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Law and Population Growth in Ghana

by Richard B. Turkson



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LAW AND POPULATION GROWTH IN GHANA

I. INTRODUCTION

A. Scope of Study

This paper is basically a report on the Ghana Law and Population Project which was a two-year undertaking established in the Faculty of Law of the University of Ghana in 1972 with financial assistance from the United Nations Fund for Population Activities.

It was staffed by six members of the Faculty and a social anthropologist of the Institute of African Studies, all working part-time on the project. The late Professor K. Bentsi-Enchill was, until his tragic death in the latter part of 1974, responsible for miscellaneous matters and for the general direction of the project. The project was also aided by six graduate students in the Faculty's LL.M. programme, working as Research Assistants.

The first year of the project was devoted primarily to surveying existing Ghanaian law with a view to ascertaining and describing such parts of this law, whether statutory, decisional or customary, as can be said to have some impact on population trends. Some of the obvious areas of law in this regard are fertility regulation, family law, the law concerning children and child welfare generally, criminal offenses and penology, the law relating to public welfare, public health, education (particularly sex education), property and other economic factors.

The essential purpose of this initial work of law compilation was to assemble provisions of the various branches of Ghanaian law, written and unwritten, which actually affect or purport to affect population trends, and to present a summarising monograph describing this law. Underlying this initial phase of the project was the deep conviction that knowledge of the existing law is an obviously prerequisite step towards assessing the impact of the law on patterns of decision-making relevant to population trends. Such an assessment of actual impact is by no means an easy matter, dependent as this necessarily is on such variables as the functioning and effectiveness of the law-enforcement machinery and on social and cultural norms and predispositions, conditioned by custom, beliefs and conventions.

It was no less obvious that such an assessment of the impact of law on population trends could not have been undertaken without prior knowledge of the actual provenances of the law. Nor are the prospects bright for any national family planning programme, such as that undertaken in Ghana, if it is prosecuted in disregard of laws and practices which operate in a contradictory manner, nullifying and frustrating the objectives of the programme.

Thus, it was a central objective of this preliminary work of law compilation to generate and disseminate knowledge regarding the actual

provisions of our law, to reveal any contradictory policies implied in them as regards population trends, and thus to provide a basis for a conscious harmonization and reform of our law to support rather than frustrate declared national policy.

For it has to be borne in mind that a state speaks officially through many channels; and that mere official declarations such as the important paper announcing its population policy which was published by the Government of Ghana in March 1969¹ are seldom enough, however vigorously prosecuted. A nation also speaks officially through the laws it enforces and through the language of its conduct in declining or failing to enforce other laws; through the practices it tolerates and through the prohibitions it imposes on other practices. And the fact that law can be intelligently formulated and applied as a conscious tool of social change is one of the working hypotheses of our modern age. The 1969 statement itself acknowledged this fact in the following words:

...studies should be undertaken of legal and administrative structures and policies to ascertain ways in which they might be re-oriented to reduce pro-natalist influences and shift the weight of influence toward lower fertility.²

While the need for a sound population policy has been well recognized in Ghana for some time now, and many important practical and administrative measures taken towards the implementation of this policy, it has to be observed that this national policy is being prosecuted in a climate of substantial inattention to obviously relevant legal arrangements, some of which can be shown to operate, and therefore to "speak officially," in a manner unhelpful and even contradictory to the national policy on population declared in the policy paper of 1969.

It was, therefore, considered pertinent to investigate and ascertain the provisions and probable impact on population trends of our law in all relevant areas and to reform and harmonize any contradictions in it as part of the process of declaring and implementing national policy.

The area of enquiry was obviously extensive. Questions had to be asked concerning our tax laws, the provisions made or not made which may be shown to favour or hinder large families such as tax allowances in respect of children, inheritance taxes, etc.; concerning the legal framework of medical practice and public health administration ranging from the regulation of medical practice, the licensing of doctors, nurses, pharmacists

¹Population Planning for National Progress and Prosperity; Ghana's Population Policy (Tema, Accra: State Publishing Corporation, March 1969).

²Ibid., p. 21.

and other personnel, the quality control of drugs and medical supplies, the effect of our import regulations on the availability of various medical supplies; concerning welfare legislation, regulating such matters as maternity leave and benefits, child and female labour, old age pensions, housing, family and child allowances; concerning our legal requirements and provision for basic elementary education through sex education to medical and paramedical education; concerning the relevance to our public education schemes of our criminal legislation concerning obscenity, or of the law regarding abortion and sterilization to the concern for population control and family planning. And no less pertinent is an investigation into the provisions and operation of our law regarding family and personal status. What consequences on our declared population policy are we to expect from the prevalence and toleration of polygamy in our society? What is the legally permitted age for marriage, and could any change in this have relevance to our population policy? Is our traditional system of extended families neutral in its impact on population trends or does it tend to foster or retard population growth? Our systems of inheritance and succession to property?

The law on this wide range of matters is extensive, and not all of it is directly relevant to population trends. The more directly relevant portions of this law are found scattered in many enactments, customs and judicial decisions. The initial phase of law compilation had the very modest aim of collecting and describing the actual provisions of those parts of our law that are directly relevant to population and fertility trends.

The next phase was one of critical appraisal. The purpose here was to arrive at proposals for legislative and administrative reform of a kind which would assist the implementation of the national population policy. In the Lent Term of 1974 a series of interdisciplinary seminars were held in order to discuss various aspects of the population question.

B. Character of the Population Problem

The history of census-taking in Ghana goes back to 1891 when the British colonial administration carried out the first census. Since then there have been other censuses at ten-year intervals except for a short period during the Second World War when conditions prevailing at the time interrupted the series. The last of the pre-independence censuses took place in 1948. The returns of these censuses were so defective in quality that it has not been possible to use them as a basis for anything that remotely approximates an accurate determination of past population trends--and this has been so despite all possible adjustments and refinements in the figures. It was impossible, for example, to determine the rate of growth since the beginning of the present century.

Census-taking showed considerable improvement in the post-independence years. The 1960 census, for example, was unique in terms of techniques, objectives and scope. There was a second census in March 1970 the results

of which are still being processed.

It must be pointed out, however, that owing to the relatively low status of population data and vital statistics, existing demographic work on the dynamics of population growth in Ghana has been based on estimates. Nevertheless, the data which is available sheds some light on demographic developments in the country.

Fertility in Ghana has been found to be high and stabilized. It has been estimated that the birth rate in the country was about 50 per thousand population in the 1960s and the total fertility ratio for the same period lay between 6.7 and 7.0. It has been further suggested, on the basis of estimates, that every Ghanaian woman passing through the child-bearing age brackets (i.e., 15-49 years) would bear on the average 6.9 children and that she would replace herself in the next generation with about two daughters who would be future mothers.

The following tables illustrate the foregoing assertions:

Table 1

ESTIMATED AND RECORDED CRUDE
BIRTH RATES FOR GHANA

<u>PERIOD</u>	<u>ESTIMATED</u>	<u>RECORDED</u>
1945-1949 ^a	52	-
1948 ^b	49	-
1950-1954 ^c	51	-
1955-1959 ^c	50	-
1959-1960 ^d	47-55	47
1963-1964 ^e	52-54	-
1968 ^f	49-50	47
1969 ^f	49-50	47
1971 ^g	-	47

Notes on Sources:

^aUnited Nations Demographic Yearbook (New York: 1963).

^bS.K. Gaisie, "Some Aspects of Fertility Studies in Ghana" in Caldwell and Okonjo, eds., The Population of Tropical Africa (London: 1968), p. 239.

^cUnited Nations, op. cit.

^dS.K. Gaisie, Dynamics of Population Growth in Ghana (1969), pp. 3, 19.

^eJ.C. Caldwell, "Population Change," in Birmingham, et. al., eds.,

A Study of Contemporary Ghana: Some Aspects of Social Structure (London: Allen & Unwin Ltd., 1967), p. 89.

^fS.K. Gaisie, "Determinants of Population Growth in Ghana," Ph.D. thesis held by Australian National University, Canberra, 1973.

^gGaisie, op. cit., supra note f.

Table 2

ESTIMATED AND RECORDED TOTAL FERTILITY
RATIOS FOR GHANA

<u>PERIOD</u>	<u>ESTIMATED</u>	<u>RECORDED</u>
1959-1960 ^a	6.5-7.3	6.2
1967-1968 ^b	6.7-7.0	6.6
1968-1969 ^b	-	6.8-6.9
1970-1971 ^c	6.9	5.8

Notes on Sources:

^aS.K. Gaisie, Dynamics of Population Growth, p. 19.

^bS.K. Gaisie, "Determinants of Population Growth."

^cBased on 1971 Supplementary Enquiry, figures made available by courtesy of the Census Office, Accra.

On the other hand, it has been observed that the death rate has been falling owing largely to improved medical facilities. For example, the estimated crude death rate and infant mortality rate of 23 per thousand and 160 per thousand respectively in the early 1960s had by the late 1960s fallen to about 19 and 20 and 133. Besides, estimated life expectancies at birth indicate considerable improvement. For the period 1948-1968, there was an estimated improvement in life expectancy from 0.33 years to 0.75 years.³

In discussing the rate of population growth, one cannot ignore the question of immigration. In 1960, 12.3% of the total population of Ghana consisted of immigrants and about 96% of the foreign-born immigrants were from the neighbouring countries of Togo, Upper Volta and Nigeria. About 86% of these immigrants were unskilled labourers, semi-skilled labourers

³For further discussion of this, see S.K. Gaisie, Dynamics of Population Growth in Ghana (1969), and "Determinants of Population Growth in Ghana" (1973).

and traders. By 1970, the foreign segment of the population had declined to about 6.6%. This sharp decline may be attributed to the enforcement of the Aliens Compliance Order, 1969. Even though it is believed that with the change of government in 1972 and the subsequent repeal of the Aliens Compliance Order, the size of the foreign segment has increased again, the precise rate of increase is not yet known.

At the beginning of 1921, Ghana had a population of just over 2 million and by the first quarter of 1960, the population had increased to 6.7 million. In other words, the population more than tripled in the short period of 40 years. Further, the 1970 Census revealed that the population had increased by about 2.7% since 1960--that is, from 6.7 million to 8.5 million. Indeed the present size of the country's population is estimated to be a little over 9 million.

With regard to the rate of growth, the estimates indicate that the rate of natural increase lies between 2.7 and 3.0 per cent per annum. This is certainly a high rate of growth--a phenomenon which may be attributed to the imbalance between fertility and mortality rates. Projections of the population of Ghanaian origin indicate that, barring any changes in the fertility level, the population would double by 1982, a period of less than 25 years and by the year 2000 there would be nearly four Ghanaians for every one in 1960. Even if a reduction in fertility of about 57% is achieved by 2000, the population is likely to double by that year. It must be pointed out, however, that the effects of reduced fertility take a considerable length of time to be felt. Consequently, even if Ghana's fertility were to drop to replacement level, in 1960, her population would continue to grow until the middle of the 21st century owing largely to the age structure of the present population.

These demographic forecasts are so disturbing that they have generated concern in official circles over what is usually characterised as the population "problem." What has generated this concern has not been so much the size of the population but the rate at which it is growing as compared with the rate of economic development.

The desire to find solutions to the "population problem" has given birth to a variety of programmes aimed almost exclusively at reducing birth rates. The underlying philosophy of this approach is that a slower rate of population growth will automatically lead to a rapid increase in per capita income and make more goods and other basic necessities of life available to the people. In other words, reduction of birth rates will lead to an improvement in the welfare of the population in general. It is the considered view of the writer however, that a population programme aimed exclusively or even mainly at reducing birth rates cannot lead automatically to the kind of results indicated above unless it is combined with efforts at a radical transformation of the economy which will ensure for the ordinary man a decent standard of living. This is essential for any meaningful and effective population policy.

Ghana's annual population growth rate (i.e., between 2.7 and 3.0 per cent) makes her one of the fastest growing nations in the world. If the present trend continues, and it is likely that it will, a severe strain on the country's economic and social machinery will be created. Even now, the rapid rate of population growth is said to account for the strain on social amenities and jobs especially in the urban areas. It is becoming increasingly clear that the few employed adults in the country cannot adequately support both the increasing number of young people, the aged and the large number of unemployed. If progress is to be made, the Government will have to find means of curbing the rapid rate of population growth while at the same time stepping up the rate of economic development.

C. Social, Religious and Cultural Elements

As noted earlier, Ghana's population is rapidly increasing even though its distribution among the various sections of the country is not uniform. Family and household size now appear to be a function of several factors including educational attainment, wealth, environment and traditional values.

Traditional family structures and patterns were evolved in relation to a lower expectation of life, in terms both of high infant mortality and fewer aged members. There is little doubt that increased expectation of life affects the size and structure of the family and its cycle and that this in turn affects the cultural milieu of the society. As an indispensable prerequisite to any discussion of the cultural consequences of population change, one has to give some account of the cultural background of the country.

Before the advent of colonialism, the country consisted of independent ethnic groups with differences in culture, language and other respects. These groups were then welded into one political entity by a European colonial power, namely Britain. Although the country has existed as one political entity for well over a century, there are still significant cultural differences amongst the various ethnic groups and even differences in the way these component groups have reacted and adjusted to the forces of social change and urbanization brought about by the impact of western ideas and values. It would be inaccurate, however, to suggest that there are no general uniformities in culture. Indeed, one can rightly speak of a common Ghanaian cultural heritage.

One significant area of social cleavage in Ghanaian culture stems from the different ways of tracing descent. The Akan-speaking people, for example, who constitute nearly half of Ghana's 8.5 million population are matrilineal while most of the other ethnic groups are patrilineal.

The traditional Akan concept of matriliney was rooted in beliefs about the essential nature of man and ideas about procreation. It was believed amongst this section of the Ghanaian community that every child was an amalgam of the blood ("mogya") of the mother and the spirit ("ntoro") of the father.

Ollennu describes this belief in the following words:

Thus of all the important qualities in a man, Ghanaian belief attaches special significance to two things (1) the sacred blood which sustains and maintains his physical and material body, and (2) the sacred spirit which constitutes his full personality and builds him up into a real being, a man. The former is of maternal ancestry, the latter of paternal ancestry.⁴

Blood is basic to the human body and its formation. Hence, an Akan was expected to have more to do with his mother and her lineal relatives than with others. These lineal relatives constituted the corporate descent group which was the basis of Akan social organization in which the mother's brother (or maternal uncle) played a pivotal role in the life of every individual.

Even though the avunculate was particularly strong, the father, who was technically speaking outside the children's descent group, played a very important part in their upbringing. Thus, an important aspect of the social organization was the need, despite the matrilineal principle, for every child to have a recognized father. He named the child and was generally responsible for his upbringing. In addition, every one belonged to a pseudo-patrilineal descent group whose membership was traced through the father, but which operated mainly within the spiritual sphere. In sum, therefore, Akan matriliney was in practice complemented by a number of other institutions which emphasized the importance of the father and the paternal line while at the same time acknowledging the supremacy of the mother and the uterine line.

The balance (though unequal) between paternal and avuncular authorities affected, in a significant way, the residence pattern which is an important variable in family organization.

Fortes, writing of the Ashanti, a section of the Akan, mentions three different types of household:

A. Households grouped around a husband and wife. In the simplest case this corresponds to the elementary family consisting of a man, his wife, and their children; but other kinsfolk may be included in the group.

B. Households grouped around an effective minimal matrilineage or part of it, such as a woman and her

⁴N.A. Ollennu, The Law of Testate and Intestate Succession in Ghana (London: Sweet & Maxwell, 1966), p. 71.

sister or daughters, or a man and his sister or sister's son.

C. Households made up of combinations of the previous types, e.g., a household consisting of a man and his wife, and children as well as his sister's children.^{5a}

One cannot therefore speak of the Akan as either matrilineal or patrilineal.

Patriliney, on the other hand, was the system of descent practised in almost all the other areas of the country. Basically, this system involved localized descent groups, patrilineal and virilineal marriages and a domestic authority structure revolving around the father-husband. There was, however, a variety of agnatic principles ranging from the "regular" and thorough-going systems of the Tallensi of the North to the more flexible and largely bilaterally-oriented system of the Ewe and the sexually-segregated domestic unity of the Ga.^{5b}

Political organization in these two systems of descent, viz., the matrilineal and the patrilineal system of descent. These differences in political systems, however, did not materially affect family life with regard to size of household. Much more important were the values associated with family life, family size, residence, descent, age of marriage and spacing of children in the society at large, which did not seem to vary with types of political organization.

Religion, for example, played an important role in traditional cultural life. Traditional Ghanaian attitudes towards the supernatural revolved around the Supreme Being or Creator God and smaller gods and ancestors. The Creator God was, however, considered to be so far removed from the cares of the world that for day-to-day matters recourse was had to smaller gods and spirits by way of prayers of intercession. Of these smaller gods and spirits, the ancestors appear to have been the most important. Ancestor-worship was organized on the basis of descent groups even though individuals were allowed, under certain circumstances to approach the ancestors through recognized channels. Descent determined the membership of groups participating in these forms of worship. It was, therefore, crucial to the survival of these groups that emphasis should be put on continued recruitment into them. Hence, important prayers always referred to fertility of members, health, long life and prosperity.

The foregoing represents, in a nutshell, aspects of Ghanaian cultural and social institutions which have a bearing on the population question and

^{5a}M. Fortes, "Kinship and Marriage Among the Ashanti," in Radcliffe-Brown and Forde, eds., African Systems of Kinship and Marriage (Oxford: 1950).

^{5b}M.G. Field, Social Organization of the Ga People (London: 1940).

to which references will be made in this part of the study.

1. Basic Features of Traditional Ghanaian Family Life

The family is a basic human institution and its organization, structure and values greatly affect society. As the recognized reproductive and the primary socializing agency, its importance in human life, particularly in matters relating to population, cannot be overemphasized. The size of any community is determined by the size of its component families and the community's policy about population size cannot achieve much unless it coincides with family ideas.

The basic unit which is being discussed here is the nuclear family. In Ghana, as in many other parts of Africa, this unit functions within the context of wider social units most of which are based on kinship affiliations such as descent groups, extended families, etc.. The nature and organization of these wider social units can and do substantially affect the pattern of family life. Besides, the society itself regulates family life through its laws and other forms of social control. In short, the family influences and is influenced by society. Thus, for example, the decision as to the number and spacing of children is inevitably influenced by the society, structure, folkways, mores, etc..

One of the most remarkable features of traditional family life was the high premium placed on children. Marriage in traditional society was primarily for procreation and the greater the number of children the greater the prestige of the couple and the more useful it used to be economically and socially for the wider kinship units. Plurality of wives perpetuated these ideas. Fertility in both men and women was highly cherished while childlessness provoked sad and often agonizing reactions from relatives and even the community.⁶ It was thought that the most effective insurance against childlessness was plurality of wives and the fullest utilization of the reproductive potential. It will be seen, then, that traditional ideals and values encouraged the existence of large families.

However, the procreative tendency in traditional attitudes was counterbalanced by a variety of taboos, injunctions and practices. Perhaps, the most notable of these restrictive practices was the weaning taboo found in almost all African societies. The basis of this taboo was the belief, which is still prevalent, that the seminal fluid contaminates the mother's breast milk which then becomes injurious to the health of the baby. The baby's mother, therefore, had to abstain from sex throughout the period of breastfeeding which ranged from two to three years. Where a man had more than

⁶For a fuller discussion of this, see G.K. Nukunya, Kinship and Marriage Among the Anlo Ewe (London: London School of Economics Monographs on Social Anthropology No. 37, 1969).

one wife, this meant that the reproductive process of the co-wives had to be regulated in such a way that while one was breast-feeding her child, the others would be in a position to offer the husband the sexual services to which, no doubt, he was legitimately entitled.

The obvious purpose of the weaning taboo was to achieve a desirable spacing of children and thereby to enhance the potential fertility of women.

A less common practice was the generational taboo by which a woman was expected to stop child-bearing as soon as one of her own children began to have children. The aim was to prevent conflict between age and generational seniority among close relatives.

Worthy of mention is the age of marriage, especially for men. As a rule, for first marriages, men married much later in life than women. Marriage for women in most societies occurred soon after puberty, usually between 16 and 18 years and 20 plus for men. Thus, while women were allowed to start their reproductive activities as soon as they were biologically qualified for it, the men were denied this opportunity, a fact which substantially curtailed the utilization of their reproductive potential. Through the practice of polygamy, however, the surplus women resulting from this age differential for the sexes were utilized for reproductive purposes. In effect, all available and capable women were given the chance to offer their child-bearing services.

It has to be observed, though, that not all the restrictive factors to which reference had been made were strictly enforced or achieved positive results. The weaning taboo was not as scrupulously enforced as one is led to believe. Indeed, in a great number of cases it was biological limiting factors rather than cultural determinants which influenced the spacing of children in the traditional system. Rules relating to age of marriage appeared to have been more closely adhered to than other traditional prohibitions. But even here widespread ignorance about age makes it somewhat doubtful whether as much was achieved as is often claimed.

Owing to inadequate health facilities, the life of a family unit was generally short. The number of adults and aged members was rather small as compared with the number of young people. Hence, the dependency burden of traditional society was enormous. This dependency burden was somewhat alleviated by the fact that children were used to supplement inadequate adult labour. Indeed, because of the economic advantages of children, the traditional Ghanaian family did not perceive a population problem. There was no need to limit family size since the inadequate health facilities rendered a large number of infants vulnerable to disease and possible death.

Even though attitudes such as these have largely persisted, changes are taking place which ought to be taken note of. Among the factors of change are improved medical facilities, western education, Christian influence and increased mobility.

It will take some time before the full impact of these changes on traditional attitudes to family size is felt but the trend towards change appears to be irreversible and cannot be ignored.

D. Brief History of Government and Private Policies and Actions

The two main organizations concerned with family planning which receive government assistance are the Ghana National Family Planning Programme and the Planned Parenthood Association of Ghana. The former is a government agency which receives annual subventions of the order of \$500,000 while the latter is a private organization financed mainly by the International Planned Parenthood Federation.

Modern family planning in Ghana dates back to 1956 when Ms. Edith Gates of the Pathfinder Fund visited the country to explore the possibilities of introducing family planning advice and services. In April 1960, her work was consolidated with the formation of a Family Planning Committee in Accra.

The next significant milestone was the establishment by the Christian Council of a Family Planning Centre in 1961 at the Accra Y.W.C.A. In 1964 another centre was started by the Council in Kumasi. In 1965, Mrs. Betty Hull, then I.P.P.F. Liaison Officer for Africa visited the country and held discussions with officials of the Ministry of Health. By this time, considerable interest and concern had been excited by the results of the 1960 Census which indicated that Ghana's population had increased by two-thirds since the 1948 census and that the unadjusted growth rate between 1948 and 1960 was 4.2%. Even though the initial administrative response to the realities of the demographic situation was that the high population growth rate could be accommodated by the socialist policies introduced, a further warning by the economists and planners who prepared the Seven-Year Development Plan (1963/64-1969/70) led the Government of the day to establish an Inter-Departmental Advisory Committee to consider a population policy.

The Committee comprised representatives of the medical profession, ministers of religion, demographers, senior civil servants and politicians. The politicians maintained that the Government's expansionist economic policy was capable of absorbing any increase in the population. Despite this tendency towards pro-natalism, however, the Committee expressed its concern about the high rate of population growth and recommended that "any direct mass campaign to increase the population may ultimately lead to an unwanted population explosion in the future." The Committee further suggested that where people on their own initiative expressed the desire to limit their reproduction doctors should be allowed to offer the necessary advice and that the Government should also explore ways of helping those who desired to limit the size of their families for economic and health reasons.

The change in government in 1966 was the beginning of a new era in the history of population control in Ghana. For, on Human Rights Day in 1967, Ghana became the first Sub-Saharan African nation to sign the World

Leaders' Declaration on Population and to join 30 other nations in affirming the following convictions:

...that the population problem must be recognized as a principal element in long range national planning if governments are to achieve their economic goals and fulfil the aspirations of their people;

...that the great majority of parents desire to have the knowledge and the means to plan their families; that the opportunity to decide the number and spacing of children is a basic human right;

...that lasting and meaningful peace will depend to a considerable measure upon how the challenge of population growth is met; and

...that the objective of family planning is the enrichment of human life, not its restriction; that family planning by assuring greater opportunity to each person, frees man to attain his individual dignity and reach his full potential.

These considerations influenced the establishment in January 1968 of a sub-committee of the Ghana Manpower Board to examine Ghana's population in its broadest possible aspects and if necessary to consider a population policy for Ghana.

The recommendations of the Board were accepted and published in 1969 as Ghana Population Policy under the title "Population Planning for National Progress and Prosperity." The main tenets of this Policy are:

1. That a national population policy and programme are to be developed as organic parts of social and economic planning and development activity. Details of programmes are to be formulated through the collaborative participation of national and regional entities both public and private, and representatives of relevant professions and disciplines.
2. That the vigorous pursuit of further means to reduce the still high rates of morbidity and mortality will be an important aspect of population policy and programmes.
3. That specific and quantitative population goals will be established on the basis of reliable demographic data and the determination of demographic trends. To this end steps will be taken to strengthen the statistical, research and analytical facilities and

capabilities of the Government and of public and private educational and scientific organizations.

4. That recognizing the crucial importance of a wide understanding of the deleterious effects of unlimited population growth and of the means by which couples can safely and effectively control their fertility the government will encourage and itself undertake programmes to provide information, advice and assistance for couples wishing to space or limit their reproduction. These programmes will be educational and persuasive, and not coercive.

5. That ways will be sought to encourage and promote wider productive and gainful employment for women; to increase the proportion of girls entering and completing school; to develop a wider range of non-domestic roles for women; and to examine the structure of Government perquisites and benefits and if necessary change them in such ways as to minimize their pro-natalist influences and maximise their anti-natalist effects.

6. That the Government will adopt policies and examine programmes to guide and regulate the flow of internal migration, influence spatial distribution in the interest of development progress, and reduce the scale and rate of immigration in the interests of national welfare.

7. That provision will be made to establish and maintain regular contact with the development and experience of population programmes throughout the world through intensified relationship with international public and private organizations concerned with population problems.

In furtherance of its population policy, the Government accepted in August 1969 an organizational and operational framework for a National Family Planning Programme recommended by the Manpower Board. In January 1970, the Government formally established the National Family Planning Programme.

The philosophy underlying the structure of the programme is that the fullest possible use should be made of existing institutions, facilities and personnel in both the public and the private sectors.

Consequently, agencies which participate in the programme are those into whose programmes family planning activities can be integrated. The Ministry of Health has major responsibility for service aspects of the programme. Its personnel in hospitals, health centres and posts are an

essential component of the service and patient-education activities. The Ministry of Information has major responsibility for the information and education aspects of the programme. The personnel of the Ministry and its facilities are used in the design, production and distribution of educational materials for press, radio and television, for outdoor publicity and for film presentations and group discussions organized by mobile teams. The Ministry of Labour and Social Welfare contributes immensely to the person-to-person communication programme and to the recruitment of new family planning "patients" through the use of its facilities and the work of its staff. Indeed, family planning forms an integral part of the programme of the Department of Social Welfare and Community Development of the Ministry.

In the private sector, the family planning organizations, e.g., the P.P.A.G. and the Christian Council participate actively in the Government programme. The P.P.A.G., for example, provides a part of the services offered in the National Programme and plays a significant role in the training of field workers and information and educational programmes. A similar role is played by the Christian Council and other private organizations (e.g., the Y.M.C.A. and Y.W.C.A.).

Since so many organizations participate in the family planning effort, there is an obvious need for co-ordination. This function is performed by the Economic Planning Division of the Ministry of Finance and Economic planning which has ministerial responsibility for the programme. At the action level, the co-ordination is performed by the Executive Director and the Staff of the National Family Planning Programme Secretariat, an arm of the Ministry.

Government action in the area of population has not been limited to the establishment of the National Family Planning Programme. As provided for in the population policy, if the Government should encourage nationals to adopt family planning as a life style then there is the need to be selective about other nationals who enter the country and the areas of economic activity that should be open to them. The Aliens Compliance Order, 1969 and the Ghana Business Promotions Act (now repealed and replaced by the Investment Policy Decree, 1965, N.R.C.D. 329) were moves in this direction.

The Government through its university institutions has encouraged in-depth study of the dynamics of population growth in the country. For example, a Demographic Unit was created within the Department of Sociology to train demographers at the undergraduate level. Later, and by the joint sponsorship of the U.N. and the Ghana Government, the Regional Institute for Population Studies was established to train African demographers at the post-graduate level and to undertake research in African population problems. The Danfa Comprehensive Rural Health and Family Planning Project has been designed to explore the combination of facilities and health education that makes for maximum utilization of health amenities and family planning services. Recently, the Population Dynamics Programme has been established jointly by the University of North Carolina and the University

of Ghana to co-ordinate resources for the population issue and to emphasize its inter-disciplinary nature.

It is obvious from the foregoing that for nearly a decade the Government has been deeply involved in a wide network of activities aimed at achieving the objectives of family planning in particular and population control in general.

II. LAWS DEALING DIRECTLY WITH BIRTH AND WITH FAMILY PLANNING EDUCATION AND SERVICES

A. Criminal Law Treatment of Sexual Activity

The Criminal Code, Act 29, 1960, has different types of rules which have a bearing on population policy. Firstly, there are rules which prohibit certain kinds of sexual activity. Secondly, there are those rules which are aimed at prevention and termination of pregnancy because of their alleged detrimental effect on others. Under this category come abortion and the crimes committed in sterilizing a person without his consent and without lawful authority--(i.e., causing harm, battery, etc.). Finally, there is a residual category of crimes governing matters which are in some other way related to sexual activity such as the crimes based on obscenity.

The crimes included in the first category above do not have a major significance in population control. They proscribe certain aberrant types of sexual activity such as rape, defilement of females under a certain age, homosexuality, incest and various other offences relating to prostitution.⁷ The intention behind these provisions appears to be the buttressing of the orthodoxy and respectability of the mainstream of sexual and potentially procreative activity. Nevertheless, a close examination of some of these crimes would reveal a certain degree of relevance to population control.

For instance, the crime of defilement of the female under the Ghanaian Criminal Code (which is known as "statutory rape" in some other jurisdictions) has some relevance to population control because it is possible to regard the policy behind it as being to keep girls below the age of 14, out of the pool of child-bearing females. This, it is submitted, is sound policy since, though certain girls below 14 may be biologically capable of having children, they clearly would be quite unprepared for the responsibilities of motherhood. Moreover, keeping such girls out of the pool can be considered as a population control technique. This is because the policy behind the concept of statutory rape can be likened to the technique of shutting down a production line in a factory in order to cut back on production. The crime of rape does not quite have this cut-back function. But the prohibition it embodies has a certain relevance for population control. If males could set upon any adult females and compel them to have sexual relations with them, there would hardly be any ordered framework within which man and woman could agree upon and use birth control methods. The preservation of the consensual nature of sexual activity which the crime of rape seeks to achieve, therefore, is a necessary pre-requisite to effective birth control. Although the crimes of the category mentioned are not of primary importance from the point of view of population policy, they can hardly be excluded from any Comprehensive Population Code.

⁷See ss. 97-100, 101-106, 107, & 273-279 of the Criminal Code, 1960, Act 29.

Of more immediate importance for population policy, however, are the crimes in the second category, particularly abortion and sterilization. It is to a discussion of these that the next few pages are devoted.

B. Abortion

The legal regulation of abortion is of great interest not only from the social point of view, but also from the point of view of jurisprudence or legal theory. Whether or not to proscribe abortion is a question that provokes discussion on the purpose of criminal law generally. To what extent should the law be used to enforce morality? Is it justifiable to use the criminal law to ensure conformity with a particular conception of morality even where an individual's non-conformity will not necessarily have an adverse impact on others? There are two basic approaches to the function of criminal law, viz., the fundamentalist approach and the utilitarian approach. To the fundamentalists, the essential purpose of the criminal law is to protect moral values. In other words, the criminal law is an instrument for the enforcement of morality. To the utilitarians, however, the purpose of the criminal law is the prevention of harm to others. John Stuart Mill in his essay On Liberty epitomised this attitude in these words:

The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.

Thus while the utilitarians insist on punishing only such behaviour as is harmful to others or to the functioning of society, the fundamentalists emphasize the punishment of all behaviour that is offensive to the moral sense of the community.

It is respectfully submitted that immorality per se should not be the primary concern of the criminal law. Rather, prevention of harm to others should be the function of the criminal law. One is reminded of the view of Prof. H.L.A. Hart that:

Recognition of individual liberty as a value involves, at a minimum, acceptance of the principle that the individual may do what he wants, even if others are distressed when they learn what it is that he does--unless, of course, there are other good grounds for forbidding it.⁸

The law relating to abortion in Ghana today is governed by Sections 58, 59 and 67(2) of the Criminal Code, 1960, Act 29. These sections

⁸H.L.A. Hart, Punishment and Responsibility (Oxford: Clarendon Press, 1970).

provide as follows:

58. Whoever intentionally and unlawfully causes abortion or miscarriage shall be guilty of a second degree felony.⁹

59(1). The offence of causing abortion or miscarriage of a woman can be committed either by that woman or by any other person; and that woman or any other person can be guilty of using means with intent to commit that offence, although the woman is not in fact pregnant.

(2). The offence of causing abortion can be committed by causing a woman to be prematurely delivered of a child with intent unlawfully to cause or hasten the death of the child.

67(2). Any act which is done, in good faith and without negligence for the purposes of medical and surgical treatment of a pregnant woman is justifiable, although it causes or is intended to cause abortion or miscarriage, or premature delivery, or the death of the child.

It is perhaps of some significance that sections 58 and 59 which create the offence of abortion appear in Part II of the Criminal Code which deals with offences against the person, i.e., criminal homicide and cognate offences. It would appear, then, from the context in which abortion law is set in the Criminal Code, that the law in this regard is aimed at protecting life--presumably, the life of the foetus. Such a conception of life has religious and philosophical underpinnings. For example, Christian (particularly Roman Catholic) theology teaches that a foetus is endowed with a soul right from the time of its conception. It is this view of when life begins which shaped the original English rules after which the present Ghanaian law was fashioned.

On the other hand, it is possible to take a different view regarding when a life deserving of protection by the Criminal law comes into being. Many people in the contemporary world would not regard an unborn child as a human being or a "life" requiring the same protection from the criminal law as ordinary mortals. On the contrary, the general belief today is that life begins at birth. In other words, the conception of life underlying the present crime of abortion is not the only one that is conceptually possible. The argument as to whether or not to permit abortion should

⁹The maximum sentence for a second degree felony is ten years' imprisonment with or without a fine. Vide Criminal Procedure Code, 1960, Act 30, ss. 296 and 297.

therefore not be made to depend on the issue whether a foetus has a life or soul or not. That is merely to invite philosophical and theological disputation in which views on either side of the fence can be respectable and acceptable.

In this connection, the view of the United States Supreme Court in the recent case of Roe v. Wade is illuminating. In this case the constitutionality of a Texan statute, making it a crime to procure abortion except for the purpose of saving the life of the mother was in issue. The Court refused to recognize an unborn child as a person within the meaning of the Fourteenth Amendment to the U.S. Constitution and said:

Texas urges that...life begins at conception and is present throughout pregnancy, and that, therefore, the state has a compelling interest in protecting that life from and after conception. We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.

It should be sufficient to note briefly the wide divergence of thinking on this most sensitive and difficult question. There has always been strong support for the view that life does not begin until life birth. This was the belief of the stoics. It appears to be the predominant, though not the unanimous, attitude of the Jewish faith. It may be taken to represent also the position of a large segment of the Protestant community....

The Court then went on later in its judgment to argue as follows:

In view of all this, we do not agree that, by adopting one theory of life, Texas may override the rights of the pregnant woman that are at stake. We repeat, however, that the state does have an important and legitimate interest in preserving and protecting the health of the pregnant woman...and that it has still another and important and legitimate interest in protecting the potentiality of human life.

The Court was of the view that the State's interest in the health of the mother justified the imposition of restrictions on the termination of pregnancy after the third month of pregnancy and further that the State's interest in the potentiality of life provided enough justification for the proscription of abortion after the foetus has become viable, i.e., after it has achieved the capacity for meaningful life outside the mother's

womb. It would appear, therefore, that the Court did not consider that there was any State interest which justified an interference with a woman's decision to terminate her pregnancy before the end of the third month of such pregnancy.

It is submitted that this attitude to the lawfulness of abortion is called for in present-day circumstances. It does not serve any useful purpose to condemn abortion in purely moral terms as an abomination and a sin. What is required is a critical and rational investigation of what social interests are sought to be promoted by making termination of pregnancy a crime as opposed to the social interests which are sought to be advanced by permitting abortion.

Turning to the Ghanaian rules themselves, it would appear from section 67(2) of the Criminal Code that an abortion is lawful if the following conditions are satisfied:

1. the purpose must be medical or surgical treatment of a pregnant woman,
2. the abortion must be done in good faith, and
3. the abortion should be done without negligence.

By far the most important defect in the present law is that it fails to answer the question of who is qualified to perform a lawful abortion and what medical or surgical indications will justify the performance of an abortion. It is possible to take the view that by referring to "purposes of medical or surgical treatment," the Criminal Code limits the application of the provision only to persons who are qualified to administer medical or surgical treatment under the law of Ghana, i.e., persons registered under the Medical and Dental Decree, 1972. It would seem, therefore, that native herbalists, midwives and other para-medical personnel are precluded from performing legal abortions.¹⁰ It is difficult to imagine that in enacting the provisions on the permissible scope of legal abortions, Parliament intended to empower persons other than those qualified to practice medicine and surgery to engage in activities for which they lack the requisite skill and expertise.

The other related question is the nature of medical or surgical indications which will justify the performance of a legal abortion. In other words, is abortion permitted under the Criminal Code only where it is necessary to preserve the life and health of the mother? Or is it permitted also in cases where the pregnancy could have serious medico-social effects on the mother or the child, e.g., where the child was conceived by

¹⁰This view is strongly urged by F. LePoole-Griffiths in an illuminating article entitled, "The Law of Abortion in Ghana," X University of Ghana Law Journal No. 2 (1973), pp. 103-129.

rape or the child is likely to have serious congenital defects? Both the Criminal Code and available judicial authorities are silent on this point. Here, again, the view may be taken that since the Code insists on "good faith" on the part of the person performing the abortion, the legislature probably intended to leave the determination of the permissible scope of legal abortion entirely to the discretion of those competent to determine what is required "for purposes of medical or surgical treatment of a pregnant woman."

Other matters such as consent requirements, requirements as to length of pregnancy, the place of performance are presumably also to be left to the discretion of the person performing the abortion.

The failure of the draftsman to provide answers to the questions posed above has left both lawyers and doctors in confusion as to the scope of legal abortions.

In May 1973, questionnaires were distributed to postgraduate students and staff of the Faculty of Law, University of Ghana, Legon under the direction of a member of the Law and Population project to ascertain their attitudes to the law on abortion and its reform. A principal aim of the enquiry was to determine whether the opinions of lawyers coincided with those of the medical practitioners to whom a similar questionnaire had been administered earlier in the year. In other words, the purpose was to discover whether there was the same kind of evidence of lack of consensus as to the meaning of the law as it stands and a felt need for reform. The number of respondents was small. Only 10 lecturers and 22 students responded out of a total of 15 and 44 respectively. Nevertheless, the results of the survey are of interest inasmuch as they express the views of members of an important section of the legal profession--the academics.¹¹

Respondents in this survey were provided with three possible alternative interpretations of the law regarding abortion. These are as follows:

1. If anyone at all intentionally causes an abortion he or she is guilty of a second degree felony. Should necessary surgical or medical treatment properly administered to a pregnant woman unintentionally happen to cause abortion the medical practitioner involved cannot be considered guilty of a second degree felony. (That is, the medical officer set out to treat the woman for some specific condition but did not set out to remove the foetus).

2. Abortions are legal when they are performed by qualified medical practitioners in government hospitals and when there are medical indications--

¹¹At the 3rd Bench, Bar and Faculty Conference in 1974, a consensus of opinion emerged that the country's abortion laws should be liberalized.

that is, when there are somatic and possibly psychiatric counter indications to pregnancy and childbirth.

3. A further possibility is that room has been left free for development of medical opinion and that a doctor who, without negligence, performs an abortion that he in good faith believes to be the preferred course of treatment of the pregnant woman, upon whatever reasonable indication, is within the limits of the law.

The results of this survey are tabulated hereunder:

Table 1

Interpretation thought correct

	<u>Lecturers</u>	<u>Students</u>	<u>Total</u>
1.	4	10	14
2.	5	8	13
3.	1	3	4
*N/R	0	1	1
Total	10	22	32

*N/R = No Response.

Table 1 reveals a lack of consensus as to the interpretation of the relevant sections of the Criminal Code.

Table 2

Interpretation thought best

	<u>Lecturers</u>	<u>Students</u>	<u>Total</u>
1.	0	2	2
2.	5	8	13
3.	5	11	16
N/R	0	1	1
Total	10	22	32

50% of the respondents considered the most liberal of the interpretations (i.e., Interpretation #3) would best suit the needs of the Ghanaian population.

Table 3

Responses to the question: "Do you feel that the present law regarding abortion is sufficiently clear as to which abortions are legal and which are not?"

	<u>Lecturers</u>	<u>Students</u>	<u>Total</u>
Yes	0	9	9
No	10	10	20
Possibly/No reply	0	3	3
Total	10	22	32

The majority of the respondents considered that the law lacks clarity.

Table 4

Responses to the question: "Do you feel that the present law gives enough guidance to the medical profession?"

	<u>Lecturers</u>	<u>Students</u>	<u>Total</u>
Yes	10	15	25
No	0	3	3
Possibly/No reply	0	4	4
Total	10	22	32

An overwhelming majority of the respondents thought that the law should be changed.

Table 6

Responses to the question: "If the law were changed and made more specific and included social and psychological reasons for procuring abortion, do you think that the following categories of cases should be included?"

<u>Category</u>	<u>Response</u>						
	<u>Yes</u>			<u>Depends</u>		<u>No</u>	
	<u>Lec.</u>	<u>Std.</u>	<u>Total</u>	<u>Lec.</u>	<u>Std.</u>	<u>Lec.</u>	<u>Std.</u>
1. Woman does not want pregnancy	5	5	10	2	7	3	8
2. No recognized father	8	6	14	1	6	1	6
3. Girl in full-time education	7	11	18	1	3	2	5
4. Girl under 16	7	9	16	0	2	3	8
5. Woman complains of psychological stress	6	14	20	1	0	3	5
6. Woman complains of financial strain	8	14	22	1	2	1	3
7. Woman feels employment and financial support of children will suffer	9	11	20	0	3	1	5
8. Woman has enough children	7	12	19	2	3	1	4
9. Woman has contraceptive failure	8	8	16	1	6	1	6
10. Pregnancy caused by rape	10	18	28	0	0	0	1

Table 6 reveals that the category of women for whom the majority of respondents felt legal abortions should be made available include (a) rape victims; (b) women suffering from financial and psychological stress;

(c) women who already have enough children; and (d) women in full-time education.

In some countries of the world induced abortion is the main method by which women control their family size.¹² That it is an important and widespread means of birth control has been recently brought to light by Professor D.A. Ampofo of the Ghana Medical School.¹³ According to him, induced abortion is extensively used for fertility control and the harmful results of abortions induced by unqualified persons affects a large section of the community, leading to a real increase in morbidity and mortality. In view of this, there is an urgent need for legally and medically acceptable abortion procedures. Owing to the lack of clarity, on the permissible scope of legal abortions and the need for change, it was decided to conduct a survey of medical practitioners' attitudes to the existing law and possible areas for reform.

This survey was carried out between November 1972 and March 1973 by Dr. Christine Opong, a member of the Law and Population Project of the University of Ghana, under the direction of the late Professor K. Bentsi-Enchill, then Director of the Project. The relatively low response rate of the survey (54%) was due to the wide geographical dispersal of respondents which made follow-up difficult. Questionnaires were mailed or distributed, self-administered and returned by post or collected.

The questionnaires were almost identical with those used for the survey involving law students and lecturers.

The results of the survey are tabulated hereunder:

¹²For mention of this and the relationship observed between abortion rates and provision of contraceptive services, see C.W. Tyler et. al., "Induced Abortion and Family Planning: Gynaecological Aspects" in S. Newman et. al., eds., Abortion Obtained and Denied Research (Population Council, 1971).

¹³D.A. Ampofo, "Abortion in Accra: The Social, Demographic and Medical Perspectives," Ghana Population Studies No. 3 (Legon: Demographic Unit, 1971); and "Abortion Trends in Korle Bu Hospital," paper read at a meeting of the Ghana Medical Association, 1972.

Table 1

Interpretation of the law
considered to be correct

Response	N	%
1.	37	19
2.	85	45
3.	53	28
Other	17	8
Total	192	100

Table 2

Responses to the question: "If you had scope for personal choice which interpretation do you feel would best suit the needs of the Ghanaian population at the present time?"

Response	N	%
1.	9	4
2.	82	43
3.	77	40
Other	24	13
Total	192	100

Table 3

Interpretation of the law thought best by interpretation thought correct.

<u>Interpretation Correct</u>	<u>Interpretation Best</u>			
	A	B	C	N/MR*
A	5	12	14	6
B	1	61	19	4
C	2	8	40	3
N/MR*	1	1	4	11
Total	9	82	77	24

*No or Multiple Response.

Table 4

Responses to the question: "Do you feel that the present law regarding abortion is sufficiently clear as to which abortions are legal and which are not?"--by interpretation thought correct.

<u>Interpretation thought correct</u>	<u>Response</u>				Total
	<u>Yes</u>	<u>No</u>	Possibly	NR	
A	6	31	-	-	37
B	23	54	6	2	85
C	6	41	5	1	53
N/MR	3*	12	-	2	17
Total N	38	138	11	5	19
%	20%	72%	6%	2%	100%

*In each of these cases, two interpretations were considered correct: A/B; A/C; B/C. This negates any assertion of clarity.

Table 5

Responses to the question: "Do you feel that the present law gives enough guidance to the Medical Profession?"--by interpretation thought correct.

<u>Interpretation thought correct</u>	<u>Response</u>			<u>N/MR</u>	<u>Total</u>
	<u>Yes</u>	<u>No</u>	<u>Possibly</u>		
A	4	30	3	-	37
B	19	57	5	4	85
C	6	40	6	1	53
N/MR	1	12	2	2	17
Total N	30	139	16	7	192
%	16%	73%	8%	3%	100%

Table 6

Responses to the question: "Do you think that the law ought to be changed?"--by interpretation thought correct.

<u>Interpretation thought correct</u>	<u>Response</u>			<u>N/MR</u>	<u>Total</u>
	<u>Yes</u>	<u>No</u>	<u>Possibly</u>		
A	31	3	2	1	37
B	61	11	9	4	85
C	41	5	6	1	53
N/MR	13	1	2	1	17
Total N	146	20	19	7	192
%	76%	10%	10%	4%	100%

Table 7

Responses to the question: "If the law were changed and made more specific and included social and psychological reasons for procuring abortion, do you think that the following categories of cases should be included?" (N=192).

<u>Category</u>	<u>Response (Percentages)</u>				<u>Total%</u>
	<u>Yes</u>	<u>Depends</u>	<u>No</u>	<u>NR</u>	
1. Woman does not want pregnancy	15	38	47	-	100
2. No recognized father	25	33	41	1	100
3. Girl in full-time education	24	44	29	3	100
4. Girl under sixteen	29	53	17	1	100
5. Woman complains of psychological stress	39	43	17	1	100
6. Woman complains of financial strain	38	33	28	1	100
7. Woman feels employment and financial support of children suffer	45	24	29	2	100
8. Woman has sufficient number of children	49	27	23	1	100
9. Woman had contraceptive failure	51	29	18	2	100
10. Pregnancy caused by rape	74	18	6	2	100

Table 8

Response to the question: "What person or group of persons should be given authority to make the decision?"

<u>Response</u>	N	%
1. Doctor performing operation	43	22
2. Doctor plus others	86	46
3. Depends on circumstances	58	30
4. No response	5	2
Total	192	100

Discussion:

The first aim of the survey was to discover how medical practitioners interpreted the law, since preliminary discussions with a few doctors, lawyers and laymen revealed a divergence of interpretations. Broadly speaking, three categories of interpretations emerged. The first was very strict (A); the second more liberal but rather vague (B); and the third even more liberal and specific (C).¹⁴

The first part of the questionnaire therefore invited the respondents to specify clearly which of these three interpretations they believed to be correct or whether they thought that some other different interpretation was the correct one.

The results show quite clearly that there is no unanimity among medical practitioners regarding interpretation of the law. One in five take a narrow view and consider any kind of intentional abortion to be illegal. 45% consider the more liberal but vague interpretation (B) to be correct and 28% consider that the most liberal of the interpretations (C) is correct.

The second aim of the survey was to discover which interpretation the medical practitioners considered to be "best suited to the needs of the Ghanaian population at the present time."¹⁵

¹⁴For the precise wording of these three interpretations, see supra p. 23.

¹⁵See Table 1.

The more liberal interpretations (B and C) were thought to be superior. This indicates a significant difference between what they considered to be the correct interpretation of the law and the one they considered to be the best.¹⁶ Table 3 shows how interpretations as to what was correct and choice as to what was best were the same or differed, indicating that 55% thought that the correct interpretation of the law and their own views as to what was best coincided. Of these, 5 (approximately 5%) thought that the strictest interpretation was correct and best. About 59% thought interpretation B was correct and best and 39% thought that the most liberal interpretation was best and correct. Of those who considered that there was a difference between what they thought correct and best (56 doctors, i.e., 29% of the total), 80% (i.e., 45/56) wanted a more liberal interpretation of the law.

There is thus a lack of consensus as to the meaning of the law and strong evidence of a desire for the liberalization of the law. The fact that the medical practitioners themselves feel that the present law lacks clarity is evidenced by their response to further questions. It will be observed from Table 4 that as many as 72% felt that the present law lacks clarity and these came from those considering interpretation A, B, and C to be correct.

It is not surprising, therefore, that the same large majority do not feel that the law gives sufficient guidance to the medical practitioners (see Table 5) and feel that the law ought to be changed (see Table 6).

Respondents were also asked if the law were changed and made more specific and included social and psychological reasons for procuring abortion, what categories of cases they thought should be included. Their responses are contained in Table 7. Ten different categories of cases were included in this question. They were ranked according to the amount of approval expressed as to whether a particular category of women should be able to procure abortion.

Women stating that they did not want the pregnancy to continue or that there was no recognized father of the child received the least sympathy. Views were mixed regarding girls in full-time education, girls under the age of sixteen and women complaining of psychological stress. On the other hand, women complaining of financial strain, women with as many children as they wanted and women who had suffered a contraceptive failure were generally considered as entitled to abortion. With regard to conceptions caused by rape, there was overwhelming approval of abortion on request. Besides, in every case except the last (where there is considerable unanimity) about a quarter to more than half of the respondents say "it depends." In other words, each case should be decided on the basis of its peculiar facts.

¹⁶See Table 2.

With respect to specifications as to the way in which abortions ought to be performed, 56% stated that it ought to take place within the first trimester of pregnancy.¹⁷ 65% said that in the case of married women, the consent of the husband was essential and ought to be required. Table 8 represents responses relating to the requirements of the decision to perform an abortion.

In the case of those stating that several persons should be authorized to make the decision, some of the responses read as follows:

At least 2 doctors--one a gynaecologist and the other an experienced medical practitioner or psychiatrist.

A panel of 2 senior physicians and a psychiatrist.

Where the pregnant woman's life is very seriously threatened, one doctor performing the operation can decide. Otherwise, all other cases need be examined or sanctioned or rejected by an "Abortion Committee" of 3 persons, the Chairman being a doctor and one of its members coming from the Department of Social Welfare. Where possible the Committee must be reconstituted every three months.

When asked whether they would in fact support the view of the Canadian Psychiatric Association that abortion should become strictly a medical procedure to be decided by the woman and her husband if she has one, along with the physician, 50% said yes, 28% said no and 19% said possibly.

The Law Reform Commission of Ghana, after carefully weighing the advantages and disadvantages of having a restrictive abortion law, has recently expressed support for the liberalization of the country's abortion laws. This is in line with informed opinion not only in legal circles but medical circles as well. Most doctors, for example, feel that there is a correlation between the present restrictive abortion laws and recourse to the high-risk (and sometimes, high cost) operation of the backstreet abortionist.

Pursuant to its recommendations, the Law Reform Commission has circulated three alternative draft proposals for liberalizing abortion laws. The first draft, which follows the British pattern, lays down a general rule making the termination of pregnancy by a registered medical practitioner, if two registered medical practitioners or one gynaecologist are of the bona fide opinion that the continuance of the pregnancy will involve risk to the life of the pregnant woman, or risk of injury to the physical or mental health of the pregnant woman or any existing children of her

¹⁷This is supported by evidence compiled by C. Tietze and S. Lewit, "Joint Program for the Study of Abortion: Early Medical Complications of Legal Abortion," 3 Studies in Family Planning No. 6, June 1972.

family. Such termination is also authorized if there is a bona fide opinion that there is substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped. Such authorized terminations of pregnancies should be carried out in hospitals or clinics approved by the Government.

The second draft also makes abortion a crime unless it is carried out by a registered medical practitioner in a general public hospital or clinic or a private hospital regulated under the Private Hospitals and Maternity Homes Act, 1955 or in a place approved by the Commissioner for Health. Apart from this requirement no further limitations are imposed. The decision to perform the abortion is left entirely to the doctor.

The third draft also prohibits abortions unless they are carried out in a hospital or a clinic. However, it enumerates the situations in which abortions, even in hospitals, will be lawful. Such abortions will only be lawful where a registered medical practitioner forms the opinion in good faith that:

1. the continuance of the pregnancy will involve serious risk to the life of the pregnant woman or injury to her physical or mental health; or
2. that there is substantial risk that the child may suffer from or later develop a serious physical or mental abnormality; or
3. that the pregnancy is the result of rape, defilement of a female, carnal knowledge of a female idiot or incest; or
4. that the pregnant woman has recently given birth to a child such that her capacity to care for another child is seriously impaired; or
5. by reason of her circumstances the pregnant woman will be unable or unlikely to care adequately for the child, if born.

Which of these alternative drafts will eventually be adopted remains to be seen, but it would appear that the third draft is the best, since it sets out in sufficient detail the grounds upon which legal abortions may be carried out.

It is submitted that the move towards liberalization of abortion laws in Ghana is a desirable one in view of the Government's declared commitment to family planning as an integral part of its population policy.

C. Sterilization

Under present Ghanaian law, there are no express regulatory provisions on sterilization. However, the Criminal Code, Act 29, 1960 contains provisions on consent as a defence to the use of force on a person which are relevant in this connection. Section 42 reads as follows:

The use of force against a person may be justified on the ground of his consent, but--

(a) the killing of a person cannot be justified on the ground of consent;

(b) a wound or grievous harm cannot be justified on the ground of consent, unless the consent is given, and the wound or harm is caused, in good faith, for the purposes of medical or surgical treatment;

(c) consent to the use of force for the purposes of medical or surgical treatment does not extend to any improper or negligent treatment;

(d) consent to the use of force against a person for the purposes of medical or surgical treatment, or otherwise for his benefit, may be given against his will by his father or mother or guardian or a person acting as his guardian, if he is under eighteen years of age, or by any person lawfully having the custody of him if he is insane or is a prisoner in any prison or reformatory, and, when so given on his behalf, cannot be revoked by him;

(e) if a person is intoxicated or insensible, or is from any cause unable to give or withhold consent, any force is justifiable which is used, in good faith and without negligence, for the purposes of medical or surgical treatment or otherwise for his benefit, unless some person authorized by him or by law to give or refuse consent on his behalf dissents from the use of force.

It is recommended that a statute be passed to make it possible for interested persons to have access to clinics whose facilities for sterilization can be obtained at little cost. Furthermore, in view of the level of expertise required, sterilization should be performed only by those qualified to practise medicine and surgery under the Medical and Dental Decree, 1972.

Sterilization should be voluntary and the persons concerned must be made to consent in writing to the operation. The requirement that the consent should be in writing is meant to protect those who may have reservations and also to protect doctors where a person later denies that he or she ever consented to sterilization. Where the person concerned is married, the written consent of his or her spouse should be obtained. Before a marriage is entered into, each party ought to be made to disclose on oath whether he or she has been sterilized. Finally, there should be age requirements.

As part of the survey to investigate medical practitioner's attitudes to abortion law and its reform (discussed above), respondents were also asked whether sterilization should be made available to all women who desire it as a means of birth control. 77% of the survey sample (i.e., 192) thought that it should be made available to all women; 57% considered that it should be made obligatory in certain circumstances for particular categories of people. Such types of people include mental patients, people suffering from incurable health conditions and even criminals.

D. Contraception

The law relating to the manufacture, distribution and use of contraceptive drugs is embodied in the Pharmacy and Drugs Act, 1961, Act 64. But this statute does not regulate the manufacture and distribution of other contraceptive devices such as the condom and the intra-uterine device.

So far as the condom and the intra-uterine device are concerned, there appears to be no law regulating their manufacture and sale. Anybody is entitled to go into a shop and buy a packet of condoms over the counter. These are sold not only in the chemists' but also in the supermarkets. It appears that in the case of the intra-uterine device a doctor's recommendation and help are required.

The following terms are used so often in the Pharmacy and Drugs Act that it may be useful to define them at the onset. These are: (a) exempted drugs; (b) dangerous drugs; and (c) restricted drugs.

An "exempted drug" within the meaning of the Pharmacy and Drugs Act, 1961, is a drug specified in the First Schedule of the Act. Of the drugs specified in that Schedule only one has something to do with contraception (i.e., castor oil) but even with regard to this drug, contraception is not one of its normal uses. On the other hand, a "dangerous drug" means a Class A, B or C drug. Of the drugs falling under Class A (see Second Schedule) only one can be used for contraception--i.e., steroid compounds with androgenic or oestrogenic activity. None of the drugs listed under Class B is a contraceptive. Similarly, Class C drugs do not include contraceptives.

The effect of the foregoing is that steroid compounds with androgenic or oestrogenic activity, which may be used as contraceptives are branded "dangerous" and by definition "restricted."¹⁸ What this means is that contraceptive drugs can only be dispensed pursuant to and in conformity with a prescription. The supplier of the drug is under a legal duty to keep the prescription form for a period of two years from the date of supply of the drug. During this period it may be inspected, presumably by

¹⁸See s.62 of the Act which defines a "restricted drug" as a drug which is a dangerous drug or any other drug which is not exempted.

servants or agents of the Pharmacy Board.¹⁹ Furthermore, contraceptive drugs may not be sold by means of an automatic machine or from any vehicle or unlicensed premises.

Again, sections 32(1) and 17(1) are of considerable importance so far as the regulation of the manufacture and sale of contraceptive drugs is concerned. The former gives the Pharmacy Board the power to demand details of the composition of a proprietary drug (i.e., a drug which is distributed by retail under a brand name and in a form ready for use) and copies of any descriptive matter published in relation to the drug where they have reason to believe that any person is proposing to sell it by retail. Again, the Board may prohibit the sale by retail of a proprietary drug where:

1. claims are made for the drug which cannot be justified;
2. use of the drug may endanger the health of the user if the recommended dose is exceeded;
3. details of the composition of the drug furnished differ substantially from those disclosed on an analysis of samples of that drug;
4. descriptive matter published in relation to the drug differs substantially from that contained in copies furnished to the Board.²⁰

By section 17(1), the Pharmacy Board is entrusted with the function of licensing corporate bodies which want to carry on the business of mixing, compounding and preparing restricted drugs and supplying restricted drugs by retail.

The foregoing are far-reaching powers of control which may be exercised in relation to the manufacture and sale by retail of contraceptive drugs.

Finally, section 34 prohibits the publication by any person, by way of advertisement of a drug, any descriptive matter calculated to lead to the use of that drug for the purpose of terminating or influencing the course of human pregnancy or for any purpose relating to human sexual intercourse. The redeeming feature of this provision, however, is that it allows publication of such descriptive matter "by direction of the Minister." Otherwise, the propaganda activities of the various family planning activities of the various family planning organizations in the country would be caught by that section.

It would be observed that the law places quite a number of restrictions on the manufacture and sale of contraceptive drugs. It is necessary at this point to comment on some of these restrictions.

¹⁹See ss. 22(1) and 25 of the Act.

²⁰See section 33.

Firstly, the restrictions relating to the manner of dispensing these drugs may have been imposed because of the possible side effects of the use of these drugs. In other words, the purposes of dispensing the drugs pursuant to and in conformity with a prescription is to ensure that the person to whom they are dispensed has been properly examined by a recognized family planning clinic and has been found to have no allergy to the drugs concerned.

Secondly, the Pharmacy Board's powers of control over the manufacture of contraceptive drugs which are proposed to be sold by retail under a brand name are meant to ensure that the use of the drugs does not endanger the health of the user. Similarly, the Board's powers in relation to the licensing of companies engaged in the manufacture of contraceptive drugs are geared towards the same aim.

Even though these restrictions are necessary for the reasons stated, they appear to be largely theoretical since, in practice, nobody seems to observe them. It is submitted that a more effective enforcement machinery is urgently required.

With regard to subsidized distribution, Section 19 of the Act makes it possible for the Minister of Health (now Commissioner of Health) to fix control prices in respect of restricted drugs which by definition include contraceptive drugs. This aspect of the law relating to contraceptive drugs ought to be retained since any government committed to family planning should be concerned with the control of prices in this area.

Finally, with regard to medical assistance, the system of health insurance which obtains in other parts of the world (e.g., Britain) does not exist in Ghana. Rather, there is a statutory scheme for ensuring that specified persons obtain medical assistance free of charge. For example, section 2 of the Hospital Fees Act, 1971, provides that "no fees shall be paid in respect of services rendered in a hospital to: (a) any person certified in writing by a medical officer to be unable to pay these fees on the ground of poverty."

The language of this provision, it is submitted, is wide enough to include services rendered to indigent persons in respect of birth control. But some kind of proof of poverty (i.e., a means test) seems to be required. Again, any full-time pupil or student in a recognized institution is entitled to medical assistance free of charge. This is important in terms of offering medical advice to students on the use of contraceptives as well as terminating pregnancy in the case of female students. Apart from the Hospital Fees Act, the only other statutes relevant to the provision of free medical assistance are the Infectious Diseases Ordinance (Cap. 78), the Lunatic Asylums Ordinance (Cap. 79) and the Beggars and Destitutes Decree, 1969 (N.L.C.D. 392). These three statutes provide for free medical assistance to the following classes of persons:

1. lunatics confined in an asylum;
2. any person suffering from or who is suspected of suffering from any disease of a communicable nature; and
3. any person who is a beggar or a destitute.

E. Education

Sex education which is gradually arousing the interest of educationists, primarily because of the publicity given to the family planning programme in this country, is not specifically provided for by the Education Act, 1961. But the provisions of that Act, particularly section 1(2), are wide enough to give the relevant authorities statutory backing for the introduction of sex education into the curricula of schools. That section provides as follows:

It shall be the duty of the local education authority for every area as far as its functions extend to contribute towards the spiritual, moral and physical development of the community by securing that efficient education throughout the primary and middle stages shall be available to meet the needs of the population.

If it is accepted that sex education has something to contribute to the spiritual, moral, mental and physical development of the community and that sex education is inherent in the concept of efficient education, then this section would appear to provide an adequate statutory basis for the introduction of sex education into the curricula of schools.

At the university level, there is no specific provision empowering the authorities of the country's universities to introduce sex education into the curricula of the various faculties. But here again certain inferences can be drawn from general provisions on who in these institutions has the power to decide what should be taught and how it should be taught.

The University of Ghana Act, 1961, for example, provides in Section 2 as follows:

The aims of the University shall be to provide higher education, to undertake research, to disseminate knowledge and to foster relationships with outside persons and bodies; and to do so in accordance with the following principles:

- (a) that in determining the subjects to be taught emphasis should be placed on those which are of special relevance to the needs and aspirations of Ghanaians, including the furtherance of African unity.

The Statutes of the University of Ghana promulgated in pursuance of the University of Ghana Act state quite clearly who has responsibility for deciding what should be taught in the University. Rule 17(a) of the said statutes provides as follows:

17. Subject to the Act and these Statutes, the Board of each Faculty shall have the following powers:

(a) to regulate within general policy approved by the Academic Board the teaching and study of the subjects assigned to the Faculty....

The following conclusions emerge from the foregoing statutory provisions:

1. that within the framework of the laws governing the University of Ghana, sex education can be fitted into the curricula of the various faculties since the subject can be said to be of "special relevance to the needs and aspirations of Ghanaians."

2. that the various Faculty Boards have the power to determine within the framework of policy laid down by the Academic Board what courses may be taught in the University and the content of such courses.

It will be seen, then, that it is possible to mount a programme of sex education at various levels of our educational system without contravening any of the laws governing education in this country.

The question which arises is whether such a programme is necessary. Traditional society has always had a system of sex education. At the time when there was no formal education, the young girl stayed with her mother and other female members of the family group and in this way she learnt proper female behaviour including how to comport herself as wife, mother and housekeeper. At puberty, i.e., menstruation and prior to marriage, she was initiated into womanhood. Most of the ethnic groups in Ghana observed these puberty rites. The Gas had "otofo," the Ashantis "bragro," the Krobos "dipo," etc.

In the performance of these rites, emphasis was placed on the importance of the family in socialization and its role as an agent of social and moral control in traditional society. The idea of pre-marital chastity was complemented by a range of social safeguards and sanctions which made violation difficult, if not impossible. Any incidence of sex misbehaviour met with the severest punishment. There was also an elaborate system of sex prohibitions and taboos to control teenage and adult sex behaviour.

With the gradual relaxation of traditional and parental control the dangers of disregarding traditional values have lost much of their threat. The modern child spends most of his or her formative years in school. The

school system itself provides a greater opportunity for children of both sexes to mix freely together.

With social change, relatively earlier physical maturity and various situations in which sexual experimentation can take place, there is a marked decrease in pre-marital chastity.

A recent survey of attitudes towards sex among selected secondary school girls is as revealing as it is alarming.²¹ The sample consists of 680 girls from various secondary schools throughout the country. Of this number about half receive information about sex from people other than their parents. These other people include boy and girl friends, brothers and sisters. Indeed, only 18.4% have actually been referred to or given books on sex by their parents, while 53.8% have come by these books themselves. All this points to the fact that there is very little discussion on sex between parents and their children.

On the question of sex involvement, the survey revealed that 63.0% have regular boy friends which, in the Ghanaian context, should not be confused with schoolmates or mere acquaintances. These are people of the opposite sex they believe they are in love with and on whom they bestow their affections in characteristically unrestrained fashion. 292 out of 680 girls have experienced actual sexual intercourse at various ages ranging from under 12 to over 19. The others have at various times been involved in different shades of sexual activity short of intercourse.

The majority of the girls interviewed were aware of different types of contraceptives such as the pill, condoms, foams and creams and the IUD. They were even aware of various methods (largely unorthodox) of procuring an abortion, e.g., the Cassava leaf or twig, brandy, castor oil, sugar cane and vinegar solution. 22.2% of the sample who have had sex before have used one type of contraceptive or the other and 2.6% have used it even before the age 16. Boy friends have been the main source of supply, though 6.3% have bought these themselves from the drug stores.

That the youth of today indulge in sexual activity on a grander scale than their predecessors cannot be doubted. But the amount and content of information and knowledge about sex leave much to be desired. It is in this light that better sex education in the educational institutions is seen as an essential component of the family planning programme. Without it, the adolescent is left on his or her own either to commit blunders or learn through unorthodox methods. If sex education is necessary, then the following questions need urgent attention:

²¹E. Aboagye, "Attitudes Towards Sex Amongst Selected Secondary School Students," paper read at the Law and Population Seminar, University of Ghana, Legon, May 1974.

1. Who will be the most effective group to carry out sex education programmes—the educational institutions, the churches, a government organization or what?

2. At what stage in the life of the adolescent should he or she be introduced to formal education on sex?

3. What should be the permissible content of such a programme?

With regard to the availability of and financial assistance to education, primary and middle education is under the Education Act, free and compulsory for all children, male or female, of school-going age. Any parent who contravenes this section of the Act commits an offence and is liable on summary conviction to a fine not exceeding \$20.99 and, in the case of a continuing offence, to a fine not exceeding \$4.00 for each day of default.

Secondary education is not compulsory but it is partly free up to the Ordinary Level in the sense that tuition is partly subsidized. Indeed, until recently text-books were supplied free of charge. Tuition at Sixth-Form Level is completely free. University students, however, have to obtain loans under the Student Loans Scheme in order to finance their education.

It would appear, therefore, that there is a move towards making at least basic education available to as many people as possible. Even though there is government subsidy at certain levels of the educational system, it is doubtful whether the nature and extent of the subsidy produces a pro-natalist effect.

III. FAMILY LAW AFFECTING POPULATION

A. General

There are three forms of marriage recognized by Ghanaian law. These are as follows:

1. marriage according to the various systems of customary law;
2. marriage according to Mohammedan law;²² and
3. marriage under the provisions of the Marriage Ordinance.²³

Customary marriages are potentially polygamous in the sense that a man is entitled to marry more than one wife if he so wishes whereas a woman married under the customary law is prevented from taking on another husband.

Under Moslem law, which also permits polygamy, a man is entitled to marry up to four wives.

Marriages under the Ordinance, however, are monogamous. They are in the words of Lord Penzance in Hyde v. Hyde, "a voluntary union for life of one man and one woman to the exclusion of all others."²⁴ It may be noted that a marriage according to customary law may be converted into an Ordinance marriage provided the same woman is involved. It is not clear, however, whether an Ordinance marriage may be reconverted into a customary law marriage.

B. Minimum Age of Marriage

Under Section 14(2) of the Marriage Ordinance, Cap. 127, the Registrar should not authorize any marriage unless he is satisfied "inter alia" that each of the parties to the intended marriage (not being a widower or a widow) is twenty-one years old, or that if he or she is under that age, the consent of the parents has been obtained.

The Marriage of Mohammedans Ordinance Cap. 129, merely provides for the registration of Mohammedan Marriages and divorces. The essentials of a valid Mohammedan marriage are not specifically regulated by the Ordinance but by general Moslem law. Generally speaking, Mohammedan women marry

²²Marriage of Mohammedans Ordinance, Cap. 129, Laws of the Gold Coast, 1951 Revised Edition.

²³Cap. 127, Laws of the Gold Coast, 1951 Revised Edition.

²⁴(1866) L.R.IP. & D. 130 at 133.

rather early (between 15 and 19), while Mohammedan men usually marry after age 21. This is also generally true of customary law marriages.

It has been said that the age at which a person marries is directly related to the number of children his or her marriage produces.²⁵ In other words, the later the age of marriage the fewer children he or she is likely to have.

Underlying this argument is the assumption that reproductive activity takes place only within the context of marriage. This brings to mind the question of concubinage and the attitude of the law to such inchoate "marriages." It is an incontrovertible fact of social life that these relationships exist in Ghana and that children often result from them. Concubinage is no crime in Ghana; in other words, to live with a woman or women with whom one has not undergone any ceremony of marriage is no crime under the laws of the country, unless of course the relationship also happens to amount to bigamy.²⁶ Although such conduct is frowned upon by traditional society, nevertheless the customary law itself has never regarded it as a crime.

The author is of the considered view that no useful purpose will be served by any campaign for late marriages designed to reduce the number of children a couple may have.

C. Divorce

With regard to divorce, customary law marriages and marriages according to Mohammedan rites are much easier to dissolve than marriages under the Ordinance in the sense that while the former require no judicial intervention the latter do. So far as marriages under the Ordinance are concerned it is now easier to obtain a divorce than it used to be. The Matrimonial Causes Act, Act 367, 1971 now recognizes one general ground for the dissolution of an Ordinance marriage, i.e., the breakdown of the marriage beyond reconciliation. Evidence of the breakdown of the marriage may consist, for example, of the fact that the parties have not lived as man and wife for a continuous period of 5 years or more.²⁷

Under the various systems of marriage known to the Ghanaian law, divorce may be followed by remarriage. It may be argued that where this occurs, childless marriages are likely to be replaced by marriages which result in children. Besides, the ease with which a divorce may be obtained

²⁵L.T. Lee, "Law and Family Planning," 2 Studies in Family Planning No. 4 (1971), p. 90.

²⁶Sections 262-265 of the Criminal Code, 1960, Act 29.

²⁷For a catalogue of the grounds for divorce, see s. 2 of the Matrimonial Causes Act, 1971, Act 367.

is likely to affect, to a substantial degree, the stability of marriages which in turn may discourage childbirths.

D. Polygamy

As has been observed, both the traditional customary law and Moham-
medan law recognize and accept the concept and practice of polygamy except
that the former does not place any limitation on the number of wives while
the latter limits the number to four.

It is generally assumed that the practice of polygamy has, by its
very nature, a great potential for the creation of large families. It is
significant to note, however, that the institution of polygamy as practised
in this country has always had a built-in mechanism for the spacing of
children, thus counterbalancing the high procreative tendency which a
plurality of wives would otherwise have. Reference has already been made
to the role played by the weaning taboo in the spacing of children.²⁸ This
taboo is based on the belief that the seminal fluid contaminates the
mother's breast milk which then becomes injurious to the health of the
baby. The mother of a young child, therefore, had to abstain from sex
throughout the period of breast-feeding which ranged from two to three
years. Where a man had more than one wife, this meant that the reproduc-
tive process of the co-wives had to be regulated in such a way that while
one was breast-feeding the others would be in a position to offer their
sexual services.

²⁸See section on Social, Cultural and Religious Elements, pp. 8-12.

IV. LAWS ON ECONOMIC FACTORS RELATED TO THE FAMILY

A. Labour and Welfare Laws

1. Maternity Benefits

The Labour Decree, N.L.C.D. 157, 1967, contains provisions designed to protect the pregnant female employee. Section 42(1) of the Decree imposes the following obligations on the employer of any industrial, commercial or agricultural undertaking:

a. The employer shall give leave to any pregnant female worker if she produces a certificate given by a Medical Officer or a midwife registered under the law for the time being in force relating to the registration of midwives to the effect that her confinement is in the opinion of such officer or midwife likely to take place within six weeks after the date of the certificate;

b. The employer shall give at least six weeks leave to a female worker in such undertaking immediately after her confinement. Where the confinement is abnormal or where in the course of the same confinement two or more babies are born, the above-mentioned period shall be extended to at least eight weeks;

c. The employer shall permit the female worker to take her annual leave in addition to her maternity leave if she becomes entitled to annual leave before the expiry of her maternity leave;

d. The employer shall not assign or temporarily allocate a pregnant female worker to a post outside her place of residence after the completion of the fourth month of pregnancy if such assignment or allocation in the opinion of a Medical Officer or a midwife will be detrimental to her health;

e. The employer shall not employ overtime in such undertaking a pregnant female worker or the mother of a child less than eight months old;

f. The employer shall pay the pregnant female worker at least 50% of her basic salary during the period of her maternity leave;

g. The employer shall allow a female worker, if she is nursing a child, half an hour twice each day during working hours for the purpose of nursing the child.

Section 43 states that the employer shall not dismiss a pregnant female employee merely because of her absence on maternity leave.

Besides, pursuant to the provisions of the Industrial Relations Act, 1965, Act 299, collective agreements have been entered into between various

branches of the Trades Union Congress and employers in various establishments--industrial, commercial and agricultural. By virtue of Section 10 of the Act, these agreements form an integral part of the contracts of employment between employers and employees. In other words, their provisions are legally enforceable against employers as if they form part of individual employment contracts. Indeed, the rights conferred on employees by these agreements cannot be waived by the employee and in the event of any conflict between the provisions of a collective agreement and those of an employment contract, the former will prevail. Irrespective of the provisions of the Act on enforceability of collective agreements, it would appear that the agreement is enforceable on the basis of common law principles of agency or, in the alternative, on the basis of Section 5 of the Contracts Act, 1960, Act 25 which deals with the enforcement by third parties of contracts expressly purporting to confer benefits on them.

On maternity leave and benefits, the provisions of the existing collective agreements basically follow the pattern laid down in the Labour Decree. They all comply with the basic minimum requirements of the Decree. Some even have provisions which go beyond these basic minimum requirements. Typical examples are the agreement between the Industrial and Commercial Workers' Union and the Graphic Corporation and that between the same Union and Shell (Ghana) Ltd.

Undoubtedly, the foregoing provisions are heavily pro-natalist inasmuch as there is no indication of the number of times a female employee can avail herself of the advantages accorded her by these provisions. It would appear that the provisions ought to be seriously re-examined in view of the Government's commitment to family planning as a method of population control. There is no doubt that a pregnant female employee needs the kind of protection embodied in these provisions. What is disturbing is the fact that there is no limit to the number of times she can go on maternity leave and claim all the attendant benefits.

2. Social Security Benefits

The next question which requires discussion is the nature of the benefits payable to a retired or injured employee or in the event of death, to his dependants and to what extent, if at all, these benefits are likely to influence his attitude to procreation.

The Social Security Decree, 1972, N.R.C.D. 127, which repealed an earlier statute (The Social Security Act, 1965, Act 279) contains a comprehensive scheme designed to promote the welfare of the worker. The Decree establishes a Social Security Fund administered by a Trust out of which are paid superannuation, invalidity, survivors', sickness, unemployment and emigration benefits. The scheme is essentially contributory and the rate of contribution is specified in Section 27 of the Decree as follows:

a. Five per centum (5%) of the worker's monthly salary to be paid each month by the worker; and

b. Twelve and a half per centum (12½%) of the worker's monthly salary to be paid each month by the employer.

By virtue of Section 23, the Decree applies to every employer of an establishment employing not less than 5 workers and to every worker employed therein. Lecturers and other academic staff of the three universities and their employers are exempted from the provisions of the Decree. It must be pointed out, however, that in relation to this class of persons there is already in existence a Superannuation Scheme which is not materially different from the Scheme established by the Decree. Foreign missions in Ghana are also exempted except that they may volunteer to register their Ghanaian staff under the Decree. Besides, the Decree makes provision for other voluntary members of the Scheme. Section 25, for example, states that an employer to whom the Decree does not apply may with the written consent of the majority of his workers, volunteer by written application to the Board of the Trust that the Decree may be applied to that establishment.

What then are the details of the benefits available under the scheme established by the Decree? Section 40 specifies the classes of benefits as follows:

a. a superannuation benefit, when a member of the Fund retires or is retired after attaining the age of superannuation which is, in the case of men 50 years, where they retire voluntarily, and 55 years in any other case. With regard to women the age of superannuation in the event of voluntary retirement is 45 years and 50 years in any other case;

b. an invalidity benefit, when a member of the fund is rendered by a permanent physical or mental disability incapable of any normal gainful employment;

c. a survivor's benefit payable:

(1) on the member's death, to the person or persons in whose favor a valid nomination exists in the Trust's office in such amount or proportion as may be specified in the instrument of nomination and

(2) in the absence of a valid nomination, to such members of the family, and in such proportions, as may be prescribed;

d. an emigration benefit payable to a member of the fund, who satisfies the Chief Administrator that he is emigrating, or has emigrated, permanently from Ghana:

e. a sickness benefit of such amount as may be prescribed by regulations shall be paid to a member out of his own contribution on his application during sickness.

f. an unemployment benefit subject to such conditions as may be prescribed; and

g. such other benefits as may be prescribed.

With respect to survivors' benefits, the member's nomination is restricted to his family. "Member of family" is however defined so as to include wives and children and even some members of the extended family.

It is important to note that in relation to workers to whom the Decree applies, these benefits are in addition to whatever benefits there may be under any pension, provident fund or gratuity scheme. These matters are regulated under such statutes as the Pension Ordinance, 1950, the Pension (Amendment) Act, 1971 and the Civil Service Act, 1960. Perhaps the most curious of the provisions of these statutes is the one which states that a woman who retires from the public service on grounds of marital obligations or for the purpose of marriage is entitled to pension or gratuity even though she may not have attained the minimum pensionable age.

Although the statutes stipulate that public officers have no absolute right to the benefits, in practice they are invariably awarded these benefits provided they satisfy the conditions laid down.

In addition to the foregoing statutes on the welfare of the employee, there is the Workmen's Compensation Act, 1963, Act 174 which applies to all employees except those in the Armed Forces. The Act requires every employer to pay compensation to his employees who sustain injury or die as a result of injury sustained in the course of their employment. Not every injury entitles an employee to compensation. The Act is in essence a reproduction of English legislation on the subject. One finds in the Ghanaian Act the same qualifications applicable to its English counterpart, viz:

a. the injury must have arisen out of and in the course of the workman's employment;

b. an employee loses his entitlement to compensation when the injury is attributable to his own negligent or willful conduct;

c. drunkenness at the time of the accident disentitles the injured workman.

The compensation payable under the Act is not uniform. For example, the amount paid when the injury results in permanent total incapacity is dependent on the workman's monthly earnings at the time of the accident and the compensation is 54 times this amount but should not, in any case, be less than £800.00 (about 400 pounds). Where death results from the

injury sustained the quantum of compensation depends on such factors as whether the workman left any dependants wholly or partly dependent on his earnings.

In practice, workers rarely resort to this Act primarily because of the prospect of recovering much larger sums of money by way of damages (especially where the injury can be attributed to the negligence of the employer or a person for whose acts the employer is, in law, responsible) in a civil action based on negligence.

It is submitted that the existence of the various welfare schemes described above is likely to engender in the worker a feeling of financial security which may in turn reduce the need for a large number of children as a potential source of financial support in times of unemployment, invalidity or old age. Besides, there is in Ghana at the moment a feeling, particularly amongst the educated, that in these hard times it is better by far to have a few children fairly early in one's working life so that these old age and retirement benefits may be used in improving the quality of one's life during retirement rather than in maintaining and educating one's children.

The provisions of the Social Security Decree on emigration benefits need special mention. Benefits of this nature constitute one method of population control provided of course they are attractive enough and those who emigrate do not come back into the country. Indeed, the Ghanaian Decree requires evidence of permanent emigration.

The practice in Ghana, however, has been adverse to the aims and objectives of these benefits. Workers, particularly those from neighboring countries, have in the past collected their emigration benefits and then have found their way back into jobs in the country. So disturbing is this practice that there is a growing consensus in official circles that the emigration benefits under the Social Security Decree should be abolished. It seems, however, that abolition is not the solution to the problem. Rather, some means will have to be found to strengthen our immigration machinery (particularly the issue of work permits) so as to ensure that those who collect emigration benefits do not come back into the country to work.

3. Child Welfare

Any comprehensive population programme must of necessity take account of the welfare of the child once it is born. So far as labour legislation is concerned, provisions on the employment of juveniles have a definite role to play. For example, without a minimum age for the employment of juveniles, parents, in view of the economic situation, will be tempted to force their children prematurely into employment in order to benefit from their earning power. Besides, if the minimum age for the employment of juveniles corresponds with the maximum age for compulsory education, the likelihood is that there will be a reduction in fertility because the

compulsory attendance of children at school will deny their parents a source of income and at the same time saddle them with the kind of financial burden which education of children entails. This situation is bound to direct their attention more forcefully to the advantages of reduced fertility. It is in this light that the provisions on child labour ought to be viewed.

The Labour Decree has important provisions regarding the employment of children. Section 44(1) of the Decree prohibits the employment of a child except where the employment is with the child's own family and involves light work of an agricultural or domestic character. Section 45 prohibits the employment of children on night and underground work except that children between the apparent ages of 16 and 18 may be employed with the written consent of the Chief Labour Officer under the following circumstances:

a. in a case of emergency which could not have been controlled or foreseen, is not of a periodical character and interferes with the normal operation of the undertaking and

b. in a case of serious emergency, when the public interest requires it.

Besides, section 46 of the Decree imposes an obligation on any employer to keep a register of young persons employed by him showing dates of their birth, if known, and if unknown, their apparent ages. A child is defined by the Decree as any person of the age or apparent age of 15 or less.

Recently, following reports of Ghanaian children employed in Lebanon under conditions which amount virtually to slave labour, the Government passed the Labour Amendment Decree, N.R.C.D. 150, making it an offence for anyone to make an agreement to employ any Ghanaian under 18 years of age as a clerical worker, artisan, labourer, apprentice or domestic servant outside Ghana. Anyone who procures or promotes the making of any such agreement is also guilty of an offence.

It is significant to note that under Ghanaian law (i.e., the Education Act, 1961) primary and middle education is free and compulsory for all children of school-going age. It is submitted that this would tend to alleviate the burden of bringing up children and reduce, in a significant measure, the negative effect on fertility which the prohibition on employment of juveniles together with a compulsory education scheme would otherwise have.

In order that the State may plan its population programme effectively, it is necessary to know the rate at which its children are being born. The Registration of Birth Act, 1965, requires that every child must be registered within 21 days of the date of birth. The duty to register is cast upon the parents of the child or the occupier of premises where the

child was born or the person present at the birth of the child. The law as it stands is adequate and, if enforced, ought to achieve its purpose. But it is doubtful whether registration is being carried out as envisaged by the Act. This is primarily due to the fact that there are not enough registration centres and the few that exist are not conveniently located. These, however, are administrative difficulties which ought to be possible to solve. Besides, a more effective enforcement machinery is urgently required.

B. Tax Law

1. Family and Child Allowances

The primary statute governing income taxation in Ghana is the Income Tax Decree, N.L.C.D. 78, 1966. Under that statute, there are no tax reliefs in respect of dependants. Before 1961, there were statutory provisions which granted exemptions by way of personal reliefs, maternity and paternity benefits and child allowances in respect of children up to a maximum of 5. These reliefs were abolished in 1961, not because of their pro-natalist tendency, but because of the administrative difficulties involved in their implementation.

2. Customs Duties on Contraceptive Materials

There is no statutory provision which deals specifically with import duties on contraceptive materials. However, the Customs and Excise Tariff Act, Act 318, 1966 imposes customs duties on various imported goods. Again, the Customs and Excise Tariff Regulations 1966, passed in pursuance of Act 318, impose a 50% duty on "medicaments," including, presumably, contraceptive materials. In practice, contraceptive materials attract the above-mentioned rate of duty only when they are imported by private firms and individuals. Since the Planned Parenthood Association and the National Family Planning Secretariat receive contraceptive materials as gifts and distribute them free of charge, no duty is imposed. As already observed, Section 19 of the Pharmacy and Drugs Act, Act 64, empowers the Commissioner for Health to fix prices of restricted drugs, including contraceptive drugs. It is submitted that this power ought to be extended to other contraceptive materials to ensure that their prices are within the means of the average person.

V. CONCLUSION

The foregoing has been an attempt to describe and analyse the actual provisions of Ghanaian law which have a bearing on population control and to reveal any contradictory policies implied in them as regards population trends. As has already been observed, the basic philosophy of this exercise is that knowledge of the existing law is an essential step towards the assessment of the impact of the law on patterns of decision-making relevant to population trends. What emerges from the discussion of the various laws is the fact that some of these laws are likely to have a negative effect on attempts at population control while others are adequate but need a more effective enforcement machinery. The law relating to abortion, for example, is one obvious area where reform, by way of liberalization, is urgently required and it is hoped that the Law Reform Commission will soon be in a position to submit its recommendations to the appropriate authorities for the necessary action. On the other hand, the law relating to vital statistics (i.e., Registration of Births and Deaths), for example, does not appear to require any significant reform; rather, what it requires is vigorous enforcement.

With regard to those parts of the law which are likely to have a negative impact on attempts at population control, one has to bear in mind the fact that these laws were not originally promulgated with population control as an objective. This, it is submitted, accentuates the need to harmonize and bring together in a Comprehensive Population Code those parts of the law which have a bearing on population control in order to promote rather than frustrate declared national policy. This exercise is bound to bridge the gap between the declared objective of population control and the law as it stands today.

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