

Donor Gametes Dilemma: Navigating the Legal Challenges in Nigeria's IVF Scene

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Setting the Scene: IVF Developments

The increasing demand for alternative reproductive methods has significantly advanced the field of In Vitro Fertilization (IVF). As a crucial aspect of Assisted Reproductive Technologies (ART), IVF involves extracting mature eggs from a female's ovaries, fertilizing them with sperm outside her body, and then implanting the resulting embryos back into her uterus to achieve pregnancy. This process, commonly known as "test-tube conception", has become increasingly popular in Nigeria, following its success in other developed countries.

However, as IVF clinics proliferate throughout the country, they operate in a regulatory vacuum, leading to substantial challenges that affect patient safety and the rights of intended parents. Current laws, which consist mainly of outdated statutes and broad ethical guidelines, fail to adequately address the rights of intended parents or the recognition of children born through these technologies, particularly those conceived with donor gametes.

Distinguishing Between Personal and Donor Gametes in IVF: Addressing Key Issues

In Vitro Fertilization (IVF) involves various complexities, particularly concerning the source of the gametes used in the process. Gametes are reproductive cells—sperm in males and eggs in females—that combine during fertilization to form a new organism. Gametes can either be sourced from the intended parents themselves or obtained from donors. This distinction is crucial as it raises different legal and ethical issues, especially when donor gametes are involved.

- **Personal (Intended Parent-Owned) Gametes:** When the gametes used in IVF come directly from the intended parents, the legal and ethical issues are generally more straightforward. In these cases, the intended parents are the biological parents of any resulting child, which simplifies matters of legal parentage and rights. The primary concerns usually revolve around consent and medical procedures involved.
- **Donor Gametes:** The use of donor gametes introduces a layer of complexity. Issues arise concerning the anonymity of the donor, the rights of the child to know their genetic origins, and the legal status of the donor as a parent. Additionally, the use of donor gametes can lead to ethical dilemmas about the commercialization of human reproductive materials and the potential for exploitation. The focus of this article is particularly on the challenges that arise from the use of donor gametes in IVF treatments in Nigeria.

Navigating Uncertain Waters: The Nigerian Legal Framework for IVF

In Nigeria, IVF has been accessible since the birth of the first Nigerian "test-tube baby," on February 11, 1989, at the Lagos University Teaching Hospital (LUTH). However, despite over three decades since this significant medical achievement, Nigeria still does not have a specific legal framework governing IVF.

Efforts to regulate IVF in Nigeria have been intermittent. The Assistive Reproductive Technology (Regulation) Bill, introduced in 2016, has not yet been passed, resulting in significant regulatory gaps. Lagos State has taken a lead with its 2019 ART guidelines, but other states are yet to follow suit. Existing regulations like the Medical and Dental Practitioners Act¹ and the Code of Medical Ethics² do provide some standards, and the Lagos Health Facility Monitoring and Accreditation Agency (HEFAMAA)³ requires health facilities, including fertility clinics, to register and undergo inspections. Nevertheless, these measures fall short of addressing the unique complexities of IVF and other ARTs.

This lack of regulation in Nigeria stands in stark contrast to the approach in countries such as the United States, the United Kingdom, Spain, the Czech Republic, and India, where comprehensive laws govern IVF. For example, the UK's Human Fertilisation and Embryology Act (HFEA) of 2008 enforces strict licensing, consent requirements, and limits on embryo storage, enhancing transparency and protecting the rights of donor-conceived individuals.⁴ While some ART centers in Nigeria follow the UK HFEA guidelines, these standards have not been fully adapted to suit the Nigerian context, highlighting the urgent need for tailored legal frameworks that ensure safe, ethical, and regulated ART practices nationwide.

Legal Limbo: Is IVF Legally Recognized in Nigeria?

IVF operates in a legal gray area in Nigeria, where it is neither explicitly prohibited nor formally recognized, due to the absence of specific regulatory frameworks. The Constitution of the Federal Republic of Nigeria 1999 (as amended) ("CFRN") does not address the use of ARTs directly. However, the right to procreate is often interpreted as a fundamental right under Section 37 of the CFRN, which protects the right to private and family life.⁵ This interpretation aligns with Article 16(1) of the Universal Declaration of Human Rights 1948, which states that

¹ Medical and Dental Practitioners Act, Cap M8, Laws of the Federation of Nigeria 2004.

² Medical and Dental Council of Nigeria, 'Code of Medical Ethics in Nigeria' (2008) <<https://www.mdcnigeria.org/downloads/code-of-conducts.pdf>> accessed June 15, 2024.

³ Lagos State Government, 'Health Facility Monitoring and Accreditation Agency (HEFAMAA) Guidelines'

⁴ Human Fertilisation and Embryology Act 2008

⁵ Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

individuals have the right to marry and start a family, irrespective of race, nationality, or religion.⁶

According to the World Health Organization, reproductive rights extend to the ability of individuals and couples to make informed and autonomous decisions about childbearing, including the number, spacing, and timing of their children, with access to appropriate information and methods that ensure optimal sexual and reproductive health. These rights also include protection against discrimination, coercion, and violence in making reproductive decisions.⁷ The right to procreation has been recognized in international legal decisions, such as the Indian case of *B. K. Parthasarathi v Government of Andhra Pradesh*,⁸ where the Andhra Pradesh High Court upheld "the right of reproductive autonomy" as integral to an individual's "right to privacy."

While international legal precedents provide valuable perspectives, they are not binding on Nigerian courts. Nevertheless, they could influence debates on the constitutionality of IVF. Moreover, Section 17(3)(d) and (h) of the CFRN directs the federal government to provide adequate medical care and promote family life,⁹ which can be interpreted to support the recognition of IVF, suggesting a potential entitlement to reasonable access to IVF treatments. Although these constitutional provisions cannot compel the government to provide these services, they do not restrict individuals from seeking such treatments independently.

Addressing Risks for Intended Parent-Owned (Personal) Gametes in IVF

Personal gametes in IVF come with inherent risks primarily related to the proper and ethical execution of medical procedures. Although these risks are generally fewer than those involving donor gametes, they include:

1. **Mismanagement or Misuse:** There is a need to vigilantly monitor and protect against possible mismanagement or misuse, such as laboratory mix-ups due to errors in handling or labeling.
2. **Consent and Information Issues:** It is crucial to ensure that the intended parent(s) provide informed consent, which includes understanding all potential risks and outcomes of the IVF procedure.

⁶ Universal Declaration of Human Rights (adopted 10 December 1948, UNGA Res 217 A(III)) art 16(1).

⁷ 'World Health Organisation' < https://en.wikipedia.org/wiki/World_Health_Organisation > Accessed June 15, 2024.

⁸ AIR 2000 AP 156.

⁹ Section 17 (3)(d) and (h) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

3. **Storage and Handling:** Proper storage and handling of gametes are critical to prevent quality deterioration that could compromise the success of the IVF process.

While using personal gametes typically involves fewer ethical concerns, stringent oversight and proactive legal measures are essential to secure a successful IVF outcome. To mitigate risks, individuals using personal gametes must maintain comprehensive documentation and open communication with IVF providers, regularly monitor clinic practices, and establish legal safeguards through contracts with the IVF clinics to protect against procedural errors or negligence.

Addressing Legal Risks for Donor Gametes in IVF

The use of donor gametes in IVF poses significant legal and ethical challenges, especially in Nigeria where there is no comprehensive legal framework governing IVF. Children born from donor gametes are not automatically recognized as the offspring of the intended parents. This gap necessitates specific legal actions to establish and protect parental rights effectively. Here are essential steps for families using donor gametes:

1. **Comprehensive Legal Documentation:** It is crucial to back all IVF processes with detailed consent forms, agreements involving donor gametes, and comprehensive medical and legal records. This documentation forms a protective foundation, clarifying the rights and responsibilities of all parties involved.
2. **Proactively Establish Parental Rights:** Although donors typically relinquish any parental rights when they provide gametes, these arrangements need clear definition and legal structure to avoid future disputes. In Nigeria, where specific laws are lacking, intended parents must take proactive legal steps to affirm their parental rights. This includes obtaining a custody order after the child's birth, which legally confirms the intended parents' status and safeguards their rights.
3. **Prompt and Proper Birth Registration:** It is crucial to register the child's birth accurately and promptly. The birth certificate should list the intended parents correctly to establish legal parenthood under Nigerian law.
4. **Stay Informed of Legal Developments:** The legal landscape around IVF may change as new discussions emerge and potential laws are enacted. Keeping informed about these developments is essential for individuals to ensure that their IVF journey complies with the latest legal standards and protections.

By implementing these measures, individuals using donor gametes can significantly enhance their legal safeguards, ensuring that both their rights and those of their children are well-protected throughout the process.

Cross-Border IVF: Citizenship Challenges for Children Conceived with Foreign Donor Gametes

Using non-Nigerian donor gametes in IVF presents unique challenges, particularly regarding the citizenship of the resulting children. The CFRN does not specifically address the citizenship status of children born through IVF, potentially leaving these children stateless if not properly managed. However, under Section 25(1) of the CFRN, a child's citizenship is derived from their parents.¹⁰ Therefore, as long as at least one of the intended parents is a Nigerian citizen and a parental custody order has been obtained in favour of the intended parent, the child is entitled to Nigerian citizenship.

The Call for IVF Legislation in Nigeria

The absence of specific IVF regulations in Nigeria results in legal uncertainties, the risk of substandard practices, and complex issues surrounding parental rights when donor gametes are used. There is a pressing need for comprehensive legal reforms to ensure that IVF practices are ethical, safe, and effectively regulated. Such legislation should clearly define regulatory oversight for IVF clinics and practitioners, enforce strict qualifications and licensing to maintain high standards of care, and outline the legal status and rights of the intended parent(s) and children born through IVF. Additionally, it should include mechanisms for resolving disputes related to parental rights or problems with IVF clinics, providing a comprehensive framework for ARTs in Nigeria.

Guiding Families Through IVF's Legal Journey

At SimmonsCooper Partners, we understand the legal complexities involved in IVF treatments, particularly within Nigeria's uncertain landscape. To address this, we have a specialized advisory service designed to assist individuals and couples as they navigate the IVF process. To discuss IVF-related legal services or any other related family law services, please do not hesitate to contact Funmilola Mesaiyete at lola.mesaiyete@scp-law.com; or Oluwadara Omoyele at oluwadara.omoyele@scp-law.com.

¹⁰ Section 25(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).