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REPRODUCTIVE JUSTICE, HUMAN RIGHTS AND INFERTILITY IN NIGERIA: A LEGAL AND POLICY ANALYSIS

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ABSTRACT
This article is set against the background of the recognition of infertility as a disease requiring specific medical, legislative and policy intervention by the World Health Organization. It was motivated by the need to explore the intersection between reproductive justice and human rights with the aim of spotlighting the challenges faced by infertile people in Nigeria. It exposes a critical legislative and policy gap in Nigerian legal structure: the absence of a systematic, rights-based presentation of infertility through the integrated framework of reproductive justice and enforceable human rights obligations. The article adopted the doctrinal research approach, relying on its analytical nature to explore the concepts and framework for reproductive justice in Nigeria. Both primary and secondary data formed the sources of data for the article. The primary sources include domestic instruments such as the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the medical and Dental Practitioner's Act while the secondary sources include text books and published articles of renown authors. The study establishes that infertility constitutes a significant reproductive justice challenge in Nigeria. It further demonstrates that Nigeria's statutory and regulatory framework does not adequately recognise or protect reproductive justice. Existing legal instruments lack explicit provisions guaranteeing equitable access to infertility prevention, diagnosis, and treatment services. In addition, the study identifies infertility as a significant determinant of health status in Nigeria and confirm that cost represents a primary structural barrier to achieving reproductive justice in Nigeria. The work recommends among others, constitutional reform and a more inclusive public health financing and insurance schemes to make reproductive justice a reality in Nigeria.

Key Words: reproductive justice , fertility care, human rights, assisted reproductive technology

Introduction

As far back as 1994, the World Health Organization (WHO) established that reproductive health is a state of complete physical, mental, and social well-being not merely the absence of disease in all matters relating to the reproductive system, its functions, and processes.[1] This position establishes that individuals have the right to a safe and satisfying sexual life, the ability to reproduce, and the authority to make autonomous decisions concerning the timing and frequency of reproduction.

WHO's position on infertility implies that legal obligations extend beyond preventive and curative measures for tackling ill health. In legal and policy terms, this can require states to undertake obligations such as: to addressing mental health impacts related to reproduction such as infertility effects, distress of accessing fertility care, pregnancy-related services and postpartum care, considering social determinants of reproductive health, which includes education, gender equality, poverty, and access to information and moving from a restrictive healthcare model to a holistic rights-based approach. This holistic approach emphasises the fact that basic human rights which are statutorily recognized cannot be satisfied in certain instances in the absence of reproductive justice.

Despite this robust perspective of the purview of reproductive justice, thirty two years later, the Nigerian legal system has failed to integrate infertility within reproductive justice frameworks. This has occasioned a critical legislative and policy gap in Nigerian legal structure: the absence of a systematic, rights-based presentation of infertility through the integrated framework of reproductive justice and enforceable human rights obligations.[2] They include: limited access to fertility care and family planning services, increased maternal and infant mortality rate, continues circles of poverty and inequality, affects educational attainment and economic opportunities especially for women and girls as well as erosion of human rights.

The Concept of Reproductive Justice

The term 'reproductive justice' was conceived in 1994 by feminists of color to conceptualize reproductive rights struggles embedded in social justice movements that challenged racism and classism, among other oppression.[3] The twelve black women[4] who coined the term defined it as a human right to maintain personal bodily autonomy, have children, not have children, and parent their children in safe and sustainable communities[5]. It was coined for the purpose of combining reproductive rights with social justice and uplifting marginalized individuals, families and communities excluded by the early reproductive rights movements.[6] The early movement known as the pro-choice movement focused on abortion. The reproductive justice movement aimed to broaden the scope of reproductive rights beyond abortion.[7] The concept of reproductive justice has undergone transitions from its inception

[1] World Health Organization (WHO) <https://www.who.int/southeastasia/health-topics/reproductive-health> Accessed 26/2/2026.

[2] Uwakwe Abugu1, Elohor Evarista and Odebala-Alonu 'Access, Equity and Cultural Dynamics in The Use of Assisted Reproductive Technology in Nigeria: A Socio-Legal Analysis' *Journal of Law and Global Policy* vol. 10 no. 2 2024, p.75.

[3] ACRJ (Asian Communities Reprod. Justice) 'A New Vision for Advancing Our Movement for Reproductive Health, Reproductive Rights and Reproductive Justice' <http://reproductivejustice.org/assets/docs> Accessed 27/1/2026.

[4] They are-Toni M. Bond Leanard, Reverend Alma Crawford, Evelyn S. Field, Terri James, Bisola Marignay, Cassandra McConnell, Cynthia Newbille,Loretta Ross, Elizabeth Terry, Mabel Thomas, Winnette P. Willis and Kim Youngblood.<communitycommons.og> Accessed 27/1/2026.

[5] Marissa, Alaniz. 'Black History Month: Leaders in Reproductive Justice' <plannedparenthood.org> Accessed 27/1/2026.

[6] 'Reproductive Justice' <communitycommons.og> Accessed 27/1/2026.

[7] Rice, Kamala. 'What is Reproductive Justice? How Women of Color Activists Are Redifining the Pro-Choice

when it was restrictively perceived as a call for the recognition of the limitations of emphasizing choice, which had largely come to mean the choice to have an abortion[8] especially among women of color to, a wider and more encompassing concept that includes the determinants of human rights.

Reproductive justice has been defined by the Oakland-based advocacy group Asian Communities for Reproductive Justice (ACRJ) as:

> the complete physical, mental, spiritual, political, economic, and social well-being of women and girls, and will be achieved when women and girls have the economic, social and political power and resources to make healthy decisions about our bodies, sexuality and reproduction for ourselves, our families and our communities in all areas of our lives.

It can be deduced from this definition that reproductive justice is not just about sexuality alone. It encompasses all factors that have direct and indirect bearing on an individuals reproductive choices. It encompasses the political, social and economic empowerment to be autonomous about sexual health and fertility care, extending beyond immediate families to communities at large. The concept uses human rights framework to draw attention and resist laws, public and corporate policies based on racial, gender and class prejudices.[9] That is, laws and policies that deny people the right to control their bodies, interfere with their reproductive decision making, and, ultimately prevent many people from being able to live with dignity in safe and healthy communities.[10]

BlackDeer advances a more contemporary perspective to the concept of reproductive justice as:

> a social and political movement, an intersectional praxis, and illuminates a breadth of social justice issues that limit sexual freedom and bodily autonomy. Understood as the right to have a child, the right to not have a child, and the right to parent with dignity, reproductive justice has emerged into public discourse, pushing the conversation beyond access to abortion.[11]

He highlights the major considerations in reproductive justice to include the following:

i. Sexual freedom: this entails the ability to express one's sexuality freely, without coercion, discrimination, or violence.[12] It has been defined as 'the right and freedom of every individual to control their own sexual and reproductive life.'[13] This freedom of self control can only be attained with appropriate information that builds self recognition right from an individual's formative years. Such does not only build freedom but helps in avoiding irreparable challenges that may undermine future enjoyment of this self control.

Paradigm.' *Meridians,Feminism, Race, Transnationalism,*, vol. 10 no 2, 2010 p. 42.

[8] Luna, ZT. 'From Rights to Justice: Women of Color Changing the Face of US Reproductive Rights' *Organizing. Soc. Without Borders,* vol. 4, 2009 p.64.

[9] Ross, J Loretta and Monisha Bajaj 'My Life's Work Is to End White Supremacy: Perspectives of a Black Feminist Human Rights Educator' *International Journal of Human Rights Education* vol. 5 issue 1 2021 p.8.

[10] Ross, Loretta and Richie Solinger. *Reproductive Justice: An Introduction* (University of California Press. 2017)

[11] Autumn AsherBlackDeer 'What is Reproductive Justice?' in: E. Goldblatt Hyatt (ed) *Social Work and Reproductive Justice; A Necessity Fit* Oxford University Press, 2025) p. 1.

[12] Rehan, Haider and Zameer Ahmed. 'A Comparative Analysis of Sexual Freedom, Rights and Laws Across Ten Progressive Nations.' *International Journal of Clinical Case Reports,* vol. 4 no. 5, 2025, p. 1.

[13] Agbadje, TTet. al (2025). 'Freedom Regarding Sexual and Reproductive Health and Rights for Adolecents and Young Adults of Haut-Cassandra, Cote d'lvoire: Astudy of Stakeholder Opinion.' *Sexes, vol.* 6 no. 4, 2025, p.61.

The WHO has stressed that ensuring access to sexual and reproductive health and rights (SRHRs) during adolescence helps prevent early pregnancy, sexually transmitted infections, and harmful practices such as child marriage, while promoting bodily autonomy and informed decision-making.[14] Within the unique context of Nigeria, this freedom will also entail the right to make choices that empowers on to avoid or overcome infertility and its attendant consequences. It will also represent empowerment to safely pursue reproductive options with ease.

ii. Bodily Autonomy: autonomy is largely construed as freedom. The two are intertwined with freedom as the main driver of autonomy. While freedom is about being free from external constraints or oppression, autonomy is largely about self-governance and making choices for ones self. Thus, freedom is the exclusion of external barriers, autonomy is the presence of self determination. Sexual freedom and rights are essential aspects of individual autonomy and human dignity.[15]

Bodily autonomy is all about having the power to decide what happens to your own body, without anyone else, including the government, forcing you to do anything[16]. Another definition which provides a clue as to other situations that can stifle bodily autonomy states that it is the capacity to exercise control over one's body and reproductive choices despite social, cultural, and legal pressures[17].

Across the globe, the ability to express one's sexuality freely, without coercion, discrimination, or violence, remains a front-line theme of gender equality and public health conversations. Beyond these however, it is about save guarding people's rights in their quest to find solution to infertility. Thus, the implication of Nigerian statutes and policies being quiet about the ability to live and enforce this important right daily aggravates consequences of prevalent conditions, especially infertility.[18] Not specifically providing for this right significantly reduces the chances of eliminating human right challenges associated with infertility.

Legal Framework for Reproductive Justice in Nigeria

1 Constitution of the Federal Republic of Nigeria, 1999 (as amended) (CFRN, 1999)

While civil and political rights are expressly recognized and guaranteed under the CFRN 1999, it does not guarantee the right to health care as a fundamental right. Rather, health care is categorized in Chapter II as 'Fundamental Objectives and Directive Principles of State Policy.' According to Nnamuchi, the expression 'directive principles' connotes an aspirational or hortatory goal as opposed to a legally binding entitlement.[19] By codifying health care under chapter II as a directive principle, the implication is that the right to health care is not justiciable under the CFRN, 1999 (as amended).

Justiciability deals with the boundaries of law and adjudication. It is concerned with the question of which issues are susceptible to being the subject of legal norms or of adjudication by a court of law. While 'Fundamental Objectives' consist of ideals toward which the nation is expected to thrive, 'Directive Principles' identify the policies which are

[14] World Health Organization 'WHO Recommendations on Adolescent Sexual and Reproductive Health and Rights. 2018. <https://www.who.int/publications/i/item/9789241514606>Accessed 27/1/2026.

[15] Rehan, Haider and Zameer Ahmed, op. cit., p.2.

[16] Kakarla, Ujjwala. 'The Right to Bodily Autonomy: Legal Battles Over Reproductive Rights.'*Lex Localis – Journal of Local Self-Government* , vol. 23, Special Issue, 2025.p. 8326.

[17] Ibrahem, Noha, Daphna Carmeli and Maayan Agmon. 'Induced Abortion as A Declaration Autonomy of Arab Muslim Women in Isreal.' S*exuality Research and Social Policy,* 2025.

[18] Akumefula, Eucharia k. and Chika Maureen Egwim-wokocha 'Exploring Coping Mechanisms and Resilience Strategies Among Childless Couples Facing Infertility in Southeast Nigeria.'*Nigerian Journal of Medical Sociology* vol. 6 no. 1, 2025.

[19] Obiajulu, Nnamuchi. 'Kleptocracy and its Many Faces: The Challenges of Justiciability of the Right to Health Care in Nigeria' *Journal of African Law,* vol. 52 no. 1, 2008, p. 1.

expected to be pursued in the nation's efforts to realize national ideals. Thus, what ordinarily should be construed as socioeconomic rights are not designated rights but 'directive principles.' Though enumerated, there are no complementary enforcement mechanisms. Section 17(3) of the 1999 Constitution provides: The state shall direct its policy towards ensuring that:

d. There are adequate medical and health facilities for all persons.

The non justiciability of the above provision and indeed the entirety of chapter II of the CFRN, 1999 (as amended) is predicated on section 6(6)(c) which provides that the judicial powers:

> … shall not except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.

This provision raises two implications for section 17(3) (d) of the CFRN,1999 (as amended) thus; a court in Nigeria cannot take cognisance of any claim based on the provisions therein, secondly, a patient cannot rely on the provision to claim entitlement for medical care suitable for his condition. This is the fate of individuals going through reproductive challenges in Nigeria. Accordingly, in *Federal Republic of Nigeria v. Adebiyi Olafisoye & Ors*[20], the Supreme Court reaffirmed that Chapter II cannot be directly enforced in court, because Section 6(6)(c) of the 1999 Constitution expressly ousts judicial jurisdiction over questions of conformity with Chapter II rights unless the Constitution itself provides otherwise. The Court upheld that courts lack inherent power to determine whether any act, omission, law or judicial decision is in conformity with the provision of Chapter II.

It is necessary to consider the provision of section 33 of the Constitution which guarantees the right to life to see whether by any expanded interpretation it could cover the right to health care. The section provides that 'no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which the person has been found guilty in Nigeria.' At this juncture, the consideration is whether health care is by any implication embedded in the right to life as guaranteed being that the right to good health care is incidental to the right to life. Whatever affects health negatively erodes the quality of life which may even result in the cessation of life. From this perspective, the government is under obligation to provide adequate health care and make it accessible to all its citizens as it has the ultimate responsibility to protect the life of its people.

Considering the obligation of the government, four issues fall for consideration. These include: availability and accessibility, equity, quality and affordability of health care in Nigeria. In terms of availability and accessibility, health care services must not only be available but also accessible. People should be able to access required health care services with ease otherwise its availability will be of no significance. Availability speaks to functional facilities and service in sufficient quantity.

Equity relates to non-discrimination in the delivery of health care services on any ground. Though distribution of resources depends on the available resources, it is necessary that available resources are equitably distributed throughout the nation. In terms of quality, it is required that health care services be medically and scientifically appropriate and of reasonable quantity. This entails among other things; good hospital equipment, quality services and drugs. These must coexist concurrently for a good healthcare system.

[20] (2004) 4 NWLR (Pt. 864) 580

Affordability speaks to the cost at which health care comes to the people. Does it come at a reasonable cost that people can afford? This is one of the central concerns bothering fertility care globally and Nigeria in particular. There is a wide disparity between the standard of living and the cost of fertility treatment in Nigeria leaving the latter to be explored only by the rich. On the whole availability, accessibility, equity and affordability concerns translate into social and ethical issues in fertility care.

Over time, Nigerian courts continue to elevate the status of social and health rights in their pronouncements despite the constraints by the non justiciability provision. For instance, in the case of The Registered Trustees of SERAP v Attorney General of the Federation,[21] the Federal High Court recognised that socio-economic rights under the African Charter, particularly the right to education and accountability in public spending, are enforceable in Nigeria. The judgement is an affirmation that domesticated treaty rights can ground claims relating to government obligations in social welfare sectors. It is an expansive interpretation of civil rights, reading socio-economic content (health, environment, education) into rights to life and dignity which indirectly actualises the provisions of chapter II of the Constitution.

This position aligns with what is obtainable in other jurisdictions. For instance, the Supreme Court of India interpreted Article 21 of the Constitution of India 1950 (right to life) to include the right to emergency medical treatment. Although the Indian Constitution originally placed health under non-justiciable Directive Principles, the Court purposively expanded the meaning of 'right to life' to encompass access to timely medical care.[22] This is also the position of South African Courts.[23]

2 National Health Act, 2014

The National Health Act, 2014 was enacted to provide a framework for the regulation, development and management of the national health system and set standards for rendering health services in the federation and for related matters. Section 23 of the Act stipulates that:

1. Every health care provider shall give a user relevant information pertaining to his state of health and necessary treatment relating to –
    a. The user's health status except in circumstances where there is substantial evidence that the disclosure of the user's health status would be contrary to the best interest of the user
    b. The range of the diagnostics procedures and treatment options generally available to the user;
    c. The benefits, risks, cost and consequences generally associated with each option; and
    d. The user's right to refuse health services and explain the implications, risks or obligations.
2. The health care provider concerned shall, where possible, inform the user in a language that the user understands and in a manner which takes into account the user's level of literacy.

Though the provisions above represent the rights of the consumers of healthcare services, they are often sacrificed on the altar of desperation. The mandatory nature of the provision which compels the health care provider to provide the above categories of information is

[21] FHC/L/CS/640/10.

[22] Paschim Banga Khet Mazdoor Samity v State of West Bengal (1996) 4 SCC 37.

[23] Minister of Health v Treatment Action Campaign 2002 (5) SA 721 (CC).

often overlooked most times for economic gains.[24] Recent investigative reporting by BBC Africa Eye documents how Nigerian women experiencing infertility have been targeted by deceptive "miracle fertility" treatments and scams, in which unverified procedures are sold on the basis of their intense desire for motherhood rather than medical oversight.[25] There are also Nigerian judicial recognition that condemn such fraudulent fertility practices as serious offences with real harm to victims.[26] In other cases, information is fraudulently represented to influence the decision of the user.[27] Section 23(2) NHA, 2014 further stresses the point of clarity of this information to the patient by directing the health care provider to ensure that this information is given to the patient in the language that he or she understands. The manner in which such information is to be given should take into account the level of literacy of the patient.

3 Medical and Dental Practitioners Act

The Medical and Dental Practitioners Act established the Medical and Dental Council of Nigeria for the registration of medical practitioners and dental surgeons and provides a disciplinary tribunal for members. Section 2 of the Act outlines the responsibilities of the council which include; determining the standards of knowledge and skill to be attained by persons seeking to become members of the medical or dental profession and reviewing those standards from time to time as circumstances may permit; securing in accordance with the provision of the Act, the establishment and maintenance of registers of persons entitled to practice as members of the medical or dental profession and the publication from time to time of lists of those persons; reviewing and preparing from time to time, a statement as to the code of conduct which the council considers desirable for the practice of the profession in Nigeria.

Looking at these provisions, it is clear that the Council is saddled with the responsibility of determining the quality of personnel to practice in the medical and dental professions in Nigeria, ensuring that people get the right standard of treatment. Although it has not issued a detailed, stand alone regulatory framework specifically governing the treatment of infertility, its general ethical and professional regulations still apply to fertility practice.

In the absence of ART rules by the Council, other bodies have issued non-binding professional guidelines. For instance, The Association for Fertility and Reproductive Health (AFRH) has developed guidelines for good ART practice for its members. These guidelines set standards for embryo transfer limits, ethical treatment of patients and clinic practices and training requirement. However, they bind only members of the association and lack statutory force. Another notable regulatory effort is from Health Facility Monitoring and Accreditation Agency (HEFAMAA) in Lagos State, which introduced guidelines regulating fertility clinics and ART practice in the state. These guidelines address: clinic registration and accreditation,

[24] Okonta, Patrick I et. al. 'Ethical Issues in the Practice of Assisted Reproductive Technologies in Nigeria; Empirical Data from Fertility Practitioners.' *African Journal of Reproductive Health,xs* vol. 22 no.33, 2018, p. 51.

[25] BBC Africa Eye, 2024 <https://www.youtube.com/watch?v=r62xSGw3kcI> Accessed 4th March,2026.

[26] Federal Republic of Nigeria v Blessing Amaka David-Agwa (Unreported-Federal High Court, Enugu Division, presided over by Justice Mohammed Garba Umar, arraigned October 22, 2024).

[27] Channels Television 'BBC Investigation Exposes Fertility Scam in Nigeria' 4th December, 2024. <https://www.google.com/search?q=Channels+Television+%E2%80%98BBC+Investigation+Exposes+Fertility+Scam+in+Nigeria%E2%80%99+4th+December%2C+2024+&sca_esv=5f99b865cd200cb6&sxsrf=AE3TifPf8JAscQLHZWrzlgmjpcFdJZOgaA%3A1758966987916&ei=y7TXaPTUN9jqhbIP7azSgAI&ved=0ahUKEwi05vHT1viPAxVYdUEAHW2WFCAQ4dUDCBE&uact=5&oq=Channels+Television+%E2%80%98BBC+Investigation+Exposes+Fertility+Scam+in+Nigeria%E2%80%99+4th+December%2C+2024+&gs_lp=Egxnd3Mtd2l6LXNlcnAiYUNoYW5uZWxzIFRlbGV2aXNpb24g4oCYQkJDIEludmVzdGlnYXRpb24gRXhwb3NlcyBGZXJ0aWxpdHkgU2NhbSBpbiBOaWdlcmlh4oCZIDR0aCBEZWNlbWJlciwgMjAyNCAyBxAjGCcY6gIyBxAjGCcY6gIyBxAjGCcY6gIyBxAjGCcY6gIyBxAjGCcY6gIyChAjGPAFGCcY6gIyBxAjGCcY6gIyChAjGPAFGCcY6gIyBxAjGCcY6gIyChAjGPAFGCcY6gIviZQhhlYhhlwAXgBkAEAmAEAoAEAqgEAuAEDyAEA-AEB-AECmAIBoAIxqAIKmAMx4gMFEgExIEDxBTyJjPssFahxkgcBMaAHALIHALgHAMIHAzQtMcgHIA&sclient=gws-wiz-serp>Accessed 27th September, 2025.

minimum facility standards and ethical oversight of ART services.though laudable, they apply only within Lagos State, not nationally leaving much to be desired. In the face of this lacuna, the three major Bills aimed at directly fertility treatment in Nigeria have lingered on the floor of the legislative houses for years. [28]

4 International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966

The International Covenant on Economic, Social and Cultural Rights, 1966 together with the Universal Declaration of Human Rights (1948) and the International Convention on Civil and Political Rights (1966) make up the International Bill of Human Rights. Within the provisions of the ICESCR, the Economic Social and Cultural (ESC) rights include the right to family protection, physical and mental health and the right to benefits of scientific process. This group of rights is considered to be essentially humanitarian and aimed at providing human beings with a right to those basic subsistence needs that make life liveable in dignity. One of the bases of this instrument which equally doubles as the undertaking of parties is:

> Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights. And, considering the obligation of states under the charter of the United Nations to promote Universal respect for, and observance of human rights and freedoms.

Thus, parties are committed to protecting and promoting these rights as well as creating the necessary environment for them to be maximized. This entail putting in place policies, infrastructures and systems that will make the attainment possible. This study is particularly interested in Article 12 of the ICESCR which provides that:

1. The states parties to the present convention recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. Steps to be taken by the states parties to achieve the full realization of this right shall include those necessary for:
   a. The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child.

Paragraph 1 above guarantees the right to the highest possible physical and mental health. The physical, social, economic mental and emotional impact of infertility on the infertile couple or individuals especially in Africa cannot be overemphasised. In Africa, children are the fabric of any society, without which no meaningful social and economic progress is considered. In many African countries, the success of marriage overlies on the ability of a woman to bear children. Reproductive challenges such as infertility results in serious psychological trauma and social stigma. In some cases, it may end up with social disgrace and exclusion, verbal and physical abuse, marital violence and breakup. This means that infertility has created situations that hinder them from enjoying these rights.

In facilitating the rights in paragraph 1 of the ICESCR, paragraph 2(a) recognizes any step taken for the purpose of reducing stillbirth-rate and infant mortality as well as the healthy development of the child. This may involve opportunities such as utilizing assisted reproductive technology (ART) to achieve conception and conception of healthy children. It

[28] The In-Vitro Fertilization Bill, 2015 SB. 127 was first read was presented to the Senate for first reading on 3rd November, 2015 while the Assisted Reproductive Technology (Regulation) Bill 2016 was first read on the 3rd of December, 2016. Both bills are yet to be passed.

provides the opportunity for individuals who are known carriers of genetic disorders and diseases such as sickle cell to have such challenges bypassed, making them reliable techniques to ensure that a child conceived will not suffer from this known health challenge. Thus, beyond living a healthy life, the infant mortality rate that is closely associated with those diseases is drastically reduced.

A model population level analysis of data from Nigeria's 2018 Demographic and Health Survey revealed that the burden of child mortality from sickle cell disease in Nigeria continues to be disproportionately higher than the burden of mortality of children without sickle cell disease. It further revealed that most of these deaths could be prevented if adequate resources were allocated, and available focused interventions were implemented.[29]

Article 15 (1) (b) of the ICESCR commits States Parties to the recognition of the right of everyone to 'enjoy the benefits of scientific progress and its applications.' ART is arguably one of the greatest advancements in the field of medicine as a whole and fertility care in particular. In fact, it has been described as the miracle of science which has transformed to a standard and common part of medical practice.[30] From the earliest attempts to understand and address infertility, to more advanced practices in ART such as sex selection, cryopreservation and pre-genetic screening represent evidence of scientific progress aimed at providing succour not just for infertile couple but as many as desire the treatments for one reason or the other. In line with the goal of reproductive justice, this provision is not just for the benefit of addressing infertility but extends to ensuring that resulting children fro fertility treatments are healthy, thus, reducing infant mortality rate.

Although the ICESCR has been ratified by Nigeria, it has not been domesticated. The ACHPR supports the protection of rights related to health and human dignity, reinforcing the obligations described in the ICESCR, particularly Articles 12 and Article 15. Through the African Charter framework, these rights can be indirectly enforced in Nigeria, including matters concerning reproductive health and access to medical innovations such as assisted reproductive technologies However, gaps in policy implementation and healthcare systems continue to limit the full realization.

5 African Charter on Human and Peoples' Rights (ACHPR)

The ACHPR established a framework for the promotion and protection of human rights in Africa within the framework of the African Union. Nigeria domesticated the Charter through the he African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983[31] giving it the force of law within Nigeria, ensuring its provisions are directly enforceable by Nigerian courts as part of national legislation. it promotes a plethora of human rights, social, economic and cultural rights as well as individual and collective rights. These rights include: right to life, right to dignity of the human person, equality of all people, right to existence and self-determination among other rights. Articles 16 and 18 which are significant to it's subject. Article 16 provides that:

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health
2. States parties to the present Charter shall take the necessary measures to protect the health of their people

[29]Obiageli E Nnodu and others 'Child mortality from Sickle Cell Disease in Nigeria: a Model-estimated, Population-level Analysis of Data from the 2018 Demographic and Health Survey.' *Lancet* vol. 8 no. 10 2021, p. 7.

[30] David, Waynfort, 'Effects of Conception Using Assisted Reproductive Technologies on Infant Health and Development: An Evolutionary Perspective and Analysis Using UK Millenium Cohort Data.' *Yale Journal of Biology and Medicine,* [2018] vol. 9 no. 3, p. 225.

[31] Cap A9, Laws of the Federation of Nigeria 2004.

> and to ensure that they receive medical attention when they are sick.

Article 16(1) of the ACHPR reproduced above guarantees the same right as article 12(1) of the ICESCR though in slightly different words. Thus, the same reasoning and comment is adopted here while Article 16 (2) of the ACHPR is also very similar to the provisions of Article 12(2) of the ICESCR. Both provisions enjoin the States Parties to do whatever is needful for the protection of the health of their citizens. As an addendum, article 16 (2) of the ACHPR urges State Parties to ensure that their citizens receive medical attention 'whenever they are sick.' The use of the word 'ensure' in this sense will imply putting in place the required legislative regimes addressing challenges of access to medical care, putting in place necessary policies to supplement the legislative regimes as well as provision of necessary physical infrastructure for medical care for all citizens irrespective of their disease.

By virtue of the fact that infertility has gained global recognition as a disease, it necessarily implies that infertile individuals seeking medical attention should properly be considered as 'sick' individuals under article 16 (2) and any measure necessary for the treatment of their respective causes of infertility should be extended to them by the state as a recognition of their right to health and the obligation of the state under article 16 of the ACHPR. However, in Nigeria, fertility treatment is considered a medical luxury and as such excluded from subsidized medical treatment for employees of both public and private institutions. In fact, fertility treatment is not available in most government owned hospitals. However, by virtue of the fact that Nigeria has domesticated the ACHPR, all its provisions are justiciable in Nigerian courts. The case of Abacha v. Fawehinmi[32] remains a landmark decision on this where the Supreme Court held the ACHPR to be part of Nigerian law, domesticated by the African Charter (Ratification and Enforcement) Act, and it is enforceable in Nigerian courts as statute law. This, and other decisions which reinforce the status of the ACHPR in Nigeria such as Incorporated Trustees of Expression Now Human Rights Initiative v. Federal Republic of Nigeria[33] make fertility rights enforceable in Nigeria.

Article 18 (1) of the ACHPR advocates for the protection of the family as the natural unit and basis of the society. It further states that the nature of such protection shall be by taking care of the physical health and mental morals of the family. Most infertile people, especially infertile women in Nigeria experience physical, emotional, psychological and social torture due to infertility.[34] Most of these conditions culminate in divorce where the challenge was experienced in a marriage setting,[35] thus disrupting the marriage union which is highly revered in Africa and Nigeria in particular.

Article 18 (3) of the ACHPR further mandates State Parties to ensure the 'elimination of every discrimination against women…' Perhaps, one of the most potent strategies to eliminate discrimination of women in Africa and Nigeria in particular is to put in place measures to address the root causes of the discriminatory practices against them rather than focusing on structures for enforcing their freedom from discrimination. Most African and particularly Nigerian cultural practices discriminate against infertile women.[36] Tackling the root causes for such discrimination will involve providing necessary and accessible treatment for infertile women.

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[32] [2000] FWLR (Pt 4) 533.

[33] (ECW/CCJ/APP/41/23) – 9 Apr 2025

[34] Ahamefule, Nwosu Innocent and Friday O., 'The Plight of Infertile Women in Nigeria.' *Journal of Policy and Development Studies,* no. 9 no. 3 2015, p. 43.

[35] Ibid.

[36] Larsen, U. et. al. 'Suffering Infertility: The Impact of Infertility on Women's Life Experiences in Two Nigerian Communities.' *Journal of Biosocial Science*, vol. 42 no. 6 2010, p.788.

6 Universal Declaration of Human Rights, 1948 (UDHR)

The Universal Declaration of Human Rights is a regime that serves as a global road map for freedom and equality, protecting the rights of every individual, everywhere. It was adopted by the United Nations in 1948 as a declaration, not a treaty. Thus, does not automatically create binding legal obligations for member states but provide useful principles that can be incorporated into domestic law to maximize fertility rights. For instance, its principles influence Nigerian constitutional and human rights jurisprudence. Many provisions in the Nigerian Constitution mirror rights contained in the UDHR.

Article 16 of the UDHR provides that 'men and women of full age without any limitation due to race, nationality or religion, have the right to marry and to found family…' Since marriage already connotes the union between a man and woman, to the mind of this researcher, the right to found a family which is recognized here is incidental to the right to marry and the right to procreate. It therefore follows that any necessary mechanism adopted to achieve this right which is not expressly forbidden by any law in force in Nigeria is valid, recognized and encouraged. Thus, treatments such as ART which are essentially targeted at making procreation possible, as well as its timing and the aftermaths can become actionable as of right if incorporated in our laws.

Article 25 of the UDHR provides that 'everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care…' The standard of living necessary for the health and well-being of individuals facing the challenge of infertility in the context of this provision will entail the necessary fertility treatment or care to address the challenge. The second part of the provision clearly recognizes 'medical care' as one of the measures to be put in place to attain the required health and well-being. Thus, in recognizing infertility as a health challenge, states which subscribed to the UDHR must ensure, by every means possible that the health and well-being of persons facing infertility is not compromised or below globally accepted standards by reason of their inability to access the necessary medical care.

Not withstanding the promising provisions of the UDHR in addressing fertility challenges, it cannot be enforced directly as a cause of action in Nigerian courts because it has not been domesticated by an Act of the National Assembly. Nigerian courts often use the UDHR as a persuasive interpretative authority, particularly when interpreting fundamental rights in Chapter IV of the Constitution or rights contained in domesticated treaties. In *Uzoukwu v Ezeonu II*[37] the Court of Appeal discussed the concept of fundamental rights and interpreted the constitutional provisions in light of international human rights norms, including the UDHR. The court emphasised that the fundamental rights provisions in the Nigerian Constitution are part of the global human rights tradition reflected in instruments like the UDHR and should be interpreted consistently with such standards.

7 Code of Medical Ethics in Nigeria

This Code was last revised in 2004. It recognizes the role of the medical practitioner as that of an adviser, a respected friend and a guardian as far as his relationship with a patient is concerned. The objectives include ensuring that Medical and Dental Practitioners subscribe to professional attitudes that represent universally accepted standards in their field of practice, obtain the required qualification and ethical standards, practice in a trustworthy manner that does not erode the confidence of patients and the society at large and maintain discipline. The Code further enjoins Medical and Dental Practitioners to be 'dedicated to providing competent medical care, with compassion and respect for human rights and dignity.' This is an implied recognition of statutes that provide for and guarantee human rights whether domestic or international. The competency of medical care has to do with provision of

[37] (1991) 6 NWLR (Pt. 200) 708.

standard and appropriate equipment, qualified medical practitioners and drugs of good quality. All these must be administered with the highest duty of care so as to protect professional integrity, guarantee patient's confidence and that of the society at large.

Although both the Universal Declaration of Human Rights and the CFRN, 1999 (as amended) guarantee human dignity, holistic consideration of section 34 of the constitution reveals a limited perspective to the concept of human dignity. The exceptions to that right as listed relate to labour and national service. Thus, limiting the perception of dignity to what one does or is made to do. It extends to an individual's sense of self-respect and of feeling worthy of respect irrespective of their physical, social or medical status.

When proper structures, systems and mechanisms are put in place to protect basic physical, social and medical needs, to a large extent the dignity of the people involved is protected because they are not exposed to situations that subject them to disrespect. In the context of this study, individuals seeking fertility care are often subjected to various disrespectful treatments both from the society and from medical practitioners irrespective of the fact that Article 3.4 of the UNDHR compels them to respect the rights of patients.[38] By Article 11.1 of the UNHDR, a physician must maintain the highest standards of professional conduct. He must not be swayed by motives of profit to influence the free and independent exercise of professional judgment on behalf of patients. He must relate honesty with patients and colleagues, and strive to expose those physicians deficient in character or competence or who engage in fraud or deception. Several accounts of fertility fraud abound in Nigeria and keep increasing by the day due to the desperation associated with infertility on the one hand and the lucrative nature of the treatment on the other.[39] No doubt, the incentive for compromising professional standards is profit making. It is however worrisome that such practices are on the increase even in the face of such provisions.

8 National Health Policy, 2016

Nations of the world achieve economic and social reforms through well-articulated development plans. This translates to public policy. This is because public policy is the government programme of action. It represents different degrees of goal articulation and regulation of government activities. Promulgated in 1988, the overall objective of Nigeria's National Health Policy is to strengthen the national health system such that it will be able to provide effective, efficient, qualitative, accessible and affordable health services that will improve the health status of Nigerians through the achievement of the health-related Millennium Development Goals (MDGs) and Sustainable Development Goals (SDGs). Some of the fundamental principles of the policy include: social justice and equity and the ideals of freedom and health care opportunity for all Nigerians. There are concerns for quality, accessibility and affordability of health care for Nigerians reflected in the policy. Article 2.2.2 of the Policy provides that;

> People have a right to equal opportunities and to good health and well-being. Interventions must take cognizance of generic, cross-cutting as well as special needs of the under-reached and vulnerable members of the population,

[38] John, Abah Anthony 'Nigerian Catholic Archbishop Concerned about Rising Trend of Women Exploitation in "fertility" Clinics' *ACI Africa* <https://www.aciafrica.org/news/17637/nigerian-catholic-archbishop-concerned-about-rising-trend-of-women-exploitation-in-fertility-clinics?utm_source=chatgpt.com.> Accessed 4/3/2026.

[39] See for instatnce the report by *The Capital* 'Outrageous! Fertility Clinics Prey On Young Females In Nigerian Universities To 'Sell' Their Eggs' <https://www.thecapital.ng/outrageous-fertility-clinics-prey-on-young-females-in-nigerian-universities-to-sell-their-eggs/?utm_source=chatgpt.com.>Accessed 5th March, 2026.

> regardless of socioeconomic status, gender, religion, ethnicity, literacy, race and location…

One of the broad objectives of the policy is to 'foster health promotion interventions targeted at addressing social determinants of health, reducing inequities and tackling priority burden of diseases in Nigeria'. There is no doubt that infertility is a major determinant of health status in Nigeria, particularly among women. Infertility in itself has been repeatedly recognized as a disease-needing health care. There are however concerns about the accessibility and affordability of fertility care in Nigeria which translates to social and ethical concerns.

Although the policy recognizes equity and access to health services, infertility care is not explicitly prioritized within the implementation framework. In practice, reproductive health programs in Nigeria tend to focus more on maternal health, family planning, and population control, leaving infertility management, especially assisted reproductive technologies largely outside mainstream public health services. This creates a disconnect between the policy's principle of equal health opportunities and the actual availability of fertility services in public facilities.

There is little evidence of dedicated budgetary provisions for infertility treatment within national or state health budgets. Most fertility services in Nigeria are delivered through private clinics, making treatment expensive and inaccessible for many citizens. Without targeted funding in health budgets, the policy's goal of affordable health care is difficult to realize for individuals experiencing infertility. Although the National Health Insurance Authority (NHIA) reforms aim to expand universal health coverage in Nigeria, infertility diagnosis and treatment are generally not comprehensively covered in the NHIA benefits package. The lack of integration between the National Health Policy goals and NHIA reimbursement structures limits financial protection for couples seeking fertility care.

While the policy aligns with global targets such as the United Nations Millennium Development Goals and Sustainable Development Goals, measurable indicators relating specifically to infertility treatment access, success rates, or service coverage are largely absent. This makes it difficult to track progress or assess whether health equity goals extend to fertility care.

Conclusion, Findings and Recommendation

Reproductive justice as a concept goes far beyond seeking treatment for infertility or the right to abortion. It is more encompassing and has within its purview issues surrounding the availability, accessibility and affordability of fertility options . It goes beyond these to post postpartum issues with regards to the health and survival of a mother and her baby or babies after birth and the quality of life of the duo in the future.

The article found that:

i. Infertility constitutes a significant reproductive justice and human rights concern in Nigeria. In Nigeria, infertility extends beyond biomedical conditions and constitute a reproductive justice issue with direct human rights implications. The physical, psychological, social, and economic consequences of infertility particularly for women demonstrate that reproductive justice is inseparable from the realization of fundamental human rights such as dignity, health, equality, and family life.

ii. Nigeria's constitutional and statutory framework does not sufficiently recognize or protect reproductive justice, especially as it relates to infertility.

iii. infertility is a major determinant of health status in Nigeria, particularly among women, affecting mental health, social well-being, marital stability, economic security, and overall quality of life. access to fertility care in Nigeria is severely limited by cost, availability, and inequity.

Accordingly, the article recommends the following short and long term reforms:

First, the government should develop a national fertility and reproductive justice policy that recognizes infertility as a disease and public health concern, integrates fertility care into national reproductive health strategies, and aligns domestic policy with Nigeria's international human rights obligations. Second, fertility services should be incorporated into public health financing, including partial coverage for diagnostics and assisted reproductive technologies through the NHIA and subsidized services in public tertiary healthcare institutions.Third, gender-responsive public health and social protection measures should be adopted, including psychosocial support for women experiencing infertility, public education campaigns to address stigma, and social protection mechanisms for women whose marital or economic security is threatened by infertility.

In the long term, constitutional reform is necessary to strengthen reproductive justice protections by making the right to health justiciable or by interpreting the constitutional rights to life and dignity to encompass access to reproductive and fertility healthcare.