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1. The choices in reproduction do not happen in an isolated manner. We are here at the heart of the chain of humankind throughout the ages. How one individual partakes in that chain is at the same time a highly personal choice and a strongly conditioned decision. It is clear now that in many instances of the last 30-40 years's history of "population programmes" the complexity of the personal act was overlooked.

"SAYING THAT POPULATION GROWTH IS THE RESULT OF WOMEN'S FAILURE TO REGULATE THEIR CHILDBEARING BECAUSE OF AN ABSENCE OF APPROPRIATE MEANS ALSO FREES THE WOMEN OF RESPONSIBILITY FOR THEIR ACTIONS. HIGH FERTILITY, IN SHORT, IS NO ONE'S FAULT. (...) DEFINING THE POPULATION PROBLEM IN TERMS OF A LACK OF CONTRACEPTIVE SUPPLIES ENABLED THE UNITED STATES TO INTERVENE QUICKLY, CHEAPLY, AND WITHOUT MUCH ATTENTION TO LOCAL CIRCUMSTANCES."<sup>1</sup>

2. In most traditions the heritage of name and land played an important role in deciding childbearing. The tribute to ancestors was a motivation in many civilisations. As survival capacity of born children was hazardous, the need for many pregnancies was a security against loss of children.

3. The link to future generations was less evident, though an agrarian society like the Jewish one in the time of King David, would measure the achievement of a personal life in terms of the capacity for a man to see his third and fourth generation.

In recent years many people have become aware that future generations may not be able to live a life of quality in the conditions of the world we leave to them. This is obviously a concern of post-industrial mentality when one can assess the negative side of over-industrialisation. Hence a presence of future quite distinct from the one felt in past periods.

4. At the crossroads of past and future, the individual has "to decide". It has been abundantly argued that desire for more children is a result of the need for extra labour force (to collect water and wood, to work in the fields), a guarantee of security in old age. But most crucial is the inner desire "to see one's children's children".

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<sup>1</sup> Peter Donaldson, "Nature against us", 1990, Chapel Hill and London, page 55.



5. Indeed, the question of pregnancy and childbirth cannot be seen only in a hyper-aseptical, technical way. If we do so, we are back under the dominant patriarchal system, mechanistic and promethean. Pregnancy and childbirth, though wrapped up in hazards and even pain, are for humans "the luminous face" of their participation in the story of creation.

It is exactly because the child who is born has the right to be lovingly expected and welcome that mastering the moment of pregnancy is a fundamental human responsibility. Deciding to have or not to have a child is an act of profound philosophical implications. Before we decide on "techniques" and "policies" we have to make it explicit.

6. In this context one can ask how free is the "free choice" or even if "choice" is there. In such fundamental matters choice is not neutral nor discretionary. Women have always to weigh the options open in the context of their own conditions and of the conditions of those for whose well-being they are responsible including the child to be born.<sup>2</sup>

7. Childbearing cannot, should not be dealt with apart from the understanding of sexuality in human life. Every individual has to understand his own existence in terms of all the dimensions of her/his being. Sexuality is one of them. It is clear that the high rate of adolescent girls who are pregnant is in close connection with a distorted education of girls as sexual beings.

A health sexual life is a condition of a free choice. But the frantic obsession with sexuality that is pervading the international scene (media, tourism) is probably not alien to the early sexual activity and to the downgrading of sexuality.

8. Family is in all civilisation the first milieu for the child socialisation. However diversified may be the tasks assigned to wife and husband in relation to the child, in all cultures the family is the milieu through which the child can be prepared to reach adulthood. The understanding of family is thus a very important factor in a reconstruction of family as community of purpose and affection.

9. The massive participation of women in professional and social activities creates a new type of problem counting very strongly in the decision about childbearing: the question of compatibility between family and professional (and other) responsibilities. This is a key-question in OECD countries (e.g. OECD High-level expert group on structural adjustment, 1991) and begins to be so among highly professional women in the South (e.g. in 1991 among 12 young women in Lagos/Nigeria, aged 26-36, with heavy professional responsibility, none had more than one child).

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<sup>2</sup> Rosemary Ruether, "reflexions on the word 'free' in free choice", in "Conscience", Catholics for a free choice, Summer 1994.



[Though this fact "serves" the desacceleration of population growth, we have to be aware that it often does so because of a heavy double burden on women. The low fertility rate of women in developed countries shouldn't fool us in the naive conviction that they have reached "full happiness". This represents still a transition period in the struggle of women for their full participation in social life and personal fulfilment.]

10. In fact, the "free choice" carries with it socially constructed expectations. The family in which the person is born creates a fundamental context through which the labour division between the sexes is reinforced and perpetuated. The very experience of the family of origin gives the first socially constructed expectation about family life, childbearing, may it be by mimesis or by reaction.

11. In most societies, reasons of self-esteem, working in different ways for men and women, are important factors in the decisions about childbearing. In some cultures, men cannot acknowledge their infertility as they would soon become outcasts. Women are not free not to have children. In a subtle way, everything points out to their worth as depending on their having children. Women are still seen in our time, even at the hub of industrial society and even in zones where their participation in professional and social life is accepted and promoted, as being defined by the fact of having children.

Society produces as well expectations in more complex ways, giving a spread out rationale for maintaining the status quo in economic and social life. The relation individuals maintain with childbearing is part of the hidden social contract.

12. The process by which the person becomes autonomous - his/her individuation - is decisive in order to be able "to choose freely" in the midst of socially constructed expectations. Hence, the importance of parenting and of the education of parents and future parents. If socialisation reinforces those expectations, it may also question them.

13. Reproductive rights are the result of rights of different nature, some of first, some of second generation. In several national Constitutions such rights are spelled out: "right to constitute a family"; "right and duty to educate and to support their children", "right to physical and moral inviolability of all persons"; "right to special protection during and after pregnancy"; "right to protection of family, e.g. family planning"; "right to health"; "motherhood and fatherhood as eminent social values".

14. Thus reproductive rights are at the cornerstone of respect and safeguard of human rights of women in what concerns their aptitude to childbearing. They are not new rights, but an integrated way of looking at acknowledged rights, enshrined in international documents. They give legal support to safe motherhood. As such, they can be considered basic rights, out of which other rights flow, and with which other rights interact.



15. We should not go around the bush in what concerns the state of affairs of "promoting population programmes" which did not respect reproductive rights of women. In such instances it is violation of basic human rights that is at stake. There has been coercion - spoken and unspoken. Some governments and some international agencies cannot be excluded, as they were among the decisive factors of the "chain of coercion" (Delhi).

16. The interdependence of different rights is particularly relevant in the articulation of reproductive rights with the right to education and the right to health. But reproductive rights are in direct interplay with other rights, namely, health of the family, housing, water and sanitation, social environment in working community, overall physical environment, etc.

17. [In the following paragraphs we are going to concentrate only on the context of the right to health. We do so because "*many health risks incurred by women are not incurred by men: e.g., domestic violence, female genital mutilation, lesser attention to women's health in medical research, problems in reproductive health, lack of education for family planning, and special health risks for women at work*".<sup>3</sup>]

The right to reproductive health care cannot be isolated from the broader question of **the status of the social, economic and cultural rights as full human rights**. The world is at the beginning in all this, but this is the deep underneath current that we need to pursue.<sup>4</sup>

18. However, the right to health - of which the right to reproductive health is a part - is still very far from being universal. It is striking to see the "WHO's historically rooted ambivalence about defining health in terms of a right"<sup>5</sup>. This expresses the conflicting views on the right to health.

19. In the international documents concerned with the right to health there are the provisions by which human beings are entitled to the means necessary for the protection and safeguard of their health. The most important normative text in terms of the right to reproductive health is the Declaration of Alma-Ata on "primary health care" which states, within the eight elements of primary

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<sup>3</sup> Virginia Leary, "the right to health in international human rights law", in "Health and Human Rights", 1994, vol.1, No.1, pages 50.

<sup>4</sup> Virginia Leary, *ibid*, pages 24-56.

<sup>5</sup> Aart Hendriks in 'The Right to Health', European Journal of Health Law, Vol. 1, No.2, 1994, page 188.



health care, maternal and child health care including family planning.<sup>6</sup>

20. Of course, the frame for the right to health is given by the International Covenant on Economic, Social and Cultural Rights (ICESCR) in its Article 12 which reads as follows:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  - (a) The production for the reduction of stillbirth-rate and of infant mortality and for the healthy development of the child;
  - (b) The improvement of all aspects of environmental and industrial hygiene;
  - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
  - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

21. This has led to the WHO's goals and targets which 'serve to ensure the survival and healthy development of special groups of the population':

Goal	To ensure survival and health development of children
Target	The infant mortality rate will not exceed 50 per 1000 live birth
Target	The mortality rate among children under five years of age will not exceed 70 per 1000 live births
Target	The proportion of low birth weight (less than 2.5 kg) will be reduced to less than 10%
Target	At least 90% of the children under one year of age will be immunized against these six diseases: diphtheria, pertussis, tetanus, measles, poliomyelitis and tuberculosis.
Goal	To improve the health and well-being of women
Target	The maternal mortality rate will be reduced by 50%
Target	All pregnant women will have protection with tetanus toxoid, access to prenatal care, trained attendants during childbirth and referral facilities for high-risk pregnancies and obstetrical emergencies
Target	Disability-free life expectancy at birth will increase by 15% in all populations. <sup>7</sup>

<sup>6</sup> WHO Position Paper - Health in Social Development. presented at the World Summit for Social Development. Copenhagen, March 1995, page 23.

<sup>7</sup> WHO Position Paper. Ibid, page 21.



22. It is the task of the Committee on Economic, Social and Cultural Rights (established in 1987) to contribute to the enforcement of Ec, Soc, Cul. Rights. It has confirmed the view that 'individual and collective interests are in direct line with each other'. The Committee investigated regularly (E/C.12/1987/SR.8) 'infant mortality rate, health care facilities for pregnant women'. 'The right to health can only be implemented in freedom and in the absence of any constraint that might prejudice personal well-being'.<sup>8</sup>

23. As the analysis made by the *Council of Europe* has shown, "... the elevation of these values to human rights status must, as an absolute minimum, mean that they, and whatever measures are necessary to secure their realisation, are not negotiable."<sup>9</sup> Though this is the path to go through in consistency with the generalized acceptance at Cairo of the concept of reproductive rights as basic rights, there is no doubt that the general political atmosphere is far from accepting all the consequences. As long as these difficulties prevail, there is no way to make the 20/20 proposal operative.

24. The question at stake is at the heart of establishing priorities in public policies today. The fundamental reason is that "the proposition that minimum core economic and social rights ought to be accorded to every individual is still almost automatically made subject by decision-makers to an economic calculus which will often culminate in various economically compelling reasons as to why such rights can simply *not* be recognised."<sup>10</sup>

## Fundação Cuidar o Futuro

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<sup>8</sup> Aart Hendriks, *ibid*, page 190.

<sup>9</sup> Human rights at the dawn of the 21st century. Proceedings of the Interregional meeting organised by the Council of Europe in advance of the World Conference on Human Rights, Palais de l'Europe, Strasbourg, 28-30 January 1993, page 66, para. 26.

<sup>10</sup> Human rights at the dawn of the 21st century. *Ibid*, page 66, para. 26.

