

A BILL

FOR

AN ACT FOR THE REGULATION OF IN-VITRO FERTILIZATION, TO PROHIBIT CERTAIN PRACTICES IN CONNECTION WITH IN-VITRO FERTILIZATION, TO ESTABLISH AN IN-VITRO FERTILIZATION AUTHORITY; TO MAKE PROVISION IN RELATION TO CHILDREN BORN OF IN- VITRO FERTILIZATION PROCESS AND FOR CONNECTED PURPOSES

Sponsored by Senator Jibrin Barau

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria as follows: Short Title.

1 1. This Act may be cited as the In-Vitro Fertilization Bill, 2015. Short Title

2 Interpretation.

3 2. In this Act, unless the context otherwise requires: Interpretation

4 "Authority" means the Human Fertilization Authority established
5 under Section 10;

6 "Minister" means the Minister for the time being responsible for health;

7 "Director" means a person appointed as such under section 11;

8 "donor" means a person who voluntarily gives his or her gametes for the
9 purpose of fertilization in an in vitro fertilization process and the person
10 need not be the spouse of the person she or he is donating the gametes to;

11 "Eggs" means live human eggs but do not include eggs in the process of
12 fertilization;

13 "Embryo" means a live human egg where fertilization is either in the process
14 or complete;

15 "Gametes" means a mature sperm or egg capable of fusing with a gamete of
16 the opposite sex to produce the fertilized egg but does not include gametes in
17 the process of fertilization;

1 "in-vitro fertilization" means fertilization in a laboratory dish or test tube of
2 sperm with eggs which have been obtained from an ovary, whether or not the
3 process of fertilization is completed in the laboratory dish or test tube;

4 "primitive streak" means a primitive streak that develops in the early stages of
5 human reproduction, that is to be taken to have appeared in any embryo not
6 later than the end of the period of 14 days beginning with the day when the
7 gametes are mixed, not counting any time during which the embryo is stored
8 and the presence of which signifies the creation of a unique human being;

9 "procreation" means the process of conceiving and delivering a baby, whether
10 through a facilitated process or through natural means;

11 "sperm" means the male gametes produced in the testicles and contained in
12 semen;

13 "surrogate mother" means a woman who has agreed to carry a pregnancy to
14 term another woman under a surrogacy agreement and lays no legal claim to
15 the born child;

16 "treatment services" for purposes of this Act, means medical, surgical or
17 obstetric services provided to the public or a section of the public for the
18 purpose of assisting women to carry children.

Application

19 **3.** This Act applies to all processes of facilitated human fertilization
20 undertaken outside the human body, whether or not the process is completed
21 outside the human body.

22 **PART II - ESTABLISHMENT, POWERS AND FUNCTIONS OF**
23 **THE IN-VITRO HUMAN FERTILIZATION AUTHORITY**

Establishment
of Authority

24 **4.-(1)** There is established an Authority known as the In-Vitro
25 Fertilization Authority.

26 (2) The Authority shall be a body corporate, with perpetual succession
27 and a common seal and shall be capable, in its corporate name, of:

28 (a) suing and being sued;

29 (b) taking, purchasing or otherwise acquiring, holding or disposing of
30 movable or immovable property;

1 (c) entering into contracts;
2 (d) borrowing money; and
3 (e) doing or performing all such other acts or thing necessary for
4 the proper performance of its functions under this Act.

5 (3) The Authority may establish such branches or organs as it may
6 deem necessary for the effective and proper discharge of its function under
7 this Act.

8 5. The functions of the Authority shall be to:

Functions of
the Authority

9 (a) Develop standards, regulations and guidelines on in-vitro
10 human fertilization;

11 (b) Advise the Minister on matters relating to the treatment and
12 care of persons undergoing In-vitro fertilization and to advise on the relative
13 priorities to be given to the implementation of specific measures in regard to
14 in-vitro fertilization;

15 (c) Undertake research on the conduct, control and treatment of in-
16 vitro fertilization;

17 (d) Develop programs for awareness creation on the methods of in-
18 vitro fertilization treatment;

19 (e) Prescribe minimum requirements for the physical
20 infrastructure for in-vitro fertilization clinics;

21 (f) Grant, vary, suspend and revoke licenses;

22 (g) Keep under review information about embryos and any
23 subsequent development of embryos;

24 (h) Provide advice and information to persons receiving in-vitro
25 fertilization treatment including persons providing gametes or embryos
26 under this Act:

27 (i) disseminate information to the public on reproductive health
28 that may relate or affect in- vitro human fertilization;

29 (j) Establish and maintain a national database on persons receiving

1 in-vitro fertilization treatment services or providing gametes or embryos for
2 use;

3 (k) Perform such other functions as may be necessary for the better
4 carrying out of the functions of the Authority under this Act.

5 Powers of the Authority.

Powers of
authority

6 6.-(1) The Authority shall have all powers necessary for the proper
7 performance of its functions under this Act.

8 (2) Without prejudice to the generality of the foregoing, the Authority
9 shall have power to:

10 (a) control, supervise and administer the assets of the Authority in
11 such manner as best promotes the purpose for which the Authority is
12 established;

13 (b) Receive any grants, gifts, donations or endowments and make
14 legitimate disbursements there from;

15 (c) Levy fees for services rendered by the Authority as maybe
16 determined from time to time by the Board;

17 (d) Open such banking accounts for the funds of the Authority as may
18 be necessary;

19 (e) enter into association with such other bodies or organizations
20 within or outside Nigeria as it may consider desirable or appropriate in
21 furtherance or for the performance of its functions under this Act;

22 (f) perform or undertake any other activity that may be necessary for
23 the fulfilment of any of the functions of the Authority under this Act.

Board of the
Authority

24 7. The management of the Authority shall vest in a Board of the
25 Authority which shall

26 comprise of:

27 (a) a chairperson appointed by the President and approved by the
28 National Assembly;

29 (b) the Permanent Secretary in the Ministry for the time being
30 responsible for finance or a representative designated in writing by the

1 Permanent Secretary;

2 (c) the Permanent Secretary in the Ministry for the time being
3 responsible for health or a representative designated in writing by the
4 Permanent Secretary;

5 (d) six persons appointed by the Minister of whom:

6 (i) two shall be medical doctors, a woman and a man who possess
7 proven knowledge and experience in reproductive health, nominated by the
8 Nigerian Medical Association;

9 (ii) two shall be lawyers, a woman and a man, who have actively
10 contributed to the promotion of the rights and welfare of women and children
11 nominated by the Law Society of Nigeria;

12 (iii) one shall be a representative of the National Human Rights
13 Commission; and

14 (e) the Director of the Authority, who shall be the Secretary to the
15 Board;

16 8. The Chairperson and the members of the Board appointed under
17 paragraph (4) (i), (ii) and (iii) of section 7 shall hold office for a term of four
18 years and shall be eligible for re-appointment for one further term of three
19 years.

Term of Office
of members of
the Authority

20 9. The conduct and regulation of the business and affairs of the
21 Board shall be as provided in the First Schedule.

Conduct of
business and
affairs of the
Authority

22 10. The functions of the Board shall be to:

Functions of
the Board

23 (a) formulate the policies of the Authority;

24 (b) carry out the objects and functions of the Authority;

25 (c) provide overall directions on effective coordination of the
26 operations of the Authority; and

27 (d) do anything incidental or conducive to the performance of any
28 of the preceding functions.

29 11.-(1) There shall be a Director of the Authority who shall be
30 appointed by the Board upon such terms and conditions as the Board may

Director of the
Authority

1 determine.

2 (2) The Director shall:

3 (a) be an ex-officio member of the Authority but shall have no right to
4 vote in any meeting of the Authority;

5 (b) be the secretary to the Authority;

6 (c) be responsible for the administration and day to day management
7 of the affairs of the Authority;

8 (d) ensure the maintenance of efficiency and discipline by all staff of
9 the Authority; and

10 (e) perform such other functions as may be assigned by Board

Staff of the
Authority

11 12. The Board may appoint such officers, agents and other staff as are
12 necessary for the efficient discharge of its functions under this Act and upon
13 such terms and conditions as the Board may determine

Experts and
Consultants

14 13. The Board may engage experts or consultants as it considers
15 appropriate, to assist in the discharge of the functions of the Authority

16 Remuneration of Board members and staff of the Authority.

Staff remuneration,
allowances etc.

17 14. The Board shall pay its members and staff such remuneration or
18 allowances as it may determine upon the advice of the National Salaries and
19 Wages Commission.

Delegation by
the Authority

20 15. The Board may, by resolution either generally or in any particular
21 case, delegate to any committee of the Authority or to any officer, member of
22 staff or agent of the Authority, the exercise of any of the powers or the
23 performance of any of the functions or duties of the Authority under this Act.

Protection from
personal liability

24 16. (1) In any action or suit, no executive or attachment of process
25 shall be issued against the an officer, employee, agent or servant thereof shall,
26 if the act or omission was done bona fide for the purposes of executing a
27 function, power or duty under the Act, render such member, officer, employee,
28 agent or servant personally liable to any action, claim or demand whatsoever.

29 (2) The provisions of subsection (1) shall not relieve the Authority of
30 the liability to pay compensation or damages to any person or any injury to him,

In-vitro human
fertilization for
procreation
purposes

1
2 **21.-(1)** A person shall undertake in-vitro fertilization only for
3 procreation purposes. Circumstances for undertaking in-vitro human
4 fertilization.

5 **22.-(1)** A person qualifies to undertake in-vitro fertilization, where it
6 is certified by a medical doctor that:

7 (a) the person is due to factors related to age, having difficulties in
8 conceiving naturally; and

9 (b) the person IS due to factors related to lifestyle having difficulties
10 ill conceiving naturally.

11 (2) Except as provided under subsection (1), a person may qualify to
12 undertake in-vitro fertilization, on any other medical, psychological or health
13 grounds as may be determined by a medical doctor.

Circumstances
under which
in-vitro human
fertilization is
precluded

14 **23.** A person shall not undertake in-vitro fertilization for:

15 (a) any purpose other than creating a human being;

16 (b) experimental purposes aimed at modifying the human race; or

17 (c) purely speculative purposes

Use of Embryo
in a woman

18 **24.** A person shall not for purposes of in-vitro fertilization place in a
19 woman:

20 (a) an embryo other than a human embryo; or

21 (b) a gamete other than a human gamete.

Gametes obtained
from minor

22 **25.** A person shall obtain a sperm or ovum from a donor under
23 eighteen years of age, or use any sperm or ovum obtained from a donor under
24 eighteen years of age except for the purpose of preserving the sperm or ovum or
25 for the purpose of creating a human being that the person reasonably believes
26 will be raised by the donor.

Authority not
to issue licence

27 **26.** The Authority shall not issue a license that allows:

28 (a) the keeping or using of an embryo other than a human embryo;

29 (b) the keeping or using of an embryo after the appearance of the
30 primitive streak;

- 1 © the placing of an embryo in any animal;
- 2 (d) the keeping or using of an embryo in circumstances
- 3 prohibited under this Act or as prescribed by Regulations.
- 4 (e) the replacing of a nucleus of a cell of an embryo with a nucleus
- 5 taken from a cell of any person, embryo or subsequent development of an
- 6 embryo; or
- 7 (f) any form of human cloning.

8 27.-(1) A person shall not:

Use of Gametes

- 9 (a) store or use any gametes save as provided under this Act;
- 10 (b) in the course of providing in-vitro fertilization treatment
- 11 services to a woman, use the sperm of any man unless the services are being
- 12 provided for the woman and the man together and both parties have
- 13 consented to the treatment;
- 14 (c) in the course of providing in-vitro fertilization treatment
- 15 services for a woman, use the egg of another woman without her consent;
- 16 (d) mix human gametes with the live gametes of an animal; or
- 17 (e) place sperms and eggs in a woman except in pursuance of a
- 18 license as provided for under this Act.

19 PART IV - RIGHTS OF PARENTS, DONORS AND CHILDREN

- 20 28.-(1) In this Act, unless the context otherwise Mother requires: Mother
- 21 "mother" means a woman who is carrying or has carried a child as a result of
- 22 placing in her an embryo or sperm and eggs or artificial insemination of the
- 23 woman Authority not to issue license.
- 24 "father" means a person who, in the case of a child who is being carried or
- 25 has been carried by a woman as a result of placing in the woman an embryo
- 26 or sperm and eggs or the artificial insemination of the woman, if:
- 27 (a) the person donated his sperms for the process of in-vitro
- 28 fertilization; and at the time of placing in the woman the embryo or the
- 29 sperm and eggs or artificial insemination of the woman, the woman was
- 30 party to a marriage with the person;

1 (b) at the time of placing in the woman of the embryo or the sperm and
2 eggs or artificial insemination of the woman, the woman was not party to a
3 marriage with the person but has subsequently married the person; or

4 (c) at the time of placing in the woman the embryo or the sperm and
5 the eggs or of the woman, the woman was not party to a marriage with the
6 person and has not subsequently married the person, but the person has, with
7 approval of the mother, written a parental agreement acquiring the rights of
8 fatherhood to the child.

9 (2) If at the time of placing in a woman the embryo or the sperm and
10 eggs or artificial insemination of the woman, the woman was a party to a
11 marriage, and the creation of the embryo carried by the woman was not brought
12 about with the sperm of the other party to the marriage, the party to the marriage
13 shall, with the consent of the other party to the marriage, be considered a father;

14 (3) A child who is adopted belongs to the person or persons who adopted the
15 child.

Use of Sperm after
the death of a man

16 29. Where the sperm of a man, or any embryo the creation of which
17 was brought about with the sperm of the man was used after the death of the
18 man, the man shall not be treated as the father of the child unless:

19 (a) the mother was married to the man at the time of the death of the
20 man and the insemination takes place within one year of the death of the man;
21 and

22 (b) the man had consented to parentage and the Artificial
23 insemination takes place within one year of the death of the man.

Parties to a
Marriage

24 30. The parties to a marriage under section 28:

25 (a) are parties to a marriage recognized under any of the systems of
26 laws in Nigeria, and subsisting at that time:

(b) includes parties to a void marriage if either or both of the parties
reasonably believed at that time that the marriage was valid;

(c) includes parties who have been cohabiting together as man and
wife for a period or periods totalling to at least two years;

1 (d) applies whether the woman was in Nigeria or elsewhere at the
2 time of the placing in the woman an embryo or sperm and eggs or her
3 artificial insemination.

4 31. A child born out of in-vitro fertilization under this Act shall
5 have the same legal rights under the Constitution or any other written law as
6 that of a child born through sexual intercourse.

Rights to accrue
to child

7 Surrogate motherhood.

8 32.-(1) A woman of not less than eighteen years may, at the request
9 of any two persons, male and female have an embryo or sperm and eggs of
10 the two persons, male and female placed or artificially inseminated in her for
11 purposes of surrogate motherhood.

12 (2) The surrogate mother under subsection (1) shall carry the child
13 on behalf of the two persons and shall relinquish all parental rights over the
14 child unless a contrary intention is proved.

15 33.-(1) In this section:

16 "parties to a marriage" mean husband and wife;

17 "court" means the High Court of Nigeria;

Parental orders
in favour of
Gamete donors

18 (2) The Court may make an order providing for a child to be treated
19 in law as the child of the parties to a marriage if:

20 (a) the child has been carried by a woman other than the wife as
21 result of placing in the woman of an Parties to a marriage.

22 (b) the gametes of the husband or wife, or both, were used to bring
23 about the creation of the embryo, and

24 (c) the conditions in subsections (3), (4), (5) (6) and (9) are
25 satisfied.

26 (3) A husband and a wife shall, sign a suffogacy agreement, before
27 the placing in a woman of an embryo or sperm and eggs or artificial
28 insemination of the woman.

29 (4) The husband and the wife must apply for the parental order
30 within one year of the birth of the child or, in the case of a child born before

1 the coming into effect of this Act, within one year of such coming into force.

2 (5) A husband, wife or both must be domiciled in Nigeria at the time of
3 the application, and of the making of the order under subsection (4),

4 (6) At the time of making an order, both the husband and the wife must
5 have attained the age of eighteen.

6 (7) The Court must be satisfied that any person who is a father of a
7 child by virtue of section 7 (b), has freely and with full understanding of what is
8 involved agreed unconditionally to the making of the order.

9 (8) A person under subsection (7) shall not require the agreement of a
10 person who cannot be found or is incapable of giving agreement.

11 (9) The court must be satisfied that no money or other benefits other
12 than for expenses reasonably incurred has been given or received by the
13 husband or the wife for or in consideration of:

14 (a) the making of the order;

15 (b) any agreement required under subsection (7); and

16 (c) the making of any arrangements with a view to making the order,
17 unless authorized by the court.

18 PART V - ACCESS TO INFORMATION

19 I-vitro fertilization Registers.

20 **34.**-(1) The Authority shall keep and maintain a register containing
21 particulars on:

22 (a) the in-vitro fertilization treatment services provided to persons;

23 (b) the keeping or use of gametes of persons or of an embryo taken
24 from any particular woman, or

25 (c) persons who undergo in-vitro fertilization;

26 (d) donors of embryos and gametes; and

27 (e) persons conceived in consequence of in-vitro fertilization
28 treatment services.

29 **35.**-(1) A person who has attained the age of eighteen may by notice to
30 the Authority require the Authority to:

1 (a) provide information stating whether or not the information
2 contained in the register shows that a person other than a parent of the
3 applicant may be a parent of the applicant.

4 (b) avail information on whether the applicant was conceived by
5 means of in-vitro fertilization; and

6 (c) state whether or not the information contained in the register
7 shows that the applicant, and a person specified in the request as a person
8 whom the applicant proposes to marry would or might be relatives.

9 (2) The Authority shall comply with the request of the applicant
10 made under section 35 if:

11 (a) the information contained in the register shows that the person
12 was, or may have been, born in consequence of in-vitro fertilization
13 treatment services, and

14 (b) the person has been given an opportunity to receive counselling
15 in regard to the implications of compliance with the request.

16 (3) The Authority shall not give information regarding the identity
17 of a person whose gametes have been used or from whom an embryo has
18 been taken if a person to whom a license applied was provided with the
19 information at a time when the Authority was not required to give the
20 information.

21 **36.-(1)** The Authority shall not avail information to a person below
22 the age of eighteen years unless the information is necessary for a medical
23 procedure relating to the minor.

Minor not to be
given information

24 (2) Where a minor seeks such information, the minor may, through
25 a legal guardian, give notice to the Authority requesting the Authority to
26 give the information and the Authority shall give the information, if:

27 (a) the information contained in the register shows that the minor
28 was, or may have been, born in consequence of in-vitro fertilization
29 treatment services; and

30 (b) the minor has been given an opportunity to receive counselling

1 on the implications of compliance with the request.

2 Information from the Authority.

3 37.-(1) Where a government agency makes a claim to the Authority
4 seeking to verify whether a man is or is not the father of a child and the
5 Authority shall comply with the request made by the government agency
6 unless it appears to the Authority that there is not sufficient reason to seek for
7 that information.

8 (2) Where the government agency is aggrieved by the decision of the
9 Authority, the agency may appeal to the Court for determination of the matter.

10 Restriction on disclosure of information.

11 38.-(1) A person who is or has been a member or Employee of the
12 Authority shall not disclose any information which the person holds or has held
13 as a member or employee of the Authority.

14 (2) The information specified under subsection (1) is:

15 (a) information contained in the register kept pursuant to section 34 of
16 this Act; and

17 (b) any other information obtained by any member or employee of the
18 Authority on terms or circumstances requiring it to be held in confidence.

19 (3) Subsection (1) does not apply to disclosure of information specified under
20 subsection(2)

21 (a) made:

22 (a) to a person as a member or employee of the Authority;

23 (b) to a person to whom a license applies for the purposes of the
24 functions under this Act;

25 (c) with the consent of a person or persons whose confidence would
26 otherwise be protected;

27 (d) in pursuance of an order of a court under this Act;

28 (e) to any government agency in pursuance of a request under section
29 37 of this Act, or

30 (f) made lawfully available to the public before the

1 disclosure is made.

2 PART VI - LICENSING

3 39. The Authority shall, in accordance with this Act issue, vary, Licence
4 revoke or renew a licence in relation to activities under this Act.

5 40. No person shall carry out in-vitro fertilization unless the person Requirement
6 is issued with a valid license under this Act. for licence

7 41.-(1) An application for a licence under this section shall be made Application for
8 to the Authority in duplicate, signed by the applicant, specifying his name licence
9 and place of business.

10 (2) Every application under this section shall be accompanied by
11 the prescribed fee.

12 (3) Where an application is made by a person in accordance with
13 this section, the Authority shall issue the person a license to carry out in-vitro
14 fertilization, if satisfied that the person meets such other requirement as may
15 be prescribed, and if not satisfied, shall refuse the application .

16 42.-(1) The Authority shall, before considering an application Inspection of
17 authorizing a person to carry out in-vitro fertilization on premises, arrange premises before
18 for the premises where in-vitro fertilization process is to be carried on to be licence is issued
19 inspected, and a report made regarding the inspection.

20 (2) Subject to subsection 3, the Authority shall inspect once in each
21 calendar year, any premises where in-vitro fertilization is to be carried and a
22 report made on the inspection.

23 (3) The Authority may not inspect a premise in any particular year
24 if the Authority considers the inspection in that year unnecessary.

25 43.-(1) The Authority may, in accordance with this Act, attach General
26 conditions to a license. conditions
for licence

27 (2) The conditions specified under subsection (1) are that:

28 (a) the activities authorized by the license shall be carried on only
29 on the premises to which the license relates and under the supervision of the
30 person responsible;

1 (b) any member or employee of the Authority, shall upon
2 identification be permitted, at all reasonable times to enter premises to which
3 the license relates and inspect the premises including the inspection of any
4 equipment, records and observing any activity;

5 (c) proper records shall be maintained in such form as the Authority
6 may direct;

7 (d) no money or other benefit shall be given or received in respect of
8 any supply of gametes or embryos unless authorized by the Authority;

9 (e) where gametes or embryos are supplied to a person to whom
10 another license applies, the Person shall be provided with information as may
11 be specified by the Authority; and

12 (f) the Authority shall be provided with copies or extracts from the
13 records or information, in such form and at such intervals as it may specify.

14 (3) Every licensee shall keep and provide information to the
15 Authority and any government bodies on:

16 (a) the persons to whom in-vitro fertilization services are provided;

17 (b) the kind of in-vitro fertilization services provided;

18 (c) the persons whose gametes are kept or used for the purposes of in-
19 vitro fertilization services;

20 (d) the persons whose gametes have been used in bringing about the
21 creation of embryos;

22 (e) such other matters as the Authority may specify.

23 (4) No information shall be removed from any records maintained in
24 pursuance of a license before the expiry of a period specified by the Authority.

25 (5) A woman shall not be provided with any treatment services that
26 involve:

27 (a) the use of any gametes of any person, if the consent of the person
28 is required under this Act and the consent has not been obtained;

29 (b) the use of any embryo taken from another woman, if the consent
30 of the woman from whom it was taken has not been obtained;

1 (c) the procedures specified under paragraph (a) and (b), unless the
2 woman has been provided with relevant information and given an
3 opportunity to receive counselling on the implications of taking the
4 proposed steps.

5 44.-(1) Every license authorizing the storage of gametes or
6 embryos shall have the condition that:

Conditions for
storage of
Gametes

7 (a) the gametes of a person or an embryo taken from a woman shall
8 be placed in storage only if received from that person or woman or acquired
9 from a person to whom a license applies;

10 (b) an embryo the creation of which has been brought about by in
11 vitro than in pursuance of the license shall be placed in storage only if
12 acquired from a person to whom the license applies;

13 (c) gametes or embryos which are stored shall not be supplied to a
14 person other than in the course of providing treatment services unless that
15 person is a person to whom a license applies;

16 (d) no gametes or embryos shall be kept in storage for longer than
17 the statutory storage period; and

18 (e) information regarding persons whose consent is required under
19 this Act, the terms of their consent and the circumstances of the storage and
20 as to such other matters as the Authority may specify shall be included in the
21 records maintained in pursuance of the license.

22 (3) The storage period in respect of embryos shall be a period not
23 exceeding five years or as the license may specify.

24 45. Where an application for a license is made to the Authority the
25 Authority shall issue the person a license if satisfied that:

Grant of licence

26 (a) the application is for a license designating the applicant as the
27 person under whose supervision the activities to be authorized by the license
28 are to be carried on;

29 (b) either the person is the applicant or:

30 (i) the application is made with the consent of the person; and

1 (ii) the applicant is a suitable person to hold a license.

2 (c) the character, qualifications and experience of the person making
3 the application are such as are required for the supervision of the activities
4 under this Act and that the person is qualified to discharge the duties under this
5 Act;

6 (d) the premises in respect of which the licence is to be granted are
7 suitable for the activities, and

8 (e) all other requirements under this Act in relation to granting of a
9 licence are satisfied.

10 (3) The Authority may grant a licence to any person by way of renewal
11 whether on the same or different terms.

12 (4) Where the Authority is of the opinion that the information
13 provided in the application is insufficient to enable it to determine the
14 application, the Authority shall not consider the application until the applicant
15 has provided further information as the Authority may require.

16 (5) The Authority shall not grant a license unless a copy of the
17 conditions to be imposed by the licence have been provided to, and
18 acknowledged in writing by the applicant and the person under whose
19 supervision the activities are to be carried on.

20 (6) The fee specified under subsection (1) means a fee of such amount
21 as may be fixed from time to time by the Authority with the approval of the
22 Minister.

23 (7) In determining the amount of fee under subsection (6), the
24 Authority may have regard to the costs of performing all its functions.

25 (8) The Authority may fix different fees for different circumstances
26 and any fees paid under this section shall not refundable.

Responsibility
of the supervisor

27 **46.-(1)** It shall be the responsibility of the person under whose
28 supervision the activities authorized by a licence are carried on to ensure:

29 (a) that the persons to whom the licence applies are of such character,
30 and are qualified by training and experience, to be suitable persons to

1 participate in the activities authorized by the licence;

2 (b) that proper equipment is used;

3 (c) that proper keeping of gametes and embryos and for the
4 disposal of gamete or embryos that have been allowed to perish; and

5 (d) that the conditions of the licence are complied with.

6 (2) The persons to whom a licence applies under this Act are:

7 (a) persons under whose supervision the activities authorized by a
8 licence are carried on;

9 (b) any person designated in the licence, or in a notice given to the
10 Authority by the person who holds the licence or the person responsible, as a
11 person to whom the licence applies; and

12 (c) any person acting under the direction of the person responsible
13 or of any person designated.

14 47.-(1) The Authority may revoke a license if satisfied:

Revocation of
licence

15 (a) that the information given for the purposes of the application for
16 the grant of the licence was false or misleading;

17 (b) that the premises to which the licence relates are no longer
18 suitable for the activities authorized by the licence;

19 (c) that the person responsible has failed to discharge, or is unable
20 because of incapacity to discharge, the duty under this Act or has failed to
21 comply with directions given in connection with any licence;

22 (d) that there has been a change of circumstances since the licence
23 was granted;

24 (e) that the character of the person responsible is not as is required
25 for the supervision of the activities or that the nominal licensee is a suitable
26 person to hold a licence; or

27 (f) the person responsible dies or is convicted of an offence under
28 this Act.

29 (2) Where the Authority has power to revoke a license under
30 subsection (1), the Authority may vary any terms of the licence.

1 (3) The Authority may, on application by the person responsible or the
2 nominal licensee, vary or revoke the licence.

3 (4) The Authority may, on an application by the nominal licensee,
4 vary the licence so as to designate another person in place of the person under
5 whom supervision is authorized by a licence, if the Authority is satisfied that
6 the character, qualifications and experience of the other person are such as are
7 required for the supervision of the activities authorized by the licence and that
8 the person shall discharge the duties under this Act, and the application is made
9 with the consent of the other person.

10 (5) Except on an application under subsection (4), the Authority may
11 vary a licence under this section:

12 (a) if it relates to the activities authorized by the licence, the manner in
13 which they are conducted or the conditions of the licence, or

14 (b) so as to extend or restrict the premises to which the licence relates.

15 (6) The Minister shall make Regulations for the refusal, variation and
16 revocation of licenses by the Authority under this Act.

Appeal to the
Authority

17 48.-(1) Where the Authority refuses issue a licence or refuses to vary a
18 licence:

19 (a) the applicant may appeal to the Authority within 30 days of the
20 date on which the decision was served on the applicant; and

21 (b) the Authority may make such determination on the appeal as it
22 thinks fit.

23 (2) The Authority shall give notice of its decision to the appellant and,
24 if it is a decision to refuse a licence or to refuse to vary a licence so as to
25 designate another person in place of the person under whom supervision is
26 authorized by a licence, or a decision to vary or revoke a licence, shall include
27 in the notice the reasons for the decision.

28 (3) The functions of the Authority on an appeal under this section
29 cannot be discharged by any committee, member or employee of the Authority

1 and, for the purposes of the appeal the quorum shall not be less than five.

2 49. Where the Authority determines under section 48 of this Act:

Appeal to the
High Court

3 (a) to refuse a licence or refuse to vary a licence so as to designate
4 another individual in place of the person under whom supervision is
5 authorized by a licence; or

6 (b) to vary or revoke a licence;

7 The person on whom notice of the determination was served may
8 appeal to the High Court.

9 50.-(1) Where the Authority:

Temporary
suspension of a
licence

10 (a) has reasonable grounds to suspect that there are grounds for
11 revoking the licence for noncompliance with this Act, and is of the opinion
12 that the licence should immediately be suspended the Authority may by
13 notice suspend the licence for a period not exceeding three months.

14 (2) The Authority shall give notice under subsection (1) to the
15 person under whom supervision is authorized by a licence or, where the
16 person under whom supervision is authorized by a licence is dead or appears
17 to the Authority to be unable because of incapacity to discharge the duty
18 imposed on him under this Act, to some other person to whom the licence
19 applies or the nominal licensee and the Authority may, by a further notice to
20 that person, renew or further renew the notice under subsection (1) specified
21 in the renewal notice.

22 PART VII - FINANCIAL PROVISIONS

23 Funds of the Authority.

24 51. The funds of the Authority shall consist of:

25 (a) such monies or assets as may accrue to the Authority in the
26 course of the exercise of its powers or the performance of its functions under
27 this Act;

28 (b) gifts, grants or donations as may be given to the Authority;

29 (c) monies that may be borrowed by the Board of Management for
30 the discharge of the functions of the Authority;

1 (d) monies from any other source provided for the Authority.

2 Financial year.

Financial Year

3 52. The Financial year of the Authority shall be the period of twelve
4 months ending on the thirtieth day of June in each year.

Annual
estimates

5 53.-(1) At least three months before the commencement of each financial
6 year, the Authority shall cause to be prepared estimates of the revenue and
7 expenditure of the Authority of that year.

8 (2) The annual estimates shall make provisions for all estimated
9 expenditure of the Authority for the financial year concerned and in particular, shall
10 provide for:

11 (a) the payment of the salaries, allowances and other charges in respect of
12 the staff of the Authority;

13 (b) the payment of pensions, gratuities and other charges in respect of
14 benefits which are payable out of the funds of the Authority;

15 (c) the acquisition and maintenance of the buildings and grounds of the
16 Authority;

17 (d) the funding of training, research and development activities of the
18 Authority;

19 (e) the proper maintenance, repair and replacement of any installation and
20 of the equipment and other movable property of the Authority;

21 (f) the creation of such funds to meet future or contingent liabilities in
22 respect of benefits, insurance or replacement of buildings or installation or
23 equipment and in respect of such other matters as the Authority may think fit.

24 (3) The annual estimates shall be approved by the Authority before the
25 commencement of the financial year to which they relate, and shall be submitted to
26 the Minister for approval and after the Minister has given approval, the Authority
27 shall not increase any sum provided in the estimates without written consent of the
28 Minister.

29 (4) No expenditure shall be incurred for the purposes of the Authority
30 except in accordance with the annual estimates approved under subsection (3), or in

1 pursuance of an authorization of the Authority given with the prior approval
2 of the Minister.

3 **54.**-(1) The Authority shall cause to be kept all proper books and
4 records or account of the income, expenditure, assets and liabilities of the
5 Authority.

Accounts and
Audit

6 (2) The Minister for the time being responsible for finance may
7 prescribe the form of any book required to be kept under subsection (1) and
8 unless a form has been prescribed, a form suitable for the purpose shall be
9 used.

10 (3) Within a period of three months after the end of each financial
11 year, the Authority shall submit to the Controller and Auditor General the
12 accounts of the Authority in respect of that year together with:

13 (a) a statement of the income and expenditure of the Authority
14 during the financial year;

15 (b) a statement of the assets and liabilities of the Authority on the
16 last day of that financial year.

17 (4) The accounts of the Authority shall be audited and reported
18 upon by the Auditor - General for the Federation in accordance with the
19 provisions of the Public Audit Act.

20 **55.**-(1) The Authority may invest any of its funds in securities in
21 which for the time being trustees may by law invest trust funds or in any
22 other securities which the Treasury may, from time to time approve.

Investments
of Funds

23 (2) The Authority may place on deposit with such bank or banks or
24 financial institutions as it may determine, any moneys not immediately
25 required of the purposes of the Authority.

26 **56.**-(1) The Authority shall cause an annual report to be prepared
27 for each financial year.

Annual Reports

28 (2) The Authority shall submit the annual report to the Minister
29 within three months after the end of the year to which it relates.

30 (3) The annual report shall contain, in respect of the year to which it

1 relates:

2 (a) the financial statements of the Authority;

3 (b) a description of the activities of the Authority;

4 (c) such other statistical information as the Authority considers
5 appropriate relating to the work of the Authority;

6 (d) any other information relating to the functions that the Authority
7 considers necessary.

8 (4) The Minister shall, within thirty days, after receiving the annual report,
9 transmit it to the National Assembly.

Special
reports

10 57. The Authority may, any time, submit a special report to the National
11 Assembly through the Minister with respect to any aspect of the functions of the
12 Authority which the Authority considers should, in the national interest, be brought
13 to the attention of the National Assembly.

14 PART VIII - MISCELLANEOUS PROVISIONS

Offences

15 58.-(1) A person commits an offence under this Act where the person
16 knowingly or recklessly:

17 (a) contravenes any of the provisions of the Act;

18 (b) contravenes any of the provisions of a notice issued under this Act; or

19 (c) obstructs a person in the execution of the person's duty under the Act.

20 (2) A person who commits an offence under subsection shall, upon
21 conviction, be liable to a fine not exceeding five hundred thousand shilling or to a
22 term not exceeding five years, or to both.

General
penalty

23 59. Any person convicted of an offence under this Act for which no penalty
24 is provided shall be liable to a fine not exceeding one hundred thousand naira or to
25 imprisonment for a term not exceeding two years, or to both.

26 PART IX - PROVISIONS ON DELEGATED POWERS

Regulations

27 60. The Minister may, make regulations generally for the better carrying
28 out of the provisions of this Act, and without prejudice to the generality of the
29 foregoing, may make regulations:

30 (a) for the eligibility of donors;

- 1 (b) for the storage of gametes and embryos;
- 2 (c) for the number of embryos that can be planted in a woman;
- 3 (d) for the number of times that a patient can be given in-vitro
- 4 fertilization a procedure;
- 5 (e) for settling disputes arising out of in-vitro fertilization;
- 6 (f) for the maintenance for records;
- 7 (g) regarding rights and duties of patients, donors surrogates and
- 8 children;
- 9 (h) in respect of the giving of consent for the use of human
- 10 reproductive material or an in vitro embryo or for the removal of human
- 11 reproductive material;
- 12 (i) in respect of the number of children that may be created from the
- 13 gametes of one donor through the application of assisted reproduction
- 14 procedures;
- 15 (j) in respect of the terms and conditions of licenses;
- 16 (k) in respect of the qualifications for licenses;
- 17 (l) in respect of the issuance, amendment, renewal, in respect of
- 18 suspension, restoration and revocation of licenses;
- 19 (m) in respect of the information to be provided in respect of
- 20 applications for a license or for the renewal or amendment of a license;
- 21 (n) in respect of the identification and labelling of human
- 22 reproductive materials and in vitro embryos used in treatment services;
- 23 (o) in respect of the collection, use and disclosure of information
- 24 regarding in-vitro fertilization;
- 25 (p) in respect of counselling services.

26 SCHEDULE (S. 9)

27 PROVISIONS AS TO THE CONDUCT OF BUSINESS

28 AFFAIRS OF THE BOARD

- 29 1.-(1) A member appointed to the Board under paragraphs (a) and
- 30 (e) of section 5 shall cease to be a member if the member:

- 1 (a) serves the Minister with written notice of resignation;
- 2 (b) is absent without written permission of the chairperson notified to the
- 3 Board, from three consecutive meetings of the Board;
- 4 (c) is convicted of a criminal offence and is sentenced to imprisonment for
- 5 a term exceeding six months with or without the option of a fine; or
- 6 (d) is incapacitated by prolonged physical or mental illness from
- 7 performing the duties of the office of a member of the Board.

Meeting of the Authority

8 2.-(1) The Board shall hold such number of meetings at such places and at
9 such times as the Board shall consider necessary for the proper discharge of its
10 functions.

11 (2) Notwithstanding sub-paragraph (1) the Board shall meet not less than
12 four times in each financial year.

13 (3) At least a fourteen days notice shall be given prior to any meeting of the

Board Special Meeting

14 3. The chairperson or any three members may call a special meeting
15 whenever it is expedient for the transaction of the business of the Board by giving
16 not less than seven days notice to the members.

Presiding at meeting

17 4.-(1) The chairperson shall preside at all meetings of the Board

18 (2) In the absence of the chairperson at a meeting, the vice-chairperson
19 shall preside at that meeting of the Board.

20 (3) In the absence of the chairperson and the vice-chairperson at a meeting,
21 the members present shall elect a member to preside at that meeting off the Board.

Quorums

22 5. The quorum for the conduct of business at a meeting of the Board shall
23 be the majority of the members or the Board.

Voting

24 6.-(1) A decision on any matter before the Board shall be by a majority of
25 votes of the members present and voting.

26 (2) In case of an equality of votes, the chairperson or the person presiding
27 shall have a casting vote.

Vacancies and defects in appointment

28 7. Proceedings of the Board shall not be invalid by reason only of a
29 vacancy in the membership of the Board or by reason of a defect in the appointment

1 of a member.

2 8. Be kept in such a manner as the Board directs, and, on the written Minutes
3 request of the Minister, shall be made available to him or any person
4 nominated by him.

5 9. The Board may establish such committees as may be necessary Committees of
6 for the performance of the functions of the Board. the Authority

7 10. Subject to the provisions of the Schedule, the Board shall Powers of the
8 regulate its own procedure. Authority to
regulate its own
procedure

9 11. Within six months of the commencement of this Act, the Board Code of conduct
10 shall establish a code of conduct for the practice and conduct of in-vitro
11 fertilization.

12 12. -(1) If a member of the Board is directly or indirectly interested Disclosure of
13 in a contract or other matter before the Board and is present at a meeting of interest
14 the Board at which the contract, proposed contract or other matter is the
15 subject of consideration, that member shall, as soon as is practicable after
16 the commencement of that meeting, disclose the fact.

17 13. The Director shall keep a record of all proceedings and Records
18 meetings of the Board.

MEMORANDUM OF OBJECTS AND REASONS

The Principal object of this Bill is to anchor the existence and practice of in-vitro- fertilization in statute law. While it is acknowledged that infertility affects a lot of women of reproductive age in Nigeria and in-vitro fertilization is often a couple's or individual's only chance at conception there has never been an attempt to clothe the practice of in-vitro fertilization in a fine statutory line. It is imperative to note that many women who require in vitro-fertilization rely on doctors who may not be qualified to undertake the procedure and as a result leading to the deaths of many women and children.

The entire legal framework does not provide any substantive and procedural essentials for in vitro fertilization; most of the Acts that relate to health care

for example the Medical Practitioners and Dentist Act and the Medical Laboratory and Technologists Act are silent on this fundamental matter. The result therefore is that the practice in-vitro fertilization which is very crucial to this country goes about in a state of virtual legal nudity.

This Bill therefore seeks to address these challenges and thereby empower and strengthen the practice of doctors in the area of in-vitro fertilization. This will not only enhance the in vitro fertilization surveillance but also strengthen control and avoid losses.

Further, the Bill makes provisions that address not only the legal Voids but also the likely societal concerns e.g. the consents necessary before undergoing in vitro-fertilization, regulation of the handling of embryos resulting from the in vitro-fertilization processes, protection of the identity, status and welfare of children borne as a result of in-vitro fertilisation, obligations of persons seeking to undertake the human vitro-fertilisation and their status as parents upon obtaining children through the process.

Significantly, the Bill creates an In vitro Fertilization Authority to regulate the processes of human vitro-fertilisation and in particular to develop standards, regulations and guidelines on in-vitro human fertilization, to undertake research on the conduct, control and treatment of in-vitro fertilization, to grant, vary, suspend and revoke licenses to provide advice and information to persons receiving in-vitro fertilization treatment including persons providing gametes or embryos and prescribe minimum requirements for the physical infrastructure for in-vitro fertilization clinics among others.

Countries which have designed a legal framework on human reproductive technologies have had to deal with a number of weighty and somewhat controversial issues. These include the appropriate balance between legislation, regulation and reproductive freedom /liberty, the interplay between ethics and legislative intervention in human reproduction, keeping the law abreast with continuous and tremendous advancement in modern science and technology. Examples of the countries with legal frameworks for this area are

Australia, UK, and South Africa among others.

Modern human reproductive technologies continue to evoke significant and often emotive ethical and scientific debate. More importantly, these technologies have brought novel legal challenges, particularly in the areas of marital relations, reproductive liberty, reproductive privacy, child rights and parental rights and responsibility.

Unfortunately, the Nigerian legal system lacks laws for the regulation of modern human reproduction technologies. The stark reality is that Nigerians continue to enter into arrangements involving modern reproductive technologies in spite of the absence of a legal regime for their regulation. This Bill therefore responds to the obvious need for a legal framework for regulation of human reproductive technologies and in particular, Vitro-fertilization in humans.

Even though decisions touching on reproduction and copulation fall within the private domain of individuals, there are formidable arguments in favour of legislative control on assisted reproduction. First, it is beyond debate that the state has a legitimate interest in restricting regulating reproductive freedom if there is demonstrable harm or negative impacts on society. Also, due to reliance on technology in assisted reproduction, the state has a legitimate interest in ensuring high standards of treatment, with a view to enhancing safety and protecting individuals from exposure to high levels of risk. Furthermore, the intervention of a third party in assisted reproduction (i.e. a doctor or clinic) removes the matter from private domain to public domain, warranting legislative intervention.

Therefore by enacting this Bill, the country would be taking a lead in helping couples who are not able to have children due to fertility problems conceive through in vitro fertilization.

PART I of the Bill contains preliminary provisions

PART II of the Bill provides for establishment of the In-Vitro Fertilization Authority with general mandate to regulate in-vitro fertilization processes in

accordance with the Act;

PART III of the Bill provides for prohibited activities under this Act.

PART IV of the Bill provides for the rights of parents donors, and children.

PART V of the Bill provides for access to information.

PART VI of the Bill provides for licensing

PART VII of the Bill provides for financial provisions

PART VIII of the Bill provides for miscellaneous provisions

PART IX of the Bill provides for provisions on delegated powers

PROVISIONS ON DELEGATED POWERS

This law when enacted will confer on a number of bodies and persons authority to make provisions having the force of law in Nigeria.

The Minister for instance is given authority by section 60 of this Act to make Regulations. The purpose and objectives of making these regulations include the following:

- (a) to provide for the eligibility of donors;
- (b) to provide mechanisms for storage of gametes and embryos;
- (c) to determine the number of embryos that can be planted in a woman;
- (d) to provide for the number of times that a patient can be given in-vitro fertilization a procedure; and
- (e) to establish mechanisms for settling disputes arising out of in-vitro fertilization; Limits of the Delegated Authority

The regulations made under this Act by the Minister will be limited to bringing into effect provisions of this Act and will therefore facilitate the promotion of public awareness control and management of in-vitro fertilization.

The enactment of this Bill shall not occasion additional expenditure of public funds.