

LEGAL ASPECTS OF WORLD POPULATION: SOUTHEAST ASIA

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INTRODUCTORY

The legal component of the subject of population is the focus of major studies in parallel country projects throughout the world.¹ Laws bearing directly or indirectly on fertility behavior are compiled, analyzed, and reviewed; their sociological implications considered and proposals for change or new legislation are formulated.

Among Southeast Asian countries involved in this activity are Indonesia, Malaysia, Singapore, Thailand and the Philippines. The exchange of ideas and experiences among them has been continuous and mutually beneficial. While this paper will be on law and population in these countries, it will deal principally with the Philippines.

These countries have certain characteristics in common. The government in each has adopted a national policy to reduce natural increase in population,² but except for Singapore which cut down its crude rate of increase from 3.5% in 1957 to 1.3% in 1975³ the annual percentage of natural increase in the other countries continues to be high. Thus, according to 1977 data this rate is as follows: Indonesia — 2.4%, Malaysia — 2.8%, Philippines — 2.7% and Thailand — 2.4%.⁴

All these countries except Thailand were former colonies of Western powers. All of them have written constitutions.⁵ In all of them laws

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¹ By the end of 1976 there were 27 country studies on population and law following the outline and classification plan of the Fletcher School of Law and Diplomacy, Population and Law Programme, administered jointly by Tufts University and Harvard. Funding comes from the UNFPA and other sources.

² Indonesia adopted her policy in 1968. Malaysia in 1966, the Philippines in 1970, Singapore in 1965 and Thailand in 1970. Stamper, *Population Policy in Development Planning: A Study of Seventy Less Developed Countries*, REPORTS ON POPULATION/FAMILY PLANNING, 17, 19, 21 (May, 1973).

³ POPULATION PROFILES I: SINGAPORE, 13 (UNFPA). See also HALL, LAW AND POPULATION GROWTH IN SINGAPORE (1973), Law and Population Monograph Series, No. 9

⁴ 1977 World Population Data Sheet of the Population Reference Bureau, Inc., Washington, D.C.

⁵ These are an interesting variety. Thailand's promulgated in October 1976 replaces the 1974 constitution. It is "enacted and promulgated by His Majesty the King." (Per copies released by the Thai Embassy in Manila of the Constitu-

of foreign derivation have been introduced and together with customary usages form part of the legal system. An example is the Philippines where Spain implanted the civil law system, the United States introduced the common law, Islamic law came in among the settlers in the South; the influence of the canon law of the Roman Catholic church is brought to bear on legislation, and the customs and usages of ethnic groups are judicially applied in appropriate cases.⁶ Out of these sources come the laws affecting population, an engrossing though complex area of investigation.

Law enters the study of population at various levels — the international, the regional, the national, and the local.

From international conferences and meetings of agencies of the United Nations Organization has emerged the concept of family planning as a basic

tion published in 93 Government Gazette, part 135, Special issue [1976].) It provides for a governmental structure during the four year period of restoration, constitutional amendments are contemplated as the process of restoration advances.

The Philippine Constitution adopted in 1973 superseded that of 1935 which was patterned after the American presidential type of government. It introduces features of parliamentarism. However, since 1972 when martial law was proclaimed, executive and legislative powers are exercised by the President. As amended in 1976, it incorporates innovations in local government. A bill of rights as well as of duties and obligations of citizens are provided.

The Indonesian "mini" constitution has only 37 articles which contains fundamental rules and broad guidelines of instructions to the Central Government and to the other authorities of the state for conducting the life of the State and providing social well-being. Promulgated in June 22, 1945, it was suspended by the Provisional Constitution of August 15, 1950 and restored on July 5, 1959. The Constitution declares Indonesia a unitary state and a republic. Among rights constitutionally guaranteed are: right to work and to expect a reasonable standard of living, freedom of assembly, speech and press, to form unions, religious freedom and right to education.

Malaysia which is a federation of 13 states is a constitutional monarchy, its head of state is the *Yang Dipertuan Agung*, a sultan elected for five years by sultans, who has to act in accordance with government advice. It has a bicameral legislature, operates as a parliamentary system and has an independent federal judiciary. Fundamental liberties of the individual are guaranteed in the constitution' (Tun Mohamed Suffian Bin Hashim, *An Introduction to the Constitution of Malaysia*).

There is as yet no single composite document which can be said to be the source of Singapore's constitution. The basic constitutional documents are: The Constitution of Singapore (including amendments made after Singapore's separation); The Republic of Singapore Independence Act 1965 (No. 9 of 1965); The Constitution of Malaysia made applicable by the Republic of Singapore Independence Act, 1965 as to certain provisions as those relating to fundamental liberties as well as emergency powers.

Although the legislature is unicameral, there is a Presidential Council for Minority Rights which, through part of Parliament has an advisory relationship with it. The Constitution is extremely flexible in that amendments can be easily made, the only exception being Part IIB (Protection of the Sovereignty of the Republic of Singapore) to amend which requires support of not less than two-thirds of the total number of votes cast by the electors at a national referendum

⁶ CIVIL CODE, Arts 9-12

human right — to determine freely and responsibly the number and spacing of children and a corollary right to education and information in this respect.⁷

The 1973 Constitution of the Philippines broke new ground by incorporating a population policy stating explicitly: "It shall be the responsibility of the State to achieve and maintain population levels most conducive to the national welfare."⁸ A similar provision was subsequently included in the 1974 Constitution of Thailand, thus:

The State should have a demographic policy appropriate for natural resources, economic and social conditions and technological progress for the purpose of economic and social development and for the security of the State.⁹

Even without provisions such as these, measures aimed at maintaining population at optimum levels should be feasible under a constitutional system which explicitly guarantees individual freedoms. Studies on law and population reveal this. In any event the competing values that have to be placed on the balance are individual rights against state power exercised to promote the common good. Laws bearing on population affect individual decisions to have or not to have children and the scope of state power to regulate that decision. This consideration underlies examination in depth of laws affecting fertility behavior.

Before the phenomenal increase in world population became a subject of universal concern, restrictive laws on contraception, sterilization and abortion were accepted features of legal systems. In Southeast Asian countries they were incorporated in legislation usually introduced by colonial powers. Developments of the last decade or so have seen the removal or liberalization of these restrictions.

⁷ UNITED NATIONS, INTERNATIONAL CONFERENCE ON HUMAN RIGHTS, Teheran, 1968, Res. XVIII; Declaration on Social Progress and Development, Gen. Assembly Res. 2542 (XXIV), art. 22(b), December 11, 1969, U.N. GA.O.R. Supp. 30 at 49, 52 A/7639 (1969); Gen. Assembly Res. 2716 (XXV), December 15, 1970; Gen. Assembly Res. 3275 (XXIX), December 10, 1974, World Population Plan of Action, adopted Bucharest, August 30, 1974, art. 39; Declaration of Mexico on the Equality of Women and Their Contribution to Development and Peace, 1975, par. 12. (E/5725, 11 July 1975).

Luke T. Lee gives a composite list of fourteen rights embodied in many human rights instruments adopted by the United Nations. (Human Rights and Population, Law and Population Book Series No. 5 [1973].)

⁸ Art. XV, sec. 10.

⁹ Sec. 86. The new constitution proclaimed in October 1976, replacing the 1974 charter does not contain the provision on population

POPULATION AND LAW: SINGAPORE

In Singapore where efforts have been so integrated that the crude rate of natural increase in population has been drastically brought down, the success story of the program can be attributed in no small degree to the positive legal measures taken. The Singapore Family Planning and Population Board under the Ministry of Health was created in 1966 and given sole responsibility for all family planning and population control activities. Existing laws were reviewed and new ones adopted not only to make contraception available, but also to liberalize the conditions for obtaining abortion and voluntary sterilization.

A system of legal incentives and disincentives to support the national population program was also put in operation and periodically improved. Thus, no married working woman can have paid maternity leave for the delivery of her third or subsequent child; accouchement fees in government maternity hospitals increase with every subsequent child; income tax deduction for children decreases after the first two and is no longer available beyond four; small families share the same priority as large ones for housing privileges, and children who are of the fourth birth order and above have a lower priority in the choice of primary schools.¹⁰

Laws, though important, cannot accomplish much if people do not accept them. The circumstances of Singapore's location, its limited land area and its population growth rate instilled a sense of urgency which an administration committed to bringing down population growth rates effectively communicated to the people. The extent to which the people of Singapore have accepted the idea of a small family can in a way be gauged by the late marriages (men marry at about age 28, women between 24 and 26) and the low birth rates. However, even this success story is not complete for the population structure rests on a base of young people — 40% under 15 years of age. With 6% in the age 60 or older group, the resulting dependency level on the working population (15-59 years old) is 87 per 100. The point is made that while this dependency ratio may serve as an incentive for family planning, over the next 10 to 15 years it is inevitable that the young will "find themselves in one another's arms and the consequent results will be a hurdle to be leapt with some trepidations."

The governments of Indonesia, Malaysia, Thailand and the Philippines similarly follow population policies, but their approach to issues of contraception, abortion, and sterilization has not been as forthright as Singapore's nor have incentive and disincentive schemes been as decisive.

¹⁰ POPULATION PROFILES I, *supra*, note 1.

MALAYSIA

Thus in Malaysia neither the importation or transmission of contraceptives through the mails is restricted by law, pills and condoms purchased in the commercial sector are not subject to import tax, condoms are freely sold in stores, barber shops and by news vendors but oral contraceptives have to be prescribed and dispensed by a pharmacist. Commercial advertising of contraceptives is limited to the medical profession.¹¹

Abortion is generally forbidden under the Penal Code.¹² No definite official policy exists as to sterilization but a circular of the Ministry of Health issued in 1959 cites that the only circumstances in which sterilization can be performed are those in which "the operator honestly believes upon reasonable ground that an operation is necessary to preserve the life of, or to avert serious injury to, the physical or mental health of the patient."¹³ The Muslim law does not raise any objection against sterilization provided it is done on valid grounds with the full consent of both the husband.¹⁴

INDONESIA

In Indonesia, restrictive provisions of the Penal Code introduced by the Dutch on contraception and disseminating information about it remain in the statute books although they are not enforced and their revision has been recommended to conform to the official population policy. Abortion is absolutely prohibited under the same Code but it is reported that physicians performing abortion because of medical indications are not prosecuted.¹⁵ There is no legislation directly applicable to voluntary sterilization; but since Indonesia is a Moslem country, Islamic law may directly apply.¹⁶

¹¹ Peng and Preble, *Malaysia, COUNTRY PROFILES*; A Publication of the Population Council, 5 (August, 1975).

¹² Sec. 312. However, abortion is permitted if performed in good faith to save the life of the mother. (LEGAL HANDBOOK OF CONTRACEPTION, VOLUNTARY STERILIZATION AND ABORTION, prepared by Law and Population Programme, Fletcher School of Law and Diplomacy, Tufts University, Wash., D.C., AID., [1976].)

¹³ Circular MH Conf. 401/7 of 25 July 1959 as cited by Rahman, *Policy Outlook in Malaysia for Sterilization and Post-Conception Control of Fertility*, in *STERILIZATION AND ABORTION PROCEDURE*; Proceedings of the First Meeting of the IGCC Expert Group Working Committee on Sterilization and Abortion, held in Penang, Malaysia, 21 (1973).

¹⁴ *Ibid.*, p. 23.

¹⁵ *INDONESIAN PENAL CODE OF JANUARY 1918*, sec. 283, 534 quoted in *INDONESIAN PLANNED PARENTHOOD ASSOCIATION, LEGAL ASPECTS OF FAMILY PLANNING IN INDONESIA*, 7 (1971); *PENAL CODE*, Arts. 299, 535, 346-349, *ibid* at 11-12.

¹⁶ *LEGAL HANDBOOK ON CONTRACEPTION*, *op. cit.*, *supra*, note 12

THAILAND

In Thailand contraceptive drugs are classified as dangerous drugs. They are labeled as such, sold only on prescription by authorized persons and specially stored,¹⁷ although in fact pills are available without prescription and the Ministry of Public Health has ruled that auxiliary midwives may prescribe pills. Abortion while a crime is allowed when performed for medical reasons by a physician and where pregnancy is a result of a sexual crime. Sterilization on males or females may be done by physicians. Under the Medical Profession Act the Ministry of Health could delegate this function to paramedicals.¹⁸

Other laws indirectly affecting population cut across a broad area of human relations. These include marriage, the family, succession employment, education, health, politics, religion, ethnic origin, and status of women.¹⁹ The measures adopted vary according to the culture, needs and other factors obtaining in the various countries.

PHILIPPINES

The legal component came into the systematic consideration of population-related problems in the Philippines when in 1972 in connection with the same Law and Population Programme which brought about studies in other countries, the UNFPA funded a similar project in the University of the Philippines Law Center. Laws bearing on population were not only compiled and reviewed, but changes were recommended and enactment of new legislation proposed.

Innovations in the Philippine law and population efforts are the introduction of a model city project²⁰ and the institution of a course in the

¹⁷ Phijaisakdi Harayankura, Country Report prepared for IPPF-ESEAOR, Regional Panel on Law and Planned Parenthood, Manila, 1976. Mimeographed.

¹⁸ *Op. cit.*, *supra*, note 12.

¹⁹ In Indonesia the enactment of Marriage Law No. 1 on January 2, 1974 improved the woman's position in marriage by requiring the consent of the future spouses, by stipulating the grounds for divorce, by imposing alimony on husband, by requiring consent of the wife or wives in case the husband wants to take more than one wife and by giving both husband and wife the legal capacity to dispose of their joint property, with the agreement of both parties. (Nani Soewondo, *The Indonesian Marriage Law and Its Implementing Regulation*, January 4, 1977. Mimeographed.)

In Thailand, it is of special significance that under the Law of Husband and Wife, the wife has many more grounds for judicial divorce than the husband. The Civil Code now makes registration as an essential requirement to the validity of a marriage. (Dharmasakti, *Status of Women in Thailand* [1972].)

The Philippine development will be given later treatment.

²⁰ The Cagayan de Oro Model City Project is described by Reuben B. Canoy's background paper in the Turis Conference entitled, *The Local Government as a Direct Participant in Population Activities* (THE SYMPOSIUM ON LAW AND RECOM

law curriculum of the state university law school which incorporates population dynamics with the legal issues on population.²¹ An awareness of the pressures arising from increased population is an integral part of development planning and a determined effort is made at all levels to promote family planning through non-coercive methods.

An official population policy was introduced at the initiative of the President.²² It was not until 1971 that the legislature enacted a statute and appropriated public funds to carry out a national population policy.²³ After the proclamation of martial law, implementation of the policy was accelerated. Among the first issuances of the President were those addressed to the problem of containing the too rapidly increasing birth rate.²⁴ It was stressed that the social and economic uplift envisioned in the program of reform could not keep pace with the increase in population, the dwindling of natural resources and the steady deterioration of the environment.

The clearly enunciated Philippine policy is to encourage all persons to adopt safe and effective means of planning and realizing desired family size and to make available all acceptable methods of contraception. The emphases are on the voluntary character of the individual decision to space, limit, or prevent pregnancies; the total effort of public and private sectors in checking the rapid population growth, and specific provision against abortion.

Restrictive provisions of law as they affect fertility behavior have been eased not only by actual amendment or repeal through the enactment of subsequent measures but by liberal interpretation. Thus, the Secretary of Justice, on an inquiry by the Population Commission, expressed the view²⁵ that surgical sterilization for either male or female who voluntarily ask for

RECOMMENDATIONS, 177-206 (UNFPA, 1975)). The Philippines has since taken positive steps to make local governments from the grass roots level (*barangays*) assume more responsibility for the population program. The Cagayan de Oro project is a model other cities seek to replicate.

²¹ Offered during the first semester every schoolyear, the course is open to graduate and undergraduate students of law. Students from other disciplines are accepted depending on area of interest and the limitations of class size.

²² President Ferdinand E. Marcos joined seventeen other heads of state in 1967 to sign a declaration originally articulated on Human Rights Day the previous year by 12 heads of state and presented to U.N. Secretary General U Thant. This called attention to the too rapid global population growth, their grave implications and how "the human aspirations common to men everywhere, to live a better life is being frustrated and jeopardized." In 1969, Executive Order No. 171 created a Population Commission.

²³ Congress of the Philippines converted this into a statutory body to give it permanency by the enactment of Republic Act No. 6365, on August 16, 1971.

²⁴ Pres. Decree Nos. 79 (1972), 69 (1972), 148 (1973), 166 (1973), Letters of Instruction Nos. 47, 47-A (1972), General Order No. 18 (1972).

²⁵ Opinion No. 131 dated Sept. 17, 1973.

it, does not fall within the Penal Code provision penalizing mutilation.²⁶ Although the Supreme Court has the final word in the interpretation of statutes, the official policy on voluntary sterilization was later clarified with the adoption of a presidential decree authorizing the inclusion of hospitalization expense for this purpose as part of medical care benefits.²⁷ In the meantime the Population Commission has formulated guidelines for performance upon request of vasectomy or tubal ligation.²⁸

Past laws restricted the importation, distribution, use, dispensation, or advertisement of contraceptive drugs or contraceptive devices as well as abortifacients. Restrictions on contraception have been removed and opinions by the Secretary of Justice on the Revised Population Act are to the effect that it has impliedly repealed restrictive measures.²⁹

Abortion continues to be strictly prohibited. Intentional abortion draws a range of serious penalties.³⁰ This is reinforced by the Child and Youth Welfare Code.³¹

The prohibitive laws notwithstanding, induced abortion is practiced. Studies beginning to be made furnish empirical data on the incidence of induced abortions.³² However, there are no reported decisions of the

²⁶ Imprisonment ranging from 12 years and 1 day to 30 years under Art. 262. REV. PEN. CODE.

²⁷ Pres. Decree No. 1013 (1977) applicable for hospitalization benefits of employees in government or private employment.

²⁸ The law and population project of the U.P. Law Center has urged that "the unvitiated consent of individuals who desire to be sterilized should be assured and protected by law" and proposes carefully formulated provisions regulating voluntary sterilization. U.P. LAW CENTER LAW AND POPULATION PROJECT, LAW POPULATION IN THE PHILIPPINES; A COUNTRY MONOGRAPH 27, 190-191 (1975).

²⁹ Opinion No. 82 dated June 6, 1975. Those on abortifacients remain.

³⁰ Under the Penal Code, the most severe is *reclusion temporal* which is imprisonment from 12 years and 1 day to 20 years; the lightest is *prision correccional* in its medium and maximum periods which is imprisonment ranging from 2 years 4 months and 1 day to 16 years.

³¹ Pres. Decree No. 603 (1974), sec. 6.

³² A case study of induced abortion in five rural villages (*barrios*) with an estimated population of 5,000 was made. Of the 676 married women, aged 15-49 interviewed, 115 or 17% had gone through at least one induced abortion.

The total number of pregnancies among these respondents was 3,179; 91.5% of these pregnancies resulted in live births, 4.7% in induced abortion and 3.8% in Juan M. Flavier of the International Institute of Rural Reconstruction of a study entitled "A Case Study on Induced Abortion in Rural Villages of Cavite" presented at the Law and Family Planning/Population Control Live-In Seminar, FPP, March 10th).

Another pregnancy termination study is by Dr. Amanda V. Valenzuela and Irma D. Jara which is a follow-up of admissions to the obstetrics ward of two hospitals, one in the City of Manila and the other in Cabanatuan. Of the 1,467 admissions for abortion 335 or 22.8% were induced (as determined by interviews, usually started outside the hospital, the hospitalizations becoming necessary because of complications).

Supreme Court³³ or the Court of Appeals on the crime of intentional abortion, nor any statistics on criminal prosecutions.

Laws bearing on population cover a much wider field than these penal provisions. It has become apparent that much more important than liberalizing measures directly affecting fertility behavior, disseminating information about the desirability of the small family, and making available the means to space and limit the number of children, is the bringing about of the environment for their acceptance. Towards this end population education is required in schools at all levels, provision for legal incentives and disincentives are made, all sectors of the nation are impressed into the dissemination and implementation of the population policy. Related to these are the steps being taken to achieve for women equality of status which the constitution guarantees them.

Previous statutory provisions, pro-natalist in character, have been amended to conform with the policy to discourage large families. The income tax deduction scheme has been changed, limiting to four the number of dependents who can be claimed for exemption purposes;³⁴ paid maternity leaves have likewise been reduced to the fourth delivery.³⁵ The Labor Code directs the establishment of family planning incentive bonus plans and programs in industry.³⁶ An original approach is that adopted by a rural bank which lowers interest on loans for family planning acceptors.³⁷

³³ In only one Supreme Court decision, *Geluz v. Court of Appeals*, G.R. No. L-16439, July 21, 1961, 2 SCRA 801 (1961) has intentional abortion ever been considered by the highest court. Even this was an action for damages against a physician, not a criminal prosecution.

³⁴ Pres. Decree No. 69 (1972) amending sec. 23 of the National Internal Revenue Code.

³⁵ Provisions of the Woman and Child Labor Law were amended by Pres. Decree No. 148, March 13, 1973 and subsequently embodied in the Labor Code, Pres. Decree No. 442 (1974). But the Secretary of Justice has opined that the four deliveries limitation is applicable only to married women privately employed, thus not covering the largest single group of women employees who are in the government service or in government-owned or controlled corporations. (See Opinion No. 141, dated October 3, 1973.)

³⁶ Among the incentive schemes are cash bonuses, leaves with pay, T-shirts, scholarships, grocery items, sacks of rice, opportunity for promotion (1 LINK 1 [July-Sept., 1967]).

³⁷ The Rural Bank of Mexico, Pampanga extends Integrated Agricultural Financing Loans to farmers and gives lower interest of 10% instead of 12% rates to borrowers who are acceptors of the family planning and nutrition programs provided they (1) practice family planning (any method is acceptable as long as no pregnancy occurs within 1 year during which the loan is outstanding); (2) motivate another couple to have a pregnant free year; (3) plant nutritious vegetables in the home lot; (4) improve sanitation of their home environment or build a sanitary toilet; (5) repay the loan on time. The 2% rebate is then placed in the borrowers savings account which can be used later for the children's education, medical expenses and other such needs. Other incentives include the

The Population Act as revised gives the Population Commission more power.³⁸ Letters of instruction issued to various departments, agencies and offices of government, direct them to carry out the policy.³⁹ General Order No. 18 issued on Dec. 18, 1972 enjoins all citizens of the Philippines, all universities, colleges and schools, government offices, mass media, civic and voluntary organizations, religious organizations of all creeds, and business and industrial enterprises to promote the concept of family welfare, responsible parenthood and family planning. The latest directive relates to grass roots participation in the effort by enjoining the barangays to come in more actively.⁴⁰

Until laws affecting Filipino women became the subject of close scrutiny⁴¹ it was generally believed that they enjoyed a status equal to, if not even more advantage, than that of the men. But that this is not so has now become clear. The law and population interest has also established the nexus between status of women and the population problem. Not only do women bear children and assume a heavy burden of rearing them, but they also account for about half of the world's population. Decisions relative to family size is influenced by attitudes resulting from the subordinate status of women. In the Philippines efforts at changing this are going on.⁴² Some progress has been achieved.⁴³

extension of free family planning services as well as the shouldering of the transportation expenses of the acceptor who undergoes sterilization in the provincial hospital or in Manila. So far, five rural banks had joined this movement. Baun, Graduate Paper, Law and Population Seminar (1977).

³⁸ Pres. Decree No. 79 (1972), amended by Pres. Decree No. 803 (1975).

³⁹ *Supra*, note 20. In turn, these departments issue rules and regulations to take care of the details. Examples are Department of Education and Culture Memorandum Nos. 29, s. 1973, 39, s. 1974; Department of Labor Order Nos. 7, s. 1973, 9, s. 1975; Department of Public Information Memorandum Circular No. 45, s. 1973.

⁴⁰ Letter of Instruction No. 436, dated July 20, 1976.

⁴¹ Cortes, *Women's Rights Under the 1973 Constitution*, 50 PHIL. L.J. 1-24 (1975); JAVELLANA (Ed.), *WOMAN AND THE LAW; ROUNDTABLE CONFERENCE: ACHIEVING FOR WOMAN FULL EQUALITY BEFORE THE LAW*, (U.P. Law Center, 1975).

⁴² Existing laws have been reviewed and carefully studied to determine which are discriminatory on the basis of sex. These have been complied and their amendments proposed. An omnibus draft was prepared by a committee created by the U.P. Law Center and the draft was presented to the National Commission on the Role of Filipino Women. Under the joint auspices of the Center and the Commission, the draft was discussed in forums in many parts of the country. Proposals for enactment into law will then be prepared.

⁴³ The Child and Youth Welfare Code (Pres. Decree No. 603) adopted in 1974: (1) erased the discriminatory provision that deprived a widow who remarried of parental authority over her children by the first husband; and (2) permits a woman to legally adopt a child without need of the husband's consent. The Labor Code (Pres. Decree No. 442) unequivocally states "Equal remuneration shall be paid to both men and women for work of equal value which complements the constitutional policy on equality of treatment afforded to labor regardless of

Provision for introduction of population education in public and private school was made early in 1973⁴⁴ and was prescribed in certain courses on the tertiary level a year earlier.⁴⁵ The state university College of Law has offered a seminar on law and population since 1973.

What results have so far been achieved by this determined pursuit of a population policy during the last decade? Between 1960-1970 the rate of natural population increase in the Philippines was 3.01%. After five years of intensive family planning campaign this went down to 2.78 but the projected 1975-1977 estimates place the rate at 2.86%.⁴⁶

Laws can articulate objectives, issue commands and attach sanctions — but attitudinal change is an internal process which individuals must first undergo for only on its basis can voluntary action be expected to proceed. The core of the legal component in population involves this process in an area which remains intimately private but has become unavoidably of public and of state concern.⁴⁷ How far can the state interfere?

In cases where the individual voluntarily decides not only to adopt methods of preventing conception but to terminate pregnancy, the operating laws may not fully permit a free choice. Thus, in the Southeast Asian countries discussed it is only in Singapore where prohibitory laws passed during colonial rule have been revised, to the extent of introducing in 1974 the principle of abortion on demand. Even in this, care was taken to prevent Singapore from becoming the abortion center of Asia.⁴⁸ The other countries including Thailand which permits abortion in certain cases, penalize it with varying degrees of severity.

The restrictions on importation of contraceptives have been lifted but the imposition of customs duties operate as barriers either to commercial

sex. It also explicitly prohibits discrimination against any woman with respect to terms and conditions of employment on account of her sex and any stipulation against marriages. This provision was applied in the NLRC case of *Zialcita v. Philippine Air Lines*; and the provision on automatic termination of service of a woman in the Women's Auxiliary Service Corps has likewise been deleted by amendment of the law.

⁴⁴ Dept. of Education Memorandum No. 29, s. 1973.

⁴⁵ Dept. of Education Memorandum No. 76, s. 1972.

⁴⁶ National Census and Statistics Office, Population Studies Division.

⁴⁷ In Robert S. McNamara's felicitous words:

"It is at one and the same time an issue that is intimately private — and inescapably public

"It is an issue characterized by reticence and circumspection and yet in desperate need of realism and candor

"It is an issue intolerant of government pressure and yet endangered by government procrastination." (*The Population Explosion*, 19 FREE WORLD 4, [1970])

⁴⁸ POPULATION PROFILES 1, *supra*, note 1.

distribution which eventually will have to take the place of foreign assistance in the form of donations in kind or to the manufacture of the drugs within the country itself.⁴⁹ While there is government policy encouraging family planning, commercial advertisement and distribution of even contraceptive devices may be restricted. An example is the Philippines where a controversy arose in 1976 over the advertisement and sale of condoms.⁵⁰

Law cannot force a change of attitudes but regulatory measures prohibiting action could aim for the opposite result, namely, command action. Thus, where population policies eschewing coercive methods fail, they could conceivably be changed and compulsory methods adopted to contain a runaway population in the interest of national survival.⁵¹ This poses even more serious implications on the autonomy of the individual, for it compels affirmation of or positive action on what may violate firmly held convictions.

In the field of law and population competing values come to the fore. Legal measures exist to protect values such as the sanctity of human life, respect for religious beliefs, the right of privacy or the standards of a profession like pharmacy, among others. Conflicts in the implementation of population policies and some measure protecting one or more of these values may occur. The conflicts will have to be resolved.

The lawyers' training is usually to find solutions to problems through the evaluation of facts and the application of relevant laws and doctrines. It is not limited to advocacy. Legislation, law reform, policy as well as decision making come within the scope of their activities. In the field of world population where demographers, sociologists, economists, psychologists, medical and other scientists had previously explored various aspects, the mutual dependence of law and these other fields of expertise will have been brought out. In this it will have been demonstrated how legal rules actually operate in practice, how empirical data can best be utilized in the

⁴⁹ U.P. Law Center Law and Population Project, *op. cit.*, *supra*, note 24 at 29-30 (1975).

⁵⁰ "CWL Wins Round 1 of 'Condom War'", Times Journal, July 9, 1975, p. 1; Palo, "Vendo Machines Retail Condoms", Bulletin Today, November 11, 1975, p. 1; "Tila Natapos na ang 'Condom War'", (Editorial), Balita, July 12, 1975; Laconsay, "Pros and Cons sa Kondom", Balita, July 13, 1975, p. 6; Del Mundo, "The Controversy over the Condom", Times Journal, July 29, 1975, p. 5.

In the three-month condom war, the population programme never had it so good. Condoms were pushed high in the ladder of acceptance, being second only to the pills. (Apelo, *The Recent 'Condom War' in the Philippines*, in the JOINT CONSULTATION OF REGIONAL INFORMATION, EDUCATION AND COMMUNICATION COMMITTEE, held in Hongkong, 15 [March 2 & 3, 1976]).

⁵¹ But this is an extreme step. In India, compulsory sterilization was attempted, but failed.

process of law reform, and how, though human rights are not quantifiable, their actuality may well be dependent on verifiable facts and figures. For in population-related problems are concentrated the whole complex of human problems — spiritual, intellectual and material.

When the human rights element is considered in relation to the population issue, it is obvious that bare announcement of policies and guarantees will not suffice to assure faithful adherence and observance. Ultimately, the test of whether or not human rights are observed in the implementation of population programs will be determined by what each state actually does, individually and in cooperation with other states, to meet the challenge of ensuring by institutional means, the foundation for providing its people the opportunity for full development as human beings, compromising at no stage in the progress towards this goal, their dignity as individuals.