

Regulating Assisted Reproductive Technology in Nigeria: An Urgent Need

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ABSTRACT: *Infertility is now a common medical problem in Nigeria. Statistics reveal that the rate of infertility in Nigeria is 30 %. Many couples and persons seeking to have children are finding it difficult, if not impossible. Thus there is a high resort to medical assistance in the form of Artificial Reproductive Technology (ART). Indeed, there has been a lot of development in ART and medical advances and inroads have been made in the field. No doubt, this has brought succour to many couples and persons seeking to become parents. However, the increase in the demand and use of ART has led to diverse uncensored and unregulated practices, abuse of medical procedure, reproduction tourism and baby factories. This raises a lot of ethical and legal issues like egg and sperm donation, the fate of unused gametes, providing ART services to Single Parents or Same sex parents, at present, there is no national law nor body regulating ART in Nigeria. This work, adopting a doctrinal approach, highlighted the Nigerian practice of ART and considered fundamental ethical and legal issues arising from the increased demand and use of ART in Nigeria and made recommendations on the effective regulation and practice of ART in Nigeria such as uniform national law, national ART regulating body, subsidizing the cost of ART services, among others.*

KEYWORDS: reproductive technology, infertility, children, Nigeria

INTRODUCTION

In Africa, children are the fabric of any society, without which no meaningful social and economic progress is considered worthwhile. Ombelet observed that in many cultures, having

children is an essential part of marriage while infertility is seen as a personal tragedy, with the potential to impact the entire family or community.¹

Infertility is recognized by the World health Organization as a global public health issue.² Worldwide, it is estimated that the absolute number of couples affected by infertility increased from forty-two million in 1990 to forty-eight and a half million in 2010. Among the various regions in the world, South East Asia and Sub-Saharan African countries have the highest prevalence of infertility where infection-related tubal damage is the commonest cause.³

Reproductive health is seen as virility, vitality, fertility and generative powers. As pregnancy and gestation are celebrated actively or passively, publically or privately, infertility and sterility on the other hand are understood as abhorrent and loathsome in both grave and significant proportions. In more families than one, infertility has led to the breakdown of peace, turned sweet love of darlings into sour grape of hatred and in some extreme cases, bred divorce.⁴ In typical African traditional societies, the family membership begins in the remote past of the ancestors, includes all the living in the present and stretches elastically to the infinite future of the yet unborn. So, impotence is understood as an adversity that exhibits the unwanted package of possible lineage obliteration.⁵ There is a high demand for babies by infertile couples with a desire to complete their family and thereby fulfill a crucial social obligation. Thus, the high burden and stigmatization of infertility in Nigeria.

Infertility has recently been construed to be a serious problem in sub-Saharan Africa. The problem of infertility in sub-Saharan Africa (including Nigeria) received comparatively little attention until recently.” Hollos⁶ further emphasized that the problem of infertility “was obscured by the region’s high fertility rates, which gave rise to a global climate of concern over population growth and high fertility that is not conducive to the perception of infertility as a real problem.⁷

It is generally believed that more than 70 million couples suffer from infertility problem worldwide and this constitutes 15% of reproductive aged couples globally. In Sub-Saharan Africa region, infertility problem prevalence varies from 9% in Gambia, 21.2% in northwestern

¹ Ariyo, N. O. et al ‘Perceived Causes of Infertility Among Married Adults in Kwara State, Nigeria’ *Kashere Journal of Education* [2021]2(2) 187-194.

²Ezeome, I.V. Akintola, S. O. Jegede, A. S. ‘Experiences of Female Clients in the Assisted Reproductive Technology Process in Nigeria’ *African Health Sciences* [2023] (23)(2) 659-69.

³ Ibid.

⁴ Ele, C. O. ‘Proliferation of Baby Factories in Nigeria; An Ethical Perspective ’ *Online Journal of Arts, Management and Social Sciences* [2016] Vol.1 No.2,10 – 20.

⁵ Ibid.

⁶ Hollos, M. ‘Profiles of infertility in Southern Nigeria: Women’s Voices from Amakiri’ *Afr J Reprod Health* [2003] (7)(2)46–56.

⁷ Akinloye, O. and Truter E.J. ‘A Review of Management of Infertility in Nigeria: Framing the Ethics of a National Health Policy’ *International Journal of Women’s Health* [2011] (3) 265–275.

Ethiopia, between 20% and 30% in Nigeria and 11.8% among women and 15.8% among men in Ghana.⁸

Infertility is a reproductive health problem worldwide; it affects over 10 % of the world population, and 30 % of the population in Sub-Saharan Africa.⁹ Infertility has been described as the most important reproductive health concerns of Nigerian women. Estimations from demographic health surveys found an 11 % prevalence rate, while clinical based studies suggested rates between 14.5 % and 30 %. In Nigeria, the prevalence of primary infertility is 5 % and secondary infertility is 8 %¹⁰

Currently, however, there is increasing awareness of infertility in Africa as a serious social and public health problem. Its prevalence on continent is much higher than that of the rest of the world, as evidenced from demographic estimates of infertility that are largely based on nationally representative surveys such as the demographic and health surveys (DHS), which provide data for country level analyses.¹¹

There is a high rate of infertility among couples in Nigeria. This challenge is perceived differently in each socio- cultural context in which it is experienced.¹² Araoye reported that the major cause of infertility in Nigeria is infection: sexually transmitted diseases (STDs) and post abortal and puerperal sepsis, with the problem by no means restricted to women. However, male infertility is regarded as taboo; a problem that no one will admit exists. This taboo itself is a contributor to practices of polygyny, with women all too frequently assumed by the local population to be the primary culprit of infertile marriages, and male infertility is handled with discretion to protect male dignity.¹³

In Africa, incidents of fertility and parenthood are highly valued with procreation usually considered the most important purpose of marriage. Sometimes, this expectation may not be achieved as a result of several factors, but, predominantly, it results from infertility which has been viewed as a major source of worry and concern in public health. In an attempt to address this worrisome problem among couples, Assisted Reproductive Technology (ART) has been

⁸ Asemota, O.A. and Klatsky, P. (2015) Access to Infertility Care in the Developing World: The Family Promotion Gap. *Seminars in Reproductive Medicine*, 33, 17-22.

⁹ Esan, D. T. et al. 'Infertility affects the Quality of life of Southwestern Nigerian Women and their Partners' *International Journal of Africa Nursing Sciences*, Volume [2022](17) 100506

¹⁰ Dattijo, L.M. et. al. 'The Prevalence and Clinical Pattern of Infertility in Bauchi, Northern Nigeria' *Tropical Journal of Obstetrics and Gynaecology* [2016] (33) (1) 76-85.

¹¹ Hollos, M. (n.6).

¹² Okafor, N. I. Ikechebelu, N. N. and Ikechebelu, J.I. 'Perceptions of Infertility and In Vitro Fertilization Treatment among Married Couples in Anambra State, Nigeria' *African Journal of Reproductive Health* [2017] (21) (4) 55-66.

¹³ Araoye, O. M. 'Epidemiology of Infertility: Social Problems of the Infertile Couples. *West Afr J Med.* [2003] 22(2):190–196.

invented and this has reportedly found to be a commendable antidote to infertility. Although, it was developed in the western countries, many Africans have embraced the practice.¹⁴

ART is currently a commonplace technology that has successfully treated millions of infertile couples the world over. However, the explosion of this technology has introduced a myriad of new social, ethical, and legal challenges.¹⁵ In vitro fertilization (IVF) is a procedure in which eggs from the woman's ovary are removed, and are mixed with sperm in an In-vitro Fertilization laboratory culture dish. Louise Joy Brown, born 25th July, 1978, is the world first baby conceived by In-vitro Fertilization (IVF), a procedure developed by Patrick Steptoe and Robert Edward. In Nigeria, Oladapo Ashiru pioneered the IVF program in 1984 and his team successfully delivered the first IVF baby in 1986.¹⁶

The importance of this birth to scientists, clinicians, and most particularly infertile patients throughout the world cannot be overstated. In several short decades, IVF has exploded in availability and use throughout the world. Worldwide, more than 70 million couples are afflicted with infertility.¹⁷ Since the first successful IVF procedure in 1978, the use of this and related technologies has expanded to become commonplace around the globe. Over the past decade, the use of ART services has increased at a rate of 5–10% annually.¹⁸

Assisted reproductive technologies (ART), are innovative, non-coital medical procreative procedures, that have brought respite to a number of childless persons and couples, just as it also raises a number of ethical and legal issues. A number of countries including Nigeria, are still struggling to find the appropriate legal framework to provide guidelines for this reproductive process to curtail inherent unethical practices associated with that development.¹⁹ The South Africa Constitutional Court in *AB and Another v Minister of Social Development*²⁰ spared no words in describing the burden of infertility and the reliefs brought to humans by the evolution of the assisted reproductive technologies as follows:

“We are not in any way short of words when it comes to describing the effects of experiencing infertility: grief; sadness; despair; panic; helplessness; and isolation are but a few of the feelings that often ensue. For a large number of people, infertility has been “the most upsetting

¹⁴ Aremo, J.I. and Eniola, B.O. ‘Assisted Reproductive Technology (ART) within the Family Law Dynamics: Imperatives for a Legal Framework’ *International Journal of Innovative Research and Development* [2020](9)(6)99-105.

¹⁵ Brezina, P. R. and Zhao, Y. ‘The Ethical, Legal, and Social Issues Impacted by Modern Assisted Reproductive Technologies’ *Obstetrics and Gynecology International* [2012]1-8.

¹⁶ Okwelogu, I. S et al. ‘In Vitro Fertilization practice: Awareness and Perceptions among Women attending Fertility Clinics in Okija, Anambra State, Nigeria’ *AFRIMEDIC Journal* [2012] (3) (2) 6

¹⁷ Ombelet, W. et al. ‘Infertility and the Provision of Infertility Medical Services in Developing Countries’ *Human Reproduction Update* [2008] (14)(6)605–621.

¹⁸ Chambers, G.M. et al ‘The Economic Impact of Assisted Reproductive Technology: A Review of Selected Developed Countries’ *Fertility and Sterility* [2009](91)(6) 2281–2294.

¹⁹ Ekechi-Agwu, C. A. and Nwafor, A. O. ‘Regulating Assisted Reproductive Technology in Nigeria; Lessons from the Australia and the United kingdom’ (*Afr J Reprod Health* [2020](24)(4)82-93.

²⁰ *AB and Another v Minister of Social Development* [2016] ZACC 4 paras 2-3.

experience of their lives”. For others, infertility is rated as comparably stressful to the loss of a partner or a child. The likelihood of depression has been shown to double for women who are infertile. Disturbingly, infertility levels are on the rise globally, with one in every ten people facing infertility problems. We are fortunate, however, to live in an era where the effects of infertility can be ameliorated to a large extent through assisted reproductive technologies. The technological advances seen over the last half century have greatly expanded the reproductive avenues available to the infertile. These reproductive avenues should be celebrated as they allow our society to flourish in ways previously impossible.”

Infertility is an international public health problem. A general estimate is that between 8 to 12 percent of couples experience some form of involuntary infertility during their reproductive lives. When extrapolated, to the global population, this means that 50 to 80 million people may be suffering from some infertility problem.²¹

The rapid advancement in this medical science, in spite of cultural and religious constraints, does not seem to have been matched by a commensurate development in the legal framework to regulate the practice in Nigeria. This has created room for unethical practices and abuses which could have been prevented if an appropriate regulatory instrument and agency of government was in place. In Nigeria, the first incidence of ART birth occurred about thirty years ago.²² That length of time is considered more than adequate for the country to have put in place an effective regulatory instrument and organ of government to ensure the efficient regulation of ART practice in Nigeria.²³

WHAT IS INFERTILITY?

Infertility can be defined as failure to conceive after twelve months of regular unprotected sexual intercourse.²⁴ The World Health Organization (WHO), however, stipulates a time period of two years.²⁵

Medically, infertility is the inability to produce a child despite regular unprotected intercourse over a certain period of time during a woman’s fertile period.

According to Bernard Dickens²⁶ in an often quoted passage;

“Infertility includes infecundity, meaning inability to conceive or to impregnate and pregnancy wastage, meaning failure to carry a pregnancy to term through spontaneous abortion and Stillbirth. Infertility includes primary infertility, where a couple has never achieved conception,

²¹ Sciarra, J. ‘Infertility: An International Health Problem’ *International Journal of Gynecology and Obstetrics*[1994] (46)155.

²² Olooto, W.E. and Adebayo, A. ‘Review of Female Infertility; Important Etiological Factors and Management’ *Journal of Microbiology & Biotechnology Research* [2012] (2)(3)379.

²³ Ekechi-Agwu, C.A. and Nwafor, A.O. (n.19).

²⁴ The Royal Commission on New Reproductive Technologies (Canada 1993);

²⁵ Canadian Health Law and Policy, “2nd ed”, (Canada, Ontario: Butterworth , 2002) 372.

²⁶ Dickens, B. ‘Reproductive Law and Medical Consent’ *U.T.L.J*[1985] (35) 255 at 281.

and secondary infertility, where at least one conception has occurred but the couple is currently unable to achieve pregnancy.”

Infertility can also be seen as a social condition deviating from a social norm. The social norm involves the model of a nuclear family, consisting of married heterosexual parents and their biologically related children. Under this model, infertility deviates from the “ideal family”. This model generates strong social pressure to satisfy the norm of couples to procreate. The basic assumption is that the need and desire to have children is a normal part of our lives. The stigma of childlessness is especially difficult for women, who have historically been defined and identified through their roles as mothers.²⁷

WHAT IS ARTIFICIAL REPRODUCTIVE TECHNOLOGY?

ART encompasses a wide range of techniques designed primarily to aid couples unable to conceive without medical assistance. It can also be defined as including all treatments that include medical and scientific manipulations of human gametes and embryos in order to produce a term pregnancy.²⁸

The concept of Assisted Reproductive Technology can be perceived to include any fertilization involving manipulation of gametes/embryos outside the human body and transfer of gametes/embryos into the body. Furthermore, Assisted Reproductive Technology allows scientists to manipulate the fertilization process in order to bypass some pathological obstacles such as blocked fallopian tubes, nonfunctioning ovaries in the females, and blocked vas deferens and low sperm count in the males in order for procreation to take place where it has been adjudged to be impossible or absolutely difficult.²⁹

There are several types of Assisted Reproductive Technology ranging from In -Vitro Fertilization to In-Vitro Maturation, Vitrification, Intra-Uterine Insemination, Intra – Cytoplasmic Sperm Injection and Collaborative Reproduction.³⁰

ARTIFICIAL INSEMINATION (AI)

This is the process by which sperm is placed into the reproductive tract of a female for the purpose of impregnating her by using means other than sexual intercourse. The sperm used in this method can be from the husband (AIH) or from a donor (AID). Modern techniques for artificial insemination were first developed for the dairy cattle industry to allow many cows to be impregnated with the sperm of a bull with traits for improved milk production

²⁷ Franklin, S. “Deconstructing Desperateness. The Social Construction of Infertility in Popular Representations on New Reproductive Technologies” in McNeil.M, Varcoe.I & Yearly.S, (eds.). *The New Reproductive Technologies*, (New York: St. Martins Press, 1990) 200.

²⁸ Adewunmi, A. A. ‘The Need for Assisted Reproductive Technology Law in Nigeria’ *University of Ibadan Law Journal*, [2012](2)(1)19-41.

²⁹ Obagboye, T. G., & James, S. T. The Legal Dynamics of Assisted Reproductive Technology in Nigeria, *Irish International Journal of Law, Political Sciences and Administration* 2022Volume: 6; Issue: 03, May -June, 2022

³⁰ Ibid.

INTRA UTERINE INSEMINATION (IUI)

Intrauterine insemination (IUI) is an infertility treatment that is often called artificial insemination. In this procedure, specially prepared sperm are inserted into the woman's uterus. Sometimes the woman is also treated with medicines that stimulate ovulation before IUI.³¹

IUI is often used to treat:

- Mild male factor infertility.
- Couples with unexplained infertility.

GAMETE INTRA FALLOPIAN TRANSFER (GIFT)

This process occurs when eggs are retrieved but not fertilized. Instead, they are mixed with the sperm and immediately placed into the fallopian tubes. (GIFT) was developed in 1984 for women with unexplained infertility.

ZYGOTE INTRA FALLOPIAN TRANSFER (ZIFT)

This is a procedure where fertilized egg (zygote), in its pronuclear stage of development, is transferred into the fallopian tube.

IN VITRO FERTILIZATION (IVF)

In vitro fertilization (IVF), meaning fertilization outside of the body, is the most common form of ART. Eggs and sperm are combined in a laboratory to create embryos. After about three to five days, the embryo (or embryos) is transferred into the woman's uterus. Embryos can also be frozen for a future transfer. When a frozen embryo is thawed and transferred into a woman's uterus it is called a frozen embryo transfer (FET).³²

(IVF-ET). Under this technique, an egg is removed from one of the infertile woman's ovaries, fertilized outside her body, and then replaced in her womb. A baby that develops from IVF procedure is called test-tube baby.

INTRACYTOPLASMIC SPERM INJECTION

Intra cytoplasmic sperm injection (ICSI) is a type of IVF that is often used for couples with male factor infertility. With ICSI, a single sperm is injected into a mature egg. The alternative to ICSI is "conventional" fertilization where the egg and many sperm are placed in a petri dish together and the sperm fertilizes an egg on its own.³³

ETHICAL AND LEGAL ISSUES IN ART IN NIGERIA

There are diverse ethical and legal issues arising out of the use of ART in Nigeria. Many have embraced the technology as a ray of hope in a seemingly hopeless situation. While others view

³¹ Ibid.

³² Center for Disease Control and Prevention; Infertility FAQs <<https://www.cdc.gov/reproductivehealth/infertility/index.htm>> Accessed December 26, 2023.

³³ Ibid.

it skeptically and with great suspicion. Some of the recurrent questions and issues for consideration include:

Are children who were fertilized by another man's sperm entitled to inherit from the estate of their social father or from their biological father? Should single parents have equal access to assisted reproductive technology (ART)? Should homosexual parents have equal access to ART? Should we have age based discrimination against the young or old users? Should an assessment be made of the stability of the relationship of the parents and family the child will enter? Can we consider who are desirable parents? And should users be compensated for costs to make access independent of income?

Should the donors of gametes or embryos be unknown or known before and after donation to the users? Should the gametes be selected or not-selected, e.g. for genetic disease, race, intelligence, sex or desirability? Should the donors be paid or unpaid? And how long should gametes and embryos be stored in banks, and what happens to left over embryos? And for the embryos, the questions are: How long should embryos be stored in freezing? What is the fate of unused frozen embryos, research, donation or wastage? And should genetic twins ever be gestated separately in different mothers or at different times?

Some of these issues shall be discussed below.

SUCCESSION

Succession deals with the transmission of the rights and obligations of a deceased person in respect of his estate to his heirs and successors. This involves the distribution of the deceased estate to his heirs. Succession may involve circumstances that deal with testacy or intestacy. Where it is testate, the testator has already made a will in which he has devised his property to those he wishes to be beneficiaries under his will. In intestate succession, on the other hand, the deceased made no will before his death and therefore died intestate. The rules governing testate and intestate succession differ and both circumstances may give rise to problems for children born via Assisted Reproductive Technology. The practice of Assisted Reproductive Technology especially in vitro fertilization raises the question as to whether children who were fertilized by another man's sperm are entitled to inherit from the estate of their *pater* (social father), rather than their *genitor* (biological father), especially in cases where the putative father died intestate.³⁴ It also raises the question of whether post-humous babies who were not included in the will, are capable of challenging such wills, where the father died testate. Moreover, in situations where the father died intestate, it raises the question of whether they will be considered as his children although the father did not know about their existence or intended existence. With respect to inheritance, the question is if a frozen embryo be taken as a person who can inherit when its genetic parents die, so that if later transferred and carried to term it will be an heir. It can be argued that if adopted children can have equal rights as biological children then a child given birth to as a result of the procurement of a donor sperm should be able to inherit the father just like a biological child.³⁵

³⁴ Obagboye, T. G., & James, S. T. (n. 29).

³⁵ Ibid.

EGG AND SPERM DONATION

The problem of unregulated sperm donation or banking may surface in Nigeria. The possibility of having multiple children fathered by a single sperm donor potentially increases the odds of accidental incest. A newspaper article of January 7, 2017 told the story of a 21-year-old University of Lagos undergraduate who was a regular sperm donor at a popular clinic for one year. He had read an article about a man in the U.K. rumoured to have fathered 800 children, and this caused him to fear that he himself may have fathered 500 children, and, worse, he worried about the prospect of his children getting married to each other in the future, and about him accidentally sleeping with his daughter.³⁶

FATE OF UNUSED ZYGOTES

In addition, the fate of extra embryos stored up may be worrisome in the country in the future. For how long do the fertility clinics store them and at what conditions; keeping in mind that power supply is a problem in Nigeria? Studies from developed countries have shown that the viability of the frozen embryos reduces with longer storage time. Do they get donated to someone else or are they to be destroyed? The views of the Catholic Church regarding the embryo and personhood present a strong argument against their destruction.³⁷ The acceptability of third-party gamete is controversial, especially in the African setting. Bello et al. in a study conducted in Ibadan, Nigeria, found only 35.2% and 24.7% of women open to accepting donated eggs and sperm, respectively.³⁸

Embryo Donation IVF cycles often result in couples transferring several embryos and cryopreserving other embryos produced by the cycle, presumptively for the purpose future pregnancy. However, in many instances, these surplus embryos are never used by the genetic parents and therefore are stored indefinitely.³⁹ The number of such embryos stored internationally is surprisingly high. In the United States alone, it is estimated that over 400,000 embryos are currently cryopreserved, many of which will not be used by their genetic parents. The ethical and moral issues surrounding how to deal with these surplus embryos have been the source of much debate. In general, four possible fates for these embryos exist.⁴⁰

- 1) thawing and discarding,
- 2) donating to research,
- 3) indefinite storage,
- 4) donating the embryos to another couple for the purposes of uterine transfer. All of these strategies have staunch supporters and detractors. Not surprisingly, there are a myriad of laws in different countries governing many aspects of how a human embryo that has been

³⁶ Osakwe, F “Sperm donor’s Nightmare: ‘Have I fathered 500 children already?’” The Guardian Newspaper <<https://guardian.ng/saturdaymagazine/cover/sperm-donors-nightmare-have-i-fathered-500-children-already>> Accessed 14 December 2023.

³⁷ Omokanye, L.O. et al ‘Assisted Reproduction Technology: Perceptions among Infertile Couples in Ilorin Nigeria’[2017] *Saudi J Health Sci.*14-8.

³⁸ Bello,F. A.Akinajo,O. R. and Olayemi,O. ‘In vitro Fertilization, Gamete Donation and Surrogacy: Perceptions of Women attending an Infertility Clinic in Ibadan, Nigeria’[2014] *Afr J Reprod Health*, vol. 18, pp.127-33.

³⁹ Paul, M.S.et al. ‘Relinquishing Frozen Embryos for Conception by Infertile Couples’[2010] *Families, Systems and Health*, vol. 28, no. 3, pp. 258–273.

⁴⁰ Ibid.

cryopreserved may be handled.⁴¹ The use of embryos for the purpose of research, specifically as it relates to human stem cells, has also been a source of fierce debate internationally and has resulted in substantial regulation that varies substantially from nation to nation.⁴²

Commodification of Gametes

The issue of the Commodification (that is any “buying or selling”) of Gametes is a cloudier sub issue for ART since it could be argued in two ways. First, from the very beginning, when a woman decides to donate her eggs or a man his sperm, some people can argue that this is buying and selling of human beings or at the very least, the makeup of humans.⁴³

Secondly, some have expressed concern that financial compensation of oocyte donors may lead to exploitation as women may proceed with oocyte donation against their own best interests, given the inherent medical risks involved.⁴⁴

Due to the substantial controversy surrounding oocyte donation, especially the amount of financial compensation may be given to an oocyte donor, federal regulations governing this practice are constantly evolving and differ substantially from country to country.⁴⁵

Surrogacy and Gestational Carriers

Another topic of ethical, social, and legal debate surrounds the use of surrogacy and gestational carriers. Surrogacy is defined as a woman who agrees to carry a pregnancy using her own oocytes but the sperm of another couple and relinquish the child to this couple upon delivery.⁴⁶

A gestational carrier, by contrast, involves a couple who undergoes IVF with their genetic gametes and then places the resultant embryo in another woman’s uterus, the gestational carrier, who will carry the pregnancy and relinquish the child to this couple upon delivery.⁴⁷

Currently, the use of gestational carriers is far more common than that of surrogates. As with donor gametes, surrogates and gestational carriers are subject to significant medical and emotional risks from carrying a pregnancy and undergoing a delivery.⁴⁸ As such, extensive counselling and meticulous informed consent are required. Some also are concerned that the use of surrogates and gestational carriers is a form of “child selling” or the “sale of parental rights”. Additionally, the rights of the surrogate or gestational carrier to not relinquish the infant following deliver are not well described.⁴⁹ In fact, legal precedent in some states within the United States has actually upheld the right of a birth mother, regardless of genetic relation to

⁴¹ Ethics Committee of the American Society for Reproductive Medicine, ‘American Society for Reproductive Medicine: Defining Embryo Donation’ *Fertility and Sterility*, [2009] vol. 92, no. 6, pp. 1818–1819.

⁴² Hug, K. ‘Motivation to Donate or not Donate Surplus Embryos for Stem-Cell Research: Literature Review’ [2008] *Fertility and Sterility*, vol. 89, no. 2, pp. 263–277.

⁴³ Ola, T.O. ‘Assisted Reproductive Technology in Nigeria: Flawed or Favored?’ *International Journal of Social Science and Humanity*, [2012] (2)(4).

⁴⁴ Brezina, P.R. Zhao, Y. ‘The Ethical, Legal, and Social Issues Impacted by Modern Assisted Reproductive Technologies’ *Obstet Gynecol Int.* [2012]:686253. doi: 10.1155/2012/686253.

⁴⁵ Ibid.

⁴⁶ James, S. ‘Avoiding Legal Pitfalls in Surrogacy Arrangements’ *Reproductive Bio Medicine* [2010](21)(7)862–867.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

the child, to retain parental rights despite the existence of a pre existing gestational carrier contract. Another central concern surrounding the use of surrogates and gestational carriers is the possibility that financial pressures could lead to exploitation and commodification of the service. The mean compensation for a gestational carrier in the United State in 2008 was estimated at approximately \$20,000.⁵⁰ In contrast, a gestational carrier in India receives an average of \$4,000 for the same service .⁵¹ Regulation of surrogates and gestational carriers varies widely from nation to nation and even within regions of individual countries. Due to these financial and legal considerations, international surrogacy has emerged as an emerging industry, especially in developing nations. This practice has exacerbated the already difficult ethical and legal issues surrounding gestational carriers.⁵²

The Right to Screen and Alter Offspring Genes:

IVF has made external access to embryos possible. It is easy to obtain embryonic DNA prior to a decision to discard or transfer the embryo. Theoretically, DNA microarray technology and single-nucleotide polymorphism maps will allow ever broader genome-wide screening of embryos to take place prior to transfer. The demand for embryo screening and negative selection will rise as families try to minimise predisposition of their children to genetic diseases and chronic adult diseases.⁵³ The studies carried out by Mario Capecchi, Martin Evans and Oliver Smithies, the receivers of the 2007 Nobel Prize in Physiology and Medicine point to the fact that genetic alteration will follow in the wake of widespread embryo screening. Their studies also suggest that DNA could be inserted and turned on at will.⁵⁴ Gene targeting would in the future, be used to identify gene function and to provide models for studying and treating diseases. This area conjures up the idea of parents being able to use this technology to empower their children, before birth, with super qualities and create inequality between them and coitally produced children in the society.⁵⁵ Even though this area of technology is still undeveloped all over the world, law makers and policy makers should start thinking along the line of regulating this field.

THE URGENT NEED TO REGULATE ART IN NIGERIA

Against the backdrop of the foregone, there is an urgent need to regulate Art Nigeria. In Nigeria and other developing countries in sub-Saharan Africa, there is no state regulation of Assisted Reproductive Technology (ART) even though we have several centers in Nigeria. This has created a huge lacuna that is being exploited by various unscrupulous practitioners. ART practitioners in Nigeria and other developing African countries have a voluntary adherence to

⁵⁰ Ibid.

⁵¹ Humbyrd,C. 'Fair Trade International Surrogacy' *Developing World Bioethics* [2009](9)(3)111–118.

⁵² Ibid.

⁵³ See Human Genome Project: SNP Fact sheet, available at http://www.ornl.gov/sci/techresources/Human_Genome/faq/snps.shtml

⁵⁴ Baroness Warnock; Warnock Committee Report 1984 CMND 91314

⁵⁵ On genetic enhancement generally, see Buchanan.A, Brock.D, Daniels.N & Wikler.D, From Chance to Choice: Genetics And Justice. (2007) 104-202.

guidelines set by the American society of Reproductive Medicine, the British Human fertilization and Embryology Authority or the equivalent body in France or Germany.⁵⁶

In Nigeria, the various ART centers are self-regulated; there is no national body that oversees the affairs of these centers. Considering the current status of ART in Nigeria, one may be tempted to think that the following reasons are contributing factors:⁵⁷

- infertility treatment and ART are not priority health issues.
- ignorance and lack of interest by politicians and health authorities.
- apathy, inertia, lack of interest and commitment by professional peer bodies.
- multi-ethnic and multi-religious composition of the population in the country makes it difficult to implement and regulate uniform ART practice guidelines.
- ART is not recognized as a sub specialty of gynecological practice. Hence no structured training for clinicians and embryologists exist for ART practice.
- Most ART practice are set up in non-governmental medical centers in the private sector, without proper supervision and licensing. Governmental intervention has never occurred in the running of ART centers in private hospitals/centers in the country.

There is no gainsaying that voluntary adherence to guidelines from different countries by the various ART centers is not the best for regulating ART in Nigeria bearing in mind the fact that Africa has more of the type of infertility that can be solved by ART procedures and ART awareness is increasing in the country. Also, Infertility should not be treated with kid's gloves but should be considered as a public health issue and not as personal challenges of individuals or a social problem. All ART practitioners should therefore come together and form a national body that would come out with a standard of practice suitable for the Nigerian Society and also create a supervisory body for the centers. This, the writer believes will go a long way in setting a good foundation for the future of ART practice in the country and even prevent a situation where quacks will hold themselves out as ART practitioners and commit atrocities that would scare the populace from having confidence in the technology and its practitioners.⁵⁸

There is therefore the need for constant and in-depth regulation of ART in Nigeria which must define and prescribe roles and status for the all the collaborators in the procreation effort. The rights and duties of physicians in the exercise must be clearly defined. Categories of persons which shall be entitled to fertility must be unambiguously stated.

The Nigerian Government can borrow a leaf from developed countries around the world that have successfully regulated ART.

The United Kingdom has the most comprehensive regulatory scheme; the pioneering Human Fertilization and Embryology Act of 1990. This Act has been reviewed by the 2008 Act. The main new elements of the Act include:

⁵⁶ Adewunmi, A.A. 'The Need for Assisted Reproductive Technology Law in Nigeria' *Unib Law Journal* [2012] (2)(1) 19-41.

⁵⁷ Ibid.

⁵⁸ Ibid.

- ensuring that the creation and use of all human embryos outside the body - whatever the process used in their creation - are subject to regulation
- a ban on selecting the sex of offspring for social reasons
- requiring that clinics take account of “the welfare of the child” when providing fertility treatment, and removing the previous requirement that they also take account of the child’s “need for a father”
- allowing for the recognition of both partners in a same-sex relationship as legal parents of children conceived through the use of donated sperm, eggs or embryos
- enabling people in same sex relationships and unmarried couples to apply for an order allowing for them to be treated as the parents of a child born using a surrogate
 - changing restrictions on the use of data collected by the HFEA to make it easier to conduct research using this information

CONCLUSION AND RECOMMENDATIONS

One vital call for Nigeria in respect to ART is that the Nigerian government need to wake up to its responsibility of providing reasonable access to infertility treatment and to also legislate on the various aspects of the practice of ART for the protection of her citizen’s rights. In other words, the Nigerian Government should provide for a comprehensive legislation that will protect the health and safety of Nigerians using assisted human reproduction, prohibit unacceptable practices, and regulate ART activities and related research; legislations that ensure strict control of ARTs practices. As step in the right direction therefore, the Nigerian Assisted Reproduction Authority Bill is expected to and should addresses some very complex and important issues like the prohibition of practices such as cloning and payment for gamete donation, and must establish a framework to regulate assisted human reproduction activities such as IVF, donor insemination and embryo research through a government agency that will oversee the implementation and enforcement of the legislation.

The essence of that piece of legislation should be to assert the value of assisted human reproduction procedures and the paramount importance of protecting the health and wellbeing of children born as a result of assisted human reproduction activities, and of individuals, especially women, using assisted human reproduction. This is with view to preserve and protect human individuality and diversity, and the integrity of the human genome, based on free and informed consent. It must also address the ethical and health concerns raised by the commercialization of the human reproductive capacity.

There is also the need for government to subsidize and or offer free infertility treatment to provide citizen access to ARTs with view to preventing same, as the first priority of government and all policy makers in respect of infertility should be prevention of its causes and then its cure. Public Enlightenment and the roles of Non-Governmental Organizations (NGOs) for the promotion of the rights of citizens to ART alongside legal, ethical, cultural and religious considerations are equally desirable in Nigeria.

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The Nigeria Government must recognize infertility as a public health issue requiring government attention. Infertility should be seen as an integral part of the health component of the country and should be incorporated into the existing health policy and services. Prevention, they say is better than Cure, therefore, the government should adopt strategies used in preventing more serious diseases at preventing the type of infertility prevalent in Nigeria and Africa. Federal agencies, professionals and consumer organizations, the scientific community, the healthcare community, other stakeholders should participate in the development of a National Public Health Plan for the prevention, detection and management of Infertility. A Public Health Symposium on Infertility should be organized where working groups will be formed and a draft national action plan will be made.

The involvement of the Nigerian government in assisted reproduction should therefore include reduction in the cost of IVF delivery by subsidy probably through the National Health Insurance Scheme so as to enable the poor benefit from such service since infertility is a public health issue that affects both the poor and rich, prevention of indiscriminate springing up of fertility clinics, the control of standards for clinical procedures and the regulation of professional practice.