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TABLE OF CONTENTS

Page

ABBREVIATIONS xvi
INTRODUCTIONS xvii

TABLE I. LAWS LISTED BY SUBJECT

GENERAL POPULATION POLICY 1
Chile 1
Korea, Republic of 2
Laos 3
Mexico 3
Peru 10
Philippines 13
Portugal 15
Thailand 20
United States 20

FERTILITY REGULATION 22
STERILIZATION 22
Bangladesh 22
Germany, Federal Republic of 22
Iceland 23
India 26
Federal Law 26
State Law 26
Maharashtra 26
Iran 36
Philippines 37
Sweden 38
United States 38
State Law 38
North Carolina 38
Pennsylvania 40
Virginia 40

CONTRACEPTION 42
Brazil 42
State Law 42
Pernambuco 42
Canada 42
Denmark 42

Page

Finland 43
France 43
Germany, Federal Republic of 43
Philippines 43
United States 45

ABORTION 47
Austria 47
Canada 47
Chile 48
Fiji 48
Germany, Federal Republic of 49
Hong Kong 52
Iceland 53
Iran 55
Israel 56
South Africa 56
United Arab Emirates 56
United States 57
Federal Statutes 57
Judicial Decisions 57
State Legislation 61
California 62
Florida 62
Idaho 63
Iowa 63
Louisiana 65
Minnesota 65
Wisconsin 66
Judicial Decisions 66
Massachusetts 66

FAMILY STATUS AND WELFARE 67

MARRIAGE 67
Denmark 67
Germany, Federal Republic of 67
Malaysia 67
Nepal 68
Portugal 68
Somalia 69
Thailand 69
United States 69
State Law 69
Puerto Rico (Commonwealth) 69

TERMINATION OF MARRIAGE 70
Germany, Federal Republic of 70
India 73
Portugal 73
United States 74
State Law 74
Puerto Rico (Commonwealth) 74

Page

RIGHTS OF SPOUSES WITHIN MARRIAGE 76
Belgium 76
Cuba 77
Germany, Federal Republic of 77
Italy 79
Netherlands Antilles 79
Portugal 80
United States 80
State Law 80
California 80
Washington 80
Puerto Rico (Commonwealth) 80

CHILDREN AND CHILD WELFARE 83

SUPPORT OF CHILDREN GENERALLY 83
Austria 83
Finland 83
France 84
United States 85
State Law 85
Puerto Rico (Commonwealth) 85

PROTECTION OF CHILDREN 88
Colombia 88
Cuba 90
Denmark 90
El Salvador 91
France 91
Germany, Federal Republic of 91
Hong Kong 94
Kenya 95
Madagascar 99
Mali 99
Mauritius 100
New Zealand 101
Singapore 101
Spain 103
Trinidad & Tobago 103
Uganda 103

LEGITIMACY OF CHILDREN 105
Cuba 105
Finland 105
France 105
Jamaica 106
Sweden 114
United States 114
State Law 114
Connecticut 114

PUBLIC WELFARE 117

FAMILY ALLOWANCES GENERALLY 117
Belgium 117

Page

Bolivia 118
France 119
Iran 119
Mali 119
Peru 119

HOUSING ASSISTANCE PROGRAMS 121
Peru 121

MATERNITY LEAVES AND BENEFITS 123
Argentina 123
Austria 123
Bolivia 124
Congo 124
Germany, Democratic Republic of 124
Iran 125
Kenya 125
Madagascar 125
Mali 125
Mauritius 126
Mozambique 126
Peru 127
Spain 127
Uganda 128
United States 128
Federal Law 128
State Law 130
New York 130

OLD-AGE AND RETIREMENT BENEFITS 131
Bahrain 131
Belgium 131
Bolivia 132
Bulgaria 132
France 132
Iran 133
Pakistan 133
Peru 134
Sweden 135

LABOR PROTECTION AND EMPLOYMENT STANDARDS 136
Council of Europe 136
Council of European Communities 137
European Court of Justice 139
Czechoslovakia 139
Denmark 139
France 140
India 140
Ivory Coast 141
Kenya 141
Madagascar 142
Mauritius 143
Spain 143

Page
Uganda 143
United Kingdom 144

PERSONAL STATUS AND INTEGRITY 145
Algeria 145
Chile 145
Cuba 145
Greece 146
Libya 146
Pakistan 146
Peru 147
Portugal 147
United States 147
State Law 147
California 147

PUBLIC HEALTH 149
HEALTH SERVICES AND INSURANCE 149
Bulgaria 149
Cuba 149
Israel 150
Peru 150
Senegal 152
United States 152

REGULATION OF NON-PHYSICIAN HEALTH PERSONNEL 156
France 156
Philippines 156
Singapore 156
South Africa 157
Sweden 158

EDUCATION 159
FREE AND COMPULSORY EDUCATION 159
Cuba 159
Japan 159
Norway 160
Peru 160
Philippines 162

ADULT AND VOCATIONAL EDUCATION 163
Algeria 163
Brazil 163
Bulgaria 163
Chile 164
Finland 164
Madagascar 164
Mexico 165

POPULATION AND SEX EDUCATION 166
Austria 166
Council of Europe 166
European Court of Human Rights 166
Iceland 168

Page

PROPERTY AND ECONOMIC FACTORS 169
TAX EXEMPTIONS 169
India 169

CUSTOMS DUTIES AND IMPORT RESTRICTIONS 170
India 170

LAND TENURE AND LAND IMPROVEMENT PROGRAMS 171
Ethiopia 171

INCENTIVES AND DISINCENTIVES 172
Bulgaria 172
India 172
Federal Government 172
State Law 173
Tamil Nadu 173
Uttar Pradesh 173
Delhi 173
Republic of Korea 174
Seoul 174
Singapore 174
Tanzania 174
Tunisia 174

MIGRATION 175
Mexico 175
Switzerland 179
Viet Nam 179

MILITARY SERVICE AS AFFECTING PROCREATION 180
Philippines 180

CENSUS AND VITAL STATISTICS SYSTEMS 182
Canada 182
State Law 182
British Columbia 182
United Arab Emirates 182
United States 182
State Law 182
Louisiana 182

TABLE II. LISTING BY COUNTRY AND ORGANIZATION

Page

Council of Europe
- Labor Protection and Employment Standards 136
- Population and Sex Education 167

Council of European Communities
- Labor Protection and Employment Standards 137

Algeria
- Personal Status and Integrity 145
- Adult and Vocational Education 164

Argentina
- Maternity Leaves and Benefits 123

Austria
- Abortion 47
- Support of Children Generally 83
- Maternity Leaves and Benefits 123
- Population and Sex Education 167

Bahrain
- Old-Age and Retirement Benefits 131

Bangladesh
- Sterilization 22

Belgium
- Rights of Spouses Within Marriage 76
- Family Allowances Generally 117
- Old-Age and Retirement Benefits 131

Bolivia
- Family Allowances Generally 118
- Maternity Leaves and Benefits 124
- Old-Age and Retirement Benefits 132

Brazil
- Contraception 42
- Adult and Vocational Education 164

Bulgaria
- Old-Age and Retirement Benefits 132
- Health Services and Insurance 150
- Adult and Vocational Education 164
- Incentives and Disincentives 173

Page

Canada
Contraception 42
Abortion 47
Census and Vital Statistics 183

Chile
General Population Policy 1
Abortion 48
Personal Status and Integrity 145
Adult and Vocational Education 165

Colombia
Protection of Children 88

Congo
Maternity Leave and Benefits 124

Cuba
Rights of Spouses Within Marriage 77
Protection of Children 90
Legitimacy of Children 105
Personal Status and Integrity 145
Health Services and Insurance 150
Free and Compulsory Education 59

Czechoslovakia
Labor Protection and Employment Standards 139

Denmark
Contraception 42
Marriage 67
Protection of Children 90
Labor Protection and Employment Standards 139

El Salvador
Protection of Children 91

Ethiopia
Land Tenure and Land Improvement Programs 172

Fiji
Abortion 48

Finland
Contraception 43
Support of Children Generally 83
Legitimacy of Children 105
Adult and Vocational Education 165

France
Contraception 43
Support of Children Generally 84
Protection of Children 91
Legitimacy of Children 105
Old-Age and Retirement Benefits 132
Family Allowances Generally 119

Page

Labor Protection and Employment Standards 140
Regulation of Non-Physician Health Personnel 157

Germany, Federal Republic of
Sterilization 22
Contraception 43
Abortion 49
Marriage 67
Termination of Marriage 70
Rights of Spouses Within Marriage 77
Protection of Children 91

Germany, Democratic Republic of
Maternity Leaves and Benefits 124

Greece
Personal Status and Integrity 146

Hong Kong
Abortion 52
Protection of Children 94

Iceland
Sterilization 23
Abortion 53
Population and Sex Education 169

India
Sterilization 26
Termination of Marriage 73
Labor Protection and Employment Standards 140
Tax Exemptions 170
Customs Duties and Import Restrictions 171
Incentives and Disincentives 173

Iran
Sterilization 36
Abortion 55
Family Allowances Generally 119
Maternity Leaves and Benefits 125
Old-Age and Retirement Benefits 133

Israel
Abortion 56
Health Services and Insurance 151

Italy
Rights of Spouses Within Marriage 79

Ivory Coast
Labor Protection and Employment Standards 141

Jamaica
Legitimacy of Children 106

Japan
Free and Compulsory Education 160

Page

Kenya
Protection of Children 95
Maternity Leaves and Benefits 125
Labor Protection and Employment Standards 141

Korea, Republic of
General Population Policy 2
Incentives and Disincentives 175

Laos
General Population Policy 3

Libya
Personal Status and Integrity 146

Madagascar
Protection of Children 99
Maternity Leaves and Benefits 125
Labor Protection and Employment Standards 142
Adult and Vocational Education 165

Malaysia
Marriage 67

Mali
Protection of Children 99
Family Allowances Generally 119
Maternity Leaves and Benefits 125

Mauritius
Protection of Children 100
Maternity Leaves and Benefits 126
Labor Protection and Employment Standards 143

Mexico
General Population Policy 3
Adult and Vocational Education 166
Migration 176

Mozambique
Maternity Leaves and Benefits 126

Nepal
Marriage 68

Netherlands Antilles
Rights of Spouses Within Marriage 79

New Zealand
Protection of Children 101

Norway
Free and Compulsory Education 161

Pakistan
Old-Age and Retirement Benefits 133
Personal Status and Integrity 146

Page

Peru
General Population Policy 10
Family Allowances Generally 119
Housing Assistance Programs 121
Maternity Leaves and Benefits 127
Old-Age and Retirement Benefits 134
Personal Status and Integrity 147
Health Services and Insurance 151
Free and Compulsory Education 161

Philippines
General Population Policy 13
Sterilization 37
Contraception 43
Regulation of Non-Physician Health Personnel 157
Free and Compulsory Education 163
Military Service as Affecting Procreation 181

Portugal
General Population Policy 15
Marriage 68
Termination of Marriage 73
Rights of Spouses Within Marriage 80
Personal Status and Integrity 147

Senegal
Health Services and Insurance 153

Singapore
Protection of Children 101
Regulation of Non-Physician Health Personnel 157
Incentives and Disincentives 175

Somalia
Marriage 69

South Africa
Abortion 56
Regulation of Non-Physician Health Personnel 158

Spain
Protection of Children 103
Maternity Leaves and Benefits 127
Labor Protection and Employment Standards 143

Sweden
Sterilization 38
Legitimacy of Children 114
Old-Age and Retirement Benefits 135
Regulation of Non-Physician Health Personnel 159

Switzerland
Migration 180

Tanzania
Incentives and Disincentives 175

Page

Thailand
General Population Policy 20
Marriage 69

Trinidad & Tobago
Protection of Children 103

Tunisia
Incentives and Disincentives 175

Uganda
Protection of Children 103
Maternity Leaves and Benefits 128
Labor Protection and Employment Standards 143

United Arab Emirates
Abortion 56
Census and Vital Statistics 183

United Kingdom
Labor Protection and Employment Standards 144

United States
General Population Policy 20
Sterilization 38
Contraception 45
Abortion 57
Marriage 69
Termination of Marriage 74
Rights of Spouses Within Marriage 80
Support of Children Generally 85
Legitimacy of Children 114
Maternity Leaves and Benefits 128
Personal Status and Integrity 147
Health Services and Insurance 153
Census and Vital Statistics Systems 183

Viet Nam
Migration 180

ABBREVIATIONS

BGB1	Bundesgesetzblatt, official record of new legislation, used in Austria and the Federal Republic of Germany
ECOSOC	Economic and Social Council of the United Nations
IDHL	International Digest of Health Legislation, issued by the World Health Organization, Geneva
ILO	International Labour Organisation, Geneva
IPPF	International Planned Parenthood Federation, London
People	Quarterly magazine on developments in the family planning field, issued by the IPPF, London
UNESCO	The United Nations Educational, Scientific and Cultural Organization
UNFPA	The United Nations Fund for Population Activities
UNICEF	The United Nations Children's Fund

ANNUAL REVIEW OF POPULATION LAW 1976

INTRODUCTION

This third issue of the *Annual Review of Population Law* marks the last of the series published under the auspices of the International Advisory Committee on Population and Law. Beginning with the 1977 issue, the *Review* will be published by the United Nations Fund for Population Activities. In transferring this task to the UNFPA, the Committee is following the recommendations of the World Population Plan of Action, adopted by the World Population Conference in Bucharest in 1974. For the Plan not only accords "high priority" to the "review and analysis of national and international laws which bear directly or indirectly on population factors" (para. 78 (h)), but also calls for a continual monitoring of population policies "as a specialized activity of the United Nations" (para. 107). The assumption of the responsibility for the *Review* by UNFPA will ensure continuity of the publication, as well as improvement of the quality and scope of coverage in view of the presence of the UNFPA's personnel in many regions of the world and its infinitely greater financial resources. As a non-governmental organization accredited to ECOSOC, UNICEF and UNFPA, the Committee will continue to offer its assistance to the UNFPA in every way possible.

With regard to format, the 1976 *Review* follows the pattern of the two previous issues, but the following points should be repeated:

1. Two tables of contents will be found, one by subject matter and the other by country and organization. Inclusion of these tables obviates the need for an index.

2. Each of the entries contains the following sub-headings: Subject, Text, Reference (if this is not already made clear in the published text), and/or Notes (explanatory remarks where necessary, without expressing any view as to the desirability of the law in question). Where the exact text is unavailable, a summary of the law will take its place.

3. By the word "laws" is meant not only legislation, but also Constitutions, regulations, decrees, judicial decisions and legal opinions of relevant Ministries, as well as some official reports and governmental statements setting forth official policies.

4. While most of the laws originated in 1976, a few pre-1976 items are included because they took effect in 1976, because of their intrinsic importance or because they have only now become available to us.

5. Translations are in most cases unofficial because official translations were not yet available at the time of publication.

6. The arrangement of the materials follows in general the *Law and Population Classification Plan.**

7. The word "Reference" is used to cover citations of primary sources and other information as to where the material is available.

---

*See Morris Cohen, *Law and Population Classification Plan* (Law and Population Monograph Series No. 5 (1972)).

The preparation of this volume would not have been possible without the cooperation of thirty Law and Population Projects and twenty-five Law and the Status of Women Projects in different regions of the world, the International Planned Parenthood Federation and its affiliate associations, the Harvard Law School Library, and innumerable concerned lawyers from all parts of the world. Major credit for collecting the materials and putting them into systematic order goes to Daniel Nagengast, Research Fellow, Law and Population Programme; Jan Stepan, Foreign and International Law Librarian, Harvard Law School; and Steven Tokarski, Deputy Director, Law and Population Programme. As in the case of the previous issues, the present volume represents the collaborative efforts of the entire staff of the Law and Population Programme.

Luke T. Lee
Executive Secretary
International Advisory Committee
on Population and Law

000 GENERAL POPULATION POLICY

Chile

Subject: New constitutional provisions.

Text: The Board of Governors executed Constitutional Act No. 2 on 11 September 1976. Article 2, clause 3, reads:

> The family is the fundamental nucleus of society. The state shall protect it and shall aim for its fortification.

Constitutional Act No. 3 was also executed on 11 September 1976. Various articles read as follows:

> *Art. 1* Men are born free and equal in dignity. This Constitutional Act assures to all persons:
>
> 1. The right to life and integrity of the person, without damaging the origin of the penalties established by law.
>
> The law protects the life of those who are about to be born.
>
> The application of all unlawful proceedings is prohibited.
>
> 2. Man and woman enjoy equal rights.
>
> ———
>
> 10. Respect for and protection of the private life and honor of the individual and his/her family.
>
> ———
>
> 18. The right to live in an environment free of contamination.
>
> 19. The right to health. The State assumes the responsibility of guaranteeing the free and equal access to measures of advancement, protection, and recuperation of health and rehabilitation of the individual. Similarly, coordination and control of integrated measures for health shall be done by the State.
>
> The execution of measures for health, is the preferred duty of the State, without damaging free individual initiative in the form and under the conditions determined by the law.
>
> ———
>
> 21. The right to social security. It is up to the State to formulate the policy on social security, to control the function of the system, and to assure the preferred right of the affiliates to effect its operation.
>
> The law shall establish a system of social security which uniformly satisfies individual and family needs resulting from any contingency, and especially, from those of maternity, old age, death,

accident, illness, handicap, family burdens, and unemployment, by way of suitable preventative, restorative, and recuperative grants.

Art. 9 Every person has the duty to feed, educate, and protect his or her children according to the law.

Art. 11, clause 2. Any individual or group act meant to spread doctrines which attack the family . . . is illegal and contrary to the institutional ordinance of the republic.

Reference: Constitutional Act No. 2, 11 September 1976; *Official Record*, annexed edition, 13 September 1976. Constitutional Act No. 3, 11 September 1976; *Official Record*, annexed edition, 13 September 1976. Letter of 5 November 1976 from Professor Francisco Cumplido to Mr. Steven Tokarski.

Korea, Republic of

Subject: Comprehensive plan to support existing family planning program.

Summary: The plan, announced on 12 March 1976 and approved by the Population Policy Deliberation Committee, provides for several major policy shifts.

Beginning in 1978, the curricula of high schools will expand into the areas of population growth and how it may be curbed. This is to be extended into middle and primary schools by 1980.

The voluntary "Mothers Club" will be developed into a nationwide "Saemaul Mothers Fraternity", designed to campaign for fewer children.

More emphasis will be placed on the provision of governmental birth control services to low income urban dwellers. At present the emphasis is on rural areas.

The number of government sponsored birth control clinics is to be increased from 1,747 to 5,036 by 1981. In addition, there is to be a strong incentive program, including family allowances and free medical services for couples undergoing sterilization. Those who adopt family planning practices will qualify for unemployment and relief benefits. Abortion too, is encouraged.

Tax incentives and disincentives include a reduction from three children to two as the number for which tax allowances will be made. Companies operating family planning programs will receive tax benefits. Families with more than three children will be discriminated against in provision of government housing and will be charged for secondary and tertiary education of fourth and subsequent children.

Legal changes raising the status of women are also recommended.

Finally, import duties on contraceptives will be abolished to help reduce prices.

The incentives are to be channeled through the armed services, village movements and industry and will be accompanied by a massive media campaign.

References: *Korean Herald*, 12 March 1976, "FPB Bares Detailed Plan to Minimize Family Size", as reported by the UNESCO Regional Communications

Unit, (Family Planning); IPPF, *Law File*, No. 6, February 1977; *People*, Vol. 4, No. 2 (1977), p. 38.

Laos

Subject: Ban on birth control.

Summary: A ban on the use of contraceptive devices and pills was imposed throughout Laos as of September 1976, in an attempt to rebuild the country's population which had been decimated by more than ten years of war. The Laotian Information Minister cited a low annual growth rate of 1.8 percent and the fact that much of the country's land is empty and in need of development. Some exceptions still remained for those whose health may be impaired by pregnancy.

Reference: The *New York Times*, 9 September 1976, p. 2, col. 2.

Mexico

Subject: Regulation implementing the General Population Law, providing guidance on population policy, its relationship to other socio-economic sectors, and the operational instructions leading to policy implementation.

Text: *Regulation Pursuant to the General Law on Population*, 12 November 1976.

CHAPTER I: PURPOSE

Art. 1. The provisions of this regulation are public and are intended to regulate, in accord with the General Law on Population, the principles of population policy, the activities of the National Council on Population, the entrance and exit of persons into and out of the country, activities of foreigners during their stay, migratory responsibility in transportation matters, and the emigration and repatriation of nationals.

Art. 2. The application of the provisions of the General Law on Population and of this regulation is the responsibility of the Ministry of the Interior, and towards these same ends, the following shall assist the Ministry:

I. The remaining agencies of the Federal Executive;
II. Local executives;
III. Municipal officials;
IV. Judicial authorities;
V. Public Notaries, commercial brokers and, relative to activities in which they represent the public, public accountants, and;
VI. Enterprises and institutions in the cases and form determined by the General Law on Population or this regulation.

Art. 3. Whenever reference is made in the text of this regulation to the Secretary, Undersecretary, or Chief Executive, it shall be understood that the reference is to those of the *Secretaría de Gobernación*; and where the words "Secretary", "Council", or "Law" are used, the reference is to the same Agency, the National Council on Population, and to the General Law on Population, respectively.

Art. 4. The Ministry is empowered to set forth the necessary administrative dispositions for the application of this regulation.

CHAPTER 2: POPULATION POLICY

SECTION I. DEMOGRAPHIC PLANNING

Art. 5. The object of population policy is to elevate the cultural, social, and economic conditions of the inhabitants of the country, with attention to their numbers—growth or reduction—evolution, structure, activities, and their rational distribution in rural areas or urban communities.

Art. 6. The Federal Executive, through the National Council on Population, shall formulate the technical plans of the demographic policy of the country, so that the various agencies and public entities include the services and resources required to fulfill those plans in their programs of economic and social development.

Art. 7. To meet the goals of the population policy, the Ministry of the Interior, in each case, shall set forth, execute, or advance before other agencies or government entities, according to their nature and suitability, the means required to carry out the actions stated in Article 3 of the Law.

Art. 8. The Ministry of the Interior shall take steps to assure that any agreements or demographic programs carried out by the Council be included in the economic and social development plans of the agencies, entities, and other institutions of the public sector. The Council shall collaborate with these groups in their work on relevant issues.

Art. 9. Respect for human rights, liberties, guarantees, individuality and cultural values of the Mexican people, shall be the supporting principles of the policy and programs applied in population issues.

Art. 10. The Council, in the plans which it formulates, shall attend to the necessities presented by the volume, structure, dynamics, and distribution of the population, attempting to relate them to the actions addressed in education, public health, investment, budgetary, agrarian, housing, urban, and employment policies, as well as those related to professional and technical training and to the protection of infants and the family.

Art. 11. The Council, based on evaluation of the state of national development, shall propose the priorities and objectives of the plans and demographic programs, and shall assign relative priorities to the required resources and investments, endeavoring to quantify them.

Art. 12. The Council shall maintain an evaluation process of its principles and strategies and of the results of its plans, in order to adapt them to the changes presented by the social and economic structure of the country.

Art. 13. The publication programs of population policy shall be directed toward making the public aware of the policy and to encourage the participation of the public in the solution of the problems which affect it.

Art. 14. Any foreign resources, property, investments, scholarships, exchanges, or programs dealing with population issues, in order to be accepted, utilized, or applied by individuals, agencies, and public or private institutions must be suited to the official demographic plans and programs and to the priorities and investments proposed by the Council. In such cases, the opinion of the Council must be obtained in advance.

Art. 15. The plans of the Council shall be part of the public and private effort to preserve the environment, to improve hygiene conditions, and reduce mortality and disease.

The Ministry of the Interior shall control the implementation of this provision.

Art. 16. The studies formulated by the Council shall contain the scientific basis of demographic policy, which must be incorporated into all education plans and programs.

Art. 17. The Ministry of Industry and Commerce shall include population data requested by the Ministry of the Interior in the questionnaires of the population census and the studies it undertakes.

SECTION II. FAMILY PLANNING

Art. 18. Family planning is the right of every individual to decide in a free, responsible, and informed manner, on the number and spacing of his/her children, and to obtain specialized information and suitable services.

Art. 19. Family planning programs have an information function, in that they must provide general and individualized information on their objectives, methods and consequences, so that individuals may responsibly exercise the right to determine the number and spacing of their children.

In the information imparted, family planning shall not be identified with any contraceptive method which implies obligatory or coerced action and impedes free exercise of the right referred to in the preceding paragraph.

Art. 20. Family planning services must be integrated and coordinated with those of health, education, social security, public information, and others intended to improve living conditions of individuals and the family.

Art. 21. Information, health, education and other services related to family planning programs, shall be free of cost when provided by public agencies and organizations.

Art. 22. Family planning programs shall give out information, in a free and clear manner, on demographic phenomena and the

connections of the family with the general process of development, and shall give instruction on legal methods to regulate fertility.

The responsibility of couples and individuals in exercising the right to plan a family, consists of taking into account the needs of their living and future children, and their relationships with the other members of the community, to give a place to better expectations of welfare and plentitude in the achievement of their collective and individual goals.

Art. 23. Information and other family planning services shall be adapted to the circumstances of each individual, locality, or region; they shall be focused on the causes of natural sterility and ways of overcoming them or increasing low fertility.

Art. 24. Education and information on family planning must inform the public of the benefits resulting from free decisions on the number and spacing of one's children, in some cases delaying procreation, and in others, conceiving during ages suitable for a healthy pregnancy.

Art. 25. Family planning information, health, and education services which are the responsibility of public institutions shall be implemented by permanent programs and shall in no way assume the character of a campaign. The National Council on Population shall approve the criteria and coordinating procedures of the agencies and institutions in charge of these services.

Art. 26. Medical, education, and family planning program information services shall guarantee to the individual free choice of fertility-regulating methods desired for use, as long as it has been shown that there are no serious side effects to humans and that they are not harmful to the health, or otherwise prohibited.

It is prohibited to require that persons use birth control methods against their will. When individuals choose to use any contraceptive method with irreversible effects, the institutions or agencies which provide the service shall require previous written consent.

Art. 27. The authorities of those health or social aid institutions which are responsible for adults subject to their authority, when an adult does not have a named legal representative, shall decide on the exercise of the right referred to in the second paragraph of Article 40 of the Constitution, after each case has been presented to the Public Ministry.

Art. 28. In health services, family planning services provided to minors shall be governed by the rules of the *derecho común.*

Art. 29. Based on the agreement adopted by the National Council on Population, the rules of the General Law on Population and on this regulation, the proper authorities shall establish the technical rules of family planning in matters of education and medical assistance information and they shall assure their correct application.

Art. 30. The judges or officials of the Civil Register, in marriage documents, shall provide information to persons contracting marriage, on family planning, legal equality of men and women, and

legal organization and development of the family, elaborated in common agreement by the local authorities and the National Council on Population.

SECTION III. FAMILIES, WOMEN AND MINORITY GROUPS

Art. 31. Demographic plans shall attempt to:

I. Link the family with national development goals;
II. Encourage strengthening of the bonds of solidarity among the members of the family;
III. Reevaluate the roles of men and women in the family;
IV. Avoid every kind of individual and collective discrimination towards women relative to the reproductive function.

Art. 32. Demographic plans shall establish the means to bring about social and economic equality for women, providing them with the same opportunities and rights as have men, relative to the activities in which they engage.

Art. 33. The plans formulated by the Council shall provide a basis to promote women and social minorities into the environments of work, education, and family and to reevaluate their activities with the goal of promoting their social development and economic freedom.

SECTION IV. POPULATION DISTRIBUTION

Art. 34. Plans concerning population distribution shall establish the means to rationally utilize the human and natural resources of the country with the goal of social and economic improvement of the living conditions of the inhabitants and the yield of their goods and benefits, so that the population may fully exercise its fundamental freedoms.

The means referred to in the preceding paragraph shall be coordinated with existing provisions regarding environmental pollution, public health, conservation, utilization of water, flora, fauna, soil, forests, and national parks.

Art. 35. Population distribution programs, through the economic, social, and cultural plans of the public sector, shall stimulate the creation of opportunities for the rural population, to strengthen its attachment to its activities and place of residence, and to make it aware that this will permit personal development and success of the community.

Art. 36. Population distribution policies shall encourage the development of marginal areas and shall include investments favorable to rural activity.

Art. 37. All regional development programs shall endeavor to achieve the following benefits:

I. To maintain an adequate ratio between the population required to satisfy employment needs in agricultural work and availability of employment in urban and industrial zones;
II. To establish compatibility between industrial needs and agricultural activities;
III. To encourage the creation, growth, and consolidation of communities in border areas of low population density.

Art. 38. The authorities shall suitably set forth their economic and social development plans and programs in such a way that a balanced exchange of goods and services exists between urban and rural populations.

Art. 39. Regional development programs, in accordance with the social conditions of the inhabitants, shall consider the economic, social, and environmental benefits which they generate, as well as their equity of distribution.

Art. 40. The Council's plans shall propose policies which encourage the creation of employment-generating activities in those places where employment is low, or where this is required by the development plans of the public sector.

Art. 41. The Council shall take the development needs of the various socio-economic regions of the country into account in the plans which it formulates, so that the proper authorities may, in implementing population programs, promote planning of urban centers, population movement, or the grouping of geographically isolated groups.

Art. 42. Population planning must assure the provision of supplies for the operation, functioning, and development of the community and shall take into account the different uses of the soil in relation to other natural resources and the suitability of the environment.

Art. 43. In its plans, the Council shall adopt means for internal migration and distribution of the population in the national territory, in order to promote harmonious growth and development of the urban centers, in accord with natural resources which exist or may be generated in the different regions of the country and with the strategy of national development policy.

CHAPTER 3: NATIONAL COUNCIL ON POPULATION

Art. 44. The National Council on Population is a public entity which is responsible for the country's demographic planning, in order to include the population in the general programs of economic and social development, contributing to its progress, and to elevate its living conditions.

Art. 45. In order to achieve its goals, the National Population Council shall have the following functions:

I. To formulate demographic plans and programs and link them to the objectives of public sector economic and social development planning suited to necessities presented by demographic phenomena;

II. To compile, categorize and attach priorities to information;

III. To promote, support, and coordinate studies and research directed toward the goals of demographic policy;

IV. To produce and diffuse information and public orientation programs, as well as bases for participation and collaboration with programs of other persons or organizations;

V. To assess and assist, in population matters, all types of public

and private, national or foreign, local, federal, or international entities, and to make any pertinent agreements with them;

VI. To prepare, produce, and distribute informative material and to publish information on the subject;

VII. To organize or participate in every type of event which serves its ends;

VIII. To utilize the aid of technical consultants and specialists in development and population programs;

IX. To formulate and give qualifying courses in demographic subjects;

X. To evaluate programs implemented by the different agencies and institutions of the public sector according to formulated demographic plans, and to propose the pertinent means to implement these plans; and

XI. The remaining functions necessary for the implementation and execution of its goals and functions.

Art. 46. The President of the National Council on Population shall have the following powers:

I. To legally represent the Council;

II. To propose internal work committees and to appoint the special representative of the Council;

III. To appoint technical and administrative functionaries and to authorize the appointments of the staff of the Council;

IV. To authorize the creation and the termination of the technical and administrative units of the Council;

V. To submit the annual budget of the Council to the treasury authorities;

VI. To set the dates of the sessions;

VII. To request heads of other public agencies and organisms to attend the sessions of the Council;

VIII. To make the necessary arrangements to carry out agreements made by the full Council;

IX. To require of the office of the General Secretary any requested information; and

X. Any others conferred on him by the Council, this regulation or other legal statutes.

Art. 47. Designated work committees shall consist of their permanent members or of some of them, and some from other public sector agencies or entities.

Art. 48. The National Council on Population shall have a General Secretary and shall include the technical and administrative resources required for its functions, according to its budget.

Art. 49. The Secretary General is responsible for the technical and administrative function of the National Council on Population and for the execution of agreements and work assigned to him/her.

Art. 50. The Secretary General shall have the following duties:

I. To delegate demographic matters, by agreement with the President of the Council, to the agencies of the public sector, according to their respective capabilities;

II. To effect the necessary measures for the fulfillment of the

function and goals of the Council, to the proper authorities and agencies;

III. To execute and realize necessary administrative actions relative to the property and rights of those for whom the Council holds office;

IV. To propose and process the nominations, authorizations, resignations and assignments of personnel for the offices and agencies of the Council and to order the distribution of work among them;

V. To prepare, in accordance with the instructions of the President, the Agenda of the Sessions;

VI. To transmit summons for the sessions of the Council;

VII. To draw up the minutes of the meeting and to assure the implementation of the agreements approved in the sessions;

VIII. To inform the Full Council and the President of the Council with respect to the fulfillment of their functions and activities;

IX. To sign the correspondence of the Council in matters pertinent to the Ministry; and

X. Any other assignments conferred on him/her by the Full Council, this regulation and other legal statutes.

Art. 51. The sessions of the National Council on Population shall be presided over by the Secretary of the Interior and, in his/her absence, by the Undersecretary of the same agency.

Art. 52. The labor relations of the technical and administrative staff of the Council shall be governed by the Federal Law of State Workers and shall be incorporated into the system of benefits of the Institute of Security and Social Services for State Workers.

Reference: Reglamento de la Ley General de Población, 12 November 1976.

Note: For General Population Law of 1974, see *Annual Review, 1974.*

Peru

Subject: Peruvian Government adopts a comprehensive population policy.

Text: The "Guidelines for a Population Policy in Peru" provide:

1. DEFINITION

Specifically, the Population Policy is the set of objectives and actions which have a direct effect on the volume, growth, structure and distribution of the population within the national territory, respecting the rights of the population, respecting the rights of persons, and whose purpose is to aid the population, as a unit, to realize its aspirations of authentic development and integral security. The Population Policy is included within the Multisectoral Policies of the Development Plans in the National Planning System. That is, it is part of those policies which, through their scope and content, orient developmental actions in several sectors and commit their available resources, and whose formulation and execution are the responsibility of more than one administrative sector.

2. OBJECTIVES

Although the Multisectoral, Sectoral and Regional Policies of the National Development Plan do not have specific objectives other than to be guided by the Development Objectives indicated in the Plan, it is considered necessary here, because of the special complexity of the problem, to state the following objectives which clarify the integral, humanistic, socialist and Christian vision that has served as a guideline for the Population Policy in Peru:

(1) To achieve a population growth that is in harmony with the population's free decision concerning family size and that contributes to Peruvian society's efforts to reach those levels of human development to which it aspires.

(2) To achieve a significant reduction in the morbidity-mortality rates, especially maternal and child, which will permit an increase in the life expectancy and in the general quality of life for our entire population.

(3) To achieve a better population distribution within the nation's territory, in agreement with the objectives of regional development and national security.

3. ACTIONS

In accordance with the normative-qualitative nature of the Development Plan, the following actions, to be programmed by the Sectors in their respective Biannual Plans, are being adopted:

(1) To review, rectify and perfect the prevailing legal rulings which oppose or do not contribute to the Population Policy objectives, and to demand their faithful execution, above all in regard to:

– Equality of people's rights and responsibilities, without discrimination based on sex.

– Free access for the population to information and adequate medical services for responsible parenthood and family planning.

– Adoption of minors, problems of unwed mothers and child abandonment.

– General restructuring of health-related services and institutions (General Health Law).

(2) To support, in conformance with the guidelines of the Educational Reform, programs in education for family living and sex education geared toward responsible parenthood. To promote the adequate preparation and integral training of teachers, and to offer programs in population education that orient students on all levels concerning the value of interpersonal human relations and a respect for life, in addition to the dynamics of demographic variables and their repercussions on societal development. To assure the ethical and scientific quality of publications, films, etc. which deal with sex and family education. To provide continuing education, especially for adults, in health and family living, as well as in the duties and rights of parents in the new Peruvian society and in the effects of social, political, economic and cultural structures on the harmonic evolution of family life.

(3) To promote activities in the economic, social and cultural spheres which tend to reevaluate the family institution and strength-

en it as the basic component of our society. This requires that the human being be considered within the framework of his family, into which he is born and within which he then develops his basic associations, both fraternal and paternal. Such a framework should be extended to the entire scope of society so that the family may be linked to the historical social process in which it finds itself, thereby achieving a society that is truly unified in its striving for the nation's objectives.

(4) To promote activities which assist in the achievement of truly responsible parenthood. That is, an informed, conscious, free choice on the part of couples to determine the size of their families, an option which takes into account not only the reciprocal duties of the couple but also their duties to their children and to society. In regard to fertility, the Government recognizes that the final decision and the direct responsibility belong to the parents themselves. The State has the responsibility to promote the transformation of the economic, social and cultural structures so that they favor this option and mode of behavior. It must also provide adequate information and properly structured programs, integrated with medical services which offer the means of respecting ethical and moral principles and assure couples of their conscious right to exercise responsible parenthood. Therefore, any attempt to coerce or manipulate people, or use abortion and sterilization as a means of birth control, are logically excluded.

(5) To provide adequate, efficient production and distribution of food (in agriculture, cattle-raising and industry) according to the nutritional needs of the population, attending as quickly as possible to the serious deficiency which exists among the most needy groups in the country.

(6) To substantially improve social and health conditions of mother and child by developing legislation, an infrastructure, and services for this purpose.

(7) To develop integral health activities oriented towards: reducing morbidity, particularly from transmittable diseases; protecting the health and safety of the working population; providing minimum health services for migrant populations; strengthening the services within the Civil Defense System in order to be able to face emergency situations; and from this moment, and even more in the future as life expectancy increases and our population's age profile changes, offering medical, economic and social services to those over 65 years of age.

(8) To establish severe, restrictive measures against environmental pollution and the depletion of our natural resources and to encourage programs for environmental improvement and conservation.

(9) To promote actions which favor settling people in sparsely populated or frontier zones, thus contributing to the country's full development and to its national security. To support the redirection of migration towards new areas of agricultural and industrial development, which would limit and balance the excessive growth of the capital and support decentralized regional development.

(10) To promote and coordinate the efforts and initiatives of public and private institutions in the population field, adjusting their

activities to conform to the directives of this Population Policy which eliminates any manipulative orientation, and encouraging their development according to the principles of participation which the Peruvian Revolution favors and defends.

(11) To strengthen the national statistical information systems in order to systematize and up-date demographic data. To sponsor studies and research in this field in order to have a better knowledge of demographic effects on the economic and social reality of this country, as well as of the influence of economic, social and cultural factors on population dynamics and distribution, and to incorporate these analyses into the formulation and evaluation of the National Plans for Development.

Reference: *Official Government Newspaper of Peru*, 3 September 1976; text taken from International Planned Parenthood Federation, *Western Hemisphere Region, News Service*, Vol. IV, No. 5, October 1976, p. 23.

Philippines

Subject: Implementation and strengthening of the Philippine Population Program.

Text: Letter of Implementation No. 45 (to all government agencies concerned) reads as follows:

Pursuant to Presidential Decree No. 79 and General Order No. 18, both dated December 8, 1972, and in order to further strengthen the implementation of the Philippine Population Program being implemented by the Commission on Population (POPCOM), Office of the President, you are hereby directed:

1. To assist the Commission on Population in the implementation of the Philippine Population Program so as to fully utilize all possible resources for national development with population and family planning as an integral component;

2. To provide appropriate planning inputs from your respective Departments/Agencies towards the preparation of the National Population Plan;

3. To integrate relevant components of the Philippine Population Program into your Agencies' workplans, specifically in the following areas of responsibility:
   a. information, education and communication (motivation);
   b. delivery of clinic and non-clinic family planning services;
   c. training of motivators, communicators and biomedical and paramedical service personnel;
   d. research;
   e. policy formulation and coordination with respect to population.

4. To require your Agencies' workers at all levels including those Offices which are attached to your Department/Agency, especially at the regional and field levels, to coordinate with the Commission on Population in the Planning and Implementation of the Philippine Population Program;

5. To instruct your Department/Agency workers at all levels including those from the Offices which you coordinate and/or supervise, especially at the regional, provincial, municipal and barangay levels, to submit to the Commission on Population through its regional and other field offices periodic and regular POPCOM-prescribed progress reports on all population and family planning related activities;

6. To tap for family planning motivation, and whenever feasible, delivery of family planning services, the various community-based organizations which your agencies have organized or will organize, supervise and/or monitor;

7. To recommend policies and measures to efficiently and effectively plan and implement the Philippine Population Program taking into consideration your Agencies' resources and expertise; and,

8. To designate an Action Officer in your Agency not later than March 1, 1976 who will liaison and coordinate with the Commission on Population on the specific activities which can be undertaken by your Agency.

Strict compliance herewith is hereby enjoined.

Done in the City of Manila, this 20th day of July, in the year of our Lord, Nineteen hundred and seventy-six.

Letter of Instruction* No. 435 reads as follows:

.... Pursuant to General Order No. 1 and in order to achieve the objectives of the Philippine Population and Family Planning Program, you are hereby directed to facilitate the implementation of the programs of the Commission on Population (POPCOM), Office of the President, by authorizing Provincial Governors and City Mayors to gradually and progressively assume the responsibility of funding the costs of all population and family planning related activities and projects agreed upon by the POPCOM and the Provincial Governors and City Mayors for their respective jurisdictions.

(SGD.) Ferdinand E. Marcos
President of the Philippines

:ter of Instruction No. 436 reads as follows:

.... Pursuant to General Order No. 1 and in order to facilitate the sustained intensive nationwide implementation of the Population and Family Planning Program coordinated by the Commission on Population (POPCOM), Office of the President, you are hereby directed to:

1. Integrate population and family planning in your overall socio-economic development plans;
2. Instruct your action officers on development to allocate and obligate funds for your respective socio-economic development programs; and,

*To the Secretary of Local Government and Community Development, Secretary of Finance, Commissioner of the Budget, and others.

3. Require your action officer on socio-economic development to coordinate with the POPCOM in the preparation, planning, implementation and monitoring of all population and family planning related activities in your respective jurisdictions including the submission of appropriate POPCOM-prescribed reports to the Commission on Population through its regional and other field offices.

(SGD.) Ferdinand E. Marcos
President of the Philippines

Reference: Letter of Implementation No. 45, 20 July 1976; Letter of Instruction No. 435, 20 July 1976; Letter of Instruction No. 436, 20 July 1976, signed by President Marcos.

Portugal

Subject: The Constitution of the Republic of Portugal, 1976.

Text: On 2 April 1976, a Constitutional Assembly adopted a new Constitution of the Republic of Portugal. Selected sections of the Constitution read as follows:

ART. 63: SOCIAL SECURITY

1. All citizens shall have the right to social security.
2. It will be the responsibility of the State to organize, coordinate, and give financial backing to a unified, but decentralized social security system, in accord with participation by trade union associations and other organizations of the working classes.
3. Organization of the social security system will not compromise the existence of private non-profit social assistance entities. These will be permitted, but will be regulated by law and will be subject to governmental financial regulations.
4. The social security system will protect citizens during illness, old age, incapacitation, loss of wives or husbands, and loss of parents, as well as during unemployment and in all other situations where their resources for survival or their capacity to work have diminished.

ART. 64: HEALTH

1. All citizens shall have the right to health protection and the duty of preserving and promoting public health.
2. The right to health protection will be concretized by creation of a national public health service, offering broad services free of charge, by establishment of economic, social, and cultural conditions which guarantee protection to infants, youth, and the aged, and by systematic improvement of living and working conditions, as well as through promotion of physical and athletic training at the academic and public levels and through development of public health education.
3. In order to assure the right to health protection, the State will assume prime responsibility for:
   a) Guaranteeing citizens' access, independently of their economic situations, to preventive medical care, treatment of illnesses, and rehabilitation;

b) Furnishing a rational and efficient medical and hospital system for the entire country;
c) Orienting its activities toward socialization of medicine and of the medical and medicine production sectors;
d) Regulating and supervising corporate and private medical services, associating their activities with those of the national health service;
e) Regulating and supervising production and marketing of chemical, biological, and pharmaceutical products and of other treatment and diagnostic resources.

ART. 65: HOUSING

1. All citizens, for themselves and for their families, will have the right to housing with adequate size, hygiene conditions, and comfort, and with preservation of personal warmth and family privacy.
2. In order to assure the right to proper housing, the State will be responsible for:
a) Developing and implementing a housing policy which will be included in general territorial redistricting plans, supported by urban development plans which will guarantee the presence of an adequate transportation and social facilities system;
b) Encouraging and supporting efforts by localities and their inhabitants which are aimed at resolving housing problems; encouraging local construction projects and creation of housing cooperatives;
c) Stimulating private construction coordinated with public goals.
3. The State will adopt policies which are intended to establish a rents system that is compatible with family incomes and the availability of private housing.
4. The State and Local governments will exercise control over undeveloped land, proceeding with necessary nationalizations or municipal appropriation of urban land and defining the corresponding rights of use for such land.

ART. 66: ENVIRONMENT AND QUALITY OF LIFE

1. All citizens have the right to a proper environment for human life, namely a sound and ecologically balanced environment. Likewise, they have the duty of protecting the environment.
2. It will be the responsibility of the State, by means of its own agencies and through encouraging public initiatives:
a) To prevent and control pollution and its effects, as well as harmful forms of soil erosion;
b) To coordinate national land in such a way as to develop biologically balanced areas;
c) To create and develop preserves, nature parks, and recreation parks, as well as classifying and safeguarding the landscape and particular sites, in such a way as to ensure protection of Nature and preservation of cultural assets which have a historical or artistic interest;
d) To promote rational use of natural resources, safeguarding their capacity to be renewed and safeguarding ecological stability.

3. Citizens who are endangered or harmed with respect to the right specified by Item No. 1 can seek, within a legal framework, cessation of actions which violate the environment, along with compensation for damages suffered.
4. The State must promote steady and accelerated improvement of the quality of life of all Portuguese citizens.

ART. 67: FAMILY

The state recognizes the institution of the family and offers its protection. Hence, its specific responsibilities become:

a) Promoting the social and economic independence of family units;
b) Developing a national system of maternal and child care, and implementing an old age policy;
c) Cooperating with parents in the education of their children;
d) Promoting, by necessary measures, awareness of family planning methods and organizing legal and technical structures which will permit the exercise of responsible parenthood;
e) Regulating taxes and social benefits in harmony with family needs.

ART. 68: MATERNITY

1. The State recognizes maternity as a fundamental social value. It will protect mothers in regard to the specific requirements of their irreplaceable role in educating their children, while also offering them opportunities for professional development and participation in the civil life of the Nation.
2. Working mothers have the right to a period of leave from work, before and after giving birth, without any loss of wages or bonuses.

ART. 69: CHILDREN

1. Children have the right to protection by society and the State, with full development of their potential as the objective.
2. Children, particularly orphans and abandoned children, have the right to special protection from society and the State against all forms of discrimination and oppression, and against abusive use of authority in the family and other institutions.

ART. 70: YOUTH

1. Youth, and especially young workers, shall enjoy special protection for exercising their economic, social, and cultural rights, namely:

a) Access to instruction, culture and work;
b) Professional training and advancement;
c) Physicial education, athletic activity, and fruitful use of leisure time.

2. The policy on youth should have as priority goals the development of young persons as individuals, their spirit of creativity, and a sense of community service.
3. The State, in cooperation with schools, businesses, mass organizations, and cultural and recreational organizations, will encourage and assist youth organizations in pursuing those objectives, and likewise in respect to all forms of international exchange among youth.

ART. 71: THE HANDICAPPED

1. Physically or mentally handicapped citizens will be entitled to full exercise of their rights and will be subject to the duties established by the Constitution, with the exception of those rights and obligations which their handicaps prevent them from exercising or fulfilling.
2. The State is obligated to develop a national prevention, treatment, rehabilitation, and social integration policy for the handicapped, and to develop educational methods which will make society aware of the duties of respect and support for the handicapped, as well as to assume responsibility for effective implementation of their rights, without harm to the rights of parents and guardians.

ART. 72: THE ELDERLY

1. The State will promote a policy for the elderly which guarantees the economic security of elderly persons.
2. The policy for the elderly likewise must be aimed at providing housing conditions, family life conditions, and community life conditions which prevent or overcome isolation or social exclusion of elderly persons, offering them opportunities to create and develop means of personal expression through active participation in community life.

. . . .

ART. 95: PLANNING REGIONS

1. The country will be divided into Planning Regions according to potential resources and geographic, natural, social, and population features of national territory, with the aim of balanced development and with the problems and interests of regional populations taken into account.
2. The law establishes Planning Regions and defines the system of regional planning agencies for those regions.

SECTION IV—LAND REFORM

ART. 96: GOALS OF LAND REFORM

Land reform is one of the fundamental means of building a socialist society, and its goals are:

a) Promoting improvement of the economic, social, and cultural situation of rural workers and owners of small and middle-sized farms, in order to transform land ownership of land and of means of production directly used in cultivation of land to those who actually work the land, as the first step toward creation of new production relationships in agriculture.

b) Increasing production and productivity in agriculture with infra-structures and human, technical, and financial resources that are sufficient to assure an improved food supply for the country, as well as an increase in exports.

c) Creating the necessary conditions so that those who work in agriculture can attain actual equality with other workers and preventing the agricultural sector from suffering unfavorable exchange relationships with other sectors.

Land reform will be one of the means for increasing production and productivity in agriculture.

ART. 97: ELIMINATION OF LARGE ESTATES

1. The transfer of possession of land and means of production which are directly used in cultivating land to those who work the land will be achieved through expropriation of large estates and large-scale capitalist entities.
2. Expropriated property will be distributed for cultivation by small farmers, rural workers' cooperatives or small farmers' cooperatives, or by other units for collective cultivation by workers.
3. The steps called for by this Article will be carried out according to the terms specified by the Land Reform Law and according to the implementation schedule of the Land Reform Program.

ART. 98: MIDDLE-SIZED ESTATES

Without undermining the right of property ownership, Land Reform will seek to achieve adequate redistribution of land in regions where there are middle-sized estates, preferably by reliance upon formation of cooperatives embracing different units or likewise, whenever it is necessary, by subdivision and leasing of property through the land reform coordination agency.

ART. 99: OWNERS OF SMALL AND MIDDLE-SIZED FARMS

1. Land reform will be carried out with protection of land ownership rights of owners of small and middle-sized farms as a means or result of their labors, and it will safeguard the interests of emigrants or those who have no other means of subsistence.
2. The law will establish criteria for setting maximum limits upon the size of private agricultural property.

ART. 100: COOPERATIVES AND OTHER COLLECTIVE AGRICULTURAL INSTITUTIONS

Achievement of the goals of land reform implies the creation by rural workers and by owners of small and middle-sized farms, with State support, of production, purchasing, and distribution cooperatives, as well as electrical power and utilities cooperatives and other forms of collective activity by those who work the land.

ART. 101: CULTIVATION OF LAND OWNED BY OTHER PERSONS

1. Leasing procedures and other forms of cultivation of land owned by other persons will be legally regulated in such a way as to guarantee stability and the legitimate interests of the person cultivating the land.
2. Systems of tenant cultivation and peonage are hereby abolished, and conditions for cultivators are here established in such a way as to achieve abolition of the system of joint ownership of agricultural land.

ART. 102: STATE ASSISTANCE

1. Owners of small and middle-sized farms, either individually or organized in cooperatives, and agricultural workers' cooperatives as well as other forms of collective land use will have the right to State assistance.
2. State assistance, according to land reform programs and the General Plan, will include, notably:

a) Granting of loans and technical assistance.
b) Support to publicly owned firms and marketing cooperatives in proportion to and in relation to output.
c) Socialization of risks resulting from unforeseeable or uncontrollable meteorological phenomena or crop diseases.

ART. 103: COORDINATION, LAND RECONVERSION, AND PRICES

The State will promote a policy of agricultural coordination and reconversion, in accord with social and ecological conditions in Portugal, and it will ensure distribution of agricultural products within the context of the orientation that is defined by agricultural and nutrition policies. At the start of each season, the appropriate guaranteed prices will be defined.

ART. 104: PARTICIPATION IN LAND REFORM

In defining and implementing land reform, notably within the agencies created for this purpose, participation by rural workers and owners of small and middle-sized farms, through their own organizations, as well as participation by cooperatives and other forms of collective land use by workers, must be assured.

Reference: *The Constitution of the Republic of Portugal*, 1976 (Annotated) Lisbon, Editus, April 1976.

Thailand

Subject: Population policy as part of National Development Plan.

Summary: The fourth 5-year Development Plan, covering the period 1977-1981, has included as one of its basic objectives the deceleration of population growth and the development of man-power and employment.

The plan hopes to provide a common source for family planning information and services and population research; the consideration of the quantitative, qualitative and distributive aspects of population and family planning; and the extension of sociolegal activities and other "beyond family planning" aspects.

Reference: IPPF, *Law File*, No. 6, February 1977, p. 3.

United States

Subject: Elimination of income ceiling requirement for individuals receiving family planning services.

Text: Eligibility determinations for family planning services have been done away with under Title XX of the Social Security Act. In geographic and social settings where substantially all persons receive incomes less than 90% of the state median income for a family of four, the state may choose group eligibility as an alternative to individual income determination. This is applicable to all services except day care. For that service, migrant farmworkers are exempted on a group basis

The statute reads in part:

(14) (A) For purposes of paragraphs (5) and (6), an individual shall, at the option of the State, be deemed to be an individual described in paragraph (5) (b) if, because of the geographic area in which any particular service is provided to him, the characteristics of the community to which it is provided, the nature of the service, the conditions (other than income) of eligibility to receive it, or other factors surrounding its provision, the State may reasonably conclude, without individual determinations of eligibility, that substantially all of the persons who receive the service are members of families with a monthly gross income which is not more than 90 per centum of the median income of a family of four in the State, adjusted (in accordance with regulations prescribed by the Secretary) to take into account the size of the family.
(b) The provisions of subparagraph (A) shall not be applicable to child day care services furnished to any child other than a child of a migratory agricultural worker.

Reference: P.L. 94-401, Title XX, Social Security Act, September 7, 1976. See also, Planned Parenthood–World Population, *Washington Memo*, W-4, March 12, 1976; W-6, April 8, 1976; W-10, June 4, 1976; W-12, August 12, 1976 and W-16, September 16, 1976.

Note: While the new legislation now makes family planning services universally available to all citizens regardless of income, reasonable fees may still be charged to Title XX patients, based upon their income. Moreover, the amendments do not mandate standards which must be followed by the states, but rather, outline federal limits. States may determine their own eligibility requirements.

Subject: Tax reform allows charitable organizations such as Planned Parenthood to engage in legislative lobbying while continuing to retain tax exempt status.

Summary: The omnibus Tax Reform Act of 1976 enables charitable organizations to devote, without penalty, up to 20% of the first $500,000 of the organization's tax-exempt expenditures, plus 15% of the next $500,000, 10% of the third $500,000 and 5% of any additional amount, up to a maximum exemption of $1,000,000 per year, to "influence legislation."

Reference: §4911 Tax Reform Act of 1976. See also Planned Parenthood-World Population, *Washington Memo*, W-16, September 16, 1976.

Note: Enactment of the statute allows organizations such as Planned Parenthood to lobby in *both* Congress and State legislatures.

100 FERTILITY REGULATION

110 STERILIZATION

Bangladesh

Subject: Payment of transportation cost to sterilization acceptors.

Summary: Male acceptors of sterilization are paid 15 *takas* for transportation cost to the place of sterilization.

Reference: *Population and Family Planning Program: A Factbook*, No. 2 (eighth edition), October 1976, Table 13, pp. 48-49.

Germany, Federal Republic of

Subject: Supreme Court decision in favor of the lawfulness of voluntary sterilization.

Text: A 34-year old mother of three children was sterilized on request by a gynecologist who had been treating her for the past twelve years. Later she sued the physician for damages. Among other issues, the court had to decide whether contraceptive sterilization, performed on request of the patient, was unlawful under West German law.

The *Bundesgerichtshof* held, in a decision of 29 June 1976, that a sterilization of a mature, consenting person by a physician was not unlawful, even if done with no medical, eugenic or social reasons. Among other reasons, the Court stated:

> Neither birth control as such, nor its medical administration are reprehensible under prevailing moral notions. On the contrary, it is generally understood that the freedom to decide for or against parentship makes possible a more humane manner of living. Such a view conforms with our scale of constitutional values . . .
>
> Where the question is that of self-determination and of the individual's own responsibility, the order of importance of one's motivation must be, in the first place, determined by the individual alone. This argument is even more valid as it cannot be imputed to a physician to minutely inquire into the reasons of his patient's decision and to examine their justification . . .
>
> In any case, if a woman, (as the plaintiff) at the time of the operation, has, at the age of thirty-four, reached a middle period of her life, has been a mother since her twenty-seventh year, and expects her third child, it can be unhesitatingly assumed that she possesses so much life experience and understanding of the

importance of maternity for her own future as well as that of her matrimony and family, to be able to make such a decision under her own responsibility....

[T]he operation [was] further not unlawful solely because the defendant [physician] did not assure himself that the husband consented to the sterilization. Where the person who wants to be sterilized is married, the conflicting wishes or interests of the other spouse must subside. The decision is to be made by the determination of the concerned person alone.

Reference: Decision of the *Bundesgerichtshof* of 29 June 1976, *Neue Iuristische Wochenschrift*, 1976 (vol. 31), p. 1790.

Subject: Voluntary sterilization covered by health insurance.

Text: By law of 28 August 1975 several statutes providing for health insurance have been amended so as to afford health insurance benefits to persons undergoing "not unlawful" sterilization operations. Thus, *e.g.*, Sec. 200(f) of the National Insurance Law (*Reichsversiche-rungsordnung*), as amended, reads:

> The insured are entitled to health insurance benefits in case of a not unlawful sterilization.... The benefits granted are for medical examinations and opinions necessary to establish prerequisites for a not unlawful sterilization... medical treatment, supplies of medicines, drugs, and dressing material, as well as hospital care. The insured are entitled to sick pay if they become unfit to work as a result on a not unlawful sterilization....

Reference: BGB1. I., 2289, 28 August 1975.

Note: Under the present West German law the concept of an "unlawful" contraceptive sterilization, performed on request of the sterilized person, is not clear. See the decision of the *Bundesgerichtshof* of 29 June 1976, above. Since the decision of the *Bundesgerichtshof* in the *Dohrn* case in 1964 the German criminal code has no provisions which would criminalize voluntary sterilization.

Other provisions of this statute may be found in §130.

Iceland

Subject: Comprehensive Law on sex education, sterilization and abortion.

Text: The provisions of a new Icelandic law pertaining to sterilization read as follows:

CHAPTER III. STERILIZATIONS.

Article 17. It is a sterilization, according to this statute, when the man's *vas deferens* or the woman's fallopian tubes are closed and the reproductivity of the person concerned is thus prevented.

Article 18. A sterilization is permissible according to this statute: I. At the request of the person concerned if she/he has reached the age of 25 and wishes strongly after careful consideration that her/his

reproductivity be prevented, and if there are no medical reasons which oppose an operation.
II. If the person concerned is younger than 25 years:
1) If there is reason to believe that the woman's health is endangered by pregnancy and childbirth.
2) If childbirth and the taking care of children would constitute a burden too heavy for her/him taking into account the family's standard of living and other reasons.
3) If a physical or mental disease seriously reduces her/his ability to take care of and bring up children.
4) When there is reason to believe that the child of the person concerned may be born with a deformity or with a serious disease because of hereditary tendencies or harmful influences on the fetus.

Article 19. A sterilization is permissible according to Article 18, I, if the person concerned has applied and signed, pursuant to Article 20, on forms published by the Surgeon General for that purpose.

A sterilization is permissible according to Article 18, II, 1), 2), 3) and 4), when the person concerned has applied, (cf. Article 20), and when two physicians, or a physician and a social worker if only social reasons are involved, (the latter must be working in the health district concerned) have given a written reasoned statement. One of the physicians shall be the specialist who performs the operation. If the reason for the application lies outside his specialty he shall be guided by the report of a specialist in that field.

Article 20. The application shall be accompanied by a declaration signed by the applicant to the effect that it is clear to her/him what the nature of the operation is and that the request for a sterilization is made from her/his own free will (*cf.* Article 22).

Article 21. The person concerned shall be told, before a sterilization is permitted in accordance with this statute, what the nature of the operation is and that it may permanently prevent the reproductivity of the person concerned.

Article 22. A sterilization may be permitted according to the application of a specially appointed guardian, if the reasons for an operation as listed in Article 18, II, exist or if the person concerned has reached the age of 25, but is, because of a mental disease, a serious mental deficiency or other mental disturbances permanently unable to understand the consequences of the operation.

Article 23. Only physicians who are licensed specialists in general surgery, gynecology and urology may perform sterilizations.

A cabinet minister can, however, in cooperation with the Surgeon General, permit a hospital physician to perform such an operation.

The operations may only be performed in hospitals recognized for that purpose by a cabinet minister.

CHAPTER IV. GENERAL CLAUSES.

Article 24. An application, medical certificates and a statement which are mentioned in Articles 11 and 19 of this statute shall be kept with the patient's record in the hospital.

After the operation, a report on forms provided for that purpose by the Surgeon General shall be sent to the Surgeon General about its performance.

Article 25. The Surgeon General shall be informed about denials of applications for an abortion or a sterilization and about the reasons for such denials.

Article 26. Health authorities shall supervise the execution of this statute and see to it that the operations dealt with in this statute (*cf.* Article 15) can be performed in state hospitals. The aim shall be conformity in their performance in all parts of the country. Instruction and advice shall be given to those who work on the execution of the statute.

Article 27. All those who in one way or another work on the execution of this statute are under a duty to remain silent about all personal affairs which they may in this connection learn about.

Article 28. If a dispute arises over whether an abortion or a sterilization shall be performed, the case shall, without delay, be referred to the Surgeon General and he shall without delay refer the case decision to a committee which shall be appointed for the purpose of supervising the statute's execution. The committee shall consist of three persons and as many substitutes: one physician, one lawyer and one social worker. They shall be appointed by the Minister of Health for terms of four years. The committee shall decide the case within a week from its receipt.

The committee shall have the necessary facilities and a secure access to specialists who may be needed to the cases received by the committee.

Article 29. The health insurance of the State Social Security Institute pays the medical costs of abortions and sterilizations.

Public funds cover expenses incurred by advice and instruction in this field.

Article 30. This statute does not cover necessary medical operations because of diseases of the reproductive organs even though they lead to an abortion or a sterilization.

Article 31. 1) A physician who performs an abortion or a sterilization without fulfilling the conditions of Articles 9, 10, or 18 shall be punished by confinement or imprisonment up to two years unless the Criminal Code provides more severe sanctions. The punishment may consist of fines only if the physician can show mitigating circumstances. The punishment shall be not less than two years and up to twelve years imprisonment if the operation was performed without the woman's approval.
2) A physician who performs an abortion or a sterilization without fulfilling the conditions of Articles 11, 12, 13, 19 or 21 shall be fined unless the Criminal Code provides more severe sanctions.
3) A physician who performs an abortion or a sterilization without fulfilling the conditions of Articles 15 or 23 shall be fined.
4) If persons other than physicians perform operations according to this statute, they shall be imprisoned up to four years unless the Criminal Code provides more severe sanctions. The punishment shall

be not less than two years and up to twelve years imprisonment if the operation was performed without the woman's approval.
5) Participants shall be punished according to parts 1 and 4 of this Article.
Negligent acts are not punishable under this statute.

Article 32. The more detailed execution of this statute shall be governed by government regulations.

Article 33. This statute enters into force immediately. When this statute enters into force it replaces statutes nr. 38/1935 and 16/1938. The Articles about castration in statute nr. 16/1938 will still remain in force.

Reference: Law Number 25/1975, 22 May 1975.

Note: Other provisions of this statute may be found in §§130 and 770.

India

Federal Law

Subject: Compensation for medical complications resulting from sterilization or IUD insertion.

Summary: The Indian Government provided a scheme for the compensation of individuals who suffer post-operative complications arising from the insertion of IUDs or sterilization.

The scheme required state governments to create committees to consider any such request for compensation. Survivors of any acceptor who dies within 10 days of the procedure would be paid Rs 5000 ($520) irrespective of the actual cause of death. Payment would be made for deaths occurring between 10 days and 4 weeks after the procedure only on verification that the insertion or sterilization did in fact give rise to the complications.

There are also provisions to pay actual costs of treatment and compensation for lost wages.

Reference: *The National Herald Tribune* (Lucknow), 23 September 1976; as reported in IPPF, *Around the Federation*, October 1976.

State Law

Maharashtra

Subject: Passage in Legislative Assembly of Compulsory Sterilization Bill.

Text: Both houses of the Legislative Assembly of Maharashtra, a state with a population of 50 million, passed an act introducing compulsory sterilization in July 1976. To become law, the Act needed the consent of the President of India, which it did not receive. This being the first legislation on involuntary sterilization ever passed by any legislature, the text of the Act is reprinted below:

1. (1) This Act may be called the Maharashtra Family (Restriction on Size) Act, 1976.
(2) It extends to the whole of the State of Maharashtra.
(3) It shall come into force in the whole of the State of Maharashtra from such date as the State Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,
(1) "appointed date" means the date on which this Act is bought into force in the State;
(2) "approved institute" means such Government Hospital, Primary Health Centre, Municipal Hospital, Zilla Parishad Hospital, Government Dispensary and such diagnostic centre, hospital, or dispensary conducted or managed by such voluntary organization or charitable trust or otherwise as the Director may from time to time approve for the purposes of this Act;
(4) [sic] "Board" means a Board constituted under section 3;
(3) [sic] "approved practitioner" means a person who is entitled to practice any system of medicine in the State under any law for the time being in force relating to medical practitioners and who, in the opinion of the Director has acquired skill in sterilization operation, either in practice or by virtue of holding an appointment in any approved institute, over such period as may be prescribed, and who has been duly approved by the Director for the purposes of this Act;
(5) "Director" means the Director of Health Services, Government of Maharashtra, and includes any person duly authorized by the State Government for the purpose of this Act;
(6) "eligible person" means a person residing in the State of Maharashtra who at any time has three children, or who has more than three children on the appointed date, and such person if a male has not completed the age of 55, and if a female, has not completed the age of 45, and includes a person who having either all three male, or all three female children, has a fourth child.
Explanation—For the purposes of this clause, "children" means the total number of living children whether born in the State or without it, which an eligible person alone has, or which he and his spouse have together; and includes children of an unwed mother and children given in adoption, but does not include children taken in adoption.

....

(9) "sterilization" includes such medical or surgical procedure, as the Director may, by general or special order from time to time determine as would effectively deprive any person of his power of reproduction, but does not include a procedure which involves removal of reproductive glands or organs unless such removal is necessary for medical or therapeutic reasons; and the expression 'sterilization operation' shall be construed, accordingly;

....

3. (1) For the purpose of carrying out the provisions of this Act, the State Government may, by notification in the Official Gazette, constitute one or more Boards for such area or areas as may be specified in the notification.

(2) Each Board shall consist of not less than five persons of whom one shall be a person who in the opinion of the State Government has adequate knowledge of law and there shall be persons who are entitled to practice in the State any system of medicine under any law for the time being in force relating to medical practitioners of whom one at least shall be a person who is a registered practitioner under the Maharashtra Medical Council Act, 1965. The Chairman shall be appointed by the State Government from amongst the members of the Board.

....

(11) Subject to the provisions of this Act and the provisions of the succeeding sub-sections, on the application of an eligible person (hereinafter referred to as "the applicant"), the Board shall, if it is satisfied on the evidence produced before it,–

(a) that sterilization may constitute danger to the life of the applicant, or

(b) that on the appointed date, the last child of the applicant is five years, or more than five years old, and the applicant duly gives an undertaking in writing that he will restrict the size of his family irrespective of the number of wives to three or more than three children which he had on that date, and in case pregnancy occurs after the birth of such last child in any such family, to report the pregnancy to the Board not later than sixty days from the date of the pregnancy, and get the pregnancy terminated according to the provisions of the Medical Termination of Pregnancy Act, 1971, and likewise further undertake to get himself sterilized within sixty days from the date of the undertaking, or,

(c) that the spouse or all the spouses of the applicant is or are dead, and the applicant has not married again, or

(d) that the applicant or his spouse is, on medical evidence, incapable of reproduction, exempt the applicant from being sterilized as hereinafter provided:

Provided that the State Government may by an order in writing delegate the power of exemption to an officer not below the rank of a Civil Surgeon specified in the order in cases falling under clause (c) or clause (d) of this sub-section.

(12) The period within which the application may be made shall be 30 days from the date of receipt of notice under sub-section (1) of section 4.

(13) The exemption granted under this section shall be subject to such conditions as may be specified in the Order, regard being had to the enforcement of the objects of this Act.

(14) For the purpose of enabling it to give exemption under sub-section (11), the Board may require the applicant or his

spouse to be medically examined at any approved institute specified by it and in doing so, the Board shall, subject to the directions of the State Government, as far as practicable for carrying out any such examination, appoint such persons who in its opinion are fit and competent to carry out the examination. The person carrying out the medical examination shall submit his report to the Board as expeditiously as possible.

(15) If, on receipt of the medical report under sub-section (14), the Board is satisfied that it is necessary to exempt the applicant or his spouse from sterilization, the Board may by an order in writing exempt the applicant or his spouse or both, as the case may require, and furnish the applicant with a copy of the exemption order. Such order shall state the date on which the Order has been made, and the reasons for which the Order has been made.

(16) The Board may, on the request of any eligible person, permit him to be represented by a pleader.

Explanation.—For the purposes of this section, the expression "pleader" includes an advocate, attorney, vakil or any other legal practitioner.

(17) The production of an exemption Order shall, unless the contrary is proved, be conclusive proof of the fact that the person named in the exemption order has been exempted from sterilization for the reason stated in the Order.

4. (1) Subject to the provisions of this Act including this section, it shall be the responsibility of every person after the appointed date to restrict the size of family to not more than three and in the case of a person having either all three male or all three female children to restrict the size of family to not more than four children and of every person who on that date has three or more children to ensure that such number of children is not exceeded, and for that purpose, every eligible person shall get himself sterilized at an approved institute as provided in this section.

The Director shall serve on every person (who, according to his knowledge and information, is an eligible person either on the appointed date or thereafter), a notice to the effect that the person specified in the notice is an eligible person and is required to be sterilized as aforesaid.

(2) Where on the appointed date, a person has already three or more than three living children, he shall present himself for registration for sterilization at an approved institute not later than 90 days from the appointed date.

(3) Where a child is born to a person and such a child is the third or fourth living child, as the case may be, then, such eligible person shall present himself for registration for sterilization at an approved institute not later than 180 days from the date on which such child is born to him.

(4) On presentation for registration under sub-section (2) or (3), the Superintendent of the approved institute shall also communicate to the eligible person the date before which he shall present himself for sterilization at the approved institute specified in the communication.

(5) Unless exempted by the Board, it shall be the responsibility of every male eligible person to get himself sterilized first as provided in this section. Unless also exempted by the Board, it shall be the responsibility of every female eligible person to get herself sterilized, in the event of her spouse being exempted from sterilization.

(6) Unless exempted by the Board, where a female eligible person has a spouse above the age of 55, then it shall be the responsibility of such eligible person to get herself sterilized, unless her spouse volunteers to get himself sterilized.

(7) Every registered eligible person shall present himself before the approved institute for sterilization on or before the date fixed and communicated to him by the Superintendent under sub-section (4).

(8) *It shall be the duty of the Director to arrange for the sterilization of all eligible persons in any area or areas as expeditiously as possible, and for that purpose the Director may, with the previous approval of the State Government, by order, appoint as many approved practitioners as are necessary and give adequate publicity to the arrangements made by him for medical examination of eligible persons, and for their sterilization in such area or areas specified in the order.*

(9) No eligible person shall be sterilized unless he has been duly medically examined by an approved practitioner, and the *approved practitioner* has recorded in writing that such sterilization does not constitute any danger to the life of the eligible person.

(10) The terms and conditions on which approved practitioners may be appointed for performing medical examination or the sterilization operation in any approved institute or otherwise shall be determined by the Director with the approval of the State Government.

(11) Notwithstanding anything contained in any law relating to medical profession for the time being in force in the State including the ethics of that profession, it shall be the duty of every approved practitioner to sterilize according to the procedure approved by the Director in this behalf every eligible person who presents himself for sterilization at an approved institute as provided in this Act.

5. (1) Where any person has been sterilized in pursuance of the provisions of this Act, the Superintendent of the approved institute in which such person has been sterilized shall grant such person a certificate to that effect in the prescribed form.

The Superintendent shall send a copy of the certificate to the local authority in whose jurisdiction the sterilized person resides and the local authority shall make an entry in the register maintained by it under section 15 in relation to the person to whom such certificate relates:

Provided that, where any eligible person has been sterilized at any time on or before the appointed date, then such person shall obtain a certificate of sterilization from such Superintendent and in such manner as may be prescribed.

(2) The certificate granted under sub-section (1) shall, subject to the provisions of sub-clause (b) of clause (2) of section 6, be conclusive proof of the fact that the eligible person holding such certificate has been duly sterilized. In the absence of a sterilization certificate, it shall be presumed, until the contrary is proved, that an eligible person has not been sterilized.

6. (1) Notwithstanding anything contained in the Indian Penal Code, or the Medical Termination of Pregnancy Act, 1971,–

(i) any eligible person who is present on the appointed date or remains pregnant after that date but before the actual sterilization of herself or her spouse, as the case may be, within the period provided in sub-section (2), or sub-section (3), of section 4, shall unless the pregnancy is of more than twelve weeks, get her pregnancy terminated under the said Act;

(ii) where, notwithstanding the sterilization of an eligible person, pregnancy occurs at any time then,–

(a) such pregnancy may be terminated according to the provisions of the said Act;

(b) the certificate granted under section 5 to the eligible person shall stand cancelled and inoperative; and

(c) the eligible person who was sterilized before the occurrence of such pregnancy shall, subject to the provisions of this Act, be liable to be sterilized again under this Act within such period as the Director may, by order, determine.

(2) All the provisions of the Medical Termination of Pregnancy Act, 1971, shall apply for the termination of any pregnancy referred to in sub-section (1) as they apply to the termination of the pregnancy under the said Act.

7. Notwithstanding anything contained in any law for the time being in force in the State, every eligible person who is sterilized or whose pregnancy is terminated shall, on a certificate of the Superintendent of the approved institute where he has been sterilized or where the pregnancy has been terminated, be entitled to paid leave for three days in the case of vasectomy and medical termination of pregnancy, and seven days for tubectomy; and every employer of such eligible person (whether permanent, temporary or otherwise) shall ensure that such paid leave for such number of days is duly sanctioned to the eligible person. Where a Superintendent for reasons to be recorded in writing certifies leave

to be necessary for any additional days in any case, the employer shall also ensure paid leave for such additional days.

8. (1) (a) No eligible person who has been sterilized shall get himself restored to reproductive capacity by any medical or surgical procedure; and

(b) No person shall restore any eligible person to reproductive capacity by any such procedure, except with the previous permission in writing of the Board.

(2) The permission referred to in sub-section (1) shall not be granted by the Board except—

(a) where all the living children have died, or

(b) where from amongst the living children all the male or all the female children have died.

9. (1) Any person who is aggrieved by any order under any of the provisions of this Act, may submit an appeal in writing within 30 days from the date of receipt of the order to the State Government.

(2) On receipt of the appeal, the State Government may, if necessary, arrange to get the aggrieved person examined in such manner and by such authority as it thinks fit.

(3) The State Government may, after making such inquiry as it thinks fit and after considering the report of the authority under sub-section (2), if any, and after hearing the aggrieved person pass such order as it thinks fit.

(4) The decision of the State Government in the appeal shall be final and conclusive, and shall not be called in question in any court.

10. All medical examinations, all sterilization operations and all termination of pregnancies made in pursuance of the provisions of this Act and any medical treatment necessary as a result of such operations or termination of pregnancies shall be made free of cost.

11. No person shall carry on any kind of malicious propaganda or propaganda on religious grounds against compulsory sterilization of an eligible person as provided in this Act.

12. No person shall give any false certificates, make a false declaration or make any false report of any examination made or conducted for the purposes of this Act.

13. The eligible person, in the event of his permanent disablement and the nominee or nominees of the eligible person in the event of the death of the eligible person, arising out of his sterilization operation, or as the case may be, termination of pregnancy, be entitled to such compensation not exceeding five thousand rupees in case of death, and three thousand rupees in case of permanent disablement as the State Government may, by order determine, regard being had to the consequences to the family of the eligible person following such death, or as the case may be, permanent disablement.

The State Government shall make rules in relation to making nominations for receiving compensation in the event of death of the eligible person, for apportionment of the compensation among the nominees and for all matters supplemental and incidental thereto.

Explanation. In this section "permanent disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates the eligible person for all work which he was capable of performing before such operation or termination of pregnancy resulting in such disablement.

14. (1) Where a person has two or three living children on the appointed date or where a second or third child is born to any person after that date, then every such person shall make a declaration within 30 days of the appointed date as the case may be of the date of such birth in the form in Schedule A appended hereto. [Appendix omitted—Editor]

(2) Where a fourth child is born to a person who has either all three male or all three female, children then such eligible person shall inform of such birth to the Director within 30 days of such birth.

15. (1) Every local authority shall maintain registers of persons having two children, and of persons having three or more children within their respective jurisdiction.

(2) Every local authority shall have a Registrar for supervising the work of maintaining registers under this section, such Registrar shall,—

(a) in a Corporation area be the Municipal Commissioner:
(b) within the limits of any municipal area, be the Chief Officer;
(c) elsewhere, be the Chief Executive Officer of the Zilla Parishad.

(3) The local authority may, for maintaining such registers, also appoint such persons as Enumeration Officers as may be necessary to collect, or aid in, or supervise the collecting of, information within any specified area from eligible persons having two, three or more than three children, respectively.

(4) An Enumeration Officer may ask all such questions set out in a prescribed form of all persons within the limits of the local area for which he is appointed, as, by instructions issued in this behalf by the State Government, he may be directed to ask.

(5) Every person to whom any question is asked under sub-section (4) shall be legally bound to answer such question to the best of his knowledge or belief.

(6) Every person occupying any house, enclosure, vessel or other place shall allow Enumeration Officers such access thereto as they may require for the purposes of collecting the information and as, having regard to the customs of the State, may be reasonable, and shall allow them to paint on, or affix to, the place such letters, marks or numbers as may be

necessary for the purposes of collecting the information under this section.

(7) (a) Any person who intentionally gives false answer to, or refuses to answer to the best of his knowledge or belief, any question asked of him by an Enumeration Officer which he is legally bound under sub-section (5) to answer, or any person occupying any house, enclosure, vessel or other place, who refuses to allow an Enumeration Officer such reasonable access thereto as is required by sub-section (5) to allow, or who removes, obliterates, alters or damages any letters, marks or numbers fixed or painted on any place, shall, on conviction, be punished with fine which may extend to one thousand rupees.

(b) Any person who abets any offense under clause (a) of this sub-section shall, on conviction, be punished also with fine which may extend to one thousand rupees.

(8) For the purpose of maintaining the registers referred to in sub-section (1) of this section, a local authority shall, subject to rules made in this behalf by the State Government, be reimbursed with the expenditure incurred by it in that behalf.

(9) Notwithstanding anything contained in this section, if any local authority fails to maintain the register as provided in sub-section (1) of this section, then the State Government shall require the Registrar to maintain such register; and for that purpose, the Registrar shall be entitled to requisition the services of such staff of the local authority as may be reasonably necessary for the purpose. Failure on the part of any member of the staff of the local authority to assist the Registrar in maintaining the register shall constitute a breach of the condition of his service; and it shall be competent to the State Government to punish such member in such manner as the State Government may in the circumstances of each case think fit.

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16. Without prejudice to the provisions of section 13, no person who is sterilized or whose pregnancy is terminated under the provisions of this Act shall be entitled to any damages except when neglect is established in the process of performance of the sterilization operation or in terminating pregnancy or in giving medical treatment to such person after such operation or termination of pregnancy.

17. (1) Whoever contravenes the provisions of sections 4, 5, 6, 7, 8, 11, 12, or 14, shall, on conviction, be punished with imprisonment for a period which may extend to two years; and where the case so requires shall also be liable to be sterilized or the pregnancy of such person shall be liable to be terminated as provided in section 6, even during the term of such imprisonment:

Provided that in the absence of any special or adequate reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall not be less than six months.

(2) Where an eligible person has been sterilized, or the pregnancy of any eligible person is terminated under sub-section (1), then, the State Government may, by order in writing, remit the unexpired period of the imprisonment, if any, and thereupon, the eligible person shall be released from the prison forthwith.

(3) Whoever contravenes any order or direction of the Board or the Director shall, on conviction be punished with imprisonment which may extend to six months or with fine which may extend to Rs. 500 but in no case less than Rs. 100.

18. All offenses punishable under sub-section (1) of section 17 shall be cognizable.

19. No suit or prosecution or any legal proceeding shall lie against any person who is duly authorized by the State Government for anything which is in good faith done or intended to be done under this Act. No prosecution under this Act shall be entertained by any court except on a complaint made by any Government Officer or servant duly empowered by the State Government in that behalf.

20. Notwithstanding anything contained in the Indian Penal Code, no approved practitioner shall be guilty of any offense under that Code or under any other law for the time being in force, if any sterilization or medical termination of pregnancy is performed by him in accordance with the provisions of this Act.

21. The State Government may give directions to the Board or any approved practitioner in respect of any matter relating to implementation of this Act, and it shall be the duty of the Board, or as the case may be, the practitioner, to give effect to such directions.

22. (1) The State Government may, by notification in the *Official Gazette* and subject to the condition of previous publications, make rules for carrying into effect the purposes of this Act. Such rules may provide for payment of fee for any of the purposes of this Act and for refund thereof, if necessary.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), such rules may provide for all or any of the following matters, namely:—

(a) under clause (3) of section 2, the period for which a registered practitioner is to hold appointment in an approved institute so as to acquire skill in the sterilization operation;

(b) under clause (8) of section 2, the manner of determining residence in any part of the State;

(c) under section 5, the form of sterilization certificate and the manner in which such certificate may be obtained by a person sterilized on or before the appointed date;

(d) rules for determining the age of an eligible person for the purposes of this Act;

(e) rules for giving rewards to informants including provision for regulating amount of such rewards and any matter ancillary thereto;

(f) any matter for which in the opinion of the State Government rules are necessary to be made for implementing the provisions of this Act.

(3) Every rule made under this section shall be laid, as soon as may be, after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made and notify such decision in the *Official Gazette*, the rule shall, from the date of such notification, have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

23. For the avoidance of doubt it is hereby declared that it shall be presumed without further evidence, until the contrary is proved, that compulsory sterilization of eligible persons provided by this Act does not constitute any violation of any religious practice, or of any essential tenet or part of any religion.

Reference: The Maharashtra Family (Restriction on Size) Act, 1976.

Note: In a policy statement issued on 28 April 1977 by Minister of Health and Family Welfare, Shri Raj Narain, it was announced that although the Government of India affirmed its strong commitment to family planning (now broadened to family welfare) it ruled out the use of compulsory measures in the area of family planning at the Central or State level.

Iran

Subject: Criminal Code provisions on sterilization liberalized.

Summary: The Civil Penal Code has been amended to include the following text:

(5) (i) A doctor shall be permitted to perform a sterilization if the spouse of the patient gives written consent, and the couple have two children.

(ii) If both partners are over 25 years of age, the stipulation as to having two children shall be waived.

(iii) Sterilization may be performed on unmarried persons only if they are over 30 years of age.

(6) Pregnancy terminations and sterilizations may only be performed in fully equipped hospitals and clinics that meet the criteria set out in the Medical and Pharmaceutical Law.

(7) Hospitals and clinics in which abortions and sterilizations are performed must keep full records of the operations for a minimum of three years. Details of the operations, but without any reference to the identity of the patient, must also be submitted to the Family Planning Department.

Reference: Article 42, §8, of Civil Penal Code, 28 October 1976; text reprinted from unofficial translation in 27 *IDHL*, No. 4, 1976, p. 789.

Note: Other provisions of this statute may be found in §130.

Philippines

Subject: Provision of Social Security coverage for voluntary sterilization.

Text: President Ferdinand E. Marcos issued a decree amending §13 of Republic Act 6111 (Philippine Medical Care Act of 1969) as follows:

Whereas, the government has adopted a national population program as an integral and vital part of social reform and development;

Whereas, Republic Act 6365 as amended by Presidential Decree 79 and further amended by Presidential Decree 803 provided for the availability of all acceptable methods of contraception, except abortion, to all Filipino citizens desirous of spacing, limiting or preventing pregnancies;

Whereas, sterilization is now an acceptable procedure of fertility control in the population program;

Whereas, the population program has demonstrated an increasing demand for sterilization service;

Whereas, it would be economically rational and consistent with the population policy to reimburse sterilization expenses of GSIS and SSS members.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution do hereby order and decree, that:

Section 1. Section 13 of Republic Act Numbered Sixty One Hundred Eleven otherwise known as the "Philippine Medical Care Act of 1969" is hereby amended to read as follows:

Under such rules, regulations and/or conditions as the SSS and GSIS may prescribe, subject to the approval of the Commission, an employee who is confined in a hospital on account of sickness or bodily injury requiring hospitalization, or is operated on for sterilization, shall be entitled to confinement not exceeding forty-five days annually to:

(a) Room and board expense benefit for each day of confinement in a hospital not exceeding twelve pesos (P12.00) a day; and

(b) Special charge expense benefits for charges necessary for the care of the employee, such as laboratory examination fees, drug, x-ray and the like, not to exceed one hundred fifty pesos. (As amended by Presidential Decree No. 273).

For drugs medicines that may be essential under this sub-section, the employee shall have the option to secure the same from either the hospital pharmacy wherein he is confined or from any detail drugstore of his own choice, subject only to the rules and regulations or as provided for in Section 18 hereof.

Section 2. Any provision of existing law, rule, regulation or order that is contrary to, or inconsistent herewith is hereby repealed or modified accordingly.

Section 3. The benefits provided by this Decree shall be effective as of January 1, 1977.

Section 4. This Decree shall take effect immediately.

Done in the City of Manila, this 22nd day of September in the year of our Lord, nineteen hundred and seventy-six.

President of the Philippines

By the President

JUAN C. TUVERA
Presidential Assistant

Reference: Presidential Decree No. 1013, 22 September 1976, signed by President Marcos.

Sweden

Subject: Regulations to implement the Sterilization Law.

Summary: A circular of 31 October 1975, issued by the National Board of Health and Welfare contains regulations to implement the 1975 Sterilization Law (*Annual Review, 1975*, p. 15). The physician who performs the operation "must in each case satisfy himself that the applicant is aware of the significance and the consequences of the operation and maintains his request to be sterilized." Detailed directives are given for performing sterilizations in hospitals.

Reference: Sterilization Law No. 580, *Socialstyrelsen: Medicinalvasendets författningssamling, 1975*, 15 December 1975, No. 116. Summary in English: 27 *IDHL*, No. 4 (1976), pp. 867-868.

United States

State Law

North Carolina

Subject: Sterilization of mentally retarded persons declared constitutional.

Summary: North Carolina statutes permit the sterilization of mentally retarded or mentally ill persons subject to procedural safeguards designed to protect their rights. (North Carolina General Statutes, Art. 7 "Sterilization of Mentally Ill and Mentally Retarded," sec. 35(36) through 35(50).) Sterilization may be authorized by a court if it finds:

> ... That because of a physical, mental, or nervous disease or deficiency which is not likely to materially improve, the person would probably be unable to care for a child or children; or, because the person would be likely, unless sterilized, to procreate a child or children which probably would have serious physical, mental or nervous deficiencies.

Under Sec. 35(39) it is a "duty" of certain health officers to initiate judicial proceedings if, in their opinion

(1) ... sterilization is in the best interest of the mental, moral or physical improvement of the retarded person,

(2) ... sterilization is in the best interest of the public at large,

(3) ... [the retarded person] would be likely, unless sterilized, to procreate a child or children who would have a tendency to serious physical, mental, or nervous disease or deficiency; or, because of a physical, mental or nervous disease or deficiency, which is not likely to materially improve, the person would be unable to care for a child or children.

In two 1976 cases the constitutionality of the above provisions was upheld by both state and federal courts.

(a) The Supreme Court of North Carolina (*In re Moore*, 221. S.E. 2d 307 (1976)) based its opinion on older decisions which had held that the state had a right to sterilize retarded or insane persons if due process safeguards were observed. The court also stated:*

> The interest of the unborn child is sufficient to warrant sterilization of a retarded person.
>
> The people of North Carolina also have a right to prevent the procreation of children who will become a burden to the State.
>
> Furthermore, the sterilization of a mentally ill or retarded individual at certain times may be in the best interest of that individual. The mentally ill or retarded individual may not be capable of determining his inability to cope with children. In addition, he may be capable of functioning in society and caring for his own needs but may be unable to handle the additional responsibility of children. This individual also may not be able to practice other forms of birth control and therefore sterilization is the only available remedy. (p. 313)

(b) On 1 October 1976 a U.S. federal district court also upheld the constitutionality of the above cited North Carolina provisions, in *North Carolina Association for Retarded Children* v. *North Carolina*, 420 F. Supp. 451 (1976). The prerequisite for constitutionality is, the court emphasized, that the statute be interpreted so that there must be:

> ... evidence that is clear, strong and convincing that the subject is likely to engage in sexual activity without using contraceptive devices and that either a defective child is likely to be born or a child born that cannot be cared for by its parent.

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*It may be again emphasized that inclusion of any material or part of its text in this *Review* does not indicate a positive opinion of the publishers. The texts cited have been selected because of their importance in the context of a statute or of a decision, or because they may be of special interest for the reader.

Reference: North Carolina General Statutes, Art. 7 (Sterilization of Mentally Ill and Mentally Retarded), §§35(36) through 35(50); *In re Moore* 221 S.E. 2d 307 (1976); *North Carolina Association for Retarded Children* v. *North Carolina*, 420 F. Supp. 451 (1976).

Pennsylvania

Subject: Private hospitals may constitutionally refuse sterilizations without spousal consent.

Text: A federal district court (E.D. Pennsylvania) held in *Holton* v. *Crozer-Chester Medical Center*, 419 F. Supp. 334, that under the U.S. Constitution a *private* hospital may refuse sterilizations without spousal consent. The decision states, in extracts:

> ... Crozer-Chester, like other private hospitals, obtains financial support from government and is subjected to comprehensive regulation on both the state and federal level. Nevertheless, most courts that have considered the state action issue as applied to private hospitals have concluded that the activities of private hospitals generally do not meet the state action requirement ... (p. 340)
>
> ... We agree ... that the relationship of a private hospital with local, state and federal governments usually does not involve the degree of interdependence of the symbiotic relationship ... This interpretation is in accord with the recent Supreme Court decisions ... (p. 341)
>
> ... Although we are compelled to grant the defendants' motion ... we do so somewhat reluctantly, because the hospital's blanket policy of refusing to perform sterilizations without spousal consent often operates unfairly and probably would be unconstitutional if Crozer-Chester were not shielded by its status as a private hospital ... The harshness of Crozer-Chester's present policy was illustrated by the case of ... one of the named plaintiffs in this suit ... in such a case the hospital's continued refusal to permit the sterilization seems unjust and unenlightened--but it is not illegal. (p. 342)

Reference: *Holton* v. *Crozer-Chester Medical Center* 419 F. Supp. 334 (E.D. Pa. 1976).

Virginia

Subject: Reinterpretation of statute which ostensibly required spousal consent for sterilization, to comply with constitutional safeguards.

Text: Code of Virginia, Chapter 27 (Sexual Sterilization), §32-423, was amended by the 1976 session of the General Assembly to read as follows:

> *Sec. 32-423.* Sexual sterilization of person twenty-one years or older. It shall be lawful for any physician or surgeon licensed by this State, when so requested by any person who has attained the age of

> twenty-one years, to perform, upon such person a vasectomy, or salpingectomy, or other surgical sexual sterilization procedure, as the case may be, provided a request in writing is made by such person and by his spouse, if there be one... No such request shall be necessary for the spouse of the person requesting such surgical operation, if the person requesting such operation shall, at the time of the request, state in writing under oath that they have lived separate and apart without any cohabitation and without interruption for a period of one year or more immediately prior to such sworn statement and request or if the person requesting such operation exhibits an executed separation agreement signed by both spouses or a certified copy of a decree of divorce from bed and board....

A companion section, § 32-426 of the Code elaborates upon the potential liability of physicians performing sterilization operations. It reads:

> Subject to the rules of law applicable generally to negligence, no physician or surgeon licensed by this state shall be liable either civilly or criminally by reason of having performed a vasectomy, salpingectomy, or other surgical sterilization procedure authorized by the provision of this chapter upon any person in this State.

Taken together, the above statutes would seem to indicate that spousal consent is necessary for a sterilization to be legal.

A challenge was brought in federal court seeking to have the provision declared unconstitutional. However, in *Doe* v. *Temple*, 409 F.Supp. 899 (1976), the U.S. District Court, in agreement with the position taken by the Attorney General of Virginia held that in spite of its language the law does not have to be interpreted so as to prohibit sterilization without spousal consent:

> ...The maxim of statutory construction *expressio unius est exclusio alterius*... has been increasingly considered to be unreliable... While there clearly was a group of sterilization procedures that the legislature intended to sanction, it may not be said that all those not included in the section in controversy are outlawed. The legislators appear to have desired to protect from civil and criminal immunity [*sic*] doctors performing specified sterilization operations. Operations not so specified were not outlawed, but the physicians performing them were not immunized from potential civil and criminal liability, if indeed it exists at all. The question of whether unsanctioned operations are legally permissible was left open, dependent on existing legal constructions... (p. 902).

Reference: Chapter 193 of the 1976 session, General Assembly of Virginia, Amending Code of Virginia, Chapter 27, §32-423. Code of Virginia, Chapter 27, §32-426. *Doe* v. *Temple*, 409 F.Supp. 899 (1976).

120 CONTRACEPTION

Brazil

State Law—Pernambuco

Subject: Initiation of family planning training program for low income persons.

Summary: According to an article in the *Jornal do Brasil*, the Labor and Social Welfare agency is providing unemployed and impoverished persons with family planning training. According to the Secretary of Labor and Social Welfare, Mr. Joaquin Francisco de Freitas Cavalcanti, two thousand families needing training will be transferred from the overcrowded area along the Capibaribe.

Reference: *Jornal do Brasil*, Sunday, 1 May 1977, 1st section.

Canada

Subject: Advertising of contraceptives.

Text: The new Medical Devices Regulations read in part:

> 1) Contraceptive devices, other than intra-uterine contraceptive devices, may be advertised to the general public by any means other than by the distribution of samples door to door or through the mail.

Reference: Medical Devices Regulations of 27 August 1975 (*Canada Gazette*, II, 24 September 1975), Schedule I.

Denmark

Subject: Information to public on contraception.

Text: A law passed 7 May 1975 reads:

> The Minister of the Interior shall ensure that the public receives information on contraceptive methods.

Reference: Law No. 177 of 7 May 1975 (*Lovtidende A*, p. 575), Section (11), Subd. (4); reported in 27 *IDHL*, No. 1 (1976), p. 111.

Finland

Subject: Quality control of contraceptives.

Summary: An Ordinance of 30 May 1975 on quality control of contraceptives provides, among other things, that all contraceptives placed on sale must be approved by the National Board of Health. Each batch of contraceptives must undergo quality control.

Reference: Ordinance No. 403 of 30 May 1975 (*Finlands Författningssamling*, 9 June 1975), Nos. 397-407, pp. 810-811; reported in 27 *IDHL*, No. 2 (1976), pp. 330-331.

France

Subject: Obligation of hospitals performing abortions to supply information on contraception.

Text: A decree promulgated on 7 August 1975 provides:

> ... that hospitals performing abortions are obliged to be able to provide women with information on contraception, or to be associated, for this purpose, with family planning or education centers.

Reference: Decree No. 75-750, 7 August 1975; *Journal Officiel*, 14 August 1975.

Germany, Federal Republic of

Subject: Contraception partly covered by health insurance.

Summary: Under a law passed 28 August 1975, insured persons are entitled to benefits covering medical advice on birth control, including necessary examinations and prescriptions of contraceptives. The price of contraceptives is not covered.

Reference: BGBl. I., 2289, 28 August 1975.

Note: Other sections of this statute may be found in §110.

Philippines

Subject: Instruction on family planning prerequisite for marriage license.

Text: Presidential Decree No. 965 of 20 July 1976 provides, in part:

> WHEREAS, the Government has adopted a national population program to achieve and maintain levels of population most conducive to the national welfare;
>
> WHEREAS, an essential element of the population program is to inform and instruct the people on family planning and responsible parenthood; and
>
> WHEREAS, an effective mode of implementing the program would be to require all applicants for marriage licenses to receive instructions and information on family planning and responsible

parenthood before they are issued the marriage license, and to create the administrative machinery for giving such instructions and information;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree:

SECTION 1. Office of Family Planning.—There is hereby created in every city and municipality an Office of Family Planning to be headed by the city or municipal health officer. He shall be assisted by the city or rural health nurse, members of the city or rural health unit, and such other personnel from the different agencies of the government involved in the family planning program, who shall perform family planning duties in addition to their regular duties. Private entities or individuals duly accredited by the Commission on Population engaged in family planning activities may also be impressed into the service.

SEC. 2. Duties of Family Planning Office.—The Office of Family Planning shall give instructions and information on family and responsible parenthood to applicants for marriage licenses and other interested persons in the form of personal instruction and/or handbooks, pamphlets or brochures. Furthermore, such instructions and information shall be consistent with the policies of the Commission on Population.

SEC. 3. Certificate of Compliance.—Applicants for marriage license shall, upon filing an application therefore, be obliged to receive instructions and information on family planning and responsible parenthood from the Family Planning Office. Such instructions and information may be in the form of personal instruction or in the form of brochures, pamphlets or handbooks. In places where there are no health officers, any person duly accredited by the Commission on Population may give the instructions herein provided.

No marriage license shall be issued by the Local Civil Registrar unless the applicants present a certificate, issued at no cost to the applicants, by an Office of Family Planning that they had received instructions and information on family planning and responsible parenthood.

———

SEC. 5. Penalties.—Any member of the Office of Family Planning who fails or refuses without just cause to give the instructions and the certificate herein provided; any local Civil Registrar who issues the marriage license without the requisite certificate from the Office of Family Planning, or any person who obtains the certificate fraudulently, shall be subject to appropriate administrative or criminal charges.

SEC. 6. Rules and Regulation.—The Commission on Population shall issue rules and regulations to implement the provisions of this Decree.

SEC. 7. Repeal of Prior Law.—All laws and ordinances inconsistent with the provisions of this Decree are hereby repealed or modified accordingly.

Reference: Presidential Decree No. 965, 20 July 1976.

Note: Compare *Annual Review, 1975*, pp. 67 ff.

United States

Subject: Regulation governing the marketing of contraceptive devices.

Summary: A law passed 28 May 1976 empowers the Food and Drug Administration to regulate medical devices including IUDs. Such devices shall require FDA's approval before they can be marketed.

Reference: Public Law 94-295 of 28 May 1976.

Subject: Regulation of contraceptive labeling and information.

Text: After a 1976 amendment the provision of the *Code of Federal Regulations* dealing with the labeling of oral contraceptives reads, in part:

> §310.501 Preparations for contraception; labeling directed to the patient.
>
> (A) ORAL CONTRACEPTIVES.
>
> . . . .
>
> (2) . . . it is deemed in the public interest to present to users of the oral contraceptives a brief notice of the nature of the drugs, the fact that continued medical supervision is needed for safe and effective use, that the drugs may cause side effects and are contraindicated in some cases, that the most important complication is abnormal blood clotting which can have a fatal outcome, that the physician recognizes an obligation to discuss the potential hazards of taking the drugs with the patient, that he has available for the patient written material discussing the effectiveness and the hazards of the drugs, and that users of the oral contraceptives should notify their physicians if they notice any unusual physical disturbance or discomfort.
>
> . . . .
>
> (4) . . . in the case of oral contraceptive drugs, the Commissioner concludes that it is necessary in the best interests of users that the following printed information for patients be included in or with the package dispensed to the patient:
>
> *(Patient Package Information)*
>
> *ORAL CONTRACEPTIVES*
>
> *(Birth Control Pills)*
>
> *Do Not Take This Drug Without Your Doctor's Continued Supervision*
>
> *The oral contraceptives are powerful and effective drugs which can cause side effects in some users and should not be used at all by some women. The most serious known side effect is abnormal blood clotting which can be fatal.*
>
> *Safe use of this drug requires a careful discussion with your doctor. To assist him in providing you with the necessary information, (Firm name) has prepared a booklet (or other form) written in a style understandable to you as the drug user. This provides information on the effectiveness and known hazards of the drug including warnings, side effects and who should not use it. Your doctor will give you this booklet (or other form)*

If you ask for it and he can answer any questions you may have about the use of this drug.

Notify your doctor if you notice any unusual physical disturbance or discomfort.

Reference: Vol. 21 Code of Federal Regulations, §310.501.

Subject: Minor's right to contraceptive services.

Summary: Under regulations issued in Utah minors were required to have written consent from their parents before obtaining family planning services under the Social Security Act and other federal programs. In 1975 a federal district court held that this limitation was invalid. On 24 May 1977 the Supreme Court (in *Jones v. T.H.*, 96 S. Ct. 2195 (1977)) affirmed the decision of the district court. The Court's ruling was based on the fact that Utah regulations contradicted the clear provisions of the Social Security Act.

In a second case, on 9 June 1977, the Supreme Court affirmed a Federal district court holding that §6811 (8) of the New York Education Law was unconstitutional insofar as it applied to non-prescription contraceptives. That statute made it a crime: (1) for any person to sell or distribute any contraceptive of any kind to a minor under 16; (2) for anyone other than a licensed pharmacist to distribute contraceptives to persons over 16; (3) for anyone, including licensed pharmacists, to advertise or display contraceptives. (See *Population Services International* v. *Wilson*, 398 F. Supp. 321 (1975); discussed in *Annual Review, 1975*, p. 33.)

Reference: *Jones* v. *T.H.*, _____ U.S. _____, 96 S. Ct. 2195 (1977). *Carey* v. *Population Services International*, No. 75-443, 9 June 1977, *U.S. Supreme Court Bulletin*, p. B2779.

130 ABORTION

Austria

Subject: Constitutional Court ruling on hospital banning abortions

Summary: Section 6 (3) of Austrian Federal Law No. 281/1974, regulating hospitals, reads:

> Regulations issued for hospitals shall not contain any provision forbidding performance of or participation in a non-criminal abortion, or imposing penalty for a refusal to perform such an abortion or to participate in it.

Two state governments (*Länder*) requested the Constitutional Court to declare this provision void as violating the freedom of religion and conscience. In a decision on 16 December 1975 the Court held the section constitutional, for the following reasons: No general obligation exists for hospitals to admit patients, except those in need of first aid, and so-called "non-refusable" persons who must be admitted to public or locally administered hospitals; Section 6 (3) was not intended to be a further limitation of this freedom of hospitals to decide on treatment. Thus, where a hospital has no obligation to treat a patient, this provision does not ban the governing body from forbidding performances of non-criminal abortions.

Reference: *Erkentnisse und Beschlusse des Verfassungsgerichtshofes*, No. 7720/1975.

Canada

Subject: Dr. Morgenthaler case ends in final acquittals.*

Summarv: After the second jury acquittal of Dr. Morgenthaler was upheld against a prosecutor's appeal by the Quebec Court of Appeals on 20 January 1976, the federal Minister of Justice, Ronald Basford, taking an exceptional step, set aside conviction on the original indictment and ordered a retrial. The Supreme Court of Canada refused to allow the prosecution leave to appeal against the Court of Appeals decision of 20 January. On 18 September 1976 a third jury acquitted Dr. Morgenthaler on the original indictment. The Quebec Government then decided to halt all further prosecution of Dr. Morgenthaler. The Minister of Justice, Marc-Andre Bedard, declared that it would be useless to start a fourth trial since the physician had been acquitted three times by different juries. He added that the abortion law

*See *Annual Review, 1974*, p. 51, and *1975*, p. 39.

was unenforceable and should be changed. "We tried in Quebec to apply this article with all the necessary force but it has been shown it cannot be applied in its present form."

Reference: The *New York Times*, 12 December 1976, p. 21, col. 1. For a full account of the trials see B.M. Dickens, "The Morgenthaler Case: Criminal Process and Abortion Law," *Osgoode Hall Journal*, Vol. 14, No. 2 (Oct. 1976), pp. 229-274.

Chile

Subject: Constitutional amendment on protection of fetus, see §000 General Population Policy.

Fiji

Subject: Therapeutic abortion clarified by Supreme Court.

Text: In *R.* v. *Emberson & Emberson*, 1976, a physician and his wife were fined for illegally carrying out an abortion. The Chief Justice, however, emphasized that there might have been grounds for acquittal if the defendants had been more thorough in obtaining information from the patient to show that a medical opinion had been formed in good faith. In charging the jury, the Chief Justice clarified the state of law in Fiji as follows:

> It is for the prosecution to satisfy you that this operation was not carried out in good faith for the purpose of preserving the physical or mental health of Mrs. B., for if a doctor honestly believes that a pregnancy should be terminated because to fail to do so would threaten the physical or mental health of his patient . . . he has not committed an offense. This is so even if the doctor's opinion was wrong so long as he formed the opinion in good faith; and in arriving at his opinion the doctor is entitled to take into account the social circumstances of the patient. That is not to say that a doctor is entitled to terminate a pregnancy solely because of adverse social or economic conditions—but that he may take them into account together with all other relevant circumstances pertaining to the patient in arriving at a genuine opinion as to whether continuation of the pregnancy poses a threat to her health.
>
> A qualified doctor is fully entitled to carry out what has been referred to in this trial as a therapeutic abortion—that is to say, to terminate a pregnancy which in his medical opinion constitutes a threat to the patient's physical or mental health. The law is not so inhumane as to prohibit it, nor is the law so arrogant as to disregard the professional opinion of a doctor honestly arrived at. The termination of pregnancy only becomes unlawful—the abortion only becomes criminal—if the doctor does not form an opinion at all or forms his opinion dishonestly, and on that the prosecution must satisfy you beyond reasonable doubt.

Reference: *R.* v. *Emberson & Emberson* (Supreme Court of Fiji, Criminal Case No. 16 of 1976).

Germany, Federal Republic of

Subject: "Not-unlawful" abortion covered by health insurance.

Summary: The Law of 28 August 1975 amends several health insurance laws so as to afford medical treatment, supplies of medicines, drugs, and dressing material, as well as hospital care to persons undergoing a "not unlawful" termination of pregnancy.

Reference: BGB1. I., 2289, 28 August 1975.

Note: Other provisions of this statute may be found in §110.

Subject: Full text of amended provisions on abortion in the Criminal Code.

Text: Part of the 1975 Criminal Code Amendment has been declared unconstitutional by the West German Constitutional Court; the Court issued its own amendment instead, as an "interim regulation." In May 1976 the West German Parliament reenacted the abortion provisions of the Criminal Code.

The following is the translated text of the abortion sections of the statute:

Section 218—*Termination of Pregnancy*

(1) Anyone who terminates a pregnancy* shall be sentenced up to three years imprisonment or to a fine.

(2) In particularly serious cases, the penalty shall be imprisonment for a period of between six months and five years. A case shall, in general, be deemed to be particularly serious if the offender:

has acted against the wishes of the pregnant woman; or

by acting wantonly has endangered the life or caused a risk of severe injury to the health of the pregnant woman.

The court may order judicial surveillance ("Führungsaufsicht") (item 2 of sub-section 1 of Section 68).

(3) If the act has been committed by the pregnant woman, the penalty shall be imprisonment for a period of up to one year or a fine. The pregnant woman shall not be punishable under the terms of the first sentence, provided that the termination of pregnancy has been performed by a physician after advice has been provided (items 1 and 2 of sub-section 1 of Section 218b) and not more than 22 weeks have elapsed since conception. The court may refrain from punishing the pregnant woman under the terms of the first sentence if she was in particularly distressed circumstances at the time of the abortion.

Section 218a—*Indications for pregnancy termination*

(1) The termination of pregnancy performed by a physician shall not be punishable under Section 218, provided that:

---

*Words omitted here from the 1974 law ("later than on the thirteenth day after conception") have been replaced by the definition in Sec. 219d *infra*.

1. the pregnant woman has given her consent; and

2. according to medical findings, a pregnancy termination is indicated, taking account of the present and future living conditions of the pregnant woman, in order to avert a risk to the life or a risk of serious damage to the physical or mental state of health of the pregnant woman, and such risk cannot be averted by any other means that the woman can be reasonably expected (*zumutbare*) to accept.

(2) The conditions of item 2 of sub-section 1 shall likewise be deemed to be fulfilled if, according to medical findings:

1. urgent reasons (*dringende Gründe*) exist for presuming that, as a consequence of a hereditary predisposition or harmful influences prior to birth, the child would suffer from irremediable injury to its state of health of such gravity that the pregnant woman cannot be required to continue the pregnancy to term;

2. an illegal act under the terms of Sections 176 to 179 has been committed against the pregnant woman, and imperative reasons exist for presuming that the pregnancy is the consequence of the act in question; or

3. a pregnancy termination is otherwise indicated in order to avert from the pregnant woman the risk of a situation of distress (*Notlage*) which:

(a) is of such gravity that the pregnant woman cannot be required to continue the pregnancy to term; and

(b) cannot be averted by any other means that the woman can be reasonably expected to accept.

(3) In the cases referred to in item 1 of sub-section 2, not more than 22 weeks shall have elapsed since conception, while in the cases referred to in items 2 and 3 of sub-section 2 not more than 12 weeks shall have elapsed.

Section 218b—*Termination of pregnancy without the provision of advice to the pregnant woman*

(1) Where the act is not punishable under Section 218, a sentence of up to one year imprisonment or a fine shall be imposed on any person terminating a pregnancy in cases where the pregnant woman has not:

1. consulted a counsellor (sub-section 2) concerning the question of the termination of her pregnancy, at least three days before the operation, and received from such a source advice concerning the public and private assistance available to pregnant women, mothers and children, particularly as regards assistance which would render the continuance of the pregnancy and the situation of the mother and child less onerous; and

2. been advised by a physician regarding medically significant aspects.

The pregnant woman shall not be punishable under the terms of the first sentence of this article.

(2) For the purposes of item 1 of sub-section 1, "counsellor" means:

1. a counselling center recognized by an authority or body, institution, or foundation subject to public law; or

2. a physician who does not himself perform the pregnancy termination and:

(a) as a member of the staff of a recognized counselling center (item 1), is responsible for providing advice within the meaning of item 1 of sub-section 1;

(b) is recognized as a counsellor by an authority or body, institution, or foundation subject to public law;

(c) has obtained information regarding the assistance available in individual cases, by consultation with a member of the staff of a recognized counselling centre (item 1) which is responsible for providing advice within the meaning of item 1 of sub-section 1, or with a social welfare authority, or by other appropriate means.

(3) The provisions of item 1 of sub-section 1 shall not be applicable if the pregnancy termination is indicated in order to avert a risk to the pregnant woman's life or health deriving from a somatic disease or physical injury.

Section 219—*Termination of pregnancy in the absence of medical confirmation*

(1) Where the act is not punishable under Section 218, a sentence of up to one year's imprisonment or a fine shall be imposed on any person who terminates a pregnancy without written confirmation having been submitted by a physician, who is not himself performing the pregnancy termination, as to whether the conditions laid down in item 2 of sub-section 1 and sub-sections 2 and 3 of Section 218a have been fulfilled. The pregnant woman shall not be punishable under the terms of the first sentence.

(2) A physician may not issue confirmations under sub-section 1 if he has been prohibited from doing so by the competent agency because of a final conviction for committing an illegal act under the terms of sub-section 1 or Sections 218, 218b, 219a, 219b, or 219c, or any other illegal act committed in connexion [sic] with a pregnancy termination. The competent agency may temporarily prohibit a physician from issuing confirmations under sub-section 1 if he is on trial on the gounds that he is suspected to have committed one of the illegal acts referred to in the first sentence.

Section 219a—*False medical confirmation*

(1) Where the act is not punishable under Section 218, a sentence of up to two years' imprisonment or a fine shall be imposed on any person who, being a physician, knowingly issues a false confirmation regarding the conditions laid down in item 2 of sub-section 1 and sub-sections 2 and 3 of Section 218a for submission under sub-section 1 of Section 219.

(2) The pregnant woman shall not be punishable under sub-section 1.

Section 219b—*Advertising for pregnancy termination*

(1) A sentence of up to two years' imprisonment or a fine shall be imposed on any person who, at a public gathering or by the dissemination of written material, audio-visual materials, pictures, or presentations, with the object of personal gain or in a grossly offensive manner, offers, announces, recommends, or publicizes:

1. his own services or the services of other persons for performing or abetting the performance of a pregnancy termination; or
2. products, articles, or procedures suitable for the termination of pregnancy, reference being made to their suitability for this purpose.

(2) Item 1 of sub-section 1 shall not be applicable where physicians of authorized counselling centers (Sec. 218b, para. 2, No. 1) are informed as to which physicians, hospitals, or establishments are prepared to perform abortions under the conditions laid down in Section 218a.

(3) Item 2 of sub-section 1 shall not be applicable where the activity in question is addressed to physicians or persons entitled to deal in the products or articles mentioned in item 2 of sub-section 1, or is carried out in the form of a published announcement in specialized medical or pharmaceutical journals.

Section 219c—*Distribution of products for pregnancy termination*

(1) Any person who distributes products or articles suitable for the termination of pregnancy with the intention of abetting unlawful acts within the meaning of Section 218 shall be sentenced to imprisonment of up to two years or to a fine.

Section 219d—*Definition*

Procedures that take effect before nidation of the fertilized ovum in the uterus has occurred shall not be deemed to be pregnancy terminations within the meaning of the Law.

Reference: Sections 218-219d of the Criminal Code as amended by the laws of 18 June 1974, BGB1. I, p. 1297 and of 18 May 1976, BGB1. I., p. 1213.

Hong Kong

Subject: Liberalized abortion law extended indefinitely.

Summary: In Section 47A of the Penal Code, as amended in 1972, the Government authorized abortion in cases where there is a risk to the life of a woman or to her physical or mental health. The law permits account to be taken of the woman's "actual or reasonably forseeable environment." The law was on a two-year basis. It renewed for another two years in March 1974, and extended indefinitely effective 26 March 1976. The substantive part of the 1972 law is the same as Sec. 1 of the United Kingdom Abortion Act of 1967, but the Hong Kong law omits the British provisions as to injury to existing children and the risk that the expected child might have a serious abnormality.

Reference: *Annual Review*, 1974, pp. 64-65; IPPF, *Law File*, September 1976, p. 7.

Iceland

Subject: Comprehensive law on sex education, sterilization and abortion.

Text: A new Icelandic law includes the following provisions on abortion:

CHAPTER II—ABORTIONS

Article 8

An abortion according to this statute is a medical operation performed in order to terminate a woman's pregnancy, before the fetus is capable of surviving.

Article 9

An abortion is permissible:

1. For social reasons:

When there is reason to believe that pregnancy and the advent of a child will be too difficult for the woman and her close family for social reasons beyond their control. Under such circumstances the following factors shall be considered:

a) Whether the woman has given birth to many children at short intervals and whether a short time has passed since her last childbirth.

b) Whether the woman endures a difficult domestic situation because of a large family or because of serious bad health of others in the household.

c) When the woman cannot because of her youth or because of lack of mental development take care of the child in a satisfactory manner.

d) Other reasons if they are fully comparable with those mentioned above.

2. Medical reasons:

a) When there is reason to believe that the physical or mental health of a woman is endangered by continued pregnancy or childbirth.

b) When there is reason to believe that a child, carried by a woman, is in danger of being born deformed or with a serious disease as a result of hereditary tendencies or harmful influences during the pregnancy.

c) When a physical or mental disease seriously reduces the ability of a woman or a man to care for and bring up a child.

3. If a woman has been raped or if she has become pregnant as a result of other criminal activity.

Article 10

An abortion shall be performed as early as possible and preferably before the end of the 12th week of pregnancy.

An abortion shall never be performed after the 16th week of the pregnancy, unless unmistakable medical reasons exist and the life and health of the woman are grossly endangered by continued pregnancy or childbirth. An abortion shall also be permissible after

16 weeks, if the chances for deformity, hereditary defects or damage to the fetus are great.

Such exemptions can only be permitted by a written authorization of a committee established under Article 28.

Article 11

Two physicians or a physician and a social worker, if only social reasons are involved (the latter must be working in the health district concerned) must have produced a written reasoned statement before an abortion may take place. One of the physicians should be a specialist in gynecology or in general surgery at the hospital where the operation takes place, the other, as a rule, the physician or the social worker who has advised the woman to go to a hospital for this purpose.

Where it is considered necessary, the specialist concerned shall be guided by the report of a psychiatrist if mental illnesses are involved.

Article 12

The woman who applies for the operation must, before an abortion may take place, have been informed about the risks connected with the operation and she must have received instruction about what social assistance is available to her in the society. All advice and instruction shall be given in an impartial manner.

Article 13

The application, the statement and certificates shall be written on forms published by the Surgeon General for this purpose.

The following factors shall be observed:

1. A woman shall sign an application for an abortion herself.

2. The operation may be permitted in accordance with the application of a guardian if a woman is unable to understand the necessity for the operation because of a mental illness, a serious mental retardation or other reasons.

3. If a woman is younger than 16 years of age or has been declared incompetent, her parents or a guardian shall participate in an application with her unless special reasons oppose it.

4. If possible, the man shall join in the woman's application, unless special reasons oppose it.

5. If a woman foregoes an operation, she must confirm her decision in writing. If a woman is denied an operation in a hospital, she and the signatories of the statement shall be so informed immediately in writing. The woman can then without delay seek the resources dealt with in Article 28 and the signatories must assist her in doing so.

Article 14

The operation itself shall be performed according to the fully recognized demands of medical science in order to insure that the woman will suffer as little as possible from the operation. The same is true about all accommodations for the woman where the operation takes place.

Article 15

Only physicians may perform an abortion. An abortion may only be performed in hospitals with a gynecologist or a speicalist in general surgery and which a cabinet minister has recognized for this purpose.

Article 16

A woman who has had an abortion shall be given guidance about contraceptives before she is released from the hospital.

If the woman is married or if she lives with a man, the man shall also receive guidance about contraceptives if possible.

It shall also be made the woman's duty to appear for a checkup after a certain period of time for a medical examination and a conversation.

Reference: Law Number 25/1975, 27 May 1975.

Note: Other provisions of this statute may be found in §§110 and 770.

Iran

Subject: Criminal Code provisions on abortion liberalized.

Text: The Civil Penal Code was amended on 28 October 1976 as follows:

(1) A physician shall be permitted to perform an abortion under the following conditions:

1. the couple are able to provide evidence of social or medico-social grounds for an abortion;
2. the abortion is performed before the fetus has reached the age of 12 weeks;
3. the written permission of the parents is obtained; and
4. there is no danger to the health of the mother.

(2) In the event that an abortion is requested on the grounds that the pregnant woman or her husband is insane, the written permission of the legal guardian of the insane partner must be obtained.

(3)(i) If the woman is unmarried, her own consent shall be sufficient.

(ii) Where the woman is in the process of suing for a divorce, the consent of her husband must be obtained as the fetus is legally considered to be his responsibility.

(4) If the physician wishes to perform the abortion on strictly medical grounds, *i.e.*, the child will be born with an incurable disease or the mother could be physically or psychologically harmed by its birth, he must obtain the 'endorsed opinion' of two other qualified physicians. In this case, it shall be sufficient to obtain the written consent of the mother alone in order to perform the abortion.

. . . .

(6) Pregnancy terminations and sterilizations may only be performed in fully equipped hospitals and clinics that meet the criteria set out in the Medical and Pharmaceutical Law.

(7) Hospitals and clinics in which abortions and sterilizations are performed must keep full records of the operations for a minimum of three years. Details of the operations, but without any reference to the identity of the patient, must also be submitted to the Family Planning Department.

Reference: Article 42, §3 of Civil Penal Code, 28 October 1976; text reprinted from unofficial translation in 27 *IDHL*, No. 4 (1976), p. 789.

Note: Other provisions of this statute may be found in §110.

Israel

Subject: Law liberalizing abortion grounds.

Summary: A law liberalizing abortion was enacted in February 1977. Under Section 5 (a) V of the law a woman may obtain an abortion if giving birth is liable to cause her or her children serious harm by virtue of the difficult situation prevailing in her family, social milieu or surroundings.

Reference: *The Jerusalem Post* (International Edition), 8 February 1977, p. 13.

South Africa

Subject: Abortion and sterilization regulations issued.

Summary Regulations were issued under Sec. 8 of the Abortion and Sterilization Act 1975 (*Annual Review, 1975*, pp. 48 ff.). The regulations pertain to the form and processing of applications and other documents. The documents must be retained by the physicians for five years.

Reference: Abortion and Sterilization Regulations, 20 June 1975; *Government Gazette*, 20 June 1975, No. 4749.

United Arab Emirates

Subject: Abortion to save woman's life regulated.

Text: A Law on the Practice of Human Medicine provides in Section 22:

> that a physician may not perform an abortion nor prescribe any abortifacient. In the event that the continuation of pregnancy endangers the life of a pregnant woman, the abortion may be carried out provided that: (a) the operation is performed by a gynecologist with the approval of a physician who is a specialist in the condition rendering the abortion necessary; and (b) a proces-verbal indicating the circumstances that justify abortion is drawn up by the physicians concerned and signed by the patient's husband or guardian as an indication of his approval to the abortion being performed (each of the parties concerned is required to keep a copy of the proces-verbal)

Reference: Law No. 7 of 1975, Section 22; reported in 27 *IDHL* No. 4 (1976). p. 893.

United States

Federal Statutes

Subject: Federal Law excludes abortion from Medicaid reimbursements.

Text: The Hyde Amendment to the Departments of Labor, Health, Education and Welfare Appropriation Act, 1977, provides:

> None of the funds contained in this Act shall be used to perform abortions except when the life of the mother would be endangered if the fetus were carried to term.

Reference: Public Law 94-439, Section 209.

Federal Judicial Decisions

In a landmark abortion case, *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S.52, 49 L.Ed. 2d 788 (1976) the U.S. Supreme Court made a decision on several issues controversial since 1973.

The following restrictions of women's rights to an early abortion, typically introduced by legislatures or regulations in some states, were held unconstitutional:*

1. Requirement of spousal consent to abortion.

> ... we cannot hold that the State has the constitutional authority to give the spouse unilaterally the ability to prohibit the wife from terminating the pregnancy, when the State itself lacks that right, 49 L.Ed. 2d 788,805.
>
> ... 'it is difficult to believe that the goal of fostering mutuality and trust in a marriage, and of strengthening the marital relationship and the marriage institution, will be achieved by giving the husband a veto power exercisable for any reason whatsoever or for no reason at all ... it is not at all likely that such action would further ... the interest of the state in protecting the mutuality of decisions vital to the marriage relationship.'** (49 L.Ed.2d 788, 806).
>
> ... when the wife and the husband disagree on this decision, the view of only one of the two marriage partners can prevail. Since it is the woman who physically bears the child and who is the more directly and immediately affected by the pregnancy, as between the two, the balance weighs in her favor. (49 L.Ed.2d 788,806).

2. "Blanket" requirement of parental consent to a minor's abortion.

> Elimination of "Blanket" requirements does not mean that every minor, regardless of age or maturity may give effective consent for the termination of her pregnancy.***

*For an earlier history of the *Danforth* case, see *Annual Review, 1975*, p. 60.

**Citing the opinion of the Federal District Court below, at 392 F. Supp. 1370-71.

***Citing *Bellotti v. Baird*, 428 U.S. 132, 49 L.Ed.2d 788 (1976), discussed at p. 60 of this *Review*.

> ... the State may not impose a blanket provision ... (49 L.Ed.2d 788,807).
>
> Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights. (49 L.Ed.2d 808).
>
> It is difficult ... to conclude that providing a parent with absolute power to overrule a determination, made by her physician and his minor patient, to terminate the patient's pregnancy will serve to strengthen the family unit ... or ... enhance parental authority or control where the minor and the nonconsenting parent are so fundamentally in conflict and the very existence of the pregnancy already has fractured the family structure. (49 L.Ed.2d 788,808).
>
> ... our holding ... does not suggest that every minor, regardless of age or maturity, may give effective consent for termination of her pregnancy.

3. Requirement to preserve the life and health of the fetus, irrespective of the stage of pregnancy.

Section 6(1) of the Missouri Act provided:

> No person who performs or induces an abortion shall fail to exercise that degree of professional skill, care and diligence to preserve the life and health of the fetus which such person would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted. Any physician or person assisting in the abortion who shall fail to take such measures to encourage or to sustain the life of the child, and the death of the child results, shall be deemed guilty of manslaughter ...

The Court agreed with the District Court's holding that this provision was unconstitutional, as it:

> [did] not specify 'that such care need be taken only after the stage of viability has been reached.' As the provision now reads, it impermissibly requires the physician to preserve the life and health of the fetus, whatever the stage of pregnancy. (49 L.Ed.2d 788,813).

4. Prohibition on use of the saline amniocentesis method of pregnancy termination.

This method was expressly prohibited by the Missouri legislature (and some others; see Illinois, *Annual Review, 1975*, p. 55) after the first twelve weeks of pregnancy, as the legislators 'found' that the method was 'deleterious to maternal health.' (49 L.Ed.2d 788,809).

The Supreme Court invalidated this provision in a strongly worded criticism:

> The State ... would prohibit the use of a method which the record shows is the one most commonly used nationally by physicians after the first trimester, and which is safer, with respect to maternal mortality, than even continuation of the pregnancy until normal childbirth. Moreover, as a practical matter, it forces a woman and

*See *Bellotti v. Baird*, discussed at p. 60 of this *Review*.

her physician to terminate her pregnancy by methods more dangerous to her health than the method outlawed . . . (49 L.Ed.2d 788,810).

The prohibition is . . . an unreasonable or arbitrary regulation designed to inhibit and having the effect of inhibiting the vast majority of abortions after the first 12 weeks. As such, it does not withstand constitutional challenge, pp. 24 ff., (49 L.Ed.2d 788,810).

On the other hand, the following provisions of the Missouri Act were held *not to be* in conflict with the U.S. Constitution:

1. The definition of viability as 'that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supporting systems.'

> . . . the definition of viability in the Act does not conflict with what was said and held in *Roe* . . . we recognized in *Roe* that viability was a matter of medical judgment, skill and technical ability, and we preserved the flexibility of the term. (49 L.Ed.2d 788,801).

> . . . it is not the proper function of the legislature or the courts to place viability, which essentially is a medical concept, at a specific point in the gestation period. The time when viability is achieved may vary with each pregnancy, and the determination of whether a particular fetus is viable is, and must be, a matter for the judgment of the responsible attending physician . . . (49 L.Ed.2d 788,802).

> . . . We thus do not accept appellants' conceptions that a specified number of weeks in pregnancy must be fixed by statute as the point of viability. (49 L.Ed.2d 788,802).

2. The requirement of written consent to abortion by the pregnant woman (which must include a statement that the consent is informed and freely given and is not the result of coercion). This, in the Court's view,

> . . . is not in itself an unconstitutional requirement. The decision to abort . . . is an important and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences. (49 L.Ed.2d 788,803).

3. The requirement to keep records of all abortions (irrespective of the pregnancy stage). Under the Missouri Act such records should be confidential and used for statistical and monitoring purposes; they may be inspected by public health officers. The Court held that such provisions, even for the period of the first trimester,

> . . . while perhaps approaching permissible limits, are not constitutionally offensive in themselves . . . we see no legally significant impact or consequence on the abortion decision or on the physician-patient relationship. (49 L.Ed.2d 788,811).

The court felt it necessary to add a warning:

> We naturally assume . . . that these record-keeping and record-maintaining provisions will be interpreted and enforced . . . in the light of our decision with respect to the Act's other provisions, and that, of course, they will not be utilized in such a way as to accomplish,

through the sheer burden of record-keeping detail, what we have held to be an otherwise unconstitutional restriction. (49 L.Ed.2d 788,812).

In several cases the district courts' decisions on constitutionality of various aspects of the post-*Roe* state legislation reflected the rulings contained in *Danforth.*

A federal court of appeals held in *Hodgson* v. *Lawson*, 542 F.2d 1350 (1976), that a Minnesota statute which provided that a fetus should be considered "potentially viable" during the second half of the gestation period, had the effect of establishing a presumption that viability occurred at the end of the twentieth week and was thus unconstitutional.

Also, on 1 July 1976 the Supreme Court remanded two cases to the lower courts to be decided anew, on procedural grounds:

In *Bellotti v. Baird*, 428 U.S. 132,49 L.Ed.2d 788,844. (1976)* a federal district court had held in 1975 that a Massachusetts requirement of parental consent for a minor's abortion was unconstitutional. The Supreme Court vacated this judgment on the grounds that a federal decision on constitutionality cannot be made where the statute in question, being ambiguous, "is susceptible" of an interpretation which would be in accord with the constitution. Therefore, the federal district court, before deciding the question of constitutionality, should require the Massachusetts Supreme Judicial Court to interpret the statute. (The Supreme Court referred to the fact that in *Danforth* it struck down a statute that created a parental veto, but that under favorable interpretation the Massachusetts consent provision might present a different legal situation.)

In *Singleton* v. *Wulff* 428 U.S. 106, 49 L.Ed.2d 788,826 (1976), a federal court of appeals held unconstitutional a Missouri statute which excluded "non-therapeutic" abortions from Medicaid. A final ruling on this question has not been given as the Supreme Court remanded the case to the appeals court because in the appeal proceedings the State of Missouri had not been given full opportunity to offer evidence and present legal arguments in defense of its statute.

However, the Medicaid issue became a subject of federal constitutional litigation anew in 1976. As explained above (p. 57) the so-called Hyde Amendment to the appropriation law funding the Department of Health, Education and Welfare for 1976/77 permitted the use of federal funds for abortions only in cases where the "life of the mother would be endangered if the fetus were carried to term." According to the legislative history (H.R. Report No. 1555, 94th Congress, 2d Session 2; 1976) the Congress intended by this amendment "to prohibit payment for abortions as a method of family planning, or for emotional or social convenience".

At least two suits have been filed in federal courts to challenge the constitutionality of this provision. In *Doe* v. *Matthews* 420 F. Supp. 865 (1976), a temporary restraining order was denied on procedural grounds. However, in *McRae* v. *Matthews* 421 F. Supp. 533 (1976), the U.S. District Court, E.D. New York, enjoined the Department of Health, Education and Welfare from denying Medicaid reimbursement for non-therapeutic abortions. Among the arguments in the Court's opinion were the following:

*See *Annual Review, 1975*, p. 62.

> The Secretary contends . . . that plaintiffs will suffer no harm from the enactment because the state under its law and, perhaps, under federal constitutional imperatives must continue to reimburse . . . elective abortions.* (p. 537).
>
> . . . .
>
> It may well be that the state could find funds to assume the responsibility for making the payments . . . but that is no more than to say that if the national government unconstitutionally denies an entitlement, catastrophe need not ensue. The answer is that action, if unconstitutional, is not tolerable, and is not made tolerable by the consideration that others may make good the harm inflicted by the constitutional default. The manifest fact is that Section 209 is calculated to stop the provision of abortional services from public funds; it is not calculated to shift the burden . . . to the states. (p. 538).
>
> . . . .
>
> The women affected by the enactment of Section 209 are denied no other medical assistance. . . .

Section 209, however, would deny them reimbursement for medical assistance

> . . . only if they elect to exercise their constitutionally protected right to terminate their pregnancies. Others who have the means to pay for medical services are free by virtue of our positive law to exercise their constitutional right to terminate their pregnancies, but the needy, the wards of government, would by this enactment be denied the means to exercise their constitutional right.
>
> . . . .
>
> What some regard as denigration of the sanctity of human life, others regard as involving no such matter . . . and visualize opposition to lawful abortion as both inhumane and callously indifferent to the tragic lot of the unwanted child. Divisions between sober and God-fearing people so deep and equal deny to civil authority any power to intervene by direction or indirection, either to compel abortion as a measure of population control or to deny medical assistance to the needy who act on their own beliefs. When the power of enactment is used to compel submission to a rule of private conduct not expressive of norms of conduct shared by the society as a whole without substantial division it fails as law and inures as oppression. (pp. 541-542).

State Legislation

A few states, to a smaller extent than in previous years, enacted statutes designed to restrict abortion by regulating various aspects of the

*Medicaid programs are operated by *states*; Federal government only supports part of the necessary funds.

operation. Some of the provisions enacted may, in the light of several 1977 federal court decisions, be held unconstitutional.

Following is a compilation of several such statutes.

California

Assembly Bill No. 2346 has added Section 25955.9 to the Health and Safety Code designed to provide medical care to aborted fetuses. That section reads:

> The rights to medical treatment of an infant prematurely born alive in the course of an abortion shall be the same as the rights of an infant of similar medical status prematurely born spontaneously.

Florida

Chapter 26-16 of the General Acts of the Regular Session of the state legislature, April to June 1976 created the following §797.03 of the Florida Statutes designed to give information to persons seeking abortions:

> 797.03. Abortion referral or counseling agencies.—
>
> (1) As used in this section, an abortion referral or counseling agency is any person, group, or organization, whether funded publicly or privately, that provides advice or help to persons in obtaining abortions.
>
> (2) An abortion referral or counseling agency, before making a referral or aiding a person in obtaining an abortion, shall furnish such person with a full and detailed explanation of abortion, including the effects of and alternatives to abortion. If the person advised is a minor, a good faith effort shall be made by the referral or counseling agency to furnish such information to the parents or guardian of the minor. No abortion referral or counseling agency shall charge or accept any fee, kickback or compensation of any nature from a physician, hospital, clinic or other medical facility for referring a person thereto for an abortion.
>
> (3) Any person who violates the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in §775.082, §775.083, or §775.084.
>
> *Section 2.* This act shall take effect October 1, 1976.

Chapter 76-231 of the General Acts of the Regular Session April to June 1976 was also passed. It requires the certification of two physicians for an abortion in the third trimester. It reads:

> (2) No termination of pregnancy shall be performed on any human being in the last trimester of pregnancy unless two physicians certify in writing to the fact that to a reasonable degree of medical probability the termination of pregnancy is necessary to save the life or preserve the health of the pregnant woman or the physician

certifies in writing to the medical necessity for legitimate emergency medical procedures for termination of pregnancy in the last trimester and another physician is not available for consultation.

(3) No termination of pregnancy shall be performed at any time except by a physician as defined herein.

(4) Any person who wilfully performs, or participates in, the termination of a pregnancy in violation of the requirements of this section is guilty of a felony of the third degree, punishable as provided in §775.082, §775.083 or §775.084, Florida Statutes.

Idaho

Idaho enacted state legislation to prevent the appropriation of moneys for abortion. Chapter 339 of . . . Laws of the State of Idaho, January to March 1976 Session, provides in part:

Section 3. No funds available to the department of health, and welfare [sic] by appropriation or otherwise, shall be used to pay for abortions, unless it is the recommendation of two (2) consulting physicians that an abortion is necessary to save the life or health of the mother, or unless the pregnancy is a result of rape or incest as determined by the courts.

Iowa

A new Iowa Criminal Code has been enacted, effective 1 January 1978. A provision concerning abortion, Chapter 1245 of the Iowa Laws of the 66th General Assembly, 1976 session, reads:

Sec. 707. NEW SECTION. Feticide. Any person who intentionally terminates a human pregnancy after the end of the second trimester of the pregnancy commits feticide. Feticide is a class C felony. This section shall not apply to the termination of a human pregnancy performed by a physician licensed in this state to practice medicine or surgery when in the best clinical judgment of the physician the termination is performed to preserve the life or health of the pregnant person or of the fetus and every reasonable medical effort not inconsistent with preserving the life of the pregnant person is made to preserve the life of the fetus.

Any person who terminates a human pregnancy who is not a person licensed to practice medicine and surgery under the provisions of chapter one hundred forty-eight (148) of the Code, or an osteopathic physician and surgeon licensed to practice osteopathic medicine and surgery under the provisions of chapter one hundred fifty A (150A) of the Code, commits a class C felony.

Sec. 708. NEW SECTION. Nonconsentual (sic) termination.
1. A person who terminates a human pregnancy without the consent of the pregnant person during the commission of a felony or felonious assault is guilty of a class B felony.

2. A person who intentionally terminates a pregnancy without the knowledge and voluntary consent of the pregnant person is guilty of a class C felony. This subsection shall not apply to a termination performed without the consent or knowledge of the pregnant person by a physician licensed in this state to practice medicine and surgery when circumstances preclude the pregnant person from providing her consent and the termination is performed to preserve the life or health of the pregnant person or of the fetus.

3. A person who by force or intimidation procures the consent of the pregnant person to a termination of a pregnancy is guilty of a class C felony.

Sec. 709. NEW SECTION. Homicide of fetus aborted alive. A person who intentionally kills a fetus aborted alive after the twentieth week of pregnancy shall be guilty of a class B felony.

Sec. 710. NEW SECTION. Duty to preserve the life of the fetus. After the twentieth week of pregnancy, a person who performs or induces a termination of a human pregnancy and who willfully fails to exercise that degree of prefessional skill, care and diligence available to preserve the life and health of a fetus showing significant, sustainable vital signs shall be guilty of a serious misdemeanor.

The General Assembly also enacted a "conscience clause". The Act, Chapter 1.113, Acts and Joint Resolutions . . . 1976 Regular Session, provides:

Sec. 1. NEW SECTION. Liability of persons relating to performance of abortions. An individual who may lawfully perform, assist, or participate in medical procedures which will result in an abortion shall not be required against that individual's religious beliefs or moral convictions to perform, assist, or participate in such procedures. A person shall not discriminate against any individual in any way, including but not limited to employment, promotion, advancement, transfer, licensing, education, training or the granting of hospital privileges or staff appointments, because of the individual's participation in or refusal to participate in recommending, performing or assisting in an abortion procedure. For the purposes of this Act, 'abortion' means the termination of a human pregnancy with the intent other than to produce a live birth or to remove a dead fetus. Abortion does not include medical care which has as its primary purpose the treatment of a serious physical condition requiring emergency medical treatment necessary to save the life of a mother.

Sec. 2. NEW SECTION. Liability of hospitals refusing to perform abortions. A hospital, which is not controlled, maintained and supported by a public authority, shall not be required to permit the performance of an abortion. The refusal to permit such procedures shall not be grounds for civil liability to any person nor a basis for any disciplinary or other recriminatory action against the hospital.

Louisiana

The Louisiana legislature attempted to proscribe abortion by defining "person" for purposes of the homicide statutes, to include fetuses. Section 1, Paragraph (7) of Section 2 of Title 14 of the Lousiana Revised Statutes of 1950, provided:

> 'Person' includes a human being from the moment of fertilization and implantation and also includes a body of persons, whether incorporated or not.

Note: An advisory opinion on the constitutionality of this statute was delivered on 29 September 1976 by the U.S. District Court for the Eastern District of Louisiana. Judge Mitchel in *Calvin Jackson, M.D.* v. *Harry Connick, et al.*, Civil Action No. 762392, Section F, issued the opinion that the statute if applied to legal abortions, would be unconstitutional and issued a permanent injunction against applying the statute to any licensed medical doctor complying with *Roe* and *Doe.*

A second statute, Act No. 352, State of Louisiana Acts of the Legislature, Regular Session 1976, amended the state vital statistics provision, Chapter 2 of Title 40 of the Louisiana Revised Statutes of 1950. The amendment requires physicians to report each abortion to the office of vital records within 15 days; requires a birth certificate to be issued whenever an abortion results in a live birth, even though the fetus may die shortly thereafter, in which case a death certificate shall also be issued; declares fetus a live-born person if outside of womb it breaths or shows evidence of life such as a heart-beat, umbilical pulsation, or movement of voluntary muscles.

Minnesota

The Minnesota legislature has passed a statute providing medical attention for aborted fetuses. Chapter 170 of the Session Laws of the State of Minnesota, January to April 1976, provides:

> *Section 1.* 145.423 PUBLIC HEALTH; ABORTION; LIVE BIRTHS. *Subdivision 1.* A live child born as a result of an abortion shall be fully recognized as a human person, and accorded immediate protection under the law. All reasonable measures consistent with good medical practice, including the compilation of appropriate medical records, shall be taken to preserve the life and health of the child.
>
> *Subd. 2.* When an abortion is performed after the twentieth week of pregnancy, a physician, other than the physician performing the abortion, shall be immediately accessible to take all reasonable measures consistent with good medical practice, including the compilation of appropriate medical records, to preserve the life and health of any live birth that is the result of the abortion.

Wisconsin

Finally, Wisconsin has enacted legislation on the advertisement and sale of abortifacients. Chapter 346 of the Laws of 1975 repeals and recreates §450.11 of the Wisconsin statutes. It reads as follows:

> (2) Except for sales to physicians and surgeons licensed under s. 448.06(1), no person may exhibit, display, advertise, offer for sale, or sell any drug, medicine, mixture, preparation, instrument, article or device of any nature used or intended or represented to be used to produce a miscarriage.

State Judicial Decisions

Massachusetts

Subject: Abortion as manslaughter: The *Edelin* case.

Summary: In October 1973 a gynecologist in the Boston City Hospital performed an abortion on a 17-year old girl, at her and her mother's request. For this, he was later indicted and convicted of manslaughter (*i.e.*, of the killing of the fetus which was possibly about 24 weeks old). The case caused much interest and controversy, as the indictment was generally viewed as an attempt to find an alternative legal possibility to prosecute abortions. (After the *Roe* and *Wade* decisions, medical abortions as such ceased to be criminal.) In December 1976 the Massachusetts Supreme Court quashed the verdict and acquitted the accused. The judges found (in a 5:1 decision) that the conduct of Dr. Edelin was neither "wanton" nor "reckless" (which would be a necessary element of the crime of manslaughter). The following are excerpts from the opinion of the court:

> Manslaughter assumes that the victim was alive and independent . . . destruction of a fetus *in utero* is not a manslaughter (p. 2810).
>
> . . . there is nothing to impeach the defendant's good faith judgment that the particular fetus was non-viable . . . (p. 2813).
>
> . . . we deal here with the professional judgment of a qualified physician acting under stress at the operation table. The Supreme Court has cautioned in the abortion cases against the undue trammeling of judgments of the individual attending physician . . .
>
> Second, we deal here with the constitutional right of privacy of the patient and the correlative right of the physician—rights to which the Supreme Court has assigned very high value (p. 2815).

Reference: *Commonwealth* v. *Edelin*, Suffolk County, 5 April 1976-27 December 1976; Massachusetts Advance Sheets, Supreme Judicial Court, 4 November 1976-6 April 1977, p. 2795.

200 FAMILY STATUS AND WELFARE

210 MARRIAGE

Denmark

Subject: Age of majority lowered to 18 years.

Summary: Law No. 312 of 10 June 1976 lowers the age of majority from 20 to 18 years of age. Thus, the age of marriage for men becomes 18 years (already the marriage age for women). Parental consent requirements have also been eliminated.

Reference: Law No. 312 of 10 June 1976; *Lovtidende A*, p. 799.

Germany, Federal Republic of

Subject: Marriage law reform.

Text: A law extensively amending the West German Civil Code was enacted on 14 June 1976. Section 1353, regarding marriage in general, now reads:

> *Sec. 1353* (1) Marriage is concluded for a lifetime. The spouses are mutually bound to a matrimonial community of life.
>
> (2) One spouse is not bound to comply with the demand of the other spouse for the establishment of the community, if the demand constitutes an abuse of right or if the marriage has foundered.

Art. III of the Law voided a former legal impediment; adultery (former §6, Law of 20 February 1946, KRAD1, p. 77).

Reference: Law to Reform Marriage and Family Law of 14 June 1976, BGB1, I., No. 67, pp. 1421 *et seq.*; translation from M.A. Glendon, *State, Law and Family: Family Law in Transition in the United States and Western Europe* (Amsterdam, New York, Oxford: North Holland Pub. Co., 1977), pp. 120 *et seq.*

Note: Other provisions of this statute may be found in §§220 and 240.

Malaysia

Subject: Marriage and Divorce Act reform.

Summary: An Act was passed which lends uniformity to all non-Muslim marriages, forbids polygamy, grants equal rights and responsibilities to both spouses and allows divorce on mutual consent.

Reference: Law Reform (Marriage and Divorce) Act, 1976; IPPF, *Law File*, No. 6, February 1977, p. 9.

Nepal

Subject: Change in age of marriage.

Text: No marriage shall be contracted or arranged unless the age of a woman is sixteen years, where the guardian has given his/her consent, and eighteen if there is no such consent and age of a man is eighteen, where the guardian has given his/her consent, and twenty-one if there is no such consent. The differences in the age of the man and the woman shall not exceed twenty years. If marriage is contracted or arranged, in contravention of the above, the following punishment shall be meted out:—

1. If the marriage has been entered into or caused to be done with a girl below the age of ten years the principal persons of the major age from among the principal persons privy to such marriage shall be punished with an imprisonment for a term ranging from three months to three years and with a fine ranging from Rs. 500/-Rs. 5,000/-.
2. If the marriage has been entered into or caused to be done with a girl above the age of ten years but below the age of fourteen years the principal persons of major age who are responsible for such marriage shall be punished with an imprisonment for a term not exceeding one year and with a fine not exceeding Rs. 2,000/-.
3. If marriage has been entered or caused to be done with a girl above the age of fourteen years but below the age of sixteen years the principal persons of the major age responsible for such marriage shall be punished with an imprisonment for a term not exceeding three months or with a fine not exceeding Rs. 1000/- or with both.

Reference: *The Legal Status of Women*, published by the Preparatory Committee, United Nations Regional Seminar (Asia and the Pacific) on Participation of Women in Political, Economic and Social Development, Kathmandu, Nepal, with Foreword by Her Majesty Asiwarya, 1975.

Portugal

Subject: Constitutional provision on marriage, permitting divorce.

Text: The new Constitution of the Portugal Republic of 2 April 1976 provides in part:

> The law shall provide for the requirements and the effects of marriage and of its dissolution—through death of a spouse or through divorce—irrespective of the form of the marriage rites.

Reference: *The Constitution of the Republic of Portugal*: 1976 (Annotated) Article 36, No. 2, Lisbon (Editus), April 1976.

Note: Other provisions of this constitution may be found in §§000 and 240.

Somalia

Subject: New Family Law.

Summary: In January 1975 a new Family Law was enacted which disallows arranged marriages of children. Prior to reaching 18 years of age, a woman wishing to marry needs parental consent. The customs of "bride price" and polygamy are abolished, with some exceptions. For instance, a man may marry a second wife only under strictly formulated conditions which include the inability of the first wife to bear children. If the first wife does not agree to a proposed second marriage by the husband, she may divorce him. Divorce is only possible by a court verdict, a departure from Moslem law. The wife can also obtain a divorce on several grounds, including irreconcilable differences between the spouses.

Reference: IPPF, *Law File*, No. 4, December 1976.

Thailand

Subject: Age of marriage.

Summary: Legislative changes in the Thai Family Law in 1976 include provisions raising the minimum marriage age for women from 15 to 17 years of age. Exceptions may be granted, however, by the courts at the request of the parents.

Reference: Letter by Dean Visid Prachuabmoh of the Graduate Faculty and Director of Law and Population Project, Chulalongkorn University, Bangkok, 14 March 1977.

United States—State Law

Puerto Rico (Commonwealth)

Subject: Elimination of provisions concerning dowry.

Summary: A law adopted on 2 June 1976 repeals Articles 1288, 1289, 1290, 1291, 1292, 1293 and 1294 of the Civil Code of Puerto Rico, 1930 edition, concerning dowry.

Reference: Law No. 106, 2 June 1976.

Germany, Federal Republic of

Subject: Divorce provisions in new Marriage Law.

Text: The new West German Marriage and Family Reform Law of 14 June 1976 amended Sections 1564 through 1579 of the Civil Code to include the following provisions applicable to divorce:

1564. A marriage can be dissolved only through judicial decision upon the petition of one or both spouses. The marriage is dissolved when the judgment becomes final. The conditions under which divorce can be sought are set forth in the following provisions.

1565. (1) A marriage can be terminated, if it has foundered (*wenn sie gescheitert ist*). A marriage has foundered if the community of life of the spouses no longer exists and it cannot be expected that the spouses will reestablish it.

(2) If the spouses have lived apart for less than one year, the marriage can only be dissolved if the continuation of the marriage would present an insupportable hardship (*unzumutbare Härte*) for the petitioner for reasons which repose in the person of the other spouse.

1566. (1) It is irrefutably presumed that the marriage has foundered, if the spouses have lived apart for one year and both spouses petition for divorce or the respondent consents to the divorce.

(2) It is irrefutably presumed that the marriage has foundered, if the spouses have lived apart for three years.

1567. (1) The spouses are living apart, if no household community exists between them and one spouse perceptibly refuses its restoration by rejecting the marital community of life. The household community no longer exists in such case even if the spouses live apart within the marital dwelling.

(2) Cohabitation for a short time, that should serve the reconciliation of the spouses, does not interrupt or stop the time periods specified in §1566.

1568. (1) The marriage may not be dissolved, although it has foundered, if and so long as the maintenance of the marriage is exceptionally necessary for special reasons in the interest of minor children produced by the marriage, or if and so long as the dissolution, for the respondent who opposes it, would pose such

severe hardship by reason of extraordinary circumstances, that the maintenance of the marriage, even taking into consideration the interests of the petitioner, appears exceptionally necessary.

(2) Paragraph (1) is not applicable if the spouses have lived apart for more than five years.

1569. If a spouse cannot take care of his* support after divorce by himself, he has a claim for support against the other spouse according to the following provisions.

1570. A divorced spouse can seek support from the other so long as and insofar as employability cannot be expected of him on account of the care or upbringing of a common child.

1571. A divorced spouse can seek support from the other, insofar as at the time of

(1) the divorce,
(2) the termination of the care or upbringing of a common child, or
(3) the cessation of the conditions for a support claim under §§1572 and 1573,

employability can no longer be expected of him on account of his age.

1572. A divorced spouse can seek support from the other, so long and insofar as at the time of

(1) the divorce,
(2) the termination of the care or upbringing of a common child,
(3) the termination of training, continued education or re-education, or
(4) the cessation of the conditions for a support claim under §1573,

employability can no longer be expected of him on account of sickness, or other impairment or weakness of his physical or mental health.

1573. (1) If a divorced spouse has no claim to support under §§1570 to 1572, he can nevertheless seek support so long as and insofar as he is unable to find any appropriate employment after the divorce.

(2) If the income from an appropriate employment is insufficient for full support (§1578), he can claim the difference between his income and full support, if he does not already have a support claim under §§1570 to 1572.

(3) Paragraphs (1) and (2) apply correspondingly, if support was granted under §§1570 to 1572, or 1575 but the preconditions of these provisions have lapsed.

(4) A divorced spouse can also claim support, if the income from an appropriate employment ceases, because he does not succeed, despite his efforts, in assuring his support after divorce in a lasting fashion through employment. If he succeeds in assuring his partial support in a lasting fashion, he can claim the difference between the support thus assured and full support.

*Refers to either spouse.

1574. (1) A divorced spouse need undertake only an employment which is appropriate for him.

(2) An appropriate employment is one which corresponds to the education, ability, age and state of health of the divorced spouse as well as to the marital relationship; in connection with the marital relationship, the duration of the marriage and the duration of care or upbringing of a common child are to be taken into consideration.

(3) Insofar as it is necessary for his entrance into an appropriate employment it is the duty of the divorced spouse to have himself trained, to have his training brought up to date or to be retrained, if a more successful outcome of the training is to be expected.

1575. (1) A divorced spouse, who in anticipation of marriage or during the marriage has not undertaken or has broken off educational or vocational training, can seek support from the other spouse, if he undertakes this or a corresponding training as soon as possible in order to obtain appropriate employment that assures enduring support and if a successful outcome of such training is to be expected. The claim exists, at the most, for the time generally needed for the conclusion of such training; in connection therewith, marriage-conditioned delays to training are to be taken into consideration.

(2) Correspondingly, this section applies if the divorced spouse continues his education or is retrained in order to compensate for disadvantages incurred because of the marriage.

(3) If the divorced spouse, after the termination of training, continued training or retraining, claims support under §1573, his improved higher educational status remains outside consideration in ascertaining what is an employment appropriate for him (§1574 para. 2).

1576. A divorced spouse can claim support from the other, insofar as and so long as employment cannot be expected of him for other grave reasons, and the denial of support, considering the interests of both spouses, would be grossly unfair. Grave reasons should not be taken into consideration solely because they have led to the foundering of the marriage.

1577. (1) The divorced spouse cannot claim support under §§1570 to 1573, 1575 and 1576, so long as and insofar as he can support himself from his own income and property.

(2) Such income is not to be taken into consideration insofar as the obligor does not supply the full support (§1578). Income that exceeds full support is to be counted, insofar as this corresponds to fairness in the light of the mutual economic relationships.

(3) The basic capital of property need not be cashed in by the claimant insofar as the realization would be uneconomic or unfair, taking into consideration the mutual economic relationships.

(4) If it was to be expected at the time of the divorce that the support of the claimant from his own property would be lastingly

assured, no claim for support lies if the property later is insufficient. This does not apply, if, at the time of the insufficiency of property, employment of the spouse cannot be expected on account of the care or upbringing of a common child.

1579. (1) A support claim does not exist insofar as the claim against the liable spouse would be grossly unfair, because

1. The marriage was of short duration; the duration of the marriage includes the time during which the claimant was entitled to support under §1570 on account of the care or upbringing of a common child,
2. The claimant has been guilty of a crime or a serious intentional offense against the obligor spouse or a near relative of the obligor spouse,
3. The claimant has maliciously brought about his own state of need,
4. Another ground as grave as those set out in numbers 1 to 3, exists,

(2) Para. (1) does not apply so long as and insofar as employment cannot be expected of the claimant on account of the care or upbringing of a common child.

Reference: Law to Reform Marriage and Family Law of 14 June 1976, BGB1, I., No. 67, pp. 1421 *et seq.*; translation from M.A. Glendon.

Note: Other provisions of the Reform Law may be found in §§210 and 240.

India

Subject: Grounds for divorce broadened.

Summary: In May 1976, the Parliament of India passed a law broadening the grounds for divorce. Grounds now include desertion, cruelty, adultery (up till now "living in adultery") and mutual consent of spouses. Minor girls, married against their will, may repudiate matrimony before they reach 18.

Reference: *People*, Vol. 3, No. 4 (1976), p. 39.

Portugal

Subject: Reform of divorce law.

Summary: After the decree-law No. 261/1975 made possible divorce of "church" marriages (see *Annual Review, 1975*, p. 84) two other decree-laws were issued to amend the Civil Code and Code of Civil Procedure. The amending provision regulates both contentious divorce and divorce by mutual consensus. In addition to existing grounds for divorce based on fault, anyone, irrespective of fault, is entitled to divorce if factual separation of the spouses has lasted six years or longer. Conciliatory proceedings are mandatory regardless of the grounds.

Divorce can be granted on consensual application of both spouses if they were married longer than two years. and if they are both over 25 and conciliatory proceedings requirements are complied with. When they are unsuccessful, the court grants first an interim divorce for the period of three months, and only after another unsuccessful attempt at conciliation will a final divorce decree be issued, effective retroactively.

Analogous provisions apply to both contentious and consensual judicial separation of spouses.

Reference: Decree Laws Nos. 561/1975 and 605/1976 amending the Civil Code and the Code of Civil Procedure as discussed in H.E. Horster, *Zeitschrift fur das gesamte Familienrecht*, Vol. 24 (1977), p. 113 ff.

United States—State Law

Puerto Rico (Commonwealth)

Subject: Elimination of sexually discriminating divorce provisions and extension of provisional measures to annulment.

Text: Section 1.—Articles 99, 100 and 101 of the Civil Code of Puerto Rico, 1930 edition, will be amended to read as follows:

Art. 99.—Residence.—If either of the spouses who is litigating the dissolution has left, or declares his* intention to leave, the spouses' domicile, the Supreme Court will designate a place for him to live until the end of the proceeding.

Art. 100.—Food Allowance.—If one of the spouses does not have sufficient resources of his own on which to live during the proceeding, the Supreme Court will order the other spouse to give him a food allowance in proportion to the property of the other spouse until the termination of the proceeding.

Art. 101.—Debts contracted after suit is filed. From the day on which the dissolution proceeding begins judicially, no debt contracted or transaction effected by either spouse without the authorization of the court which encumbers the jointly owned property will be valid.

Section 2.—This law will begin to take effect immediately after its approval and its provisions will be applied to suits of dissolution of marriage which are prosecuted after the date it takes effect.

Reference: Law No. 84, 30 June 1976.

Subject: Elimination of automatic designation of the wife as innocent spouse and provision for no-fault grounds.

Text: ART. 96—GROUNDS FOR DIVORCE

Grounds for Divorce are:

(9) The separation of both spouses for an uninterrupted period of more than two years; provided that sufficient proof is given of the

*Or her.

separation for the expressed period of more than two years, when the judgment is pronounced neither of the spouses will be considered innocent or guilty.

Reference: Law No. 101, 2 June 1976.

Subject: Annulment of Article preventing remarriage of wife after termination, and facilitation of determination of paternity prior to remarriage.

Text: Article 70 of the Civil Code, 1930 edition, which governed the qualifications of those who married was repealed. Instead, Article 70-A was added to the Code:

> Art. 70-A.—When the marriage has been dissolved for any reason, the man and the woman remain legally competent to formalize a new marriage at any time after said dissolution.
>
> Nevertheless, so as to facilitate the determination of paternity, the woman whose marriage has been dissolved and who decides to enter into a new marriage within 301 days of said dissolution, must show to the authorized person who will celebrate the marriage ceremony a medical certificate stating whether or not she is pregnant.
>
> If it is positive this certificate will constitute a presumption of the paternity of the spouse of the dissolved marriage.
>
> If the woman has given birth within the referred to 301 days, it will not be necessary to present such a certificate in order to contract a new marriage.

Reference: Law No. 108, 2 June 1976.

Belgium

Subject: Adoption of a Law on Marriage Contracts and the Respective Rights of Spouses.

Summary: An extensive "Law Relating to the Rights and Obligations of the Spouses and on Marital Property" replaces Chapter VI and Title V of Book III of the Civil Code. Some of the more important amended sections now provide:

The spouses are obliged to live in conjugal community (Section 213).

The conjugal residence shall be determined by conjugal consent; otherwise the court determines it, having regard to the best interests of the rest of the family (Section 214).

A spouse is entitled to be engaged in an occupation without the consent of the other spouse (Section 216, para. 1).

Each spouse acquires his or her own income, from which family needs receive first priority (Section 217).

Each spouse shall contribute to the needs of the family according to his or her ability (Section 221).

Obligations entered by one spouse to cover the needs of the household or the education of the children bind jointly the other spouse (Section 222).

All marriage contracts shall be recorded by a state notary (Section 1.392).

The property owned by a married couple consists of: separate property of the husband, separate property of the wife and common property of both spouses (Section 1.398).

The gains from the gainful occupations of the spouses is common property (Section 1.405, No. 1).

The spouses manage their common property in the best interests of the family (Section 1.415).

The common property can be managed by either of the spouses; they can exercise their management rights alone, but they are obliged to respect the acts of management performed by the other spouse (Section 1.416).

One spouse may not dispose of the common property gratuitously *inter vivos* without the consent of the other spouse (Section 1.419).

The spouses can determine, by a marriage contract, that they will keep their properties separate; in such a case each spouse manages his or her own property (Section 1.466).

Each spouse can claim in the court that a separation of the common property be ordered, if its management by the other spouse endangers the claimant's interests (Section 1.470).

Reference: Law relating to the Rights and Obligations of the Spouses and on Marital Property, 14 July 1976; *Moniteur Belge*, 18 September 1976, p. 11697. Unofficial translation by the Law and Population Programme.

Cuba

Subject: Rights of Spouses Established in New Constitution.

Text:

Article 35. Marriage is the voluntarily established union between a man and a woman, who are legally fit to marry, in order to live together. It is based on full equality of rights and duties for the partners, who must see to the support of the home and the integral education of their children through a joint effort compatible with the social activities of both.

The law regulates the formalization, recognition and dissolution of marriage and the rights and obligations deriving from such acts.

Reference: Constitution of the Republic of Cuba, 24 February 1976, Art. 35; translation in *Constitutional and Parliamentary Information*, 3rd Series, No. 107, 1976, p. 67.

Note: Other provisions of the Constitution may be found in §§320, 340, 570, 610 and 710.

Germany, Federal Republic of

Subject: Regulation of the rights of spouses in new Marriage Law.

Text: A new Marriage and Family Reform Law contains extensive provisions regarding the rights of spouses both in the marital community and after the termination of the marriage. The main principles of the new law are equality of the spouses; maintenance payments according to the needs of the partner (i.e., not based on "guilt") and sharing of old age and disablement pensions between the divorced spouses. Many sections of the Civil Code have been amended, especially those affecting the consequences of marriage in general such as obligations and rights of the spouses, duty to support a spouse, maintenance after divorce, equalization of benefits claims and succession rights of the surviving spouse.

A few of the amended provisions are reproduced as follows:

Section 1355:

(1) The spouses bear a common family name (the marriage name).

(2) The spouses can designate as the marriage name, by declaration before the Registrar the birth name of the husband or the birth name of the wife. If they make no designation, the marriage name is the birth name of the husband. The birth name is the name recorded on the birth certificate of the intended spouses at the time of the celebration of the marriage.

(3) A spouse, whose birth name is not the marriage name, can, by declaration before the Registrar, place his* birth name or the name he bears at the time of the celebration of the marriage in front of the marriage name; the declaration must be publicly attested.

(4) A widowed or divorced spouse retains the marriage name. He can, by declaration before the Registrar take back his birth name or the name borne at the time of the celebration of the marriage; the declaration must be publicly attested.

Section 1356:

(1) The spouses conduct the running of the household agreement. If the running of the household is left to one of the spouses, that spouse manages the household on his own responsibility.

(2) Both spouses have the right to be employed. In the choice and exercise of an occupation they must pay due regard to the interests of the other spouse and the family.

Section 1357:

(1) Each of the spouses is entitled to make contracts for the provision of the needs of the family, including the other spouse. Such transactions confer rights and obligations upon both spouses unless the circumstances indicate a different solution.

(2) A spouse may limit or exclude the authority of the other spouse to make contracts which affect the former; if there is insufficient ground for such limitation or exclusion, the Guardianship Court may, upon petition, set it aside. Such limitation or exclusion is effective as against third parties only in accordance with the provisions of Section 1412.

Section 1360:

The spouses are mutually obliged to appropriately maintain the family through their work and with their property. If the running of the household is left to one spouse, that spouse as a rule fulfills his duty to contribute to the support of the family through work by managing the household.

Section 1360a, para. 2(2):

The spouses are mutually obliged to make available, at a suitable time in advance, the necessary means for the common support of the family.

*Or her.

Section 1361:

(1) If the spouses are separated, one spouse can demand from the other support adequate to the circumstances of both spouses and to their income situation and property. If divorce proceedings are pending between separated spouses, the cost of adequate old age insurance and disability insurance is to be considered, from the beginning of the proceedings, as part of the maintenance needs.

(2) The spouse who is not gainfully occupied may be required to work for his or her own support only if it can be (reasonably) expected in view of his or her personal circumstances—especially on the prior gainful occupation, taking into account the duration of the marriage—and in view of the economic situation of both spouses.

4) The current support shall be effected through periodic payments (*Geldrente*). The payment shall be paid monthly in advance.

Reference: Law to Reform Marriage and Family Law of 14 June 1976, BGB1. I., No. 67, pp. 1421 *et. seq.*; translation from M.A. Glendon.

Note: Other provisions of this statute may be found in §§210 and 220.

Italy

Subject Tax law concept of the husband as head of the family, held unconstitutional by the Italian Constitutional Court.

Summary: On 14 July 1976 the Constitutional Court of Italy declared unconstitutional several provisions of the Italian income tax laws under which a mandatory joint return ("declaration") filed by the husband, was required to include the income of both spouses. The wife, under the old statute, for the purposes of joint return, was obliged to supply her husband with all the relevant information regarding her own income.

Reference: *Corte Costituzionale*, decision of 14 July 1976 (*Gazetta Ufficiale*, 21 July 1976); full text of the opinion in *Rivista de Legislazione Fiscale*, 1976, cols. 1561-1591.

Netherlands Antilles

Subject: Extension of property rights to married women.

Summary: A law was adopted in 1975 enabling married women to make purchases on their own behalf. Previously, married women needed written consent of their husbands for more expensive purchases, even if they could prove that the goods were purchased using the wife's personal property.

Reference: Letter from the Foundation for the Promotion of Responsible Parenthood, Curacao, 11 February 1977.

Portugal

Subject: Constitutional provision for equality of spouses.

Text: The new Constitution provides:

> The rights and obligations of both spouses in relation to their legal and political capacity and to the upbringing and education of their children are equal.

Reference: *The Constitution of the Republic of Portugal*, 1976 (Annotated) Article 36, No. 2, Lisbon (Editus), April 1976.

Note: Other provisions of the Constitution may be found in §§000 and 210.

United States—State Law

California

Subject: Judicial trend towards reorganizing quasi-community property between unmarried partners.

Summary: In December 1976, the Supreme Court of California held in *Marvin* v. *Marvin*, 557 P.2d 106 (1976), that an oral contract between a man and a woman to combine their efforts and earnings and share equally all property accumulated while living together, was enforceable. Such partners may agree to pool their earnings and hold all property acquired during the relationship in accord with the law governing community property, or they may agree on separate property or only a partial pool of their earnings and property.

Reference: *Marvin* v. *Marvin*, 557 P.2d 106 (1976).

Washington

Subject: Reconsideration of earlier holding discriminating against unmarried partners.

Summary: In *Latham* v. *Hennessey*, 554 P.2d 1052 (1976), the Supreme Court of Washington indicated its willingness to reconsider its older (1942) holding under which property acquired by a man and woman not married to each other, but living together as husband and wife, was not community property.

Reference: *Latham* v. *Hennessey*, 554 P.2d 1057 (1976).

Puerto Rico (Commonwealth)

Subject: Amendments to Civil Code relating to the administration of property owned jointly by husband and wife.

Text:

> *Art. 91.*—Administrator of Conjugal Property.—Both spouses will be the administrators of the property jointly owned by husband and

wife, unless stipulated otherwise, in which case one of the spouses will grant the other the authority to act as the administrator of the jointly owned property.*

The purchases made with such property (or assets) by either of the spouses will be valid when they involve things destined for the family's use or personal items in accord with the social and economic status of the family, and either spouse can make such purchases with cash or on credit.

Art. 92.—Alienation of property.—The real assets of the jointly owned property cannot be alienated or encumbered, under penalty or nullity, without the written consent of both spouses. Nothing provided for so far will be interpreted to the effect of limiting the future spouses' liberty to grant marriage articles.

Art. 93.—Representative of the jointly owned property.—Except as provided for in Article 91, either of the spouses may legally represent the jointly owned property. Any unilateral administrative act by either spouse will encumber the jointly owned property and will be presumed to be legally binding.

Art. 1308.—Obligations of the jointly owned property.—The jointly owned property will be responsible for

1. All the debts and obligations contracted during the marriage by either spouse.

2. The arrears or credits accrued during marriage from the liabilities of both the personal property of the spouses and the property held in community by the husband and wife.

3. The minor repairs or up-keep made during the marriage on the individually owned property of either spouse. Major repairs will not be the responsibility of the jointly owned property.

4. The major or minor repairs made on the jointly owned property.

5. The maintenance of the family and the education of the shared children and of either of the spouses.

6. The personal loans taken out by either spouse.

Art. 1313.—Consent of both spouses.—Notwithstanding the provisions of Article 91, neither spouse may give, alienate, or encumber the personal or real property of the jointly owned property without the written consent of the other spouse, except for those things destined for the family's use or personal things in accord with the social or economic status of both spouses.

**Translator's Note:* The full translation of *sociedad conyugal* is: "joint ownership of property by husband and wife." The abbreviated term, "jointly owned property" is used where appropriate.

Any act of disposal or administration that either of the spouses performs on this property in violation of this article will not damage the other spouse or his heirs.

The spouse involved in commerce, industry or a profession may acquire or dispose of the personal property intended for these purposes, for just cause, without the consent of the other spouse. Nevertheless, he will be responsible for the damages or losses to the jointly owned property that might arise from such acts. Action will be brought only at the time of the dissolution of the joint ownership of property by husband and wife.

Reference. Law No. 51, 21 May 1976.

300 CHILDREN AND CHILD WELFARE

310 SUPPORT OF CHILDREN GENERALLY

Austria

Subject: Federally funded advance payments for child maintenance.

Summary: Under the provisions of a federal law the Federal Government:

Will provide advance payments for maintenance to which children are entitled under civil law (*Sec. 1*).

The Statute covers only cases where the child entitled to maintenance does not live in the household of the "debtor" (*Sec. 2*).

Advance payments will be supplied if maintenance, as determined by a judicial order, cannot be collected from the debtor (Sec. 3), if the debtor evades judicial proceedings, or if he is serving prison sentence imposed exclusively for not providing maintenance (*Sec. 4*).

For maintenance which had been determined by a judicial decision advance payments will be supplied even if there is another person also obligated to maintain the child (*Sec. 7*).

After a court has ordered federal advance payments, all further maintenance payments by the debtor must be made to the Treasury (*Sec. 27*).

Reference: Federal Law of 20 May 1976, BGB1. No. 25/1976 (On Advance Payments for the Maintenance of Children).

Finland

Subject: A child's right to sufficient support.

Summary: A new law on child support delineates what constitutes a child's right to sufficient support:

Section 1. This includes the means to satisfy material and spiritual needs in accord with the child's level of development; care for the child and its education as well as to defray the resulting costs.

Section 2. Parents are obliged to provide this support, taking into consideration their age, their ability to work and employment opportunities, available funds, etc. Other factors taken into consideration are the child's capability and possibility of supporting itself, as well as circumstances relieving parents of their obligation.

Section 3. A parent's obligation to support a child ends when the child reaches the age of eighteen years, with the exception of adequate educational costs.

Section 4. If the parents do not provide due support *in natura*, they are obliged to make support payments, the amount of which can be determined either by an agreement or by court order.

Reference: Law No. 704, (On Right to Sufficient Support), 5 September 1975; *Finlands Författningssamling*, No. 64.

France

Subject: Post-natal benefits to children.

Summary: An act of 3 January 1975 introduces a number of benefits for children:

1. Post-natal allowances will be granted regardless of whether the birth took place in France, or within a specific time.
2. The allowances are payable to any child regardless of nationality as long as it is born viable and acknowledged by its mother, is under 2 years old, and resides in France.
3. The mother must be a resident of France.
4. Allowances are only payable if the child receives three medical examinations: the first within 8 days after birth, one in 9 months and one at 24 months, as prescribed by Art. 164 of the Public Health Code. Payments are to be made in three installments following each examination.
5. The payments are made to whoever has custody of the child and are not assignable.
6. Child care allowance conditions are also relaxed. Employment will no longer be the only condition acceptable for receipt of the allowance.
7. Finally, the Act extends coverage of orphan's allowances to orphans and children whose father and/or mother is missing. Even less stringent conditions apply where the child has been manifestly abandoned by both parents.

Reference: Act No. 75-6 of 3 January 1975, *Journal Officiel*, 4 January 1975; as reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1975), p. 300.

Note: For provisions of this statute regarding family benefits to young couples, see §510.

Subject: Allowances for single parents.

Text: A law "On Various Measures of Social Protection of the Family" (Title I) amends the Code of Social Security by adding provisions on "allowances for single parents" as follows:

Single parents, even if they have no gainful occupation, are entitled to a monthly allowance. Its amount is commensurate with the number of children and may be paid until the youngest child reaches three years of age.

Single parents are considered persons who are widowed, divorced, separated from or abandoned by their spouses, or not married, and who alone, in effect and permanently, take care of one or more children residing in France, as well as single pregnant women who have filed a declaration of their pregnancy and undergone prenatal tests required by law.

Reference: Act No. 76-617 of July 1976, *Journal Officiel*, 10 July 1976, p. 4149.

United States—State Law

Puerto Rico (Commonwealth)

Subject: Rights and obligations of parents regarding children.

Text: Amendments to the Civil Code of Puerto Rico on 2 June 1976 read:

Section 1.—Arts. 152, 154, 162, 164, 165, 233 and 237 of the Civil Code of Puerto Rico, as amended, are amended to read as follows:

Art. 152.—Patria Potestas over children.—*Patria potestas* over unemancipated children belongs to both parents jointly; and in cases of emergency the parent who has the minor in his custody at that time can exercise it by himself.

Patria potestas will belong to only one of the parents when:

(1) the other has died, is absent, or is legally disabled.

(2) only one parent has recognized or adopted the child.

. . . .

Art. 154.—Administration of property.—The administration of the property of the children that are under *patria potestas* belongs, in the absence of a pertinent judicial ruling, to both parents jointly or to that parent who has the minor under his custody and authority.

. . . .

Art. 162.—Usufruct in the case of divorce.—In the event of divorce, the usufruct of the property of the unemancipated children will belong, in accord with that established by the preceding sections, to the parent who has the minor under his authority and custody.

. . . .

Art. 164.—Dissolution of the marriage.—When the marriage is dissolved for any reason, the father or mother who voluntarily abandoned his children for a period of more than six months will lose *patria potestas*: The court may intervene before the end of this period when special circumstances call for this. In order to decree the termination of this *patria potestas*, it will be ordered in a declaratory action in the chamber of the superior court under whose jurisdiction the minor or minors reside, after action is brought

by the ex-spouse, by the district attorney, or by one of the people called upon to exercise the legal tutelage, and provided that the court, after hearing the necessary proof, deems it desirable for the benefit of the minor or minors; and the mother or father, if there is one, who is then deprived of *patria potestas* may also request that a suitable guardian be named.

Art. 165.–Suspension of *patria potestas.–Patria potestas* will be suspended on account of judicially declared incapacity or absence.

. . . .

Art. 233.–Emancipation by the father or mother; declaration; notation.–The minor may be emancipated to manage his person and administer his property, or solely for the administration of his property, by his mother, by his father, or by the father and mother jointly, or by the one who exercises *patria potestas* over the minor, when said minor has reached the age of eighteen years. This emancipation will occur by the declaration of the father or the mother or of both, when they exercise *patria potestas* jointly, made before a notary public in the presence of two witnesses and with the consent of the minor. It must be entered in the civil registry, not producing an effect against third parties in the interim.

. . . .

Art. 237.–Capacity of a disqualified minor.–Emancipation enables the minor to manage his person and property as if he were of full age; but until he reaches full age the emancipated minor may not contract any promise or obligation that exceeds the gross value of his income for one year. Nor may he encumber or sell his real assets without the consent of his father and his mother, when both exercise *patria potestas*, or of the one who exercises it by himself, or, if applicable, of the guardian. Nor may he appear in court without the allowance of said persons.

Section 2.–This law will take effect immediately after its approval.

Reference: Law No. 99, 2 June 1976.

Subject: Care of Minor Children after Divorce.

Text: Amendments to Article 197 of the Civil Code of Puerto Rico on 2 June 1976 to protect the rights of minor children during a divorce read:

Section 1.–Article 107 of the Civil Code of Puerto Rico is amended to read as follows:

Art. 107.–Care of minor children after the divorce. In all divorce cases the minor children will be placed under the care and *patria potestas* of the spouse who the court considers, in its complete discretion, will most serve the best interests and well-being of the minor; but the other spouse will have the right to continue family relations with his children in the manner and extent stipulated by the court upon pronouncing the judgment, according to the cases.

The spouse who has been deprived of custody and *patria potestas* will have the right to recover them if he proves before any competent superior court the death of the other ex-spouse or demonstrates to the satisfaction of the court that the recovery of

custody and *patria potestas* serves the best interests and well-being of the minors.

Reference: Law No. 100, 2 June 1976.

Colombia

Subject: Statute and decree regulating adoption.

Text: A law governing who may adopt took effect on 28 January 1975. It reads:

> *Art. 269:* A capable person who is at least 25 years old and who is at least 15 years older than the adoptive child and who is in such physical, mental and economic condition that would enable him to provide a home for an 18 year old minor may adopt.

On 28 April 1975, the national government issued Decree No. 752 as a means of regulating the new law. It reads:

> *Art. 1:* In order to understand the social conditions of the presumed adopting parent or parents, the judge, apart from the pertinent evidence attached to the request, should interview them personally as arranged by Article 175 of the Code of Civil Procedure. The judge will be able to dispense with the interview if upon request a signed and sworn statement is presented by the director of the institution who has had the presumed "adopted person" under his care, and shows that he has vouched for having personally interviewed the presumed adopting parent or parents and as a result of the aforementioned interviews, the institution considers that the applicants are economically capable of adopting a child and that each adoption is treated individually.
>
> The certificate referred to must come from an institution that is legally authorized to handle adoption procedures.
>
> The physical and mental condition of the presumed adopting parents will be determined according to the evidence considered in the Code of Civil Procedure.
>
> When the presumed adoptive parents live outside the country the evidence of physical and mental suitability and in general the vital as well as the complementary attributes must be authenticated by the Colombian Consul in that area, or in his absence by a Consul from a neighboring country.
>
> If the authenticated documents are not in Spanish they must be accompanied by a translation carried out by the Foreign Ministry or by an officially designated translator.
>
> *Art. 2:* The director of each region of the Colmbian Institute of Family Welfare or the official designated by him for these purposes will concede the authority of moving the minor out of the country whenever the request has been previously submitted by the adopting

parents to the official who gives his permission in a document in which they testify, under oath, that they will undertake the care of the presumed adoptive child; that they will give the place and address to which he will be taken and that they agree to follow the instructions of the Colombian authorities concerning adoption and will inform the authorities as to any change of address or conditions.

Art. 3: Upon requesting the document as stipulated by the previous article they must submit the following certificates:

(a) Authenticated copies of the petition for adoption and of the judicial decree of the same.

(b) An authenticated permit from the immigration authorities of the country to which the adoptive child will be taken, or certification by the respective Consul which states that an authorized visa will be given as soon as his emigration has been officially authorized.

(c) Three authenticated references on the ability of the adoptive parents to fulfill their respective duties forwarded by persons who, because of their personal or professional knowledge can demonstrate that the aforementioned adoptive parents have the necessary physical, moral and economic conditions to be able to fulfill their responsibilities.

Art. 4: In order to show the state of abandonment as referred to in Article 283 of the Civil Code in accordance with the proceedings established in Articles 8 and 9 of the Decree of the Law 1818 of 1964, the following must be taken into account:

In reference to the children a copy of the birth certificate and of a statement claiming abandonment must be surrendered.

In reference to minors who have been in the care of a private or public establishment, and who have not been reclaimed by their parents or legal guardians, a copy of the birth certificate and a statement as to the date at which the minor was referred to the establishment, signed by the director of the institution, must be presented within a period of time set by law.

In reference to minors who were surrendered by their legal guardians to the Colombian Institute for Family Welfare or another Authorized institution the following documents must be presented; a copy of the birth certificate and a certificate from the institution stating that they received the child for purposes of adoption.

Art. 5: In order to determine the date from which 3 months must be counted since abandonment as set forth in the second section of Article 282 of the Civil Code, certificates showing possible places of residence or declarations on the part of persons with knowledge of the minor will be accepted according to the requirements of the law.

Art. 6: The licenses to operate as a legal institution for adoption can only be executed by the director of the Colombian Institute of Family Welfare.

These licenses will only expire if it can be verified at any time that their officials violated moral principles or did not provide the necessary materials to develop programs of adoption, or if with the

pretext of fulfilling this objective, they violated the civil dispositions on adoption or any other in the Penal Code.

The above clause is intended so that administrative responsibilities can be carried out according to the laws.

Art. 7: The present Decree will take effect as of the date on which it was set forth.

Reference: Fifth Law of 1975; Article 1, Title 13, First Book of the Civil Code. Decree No. 752 of 1975, as reported in *Adoption-Legislative Evolution and Study of the Fifth Law of 1975*, P.M. Gomez, Degree Thesis, Republic of Colombia.

Note: In September 1975, a demand was placed before the State Counsel to declare the first two clauses of Article 1 and Article 2 of the decree null and void. At this writing the resolution of the matter is unknown.

Cuba

Subject: Provisions for parental protection of children in new constitution.

Text: *Article 37.* The parents have the duty to provide nourishment for their children; to help them to defend their legitimate interests and in the realization of their just aspirations; and to contribute actively to their education and integral development as useful, well-prepared citizens for life in a socialist society.

It is the children's duty, in turn, to respect and help their parents.

Reference: Constitution of the Republic of Cuba, 24 February 1976, Art. 37; translated in *Constitutional and Parliamentary Information*, 3rd Series, No. 107, 1976, p. 67.

Note: Other provisions of the Constitution may be found in §§240, 340, 570, 610 and 710.

Denmark

Subject: Amendment to adoption law.

Summary: Denmark has adopted a law which requires an examination and approval of persons wishing to adopt children in all cases, except where a close relationship exists between the adopter and the child or his or her parents.

The examinations are carried out by a three member board, established in connection with the county social services.

Applicants who do not receive approval may appeal to a newly established central Board of Appeal. The seven member Board is to be composed of persons with wide expertise on adoption. Its other duties will include supervision of local board practice and other matters which the Minister of Justice may refer to it.

Reference: Council of Europe, *Newsletter*, No. 23, March-May 1976, p. 2.

El Salvador

Subject: Rights of minors to health protection.

Summary: The Code for Minors regulates and recognizes the minor's right to become fully developed from a biological, social and psychological standpoint. It establishes maternal and child health and welfare services designed to protect and care for children under four years of age and pregnant women; vaccination and health campaigns; and periodic examinations of school age minors. The Code also provides for the organizing of a Salvadoran Council for Minors and the establishment of a social welfare service.

Reference: Decree No. 56, 8 January 1974 promulgating the Code for Minors, appearing in *Diario Oficial*, 31 January 1974, No. 21, pp. 1222-1233.

France

Subject: Benefits related to adoption enacted.

Summary: A law "On Various Measures of Social Protection of the Family" amends:

1) the Labor Code and some other laws, by affording to a woman, to whose care an adopted child has been entrusted, rights analogous to those afforded to a woman who has delivered a child ("adoption leave");

2) the Code of Social Security, by affording a three day leave to a "head of family" to whose household an adopted child has been entrusted.

Reference: Law No. 76-617 of 9 July 1976, *Journal Officiel* of 10 July 1976, p. 4149.

Subject: Protection of handicapped children.

Summary: Among other provisions, a new Law of 30 June 1975 recognizes the need for the education of handicapped children and adolescents. Under the Act, the State assumes costs of teaching and vocational training regardless of whether the child attends regular classes or special classes. There is an additional special education allowance for young handicapped people if they have not been admitted to a special educational establishment, or, if they do attend a boarding school but their expenses are not covered by sickness insurance.

Other benefits include old-age insurance coverage for mothers who are unable to work because their handicapped children could not get admitted to a boarding institution. Their contributions are paid by the family allowance fund.

Reference: Law No. 75-534, 30 June 1975, *Journal Officiel*, 1 July 1975; reported in ILO, *Social and Labour Bulletin*, No. 4, (December 1975), pp. 403-404.

Germany, Federal Republic of

Subject: New adoption law.

Text: Legislative changes in 1976 brought a thorough revision of the West German adoption law. Adoption ceases to be a contract between two

private parties and becomes an integration of a homeless child into a new family by judicial decision. The links with the natural parents of adopted children are severed. With minimal exceptions. it will be impossible in the future to annul an adoption.

The text of the new law reads, in part, as follows:

ARTICLE 1. AMENDMENTS OF THE CIVIL CODE

Title Eight of the Second Part of Book Four of the Civil Code is amended as follows:

I. ADOPTION OF MINORS

Sec. 1741 (1) Adoption is authorized if it will further the well-being of a child and if it can be anticipated that it may result in a parent-child relation between the adopter and the child.

(2) The spouses may adopt a child jointly. One spouse alone may adopt his or her child born out of wedlock, or a child of the other spouse . . .

(3) A non-married person alone may adopt a child. The father or the mother of a child born out of wedlock may adopt that child.

. . . .

Sec. 1743 (1) If a child is to be adopted by both spouses jointly, one of them must have reached the age of twenty-five, the other the age of twenty-two.

(2) A person wishing to adopt a child alone must have completed the age of twenty-five.

(3) A person wishing to adopt her or his child born out of wedlock, or a child of his or her spouse, must have reached the age of twenty-one.

(4) The adopter must have full legal capacity.

Sec. 1744. As a rule, an adoption may be declared (by the court) only after the adopter has had the child for an adequate period in his or her care.

Sec. 1745. The court shall not declare the adoption if there exists outweighing adverse interests of children either of the adopter or of the person to be adopted, or if the interests of the child to be adopted may be endangered by the children of the adopter. Property interests, however, may not be decisive.

Sec. 1746. (1) For the adoption, the consent of the child is required. On behalf of the child who is incompetent or is less than fourteen years of age the consent may be given by the child's legal representative alone. Otherwise the child itself must consent to the adoption; in addition, the approval of the legal representative is necessary.

. . . .

Sec. 1747. (1) The consent of the parents is necessary to the adoption of a child born in wedlock.

(2) The consent of the mother is necessary to the adoption of a child born out of wedlock. . . .

(3) The consent cannot be given before the child is eight weeks old. It is valid even if the consenting person did not know the identity, already established, of the adopters.

Sec. 1749. (1) To the adoption of a child by one of the spouses alone the other spouse's consent is necessary . . .

. . . .

Sec. 1751. (1) After a parent has consented to the adoption of a child, his or her parental authority shall cease; the right to personal contact with the child must not be exercised. . . .

Sec. 1752. (1) The adoption shall be declared, on application of the adopter, by the guardianship court.

. . . .

Sec. 1754. (1) If both spouses adopt a child, or if one spouse adopts the child of the other spouse, the child acquires the legal status of a child born to the spouses in wedlock.

(2) Otherwise the child acquires the legal status of a child born in wedlock to the adopter.

Sec. 1755. (1) The family relationship of an adopted child and of its progeny to the former relatives, as well as the rights and obligations arising out of that relationship are extinguished by adoption.

. . . .

Sec. 1757. (1) The child receives as a surname the family name of adopter. . . .

Sec. 1758. (1) Facts which may disclose that an adoption took place, or its circumstances, must not be made public or investigated without the consent of the adopter and of the adopted child, except where this may be required, on special reasons, by public interest.

. . . .

Sec. 1759. An adoption may be annulled only as provided in Sections 1760* and 1763.

. . . .

Sec. 1763. (1) So long as the adopted child has not reached majority the guardianship court can *ex officio* annul the adoption, if it is required for very serious reasons affecting the well-being of the child.

II. ADOPTION OF PERSONS WHO HAVE REACHED MAJORITY

Sec. 1769. The adoption of a person who has reached majority must not be declared if it may conflict with outweighing interests of the children either of the adopter or of the person to be adopted.

By Art. 6, No. 3, of the Adoption Law, Sec. 173 ("Incest") of the Criminal Code has been amended to remove cohabitation between persons who are near relatives by reason of adoption from the conduct which would constitute the misdemeanor of incest.

Reference: Adoption Law of 2 July 1976, BGB1. I., p. 1749.

Subject: Legal regulation of adoption counselling.

**I.e.*, in a few very narrowly drawn cases where the necessary application for adoption or the consent to it has not validly been given.

Summary: Along with the new adoption law, the "Adoption Counselling Law" was enacted. It authorized the State Youth Agencies and some other agencies to "bring together children under 18 and persons who want to adopt a child" to further successful adoptions. Only specially authorized centers may engage in such activity. Unauthorized "bringing together" (*Vermittlung*) of adoptions, as well as advertising of adoption possibilities, is, as a rule, unlawful and punishable as an administrative offense.

Reference: Adoption Counselling Law (*Adoptionsvermittlungsgesetz*) of 2 July 1976, BGB1. I., p. 1762.

Subject: Law regulating conditions of work for young people.

Summary: A new law adopted 23 January 1976 regulates the conditions of workers under 18 years of age. Among the provisions:

It raises the minimum age for employment from 14 to 15 years, with the exception of light work for children over 13 years in agriculture, newspaper distribution and sports;

It limits shifts to 10 hours per day in most types of work (11 hours in catering and hotel business, 8 hours in mining);

It limits work to day-light hours, with some exceptions;

It prohibits employment of youths in dangerous jobs or on piece work and time-regulated work sequences;

It eliminates work days where 5 hours or more are spent at vocational training;

It improves medical care with free annual examinations for workers under 18 years of age.

Reference: *Gesetz Zum Schutze der arbeitenden Jugend*, reported in ILO, *Social and Labour Bulletin*, No. 1 (March 1976), pp. 56-57.

Hong Kong

Subject: Child care centres.

Summary: A 1975 Ordinance defines child care centres as any premises which habitually receive more than five children under 6 years of age, for the purposes of child care and supervision during the day or for longer periods. There are some exceptions.

Section 6 prohibits operation of a centre without registration.

Section 7 governs the procedures for registration.

Section 12 provides that the Governor may appoint any Government medical officer as medical officer of a child care centre.

Finally, Section 18 allows the Governor in Council to promulgate regulations regarding: medical examination of children and employees; the exclusion of any individual for health reasons; the hygiene and sanitation of the centre; and safeguards against health hazards.

Reference: The Child Care Centres Ordinance 1975 (No. 13 of 1975), 6 February 1975; *Hong Kong Government Gazette*, Legal Supplement No. 1, Vol. 117, 7 February 1975, pp. A74-A84; reported in 27 *IDHL*, No. 4 (1976), p. 764.

Subject: Health and welfare of children attending child care centres.

Text: Part V of the 1976 Regulations reads in part:

> 41. (1) If a medical officer certifies that any child or employee should be excluded from the centre by reason of suffering, or having recently suffered, from any infectious disease or by reason of having been in contact with or living in the same house as a person suffering from an infectious disease, the supervisor of the centre shall, if so required in writing by the medical officer, cause such child or employee to be excluded from the centre for such period as shall seem necessary.
>
> (2) If the supervisor suspects or knows of a case of infectious disease amongst children or employees of a centre, or suspects or knows that any such person has been in contact with a case of infectious disease, he shall immediately so report to a medical officer.
>
> (3) In this regulation, 'infectious disease' has the same meaning as in the Quarantine and Prevention of Disease Ordinance.

Other provisions deal with sanitation of the facilities, water supply and furnishings of child care centres. In addition, medical examinations and first aid facilities are covered.

Reference: The Child Care Centres Regulations 1976 (2.N.101 of 1976), 30 March 1976; *Hong Kong Government Gazette*, Legal Supplement, No. 2, Vol. 118, 9 April 1976, pp. B343-B358; reported in 27 *IDHL*, No. 4 (1976), pp. 764-765.

Kenya

Subject: Labor protection for children and women.

Text: The new Employment Act of 1976 provides:

PART IV—EMPLOYMENT OF WOMEN AND JUVENILES

> 24. (1) Nothing in this Part shall apply to an industrial undertaking in which only members of the same family are employed, unless such employment, by its nature or the circumstances in which it is carried on, is dangerous to the life, health or morals of the persons employed therein, or to any technical school or institution which is for the time being approved and supervised by a public authority.
>
> (2) In this Part, except where the context otherwise requires—
>
> 'employment' means employment in any labour exercised for the purpose of gain, whether the gain be to a woman or juvenile, as the case may be, or to any other person; and if a woman or juvenile is found in any industrial undertaking or any mine at any time when work is going on or machinery is in motion therein, except during any intervals for meals or rest, she or he shall, until the contrary is proved, be deemed for the purpose of this Part or have been then in employment therein;
>
> 'industrial undertaking' has, with respect to employment, the following meaning—

(a) mines, quarries and other works for the extraction of any substance from or from under the surface of the earth;

(b) any factory within the meaning of the Factories Act;

(c) the construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbor, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephone installation, electrical undertaking, gas work, water work, or other work of construction, as well as the preparation for or laying of the foundations of any such work or structure;

(d) transport of passengers or goods by road, rail or inland waterway, including the handling of goods at docks, quays, wharves and warehouses, but excluding transport by hand:

Provided that—

(i) the Minister, if he sees fit so to do, having regard to the nature of the work involved in any employment carried on in any industrial undertaking, may by order declare that such employment shall be excluded from the provisions of this Part relating to industrial undertakings, and thereupon such employment shall be deemed not to be employment in an industrial undertaking for the purposes of this Part;

(ii) any undertaking of which a part only is an industrial undertaking shall not for that reason alone be deemed to be an industrial undertaking;

mine includes any undertaking, whether public or private, for the extraction of any substance from or from under the surface of the earth.

25. (1) No person shall employ a child, whether gainfully or otherwise, in any industrial undertaking.

(2) The provisions of this section shall not apply to the employment of a child in an industrial undertaking under a deed of apprenticeship or indentured learnership lawfully entered into under the provisions of the Industrial Training Act.

26. Subject to the provisions of the Industrial Training Act relating to contracts of apprenticeship or indentured learnership, any person who employs a child, or causes any child to be employed, or being the parent or guardian or other person having for the time being the charge of or control over a child, allows such child to be employed, otherwise than under a verbal contract of service shall be guilty of an offense.

27. (1) No child, other than one serving under a contract of apprenticeship or indentured learnership in accordance with the provisions of the Industrial Training Act, shall be employed in any industrial undertaking in attendance on any machinery.

(2) No child shall be employed in any open-cast workings or sub-surface workings which are entered by means of a shaft or adit.

28. (1) Subject to the provisions of section 29 of this Act, no woman or juvenile shall be employed between the hours of 6:30 p.m. and 6:30 a.m. in any industrial undertaking:

Provided that—

(i) women or male young persons may be so employed in cases of emergencies which could not have been controlled or foreseen, which interfere with the normal working of the industrial undertaking and which are not of a periodical nature;

(ii) women may be so employed in cases where their work is connected with raw materials or materials in the course of treatment, being in either case materials which are subject to rapid deterioration, and their work during such hours is necessary to preserve any such materials from certain loss; and

(iii) women, holding responsible positions of a mangerial or technical nature, or employed in health and welfare services, and not normally engaged in manual work, may be so employed.

(2) Notwithstanding the provisions of subsection (1) of this section, the Minister may, after consultation with the Board, authorize an employer in writing to employ women or young persons up to the hour of midnight or from the hour of 5 a.m., subject to such conditions as the Minister may determine.

29. In case of any serious emergency, when the public interest demands it, the Minister may, by notice in the Gazette, suspend the operation of section 28 of this Act in so far as it affects women and male young persons.

31. Every employer who employs any juvenile shall keep and maintain a register containing the following particulars of every juvenile so employed—

(a) age or date of birth;

(b) date of entry into and of leaving such employment;

(c) such other particulars as may be prescribed.

32. An authorized officer may require any juvenile in employment to be medically examined at any time during the period of his employment.

33. (1) If, during the hearing of a charge for an offense under this Act, it is alleged that any person was at the date of the offense of, over or under a particular age, the court hearing the charge shall, after such inquiry as it considers necessary and after hearing any evidence which may be tendered by any party to the proceedings, determine the age of such person for the purposes of the proceedings, and such determination shall be final; and no conviction or order or judgment of a court under this Act shall be invalidated by any subsequent proof that the age of any person has not been correctly stated to, or determined by, the court.

(2) Subject to the provisions of subsection (1) of this section, whenever any question arises as to the age of an employee and no sufficient evidence is available as to his age, a medical officer may estimate his age by his appearance or from any available information, and the age so estimated shall, for the purposes of this Act, and unless and until the contrary is proved, be deemed to be his true age.

34. (1) A labor officer may, by notice in writing served upon the employer, terminate or cancel any contract of service (other than a deed of apprenticeship or indentured learnership lawfully entered into under the provisions of the Industrial Training Act) which has been entered into by any juvenile with such employer, on grounds that, in the opinion of such officer the employer is an undesirable person, or that the nature of the employment is dangerous or immoral, or is likely to be injurious to the health of such juvenile, or for any other cause which may be prescribed.

(2) A labor officer may, by notice in writing served upon any person, prohibit such person from employing a juvenile, or employing a juvenile in any class or description of employment specified in the notice, on the grounds that, in the opinion of such officer, such person is an undesirable person, or that the nature of the employment is dangerous or immoral, or is likely to be injurious to the health of the employee, or for any other cause which may be prescribed.

(3) A notice given under subsection (1) or subsection (2) of this section shall be personally served upon the employer or person to whom it is addressed.

(4) Any employer, employee or person who is aggrieved by a notice given under subsection (1) or subsection (2) of this section may, within thirty days after the date of service thereof, appeal in writing against such notice to a subordinate court of the first class, which may confirm or set aside the notice and the decision of such court thereon shall be final.

(5) Any employer or person who, having been served with a notice given under subsection (1) or subsection (2) of this section which has not been set aside on appeal, employs or continues to employ the juvenile to whom the notice refers in or about the employment to which the notice relates, or any similar employment, or, as the case may be, employs any juvenile, shall be guilty of an offense:

Provided that it shall not be an offense for an employer served with a notice given under subsection (1) of this section to continue to employ the juvenile to whom the notice refers during the period of thirty days limited for appeal or, if an appeal is lodged within that period, pending the outcome of that appeal.

35. If any person knowingly employs a juvenile in any industrial undertaking in contravention of the provisions of this Part, he shall be guilty of an offense and liable to a fine not exceeding one thousand shillings or, in the case of a second or subsequent offense, of two thousand shillings.

37. If any woman or juvenile is killed or dies or suffers any bodily injury in consequence of her or his employer having contravened any provision of this Part, such employer shall, in addition to any other penalty, be liable to a fine not exceeding four thousand shillings, or, in default of payment, to imprisonment for a term not exceeding six months; and the whole or any part of the fine may be applied for the benefit of the injured person or her or his family or otherwise as the Minister may direct:

Provided that—

(i) in the case of injury to health, the employer shall not be liable to a penalty under this section unless the injury was caused directly by the contravention; and

(ii) the employer shall not be liable to a penalty under this section if a charge against him under this Part in respect of the act or default by which the death or injury was caused has been heard and dismissed before the injury occurred.

Reference: *The Employment Act, 1976* (Act No. 2 of 1976), *Kenya Gazette Supplement*, No. 19, made effective on 3 May 1976 by Legal Notice No. 69/1976.

Note: Other provisions of this statute may be found in §§530 and 560.

Madagascar

Subject: Minimum age for employment.

Summary: The minimum age for employment is set at 14 years. This age limitation applies also to apprentices.

Reference: Ordinance No. 75-013-0/DM, *Journal Officiel*, 5 June 1975; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1975), pp. 232-234.

Note: Other provisions of this Ordinance may be found in §§530, 560 and 740.

Mali

Subject: A decree limiting types of work in which young people may be employed.

Summary: A Decree of 18 October 1975 specifies types of work and undertakings in which young persons may not be employed in Mali. The Decree states that, as a general rule, it is unlawful to employ children and young persons on work that is beyond their strength or that is dangerous for their health or morals, in any establishment (including teaching in charitable institutions).

It is unlawful to employ children under 14 years of age as apprentices, except in undertakings employing only members of the employer's family (even in these undertakings, the work must not be dangerous for their health, safety or morals). It is also unlawful to employ them on domestic work in the family and on work of an essentially educational character in technical and vocational schools.

This age limit may be lowered to 12 for light domestic work (kitchen help, childminding) or light agricultural work (picking, gathering, sorting). For other light nonindustrial jobs, written authorization must first be obtained from the labor inspector, who consults the employers' and workers' organizations concerned; but the work must not exceed 4 1/2 hours a day for children not attending school, and those under 14 years of age and attending school may only be employed during the school vacation and for a maximum of 2 hours a day. Such work is prohibited on Sundays, general holidays and at night (between 8 p.m. and 8 a.m.).

The maximum length of the working day for persons aged 14 to 18 is 8 hours, with one or more rest periods amounting to not less than 2 hours.

The compulsory weekly period of rest is 24 consecutive hours; work is prohibited on general holidays.

The Decree specifies the types of job that are beyond the strength of children and young people (carrying loads, transport by means of vehicles and rail tip-wagons). The ban on underground work in mines and quarries applies to young girls in general and to boys under 16 years of age; boys from 16 to 18 may only be employed on such work as part of an apprenticeship or a vocational training course, and for no more than 5 hours in any 24 hour period.

The Decree also lists dangerous jobs that are prohibited for children and young workers.

To secure the implementation of the Decree:

- the employer, in all establishments employing young workers, must keep a register showing the name and date of birth of each person under 18 years of age employed by him; he must keep documents proving the employee's age and produce these whenever the labor inspector wishes to see them;
- the employment of young persons is subject to the consent of the parents or guardian; this consent must be given to the employer in writing;
- the labor inspectors may require a medical examination of any young worker to establish that the work he does is not beyond his strength. When it is established that the worker is physically unfit for the work, he must be assigned to a job that is suited to his physical abilities; if this proves to be impossible, he will be dismissed and will receive payment in lieu of notice and other compensation provided for in the Labour Code.

The latter provision applies equally to young people who were employed on unauthorized work on the date the Decree came into effect.

Two appendices to the Decree list, first, the work and undertakings which are prohibited for children under 18 years of age and the reasons for the prohibition, and second, the undertakings in which the employment of children under 18 years of age is authorized under certain conditions (the conditions are given as well as the reasons for granting authorization).

Reference: Decree No. 98/PG-RM, 18 October 1975; reported in ILO, *Social and Labour Bulletin*, No. 1 (March 1976), pp. 59-60.

Mauritius

Subject: New Law on child labor.

Summary: Children under the age of 15 years may not be employed.

Young persons under the age of 18 years may not be employed for night work or any unhealthy or dangerous work. In addition, young persons may not work more than 36 hours in a week, except in a shop where they may be employed for 48 hours in a week.

Reference: The Labour Act, 1975, 24 December 1975; reported in ILO, *Social and Labour Bulletin*, No. 3 (June 1976), pp. 152-154.

Note: Other provisions of this statute may be found in §§530 and 560.

New Zealand

Subject: Social work services for children and young persons.

Summary: A new Act repeals the Child Welfare Act, 1925 and empowers the Government to establish preventive and social work services to children in danger of being deprived, neglected, disturbed or running afoul of the law due to lack of familial or parental care.

Reference: The Children and Young Persons Act 1974, *The Statutes of New Zealand, 1974*, 1975, Vol. 2, pp. 1633-1707. See 27 *IDHL* No. 2 (1976), pp. 395-396.

Singapore

Subject: Employment of children and young persons.

Text: Sections 68 and 69 of the Employment (Amendment) Act, 1975, read as follows:

> *Section 68.* No child or young person shall be employed in any industrial undertaking which the Minister by notification in the *Gazette* declares to be an industrial undertaking in which no child or young person shall be employed.
>
> *Section 69.* The Minister may by regulations made under this Act prescribe the conditions upon which a child or young person may be employed in any industrial or non-industrial undertaking.

The Employment of Children and Young Persons Regulations, 1976, reads as follows:

> In exercise of the powers conferred by section 69 of the Employment Act, the Minister for Labour hereby makes the following Regulations:—
>
> 1. These Regulations may be cited as the Employment of Children and Young Persons Regulations, 1976, and shall come into operation on the 2nd day of January, 1976.
>
> 2. In these Regulations, unless the context otherwise requires—
>
> "approved apprenticeship" means any apprenticeship approved by the Industrial Training Board from time to time;
>
> "electrical apparatus" includes all apparatus, machines, consuming devices and fittings in which electrical conductors are used or which they form a part;
>
> "insulated" means covered or protected by material of such size, quality and construction according to the circumstances so as to afford adequate protection from danger; and
>
> "live" means electrically charged.
>
> 3. No child who is below the age of twelve years shall be employed in any occupation.
>
> 4. (1) No child shall be employed in any industrial undertaking without the written permission of the Commissioner.

(2) Paragraph (1) shall not apply to a child employed in an industrial undertaking under an approved apprenticeship scheme.

5. No young person shall be employed in an industrial undertaking unless he has been examined by a registered medical practitioner and certified to be medically fit.

6. No child or young person shall be employed as a workman during the night or any part thereof.

7. Subject to the provisions of regulation 9, no child shall be employed as a workman for more than three hours without a break of thirty minutes or for more than six hours in any one day.

8. Subject to the provisions of regulation 9, no young person shall, without the written permission of the Commissioner, be employed as a workman in an industrial undertaking for more than four hours without a break of thirty minutes, or for more than seven hours in any one day.

9. Where a child or young person is attending school, the period of work put in by the child or young person plus the period of school attendance shall not in the aggregate exceed six hours or seven hours respectively in any one day except where such child or young person is employed upon work carried on in any Government or other technical school, or under any approved apprenticeship scheme.

10. No child or young person shall, without the written permission of the Commissioner, be employed as a workman on a rest day.

11. (1) No child or young person shall be employed in any occupation or in any place or under working conditions injurious or likely to be injurious to the health of that child or young person.

(2) The certificate of a registered medical practitioner shall be conclusive upon the question of whether an occupation or any place or working conditions is or are injurious or likely to be injurious to the health of the child or young person.

12. No child, except a child employed under an approved apprenticeship scheme, shall be employed as a workman upon any vessel unless such vessel is under the personal charge of the parent of the child.

13. No person shall employ or permit to be employed any child or young person in any service involving management of, or attendance on, machinery in motion.

14. No person shall employ or permit to be employed any child or young person in any service involving management of, or attendance on, or proximity to, any live electrical apparatus not effectively insulated.

15. No child or young person shall be employed in any underground work.

16. When a young person is employed in an industrial undertaking the employer shall notify the Commissioner for Labour of that fact within thirty days from the date of employment and give all relevant

particulars relating to that young person in the form set out in the Schedule to these Regulations.

Reference: Sections 68 and 69, Employment (Amendment) Act 1975; The Employment of Children and Young Persons Regulations, 1976; See also, *Laws Affecting Population and Family Planning in Singapore*, UNFPA Law and Population Project Report No. 1, by Kenneth K.S. Wee.

Spain

Subject: Protection of young workers, minimum age requirements.

Summary: A new Act covering, in general terms, all aspects of work, was introduced in Spain on 21 April 1976.

Among other provisions, the Act grants 30-day minimum paid annual leave to workers under 18 years of age (21 days for older workers). The minimum age for entering the labor force is set at 16 years.

Finally, workers with a child under 6 years of age will be allowed to work 1/3 fewer hours, with a reduction in pay. Only one spouse may exercise this right.

Reference: *Boletin Oficial del Estado* (Official Gazette), No. 96, 21 April 1976, p. 7894; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1976), pp. 254-255.

Note: Other portions of this statute may be found in §§530 and 560.

Trinidad & Tobago

Subject: Establishment of Tobago Council for Handicapped Children.

Summary: The Act establishes a Council with the objective of: investigating the problems of handicapped children; establishing centers for their care; and, assisting in the provision of education, treatment, training and rehabilitation services to them.

Reference: The Tobago Council for Handicapped Children (Incorporation) Act, Act. No. 28 of 20 September 1975; reported in 27 *IDHL*, No. 4 (1976), p. 891.

Uganda

Subject: Conditions for employing children.

Text: Employment Decree, 1975.

(a) Children under the age of twelve years are not employable, except on such light work as prescribed by the Minister of Labor from time to time by statutory order;

(b) Children under the age of sixteen cannot be employed underground at any time except under an apprenticeship training;

(c) Children under the age of sixteen years cannot be employed to work during the night in any industrial undertaking, except when

permission to do so is granted by the Commissioner of Labor and in case of emergencies which cannot be controlled or foreseen and which are not of frequent occurrence;

(d) Young persons may not be employed in any work which is injurious to health, dangerous, or otherwise unsuitable; and

(e) Any person who employs young persons in any industrial undertaking or on any vessel propelled by mechanical power, is required to keep a register of all young persons employed by him with particulars of age, period of employment, terms and conditions of employment and other particulars prescribed by the Labor Commissioner.

Reference: The Employment Decree of 1975, 13 June 1975, reprinted in A. Kiapi, *Law and Population In Uganda* (Law and Population Programme Monograph Series No. 42 (1977)) at pp. 19-20.

Note: Other provisions of this statute may be found in §§530 and 560.

340 LEGITIMACY OF CHILDREN

Cuba

Subject: Abolishment of "illegitimacy" in new Constitution.

Text: Article 36. All children have the same rights, regardless of being born in or out of wedlock. Distinctions regarding a child's filiation are abolished. No statement shall be made with regard to the difference in birth or the civil status of the parents either in the registration of the children's birth or in any other documents that mention parenthood. The state guarantees, through adequate legal means, the determination and recognition of paternity.

Reference: Constitution of the Republic of Cuba, 24 February 1976, Art. 36; translation in *Constitutional and Parliamentary Information*, 3rd Series, No. 107, 1976, p. 67.

Note: Other provisions of the Constitution may be found in §§240, 320, 570, 610 and 710.

Finland

Subject: Law on establishment of paternity.

Summary: A new law, "On Paternity," contains provisions for proving, legally certifying, or dissolving, the relationship between a child and its father.

Section 2 provides that the husband is presumed to be the father of a child born during marriage. In divorce cases, the presumption also applies if it is possible the child was conceived prior to the termination of the marriage. If the mother remarries prior to the birth, the new husband is regarded as the father. Procedures for proving paternity where it is denied are also set out.

Chapter 3 provides the procedure in cases where the father wishes to admit paternity.

Finally, Chapter 5 deals with the dissolution of the relationship between child and father.

Reference: Law "On Paternity," 5 September 1975; *Finlands Författningssamling*, p. 700.

France

Subject: Retroactive abolishment of discrimination against "adulterine children."

Summary: Prior to 1972, French civil law discriminated harshly against children born from an extramarital relationship of a married person. The 1972 Filiation Law abolished this discrimination in the areas of status and property rights.

In November 1975, the French Supreme Court held that the new anti-discrimination provisions did not apply to children born before 1 August 1970. The French Parliament recently passed legislation which expressly provides that the new rights are to be applied retroactively, even in cases where a negative court decision has already been issued.

Reference: Law No. 76-1036, 15 November 1976.

Subject: A husband who consents to his wife's artificial insemination, nonetheless retains the right to deny his paternity.

Summary: This result was reached by a (first instance) civil court in Nice, in a decision on 30 June 1976. The facts were as follows. A wife whose husband was permanently sterile accepted artificial insemination from a donor. She asserted that this was done with the consent of the husband. After a child was born, the husband brought an action to disavow the paternity, denying that he had consented to the artificial insemination. The only contested fact in this litigation was whether or not the husband did consent. The court, however, held that this fact was not relevant, as under the amended Section 311, para. 9, of the Civil Code "claims relating to filiation cannot be renounced." Thus, even if the husband had consented to his wife's artificial insemination, being sterile, he would be entitled to change his mind subsequently and to obtain a judgment declaring that the child born from the artificial insemination was not his legitimate child.

Reference: J.C.P. 1976, II, 18597, 30 June 1976; *Observation*, Harichaux-Ramu.

Note: Dr. Harichaux-Ramu emphasizes the necessity of legislation which would regulate legal questions of artificial insemination, as the number of children thus born in France is estimated between 1,000 and 2,000 a year.

Jamaica

Subject: Abolishment of Illegitimacy.

Text: The New Status of Children Act, 1976, provides:

1. This Act may be cited as the Status of Children Act, 1976, and shall come into operation on a day to be appointed by the Minister by notice published in the Gazette.

2. (1) In this Act (except in the Schedule "child" includes a child born out of wedlock;

"marriage" includes a void marriage;

"Registrar-General" means the Registrar-General under the Registration (Births and Deaths) Act and includes any person for the time being discharging the duties of that office;

"trustee" includes guardians, committees of lunatics, as well as all persons who are trustees within the meaning of the Trustee Act.

(2) For the purposes of sections 11 to 15 inclusive—

"blood samples" means blood taken for the purpose of blood tests;

"blood tests" means blood tests carried out and includes any test made with the object of ascertaining the inheritable characteristics of blood;

"excluded" means excluded subject to the occurrence of mutation.

STATUS OF CHILDREN

3. (1) Subject to subsection (5) and to the provisions of sections 4 and 7, for all the purposes of the law of Jamaica the relationship between every person and his father and mother shall be determined irrespective of whether the father and mother are or have been married to each other, and all other relationships shall be determined accordingly.

(2) The rule of construction whereby in any instrument words of relationship signify only legitimate relationship in the absence of a contrary expression of intention is hereby abolished.

(3) Subject to subsection (4), this section shall apply in respect of every person, whether born before or after the commencement of this act, and whether born in Jamaica or not, and whether or not his father and mother has ever been domiciled in Jamaica.

(4) Nothing in this section shall affect or limit in any way any rule of law relating to—

(a) the domicile of any person;
(b) the citizenship of any person;
(c) the provisions of the Children (Adoption of) Act which determine the relationship to any other person of a person who has been adopted;
(d) the construction of the word "heir" or of any expression which is used to create an entailed interest in real or personal property.

4. (1) All dispositions made before the commencement of this Act shall be governed by the enactments and rules of law which would have applied to them if this Act had not been passed.

(2) Where any disposition to which subsection (1) applies creates a special power of appointment, nothing in this Act shall extend the class of person in whose favor the appointment may be made, or cause the exercise of the power to be construed so as to include any person who is not a member of that class.

(3) The estates of all persons who have died intestate as to the whole or any part thereof before the commencement of this Act shall be distributed in accordance with enactments and rules of law which would have applied to them if this Act had not been passed.

(4) In this section "disposition" means a disposition; including an oral disposition, of real or personal property whether *inter vivos* or by will or codicil; and notwithstanding any rule of law, a disposition made by will or codicil executed before the date of commencement of this Act shall, notwithstanding the provisions of section 29 of the Wills Act, not be treated for the purposes of this section as made on or after that date by reason only that the will or codicil is confirmed by a codicil executed on or after that date.

5. (1) For the purposes of the administration or distribution of the estate of any deceased person or of any other property held upon trust, every personal representative or trustee shall, whenever it is material in the circumstances, make honest and reasonable inquiries as to the existence of any person who could claim an interest in the estate or other property by reason only of this Act, but shall not be obliged to pursue such inquiries further than he honestly and reasonably believes to be necessary.

(2) No action shall lie against any personal representative or trustee, by any person who could claim an interest in the estate or other property aforesaid by reason only of this Act, to enforce any claim arising by reason of the fact that the personal representative or trustee has made any distribution of the estate or property or otherwise acted in the administration of the estate or property disregarding the claims of that person where, at the time of making the distribution or otherwise so acting, the trustee, having made such inquiries as are required under subsection (1), had no notice of the relationship on which the claim is based.

(3) Nothing in this section shall prejudice the right of any person claiming an interest in the estate or property aforesaid, (which interest is alleged by the claimant to have existed at the time the trustee made the distribution or otherwise acted as aforesaid) to follow such estate or property, or any property representing it, into the hands of any person, other than a purchaser, who may have received it.

EVIDENCE RE PARENTHOOD

6. (1) Subject to subsections (2) and (3), a child born to a woman during her marriage, or within ten months after the marriage has been dissolved by death or otherwise, shall, in the absence of evidence to the contrary, be presumed to be the child of its mother and her husband, or former husband, as the case may be.

(2) Subsection (1) shall not apply if, during the whole of the time within which the child must have been conceived, the mother and her husband were living apart under an oral or written agreement for separation, or under a decree or order of separation, or *decree nisi* of divorce, made by a competent court or authority in Jamaica or elsewhere.

(3) Subsection (1) shall not apply where a child is born within ten months after the dissolution of the marriage of its mother by death or otherwise, and after she has married again, and in such case there shall be no presumption as between the husband of the mother and

her former husband that either is the father of the child, and the question shall be determined on the balance of probabilities in each case.

7. (1) The relationship of father and child, and any other relationship traced in any degree through that relationship shall, for any purpose related to succession to property or to the construction of any will or other testamentary disposition or of any instrument creating a trust, be recognized only if—

(a) the father and the mother of the child were married to each other at the time of its conception or at some subsequent time; or

(b) paternity has been admitted by or established during the lifetime of the father (whether by one or more of the types of evidence specified by section 8 or otherwise);

Provided that, if the purpose aforesaid is for the benefit of the father, there shall be the additional requirement that paternity has been so admitted or established during the lifetime of the child or prior to its birth.

(2) In any case where by reason of subsection (1) the relationship of father and child is not recognized for certain purposes at the time and the child is born, the occurrence of any act, event, or conduct which enables that relationship, and any other relationship traced in any degree through it, to be recognized shall not affect any estate, right, or interest in any real or personal property to which any person has become absolutely entitled, whether beneficially or otherwise, before the Act, event or conduct occurred.

8. (1) If, pursuant to section 19 of the Registration (Births and Deaths) Act or to the corresponding provisions of any former enactment, the name of the father of the child to whom the entry relates has been entered in the register of births (whether before or after the commencement of this Act), a certified copy of the entry made or given in accordance with section 55 of that Act or sealed in accordance with section 57 of the said Act shall be *prima facie* evidence that the person named as the father is the father of the child.

(2) Any instrument signed by the mother of a child and by any person acknowledging that he is the father of the child shall, if executed as a deed or by each of those persons in the presence of an attorney-at-law or a Justice of the Peace or a Clerk of the Courts or a registered medical practitioner or a minister of religion or a marriage officer or a midwife or the headmaster of any public educational institution as defined in the Education Act be *prima facie* evidence that the person named as the father is the father of the child.

(3) An affiliation order within the meaning of the Affiliation Act shall be *prima facie* evidence of paternity in any subsequent proceedings, whether or not between the same parties.

(4) Subject to subsection (1) of section 7, a declaration made under section 10 shall, for all purposes, be conclusive proof of the matters contained in it.

(5) An order made in any country outside Jamaica declaring a person to be the father or putative father of a child, being an order to which this subsection applies pursuant to subsection (6), shall be *prima facie* evidence that the person declared the father or putative father, as the case may be, is the father of the child.

(6) The Minister may from time to time, by order, declare that subsection (5) applies with respect to orders made by any court or public authority in any specified country outside Jamaica or by any specified court or public authority in any such country.

9. (1) Any instrument of the kind described in subsection (2) of section 8, or a duplicate or attested copy of any such instrument, may in the prescribed manner and on payment of the prescribed fee (if any) be filed in the office of the Registrar-General, but it shall not be necessary to file any such instrument.

(2) The Registrar-General shall cause indices of all instruments and duplicates and copies of instruments filed with him under subsection (1) to be made and kept in his office, and shall upon the request of any person and on receipt of the prescribed fee (if any), cause a search of any index to be made, and shall permit any such person to inspect any such instrument or any such duplicate or copy.

(3) Where the Supreme Court or the Family Court makes a declaration of paternity under section 10 or where a Resident Magistrate's Court or the Family Court makes an affiliation order within the meaning of the Affiliation Act, the Registrar of the Court or the Clerk of the Court, as the case may be, shall forward a copy of the declaration or order, as the case may require, to the Registrar-General for filing in his office under this section, and on receipt of any such copy the Registrar-General shall file it accordingly as if it were an instrument of the kind described in subsection (2) of section 8.

10. (1) Any person who—

(a) being a woman, alleges that any named person is the father of her child; or

(b) alleges that the relationship of father and child exists between himself and any other person; or

(c) being a person having a proper interest in the result, wishes to have it determined whether the relationship of father and child exists between two named persons,

may apply in such other manner as may be prescribed by rules of court to the Supreme Court or the Family Court for a declaration of paternity, and if it is proved to the satisfaction of the Court that the relationship exists the Court may make a declaration of paternity whether or not the father or the child or both of them are living or dead.

(2) Where a declaration of paternity under subsection (1) is made after the death of the father or of the child, the Court may at the same or any subsequent time make a declaration determining, for

the purposes of paragraph (b) of subsection (1) of section 7, whether any of the requirements of that paragraph have been satisfied.

BLOOD TESTS

11. (1) In any civil proceedings in which the paternity of any person (hereinafter referred to as "the subject") fails to be determined by the court hearing the proceedings, the court may, on an application by any part to the proceedings, give a direction for the use of blood tests to ascertain whether such tests show that a party to the proceedings is or is not thereby excluded from being the father of the subject and for the taking, within a period to be specified in the direction, of blood samples from the subject, the mother of the subject and any party alleged to be the father of the subject or from any, or any two, of those persons.

(2) A court may at any time revoke or vary a direction previously given by it under this section.

(3) The person responsible for carrying out blood tests taken for the purpose of giving effect to a direction under this section shall make to the court by which the direction was given a report in which he shall state–

(a) the results of the tests;
(b) whether the person to whom the report relates is or is not excluded by the results from being the father of the subject; and
(c) if that person is not so excluded, the value, if any, of the results in determining whether that person is the subject's father;

and the report shall be received by the court as evidence in the proceedings of the matters stated therein.

(4) Where a report has been made to a court under subsection (3), any party to the proceedings may, with the leave of the court, or shall, if the court so directs, obtain from the person who made the report a written statement explaining or amplifying any statement made in the report, and that statement shall be deemed for the purposes of this section to form part of the report made to the court.

(5) Where a direction is given under this section in any proceedings, a party to the proceedings shall not be entitled to call as a witness the person responsible for carrying out the tests taken for the purpose of giving effect to the direction, or any person by whom anything necessary for the purpose of enabling those tests to be carried out was done, unless–

(a) within fourteen days after receiving a copy of the report he serves notice on the other parties to the proceedings, or on such of them as the court may direct, of his intention to call that person; or
(b) the court otherwise directs;

and where any such person is called as a witness the party who called him shall be entitled to cross-examine him.

(6) Where a direction is given under this section the party on whose application the direction is given shall pay the cost of taking and testing blood samples for the purpose of giving effect to the direction (including any expenses reasonably incurred by any person in taking any steps required of him for the purpose), and of making a report to the court under this section, but the amount paid shall be treated as costs incurred by him in the proceedings.

(7) In this section civil proceedings include any proceedings under the Affiliation Act.

12. (1) Subject to the provisions of subsections (3) and (4) and without prejudice to section 13, a blood sample which is required to be taken from any person for the purpose of giving effect to a direction under section 11 shall not be taken from that person except with his consent.

(2) The consent of a minor who has attained the age of sixteen years to the taking from himself of a blood sample shall be as effective as it would be if he were of full age; and where a minor has by virtue of this subsection given an effective consent to the taking of a blood sample it shall not be necessary to obtain any consent for it from any other person.

(3) A blood sample may be taken from a person under the age of sixteen years, not being such a person as is referred to in subsection (4), if the person who has the care and control of him consents.

(4) A blood sample may be taken from a person who is suffering from mental disorder and is incapable of understanding the nature and purpose of blood tests if the person who has the care and control of him consents and the medical practitioner in whose care he is has certified that the taking of a blood sample from him will not be prejudicial to his proper care and treatment.

13. (1) Where a court gives a direction under section 11 and any person fails to take any step required of him for the purpose of giving effect to the direction, the court may draw such inferences, if any, from that fact as appear proper in the circumstances.

(2) Where in any proceedings in which the paternity of any person falls to be determined by the court hearing the proceedings there is a presumption of law that that person is born in wedlock, then if—

(a) a direction is given under section 11 in those proceedings; and
(b) any party who is claiming any relief in the proceedings and who for the purpose of obtaining that relief is entitled to rely on the presumption fails to take any step required of him for the purpose of giving effect to the direction,

the court may adjourn the hearing for such period as it thinks fit to enable that party to take that step, and if at the end of that period he has failed without reasonable cause to take it the court may, without prejudice to subsection (1), dismiss his claim for relief notwithstanding the absence of evidence to rebut the presumption.

(3) Where any person named in a direction under section 11 fails to consent to the taking of a blood sample from himself or from any person named in the direction of whom he has the care and control, he shall be deemed for the purposes of this section to have failed to take a step required of him for the purpose of giving effect to the direction.

14. If for the purpose of providing a blood sample for a test required to give effect to a direction under section 11 any person personates another, or proffers a child knowing that it is not the child named in the direction, he shall be liable on summary conviction in a Resident Magistrate's Court to imprisonment for a term not exceeding twelve months or to a fine not exceeding five hundred dollars.

15. The Minister may by regulations make provision as to the manner of giving effect to directions under section 11 and, in particular, any such regulations may—

(a) provide that blood samples shall not be taken except by such medical practitioners as may be designated by the Minister;
(b) regulate the taking, identification and transport of blood samples;
(c) require the production at the time when a blood sample is to be taken of such evidence of the identity of the person from whom it is to be taken as may be prescribed by the regulations;
(d) require any person from whom a blood sample is to be taken, or, in such cases as may be prescribed by the regulations, such other person as may be so prescribed, to state in writing whether he or the person from whom the sample is to be taken, as the case may be, has during such period as may be specified in the regulations suffered from any such illness as may be so specified or received a transfusion of blood;
(e) provide that blood tests shall not be carried out except by such persons, and at such places, as may be appointed by the Minister;
(f) prescribe the blood tests to be carried out and the manner in which they are to be carried out;
(g) regulate the charges that may be made for the taking and testing of blood samples and for the making of a report to a court under section 11;
(h) make provision for securing that so far as practicable the blood samples to be tested for the purpose of giving effect to a direction under section 11 are tested by the same person;
(i) prescribe the form of the report to be made to a court under section 11.

GENERAL

16. (1) The Minister may from time to time, make regulations for all or any of the following purposes—

(a) prescribing fees and forms for the purpose of this Act;
(b) providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

(2) Where the Registrar-General is empowered to do any act for which a fee is payable, he may refuse to do the act until the fee is paid.

(3) Notwithstanding the provisions of any regulations under this Act, the Registrar-General may dispense with the payment of any fee payable under this Act.

17. The enactments mentioned in the first column of the Schedule are hereby amended to the extent specified in the second column of that Schedule.

Reference: The Status of Children Act, 1976, November 1976.

Sweden

Subject: Joint custody of children born inside and outside of wedlock.

Summary: The Riksdag has enacted a new law, due to take effect on 1 January 1977, which allows both parents to act as guardians and share custody of children regardless of whether they have ever married.

Under the new statute, the mother would still automatically maintain custody at birth, if the parents are not married. But, if the parents agree, the father may take custody, or, if there is disagreement, a court may award custody to either, based on what is best for the child. Joint custody is also made possible even if the parents are unmarried. This is also true of situations where there has been a divorce, provided the parents agree on joint custody.

In addition, all references to children born inside or outside of marriage are to be deleted from statutes and regulations. "Child" or "children" is now the proper usage.

Reference: Joint Custody of Children Act, to take effect 1 January 1977; reported in Birgitta Linner, "No Illegitimate Children in Sweden," in *Current Sweden*, No. 157 (April 1977), (2).

United States—State Law

Connecticut

Subject: Status of children conceived through artificial insemination.

Text: Title 45, Chapter 778b, General Statutes of Connecticut, Revision of 1958, has been amended to read:

§ 45-69f It is declared that the public policy of this state has been an adherence to the doctrine that every child born to a married woman during wedlock is legitimate. Sections 45-69f to 45-69n, inclusive, and section 45-162, shall be construed as a codification and clarification of such doctrine with respect to any child conceived as a result of heterologous artificial insemination.

§ 45-69g. (a) The technique known as heterologous artificial insemination, or artificial insemination with the semen of a donor, hereinafter referred to as A.I.D., may be performed in this state only by persons certified to practice medicine in this state pursuant to chapter 370.

(b) A.I.D. shall not be performed unless such physician receives in writing the consent and request of the husband and wife desiring the utilization of A.I.D. for the purpose of conceiving a child or children.

§ 45-69h. Whenever a child is born, who was conceived by the use of A.I.D., a copy of the consent and request required under subsection (b) of section 45-69g, together with a statement of the physician who performed the A.I.D., that to the best of his knowledge such child was conceived by the use of such A.I.D., shall be filed with the judge of probate in the district in which such child was born or in which such child resides, and the information contained therein may be disclosed only to the persons executing such consent and no other person shall have access to such information except upon order of the probate court for cause shown.

§ 45-69i. Any child or children born as a result of A.I.D. shall be deemed to acquire, in all respects, the status of a naturally conceived legitimate child of the husband and wife who consented and requested the use of A.I.D.

§ 45-69j. No donor of sperm used in A.I.D., or any person claiming by or through him shall have any right or interest in any child born as the result of A.I.D.

§ 45-69k. (a) Any child conceived as a result of A.I.D. performed in Connecticut and born in another jurisdiction shall have his status determined by the law of such other jurisdiction.

(b) If a child is conceived by A.I.D. in another jurisdiction but is born in Connecticut to a husband and wife who, at the time of conception, were not domiciliaries of Connecticut, such child shall have the same status as is provided in section 4 of this act notwithstanding the provisions of sections 2 and 3 of this act may not have been complied with.

§ 45-69l. A child born as a result of A.I.D. may inherit the estate of his mother and her consenting spouse or their relatives as though he were the natural child of such mother and consenting spouse and he shall not inherit the estate from his natural father or his relatives. The mother and her consenting husband or their relatives may inherit the estate of such child born as a result of A.I.D., if the child dies intestate, and the natural father or his relatives shall not inherit from him.

§ 45-69m. The words "child," "children," "issue," "descendants," "descendant," "heirs," "heir," "unlawful heirs," "grandchild" and "grandchildren," when used in the singular or plural in any will or trust instrument, shall, unless such document clearly indicates a contrary intention, include children born as a result of A.I.D. The provisions of this section shall apply to wills and trust instruments

whether or not executed before, on or after the effective date of this act unless the instruments indicate an intent to the contrary.

Section 45-162 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) The words "child," "children," "issue," "descendants," "descendant," "heirs," "heir," "unlawful heirs," "grandchild" and "grandchildren," when used in the singular or plural in any will or trust instrument, shall, unless such document clearly indicates a contrary intention, be deemed to include children born as a result of A.I.D. The provisions of this section shall apply to wills and trust instruments whether or not executed before, on or after the effective date of this act unless the instrument indicates an intent to the contrary.

(b) If, after the making of a will, the testator marries or is divorced or his marriage is dissolved or a child is born to the testator or a minor child is legally adopted by him, or a child is born as a result of A.I.D. as defined in section 1 of this act, to which the testator has consented in accordance with section 2 of this act, and no provision has been made in such will for such contingency, such marriage, divorce, dissolution, birth or adoption of a minor child shall operate as a revocation of such will. No will or codicil shall be revoked in any other manner except by burning, cancelling, tearing or obliterating it by the testator or by some person in his presence by his direction, or by a later will or codicil. The revocation of such will by divorce or dissolution of marriage shall be effective only as to wills executed on and after October 1, 1967.

§ 45-69n. Nothing in this act shall be construed as a change or modification of the rights or status of children born prior to October 1, 1975, but shall be construed as a clarification and codification of the rights and status such children had on said date.

Reference: Public Act No. 75-233 of 1975, and Public Act 76-279 of 1976; Amendments to Title 45, Chapter 778b, General Statutes of Connecticut, Revision of 1958.

PUBLIC WELFARE

510 FAMILY ALLOWANCES GENERALLY

Belgium

Subject: Family Benefits for independent workers.

Text: King Baudouin of Belgium has ratified a law providing family benefits to independent workers. The law, which became effective on 1 April 1976, provides in part:

Article 1. The King established, by decree decided in the Council of Ministers, the system of family allowances envisioned by the Royal Decree Number 38 of July 26, 1967, providing for the social status of independent workers.

Article 2. This system will provide in particular the granting of:

1. Birth allowances;
2. Family allowances, of which the amount can vary specifically as a function of the number and the age of the children, of the condition of orphanhood or handicaps, or of a child of an independent worker or of a welfare recipient incapable of working.

These benefits are granted starting with the first child.

Article 3. In view of the adaptation of family benefits to the consumer price index, in conformity with the law of August 2, 1971, the specific regulations following are taken into account:

1. The family benefits paid quarterly are considered to be due in monthly thirds;
2. The birth benefit is adapted as are the family benefits assignable to the month of birth.

Article 4. Without prejudice to the actions to be taken by virtue of Article 5, . . . the family benefits are granted and paid to the social security account for independent workers by the National Auxiliary Social Security Administration for Independent Workers, in an amount determined by the person who, by his professional activity, exercises the right to these benefits conforming to the Royal Decree Number 38 of July 27, 1967, affiliated with one or another of these accounts.

Article 5. In the matter of family benefits, the National Social Security Institute for Independent Workers has the specific responsibility:

1. To assume the general financial administration of the system of family benefits provided by the present law;
2. To assure the coordination with the National Office of Family Allowances for Salaried Workers;
3. To make available to the Social Security funds for independent workers the funds necessary in view of payment of the family benefits due by the said funds;
4. To grant and to pay the family benefits in the cases provided by the King;
5. To establish the statistics on the subject of beneficiary children and of persons whose activity exercises the right to family benefits.

Article 6 §1. The financing of the system is assured by:

1. The product of the contribution assigned to the system of family benefits in virtue of the Royal Decree Number 38 of July 27, 1967, setting up the social status of independent workers;
2. A national subsidy of which the annual amount is fixed at 3,258.4 million. This subsidy is due in monthly twelfths.

The national subsidy is adapted to fluctuation of the consumer price index conforming with the law of August 2, 1971. The amount in question at the second paragraph is already adapted to the pivot index 142.75.

§2. As the financing of the system requires, the national institute visualized in Article 5 may raise loans to which is attached the guarantee of the State.

Article 7. The King sets the time limitations of legal actions intended to obtain payment of family allowances or reimbursement of family allowances paid improperly.

Reference: Law relative to family benefits for independent workers, 29 March 1976. *The Belgium Monitor*, 6 May 1976, pp. 5950-5951.

Bolivia

Subject: Reform of Social Security System and family benefits.

Summary: Family benefits payable by an employer under a reform decree of 24 December 1975 include:

A household allowance of 40 pesos a month for each married or single worker;

A family allowance of 45 pesos a month for each child up to 19 years of age;

A nursing allowance for each child under 1 year;

A birth allowance of 400 pesos at the birth of each child;

A burial allowance of 400 pesos for each deceased child under 19 years of age.

Reference: Legislative Decree, No. 13214, 24 December 1975; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1976), pp. 268-269.

Note: Other provisions of this Decree may be found in §§530 and 540.

France

Subject: Family benefits to young couples.

Summary: As part of an Act providing welfare arrangements for mothers and their families, loans are to be granted to young married couples for housing, home improvements, and furniture and household effects.

The loans are to be financed in the same way as family benefits.

Reference: Act No. 75-6 of 3 January 1975, *Journal Officiel*, 4 January 1975; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1975), p. 300.

Note: For other provisions of this statute regarding post-natal benefits to children, see §310.

Iran

Subject: Family allowances under new Social Security Act.

Summary: Under the new Social Security Act, covered persons will receive family grants for their first two children. Costs are borne by the employer.

Reference: ILO, *Social and Labour Bulletin*, No. 1 (March 1976), pp. 72-74.

Note: Other provisions of this statute may be found under §§530 and 540.

Mali

Subject: Stricter conditions for family benefits.

Summary: Conditions for the receipt of Family Benefits have been strengthened. An Ordinance of 15 July 1975, amending the Social Welfare Code of 1962, has lengthened the required time of service from 6 to 9 months before a worker becomes entitled to benefits.

A Decree, promulgated on 5 August 1975, raises the rate of contribution to the family benefit program from 5 to 8% of wages. In addition, it removes the upper limit on wages for which contributions are payable. Finally, it lays down procedures for collection of contributions.

Reference: Ordinance No. 41/CMLN, 15 July 1975, and Decree No. 139/PGRM, 5 August 1975; reported in ILO, *Social and Labour Bulletin*, No. 1 (March 1976), pp. 74-75.

Note: Other provisions of the Ordinance may be found in §530.

Peru

Subject: Family subsidy to workers.

Text: A Decree of 2 December 1976 reads, in part, as follows:

Article 1. The family subsidy will be given to the worker or employee of the public sector beginning from the time it takes effect, and including payments for the probatory period if the worker:

(a) is married,
(b) is responsible for children less than 21 years of age,
(c) is responsible for children of more than 21 years of age who are physically or mentally incapacitated.

....

Article 4. The family subsidy for disabled children will be given to regular workers in the public sector whose children who are of full age, are in their charge and physically and mentally incapacitated, and cannot take care of themselves. The incapacity must be proven by a medical certificate issued by the authorized offices of the Ministry of Health.

Article 5. The family subsidy for married people with minor children and/or incapacitated children includes only one of the spouses and will be paid to the wife and/or mother if both are stable workers in the public sector, except in the case of a judicial ruling to the contrary. If the benefit received by the husband and/or father is greater, it must be transferred to the single account of the wife or mother.

....

Article 7. The family subsidy for married people ends when there is:

(a) annulment of the marriage,
(b) divorce,
(c) death of the spouse.

Article 8. The family subsidy for children ends if:

(a) the child reaches 21 years of age,
(b) the child is emancipated,
(c) the child marries before the age of 21,
(d) the child receives salary, pension, or income greater than the minimum wage, whatever the origin and time of year in which it is obtained,
(e) the cause of the incapacity disappears, or
(f) the child dies.

Reference: Supreme Decree No. 008, 2 December 1975.

520 HOUSING ASSISTANCE PROGRAMS

Peru

Subject: Improvement in housing and encouragement of construction.

Summary: The Peruvian three year plan calls for significant improvement in housing as follows:

38. HOUSING AND CONSTRUCTION

a. *Objective*

Significant improvement in the housing conditions of the Peruvian population and the encouragement of public and private investment in construction.

b. *Outline of action*

(1) Progressively disclose and implement the National Plan for Urban Development, while giving to all sectors opportunities for discussion.

(2) Promote the construction of economical and multi-family housing, taking into account social realities in the use of housing, and establish legal norms to regulate rents and sales.

(3) Promote companies for the production of construction materials of construction which are not reserved to the State, as well as for private construction in general.

(4) Adapt the Regulations on Construction, making it easier for the design and construction of housing to be made with materials of the respective region and with intensive use of hand labor.

(5) Assign to the Sector the exclusive responsibility for water and sewage.

(6) Regularize production and regulate the buying and selling of construction materials, along with the control of quality and prices.

(7) Redirect housing financing in order to permit the financing of projects offering basic services to low-income groups, by formulating an investment plan.

(8) Extend water and sewage systems and the furnishing of communities with such equipment, in conformity with priorities set out in the plan of regional development.

(9) Progressively eradicate hovels and shacks, with the participation of Local Government and the Private Sector.

(10) Promote and give technical assistance to low-income groups for construction of their own housing and community participation in the construction and betterment of housing.

(11) Direct urban expansion towards uncultivated and unproductive land while preserving farmland.

(12) Integrate the *Pueblos Jovenes* into the Urban System so that they may have those public services which are indispensable.

(13) Improve housing legislation, in particular regarding administrative transactions, so as to speed up the improvement of programs and projects.

(14) Give incentive to technological investigation relative to new materials and construction techniques, taking into account our national, regional and local reality.

(15) Set rules for and control the construction of public buildings and their furnishings with a view towards decentralization and austerity.

(16) Promote construction financing, preferably orienting it towards large scale housing developments outside of large urban centers.

(17) Increase financial resources by means of obtaining foreign help for the building of large scale services, progressive urbanization and shopping centers.

Reference: *Plan de Gobierno Tupac Amaru*, 1977-1980, §38.

Note: Other provisions of the Plan may be found in §§570, 610 and 710.

530 MATERNITY LEAVES AND BENEFITS

Argentina

Subject: Changes in maternity benefits.

Summary: Amendments to Act No. 20.744 of 11 September 1974 concerning labor contracts contain several provisions applicable to maternity.

The time period during which women workers are presumed to be dismissed on grounds of pregnancy is extended from 6 months to 7 1/2 months. The period runs from the time the woman provides her employer with a certificate confirming pregnancy, and may precede or follow confinement.

The time period for unpaid leave for purposes of having a child has been reduced to from 3 to 6 months. The period under the 1974 Act was 6 months to a year. The employer must reinstate the woman at the end of the period. Previously, the employer had up to 60 days from a request by the woman to reinstate.

Finally, the period during which dismissal without reasons being given has been reduced to 3 months preceding and 6 months following the marriage. (The 1974 Act provided for 6 months and 12 months respectively.)

Reference: Standard Contract of Employment, Act No. 21.293, 23 April 1976, and Decree No. 390, 13 May 1976; *La Nacion* (Buenos Aires), 25 April 1976; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1976), pp. 206-208.

Austria

Subject: Increase in maternity benefits.

Summary: Maternity benefits have been extended to adoptive mothers and mothers who are employed part-time but making less than 1,040 schillings a month. Allocations have been raised substantially, and mothers living alone may receive even higher allowances.

Mothers living alone who are unable to place a child in a creche, and thus unable to work, receive special unemployment benefits until the child reaches three years.

Reference: *Bundesgesetzblatt* (Official Gazette), No. 389, 6 May 1976, Section for 25 June 1976; *Amtliche Nachrichten*, July 1976; as reported in ILO, *Social and Labour Bulletin*, No. 4 (December 1976), p. 370.

Bolivia

Subject: Maternity benefits.

Summary: Maternity benefits for a period of 45 days before confinement and 45 days after will be paid to women who have made four monthly contributions in the year prior to the date on which payment of pre-natal benefits end.

The women may not engage in gainful employment while receiving benefits.

Reference: Legislative Decree, No. 13214, 24 December 1975; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1976), pp. 268-269.

Note: Other provisions of this Decree may be found in §§510 and 540.

Congo

Subject: Maternity provisions of new Labour Code.

Summary: A new Labour Code promulgated on 15 March 1975 contains the following provisions dealing with maternity:

The duration of maternity leave with pay, though remaining at 15 weeks, has been reapportioned so that 9 weeks are required to be taken prior to confinement. A woman is totally barred from employment during those 15 weeks. The old law contained a 6 week ban.

During maternity leave, the woman is entitled to full wages, up from half wages under the previous code. The employer pays half and the National Social Welfare Fund bears the other half in addition to the costs of free care.

Finally, a woman may be prohibited from work for longer periods if the work is particularly hazardous or there are serious complications in the pregnancy. The inspector of labor is responsible for this prohibition, done on the basis of a medical certificate. During this time the woman retains all maternity benefits.

Reference: Act No. 45/75, 15 March 1975; reported in ILO, *Social and Labour Bulletin*, No. 4 (December 1975), pp. 349-351.

Germany, Democratic Republic of

Subject: Maternity leaves and benefits extended.

Summary: Under a Governmental Decree of 27 May 1976, implemented by regulation of 1 October 1976, maternity leaves and benefits have been improved as follows:

a) Paid maternity leave has been extended from 18 to 26 weeks (6 weeks before the delivery and 20 after); in cases of complicated birth, the leave extends two additional weeks.

b) After the above leave runs out, a mother of two or more children may, if she wishes, take an additional leave for the period until her last child reaches one year of age, provided she takes care of this last child in her household. During this period she will receive "maternity support" and can earn additional (income tax free) income by performing occasional part-time work for her employer.

Reference: Governmental Decree, BGB1.I., p. 269, 27 May 1976; Regulation, BGB1.I., p. 488, 1 October 1976.

Iran

Subject: Maternity benefits under new Social Security Act.

Summary: Under a new Social Security Act approved by Imperial Decree on 30 June 1975, maternity benefits are only payable when the worker has made contributions for 60 days during the twelve months preceding confinement. Daily benefits amount to two-thirds of the insured person's wages. They are payable for a maximum of 12 weeks.

Reference: ILO, *Social and Labour Bulletin*, No. 1 (March 1976), pp. 72-74.

Note: Other provisions of the statute may be found under §§510 and 540.

Kenya

Subject: Maternity leave.

Text: Section 7(2) of the new Employment Act reads as follows:

> A woman employee shall be entitled to two months' maternity leave with full pay: Provided that a woman who has taken two months' maternity leave shall forfeit her annual leave in that year.

Reference: Employment Act. No. 2/1976, made effective on 3 May 1976 by Legal Notice, No. 69/1976. See also S.B.O. Gutto, *The Status of Women in Kenya, A Study of Paternalism, Inequality and Under-Privilege.* Discussion Paper No. 235, Institute for Development Studies, University of Nairobi, April 1976, p. 76.

Note: Other provisions of this statute may be found in §§320 and 560.

Madagascar

Subject: Maternity provisions of New Labour Code.

Summary: The Military Directorate of Madagascar issued a new Ordinance on 17 May 1975, which provides that a woman who has been medically certified as pregnant may leave work without warning. Pregnant women may take 14 weeks leave, 8 of which must be after confinement. During this period, the National Social Insurance Fund, or, failing this, the woman's employer, must pay her an amount equal to 1/2 the salary which she was earning when the leave began, and reimburse all medical expenses.

Reference: Ordinance No. 75-013-0/DM, *Journal Officiel*, 5 June 1975; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1975), pp. 232-234.

Note: Other provisions of this Ordinance may be found in §§320, 560 and 740.

Mali

Subject: Increase of maternity allowance.

Summary: An Ordinance adopted in July 1975, among other amendments to the 1962 Social Welfare Code, removes the ceiling in calculating the daily maternity allowance, which previously was equal to the woman's full wage.

Reference: Ordinance No. 41(CMLN, 15 July 1975; reported in ILO, *Social and Labour Bulletin*, No. 1 (March 1976), pp. 74-75.

Note: For other provisions of the Ordinance, see §510.

Mauritius

Subject: Maternity benefits.

Summary: Female workers are entitled to six weeks maternity leave prior to confinement and six weeks leave following confinement at full remuneration, if employed with the same employer for more than twelve months.

Reference: The Labour Act, 1975, 24 December 1975; reported in ILO, *Social and Labour Bulletin*, No. 2 (June 1976), pp. 152-154.

Note: Other portions of the statute may be found in §§320 and 560.

Mozambique

Subject: Council of Ministers' decree on maternity leave.

Text: *Article 1. (1).* During the period of maternity, working women have the right to a 60-day leave, fully paid, independent of their civil status.

(2). For the purposes of this decree, working women will be defined as those women who render services to the State or to any public entities or services and to local entities and autonomous services, as well as those women who work for private entities, including rural workers and domestic servants, whatever the work regime or period worked.

Article 2. The holiday indicated in Article 1 may begin at any time after the twentieth day prior to the probable date of birth, which will be set by the proof of pregnancy made by the National Health Service.

Article 3. The maternity leave will not interrupt the period of effective service and will not diminish any other vacation time to which the worker has a right.

Article 4. Those working women who at the time of this decree are on the leave recognized by the previous legislation will benefit from the provisions of this decree.

Article 5. If the working woman nurses her child she will be authorized to interrupt her work daily, for that purpose, for 2 one-half-hour-periods, without a reduction in salary.

Article 6. After the fifth month of pregnancy and during the first six months of nursing, the working woman will be exempt from night work.

Article 7. (1). The Ministries of Health and of Labor, jointly will determine which industrial activities should be prohibited during the period of pregnancy because of the danger presented to the health of pregnant women.

(2). Those workers affected by the above section of this article will be changed to other activities appropriate to their state, without a reduction in salary.

Article 8. The provisions of this decree do not revoke effective provisions of other laws or agreements which are more favorable.

Article 9. Any doubts raised in the application of this decree will be resolved by joint decision of the Ministers of Health and Labor.

Article 10. This decree takes effect immediately.

Reference: Decree No. 37/76, Council of Ministers, 26 October 1976.

Peru

Subject: Free medical attention during pregnancy and childbirth.

Text: The text of the 20 August 1974 decree reads as follows:

Article 1. From the date of this Supreme Decree, attention given a woman during her pregnancy, childbirth and time immediately following childbirth, as well as the attention given the new-born child, will be free in the establishments connected with the Ministry of Health, in those of the Institute of the Newly Born and of Child-Mother Care, and in those of the Societies for Public Good Works, and in all the health centers designated by the Ministry.

Article 2. The costs of this free care will be assumed by the Ministry of Health and its Decentralized Public Organs.

Article 3. In the case of people subject to a social security system or another type of coverage, the cost of their care will be assumed by the institutions that are obliged to render them this service.

Article 4. The Ministry of Health, in all cases, will prescribe the complementary provisions appropriate for the fulfillment of this Decree.

Reference: Supreme Decree No. 00451, 20 August 1974.

Spain

Subject: Maternity leave.

Summary: A new Act covering, in general terms, all aspects of work, was promulgated on 21 April 1976.

Among other provisions the Act mandates at least 6 weeks of maternity leave prior to confinement and 8 weeks afterward.

In addition, any woman wishing to raise her child herself may suspend her work contract for three years and will be entitled to the first vacant corresponding post if she then applies for reinstatement.

Reference: *Boletin Oficial del Estado* (Official Gazette), No. 96, 21 April 1976, p. 7894; reported in ILO, *Social and Labour Bulletin*. No. 3 (September 1976), pp. 254-255.

Note: Other portions of this statute may be found in §§320 and 560.

Uganda

Subject: Maternity leave with pay.

Summary: Women are to receive one month's paid maternity leave.

Reference: The Employment Decree, 1975, 13 June 1975; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1975), pp. 290-292.

Note: Other provisions of this statute may be found in §§320 and 560.

United States—Federal Law

Subject: Exclusion of pregnancy-related disability benefits from private company disability plan does not constitute sex discrimination under Title VII.

Text: The decision of the United States Supreme Court in *General Electric Co.* v. *Martha V. Gilbert*—U.S.—, 97 S. Ct. 401, 50 L.Ed. 2d 343, of 7 December 1976, dealt with the applicability of Title VII of the Civil Rights Act of 1964, a statute which prohibits sex discrimination in employment, to General Electric's Weekly Sickness and Accident Insurance Plan.

The case was originally brought by women who had been denied disability benefits while absent from work due to pregnancy.

Following trial at the District Court level (375 F. Supp. 367), an order was entered which determined that General Electric had engaged in sex discrimination in violation of §703(a)(1) of Title VII, 42 U.S.C. §2000e-2(a)(1). The court found that regardless of whether the cost of including pregnancy-related benefits might make the plan more costly for women than men, it was necessary to effectuate the intent of Title VII to equalize employment opportunities.

General Electric was enjoined from continuing to exclude pregnancy related disabilities from coverage. General Electric appealed and the Court of Appeals affirmed (519 F.2d 661 (4th Cir.)).

The Supreme Court granted certiorari (423 U.S. 822, 96 S. Ct. 36, 46 L.Ed. 2d 39). Utilizing an analysis of the meaning of "discrimination" arrived at in an earlier decision, *Geduldig* v. *Aiello*, 417 U.S. 484, 94 S. Ct. 2485, 41 L.Ed. 2d 256 (1974), construing the Equal Protection Clause of the Fourteenth Amendment and its applicability to a state disability plan, the Court found that the plan did not discriminate based upon gender. The Court, at 97 S. Ct. 407, quoted extensively from *Geduldig*, stating that the plan:

> 'merely removes one physicial condition—pregnancy—from the list of compensable disabilities. While it is true that only women can become pregnant, it does not follow that every legislative classification concerning pregnancy is a sex-based classification. . . . Normal pregnancy is an objectively identifiable physical condition with

> unique characteristics. Absent a showing that distinctions involving pregnancy are mere pretexts designed to effect an invidious discrimination against the members of one sex or the other, lawmakers are constitutionally free to include or exclude pregnancy from the coverage of legislation such as this on any reasonable basis, just as with respect to any other physical condition. The lack of identity between the excluded disability and gender as such under this insurance program becomes clear upon the most cursory analysis. The program divides potential recipients into two groups—pregnant women and non-pregnant persons. While the first group is exclusively female, the second includes members of both sexes.' (417 U.S., at 496-497, n. 20; 94 S. Ct. at 2492.)

Thus, the Court found there was no gender-based discrimination in the California disability plan. Furthermore, the Court stated that the reasoning in *Geduldig* was applicable to the Title VII case before the Court in *General Electric* since both cases involved determining the meaning of sex discrimination as applied to similar insurance plans.

The Court held that, as in *Geduldig*, the respondents failed to demonstrate a gender-based discriminatory effect and therefore there was no prima facie violation of Title VII.

Finally, the Court analyzed the legislative intent behind the statutes utilizing the guidelines promulgated by the Equal Employment Opportunity Commission, (EEOC), opinion letters from the General Counsel of the EEOC, and legislative history and amendments to conclude that the insurance plan here was not discriminatory under Title VII.

Justices Brennan and Marshall dissented for two reasons. The first was that the District Court record clearly showed that General Electric had purposefully sought to undercut employment opportunities for women who became pregnant while working. Second, the dissenters found the EEOC construction of sex discrimination under §703(a)(1) to be in full accord with the main objective of Title VII.

Justice Stevens also dissented for the reason that the insurance plan, by placing pregnancy in a class by itself, discriminated against women. Noting that it is the capacity to become pregnant which is dealt with in insurance contracts, Justice Stevens found it inaccurate to make the division on the line of pregnant women/non-pregnant persons. Rather such insurance policies deal with future risks, not historic facts and in that sense a risk of substantially all women but no men, was not covered.

Reference: *General Electric Co.* v. *Martha V. Gilbert*—U.S.—, 97 S. Ct. 401, 50 L.Ed. 2d 343 (1976).

Note: Legislation was introduced in both the U.S. House of Representatives and the U.S. Senate to amend the definition of sex discrimination under Title VII according to Planned Parenthood Washington Memo, 25 March 1977, (U.S.). The proposed amendment would forbid discrimination "because of or on the basis of pregnancy, childbirth or related medical conditions".

The legislation would state further that:

> women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work.

The *Annual Review, 1977* will follow this legislation and report on its outcome. For more information on the lower court opinions, see *Annual Review, 1975*, p. 109.

State Law—New York

Subject: Exclusion of pregnancy-related disability benefits from private company disability plan does constitute sex discrimination under State Human Rights Law.

Summary: The New York State Court of Appeals had occasion to view a similar insurance plan, two weeks after the Supreme Court decision in *General Electric.*

These cases dealing with the ability of private employers to deny disability benefits were brought before the State Human Rights Appeal Board.

The cases confronted an incongruity between two state laws: the first was Workmen's Compensation Law, art. 9, §205, Subd. 3 of the Disability Benefits Law, which excepted disability "caused by or arising in connection with a pregnancy" from the minimum benefits mandated by that law for private employers.

The statute in conflict was the State Human Rights Law, as amended in 1965, to end sex discrimination. The law is applicable to any and all employers, private and public, who employ more than three workers.

Human Rights Law, art. 15, Section 296, Subd. 1, par. [a] reads in part:

> It shall be an unlawful discriminatory practice . . . for an employer . . . because of the . . . sex . . . of any individual . . . to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

Thus the Court was forced to choose between two conflicting statutes. The Human Rights Law was held to govern and pregnancy benefits are mandated in New York state.

Reference: *Brooklyn Union Gas Co.* v. *New York State Human Rights Appeal Board*, 41 N.Y. 2d 84, 359 N.E. 2d 393 (1976).

540 OLD AGE, RETIREMENT AND DEATH BENEFITS

Bahrain

Subject: New pension law concerning governmental employees.

Summary: A new pension law took effect in Bahrain on 1 October 1975, governing retirement and death benefits of government employees, excluding police and military personnel.

The retirement age is set at 60 for men and 55 for women. Employees contribute 7% of the basic annual salary and the government contributes 14% or, if so decided by the governing board and approved by the Council of Ministers, some other percentage.

Benefits remain the same for those who resign for serious illness or who are retrenched [sic] due to industrial injury.

Employees dismissed for disciplinary reasons have their benefits reduced 5% for each year of service if under 45, and 2.5% if between the ages of 45 and 50.

Employees retiring before qualifying (20 years of services; 15 if the employee resigns at 50; 10 years, in case of retrenchment [sic] or non-disciplinary layoff) receive a lump sum calculated at 1 1/2 months salary for each year up to 5 years, 2 months salary for each year between 5 and 10, and 3 months for all following years with a 4-year maximum. The sum is increased 50% in instances of retrenchment of non-disciplinary layoff.

Reference: *Al Jarida al-Rasmiya* (Official Gazette), No. 1131, July 1975; *Gulf Mirror* (Manama, Bahrain) 24 August 1975; reported in ILO, *Social and Labour Bulletin*, No. 4 (December 1975), pp. 401-402.

Belgium

Subject: Early retirement benefit.

Summary: New early retirement laws have been passed in order to encourage the opening up of new positions for young workers and provide more flexible retirement ages.

The law of 27 February 1976 allows retirement at age 64, (normal retirement age is 65 for men, 60 for women) under certain conditions.

A second law provides a pre-pension payable to male workers from the age of 62 and women from the age of 58, when certain conditions are met.

Finally, a third provision provides early retirement for those who have been employed in arduous or unhealthy occupations for a substantial period of time.

Reference: Law of 27 February 1976; Law on Economic Recovery of 30 March 1976; *Moniteur Belge* (Official Gazette), 9 March 1976, p. 2532; 1 April 1976, p. 3923; 21 May 1976, p. 6902; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1976), pp. 267-268.

Bolivia

Subject: Old age pensions.

Summary: Old age pensions are payable to insured women over 50 years of age and men over 55 years of age who have made at least 180 contributions.

The amount of each pension is composed of a basic sum plus additional amounts equal to 2% of the wage on which contributions were payable for every 12 months (or fractions greater than 6 months) over and above the requisite 180 months.

Reference: Legislative Decree No. 13214, 24 December 1975; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1976), pp. 268-269.

Note: Other provisions of this statute may be found in §§510 and 530.

Bulgaria

Subject: Pension improvements for agricultural workers.

Summary: Legislation on pensions in Bulgaria is amended by Act No. 1297, dated 3 July 1975. The Act came into force on 1 July 1975.

Under the new Act, the pension scheme for members of agricultural cooperatives is brought into line with that for wage-earning workers, *i.e.*, their old-age pensions will henceforth be calculated on the basis of the average of the highest wage received during three consecutive years over the past 15 years, and their disability pensions will be calculated on the basis of the average wage for the preceding 12 months.

In addition, recipients of a full old-age pension (due after 25 years' service in the case of men and after 20 years' in the case of women) will be allowed to continue in paid employment. The basic wage which may be earned on top of the pension must not exceed 120 leva a month (1 US dollar = 1.20 leva). A limit is set for pensioners who continue to work in sectors other than agriculture, building and other economic sectors specified by the Act; when their basic wage exceeds 120 leva a month, the pension is reduced to 100 leva a month. The full pension will continue to be paid to pensioners working half time, a few hours a day, or a few days a week. The new provisions do not apply to some highly paid jobs and positions specified by the Council of Ministers.

Reference: *D'rzaven Vestnik* (Official Gazette), No. 53, 11 July 1975; as reported in ILO, *Social and Labour Bulletin*, No. 4 (December 1975), p. 402.

France

Subject: Lower retirement age for some manual workers.

Summary: New retirement conditions have been adopted in order to improve the status of some manual work. Retirement pensions at the maximum rate are now available for workers in certain types of jobs on reaching age 60. Normally, full pensions are only available at age 65.

The types of work include conveyor belt work, work at a furnace, and work where there is exposure to inclement weather, among others. This type of work must have been performed for 5 of the last 15 years. An additional requirement is that the worker must have been insured for at least 42 years or 30 years in the case of women doing manual work who have raised at least three children.

Reference: Decree No. 76-404, 10 May 1976; *Journal Officiel*, 12 May 1976; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1976), p. 270.

Iran

Subject: Old age benefits under new Social Security Act.

Summary: Under a new Social Security Act, an old age pension is payable to workers who have contributed to the scheme for at least 10 years. Male workers must have reached the age of 60. Female workers must be 55.

The amount is calculated by multiplying the number of insured years by 1/35th of the person's average wages. The amount must be greater than minimum wage and less than the person's previous average wage.

Reference: ILO, *Social and Labour Bulletin*, No. 1 (March 1976), pp. 72-74.

Subject: Death benefits under new Social Security Act.

Text: Under a new Social Security Act, survivors of a deceased covered worker may receive pensions at the following rate:

- 50 per cent of the dead person's pension in the case of a widow who does not remarry, or in the case of a widower who is disabled or over 60 years of age, who has not remarried, and who was dependent upon his wife;
- 25 per cent of the dead person's pension in the case of a dependent child (50 per cent if the child has lost both parents);
- 20 per cent of the dead person's pension in the case of a dependent mother or father.

The total amount of the pension granted in this way may not exceed that of the pension which the deceased received or would have been entitled to receive. Should this happen, a proportional reduction is made.

Reference: ILO, *Social and Labour Bulletin*, No. 1 (March 1976), pp. 72-74.

Note: Other provisions of this statute may be found under §§510, and 530.

Pakistan

Subject: Enactment of Old Age Benefit Ordinances.

Summary: A new system for old age benefits became effective on 1 July 1976. The system, applicable to establishments with 10 or more workers, provides old age and invalidity benefits to persons with wages less than 1,000 rupees (U.S. dollar = 9.90 Pakistan Rupees) per month. Retirement age for eligibility is 55 years for men and 50 for women. Eligibility also requires 15 years of insurable employment; 7 years for workers too old to fulfill this requirement on implementation of the scheme. Invalidity eligibility is effective after 5 years of insurable employment.

Employers will contribute to the fund, workers will not. Benefits are 75 rupees per month, in addition to benefits from other insurance or funds.

Reference: *Old Age Benefit Ordinance*, 1975; reported in ILO, *Social and Labour Bulletin*, No. 1 (March 1976), p. 76.

Peru

Subject: Reform and expansion of social security system.

Text: The new Peruvian three year development plan calls for improvements in the social security system and an expansion of its coverage as follows:

35. SOCIAL SECURITY

a. *Objective*

An efficient Social Security with a significant expansion of its coverage.

b. *Outline*

(1) Improve the financial system of Social Security in order to enlarge the scope of its payments and assure the correct diversion and application of its funds.

(2) Improve the coordination of the Social Security hospital system with the Health Sector.

(3) Push for decentralization and deconcentration of Social Security in order to further regionalization.

(4) Conclude the process of administrative improvement of Social Security, transforming it into an efficient organization.

(5) Creation of special, new regulations of social security.

(6) Increase the operative capacity of Social Security with the object of granting effective health services outside of the capital, giving priority to the rural sector and progressively incorporating the families of those insured.

(7) Improve Social Security legislation in order to facilitate its application and speed the procedures for the awarding of payments.

Reference: *Plan de Gobierno Tupac Amaru*, 1977-1980, §35.

Note: Other provisions of the Plan may be found in §§520, 570, 600 and 710.

Subject: Readjustment of retirement pension, and cost of living allowance.

Text: A section of the Peruvian Social Security System, providing general family benefits, readjusts retirement benefits as follows:

The Peruvian Social Security Retirement Pensions of men pensioners who have contributed for 30 or more years and of women pensioners who have contributed for 25 or more years whose total is lower than the current minimum wage of the zone of the last job that gave rise to the pension will be readjusted, as of August 1, 1975, to the level of the abovementioned minimum wage.

Reference: Resolution No. 0701-75 of the Ministry of Labor.

Subject: Cost of living allowance for retired persons.

Summary: A decree of 11 November 1975 reads:

Art. 1. As of July 1 of the present year (1975) the following pensioners will receive 400 *soles* per month, whatever the level of the pension they are now receiving: the retired pensioners in the charge of the employer and those of the different systems of financial benefits administered by the Peruvian Social Security System, with the exception of the old-age pensioners of Law No. 8433 who continue to work and consequently are already receiving the Special Allowance referred to in Decree Law No. 21202.

Art. 2. With regard to the beneficiaries of concurrent pensions for widowhood and orphans, the whole Special Allowance referred to in the previous article will be remitted to the holder of the widowhood pension as long as he or she exercises *patria potestas* over all of the orphan pensioners who are the children of the principal.

Reference: Law Decree No. 21311, 11 November 1975.

Sweden

Subject: Work injury insurance; death benefits.

Summary: Among the changes in the new work injury insurance act are provisions for increases in survivors' benefits such as funeral grants, child annuities and annuities to the widow or woman in the equivalent position. Childless women under 36 years are not entitled to an annuity.

Reference: *Svensk Författningssamling* (Official Gazette), SFS 1976:380, 26 May 1976, and information provided by the Swedish National Social Insurance Board; reported in ILO, *Social and Labour Bulletin*, No. 4 (December 1976), pp. 375-376.

560 LABOR PROTECTION AND EMPLOYMENT STANDARDS

(For other material in this field on employee maternity benefits and on giving women equal employment rights with men, see §§530 and 570.)

Council of Europe

Subject: Social Security for women at home.

Summary: Specific recommendations of a resolution adopted by the Committee of Ministers of the Council of Europe to improve the conditions of women who devote themselves to domestic duties include the following:

(a) that medical assistance in sickness and pregnancy be guaranteed by governments to women at home. Where the capacity to work has been substantially impaired by disablement due to sickness or accident, benefits in kind and rehabilitation services should be guaranteed and should be no less favorable than similar ones enjoyed by gainfully employed persons, while cash benefits and other services should be considered. When a woman at home reaches normal pensionable age, she should be afforded old-age benefits, the amount of which should not be less than the minimum pension provided for former gainfully employed persons under general schemes.

(b) that women at home and their children should be compensated for the temporary or permanent loss of support when the breadwinner dies, and they should be helped to enter training or rehabilitation programs so that they may become employed.

(c) that family benefits should be available to women at home in general, and that sickness benefits and family benefits for separated or divorced women at home and for their children be instituted.

(d) that governments consider compensation for work in the home where appropriate, possibly through cash benefits commensurate with the resources of the family, the composition of the family, and the age of the children.

(e) that women who interrupt or abandon an occupation that is subject to compulsory insurance in order to take up the tasks of family life should be afforded the opportunity to keep up this insurance.

Reference: Resolution (75) 28 of the Committee of Ministers of the Council of Europe, 12 November 1975; reported in ILO, *Social and Labour Bulletin*, No. 1 (March 1976), pp. 80-81.

Council of European Communities

Subject: Equal pay for men and women.

Text: On 9 February 1976, the Council of the European Communities (EC) adopted a directive concerning the implementation within member states of equal treatment for women in work related areas. The directive seeking to end discrimination, read in part:

ARTICLE 2

(1) For the purposes of the following provisions, the principle of equal treatment shall mean that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status.

(2) This Directive shall be without prejudice to the right of Member States to exclude from its field of application those occupational activities and, where appropriate, the training leading thereto, for which, by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor.

(3) This Directive shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity.

(4) This Directive shall be without prejudice to measures to promote equal opportunity for men and women, in particular by removing existing inequalities which effect women's opportunities in the areas referred to in Article 1 (1).

ARTICLE 3

(1) Application of the principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex in the conditions, including selection criteria, for access to all jobs or posts, whatever the sector or branch of activity, and to all levels of the occupational hierarchy.

(2) To this end, Member States shall take the measures necessary to ensure that:

(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment shall be abolished;

(b) any provisions contrary to the principle of equal treatment which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be, or may be declared, null and void or may be amended;

(c) those laws, regulations and administrative provisions contrary to the principle of equal treatment when the concern for protection which originally inspired them is no longer well founded shall be revised; and that where similar provisions are included in collective agreements labor and management shall be requested to undertake the desired revision.

ARTICLE 4

Application of the principle of equal treatment with regard to access to all types and to all levels, of vocational guidance, vocational

training, advanced vocational training and retraining, means that Member States shall take all necessary measures to ensure that:

(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment shall be abolished;

(b) any provisions contrary to the principle of equal treatment which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be, or may be declared, null and void or may be amended;

(c) without prejudice to the freedom granted in certain Member States to certain private training establishments, vocational guidance, vocational training, advanced vocational training and retraining shall be accessible on the basis of the same criteria and at the same levels without any discrimination on grounds of sex.

ARTICLE 5

(1) Application of the principle of equal treatment with regard to working conditions, including the conditions governing dismissal, means that men and women shall be guaranteed the same conditions without discrimination because of sex.

(2) To this end, Member States shall take the measures necessary to ensure that:

(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment shall be abolished;

(b) any provisions contrary to the principle of equal treatment which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be, or may be declared, null and void or may be amended;

(c) those laws, regulations and administrative provisions contrary to the principle of equal treatment when the concern for protection which originally inspired them is no longer well founded shall be revised; and that where similar provisions are included in collective agreements, labor and management shall be requested to undertake the desired revision.

ARTICLE 6

Member States shall introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves wronged by failure to apply to them the principle of equal treatment within the meaning of Articles 3, 4 and 5, to pursue their claims by judicial process after possible recourse to other competent authorities.

ARTICLE 7

Member States shall take the necessary measures to protect employees against dismissal by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

ARTICLE 8

Member States shall take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in

force, are brought to the attention of employees by all appropriate means, for example at their place of employment.

Reference: Council Directive of 9 February 1976 (76/207/EEC); *Official Journal of the European Communities*, No. 39/40, 14 February 1976.

Note: The member states were given 30 months to enact the laws adopted by the directive, and 4 years to revise protective provisions in their statutes.

European Court of Justice

Subject: Equal pay to men and women.

Summary: By its decision of 8 April 1976, the Court settled the case involving Ms. G. Defrenne, an airline stewardess who claimed the right to pay equal to that received by male air stewards from Sabena, the Belgian national airline, under Article 119 of the Treaty of Rome.

Article 119, which established the EC, provided for the principle of equal pay for men and women. At issue was the direct applicability of Article 119 to the national law of member states.

The court ruled in effect that Article 119 was directly applicable and enforceable through national courts but ruled that only those persons with cases pending in national courts could receive retroactive benefits.

The equal pay provisions was thus found directly applicable from 1962 to the original member states and from the date of EC accession for the more recent member states.

Reference: *Europolitique* (Brussels) No. 310, March 1976, and No. 316, April 1976; *The Financial Times*, (London), 9 April 1976; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1976), pp. 280-281.

Czechoslovakia

Subject: Revision of Labour Code.

Summary: Among other provisions, a 1 July 1975 Amendment to the Labour Code of 1965 prescribes conditions for the employment stability of working mothers.

Specifically, the Amendment prohibits the termination of employment contracts of working mothers with children up to 3 years of age, irrespective of whether the woman is still on maternity leave or has resumed work. If her job is abolished, the undertaking must find new employment immediately for any woman who is pregnant or on maternity leave. If not possible, the period of notice is extended automatically until a new job is provided.

Reference: *Práce a mzda* 4-5, Law No. 20/1975; Government Ordinance, 23 April 1975; reported in ILO, *Social and Labour Bulletin*, No. 4 (December 1975), pp. 351-353.

Denmark

Subject: Equal pay for men and women.

Summary: A law which became effective on 9 February 1976 provides for equal pay for men and women for equal work. It also provides for judicial review where a worker believes that his or her employer is not fulfilling the legal obligation.

If a wage earner is dismissed for demanding equal pay under the law, he or she may receive compensation to be determined after consideration of the length of employment and other factors. Total compensation cannot exceed 26 weeks' salary.

Reference: *Law on Equal Pay for Men and Women*, Law No. 32-1976, 4 February 1976, Lovtidende A, 1976, No. VI, p. 64; reported in ILO, *Social and Labour Bulletin*, No. 2 (June 1976), p. 177.

France

Subject: Maximum hours of work.

Summary: Maximum hours of work for workers in commerce and industry, public works and para-agriculture have been reduced from 50 to 48 over twelve consecutive weeks, and from 57 to 52 in any given week. Agriculture workers are still subject to the old regulations.

Reference: Act of 27 December 1975; *Journal Officiel*, 30 December 1975; *Liaisons Sociales* (Paris), No. 96-75, 17 November 1975; reported in ILO, *Social and Labour Bulletin*, No. 1 (March 1976), p. 56.

India

Subject: Equal Pay Ordinance, Act and rules.

Summary: On 26 September 1975, an ordinance was promulgated by the President providing for equal pay for workers regardless of sex, and for prevention of sex discrimination in employment.

The Ordinance also prohibits discrimination in recruitment for the same work, with the exception of employment of women for work from which they are prohibited by law. Contravention of either remuneration or recruitment provisions may lead to fines up to 5,000 rupees.

Detailed record keeping by employers is also required. Government inspection is mandated and a refusal to furnish information is punishable by a fine of up to 1,000 rupees.

The Ordinance does not apply to situations involving special treatment for women in connection with pregnancy or childhood.

On 11 February 1976, the Equal Remuneration Act was passed by the Indian Parliament. The provisions of the Act are the same as that of the Ordinance.

Finally, on 11 March 1976, the Equal Remuneration Rules, 1976, came into effect, implementing the Ordinance.

Reference: Equal Remuneration Ordinance, 1975, reported in ILO, *Social and Labour Bulletin*, No. 4 (December 1975), p. 411.

The Equal Remuneration Act, 1976, *The Gazette of India, Extraordinary*, Part II, section 1, 11 February 1976; Ministry of Labour Notification,

Equal Remuneration Rules, 1976, *The Gazette of India, Extraordinary*, Part II, section 3, subsection (i), 11 March 1976, reported in ILO *Social and Labour Bulletin*, No. 3 (September 1976), p. 277.

Ivory Coast

Subject: Paid annual leave.

Summary: An amendment to the 1964 Labor Code has extended paid leave and holidays. There are now two paid holidays a month (1 1/2 previously). Workers under 18 years, those with more than 20 years service in the same undertaking, and working or apprenticed mothers with children under 15, may receive additional leave, as fixed by collective agreement.

Reference: Act No. 75-496, 10 July 1975; *Journal Officiel*, No. 41, 21 August 1975, p. 1480; reported in ILO, *Social and Labour Bulletin*, No. 1 (March 1975), p. 59.

Kenya

Subject: Provisions of new Employment Act for the protection of women employees.

Summary: Among other provisions, the new Kenyan Employment Act provides for the protection of women in the following sections:

28. (1) Subject to the provisions of section 29 of this Act, no woman or juvenile shall be employed between the hours of 6:30 p.m. and 6:30 a.m. in any industrial undertaking:

Provided that–

(i) women or male young persons may be so employed in cases of emergencies which could not have been controlled or foreseen, which interfere with the normal working of the industrial undertaking and which are not of a periodical nature;

(ii) women may be so employed in cases where their work is connected with raw materials or materials in the course of treatment, being in either case materials which are subject to rapid deterioration, and their work during such hours is necessary to preserve any such materials from certain loss; and

(iii) women, holding responsible positions of a managerial or technical nature, or employed in health and welfare services, and not normally engaged in manual work, may be so employed.

(2) Notwithstanding the provisions of subsection (1) of this section, the Minister may, after consultation with the Board, authorize an employer in writing to employ women or young persons up to the hour of midnight or from the hour of 5 a.m., subject to such conditions as the Minister may determine.

29. In case of any serious emergency, when the public interest demands it, the Minister may, by notice in the Gazette, suspend the operation of section 28 of this Act in so far as it affects women and male young persons.

30. No female shall be employed on underground work in any mine except in the following circumstances—

(a) a woman holding a position of management who does not perform manual work;
(b) a woman engaged in health or welfare services;
(c) a woman who in the course of her studies spends a period of training in the underground parts of a mine; or
(d) a woman who may for any other reason have to enter the underground parts of a mine for the purpose of non-manual occupation.

36. Any person who employs a woman in contravention of the provisions of this Part shall be guilty of an offense and liable to a fine not exceeding one thousand shillings, or, in the case of a second or subsequent offense, not exceeding two thousand shillings.

37. If any woman or juvenile is killed or dies or suffers any bodily injury in consequence of her or his employer having contravened any provision of this Part, such employer shall, in addition to any other penalty, be liable to a fine not exceeding four thousand shillings, or, in default of payment, to imprisonment for a term not exceeding six months; and the whole or any part of the fine may be applied for the benefit of the injured person or her or his family or otherwise as the Minister may direct:

Provided that—

(i) in the case of injury to health, the employer shall not be liable to a penalty under this section unless the injury was caused directly by the contravention; and
(ii) the employer shall not be liable to a penalty under this section if a charge against him under this Part in respect of the act or default by which the death or injury was caused has been heard and dismissed before the injury occurred.

Reference: *The Employment Act, 1976* (Act No. 2 of 1976), *Kenya Gazette Supplement*, No. 19, made effective on 3 May 1976 by Legal Notice No. 69/1976.

Note: Other provisions of this statute may be found in §§320 and 530.

Madagascar

Subject: Employment conditions.

Summary: An Ordinance issued by the Military Directorate fixes the statutory hours of work for workers in private establishments at 40 hours per week. Paid leave accrues at the rate of 2 1/2 working days per month.

Reference: Ordinance No. 75-013-0/DM; *Journal Officiel*, 5 June 1975; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1975), pp. 232-234.

Note: Other provisions of this Ordinance may be found in §§320, 530 and 740.

Mauritius

Subject: Female employment regulations.

Summary: Women may not be employed for night work.

Reference: The Labour Act, 1975, 24 December 1975; reported in ILO, *Social and Labour Bulletin*, No. 2 (June 1976), pp. 152-154.

Note: Other provisions of this statute may be found in §§320 and 530.

Spain

Subject: Wage and hour legislation; equal pay for men and women.

Summary: A new Act covering, in general terms, all aspects of labor was promulgated on 21 April 1976.

Among other provisions, maximum hours of work are limited to 44 per week, and 9 hours per day with 12 hours rest between two working days. Overtime limits are 2 hours per day, 20 hours per month and 120 hours per year.

Minimum wages are set by the Government once a year, or once every six months if the cost of living index rises by 5%. Each worker is entitled to two bonuses equal to 21 days wages.

A fund is to be set up to guarantee the payment of wages for employees of insolvent or bankrupt undertakings.

The Act recognizes equal rights for men and women, and equal pay for equal work. Women may be prohibited from working in certain dangerous and unhealthy jobs.

Reference: *Boletin Oficial del Estado* (Official Gazette), No. 96, 21 April 1976, p. 7894; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1976), pp. 254-255.

Note: Other portions of this statute may be found in §§320 and 530.

Uganda

Subject: 1975 Employment Decree.

Summary: An Employment Decree, dated 2 June 1975, repealed the Ugandan Employment Act, the Employment of Children Act and the Employment of Women Act.

Among other provisions, the law provides for a system of minimum notice periods for termination of employment. Deductions from wages are limited and workers are protected with priority rights to 4 months' wages in cases in which an attachment order is issued on the employer's property to satisfy a debt.

A work week limit is now 48 hours, and normal daily hours are 9 in industrial undertakings and 10 hours in other types of employment.

The weekly limit can be exceeded when the notice of the employment

requires it, but in no event may the average of a 3-week period exceed 48 hours. Holidays are mandatory with full pay at a rate of one and a half working days for every completed month of service.

Reference: *The Employment Decree, 1975*, 13 June 1975; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1975), pp. 290-292.

Note: Other provisions of this statute may be found in §§320 and 630.

United Kingdom

Subject: Equal rights for women.

Summary: On 29 December 1975, two measures equalizing work prospects for men and women came into effect.

The first is the Equal Pay Act of 1970 which was to come into effect after a 5-year period. During that time, employers were to have provided for equal pay for equal work as well as the elimination of sex discrimination in the areas of collective agreements, and employers' and statutory pay structures.

The Sex Discrimination Act, which prohibits discrimination by sex or marriage in employment, education, training, the provision of public housing, and advertising in those areas, received Royal Assent on 12 November 1975. In addition, an Equal Opportunities Commission was established to help enforce the new Act.

Reference: Equal Pay Act of 1970, 29 December 1975; The Sex Discrimination Act, 12 November 1975, *Department of Employment Gazette*, December 1975; as reported in ILO, *Social and Labour Bulletin*, No. 1 (March 1976), p. 85.

570 PERSONAL STATUS AND INTEGRITY

Algeria

Subject: Promotion of equality in National Charter.

Summary: The President signed an ordinance which puts the National Charter into full force, on 5 July 1976. The Charter had been adopted by referendum on 27 June 1976. Among other provisions the Charter seeks to promote women's participation in the political, cultural, economic and social life of the country. In addition, it provides for equal pay for equal work.

Reference: *Chartre Nationale 1976*, 5 July 1976; *El Moudjahid*; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1976), pp. 205-206.

Chile

Subject: Constitutional change providing for equal rights for men and women.

Summary: Article 2 of the new constitution guarantees that "men and women shall enjoy equal rights."

Reference: Chilean Constitution, 13 September 1976. See also, *People*, Vol. 4, No. 1, 1977, p. 40; and IPPF, *Around the Federation*, October 1976.

Note: The new Chilean constitution is discussed more extensively in §000, General Population Policy.

Cuba

Subject: Promotion of equality in new Constitution.

Text:

Article 40. All citizens have equal rights and are subject to equal duties.

Article 41. Discrimination because of race, color, sex or national origin is forbidden and is punished by law.

The institutions of the state educate everyone from the earliest possible age in the principle of equality among human beings.

. . . .

Article 43. Women have the same rights as men in the economic, political and social fields as well as in the family.

In order to assure the exercise of these rights and especially the incorporation of women into socially organized work, the state sees to it that they are given jobs in keeping with their physicial

constitution; they are given paid maternity leave before and after giving birth; the state organizes such institutions as children's day-care centers, semiboarding schools and boarding schools; and it strives to create all the conditions which help to make real the principle of equality.

Reference: Constitution of the Republic of Cuba, 24 February 1976, Arts. 40, 41, 43; translation in *Constitutional and Parliamentary Information*, 3rd Series, No. 107, 1976, p. 69.

Note: Other provisions of the Constitution may be found in §§240, 320, 340, 610 and 710.

Greece

Subject: Constitutional right of women to equal rights and equal pay.

Text: The Constitution of Greece now provides:

Art. 4, para. 2. Greek men and women have equal rights and equal obligations.

Art. 22, para. 1, subsection 2. All working people, irrespective of sex or other distinctions, shall be entitled to equal pay for work of equal value rendered.

Reference: The Constitution of Greece (Resolution No. 12 of the Fifth Revisionary Parliament of the Hellenes), 7 June 1975.

Libya

Subject: Role of women in social and economic development.

Summary: Libya's Five-Year Plan for the period 1976-1980 encourages "...an increase in employment for women in those spheres which are suitable to female labour."

Reference: *African Women*, Jan.-Feb., 1976; reported in IPPF, *Law File*, December 1976.

Pakistan

Subject: Declaration on the Rights of Women.

Summary: Prime Minister Bhutto announced a Declaration designed to abolish sexually discriminatory customs and practices. The Declaration seeks to ensure equal access to education, employment and health care, while improving the property rights of women. At the same time, measures will be taken to safeguard the family.

Reference: IPPF, *Law File*, January 1977.

Peru

Subject: Improvements in the status of women.

Text: The new Peruvian three-year development plan calls for improvement in the status of women utilizing the following guidelines:

30. THE PERUVIAN WOMAN

a. *Objective*

Reevaluation of the status of women and their gradual incorporation into the activities of the life of the country.

b. *Outline*

(1) Facilitate women's access to the various programs in the Public Sector, giving special emphasis to the peasant woman.

(2) Make it easier for women's participation in the various levels of decision-making in the political, social and economic life of the country.

(3) Facilitate greater access of women to the educational system, working towards the elimination of illiteracy and absenteeism.

(4) Assure the effective application of coeducation in such a way that it permits the same opportunities for work training to both men and women.

(5) Promote the creation of centers of basic education as well as other facilities for the purpose of opening to women a growing access to the productive life of the country.

(6) Facilitate, by means of the Educational System and the social communication media, the diffusion of programs in accord with a new image of women.

(7) Change the Civil Code and legislation in general with reference to those aspects which limit women's rights.

(8) Enlarge activities of mother/child protection with increased participation of the general population.

Reference: *Plan de Gobierno Tupac Amaru, 1977-1980*, §30.

Note: Other provisions of the Plan may be found in §§520, 610 and 710.

Portugal

Subject: Social and cultural rights under new constitution.

Note: Provisions of the new *Constitution of the Republic of Portugal* dealing with Social Security may be found in §000 General Population Policy.

United States—State Law

California

Subject: "Right-to-die" legislation.

Text:

7186. The Legislature finds that adult persons have the fundamental right to control the decisions relating to the rendering of their own medical care, including the decision to have life-sustaining procedures withheld or withdrawn in instances of a terminal condition.

The Legislature further finds that modern medical technology has made possible the artificial prolongation of human life beyond natural limits.

The Legislature further finds that there exists considerable uncertainty in the medical and legal professions as to legality of terminating the use or application of life-sustaining procedures where the patient has voluntarily and in sound mind evidenced a desire that such procedures be withheld or withdrawn.

In recognition of the dignity and privacy which patients have a right to expect, the Legislature hereby declares that the laws of the State of California shall recognize the right of an adult person to make a written directive instructing his physician to withhold or withdraw life-sustaining procedures in the event of a terminal condition.

7188. Any adult person may execute a directive directing the withholding or withdrawal of life-sustaining procedures in a terminal condition. The directive shall be signed by the declarant in the presence of two witnesses not related to the declarant by blood or marriage and who would not be entitled to any portion of the estate of the declarant upon his decease under any will of the declarant or codicil thereto then existing or, at the time of the directive, by operation of law then existing. The directive shall be in the following form:

DIRECTIVE TO PHYSICIANS

Directive made this _____ day of _____ (month, year).

I _____, being of sound mind, willfully, and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

1. If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-sustaining procedures would serve only to artifically prolong the moment of my death and where my physician determines that my death is imminent whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.

2. In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this directive shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.

4. I have been diagnosed and notified at least 14 days ago as having a terminal condition by _____, M.D., whose

address is _____, and whose telephone number is _____. I understand that if I have not filled in the physician's name and address, it shall be presumed that I did not have a terminal condition when I made out this directive.

5. This directive shall have no force or effect five years from the date filled in above.

6. I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Signed _____

City, County and State of Residence_____

The declarant has been personally known to me and I believe him or her to be of sound mind.

Witness _____

Witness _____

References: Part 1, Division 7, Chapter 3.9 (Natural Death Act) Health and Safety Code.

Note: The legislation entered into force on 1 January 1977 and is the first right-to-die bill in the United States.

600 PUBLIC HEALTH

610 HEALTH SERVICES AND INSURANCE

Bulgaria

Subject: Free socio-legal aid for pregnant women, young mothers, mental patients, alcoholics, and drug dependent persons.

Summary: The implementing instruction prescribes in part:

that specialized offices for the provision of free socio-legal aid are to be established: (1) at obstetric and gynecological clinics of the Academy of Medicine, Class 1 district hospitals, other district hospitals, rayon hospitals serving a population of over 80,000, the municipal hospitals of Sofia, Plovdiv, and Varna, specialized obstetric and gynecological hospitals, and other health establishments, after consultation with the Ministry of Public Health, the offices being intended to protect pregnancy, maternity, and childhood in such cases; (2) at psychiatric clinics and clinics for the treatment of alcoholics of the Academy of Medicine, district neuro-psychiatric "dispensarization" centres, and district psychiatric hospitals, after consultation with the Ministry of Public Health, the offices being intended to provide socio-legal aid to mental patients, alcoholics, and drug-dependent persons in such cases. The following are entitled to benefit from the free socio-legal aid provided in health establishments: pregnant women; mothers with children under three years of age; incompetent mental patients, alcoholics, and drug-dependent persons; and the families of mental patients.

Reference: Instruction No. 132, *Državen Vestnik*, 4 March 1975, No. 18, pp. 2-3; reported in 26 *IDHL*, No. 4 (1975), pp. 737-738.

Cuba

Subject: Health provision in new Constitution.

Text: *Article 49.* Everybody has the right to health protection and care. The state guarantees this right:

—by providing free medical and hospital care by means of the installations of the rural medical service network, polyclinics, hospitals and preventive and specialized treatment centers;

—by providing free dental care;

—by promoting the health publicity campaigns, health education, regular medical examinations, general vaccinations and other measures to prevent the outbreak of disease. All the population cooperates in these activities and plans through the social and mass organizations.

Reference: Constitution of the Republic of Cuba, 24 February 1976, Art. 49; translation in *Constitutional and Parliamentary Information*, 3rd Series, No. 107, 1976, p. 71.

Note: Other provisions of the Constitution may be found in §§240, 320, 340, 570 and 710.

Israel

Subject: Insurance coverage of housewives for injury, illness or birth.

Summary: Housewives were originally covered by provisions of the 1968 Disability Insurance Act, as amended in 1973, subject to implementing regulations.

In April 1976 the regulations were adopted. They provide coverage for housewives suffering from physical, mental or emotional impairment, resulting from illness, birth or accident, if their capacity to work is reduced by 50% or if they cannot fulfill their duties at home.

There are two tests: one to determine medical incapacity and one to determine "occupational" incapacity. The housewife must be suffering from 50% medical incapacity from a single injury, or 60% from two or more injuries in order to undergo the "occupational" disability test.

Benefits are equal to 20% of the average wage in the country with a dependent's allowance of 10% of the average wage for the first child and 8% for each additional child. In addition, special services and help in the house are provided.

A full benefit is paid if the housewife is suffering a 75% disability. A proportionately lower amount is provided for disability between 75% and 50%.

The regulations will be applied gradually, with those suffering disability over 60% being enrolled the first two years, and those with lesser disabilities becoming eligible thereafter.

Reference: National Insurance Law (consolidated version), 1968: Regulations concerning disability insurance and rights of the housewife, April 1976 (in Hebrew); Histadrut: Council or Women Workers, Department of Legislation: *Disability Insurance for the Housewife*, by Dr. Ruth Ben Israel, publication No. 28, April 1976 (in Hebrew); reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1976), pp. 273-274.

Peru

Subject: Expansion of public health system.

Text: The new Peruvian three-year development plan calls for improvements in the nation's public health system and provision for higher levels of nutrition.

36. HEALTH

a. *Objective*

Medical attention for the community with a view to having such attention within reach of the entire population.

b. *Outline*

(1) Integrate and improve, little by little, decentralized, public health organizations.

(2) Significantly increase the coverage of health services, giving priority to mothers with children.

(3) Offer wide services, giving priority to activities for the prevention of sickness.

(4) See that the numbers and professional quality of personnel in the health sciences as well as in administration and support services is adequate for the needs of the country. Also redesign courses of study with reference to the country's health problems.

(5) Encourage popular participation in activities of health provision.

(6) Improve and consolidate the Servicio Civil de Graduandos in this field.

(7) Develop a health infrastructure establishing a system of progressive levels of attention, from the home to the specialized hospital, within a reasonable, regional distribution.

(8) Encourage scientific and technical investigation, utilizing larger sums of money and international technical cooperation.

(9) Increase programs for the control of environmental contamination and improve respective legislation.

(10) Encourage investigation and education in nutrition and reorient programs of complementary nutrition, increasing their coverage.

(11) Incorporate into basic industry the manufacture of fundamental products for the pharmaceutical industry.

(12) Finish the writing of the Sanitary Code.

(13) Intensify the suppression of unlawful traffic in and the prevention of unlawful use of habit forming drugs, as well as the rehabilitation of addicts; improving respective legislation.

(14) Stimulate in the private sector the development of those activities which collaborate with the State in its health policies, within the regulations of the law.

37. NUTRITION

a. *Objective*

Higher levels of nutrition in the populace, especially in youth.

b. *Outline*

(1) Establish a policy of development in rural areas which will coordinate the activities of the State in support of food production.

(2) Significantly elevate the production of agricultural products, reducing dependence on imported food.

(3) Develop the food industry and facilitate its decentralization.

(4) Improve the commercial system so as to obtain adequate conditions for food provision.

(5) Adopt a price policy on the regional and national level which will integrate the interests of both producers and consumers.

(6) Reinforce, in a sensible way, the promotionary activities of the State in the commercialization of food.

(7) Reorient housing and nutritional financing, particularly in favor of children, the elderly and pregnant women and normalize food advertising.

(8) Encourage the participation of the citizenry in the distribution and control of prices by means of Committees for the Defense of Consumers.

(9) Intensify scientific and technological investigation with reference to the massive production and transformation of foodstuffs and diffuse and apply its results.

(10) Unite policies relevant to activities of production, food assistance and investigation into nutrition.

(11) Develop Statistics of Nutrition in such a way as to make it possible to take immediate steps to promote planning of production, consumption and commercialization.

Reference: *Plan de Gobierno Tupac Amaru*, 1977-1980, §§36 and 37.

Note: Other provisions of the plan may be found in §§520, 570 and 710.

Senegal

Subject: Obligatory sickness insurance for workers, spouses and children.

Summary: By Decree of 14 August 1975, the Government of Senegal has implemented obligatory sickness insurance for undertakings with staffs over 100. Those undertakings with smaller staffs must group together or join an existing institution. The insurance benefits workers, their spouses and their children. Contributions to the plan are split between worker and employer.

Reference: Act No. 75-50 of 3 April 1975; *Journal Officiel* (Official Gazette), 28 April 1975; Decree No. 75-895 of 14 August 1975; *Journal Officiel* (Official Gazette), 27 September 1975; reported in ILO, *Social and Labour Bulletin*, No. 4 (December 1975), pp. 405-406.

United States

Subject: Ethical safeguards and reviewing standards for research involving pregnant women, fetuses and human *in vitro* fertilization.

Text: A new statute sets up two Ethical Advisory Boards competent to deal with medical, legal, social, ethical and related issues. One Board operates in an advisory capacity to the Public Health Service, the other to all other agencies within the Department of Health, Education and Welfare.

The Board reviews applications or proposals for research funding to insure ethical compliance before funding is provided.

Specific regulations include the following:

§46.203 DEFINITIONS.

As used in this subpart:

(a) "Secretary" means the Secretary of Health, Education and Welfare and any other officer or employee of the Department of Health, Education and Welfare to whom authority has been delegated.

(b) "Pregnancy" encompasses the period of time from confirmation of implantation until expulsion or extraction of the fetus.

(c) "Fetus" means the product of conception from the time of implantation until a determination is made, following expulsion or extraction of the fetus, that it is viable.

(d) "Viable" as it pertains to the fetus means being able, after either spontaneous or induced delivery, to survive given the benefit of available medical therapy to the point of independently maintaining heart beat and respiration. The Secretary may from time to time, taking into account medical advances, publish in the *Federal Register* guidelines to assist in determining whether a fetus is viable for purposes of this subpart. If a fetus is viable after delivery, it is a premature infant.

(e) "Nonviable fetus" means a fetus *ex utero* which, although living, is not viable.

(f) "Dead fetus" means a fetus *ex utero* which exhibits neither heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles, nor pulsation of the umbilical cord (if still attached).

(g) "*In vitro* fertilization" means any fertilization of human ova which occurs outside the body of a female, either through admixture of donor human sperm and ova or by any other means.

§46.206 GENERAL LIMITATIONS.

(a) No activity to which this subpart is applicable may be undertaken unless:

(1) Appropriate studies on animals and nonpregnant individuals have been completed;

(2) Except where the purpose of the activity is to meet the health needs of the mother or the particular fetus, the risk to the fetus is minimal and, in all cases, is the least possible risk for achieving the objectives of the activity.

(3) Individuals engaged in the activity will have no part in: (i) Any decisions as to the timing, method, and procedures used to terminate the pregnancy, and (ii) determining the viability of the fetus at the termination of the pregnancy; and

(4) No procedural changes which may cause greater than minimal risk to the fetus or the pregnant woman will be introduced into the procedure for terminating the pregnancy solely in the interest of the activity.

(b) No inducements, monetary or otherwise, may be offered to terminate pregnancy for purposes of the activity.

§46.207 ACTIVITIES DIRECTED TOWARD PREGNANT WOMEN AS SUBJECTS.

(a) No pregnant woman may be involved as a subject in an activity covered by this subpart unless: (1) The purpose of the activity is to meet the health needs of the mother and the fetus will be placed at risk only to the minimum extent necessary to meet such needs, or (2) the risk to the fetus is minimal.

(b) An activity permitted under paragraph (a) of this section may be conducted only if the mother and father are legally competent and have given their informed consent after having been fully informed regarding possible impact on the fetus, except that the father's informed consent need not be secured if: (1) The purpose of the activity is to meet the health needs of the mother; (2) his identity or whereabouts cannot reasonably be ascertained; (3) he is not reasonably available; or (4) the pregnancy resulted from rape.

§46.208 ACTIVITIES DIRECTED TOWARD FETUSES *IN UTERO* AS SUBJECTS.

(a) No fetus *in utero* may be involved as a subject in any activity covered by this subpart unless:

(1) The purpose of the activity is to meet the health needs of the particular fetus and the fetus will be placed at risk only to the minimum extent necessary to meet such needs, or (2) the risk to the fetus imposed by the research is minimal and the purpose of the activity is the development of important biomedical knowledge which cannot be obtained by other means.

(b) An activity permitted under paragraph (a) of this section may be conducted only if the mother and father are legally competent and have given their informed consent, except that the father's consent need not be secured if: (1) His identity or whereabouts cannot reasonably be ascertained, (2) he is not reasonably available, or (3) the pregnancy resulted from rape.

§46.209 ACTIVITIES DIRECTED TOWARD FETUSES *EX UTERO,* INCLUDING NONVIABLE FETUSES, AS SUBJECTS.

(a) No fetus *ex utero* may be involved as a subject in an activity covered by this subpart until it has been ascertained whether the particular fetus is viable unless: (1) There will be no added risk to the fetus resulting from the activity, and (2) the purpose of the activity is the development of important biomedical knowledge which cannot be obtained by other means.

(b) No nonviable fetus may be involved as a subject in an activity covered by this subpart unless: (1) Vital functions of the fetus will not be artificially maintained except where the purpose of the activity is to develop new methods for enabling fetuses to survive to the point of viability, (2) experimental activities which of themselves would terminate the heartbeat or respiration of the fetus will not be employed, and (3) the purpose of the activity is the development of important biomedical knowledge which cannot be obtained by other means.

(c) In the event the fetus *ex utero* is found to be viable, it may be included as a subject in the activity only to the extent permitted by and in accordance with the requirements of other subparts of this part.

(d) An activity permitted under paragraph (a) or (b) of this section may be conducted only if the mother and father are legally competent and have given their informed consent, except that the father's informed consent need not be secured if: (1) his identity or whereabouts cannot reasonably be ascertained, (2) he is not reasonably available, or (3) the pregnancy resulted from rape.

§46.210 ACTIVITIES INVOLVING THE DEAD FETUS, FETAL MATERIAL, OR THE PLACENTA.

Activities involving the dead fetus, mascerated fetal material, or cells, tissue, or organs excised from a dead fetus shall be conducted only in accordance with any applicable State or local laws regarding such activities.

§46.211 MODIFICATION OR WAIVER OF SPECIFIC REQUIREMENTS.

Upon the request of an applicant or offeror (with the approval of its Institutional Review Board), the Secretary may modify or waive specific requirements of this subpart, with the approval of the Ethical Advisory Board after such opportunity for public comment as the Ethical Advisory Board considers appropriate in the particular instance. In making such decisions, the Secretary will consider whether the risks to the subject are so outweighed by the sum of the benefit to the subject and the importance of the knowledge to be gained as to warrant such modification or waiver and that such benefits cannot be gained except through a modification or waiver. Any such modifications or waivers will be published as notices in the *Federal Register.*

Reference: Part 46 (Protection of Human Subjects) and Subtitle A (Department of Health, Education and Welfare) of Title 45 (Public Welfare) of the United States Code of Federal Regulations, 17 July 1975, *Federal Register*, Vol. 40, No. 154, 8 August 1975, pp. 33525-33551: and Amendments, 31 October 1975, *Federal Register*, Vol. 40, No. 215, 6 November 1975, p. 51638.

Subject: Definition of viable fetus.

Summary: A "viable fetus" for purposes of §46.203(g) includes those with an estimated gestational age of 20 weeks or more, and a body weight over 500 grams.

Reference: Subpart C to Part 46, Subtitle A, of Title 45 of the United States Code of Federal Regulations, 29 July 1975; *Federal Register*, Vol. 40, No. 154, 8 August 1975, p. 33552.

643 REGULATION OF NON-PHYSICIAN HEALTH PERSONNEL

France

Subject: Amendment to Code of Ethics for Midwives.

Summary: New amendments deal with:

Section 24: Laboratory examinations and analyses that midwives may prescribe;

Section 25: The granting of permission for midwives to carry out amnioscopy at the beginning of labor;

Section 66: The addition of the amnioscope to the list of instruments midwives may use.

Reference: Decree No. 76-770 of 10 August 1976 to amend Decree No. 49-1351 of 30 September 1949, appearing in *Journal Officiel*, 17 August 1976, No. 191, p. 4956; reported in 27 *IDHL*, No. 4 (1976), p. 741.

Philippines

Subject: Creation of the Paramedic Certifying Board to regulate IUD insertion and pill dispensing procedures by trained nurses and midwives.

Summary: In an attempt to provide rural women with midwives and nurses, the Commission on Population (POPCOM) has established a Paramedic Certifying Board. The Board handles all accreditation and certification relating to the training of midwives and nurses as Family Planning Midwives and Family Planning Nurses. A certificate of successful completion of the prescribed training entitles the midwife or nurse to render and prescribe such family planning methods. Certification entails training in one of four accredited training institutions and the submission of case reports detailing 5 pill prescriptions and 20 IUD insertions.

Reference: *People*, Vol. 3, No. 3 (1976), p. 37.

Singapore

Subject: Change in procedural regulation of nurses and midwives and easing of restrictions for the practice of midwifery by unregistered persons.

Summary: The Nurses and Midwives Act, 1975, has superseded both the Midwives Act and the Nurses Registration Act. The prime innovation is the creation of a Singapore Nursing Board to fulfill the functions of the former Midwives Board and the former Nursing Board with power to regulate the admission of nurses and midwives to practice.

One substantive change has occurred. Under the repealed Midwives Act, Section 5(2), persons who were not registered as a midwife were not permitted to "habitually and for gain attend women in childbirth otherwise than under the direction of a registered medical practitioner." The comparable Section 14(3) of the 1975 Act contains no such prohibition.

Moreover, Section 14(1) of the 1975 Act reads as follows:

> Where the board removes the name of a midwife from the register it may also prohibit her from attending to women in childbirth in any capacity other than that of midwife.

Thus, there is a clear implication that unregistered persons may practice midwifery.

Reference: Singapore Nurses and Midwives Act 1975; reported in *Laws Affecting Population and Family Planning in Singapore*, UNFPA Law and Population Project, Report No. 1, by Kenneth K.S. Wee.

South Africa

Subject: New regulations for curriculum leading to a diploma of midwifery.

Summary: A diploma in midwifery now requires a course of two years duration, with a one-year exemption for registered nurses. Principles underlying the programme include teaching at the applied level throughout; consideration of ethical, legal and medico-legal foundations; and the examination of scientific principles with emphasis on microbiology, parasitology and pharmacology.

Curriculum includes the basic sciences, science and the art of midwifery, preventive and promotive health care and family planning, principles of professional practice, ward administration and clinical instruction and record keeping.

Practice and clinical instruction must include the following:

(a) 60 hours in an ante-natal department or clinic (the student must examine and receive instruction in the supervision of at least 30 pregnant women);
(b) witnessing under instruction of five deliveries before being allowed to perform deliveries;
(c) 15 deliveries by the student personally (at least the first five deliveries must be performed in the school);
(d) 15 internal examinations by the student personally (the findings must be checked by a medical practitioner or a registered midwife);
(e) breathing and relaxation techniques, ante-natal exercises, post-natal exercises;
(f) performance of episiotomies;
(g) suturing of first and second degree tears of the perineum and of episiotomies and administration of a local anesthetic, excluding pudendal block.

During the above-mentioned instruction, the student: (a) is required to keep records of ante-natal patients and of the patients personally delivered by the student; (b) is required to nurse ante-natal patients suffering from abnormal conditions; (c) may receive instruction in a district approved by the Council.

Reference: Government Notice No. R.254, 14 February 1975, The South African Nursing Council; *Government Gazette*, 14 February 1975, No. 4586, pp. 16-21; reported in 27 *IDHL*, No. 1 (1976), pp. 192-194.

Sweden

Subject: Provision of contraceptive devices by school nurses.

Summary: Parliament has enacted an Act which provides school nurses with extra pay for helping individual students with sexual problems and distributing free contraceptive foam and condoms. The nurses will refer students seeking pills or intra-uterine devices to clinics.

Reference: *People*, Vol. 4, No. 1 (1977), p. 37.

700 EDUCATION

710, 720 FREE AND COMPULSORY EDUCATION

Cuba

Subject: Educational guarantees in new Constitution.

Text: *Article 50.* Everyone has the right to an education. This right is guaranteed by the free and widespread system of schools, semiboarding and boarding schools and scholarships of all kinds and at all levels of education, and because of the fact that all educational material is provided free of charge, which gives all children and young people, regardless of their family's economic position, the opportunity to study in keeping with their ability, social demands and the needs of socioeconomic development.

Adults are also guaranteed this right, and education for them is free of charge, with the specific facilities regulated by law, by means of the adult education program, technical and vocational education, training courses in state agencies and enterprises and the advanced courses for workers.

Reference: Constitution of the Republic of Cuba, 24 February 1976, Art. 50; translation in *Constitutional and Parliamentary Information*, 3rd Series, No. 107, 1976, p. 71.

Note: Other provisions of the Constitution may be found in §§240, 320, 340, 570 and 610.

Japan

Subject: Financial Assistance to Employers for Educational Leave.

Summary: As of 1 April 1975, when the new Employment Insurance Scheme became fully effective . . . financial assistance is payable to small-scale employers to encourage them to give their employees paid educational leave and to send them to public vocational training courses. The amount payable per day per employee is 1,060 yen (1 US dollar = 295 yen), for a maximum duration of 100 days per educational or training course. During the period of the course, normal wages must be paid by the employer to the employee. The regulations also specify the types of educational institutions at which courses may be taken and the minimum number of lessons which the employee must attend. . . .

Reference: *Shukan Rodo News* (Weekly Labour News) (Tokyo), 31 March 1975; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1975), p. 341.

Norway

Subject: Governmental subsidies to correspondence education.

Summary: New regulations, issued 5 June 1975, by the Norwegian Ministry of Church and Education are intended to make education by correspondence less expensive and free when possible.

Based on the Correspondence School Act of 1948, the regulations make all correspondence education within the public school system free, if not geared towards a public examination.

Where the courses are geared towards an examination but arranged by some institution outside the public school system, the State pays the whole fee less a small student's part of NKr. 50 to 100 (U.S. dollar = 5.37 Norwegian Kroner) depending on the student's total fee. If a course includes both classroom and correspondence work, the State pays the whole fee. Finally, if there is a correspondence study circle, the State will make complete reimbursement on completion of the course.

Qualification of course subsidies are subject to approval by the Ministry or in certain instances by the National Correspondence School Council.

Reference: "Regulations concerning state subsidies to education by correspondence," laid down by the Ministry of Church and Education on 5 June 1975, on the basis of Parliamentary Report (*Stortingsmelding*) No. 118 (1972-73), and in agreement with the Parliament's decision of 3 December 1974. Norwegian Association of Correspondence Schools: pamphlet introducing the new regulations, undated, reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1975), pp. 342-343.

Peru

Subject: Educational reform to reduce illiteracy and improve education.

Summary: The new Peruvian three year development plan calls for improvements in the educational system and the reduction of illiteracy as follows:

33. EDUCATION

a. *Objective*

Improved levels of education with increased assistance and a reduction of illiteracy putting into practice the Educational Reform.

b. *Outline*

(1) Reduce illiteracy, with the help of the populace and public institutions.

(2) Intensify the putting into practice of programs outside of the school setting on different levels and methods of the educational system.

(3) Increase, improve and equip educational centers; promote a greater participation in the community utilizing those organizational resources which have educational potential.

(4) Reinforce education at work and by means of work at the corresponding levels and courses of action, linking these with labor activities in the community.

(5) Promote the effective participation of the community in the management of education by means of the *Nucleos Educativos Comunales* (one central school instead of several scattered ones—Translator's note).

(6) Promote the putting into practice of the First Level of Higher Education, adapting it to the needs of the country and of the new means of production.

(7) See that the training of qualified personnel is adequate for the occupational requirements of the country, while maintaining studies of said needs.

(8) Promote the participation of teachers in applying the Reform and in the discovery and solution of those problems which concern them in their profession.

(9) Prescribe the *Ley del Magisterio* (Law of the Teaching Profession—Translator's note) and other legal mechanisms which have in mind the regulation of the educational sector.

(10) Promote, through the Educational System, the training of personnel apt in scientific and technological investigation.

(11) Prescribe the legal mechanisms and establish little by little the *Servicio Civil de Graduandos* [*alternative to military service for college graduates—Translator's note*].

(12) Develop a system to reaffirm, promote and diffuse national and universal culture in its many forms.

(13) Intensify the implementation of the National System of Recreation, Physical Education and Sports.

(14) Intensify the participation of different sectors in the application of the Educational Reform.

(15) Promote the obligatory contribution of companies to the financing of the education of workers and their families.

(16) Deepen the reform of the educational administration and promote the diversion of financial resources from other sources, distinct from those of the State.

(17) Facilitate the creation and development of centers of education which will collaborate with the State in the task of education (private schools, cooperative schools, commercial participation), in accord with the General Law of Education.

Reference: *Plan de Gobierno Tupac Amaru*, 1977-1980, §33.

Note: Other provisions of the plan may be found in §§520, 570, and 610.

Philippines

Subject: Supplement to existing scholarship program.

Summary: The President by decree has provided for the establishment of a "study now, pay later" program. The Act grants financial assistance to Filipino graduates of authorized public or secondary schools who wish to pursue further studies but are in financial need.

The Act contains regulations and provides for a supervisory Education Assistance Policy Council.

It is to take effect on the publication of implementing regulations.

Reference: *Educational Assistance Act of 1976*, Presidential Decree No. 932, 13 May 1976, as reproduced in Philippines: Department of Labor, *Philippine Labor*, 2 June 1976. Reported in ILO, *Social and Labor Bulletin*, No. 3 (September 1976), pp. 305-306.

740 ADULT AND VOCATIONAL EDUCATION

Algeria

Subject: Ordinance to promote the education and training of workers.

Summary: An Ordinance was enacted on 24 April 1975, designed to promote the education and training of workers.

In particular, it provides for full paid leave up to 18 months for such purposes. The employee must return to the enterprise upon completion of training.

Reference: Ordinance No. 75-31, 29 April 1975; *Journal Officiel*, 16 May 1975; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1975), p. 337.

Brazil

Subject: Legislation promoting vocational training.

Summary: Three new acts were adopted in Brazil in 1976 which were designed to promote vocational training. In addition to establishing a Federal Manpower Council to administer over the various projects, the program will have a number of other aspects. Tax deductions of twice the amount spent by any undertaking on approved training programs will be granted, up to an amount equal to 10 percent of the undertaking's total taxable income.

In addition, a National Rural Vocational Training Service (SENAR) has been established to provide rural vocational training.

Reference: Decree No. 77632 of 1 April 1976, *Diario Oficial*, Section 1, Part 1, 2 April 1976; Act No. 6297 of 15 December 1975; Decree No. 77463 of 20 April 1976, *Diario Oficial*, Section 1, Part 1, 22 April 1976; Decree No. 77354 of 31 March 1976, *Diario Oficial*, 14 April 1976; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1976), pp. 299-300.

Bulgaria

Subject: In-plant education courses for workers.

Summary: A system of in-plant education courses designed for workers who have not completed primary or secondary education was established by regulations issued 1 August 1975.

The one to two-year courses are given outside of working hours and consist of 12 hours formal instruction per week.

Examinations are given at the end of the course with educational leave payments made to workers to allow for preparation. Administrative responsibilities rest with local educators in order to insure a level of training equal to regular school courses.

Enterprises in the same area may cooperate and establish one course between them if they individually do not have sufficient numbers of workers.

Reference: *D'ržhaven Vestnik* (Official Gazette), 1 August 1975; reported in ILO, *Social and Labour Bulletin*, No. 2 (June 1976), p. 196.

Chile

Subject: Vocational training and employment promotion.

Summary: Legislation has been enacted designed to promote vocational training. Financing rests with individual undertakings, however, they may deduct these expenditures from their tax bills up to a maximum of 1% of their wage bill.

Workers will still receive full wages, regardless of work hour changes. Fellowship programs will be set up to train those interested in fields considered nationally important.

A regulatory body, the National Training and Employment Service, will supervise the entire program and replace pre-existing agencies. The legislation is to take effect on 1 January 1977.

Reference: *Diario Oficial*, 8 May 1976; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1976), pp. 300-301.

Finland

Subject: Legislation encouraging training to promote employment.

Summary: A new law sets up full adult retraining and further education courses at vocational schools established by the State, a community or group of communities, or by private foundations. In addition, some courses will be offered at existing vocational and high schools.

Persons must be 20 years old, unemployed or threatened with unemployment, or wishing to change to jobs for which trained personnel are needed, or in need of training to increase vocational skills.

Reference: *Finlands Författningssamling* (Official Gazette), No. 31, 16 January 1976; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1976), p. 301.

Madagascar

Subject: Education leave.

Summary: An Ordinance has been issued which provides that each worker is entitled to 12 working days per calendar year (not counting traveling time) to attend education courses. During this time, the worker is to be paid by the employer.

Reference: Ordinance No. 75-013-0/DM, *Journal Officiel*, 5 June 1975; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1975), pp. 232-234.

Note: Other provisions of this Ordinance may be found in §§320, 530, and 560.

Mexico

Subject: New system of adult education.

Summary: A new Act is designed to make adult education, for persons over 15 who have not completed primary or secondary schooling, a part of the national education system.

It provides for the use of all media aids and all existing adult education establishments. In addition, all governmental bodies will provide workers and their families with the opportunity to attend school.

Reference: *Diario Oficial*, 31 December 1975; reported in ILO, *Social and Labour Bulletin*, No. 3 (September 1976), pp. 303-304.

770 POPULATION AND SEX EDUCATION

(For related provisions, see §120, Contraception)

Austria

Subject: Sex education curricula for high schools.

Summary: Under an order (*Verordnung*) of the Federal Minister of Education and Arts of 20 July 1976, sex education in the eighth grade (top) of the "Gymnasium" and similar high schools shall include: human sexuality, sexual ethics and sexual hygiene; pregnancy and birth; birth control and family planning.

Reference: Order No. 607/1976 BGB1, 20 July 1976.

Council of Europe—European Court of Human Rights

Subject: The European Court of Human Rights rejects claims that Danish "integrated" sex education in public schools is a violation of human rights.

Summary: In a case in which three applications were lodged by parents against the Kingdom of Denmark, the Court held by six votes to one that there was no breach of Article 2 of Protocol No. 1, or of Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms taken together with said Article 2. Article 2 of Protocol No. 1 provides a right to education for all people. It also ensures the rights of the parents to have their children taught, by the State, in conformity with their own religions and philosophical convictions.

Danish sex education policies provide for integration of the topic into other compulsory subjects in the school curriculum. The reasoning behind this is explained as follows in the Guide to sex education, *Vejledning om Seksualoplysning i folkeskolen* 1971:

> The main purpose of integration is to place sex guidance in a context where the sexuality of man does not appear as a special phenomenon. Sexuality is not a purely physical matter . . . nor is it a purely technical matter. . . . On the other hand it is not of such emotional impact that it cannot be taken up for objective and sober discussion. . . . The topic should therefore form an integral part of the overall school education. . . .

The Court stated in holding for the State that the Danish State,

> by providing children in good time with explanations it considers useful, is attempting to warn them against phenomena it views as

> disturbing, for example, the excessive frequency of births out of wedlock, induced abortions and venereal diseases. The public authorities wish to enable pupils, when the time comes, 'to take care of themselves and show consideration for others in that respect,' not ... [to] land themselves or others in difficulties solely on account of lack of knowledge' (Section 1 of the Executive Order of 15 June 1972).
>
> These considerations are indeed of a moral order, but they are very general in character and do not entail overstepping the bounds of what a democratic State may regard as the public interest. Examination of the legislation in dispute establishes in fact that it in no way amounts to an attempt at indoctrination aimed at advocating a specific kind of sexual behavior. It does not make a point of exalting sex or inciting pupils to indulge precociously in practices that are dangerous for their stability, health or future or that many parents consider reprehensible. Further, it does not affect the right of parents to enlighten and advise their children, to exercise with regard to their children natural parental functions as educators, or to guide their children on a path in line with the parents' own religious or philosophical convictions.

The Court went further and pointed out that the Danish State preserves the right of parents to place their children in heavily subsidized private schools, or to educate them at home.

As to the alleged violation of Article 14, which prohibits religious discrimination, the Court noted the difference between religious instruction and sex education: the former requires the dissemination of tenets wherein the latter disseminates mere knowledge.

The applicants also invoked Articles 8 and 9 of the Convention claiming that the legislation interfered with their right to respect for their private and family life, as well as their rights of freedom of thought, conscience and religion. The Court refused to find any breach of such rights.

In a separate opinion, Judge Verdross drew a distinction between the communication of information on biology and natural sciences, on the one hand, and information concerning sexual practices on the other. The latter, he stated, affects the development of the minor's conscience and, as such, may be violative of the parents' Christian convictions. Moreover, the Judge noted, the Danish legislation itself took cognizance of this distinction by providing private schools with the discretion to choose whether to include information on sexual matters although making a biology course mandatory. He stated that failure of the Danish Act to exempt children of parents with religious convictions at variance with these policies is in derogation of Article 2 of Protocol No. 1.

Reference: *Case of Kjeldsen, Busk Madsen and Pederson*, European Court of Human Rights, Strasbourg, 7 December 1976.

Note: The case was referred to the Court from the European Commission of Human Rights. For details of that body's ruling, see *Annual Review, 1974*, pp. 107-108.

Iceland

Subject: Comprehensive law on sex education, abortion and contraception.

Text: The provisions of the new Icelandic law which relate to sex education provide:

CHAPTER 1: ADVICE AND EDUCATION

Article 1. Advice and education on sex life and childbearing shall be made available to the public.

The Surgeon General supervises the execution and structure of such advice and education.

Article 2. Assistance shall be given according to circumstances, concerning:

1. Instruction and advice about the use of contraceptives and their procurement.

2. Advice for persons who contemplate requesting an abortion or a sterilization.

3. Sex life education and advice and instruction about parental responsibility.

4. Advice and instruction concerning the assistance which is available to women in connection with pregnancy and childbirth.

Article 3. An advisory service shall be provided at public clinics and hospitals which may work together with the maternity committee, gynecological clinics, the Mental Health Society, family planning, and social workers.

Article 4. The advisory service shall consist of physicians, social workers, midwives, nurses, and teachers according to needs.

Article 5. All recognized contraceptives shall be made available from the advisory service. The aim shall be to make it easier for the public to obtain contraceptives, for example, by public health insurance participation in their cost.

Article 6. Advice for persons who contemplate an abortion or sterilization includes the following factors:

1. Medical assistance;
2. Pregnancy tests;
3. Advisory and supportive conversations;
4. Social assistance;
5. Assistance with regard to an application and reference to a hospital.

Article 7. Educational authorities shall, in cooperation with the chief school physician, provide instruction about sex life and sex life ethics during the compulsory school years. This instruction shall also be given in other school years.

Reference: Law Number 25/1975, 22 May 1975.

Note: Other provisions of this statute may be found in §§110 and 130.

800 PROPERTY AND ECONOMIC FACTORS

820 TAX EXEMPTIONS

India

Subject: Promotion of family planning.

Summary: A 100% rebate in income tax assessment was designated by the Indian Government for any donations made to the Government or approved charitable institutions, which were designed to promote family planning. Previously, only a 50% rebate of the donation was allowable.

Reference: IPPF, *News*, November/December 1976, p. 6.

825 CUSTOMS DUTIES AND IMPORT RESTRICTIONS

India

Subject: Liberalization of import policy for family planning equipment.

Summary: A new policy allowing registered medical practitioners, hospitals, medical institutions and nursing homes to import family planning appartus is now in effect.

Equipment such as laproscopes, culdoscopes, hysteroscopes and vacuum aspirators, accessories and spares may now be imported by such institutions for their own use.

Reference: *Financial Times* (India), 26 June 1976; reported in IPPF, *Law File*, No. 1, September 1976.

830 LAND TENURE AND LAND IMPROVEMENT PROGRAMS

Ethiopia

Subject: Dismantling and restructuring of land tenure system.

Summary: A law prohibiting discrimination based on sex, nationality or legitimacy in the inheritance of land has replaced an archaic tenure system which allowed such discrimination.

Reference: The Land Reform Proclamation of 1975, as reported in Haile and Yimer, *Law and Population Growth in Ethiopia* (Law and Population Programme Monograph Series No. 35 (1976)), p. 30.

870 INCENTIVES AND DISINCENTIVES

(See also § 110 on Sterilization.)

Bulgaria

Subject: Pro-natalist economic benefits to mothers.

Summary: Several benefits are provided to women in order to encourage child-bearing.

A system of birth grants is enacted under which a Bulgarian mother would receive $100 U.S. for her first child, $250 U.S. for her second and $500 U.S. for her third child. In addition, children will receive monthly allowances until their sixteenth birthday.

Maternity leave increases are also provided, and mothers are eligible for subsidized laundry and house cleaning services. Finally, special classes are provided for boys to teach them to share household chores.

Reference: *People*, Vol. 3, No. 3 (1976), p. 38.

India—Federal Government

Subject: National Population Policy.

Summary: A system of graduated incentives for both male and female acceptors of sterilization was announced by Dr. Karan Singh, Minister of Health. Persons sterilized after two children would receive 150 rupees ($17.10 U.S.). Those sterilized after three children would receive 100 rupees ($11.40 U.S.) and those sterilized after four children would receive 70 rupees ($7.98 U.S.).

Reference: "National Population Policy," K. Singh, Vol. 2, *Population and Development Review*, (2), June 1976, pp. 309-312; reported in *George Washington University Law Review*, unpublished manuscript.

Subject: Three child families for governmental employees.

Summary: The Indian Government amended the civil service conduct rules to limit Government employees' families to three children. The only exception was for employees who already had more than three children as of 30 September 1977. Presumably, any civil servant having a child after that date would lose his or her job.

Reference: *The International Herald Tribune*, 7 September 1976; reported in IPPF, *Law File*, No. 1, September 1976. See also *The New York Times*, 10 August 1976.

State Law

Tamil Nadu

Subject: Shorter jail terms for prisoners who undergo sterilization.

Summary: Convicts in Tamil Nadu who submit to sterilization may have their jail term reduced.

Reference: *Intercom*, Vol. 4, No. 5 (May 1976), p. 4.

Uttar Pradesh

Subject: Obligatory sterilization for government employees.

Summary: Any government servant whose spouse is alive and who has three or more children must be sterilized within three months, pursuant to a state government order issued under the Defence of Internal Security of India Rules. Those failing to do so will cease to be entitled to any rationed article beyond the basic four units.

Reference: *The Indian Statesman*, 26 June 1976; as reported in IPPF, *Law File*, No. 1, September 1976.

Subject: Community prizes.

Summary: Uttar Pradesh has established a group incentive of community prizes for attainment of family planning goals. First prize is 20,000 rupees ($2,300 U.S.) to be used for hospital improvement.

Reference: "Community Prizes for Uttar Pradesh," 11 *Centre Colling*, (5), 11 May 1976; as reported in *George Washington University Law Review*, unpublished manuscript.

Delhi

Subject: Incentives and disincentives to Indian capital residents and government employees.

Summary: Delhi, which is under federal administration, was the target for federal government encouragement of sterilization.

The system centered around "eligible couples," which are couples with less than two children who have pledged sterilization, or couples with two or more children with one spouse sterilized.

Eligible couples and their families received free treatment in outpatient departments at government hospitals, and preferential treatment for government jobs. In addition, they become entitled to vacation pay advances, housing loans and advances for the purchase of scooters or cars.

New government employees with more than two children would be required to become sterilized within two months. People living in government housing would lose their housing if one spouse in a family with more than two children were not sterilized, or if a third child were born.

Reference: *The New York Times*, 26 February 1976, p. 1, col. 3.

Note: At the time of publication, no information was available to the editors on the possible repeal of these provisions after the March 1977 change in government.

Korea, Republic of

Seoul

Subject: Vasectomy incentives.

Summary: The city government of Seoul has announced that married men undergoing vasectomies would receive priority in buying or renting new municipally built apartments.

Reference: *IEC Newsletter*, No. 24, 1976. See also, *People*, Vol. 4, No. 1 (1977), p. 37.

Singapore

Subject: Permission to marry.

Summary: Marriage licenses will only be granted to foreigners seeking permission to marry Singapore citizens, on condition they sign a statement that they will be sterilized after the birth of a second child.

Reference: *People*, Vol. 3, No. 4 (1976), p. 38.

Tanzania

Subject: Abolition of tax allowances; spacing of maternity leave.

Summary: Legislation in Tanzania has abolished tax allowances for dependent children, reversing a previous incentive to have children.

A separate law provides three months' maternity leave for working women, but allows only one such leave every three years.

Reference: *People*, Vol. 4, No. 1 (1977), p. 37; IPPF, *Around the Federation*, October 1976.

Tunisia

Subject: Incentives to acceptors of sterilization.

Summary: Acceptors of tubal ligation are offered an incentive of 5 dinars (U.S. $13.00).

Reference: *Population and Family Planning Programs: A Factbook*, No. 2 (8th edition), October 1976, Table 13, pp. 48-49.

900 MIGRATION

Mexico

Subject: General law on Human Settlements.

Summary: On 20 May 1976, the Mexican Government promulgated an act designed to relieve urban congestion and improve the quality of community life. The Act reads in part:

CHAPTER I

General Provisions

Article 1. The provisions of this Law are of a public nature, are in the public interest, and are aimed at:

I. Establishing participation by the Municipalities, the States and the Federation in the Planning and regulation of human settlements in the national territory;

II. Setting basic standards for planning the establishment, conservation, improvement and growth of population centers; and

III. Defining the principles under which the State shall exercise its powers in determining the provision, uses, reserves and future of land areas and real property.

Article 2. For the purposes of this Law, the following definitions shall be used:

I. Human settlement means the emergence of a specific conglomeration of population with all its systems of coexistence in a determined physical area that includes the natural elements and material structures existing in such areas;

II. Population centers mean the urban areas occupied by the installations required for their normal life; those reserved for their future exapansion; those constituted by natural elements that fulfill the function of preserving the ecological conditions of such centers; and those which by resolution of the competent authorities are designated for the establishment of such centers; and

III. The Federal Public Sector means the Ministries and Departments of State, the federal autonomous agencies, the State-affiliated companies in which the Federal Government holds a major portion of the stock, and other public institutions.

Article 3. The planning and regulation of human settlements will result in improvement of the living conditions of the urban and rural population by means of:

I. Making proper use of natural elements for the social good in order to bring about equitable distribution of wealth;

II. Balanced development of the country by harmonizing the inter-relation between the city and the rural areas and distributing equitably the benefits and burdens of the urban development process;

III. Balanced distribution of population centers in the national territory and their integration within the framework of national development;

IV. Proper socioeconomic inter-relation of cities in the national system;

V. The most efficient inter-action possible between the systems of coexistence and services in each population center, particularly as regards the creation and improvement of conditions favorable to the proper relations between industrial areas and workers housing areas, transportation between these areas, and rest and recreation;

VI. Development of medium-sized cities in order to avoid cities whose disproportionate size produces negative economic situations and serious social and human deterioration;

VII. Decongestion of large cities;

VIII. Improvement of the quality of life in the community;

IX. Greater participation by citizens in the solution of problems generated by coexistence in human settlements;

X. Regulation of the land market and of real estate set aside for low-income housing; and

XI. Promotion of projects to provide all inhabitants of the country with decent housing.

....

CHAPTER II

Concurrence and Coordination of Authorities

Article 8. The powers of the State with regard to Human Settlements under this Law shall be exercised concurrently by the authorities of the Municipalities, the States and the Federation within the scope of their jurisdiction and competence.

Article 9. The Municipalities, the States and the Federation, within the scope of their jurisdiction, shall:

I. Prescribe any pertinent measures necessary to ensure that all lands, according to their suitability, and waters and forests are used in accordance with the function assigned them in the respective plans;

II. Formulate and implement urban development plans that will provide for necessary public action and investment;

III. Carry out the public works and services necessary for urban development;

IV. Regulate the land market and the market for real estate used for low-income housing, which may be carried out by means of appropriate laws or administrative provisions; and

V. In general, provide for precise observance of urban planning.

Article 10. The national Urban Development Plan shall be based, *inter alia*, on the following considerations:

I. The needs deriving from the volume structure, dynamics and distribution of the population;

II. A diagnosis of the status of urban development in the entire country;

III. The problems involved in human settlements and the definition of their causes and consequences;

IV. Projections of foreseeable overall demand for all economic sectors in urban areas;

V. Possible goals with regard to the quality of life in human settlements; and

VI. The general strategy for achieving these goals in accordance with the circumstances prevailing in different parts of the country, in the understanding that such goals are compatible with the resources and means available to achieve them.

. . . .

CHAPTER III

Conurbations

Article 18. The conurbation phenomenon occurs when two or more population centers form or tend to form a geographic, economic and social unit.

Article 19. For the purposes of the present Law, the conurbation phenomenon must be formally recognized by means of an official statement. If the population centers are situated within the limits of a single State, it is the responsibility of the local Executive Branch to issue such a statement and have it published in the respective official gazette. If the population center is situated in more than one State, issuance of the statement is the responsibility of the President of the Republic and it shall be published in the *Diario Oficial* (Official Gazette). In both cases it shall also be published in one of the local or national newspapers of greatest circulation, as appropriate.

Article 20. In the conurbation process the planning and regulation of the area shall be carried out by the corresponding authority or jointly by the governments of the Municipalities, the States involved and the Federation, or solely by the governments of the Municipalities and the respective State.

. . . .

CHAPTER IV

Regulations on Property in Population Centers

Article 28. Regulation of human settlements shall be carried out by means of planning and regulation of the establishment, conservation,

improvement and growth of population centers according to the manner in which such activities have been provided for in the plans referred to in Article 6 of this Law.

Article 29. The establishment of population centers under the terms of this Law shall require a Decree issued by the legislature of the corresponding State and official statements on the provision of lands and determination of uses, reserves and future thereof.

Article 30. The Decree referred to in the preceding Article shall contain appropriate official statements on the provision of lands and the determination of uses, reserves and future thereof.

Article 31. Conservation of population centers consists of activities aimed at maintaining:

I. Ecological balance;

II. The good condition of material works in accordance with the provisions of urban development plans; and

III. The good condition of buildings, monuments, public squares, parks and all other elements constituting their historical and cultural heritage in accordance with the laws in force.

Article 32. Improvement consists of activities aimed at reordering and renovating population centers by means of optimum use of component and necessary material elements.

Article 33. Improvement may be effected by means of agreements between the authorities and property owners in which their respective interests are taken into consideration, or by means of expropriation of real property for reasons of the public good.

Article 34. The growth of population centers shall be attended to by means of determining areas necessary for their expansion.

Article 35. Upon publication of the Urban Development Plans provided for in Article 4, the land areas and real property included in such Plans shall be subject to the regulations of this Law.

Transitory Article

Sole Article. The present Law shall come into force 30 days after its publication in the *Diario Oficial de la Federación* (Official Gazette).

Mexico, D.F., May 20, 1976.—Dep. Manuel Ramos Gurrión, President.—Sen. Enrique González Pedrero, President.—Dep. Rogelio García González, Secretary.—Sen. José Castillo Hernández, Secretary.—Paraphs.

In fulfillment of the provisions of Article 89, Section I of the Political Constitution of the United Mexican States, and for the purpose of its publication and observance, I hereby issue the present Decree in the residence of the Chief Executive in Mexico City, Federal District on the twentieth day of May in the year nineteen hundred and seventy-six.

Reference: *General Law on Human Settlements*, 20 May 1976; *Diario Oficial*, 26 May 1976.

Switzerland

Subject: Reduction in number of working immigrants.

Summary: A new Federal ordinance came into effect on 1 November 1976, which reduces the number of immigrants into Switzerland who wish to work from 145,000 per year, to 110,000.

Reference: *Neue Zurcher Zeitung*, 24 October 1976, p. 18.

Viet Nam

Subject: Resettlement from urban to rural areas.

Summary: The Viet Nam Government has reportedly developed a program to resettle large numbers of urban residents in the countryside. This is being done, among other reasons, to expand agriculture and relieve population pressure in the cities. Plans are made to eventually move 10 million persons, with an additional resettlement of 1.5 million nomadic Montagnard tribesmen in permanent areas.

Reference: *The New York Times*, 1 May 1977, pages 1, 20. See also IPPF, *Law File*, No. 4, December 1976; *People*, Vol. 4, No. 2 (1977), p. 38.

910 MILITARY SERVICE AS AFFECTING PROCREATION

Philippines

Subject: Establishment of Women's Auxiliary Corps in the Armed Forces.

Summary: Republic Act No. 3835 was amended, in part, as follows:

Section 3. Section 3 of the Act is hereby amended to read as follows:

"Section 3. Any unmarried and without dependent female citizen of the Philippines, between the ages of eighteen and twenty-six years, able-bodied, physically and mentally fit, of good moral character and habits and who has completed the second year of any course from a college or university recognized by the government may be enlisted in the Women's Auxiliary Corps for a term of three years; Provided that, insofar as practicable, enlistments shall be apportioned among the various provinces of the Philippines; Provided further, that high school graduates who possess technical or special skills necessary in the performance of non-combatant/administrative duties and other functions and services as may be determined by the Secretary of National Defense may be enlisted in the Women's Auxiliary Corps."

. . . .

Section 5. Section 5 of the Act is hereby amended to read as follows:

"Section 5. Except as otherwise specifically provided, all laws and regulations now or hereafter applicable to commissioned officers and enlisted men of the AFP shall likewise be applicable respectively to commissioned officers and enlisted women of the Women's Auxiliary Corps: Provided, that any commissioned officer or enlisted woman who contracts marriage while in the active service shall be automatically separated from the service, unless she has, at the time of said marriage, already completed at least five (5) years of continuous active military service in the AFP; Provided further, that all laws and regulations on maternity leave now or hereafter applicable to female employees of the government shall be applicable to married members of the Corps, and provided finally that members of the Women's Auxiliary Corps who were previously separated or discharged honorably by reason of marriage may be called to active duty subject to the conditions aforementioned and in accordance with rules and regulations as the Secretary of National Defense, upon recommendation by the Chief of Staff, AFP may prescribe."

This Decree takes effect upon approval.

Done in the City of Manila, this 25th day of October, in the year of Our Lord nineteen hundred and seventy-six.

(SGD.) FERDINAND E. MARCOS
President of the Philippines

Reference: Presidential Decree No. 1043, 25 October 1976.

950 CENSUS AND VITAL STATISTICS SYSTEMS*

Canada—State Law

British Columbia

Subject: Reporting of changes resulting from transsexual surgery.

Summary: Regulations governing medical reporting under the Vital Statistics Act are amended to provide that the required medical certificate must state when external genitalia have been so altered as to resemble those of the opposite sex. Similarly, alterations of the breasts so as to resemble that of the opposite sex are to be reported.

Reference: British Columbia Regulation 55/75; amendment to the Vital Statistics Act, 23 January 1975; *The British Columbia Gazette*, Part II, Vol. 18, 18 February 1975, No. 4, p. 146; reported in 27 *IDHL*, No. 2 (1976), pp. 276-277.

United Arab Emirates

Subject: Law regulating registration of births and deaths.

Summary: Legislation was enacted prescribing the procedures for the registration of all births and deaths.

Reference: Federal Law No. 6 of 1975; reported in 27 *IDHL*, No. 4 (1976) p. 893.

United States—State Law

Louisiana

Subject: Records of birth after anatomical change of sex.

Text: *Section 61.* Issuance of new birth certificate after anatomical change of sex by surgery.

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*A "vital statistics system" is a four-part system relating to vital records. The four parts of the system are:

(1) *Compiling vital records:* registration, collection and self-reporting
(2) *Maintaining vital records:* preservation, amendment and certification;
(3) *Statistical operations:* tabulation and statistical analysis of vital records—alone or as part of a larger set of demographic data; and
(4) *Publication:* basic records, tabulations or analysis thereof.

A. Any person born in Lousiana who, after having been diagnosed as a transsexual or as pseudo-hermaphrodite, has sustained sex reassignment or corrective surgery which has changed the anatomical structure of the sex of the individual to that of a sex other than that which appears on the original birth certificate of the individual, may petition a court of competent jurisdiction as provided in this Section to obtain a new certificate of birth.

B. Suits authorized by this Section shall be filed in the judicial district court having jurisdiction over the parish in which the petititioner resides or over the parish in which the petitioner was born, and petitioners who either reside in or were born in the Parish of Orleans shall file suit in the Civil District Court for the Parish of Orleans. The suit of any petitioner born in Louisiana shall be filed contradictorily with the state office of vital records and in the event the person is married the person's spouse shall also be a necessary party to the law suit. The petition shall be accompanied by a certified copy of the petitioner's original birth certificate.

C. The court shall require such proof as it deems necessary to be convinced that the petitioner was properly diagnosed as a transsexual or pseudo-hermaphrodite, that sex reassignment or corrective surgery has been properly performed upon the petitioner, and that as a result of such surgery and subsequent medical treatment the anatomical structure of the sex of the petitioner has been changed to a sex other than that which is stated on the original birth certificate of the petitioner. If the court shall find that the evidence sustains the required proof, the court shall render a judgment ordering the issuance of a new birth certificate changing the sex designated thereon from that shown upon the petitioner's original certificate of birth. The petitioner may in the same suit seek to have the name of the petitioner changed, and the court may render judgment in accordance with law upon this additional petition at the same time.

D. A certified copy of the petition and judgment for a new certificate pursuant to this Section shall be furnished to the state registrar of vital records at New Orleans within ten days after the judgment is rendered. The registrar shall issue to the petitioner a new certificate or certified copy thereof; whereupon the original birth certificate and the copy of the petition and judgment received by the registrar shall be sealed in a package and filed in the archives of the office of vital records.

This sealed package shall be opened only upon demand of the individual to whom the new certificate was issued, and then only by order of the court which rendered the judgment ordering the issuance of the new certificate.

Reference: Act 352, State of Louisiana Acts of the Legislature, Regular Session 1976, amending Chapter 2 of Title 40 of Louisiana Revised Statutes of 1950.