



PN-AAN-178  
ISSN 29854

LAW AND POPULATION  
PROGRAMME

**TUFTS UNIVERSITY**  
**THE FLETCHER SCHOOL OF LAW AND DIPLOMACY**  
Administered with the cooperation of Harvard University

MEDFORD  
MASSACHUSETTS 02155

September 2, 1976

LAW AND POPULATION PROGRAMME NEWSLETTER NO. 9

I. STATUS OF COUNTRY PROJECTS

The UNFPA has devoted the second issue of its Population Profile Series to "Law and Population." This monograph describes the objectives and activities of twenty-five Law and Population Projects as well as summarizes the major recommendations already adopted by those projects. Copies may be obtained by writing to: Public Information, UNFPA, 485 Lexington Avenue, 21st Floor, New York, New York 10017.

A country project request from Senegal has been approved by the UNFPA. The Project will be conducted by the Institut Fondamentale d'Afrique Noir at the University of Dakar and will be directed by M. Mamadou Moustapha Niang, who is in charge of social science research at the Faculty of Social Sciences of that University, and by Mr. Cheikh T. Sar, Magistrate of the Palais de Justice in Dakar.

INDIVIDUAL COUNTRIES

Bangladesh: The present Law and Population Project is being carried out by the Institute of Law and International Affairs and is funded by the International Bank (IBRD). Influential members of government are collaborating in the work, and it is expected that many of the Project's recommendations will be adopted.

Egypt: Country Project headed by Dr. Khalifa is organizing the Regional Seminar on Law and Population to be held in Egypt in December 1976. For more about this see section V.

Ethiopia: Country monograph completed and published as Law and Population Monograph Series No. 35.

Indonesia: Country Project Director, Mrs. Nani Soewondo, organized a regional IPPF law panel in the East and South-East Asia and Oceania region in Manila in July 1976.

Korea, Republic of: The Law and Population Project has published the Final Report on the Maternal and Child Health Law and Induced Abortion in Korea by Byong-Je Jon, in collaboration with Kye-choon Ahn, Pyong-choon Hahm and Seung-Doo Yang, Yonsei University, Seoul.

Malaysia: Proposed projects for 1976-77 include work on achieving greater accessibility to contraceptive methods, studies of laws related to custody of minors and study of the effect of income tax on spouses.

Morocco: The Law and Population Programme has published Droit et Population: Aspects Juridiques by Professor A. Belkaziz, former Dean of the Law Faculty of Université Mohammed V, and Loi et Fécondité: Annexe Sociologique, by Dr. A. El Khatibi of the Department of Sociology.

Philippines: Country monograph on Law and Population to be used as background for a national conference on law and population in Manila in November 1976. In addition, the Project's compilation of population-related laws in the Philippines was published in a special issue of the Philippine Law Journal. The University of the Philippines Law Center also published Women and the Law in observance of the International Women's Year.

Singapore: Project is conducting a national sample survey to ascertain attitudinal and behavioral responses to Singapore's incentives and disincentives programs in family planning.

Thailand: The Law and Population Project issued a progress report in April 1976 which may serve as background for reform of laws related to abortion and population education.

Togo: The report on Togo law and population will be appended to the proceedings of the Regional Seminar on Law and Population for Francophone African States, expected in the fall of 1976.

## II. PUBLICATIONS

Since the last Newsletter, the following new monographs have appeared:

Law and Population Growth in Chile, by Jose Sulbrandt and Maria Alicia Ferrara (1975) (No. 31);

Law and the Status of Colombian Women, by Josefina Amezcua de Almeyda (1975) (No. 32);

Law and Population Growth in Ghana, by Richard B. Turkson (1975) (No. 33);

Law and Population in Brazil, by Walter Rodrigues, Joao Antonio Gordilho de Proenca, Maria Alicia Paiva, Fernando de Queiroz Mattoso, Leo de Affonseca, Otavio Augusto de Paiva, Theognis Nogueira and Benjamin Moraes Felho (1975) (No. 34);

Law and Population Growth in Ethiopia, by Daniel Haile and Erbu Yimer (1976) (No. 35);

Reform of Laws Affecting Population Growth: Recent Developments, by Edmund H. Kellogg (1976) (No. 36);

North African Migrants Under West European Law, by Peter B. Maggs and Luke T. Lee (1976) (No. 37);

Following the excellent reception for the 1974 issue, The Annual Review of Population Law, 1975 has been completed and has gone to press.

A background paper by UNFPA for the World Population Conference entitled "Law and World Population" was published during the reporting period in United Nations, The Population Debate: Dimensions and Perspectives (1975, Vol. II, pp. 615-25).

Two other UNFPA publications have just been released:

Law and Population (Population Profile Series No. 2); and, Survey of Contraceptive Laws: Country Profiles, Checklists and Summaries.

The Programme is cooperating with the UN in the preparation of a volume entitled Law and the Status of Women--a fifteen country survey-- which will be published also by the Columbia Human Rights Law Review in the fall of 1976.

### III. COLLABORATION WITH THE UNITED NATIONS AND OTHER ORGANIZATIONS

In addition to the preparation of materials for publication by the United Nations and continued collaboration with IPPF in its Law and Planned Parenthood Panel and dissemination of information with regard to worldwide changes in laws affecting population, the following constitute this period's major meetings in which the Programme participated.

Workshop on Reducing Fertility through Beyond Family Planning Measures. The Director attended this Workshop, sponsored by the Inter-Governmental Coordinating Committee of the ASEAN region in Penang, Malaysia, 26-29 January, 1976, in his capacities as a member of the Workshop's Steering Committee and author of a background paper entitled "Human Rights Aspects of 'Beyond Family Planning Measures'".

International Student Program at the Margaret Sanger Center. The Director organized and conducted a Law and Population Seminar for international students in New York City on Saturday, 7 February, 1976. Three panels were organized, conducted by the Director, Mr. Steven Tokarski of the Columbia University Law School and Ms. Jeannie Rosoff of Family Planning Reporter in Washington, D.C.

Airlie House Conference on New Developments in Fertility Regulation. The Director organized and chaired a law panel at a Conference on Menstrual Regulation sponsored by the Pathfinder Fund and the School of Public Health of the University of Pittsburgh, 28-31 March, 1976, at Airlie House, Virginia. The Conference was attended by physicians from Latin America. The law panel consisted of the following, in addition to the Director as Chairman: Professor Carlos Dunshee de Abranches of the Law Faculty of the University of Guanabara; Dra. Judith Cisneros of El Salvador and Dra. Nancy

Romero de Aliaga of Bolivia. The panelists were unanimous in their view that menstrual regulation is different from abortion under the Latin American legal system and is not illegal.

The Annual Meeting of the American Society of International Law. The Director organized and chaired a panel on Law and Population at the Annual Meeting of the American Society of International Law in Washington, D.C. on Friday, 23 April 1976. The panelists included Mrs. Helvi Sipila, Assistant Secretary-General for Social Development and Humanitarian Affairs; Ambassador Marshall Green of the US State Department; and Ambassador Tommy Koh, Permanent Representative of Singapore to the United Nations. This marked the first time that the American Society of International Law had devoted a session of its annual meeting to the topic of population.

IPPF Panel on Law and Planned Parenthood and ESEAOR Regional Panel. In his capacity as consultant to IPPF, the Director attended its panel on Law and Planned Parenthood in London, 26-28 April 1976, and the ESEAOR Regional Panel in Manila, 14-15 July 1976. He presented reports on recent developments in law and population panels and the Law and Population Programme.

Annual Meeting of the Population Association of America. The Director served as discussion leader at a luncheon round-table on law and population at the annual meeting of the Population Association of America in Montreal on 29 April, 1976.

Conference of Women and Development. At a conference on "Women and Development" held at Wellesley College on 2-6 June, 1976, sponsored by the African Studies Association, the Association for Asian Studies, the Latin American Studies Association and the Center for Research on Women at Wellesley College, the Programme distributed copies of its publication, Law and the status of Colombian Women, to participants.

18th Assembly of Inter-American Commission of Women and Hemispheric Conference for Women '76. The Programme collaborated with the above mentioned organizations by making available all its monographs on Laws Discriminating Against Women in Latin America for reproduction and distribution in meetings in Miami, Florida, in August 1976. The Programme also assisted in the preparation of a list of lawyer-participants for the conference.

#### IV. RECENT LAW CHANGES

The Annual Review for 1975 shows that the momentum for the revision and updating of population laws continued in that year, and there are strong indications that this will be maintained through 1976. Among the changes as to which this Programme has so far been informed are the following:

##### A. Africa

The new Family Law proposal of the Egyptian Ministry of Social Affairs met with opposition from some religious leaders and is being re-drafted with

the assistance of the Institute for Islamic Studies in Cairo. Ghana's Law Reform Commission is reviewing Ghana's abortion laws with a view toward clarifying ambiguities in current law. At present, Ghana's abortion law does not clearly define abortion nor does it provide adequate guidance as to which operations are prohibited or permitted. Some sections of the statute imply absolute prohibition while other sections seem to allow broad exceptions in the case of operations for medical treatment done in good faith without negligence. The Commission's initial report states the case for and against liberalization of abortion and provides draft statutes for legislative consideration. A family law bill is being considered by the Kenya Parliament and is consistent with the policy statement issued in June 1975 providing paid maternity leave for women who have completed at least twelve months of employment. The Moroccan Ministry of Health has authorized trained paramedicals to prescribe oral contraceptives provided that an examination is conducted at a family planning or medical center and a questionnaire testing for side effects is filled out. Referral to a physician is required if the examination or questionnaire reveals contraindications to the use of oral contraceptives. Pursuant to an announcement in November 1975, Nigeria has recently moved toward liberalizing its law on abortion. In Zaire, the National Committee for Desirable Births has as its objective the design of a policy to reduce infant mortality and improve health care in keeping with President Mobutu's teaching that defines the family as the central cell of the nation.

Libya and The Democratic Republic of Madagascar have taken steps to give formal recognition to the role of women in revolution, as wives, mothers and educators.

#### B. Asia and Oceania

The Government of Bangladesh announced in a policy statement of 1975 that it will incorporate sex and population education in hygiene courses taught in its schools, including education regarding contraceptives. Preparation is also underway in Bangladesh for issuance of a decree on abortion which would allow abortion on request during the first three months of pregnancy and afterward on grounds of mental health. Bangladesh government radio has recently begun advertising oral contraceptives by both their proprietary and trade names. As of 1975, these policies have been coordinated by the eight-member National Population Council of Bangladesh. In Iran, laws providing for educational services, old age security and regulating agricultural and child labor have been introduced.

The Central Government of India has announced a plan to use disincentives to induce government employees to have smaller families. Thus far, only one state in India, Maharashtra, has taken the step of mandatory sterilization in some cases. Indian Health and Family Planning Minister, Dr. Karan Singh, announced that the Government's new population policy will include: raising the age of marriage to 18 for women and 21 for men, improving educational opportunities for women, introducing population education in schools, increasing monetary incentives for sterilization and granting allowances for donations to voluntary family planning associations.

The Indian Ministry of Education and Social Welfare has prepared a plan of action to improve the position of women in education, employment and health care.

The Japanese Ministry of Health and Welfare has reduced the maximum legal period for induced abortion from 28 to 24 weeks after the last menstruation. Korean income tax measures now provide for a deduction for dependants limited to a maximum of three persons (including children). A law reform act related to marriage and divorce is expected to be enacted in Malaysia in 1976.

In New Zealand, the acquittal of a physician by the Supreme Court of Auckland on a charge of intent to unlawfully procure a miscarriage, established that abortion may be performed for reasons of physical and mental health. Liberalization of Pakistan's abortion law has been recommended by an All-Pakistan Medical Seminar in Karachi. Consideration is also being given by the government of Pakistan to a proposal to guarantee old age protection to parents who have been sterilized and who reach old age without a living son. Also, a tax rebate for families with two children only was included in the Pakistan budget for 1975-76.

In the Philippines, President Marcos recently signed a Letter of Instruction making family planning counseling a condition for the issuance of a marriage license. The presidential letter provides a criminal penalty for anyone attempting to circumvent the new regulation. An Office of Family Planning has been created in every city and municipality to facilitate implementation of the letter of instruction and to provide other interested persons with family planning education materials. To strengthen the implementation of the Philippine Population Program, government agencies have been instructed to coordinate their activities with POPCOM, the Philippine Commission on Population. Also in the Philippines, a Paramedic Certifying Board has been created to accredit and certify nurses trained in pill prescription and IUD insertion. Consistent with Singapore's policy of encouraging family planning, both male and female civil servants who undergo voluntary sterilization will be granted seven days unrecorded full-pay leave. Also, a fee for childbirth is being added as a disincentive in Singapore's family planning program.

The Supreme Court of Fiji ruled on 23 August, 1976, that the abortion law of Fiji (patterned on the 1861 English law) should be interpreted to allow abortion on social, economic and health grounds, provided that the physician performed the operation in good faith in the belief that continuity of pregnancy would result in mental stress upon the pregnant woman (the Emberson Case).

C. Europe

A draft directive of the Commission of European Communities obliges member states to abolish discrimination based on sex, marital or family status in employment and training. The European Court of Justice has ruled that under the Treaty of Rome, women are entitled to equal pay.

The U.K. enacted a Sex Discrimination Act in 1975 which covers employment, training, education, housing credit and advertising and created the Equal Opportunities Commission to investigate reports of discrimination. By government authorization, two private charitable clinics now offer abortions in Britain. However, abortions after the twentieth week of pregnancy may be performed only in hospitals which have resuscitation equipment.

Bulgaria has adopted a policy of incentives for childbirth; \$100 for the first child, \$250 for the second and \$500 for the third. Czechoslovakia has increased family allowances, childbirth grants and maternity allowances.

The French Government has announced that as of September 1976, instruction on contraception will be compulsory at all French secondary schools. An act banning employment discrimination on the basis of sex was also passed by the French Senate. Italy, in its new family code has recognized the work of housewives as a job having economic value.

The West German Bundestag has agreed on a new liberalized abortion law to take the place of the provisions held unconstitutional in 1975. New provisions permit abortion on grounds (among others) of mental health and also decriminalize abortions performed within thirteen days after conception. A law giving men and women equal rights in marriage and divorce has also been adopted by the Bundestag.

D. Latin America

Two states in Brazil have merged to become the new state of Rio de Janeiro and have adopted a new constitution which gives special attention to family planning and to the development of a "eugenic conscience" for the family. Colombia has adopted a divorce law covering civil marriage. The Constitution of Mexico was amended to include planned parenthood as a right and to make men and women equal before the law. The Government of Peru, which has been very conservative on family planning until the present, has officially established a population commissioner to study and report on the country's population problem.

E. North America

In Canada, a case which began as a straight forward prosecution for violation of the abortion statute has deeply affected the Canadian legal system itself. Dr. Henry Morgenthaler, who has been under almost constant prosecution since 1970 for performing abortions, was acquitted in 1975 by a jury verdict which was then reversed on the prosecutor's appeal to the Quebec Court of Appeals. Conviction despite jury acquittal was unique in Canadian

history and aroused public protest. Subsequently, the Minister of Justice intervened to set aside the court's conviction and ordered a re-trial before another jury, a procedure also unique in Canadian legal history. In a related development, a committee of the Canadian Justice Department is conducting a study examining the availability of therapeutic abortions, the criteria applied by abortion committees and how quickly women obtain abortions. The committee's report will serve as the basis for further consideration of the current policy allowing abortion only on certification by three physicians that the woman's life or health is threatened by pregnancy. In the United States, the Supreme Court has refused to overturn a California case which found constitutional a town zoning ordinance designed to restrict the town's rate of growth. In a recent decision (U.S. v. Danforth, 1976, No. 74-1151) the Supreme Court struck down as unconstitutional a Missouri statute requiring the consent of the pregnant woman's spouse and her parents (for minors) when abortion is performed during the first twelve weeks of pregnancy. Citing previous decisions which established that the abortion decision should be left to the woman and her physician the Court upheld the constitutionality of the requirement of written consent of the woman herself but held that there was no significant state interest sufficient to uphold the requirement of spousal or parental consent. In January 1976, the North Carolina Supreme Court held that the state has a right to protect itself and its people through the sterilization of the mentally retarded providing the subject's rights of due process are fully protected and sterilization is not prescribed as cruel and unusual punishment. The decision was handed down in a suit filed by the mother of a mentally retarded 15-year old son, to block his sterilization by the county's Department of Social Services. The state of Wisconsin adopted a law making contraceptives available through physicians, pharmacies and registered nurses without any restriction. The Department of Health of Puerto Rico has issued regulations liberalizing the Department's sterilization services.

#### V. OTHER ITEMS OF INTEREST

A Regional Seminar on Law and Population for the Middle East and North Africa is planned for December 1976 in Cairo, Egypt. The Seminar will allow countries of similar background to compare notes and strengthen their determination to undertake revisions of law for human rights purposes. This will be the last of a series of regional seminars which have been held in Nairobi, November 1974; Lome, Togo, March 1975; Jakarta, Indonesia, July 1975; and Cartagena, Colombia, September 1975.