. PENAL CODE, Art. 255.

<sup>79</sup> *Reclusion Perpetua* is life imprisonment.

<sup>80</sup> REV. PENAL CODE, Art. 255.

<sup>81</sup> *Reclusion temporal* in its maximum period is imprisonment of 17 years, 4 months and one day.

<sup>82</sup> *Prision correccional* in its medium and maximum periods is imprisonment ranging from 2 years, 4 months and one day to 6 years.

<sup>83</sup> REV. PENAL CODE, Art. 255.

<sup>84</sup> VIADA, cited in 2 REYES, *op. cit.*, *supra*, note 71 at 412.

79) did not specify in detail how family planning education and services should be carried out. It broadly stated that the Commission shall "put up family planning clinics in cooperation with the Department of Health"; undertake such action projects as are necessary; and "disseminate technical and scientific information relating to medical, social, economic and cultural phenomena as these affect or are affected by population." The Population Commission has, since its creation, pursued the policy of promoting "the broadest understanding by the people of the adverse effects on family life and national welfare of unlimited population growth and to provide the means by which couples can effectively determine the proper size of their families." To this end, the Government, through its instrumentalities, undertakes and encourages the giving of information and services for couples who wish to space or limit their child-bearing activities. The cooperation of private agencies has been enlisted in establishing a sustained intensive and coordinated program of public information using all media and a variety of techniques.<sup>85</sup> The Revised Population Act makes it an objective of the Commission "to make family planning a part of a broad educational program."<sup>86</sup> By Letter of Instruction No. 47<sup>87</sup> the President has instructed the Secretary 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 appropriate licensing examination.

In line with the Commission's objective, the Secretary of Education and Culture has directed that a youth civic action program be integrated in the curriculum of all public and private schools, colleges and universities throughout the country.<sup>88</sup> Participation in a youth civic action program shall be required for graduation beginning school year 1973-74. For secondary school and college students, the program involves, among others, a lecture on population education and the preparation of posters for population education.

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<sup>85</sup> Population Program F.Y. 1972-76, p. 3-4.

<sup>86</sup> Rep. Act. No. 6365 (1971), as amended, sec. 4.

<sup>87</sup> Dated December 8, 1972, 68 O.G. 9885 (Dec., 1972).

<sup>88</sup> Department Order No. 53, dated December 29, 1972.

## IV. FAMILY LAW AFFECTING POPULATION

A. *Minimum Marriage Age*

Under the Civil Code, the minimum marriage age is sixteen for the male and fourteen for the female. Article 54 of the Civil Code provides:

"Any male of the age of sixteen years or upwards, and any female of the age of fourteen years or upwards, not under any of the impediments mentioned in articles 80 to 84 may contract marriage."

B. *Polygamy and Bigamy*

Polygamous or bigamous marriages are expressly declared void from the beginning by Article 80 of the Civil Code. In addition, Article 83 states:

"Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance, unless:

"(1) The first marriage was annulled or dissolved; or

"(2) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or if the absentee, though he has been absent for less than seven years, is generally considered as dead and believed to be so by the spouse present at the time of contracting such subsequent marriage, or if the absentee is presumed dead according to articles 390 and 391. The marriage so contracted shall be valid in any of the three cases until declared null and void by a competent court."

The Revised Penal Code imposes the penalty of *prision mayor*<sup>89</sup> on any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.<sup>90</sup>

C. *General Marriage Laws*

Marriage is considered by the Civil Code not as a mere contract but as an inviolable social institution. Hence, its nature, consequences and incidents are governed by law and not subject

<sup>89</sup> Imprisonment ranging from 6 years and 1 day to 12 years.

<sup>90</sup> Art. 349.

to stipulation, except that the marriage settlements may to a certain extent fix the property relations during the marriage.<sup>91</sup> No marriage can be solemnized unless the following requisites are complied with: (1) legal capacity of the contracting parties, (2) their consent freely given, (3) authority of the person solemnizing the marriage, and (4) a marriage license, except in a marriage of exceptional character.<sup>92</sup> Any person who has reached the minimum age can contract marriage, provided he is not under any of the legal impediments mentioned in Articles 80 to 84 of the Code.<sup>93</sup> The marriage license shall be issued by the local civil registrar if each of the contracting parties swears to an application in writing that he or she has the necessary qualifications for contracting marriage.<sup>94</sup> If the male is less than twenty years of age or the female less than eighteen years, the party concerned is required to exhibit to the local civil registrar the written consent to the marriage of his or her father or mother or guardian or person having charge of him or her.<sup>95</sup> In this case, if the marriage was nevertheless solemnized without the consent of the parent or guardian, the marriage may be annulled, unless after attaining the age of 20 or 18 years, as the case may be, such party freely cohabited with the other and both lived together as husband and wife.<sup>96</sup> Males above 20 but under 25 years of age, or females above 18 but under 25 years of age, are obliged to ask their parents or guardians for advice on the intended marriage. If they do not obtain such advice or if it be unfavorable, the marriage shall not take place till after three months following the completion of the publication of the application for the marriage license.<sup>97</sup>

The following marriages are incestuous, and hence void, whether the relationship between the parties be legitimate or illegitimate: (1) between ascendants and descendants of any degree; (2) between brothers and sisters, whether of the full or half blood; and (3) between collateral relatives by blood within the fourth

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<sup>91</sup> Art. 52.

<sup>92</sup> Art. 53.

<sup>93</sup> Art. 54. In general, the impediments mentioned in Arts. 80 to 84 refer to those (1) where there is a lack of any of the essential requisites of marriage, i.e., age [Art. 80]; (2) bigamous or polygamous marriages (Art. 83); (3) incestuous marriages or quasi-incestuous marriages [Arts. 81-82].

<sup>94</sup> Art. 59.

<sup>95</sup> Art. 61.

<sup>96</sup> Art. 85.

<sup>97</sup> Art. 62.

degree.<sup>98</sup> The Civil Code also declares void from the beginning marriages (1) between stepfathers and stepdaughters, and stepmothers and stepsons; (2) between the adopting father or mother and the adopted, between the latter and the surviving spouse of the former, and between the former and the surviving spouse of the latter; and (3) between the legitimate children of the adopter and the adopted.<sup>99</sup> Under the Revised Penal Code, the penalty of *prision correccional* in its medium and maximum periods<sup>100</sup> is imposed upon any person who shall contract marriage knowing that the requirements of the law have not been complied with or that the marriage is in disregard of a legal impediment. If either of the contracting parties shall obtain the consent of the other by means of violence, intimidation or fraud, he shall be punished by *arresto mayor* in its maximum period.<sup>101</sup>

#### D. Annulment of Marriage

Marriage may be annulled for any of the following causes existing at the time of the marriage:<sup>102</sup>

(1) If the party in whose behalf it is sought to have the marriage annulled was between the ages of 16 and 20 years if male, or between the ages of 14 and 18 years if female, and the marriage was solemnized without the consent of the parent, guardian or person having authority over the party, unless after attaining the ages of 20 or 18 years, as the case may be, such party freely cohabited with the other and both lived together as husband and wife. The action for annulment may be brought either (a) by the party whose parent or guardian did not give his consent, within 4 years after attaining the age of twenty or eighteen years, as the case may be, or (b) by such parent or guardian himself, before the minor party for whose account it is brought reaches the age of 20 or 18 years.<sup>103</sup>

(2) If in a second marriage, the former husband or wife believed to be dead was in fact living and the marriage with such former husband or wife was then in force. The absent spouse who

<sup>98</sup> Art. 81.

<sup>99</sup> Art. 82.

<sup>100</sup> *Prision correccional* in its medium and maximum periods is imprisonment ranging from 2 years, 4 months and 1 day to 6 years.

<sup>101</sup> Art. 350. *Arresto mayor* in its maximum period is imprisonment ranging from 4 months and 1 day to 6 months.

<sup>102</sup> Art. 85.

<sup>103</sup> Art. 87(1).

has reappeared may bring the action at any time during his or her lifetime or either spouse of the subsequent marriage may do so at any time during the lifetime of the other.<sup>104</sup>

(3) If either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife. Insanity must exist at the time of the marriage and not before or after.<sup>105</sup> If the sane spouse knew that the other was insane at the time of the marriage, he cannot bring the action for annulment.<sup>106</sup> The action may be instituted by the sane spouse or relative or guardian of the insane party at any time before the death of either party.<sup>107</sup>

(4) If the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of facts constituting the fraud, freely cohabited with the other as her husband or his wife, as the case may be. The only cases of fraud allowed in this instance are: (a) misrepresentation as to the identity of one of the contracting parties: (b) non-disclosure of a previous conviction of the other party of a crime involving moral turpitude where the penalty imposed was imprisonment for two years or more; and (c) concealment by the wife of the fact that at the time of the marriage, she was pregnant by another man other than her husband. No other misrepresentation as to character, rank, fortune, or chastity is considered such fraud as to constitute ground for the annulment of marriage.<sup>108</sup> The action for annulment based on fraud must be brought within four years after the discovery of the fraud.<sup>109</sup>

(5) If the consent of either party was obtained by force or intimidation, unless the violence or threat having disappeared, such party afterwards freely cohabited with the other. There is violence if serious or irresistible force is employed; intimidation, when there exists a reasonable and well-grounded fear of imminent and grave evil upon the person or property of the contracting party or his immediate relative.<sup>110</sup> The action must be instituted by the injured party within four years from the time the force or intimidation ceased.<sup>111</sup>

<sup>104</sup> Art. 87(2).

<sup>105</sup> *Katipunan v. Tenorio*, C.A.-G.R. No. 43442, September 29, 1937; 38 O.G. 172 (January, 1940).

<sup>106</sup> Art. 87(3).

<sup>107</sup> Art. 87(3).

<sup>108</sup> Art. 86.

<sup>109</sup> Art. 85(4).

<sup>110</sup> Art. 1335.

<sup>111</sup> Art. 85(5).

(6) If either party was physically incapable of entering into the married state, and such incapacity continues, and appears to be incurable. Physical incapacity refers to impotency and not sterility; it is the physical inability to have sexual intercourse.<sup>112</sup> The presumption of law is in favor of potency.<sup>113</sup> The action for annulment on the ground of impotence is available to the "injured party" at any time within eight years after the marriage.<sup>114</sup>

As earlier intimated, marriage is considered by law as an inviolable social institution, hence courts are strict and cautious in granting annulments.<sup>115</sup> Marriage may be annulled only by judgment of a competent court and on the grounds provided by law. Once declared, the nullity relates back to the beginning of the marriage. No judgment annulling a marriage can be promulgated on a stipulation of facts or by confession of judgment. The Rules of Court require that the material facts alleged in the complaint should be proved.<sup>116</sup> If the defendant makes no appearance in court, the judge shall order the prosecuting attorney to investigate whether collusion between the parties exists.<sup>117</sup> Annulment of marriage dissolves the marital bonds, and in the words of the Supreme Court, "abolishes the legal character of the society formed by the putative spouses."<sup>118</sup> However, it cannot destroy the juridical consequences which the marital union produced during its continuance.<sup>119</sup> Thus, under the Civil Code, children conceived or born of voidable marriages before the decree of annulment are considered legitimate.<sup>120</sup>

#### E. Divorce

The Civil Code does not sanction absolute divorce. However, it permits relative divorce or, as the concept is called in the Civil Code, legal separation. During the Spanish regime, the law on divorce in the Philippines was found in the *Siete Partidas*,<sup>121</sup> which allowed only relative divorce. Absolute divorce was decreed, however, during the American occupation, by Act No. 2710, which was passed on March 11, 1917. The Supreme Court in the case of

<sup>112</sup> *Menciano v. San Jose*, 89 Phil. 63 (1951).

<sup>113</sup> *Jimenez v. Cañizares*, G.R. No. 12790, August 31, 1960, 60 O.G. 4938 (Aug., 1964).

<sup>114</sup> Art. 87(6).

<sup>115</sup> *Roque v. Encarnacion*, 95 Phil. 643 (1954).

<sup>116</sup> Rule 9, Sec. 1.

<sup>117</sup> Arts. 88 and 101.

<sup>118</sup> *Sy Joc Lieng v. Sy Quia*, 16 Phil. 137 (1910).

<sup>119</sup> *Ibid*

<sup>120</sup> Art. 89(2).

<sup>121</sup> Fourth Partida. Title 10, Laws 1 and 2 cited in *Benedicto v. de la Rama*, 3 Phil. 34, 40-1 (1903).

*Valdez v. Tuazon*<sup>122</sup> ruled that Act No. 2710 abolished relative divorce and established a regime of absolute divorce. During the Japanese occupation, a new divorce law, Executive Order No. 141, purported to repeal Act No. 2710 and to increase the grounds for absolute divorce. This Executive Order was abrogated by proclamation of the Commander-in-Chief of the United States Army of Liberation, declaring all laws passed during the Japanese occupation null and void. Thus, Act No. 2710 was revived. When the Civil Code took effect on August 30, 1950, it provided only for legal separation, or separation from bed and board, and eliminated absolute divorce from Philippine Law. Foreign divorces obtained by citizens of the Philippines are not recognized, according to Article 15 of the Code, which provides that "laws relating to family rights and duties or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad." Article 17 stipulates that "prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country." Divorces among Filipino Moslems residing in non-Christian provinces are recognized by law; by legal provision, these were allowed to be governed by Moslem customs and practices.<sup>123</sup>

Legal separation is not easily obtained under the Civil Code. The only grounds for legal separation are: (1) adultery on the part of the wife and concubinage on the part of the husband as defined in the Penal Code; and (2) an attempt by one spouse against the life of the other.<sup>124</sup> Under the Revised Penal Code, adultery is committed by a married woman who has sexual intercourse with a man not her husband.<sup>125</sup> Concubinage, on the other hand, is committed by a husband who (a) keeps a mistress in the conjugal dwelling or (b) cohabits with her in any other place, or (c) has sexual intercourse with a woman who is not his wife under scandalous circumstances.<sup>126</sup> In every petition for legal separation, the Court is duty-bound to take steps, before granting the legal separation,

<sup>122</sup> 40 Phil. 943 (1920).

<sup>123</sup> Rep. Act No. 394, approved June 17, 1949. This recognition was for a period of 20 years from the date of approval of the Act. This was extended to 30 years by Rep. Act No. 6268, approved June 19, 1971.

<sup>124</sup> Art. 97.

<sup>125</sup> Art. 333.

<sup>126</sup> REV. PENAL CODE, Art. 334.

toward the reconciliation of the spouses, and must be fully satisfied that such reconciliation is highly improbable.<sup>127</sup> A person is not entitled to legal separation unless he has resided in the Philippines for one year prior to the filing of the petition for separation, except when the cause for legal separation had taken place within Philippine territory.<sup>128</sup> The action must be commenced within one year from the date the plaintiff became cognizant of the cause and within five years from the date when such cause occurred.<sup>129</sup> In no case shall an action for legal separation be tried before six months shall have elapsed since the filing of the petition.<sup>130</sup>

Legal separation may be claimed only by the innocent spouse. Where both spouses are offenders, it cannot be claimed by either of them. It will not be granted where there is condonation of, or consent by the innocent spouse to, the adultery or concubinage. Collusion between the parties to obtain legal separation shall cause the dismissal of the petition.<sup>131</sup> Neither shall a decree of legal separation be issued upon a stipulation of facts or by confession of judgment. In case of non-appearance of the defendant, the court shall order the prosecuting attorney to inquire whether or not a collusion between the parties exists. If there is no collusion, the prosecuting attorney shall intervene for the state in order to insure that the evidence for the plaintiff is not fabricated.<sup>132</sup> If the spouses are reconciled before the granting of the decree of legal separation, the proceedings shall be stopped; reconciliation after the rendition of the decree of legal separation rescinds it.<sup>133</sup> The decree of legal separation has the following effects:

(1) The spouses are entitled to live separately from each other, but the marriage bonds are not severed;

(2) The conjugal partnership of gains, or the absolute conjugal community of property, as the case may be, is dissolved and liquidated but the offending spouse has no right to any share of the profits earned by the partnership or the community, such share to go to the children of both, and the children of the guilty spouse had by a prior marriage;

(3) The innocent spouse shall have custody of the minor children unless otherwise directed by the court;

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<sup>127</sup> CIVIL CODE, art. 98.

<sup>128</sup> CIVIL CODE, art. 99.

<sup>129</sup> CIVIL CODE, art. 102.

<sup>130</sup> CIVIL CODE, art. 103.

<sup>131</sup> CIVIL CODE, art. 100.

<sup>132</sup> CIVIL CODE, art. 101.

<sup>133</sup> CIVIL CODE, art. 108.

(4) The offending spouse is disqualified from inheriting from the innocent spouse by intestate succession and the provisions in favor of the offending spouse made in the will of the innocent one are revoked by operation of law;<sup>134</sup>

(5) The innocent spouse may revoke the donations by reason of marriage made by him or by her to the offending spouse.<sup>135</sup>

#### F. *Paternity and Filiation*<sup>136</sup>

Under the Civil Code, children are classified as either legitimate or illegitimate. Legitimate children are those born in wedlock or within a competent time afterwards; the illegitimate are those born out of wedlock. Illegitimate children in turn are divided into (1) the natural, and (2) those not natural. The natural children belong to three categories: natural proper, natural by legal fiction, and natural by presumption. Natural children proper are those born out of wedlock of parents who, at the time of the conception of such children, were not disqualified to marry each other.<sup>137</sup> Natural children whose parents were not disqualified from marrying each other at the time they were conceived, and who have been recognized by their parents before or after the celebration of the marriage or have been judicially declared as natural, are considered legitimated by the subsequent marriage of their parents.<sup>138</sup> In virtue of the subsequent marriage of their parents, illegitimate children of this class are by fiction of law considered legitimate.<sup>139</sup> Natural children by legal fiction are those conceived or born of a void marriage, or conceived of a voidable marriage after the decree of annulment.<sup>140</sup> Natural children by presumption are those recognized by only one of the parents, who had legal capacity to contract marriage at the time of conception.<sup>141</sup> Illegitimate children who are not natural are those who do not fall under any of the categories of natural children stated above.

A child is presumed legitimate if born in lawful wedlock after one hundred and eighty days following the celebration of the marriage, and before three hundred days following its dissolution or the separation of the spouses. This presumption of legitimacy

<sup>134</sup> CIVIL CODE, art. 106.

<sup>135</sup> CIVIL CODE, art. 107.

<sup>136</sup> The discussion on Paternity and Filiation is substantially taken from GAMBOA, *op. cit.*, *supra*, note 19 at 121-123.

<sup>137</sup> CIVIL CODE, art. 269.

<sup>138</sup> CIVIL CODE, arts. 269-275.

<sup>139</sup> CIVIL CODE, art. 272.

<sup>140</sup> CIVIL CODE, art. 89.

<sup>141</sup> CIVIL CODE, art. 277.

can be overturned only if it was physically impossible for the husband to have access to his wife within the first one hundred and twenty days (the period of conception) of the three hundred which preceded the birth of the child. Physical impossibility of access might occur if the husband was (a) impotent, or (b) living separately from his wife as when he had been confined in prison or residing abroad or, (c) seriously ill during the stated period.<sup>142</sup>

Legitimate children are entitled (a) to bear the surnames of their parents, (b) to receive support from them, from their ascendants, and in proper cases from their brothers and sisters, and (c) to inherit from their parents and relatives.<sup>143</sup> Natural children who have been legitimated by the subsequent marriage of the parents are entitled to the same rights as legitimate children. Other illegitimate children who are not or cannot be legitimated enjoy lesser successional and other civil rights.<sup>144</sup>

## V. LAWS ON ECONOMIC FACTORS RELATED TO FAMILY

### A. *Maternity Benefits*

The Woman and Child Labor Law<sup>145</sup> extends maternity protection to women in private employment under the following forms:

- (1) Maternity leave with pay;
- (2) Vacation leave without pay in addition to the maternity leave, for illness arising from the pregnancy, delivery or miscarriage;
- (3) Prohibition against discharge for prolonged absence on the ground of such illness; and
- (4) Nursing as well as nursery privileges.<sup>146</sup>

Maternity protection under this law is extended to any woman employee who may be pregnant, whether married or unmarried, for the first four deliveries.<sup>147</sup> In case of expected normal delivery, any woman employed who has rendered an aggregate service of at least 6 months for the last twelve months is entitled to a leave period of two weeks prior thereto and four weeks thereafter. During

<sup>142</sup> CIVIL CODE, art. 255; RULES OF COURT (1964); Rule 131, Sec. 4(a).

<sup>143</sup> CIVIL CODE, art. 264.

<sup>144</sup> CIVIL CODE, arts. 272, 282, 287 and 895.

<sup>145</sup> Rep. Act No. 679 (1952), as amended by Pres. Decree No. 148 dated March 13, 1973.

<sup>146</sup> Sec. 8.

<sup>147</sup> Revised Rules and Regulations implementing Rep. Act No. 679 hereinafter referred to as WCL RULES, Sec. 7.

such leave period, she is entitled to full pay.<sup>148</sup> Maternity leave shall be extended without pay on account of illness medically certified to arise out of the pregnancy, delivery, abortion or miscarriage, which renders the woman unfit for work unless she has earned unused leave credits from which such extended leave may be charged.<sup>149</sup> Prolonged absence on account of illness incident to pregnancy, delivery or miscarriage is not a valid ground for discharge.<sup>150</sup> It is unlawful for any employer to discharge any woman employed by him for the purpose of preventing such woman from enjoying maternity benefits or on account of her pregnancy or while on leave or in confinement due to her pregnancy; or to discharge or refuse the admission of such woman upon returning to her work for fear that she may again be pregnant.<sup>151</sup> Formerly, the law imposed a duty on an employer to allow any woman employee who was nursing a child at least half an hour twice a day during her working hours to nurse her child.<sup>152</sup> It was also the duty of every employer having at least 15 women in his employ to establish an adequate nursery near the place of work where they may leave their children, said nursery to be under the supervision of either a registered nurse or a qualified midwife.<sup>153</sup> The law as amended by Presidential Decree No. 148 now authorizes the Secretary of Labor to issue regulations requiring employers to establish nurseries in their work places for the benefit of women employees.<sup>154</sup> Establishments which are required by law to maintain a clinic or infirmary now have a duty to provide free family planning services to their employees. This includes, but is not limited to, the application or use of contraceptive and/or intra-uterine devices.<sup>155</sup> In coordination with the other agencies of the Government engaged in the promotion of family planning, the Department of Labor shall develop and prescribe incentive bonus schemes to encourage family planning among the married workers in any establishment or enterprise.<sup>156</sup>

Under Department of Labor Order No. 7, series of 1973,<sup>157</sup> employers who habitually employ more than 300 workers shall provide free family planning services to their employees and their

<sup>148</sup> Rep. Act No. 679 (1952) as amended, sec. 8(a).

<sup>149</sup> Sec. 8(b).

<sup>150</sup> Rep. Act No. 679, as amended, Sec. 8(a).

<sup>151</sup> Rep. Act No. 679, as amended, sec. 12(a).

<sup>152</sup> Rep. Act No. 679, (1952) as amended, sec. 8(b).

<sup>153</sup> Rep. Act No. 679, (1952) as amended, sec. 8(c).

<sup>154</sup> Sec. 8(d).

<sup>155</sup> Sec. 8(e).

<sup>156</sup> Sec. 8(f).

<sup>157</sup> 3 ALEC REPORT 7 (Dec., 1973).

spouses, which shall include the application or use of contraceptive or intra-uterine drugs or devices. Firms falling within this category shall maintain in their infirmary a family planning clinic, and the physicians and dentists who take charge of the clinical services of the workers as required by the Free Emergency Medical and Dental Treatment Act<sup>158</sup> shall be trained in family planning in a duly recognized family planning training center. In establishments with more than 200 but less than 300 workers family planning services shall be administered by retained or full-time physicians. If the number of workers is 30 or more but less than 200, the services shall be under the charge of a nurse duly certified by the POPCOM or its designated representatives. The Department Order enjoins and encourages business firms to experiment with the giving of bonuses and awards to successful contraceptors. They are expected to calculate the savings in finances and man-hours, accruing because of successful employee participation in family planning activities. Savings may take the form of unused maternity leaves, medical care which is forgone by reason of non-pregnancy and non-delivery, medical, educational and other dependency benefits not utilized as a result of reduced childbearing. A portion of these savings may be utilized in incentives and bonuses for successful participation in family planning such as: (a) Pension plans, insurance benefits, savings deposits or other social security measures for employees who participated effectively in the family planning program; (b) Bonuses in terms of leaves and time-off for contraceptive acceptance or for successfully avoiding pregnancy; (c) Cash, leave, or promotion credit bonuses to female employees who do not utilize maternity leaves for a certain number of years; (d) Cash, commodity or benefit bonuses to employee-motivators for recruitment of acceptors and for successfully encouraging continuation on contraception; (e) Group bonuses to divisions and departments for exceeding certain levels of contraceptive acceptance or for accumulating certain numbers of aggregate years of non-pregnancy among employees; (f) Prizes and awards on a competitive basis to individuals, couples, or divisions for excellence in recruitment of acceptors, for continuation of practice for reduction of fertility, or for effectiveness of contraceptive methods accepted. Any bonus plan adopted will be reviewed by the firm's consultative and advisory committee on family planning to insure that the interests of labor are served, and that enrollment in bonus programs is voluntary and ethically acceptable to all concerned.

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<sup>158</sup> Rep. Act No. 1054 (1954).

Married women who are permanently or temporarily appointed in the service of the Government, or in any of its branches, subdivisions or agencies, or instrumentalities, including the corporations and enterprises owned or controlled by the Government, in addition to the vacation and sick leave which they enjoy, are entitled in case of pregnancy to a maternity leave of sixty days subject to the following conditions:

(a) Permanent and regular employees who have rendered two or more years of continuous service are entitled to maternity leave with full pay;

(b) Permanent and regular employees who have rendered less than two years of continuous service shall be entitled to half pay;

(c) Temporary employees who have rendered two or more years of continuous service shall be entitled to maternity leave with half pay;

(d) Temporary employees who have rendered less than two years of continuous service are entitled to a number of days of maternity leave with pay based on the ratio of thirty days of maternity leave to two years of continuous service; and

(e) Temporary employees, who passed civil service examinations given before the date of the application for maternity leave but the result of which examinations were released after such date of application, are entitled to the maternity leave granted to regular employees as of the date when said examinations were given.<sup>159</sup>

The proper department head or chief of bureau or office is enjoined to avoid the assignment of strenuous and fatiguing work to married women under their charge who are in the state of pregnancy.<sup>160</sup>

#### B. *Child Care and Allowances*

The Philippines does not have any law dealing explicitly or directly with child allowances. It must be stated, however, that under the Civil Code, the father and the mother have, with respect to their unemancipated children, the duty to support them, to have them in their company, to educate and instruct them in keeping with their means, and to represent them in all actions which redound

<sup>159</sup> Com. Act No. 647 (1941) as amended, sec. 1.

<sup>160</sup> Com. Act No. 647 (1941) as amended, sec. 2.

to their benefit.<sup>161</sup> Consequently, every child is entitled under the the same Code to parental care, to receive at least elementary education, to be given moral and civil training by the parents and to live in an atmosphere conducive to his physical demands, moral and intellectual development.<sup>162</sup> For the purpose of promoting the full growth of the faculties of every child, the Code states that the Government will establish whenever possible:

1. Schools in every barrio, municipality and city where optional religious instruction shall be taught as part of the curriculum at the option of the parent or guardian;
2. Puericulture and similar centers;
3. Councils for the Protection of Children; and
4. Juvenile courts.<sup>163</sup>

The Council for the Protection of Children, which was designed by the Civil Code to look after the welfare of children in the municipality, is invested with the following functions:

1. Foster the education of every child in the municipality;
2. Encourage the cultivation of the duties of parents;
3. Protect and assist abandoned or mistreated children, and orphans;
4. Take steps to prevent juvenile delinquency;
5. Adopt measures for the health of children;
6. Promote the opening and maintenance of playgrounds;
7. Coordinate the activities of organizations devoted to the welfare of children, and secure their cooperation.<sup>164</sup>

From all indications, the provision authorizing the establishment of the Council is a dead-letter law.

Juvenile and Domestic Relations Courts have been established in the Cities of Manila, Baguio, Naga, Iriga, Caloocan, Dumaquete, and Quezon, and in the Provinces of Iloilo and Cebu.<sup>165</sup> These courts have jurisdiction over cases involving custody of children, guardianship, adoption, paternity and acknowledgment of natural children, annulment of marriages, legal separation of spouses, actions for support and proceedings affecting dependent or neglected children and other cases affecting deprivation of parental

<sup>161</sup> Art. 316.

<sup>162</sup> Art. 356.

<sup>163</sup> Art. 359.

<sup>164</sup> Art. 360.

<sup>165</sup> Rep. Act Nos. 1401 (1955), 6512 (1972), 6591 (1972), 5502 (1969), 5797 (1969), 4836 (1966), 4834 (1966), and 6586 (1972).

authority. They also have jurisdiction over criminal cases where the accused is 16 years of age or under at the time of the trial. In each court, there is established a social service and counseling division which prepares social case studies, performs probation, counseling and other social services in connection with cases filed with the court. A child is considered to be dependent or neglected if 16 years of age or under and (1) is destitute or dependent upon the public for support or (2) is homeless or abandoned or has no proper parental care or guardianship.

The Department of Social Welfare created by the Social Welfare Act of 1968<sup>166</sup> to replace the former Social Welfare Administration has been entrusted with the duty of developing and implementing a comprehensive social welfare program consisting among others of:

1. Preventive and remedial programs and services for individuals, families and communities; and
2. Protective, remedial and developmental welfare services for children and youth.<sup>167</sup>

Specifically, the Department:

1. Undertakes research programs and studies on matters pertaining to family life, the welfare needs of children and youth, the aged, the disabled and other individuals or groups with special needs;
2. Initiates and administers pilot social welfare projects designed to suit local settings, problems and situations for possible implementation on a nation-wide basis;
3. Accredits institutions and organizations, public and private, engaged in social welfare activity including licensing of child caring and child placement institutions, and provides consultative services relating thereto;
4. Establishes, administers and maintains such facilities as child caring institutions and others, whenever it may be deemed necessary to carry out the objectives of the Act.<sup>168</sup>

Under the Department, the Bureau of Family and Child Welfare has, among others, the function of formulating policies and

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<sup>166</sup> Rep. Act No. 5416 (1968).

<sup>167</sup> Rep. Act No. 5416 (1968), sec. 3.

<sup>168</sup> Rep. Act No. 5416 (1968), sec. 3.

procedures, developing programs and standards, advising and assisting in the implementation of (a) social welfare services which will promote the social development of families, prevent family disorganization and develop population awareness, social consciousness, and civic responsibility; and (b) programs for the care, protection, training, rehabilitation and development of children such as the abused, abandoned, neglected and handicapped.<sup>169</sup>

The Department of Health, on the other hand, has enjoined all health personnel to integrate family planning activities in their respective services.<sup>170</sup> It has created the National Family Planning Office (formerly named National Comprehensive MCH Family Planning Project Office) which is charged primarily with the responsibility of over-all planning, administration, coordination and evaluation of the Family Planning Program of the Department. Its specific objectives are:

1. To integrate family planning services as part and parcel of the total family health program of the Rural Health-Family Planning Centers under the Department of Health. The basic health services provide opportunities and occasions for community education/information on family planning.
2. To provide family planning information, education and motivation during the pre-natal and post-natal periods and to make available family planning services to all eligible women who desire to limit-space their pregnancies during the pre-and inter-conceptual periods.
3. To improve maternal and child care through spacing of child-births.
4. To lower maternal and infant morbidity and mortality.
5. To lower the birth rate in order to attain a balance in our national economy between the demands of an increasing population and available resources.

The family planning program of the Department includes the establishment of family planning clinics in its eleven regions all over the country which would provide available contraceptives, acceptable methods to regulate fertility, free of charge, and marital and marriage guidance and counselling. The Department likewise coordinates with the Commission on Population in some activities vital to the effective implementation of the program, such as the utilization of paramedicals (with the approval of licensing authorities) in areas where services of physicians are not available, and

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<sup>169</sup> Integrated Reorganization Plan, Pres. Decree No. 1, dated September 24, 1972.

<sup>170</sup> Department Circular No. 16, dated January 16, 1970.

of indigenous midwives as motivators in some areas of the country.<sup>171</sup>

C. *Laws on Descent and Distribution of Property.*<sup>172</sup>

Succession under the Civil Code is a mode of acquisition by virtue of which the property, rights and obligations of a decedent are transmitted to another or others either by his will or by operation of law.<sup>173</sup> Succession may be: (1) testamentary; (2) legal or intestate; or (3) mixed.<sup>174</sup> Testamentary succession is that which results from the designation of an heir, made in a will executed in the form prescribed by law.<sup>175</sup> Legal or intestate succession is that which occurs by operation of law, while mixed succession is that effected partly by will and partly by operation of law.<sup>176</sup>

That part of the testator's property which he cannot dispose of by will, because the law has reserved it for compulsory heirs, is known as the legitime. The compulsory heirs for whom it is reserved by law are:

1. Legitimate children and descendants, with respect to their legitimate parents and ascendants;
2. In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;
3. The widow or widower;
4. Acknowledged natural children, and natural children by legal fiction; and
5. Other illegitimate children, e.g., adulterous children.<sup>177</sup>

If there are legitimate children and descendants, the legitimate parents and ascendants are excluded. But the widow or widower, the acknowledged natural children, the natural children by legal fiction and the other illegitimate children are not excluded even if there are legitimate children and descendants, or legitimate parents and ascendants; neither do they exclude each other. Thus the widow or widower and the illegitimate children share in the inheritance concurrently with the legitimate children or with the

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<sup>171</sup> Department of Health, National Family Planning Office, Rules and Regulations.

<sup>172</sup> The discussion on the laws on descent is taken largely from GAMBOA, *op. cit.*, *supra*, note 19.

<sup>173</sup> Art. 774.

<sup>174</sup> Art. 778.

<sup>175</sup> Art. 779.

<sup>176</sup> Art. 780.

<sup>177</sup> Art. 887.

legitimate parents in every case, but their shares are taken from the free portion of the estate.

The legitime of the legitimate children and descendants consists of one-half of the entire estate of the father and of the mother. The other half, referred to as the free portion, may be disposed of by the testator freely, subject to the rights of the widow or widower and the illegitimate children.<sup>178</sup>

The legitime of legitimate parents or ascendants consists of one-half of the hereditary estate of their children and descendants, the other half likewise being free but subject to the rights of the illegitimate children and surviving spouse of the testator.<sup>179</sup>

The legitimate parents or ascendants of a testator are entitled to a legitime only in default of the latter's legitimate children and descendants.

The legitime of the widow or widower of the testator varies according to the classes and number of other compulsory heirs who survive with her or him. Where the only survivor is the spouse of the testator, his or her legitime generally consists of one-half of the estate and the other half is at the free disposal of the testator.<sup>180</sup> If only one legitimate child of the deceased survives with the widow or widower, the latter's legitime is one-fourth of the estate; if there are two or more legitimate children, the surviving spouse is entitled to a legitime equal to that of each of the legitimate children.<sup>181</sup> The general principle obtaining in the case of the surviving spouse is that he or she participates as a concurrent heir in all cases.<sup>182</sup> This is true also with respect to acknowledged natural children, natural children by legal fiction, and other illegitimate children.<sup>183</sup>

A compulsory heir may be deprived of his legitime by means of disinheritance for causes expressly provided by law.<sup>184</sup> The legal causes for the disinheritance of children and descendants, legitimate as well as illegitimate, are:

1. Conviction of an attempt against the life of the testator, his or her spouse, descendants or ascendants;

<sup>178</sup> Art. 888.

<sup>179</sup> Art. 889.

<sup>180</sup> Art. 900.

<sup>181</sup> Art. 892.

<sup>182</sup> See CIVIL CODE, arts. 893-894, 897-900.

<sup>183</sup> See CIVIL CODE, arts. 895-896, 901-903.

<sup>184</sup> Art. 915.

2. False accusation against the testator of a crime for which the law prescribes imprisonment for six years or more;
3. Conviction of adultery or concubinage with the spouse of the testator;
4. Causing the testator to make a will, or to change one already made, by fraud, violence, intimidation, or undue influence;
5. Refusal to support the testator without justifiable cause;
6. Maltreatment of the testator by word or deed;
7. Leading a dishonorable or disgraceful life; and
8. Conviction of a crime which carries with it the penalty of civil interdiction.<sup>185</sup>

Intestate succession takes place when a person dies without a will, or with a void or inefficacious will, or if no one succeeds under his will. If a will is valid but it disposes of only part of the testator's property, intestate succession takes place with respect to the rest of the property not covered by the will.<sup>186</sup> In these cases, since there are no testamentary heirs, the law determines who are to succeed to the inheritance of the deceased. Among those called by the law to succeed by intestacy are the relatives of the deceased, both legitimate and illegitimate, his surviving spouse and the State, according to a specified order. The relative nearest in degree excludes the more distant ones, except where the right of representation takes place. Relatives in the same degree inherit in equal shares except in the cases of brothers and sisters of the full blood and of the half-blood. The share of the brother or sister of the half-blood is one-half that of the brother or sister of the full blood.

The order of intestate succession is briefly summarized as follows: first, legitimate children and their descendants; second, legitimate parents and ascendants; third, illegitimate children and their descendants; fourth, the surviving spouse, without prejudice to the rights of brothers and sisters; fifth, collateral relatives within the fifth degree; and sixth, the State.

The above-listed classes of heirs inherit successively and exclusively — that is, one class succeeds only when there are no classes above it; and it excludes all other classes below it except that the surviving spouse and the illegitimate children are always entitled to their share as concurring heirs.

<sup>185</sup> Art. 919.

<sup>186</sup> CIVIL CODE, art. 960; *De Castro v. Billion*, 82 Phil. 69 (1948); *Ramos v. Marquez*, 10 Phil. 722 (1908); *Ignacio v. Martinez*, 33 Phil. 576 (1916).

#### D. *Immigration*

Under the Immigration Act of 1940,<sup>187</sup> aliens are classified into immigrants and non-immigrants. As defined in the law, an immigrant is any alien arriving from any place outside of the Philippines other than a non-immigrant.<sup>188</sup>

Immigrants are divided into quota immigrants and non-quota immigrants. For quota immigrants only 50 are allowed to enter for any nationality in any given year. These are further subdivided into (a) the preference quota, granted to fathers and mothers of Filipino citizens who are 21 years or over and to the wives, husbands and unmarried children under 21 of aliens lawfully admitted into the Philippines for permanent residence and residing therein;<sup>189</sup> and (b) the non-preference quota, granted to those who do not qualify for the preference quota.

Under Section 13 of the Act the following are non-quota immigrants: (a) The wife or the husband or the unmarried child under 21 years of age of a Philippine citizen, if accompanying or coming to join such citizen; (b) A child of alien parents born during the temporary visit abroad of the mother who had previously been admitted lawfully into the Philippines for permanent residence, if the child is accompanying or coming to join a parent and applies for admission within five years from the date of its birth; (c) A child born subsequent to the issuance of the immigration visa to the accompanying parent, the visa not having expired; (d) A woman who was a citizen of the Philippines and who lost her citizenship because of her marriage to an alien or by reason of the loss of the Philippine citizenship by her husband, and her unmarried child under 21 years of age, if accompanying or coming to join her; (e) a person who had previously been admitted lawfully into the Philippines for permanent residence and is returning from a temporary visit abroad to an unrelinquished residence in the Philippines;<sup>190</sup> (g) A natural born citizen of the Philippines who has acquired a foreign citizenship abroad and is returning to the Philippines for permanent residence, as well as his spouse and minor unmarried children.<sup>191</sup>

A non-immigrant may be: (1) A temporary visitor coming for business or for pleasure or for reasons of health; (2) A person

<sup>187</sup> Com. Act No. 613 (1940).

<sup>188</sup> Sec. 50(j).

<sup>189</sup> Com. Act No. 613 (1940), sec. 19.

<sup>190</sup> As amended by Rep. Act No. 503 (1950).

<sup>191</sup> As amended by Rep. Act No. 4376 (1965).

in transit to a destination outside the Philippines; (3) A seaman serving as such on a vessel arriving at a port of the Philippines seeking to enter temporarily and solely in the pursuit of his calling as seaman; (4) An alien entitled to enter the Philippines solely to carry on trade between the Philippines and the foreign state of which he is a national under, and in pursuance of, the provisions of a treaty of commerce and navigation, and his wife and unmarried children under 21 years of age, if accompanying or coming to join him;<sup>192</sup> (5) A student, having means sufficient for his education and support in the Philippines who is at least eighteen years of age and who seeks to enter the Philippines temporarily and solely for the purpose of taking up a course of study higher than high school at a university, seminary, academy, college or school approved for such alien students by the Commissioner of Immigration;<sup>193</sup> (6) An alien coming to pre-arranged employment, for whom the issuance of a visa has been authorized, and his wife and unmarried children under 21 years of age, if accompanying him or coming to join him within 6 months from the date of his admission into the Philippines as a non-immigrant. By administrative regulation, the following are also considered non-immigrants: (1) Tourists and temporary visitors not belonging to the restricted nationals coming without visas for a stay of 21 days;<sup>194</sup> (2) Refugees for religious, political, or racial reasons;<sup>195</sup> (3) Special temporary visitors, pursuant to Article XI of the Military Bases Agreement of March 14, 1949 *viz*, (a) Members of the families of United States Armed Forces personnel coming to the Philippines to join the head of family during his tour of duty therein;<sup>196</sup> (b) United States nationals employed by or under a contract with the United States together with their family;<sup>197</sup> (c) Technical personnel of other nationalities (not being persons excluded by the laws of the Philippines) in connection with the construction, maintenance or operation of the United States bases in the Philippines; (4) Special non-immigrants under Section 47(a) of the Immigration Act of 1940 for aliens who are not government employees, and as foreign government officials under Section 9(e) for aliens who are in the government service, pro-

<sup>192</sup> As amended by Rep. Act Nos. 503 (1950) and 1393 (1955).

<sup>193</sup> As amended by Rep. Act Nos. 503 (1950) and 1393 (1955).

<sup>194</sup> Ex. Order No. 408, s. 1960, as amended by Ex. Order No. 186, s. 1969 in relation to Sec. 47(a) (2).

<sup>195</sup> Com. Act No. 613 (1940), sec. 47(b).

<sup>196</sup> D.F.A. VISA REGULATIONS, Part C. Sec. 10(a) hereinafter cited as VISA REGS.

<sup>197</sup> VISA REGS., Part C, Sec. 10(b).

ceeding to the Philippines as scholars, trainees, participants, or fellows under certain auspices *e.g.*, SEATO, UNESCO, NEC/AID; (5) Special non-immigrants under Section 47(a) par 2 of the Act, for aliens, their spouse and unmarried children under 21 years of age coming for employment under the Investment Incentives Act.<sup>198</sup>

Excluded from entry into the Philippines are: (1) Idiots or insane persons and persons who have been insane; (2) Persons afflicted with a loathsome or dangerous contagious disease, or epilepsy; (3) Persons who have been convicted of a crime involving moral turpitude; (4) Prostitutes, or procurers, or persons coming for any immoral purpose; (5) Persons likely to become a public charge; (6) Paupers, vagrants, and beggars; (7) Persons who practice polygamy or who believe in or advocate the practice of polygamy. (8) Persons who believe in or advocate the overthrow by force and violence of the Government of the Philippines, or of constituted law and authority, or who disbelieve in or are opposed to organized government, or who advocate the assault or assassination of public officials because of their office, or who advocate or teach principles, theories, or ideas contrary to the Constitution of the Philippines, or advocate or teach the unlawful destruction of property, or who are members of or affiliated with any organization entertaining or teaching such doctrines; (9) Persons over fifteen years of age, physically capable of reading, who cannot read printed matter in ordinary use in any language selected by the alien; (10) Persons who are members of a family accompanying an excluded alien; (11) Persons accompanying an excluded person who is helpless from mental or physical disability or infancy; (12) Children under 15 years of age, unaccompanied by or not coming to a parent; (13) Stow-aways; (14) Persons coming to perform unskilled manual labor in the pursuance of a promise or offer of employment, express or implied;<sup>199</sup> (15) Persons who have been excluded or deported from the Philippines;<sup>200</sup> (16) Persons who have been removed from the Philippines at the expense of the Government of the Philippines, as indigent aliens; and (17) Persons not properly documented for admission. However, the Commissioner of Immigration is authorized to exercise his discretion to permit any alien properly documented who is subject to exclusion if he is

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<sup>198</sup> Rep. Act No. 5186 (1967).

<sup>199</sup> As amended by Rep. Act No. 503 (1950).

<sup>200</sup> As amended by Rep. Act No. 503 (1950).

lawfully resident in the Philippines and returning from a temporary visit abroad, or applying for temporary admission.

E. *Taxation*

1. *Income Taxes*

The following personal exemptions<sup>201</sup> are allowed in the nature of a deduction from the amount of the net income:

(1) ₱1,800 if the person making the return is single, or married but legally separated from his spouse;

(2) ₱3,000 if the person making the return is a married man or woman or the head of a family. This shall be made only once from the aggregate income of both spouses when not legally separated. The "head of a family" includes an unmarried person with (a) one or both parents or (b) one or more brothers or sisters or (c) one or more legitimate, recognized natural or adopted children living with and dependent upon him for their chief support where such brothers, sisters or children are not more than 21 years of age, unmarried, and not gainfully employed or where such children are incapable of self-support because mentally or physically defective.

(3) ₱1,000 for each legitimate, recognized natural or adopted child wholly dependent upon and living with the taxpayer who is head of a family, if such dependent is not more than 21 years, unmarried and not gainfully employed or incapable of self-support because mentally or physically defective. The total number of dependents for which additional exemptions may be claimed shall not exceed four.

A taxpayer who marries or has additional dependents during the taxable year is entitled to these exemptions in full. If he dies at any time during the taxable year, his estate may claim the full exemption for himself and his dependents; should his spouse or any of his dependents die or become 21 years old during the year the taxpayer may still claim the same deductions as if the former died or as if such dependents became 21 years old at the close of the year.

<sup>201</sup> Com. Act No. 466 (1939) as amended, sec. 23, hereinafter referred to as TAX CODE, as amended by Pres. Decree No. 69, dated October 19, 1972.

### 2. Estate and Inheritance Taxes

An estate tax is imposed on the privilege of a decedent to transmit property at death, based on the entire net estate, regardless of the number of heirs and their relation to the decedent. Formerly, an inheritance tax was imposed on the privilege of the heirs to receive property. This was repealed by Presidential Decree No. 69.

There is levied, upon the transfer of the net estate of every decedent, whether a resident or non-resident of the Philippines, a tax equal to the sum of the following percentages of the value of the net estate:<sup>202</sup>

| IF THE NET ESTATE IS |                     | THE TAX SHALL BE |                            |
|----------------------|---------------------|------------------|----------------------------|
| <i>Over</i>          | <i>But Not Over</i> |                  | <i>Plus Of Excess Over</i> |
| —                    | ₱ 10,000            | EXEMPT           | —                          |
| ₱ 10,000             | 50,000              | 3%               | ₱ 10,000                   |
| 50,000               | 75,000              | ₱ 1,200          | 50,000                     |
| 75,000               | 100,000             | 2,200            | 75,000                     |
| 100,000              | 150,000             | 3,450            | 100,000                    |
| 150,000              | 200,000             | 8,450            | 150,000                    |
| 200,000              | 300,000             | 15,950           | 200,000                    |
| 300,000              | 400,000             | 35,950           | 300,000                    |
| 400,000              | 500,000             | 60,950           | 400,000                    |
| 500,000              | 625,000             | 90,950           | 500,000                    |
| 625,000              | 750,000             | 134,700          | 625,000                    |
| 750,000              | 875,000             | 184,700          | 750,000                    |
| 875,000              | 1,000,000           | 240,950          | 875,000                    |
| 1,000,000            | 2,000,000           | 303,450          | 1,000,000                  |
| 2,000,000            | 3,000,000           | 833,450          | 2,000,000                  |
| 3,000,000            |                     | 1,393,450        | 3,000,000                  |

### 3. Gift Tax

There is levied on the transfer (in trust or otherwise) by any person (resident or non-resident) of property (real or personal, tangible or intangible) by gift (direct or indirect), a donor's tax computed on the basis of the total net gifts made during the calendar year in accordance with the following schedule:

| IF THE NET GIFT IS |                     | THE TAX SHALL BE |                            |
|--------------------|---------------------|------------------|----------------------------|
| <i>Over</i>        | <i>But Not Over</i> |                  | <i>Plus Of Excess Over</i> |
| —                  | ₱ 1,000             | EXEMPT           | —                          |
| ₱ 1,000            | 50,000              | 1.5%             | ₱ 1,000                    |
| 50,000             | 75,000              | ₱ 735            | 50,000                     |
| 75,000             | 100,000             | 1,360            | 75,000                     |
| 100,000            | 150,000             | 2,110            | 100,000                    |

<sup>202</sup> TAX CODE, sec. 85.

|           |           |         |     |           |
|-----------|-----------|---------|-----|-----------|
| 150,000   | 200,000   | 5,110   | 9%  | 150,000   |
| 200,000   | 300,000   | 9,610   | 12% | 200,000   |
| 300,000   | 400,000   | 21,610  | 15% | 300,000   |
| 400,000   | 500,000   | 36,610  | 18% | 400,000   |
| 500,000   | 625,000   | 54,610  | 21% | 500,000   |
| 625,000   | 750,000   | 80,860  | 24% | 625,000   |
| 750,000   | 875,000   | 110,860 | 28% | 750,000   |
| 875,000   | 1,000,000 | 145,860 | 32% | 875,000   |
| 1,000,000 | 2,000,000 | 185,860 | 36% | 1,000,000 |
| 2,000,000 | 3,000,000 | 545,860 | 38% | 2,000,000 |
| 3,000,000 |           | 925,860 | 40% | 3,000,000 |

The donee's tax has likewise been abolished by Presidential Decree No. 69.

F. *Government Service Insurance System*

Membership in the Government Service Insurance System is compulsory for all appointive officers and employees in government, including government owned and controlled corporations; regular employees of the Philippine National Red Cross; officers and enlisted men of the Armed Forces; and all elective officials receiving compensation as defined in the Government Service Insurance System Act.<sup>203</sup> Temporary employees are covered for purposes of term insurance for ₱2,750 if appointed for not less than two months.

The benefits under the GSIS Act include:

1. life insurance benefits, equivalent to the annual compensation of the employee, plus optional insurance taken; and
2. retirement benefits, as follows:

(a) *Amount of annuity.* — Upon retirement after faithful and satisfactory service, a member shall automatically be entitled to a life annuity guaranteed for at least five years and thereafter as long as he lives. The amount of the monthly annuity at the age of 57 years shall be thirty pesos, plus, for each year of service after June 16, 1951, two per centum of the average monthly salary received by him during the last three years of service, plus, for each year of service rendered prior to June 16, 1951, one and two-tenths per centum of said average monthly salary. However, this amount shall be adjusted actuarially if he retires at an age other than 57 years. The maximum amount of

<sup>203</sup> Com. Act No. 186 (1936) as amended, hereinafter cited as GSIS Act.

monthly annuity at age 57 shall not in any case exceed three-fourths of said average monthly salary.

In lieu of this annuity, he may, prior to his retirement, elect one of the following equivalent benefits:

- 1) Monthly annuity during his lifetime;
- 2) Monthly annuity during the joint-lives of the employee and his or her spouse guaranteed for at least 5 years, which annuity, however, shall, upon the death of either and after the 5-year guaranteed period, be reduced to one-half and be paid to the survivor;
- 3) For those who are at least 63 years of age, lump-sum payment of the present value of annuity for the first 5 years, and for those who are at least 60 but below 63 years of age, lump-sum payment of the present value of the annuity for the first 3 years, with the balance of the 5-year guaranteed annuity payable in lump-sum upon reaching 63 years of age, and annuity after the guaranteed period to be paid monthly; or
- 4) Such other benefits as may be approved by the System.

(b) *Survivors' benefit.* — Upon death before he becomes eligible for retirement, his beneficiaries as recorded in the application for retirement annuity filed with the System shall be paid his own premiums with interest at 3% per annum, compounded monthly. If he has served at least 5 years and his death is not due to his own misconduct, gross negligence, intemperate use of drugs or alcoholic liquor, or vicious or immoral habits, his beneficiaries shall also be paid by the employer his one month's salary for every year of service, based on the highest rate he received.

If on his death he is eligible for retirement, then the automatic retirement annuity or the annuity previously chosen by him shall be paid accordingly.

(c) *Disability benefit.* — If he has served less than 5 years and has become permanently and totally disabled, he shall be paid his own contributions with interest at 3% per annum, compounded monthly. If he has served at least five years but less than fifteen years, he shall be paid also the corresponding employer's premiums, without interest. Should his disability be not due to his own misconduct, gross negligence, intemperate use of drugs or alcoholic liquor, or vicious or immoral habits, he shall also be paid by the employer one month's salary for every year of

service, based on the highest rate received. If he has served at least 15 years he shall be retired and be entitled to the benefit provided under paragraph (a).

(d) Upon dismissal for cause or on voluntary separation, he shall be entitled only to his own premiums and voluntary deposits if any, plus interest at three *per centum per annum*, compounded monthly.<sup>204</sup>

*Conditions for retirement.* — (a) On completion of 30 years of total service and attainment of age 57, a member has the option to retire. In all cases of retirement under the GSIS Act, the last three years of service before retirement must be continuous, and he must have made contributions for at least 5 years. In the case of those who are at least 57 years of age, a period of service shorter than 30 years may be allowed, provided that each year's decrease in service shall be compensated by a one-half year increase in age over 57 years. A younger age of retirement may be permitted provided that each year's decrease below 57 years shall be compensated by one year increase in service over 30 years. If an employee is a laborer or one whose work is mostly manual, the ages mentioned above may be decreased by not more than 5 years at the discretion of the System. In all cases no one shall be entitled to retirement benefits if his age is below 52 years or his total service is less than fifteen years.

(b) Notwithstanding the provisions of the preceding paragraph, a member may be allowed to retire after rendering a total service of 30 years, regardless of age, the retiring employee to receive a monthly annuity for life.

(c) Retirement is also allowed any official or employee, appointive or elective, regardless of age and employment status, who has rendered a total of at least 20 years of service, the last three years of which are continuous. The benefit shall, in addition to the return of his personal contributions with interest compounded monthly and the payment of the corresponding employer's premiums without interest, be only a gratuity equivalent to one month's salary for every year of the first 20 years of service, plus 1½ months' salary for every year of service over 20 but below 30 years and two months' salary for every year of service over 30 years

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<sup>204</sup> GSIS Act, sec. 11(a)-(d).

based on the highest rate received in case of employees, and on the rates of pay as provided by law in case of elected officials. Officials and employees retired under the GSIS Act shall be entitled to the commutation of the unused vacation and sick leave, based on the highest rate received, which they may have to their credit at the time of retirement.<sup>205</sup>

(d) Retirement shall be automatic and compulsory at the age of 65 years with lump sum payment of the present value of annuity for the first 5 years and future annuity to be paid monthly, and other benefits given to a compulsorily retired member as provided for by law,<sup>206</sup> if he has completed 15 years of service and if he has not been separated from the service during the last three years of service prior to retirement; otherwise he shall be allowed to continue in the service until he shall have completed the required length of service, unless he is otherwise eligible for disability retirement. If a member exercises the option to retire at age 63 years, he shall likewise be entitled to all the benefits provided for in this paragraph. If the option is exercised at age 60 or over but below 63 years, the retiree shall be entitled to a lump sum payment of the present value of annuity for the first 3 years, with the balance of the 5 year guaranteed annuity payable in lump sum upon reaching the age of 63 years, and future annuity to be paid monthly, in addition to other benefits provided for by law.<sup>207</sup>

#### G. *Social Security*

A Social Security System is established by the Social Security Act<sup>208</sup> to provide protection against the hazards of disability, sickness, old age and death.<sup>209</sup> The benefits provided under this Act are concurrent with other benefits received by the employee for the same injury or illness under other laws, such as the Workmen's Compensation Law, the Government Service Insurance Act, and the Civil Code.<sup>210</sup> Membership in the System is compulsory for all private employers not exempt from the Act and their employees not over 60 years old,<sup>211</sup> including agricultural workers who

<sup>205</sup> GSIS Act, sec. 12(a)-(c).

<sup>206</sup> Rep. Act No. 660 (1951), as amended.

<sup>207</sup> Rep. Act No. 660 (1951), as amended.

<sup>208</sup> Rep. Act No. 1161 (1954), as amended.

<sup>209</sup> Rep. Act No. 1161 (1954), sec. 2.

<sup>210</sup> *Rural Transit Employees Assn. v. Bachrach Trans. Co.*, G.R. No. 21441, December 15, 1967, 21 SCRA 1263 (1967), *Valencia v. Manila Yacht Club*, G.R. No. 27346, June 30, 1969, 28 SCRA 72 (1969).

<sup>211</sup> Rep. Act No. 1161 (1954), sec. 9.

(a) are paid regular daily wages or base pay or (b) work for their employer for an uninterrupted period of at least 6 months within a 12-month period, whether they are paid regular daily wages or not.<sup>212</sup>

Excluded are the following:

- 1) Agricultural labor when performed by a share or leasehold tenant or worker who is not paid any regular daily wage or base pay and who does not work for an uninterrupted period of at least six months in a year;
- 2) Domestic service in a private home;
- 3) Employment purely casual and not for the purposes of occupation or business of the employer;
- 4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one years in the employ of his parents;
- 5) Service performed on or in connection with an alien vessel by an employee if he is employed when such vessel is outside the Philippines;
- 6) Service performed in the employ of the Philippine Government or an instrumentality or agency thereof;
- 7) Service performed in the employ of a school, college or university if such service is performed by a student who is enrolled and is regularly attending classes therein;
- 8) Services performed in the employ of a foreign government or international organization, or their wholly owned instrumentality;
- 9) Service performed by a student nurse in the employ of a hospital or nurses' training school, and service performed as a medical intern in the employ of a hospital; and
- 10) Such other services performed by temporary employees which may be excluded by regulation of the Commission.<sup>213</sup>

Social Security benefits are paid from a special fund created by the Act from the following sources: contribution of covered employees;<sup>214</sup> contribution of covered employers; and contribution of the Government.<sup>215</sup> The following benefits are provided for in the Social Security Act:

<sup>212</sup> S.S.C. Res. No. 1466, s. 1963.

<sup>213</sup> Rep. Act No. 1161 (1954) as amended, sec. 8(j).

<sup>214</sup> Rep. Act No. 1161 (1954), sec. 18.

<sup>215</sup> Rep. Act No. 1161 (1954), sec. 19.

1. *Retirement Benefits.* — A covered employee who (1) has paid at least 120 monthly contributions to the System, has reached the age of 60 years and is separated from employment or if still employed is receiving less than P250 monthly compensation or (2) has paid at least 120 monthly contributions and has reached 65 years or (3) has paid at least 35 monthly contributions and has become permanently totally disabled shall be entitled for as long as he lives to a monthly pension computed as follows: 45% of the first P120 of the average monthly salary credit or fraction thereof, plus 25% of the next P300 of the average monthly salary credit or fraction thereof; 9% of each succeeding P100 average monthly salary credit or fraction thereof; 1/10 of 1% of the average monthly salary credit for each monthly contribution in excess of 120 and paid as of the last day of the second quarter preceding the quarter of the retirement. The minimum monthly pension is forty-five pesos.<sup>216</sup>

2. *Death and Disability Benefits.* — Upon the employee's death, his beneficiaries shall be entitled to a basic lump sum amount, plus 5/12 of 1% of the basic lump sum amount for each monthly contribution in excess of 12 monthly contributions provided either of the following conditions is present: 1) he shall have paid 18 monthly contributions within the 36 calendar month period ending on the last day of the second quarter preceding the quarter of death; 2) his payment ratio is not less than 80%. If none of these conditions is present, the death or disability benefit shall be the above amount multiplied by 1 1/4 times his payment ratio. The death or disability benefit shall not be less than the total contributions paid by him and his employer in his behalf nor less than P500.<sup>217</sup> In case of permanent total disability, if such disability occurs before he has paid 36 monthly contributions, the employee shall be entitled to the basic lump sum amount provided either of the above conditions is present.

Death benefits pertain to the beneficiary designated as such by the covered employee from among the following: the legitimate spouse; the legitimate, legitimated, acknowledged natural children and natural children by legal fiction, and other illegitimate children, and their legitimate descendants; and the legitimate parents.

<sup>216</sup> Sec. 12, as amended by Pres. Decree No. 77 dated April 23, 1973.

<sup>217</sup> Sec. 13, as amended by Pres. Decree No. 24, dated October 19, 1972.

In the absence of any of the foregoing, any other person designated by him.<sup>218</sup>

If the disability is partial but permanent, the amount of benefit shall be such percentage of the benefit described in the preceding paragraph as the Commission may determine, with due regard to the degree of disability.<sup>219</sup>

3. *Sickness benefits.* — A covered employee who has paid at least 12 monthly contributions and who, on account of sickness or bodily injury, is confined for more than 5 days in a hospital, or elsewhere with the Social Security Commission's approval shall for each day of confinement be paid by his employer or by the SSS, if such person is unemployed, an allowance equivalent to 70% the average daily salary credit under the following conditions: (1) the total amount shall not be less than ₱2.50 nor exceed ₱12 nor paid for a period longer than 120 days in one calendar year; (2) no employee shall be paid any sickness benefit for more than 240 days on account of the same confinement; and (3) the employee shall notify his employer, or if unemployed, the System, within 5 days after the start of such confinement, unless such confinement is in a hospital or the employee became sick or was injured while working or within the premises of the employer. One hundred per cent of the daily benefits shall be reimbursed by the System to the employer.<sup>220</sup>

The allowance shall begin only after all current sick leaves of absence with full pay, if any, to the credit of the employee shall have been exhausted.<sup>221</sup>

#### H. *Workmen's Compensation*<sup>222</sup>

The Workmen's Compensation Act<sup>223</sup> requires the payment of compensation to employees or laborers or their dependents in cases of death, disability or illness arising out of or in the course of their employment. It applies to all employees in industrial, commercial and agricultural establishments and in religious, charitable and educational institutions<sup>224</sup> and to officials, employees and laborers in the service of the National Government and its

<sup>218</sup> Rep. Act No. 1161 (1954), sec. 8(k), as amended by Pres. Decree No. 177, dated April 23, 1973.

<sup>219</sup> Rep. Act No. 1161 (1954), sec. 13(b).

<sup>220</sup> Sec. 14, as amended by Pres. Decree No. 24, dated October 19, 1972.

<sup>221</sup> Rep. Act No. 1161 (1954), sec. 14(a), as amended by Pres. Decrees Nos. 24 and 177.

<sup>222</sup> Tabulations in this section are taken from QUIASON & FERNANDEZ, LABOR & SOCIAL LEGISLATION 160-264 (1971).

<sup>223</sup> Act No. 3428 (1928), as amended.

<sup>224</sup> Sec. 1.

political subdivisions and instrumentalities.<sup>225</sup> Benefits under the the Act may be divided into two general classes: (1) Indemnity benefits in the form of cash payments, and (2) Medical benefits in the form of medical services, hospitalization, medicine and other matters related to the treatment of the compensable injury or disease.

Indemnity benefits consist of (a) disability benefits for disabilities which may be total, partial, temporary, or permanent; and (b) death benefits.

Permanent partial disabilities are in turn classified into:

(1) Schedule injuries if included in the statutory list to which specific payments are assigned, and

(2) Non-schedule injuries.

(a) *Disability benefits* may be tabulated as follows:<sup>226</sup>

| <i>Disability</i>                   | <i>Average Weekly Wages</i> | <i>Compensation</i>  | <i>Minimum</i> | <i>Maximum</i> | <i>Duration</i>                 |
|-------------------------------------|-----------------------------|--|----------------|----------------|---------------------------------|
| Total temporary                     | P14.00 and over             | 60 per cent of average weekly wages  | P14 a week     | P6,000         | During disability               |
|                                     | Under P14.00                | Entire average weekly wages  |                | P6,000         |                                 |
| Total Permanent                     | P14.00 and over             | 60 per cent of average weekly wages  | P14 a week     | P6,000         |                                 |
|                                     | Under P14.00                |  | P14 a week     | P6,000         |                                 |
| Partial temporary                   |                             | 50 per cent of of the difference between average weekly wage before and after disability |                | P18 a week     | 208 weeks subject to adjustment |
| Partial permanent (Schedule injury) |                             | 50 per cent of average weekly wages  |                | P6,000         | As stated                       |

<sup>225</sup> Sec. 3.

<sup>226</sup> Sec. 14.

The list of schedule injuries with the period of compensation is as follows:<sup>227</sup>

| <i>Loss of member or use thereof*</i> | <i>Period of Compensation (in weeks)</i> |
|---------------------------------------|--|
| Thumb                                 | 40                                       |
| First finger                          | 30                                       |
| Second finger                         | 25                                       |
| Third finger                          | 20                                       |
| Fourth finger                         | 10                                       |
| Half of thumb or other finger***      | Half of corresponding period             |
| Big toe                               | 25                                       |
| Any other toe                         | 10                                       |
| Half a toe**                          | Half of corresponding period             |
| Hand***                               | 160                                      |
| Arm                                   | 208                                      |
| Foot                                  | 130                                      |
| Leg                                   | 190                                      |
| Eye                                   | 100                                      |
| Sense of hearing**** (both ears)      | 208                                      |
| Sense of hearing**** (one ear)        | 44                                       |
| Both ears                             | 84                                       |
| One ear                               | 40                                       |

\* Loss of use must be permanent.

\*\* Loss of first joint; if more than one joint is lost, loss is of entire member.

\*\*\* Compensation for loss of more than one finger shall not exceed compensation for hand.

\*\*\*\* Loss must be complete and permanent.

All other cases of disability not mentioned in the Act are classified as non-schedule injury. The compensation shall be 50% of the difference between the average weekly wages of the injured person and his subsequent earning capacity in the same or some other employment, payable while the partial disability lasts; but subject to reconsideration of the degree of impairment by the Workmen's Compensation Commission at the request of an interested party.<sup>228</sup> In case of an injury producing a serious disfigurement of the face or head, the Commission may, at the request of an interested party, determine and award such compensation as may seem fair and proper in view of the nature of the disfigurement, but which shall not exceed six thousand pesos.<sup>229</sup>

<sup>227</sup> Sec. 17.

<sup>228</sup> Sec. 18.

<sup>229</sup> *Ibid.*

(b) *Death benefits* shall be paid to the following in the order of priority set forth below. Those in a higher category exclude all others. In order that death benefits may accrue to the deceased employee's dependent, it must occur within two years from the date of the compensable illness or injury which caused the death.<sup>230</sup>

| <i>Dependent</i>                                  | <i>Degree of Dependency</i> | <i>Compensation</i>                                |
|---|-----------------------------|--|
| Widow or widower only                             |                             | 45 per cent  |
| Widow or widower with one or two children         |                             | 50 per cent  |
| Widow or widower with three or more children      |                             | 60 per cent  |
| One or two children only                          |                             | 40 per cent  |
| Three or more children                            |                             | 50 per cent  |
| Father, mother or grandparent                     | Total                       | 40 per cent  |
| Father and mother or two or more grandparents     | Total                       | Equal sharing of 40 per cent                       |
| Father, mother, or grandparent                    | Partial                     | 25 per cent  |
| More than one parent or grandparent               | Partial                     | Equal sharing of 25 per cent                       |
| Brother, sister or grandchild only                |                             | 25 per cent  |
| For each additional brother, sister or grandchild |                             | Additional 5 per cent up to maximum of 40 per cent |
| No dependents                                     |                             |  |
| Workmen's Compensation Fund                       |                             | P1,000.00  |

The Act prescribes the following requisites of dependency and period of compensation.<sup>231</sup>

<sup>230</sup> Sec. 8.

<sup>231</sup> Secs. 9 & 10.

| <i>Dependent</i>              | <i>Requisites</i>   | <i>Period of Compensation</i>                                  |
|-------------------------------|---|--|
| Widow                         | Living with deceased, or actually dependent, wholly or partly | Until death or re-marriage                                     |
| Widower                       | Incapable of supporting self and actually dependent           | During incapacity  |
| Son or daughter               | Under 18 and single or incapable of self-support and single   | Up to 18 years of age, or until marriage, or during incapacity |
| Parent or grandparent         | Actual dependency   | During actual dependency                                       |
| Grandchild, brother or sister | Under 18, or incapable of self-support and totally dependent  | Up to 18 years of age, or until able to support self           |

In all the above cases, the maximum period of compensation is 208 weeks (four years).

In the event of successive compensable events, the compensation provided for any of these is not exclusive of that provided in the others. However, the following rules shall be observed:

(1) In case partial disability sets in after a period of total disability, such period of total disability shall be deducted from the total period of two hundred and eight weeks and the amount of the compensation paid shall not in any case be in excess of the total sum of six thousand pesos.<sup>232</sup>

(2) In the event that the total disability begins after a period of partial disability, the amount of compensation due for the latter and for any other disability shall not exceed the maximum amount of six thousand pesos.<sup>233</sup>

(3) In the event of death occurring after a period of total or partial disability, the period of disability shall be deducted from the respective total periods established in section ten of the Act.<sup>234</sup>

*Additional compensation.* — The employer is required to pay an additional 50% of the compensation due as a penalty for tortious conduct in the following cases:

<sup>232</sup> Sec. 16.

<sup>233</sup> Sec. 14.

<sup>234</sup> Sec. 12.

(1) Where the injury or illness results from the failure of the employer to comply with any law, or order, rule or regulation of the Workmen's Compensation Commission; or of the Industrial Safety Bureau (now merged with the Bureau of Labor Standards);

(2) Where the employer has violated the provisions of Republic Act No. 679 as amended;

(3) Where the employer has failed to install and maintain safety appliances; and

(4) Where he has failed to take other precautions for the prevention of accident or occupational disease.<sup>235</sup>

*Medical Benefits.* — The employer or insurance carrier shall provide the employee with such services, appliances and supplies as (1) the nature of his disability and process of his recovery may require; and (2) will promote his early restoration to the maximum level of his physical capacity.<sup>236</sup>

*Services.* — Include attendance and treatment (medical, surgical, dental, hospital and nursing); proper fitting and training in the use of appliances; and the necessary training for purposes or rehabilitation.<sup>237</sup>

*Appliances.* — Include crutches, artificial members and other devices of the same kind and the replacements or repair of such artificial members or such devices, unless the replacement or repair is made necessary by the lack of proper care by the employee.<sup>238</sup>

*Supplies.* — Refer to medicines as well as medical, surgical and dental supplies. Medical benefits shall be provided immediately after an employee has suffered an injury or contracted sickness and during the subsequent period of disability.<sup>239</sup> Such benefits shall continue to be provided as long as the injury, illness or disease has not been cured or arrested.<sup>240</sup>

#### I. *Medicare*

The Philippine Medical Care Act of 1969,<sup>241</sup> seeks to provide gradually total medical care for the people by adopting a comprehensive and coordinated medical care program.<sup>242</sup> The Philippine

<sup>235</sup> Sec. 4-A.

<sup>236</sup> Sec. 13. See *Republic v. Workmen's Compensation Commission*, G.R. No. 29703, February 25, 1971, 37 SCRA 619 (1971).

<sup>237</sup> Sec. 13.

<sup>238</sup> Sec. 13.

<sup>239</sup> *Ibid.*

<sup>240</sup> *Itogon-Suyoc Mines v. Dulay*, G.R. No. 18974, September 30, 1963, 9 SCRA 199 (1963).

<sup>241</sup> Rep. Act No. 6111 (1969).

<sup>242</sup> Sec. 2.

Medical Care Plan consists of two basic programs: Program I — for the members of the Social Security System and the Government Service Insurance System; and Program II — for those not in either of the above systems. Coverage under the Act is automatic for any person compulsorily covered by the Social Security System (SSS) under Republic Act No. 1161 or by the Government Service Insurance System (GSIS) under Commonwealth Act No. 186, as amended, except members of the Armed Forces of the Philippines. The SSS and the GSIS shall set up their respective medical care funds and shall administer the same in accordance with the Philippine Medical Care Act and the policies and implementing rules and regulations of the Philippine Medical Care established under the Act. Within five years from the approval of the Act, the SSS and the GSIS shall respectively adopt a supplementary plan designed to take over the medical care needs of the legal dependents of their members from Program I for which the SSS and the GSIS may require additional premiums.<sup>243</sup>

The beneficiaries under Program I are entitled to the following benefits: (a) hospitalization expense benefit, (b) surgical expense benefit and (c) medical expense benefit.

*Hospitalization Expense Benefit.* — Under such rules or regulations as the SSS and the GSIS may prescribe, subject to approval by the Philippine Medical Care Commission, an employee who is confined in a hospital on account of sickness or bodily injury requiring hospitalization is entitled to confinement not exceeding 45 days annually to (a) room and board expense benefit for each day of confinement in a hospital not exceeding ₱12.00 a day and (b) special charge expense benefit, charges necessary for the care of the employee, such as laboratory examination fees, drugs, X-ray, and the like, not to exceed ₱150.00.<sup>244</sup>

*Surgical Expense Benefit.* — An employee who has undergone surgical operation in a hospital is entitled to a surgical expense benefit as may be determined by the SSS or GSIS, taking into account the nature and complexity of the procedure as follows:

(a) Surgeon's fees not to exceed ₱50 for a minor operation, ₱150 for a medium operation, and ₱350 for a major operation.

(b) Anesthesiologist's fees not to exceed ₱25 for a minor operation, ₱50 for a medium operation, and ₱150 for a major operation.

<sup>243</sup> Sec. 10.

<sup>244</sup> Sec. 13, as amended by Pres. Decree No. 273, dated August 14, 1973.

(c) Operating room fees not to exceed P25 for a minor operation, P40 for a medium operation, and P60 for a major operation.<sup>245</sup>

*Medical Expense Benefit.* — An employee who has received necessary professional medical treatment by a medical practitioner while confined is entitled to a medical expense benefit of P5.00 for each daily visit. The maximum benefit shall not, however, exceed P100 for a single period of confinement or for any one sickness or injury. Specialists who are certified by the Philippine Medical Association are entitled to collect P10.00 for each daily visit.<sup>246</sup>

The benefits provided under the Act are payable directly to the hospital, the medical practitioner and the retail drug store, if any, under such rules, regulations and/or conditions as the SSS or GSIS may prescribe, subject to the approval of the Commission. When the charges and fees agreed upon between the employee and the hospital or medical practitioner are in excess of the amount of the benefits provided for under the Act, the employee is liable only for the payment of that portion of such fees and charges as are in excess of the benefits payable under the Act.<sup>247</sup>

No employee shall be entitled to the benefits granted under the Act unless he shall have paid at least three monthly contributions during the last twelve months prior to the first day of the single period of confinement. In case of sickness in which surgery may be deferred at the election of the employee in such cases as herniotomy, hemorrhoidectomy, tonsillectomy, adenoidectomy and the like, the required monthly contributions paid immediately prior to the operation shall be at least for twelve consecutive monthly installments.

The benefits granted under the Act do not cover any expense for: (a) Cosmetic surgery or treatment; (b) Dental service, except major dental surgery or operation which needs hospitalization; (c) Optometric service or surgery; (d) Services related to the case of psychiatric illness or of diseases traceable to such illness; and (e) Services which are purely diagnostic.<sup>248</sup>

Under Program II, hospitalization, out-patient and domiciliary care are provided for. For purposes of hospitalization, private hospitals and clinics duly licensed by the Bureau of Medical Services

<sup>245</sup> Sec. 14, as amended by Pres. Decree No. 273, dated August 14, 1973.

<sup>246</sup> Sec. 15.

<sup>247</sup> Sec. 18.

<sup>248</sup> Sec. 20.

shall set aside at least twenty per cent (20%) of their total bed capacity as service beds to be subsidized at the rate of P10.00 per bed per day to be paid by the month not later than the tenth day of the following month, from any special fund appropriated for this purpose. These service beds shall remain such only when payments of these monthly subsidies do not become delinquent for more than three consecutive months.

Hospital loans shall be given priority by government financing institutions, especially in the rural areas where there are no existing government or private hospitals, at a maximum rate of six per cent (6%) *per annum* on a long term basis. Until such time as the Commission can otherwise provide therefor, the major aspect of out-patient and domiciliary care shall be carried out initially by existing government hospitals, rural health units and other government clinics.<sup>249</sup>

To be entitled to the benefits under Program II, every resident shall be registered and issued a medical care card upon payment to the respective provincial, city, or municipal treasurer concerned of the required yearly assessments to be fixed by the Commission. The yearly assessments shall be payable on or before January 20 of each year to be collected by the City or Municipal Treasurer concerned, and shall respectively be held by them in trust for the City Medical Care Council or the Municipal Medical Care Council, as agents of the latter.<sup>250</sup>

#### J. *Land Tenure*

The Code of Agrarian Reforms of the Philippines, formerly known as the Agricultural Land Reform Code, declares the following, among others, as the policy of the State:

(1) To establish cooperative-cultivatorship among those who live and work on the land as tillers, owner-cultivatorship and the economic family-size farm as the basis of Philippine agriculture and, as a consequence, divert landlord capital in agriculture to industrial development;

(2) To achieve a dignified existence for the small farmers free from pernicious institutional restraints and practices;

(3) To create a truly viable social and economic structure in agriculture conducive to greater productivity and higher farm incomes through a cooperative system of production, processing, marketing, distribution, credit, and services;

<sup>249</sup> Sec. 27.

<sup>250</sup> Sec. 28.

(4) To apply all labor laws equally and without discrimination to both industrial and agricultural wage earners;

(5) To provide a more vigorous and systematic land resettlement program and public land distribution;

(6) To make the small farmers more independent, self-reliant and responsible citizens, and a source of genuine strength in our democratic society;

(7) To give first priority to measures for the adequate and timely financing of the Agrarian Reform Program pursuant to House Joint Resolution Numbered Two, otherwise known as the Magna Carta of Social Justice and Economic Freedom; existing laws; executive and administrative orders; and rules and regulations to the contrary notwithstanding;

(8) To involve local governments in the implementation of the Agrarian Reform Program; and

(9) To evolve a system of land use and classification.<sup>251</sup>

Pursuant to this policy, the Code established:

(1) An agricultural leasehold system to replace all existing share tenancy systems in agriculture;

(2) A system of crediting rental as amortization payment on purchase price;

(3) A declaration of rights for agricultural labor;

(4) A machinery for the acquisition and equitable distribution of agricultural land;

(5) An institution (the Land Bank) to finance the acquisition and distribution of agricultural land;

(6) A machinery (the Agricultural Credit Administration) to extend credit and similar assistance to agricultural lessees, amortizing owners-cultivator, owners-cultivator, and cooperatives;

(7) A machinery (the Agricultural Productivity Commission) to provide marketing, management, and other technical assistance and/or services to agricultural lessees, amortizing owners-cultivator, owners-cultivator, and cooperatives;

(8) A machinery for cooperative development;

(9) A department (the Department of Agrarian Reforms) for formulating and implementing projects of agrarian reform;

(10) An expanded program of land capability survey, classification and registration;

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<sup>251</sup> Rep. Act No. 3844 (1964), as amended by Rep. Act No. 6389 (1971) and Pres. Decree No. 251, dated July 27, 1973, sec. 2.

(11) A judicial system (the Court of Agrarian Relations) to decide issues arising under the Code and other related laws and regulations; and

(12) A machinery (the Office of Agrarian Counsel) to provide legal assistance to agricultural lessees, amortizing owners-cultivator and owners-cultivator.<sup>252</sup>

Agricultural share tenancy throughout the country has been declared contrary to public policy and automatically converted to agricultural leasehold.<sup>253</sup>

Shortly after the declaration of martial law, the President proclaimed the entire country a land reform area<sup>254</sup> and decreed the emancipation of all tenant farmers of private agricultural lands primarily devoted to rice and corn under a system of share-crop or lease-tenancy whether classified as landed estate or not. The tenant farmer is deemed owner of a portion of land constituting a family-size farm of five hectares if not irrigated and three hectares if irrigated. In all cases, the landowner may retain an area of not more than seven hectares if he is cultivating such area or will cultivate it.<sup>255</sup> With respect to agricultural lands of the public domain it has been made an essential condition in every application for or grant thereof under the Public Land Act<sup>256</sup> that the applicant or his transferee shall enter and work upon, improve and cultivate the land himself in the periods prescribed for the various modes of concession under the said law. The employment or use of share tenants for purposes of complying with the requirements of the Public Land Act regarding entry, occupation, improvement or cultivation constitutes a ground for the denial of the application, cancellation of the grant and forfeiture of improvements on the land in favor of the government.<sup>257</sup>

The land reform program was conceived and adopted without the population problem in mind, but principally to contain agrarian unrest. It would seem that requiring the farmer-tiller to cultivate personally a family-size farm, where present methods of farming are not mechanized could be an effective incentive for the raising of large families. Considering that a majority of the population is rural, this may, in the long run, hinder the population program.

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<sup>252</sup> Sec. 3.

<sup>253</sup> Sec. 4, 1st par.

<sup>254</sup> Pres. Decree No. 2 dated September 26, 1972.

<sup>255</sup> Pres. Decree No. 27, dated October 21, 1972.

<sup>256</sup> Com. Act No. 141 (1936).

<sup>257</sup> Pres. Decree No. 152, dated March 13, 1973.

### K. Zoning and Housing

The National Planning Commission, created by Executive Order No. 367 (1950) from several predecessor agencies, has been charged with the responsibility of urban and land use planning. It is empowered to prepare and adopt general plans, zoning regulations and subdivision regulations, all of which were to be effective unless overruled by a  $\frac{3}{4}$  vote of the appropriate local legislative body. In 1949, the Commission promulgated a set of model subdivision regulations to be adopted by local governments.<sup>258</sup> Approval by the National Director of Planning of a subdivision plot is made a condition for the recording of a subdivision plot in the office of the Register of Deeds and for the sale of subdivision lots.<sup>259</sup> The power to enact zoning and subdivision regulations has now been expressly conferred by the Local Autonomy Act of 1959<sup>260</sup> on municipalities and cities. Formerly, zoning ordinances adopted by local governments were upheld by the Supreme Court in several cases.<sup>261</sup> They were sustained for being within the grant of power to local governments to provide for the health, sanitation, abatement of nuisance and the general welfare. These cases in the main dealt with ordinances regulating obnoxious industrial uses in specified areas. Several Supreme Court decisions have held that regulations adopted by the Commission required affirmative enactment by local governments through ordinance; other rulings are to the effect that such regulations are void as an unconstitutional delegation of legislative power.<sup>262</sup> The Commission has prepared development plans for 194 municipalities, but only 60 have adopted these. Fifty-nine municipalities out of 1,134 have enacted subdivision regulations but none have zoning ordinances. Only 12 cities out of 65 have subdivision regulations while 8 have zoning ordinances.<sup>263</sup> The Commission has become an advisory agency for planning local regulations for the local governments. It has been noted that the latter do not often adopt plans prepared by the Commission nor implement them.<sup>264</sup>

<sup>258</sup> 45 O.G. 2417 (March, 1946).

<sup>259</sup> Ex. Order No. 986, s. 1946.

<sup>260</sup> Rep. Act No. 2264 (1959).

<sup>261</sup> *People v. Cruz*, 54 Phil. 24 (1929); *Seng Kee & Co. v. Earnshaw*, 56 Phil. 204 (1931); *Tan Chat v. Mun. of Iloilo*, 60 Phil. 465 (1934); *People v. de Guzman*, 90 Phil. 132 (1951).

<sup>262</sup> *University of the East v. City of Manila*, 96 Phil. 316 (1954), *Unson v. Lacson*, 100 Phil. 695 (1957), *Javillonar v. National Planning Commission*, 100 Phil. 485 (1956), *Manzano v. Lacson*, G.R. No. 11051, June 30, 1958, 55 O.G. 4443, (1958).

<sup>263</sup> See Magavern, *Physical Planning Law in the Philippines: The Need for Legislation*, 43 PHIL. L.J. 571 (1968).

<sup>264</sup> *Ibid.* at 585.

The People's Homesite and Housing Corporation is the principal national housing agency. It was created by Executive Order in 1947<sup>265</sup> by consolidating the National Housing Commission and the People's Homesite Corporation. The People's Homesite Corporation was organized by the National Development Corporation, a government controlled corporation, to promote home building and home ownership, and to establish model communities and cooperative associations. The National Housing Corporation, on the other hand, was empowered to expropriate and redistribute land, to build and provide housing and to regulate building and sanitary conditions in slum areas.<sup>266</sup> Under Republic Act No. 222, it was granted the power to guarantee home mortgages within certain limits. Later, the Home Financing Commission was, however, created to perform this function. Under the Land Reform Code of 1963 (now Code of Agrarian Reforms), the expropriation of urban lands has been transferred to the Philippine Homesite and Housing Corporation.<sup>267</sup>

The Home Financing Commission was established to operate a mortgage insurance program,<sup>268</sup> and has insured mortgages on about 4,000 houses. Among its functions are to promote housing by the aided self-help method whereby families with some outside aid build their own houses with their own labor; to provide technical guidance to such families; to own and let out at nominal rental any simple equipment or tools needed for self-building of houses; to insure loans to such families on first liens on house and land and with such other security and conditions as the Commission may determine providing at least for ultimate recovery of principals; and to do such other activities as are relevant or significant to such a program of aided self-help for housing.<sup>269</sup> Several government agencies, such as the Government Service Insurance System (GSIS), Social Security System (SSS), and the Development Bank of the Philippines (DBP) are also authorized to make mortgage loans, but these loans have principally benefited the wealthier sectors of the population. The total of government financed housing has been 70,000 units.<sup>270</sup>

<sup>265</sup> Ex. Order No. 93 (1947).

<sup>266</sup> Com. Act No. 648 (1941).

<sup>267</sup> Rep. Act No. 3844 (1963), sec. 73.

<sup>268</sup> Rep. Act No. 580 (1950) as amended by Rep. Act No. 1557 (1956).

<sup>269</sup> Sec. 4(e).

<sup>270</sup> De Vera, *The Philippine Housing Situation* (1967) cited in Magavern, *op. cit.*, *supra*, note 244 at 587.

## VI. GENERAL OBSERVATIONS

Family planning activities in the Philippines have been legitimized and considerably expanded with the enactment of two important pieces of legislation — Republic Act No. 4729, which regulates the sale and dispensation of contraceptives in the Philippines, and Republic Act No. 6365, as revised by Presidential Decree No. 79, creating the Commission on Population. This latter law authorizes the Commission to undertake either directly or through other agencies or instrumentalities the provision of education and services to couples wishing to limit their child-bearing activities. Other Presidential Decrees dealing with maternity leaves, the exemption from income taxation only up to the fourth dependent, etc. have reinforced the current population program. The enactment of these laws indicates that the policy of the Government toward family planning activities has radically changed from one of indifference, or in some aspects, prohibition, to outright encouragement. Surveys conducted by the Population Institute of the University of the Philippines show that in various parts of the Philippines, women desire moderate-sized families, and would not want to have more children than they already have. They also approve in general of the idea of family planning and are interested in learning more. In the Greater Manila Area, where the most urbanized sector of the population lives, it appears that even without an information campaign, a sizeable number of women will avail themselves of family planning services when they are easily accessible. It has also been reported that the women overwhelmingly selected contraceptive methods which are highly effective.<sup>271</sup> Surprisingly, religious beliefs did not prevent a majority of Catholics in the survey from selecting the oral pill or IUD as a method of contraception.<sup>272</sup> Whether or not the religious element would adversely affect family planning activities among those in the rural areas, who constitute the bulk of the population, has not been conclusively established. An early substantial fertility decline, perhaps even with the present government support of family planning activities, is not expected. Even if there should be a fertility reduction within the next few years, the outlook is pessimistic as to the alleviation of the problems ensuing from the present high population growth.<sup>273</sup> In 1966, the University of the Philippines Law Center submitted to the Congress a proposed Penal

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<sup>271</sup> Concepcion, *Fertility Decline in the 70's in PHILIPPINE POPULATION IN THE SEVENTIES*, 393.

<sup>272</sup> *Ibid.* at 392.

<sup>273</sup> *Ibid.* at 395.

Code of the Philippines to supersede the present Revised Penal Code. It was filed in the House of Representatives as House Bill No. 16370 on May 3, 1967; however, it was not acted upon by the House. No changes were proposed on the Articles on infanticide, the different classes of abortion, and mutilation. In 1972, the House approved H. No. 1855, a bill which sought to replace the Revised Penal Code with a new body of criminal laws, to be known as the Code of Crimes. Although in Article 159, abortion committed to save the life of the mother or to remove a grave and imminent danger to her health is expressly not penalized, yet, infanticide and the different kinds of abortion before mentioned in the old Code with a few other additions are punished.<sup>274</sup> In fact the prescription, selling and advertising of abortive drugs, substances, objects, instruments, or methods are likewise punished.<sup>275</sup>

Even under the present Penal Code, the view has been expressed that therapeutic abortion (i.e., interruption of pregnancy by a surgeon to save the life or preserve the health of the mother) is justified under paragraph 4 of Article 11 of the Revised Penal Code which provides:

ART. 11. *Justifying circumstances.* — The following do not incur any criminal liability:

x x x x x

4. 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 sought 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.

On the other hand, the contrary opinion has also been advanced that in the light of present medical knowledge there is hardly any situation where this justifying circumstance (with reference to therapeutic abortion) can apply.<sup>276</sup> A multi-faceted long-range program, including the enactment of laws which would not only remove existing legal obstacles to a more vigorous prosecution of family planning activities but would also encourage a small-size family, could provide a lasting solution to the problems of rapid population growth.

<sup>274</sup> See Arts. 153-158.

<sup>275</sup> Art. 160.

<sup>276</sup> ZARRAGA, LEGAL MEDICINE 100. (1971).

## VII. POSSIBLE IMPROVEMENTS IN LAWS AFFECTING POPULATION

The laws on family planning in the Philippines are on the whole strongly pro-natalist. Recent legislative enactments regulating the use and dispensation of contraceptives and the establishment of a population commission which would undertake family planning services are at most stop-gap measures designed to cope with the problem of rapid population growth. In the consideration of law as a means of social control for the population problem, what is needed in the Philippines is a systematic examination of the laws bearing on family planning and population control, with the end in view of producing a coherent and consistent public policy on the subject. The subjects of marriage, the establishment of drug companies exclusively devoted to the production of contraceptive drugs and devices, social security, medicare, housing and child care and allowances, have not been fully explored and previously considered possible areas of reform. Before this task is undertaken, it is imperative that accurate vital statistics should be on hand. It would seem that because of the predominance of Catholics among the population, public opinion would be heavily against either the express legalization of abortion or sterilization, two practices which, as the experience of Japan shows, were responsible for a rapid decline in the birth rate. Sterilization operations, however, have been ruled by the Secretary of Justice as not constituting the crime of mutilation.<sup>277</sup> As the laws on contraception have been liberalized both by legislation and administrative interpretation, family planning services and information programs have been prosecuted with more vigor. The experience derived from this activity would be enlightening in the determination of what specific laws could be enacted for law reform. Except for those dealing with abortion or sterilization relevant legal provisions which have become obstacles to a successful family planning program could be repealed. New provisions which would support the program could be proposed for enactment. It is essential that, with the necessary supporting sociological and economic data, a systematic effort be made toward legal reform in the field of family planning and population control.

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<sup>277</sup> Opinion No. 131, dated September 17, 1973.