ANSWER ON TERMINATION OF PREGNANCY

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

ISSUES FOR DETERMINATION:

* Whether Charity has the right to terminate her pregnancy?
* Whether there a legal grounds for terminating a pregnancy?
* Whether the father of the child has any legal right in the decision?

In answering this question, we must know what termination of pregnancy, known as abortion is. According to the Harvard Health Publishing of the Harvard Medical School, abortion is the removal of pregnancy tissue, products of conception or the foetus and placenta (afterbirth) from the uterus.[[1]](#footnote-2) One must note that in Nigeria currently, abortion is illegal and a person who does an abortion is liable to seven years imprisonment and the person who helps to perform the act are liable to up to 14 years imprisonment.[[2]](#footnote-3) For example in the case of *R v. Idiong and Umo*, the 2 defendants had been convicted of murder on the grounds that the 1st accused had obtained the services of the 2nd accused, a native doctor, to give native medicine to bring about an abortion. The abortion resulted in the woman's death. Therefore the 1st accused was party to the crime. The West African Court of Appeal found that the 2nd accused had acted innocently believing that the medicine would relieve pain that the dead woman suffered from a retained placenta. He gave an abortifacient (a drug) for expulsion of the placenta. He was found "not guilty" of murder and manslaughter. The 1st accused was found criminally responsible for causing the abortion, but was found not guilty of murder. He was guilty of manslaughter, however. In the above case, even though the woman was dead, the native doctor was convicted of both procuring the abortion and manslaughter.

**Therefore**, the whole idea of abortion is not legal in Nigeria. But there are exceptions, that is, circumstances where a woman can have an abortion and it will not be illegal. These shall be discussed below:

1. According to Section 297 of the Criminal Code, an abortion can be carried out where the continuation of the pregnancy will endanger the life of the mother.

Note that: Abortion is also legal where the pregnancy resulted as a result of rape or incest. But this is in some (not even all) of the jurisdictions where abortion is illegalised.

In order for the above provision in Section 297 to be considered a lawful act,

i) the pregnancy must be terminated by a registered medical practitioner: there is no inclusion of native doctor, nurse, quack doctor, etc.

ii) the decision to abort must have been assented y two medical practitioners who are of the opinion formed in good faith

iii) the pregnancy has not exceeded its 20th week.

In advising Charity, in Nigeria, abortion is an illegal act as provided in section 228, s 229, and s 230 of the criminal code. Therefore, on the face of it Charity cannot lawfully abort her child. She can only do so if the continuance of the pregnancy will cause her grave harm and also the child. Therefore, the abortion can only be legal if two or more medical practitioners have made an opinion that the pregnancy will be damaging to her and if the pregnancy has not exceeded its 20th week.

**As** regards whether the father possesses any legal rights, this varies from country to country. Mostly it has been considered as a moral issue, with some people branding it immoral and unethical for a woman to have an abortion without the consent of the father. For example, in the United States of America, courts have ruled that a father has no say in the woman’s abortion and that they cannot veto her decision to do so.

This is also the case in England and in cases which have been brought were it is usually the mother who is at risk if she were to go on with the pregnancy, the courts have rejected the fathers’ claim to counter an abortion.[[3]](#footnote-4)

Therefore, the father has no legal rights as regards abortion as it is usually between the mother and the foetus.

1. Harvard Medical School, ‘Abortion’, *Harvard Health Publishing,*< https://www.health.harvard.edu/medical-tests-and-procedures/abortion-termination-of-pregnancy-a-to-z> accessed 18th April, 2020 [↑](#footnote-ref-2)
2. Nigerian Criminal Code Act, s 228, s 229, s 230 [↑](#footnote-ref-3)
3. --‘The Rights of the Father in Abortion Cases’, <http://www.efc.org.uk/the-rights-of-the-father-in-abortion-cases/ > accessed 19 April 2020 [↑](#footnote-ref-4)