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COURSE: HEALTH LAW

COURSE CODE: LPB 514

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The issues to be considered in this scenario is majorly if Mrs Charity qualifies under Nigerian law to have an abortion.

Generally as provided by the criminal code and penal code abortion is illegal in Nigeria and there are only a handful of exceptions to justify abortion of ansy sorts.

The criminal code’s position on abortion are provided for in the following sections:

Section 228.

*“Attempts to procure abortion*

*Any person who, with intent to procure miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a felony and is liable to imprisonment for fourteen years*.”

Section 229.

*“Attempt to procure own miscarriage*

*Any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her is guilty of a felony and is liable to imprisonment for seven years.”*

Section 230.

*“Supplying drugs or instruments to procure abortion*

*Any person who unlawfully supplies to or procures for any person anything whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child is guilty of a felony and is liable to imprisonment for three years.”*

By virtue of these sections the position of Nigerian law as regards abortion is clear.

However, there are grounds on which an abortion would be allowed in Nigeria they are as follows:

The major exception is provided for in section 297of the Criminal Code which provides that:

“*A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time and to all the circumstances of the case*.”

This section clearly states for the preservation of the mother’s life. Without this requirement the abortion would be illegal. This section means that an abortion would be allowed if it is dangerous to the mother’s life to allow the pregnancy to continue.

Another exception is that the termination of the pregnancy is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman.

Again that the pregnancy has not exceeded its 20 week and the continuing of the pregnancy would invoke risk greater than if the pregnancy were terminate. After the 20th week it is presumed that the child is of good health and would most likely be born alive.

Again that there is a substantial risk that if the child were born it would suffer from physical or mental abnormalities as to be seriously handicapped.

Lastly, that the pregnancy is as a result of rape or incest.

Mrs Charity does not fall under any of the statutory exception to have an abortion. According to present abortion laws in the country she is unable to have an abortion.

If Mrs Charity, however decides to have the abortion anyway through illegal means the question of if her husband has a say is one of autonomy. She has the right to do as she pleases with her body, however considering the fact that the child is not just hers but also her husband would give him a say as to the future of the unborn child.

In conclusion, I am of the opinion that the Nigeria laws on abortion are too strict and there should be more room for exceptions to the abortion laws. However Mrs Charity does not qualify to have an abortion and due to the union between her and her husband he would have a say in the decision making as to having an abortion.