

Chapter III

The Philippine Fertility Control Policy: A General Survey and Description

This chapter attempts to highlight some of the major fertility control policies embodied in the laws of the Philippine Government that influence family planning knowledge, attitudes, beliefs and practices. It is significant to note that legislations have come only lately in the consideration of the Philippine population problem. In fact, only recently policymakers recognized that the country's laws and regulations have an important impact, actual and potential, on the components of population change, more specifically, human fertility. Toward this end, the Philippine Government has employed various strategies short of coercion, such as the formulation of certain policies expressed as decrees, executive orders, letters of instruction, to mention a few, to encourage the adoption of desirable family planning behavior among the population.

The effect of some laws and policies on population growth is more than that of others. For instance, a legislation providing for a policy on population and establishing the requisite administrative machinery for implementation of that policy will have a direct and measurable effect on population dynamics. The relationship will be less apparent in laws relating to marriage and divorce and to economic bearing on the family, such as maternity leave and taxation. In these areas, it is difficult to establish the causative effect of the law and to isolate it from other social and economic variables. Nevertheless, a closer examination of Philippine laws which have bearing on population control will contribute to a better understanding of the legal dimension of the population problem.

A. BRIEF HISTORY OF GOVERNMENT POPULATION POLICIES AND ACTIONS

In the Philippines, attempts to initiate family planning can be traced as early as 1920, when Reverend Housely, a Methodist missionary, discussed family planning with mothers in Pampanga. Alongside this pioneering effort was the subsequent dissemination of information on family planning by Presbyterian and Congregational ministers and some non-Catholics. However, this movement did not invite many adherents until the latter part of 1960, when the first family planning movement was established, obtaining support from the International Parenthood Movement Program.¹

Basically, nothing much was done toward the solution of the persistent population problem until late 1962, when a population and development mission visited Manila under the sponsorship of the Ford Foundation. One of the objectives of the mission was to establish a national agency to study all aspects of the population problem. The effort led to the creation of the University of the Philippines Population Institute (UPPI) in 1964, which was intended to serve as a center of research on population matters and a training ground for demographers.

During the First Conference on Population, which took place in 1965 under the joint auspices of the UPPI and the then National Science Development Board (NSDB), Dr. Frank Lorimer reported from his study that if the prevailing Philippine fertility rate is maintained until the end of the century it would result in 111 millions population.²

The family planning movement in the Philippines gained further momentum in the sixties with the organization of several private associations such as the Planned Parenthood Movement of the Philippines (PPMP), a non-profit organization designed to provide education, information, and clinic services and the Family Planning Association of the Philippines (FPAP). These two pioneering organizations merged in February 1969 to form the Family Planning Organization of the Philippines (FPOP). Another private organization is the Institute of Maternal and Child Health (IMCH) which established a National Training

Center for Maternal Health Services to provide education and training in family planning for medical and paramedical personnel.

While the private sector has to be certainly credited for its pioneering ventures in the field of population control, it was only through the Philippine Government's bold initiative in the early seventies that comprehensive action against population explosion was apparently realized. Government efforts in family planning were officially started in 1968, when the Project Office for Maternal and Child Health was created in the Department of Health to administer a population and family planning program for the country. To further strengthen the comprehensive efforts of the government towards the realization of its population control program, the President of the Philippines issued Executive Orders No. 171 and 233 in 1969 and 1970, respectively, creating the Commission on Population (POPCOM) which was to be responsible for undertaking studies on the Philippine population in all its facets and to formulate policy and program recommendations on population as it relates to socio-economic development. Based on the agreement between the National Economic and Development Authority (NEDA) and the United States Agency for International Development (USAID), POPCOM took over in July 1970 the functions of the Project Office for Maternal and Child Health as the central planning, coordinating, and supervising body for the national population program.³

By the middle part of 1971, Republic Act No. 6365, otherwise called "The Population Act," was signed into law. It declared family planning a national policy but respected the religious beliefs of the individuals concerned. Republic Act 6365 was amended by Presidential Decree No. 79, which spells out the involvement of both the public and private sectors in the national family planning program.⁴

Since P.D. No. 79 was issued, various reforms and amendments have been made relative to the same decree. Presidential Decrees No. 166 (March 1973) and No. 803 (September 1975), for instance, recognized the role of the private sector in the formulation and implementation of population policy by giving it representation in the POPCOM's Board of Commissioners. By

the same token, P.D. No. 1204 (September 29, 1979) also granted membership to POPCOM's Board the Department Secretaries of Local Government and of Labor to represent the local government and labor sectors, respectively. It likewise strengthened the administrative powers and functions of POPCOM.

Family planning has been traditionally incorporated as a development program in the NEDA Development Plans since 1972. In addition, family planning was not only brought within POPCOM's organizational structure, but was also integrated in other sectoral development program structures of other government agencies such as the departments of Education, Health, Labor, Social Welfare, and the like.

On the whole, the Philippine family planning program through its fertility control measures is defined by four basic policies: non-coercion, integration, multi-agency participation, and the participation of the public and private sectors. The way in which these policies are interpreted and implemented has not remained constant. They have been redefined, enriched or adjusted as the program adopts to changes or shifts to new directions.⁵ Whether the true contents of these fertility control policies are contributory to the target goals of family planning or not is something open to question. The following discussion will provide solid orientation on the contents of major fertility control policies of the government.

B. GOVERNMENT FERTILITY CONTROL POLICIES: **A CONTENT DESCRIPTION**

Policies and Laws on Population Control

a. The Philippine Constitution

The population policy enunciated in the 1973 Constitution is neither pro-natalist nor anti-natalist in nature. It is sufficiently flexible to sustain measures encouraging birth,

should the national welfare demand an increase in population or require measures aimed at checking population growth, if there is too rapid an increase.⁶

By content analysis, it may be advanced that the New Constitution broadly provides and supports a policy of population control through the following provisions:

Article XV - General Provisions

X X X X X X X X X X X X X X X X X X X X X X X X X X X X X X

Section 10. It shall be the responsibility of the state to achieve and maintain a population level most conducive to national welfare.

Section 11. The state considers the customs, traditions, beliefs, and interests of the national cultural communities in the formulation and implementation of state policies.

Moreover, the prime responsibility vested on the government in maintaining population levels most conducive to national welfare is inescapable in the light of the subsequent provisions in the Constitution:

Article II - Declaration of Principles and State Policies

X X X X X X X X X X X X X X X X X X X X X X X X X X X X X X

Section 4. The state shall strengthen the family as a basic social institution. The natural right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the aid and support of the government.

Section 6. The state shall promote social justice to ensure the dignity, welfare, and security of

all the people. Toward this end, the state shall regulate the acquisition, ownership, use, enjoyment and disposition of private property, equitably diffuse property ownership and profits.

Section 7. The state shall establish, maintain, and ensure adequate social services in the field of education, health, housing, employment, welfare, and social security to guarantee the enjoyment by the people of a decent standard of living.

b. Republic Act No. 6365

By and large, it was the enactment in 1971 of Republic Act No. 6365, establishing a national policy on population through the creation of a Commission on Population, which manifested sincere government effort to control or regulate the rapid population growth in the Philippines. The law provides, among others, a national program for family planning, which respects the religious beliefs of the individuals concerned, in order to increase the share of every Filipino in the fruits of national development and to meet the serious socio-economic challenge of a high rate population growth.

Likewise, the Act charged POPCOM with the following duties and function (Section 4): (1) to formulate and adopt integrated and comprehensive long-term plans and programs on population; (2) to coordinate and evaluate the implementation of population plans and programs; (3) to put up family planning clinics in coordination with the Department of Health; (4) to undertake and publish studies and investigation on Philippine population in all its aspects; and (5) to perform such duties as proper authorities may from time to time direct the Commission to undertake.

c. Presidential Decree No. 79

To effectively and successfully execute the population control program, R.A. 6365 was amended by P.D. No. 79 (December 8, 1972). The decree clearly provides the active involvement of both public and private sectors in the planning and implementation of the Philippine family planning program.

More specifically, the Decree defined the main objectives of the government family planning program to be as follows: (1) to formulate plans and programs on population consistent with national development goals; (2) to organize and implement programs that will promote a better understanding of the adverse effects of unlimited population growth to national welfare; (3) to make family planning a part of a broad educational program; (4) to encourage all persons to adopt safe measures of family planning and to discourage them from resorting to unacceptable methods of contraception; (5) to establish and maintain continuous coordination with international and private bodies; and (6) to provide family planning services as a part of the overall health care.

Laws Directly Dealing with Birth

a. Birth Control and Dispensation of Abortive Drugs

The Revised Administrative Code,⁷ as amended, explicitly prohibits the delivery or importation into the country of the following item, as provided in Section 1954:

- (c) Articles, instruments, drugs and substance designed, intended, or adopted to produce abortion, or for any indecent or immoral use, or which are advertised or described in a manner

calculated to lead another to use or apply them for producing abortion or for any indecent or immoral purpose.

The ongoing regulatory action of the government in the use, manufacture, sale or advertisement of contraceptives and drugs producing abortion was further underscored through the passage of the Pharmacy Law. This law prohibits the dispensation of anti-conceptual substances and devices more particularly drugs or chemicals capable of provoking or preventing conception as classified by the then Food and Drug Administration or those sold to any person without the prescription of a licensed doctor.⁸

b. Dissemination of Birth Control Information

The Postal Law,⁹ which is an integral component of the Revised Administrative Code, classifies as absolutely non-mailable matter contraceptives, drugs, or devices, including all printed matters or photographs which give information on abortion and contraception. It also provides that any absolutely non-mailable matter which is deposited in any post office for transmission by mail shall be forfeited to the government.

Thus, based on the above provisions of the Postal Law, the conclusion may be deduced that information on contraception and abortion is considered by public policy as obscene publications. Broadly, obscene publications related to information on contraception or abortion are not specifically or clearly penalized under the same Code. For instance, information on birth control or abortion with the obvious purpose of educating the masses would not, under judicious interpretation of the law penalizing "obscenity," be prohibited under Article 201 of the Revised Penal Code, unless, of course, a showing is made that it is being used as a subterfuge for the dissemination of hardcore pornography.¹⁰

In support of the information campaign of the government, P.D. No. 79, has authorized the availability of all methods of contraception except abortion to all Filipino citizens who wish to practice family planning.¹¹

c. Abortion

The Revised Penal Code, as amended, considers abortion as a major crime. As defined by the Code, abortion is the willful killing of the foetus in the uterus, or the violent expulsion of the foetus from the maternal womb which results in the death of the foetus.

The Penal Code also defines the various ways by which abortion is committed by individuals and the corresponding penalties for each one. Likewise, it has classified abortion into two types, as to whether it is intentional or unintentional.

In intentional abortion, the harshness of the punishment is graduated depending on whether the person who committed it acted with violence upon the pregnant woman or without the consent of the said woman. On the other hand, unintentional abortion is committed if violence is inflicted on a pregnant woman, resulting in abortion, but the offender did not intend to cause the abortion.

A pregnant woman who practices abortion upon herself or consents that another person should conduct the abortion on her shall consequently suffer the penalty of *prison correctional* in its medium and maximum periods. However, the liability of the woman is mitigated if her purpose in practicing abortion is to conceal dishonor, in which case the law provides that she suffer only the penalty of *prison correctional* in its minimum and medium periods.¹²

If the crime of abortion is committed by the parents of the pregnant woman or either of them, and they act with the consent of the woman for the purpose of concealing her dishonor, the offenders shall suffer the penalty of *prison correctional* in its

medium and maximum periods. It is vital to note here that there is no mitigation for parents of the pregnant woman even if the purpose is to conceal dishonor.¹³

In a similar vein, the penalties in Article 256 of the Penal Code shall be imposed in their maximum period, upon any physician or midwife who, taking advantage of their scientific knowledge or skill, shall cause an abortion or assist in causing the same.

Apparently, the provision of the Revised Penal Code punish any and every kind of abortion; however, therapeutic abortion, e.g. interruption of pregnancy to preserve the life of the mother, may be justified under Article 11 (4) of the same Code.¹⁴

d. *Sterilization*

There is no clear provision in the Revised Penal Code that prohibits a person to practice sterilization. What is punishable under the law is mutilation, usually called castration, which may result in sterilization.

In this connection, the practice of castration which may result in sterilization casts some doubts as to whether vasectomy or salpinjectomy voluntarily procured are punishable under the law. In the opinion of the Secretary of Justice (1973), ligation and vasectomy as methods of contraception could not be regarded as mutilation or castration within the contemplation of Article 262 of the Penal Code based on the following grounds: Firstly, these methods of surgical sterilization do not involve the removal of reproductive glands or organs as in the case of castration, with which it is sometimes confused. Secondly, there can be no offense committed where the subject consents knowingly to the operation, in the same manner as no offense is committed by the surgeon who intentionally removes, for instance, an eye or kidney from a person, who consents thereto, for the purpose of transplanting it upon another. The only difference is that in surgical sterilization the purpose is not transplantation but family planning, motives of which are not against the law or public policy. Lastly, the

declared national policy of the government encouraging population control, as broadly prescribed in the Philippine Constitution and its related laws, would be thwarted if the law will consider as illegal the two acceptable methods of contraception in question.¹⁵

The information drive of the government for married couples to adopt sterilization has acquired additional strength through the passage of P.D. No. 1013. This particular decree has authorized the reimbursement of expenses in connection with, among others, sterilization procedures.¹⁶

e. Registration and Certification of Births

Under Republic Act No. 3753, the declaration of the doctor or midwife in attendance at birth or, in default thereof, the declaration of either parent of the new-born child, shall be sufficient for the registration of child births that occurred since January 1974. P.D. No. 651 was issued by the President requiring those in attendance at birth, i.e., doctors, midwives, and parents, to report to the Local Civil Registrar such births, regardless of the nationality, culture, and religion of the newborn child.

To effectively enforce such registration of childbirths, the government declared that starting with the year 1975, the presentation of a birth certificate shall be prerequisite to enrolment in the first grade in all schools in the Philippines and to allowance of tax exemptions for dependents under the National Internal Revenue Code.

In its penalty provisions, any person required under the law to report for registration any fact concerning the birth of a child and who fails to do so, shall, upon conviction, be punished by a fine of not less than five hundred pesos but no more than one thousand pesos, or an imprisonment of not less than three months but no more than six months, or both, at the discretion of the court.¹⁷

Law on Family Planning Education and Services

Before the amendment of the Population Act of 1971 by P.D. 79, the related provisions on family planning education and services were not clearly emphasized. However, under P.D. 79, population policymakers specified as among the duties and functions of POPCOM the following: "to make family planning a part of a broad educational program and to provide family planning services as part of the overall health care."

In compliance with P.D. 79, the Ministry of Education, Culture and Sports ordered the teaching of population education in both elementary and secondary schools starting School Year 1973-74. This implies the integration of population education into their curricula at all levels in any of the following subjects: home economics, social studies, and health.¹⁸

At the collegiate level, the teaching of population education has also been integrated into the curricula of private schools, colleges, and universities in the Philippines, more specifically in the college of medicine, through Letter of Instruction No. 47.

In a related administrative order, the Secretary of Social Welfare developed a program of Population Awareness and Sex Education for the out-of-school youth. It is an action-research project for the out-of-school youth equipped with the function of informing, educating, and motivating the youth on population awareness and sex education and integrated into the ministry's human resources development program.¹⁹

Family Law Affecting Family Planning Behavior

a. Minimum Age for Marriage

Among other legal requirements, the Civil Code of the Philippines provides that no marriage shall be solemnized unless the contracting parties are in the legal capacity. Accordingly, the minimum age for marriage is provided for under Article 54: "any male of the age of 16 years or upwards, and female of the age of 14 years or upwards, not under any of the impediments mentioned

in Articles 80 to 84, may contract marriage."²⁰

The Civil Code also states that any male above 20 but under 25 years of age, or female above 18 but under 23 years of age shall be required to seek their parents or guardians' advice before his or her marriage can be solemnized legally.

By inference, marriage contracted under the ages of 16 and 14 years by the male and female, respectively, even with the consent of the parents shall be considered void from the start.

At this point, it might be of prime importance to mention that the minimum age for marriage provided for in the Philippine Civil Code does not apply to Muslim Filipinos who by historical tradition have markedly followed a quite different rule on the matter. As such, the "Code of Muslim Personal Laws of the Philippines" has specified a minimum age for marriage among Muslim Filipinos which is distinct from those provided in the Civil Code.

By way of comparison, under the Muslim Code, a 15-year-old male may contract marriage and for the female, she must have reached the age of puberty, which is presumed to be attained at the age of 15. Furthermore, it is also provided by the Muslim Code that the *Shari'a* District Court may, upon the petition of a proper *wali* (guardian in marriage), order the solemnization of the marriage of a female who, although less than 15 but not below 12 years of age, has attained puberty. Article 16 of the Code likewise provides that marriage through a *wali* by a minor below the prescribed ages shall be regarded as a betrothal and may be annulled upon the petition of either party within four years after attaining the age of puberty, provided no voluntary cohabitation has taken place and the *wali* who contracted the marriage was other than the father or paternal grandfather.²¹

b. *Family Planning Instructions Before Marriage*

The law provides that applicants for marriage license, upon filing thereof, are obliged to receive instructions on family planning and responsible parenthood from the family planning

office. Such instructions may be in the form of brochures or handouts. In places where there are no health officers, any person duly accredited by POPCOM may give instructions, as provided by law.

In addition, no marriage license may be issued by the local civil registrar unless the applicants present a certificate, issued at no cost to the applicants, by an office of family planning and the former shall withhold the issuance of marriage license for a period of two weeks to enable the family planning office to give instructions and information and the applicants to receive the same.²²

c. Polygamy

Marriage that fall within the category of polygamous or bigamous nature are considered void from the very start by the Civil Code. Explicitly, Article 83 of the Code states that any marriage entered into by a person other than such first spouse of such person with any person other than such first spouse shall be illegal and void from its performance except under certain circumstances as follows:

- (1) The first marriage was annulled or dissolved; or
- (2) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee for less than seven years, is generally considered dead and believed to be so by the spouse present at the time of contracting such subsequent marriage, or if the absentee is presumed dead according to articles 390 and 391. The marriage so contracted shall be valid in any of three cases until declared null and void by a competent court.

A case of departure from the foregoing provisions

governing polygamy has been observed among the Muslim Filipino population. Although it is not generally practiced, polygamy is considered by the Muslim Filipinos as an Islamic institution. In fact, the Muslim Code has a contrary provision on polygamy *vis-a-vis* the Civil Code. Under the Code, a Muslim male can have more than one wife provided he can deal with them equal companionship and just treatment, as enjoined by Islamic law. However, he cannot have more than four at a time.²³

A Muslim husband desiring to contract a subsequent marriage is required by the Muslim Code, before so doing, to file a written notice with the Clerk of the *Shari'a* Circuit Court of the place where his family resides. Upon receipt of said notice, the Clerk is required to give a copy thereof to the wife or wives. Should any of the wives establish her opposition, an *Agama* Arbitration Council shall be constituted in accordance with the provisions of Article 161 of same Code. If the *Agama* Council fails to obtain the wife's consent to the proposed marriage, the Court shall, subject to Article 27, decide whether or not to sustain her objection. In effect, a person who fails to comply with the requirements for subsequent marriages (Articles 161 and 162) provided for in the Muslim Code will be punished by *arresto mayor* or a fine of not less than two hundred pesos but not more than two thousand pesos, or both, at the discretion of the Court.

d. Divorce

Within the context of the Philippine legal system, absolute divorce is forbidden. There is, however, a provision in the Civil Code that sanctions relative divorce or what is known as legal separation. History tells us that absolute divorce was allowed during the American Regime through the passage of Act No. 2710, which also abolished relative divorce. However, the subsequent promulgation and implementation of the Civil Code in 1950 has consequently repealed Act 2710, thereby abolishing absolute divorce in favor of legal separation, or separation from board and bed.

But legal separation is hardly obtainable under the Civil Code, as evidenced by the strict conditions it prescribes before a

person could petition for legal separation, such as: (1) adultery on the part of the wife and concubinage on the part of the husband, as defined in the Revised Penal Code; and (2) an attempt by one spouse against the life of the other.

Based on Muslim customs, absolute divorce among Muslim Filipinos residing in non-Christian provinces is recognized by law. This special recognition was intended to last for a period of 20 years from the date of its approval in 1949 but it was extended to 30 years by R.A. No. 6268. Under the Muslim Code, divorce is recognized as an integral part of the Philippine body of family laws and regulations. Essentially, its purpose is to recognize the legal system of the Muslims in the Philippines as a part of the law of the land and to make Islamic institutions, like divorce and polygamy, more regulated and effective.²⁴

Theoretically, the Muslim Code grants both spouses the right to divorce and specifies several ways of exercising it through the following forms (Article 45, Sec. 1): (1) *faskh* (judicial decree); (2) *talaq* (repudiation of the wife by the husband); (3) *tafwid* (exercise by the wife of the delegated right to repudiate); (4) *ila* (vow of continence by the husband); (5) *khul* (redemption by the wife); and (6) *zihar* (injurious assimilation of the wife by the husband).

Laws on Economic Factors Related to Family Planning

In consonance with its family planning program, the Philippine Government has also passed laws that indirectly influence the fertility behavior of employees in both government and private sectors and the tax-paying public in general. These laws on economic factors related to family planning include, among others, the laws governing maternity leave benefits, labor incentives for family planning, and tax exemption benefits.

a. Maternity Leave Benefits

The New Labor Code of the Philippines extends maternity protection to women employees in the private sector under the

following conditions:²⁵

- (1) Every employer shall grant to any pregnant woman employee, who has rendered an aggregate service of at least six months for the last twelve months, maternity leave of at least two weeks prior to the expected date of delivery and another four weeks after normal delivery or abortion, with full pay in accordance with her average weekly wages.
- (2) The maternity leave shall be extended without pay on account of illness medically certified as due to pregnancy, delivery, abortion, or miscarriage, which renders the woman unfit for work, unless she has in her credit unused leaves from which extension may be charged.
- (3) The maternity leave provided in this Code shall be paid by the employer concerned only for the first four deliveries by a woman employee after the affectivity of this Code.

To ensure the enjoyment of the maternity leave benefits by private women employees, P.D. No. 1202 was issued by the President, prescribing that any woman employee covered under the Social Security Law for whom at least three monthly maternity contributions in the twelve-month period immediately preceding the semester of her childbirth, abortion or miscarriage have all been paid in accordance with the same Act and who is currently employed shall be paid a duly maternity benefit equivalent to one hundred percent of her average daily salary credit for forty-five days subject to certain specified conditions. One such condition states that if an employee should give birth or suffer abortion or miscarriage without the required contributions having been remitted for her by her employer to the Social Security System (SSS), or without the latter having been formally and previously informed of the date of pregnancy, the employer shall be liable to pay the SSS damages amounting or equivalent to the benefits which said employees would otherwise have received

and the SSS shall in turn pay such amount to the employee concerned.

As a protection measure against undue discrimination of women employees in the private sector, the Labor Code has outlined several prohibited acts on the part of the employer: (1) to dismiss any woman employed by him for the purpose of preventing such woman from enjoying maternity leave, facilities and other benefits provided under the Code; (2) to discharge the woman due to her pregnancy, or while on leave or in confinement due to her pregnancy subject to the provisions of Section 14 of the Code; (3) to refuse the admission of such woman upon returning to her work for fear that she may be again pregnant; and (4) to prescribe as a condition for or continuation of employment that a woman employee shall not get married or to stipulate expressly that upon getting married a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate against or otherwise prejudice a woman employee by mere reason of her marriage.²⁶

For women employees in the government, the Revised Administrative Code of 1978 provides maternity benefits to them as reflected in Section 1011. Briefly, the Code stresses that in addition to vacation and sick leave, a married woman employed in the government shall be entitled to maternity leave of sixty days subject to certain conditions as defined in the Code.

b. *Labor Incentives for Family Planning*

In response to the current program of the government on population control, establishments which are required by law to maintain a clinic or infirmary are now duty-bound under P.D. No. 442 to provide free family planning services to their employees which shall not be limited to the application of particular contraceptive methods. Toward this end, and in coordination with other agencies of the government participating in the promotion of family planning, the then Ministry of Labor was directed to develop and prescribe incentive bonus schemes to encourage family planning among women employees in any establishment or enterprise.

and the SSS shall in turn pay such amount to the employee concerned.

As a protection measure against undue discrimination of women employees in the private sector, the Labor Code has outlined several prohibited acts on the part of the employer: (1) to dismiss any woman employed by him for the purpose of preventing such woman from enjoying maternity leave, facilities and other benefits provided under the Code; (2) to discharge the woman due to her pregnancy, or while on leave or in confinement due to her pregnancy subject to the provisions of Section 14 of the Code; (3) to refuse the admission of such woman upon returning to her work for fear that she may be again pregnant; and (4) to prescribe as a condition for or continuation of employment that a woman employee shall not get married or to stipulate expressly that upon getting married a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate against or otherwise prejudice a woman employee by mere reason of her marriage.²⁶

For women employees in the government, the Revised Administrative Code of 1978 provides maternity benefits to them as reflected in Section 1011. Briefly, the Code stresses that in addition to vacation and sick leave, a married woman employed in the government shall be entitled to maternity leave of sixty days subject to certain conditions as defined in the Code.

b. *Labor Incentives for Family Planning*

In response to the current program of the government on population control, establishments which are required by law to maintain a clinic or infirmary are now duty-bound under P.D. No. 442 to provide free family planning services to their employees which shall not be limited to the application of particular contraceptive methods. Toward this end, and in coordination with other agencies of the government participating in the promotion of family planning, the then Ministry of Labor was directed to develop and prescribe incentive bonus schemes to encourage family planning among women employees in any establishment or enterprise.

Pursuant to the Labor Code of the Philippines and the Rules and Regulations Implementing the Labor Code of the Philippines, the Secretary of Labor has issued Department Order No. 9 (July 8, 1975) which sets the guidelines and procedures for the provision of family planning services and related labor benefits in all business firms. In the same Order, employers are required to provide and integrate family planning into existing services and education programs, including applied nutrition, community development, extension classes, and education undertaken by the management. Most noteworthy is the provision on a positive incentive towards an early acceptance of the desirable family planning behavior by workers, in which case employers are required to provide time off with pay for workers to attend lectures and visit clinics.

Essentially, in order to promote the acceptance and practice of contraceptives, establishments are enjoined to experiment to give successful acceptors awards. The financial awards are to be drawn from savings in finances and man-hours in the form of maternity leaves, medical care, and other dependency benefits that are unused as a result of reduced fertility.

c. Tax Exemption for Dependents

One of the specific legal measures adopted by the government to influence the family planning behavior of the target population is the limitation of tax exemptions to only four dependents. Section 23 (c) of the National Internal Revenue Code of 1977 granted:²⁷

The sum of P2,000 for each legitimate, recognized, natural, or adopted child, wholly dependent upon and living with the taxpayer if such dependents are not more than 21 years of age, unmarried, and not gainfully employed or incapable of self-support because mentally or physically defective. The additional exemption under this subsection shall be allowed only if the person making the return is either married or head of the family; provided however, that the total number of dependents for which additional

exemption may be claimed shall not exceed four dependents.

Based on the above provision in the Revenue Code, only four dependents, for which additional exemptions may be claimed, is allowed the income taxpayer effective January 1, 1973.

C. SUMMARY AND CONCLUSION

In this particular chapter, a content description was made on selected population control policies and laws of the Philippine Government which have both direct and indirect influences on Filipino fertility behavior. On the whole, the laws and policies on family planning in the Philippines are "soft" and pro-natalist. Recent legislative enactments and presidential decrees regulating the use and dispensation of contraceptives, and the creation of the POPCOM, are at most stop-gap measures designed to combat rapid population growth.

At this point, it must be stressed that the use of legal social control measures for population problems requires a systematic examination and review of all laws and policies on family planning and fertility control, if government aims to produce a consistent public policy on the matter. The subject of marriage, social security, medicare, housing, and child care and allowances, were neither extensively explored nor previously considered for possible areas of reform. Prior to the undertaking of these policy measures for implementation, it is necessary that accurate information should be available. For instance, while sterilization seems to be the most effective method of controlling population growth, religious opinion, especially among the Muslims and Catholics, is against the said method.

It appears, therefore, that existing fertility control policies of the government discourage instead of enhance the adoption of the desirable family planning behavior among the Filipinos, because the cultural and religious beliefs of the target population, specifically the minority religions like Islam, were not considered in the policy formulation and implementation stages; hence, the existence of popular resentment towards family planning policies, especially in the rural areas.

Nevertheless, as the laws on contraception have been liberalized both by legislation and administrative interpretation, family planning services and information programs have been implemented with additional strength. The lessons derived from this particular activity would be helpful in identifying what specific laws can be repealed, amended, or enacted for improving the country's population policy in general. More particularly, except for those dealing with abortion, relevant policies and laws which hinder the success of family planning could be repealed to accommodate constructive changes in the program.

With the necessary supporting sociological and economic data, a systematic effort can be made toward legal reform in the field of fertility control. More significantly, policymakers have to bear in mind that crucial policy decisions will have to consider the right to privacy as against competing public interest when these decisions relate to the population problem.

NOTES

1. See Mercedes B. Concepcion, "An Overview of Family Planning in the Philippines," *Monograph Series*, No. 1 (1974), p. 25; See also Peralta, *op. cit.*, p. 90; Bureau of Training Research and Special Projects, "Task Report on Family Planning in the Philippines, 1969-1970," (1970), p. 3

2. Mercedes B. Concepcion, "Population Policy and Family Planning," *Population of the Philippines*, ed. Mercedes B. Concepcion (Manila: UPPI, 1977), pp. 115-116.

3. See Amelia P. Varela, "Family Planning in the Philippines: Assessment of the Program Implementation," *Philippine Journal of Public Administration*, 20 (July 1976), p. 238; Peralta, *op. cit.*, p. 91.

4. Concepcion, Population Policy, *op. cit.*, p. 117

5. National Census and Statistics Office, *Philippine Yearbook 1978* (Manila, 1978), p. 76.

6. Irene R. Cortes, "Population and Law: The Fundamental Rights Aspects in the Philippine Setting," in *Law and Population: The Philippine Law and Population Program*, *op. cit.*, p. 5.

7. Presidential Decree No. 1587 (Otherwise known as the Revised Administrative Code of 1978), dated June 11, 1978.

8. Republic Act No. 5921, dated June 21, 1969.

9. P.D. 1587, op. cit., sec. 1954.

10. See the *Revised Penal Code* (Act No. 3815 as amended), dated December 8, 1930, art. 201; Antonio L. Gregorio, *Fundamentals of Criminal Law Review* (Manila: Rex Book Store, 1978), pp. 298-299.

11. This specific provision relating to abortion does not clearly spell out whether all forms of abortion are prohibited or some are permissible under special conditions.

12. Penal Code, *op. cit.*, arts. 256-258.

13. Luis B. Reyes, *The Revised Penal Code* (Manila: Rex Book Store, 1975), p. 445.

14. If the abortion is produced by a physician to save the life of the mother, there is no liability. This is known as "therapeutic" abortion (Feria and Gregorio, p. 315). But abortion without medical necessity to warrant it is punishable (*Geluz vs. Court of Appeals*, 1961 2 SCRA 801).

15. See Department of Justice, *Justice Opinion No. 131*, dated September 17, 1973.

16. See Medicare Commission, *Medical Circular No. 62* ("Inclusion of Sterilization Procedures under Medicare"), dated January 1, 1977.

17. See P.D. 651, secs. 1, 3, & 9.

18. See Department of Education and culture, *Department Memorandum No. 29*, dated May 21, 1973; See *General Order No. 18* (enjoining all citizens of the Philippines, all universities, colleges, and schools, government offices, mass media, civic and industrial enterprises to promote the acceptance of family planning).

19. See Department of Social Welfare, *Administrative Order No. 950*, Series of 1972.

20. *Republic Act No. 386* (as amended), dated June 18, 1949, sec. 53.

21. P.D. 1083, *op. cit.*, arts. 16 (2 & 3).

22. See *Presidential Decree No. 965*, dated July 20, 1976.

23. P.D. 1083, op. cit., art. 27.

24. Ibid., Art. 2(a).

25. See *Presidential Decree No. 442* (as amended by P.D.'s No. 570-A, 626, 823, 865-A and 891), dated May 1, 1974.

26. Ibid., Art. 137 (1, 2, & 3).

27. See *Presidential Decree No. 1158* (as amended by P.D.'s No. 1773 and 1868 and Batasan Pambansa Blg. 135), dated June 3, 1977.