

**RETHINKING REPRODUCTIVE RIGHTS BEYOND BIOLOGICAL MOTHERHOOD IN NIGERIA'S INDUSTRIAL SECTOR: LEGAL PERSPECTIVES \***

**Abstract**

*In Nigeria's industrial sector, sexual and reproductive rights are primarily conceptualised through the lens of biological motherhood, emphasising fertility, pregnancy, and childbirth. This notion marginalises working-class women who, despite possessing reproductive rights, are unable to biologically reproduce. Using a doctrinal methodology, this article critically examines Nigeria's constitutional provisions, statutory frameworks, and cases to reveal the inadequacy of its legal protection for sexual and reproductive autonomy beyond biological capacity. Particular attention is paid to the Constitution of 1999, the Labour Act, and the Child's Rights Act, which collectively fail to recognise assisted reproductive technologies like surrogacy and adoption as legitimate avenues of reproductive expression which should possess reproductive right. The article will examine South Africa's legal framework, where constitutional guarantees of dignity, equality, and reproductive health, alongside legislation such as the Children's Act 2005 and the National Health Act 2003, explicitly regulate assisted reproduction, surrogacy and Adoption. A progressive shift towards recognising reproductive rights as grounded in autonomy rather than biological reproduction. The article highlights Nigeria's inadequacy in safeguarding women confronting infertility or choosing non-biological avenues to parenting. It advocates for a redefinition of reproductive rights in Nigeria that prioritises autonomy, dignity, and equality, ensuring alignment of national legislation with international and regional human rights commitments.*

**Keywords:** Reproductive Rights, Biological Motherhood, Industrial Sector, Legal Perspectives, Nigeria

**1. Introduction**

Reproductive rights are acknowledged in international law as encompassing 'the right of all individuals and couples to freely and responsibly determine the number, spacing, and timing of their offspring, along with access to the information and means necessary for such decisions.'<sup>1</sup> They include both the right to reproduce and the right not to reproduce, as well as the right to bodily integrity, reproductive autonomy, and access to healthcare services that enable safe and informed reproductive choices.<sup>2</sup> In many societies, including Nigeria, reproductive rights have traditionally been framed through the narrow lens of biological motherhood, that is, a woman's ability to conceive, carry, and give birth to children. This narrative reduces women's reproductive value to maternity, thereby excluding those who are unable, choose not to, or delay reproduction. Such view entrenches stigma against infertile women, unmarried women, and those who assert control over their reproductive choices.<sup>3</sup> Working-class women who have sexual and reproductive rights but are unable to conceive frequently encounter prejudice and exclusion in legal contexts and within the workplace. National legal systems safeguard biological women in the workplace but neglect to accommodate working-class women who possess sexual and reproductive rights yet are unable to reproduce. The International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 12, mandates that states ensure the highest attainable standard of health, encompassing reproductive health. For women experiencing infertility, this necessitates access to reproductive treatments like IVF, Surrogacy, donor programs, and fertility preservation technology. A rights-based approach necessitates legal frameworks that streamline adoption processes, ethically govern surrogacy, and ensure access to alternative parenthood irrespective of marital or economic circumstances.

This article discusses rethinking reproductive rights beyond biological motherhood in Nigeria's industrial sector. This article will also examine best practices Nigeria can learn from South Africa. The article is divided into eight parts. Part one is on the general introduction, part two examines the conceptual clarification of sexual and Reproductive rights, and part three accesses the concept of a woman under the statute, Part four considers the sexual and Reproductive Rights of women who have reproductive rights but cannot reproduce, part five examines the Nigerian legal framework on reproductive rights, part six considers the rethinking of the scope of reproductive rights: a legal lesson from South Africa, part seven examines reconceptualising reproductive rights in Nigeria, Part eight examines the conclusion and recommendations.

**2. Conceptual Clarification of Sexual and Reproductive Rights**

The World Health Organization<sup>4</sup> defines sexual health as: 'Sexual health is a state of physical, mental and social well-being in relation to sexuality. It requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence.' Sexual health is a state of physical, emotional, mental, and social well-being related to sexuality, not just the absence of disease, dysfunction, or infirmity,

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<sup>1</sup> International Conference on Population and Development, Programme of Action (Cairo, 5–13 September 1994) para 7.3.

<sup>2</sup> Ibid

<sup>3</sup> AA Adepoju, 'Fertility, Motherhood and the Rights of Women in Nigeria' (2019) African Journal of Reproductive Health 23(2) 12.

<sup>4</sup> World Health Organization, 'Sexual Health' <<https://www.who.int/topics/sexual-health/en/>> accessed 29 September 2023.

<sup>5</sup> According to the Special Rapporteur on the right of everyone to enjoy the highest attainable standard of physical and mental health, WHO made this definition in 2004. Based on the Programme of Action's acknowledgement that sexual health 'is the enhancement of life and personal relations, and not merely counselling and care related to reproduction and sexually transmitted diseases,' this definition was developed. It describes how the physical, emotional, intellectual, and social facets of sexuality are integrated in ways that are constructively rewarding and improve communication, personality, and love. One aspect of reproductive rights is sexual health,<sup>6</sup> Sexual and reproductive health rights or SRHR is the concept of human rights applied to sexuality and reproduction. It is a combination of four fields that in some contexts are more or less distinct from each other, but less so or not at all in other contexts. These four fields are sexual health, sexual rights, reproductive health and reproductive rights.<sup>7</sup> In the concept of SRHR, these four fields are treated as separate but inherently intertwined.<sup>8</sup> Distinctions between these four fields are not always made. Sexual health and reproductive health are sometimes treated as synonymous to each other, as are sexual rights and reproductive rights. In some cases, sexual rights are included in the term sexual health, or vice versa.<sup>9</sup> Reproductive rights are legal rights and freedoms linked to reproduction and reproductive health.<sup>10</sup>

The World Health Organisation (WHO) defines reproductive rights as follows: 'Reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence.'<sup>11</sup> In other words, this entails the right to take decisions on child spacing and raising by either male or female devoid of coercion and violence. Abortion rights movements, birth control, freedom from forced sterilization and contraception, access to high-quality reproductive healthcare, and the ability to make free and informed reproductive decisions are all examples of women's reproductive rights.<sup>12</sup> The right to menstrual health, protection from practices like female genital mutilation (FGM), and education regarding sexually transmitted diseases and other facets of sexuality are examples of reproductive rights.<sup>13</sup>

From the definition of reproductive rights above, a broader contextualization recognises reproductive rights as extending beyond biological capacity to include bodily autonomy, decision-making freedom, and access to comprehensive reproductive health services. This definition emphasizes the right to Contraception and family planning; Safe abortion services where lawful; Fertility treatment and assisted reproductive technologies; Protection from sexual harassment and reproductive coercion in workplaces; Maternity and paternity protections, and work-life balance measures; Non-discrimination on grounds of infertility or non-motherhood<sup>14</sup> This broader understanding of sexual and reproductive rights is anchored in international human rights law. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) affirms women's rights to decide freely on matters of reproduction.<sup>15</sup> Similarly, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) recognises women's rights to control their fertility, to choose whether to have children, and to access reproductive health services.<sup>16</sup> The ICPD Programme of Action (1994) also emphasises reproductive autonomy as central to dignity and equality.<sup>17</sup> Reproductive Autonomy pertains to the right and liberty of individuals, particularly women, to make independent choices regarding the timing, manner, and decision to procreate. It includes access to healthcare, contraception, legal abortion, fertility services, and the ability to refuse reproduction without discrimination or compulsion<sup>18</sup> Biological capacity refers to the physiological ability of an individual to reproduce, whereas reproductive autonomy constitutes a legal and human rights principle.<sup>19</sup> A woman of childbearing age may possess the biological capacity to conceive, yet she may opt not to reproduce; reproductive autonomy ensures her freedom to make that choice free from external intervention.<sup>20</sup>

<sup>5</sup> The Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, 'Mental Health' (E/CN.4/2004/49) <<http://ohchr.org>> accessed 29 September 2023.

<sup>6</sup> WHO, 'Defining Sexual Health: Report of a Technical Consultation on Sexual Health' (28-31 January 2002, Geneva).

<sup>7</sup> Wikipedia, 'Sexual and Reproductive Health and Rights' <<http://n.m.wikipedia.org>> accessed 4 July 2024.

<sup>8</sup> IPPF Charter on Sexual and Reproductive Rights Guidelines (2011) <<https://web.archive.org/web/20181223155448/https://www.ippf.org/resource/IPPF-Charter-Sexual-and-Reproductive-Rights>> accessed 4 July 2024.

<sup>9</sup> Imasogie MO, 'Reproductive Rights as Human Rights' (2004) in AN Nwazuoke (ed) 'Essays in Human Rights Law' (Ebonyi State University) 98-123.

<sup>10</sup> Olomjobi (n 5).

<sup>11</sup> WHO, 'Gender and Reproductive Rights' (2009) <<http://who.int/reproductive-health/gender/index.html>> accessed 29 September 2023.

<sup>12</sup> Amnesty International USA, 'Stop Violence against Women: Reproductive Rights' (2008) <[http://www.amnestyusa.org/Stop\\_Violence\\_Against\\_Women\\_SVAW/Reproductive\\_Rights/page.do?id](http://www.amnestyusa.org/Stop_Violence_Against_Women_SVAW/Reproductive_Rights/page.do?id)> accessed 29 September 2023.

<sup>13</sup> WHO, 'Tackling the Taboo of Menstrual Hygiene in the European Region' (2018) accessed 29 September 2023.

<sup>14</sup> Rebecca J Cook and Bernard M Dickens, *Reproductive Health and Human Rights: Integrating Medicine, Ethics, and Law* (Oxford University Press 2003).

<sup>15</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

<sup>16</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005).

<sup>17</sup> International Conference on Population and Development (ICPD), Programme of Action of the International Conference on Population and Development (UN 1994).

<sup>18</sup> Rebecca J Cook and Bernard M Dickens, *Reproductive Health and Human Rights: Integrating Medicine, Ethics, and Law* (Oxford University Press 2003).

<sup>19</sup> International Conference on Population and Development (ICPD), Programme of Action of the International Conference on Population and Development (UN 1994).

<sup>20</sup> Purdy, L. (2006). 'Women's reproductive autonomy: medicalization and beyond.' *Journal of Medical Ethics*, 31(12), 772-778.

Biological reproduction denotes the inherent process by which humans procreate, hence guaranteeing the perpetuation of the species. It pertains to biological capacity, namely the physiological potential of women and men to conceive and bear offspring.<sup>21</sup> thus, biological capacity is rooted in physiology, whereas reproductive autonomy is grounded in human rights, dignity, and self-determination.<sup>22</sup> Feminist legal theory further critiques the ‘motherhood-only’ paradigm, arguing that women must not be valued solely for their reproductive capacity but as individuals entitled to dignity and autonomy.<sup>23</sup> In the Nigerian industrial sector, this means labour laws and workplace policies must go beyond maternity protection to address issues such as sexual harassment, reproductive health needs, work–life balance, and corporate governance mechanisms that uphold reproductive justice.

### **3. Concept of a Woman under the Statute**

Under the Nigerian law, there is no single universal definition of a ‘woman’ across all statutes. Most laws use the word ‘woman’ in context e.g. maternity, violence, and employment without expressly defining it. Instead, protections for women’s sexual and reproductive rights are framed through provisions on maternity, dignity, equality, and protection from violence/discrimination.<sup>24</sup> The Constitution of the Federal Republic of Nigeria, 1999 (as amended) has no explicit definition of ‘woman,’ but: the Court in the case of *Folarin Oreka Maiya v. Clinton Health Access Initiative*<sup>25</sup> have interpreted these provisions of section 34(1) which guarantees the right to dignity of the human person (protecting against sexual abuse, degrading treatment) and Section 42(1) which prohibits discrimination on the basis of sex as protecting women from pregnancy-related discrimination in the workplace. A reproductive rights protection. According to the Labour Act<sup>26</sup> A woman was defined as any member of the female sex, whatever her age or employment status; this definition is crucial for understanding specific rights and protections afforded to women in workplace. This definition implies that the labour act focuses on the biological sex of an individual by defining a woman as female. This definition also applies to women employees of any age and also protects their employment status whether manual, clerical, administrative or professional. The Labour Act also protects her reproductive right to maternity leave and wage security in the industrial sector<sup>27</sup>

The Violence against Persons (Prohibition) Act, 2015 (VAPP Act) did not define who a ‘woman’ is, it only provided an extensive protection of women’s bodily integrity and sexual and reproductive rights by prohibiting sexual violence<sup>28</sup>, criminalising harmful traditional practices against women, such as female genital mutilation and harmful widowhood practices<sup>29</sup> the above implies that the VAPP Act recognises a woman as a female person deserving protection from sexual and gender-based violence, thereby safeguarding her reproductive autonomy. The Employee Compensation Act (ECA)<sup>30</sup> did not specifically define a woman but an employee under the Act as a person employed by an employer under oral or written contract of employment, whether on a continuous, part-time, temporary, apprenticeship or casual basis, and includes domestic servants who are not members of the family of the employer, but excludes an out-worker This broad definition covers nearly all categories of workers ranging from permanent, contract, part-time, casual, and domestic workers unlike the Labour Act, which restricts ‘worker’ to mainly manual and clerical employees. Many Nigerian women are employed as domestic workers, casual labourers, or part-time staff in the industrial and service sectors. By explicitly including these categories, the ECA ensures that women outside the traditional ‘formal sector’ can claim protection and compensation. This is crucial for women’s reproductive rights, since informal sector workers are often the most vulnerable to unsafe working conditions that may affect pregnancy, maternal health, or fertility.

The most wide-reaching international human rights treaty tailored to women is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>31</sup> Ratified by Nigeria (though not domesticated under section 12 of the Constitution), but often cited by courts as persuasive authority. Nigeria is a signatory, and court in the case of *Abacha v. Fawehinmi*<sup>32</sup> affirmed that ratified international treaties can guide interpretation of rights even if is not domesticated. The term ‘woman’, however, is left undefined in CEDAW. It defined discrimination against women broadly to include any distinction, exclusion, or restriction on the basis of sex that impairs women’s rights, including reproductive rights.<sup>33</sup> The lack of a specific definition begs the question: What makes a woman? Is a woman defined by her anatomy? Her biology? Her genetics? All three? Is a woman defined by her gender identity? Her gender performance or her perceived gender?

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<sup>21</sup> World Health Organization, Sexual and Reproductive Health and Research (SRH) (WHO 2020).

<sup>22</sup> Guttmacher Institute. ‘Any Restrictions on Reproductive Health Care Harm Reproductive Autonomy: Evidence from Four States,’ March 2024.

<sup>23</sup> Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989).

<sup>24</sup> National Human Rights commission, *The right of women and gender related matters* @ <https://www.nigeriarights.gov.ng>

<sup>25</sup> NICN/ABJ/132/2012)

<sup>26</sup> Labour Act, s 91

<sup>27</sup> Labour Act, Cap L1, LFN 2004 section 54(1)

<sup>28</sup> Section 1 of VAPP

<sup>29</sup> Section 23, 25

<sup>30</sup> Employee’s compensation Act, 2010

<sup>31</sup> United Nation Convention on the Elimination of All Forms of Discrimination Against Women art. 29, opened for signature Mar. 1, 1980, 1249 U.N.T.S. 13 [hereinafter CEDAW].

<sup>32</sup> (2000) 6 NWLR (Pt. 660) 228)

<sup>33</sup> Article 1 of CEDAW

#### **4. Sexual and Reproductive Rights of Women who have Reproductive Rights but Cannot Reproduce**

This right pertains to women who adopt or foster children when they are unable to conceive. The Nigerian laws acknowledge adoption as a statutory process, and as such, they specify the requirements for adopters, the process, the means, and the outcomes of adoption.<sup>34</sup> In many legal systems today, adoption is a creation of statute. It was unknown to English Common Law as well as under Islamic Law.<sup>35</sup> The law regulating adoption vary from State to States in Nigeria, it may be perfected in line with statutory provision as well as the practice under customary law, which must be in accordance with the provision of the law. Before the enactment of the Child's Rights Act<sup>36</sup> (CRA) in Nigeria, various States of the Federation enacted their adoption laws.<sup>37</sup> Most of these adoption Laws of the various States are substantially similar in their provision with little significant differences.

The establishment of a family bond between a child and one or more individuals who are not the child's biological parents is known as child adoption. The legal link between the child and his biological parent is broken throughout this process, and it is then restored between the child and a third party. When the adoption application is approved, the adopter legally and naturally acquires the child's parents' rights, responsibilities, duties, and liabilities. Adoption of children can occur for a variety of reasons, including infertility in couples, parent disappearance, orphaned children due to death, and more.<sup>38</sup> Although the law outlines the steps involved in obtaining an adoption order, it did not safeguard working-class women who are in some manner responsible for caring for adopted young children. Will the mother be eligible for maternity leave and other benefits that come with the leave if a two-week-old infant is adopted?

A woman who carries and delivers a child on behalf of another couple is commonly referred to as a 'surrogate mother' or 'surrogacy.' Straight surrogacy, often referred to as traditional surrogacy, is the process of inseminating the intended surrogate with the couple's husband's semen. In vitro fertilization (IVF) of a couple's sperm and ovum, followed by transfer to a surrogate, is known as gestational/genetic surrogacy. Gestational surrogacy allows women who have sexual and reproductive rights but struggle to conceive to have their children because the surrogate mother is not genetically related and will not be responsible for anything after the child is born<sup>39</sup> one promising treatment for infertile couples is surrogacy. For many couples, surrogacy may be a viable option if IVF doesn't work.<sup>40</sup> The law has also failed to protect working class women who are engaged in this procedure.

#### **5. Nigerian Legal Framework on Reproductive Rights**

##### **Constitution of the Federal Republic of Nigeria 1999 (As Amended)**

The 1999 Constitution of the Federal Republic of Nigeria (as amended) is the Supreme law of the land and serves as the foundation for the protection of fundamental rights in Nigeria. However, despite its broad guarantees of human rights, the Constitution does not make explicit provisions for the protection of women's sexual and reproductive rights, particularly within the industrial and labour sector. Chapter IV of the Constitution ensures fundamental rights, including the right to life, human dignity, personal liberty, and freedom from discrimination.<sup>41</sup> While these rights are significant, they are couched in general terms and do not explicitly address women's sexual and reproductive autonomy. Section 33 ensures the right to life; nevertheless, it does not include reproductive health matters like as access to safe abortion, maternal healthcare, or safeguards against workplace discrimination related to pregnancy or motherhood.<sup>42</sup> Section 34 similarly upholds the dignity of the human person and the right to freedom from inhuman or degrading treatment; but, it does not explicitly address or ban reproductive coercion, workplace harassment, or unsafe working circumstances impacting pregnant women.<sup>43</sup> Consequently, the safeguarding granted to women under these regulations is merely implicit, not explicit. Additional constraints emerge from Chapter II of the Constitution, which delineates the Fundamental Objectives and Directive Principles of State Policy. Section 17(3)(e) stipulates that the State must guarantee the health, safety, and welfare of all employees, but section 17(3)(f) requires equal remuneration for equivalent work without discrimination based on sex.<sup>44</sup> Although these clauses seem to address the wellbeing of female workers, they are deemed non-justiciable by section 6(6)(c), which explicitly excludes Chapter II from judicial enforcement. This constitutional framework implies that women's rights to safe and healthy reproductive conditions at work, including maternity protection, breastfeeding breaks, and protection against discrimination during recruitment due to pregnancy, cannot be legally enforced unless established by specific legislation.<sup>45</sup> The lack of clear constitutional acknowledgement of sexual and reproductive rights exacerbates structural inequality within Nigeria's industrial sector. Female employees frequently find

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<sup>34</sup>Ogbah NG, 'Adoption in Nigeria and the Provisions of the Law' (2022) <<http://www.sabilaw.org>> accessed 17 January 2024.

<sup>35</sup>Jajudeen OI, 'Adoption Practice in Nigeria: An Overview' [2013] 19 *Journal of Law, Policy and Globalization* 7.

<sup>36</sup>Child's Rights Act, Cap C50 LFN 2004.

<sup>37</sup>Adoption Law of Eastern Nigeria No 12, 1965, Bendel State Adoption Law No 5, 1979, Cross-River State Adoption Law No 7, 1981, Ogun State Adoption Law No 3, 1983, Oyo State Adoption Law No 4, 1985, Lagos State Adoption Law 1968.etc.

<sup>38</sup>Ogbah (n 93).

<sup>39</sup>Brinsden RP, 'Gestational Surrogacy' (2003) 9(5) *Human Reproduction Update* 483-491.

<sup>40</sup>Zawawi M, 'Third Party Involvement in the Reproductive Process: Comparative Aspects of the Legal and Ethical Approaches to Surrogacy' (2012) *Eubios Ethics Institute* <<http://www.eubios.info/ABC4/abc4389.htm>> accessed 10 September 2024.

<sup>41</sup>Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 33-44.

<sup>42</sup>ibid s 33.

<sup>43</sup>ibid s 34.

<sup>44</sup>ibid s 17(3)(e)-(f).

<sup>45</sup>Akinola OA, 'Reproductive Rights of Women under the Nigerian Legal System: An Appraisal' (2018) 4 *Nigerian Journal of Human Rights Law* 45.

themselves susceptible to policies and workplace environments that neglect reproductive necessities, including menstrual health management, family planning assistance, and maternity health safety.<sup>46</sup> In the absence of a constitutional framework, legislative and policy protections are disjointed and inadequately enforced.

#### **Labour Act 2004**

The Nigerian Labour Act is the primary legislation governing employment relations and workers' rights in the industrial sector.<sup>47</sup> Despite including measures for maternity protection and workplace welfare, it does not offer protection to women who are infertile, so indirectly discriminating based on reproductive potential. The right to reproduce, and by extension, the right not to reproduce or the inability to reproduce, constitutes a fundamental aspect of sexual and reproductive rights acknowledged by international human rights law.<sup>48</sup> However, the Nigerian labour law framework remains largely silent on this category of women, exposing them to various forms of workplace discrimination, stigmatization, and social exclusion. Sections 54 and 55 of the Labour Act stipulate maternity leave, ban dismissal during pregnancy, and grant the entitlement to paid leave preceding and following childbirth.<sup>49</sup> These regulations, however commendable, are specifically concentrated on women who are pregnant or have recently delivered. They fail to acknowledge the comprehensive range of reproductive health or the rights of women who are unable to conceive or bear children for medical, physiological, or personal reasons<sup>50</sup>

The legislation marginalises women whose reproductive experiences do not conform to the conventional paradigm of motherhood by only linking reproductive rights with pregnancy. This method embodies a biological determinism in labour legislation that associates women's worth in the industrial labour with their reproductive capabilities, hence marginalising infertile or childless women from certain safeguards or acknowledgement. In reality, numerous women who are infertile encounter both subtle and overt discrimination in the job, such as denial of promotions, negative stereotyping, and social marginalisation.<sup>51</sup> Labour law provides no recourse for such discrimination as it does not recognise reproductive status whether fertile or infertile as a basis for protection. Section 42 of the Constitution forbids discrimination based on sex; however, this does not extend to include reproductive capacity or infertility.<sup>52</sup> In the industrial sector, characterised by a predominantly male culture, women who are unable to reproduce are occasionally regarded as 'less womanly' or 'incomplete.'<sup>53</sup> Such biases can influence employment decisions, especially in settings where corporate social functions or informal workplace relations emphasize traditional family structures.<sup>54</sup> The Labour Act, by its silence, fails to impose any obligation on employers to prevent or redress such discrimination. The Labour Act, through its omission, does not impose any duty on employers to prevent or rectify such discrimination.

The Labour Act, aside from maternity provisions, fails to address several facets of reproductive health, including infertility treatment, reproductive aid (e.g., in-vitro fertilisation), Surrogacy or workplace flexibility for medical visits pertaining to reproductive health issues.<sup>55</sup> This omission contradicts the holistic understanding of reproductive rights adopted by the International Conference on Population and Development (ICPD), which defines reproductive rights as 'the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so.'<sup>56</sup> This definition implies protection for women regardless of their capacity to reproduce, ensuring their dignity, health, and equality in employment contexts. Nigeria has ratified several international instruments that guarantee women's reproductive autonomy and non-discrimination in employment. These include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the ILO Discrimination (Employment and Occupation) Convention (No. 111).<sup>57</sup> Article 11(2) of CEDAW specifically requires States to prevent discrimination based on marriage or maternity in employment, but Nigeria's domestic labour law does not extend these protections to women who cannot reproduce.<sup>58</sup> Furthermore, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) affirms women's rights to control their fertility and to be free from discrimination on that basis.<sup>59</sup> Yet, there is no domestic implementation of this obligation in the industrial sector. Consequently, women facing infertility are left without any legal avenue for redress against workplace victimisation or social prejudice.

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<sup>46</sup> Okorodudu-Fubara MT, 'Women's Rights and the Nigerian Constitution: Issues and Challenges' (2015) 3 Ekiti State University Law Journal 67.

<sup>47</sup> Labour Act Cap L1 Laws of the Federation of Nigeria 2004.

<sup>48</sup> . United Nations Population Fund (UNFPA), *Reproductive Rights Are Human Rights: A Handbook for National Human Rights Institutions* (UNFPA 2014).

<sup>49</sup> Labour Act (n 1) ss 54–55.

<sup>50</sup> Akinola OA, (N43)

<sup>51</sup> Okorodudu-Fubara MT(N43)

<sup>52</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), s 42.

<sup>53</sup> Eboh RN, 'Gender Stereotyping and Women's Employment in Nigeria: A Legal Analysis' (2019) 5 University of Benin Law Journal 22.

<sup>54</sup> Onyekwere G, 'Workplace Culture and Gender Equality in Nigeria's Industrial Sector' (2020) 12 Nigerian Labour Law Review 78.

<sup>55</sup> Labour Act (n 47).

<sup>56</sup> International Conference on Population and Development, Programme of Action (Cairo, 5–13 September 1994) para 7.3.

<sup>57</sup> International Labour Organization, *Discrimination (Employment and Occupation) Convention* (No 111, adopted 25 June 1958, entered into force 15 June 1960).

<sup>58</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 11(2).

<sup>59</sup> . Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) art 14.

### **Child's Rights Act**

The Child's Rights Act 2003 (CRA) represents Nigeria's attempt to domesticate the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC).<sup>60</sup> The Act consolidates all legislation pertaining to the safety, welfare, and development of children, affirming that every child is entitled to survival, development, and protection against discrimination.<sup>61</sup> While this legislative framework is commendable, it is primarily child-centric and offers little to no attention to the reproductive rights of women, particularly those who are unable to bear children. From a socio-legal standpoint, reproductive rights encompass the right to reproduce, access to reproductive healthcare, the ability to make reproductive choices without compulsion, and the freedom from discrimination based on reproductive status.<sup>62</sup> The CRA inherently emphasises children as beneficiaries, however it fails to provide protection or acknowledgement to the women who bear, deliver, or nurture them, nor does it consider the circumstances of those who want to conceive who are unable to do so.

### **VAPP Act 2015**

This Act was enacted pursuant to section 4(2) of the Nigerian Constitution, initially applied to the Federal Capital Territory but has since been adopted in several states.<sup>63</sup> The long title of the Act declares its purpose: 'to eliminate violence in private and public life, prohibit all forms of violence against persons and provide maximum protection and effective remedies for victims.'<sup>64</sup> Part III of the Act defines numerous forms of violence, including rape (section 1), coercive sexual acts (section 2), forced isolation or eviction (section 9), and harmful widowhood practices (section 15).<sup>65</sup> Section 46 further provides a definition of 'violence' encompassing physical, sexual, psychological, verbal, emotional, or economic harm.<sup>66</sup> Nevertheless, the Act's conceptualisation of violence remains limited. It primarily addresses discrete acts of abuse individualised violations between a perpetrator and a victim-without addressing systemic discrimination or institutional neglect that constitute structural violence.<sup>67</sup> Consequently, infertility discrimination, reproductive-health deprivation, or workplace exclusion due to childlessness are not recognised as acts of violence within the Act's meaning.<sup>68</sup> This omission creates a normative dissonance between the VAPP Act and Nigeria's international human-rights obligations. Under Article 12 of CEDAW, states must ensure women's access to appropriate healthcare services, including reproductive and fertility services.<sup>69</sup> The Maputo Protocol, in Article 14, guarantees women's rights to control their fertility and be free from coercion in reproductive decision-making.<sup>70</sup> These instruments collectively require states not only to prohibit direct violence but also to combat structural discrimination that undermines women's reproductive autonomy.<sup>71</sup> The VAPP Act's failure to recognise infertility-related discrimination as reproductive violence reduces reproductive rights to issues of sexual coercion or bodily harm, excluding women whose reproductive suffering arises from social stigma or workplace exclusion.<sup>72</sup> This legal framework also affects industrial relations. Women who cannot reproduce are often excluded from workplace benefits such as maternity leave or family health coverage, and may face subtle harassment.<sup>73</sup> Since such discrimination does not fall within the Act's definition of violence, affected women are denied both recognition and remedy.

## **6. Rethinking the scope of Reproductive Rights in Nigeria: A Legal Lesson from South Africa**

### **Constitution of the Republic of South Africa 1996**

This is among the most progressive constitutions in the world as it encompasses a broad spectrum of rights, including women's SRHR throughout all sectors, including the industrial sector. Section 9 guarantees the right to equality and forbids discrimination based on gender, sex, pregnancy, marital status, sexual orientation, and culture, among other factors.<sup>73</sup> Section 10 guarantees the right to human dignity, whereas section 11 safeguards the right to life. According to section 12(1), every individual is entitled to personal freedom and security, which encompasses protection from all types of violence and the right to be free from cruel, inhuman, and degrading treatment. Section 12 (2) stipulates the right to bodily and psychological integrity, encompassing the right to make reproductive decisions, to possess security and control over one's body, and to not be subjected to medical and scientific experimentation without informed agreement. The Constitution acknowledges the right to reproductive health by ensuring access to health-care services that including reproductive health care.<sup>74</sup> Section 15 guarantees the right to privacy. The Constitution explicitly acknowledges women's reproductive health rights and implicitly recognises related rights, including the rights to equality, human dignity, life, personal freedom and security, freedom of religion, belief and opinion, freedom of association, and children's rights.<sup>75</sup> The acknowledgement of these rights provides a significant benefit to South

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<sup>60</sup> Child's Rights Act 2003, Cap C50, Laws of the Federation of Nigeria.

<sup>61</sup> United Nations Convention on the Rights of the Child (1989).

<sup>62</sup> A Ezeilo, *Feminism and the Law in Nigeria* (Ababa Press 2013).

<sup>63</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended) s 4(2).

<sup>64</sup> VAPP Act 2015, Long Title.

<sup>65</sup> . *ibid*, ss 1–15.

<sup>66</sup> *ibid*, s 46.

<sup>67</sup> A Ezeilo, *Women, Law and Human Rights in Nigeria* (Ababa Press 2017) 113.

<sup>68</sup> CEDAW, art 12.

<sup>69</sup> Maputo Protocol, art 14.

<sup>70</sup> . UN Committee on the Elimination of Discrimination against Women, General Recommendation No 24: Women and Health (1999).

<sup>71</sup> *Ibid*.

<sup>72</sup> Maputo Protocol, art 14.

<sup>73</sup> Section 9(3)

<sup>74</sup> Section 27 of the Constitution of the Republic of South Africa.

<sup>75</sup> Bill of Rights of the South African Constitution

African women by enhancing their reproductive autonomy. Furthermore, South Africa's Constitution mandates the creation of governmental institutions to uphold democracy. These institutions are established to guarantee the enforcement of constitutional requirements, thereby impacting the lives of South Africans. These institutions are anticipated to guarantee the effectiveness of the constitutional provisions affirming women's reproductive autonomy.<sup>76</sup> In South Africa, sexual and reproductive health rights gained importance from the acknowledgement of the right to health. Section 27(1) (a) of the Constitution of the Republic of South Africa, 1996, stipulates that 'everyone has the right to access health care services, including reproductive health care.' This right grants women the autonomy to determine if and when to start a family, as well as the entitlement to be educated about and to access, if they so desire, safe, effective, inexpensive, and acceptable family planning options.<sup>77</sup> Other rights that relate to sexual and reproductive rights of women guaranteed by the 1996 Constitution include rights to equality,<sup>78</sup> human dignity,<sup>79</sup> life,<sup>80</sup> privacy,<sup>81</sup> education,<sup>82</sup> and bodily and psychological integrity.<sup>83</sup> Additional legislation has been established in accordance with the rights enshrined in the 1996 Constitution.

The best practices Nigeria can apply from what works in South Africa are:

The Constitution of the Republic of South Africa, 1996, explicitly guarantees several rights directly relevant to SRHR: Section 12(2): Recognises everyone's right to bodily and psychological integrity, including the right to make decisions concerning reproduction. Section 27(1)(a): Grants everyone the right to have access to health care services, including reproductive health care. Section 9: Enshrines equality and prohibits discrimination on the grounds of sex, gender, pregnancy, and marital status. The Nigerian Constitution does not specifically acknowledge women's reproductive health rights. The acknowledgement of these rights can be deduced from the stipulations of Section 17, which mandates the state to orient its policies towards ensuring sufficient medical and health facilities for all individuals. This clause prohibits the exploitation and neglect of children and adolescents and emphasises the state's obligation to foster and advance family life.<sup>84</sup> However, the rights acknowledged in this section are not enforceable in Nigerian courts and serve solely as a guideline for policymakers.<sup>85</sup> The reproductive health rights of women in Nigeria can be deduced from the acknowledgement of essential human rights associated with these rights, including the right to life, dignity, personal liberty, privacy in family life, freedom from discrimination, and the right to freedom of thought, conscience, and religion.<sup>86</sup> Therefore, when a woman's reproductive autonomy is violated in Nigeria, she may associate this right with any of the acknowledged fundamental human rights to assert it. Nigeria can learn from South Africa and adopt explicit constitutional provisions recognizing working class women's right to reproductive decision-making, Access to reproductive health services, and Protection from gender-based and pregnancy-related discrimination.

#### **Labour Laws Amendment Act 10 of 2018 (LLAA)**

This law updated South Africa's employment framework by implementing inclusive and gender-sensitive parental leave measures and guaranteeing social security coverage for new parents. The reform aimed to advance gender equality in caregiving, protect women's reproductive autonomy, and harmonise the nation's labour rules with international agreements, including ILO Convention No. 183 on Maternity Protection and CEDAW. These revisions are especially pertinent to the industrial sector, where female workers frequently encounter reproductive health hazards, employment instability during motherhood, and insufficient assistance in managing familial obligations. The LLAA revised section 25A of the Basic Conditions of Employment Act to provide ten consecutive days of parental leave for employees who are parents of a child, irrespective of gender. This entitlement begins on the date of the child's birth or adoption.<sup>87</sup> This change recognises that reproductive care is not only a woman's obligation and guarantees that fathers or partners can engage actively in postnatal care. It also mitigates the indirect discrimination women encounter when companies regard maternity as a solely female responsibility. The LLAA additionally established sections 25B and 25C of the BCEA<sup>88</sup>, granting Adoptive parents (of a child below two years) ten consecutive weeks of leave; and Commissioning parents (in surrogacy arrangements) ten consecutive weeks of leave providing adoptive parents of a child under two years with ten consecutive weeks of leave, and commissioning parents in surrogacy arrangements with ten consecutive weeks of leave. This innovation broadens the protection of reproductive rights to encompass non-biological motherhood, honouring varied family configurations and guaranteeing equitable treatment under labour law. It also guarantees that women engaged in surrogacy, sometimes disadvantaged in industrial work environments, are safeguarded and able to recuperate physically and psychologically post-childbirth.

The LLAA revised the Unemployment Insurance Act 63 of 2001 to permit all employees on parental, adoption, or commissioning parental leave to receive unemployment benefits during their leave time.<sup>89</sup> This guarantees financial stability

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<sup>76</sup> Chapter 9 of South African Constitution

<sup>77</sup> JC Mubangizi, 'An Assessment of the Constitutional, Legislative and Judicial Measures against Harmful Cultural Practices that Violate Sexual and Reproductive Rights of Women in South Africa' [2015] 16(3) *Journal of International Women's Studies* 166.

<sup>78</sup> Section 9 of the 1996 Constitution.

<sup>79</sup> Section 10 of the 1996 Constitution.

<sup>80</sup> Section 11 of the 1996 Constitution.

<sup>81</sup> Section 14 of the 1996 Constitution.

<sup>82</sup> Section 29 of the 1996 Constitution.

<sup>83</sup> Section 12(2) of the 1996 Constitution.

<sup>84</sup> Section 17(3)(d) (f) & (h) of the Nigerian Constitution.

<sup>85</sup> Section 6(6) (c).

<sup>86</sup> Chapter 4.

<sup>87</sup> Labour Laws Amendment Act 10 of 2018 (South Africa), inserting s 25A into the Basic Conditions of Employment Act 75 of 1997.

<sup>88</sup> Ibid.

<sup>89</sup> Labour Laws Amendment Act 10 of 2018 (South Africa), amending the Unemployment Insurance Act 63 of 2001.

and promotes economic equality between male and female caregivers. It also prevents discrimination against women who often bear the brunt of unpaid caregiving during reproductive transitions. By legislating for both parents' right to leave, the LLAA fosters workplace equality and aligns with Section 9 of the Constitution of the Republic of South Africa, 1996, which prohibits gender discrimination. It reduces the tendency for employers to view women as less productive due to maternity and caregiving duties.<sup>90</sup> The introduction of parental and commissioning leave prompted the development of family-friendly workplace policies across industries, including flexible scheduling, part-time work, and work-from-home arrangements for new parents.<sup>91</sup> This recognises the interdependence of reproductive health, family welfare, and industrial productivity.

Lessons Nigeria can learn from LLAA is that the Nigeria's Labour Act<sup>92</sup> makes no provision for paternity or parental leave, this in turn reinforces gender stereotypes that caregiving is exclusively for the female. Nigeria can adopt South Africa's inclusive approach by Introducing statutory paternity and parental leave for both male and female employees; Encouraging industrial employers to design gender-neutral leave policies; and Promoting workplace cultures that support shared parental responsibilities. Nigeria's Labour Act and related laws are silent on adoption and surrogacy leave. To align with evolving reproductive realities, Nigeria should recognise adoptive and commissioning parental leave in its labour framework; Ensure protection for surrogate mothers and adoptive parents in industrial employment; and harmonise these provisions with the Child Rights Act 2003 and reproductive health policies. In Nigeria, maternity benefits are often limited to the public sector or a few large industrial employers. The Employees' Compensation Act 2010 did not adequately cover parental leave benefits. Nigeria can learn from South Africa by Expanding its social insurance schemes to cover maternity and parental leave across all industrial sectors. The Labour Laws Amendment Act 10 of 2018 marks a significant shift in South Africa's labour jurisprudence one that links reproductive justice with workplace equality. By extending leave entitlements to all forms of parenthood, ensuring social protection during reproductive transitions, and enforcing equality through strong institutions, South Africa sets a benchmark for integrating sexual and reproductive rights into industrial labour governance. For Nigeria, adopting these best practices would modernise its Labour Act, promote shared caregiving, and safeguard the economic and reproductive wellbeing of women in the industrial workforce consistent with its international obligations under CEDAW, the Maputo Protocol, and the African Charter on Human and Peoples' Rights.

## **7. Towards Reconceptualising Reproductive Rights in Nigeria**

The 1994 Programme of Action from the International Conference on Population and Development (ICPD) delineated reproductive rights as the entitlement to autonomously make decisions on reproduction, based on informed choice and access to suitable healthcare services.<sup>93</sup> Article 16(e) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) affirms women's entitlement to 'freely and responsibly decide on the number and spacing of their children.'<sup>94</sup> Article 14(1) of the Maputo Protocol ensures women's rights to manage fertility, determine childbearing, and obtain sufficient reproductive healthcare. These instruments jointly assert that reproductive rights encompass not just biological capacity but also autonomy, equality, and liberation from societal pressure. Nigerian legal frameworks, specifically the Labour Act, Child Rights Act, and Violence Against Persons (Prohibition) Act (VAPP Act),<sup>95</sup> have traditionally embraced a protectionist rather than an empowerment-oriented approach to reproduction.<sup>96</sup> This legal silence reflects a gendered assumption that women's reproductive roles are primarily linked to motherhood, and that legal protection is needed only when women are pregnant or mothers.<sup>97</sup> Women who are unable or opt not to reproduce are thereby rendered invisible in the legal framework, despite experiencing widespread social and economic marginalisation.

Nigeria's constitutional and statutory frameworks reveal the fragmented recognition of reproductive rights. The 1999 Constitution (as amended), in Chapter IV, guarantees fundamental rights such as dignity of the human person (section 34) and freedom from discrimination (section 42).<sup>98</sup> Yet, reproductive autonomy is not expressly articulated, nor are reproductive-health entitlements protected as socio-economic rights.<sup>99</sup> The Labour Act (Cap L1 LFN 2004) provides limited protection for women in the industrial sector through provisions on maternity leave (section 54) and prohibition of employment during confinement.<sup>100</sup> However, the Act's silence on infertility discrimination or workplace reproductive-health support perpetuates gender inequality.<sup>101</sup> It assumes that women's only reproductive vulnerability arises during pregnancy, thereby excluding women who cannot reproduce from the scope of protection.<sup>102</sup> Similarly, the VAPP Act 2015, although progressive in addressing sexual and domestic violence, defines violence narrowly as physical or psychological harm and fails to encompass structural reproductive discrimination such as workplace exclusion or social stigma against childless women.<sup>16</sup> The Child Rights Act 2003 also frames

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<sup>90</sup> Constitution of the Republic of South Africa, 1996, s 9; Labour Laws Amendment Act 10 of 2018.

<sup>91</sup> Department of Employment and Labour (South Africa), 'Guidelines on Parental Leave Implementation' (2019).

<sup>92</sup> *ibid*

<sup>93</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

<sup>94</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) (Maputo Protocol).

<sup>95</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>96</sup> *ibid*

<sup>97</sup> *ibid*

<sup>98</sup> *ibid*

<sup>99</sup> African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217.

<sup>100</sup> J N Ezeilo, *Feminism and the Human Rights of Women in Africa* (Women's Aid Collective 2018).

<sup>101</sup> T Agbaje, 'Reproductive Justice and Workplace Equality in Nigeria' (2022) *Nigerian Law Review* 88.

<sup>102</sup> National Human Rights Commission, *Guidelines on Gender Equality and Labour Practices in Nigeria* (Abuja, 2021).

reproduction in relation to child welfare rather than adult reproductive autonomy.<sup>103</sup> These frameworks collectively indicate that Nigeria's legal system continues to treat reproduction as a private or biological matter rather than a site of social and legal justice.<sup>104</sup> By focusing on the protection of mothers rather than the empowerment of women as autonomous agents, the law reproduces patriarchal expectations that women's value in society and in the workplace is tied to their reproductive function.<sup>105</sup>

In Nigeria's industrial sector, reproductive discrimination manifests in subtle yet pervasive ways. Employers often privilege women who are mothers, assuming that motherhood signifies social stability, while childless or infertile women may face verbal harassment, exclusion, or economic disadvantage.<sup>106</sup> In other instances, workplace benefits such as childcare allowances, family medical insurance, or maternity-related bonuses exclude women who cannot reproduce, creating an indirect form of gendered inequality.<sup>107</sup> From a human-rights perspective, such practices violate the principles of equality, dignity, and non-discrimination enshrined in Articles 2 and 3 of the African Charter on Human and Peoples' Rights, as domesticated in Nigeria through the African Charter (Ratification and Enforcement) Act.<sup>108</sup> The Maputo Protocol, in Article 2(1), further obliges states to eliminate discrimination and ensure women's full human rights in all spheres of life, including employment.<sup>109</sup> The International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Nigeria, also recognises the right to the highest attainable standard of health, including reproductive health (Article 12).<sup>110</sup> When workplaces fail to accommodate women's reproductive health needs—or when infertility stigma undermines a woman's professional dignity—the state's duty to protect those rights is breached.<sup>111</sup> Therefore, reconceptualising reproductive rights in Nigeria requires extending legal protection beyond maternity to include the right to non-discrimination based on reproductive status, the right to reproductive health support at work, and the right to dignity for infertile women.<sup>26</sup>

A reconceptualised understanding of reproductive rights in Nigeria demands Reproductive rights must be viewed as an aspect of personal liberty and bodily integrity. This requires recognising the right to make reproductive choices without coercion, stigma, or economic disadvantage.<sup>112</sup> Also reproductive rights protections extend equally to all women—mothers, childless women, and infertile women alike.<sup>113</sup> Reproductive justice cannot be achieved through individual remedies alone. It requires institutional accountability, ensuring that industrial employers implement workplace policies that respect reproductive diversity and do not penalise women based on fertility status.<sup>114</sup> A reconceptualised framework must thus shift from a maternal-protection paradigm to a reproductive-justice paradigm, one that views reproduction as encompassing both the ability and the inability to reproduce.

## **8. Conclusions and Recommendations**

Reproductive rights in Nigeria are conceptually and legally inadequate. The prevailing legal frameworks, although they address certain facets of sexual violence and maternity safety, inadequately encompass the wider human rights features of reproductive autonomy, especially for women who are unable to conceive. This leads to a twin kind of discrimination in the industrial sector: firstly, the systemic omission of reproductive health care from workplace legislation; and secondly, the societal stigmatisation of women who fail to meet reproductive expectations.<sup>115</sup> To promote gender equality in accordance with Nigeria's commitments under CEDAW, the Maputo Protocol, and the African Charter, the following recommendations are proposed: To guarantee sufficient protection, it is imperative to change the Constitution to clearly acknowledge sexual and reproductive rights as legal human rights. This acknowledgement would align Nigeria with its international human rights commitments under documents such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the African Charter on Human and Peoples' Rights, both of which Nigeria has ratified. Incorporating explicit reproductive rights provisions into the Constitution will enhance the enforceability of sector-specific labour legislation and bolster judicial protection for women workers in the industrial sector. Amending Nigeria's labour law to safeguard the sexual and reproductive rights of women who

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<sup>103</sup> Funmi Olonisakin, 'Child rights and Protection in Nigeria: legal policy and gaps (2016) Nigerian Journal of Family Law, 45

<sup>104</sup> *ibid*

<sup>105</sup> *Ibid*.

<sup>106</sup> Olusoji David Popoola and Regina Chinedu Ariaga, 'Pregnancy-related Discrimination in Nigeria Workplace: Laws Are Not to Be Blame' (ResearchGate, Jan 2022) [https://www.researchgate.net/publication/358140280\\_PREGNANCY\\_RELATED\\_DISCRIMINATION\\_IN\\_NIGERIA\\_WORKPLACE\\_LAWS\\_ARE\\_NOT\\_TO-BE\\_BLAKE](https://www.researchgate.net/publication/358140280_PREGNANCY_RELATED_DISCRIMINATION_IN_NIGERIA_WORKPLACE_LAWS_ARE_NOT_TO-BE_BLAKE) accessed 11 Nov 2025.

<sup>107</sup> *Ibid*.

<sup>108</sup> African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, Articles 2 and 3, as domesticated in Nigeria through the African Charter (Ratification and Enforcement) Act 2004.

<sup>109</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005) Article 2(1).

<sup>110</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) UNTS 993, Article 12.

<sup>111</sup> Chinwe Patricia Iloka and Chi Johnny Okongwu, 'Sexual and Reproductive Rights of Women in Nigeria: Imperatives of Domestic and International Laws' (2022) 6 African Journal of Law and Human Rights 177 <https://journals.ezenwaohaetorc.org/index.php/AJLHR/article/download/2168/2212> accessed 11 Nov 2025.

<sup>112</sup> Adeyinka Adejugbe & Adedolapo Adejugbe, 'Women and Discrimination in the Workplace: A Nigerian Perspective' (20 Aug 2018) SSRN <https://ssrn.com/abstract=3244971> accessed 11 Nov 2025.

<sup>113</sup> Y. J. Terdoo, 'Protecting Women from Workplace Discrimination in Nigeria' (2021) 8 J of CPL <https://journals.unizik.edu.ng/index.php/jcpl/article/view/807> accessed 11 Nov 2025.

<sup>114</sup> *Ibid*.

<sup>115</sup> Owoyemi O., 'Gender: A Precursor for Discriminating Against Women in Nigeria' (2014) 'World Scholars' <https://worldscholars.org/index.php/ajbm/article/download/399/pdf/1254> accessed 11 Nov 2025.

are infertile is not simply a legislative task, it is a fundamental human rights obligation. Incorporating reproductive status as a protected category in employment law would represent a significant advancement towards attaining substantive equality in the industrial sector. The Labour Act should be revised to include provisions that prohibit discrimination based on reproductive health status, encompassing infertility, reproductive surgery, or assisted conception. This is consistent with the principles of non-discrimination and dignity outlined in sections 34 and 42 of the Constitution. Employers should be mandated to offer reasonable accommodations for reproductive health treatments, akin to those provided for maternity or disability-related leave. Such accommodations may encompass flexible work hours, short-term leave, or workplace counselling support. Nigeria must domesticate and implement its obligations under CEDAW and the Maputo Protocol by enacting comprehensive legislation concerning sexual and reproductive health rights. The Labour Act should explicitly incorporate provisions that address discrimination related to infertility in employment. South Africa specifically expands reproductive rights beyond childbirth, safeguarding women's autonomy regardless of biological parenthood, it is recommended Nigeria learn from this country to advance its laws on reproductive rights.