

## CHAPTER IX:

# Population Policies

For decades, governmental policy objectives regarding the composition, size, and growth of national populations have had a tremendous impact on women’s reproductive rights. Whether governments have sought to increase the size of their populations or reduce their rates of growth, these objectives have shaped laws and policies affecting women’s ability to make decisions regarding their fertility.

This chapter addresses the duty of governments to ensure that national population policies are premised on respect for the dignity of individual women, even where demographic goals are officially endorsed. It reviews the international legal foundations of this duty and identifies its three principal components: 1) giving strong legal protection to the right to decide the number and spacing of one’s children, 2) using the language of human rights in population policies themselves, and 3) making population policies a vehicle for improving women’s status and health. The chapter provides examples of recent national developments reflecting each of these governmental responsibilities.

### Background: A Brief History of Population Policies

In many low-income countries, rapid population growth has long been viewed as detrimental to future economic growth. As a result, national and international policy debates have focused on reducing fertility rates. Beginning in the 1960s and 1970s, a number of countries adopted explicit policies of “population control,” often with inadequate consideration of the impact on women’s reproductive rights, which are disproportionately—and often negatively—affected as a result.<sup>1</sup>

The International Conference on Population and Development (ICPD), held in Cairo in 1994, was a major turning point in the history of population policies. At the ICPD, countries agreed that the advancement and protection of women’s human rights should be central to government efforts to address population and development issues.<sup>2</sup> The resultant ICPD Programme of Action focused unprecedented attention on gender equality, equity, and women’s empowerment.<sup>3</sup> It expressed the view that “[t]he empowerment and autonomy of women and the improvement of their political, social, economic and health status is a highly important end in itself.”<sup>4</sup> Further, the ICPD Programme of Action declared that “[t]he promotion of the responsible exercise of these rights for all people should be the fundamental basis for government- and community-supported policies and programmes in the area of reproductive health, including family planning.”<sup>5</sup> The document also affirmed that coercive practices in the provision of family planning services constitute a violation of reproductive rights and should be eliminated.<sup>6</sup>

Today, most population policies continue to implicate women’s reproductive health and rights. In addition to stating the government’s broad objectives on population, these policies often provide the framework for the delivery of reproductive health care.

## HUMAN RIGHTS FRAMEWORK

Women have a **right to reproductive self-determination**. This right protects women from interference with decisions they make about their bodies, and draws support from international guarantees of the right to physical integrity and privacy. The global community has repeatedly acknowledged the right to decide freely and responsibly the number and spacing of one's children. This right entitles women to have access to all safe, effective means of controlling their family size. It also means that women must be able to make decisions about their fertility free of coercion and violence.

*For international legal foundations of the rights marked in bold, see Appendix B*

Policies that seek to achieve demographic targets primarily by controlling women's fertility violate women's **right to freedom from discrimination**. Historically, where government population policies have approached women solely as vehicles for lowering fertility rates, women have suffered the effects of coercive measures, such as forced sterilization or abortion. The burden has been particularly heavy on low-income, minority, and indigenous women, who face discrimination on multiple grounds and may be most vulnerable to rights violations.

The **right to health** entitles women to the full range of contraceptive methods and the information they need to obtain and use those methods. Supplying women with only one type of method, such as the long-acting hormonal injectable, without presenting a range of other acceptable options jeopardizes women's ability to achieve their highest attainable standard of health.

These legal guarantees give rise to the following governmental duties:

- **Governments must recognize and protect the right to determine the number and spacing of one's children.** The ICPD Programme of Action explicitly affirmed that women's reproductive rights "rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children"<sup>77</sup> and on "the right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents."<sup>78</sup> It is especially important that governments affirm this principle when setting policy objectives regarding population.
- **Population policies should take a human rights approach and reject coercive implementation strategies.** Most countries address population through national policies issued by the executive branch of government. These policies must comply with international and national guarantees of human rights. In addition, they should explicitly embrace a human rights approach to population policy.
- **Population policies, whatever their stated demographic objectives, should call for strategies to promote women's human rights and health.** Women's human rights must be viewed as ends in themselves and not merely as means to achieve development goals. However, because women's empowerment has been identified as one of the primary means of reducing poverty and improving national quality of life, governments have strategically addressed women's status and health in population policies. This practice should continue.

## 1. LEGAL RECOGNITION OF THE RIGHT TO DETERMINE THE NUMBER AND SPACING OF ONE'S CHILDREN

One means of ensuring that, in the context of population policies, autonomy in reproductive decision-making receives the highest degree of protection is to give it the status of a constitutional guarantee. While most constitutions protect basic principles of physical integrity and privacy, few governments have made the link between population policies and individual rights in their constitutions. **Ecuador** made that link explicitly.

### A. Ecuador's Constitution Protects Reproductive Autonomy

*Ecuador adopted a new Constitution in 1998.<sup>9</sup> The new constitution continues to give explicit protection to the right of parents to plan their families. This protection was first given constitutional status in 1978 and has been repeated in successive constitutions since then.<sup>10</sup>*

The government of Ecuador articulated its support for responsible maternity and paternity in the country's constitution. Article 39 of the Constitution of Ecuador provides that the state guarantees its citizens the right to decide the number of children they want to have. The article further provides that it is the duty of the state to provide information, education, and other means to assist people in exercising this right.<sup>11</sup>

## 2. POPULATION POLICIES THAT TAKE A HUMAN RIGHTS APPROACH

One means of acting on national commitments to international human rights standards is to incorporate the principles of the ICPD Programme of Action and, where necessary, adapt those principles to the national context. **South Africa** took this approach in crafting its national population policy.

### A. South African Population Policy Upholds Reproductive Rights

*Before crafting a new population policy in 1998, the South African government circulated a Green Paper that invited individuals, organizations, and the media to provide input on approaches the government should take regarding population matters.<sup>12</sup> Upon opening this debate, the government stressed the ICPD as the starting point for any dialogue on population policy. Government officials also declared that “the ICPD Programme of Action emphasizes the importance of human rights, and that all programmes must be implemented within a framework of internationally accepted human rights.”<sup>13</sup>*

*Human rights as “guiding principles”*

The 1998 Population Policy for South Africa follows the mandate of the ICPD and establishes the human rights framework as the first of the 12 Guiding Principles of the policy.<sup>14</sup> These 12 principles “provide the ethical context for a human rights approach to integrating population concerns into development planning, implementation and monitoring.”<sup>15</sup> One of these principles affirms the definition of reproductive rights as established in the ICPD Programme of Action.<sup>16</sup> Interspersed throughout the policy are references to the principles of human rights, including free and informed choice, nondiscrimination, equal access to reproductive health care, and women's rights.

### *Emphasis on reproductive rights and health care*

Of the 24 major strategies for implementation outlined in the Population Policy for South Africa, several stress the importance of the accessibility and affordability of reproductive health care. In line with the government's overall health-care approach, the policy makes reproductive health care a key component of primary health that must be made universally affordable and accessible. The policy further recognizes that “[g]overnment imposed and driven fertility control measures are not reconcilable within freedom of choice and human rights.”<sup>17</sup>

### *Emphasis on women's equality*

Several of the strategies also highlight the importance of gender equality, the availability of information, and empowerment, which are each needed to make informed choices about reproductive health. The focus on gender calls for the following measures:

- affirmative action to assure women's representation in decision-making bodies;
- reduction of violence against women and children;
- elimination of gender discrimination;
- better enforcement of protective laws; and
- promotion of “equal participation of men and women in all areas of family and household responsibilities, including responsible parenthood, reproductive health, child-rearing and household work.”<sup>18</sup>

### *Recognition of adolescents' rights*

In the area of education and information, the policy seeks to enable adolescents to make informed decisions about their reproductive and sexual behavior through participation in new programs in “life skills, sexuality and gender-sensitivity education, [and] user-friendly health services.”<sup>19</sup>

## **3. POPULATION POLICIES THAT PROMOTE WOMEN'S STATUS AND HEALTH**

A sincere commitment to women's equality, stated in a national population policy, can mobilize public resources for programs that can make a difference in women's lives. It can also support advocates for women's rights who are working in other policy spheres. **India**, in its population policy, enumerated many policy objectives that target women's status.

### **A. India's National Population Policy Cites Objectives for Women's Rights and Health**

*In 1952, India initiated the world's first state-sponsored family planning program to slow population growth.<sup>20</sup> From the early 1960s through the mid-1990s, India pursued a population program driven by contraceptive acceptance targets.<sup>21</sup> The ICPD in 1994 led to major shift in national policy. In 1996, the government announced the “target-free approach,” which eliminated nationally mandated targets for contraceptive acceptance while continuing to allow for locally determined targets set by grassroots workers.<sup>22</sup> The current National Population Policy commits to continuing the “target-free” approach to the provision of family planning services, as well as decentralized planning and implementation of such services. While the policy sets clear goals for reducing the national fertility rate and calls for promotion of the “small family norm,” it also commits to securing voluntary and informed choice and consent for anyone accessing reproductive health-care services.<sup>23</sup> In addition, it cites several goals related to women's empowerment and health.<sup>24</sup>*

The social, educational, and reproductive health goals to be achieved by 2010 include the following:

- meet the needs for basic reproductive and child health services, supplies, and infrastructure;
- make schooling up to age 14 free and compulsory and reduce drop out rates for primary and secondary school to below 20% for both boys and girls;
- reduce the infant mortality rate to below 30 infant deaths per 1,000 live births;
- reduce the maternal mortality ratio to below 100 maternal deaths per 100,000 live births;
- promote delayed marriage for girls until at least age 18 and preferably after age 20;
- increase the proportion of deliveries that take place at medical institutions to 80% and the proportion of births attended by medical personnel to 100%;
- achieve universal access to family planning information, counseling, and services and offer a wide range of contraceptive choices;
- achieve universal registration of births, deaths, marriages, and pregnancies;
- contain the spread of HIV and better integrate the management of reproductive tract infections and sexually transmissible infections;
- integrate traditional Indian medicine into outreach and the provision of reproductive and child health services; and
- create a people-centered approach to all social programs relating to family welfare.<sup>25</sup>

## CONCLUSION

Policy measures aimed at shaping the composition, size, and growth of national populations inevitably have an impact on women's reproductive health and decision-making. Therefore, governments must approach these measures with a clear commitment to women's reproductive rights. Such a commitment can be demonstrated in a national constitutional guarantee of individual reproductive decision-making. In addition, population policies themselves should not only meet human rights standards, but should also embrace human rights principles, particularly those articulated in the ICPD Programme of Action. Finally, even where population policies explicitly embrace demographic goals, they should target strategies that improve women's status and health.

## Endnotes

1. CENTER FOR REPRODUCTIVE RIGHTS, RETHINKING POPULATION POLICIES 1 (2003); Paula Abrams, *Population Control and Sustainability: It's the Same Old Song But With a Different Meaning*, 27 ENVTL. L. 1111, 1112-13 (1997).
2. *Programme of Action of the International Conference on Population and Development*, Cairo, Egypt, Sept. 5-13, 1994, para. 4.1, U.N. Doc. A/CONF.171/13/Rev.1 (1995) [hereinafter *ICPD Programme of Action*].
3. *Id.*
4. *Id.*
5. *Id.* para 7.3.
6. *Id.* princ. 8 and para. 7.3.
7. *Id.* para 7.2.
8. *Id.* para 7.2.
9. CONST. OF ECUADOR (1998), available at <http://pdba.georgetown.edu/Constitutions/Ecuador/ecuador98.html>.
10. UN POPULATION DIV. DEP'T OF ECONOMIC AND SOCIAL AFFAIRS, ABORTION POLICIES: A GLOBAL REVIEW 133 (2002).
11. CONST. OF ECUADOR, *supra* note 9, art. 39.
12. MINISTRY FOR WELFARE & POPULATION DEVELOPMENT, A GREEN PAPER FOR PUBLIC DISCUSSION: POPULATION POLICY FOR SOUTH AFRICA 5 (1995).
13. *Id.* at 14.
14. MINISTRY FOR WELFARE, POPULATION POLICY FOR SOUTH AFRICA viii-ix, sec. 1.5 (1998).
15. *Id.* at ix.
16. *Id.* at viii-ix, sec. 1.5.7 (1998); *ICPD Programme of Action*, *supra* note 2, para 7.3.
17. MINISTRY FOR WELFARE, POPULATION POLICY FOR SOUTH AFRICA, *supra* note 14, at viii-ix, sec. 1.4 at 7.
18. *Id.* secs. 3.516-16.
19. *Id.* sec. 3.514.
20. Carl Haub & O.P. Sharma, *India's Population Reality: Reconciling Change and Tradition*, POPULATION BULLETIN (Population Reference Bureau, Washington, D.C.), vol. 61(2), Sept. 2006, at 14.
21. CENTER FOR REPRODUCTIVE RIGHTS, WOMEN OF THE WORLD—LAWS AND POLICIES AFFECTING THEIR REPRODUCTIVE LIVES 89 (2004).
22. *Id.*
23. *Id.*
24. DEP'T OF FAMILY WELFARE, MIN. OF HEALTH & FAMILY WELFARE, GOV'T OF INDIA, NATIONAL POPULATION POLICY 2000 at 2 (Box 2: National Socio-Demographic Goals for 2010) (2000).
25. *Id.*