Court order needed to abort pregnancy resulting from rape – Lawyer

Date: 2022-07-10

Source: https://punchng.com/court-order-needed-to-abort-pregnancy-resulting-from-rape-lawyer/

Lagos-based lawyer and Executive Director of Centre for Health Equity and Justice, Timothy Adewale, speaks to GODFREY GEORGE about the controversy trailing the newly-introduced Lagos State Guidelines on Safe Termination of Pregnancy for Legal Indications  
  
Barely two weeks after the release of the Lagos State Guidelines on Safe Termination of Pregnancy for Legal Indications, the state government announced the suspension of its implementation, citing controversy generated. Did you see the suspension coming?  
  
Honestly, I didn’t see this coming. This is because I believe that every stakeholder in the matter ordinarily should have been carried along before the release of the document. This is a document that has been in the waiting for almost four years. It is expected that every ‘t’ should have been crossed and ‘i’ dotted. This is not the first health regulation that would come out of Lagos State. There had been others even in recent times without anyone raising an eyebrow. I don’t know why there seems to be a controversy around this one. But I must say that the way this latest document was released was uncalled for. The publicity given to it wasn’t necessary. The document is meant for medical practitioners alone; not for the general public. There are other regulations, including the one that guides people who do not want blood transfusion. The document is not necessarily supposed to be made public so it does not generate these kinds of reactions. There is nothing new in the regulation because ordinarily even though abortion is criminalised (in Nigeria), therapeutic abortion has always been allowed and nobody has been raising any eyebrow. But when you decide to go public and release the guidelines to laymen, this is the kind of reaction you will get. The guidelines are supposed to be circulated only to medical practitioners whom the document was created for in the first place. The people who have issues with the document are not medical professionals, but civil society groups and religious bodies. I am not saying we should ignore them, but guidelines are always guidelines and they should be left as that.  
  
Do you share the view of those who say the Lagos State Government, coming up with this regulation at this time, is merely chasing clout following the recent American Supreme Court judgment outlawing abortion in the US?  
  
I don’t think so looking at the background of what happened. This is a document that has been in the works for like four years. The US Supreme Court’s decision in Roe Vs Wade was given only a few weeks ago. What I am saying is that the publicity given by Lagos State to the release of these guidelines is the issue. It wasn’t necessary, given how religious our society is. That is why the government should have been more sensitive. The publicity was unnecessary.  
  
You said previous medical regulations released by Lagos State were not publicised. Why do you think the state took a different approach in this case?  
  
I don’t really know their motive but I know that when guidelines like this are released, in most cases, we find out that it is to justify a grant given by a donor, foundation or a trust fund. When a donor gives you money, you would have to show to the donor that the money has been judiciously spent. Besides this, I cannot think of any other reason to justify the publicity given to the document. This is not the first guideline Lagos is releasing, so why the publicity now? Several guidelines have been issued on assisted reproductive technology, for instance, and there were no public outcries. The publicity in this case has sent a wrong signal. People now think the regulation encourages abortions but that is untrue. People are raising eyebrows because they don’t have a full grasp of what is contained in the policy book.  
  
Have you seen a copy of the document; what are its major highlights?  
  
Yes, I have seen a copy. I don’t see how it’s different from what we have in the national guideline. When the national guideline was released, was it publicised? No. It has always been like that. What Lagos State has just done is to domesticate the national guideline. In Lagos, we see that medical personnel are not criminally liable for abortion performed in good fate with adequate and reliable care and all that. So, the major reason for this guideline is to help medical practitioners to find some medical conditions that would qualify a woman who wants to terminate a pregnancy. There is a list of diseases or medical conditions for these qualifications. They include kidney diseases, heart and cardiovascular diseases, cancer, mental disorders, genetic disorders, blood diseases and the like. The document also highlights a step-by-step approach for the medical practitioners before performing an abortion. The document is meant solely for medical practitioners and not the general public.  
  
There is a guideline to follow for surgery and others to follow for non-surgical interventions as well as for post-abortion or follow-up care. The document also makes provision for family planning and contraceptives. The one that concerns us, as lawyers, is to check if provisions were made for patients’ informed consent, and it does. This means that even if a doctor recommends an abortion as a solution to a medical problem but the pregnant woman rejects it, the doctor cannot go ahead to perform abortion, even if the doctor is convinced that the woman will die unless an abortion is performed. This is contained in the guidelines. If this provision was not there, a lot of lawyers would have raised an eyebrow and rejected the document.  
  
You may be aware of the court decision in the case of Okonkwo Vs Medical and Dental Council of Nigeria. In that ruling, it was made clear that everyone has a right to decide the kind of medical care they want. Even if the physician says the patient may die if they don’t undergo a particular procedure, the patient has a right to say, “I don’t want the procedure; let me die.” The law is that the patient’s wish must be respected by the practitioner, and adequate care must be given to the patient to the best of the doctor’s ability. It would be erroneous to conclude that since the patient has rejected suggested medical interventions, all their chances of survival have been foreclosed. Taking cognisance of our religious views, people ought to be left to decide what they want while respecting their religious views.  
  
Having now been published, do you foresee any problem with the eventual implementation of the regulations?  
  
There is the likelihood of abuse. Doctors may now argue that now that the document has been made public, it is well understood by members of the public. Now, anybody can just approach a doctor and say, “I think I am not in a good mental state of mind to carry this pregnancy and I want to abort.” If it becomes a court case, the doctor may say, “The patient told us she didn’t have good mental capacity to carry the pregnancy, so I aborted.” I think this development gives the doctors a place to hide. Before now, doctors were always afraid to perform non-therapeutic abortion, knowing that they are under the strict watch of the health council. Both the doctors and those seeking abortion go about it secretly. But I feel that this guidelines will embolden people seeking abortion to freely approach a doctor, riding on the provisions of the guidelines.  
  
In what ways would you want the guidlines to be reviewed, as a medical law expert?  
  
The guidelines leave a lot at the medical practitioners’ discretion, which is very bad. That is the major downside. The doctors should not be given such powers to solely determine which pregnancy should be terminated and which should not. That will breed abuse and misuse. Our criminal and penal codes make provisions against indiscriminate abortion (not the therapeutic one). The therapeutic option has always been excused whether in the criminal or penal code. Anyone who seeks to get an abortion and does so risks 14 years’ imprisonment. For pharmacist who sells the drugs, it’s three years’ imprisonment. These have been the deterring factors. Now that this document has been put in the public domain, it is bound to be misused and abused by both members of the public and medical practitioners.  
  
I am also of the view that getting a therapeutic abortion should not be on the decision of only one doctor. There should be a provision that two or more doctors come together to review the patient’s case before a decision is reached. It would be devastating for a woman to abort a pregnancy at a doctor’s discretion only to find out later from another doctor that she would have been able to carry the foetus to full term. We are talking about the life of an unborn child. The guidelines should stress the need for a second or third opinion. Only then should they (doctors) go ahead.  
  
Why is it that abortion is commonplace in Nigeria despite the being prohibited by law as you have explained?  
  
The major problem has always been poor enforcement of existing laws. The Lagos State Health Council and Hospital Monitoring Board are trying their best but there is still a lacuna.  
  
The government should be more intentional in enforcing the existing laws. If there are lacunae, they should cover them up. The Lagos State House of Assembly should be more proactive. The citizens have to be reoriented on the value systems that guide our society. There is a law against quackery; the government should enforce that too. When people know that the government is serious about it, that would reduce the menace.  
  
There is also a law against men running away after impregnating a woman. A lot of times we find young ladies being influenced by their parents and others to seek abortion. But it is criminal; it is tantamount to aiding an illegal act and that attracts three years’ imprisonment. These are the parts that should be publicised so that young ladies who are being cajoled to have an abortion against their wish can seek refuge with the government.  
  
Do you think Nigeria should tinker with the law to accommodate other forms of abortion beyond therapeutic abortion?  
  
I don’t think so. The law is good just the way it is. The problem in other climes is the belief by people that they own their bodies and can do whatever they want with their bodies. That should not be the case in Nigeria, and shouldn’t be the position of our laws. Once a foetus is there, one cannot terminate that foetus. The foetus has as much right to life as the mother. I am pro life and the law should be left the way it is.  
  
Is abortion on the basis of rape considered as therapeutic?  
  
For rape, one can approach a court of law to get an order, following the special condition. It is the same everywhere, even in the US. These are matters that can be entertained by the court of law. If someone has been raped, got pregnant and needs to terminate the pregnancy, the person can approach a court. The duty of the court is to interpret the law.