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**Anti-Contraception Laws in Sub-Saharan
Francophone Africa: Sources and Ramifications**

by Bernard Wolf



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ANTI-CONTRACEPTION LAWS IN SUB-SAHARAN FRANCOPHONE
AFRICA: SOURCES AND RAMIFICATIONS

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ANTI-CONTRACEPTION LAWS IN SUB-SAHARAN FRANCOPHONE AFRICA:
SOURCES AND RAMIFICATIONS

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ANTI-CONTRACEPTION LAWS IN SUB-SAHARAN FRANCOPHONE AFRICA:
SOURCES AND RAMIFICATIONS*

I. INTRODUCTION

The governments of the French-speaking African nations south of the Sahara Desert have, in general, opposed the implementation of family planning programs. In particular, these governments have enacted or retained laws which prohibit or restrict the import, manufacture, advertisement, or sale of contraceptives. This study will concern itself with the nature of these anti-contraception laws and the degree to which they reflect the pro-natalist attitudes of the various African governments.

An analysis of the anti-contraception laws of Sub-Saharan Africa must of necessity be concerned with a number of questions. First, what are the provisions of these laws, and how well do the governments enforce them? Secondly, to what extent do they actually encourage the continuation of these attitudes? Third, should, in fact, the governments of the area seek to limit the population growth of their nations and, if so, what role would a change in the laws have in putting new population policies into effect? Fourth, what ramifications would changes in the laws have on society apart from reducing fertility, and how should the governments deal with the social and economic consequences that changes in the laws might bring? Finally, what political liabilities would a government face if it actually attempted to change its anti-contraception laws and implement a family planning program? Obviously, the answers to many of these questions are not clear, but we must nonetheless keep all of these questions in mind throughout our discussion.

The countries of Sub-Saharan Francophone Africa -- namely, Mauritania, Dahomey, Guinea, Ivory Coast, Niger, Mali, Cameroun, Senegal, Upper Volta, Togo, Chad, Gabon, Congo-Brazzaville, and the Central African Republic¹ -- vary greatly in physical size, topography, endowment of resources, and level of per capita wealth. Furthermore, each

*This monograph is an outgrowth of a paper prepared by the author for an interdisciplinary seminar on Law and Population offered at the Fletcher School of Law and Diplomacy.

¹Editor's Note - Zaire (former Belgian Congo), Burundi and Rwanda are not included herein. They are, indeed, francophone, but they were not affected by the same influences as the former French territories. In Burundi and Rwanda, the pressure of very heavy populations on a pastoral economy based on eroding hillsides may force attention to be paid to the problem by governments which are still pro-natalist. In Zaire, the President has set up a "National Council for the Promotion of the Principle of Desirable Births." This is intended to make recommendations to the government, which may include recommendations on amendments to the laws. Some clinical services are already available in Zaire.

country contains several tribes, which speak different languages and adhere to different religions. The area that we are considering, then, is an extremely heterogeneous one, and we must therefore be careful when we make general statements about the countries which lie within it.

Nevertheless, all of the nations do have certain important shared characteristics. First, with the qualified exception of Togo and Cameroun, all were subject to many years of French rule, and each has been greatly influenced by its former experience as a French colony. Second, although the nations vary in population size and density, only Dahomey, Senegal, and Mali consider themselves to be in danger of becoming seriously overpopulated in the near future; all of the other countries are either unconcerned or enthusiastic about the fact that the sizes of their populations are increasing, in many cases at a very rapid rate. Finally, most of the nations have relatively stable and centralized governments, which are quite capable of enforcing their anti-contraception laws, should they wish to do so.

II. UNDERPOPULATION OR OVERPOPULATION?

A. Underpopulation

Central to any examination of these anti-contraception laws is the question of whether the countries of Sub-Saharan Francophone Africa are underpopulated or overpopulated. Although specific demographic studies of the area are somewhat incomplete, we do know that the rate of population increase there has mushroomed during the last few decades. In all of Africa, the rate of population increase was only 0.6 percent per year between 1900 and 1930, but this figure increased to 1.3 percent from 1930 to 1950, and it reached 2.4 percent by 1960.² Most studies indicate that the population growth rates of the countries we are considering either approximate or exceed the latter figure, although Gabon is experiencing less rapid population growth.³

The population density of the countries, however, is very low. Niger, for example, has slightly over four million inhabitants, or an average of only 8.3 persons per square mile.⁴ Similarly, Congo-Brazzaville claims 900,000 citizens, who are spread over 135,000 square miles.⁵ Even Upper Volta, which many scholars think is clearly overpopulated, has only 4.7 million residents and a population density of only 47 persons per square mile.⁶ One is therefore not surprised to learn that many of the governments of these countries feel that their nations are underpopulated, rather than overpopulated. The government of the Central African Republic, in fact, strongly encourages large families, and the government of Cameroun hopes eventually to expand its population from its present size of 5,836,000 to fifteen million.⁷

²William A. Hance, "The Race Between Population and Policies," in Africa Report, January, 1968, p. 11, and Agency for International Development, Population Program Assistance (Washington, D.C., 1969), p. 10.

³The International Planned Parenthood Foundation estimated Gabon's population growth rate to be only 1.3%. See IPPF, "Family Planning in Five Continents," October, 1972.

⁴Guy de Lusignan, French Speaking Africa Since Independence, (New York: Frederick A. Praeger, 1969), p. 151.

⁵Ibid., p. 91.

⁶Ibid., p. 145. Note that the IPPF survey cited above credits Upper Volta with a population of 5,384,000.

⁷IPPF, op. cit. supra note 3, and Agency for International Development, op. cit. supra note 2 at 111.

1. Disadvantages inherent in a small population

The view that the nations in our study are underpopulated is supported by several arguments. First, countries with small populations, such as many of the nations we are examining, often face certain inherent problems which could be alleviated by having larger populations. Professor Donald B. Keesing, for example, asserts that developing countries with small populations have a propensity to exhibit certain undesirable characteristics, including political instability, low productivity, stagnant technology, high costs of "social overhead," and high costs in those manufacturing industries whose economies of scale must be largely limited to the home market.⁸ Indeed, some of these characteristics apply quite well in the case of Sub-Saharan Francophone Africa although, as we have already noted, most of the nations in the area have manifested a rather stable political structure.

2. Small population as a barrier to development

A number of Dr. Keesing's assertions suggest a related argument which is commonly made by those who feel that the countries in the area of our study are underpopulated, namely, that the low level and density of the population of the French-speaking countries south of the Sahara inhibits economic development. Many African scholars have noted that population growth was one factor which stimulated Western countries to increase their industrial productive capacities during the nineteenth and twentieth centuries, and that the increased output which resulted caused an improvement in the overall living conditions of the Western people. Many Africans therefore believe that an increased population size would inherently encourage agricultural and industrial development. One author, for example, writes:

"Each time that God creates a mouth, he creates at the same time the food which must feed it." This saying of my grandmother, a hundred year old Senegalese woman, expresses the African optimism. It is the opposite of the theory of Malthus...⁹

In this particular case, the author's thesis is that the governments of Francophone Africa could encourage development by increasing the birth rate, decreasing the mortality rate, and encouraging selective migration and resettlement of the population.

⁸Donald B. Keesing, "Small Populations as a Political Handicap to National Development," in Political Science Quarterly, March, 1969.

⁹Abdoulaye Wade, Économie de l'Ouest Africain (Paris: Présence Africaine, 1959), pp.251-252.

A more technical study of sixty modern firms in Cameroun made a few years ago strongly suggested that demographic growth would stimulate industrialization there. The report observed that those industries in Cameroun which supply the home market seemed to be "extremely sensitive" to increases in the population. Moreover, the report predicted that by 1974 food needs in the country would surpass the capacity of the food-producing firms at the time of the study and that by 1972 building material firms would be faced with a demand which exceeded the reserve capacity they had at the time of the study. The report concluded that the increased demands caused by the expanding population of Cameroun would encourage the expansion of food-producing and building materials industries.¹⁰

3. Colonial exploitation, not overpopulation, seen as source of difficulties

A final argument in support of the contention that Africa is underpopulated is that foreign colonial exploitation, not rising population growth rates, has been the source of the barriers to economic development that the African nations have faced. Samir Amin, for example, writes that many regions of Africa had a larger population in the past than they have at the present time; the sale of Africans to engage in hard labor, which was widespread during much of the colonial period, caused severe depletions of the populations of many rural areas.¹¹ Thus, African countries proved in the past that they were capable of maintaining larger numbers of people than they have now.

In addition, Amin contends that the growing unemployment present in most of the African cities is the result of "marginalization," and not overpopulation. Although Amin's precise definition of "marginalization" is not clear, we must assume that he is referring to the efforts of the colonial powers to prevent the beneficial dynamic effects of colonialism from reaching the African community. In other words, the colonial powers repatriated most of the profits from their economic endeavors, and they failed to provide Africans with substantial job training and capital so that they could engage in development once they became independent. Amin further implies that the developed nations continue to have a strong interest in keeping Africa underdeveloped.

Amin is certainly justified in identifying previous European colonialism as a source of tremendous difficulties for a large portion of the African population, and he is undoubtedly correct in claiming

¹⁰ Study cited in OECD, The Demographic Transition in Tropical Africa (Paris, 1971), pp. 127-128.

¹¹ Samir Amin, "Under-Populated Africa." Paper presented for the African Population Conference held in Accra, Ghana, in November, 1971.

that during the periods of foreign exploitation many Africans were unable to obtain the skills necessary for useful employment. His claim that the developed nations still seek to prevent African countries from developing, however, is more subject to debate. In any event, it seems probable that the current rapid growth of population in the cities has exacerbated the unemployment problem, whatever its original source. We shall discuss this latter proposition later in our study.

B. Overpopulation

One can advance strong arguments to support the viewpoint that the countries of Sub-Saharan Francophone Africa are underpopulated. Nevertheless, evidence that many of these countries are rapidly becoming overpopulated is even more convincing. The high rate of population growth is especially serious in view of the limited agricultural potential of the area. Moreover, the rapidly increasing population is crowding the cities and presenting formidable obstacles to economic development.

1. Limited agricultural potential of the area

Agricultural conditions in French-speaking Africa are very poor. In the first place, much of the soil is unsuitable for farming; only two-thirds of the continent has soil cover, most of which is either leached by heavy tropical rains or deprived of sufficient water by semi-desert conditions. Niger is the pre-eminent example of a nation whose agricultural potential is limited by its lack of farming land: partly because three quarters of the country receive less than fifteen inches of rain per year, only two percent of its land is cultivated and little more land could be made cultivable without great expense. Consequently, although Niger is sparsely populated, it is forced to import a large amount of food from abroad.¹² The land in Niger simply cannot support larger numbers of people, no matter how industriously they might work the meager farming lands.

In those areas where the land may be farmed, the soil is often overworked. Dahomey, in particular, suffers from this problem: the soil is becoming exhausted, and it will soon be unable to provide enough food for the population, which is growing at a rate of 2.5 percent per year.¹³ Dahomey suffers from an additional problem which also plagues many other African nations: the individual holdings of its good farming land are being divided into increasingly small lots, so that large-scale agricultural methods become very difficult to employ. In many parts of Africa, land ownership is communal, so

¹²de Lusignan, *op.cit. supra* note 4 at 151, and R.J. Harrison Church, *Environment and Policies in West Africa* (New York: D. Van Nostrand Company, Inc., 1963), pp.36-39.

¹³IPPF, *op.cit. supra* note 3, and de Lusignan, *op.cit. supra* note 4 at 17.

that as the population in an area increases, there are more demands on the land and the fallow period shortened. In both cases, the amount of food that the land can produce will decrease. ¹⁴

A final reason why much of the land in Sub-Saharan tropical Africa is unable to be used to produce food is that it is located in areas where there is a great deal of disease. Above all the tsetse fly, unique to Africa, plagues the tropical areas south of fourteen degrees latitude. Consequently, although some of the land within the "tsetse zone" is suitable for raising livestock, most cattle must be kept in the driest areas of northern Africa, since they are very susceptible to the deadly trypanosome which the tsetse fly often carries. The drier areas of the north, however, are less suitable for cattle raising. ¹⁵ The presence of other diseases, such as malaria and bilharzia, strongly discourages the reclamation of potentially good agricultural land in other areas. ¹⁶

It is possible that improvements in agricultural methods and disease control will increase output to a certain extent, but, as we have seen, physical, cultural, and epidemiological barriers to efficient and effective land use will severely limit the capacity of the land to feed the growing number of Africans. Already, the land is having a difficult time supporting the increased population. Guy de Lusignan has written that the per capita output of food in black Africa decreased by 0.4 percent per year during the 1950's and 1960's. ¹⁷ One cannot be very optimistic that this figure will improve in the 1970's, especially if the population continues to increase as rapidly as it has in the past. ¹⁸

¹⁴Etienne van de Walle, "The relationship between population change and economic development in tropical Africa," in John C. Caldwell and Chukuka Okonjo, The Population of Tropical Africa (New York: Columbia University Press, 1968). See also Leonard Joy, "The Economics of Food Production," in African Affairs, January 1966, p.326.

¹⁵Church, op.cit. supra note 12 at 102-107.

¹⁶de Lusignan, op.cit. supra note 4 at 147.

¹⁷Ibid., p.323.

¹⁸Prospects of increased food production seem especially dim in Mauritania, Senegal, Mali, Upper Volta, Niger, and Chad, which have been plagued by severe drought during the last five years. Widespread famine now threatens the people of these countries. See The New York Times, May 21, 1973.

More likely is the prospect that French-speaking nations south of the Sahara will have to increase the amount of food that they import from abroad. Most of the countries in the area, particularly Upper Volta, Niger, and Dahomey, already must import a large part of their food supply, including large amounts of sugar, cola nuts, dairy products, wheat, and rice.¹⁹ Even Senegal, which has been able to raise a rather significant amount of crops such as peanuts for export, has been forced to spend most of the money that it earns from these exports to purchase foodstuffs from foreign countries to feed its growing numbers.

The shortage of food in the area is tragic for a number of reasons. On one hand, many of the nations are so poor that they simply cannot supply their populations with enough food to keep them healthy; as a result, malnutrition has been widespread, and nutritional diseases have been a major cause of high infant mortality.²⁰ On the other hand, the fact that these nations must spend large sums of money on food imports prevents them from buying the capital equipment that they need for industrial development. Finally, the need for food imports from abroad is causing Sub-Saharan Francophone Africa to become more economically dependent on Europe; this situation is bound to be frustrating for nations which only fifteen years ago, made such great efforts to achieve independence from Europe.

Thus, the level of agricultural production in French-speaking Africa is insufficient to feed the growing population, and the population growth in turn is reducing the productivity of much of the limited amount of suitable agricultural land that exists.

2. Overcrowding in the towns

A second manifestation of the fact that Sub-Saharan Francophone Africa is becoming overpopulated is the overcrowding in the cities and towns. Since the beginning of the twentieth century, both the size of the towns and the percentage of the nations' inhabitants living in urban areas has increased sharply. Consider, for example, the case of the Ivory Coast. In 1920 the total urban population there was estimated at approximately 25,000 or 1.6 percent of the population of the colony, and by 1945 it had risen to 120,000 or 6 percent of the total population. Ten years later, the urban population reached 300,000, representing 13 percent of the colony's inhabitants, and by 1958, when the Ivory Coast became independent, the urban population stood at 466,000, or 15

¹⁹de Lusignan, op.cit. supra note 4 at 323-324.

²⁰Agency for International Development, op.cit. supra note 2 at 110.

percent of the nation.²¹ The Ivory Coast has continued to be characterized by growing urbanization during its years as an independent country. Moreover, the Ivory Coast seems to be representative of tropical Africa in general, whose urban population had by 1965 reached 18 percent of the total number of inhabitants of the areas.²²

Urbanization is not inherently undesirable; on the contrary, such a phenomenon is often a prerequisite for economic development, since industrialization requires sufficient numbers of people to work in industrial enterprises and a sufficient concentration of inhabitants to serve as an accessible market for industrial produce. However, in the case of Sub-Saharan Francophone Africa, the swelling of urban areas is unfortunately resulting in widespread misery and unemployment rather than substantial economic development.

The rate of unemployment in the towns is very high, in many cases reaching approximately 20 percent of the male population of working age.²³ Part of the problem results from the massive influx into the towns of young men from rural areas who possess no marketable skills. On the other hand, industrialization in most towns simply is not at a sufficient level to absorb the growing number of urban residents, regardless of whether they have skills or not. Furthermore, those industries which are being developed are often so capital-intensive that they create little local employment; one study, for example, estimated that mining enterprises in West Africa create only one job for every \$100,000 to \$250,000 invested.²⁴ In short, although the amount of urban employment in French-speaking Africa south of the Sahara is increasing, the percentage of the potential male working force in the towns that have jobs is steadily decreasing. High birth rates and large amounts of migration have greatly contributed to this problem.

The overcrowding to the towns has brought not only increased unemployment, but also worsened living conditions. Many of the towns are becoming unhealthy places in which to live, especially since basic amenities, such as latrines and drains, are already inadequate to

²¹Samir Amin, Le développement du capitalisme en Côte d'Ivoire (Paris: Les Editions de Minuit, 1967), pp. 33-35. Amin does not explain how he obtained his figures or what he defined as an urban area.

²²OECD, op.cit. supra note 10 at 32. In this case an urban area is defined as a center of five thousand inhabitants or greater.

²³See, for example, Amin, op.cit. supra note 21 at 39, for a discussion of urban unemployment in the Ivory Coast.

²⁴van de Walle, in Caldwell and Okonjo, op.cit. supra note 14 at 366.

accommodate urban residents.²⁵ The obvious answer to the problem of the overcrowding of the towns is to resettle urban dwellers in sparsely-populated rural areas or at least in land lying on the outskirts of the towns. Unfortunately, however, such resettlement programs are difficult to implement. In the first place, as we have seen, much of the rural area cannot support a large number of people, and much farming land is already becoming depleted because too many people are trying to work it. Secondly, even the resettlement of people from urban areas to land surrounding the towns can meet with only limited success, since many Africans have strong ties to their extended families and prove to be unhappy in alien surroundings. Finally, resettlement programs tend to be quite costly.²⁶ In short, it would be better to improve the housing in the towns than to resettle large numbers of people, but it is difficult to improve housing when funds are so scarce and the urban population is growing so rapidly.

3. Rapid population growth as a barrier to development

Thus far, we have seen the adverse effects of overpopulation in Sub-Saharan Francophone Africa both on agricultural production and on urban life. A final reason why one might argue that the population of this area is growing too rapidly is that economic development there has been impeded by rapid population increases. We noted previously that those who believe that the rapid rate of population increase will stimulate economic development in Africa often point to the population increase in the Western world that accompanied the Industrial Revolution. Nevertheless, important differences exist between the Western experience of several centuries ago and the conditions that many nations in Africa are facing today. William A. Hance, for example, observes that the rate of population growth in Africa today is far greater than the rate during the early years of the Western European Industrial Revolution, and that the average incomes of most of the African countries are far lower than those found in Western Europe several centuries ago. Consequently, Hance concludes that the current mushrooming of population in Africa is not consonant with the goal of

²⁵Robin Hallet, People and Progress in West Africa: An Introduction to the Problems of Development (New York: Pergamon Press, 1966), p.110.

²⁶Ibid., pages 31 and 110. A recent case in the Ivory Coast illustrates many of these problems. The government plans to resettle 70,000 people in new lands made arable by the construction of Koussou Dam. The vast majority of people who will be resettled are Baulé, the Ivory Coast's largest ethnic group. Nevertheless, although the areas into which they will be moved are populated mainly by Baulé, many officials are concerned about how they will be received by the established population. The forest regions are already experiencing significant land pressure, and a number of conflicts between the newcomers and the established settlers have taken place. See Victor D. Dubois, "Population Review 1970: Ivory Coast," in Fieldstaff Reports, p.9.

economic development.²⁷

A fast rate of population growth requires large expenditures on infrastructure (schools, roads, housing, etc.) just to maintain living standards at their previous levels. Therefore potential savings with which a nation might have bought the capital equipment needed for economic development must be used to prevent lowered living standards. Etienne van de Walle writes that a nation whose population increases by one percent a year generally must use up 4 percent of its gross national product in order to maintain the existing level of prosperity of its citizens. By extrapolation, van de Walle concludes that if the population of West Africa continues to grow at its present annual rate of approximately 2.3 percent, the nations in this area would be required to spend over 9 percent of their national incomes merely to accommodate the population increase. Van de Walle estimates that most African nations are able to save only 6 percent of their gross national products -- an amount far short of what they need just to maintain the present poor conditions in which the population lives.²⁸

In short, French-speaking Africa south of the Sahara Desert is not under-populated, as some might claim; rather, the rapid rate of population growth should be of great concern to the governments of the countries there. In actual fact, however, these governments are, for the most part, unconcerned about the high fertility of their citizens, and they have enacted or retained anti-contraception laws which manifest their lack of concern. (The extent to which the attitudes of the strip of countries lying along the south side of the Sahara (Chad, Mauritania, Niger, Upper Volta) may be changed by the apparent climatic change in the area and the southward advance of the desert is hard to calculate. Ghana now has a policy of deporting unwanted immigrants from the north).

²⁷Hance, op.cit. supra note 2 at 11.

²⁸van de Walle, in Caldwell and Okonjo, op.cit. supra note 14 at 361. Even the Ivory Coast, the most prosperous of the Sub-Saharan Francophone countries, has had an economy which has been expanding at a rate of 7-9% per year. Dubois, op.cit. supra note 26 at 6-7. Thus, if one accepts van de Walle's proposition, even the Ivory Coast has an economy which is not expanding rapidly enough to keep pace with its population growth rate.

III. SOURCES OF PRO-NATALIST ATTITUDES

A. Cultural Facts

In order to understand the nature of these anti-contraceptive laws and the problems that would be encountered by any government that sought to change them, we must first seek to understand the sources of the pro-natalist attitudes that underlie the actual laws. Clearly, there seem to be cultural, socio-economic, medical, and historical factors which would encourage parents in the area to have large families even if the existing laws did not do so.

In many parts of Sub-Saharan Africa there exist strong cultural factors which encourage large family sizes. First, as Dr. Pierre Pradervand has noted, the attitudes of the Sub-Saharan tribes often differ markedly from the attitudes of Islamic groups further north. In the Islamic nations, for example, parents exhibit a clear preference for male children; thus, as soon as a woman has had a sufficient number of males, she will stop conceiving. In many Sub-Saharan African tribes, however, parents desire large numbers of both female and male offspring. Moreover, Islamic cultures have a strong aversion to illegitimate children, whereas in many African tribes, such as the Ewonde of Cameroun or the Agni of the Ivory Coast, an illegitimate child will be joyfully adopted by the parents of the girl who conceived it.²⁹

Furthermore, in many areas of the world women desire no more than three or four children because they feel that their physical beauty and comfort would be reduced by larger numbers of pregnancies. One particular scholar has termed this phenomenon the "cosmetic motive" for birth control, and he suggests that it is present throughout the entire world.³⁰ The traditional African woman, however, generally places her role as a mother in a pre-eminent position, and although valuing physical beauty, she considers it less important than her ability to conceive large numbers of children. Dr. Pradervand illustrates particular points by noting that among the Ewonde and other tribes, women encourage their breasts to hang down, even to the point of beating them with a stick, so that the milk will flow better from them. Dr. Pradervand also remarks that among other tropical African

²⁹Dr. Pierre Pradervand, Family Planning Programmes in Africa OECD, pp.14-15, and F.J. Clozel and Roger Villamur, ed., Les Coutumes Indigènes de la Côte d'Ivoire (Paris: Librairie Maritime et Coloniale, 1902). This latter book is very dated, but it still is a comprehensive study. See especially M. Roger Villamur, "Les Coutumes du Groupe Agni," and M.M. Delafosse, "Coutumes Indigènes des Agni du Baoule."

³⁰Martin Gerhard Giesbrecht, "Women versus the Malthusian trap: The Cosmetic Motive for Birth Control," in Journal of Political Economy, March, 1971.

tribes, tribal members show great contempt for sterile women.³¹

In the towns, religion plays a role in encouraging high fertility. Many of the nations' educated people, who might be instrumental in changing governmental population policy, live in urban areas. Nevertheless, a large number of them belong to the Roman Catholic Church, and they would be opposed to family planning programs if the government ever proposed them. Moreover, many Muslim members of the urban elite oppose birth control programs, because they feel that by changing the status of women in the society such measures could encourage the abolition of polygamy, the raising of the minimum marriage age, or other changes which would be contrary to common Islamic practice.³²

B. Socio-economic Factors

In addition to cultural and religious factors which contribute to strong pro-natalist attitudes in tropical Africa, there are also a number of socio-economic factors which encourage parents to have large families. In some parts of tropical Africa children are considered to be economically valuable because they can share the work burden. In northern Dahomey, for example, many village parents are opposed to the creation of schools because they would remove children from the fields.³³

The socio-economic value of children is enhanced by certain governmental attitudes and policies. In many Francophone African countries, for example, laws provide family allowances which are based on family size, and they grant pre-natal allowances to expectant mothers during their entire period of pregnancy.³⁴ The cash value of these allowances is not great and many Africans do not receive them. Nevertheless, they still create a positive stimulus for large family sizes. On the other hand, the governments of these countries generally provide inad-

³¹Pradervand, op.cit. supra note 29 at 30. For discussion of marital customs of the Samo tribe of Upper Volta, see Francoise Izard, "Parenté et Mariage: La choix du conjoint dans une société à prohibitions matrimoniales." Paper presented to the African Regional Population Congress in Accra, Ghana, on December 18, 1971.

³²In the case of the Ivory Coast, see Dubois, op.cit. supra note 26 at 12.

³³Pradervand, op.cit. supra note 29 at 12.

³⁴United Nations, Measures, Policies and Programmes Affecting Fertility, with Particular Reference to National Family Planning Programmes (Department of Economic and Social Affairs, Population Studies, No. 51, 1972), p.30.

quate social services, so that large families become a type of social security asset for parents who fear the certainty of old age or the contingency of protracted illness. Furthermore, evidence exists that even in those areas of tropical Africa where a more modernized economy is beginning to develop, parents continue to view large numbers of children as important socio-economic assets.³⁵

C. Medical Factors

A third reason why there is a preponderance of pro-natalist attitudes in Sub-Saharan Francophone Africa, in addition to cultural and socio-economic considerations, is the fact that many Africans believe that high fertility is necessary to overcome the high rates of infant and child mortality which have constantly plagued the area. It is true that this belief is becoming less prevalent in those areas of Africa in which people are receiving greatly improved health care.³⁶ In most of tropical Africa, however, an ironic situation exists: health care improvements have been sufficient to cause a significant reduction in the incidence of infant and child mortality, but insufficient to convince most Africans to have less children.

Africa's mortality rate remains higher than that of any other continent in the world, in spite of efforts by the governments to improve health conditions in their countries. Although modern medicine has enabled much of tropical Africa to eliminate malaria, other debilitating diseases, such as bilharzia, continue to afflict large numbers of Africans.³⁷ Certain countries, in particular Upper Volta, are severely plagued by a plethora of serious diseases, including measles, treponemiasis, and tuberculosis.³⁸ As long as disease is

³⁵John C. Caldwell notes that the social security value of children in tropical Africa is not declining in those areas which are modernizing, unless the government has engaged in widespread social security programs or unless the extended family has begun to dissolve. He writes: "The truth is that the child of the well-off, cash-cropping farmers or of the urban employed may be a far more valuable safeguard for old age than the child of the subsistence farmer since his schooling will probably earn him a well-paid town job." John C. Caldwell, "The Control of Family Size in Tropical Africa," in Demography, 1968, pp.600-602.

³⁶Ibid., p.602.

³⁷See "Africa in the Seventies," in African Development, printed in Nancy L. Hoepfli, ed., West Africa Today (New York: The H.W. Wilson Company, 1971).

³⁸Pradervand, op.cit. supra note 29 at 20.

rampant and the death rates, although falling, remain high, parents in tropical Africa will continue to be reluctant to adopt family planning or even to change their pro-natalist attitudes. Dr. Pradervand therefore writes:

One is never going to convince women to adopt contraception on a large scale as long as mortality levels are so high. The rare countries where family planning programmes seem to have a slight effect on fertility all have among the lowest death rates in the world. There is no example of a successful large-scale family planning programme in any country with death rates above 12 per thousand. In the majority of countries of West Africa, death rates are well over 200% higher, sometimes almost 300% more than this figure. It should not thus surprise the reader that we conclude that high mortality is undoubtedly the single most important obstacle to the adoption of contraception on a large scale in Africa today.³⁹

The net result of the cultural, socio-economic, and medical factors that we have discussed is that families in tropical Africa desire far more children than families in other major areas of the world. One study found that parents in North America and Europe desired, on the average, 2.8 children and that the "average" parents in Asia and Latin America desired 4 children. In tropical Africa, however, those parents who were interviewed expressed an average desire for 6.6 children. Moreover, only in tropical Africa did the desired family size exceed the actual completed family size.⁴⁰ Although the results of the survey may not be taken as absolute proof of the strength of pro-natalist attitudes in tropical Africa, they do corroborate much of the empirical evidence we have discussed thus far.

D. Impact of the French Colonial Experience

We have, so far, been examining factors which contribute to the preponderance of pro-natalist attitudes throughout all of tropical African countries and exploring the reasons why the former French colonies there have been far more opposed to family planning in general, and the dissemination of contraceptives in particular, than have other nearby countries. The most important reason for the distinction between Francophone and non-Francophone countries with respect to governmental attitudes toward birth control is the fact that the Francophone nations remain strongly influenced by the period of French hegemony in Africa, during which the French government opposed family

³⁹Ibid., p.18.

⁴⁰Thomas E. Dow, Jr., "Theoretical Considerations and African Models," in Journal of Marriage and the Family, May, 1969, p.253.

planning and the sale of contraceptives both at home and in the colonies.

Since the end of the eighteenth century, when France gained control of Senegal, to the end of the 1950's, when she was forced to recognize the independence of her major African possessions, French colonial policy was one of cultural and political assimilation. France generally viewed her task in Africa to be a "civilizing mission," whereby she would bring the advantages of the French heritage to her colonies. French colonizers attempted to accomplish this task both by establishing a French system of education, in which instructors taught African students French language and culture, and by creating other institutions which aimed at perpetuating the influence of the French nation.

The French colonial attitude was markedly different from that of the British, and the effects of French and British rule on their respective colonies stood in noticeable contrast to one another. Consider, for example, the attitudes of the two countries toward tribal rule. On one hand, the British government tended to work through the local chiefs, a practice which maximized the chiefs' authority but at the same time reduced their popularity by forcing them to implement sometimes unpopular programs.⁴¹ France, on the other hand, generally sought to replace the tribal chiefs by groups which it felt would be more loyal to the French colonial administration. Furthermore, the French -- unlike the British -- altered the traditional political units of their colonies so that they would be of relatively equal size and hence easier to govern. The result of these actions was that the chief steadily lost his traditional authority in the Francophone colonies.⁴²

The African leaders who emerged in the Francophone colonies felt strong ties to the mother country, and even when the African colonies became independent during the decades following the end of the second world war, the leaders accepted the idea of the French community. According to this idea, France and her overseas territories would join in a union, in which each country would remain completely sovereign but would co-operate closely on certain questions, such as foreign affairs, economic policies, and national defense.⁴³

Although the idea of the community did not succeed, France has retained a great deal of influence in Sub-Saharan Africa, particularly in the areas of economics and culture. Most nations in the area belong to the French financial association, known as the primary market for

⁴¹William Arthur Lewis, Politics in West Africa (New York: Oxford University Press, 1965), pp.19-20.

⁴²Michael Crowder, West Africa Under Colonial Rule (Evanston: Northwestern University Press, 1968), pp.175-193.

⁴³de Lusignan, op.cit. supra note 4 at 18.

African export materials.⁴⁴ In this association the Francophone African countries maintain a common currency known as the CFA franc (African Financial Community Franc).⁴⁵ It is true that the Yaoundé Agreement of the European Common Market enables the African countries to establish expanded markets in the rest of Western Europe, but most likely these nations will continue to sell a large amount of their exports to France.

In any event, it is clear that France maintained strong influence over Sub-Saharan Francophone Africa during the period of French colonialization and in the years when the colonies became independent. It is not surprising, then, that the new Francophone African countries adopted laws and policies concerning birth control and the dissemination of contraceptives which were identical to French law and practice during the period of French colonialization. Thus, as one author writes, anti-contraception laws in Sub-Saharan Francophone Africa as "largely a French heritage, might some day be re-examined to see if they are in the best national interest."⁴⁶

On July 29, 1920, the French parliament passed a law which outlawed abortion and greatly restricted the advertisement or sale of contraceptives in France or the French colonies.^{46a} We shall subsequently examine this law in greater detail, since although it is no longer in effect in France, it technically remains in force in many Francophone African countries. In any event, one should note here that the provisions of the "Law of 1920" were not strictly enforced by government authorities in France.⁴⁷

⁴⁴J. B. Webster and A. A. Boaken, The Revolutionary Years: West Africa Since 1800 (Norwich, Great Britain: Fletcher and Son, Ltd., 1967), p.277.

⁴⁵The CFA franc is actually issued by two separate central banks, one dealing with countries of former French West Africa, and the other with the countries of former French Equatorial Africa and Cameroun. In both cases France guarantees the convertibility of the CFA franc into French francs, at the rate of 2 French francs for 100 CFA francs. For further discussion, see Pierre Lampue, Droit d'Outre-Mer et de la Cooperation, Quatrième édition (Daloz: Paris, 1969), pp. 173-175.

⁴⁶Bernard Berelson, ed., Family Planning and Population Programmes (Chicago: The University of Chicago Press, 1965), p. 167.

^{46a}See Appendix I.

⁴⁷Discussion of the enforcement of the "Law of 1920" may be found in Jaine Mossuz, "La Régulation des Naissances: Les Aspects Politiques de Débat," in Revue Francaise de Science Politique, October, 1966.

On December 28, 1967, the French government enacted a new law, which liberalized many of the provisions of the law of 1920.⁴⁸ As I shall explain later, the 1967 law applies only to France and not to the new African nations. The new law permits the manufacture, import, and sale of contraceptives in France under certain conditions. Diaphragms, for example, may be obtained on request, but the purchase of oral contraceptives requires a prescription and the insertion of IUD's must be performed by a doctor. Moreover, minors may buy contraceptives only with the permission of their parents. Finally, anti-natalist propaganda is still against the law, and all advertising of contraceptive methods is forbidden, except in pharmaceutical or medical journals.⁴⁹

In short, the law passed in 1967 is more liberal than the law of 1920, but the new measure still places many limitations on the advertising and sale of contraceptives. A strict interpretation of the 1967 law could, in fact, limit the activities of the French family planning association; moreover, many of the liberalized portions of the law have yet to be implemented.⁵⁰ In any event, the new law was passed long after the French colonies in Sub-Saharan French Africa became independent, and it has therefore had little effect on altering the pro-natalist

⁴⁸Editor's Note: Le Monde of Paris of June 16, 1973, reported that the French Government had introduced an abortion reform bill, permitting abortion when:

1. The continuation of pregnancy would threaten the physical, mental, or psychic health of the woman, either on an immediate or long-term basis;
2. There is a high risk of congenital or fetal malformation; or
3. The pregnancy is the result of a violent or criminal act or of incest.

The applicant would have to apply to a physician in writing. The application would have to be approved by two physicians, and the doctor first receiving the application would be required to explain the dangers involved and the social provisions available from the government for the care of mothers and children. The abortion would have to be performed by a physician with normal health safeguards, and only after a week's delay. After the operation, the woman would receive information about family planning. (Special provisions are made to cover minors and incompetents.)

No doctor would be required to perform the operation against his conscience. The woman's privacy would be protected and the costs would be covered under health insurance and social welfare under the usual provisions.

⁴⁹Journal Officiel de la République Française, December 29, 1967.

⁵⁰For example, regulations governing the organization of planned parenthood centers and the insertion of IUD's were only published in 1972. See "France," IPPF Situation Report, December, 1971.

attitudes of the African leaders, which were molded during the colonial period. Whether the continued ties between France and her former colonies will cause the African nations to adopt more liberal attitudes toward birth control in the future remains to be seen.

IV. ANTI-CONTRACEPTION LAWS

A. Survey of the Policies and Laws

Until this point we have been reviewing background essential to the understanding of the anti-contraception laws and practices in Sub-Saharan Francophone Africa. We have seen that tropical Africa is becoming increasingly overpopulated, in spite of the fact that much of the area gives one the impression of being underpopulated. We have also observed that pro-natalist attitudes in tropical Africa continue to be widespread because of certain cultural, socio-economic, and medical factors. Finally, we have noted that the Francophone countries in the area are especially opposed to birth control because of the marked influence of the French colonial experience, during which France manifested strong pro-natalist attitudes.

Let us now consider the actual policies of the governments of Sub-Saharan Francophone Africa with respect to birth control. As we have seen, most of these governments believe that their countries are underpopulated, and consequently they have refused to sponsor organized family planning activities. In particular, the governments of Cameroun, Congo-Brazzaville, Cnad, Gabon, Guinea, Ivory Coast, Niger, Upper Volta, and the Central African Republic have permitted almost no family planning activities in their countries, although in some cases they have allowed private doctors to advise their patients about birth control.⁵¹ Given the shortage of the supply of doctors in most of these countries, however, it is unlikely that very many Africans have received birth control information by this means.

Only in Dahomey, Mali, and Senegal do the governments support the idea of family planning. In Dahomey, the government has allowed the creation of a private Family Planning Association, and the Pathfinder Fund and Christian Aid have financed the family planning addition to the government Maternity and Child Health Clinic, which began operating in Cotonou early in 1971. In Senegal, the government helped establish a Family Planning Association in 1970 which was discontinued a year later. Nevertheless, the President made a statement in 1971 in parliament in favor of population regulation and the government continues to favor certain programs to control population growth.⁵² It has permitted local doctors and trained midwives in Dakar to insert IUD's and provide birth control information and training to midwives from other countries. Mali has established a family planning program in conjunction with existing maternal and child health clinics⁵³ and Mali

⁵¹Agency for International Development, op.cit. supra note 2 at 111-138; and IPPF, op.cit. supra note 3.

⁵²Newspaper Le Soleil, of March 20-21, 1971, Dakar.

⁵³Agency for International Development, op.cit. supra, note 2.

may also be the first Francophone country to amend and liberalize its laws. In Togo the government has not committed itself to any position on family planning, although the Ford Foundation has assisted in sponsoring some family planning programs there.⁵⁴

In any event, all of the countries of Sub-Saharan Francophone Africa maintain laws restricting the use of contraceptives. Most of the countries, in fact, still operate under the provisions of the French "Law of 1920." As Jeswald W. Salacuse notes, each of the Francophone African nations has enacted "reception" statutes either as a part of its constitution or as a law or ordinance. In each case, these statutes provide that all French colonial law in effect prior to a nation's independence and not contrary to its constitution remains in effect until amended or repealed by the government.⁵⁵ The French "Law of 1920," which was enacted long before any of the nations of Sub-Saharan Francophone Africa received their independence, has been amended or repealed by only a few of the new African countries. For most of the countries, then, the "Law of 1920" is still in force, even though it is no longer in effect in France.

According to the "Law of 1920" it is illegal to advertise, distribute or sell contraceptives or abortifacients in either public or private places, except under certain specific conditions. Pharmacists, for example, may sell condoms, and doctors may prescribe oral contraceptives to their patients for health reasons. Furthermore, groups may distribute information on the rhythm method. Otherwise, the practice of birth control is illegal, and it is punishable by fines and imprisonment.⁵⁶

Mali, Chad, Gabon, and Cameroun have revised those parts of the

⁵⁴Ibid.

⁵⁵Jeswald W. Salacuse, An Introduction to Law in French-Speaking Africa. Volume I. Africa South of the Sahara (The Michie Company, Virginia, 1969). The various laws and ordinances are cited in different parts of the book.

⁵⁶Further discussion of the "Law of 1920" may be found in Jean Bourgeois-Pichat, "France," in Country Profiles, published by the Population Council in May, 1972. The actual text of the law may be found in the appendix. One should note that the fines for violations of various aspects of the "Law of 1920" are given in French francs, which is not the currency of any of the Sub-Saharan Francophone African nations. Nevertheless, since the CFA franc is convertible into French francs (see footnote 45), the African governments could easily calculate the equivalent CFA franc value of the fines specified in the "Law of 1920".

"Law of 1920" that pertain to abortions. In these countries, abortion is still illegal, but the penalties for violating the laws have been changed.⁵⁷ Only Chad, Gabon, and Cameroun, however, have adopted new anti-contraception laws. In Chad, the 1965 law prescribes a sentence of one to six months imprisonment and a fine of 24,000 to 1,200,000 CFA francs (\$100 to \$5000) for anyone who advertises the sale of contraceptives; who sends advertisements for the sale of contraceptives through the mail, in sealed or unsealed envelopes; or who displays books, articles, posters, drawings, or even emblems whose purpose is to advertise contraceptives. The same penalties are prescribed for anyone who engages in efforts to establish a nation-wide birth control campaign in Chad. These penalties also apply to anyone who sells or distributes contraceptive pills or devices, or who sells devices or medicines which he claims to have contraceptive effects but which, in fact, do not. On the other hand, pharmacists in Chad may sell contraceptives and abortifacients if they receive special permission from the local prefect and the pharmacy inspectors.⁵⁸ (See Appendix II).

The 1968 law adopted in Cameroun established a National Association of Pharmacists, whose purpose is "to maintain the principles of moral conduct, integrity and devotion essential to the practice of pharmacy and the observance by all members of their professional obligations." Created in conjunction with this Association was an inspection service, which was given the responsibility of overseeing the pharmacies and of making certain that they adhere to the strict regulations governing the advertising of pharmaceutical products. Among these regulations is a measure prohibiting the advertisement of either contraceptives or abortifacients, on the grounds that "such advertising provokes and facilitates abortion."⁵⁹

In the case of Gabon, Dr. Pradervand writes that the government passed a new anti-contraception law which prohibits the importation of contraceptives and prescribes heavy fines and prison sentences for those who violate the law. Moreover, the government has set up special inspection teams to enforce the measure. In justifying its need for the law, the government claimed that Gabon was underpopulated and that in any case there were not enough doctors to make certain that contraceptives would be properly used.⁶⁰

⁵⁷République Gabonaise Code Pénal (Loi No. 21-63 du mai 1963); République de Mali Code Pénal (Loi No. 99 A.N.-R.M. du 3 août 1961); Journal Officiel de la République du Tchad, January 1, 1966 (Loi No. 28 du 29 décembre 1965). The Cameroun law is cited in the African Law Digest as Loi No. 68-LF-8 of June 11, 1968.

⁵⁸Journal Officiel de la République du Tchad, January 1, 1966 (Loi No. 28 du 29 décembre 1965).

⁵⁹African Law Digest, Loi No. 68-LF-8. of June 11, 1968.

⁶⁰Pradervand, *op.cit.* supra note 29 at 23.

B. Degree to Which the Laws are Enforced

Whether the anti-contraceptive laws which we have been discussing are a positive stimulus to high fertility rates or merely a reflection of the strong pro-natalist attitudes which already exist is not easy to determine. On one hand, the centralist governments of the various countries have in some cases established inspection groups which are quite capable of enforcing the laws. Thus, as Bernard Berelson writes, the anti-contraception laws "have been much more effective in achieving their stated end in the simple economies and small urban societies of Africa than they have been in the more complex situation found in France itself.⁶¹ Berelson feels that the effectiveness with which the anti-contraceptive laws may be enforced in Sub-Saharan Francophone Africa is an important reason why the population there generally does not use modern contraceptives.

On the other hand, in a large number of cases the anti-contraceptive laws appear to be a mere reflection of already prevailing pro-natalist attitudes. One legal journal, for example, notes that the anti-contraceptive and anti-abortifacient laws of Chad are practically never enforced, and that the citizens refrain from practicing birth control methods simply because they have never wished to do so, even when it was technically legal. The journal therefore concludes:

One can say that, in spite of certain rather severe measures, notably on the matter of abortion, but for all practical purposes unenforced, the legislator from Chad has proved to be rather liberal and feminist. He has decided that in the area of conjugal relations he should not deceive himself about the efficacy of penal sanctions.⁶²

In the Ivory Coast, moreover, Victor D. Dubois notes that the government of President Houphouët-Boigny has not strictly enforced many provisions of the nation's anti-contraception laws. In fact, the government does not really prohibit anyone from practicing birth control, since contraceptive pills and devices may be purchased openly in any pharmacy, usually without a doctor's prescription. Moreover, most doctors and pharmacists in the Ivory Coast openly give birth control advice when people ask them for it.⁶³ In actual fact, however, most inhabitants of the Ivory Coast do not practice birth control simply because they do not wish to do so.

⁶¹Berelson, op.cit. supra note 46 at 167.

⁶²Recueil Penant, January-February-March, 1970, p.279.

⁶³Dubois, op.cit. supra note 26 at 11.

A synthesis of the contrasting points of view described in the last few paragraphs nevertheless seems possible. On one hand, citizens of the area clearly maintain pro-natalist attitudes for reasons other than a mere fear of the penal sanctions prescribed by the various anti-contraception laws. On the other hand, the very existence of these laws symbolizes the government's opposition to family planning, although, as we have seen, Mali, Dahomey, and Senegal have taken action to limit their population sizes without necessarily changing their anti-contraception laws. However, a permanent family planning program would, at least in the long run, seem to require the legalization of contraceptive advertisement and sale.

V. FACTORS CHANGING PRO-NATALIST ATTITUDES

Given that the high levels of fertility in Sub-Saharan Francophone Africa threaten the citizens with severe problems in the near future, and given the continued pro-natalist attitudes of most of the governments, one could easily conclude that the situation in the area is virtually hopeless. Nevertheless, certain factors could convince citizens to alter their pro-natalist attitudes, and certain other factors might influence the governments of the countries to think more seriously about the need for family planning programs.

A recent survey found that although the level of fertility in tropical Africa has continued to remain high, a large number of Africans interviewed, especially in the urban areas, expressed an interest in family planning. Moreover, approximately one-fifth to one-third of the women interviewed expressed a desire to stop childbearing.⁶⁴ The person who conducted the survey concluded that interest in family planning is widespread and that it is likely to increase in the future. He did not, however, specify how much of his survey was conducted in the Francophone part of tropical Africa.

A. Decline in the Death Rate

In any event, certain phenomena do seem to be working to change the pro-natalist attitudes of citizens in Francophone, as well as non-Francophone tropical Africa. One of the most important of these is the widespread improvement in health which has begun to occur within the last decade. For many years during French rule, the colonial administration maintained health services in Africa which primarily served the European population. Moreover, almost all of the health facilities were located in the towns, so that the substantial numbers of rural inhabitants had literally no access to them.⁶⁵

Although the French did change their attitude to some extent during the inter-war years, it was not until the colonies achieved independence that the health needs of the majority of Africans began to receive substantial attention. After winning their freedom, the governments of the new countries, with the help of several international organizations, began to spend much time and money on reducing disease and improving health conditions.

⁶⁴Dow, op.cit. supra note 40 at 254. Although the percentage of women expressing a desire to stop childbearing was greater at higher ages and parity levels, this figure was significant among lower age and parity women as well.

⁶⁵Crowder, op.cit. supra note 42 at 285.

We observed previously, when discussing the sources of pronatalist sentiment in tropical Africa, that although mortality rates are decreasing in the area, they are generally not decreasing rapidly enough to convince parents to have less children. However, continued advances in the health field may eventually begin to have an important effect on widely-held fertility attitudes. Even countries such as Niger and Upper Volta, which have been habitually plagued by disease, are beginning to show evidence of improved mortality conditions; a recent study, for example, noted that a significant decrease in the rate of childhood mortality since 1969 had occurred in both countries, largely due to improvements in sanitation, nutrition, and childcare knowledge.⁶⁶ Eventually, the improvements in health, such as those which are taking place in Upper Volta and Niger, should work to alter the widespread belief that high fertility is necessary to overcome the losses which a family feels destined to suffer from infant and child mortality.

Urbanization

Another factor which is altering traditional life styles and attitudes is the increased urbanization in the Sub-Saharan Francophone African countries. We noted previously that the overcrowding of the towns is a tragic result of overpopulation; this large-scale urbanization may, however, also be a source of hope. For a number of reasons, people in the urban areas of tropical Africa generally desire smaller family size than do people in the countryside.⁶⁷ In the first place, the former group is confronted directly by the problems of inadequate housing and other facilities which overcrowding causes. Secondly, town dwellers have easier access to health and medical services than do inhabitants of outlying areas, and therefore the mortality rates in the cities are generally much lower than those in the countryside. (We have already discussed the fact that significantly lowered mortality rates can lead to decreased fertility.) Finally, intensive educational programs have been implemented in the towns, and although these programs do not directly stress the need for family planning, they indirectly contribute to lowered fertility rates in a variety of ways. Above all, dynamic education programs challenge people to question their traditional values. Moreover, increased education has enhanced the establishment of an urban middle class in many of the towns. The members of this class are ambitious to increase their standard of living, but many are unable to do so because they must support large numbers of children

⁶⁶Judith A. Harrington and D. Ian Pool, "Patterns of Survivorship in Upper Volta and Niger, 1969 and 1970." Paper prepared for the Center for Population Planning and Center for Research in Economic Development at the University of Michigan.

⁶⁷In the case of Ghana, for example, see Caldwell, op.cit. supra note 35 at 606.

and relatives. This group of people could potentially see much direct personal value in family planning.⁶⁸

In short, improvement in health and increased urbanization have the potential of causing a substantial number of Africans to alter their pro-natalist attitudes. The length of time which will be required for them to change their attitudes is not certain; indeed, many experts believe that Sub-Saharan Francophone Africa will have to become much more overpopulated before the majority of people will be amenable to the establishment of birth control programs. Unfortunately, such an increased population would create serious hardships for the inhabitants of most of the countries.

C. Demonstration Effect of Other African Countries

If the citizens of Sub-Saharan Francophone Africa are not likely to change their pro-natalist attitudes for some time, the governments of these countries might alter their population policies as a result of the demonstration effect of family planning programs in nearby Commonwealth Africa. Most of the Commonwealth countries have pursued relatively anti-natalist population policies since the time of their independence; today, therefore, most aspects of the practice of contraception are legal in these countries. The manufacture of contraceptives is legal, although in practice there is little home production of pills and other devices. In addition, the import of contraceptives is permissible, although in some countries, such as Rhodesia, an import duty is levied. Finally, the sale of contraceptives is legal in all African Commonwealth countries, and free or subsidized distribution of them through family planning associations, hospitals, or other means is allowed. Family planning clinics have operated in Rhodesia, Uganda, and Kenya for over fifteen years, although family planning services are not widespread in most of Commonwealth Africa.⁶⁹

The African Commonwealth country most likely to have a strong demonstration effect on Sub-Saharan Francophone Africa is Ghana. During the last decade, the leadership in Ghana has reversed its pro-natalist population policies and is presently pursuing a vigorous family planning program. During the latter years of the Nkrumah regime, the government was hostile toward the idea of birth control, and it limited both the import of contraceptives and the dissemination of family planning information.⁷⁰ After Nkrumah was ousted in 1966, the new leaders presented a program for development which recognized the adverse

⁶⁸Dubois, op.cit. supra note 26 at 9-10.

⁶⁹John C. Caldwell, "Population policy: a survey of Commonwealth Africa," in Caldwell and Okonjo, op.cit. supra note 14.

⁷⁰Caldwell, op.cit. supra note 35 at 608.

effects of the high Ghanaian birth rate but still maintained that the increasing population would provide needed labor for economic improvement.⁷¹ Finally, in 1970 the government issued a new population policy, based on the premise that rapid population growth "can jeopardize national aspirations for economic and social development and adversely affect the welfare of families and the health of individuals."⁷²

The Ghanaian program presents the countries of Sub-Saharan Francophone Africa with a good model which they could imitate. Certainly, it was easier for Ghana to change its pro-natalist policies than it would be for the French-speaking nations of the area, if only because Ghana underwent British, rather than French, colonial rule. Indeed, Great Britain had legalized the import, manufacture, sale, and distribution of contraceptives well before the time that her African colonies became independent. Without a long tradition of domination by a pro-natalist country, Ghana proved to be more flexible about changing its attitudes toward birth control than tropical French Africa.

On the other hand, leaders of the French Islamic African areas in the North have begun to develop family planning programs, in spite of a long history of French rule.⁷³ These latter countries, of course, have not faced the same cultural, socio-economic, and medical barriers which have contributed so strongly to the pro-natalist attitudes of the inhabitants of the tropical region. Nevertheless, the combined examples of Ghana and Islamic North Africa suggest that the governments of Sub-Saharan Francophone Africa might, if they wished, take positive steps toward controlling their countries' birth rates.

⁷¹Office of the Planning Commission, Ghana, Seven-Year Development Program, quoted by Caldwell and Okonjo, op.cit. supra note 14 at 370.

⁷²Statement by the Ghanaian government, quoted in African Population Newsletter, May, 1970, p.16.

⁷³For a summary of contraception laws and practices in Morocco and Algeria, see the IPPF Situation Reports for Morocco (January, 1972) and Algeria (September, 1971).

VI. POSSIBLE CHANGES IN POLICY

What steps should the governments take? Ideally, perhaps, they should immediately change their laws so as to legalize the import, manufacture, advertisement, sale, and distribution of contraceptive pills and devices. Such a change, one might argue, would have few foreseeable negative effects on the citizens, since only those people who actually desired to limit their family sizes would use the contraceptives for personal or moral reasons, and those who simply wished to have a large family would not be forced to buy contraceptives. Changing of the laws would, on the other hand, allow those parents who actually wished to plan either the size of their families or the spacing of their children to do so legally.

Nevertheless, this argument has at least three major shortcomings. First, it does not take into account the actual political situation in Sub-Saharan Francophone Africa. The governments of some of the nations, as we have seen, seek to increase, not control the size of their populations, and it will take a long time to convince them to reconsider their general population outlook, much less to change their anti-contraception laws.⁷⁴

Moreover, other countries whose leaders are more sympathetic to the concept of family planning view the idea of changing their laws as a politically inexpedient act, whose primary result would be to arouse resentment on the part of the citizens toward the government. In the Ivory Coast, for example, although President Houphouet-Boigny -- a former physician -- appears to recognize the merits of family planning, he is unwilling to change the anti-contraception laws of his country for very real political reasons.⁷⁵

The bulk of Francophone countries in Sub-Saharan Africa which would not be willing to change their laws could nevertheless, take important, but less politically hazardous, steps to begin to confront their population problems. For example, those governments which lack accurate information about the size and composition of their population should be urged to form agencies to gather this information. An encouraging sign, for instance, occurred in the Central African Republic in January, 1971, when the government created a Population Office within the Ministry of Health, whose purpose was to make a

⁷⁴Many governments, for example, feel that rapid population growth is necessary to insure that their nations do not become politically and militarily vulnerable to neighboring countries. This feeling is present in the Ivory Coast, where the government seeks to keep the population total on a par with that of Cameroun and Chad.

⁷⁵Dubois, op.cit. supra note 26 at 11.

detailed census of the population.⁷⁶ After all, only when a nation has accurate demographic information can it seriously think about creating a viable family planning program.

Another step that governments presently unwilling to change their contraception laws could be urged to take is to re-examine the status of women in their countries. A positive step, for example, was taken by the United Nations in 1971, when it held a seminar in Libreville, Gabon, on "The Participation of Women in Economic Life." At this meeting representatives of many African governments discussed quite a number of subjects, including family planning.⁷⁷ In 1964 the government of the Ivory Coast took an even more concrete step toward improving the status of women in the country by passing a new Civil Code, which declared that the civil status of women would henceforth be equal to that of men. In addition, the new Civil Code forbade child marriage, polygamy, and excessive dowries. The government has appeared to be serious about enforcing the provisions of the new law.⁷⁸ Guinea and Mali have also passed new marriage laws during the last decade. Gabon and the Central African Republic have recently enacted customary law affecting marriage.⁷⁹

For many of the countries -- especially those with large Moslem components in their populations -- any major programs to alter the traditional status of women in the society would certainly encounter strong opposition from a large number of citizens. Moreover, Islamic law has official status on most of the countries, quite apart from the law enacted by the government.⁸⁰ Therefore, some governments might be on questionable ground if they attempted to promulgate marriage laws which conflicted with Islamic practice. Nevertheless, those countries which are willing to re-examine the social status of their

⁷⁶"Central African Republic," IPPF Situation Report, February, 1972.

⁷⁷"Gabon," IPPF Situation Report.

⁷⁸Dubois, op.cit. supra note 26 at 12.

⁷⁹Henry F. Morris, "Marriage Law Since 1950," in Arthur Phillips and Henry F. Morris, Marriage Laws in Africa (New York: Oxford University Press, 1971), p.38. The various laws are cited in the article.

⁸⁰Salacuse, op.cit. supra note 55, notes that as early as 1857 the French rulers officially recognized the right of Senegalese Moslems to be governed by Islamic law (p.46). In Mauritania, Islamic law is considered to be the country's general private law, and modern law has status only insofar as it does not conflict with Islamic law (p.194).

women might one day agree to reconsider national family and population programs.

These are but a few of the steps that the governments of Sub-Saharan Francophone Africa could be encouraged to take. These measures, in themselves, might be more politically feasible than changing the anti-contraception laws; at the same time, however, they would encourage the governments to think more seriously about the need for family planning.

There is a second shortcoming in the argument that the governments of Sub-Saharan Francophone Africa should be urged to change their contraception laws immediately. The problem is that simply liberalizing the contraceptive laws would not convince the inhabitants to use contraceptives or even alter their pro-natalist attitudes since, as we have observed, these attitudes are the result of a variety of cultural, socio-economic, medical, and historical factors and not the result of any fear of sanctions for violating the laws.

It is true that a change in the laws would enable those parents who wished to limit their family size to do so, although, as we have already observed, many governments do not stringently enforce existing anti-contraception laws against families that wish to obtain or use birth control devices. In addition, liberalized laws would allow private family planning groups to operate more freely in the countries. On the other hand, a mere change in the anti-contraception laws would not be sufficient to limit the rapid population growth which is widespread throughout the area. In fact, for all the resentment it might cause among the inhabitants, a change in the laws might have little effect at all in slowing the birth rate if most people do not use contraceptives when they become legal.

Consequently, if and when the governments in Sub-Saharan Francophone Africa become seriously concerned about reducing their rate of population growth, they should not liberalize their contraception laws without also planning for an effective, nationally coordinated family planning program. Detailed proposals for family planning programs have been developed by many scholars, and it is not my purpose here to suggest a specific plan suitable for the nations of Sub-Saharan Francophone Africa. Nevertheless, we should note that such a plan need not be expensive, since family planning services could be made part of the existing health services of each country and would be an especially appropriate addition to maternity and child health clinics.⁸¹ Indeed,

⁸¹An excellent general analysis of the costs and ramifications of a Maternal Child Health-Family Planning Service operation is given in Howard C. Taylor, Jr. and Bernard Berelson, "Maternity care and family planning as a world problem," in American Journal of Obstetrics and Gynecology, April 1, 1968. A description of such programs which are operating in other parts of the world is given in Gerald I. Zatuchni, "International postpartum family planning program," in the same issue.

family planning programs operating as a normal and reasonable part of the maternity and child health clinics would be more likely to receive the understanding and trust of the citizens than if they were otherwise implemented, since birth control would be directly identified with lower infant and child mortality as well as with maternal welfare.⁸² It is not surprising, then, that Dahomey and Mali have decided to implement their family planning programs this way.

Most of the nations of Sub-Saharan Africa are not at this moment prepared to take the dramatic step of changing their anti-contraception laws. However, if and when they decide to liberalize these laws, they will have to develop effective family planning programs if the change in their laws is to have any significant impact on the fertility practices of the inhabitants. This very fact leads to the third difficulty with the argument that the countries we are discussing should immediately liberalize their contraception laws -- namely the likelihood that significant changes in fertility practices might have far-reaching effects on the societal structure, which the government would then have to deal with.

We have already mentioned some of these probable effects. For example, in those areas where parents still consider large families to be a social security asset, birth control programs most likely would be viewed with great suspicion unless the government enacted meaningful social welfare legislation to compensate for the perceived social security loss that smaller families would bring. Since many of the governments cannot afford such compensation, they would have to rely on the help of international organizations.

Moreover, as we noted, the status of women might be greatly changed by the creation of family planning programs, and the government would have to understand the ramifications of the new position of the woman in society. Finally, birth control programs would undoubtedly disrupt long-established cultural and religious patterns, and the governments would have to be prepared to deal with these changes.

In spite of these and many other caveats, we must not conclude that the governments of Sub-Saharan Francophone Africa should refrain from confronting the population problem in their countries. On the contrary, the negative consequences of fast population growth rates, or of over-population, are too severe to ignore. Governments in this area must be convinced of the need to limit the population size of their nations, and they in turn must convince their citizenry of this need. Furthermore, they must take steps to face the socio-economic and cultural problems which the introduction of birth control programs might create. In the

⁸²Taylor and Berelson, op.cit. supra note 81 at 887. See also United Nations, Human Fertility and National Development (New York: United Nations, 1971), p.72.

legal framework, the governments must reexamine the customary and public laws of their countries with respect to contraception so that they can construct acceptable means of solving their population problems. Already, some of the nations have begun such a reexamination, and their efforts should be encouraged.

The Abidjan Conference on Population, held in June 1973 and organized by International Educational Development, Inc. was attended by many people including many representatives of the Roman Catholic Church. It concluded that, as a part of comprehensive development, there is a necessity for programs of sex education, and "opted for regulation of births to attain a better quality of life."

APPENDIX IThe French Law of 1920

(Unofficial Translation by Law and Population Programme)

Article 1

Whoever shall incite or encourage the crime of abortion, whether or not this incitement be followed by the crime itself;

Either by a speech in a public place or at a public meeting; or

By sale, or offer for sale, or offer, whether or not public, or exposing or exhibiting by poster, or placing in public channels or in public places, or by home distribution, or by sending under wrapper or in an open or sealed envelope, or through the mails or through any agency for distribution or transport, books, written material, printed matter, announcements, posters, drawings, pictures, or emblems; or

By advertising medical offices, or alleged medical offices;

Shall be punished by imprisonment of from six months to three years, and a fine of from 100 francs to 3,000 francs.

Article 2

Whoever shall sell, offer for sale, or cause to be sold, distribute or cause to be distributed, in any manner whatsoever, medicines, substances, instruments or objects of any kind, knowing that they will be used to commit the crime of abortion, even if this abortion is not in fact committed or attempted, and even if these medicines, substances, instruments or objects intended as means for abortion are not, in fact, effective for this purpose, shall be punished in the manner set forth in Article 1, above.

Article 3

Whoever for the purpose of contraceptive propaganda, shall, through one of the means specified in Articles 1 and 2 above, describe, or divulge or offer to reveal methods designed to prevent pregnancy or shall facilitate the use of these methods shall be punishable by imprisonment of from one to six months and a fine of from 100 francs to 5,000 francs.

The same penalties shall be imposed upon whosoever, by one of the methods set forth in Article 23 of the Law of July 29, 1881, shall take action in pursuance to contraceptive or anti-natalist propaganda.

Article 4

All infractions of Articles 32 and 36 of the Law of 21 germinal, of the year XI shall be punishable by the same penalties, when the secret medicines are marked with labels or markings or in any other way designated as having the power to prevent pregnancy, even when such designation shall, in fact, be untrue.

Article 5

When an abortion shall have been carried out as a result of the actions or methods set forth in Article 2, above, the provisions of Article 317 of the penal code shall be applicable to those persons who carry out the said actions or methods.

Article 6

Article 463 of the penal code shall be applicable to the crimes specified above.

Article 7

This law shall be applicable to Algeria and to the colonies under conditions which shall be set forth under public administration regulations.

Source: Les Lois Nouvelles, Année 1920 (Paris: Emile Schaffhauser, Director).

APPENDIX IIAnti-Contraception Law of ChadLaw No.28 of December 29, 1965

(Unofficial Translation by Law and Population Programme)

Chapter IV

Contraceptives and Abortifacients; Contraceptive propaganda; incitement
of AbortionArticle 95

All persons are forbidden to show, offer, cause to be offered, sell or offer for sale, or cause to be sold, distribute or cause to be distributed in any manner whatsoever, any medicine or substance, intra-uterine probe or other object which might be used to provoke or to facilitate an abortion. A list of these items is set forth in an arrêté of the Minister of Public Health.

Notwithstanding the above, pharmacists may sell those medicines, substances and objects listed on a special register drafted by the prefect and approved by the Inspector of Pharmacy.

The arrêté of the Minister of Public Health provided for in paragraph one of this article shall set forth the procedures for the regulation of the sale of the medicines, substances, objects and instruments referred to in the first paragraph of this article.

Manufacturers and dealers in gynecological instruments are forbidden to sell the above instruments to any person not a member of the medical profession or a licensed dealer in surgical instruments.

Article 96

Any infraction of the provisions of the above article shall be punished by imprisonment of from 3 months to 2 years and a fine of from 120,000 to 1,200,000 francs.

The court shall order, in all such cases, the confiscation of the medicines, substances, instruments and objects which shall have been seized. The court may, in addition, order the temporary or permanent revocation of the license of the condemned person to practice the profession in connection with which the crime shall have been committed.

Article 97

Whoever shall by a speech made in a public place or public meeting;
or,

By sale, or offer for sale, or offer, whether or not public, or exposing or exhibiting by poster, or placing in public channels or in public places, or by home distribution, or by sending under wrapper or in an open or sealed envelope, or through the mails or through any agency for distribution or transport, books, written material, printed matter, announcements, posters, drawings, pictures, or emblems, or by advertising medical offices or alleged medical offices,

Incite an abortion, even in a case where the incitement shall not result in an abortion, shall be punished by imprisonment of from 6 months to 3 years and a fine of from 24,000 to 720,000 francs.

Whoever shall sell, offer for sale, or cause to be sold, distribute or cause to be distributed in any manner whatsoever, medicines, substances, instruments or objects of any kind, knowing that they will be used to commit the crime of abortion, even if this abortion is not in fact committed or attempted, and even if these medicines, substances, instruments, or objects so intended as means for abortion, are not in fact effective for this purpose, shall be punished in the manner set forth in the preceding paragraph.

Article 98

Whoever, for the purpose of contraceptive propaganda, shall, through one of the means specified in Article 97, describe or divulge or offer to reveal methods designed to prevent pregnancy or shall facilitate the use of these methods shall be punishable by imprisonment of from one to six months and a fine of from 24,000 to 1,200,000 francs.

The same penalties shall be imposed upon whoever shall take action in pursuance to contraceptive or anti-natalist propaganda.

Article 99

All infractions envisaged under Articles 7 and 8 shall be punishable by the same penalties, when the secret medicines are marked with labels or markings or in any other way designated as having the power to prevent pregnancy, even when such designation shall, in fact, be untrue.

Article 100

When an abortion shall have been carried out as a result of the actions or methods set forth in the last paragraph of Article 97, above, the provision of Article 17 of the penal code now in force shall be applicable to those persons who carry out the said actions or methods.

Source: Journal Officiel de la République du Tchad, January 1, 1966, p. 13.

International Advisory Committee on Population and Law

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