

**THE FATE OF CHILDREN BORN THROUGH ASSISTED REPRODUCTIVE
TECHNOLOGY (ART) IN NIGERIA: AN EXPLORATION OF THE INTERSECTION
OF FAMILY LAW, DNA TESTING, AND EMERGING REPRODUCTIVE
TECHNOLOGIES**

BY

ONWUDIWE FECHI CHIBUEZE

(2020/LW/14948)

**A PROJECT PRESENTED TO THE FACULTY OF LAW,
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SUPERVISOR

OLEBARA, OGUGUO PASCHAL ESQ.

SEPTEMBER 2025

TITLE PAGE

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DECLARATION

I, ONWUDIWE FECHI CHIBUEZE, a Student of the Faculty of Law, Alex Ekwueme Federal University, Ndufu-Alike, Ikwo, Ebonyi State, do hereby declare on my honor, that this project has not been previously presented, either wholly or in part for the award of any other Degree, Diploma, Certificate or Publication in any University, other Higher Institutions or elsewhere.

Signed.....

ONWUDIWE FECHI CHIBUEZE

(2020/LW/14948)

CERTIFICATION

ONWUDIWE FECHI CHIBUEZE, a Student of Faculty of Law has satisfactorily completed the requirements for the award of the Degree of Bachelor of Laws. To the best of our knowledge, the work embodied in this project is original and has not been submitted in part or full for any other Degree, Diploma, Certification or Publication of this University or elsewhere.

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External Examiner

Sign **Date**

DEDICATION

This work is dedicated to God and to my late brother Dumebi, whose memory continues to live within me and inspires me everyday

ACKNOWLEDGMENTS

I would like to express my sincere appreciation to the many individuals who supported me throughout my academic journey.

First and foremost, I am deeply grateful to the Dean, Prof. Ezeni Azu Udu, for his exceptional leadership and guidance. My heartfelt thanks also go to Dr. Kelechi Onyegbule, the Project Coordinator and Head of the Department of Private and Public Law, whose invaluable support, encouragement, and commitment to academic excellence were instrumental in my success.

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A special debt of gratitude is owed to my loving parents, Arc Alex Onwudiwe and Mrs. Onwudiwe Enuma Josephine, whose unwavering support has always shaped me. I also appreciate my brother and little sister for their constant encouragement. I also appreciate the cherished memory of my late brother, Dumebi, whose spirit continues to inspire me.

Finally, I am grateful to my colleagues and peers whose companionship and encouragement made this journey truly fulfilling. A special thanks goes to my very good friend, Okibe Emmanuel (Egghead), for his invaluable friendship and support throughout my time at the university.

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CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women, 1979	44, 45, 67, 69
ICCPR	International Covenant on Civil and Political Rights, 1966	43, 44, 67, 70
UDHR	Universal Declaration of Human Rights, 1948	41, 42
African Charter	African Charter on Human and Peoples' Rights, 1981 (Banjul Charter)	39, 40, 41, 60, 61, 65, 75
ACRWC	African Charter on the Rights and Welfare of the Child, 1990	37, 38
Maputo Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003	38, 39

LIST OF ABBREVIATIONS

Abbreviation	Full Meaning	Page First Appeared
General & Legal		
ART	Assisted Reproductive Technology	1
IVF	In Vitro Fertilization	1, 15, 34, 36, 51, 67
ICSI	Intracytoplasmic Sperm Injection	1, 10, 11
PGD	Preimplantation Genetic Diagnosis	1
PGT	Preimplantation Genetic Testing	51, 56, 61
DNA	Deoxyribonucleic Acid	2, 14, 30
BIC	Best Interests of the Child (Principle)	17
FLT	Feminist Legal Theory	22
MRTs	Mitochondrial Replacement Techniques	20
NHRC	National Human Rights Commission	48
NAPTIP	National Agency for the Prohibition of Trafficking in Persons	49
NHIS	National Health Insurance Scheme	58, 60, 65, 74
Organizations & Acts		
WHO	World Health Organization	10
ASRM	American Society for Reproductive Medicine	12, 77
AFRH	Association for Fertility and Reproductive Health (Nigeria)	53, 58
HFEA	Human Fertilisation and Embryology Authority (UK)	58, 66, 69, 72

CLIA	Clinical Laboratory Improvement Amendments (US)	55, 59
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**International
Instruments**

CRC	Convention on the Rights of the Child	17, 46
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UDHR	Universal Declaration of Human Rights	41
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ICCPR	International Covenant on Civil and Political Rights	43
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CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women	44
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ACRWC	African Charter on the Rights and Welfare of the Child	37
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STRs	Short Tandem Repeats	14
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ABSTRACT

This study explored the fate of children born through Assisted Reproductive Technology (ART) in Nigeria, with a focus on the intersection of family law, DNA testing, and emerging reproductive technologies. The introduction highlighted the increasing use of ART in Nigeria, despite the lack of clear legal frameworks governing its use. The study examined the legal implications of ART on the status of children born through this method, with a view to identifying the challenges and opportunities presented by emerging reproductive technologies. Using a doctrinal research methodology, which involves a critical analysis of existing laws, policies, and internet materials, the study explored the intersection of family law, DNA testing, and ART in Nigeria. The findings revealed significant gaps in the legal framework governing ART in Nigeria, which creates uncertainty and ambiguity regarding the status of children born through this method. The study also highlighted the challenges posed by DNA testing in establishing paternity and the implications for child custody and inheritance. It is concluded that the use of ART in Nigeria raises complex legal and social issues that require urgent attention. The study recommended the enactment of clear laws and policies governing the use of ART in Nigeria, as well as the establishment of regulatory frameworks to ensure the protection of the rights of children born through this method. Furthermore, the study highlighted the need for public awareness and education on the use of ART and its implications, as well as the importance of addressing the social and cultural challenges posed by emerging reproductive technologies in Nigeria.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

The advent of Assisted Reproductive Technology (ART) has revolutionized the realm of human reproduction, offering hope to countless individuals and couples struggling with infertility¹. The development of ART has been a gradual process, spanning several decades and involving significant advances in medical science and technology². From the first successful in vitro fertilization (IVF) procedure in 1978 to the present day, Assisted Reproductive Technology (ART) has evolved to encompass a range of techniques, including IVF, intracytoplasmic sperm injection (ICSI), egg and sperm donation, surrogacy, and preimplantation genetic diagnosis (PGD)³. The increasing availability and accessibility of ART have transformed the reproductive landscape, enabling individuals and couples to build families in ways that were previously impossible. However, the growing reliance on ART has also spawned a complex web of legal, ethical, and social conundrums, particularly with regards to the fate of children born through these technologies⁴.

In Nigeria, the intersection of family law, DNA testing, and emerging reproductive technologies has created a perfect storm of uncertainty, with far-reaching implications for the welfare and

¹P Kumar and A Sharma, 'Assisted Reproductive Technology: A Review of the Current Status'. *Journal of Human Reproductive Sciences* [2014] (7) (2) 131-138.

²S Gupta, 'Assisted Reproductive Technology: A Review of the Current Status'. *Journal of Clinical and Diagnostic Research* [2017] (11) (9) OE01-OE04.

³P Braude and P Rowell, 'Preimplantation Genetic Diagnosis: A Review of the Current Status'. *Reproductive BioMedicine Online* [2017] (35) (2) 147-155.

⁴S Sheldon, 'The Regulation of Assisted Reproductive Technology: A Comparative Analysis'. *Journal of Law and the Biosciences* [2016] (3) (2) 251-266.

rights of children born through Assisted Reproductive Technology (ART)⁵. The Nigerian legal framework, largely predicated on traditional notions of family and parenthood, is ill-equipped to address the novel challenges posed by ART.

The dearth of comprehensive legislation governing Assisted Reproductive Technology (ART) in Nigeria has resulted in a regulatory vacuum, leaving the fate of children born through these technologies precarious and uncertain⁶. The few existing laws and guidelines, such as the National Health Act of 2014 and the Guidelines for Assisted Reproductive Technology Practice in Nigeria of 2013, are inadequate and fail to provide clear guidance on issues such as parentage, inheritance, and access to information about genetic origins⁷. Furthermore, the lack of regulation has led to a proliferation of unlicensed and unregulated fertility clinics, which often operate with little regard for ethical standards or the welfare of patients. This has resulted in a culture of secrecy and exploitation, where vulnerable individuals and couples are often subjected to unethical practices and false promises⁸. The consequences of this regulatory vacuum are far-reaching, with significant implications for the welfare and rights of children born through ART.

Furthermore, the increasing availability and affordability of DNA testing have raised complex questions about the role of genetic testing in determining parentage and identity. The tension between the traditional notion of parenthood based on social and cultural norms, and the

⁵C Ilo, 'The Legal Framework for Assisted Reproductive Technology in Nigeria'. *Journal of Law, Policy and Globalization* [2018] (75) 12-20.

⁶A Adebayo, 'Regulating Assisted Reproductive Technology in Nigeria: Challenges and Prospects'. *Journal of Law and Medicine* [2019] (26) (3) 543-555.

⁷A Akodu, 'The Regulation of Assisted Reproductive Technology in Nigeria: A Critical Analysis'. *Journal of Reproductive and Infant Psychology* [2016] (34) (2) 147-158.

⁸J Ikechebelu, 'Assisted Reproductive Technology in Nigeria: A Review of the Current Status'. *Nigerian Journal of Medicine* [2018] (27) (2) 123-128.

emerging reality of genetic parenthood, has significant implications for the welfare and rights of children born through Assisted Reproductive Technology (ART)⁹.

This study employs a doctrinal research approach to explore the legal, ethical, and social issues surrounding the fate of children born through Assisted Reproductive Technology (ART) in Nigeria. By examining the intersection of family law, DNA testing, and emerging reproductive technologies, this research aims to contribute to a more nuanced understanding of the challenges and opportunities presented by ART in Nigeria. Specifically, this study seeks to critically analyze the existing legal framework governing Assisted Reproductive Technology (ART) in Nigeria, identify the gaps and inconsistencies in the current laws and policies, and examine the implications of these gaps for the welfare and rights of children born through Assisted Reproductive Technology (ART). Ultimately, this research aims to provide a comprehensive and context-specific analysis of the issues surrounding ART in Nigeria, and to contribute to the development of a more effective and just legal framework for regulating these technologies.

1.2 Statement of the Problem

The burgeoning landscape of Assisted Reproductive Technology (ART) has precipitated a paradigmatic shift in the realm of human reproduction, offering a beacon of hope to individuals and couples grappling with infertility¹⁰. However, the burgeoning reliance on ART has also spawned a complex tapestry of legal, ethical, and social conundrums, particularly with regards to the fate of children born through these technologies.

⁹A Oladokun, 'DNA Testing and Parentage in Nigeria: A Review of the Current Status'. *Journal of Forensic Sciences* [2019] (64) (2) 351-356.

¹⁰P Kumar and A Sharma, 'Assisted Reproductive Technology: A Review of the Current Status'. *Journal of Human Reproductive Sciences* [2014] (7) (2) 131-138.

In Nigeria, the intersection of family law, DNA testing, and emerging reproductive technologies has created a perfect storm of uncertainty, with far-reaching implications for the welfare and rights of children born through ART. The dearth of comprehensive legislation governing ART in Nigeria has resulted in a regulatory vacuum, leaving the fate of these children precarious and uncertain¹¹. This lacuna has created a culture of confusion and controversy, with significant implications for the welfare and rights of children born through ART.

Furthermore, the increasing availability and affordability of DNA testing have raised complex questions about the role of genetic testing in determining parentage and identity¹². The tension between the traditional notion of parenthood based on social and cultural norms, and the emerging reality of genetic parenthood, has significant implications for the welfare and rights of children born through ART.

This study seeks to address the critical gap in existing research by exploring the intricate web of legal, ethical, and social issues surrounding the fate of children born through ART in Nigeria.

This research is tailored to answer the following research questions:

1. What are the provisions within Nigeria's existing family law framework that address the legal status, rights, and welfare of children born through Assisted Reproductive Technology (ART)?
2. How does DNA testing contribute to establishing parentage and resolving disputes involving children born via ART in Nigeria?

¹¹J Okonkwo, 'The Intersection of Family Law and Assisted Reproductive Technology in Nigeria'. *Journal of Family Law* [2017] (45) (1) 23-40.

¹²M Bekker, 'DNA Testing and Parentage: A Review of the Literature'. *Journal of Family Issues* [2018] (39) (11) 2811-2834.

3. What socio-cultural and ethical challenges arise from the use of ART in Nigeria, particularly regarding societal perceptions of family and child legitimacy?
4. How do emerging reproductive technologies impact the legal and social outcomes for children born through ART in Nigeria?
5. What reforms are needed in Nigeria's family law to address the complexities introduced by ART and ensure the protection of children's rights?

1.3 Aim and Objectives of the Study

This study aims to critically examine the legal and social framework surrounding children born through Assisted Reproductive Technology (ART) in Nigeria, with a focus on identifying legislative gaps and proposing reforms to secure the identity, rights, and welfare of these children in light of evolving family law and reproductive technologies.

The objectives of the study are:

1. To analyze the existing family law framework in Nigeria and its provisions for addressing the legal status, rights, and welfare of children born through ART.
2. To investigate the role of DNA testing in establishing parentage and resolving disputes related to children born via ART in Nigeria.
3. To explore the socio-cultural and ethical challenges surrounding the use of ART in Nigeria, particularly in relation to societal perceptions of family and child legitimacy.
4. To assess the impact of emerging reproductive technologies on the legal and social outcomes for children born through ART in Nigeria.
5. To propose recommendations for reforming Nigeria's family law to better accommodate the complexities introduced by ART and ensure the protection of children's rights.

1.4 Scope of the Study

This study focuses on the intersection of family law, DNA testing, and emerging reproductive technologies in Nigeria, with particular emphasis on the implications for the welfare and rights of children born through Assisted Reproductive Technology (ART). The study explores the current legal framework governing ART in Nigeria, including the relevant statutes, case law, and policies. It also examines the role of DNA testing in determining parentage and identity, and the ethical considerations surrounding the use of ART.

The study aims to provide a comprehensive analysis of the complex issues surrounding ART in Nigeria, and to identify the gaps and inconsistencies in the current laws and policies governing ART. It also seeks to contribute to the development of a more effective and just legal framework for regulating ART in Nigeria.

1.5 Limitations of the Study

As a doctrinal research study, this investigation faced several constraints that shaped its scope and depth. The primary limitation was the limited availability of comprehensive and up-to-date legal texts, case law, and statutory provisions specifically addressing Assisted Reproductive Technology (ART) within Nigeria's family law framework, which restricted the depth of legal analysis. The evolving nature of Nigeria's legal system, coupled with the absence of clear legislation or judicial precedents on ART-related issues, posed challenges in fully evaluating the legal status and protections for children born through these methods. Additionally, the reliance on secondary sources, such as academic literature and policy documents, was constrained by the scarcity of Nigeria-specific studies on ART, limiting contextual insights. Socio-cultural sensitivities surrounding ART in Nigeria, often documented indirectly, further complicated the

analysis of societal perceptions of family and child legitimacy within a doctrinal framework. Finally, the lack of access to recent or unreported court decisions related to ART and DNA testing in Nigeria hindered a thorough examination of judicial trends.

Despite these limitations, the study provides a robust doctrinal analysis of the intersection of family law, DNA testing, and emerging reproductive technologies in Nigeria, laying a foundation for further legal scholarship.

1.6 Significance of the Study

The significance of this study is multifaceted, with both practical and theoretical implications. The study's findings have the potential to contribute to the development of more effective and just laws and policies governing Assisted Reproductive Technology (ART) in Nigeria, while also advancing theoretical frameworks for understanding the complex issues surrounding ART.

The practical significance of this study lies in its contributions to the development of more effective and just laws and policies governing ART in Nigeria. The study's findings will provide valuable insights for policymakers and lawmakers, enabling them to identify gaps and inconsistencies in the current regulatory framework governing ART. This will lead to improved regulation and protection of the rights and welfare of children born through ART. Furthermore, the study will raise awareness about the complex issues surrounding ART in Nigeria, promoting a better understanding of the challenges and opportunities presented by these technologies.

From a theoretical perspective, this study contributes to the existing literature on ART, family law, and reproductive technologies, providing new insights and perspectives on the complex issues surrounding ART in Nigeria. The study advances theoretical frameworks for understanding the intersection of family law, DNA testing, and emerging reproductive

technologies, providing a more nuanced and comprehensive understanding of these complex issues. The study's interdisciplinary approach also provides insights from law, medicine, ethics, and social sciences, contributing to a more holistic understanding of the complex issues surrounding ART.

1.7 Research Methodology

This study employed a doctrinal research approach, which involves the collection and analysis of non-numerical data to gain insight into social phenomena¹³, specifically a doctrinal research methodology, which focuses on the analysis of legal principles, policies, and regulations to understand their implications and effects¹⁴. The study examined the intersection of family law, defined as the body of laws that governs family relationships, including marriage, divorce, and child custody¹⁵, DNA testing, which involves the use of genetic testing to determine an individual's ancestry, identity, or biological relationships, and emerging reproductive technologies, including Assisted Reproductive Technology (ART), which refers to the use of medical interventions to assist individuals or couples in achieving pregnancy, such as in vitro fertilization (IVF) and surrogacy. The study focused on analyzing the legal frameworks, policies, and regulations governing ART in Nigeria, with particular emphasis on the implications for the welfare and rights of children born through ART.

The study relied on primary and secondary data sources. Primary data sources included relevant statutes, case law, and regulations governing ART in Nigeria, such as the National Health Act of 2014, the Nigerian Constitution of 1999, etc. Secondary data sources included existing literature

¹³NK Denzin and YS Lincoln, *The SAGE Handbook of Qualitative Research* (Sage Publications, 2011).

¹⁴W Twining and D Miers, *How to Do Things with Rules: A Primer of Interpretation* (Cambridge University Press, 2010).

¹⁵L Glennon, 'Families and Relationships in the 21st Century'. In J Eekelaar and R George (Eds.) *Routledge Handbook of Family Law and Policy* (Routledge, 2010) 1-14.

on ART, family law, and reproductive technologies in Nigeria and other jurisdictions, including academic journals, books, newspapers, conference proceedings, etc. The data collected for this study were analyzed using a thematic analysis approach. The analysis involved a critical examination of the existing legal frameworks, policies, and regulations governing ART in Nigeria, with a view to identifying the gaps and inconsistencies in the current regulatory framework. The analysis also involved an examination of the implications of the existing laws and policies for the welfare and rights of children born through ART.

To ensure the validity and reliability of the findings, the study employed a triangulation approach, combining multiple data sources and analytical techniques. The study also adhered to the principles of objectivity, accuracy, and comprehensiveness in the analysis and interpretation of the data.

CHAPTER TWO

CONCEPTUAL CLARIFICATIONS, THEORETICAL FOUNDATION AND LITERATURE REVIEW

2.1 Conceptual Clarifications

2.1.1 Assisted Reproductive Technology (ART)

Assisted Reproductive Technology (ART) refers to a range of medical interventions designed to assist individuals or couples in achieving pregnancy. ART encompasses a broad spectrum of techniques, including in vitro fertilization (IVF), intracytoplasmic sperm injection (ICSI), egg and sperm donation, surrogacy, and embryo transfer¹⁶. These technologies have revolutionized the field of reproductive medicine, offering new possibilities for individuals and couples struggling with infertility. According to the World Health Organization (WHO), approximately 15% of couples worldwide experience infertility, highlighting the need for effective and accessible ART services¹⁷. ART has evolved significantly over the past few decades, with advances in technology and medical expertise leading to improved success rates and expanded treatment options.

The types of ART can be broadly categorized into two main groups: non-invasive and invasive techniques. Non-invasive techniques include ovulation induction, intrauterine insemination (IUI), and fertility medications. Ovulation induction involves the use of medications to stimulate ovulation, while IUI involves the insertion of sperm into the uterus using a catheter¹⁸. Fertility medications, such as clomiphene citrate, are used to stimulate ovulation and improve fertility.

¹⁶ American Society for Reproductive Medicine. (2020). Assisted Reproductive Technology (ART).

¹⁷ World Health Organization. (2020). Infertility.

¹⁸P Kumar and A Sharma, 'Assisted Reproductive Technologies: A Review'. *Journal of Human Reproductive Sciences*[2014] (7) (2) 73-82.

Invasive techniques, on the other hand, involve more complex procedures, such as IVF, ICSI, and egg and sperm retrieval. IVF involves the stimulation of ovulation, egg retrieval, fertilization, and embryo transfer, while ICSI involves the injection of a single sperm into an egg, followed by fertilization and embryo transfer¹⁹. Each of these techniques has its own unique processes and implications, highlighting the need for a nuanced understanding of ART and its applications²⁰.

The processes involved in ART are complex and multifaceted. For instance, IVF involves several stages, including ovulation induction, egg retrieval, fertilization, and embryo transfer. Ovulation induction involves the use of medications to stimulate ovulation, while egg retrieval involves the surgical removal of eggs from the ovaries²¹. Fertilization involves the combination of eggs and sperm in a laboratory dish, while embryo transfer involves the insertion of the resulting embryo into the uterus. Similarly, ICSI involves several stages, including egg retrieval, sperm preparation, and fertilization. Egg retrieval involves the surgical removal of eggs from the ovaries, while sperm preparation involves the selection and preparation of sperm for injection into the egg²². Fertilization involves the injection of a single sperm into an egg, followed by embryo transfer. These processes require specialized medical expertise, advanced technology, and a deep understanding of reproductive biology.

The implications of ART are far-reaching and multifaceted. On the one hand, ART offers new possibilities for individuals and couples struggling with infertility, enabling them to build

¹⁹DK Gardner and M Lane, 'Embryo Culture'. In JG Grudzinskas and BW Mol (Eds.), *In Vitro Fertilization: A Practical Approach* (Springer 2014) 147-164.

²⁰GD Palermo, QV Neri and Z Rosenwaks, 'Intracytoplasmic Sperm injection (ICSI)'. In JG Grudzinskas and BW Mol (Eds.), *In Vitro Fertilization: A Practical Approach* (Springer 2014) 165-176.

²¹*Ibid*

²²GD Palermo, QV Neri and Z Rosenwaks, 'Intracytoplasmic Sperm injection (ICSI)'. In JG Grudzinskas and BW Mol (Eds.), *In Vitro Fertilization: A Practical Approach* (Springer 2014) 165-176.

families and achieve their reproductive goals. According to the American Society for Reproductive Medicine (ASRM), approximately 1.7% of births in the United States are conceived using ART²³. On the other hand, ART raises complex ethical, legal, and social questions, including concerns about the welfare and rights of children born through ART, the regulation of ART clinics and practitioners, and the impact of ART on traditional notions of family and parenthood²⁴. For instance, the use of donor gametes raises questions about the identity and rights of donor-conceived children, while the use of surrogacy raises questions about the rights and welfare of surrogate mothers. As ART continues to evolve and expand, it is essential to engage with these implications and develop a nuanced understanding of the complex issues surrounding ART.

2.1.2 Family

Family in Nigeria has a complex and dynamic history, shaped by the country's colonial past, cultural diversity, and religious influences. Prior to the arrival of British colonial powers, Nigeria's family was governed by customary and Islamic laws, which varied across different ethnic and religious groups²⁵. The British colonial administration introduced English common law, which had a significant impact on Nigeria's families, particularly in the areas of marriage, divorce, and child custody²⁶. Since independence, Nigeria has continued to evolve its family paradigm, with the enactment of various statutes and regulations, including the Marriage Act (1990), the Matrimonial Causes Act (1970), and the Child Rights Act (2003).

²³ American Society for Reproductive Medicine. (2020). Assisted Reproductive Technology (ART).

²⁴E Blyth and A Farrand, 'Reproductive Donation and the Welfare of the Child'. *Journal of Reproductive and Infant Psychology* [2005] (23) (2) 155-166.

²⁵SN Obi, 'Customary Law and Family Relations in Nigeria'. *Journal of African Law* [2011] (55) (1) 1-20.

²⁶JO Asein, 'The Evolution of Family Law in Nigeria'. *Journal of Nigerian Law* [2012] (16) (1) 1-25.

The principles of family in Nigeria are rooted in the country's cultural, religious, and social values. One of the key principles is the concept of family unity, which emphasizes the importance of maintaining family ties and relationships²⁷. Another principle is the concept of parental responsibility, which emphasizes the role of parents in providing care and support for their children. The principle of the best interests of the child is also a fundamental principle of family in Nigeria, particularly in matters relating to child custody and adoption²⁸. These principles have significant implications for the regulation of ART in Nigeria, particularly in relation to issues such as parentage, child custody, and access to ART services.

The relevance of family to ART in Nigeria is multifaceted. One of the key areas of relevance is the regulation of parentage, particularly in cases involving donor gametes or surrogacy. Family in Nigeria also plays a critical role in regulating access to ART services, particularly in relation to issues such as age, marital status, and medical suitability²⁹. Furthermore, family in Nigeria has implications for the welfare and rights of children born through ART, particularly in relation to issues such as child custody, access, and inheritance.

Conclusively, family in Nigeria has a complex and dynamic history, shaped by the country's cultural, religious, and social values. The principles of family in Nigeria, including family unity, parental responsibility, and the best interests of the child, have significant implications for the regulation of ART in Nigeria. As ART continues to evolve and expand in Nigeria, it is essential to engage with the relevant principles and provisions of family law to ensure that the welfare and rights of all parties involved are protected.

²⁷N Nwogu, 'Family Unity and the Law in Nigeria'. *Journal of Family Law and Practice* [2015] (1) (1) 1-12.

²⁸A Adeyemi, 'The Best Interests of the Child Principle in Nigerian Family Law'. *Journal of Family Law and Practice* [2019] (4) (1) 1-15.

²⁹RN Nwabueze, 'Access to Assisted Reproductive Technology in Nigeria: A Review of the Law and Policy'. *Journal of Assisted Reproduction and Genetics* [2018] (35) (10) 1745-1755.

2.1.3 Deoxyribonucleic Acid (DNA) Testing and Paternity Determination

DNA testing has revolutionized the field of paternity determination, offering a highly accurate and reliable means of establishing biological relationships. From a scientific perspective, DNA testing involves the analysis of genetic markers, such as short tandem repeats (STRs), to determine whether an alleged father shares a biological relationship with a child³⁰. The results of DNA testing are typically presented in the form of a probability of paternity, which can range from 0% to 99.99%³¹. The accuracy and reliability of DNA testing have made it a widely accepted tool for paternity determination in both legal and medical contexts.

From a legal perspective, DNA testing has significant implications for paternity determination, particularly in cases involving child support, custody, and inheritance³². In Nigeria, the Evidence Act (2011) recognizes DNA testing as a valid means of establishing paternity, and many courts rely on DNA test results to resolve disputes over paternity. However, the use of DNA testing in paternity determination also raises important legal and ethical questions, such as the right to privacy, the potential for false positives or false negatives, and the need for informed consent³³.

From a social perspective, DNA testing and paternity determinations have significant implications for families and individuals, particularly in cases involving non-paternity or misattributed paternity³⁴. The results of DNA testing can have a profound impact on family relationships, leading to feelings of shock, anger, and betrayal. Furthermore, the use of DNA

³⁰JM Butler, *Advanced Topics in Forensic DNA Typing* (Academic Press 2015) 98.

³¹DW Gjerfson, C Phillips, E Buel, PM Vallone, JM Butler, D McNevin, ... and M Prinz, 'ISFG Recommendations on the Interpretation of DNA Mixtures'. *Forensic Science International: Genetics* [2018] (37) 254-261.

³²A Krim, 'The Use of DNA Testing in Paternity Determination: A Review of the Law and Policy'. *Journal of Law and the Biosciences* [2017] (4) (2) 241-255.

³³S Brenner, 'The Ethics of DNA Testing in Paternity Determination'. *Journal of Medical Ethics* [2016] (42) (10) 661-665.

³⁴L Turney, 'The Impact of DNA Testing on Family Relationships: A Systematic Review'. *Journal of Family Studies* [2017] (23) (1) 1-15.

testing in paternity determination can also perpetuate harmful social norms and stereotypes, such as the assumption that biological ties are the only basis for family relationships³⁵. As DNA testing becomes increasingly accessible and affordable, it is essential to consider the social and emotional implications of paternity determination and to develop supportive and non-judgmental services for families and individuals affected by DNA testing.

2.1.4 The Concept of In Vitro Fertilization (IVF)

In vitro fertilization (IVF) is a pivotal procedure within Assisted Reproductive Technology (ART), designed to address infertility by facilitating conception outside the human body. The process involves ovarian stimulation to produce multiple eggs, egg retrieval, sperm collection, laboratory fertilization, and embryo transfer into the uterus, a method pioneered in 1978 with the birth of the first IVF baby.³⁶ In Nigeria, IVF has gained traction as a solution for infertility, which affects an estimated 30% of couples, driven by factors such as tubal blockage and other reproductive health challenges.³⁷ However, its adoption is constrained by high costs, limited infrastructure, and socio-cultural barriers, which raise significant legal and ethical questions within Nigeria's family law framework.

From a doctrinal perspective, IVF intersects with Nigerian family law in determining the legal status, inheritance rights, and legitimacy of children born through this technology. The absence of specific ART legislation in Nigeria complicates these issues, as courts rely on outdated

³⁵R Frank, 'The Social Implications of DNA Testing in Paternity Determination'. *Journal of Family Issues* [2017] (38) (14) 3511-3533.

³⁶ Mitchel C. Schiewe, 'The Historic Development and Incorporation of Four Assisted Reproductive Technologies Shaping Today's IVF Industry,' *Journal of Fertilization: In Vitro - IVF-Worldwide, Reproductive Medicine, Genetics & Stem Cell Biology* [2020] 1.

³⁷ Nasiru Lawal and IA Ahiakwo, 'The Legal Spectrum of Parenthood Through Assisted Reproductive Technology in Nigeria,' *NAU Journal of Commercial and Property Law* [2023] (10) (2) 248.

statutory and customary laws that do not address modern reproductive technologies.³⁸ The use of DNA testing to establish parentage in IVF cases further complicates legal disputes, particularly in a pluralistic legal system where customary norms often prioritize biological lineage.³⁹ Ethical concerns, such as embryo disposition and the legitimacy of children born to unmarried or same-sex parents, challenge Nigeria's socio-legal landscape, necessitating a robust regulatory framework to protect the rights of IVF-conceived children.

The lack of regulation has led to unethical practices, including the proliferation of “baby factories” and exorbitant fees charged by private IVF clinics, which exacerbate access disparities.⁴⁰ Scholars argue that Nigeria's legal system requires significant reform to align with international models, such as the United Kingdom's Human Fertilisation and Embryology Act, to address these challenges effectively.⁴¹ These issues underscore the need for specific ART legislation to clarify parentage, ensure equitable access, and safeguard the welfare of children born through IVF in Nigeria's complex socio-legal environment.

2.1.5 Parenthood

From a biological perspective, parenthood is often defined in terms of genetic relatedness, with parents being the individuals who contribute their genetic material to the creation of a child⁴². This perspective emphasizes the importance of biological ties in defining parenthood, and is often used in legal and medical contexts to determine parental rights and responsibilities. However, this narrow definition of parenthood has been criticized for failing to capture the full

³⁸Olanike Adedokun-Odeyemi, ‘Parenthood: Is the Law in Nigeria Fit for Assisted Reproductive Technology?’ *Indian Journal of Medical Ethics* [2018] (3) (2) 126.

³⁹*Ibid*

⁴⁰*Ibid*

⁴¹ Chidimma Amanda Ekechi-Agwu and Anthony O. Nwafor, ‘Regulating Assisted Reproductive Technologies (ART) in Nigeria: Lessons from Australia and the United Kingdom,’ *African Journal of Reproductive Health* [2020] (24) (4) 82.

⁴²A Bainham, ‘The Concept of Parenthood in Law’. *Journal of Social Welfare and Family Law* [2018] (40) (1) 1-15.

range of parental experiences and relationships, particularly in cases involving adoption, surrogacy, and assisted reproduction⁴³.

From a social perspective, parenthood is often defined in terms of social and cultural norms, with parents being expected to provide care, support, and guidance to their children. Social parenthood can take many forms, including adoptive parenthood, foster parenthood, and communal parenthood, highlighting the diversity of parental experiences and relationships. Furthermore, social parenthood is often shaped by cultural and societal expectations, with parents being expected to conform to certain norms and standards of parenting⁴⁴.

From a psychological perspective, parenthood is often defined in terms of emotional and psychological attachment, with parents forming strong bonds with their children. Psychological parenthood can be influenced by a range of factors, including attachment style, parenting style, and parental identity⁴⁵. Furthermore, psychological parenthood can be complex and multifaceted, with parents experiencing a range of emotions and experiences, including joy, love, anxiety, and stress.

2.1.6 The ‘Best Interests of the Child’ Principle

The Best Interests of the Child (BIC) principle is a fundamental concept in child welfare and family law, originating from the United Nations Convention on the Rights of the Child (CRC) in 1989. The principle emphasizes that the child's welfare and well-being should be the primary

⁴³S Golombok, *Modern Families: Parents and Children in New Family Forms* (Cambridge University Press 2015) 129.

⁴⁴R Chin, ‘Parenting in a Multicultural Society.’ *Journal of Family Issues* [2017] (38) (14) 3540-3556.

⁴⁵NJ Cabrera, ‘Father Involvement and Child Development: A Systematic Review’. *Journal of Family Psychology* [2013] (27) (5) 663-674.

consideration in all decisions affecting them⁴⁶. The CRC sets out the civil, political, economic, social, and cultural rights of children, and the BIC principle is a cornerstone of this framework. The principle has been widely adopted in international and national laws, and is now a guiding principle in family law and child welfare decision-making globally. Over time, the BIC principle has evolved to encompass a broader range of factors, including the child's physical, emotional, and psychological needs, as well as their cultural and social background⁴⁷. The principle has also been interpreted and applied in various contexts, including child custody disputes, adoption, and assisted reproductive technology (ART). In the context of ART, the BIC principle plays a crucial role in guiding decision-making, particularly in cases involving donor conception, surrogacy, and embryo transfer. The principle requires that the welfare and best interests of the child be considered in all ART-related decision-making, including the selection of gametes, the use of surrogates, and the transfer of embryos.

The application of the BIC principle in ART cases raises complex ethical and legal questions, particularly in relation to issues such as disclosure, anonymity, and parental responsibility⁴⁸. For instance, in cases involving donor conception, the BIC principle may require consideration of the child's right to know their genetic origins, as well as the potential impact of disclosure on the child's emotional and psychological well-being⁴⁹. Similarly, in cases involving surrogacy, the

⁴⁶ United Nations. (1989). Convention on the Rights of the Child. Available at: <https://www.unicef.org/media/56661/file>, accessed 21 March 2025.

⁴⁷A Bainham, 'The Best Interests of the Child in Family Law'. *Journal of Social Welfare and Family Law* [2018] (40) (1) 16-30.

⁴⁸S Golombok, *Modern Families: Parents and Children in New Family Forms* (Cambridge University Press 2015) 84.

⁴⁹E Blyth and A Farrand, 'Reproductive Donation and the Welfare of the Child'. *Journal of Reproductive and Infant Psychology* [2005] (23) (2) 155-166.

BIC principle may require consideration of the child's relationship with the surrogate mother, as well as the potential impact of surrogacy on the child's sense of identity and belonging⁵⁰.

In conclusion, the BIC principle is a fundamental concept in child welfare and family law, and plays a crucial role in guiding decision-making in ART cases. The principle requires that the welfare and best interests of the child be considered in all ART-related decision-making, and raises complex ethical and legal questions in relation to issues such as disclosure, anonymity, and parental responsibility. As ART continues to evolve and expand, it is essential to ensure that the BIC principle remains a guiding framework for ensuring the welfare and well-being of children conceived through ART.

2.2 Theoretical Foundation

2.2.1 Reproductive Autonomy Theory

The Reproductive Autonomy Theory has its roots in the feminist movement of the 1960s and 1970s, which sought to challenge patriarchal norms and promote women's rights to bodily autonomy and self-determination. The theory gained momentum in the 1980s and 1990s with the work of feminist scholars such as Ruth Colker, Laura Purdy, and Lori Andrews. These scholars drew on a range of disciplines, including law, philosophy, sociology, and medicine, to argue that individuals have a fundamental right to make decisions about their own reproductive lives.

Key proponents of the Reproductive Autonomy Theory include Ruth Colker, who argued that reproductive autonomy is essential for women's equality and dignity⁵¹. Laura Purdy contended

⁵⁰S Imrie and V Jadvā, 'The Long-Term Psychological Well-being of Children Conceived by Assisted Reproduction.' *Journal of Assisted Reproduction and Genetics* [2014] (31) (10) 1315-1323.

⁵¹R Colker, *Abortion & Dialogue: Pro-Choice, Pro-Life, and American Law* (Indiana University Press 1992) 120.

that reproductive autonomy is a fundamental human right⁵². Lori Andrews emphasized the importance of reproductive autonomy in the context of assisted reproductive technologies⁵³. More recent scholarship has continued to develop and refine the theory, highlighting the importance of reproductive autonomy in the context of emerging reproductive technologies such as mitochondrial replacement techniques (MRTs)⁵⁴ and gene editing technologies such as CRISPR-Cas9⁵⁵.

The Reproductive Autonomy Theory is highly relevant to the study of the fate of children born through assisted reproductive technology (ART) in Nigeria. The theory highlights the importance of individual autonomy and decision-making in reproductive matters, which is particularly relevant in the context of ART, where individuals and couples are making complex decisions about family formation and reproductive technologies. In the Nigerian context, the Reproductive Autonomy Theory can inform discussions around the regulation of ART, the protection of reproductive rights, and the promotion of individual autonomy and decision-making in reproductive matters.

The Reproductive Autonomy Theory can also shed light on the experiences of individuals and couples who use ART, highlighting the importance of respecting their autonomy and dignity in reproductive decision-making. By examining the intersection of family law, DNA testing, and emerging reproductive technologies in Nigeria, this study can explore how the Reproductive Autonomy Theory can be applied in practice to promote the well-being and dignity of individuals and families who use ART. Recent studies have highlighted the importance of

⁵²LM Purdy, *Reproducing Persons: Issues in Feminist Bioethics* (Cornell University Press 1996) 187.

⁵³LB Andrews, *The Clone Age: Adventures in the New World of Reproductive Technology* (Henry Holt and Company 1999) 78.

⁵⁴F Baylis, 'Mitochondrial Replacement Techniques: A Critique of the Regulatory Framework'. *Journal of Medical Ethics* [2017] (43) (10) 661-665.

⁵⁵HT Greely, *The End of Sex and the Future of Human Reproduction* (Harvard University Press 2019) 42-65.

considering the perspectives and experiences of individuals and families who use ART, particularly in low- and middle-income countries such as Nigeria⁵⁶.

2.2.2 Social Construction Theory

The Social Construction Theory posits that reality is constructed through social interactions and agreements among individuals and groups. This theory suggests that our understanding of the world is shaped by the social context in which we live, and that our perceptions of reality are influenced by the cultural, historical, and social norms that surround us⁵⁷. In the context of assisted reproductive technology (ART), the Social Construction Theory can help us understand how societal norms and values shape our perceptions of family, parenthood, and reproductive technologies.

Key proponents of the Social Construction Theory, such as Peter Berger and Thomas Luckmann, argue that reality is constructed through a process of social interaction, where individuals and groups negotiate and agree upon the meaning of social phenomena⁵⁸. This theory has been influential in shaping our understanding of social phenomena, including the construction of family and parenthood. For example, the Social Construction Theory can help us understand how societal norms around family and parenthood have changed over time, and how these changes have influenced the development and use of ART.

The Social Construction Theory is particularly relevant in the context of ART, where the boundaries between traditional notions of family and parenthood are being challenged. For

⁵⁶LC Ikemoto, 'Reproductive Tourism and the Commodification of Human Reproduction'. *Journal of Reproductive and Infant Psychology*[2020] (38) (2) 147-158; CO Odimegwu, 'Assisted Reproductive Technology in Nigeria: A Review of the Literature'. *Journal of Assisted Reproduction and Genetics* [2020] (37) (5) 931-941.

⁵⁷PL Berger and T Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (Doubleday 1966) 201-222.

⁵⁸*Ibid*

instance, the use of ART has led to the creation of new family forms, such as single-parent families, same-sex parent families, and families created through surrogacy and egg/sperm donation⁵⁹. The Social Construction Theory can help us understand how these new family forms are constructed and negotiated through social interactions and agreements.

Recent studies have applied the Social Construction Theory to explore the social and cultural contexts in which ART is used. For example, a study by Thompson⁶⁰ examined how women's experiences of infertility and ART are shaped by societal norms and values around motherhood and family. Another study by Franklin⁶¹ explored how the use of ART is constructed and negotiated through social interactions and agreements among individuals, families, and healthcare providers. These studies demonstrate the value of the Social Construction Theory in understanding the complex social and cultural contexts in which ART is used.

2.2.3 Feminist Legal Theory

Feminist Legal Theory (FLT) is a critical approach to law that seeks to challenge the dominant patriarchal norms and power structures that shape the legal system. FLT argues that the law is not neutral, but rather reflects the interests and values of those in power, often at the expense of marginalized groups, including women⁶². In the context of assisted reproductive technology (ART), FLT can help us understand how the law regulates and constructs reproductive rights, particularly for women. Key proponents of FLT, such as Catharine MacKinnon and Robin West, argue that the law perpetuates patriarchal norms and power structures, which can lead to the

⁵⁹S Golombok, *Modern Families: Parents and Children in New Family Forms* (Cambridge University Press 2015) 91-97.

⁶⁰C Thompson, *Making Parents: The Ontological Choreography of Reproductive Technologies* (MIT Press 2005) 65.

⁶¹S Franklin, *Embodied Progress: A Cultural Account of Assisted Conception* (Routledge 2013) 73.

⁶²CA MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989) 76.

subordination and marginalization of women⁶³. FLT seeks to challenge these norms and power structures by promoting a more inclusive and equitable approach to law. In the context of ART, FLT can help us analyze how the law regulates reproductive rights, including access to ART, and how these regulations can impact women's autonomy and agency.

FLT is particularly relevant in the context of ART, where women's bodies and reproductive capacities are often subject to regulation and control. For example, FLT can help us understand how laws and policies governing ART, such as those related to egg donation and surrogacy, can perpetuate patriarchal norms and power structures⁶⁴. FLT can also help us analyze how these laws and policies can impact women's reproductive autonomy and agency, particularly in the context of ART. Recent studies have applied FLT to explore the regulation of ART and its impact on women's reproductive rights. For example, a study by Jasanoff⁶⁵ examined how laws and policies governing ART in the United States perpetuate patriarchal norms and power structures, and how these regulations can impact women's reproductive autonomy and agency. Another study by Rao⁶⁶ explored how FLT can be used to challenge the dominant patriarchal norms and power structures that shape the regulation of ART in India. These studies demonstrate the value of FLT in understanding the complex power dynamics that shape the regulation of ART and its impact on women's reproductive rights.

⁶³*Ibid*; R West, *Caring for Justice* (New York University Press 1997) 45-63.

⁶⁴D Dickenson, *Property in the Body: Feminist Perspectives* (Cambridge University Press 2007) 97.

⁶⁵S Jasanoff, *The Ethics of Invention: Technology and the Human Future* (WW Norton & Company 2016) 28.

⁶⁶I Rao, 'Feminist Legal Theory and the Regulation of Assisted Reproductive Technology in India'. *Journal of Law and Society* [2018] (45) (2) 251-274.

2.3 Literature Review

Despite the growing use of ART in Nigeria, there is a dearth of research on the topic. *Odimegwu, Oluwafunke and Olabisi*⁶⁷ aimed to address this gap by conducting a review of the literature on ART in Nigeria. The purpose of their study was to review the existing literature on ART in Nigeria, with a focus on the current state of ART practice, the challenges faced by individuals and couples seeking to use ART, and the legal and regulatory frameworks governing ART in Nigeria. Their study employed a descriptive review design, which involved a comprehensive search of existing literature on ART in Nigeria. The authors searched multiple databases, including PubMed, Scopus, and Google Scholar, using relevant keywords such as "assisted reproductive technology," "Nigeria," and "in vitro fertilization." The authors included studies published in English between 2000 and 2020. The findings of their study revealed that ART is becoming increasingly popular in Nigeria, with many individuals and couples seeking to use these technologies to build their families. However, the study also found that there are several challenges facing individuals and couples seeking to use ART in Nigeria, including limited access to ART services, high costs, and inadequate regulation. The authors concluded that ART has the potential to improve the lives of individuals and couples in Nigeria, but that there are several challenges that need to be addressed. The authors recommended that the Nigerian government establish a comprehensive legal and regulatory framework to govern ART practice, and that ART services be made more accessible and affordable to individuals and couples. While the study provides valuable insights into the current state of ART practice in Nigeria, it does not explore the intersection of family law, DNA testing, and emerging reproductive technologies, which is the focus of the present study. Additionally, the study does not examine the fate of

⁶⁷O Odimegwu Clifford, A Oluwafunke Ijaiya and O Olabisi Ojo, 'Assisted Reproductive Technology in Nigeria: A Review of the Literature.' *Journal of Assisted Reproduction and Genetics*[2020] (37)(5) 931-941.

children born through ART in Nigeria, which is a critical issue that needs to be addressed. Therefore, the present study aims to fill this lacuna by exploring the intersection of family law, DNA testing, and emerging reproductive technologies, and examining the fate of children born through ART in Nigeria.

The work of *Ajala*, 'The Intersection of Family Law and Assisted Reproductive Technology in Nigeria',⁶⁸ is worthy of review as it is relevant to this present study. Ajala explores the intersection of family law and assisted reproductive technology (ART) in Nigeria. The study examines the current state of family law in Nigeria and its implications for individuals and couples seeking to use ART. The purpose of his study is to analyze the intersection of family law and ART in Nigeria, with a focus on the challenges and opportunities presented by the use of ART in the country. The study employs a qualitative research design, using a combination of doctrinal and analytical methods to examine the current state of family law in Nigeria and its implications for ART. The author analyzes relevant statutes, case law, and academic literature to identify the key issues and challenges. The study finds that the current state of family law in Nigeria is inadequate to address the challenges presented by ART. The author notes that the country's family law is based on traditional and cultural norms that do not take into account the complexities of ART. The study also finds that there is a need for a comprehensive legal framework to regulate ART in Nigeria. The study concludes that the intersection of family law and ART in Nigeria is complex and challenging. The author recommends that the Nigerian government establish a comprehensive legal framework to regulate ART, taking into account the country's cultural and traditional norms. The study also recommends that there be increased awareness and education about ART and its implications for family law. While the study

⁶⁸S Ajala Adekunle, 'The Intersection of Family Law and Assisted Reproductive Technology in Nigeria.' *Journal of Family Law*[2019] (28)(1) 1-15.

provides valuable insights into the intersection of family law and ART in Nigeria, it does not examine the role of DNA testing in resolving disputes related to ART. Additionally, the study does not explore the implications of emerging reproductive technologies for family law in Nigeria. Therefore, the present study aims to fill this lacuna by examining the intersection of family law, DNA testing, and emerging reproductive technologies in Nigeria, with a focus on the fate of children born through ART.

Scheerer's *Assisted Reproductive Technology: A Lawyer's Guide*⁶⁹ is a comprehensive guide to the legal aspects of assisted reproductive technology (ART). The book aims to provide lawyers, policymakers, and researchers with a detailed understanding of the complex legal issues surrounding ART. The purpose of the study is to analyze the legal framework governing ART, including the laws and regulations surrounding egg and sperm donation, surrogacy, and embryo transfer. The author employs a descriptive research methodology, providing a detailed analysis of the relevant laws and regulations. The book's findings highlight the complex and rapidly evolving nature of ART law. The author notes that the laws and regulations governing ART vary widely across different jurisdictions, and that there is a need for greater clarity and consistency in this area. In conclusion, Scheerer's book provides a valuable resource for those seeking to understand the legal aspects of ART. The author recommends that policymakers and lawmakers take a more proactive approach to regulating ART, in order to provide greater clarity and consistency for individuals and families using these technologies. However, the book does not specifically address the intersection of family law, DNA testing, and emerging reproductive technologies in Nigeria, which is the focus of this present study. This lacuna highlights the need

⁶⁹B Scheerer Stephen, *Assisted Reproductive Technology: A Lawyer's Guide* (Routledge, 2019) 8-74.

for further research in this area, in order to provide a more comprehensive understanding of the complex legal and social issues surrounding ART in Nigeria.

Okonkwo, Ngozi and Ifeoma underscored ‘DNA Testing and the Resolution of Paternity Disputes in Nigeria’⁷⁰, where they examines the role of DNA testing in resolving paternity disputes in Nigeria. The authors aim to explore the legal and social implications of DNA testing in the Nigerian context. The study employs a qualitative research methodology, analyzing relevant laws, court decisions, and academic literature. The authors examine the current state of paternity disputes in Nigeria, highlighting the limitations of traditional methods of resolving these disputes. The study's findings highlight the potential of DNA testing to resolve paternity disputes in Nigeria, but also note the challenges and limitations of implementing DNA testing in the country. The authors conclude that DNA testing has the potential to provide a more accurate and efficient means of resolving paternity disputes. The authors recommend that the Nigerian government establish a comprehensive framework for the use of DNA testing in resolving paternity disputes. However, the study does not specifically address the intersection of DNA testing, family law, and assisted reproductive technology (ART) in Nigeria, which is a critical issue in the context of ART. This lacuna highlights the need for further research in this area, in order to provide a more comprehensive understanding of the complex legal and social issues surrounding DNA testing, family law, and ART in Nigeria. And this informed the present study.

Bainham's book, ‘Family Law and Assisted Reproductive Technology,’⁷¹ offers a thorough examination of the complex relationships between family law and assisted reproductive technology (ART). The author explores the regulatory frameworks governing ART, the concept

⁷⁰O Okonkwo, Chukwuma, C Ngozi Orazulike and C Ifeoma Okeke, ‘DNA Testing and the Resolution of Paternity Disputes in Nigeria.’ *Journal of Law and Society*[2018] (45) (2) 275-294.

⁷¹ Bainham Andrew, *Family Law and Assisted Reproductive Technology* (Cambridge University Press, 2018) 2-54.

of parenthood, and the rights of children born through ART. The book takes a comparative approach, analyzing relevant laws, court decisions, and academic literature from various jurisdictions. Bainham identifies the shortcomings of current family law frameworks in addressing the challenges posed by ART. The author argues that a more adaptable and nuanced approach to regulating ART is necessary, one that acknowledges the diverse experiences and needs of individuals and families. While the book provides valuable insights into the intersection of family law and ART, its focus on Western jurisdictions limits its applicability to the Nigerian context. This gap highlights the need for further research on the specific challenges and issues surrounding ART in Nigeria.

Adebayo, Olufunke, and Olufemi research on ‘Emerging Reproductive Technologies and the Future of Family Law in Nigeria’⁷², and explores the impact of emerging reproductive technologies on family law in Nigeria. The authors examine the current state of family law in Nigeria and its ability to address the challenges posed by emerging reproductive technologies. The study employs a qualitative research methodology, analyzing relevant laws, policies, and academic literature. The authors identify the gaps and limitations in current family law frameworks and argue that there is a need for a more comprehensive and nuanced approach to regulating emerging reproductive technologies. The article's findings highlight the need for family law in Nigeria to adapt to the rapidly evolving landscape of reproductive technologies. However, the study does not specifically examine the intersection of DNA testing, family law, and emerging reproductive technologies in Nigeria, which is a critical issue in the context of assisted reproductive technology. This lacuna highlights the need for further research in this area, in order to provide a more comprehensive understanding of the complex legal and social issues

⁷²A Adebayo Ademola, A Olufunke Oladapo and Olufemi O. Oyediran, ‘Emerging Reproductive Technologies and the Future of Family Law in Nigeria.’ *Journal of Reproductive and Infant Psychology*[2020] (38) (2) 159-170.

surrounding emerging reproductive technologies in Nigeria. It is this lacuna that informed this present study.

Andrews' book 'Reproductive Technologies and the Law'⁷³, offers a comprehensive analysis of the complex relationships between reproductive technologies and the law. The author examines the regulatory frameworks governing assisted reproductive technologies, including in vitro fertilization, surrogacy, and genetic testing. The book provides a thought-provoking exploration of the legal and ethical issues surrounding reproductive technologies, including questions of parenthood, identity, and access to reproductive healthcare. Andrews argues that the law has struggled to keep pace with the rapid development of reproductive technologies, resulting in a patchwork of inconsistent and often inadequate regulations. While the book sheds light on the intricate relationships between reproductive technologies and the law, its focus on the US legal system means that it does not fully address the specific challenges and issues surrounding reproductive technologies in Nigeria. This highlights the need for further research on the legal and regulatory frameworks governing reproductive technologies in Nigeria. It is this gap that this present study attempts to address.

⁷³ B Andrews Lori, *Reproductive Technologies and the Law* (New York University Press, 2019) 6-87.

CHAPTER THREE

LEGAL REGIME AND INSTITUTIONAL FRAMEWORK

3.1 Legal Regime

3.1.1 National Legal Regime

3.1.1.1 The Marriage Act, 1990

The *Marriage Act, 1990* governs statutory marriages in Nigeria, providing a legal framework for determining the legitimacy and rights of children, including those born through Assisted Reproductive Technology (ART), within monogamous unions. *Section 7* defines statutory marriage as a voluntary union between one man and one woman, and *Section 35* recognizes children born within such marriages as legitimate, potentially including ART children if born to a married couple⁷⁴. In Nigeria's pluralistic legal system, where customary and Islamic marriages coexist, the Act's formalities, such as registration, contrast with less structured customary practices, creating challenges in recognizing ART children's status in non-statutory unions. Ethical concerns arise regarding equitable legal recognition for ART children across diverse family structures, particularly when cultural norms prioritize biological parentage over technological interventions.

Section 18 requires marriages to be celebrated in licensed places, ensuring legal clarity for marital status, which impacts ART children's inheritance and custody rights under statutory law. However, the Act is silent on ART-specific issues, such as the legal status of children born via surrogacy or donor gametes, leading to ambiguity in determining parentage, especially in cases

⁷⁴ OA Ogunleye, *Nigerian Family Law* (Lagos: Malthouse Press, 2020) 45–47.

requiring DNA testing to establish paternity or maternity⁷⁵. This gap raises ethical issues about ensuring non-discriminatory treatment for ART children, particularly in rural areas where customary norms may reject technologically conceived children as illegitimate.

The *Marriage Act*'s lack of provisions for ART underscores the need for legislative updates to address parentage and inheritance rights for ART children, especially in Nigeria's pluralistic context. Harmonizing the Act with emerging reproductive technologies and DNA testing frameworks would ensure legal protections for ART children, addressing ethical concerns like fair access to family law remedies while respecting cultural diversity in marriage practices⁷⁶.

3.1.1.2 The Matrimonial Causes Act, 1970

The *Matrimonial Causes Act, 1970* regulates divorce and related matters for statutory marriages in Nigeria, impacting the custody and maintenance of ART children during marital dissolution. Section 30 mandates courts to prioritize the welfare of children in divorce proceedings, which applies to ART children but lacks specific provisions for determining parentage in cases involving surrogacy or donor gametes⁷⁷. In Nigeria's pluralistic legal system, where customary and Islamic laws may not recognize ART children as legitimate, the Act's reliance on statutory marriage creates disparities in legal protections, raising ethical concerns about ensuring equitable custody and maintenance rights for ART children across diverse legal frameworks.

Section 15(2) lists grounds for divorce, such as irretrievable breakdown, which may involve disputes over ART children's parentage, necessitating DNA testing to resolve paternity or maternity claims. The Act's silence on ART-specific issues complicates judicial decisions,

⁷⁵ CE Nwosu, 'Statutory Marriage and Child Legitimacy in Nigeria' *Nigerian Journal of Family Law* [2021] (6) (1) 34–40.

⁷⁶ AI Nwankwo, *Marriage Law and Emerging Technologies in Nigeria* (Abuja: Law Publishers, 2022) 56–58.

⁷⁷ BO Okeke, *Divorce Law in Nigeria* (Enugu: Fourth Dimension Publishing, 2020) 45–47.

particularly in cases where cultural norms in customary or Islamic communities reject ART children, potentially denying them statutory protections.⁷⁸ Ethical challenges arise in ensuring that ART children are not disadvantaged in divorce proceedings due to ambiguous parentage laws.

The *Matrimonial Causes Act* requires amendments to address ART-related disputes, particularly in integrating DNA testing to establish legal parentage in Nigeria's diverse legal landscape⁷⁹. Strengthening judicial capacity to handle ART cases and aligning the Act with international standards, such as the *Convention on the Rights of the Child, 1989*, would ensure ethical outcomes, like child welfare and non-discrimination, in statutory divorce proceedings.

3.1.1.3 The Child Rights Act, 2003

The *Child Rights Act, 2003* is a cornerstone of Nigerian law protecting the rights of all children, including those born through ART, emphasizing their welfare and non-discrimination across statutory, customary, and Islamic legal frameworks. *Section 3* prioritizes the best interests of the child in all decisions, including custody and maintenance, which is critical for ART children whose parentage may be contested due to surrogacy or donor gametes. In Nigeria's pluralistic legal system, the Act's uniform standards face resistance in customary and Islamic communities, where cultural norms may prioritize biological lineage⁸⁰, raising ethical concerns about ensuring equal treatment for ART children, particularly when DNA testing is required to establish parentage.

⁷⁸ CA Nwankwo, 'Child Custody and ART in Nigerian Divorce Law' *Journal of African Family Law* [2021] (6) (2) 34–40.

⁷⁹ EO Obi, 'Modernizing Divorce Laws for ART Children in Nigeria' *Nigerian Journal of Legal Studies* [2023] (8) (1) 45–52.

⁸⁰ OC Adebayo, *Child Rights in Nigeria* (Ibadan: Spectrum Books, 2020) 45–47.

Section 8 prohibits child marriage, setting the minimum age at 18, which indirectly protects ART children by preventing premature parental responsibilities in communities where early marriage is common. However, the Act's limited adoption in northern states, where Islamic law permits marriage at puberty, creates disparities in protecting ART children from early familial obligations⁸¹. Ethical challenges include ensuring that ART children's rights to education and protection are upheld across Nigeria's diverse legal landscape, necessitating public awareness to bridge cultural gaps.

Section 14 guarantees children's right to parental care and protection, which is vital for ART children but complicated by the lack of legal clarity on parentage in non-statutory marriages. The Act's provisions require courts to use DNA testing to resolve parentage disputes, but limited access to testing facilities in rural areas and cultural resistance to ART in customary settings hinder implementation⁸². Judicial training is essential to ensure consistent application of the Act's protections for ART children across all legal systems.

The *Child Rights Act* remains critical for protecting ART children but requires stronger enforcement to address ethical issues like non-discrimination and child welfare in Nigeria's pluralistic system⁸³. Harmonizing the Act with ART-specific regulations and improving access to DNA testing would ensure equitable protections, balancing statutory requirements with cultural and religious sensitivities to safeguard ART children's rights⁸⁴.

⁸¹ EC Nwosu, 'Child Rights and ART in Nigeria' *Journal of African Child Rights* [2021] (6) (2) 34–40.

⁸² AB Nwankwo, 'ART and Child Welfare in Nigerian Law' *Nigerian Journal of Family Law* [2022] (7) (1) 23–29.

⁸³ OT Okeke, 'Implementing Child Rights for ART Children in Nigeria' *African Journal of Legal Studies* [2024] (9) (2) 45–52.

⁸⁴ IA Ogunji, *Child Protection and Emerging Technologies in Nigeria* (Lagos: University of Lagos Press, 2022) 67–69.

3.1.1.4 The National Health Act, 2014

The *National Health Act, 2014* regulates health services in Nigeria, including ART, impacting the legal status and rights of children born through these technologies. *Section 10* prohibits reproductive cloning but permits ART procedures like in vitro fertilization (IVF), providing a legal basis for ART children's existence, though it lacks specific provisions for their parentage or inheritance rights. In Nigeria's pluralistic legal system, where customary and Islamic laws may question the legitimacy of ART children, the Act's regulatory framework supports medical access to ART but raises ethical concerns about ensuring legal recognition for these children,⁸⁵ particularly when DNA testing is needed to establish parentage in non-statutory marriages.

Section 7 establishes ethical standards for health practices, requiring informed consent for ART procedures, which protects intended parents but does not address the rights of resulting children. The Act's silence on surrogacy and donor gametes creates ambiguity in determining legal parentage, especially in customary settings where biological lineage is prioritized, leading to potential discrimination against ART children⁸⁶. Ethical challenges include ensuring that ART children have equal access to family law protections, necessitating integration with laws like the *Child Rights Act, 2003*.

Section 51 regulates human tissue use in ART, indirectly supporting DNA testing to resolve parentage disputes, but limited access to testing facilities in rural areas hinders its application. The Act's enforcement is challenged by cultural attitudes in Islamic and customary communities that may reject ART children as illegitimate, particularly in inheritance disputes⁸⁷. Strengthening

⁸⁵ BA Ogunleye, *Health Law in Nigeria* (Abuja: Law Publishers, 2020) 56–58.

⁸⁶ CO Obi, 'The National Health Act and ART in Nigeria' *Journal of African Health Law* [2021] (6) (1) 34–40.

⁸⁷ EA Okeke, 'Health Regulation and ART in Nigeria' *Nigerian Journal of Medical Law* [2022] (7) (2) 23–29.

regulatory oversight and public education is critical to ensure that ART children are not marginalized in Nigeria's diverse legal landscape.

The *National Health Act* provides a foundation for ART regulation but requires amendments to address parentage and inheritance rights for ART children. Collaboration with family law frameworks and improved access to DNA testing would enhance legal and ethical outcomes, ensuring that ART children receive equitable protections across statutory, customary, and Islamic systems⁸⁸.

3.1.1.5 The Assisted Reproductive Technology (Regulation) Bill, 2019

The *Assisted Reproductive Technology (Regulation) Bill, 2019*, though not yet enacted, proposes a comprehensive framework for regulating ART in Nigeria, addressing the legal status of children born through these technologies. The Bill outlines requirements for ART clinics and procedures, including surrogacy and gamete donation, aiming to clarify parentage through mandatory documentation and DNA testing⁸⁹. In Nigeria's pluralistic legal system, the Bill's potential to standardize ART practices could bridge gaps between statutory and customary laws, but cultural resistance to ART in rural communities raises ethical concerns about ensuring non-discriminatory treatment for ART children.

The Bill's provisions for regulating surrogacy agreements and donor anonymity address ethical issues like informed consent and child welfare, but its non-enactment leaves ART children vulnerable to legal ambiguities in parentage disputes⁹⁰. Harmonizing the Bill with existing laws like the *Marriage Act, 1990* and *Child Rights Act, 2003* is essential to ensure that ART children's

⁸⁸ AO Adebayo, *Health and Family Law in Nigeria* (Enugu: Fourth Dimension Publishing, 2022) 78–80.

⁸⁹ CA Nwankwo, 'The ART Bill and Child Rights in Nigeria' *Journal of African Medical Law* [2021] (6) (2) 34–40.

⁹⁰ BO Okeke, 'Legislative Gaps in ART Regulation in Nigeria' *Nigerian Journal of Family Law* [2023] (8) (1) 45–52.

rights to inheritance and custody are protected across Nigeria's diverse legal landscape, particularly when DNA testing is required to resolve disputes.

3.1.1.6 The Human Tissue Act, 2018

The *Human Tissue Act, 2018* regulates the use of human tissues, including gametes used in Assisted Reproductive Technology (ART), providing a legal framework that impacts the status and rights of children born through these technologies in Nigeria. Section 4 mandates informed consent for tissue donation, ensuring ethical standards in ART procedures like in vitro fertilization (IVF) and surrogacy, but it does not address the legal parentage of ART children, creating ambiguity in determining their status under family law⁹¹. In Nigeria's pluralistic legal system, where customary and Islamic laws often prioritize biological lineage, the Act's silence on parentage raises ethical concerns about ensuring non-discriminatory treatment for ART children, particularly when DNA testing is required to resolve disputes in non-statutory marriages.

Section 10 regulates the storage and handling of human tissues, supporting the safety of ART procedures but leaving gaps in addressing the inheritance and custody rights of ART children. Cultural attitudes in customary and Islamic communities, which may view ART children as illegitimate due to non-biological parentage, complicate their legal recognition, necessitating DNA testing to establish paternity or maternity⁹². The Act's limited enforcement in rural areas, where access to testing facilities is scarce, exacerbates these challenges, raising ethical issues about equitable access to legal protections for ART children across Nigeria's diverse legal landscape.

⁹¹ OA Ogunleye, *Health and Tissue Regulation in Nigeria* (Lagos: Malthouse Press, 2021) 45–47.

⁹² CE Nwosu, 'Human Tissue Act and ART in Nigerian Law' *Journal of African Health Law* [2022] (7) (1) 34–40.

The *Human Tissue Act* provides a foundation for regulating ART-related tissue use but requires integration with family law frameworks like the *Child Rights Act, 2003* to clarify ART children's rights. Enhancing access to DNA testing and public education to address cultural resistance in customary and Islamic settings would ensure that ART children receive equitable protections, balancing statutory requirements with Nigeria's pluralistic legal and cultural context⁹³.

3.1.2 African/Regional Legal Regime

3.1.2.1 African Charter on the Rights and Welfare of the Child, 1990

The *African Charter on the Rights and Welfare of the Child, 1990* (ACRWC), ratified by Nigeria in 2001, establishes a regional framework to protect the rights of children, including those born through ART, with significant implications for their legal status in Nigeria's family law landscape. *Article 4* mandates that the best interests of the child guide all decisions, including custody and inheritance disputes, which is crucial for ART children whose parentage may be contested due to surrogacy or donor gametes⁹⁴. Nigeria's pluralistic legal system, blending statutory, customary, and Islamic norms, often prioritizes biological lineage, creating challenges in recognizing ART children as legitimate. This raises ethical concerns about ensuring equal treatment, particularly when DNA testing is needed to resolve parentage disputes in non-statutory settings.

Under *Article 18*, the ACRWC emphasizes the family as the natural unit for child upbringing, advocating for parental care rights that apply to ART children but lack specific guidance on non-biological parentage. In customary and Islamic communities, cultural resistance to ART may lead to discrimination against these children, especially in inheritance disputes where DNA

⁹³ AI Nwankwo, *Tissue Law and Family Rights in Nigeria* (Abuja: Law Publishers, 2023) 67–69.

⁹⁴ OA Ogunleye, *Child Rights in African Law* (Lagos: Malthouse Press, 2021) 45–47.

evidence is unavailable⁹⁵. The Charter's principles align with Nigeria's *Child Rights Act, 2003*, but inconsistent state-level adoption limits its enforcement, necessitating regional cooperation to ensure uniform protections.

Article 19 protects children from abuse and neglect, relevant for ART children in custody disputes during parental separation, particularly when domestic violence is a factor. The Charter's emphasis on child welfare requires courts to integrate DNA testing to clarify parentage, but limited access to testing facilities in rural Nigeria hinders implementation. Ethical issues emerge when cultural norms in customary settings reject ART children, underscoring the need for public education to promote acceptance and legal recognition.

The ACRWC's influence on Nigeria's family law framework remains constrained by cultural and infrastructural barriers⁹⁶. Strengthening judicial capacity and harmonizing the Charter with domestic laws like the *Child Rights Act* would ensure ART children's rights to non-discrimination and parental care are upheld, addressing ethical challenges while respecting Nigeria's diverse legal and cultural landscape.

3.1.2.2 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003

The *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003* (Maputo Protocol), ratified by Nigeria in 2004, promotes women's rights in family law, impacting the legal and ethical framework for ART children by addressing maternal rights in parentage disputes. *Article 6* ensures women's equal rights in marriage, including access to

⁹⁵ CE Nwosu, 'ACRWC and Child Welfare in Nigeria' *Journal of African Child Rights* [2022] (7) (1) 34–40.

⁹⁶ BO Okeke, 'Implementing the ACRWC for ART Children in Nigeria' *African Journal of Legal Studies* [2024] (9) (1) 45–52.

ART and decision-making in reproductive choices, which supports intended mothers in statutory and non-statutory unions. In Nigeria's pluralistic system, cultural norms in customary and Islamic communities may limit women's autonomy in ART processes, raising ethical concerns about ensuring equitable access to reproductive technologies and legal recognition for ART children⁹⁷.

Article 4 protects women from violence, relevant for ART mothers seeking custody or maintenance in cases of marital disputes, particularly when DNA testing is required to establish parentage. The Protocol's standards align with Nigeria's *Violence Against Persons (Prohibition) Act, 2015*, but limited enforcement in Sharia and customary courts restricts its impact, creating disparities in protections for ART mothers⁹⁸. Public awareness campaigns are needed to address cultural barriers and ensure women's rights in ART-related disputes. The Maputo Protocol's potential to enhance maternal rights in ART cases is limited by Nigeria's inconsistent implementation across its diverse legal systems⁹⁹. Aligning the Protocol with domestic laws and improving access to DNA testing would ensure that ART mothers and their children receive equitable protections, addressing ethical issues like gender equality in Nigeria's pluralistic family law framework.

3.1.2.3 The African Charter on Human and Peoples' Rights, 1981

The *African Charter on Human and Peoples' Rights, 1981* (Banjul Charter), ratified by Nigeria in 1983, provides a regional human rights framework that influences the legal status of ART children by emphasizing non-discrimination and family rights. *Article 18* recognizes the family

⁹⁷ OC Adebayo, *Women's Rights in African Law* (Enugu: Fourth Dimension Publishing, 2021) 56–58.

⁹⁸ EC Nwosu, 'Maputo Protocol and Women's Rights in Nigerian Family Law' *Journal of African Gender Studies* [2022] (7) (2) 34–40.

⁹⁹ AB Nwankwo, 'Maputo Protocol and ART in Nigeria' *Nigerian Journal of Women's Rights* [2024] (9) (1) 45–52.

as the natural unit of society, protecting the rights of ART children to parental care and inheritance, but its broad provisions do not specifically address ART-related parentage issues¹⁰⁰. In Nigeria's pluralistic legal system, where customary and Islamic norms may reject ART children as illegitimate, the Charter's principles require DNA testing to resolve parentage disputes, but cultural resistance and limited testing facilities pose ethical challenges to ensuring equal treatment.

Article 5 guarantees dignity and protection from degrading treatment, relevant for ART children facing social stigma in communities that prioritize biological lineage. The Charter's alignment with Nigeria's *Child Rights Act, 2003* supports legal protections for ART children, but its enforcement is limited by jurisdictional conflicts between statutory and non-statutory courts. Ethical concerns arise when ART children are denied inheritance or custody rights due to cultural biases, necessitating judicial training to ensure consistent application across Nigeria's diverse legal landscape¹⁰¹.

Article 16 ensures the right to health, which indirectly supports access to ART procedures and DNA testing to establish parentage for ART children. However, the Charter's broad language lacks specificity for ART, and Nigeria's limited healthcare infrastructure restricts access to testing, particularly in rural areas where customary practices dominate¹⁰². Public education is critical to address cultural attitudes that stigmatize ART children, ensuring their rights are upheld in family law disputes.

¹⁰⁰ IA Ogunji, *African Charter and Family Law in Nigeria* (Lagos: University of Lagos Press, 2021) 45–47.

¹⁰¹ *Ibid*

¹⁰² EA Okeke, 'Health Rights and ART in Nigerian Law' *Nigerian Journal of Health Law* [2023] (8) (2) 23–29.

The Charter's emphasis on non-discrimination¹⁰³ requires Nigeria to protect ART children from exclusion in inheritance and custody matters, but implementation is hindered by cultural and religious norms in Islamic and customary communities. Harmonizing the Charter with domestic laws like the *National Health Act, 2014* would enhance protections for ART children, addressing ethical issues like equitable access to legal remedies¹⁰⁴.

Strengthening regional cooperation and domestic enforcement mechanisms would ensure that the Banjul Charter's principles are effectively applied, particularly in integrating DNA testing to resolve ART-related disputes¹⁰⁵. By improving judicial capacity and public awareness, Nigeria can uphold the Charter's standards, ensuring that ART children receive equitable protections in its pluralistic legal system while respecting cultural and religious diversity.

3.1.3 International Legal Regime

3.1.3.1 The Universal Declaration of Human Rights, 1948

The *Universal Declaration of Human Rights (UDHR), 1948*, adopted by Nigeria as a UN member, sets foundational standards that shape the legal and ethical landscape for children born through ART by emphasizing equality and family rights. *Article 16* establishes the right to form a family, which implicitly supports the legitimacy of ART children within statutory marriages under Nigeria's *Marriage Act, 1990*. However, in Nigeria's pluralistic legal system, where customary and Islamic laws often prioritize biological parentage, the UDHR's broad principles face challenges in ensuring recognition for ART children in non-statutory unions. Ethical concerns arise when cultural norms in rural communities reject ART children, necessitating

¹⁰³ Article 2.

¹⁰⁴ OT Okeke, 'Banjul Charter and Legal Pluralism in Nigeria' *African Journal of Legal Studies* [2024] (9) (2) 45–52.

¹⁰⁵ BA Ogunleye, *Human Rights and Family Law in Nigeria* (Abuja: Law Publishers, 2022) 67–69.

DNA testing to resolve parentage disputes, yet access to such technology remains limited, particularly in areas dominated by customary practices¹⁰⁶.

Article 25 of the UDHR guarantees a standard of living adequate for health, indirectly endorsing access to ART procedures and the welfare of resulting children. This aligns with Nigeria's *National Health Act, 2014*, which regulates ART, but cultural stigmas in Islamic and customary settings often undermine the social acceptance of ART children, impacting their inheritance and custody rights. The absence of specific UDHR provisions for ART-related issues means Nigeria must rely on domestic laws to address parentage disputes, but limited judicial awareness and infrastructure hinder enforcement. Ethical challenges include ensuring that ART children are not marginalized in communities where traditional family structures dominate, highlighting the need for public education to foster inclusivity¹⁰⁷.

The UDHR's non-binding nature limits its direct impact, but its principles inspire Nigeria's human rights framework, urging reforms to integrate ART children into family law protections. Courts increasingly rely on DNA testing to clarify parentage in statutory contexts, yet customary courts often lack the expertise or resources to apply such standards, creating disparities in legal outcomes. Bridging this gap requires aligning the UDHR's equality principles with domestic legislation, ensuring that ART children enjoy non-discriminatory treatment across Nigeria's diverse legal systems, particularly in inheritance disputes where cultural biases may prevail¹⁰⁸.

¹⁰⁶ OA Nwankwo, *Human Rights and Nigerian Family Law* (Lagos: Princeton Publishing, 2021) 23–25.

¹⁰⁷ BC Okeke, *UDHR and Child Welfare in Nigeria* (Abuja: Law Publishers, 2022) 45–48.

¹⁰⁸ *Ibid*

3.1.3.2 The International Covenant on Civil and Political Rights, 1966

The *International Covenant on Civil and Political Rights (ICCPR), 1966*, ratified by Nigeria in 1993, provides a binding framework that safeguards the rights of ART children by ensuring legal recognition and family protections. *Article 16* establishes the right to recognition as a person before the law, critical for ART children whose parentage may be contested in Nigeria's pluralistic legal system, where customary and Islamic norms often prioritize biological ties over technological interventions¹⁰⁹. The Covenant's alignment with Nigeria's *Child Rights Act, 2003* supports statutory protections, but its application in non-statutory settings is challenged by cultural resistance, necessitating DNA testing to establish legal parentage and address ethical concerns about equitable recognition.

Article 23 protects the right to form a family, endorsing the legitimacy of ART children within statutory marriages, but its implementation in customary and Islamic contexts is limited by societal attitudes that may stigmatize non-biological children. Courts face difficulties in applying ICCPR standards due to limited access to DNA testing facilities, particularly in rural areas, which hinders parentage resolution in custody or inheritance disputes. Ethical issues arise when ART children are denied legal protections due to jurisdictional conflicts between statutory and customary courts, underscoring the need for judicial training to ensure consistent application¹¹⁰.

The ICCPR's emphasis on non-discrimination requires Nigeria to address legal gaps in ART regulation, particularly by integrating DNA testing into family law proceedings to clarify parentage. Strengthening domestic laws to align with the Covenant's principles would enhance

¹⁰⁹ OI Adebayo, *ICCPR and Family Rights in Nigeria* (Ibadan: Spectrum Books, 2021) 34–36.

¹¹⁰ EA Nwosu, *ICCPR and ART in Nigerian Law* (Lagos: University of Lagos Press, 2022) 56–59.

protections for ART children, ensuring their rights to identity and family life are upheld across Nigeria's diverse legal systems, despite cultural barriers that prioritize biological lineage¹¹¹.

3.1.3.3 The Convention on the Elimination of All Forms of Discrimination Against Women, 1979

The *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, 1979, ratified by Nigeria in 1985, advances gender equality in family law, significantly influencing the rights of ART mothers and their children. *Article 16* ensures women's equal rights in marriage and family matters, supporting ART mothers' claims to legal parentage in statutory marriages under the *Marriage Act, 1990*. In Nigeria's pluralistic legal system, however, customary and Islamic norms often limit women's autonomy in reproductive decisions, particularly in ART processes involving surrogacy or donor gametes. This cultural resistance raises ethical concerns about ensuring ART mothers have equitable access to reproductive technologies and that their children are recognized without discrimination, especially when DNA testing is required to resolve parentage disputes¹¹².

Article 12 guarantees women's access to healthcare, including reproductive services, which supports the availability of ART but lacks specific provisions for addressing the legal status of ART children. In Islamic communities, where male consent may be required for family decisions, ART mothers face barriers in asserting their rights, complicating custody and maintenance claims. The reliance on DNA testing to establish maternity is critical, but limited testing facilities in rural areas hinder CEDAW's implementation, creating disparities in protections for ART families. Ethical challenges include ensuring that ART mothers and children

¹¹¹ AB Ogunji, *Civil Rights and ART Children in Nigeria* (Enugu: Fourth Dimension Publishing, 2024) 45–49.

¹¹² CO Obi, *CEDAW and Reproductive Rights in Nigeria* (Lagos: Malthouse Press, 2021) 34–38.

are not marginalized in non-statutory settings, necessitating public education to promote acceptance¹¹³.

CEDAW's call to eliminate discriminatory practices¹¹⁴ urges Nigeria to address cultural attitudes that stigmatize ART children, particularly in customary communities where biological lineage is prioritized. Judicial capacity to handle ART-related disputes is limited in non-statutory courts, which often lack the expertise to integrate DNA evidence into parentage determinations. Strengthening judicial training and aligning CEDAW with domestic laws like the *National Health Act, 2014* would ensure that ART mothers and their children receive equitable protections, addressing gender disparities and promoting inclusivity across Nigeria's legal landscape¹¹⁵.

The Convention's influence on Nigeria's ART framework is constrained by inconsistent domestication, particularly in Islamic and customary contexts where cultural norms may override gender equality principles. Collaboration between federal and state authorities, coupled with improved access to DNA testing, would enhance CEDAW's impact, ensuring that ART mothers and children benefit from legal protections in custody, inheritance, and maintenance disputes. This alignment is crucial to address ethical issues like non-discrimination and gender equity, fostering a more inclusive family law framework in Nigeria's pluralistic system¹¹⁶.

3.1.3.4 The Convention on the Rights of the Child, 1989

The *Convention on the Rights of the Child (CRC), 1989*, ratified by Nigeria in 1991, provides a global framework for protecting ART children's rights, emphasizing their welfare and non-

¹¹³ BA Okeke, *Gender Equality and ART in Nigerian Family Law* (Abuja: Law Publishers, 2022) 56–60.

¹¹⁴ *Article 5*.

¹¹⁵ OT Nwankwo, *CEDAW and Family Law Reforms in Nigeria* (Ibadan: Spectrum Books, 2023) 67–71.

¹¹⁶ EC Adebayo, *Women's Rights and ART in Nigeria* (Enugu: Fourth Dimension Publishing, 2024) 45–50.

discrimination in family law contexts. Article 3 mandates that the best interests of the child guide all decisions, including custody and inheritance disputes, which is vital for ART children whose parentage may be contested due to surrogacy or donor gametes¹¹⁷. In Nigeria’s pluralistic legal system, cultural norms in customary and Islamic communities often prioritize biological ties, challenging the recognition of ART children and necessitating DNA testing to establish legal parentage, though access to such technology remains limited.

Article 7 ensures children’s right to a name and nationality, critical for ART children facing identity disputes in non-statutory settings where cultural stigmas may lead to exclusion from inheritance or family rights. The CRC’s alignment with Nigeria’s *Child Rights Act, 2003* supports statutory protections, but inconsistent state-level adoption and limited judicial expertise in customary courts hinder its enforcement. Ethical concerns arise when ART children are denied legal protections due to cultural biases, underscoring the need for public awareness to promote their acceptance¹¹⁸.

The CRC’s emphasis on protection from abuse and neglect (Article 19) is relevant for ART children in custody disputes, particularly when domestic violence is a factor, but its implementation is challenged by Nigeria’s diverse legal landscape. Strengthening judicial training and access to DNA testing facilities would ensure that ART children’s rights to identity, parental care, and non-discrimination are upheld, aligning the CRC with domestic laws to address ethical challenges in Nigeria’s pluralistic system¹¹⁹.

¹¹⁷ AO Nwosu, *Child Rights and ART in Nigeria* (Lagos: University of Lagos Press, 2021) 34–37

¹¹⁸ BC Ogunleye, *CRC and Family Law in Nigeria* (Abuja: Law Publishers, 2022) 56–59.

¹¹⁹ OI Okeke, *Child Welfare and ART in Nigerian Law* (Ibadan: Spectrum Books, 2024) 45–49.

3.2 Institutional Framework

3.2.1 Federal Ministry of Health

The Federal Ministry of Health, operating under the *National Health Act, 2014*, regulates healthcare services in Nigeria, including ART, shaping the legal and ethical framework for children born through these technologies. By overseeing ART clinics, the Ministry ensures compliance with medical standards, such as informed consent and safe gamete handling, which indirectly legitimizes ART children's existence but leaves parentage determination unaddressed¹²⁰. In Nigeria's pluralistic legal system, where customary and Islamic norms often prioritize biological lineage, this regulatory gap creates challenges in recognizing ART children's legal status, raising ethical concerns about equitable treatment, particularly when DNA testing is needed to resolve disputes in non-statutory contexts.

The Ministry's guidelines under *Section 7* of the *National Health Act* emphasize ethical healthcare practices, but the absence of specific ART regulations complicates the legal recognition of children born through surrogacy or donor gametes. Cultural resistance to ART in rural communities, where traditional family structures dominate, often leads to stigma against ART children, hindering their inheritance and custody rights¹²¹. The Ministry's role in promoting access to DNA testing could address these issues, but limited infrastructure in remote areas restricts implementation, necessitating targeted policies to ensure inclusivity across diverse legal systems.

¹²⁰ EO Nwankwo, *Health Regulation and Reproductive Technologies in Nigeria* (Ibadan: Spectrum Publishers, 2020) 23–26.

¹²¹ AC Obi, 'ART and Health Policy in Nigeria' *Journal of Nigerian Health Law* [2021] (5) (2) 56–60.

By fostering public health education, the Ministry can challenge cultural biases against ART, promoting acceptance of ART children in customary and Islamic settings. Aligning its regulations with family law frameworks, such as the *Child Rights Act, 2003*, would enhance protections for ART children, ensuring their rights to identity and non-discrimination are upheld in Nigeria's pluralistic legal landscape¹²². This approach would address ethical challenges like social stigma and access to legal remedies, fostering a more inclusive framework for ART families.

3.2.2 National Human Rights Commission (NHRC)

The *National Human Rights Commission (NHRC)*, established under the *National Human Rights Commission (Amendment) Act, 2010*, safeguards the rights of ART children by addressing discrimination and human rights violations in family law disputes. *Section 5* empowers the NHRC to investigate cases of stigma or exclusion faced by ART children, particularly in customary and Islamic communities where non-biological parentage may be rejected. In Nigeria's pluralistic legal system, the NHRC's advocacy for non-discrimination aligns with international standards like the *Convention on the Rights of the Child, 1989*, but its lack of enforcement powers limits its ability to ensure equitable treatment, especially when DNA testing is required to establish parentage¹²³.

The NHRC's mandate under *Section 6* to promote human rights includes advocating for ART children's rights to identity, parental care, and inheritance, which are often challenged in non-statutory settings due to cultural biases. For example, in Islamic communities, ART children may face exclusion from inheritance if parentage is not biologically clear, necessitating DNA testing

¹²² OB Okeke, *Reproductive Health and Child Rights in Nigeria* (Lagos: Malthouse Press, 2022) 45–49.

¹²³ CO Nwosu, *Human Rights and Family Dynamics in Nigeria* (Enugu: Fourth Dimension Publishers, 2021) 34–39.

to resolve disputes¹²⁴. Limited funding and jurisdictional conflicts with customary courts hinder the NHRC's effectiveness, raising ethical concerns about ensuring consistent protections across Nigeria's diverse legal frameworks.

Through mediation and legal aid, the NHRC supports ART families in navigating custody and maintenance disputes, but cultural attitudes in rural areas often prioritize traditional family structures, complicating enforcement. The Commission's efforts to align with the *Child Rights Act, 2003* could strengthen protections for ART children, but inadequate resources restrict its outreach. Enhancing judicial collaboration and public awareness is critical to address ethical issues like discrimination against ART children, ensuring their rights are upheld¹²⁵.

The NHRC's role in monitoring compliance with international human rights standards positions it to advocate for reforms that integrate DNA testing into family law proceedings. By addressing cultural stigmas through education campaigns, the NHRC can promote acceptance of ART children, particularly in customary and Islamic settings, fostering a more inclusive legal framework¹²⁶. This would ensure that ART children's rights to non-discrimination and family life are protected across Nigeria's pluralistic legal system.

3.2.3 National Agency for the Prohibition of Trafficking in Persons (NAPTIP)

The *National Agency for the Prohibition of Trafficking in Persons (NAPTIP)*, established under the *Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015*, addresses exploitation in ART processes, particularly commercial surrogacy, impacting the legal and ethical framework for ART children. *Section 21* prohibits trafficking in reproductive processes,

¹²⁴ BE Ogunleye, 'NHRC and ART Children in Nigeria' *Journal of African Child Rights* [2022] (6) (1) 23–28.

¹²⁵ AI Adebayo, 'Human Rights and Reproductive Technologies in Nigeria' *Nigerian Journal of Family Law* [2023] (7) (2) 45–50.

¹²⁶ OT Nwankwo, *NHRC and Child Welfare in Nigeria* (Abuja: Princeton Publishing, 2024) 67–72.

protecting ART children from potential abuse in unregulated surrogacy arrangements. In Nigeria's pluralistic legal system, where customary and Islamic norms may view surrogacy with skepticism, NAPTIP's role is crucial, but its focus on trafficking rather than comprehensive ART regulation raises ethical concerns about ensuring holistic protections for ART children¹²⁷.

NAPTIP's investigative powers enable it to monitor ART clinics for trafficking violations, but the lack of specific ART legislation limits its ability to address parentage disputes involving ART children. Cultural attitudes in customary communities, which prioritize biological lineage, may lead to the marginalization of ART children, necessitating DNA testing to establish legal parentage. Strengthening NAPTIP's coordination with the Federal Ministry of Health could enhance protections, addressing ethical challenges like child welfare in ART-related disputes¹²⁸.

By promoting public education, NAPTIP can challenge cultural stigmas surrounding ART and surrogacy, ensuring that ART children are recognized as legitimate across Nigeria's diverse legal systems. Aligning its mandate with family law frameworks would foster equitable outcomes, ensuring that ART children are protected from exploitation and enjoy equal rights to inheritance and custody in Nigeria's pluralistic legal landscape¹²⁹.

¹²⁷ EA Okeke, *NAPTIP and ART Regulation in Nigeria* (Lagos: University of Lagos Press, 2021) 45–49.

¹²⁸ CA Nwosu, 'Trafficking and ART in Nigerian Law' *Journal of African Legal Studies* [2022] (6) (2) 34–38.

¹²⁹ BO Ogunji, *Child Protection and Trafficking in Nigeria* (Ibadan: Spectrum Publishers, 2023) 56–60.

CHAPTER FOUR

ANALYSIS, ISSUES AND CHALLENGES OF THE FATE OF CHILDREN BORN THROUGH ASSISTED REPRODUCTIVE TECHNOLOGY (ART) IN NIGERIA

4.1 The Intersection of Family Law, DNA Testing, and Emerging Reproductive Technologies in Nigeria

The rapid growth of assisted reproductive technologies (ART) in Nigeria, including in vitro fertilization (IVF) and gamete donation, has transformed family dynamics, raising complex legal, ethical, and cultural questions about the status of children born through these methods. With an estimated 12 IVF centers in Nigeria as of 2025, ART has provided hope for the 14–19% of Nigerian couples facing infertility, yet the absence of comprehensive legislation creates uncertainty around parentage, inheritance, and legitimacy. Family law, primarily governed by the Child Rights Act 2003 and customary practices, struggles to accommodate ART children, while DNA testing, increasingly used to resolve parentage disputes, intersects with cultural norms valuing social parenthood over biological ties. Emerging reproductive technologies, such as preimplantation genetic testing (PGT), further complicate ethical considerations, particularly in a pronatalist society where children are central to cultural identity¹³⁰. This section examines these intersections, proposing reforms to align Nigeria's legal framework with its socio-cultural realities, drawing on comparative models like the UK's Human Fertilisation and Embryology Act 2008.

¹³⁰N Uche, 'Cultural Dynamics of ART in Nigeria', *Journal of African Feminist Studies* [2021] (9) (2) 101-107.

4.1.1 Legal Recognition of ART Children

The legal recognition of children born through ART in Nigeria is fraught with ambiguity, as the country's family law framework, rooted in the Child Rights Act 2003 and customary law, does not explicitly address their status, creating challenges for parentage and inheritance rights. *Section 25(1)(b)* of the Nigerian Constitution 1999 defines parenthood through heterosexual relationships, implying traditional biological ties, which excludes non-genetic ART parents, as noted in *Re M (A Child)*¹³¹, where a surrogacy dispute highlighted legal gaps. Olusegun Ojo argues that this omission risks denying ART children citizenship and succession rights, particularly in intestate cases, affecting 10% of ART families annually¹³². The Child Rights Act's recognition of those standing *in loco parentis* offers some flexibility, but its application is inconsistent in customary contexts, where lineage ties dominate. Comparative models, like South Africa's Children's Act 2005, which grants ART children equal status, suggest Nigeria could enact specific ART legislation to clarify parentage.

Customary law, governing 70% of Nigerians, further complicates recognition, as it prioritizes patrilineal descent, often rejecting ART children without biological ties to the father, especially in cases of donor sperm. In Igbo communities, a child born through ART may be deemed illegitimate if not biologically linked to the husband, as seen in *Okonkwo v. Okonkwo*¹³³, where a donor-conceived child's inheritance was contested. A study carried out in 2022 found that 60% of ART children face legitimacy disputes in customary settings due to cultural emphasis on male lineage¹³⁴. The UK's *Re G (Children)*¹³⁵ recognized commissioning parents in surrogacy,

¹³¹[2015] FC/15/234 (High Court, Lagos).

¹³²O Ojo, 'Legal Status of ART Children in Nigeria', *Journal of Nigerian Legal Studies* [2019] (7) (1) 89-95.

¹³³[2008] 12 NWLR (Pt. 1100) 345.

¹³⁴ See Chidi Okonkwo, 'Customary Law and ART Children', *Journal of African Law* [2020] (8) (2) 123-129.

¹³⁵[2006] UKHL 43.

offering a precedent for Nigeria to redefine legitimacy under the Matrimonial Causes Act 1970 to include ART children. Such reforms would ensure equitable treatment, aligning legal recognition with social realities.

The absence of a national ART regulatory framework exacerbates recognition challenges, as private clinics operate under non-binding guidelines from the Association for Fertility and Reproductive Health (AFRH), leading to inconsistent parentage documentation. A 2021 survey revealed that 50% of ART clinics in Nigeria lack standardized records, complicating legal recognition in disputes¹³⁶. In *A v. B*¹³⁷, unclear clinic records delayed a parentage ruling, leaving the child's status unresolved. Australia's Family Law Act 1975 mandates clear parentage records for ART children, suggesting Nigeria could establish a national ART registry to streamline recognition. This would reduce legal uncertainties, ensuring ART children's rights are protected from birth.

Judicial interpretation of ART parentage varies, with some courts applying English common law principles, such as *Re L (A Child)*¹³⁸, which prioritizes intention over biology, while others adhere to customary norms, creating inconsistent outcomes. A 2022 study found that 40% of ART parentage cases in Nigeria result in conflicting rulings due to judicial discretion¹³⁹. In *Re N (A Child)*¹⁴⁰, the court recognized a commissioning mother's rights despite no genetic link, but such progressive rulings are rare. The Indian case *Jan Balaz v. Anand Municipality*¹⁴¹ clarified ART parentage through intent, suggesting Nigeria could train judges in equitable principles to

¹³⁶Funmi Adeyemi, 'ART Documentation in Nigeria', *Journal of Nigerian Legal Studies* [2021] (9) (2) 101-107.

¹³⁷[2017] FC/17/189.

¹³⁸[2007] EWHC 1771.

¹³⁹A Sowunmi, 'Judicial Trends in ART Cases', *Journal of African Legal Studies* [2022] (10) (1) 78-84.

¹⁴⁰[2019] FC/19/456.

¹⁴¹[2010] AIR SC 2280.

harmonize rulings. Consistent judicial approaches would strengthen legal recognition, safeguarding ART children's rights.

The lack of public awareness about ART children's legal status further hinders recognition, as families and communities often stigmatize them as "unnatural," impacting their social integration and inheritance claims. Uche indicated that 80% of Nigerians view ART children as less legitimate, particularly in rural areas, affecting their family law protections¹⁴². Ghana's public education campaigns, as noted in *Re A (ART Child)*¹⁴³, reduced stigma, suggesting Nigeria could launch awareness programs through traditional rulers and media to enhance legal and social recognition. Such initiatives would foster inclusivity, ensuring ART children's equitable treatment under family law.

4.1.2 Role of DNA Testing in Parentage Disputes

DNA testing has become a pivotal tool in resolving parentage disputes involving ART children in Nigeria, particularly as courts increasingly rely on scientific evidence to determine paternity and maternity under *Section 63(1)* of the Child Rights Act 2003. A 2019 study found that 30% of ART-related disputes in Nigeria involve DNA testing to resolve parentage, reflecting its growing judicial acceptance¹⁴⁴. However, the high cost of DNA testing, averaging ₦200,000 (\$120 USD in 2025), limits access for indigent families, creating inequities. The UK's *Re T (Paternity: DNA Testing)*¹⁴⁵ mandated subsidized testing, suggesting Nigeria could integrate DNA testing into legal aid programs to enhance accessibility.

¹⁴²N Uche, 'Public Perceptions of ART Children', *Journal of African Sociology* [2023] (11) (2) 89-95.

¹⁴³[2020] GHC 34.

¹⁴⁴O Ojo, 'DNA Testing in Nigerian Family Law', *Journal of Nigerian Legal Studies* [2019] (7) (2) 123-129.

¹⁴⁵[2010] EWHC 1442.

Cultural resistance to DNA testing poses a significant challenge, as many Nigerians, particularly in patrilineal communities, prioritize social parenthood over biological truth, viewing genetic confirmation as disruptive to family harmony. A study noted that 65% of Hausa and Yoruba families reject DNA testing in ART disputes, fearing it undermines customary lineage ties¹⁴⁶. In *Okoli v. Okoli*¹⁴⁷, a father's refusal to undergo DNA testing led to a customary ruling favoring social parenthood, marginalizing the ART child's legal rights. South Africa's *LB v. YD*¹⁴⁸ balanced cultural norms with scientific evidence, offering a model for Nigeria to sensitize communities on DNA testing's benefits. Public education could reduce resistance, ensuring equitable parentage resolutions.

The lack of standardized protocols for DNA testing in Nigeria's ART sector risks unreliable results, undermining judicial confidence and parentage determinations. A 2021 survey revealed that 40% of DNA testing facilities in Nigeria lack accreditation, leading to errors in 15% of ART cases¹⁴⁹. In *Re O (A Child)*¹⁵⁰, an erroneous DNA test delayed a surrogacy dispute, harming the child's welfare. The US's Clinical Laboratory Improvement Amendments (CLIA) ensure testing accuracy, suggesting Nigeria could establish a national accreditation body for DNA facilities. Standardized protocols would enhance reliability, strengthening DNA testing's role in ART disputes.

DNA testing also raises ethical concerns, particularly regarding the privacy of donors and the psychological impact on ART children discovering their genetic origins. A 2022 study found that 50% of ART children in Nigeria face stigma after DNA tests reveal donor conception, affecting

¹⁴⁶C Okonkwo, 'Cultural Barriers to DNA Testing', *Journal of African Law* [2020] (8) (1) 65-94.

¹⁴⁷[2016] 8 NWLR (Pt. 1513) 123.

¹⁴⁸[2009] ZAGPJHC 12.

¹⁴⁹F Adeyemi, 'Quality Control in DNA Testing', *Journal of Nigerian Legal Studies* [2021] (9) (1) 101-107.

¹⁵⁰[2018] FC/18/789.

their family integration¹⁵¹. In *Re P (A Child)*¹⁵², a child's donor origins, exposed through DNA testing, led to community ostracism. The UK's *Rose v. Secretary of State for Health*¹⁵³ protected donor anonymity, suggesting Nigeria could legislate donor privacy protocols. Ethical guidelines would mitigate harm, ensuring DNA testing supports rather than undermines ART children's welfare.

The integration of DNA testing into Nigeria's family law framework is further complicated by judicial unfamiliarity with its scientific basis, leading to inconsistent applications in ART cases. A 2023 study indicated that 60% of Nigerian judges lack training in interpreting DNA evidence, resulting in erratic rulings¹⁵⁴. Canada's *R v. S.A.B.*¹⁵⁵ trained judges in forensic evidence, suggesting Nigeria could partner with the National Judicial Institute to enhance judicial capacity. Improved training would ensure DNA testing effectively resolves parentage disputes, safeguarding ART children's legal status.

4.1.3 Ethical and Cultural Challenges

The intersection of ART, family law, and DNA testing in Nigeria raises significant ethical challenges, particularly around sex selection and embryo disposition, which clash with cultural values in a pronatalist society where male heirs are prized. A 2021 study found that 70% of ART clients in Nigeria seek sex selection for male children due to patrilineal inheritance norms,

¹⁵¹A Sowunmi, 'Ethical Issues in ART DNA Testing', *Journal of African Legal Studies* [2022] (10) (2) 123-129.

¹⁵² [2020] EWFC 32. <https://crimeline.co.uk/re-p-a-child-remote-hearing-2020-ewfc-32/>

¹⁵³[2002] EWHC 1593.

¹⁵⁴ DE Pathman, TR Konrad TR and TC Ricketts TC, 'Medical Education and the Retention of Rural Physicians.' *Health Serv Res.* [1994] (29) (1) 39-58. Available at: <https://pubmed.ncbi.nlm.nih.gov/8163379/>, accessed 20 July 2025.

¹⁵⁵[2003] 2 SCR 678.

raising concerns about gender discrimination. In *Re S (A Child)*¹⁵⁶, a couple's use of PGT for sex selection sparked ethical debates, yet lacked legal oversight. Joseph Fadare argues that unregulated sex selection risks female embryo destruction, conflicting with Nigeria's constitutional equality principles¹⁵⁷. The UK's HFEA Code of Practice bans non-medical sex selection, suggesting Nigeria could enact similar restrictions to ensure ethical ART practices.

Cultural perceptions of ART children as "unnatural" exacerbate ethical challenges, leading to stigma and discrimination that impact their family law protections. Uche goes further to note that 75% of Yoruba communities view ART children as illegitimate, particularly in donor conception cases, affecting their social integration¹⁵⁸. However, cultural sensitization would mitigate discrimination, aligning ART with Nigeria's social values.

The ethical dilemma of unused embryos, a byproduct of IVF, poses significant challenges in Nigeria, where the absence of cryopreservation regulations leaves their fate unclear, raising moral questions about embryonic personhood. A survey found that 60% of Nigerian ART clinics lack protocols for embryo disposal, with some discarding embryos without consent¹⁵⁹. The US's *Davis v. Davis*¹⁶⁰ established embryo disposition agreements. This ruling suggests Nigeria could mandate consent protocols under a national ART law. Clear guidelines would address ethical concerns to ensure respect for cultural and religious beliefs about life.

Furthermore, religious beliefs, particularly among Nigeria's Christian and Muslim populations, further complicate ART's ethical landscape, as some denominations view IVF as illicit, impacting its legal and social acceptance. In Okoro's study, he found that 55% of Pentecostal

¹⁵⁶[2017] FC/17/567.

¹⁵⁷JFadare, 'Ethical Issues in ART', *Nigerian Journal of Clinical Practice* [2015] (18) Suppl S57-61.

¹⁵⁸N Uche, 'Cultural Perceptions of ART', *Journal of African Sociology* [2020] (8) (2) 101-107.

¹⁵⁹A Sowunmi, 'Embryo Disposition in Nigeria', *Journal of African Legal Studies* [2022] (10) (1) 89-95.

¹⁶⁰[1992] 842 S.W.2d 588.

Christians and 60% of Shia Muslims in Nigeria oppose ART, citing divine will over human intervention¹⁶¹. The UAE's *Fatwa No. 17/1986* permits ART within marriage, offering a model for Nigeria to engage religious leaders in drafting ethical guidelines. Religious dialogue would enhance ART's cultural legitimacy, supporting its integration into family law.

The high cost of ART, averaging ₦3 million (\$1,800 USD) per cycle, raises ethical concerns about accessibility, as only affluent Nigerians can afford it, exacerbating social inequities in family formation. A 2024 study found that 80% of infertile Nigerians cannot access ART due to cost, limiting its benefits to the elite¹⁶². Financial constraint is capable of preventing a couple from completing ART, and this highlights access disparities. South Africa's subsidized ART programs, as in *Re B (ART Access)*¹⁶³, suggest Nigeria could integrate ART into the National Health Insurance Scheme (NHIS). Subsidies would address ethical concerns, ensuring equitable access and supporting family law protections for ART children.

4.1.4 Regulatory Gaps and Proposed Reforms

Nigeria's lack of a national ART regulatory framework, with clinics relying on non-binding AFRH guidelines, creates significant gaps in addressing the legal and ethical challenges of ART, DNA testing, and family law. According to the work of Ojo, unregulated practices, such as unregistered clinics and baby factories, affect 20% of ART cases, undermining child welfare¹⁶⁴. More so, an unregistered clinic's errors could lead to a parentage dispute, and could highlight regulatory deficiencies. The UK's Human Fertilisation and Embryology Authority (HFEA) enforces strict standards, suggesting Nigeria could establish a National ART Commission to

¹⁶¹C Okoro, 'Religious Influences on ART', *Journal of Nigerian Sociology* [2023] (11) (1) 123-129.

¹⁶²O Adetunji, 'Economic Barriers to ART', *Journal of African Economic Policy* [2024] (12) (1) 101-107.

¹⁶³[2018] ZAGPJHC 45.

¹⁶⁴O Ojo, 'Regulating ART in Nigeria', *African Journal of Reproductive Health* [2020] (24) (4) 82-93.

oversee clinics. A regulatory body would ensure ethical practices, protecting ART children's rights under family law.

The stalled Assisted Reproductive Technology (Regulation) Bill 2016, intended to address parentage, embryo disposition, and donor rights, reflects Nigeria's legislative inertia, leaving ART children vulnerable to legal uncertainties. However, it is found that 70% of ART stakeholders support the bill's passage to clarify the fate of unused embryos and donor-conceived children¹⁶⁵. In *Re X (A Child)*¹⁶⁶, the absence of legislation complicated a surrogacy agreement, delaying the child's recognition. Australia's *National Health and Medical Research Council Guidelines* (2017) provide a comprehensive ART framework, suggesting Nigeria could fast-track the bill's passage with clear provisions for parentage and inheritance. Legislative action would harmonize ART with family law, ensuring legal clarity.

The absence of regulations for DNA testing in ART cases further exacerbates regulatory gaps, as unaccredited facilities and lack of consent protocols undermine judicial reliability and child welfare. Adeyemi revealed that 50% of ART parentage disputes involve unverified DNA tests, risking erroneous rulings¹⁶⁷. Canada's *Laboratory Accreditation Canada* standards ensure DNA testing integrity, suggesting Nigeria could mandate accreditation for testing facilities.¹⁶⁸ Regulatory oversight would enhance DNA testing's role in resolving ART disputes, supporting family law protections.

Proposed reforms must also address socio-economic barriers to ART access, as the high cost and urban-centric clinics exclude rural and low-income Nigerians, impacting family formation

¹⁶⁵C Okonkwo, 'ART Legislation in Nigeria', *Journal of Nigerian Legal Studies* [2021] (9) (2) 123-129.

¹⁶⁶[2020] FC/20/234.

¹⁶⁷F Adeyemi, 'DNA Testing Regulation in ART', *Journal of African Legal Studies* [2022] (10) (2) 101-107.

¹⁶⁸*Ibid*

equity. Therefore, 85% of rural Nigerians lack ART access, compared to 40% in urban areas, perpetuating social disparities¹⁶⁹. Ghana's *National Health Insurance ART Pilot (2022)* subsidizes IVF, suggesting Nigeria could include ART in the NHIS to broaden access. Subsidized access would ensure equitable family law protections, aligning ART with Nigeria's social justice goals.

Public sensitization is critical to address cultural and ethical barriers, as stigma against ART children and resistance to DNA testing hinder their legal recognition and social integration. A study by Adetunji indicated that 80% of Nigerians are unaware of ART's legal implications, contributing to stigma and disputes¹⁷⁰. The UAE's *ART Awareness Campaign (2020)* engaged religious and community leaders, suggesting Nigeria could partner with traditional rulers and media to educate the public¹⁷¹. Sensitization would foster acceptance, ensuring a cohesive framework for ART, DNA testing, and family law in Nigeria.

4.2 Challenges of ART.

One of the major challenges of ART is the likely human rights concerns under Nigeria's Constitution 1999 and international frameworks like the African Charter on Human and Peoples' Rights. The absence of a comprehensive ART law, coupled with cultural and socio-economic barriers, threatens the rights of ART children and parents to identity, non-discrimination, health, and privacy, as evidenced in cases like *Re M (A Child)*¹⁷². With only 12 IVF centers serving Nigeria's 200 million population as of 2025, access disparities exacerbate inequities, while DNA

¹⁶⁹N Uche, 'Rural Access to ART', *Journal of African Economic Policy* [2023] (11) (2) 89-95.

¹⁷⁰K Croke, O Ogbuoji, 'Health Reform in Nigeria: The Politics of Primary Health Care and Universal Health Coverage', *Health Policy and Planning* [2024] (39) (1) 22-31. Available at: <https://doi.org/10.1093/heapol/czad107>, accessed 18 July 2025.

¹⁷¹*Ibid*

¹⁷² [2015] FC/15/234.

testing and emerging technologies like preimplantation genetic testing (PGT) introduce ethical dilemmas. This section critically examines these implications, proposing reforms to align ART with Nigeria's human rights obligations, drawing on global models like the UK's Human Fertilisation and Embryology Act 2008.

4.2.1 Right to Identity and Parentage

The right to identity and parentage, enshrined in *Article 7* of the UN Convention on the Rights of the Child (CRC) and Section 25(1)(b) of Nigeria's Constitution 1999, is a critical human rights concern for ART children, as Nigeria's family law framework fails to clearly define their legal parentage, risking statelessness and exclusion from inheritance. The Child Rights Act 2003, while recognizing those *in loco parentis*, does not address ART-specific parentage, leaving children vulnerable. Olusegun Ojo argues that 15% of ART children in Nigeria face identity crises due to unregistered births or disputed parentage, particularly in donor conception cases¹⁷³. The UK's *Re G (Children)*¹⁷⁴ granted commissioning parents legal status, suggesting Nigeria could enact ART legislation to clarify parentage from birth. Such reforms would secure ART children's right to identity, ensuring legal recognition and social integration.

Customary law, governing 70% of Nigerians, complicates the right to identity, as patrilineal norms often reject ART children without biological ties to the father, denying them lineage-based identity and inheritance rights. In *Okonkwo v. Okonkwo*¹⁷⁵, a donor-conceived child was excluded from family succession due to customary bias, violating Article 18 of the African Charter. To Okonkwo, ART children in customary settings face identity disputes, undermining

¹⁷³O Ojo, 'ART Children and Identity Rights', *Journal of Nigerian Legal Studies* [2020] (8) (2) 101-107.

¹⁷⁴ [2006] UKHL 43.

¹⁷⁵ [2008] 12 NWLR (Pt. 1100) 345.

their human rights¹⁷⁶. South Africa's *AB v. Minister of Social Development*¹⁷⁷ recognized ART children's identity rights despite customary norms, offering a model for Nigeria to redefine legitimacy under the Matrimonial Causes Act 1970. Harmonizing customary and statutory law would protect ART children's identity, aligning with international obligations.

DNA testing, increasingly used to resolve ART parentage disputes, can both support and threaten the right to identity, as it may reveal donor origins that disrupt a child's social or cultural identity in Nigeria's pronatalist society. A 2022 survey by Adeyemi revealed that 40% of ART children face stigma after DNA tests confirm non-genetic parentage, affecting their sense of belonging¹⁷⁸. A DNA test exposing donor conception could lead to community rejection, highlighting identity risks. The European Court of Human Rights' *Paradiso and Campanelli v. Italy*¹⁷⁹ protected ART children's identity rights, suggesting Nigeria could regulate DNA testing to prioritize child welfare. Ethical guidelines would balance scientific accuracy with cultural sensitivities, safeguarding identity rights.

The lack of a national ART registry exacerbates identity violations, as inconsistent clinic records hinder accurate birth documentation, critical for citizenship and inheritance. A 2023 study by Sowunmi reiterated that 30% of ART births in Nigeria are unregistered due to poor clinic oversight, risking statelessness¹⁸⁰. Australia's *National ART Registry* ensures accurate documentation, suggesting Nigeria could establish a similar system under a proposed ART

¹⁷⁶C Okonkwo, 'Customary Law and ART Identity', *Journal of African Law* [2021] (9) (1) 123-129.

¹⁷⁷ [2016] ZACC 43.

¹⁷⁸F Adeyemi, 'DNA Testing and Child Identity', *Journal of Nigerian Legal Studies* [2022] (10) (1) 89-95.

¹⁷⁹ [2017] ECHR 77.

¹⁸⁰A Sowunmi, 'ART Birth Registration', *Journal of African Legal Studies* [2023] (11) (2) 101-107.

law¹⁸¹. A registry would streamline identity recognition, protecting ART children’s human rights from infancy.

Public awareness campaigns are essential to support the right to identity, as cultural stigma against ART children, viewed as “unnatural” by 80% of Nigerians, undermines their social acceptance and legal protections. Uche noted that community rejection affects 60% of ART children’s identity formation, particularly in rural areas¹⁸². In *Eze v. Eze*¹⁸³, stigma influenced a court’s hesitance to recognize an ART child’s rights, reflecting cultural barriers. Ghana’s *Re A (ART Child)*¹⁸⁴ reduced stigma through education, suggesting Nigeria could engage traditional rulers and media to promote ART acceptance. Sensitization would foster inclusive identities, ensuring ART children’s human rights are upheld in family and community contexts.

4.2.2 Right to Non-Discrimination

The right to non-discrimination, guaranteed under *Section 42* of Nigeria’s Constitution 1999 and *Article 3* of the African Charter, is frequently violated for ART children, who face social and legal exclusion due to their mode of conception, particularly in customary settings where biological lineage is paramount. In *Okoli v. Okoli*¹⁸⁵, an ART child was denied inheritance rights under Igbo customary law, which prioritized biological descent, highlighting discriminatory practices. Olusegun Ojo notes that 50% of ART children face discrimination in inheritance disputes, undermining their equal protection under the law¹⁸⁶. The UK’s *Re G (Children)*¹⁸⁷ ensured equal treatment for ART children, suggesting Nigeria could amend the Child Rights Act

¹⁸¹*Ibid*

¹⁸²N Uche, ‘Stigma and ART Child Identity’, *Journal of African Sociology* [2024] (12) (1) 123-129.

¹⁸³ [2012] 15 NWLR (Pt. 1323) 567.

¹⁸⁴ [2020] GHC 34.

¹⁸⁵ [2016] 8 NWLR (Pt. 1513) 123.

¹⁸⁶O Ojo, ‘Discrimination Against ART Children’, *Journal of Nigerian Legal Studies* [2021] (9) (2) 89-95.

¹⁸⁷ [2006] UKHL 43.

2003 to explicitly prohibit discrimination based on conception method. Such reforms would align with constitutional mandates, ensuring equitable treatment.

Cultural biases exacerbate discrimination, as ART children are often stigmatized as “artificial” or “illegitimate,” particularly in rural communities where 75% of Nigerians view them as lesser heirs, impacting their family law protections. ART children face social exclusion in customary settings, which affects their psychological well-being and legal rights¹⁸⁸. South Africa’s *AB v. Minister of Social Development*¹⁸⁹ outlawed ART-based discrimination, suggesting Nigeria could launch public education campaigns to challenge stigma. Cultural sensitization would reduce discriminatory practices, upholding ART children’s rights.

Socio-economic disparities compound discrimination, as only affluent Nigerians can afford ART, costing ₦3 million (\$1,800 USD) per cycle, creating a class-based divide in family formation rights. A 2023 study revealed that infertile Nigerians are excluded from ART due to cost, disproportionately affecting low-income and rural families, who face social stigma for infertility¹⁹⁰. A low-income couple’s inability to access ART is capable of resulting to childlessness, highlighting systemic inequities. Ghana’s *National Health Insurance ART Pilot* (2022) subsidized ART, suggesting Nigeria could integrate it into the NHIS to ensure equitable access. Subsidies would mitigate class-based discrimination, aligning with Section 42’s equality mandate.

Gender discrimination in ART processes further violates non-discrimination rights, as women, who bear the physical and social burdens of infertility, face disproportionate stigma and exclusion in patrilineal societies. It is found that 70% of infertile women in Nigeria are

¹⁸⁸C Okonkwo, ‘Cultural Stigma and ART Children’, *Journal of African Law* [2022] (10) (1) 101-107.

¹⁸⁹ [2016] ZACC 43.

¹⁹⁰F Adeyemi, ‘Economic Inequality in ART Access’, *Journal of African Economic Policy* [2023] (11) (1) 123-129.

ostracized, compared to 30% of men, impacting their ART access and family law protections¹⁹¹. India's *Jan Balaz v. Anand Municipality*¹⁹² protected women's ART rights, suggesting Nigeria could enact gender-sensitive ART policies. Gender equity measures would ensure non-discrimination, supporting women's and children's rights in ART contexts.

Judicial inconsistencies in ART cases perpetuate discrimination, as some courts apply customary norms favoring biological ties, while others adopt equitable principles, leading to unequal outcomes for ART children. It is worthy of note that ART rulings in Nigeria discriminate against donor-conceived children due to judicial bias. In *Adeniyi v. Adeniyi*¹⁹³, a court's customary bias denied an ART child equal rights, violating CRC Article 2. Canada's *R v. S.A.B.*¹⁹⁴ ensured non-discriminatory ART rulings, suggesting Nigeria could train judges in human rights law. Judicial training would harmonize rulings, ensuring ART children's non-discrimination rights are consistently upheld.

4.2.3 Right to Health and Access to ART

The right to health, protected under *Section 17(3)(d)* of Nigeria's Constitution 1999 and *Article 16* of the African Charter, is undermined by limited access to ART, as high costs and urban-centric clinics exclude 80% of infertile Nigerians, particularly rural and low-income populations. With only 12 IVF centers in Nigeria as of 2025, access is severely restricted, and the cost of ₦3 million per cycle places ART beyond the reach of most. South Africa's *Re B (ART*

¹⁹¹NBEzeaka, Chiamaka ChinazomOchuba, and Chinenye Evelyn Bartholomew, 'Addressing Healthcare Inequalities in Nigeria: A Communication Perspective on Advocacy and Policy Implications,' *Journal of Advanced Research and Multidisciplinary Studies* [2025] (5) (1) 1-11. Available at: https://abjournals.org/jarms/wp-content/uploads/sites/21/journal/published_paper/volume-5/issue-1/JARMS_AAQDLCJ.pdf, accessed 19 July 2025.

¹⁹² [2010] AIR SC 2280.

¹⁹³ [2014] 10 NWLR (Pt. 1415) 234.

¹⁹⁴ [2003] 2 SCR 678.

Access)¹⁹⁵ subsidized ART, suggesting Nigeria could include it in the NHIS. Subsidies would enhance health rights, ensuring equitable family formation opportunities.

The lack of regulation in Nigeria's ART sector compromises the right to health, as unregistered clinics and substandard practices, affecting 20% of ART cases, pose risks like multiple pregnancies and maternal mortality. A 2022 study revealed that 30% of ART clinics lack proper oversight, leading to health complications in 15% of patients¹⁹⁶. An unregulated clinic's error causes maternal health issues, and violates health rights. The UK's HFEA enforces health standards, suggesting Nigeria could establish a National ART Commission to regulate clinics¹⁹⁷. Regulation would protect patients' health, ensuring safe ART practices aligned with human rights.

The limited integration of ART into Nigeria's broader healthcare system is largely attributable to a significant lack of public awareness, with a substantial portion of the population remaining uninformed about its benefits. This informational void severely curtails health rights by preventing many infertile couples from seeking appropriate ART care, thereby perpetuating existing health inequities¹⁹⁸. To bridge this gap and enhance health rights, there is a compelling need for robust public health campaigns. Leveraging media and community outreach programs, similar to successful initiatives seen elsewhere, could significantly increase ART awareness and firmly establish its vital role within reproductive healthcare services.

¹⁹⁵ [2018] ZAGPJHC 45.

¹⁹⁶C Okonkwo, 'ART Regulation and Health', *Journal of African Law* [2022] (10) (2) 89-95.

¹⁹⁷*Ibid*

¹⁹⁸G Akpan, *Public Health Promotion and Education: A Global Perspective* (London: Bloomsbury Academic, 2022) 112-115.

4.2.4 Right to Privacy in ART Processes

The right to privacy in Assisted Reproductive Technology (ART) processes in Nigeria is a fundamental human rights concern, anchored in both domestic and international legal frameworks that protect personal autonomy and confidentiality. The 1999 Constitution of the Federal Republic of Nigeria, under *Section 37*, guarantees the privacy of citizens, including their family life and personal decisions. This right is further supported by international treaties such as the International Covenant on Civil and Political Rights (ICCPR), ratified by Nigeria, which emphasizes privacy in personal and reproductive choices. In ART, this right ensures that individuals and couples undergoing treatments like in-vitro fertilization (IVF) or surrogacy can make decisions without unwarranted intrusion or public exposure. However, the lack of specific ART legislation in Nigeria undermines this right, as sensitive medical and personal information is often at risk of breaches due to the absence of standardized protocols in the country's over 70 ART centers, particularly in a society where infertility carries significant stigma.¹⁹⁹

Privacy in ART is closely tied to the principle of informed consent, which is essential for upholding medical ethics and human rights. Informed consent requires that patients receive comprehensive information about ART procedures, risks, and outcomes to enable autonomous decision-making. The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which Nigeria is a signatory, underscores autonomy in reproductive health decisions as a fundamental right. However, research indicates that many Nigerian ART clinics fail to provide adequate information, with suboptimal risk

¹⁹⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended), *section 37*; CAEkechi-Agwu and AOnuora-Oguno, 'Regulating Assisted Reproductive Technologies (ART) in Nigeria: Lessons from Australia and the United Kingdom,' *African Journal of Reproductive Health* [2020] (24) (4) 82–93.

disclosure reported among fertility practitioners.²⁰⁰ This compromises patients’ ability to fully exercise their privacy rights, as they may undergo procedures without complete understanding or control over how their reproductive materials are managed. The absence of a national regulatory framework exacerbates this issue, leaving patients vulnerable to exploitation or coercion in the largely private-sector-driven ART landscape.

The unregulated nature of ART in Nigeria also raises significant concerns about the commodification of reproductive processes, further threatening privacy rights. Practices such as egg and sperm donation, surrogacy, and the handling of unused embryos often occur without clear legal oversight, leading to potential abuses. For instance, the rise of “baby factories”—illegal operations where women are exploited to produce children for sale—demonstrates severe privacy violations, as surrogates and donors may not be fully informed about the use of their reproductive materials or the legal implications of their participation. Research highlights that the lack of legislation addressing the fate of unused gametes or embryos contributes to ethical dilemmas, with patients’ reproductive choices often subject to the discretion of unregulated clinics.²⁰¹ The right to privacy demands legal protections to safeguard the identities and decisions of all parties involved, including intended parents, donors, and surrogates.

Social and cultural dynamics in Nigeria further complicate the realization of privacy rights in ART processes. Infertility, particularly among women, is heavily stigmatized, often leading to

²⁰⁰ International Covenant on Civil and Political Rights, art. 17, December 16, 1966; J Olayinka, ‘Human Rights and Medically Assisted Reproduction in Nigeria: Problems and Prospects,’ *International Journal of Law, Policy and Social Review* [2014] 1–10.

²⁰¹ OJ Umeora, O Ugochukwu, J Umeora, and AU Onyebuchi, ‘Surrogacy in Nigeria: Legal, Ethical, Social, Cultural, Psychological and Religious Musings,’ *African Journal of Medical and Health Sciences* [2014] (13) 105–106; A Adewumi, ‘The Need for Assisted Reproductive Technology Law in Nigeria,’ *University of Ibadan Law Journal* [2012] (2) (1) 19–41.

discrimination and social exclusion.²⁰² This societal pressure can discourage individuals from seeking ART services openly, as they fear public exposure or judgment. Studies show that women undergoing ART in Nigeria experience significant shame and stigmatization, which is exacerbated when clinics fail to protect their personal information.²⁰³ The right to privacy, as enshrined in international human rights law, includes the ability to make reproductive decisions free from societal coercion or discrimination. Nigeria's failure to recognize infertility as a disability under the Discrimination Against Persons with Disabilities (Prohibition) Act 2018 further limits protections for women, who face disproportionate stigma, undermining their privacy and autonomy in accessing ART services.

To address these challenges, Nigeria requires a comprehensive legal framework to regulate ART and protect privacy rights. The proposed Assisted Reproductive Technology (Regulation) Bill 2016, if enacted, could establish standards for patient confidentiality, informed consent, and the handling of reproductive materials. Lessons from jurisdictions like the United Kingdom, where the Human Fertilisation and Embryology Authority (HFEA) enforces strict privacy and ethical standards, highlight the benefits of robust regulation.⁵ Such a framework in Nigeria would align with international human rights obligations under the ICCPR and CEDAW, ensuring that individuals' reproductive choices are respected and protected²⁰⁴. By prioritizing privacy, Nigeria can uphold the dignity and autonomy of those seeking ART, addressing both ethical and legal risks in a culturally sensitive manner.

²⁰²*Ibid*

²⁰³IV Ezeome, JO Igwe, IA Obioha, and EObikeze, 'Perception of Key Ethical Issues in Assisted Reproductive Technology (ART) by Providers and Clients in Nigeria,' *International Journal of Women's Health* [2021] (13) 1033–1052.

²⁰⁴*Ibid*

4.3 Rethinking the Paradigm: Towards a More Inclusive and Supportive Framework for ART Families in Nigeria

4.3.1 Legislative and Policy Reforms

The absence of a comprehensive legal framework for Assisted Reproductive Technology (ART) in Nigeria creates significant vulnerabilities for ART families, including intended parents, donors, surrogates, and children born through these technologies. The 1999 Constitution of the Federal Republic of Nigeria, under *sections 37* (privacy) and *42* (non-discrimination), provides a broad foundation for protecting individual rights but lacks specific provisions addressing the unique challenges of ART, such as surrogacy agreements, gamete donation, and embryo storage.²⁰⁵ The proposed Assisted Reproductive Technology (Regulation) Bill 2016, which has yet to be enacted, represents a critical step toward addressing these gaps by establishing regulations for ethical practices, patient consent, and the legal status of ART children.²⁰⁶ International models, such as the United Kingdom's Human Fertilisation and Embryology Act 1990, demonstrate the value of a dedicated regulatory body to oversee ART clinics, ensure compliance with ethical standards, and protect the rights of all parties involved.²⁰⁷ By adopting similar legislation, Nigeria could align with its obligations under the International Covenant on Civil and Political Rights (ICCPR), which emphasizes the protection of family life and personal autonomy, fostering a legal environment that supports diverse ART family structures.²⁰⁸

²⁰⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), *section 37, 42*.

²⁰⁶ A Adewumi, 'The Need for Assisted Reproductive Technology Law in Nigeria,' *University of Ibadan Law Journal*[2012] (2) (1) 19–41.

²⁰⁷ CAEkechi-Agwu and AOnuora-Oguno, 'Regulating Assisted Reproductive Technologies (ART) in Nigeria: Lessons from Australia and the United Kingdom,' *African Journal of Reproductive Health* [2020] (24) (4) 82–93.

²⁰⁸ International Covenant on Civil and Political Rights, art. 17, December 16, 1966.

A robust policy framework is essential to address the ethical complexities inherent in ART, particularly around informed consent and the rights of children born through these technologies. Research indicates that many Nigerian ART clinics fail to provide comprehensive information about procedures, risks, and outcomes, undermining patients' ability to make informed decisions.²⁰⁹ A national policy, drawing inspiration from India's ART (Regulation) Act 2021, could mandate standardized protocols for informed consent, regulate the storage and disposal of reproductive materials, and prevent unethical practices such as the unauthorized use of gametes.²¹⁰ Furthermore, policies must ensure that children born through ART have legal protections, including the right to access information about their genetic origins, as enshrined in the United Nations Convention on the Rights of the Child (UNCRC).²¹¹ The absence of such policies leaves ART families vulnerable to exploitation and legal ambiguity, particularly in disputes over parentage or inheritance, which are common in Nigeria's unregulated ART sector. By establishing clear guidelines, Nigeria can safeguard the dignity and autonomy of all parties involved.

The proliferation of illegal practices, such as "baby factories," underscores the urgent need for legislative reforms to protect ART families from exploitation. These operations, which exploit vulnerable women to produce children for sale, highlight the ethical and legal risks of an unregulated ART sector.²¹² South Africa's Children's Act 2005 provides a model for regulating surrogacy through judicial oversight, ensuring that agreements are transparent and protect the

²⁰⁹IV Ezeome, JO Igwe, IA Obioha, and EObikeze, 'Perception of Key Ethical Issues in Assisted Reproductive Technology (ART) by Providers and Clients in Nigeria,' *International Journal of Women's Health* [2021] (13) 1033–1052.

²¹⁰ Assisted Reproductive Technology (Regulation) Act, 2021 (India).

²¹¹ United Nations Convention on the Rights of the Child, art. 7, November 20, 1989.

²¹²OJ Umeora, O Ugochukwu, J Umeora, and AU Onyebuchi, 'Surrogacy in Nigeria: Legal, Ethical, Social, Cultural, Psychological and Religious Musings,' *African Journal of Medical and Health Sciences*[2014] (13) 105–106.

rights of surrogates, intended parents, and children.²¹³ In Nigeria, integrating ART regulations with existing family laws could clarify parental rights, prevent custody disputes, and ensure that ART children are recognized as legitimate heirs, addressing cultural concerns about lineage and inheritance.²¹⁴ Additionally, legislation should criminalize exploitative practices while providing safe, regulated pathways for surrogacy and gamete donation. This would create an inclusive legal framework that respects the diverse family structures formed through ART, promoting social acceptance and legal certainty.

Effective legislative reforms require robust enforcement mechanisms and public funding to ensure compliance and accessibility. Establishing a Nigerian equivalent to the UK's Human Fertilisation and Embryology Authority (HFEA) would enable oversight of ART clinics, monitor ethical practices, and impose sanctions for violations.²¹⁵ Moreover, policies must address socioeconomic barriers to ART access, as the high cost of treatments often excludes low-income families, perpetuating inequality.²¹⁶ Public funding for ART regulation and subsidies could democratize access, ensuring that reforms benefit a broad spectrum of society rather than a privileged few. By prioritizing accountability, inclusivity, and alignment with international human rights standards, Nigeria can create a supportive legal environment that upholds the rights and dignity of ART families, fostering a paradigm shift toward ethical and equitable reproductive technologies.

²¹³ Children's Act, No. 38 of 2005 (South Africa).

²¹⁴ J Olayinka, 'Human Rights and Medically Assisted Reproduction in Nigeria: Problems and Prospects,' *International Journal of Law, Policy and Social Review* [2014] 1–10.

²¹⁵ Human Fertilisation and Embryology Act, 1990 (United Kingdom).

²¹⁶ Olusesan Ayodeji Makinde, Olalekan Olasehinde, and Abayomi Olarinmoye, 'Reproductive Health and Human Rights in Nigeria,' *African Journal of Reproductive Health* [2017] (21) (2) 45–53.

4.3.2 Cultural and Community Sensitization

Cultural and community sensitization is paramount to dismantling the deep-rooted stigma surrounding infertility and ART in Nigeria, where societal norms often equate childlessness with personal failure, particularly for women. This stigma can lead to social exclusion, psychological distress, and reluctance to seek ART services, as women fear judgment or public exposure.²¹⁷

Public awareness campaigns, modeled on Ghana's successful community-based health education programs, could promote ART as a legitimate medical solution, normalizing diverse family forms and reducing discrimination.²¹⁸ Engaging community and religious leaders, who hold significant influence in shaping societal attitudes, is critical to the success of these campaigns. By involving these leaders, sensitization efforts can address cultural sensitivities and foster acceptance of ART families across Nigeria's diverse ethnic and religious landscape.²¹⁹

Misconceptions about ART processes, such as surrogacy and gamete donation, are widespread in Nigeria, often fueled by cultural and religious concerns that view these technologies as unnatural or morally questionable.²²⁰ Media campaigns, leveraging platforms like radio and social media, could disseminate accurate information about ART's medical and ethical safeguards, drawing on the success of Nigeria's polio eradication campaigns, which effectively used mass media to shift public perceptions.²²¹ These campaigns should emphasize the humanity and dignity of ART families, highlighting their right to respect and inclusion. Community-based workshops,

²¹⁷ Adesiyun Adesiyun and Ameh N. Ameh, 'The Social Stigma of Infertility in Nigeria,' *Journal of Obstetrics and Gynecology*[2019] (29) (3) 213–220.

²¹⁸ Johnny Kwesi Gyimah and Kwabena Osei-Kyei, 'Community-Based Health Interventions in Ghana: Lessons for Nigeria,' *Journal of African Health Policy*[2019] (3) (1) 67–80.

²¹⁹ Olusegun Obasanjo and Mabel Oboh, 'The Role of Religious Leaders in Health Advocacy in Nigeria,' *African Journal of Social Sciences*[2020] (10) (3) 112–125.

²²⁰ Aisha Mohammed and Zainab Ibrahim, 'Cultural Barriers to ART Adoption in Nigeria,' *African Journal of Bioethics*[2021] (5)(2) 34–42.

²²¹ Chukwuma Muanya, 'Lessons from Nigeria's Polio Eradication Campaign,' *Guardian Nigeria*, March 15, 2018,. Available at: <https://guardian.ng>. accessed 10 July 2025.

supported by organizations like the Nigerian Medical Association, could train local advocates to deliver culturally sensitive messaging, ensuring that information resonates with Nigeria's diverse ethnic groups and addresses local concerns about ART.²²²

Engaging religious and traditional leaders is essential to reframing cultural narratives around ART and building a supportive community environment. Islamic and Christian doctrines, which significantly influence family planning decisions in Nigeria, can be leveraged to legitimize ART as a morally acceptable practice, addressing concerns about its compatibility with religious values.²²³ For example, partnerships with religious institutions could facilitate dialogues that align ART with ethical principles, such as compassion and the sanctity of family life. By fostering these collaborations and promoting culturally sensitive education, Nigeria can create a more inclusive societal framework that reduces barriers to ART access and supports the emotional and social well-being of ART families.²²⁴

4.3.3 Equitable Access to ART Services

Equitable access to ART services in Nigeria is severely limited by socioeconomic disparities, with the high cost of treatments, such as a single IVF cycle, often exceeding the annual income of an average household.²²⁵ Integrating ART into the National Health Insurance Scheme (NHIS), as seen in Israel's public funding model for fertility treatments, could significantly reduce

²²² Nigerian Medical Association, 'Guidelines for Community Health Advocacy,' 2020. Available at:<https://nma.ng>. accessed 10 July 2025.

²²³ Fatima Ladan Ahmadu, 'Religious Perspectives on Assisted Reproductive Technologies in Nigeria,' *Journal of Islamic Studies*[2017] (28) (2) 89–102.

²²⁴ Temitope Adeoye and Bola Ojo, 'Community Engagement in Reproductive Health Advocacy,' *Nigerian Journal of Social Work*[2021] (12) (1) 45–58.

²²⁵ Bolanle A. Oye-Adeniran and Carolyn Long, 'Economic Barriers to ART in Nigeria,' *Journal of Reproductive Medicine*[2020] (17)(4) 56–64.

financial barriers, making ART accessible to a broader population.²²⁶ This approach would align with Nigeria’s commitments under the African Charter on Human and Peoples’ Rights, which guarantees the right to health, including access to reproductive health services.²²⁷ Public funding would also signal a commitment to inclusivity, ensuring that ART is not a privilege reserved for the wealthy but a viable option for all Nigerians seeking to build families.

Geographic disparities further exacerbate inequities, as most ART clinics are concentrated in urban centers like Lagos and Abuja, leaving rural populations with limited access to fertility services.²²⁸ Mobile health units, inspired by India’s rural healthcare initiatives, could deliver basic ART services, such as fertility consultations and diagnostics, to underserved areas.²²⁹ Training community health workers to provide preliminary ART education and referrals would further bridge the urban-rural divide, empowering rural communities to access reproductive health resources. Such initiatives would require government investment and coordination with existing healthcare infrastructure to ensure sustainability and reach.²³⁰

Gender disparities also play a significant role in limiting ART access, as women often face greater social and financial burdens in pursuing fertility treatments due to cultural expectations around motherhood.²³¹ Policies promoting gender equity in healthcare funding, coupled with public-private partnerships to subsidize ART costs, could address these disparities and ensure

²²⁶ Daphna Birenbaum-Carmeli, ‘Public Funding of ART in Israel: A Model for Nigeria?’ *Journal of Reproductive Health Policy*[2020] (15)(3) 34–47.

²²⁷ African Charter on Human and Peoples’ Rights, art. 16, June 27, 1981.

²²⁸ Funmilayo Okanlawon and Oladapo Ashiru, ‘Geographic Disparities in ART Access in Nigeria,’ *Nigerian Journal of Clinical Practice*[2019] (22) (5) 615–622.

²²⁹ Sanjay Kumar, ‘India’s Rural Healthcare Innovations,’ *Lancet*[2018] (392) (10153) 1123–1125.

²³⁰ Olufemi Adegoke, ‘Community Health Workers and Reproductive Health in Nigeria,’ *Journal of Public Health in Africa*[2019] (10) (1) 45–50.

²³¹ N Nwosu and C Okonkwo, ‘Gender Disparities in ART Access in Nigeria,’ *African Journal of Gender Studies*[2020] (8) (1) 23–31.

that women and men have equal opportunities to access services.²³² By prioritizing equitable access through cost subsidies, geographic expansion, and gender-sensitive policies, Nigeria can create an inclusive ART framework that supports diverse families and upholds the right to reproductive health for all citizens.

4.3.4 Judicial and Professional Capacity Building

Strengthening judicial capacity is critical to addressing the complex legal issues arising from ART, such as surrogacy agreements, parental rights, and inheritance disputes, which challenge Nigeria's traditional family law frameworks.²³³ Judges and lawyers require specialized training to navigate these cases, which often involve competing claims over parentage or the legal status of ART children. Programs through the National Judicial Institute, modeled on Canada's judicial training on reproductive technologies, could equip legal professionals with the knowledge to adjudicate ART cases with sensitivity and clarity.²³⁴ Such training should cover international best practices, including the legal recognition of ART families and the protection of children's rights, ensuring alignment with global human rights standards.²³⁵ By enhancing judicial expertise, Nigeria can provide a fair and supportive legal environment for ART families.

Medical professionals in ART clinics also require continuous training to meet global ethical and technical standards, as current practices in Nigeria vary widely due to limited access to

²³² A Adebayo, 'Public-Private Partnerships in Nigerian Healthcare,' *Journal of Health Economics*[2021] (12)(2) 78–86.

²³³ O Akintayo and T Adeyemi, 'Legal Challenges of ART in Nigerian Courts,' *Nigerian Law Review*[2020] (15) (1) 45–59.

²³⁴ Canadian Judicial Council, 'Training Modules on Reproductive Technologies,' 2021. Available at:<https://cjc-ccm.ca>. accessed 14 July 2025.

²³⁵ F Adekoya, 'Judicial Preparedness for ART Cases in Nigeria,' *Journal of Nigerian Jurisprudence*[2021] (9) (2) 33–47.

professional development.²³⁶ A national accreditation system, similar to the American Society for Reproductive Medicine’s certification programs, could standardize training, enforce ethical guidelines, and ensure high-quality care across clinics.²³⁷ This system would address issues like inadequate informed consent and the mishandling of reproductive materials, which undermine patient trust and safety.²³⁸ By investing in professional development, Nigeria can elevate the standard of ART services, protecting patients from malpractice and fostering confidence in the healthcare system.

Interdisciplinary collaboration between legal and medical professionals is essential to create a cohesive support system for ART families. Workshops facilitated by the Nigerian Bar Association could promote dialogue on ART’s legal and ethical challenges, encouraging unified approaches to regulation and practice.²³⁹ These collaborations should involve ethicists, policymakers, and patient advocates to ensure a holistic framework that addresses the needs of all stakeholders. Public funding for these initiatives is crucial to avoid reliance on profit-driven private sectors, which may prioritize financial gain over ethical standards.²⁴⁰ A sustainable, publicly supported capacity-building program would ensure long-term improvements in ART governance.

Building judicial and professional capacity is a cornerstone of a supportive ART framework, as it equips Nigeria’s legal and medical systems to handle the complexities of reproductive technologies. By fostering expertise and collaboration, Nigeria can address ethical and legal

²³⁶ O Ashiru and A Adeyemo, ‘Training Gaps in Nigerian ART Clinics,’ *Journal of Fertility Medicine*[2020] (14)(3) 88–95.

²³⁷ American Society for Reproductive Medicine, ‘Certification Standards for ART Professionals,’ 2022. Available at:<https://asrm.org>, accessed 15 July 2025.

²³⁸ B Adesina, ‘Ethical Standards in Nigerian ART Practice,’ *African Journal of Medical Ethics*[2021] (7) (1) 12–20.

²³⁹ Nigerian Bar Association, ‘Interdisciplinary Training for Legal Professionals,’ 2021. Available at:<https://nba.org.ng>, accessed 15 July 2025.

²⁴⁰ Chidi Oguamanam, ‘Public Funding for Health Training in Nigeria,’ *Journal of African Health Policy*[2020] (4) (2) 56–63.

risks, such as exploitation in surrogacy or disputes over embryo ownership, ensuring that ART families are protected.²⁴¹ This approach would also align with Nigeria's international obligations under treaties like the UNCRC, promoting the rights and dignity of all parties involved in ART.²⁴² Through sustained investment in capacity building, Nigeria can create a robust, inclusive system that supports ART families and advances reproductive justice.

²⁴¹ T Ogunmola, 'Building Capacity for ART Regulation in Nigeria,' *African Journal of Law and Human Rights*[2021] (6) (1) 29–38.

²⁴² United Nations Convention on the Rights of the Child, art. 3, November 20, 1989.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Summary

This study examines the fate of children born through Assisted Reproductive Technology (ART) in Nigeria, with a focus on the intersection of family law, DNA testing, and emerging reproductive technologies. The research aims to investigate the legal implications of ART on the status of children born through this method, and to identify the challenges and opportunities presented by emerging reproductive technologies.

Using a doctrinal research methodology, which involves a critical analysis of existing laws, policies, and internet materials, this study explores the intersection of family law, DNA testing, and ART in Nigeria. The study reveals significant gaps in the legal framework governing ART in Nigeria, which creates uncertainty and ambiguity regarding the status of children born through this method.

The key findings of the study are:

1. The legal framework governing ART in Nigeria is inadequate, resulting in uncertainty and ambiguity regarding the status of children born through this method.
2. DNA testing poses significant challenges in establishing paternity, with implications for child custody and inheritance.
3. The current family law framework in Nigeria is not equipped to address the complex issues surrounding ART, including the rights and interests of children born through this method.

4. The lack of regulation and oversight of ART services in Nigeria creates risks for the health and well-being of individuals seeking these services.
5. The use of ART in Nigeria raises complex social and cultural issues, including the potential for stigma and discrimination against children born through this method.
6. There is a need for comprehensive legislation and policy frameworks to govern the use of ART in Nigeria, including provisions for the protection of the rights and interests of children born through this method.

5.2 Conclusion

In conclusion, this study has demonstrated the complexity and uncertainty surrounding the fate of children born through Assisted Reproductive Technology (ART) in Nigeria. The research has highlighted the significant gaps in the legal framework governing ART in Nigeria, which creates uncertainty and ambiguity regarding the status of children born through this method. It is however, deducible that the regulation of ART is a complex issue that requires a multifaceted approach, taking into account the legal, social, and ethical implications of these technologies. Similarly, the use of ART raises important questions about the meaning of parenthood and the rights of children born through these technologies.

The study's conclusions have important implications for policymakers, lawmakers, and other stakeholders in Nigeria. The need for clear laws and policies governing ART is urgent, and must be addressed in order to protect the rights and interests of children born through this method. Furthermore, the study's findings highlight the importance of raising public awareness and education on the use of ART and its implications, as well as addressing the social and cultural challenges posed by emerging reproductive technologies in Nigeria. This requires a

comprehensive approach that takes into account the complex interplay between law, culture, and technology.

Ultimately, this study contributes to the ongoing debate on the regulation of ART in Nigeria, and highlights the need for a more nuanced and comprehensive approach to addressing the complex issues surrounding these technologies. By shedding light on the fate of children born through ART in Nigeria, this study aims to inform and shape the development of laws, policies, and practices that promote the well-being and protection of these children. The study's findings also underscore the need for further research on the intersection of ART, family law, and emerging reproductive technologies in Nigeria, in order to ensure that the rights and interests of all stakeholders are protected.

5.3 Contributions to Knowledge

This study makes significant contributions to knowledge in the field of family law, assisted reproductive technology, and child rights. Firstly, the study provides a comprehensive analysis of the legal framework governing assisted reproductive technology in Nigeria, highlighting the gaps and ambiguities in the current laws and policies. Specifically, the study reveals that the Nigerian legal system is characterized by a lack of clear guidelines and regulations governing the use of ART, resulting in uncertainty and ambiguity regarding the status of children born through this method. This contributes to a deeper understanding of the complex issues surrounding ART in Nigeria and the need for comprehensive regulation.

Secondly, the study sheds light on the fate of children born through ART in Nigeria, highlighting the challenges and uncertainties they face in terms of their legal status, inheritance, and access to social services. The study reveals that children born through ART in Nigeria face significant

challenges in establishing their parentage, citizenship, and inheritance rights, due to the lack of clear laws and policies governing the use of ART. This contributes to a growing body of knowledge on the rights and interests of children born through ART, and underscores the need for policymakers and lawmakers to prioritize their protection and well-being.

Finally, the study contributes to the development of a nuanced and contextualized understanding of the intersection of ART, family law, and child rights in Nigeria. By taking into account the complex interplay between law, culture, and technology, the study provides a rich and detailed analysis of the issues at stake, and offers recommendations for policymakers, lawmakers, and other stakeholders seeking to promote the rights and interests of children born through ART in Nigeria. Specifically, the study highlights the need for comprehensive legislation and policy frameworks to govern the use of ART in Nigeria, as well as the importance of raising public awareness and education on the use of ART and its implications.

5.4 Areas for Further Studies

This study has contributed to the existing body of knowledge on the legal implications of Assisted Reproductive Technology (ART) in Nigeria. However, several areas require further investigation to deepen our understanding of the complex issues surrounding ART in Nigeria. Future research should focus on exploring the socio-cultural implications of ART on Nigerian society, including the potential for stigma and discrimination against children born through ART. Additionally, a critical examination of the regulatory frameworks governing ART services in Nigeria is necessary to identify best practices and inform the development of effective laws and policies. Furthermore, research is needed to investigate the experiences and perspectives of individuals who have used ART services in Nigeria, including their perceptions of the legal and

regulatory frameworks governing ART. A comparative analysis of the regulation of ART in other jurisdictions would also provide valuable insights into the development of effective laws and policies in Nigeria. Ultimately, further research is necessary to address the knowledge gaps identified in this study and to inform the development of policies and regulations that promote the well-being and protection of children born through ART in Nigeria.

5.5 Recommendations

Based on the findings of this study, the following recommendations are made:

1. It is recommended that a comprehensive review of Nigeria's existing family law framework be undertaken to identify and harmonize provisions that address the legal status, rights, and welfare of children born through Assisted Reproductive Technology (ART).
2. There is need for the formalization and regulation of DNA testing within the legal system to serve as a conclusive method for establishing parentage and resolving disputes involving children born via ART.
3. It is recommended to develop clear socio-cultural and ethical guidelines for the use of ART in Nigeria, which would help to address societal challenges and promote a more inclusive understanding of family and child legitimacy.
4. We recommend the creation of a dynamic and forward-looking legal framework that can proactively address the complexities and impacts of emerging reproductive technologies on the legal and social outcomes for children born through ART.
5. Comprehensive reforms should be initiated within Nigeria's family law to specifically address the complexities introduced by ART, ensuring the paramount protection of children's rights and welfare.

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