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ABSTRACT

Abortion is a health issue that evokes many political and moral debates over the years. Abortion laws differ from country to country. While some countries legally permit abortion, other countries do not. Despite the variations in abortions laws, a lot of women still engage in abortion. Nigeria is one the countries that prohibits abortion, however, there are some exceptions to this law provided in legislations.

1. What are the grounds for a lawful termination of pregnancy?

Termination of pregnancy is the intentional ending of life of a potential child before he/she is born while he/she is still a foetus. Abortion is governed by the Criminal code in Southern Nigeria and the Penal code in Northern Nigeria. Termination of pregnancy is illegal under the two laws. Any person who helps the woman terminate her pregnancy will be liable to imprisonment for fourteen (14) years[[1]](#footnote-1). Where a woman herself causes or attempts to cause her own miscarriage will be liable to imprisonment for seven (7) years.[[2]](#footnote-2)

Termination of pregnancy otherwise known as abortion is illegal in Nigeria. This is justifiable by the provision of the constitution that emphasises on right to life.[[3]](#footnote-3) However, there are certain grounds upon which termination of pregnancy will be lawful and they include:

1. Rape: in the case of rape where a woman gets pregnant, she will be allowed to terminate the pregnancy and it will not be considered a crime under the law. The case of *Rex v. Bourne[[4]](#footnote-4)* served as a starting point which addressed the legal grounds upon which an abortion could be allowed by the law.
2. When the continuance of the pregnancy would put the life of the woman at risk, then an abortion would not be unlawful. In this case, it would be seen as being done to save the life of the woman. In the case of *Rex v. Bourne,* the whole Nigeria has allowed abortion in order to save a woman’s life or her physical and mental health.[[5]](#footnote-5)
3. When it is discovered that the child is not capable of being born alive
4. When it is proven that if the child were born, he/she would suffer from menta or physical abnormalities or disabilities.

In the case scenario given, Charity has no legal right to get an abortion because it is against the Nigerian law. However, she will be able to get an abortion if she falls under any of the categories of exceptions mentioned above.

1. Does the potential father have any legal rights in this decision?

If a man’s pregnant partner chooses to have an abortion, the father’s consent is not legally required in Nigeria. However, just as the right of women to abort (abortion laws) differs from country to country, so does the legal rights of the potential father.

It was reported in 2011 that Indonesia, Malawi, Syria, United Arab Emirates, Equatorial Guinea, Kuwait, Maldives, Morocco, South Korea, Saudi Arabia, Japan, Taiwan and Turkey had laws requiring spousal consent before an abortion could happen.[[6]](#footnote-6) However, this is not required in other countries. For example, in the 1978 case of *Paton v. Trustees of British Pregnancy Advisory Service* where a man attempted to stop his ex-wife from getting an abortion but the judge rule in favour of the woman allowing her to get the abortion without the consent of the potential father[[7]](#footnote-7). A number of other cases have also risen where the potential father was denied the right to make a decision with regards to abortion.

In Nigeria, there is no legal provision for the legal rights of a potential father in the case of an abortion because abortion is not legal and as such no consideration is made to the opinion of a potential father. It is therefore left to the woman to decide whether or not she would like to have the opinion of the potential father in making the decision on whether or not to abort.

In conclusion, since there is no legal provision in Nigeria on the legal rights of a potential father with regards to abortion, it is left as a moral issue because regardless of the prohibition of abortion in Nigeria, a large percentage of women still do abortions. So, the right of the potential father having an opinion is based on whether or not the woman gives him that option.

1. Sections 228,230,297 Criminal Code, Laws of the Federation of Nigeria cap.77 (1990) and Sections 232 Penal Code, Laws of Northern Nigeria cap.89 (1963). [↑](#footnote-ref-1)
2. Section 229 Criminal Code, Laws of the Federation of Nigeria cap.77 (1990). [↑](#footnote-ref-2)
3. Section 36(3) Constitution of the Federal Republic of Nigeria, 1999 (as amended). [↑](#footnote-ref-3)
4. (1939)1 KB 687 [↑](#footnote-ref-4)
5. M.O. Izunwa, “Right to Life and Abortion Debate in Nigeria: A Case for the Legislation of the Principle of Double-Effect” (2011). [↑](#footnote-ref-5)
6. The World’s Abortion Laws (2011), *<*[*https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/AbortionMap\_2011.pdf*](https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/AbortionMap_2011.pdf) *>* accessed April 17, 2020. [↑](#footnote-ref-6)
7. *<*[*https://web.archive.org/web/20041230224629/http://www.bpas.org/press-office/archive\_2001/30\_03\_2001.html*](https://web.archive.org/web/20041230224629/http://www.bpas.org/press-office/archive_2001/30_03_2001.html)*>* accessed April 17, 2020. [↑](#footnote-ref-7)