

**Rural community member's perceptions on Termination of Pregnancy  
Act (92 of 1996) in selected villages within Lepelle-Nkumpi Local  
Municipality**

By

**Murwa Segopotje Peggy**

In fulfillment of the requirements of the degree of

**Master of Administration**

In

**Public Administration**

In the

**Faculty of Management and Law**

(School of Economics and Management)

at the

University of Limpopo

South Africa

Supervisor: Prof M P Sebola

2016

## **DECLARATION**

I declare that the dissertation hereby submitted to the University of Limpopo, for the degree of Masters of Administration has not previously been submitted by me for a degree at this or any other university; that it is my work in design and in execution, and that all material contained herein has been duly acknowledged

Signature .....

Date.....

Murwa, S.P

## **ACKNOWLEDGEMENTS**

Firstly I would like to thank God for giving me wisdom and making it possible for me to go through this study.

My sincere gratitude and appreciation to my supervisor Professor M.P Sebola for his guidance and encouragement throughout the study.

My parents Mahlako and my late father Mphela for giving birth to me and their moral support at all times throughout my studies. I thank them for their encouragement and their understanding and assuming responsibility when I was busy with the study. It is because of you that I am happy today.

My sincere thanks and appreciation are also extended to all my family, friends and relatives for being supportive and encouraging sources to me throughout the course of this study.

Special thanks to the respondents at Lepelle-Nkumpi municipal area for the support during data collection.

## **DEDICATION**

I dedicate this dissertation to the students and the academics who will find it as a useful source.

## ABSTRACT

In the practice of public administration, the law-making process always predominates and therefore, it should be stressed from the onset that law making in general is much more than a decision making. This study therefore locates the *Choice on Termination of Pregnancy (Act 92 of 1996)* as a law articulation that need to be implemented accordingly to realise societal goals. However, with good intentions of such a law, there are challenges regarding implementation thereof within sectors of the society due to the diverse nature of South Africa in both traditions, cultural and religious beliefs. The introduction of the Act in South Africa was received with lot of pessimism and concerns by traditionalists, individuals that are culturally sensitive and religious leaders of various denominations. Such concerns has observably created a conundrum within traditional communities within the selected villages found in the Lepelle-Nkumpi Local Municipality in that termination of pregnancy is regarded as a taboo and immoral, more so within both the traditional and religious circles. Due to those escalating challenges and perceptions, it is deemed necessary that the study of this kind be conducted to inform both the practice and the academia for purpose of advancing knowledge within the field of Public Administration. Therefore, the purpose of this study was to explore the perceptions of community members of the selected villages of Lepelle-Nkumpi Local Municipality about the Termination of Pregnancy Act (92 of 1996).

This was done through the use of primary and secondary data as it aimed to present the quantitative and qualitative explanation and report on the perceptions of the community members of the Act 92 of 1996 in South African municipalities. However, this was chosen because the methods assist in verifying the validity of the data and tend to emphasise that there is a common reality on which people can agree on. Therefore, the findings of the study reveals that community members are aware of the implementation of Act 92 of 1996, they believe that the Act is a human right issue and it provide health and safety of women but nevertheless, they perceive the Act as contradicting their moral right, because they believe that termination of pregnancy is as same as murder. In conclusion, it is recommended that the effective public participation is needed because people are aware of termination of pregnancy but are not well informed of the

Act; that the implant contraceptive injection should be a rule, be applied to high schools that every teenage girl must be injected to prevent unwanted pregnancies; girls below the age of 18 years should consult their legal guardians before requesting TOP; conditions of parents to those of minors should be different and only pregnancy that resulted from rape must be allowed for termination or however, the Act should just be abolished.

## **ABBREVIATIONS**

TOP - Termination of Pregnancy

CTOPA - Choice on Termination of Pregnancy Act

USA - United States of America

UCA - United Christian Action

CLA - Christians Lawyers Association

IDP - Integrated Development Plan

SANC - South African National Council

RDP - Reconstruction and Development Programme

ANC - African National Congress

SANA - South African National Assembly

NP - National Party

NRLO - National Right of Life Organisation

NAF - National Abortion Federation

WHO - World Health Organisation

FET – Further Education and Training

## TABLE OF CONTENTS

<b>CONTENT</b>	<b>PAGE NO</b>
<b>Declaration</b>	<b>i</b>
<b>Acknowledgements</b>	<b>ii</b>
<b>Dedication</b>	<b>iii</b>
<b>Abstract</b>	<b>iv</b>
<b>Abbreviations</b>	<b>v</b>
<b>CHAPTER ONE: INTRODUCTION AND BACKGROUND TO THE STUDY</b>	
<b>1.1 INTRODUCTION</b>	<b>1</b>
<b>1.2 PROBLEM STATEMENT</b>	<b>3</b>
<b>1.3 AIM AND OBJECTIVES</b>	<b>3</b>
<b>1.4 RESEARCH QUESTIONS</b>	<b>4</b>
<b>1.5 DEFINITIONS OF CONCEPTS</b>	<b>4</b>
1.5.1 LAW	5
1.5.2 TERMINATION	5
1.5.3 COMMUNITIES	5
<b>1.6 RESEARCH DESIGN AND METHODOLOGY</b>	<b>6</b>
1.6.1 THE STUDY AREA	6
1.6.2 RESEARCH DESIGN	6
1.6.2.1 Qualitative research	7
1.6.2.2 Quantitative research	8
<b>1.7 SIGNIFICANCE OF THE STUDY</b>	<b>8</b>
<b>1.8 ETHICAL CONSIDERATIONS</b>	<b>8</b>



<b>1.9 CONCLUSION</b>	9
<b>1.10 CHAPTER LAYOUT</b>	9
<b>CHAPTER TWO: SOCIAL SYSTEMS THEORY AND THE CHOICE ON TERMINATION OF PREGNANCY</b>	
<b>2.1 INTRODUCTION</b>	10
<b>2.2 CONCEPTUALISING SOCIAL SYSTEMS THEORY</b>	11
<b>2.3 THE IMPORTANCE OF THE SOCIAL SYSTEMS THEORY ON THE CHOICE ON TERMINATION OF PREGNANCY ACT 92 OF 1996</b>	12
<b>2.4 THE NATURE AND THE CHARACTERISTICS OF THE SOCIAL SYSTEM THEORY</b>	14
<b>2.5 THE COMPLEXITY OF THE SOCIAL SYSTEMS THEORY</b>	15
2.5.1 THE STRUCTURE OF THE THEORY	16
2.5.2 THE POWERS OF INDIVIDUAL ACTORS	17
<b>2.6 ELEMENTS OF THE SOCIAL SYSTEMS THEORY</b>	17
2.6.1 COMMUNICATION	18
2.6.2 THE ENVIRONMENT	19
2.6.3 INFORMATION	20
2.6.4 FUNCTION AND STRUCTURE	21
2.6.5 SOCIETAL ETHICS	22
2.6.5.1 <i>Norms and the customs of the society</i>	23
<b>2.7 CONCLUSION</b>	24
<b>CHAPTER THREE: LAW-MAKING PROCESS AND THE CHOICE ON TERMINATION OF PREGNANCY ACT 92 OF 1996</b>	
<b>3.1 INTRODUCTION</b>	26

<b>3.2 LAW MAKING</b>	27
3.2.1 LAW MAKING AND IMPLEMENTATION	27
3.2.1.1 Law-making process	28
3.2.1.2 Implementation process	30
3.2.1.2.1 <i>Legislature</i>	31
3.2.1.2.2 <i>Courts of law</i>	31
3.2.1.2.3 <i>Interest groups</i>	32
3.2.1.2.4 <i>Community</i>	32
3.2.1.2.5 <i>Political parties</i>	32
<b>3.3 THE CHOICE ON TERMINATION OF PREGNANCY ACT 92 OF 1996</b>	33
3.3.1 THE STATE ON TERMINATION OF PREGNANCY	
LEGISLATION: WORLDWIDE PERSPECTIVE	34
3.3.1.1 Legalisation of Termination of Pregnancy in the United State of America, Britain, Portugal and Belgium	35
3.3.1.2 Termination of Pregnancy in Turkey, Syria and Tunisia	38
3.3.2 THE PERSPECTIVE OF TERMINATION OF PREGNANCY IN AFRICAN COUNTRIES, SOUTH AFRICA AND NEIGHBORING COUNTRIES	40
3.3.2.1 Perspectives on termination of pregnancy in African countries	40
3.3.2.2. Perspectives of Termination of Pregnancy in South African Neighboring Countries	42
3.3.2.3 Perspective of termination pregnancy in South Africa	45
<b>3.4 THE TRANSITION TO THE DEMOCRATIC STATE IN SOUTH AFRICA</b>	48
3.4.1 THE CHOICE ON TERMINATION OF PREGNANCY ACT 92 OF 1996	50
<b>3.5 THE STATE OF TRADITIONAL, CULTURAL AND RELIGIOUS BELIEFS ON TERMINATION OF PREGNANCY ACT</b>	56

<b>3.6 CONCLUSION</b>	60
-----------------------	----

## **CHAPTER FOUR: RESEARCH DESIGN AND METHODOLOGY**

<b>4.1 INTRODUCTION</b>	61
<b>4.2 RESEARCH DESIGN</b>	62
4.2.1 QUALITATIVE RESEARCH	62
4.2.2 QUANTITATIVE RESEARCH	62
<b>4.3 RESEARCH POPULATION</b>	61
<b>SAMPLING</b>	61
<b>4.4 DATA COLLECTION METHODS</b>	62
4.5.1 INTERVIEWS	64
4.5.2 QUESTIONNAIRE	64
<b>4.6 DATA ANALYSIS</b>	64
<b>4.7 ETHICAL CONSIDERATIONS</b>	64
4.7.1 CONFIDENTIALITY AND ANONYMITY	65
4.7.2 CONSENT FORM	65
4.7.3 APPROVAL BY THE RESEARCH ETHICS COMMITTEE	65
<b>4.8 CONCLUSION</b>	66

## **CHAPTER FIVE: RESEARCH FINDINGS, ANALYSIS AND INTERPRETATIONS**

<b>5.1 INTRODUCTION</b>	67
<b>5.2 RESEARCH FINDINGS</b>	67
<b>5.3 DATA COLLECTED THROUGH QUESTIONNAIRES</b>	68

5.3.1 THE BIOGRAPHICAL INFORMATION	68
5.3.1.1 Age and gender profile of respondents	68
5.3.1.2 Religion profile of respondents	69
5.3.1.3 Employment status of the respondents	70
5.3.1.4 Educational status of the respondents	71
5.3.2 THE KNOWLEDGE OF THE ACT ON TERMINATION OF PREGNANCY	72
5.3.2.1 The familiarity of Act 92 of 1996	73
5.3.2.2 The knowledge of Act 92 of 1996	74
5.3.2.3 Pregnancies that resulted from rape	75
5.3.2.4 The opinion that the Act is in conflict with respondents culture	75
5.3.3 THE COMMUNITIES PERCEPTIONS OF ACT 92 OF 1996	76
5.3.3.1 Termination of pregnancy as a human right issue	77
5.3.3.2 Termination of pregnancy being legal	78
5.3.3.3 Termination of pregnancy as murder	79
5.3.3.4 The contradiction of the Act with the community's culture, religion and believes	80
5.3.3.5 The Choice on Termination of Pregnancy Act provides health and safety of young girls	81
5.3.4 THE EFFECTS OF THE ACT ON TERMINATION OF PREGNANCY	82
5.3.4.1 Woman has the rights to make their own decisions	82
5.3.4.2 The girls under the age of 18 years should obtain consent from legal guardian or parent before requesting TOP service.	83
5.3.4.3 Financial problems are the reason for termination of pregnancies	84
5.3.4.4 Foetus should excise the same rights as their mother	85
5.3.4.5 Opinion that the Act should be legal since it reduces the population rate	
5.3.4.6 Opinion that my religion does not prevent me from requesting TOP service	86
5.3.4.7 The degree at which the implementation of the Act causes moral degradation and disrespect for human rights	87

5.3.4.8 The opinion that the majority of people requesting termination of pregnancy service are unemployed and illiterate	89
5.3.4.9 The respondent's opinion that a foetus is not a legal person and does not need to excise the legal rights	90
<b>5.4 DATA COLLECTED THROUGH INTERVIEWS</b>	<b>91</b>
5.4.1 THE BIOGRAPHICAL INFORMATION	91
5.4.1.1 Age and gender profiles of the respondents	92
5.4.1.2 Religion profiles of respondents	93
5.4.1.3 Employment status of the respondents	94
5.4.1.4 Educational status of the respondents	95
5.4.2 THE NATURE OF RESPONDENTS ROLE IN TOP ACT 92 OF 1996	96
5.4.3 THE KNOWLEDGE OF ACT 92 OF 1996	96
5.4.4 PARTICIPANTS INVOLVEMENT IN LAW-MAKING PROCESS	97
5.4.5 THE COMMUNITY MEMBERS SUPPORT OF THE ACT 92 OF 1996	98
5.4.6 THE PERCEPTIONS OF THE ACT 92 OF 1996	99
5.4.7 THE PERCEPTIONS OF THE RELIGIOUS GROUPS AND TRADITIONALIST ABOUT THE ACT	100
5.4.8 THE IMPLEMENTION OF THE ACT DESPITE ITS REJECTION	101
5.4.9 RESPONDENTS RELIGION ON ACT 92 OF 1996	103
5.4.10 THE OPINION THAT SECTION 28(2) OF THE CONSTITUTION CONTRADICTS THE ACT	105
5.4.11 RESPONDENTS VIEW ABOUT THE ACT 92 OF 1996	106
<b>5.5 CONCLUSION</b>	<b>107</b>

<b>CHAPTER SIX: SUMMARY, CONCLUSIONS AND RECOMMENDATIONS</b>	
<b>6.1 INTRODUCTION</b>	<b>108</b>
<b>6.2 SUMMARY</b>	<b>108</b>
<b>6.3 RECOMMENDATIONS</b>	<b>110</b>
<b>6.4 CONCLUSIONS</b>	<b>113</b>
<b>LIST OF REFERENCES</b>	<b>114</b>

## **ANNEXURES**

### **LIST OF FIGURES**

Figure 1: Age and Gender	69
Figure 2: Religion	70
Figure 3: Employment	71
Figure 4: Education	72
Figure 5: The familiarity of the Act	73
Figure 6: The opinion that the Act is in conflict with your culture	73
Figure 7: Termination of Pregnancy as a human right issue	74
Figure 8: Termination of Pregnancy should be legal	75
Figure 9: Termination of Pregnancy as murder	76
Figure 10: Termination of Pregnancy Act provides health and safety of women	81
Figure 11: The girls under the age of 18 years should obtain consent from legal guardian or parent before requesting Termination of Pregnancy service	84
Figure 12: Foetus should exercise the same rights as the mother	86
Figure 13: The Act should be legal since it helps to maintain the population rate	87

Figure 14: The cause of moral disrespect by the Choice on Termination of Pregnancy89

Figure 15: A foetus is not a legal person 91

Figure 16: Age and gender 93

Figure 17: Religion 94

Figure 18: Employment 95

## **LIST OF TABLES**

Table 1: Girls below the age of 18 years should access the TOP 74

Table 2: Pregnancies that resulted from rape 75

Table 3: The contradiction of the Act with the community 80

Table 4: Every woman has the right to make her own decisions 80

Table 5: The financial problems are the reason for termination of pregnancies 85

Table 6: The opinion that my religion does not prevent me from requesting Termination of Pregnancy service 88

Table 7: People requesting TOP services are unemployed and uneducated 90

Table 8: Educational level 95

## CHAPTER ONE

### INTRODUCTION AND BACKGROUND OF THE STUDY

#### 1.1 INTRODUCTION

According to Cloete and de Coning (2012), in the practice of public administration, the law making process always predominates, yet there is still confusion about the meaning of law. Therefore, it should be stressed from the outset that law and law making in general are much more than a decision making. King (2010) defines law as “a choice that the government makes in response to a political issue or a public problem”. On the other hand the World Health Organisation (2004) view law making “as the process by which the governments translate their political vision into programmes and actions to deliver outcomes in the world”. Therefore, within the South African government context law is promulgated among others through acts of parliament and other pronouncement of government institutions of authority.

This study therefore has located the *Choice on Termination of Pregnancy Act 92 of 1996* as a law articulation that need to be implemented accordingly to realise societal goals. In terms of section 2(1) (a) of the same Act, it is stated that pregnancy may be terminated upon the request of a woman during the period not exceeding twelfth week of such pregnancy, with the provision that under specified circumstances that can also be considered from the thirteenth to the twentieth week only for serious medical reasons that can be determined accordingly. Such provision is in line with the constitutional provision of the Bill of Rights as contained in section 12 (2) (a) and (b) of the *Constitution of the Republic of South Africa of 1996*, which provides that “everyone has the right to bodily and psychological integrity”. Those rights include the right to make decisions concerning reproduction, security and control over their body.

Despite, the good intentions of such a law, there are challenges for the implementation thereof among other sectors of the society due to the diverse nature of South Africa in both traditions, cultural and religious beliefs. Such beliefs also enjoy constitutional protection hence the state of paradox that is surfacing in practice whenever this Act is operationalised. This is also on the background that the rate of pregnancy is high in South Africa as a developing country compared to



other developed countries especially among teenagers (Panday, Makiwane, Ranchod & Letsoalo, 2009: 13). This create the believe that people do not follow the law on termination of pregnancy or they are not aware of the Act as a law governing termination of pregnancy in South Africa. Therefore, the phenomenal landscape within which this law has to take place found itself in the state of limbo with questions raised towards the impact thereof. The introduction of the Termination of Pregnancy Act in South Africa was received with a lot of pessimism and concerns by traditionalists, those that are culturally sensitive and religious leaders from various denominations. Such uncertainty has observably created a conundrum within traditional communities such as selected villages found in the Lepelle-Nkumpi Municipality in that termination of pregnancy is regarded as a taboo and immoral more so within both the traditional and religious circles.

The challenge becomes eminent when it comes to the practice of public administration as acts that are promulgated within the patronage of the *Constitution of the Republic of South Africa of 1996* have to find expression within the diverse society. Such has been an issue with the introduction of the *Choice on Termination of Pregnancy Act 92 of 1996* as it touches on values that are entrenched within rural communities. Due to those escalating challenges and perceptions it is deemed necessary that the study of this kind must be conducted to inform both the practice and the academia for purpose of advancing knowledge within the field of Public Administration. One other aspect is that the Act itself is against some traditional, cultural and religious beliefs of the people especially those within the rural set-up and those communities that are economically, industrially and socially less developed. It is against this background that the study evaluates the perceptions about the Act on termination of pregnancy in those selected villages within Lepelle-Nkumpi Municipal area under Capricorn District Municipal area, Limpopo Province.

## **1.1 PROBLEM STATEMENT**

The purpose of the study is to investigate the community member's perceptions about the introduction of the Act on termination of pregnancy on rural communities as promulgated through the *Choice of Termination of Pregnancy Act 92 of 1996* using selected villages located in the Lepelle-Nkumpi Local Municipality as a case

in point in that there are misconceptions on its effects within traditional, cultural and religious beliefs. Such piece of legislation will be examined in order to determine as to what extent its implementation found expression within the selected villages with a view of establishing the impact it has within the denominations as mentioned. The study will use a Social Systems Theoretical approach as a framework to interrogate the phenomena on the termination of pregnancy as it manifests itself within the area of study identified within the confines of the promulgated legislation as point of departure.

## **1.2 AIM AND OBJECTIVES**

The aim of this study is to investigate the community member's perceptions about the Act on Termination of Pregnancy within rural communities in selected villages located in the Lepelle-Nkumpi Local Municipality in order to come out with recommendation that can assist in law making implementation that is within the moral connotation in the practice of public administration. Such will be done through the theoretical framework of Social systems theory as a means of probing the perceptions of the inhabitants of communities in the villages identified. To realise this aim, the following objectives will be pursued:

- To establish the theoretical framework on the implementation of the Termination of Pregnancy Act within rural communities found in selected villages at Lepelle-Nkumpi Local Municipality using a Social Systems Theory;
- To determine the extent to which rural communities in selected villages at Lepelle-Nkumpi Local Municipality perceive the implementation of the Termination of Pregnancy Act;
- To establish the extent to which the perceptions of such rural communities have an effect on the Act on termination of pregnancy which impact the Act implementation landscape in general;
- To make recommendations on aspects that needs to be considered whenever a moral related law promulgation like that of termination of pregnancy need to be considered within the field of Public Administration.

### **1.3 RESEARCH QUESTIONS**

The main research question of this study is: What is the perception of the law on termination of pregnancy within rural communities in selected villages found in Lepelle-Nkumpi Local Municipality in order to come out with recommendation that can assist in law implementation that is within the moral connotation in the practice of public administration? To answer this main research question, the following sub-research questions need to be dealt with:

- What is the state of theoretical framework on the implementation of the termination of pregnancy within rural communities found in selected villages at Lepelle-Nkumpi Local Municipality using a social systems theory?
- To what extent is the rural communities in selected villages at Lepelle-Nkumpi Local Municipality perceive the implementation of the Termination of Pregnancy Act?
- What effect does the rural community's perception have on the Act on Termination of Pregnancy in general?
- What are the possible recommendations that could be considered whenever a moral related law promulgation like that of termination of pregnancy need to be considered within the field of Public Administration?

### **1.4 DEFINITION OF CONCEPTS**

According to Creswell (2009) terms should be defined if they first appear in a study so that the reader may understand clearly the meaning and the context in which the words are used. Therefore, for the purpose of this study the following concepts are defined and conceptualised in relation to the ability of this study:

#### **1.5.1 LAW**

A law is defined as a choice that the government makes in response to a political issue or a public problem (King, 2010) and Cook, Dickens and Bliss, (1999), posits that a law is the "system of rules which a particular country or community recognises as regulating the actions of its members and which it may enforce by the imposition of penalties". In these regard a law is a principle by which a government is guided.

### 1.5.2 TERMINATION

According to Panday, Makiwane, Ranchod and Letsoalo (2009), termination is defined as an act of ending something. In this study, termination means ending. Hence termination of pregnancy means the separation and expulsion by the medical means of the contents of the uterus of a pregnant woman as it is defined by the *Choice on Termination of Pregnancy Act 92 of 1996*. The World Health Organisation (WHO) defines termination of pregnancy as the “induced or spontaneous loss of a pregnancy prior to the 22nd week of gestation or, if the gestation is not known, where the foetus weighs less than 500g”. The National Right to Life Organization (NRLO) defines termination of pregnancy as any premature removal of a human foetus, whether naturally spontaneous as in a miscarriage or artificially induced.

### 1.5.3 COMMUNITIES

According to Nel (1996), the word “community” different meanings: it refers to small unit of any size that shares common values or community can also refer to the national, international community and community as a group of interacting living organisms sharing a populated environment. Therefore, in this study community refers to the geographic community that ranges from local neighbourhoods, suburb, and villages within Lepelle-Nkumpi Local Municipality specifically selected rural villages found in ward 21 and ward 23.

## **1.6 RESEARCH DESIGN AND METHODOLOGY**

Research methodology is the study of a research process in all its broadness and complexity. It is the various methods and techniques that are to be used, and the influence of the methodological preference on the types of data analysis employed and the subsequent interpretation of findings (Mouton & Marais, 1993). According to McMillian and Schumacher (1989: 39), research methodology is systematic and purposeful, procedures are not haphazard activities; instead they are planned to yield data on a particular problem. This can be done with measurement techniques, extensive interviews, and observation or a collection of documents.

### 1. 6.1 THE STUDY AREA

Lepelle-Nkumpi is one of the local municipalities within the Capricorn district municipality in Limpopo and is located in the Southern part of the Capricorn district. In terms of the Capricorn District Municipality Spatial Development Framework of 2004, the municipality is predominately rural and covers 3,454.78 km<sup>2</sup> which represent 20.4 per cent of the district total land area. According to the Integrated Development Plan of Lepelle-Nkumpi Local Municipality of (2012), approximately 95 per cent of the land falls under the jurisdiction of Traditional Authorities. The municipality consist of 8 traditional leaders and all the infrastructural resources available at Lepelle-Nkumpi are as follows; health centres, municipality and government offices and the Further Education and Training (FET) colleges. Unemployment is a major concern in this Municipality and the situation is aggravated by the influx of people from surrounding rural areas.

### 1.6.2 RESEARCH DESIGN

Research design is a systematic plan for a research that describes how, when and where data is to be collected and analysed (Parahoo, 1997). It is also recognised as a detailed plan or method for obtaining data scientifically in such a way that the validity of the findings is maximised (Mouton & Marais, 1993). According to Lather (1999) research design is the way the researcher plans and structures the research process and it can also be described as a flexible set of guidelines that connect theoretical paradigms to strategies of enquiry and methods for collecting empirical materials.

This study was largely quantitative and qualitative in nature as it aimed to investigate the quantitative and qualitative explanation and report on the perception of the *Choice on Termination of Pregnancy Act 92 of 1996* in South African municipalities with reference to Lepelle-Nkumpi Local Municipality. Straus and Corbin (1990) state that qualitative research is concerned with developing explanation of social phenomena and with the understanding of human beings and the nature of their interactions with other humans and surroundings. The reason for using qualitative approach is that it provides accurate portal or account of the characteristics of a particular individuals, situations or groups (Mouton & Marais, 1991). The qualitative research also assists the researcher in verifying the validity of data by way of comparison on various kinds of data and methods that would be in

the form of observation and interviews at the same time (Silverman, 1995). The other reason why the researcher chooses both the method is that the quantitative research methods mostly tend to emphasize that there is a common reality on which people can agree, however the research design will therefore be flexible.

#### **1.6.2.1 Qualitative research**

Qualitative methodology refers to research which produces descriptive data: generally no numbers or counts are assigned to observations, the indispensable condition or qualification for qualitative methodology is a commitment to seeing the world from the point of view of the actor. Based on the qualitative research methodology the researcher will design and compile a structured interview questions and unstructured questions in order to collect information from the municipal manager, traditional leaders, church leaders, the councillors of the municipality of Lepelle-Nkumpi, the officials in the Limpopo legislature as well as the community based organisations such (SANCO, ward committees) within the jurisdiction of the Lepelle-Nkumpi Local Municipality. De Vos (2001) defines a qualitative research as a multi perspective approach, making sense of interpreting or reconstructing this interaction in terms of meaning that the subjects attached to it. The qualitative approach deals with data that are principally verbal.

#### **1.6.2.2 Quantitative research**

Quantitative data collection method relies on random sampling and structured data collection that it deserves experience into predetermined response categories, it produces the results that are easy to summarise and compare (De Vos, 2001: 240). Quantitative research approach is concerned with testing hypothesis driven from theory and or being able to estimate the size of a phenomenon of interest. The study will also use structured questionnaire that will be administered to the ward 21 and ward 23 members of the society. This method has been chosen because it will allow the researcher to get first-hand information.

### **1.7 SIGNIFICANCE OF THE STUDY**

The goal of this study is to deal with the stigma associated with Termination of Pregnancy Act as a position within the legislative framework in South Africa through educating communities to the effect that the Act is not meant to eradicate their

traditional, cultural and religious beliefs. Such will eventually address issues within the applied field of the law landscape in public administration as well as matters of basic research within the subject field on law making implementation. There are also methodological imperatives that the study is purporting to provide within the scholarship of public administration. The findings of the study will also be made available to the Lepelle-Nkumpi Local Municipality for reference as it develops acts related to moral issues like termination of pregnancy as it remains sensitive within traditional, cultural and religious communities.

### **1.8 ETHICAL CONSIDERATIONS**

McMillan and Schumacher (2001) define research ethics as dealing with beliefs about what is right or wrong and good or bad. Wassenaar (2006) indicates that “the essential purpose of research ethics is to protect the welfare of research participants”. The research ethics involves a focus on the welfare of the research participants and extends into areas such as scientific misconduct. The researcher will always make sure that the respondent’s information is used only for the purpose of the study, the information will be confidential and it will be treated with the confidentiality it deserves.

### **1.9 CONCLUSION**

In conclusion termination of pregnancy is regarded as an offence and immoral more so within both the traditional and religious circles, therefore the study aimed to investigate the community member’s perceptions of the Termination of Pregnancy Act within rural villages found in the Lepelle-Nkumpi Local Municipality in the South African municipalities. Because of its perceptions by the traditionalist, it is deemed necessary that this study be conducted to inform both the practice and the academia for the purpose of advancing knowledge within the field of Public Administration.

## **1.10 CHAPTERS LAYOUT**

### **CHAPTER ONE**

**Introduction and background to the study**

### **CHAPTER TWO**

**Social systems theory and the *Choice on Termination of Pregnancy Act (92 of 1996)***

### **CHAPTER THREE**

**Law-making process and the *Choice on Termination of Pregnancy Act (92 of 1996)***

### **CHAPTER FOUR**

**Research design and methodology**

### **CHAPTER FIVE**

**Research findings, Analysis and Interpretations**

### **CHAPTER SIX**

**Summary, Conclusions and Recommendations**



## CHAPTER TWO

### THE SOCIAL SYSTEMS THEORY AND THE CHOICE ON TERMINATION OF PREGNANCY ACT (92 OF 1996)

#### 2.1 INTRODUCTION

The theoretical framework is defined as the structure that holds and support a theory of a study. Hence, it describes the theory which explains why the problem under the study exists. The theoretical framework of a research project “relates to the philosophical basis on which the study takes place, and forms the link between the theoretical aspects and the practical components of the investigation undertaken”. However, the social systems theory has the implications for decision made in the study process. The theoretical issues of the study explore the functional relationship among its categories as well as to investigate the stability and the change that is inherent in that particular society. The researcher chose the Social systems theory as the theoretical framework of the study that will help to analyse the challenge of the *Choice on Termination of Pregnancy Act 92 of 1996* amended, which is faced by different societies or cultural groups. The Act as termination of pregnancy law in South Africa came into effect in South Africa on the 1 February 1996 and was introduced with some problems that threaten the cultural beliefs of the people.

Although the term “social system theory” can be used in more elementary sense and for the purpose of the term attention is confined to systems of interaction between individual orientated to a situation and where the theory includes a commonly understood theory of cultural codes. Therefore, as society organizes its elements according to its own reason, societal issues and activities into its operation, the study was conducted within selected villages found at Lepelle-Nkumpi Local Municipality. Historically Social systems

The social systems theory aimed to describe the phenomena existing without considering the role played by individuals since it gives level of abstraction needed to describe the phenomena of the environment (Viskovatoff, 1997). This chapter conceptualises the concept of social systems theory, discusses the importance of the social systems theory on the Choice on Termination of Pregnancy Act (92 of

1996), the nature and the characteristics of the social systems theory, the complexity of the social systems theory as well as the elements of the social systems theory such as communication; the environment; information; functions and structure and the societal ethics

## **2.2 CONCEPTUALISING SOCIAL SYSTEMS THEORY**

According to Bertalanffy (1972), a system is a model of general nature, which is a conceptual equivalent social phenomenon rather than universal traits of entities. However it is further stated that a system refers to “general characteristics partaken by a large class of entities conventionally treated in different disciplines” (Viskovatoff, 1997). It is defined as an organised entity that is of components that interact in a way that are distinct from their interaction with other entities, which endure over some period of time (Bertalanffy, 1968). Therefore, the demarcation of the system involves the designation of a social system theory as being micro or macro depending on the size and the complex of the problem. Social systems theory is defined as a set of “interdependent independent variables” (Bruce, 2002). In this regard the systems identify the ordering principles of interdependence between independence variables.

The theoretical task of analysing the social system theory can be specified as exploring the functional relationship among its categories as well as investigating social stability and social change that is inherent in any particular society, as in this study is the introduction of the *Choice on Termination Of Pregnancy Act 62 of 1996* by the South African government in the South African society. The Act was introduced with some dispute that there are misconceptions on its effects within traditional, cultural and religious beliefs. According to Dale, Smith, Chess and Norlin (2006), social systems theory is the Trans disciplinary study of the nonconcrete organisation of a phenomenon, independent of substance, temporal scale of existence. Social systems theory is defined as set of elements vertical in interrelation among and with the environment.

Therefore Luhmann (2006) argues that a social systems theory is a way of elaborating increasingly complex systems across a continuum environment that encompasses the person in an environment. However, in this regard the social system theory is a system of communication and the society that encompassing

mostly the boundaries between itself and its environment. According to Bertalanffy (1968), the boundaries of a social system theory can be partially be defined by norms and customs of the society or the organisation and therefore, it grows between exchanges of powers and information between its environment. However the theory investigates both the principles that are common to all complex entities and it provides the best theoretical basis of the study of human communication and it is a philosophical viewpoint on the relationship between people and their social environment (Anderson, Carter & Lowe, 1999 & Bruce, Friedman & Karen, 2001). According to Luhmann (2001:16) social systems are not systems of action structured in terms of the thoughts and behaviours of individual actors, rather the power and the way in which the system is been implemented, which in this study the system refers to the *Choice on Termination of Pregnancy Act 92 of 1996*. The elaboration of the role and the structure of theory in action involve consideration of differentiation in relation to the aspect of the system and its relation to communication, culture and community issues (Parson: 2005). Therefore, figuring out the role and the structure of the theory, it is ought important to discuss the importance of the social systems theory as theories in general explains to the researcher and the reader why the problem under the study exist.

### **2.3 THE IMPORTANCE OF THE SOCIAL SYSTEMS THEORY TO THE CHOICE ON TERMINATION OF PREGNANCY ACT 92 OF 1996**

The theoretical framework is the structure that supports a theory of a study and it introduces and describes the theory which explains why the problem under the study exists (Luhmann, 2001). However, the identification and analysis of the social systems theory is of crucial importance for the progress of social science theory and research in the sense that it explains why the problem under the study exists. The social systems theory explores the functional relationship among the society or community and investigates the stability and the change that is inherent in that particular society (Sinclair, 2007: 56). Luhmann (2001:73) emphasised that every theory is reproduced by its specific network operations and however the social systems theory has the sociological task of specifying the dynamics of its network systems in terms of the functional differentiation, the reflexivity and the self-organisation of the society.

According to Howard (1975), theories help reduce the dread of meaninglessness that arise when we encounter situations that we cannot fully understand, irrespective of whether we turn to mythology, theology, philosophy or scientific methods as source of our assumptions. Dealing with the concept “termination of pregnancy” is a complex phenomenon which is influenced by both the internal and external factors. Although there are number of theories that can be used, the researcher looked at the complexity of the study and chose the Social systems theory to be used to understand the concept of termination of pregnancy as a policy statement of the government and relate it to public administration. Palmaru (2012: 64) claims that the social systems theory allows explaining life due to the fact that the theory can create independence from individuals who poses serious problems for communications. The social systems theory is the set of the theoretical and conceptual tool, not a single theory to be adopted holistically (Viskovatoff, 1997) therefore its notion has developed across a range of disciplines, both natural and social sciences from ecology of life. The theory must therefore involve the strict avoidance of some crucial theoretical and philosophical issues because they can be applied to all parts of the society or of the communities.

The social system theory promises to increase sociology as a science, its research productivity, and its resonance with the public (Parsons, 1961 & Forrer, Kee & Seth, 2007). Therefore, it is believed that the social systems theory solves important problems that are sociologically sensitive and the problem between society and the individuals. However in this study theory is self-contained, in the sense that it may make use of empirical knowledge provided by various sciences but does not need any theoretical constructs from those sciences to produce explanations that are satisfactory on its own terms.

The adoption of the *Choice on Termination of Pregnancy Act 92 of 1996* has suffered criticisms that are as much orientated towards the problem introduced with the implementation thereof. Therefore, the social systems theory is believed to solve the problems that have confounded sociological matters. The theory draws inspiration from biology but it also owes something to recent development in science and however it aspires not just to promote interdisciplinary research but to reunite all sciences (Leighninger, 1977 & Vidich, 2000). In this sense it is a theory of

individuals and interrelationships among individuals which might be singled out for special treatment of information and communication.

## **2.4 THE NATURE AND THE CHARACTERISTICS OF THE SOCIAL SYSTEM THEORY**

The nature of the social systems theory is impending into complex system which comes from the corporate work and time after time the corporations are having severe and well-known difficulties (Dale, Smith, Chess & Norlin, 2006). According to Parson, (2005; 117) the difficulties of the social system theory are sensitive to the power structure of the organisation, to traditions and to the personal goals, the welfare and some policies are being followed that are believed they could lighten some difficulties. However, in many instances it emerges that the known policies describe a system which actually causes troubles. In this regard, the known and intended practices of the organisation are sufficient to create the difficulties being experienced.

Many characteristics of social systems theory mislead people and the behaviour that people do not anticipate, appears in corporate system and in the world-wide pressure like it is in its nature (Forrester, 1995 & Luhmna, 2005). Therefore, there are number of characteristics of the social systems theory that mislead the people and its environment, however the social systems theory is inherently sensitive to most change that people choose in an effort to alter the behaviour of the environment or the organisation. In fact the system draws attention to the points at which an attempted intervention has failed.

The social system theory can mislead in a complicated way by presenting an apparent cause that meets the expectations derived from other systems and it seems to have a sensitive influence through which behaviour can be changed (Forrester, 1995 & Dale, Smith, Chess & Norlin, 2006). The influence points are not really where people expect, however when influence policy is identified the chances are great that a person guided by the intuition and judgment will alter the system in a wrong direction. Therefore, according to Dale and *et al* (2006) the social system theory exhibit a conflict between short and long term consequences of a policy change, while a policy that produces improvement in the short run is usually one that degrades a system in the long run.

Many problems faced today are cumulative results of the systems measure that are taken in prior decades (Sinclair, 2007). The social systems theory is concerned with the observation of difference, relations and boundaries and it is interested in defining essences and values of the environment. However, the theory criticizes sociological paradigms that attempt to solve the problems of operational closure and double contingency with presumptions of communicative rationality and it also emphasises the impossibility of successful communication and explain how society manages to reproduce itself.

## **2.5 THE COMPLEXITY OF THE SOCIAL SYSTEMS THEORY**

According to Wolfram (1985), throughout the world one observes the phenomena of great complexity of the social systems theory which is a crucial problem for many areas of science to clarify the mechanisms by which the number of such components acting together can produce behaviour of the great complexity observed. However, the general principle that governs the overall behaviour of the system implies that the initial order is progressively degraded as a system evolves. In this regard the social systems theory evolves a series of time steps and the, rule depends on the value of a site. The complexity of the social system theory represents different types of social phenomena and at the same time emphasises the multi dimension nature of the social world such as the social support, cultural competencies, human rights and the community development. According to Luhmann (1998) social systems theory is designed as a second order observation but however it is strictly a descriptive theory but the ethics are the first of all the description of the moral communication to the society.

According to Mattheis (2012), the dynamics of the social systems theory is developed to describe the global properties of solution to differential behaviour as to consider the evolution from all its possible initial states. Therefore, even though the initial state is disordered, the theory is organizing itself through its dynamic evolution that is suddenly generating complicated patterns. The complexity of the social systems theory implies limitations of principles which can be made of other systems and one way to find out how a system behaves in particular circumstances is always to stimulate each step in its evolution explicitly (Wolfram, 1989 & Lehmann, 2001 & Mattheis, 2012). Therefore any procedure for predicting the behaviour of the

theory can be considered as an algorithm to be carried out using the system and for the prediction to be effective it must shortcut the evolution of the system itself.

However, both the structure and the power of individual actors as component of the social systems theory are been said as the units of the theory (Bertalanffy, 1972 & Parson, 2005), and the unit is the act of the actors which constitutes to the complexity of the social systems theory and the structure of the social systems theory is the component that compounds the theory to be understood because the theory consists of the societal exploration of wholes and wholeness which long ago were considered to be theoretical notions exceeding the boundaries of the environment itself.

### 2.5.1 THE STRUCTURE OF THE SOCIAL SYSTEMS THEORY

According to Parson (2005), the component of the social systems theory has been said as the units of the system, in which in this sense the unit is the act of the actors. Since the social system is a system of process of interaction between actors, it is the structure of the relations between the actors as involved in the interactive process which is essentially the structure of the social system theory. The theory consists of the scientific exploration of wholes and wholeness which long ago were considered to be metaphysical notions transcending the boundaries of science (Henry & Seidl, 2003 & Parson, 2005 & Luhmann, 2006). At the same time the interdisciplinary nature of the concepts and the principles applying to the social system theory provides a possible approach toward the unification of science.

The obverse of the functional prerequisite of meeting a proportion of the needs of the individual actors, is the need to secure adequate participation of a sufficient proportion of actors in which it is suggested that the representatives of the cultural groups, societal groups or organisational representatives should be involved in the law formation that is to motivate them to the performances which may be necessary if the bill in question is to persist or develop. Indeed it is because it is a condition that needs to satisfy the needs of actors as a prerequisite for all.

According to Parson (2005), there are units of the social system which are the components of the social system theory referable to the individual actors of collective matters of which in this study we refer to as a law. Those units of the

social systems are the social act which is performed and oriented by the actors; the status role as the organised system of acts of the actor occupying given reciprocal status and the actor as a social unit. However, all these matters of social systems theory are influenced by the powers of the individual actors.

### 2.5.2 THE POWERS OF INDIVIDUAL ACTORS

The ability to cope requires both the problem solving and the ability to regulate negative approaches and therefore the locus control of the problem requires both the internal and external sources in order to cope and to develop particular defence of the challenge (Parson, 2005). However, the power has derived from a source extrinsic to the individual and whiles the dominant groups in the society uses their position of power to influence the society or the group through transactions which resources are provided.

These kind of tension affect the whole segments of the population not just individuals, as the introduction of the *Choice on Termination of Pregnancy Act 92 of 1996* was introduced with the challenges that are immorally affecting different denominations in South Africa, therefore in this study the research is conducted within selected villages found in Lepelle-Nkumpi Local Municipality as the municipality is dominantly rural where majority subscribes to their cultures and religions. In this regard the Act was introduced by the individual actors who have powers or influence over the Act but the problem is affecting almost the whole segments of the society which is the cause of concern and the reason of the study. Therefore, there are components that recognise the social systems theory as a theory of norms and customs of social organisations.

### 2.6 ELEMENTS OF THE SOCIAL SYSTEMS THEORY

According to Luhmann (2001), the social systems theory are not systems of action structured in terms of the thoughts and behaviours of individual actors but Communication, the understanding of the environment, information, function and the structure, societal ethics as guided by its norms and the customs are regarded as the basic element of the theory.



### 2.6.1 COMMUNICATION

Communication is considered as the unit of observation for the valuation of the operation of the social systems theory; however it is an on-going progression without interrupting sustained operation which produces itself (Mattheis, 2012). The determination of communication as a basic element of the social systems theory leads to more challenges regarding the organisational behaviour and through the continuous positions of communication the operations finally develop the society or the environment (Luhmann, 2001). According to Mattheis (2012), communication is a core element of the social systems theory and each system consist of countless meaningful communications which is considered as a functional unit if it serves the perpetuation of the complex structured unity of the society.

Therefore, it is accordingly not a stable structure but the system consist moreover of multiple of events which change easily and it is important to mention that although social system theory communicate about the environment but rather cannot communicate directly with the environment (Luhmann, 2001 & Mattheis, 2012). In this sense the social systems theory cannot operate without individual actors. Therefore, for a legislature to benefit all the people and its environment the individual actors need to consult the public about proposed bill being implemented, however this can be done through public participation.

There are minimum conditions necessary for the production, maintenance and development of cultural system in general and of particular types of cultural system. "It may be presumed that disruption of the communication system of a society is ultimately just as dangerous as disruption of its system of the motivational integration" (Luhmann, 2001 & Sinclair, 2007 & Mattheis, 2012). According to Bartalanffy (1972), a social systems theory in the present sense "is not possible without language and without certain patterns of culture such as empirical knowledge necessary to cope with situational demands". Language plays a vital role in symbolic interaction and through language, individuals can name, distinguish and categorise symbols, identify roles, interact with others and their minds internally, develop perspectives of the world and interpret the situation within their environment with the aspects of their culture.

## 2.6.2 ENVIRONMENT

Social systems theory enables the environment to understand the component and the dynamics of the problem in order to interpret and develop strategies with the goal of enhancing the relationship between individuals and their environment (Hendry & Seidl, 2003). According to Luhmann (2006) social system theory is a system of communication and the society is the most encompassing element and the theory is a boundary between itself and its environment. Bruce (2002) argues that social system theory is operationally closed in that while it uses and relies on resources from the environment, those resources do not become part of the system's operation, but the theory requires human consciousness. In this regard the social systems theory is neither part of the society nor of any specific systems because society is people's environment therefore people can change and influence the environment.

Since this theory is based more on the saying that requires a model that presuppose the independence and interdependence of all its categories therefore the theory must follow the dimension of reality or action that is not specifically directed to culture and personality, but perhaps it should indicates the view that theorising follow after reality rather than preceding rigid fashion. In this regard the choice on termination of pregnancy act must tail reality rather than the preceding inflexible custom of individuals. The essence of the social systems theory is that its basic stuff is to use what has become a technical term "action" and that is the exchange of meaning and idea in social interaction through mutual understood symbols (Gilbson, 2000 & Bruce, 2002) and the functionalist of the social systems. The understanding of the environment by the individual actors and the members of the community is very important due the norms, beliefs and values that regulate the society.

The social systems theory coincides with the society or the community's expectations and the normative orientations that regulate the relationship between actors with the objectives to satisfy functional needs of the society (Pabjan, 2005). The external factors or the environment influences the social systems theory (Pabjan, 2005: 77) where in these study the social systems theory is influenced by the society, economic and political institutions, the culture and the law. The attitude

towards the level of pregnancy and teenage pregnancy and the level of population in South Africa are subjected to influence the *Choice on Termination of Pregnancy Act 92 of 1996* which came into effect on the 1<sup>st</sup> of February 1996, therefore in this regard all these changes of the outside environment determine the conditions of the society or the community and gradually those influences, shape the society which might be one of the reasons why the Act was passed or exist. According to Walby (2007), South Africa is a free market economy and a free market economy promotes the erosion of social solidarity because it often causes conflict of interests among different groups and this sometimes is perceived as a threat to social order.

### 2.6.3 INFORMATION

Due to the dynamic nature of interactions in people and the environment, information is the central component to deal with. However in this study the relationship between termination of pregnancy and the cultural believes or religions of the people is an issue of concern for those who are culturally sensitive. However information relates to the cause and effect of relationship between the person and the environment and it may be directed to changing oneself in order to meet environmental social demands through communication (Bruce & Karen, 2000). Therefore the society needs to be informed of the nature and what is meant and how the system is recognised at the level of observation and the people must be considered for the surrounding context that includes legislatures and in some extent be defined by the phenomenon under consideration.

In this regard the distinct entities existing in their own right within a large framework of overall collective environment must be identifiable however in doing so the internal and the external responsiveness of issue of consideration can be recognised. Like in this study, the issue that the termination of pregnancy as legalised by the South African government is against the cultural beliefs of some group of people, however the understanding of the process under consideration expressed in terms of its roles and functions within the environment could have been taken into considerations by the individual actors if those sensitive groups where considered or represented.

#### 2.6.4 FUNCTION AND STRUCTURE

According to Bertalanffy (1968: 3), the social systems theory consist of many things firstly “the system exist in an environment; the system had the internal relationships among its objects; the systems consist of the attributes, or properties of the system and its objects and it is a set of things that affect one another within an environment”. Therefore function as an element of the social systems theory refers to the imperative of maintaining the stability of the institutional culture defining the structure of the environment which the social systems theory exist within.

According to (Parson, 1961) the social systems theory state that theories should address both the agency of social actors and the structural constraints of social behaviour because people have agency in shaping and changing their social context but are also constrained by the environmental situations (Parson, 2005 & Dale, Smith, Chess and Norlin, 2006). However individual actors must account for both change and stability because they have motivations, interest, practices and values that influence their beliefs. In this sense all the regions that are immorally affected by the legislation on termination of pregnancy, there are however the motives, interest, practices and values that influence the sensitivity of the law. Therefore the general problem of the function of the social systems theory is the ethics of the society and the variety of the levels on which it may be approached.

The social systems theory cannot be structured as to be radically incompatible with the conditions of functioning of its component individual actors as organic organisms and as personalities or stable cultural system (Swedberg, 1998 & Parson, 2005). However, it must avoid commitment to cultural patterns which fails to accept the condition of survival. According to Parson (2005), the important element of the functional prerequisite of the social systems theory is the individual’s life such as physical safety. In this regard the structured functions of the Act on termination of pregnancy need not to endanger the life of the pregnant women.

#### 2.6.5 SOCIETAL ETHICS

According to Bertalanffy (1968), the boundaries of a social system theory can be partially be defined by norms and customs of the society or the organisation and therefore, it grows between exchanges of powers and information between its

environment. However the theory investigates both the principles that are common to all complex entities and it is strictly a descriptive theory but the ethics are the first of all the description of the moral communication of the society or the environment.

The general element of the social systems theory is the ethics of the society and the variety of the levels on which it may be approached (Parson, 2005). The theory describe society as self-organising system that includes human being and asserts that a society is a closed system that produces itself and its environment by establishing selective relations between its operations (Bertalanffy,1968). Therefore a social systems theory cannot be structured as to be radically incompatible with the conditions of functioning of its component of individual actors as personalities or stable cultural system (Swedberg, 1998 & Parson, 2005). However, it must avoid commitment to cultural patterns which fails to accept some conditions for survival.

According to Parson (2005), the important element of the functional prerequisite of the Social systems theory is the individual's life such as physical safety. However in this study the starting point of the debate is the condemnation of the overview human approach, in which in this regard it seems to be reasonably well established that there are conditions of socialisation with respect for instance to the relation between affectional support and security without which function can be build. Therefore the needs of individual actors constitute conditions to which the theory must be adopted. According to Luhmann (2012), in general terms the functional problem for social system theory is minimizing the potential behaviour because of certain features of the environment which can be analysed notably by the problem of opportunity, the problem of reputation and the problem of power.

In simple sense the opportunity, the status and the power of the individual actors of which in this study is referred to as law formulators and law implementers are more influential to the passing of the law because of their reputation. The immense variety of particular acts which are disruptive in that they interfere with the role players or actors is distributed however to reduce the efficiency of the system by depressing the role players but still do not constitute a threat to its stability (Luhmann, 2012 & Parson, 2015). However in the present context of the problem of the study, the expectation that the significance of the social system theory in human nature may be brought to the attention of immoral social sensitivity.

Much of the current sociological theorising appears to be guided by a disbelief in the value of the analytical abstractions and by a corresponding belief in the possibility of providing theoretical accounts of what happens as it actually happens (Bartholomew: 2000). Even in the most trivial description of a social situation, we are forced to be highly selective about which events to include and which events to exclude from the description; the choice implicitly or explicitly guided by our prior belief about the essential elements of the situation.

According to Hedstrom and Swedberg (1998), the distinction between a complex social reality and an intentionally simplified analytical model of the reality seems to have been lost in many sociological discussions of the social systems theory. Like in this study termination of pregnancy as a law of termination of pregnancy in South Africa, therefore the complex reality of the Act is that it is against the religious, beliefs, and the cultural group of people, by which now it seems as nothing can happen with regard to the changeability of the Act. In this regard the choice between infinitely and many analytical models that can be used for describing and analysing a given social situation can never be guided by their true value. Due to the different norms and customs of the society as the important instruments to escort the behaviour of the society it is important for people's ethos to be recognised or considered imperative.

#### *2.6.5.1 Norms and the customs of the society*

The other essential element of the social systems theory is the relations of control development for the past generation in both the biological and the behaviour of the environment and accordingly the focus functional pattern lies in the structural category of values (Bruce, 2002). In this regard the social system theory is made up of the differentiated roles that maintain values shared by individuals from the society, so that the society is governed by the cultural norms that are transmitted from one generation to another by a means of socialisation. The concept of socialization simply implies that people understand one another because the society is liberal. Therefore in this regard they will be learning to behave and to relate to others according to their shared cultural models. However, the control function concerns the motivational commitment of individuals and the problem is that the socialisation of individuals is the process by which the values of the society are

internalised within the society (Luhmann, 2001 & Sinclair, 2007 & Mattheis, 2012). Even though the values of the society are internalised the commitments involved are subject to different kinds of strains within the society.

## **2.7 CONCLUSION**

In conclusion the social system theory is made up of the differentiated roles that maintain value systems shared by individuals from the society, so that the society is ruled by the cultural norms that are transmitted from one generation to another by a means of socialisation. The concept of socialisation simply implies that people understand one another because the society is liberal. Therefore, in this regard they will be learning to behave and to relate to others according to their shared cultural models. A society is a system of interrelationships that connects individuals together; however no culture exists without a society and no society exist without a culture. This bring the awareness of the challenge tackled by the world today which is brought by the Act (*The Choice on Termination of Pregnancy Act 92 of 1996*) of which it affects the cultural believes of the people and in that sense it also disturbs the society in general.

A range of social inequalities may be empirically noted but explained as an outcome of one overarching system of inequality and the negative connotations attached to the Act as it is perceived to be immoral. However, there are many attempts to constitute gender as articulating systems or as partial systems that are partially rather than fully supported by individual groups. The development of the Act suffered criticisms that are as much orientated towards the problem introduced with the implementation thereof. However, the Social systems theory is believed to solve the problems that have confounded sociological matters.

The social systems theory is the set of the theoretical and conceptual tool, not a single theory to be adopted holistically. Its notion has developed across a range of disciplines both natural and social sciences from ecology of life and the theory involve the strict avoidance of some crucial theoretical and philosophical issues and however they are compelling because they can be applied to all parts of the society or of the communities. The social system theory promises to increase sociology as a science, its research productivity, and its resonance with the public. Therefore, it is believed that the social systems theory solves important problems that are

sociologically sensitive and the problem between society and the individuals. In the chapter that follows the study focuses on law making process and the *Choice on Termination of Pregnancy Act 92 of 1996* in South Africa.



## CHAPTER THREE

### LAW-MAKING PROCESS AND THE *CHOICE ON TERMINATION OF PREGNANCY ACT (92 OF 1996)*

#### 3.1 INTRODUCTION

The aim of this chapter is to examine the formulation and the implementation of the Act on termination of pregnancy as a law governing the termination of pregnancy in South Africa, in order to make recommendations that can assist in law-making implementation that is within the moral suggestion in the practice of public administration. Law-making is defined as a process to transform an idea into a specific proposal for a law. Therefore, within the South African government context a law is promulgated among others, through the acts of the parliament and other pronouncement of government institutions of authority.

This chapter therefore has located the *Choice on Termination of Pregnancy Act 92 of 1996* as a law passed, which came into effect in 1 February 1997 as a law governing termination of pregnancy in South Africa. As a case in point in that there are misconceptions on its effects within traditional, cultural and religious beliefs. When the termination of pregnancy Act was introduced in South Africa there was lot of negativity and concerns from traditionalists and those that are culturally sensitive as well as religious leaders from various denominations. Such uncertainty has observably created a mystery within traditional communities and the Act is regarded as outlawed and morally wrong more so within both the traditional and religious circles. The challenge becomes well-known when it comes to the practice of public administration as Acts that are promulgated within the patronage of the *Constitution of the Republic of South Africa of 1996* have to find expression within the diverse society. Therefore, the literature is pursued with the view of gathering information to support the study. Discussed in this chapter are law making as implemented and the law-making process, the *Choice on Termination of Pregnancy Act (92 of 1996)* in the worldwide perspective, national perspective and the South African perspective

## 3.2 LAW MAKING

When every law or act is been formulated, the government, administrators, stakeholders and political parties come together with different opinions to implement the proposed act. However the process of such implementation is discussed in this section as law governing termination of pregnancy in South Africa. A law is defined as a choice that the government make in response to a political issue or a public problem (King, 2010) and according to the World Health Organisation (2004) law making is defined as the “process by which the governments translate their political vision into programmes and actions to deliver outcomes in the world or a process to transform an idea into a specific proposal for a law”.

### 3.2.1 LAW MAKING AND IMPLEMENTATION

In the course of daily lives citizens are affected directly and indirectly by the acts which constitute a significant portion of their lives. According to Zander (1989), a law means legislation or acts adopted by the governmental bodies. In this regard laws confer advantages and disadvantage, causes pleasure, irritation and collectively have important consequences for citizen’s well-beings and happiness. The term law designates the behavior of some actors, such as the officials and legislatures in the community. According to Zander and King (1989 & 2010) a law is defined as a relatively stable, purposive course of action followed by actors in dealing with a problem or matter of concern.

However, a law may also be viewed as whatever government chooses to do or not to do and laws are developed by governmental bodies and government officials. Laws consists of course of action taken over time by governmental officials rather than their separate decision, but includes not only the decision to adopt a rule of law or make a rule on some topic but also the subsequent decisions that are intended to enforce the law (Cloete & Anderson, 2006 & King, 2010 & de Coning, 2012). However, the scholars argue that laws emerge in response on public issues and bills made by other actors such as private citizens, group representatives of the society or legislators and public officials. A law is formulated as a bill and signed by the governor as an act with some challenges that need attention as in this study the *Choice on Termination of Pregnancy Act 92 of 1996* was introduced with the challenge that the Act is against the beliefs of different groups. Therefore, it induced

the researcher's attention to find it important to find out what measures are being followed in the formulation process and what challenges are encountered thereof.

### 3.2.1.1 Law-making process

Government at all sphere (national, provincial and local) is active in producing acts (Zander, 1989 & Anderson, 2011: 75) and every year laws and regulations flows from national, provincial and local legislative bodies. Law making involves developing pertinent and acceptable proposed bill for dealing with public proposal and does not always culminate in a law, executive order or administrative rule. Law making denotes the total process of creating, adopting and implementing a bill and therefore a bill can become a law (King, 2010). According to king (2010), a law making is a process during which an idea of a law is made into a law or an act. However, formulation refers to the crafting of alternatives or options of dealing with the problems encountered because most bills are formulated and implemented with some challenges or conditions that produce dissatisfaction among people and their environment.

For example, in this study the *Choice on Termination of Pregnancy Act 92 of 1996* as a law governing termination of pregnancy in South African society, was introduced with lot of conundrum with effects within traditional, cultural and religious beliefs. Terminating pregnancy is regarded as outlawed and immoral by most traditionalists and the religious dominations in South African. Therefore, not all the problems associated with a law or the public are the public problems, because public problems are those affecting a number of people and "having broad effects and consequences for persons not directly involved".

With regard to the Act, the problem is with individuals or rather group of communities, not the public because if the person terminated the pregnancy, the termination does not directly affect the next person. In this sense it is likely difficult or impossible for individuals to resolve problems implemented with a law. Although many problems are persistent, how they are defined may change as values and conditions changes. According to King (2010), the law makers may decide not to take positive action on the problem but instead to leave it alone, and let the matters work themselves out, which is the reason for the study.

Many bill proposals are developed by the officials in the administrative departments and agencies, therefore the plans are transmitted to the executive and if they accord with the president's policies and programmes, they therefore sent on to the governor (Zander, 1989, & King, 2010 & Cloete & de Coning, 2012). Governmental agencies because of their specialisation, expertise and continued involvement in particular bills are in good position to engage in formulating the law (King, 2010). Temporary organisations may be established by the government to study particular bills and develop the proposal.

However, those organisations may include presidential commission, task forces, interagency committees and their membership may include both the legislative and executive officials as well as the private organisations. In the course of investigation through contacts with the administrative officials, the interest groups representatives and on the basis of their own interest, legislators receive suggestion for action on problems and formulate proposed course of action (Dye, 1966 & Anderson, 2011 & Cloete & de Coning, 2012). However, the presidential commission may not always produce the sort of bill recommendations preferred by their appointers, but the preferred options are arranged by the committee jointly composed of executive officials, members of the congress and the private citizens appointed by the president and the legislative leaders to advise on the solution of the law to be formulated.

In the course of congressional hearing and investigations with administrative officials and the interest group representatives and on the basis of their own interest and activities, legislators receive suggestions for action on the problems and formulate the proposed bill. According to Dye (1966: 34), the congress is doing much of the formulation in some areas with the intention to limit the discretion of administrative officials when implementing the act.

The interest groups also have a major role in law making, they are often going to the legislature with specific proposal of legislation and they also work with executive and legislative officials to develop the proposed bill with some modifications to suit their interest (Zander, 1989 & King, 2010). When a bill is formulated into a law it constitute the pre-decision segment process in that they do not involve formal decisions on what will become law, however they determine issues to be

considered, which will be further examined and they often draw the experience of other governments (foreign and domestic) for ideas and to gain notion of what works and what do not work. According to Oleszek (1989: 67), the formulation of the proposed bill involves the decision making among alternatives and the decision is made on the basis of intuition. After a bill is reported out of its final committee, it is given its second reading and placed before the discussion and consideration. Therefore, the floor amendments are considered and preliminary vote on the bill is taken.

### 3.2.1.2 Implementation process

When the formation phase of the bill has been completed, the bill will be enacted into the law by the legislature, therefore be referred to as a law but the law is not concluded, therefore the implementation stage of the law making process will be the next step. According to Dye and Corchran *et al*, (1966 & 2005) implementation is referred to as to what happens after a bill becomes a law. The implementation is concerned with the agencies and officials involved, the procedures they follow, the techniques they employ the political support and the oppositions they encounter. According to Nathan and Oliver (1994: 73) implementation is “neither a routine nor a predictable process” because some proposed bill succeed and others fails which remains a challenge, but the question that comes the way is who implement the it? Implementing a bill to become a law is a formal complex of array of administrative agencies which is referred to as bureaucracies, but they are so called the primary implementers.

Although the administrative agencies are involved as the primary implementers of the, there are other role players that are involved and contribute in different ways to the execution of a law. This includes the legislature, the courts, the interest groups and the community organisations which may be directly involved in law making and implementation.

#### 3.2.1.2.1 *Legislature*

According to Jaffe and Heywood (1937 & 2009), the legislature has a bill proposal written in an appropriate form with the aid of an attorney and they may decide to become the chief author of the bill. However, the legislative bodies display interest

in the implementation of a proposed bill. In legislation the committee hearing and investigations are used to gather information, to review the implementation of bills, publicize agencies actions, put pressure on agency officials and chance the political reputations of members of the congress (Oleszek, 1989 & Anderson, 2011). Nathan and Oliver (1994), posits that the committee reports the bills or statements explaining how the legislation should be implemented and the how matters should be extracted by senators from nominees during hearing on their appointment.

Therefore, the legislative bodies give the administrative agencies flexibility in the implementation of legislation and when the administrative bodies implement the bill; the legislative bodies persist because the executive branches view the process as a practical way to handle some of their interest (Sabatier, 1986 & Cloete & de Coning, 2012). However, that's where the challenge or the problem comes in the sense that the members of the congress engage helpful to their chances of reelection and because it contributes to their oversight of their agencies.

#### *3.2.1.2.2 Courts of law*

Making a law requires special juristic and legal knowledge about how to translate the developed bill and favored problem-solutions into the text of a law (Unde, 1975 & Gupta, 2008). Therefore, Nathan and Oliver (1994), argues that some legislation's are enforced through judicial action or courts of law and in some instances the courts of law may be directly involved in the administration of the bill. The most important influence of courts of law on the administration is the flow from their interpretation of statutes and administrative rules and regulations and the review of the administrative decisions in case brought before them.

According to Zander (1989), the courts of law may transform their ideas into a specific legislative proposal with the help of a legislators and National Assembly. Heywood (2009) state that once the National Assembly adopted a draft law the legislators additionally requires a review and comment on the law from the senate. Therefore, after all that he law can finally be adopted by the National Assembly.

#### *3.2.1.2.3 Interest groups*

The interest groups can successfully influence the implementation if they have a substantial effect on the course and on the impact of the bill (King, 2010). The

groups directly participate in administration when the representation of particular interest is specified for the boards of agencies. However, they may complain to the congress or the executive if they believe that a proposed bill is not being implemented in accordance with the intent of the congress (Quack, 2007 & Anderson, 2011). When the interest groups have a role in agency decision-making they can also add legitimacy to the bill that they have helped to develop (Quack, 2007). Therefore, they may also vote to pass the bill in its original form or may decide to make changes to the bill; these changes are called amendments and are adopted by a majority vote.

#### *3.2.1.2.4 Community*

At local government level, the community and other organisations are used in the administration of the proposed bill (Oleszek, 1989 & Anderson, 2011). According to Gupta (2008), the community organisations have a vital role in determining when a portion of eligible legislative bodies are required to draft a bill of law and the problems thereafter. Therefore, Heywood (2009) posits that every member of the community and community organisations are given the opportunity to actively debate the merits of the entire bill and to propose amendments to it. However, not only the community organisations are involved in the implementation process but the political party officials and the presidential staff officials are also involved as well as the media communication.

#### *3.2.1.2.5 Political parties*

The roles of the political party's organisations have an influence on the implementation of the proposed bill of law. The political party organisations decline decades with the extension of hiring most agency personnel who will influence the welfare and the orientation of the proposed bill (Anderson, 2011). After the formulation and implementation of the bill, the public relation officers present the bill to the parliament, press and the people (Williams, 1986 & Gupta, 2008). The power of final discussion of the draft bill and its adoption remains in the responsibility of all law makers who have to consider different proposals and options and who by a board process of discussion and comparison of different options shall find the best possible solutions. However, the law will always affect the public directly and indirectly in that sense people are involved. Nevertheless, the outcome of a bill can

be most meaningfully understood as externalities that impose or benefit the third parties and in most case the public are indirectly, positively and negatively affected by the law of government. Therefore, the bill of law in this study refers to the choice on termination of pregnancy Act 92 of 1996 which was amended and passed on the 1 of February 1997. The Act is believed to been introduced with moral disrespect by traditionalist and those that are culturally sensitive.

### **3.3 THE CHOICE ON TERMINATION OF PREGNANCY ACT 92 OF 1996**

Historically, termination of pregnancy has been underpinned by controversy and moral consensus on termination of pregnancy is hard to achieve. At the same time, in the age of human rights, organs of state , including legislatures and the judiciary, cannot point to the lack of political, moral and religious consensus on termination of pregnancy to justify their failure to address the injustices women suffer on account of unsafe termination of pregnancy. When national authorities fail to implement termination of pregnancy laws to respect, protect and fulfil women's human rights, including reproductive rights, women with unwanted pregnancies often resort to unsafe termination of pregnancy.

However, women have the right to protect their reproductive health by exercising their rights to effective access to legal and safe termination of pregnancy services. The majority of the African countries such as Sudan; Kenya; Botswana and Ghana still have restrictive termination of pregnancy laws which contribute to unsafe and illegal termination of pregnancy in the world, but radical change in Termination of Pregnancy legislation occurred in 1996 in South Africa as the *Choice on Termination of Pregnancy Act 62 of 1996* was passed.

The aim of the Act on termination of pregnancy is to ensure safe and accessible termination of pregnancy for all women in the country. Therefore, since the aim of the study is to investigate the community member's perceptions of the Act on termination of pregnancy within rural villages found in Lepelle-Nkumpi Local Municipality in South Africa in the Limpopo province, it is important to study the conditions or the state of the TOP worldwide, in African countries, South Africa and countries bordering South Africa.



### 3.3.1 THE STATE ON TERMINATION OF PREGNANCY LEGISLATION: WORLDWIDE PERSPECTIVE

According to Cloete (1994) a state is created as a result of a process of law-making which culminates in a constitution for that state and the constitution is the first policy statement of the state. The constitution declares the action to be taken by the specified institutions and office bearers who follow procedures; respect prescribed conduct guidelines and values for the creation and the maintenance of the state (Cochran & Malone, 2005). The acts are needed by the communities to provide goods and service to make a living together in closer settlement (Cloete & de Coning, 2011). A community that is economically and industrially not developed requires many more public services than a developed community, in these regard some policies are needed to be the leading factors or the guiding tool in that sense. Against the background of the international growth and development in the reproductive rights, “the governments globally have responded to the growing international consensus for acts focusing on the well-being of the women and the socio-economic reasons by introducing *the Choice on Termination of Pregnancy Act 62 of 1992*”.

TOP laws have evolved through courts and human rights tribunals around the world interpreting human rights to recognise and sometimes deny women’s right to access the termination of pregnancy service and information and there has been a global trend towards liberalisation of termination of pregnancy laws observed before 1985 and 1973 (Cook, Dickens & Bliss, 1999: 24 & Jewkes & Rees, 2005). Determining the legality of terminating unwanted pregnancy is complex as TOP laws are generally addressed in multiple statutes, codes and regulations which apply simultaneously worldwide (Cook & Dickens, 2003, Sai, 2004, Jewkes & Rees, 2005 & Smith, 2013). According to Sai (2004), in countries where termination of pregnancy is “readily available, various types of laws, including judicial opinions, social security laws and health codes, regulate TOP as a medical procedure” and most governments permit terminating pregnancies under certain circumstances.

### 3.3.1.1 Legalisation of Termination of Pregnancy in the United State of America, Britain, Portugal, Belgium and Brazil

The legalisation of termination of pregnancy in this section is discussed within the international countries like the United States of America, Britain, Portugal, Belgium and Brazil. These countries were chosen because against the background of the international growth and development in the reproductive rights, the governments globally have responded to the growing international consensus for acts focusing on the well-being of the women and the socio-economic reasons by introducing *the Choice on Termination of Pregnancy Act 62 of 1992*.

#### *United States of America and Britain*

According to Engelbrecht, Jewkes and Rees (2005 & 2005) the development of the termination of pregnancy in the United State of America (USA) and Britain has a strong impact on Africa and specifically South Africa. Prior to 1800, there was no legislation relating to termination of pregnancy in any of the American state and Africa has not always allowed simultaneous documentation of TOP traditions and practices, while in the British common law as interpreted by the American courts was used to govern the legal status of TOP (Ngwean, 2004 & Engelbrecht, 2005 & Henshaw, Adewole, Singh, Bankol, Oye-Adeniran, & Hussain, 2008). The first anti-termination of pregnancy statute was passed in the decades prior to the civil war but focus on the safety of the women and after the civil war ended, and then the American state began to adopt a stricter approach to termination of pregnancy. According to Ngwean, (2004: 23) after the Supreme Court decision in 1973 in USA termination of pregnancy became an issue of federal constitutional law by holding that terminating unwanted pregnancies was a constitutional right, the law led to many women resorting to illegally terminating pregnancies. The Supreme Court ruled that America have the right to privacy, including the women's right to decide whether to have a child or not. However, the women and the doctor had the right to decide without the state interference at least during the first trimester of pregnancy (National termination of pregnancy Federation, 2004). According to Gerber Fried (2000) the American state laws are in place to ensure that minors inform their parents of their decision to terminate pregnancy, although such laws include

provisions for judicial by-laws. In this sense the minor has to go to court to discuss her personal life and pregnancy in front of the people or strangers.

The South African CTOP allows women under 18 years of age to have access to termination of pregnancy service without parental consent, but during 2000 the provision of the CTOP was challenged as it was said that the Act infringed on the constitutional right of every child to family or parental care and to be protected from maltreatment, neglect, or degradation (section 28(2) of the constitution of republic of South Africa of 1996 & Smith, 2013). The influence of the British termination of pregnancy legislation on the former African colonies such as (Zambia, Botswana, Ghana, Sudan, Zimbabwe, Uganda, Malawi, Kenya, Sierra, Nigeria, South Africa and Mauritius) were profound and there has been a limited termination of pregnancy law reform in many of these countries (Dixon-Mueller, 1990 & Pillai & Wang 1999), While in Britain TOP legislation was liberalised in 1967 (Ngwena, 2004). According to Ferreira, Finer and Henshaw, (1985 & 2003) prior to 1803 British common law allowed termination of pregnancy before 20-24 weeks because it was believed that after 20-24 weeks of pregnancy the soul entered the body. Although termination of pregnancy is performed after the period of 20-24 weeks was an offence there were no fixed penalties (Pillai & Wang; 1999). According to Pillai and Wang, Ngwena, & Dixon-Mueller, (1999 & 2004) after 1803, a radical change in TOP law took place and TOP became a criminal offence from the time of conception; this is quantified in the statutory amendment of 1828 in section 28 of the *Offence Against the Person Act of 1861* of Britain. Section 28 of the Act became the foundation of prohibition and served as unsatisfactory guide for the circumstances permitting termination of pregnancy in many jurisdiction of the common law. (Ferreira, 1985; Finer & Henshaw, 2003) argues that termination of pregnancy became a criminal offence, punishable by three years to life imprisonment even if the service performed has been performed for medical reasons and further state that it was only in 1929 that legal changes to TOP law took place.

The *Infant Life Preservation Act of 1929*, stating that it was not an offence if the termination of pregnancy was conducted for the purpose preserving the mother's life but illegal to kill a child capable of being born alive and the foetus is presumed viable at 28 weeks. According to Finer & Henshaw, (2003) currently termination of pregnancy law in British is the *Termination of Pregnancy Act of 1967* which came

into effect on the 27 April 1968. TOP is allowed if a registered medical practitioner conducts the service in a National Health Service hospital or at the department of health approved location. According Ngwena, (2004), the availability of the termination of pregnancy service in Africa was governed by the customary law.

### *Portugal and Belgium*

However, the African countries under French adopted TOP law based on the French Napoleonic code of 1810, the prohibition of TOP was absolute and was taken that termination of unwanted pregnancy was legally justifiable if is done to save the life of the women (Dixon-Mueller, 1990). Countries colonised by Portugal, driven their TOP law from the Portugal criminal code of 1886 and the code was strongly influenced by the Napoleonic code of 1810 and the Spanish law and in general termination of pregnancy was prohibited and no exceptions were provided for, but however it was accepted that terminating unwanted pregnancy is conducted to save a women's life (Dixon-Mueller, 1990). Similarly, Belgian colonies adopted the penal code of Belgium which prohibited termination of unwanted pregnancy absolutely but tolerated that the termination of pregnancy to be performed to save the mother's life.

### *Brazil*

According to Dixon-Mueller (1990), Brazil has the largest percentage of Catholics however, they voiced their opposition to any legal reform allowing improved access to termination of pregnancy merely on the conditions were pregnancy resulted from rape or incest; when the life of the pregnant woman is at risk and when the fetus has anencephaly. However, Brazilian lawmakers want to increase the penalties for termination of pregnancy, despite the pleas of international bodies such as the UN to legalise termination of pregnancy during the Zika widespread. Nevertheless, Brazil like other American nations such as Belize; Nicaragua; Paraguay; Colombia and Bolivia affected by Zika virus, does not allow pregnancy to be terminated except in cases where rape can be proven that the mother's life is at risk, or if the child will not survive. However, it is stated by the president of the National Conference of Brazilian Bishop who said that "termination of pregnancy is not the

answer to the Zika virus we need to value life in whatever situation or condition it may be” (Time Magazine, 22 February 2016). Nevertheless, the Catholic and Pentecostal churches have stressed that children living with microcephaly can be loved and cared for saying that against the termination of pregnancy.

### 3.3.1.2 Termination of Pregnancy legislation in Turkey, Tunisia and Syria

According to the TOP law in Turkey married women who request termination of pregnancy services must have the consent of their husbands. Single women who are older than 18 years can have TOP service on request without consent (Kavlak, Atan, Saruhan & Sevil, 2006; 6). Therefore, those women who are under the age of 18 years of age must have the consent of their parents before requesting the service in terms of family planning law of 1983 in Turkey. According to Department of Economic and Social Affairs (2002), Tunisia is the first Muslim country to liberalise termination of pregnancy law. However, the Department of Economic and Social Affairs (2002: 34), state that the Tunisian Penal Code of 1913 and the legislative decrees of 1920 and 1940, which amended the termination of pregnancy provisions of the Code, had all prohibited the performance of termination of pregnancy, except to save the life of the pregnant woman.

Nevertheless, Kavlak *et al* (2006), state that the Code allows termination of pregnancy to be performed during the first three months of pregnancy, if a couple had at least five living children and the woman had been pregnant for less than three months, and at any time during pregnancy if the continuance of pregnancy posed a danger to the health of the pregnant woman. According to the Department of Economic and Social Affairs (2002), termination of pregnancy performance is authorised on request during the first three months of pregnancy.

However, after this period the TOP may be performed when there is a risk that the health or mental balance of the mother will be compromised by the continuation of the pregnancy or a risk that the unborn child will suffer from a serious disease or infirmity (Henshaw, Adewole, Singh, Bankol, Oye-Adeniran, & Hussain, 2008). After this period, termination of pregnancy must be performed in an establishment approved for the purpose and the treating physician must present a report to the physician who will perform the TOP service. According to Lawrence (2016), the

performance of termination of pregnancy is subsidised by the Government in the same way as all other medical services, and those entitled to receive free health care can obtain the termination of pregnancy free of charge in public hospitals. According to (Kavlak *et al*, 2006), induced termination of pregnancy is generally illegal in the Syrian Arab Republic. Under the Penal Code of 22 June 1949 however, (Dabash & Roudi-fahimi, 2003) state that there are no stated exceptions to a general prohibition on termination of pregnancy. (Johnston, 2008 & Henshaw *et al*, 2008), states that a person who performs termination of pregnancy on a woman with her consent is subjected to one to three years' imprisonment.

According to the Department of Social Affairs Population Division (2002), harsher penalties are applied if the termination results in the death of the woman or if the person performing the termination of pregnancy service is a health professional. However, the harsher penalties are ungentle and unpleasant penalties that are pragmatic. Therefore, these penalties are reduced if the termination of pregnancy is performed by the woman to save her honour or another person performs the service to save the honour of a descendant. Nonetheless, under general criminal law principles of necessity, termination of pregnancy can be legally performed to save the life of the pregnant woman (Lawrence, 2016). Moreover, the law on the exercise of health professions specifically allows an abortion to be performed by a physician or midwife when continuation of the pregnancy poses a danger to the life of the woman (Henshaw *et al*, 2008 & Lawrence, 2016).

In this regard, the performance of the termination of pregnancy must be approved by another physician. Before the performance of termination of pregnancy service a record must be drawn up certifying the necessity of the TOP service; and the record must be signed by the two physicians and the patient or her spouse or guardian. In both Turkey and Tunisia, termination of pregnancy services are legal and provided free of charge in public health facilities, but the services are not yet uniformly available across the country (Dabash & Roudi-fahimi, 2003). However, Turkey and Tunisia TOP is legal on request during the first trimester of pregnancy (Johnston, 2008) and while in Syria termination of pregnancy is restricted on conditions.

### 3.3.2 THE PERSPECTIVE OF TERMINATION OF PREGNANCY IN AFRICAN COUNTRIES, NEIGHBORING COUNTRIES AND SOUTH AFRICA

Termination of pregnancy is a global phenomenon which has affected different countries, nationally and internationally (Tautz, 2004). In this section the perspectives of termination of pregnancy has been discussed from the African countries, the countries neighboring South African and South Africa.

#### 3.3.2.1 Perspectives on termination of pregnancy in African countries

According to Engelbrecht (2005), since 1960 there has been a movement toward termination of pregnancy law reform in most of African countries. The process of development in TOP legislation commenced in Anglophone Africa and tended to mirror adaptations made by the former colonial powers. The perceptions of termination of pregnancy in the African countries are discussed as following:

##### *Ghana*

Termination of pregnancy act in Ghana is currently a priority for investigation because of its unexpected low impact on reducing the maternal mortality rate in Ghana, the reduction of which remains a priority of the Government of Ghana (Adanu & Tweneboah, 2004). Although it is important to have a law in place, according to Aniteye & Mayhew (2013: 4) termination of pregnancy is generally described as illegal in Ghana unless it is carried out by a medical practitioner in a designated facility following rape, incest, and foetal abnormality, but according to the *Criminal Code of Ghana of 1985* requires that termination of pregnancies are performed only by medical practitioners. *The Constitution of Ghana of 1992* and the international conventions such as the International Conference on Population and Development in Cairo state that it is the statutory right of women to terminate the pregnancy or perform the termination of pregnancy services (Sai, 2004 & Ngwena, 2004).

##### *Egypt*

In Egypt, the termination of pregnancy is highly restricted and it is found that the treatment of unsafe termination of pregnancy consumed a large share of resource in a national representative sample of hospitals (Lassey & Wilson, 1998). "Egypt

and Iran completely prohibit termination of pregnancy despite the exception that Islam makes to preserve women's life or health" (Correa, 2003). According to Huntington, Nawar, Hassan, Youssef and Abdel-Tawab (1998), the termination of pregnancy policy is classified as restrictive on a worldwide scale, as it is permitted to serve the health of the woman, even when pregnancy is terminated within the prescribed period which is within 120 days for health reasons of the mother. According to Johnson (2008:14), terminating of pregnancies is an extremely delicate and sensitive issue in Egypt.

### *Tanzania*

According to Bangse (2010), in Tanzania the penal code explicitly states that termination of pregnancy is legally permitted if it is performed to save a woman's life. However, the Tanzania ratified the African Charter's Protocol on the Rights of Women in Africa (Kinemo; 2009), which according to Kinemo (2009), it requires their government to protect the reproductive rights of women by authorising termination of pregnancy in cases of sexual assault, rape or incest, and where the continued pregnancy endangers the mental and physical health of the pregnant woman or the foetus. According to Bangse (2010), the rule is that pregnancy should be terminated by a registered Medical practitioner if he is of the opinion formed in good faith that the continuance of pregnancy would involve risk to the life of the pregnant woman or of injury to the physical or mental health of the pregnant woman or any existing children or her family greater than if the pregnancy were terminated (Okonofua, Shittu, Oronsaye, Ogunsakin, Ogbomwan, Zayyan; 2005). Compared to the Somaliland, Somalia has been without an effective central government since the revolution of President Siad Barre in 1991. However, their cultural and religious beliefs strongly influence social norms and values and the large family size is praised and encouraged in Somali society, while discussion of sexual and reproductive health is generally taboo, leading to significant gaps in knowledge on healthy behaviors (Okonofua *et al* ; 2005 & Kinemo; 2009).

### *Rwanda*

Similarly, in Rwanda the law on termination of pregnancy remains restrictive with the procedure only permitted to save a woman's life or to protect her physical health (Government of Rwanda; 2007). According to Basinga, Moore, Singh, Audam,



Carlin, Birungi, & Ngabo, (2002) a woman seeking a legal termination of pregnancy has to go through a very demanding process of getting the consent of three doctors for the procedure, making access to a legal termination of pregnancy extremely difficult even when the pregnancy termination would be allowed under the law. However, according to (Basinga *et al*, 2002) a high penalty is proposed by the law for anyone who helps a woman to abort, many medical doctors do not even think about abortion even when it is medically indicated. Therefore, in that regard as the consequence, many women will turn to unsafe termination of unwanted pregnancies.

### 3.3.2.2. Perspectives of termination of pregnancy in South African Neighboring Countries

#### *Lesotho and Swaziland*

Termination of pregnancy falls under common law in both Lesotho and Swaziland which is based in Roman-Dutch law and prohibits termination of pregnancy, accepts in case of necessity (Dixon-Mueller, 1990). But the question of concern that arises is to under which circumstances terminating pregnancy be considered as a case of necessity? According to Engelbrecht, (2005) Lesotho and Swaziland are countries with most restrictive termination of pregnancy laws (see also Ngwena, 2004) and these countries clearly benefited from the experience of South Africa regarding the development and implementation of the CTOPA as one of the most liberal termination of pregnancy law in South Africa. Mozambique has also maintained the same law as Lesotho and Swaziland (Ngwena, 2004), although the law has remained stagnant in Mozambique but the liberalization of TOP has been implicitly condoned by the state (Engelbrecht, 2005 & Ngwena, 2004) and since the early 1980's termination of pregnancy has been allowed on request at number of hospitals through the country in an attempt to cope with widespread and the impact on women's health. In essence, Mozambique allows termination of pregnancy to save the pregnant women's life and to preserve the mental and the health of the foetal.

Prior to constitutional reform, the law on termination of pregnancy in Swaziland was governed by Swazi Common Law, which is a colonial inheritance from English

Common Law (Mavundla; 2009). According to Ngwena (2014), Section 15(5) of the Constitution of Swaziland of 2005 reformed the Common Law to permit termination of pregnancy when pregnancy threatens the life of the woman, when it constitutes a serious threat to the health of the pregnant woman, when there is a risk of serious and irreparable foetal malformations, when pregnancy is a result of rape, incest or sexual intercourse with a mentally disabled female and however (Mavundla, 2009 & Ngwena, 2014), previously there was no statutory law in Swaziland governing the performance of termination of pregnancy. According to Mavundla (2009), the Constitution of the Kingdom of Swaziland and the International Family Planning Perspectives, termination of pregnancy is prohibited except in cases of necessity. However, the case of necessity exists only when termination of pregnancy is performed to save the life of the pregnant woman.

### *Zimbabwe*

As compared to Zimbabwe, the Zimbabwean Termination of Pregnancy Act of 1977, which was retained at independence in 1980, according to Mavundla and Ngwena (2009, & 2014), permits termination of pregnancy on the grounds that: continuation of the pregnancy would endanger the life of the woman; continuation of the pregnancy would constitute a serious threat of permanent impairment to the woman's physical health; there is a serious risk that the child to be born will suffer from a physical or mental defect as to be permanently, seriously handicapped; and that the pregnancy is the result of unlawful sexual intercourse with a minor.

Bangser (2010), state that Zimbabwe adopted a new constitution in 2013 and however, the adoption a new constitution in 2013 in its right to life provision, it added a sub-provision that has implications for the regulation of termination of pregnancy and section 48 of the Constitution of Zimbabwe of 2013 guarantees that every person has the right to life, while section 48(3) provides that: an Act of Parliament must protect the lives of unborn children, and that the Act must provide that pregnancy may be terminated only in accordance with the law (Mavundla, 2009). Other than recognising that the Zimbabwean state has a constitutional interest in protecting the foetal life, it is not readily apparent as to what section 48(3) adds to the regulation of termination of pregnancy because Zimbabwe already has legislation that specifically regulates termination of pregnancy. According to

Ngwena (2004) Zimbabwe is one of the African countries where there has been half-hearted reform of the TOP law, which is the *Termination of Pregnancy Act of 1977* driven from the *Offence Against the Person Act* and the common law. According to the Act, termination of pregnancy service may be conducted “if the pregnancy endangers the life of the woman; if the pregnancy represents a threat of permanent impairment of her physical health; if the pregnancy was a result of unlawful intercourse such as rape or incest”. The Act is not concerned with termination of pregnancy as a public health issue (Ngwena, 2004 & Engelbrecht, 2005) but the nature of the Act renders the health workers to perform the service only if the legal requirements are met.

### *Namibia*

Similarly to Namibia, the country inherited the *Abortion and Sterilization Act 2 of 1975* of South Africa in 1990 (Correa, 2003: 4) and the legal requirements need to be met before the service be rendered, of which the legal requirements are “ if the pregnancy endangers the life of the woman; if the pregnancy poses a serious threat to the women’s mental health; if there is the risk that the child will suffer from a physical or physical defect of such a nature as to irreparably handicapped or if the pregnancy is a result of unlawful sexual intercourse including rape or incest”. In addition, two doctors besides the women’s doctor are required to certify the existence of the service and the service has to be performed by the medical practitioner in the state hospital or approved medical facility (Engelbrecht, 2005), therefore any person violating this law is subject to imprisonment for up to five years or a payment of a fine.

Namibia long period ago shared the same termination of pregnancy law with South Africa and it is in position to benefit from the experience of South Africa regarding the reform of the law (Dixon-Mueller, 1990: 300). The penal code of Botswana enacted in 1964, based in the British *Offence Against Person Act of 1861* governed the termination of pregnancy and is permissible if the medical practitioner is satisfied that the pregnancy was a results of a rape, defilement or incest; if the pregnancy involves risk to the life of the women or injury to the physical or mental health; if there is an evidence of risk that the child will suffer from but the TOP has to be performed within the first 16 weeks by the medical practitioner in the state hospital or a registered hospital or clinic approved for that purpose. In Nigeria,

according to Henshaw *et al* (2008), although TOP is permitted only to save the life of a pregnant woman, the practice was common and occurred under unsafe conditions.

### 3.3.2.3 Perspective of termination pregnancy in South Africa

In South Africa termination of pregnancy is not available for social or economic reasons like in Botswana, nor is available on request (Correa, 2003: 13). The United Nation (2001) noted that illegal termination of pregnancies continued to be a concern in Botswana due to; lack of procedures to be followed to perform the service; uncooperative doctors; due to the fact that there is no clear guidelines for determining whether the pregnancy is a result of a rape or an incest; shortage of medical practitioner; no legal treatment and guidelines for minor seeking to terminate unwanted pregnancies; few facilities for providing the service; and the difficulties experienced by women living in rural areas in accessing the termination of pregnancy services. In addition, lack of public awareness about termination of pregnancy legislation, service and the facilities for providing such services are also impede access to termination of pregnancy. In fact, this is a reason of concern as South African women are still encountering impediments in accessing termination of pregnancy services.

Prior to the 1994, South Africa functioned under the Political System of apartheid that affected all the spheres of life. South Africans were categorised into four racial groups namely; Blacks, Indians, Whites and Coloureds and they were classified according to their separate development. The government designated separate residential areas for each racial group and restrictions were introduced on every aspect of life including special mobility, employment, education and health care were organised along racial divisions (Van Rensburg, 2004). National Party was in power in 1948 until 1994, the party aggravated racial segregation and discrimination in South Africa (Pillay, 2001; & Cooper *et al* 2004). According to Van Rensburg (2004) the apartheid and racial segregation as well as the appearance thereof the health care system cannot be ascribe to the actions of the National Party government, but the colonisation encouraged segregation and inequality among racial groups in South Africa. Prior to 1948, the separate health care authorities, hospital wards and clinics for whites and non-whites resulted in inequality.

Therefore, in 1948 the segregation became the official policy of the National Party government and non-whites were denied political, health, economic, and social rights. According to Gerhardt (1997), in 1969, the South African minister of health refused for a commission of enquiry to consider the legislation of terminating pregnancy in the following circumstance: if there was a chance that the child born would be abnormal; to preserve the life and the health of the pregnant women; and in the case were pregnancy was a result of rape, incest or if the women was not able to understand the consequences of sexual intercourse. Early in the 1970's the common law as pertained, termination of pregnancy was described as a minefield by the courts while a commission of enquiry into termination of pregnancy and Sterilisation Bill was appointed in 1974 to investigate and report on the law concerning termination of pregnancy but the commission comprised of senior white male parliamentarians (Gerhardt, 1997 & Ngwena, 1998 & Cooper *et al*, 2004). Sarkin (1998; 107) stated that "the direct impact of pregnancy termination restrictions falls exclusively on a class of people that consist entirely of women".

Only women fall pregnant and however only women will endure unwanted pregnancies and adverse health consequences if the state restricts terminating pregnancy but yet the commission comprised only on the white male parliamentarians. Women are needed in the committee to investigate the consequences, impact and the effect of terminating pregnancies as they are the ones who need the service in order to determine what is right or wrong if one wanted to abolish the punishment. The South Africa termination of pregnancy Law Reform Group and the termination of pregnancy Reform Action Group were founded during the early 1970's and amalgamated in 1976. Prior to 1975 in South Africa, termination of pregnancy was allowed only on extremely restricted grounds. White women had several options available to them when faced with unwanted pregnancies and therefore an option was opened to white women to fly to Britain to terminate unwanted pregnancies, while black and coloured women were generally in secured and not positioned to seek help from private doctors or to fly over seas to seek the service (Guttmacher *et al*, 1998 & Cooper, 2004). In this regard their ability to obtain the pregnancy termination service was far more limited.

Before the *Termination of Pregnancy and Sterilization Act 2 of 1975* came into effect in South Africa, termination of pregnancy was criminalised under common law (Tautz, 2004). At that time it was rationalised and this was done to protect the health of women and unborn babies as a matter of justice out of a fear of God (McGill, 2006). In March 1975, the *Termination of Pregnancy and Sterilisation Act 2 of 1975* became the first South Africa statutory legislature in an area of medicine essential to women (Strauss, 1968). The Act allowed termination of pregnancy to be performed in South Africa on conditions that: if the pregnancy would endanger the life of the pregnant women or if it has posed a serious risk to her physical or mental health; if there was a risk that the child would suffer from a physical or mental defect of such a nature as to irreparably handicapped; and if the pregnancy was result of unlawful sexual intercourse such as a rape, incest or intercourse with a mental defective female who does not understand the consequences of the sexual intercourse or who cannot bear parental responsibility.

The requirements for the authorisation of termination of pregnancy service under this law was that all proposed unwanted pregnancies had to be certified by two medical doctors excluding the doctor who was to perform the service. For that essence the doctors had to certify that the women satisfy the grounds for legal termination of pregnancy but the certifying doctor must be performing the service for at least four years. According to Ngwena (1998), once the unwanted pregnancy service conducted, the medical superintendent of the facility where the service took place had to submit the details of the service including the name of the patient and the address to the Department of National Health and Population Development. In this regard in reality the Act disempowered women and disregarded international development in the human and reproductive rights fields.

The restrictive of the legislation encouraged unsafe or illegal termination of pregnancies because the government was ignoring the rights of the women to health and reproductive self-determination because the women wishing to obtain the termination of pregnancy service had to approach police officer, state officials, doctors and the magistrate for permission to terminate pregnancy. According to Sarkin (1989), the certification requirements and the excessive bureaucracy surrounding the Act were further deterrents. As many women had little education

and limited access to legal advice about termination of pregnancy because of the segregation of the ruling party, they were unlikely to be aware of the fact that they could apply for a legal termination of pregnancy. According to (Guttmacher *et al*, 1998; Ngwena 2004 & Sai, 2004) the Act did not increase access to safe and legal termination of pregnancy despite the claims by parliamentary advocates that it would decrease the rate of illegal and unsafely of termination of pregnancies and therefore the counseling was absent because the required psychiatric visit were to evaluate the situation and not to provide support for counseling.

### **3.4 THE TRANSITION TO THE DEMOCRATIC STATE IN SOUTH AFRICA**

Despite the problem surrounding the termination of pregnancy issues in South Africa, the government stood firm in its position regarding the termination of pregnancy legislation. In 1990, the Department of Health requested the public to put together the submissions regarding the termination of pregnancy *and Sterilisation Act 2 of 1975* (Ngwena, 2004). The ANC government fought against the system dominated by colonialism and apartheid as well as the suppression of women and the aspiration of the ANC government which was to create a constitutional democracy based upon equality under law, the protection of fundamental rights, freedom and social justice.

Therefore, this led to the formulation of the *Choice on Termination of Pregnancy Act 92 of 1996*. The opponents of the *Choice on Termination of Pregnancy Act of 1996*, such as Doctors for Life, the Christian Lawyers Association, religious organisations and other pro-life organisations, challenged the legalisation of the termination of pregnancy on demand (Guttmacher, Kapadia, Te Water & de Pinho 1998 & McGill, 2006) arguing that the unborn child has a right to live. The CTOPA allowed the termination of pregnancy on the following conditions:

- ❖ Terminating of unwanted pregnancy on request should be available during the first 14 weeks of pregnancy;
- ❖ Minors should be able to access pregnancy termination service without parental consent;
- ❖ Minors be counseled before the service;
- ❖ It is not necessary for a husband to consent to the termination of pregnancy;

- ❖ Minors should seek consent from parents, guardians, or trusted friends but this should however not be the mandatory;
- ❖ Health worker should be trained to conduct the service and the statistics should be kept, but names and identities should remain confidential.

The Choice on Termination of Pregnancy Bill was the most continuous piece of legislation to be put before South Africa's first democratic parliament (Diamond, 2004) and the Bill was introduced to the national assembly in 1995 when the political parties were concerned with the recommendations of the Bill such as (allowing the midwives to perform the service and allowing minors to terminate unwanted pregnancies without their parental consent) but the Democratic Party and the National Party were in favour of the Bill and the government insisted that the midwives perform the service and the minors do not need to consult their parents to perform the service.

However, the members of parliament and the doctors agreed to amend the Bill and reduce limitations of pregnancy termination. During apartheid, the Afrikaner-dominated National Party government advanced separate population policies for white, black and coloured South Africans, fuelled by fear of unsustainable population growth (Guttmacher *et al*, 1996). The fear took on racist overtones manifested suggesting that the black population was growing too quickly while the growth rate of the white population was stagnating, and that the black and coloured populations were becoming a burden upon the country's resources (Harrison, Lurie & Wilkinson, 2000 & Varkey, 2000). According to Guttmacher, Kapadia, Te Water and de Pinho (1996), access to legal termination of unwanted pregnancy was an integral part of a national health program drafted by African National Congress (ANC) leaders during the 1994 elections. The ANC's Reconstruction and Development Programme (RDP) (1994) outlined new national goals stating that "every woman must have the right to choose whether or not to have an early termination of pregnancy according to her own beliefs", and after the electoral victory, the new government began to prepare a new termination of pregnancy law for consideration by the nation's parliament (Morrone, 2006). Prior to the vote in the South African National Assembly, the legislation was passed as *The Choice on Termination of Pregnancy Act 92 of 1996*. The Act was introduced in the first post-apartheid parliament and came into force on 1 February 1997. It implemented the



statement in the governing African National Congress law framework that every woman must have the right to choose whether or not to have an early termination of pregnancy according to her own beliefs (Guttmacher *et al*, 1998). According to Lefleur (1990), the Christian Lawyers Association and other anti-termination of pregnancy groups challenged the constitutionality of the Act, asserting that it violated the right to life contained in section 11, the Bill of Rights in the *Constitution of Republic of South Africa of 1996* and they further stated that in 1998 the Transvaal Provincial Division of High Court dismissed the case, ruling that a foetus is not a person and does not have a right to life, and that the right to make decisions concerning reproduction contained in section 12 of the *Republic of South African Constitution of 1996* protects a woman's right to terminate unwanted pregnancy.

#### 3.4.1 THE CHOICE ON TERMINATION OF PREGNANCY ACT 92 OF 1996

Despite oppositions from political parties and the religious groups, the CTOPA was passed on the 31 October 1996. The Act came into effect on February 1, 1997, permitting the performance of legal termination of pregnancy to be performed upon the request on the first trimester of pregnant women, without any need for the approval of doctors, psychiatrists or magistrates (Guttmacher, Kapadia, Te Water & De Pinho 1996), and as well as replacing the restrictive provisions of *the Termination of Pregnancy and Sterilisation Act of 1975*.

The aim of the CTOPA is to ensure safe, hygienic and accessible termination of unwanted pregnancy for all women in South Africa and the Act is based on the 1996 constitution (De Pinho & Hoffman, 1998). Section 4 (b) (i) of the Choice on Termination of Pregnancy of 1996 state that the minors are counseled to notify their parent or guardian of their decision but are not required to receive consent for the procedure. Section 2 (1) (b) of the *Choice on Termination of Pregnancy Act 92 of 1996* further state that the pregnant women between 13 and 20 weeks of gestation can terminate pregnancy if a medical practitioner believes that the pregnancy threatens the mental or physical health of the woman or foetus, if the pregnancy resulted from rape or incest, or if it affects the socio-economic situation of the women. According to Ngwena (2004) CTOPA allows for termination of unwanted pregnancy on request during the first 12 weeks of pregnancy and during this period the women does not need to provide any reason why she want to terminate the

unwanted pregnancy. In that regard therefore, the medical practitioner or the midwife who has undergone the prescribed training may perform the service. Correa (2003; 13) state that the CTOPA places no limit to terminate unwanted pregnancy during the first trimester and insinuates that the unborn child's life is less important than the rights of the pregnant women.

The Choice on Termination of Pregnancy Act is not the result of unconsidered actions on the part of the government, but rather a culmination of political ideology based on equality, equity and non-discrimination and the outcome of the Act is that South Africa now has one of the liberal terminations of pregnancy law in the world (De Pinho & Hoffman, 1998 & Althaus, 2000). According to (Guttmacher *et al* 1996; De Pinho & Hoffman, 1998; Althaus, 2000; Cooper, Morrionic, Orner, Moodley, Harries, Cullingworth; Hoffman, 2004 & Engelbrecht, 2005), the objects of the Act can therefore be summarised as follows:

- ❖ Provide for legal TOP in the sense that recognise the value of the human dignity, equality, security of person, non-racialism and non-sexism as well as the freedom which underlie democratic South Africa;
- ❖ To recognise that the decision to have children is fundamental to a women's psychological and social health;
- ❖ To acknowledge that the government provide safe conditions under which the right to choice be exercised without fear;
- ❖ To ensure that the government has the responsibility to provide reproductive health care to all citizens;
- ❖ To concede that both women and men have the right to be informed and have access to safe affordable and acceptable method of fertility of their choice and that the women have the right access health care service to ensure future safe pregnancy;
- ❖ To recognise that the 1996 constitution protects the rights of persons to make decisions on reproduction and make decision over their bodies and to provide TOP not as distinct contraceptive service but as a reproductive health service.

The CTOPA aimed at extending freedom of choice by offering every woman the right to choose whether to have early, safe and legal termination of pregnancy according to their individual beliefs. In essence no women should be discriminated against based on race, religion or culture. Therefore, they have the right to make their own decisions of their reproduction concerning the timing, spacing, and number of children they wish to have. In this regard, the government is responsible for safe, effective, affordable reproductive health care of every woman seeking to terminate pregnancy. In this regard, the government is responsible for safe, effective, affordable reproductive health care of every women seeking to termination of pregnancy. Correa (2003) argues that liberalised laws as CTOPA do not necessarily guarantee expanded access to termination of pregnancy service.

According to Engelbrecht (2005), the impediments to access such as a shortage of health care providers and refusal of health care providers to perform the service do not disappear once the law has been liberalised. For example, according Correa (2003) it is clear in the Free State where it was found that six years after the introduction of the CTOPA there has been negative attitude and hostility towards health care workers. In this regard the negative attitudes and hostility impact on service delivery in that there are a limited number of workers who are willing to provide service. Due to limited number of doctors, trained midwives are permitted to conduct the termination of unwanted pregnancy service in order for the service to be widely available. There are key elements that CTOPA such as (counseling, minors access to TOP, duties of the health workers, TOP facilities and midwife training) that need to be explored. However, such elements could be discovered when the bellow conditions are met.

Firstly, the government should promote non-mandatory and non-directive counseling before and after the termination of unwanted pregnancy service and however, the counseling should protect the autonomy of the client and as far possible be free from the personal values of the counselor. In section 4 of the CTOPA, the counseling should include sufficient information to help women make an informed choice regarding termination of pregnancy and during counseling women should be informed of: the TOP procedures and associated risk; alternatives to TOP and the use of the contraceptives to prevent unwanted future pregnancies.

Secondly, the Choice on Termination of Pregnancy Act allows for minors to request to terminate unwanted pregnancy without the consent of their legal guardian, but the doctor or the midwife is obliged to advise the minor to consult with the parents, guardian, or a family member but however the minor may choose not to do so. During the first four years after the implementation of the CTOPA minors represented approximately 12 per cent of the recipient of TOP service provision nationally while 32 per cent of women under the age of 20 become pregnant (statistic South Africa, 2003). Motherhood has a significant impact on teen mothers, typically they are less educated, have few employment opportunities and have less stable marital status nevertheless, this has a negative impact on the economic development and economic growth widely.

Thirdly, the private health facilities must apply in writing to the Minister of Health in order to be designated as a TOP facility. Section 3 of the CTOPA state that both in public and private institution the following requirements must be met before they can be approved to perform the service (medical and nursing personnel; Surgical theater; Safe waste disposal infrastructure; Telephonic means of communication; Appropriate infection control measures; Surgical measures; Appropriate transport for emergency transfer if needed; Drugs for intravenous and intramuscular injection).

Section 2(2) of the CTOPA a registered midwife who has undergone the prescribed training may perform TOP of less 12 weeks of gestation period. Permitting trained midwives to provide TOP services was a strategic move to expand service to the most inaccessible parts in the country (Hord & Xaba, 2002). The South African National Council (SANC) developed guidelines for short courses to train nurses in TOP procedures and related reproductive health matters as well as the National termination of pregnancy Care Programme (NACP) was initiated in 1998 by the national directorate for maternal health to increase the TOP providers (Althaus, 2000). According to Hord and Xaba, (2002) the Midwife termination of pregnancy Care Training Programme under took three activities: training midwives; evaluating the quality of midwives and developing termination of unwanted pregnancy care curriculum and manual training. The health workers are responsible and are compelled to inform the service seeker about her rights to access service. Section 27(1)(a) of the *Constitution of Republic South Africa of 1996* everyone has a right to

access health care services, including the reproductive health care. Therefore the government is obliged to make the resources available.

However some legal challenges were brought against the CTOPA but failed. Firstly in 1998 the Christians Lawyers Association (CLA) Christian for Truth in South Africa and the United Christian Action (UCA) attempted the CTOPA void in total under the Constitution of Republic of South Africa of 1996. The argument was that life begins at conception and that termination of pregnancy ends the life. According to the 1996 Constitution of the Republic of South Africa everyone has a right to life and this should apply even to the foetus. According to Ngwena, (2004) a foetus has the constitutional rights and the CTOPA is thus contrary to the Republic of South African Constitution.

However the fact that the foetus is not a legal person under the 1996 constitution, therefore the CTOPA does not breach section 11 of the constitution of 1996. Secondly, the CLA brought another legal challenge to the Act regarding the rights of minors to exercise their choice to terminate pregnancy. Section 28(2) of the constitution state that the best interest of a child should take precedence in every matter concerning the child.

Therefore, the CLA argued that the decision to terminate pregnancy would have long-term emotional, physical and spiritual effects on the minor and she needs to be protected against such as the CTOPA infringed on the constitutional right that every child has the right to parental care as well as the right to be protected from maltreatment and neglect (Guttmacher *et al*, 1996; Sidley, 1998 & Panday *et al*, 2009). South Africa's liberal termination of pregnancy law is being challenged in court by three Christian groups who say that the law goes against the constitutional guarantee of a "right to life" (Sidley, 1998), further stated that the law is being challenged by the United Christian Action Group, the Christian Lawyers' Association, and Christians for Truth, who have asked the Pretoria High Court to set aside the *Choice on Termination of Pregnancy Act 92 of 1996*, arguing that a foetus has a right to life (Guttmacher *et al*, 1996).

Many Christians believe that terminating of unwanted pregnancy is considered as murder and inherently immoral and many South Africans are Christians therefore, the government and the law are commonly in conflict with people's religion (Ferree, Gamson, Gerhards & Rucht, 2000: McGill, 2006). According to Sidley (1998), many

women seeking to terminate pregnancies in South Africa are unemployed. According to Integrated Development Plan (IDP) of 2012-2013 of Lepelle-Nkumpi Local Municipality, the population in the area has a low level of skilled personnel, with the result that the labour force in area is in elementary occupations. Most of the occupations in this area do not require particularly high qualifications and tend to be occupations comprising fairly routine tasks, sometimes requiring some degree of physical effort.

The level of pregnancy is very high in South African as a developing country compared to other developed country especially teenagers (Panday, Makiwane, Ranchod & Letsoalo, 2009), this brings the idea that people do not follow or belief on the act of pregnancy termination as a law of governing termination of pregnancy in South Africa. Therefore, in these regard the problem arises that not all the South Africans belief on the Act but other oppose the Act in which is the reason for this study. In this case, since the *Choice on Termination of Pregnancy Act 92 of 1996* is against the cultural believes of the people however, it is against this background that the study seek to evaluate the perceptions of the Act to the lives of the people with specific reference to the people residing at Lepelle-Nkumpi municipal area. Even though there were some challenges facing the implementation of the Act but there are numerous successes regarding the operation of the Act.

### **3.5 THE STATE OF TRADITIONAL, CULTURAL AND RELIGIOUS BELIEFS ON TERMINATION OF PREGNANCY ACT**

The term culture is derived from the Latin word “*cultura*” (Rojek, 2008). Though it is not easy to discover what religious attitudes, our prehistoric ancestors may have toward termination of pregnancies there is an evidence of religious attitudes of some contemporary prehistoric societies.

According to Tooley (1983), termination of pregnancy has been one of the most highly debated social and political issues. Perhaps one of the reasons why the debate over termination of pregnancy is that dividing language is used. According to Connee (1999), the Pro-Life advocates believe that termination of pregnancy is as murder, while Pro-Choice advocates do not believe the same way. However, the question that rises is what explains such diversity of opinion? It is assumed by

(Lotz, nd) that the most generous assumption one can make is that people come to different conclusions about the meaning of termination of pregnancy because they have fundamentally different ideas about whom or what is being terminated.

However, one kind takes as its concern the question of the moral status of the foetus and this kind of argument plays a central role in debates concerning the stage at which a pregnancy may be terminated. The other kind of argument claims that even if we could settle the question of the moral status of the foetus, we will not thereby have settled the question of the moral permissibility of termination of pregnancy (Lotz, nd). The majority of the religions have taken strong oppositions on termination of pregnancy; they believe that the issue on terminating pregnancy encompasses profound issues of life and death, right and wrong, human relationships and the nature of society and that make it a foremost concern about the *Choice on Termination of Pregnancy Act 92 of 1996*.

The challenge becomes important when it comes to the practice of public administration as policies that are promulgated within the support of the *Constitution of the Republic of South Africa of 1996* have to find the expression within the diverse society. However, several groups appear to have become more permissive about TOP services. The studies conducted in the USA, revealed that whatever the religious beliefs make use of TOP service (Hoffman & Johnson, 2005 & Kadayifci, *et al*, 2007). According to Harries *et al* (2009: 6), in South Africa religious beliefs influence some nurse's decision not to be involved in TOP service such as Roman Catholicism, they influence their decisions. Therefore, for the significance and rationale of this study, the following are the different views on termination of pregnancy as an act passed against the traditional, cultural and religious beliefs.

The Christian religion is against the *Choice on Termination of Pregnancy Act 92 of 1996*, according to William and Lefleur (1990) to terminate an unborn child is practically the same as murder. Christians believes that life begins at conception therefore terminating pregnancy is to end a life as provided in the Bible in the book of Jeremiah 1:5 and the descriptions of God's knowledge and love for human beings beginning in the womb. In this regard the scripture clearly indicate that terminating a pregnancy is not an act approved by the bible. In Luke chapter 1 verses 36 and 41 we are told that Elisabeth conceived a son and that the baby leaped in her womb.

The bible does not say that the foetus leaped in her womb, it says the baby leaped (Luke, 2:12-16). In this sense an unborn baby and a new-born baby are the same; they are both living human beings.

According to Keown (2004), the natives of Formosa also terminate pregnancies for religious reasons not as part of ritual, but because it considered to be sinful to bear children before certain age. In the same culture the child is not considered to be full person until the child be given a name at two or three years of age. According to Lefleur (1990), the Buddhists believe that life should not be destroyed, but they regard causing death as morally wrong only if the death is caused deliberately or by negligence. According to Keown (2004) the decision to terminate pregnancy is therefore a highly personal one and one that requires careful and compassionate exploration of the ethical issues involved, therefore a willingness to carry the burden of whatever happens as a result of the decision will depend on the motive and intention behind the decision. Traditionally Buddhism rejects termination of unwanted pregnancy because it involves the deliberate destroying of a life and the Buddhists regard life as starting at conception as of Christianity (Lefleur, 1990).

The Israeli law differs from that of other countries, whereby elective TOP is available until the 23<sup>rd</sup> week of pregnancy. It is also permissible under specific conditions, namely that the pregnant woman is a teenager or an adult older than 40, unmarried, the woman has severe emotional problems, the woman's health is at risk or there is evidence of foetal abnormalities (Gagin, Oded, Cohen & Itskovitz, 2001:99). Judaism does not forbid TOP, but it does not permit TOP on demand and termination of pregnancy is only permitted for serious reasons while the Jewish law is more lenient concerning termination of pregnancy in the first forty days of pregnancy as it considers the embryo to be of relatively low value during this time (Lenn, 1998). Judaism expects every case to be considered on its own merits and the decision to be taken after consultation with a rabbi competent to give advice on such matters and they permits terminating pregnancy only in cases where continuing the pregnancy would put the mother's life in serious danger (Lenn, 1998).

Hinduism is religion of India, in their traditions there is no great distinction between religion and a culture, and the ethical decisions are grounded in both religious beliefs and cultural values (Lipner, 1989). For Hindus, the most important ethical



consideration surrounding the start of life is their belief in karma: that the foetus is not developing into a person but, rather is already a person from the moment of conception (Madan, 1985). Terminating pregnancy at any stage of foetal development is thus judged to be a murder (Coward & Ratanaku, 1999: 2). In this sense the Hinduism religious prohibit terminating pregnancy, except where it is necessary to save the mother's life. According to Lipner (1989) traditional Hinduism and many modern Hindus also acknowledge terminating pregnancy as a breach of the duty to produce children in order to continue the family and produce new members of society.

Scholars agreed that after quickening place termination of pregnancy is prohibited to all Muslims for it is a crime against a living being (Logan, Holcombe, Manlove, & Ryan, 2007) and stated in strong terms that terminating unwanted pregnancies counters Islam's respect and it leads to the depletion and eventually the extermination of the human race, involving the attempt to alter Gods will of creation (Cope, 1993: 64 & Coward & Ratanakulu, 1999) this is also supported by the word of God in Qur'an (5:32, 17:33 & 25:63) which reads as thus "do not kill the soul that God made". According to Cope (1993: 64) if the pregnancy is the results of rape or incest between brothers and sister or father and daughter then the termination of pregnancy in this case is due to psychological considerations and for that sense it is prohibited to terminate pregnancy of more than 120 days as it is considered as a crime against the unborn baby as the soul has already entered the foetus. Issues surrounding the legislation of termination of pregnancy service generate moral and clinical dilemmas for health professionals concerned with its provision. However, the differences arise between the perceived moral wrongness and legality. Therefore, women might find themselves in a dilemma between accessing TOP service and their cultural and moral values which can be viewed as a barrier to accessing termination of pregnancy.

### **3.6 CONCLUSION**

Determining the legality of terminating unwanted pregnancies is complex as TOP laws are generally addressed in multiple statutes, code and regulations which apply simultaneously worldwide. However, in conclusion TOP laws have evolved through courts and human rights tribunals around the world and the majority of the African

countries still have restrictive termination of pregnancy laws which contribute unsafe and illegal termination of pregnancy in the world as it has been discussed.

In this chapter it is found that the South African choice on termination of pregnancy act allows woman under the age of 18 years of age to have access to termination of pregnancy without their parental consent, but during the year 2000 the provision of the CTOPA was challenged as it was said that the Act infringed on the constitutional right of every child has a right to parental care and to be protected from maltreatment and neglect. The choice on termination of pregnancy places no limit to terminate unwanted pregnancies during the first trimester and insinuates that the unborn child's life is less important than the right of the pregnant woman as the objection is said. However, the Act has been implemented despite the opposition from different societies in the sense that the majority of the religions took a strong opposition on termination of pregnancy on demand; they believe that the issue on termination of pregnancy encompasses profound issues of life and death, right and wrong, human relationships and the nature of society and that make it a foremost concern about the *Choice on Termination of Pregnancy Act 92 of 1996*.

## CHAPTER FOUR

### RESEARCH DESIGN AND METHODOLOGY

#### 4.1 INTRODUCTION

Research methodology is the study of the research process in all its broadness and complexity, it is the various methods and techniques that are employed the influence of the methodological preference on the types of data analysis employed and the subsequent interpretation of findings. Research methodology is systematic and purposeful, procedures are not haphazard activities; instead they are planned to yield data on a particular problem. This is done through the use of qualitative data and quantitative data.

In this chapter discussed is research design which is planned through qualitative and quantitative research; the research population; the sampling method of the study; the methods of collecting data which is collected through the use of interviews and questionnaire; data analysis and ethical considerations.

#### 4.2 RESEARCH DESIGN

Research design is a systematic plan that describes how, when and where data is to be collected and analysed (Parahoo, 1997: 42). It is also recognised as a detailed plan or method for obtaining data scientifically in such a way that the validity of the findings is maximised (Mouton & Marais, 1993). According to Lather (1999) research design is the way the researcher plans and structures the research process and it can also be described as a flexible set of guidelines that connect theoretical paradigms to strategies of enquiry and methods for collecting empirical materials.

This study will largely be quantitative and qualitative in nature as it aimed to investigate the quantitative and qualitative explanation and report on the community member's perceptions of the *Choice on Termination of Pregnancy Act 92 of 1996* in South African municipalities with reference to Lepelle-Nkumpi Local Municipality. Straus and Corbin (1990) state that qualitative research is concerned with developing explanation of social phenomena and with the understanding of human beings and the nature of their interactions with other humans and surroundings. The

reason for using qualitative approach is that it provides accurate portal or account of the characteristics of a particular individuals, situations or groups (Mouton & Marais, 1991). The qualitative research also assists the researcher in verifying the validity of data by way of comparison on various kinds of data and methods that would be in the form of observation and interviews at the same time (Silverman, 1995). The other reason why the researcher chooses both the method is that the quantitative research methods mostly tend to emphasise that there is a common reality on which people can agree, however the research design will therefore be flexible.

#### 4.2.1 QUALITATIVE RESEARCH

Qualitative methodology refers to research which produces descriptive data: generally no numbers or counts are assigned to observations, the indispensable condition or qualification for qualitative methodology is a commitment to seeing the world from the point of view of the actor. Based on the qualitative research methodology the researcher designed and compiled a structured interview questions and unstructured questions in order to collect information from the municipal manager, traditional leaders, church leaders, the councillors of the municipality of Lepelle-Nkumpi, the officials in the Limpopo legislature as well as the community based organisations such (SANCO, ward committees) within the jurisdiction of the Lepelle-Nkumpi Local Municipality. De Vos (2001: 240) defines a qualitative research as a multi perspective approach, making sense of interpreting or reconstructing this interaction in terms of meaning that the subjects attached to it. The qualitative approach deals with data that are principally verbal.

#### 4.2.2 QUANTITATIVE RESEARCH

Quantitative data collection method relies on random sampling and structured data collection that it deserves experience into predetermined response categories, it produces the results that are easy to summarise and compare (De Vos, 2001). Quantitative research approach is concerned with testing hypothesis driven from theory and or being able to estimate the size of a phenomenon of interest. The study will also use structured questionnaire that were administered to the members of ward 23 and ward 22 of the Lepelle-Nkumpi. This method has been chosen because it allowed the researcher to get first-hand information.

### **4.3 RESEARCH POPULATION**

Population is defined as respondents in the universe who possess specific characteristics. The research population refers to the total set from which the respondents are chosen (Zikmund, 1994 & De Vos, 2001). The population of this study were as follows: municipal manager, traditional leaders, church leaders, the councillors of the municipality of Lepelle-Nkumpi, the officials in the Limpopo legislature as well as the community based organisations such (SANCO, ward committees) within the jurisdiction of the Lepelle-Nkumpi Local Municipality.

### **4.4 SAMPLING**

A sample is a group which is selected from the population and thus less than the population, while remaining as representative as possible. According to De Vos and Strydom (1998: 191), a sample is defined as elements of the population considered for actual inclusion in the study. Bless and Higson-Smith (1995) argues that although a sample is a subset of the population, it must have properties which make it representative of the whole. In this study two types of sampling strategies are adopted (the qualitative and quantitative sampling).

Firstly for qualitative sampling method, a purposive sampling was adopted in which the researcher was purposefully selecting from the identified population certain individuals to provide information. The municipal manager, one councillor within the jurisdiction of the Lepelle-Nkumpi Municipality, the traditional leaders, eight church leaders, four officials in the Limpopo Legislature. Secondly, the quantitative sampling method, a random sampling was adopted in which the researcher randomly sent the questionnaires to the members of the community to respond to set structured questions. The purpose of random sampling is to ensure that a large number of populations have a probability of participating.

### **4.5 DATA COLLECTION METHODS**

In this study data was collected with the use of structured and unstructured interviews and the structured questionnaires and that are discussed as follows:

#### 4.5.1 INTERVIEWS

The targeted respondents of the study were as follows: one (1) municipal manager, one (1) municipal mayor, two (2) municipal councillors, one (1) traditional leader, three (3) church leaders, and four (4) officials in the Limpopo legislature. An interview allows the study to probe deeper following the answer of the respondents and it involves a direct personal contact with the participant who is asked to answer questions relating to the problem.

#### 4.5.2 QUESTIONNAIRE

The questionnaire is composed of a list of questions or statement to which the respondents were requested to respond in writing. Questionnaires were used to obtain the opinions of members of the public about the perceptions of the *Choice on Termination of Pregnancy Act 92 of 1996*. However, one hundred and twenty (120) questionnaires were distributed to the members of the public residing in ward 22 and ward 23 (sixty (60) for each ward), in the Lepelle-Nkumpi Local Municipality. One hundred and eighteen (118) were received back. The method has been used because it is believed to collect large amount of information which enables data to be easily quantified and can thus provide a comparable data basis from different perspectives.

#### 4.6 DATA ANALYSIS

The form of analysis is determined by the specific qualitative and quantitative approach taken. The collected data was analysed through the use of statistical table, charts, histograms to explain clearly and complexity of data gathered and therefore this was done through descriptive mode as well as through the use of Statistical Package for Social Science (SPSS).

#### 4.7 ETHICAL CONSIDERATIONS

McMillan and Schumacher (2001) defines research ethics as dealing with beliefs about what is right or wrong, proper or improper, good or bad. Wassenaar (2006) indicates that the essential purpose of research ethics is to protect the welfare of research participants. The research ethics however involves more than a focus on the welfare of the research participants and extends into areas such as scientific misconduct. Therefore, in pursuing the objectives of the study, the researcher was

guided by the ethical considerations such as Confidentiality and Anonymity, consent form and approval of the research ethics committee.

#### 4.7.1 CONFIDENTIALITY AND ANONYMITY

Confidentiality and anonymity are related but distinct concepts. According to Henn (2006), anonymity ensures that a person remain nameless and unidentifiable, while confidentiality mean that the researcher hold the information in confidence and it is commonly viewed as a kin to the principle of privacy (Oliver, 2003 & Gregory; 2003). The researcher informed the respondent's that the information is used only for academic purpose and their names will not be disclosed.

#### 4.7.2 CONSENT FORM

Consent form is a voluntary agreement to participate in a research. However, it is the process in which the subject has an understanding of the research and its risks. The researcher wrote a covering letter to inform the participants who the researcher is, the reason for conducting the study, what the study is about and its purpose and also informed the participants of their potential rights so that the participants participates willingly. The researcher also wrote a letter of requisition to collect data from selected geographic area.

#### 4.7.3 APPROVAL OF THE RESEARCH ETHICS COMMITTEE

According to Merz (2004), the ethics committee can help the researcher to design ethical studies but the committee is not responsible for how the study is done. Hence, the researcher is ultimately held accountable. The Ethic Committee is actually the unifying factor in all the research. The researcher ensured that this study was conducted after getting approval from the University of Limpopo Ethical Committee (TREC).

### **4.8 CONCLUSION**

This chapter discussed the research design and methods that were proposed in the study and clarified the methods that have been used to collect the data. Therefore, the chapter that follows focuses on the data analysis and interpretations of the outcomes of the study.

## **CHAPTER FIVE**

### **RESEARCH FINDINGS, ANALYSIS AND INTERPRETATIONS**

#### **5.1 INTRODUCTION**

An essential component of ensuring data integrity is the accurate and appropriate analysis of the research findings. Chapter four outlined the research methodology was used, therefore chapter five focuses on the findings of the qualitative and quantitative data which was obtained by means of interviews and questionnaires. In this chapter the data was collected with the use of structured and unstructured interview questions and through structured questionnaires. The structured and unstructured questions was presented in the interview scheduled and the questionnaires was used to obtain the opinion of the community members in ward 22 and ward 23 in order to justify what should be done to improve the knowledge and the importance of laws in South Africa. The findings obtained from the interviews and questionnaire's responses were presented, recorded, analysed and interpreted accordingly and however, the original ideas are developed and judgments are made on the findings. The data in this chapter is presented separately, data collected through questionnaires and data collected through interview questions.

#### **5.2 THE RESEARCH FINDINGS**

The study was conducted at Lepelle-Nkumpi Local Municipality under Capricorn District Municipality in the Limpopo province. It investigated the community's member's perception of the *Choice on Termination of Pregnancy Act 92 of 1996* as implemented. The data from the above mentioned municipality was collected from August to September 2015 with the use of structured questionnaires and the use of unstructured and structured interview questions.

The researcher chose the questionnaire method to randomly select members of the community from ward 22 and ward 23 to respond to the questionnaires because it allows first-hand information while with the interview, the researcher obtained permission from the Municipal manager to conduct interview with relevant respondents from the Municipality. However, 120 questionnaires were handed out to the respondents residing at ward 22 and ward 23 of the municipality area of jurisdiction. Out of 120 questionnaires 118 were received back. However, the



findings of the study are presented into two sections. The first section focuses on the data collected through the structured questionnaires while the other section focuses on the findings of the data collected through structured and unstructured interview questions.

### **5.3 DATA COLLECTED THROUGH QUESTIONNAIRES**

A total of 120 questionnaires were randomly distributed to the members of the local communities residing in ward 22 and ward 23 (60 for each ward), but only 118 were received back. To ensure that relevant data collected through questionnaires satisfy the aim and objectives of the study the researcher structured the questionnaires in the following order: biographical information, the knowledge of the TOP Act, the community's perception of the Act and the effects of the of the Act on the communities culture; on the right of the foetus; on the consent of parents for girls under the age of 18 years as well as the right and the decision of the woman. Therefore, the structured questionnaires provided the findings as follows.

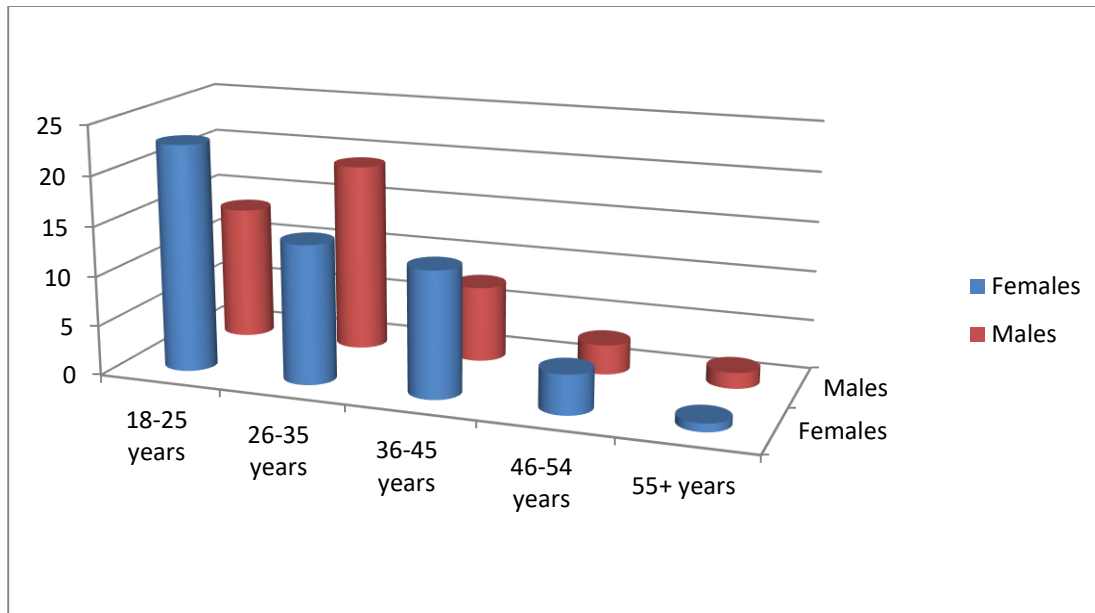
#### **5.3.1 THE BIOGRAPHICAL INFORMATION**

This section presents the biographical information of the respondents who participated in this study, in a questionnaire form. The data was presented in terms of Age, Gender, Educational level, Employment category and the Religion category. However, this provided the researcher with details of participants who contributed or took part in this study for data collected to be understood in accordance with the average response involved. The biographical information of the findings is as follows:

##### **5.3.1.1 Age and gender profiles of the respondents**

It was important to identify age and gender of the respondents in order to make the sample representative. The figure below emphasises the age and gender level among the respondents.

Figure 1: Age and gender profiles of the respondents

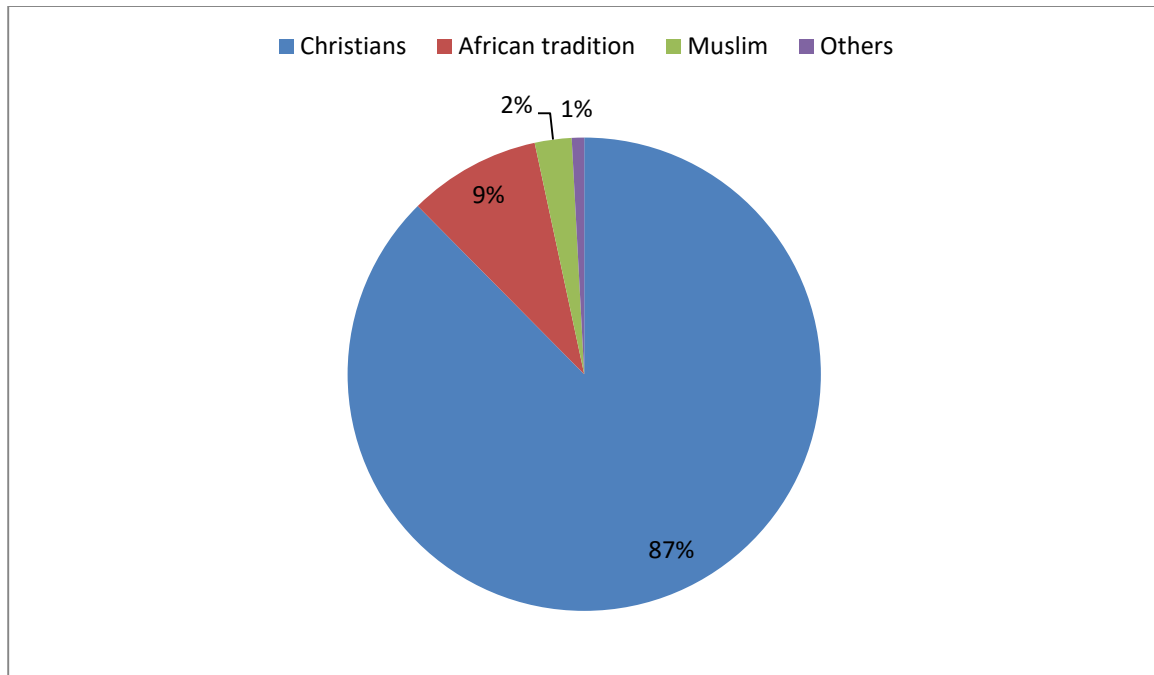


As shown in the figure above the blue bars represent the total number of females whilst the red bars represent male's respondents. The figure designates the total age and gender percentage representative of the respondents and the researcher found an overall **54%** of the respondents comprising of 22.8% aged 18-25 years, 14% aged 26-35 years, 12.7% aged 36-45 years, 0.84% aged 55+ years and 4% aged 46-54 years were females aged between 18 and 55+ years and while **45.5%** were males comprising of 13.5% aged 18-25 years, 19% aged 26-35 years, 7.6% aged 36-45 years and 3% aged 46-54 years and 1.6% aged 55+ years. Females were the majority respondents of the questionnaires at 54%, the perspective of the analysis can be that the Act is about females being the reason of the high percentage of females respondent and youth aged 18-36 are dominating respondents in this research at 65% comprising of 44 females and 33 males.

### 5.3.1.2 Religions profiles of the respondents

The respondents were requested to indicate their religious affiliations. Probing of religion category in this study is significant to categorise the dominant religion affiliation in the Lepelle-Nkumpi Local Municipality. The religion affiliation was categorised by Christians, African traditions, Muslims and others to specify and therefore, the figure below demonstrate the religion of the respondents.

Figure 2: Religious profiles of the respondents

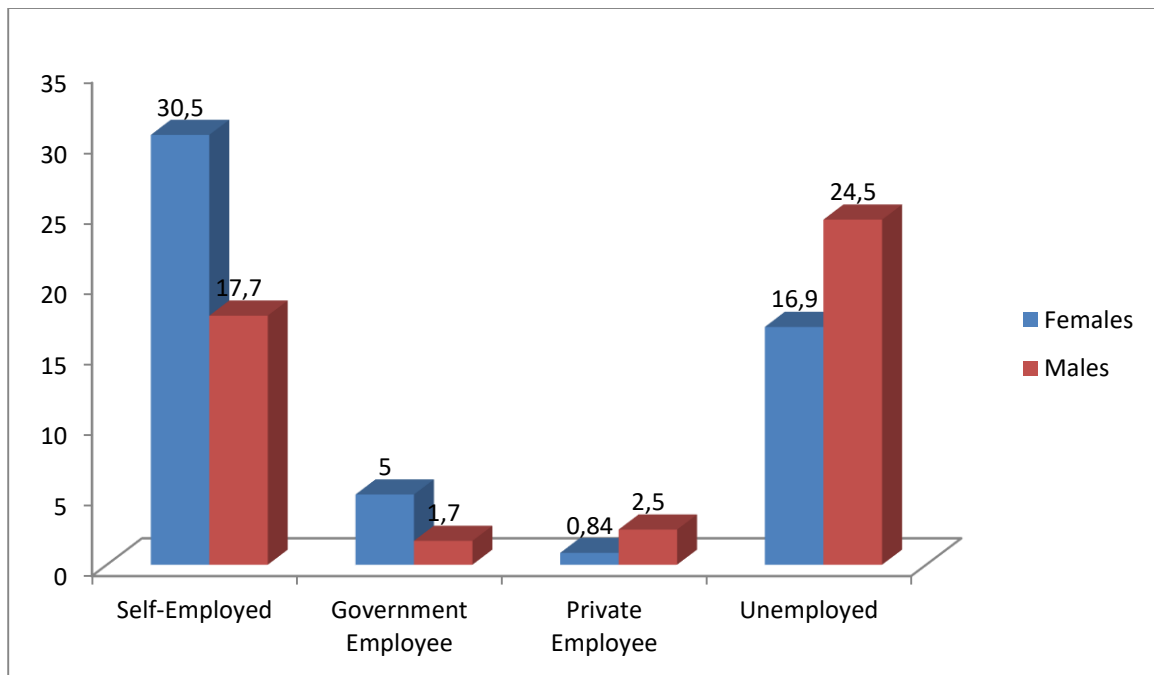


Out of 118 respondents, 87% reported that they are Christians, only 2% are Muslims and, 9% believes in African tradition and 1% reported other and specified none which means they had no religious affiliation. The analysis of the findings in this study shows that the Lepelle-Nkumpi is dominated by the Christians. Christians believes uphold the sanctity of life, shaping moral and ethical perceptions of the termination of pregnancy services.

### 5.3.1.3 Employment status of the respondents

The employment category in this study was categorised into self-employed, government employee, private sector employee and unemployed as indicated on the figure 3 below.

Figure 3: Employment status of the respondents

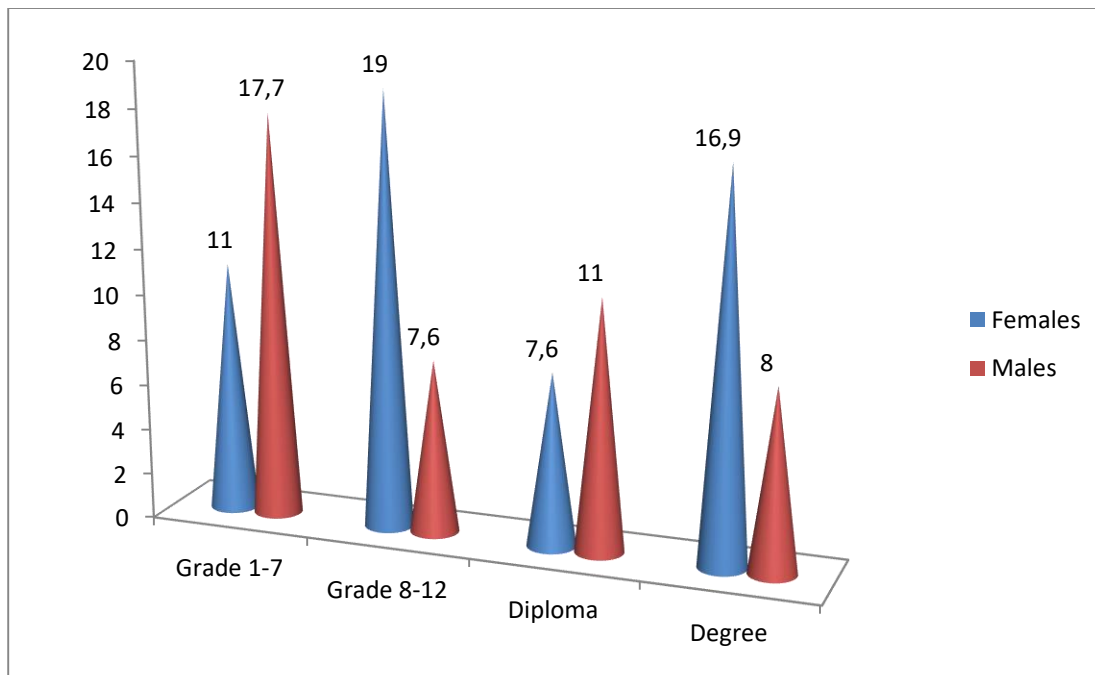


The figure above shows the employment category of the respondents. The figure indicates that self-employment is dominating at a rate of 48% including 30.5% (N=36) of females and 17.7% (N=21) of males, as it has been indicated that the municipality is predominately rural and people derive their income from informal selling and hawking. However, private employees and government employees are fewer because population in this area has a low level of qualified and skilled personnel. Nevertheless, education in these areas is challenging leading to high level of unemployment, at a rate of 41% comprising of 16.9% (N=20) and 24.5% (N=29) females and males respectively. Unemployment is a major concern in this municipality and the situation is aggravated by the influx of people from surrounding rural areas. It should be noted that the students who participated in this were also counted as being unemployed

#### 5.3.1.4 Educational status of the respondents

The educational level of the respondents helps to validate the data. Therefore, the educational category of the population is categorised as follows: grade 1-7; grade 8-12; diploma; and degree. The educational level of the respondents is presented as follows:

Figure 4: Educational status of the respondents



The above figure elucidates the status of education of the total respondents. The researcher found it significant to identify the status of education for the study to be representative of the whole population. There is an alarmingly high percentage of 11% (N=13) and 17.7% (N=21) of females and males without schooling or with minimal education qualifications aged 36-55+ respectively which they had no matric having left school at primary levels. The researcher found that there is only 7.6% (N=9) and 11% (N=13) females and males with diploma respectively among respondents aged between 18-45 years. However, there is high percentage of males at 7.6% (N=9) with matric certificates and 19% (N=23) females with matric age 18-25 years. Therefore, the respondents with higher qualifications such as degree has been found to be low at 16.9% (N=20) and 8% (N=10) females and males respectively.

### 5.3.2 THE KNOWLEDGE OF THE TERMINATION OF PREGNANCY ACT

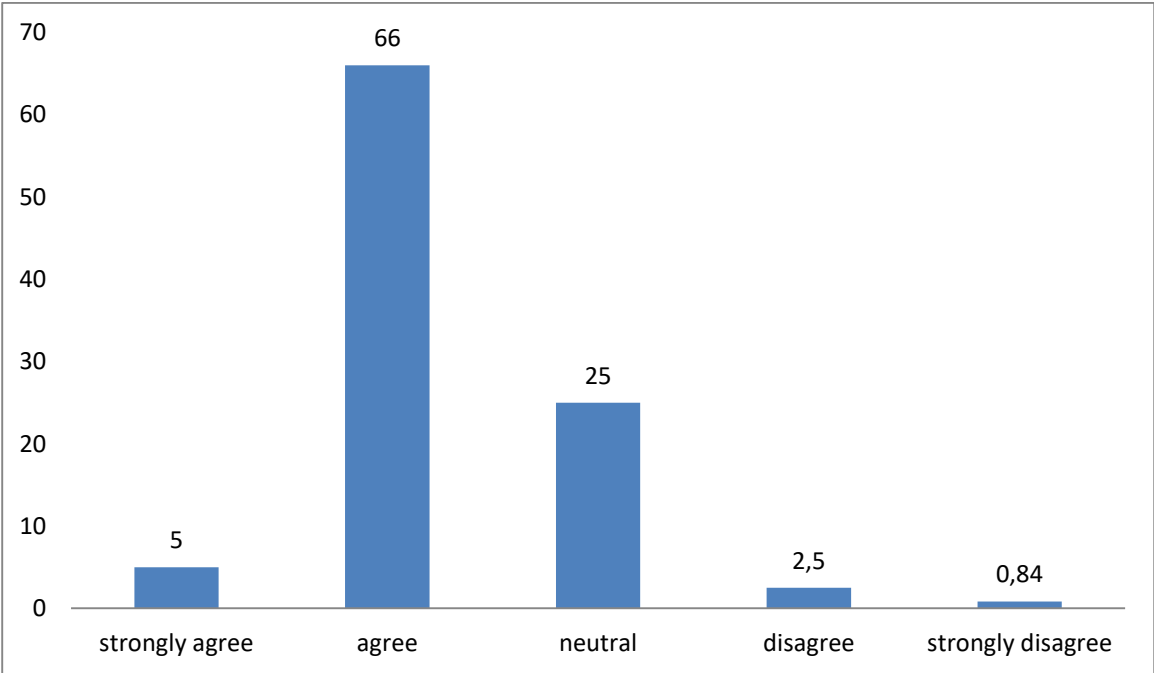
The knowledge concerning the information on the CTOPA was noted by (Varkey, 2000) who reported that while women may know that termination of pregnancy is legal it is likely that the respondents are familiar with the access and the facts of the Act. However, the familiarity, knowledge, parental consent to girls who are minors

towards TOP, pregnancy resulted from rape and the legality of the Act by the respondents is presented below.

5.3.2.1 The familiarity of Act 92 of 1996

The respondent's knowledge about TOP and CTOPA is illustrated by the figure below. The researcher wanted to establish whether the Act is knowledgeable to the public in the study area or not. However, it is often said that the legislation on TOP act is not well known to the public not only of the study area. Therefore the result from data collection shows as follows, the figure answers the opinion that the respondents are familiar with the termination of pregnancy Act.

Figure 5: familiarity of Act 92 of 1996 to the respondents



66% (N=78) of the respondents agree that they understand and they are familiar with the *Choice on Termination of Pregnancy Act 92 of 1996* that was legalised in South Africa and 6 of them strongly agree which constitute 5% of the respondents. Compared to 0.84% (N=1) of the respondents strongly disagree that they are not familiar and 2.5% (N=3) disagree to the opinion. While 25% (N=30) of the respondents are neutral of the opinion. Based on the responses gathered from the questionnaires that were distributed to the participants, it is interesting that all of the respondents have an idea of the concept termination of pregnancy. With regard to the knowledge of the CTOPA an overall 71% of the respondents for the opinion that

you are familiar to the Act on termination of pregnancy, was indicated that the respondents are well informed about the Act compared to an overall 3% of the respondent who disagree to the opinion.

5.3.2.2 Knowledge of the Act 92 of 1996 by the respondents

The knowledge of the respondents on the CTOPA, to the opinion that the Act allows the girls below the age of 18 years to access the service on termination of pregnancy shows as follows.

Table 1: girls below the age of 18 years should access the TOP

<b>Strongly agree</b>		<b>Agree</b>		<b>Neutral</b>		<b>Disagree</b>		<b>Strongly disagree</b>	
<b>N</b>	<b>%</b>	<b>N</b>	<b>%</b>	<b>N</b>	<b>%</b>	<b>N</b>	<b>%</b>	<b>N</b>	<b>%</b>
-	0	7	5.9	23	19	79	66.9	9	7.6

The implementation of a law often consider uncertainties about what the law will accomplish, how effective will it be, or the consequences it will have to the society. However, the CTOPA was introduced with lot of negativities and concerns and nevertheless, there are misconceptions on its effects within traditional, cultural and religious beliefs. It is said the Act Infringed on the constitutional right that every child has the right to parental care as well as the right to be protected from maltreatment and neglect.

Of all the respondents 5.9% (N=7) agree that the Act allows girls bellow the age of 18 years to access the service on termination of pregnancy, while none of the respondents strongly agree that the Act allows the girls below the age of 18 years to access the service on termination of pregnancy. However, with regard to the respondents knowledge about CTOPA, a huge percentage of 66.9% (N=79) disagreed to the opinion while 7.6% (N=9) strongly disagree that girls below the age of 18years should be allowed for termination of pregnancy. Therefore, an overall of 74.5% of the respondents disagree that the TOP act allows the girls below the age of 18years to access the TOP service thereby, indicating that the respondents are

not well informed about the Act. This observation is also evident in the relative high portion of neutral response at 19% (N=23) to an extent that Neutral response should be treated as an unsure answer, thus portraying the lack of knowledge. It is of the opinion of the respondents that minors need to obtain parental consent before allowed to access the service on termination of pregnancy so that the conscientious objection in the CTOPA is interpreted with sections of the 1996 Constitution in mind.

5.3.2.3 Pregnancies resulted from rape

The South African’s *choice on termination of pregnancy Act 92 of 1996* allows women under the age of 18 years to have access to termination of pregnancy service without parental consent and it is believed that the Act infringed on the constitutional right of every child to family or parental care and to be protected from maltreatment and neglect. Therefore, the table below emphasises the opinion that the Act allows pregnancy resulted from rape or incents to be terminated.

Table 2: pregnancies that resulted from rape

<b>Strongly agree</b>		<b>Agree</b>		<b>Neutral</b>		<b>Disagree</b>		<b>Strongly disagree</b>	
<b>N</b>	<b>%</b>	<b>N</b>	<b>%</b>	<b>N</b>	<b>%</b>	<b>N</b>	<b>%</b>	<b>N</b>	<b>%</b>
-	0	98	83	20	16.9	-	0	-	0

Of all the respondents 83% of the respondents agree that the Act allows pregnancy resulted from rape or incenc to be terminated while none of them disagree to the statement. However, none strongly agree or strongly disagree while 16.9% of them are not sure of the statement. Nevertheless, these findings correlate with the conditions or the requirements of the CTOPA, which allows termination of pregnancy services to be available on request when the pregnancy resulted from rape or incest.

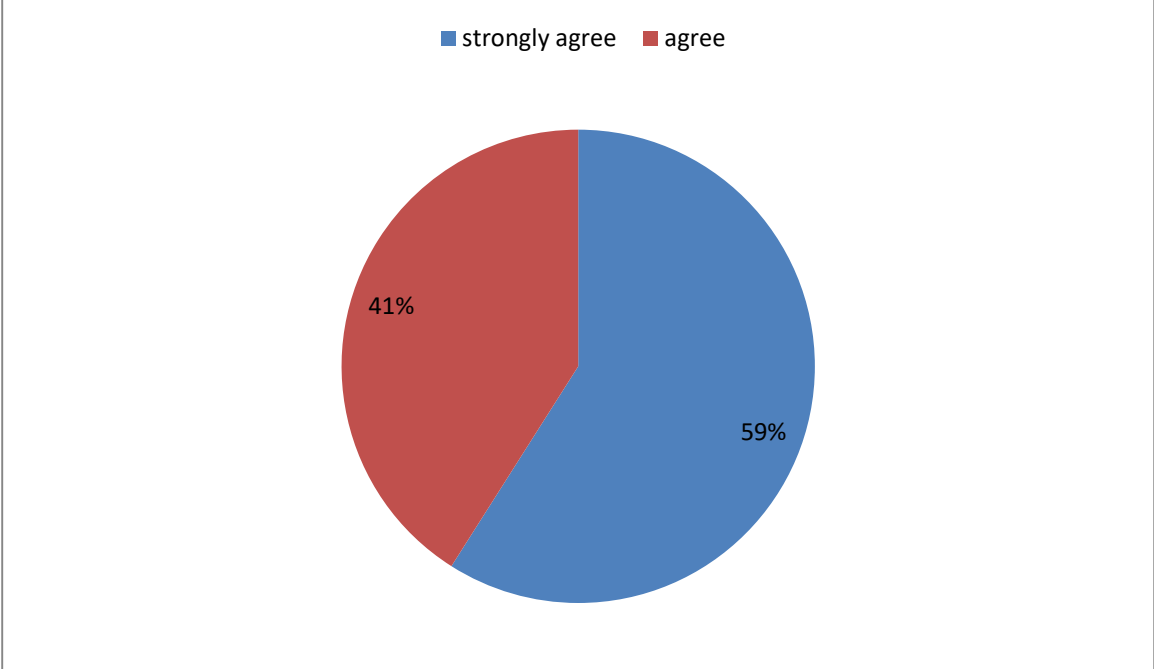
5.3.2.4 The opinion that Act is in conflict with respondent’s culture

It is believed that terminating of unwanted pregnancy is considered as murder and inherently immoral and therefore the government and the law are commonly in



conflict with people’s belief. However, the below figure emphasise the opinions of the respondents to the statement that the CTOPA is in conflict with their culture.

Figure 6: The opinion that the Act is in conflict with respondent’s culture



The above figure shows that 59% (N=70) of the respondents strongly agree to the opinion that the Act is in conflict with people’s culture while 41% (N=48) agree to the opinion. Hence, none of the respondents strongly disagree nor agree to the opinion that the Act is in conflict with their culture. Therefore, an overall 100% of the respondents are of the opinion that the Act is in conflict with their culture. The findings on the above figure can be said that the issue of ethics and morality on termination of pregnancy will continue to conflict with the morals and ethics of all the respondents since 87% of the participants are Christians as exposed by figure 2 in page 63.

However, Christianity believes that an unborn baby and a new-born baby are the same; they are both living human beings and they believe that terminating unborn child is as murder. Nevertheless, it is revealed that the community or rather people at Lepelle-Nkumpi are not fully conversant about this law on termination of pregnancy because few just know that termination of pregnancy is allowed but at what stage one can request the service or who can request the service, people are not sure of. Therefore, the researcher recommend that government introduce media

for public information about law making because media today is believed to convey information to the public very quicker.

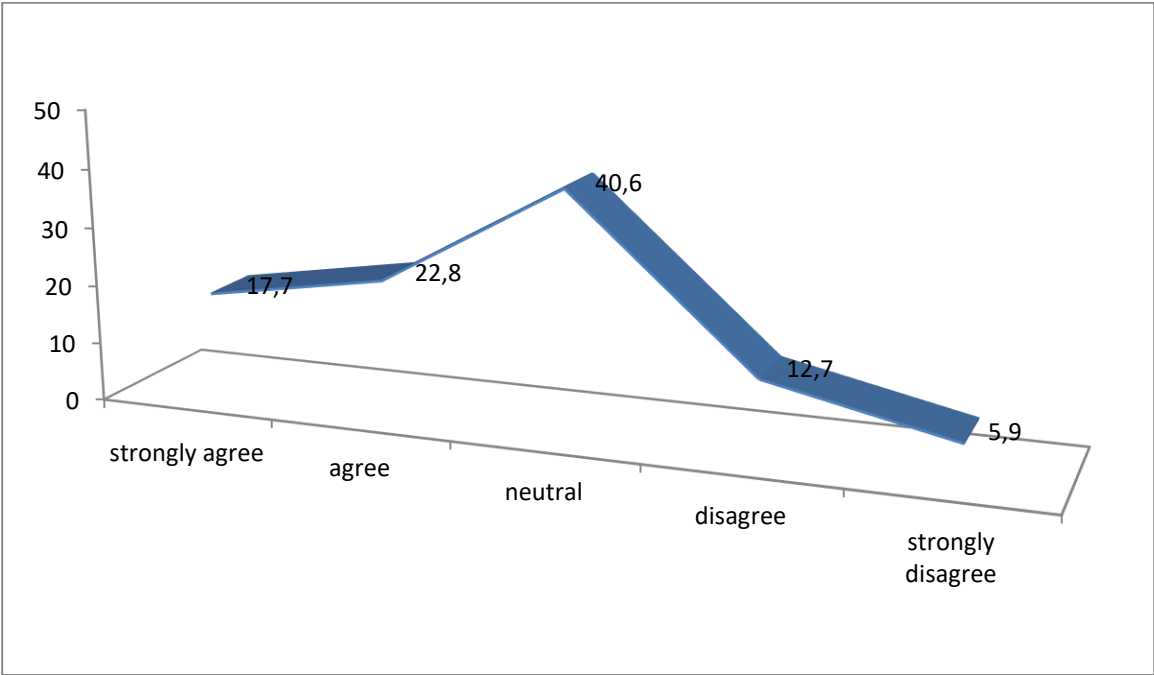
### 5.3.3 THE COMMUNITIES MEMBERS PERCEPTIONS OF THE ACT

It was for the purpose of this study to identify and describe attitudes towards and perceptions of the community on the *Choice on Termination of Pregnancy Act 92 of 1996* in the Lepelle-Nkumpi Local Municipality. Lepelle-Nkumpi is dominated by Christians where by the majority believe that terminating unwanted pregnancy amount to killing. However, the community's perceptions have been evaluated through the following opinions: TOP act as a human right issue; whether termination of pregnancy should be legal; TOP is the same as murder; whether TOP contradict the Act and whether the Act provide health and the safety of women. Therefore, the findings are as follows.

#### 5.3.3.1 Termination of pregnancy as a human right issue

The respondents were asked if their community believes that termination of pregnancy is important for human right or not and the results are captured in the figure below.

Figure 7: TOP as a human right issue

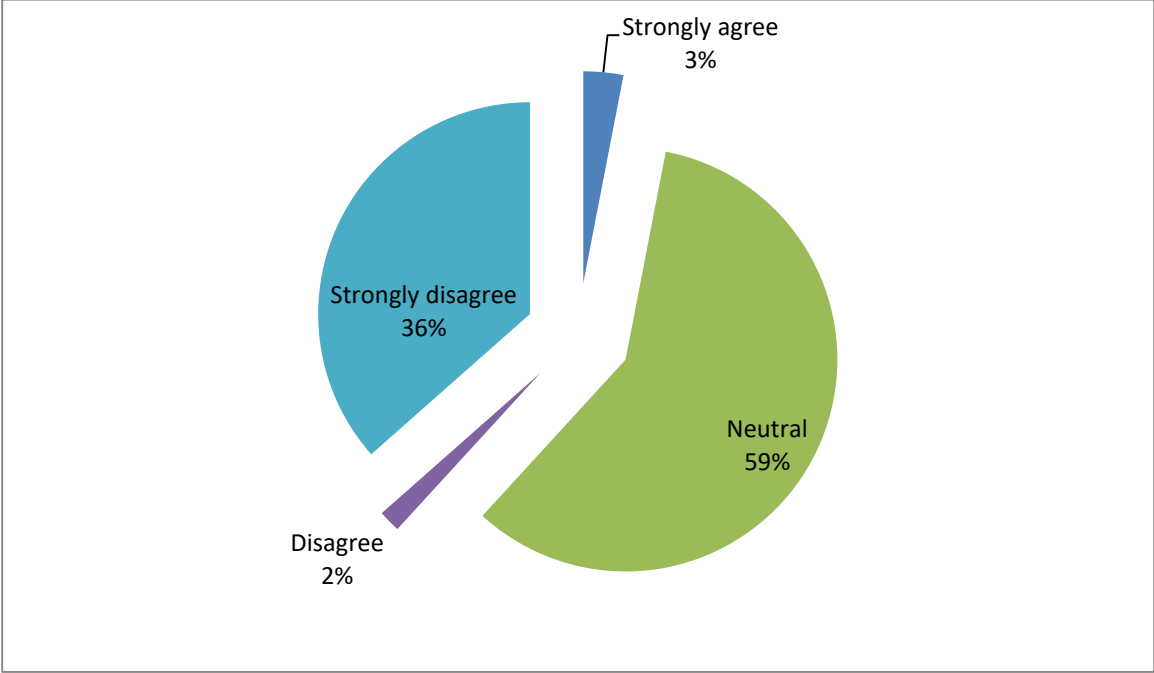


With the results gathered from the questionnaires, 5.9% (N=7) of the respondents strongly disagreed that termination of pregnancy is important for human right in their community compared to 17.7% (N=21) who strongly agree. With regard to the opinion above it shows that the respondents are not sure if the Act is important for human right as the opinion is evident by a relative high portion of “Neutral” with 40.6% (N=48) of the opinion. The fact that termination of pregnancy has been legalised in South Africa, it is viewed to increase the need for TOP services in the community or rather the country as a whole, requiring more and more nurses to work on termination of pregnancy services, regardless of their issue of ethics and morality.

### 5.3.3.2 Termination of pregnancy being legal

Although the argument has been raised by the doctors of life, the Christian Lawyers, and other associations and despites all the negative opinions that were suggested about termination of pregnancy as proposed in 1994 to be legalised in South Africa, the Act is implemented and termination of pregnancy is on demand. Therefore, findings on the opinion that termination of pregnancy should be legal is emphasised by the figure bellow.

Figure 8: TOP should be legal



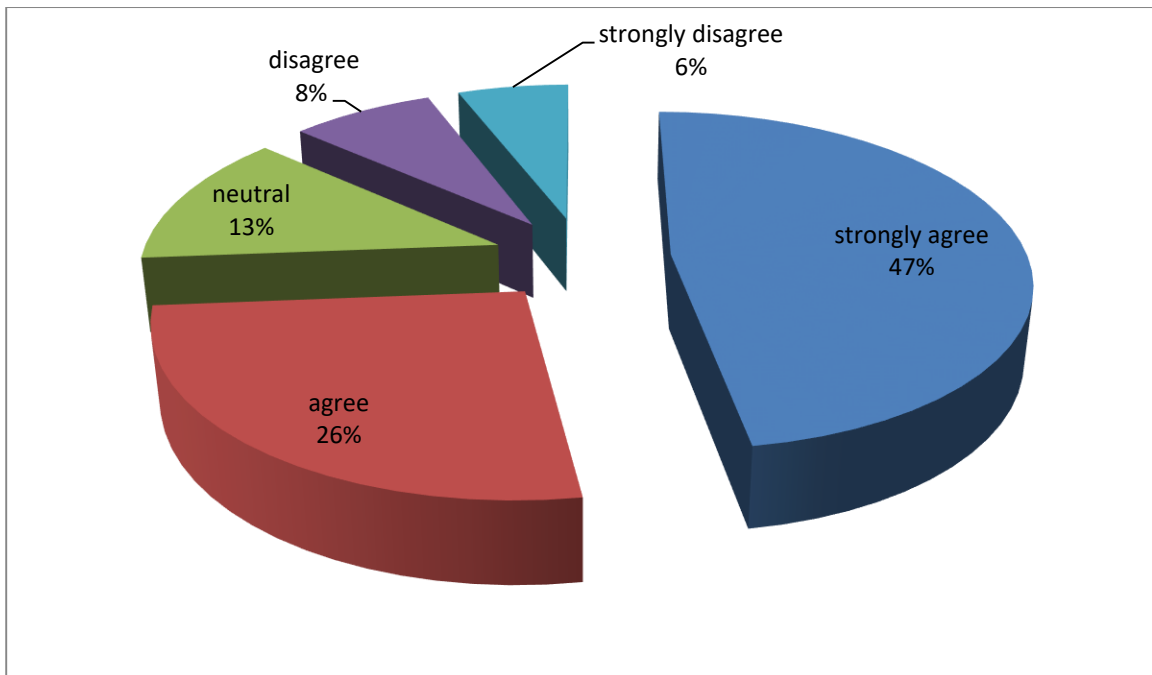
The above figure indicate that 3% (N=4) of the respondents strongly agree to the opinion that termination of pregnancy should be legal. 36% (N=42) of the respondents strongly disagree with the opinion that termination of pregnancy should be legal, while 2% (N=2) of the respondents disagree. Therefore, the overall of 38% of the respondents disagree to the opinion compared to only 3% of the respondents who agree. Nevertheless, it is believed that termination of pregnancy is merely a murder performed by the health worker.

Therefore, the analysis of the findings on the above figure shows that the foetus in the womb is deemed to be fully a human being, whenever the question concerns advantages accruing to him/her when born, even though before birth his/her existence is never assumed in favour of anyone else. But hence, the Republic of South African Constitution (Bill of Rights) state that the unborn child is not legally viewed as a legal person, because he/she does not exercise the legal rights and a natural person's legal personality begins at birth.

#### 5.3.3.3 Termination of pregnancy as murder

87% of the respondents indicated to be Christians on figure 2 and the Christians believes that termination of pregnancy is as murder. However, the opinion that the *Choice on Termination of Pregnancy Act 92 of 1996* is a murder is illustrated on the figure bellow.

Figure 9: TOP as murder



The above figure indicate a huge amount of 47.4% (N=56) strongly agree to the opinion that TOP Act is as murder performed by the health worker, compared to 6% (N=7) which strongly disagree to the opinion, while 26% (N=31) agree compared to 8% (N=9) who disagree. However, 13% (N=15) are neutral of the opinion. There is an overall of 78% of the respondents who agree to the opinion compared to 14% of the respondents who disagree to the opinion. Therefore, the results of the figure show that people agree that termination of pregnancy is the same as murder.

#### 5.3.3.4 The contradiction of the Act with the community's culture, religion and believes

It is believed that the Choice on Termination of Pregnancy Act 92 of 1996 is in contradiction with peoples believe. Therefore, it was important for this study to probe whether the opinion that TOP is in contradiction with the community's culture or not as the second objective of the study is to determine the extent at which rural communities in selected villages at Lepelle-Nkumpi Local Municipality perceive the implementation of the termination of pregnancy act. However, the table below elucidates the results on the contradiction of the Act with the community's culture, religion and believes.

Table 3: The contradiction of the Act with respondents culture.

Strongly Agree		Agree		Neutral		Disagree		Strongly Disagree	
N	%	N	%	N	%	N	%	N	%
76	64.4	27	22.8	14	11.8	1	0.84	-	0

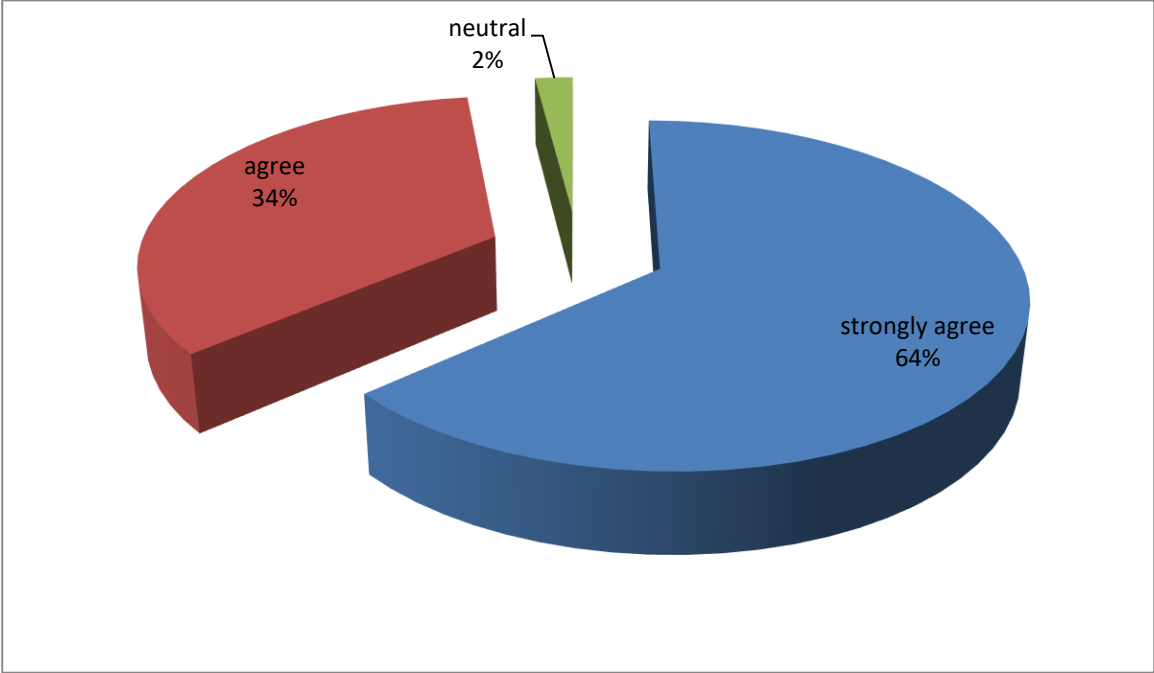
The above table elucidates the opinion that some members of the community view the Act as a contradiction of their culture, **(N)** represent the number of respondents and **(%)** is the percentage of the respondents. However, 64.4% of the respondents strongly agree to the opinion that the *Choice on Termination of Pregnancy Act 92 of 1996* is in contradiction with their culture, while 0.84% disagree to the opinion and 11.8% are neutral of the opinion. Nevertheless, the analysis of the findings reveals that terminating pregnancy is viewed as a very serious offence. Because an overall of 87.2% of the respondent agree to the opinion that TOP act is in contradiction with their culture compared to an overall of 0.84% of the respondents who disagree to the opinion. In these regard, this might have an influence on nurses who have no choice in the matter of termination of pregnancy, and who are required to render termination of pregnancy services in spite of their potential personal religious and cultural ethics and the professional objections to termination of pregnancy and might obstruct the accessibility of these services and hinder the effective implementation of the provisions of *the Choice on Termination of Pregnancy Act 92 of 1996* at ground level.

#### 5.3.3.5 The Choice on Termination of Pregnancy Act provides health and safety of young girls

The *Choice on Termination of Pregnancy 92 of 1996* came into effect on February 1, 1997, permitting that pregnancy be terminated upon the request through the first trimester of a pregnant women, without any need for the approval of doctors, psychiatrists or magistrates. Therefore, the researcher found it important to investigate whether the implementation of the Act provides the health and the safety

of young girls to the communities at Lepelle-Nkumpi. However, the outcomes are as follows.

Figure 10: Termination of pregnancy act 92 of 1996 provides health and safety of women.



Of the respondents, an overall of 98% (N=115), are of the opinion that the implementation of the CTOPA provides health and safety for young girls however, this is shown on the above chart that 64% strongly agree to the statement while 34% agree and 2% (N=3) are neutral of the opinion. Therefore, none of the respondents strongly disagree nor disagree to the opinion that the implementation of the Act provides health and safety of young girls. Even though the people are of the opinion that termination of pregnancy is as murder nevertheless, they are of the opinion that the Act provides the safety of women. However, the researcher found it important to note that all of the respondents are of the opinion that the implementation of *the Choice on Termination of Pregnancy Act 92 of 1996* is in contradiction with people’s culture and religious believe as indicated by figure 6, but nevertheless they view the Act as it provides health and safety young girls. This really shows a misunderstanding of the respondents and this reveals that with the Act contradicting their religion, people can still go for TOP services due to its safety. Under the same breath it can be said that Christianity does not quantify not to access the termination of pregnancy services.

### 5.3.4 THE EFFECTS OF THE ACT ON TERMINATION OF PREGNANCY

Since the aim of this study was to investigate perceptions of the act on termination of pregnancy within rural communities in order to come out with recommendation that can assist in law implementation that is within the moral connotation in the practice of public administration, it was important to isolate the communities' possessions of the Act. Therefore, the following opinions are the effects of the Act investigated: every women has the rights to make her own decisions; 18 years aged should obtain consent before requesting the service; financial problems are the reason to TOP; foetus should excise the same rights as the mother; the legality of the act reduces population rate; the religion prevention to TOP; TOP causes moral disrespect and foetus is not a legal person. However, the following are the results of the findings.

#### 5.3.4.1 Woman has the right to make their own decisions

It is assumed that the *Choice on Termination of Pregnancy Act 92 of 1996* aimed at extending freedom of choice by offering every woman the right to choose whether to have early, safe and legal termination of pregnancy according to their individual beliefs. In essence no women should be discriminated against based on race, religion or culture. However, they have the right to make their own decisions of their reproduction concerning the timing, spacing, and number of children they wish to have. Therefore, the opinion on every woman has the right to make her own decisions has been highlighted and the findings are as follows.

Table 4: Every woman has the right to make her own decisions.

Strongly agree		Agree		Neutral		Disagree		Strongly disagree	
N	%	N	%	N	%	N	%	N	%
45	38	60	50.8	9	7.9	4	3.3	-	0

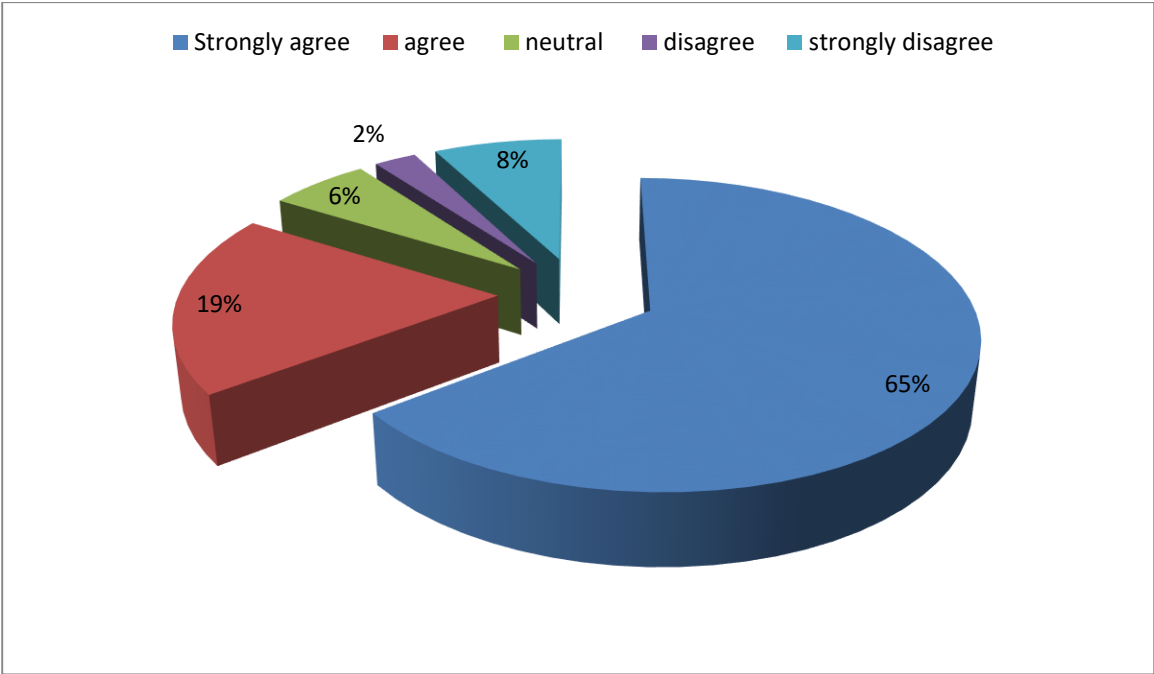


The above table designates **(N)** as the number of respondents and **(%)** as the percentage. 50.8% of the respondents agreed to the opinion that every woman has the rights to make her own decisions, while 3.3% disagree to the opinion but however, 7.9 % were neutral of the statement. An overall of 88.8% of the respondents agree that every woman has the right to make her own decisions compared to only 3.3% of the respondents who disagree.

5.3.4.2 Girls under the age of 18 years should obtain consent from legal guardian or parent before requesting termination of pregnancy service.

One of the conditions on the *Choice on Termination of Pregnancy Act 92 of 1996* is that minors should be able to access pregnancy termination service without parental consent. The above mentioned condition brought to researcher’s attention that should the person under the age of 18 years obtain consent from legal guardian or parent or not. Therefore, the outcomes on the opinion were as follows.

Figure 11: The person under the age of 18 years should obtain consent from legal guardian or parent before requesting TOP service.



Termination of pregnancy is an emotionally laden subject with numerous conflicting opinions regarding its necessity. It is of the opinion that the person under the age of 18 years should obtain the consent from the legal guardian before requesting the service. This is shown by a high portion of the respondents who agree at 65%

(N=77) and those who strongly agree at 19% (N=22). Nevertheless, 6% (N=7) are neutral of the opinion, while 8% (N=9) strongly disagree and 2% (N=3) disagree. An overall of 84% of the respondents agree to the opinion that the person under the age of 18 years should obtain the legal consent before requesting the termination of pregnancy service, compared to 11% of the respondents who disagree to the opinion. The findings of the figure above reveal that the girls below the age of 18 years should obtain consent from legal guardian before requesting access to termination of pregnancy service.

5.3.4.3 Financial problems are the reason for termination of pregnancies

It is believed that the financial circumstances of a pregnant woman sometimes force them to request termination of pregnancy service. However, the opinion that the financial problems are the reason for termination of pregnancies was probed and the findings are tabled below.

Table 5: The financial problems are the reason for termination of pregnancies.

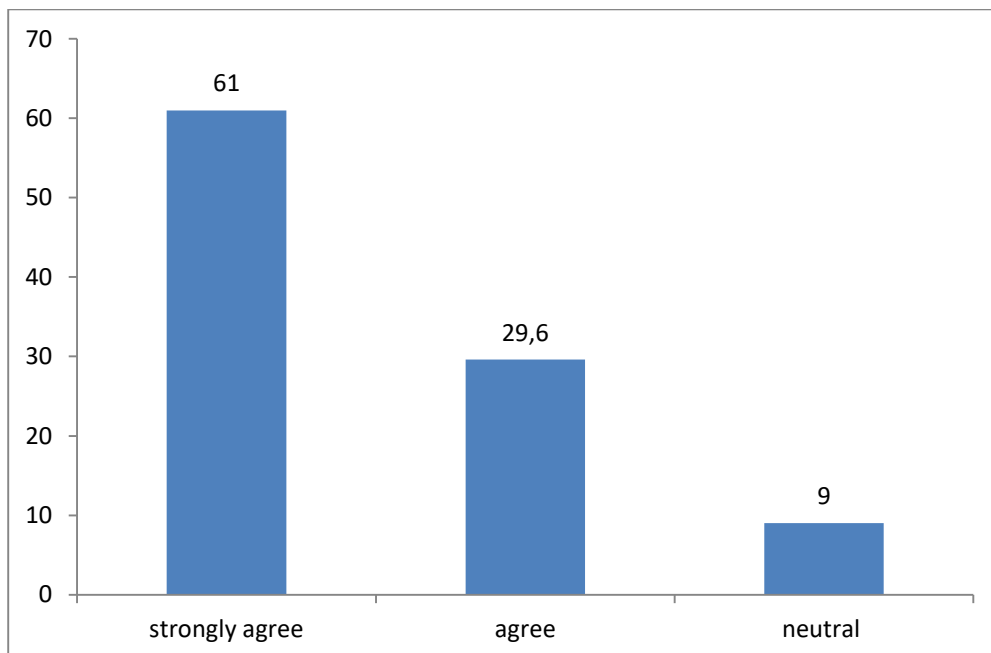
Strongly agree		Agree		Neutral		Disagree		Strongly disagree	
N	%	N	%	N	%	N	%	N	%
7	5.9	58	49	36	30	11	9	6	5

The division surfaced in the respondents opinions concerning social and financial reasons being sufficient cause of TOP, with 54.9% (N=65) in favour of comprising of 49% (N=58) and 5.9% (N=7) agree and strongly agree respectively and 14% (N=17) against social and financial grounds while 30% (N=36) are neutral of the opinion. Nevertheless, the majority of the respondents agreed with the statement that financial problems are the reasons of concern for requisition of the termination of pregnancy services. Similarly, according to the *Choice on Termination of Pregnancy Act 92 1996*, a pregnancy may be terminated if the continued pregnancy could significantly affect the social or economic circumstances of the woman.

#### 5.3.4.4 Foetus should exercise the same rights as the pregnant woman

In the literature reviewed (paragraph 3.4), it is found that the division of the High Court dismissed the case on termination of pregnancy, ruling that a foetus is not a person and does not have a right to life. However, according to Ngwena (2004), it is not an offence if the termination of pregnancy is conducted for the purpose preserving the mother's life but illegal to kill a child capable of being born alive and the foetus is presumed viable at 28 weeks. Therefore, the opinion that the foetus should exercise the same right as the mother has been raised and the findings are captured on the figure below.

Figure 12: Foetus should exercise the same rights as the mother.



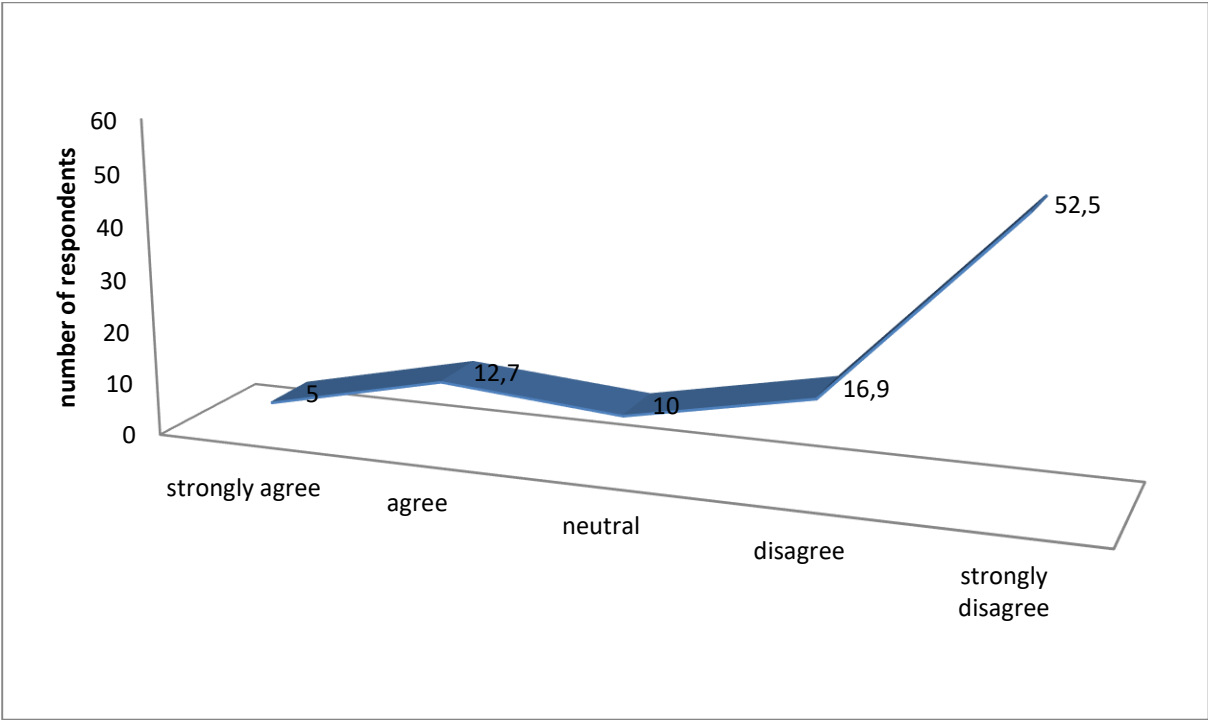
Even though 40% of the respondents on figure 7 (comprising of 22.8% who agree and 17.7% who strongly agree) agree that TOP should be a human right issue and in the literature reviewed it is found that the majority of people are of the opinion that it is every women choice to terminate unwanted pregnancy but (N=72) 61% of the respondents are strongly of the opinion that the foetus should exercise the same rights as the mother and none disagree while (N=11) 9% are neutral of the opinion and 29.6% (N=35) agreed to the opinion. Therefore, the above figure reveals that the foetus should exercise the same rights as the mother supported by 90.6% of the

respondents who agree to the opinion that the foetus should excise the same rights as the mother

5.3.4.5 Opinion that the Act should be legal since it reduces the population rate

It is of the opinion that the National Party government advanced separate population policies for white, black and coloured South Africans, fuelled by fear of unsustainable population growth and the fear took on racist overtones manifested suggesting that the black population was growing too quickly while the growth rate of the white population was stagnating. However, the below figure emphasise the findings on the opinion that the Act should be legal because it reduces the population rate.

Figure 13: The Act should be legal since it reduces the population rate.



52.5% of the respondents strongly disagree to the opinion that the Act reduces the population compared to 5% of the respondents who strongly agree to the opinion. However, 12.7% (N=15) agree compared to 16.9% (N=20) disagree, while 10% (N=12) are neutral of the opinion. In this regard, this confirms that the majority of the respondents are against the implementation of the Act, supported by an overall high portion of disagree at 69% of the respondent compared to 17.7% of the

respondents who disagree to the opinion that the Act should be legal since it reduces the population rate.

5.3.4.6 Opinion that my religion does not prevent me from requesting termination of pregnancy service

The majority of the religions have taken strong oppositions on termination of pregnancy; they believe that the issue on terminating pregnancy encompasses profound issues of life and death. Nevertheless, that makes it a foremost concern about the Choice on Termination of Pregnancy Act 92 of 1996 and therefore, the below table shows the findings on the opinion that my religion does not prevent me from accessing the termination of pregnancy.

Table 6: The opinion that my religion does not prevent me from requesting TOP service

<b>Strongly agree</b>		<b>Agree</b>		<b>Neutral</b>		<b>Disagree</b>		<b>Strongly disagree</b>	
<b>N</b>	<b>%</b>	<b>N</b>	<b>%</b>	<b>N</b>	<b>%</b>	<b>N</b>	<b>%</b>	<b>N</b>	<b>%</b>
-	0	-	0	3	2.5	34	28.8	81	68.8

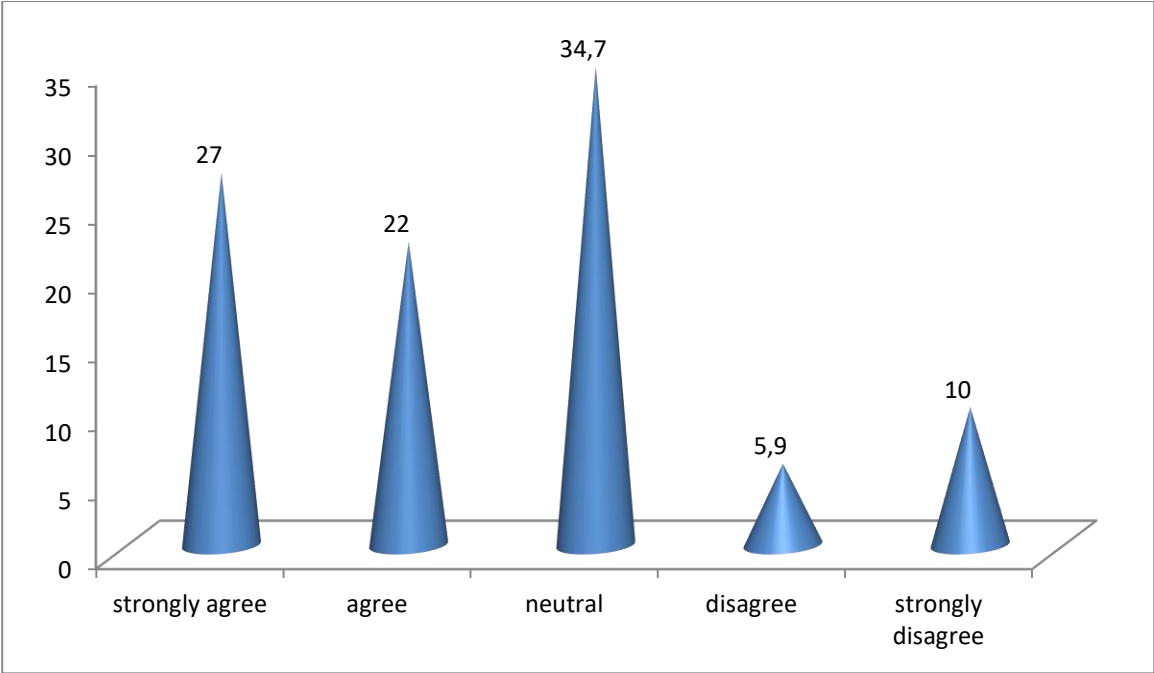
As indicated by the table above, as many as 68.8% of the respondents strongly disagree to the opinion that their religion does not prevent them from requesting the TOP service while 28.8% of them disagree to the opinion. However, none of them agree nor strongly disagree. The table just openly conveys to us that the respondents are of the opinion that their religion does avert them from accessing the termination of pregnancy as indicated by a high portion of respondents who disagree at 96%.

5.3.4.7 The degree at which the implementation of the Act causes moral degradation and disrespect for the human rights

Termination of pregnancy is regarded as immoral by most traditionalists. However, the below figure illustrate the degree at which the implementation of the Act causes

moral degradation and disrespect for the right of human by the respondents at the communities in the Lepelle-Nkumpi Local Municipality.

Figure 14: The causes of moral disrespect by the Choice on Termination of Pregnancy Act 92 of 1996.



Of the respondents 27% (N=32) strongly agree to the opinion that the implementation of the Act is a cause of moral degradation and disrespect for human right compared to 10% (N=12) who strongly disagree while 22% agree with the opinion compared to 5.9% (N=7) who disagree and a high number of the respondents at a rate of 34.7% (N=41) are neutral of the statements. However, the findings of the respondents reveals that the respondents are of the opinion that the implementation of the Act causes disrespect of women by a high portion of agree and strongly agree, at overall of 49% compared to an overall of 15.9% of the respondents who disagree to the opinion.

5.3.4.8 The opinion that the users requesting TOP service are unemployed and illiterate

According to Sidley (1998), many women seeking to terminate pregnancies in South Africa are unemployed. Therefore, the result on the opinion that the majority of

individuals requesting termination of pregnancy are unemployed and illiterate is tabled as follows.

Table 7: individuals requesting TOP services are unemployed and illiterate

Strongly agree		Agree		Neutral		Disagree		Strongly disagree	
N	%	N	%	N	%	N	%	N	%
7	5.9	13	11	31	26	39	33	28	23.7

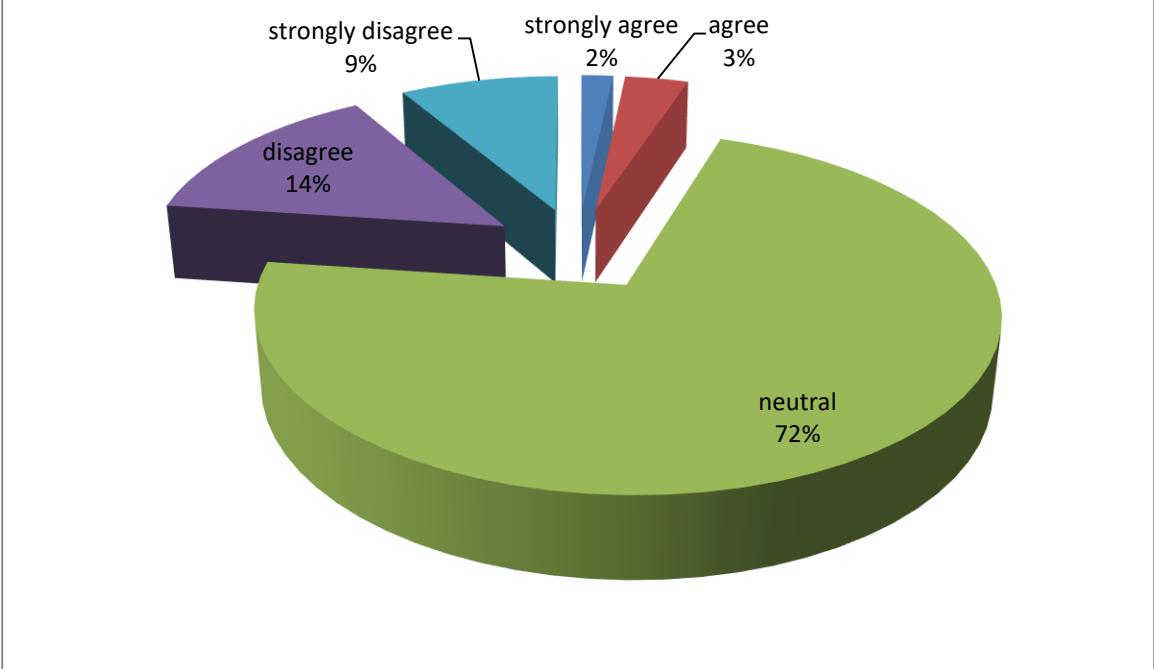
The table above illustrates the opinion that the majority of the people requesting TOP service are unemployed and uneducated. (N) Represents the number of the respondents and (%) shows the total percentage of the respondents. 5.9% of the respondents strongly agree to the statement that the unemployed and uneducated are the ones who request the TOP service more often, compared to 23.7% of the respondents who strongly disagree with the statement. However, 11% agree compared to 33% who disagree and 26% are neutral of the statement. Therefore, the findings confirms that the majority of the respondents disagree with the opinion as it is shown by the overall respondents of 56.7% who disagree compared to the overall respondents of 16.9% who agree. In this regard, not only the unemployed and uneducated are not only the ones who request the service on TOP.

5.3.4.9 The respondent’s opinion that a foetus is not a legal person and does not need to excise the legal rights

In the literature reviewed it is found that the Transvaal Provincial Division of the High Court dismissed the case on termination of pregnancy, ruling that a foetus is not a person, does not have a right to life, and that the right to make decisions concerning reproduction, contained in section 12 of the *Republic of South African Constitution of 1996*, protects a woman's right to terminate unwanted pregnancy. Nevertheless, Ngwena, (2004) argues that a foetus has the constitutional rights and the Choice on Termination of Pregnancy Act 92 of 1996 is thus contrary to the 1996 constitution. Therefore, the argument brought to the researcher’s consideration that is a foetus a legal person and has a right to excise the legal rights? However, the

following are the results of the opinion on whether the foetus is not a legal person or does not need to excise the legal rights.

Figure 15: A foetus is not a legal person



Of the respondent 2% (N=2) strongly agree to the opinion that a foetus is not a legal person therefore does not need to excise the legal right compare to 9% (N=10) who strongly disagree with the opinion. Nevertheless, 3% (N =4) agree compared to 14% (N=17) who disagree, while 72% (N=85) are neutral of the opinion. Therefore, it is discovered that the respondents are of the opinion that the foetus should have the same right as the legal person because it is of the opinion that the foetus is a living soul supported by 23% of the respondents who disagree to the opinion that a foetus is not a legal person. This is also supported by figure 12 which illustrate that a foetus should excise the same right as the mother by a high portion of 61% of the respondents who strongly agree to the opinion.

**5.4 DATA COLLECTED THROUGH INTERVIEWS**

Interviews and questionnaires were the two methods of collecting data as showed in chapter four. The researcher obtained permission from the Municipal manager to conduct interview with relevant individuals from the municipal area. This study confined itself to interviewing the Municipal manager, the Mayor, the ward Councilors, the traditional leaders, the officials at Limpopo legislature and the Priest



from different cathedrals within Lepelle-Nkumpi Local Municipality. The interviewed individuals are as follows: 3 (three) priests from different churches, the municipal manager, ward councilor, the municipal mayor, the traditional leader and the 4 (four) officials at Limpopo legislature. However, the total number of interviewed individuals was 11 (eleven) but was supposed to be 12 (twelve). Nevertheless, not all targeted respondents could be reached for variety of limitations such as unavailability during interview. Therefore, the below is the biographical information of the total respondents of the qualitative data collected.

#### 5.4.1 THE BIOGRAPHICAL INFORMATION

This section presents the biographical information of the respondents who participated in the interviews. The data was presented in terms of age, gender, educational, employment status and the religion status. However, this provided the study with details of participants who contributed or took part in this study for data collected to be understood in accordance with the average respondents involved.

##### 5.4.1.1 Age and gender profiles of the respondents.

Age group of the respondents is importance because it determines the response they provide and depending on the information required by the researcher. However, it is ranged as follows: 18-25 years; 25-35 years; 36-45 years; 46-54 years and 55+ years. The below figure designates the total age and gender representative of the respondents, the red bar on the figure represent females compared to the blue bar representing males.

Figure 16: age and gender profiles of the respondents

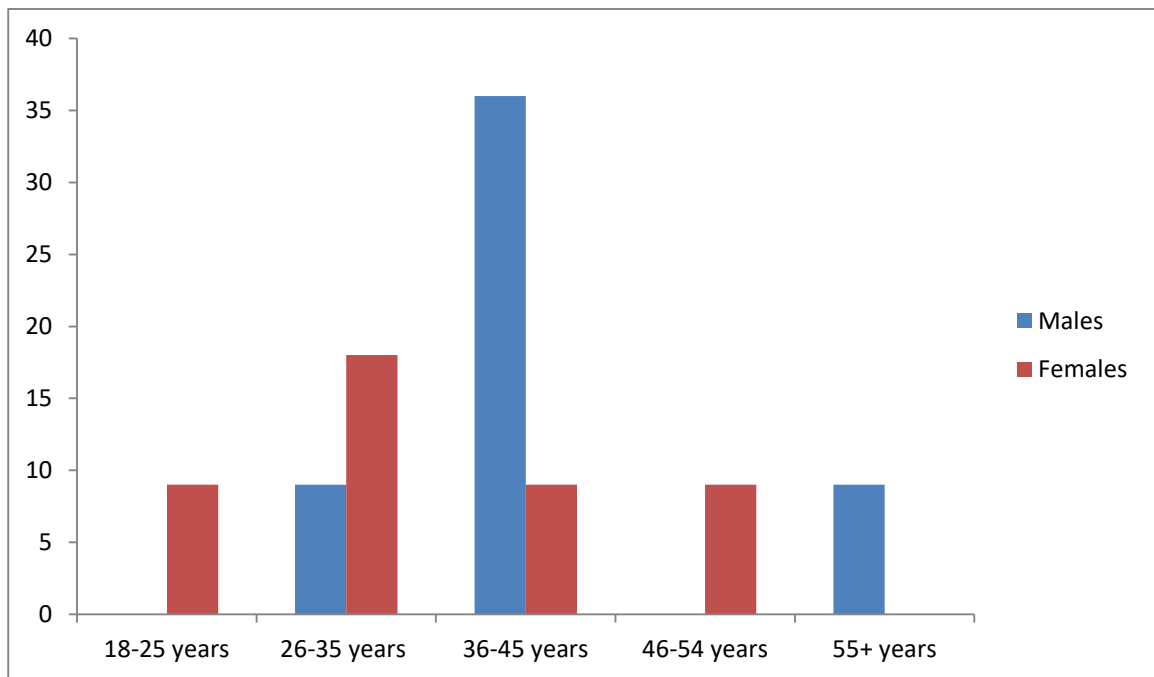
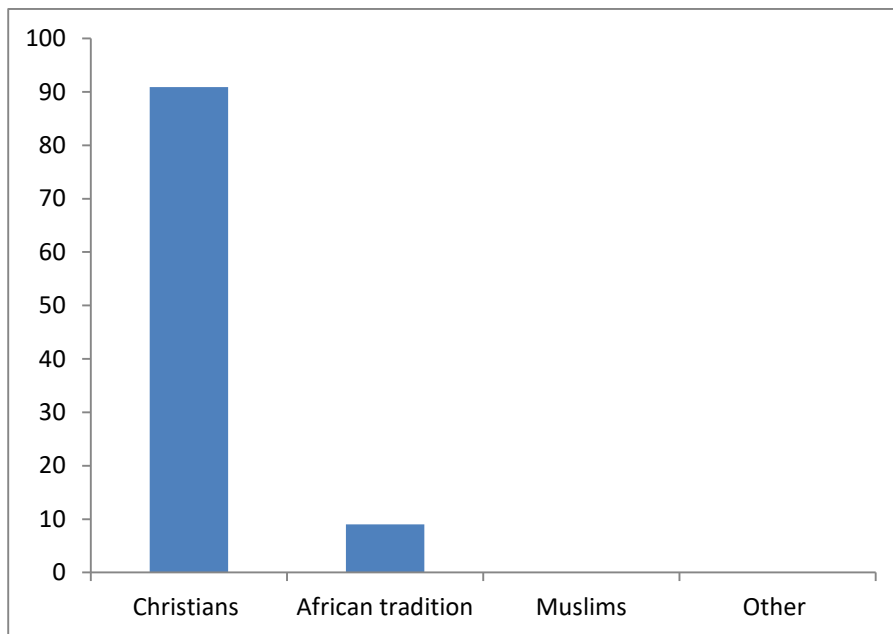


Figure 16 above designate an overall of 45% (N=5) of Females consisting of 9% (N=1) aged 18-25 years, 18% (N=2) aged 26-35 years, 9% (N=1) aged 36-45 years, 9% (N=1) aged 46-54; Compared to an overall 54.5% (N=6) males comprising of 9% (N=1) aged 26-35 years, 36% (N=4) aged 36-45 years, 9% (N=1) aged 55+ years. Probing of the age and gender is importance for the study because it ensures that the results obtained are not biased, because on the above figure an overall of 45% are females while an overall of 54.5% are males. Therefore, the results of the study contributed almost equally on gender.

#### 5.4.1.2 Religion profiles of the respondents

The religion affiliation is categorised by Christians, African traditions, Muslims and other to specify and the figure below demonstrate the religion profiles of the respondents.

Figure 17: Religion profiles of the respondents

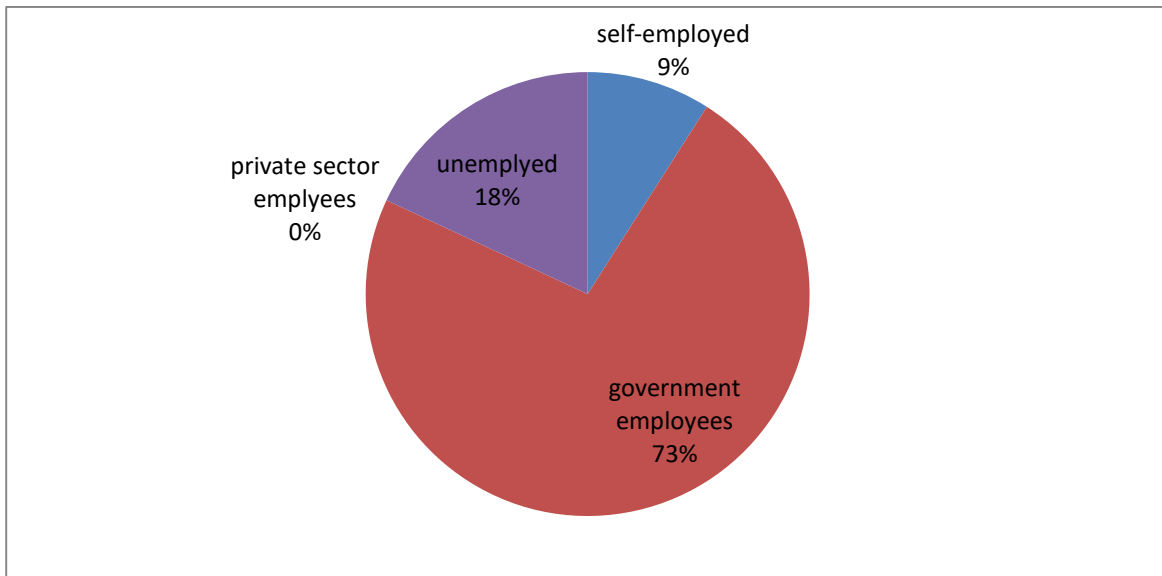


The above chart designate that of the total respondents, 90.9% (N=10) of the respondents are Christian while 9% (N=1) of the respondents believed in their African traditions and none of the respondents were Muslims or another. The majority of the interviewed individuals are Christians similarly to those findings of the data collected through questionnaires. This totally indicates that the municipality is constituted by the Christians.

#### 5.4.1.3 Employment status of the respondents

The employment status of the respondents in this study is categorised by self-employed, government employee, private sector employee and unemployed. The below are the findings

Figure 18: Employment status of the respondents



The figure above indicated that 72.7% (N=8) of the interviewed respondents are government employees, compared to 18% (N=2) of the respondents being unemployed, while 9% (N=1) of the respondents are self-employed and none working in the private sector.

#### 5.4.1.3 Educational status of the respondents

The education status in the study authenticates the data. However, the educational status of the respondents is categorised as follows: grade 1-7; grade 8-12; diploma; and degree. The educational level of the respondents is therefore presented as follows.

Table 8: Educational status of the respondents

GRADE1-7				GRADE 8-12				DIPLOMA				DEGREE			
MALE		FEMALE		MALE		FEMALE		MALE		FEMALE		MALE		FEMALE	
N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
-	0	1	9	2	18	-	0	3	27	4	36	1	9	-	0

The table above illustrates the educational status of the respondents in the study. The findings indicate that the total females and males who took role in the qualitative data were 5 and 6 females and males respectively which make the total of 11. Nevertheless 9% of the females had grade 7 qualification compared to none of the males who have grade 7. However, a high frequency of 36% females have diploma compared to 27% of males. This finding indicates that the majority of people in the public sector are not fully educated because the dictating 73% of the employees are government employees.

#### 5.4.2 THE NATURE OF RESPONDENTS ROLE IN TOP ACT

During data collection the researcher found it essential for the study to probe the interviewee's, the nature of the role played in the termination of pregnancy Act as it is legalised in South Africa to check if they are relevant individuals for the study. Therefore, the question on "what is the nature of your role in the implementation of TOP Act 92 of 1996" was asked. Nevertheless, the respondents from the interviewed individuals said that there were not there when the *Choice on Termination of Pregnancy Act 92 of 1996* was implemented but however, currently they are involved in law making process. One of the respondents who claimed to be there when the CTOPA was implemented alleged that he was involved in law making implementation phase where his role was to follow the trials and procedures of the proposed law as an administrators, to discover and note down the support and the oppositions of the proposed law by the political parties organisations and the community organisations. Therefore, the researcher found the interviewed individuals relevant to the study as in the literature reviewed, law making is concerned with the agencies and officials involved, the procedures they follow, the techniques they employ the political support and the oppositions they encounter.

#### 5.4.3 THE PEOPLE'S KNOWLEDGE ON ACT 92 OF 1996

The question on "are you familiar with the Act on termination of pregnancy" has been questioned, however, the majority of the respondents claim to be fully knowledgeable of the conditions and the requirements of the Act, hence some of the respondents impartially have an idea that termination of pregnancies is legalised in South Africa

but they are of no ideas on what conditions can one request the service, while the other respondents is not even aware that the termination of pregnancy is legalised in South Africa, who said “ *I was not aware and did not know that terminating pregnancies is legal in the country, I indeed did not know about the Act*”. However, the one of the respondents stated that in 1990 the Department of Health requested the public to put together the submissions regarding the termination of pregnancy and prior to 1990, the *Sterilisation Act 2 of 1975* existed for many years. One of the respondents said that the termination of pregnancy came into effect in South Africa in 1996 because of freedom and social justice that the ANC government has assimilated in 1994. Nevertheless, this has been said as the respondent was trying to show his knowledge and awareness about the implementation of the Act and the cause of its amendment.

Nevertheless, it has been said that the Act is on demand before the first 3 months, which is similar to the conditions of the Act which state that termination of unwanted pregnancy should be available on request during the first 14 weeks of pregnancy by (Ngwenya, 2004) in the literature reviewed. However, this is also supported by section (2) (b) of the *Choice on Termination of Pregnancy Act 92 of 1996* which state that the pregnant women between 13 and 20 weeks of gestation can terminate pregnancy if a medical practitioner believes that the pregnancy threatens the mental or physical health of the woman or foetus, if the pregnancy resulted from rape or incest, or if it affects the socio-economic situation of the women. With all the findings attained the researcher found it convincing and substantial that the respondents in this manner are of full knowledge of the requirements, conditions, and who is to access the service on termination of pregnancy.

#### 5.4.4 PARTICIPANTS INVOLVEMENT IN LAW-MAKING PROCESS

The majority of the participants in the study are involved in law making and some are females and males. All of the respondents agree that the public or the members of the community are involved in every law making process of every law of government that is proposed to be implemented. However, this is said to be through public participations, such as public meetings or public gatherings with the ward councilors, traditional leaders, and municipal mayors and through media such as radio communications. Some of the respondents said in most case the members of

the community are involved through public meetings with the ward councilors. Nevertheless, public engagement is suggested to be more effective because it is believed to be realistic and achievable. In this regard it works for citizens and government. Hence, the Constitution provides a framework for an open and participatory democracy and it provides specific references and creates obligations in all spheres of government. Section 118 (1) of the Constitution of the Republic of South Africa makes the provision for the public to access and to be involved in legislative process. However, it states that the provincial legislatures must facilitate such public engagement and maintains that legislatures.

One of the respondents considers the fact that not all law making process result in legislation that would come before the inspection of legislatures and be open for public debate. However, that grabbed the researcher's attention that it is possible that the legislative process of the *Choice on Termination of Pregnancy Act 92 of 1996* did not fully involve the members of the public, especially communities at Lepelle-Nkumpi Local Municipality because majority of the respondents knows about termination of pregnancy, but not so sure of the legalisation of Act 92 of 1996 especially those who are not educated and those with minimal educational qualifications.

#### 5.4.5 THE COMMUNITY MEMBERS SUPPORT OF THE ACT 92 OF 1996.

It was for the purpose of this study to investigate the attitudes of the members of the community towards the implementation of Act 92 of 1996 and whether or not the community members support the Act 92 Of 1996. A question on "Did the members of the communities show the support for the Act 92 of 1996?" was raised. Some of the respondents highlighted that they are currently involved in the law making process but, they were not involved when the *Choice on Termination of Pregnancy Act 92 of 1996* was implemented and taken into action. Hence, one of the respondents who claimed to be involved in the process making of the *Choice on Termination of Pregnancy 92 of 1996* said that the majority of rural municipalities were opposing the Act, because they believed that termination of unwanted pregnancies amount to killing of innocent soul.

The respondents further said that one of the community members said that "it should be our right to do what we want with our bodies". However, by then the

interviewed respondent said he was surprised of the respond of the community member. Therefore, the above response grabbed the researcher attention and nevertheless the researcher found it important to say that even some law making implementers did not seem to support the implementation of Act 92 of 1996, and this reveals that even law makers or implementers did not support the implementation of the Act, but however, the Act was implemented despite the rejection and opposition of it. In line with the international human rights, the respondents at Lepelle-Nkumpi Local Municipality unanimously agreed that TOP is an important human right particularly as every woman have a right to make her own decisions concerning her body.

However, it is clear that the respondents are in favour of parental involvement in the minors decision to terminate unwanted pregnancies, nevertheless one of the respondents said that there should be set of rules for minors compared to those of adults and went as far to say the parental consent should be obtained legally and even in the case of complications.

An open-ended question were asked to the respondents during interview on whether the religion of a woman could prevent her from accessing TOP services and the respondents indicated that the church could not prevent a woman from accessing TOP services as remarked "I know it is not right to terminate pregnancy but the church cannot prevent me to access the service on TOP, it is my choice but I will forever have a fear that I have sinned". This remark gave the researcher an idea that even though Christians believes that termination of pregnancy is as murder and, that restrict them to access the service on termination of pregnancy however, it is clear that some of the Christians can still go for termination of pregnancy even though it is morally wrong to terminate pregnancy. Therefore, this reveals that Christianity does not really prohibit termination of pregnancy to be performed hence, it is just people's moral believe.

#### 5.4.6 THE PERCEPTIONS OF ACT 92 OF 1996

It was for the purpose of this study that it aimed to investigate the community member's perceptions of the Act on termination of pregnancy in selected villages found at Lepelle-Nkumpi Local Municipality in order to come out with



recommendation that can assist in law making implementation that is within the moral connotation in the practice of public administration.

All of the respondents perceive the Act as opposing their religion stating that termination of pregnancy is a sin according to their religion. One of the respondents regarded the Act as a human right, because the respondent said “every woman should have the right to bodily expression and the right to make choice on her own”. Nevertheless, all the respondents believe that life begins at conception and termination of pregnancy end life.

It has been said by one of the respondents who claimed to know nothing about Act that “the implementation of the Act is against my culture and my religion but termination of pregnancy does exist and it is legalised what can I do, termination of pregnancy is evil”. Nevertheless, this confirms that people are constrained by their religion and they think they do not have powers to change any law that exist forgetting that they are the government and they have the right to say their thought in any rule of law that affects their emotions as it is mentioned in the Bill of Rights.

Despite the fact that the people at Lepelle-Nkumpi Local Municipality perceive the Act as a murder of unborn soul, there was a stormy debate concerning termination of pregnancy issue during data collection and it is claimed that the legalisation of termination of pregnancy service in South Africa restore the dignity of women but contribute to a “better life”. However, some argument was raised by participants during data collection that “termination of pregnancy is quoted with murder which portrays the attitude of the broader South African community.

#### 5.4.7 THE PERCEPTIONS OF THE RELIGIOUS GROUPS AND TRADITIONALIST ON ACT 92 OF 1996

The religious groups, traditionalist and the people in general were opposed to the Act. All of the respondents agreed to the statement that the religious groups, the traditionalist, and people in general opposed to the act on termination of pregnancy even though some were not involved in law making process. Hence, one of the respondents who said he was involved in the law making process said that the church leaders and the religious organisations defied the Act, opposing termination of pregnancy on request arguing that unborn child has the right to life. Furthermore,

the respondent said that “even myself, i was against termination of pregnancy on demand”. This is also supported by (Guttmacher *et al*, 1998) that the opponents of the *Choice on Termination of Pregnancy Act 92 of 1996*, such as Doctors for Life, the Christian Lawyers Association, religious organisations and other pro-life organisations, challenged the legalisation of the termination of pregnancy on demand arguing that the unborn child has a right to live. However, church leaders and the traditional leaders have emphasised the blessedness of life and the dignity of each and every human being. Hence, from the point of view of Christianity and the Church's stand termination of pregnancy must be condemned in the strongest terms possible. Nevertheless, although the argument was raised by the doctors of life, the Christian Lawyers, and other associations, the Act was implemented and termination of pregnancy is on demand currently in South Africa. With the above background, it is only natural to see why termination of pregnancy has no place in African Religion and traditional society. Admittedly, termination of pregnancy is an emotive issue cultural and religious values have always made it taboo highly valued in some society.

This ground proves to be somewhat ambiguous in how people define the issue on termination of pregnancy because one of the respondents emphasised that termination of pregnancy should be legal in some circumstances but not completely illegal or freely accessed. Therefore, within this position on termination of pregnancy services, the restrictions people desire to impose on termination of pregnancy range from very few to very severe, with the majority favoring greater restriction on TOP opposed to its free access but due to the large amount of economic power and level of organisation within the groups debating the conditions on termination of pregnancy in South Africa on request, TOP is available on demand.

#### 5.4.8 THE IMPLEMENTATION OF THE ACT DESPITE ITS REJECTION

The issue of terminating pregnancies as a form of family planning and population control is not new hence, it has been happening illegally in South Africa. The RSA faces a problem as the other countries relating to both the legal and illegal termination of pregnancy. However, it is assumed that the inception of democracy in 1994 in South Africa changed the climate of human rights in the new political dispensation. The implementation of the *Choice on Termination of Pregnancy Act*

92 of 1996 is suggested to be influenced by the termination of pregnancy performed illegally under unsafe conditions which remained a major cause of mortality and morbidity among women. Despite the negative opinions that were suggested about termination of pregnancy as legalised in South Africa the Act is implemented. However, it was found essential by the researcher to examine the perceptions of the populations on the opinion, “the Act was implemented despite their rejection of it, what caused that”. Therefore, one of the interviewed respondents said that:

*“Termination of pregnancy should be granted on demand and instead, termination of unwanted pregnancies should be an integral part of realising reproductive health as a human right that comes with capabilities for women”.*

However, the other respondents said that the Act was influenced by the freedom the African National Congress government had and that influenced the philosophies of human rights. Hence, the other participants said that the Act was implemented as a birth rate control which is believed to control the growth rate and sustain the economy of the country, while the other respondents argued that there are contraceptives to control the birth rate in the country mentioned that “the *Choice on Termination of Pregnancy Act 92 of 1996* was not implemented as a birth rate controller because there are number of contraceptives that can be used to avoid unwanted pregnancies”.

The legalisation of the Act appears to be disturbing the sentiments of the people. However, one of the respondents said that:

*“The people must not forget that there are legal rights and moral rights. And however, the Choice on Termination of Pregnancy Act 92 of 1996 could be seen as a legal right by the government because the Act has been legalised despite the rejection and the opposition of it”. The respondent explained that the legal rights are the rights laid down in laws while the moral rights are what the person believes in. Further the respondents gave an example saying that there can be a legal right saying that people at a certain age may have the right to drink alcohol, but others may believe that they do not have the moral right to do that. Therefore, the researcher reveals that if there are moral and legal rights the government cannot satisfy all citizens’ moral rights*

*that are the reason why the government stood firm on the Act because they supposed the Choice on Termination of Pregnancy Act 92 of 1996 is a legal right.*

However, the respondent further said that the churches and other religious organisations may provide much opposition to legal termination of pregnancies nevertheless, that is really appropriate for their morals. Therefore, it cannot be said that the government is not being fair. However, those who believe that terminating pregnancy is a sin or a murder must not request the service because it is against their moral right. With the findings and all the suggestions, the researcher has been convinced that there is a difference between the moral rights, human rights and legal rights, however, the government cannot please every citizen in the country but can do what's best for people.

One of the respondents was of the opinion that the implementation of *the Choice on Termination of Pregnancy Act 92 of 1996* was to limit the size of the families of married and unmarried women. This could, however be accomplished by the effective use of contraceptives. *It was also stated that "The Act considers women's reproductive rights and therefore, extends their freedom of choice".*

A question whether there is a contradiction between the CTOPA and the *Republic of South African Constitution of 1996* was asked and one of the respondents said that "The Constitution does not explicitly mention termination of pregnancy, but two sections of the Bill of Rights mention reproductive rights. Section 12(2)(a) states that, everyone has the right to bodily and psychological integrity, which includes the right to make decisions concerning reproduction, while section 27(1)(a) states that everyone has the right to have access to health care services, including reproductive health care" arguing that the constitution and the CTOPA does not really contradict with the constitution because the constitution does not explicitly mention termination of pregnancy but mention reproductive health care.

#### 5.4.9 RESPONDENT'S RELIGION AND ACT 92 OF 1996

It was found significant for the study to know the communities perceptions on the availability of termination of pregnancy on demand. However, the question on what does your religion say about termination of pregnancy is been asked. Nevertheless, Lepelle-Nkumpi is dominated by Christians where by majority believe that

terminating pregnancy amount to killing. During data collection one of the interviewed church leaders said that:

*“brave and selfless leaders who went against their society’s moral and ethics accepting killing of children, I implore that God punish not the pregnant women seeking and submitting to termination of pregnancy service but rather the person who perform the service”.*

However, all of the interviewed church leaders believe that an unborn child is a human being and has the right to life and further stated that termination of pregnancy is considered to be a murder and must therefore lead to people who perform it to be arrested. The respondent said that life begins at conception and terminating pregnancy end life, quoted that “in Jeremia 1 and Luke 1 says that Elisabeth conceived a son and the baby leaped in her womb, the bible does not say that the foetus leaped in her womb”. Therefore, they regard an unborn baby and a new-born baby the same.

The other respondents indicated that a woman cannot be prevented by the religion but although one is doing it she will always have that guilty feeling that she have sinned” because they believe that termination of pregnancy is a sin.

One of the traditional leaders said that even though I am not a Christian but, “termination of pregnancy is a sin and that will never alter even if the government makes it legal”. Only one of the interviewed respondents does not believe that terminating pregnancy is murder but most of the respondents believe that termination of pregnancy amount to killing and therefore the Act must be re-amended. There was a stormy debate concerning termination of pregnancy issue and it is claimed that the legalisation of TOPs in the South Africa restore the dignity of women but contribute to a better life, but some argument was raised by participants during data collection that termination of pregnancy is quoted with murder which portrays the attitude of the broader South African community. Nevertheless, the researcher found it very clear that termination pregnancy is viewed as a very serious offence, especially by the Christians.

#### 5.4.10 THE OPINION THAT SECTION 28(2) OF THE CONSTITUTION CONTRADICTS THE ACT 92 OF 1996

Section 28(2) of the constitution state that the best interest of a child should take precedence in every matter concerning the child and the act on termination of pregnancy allows the service to be conducted without the parental concerns. However, the statement shows the contradiction of the termination of pregnancy Act 92 of 1996 and of the constitution, as such the views about the above constitutional statement has been asked. The issue of parental consent was claimed to be uncertain in the CTOPA by the respondents and however, it is not unexpected that people are uncertain as to how to interpret the law since it contradicts with the constitution. However, it is suggested that minors need to obtain parental consent before allowed to access the service on termination of pregnancy so that the conscientious objection in the CTOPA be interpreted with sections of the 1996 Constitution in mind.

However, the researcher found it clear that the respondents are in favour of parental involvement in the minor's decision to terminate unwanted pregnancy. Nevertheless, one of the respondents said that "there should be set of rules for minors compared to adults and went as far to say that the parental consent should be obtained legally and even in the case of complications". The other respondents supported that saying that similar to the girls under the age of 18 years should acquire the parental consent before requesting the service because they are minors.

The opinion about the above constitutional statement was suggested that it is because of the reason that every Department has different policies. However, if they want to come up with same idea they have to merge to make an agreement on one condition that support each other. This reveals that the Departments when coming up with new ideas they do not consult with the constitution that is the reason why the ideas end up contradicting.

#### 5.4.11 RESPONDENTS VIEW ABOUT THE ACT 92 of 1996

The introduction of the termination of pregnancy act in South Africa was welcomed with lot of distrust and concerns from traditionalists and those that are culturally

sensitive as well as religious leaders from various dominations. Such uncertainty has observably created a mystery within traditional communities. Therefore, the researcher found it important to have peoples input on the amendment of the Act and in-boxed a space of opinions on what suggestion to amend on the implementation of the Act if it was to be amended. The suggestions were as follows:

One of the respondents suggested that the implant contraceptive injection must be implemented as a policy and it must be taken out to high schools that every teenager must be injected to prevent and avoid unwanted pregnancies. The other suggestion was that all girls below the age of 18 years who request the service on termination of pregnancy should consult their parent or legal guardian before the service rendered, this was suggested to be a precondition to the provision of the service on termination of pregnancy to all girls below the age of 18 years.

One of the respondents said perhaps there should be different conditions of parents compared to those of the young girls such as, young girls should request the parental permission before requesting the service on termination of pregnancy and however a written consent from parents or legal guardian must be produced by young girls below the age of 18 years when requesting the service on termination of pregnancy 24 hours before the service being rendered. One of the respondent recommended that only pregnancy resulted from raped should be available on request not any other unwanted pregnancies.

One of the respondents commended that since CTOPA is against peoples moral, however those who believe that Act 92 of 1996 is against their moral ethics should not be granted the service. However, this can be done by affiliating the religious belief of every woman who requests the service on termination of pregnancy before being assisted. One of the interviewed priest who was of the opinion that termination of pregnancy is a sin, suggested that the Act must be abolished saying that “ if there is high population growth in the country let it be that’s the time and the way God wanted it to be rather than killing”.

The fact that termination of pregnancy has been legalised in South Africa, it is of the opinion that it will increase the need for termination of pregnancy services in the community or rather the country as a whole, requiring more and more nurses to work in termination of pregnancy services, in regardless of their issue of ethics and

morality. In line with the international human rights, the respondents at Lepelle-Nkumpi Local Municipality agreed that TOP is an important human right particularly as every woman should have the right to make her own decisions concerning her body.

## **5.5 CONCLUSION**

The CTOPA has generated considerable controversy by the South African communities and the South African health system is faced with massive challenges of providing safe, effective and acceptable termination of pregnancy service throughout the country. In light with these challenges, the aim of the study was to investigate the community member's perceptions of the *Choice on Termination of Pregnancy Act 92 of 1996* with the purpose of developing a set of guidelines or recommendations based on the sensitivities of the Act. In pursuing the aim, the literature from various sources was reviewed. The empirical data was collected from the community members which are the public and those individuals who are involved in law making. However, this chapter reflected on the main findings of both the literature reviewed and the empirical data collected and in the next chapter the study provide the conclusion and recommendations from the research findings of study which is informed by the findings in chapter five.



## CHAPTER SIX

### SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

#### 6.1 INTRODUCTION

The previous chapter investigated the community's member's perceptions of the *Choice on Termination of Pregnancy Act 92 of 1996* in selected villages found in the Lepelle-Nkumpi Local Municipality within the Capricorn district municipality, specifically ward 22 and ward 23. The researcher analysed and interpreted the findings of the questionnaires and interviews that were conducted. However, those findings were presented, interpreted and analysed in the previous chapter. Therefore, this chapter provides the summary, draw conclusions and make up the recommendations from the previous chapters with concern to *The Choice on Termination of Pregnancy Act (92 of 1996)* that is legalised by the South African government, which came into effect on the February, 1, 1997.

#### 6.2 SUMMARY

The study aimed at investigating the community member's perceptions of the Act on termination of pregnancy in order to come out with recommendations that can assist in law implementation that is within the moral implication in the practice of public administration. To realise the aim, the following chapters were led by the objective were discussed.

**Chapter one:** The chapter outlined the positioning of the study. However, it provided the background; the problem statement; the aim and the objectives; the research question as a guideline of the study; clarification of concepts such as a law, termination and communities; significance of the study and considering research ethics. The chapter assisted as a planning tool for conducting the study. However, this chapter revealed that the proposed statement of problem is important to be investigated on, because the introduction of the Act was received with lot of concerns from those who are traditionally sensitive and that becomes important when it comes to the practice of public administration. Therefore, the foundation of this chapter provided a stand of the proposed objectives that were answered by the followed chapters.

**Chapter two:** The chapter was led by the second objective of the study, where it presented the theoretical framework. The theoretical framework is the structure that supports a theory of a study and describes the theory which explains why the research problem under the study exists. The researcher chose the Social systems theory as the theoretical framework of the study that helped to analyse the challenge that is perceived with the implementation of the *Choice on Termination of Pregnancy Act 92 of 1996*. However, in the chapter the importance of the social systems theory to the Act was discussed; the nature and the characteristics of the framework; the complexity of the theory looking at the structure and the powers of the individual actors; the elements of the theory such as communication, the environment, information, the societal ethics guided by the norms and the customs of the society.

**Chapter three:** The chapter reviewed the literature gathered with the aim of examining the formation and implementation of the Act on termination of pregnancy as a law governing the termination of pregnancies in South Africa. Nevertheless, the chapter was answering to the second objective which was to determine the extent to which members of rural communities in selected villages at Lepelle-Nkumpi Local Municipality perceive the implementation of the Act. Therefore, the chapter dealt with the law making and implementation process; the state on the Choice on Termination of Pregnancy Act on the world wide perspective, African perspective, and in the South African perspective; the conversion to the democratic state in South Africa; the conditions of the Act in South Africa; the state of traditional, cultural and religious beliefs on Termination of Pregnancy Act. The literature on this chapter proven that termination of pregnancy is regarded as a serious offence for the reason that the opponents of the *Choice on Termination of Pregnancy Act of 1996*, such as Doctors for Life, the Christian Lawyers Association, religious organisations and other pro-life organisations, challenged the legalisation of the termination of pregnancy on demand arguing that the unborn child has a right to live. However, the Act has been implemented despite the oppositions.

**Chapter four:** this chapter presented various methods and techniques that are employed which is the research methodology. However, the data methods are plans to yield data on a particular problem. Therefore, in this chapter the study design was presented, and the researcher used two methods of collecting data (the qualitative and quantitative research) followed by the study population; the population sampling; data analysis were the researcher used the descriptive mode of analysis and Statistical Package for Social Science Production to analyse the data; and ethical consideration were the researcher adhered to the research ethics.

**Chapter five:** In this chapter the attention was given to the findings, analysis and interpretations of the study. However, the chapter focused on the findings of the qualitative and quantitative data which was obtained by means of interviews and questionnaires, with the aim of responding to the third objective of the study which was to establish the extent to which the perception members of such rural communities have an effect on the law on termination of pregnancy impact the implementation landscape in general. In this chapter, data was collected and analysed with the use of statistical tables and figures to explain clearly the complicity of the data. The researcher found that Lepelle-Nkumpi is dominated by the Christians and they believe uphold the sanctity of life, shaping moral and ethical perceptions of TOP. Even though they regard termination of pregnancy as immoral but they regard TOP as a human right issue. Nevertheless, the finding reveals that people are familiar to termination of pregnancy but the majorities are not aware of the implementation of the Act and its conditions.

**Chapter six:** The chapter provides the summary, conclusions and recommendations of the study. However, it suggests the ideas to amend the Act. Therefore, the conclusion and recommendations are as follows.

### **6.3 RECOMMENDATIONS**

In the study the last objective was “to make recommendations on aspects to be considered whenever a moral related law promulgation like that of termination of pregnancy need to be considered within the field of Public Administration”. However, the study successfully collected the information on the community’s member’s perceptions on termination of pregnancy within rural villages at Lepelle-

Nkumpi Local Municipality. Based on the problem mentioned in conclusion, the study therefore recommends the following:

### ***6.3.1 Effective public participation***

Public engagement need to be more effective especially to selected villages. The Constitution provides a framework for an open and participatory democracy and the provincial legislatures must facilitate such public engagement because it is found that the respondents at Lepelle-Nkumpi Local Municipality are not fully knowledgeable on the *Choice on Termination of Pregnancy Act 92 of 1996* and this leaves a gap on the understanding of the laws and law making in the Lepelle-Nkumpi Local Municipality.

### ***6.3.2 The three year contraceptive injection should be a rule***

Due to a large amount of people demanding termination of pregnancy in South Africa, it is recommended that the implant contraceptive injection be implemented as a rule or policy and it must be implemented out to high school teenagers that every teenage girl must be injected to prevent and avoid unwanted termination of pregnancies.

### ***6.3.3 Girls below the age of 18 years should consult their legal guardians before requesting Termination of Pregnancy***

It is also recommended that all girls below the age of 18 years who request the service on termination of pregnancy should consult their parent or legal guardian before the service on termination of pregnancy being rendered and it is therefore, recommended that, it be a precondition to the provision of the service on termination of pregnancy for girls below the age of 18 years.

### ***6.3.4 Different conditions of minors to those of parents***

There should be different conditions of parents compared to those of the teenage girls such as: the teenage girls should request the parental permission before requesting the service and a written consent must be available 24 hours before the procedure on termination of pregnancy for teenage girls being granted; the parents confidentiality must be respected and the termination of pregnancy service must be granted unconditionally; if a girl is below the age of 18 years the parents authorisation for TOP service must be involved for in case of complications.

### **6.3.5 Religious affiliation before requesting the TOP service**

Since the *Choice on termination of Pregnancy Act 92 of 1996* is believed to be against respondents moral, however those who believe that the Act is against their moral ethics should not be granted the service. Hence, this can be done by affiliating the religious belief of every woman who requests the service on termination of pregnancy, before being assisted because some of the religions does not allow termination of pregnancy as such they view terminating unwanted pregnancies as a murder.

### **6.3.6 The Act should be abolished**

Having analysed the data in order to evaluate the respondent's sentiments we understand and accept that any decision made will ultimately dissatisfy a percentage of certain population. However, it recommended that the Act be abolished because, termination of pregnancy will remain an issue which opposing sides will never see eye to eye on and the basis of the issue fundamentally lays within the values and beliefs of each religion. Hence, the issue will likely remain immersed in controversy and remain unresolved.

### **6.3.7 TOP should be legal on circumstances**

It is encouraged that this legalised termination of pregnancy come with restrictions and regulations mandated by the states. Hence, the citizens cannot deny or prohibit a woman's right to choose. But however, it can regulate every woman's decision and allow the governments to determine the appropriate stipulations and restrictions of the legalisation on termination of pregnancy. Therefore, termination of pregnancy must not be freely accessed but should be legal on circumstances such as: if the pregnancy resulted from rape; the continuing pregnancy will result in pregnant women's physical health at risk or if the child will suffer from physical or mental abnormalities.

## **6.4 CONCLUSION**

During the 1990s when the reproductive rights were receiving substantial attention internationally, South Africa was in a process of political transformation as the first democratic government was elected in 1994. Even prior to the democratisation of

the country, the focus of the ANC was to bring about the fundamental socio-economic reform. However, it was noted that by providing the quality, accessible and affordable health services including reproductive health care, the concerns such as the maternal mortality and unwanted pregnancies could be addressed. The study clearly demonstrate that although the CTOPA has opened the door to women to access termination of pregnancy service the implementation of the Act is confronted by numerous challenges. Given the numerous obstacles reported in chapter 5 the discussion of the findings of the empirical study in relation to the literature reviewed ultimately, suggested recommendations to overcome obstacles on the community members perceptions of accessing the termination of pregnancy service in the Lepelle-Nkumpi municipality and South Africa as a whole.

## REFERENCES

- Adanu, R. M. & Tweneboah, E. 2004. *Reasons, fear and emotion behind induced abortion in Accra, Ghana*. Research review NS, 20(2): 1-9
- Althaus, F. A. 2000. Work in progress: the expansion of access to termination of pregnancy service in South Africa following legalisation. *Family Planning Perspectives*, 26(2): 340-410.
- Anderson, J. E. 1994. *Public policy-making: an introduction*. Boston: Houghton Mifflin
- Anderson, J. E. 2006. *Public Policy Making*. Wadsworth, Cengage Learning. 6<sup>th</sup>ed
- Anderson, J. E. 2011. *Public Policy Making*. Wadsworth, Cengage Learning. 7<sup>th</sup>ed
- Anderson, R. E., Carter, I., & Lowe, G. R. 1999. *Human behavior in the social environment* 5<sup>th</sup> ed. New York: Aldine de Gruyter
- Aniteye P. & Mayhew S.N. 2013. *Shaping legal abortion provision in Ghana: using policy to understand provider related obstacles to policy implementation*. found; <http://www.health-policy-system.com/content/11/123.pp.1-14> (Accessed on 07 May 2014)
- Baker, R. F., Michaels, R. M., & Prestons, E. S. 1975. *Public policy Development: linking the technical and political processed*. New York: John Wiley
- Bangser, M. 2010. *Falling Through the Cracks: Adolescent Girls in Tanzania, Insights from Mtwara, Dares Salaam*: USAID\Tanzania.
- Bartholomew, J. D. 2000. *Stochastic Models for Social Processes*. London; New York
- Basinga, P., Moore, A. M, Singh, S.D, Audam, S., Carlin, L., Birungi, F., & Ngabo, F. 2002. *Abortion Incidence in Rwanda*. School of Public Health, National University of Rwanda. New York: USA; Rwanda Guttmacher Institute.
- Bernardi, F., Gonzalez, J. J. & Requena, M. 2011. "The Sociology of Social Structure". 21<sup>st</sup> Century Sociology. SAGE: United Kingdom

Bertalanffy, L. 1950. The outline of general systems theory. *Journal of Science* 42: 198-210

Bertalanffy, L. V. 1972. The History and Status of General Systems Theory. *The Academy of Management Journal*, 15(4): 407-426.

Bertalanffy, V. L. 1968. *General Systems Theory*. New York: Braziller

Bless, C. & Higson-Smith, C. 1995. *Fundamentals of social research methods: an African perspective*, 2<sup>nd</sup> edition. JUTA

Bogdan, R. C. & Biklen, S. P. 1992. *Qualitative Research for Education: An Introduction to Theory and Methods*. Boston: Allyn and Bacon, Inc

Bradford, H. 1994. *You call that democratic? Struggles over abortion in South Africa in the 1970s*, paper presented at the Wits History Workshop, University of Witwatersrand, Johannesburg,

Bradford, H. H., Knives & Plastic. 1991. *150 Years of Abortion in South Africa: Science, Medicine and Cultural Imperialism*, New York: St. Martin's Press.

Bruce, C.W. 2002. Bernard Barber's Social Systems Theory. *The American Sociologist*, 33(2): 86-104.

Bruce, D. F. & Keren, N. A. 2000. Systems Theory. *Journal of Management Studies* 4(1): 3-19

Charles, C. M. 1998. *Introduction to Educational Research*. New York. Longman

Claire, .B, Higsons-Smith, .C, & Kagee, A. 2006. *Fundamentals of Social Research Methods: An African Perspective*. Cape Town: Juta

Cloete, F & de Coning, C. 2012. *Improving Proving Public Policy: Theory, Practice and Results 3<sup>rd</sup> edition*. Pretoria: Van Schaik

Cloete, J.J.N. 1977. *South African Public Administration: selected readings*. J.L Van Schaik: Pretoria

Conee, E. 1999. Metaphysics and the Morality of Abortion. *Mind, New Series*, 108 (432): 619-646.



- Cook, R. J. & Dickens B. M. 2003. Human Rights Dynamics of Termination of Pregnancy Law Reform. *Human Rights Quarterly*, 25(1): 1-60
- Cook, R. J., Dickens, B. M. & Bliss, L. E. 1999. International Development in Termination of Pregnancy Law from 1988 to 1998. *American Journal of Public Health*, 89(4): 579-586
- Cooper, .D. Morrionic, .C. Orner, .P. Moodley, .J. Harries, .J. Cullingworth, .L. & Hoffman, .M. 2004. Ten years of democracy in South Africa: Documenting Transformation in Reproductive Health. *Reproductive Health Matters*, 12(24): 70-89.
- Cope, J. 1993. *A Matter of Choice: Abortion Law Reform in Apartheid South Africa, Pietermaritzburg, South Africa*: Haded Books.
- Corchran, C. L. & Malone, E. F. 2005. *Public Policy Perspective and Choices* 3<sup>rd</sup> edition. Lynne Rienner
- Correa, .J. 2003. Termination of pregnancy is a global political issue. *Women's International Network News*, 29(3): 13-17.
- Coward, H. & Ratanakul, P. 1999. *A cross-cultural dialogue on health care ethics*. Waterloo (ON): Wilfrid Laurier University Press.
- Creswell J. W. 2009. *Research design: Qualitative, Quantitative and Mixed methods approach* 3<sup>rd</sup>ed. United States of America: SAGE
- Dabash, R. & Roudi-Fahimi, F. 2003. *Abortion in the Middle East and North Africa*. Gynuity
- Dale, O., Smith, R., Chess, W.A., & Norlin, J. M. 2006. *Human Behavior in the Social Environment: A Social Systems Model*. Boston: Allyn & Bacon
- De Pinho, .H. & Hoffman, .M. 1998. Termination of Pregnancy- understanding the new Act. *Continuing Medical Education*, 16(8): 786-790
- De Vos, A. S. & Strydom H. 1998. *Research at Grass Roots: A primer for the caring professions*. Pretoria: Van Schaik
- De Vos, A. S. 2001. *Research at Grass Roots: for the Social Science and Human Service Professions*. Pretoria: Van Schaik
- De Wer J. M. J., Timothy D. H., Hilu K.W., & Flether. 1981. *Systematic of South American Trispsacum Gramineae*. Amer. J. Bot. 68: 269-270

Denzin N. K & Lincoln Y.S. 1994. *Handbook of qualitative research*. United State of America: SAGE

Department of Economic and Social Affairs Population Division. 2002. Abortion Policies: Global Review Volume iii. United Nation; Amazon.com

Diamond, .B. 2004. Law for midwives: Termination of Pregnancy. *British Journal of Midwives*, 12(8): 516-750

Dixon-Mueller, .R. 1990. Termination of Pregnancy Policy and woman's health in developing countries. *International Journal of Health Services*, 20(2): 297-314

Dlilulio, J. J., Nathan R., & Kettle, D. *The Administrative Principle*. Pretoria: Van Schaik

Dye, T. R. 1995. *Understanding Public Policy Englewood*. Cliffs, H.J: Prentice hall

Dye, T.R. 1966. Politics, Economics and The Public Policy Outcomes in the fifty States. Chicago: Rand-McNally.

Engelbrecht, .M.C. 2005. Termination of Pregnancy Policy and Service: Appraisal of the implementation and operation of the Choice on Termination of Pregnancy Act 92 of 1996. University of Free State

Ferreira, .M. 1985. Termination of Pregnancy and Family Planning: a literature study. *RSA 2000*, 7(2): 15-24

Finer .L. B. & Henshaw S. K. 2003. Termination of pregnancy incidence and service in the united states in 2000. *Perspectives on Sexual and Reproductive Health*, 35(1): 6-15

Forrer, J, Kee, J. E & Gabriel, S. 2015. Not your father's Public Administration. *Journal of Public Affairs Education*, 13(2): 265-280

Forrester, J. W. 1995. Counterintuitive Behavior of Social Systems. Alumni association of the Massachusetts, Cambridge; USA

Gay, L. R. 1981. *Educational Research*. Columbia: Charles E. Merrill

Gerber Fried, .M. 2000. Termination of pregnancy in the United State: barriers to access. *Health and Human Right,s* 4(2): 174-194

- Gerhardt, .A. 1997. Termination of pregnancy law into action: implementing legal reform. *Initiatives in Reproductive Health Policy*, 2(1): 2-4
- Gibson, .D. 2000. Social Interaction Systems: Theory and Measurement. *Contemporary Sociology*, 29(5): 733-735.
- Government of Rwanda. 2007. Economic Development and Poverty Reduction Strategy, 2008–2012, Ministry of Finance and Economic Planning, Kigali - Rwanda.
- Gregory, I. 2003. Ethics in research. London: Continuum
- Guttmacher, S., Kapadia F., Te Water F., & de Pinho H., 1996. *Abortion reform in South Africa: a case study of the termination pregnancy act- international family planning perspectives*. 24(4): 76-100
- Guttmacher, S., Kapadia, J., Te Water, J. & H de Pinho. 1998. *Abortion reform in South Africa: a case study of the 1996 choice on termination of pregnancy Act*. 24(4): 120-145
- Hanekom, S. X & Sharkansky, I. 1993. Policy-making and implementation in conditions of extreme uncertainty: the case of South Africa and Israel. SAIPA: *Journal of Public Administration*. 28(2): 96-200
- Hanekom, S. X. 1992. *Public Policy Framework and Instrument for Action*. Johannesburg: Southern
- Hanekom, S.X. 1987. *Public Policy Framework and Instrument for Action*. Johannesburg: Macmillan
- Hans-ulrich, D. 1998. Niklas Luhmann's theory as a challenge for ethics. *Ethical Theory and Moral Practice*, 1: 85-102
- Harrison, A., Montgomery, E., Lurie, M. & Wilkinson, D. 2000. Barriers to implementing South African Termination of Pregnancy Act in Kwazulu-Natal. *Health Policy and Planning*. 15: 424- 431
- Hedstrom, .P. & Swedberg, .R. 1998. Social Mechanisms: An Analytical Approach to Social Theory. Cambridge University Press; United Kingdom

- Hendry, J. & Seidl, D. 2003. The Structure and Significance of Strategic Episodes: Social systems theory and Routine Practices of Strategic Change. *Journal of Management Studies*, 40(1): 355-410
- Henshaw, S. K., Adewole, I. F, Singh. S., Bankole, A., Oye-Adeniran, B., & Hussain, R. 2008. Severity and cost of unsafe abortion complications treated in Nigerian Hospitals. *International Family Planning Perspectives*, 34:40–50.
- Hogwood, B.W & Gunn, L. A. 1984. *Policy analysis for the real world*. Durban: Oxford University Press
- Hord, C. H. & Xaba, M. 2002. Termination of pregnancy law reform in South Africa: report of the study tour. Johannesburg: Ipas.
- Howard, .G. 1975. *Some critical observations on the relevance of social systems theory for social work practice*. *Canadian Journal of Social Work Education*, 1(3): 13-23
- Huntington, D. Nawar L. Hassan E. Youssef H. and Tawab A. N. 1998. *The post abortion caseload in Egyptian hospital: a descriptive study*, 24(1): 25-31
- Jewkes, R & Rees H. 2005. Dramatic decline in abortion mortality due to the Choice on Termination of Pregnancy Act, *South African Medical Journal*, 95 (4): 235-250
- Johnston, R. 2008. *Historical abortion statistics, Tunisia*. Found: <http://www.johnstonsarchive.net/policy/abortion/ab-tunisia.html>. (Accessed 13 may 2014)
- Kemajuan J. 2001. *Malaysian Islamic Developmental Department: The Ruling on Termination of Pregnancy Due To Rape*: Found: <http://www.e-fatwa.gov.my/fatwakebangsaan/hukum-menggugurkandungankandungangmangsa-yang-dirogol>. (Accessed 20 March 2014).
- Keown, D. 2004. Science and Theory New. *Journal of Geography*, 117(2): 271-280
- Kinemo, R. E. J. 2009. Abortion and family planning in Tanzania. United Nations: World Health Organisation
- King, M. L. 2010. The law-making process. State capitol; Senate office. Found: <http://www.senate.leg.state.mn.us/publications/billlaw.pdf> (Accessed on 02 November 2015)

- Lasse, A. & Wilson J. B. 1998. Trends in maternal mortality in Korle Bu Hospital. *Ghana Medical Journal*, 32: 910-916.
- Lather, P. 1999. "To be of use: the work reviewing". *Review of Educational Research*, 29 (1): 2-4
- Laura, A. R & Rosenfeld, A. R. 2004. Local Economic Development in the United State and Canada: institutionalizing policy approaches. *The Review of Public Administration*, 12: 3-13
- Lawrance, R. 2016. Brazilian lawmakers want harsher penalties for abortion in facing Zika epidemic. Found: <http://www.injustice.in/women/2016/02/22brazilian-lawmakers-want-harsher-penalties-for-abortion-facing-the-zika-epedemic/>  
(Accessed on 24 March 2016)
- Lefleur, R. William. 1990. Contestation and Consensus: *The Morality of Abortion in Japan*, *Philosophy East and West*, 40: 335-341
- Lenn, E. Good man. 1998. *Judaism Human Rights and Human Values*, 12 (6): 15-17
- Lipner, E. 1989. The classical Hindu view on abortion and moral status of the unborn. *Journal of Religious and Ethics*, 14(4): 222-250
- Logan, C., Holcombe S., Manlove, J. & Ryan . 2007. *Childhood sexual abuse and teenage pregnancy: a white paper* Washington Dc: chila Trends Inc
- Lotz, M. nd. *Ethical Arguments Concerning the Moral Permissibility of Abortion*. Australia: University of Melbourne
- Luhmann, N. 2006. System as difference. *Organisation*, 13(1): 37-57
- Madan, T. N. 1985. *Concerning the categories of subha and suddha in Hindu culture*. In: Carman JB
- Mattheis, C. 2012. The System Theory of Niklas Luhmann and the Constitutionalization of the world society. *Goettingen Journal of International Law*, 4(2): 625-647
- Mavundla, S. D. 2009. *Access to Legal Abortion by Rape Victims as a Reproductive Health Right: Case study Swaziland and Ethiopia*. University of Addis Ababa, Ethiopia

- McMillan, J. H & Schumacher, S. 2001. *Research in education: a conceptual introduction 3<sup>rd</sup> edition*. New York. Harper Collins.
- McMillan, J. H. & Schumacher, .S. 1989. *Research in education: a conceptual introduction*. New York. Addition Wesley Longman
- Mote, C.V., Otupir, E., & Hindin, M.J. 2010. *Factors associated with induced abortion among women in Hohoe, Ghana*.
- Mouton, J. & Marais, H.C. 1993. *Basic Concepts in the Methodology of Social Science*. Pretoria: HRSC
- Mouton, J. 1996. *Understanding Social Research: Data collection (ensuring reliability)*. Pretoria: Van schaik
- Mouton, J. 2001. *How to succeed in your master and doctoral studies: a South African guide and resource book*. Pretoria: Van Schaik
- Mtubatuba, & Hopkins, J. 2000. *Barriers to implementing South Africa's termination of pregnancy act in rural KwaZulu-Natal: centre for epidemiological research in South Africa: Oxford University Press*
- Mulder, J. 1989. *Foundation of axiomatic functionalism*. Berlin: de Gruyter.
- Nathan, J. A. & Oliver, J. K. 1994. *Foreign policy making and the American political system 3<sup>rd</sup>ed*. Baltimore: Johns Hopkins University Press.
- Nel, E. 1996. *Local community economic development; applied practice and current policy formation in small town in South Africa department of geography*. South Africa: Rhodes University. Found: [www.comm-dev.org/conf96](http://www.comm-dev.org/conf96). (Accessed 23 march 2013)
- Ngwean, C. 2004. Access to legal termination of pregnancy: developments in Africa from a reproductive and sexual health rights perspective. *Reproductive Health and Human Rights*, 19(22): 329-349
- Ngwena, C. 2004. Access to legal termination of pregnancy: developments in Africa from a reproductive and sexual rights perspective. *SA Publiek/Public Law*, 19: 328-350

- Ngwena, C. 2004. An appraisal of termination of pregnancy law in southern Africa from a reproductive health rights perspective. *Journal of Law, Medicine & Ethics*, 32(4): 708-717
- Ngwena, C. 2014. Human Rights and African Abortion Laws: A hand book of judges. Kenya; Ipas
- Okonofua, F. E, Shittu, S. O, Oronsaye F., Ogunsakin D., Ogbomwan S., Zayyan, M. 2005. Attitudes and Practices of Private Medical Providers Towards Family Planning and Abortion Services in Nigeria. *Acta Obstet Gynecol Scand*, 84: 270–80
- Oleszek, W. J. 1989. *Congressional procedure and policy process* 3<sup>rd</sup> ed. Washington: CQ Press
- Oliver, P. 2003. *The Student Guide to Research Ethics*. Maidenhead: Open University Press
- Pabjan, B. 2005. Researching prison-a sociological analysis of social system. *Interdisciplinary Description of Complex Systems*, 3(2): 100-108
- Palmaru, R. 2012. Making sense and meaning on the role of communication and culture in the reproduction of social systems. *Constructivist Foundation*, 8(1): 63-76
- Panday, S., Makiwane, M., Ranchod C., & Letsoalo, T. 2009. *Teenage pregnancy in South Africa- with a specific focus on school-going learners*. *Child, Youth, Family and Social Development, Human Sciences Research Council*. Pretoria: Department of Basic Education.
- Parahoo, K. 1997. *Nursing research: principles, process and issues*. London: MacMillan Press
- Parson, T. 2007. An Outline of the Social System (1961). *Theories of Society*, 1: 421-440
- Patton, W. & McMahon, M. 2006. The systems theory framework of career development and counselling: connecting theory and practice. *International Journal for the Advancement of Counselling*, 28(2):153-166
- Pillai, V. & Wang, G. 1999. Women's reproductive rights and social inequality in developing countries. *Social Science Journal*, 36(3): 459-670

- Randall, B. R. & Franklin, G. A. 1991. *Congress, the Bureaucracy and Public Policy* 6<sup>th</sup>ed. Pacific Grove: Cole
- Regenesys. 2003. *Research School of Public Management*. Johannesburg.
- Robert, D & Leighninger, J. R. 1977. Systems Theory and Social Work: A re-examination. *Journal of Education for Social Work*, 13(3): 44-49
- Rojek, C. 2008. *Cultural Studies*. Polity Press: Cambridge
- Sabatier, P. A. 1986. "Top-Down and Bottom-Up Models of policy implementation: a critical analysis and suggested synthesis". *Journal of Public Policy*, 6(1): 21-48
- Sai, F. 2004. International commitments and guidance on unsafe termination of pregnancy. *African Journal of Reproductive Health*, 8(1): 15-29
- Sarkin, .J. 1998. Patriarchy and discrimination in apartheid South Africa. *Buffalo Human Rights Law Review*, 4:142-184
- Savenye, W. & Robison, R .2004. *Qualitative Research Methods, Research and Assessment*. Northern Illinois University, Erlbaum and Bloomington: Illinois
- Sekaran, U. 1992. *Research Methods of Business: A skill- building approach*. 2<sup>nd</sup> edition. New wiley
- Shamoo .A. E & Resnik D. 2003. *Responsible conduct of research*. Oxford University Press: Oxford.
- Sidley, .P. 1998. *South Africa Liberal Abortion Laws Challenged*. Johannesburg; Found <http://dx.doi.org/10.1136/bmj.316.7146.169/6a> (Accessed 12 may 2014)
- Silverman, D. 1995. *Qualitative Research; Theory, Method and Practice*. London: SAGE
- Silverman, D. 1997. *Qualitative research Theory, Method, Practice*. London: SAGE
- Sinclair, M. 2007. A guide to understanding Theoretical and Conceptual Frameworks. *Evidence Based Midwifery*, 5(2): 39-40
- Smith, S.S. 2013. Reproductive Health and the Question of termination of pregnancy in Botswana. *African Journal of Reproductive Health*, 17 (4): 26-45



South Africa (Republic). 1996, Constitution of the Republic of South Africa No.108 of 1996. Pretoria: government printer.

South Africa (Republic) 1996, the Choice on Termination of Pregnancy Act (act no. 92 of 1996). Pretoria: government printer.

Statistic South Africa census. 2001. Lepelle-Nkumpi Integrated Development Plan Review 2007/8. Pretoria: Government Printer

Statistic South Africa. 2003. Census 2001.Census in brief. Pretoria: Government printer

Strauss, A. L. & Corbin, J. M. 1990. *Basics of qualitative research: grounded theory procedures and techniques*. London: SAGE

Strauss, S. A .1968. Therapeutic termination of pregnancy and South African law. *South African Law Journal*, 434-470

Tautz, S. 2004. *Unsafe abortion: a review and discussion paper, sector project reproduction health*, 23(3): 450-470

Tawab, A. 1987. *Forensic and criminal investigation and forensic evidence*. Alexandria: Termination-of-Pregnancy rights and foetal interests in continued existence in South Africa: The Choice on Termination of Pregnancy Act. No 92 of 1996), 15(5): 229-245

Tooley, M. 1983. *Abortion and Infanticide*. Oxford: Oxford University Press.

Van Rensburg, H. C. J. 2004. The history of health care in South Africa. *Health and health care in South Africa*. Pretoria: Van schaik

Varkey, S. J. 2000. Abortion service in South Africa: *International Family Planning Perspective*, 26: 87-88

Vidich, J. 2000. The Department of Social Relations and Systems Theory at Harvard. *The International Journal of Politics, Culture and Society*, 13(4): 607-648.

Viskovatoff, A. 1997. Foundations of Niklas Luhmann's Theory of Social Systems. *Philosophy of Social Sciences*, 29(4): 418-516

Walby, S. 2007. The complexity, Systems Theory and Multiple Intersecting Social Inequalities. *Philosophy of Social Sciences*, 37(4): 449-470

Wassenaar, .D. R. 2006. *Ethical issues of social science research. South African research ethics training initiative*. School of psychology, University of KwaZulu-Natal: Pietermaritzburg.

Wiersma, W. 1980. *Research methods in education*. Illinois: peacock

Williams, S. 1986. *Policy and Practice: The Experience of the Government*. Birdcage walk; Royal Institute of Public Administration

World health organization. 2004. *Health Service Planning and Policy-Making: A Toolkit for Nurses and Midwives*

Yuan, N.P., Koss, M.P. & Stone, M. 2001. Malaysian Islamic Developmental Department. *The Ruling on Termination of Pregnancy Due To Rape*. Found: <http://www.e-fatwa.gov.my/fatwakebangsaan/hukum-menggugurkankandungan-mangsa-yang-dirogol> (Accessed 13 may 2014).

Po box 388

Mphahlele

0736

12 August 2015

Dear respondent

I Peggy Murwa a Masters of Administration student at University of Limpopo (Department of Public Administration), conducting a research on **“Community’s member’s perceptions on Termination of Pregnancy Act 92 of 1996 in Selected villages within Lepelle-Nkumpi Local Municipality”**

The aim of this study is to deal with the stigma associated with termination of pregnancy as a law position within the legislative framework in South Africa through educating communities to the effect that the law is not meant to eradicate their traditional, cultural and religious beliefs. Therefore, the research is only meant for completion of the study and for academic purpose. However, the researcher will always make sure that the information you provided is used only for the purpose of the study, the information will be confidential and the respondents name will remain anonymous.

Feel free to answer the below questions and tick with an (X) where applicable. Your cooperation will be highly appreciated.

Thanking you in anticipation.

Yours faithful

Murwa, S. P

## QUESTIONAIRES

### RURAL COMMUNITIES

#### INSTRUCTIONS

Please be open to complete this questionnaire. It is for the research purpose and the data will be handled confidentially. Your cooperation will be highly appreciated. Please tick with an (X) to the answer representing your response to the question where necessary.

1. <u>BIOGRAPHICAL INFORMATION</u>						
AGE	18-25	26-35	18-35	36-45	46-54	55+
GENDER PROFILE			Male		Female	
EDUCATIONAL STATUS	Grade 1-7	Grade 8-12	Diploma	Degree		
EMPLOYMENT STATUS	Self-employed	Government employee	Private sector	Unemployed		
RELIGION PROFILE	Christian	African tradition	Muslim	Others (specify)		

#### 2. KNOWLEDGE OF THE ACT

2.1 Are you familiar with the Act on termination of pregnancy?

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
----------------	-------	---------	----------	-------------------

2.2 Are you aware that the Act allows girls below the age of 18 years to access

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
----------------	-------	---------	----------	-------------------

2.3 Are you aware that the Act allows pregnancy resulted from rape or incest to

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
----------------	-------	---------	----------	-------------------

2.4 Are you of the opinion that the Act is in conflict with your culture?

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
----------------	-------	---------	----------	-------------------

### **3 THE COMMUNITY PERCEPTION OF THE ACT**

3.1 Your community believes that termination of pregnancy is important for human right.

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
----------------	-------	---------	----------	-------------------

3.2 Are you of the opinion that the implementation of the CTOPA provides health and safety for young girls?

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
----------------	-------	---------	----------	-------------------

3.2 Some members of the community view the Act as a contradiction of their culture.

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
----------------	-------	---------	----------	-------------------

3.3 TOP Act is merely a murder performed by the Health worker.

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
----------------	-------	---------	----------	-------------------

3.4 TOP should be legal.

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
----------------	-------	---------	----------	-------------------

### **4 EFFECTS OF THE ACT**

4.1 The implementation of the Act is a cause of moral degradation and disrespect for rights of human life.

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
----------------	-------	---------	----------	-------------------

4.2 Every woman has the rights to make her own decision.

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
----------------	-------	---------	----------	-------------------

4.3 I support the Act since it reduces the population rate.

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
----------------	-------	---------	----------	-------------------

4.4 The person under the age of 18 years should obtain consent from legal guardian before requesting the service.

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
----------------	-------	---------	----------	-------------------

4.5 The financial problems are reasons for requesting termination of pregnancy services.

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
----------------	-------	---------	----------	-------------------

4.6 My religion does not prevent me from requesting TOP service.

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
----------------	-------	---------	----------	-------------------

4.7 A Foetus is not a legal person and does not need to excise the legal rights.

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
----------------	-------	---------	----------	-------------------

4.8 No one should feel embarrassed to request TOP service.

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
----------------	-------	---------	----------	-------------------

4.9 The Foetus should have the same rights as the mother.

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
----------------	-------	---------	----------	-------------------

4.10 Majority of the people requesting TOP service are unemployed and uneducated.

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
----------------	-------	---------	----------	-------------------

**Thank you for your participation!!!!**

**INTERVIEW QUESTIONS**

**MUNICIPAL MANAGER/ WARD COUNCILORS**

<b>2. BIOGRAPHICAL INFORMATION</b>						
AGE	18-25	26-35	18-35	36-45	46-54	55+
GENDER PROFILE			Male		Female	
EDUCATIONAL STATUS	Grade 1-7	Grade 8-12	Diploma	Degree		
EMPLOYMENT STATUS	Self-employed	Government employee	Private sector	Unemployed		
RELIGION PROFILE	Christians	African tradition	Muslims	Others (Specify)		

**3. THE IMPLEMENTATION OF THE ACT**

2.1 What is the nature of your role in the TOP Act?

.....

.....

.....

.....

2.2 When policies are implemented are members of the communities involved?

YES  OR NO

2.3 If yes, how are they involved?

.....

.....

.....

.....

2.4 Do you think the involvement was effective?

.....  
.....  
.....  
.....

2.5 Did the members of the community shows support for the Act?

.....  
.....  
.....  
.....

2.6 Generally religious groups, traditionalist and people in general were opposed to the Act. Is it true or not

.....  
.....  
.....  
.....

2.7 Often the public says the Act was implemented despite their rejection of it. What do you think caused that?

.....  
.....  
.....  
.....

2.8 What does your religion say about Act 92 of 1996?

.....  
.....  
.....  
.....

2.9 Section 28(2) of the constitution state that the best interest of a child should take precedence in every matter concerning the child such as (the right to parental care as well as the right to be protected from maltreatment and neglect)



and however the Act on termination of pregnancy allows the service to be conducted without the parental concerns.

What is your personal view about this constitutional statement?

.....  
.....  
.....  
.....

2.10 If the Act were to be amended what would be your suggested amendment?

.....  
.....  
.....  
.....

**Thank you for your time and effort!!!!**

**INTERVIEW QUESTIONS**

**CHURCH LEADERS AND TRADITIONAL LEADERS**

**1. THE IMPLEMENTATION, KNOWLEDGE AND PERCEPTIONS OF THE ACT.**

1.1 Are you familiar with the Act on Termination of Pregnancy?

.....  
.....  
.....  
.....

1.2 What are your perceptions of Act 92 of 1996?

.....  
.....  
.....  
.....

1.3 What does your religion say about the Act 92 of 1996?

.....  
.....  
.....  
.....

1.4 “The Act allows girls younger than 18 years of age to have access to termination of pregnancy service without parental consent”

How do you feel about this statement?

.....  
.....  
.....  
.....

1.5 “Churches and other religious organisations provide much opposition to legal termination of pregnancies”. Do you see that as appropriate or fair to the government?

.....  
.....  
.....  
.....

1.6 Life begins at conception and termination of pregnancy ends the life" what do you think about this statement?

.....  
.....  
.....  
.....

**Thank you for your cooperation!!!!**