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NOTES

NORPLANT AND THE NEW PARADIGM OF INTERNATIONAL POPULATION POLICY

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Until recently the fundamental tenet of United States and international population policy has been to limit the number of people in the developing world.¹ International population control policy has given priority to the reduction of birth rates and neglected the goals of empowerment, reproductive rights, and quality of life. The organizing principle of population control has dominated the provision of family planning services and in doing so has distorted the goals of both empowerment and fertility decline.²

Current population trends justify concern about the effects of rapid population growth. The population of the Earth is now 5.6 billion and will reach 6 billion by the end of the century.³ The world is adding 93 million people each year,⁴ and Africa is experiencing the fastest population growth in human history.⁵ No one can accurately predict how long these population trends will continue;⁶ however, many scientists argue that continuing rapid population growth without the concurrent development of social structures may play a role in many of the problems facing humankind.⁷ Rapid population growth may contribute to environ-

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1. RUTH DIXON-MUELLER, *POPULATION POLICY & WOMEN'S RIGHTS: TRANSFORMING REPRODUCTIVE CHOICE* 56 (1993).

2. *Id.* at 56-57.

3. GEORGE D. MOFFETT, *CRITICAL MASSES* 7-8 (1994); Lori S. Ashford, *New Perspectives on Population: Lessons from Cairo*, *POPULATION BULL.*, Mar. 1995, at 4-5.

4. MOFFETT, *supra* note 3 at 9.

5. Omari H. Kokole, *The Politics of Fertility in Africa*, in *THE NEW POLITICS OF POPULATION: CONFLICT AND CONSENSUS IN FAMILY PLANNING* 73, 73 (Jason L. Finkle & C. Alison McIntosh eds., 1994).

6. Gaston Fischer, *The Population Explosion: Where Is It Leading?*, 15 *POPULATION & ENV'T: J. INTERDISCIPLINARY STUD.* 139, 149 (1993). The United Nations (UN) projects that replacement fertility, or an average of two children per family, will "most likely" be reached between 2030 and 2050, causing population to peak at about 11.5 billion during the twenty-second century. See MOFFETT, *supra* note 3, at 8-9. In contrast, the UN projects stabilization at 6 billion as its "best case" scenario. *Id.*

7. Population Council, "Science Summit" on World Population: A Joint Statement by

mental degradation,⁸ and may act as an impediment to economic development, but the exact relationship between population growth and development is unknown.⁹ Whatever the empirical dynamic between population and development, "governments everywhere have come to see rapid population growth in third world countries as an obstacle to development."¹⁰

The international community's attentiveness towards the impact of population growth on development and the environment is laudable, as these critical issues require international action. Unfortunately however, many policymakers, driven by fears of the effects of rapid population growth, have adopted population control as the exclusive rationale for family planning in developing nations.¹¹ Since the 1960s the perceived need to control the number of births in developing nations has governed the population policies of the United States, the United Nations (UN), and the World Bank.¹² The belief that population control should be the primary purpose of family planning programs has become "so deeply ingrained in the culture that it profoundly shapes the

58 of the *World's Scientific Academies*, reprinted in 20 *POPULATION & DEV. REV.* 233, 235 (1994) [hereinafter *Science Summit*]. It is important to note, however, that there is no absolute consensus over the negative impact of overpopulation. MOFFETT, *supra* note 3, at 4. Some economists, notably Julian Simon, argue that there is no such thing as "overpopulation" and that population growth is valuable for its role in driving technological change. See generally JULIAN L. SIMON, *POPULATION MATTERS: PEOPLE, RESOURCES, ENVIRONMENT, AND IMMIGRATION* (1990). At the other end of the spectrum, some population experts believe that the earth has overshoot its carrying capacity and is already doomed to widespread disaster brought on by overpopulation. See, e.g., David Price, *Energy and Human Evolution*, 16 *POPULATION & ENV'T: J. INTERDISCIPLINARY STUD.* 301, 301 (1995) ("A collapse of the earth's human population cannot be more than a few years away."). More moderate population experts believe that the carrying capacity of the earth is finite, but unknown. See Vaclav Smil, *How Many People Can the Earth Feed?*, 20 *POPULATION & DEV. REV.* 255, 255-57 (1994). Accordingly, "the vast majority of experts believe that any prudent strategy for dealing with the future must include measures to slow projected population growth." MOFFETT, *supra* note 3, at 5. See generally *Science Summit*, *supra*.

8. *Science Summit*, *supra* note 7, at 235.

9. See Dennis J. Mahar, *Population Growth and Human Carrying Capacity in Sub-Saharan Africa*, in *WORLD POPULATION TRENDS AND THEIR IMPACT ON ECONOMIC DEVELOPMENT* 59, 66 (Dominik Salvatore ed., 1988). Social scientists do not fully understand the relationship between population growth and development, but believe that the relationship involves a complex web of reactions through which population growth and development influence each other. OZZIE G. SIMMONS, *PERSPECTIVES ON DEVELOPMENT AND POPULATION GROWTH IN THE THIRD WORLD* 206 (1988).

10. Jason L. Finkle & C. Alison McIntosh, *The New Politics of Population*, in *THE NEW POLITICS OF POPULATION: CONFLICT AND CONSENSUS IN FAMILY PLANNING*, *supra* note 5, at 3, 3.

11. Andrew D. Ringel, Note, *The Population Policy Debate and the World Bank: Limits to Growth vs. Supply-Side Demographics*, 6 *GEO. INT'L ENVTL. L. REV.* 213, 224 (1993); see DIXON-MUELLER, *supra* note 1, at ix.

12. DIXON-MUELLER, *supra* note 1, at 63-65; Ringel, *supra* note 11, at 222-24.

culture's world view."¹³ As a result, international population policies have measured the success of family planning in terms of demographic impact rather than the improvement of the quality of life for people living in the developing world. Family planning has emphasized averting births, not increasing the choices available to women. This population control strategy has rested on three assumptions: (1) population growth is the primary cause of developing nations' problems; (2) people must be persuaded or forced to have fewer children; and (3) efficacy in preventing pregnancy should take priority over health and safety concerns.¹⁴

Activists recently have begun to challenge the doctrine of population control on several fronts. Even as religious and ethical objections to family planning programs have begun to subside, feminists from developing and Western nations have criticized existing family planning programs and the philosophies that underlie those policies.¹⁵ Feminist critiques of population policy stress that the goal of family planning must be to provide women with the social power necessary to control their own reproductive capacities in the context of broader social and economic change.¹⁶ If population control, rather than the need to expand opportunities for women, is the motivation behind family planning programs, the programs will fail both objectives. The policies are not only detrimental to women's health and well-being but their implementation will not necessarily lower birth rates.¹⁷

In 1989 the UN Economic and Social Council called for an International Conference on Population and Development (Cairo Conference). After several preparatory conferences, in September 1994 the Cairo Conference, which initiated a shift in the world

13. BETSY HARTMANN, *REPRODUCTIVE RIGHTS AND WRONGS: THE GLOBAL POLITICS OF POPULATION CONTROL* 4 (rev. ed. 1995) (arguing that rapid population growth is a symptom rather than a cause of development problems); see DIXON-MUELLER, *supra* note 1, at 56; see also Ringel, *supra* note 11, at 225 (pointing out that the Western media frame population issues in terms of the "limits to growth").

14. HARTMANN, *supra* note 13, at xix.

15. Ruth Dixon-Mueller & Adrienne Germaine, *Population Policy and Feminist Political Action in Three Developing Nations*, in *THE NEW POLITICS OF POPULATION: CONFLICT AND CONSENSUS IN FAMILY PLANNING*, *supra* note 5, at 197, 212-13; Finkle & McIntosh, *supra* note 10, at 4; see SONIA CORREA, *POPULATION AND REPRODUCTIVE RIGHTS: FEMINIST PERSPECTIVES FROM THE SOUTH* 5 (1994). For an early feminist criticism of U.S. population policy, see Virginia Gray, *Women: Victims or Beneficiaries of U.S. Population Policy?*, in *POLITICAL ISSUES IN U.S. POPULATION POLICY* 167 (Virginia Gray & Elihu Bergman eds., 1974).

16. DIXON-MUELLER, *supra* note 1, at 192.

17. HARTMANN, *supra* note 13, at xix-xx.

population policy paradigm, was finally held.¹⁸ The new paradigm "focuses not on controlling numbers but on providing broadly defined reproductive health services and on acknowledging women's reproductive rights and their need for empowerment."¹⁹ The Cairo Conference changed the terms of population policy discourse from an exclusive emphasis on the number of births in the developing world to a concern for the health and welfare of the people living in those developing areas. The Conference gave priority to women's empowerment, reproductive health and rights, and disengaged itself from a focus on demographic targets.²⁰

Despite the contention of some commentators that the new ethic of empowerment for women is empty rhetoric,²¹ the Cairo Conference represents a significant turning point in world population policy. Much, however, remains to be done. The Cairo Conference Program of Action is not legally binding on participating governments and will require funding and resources to accomplish its goals.²² In addition, the international community has not yet recognized all of the implications of the Cairo principles. Some elements of the population control agenda surfaced at the Cairo Conference.²³ For example, the Conference stressed the contraceptive implant Norplant as a means of birth control for women in the developing world.²⁴ Norplant is a contraceptive that must be implanted surgically for a predetermined amount

18. *Choices and Responsibilities: Finding the Balance*, 31 UN CHRON., Sept. 1994, at 40, 40-41.

19. Gita Sen, *The World Programme of Action: A New Paradigm for Population Policy*, ENV'T, Jan.-Feb. 1995, at 10, 10.

20. Lincoln C. Chen et al., *Women, Politics, and Global Management*, ENV'T, Jan.-Feb. 1995, at 4, 7.

21. See, e.g., Alexander Cockburn, *Real U.S. Policy in Third World: Sterilization*, L.A. TIMES, Sept. 8, 1994, at B7. "Cut through all the reassuring lingo about 'empowering women' and consider the realities of U.S. population policy today in Haiti. As revealed in an internal U.S. Agency for International Development report, the fundamental goal of the American government is to keep the natives from breeding." *Id.*

22. C. Alison McIntosh & Jason L. Finkle, *The Cairo Conference on Population and Development: A New Paradigm?*, 21 POPULATION & DEV. REV. 223, 225 (1995); see also Program of Action of the 1994 International Conference on Population and Development, Sept. 13, 1994, para. 2.1, reprinted in 21 POPULATION & DEV. REV. 187 (Ch. I-VIII) & 437 (Ch. IX-XVI) (1995) [hereinafter Program of Action] ("The implementation of the recommendations contained in the Programme of Action is the sovereign right of each country. . .").

23. See *Finland: Cairo Conference May Boost Sales of Norplant* (Abstract), KAUPPALEHTI, Sept. 9, 1994, at 10, available in Westlaw, INT-NEWS database [hereinafter *Cairo Conference*].

24. *Id.*

of time, thereby stripping women of control over their reproductive lives.²⁵ The decision to use Norplant as a means of birth control in much of the developing world is not the result of an evaluation of the needs of women. The decision is instead a product of the population control strategy adopted by pharmaceutical companies and international population planners.²⁶

This Note will discuss Norplant as a contraceptive for women in developing nations from the perspective of a feminist critique of population policy. In the first section, this Note will present a history of population policy. In the second section, this Note will briefly describe the paradigm shift that is taking place as a result of recent policy changes. In the third section, this Note will critique the policy of population control in terms of its endorsement of the use of contraception like Norplant.

I. THE HISTORY OF INTERNATIONAL POPULATION POLICY

During the 1927 World Population Conference organized by Margaret Sanger and held in Geneva, Switzerland, the international community first addressed population policy concerns. Officials of the League of Nations privately supported the 1927 Conference, although the League was not officially represented at the Conference because the League considered the issue too controversial.²⁷ The League of Nations later established a committee to study the relationship between population and socioeconomic problems; however, the committee met only once before World War II disrupted the League.²⁸ Before its termination, the League sponsored the publication of a study that examined the connection between population dynamics and socioeconomic development in the European community.²⁹

Soon after its creation, the United Nations established a Population Commission to study the issue of population growth at the suggestion of the United States and Great Britain.³⁰ The

25. HARTMANN, *supra* note 13, at 210; Catherine Albiston, *The Social Meaning of the Norplant Condition: Constitutional Considerations of Race, Class, and Gender*, 9 BERKELEY WOMEN'S L.J. 9, 11 (1994).

26. See HARTMANN, *supra* note 13, at 208.

27. STANLEY P. JOHNSON, *WORLD POPULATION AND THE UNITED NATIONS: CHALLENGE AND RESPONSE* 7 (1987).

28. *Id.*

29. Rudley Kirk, *Europe's Population in the Interwar Years* (1946), reprinted in 1 *WORLD POPULATION BASIC DOCUMENTS* 143, 149 (James A. Joyce ed., 1976).

30. E.S.C. Res. 3, U.N. ESCOR, 3d Sess., U.N. Doc. E/190/Rev.2, E/223, E/229 (1946);

Population Commission established a Population Division within the United Nations itself. The Population Division was not a policy organization, but a research organization that coordinated much of the research that would direct future population policy determinations.³¹ The Population Commission's and Population Division's orientations toward research, rather than policy, characterized international population thinking as a whole in the 1950s.³² Although the United Nations sponsored a World Population Conference in 1954, the Conference was largely a scientific forum.³³ Support for birth control policies grew slowly throughout the 1950s. In 1959 the Population Commission set the stage for the policies of the 1960s when it suggested that population growth may impede the economic progress of developing countries.³⁴ At the same time some of the specialized UN agencies were voicing concerns over rapid population growth.³⁵

The U.S. government first officially confronted the population issue in 1958 under the President's Committee to Study the United States Military Assistance Program. Although population was not an explicit area of consideration under the Committee's mandate, the Committee did advocate programs to counter population growth as part of U.S. aid packages.³⁶ President Eisenhower did not support the Committee's findings, however, and prevented the recommendations from taking effect.³⁷

The beginning of the 1960s marked a new era in population policy. Both the United States and the United Nations began implementing activist population policies that sought to limit births in developing nations. Congress authorized "research into the problems of population growth" as an element of development

see *U.S. Delegation: Proposal for the Establishment of a Population Committee*, U.N. Doc. E/93 (1946); see also *United Kingdom Delegation: Proposal for the Establishment of a Demographic Commission*, U.N. Doc. E/98 (1946); see also E.S.C. Res. 150, U.N. ESCOR, 7th Sess., U.N. Doc. E/969 (1948) (expanding the responsibilities of the Population Commission).

31. JOHNSON, *supra* note 27, at 8-9.

32. *Id.* at 9.

33. *Id.* at 12-13.

34. *Id.*

35. Finkle & McIntosh, *supra* note 10, at 6.

36. Ruth Dixon-Mueller, *U.S. International Population Policy and "The Woman Question,"* 20 N.Y.U. J. INT'L L. & POL. 143, 148 (1987).

37. *Id.* President Eisenhower later changed his position on family planning and expressed his new view that, "[i]f we now ignore the plight of those unborn generations which, because of our unreadiness to take corrective action in controlling population growth, will be denied any expectations beyond abject poverty and suffering, then history will rightly condemn us." 113 CONG. REC. 6490, 6494 (1967) (letter to Senator Gruening).

research in the Foreign Assistance Act of 1963.³⁸ President Johnson stated in his 1965 State of the Union Address that the United States must act to slow the growth of world population, and thus rhetorically committed the U.S. to a strategy of population control.³⁹ President Johnson continued the theme of population control throughout his administration.⁴⁰

Congress addressed the concerns of President Johnson in the Food for Peace Act of 1966, which authorized the use of foreign currency for "activities . . . related to the problems of population growth" by any presidentially approved agency.⁴¹ In 1967, when Congress did not believe that the U.S. Agency for International Development (USAID) was devoting sufficient resources to its population control obligations, it amended the Foreign Assistance Act to broaden USAID's population mandate.⁴² A passage from Senator Fulbright's speech to introduce the amendment demonstrates the exclusive focus on averting births:

We in the industrialized nations bear a considerable share of the blame for the population explosion. Modern public health programs, malaria eradication, vaccinations and the like, often made possible through our aid, have reduced mortality rates appreciably in the developing nations. Yet there is little virtue in saving people from malaria and dysentery to let them die slowly of malnutrition. The commonsense answer is clear—we need to provide help for voluntary birth control needs as we have already provided help for death control.⁴³

After Congress allowed USAID to distribute contraceptives directly, a new director, Dr. R.T. Ravenholt, took over the Population Branch of USAID and concentrated the agency's efforts on fertility control.⁴⁴ The United States also began to offer assistance to governmental and non-governmental organizations

38. Pub. L. No. 88-205, § 105, 77 Stat. 379, 382 (1963) (codified at 22 U.S.C. § 2201(b) (1970) (repealed 1975)) (amending Foreign Assistance Act of 1961); *see also* Foreign Assistance Act of 1961, Pub. L. No. 87-195, § 241, 75 Stat. 424, 433 (1961) (codified at 22 U.S.C. § 2201 (1959-61 Supp. III) (repealed 1975)) (authorizing research into "the means, techniques, and other such aspects of development assistance").

39. Dixon-Mueller, *supra* note 36, at 149.

40. *See* 113 CONG. REC. 6490, 6494-96 (1967) (collecting President Johnson's statements on population control).

41. Food for Peace Act of 1966, Pub. L. No. 89-808, § 104(h), 80 Stat. 1526, 1531 (1966) (codified at 7 U.S.C. § 1704(h) (1994)).

42. 113 CONG. REC. 6490, 6493-94 (1967) (statement by Senator Fulbright).

43. *Id.* at 6493.

44. HARTMANN, *supra* note 13, at 107.

who wanted to carry out population control programs. This period marked the emergence of strong support for population control programs as a matter of U.S. policy, rather than as an occasional interest of the government.⁴⁵ The political, military, and economic dominance of the United States during this time allowed the U.S. government to assume world leadership on the issue of population control.⁴⁶

As the United States became more active, UN involvement in population control also increased. As early as 1962, the United Nations invited its member nations to formulate their own population policies. In General Assembly Resolution 1838, the United Nations framed the population issue in terms of both economic development and the health and welfare of the family.⁴⁷ The United Nations established the United Nations Fund for Population Activities (UNFPA) in 1966.⁴⁸ The UNFPA grew quickly. By 1971, the world community had recognized UNFPA as the driving force behind UN population activities.⁴⁹

Policymakers at the Population Branch of USAID saw the work of UNFPA as a necessary complement to the initiatives of USAID.⁵⁰ The creation of UNFPA, however, was important because it legitimized population programs that previously did not exist. By endorsing the goal of fertility control, the United Nations gave credibility to population programs that developing nations often viewed with suspicion.⁵¹ The United States hoped that channeling money through the UN would shield population control programs from charges of genocide and imperialism.⁵² Following the lead of the United States and the United Nations, in 1968 the World Bank under the leadership of newly inaugurated President Robert McNamara began to accept a population

45. WORKING GROUP ON FACTORS AFFECTING CONTRACEPTIVE USE, NATIONAL RESEARCH COUNCIL, FACTORS AFFECTING CONTRACEPTIVE USE IN SUB-SAHARAN AFRICA 134 (1993) [hereinafter WORKING GROUP].

46. Finkle & McIntosh, *supra* note 10, at 7-8.

47. G.A. Res. 1838, U.N. GAOR, 17th Sess., U.N. Doc. A/5100 (1962).

48. Finkle & McIntosh, *supra* note 10, at 9; *see* G.A. Res. 2211, U.N. GAOR, 21st Sess., U.N. Doc. A/6604 (1966) (enabling the Secretary General to create a fund for addressing population goals).

49. STANLEY P. JOHNSON, WORLD POPULATION: TURNING THE TIDE 94 (1994); *see* G.A. Res. 2815, U.N. GAOR, 26th Sess., U.N. Doc. A/8429 (1971) (directing the Secretary General to expand and reform the UNFPA).

50. HARTMANN, *supra* note 13, at 108.

51. WORKING GROUP, *supra* note 45, at 134.

52. Finkle & McIntosh, *supra* note 10, at 9.

control philosophy. McNamara spoke on population issues in his inaugural address and continued to stress population issues throughout his tenure as World Bank president.⁵³

Both internal actors and the developing world placed limitations on U.S. population policy in the mid-1970s. In 1973 Congress passed the Helms Amendment to the Foreign Assistance Act of 1961.⁵⁴ The amendment provided that no U.S. funds could be used to directly finance abortion services or abortifacient drugs.⁵⁵ The largest opposition to U.S. population objectives occurred at the 1974 World Population Conference in Bucharest where the U.S. position in favor of demographically oriented population policies came under heavy criticism. Marxists and nationalists who supported population growth, as well as others who believed population control policies were a part of a U.S. strategy of imperialism, castigated the U.S. delegation.⁵⁶ After revision, the World Population Plan of Action reflected the conviction, widely supported by the United States, that social and economic development could slow rapid population growth.⁵⁷ This development-oriented strategy, however, did not instigate a shift away from the doctrine of fertility control, which remained the primary goal of population policy.

The development strategy was simply a different means to attain the same end. As feminist demographer Ruth Dixon-Mueller argues, the new approach merely targets women's behavior rather than women's bodies. "If biomedical engineering had not produced the 'perfect contraceptive,' perhaps social engineering could identify the 'perfect social variable' that might alter women's reproductive aspirations and behavior."⁵⁸ In any event, USAID continued to treat fertility control as its primary goal, albeit with different tactics.⁵⁹

The population policy of the United States took a noticeable turn under the Reagan Administration. At the 1984 International Conference on Population in Mexico City, the United States announced that it no longer considered rapid population growth

53. Jack Lyne, *Robert McNamara: If We Don't Change Soon, We're Going to Have to Change*, SITE SELECTION & INDUS. DEV., Feb. 1992, at 59; Ringel, *supra* note 11, at 223.

54. Pub. L. No. 93-189, 87 Stat. 714 (1973) (codified at 22 U.S.C. § 2151b(f)(1) (1994)).

55. *Id.* The Helms Amendment thus denied women in developing nations the range of options that are available to American women. Dixon-Mueller, *supra* note 36, at 153.

56. DIXON-MUELLER, *supra* note 1, at 68; NAILA KABEER, REVERSED REALITIES: GENDER HIERARCHIES IN DEVELOPMENT THOUGHT 188-89 (1994). For a summary of the positions of the major players, see JOHNSON, *supra* note 49, at 109-21.

57. See WORKING GROUP, *supra* note 45, at 134.

58. DIXON-MUELLER, *supra* note 1, at 70.

59. Dixon-Mueller, *supra* note 36, at 155.

an obstacle to development and concluded that development problems were the result of market distortions and government policies.⁶⁰ This shift in U.S. policy represented the institutionalization of the school of "supply-side demographics," an extension of the supply-side economics endorsed by Reagan.⁶¹ The United States also announced the "Mexico City Policy," which stated that the United States would no longer fund any population programs that involved coercive means or that supported abortion services, counseling, or referrals.⁶² Pursuant to the Mexico City Policy, USAID halted funding in 1985 for the two largest international family planning organizations: the International Planned Parenthood Federation (IPPF)⁶³ and UNFPA.⁶⁴ Although the Reagan Administration's policies changed who would receive USAID money, population aid *in totem* remained strong. Despite

60. *U.S. Policy Statement at the United Nations International Conference on Population, 2d Sess., Mexico City (Aug. 6-13, 1984), reprinted in 10 POPULATION & DEV. REV. (1985) [hereinafter Mexico City Policy]; see KABEER, supra note 56, at 194.*

61. Ringel, *supra* note 11, at 228-29. For a more complete analysis of the institutionalization of supply-side demographics in the Reagan Administration, see *id.* at 220-22, 227-29. Members of the revisionist school of population, which argued that population growth is beneficial rather than harmful, used the phrase "supply-side demographics." See, e.g., Ben Wattenberg & Karl Zinsmeister, *Introduction: The Argument About "Supply-Side Demographics,"* in ARE WORLD POPULATION TRENDS A PROBLEM? 1,1 (Ben Wattenberg and Karl Zinsmeister eds., 1985). This revisionist usage should not be confused with the "supply-side" strategy of USAID in the 1970s, which involved supplying large numbers of contraceptives to developing nations. Cf. Dixon-Mueller, *supra* note 36, at 155 (explaining USAID's shift from a "supply-side" to a "demand-side" approach).

62. Ringel, *supra* note 11, at 229 & n.45. For further discussion of the history of the Mexico City policy, see Sharon Camp, *The Impact of the Mexico City Policy on Women and Health Care in Developing Countries*, 20 N.Y.U. J. INT'L L. & POL. 35, 35-41 (1987). The policy declared that:

The United States does not consider abortion an acceptable element of family planning programs and will no longer contribute to those of which it is a part.... Moreover, the United States will no longer contribute to separate nongovernmental organizations which perform or actively promote abortion as a method of family planning in other nations.

Mexico City Policy, *supra* note 60.

63. Camp, *supra* note 62, at 37-38. USAID defunded IPPF because IPPF could not enforce a policy that removed abortion from its central budget on its independent national affiliates. Although the IPPF only spent \$400,000 to \$600,000 per year on abortion-related activities, it lost a \$12 million grant from USAID. *Id.* at 37; Rebecca J. Cook, *U.S. Population Policy, Sex Discrimination, and Principles of Equality Under International Law*, 20 N.Y.U. J. INT'L L. & POL. 93, 100 (1987).

64. Michael Marcus, Note, *United States Foreign Population Assistance Programs: Anti-Abortion Propaganda?*, 15 BROOK. J. INT'L L. REV. 843, 860-63 (1989). The United States cancelled UNFPA's funding because the organization gave assistance to China. Chinese policies emphasized abortion as a solution. DIXON-MUELLER, *supra* note 1, at 75.

the "supply-side" rhetoric, USAID provided \$2.9 billion for population control activities in the 1980s.⁶⁵ In addition, the U.S. influence at UNFPA continued and both the United States and UNFPA anticipated that funding would be resumed at a later date.⁶⁶

Ironically, while the U.S. government was outwardly advocating a decrease in support for population programs, the media and international community were extolling the need for population control.⁶⁷ The 1984 *World Development Report* of the World Bank argued that population could not be stabilized in many developing nations without family planning policies.⁶⁸ Since that time the World Bank has stressed fertility control in its development policies.⁶⁹ During the 1980s UNFPA continued to be a vital force in the provision of family planning services. Following the lead of the United Nations and the World Bank, the developing world reversed its "development first" position at the 1984 Mexico City Conference. Underdeveloped countries declared that population growth must be slowed whether or not a new economic order came into existence.⁷⁰

II. POPULATION POLICY IN THE 1990s

In the 1990s the Clinton administration has taken a radically different approach to population issues. On his third day in office Clinton reversed several of the reproductive policies enacted by his Republican predecessors, particularly the Mexico City Policy.⁷¹ Clinton also announced the resumption of funding for IPPF and UNFPA as well as an increase in funding for population programs in general.⁷² In 1995 the United States spent \$605 million on population programs.⁷³ Today the United States is the largest source of funding for population programs in the world.⁷⁴ In

65. WORKING GROUP, *supra* note 45, at 157.

66. Finkle & McIntosh, *supra* note 10, at 11.

67. Ringel, *supra* note 11, at 223-24.

68. WORLD BANK, *WORLD DEVELOPMENT REPORT 1984* (Rupert Pennant-Rea ed., 1984).

69. Ringel, *supra* note 11, at 224.

70. WORKING GROUP, *supra* note 45, at 135.

71. See Memorandum on the Mexico City Policy, 1 PUB. PAPERS 10-11 (Jan. 22, 1993). For an example of Clinton's changes in the domestic arena, see Memorandum on the Title X "Gag Rule," 3 C.F.R. 723 (1994) (Jan. 22, 1993).

72. Kim Murphy, *U.S. Population Team Has Changed Jerseys in Last Decade*, L.A. TIMES, Sept. 14, 1994, at A9.

73. Anthony Shadid, *Cairo Slum Offers an Apocalyptic Vision of Overpopulation and Poverty*, L.A. TIMES, Feb. 5, 1995, at A4.

74. *U.S. Population Policy and U.S. Position at the Upcoming Cairo Conference: Hearing*

addition to providing \$50 million in funding for UNFPA for fiscal year 1995, USAID sponsors bilateral population programs in thirty-seven countries.⁷⁵

For decades feminists have criticized the international population establishment for its emphasis on demographic goals rather than quality of life issues. Although the population control orientation of these international actors has enormous momentum, the voices of women are beginning to be incorporated into population policy.⁷⁶ The policies of the Clinton Administration and the Cairo Conference both indicate the emergence of a new paradigm in population thinking.

Although Clinton inherited a State Department that was weak on population matters, he quickly signalled his commitment to population and sustainable development issues with the appointment of former Colorado Senator Timothy Wirth as Counselor in charge of population matters at the Department of State.⁷⁷ In the first official Clinton Administration statement on population policy, Wirth declared to the Second Session of the Preparatory Committee for the International Conference on Population and Development (Prepcom II) that, "[o]verall, we must take a broader approach to sexual and reproductive health. We must recognize that advancing women's rights and health and promoting family planning are mutually reinforcing objectives."⁷⁸ Wirth identified three priority population issues for the Clinton Administration: women's health and status, population and the environment, and migration.⁷⁹ He specifically rejected employing an exclusive focus on demographic targets, arguing that although regional goals should be developed to measure progress, "targets and quotas which apply penalties to failure ... [are] a self-defeating approach."⁸⁰ The Clinton Administration's commitment to look beyond a narrow focus on population control has allowed the feminist population agenda to become a viable political alternative to the policies of the past.

Although the USAID's Office of Population traditionally had concentrated its efforts on averting births, USAID moved in concert with the State Department to incorporate this new per-

Before the Comm. on Foreign Affairs, House of Rep., 103d Cong., 2d Sess. 1 (1994) [hereinafter Hearing].

75. *Id.*

76. Finkle & McIntosh, *supra* note 10, at 25-26.

77. McIntosh & Finkle, *supra* note 22, at 240-41.

78. Timothy E. Wirth, *United States International Population Policy: An Official Statement* (May 11, 1993), in 19 POPULATION & DEV. REV. 403, 404-05 (1993).

79. *Id.* at 404.

80. *Id.* at 405.

spective into their policies. USAID held discussions with feminist groups in an attempt to introduce elements of the women's agenda into USAID programs.⁸¹ In March 1994 USAID released a document that outlined its revised approach to population policy. The document continued to advance Wirth's articulation of a dual focus on both women's rights and family planning.⁸² USAID pledged to "contribute to a cooperative global effort to stabilize world population growth and support women's reproductive rights."⁸³

The USAID document was especially important because it treated women's health and rights as objectives in and of themselves, rather than as mere means to eliminate rapid population growth. USAID set out four principles it would follow when implementing programs:

- Promoting the rights of couples and individuals to determine freely and responsibly the number and spacing of their children.
- Improving individual health, with special attention to the reproductive health needs of women and adolescents and the general health needs of infants and children.
- Reducing population growth rates to levels consistent with sustainable development.
- Making programs responsive and accountable to the end-user.⁸⁴

In order to implement these principles, USAID committed itself to improving reproductive health care, guaranteeing infant and child health, and providing education for girls and women, as well as providing support for family planning programs.⁸⁵

The Cairo Conference was an important outgrowth of this new approach to population policy. The Conference was unique in that women participated in the policymaking process at unprecedented

81. McIntosh & Finkle, *supra* note 22, at 241-42.

82. United States Agency for International Development, *Stabilizing World Population Growth and Protecting Human Health: USAID's Strategy* (March, 1994), reprinted in 20 POPULATION & DEV. REV. 483 (1994).

83. *Id.* at 484.

84. *Id.* at 485.

85. *Id.* at 486-87. Of course, institutional change is slow. For a description of USAID's instrumental use of health services to promote population control, see Soheir A. Morsy, *Deadly Reproduction among Egyptian Women: Maternal Mortality and the Medicalization of Population Control*, in CONCEIVING THE NEW WORLD ORDER: THE GLOBAL POLITICS OF REPRODUCTION 162, 163 (Faye D. Ginsburg & Rayna Rapp eds., 1995).

levels. Women's organizations from both the North and South engaged in an intense international lobbying effort to include their concerns in the final draft of the Cairo Conference Program of Action.⁸⁶ At the same time that Wirth was announcing the U.S. position, feminists at Prepcom II demanded the inclusion of empowerment language within the Program of Action. The debate at Prepcom II resulted in the addition of two new chapters, "Gender Equality and the Empowerment of Women" and "Reproductive Rights, Reproductive Health, and Family Planning."⁸⁷ Prepcom III prompted the further development of a feminist agenda and the incorporation of such issues as development, migration, and the needs of the age groups outside the ordinary range of population policies.⁸⁸ The Cairo Conference brought together more than 10,000 participants from 1500 organizations, with more than 150 countries represented.⁸⁹

The official document of the Cairo Conference, the Program of Action, opens with a recitation of the reasons why action needs to be taken on population issues, such as rapid population growth, increasing world poverty, and accelerating environmental decline.⁹⁰ The Preamble also points out that the implementation of the Program of Action is the responsibility of individual nations, a theme to which the document returns in Chapter II on Principles.⁹¹

Chapters IV-VIII represent the core of the Program of Action. Chapter IV, "Gender equality, equity, and empowerment of women," explains that "[t]he empowerment and autonomy of women and the improvement of their political, social, and economic and health status is a highly important end in itself," as well as "essential for the long-term success of population programmes."⁹² This approach reemphasizes the U.S. position that women's rights and family planning are mutually reinforcing.⁹³ The Program of Action declares that women's needs are important and that women and their concerns are not simply a means to an end. Chapter IV also outlines a variety of actions necessary

86. Sen, *supra* note 19, at 11, 15.

87. McIntosh & Finkle, *supra* note 22, at 238.

88. Sen, *supra* note 19, at 11.

89. Chen et al., *supra* note 20, at 6.

90. Program of Action, *supra* note 22, ¶¶ 1.2-1.3.

91. *Id.* ¶¶ 1.11, 1.15, and para. 2.1.

92. *Id.* ¶ 4.1.

93. See *supra* notes 78, 85 and accompanying text.

to empower women, support girls, and provide for male responsibilities.⁹⁴

Chapter V, "The family, its roles, rights, composition and structure," examines ways in which families can be protected. Most importantly, the Program of Action discusses the vast diversity of family structures that exist within different social and cultural systems.⁹⁵

Chapter VI outlines the structure and growth of population. This chapter documents those population trends which are expected to occur over the next century.⁹⁶ The Program of Action then sets forth its recommendation regarding "Fertility, mortality and population growth rates" in Paragraph 6.4:

Countries should give greater attention to the importance of population trends for development. Countries that have not completed their demographic transition should take effective steps in this regard within the context of their social and economic development and with full respect of human rights. Countries that have concluded the demographic transition should take necessary steps to optimize their demographic trends within the context of their social and economic development. These steps include economic development and poverty alleviation, especially in rural areas, improvement of women's status, ensuring of universal access to quality primary education and primary health care, including reproductive health and family-planning services, and educational strategies regarding responsible parenthood and sexual education.⁹⁷

This paragraph clearly indicates the shift of focus that occurred at Cairo. Paragraph 6.4 employs some of the weakest language in the document to support population control policies.⁹⁸ The weakness of the population control message in the Program of Action accentuates the emerging dominance of feminist concerns.

94. Program of Action, *supra* note 22, ¶¶ 4.4-4.29.

95. *Id.* ¶ 5.1.

96. *Id.* ¶ 6.1.

97. *Id.* ¶ 6.4.

98. Compare *id.* ¶ 4.18 ("[A]ll countries are urged to ensure the widest and earliest possible access for girls and women to secondary and higher levels of education.") and *id.* ¶ 9.7 ("Governments should strengthen the capacity for land management, including urban planning, at all levels . . .") with *id.* ¶ 6.4 ("Countries should give greater attention to the importance of population trends for development."). For an example of an argument that this language is too weak, see Charles Westoff, *International Population Policy*, Soc'y, May/June 1995, at 11, 11.

Chapter VII addresses the goals of "[r]eproductive rights and reproductive health." Part A sets forth a broad range of actions designed to improve the policymaking aspects of population policies, such as including women in decisionmaking, increasing community participation, and providing a broader range of options for women.⁹⁹ Other sections describe the roles of family planning, human sexuality and gender relations, and prevention of sexually transmitted diseases.¹⁰⁰ Chapter VIII stresses health care for women and children, particularly in the childbirth context.¹⁰¹ The strength of the feminist perspective especially influenced the drafting of paragraph 8.25, which included the first mention in a UN document that abortion could be legal and safe.¹⁰² Other chapters deal with population distribution within countries, migration, education, technology, and implementation of the recommendations.¹⁰³

The Cairo Program of Action changed the meaning of international population policy. In response to the Cairo Conference, the international community has demonstrated that it is willing to view population problems of developing nations in terms of quality of life objectives, rather than demographic quotas. In developing nations, reproductive rights and health directly affect women's quality of life.¹⁰⁴ Standing alone, however, the Program of Action is just a piece of paper with no legal effect.¹⁰⁵ The leaders of the new paradigm must convince others in the population establishment to take the goals of Cairo seriously. Shortly before the Cairo Conference, a population researcher in Cairo wrote:

On one side, there is the population establishment, that has stood strongly in support of family planning policy, beginning to change the terminology of its discourse to incorporate the concepts of health and reproductive health. We find, however,

99. Program of Action, *supra* note 22, ¶¶ 7.7, 7.9-7.10.

100. *Id.* ¶¶ 7.12-7.48.

101. *Id.* ¶¶ 8.1-8.27.

102. *Id.* ¶ 8.25 ("In circumstances where abortion is not against the law, such abortion should be safe."); McIntosh & Finkle, *supra* note 22, at 249.

103. See Program of Action, *supra* note 22, at ch. IX ("Population Distribution, Urbanization and Migration"), ch. X ("International Migration"), ch. XI ("Population, Development, and Education"), ch. XII ("Technology, Research, and Development"), ch. XIII ("National Action"), ch. XIV ("International Cooperation"), ch. XV ("Partnership with the Non-Governmental Sector"), & ch. XVI ("Follow-up to the Conference").

104. Cf. Dixon-Mueller, *supra* note 36, at 144.

105. McIntosh & Finkle, *supra* note 22, at 225.

that such changes generally remain cursory while in substance the population establishment stays strongly wedded to the traditional concerns of family planning programmes focusing its attention on number of acceptors, prevalence of use and, now, with the new concept of unmet demand for contraception.¹⁰⁶

The next step for the international community is to implement the goals and policies set forth in the Program of Action. Implementation measures that advocate the use of such methods as the Norplant contraceptive, however, have no place in the new paradigm of feminist population policy.

III. THE FEMINIST CRITIQUE OF NORPLANT

The population control agenda of many population planners has distorted the provision of family planning services to the developing world and steered family planning away from serving women's needs.¹⁰⁷ The population control philosophy treats women as if they were reproductive machines, instead of human beings with individual desires and needs.¹⁰⁸ The continuance of the population control ideology remains a critical factor in the support for such methods as the contraceptive implant Norplant. Norplant is a contraceptive consisting of six matchstick-sized rods that are surgically implanted in a woman's arm using a local anesthetic.¹⁰⁹ The rods slowly release low levels of the synthetic progestin levonorgestrel, which inhibits ovulation and thickens cervical mucus.¹¹⁰ Although versions with a shorter duration are being developed,¹¹¹ Norplant renders a woman infertile for five years, or until the implant is removed.¹¹²

106. Huda Zarayk et al., *Rethinking Family Planning Policy in the Light of Reproductive Health Research*, 141 INT'L SOC. SCI. J. 424 (1994).

107. *Id.*; see also HARTMANN, *supra* note 13, at 37-38 (explaining that family planning has been inextricably tied to population control goals); Dixon-Mueller & Germain, *supra* note 15, at 214 (charging that some family planning programs treat women as instruments of population control); cf. *supra* part I (explaining the evolution of family planning policy).

108. Nirmala Sathe, *Women's Health Is Women's Concern*, in 2 THIRD WORLD/SECOND SEX 233, 234 (Miranda Davies ed., 1987); see also MOFFETT, *supra* note 3, at 189-90 (pointing out that the emphasis on fertility control leads to treating women as merely contraceptive acceptors); Madeline Henley, *The Creation and Perpetuation of the Mother/Body Myth: Judicial and Legislative Enlistment of Norplant*, 41 BUFF. L. REV. 703, 711 (explaining that judges and legislators view women as functions of their reproductive capacity).

109. Albert G. Thomas & Stephanie M. LeMelle, *The Norplant System: Where Are We in 1995?*, 40 J. FAM. PRACTICE 125, 130 (1995).

110. *Id.*

111. George F. Brown, *Long-Acting Contraceptives: Rationale, Current Development, and*

The influence of the population control ideology was still present at the Cairo Conference although it was not reflected in the Program of Action. The U.S. manufacturer of Norplant, Wyeth-Ayerst, was one of the sponsors of the Cairo Conference.¹¹³ At the Conference, Norplant was considered a promising new contraceptive.¹¹⁴ The Conference praised countries with strong Norplant programs, such as Bangladesh and Indonesia, and identified them as models for the developing world.¹¹⁵

An international emphasis on Norplant translates into the actual implantation of Norplant into women's bodies. Birth control clinics often offer only one or two long-term methods despite the claim that they provide a variety of contraceptive options.¹¹⁶ UNFPA does not contend that Norplant is the ideal solution to population problems; rather, it asserts that women should be able to choose from a range of contraceptive options.¹¹⁷ However, UNFPA's rhetoric is sometimes empty.¹¹⁸ In reality the clinics frequently deny women the choice between Norplant and other contraceptives. For example, the only birth control choices offered to women through a 1988-90 USAID population program in Peru were the contraceptive Norplant and sterilization.¹¹⁹

The endorsement and use of Norplant in the developing world reveals the serious flaws of a population control agenda and its underlying disrespect for women's rights and safety. This section will critique three elements of Norplant use: the lack of women's control over their reproduction, the drive for effective fertility control at the expense of health and safety, and government coercion of women.

Ethical Implications, HASTINGS CENTER REP., Jan.-Feb. 1995, at S13 (Special Supplement on Long-Acting Contraception: Moral Choices, Policy Dilemmas).

112. Thomas & LeMelle, *supra* note 109, at 130.

113. John M. Waller, *Bella's Babies*, AM. SPECTATOR, April 1995. In fact, the Wyeth-Ayerst logo appeared on the nametags of the Cairo delegates. *Id.*

114. *Cairo Conference*, *supra* note 23, at 10.

115. Betsy Hartmann, *Population: Bangladesh Is No Model*, INT'L HERALD TRIB., Sept. 30, 1994, available in LEXIS, NEWS Library, CURNWS File; *When 'Voluntary' Isn't*, ROCKY MTN. NEWS, Sept. 15, 1994, at 54A; see KABEER, *supra* note 56, at 195 ("[C]oercive measures are brought to bear on targeted populations in ... hidden ways: through the highly selective promotion of contraceptive technology, through the use of incentives and disincentives, or through the selective dissemination of particular methods.").

116. HARTMANN, *supra* note 13, at 64-65.

117. Mac Van Dinther, *Population: Drug Implant a Controversial Over-Population Remedy*, Inter Press Service, Nov. 8, 1989, available in LEXIS, NEWS Library, ARCNEWS File.

118. *Id.* (citing Sumati Nair, an Indian women's rights activist).

119. *Id.*

A. *Women's Control of Reproduction*

Many Westerners, particularly Americans, desire quick, technical solutions to complex problems.¹²⁰ When evaluating the provision of family planning services, however, the question should not be the effectiveness of the technology, but whether the chosen form of fertility control empowers those women who use it.¹²¹ Norplant is a type of contraception that strips women of control.¹²² Its use can be appropriate for women in developing nations only if those women make a fully informed choice to use Norplant and have access to removal facilities.¹²³

Many contraceptive methods are user-controlled. Male or female users must insert or fit barrier method contraceptives such as condoms (male or female), diaphragms, and cervical caps before they are effective.¹²⁴ Likewise, users must take oral contraceptives daily in order to prevent conception. The advantage of barrier or oral contraceptives is also the disadvantage, because with freedom comes responsibility. Barrier methods and oral contraceptives require constant maintenance or reapplication.¹²⁵ Norplant, as well as other long-term methods, such as intra-uterine devices (IUDs), Depo-Provera, or the newly developed contraceptive vaccine, eliminate the user's day-to-day control over fertility.¹²⁶ When using Norplant, women cannot control their fertility for five years, the life of the implant, or until the implants are removed.¹²⁷ In the words of one Brazilian feminist, "[w]hen a woman uses Norplant, she is [i]n the hands . . . of the provider.

120. PATRICIA STAMP, *TECHNOLOGY, GENDER, AND POWER IN AFRICA* 51 (1993); Tony Lang, *Best Birth Control Is Education*, CINCINNATI ENQUIRER, Aug. 31, 1994, at A8.

121. *Searching For Solutions—The Problem with Norplant*, *All Things Considered* (National Public Radio, Aug. 22, 1994) (Transcript # 1582-6), available in LEXIS, NEWS Library, CURNWS File [hereinafter *Searching for Solutions*] (quoting Joan Dunlap, President of the International Women's Health Coalition).

122. Tracy Ballard, *The Norplant Condition: One Step Forward or Two Steps Back?*, 16 HARV. WOMEN'S L.J. 139, 144 (1993).

123. See Ellen H. Moskowitz et al., *Long-Acting Contraceptives: Ethical Guidance for Policymakers and Health Care Providers*, HASTINGS CENTER REP., Jan.-Feb. 1995, at S1, S6 (Special Supplement on Long-Acting Contraception: Moral Choices, Policy Dilemmas).

124. See BETSY HARTMANN, *REPRODUCTIVE RIGHTS AND WRONGS: THE GLOBAL POLITICS OF POPULATION CONTROL AND CONTRACEPTIVE CHOICE* 32 (1st ed. 1987).

125. See *id.*

126. See C. Alison McIntosh & Jason L. Finkle, *The Politics of Family Planning: Issues for the Future*, in *THE NEW POLITICS OF POPULATION: CONFLICT AND CONSENSUS IN FAMILY PLANNING*, *supra* note 5, at 265, 269.

127. THE SCOTSMAN, Sept. 6, 1994, available in LEXIS, NEWS Library, CURNWS File (citing UBINIG, a Bangladeshi women's group).

She is quite defenseless. This is a method over which she has no control at all."¹²⁸

The philosophy of population control, which has dominated family planning services for the past thirty years, has led to a disproportionate emphasis on long-term birth control, like Norplant, over user-controlled contraceptives, like barrier methods or natural family planning.¹²⁹ Population planners who hope to curtail birth rates favor long-term contraceptives because, unlike barrier and natural methods, such contraceptives remain under the provider's control and are thus more reliable.¹³⁰ A population planner who has a quota is more concerned with the number of women who accept Norplant than the quality of life of those who do.¹³¹

Limited user control is preferable in some contexts.¹³² Norplant and other similar contraception do not require maintenance and daily use; nor do they cause inconvenience during sex or struggle with a sexual partner.¹³³ Before a woman takes on such a long-term commitment, however, she must have the chance to make an informed decision that includes patient counseling, a proper examination, and detailed information about the risks.¹³⁴ For instance, Norplant is contraindicated for women with heart problems, high cholesterol, high blood pressure, diabetes, acute liver disease, breast cancer, or a history of blood clots.¹³⁵ The fact that comprehensive health care and counseling must accompany the use of Norplant makes it an inappropriate contraceptive for much of the developing world. Counseling, screening, and follow-up facilities are inadequate in most developing nations.¹³⁶ The scarcity of physicians and good medical care makes developing countries particularly susceptible to the abuses associated with Norplant.¹³⁷ Moreover, the likelihood that family planning workers

128. *Searching for Solutions*, *supra* note 121 (quoting Jacqueline Pecandi, Brazilian women's rights activist).

129. HARTMANN, *supra* note 13, at 179.

130. See Sylvia Chant, *Gender and Reproduction in Urban Areas*, in *WOMEN IN THE THIRD WORLD: GENDER ISSUES IN RURAL AND URBAN AREAS* 188, 197 (Lynne Brydon & Sylvia Chant eds., 1989).

131. Reena Shah Stamets, *Women's Bodies, Women's Rights*, ST. PETERSBURG TIMES, Sept. 25, 1994, at 1D.

132. See Ballard, *supra* note 122, at 142-43.

133. See *id.* at 142.

134. Stacey L. Arthur, *The Norplant Prescription: Birth Control, Woman Control, or Crime Control?*, 40 UCLA L. REV. 1, 94-95 (1992).

135. Ballard, *supra* note 122, at 142-43.

136. DIXON-MUELLER, *supra* note 1, at 209.

137. Ballard, *supra* note 122, at 144.

may hide side effects of long-term methods from women in order to meet their contraceptive acceptance quota is great.¹³⁸

Finally, in order for Norplant to adequately serve women's needs, facilities for removal must be available.¹³⁹ The surgery required for Norplant removal makes it inappropriate for women living in almost all rural areas of developing nations.¹⁴⁰ Given the general lack of access to health care in these areas, many women find it difficult to have the Norplant removed.¹⁴¹ In some nations Norplant providers do not even keep track of women who have received Norplant so that the implants can be properly removed after five years.¹⁴² The only control that a woman using Norplant retains over her fertility is the ability to remove the implant. If a woman cannot remove the implant, however, she is powerless. Unfortunately, "Norplant's lack of user control enables it to be used to remove as much or more of a woman's control over her reproduction as it gives."¹⁴³

B. Valuing Fertility Control over Health

There is a great need for safe and accessible contraception in the developing world.¹⁴⁴ As in so many other spheres, however, women have no role in the production and distribution of reproductive technology.¹⁴⁵ The goals of population control and profit have influenced the research and development of contraceptive technology more so than women's needs for safe and affordable birth control.¹⁴⁶ Emphasis on fertility reduction has compelled researchers to concentrate on long-term contraception and to neglect the development and usage of other forms of contraception that allow women to exercise more control over their reproductive lives.¹⁴⁷

138. HARTMANN, *supra* note 13, at 65.

139. Moskowitz et al., *supra* note 123, at S6.

140. HARTMANN, *supra* note 13, at 209.

141. *Id.*

142. *See infra* note 238 and accompanying text.

143. Henley, *supra* note 108, at 771.

144. JULIA CLEVES MOSSE, *HALF THE WORLD, HALF A CHANCE: AN INTRODUCTION TO GENDER AND DEVELOPMENT* 139 (1993).

145. *See* STAMP, *supra* note 120, at 46-47.

146. Judy Wajcman, *Delivered into Men's Hands? The Social Construction of Reproductive Technology*, in *POWER AND DECISION: THE SOCIAL CONTROL OF REPRODUCTION* 153, 170 (Gita Sen & Rachel C. Snow eds., 1994); *see* KABEER, *supra* note 56, at 208 ("In general, the population establishment have [sic] used efficacy of method as the main criterion guiding research and dissemination ...").

147. *See* HARTMANN, *supra* note 13, at 179-80; *see* Carmen Barroso & Sonia Correa,

The contraceptive research establishment has deemphasized barrier and morning-after methods because they are less effective in serving the long-term goals of population control.¹⁴⁸ The male bias that pervades medical, particularly contraceptive, research compounds the effects of population control priorities on birth control research.¹⁴⁹ The overwhelmingly male field focuses on birth control for women because it perceives contraception as a women's concern.¹⁵⁰ Men prefer to require that women take the pills, endure the injections, and receive the implants.¹⁵¹ The scientific community has developed most current contraceptive technology, including Norplant, within this technological framework.¹⁵²

Sexism and population control objectives have engendered research biases that have a devastating effect on women. The international establishment targets the developing world for the introduction of inferior long-term contraceptives such as Depo-Provera and the Dalkon shield.¹⁵³ Researchers and scientists often test birth control technology in developing nations before introducing it into the West.¹⁵⁴ Women have been deliberately exposed to unsafe reproductive technologies both in the West and in developing nations.¹⁵⁵ In pursuing the goal of reducing birth rates as quickly as possible, the contraceptive industry has neglected health and safety concerns.¹⁵⁶

Public Servants, Professionals, and Feminists: The Politics of Contraceptive Research in Brazil, in *CONCEIVING THE NEW WORLD ORDER: THE GLOBAL POLITICS OF REPRODUCTION*, *supra* note 85, at 292, 300.

148. Wajcman, *supra* note 146, at 170.

149. See Kerith Cohen, Note, *Truth & Beauty, Deception & Disfigurement: A Feminist Analysis of Breast Implant Litigation*, 1 WM. & MARY J. WOMEN & L. 149, 153-55 (1994).

150. HARTMANN, *supra* note 13, at 179; see Wajcman, *supra* note 146, at 170 ("[M]ost of the research into medical contraceptive methods is done by men on techniques for use by women.").

151. Cohen, *supra* note 149, at 155 (citing Joan E. Steinman, *Women, Medical Care, and Mass Tort Litigation*, 68 CHI-KENT L. REV. 409, 412 (1992)).

152. CORREA, *supra* note 15, at 6.

153. Pamela Bolton et al., *Health Technologies and Women of the Third World*, in 1 THE WOMEN AND INTERNATIONAL DEVELOPMENT ANNUAL 57, 59 (Rita S. Gallin et al. eds., 1989); Chant, *supra* note 130, at 196; KABEER, *supra* note 56, at 208-09. Norplant was promoted in developing nations before it was approved in the United States. Chant, *supra* note 130, at 196.

154. Cheryl Johnson-Odim, *Common Themes, Different Contexts: Third World Women and Feminism*, in THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM 323 (Chandra Talpade Mohanty et al. eds., 1991); Rachel Snow, *Reproductive Technologies: For Whom, and to What End*, in POWER AND DECISION: THE SOCIAL CONTROL OF REPRODUCTION, *supra* note 146, at 147.

155. Cohen, *supra* note 149, at 155; see Bolton et. al., *supra* note 153, at 58.

156. See HARTMANN, *supra* note 13, at 180-84.

Contraceptive research organizations have allocated less than ten percent of their budgets for questions of safety.¹⁵⁷ Given the historically poor record in the area of contraceptive research, it is not surprising that numerous women have complained about Norplant. In a U.S. study conducted one year after implantation, seventy-eight percent of the women reported side effects, including seventy percent with bleeding pattern changes.¹⁵⁸ Other common side effects are nausea, dizziness, and nervousness.¹⁵⁹ In the United States, the Judicial Panel on Multidistrict Litigation recently consolidated twenty federal lawsuits against Norplant's American manufacturer, Wyeth-Ayerst, into a class action in the Eastern District of Texas.¹⁶⁰ The Norplant cases allege side effects associated with Norplant, such as enlargement of the ovaries or fallopian tubes, dermatitis, acne, migration of the device, appetite changes, weight gain, blood vessel abnormalities, mastalgia, hirsutism or alopecia, skin discoloration, infection, numbness or pain at site, arm, or hand, and nerve damage.¹⁶¹

The most serious complaints about Norplant involve removal. According to one complaint, up to four surgeries may be required to remove implants that migrate or become covered in scar tissue.¹⁶² At the Cairo Conference, a Bangladeshi woman showed her arm, which had been rendered useless after Norplant removal.¹⁶³ Infection can occur with even the best health care;

157. *Id.* at 180.

158. Margaret L. Frank et al., *One-Year Experience with Subdermal Contraceptive Implants in the United States*, 48 *CONTRACEPTION* 229, 240 (1993).

159. Elaine Porterfield, 'Hassle,' *Side Effects Prompt Suit Over Norplant*, *NEWS TRIB.*, Jan. 27, 1995, at B1.

160. *Norplant: MDL Panel Consolidates Federal Lawsuits for Proceedings in Eastern District of Texas*, *Prod. Liab. Daily (BNA)* (Jan. 9, 1995), available in Westlaw, BNA-PLD database (discussing *In re Norplant Contraceptive Product Liability Litigation*); see, e.g., *Norplant: Recipients File Federal Class Action in Minnesota Over Severe Side Effects*, *Prod. Liab. Daily (BNA)* (Sept. 29, 1994), available in Westlaw, BNA-PLD database (discussing *Gall v. Wyeth-Ayerst Laboratories, Inc.*); *Norplant: California Women File Federal Class Action Over Contraceptive's Alleged Side Effects*, *Prod. Liab. Daily (BNA)* (Sept. 21, 1994), available in Westlaw, BNA-PLD database [hereinafter *California Women*] (discussing *Meeter v. Wyeth-Ayerst Laboratories, Inc.*); *Norplant: Manufacturer Failed to Warn of Side Effects, According to Putative Federal Class Action*, *Prod. Liab. Daily (BNA)* (Aug. 18, 1994), available in Westlaw, BNA-PLD database (discussing *Doe v. Wyeth-Ayerst Laboratories, Inc.*); *Norplant: Florida, Illinois Class Complaints Filed, Allege Faulty Warning, Training on Removal*, *Prod. Liab. Daily (BNA)* (July 26, 1994), available in Westlaw, BNA-PLD database [hereinafter *Class Complaints Filed*] (discussing *Smith v. Wyeth-Ayerst Laboratories, Inc.*).

161. *California Women*, *supra* note 160.

162. *Class Complaints Filed*, *supra* note 160.

163. April Lindgren, *Rich Nations Must Tread Softly*, *OTTAWA CITIZEN*, Sept. 4, 1994, at A1.

therefore, removal infections are likely to be much more widespread and dangerous in developing nations where health care services are of a substantially lower quality.¹⁶⁴

The outlook for safer and more convenient contraception is mixed. Norplant was the first new contraceptive approved in the United States in thirty years.¹⁶⁵ Contraceptive research has been extremely slow,¹⁶⁶ and only one U.S. company is presently conducting contraceptive research.¹⁶⁷ Some advancement is noticeable, however. The scientific community has introduced a new barrier method, the female condom, and also will soon make available a stronger plastic condom.¹⁶⁸ RU 486 is currently distributed in four countries and could be used as a once-a-month pill.¹⁶⁹ Also under development are contraceptive vaginal rings that would release hormones that remain under the control of the user and are easier to fit than diaphragms.¹⁷⁰ Finally, researchers and scientists are investigating the possible use of microbicides and contraceptive vaccines.¹⁷¹ As promising as some new methods may appear, scientific advancement does not exist in a vacuum. Social prejudices will continue to thwart true advancement in the reproductive area. Unfortunately, "[a]s long as contraceptive technology is perceived . . . as a technical fix for the population problem[,] contraceptive research is likely to be misdirected and misapplied."¹⁷²

C. Governmental Abuse of Norplant

Family planning programs that focus on population control have a long history of abusing women's rights.¹⁷³ Population policies driven by contraceptive acceptor quotas, rather than by a philosophy that seeks to give women control over their repro-

164. HARTMANN, *supra* note 13, at 209.

165. Anne-Marie Funk, Note, *Norplant Use in Conjunction with the Welfare System*, 2 S. CAL. INTERDISCIPLINARY L.J. 147, 148 (1993).

166. *Hearing*, *supra* note 74, at 10 (statement of Dr. Samuel Preston, Professor of Demography at University of Pennsylvania).

167. *Whatever Happened to the Contraceptive Revolution*, WASH. POST, Dec. 13, 1994, at Z12, HE.

168. Brown, *supra* note 111, at S14.

169. *Id.*

170. *Id.*

171. *Id.* at S13-S14. For a feminist critique of contraceptive vaccines, see Judith Richter, *Beyond Control: About Antifertility "Vaccines," Pregnancy Epidemics, and Abuse*, in POWER AND DECISION: THE SOCIAL CONTROL OF REPRODUCTION, *supra* note 146, at 205.

172. HARTMANN, *supra* note 124, at 267.

173. Lindgren, *supra* note 163, at A1.

ductive lives, have resulted in systematic violations of women's bodily integrity. Between 1.5 and 2 million women use Norplant worldwide, with most users in the United States and Indonesia. In developing countries, the public sector is the exclusive provider of Norplant.¹⁷⁴ Norplant can take virtually all control over reproduction from women,¹⁷⁵ and "it is this lack of control that makes Norplant an attractive coercive device."¹⁷⁶ Several nations already have been involved in abuse of the Norplant device.¹⁷⁷ Given the growing concern about overpopulation and ecological scarcity, nations are likely to give increased attention to long-term contraceptives like Norplant.¹⁷⁸ This section will examine the impact of Norplant policies adopted in Bangladesh, the United States, and Indonesia on women in those countries. This examination, however, transcends geographical borders. Feminist population policy critic Rachel Snow proffers that, "[w]hile the nature of abuse may differ in Indonesia and Atlanta, and vary by race and class, the stories of such abuse are uniformly sobering."¹⁷⁹

1. Bangladesh

Bangladesh considers population control to be a "number one priority" and has had vigorous population control programs since the early 1970s.¹⁸⁰ Backed by the World Bank and USAID, Bangladesh instituted a heavy-handed campaign that has focused on long-term population control and has overlooked user-controlled methods and basic health care.¹⁸¹ In 1989 Bangladesh incorporated Norplant into its birth control policy and began to distribute the implant through its government-funded clinics.¹⁸² The Cairo Conference promoted Bangladesh as a population model, despite the

174. Sonia Correa, *Norplant in the Nineties: Realities, Dilemmas, Missing Pieces*, in *POWER AND DECISION: THE SOCIAL CONTROL OF REPRODUCTION*, *supra* note 146, at 288, 290.

175. Albiston, *supra* note 25, at 11; *see supra* part III.A.

176. Albiston, *supra* note 25, at 11; *see also* Ballard, *supra* note 122, at 144 ("The loss of user control associated with the Norplant implant holds some worrisome possibilities for abuse on a systemic level.").

177. Henley, *supra* note 108, at 763 ("Lack of user control has enabled Norplant to be abused in some countries, usually in the name of population control."); *see infra* parts III.A., III.B., III.C.

178. *See* David S. Coale, Note, *Norplant Bonuses and the Unconstitutional Conditions Doctrine*, 71 TEX. L. REV. 189, 197-98 (1992).

179. Snow, *supra* note 154, at 148.

180. HARTMANN, *supra* note 13, at 224-26.

181. Hartmann, *supra* note 115.

182. Tabibul Islam, *Bangladesh: Row Over Controversial Contraceptive*, Inter Press Service, June 17, 1989, available in LEXIS, NEWS Library, ARCNEWS File.

fact that its programs are coercive and neglect women's health.¹⁸³

According to the World Development Organization, a London charity, Bangladeshi population programs often coerce women into making certain reproductive choices.¹⁸⁴ Bangladeshi programs that utilize incentives and disincentives are coercive because poor women face a choice between accepting birth control or forfeiting government-sponsored economic benefits that they need for their survival.¹⁸⁵ For example, Bangladeshis usually do not have access to basic health care; however, the government gives women preferential treatment in health care programs if they accept birth control.¹⁸⁶ Also, the government sometimes denies women access to agricultural cooperatives when they do not participate in a birth control program.¹⁸⁷ The Bangladeshi women's group UBINIG reports that clinic workers have forced Bangladeshi women to use Norplant.¹⁸⁸ The clinic workers failed to offer alternative forms of birth control and did not warn the women of the side effects associated with Norplant.¹⁸⁹ This policy encourages government abuse when it elevates the desire for reduced birth rates above health concerns. In order to meet quotas, family planning workers feel compelled to offer only the most long-term contraceptives and hide the side effects from women.¹⁹⁰

UBINIG claims that the clinics in many instances have refused to remove the implants from women who experienced side effects or from those who wanted to have more children.¹⁹¹ One Bangladeshi Norplant removal study showed that one year after implantation, thirty-three percent of those studied had requested removal of Norplant.¹⁹² Of those with more than one request for removal of the implant, health officials advised sixty-one percent to retain the implant and to allow doctors to treat the side effects.¹⁹³ Officials told the others that doctors were too busy to

183. Hartmann, *supra* note 115.

184. THE SCOTSMAN, *supra* note 127.

185. See Karin E. Wilinski, Note, *Involuntary Contraceptive Measures: Controlling Women at the Expense of Human Rights*, 10 B.U. INT'L L.J. 351, 373 (1992).

186. THE SCOTSMAN, *supra* note 127.

187. Lindgren, *supra* note 163, at A1.

188. THE SCOTSMAN, *supra* note 127.

189. *Id.* For a description of some of the side effects of Norplant, see *supra* notes 158-161 and accompanying text.

190. HARTMANN, *supra* note 13, at 62-63.

191. THE SCOTSMAN, *supra* note 127.

192. Karen Hardee et al., *Contraceptive Implant Users and Their Access to Removal Services in Bangladesh*, 20 INT'L FAM. PLAN. PERSP. 59, 65 (1994).

193. *Id.* at 66.

remove the implants or that it was medically impossible to remove the implants before the five year duration had expired.¹⁹⁴ These women thus lost all control over their reproduction. In addition to not being able to personally regulate their fertility, they were unable to remove the birth control device through the government clinic. By denying them access to removal services, the government coerced these women into the continued use of birth control that they no longer wanted.¹⁹⁵

2. *The United States*

In the United States, Norplant has attracted a great deal of attention because judges and legislators have attempted to use Norplant as an expedient solution to social problems.¹⁹⁶ Two days after Norplant's approval by the Food and Drug Administration (FDA), the *Philadelphia Inquirer* printed an editorial advocating the implantation of Norplant in African American women on welfare as a way to reduce the welfare rolls.¹⁹⁷ The newspaper quickly apologized, but the debate had begun.¹⁹⁸ In the United States the abuse of Norplant has taken two main forms: Norplant use as a condition of probation and financial incentives and disincentives to use Norplant.¹⁹⁹

The judiciary has quickly recognized ways in which Norplant could be used to control women's behavior.²⁰⁰ Judge Howard Broadman made headlines across the United States when he ordered Darlene Johnson, an African American woman, to use Norplant as a condition of her probation for a child abuse conviction.²⁰¹ Johnson violated other probation conditions before her appeal; therefore, the court of appeals did not review her sen-

194. *Id.*

195. See Wilinski, *supra* note 185, at 372.

196. Douglas A. Berman, *The Rights and Wrongs of Norplant Offers*, 3 S. CAL. REV. L. & WOMEN'S STUD. 1, 1 (1993).

197. *Poverty and Norplant: Can Contraception Reduce the Underclass?*, PHILA. INQUIRER, Dec. 12, 1990, at A18.

198. Tamar Lewin, *Implanted Birth Control Device Renews Debate over Forced Contraception*, N.Y. TIMES, Jan. 10, 1991 at A20; *Newspaper Apologizes*, NEWSDAY, Dec. 23, 1990, at 14.

199. See Henley, *supra* note 108, at 731-32.

200. See *id.* at 734-36.

201. See Reporter's Transcript of Judgment Proceedings at 10, *People v. Johnson* (No. 29390) (Cal. Super. Ct. 1991).

tence.²⁰² Despite the fact that the use of Norplant as a condition of probation is widely condemned as racist²⁰³ and sexist,²⁰⁴ as well as unconstitutional,²⁰⁵ judges have continued to offer such a condition as an alternative to prison.²⁰⁶ In fact judges have

202. *People v. Johnson*, No. F015316, 1992 WL 685375 (Cal. Ct. App. Apr. 13, 1992); see also Arthur, *supra* note 134, at 18-19.

203. See Albiston, *supra* note 25, at 11 (arguing that Norplant probation conditions target women of color); see also Ballard, *supra* note 122, at 159-60 (arguing that Norplant probation conditions constitute a racial equal protection violation); Barbara L. Bernier, *Class, Race, and Poverty: Medical Technologies and Socio-Political Choices*, 11 HARV. BLACKLETTER J. 115, 137 (1994) (arguing that Norplant probation conditions have a disproportionate impact on women of color); Henley, *supra* note 108, at 703, 710, 742 (arguing that Norplant probation conditions play into the myth of the African American woman as sexually promiscuous and as a "bad mother"); Kristyn M. Walker, Note, *Judicial Control of Reproductive Freedom: The Use of Norplant as a Condition of Probation*, 78 IOWA L.R. 779, 809-10 (1993) (arguing that Norplant probation conditions are racially motivated).

204. Julie Mertus & Simon Heller, *Norplant Meets the New Eugenicists: The Impermissibility of Coerced Contraception*, 11 ST. LOUIS U. PUB. L. REV. 359, 370-71 (1992) (arguing that the sexist bias of Norplant orders is demonstrated by the fact that only women are targeted); Hilde Lindemann Nelson & James Lindemann Nelson, *Feminism, Social Policy, and Long-Acting Contraception*, 25 HASTINGS CENTER REP., Jan.-Feb. 1995, at S30, S31 (Special Supplement on Long-Acting Contraception: Moral Choices, Policy Dilemmas) (arguing that Norplant orders aggregate child bearing with responsibility for child rearing); Erika T. Blum, Note, *When Terminating Parental Rights Is Not Enough: A New Look at Compulsory Sterilization*, 28 GA. L. REV. 977, 1009, 1012-13 (1994) (arguing that Norplant orders deny equal protection because there is no male equivalent of Norplant); Wilinski, *supra* note 185, at 377-78 (arguing that Norplant orders violate the Convention on the Elimination of All Forms of Discrimination Against Women).

205. Arthur, *supra* note 134, at 86 (arguing that Norplant orders violate due process because the conditions are not definite, understandable, and possible to perform); Ballard, *supra* note 122, at 159-60 (arguing that Norplant orders represent a denial of equal protection on the basis of race, gender, and status); Mertus & Heller, *supra* note 204, at 369-70 (arguing that Norplant orders violate the right to medical decisionmaking); Melissa Burke, Note, *The Constitutionality of the Use of the Norplant Contraceptive Device as a Condition of Probation*, 20 HASTINGS CONST. L.Q. 207, 233-34 (1992) (explaining that Norplant orders violate the right to procreative freedom); Janet F. Ginzberg, Note, *Compulsory Contraception as a Condition of Probation: The Use and Abuse of Norplant*, 58 BROOK. L. REV. 979, 1016 (1992) (arguing that Norplant orders violate the right to bodily integrity); Elyse R. Rosenblum, Recent Development, *The Irony of Norplant*, 1 TEX. J. WOMEN & L. 275, 277 (1992) (arguing that Norplant orders violate the right to control contraceptive use); Steven S. Spitz, Note, *The Norplant Debate: Birth Control or Woman Control?*, 25 COLUM. HUM. RTS. L. REV. 131, 168 (1993) (arguing that Norplant orders constitute a denial of equal protection because they only target women); Walker, *supra* note 203, at 807 (arguing that Norplant orders constitute cruel and unusual punishment). *Contra* Thomas E. Bartrum, Note, *Birth Control as a Condition of Probation—A New Weapon in the War Against Child Abuse*, 80 KY. L.J. 1037, 1050-51 (1991-92) (arguing that the state interest in protecting children outweighs the interest in procreative liberty); Toni D. Saunders, Comment, *Banning Motherhood: An Rx to Combat Child Abuse?*, 26 ST. MARY'S L.J. 203, 247 (1994) (arguing that the state interest in protecting the unborn overrides the right to bodily integrity); Denise E. Stich, Comment, *Alternative Sentencing or Reproductive Control: Should California Courts Use Norplant to Protect Future Children*

sentenced at least seven women to receive Norplant as a part of their probation.²⁰⁷ Norplant probation orders use the machinery of the state to coerce women into surrendering control over their reproductive lives.²⁰⁸

State legislators in the United States also have considered Norplant as a means to control women's behavior.²⁰⁹ Norplant has been the focus of at least twenty welfare reform bills in thirteen states.²¹⁰ A number of these unsuccessful bills would have required women, who receive Aid to Families with Dependent Children (AFDC) payments, to accept Norplant.²¹¹ Some bills, such as one introduced in Florida in 1993, provide bonus payments to those women receiving AFDC payments who use Norplant.²¹²

A few of these welfare reform bills have become law. In the state of Washington, a law provides that family planning services, including information on Norplant, must be given to mothers receiving maternity care assistance.²¹³ Tennessee goes further and mandates that the state give written information on Norplant to all people who receive public assistance.²¹⁴ As of November 1, 1995, women receiving AFDC in California will not receive more benefits for additional children unless the woman was using Norplant or other long-term birth control.²¹⁵ According to one commentator, "[t]he cultural stereotype of the female-headed

from *Child Abuse and Fetal Abuse?*, 33 SANTA CLARA L. REV. 1017, 1050 (1993) (arguing that Norplant orders are not unconstitutional for repeat offenders because less restrictive alternatives have been exhausted).

206. Moskowitz et al., *supra* note 123, at S2.

207. See *In re Lacey P.*, 433 S.E.2d 518 (W.Va. 1993); *People v. Smith*, No. 92-CF-761 (Circuit Ct. Feb. 1993); *People v. Garza*, No. 29794 (Cal. Super. Ct. 1991); *State v. Carlton*, No. CR90-1937 (Neb. County Ct. 1991); *People v. Johnson*, No. 29390 (Cal. Super. Ct. Jan. 2, 1991); John Makeig, *Surgical Deterrent: Mom Convicted of Child Abuse Picks Birth-Control Implant over Prison*, HOUS. CHRON., Mar. 6, 1992, at A1 (discussing the sentencing of Ida J. Tovar); *Judge Orders Woman to be Given Contraceptive*, UPI, Sept. 6, 1991, available in Lexis, NEWS library, ARCNWS file (discussing the sentencing of Cathy L. Knighten); see also Henley, *supra* note 108, at 735-41 (explaining the facts of several Norplant order cases).

208. Emily Campbell, *Birth Control as a Condition of Probation for Those Convicted of Child Abuse: A Psycholegal Discussion of Whether the Condition Prevents Future Child Abuse or Is a Violation of Liberty*, 28 GONZ. L. REV. 67, 101-02 (1992-93); Burke, *supra* note 205, at 233-34.

209. See Henley, *supra* note 108, at 749-52.

210. *Id.* at 731.

211. Moskowitz et al., *supra* note 123, at S2.

212. See Fla. S. 1886, 13th Leg., 1st Reg. Sess. (1993), available in LEXIS, Legis Library, STTRCK File.

213. WASH. REV. CODE § 74.09.800 (West Supp. 1994).

214. TENN. CODE ANN. § 71-5-133 (Michie 1995).

215. ANN. CAL. WELF. & INST. CODE § 11450.04 (West Supp. 1993-94).

household receiving public assistance has evolved from the image of the white widow to the image of the black welfare mother."²¹⁶ Playing on the myth of the "brood sow,"²¹⁷ the welfare Norplant proposals target women, especially African American women, as the source of society's problems.²¹⁸ Furthermore, these proposals violate women's constitutional rights by requiring that they forfeit reproductive control in order to receive economic assistance. It is unconstitutional to condition benefits on the surrender of constitutional rights.²¹⁹

3. Indonesia

Indonesia presents the most egregious examples of Norplant abuse. Indonesia, the world's fifth most populous nation, has been cited as a success story of population control by USAID, UNFPA, and other agencies.²²⁰ The 1.97% population growth rate, however, has come at the expense of women's reproductive rights.²²¹ According to one member of the Indonesian women's group "SP," "[a]lthough the [program] ostensibly underline [sic] the health conditions of the mother and child, [its] narrow emphasis on birth control targets overcomes the needs of women for complete information and health protection."²²²

216. Thomas Ross, *The Rhetoric of Poverty: Their Immorality, Our Helplessness*, 79 GEO. L.J. 1499, 1515 (1991).

217. Henley, *supra* note 108, at 752-53.

218. See *id.* at 752-58; see also Berman, *supra* note 196, at 6-7 (pointing out that financial incentives and mandatory Norplant proposals target poor, minority women); Jeanne L. Vance, Note, *Womb for Rent: Norplant and the Undoing of Poor Women*, 21 HASTINGS CONST. L.Q. 827, 832-33 (1994) (explaining that financial incentive proposals have inherently racial overtones).

219. Coale, *supra* note 178, at 204-06 (arguing that financial incentives violate the doctrine of unconstitutional conditions by requiring women to give up their rights to contraceptive choice, refusal of medical treatment, and free exercise); Vance, *supra* note 218, at 842 (arguing that financial incentives are unconstitutional because they penalize women for the exercise of constitutional rights); Wilinski, *supra* note 185, at 376 (arguing that conditioning welfare on Norplant use violates the right to procreation). *But cf.* John R. Hand, Special Project, *Buying Fertility: The Constitutionality of Welfare Bonuses for Welfare Mothers Who Submit to Norplant Insertion*, 46 VAND. L. REV. 715, 753 (1993) (arguing that the doctrine of unconstitutional conditions jurisprudence is so confused that it is almost impossible to predict whether financial incentives are unconstitutional).

220. Leah Makabenta, *Indonesia: Population Success Story Has Shady Side*, Inter Press Service, Nov. 5, 1992, available in LEXIS, NEWS library, ARCNWS file; *When 'Voluntary' Isn't*, *supra* note 115.

221. Makabenta, *supra* note 220.

222. *Id.* [second and fourth alterations in original] (quoting "Kris," a member of the SP).

A contraceptive program that involves both encouragement and coercion has been instrumental in implanting over one million Indonesian women with Norplant.²²³ The World Bank and UNFPA finance these efforts.²²⁴ In the city of Bogor, the contraceptive choice of government employees affects their payment schedules.²²⁵ Employees who use long-term birth control, such as Norplant or sterilization, receive their salary on time, while those who use oral contraceptives or barrier methods receive their salaries three days late.²²⁶ Employees who are not part of the contraceptive program at all will not get paid until a week later.²²⁷ Also, women cannot work on Indonesia's tea plantations unless they have a registration card confirming the fact that they have agreed to use the favored form of birth control,²²⁸ which is now Norplant.²²⁹

Since 1987 the Indonesian government has been conducting "Norplant safaris."²³⁰ During these safaris, population control staff descend on villages with troops and village leaders to recruit women for Norplant use.²³¹ One expert describes these campaigns, which reportedly have included threatening women at gunpoint, as "a very heavy form of persuasion."²³² The government gives the safari teams strict quotas as to how many women must accept Norplant²³³ and military and public health officials make it clear that the villagers will be punished if the women do not "voluntarily" meet these quotas.²³⁴

The indifference of the safari teams towards women's health needs only compounds the trauma that women endure during these safaris.²³⁵ The safari teams pressure women into accepting

223. Correa, *supra* note 174, at 290; Arthur Caplan, *The Norplant Safaris—Birth Control Implant Leads to Population Control by Governments*, SEATTLE TIMES, July 7, 1991, at A13; When 'Voluntary' Isn't, *supra* note 115.

224. THE SCOTSMAN, *supra* note 127.

225. Makabenta, *supra* note 220.

226. *See id.*

227. *Id.*

228. Dave Todd, *Walking Time Bombs*, TORONTO STAR, Dec. 28, 1991, at H10.

229. Makabenta, *supra* note 220.

230. Caplan, *supra* note 223, at A13; *see also* Nicholas Eberstadt, *What Is Population Policy?*, Soc'y, May/June 1995, at 26, 29.

231. Caplan, *supra* note 223, at A13; *see also* Makabenta, *supra* note 220 (describing the campaigns to threaten people into accepting contraceptives); Todd, *supra* note 228, at H10 (describing the safaris in Indonesia's remote regions).

232. Todd, *supra* note 228, at H10 (quoting Ines Smyth of Oxford University's Applied Social Studies and Social Research Department).

233. Caplan, *supra* note 223, at A13.

234. Todd, *supra* note 228, at H10.

235. *Id.*

Norplant without informing them of the risks associated with the contraceptive.²³⁶ Also, the safari workers do not ensure that the implanted women are not pregnant, which creates the risk of ectopic pregnancies.²³⁷ Likewise, no adequate program exists to keep track of women with implants or remove those implants when necessary,²³⁸ and the safaris take place in areas with poor communication, transport, and health infrastructures.²³⁹ Some groups have alleged that the Indonesian government has used long-term contraceptives as part of its genocidal campaign against East Timor.²⁴⁰ According to some reports, health officials inject Depo-Provera into schoolgirls who believe that they are being vaccinated.²⁴¹

Coercive policies aside, Norplant is an inappropriate contraceptive for most Indonesian women. Indonesia does not have a strong health infrastructure and cannot conduct the supervision and follow-up necessary for successful Norplant use.²⁴² Indonesia lacks the facilities required for the removal of the spent Norplant capsules.²⁴³ Additionally, many Indonesian women are subject to strict menstrual taboos.²⁴⁴ Norplant, which causes irregular bleeding for most of its users, "can play havoc with their personal and social lives."²⁴⁵ By adopting a policy of Norplant use, family planners have ignored the health and personal needs of those women who are forced to participate in such a program.

IV. CONCLUSION

For more than thirty years demographic goals have directed and dominated international population policy. The Cairo Confer-

236. Correa, *supra* note 174, at 295; Ballard, *supra* note 122, at 143; Caplan, *supra* note 223, at A13.

237. Caplan, *supra* note 223, at A13.

238. Correa, *supra* note 174, at 296; Todd, *supra* note 228, at H10.

239. Makabenta, *supra* note 220.

240. Correa, *supra* note 174, at 293; THE SCOTSMAN, *supra* note 127.

241. THE SCOTSMAN, *supra* note 127; Dave Todd, *Indonesia: Birth Control Program Threatens Thousands*, OTTAWA CITIZEN, Nov. 26, 1991, at A1 (citing Ines Smyth of Oxford University's Applied Social Studies and Social Research Department).

242. Correa, *supra* note 174, at 295; Makabenta, *supra* note 220. The manufacturer of Norplant stresses that patient counselling and proper examination are critical to the successful use of Norplant. Arthur, *supra* note 134, at 95.

243. Makabenta, *supra* note 220.

244. Ann Oakley, *Norplant: Under Her Skin*, 307 BRITISH MED. J. 1571 (1993); Jane Seymour, *When the Pill Gets Under Your Skin*, NEW SCIENTIST, Dec. 4, 1993, at 22, 23.

245. Seymour, *supra* note 244, at 23 (citing Jannemieke Hanhart of the Women's Health Action Foundation).

ence, however, represented the beginning of the emphasis on the quality of life of those women affected by population policies. The Cairo Conference's Program of Action marks a move from an international obsession with population control toward the provision of broadly defined reproductive health services.²⁴⁶ The road ahead, however, is long and difficult.

This Note has examined from a feminist perspective the results of a population control focus as exemplified in the use of the long-term contraceptive Norplant. In order to move beyond such a narrow focus, the international community must seek solutions to the social, reproductive, and economic problems faced by women around the world.²⁴⁷ As Ruth Dixon-Mueller writes:

Reproductive policies that are genuinely supportive of human rights recognize that personal freedoms and social entitlements are essential to the advancement of human welfare. They respond *not* to a crisis mentality about the perils of overpopulation, which can trigger damaging and ultimately self-defeating efforts at massive population control. Rather, they evolve from a thoughtful engagement of the difficulties women face around the world in their struggle to take control over their own fertility and their own lives.²⁴⁸

The principles espoused by the international consensus at Cairo outline a population policy that properly reflects the reproductive needs of women and men around the world. As stated in Principle Four of the Program of Action, "women's ability to control their own fertility [is the] cornerstone[] of population- and development-related programmes."²⁴⁹ If population planners followed this principle, then they would critically examine the role of Norplant in population policy. An essential part of this analysis would be the determination of whether Norplant's use in a specific country would increase or decrease women's control over their fertility.

Similarly, the Program of Action contains a variety of recommendations to correct the abuses associated with the application of Norplant in the population policies of many countries. The Programme of Action seeks to eliminate discrimination based on proof of contraceptive use,²⁵⁰ promote a full range of health and

246. Sen, *supra* note 19, at 37.

247. See DIXON-MUELLER, *supra* note 1, at 192.

248. *Id.*

249. Program of Action, *supra* note 22, para. 2.7.

250. *Id.* § 4.4(f); see *supra* notes 225-29 and accompanying text (describing Indonesia's government employee contraceptive program).

family planning options,²⁵¹ and expedite development of safe and effective contraceptives that take users' needs into account.²⁵² If individual nations and the UN seriously consider the principles and recommendations for action from the Cairo Conference, they could alleviate many of the problems that are a part of international population policy.

Improvements are possible. The United States under the Clinton Administration already has taken many steps to include women's needs in population policy. Similarly, the United Nations may feel bound by the Program of Action in ways that individual countries are not. In order to promulgate this new feminist thinking, family planning must abandon the myopic goals of population control and adopt a sensitivity to women's rights and health needs. The Cairo Conference has taken a promising step in that direction and hopefully the world community will incorporate the ideals of the Conference into international population policy.

251. Program of Action, *supra* note 22, ¶ 7.6; *see supra* notes 119, 136-38 and accompanying text (describing the limited range of contraceptive and health options in the developing world).

252. Program of Action, *supra* note 22, ¶¶ 12.12, 12.16; *see supra* notes 144 to 156, 165-72 and accompanying text (describing problems in current contraceptive research).