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The Practice of Assisted Human Reproduction Technologies (Arts) in Nigeria: The Unanswered Legal and Ethical Questions

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ABSTRACT

Assisted Reproductive Technology (ART) is practiced today in Nigeria through gamete donations and In-Vitro Fertilization as a result of developments in the field of medicine to combat infertility. While the development is welcomed, certain issues associated with its practice need to be examined from legal and ethical perspective. Those who desire child without bearing pregnancy and barren couples do turn to ARTs methods for help without due regards of legal, ethical and moral considerations of the methods. Thus, there are questions over the fate of fertilized human eggs that are not implanted, sperm frozen or stored and the fate of the human embryos created if the couples who created them die, divorce, become incapacitated or no longer want to have children. In this regard, the right of humans to tamper with the natural processes of childbearing has been questioned as well. The quest to find legal answers to these issues and ensure appropriate regulation of ARTs to embrace them, enhance practice and guard against abuse is therefore imperative. This article, employing doctrinal approach, aims at explore and highlight Nigerian practice of ARTS and fundamental legal and ethical issues surrounding it as technology transforms the means of human reproduction. The article suggests robust and balanced legislations for befitting regulatory framework as the way forward in Nigeria.

Keywords: *Procreation, Technology, Assisted-Reproduction, Law, Ethics*

INTRODUCTION

It is fact that a certain number of couples who want to have children are unable to have them, and popular culture calls them 'infertile'. There is range of techniques available to assist them to have children, if they are not able or willing to adopt a baby. Physicians have developed methods to overcome infertility, with the motive of helping such couples have their own child. In some countries, the assisted reproductive technologies such as in vitro fertilization (IVF) and donor insemination (DI) are involved in a very minimal percentage of the live births. The birth of children to infertile couples brings not only great human joy but a new human being. It is consistent in theory with the ethical principles of autonomy and beneficence, often argued to be the premier ethical principles.

In regulating these techniques, societies should recognize the frustration of couples who desire to have a family genetically related but are unable to achieve this on their own. In typical traditional Nigerian society, there are many prenatalistic ideas putting pressure on couples to have children, and there is a shortage of children for adoption. Those medical treatments are the means of raising children for many couples who were not able to conceive and give birth to children naturally. All methods for the procreation of children should always have the well-being of the family in mind, so that we do not harm the children who result. While regulating the techniques, society has to avoid doing harm by extremely restraining regulations and or prohibition of the techniques if that would do harm to the families that make up society.

To add to the ethical evaluation, assisted reproduction is also accompanied by questions of justice in the eligibility for access to the techniques. While the resources are limited, the first priority for government funding should be to benefit infertile married couples. For long-term de facto "married" couples, who wish to have a child by IVF, it would seem that they should be prepared to become legally married if they wish to use the involved procedures of IVF, and to raise children. But the question is whether, in Nigeria as is done in Germany, a state can prohibit access by other persons,

including homosexual couples, and single parents (male or female). In the Netherlands lesbian couples have used IVF and AID (Artificial Insemination by Donor). In the USA courts have ruled that it is not possible for clinics to refuse to consider applications for reproductive technology from unmarried couples, or single women. In the US Constitutional tradition, there is a right to procreate and raise children according to individual preferences. There are two levels of implication of the principle of justice; one is payment for services from government, which can be argued to be a matter of public consensus and policy. The other level is when a person pays from their own money, and here we have seen some countries allow single women and men pay for infertility services to bring about the birth of children that they will be social parents of, whether or not they are genetic or gestation parents.

Fertile people may have a need for infertility treatments also. People who undergo radiation treatment, especially women, may want to store eggs for use thereafter. Some chemotherapy agents also can cause mutations. Oocyte recovery would allow future pregnancy. A woman in her twenties may want to store oocytes produced then, for implantation in the thirties when she wants to have a child, as older women have increased risks of chromosomal abnormality. Abnormalities can be screened for using genetic screening, but oocyte recovery when there is a more significant risk of mutation, and the case of possible absence of oocytes, is justifiable. It is a question of resources available, more than anything else, once we accept IVF as an ethical technique. Sperm banks can also store sperm for future use also. Generally ethical concerns have led most people to restrict posthumous use of gametes.[1]

The practice of Assisted Reproductive Technologies (ARTs) for the treatment of infertility have been in used in Nigeria for some time now, but without a formal legal framework regulating it. ARTs are not only dynamic but some aspects of them even at present are regarded dangerous to the common good of the public at large. Some of these aspects affect the ethical, cultural and religious sensibilities of the adherents of the major Faiths in Nigeria. Lack of adequate legal framework for managing and controlling the practice may lead to abuse by unscrupulous persons who may indulge in the offensive aspects of the Medically Assisted Reproduction System. The Nigerian legal system too will continue to lag behind among the comity of nations on such important matter and this will definitely affect adversely the interest of the country unless the right steps are taken to put in place an appropriate legal framework on the subject. Treating infertility notwithstanding has become a highly competitive business, despite the fact that the field itself is largely under-regulated in Nigeria. Along with advances in technology comes the need for government guidelines in laws and policies to ensure that those technologies are used safely and responsibly. This article advocates for a robust legal regulation of Assisted Reproductive Technology (ART) in Nigeria in the light of what obtains in some developed countries of the world. Nigerians also need to find answers legally speaking to the concerns expressed on ethics, safety, rights and regulation of technology so as to guard against abuse.

WHAT IS ASSISTED REPRODUCTION/ REPRODUCTIVE TECHNOLOGY (ART)?

Assisted Reproduction/Reproductive Technology (ART) is any technological procedure that helps infertile women to conceive.[2] Different medical technologies have been developed to assist in reproduction and overcome infertility including Artificial Insemination; In vitro Fertilization; Surrogate Motherhood; Human Cloning; Gene Replacement Therapies; Artificial Embryo Donation; Ectogenesis; Embryo Adoption; and Egg Transfer etc. Some of the techniques employed to achieve this goal are explained as follows:

- Gamete intra fallopian transfer (GIFT), 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.

[1] Davis, D. "Embryos created for research Purposes", Kennedy Institute of Ethics Journal, vol. 5 Issue 1, 1995, p. 44.

[2] Assisted Reproduction Technology, <http://www. ivfsurrog acy.com /ivf/ assisted_reproduction.htm > accessed 20 August, 2017, and 'Assisted Reproduction', The American Heritage Medical Dictionary,<www.yourdictionary. com/medical/ assisted reproduction>, accessed 20 August 2017.

- Zygote intra fallopian transfer (ZIFT), which is a procedure where fertilized egg (zygote), in its pronuclear stage of development, is transferred into the fallopian tube.
- In-Vitro Fertilization and Embryo Transfer (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.[3]
- Surrogacy. This is a method of reproduction whereby a woman agrees to become pregnant and deliver a child for another party, usually through a contractual arrangement. She may be the child's genetic mother, if only the sperm is used to fertilize her ovum. The sperm and egg of a married couple may also be fertilized in vitro, and subsequently placed in the womb of a surrogate mother as a gestational carrier who is paid simply for leasing her womb and giving birth to the baby.
- 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.[4]

According to some experts, Artificial Insemination is a form of medically assisted conception and not that of assisted reproduction, which stands only for treatments that include the handling of human oocytes and sperm or embryos outside the body for the purpose of establishing a pregnancy.[5]

VIEWS ON HUMAN REPRODUCTION

There are several different views of ART we can have for ethics. The parents-to-be can consider it a right for reproduction, a duty to fulfil social obligation, a privilege to be able to bring about the creation of a child as a gift of God, a risk that the child will inherit a genetic disease or be harmed by environmental pollution, or a burden imposed by familial pressure to fulfil their duty. The creation of a child can be considered the ultimate act of love, and the parent-child relationship is arguably the central love relationship we can see among human relationships.[6]

Depending upon the view we have of the reproduction, we could arrive at quite different ethical conclusions. The right for reproductive chose comes from the principle of autonomy, whereas bringing about the birth of a child with a genetic disease has been considered as causing harm by some. Nowadays, many people consider it a right to use prenatal diagnosis, and also many consider it a duty for responsible parenthood that now extends into prenatal care.[7]

The children can view reproduction as a reason for existence itself. It is also the prime origin of their future happiness and sadness in life, bringing about their actual being as a moral

[3] The world's first test-tube baby, Louise Joy Brown was born in Great Britain on 25th July, 1978.

[4] For these and other ART techniques, see: Acosta, A. A. "Assisted Reproduction in vitro fertilization"; & Morshedi. M. "Artificial Insemination using a donor's sperm" in Acosta, A. A. & Kruger, T. F. (ed.), Human Spermatozoa in Assisted Reproduction, (New York: The Parthenon Publishing Group, 2006), pp. 347-348 & 367-368; Leon Speroff et al., Clinical Gynaecology, Endocrinology and Infertility, Maryland, Williams & Wilkins, 1989, 611-617; Petrozza**,** J.C. and Sabatini, M.E. (2008), Assisted Reproduction Technology**,** <http://emedicine. medscape. om/obstetrics_gynecology#reproductive>, accessed 23 August 2017. See also: <http://www.ehealthmd.com/ library/infertility/INF_assisted.html>;and <http://en.wikipedia.org/wiki/Artificial_insemination & wiki/Surrogacy> Accessed on 23 August, 2017.

[5] Vayena, Effy et al., Current Practices and Controversies in Assisted Reproduction, (Report of a meeting on "Medical, Ethical and Social Aspects of Assisted Reproduction"), Geneva: World Health Organization, 2002, p. ix; Clayton, Heather B. et. al., Ectopic Pregnancy Risk With Assisted Reproductive Technology Procedures. <http://www. acog.org/ from_home/ publications/ green_journal/ 2006/ v107n3p595.pdf>, accessed July 8, 2017; also on <http://en.wikipedia.org/ wiki/ Assisted reproductive _ technology>, accessed on 20 August, 2014.

[6] Macer, Darryl R.J., Shaping Genes: Ethics, Law and Science of Using Genetic Technology in Medicine and Agriculture (Christchurch: Eubios Ethics Institute 1990), p. 33

[7] Macer, Darryl R.J. (1998b) "Ethics and Prenatal Diagnosis", pp. 999-1024 in Genetic Disorders and the Fetus: Diagnosis, Prevention and Treatment, Milunsky, A. (eds.), (John Hopkins University Press 1998), p. 13

person. Generally we cannot regret our creation itself, though in extreme periods of depression people do regret that they exist. There is no reason to believe that children brought into the world by ART feel any more sad than children who came about in the non-assisted human reproduction between a man and woman. In fact, many children may feel that their parents had a greater desire that led them to seek ART. For a few exceptional cases, where ART is used as a preference over normal sexual intercourse, for example by lesbian mothers who refuse to have a sexual intercourse with a man, we can also question whether the act itself is central to the ethical conclusion. The consequences and the virtue (to want to bring about a child) arguments would both support the creation of a child.[8]

Society can have various views on ART. Some societies actively seek to have more children, for example the state of Israel, and some other countries with strong religious and/or political goals for population increase. More often societies are actually trying to reduce population growth, so that countries like Italy or Japan tend to have negative population birth rates. Countries with strong population policies such as China, have also realized there is a need to maintain a reasonable population age structure of active workers to support both young and old persons. Justice questions make us consider the cost of the birth of babies by IVF, which in the USA in 1995 was on average US$39,000. There are also questions about whether young or old have more right to use the services.[9]

With the trend to focus more on individual choice, society has generally accepted the provision of services to help the infertile. Infertility as defined in the first sentence of the paper, where people desire to have a child, has been considered a disease in the medical sense. Medical service providers may then view ART as a service to help people who are in need. Some providers also regard the services as a business, and make considerable income through private services. We can see adverts for the services offered by commercial agencies in countries around the world, from USA to India.[10]

Ethical Cum Legal Issues in Current Practice and Future Extensions in Arts

As a result of IVF there are numerous spare eggs, and embryos. The ownership and fate of these embryos is one of the major questions arising from the use of IVF.[11] There are also many eggs that have been taken from women being sterilized, and increasingly they have donated the eggs for scientific research. These eggs can then be fertilized to provide a large supply of human embryos for scientific research. The goal of much embryo research in the past decades has aimed at successful alleviation of infertility, and has now led directly to the births of hundreds of thousands of children by IVF. The first experiments on early embryos were a necessary prerequisite to the technique of IVF.[12] The preimplantation embryos needed to be studied before being used clinically, especially the cell nuclei and chromosomes, to ensure that they were normal. Only after numerous studies of animal embryos were some human embryos studied to see their resistance to noxious agents, and manipulation that was needed for IVF.[13]

Most patients undergoing IVF treatment around the world have embryos frozen, because as a medical technique, IVF is best used by taking many eggs in one operation. These eggs are then frozen until needed. The procedure to remove eggs is complicated, and involves a period of hormonal stimulation of egg maturation, so it is easier, cheaper and less traumatic to take all the eggs that can be recovered (may be 20) at once. Clinics only need to replant 2-3 embryos to have a reasonable chance of a successful pregnancy. In fact a limit of two or three embryos implanted per cycle is enforced in some countries to lower the risks of multiple pregnancies. If it is unsuccessful, another set of embryos will be replanted at a later date. The overall increase in the efficiency of the IVF procedure due to freezing is about 15-20%. Experiments also led

[8] Ibid.

[9] Parks, JA. "A Closer Look at Reproductive Technology and Postmenopausal Motherhood", Canadian Medical Association Journal, (1996), 154, p. 191.

[10] McCall, M. "Pursuing conception: a physician's experience with in-vitro fertilization", Canadian Medical Association Journal, (1996), 154,pp. 178-179.

[11] Macer, Darryl R.J., op cit. note 6 supra, p. 37

[12] Davis, D. op cit. note 1 supra, pp. 43-54.

[13] Steptoe, P. (1985) "Historical aspects of the ethics of in vitro fertilisation," Annals of the New York Academy of Science, 442, p. 576.

to ICSI, which is mechanical injection of sperm nuclei into the oocyte, or chemical or physical methods of fusing the egg and sperm membranes. There have been safety concerns expressed over ICSI.[14]

The production of any human/animal hybrids or chimeras should not pass beyond the stage where the primitive streak is formed, though in practice most would not survive beyond the 2-4 cell stage. The situation regarding chimeras of different human embryonic cells is unclear, but should only be used if it is going to be a therapeutic advantage to the individual made. It is possible that this situation could be reached in the future, though the technology for making chimeras has existed for several years.[15]

We can't reject these techniques as "unnatural" because we would then be rejecting modern medicine as a whole, as every medical treatment is aimed to resist disease and suffering. There has been a concern about the capacity of technology to change, not just the conditions of human existence, but its essential characteristics. What has occurred with reproductive technologies is a revolution in our view of human reproduction. The writings of thirty years ago were mainly against IVF, but now most writers see it as ethical for use by married couples. It is not a matter of being conformed to the world, but rather the value of hindsight and understanding upon a technology.[16]

The religious objections to masturbation used in these treatments are used only by a few conservatives, most theologians do not consider this important. The motive behind the act of producing semen is procreative and so different to the acts that those claiming scriptural objection refer to. Religious taboos may be eased in the case of IVF, as it leads to cocreation of children. The sexual taboos should not have a role in the assessment of these issues unless they are morally relevant. We should note that IVF for married couples is accepted in some Islamic countries, where there are clinics. It is also accepted by many Jews,[17] and there are clinics in Israel, that will provide services to a broader group of infertile women. There is still objection to the separation of procreative and conjugal aspects of marriage, from the Roman Catholic. The view of the Roman Catholic church has been that aids to infertility involve the intrusion of a third party, the physicians and scientists, into the marriage as a means of solving the infertility problem. This was seen as a trespasse upon the covenant and exclusive relationship between the husband and wife, who are "one flesh", and also intruding into the parent-child relationship of the family. The argument that children who are not born as a result of conjugal intercourse are deprived of "proper perfection" (Vatican 1987) has no scriptural, reasoned or scientific basis. This is not only an unscriptural doctrine but cruel, harmful and in my opinion a mistake which needs changing, as such statements affect the lives of many people, who look to religious authorities as sources of moral guidance. We can hope that theological interpretations consider new technology.[18] There have been feminist critiques and defenses of ARTs, as discussed by other authors too.[19]

The two sources of extramarital gametes that are commonly used are those donated by relatives or friends, or those from completely anonymous sources.[20] Because of the risk of a conflict of attitude toward an offspring from an identifiable non-parental source, anonymous donations are preferred. In actual fact it is very difficult to conceal the fact, and will become much more difficult in years to come when genetic

[14] Levinson, G. et al. "Recent advances in reproductive genetic technologies", Biotechnology Journal 13 (1995) 13, 968.
[15] Ibid.
[16] Macer, Darryl R.J., Bioethics for the People by the People (Christchurch: Eubios Ethics Institute, 1994), p. 255
[17] Grazi, Richard V. Be Fruitful and Multiply: Fertility Therapy and the Jewish Tradition (Genesis Jerusalem Press, 1994), p. 155
[18] Vatican, Sacred Congregation for the Doctrine of the Faith "Lawful and Illicit Uses of New Techniques in Human Embryology", (Jerusalem: Mishnah publications 1987), p.59
[19] E.g., Basen, G., Eichler, M. & Lippman, A. (eds.), Misconceptions. The Social Construction of Choice and the New Reproductive and Genetic Technologies (Voyageur Publishing 1995), p. 267. One can ask whether infertility is a socially constructed disease unlike other diseases (Gibson, 1995). For Buddhist views and Japaness, and for public opinion around Asia, see results of the International Bioethics Survey by OTA, U.S. Congress Office of Technology Assessment, Infertility: Medical and Social Choices (Washington D.C.: U.S.G.P.O., July 1988 , OTA-BA-358), pp. 366-369
[20] See Daniels, K. & Haimes, E., (eds.), Donor insemination: International Social Science Perspectives (Cambridge University Press 1998), p. 655

fingerprints of many people start to be recorded. It has been argued that the ethical right to know your origins supports the laws in Sweden or New Zealand, giving the child a way to contact their genetic parents.[21]

Besides the ethical argument that children should be able to know their roots, there are also medical reasons for regulation. This is especially so for semen donors, as there has been numerous accounts of the transmission of infectious diseases, such as Human Immunodeficiency Virus (HIV), ureaplasma, cytomegalovirus and herpes simplex virus. There is currently a lack of systematic screening of semen. In France there is some genetic screening of semen, and recipients, to avoid known serious genetic disease. The American Fertility Society (1990) guidelines recommend that each donor should be limited to 15 successful pregnancies, though less in smaller local areas. In South Africa, the maximum number of children that one donor's sperm can be used for is five.[22]

It may be more balanced to use both egg and sperm from outside of the marriage, making the separation between genetic and social parenthood more fully. Donated embryos may be used, it is generally considered that any "spare" embryos made during the process of IVF, or donated egg and sperm, remain the property of the donors. The responsibility of safe medical practice is the responsibility of the medical staff. The doctor used to be the major selector of donors, but with the existence of large sperm banks the parents can increasingly chose the donor's characteristics, usually to match those of the husband or possibly with eugenic aims. There needs to be control over the number of times the same donor is used, so that there is a low chance of unwitting incestuous marriages. Some believe that the procedure is best left under the control of doctors, but it is very open to personal abuse.[23]

There are commercial sperm banks operating in the USA, which has long been tolerated but is widely considered to be unethical. It is possible to separate both genetic and social parenthood from physiological parenthood as in the case of womb-leasing, or surrogate mothers. There are laws in some countries including and some states of the United States, which say that if the surrogate decides to keep the baby than no contract that she has signed can prevent her doing so. Carrying a baby to birth is the primary legal right to being a parent of the baby. In other countries and states of the United States, the preconception intent of the parents governs who are the legal parents of the child born.[24] It is doubtful whether surrogacy should itself be illegal, as it seems strange to make the birth of a child illegal. However, it should still be discouraged from an ethical viewpoint.[25]

There are psychological and emotional factors which require careful scrutiny. Surrogacy in terms of financial gain is morally wrong to most people. Surrogacy could lead to the situation where wealthy couples do not have to have the experience of pregnancy but let other women, who need money, have the troubles of pregnancy. There is a real danger that it would lead to the exploitation of poorer women. In the United States there are many surrogacy agencies, which involve commercial payments, and they offer services to clients from Japan and Germany for example, whose own countries do not allow surrogacy.[26]

We have to consider the future of society in the genomic age. While we have got somewhat used to the genetic age, although few people understand it, the speed of development of genetic sequencing technology is so rapid, that the complete human genome sequence of three individuals is expected to be available by the end of the year 2000. On the 1st April 1999, Celera, the new company of Craig Venter started sequencing the human genome. Today we can go on the Internet to look at the complete genomic sequences of over 20 species. Celera will have a daily sequence capacity of 100 million base pairs a day. In this facility, the

[21] Marshall, LA. "Intergenerational gamete donation: Ethical and societal implications", American Journal of Obstetrics and Gynecology, (1998), 178, 1171-1176.

[22] Jalbert, Pierre et al., "Genetic aspects of artificial insemination with donor semen: The French CEGOS Federation guidelines," American Journal of Medical Genetics, 1989, 17, no. 33, pp. 269-275.

[23] Andrews, Lori B., "Legal aspects of assisted reproduction," Annals New York Academy of Science, 1988, 55, no. 541: pp. 668-681.

[24] Andrews, Lori B. op cit.

[25] Glover, Jonathan et al., Fertility and the Family. The Glover Report on Reproductive Technologies to the European Commission (London: Fourth Estate 1989), pp. 344-349

[26] Ibid.

sequencing of the first bacterial genomes would take about two hours. They predict it will take 18 months to finish the genome sequences to make a composite human genome. Already Craig Venter and some other scientists are talking of individual genomic sequencing, and at least thousands of mutations can be screened simultaneously already.[27]

It is clear that very soon this technology will be common place, so that a person's ability for decision making on genetic information will need to be improved. Therefore when we read comments in reports or surveys like, "If I know my child will have Alzheimer's genes, I will never have a child", we ask what people will do when they are given these choices as part of routine health checks. In many countries there are regular and efficient systems for public health checks through city offices, but generally there is insufficient counselling for the tests that are offered. This situation will just become worse. Some traditions of selection in birth such as sex selection have been widely criticized, because they are not for disease. However, certain health and medical institutions in the USA have been offering parents sex preference choices since 1998.[28]

PATIENTS/USERS RIGHT TO ARTS AND MEDICAL ETHICS

Respect for human rights is integral to medical practice and indispensable to health. Human rights underpin ethical medical practice and are essential for a healthy population. Human rights affect medical practice in several ways. They influence ethical codes; they justify each patient's claim to the best attainable physical and mental health through their emphasis on norms, obligations, and accountability; and health is jeopardized when generic human rights are violated. Moreover, the values enshrined in human rights are reliable guides for contemporary practice because they are universal and focus on people as rights holders rather than patients.[29] Evolutions of medical ethics customarily begin with the virtues and principles allegedly originally found in documents such as the Hippocratic Oath and the Epidemics, both attributed to Hippocrates, a descendant of Asclepius, in the 4th century BC. These include the virtues of professional self-respect, collegiality, and competence, as well as the principles of respect for patient confidentiality, beneficence, non-maleficence, respect for life and, egalitarian treatment. The tripartite collection of documents that remain central to medical ethics are: the Declaration of Geneva, also known as the Modernised Hippocratic Oath, the Nuremberg Declaration on Human Experimentation, and the International Code of Medical Ethics. Mirroring these international medical ethics documents was the tripartite international Bill of Human Rights. This included the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Cultural and Social Rights (ICESCR). These instruments were unambiguously directed at relationships between individuals (albeit within the sphere of governmental responsibility), as well as relations between states but they contained many principles and obligations that resembled norms of medical ethics.[30]

Particular provision dealing with medical ethics is the UDHR,[31] where provisions requiring respect for human dignity and equality (articles 1 and 2), as well as (article 3) which provides for human right to life. Others resembled components of medical ethics in prohibiting torture or cruel, inhuman or degrading treatment or punishment (article 5); requiring non-discrimination

(article 7); and progressive realisation of the human right to a standard of living adequate for health and medical care (article 25). Similarly, many other International Conventions contain protections of the "right to life" and prohibitions on "torture or cruel and unusual treatment or punishment", as well as obligations upon states to progressively realize the "human right to

[27] Ibid.

[28] Berkowitz, J.M. & Snyder, J.W. "Racism and sexism in medically assisted conception", Bioethics, 1989, 4 no. 12, 25-44.

[29] Available at http://www.studentbmj.com, last accessed 30 July 2017.

[30] T A Faunce J., 'Will International Human Rights Subsume Medical Ethics? Intersections in the UNESCO Bioethics Declaration Universal', Medical Ethics, (2005) 31, 173-178, <http://jme.bmj.com>, accessed 20 August, 2017.

[31] United Nations Universal Declaration of Human Rights, adopted 10 Dec 1948. GA Res 217A (III). UN doc A/810 (1948) 71.

health".[32] Numerous jurisdictions have constitutional provisions on similar subjects and interpretation of them contributes to the global development of international human rights, as well as medical ethics. There is also the concept of respect for privacy which is an integral part of medical ethics as well as a fundamental human right. One important issue in the relationship of doctor-patient is the need to maintain confidentiality of information with respect to the privacy of patient under treatment.[33] In all these, the emphasis is on the patients' human rights rather than the general human dignity which the practice of ARTS tends to risk.

A contentious debate around infertility which necessitates resort to ARTs today has to do with the right to medically reproduce or a right to access fertility treatment. Who should have access to infertility treatments and which of the services should be accessible? Are the rights in favour of medical assisted reproductive techniques absolute or how should the rights be exercised? Answers to the questions are important because patients and users have a 'right to medically reproduce' which implies that someone has a corresponding duty to provide for that right. The question then is: upon whom is it incumbent to ensure that the right is realized? One basic human right is that of a woman to decide when and how to conceive. However, most professional bodies and legislation in the various countries of the world have recommended that ART should be restricted to heterosexual couples, legally married, or at least, living in a stable cohabitation. The implication here then is that not all women can, as of right, enjoy that human right "to decide when and how to conceive". Consequently, people who are gays, lesbians, and single parents who want to have access to infertility treatment cannot do so as of right. The implication here, even for married women, is that the fundamental right of women to decide "when and how to conceive" is not absolute. As one's right stops where another's begins, thus, to allow couple to enjoy absolutely their right to medically assisted reproduction without considering the rights of the expected children to be provided with good necessities of life would mean a denial of their human rights also.[34] Therefore, this apparent restriction is a sort of interest-balancing and it is encouraged.

THE PRACTICE AND POSITION OF ARTS IN NIGERIA

Fertility and parenthood are highly valued in Nigeria and in Africa generally to the extent that procreation is usually considered the most important purpose of marriage and infertility is often associated with marital instability and many other psychosocial consequences[35]. As a result of infertility incidences, there is demand for ART in Nigeria, especially because most infertility cases are infection related and therefore best treated by ARTs.[36] Despite the

[32] Toebes B ., 'Towards an Improved Understanding of the International Human Right to Health'. Human Rights Quarterly (1999) 21, 661–79 at 671, http://jme.bmj.com, accessed 26 July, 2017.

[33] See for instance the 1999 Constitution of the Federal Republic of Nigeria (as amended), section 37, relating to "right to private and family life"

[34] It may be of help at this stage for instance s. 13 (5) of the Human Fertilization and Embryology Act 1990 which is concerned with a number of issues, one of which is the access to infertility treatment. An interesting discussion went on during the passage of the Act which culminated in a clause in the Act, known as the 'welfare of the child' clause. This states that: 'a woman should not be provided with infertility services unless account has been taken of the welfare of any child who may be born as a result of the treatment, or of any other child who might be affected as a result of the birth.' The welfare of the child clause is effectively a way of assessing patients and users, to see if they are suitable to enjoy the service. This assessment is not based on clinical grounds, but on aspects of the patient's or users' life which are thought to be relevant to their request.

[35] Ebomoyi and Adetoro, 1999; Adetoro and Ebomyi 1991; Larsen, (2000), 'Infertility in Nigeria' adapted from <http://humupd.oxfordjournals.org>, accessed 23 July, 2017.

[36] The evolution of medically assisted reproduction in Nigeria can be traced to the birth of Nigeria's first tube baby, authenticated by the Federal Government of Nigeria, named Baby Hannatu born precisely on the 11th of February, 1998, through in vitro fertilization(IVF)performed by Doctor Ibrahim Wada of Nisa Premier Hospital and Nordic Fertility Centre Abuja. Since then ARTs have helped numerous individuals in Nigeria overcome physiological or social barriers to reproduction that previously would have made it impossible for them to have children. Ibrahim Wada, 'Nisa Premier Hospital - About Us' (2017)<http://www.nisapremierhospital.com/aboutus.html>, accessed 25 July, 2017. However, years before, similar medical feat was carried out on 17th March 1989, at the Lagos University Teaching Hospital, Lagos, when a team of experts from the Hospital, and the College of Medicine University of

demand, provisions for ARTs are however, still meagre and mostly available in private settings.[37]

In Nigeria, there is no direct legislation yet on medically assisted reproduction, unlike the position in some advanced countries, but a search through available literature reveals that there is effort in the pipeline to produce such legislation i.e. the Nigerian Assisted Reproduction Authority Bill since 2012 that seeks to to establish the Nigerian Assisted Reproduction Authority to among others regulate the practice of ARTs techniques in Nigeria and for related matters. Therefore, subject to International Conventions and Treaties to which Nigeria has subscribed, it is submitted that the country has no legal framework regulating the modern technological breakthroughs of ARTs to combat infertility. Consequently, it can be reasonably concluded that the "right to medically reproduce" as available currently in countries such as UK, Italy, South Africa, USA, etc, is alien in Nigeria.[38]

NEED FOR REGULATING ARTS IN NIGERIA: THE LEGAL AND ETHICAL QUESTIONS

The responsibility to regulate the practice of ARTs is an affair of states within their respective jurisdictions having regards to cultural and religious considerations. Some of the key legal and ethical questions that have been raised with respect to the practice of ARTs for states and cultures to consider include questions for the users, donors and embryos.

For the users, the questions are: 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?

For the donors, the questions are: 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?

Within each culture, there are individuals who desire the use of ART, and may take different positions on these questions. As a general principle of societal co-existence people should respect one another, and have tolerance for the expressions of diversity and notions of other persons. Apparently, though the issues raised by these transcend beyond legal but ethical, cultural and religious considerations. However, harm should not be allowed to be meted on the children, or the parents and users of ARTs. Therefore, cultural and religious diversity in the

Lagos, became the first Researchers ever, to produce the test tube baby in Black Africa, comprising East, West, and Central Africa. 'Nigeria's IVF Babies', <http://www.ivfbabiesnigeria.blogspot.com>, *accessed 25 July, 2017.*

[37] Okonofua et al., Assisted Reproduction in Nigeria, 2002, adapted from *Human* Reproduction Update, <http://humupd.oxfordjournals.org>, accessed 25 July, 2017.

[38] In the United Kingdom, ART is governed by legislation, in particular, the Human Fertilisation and Embryology Act 1990 (HFEA) and a regulatory body set up under that legislation: the Human Fertilisation and Embryology Authority. The HFEA issue licences practitioners and is required by law to publish a Code of Practice. See The United Kingdom Human Fertilisation and Embryology Authority Code of Practice, 4th edition July 2008. In Italy, in 2004, the Italian Parliament enacted a law regulating medically assisted reproduction. Although the law recognizes as legal certain assisted reproduction techniques, several other procedures are implicitly or expressly banned. The new legislation limits the use of assisted human reproductive procedures to stable heterosexual couples who live together and are of childbearing age. "Assisted Human Reproduction Internationally", available at <http://www.hc-sc.gc.ca>, accessed 25 July, 2017. In South Africa, ART is governed by legislation and regulations have been made by Government pursuant to legislation. ART must be performed in accordance with the law and the code of practice for ART published by the Department of Health and Social Welfare. Authorization to carry out ART is granted by the Minister of National Health and Population to any institutions that comply with the prescribed conditions prescribed by the Minister. - Article 28, Federal Law no. 6 of December 1998.

approaches to ARTs have been set to influence legislations in that respect, though in reality there is much more debate with society, culture and religion over the benefits and risks of ARTs generally. This diversity demands pro-active laws and policies towards the sole purpose of ARTs i.e. the birth of a child which should never be a crime.

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 establishes a framework to regulate assisted human reproduction activities such as IVF, donor insemination and embryo research through government a 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 subsidise and or offer free infertility treatment to provide citizens' 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 Organisations (NGOs) for the promotion of the rights of citizens to ARTs alongside legal, ethical, cultural and religious considerations are equally desirable in Nigeria.

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