

# A Study of Knowledge, Attitudes and Understanding of Legal Professionals about Safe Abortion as a Women's Right



## IN PHILIPPINES







**Authors:** Dalvie S <sup>1</sup>, Barua A <sup>2</sup>, AP Luczon C <sup>4</sup>, Tadiar F <sup>5</sup>

**Background:** Sexual and Reproductive rights and health for the women of Asia sometimes appears to be a distant vision. The ICPD, the Millennium Development Goals and the Beijing Declaration notwithstanding, maternal mortality continues to be high in many parts of Asia and patriarchal society structures reinforce women's lack of autonomy and decision making capacities thus putting their lives at risk on a daily basis through deprivation, physical and sexual violence, rape, unsafe abortions, and others. Unsafe abortions still contribute to 13-50 % of the maternal mortality in some of these countries.

The Asia Safe Abortion Partnership (ASAP) [www.asap-asia.org](http://www.asap-asia.org) was formed in March 2008 as the regional network supported by the International Consortium for Medical Abortion (ICMA) [www.medicalabortionconsortium.org](http://www.medicalabortionconsortium.org). The objectives of ASAP are to promote new technologies for safe abortion, serve as a forum for information and experience sharing, strategic thinking and planning for a collective vision aimed towards regional/ international advocacy and support members to advance the partnership goal in their country contexts through law and policy advocacy, capacity building, research and documentation and service delivery.

The ultimate goal of ASAP is : "To promote, protect and advance women's sexual and reproductive rights and health in Asia by reducing unsafe abortion and its complications; and where it is legal, by promoting access to comprehensive safe abortion services."

A number of studies, particularly in the recent past have looked at the issue of safe abortion services, their reach

and the perspective of both users and service providers. Therefore, ASAP planned a multi-country study that went beyond the community- provider interface and explored the views of gatekeepers such as lawmakers and implementers who are outside the service provision field. A survey of legal professionals and law enforcement officials was planned with a view to assess their level of understanding and support for safe abortion as a women's right and public health issue in countries where abortion laws are restrictive and where it is legal.

The aim of the study was to obtain an understanding of the differences in knowledge, attitudes and understanding among legal professionals and law enforcement officials towards women's rights to safe and legal abortion in countries where abortion is severely restricted and where it is legal, in order to inform the strategies for advocacy to liberalize abortion in those countries.

In order to make significant changes in improving access to safe abortion reforming national laws and policies (especially in restrictive environment); setting forth more effective principles and guidelines for public information and service delivery (in countries with more liberal policies); and other changes may be critical. When it comes to examining the law as it is and the law as it should be, it is therefore important and necessary to look at the role of the legal profession as agents of change.

The legal profession, in its first sense, means not only the private practitioners, but also the judges, magistrates, law students, and law professors (academe). Lawyers after all, make use of the law to defend or prosecute women or abortion service providers who are held to account under the law; the academe's opinions are consulted by the

1. Coordinator, Asia Safe Abortion Partnership. 2. Executive Director, Foundation for Research in Health Systems (FRHS). 3. Women's Legal Education, Advocacy and Defense (WOMENLEAD) Foundation, Inc. 4. MD , Institute for Social Studies and Action (ISSA).

judges and magistrates who in turn, interpret the provisions of the law and decide the fate of the woman/service provider accordingly. Legal experts (whether private practitioners, members of the judiciary or the academe) are always at the forefront in legislative advocacy - drafting of bills, as well as providing legal expertise and support for the sponsors of proposed legislative measures, to ensure that the proposed measure measures up to the agreed-upon standards, i.e., the Constitution and in many cases, the state's international commitments.

The court is a powerful arena to effect changes in society. Through the avenue of the courts, restrictive laws may be stricken down as invalid; failure to implement the law by state agents, may hold these state agents liable, in their official as well as personal capacity; refusal to heed the requirements of the law, may also compel the courts to enforce compliance by these state agents. Needless to say, the role of the lawyer in advocating for these reliefs, and of the judges / magistrates in deciding to grant and ordering the reliefs sought, are important in society purporting to be under the rule of law, where society evolves and changes are effected, in part, through the courts and justice system.

Legal profession, when used in this study, however, does not simply refer to those who have had formal schooling in law and are bestowed the titles as such. This study adopts an expanded definition of the legal profession and includes also legislators, high ranking police personnel, jailers, medical practitioners, head of hospitals, and other persons who are tasked with the implementation of the law, as well as those whose opinion and experience may be given weight in legal and policy advocacy.

While the members of the legal profession are important agents of change in society, they cannot effect lasting change on their own. We recognize that these changes in the field of law and policy need to be propelled and informed by the experiences and wisdom of those at the ground level in the implementation of the law.

The study findings are expected to help in a greater understanding of the perspectives of this group and will inform future capacity building, attitude reconstruction efforts and the development of advocacy tools for action.

#### Research Questions:

The main research questions asked were:

- Are legal and law enforcement personnel aware of the abortion related law in their country?
- What is their attitude towards access to safe abortion being seen as a women's right?
- What is their understanding of safe abortion (or lack of it) as a social justice and public health issue?
- What impact do they perceive this has on access to safe abortion by the women in their country?
- What influences their position vis a vis women in the community in the context of the right to safe abortion services?
- What interventions can be recommended to ensure a more supportive role for these persons in enhancing women's right to safe abortion?
- What can be recommended to improve the situation for women in these countries to improve their access to safe abortion services?

1. Legal profession to include law students, practicing lawyers, magistrates, judges. 2. Police personnel, Jailors, women cell, and medical practitioners (Obs & gyne of government hospitals responsible for providing post abortion care to women with complication of unsafe/ clandestine) can be included in the sample.

### Methodology:

This study is unique in its attempt to move beyond the women/community- provider interface and look at gatekeepers outside the service provision field.

Semi structured questionnaires were administered to 26 members of the legal profession<sup>1</sup> and law enforcement officials<sup>2</sup> from Philippines.

An attempt has been made to identify those members who are involved in handling abortion related cases, or are in a position to influence policy debate, decision making process of the judiciary. Strict confidentiality was maintained of the identity and coding was used.

Secondary data analysis was carried out to describe the context and characteristics of the communities under study.

The results of this study will be utilized to develop advocacy tools and strategies which will facilitate sensitization of legal professionals and create a feasible and supportive environment for enabling laws which create improved access to safe abortions.

### Analysis focus

Data was analysed to describe and demonstrate patterns, emerging themes, and specific characteristics linked to

1. Abortion laws, rationale, law enforcement mechanisms
2. Knowledge, attitudes, and perceptions amongst law professionals, enforcement officials and gatekeepers regarding unwanted pregnancies and abortion (safe / unsafe)
3. Differences in knowledge, attitudes, and perceptions amongst law professionals, enforcement officials and gatekeepers regarding Abortion laws, rationale, law enforcement mechanisms

**Sample:** Total 26 persons were interviewed. The sample covered a wide range of respondents. Out of these 9 were Medical Doctors with more than three to four years of experience, 6 were lawyers with an average of three years of experience, 2 were judges, and 1 each was Police and National Machinery for Women rights Officer. Of the remaining, 5 were government servants with more than six years of work experience and 1 respondent was a Legislator. One respondent was science graduate with six years of work experience and one was Gender Consultant with 8 years of experience. Two respondents were NGO leaders.

### Findings

The findings from the interviews are presented against the overview of the abortion statistics and the legal context of abortion in the country.

### Context in Philippines

According to the International Planned Parenthood Federation report the number of induced abortions per year in Philippines range from 155,000 to 750,000. Estimates from another source suggest an abortion rate of 27 per 1,000 women aged 15-44 per year. The rate increased significantly between 1994 and 2000 in the urban areas particularly metropolitan Manila (from 41-52) and Visayas (from 11 to 17).

Abortions in the country are sought by women for economic reasons and employment or professional obligations, to continue their education, limit their family size or in case of relationship problems. Surveys also indicate that there is a high incidence of repeat abortion.

The Revised Population Act of 1972 in Philippines was categorical that abortion was an unacceptable method of birth control. Despite the edict under this Act, induced abortions are widely resorted to by women who have unplanned pregnancies and the services are provided by

a range of providers that include the hilot, midwives, and doctors. Some women also “self-medicate”. Some qualified service providers however conduct induced abortions only to save the life of the woman, and with the consent of the family.

The various methods used to induce abortion include massage and abdominal pressure, insertion of foreign bodies, dilation and curettage (raspa), Menstrual regulation (MR), and oral medications such as Quinine, Methylergometrin, Methotrexate, and Misoprostol (Cytotec).

Women have to make multiple attempts to get the abortion done. Many of them end up getting their pregnancies terminated by unskilled providers under unhygienic conditions, resulting in serious medical problems. Studies show that a vast majority (80%) of women who undergo abortion have some complications. In 2000, an estimated 78,900 women were hospitalized for postabortion care. Half of the women with complications came to hospitals for severe complications. Severe complications have been observed more often in women who undergo abortion using methods like massage, Misoprostol or vaginal insertion of a catheter. Poor and rural women who lack access to safe methods and qualified providers are known to experience higher rates of severe complications. Expenditure involved and attitude of medical providers discourage many of them from seeking treatment for these complications.

An estimated 800 women per year die from complications of unsafe abortion. Poorly performed induced abortions result in high maternal mortality and morbidity. Hospital surveys have found that about one third of maternal deaths occurring in hospitals can be attributed to induced abortion.

There are reports of women being maltreated and labeled as criminals when they come to the hospitals for post-abortion care. Abortion techniques and the social and

personal implications of abortion are not a part of the medical training and the religious view that abortion is a mortal sin translates into doctors condemning women who undergone abortions.

Abortion in the Philippines is legally prohibited. **Section 12 of Article II: Declaration of Principles and State Policies** in the 1987 Constitution of Philippines states, “The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception”. This reinforces the provision contained in a Presidential Decree of 1975 establishing the Child and Youth Welfare Code, which stipulates that a child has the dignity and worth of a human being from the moment of conception and has the right to be born well.

The main sponsor of the constitutional provision that safeguards the foetal life justified the provision as, **“Arguments of a few women that they should have the right to do whatever they please with their body is completely irrelevant. The fertilized ovum is already a separate body. It is no longer the body of the woman and has the moral as well as the constitutional right to life. Conflict of rights is fictitious. When two rights come in conflict, the more basic right and/or the right concerning the graver matter takes precedence. The right to life is more basic than the right to privacy or any other posterior rights.”** It was further argued that the preservation of life is required even if it should appear that the child would be deformed or was the fruit of multiple rape.

Religion, particularly the Catholic Church was and continues to be strongly and vocally opposed to abortion in the country and was prime mover behind the above mentioned constitutional policy about equal value to the life of the mother and the unborn from conception.

In December 1930, the Penal Code in existence since the Spanish colonial era was revised. However, the

Revise Penal Code (Act 3815) is considered as a mere reproduction of the old laws of Spain in operation in that country since the 1870s. Different articles specify the punitive measures in case of violation of the Penal code.

As per **Article 256** on Intentional abortion, “Any person who shall intentionally cause an abortion shall suffer the penalty of reclusion temporal<sup>1</sup>, if he shall use any violence upon the person of the pregnant woman, the penalty of prison mayor if, without using violence, he shall act without the consent of the woman and the penalty of prison correccional in its medium and maximum periods, if the woman shall have consented”.

**Article 257** on Unintentional abortion says, “The penalty of prison correccional in its minimum and medium period shall be imposed upon any person who shall cause an abortion by violence, but unintentionally”.

**Article 258** on Abortion practiced by the woman herself or by her parents specifies, “The penalty of prison correccional in its medium and maximum periods shall be imposed upon a woman who shall practice abortion upon herself or shall consent that any other person should do so”.

**Article 259** on Abortion practiced by a physician or midwife and dispensing of abortifacients says, “The penalties provided in Article 256 shall be imposed in its maximum period, respectively, upon any physician or midwife who, taking advantage of their scientific knowledge or skill, shall cause an abortion or assist in causing the same. Any pharmacist who, without the proper prescription from a physician, shall dispense any abortive shall suffer arrest or/and a fine not exceeding 1,000 pesos”.

The law on abortion is thus restrictive as it does not have any provisions for any exemptions from criminal liability. However, under the general criminal law principles of necessity as set forth in article 11(4) of the Code, an abortion may be legally performed to save the pregnant woman's life. A decision of the Supreme Court also recognized abortion to save the mother's life. Women who undergo abortions are often arrested by police but are rarely prosecuted.

### Knowledge of respondents

#### Abortion trends

More than half (15/26) respondents did not have any idea about the number of abortions taking place in the country. While rest said that the number of abortion per year in the country ranged from 3 to 8 million.

### 3. Penalties under the Revised Penal Code:

Reclusion Perpetua – 20 years & 1 day to 40 years (indivisible)

Reclusion Temporal – 12 years & 1 day to 20 years.

Periods: Minimum- 12y1d – 14y8m

Medium- 14y8m1d-17y4m

Maximum- 17y4m1d – 20y

Prision Mayor – 6 years and 1 day to 12 years.

Periods: Minimum- 6y1d -8y

Medium- 8y1d – 10y

Maximum- 10y1d – 12y

Prision Correccional – 6 months & 1 day to 6 years

Periods: Minimum- 6m1d- 2y4m

Medium- 2y4m1d – 4y2m

Maximum- 4y2m1d – 6y

Arresto Mayor – 1 month & 1 day to 6 months.

Periods: Minimum- 1m – 2m

Medium- 2m1d – 4m

Maximum- 4m1d - 6m

Arresto Menor – 1 day to 30 days.

Periods: Minimum- 1d-10d

Medium- 11d – 20d

Maximum- 21d to 30d

A 59 year old, male, Roman Catholic, chief of a Maternity hospital said, *“Among hospitals, abortion is almost always in the top causes of admission, second to Normal, Spontaneous Delivery. But I don’t know the numbers”.*

The reasons for seeking abortions according to them were poverty, low education level, multiparity, spacing, unawareness about sex, accidental pregnancies among adolescents, severe foetal malformations and pregnancies resulting from rape, incest and sexual abuse. Only four respondents said that the abortion was more common in married while rest of them said that it is more common among the poor and unmarried adolescents.

A 55 year old, female, Roman Catholic, NGO activist in addition to those mentioned above also listed a bizarre reason for abortion. She said, *“Usually women who seek abortion are mostly unmarried, from lower class, with low education, and without any knowledge of what happens after sex. But there are those who enter beauty competitions, and so become pregnant so that their breasts become bigger during the first stage of pregnancy. Then they abort the pregnancy...”.*

Ten respondents mentioned that they were unaware of the techniques or methods used to induce abortion. Twelve respondents talked about traditional method like abdominal massage, herbs and excess physical activity such as polishing of the floor with coconut shell being used to induce abortion. A similar number were aware of modern methods like pill, vacuum operative, D & E, suction etc. Medical doctors in the sample said that in case of a spontaneous or uncomplicated abortion vacuum aspiration is suggested and D & C is performed for incomplete abortions.

A 56 year old, female, Protestant, Gender and Reproductive Health Consultant said, *“Many of the abortions are self-induced, using herbs, medicines from underground, insertion of catheters. Traditional birth attendants also use massage of the abdomen, or manipulation. There are more women who use indigenous methods. These are unreported. There is no research on indigenously induced abortion in this country.”*

A 59 years old, female, Roman Catholic, former Provincial Health Officer and Chief of Hospital said, *“Abortion providers are hilots (TBAs) or midwives, healers, or experienced health workers. Hilots give something to drink or insert foreign body, catheter, or hangers. Women also use herbal concoctions, strenuous activity (jump or lundag). There are anecdotes that they use medicines like cortisol and aspirin, or buy abortifacients in front of the Quiapo church where remedies such as “pamparegla” (induce menstruation), or “pagpalinis sa dugo” (clean the blood), or pagpaobra ng regla (to make menstruation work) are available”.*

Most respondents were of the opinion that the abortions that were induced in the country were unsafe, particularly those conducted by unqualified personnel and under unhygienic conditions.

The 50 years old, female, Roman Catholic, official of the National machinery for women's rights discussed 'safe' and 'unsafe' abortion in her opinion, *“The “hilots” (traditional birth attendants), they do all sorts of things. They use hangers, and all sorts of unsafe instruments. They give herbs, or whatever potion to cause the abortion. Sometimes, abortion is not complete, the uterus not cleaned. We have a very high mortality rate due to mostly I think unsafe abortions. The safest I think now is the vacuum. I forget the complete name - the one that sucks out. Then, D and C. They dilate your cervix and scrape off the lining of the uterus. So these would be safe abortions, which OB-GYN's are trained for”.*

#### Abortion laws

Barring two, all other respondents had some knowledge of the abortion law. These respondents said that abortion is an illegal, criminal and punishable act in Philippines. Majority religion plays a major role in formulation of the law. Statements of the interviewed reflected their awareness about the law and mirrored the deep divisions on perceived reasons for the current state of legality.

A 43 years old, female, Roman Catholic legislator involved in reproductive health and agrarian reforms said, *“Abortion is still illegal, according to the Revised penal Code. There is a*

*weak understanding of the separation of church and state. Public policy must be secular.*

A 43 years old, female, Roman Catholic judge of a family court who specializes in family law, on the other hand, justified the country's law as, *“We have our criminal laws against abortion, it's a felony under the Revised Penal Code, even when you assist a person to do it. Also, it violates the Constitution, because of the provision on equal protection of the life of the mother and the unborn from the moment of conception. We are a Catholic country, so “there's that inclination to hypocrisy.”*

Medical doctors however specified that in presence of a harmful medical condition in pregnancy abortion is allowed. They added that though it is illegal and a crime if it is intentional, they are obliged to treat the case if there are complications. Three lawyers indicated the way the law and reproductive health bills could be interpreted to permit abortions if required. A few illustrative quotes are:

A 40 years old, female, Roman Catholic Women's rights advocate and senior lecturer in one of the leading law schools in the Philippines said, *“Intentional Abortion is prohibited by the Revised Penal Code: Revised Penal Code of the Philippines, Act 3815, 1930, Book II, Title VIII, c 1, s 2, Art.257-259. The Philippine law is restrictive and comparable to what they used to have in Colombia before Monica Roa's case. While there is not specific and categorical exception for rape, incest and saving the life of the mother in law and existing jurisprudence (the only mention of it is in an obiter opinion), I have always argued it is legally possible to make an exception through an interpretation of the Constitutional provision”.*

A 59 years old, female, Roman Catholic government health administrator and ex- Provincial Health Officer said, *“The Revised Penal Code specifies that termination of pregnancy by any means is a criminal act, punishable by law. But according to some, the Reproductive Health bill equates reproductive health as abortion. This predisposes to the legality of abortion”.*

As far as source of information of the law was concerned, four respondents said that they came to know about abortion laws during their Medical studies while seven respondents who were lawyers said that they studied abortion law and policies in their syllabus. Three had come across the details of the law during their advocacy work. Others said that they came to know through the media or had either read articles or literature regarding abortion law. One of the respondents had attended WHO workshop in Bangkok where the abortion law was discussed.

When asked about Abortion law in other countries four respondents said that they had no idea while twenty two respondents said that abortion is legal and allowed in westerns countries. The respondents cutting across their fields of expertise gave reasons for the current legal situation in these countries.

The 43 years old, female, Roman Catholic judge with expertise in family law explained the liberal law in USA and justified the situation in Philippines as, *“Of course, the US is liberal. I think the premise would be the way of thinking of the Americans. They're very individualistic. And in their constitution ... they have emphasis on the right to pursuit of happiness... life, and liberty. Under our Constitution, our commentaries, right to life, liberty and pursuit of happiness is included in the right to life...”*

Fifteen respondents knew about CEDAW and eight knew about ICPD agreement. All these people knew that their country was a signatory to these agreements. Six respondents said that they knew about CEDAW but did not know whether Philippines was a signatory to the agreement. Similarly three respondents knew about ICPD but were unaware about whether the agreement was signed by Philippines Government. While describing the specifics under each of these agreements a few of the knowledgeable respondents from various fields also cited their support for these agreements, their frustrations with the influence religion has and also at the non-implementation of the stipulations.

A 32 years old, male, Roman Catholic City Councilor said, *“Because of CEDAW, RA 9262 (Anti-Violence against Women and Children) was filed and passed. It reinforced the rights of women and children against abuse towards them, mental, sexual, physical. The Philippines was a signatory to this agreement. I am not familiar with the ICPD. If the Philippines is a signatory, maybe it is a non-practicing signatory. I am familiar with the Beijing Declaration. The Beijing and Mexico declarations created quite a stir. Some countries define reproductive health and abortion as one and the same. So majority of the hierarchy of the church are afraid, because of the concept that abortion and reproductive health are the same. It is part of their Constitution. In the Philippines, RH is against abortion. The Roman Catholics are against abortion”.*

A 36 years old, female, Roman Catholic doctor and congresswoman lamented, *“The Philippines is a signatory to CEDAW but not practicing it, due to political accommodations. It is convenient to give up. It was signed only for political survival, and to add “pogi” (positive) points for the country. Without appropriate reproductive health program, we will never be able to take a step forward. The Philippines signed ICPD but does not apply the actions. But some legislators say that the Philippines signed it to legalize abortion. They make it appear that ICPD promoted abortion. In the Philippines, we are supposed to be “pro-life”. But not really. Look at women as sexual instruments to have children, to like babies. Women are not recognized for their life. Even the older women have to support their children and grandchildren. Even the great grand mother does laundry, and work until she dies for her children and grandchildren. Women have the right to good quality and information. But this is not there. We capitalize on misinformation based on religion. Nahirapan buhayin (it is difficult to make them live)”.*

#### Implementation and enforcement mechanism

Less than half (10/26) of the respondents said that the police, local government and media play an important role in implementation and enforcement of the law. The implementation of law involves investigation, prosecution

with evidence and judicial process. Police's role is to arrest both women and doctor. And that of the health provider is to be a witness in the process of prosecution. A few felt that implementation is unsatisfactory as even if the complaint is made for violation of the law, most of the time the complaint just disappears. Economic background of those violating the law was reported as one of the major influence on implementation and enforcement of the law.

*“The police, local government and media are involved in arresting violators. Nobody is prosecuted in the community. Only in the media, you see those arrested from the “illegal clinics”. They detain the practitioners. Maybe class is a factor in the arrest of violators. If you are rich, you are not arrested. Sometimes the media would target the “mahina” clinics - those who do not seem to be wealthy or influential. It is difficult to say what factors affect the arrest of violators”*, said the 55 years old, female, non-practicing Roman Catholic NGO activist.

Two respondents also indicated that often people (both women as well as practitioners) do not testify or cooperate with the investigations and this affects the enforcement of the law which is activated only after filing of a complaint and gathering of evidence.

A 59 years old, female, Roman Catholic gynaecologist associated with a tertiary care general hospital said, *“Processes are followed when there is violation of the law and when someone reports (“sumbong”). Then an entrapment is set up. I have no knowledge of actual arrest. Women don't talk due to the law which may convict them. But many women are ignorant of the law. I don't know anybody who was arrested or convicted. No doctor would report someone asking for abortion service”.*

A 50 year old, Roman Catholic lawyer recounted her personal experience, *“I will share a personal experience. We have this house in \*\*\* City. We had it rented to a doctor. I did not even verify if he is a true doctor. After 3 or 4 years, we learned that it was a clinic for abortion. We found out*

*because of the neighbors. We reported it and had him evicted. We got the property back... He was charged ... We were not able to follow up the case. Nobody would come out to testify against him. According to the neighbors, there were so many clients going to him”.*

**Legal outcome and trends**

The knowledge about the legal outcomes and trends was almost non-existent. Eight respondents said that personally they do not perform abortions nor have they come across any such cases and therefore are unaware of the outcomes. Some of the lawyers reported experience of working on the issue through Law School Human Rights Centre and Women’s Desk but none had directly dealt with abortion cases. The government officials also confessed that since they are not approached for abortion cases they are unaware but being in government department they consider abortion illegal and suggest stiffer penalties if they do come across a case. One of the NGO official said that we were approached to provide legal assistance to health providers whose clinics were raided by police or media.

Respondents, however, did discuss the determinants of legal outcomes in the country. Almost a fifth of the respondents said that income affects the outcome. A few mentioned that religion, marital status, and attitude of the enforcement official affects the outcome and the quantum of punishment given to the violators of the law.

*“Local laws do not protect anybody in cases of violation. Only class and income affect the application of the law to violations - religion, marital status, do not play any role nor are they relevant. Money talks, and helps release these people”*, said the 56 years old, female, Protestant Consultant on Gender, Reproductive Health and Development.

**Attitudes**

**Relevance of the Act**

Sixteen respondents said that according to them abortion

is illegal, crime, punishable act, under revised penal code it is not legal and it is an encroachment on the teachings of the church. Three respondents did not mention their view on the current abortion law in Philippines. Seven believed that the law was not relevant in its current format and needed change. Those who believed that there was a need for change justified it as follows:

The 59 years old, female, Roman Catholic gynaecologist representing a professional organization said, *“The law should be more liberal. Not all Filipinos are Roman Catholics. A woman should be given the right to choose, have freedom to decide on what is the best for her”.*

A 50 years old, female, NGO leader was equally vocal about her views on the matter, *“The current law is restrictive and anti-women. This is not only a matter of women's right it's a matter of women's lives”.*

The 59 years old, female, Roman Catholic government health administrator while supporting change was more cautious about its being contextualized to facilitate wider acceptance and implementation. She said, *“The law on abortion should be strengthened, based on recent developments, since time changes. There should be a fast rule. Medical science is rapidly evolving. Change should be scientific but with consideration of socio-cultural context. In the Philippines, there should be respect for cultural beliefs. Our legal system was based on other countries”.*

A few supported the move to bring in a more liberal and women friendly RH bill despite its shortcomings, *“The RH bill should be passed, even if it has some flaws particularly on the reduction of problems of social structures to population. This is a weakness. It blames the woman for this problem. Another flaw is in the machinery. Why are they putting the Population Commission in charge of the implementation of the bill, and not the Department of Health which should have the expertise. What we appreciate in the bill is the increasing of access of women to information and services. So we support the bill”.*

**Need for Amendments**

Of the seven who mooted change in the law, two were in favour of it being made stricter, and the remaining said that it was not a reasonable policy and that the law should be more lenient and not impose an absolute prohibition, because there are circumstances that may warrant abortion. The latter believed that the current law is restrictive and anti women.

The changes or amendments suggested were:

- The provisions should follow the frame work of CEDAW and offer right to choose and access to ensure implementation of that choice.
- Doctors/medical professionals should be allowed to conduct abortion for select conditions to save life of the woman. The conditions specified were fetal anomalies, danger to the women's life during pregnancy, mental and psychological problems in the woman, and pregnancies resulting from incest and rape.
- Women should be given the right to choose and freedom to decide what is best for them

*“Our laws on abortion (particularly penal law) is archaic. We need to change the laws. Ideally decriminalization of all cases of consented abortion is one welcome change but given our social context we can begin with introducing exceptions in cases such as saving the life of the woman and build on that: rape, incest fatal fetal conditions etc”,* commented the 40 years old, female, Roman Catholic lawyer, women's rights activist and senior lecturer in one of the leading law schools in the Philippines.

Those in favour of stricter law said that given the Christian majority religious diktats should guide the law and penalties in case of violation.

Majority of the respondents said that representatives from the government, NGOs, health department, religious bodies, women's rights activists, Philippines Medical

Association, and women's organizations, medical students, legislators, policy makers and lawyers should be involved in bringing a change in the abortion laws in Philippines.

*“In working for change, everyone has a role to play: government, NGOs, health professionals, academicians, religious sector, etc. The legal sector should take the lead as this concerns the right to self-determination. We must create new boxes to counter anti-choice sentiments - the Roman Catholic Church is not important. The lawyers need to be educated in the processes stated in the Revised Penal Code. We need support at every stage. The educators/academia and media can be advocates and proponents of different faiths can speak out. We have to build a mass of multi-sectoral supporters for women's right to choose abortion. They should let go of their political biases and work with all who clearly support abortion rights. We should work on genuine power-sharing to get things really moving considering limited resources”,* argued the 56 years old, female, Protestant consultant on Gender, Reproductive Health, Development.

The respondents also warned that pro life lobby, Roman Catholic church, conservative doctors, politicians, and sometimes even the Human Rights lobby may pose a challenge while working to bring a change in the abortion law. Most respondents re-iterated the need to bring in all the stakeholders into the fold to discuss and come out with a policy or law that was widely acceptable and therefore implementable for the greater good of women.

The 43 years old, female, Roman Catholic legislator said, *“The biggest challenge is the strong, and even violent resistance of “pro-life’ movement. Their reaction will be forces representing patriarchy and capitalism. This is also very personal to them, and even fundamental to them. Churches, especially the Roman Catholic, are very organized. Some Roman Catholic lay organizations are very indoctrinated. They are well meaning people and these issues are challenging and painful to them too. They have their personal convictions.....They will fight and stand their ground. Mabigat*

*at matagal ang baggage (the baggage will be heavy and prolonged). It requires understanding and patience from us. Those less sectarian, will draw from us. In the end, all will be for us....Hopefully, in the end, there will be healing”.*

While there were a few who were not that optimistic about the ability to persuade the church to take a liberal stand. A 60 year old, female, Protestant officer of the Philippine Judicial Academy stated, *“Religious people play so much role [because] you know those people have so much persuasion, moral persuasion over the population so what they say really is sort of law upon the constituents, upon the parishioners, upon the members etc. They have a lot of influence. Catholic church is dogmatic. What the Pope says, it is the law, unless the Pope becomes liberal and issues probably an encyclical or whatever, I don't think there is hope that the Catholic will ever change”.*

**Abortion as Women's Right, Public Health or Social Justice Issue**

Respondents differed in their views on women's rights and abortion rights. Few of them said that sexual health is the right of women and women have a right over their body. One respondent also said that only married couples have these rights.

Fourteen respondents said that abortion was not a right. Rather abortion is a sin, crime and punishable act if it is induced as the unborn child also has the right to live.

The 59 years old, female, Roman Catholic, official from the National Penitentiary for Women contested abortion as woman's right. She said, *“We are a Christian-dominated society. We cannot justify or legalize any form of abortion. I am not being a hypocrite – someone who thinks “it is every body's right', for instance, in the case of a tortured woman. The concept of the right to be born is also there”.*

While the others said that abortion is an issue of the woman's choice at any stage of pregnancy. It is the right of each woman to determine what should happen to her body and life.

*“Mine is a layman's view of it since it is the women who bear children.....Very few men would be agreeable, let's say to insofar as population control is concerned to undergo the necessary steps like vasectomy, it is always focused on the women. ...Going further to the issue on population interrelating with the reproductive code, where they go hand-in-hand, it is specially the women who would choose or should have the freedom to take decision on the manner how to go about this. Although, it takes two to tango but it heavily relies on the women” (50 year old, female, Roman Catholic lawyer)*

One respondent said that it varies from case to case but still it is the woman who should decide whether she wants a pregnancy or not.

Those who saw this as woman's right also said that government should officially allow abortion to be done by qualified persons such as Obstetricians and Gynaecologists as it is a public health issue. They also suggested that as far as possible abortions should be prevented by promoting family planning services.

**Discussion**

The Revised Penal Code of Philippines dealing with abortion is a copy of an 1870 law in Spain. While the abortion laws in Spain have since been liberalized, in Philippines the laws have remained unchanged. The Philippine law on abortion is one of the most restrictive in the world with no express provision for any kind of exemption from criminal liability. Further, the law prohibits importing anything intended to be used for inducing abortion-including “any printed matter which advertises or describes or gives directly or indirectly information where, how or by whom unlawful abortion is produced.” This is despite the fact that the country is a signatory to the ICPD and CEDAW, with no reservations.

In our study while more than half respondents did not have any idea about the number of abortions taking place in the country, majority did mention unwanted pregnancy as one



of the main reason for seeking abortion and that most of the abortions taking place in the country were unsafe and conducted under unhygienic conditions.

Respondents were aware that under the country's law abortion is an illegal, criminal and punishable act but felt that implementation is largely unsatisfactory as the procedures were inequitable. Religion, marital status, and attitude of the enforcement official influenced the outcome and the quantum of punishment given to the violators of the law.

Abortion laws in the country are one of the most restrictive ones in the region. Religion has a major influence on the formulation of laws in the country. Religious beliefs are also reflected in the views and attitude of the respondents in our study. More than half the respondents believed that abortion is a sin, crime and punishable act and only about a fifth of the respondents supported liberalization of the law. While they did not contest the right of the woman to her body and life, they also maintained that the unborn child had equal right to live. The common view was that prevention of abortion through an aggressive promotion of family planning services was a better way of addressing the issue of unwanted pregnancies.

### **Acknowledgments**

We are grateful to The David & Lucile Packard Foundation for their financial support for making the study possible.

We thank Claire AP Luczon, ASAP Steering Committee member for her contribution to the introductory write up on the role of lawyers and the rationale for the study.

### **References**

- Singh, Juarez, Cabigon, Ball, Hussain, Nadeau, Unintended Pregnancy and Induced Abortion in the Philippines: Causes and Consequences, New York: Guttmacher Institute, 2006., p.5.
- Bernas, J.. The Intent of the 1986 Constitution Writers (1995), p. 119.
- [www.un.org/esa/population/publications/abortion/doc/philippines.doc](http://www.un.org/esa/population/publications/abortion/doc/philippines.doc), last retrieved 22 July 2008.
- Geluz vs. CA, July 20, 1961.
- WOMENLEAD Foundation, Inc. Country Profile: Phillipines
- Arrow. Asia-Pacific: A Regional Overview: Unsafe Abortions. Cambodia, China, India, Indonesia, Malaysia, Nepal, Philippines and Pakistan





[www.asap-asia.org](http://www.asap-asia.org)