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Judicial Decisions

International Advisory Committee
on Population and Law



Law and Population Programme
THE FLETCHER SCHOOL OF LAW AND DIPLOMACY
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- 7/ *Population in the UN System: Developing the Legal Capacity and Programs of UN Agencies*, by Daniel G. Partan (a summary of a book, see item 3 above.) (1972).
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- 18/ *Population and the Role of Law in the Americas*, Proceedings of a Seminar of the Human Rights Committee at the 18th Conference of the Inter-American Bar Association (1974).

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ANNUAL REVIEW OF POPULATION LAW, 1975

**Constitutions
Legislation
Regulations
Legal Opinions
and
Judicial Decisions**

**International Advisory Committee
on Population and Law**

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ABBREVIATIONS

BGBL	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 1975

INTRODUCTION

This is the second issue of the Annual Review of Population Law. A major innovation is the inclusion of resolutions adopted by international organizations which have significant bearing upon the population law and policy of Member States. Also new is the addition of two new categories of law under the headings of "Migration" and "Census and Vital Statistics System."

With regard to format, the 1975 Review follows the pattern of the 1974 Review, 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 1975, a few pre-1975 items are included because they took effect in 1975, 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 matter is available. Unfortunately, we did not always have the formal citation or full information available here, but we have supplied such information as we do have.

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

The International Advisory Committee on Population and Law is encouraged by the many favorable responses to the appearance of the first issue. It is convinced that such a Review fills an urgent practical need, and steps should be taken to institutionalize the publication on a permanent basis, preferably under a United Nations agency.

The preparation of this volume would not have been possible without the cooperation of twenty-six Law and Population Projects in different regions of the world, the International Planned Parenthood Federation and its affiliated associations, the Harvard Law School Library, and many lawyers from different parts of the world. While it is impossible to list all people who have helped in this compilation, the following individuals deserve special mention:

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Prof. Yang Seungdoo - Korea, Republic of
Prof. S.K. Singh - India
Prof. K. Wee - Singapore
Prof. W. Weerasooria - Sri Lanka

As in the case of the previous issue, major credit for collecting the materials and putting them into a systematic order goes to Edmund H. Kellogg, Deputy Director, Law and Population Programme, and Jan Stepan, Foreign and International Law Librarian, Harvard Law School.

The present issue, however, represents the collaborative effort of the entire staff of the Law and Population Programme.

To ensure completeness of materials for future issues, the reader's assistance in sending to the Law and Population Programme the texts of new laws bearing on population will be greatly appreciated.

International Advisory Committee
on Population and Law

000 GENERAL POPULATION POLICY

Council of Europe

Subject: The Council of Europe adopts a comprehensive resolution on "Legislation affecting fertility and family planning."

Text: The preamble of the Resolution reads:

The Committee of Ministers,

1. Having regard to Recommendation No. 2 of the 2nd European Population Conference on certain social and economic aspects of fertility trends in Europe, and to the studies carried out and conclusions put forward by its Committee of Demographic Experts;
2. Noting that Resolution 2436 (XXIII) of the General Assembly of the United Nations refers to "the right of parents to decide freely and responsibly on the number and spacing of their children";
3. Noting that the World Population Plan of Action adopted by the World Population Conference held in Bucharest in August 1974 affirms that all couples and individuals have the right to decide freely and responsibly the number and spacing of their children;
4. Noting further that in the programme of concerted international action for advancement of women (1970), the General Assembly of the United Nations declared one of the minimum targets of the Second United Nations Development Decade to be the making available to all persons who so desire of the necessary information and advice to enable them to exercise that right;
5. Noting the differences in legislation pertaining to contraception, abortion and economic and social aid to families in member states, and noting also the marked differences between the de jure and de facto situations which frequently exist in this field;
6. Noting that these differences may lead to social injustice;
7. Noting that the recent decline in fertility in nearly all developed countries has occurred despite these differences in legislation and in its application;
8. Conscious that legislation affecting family planning

and aid to families should be seen primarily as a means of allowing people to exercise their discretion,

Recommends member Governments:

I. i. when formulating policies relating to population to have full regard to the rights and needs of families;

ii. to enable all persons who so desire to have the information and means to decide freely and responsibly on the number and spacing of their children;

II. in order to realize these objectives, to take the following legislative and administrative measures:

(Then follow specific sections on Family Planning Services, Education in Family Planning, Sterilization, Abortion, and Economic and Social Assistance to Families. These sections are provided in this Review under the appropriate headings.)

Reference: Resolution (75)29 adopted by the Committee of Ministers of the Council of Europe on 14 Nov. 1975, at the 250th meeting of the Ministers' Deputies.

Note: The representatives of Belgium and West Germany reserved their governments' rights not to comply with the section on abortion, and the representative of Ireland reserved his Government's rights as to the resolution as a whole.

United Nations, Women's Year Conference

Subject: The United Nations Declaration of Mexico and World Plan of Action for the Implementation of the Objectives of the International Women's Year contain strong provisions on the right of family planning.

Text: The Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace, 1975, reads, in part, as follows:

Every couple and every individual has the right to decide freely and responsibly whether or not to have children as well as to determine their number and spacing, and to have information, education and means to do so.

The World Plan of Action reads, in part, as follows:

136. The status of women and, in particular, their education level, whether or not they are gainfully employed, the nature of their employment, and their position within the family are

all factors that have been found to influence family size. Conversely, the right of women to decide freely and responsibly on the number and spacing of their children and to have access to the information and means to enable them to exercise that right has a decisive impact on their ability to take advantage of educational and employment opportunities and to participate fully in community life as responsible citizens.

137. The exercise of this right and the full participation of women in all aspects of national life are closely interrelated with such crucial demographic variables as age at marriage, age at birth of first child, the length of interval between births, age at termination of child-bearing, and total number of children born.

138. The hazards of child-bearing, characterized by too many pregnancies, pregnancies at too early or too late an age and at too close intervals, inadequate pre-natal, delivery and postnatal care and resort to illegally induced abortions, result in high rates of maternal mortality and maternal-related morbidity. Where levels of infant and early childhood mortality as well as of fetal mortality are high, their reduction - a desirable end in itself - may also be a prerequisite of the limitation of the number of pregnancies that the average woman will experience, and of the society's adoption of a smaller ideal family size where this is a desired goal. Fewer pregnancies may be more easily achieved when there is a reasonable expectation that children born will survive to adulthood.

. . .

142. While States have a sovereign right to determine their own population policies, individuals and couples should have access, through an institutionalized system, to the information and means that will enable them to determine freely and responsibly the number and spacing of their children and to overcome sterility. All legal, social or financial obstacles to the dissemination of family planning knowledge, means and services should be removed. Every effort should be made to improve knowledge and identification of the causes of involuntary sterility, subfecundity and congenital birth defects and to secure their reduction.

143. Family planning programmes should direct communication and recruitment efforts towards women and men equally, since successful fertility regulation requires their mutual understanding and co-operation. This policy would enable women to exercise equally with men their right to decide how many children they will bear and the timing of the births. Attainment of these goals requires the development of means of contraception and birth control that will be both efficient and compatible with cultural values prevailing in different societies. Family planning programmes should be integrated and co-ordinated with health, nutrition and other services designed to raise the quality of family life.

The "Resolutions and Decisions" adopted by the Women's Year Conference included the following:

. . . .

15. Family planning and the full integration of women in development.

The World Conference of the International Women's Year,

. . . .

1. Calls on Governments, the specialized agencies and the organizations within the United Nations system to implement the World Population Plan of Action;

2. Calls on Governments, consistent with their national policy, as far as possible:

(a) To provide adequate facilities for the formal and non-formal education for women and girls, especially those in rural areas, to ensure that full advantage shall be taken of family health services;

(b) To make available to nursing mothers and their children the necessary health services within easy reach, coupled with programmes of education in maternal health and child welfare as an integral part of health programmes;

(c) To make available to all persons the necessary information and advice and adequate facilities and services within easy reach to enable women who so desire to decide on the number and spacing of their children, and, furthermore, to prepare young people for responsible parenthood;

(d) To include women on all boards and policy-making bodies at all levels in relation to the numbers of men, especially in socio-economic development plans and population policies;

3. Requests the Executive Director of the United Nations Fund for Population Activities and the Administrator of the United Nations Fund for International Women's Year to co-ordinate their activities to ensure the optimum utilization of existing resources;

. . . .

Reference: Report of the World Conference of the International Women's Year, Mexico City, 19 June - 2 July 1975, E/CONF 66/34; E 5725, pp. 4, 7, 26, 27, 87, 88.

United Nations, Economic and Social Council

Subject: The Economic and Social Council urges member Governments and international bodies to help couples and individuals to obtain information, education and means for family planning.

Text: Resolution 1942 (LVIII) (6 May 1975) reads, in part, as follows:

The Economic and Social Council. . .

Further recognizing that equal status of men and women in the family and in society improves the overall quality of life and that this principle of equality should be fully realized in family planning where each spouse should consider the welfare of the other members of the family, and recognizing that improvement of the status of women in the family and in society can contribute, where desired, to smaller family size, and that the opportunity for women to plan births also improves their individual status. . .

Urges United Nations bodies, Member States and relevant non-governmental organizations. . .

To recommend that couples and individuals have access to the information, education, and means to enable them to decide freely and responsibly on the number and spacing of their children.

Brazil

Subject: State of Rio de Janeiro required by new constitution to give special attention to family planning.

Text: Article 147 of the Constitution of the (new) state of Rio de Janeiro (created in 1975 by uniting two older states, Rio and Guanabara) reads, in part:

For the defense and protection of health, the state shall carry out through its own services, through incentives to private initiative, or through agreements with the federal and local Governments, activities in the fields of medicine, medical assistance, health education, rehabilitation, teaching and research.

Sec. 1 The State shall give special attention:

g) To family planning and to the development of an awareness of eugenics in the family.

Reference: Article 147 of the Constitution of the State of Rio de Janeiro.

Note: This is the first law change in Brazil since the Brazilian delegate announced at the World Population Conference in Bucharest that it would implement family planning as a human right.

New Zealand

Subject: Royal Commission to Enquire into, and Report upon, Contraception, Sterilization and Abortion established.

Summary: The statement by the Director of the Commission reads in part: "In the matter of the Royal Commission to Enquire into and Report upon Contraception, Sterilization and Abortion. Notice is hereby given that:

1. The terms of reference of the said Royal Commission are to receive representations upon, enquire into, investigate and report on the following matters:

1. The legal, social and moral issues that are raised by the law and practice relating to (contraception, voluntary human sterilization or abortion)

. . . .

3. Any changes that should be made in the public interest to the law or practice relating to contraception, voluntary human sterilization or abortion:

4. The likely effects upon the present health, hospital and medical services of any changes to such law and practice.

II. The Commission is required to report to His Excellency, the Governor-General, its findings, opinions and recommendations not later than the thirtieth day of June 1976.

Reference: Statement issued as a Public Notice, by direction of the Commission, 10 July 1975 at Wellington. See Evening Post, Wellington, 10 July 1975.

Pakistan

Subject: Special Committee established to develop recommendations to make the population planning program more effective.

Summary: In May 1975, the Prime Minister established a committee of four made up of the Federal Minister of Health, Labor, Social Welfare and Population Planning, the Prime Minister's Representative on Administrative Inspection, the Secretary of the Planning Division and Dr. Attiya Inayatullah, former head of the Family Planning Association of Pakistan, as non-official member. The Committee made comprehensive recommendations for the restructuring of the program which were approved by the appropriate authorities.

Reference: Communication from the Family Planning Association of Pakistan, dated 5 Feb. 1976.

Philippines

Subject: Amendment of Revised Population Act.

Text: Whereas, private sector participation must be strengthened to achieve a comprehensive and more effective national population program;

Whereas, involvement of the private sector in the development and formulation of policy and plans is essential to achieve effective coordination in the execution of our national population program;

Whereas, the Population Center Foundation, Inc. is the primary grant-making institution for population programs of the private sector in the Philippines and has developed the potential of becoming a major source of population expertise in the Asian Region;

Whereas, effective coordination between the Population Center Foundation, Inc. and the Commission on Population is necessary to maximize the efforts and resources that are applied to our national population program;

Now, therefore, I, Ferdinand E. Marcos, President of the Philippines, by virtue of the powers vested in me by the Constitution and in order to strengthen the population program of the Philippines, do hereby decree and make part of the law of the land the following:

Section 1. Section 6 of Presidential Decree No. 79 as amended is hereby further amended to read as follows:

"All functions and powers of the POPCOM shall be vested in and exercised by a Board of Commissioners hereinafter referred to as the Board, composed of: Secretary of Education

and Culture, Secretary of Health, Secretary of Social Welfare, Dean of the University of the Philippines Population Institute, the Director-General of the National Economic and Development Authority, Executive Director of the Population Center Foundation, Inc., and two other members from the private sector who possess the necessary expertise in the field of population and who are not recipients of Population Commission program money, each to be appointed by the President of the Philippines for a term of three years."

Section 2. Repealing Clause - All laws, acts, decrees, executive orders and rules and regulations, or parts thereof inconsistent with this Decree are hereby repealed or modified accordingly.

Section 3. Effectivity. - This Decree shall take effect immediately.

Done in the City of Manila this 25th day of September in the year of Our Lord, nineteen hundred and seventy-five.

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

By the President:

(Sgd.) Alejandro Melchor
Executive Secretary

United States

State Law

California

Subject: Community's use of a zoning ordinance to slow population growth upheld.

Note: For discussion of the Petaluma Case, see infra section 830.

Massachusetts

Subject: State law calls for planning to control growth.

Text: The Massachusetts Growth Policy Development Act, Chapter 807, 1975 Regular Session, reads, in part, as follows:

Section 1 . . .

this act has the following purposes:

(1) The initiation of a locally-oriented, participatory planning process to enable representatives from various interest groups in each municipality . . . to evaluate the effects of unplanned and uncoordinated growth and development patterns, formulate future growth and development goals . . . , coordinate local growth and development goals. . .

. . . .

Section 3. . . There shall be created in every municipality of the commonwealth a local growth policy committee composed

Section 4. . . the Agency (Office of State Planning) shall send to the selectmen of every town and to the chief executive officer of every city a request for a Statement of Growth Management Problems and Priorities, . . . The Statement . . . may include questions and requests for proposed policies relating to the following:

a. local growth management problems of highest priority, with particular reference to:

(1) The most significant changes, both recent and anticipated, in population density . . .

. . . .

d. Community goals for growth and/or conservation and the adequacy of existing laws for achieving these goals.

. . . .

Section 7 . . . The office of state planning . . . shall prepare a report for the special commission containing, but not limited to:

. . . .

g. a recommended growth policy for the commonwealth which shall reflect both local and regional preferences and capabilities . . .

Section 8. Within eleven months of the effective date of this act, the (special) Commission shall prepare and shall . . . submit to the general court (legislature) and to the governor a report which shall include . . . the following elements:

a. standards and, where appropriate, new mechanisms, instrumentalities, and processes to guide growth and development into those areas where they will be most

desirable . . . to minimize adverse environmental effects
and to conserve open land and natural resources. . . .

. . . .

Approved Dec. 22, 1975.

Zaire

Subject: Creation of the National Committee for Desirable Births ("Naissances Desirables").

Summary: On 20 Nov. 1975 the National Committee for Desirable Births was created to establish a unified policy for the entire country in this field and to plan for the expansion of desirable birth clinics for the whole country. The program is for the purpose of improving the health of mothers through the better spacing of childbirths. The activities will include: training of personnel for the clinics; the study of popular attitudes toward contraception; motivation, education and information of the population, and the collection of statistics.

References: Act of Zaire Government of 20 Nov. 1975 creating the National Committee and naming its members. See statement of Sabwa Matanda, government official responsible for the Desirable Births Program.

Note: The Committee takes the place of the National Council for the Promotion of the Principles of Desirable Births, created on 14 Feb. 1973 by Ordinance No. 73/089.

100 FERTILITY REGULATION

110 STERILIZATION

Council of Europe

Subject: Council adopts a general resolution on "Legislation Affecting Fertility and Family Planning" (see supra p. 3), including a part on sterilization.

Text: Part C of Resolution (75)29 of the Committee of Ministers of the Council recommends to member Governments to take the following legislative and administrative measures . . .

. . . .

C. Sterilization

1. To ensure that persons who desire sterilization are made fully aware that in the present state of knowledge the operation is generally irreversible.

2. To make sterilization by surgical procedure available as a medical service.

Pakistan

Subject: For various measures taken by the Government to provide incentives for voluntary sterilization, see People, Vol. 2, No. 3 (1975), p. 39.

Singapore

Subject: For various measures taken by the Government to provide incentives for voluntary sterilization, see People, Vol. 2, No. 3 (1975), p. 39.

South Africa

Subject: New law on sterilization of incompetent persons. (See also under abortion.)

Text: Act No. 2, the Abortion and Sterilization Act of 1975, (117 Government Gazette No. 4608, (12 Mar. 1975), p. 2, to define the circumstances in which . . . a person who is incompetent to consent to sterilization may be sterilized, reads, in part, as follows:

4. (1) A sterilization shall not be performed on any person who for any reason is incapable of consenting or incompetent to consent thereto, unless--

(a) two medical practitioners, of whom one shall be a psychiatrist, have certified in writing that the person concerned is capable of procreating children and

(i) is suffering from a hereditary condition of such a nature that if he or she were to procreate a child, such child would suffer from a physical or mental defect of such a nature that it would be seriously handicapped; or
(ii) due to a permanent mental handicap or defect is unable to comprehend the consequential implications of or bear the parental responsibility for the fruit of coitus;

(b) the person who may in law consent to an operation beneficial to that person has granted written consent to the sterilization; and

(c) the Minister has granted written authority for the sterilization.

(2) The person who may consent to an operation as contemplated in subsection (1) (b), is hereby authorized to grant the consent referred to therein.

(3) The provisions of this section shall not be construed as affecting the position in law of any person capable of consenting or competent to consent to an operation on himself.

. . . .

10. (1) Any person-- . . .

(c) who performs a sterilization in contravention of section 4 . . . (or at an unauthorized institution, or without appropriate written authority)

shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand rand or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(Section 6 establishes the requirements for obtaining the written authority of the institution in which the operation is to be carried out, and Section 7 sets forth the requirements for reporting. Section 9 provides a "conscience clause" to the effect that medical personnel "shall not be obliged to participate in or assist with . . . any sterilization.")

Note: The consent of persons capable of giving consent is sufficient authority for sterilization, if it is not contrary to "good morals" or public policy.

Sweden

Subject: Comprehensive Voluntary Sterilization Law, granting right to sterilization to persons over 25.

Text: The Law on Sterilization of 12 June 1975 (Svensk Forfattningssamling 1975:580, entering into force on 1 Jan. 1976) reads, in part, as follows:

Sec. 1 This act deals with operations on the reproductive organs, which, while not amounting to castration, cause permanent discontinuance of generative capacity (sterilization). The act is not applicable to operations made as part of medical treatment of a physical illness.

Sec. 2 A Swedish citizen, or a person domiciled in Sweden, who has reached the age of 25 years may be sterilized on his or her request. If sterilization is denied, the matter shall be submitted, without delay, for examination by the National Board of Health and Welfare.

Sec. 3 On the request of a Swedish citizen or domiciliary who is younger than 25 years but older than 18 years, a sterilization may be approved by the National Board of Health and Welfare,

(1) If there is a considerable danger that genes can be transmitted to descendants which can cause serious mental illness or abnormality, grave physical illness or other serious handicap (genetic indication);

(2) Where the person requesting sterilization is a woman, if, owing to some illness, physical disability, or weakness, a pregnancy could seriously endanger her life or health (medical indication);

(3) In connection with a request for determination of sex (sex change) under Sec. 1 of the "Act (1972:119) Determination of Sex in Certain Cases," where conditions for such a determination (change) are present.

Sec. 4 There shall be no appeal from a decision of the National Board of Health and Welfare on matters pertaining to sterilization.

Sec. 5 A sterilization operation shall not be performed before the applicant has been fully informed as to the effects and consequences of the operation and as to other appropriate methods of preventing pregnancy.

Sec. 6 Only a licensed physician is authorized to perform a

sterilization.

Sterilizations of women can be performed only in a general hospital or other medical institution which has been approved by the National Board of Health and Welfare.

Sec. 7 Anyone involved in a sterilization case may not, without authorization, disclose any information thus acquired which would be connected with the personal affairs of the patient.

Sec. 8 Whoever intentionally performs a sterilization in violation of this Act shall be punished by a fine or by imprisonment of up to 6 months, where the act is not otherwise punishable under the Penal Code.

This Act shall enter into force by January 1, 1976, at which time the Sterilization Act (1941:282) shall be repealed.

Note: This law was based on recommendations to the parliament by an official government committee report (SOU 1974:25). Translation by Mr. Krister H. Thelin, graduate student at the Harvard Law School.

United Kingdom

Subject: Decision of the High Court holding that non-therapeutic sterilization performed without competent consent of the person sterilized would be a violation of a basic human right.

Text: Held:

(i) The operation proposed was one which involved the deprivation of basic human right, i.e. the right of a woman to reproduce, and therefore, if performed on a woman for non-therapeutic reasons and without her consent, would be a violation of that right. Since D. could not give an informed consent, but there was strong likelihood she would understand the implication of the operation when she reached the age of 18, the case was one in which the courts should exercise its (sic) protective powers. Her wardship would accordingly be continued

(ii) A decision to carry out a sterilization operation on a minor for non-therapeutic purposes was not solely within a doctor's clinical judgment. In the circumstances the operation was neither medically indicated nor necessary, and it would not be in D's best interests for it to be performed since the evidence showed that D's mental and physical condition and attainments had already improved, that her future prospects were unpredictable, and that she was as yet unable to understand or appreciate the implications of the operation, whereas it was likely that in later years she would be able to make her own choice . . .

Reference: In re D (a minor), (1976) 1 All ER, 326, 327, 335. (Decision of 17 Sept. 1975, reported in All England Law Reports).

Note: The case involved mother's attempts to arrange the sterilization of her 12 year old daughter, who suffered from a condition diagnosed as Soto's syndrome. The girl was somewhat retarded mentally (IQ 80), but, as was commonly accepted, had sufficient intellectual capacity to enable her to marry in due course. When she reached puberty at 10, her mother was worried that her daughter might be seduced and possibly give birth to an abnormal child. (See also decisions of the U.S. courts on p. infra.)

United States

State Law

In 1975 several state legislatures adopted laws, most of which concern consent of minors or incompetent persons. The underlying rationale is usually the protection of such persons against the consequences of immature decisions or to ensure that they will not be sterilized without their personal decision. The following are some of these statutes expressly referring to sterilization and also a few which refer only to medical treatment in general terms.

California

Subject: Documentary evidence of informed consent made prerequisite for payment under "Medi-Cal" (public funds) of the costs of a voluntary sterilization.

Text: Sec. 14191 of the Welfare and Institutions Code, as amended, provides:

Notwithstanding any other provision of law, no payment for care or services shall be made under Medi-Cal to the attending physician under this chapter for the costs of any voluntary nonemergency sterilization unless the treatment authorization request is accompanied by the documents evidencing informed consent required by regulations of the department.

Reference: West's California Legislative Service . . . 1975-1976, Chapter 220.

Colorado

Subject: Statute providing for sterilization of mentally retarded persons.

Text: Sec. 27-10.5-128 to 132 of the Colorado Revised Statutes 1973, as amended, read, in part, as follows:

Sec. 27-10.5-128. Sterilization-limitations . . .

(b) Any mentally retarded person over eighteen years of age who has, and whose lawful parent or legal guardian has, given consent, as defined in section 27-10.5-102 (2), may be sterilized if all of the following consultants also give consent:

(I) A psychiatrist or psychologist who consults with or interviews mentally retarded person; and

(II) A person who works in the field of mental retardation, and is knowledgeable in it, who consults and interviews the mentally retarded person.

(2) No person who is mentally retarded and who has not given consent shall be sterilized.

Sec. 27-10.5-129. Sterilization proceedings.

(1) Any mentally retarded person, the parent, legal guardian, or custodian of said person, may file a petition for a sterilization with the court. The citation shall set forth the following:

. . . .

(2) Copies of the petition . . . shall be mailed to the mentally retarded person, his nearest relative. . . .

(3) A hearing on the petition shall be held promptly. The mentally retarded person shall be physically present throughout the entire proceeding, represented by counsel,

. . . .

Sec. 27-10.5-130. Competency to give consent to sterilization . . .

(1) If the mentally retarded person's competency to give consent to sterilization is denied by the doctor from whom the mentally retarded person has sought the sterilization. . . (the) person may file a petition for sterilization . . . with the court.

(2) If the court decides that an individual has given consent . . . and is competent to give such consent, the court shall order that a voluntary sterilization . . . be performed on said person. If the court determines that a person is incompetent to give consent . . . the court shall order that no sterilization . . . be performed.

. . . .

Sec. 27-10.5-132. Limitations on sterilization.

(1) Consent to sterilization shall be made neither a condition for release from any institution nor for the exercise of any right, privilege, or freedom.

(2) Nothing in this article shall require any hospital or any person to participate in any sterilization, nor shall any hospital or any person be civilly or criminally liable for refusing to participate in any sterilization.

Reference: 1 Colorado Laws . . . First Regular Session . . . 1975, Chapter 251.

Louisiana

Subject: Law providing for consent of minors to medical treatment not applicable to abortion or sterilization.

Text: The provisions of the Medical Consent Law enabling certain categories of minors to consent to surgical or medical treatment provide, in part, as follows:

" . . . shall not apply in any manner whatsoever to the subjects of abortion or sterilization, which subjects shall continue to be governed by existing law . . ."

Reference: West's Louisiana Session Law Service, 1975; Act No. 798 ("Medical Consent Law").

Massachusetts

Subject: Provisions enabling certain minors to consent to medical treatment limited in case of abortion or sterilization.

Text: Section 12F of a 1975 act authorizing certain minors to consent to certain medical treatment, provides, in part, as follows:

. . . .

Any minor may give consent to his medical or dental care at the time such care is sought, if

(i) he is married, widowed, divorced; or

(ii) he is the parent of a child . . . ; or

(iii) he is a member of any of the armed forces; or

(iv) she is pregnant or believes herself to be pregnant; or

(v) he is living separate and apart from his parent or legal guardian and is managing his own financial affairs;

. . . .

Consent shall not be granted under subparagraphs (ii) through (vi) inclusive, for abortion or sterilization.

Reference: 1975 Advance Legislative Service for the Annotated Laws of Massachusetts, Chapter 564 (An Act authorizing the Consent by Certain Minors to Certain Medical and Dental Care).

Minnesota

Subject: Provisions on sterilization of mentally retarded persons (including cases of compulsory sterilization).

Summary: Where the commissioner of public welfare has been appointed guardian of a retarded person, he can consent to the sterilization of his ward but a court must then decide if the operation is in the best interest of the ward. There are also detailed provisions on the personal consent to sterilization of such mentally retarded persons who are not wards of the commissioner. Such persons' personal consent is necessary for sterilization.

Reference: Minnesota Session Law Service 1975 First Regular Session, Chapter 208, sections 252A.11-13.

Nevada

Subject: Provisions enabling certain minors to consent to medical care exclude consent to sterilization.

Text: Sec. 129.030 provides, in part, as follows:

. . . .

(4) Notwithstanding the provisions of subsection 2, a minor may not consent to her or his sterilization. (Subsection 2 deals with drug addicts.)

Reference: 2 Statutes of the State of Nevada . . . 1975, Chapter 716.

New Hampshire

Subject: Repeal of statute allowing sterilization of inmates of certain institutions.

Summary: New Hampshire has repealed an old law providing for the compulsory

sterilization of inmates of state and county institutions, where such inmates were afflicted with certain incurable conditions.

Reference: Session Laws, Chapter 43, p. 41.

New York

Subject: 1974 case which provided public funding for sterilization affirmed.

Note: The case of Ferro v. Levine, 359 N.Y. Supp. (2d) 1012, mentioned in the Annual Review of Population Law, 1974, p. 30, which held that voluntary sterilization for family planning purposes must be reimbursed under "Medicaid" funding, was affirmed on appeal. (362 N.Y. Supp. (2d) 591.)

Oregon

Subject: Male sterilization included among free family planning services.

Text: Subsection (3) has been added to Section 435.305 of the Oregon Revised Statutes which provides:

(3) Free clinics to sterilize males under subsection (1) of this section may be conducted as a part of the program provided for in ORS 435.205 (i.e., of the family planning and birth control services administered free to persons whose family income does not exceed a certain limit).

Reference: 2 Oregon Laws and Resolutions . . . 1975, Chapter 591.

Note: Voluntary sterilization was expressly authorized in Oregon by a 1969 statute. It was previously not clear whether sterilization was included in free "family planning and birth control services."

Puerto Rico

Subject: Voluntary sterilization operations provided by government without cost.

Summary: The Assistant Secretary of Health for Family Planning announced that the Government would provide sterilization operations after a three-day waiting period.

Reference: New York Times, 4 November 1974.

Note: The Auxiliary Secretariat for Family Planning for the Department of Health issued a memorandum to the Regional Directors of Family Planning, under date of 4 May 1976 which sets forth in detail the conditions under which sterilization may be given to an applicant. These are very liberal and will be included in the Annual Review for 1976.

120 CONTRACEPTION

Council of Europe

Subject: Council adopts a general resolution on Legislation Affecting Fertility and Family Planning (supra p. 3), including a part on Family Planning Services.

Text: Part A of the Council's Resolution recommends to member governments to take the following legislation and administrative measures;

A. Family Planning Services

To make family planning information, advice and means available to all sections of the population as an integral part of health and social services, by means of:

- i. increasing the range and efficiency of family planning services, and ensuring that they are well distributed geographically so as to be within easy reach of the whole population; in this context, special attention needs to be paid to rural areas and the socially disadvantaged areas of large cities.
- ii. supporting, where appropriate, the work of non-governmental family planning organizations; this should not be seen as a substitute for action by governments, but should play a clearly defined role in the overall national family planning structure, such organizations being encouraged to continue their work in association with the public health service;
- iii. creating, where necessary, a national authority or system of co-ordination for action concerning family planning;
- iv. taking all necessary steps to publicize family planning services, with the aim of ensuring that all sections of the population are fully informed of the facilities to which they are entitled;
- v. authorizing the supervised advertisement of contraceptives and their distribution after officially approved technical and clinical testing;
- vi. ensuring that family planning consultation and the provision of all contraceptives requiring medical supervision are organized in such a way that all income groups may have equal access to them;
- vii. encouraging the medical profession to play a part in family planning programmes as an important contribution to good standards of family and community health.

Reference: Part A, Resolution (75)29 of Committee of Ministers of Council of Europe, adopted on 14 Nov. 1975.

Australia (State of Victoria)

Subject: Law on Registration and Advertising of Contraceptives.

Text: The Health (Contraceptives) Act 1974 provides, in part, as follows:

Section 270H prescribes that the Chief Health Officer is to keep a register of contraceptives, with the following particulars being given under each entry: (1) the distinctive name of the contraceptive; (2) where the contraceptive is a drug or other chemical or biological substance, the prescription or composition of the contraceptive as set out in the application for registration or, where the registration is varied, in the application for variation of the registration, or as determined under Section 270F; (3) where the contraceptive is not a drug or other chemical or biological substance, a description of the contraceptive; and (4) such other matters as are prescribed. A copy of the register is to be published annually in the Government Gazette.

. . .

Section 270M prescribes that no person may (a) insert, or cause to be inserted, in a newspaper, magazine, periodical, handbill, circular, programme, or other document printed or prepared in Victoria a statement intended or apparently intended by that person or any other person to promote the sale or disposal of a contraceptive as such, (b) publicly exhibit such a statement in view of persons who are in a street or public place, or (c) gratuitously send or deliver, or cause to be gratuitously sent or delivered, to a person or throw or leave or cause to be thrown or left upon premises in the occupation of a person or upon a public place a handbill, circular, programme, or other document containing such a statement, unless the contraceptive is a registered contraceptive and the statement has been approved by the Chief Health Officer under this Section either generally or for a specific use. Details are given of the procedure for obtaining the Chief Health Officer's approval for such statements.

Reference: Health (Contraceptives) Act of 1974, (Act. No. 8642), amending Part XIV of the Health Act of 1958 and other Acts. Law dated 17 Dec. 1974, to come into operation on a date or dates to be fixed by proclamation. Text taken from 26 IDHL No. 4, p. 729 (1975).

Note: Registered contraceptives may be marketed at pharmacies, practitioners' surgeries, clinics and other approved places. Application is made to the Chief Medical Office to have a place approved for marketing. The state of New South Wales has repealed the old Obscene and Indecent Publications Act, 1901-1968 and liberalized the law on advertising and publications.

France

Subject: Free distribution of contraceptives at family planning centers.

Official approval required for commercial publicity on contraceptives to professionals.

Text: Decree No. 75-315 implementing the family planning laws of 1967 and 1974* reads, in part, as follows:

Art. 2 - There are hereby added after Art. 6 of the Decree of 24 April 1972,** Articles 6-1. . . as follows: . . .

Art. 6-1 - Contraceptive medications, products or objects shall be distributed free of charge from the authorized centers for family planning and education to the persons mentioned in Article 2 of the . . . Law of 4 Dec. 1974* on the prescription of the physician in charge of the center.

Art. 8 - Art. 5 of Decree No. 69-104 of 3 Feb. 1969 is hereby replaced by the following provision:

Art. 5 - All direct or indirect commercial advertising (publicité) in publications intended solely for physicians and pharmacists and designed to persuade them to familiarize themselves with, to prescribe or to buy contraceptives or to spread the use of contraceptive methods, must obtain the special prior approval of the Minister in charge of Health, which approval shall be given on the advice of the commission established under Art. R 5047 of the Public Health Code, which, for this purpose, must include a gynecologist.

Reference: Decree No. 75-315 of 5 May 1975. Journal Officiel of 6 May 1975, p. 4592.

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Subject: Decree establishes the quantity of contraceptives which may be supplied at any one time; and privacy for minors.

Text: Decree No. 75-317 reads, in part, as follows:

* The Law of 1974 is Law No. 74-1026 of 4 Dec. 1974, a comprehensive law on family planning, reprinted in Annual Review, 1974 at p. 39 et. seq.

** Decree No. 72-318 of 24 April 1972 setting up organizations to provide information, consultation and family counselling, reprinted in Doublet and Villedary, Law and Population Growth in France, (Law and Population Programme Monograph Series No. 12, 1973) at p. 81.

Art. 1...

...contraceptive medications may be supplied for a period of three months. Renewals are permitted, on condition that there is an indication to this effect on the prescription and up to a limit of one year's treatment.

Art. 2

Article R. 5177 of the Public Health Code (dealing with the recording of prescriptions in a register by practitioners entitled to issue them) is completed by the addition of the following provisions:

These provisions shall not apply to the supply, in authorized family planning or education centres, of contraceptive medications or products to minors who wish that secrecy be observed."

Reference: Decree No. 75-317 of 5 May, 1975, amending Arts. R. 5148 bis and R. 5177 of the Public Health Code; Journal Officiel of 6 May 1975, No. 105, p. 4594.

Hong Kong

Subject: Ordinance revised to require prescription for dispensation of hormone pills over a specified dosage.

Summary: The Pharmacy and Poisons Ordinance was revised in 1975 to restrict the distribution of hormone contraceptives over a certain dosage. Pills with a low dosage may still be sold freely without a prescription.

Reference: Pharmacy and Poisons Ordinance Amendment of 1975. Information in letter from Secretary of Family Planning Association of Hong Kong, dated 9 Feb. 1975.

Note: Low dosage oral contraceptives may still be sold without a prescription. The original draft of the ordinance was liberalized at the request of the Family Planning Association of Hong Kong.

Iraq

Subject: Prescription requirement on pills withdrawn.

Summary: A decree of the Ministry of Health of 1975 allows sale of contraceptive pills by pharmacies without a doctor's prescription.

Reference: Letter of 21 Aug. 1975 from Dr. F.H. Ghali, President of Iraq Family Planning Association to Mr. Gille of U.N. Fund for Population Activities.

Italy

Subject: Provision of regional and municipal family service centers to include family planning.

Text: Law No. 405 of 29 July 1975, reads, in part, as follows:

Art. 1 The purposes of the family and maternity assistance services are:

- a) to furnish psychological and social assistance in preparing people for responsible parenthood, and to deal with problems of the couple and of the family, and problems related to children;
- b) to provide the means to achieve freedom of choice for couples and individuals in relation to responsible procreation, taking into account the ethical convictions and physical well-being of the users;
- c) To care for the woman's health, and that of the product of conception;
- d) To give out information helpful in either promoting or preventing pregnancy by counselling on methods and medications suitable for each individual case.

Art. 2 The region shall fix, in conformity with its own legislative rules, the criteria for the programming, functioning, establishment and control of the services specified in Article 1 in accordance with the following principles:

- a) Family and maternity counselling assistants will be installed by the municipalities or by their labor unions as operating organs within the local health units, once these are established;
- b) These counsellors may also be established by institutions, or by public and private non-profit organizations with social, health, or welfare purposes, and which are supervised, directly or indirectly, or are accepted, by the local health units once the latter are established;

c) The public counsellors providing out-patient or home care, and the proper assistance and means necessary to carry it out, will make use of personnel from the district health units, from the municipal and union health offices, from the medical and obstetric organizations and from the other social, psychological and health organizations. The counsellors referred to in paragraph b) will carry out the above-mentioned functions by means of agreements with the local health units. Until the health reform comes into effect, the counsellors referred to in paragraph b) can operate through agreements with the health institutions operating in the area, based on the annual regional program referred to in Art. 6 and in accordance with the regional criteria. For laboratory and radiological analysis and for all other research requiring special equipment, the public and private counsellors may make use of the hospitals, and of the specialized offices of the health care institutions.

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Art. 3. Consultants and welfare personnel assisting the consultants must have specific degrees in one of the following disciplines: medicine, psychology, pedagogy and social welfare, as well as experience and licenses, where prescribed, in their professions.

Art. 4 The cost of the prescription of pharmaceutical products is charged to the center or service which gives health assistance.

The other assistance provided by the service instituted under this law shall be free of charge for all Italian citizens and for foreigners residing or staying, even temporarily, in Italian territory.

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Art. 8 All provisions inconsistent, or in conflict, with the present law are repealed.

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Reference: Law No. 405, of 29 July 1975, on Establishment of Family Consultants; Gazzetta Ufficiale of 27 Aug. 1975, p. 5947.

Jamaica

Subject: Prescription requirement for pills removed; commercial advertising of contraceptives permitted; customs duties on contraceptives removed or reduced. Provision for the establishment of a commercial distribution program for pills and condoms.

Summary: These provisions were tabled* in the Jamaican Parliament through the Ministry of Health and Environmental Control - Ministry Paper No. 1 dated 27 Jan. 1974, subsequent to consideration of the total Health proposal as it affected Population, Family Planning, Family Life Education and the delivery of Health Services - Education and clinical. The operational plan was developed and implemented in consultation with, and with the approval of, the Drugs and Poison Control Board of the Ministry of Health and Environmental Control.

Reference: Ministry of Health and Environmental Control Paper 1, 22 Jan. 1974.

Morocco

Subject: Resupply of pills allowed without formality.

Text: Letter from Minister of Public Health to the Medical Directors of Provinces and Prefectures reads as follows:

Subject: Prescription of oral contraceptives.

I have the honor to recall to your attention that the prescription of the (contraceptive) pill to each new acceptor must be protected by all necessary medical checks, and should only be carried out after questioning of the patient and a careful medical examination either by a physician or by para-medical personnel trained for the purpose.

Nevertheless, experience both in Morocco and in other countries shows that the function of re-supply of acceptors can be extended to all preventive medicine posts, and, in particular, in dispensaries. The re-supply of contraceptive pill users through dispensaries brings the double advantage of saving these women long and sometimes difficult trips, and also to relieve the health centers which have, up to the present, been the only

*In Jamaica, when the parliament "tables" (takes no action) on regulations announced by a ministry, the regulations remain in force. Such "tabling" should not be confused with "tabling" proposed legislation.

organs authorized to deliver oral contraceptives.

Please take all the measures necessary to assure to the dispensaries a larger share of the work of re-supply of oral contraceptives, in accordance with the attached instructions*, which show how to identify cases of danger which should be referred to a physician before the woman is permitted to continue the taking of oral contraceptives.

Reference: Letter of May 1975 from Dr. A. Touhami, Minister of Public Health, No. 43/030/PF.

Philippines

Subject: Sale of contraceptives without prescription.

Text: A letter to the Executive Director of the Population Center Foundation from the Secretary of Justice (June 6, 1975) reads, in part, as follows:

. . . .

I understand that the question has arisen in connection with the present plan of that Foundation to conduct an intensive and widespread distribution of condoms and other contraceptive devices not only through duly licensed drug stores but also through all commercial channels of distribution, even on the sari-sari store level.

The cited provision of P.D. No. 79** reads:

*The attachment is a check list of symptoms whose existence would require the woman to be referred to a physician.

**Presidential Decree No. 79 (The Revised Population Act).

Sec. 5 Duties and Functions of the POPCOM*
The POPCOM shall have the following duties and powers:

. . . .

(d) To utilize clinics, pharmacies as well as other commercial channels of distribution for the distribution of family planning information and contraceptives.

On the other hand, the cited section of R.A.** No. 4729 declares:

Sec. 1 It shall be unlawful for any person, partnership, or corporation, to sell, dispense or otherwise distribute whether for or without consideration, any contraceptive drug or device, unless such sale, dispensation or distribution is by a duly licensed drug store or pharmaceutical company and with the prescription of a qualified medical practitioner. (Underscoring supplied.)

I believe your view is correct.

Decidedly, there is a repugnancy between these two provisions which cannot be reconciled since the first allows the distribution of the contraceptives through all commercial channels, whereas the latter limits such distribution to duly licensed drug stores or pharmaceutical companies and upon doctor's prescription. It is a familiar rule that a prior special statute (in the present case R.A. No. 4729, which deals particularly with the distribution of contraceptive drugs and devices) may be repealed impliedly by the enactment of a later general statute (here, P.D. No. 79 which covers the general subject of a national population program, the distribution of contraceptives being only one of the matters embraced therein), where the legislative intent to effectuate the repeal is unequivocally expressed, as when the later general statute cannot effectively operate while the special statute remains in operation. (Morris v. Neider, 18 NYS 2d 207/1940/; see also Sutherland, Statutory Construction, Vol. 1, p. 486.)

*POPCOM is the Commission on Population, in the Office of the President (Pres. Decree No. 79, Dec. 8, 1972).

**Republic Act No. 4729 of June 18, 1966.

To require contraceptives to be sold or dispensed only upon medical prescription and at duly licensed drug stores in compliance with section 1 of R.A. No. 4729 would certainly render ineffectual the directive contained in section 5 (d) of P.D. No. 79 that contraceptives be distributed not only at duly licensed pharmacies or drug stores but also in all other commercial channels of distribution. Consequently, the former must be deemed to have been repealed by the latter.

Signe .,

Vicente Abad Santos
Secretary of Justice

Reference: Excerpts from a letter from the Secretary of Justice, Department of Justice, Manila to the Executive Director, Population Center Foundation, Inc., Makati, Rizal of 6 June 1975.

Saudi Arabia

Subject: Ban on Contraceptives in Saudi Arabia.

Summary: On 28 April, a royal decree, issued in Mecca, bans contraceptives in the country and forbids smuggling of pills or devices into the country.

Reference: Boston Globe , 7 May 1975.

Note: Decree follows an alleged ruling of World Moslem League that birth control is inimical to Islam. Decree may have been motivated by desire to raise manpower in the country. Government still makes contribution to U.N. Fund for Population Activities.

Sri Lanka

Subject: Prescription requirement for pills removed.

Summary: Ministry of Health abolished the requirement of a medical prescription for the dispensing of oral contraceptives.

Reference: Policy decision by Ministry of Health. Letter from W. Weerasooria of Sri Lanka Law and Population Project, dated 17 Apr. 1975.

Sweden

Subject: Trained midwives specifically authorized to provide contraceptive services.

Text: A 1975 ordinance on midwives reads, in part, as follows:

. . . .

6. A midwife's activities shall consist principally in the care of the healthy pregnant woman, . . . A midwife with appropriate training may provide advice and treatment in connection with contraception and contraceptives.

Reference: Ordinance No. 109 of 3 April 1975, (amending a 1955 Regulation) relating to midwives; Svensk Författningssamling, 22 Apr. 1975. See Text in 26 IDHL No. 4, p. 876.

United Kingdom

Subject: Contraceptive supplies made exempt from prescription charge for drugs and appliances.

Summary: On 14 May 1975, the Minister of State (Health) announced in the House of Commons that general practitioners would be included in the comprehensive National Health Service family planning service, starting July 1, 1975. This meant that the practitioners outside the NHS clinics would no longer make prescription charges to their patients for prescribing contraceptives. Previously, such supplies had been free of charge at NHS clinics and hospitals, but general practitioners had made charges.

Reference: National Health Service (Charges for Drugs and Appliances) Amendment Regulations 1975, Nos. 718 and 719.

United States

Federal Law

Subject: Amendment of Regulations of the Food and Drug Administration, Department of Health, Education and Welfare, relating to postcoital oral contraceptives.

Summary: Comprehensive regulations dealing with labelling and information to be provided to users of oral contraceptives have been extended to the postcoital oral contraceptive, Diethylstilbestrol ("DES").

Reference: Code of Federal Regulations, Chapter 21 (Food and Drugs), revised as of April 1, 1975, sec. 310.501 (b).

State Law

California

Subject: Information on family planning and pre-release contraceptive services provided to female prisoners.

Text: The provisions of the Penal Code and other codes dealing with institutional detention are amended to ensure: a) the information and education regarding the availability of family planning services if given, and b) in some cases, the provision of family planning services before release. Thus, e.g., the amended Sec. 3409 of the Penal Code reads:

(a) . . .

(b) Each and every woman inmate shall be furnished. . . with information and education regarding the availability of family planning services.

(c) Family planning services shall be offered to each and every woman inmate at least 60 days prior to a scheduled release date. Upon request any woman inmate shall be furnished. . . with the services of a licensed physician or she shall be furnished. . . with services necessary to meet her family planning needs at the time of her release.

Reference: West's California Legislative Service. . . 1975-1976, Regular Session, Chapter 1146.

Maine

Subject: License requirement for the selling of condoms repealed.

Summary: Chapter 75 of Public Laws, 1975 Regular Session (Maine Legislative Service, 1975) repealed sections 1131 - 1143 of Maine Revised Statutes Annotated which included a provision under which a license was needed to sell or distribute "prophylactic rubber goods".

New York

Subject: Unconstitutionality of state statute prohibiting: a) supply of contraceptives to persons under sixteen years; b) distribution by other persons than licensed pharmacists; c) advertisement or display of contraceptives.

Text: The decision of a United States (federal) three-judge District Court in New York in Population Services Int. v. Wilson* of 2 July 1975 dealt with three aspects of contraception which are covered by law in many countries. In view of its importance we reproduce certain portions of the opinion of the court as follows:

Plaintiffs had attacked the constitutionality of Section 6811(8) of the Education Law, that read as follows:

*398 F. Supp. 321 (1975).

"It shall be a class A misdemeanor for: . . .

8. Any person to sell or distribute any instrument or article, or any recipe, drug or medicine for the prevention of conception to a minor under the age of sixteen years; the sale or distribution of such to a person other than a minor under the age of sixteen years is authorized only by a licensed pharmacist but the advertisement or display of said articles, within or without the premises of such pharmacy is hereby prohibited."

Stating that

"access to contraceptives is an aspect of the right of privacy, that is, a right encompassed within the personal liberty protected by the Due Process Clause of the Fourteenth Amendment" (p. 331)

the court found all three definitions of the above misdemeanor, as phrased by the New York law, to be unconstitutional.

The court

"rejects at the outset any suggestion that the privacy right at issue here, i.e., access to non-prescription contraceptives, is necessarily inapplicable to minor persons under the age of sixteen" (p. 331).

The court observed that

". . . some young persons under the age of sixteen. . . engage in sexual intercourse. . . (and that) the consequence of such activity is often venereal disease, unwanted pregnancy, or both. . ." (p. 332-3)

". . . the State has cited . . . no evidence whatever to the Court that sexual activity among young persons under the age of sixteen decreases as the availability of contraceptives is restricted . . ." (p. 334)

The court stressed the points that under the New York Social Services Law, as amended in 1974, contraceptive services should be offered to sexually active "children", who desire them and are eligible for the Medicaid program, and, furthermore, that in New York, with consent, a person under fifteen years may marry.

With regard to limitation to pharmacists of the right to sell contraceptives, the court stated:

"The defendants have suggested no reason, and the Court can perceive none, why the non-prescription contraceptive products . . . should be sold to all persons and at all times only (emphasis in original) by persons with the background and training of a licensed pharmacist. (p. 335) . . . The provision, as drafted, is overly restrictive and unconstitutional." (p. 336)

(The court added that states may, in pursuing legitimate interests, place some limits on distribution of non-prescription contraceptives - as, for example, to ban vending machines where this technique of distribution might endanger the quality of products.)

With regard to the advertisement issue, the court stated that a

". . . complete ban on advertisement and display limits the ability of New York State residents to receive information." (p. 336)

The court then distinguished, for the purpose of analysis, three categories of advertisement: purely commercial, purely "public interest", and mixed. The court stated that only

"purely commercial speech . . . does not enjoy constitutional protection. . . ." (p. 337).

". . . however, . . . the subject statute operates to ban any (emphasis in original) advertisement and display of non-prescription contraceptive, regardless of its educational value, its relation to the public interest, or its connection to the exercise of personal rights of privacy. In other words, the statute bans "public interest" and mixed as well as purely commercial advertising and display." (pp. 337-8)

"Regulations affecting protected freedoms must be narrowly drawn . . . The New York statute operates to prohibit dissemination of informational material relating to the intimate phases of sexual life protected by the right of privacy and to such matters of public interest and importance as birth control, contraception, and population growth. Clearly, the statute is overbroad. Hence it must be declared unconstitutional." (Emphasis added) (p. 339)

Note: According to the New York Times of 8 June 1976 (p. 14, col. 1) the U.S. Supreme Court has agreed to review the Population Services case.

On November 26, 1974 another U.S. District Court found a Wisconsin statute prohibiting sale or distribution of contraceptives "to or for any unmarried person" unconstitutional, as an unjustified intrusion in the area protected by the right to privacy. (Baird v. Lynch, 390 F. Supp. 740.)

Oregon

Subject: Limitations on advertising and sale of contraceptives repealed.

Summary: Sec. 8 of Chapter 285 of Oregon Laws and Resolutions, . . . 1975 repeals older prohibitions against displaying or advertising contraceptives, and selling them in vending machines, and repealed via license requirements.

Virginia

Subject: Family planning clinics established.

Text: New section 37.1-23.1 of the Code of Virginia reads as follows:

Sec. 37.1-23.1 Establishing family planning clinics: eligibility.

A. The Board shall establish family planning clinics in the State hospitals for the purpose of advising, counseling and educating patients about birth control. Each hospital shall conduct a minimum of one family planning session every three months.

B. The Department of Health shall secure and furnish the necessary medical personnel and educational and contraceptive materials subject to availability of funds and personnel.

C. All patients shall be eligible to attend the family planning clinics and to receive medical and educational services on a voluntary basis. Consent for the participation of patients not capable of giving legal consent shall be obtained as provided by law.

Reference: Chapter 315 of the Acts of the General Assembly of the Commonwealth of Virginia, Session 1975, Vol. 1.

Wisconsin

Subject: Law to limit advertising and display of contraceptives.

Text: Section 450.11 of the Wisconsin statutes (as amended by Chap. 346 of the Laws of 1975) reads as follows:

450.11 Advertising or display of contraceptive articles, sale in certain cases prohibited. (1) As used in this section, "contraceptive article" means any drug, medicine, mixture, preparation, instrument, article or device of any nature used or intended or represented to be used to prevent a pregnancy.

(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.

(3) No person may exhibit, display or advertise any contraceptive article for commercial purposes.

(4) No person may manufacture, purchase, rent, or have in his possession or under his control, any vending machine, or other mechanism or means so designed and constructed as to contain and hold contraceptives articles (sic) and to release the same upon the deposit therein of a coin or other thing of value.

(5) No person except a pharmacist registered under s.450.02, a physician or surgeon licensed under s.448.06 (1), or a professional nurse registered under s. 441.06, may offer to sell or sell contraceptive articles.

(6) Any person violating this section shall be fined not less than \$100 nor more than \$500 or imprisoned for not to exceed 6 months or both.

Note: There is a question whether this law will be upheld as constitutional in the light of Population Services Int. v. Wilson, see supra p. 32. See Baird and Extrom v. La Follette et al, Wisconsin Sup. Ct., August Term 1975; 5 Fam. Plan/ Pop. Rep. No. 3, p. 38, June 1976.

U.N. Economic and Social Commission for Asia and the Pacific

Subject: ESCAP report recommends consideration of liberalization of abortion legislation.

Text: Among the measures recommended are:
"(i) Giving consideration to liberalization of abortion legislation so as to lower morbidity and mortality caused by illegal abortion."

Reference: Report of Regional Post-World Population Conference Consultation U.N. Document E/CN.11/1208, p. 9, para. 26(i).

Council of Europe

Subject: Council adopts a general resolution on legislation affecting fertility and family planning (supra p. 3) including a part on abortion.

Text: Part D of Resolution (75)29 of the Committee of Ministers of the Council recommends to member Governments "to take the following legislative and administrative measures":

. . .

D. Abortion

1. To reduce the need to resort to abortion, in particular by implementing the measures recommended in the other sections of this resolution;
2. To ensure that all legal abortions are carried out under the best possible medical conditions;
3. To ensure that abortion, in those cases where it is permitted by law, is available as a medical service to all women regardless of their social or economic position;
4. To take all necessary steps to eliminate the practice of illegal abortion with its attendant dangers.

Note: The representatives of Belgium, West Germany and Ireland reserved their Governments' rights not to comply with this part of the Resolution. West Germany's reservation was a consequence of the Constitutional Court's "Abortion Judgment" of 25 Feb. 1975.

On the other hand, the European Commission on Human Rights examined an "application brought by two women against the Federal Republic of Germany. . . protesting against the ruling of the Constitutional Court declaring the law, whereby criminal proceedings

may not be brought for termination of pregnancy, carried out in certain conditions, to be unconstitutional." (Activities of the Council of Europe in the Field of Human Rights in 1975 - Publ. No. H(76)1 of 19 Jan. 1976, p. 5. - The preliminary decision of the Commission "on the acceptability of the application" may be issued in 1976.)

In two European countries the constitutional courts have been requested to decide if laws liberalizing abortion by allowing it in the first trimester, violate the European Convention of Human Rights, which, in its Art. 2(1), (1) declares: "Everyone's right to life shall be protected by law." The French Constitutional Council, on 15 Jan. 1975, held that it is not competent to decide on the conformity of French laws with international treaties.- The Constitutional Court of Austria (where the European Convention has constitutional status) held on 11 Oct. 1974 that "everyone" in the meaning of the Convention does not include the fetus. (See Annual Review, 1974, p. 49.)

Canada

Subject: The controversial cases of Dr. Morgenthauer continue.

Summary: As reported in Annual Review, 1974 (p. 51) on a preliminary basis the Supreme Court of Canada upheld, in a 6:3 decision, the conviction of Dr. Morgenthauer for criminal abortion in a case where he had operated without complying with a statutory provision that a hospital "therapeutic abortion committee" must certify that the continuation of the pregnancy would be likely to endanger the life or health of the pregnant woman. In the trial court, the doctor had been acquitted by the jury. The dissenting opinion (of the Chief Justice and two other Justices) maintained that it was for the jury to decide whether there was "necessity" in a case where

. . . a friendless young woman, a native of another country, and a comparative stranger in Canada, who is alone, frightened by her pregnancy and without the means or access to means to be able to invoke the elaborate procedures of s.251 (4), and who in desperation seeks the assistance of a qualified surgeon who in his honest judgment feels that immediate abortifacient surgery should be performed, and carries it out to preserve the young woman's mental health, if not also her physical health. *

*Only 27 of the 281 hospitals in the Province of Quebec have the required committees, and even fewer actually provide the operation routinely, according to a letter to the Prime Minister signed by 350 professors and students at McGill University. (New York Times, 15 June 1975.)

The decision caused much discussion in Canadian legal, medical and political circles, partly because of the medical questions involved, and partly because it was the first case in Canada where an appeal court, after quashing an acquittal by the jury, had not ordered a new trial, but entered a verdict of guilty instead. On 9 June 1975 Dr. Morgenthaler was again acquitted by a jury on another charge of having performed an abortion on a 17 year old girl. This time, however, the acquittal was upheld by the Quebec Court of Appeals on 20 Jan. 1976.

Reference: Morgenthaler v. The Queen, Supreme Court of Canada, Judgment of 26 March, 1975, 53 D.L.R. (3d) 161. - New York Times, 15 June 1975 and 21 Jan. 1976.

France

Subject: Implementing regulations adopted for Law No. 75-17 of 17 Jan. 1975 on abortion.

Summary: As required under Law 75-17, implementing decrees and orders were issued in 1975, including, among others:

a) Decree No. 75-353 of 13 May 1975, (Journal Officiel, 15 May, p. 4917; implementing Art. L.162-4 of the Code of Public Health), provides details as to the pre-abortion consultations required by Law 75-17;

b) Decree No. 75-354 of 13 May 1975, (Journal Officiel 15 May, p. 4918 ; implementing Art. L.162-11 of the Code of Public Health), regulates the voluntary termination of pregnancy of aliens;

c) Order (arrêté) of 13 May 1975 of the Minister of Health, (Journal Officiel 15 May, p. 4918) regulates the information guide ("dossier guide") to be furnished, according to the 1975 law, to pregnant women requesting abortion. The text of the information guide is published as an annex to the order.

Note: For summaries of the main provisions of the above decrees and order in English see 26 IDHL (1975), p. 765 ff.

Germany, Federal Republic of

Subject: Constitutional Court's decision on the constitutionality of the 1974 Abortion Act.

Summary: As reported in the Annual Review, 1974, (p. 59) the German Constitutional Court held the provision of the 1974 abortion

law authorizing first trimester abortions to be unconstitutional. That decision was made by the "First Senate" of the Court by a 6:2 majority. The opinion, including the dissenting opinion, requires 95 pages in the official reporter, and so it is impossible to reproduce here even the shortest quotations in a meaningful way. The majority held that, starting with the fourteenth day after conception, the fetus was included in the provision of the West German Constitution that "everyone has the right to life"; that the constitution requires the state to enact appropriate criminal laws to assure this protection, even against the pregnant mother; that the non-criminal means provided for by the 1974 law were not adequate, and that any legalized abortion should be based on medical or other indications.

The minority opinion pointed out that: the majority attempts to perform a legislative function; that the constitutional protection of civil rights cannot be converted into a demand for criminal sanctions against individuals, especially in a highly controversial area; and that it is impossible to foresee whether, in the light of universal experience with abortion laws, the requested criminalization of early abortion would result in more or less protection for the fetus than the non-criminal measures enacted by the Parliament.

The complete text of the Constitutional Court's decision, including the dissent, has been recently published in English translation in 9 John Marshall Journal of Practice and Procedure, p. 605 (1976).

Reference: Decision of the West German Constitutional Court of 25 Feb. 1975, 39 BVerfGE p. 1 (1975).

x x x x

Subject: New 1976 abortion law amending the Criminal Code.

Summary: The Constitutional Court's ruling (see item above) is binding for the Bundestag's future enactments, as are the Court's basic reasons as stated in its opinion. In view of this the combined majority parties in the Bundestag submitted, in October 1975, a draft bill of a substitute amendment, liberalizing authorization of abortion on various "indications" in the first trimester. The bill was adopted on 6 May 1976.

Under the new law, intervention during a few days after conception is not deemed to be abortion. The law states that "acts, the effects of which begin prior to the conclusion of nidation of the fertilized egg in the uterus, do not constitute termination of pregnancy for the purpose of this law." Even where the required indications are lacking, the pregnant woman shall not be criminally responsible if the abortion is carried out by a doctor and after consultation with the appropriate bodies within 22 weeks of conception. The court can always waive punishment if the woman was in a state of a serious distress (besondere Bedrängniss) at the time of the abortion.

An abortion is not punishable (i.e., neither for the woman nor for the doctor) if the pregnant woman consents and if it is called for, on medical grounds — taking into account the present

and future circumstances of the mother's life — so as to avert endangering the life of the pregnant woman or serious damage to her physical or mental health.

The law says that a pregnant woman's physical or mental health is inter alia endangered if, according to medical findings, the following circumstances apply:

- (1) Serious reasons justify the expectation that the child's health will be seriously damaged due to prenatal influences;
- (2) The pregnant woman has been the victim of specified sexual crimes and the pregnancy is most probably the result of this crime;
- (3) The interruption of pregnancy is called for to avert the danger of a situation of distress (Gefahr einer Notlage), "so serious that the continuation of pregnancy cannot be required from the pregnant woman and cannot be averted by other means which can be reasonably required (zumutbar) from her.

If eugenic grounds apply (No. 1) the abortion must be carried out within 2 weeks; in cases Nos. (2) and (3) within 12 weeks.

The abortion must be performed by a doctor. At least three days prior to the intervention the woman must have received advice on public and private aid available in cases of pregnancy and to mothers and children. She must also have received advice on her medical situation.

The law enumerates the bodies and persons entitled to advise on aid to the pregnant woman. Inter alia this may be a doctor, but not the one who performs the abortion.

Reference: Deutscher Bundestag, 7. Wahlperiode, Drucksache 7/4128; Bundesgesetzblatt I, No. 56, p. 1213, (21 May 1976). Law took effect 21 June 1976.

India

Subject: Simplification of formalities in connection with abortions.

Summary: Shortly after the passage of the Medical Termination of Pregnancy Act in 1971, the Indian Government issued implementing rules under the Act. These rules set up a complicated system of boards

to approve the practitioners who would carry out the operations, and the places where such operations might be performed. A series of forms were required in connection with these approvals and with the individual operations. After a few years' **experience** the Government issued, in 1975, new and greatly simplified rules which 1) eliminate board approvals and place control of the work in hands of the Chief Medical Officer of each district, 2) simplify and shorten the forms required, 3) protect the secrecy of the identity of women undergoing the operations.

Reference: Medical Termination of Pregnancy Rules, 1975, issued by the Minister of Health and Family Planning, 10 Oct. 1975, repealing the Rules of 1972.

Italy

Subject: Law prohibiting abortions even to preserve a woman's health held unconstitutional.

Text: Article 546 of the Italian Penal Code (dating from Fascist times) read:

Whoever causes the abortion of a woman, with her consent, shall be punished with penal servitude from two to five years.

The same punishment shall apply to the woman who has consented to the abortion.

. . . .

On 18 Feb. 1975 the Constitutional Court held:

The Court declares as unconstitutional that aspect of Article 546 of the Penal Code which forbids pregnancy termination even in a case where continued gestation might involve serious damage or danger, medically established, to the health of the mother and which cannot be avoided by other means.

The Court held that Arts. 31(2) and 32 which protect, respectively, mothers and health had been violated. The Court's opinion stated, among other reasons:

There is not an equality of values (equivalenza) between the right not only to life, but even to health, of someone who, like a mother, is already a person and the safety of the embryo who has yet to become a person.

Reference: Constitutional Court, Decision of 18 Feb. 1975, Gazzetta Ufficiale, No. 55 of 26 Feb. 1975, p. 1669; full text in 20 Giurisprudenza Costituzionale (1975), p. 117.

Note: A petition for a referendum to repeal the provisions of the Penal Code on abortion has been filed with the Court of Cassation with more than 500,000 signatures. It is not yet clear if and when the referendum may be held. (see Council of Europe, Newsletter on Legislative Activities, No. 19, p. 10.)

Jamaica

Subject: Minister of Health issues a formal statement that abortion to protect a woman's mental and physical health is lawful under Jamaican Common Law.

Text: The Ministry's Paper No. 1, on "Abortion: Statement of Policy", reads, in part, as follows:

2. The present Laws relating to Abortion are contained partly in our Common Law and partly in the Statute Law - The Offences Against the Person Act.
3. The Statute Law position is that it is a criminal offence for anyone to procure an unlawful abortion. Indeed sections 65 and 66 of the Offences Against the Person Act lay down a maximum penalty of life imprisonment for the offence. The Statute also provides a maximum penalty of three years imprisonment for anyone who assists in the procuring of an unlawful abortion. Despite these severe penalties, the statute is absolutely silent on the circumstances in which an abortion would be lawful.
4. The Common Law position is that it is lawful for a registered medical practitioner acting in good faith to take steps to terminate the pregnancy of any woman if having regard to such circumstances as he may reasonably consider relevant he forms the opinion that the continuation of the pregnancy would be likely to constitute a threat to the life of the woman or inure to the detriment of her mental and physical health.
5. It has been represented to the Government that because this legal position is not embodied in the Statute Law, it creates considerable uncertainty in the minds of medical practitioners. This uncertainty inhibits their willingness to perform operations and this in turn creates hardships for citizens who have lawful grounds for abortion as are contained in the Common Law.
6. The fact that the Statute is silent on the circumstances in

which abortion would be lawful is the main reason why our qualified medical practitioners develop inhibitions in this area of work. It is considered that this matter is far too important to be left in a state of uncertainty and an unequivocal law appears to be urgently required.

7. After giving careful consideration to this matter, the Government has now decided to amend the relevant sections of the Offences Against the Person Act so as to: -

(a) make clear when an abortion would be lawful in Jamaica; that is, to spell out in the Statute Law, or to codify, what in effect is the existing Common Law position;

(b) take steps to make rape, carnal abuse and incest a lawful ground for abortion.

8. The fact is that there are circumstances where common decency justifies the termination of a pregnancy. For example, in the case of statutory rape, that is, rape of a person below the age of consent, decency and mercy require that the young child should not be obliged to bear a child resulting from the cruel and/or insane desires of a criminal.

9. The purposes of the amendment proposed at paragraph 7(a) above, is merely to incorporate the Common Law position into an Act of Parliament, thereby codifying the Law for the guidance of all and sundry.

10. The Government proposes to introduce legislation into the House to give effect to the proposed amendments as set out in this Paper.

Reference: Paper No. 1 signed by Kenneth A. McNeill, Minister of Health and Environmental Control, 15 Jan. 1975. (M.P. No. HH 490/01.)

New Zealand

Subject: Supreme Court decision establishes test of when abortion is "lawful," which includes danger to mental health.

Text: The case involved a criminal prosecution of a physician for "unlawfully" using an "instrument" with "intent to procure a miscarriage." The court, in instructing the jury, stated that the test is whether or not the doctor honestly believes that the use of the instrument was

necessary to preserve the woman from serious danger to her life or to her physical or mental health, not being the normal dangers of pregnancy and childbirth.

Reference: Regina v. Woodnough, T. 90/75, Supreme Court of New Zealand,
Auckland Registry.

Note: Since the statute merely said "unlawfully," the court introduces the mental health ground from the Common Law in interpreting the language. The court used the same ground in finding that a non-profit abortion clinic in Auckland could operate legally and was not covered by a special law providing that abortions to preserve "the life of the mother" had to be performed in licensed hospitals. (Declaratory Judgment on the Hospitals Amendment Act of 1975)

Norway

Subject: Comprehensive Abortion Law

Text: Law No. 50 of 13 June 1975 reads, in part, as follows:

Sec. 1.

A pregnant woman is entitled to a pregnancy termination if:

- a. the pregnancy, the birth or the care of the child may result in an unreasonable stress on the physical or mental health of the woman. Her general state of health should be taken into consideration;
- b. the pregnancy, the birth or the care of the child may place the woman in a dangerous position (life situation);
- c. there is a serious danger that the child may have or contract a serious illness as a result of hereditary tendencies, disease or harmful influences during the pregnancy;
- d. she became pregnant under the conditions* mentioned in Sections 207-209 of the Criminal Code, or if the pregnancy is a result of the circumstances mentioned in Sections 192-199 of the Criminal Code; or
- e. she suffers from a serious mental illness or is mentally handicapped to a considerable extent.

When assessing a request for an abortion on the grounds mentioned above, especially under a, b, and c, the woman's total situation should be considered, including her ability to take the necessary care of the child. In this respect, the woman's own assessment of the situation should carry great weight.

* Rape or incest.

Sec. 2

The pregnancy termination should take place at the earliest possible stage during the pregnancy, normally before the expiration of the twelfth week of the pregnancy.

In the event of pregnancy termination after the twelfth week, the grounds for granting pregnancy termination should be interpreted more strictly, corresponding to the duration of the pregnancy.

After the expiration of the eighteenth week of the pregnancy, a pregnancy cannot be interrupted, unless there are particularly strong valid reasons. If there is any reason to believe that the fetus is capable of surviving, permission for pregnancy termination cannot be granted.

Sec. 3

Surgical procedures* after the expiration of the twelfth week of the pregnancy shall only be done in a hospital. Surgical procedures* done before the expiration of the twelfth week of the pregnancy may also be done in/by some other institution approved by the County Health Officer (in Oslo by the City Health Officer).

A pregnancy termination shall only be carried out by a physician.

Sec. 4

The request for a pregnancy termination should be made by the woman herself. If she is under the age of 16, her parental or her legal guardian should be given an opportunity to express his or her opinion about the abortion. If the woman is mentally retarded, her legal guardian should be given an opportunity to voice his or her opinion in the matter.

If the woman is seriously mentally handicapped, the request for this case should only be sought if she is capable of understanding the nature of the abortion procedure.

If the (retarded) woman is without a legal guardian, as mentioned in the third sentence of the first paragraph of this Section, or for other reasons, the local authorities should, upon the request of the physician, name a person to execute the duties of a legal guardian, according to the said law. (See Section 7.)

Sec. 5

The request for an abortion should be made to a physician; it can also be made to a board of officials. (See Section 7.)

The woman who has requested an abortion or the person who has done so under Section 4 should be informed by the physician (or the board) about the nature of the procedure and about the medical effects. If the woman so desires, she should be further informed about the financial and other types of support that she could obtain if she decides to carry the

*Presumably the law is referring only to surgical procedures involved in doing abortions.

pregnancy to term.

Sec. 6

After the woman has received the information, as mentioned in Section 5, the physician should send the request together with a written statement about the reasons for granting the woman an abortion, plus the observations that have been made, to a board (see Section 7).

If the request has been addressed directly to the board, it should consider the subject and reach a decision immediately.

Sec. 7

A decision on the abortion takes place after consultation with the woman by a board of two physicians. The board can decide to whom to delegate the responsibility of carrying out the abortion before the twelfth week of gestation, according to the rules provided by the King. If the said person [to whom the responsibility is delegated] is doubtful about the request, then the board shall handle the matter.

Reference: Law on Abortion, Norsk Lovtidend, No. 50, of June 1975 repealing Act of 11 Nov. 1960.

Note: The Government's rules implementing the law were simplified, and provide that if an application is refused, it is automatically reviewed by a separate commission.

South Africa

Subject: New abortion (and sterilization) law.

Text: The Abortion and Sterilization Act (1975) reads, in part, as follows:

2. No person shall procure an abortion otherwise than in accordance with the provisions of this Act.
3. (1) Abortion may be procured by a medical practitioner only, and then only--
 - (a) where the continued pregnancy endangers the life of the woman concerned or constitutes a serious threat to her physical health, and two other medical practitioners have certified in writing that, in their opinion, the continued pregnancy so endangers the life of the woman concerned or so constitutes a serious threat to her physical health and abortion is necessary to ensure the

life or physical health of the woman (sic);

(b) where the continued pregnancy constitutes a serious threat to the mental health of the woman concerned, and two other medical practitioners have certified in writing that, in their opinion, the continued pregnancy creates the danger of permanent damage to the woman's mental health and abortion is necessary to ensure the mental health of the woman;

(c) where there exists a serious risk that the child to be born will suffer from a physical or mental defect of such a nature that he will be irreparably seriously handicapped, and two other medical practitioners have certified in writing that, in their opinion, there exists, on scientific grounds, such a risk; or

(d) where the fetus is alleged to have been conceived in consequence of unlawful carnal intercourse, and two other medical practitioners have certified in writing--

(aa) in the case of alleged rape or incest, after such interrogation of the woman concerned as they or any of them may have considered necessary, that in their opinion the pregnancy is due to the alleged rape or incest, as the case may be; or

(bb) in the case of alleged unlawful carnal intercourse in contravention of section 15 of the Immorality Act, 1957 (Act No. 23 of 1957), that the woman concerned is an idiot or imbecile.

(2) (a) A medical practitioner who has issued a certificate referred to in subsection (1) shall in no way participate in or assist with the abortion in question, and such a certificate, or such certificates issued for the same purpose, shall not be valid if issued by members of the same partnership or by persons in the employ of the same employer.

(b) The provisions of paragraph (a) shall not apply to the performance by any person of his functions in the service of the State.

. . .

(5) (1) An abortion may be procured and a sterilization contemplated in section 4 may be performed only at a State-controlled institution or an institution designated in writing for the purpose by the Minister in terms of subsection (2).

(2) The Minister may designate any institution for the purposes of subsection (1), and subject to such conditions and requirements as he may consider necessary or expedient for achieving the objects of this Act, and may, if in his opinion it is justified, at any time withdraw any such designation.

(3) A decision of the Minister in terms of subsection (2) shall be final.

(6) (1) An abortion shall not be procured without the written authority of

. . .
(a) in the case of a State-controlled institution, the medical practitioner in charge of such institution or a medical practitioner designated for the purpose by the first-mentioned medical practitioner; or

(b) in the case of an institution designated in terms of section 5 (2), a medical practitioner designated for the purpose by the person managing such institution, granted on application to such medical practitioner in accordance with subsection (2).

(2) An application for authority in terms of subsection (1) shall be made in the prescribed form by the medical practitioner who is to procure the abortion in question. . . and shall be accompanied--

(a) in the case of an intended abortion--

(i) in the circumstances contemplated in subsection (4), by the certificate referred to in that subsection;

(ii) by the certificate or certificates referred to in section 3 issued by two medical practitioners;

. . .

(3) If a medical practitioner has issued a certificate for the purposes of section 3 (1) and he is at any time such a medical practitioner as is referred to in subsection (1) of this section, he shall not be precluded from granting any relevant authority for the purposes of the said subsection.

(4) Where the pregnancy is alleged to be the result of unlawful carnal intercourse, the abortion shall not be procured unless there is produced to the medical practitioner whose written authority is required in terms of subsection (1) a certificate, issued by a magistrate attached to the court having jurisdiction in respect of the alleged offence in question, to the effect that--

(a) he has satisfied himself--

(i) that a complaint relating to the alleged unlawful carnal intercourse in question has been lodged with the Police or, if such a complaint has not been so lodged, that there is a good and acceptable reason why a complaint has not been so lodged;

(ii) after an examination of any relevant documents submitted to him by the Police and after such interrogation of the woman concerned or any other person as he may consider necessary, that, on a balance of probability, unlawful carnal intercourse with the woman concerned had taken place;

(iii) in the case of alleged incest, the woman concerned is within the prohibited degree related to the person with whom she is alleged to have committed incest; and

(b) in the case of alleged rape or incest, the woman concerned alleges, in an affidavit submitted to the magistrate or in a statement under oath to the magistrate, that the pregnancy is the result of that rape or incest, as the case may be.

(5) Where it is not proved that any person charged with unlawful carnal intercourse with a female idiot or imbecile in contravention of section 15 of the Immorality Act, 1957 (Act No. 23 of 1957), knew, at the time of the alleged offence, that that woman was an idiot or imbecile, but it is proved that he had carnal intercourse with her, such carnal intercourse shall for the purposes of subsection (4) nevertheless be deemed to be unlawful carnal intercourse.

(6) If an application complying with the requirements of this section is made to the appropriate medical practitioner referred to in this section, he shall grant the authority in question.

(7) (1) A medical practitioner who under section 6(1) grants authority for an abortion or a sterilization, shall, within twenty-one days after the abortion or sterilization, by registered post report confidentially to the Secretary for Health the granting of such authority and at the same time submit to him a written statement in the prescribed form and setting forth--

(9) A medical practitioner (other than a medical practitioner referred to in section 6(1)), a nurse or any person employed in any other capacity at an institution referred to in section 5(1) shall, notwithstanding any contract or the provisions of any other law, not be obliged to participate in or assist with any abortion contemplated in section 3 or any sterilization contemplated in section 4.

Reference: The Abortion and Sterilization Act (1975), see also 26 IDHL No. 4, p. 844. See also supra, p. 46, re sterilization portion of the law.

Note: The other sections of the law contain material on sterilization, definitions, qualifications of physicians, reports, penalties, etc.

United States

Federal Law

The Supreme Court of the United States and several federal district courts and circuit courts of appeal decided a number of cases on the validity and constitutionality of various state statutes regulating abortion issues. As the laws in question were those of various states, these federal court cases are covered in the following section on State Law.

State Law

In 1975 the trend of legislation in several states continued (although on a reduced scale in comparison with 1974)* to regulate abortion issues either by comprehensive statutes (Illinois, North Dakota, Virginia) or by short statutes dealing with specific aspects of the issue.

As an example of the comprehensive statutes we include, in part, the text of the 1975 Illinois Act. (See also the 1974 statute of Montana in Annual Review, 1974.) This may help to understand the importance of the constitutional decisions of the federal courts, which are covered later in this section.

Illinois Abortion Act of 1975

Section 1.

It is the intention of the General Assembly of the State of Illinois to reasonably regulate abortion in conformance with the decisions of the United States Supreme Court of January 22, 1973. Without in any way restricting the right of privacy of a woman or the right of a woman to an abortion under those decisions, the General Assembly of the State of Illinois do solemnly declare and find in reaffirmation of the longstanding policy of this State, that the unborn child is a human being from the time of conception and is, therefore, a legal person for purposes of the unborn child's right to life and is entitled to the right to life from conception under the laws and Constitution of this State. Further, the General Assembly finds and declares that longstanding policy of this State to protect the right to life of the unborn child from conception by prohibiting abortion unless necessary to preserve the life of the mother is impermissible only because of the decisions of the United States Supreme Court and that, therefore, if those decisions of the United States Supreme Court are ever reversed or modified or the United States Constitution is amended to allow protection of the unborn then the former policy of this State to prohibit abortions unless necessary for the preservation of the mother's life shall be reinstated.

*Compare Annual Review, 1974.

Section 2.

Unless the language or context clearly indicates a different meaning is intended, the following words or phrases for the purpose of this Act shall be given the meaning ascribed to them:

(1) "First trimester" means the first twelve weeks of gestation commencing with ovulation rather than computed on the basis of the menstrual cycle.

(2) "Viability", that stage of fetal development when the life of the unborn child may be maintained outside the womb by natural or artificial life-supportive systems.

. . . .

Section 3.

No abortion shall be performed prior to the end of the first trimester of pregnancy except:

(1) By a duly licensed, consenting physician in the exercise of his best clinical medical judgment;

(2) After the woman, prior to submitting to the abortion, certifies in writing her consent to the abortion and that her consent is informed and freely given and is not the result of coercion. The informed consent shall state that the woman has been informed of the following:

(a) The physical competency of the fetus at the time the abortion is to be performed, such as, but not limited to, what the fetus looks like, the fetus' ability to move, swallow, and its physical characteristics;

(b) The general dangers of abortion, including, but not limited to, the possibility of subsequent sterility, premature birth, live-born fetus, and other dangers; and

(c) The particular dangers of the procedure to be used.

Any physician who intentionally fails to inform the woman about to be aborted or who intentionally fails to secure a written informed consent as indicated herein, violated the provisions of this Act and commits a Class B misdemeanor.

Any intentional violation of this Section shall be admissible in a civil suit as prima facie evidence of the physician's failure to obtain an informed consent;

(3) With the written consent of the woman's spouse, unless the abortion is certified by a licensed physician to be necessary in order to preserve the life or health of the mother.

(4) With the written consent of one parent or person in loco parentis of the woman if the woman is unmarried and under the age of 18 years, unless the abortion is certified by a licensed physician as necessary in order to preserve the life or health of the mother.

Section 4.

No abortion performed subsequent to the first trimester of pregnancy shall be performed except where the provisions of Section 3 of this Act are satisfied and the abortion is performed in a hospital, on an inpatient basis, with measures for life support for any clearly visible evidence of viability.

Section 5.

(1) No abortion not necessary to preserve the life or health of the mother shall be performed unless the attending physician first certifies with reasonable medical certainty that the fetus is not viable.

(2) When the fetus is viable no abortion shall be performed unless medically necessary to preserve the life or health of the mother and only after consultation with at least two other physicians not related to or engaged in practice with the attending physician.

Section 6.

(1) No person who performs or induces an abortion after the fetus is viable 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 intentionally fail to take such measures to encourage or to sustain the life of viable fetus (sic) or child, and the death of the viable fetus or the child results, shall be deemed guilty of a Class 2 felony.

(2) Whoever, with intent to do so, shall take the life of a premature infant aborted alive, shall be guilty of a Class 1 felony.

(3) No person shall use any fetus or premature infant aborted

alive for any type of scientific, research, laboratory or other kind of experimentation, either prior to or subsequent to any abortion procedure except as necessary to protect or preserve the life and health of such premature infant aborted alive.

Section 7.

In every case where a live born infant results from an attempted abortion which was not performed to save the life of health of the mother, such infant shall be an abandoned ward of the State under the jurisdiction of the juvenile court wherein the abortion occurred, and the mother and father, if he consented to the abortion, of such infant shall have no parental rights or obligations whatsoever relating to such infant. The attending physician shall forthwith notify said juvenile court of the existence of such live born infant.

Section 8.

Any woman seeking an abortion in the State of Illinois, after viability, shall be verbally informed of the provisions of Section 7 of this Act by the attending physician and the woman shall certify in writing that she has been so informed.

Section 9.

The General Assembly finds that the method or technique of abortion known as saline amniocentesis whereby the amniotic fluid is withdrawn and a saline or other fluid is inserted into the amniotic sac of the purpose of killing the fetus and artificially inducing labor is deleterious to maternal health and is hereby prohibited after the first trimester of pregnancy.

Section 10.

A report of each abortion performed shall be made to the Department on forms prescribed by it. Such report forms shall not identify the patient by name, but shall include, but not be limited to, information concerning . . .

. . . .

Section 11.

(a) A person who commits a criminal abortion is guilty of a Class 2 felony.

(b) Any person who advertises, prints, publishes, distributes or circulates any communication through print, radio or television media advocating, advising or suggesting any act which would be a violation of this Act is guilty of a Class B misdemeanor.

(c) Any hospital, licensed facility or physician who fails to submit a report to the Department under the provisions of Section 5 of the Act and any person who fails to maintain the confidentiality of any records or reports required under this Act is guilty of a Class B misdemeanor.

(d) Any person who sells any drug, medicine, instrument or other substance which he knows to be an abortifacient and which is in fact an abortifacient, unless upon prescription of a physician, is guilty of a Class B misdemeanor.

Section 12.

All tissue removed at the time of abortion shall be submitted for analysis and tissue report to a board eligible or certified pathologist as a matter of record in all cases. There shall be no exploitation of or experimentation with the aborted tissue.

Section 13.

No physician, hospital, ambulatory surgical center, nor employee thereof, shall be required against his or its conscience declared in writing to perform, permit or participate in any abortion, and the failure or refusal to do so shall not be the basis for any civil, criminal, administrative or disciplinary action, proceeding, penalty or punishment. If any request for an abortion is denied, the patient shall be promptly notified.

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The other two comprehensive abortion statutes are the North Dakota Abortion Control Act (Chapter 124, 1, Laws . . . of the Legislative Assembly of the State of North Dakota . . . 1975) and Amendment of Article 9 of Chapter 5 of the Virginia Criminal Code, (4 Code of Virginia Annotated, 1975, Replacement Volume.)

x x x x

Several single-purpose statutes regulate special aspects of abortion, as, e.g., the following:

1. Prohibition of abortion during advanced pregnancy:

Section 11-23-5 of the Rhode Island General laws prohibited abortion of a "quick child", that is, of

. . . an unborn child whose heart is beating, who is experiencing electronically measurable brain waves, who is discernibly moving, and who is so far developed and matured as to be capable of surviving the trauma of birth with the aid of medical care and facilities available in this state,

unless such abortion is necessary "to preserve the life of such mother".

The U.S. District Court in Rhode Island declared on June 10, 1975 that the statute was unconstitutional, as it failed to except from the prohibition also those "postquickening" abortions which are necessary for preservation of the health of the pregnant woman (Rodos v. Michaelson, 396 F. Supp. 768 (1975)).

2. Exclusion of abortions from Medicaid and other insurance programs

Michigan's statute (Public Act No. 241, West's Michigan Legislative Service 1975) prohibits funds appropriated to the Department of Social Service (including Medicaid) to be used for abortions, except when necessary to preserve the woman's life. New Jersey adopted a similar statute.

3. Preservation of the life of an aborted fetus; prohibition of experimentation

Arizona's Section 36-2301-2303 of the Arizona Revised Statutes (Arizona Legislative Service 1975, Chapter 141, reads:

Sec. 36-2301. Duty to promote life of fetus or embryo delivered alive

If an abortion is performed and the fetus or embryo is delivered alive, it is the duty of any physician performing such abortion to see that all available means and medical skills shall be used to promote, preserve and maintain the life of such fetus or embryo.

Sec. 36-2302. Experimentation on fetus or embryo prohibited

No fetus or embryo, living or dead, and no parts or organs of any such fetus or embryo resulting from an induced abortion shall in any manner be used for any medical experimentation or scientific or medical investigation purposes except as is strictly necessary to diagnose a disease or condition in the mother of the fetus or embryo and only where the abortion was performed because of such disease or condition.

Sec.36-2303. Violation and penalty

Any person who violates any provision of this article is guilty of a felony.*

4. Consent to abortion of minors

Massachusetts' Act authorizing the consent by certain minors to certain medical and dental care (Chapter 564, Massachusetts Legislative Service . . . 1975) establishes the capacity of several categories of minors to give consent to medical care e.g., minors who are married, widowed, or divorced; who "are pregnant or believe(s) herself to be pregnant", or living apart from parents and are managing their own financial affairs, who are members of the armed forces, etc. However, to abortion (or sterilization) minors can only give valid consent if they are "married, widowed, divorced."

5. "Conscience clauses"

Kansas's Chapter 313 of the 1975 Session Laws of Kansas added to section 1 of the Kansas Statutes Annotated, 65-443, the following text:

No hospital, hospital administrator, or governing board of any hospital shall terminate the employment or prevent or impair the practice or occupation of or impose any sanction on any person because of such person's refusal to perform or participate in the termination of any human pregnancy.

6. Regulation of referral activities

Maryland's Chapter 703, 2 Laws of Maryland 1975, p. 3148, adds a new section, 129A(e), to Art. 43-Health, of the Annotated Code of Maryland. It provides for registration of any abortion referral service; no such service may accept, solicit, split or divide fees received by physicians or abortion clinics for referring patients.

7. Reporting of abortions

Hawaii's amended sec. 338-9 (4 Hawaii Revised Statutes 1975 Supplement, p. 288) and North Dakota's Health Statistics Act (Chapter 223, Laws. . . of the Legislative Assembly of the State of North Dakota) provide for reporting of "fetal deaths". Under Dakota's Act, sec. 1(2),

'Fetal Death' means death prior to the complete expulsion or extraction from its mother of a product of human conception,

*New York adopted a similar statute in 1974.

irrespective of the duration of pregnancy; the death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

Several of the above statutes - particularly the comprehensive acts of Illinois and North Dakota - attempt to limit the right to abortion, as declared by the 1973 decisions of the Supreme Court, by the inclusion of various provisions clearly intended to restrict abortions. There were therefore considerable doubts as to the constitutionality of a number of these restrictions, and a number of courts, both federal and state, had to decide on the constitutionality of these provisions.

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The trend of the U.S. courts to enforce the principles of women's constitutional right to abortion (set forth in Roe v. Wade and Doe v. Bolton, 410 U.S. 113, and 179(1973); see Annual Review, 1974, p. 71 et seq) continued in 1975. Both federal and state courts decided a great number of controversial issues, often holding that restrictive provisions of state laws were unconstitutional. (A notable exception was the Danforth case,* *infra*). However, the Supreme Court decided in 1975 that it would hear arguments on some of these cases and rulings of basic importance in this field are expected.

With that caveat, a short survey of 1975 judicial decisions may be summarized as follows:

1. Prohibition of abortion by non-physicians constitutional

In Connecticut v. Menillo, 96, S. Ct. 170 (1975), the Supreme Court held that even during the first trimester non-physicians may be constitutionally prohibited, under criminal sanction, from performing abortions. Similarly, a federal Court of Appeals in Spears v. Circuit Court, Warren County, 517 F. 2d 360 (1975) affirming conviction of a midwife, upheld a Mississippi statute making abortion a felony unless performed "by a duly licensed, practising physician."

2. Special conditions of legally performed abortion

a. In Rodos v. Michaelson, 396 F. Supp. 768 (1975) the 1975 statute of Rhode Island (see above, p. 56) was struck down as unconstitutional because it prohibited, by implication,

*Planned Parenthood of Cent. Missouri v. Danforth 392 F. Supp. 1362 (1975),

abortion in the later phases of pregnancy for the preservation of the woman's health.

b. A District Court in Planned Parenthood Association v. Fitzpatrick, 401 F. Supp. 554 (1975) held unconstitutional the definition of viability* in the Pennsylvania Abortion Control Act ("the capability to live outside the mother's womb albeit with artificial help") as being vague and overbroad. The court said:

Roe makes it abundantly clear that the compelling point at which a state in the interest of fetal life may regulate, or even prohibit, abortion is not before the twenty-fourth week of gestation. . . ; in carving out this new time period labelled "may be viable", the state is regulating abortions during the second trimester. . . not. . . in the interest of maternal health (p. 577).

On the other hand, another federal District Court in Planned Parenthood of Central Missouri v. Danforth, 392 F. Supp. 1362 (1975) held the definition ". . . the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supportive systems" to be constitutional, on the ground that the determination of viability in a given case should be left to the attending physician (p. 1368).

c. In Danforth, the Missouri statutory prohibition on the use of the saline amniocentesis method after the first twelve weeks of pregnancy was held constitutional. The court found that (during the second trimester) "use of saline method exposes the woman to the danger of severe complications, regardless of the skill of the physician and the precautions taken". Thus the proscription of this method was seen as reasonably related to maternal health ** (pp. 1372, 1374).

*In Roe v. Wade, the Supreme Court said that the fetus is viable when it is potentially able to live outside the mother's womb, albeit with artificial aid, and defined as follows: "Viability is usually placed at about seven months (28 weeks), but may occur earlier, even at 26 weeks." 410 U.S. 113, at 160.

**In Rodos v. Michaelson, supra (at 773) the court noted the testimony of a plaintiff-doctor that in his medical judgment "no other medical procedure which can be used to terminate a sixteen to twenty four-week pregnancy, such as a hysterotomy even approximates the safety to the pregnant woman of saline infusion."

3. Prohibition of abortions in public hospitals

U.S. Circuit Court of Appeals for the Eighth District, in Doe v. Poelker, 515 F. 2d. 541 (1975) continued the trend of holdings that under Roe and Doe the St. Louis City policy, which prohibited all non-therapeutic abortions in its publicly owned hospitals, was unconstitutional.

4. Prohibition of abortions in private institutions

Also in conformity with most of the older court decisions, Federal courts held that private hospitals could constitutionally refuse to perform non-therapeutic abortions, even when they receive federally financed assistance. This was a decision of the Circuit Court of Appeals of the Fifth Circuit, affirming a case cited in the Annual Review, 1974: Greco v. Orange Memorial Hospital, 513 F. (2d) 873 (1975).

However, the Circuit Court of Appeals for the Fourth Circuit found that a private West Virginia hospital, which received public funds, did violate the constitutional rights of pregnant women by refusing to perform abortions. The court saw the policy of the hospital to be based on the long existing (criminal abortion) statute of West Virginia, which had been found unconstitutional. Doe v. Charleston Area Medical Center, 44 U.S. Law Week 2234.

5. Exclusion of abortions from Medicaid and similar benefits.

The District Court's decision in Doe v. Westby (see Annual Review, 1974, p. 82) was reiterated on different grounds in 1975. The Court held that a state, in extending medical aid for full term deliveries and also for therapeutic abortions, could not decline to finance non-therapeutic abortions. 402 F. Supp. 140 (1975).

The Circuit Court of Appeals for the Third Circuit, in Doe v. Beal, 523 F. 2d 611 (1975)* held that regulations excluding non-therapeutic abortions from Medicaid funding are inconsistent with the federal Medicaid Act.** The appeal court said:

. . . once the state has decided to finance full-term delivery and therapeutic abortion as methods for treatment of pregnancy, it cannot decline to finance non-therapeutic abortions without violating the requirements of the Title XIX (of the Social Security Act). . . through the end of the second trimester.(p. 622)

*This was the same case as Doe v. Wohlgenuth. (See Annual Review for 1974, p. 82 for case in District Court).

**This case was therefore based on interpretation of the federal law and not on constitutional grounds.

The case of Roe v. Ferguson, 515 F. (2d) 279 (1975), in the Sixth Circuit went the other way.

6. Consent Requirements

The federal District Court (Massachusetts) in Baird v. Bellotti, 393 F. Supp. 847 (1975), held that the requirement of parental consent to an abortion for a minor is constitutionally invalid. (A 1974 statute of Massachusetts had made it a criminal offense to perform an abortion upon an unmarried minor without the consent of both parents. If the parents refused, consent could be obtained from a court).

Similarly another District Court (Colorado) in Foe v. Vanderhoof, 389 F. Supp. 947 (1975), held that a statute which required parental or guardian consent in order for minors to obtain abortion was unconstitutional. As the court pointed out:

The right (to a decision to terminate the pregnancy) is a personal one guaranteeing to the individual the right to make basic decisions concerning. . . her life. . . Minors are entitled to this personal right as well as adults. (emphasis added).

In State v. Koome, 530 P. 2d 260 (1975), a doctor was convicted of performing an abortion on a sixteen year old girl in violation of a criminal abortion statute of the State of Washington requiring parental consent. The Supreme Court of Washington reversed the conviction, holding that the requirement of parental consent was unconstitutional as a violation of a minor's right to privacy and equal protection of the laws.

Where minor's rights have been held subject to curtailment by the state in excess of that permissible in the case of adults it has been because some peculiar state interest existed in the regulation and protection of children, not because the rights themselves are of some inferior kind. (p. 263)

The Circuit Court of Appeals for the Fifth Circuit, in Poe v. Gerstein, 517 F. 2d. 787 (1975), held that the fundamental right to an abortion applies to minors as well as to adults, and that both the parental and spousal consent requirements in a Florida statute were unconstitutional.

The Court said:

. . . it would appear that all of the criteria of Roe apply with even greater force to an unwed pregnant minor: teenage motherhood involves serious consequences including adverse

physical and psychological effects upon the minor and her children, the stigma of unwed motherhood, impairment of educational opportunities caused by the need to drop out of school. . ." (p. 791)

. . . the state could arguably rely upon . . . interests:
(a) preventing illicit sexual conduct among minors. . .
(c) fostering parental control: (d) supporting the family as a social unit . . . (but)

. . . there is no evidence that a statute of this type would significantly affect illicit sexual conduct among minors. . .; the deterrence of sexual conduct is not a rational or reasonable purpose of the statute. (p. 793)

The fact that the minor became pregnant and sought an abortion contrary to the parents' wishes indicates that whatever control the parent once had over the minor has diminished, if not evaporated entirely. . . (p. 794)

. . . in the abortion context the requirement of parental permission is unlikely to achieve the state's aim of ensuring the preservation of the family. If a minor's pregnancy has fractured the family structure, imposition of a parental prohibition of abortion cannot reasonably be expected to restore the family's viability as a unit. (p. 794)

In the Fitzpatrick decision, supra p. 59, the federal District Court held that both the spousal consent and parental consent provisions of the Pennsylvania Abortion Control Act were unconstitutional. The court said:

. . . spousal consent provision. . . is invalid because it does not balance the interest of the pregnant woman with the purported interest, if there is a constitutional one, of the husband; but rather the provision gives the spouse an unqualified and unconditional veto over the wife's decision to have an abortion, thus completely ignoring the fundamental right of the pregnant woman. . . (p. 565).

It seems that the only federal court decision which came to a contrary conclusion was the Danforth case, supra p. 59, which upheld Missouri's provisions requiring consent of the husband or, if the girl were single and under 18, the consent of a parent, (except when it was necessary to preserve the life of the pregnant woman). The court argued that the state legislation was designed to protect "the integrity of the marriage unit", that "procreation has been held to be a fundamental aspect of the marriage relationship", and that there are compelling state interests "in protecting the

mutuality of decisions vital to the marriage relationship" and "in safeguarding the authority of the family relationship " (pp. 1369-70).

7. Prohibition of advertising and limitation of referral services

The Supreme Court's decision in Bigelow v. Virginia, 421 U.S. 809 (1975), held unconstitutional a statute of Virginia which made it a misdemeanor to encourage, by the sale or circulation of any publication, the processing of an abortion. A newspaper in Virginia published an advertisement for a New York City organization announcing that it would arrange low-cost placements in accredited hospitals and clinics in New York for women with unwanted pregnancies. The advertisement offered "information and counseling", it gave the organization's address and telephone number; and it stated that abortions "are now legal in New York" and there "are no residency requirements". The opinion of the court reads, in part, as follows:

The central assumption of the Supreme Court of Virginia was that the First Amendment guarantees of speech and press are inapplicable to paid commercial advertisement. . . ; however. . . speech is not stripped of First Amendment protection merely because it appears in that form. . . The fact that the particular advertisement. . . had commercial aspects or reflected the advertiser's commercial interests did not negate all First Amendment guarantees (p. 818)

The advertisement. . . did more than simply propose a commercial transaction. It contained factual material of clear "public interest". . . Viewed in its entirety, the advertisement conveyed information of potential interest and value to a diverse audience — not only to readers possibly in need of the services offered, but also to those with a general curiosity about, or genuine interest in, the subject matter or the law of another state. . . and to readers seeking reform in Virginia (p. 822)-

Relying on the Bigelow case the Pennsylvania District Court in Fitzpatrick (supra, p. 59) found unconstitutional a Pennsylvania provision which prohibited any physician, clinic, or other person or agency from engaging in solicitation or advertising having the purpose of "inviting, inducing, or attracting" members of the public to come to such physician, clinic or other agency to have abortions or to purchase abortifacients. For a similar conclusion in a federal case in New York, see Population Services Int. v. Wilson (supra, p. 32).

8. Sanctions imposed for "bad faith" in failing to observe the

principles of Roe v. Wade

In the case of Doe v. Poeller (supra, p. 60) the federal Circuit Court of Appeals found that

. . . the State of Missouri and the City of St. Louis. . . have obstinately continued to implement and enforce statutes, regulations and policies designed to circumvent the constitutional law declared by the Supreme Court, (revealing) a wanton, callous disregard for the constitutional rights of indigent pregnant women continuing long after those rights have been clearly enunciated by the Supreme Court in Roe. . . and Doe. . .

The court, as an exception from a general rule, therefore awarded attorney's fees against the Mayor of St. Louis (whom the court found to be principally guilty of "bad faith"). The fees were \$3,500 for the appellate portion of the litigation. The court directed the District Court to determine and award attorney's fees for the trial court proceedings against the same man.

Note: Three 1976 decisions by the United States Supreme Court have had a great impact on the significance of some of the 1975 State law reported above. The decisions will be reported on in detail in the Annual Review, 1976. It should be at least noted here that the following parts of one State's abortion law were declared unconstitutional:

- (a) requirement of husband's consent
- (b) unqualified requirement of parental consent to an abortion performed on a minor
- (c) prohibition of the saline amniocentesis abortion method.

200 FAMILY STATUS AND WELFARE

210 MARRIAGE

Cuba

Subject: Minimum marriage age set at 18 years (with exceptions).

Text: Article 3 of the new Family Code reads, in part, as follows:

Females and males who are 18 years of age are authorized to enter into matrimony. Therefore, persons of less than 18 years of age are not authorized to enter into matrimony.

Notwithstanding the provision of the above paragraph, in exceptional cases and for justified grounds the parents, or other relatives in the absence of parents, or in other cases a court, may grant to persons less than 18 years of age the authorization to enter into matrimony, provided that the female has completed her fourteenth year and the male has also completed his sixteenth year.

Reference: Family Code; Law No. 1289 of 14 Feb. 1975; Gaceta Oficial of 15 Feb. 1975, Article 3.

Note: The Article also contains details with regard to the exceptional cases and procedures to be followed.

Italy

Subject: Minimum marriage age raised to age of majority (18 years).

Text: Article 4 of the new Family Law reads, in part, as follows:

Art. 84 of the Civil Code is replaced by the following:

Art. 84 - Age - Minors may not enter into matrimony.

A court, on the request of the interested party, having ascertained the psychological and physical maturity of the applicant and the soundness of the reasons presented; having heard the views of the state attorney, of the parents or of the guardian, may by decree issued in the council chamber, permit a marriage of a person who has completed sixteen years if there are serious reasons for doing so.

Reference: Law No. 151 of 19 May 1975 on Reform of Family Law, Gazzetta Ufficiale, 23 May 1975, p. 593.

Note: To understand the Italian marriage law and the background of the

statute of 19 May 1975, it is necessary to keep in mind that since the 1929 Concordat Italy has two kinds of marriages, both legally valid:

- a) "Civil" marriage, contracted before a state official; and
- b) Catholic "concordat" marriage, contracted before a priest, which has legal effects if certain formalities, e.g. registering in a civil register, are fulfilled. Under Law No. 847 of 27 May 1929, the validity of "concordat" marriage, including its prerequisites was governed by canon law and ecclesiastical tribunals had jurisdiction to decide on the nullity of such a marriage. It is estimated that from 80 to 90 percent of Italian marriages still are "concordat" ones. To the extent that the 1975 Law on Reform of Family Law regulates the consequences of marriage, it applies both to the civil and "concordat" marriages. Since this law does not govern the prerequisites of "concordat" marriages, these, under Canon Law, can still be validly contracted by boys of 16 or girls of 14.

X X X X

Subject: Age of majority set at 18.

Text: Art. 1 of Law No. 39 of 8 March 1975 amends Art. 2 of the Civil Code to read, in part, as follows:

Art. 2 - (Age of majority. Capacity for action). The age of majority shall be set at the completion of the eighteenth year. With the age of majority, the capacity to carry out all actions for which another age has not been established, is acquired.

Reference: Law No. 39 of 8 March 1975, Gazzetta Ufficiale of 10 March, 1975, p. 1626.

Philippines

Municipality of San Agustin, Province of Isabela

Subject: Municipal ordinance requires family planning counselling for marriage license applicants.

Text: Section 1 - No person or persons shall be granted a marriage license without presenting before the Local Civil Registrar a certification from the office of the Rural Health Unit and other competent agencies of the government that they have been informed or have attended lectures or seminars about Family Planning.

Section 2 - Effectivity: This Ordinance shall take effect June 17, 1974.

Reference: Ordinance No. 10, Series 1974, adopted unanimously by the Municipal Council on 17 June 1974.

Note: Similar ordinances were adopted by more than 200 municipalities in the Philippines by the end of 1974. A Presidential Decree of 25 July 1976 made this requirement compulsory throughout the country.

220 TERMINATION OF MARRIAGE

Australia

Subject: New divorce law bases dissolution of marriage on ground of irretrievable breakdown of marriage.

Text: Family Law Act of 1975 reads, in part, as follows:

Part VI - Dissolution and Nullity of Marriage

48. (1) An application under this Act by a party to a marriage for a decree of dissolution of the marriage shall be based on **the** ground that the marriage has broken down irretrievably.

(2) Subject to sub-section (3), in a proceeding instituted by such an application, the ground shall be held to have been established, and a decree of dissolution of the marriage shall be made, if, and only if, the court is satisfied that the **parties** separated and thereafter lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of the filing of the application for dissolution of marriage.

(3) A decree of dissolution of marriage shall not be made if the court is satisfied that there is a reasonable likelihood of cohabitation being resumed.

49. (1) The parties to a marriage may be held to have separated notwithstanding that the cohabitation was brought to an end by the action or conduct of one only of the parties.

(2) The parties to a marriage may be held to have separated and to have lived separately and apart notwithstanding that they have continued to reside in the same residence or that either party has rendered some household services to the other.

50. (1) For the purposes of proceedings for a decree of dissolution of marriage, where, after the parties to the marriage separated, they resumed cohabitation on one occasion but, within a period of three months after the resumption of cohabitation, they again separated and thereafter lived separately and apart up to the date of the filing of the application, the periods of living separately and apart before and after the period of cohabitation may be aggregated as if they were one continuous period, but the period of cohabitation shall not be deemed to be part of the period of living separately and apart.

(2) For the purposes of sub-section (1), a period of

cohabitation shall be deemed to have continued during any interruption of the cohabitation that, in the opinion of the court, was not substantial.

. . . .

Part VII - Welfare and Custody of Children

. . . .

63. (1) A decree nisi of dissolution of marriage does not become absolute unless the court, by order, has declared that it is satisfied--

(a) that there are no children of the marriage who have not attained the age of 13 years; or

(b) that the only children of the marriage who have not attained the age of 18 years are the children specified in the order and that--

(i) proper arrangements in all the circumstances have been made for the welfare of those children; or

(ii) there are circumstances by reason of which the decree nisi should become absolute notwithstanding that the court is not satisfied that such arrangements have been made.

(2) Where, in proceedings for a decree of dissolution of marriage, the court is in doubt whether the arrangements made for the welfare of a child of the marriage are proper in all the circumstances, the court may adjourn the proceedings until a report has been obtained from a welfare officer regarding those arrangements.

64. (1) In proceedings with respect to the custody or guardianship of, or access to, a child of a marriage--

(a) the court shall regard the welfare of the child as the paramount consideration;

(b) where the child has attained the age of 14 years, the court shall not make an order under this Part contrary to the wishes of the child unless the court is satisfied that, by reason of special circumstances, it is necessary to do so; and

(c) subject to paragraphs (a) and (b), the court may make such order in respect of those matters as it thinks proper, including an order until further order.

(2) In proceedings with respect to the custody of a child of a marriage, the court may, if it is satisfied that it is desirable to do so, make an order placing the child in the custody of a person other than a party to the marriage.

(3) Where the court makes an order placing a child of a marriage in the custody of a party to the marriage, or of a person other than a party to the marriage, it may include in the order such provision as it thinks proper for access to the child by any person.

(4) Where a court makes an order for joint custody of a child of a marriage or declines to make an order for the sole custody of the child, it may make orders as to access or such other orders as it thinks proper.

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Part VIII - Maintenance and Property

72. A party to a marriage is liable to maintain the other party, to the extent that the first-mentioned party is reasonably able to do so, if, and only if, that other party is unable to support herself or himself adequately, whether by reason of having the care or control of a child of the marriage who has not attained the age of 18 years, or by reason of age or physical or mental incapacity for appropriate gainful employment or for any other adequate reason having regard to any relevant matter referred to in sub-section 75 (2).

73. The parties to a marriage are liable, according to their respective financial resources, to maintain the children of the marriage who have not attained the age of 18 years.

74. In proceedings with respect to the maintenance of a party to a marriage or of a child of a marriage, the court may make such order as it thinks proper for the provision of maintenance in accordance with this Part.

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(Sections 75 through 90 make full provision for support payments and the bases on which they are calculated.)

Reference: Family Law Act of 1975; No. 53 of 1975; approved 12 June 1975, repealing previous Matrimonial Causes Acts.

Colombia

Subject: Legalization of civil divorce.

Text: Law No. 1 of 1976 (to establish divorce of civil matrimony, to regulate legal separation and the separation of property in civil and canonical matrimony, and to make certain other changes in the Civil Code on matters of Family Law) amends certain articles of the Civil Code to read as follows:

Article 152 Civil matrimony is dissolved by the real or presumed death of one of the spouses or by judicially decreed divorce.

. . . .

Article 154 The following are grounds for divorce:

- (1) Extramarital sexual relations by one of the spouses, unless the complainant has consented, facilitated or pardoned the act. . . .
- (2) Serious and unjustified failure, on the part of one of the spouses, to carry out his duties as husband or father, or as wife or mother.
- (3) Outrages, or cruel and habitual mistreatment, if it threatens the health, the bodily integrity, or the life of the other spouse or of their descendants, or if it makes domestic peace and calm impossible.
- (4) The habitual intoxication of one of the spouses.
- (5) The habitual and addictive use of hallucinating or narcotic drugs, unless they are medically prescribed.
- (6) Any serious and incurable abnormality or illness, whether physical or psychic, on the part of one of the spouses which imperils the moral or physical health of the other spouse and renders the matrimonial community impossible.
- (7) Any conduct on the part of one of the spouses which tends to corrupt or pervert the other spouse, or their issue, or persons who are under their care and who live under the same roof.
- (8) Judicially decreed legal separation which lasts more than two years, and
- (9) Imprisonment of one of the spouses by the decision of a court, for a period longer than four years for a common crime which the judge having jurisdiction over the divorce considers to be atrocious or opprobrious.

. . . .

Article 160 Once the decree of divorce has been put into effect, the bond of matrimony and the conjugal society are dissolved, but the rights and duties of the divorced persons with respect to their common children, and, as the case may be, the mutual rights and duties of support of the former spouses between themselves remain, in accordance with the provisions of Title XXI of Book I of the Civil Code.

Article 162 In cases involving the grounds for divorce set forth in sub-paragraphs 1, 2, 3, 4, 5, and 7 of Article 154 of this Code, the innocent spouse shall be authorized to revoke such contributions as he or she may have made on grounds of matrimony to the guilty spouse, without giving cause to the latter to invoke rights or concessions made exclusively in his or her favor in the marriage settlement.

. . . .

Article 423 The judge shall set the form and quantity in which support payments are to be paid,

Equally the judge may order that the spouse, who is obligated to make support payments to the other as a result of the divorce or legal separation decision, shall give a guarantee, either personal or with security, to assure the payments in the future.

. . . .

Article 423 For the divorce proceeding, the following rules shall be observed:

. . . .

5. The judge, in the sentence which grants the divorce decree, shall decide:

a) To place the minor children in the care of one of the spouses, or of both of them or of an outside person, depending on age, sex or proven ground for the divorce;

b) To whom the parental authority over non-emancipated children shall be granted in all cases where the proven ground for the divorce shows that that authority should be suspended or lost, or whether the children should be placed under wardship;

c) The proportions in which the spouses are to contribute to the bringing up, education and establishment of the common children, in accordance with the provisions of paragraphs 2 and 3 of Article 257 or the Civil Code.

d) If appropriate, the amount of the support payments which one of the spouses is obligated to pay to the other.

Reference: Law No. 1 of 19 Jan. 1976.

Note: The Concordat with the Vatican dated 1973 and ratified by Law No. 20 of 18 Dec. 1974 provides in Article VII that the Colombian Government recognizes the full effect of marriage under Canon Law, and that it will inscribe such marriages in the civil register. The new divorce law does not provide for divorce of persons married under Canon Law, nor does it affect the civil registration of Canon Law marriages.* Thus it affects only a small proportion of marriages.

Cuba

Subject: New Divorce Law.

Text: The Fourth Section of Chap. III of the new Family Code reads, in part, as follows:

Art. 49 Divorce shall produce the dissolution of the marriage bond and the other effects set forth in this Section.

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Art. 51 A divorce shall be granted when there is mutual agreement by the spouses, or when the court has verified that there are such grounds that the marriage has lost its meaning for the spouses and the children and, therewith, for society.

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Art. 53 Divorce proceedings may be brought by either of the spouses.

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Art. 56 If the spouses have lived together for more than one year or had children during the marriage, the court, at the time of the divorce, shall order support payments to be made to one of the spouses in the following cases:

- 1) To a spouse who has no paid job and lacks other means of support. These payments shall be provisional and shall be paid by the other spouse for a period of six months if there are no minor children in his or her care and maintenance, or for the period of a year if there are such children, which payments will enable the beneficiary to obtain a paying job.

*Information from Dr. Francisco Escobar, Harvard Population Center, Cambridge, Mass.

2) To a spouse who for reasons of incapacity, old age, illness or other incurable impediment, is disabled from work and has no other means of support. In this case, the payments shall be paid as long as the impediment exists.

Art. 57 The court, in its divorce decree, shall decide with regard to parental authority, providing, in the normal case, that both parents shall exercise it over their minor children.

Despite the above, the court may confer sole parental authority to that parent who, in its judgment, should exercise it, if this is required in the interest of the minor children, stating the reasons for which it deprived the other parent of the authority.

Art. 58 In the divorce decree the court shall determine which of the parents shall retain responsibility for the care and maintenance of the children of the marriage, and shall make such provision as is appropriate for these children to maintain adequate communication with the parent to whom the care and maintenance is not confided.

Art. 59 The support of the minor children is the obligation of both parents, even when he or she may not have any parental authority over them, or they are not under his or her care and maintenance, or where they are placed on an educational establishment. In accordance with this express rule, the court shall establish in the divorce decree, the amount of the support payments which, as the case may be, the parent who does not have care and maintenance should make for his or her minor children.

Reference: Family Code; Law No. 1289 of 14 Feb. 1975; Gaceta Oficial of 15 Feb. 1975, Arts. 49 et seq.

France

Subject: New comprehensive divorce and separation law.

Text: Law No. 75-617, amends the Sixth Title of the First Book of the Civil Code to read, in part, as follows:

Title VI
On Divorce
Chap. First
Types of Divorce

Art. 229 Divorce may be granted in the following types of case:

Mutual Consent
Disruption of Life in Common
Fault

Section I
Divorce by Mutual Consent

Para. 1 Divorce by agreement of the spouses

Art. 230. When the spouses petition together for a divorce, they need not make known the cause; they must only submit for the approval of the judge the draft of an agreement which will regulate the consequences.

The petition may be presented either by the respective lawyers of the parties, or by one lawyer chosen by common accord.

Divorce by mutual consent may not be sought during the first six months of marriage.

Art. 231. The judge is to examine the petition with each of the parties, then to call them together. Then he is to call in the lawyer or lawyers.

If the spouses persist in their intention to divorce, the judge is to advise them that their petition should be renewed after a three-month period of reflection.

In the absence of a renewal within the six months following the expiration of this period of reflection, the joint petition will lapse.

Art. 232. The judge is to pronounce the divorce if he is convinced that the intention of each spouse is real and that each of them has given his consent freely. In the same judgment he approves (homologue) the agreement governing the consequences of the divorce.

He can refuse his approval and the granting of the divorce if he judges that the agreement does not sufficiently secure the interests of the children or of one of the spouses.

Para. 2 Divorce petitioned by one spouse and accepted by the other

Art. 233. One spouse may petition for divorce by setting forth the fact of a set of acts, proceeding from both spouses, which make the continuation of their life in common intolerable.

Art. 234. If the other spouse acknowledges the facts before the judge, the judge is to grant the divorce without ruling on the allocation of fault. A divorce granted in this manner produces the legal effects of a divorce granted for shared fault.

Art. 235. If the other spouse does not acknowledge the facts, the judge is not to grant the divorce.

Art. 236. The statements made by the spouses may not be used as evidence in any other legal action.

Section II

Divorce by Rupture of Life in Common

Art. 237. One spouse may petition for divorce, by reason of the prolonged disruption of the life in common, when the spouses have been factually separated for six years.

Art. 238. The same is the case where the mental faculties of the other spouse have been so seriously impaired for a period of six years that the community of life no longer exists between the spouses and cannot, according to the most reasonable conjectures, be reestablished in the future.

The judge may on his own motion dismiss this petition, without resorting to the provisions of Article 240, if the divorce would entail the risk of too serious consequences for the illness of the other spouse.

Art. 239. The spouse who petitions for divorce for disruption of the life in common is to assume all of the costs of the suit. In the petition he is to specify the means through which he will fulfill his obligations to his spouse and children.

Art. 240. If the other spouse establishes that the divorce would entail, either for him, taking account of his age and of the duration of the marriage, or for the children, material or moral consequences of exceptional hardship, the judge is to dismiss the petition. He can even dismiss it on his own motion in the situation provided for in Article 238.

Art. 241. The disruption of the life in common can be invoked as a ground of divorce only by the spouse who presents the initial petition, called the principal petition.

The other spouse can then present a petition, called the cross-petition, (*demande reconventionnelle*) by alleging the fault of the spouse who took the initiative. This cross-petition can only be for divorce and not for legal separation. If the judge accepts the cross-petition, he dismisses the principal petition, and grants the divorce on the ground of fault of the spouse who took the initiative.

Section III

Art. 242. Divorce can be sought by one spouse for acts imputable to the other spouse when these acts constitute a serious or repeated violation of the duties and obligations of marriage and render intolerable the maintenance of the life in common.

Art. 243. It can be sought by one spouse when the other has been sentenced in a criminal case to one of the punishments set forth in Article 7 of the penal code.

Art. 244. The reconciliation of the spouses taking place after the occurrence of the facts alleged bars them from being invoked as cause for divorce.

The judge in such case is to declare that the petition is inadmissible. A new petition can however, be presented on the basis of facts occurring or discovered after the reconciliation, the earlier facts then being admissible in support of this new petition.

The temporary maintenance or resumption of the common life are not to be considered a reconciliation if they result only from necessity or from an attempt at conciliation or from the requirements of the upbringing of the children.

Art. 245. The faults of the spouse who took the initiative in the divorce do not prevent the examination of his petition; they can however, deprive the acts with which he reproaches the other spouse of that character of seriousness which would have made them a cause for divorce.

These faults can also be invoked by the other spouse in support of a cross-petition for divorce. If both petitions are admitted, the divorce is granted for shared fault.

Even in the absence of a cross-petition, the divorce can be granted for shared fault of both spouses if the trial reveals fault attributable to both of them.

Art. 246. When the divorce has been petitioned for under Articles 233 to 245, the spouses may, before any decision on the grounds for divorce has been rendered, petition the court to take note of their agreement and to confirm a draft agreement setting forth the consequences of the divorce.

In such cases, the provisions of Articles 231 and 232 shall be applicable.

(Chapter II sets the procedures to be followed and provides steps to be taken for the protection and support of the spouses and children during the proceedings.)

Chapter III

. . .

Section II

Consequences of divorce for the spouses

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Para. 2 The results applicable to the different types of divorce

Art. 265. The divorce is stated to have been granted against a spouse if it has been granted exclusively on the basis of his or her fault. It is also stated to have been granted against the spouse who took the initiative in petitioning for a divorce on the ground of

disruption of life in common.

The spouse against whom the divorce is granted loses those rights which the law, or agreements with third parties, accord to the divorced spouse.

These rights are not lost in cases of shared fault or of divorce agreement.

Art. 266. When the divorce is granted on the ground of the fault of only one of the spouses, the spouse at fault may be ordered to pay damages as compensation for such material and moral harm as the dissolution of the marriage may have caused to the other spouse.

The latter may only request such damages at the time of the divorce proceedings.

Art. 267. When the divorce is granted on the ground of the fault of only one of the spouses, the spouse at fault loses all claim to contributions and marital benefits which the other spouse may have made to him or her, either at the time of the marriage or afterwards.

The other spouse keeps the contributions and marital benefits which were made to him or her, despite the fact that they may have been declared to be reciprocal, and that the reciprocity did not occur.

Art. 267-1. When the divorce is granted on grounds of shared fault, each spouse may reclaim all or part of the contributions and benefits which he or she may have made to the other.

Art. 268. When the divorce is granted on mutual agreement the spouses must themselves decide what is to be done with the contributions and benefits which they have made to each other; if they have made no such decision, the contributions and benefits are deemed to be continued.

Art. 268-1. When the divorce is granted on the request of one spouse, accepted by the other, both spouses may recall all or part of the contributions and benefits which they have made to each other.

Art. 269. When the divorce is granted on the ground of disruption of life in common, the spouse who took the initiative loses all right to the contributions and benefits which the other spouse has made to him or her.

The other spouse keeps his or hers.

Para. 3 Compensatory payments

Art. 270. Except where it is pronounced by reason of the disruption of the life in common, divorce puts an end to the duty of support established in Article 212 of the Civil Code; but one spouse may be required to make to the other a payment designed to compensate, so far as possible, for the disparity which the disruption of the marriage creates in the conditions of their respective lives.

Art. 271. The compensatory payment is to be fixed according to the needs of the spouse to whom it is made and the resources of the other, taking account of their situations at the time of the divorce and of developments in the foreseeable future.

Art. 272. In the determination of needs and resources, the judge is to take into consideration notably:

- the age and the state of health of the spouses;
- the time already devoted or which they will have to devote to the upbringing of the children;
- their professional qualifications;
- their existing and foreseeable economic rights;
- the eventual loss of such rights in connection with terminable pensions;
- their wealth, in income as well as capital, after the liquidation of the matrimonial regime.

Art. 273. The compensatory allowance has a contractual (forfaitaire) nature. It can not be modified even when there are unpredicted changes in the resources or needs of the parties, except in cases where a failure to modify would have exceptionally serious consequences for one of the spouses.

. . . .

Art. 276. In default of a lump sum, or if the lump sum is insufficient, the compensatory payment can take the form of a pension (rente).

Art. 276-1. The pension is to be granted for a time equal to, or less than, the life of the creditor-spouse.

It is to be indexed; the index is to be determined as in the case of support payments.

The amount of the pension prior to being indexed can be made uniform for its entire duration or may vary in successive stages according to the probable evolution of needs and resources.

Art. 276-2. At the death of the debtor-spouse, the responsibility for the pension passes to his heirs.

Art. 281. When the divorce is granted for disruption of the life in common, the spouse who took the initiative in the divorce remains completely bound to the duty of support.

In the case of Art. 238 (impairment of a spouse's mental faculties), the duty of support includes everything which is necessary for the medical treatment of the ill spouse.

Art 282. The accomplishment of the duty of support is to take the form of periodic alimony. This may always be modified in accordance with the resources and needs of each spouse.

Art. 283. Periodic alimony terminates as a matter of law if the spouse who is the creditor contracts a new marriage.

It is terminable if the creditor is living in open and notorious concubinage.

Art. 286. The divorce leaves in effect the rights and duties of the father and mother with respect to their minor children, subject to the following rules.

Art. 287. According to the interest of the minor children, their custody is entrusted to one or the other of the spouses. In exceptional circumstances and if the interest of the children requires it, the custody may be entrusted to another person, chosen preferably from among their relatives, or, if this is impossible, to a custodial institution.

Art. 287-1. Before ruling on the custody of the children, either provisionally or definitively, and on the right of visitation, the judge may commission a qualified person to make an investigation of the case. This latter is to gather information on the material and moral situation of the family, on the conditions in which the children live and are raised and on the measures appropriate to take in their interest.

If one of the spouses contests the conclusions of the investigation, he may request a counter-investigation (contre-enquête).

The investigation may not be used in the trial on the grounds for divorce.

Art. 288. The spouse to whom custody of the children has not been entrusted retains his right to supervise their maintenance and their upbringing. He contributes to these according to his resources.

A right to visit and to receive visits can be denied him only for serious reasons.

Art. 289. The judge rules on the allocation of custody and on the manner of exercise of parental authority, the petition of one of the spouses, of a family member, or of the ministry.

Art. 290. The judge is to take account of:

1. agreements entered into between the spouses;
2. information collected in the investigation or counter-investigation provided for in article 287-1;
3. the sentiments expressed by the minor children when hearing them has appeared necessary and does not involve disadvantages for them.

. . . .

Chapter IV

Legal Separation

Section I

Grounds and Procedure for Legal Separation

Art. 296. Legal separation can be pronounced upon the petition of one of the spouses in the same cases and upon the same conditions as divorce.

Art. 297. The spouse against whom the petition for divorce is presented can file a cross-petition for legal separation. The spouse against whom a petition for legal separation is presented can file a cross-petition for divorce.

If a petition for divorce and a petition for legal separation are simultaneously granted, the judge is to pronounce a divorce for shared fault of the two spouses.

. . . . Section II

Consequences of Legal Separation

Art. 299. Legal separation does not dissolve the marriage but it terminates the duty of cohabitation.

. . . . Section III

Termination of Legal Separation

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Art. 306. Upon the petition of one of the spouses, the judgment for legal separation is converted as a matter of law into a judgment for divorce when the legal separation has lasted for three years.

Art. 307. In all cases of legal separation, it can be converted into divorce by joint petition.

When the legal separation has been granted upon joint petition, it can only be converted into divorce by a new joint petition.

Art. 308. By the fact of the conversion, the grounds for legal separation become the grounds for divorce; the attribution of wrongs is not modified.

Reference: Law No. 75-617 of 11 July 1975, on the reform of Divorce; Jour. Offic. of 12 July 1975, p. 7171.

Note: Translation largely from M.S. Glendon, "The French Divorce Reform Law of 1976", 24 American Journal of Comparative Law No. 2 (1976), p. 199.

Germany, Federal Republic of

Subject: Note on a 1976 development.

Text: A comprehensive amendment to the Civil Code was enacted on 14 June 1976. It made many changes in marriage and family law, which will be reported on in detail in next year's volume of this Annual Review. The changes are based on a principle of full equality of the spouses. Of particular interest is a change in the divorce law, under which only the "breakdown of marriage" is a ground for divorce and not "fault" by either spouse.

Reference: Bundesgesetzblatt I., No. 67, 15 June 1976, p. 1421 ff.

Luxembourg

Subject: New divorce law.

Summary: Law of 6 Feb. 1975 facilitates divorce by consent.

The former prohibition of divorce by consent where the marriage had lasted twenty years or more was repealed, as was the former provision under which consent of the parents or grandparents of the parties was needed for this kind of divorce. The provision under which half of the property of spouses who obtained divorce by consent became the property of their children was also repealed.

Equality of sexes was introduced by an amendment of Sec. 275 of the Civil Code which formerly prohibited divorce by consent if the husband was under 25 or if the wife was under 21. Now the minimum age for this kind of divorce is 21 years for both husband and wife.

Proceedings by which divorce by consent may be obtained were somewhat simplified, and the period during which a woman could not remarry was shortened.

Reference: Law of 6 Feb. 1975, on divorce by consent and second marriages, (Memorial A 1975, p. 255); Council of Europe. Newsletter on Legislative Activities, No. 17 (1975), p. 2.

Portugal

Subject: Divorce liberalized after amendment of Concordat with the Catholic Church.

Summary: Under the Concordat of 7 May 1940 marriages solemnized by a Catholic Church ceremony were acknowledged as legally valid and

were regulated by Canon law. No divorce was permitted for such marriages. Civil Code divorce applied only to "civil" marriages, i.e. perhaps to not more than 10 percent of Portuguese marriages.

After the 1974 political changes in Portugal the Vatican agreed to amend the Concordat (by an "Additional Protocol" of 15 Feb. 1975), under which spouses married under Catholic rites are obliged to respect Canon Law only "in their relation to the Catholic Church". This enabled the interim Portuguese government to issue, on 22 May 1975, a decree-law which applied both to "civil" and "church" marriages. The new law allows divorce for all marriages. There are three kinds of divorce: a) divorce for fault, based on several grounds listed in Art. 1778 of the Civil Code, b) conversion of legal separation into divorce, which can be moved by either of the separated spouses; and c) divorce by consent, which must be granted first as a preliminary divorce, for the period of one year, and which will become absolute if the spouses do not become reconciled in the meantime.

Reference: Decreto-Lei No. 261 of 22 May 1975, Diario de Governo, I (27 May 1975), p. 533; Korster H.E. in 22 Zeitschrift für das gesamte Familienrecht, p. 469 (1975).

240 RIGHTS OF THE SPOUSES WITHIN MARRIAGE

Austria

Subject: Amendment of the Civil Code to equalize rights of spouses

Text: By the law of 1 July 1975, BGBl. No. 1975/412, Parliament enacted a new law on the personal effects of marriage. Among the more important of the amended provisions are the following:

Personal Effects of Marriage

Sec. 89 The personal rights and duties of the spouses in their mutual relations are equal, except in those cases in the present chapter where the Civil Code provides otherwise.

Sec. 90 The spouses have a mutual duty to maintain a comprehensive marital community of life (umfassende eheliche Lebensgemeinschaft): they have in particular a duty to share a common home, to be faithful, to treat each other with decency, and to aid each other. Each spouse must cooperate in the earning activities of the other, so far as this can be reasonably requested from him or her, and so far as it is usual under the circumstances in which the spouses live.

Sec. 91 The spouses must arrange by mutual understanding their marital community of life, in particular the management of their household, as well as their earning activities, having regard for each other and for the well-being of their children.

Sec. 92 Should a spouse request, on justifiable reasons, that the common residence be transferred, the other spouse shall comply with the request, except where he or she also has justifiable reasons of equal weight for not complying.

Notwithstanding the provision of the preceding paragraph a spouse may temporarily take (nehmen) a separate dwelling, for so long a period as life in common with the other spouse cannot be reasonably requested, especially where his or her safety is endangered, or where a separate dwelling is justified for important personal reasons.*

. . . .

Sec. 94 The spouses are obliged, to the best of their ability, and in accord with the arrangement of their marital life community, to participate jointly in paying expenses which are appropriate to their conditions of life. (Lebensverhältnissen).

The spouse who manages the common household fulfils there-

*By the Law of 1 July 1975 (BGBl. 417) spouses are given the right to share the family apartment. The registration of this right in the Real Property Register is also provided;

by his or her contribution under the preceding paragraph; he or she is entitled to obtain maintenance from the other spouse, taking into consideration his or her own income. After the common household has been terminated, this applies in favor of the spouse who until then was entitled to maintenance, except where the claim for maintenance would indicate a misuse of such a right, especially in the light of the reasons which caused the termination of the common household. A spouse is also entitled to maintenance in cases where he or she was not able to fulfil his or her contribution under the preceding paragraph.

The right to maintenance, as such, cannot be waived in advance (im Vorhinein).

Sec. 95. The spouses shall participate in the management of their common household commensurate with their personal circumstances, especially with regard taken to their occupation workload. Where, however, a spouse is not engaged in an outside earning occupation it is his or her duty to manage the household.

. . . .

Previous Law: Under the old provisions of the Austrian Civil Code (of 1811) the husband was the "head of the family"; the wife was obliged to follow her husband in his residence.

Note: The reform of the community property law in Austria is still going on. The last government draft bill, based on the principle of equality of sexes, was submitted in 1972.

Cuba

Subject: Wives given equal rights within marriage in New Family Code.

Text: The preamble contains the following paragraph:

Considering: that rules still exist in our country in regard to the family — legal rules of the bourgeois past which are obsolete, contrary to the principle of equality, and discriminate against women and children born out of wedlock; rules which should be replaced by other rules which fully conform to the principle of equality, and with the realities of our socialist society which is in continuous and impetuous advance.

Chapter II reads, in part, as follows:

Art. 24 Marriage is built on the basis of equality of the rights and duties of both spouses.

. . . .

Art. 26 Both spouses are required to care for the family which they have created, and to cooperate with each other in the education, training and guiding of the children following the principles of socialist morality. They must equally participate in the control of the home and cooperate in its better development, according to the capacities and possibilities of each spouse.

Art. 27 The spouses must contribute to the satisfaction of requirements of the family which they have created through their marriage, each according to his or her own abilities and economic capacity. Nevertheless, if either one of them shall contribute to this subsistence only by his or her work in the home and in the care of the children, the other spouse must alone contribute to the above subsistences without being excused from his duty to cooperate in the above work and care.

Art. 28 Both spouses have the right to practice their professions or occupations and have the duty to offer each other reciprocal cooperation and help, as well as to study and improve their knowledge, but they shall, in any case, so organize their home life that these activities are coordinated with the obligations imposed by this Code.

. . . .

Art. 35 The spouses are the administrators of the joint marriage property, and each one of them, without distinction, may carry out these administrative actions, and acquire these goods which are naturally designed for the ordinary use and consumption of the family.

Art. 36 Neither of the spouses shall carry out acts of control with regard to the joint property without the previous consent of the other, except for cases of recovery of the property for the benefit of the community.

. . . .

Art. 38 The joint community property shall terminate when the marriage ends. The joint property shall be divided equally between the spouses, or, in case of the death of one of them, between the surviving spouse and the heirs of the deceased spouse.

Reference: Family Code; Law No. 1289 of 14 Feb. 1975; Gaceta Oficial of 15 Feb. 1975, Preamble and Arts. 24 et seq.

Italy

Subject: Broad reform of family law gives each spouse equal rights.

Text: Law No. 151 makes a number of amendments in the text of the Civil Code. These include the following amended Articles:

Art. 143 Reciprocal rights and duties of spouses

On marriage the husband and the wife acquire the same rights and assume the same duties.

The marriage creates reciprocal obligations of fidelity, moral and material assistance, of collaboration in the interests of the family, and of cohabitation.

Each is bound to contribute to the needs of the family on the basis of his or her means and capacity for professional or domestic work.

Art. 144 Guide-lines for family life and residence

The spouses shall agree between themselves as to the rules governing their family life and as to the place of the family residence, on the basis of the requirements of both, giving priority to the needs of the family itself.

Each spouse has authority to carry out the agreed guide-lines.

Art. 149 Duties toward the children

Matrimony imposes on both the spouses the obligation to care for, instruct, and educate the children, taking account of their capacity, their natural inclinations and their aspirations.

Art. 179 Personal property of each spouse

The following are not considered as joint or community property and remain the personal property of the spouse.*

a. Property which, prior to the marriage, was owned by a spouse or with respect to which he or she held the actual right to enjoyment.

b. Property which was acquired after the marriage by gift or by inheritance, provided that it was not specifically made a part of the community property by the document of gift or will.

. . . .

*The sub-paragraphs enumerating property which remains personal to the spouse are very broad and community property is relatively limited. There are also full provisions for separation of property in the new law.

Art. 180 Management of community property

Each spouse is separately responsible for the management of the community property and for legal representation in actions in relation to it.

The spouses are jointly responsible for action with regard to community property which exceeds the normal management function, including the making of contracts under which personal rights to possession or legal representation are acquired or disposed of.

. . . .

Art. 230 Family business

Unless another arrangement can be shown, a member of the household who has worked continuously for the family or for a family business has a right to support in accordance with the family's assets. Such a person shares in the profits of the business and in its property, as well as in its growth, and in its management, in proportion to the quantity and quality of the work performed. Decisions concerning the use of the profits and gains as well as those concerning extraordinary management questions, production and the termination of business shall be taken by majority vote among the family members taking part in the business. . . .

The work of a woman is equivalent to that of a man.

. . . .

Art. 316 Exercise of parental authority

The child is subject to the authority of his or her parents until reaching majority or until emancipation.

The authority is exercised by common agreement of the parents.

In case of disagreement on matters of special importance, either parent may have recourse to the judge, without formality, and indicate his views to him.

Luxembourg

Subject: "Parental" authority replaces "paternal" authority. See infra p.

Spain

Subject: New law on the situation of the married woman and the rights and duties of spouses.

Text: A number of articles of the Civil Code were changed in 1975. Among the more important were the following, which, as amended, read, in part, as follows:

Art. 21 Marriage alone does not change the nationality of the spouses, nor does it limit or place conditions upon its

acquisition, loss or recuperation, for either spouse independently of the other.

A spouse of Spanish nationality only loses his or her nationality by marrying a foreigner if he or she voluntarily takes the nationality of the foreigner.

. . . .

Art. 57 The husband and the wife owe each other mutual respect and protection and shall act always in the interest of the family.

Art. 58 The spouses shall decide, by common agreement on their place of residence. Lacking such an agreement, the decision shall be made by the spouse who exercises parental authority (patria potestad) if there are children, however, a judge may, on the petition of the other spouse, make the decision in the interest of the family as a whole. Other cases shall be settled by the courts.

Art. 59 The husband is the administrator of the community property, unless there is an express provision to the contrary.

Art. 62 Marriage does not restrict the capacity to act of either spouse.

. . . .

Art. 63 Neither spouse may claim the right to represent the other (legally) unless that right has been voluntarily conferred on him or her.

Art. 66 The spouses may carry on transactions in relation to goods and services needed to care for the ordinary needs of the family entrusted to his or her care, in conformity with the customs of the place and the circumstances and position of the family.

Art. 73 Confirmation of a legal separation decree shall have the following effects:

1. The separation of the spouses;
2. The placing of the children under the custody and protection of the innocent spouse;

If both spouses were at fault, the judge may, in his discretion, provide a guardian for the children under the provisions of the Code. Despite this, if in the course of the separation proceedings nothing to the contrary shall have appeared, the mother should retain the care of children under seven years old.

. . . .

3. The loss by the spouse at fault of all which was given or promised to him or her by the innocent spouse or by third persons on behalf of the innocent spouse, and the retention by the innocent spouse of all which he or she received from the guilty spouse, with the additional right to claim as of that time all that had been promised to him or her.

4. The separation of the property of the marital community, with each spouse holding possession and management of his or her share.

5. The retention by the innocent spouse, and the loss by the guilty spouse of the right to support.

. . . .

Art. 1,053. Either spouse may request the partition of inherited property without the intervention of the other.

Art. 1,320. Spouses who have reached majority may at any time, by mutual agreement, modify the economic, contractual or legal arrangements of their marriage. . . .

Art. 1,441. The administration of the marital community property shall be transferred to the wife through legal action:

1. when the wife is the guardian of her husband;
2. when a declaration of the husband's desertion has been petitioned for and in which the right has been granted to the wife to administer the community property;
3. when the husband has been declared a spend-thrift by the military authorities or in default in a criminal case.

The Courts may also confer the administration to the wife if the husband has abandoned his family, or if, having found himself absolutely unable to carry out the administration, he has not provided for her.

Reference: Law 14 of 2 May 1975 on the Reform of Certain Articles of the Civil Code on the legal situation of the married woman, and the rights and duties of spouses. B.O. del E., No. 107, p. 9413 of 5 May 1975.

Previous Law: The Commentary on the new law issued by the Spanish Government states, as to Arts. 57 and 58 that one of the purposes of the amendment was to make the spouses equal. As to Article 57

the old "discriminatory formula of protection as an attribute of the husband's role and obedience as the obligation of the wife" has been repealed.

300 CHILDREN AND CHILD WELFARE

310 SUPPORT OF CHILDREN GENERALLY *

United States

Federal Law

Subject: Supreme Court holds that the term "dependent child" under the Social Security Act does not include unborn children.

Summary: In the case of Burns v. Alcala, 420 U.S. 575, (1975) the Court found that states receiving federal financial aid under the program of Aid to Families with Dependent Children are not obliged to offer welfare benefits to pregnant women for their unborn children. The term "child" in the Social Security Act does not include "unborn child". (The Court was concerned only with the interpretation of the statutory language and did not deal with the question of the constitutionality of this interpretation; for this consideration the case was remanded to the lower court.)

x x x x

Subject: Equal rights of girls and boys to support, See Stanton v. Stanton, infra, p. 114.

*For provisions on child support in divorce cases, see Section 220 supra on marriage termination.

320 PROTECTION OF CHILDREN

Iran

Subject: New law on child and female labor in agriculture.

Text: Arts. 12 and 13 of law read, in part, as follows:

Art. 12 It is prohibited to put a child of less than twelve years of age to work in any of the types of agricultural labor listed in Art. 1 of this law.

Art. 13 It is prohibited to put a child of less than fourteen years of age to work at night. The same rule shall apply to women. It is also prohibited to give difficult tasks, and tasks damaging to health to children and women.

A regulation of the High Council on Agricultural Employment shall define "difficult" and "damaging" on the basis of climatic conditions and local custom. The Council shall also set forth what working hours are prohibited.

Reference: Law on Labor in Agriculture, passed 3 July 1974.

Italy

Subject: Parents specifically forbidden the usufruct of property earned by their children.*

Text: Art. 324 of the Civil Code, as amended by Law No. 151 reads, in part, as follows:

The parents exercising parental authority over their children shall have, in common, the usufruct of the property of the child.

Not subject to this legal usufruct are:

- 1) Goods acquired by the child with the proceeds of his or her own labor.

Reference: Law No. 151 of 19 May 1975 on the Reform of Family Law; Gazzetta Ufficiale of 23 May 1975, p. 593.

*For provisions of the same law on affiliation and the rights of illegitimate children, see immediately succeeding section.

Philippines

Subject: Child and Youth Welfare Code.

Text: Title I, Art. 3 and Art. 4 of the Code, effective June, 1975, establish the rights and responsibilities of the child as follows:

Art. 3. Rights of the Child.-- All children shall be entitled to the rights herein set forth without distinction as to legitimacy or illegitimacy, sex, social status, religion, political antecedents, and other factors.

(1) Every child is endowed with the dignity and worth of a human being from the moment of his conception, as generally accepted in medical parlance, and has, therefore, the right to be born well.

(2) Every child has the right to a wholesome family life that will provide him with love, care and understanding, guidance and counseling, and moral and material security.

The dependent or abandoned child shall be provided with the nearest substitute for a home.

(3) Every child has the right to a well-rounded development of his personality to the end that he may become a happy, useful and active member of society.

The gifted child shall be given opportunity and encouragement to develop his special talents.

The emotionally disturbed or socially maladjusted child shall be treated with sympathy and understanding, and shall be entitled to treatment and competent care.

The physically or mentally handicapped child shall be given the treatment, education and care required by his particular condition.

(4) Every child has the right to a balanced diet, adequate clothing, sufficient shelter, proper medical attention, and all the basic physical requirements of a healthy and vigorous life.

(5) Every child has the right to be brought up in an atmosphere of morality and rectitude for the enrichment and the strengthening of his character.

(6) Every child has the right to an education commensurate with his abilities and to the development of his skills for the

improvement of his capacity for service to himself and to his fellowmen.

(7) Every child has the right to full opportunities for safe and wholesome recreation and activities, individual as well as social, for the wholesome use of his leisure hours.

(8) Every child has the right to protection against exploitation, improper influences, hazards, and other conditions or circumstances prejudicial to his physical, mental, emotional, social and moral development.

(9) Every child has the right to live in a community and a society that can offer him an environment free from pernicious influences and conducive to the promotion of his health and the cultivation of his desirable traits and attributes.

(10) Every child has the right to the care, assistance, and protection of the State, particularly when his parents or guardians fail or are unable to provide him with his fundamental needs for growth, development, and improvement.

(11) Every child has the right to an efficient and honest government that will deepen his faith in democracy and inspire him with the morality of the constituted authorities both in their public and private lives.

(12) Every child has the right to grow up as a free individual, in an atmosphere of peace, understanding, tolerance, and universal brotherhood, and with the determination to contribute his share in the building of a better world.

Art. 4. Responsibilities of the Child. - Every child, regardless of the circumstances of his birth, sex, religion, social status, political antecedents and other factors shall:

(1) Strive to lead an upright and virtuous life in accordance with the tenets of his religion, the teachings of his elders and mentors, and the biddings of a clean conscience;

(2) Love, respect and obey his parents, and cooperate with them in the strengthening of the family;

(3) Extend to his brothers and sisters his love, thoughtfulness, and helpfulness, and endeavor with them to keep the family harmonious and united;

(4) Exert his utmost to develop his potentialities for service, particularly by undergoing a formal education suited to his abilities, in order that he may become an asset to himself and to society;

(5) Respect not only his elders but also the customs and traditions of our people, the memory of our heroes, the duly constituted authorities, the laws of our country, and the principles and institutions of democracy;

(6) Participate actively in civic affairs and in the promotion of the general welfare, always bearing in mind that it is the youth who will eventually be called upon to discharge the responsibility of leadership in shaping the nation's future; and

(7) Help in the observance of individual human rights, the strengthening of freedom everywhere, the fostering of cooperation among nations in the pursuit of their common aspirations for programs and prosperity, and the furtherance of world peace.

Note: The Child and Youth Welfare Code applies to persons below twenty-one years of age (except those legally emancipated) and covers broad areas which affect the life of the child. Among these are sections governing parental authority, adoption, educational opportunities, religious instruction, youthful offenders and dependent and neglected children. The Code's policy in these fields is that the ". . . child is one of the most important assets of the nation. Every effort should be exerted to promote his welfare and enhance his opportunities for a useful and happy life."

Reference: The Youth and Child Welfare Code, Presidential Decree No. 603, 10 December 1974.

United Kingdom

Subject: Comprehensive Childcare and Adoption Law

Summary: The new law "to make further provision for children" sets up, inter alia, adoption services, custodianship provisions and provisions on child care by local authorities.

Reference: Children Act, 1975; Part 7 The Law Reports, Statute 1975, March 1976, p. 2313.

340 LEGITIMACY OF CHILDREN

Council of Europe

Subject: Convention on affiliation and protection of illegitimate children signed at Strasbourg.

Text: The Convention contains the following articles, among others:

.

Art. 3. Paternal affiliation of every child born out of wedlock may be evidenced or established by voluntary recognition or by judicial decision.

Art. 4. The voluntary recognition of paternity may not be opposed or contested insofar as the internal law provides for these procedures unless the person seeking to recognise or having recognised the child is not the biological father.

Art. 5. In actions relating to paternal affiliation scientific evidence which may help to establish or disprove paternity shall be admissible.

Art. 6(1). The father and mother of a child born out of wedlock shall have the same obligation to maintain the child as if it were born in wedlock.

.

Art. 9. A child born out of wedlock shall have the same right of succession in the estate of its father and its mother and of a member of its father's or mother's family, as if it had been born in wedlock.

Reference: European Convention on the Legal Status of Children Born out of Wedlock, signed 15 Oct. 1975.

Cuba

Subject: New Cuban Family Code gives illegitimate children fully equal rights.

Text: The Preamble contains a paragraph (see supra p. 84) which states that the law is intended to reverse old laws which "discriminate against . . . children born out of wedlock." The body of the Code reads, in part, as follows:

Art. 1. This Code covers the legal regulation of the institution

of family: matrimony, ... parent-child relations, support obligations, ... with the principal purposes of contributing:

. . . .

To the more efficient accomplishment by parents of their obligations with respect to the protection, and training and education of children so that they may fully develop in all ways and as worthy citizens of socialist society:

To the full realization of the principle of equality of all children.

. . . .

Art. 65. All children are equal and they therefore enjoy equal rights and have the same duties with regard to their parents, regardless of the parents' civil status.

Art. 67. The birth registration of the child, and the recognition by parents who are not married shall be carried out by both parents, either jointly or separately.

Art. 68. In a case where the request for registration under the preceding Article is made by the mother alone and where she states the name of the father, the latter shall be summoned to appear before the officer in charge of the Civil Registry with the warning that if he does not appear within thirty days to accept or to deny paternity, the child will be registered as his. If the thirty day period expires without verification of the contest of paternity, the registration will be made formal in the terms of the warning, and once this has been accomplished, the contest may only be made through an action of law which must take place within the period of a year. (?)

If the paternity is denied, the registration is effected without naming the father, without prejudice to the right of the mother to claim filiation in the appropriate manner.

. . . .

Art. 77. The action at law to claim recognition of children may be brought by the children and by the father or mother who has recognized them against the parent who has not done so.

. . . .

Art. 122. Those who may claim support include:
1) Minor children from their parents, in all cases.

Reference: Family Code Law No. 1289 of 14 Feb. 1975; Gaceta Oficial

of 15 Feb. 1975, Preamble and Arts. 1, 67 et seq.

Italy

Subject: Child support provisions in new family law; duty to support illegitimate children.

Text: Law No. 151 makes a large number of amendments in the text of the Civil Code. These include the following amended articles:

Art. 149. Duties toward the children

Matrimony imposes on both spouses the obligation to care for, instruct and educate the children, taking account of their capacity, their natural inclinations and their aspirations.

Art. 155. Provisions as to children in cases of legal separation.

On pronouncing a legal separation the judge may declare which spouse is entrusted with the custody of the children. He may make any other provision regarding them, basing his action exclusively on their moral and material interests.

In particular, the judge may fix the amount and manner in which the other spouse shall contribute to the support and education of the children; including the manner in which he or she may exercise his or her rights in regard to them.

Art. 261. Rights and duties deriving from recognition of illegitimate children.

Recognition requires the parent to assume all the duties and rights which he or she has with regard to legitimate children.

Art. 279. Responsibility for support and education

In any case in which action for a judicial declaration of paternity or maternity may not be proposed (non può proporsi) the illegitimate child may take action to obtain support and education. If the child has reached the age of majority and is in a state of need, he may act to obtain a food allowance.

The action is admissible upon the judge's authorization in accordance with Art. 274.

The action may be taken in the interest of the minor child by a special guardian named by the judge on the request of the state attorney or of the parent who has authority over the child.

Reference: Law No. 151 of 19 May 1975; Gazzetta Ufficiale of 23 May 1975, p. 593.

Jamaica

Subject: Affiliation and maintenance laws tightened to enforce child support.

Text: A provision of the Affiliation Act setting a fixed weekly sum of money payable by putative fathers was repealed, and the Resident Magistrates in each parish were authorized to set "such sum of money weekly as having regard to the means of the putative father and all the circumstances of the case," they think just.

Enforcement provisions were added to the Maintenance Act, by adding provisions to Section 7 as follows:

7A (1) The Resident Magistrate of each parish shall from time to time, appoint for the purposes of this Act a Clerk or Assistant Clerk of the Courts to be Collecting Officer. . .

. . . .

(2) Where a Resident Magistrate makes a maintenance order he shall upon the application of any person entitled to be maintained by any other person under this Act, and any person having the actual care and custody of any child so entitled. . . provide in the order that all payments thereunder be made to the the Collecting Officer. . .

(3) Payment of the amount ordered may be made to the Collecting Officer in person, or by letter sent by registered post properly addressed to the Collecting Officer and posted in time to be delivered to him on the day appointed for payment.

(4) It shall be the duty of the Collecting Officer to receive all payments directed to him under this Act and to make payment fortnightly to the person named in the maintenance order of the sum directed to be paid under the order or such part thereof as he receives without making any deduction therefrom.

. . . .

7B (1) Where under a maintenance order, which provides that payment thereunder shall be made to the Collecting Officer, payment is fourteen clear days in arrear, the Resident Magistrate may, upon the application of the Collecting Officer, issue a warrant directing the sum due under such order... together with the costs attending such warrant, to be recovered by distress and sale of the goods and chattels of the person liable to make payment, and if upon the return of such warrant it shall appear that no sufficient distress can be had, the Resident Magistrate may issue a warrant to bring before him the person liable to make payment of the sum so due, and in case that person neglect or refuse without reasonable cause to make payment of the sum so due together with such costs, the Resident Magistrate may commit him to prison for any period not exceeding three calendar months with or without hard labour unless such sum and costs, together with the costs of commitment, be sooner paid.

A Family Court is also established to "try or otherwise deal with offenses, causes or matters" arising under the Affiliation Act, the Children (Guardianship and Custody) Act, and the Maintenance Act (among others).

Reference: Affiliation (Amendment) Act, of 18 Dec. 1975, (Act 39 of 1975) Sec. 2 (Amending Sec. 5 of the principal act); Maintenance (Amendment) Act of 18 Dec. 1975 (Act 38 of 1975) Sec. 3 (amending Sec. 7 of the principal act); the Judicature (Family Court) Act of 18 Dec. 1975 (Act 41 of 1975).

500 PUBLIC WELFARE

510 FAMILY ALLOWANCES GENERALLY

(including aid to dependent children)

Council of Europe

Subject: Council adopts a general resolution on Legislation Affecting Fertility and Family Planning (see supra p. 3) including a part calling for continued review of family allowances, special attention to problems of families with special problems, and protection of working parents.

Text: Part E of Resolution (75)29 recommends member governments to take the following legislative and administrative measures. . . ."

E. Economic and Social Assistance to Families

1. To reconsider current systems and levels of family allowances, as well as their periodical revision, and to assess how far the present structure of priorities in social provision—including the relationship between direct and indirect benefits, e.g. tax relief—is appropriate to present social and family needs;

2. To pay special attention to the specific needs of certain families which are statistically in a minority (single-parent families, families with several children, etc.);

4. To review the position of working people with direct family responsibilities, in particular with regard to maximum possible flexibility of working hours, including opportunities for part-time work, and by extending the provision of crèches, nursery schools and similar services;

Reference: Resolution (75)29 of the Committee of Ministers.

France

Subject: Law providing child allowance for persons not otherwise participating in a compulsory sickness and maternity scheme and never having had permanent employment.

Text: Law No. 75-574 on the spreading of social security provides, in part, as follows:

Art. L.242-4. Any person whose age is less than an age to be established by regulation, who does not benefit from a mandatory system of illness and maternity insurance, who has never held a salaried position except on an occasional basis on conditions set forth in a decree, and who registers for the first time as seeking employment under the conditions provided in the Labor Code, shall receive general social security allowances in the nature of sickness and maternity insurance for him or herself and the members of his or her family as defined in Art. 285 of this Code.

Art. 4. A divorced person who does not otherwise benefit from sickness and maternity insurance shall continue to receive for him or herself and the dependent members of his or her family for a period whose length is established by a Council of State decree, allowances in the nature of a mandatory system of sickness and maternity insurance The period shall continue until the youngest dependent child has reached the age of three.

(Similar provision is made for the beneficiaries of a deceased insured person and for a legally separated spouse.)

Reference: Law No. 75-574 of 4 July 1975; Journal Officiel of 5 July 1975, p. 6811.

Sweden

Note: On June 5, 1975, the Swedish Parliament enacted the Law Amending the Provisions of Family Allowances (Svensk författningssamling No. 1975: 554). The law is a comprehensive amendment of the old law on family allowances (1946:99).

Tunisia

Subject: Family allowances for some public employees revised as disincentive to large families.

Text: By a decree of 30 Dec. 1975 the schedule of family allowances for certain classes of public employees was revised to read:

	Monthly sum for a child
First child	: 4 Dinars, 600 millimes
Second child	: 3 Dinars, 800 millimes
Third child	: 3 Dinars, 300 millimes
Fourth child	: 2 Dinars, 700 millimes

Reference: Presidential Decree No. 75-952 of 30 Dec. 1975, concerning rates (taux) of family allowances, Journal Officiel of 30/31 Dec. 1975, p. 2884.

United Kingdom

Subject: Comprehensive Act on Children's Benefits

Summary: The act is to "replace family allowances with a new benefit to be known as child benefit." The benefit is to be payable to a person responsible for one or more children who is (or are) under sixteen or under nineteen and receiving full time education.

Reference: Child Benefit Act of 1975; Part 6, The Law Reports, Statutes 1975, Feb. 1975, p. 1775.

530 MATERNITY LEAVES AND BENEFITS

France

Subject: Law forbidding refusal of employment to a woman on account of pregnancy.

Text: Law No. 75-625 inserts a new Article L 122-25 into the Labor Code as follows:

Art. L. 122-25. An employer may not take into consideration a woman's condition of pregnancy as a basis for refusing to hire her, to cancel her work contract during her trial period, or . . . to make a change in her employment. On these grounds, an employer is forbidden to investigate or to have an investigation made as to information concerning her state of pregnancy.

A woman candidate for employment . . . is not required . . . to reveal her pregnancy.

(A criminal penalty is imposed for infraction of this provision).

Reference: Law No. 75-625 of 11 July 1975; Journal Officiel of 13 July 1975, p. 7226.

Tanzania

Subject: Provisions on maternity leaves amended

Text: "An Act to Amend Certain Labour Laws" of 4 April 1975 reads, in part:

. . . The Employment Ordinance is amended by . . . the following sections:

25B-(1) A female employee in respect of whom a medical officer has given a certificate that she is expected to deliver a child will be entitled to--

- (a) pre-natal maternity leave of forty-two days which may be taken at any time--
 - (i) after the completion of the seventh month of pregnancy if a medical officer recommends that such leave is necessary or desirable in the interest of the employee's health; and
- (b) post natal maternity leave of forty-two days commencing from the day on which such female employee delivers herself of a child:

Provided that--

- (a) a female employee shall not be entitled to any maternity leave under this section if she did, at any time within the three years immediately preceding the date on which the application for maternity leave is made and while in the continuous employment by the same employer, take any maternity leave under this section;
 - (b) an employee shall, in relation to any pregnancy, be deemed to have taken the whole of her maternity leave to which she is entitled under this section if she does, in relation to that pregnancy, take the whole or any part of the pre-natal or post-natal maternity leave;
 - (c) where in any calendar year a female employee has taken maternity leave under this section she shall forfeit--
 - (i) her annual leave which she would have but for this paragraph been entitled to take in that calendar year; or
 - (ii) if she has already taken her annual leave in such calendar year, the annual leave which she would but for this paragraph be entitled to take in the next succeeding calendar year.
- (2) Maternity leave under subsection (1) shall be with full pay and at the expense of the employer.
- (3) For the purposes of--
- (a) subsection (1), it shall be immaterial whether or not the female employee who applies for maternity leave is lawfully married;
 - (b) of paragraph (a) of the proviso to subsection (1), where during any period a female employee has been employed by two or more employers in any of the circumstances specified or are deemed by any written law to have been specified in subsection (1) of section 8A of the Severance Allowance Act, 1962 she shall be deemed to have been in the continuous employment of the same employer during such period;
 - (c) paragraph (c) of the proviso to subsection (1), where a female employee commences her maternity leave in any calendar year she shall be deemed to have taken

the maternity leave in the calendar year in which such leave expires.

(4) Nothing in this section shall be construed as precluding a female employee and her employer from entering into an agreement providing for maternity leave with full pay not less favorable to the employee than maternity leave provided for in this section.

Reference: Act. No. 1 of 1975, Acts Supplement to the Gazette of the United Republic of Tanzania, No. 14, Vol. LVI, 4 April 1975.

United States

Subject: Federal Court of Appeals held that women absent from work because of pregnancy-related disabilities may not be denied disability benefits.

Text: On 27 June 1975, the U.S. Court of Appeals, 4th Circuit in Gilbert v. General Electric Co. gave an opinion from which the following are excerpts:

. . . the District Court . . . held the denial of pregnancy-related disability benefits violative of Title VII of the Civil Rights Act of 1964, as amended.

. . . We affirm.

. . . The legislative purpose behind Title VII was to protect employees from any form of disparate treatment because of race, color, religion, sex or national origin or, as one commentator has stated it, "to make employment decisions sex-blind, as well as colorblind."

. . . Pregnancy is a condition unique to women and a basis characteristic of their sex. A disability program which, while granting disability benefits generally, denies such benefits expressly for disability arising out of pregnancy, a disability possible only among women, is manifestly one which can result in a less comprehensive program of employee compensation and benefits for women employees than for men employees; and would do so on the basis of sex.

. . . It is of no moment that an employer may not have deliberately intended sex-related discrimination; the statute looks to "consequences," not intent. Any discrimination, such as that here, which is "inextricably sex-linked" in consequences and result, is violative of the Act.

Reference: 519 F. 2d. 661 (1975).

United Kingdom

Subject: Employees can not be dismissed on grounds of pregnancy; maternity payments set and a Maternity Pay Fund established.

Text: Sections 34-39 of the Employment Protection Act of 1975 reads, in part, as follows:

34 (1) An employee shall be treated for the purposes of Schedule 1 to the 1974 Act as unfairly dismissed if the reason or principal reason for her dismissal is that she is pregnant or is (sic) any other reason connected with her pregnancy, except one of the following reasons--

(a) that at the effective date of termination she is or will have become, because of her pregnancy, incapable of adequately doing the work which she is employed to do;

(b) that, because of her pregnancy, she cannot or will not be able to continue after that date to do that work without contravention (either by her or her employer) of a duty or restriction imposed by or under any enactment.

.

35 (1) An employee who is absent from work wholly or partly because of pregnancy or confinement shall, subject to the following provisions of this Act, be entitled--

(a) in accordance with sections 36-38 below, to be paid by her employer a sum to be known as maternity pay; and

(b) in accordance with sections 48-50 below and Schedule 3 to this Act, to return to work.

.

36 (1) Maternity pay shall be paid in respect of a period not exceeding, or periods not exceeding in the aggregate, six weeks during which the employee is absent from work wholly or partly because of pregnancy or confinement (hereinafter in this section and sections 37 and 38 below referred to as the payment period or payment periods).

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38 (1) A complaint may be presented to an industrial tribunal

by an employee against her employer that he has failed to pay her the whole or any part of the maternity pay to which she is entitled.

. . . .

39 (1) There shall be established under the control and management of the Secretary of State a fund to be called the Maternity Pay Fund out of which payments shall be made in accordance with the following provisions of this Act.

. . . .

Reference: Employment Protection Act of 1975, Part 7 The Law Report, Statutes 1975 March 1975, p. 2105.

540 OLD-AGE AND RETIREMENT BENEFITS

Iran

Subject: New welfare law, possibly covering family planning services and old age and sickness protection.

Text: The Welfare Services Law of March 1975 reads, in part, as follows:

Art. 1. In order to provide welfare services for the needy individuals and groups in Iranian society, the Organization for Safeguarding of Welfare Services is hereby created.

Art. 2. The duties of the organization, which will be carried out either through directly available means, or by means of assistance from non-governmental welfare organizations, are:

- A. To study and carry out necessary research for the purpose of determining the welfare requirements of needy individuals and groups of the society.
- B. To prepare both long and short-run projects and programmes for the purpose of alleviating the welfare requirements of the needy individuals and groups of the society.
- C. To provide welfare services which shall include:
 - i. provision of a minimum level of living expense for uninsured families that are in low-income brackets, and whose breadwinner is deceased, in prison, or who, due to illness, disability caused by physical, psychological, social and imprisonment reasons, or other justifiable reasons, is not able to provide all or a part of a family's necessary living expenses; by means of encouraging the other members of the family to help themselves or by establishing an income for the family;
 - ii. assistance to disabled persons who have meager income or no income at all, and provision to them of a minimum living allowance;
 - iii. support and protection of special groups;
 - iv. guidance and teaching of families about welfare problems.

D. In order to improve the quality of the activities of welfare organizations, to carry out education programmes for the purpose of securing the trained man-power needed by these organizations, and to instruct their employees through the creation of schools and institutions of higher education or through non-governmental welfare organizations.

. . . .

Note: 1. The criteria for setting the minimum level of living expenses for the above-mentioned assistance will be proposed by the organization hereby created. They shall be subject to approval by the Ministry of Social Welfare and finally enacted by the High Council of Social Welfare.

2. The regulations pertaining to the protection and support of special individuals and groups, and to the creation and administration of centers will be prepared by this organization, approved by the Ministry of Social Welfare, and finally enacted by the High Council of Social Welfare.

. . . .

Art. 3. The organization has an independent financial and legal personality. Its administration will be pursuant to the rules of its Constitution, and other bylaws and regulations.

. . . .

Art. 5. The sources of the Organization's revenue are:

- A. an annual allotment of credit by the government in the national budget.
- B. assistance and contributions made to it by domestic and foreign real or legal persons.
- C. the organization's own revenue from performances of its services.

Art. 6. Administrative Council of the Organization is comprised of:

- A. Minister of Social Welfare, who shall be the presiding officer
- B. Chief of the Organization for planning and Budget

- C. Minister of Economic Affairs
- D. Minister of Health
- E. Minister of Co-operatives and Rural Affairs
- F. Minister of Labour and Social Affairs
- G. A representative of non-governmental welfare organizations, to be elected by the High Council of Social Welfare.

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Reference: Law on the Organization of Welfare Services of March 1975.

Note: A letter from Dean Parviz Saney of the National University, School of Law in Teheran, date 3 July 1976, has substantiated the relevance of the above Welfare Services Law to family planning. Dean Saney stated that the "special groups" who are to receive services (Art. 2, Section C, para. iii) include children and the elderly. He also said that the phrase, "guidance and teaching of families about welfare problems" (Art. 2, Section C, para. iv) "can very well cover family planning, even though the text does not specifically refer to this welfare activity."

560 LABOR PROTECTION AND EMPLOYMENT STANDARDS

Iran

Subject: Iranian Agricultural Labor Law. (See above, Section 320.)

(For other material in this field on employee maternity benefits and on giving women equal employment rights with men, see Sections 530 and 570 of this Part.)

Philippines

Subject: Family planning services required of employers for workers.

Text: Pursuant to the authority vested in me by Article 133 of the Labor Code of the Philippines and by Section II, Rule VII, Book III of the Rules and Regulations Implementing the Labor Code of the Philippines, the following requirements of family planning services to be given by the employers to their workers are hereby promulgated:

A. Delegation of Responsibilities:

Under the general guidance of the Department of Labor, through the Bureau of Labor Relation for promotion, the Bureau of Labor Standard for enforcement and the Population/Family Planning Office for coordination, the following specific area of responsibilities are assigned with regard to family planning services.

1. Employers should:

- 1.1 Arrange for the training of existing or new clinic personnel to insure that they are competent to promote family planning;
- 1.2 Provide clinical services including follow-up and treatment of normal minor side effects; (See ANNEX A establishment of Family Planning In-Plant Clinic Service)
- 1.3 Where clinical services in the establishments are not available, inadequate, or not well administered, provide referral to competent private or public nearby facilities;
- 1.4 Integrate family planning into existing services and education programs including applied nutrition community development, extension classes and education undertaken by management;
- 1.5 Provide time off with pay for workers to attend lectures and in going to the clinics;
- 1.6 Provide lecture halls, projectors, visual aids and printed materials for motivational meetings;

- 1.7 Schedule informational sessions and clinical services to insure that all workers get the opportunity to be exposed to the program;
 - 1.8 Develop or procure through government assistance appropriate informational and educational materials on family planning;
 - 1.9 Insure that government forms and reporting procedures are followed so that the involvement of the organization in the national program is achieved;
 - 1.10 Whenever practicable, to encourage the use of contraceptive by the people within surrounding communities which are adjacent to the industrial establishments.
2. Workers should:
 - 2.1 Provide moral support for the program including support for information programs;
 - 2.2 Insure that employees attend information sessions that are set up by management, go to the clinics as scheduled, report medical complications as discovered and follow scientific instructions;
 - 2.3 Train shop stewards and/or their wives to act as motivators and communicators to enhance the image of family planning;
 - 2.4 Organize the workers into groups to reinforce continuation such as, mother's clubs or workers family planning groups;
 - 2.5 Help to insure that workers follow contraceptive methods which are appropriate to their own situation and that reluctant acceptors are counselled and encouraged to use more suitable methods;
 - 2.6 Integrate family planning education into normal activities of community development, social action and education undertaken by trade unions;
 - 2.7 Provide funds for study grants to selected trade union members/officers to attend family planning training sessions or courses.
 3. Both Employers and Labor should:
 - 3.1 Organized an in-plant Labor/Management coordinating committee in each establishment with representatives from workers and employers with the responsibility to organize, develop, implement and monitor the status of the in-plant family planning program to determine the awareness, acceptance and continued practice of family planning;

- 3.2 To negotiate and/or renegotiate provisions for family planning information, education, communication and clinic service activities.
- 3.3 The foregoing areas of responsibilities shall apply to all employers group and workers organization regardless of the number of workers or union members, except that only establishments which employ in excess 200 workers shall be required to maintain an in-plant clinic for delivery of family planning method services. In the maintenance of these services, the following requirements and rules shall apply:
- 3.4 More than 200 workers:
- 3.4.1 Employers who habitually employ more than two hundred (22) workers in any locality shall provide free family planning services to their workers and their spouses which shall include, but not limited to the application or use of contraceptive or intrauterine devices. (Sec. 11 Rules and Regulations Implementing the Labor Code of the Philippines)
- 3.4.2 For an effective compliance of this requirement, establishments falling within the aforesaid category, shall maintain in their establishment a Family Planning Clinic. The physician and the nurse who take charge of the clinical services of the workers shall be given a training on family planning services in a duly recognized family planning training center of the POPCOM, or in one of its designated agencies.
- 3.4.3 All contraceptive methods shall be made available free to workers, such as oral contraceptive pills, intrauterine devices (IUD), rhythm method, foam, condoms, injectibles including sterilization.
- 3.5 For 200 workers or less:
- Family planning services in establishments employing two hundred or more, shall be the responsibility of a retained or full-time physician, whereas, if the number of workers is less than 200, it may be under the charge of a nurse, after certification by the POPCOM or its designated representative pursuant Presidential Decree No. 79 Sec. 5 (a).
4. Consultative Committees:
- 4.1 Within the Department of Labor, a family planning consultative Committee shall be organized under the Office of the Secretary. The committee shall take charge of the formulation and evaluation of policies and shall render whatever consultative services available. The committee shall be composed of three members, one

representing each of the following--labor management, Department of Labor, and the representative of the Department of Labor shall be the Chairman.

- 4.2. There shall be one family planning Consultative Committee at each Regional Office to be similarly constituted and the Regional Director of the Department of Labor shall be the Chairman. Regional family planning Consultative Committee shall be responsible for the full implementation of the services and programs in an expeditious manner by management and labor. The Regional Consultative Committee shall bring to the attention of the National Consultative Committee suggestion for modifications of policies. It shall report any violations or non-compliance with the rules, guidelines and regulations of the law and of subsequent modifications.
5. Incentive Bonus Plans and Programs:
 - 5.1. Bonus for contraceptive acceptance or continuation. In order to promote the acceptance of and continuation on the of effective contraceptives, establishments and their consultative committees are encouraged to experiment with the giving of bonuses and awards to successful contraceptors.
 - 5.2 In general, establishments will be expected to calculate the savings in finances and man hours which will accrue by virtue of the workers successful participation in family planning activities. These savings may take the forms of unused maternity leaves; of medical care which is foregone by virtue of non-pregnancy and benefits which are not utilized as a result of reduced child-bearing; of time which is saved by virtue of increased work efficiency of non-pregnant female workers and of male workers with fewer dependents. Once such calculation has been ascertained, a portion of the savings which has accrued may be utilized in the form of incentives bonuses for successful participation in family planning. These bonuses may take any of the following forms among others:
 - 5.2.1 Pension plans, insurance benefits, savings deposits or other social security measure for workers who participated effectively in the family planning program;
 - 5.2.2 Bonuses in terms of additional leaves and time-off for contraceptive acceptance or for successfully avoiding pregnancy;
 - 5.2.3 Cash, leave or promotion credit bonuses to female workers who do not utilize maternity leaves for a certain number of years;

- 5.2.4 Cash, commodity or benefit bonuses to worker motivators for recruitment of acceptors and for successfully encouraging continuation on contraception;
- 5.2.5 Group of workers bonuses by divisions and departments for exceeding certain levels of contraceptive acceptance or for accumulating certain number of aggregate years of non-pregnancy;
- 5.2.6 Prizes and awards on a competitive basis to individuals, couples, or divisions/departments for excellence in recruitment of acceptors, for continuation of practice for reduction of fertility, or for effectiveness of contraceptive methods accepted.
- 5.3. Any bonus which is adopted should be carefully reviewed by the establishments' consultative committee to ensure that the interests of workers are served, that enrollment in bonus programs is voluntary, that there is no coercion to accept contraception, and that such programs are ethically acceptable to all concerned.
- 5.4. The family planning committee of the Office of the Secretary shall be responsible for providing for consultative services to establishments in design and testing of appropriate bonus program.
6. Information and Clearing House:
 - 6.1. Information on family planning in the different regions should be collected by the Population/Family Planning Office and arrangements made for their wide and systematic dissemination, drawing upon the clearing house facilities of the Population Commission.
7. Fact-Finding and Research:
 - 7.1. To determine the impact and/or effectiveness of the program, a follow-up survey should be undertaken by the Population/Family Planning Office annually. The survey should include:
 - 7.1.1 Critical study of schemes of family planning and related measures in the organized sector, including incentives and cost benefit aspects;
 - 7.1.2 Field inquiries and studies on maternity benefit and its effect on fertility;
 - 7.1.3 Policy oriented field studies on women's employment and its effect on fertility;

- 7.1.4 Studies on finances and balances of health care, as a result of introducing family planning in the medical care component of social security; and
- 7.1.5 Field inquiries and studies on the relationship between the size, and composition of the family and occupational safety and health absenteeism, work motivation and productivity of the workers.
- 7.2 A complete report to the Secretary of Labor shall be submitted after the end of every survey made, to assess the situation with a view of improving, revising and/or adopting other means, methods or procedures more effective to carry out the purpose envisioned by the Labor Code of the Philippines.

APPROVED:

(SGD.) AMADO GAT INCIONG
Acting Secretary

July 8, 1975

Reference: Department of Labor, Department Order No. 9 (Series 4, 1975). Text reproduced in Law and Population in the Philippines (Quezon City: University of the Philippines Law Center, 1975), pp. 231-37.

570 PERSONAL STATUS AND INTEGRITY*

League of Arab States

Subject: Role of women in social and economic development

Summary: The Second Conference of the Ministers for Social Affairs of Arab countries met in Khartoum (Sudan) and in Cairo (Egypt) from 25 to 27 March and from 27 to 29 May 1975, respectively. Attended by delegates from 18 Arab countries, it called upon Arab countries to promote equal educational and training opportunities for women and to foster the conditions which would allow women to exercise functions consistent with development plans.

Reference: League of Arab States: Resolutions, Second Conference of Arab Ministers for Social Affairs, 25-29 May 1975; ILO, Social and Labour Bulletin, No. 3 (Sept. 1975), pp. 240-41.

France

Subject: Pregnancy cannot be ground for refusal of employment. See Section 530 supra, p. 102.

Greece

Subject: A national collective agreement establishes the principle of equal remuneration for men and women

Summary: A collective agreement signed on 26 February 1975 and applicable to the whole of Greece contains a provision on equal pay for men and women, to be implemented in stages.

Reference: National general collective labour agreement, 26 Feb. 1975, respecting the application of standards of equal pay for men and women, increased holidays and days off and the introduction of a 45-hour working week (free translation); ILO, Social and Labour Bulletin, No. 3 (Sept. 1975), p. 306.

Jamaica

Subject: Equal pay for equal work law adopted

Text: Section 3 of the new law reads, in part, as follows:

(1) From and after the 1st day of January 1976 no employer shall, by failing to pay equal pay for equal work, discriminate between male and female employees employed by him in the same establishment in Jamaica.

*For material on equal rights within marriage, see Section 240 supra.

(2) Subject to subsection (4), any employer who contravenes the provisions of this section in respect of any employee shall be guilty of an offence, and shall be liable on summary conviction in a Resident Magistrate's Court in respect of each offence, to a fine not exceeding two hundred dollars or to imprisonment with or without hard labour for a term not exceeding twelve months and to an additional fine not exceeding twenty dollars for each day on which the offence is continued after conviction therefor.

(3) Where an employer is convicted of an offence under this section the Court may, without prejudice to its powers under subsection (2), order him to pay to any employee in relation to whom the offence was committed such sums as appear to the Court to be due to that employee having regard to the provisions of subsection (1) so, however, that in determining any such sum no account shall be taken of any period prior to the 1st January 1976 or prior to the period of six years immediately preceding the date on which the relevant information or complaint was laid whichever is the later.

Reference: Law No. 34-1975, The Employment (Equal Pay for Men and Women) Act, 1975, dated 2 Oct. 1975.

Note: The law contains provisions which define pay and employment and which cover the gathering of evidence, the keeping of funds, inspection, and procedures for medication.

Mexico

Subject: Article in Constitution giving special protection to women in employment repealed.

Summary: Art. 123 of Constitution was deleted since its provisions for special protection for women (e.g., overtime, night work) were felt to discriminate against them.

x x x x

Subject: General Population Law amended to give women full status.

Text: A new section (V) was added to Article 3 of the General Population Law which reads as follows:

For the purposes of this Law, the Secretariat of the Interior shall dictate and carry out, or when appropriate, promote with the competent or appropriate agencies, measures necessary:

V. To promote the complete integration of the woman into the economic, educational, social and cultural process.

Reference: Amendment of 31 Dec. 1974 to the General Population Law.

Netherlands

Subject: Equal pay for equal work law adopted.

Summary: An Act to lay down rules respecting the entitlement of workers to a wage that is equal to the wage of workers of the other sex for work of equal value. Equal Wage for Women and Men Act. Dated 20 March 1975. (Staatsblad, 1975, No. 129).

United Kingdom

Subject: Equal access to pension systems for male and female employees.

Text: Part IV of the Social Security Pensions Act of 1975 for various purposes including "securing that men and women are afforded equal access to occupational pensions schemes," contains sections which read, in part, as follows:

53(1) The provisions of sections 54-56 below shall have effect with a view to securing that the rules of occupational pension schemes conform with the equal access requirements.

(2) Subject to subsection (3) below, the equal access requirements in relation to a scheme are that membership of the scheme is open to both men and women on terms which are the same as to the age and length of service needed for becoming a member and as to whether membership is voluntary or obligatory.

(3) Regulations may--

(a) provide for the equal access requirements to apply, whether to an occupational pension scheme, or to terms of employment relating to membership of it, or to both, with such modifications and exceptions as the Secretary of State considers necessary for particular cases or classes of case;

(b) modify those requirements in any manner which he thinks appropriate with a view to securing the orderly implementation of the provisions of sections 54-56 below and to obtaining general compliance with those provisions.

(4) A rule does not contravene the equal access requirements only because it confers on the scheme's trustees or managers, or others, a discretion whose exercise may result in a person being more or less favorably treated than he otherwise would be, so long as the rule does not provide for the discretion to be exercised in any discriminatory manner as between men and women.

. . . .

54 (1) Where the rules of an occupational pension scheme do not comply with the equal access requirements it shall be the responsibility of--

(a) the trustees and managers of the scheme; or

(b) in the case of a public service pension scheme, the Minister, government department or other person or body concerned with its administration,

to take such steps as are open to them for bringing the rules of the scheme into conformity with those requirements.

(2) The Occupational Pensions Board may at any time, and shall if requested by any such persons as are mentioned in sub-section (1) above, advise whether the rules of a scheme do or do not in the Board's opinion conform with the equal access requirements and, where the Board advise that the rules do not conform, they shall indicate what steps they consider should be taken with a view to securing conformity.

Reference: Social Security Pensions Act of 1975, Part 5 The Law Reports, Statutes 1975, Feb. 1976, p. 1695.

x x x x

Subject: Provision preventing dismissal on ground of pregnancy. (See Section 530, supra p.110.)

United States

Subject: State Law found unconstitutional which made the age of majority different for men and women, because it provided parental support for different periods of time.

Summary: The United States Supreme Court, in Stanton v. Stanton, 421 U.S. 7 (1975) declared a law of the State of Utah which provided that the period of minority extends in males to the age of twenty-one years and in females to that of eighteen years unconstitutional for violation of the equal protection clause of the Federal Constitution. The context in which this decision was made was a parent's obligation for support payments for his children. The Court commented: "If a specified age of minority is required for the boy in order to assure him of parental support while he attains his education and training, so, too, it is for the girl."

600 PUBLIC HEALTH

640 REGULATION OF NON-PHYSICIAN HEALTH PERSONNEL

Morocco

Subject: Authorization of screening of acceptors by para-professional medical personnel and resupplying pill acceptors by dispensaries.

Text: For the text of the circular letter of the Minister of Public Health that makes these authorizations see Section 120 supra, p.28)

Sweden

Note: Trained midwives specifically authorized to provide contraceptive services. See Section 120 supra, p.31)

700 EDUCATION

710, 720, 750 FREE AND COMPULSORY EDUCATION

Iran

Subject: Compulsory education and free secondary education law.

Text: The Provision of Education Facilities Law of 1974 reads, in part, as follows:

. . . .

Art. 2. At any location where elementary and guidance education is free and compulsory, . . . the child's mother, father or legal guardian who is responsible for the child's education has the duty to provide for the child's registration and means of schooling. In case they fail to do so, the Ministry of Education shall act in accordance with Article 5 of the law of free and compulsory education.

Art. 3. The father, mother, or the legal guardian of a child who is not 18 years of age, and who has completed the guidance term (according to the criteria set forth by the Ministry of Education), and who has been shown to be qualified for higher education, has the duty to provide for, and to facilitate the course of the child's continuing education. In case they are financially unable to do so, the government has the duty to provide the necessary means for the child's education under the stipulations of Article 6 of this law.

The criteria and conditions determining financial inability of the parents and the guardian, will be set forth by the Ministry of Education, pending approval by the Council of Ministers.

Art. 4. In the case of a child who is not 18 years old, if the father, mother or legal guardian who is legally responsible for the child's living expenses, and who has the financial ability to provide for such education, refuses to do so, or in any manner impedes and prevents the child's education, he or she shall be answerable to judicial authorities and liable to be fined from 10,000 rials to 200,000 rials, without impairment of the obligation to provide for the child's education. . . .

. . . .

Art. 5. Vocational education, up until the end of secondary school education, is free.

Art. 6. Secondary school education for those who wish to

work in governmental bureaus is free, provided that they commit the same number of years to the service of the government. The criteria for working in government bureaus, and the mode of implementation of this article will be set forth by the Ministry of Education, pending approval by the Council of Ministers.

. . . .

Reference: Law for the Provision of Educational Facilities and Possibilities, of July 1974.

Note: The law also provides that children accepting free higher education must devote a certain number of years to government service if called upon to do so.

The text of this law was not available in time for publication in the Annual Review, 1974.

770 POPULATION AND SEX EDUCATION

Council of Europe

Subject: Council adopted a general resolution on legislation affecting fertility and family planning, (see supra p.) including a part on sexuality education.

Text: Part B of the Resolution recommends to member Governments that they:

. . . ensure that all people, especially young people, whether married or single, are informed about the problems and objectives of family planning and about the relative advantages and disadvantages of the various methods available, and in particular by:

i. ensuring that those who are responsible for school curricula, at appropriate levels, are aware of the importance of education in family planning;

ii. making it possible for all couples, and especially those intending marriage, to be able to take advice and instruction on family planning, and encouraging them to do so;

iii. ensuring that those who are responsible for the curricula of medical schools are aware of the importance of including training in the role of doctors in the family planning services;

iv. training social workers, youth workers and paramedical personnel to provide adequate guidance on family planning.

Reference: Part B. Resolution (75)29, Committee of Ministers of Council of Europe.

Note: The Irish delegate reserved his government's right not to comply with the entire resolution.

Philippines

Subject: Requirement of family planning counselling for applicants of marriage license. See Section 210 supra, p.

Sri Lanka

Subject: Ministry of Education authorizes broad scope in the teaching of population education.

Summary: Population education has been offered in public schools for several years, but it has included little sex education. Under a new rule, teachers are given greater latitude in covering this field in the appropriate manner if they desire.

Reference: Policy decision of Ministry of Education. Letter from W. Weerasooria of Sri Lanka Law and Population Project, dated 17 April 1975.

Togo

Subject: Sex education introduced into the curricula of public schools starting with the lower grades.

Text: The official monthly magazine, Dialogue, founded by the President of the Republic, in its issue of 31 March 1975, announced, in an article on new education programs, the following:

Sex education will be introduced into the school programs starting in the elementary schools (des le Premier Degre). It will be given to students of both sexes.

Reference: Dialogue, issue No. 3, of 31 March 1975, p. 13.

United States

California

Subject: Non-compulsory sex education course upheld as constitutional by Court of Appeals.

Text: In a case where certain parents tried to stop a non-compulsory course on the grounds that it was contrary to their sole rights to educate their children on matters of marriage and sex and that it infringed their Constitutional right to the free exercise of their religion, the highest court of California dismissed the complaint. The court said, inter alia,

. . . the State's interest in the health of its children outweighs claims based upon religious freedom and the right of parental control.

and that the subjects covered were

. . . not covered from a religious point of view but simply

as public health matters.

The Court added :

The program areas that the parents challenge are simply not religious in nature. . . . The fact that the parents possess certain ideas or views concerning life relationship and sex which are based on moral standards . . . does not make the teaching of sex education and family life religious in nature

The Court concluded that:

If . . . the plaintiffs contend that the curriculum and material taught in the challenged courses are contrary to their particular religious beliefs and even though their children are not required to attend such courses, they still have a constitutional right to have such material conform to their religious beliefs, then clearly there is no such constitutional right. If such were not the case, it is obvious that every citizen could seek to control the curriculum and material being taught in our public school system by simply asserting that such material was contrary to their particular religious beliefs.

Reference: Citizens for Parental Rights v. San Mateo County Board of Education, 24 Calif. 68 (1975). The U.S. Supreme Court dismissed an appeal. 44 U.S. Law Week 3359 (1976), 5 Fam. Plan./Pop. Rep. No. 3 (1976), p. 38.

Note: Under the U.S. Federal and State constitutions, the governments may neither establish a preferred religion nor interfere with the free exercise by any person of his religion.

Maryland (City of Baltimore)

Subject: Population Education introduced officially into the curricula of the City of Baltimore.

Summary: In August 1975, the Superintendent and Deputy Superintendent of the Baltimore City School System approved the inclusion in the curricula of the city's schools of material on population education prepared by the Urban Life Education Project. The materials are integrated into other courses.

Reference: Statement to Law and Population Programme by Mr. Lester M. McCrea, Director of the Urban Life Education Project in Baltimore.

800 PROPERTY AND ECONOMIC FACTORS

820 TAXATION

Korea, Republic of

Subject: Tax deduction for lineal descendants limited to three.

Text: Art. 65 of the Income Tax Law reads, in part, as follows:

The dependent family members for tax deduction purposes under paragraph 1 of this article shall be those members living together with the person, as follows: lineal ascendants of 60 years old or more; lineal descendants of 20 years old or less; brothers and sisters of 60 years old or more or 20 years old or less, . . . (T)he number of lineal descendants shall be limited to three.

Reference: Income Tax Law, 24 December 1974, Law No. 2705, Article 65, Section 4.

Pakistan

Subject: Tax deductions for dependent children limited to two.

Text: According to an announcement made by the Minister of Finance on 7 June 1975

I. INCOME TAX

1. Family allowance at the rate Rs. 750 per dependent child, subject to a maximum of Rs. 1,500 is being provided in the case of all tax-payers with incomes not exceeding Rs. 50,000.

This will be in addition to the personal allowance and will be allowed with effect from the assessment year 1975-76.

Reference: The Sun, Karachi, 8 June 1975, p. 1, col. 5.

830 LAND TENURE AND LAND IMPROVEMENT PROGRAMS

United States

Federal Law

Subject: Zoning law designed to limit rate of growth of a town upheld as valid under Federal Constitution.

Summary: A federal Circuit Court of Appeals upheld a zoning plan of a California city which fixed the housing development growth rate at a point not to exceed 500 dwelling units per year for five years. It was agreed that this rate was lower than what would have occurred without controls.

The court held that regulations for the purpose of "permanently restricting growth" may serve "a legitimate governmental interest, following within the concept of the public welfare, the preservation of quiet family neighborhoods. . . and the preservation of a rural environment. . ." The court concluded that the "concept of the public welfare is sufficiently broad to uphold Petaluma's desire to preserve its. . . open spaces and low density of population, and to grow at an orderly and deliberate pace."

Reference: Construction Industry Association of Sonoma County v. City of Petaluma 522 F. (2d) 897 (1975); Supreme Court denied certiorari 1976.

Note: This case appears to establish the right under the U.S. Constitution of communities to restrict their growth through the use of zoning (land use planning) regulations. What effect this may have on fertility is not yet clear.

870 INCENTIVES AND DISINCENTIVES

Council of Europe

Subject: Council adopts a general Resolution on Legislation Affecting Fertility and Family Planning (See supra, p. 3) including the following:

Text: Part E (3) of the Resolution on Legislation Affecting Fertility and Family Planning (supra p. 3) of the Council of Europe calls for governments,

In framing government housing policy, to take account of the real needs of families, having regard to their varying size and structure.

Reference: Resolution No. (75)29 of the Committee of Ministers, (See p. 3 supra) ; Part E, para. 3.

Note: Since the European countries are not concerned with excessive population growth, this provision is presumably based on welfare considerations rather than on any attempt to influence population growth either upward or downward. Housing allocation has been used to discourage growth in some Asian countries.

Pakistan

Subject: Experimental scheme proposed to provide official old age insurance to couples undergoing sterilization.

Summary: In two districts, the government-controlled insurance company would offer to low-income families with three children (including a son) old age insurance if either spouse is sterilized at an official clinic. The policies would be taken out on behalf of the family by the Pakistan Population Planning Council. They would mature at the insured's age of 55 and yield 10,000 Rupees.

Reference: 2 Future No. 3, July-Aug. 1975, p. 10 (Published by IPPF Indian Ocean Region).

Saudi Arabia

Subject: Baby bonus granted.

Summary: According to a short news article, the Saudi Arabian Government has granted a baby bonus to encourage fertility.

Reference: Boston Globe, 7 May 1975.

Singapore

Subject: General rise in accouchement fees in government hospitals, with steeper increases provided as birth order rises.

Text: In July 1975, a new higher schedule of accouchement fees was inaugurated for government hospitals, as follows:

	<u>A Class</u>	<u>B Class</u>	<u>C Class</u>
(a) First child	\$300.00	\$120.00	\$ 60.00
(b) Second child	\$360.00	\$180.00	\$ 90.00
(c) Third child	\$420.00	\$240.00	\$120.00
(d) Fourth child	\$480.00	\$300.00	\$240.00
(e) Fifth and subsequent child	\$480.00	\$360.00	\$300.00

Reference: Regulation of Ministry of Health, taking effect on 18 July 1975.

Previous Law: The 1972 rates began with \$250, \$100, and \$50 for the first child, and rose to \$400, \$300, and \$250, respectively.

x x x x x

Subject: Various incentives provided by government for couples accepting sterilization.

Summary: Prior to 1975, a number of incentive schemes were adopted. Civil servants undergoing voluntary sterilization were granted seven days full-pay leave, under a Health Ministry regulation. The Ministry of Education announced that children of a sterilized parent would be given top priority in the choice of a primary school. Accouchement fees were refunded if either husband or wife was sterilized within two months of the delivery of their third child. These schemes received considerable attention in the local press during 1975.

References: Straits Times, 21 May 1975; K. Wee, Country Report, Singapore (presented at the Regional Seminar on Law and Population for South and Southeast Asia, at Jakarta, 21 July 1975, p. 38); Straits Times, 26 May 1975; letter to Law and Population Programme from Mr. Wee of 29 April 1976.

Tunisia

Subject: Family allowances per child successively lowered after first child. (See Section 510, supra p. 100.)

900 MIGRATION

Sweden

Subject: New guidelines for immigration policy

Summary: In May 1975, the Swedish Parliament unanimously adopted new government guidelines regarding immigration policy and minority groups. Based on the final report of the Royal Commission on Immigration, the guidelines state that immigration policy should be characterised by three principles: equality, freedom of choice as regards the extent to which a minority should retain and develop its original identity and co-operation between immigrant and minority groups and the rest of the population. Under the guidelines, the general policy of controlled immigration is to continue: Immigrants from countries outside the Nordic area must have employment, labor permits and accommodations before they can enter the country.

Reference: Sweden: Ministry of Labour: Immigrants in Sweden: A Summary of Swedish Immigration Policy, June 1975, 31 pp, ILO, Social and Labour Bulletin, No. 3 (Sept. 1976), pp. 318-19.

950 CENSUS AND VITAL STATISTICS SYSTEM*

Central African Republic

Subject: Creation of governmental organizations for census taking and vital statistics collection.

Text: The Decree No. 73/100 of 16 March 1973 provides:

Art. 1.

A National Commission for the Census of the Population is hereby constituted. This permanent Commission is a consultative body; its function is to coordinate all censuses, surveys and demographic research aimed at the promotion and increase of the collection of statistical data.

*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.) Composition

Art. 2.

B.) Responsibilities of the Commission

Art. 3.

The main functions of the National Commission for the Census of the Population are:

- a) to determine the national objectives of the census of the population as well as the type and design of other economic or social surveys;
- b) to be in close contact with the Government in regard to the decisions made and the objectives set by the Commission;
- c) to inspect the operations in the field;
- d) to amend the objectives as the Commission deems necessary for the success of a demographic census or of other surveys.

The Decree No. 73/101 of 16 March 1973 provides:

Art. 1 (creates a Department of Demographic Studies).

Art. 3

The Department of Demographic Studies shall be charged with:

- planning, executing and managing censuses and all demographic surveys;
- undertaking all research related to births, deaths, marriages, and migration;
- participating in preparatory research for setting up a system for recording vital statistics;
-
- producing a card record file of villages.

Reference: Journal Officiel de la Republique Centrafricaine, 15 April 1973, pp. 840-841.

Nigeria

Subject: National Census Decree, 1973

Text: THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows:

Establishment, Constitution and Functions of the Board

1. For the purposes of taking the next census in Nigeria under the principal Act* there is hereby established a board to be called "the National Census Board" (hereinafter in this Decree referred to as "the Board").

2. The Board shall, subject to the provisions of this Decree, be responsible for the overall control and supervision of the arrangements for the census as directed under section 3 of the principal Act by the Head of the Federal Military Government to be taken in November 1973, and without prejudice to the generality of the foregoing provisions, the Board shall have power -

(a) to make such arrangements as are necessary for the collection, revision and collation of the information required to be obtained for the purpose of the census;

(b) to control and supervise the preparation and issue of any necessary forms and instructions for the conduct of the census;

(c) to call for, examine, study and make recommendations in respect of any reports which may from time to time be submitted to it by the Chief Census Officer;

(d) to appoint, with the approval of the Head of the Federal Military Government, census officers, supervisors and enumerators required for the taking of the census;

(e) to give such directions to the Chief Census Officer or any other person appointed pursuant to this Decree;

(f) To submit the results of the census as soon as may be possible after the conclusion of the enumeration to the Head of the Federal Military Government; and

*The Statistical Act, Chapter 193, The Laws of the Federal Republic of Nigeria, Rev. Ed., 1958.

(g) to do all such things as may be necessary or expedient for the exercise of the powers or the performance of its functions under this Decree and the principal Act.

. . . .

4. (1) There shall be established for each State a State Census Committee (hereinafter in this Decree referred to as "the Committee").

(2) The Committee in each State shall consist of a number of persons who shall be appointed by the Head of the Federal Military Government after consultation with the Military Governor or Administrator of a State, and shall comprise -

(a) a Chairman, who shall be the representative of the State on the Board; and

(b) other members, of whom one shall be a Census Officer of the State, and the number of members of the Committees, respectively, shall be uniform throughout the Federation but shall not be less than 10 or more than 15.

(3) The Committee shall advise the Board on any aspect of the Board's functions and shall assist the State Census Officer in the execution of his functions and consider reports which shall from time to time be made to the Committee by that Officer.

(4) Every Committee shall have a Census Office the head of which shall be the State Census Officer.

(5) The Head of the Federal Military Government may in writing, after consultation with the Military Governor or Administrator of a State, make provisions for the tenure of office of members of the Committee, the quorum and the procedure at meetings of the Committee and such other matters as may be relevant to the proper functions of the Committee.

The Chief Census Officer's Functions, etc.

5. The Chief Census Officer shall be the chief executive of the Board and shall be responsible subject to the authority of the Board for--

(a) the direction of the overall technical and administrative control of the conduct and operation of the census;

(b) the demarcation of the whole country into census enumeration areas;

(c) the designing, testing and finalization of census questionnaires;

(d) the procurement of census materials, equipment and supplies and their distribution to the different census offices in the States;

(e) the appointment of all census personnel, except census officers, supervisors and enumerators to be appointed under section 2(d) above;

(f) the training of all census technical staff, including cartographers and cartographic assistants, enumerating staff and data processing staff;

(g) the processing, tabulation, analysis and publication of census data; and

(h) the conduct of the census post enumeration survey and the analysis thereof.

6.--(1) There shall be a Secretary to the Board who shall serve under the general direction of the Chairman.

(2) The Secretary--

(a) shall be responsible for the summoning of meetings of the Board at such times as may be directed by the Chairman and the keeping of the records of all the proceedings of the meetings of the Board;

(b) shall be the head of the secretariat of the Board and shall be responsible for the general administration thereof;

(c) shall provide census office accommodation and equipment for members of the Board and of the committees in Lagos and in the States; and

(d) shall perform such other functions as may be determined by the Chairman.

. . . .

10. Every person employed in the execution of any power or duty under this Decree shall make an oath or affirmation in the form set out in the Schedule to this Decree and such oath or affirmation shall--

(a) in the case of the Chief Census Officer and any State Census Officer, be made before a Magistrate, and

(b) in any other case, be made before the Chief Census Officer, any State Census Officer or any other person specified for that purpose by the Chief Census Officer.

11. It shall not be lawful for any State Committee to debate, discuss or deal with, or require the State Census Officer or any census officer to release to the Committee, population figures (or matters relating thereto) of the State in question without the approval in writing of the Board; and any person who, without such approval--

(a) communicates or releases any information concerning the population figures of a State to the Committee or members thereof; or

(b) tables for discussion at a meeting of the Committee the population figures of the State; or

(c) treats, engages in, or takes part in debating the population figures of the State at a meeting of the Committee,

shall be guilty of an offence and shall be liable on conviction to a term of imprisonment of not less than five years without the option of a fine.

12.--(1) Any person employed for any of the purposes of this Decree who--

(a) makes or signs or causes to be made or signed any returns or document of whatever nature required for the purposes of this Decree which he knows to be false or untrue in any material particular, or

(b) enters in such returns or document any information or statement which he knows to be false or untrue in any material particular, or

(c) counterfeits any seal or stamp of the Board or signature or initials or other mark of any other person authorised by the board to certify such returns or document,

shall be guilty of an offence and liable on conviction to a fine of N1,000 or imprisonment for three years or to both such fine and such imprisonment.

13.--(1) Any person, being a person employed for any of the purposes of this Decree, who without lawful authority publishes or communicates, to any person, otherwise than in the ordinary course of his duties, shall be guilty of an offence and liable on conviction to a fine of N1,000 or to a term of imprisonment of three years, or to both such fine and such imprisonment.

(2) Any person, being in possession of any information which to his knowledge has been disclosed in contravention of this Decree, who publishes or communicates to any person such information shall be guilty of an offence and liable on conviction to a fine of ₦1,000 or to a term of imprisonment of three years, or to both such fine and such imprisonment.

(3) Any person who, in the execution of any other purpose or duty under this Decree fails to comply with or contravenes any other term or condition of his oath shall be guilty of an offence and shall be liable on conviction to a fine of ₦1,000 or to a term of imprisonment of three years or to both such fine and such imprisonment.

14.--(1) Any person who is required to furnish information, estimates, returns or particulars under this Decree and who fails so to do, shall be guilty of an offence and liable on conviction to a fine of ₦50 or to a term of imprisonment of three months, or to both such fine and such imprisonment, or in the case of a second or subsequent offence to a fine of ₦100 or to a term of imprisonment of six months, or to both such fine and such imprisonment, but it shall be a defence for any person charged with failure to furnish information, estimates, returns or particulars under this Decree to prove that he did not know and had no reasonable cause for knowing that he was required to give that information or those estimates, returns or particulars.

(2) Any person who after conviction in respect of an offence under subsection (1) continues to fail to comply with such subsection, shall be guilty of a further offence and may on conviction thereof be punished accordingly.

(3) Any person who in purported compliance with requirement to furnish information, estimates, returns or particulars under this Decree knowingly or recklessly makes any statement in such information, estimates, returns or particulars which is false in any material particular, shall be guilty of an offence and liable on conviction to a fine of ₦100 or to a term of imprisonment of six months, or to both such fine and such imprisonment.

15.--Any person who during the census--

(a) knowingly presents himself to any person employed for the purpose of this Decree for counting more than once or misleads any such person employed as aforesaid into counting him more than once; or

(b) aids, abets, counsels or procures any person to do any act referred to in paragraph (a) above,

shall be guilty of an offence and liable on conviction to a fine of ₦1,000 or to a term of imprisonment of three years or both such fine and such imprisonment.

16.--Any person who wilfully and without lawful authority destroys, defaces or mutilates any schedule, form or other document containing information obtained in the pursuance of the provisions of this Decree or destroys, obliterates, alters or damages any sticker containing the number of the house pasted on the premises for the purposes of the census shall be guilty of an offence and liable on conviction to a fine of ₦1,000 or to a term of imprisonment of three years, or to both such fine and such imprisonment.

. . . .

19.--(1) This Decree may be cited as the National Census Decree 1973.

(2) This Decree shall be deemed to have come into operation on 1st April 1972 and shall continue in force for a period of five years thereafter.

Reference: Supplement to Official Gazette No.34, Vol. 60, 28 June 1973 - Part A, Decree No. 26, pp. A 515-520.

Philippines

Subject: Requiring the taking of an integrated census of population and economic activities in May 1975 and for other purposes.

Text: Whereas, more recent census data on the Philippine population is required for national, social and economic planning and for the formulation of national and sectoral policies on manpower development and utilization, health, education, housing and population control, etc.;

Whereas, national censuses are the primary sources of basic data on population that could adequately meet these needs;

Whereas, the last census of the Philippines conducted on May 6, 1970, would not truly reflect the changes brought about by recent government programs adopted to accelerate the socio-economic development of the country;

Whereas, to provide economic planners and administrators with the data needed for national planning and to properly evaluate the progress made in various fields and measure the impact of on-going projects of the governments, as well as provide the "barangays" with the latest data on their population to effect desired changes and reforms in the social, economic and political structures within their jurisdiction, a total enumeration of the population is necessary;

Now, therefore, I, Ferdinand E. Marcos, President of the Philippines by virtue of the powers vested in me by the Constitution, do hereby decree that a national census be undertaken in May, 1975, in accordance with the plans drawn by the National Census and Statistics Office, in coordination with the National Economic and Development Authority, and such census shall cover an enumeration of the population and their economic activities.

Section 1. Presidential Census Coordinating Board and Provincial City and Municipal Census Board--For the systematic coordination of government agencies and instrumentalities involved in the conduct of the 1975 Integrated Census of Population and Economic Activities, a Presidential Census Coordinating Board to be composed of the following is hereby created:

Chairman: The Executive Secretary

Vice-Chairman: The Director General of the National Economic and Development Authority

Members: The Secretary of National Defense
The Secretary of Labor
The Secretary of Education and Culture

The Secretary of Public Works, Transportation and
Communications

The Secretary of Department of Public Highways

The Secretary of Agriculture

The Secretary of Natural Resources

The Secretary of Local Government and Community
Development

The Board shall issue such rules and regulations as may be necessary to successfully carry out this national undertaking.

As a counterpart of the Presidential Census Coordinating Board at the local government level, there shall be established a Provincial, City or Municipal Census Board in each province, city and municipality, as the case may be, which shall provide such facilities and assistance as shall be required by the National Census and Statistics Office. The Provincial Census Board shall be composed of the Provincial Governor, as Chairman, and the Division Superintendent of Schools, Senior District Highway Engineer, PC Provincial Commander, Provincial Development Officer and the Provincial Agriculturist, as members. The City Census Board shall be composed of the Municipal Mayor, as Chairman, and the Supervisor/Principal Teacher, Municipal Agriculturist, and the Municipal Development Officer, as members.

The Executive Officer of the Presidential Census Coordinating Board shall be the Executive Director of the National Census and Statistics Office while that of the local boards shall be the Provincial Census Officer for provinces and the Municipal Census Officer/Census Assistant or the City/Municipal Census Supervisor for cities and municipalities.

The Boards may call upon any department, bureau, office, agency or instrumentality of the government for any assistance in the performance of their functions.

Section 2. Census Day--The first day of May, 1975 is hereby designated as Census Day from which date the census field enumeration shall commence and continue until every individual in the country shall have been enumerated. The collection of data will be by enumeration and the respondent shall be the head or any responsible member of the household.

Section 3. Participation of various government agencies and instrumentalities--All heads of departments, bureaus, offices and agencies of the government, government-owned and controlled corporations, and provincial, city and municipal officials, including the barangay chairman, are hereby enjoined to organize seminars, meetings and open forums on the forthcoming nationwide census operation and to make available their facilities as well as the

services of such personnel as may hereafter be requested or requisitioned by the National Census and Statistics Office to insure the success of the census.

Section 4. Enumeration personnel and government employees drafted for census work--Whenever feasible, public school teachers and college students under the Youth Civic Action Program (YCAP) shall be utilized for enumeration work; in which case a public teacher shall be paid an honorarium not to exceed ₱150.00 plus service credits equivalent to the number of days engaged in census work; a college student shall be given an allowance not to exceed ₱100.00 for services as census enumerator; government employees whose services are drafted for census work shall be entitled to such allowances as shall be prescribed by the President Census Coordinating Board, payable from census funds.

Section 5. Population count--Before the end of 1975, a count of the population by province, municipality, and barangay shall be published by the National Census and Statistics Office, which population count, upon proclamation by the President of the Philippines, shall be considered official for all purposes, until the final count has been determined from the processed census returns.

Section 6. Confidentiality of census data--Data furnished the National Census and Statistics Office shall not be used as evidence in any court or public office, either as evidence for or against any individual; nor shall such data be divulged to any person except to authorized employees of the National Census and Statistics Office, acting in the performance of their duties; nor shall such data be published except in the form of summaries or statistical tables in which no reference to an individual shall appear. Any person violating the provisions of this section shall be punished by a fine of not more than five hundred pesos or by imprisonment for not more than six months, or by both.

Section 7. Punishable acts--Any person who refuses access to his premises of duly appointed census enumerators; or refuses to be interviewed, or fails or refuses to furnish the information called for in the census questionnaire; or knowingly gives data or information which shall prove to be materially untrue in any particular shall, upon conviction, be punished by a fine of not more than five hundred pesos or by imprisonment of not more than six months, or by both.

Section 8. Cooperation of the mass media and the general public--The cooperation of the various types of media in giving the 1975 census as wide a publicity as possible to promote the attainment of this Decree is enjoined. FURTHER: The general public is enjoined to give true and accurate information to census enumerators to insure the reliability of the data collected.

Section 9. Appropriation--The Commissioner of the Budget shall provide the National Census and Statistics Office with the amount of NINETEEN MILLION PESOS (₱19,000,000.00) or so much thereof as is necessary to undertake the 1975 Integrated Census of Population and Economic Activities, including the processing, tabulation and publication of the census results in pursuance to Section 4, paragraph 28 of Presidential Decree No. 503.

Section 10. Repealing clause--All laws and executive orders, or parts thereof, contrary to or inconsistent with the provisions of this Decree are hereby repealed, amended or modified accordingly.

Section 11. Effectivity--This decree shall take effect and be implemented immediately.

Done in the City of Manila, this 31st day of January in the year of Our Lord, nineteen hundred and seventy-five.

(Sgd.) FERDINAND E. MARCOS
President
Republic of the Philippines

By the President:

(Sgd.) ALEJANDRO MELCHOR
Executive Secretary

References: Presidential Decree No. 650, 31 January 1975. Text reproduced in Law and Population Project, Law and Population in The Philippines (Quezon City: U.P. Law Center, 1975), pp. 245-49.

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