

ENFORCEMENT OF SURROGACY AGREEMENT IN NIGERIA

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Abstract

Despite the growing reliance on surrogacy due to infertility and other reproductive challenges, there is no comprehensive legal framework governing its practice. The enforcement of surrogacy agreements in Nigeria is uncertain; as such agreements are not explicitly recognized under Nigerian law. Issues such as parental rights, breach of contract, and ethical considerations further complicate enforceability. While some surrogacy arrangements are conducted through private agreements, the absence of statutory backing makes such agreements vulnerable to legal disputes, particularly regarding custody and financial obligations.

The paper adopts qualitative research design to gain an insight into the enforcement of surrogacy agreement in Nigeria. The research used descriptive analysis to examine the issues surrounding of surrogacy agreement in Nigeria. The paper which is theoretical in nature drawn its argument from secondary data which include journal publication, textbooks and internet sources. To realize the objective of this paper and for ease of analysis, the paper is thematically divided into the following eight parts. The first highlight the introduction, the second section discussed the history of surrogacy in Nigeria, the third surrogacy agreement in Nigeria, the fourth dealt with the enforcement of surrogacy agreement in Nigeria, the fifth fertility clinics and surrogacy agencies, the sixth section focuses on the future of surrogacy in Nigerian and the seventh is the conclusion and the eight is the recommendation.

This paper also explores the challenges surrounding the enforcement of surrogacy agreements in Nigeria, examining relevant legal principles and judicial attitudes. It argues for the need for a clear legislative framework to regulate surrogacy, ensuring the protection of all parties involved, particularly the surrogate mother, intended parents, and the child.

The study concluded that surrogacy in Nigeria exists in a legal and social vacuum, with many unanswered questions about the rights and responsibilities of the parties involved. The practice is not widely accepted due to cultural and religious reasons, and there is no formal legal framework to govern surrogacy arrangements. It was recommended that a formal legal framework could help regulate how surrogate mothers are compensated, ensuring that they are not exploited and that compensation is fair and transparent.

Keywords: *Enforcement, Surrogacy, Agreement, Parental Right, Child*

1.0 INTRODUCTION

Surrogacy is illegal in many nations, but people nonetheless do it. In some jurisdictions, surrogacy is unregulated while in certain countries, it is guided by a 'commercial' or 'altruistic' framework. Although Nigeria does not prohibit surrogacy, it has not established a legal framework for regulating the surrogacy procedure¹. The lack of formal legislation governing the practice places both the *couple* and the *intended surrogate mother* in *legal limbo*, exposing the parties to legal dangers.²

Surrogacy is a procedure in which a woman, known as the surrogate or gestational carrier, agrees to carry and give birth to a child for another individual or couple, known as the intended parent(s).³ The surrogate carries the pregnancy and gives birth to the child, to pass it on to the intended parent(s) following delivery. Surrogacy can

¹Ezejiofor, G. (2021). Legal and ethical concerns in surrogacy in Nigeria: A need for legislative intervention. *Nigerian Journal of Legal Studies*, 10(2), 45-67.

² Akinbode, O. A. (2023). "Surrogacy Law and Development in Nigeria." *The Loyal Nigerian Lawyer*. Retrieved from <https://loyalnigerianlawyer.com/surrogacy-law-and-development-in-nigeria>

³ Van den Akker, O. B. A. (2007). Psychological aspects of surrogate motherhood. *Human Reproduction Update*, 13(1), 53-62.

be either altruistic, in which the surrogate receives no financial compensation beyond reasonable expenses, or commercial, in which the surrogate is compensated for her role. Surrogacy is frequently attempted by individuals or couples who are unable to conceive or carry a child due to infertility, pregnancy-related health problems, or other causes. It is a practice involving sophisticated medical procedures, emotional difficulties, and legal consequences that necessitate thorough understanding and adherence to applicable laws and rules. Surrogacy laws and regulations differ widely among jurisdictions, creating complex legal, ethical, and medical issues.

Surrogacy is usually divided into two types, traditional surrogacy and gestational surrogacy. Traditional surrogacy involves using the surrogate's egg for conception, mainly by intrauterine insemination (IUI). It is less popular because of its legal and emotional difficulties while Gestational surrogacy involves a woman carrying and giving birth to a child generated by in-vitro fertilization with the gametes of one or both intended parents, without the gestational surrogate's genetic contribution i.e. creating an embryo using an infertile woman's egg and sperm and implanting it in a surrogate mother.

Who are the intended parents?

Intended Parents are individuals or couples who are unable to conceive naturally and opt for surrogacy to start a family.

Who is a surrogate mother?

A "surrogate mother" is a woman who, for financial or other reasons, agrees to bear a child for another woman who is unable to conceive. She is a "substitute mother" who conceives, gestates, and delivers a child on behalf of another woman, who is then considered the child's "real" mother (social and legal).

2.0. HISTORY OF SURROGACY IN NIGERIA

Before the arrival of assisted reproductive technologies (ART) like IVF, Nigeria had traditional practices to address infertility and childbearing challenges. In many Nigerian communities, adoption was a common solution for childless couples. Families who were unable to have children would often adopt children from extended family members or from other communities, ensuring that the family line continued and that the couple could fulfill their societal roles. This practice, while not a form of surrogacy, was a way for couples to maintain family connections and responsibilities despite infertility.⁴

In polygamous communities, where multiple wives were common, a wife who could not conceive might invite another woman, often a co-wife or concubine, to bear children for her husband. This practice, which might seem similar to surrogacy in some respects, was rooted in the societal importance of having children, especially male heirs, in such communities. Additionally, many traditional African societies, including Nigeria, have long relied on herbal medicine and spiritual rituals to treat infertility.⁵

Traditional healers played an important role in offering remedies, often in the form of herbal treatments or spiritual interventions, aimed at improving fertility. While these methods did not directly involve surrogacy, they reflect the desire to address reproductive challenges using available cultural and spiritual resources.⁶

The introduction of assisted reproductive technologies, including IVF and surrogacy, began to shape the landscape of fertility treatment in Nigeria in the late 20th century. IVF, first successfully developed in the 1970s, became increasingly available to Nigerians in the 1990s. With IVF came the possibility of surrogacy, where a woman would

⁴Okonjo, B. (2015). *Infertility and Family Continuity: Social and Cultural Solutions in Nigeria*. Ibadan: Academic Press.

⁵Akinyele, R. (2018). *Polygamy and Reproductive Practices in Nigerian Society*. Abuja: National Research Institute.

⁶Adepoju, T., & Olorunfemi, K. (2020). *Traditional Healing Practices and Infertility Treatment in Nigeria*. Lagos: Heritage Publishers.

carry a child for another individual or couple who were unable to conceive themselves. In Nigeria, however, the uptake of these technologies was *initially slow and limited, primarily due to high costs, lack of widespread awareness, and general scepticism about such practices.*

In the 1990s and early 2000s, a few fertility clinics in Nigeria started offering ART services, including surrogacy. These clinics were concentrated in major cities like Lagos and Abuja and catered mostly to upper and middle-class Nigerians who could afford the expensive procedures. Despite the limited access, surrogacy began to gain recognition as an option for childless couples, especially those facing medical infertility or complications such as an inability to carry a pregnancy to term.

Culturally, surrogacy in Nigeria has faced significant resistance. Nigerian society places a high value on biological parenthood, particularly in the context of marriage. Many Nigerians, especially in rural areas and among religious communities, view surrogacy as an unnatural practice. Religious groups, particularly conservative Christians and Muslims, have been vocal in their opposition to surrogacy. For instance, the Roman Catholic Church and many Protestant denominations strongly oppose assisted reproductive technologies practices like surrogacy, viewing them as interfering with the natural order of reproduction.

Similarly, Islam, which is practiced by a significant portion of the Nigerian population, generally rejects surrogacy, especially since it involves a third party in the reproductive process, which is often seen as violating principles of family lineage and inheritance. Although surrogacy was not widely practiced in Nigeria in the earlier years, it gained some visibility due to legal cases involving the custody of children born through surrogacy arrangements. Despite these legal cases, Nigeria still lacks a comprehensive legal framework for surrogacy. The practice remains largely unregulated, leading to a number of legal and ethical challenges. The lack of clear legal guidelines creates uncertainty for both intended parents and surrogate mothers, especially when it comes to issues like parental rights, custody disputes, and the surrogate's compensation.⁷

Surrogate mothers in Nigeria, often from lower socio-economic backgrounds, may face exploitation if proper agreements are not put in place, raising ethical concerns regarding the fairness and autonomy of the surrogacy process. Fertility clinics and agencies that offer surrogacy services in Nigeria have worked within this gray area, with some offering legal contracts to safeguard the interests of all parties involved. However, these contracts are not legally binding under Nigerian law, and they do not provide the same protection as those in countries with more established surrogacy laws. In recent years, awareness of surrogacy as a fertility option has slowly begun to grow, especially among urban Nigerians. However, it remains a controversial and complex issue involving medical and legal considerations and deeply rooted cultural and religious beliefs⁸.

3.0. SURROGACY AGREEMENT

It is expedient first and foremost to give a prefatory definition of what the concept “surrogacy agreement” means and also to highlight key elements of a surrogacy agreement.

A surrogacy agreement also known as a surrogacy contract, is a *legal* document that states all parties' rights, obligations, and expectations in a surrogacy relationship. Some key elements that may be contained in the Surrogate Agreement include⁹:

⁷ibid

⁸ Practice Committee of the American Society for Reproductive Medicine. (2017). Guidance on gestational surrogacy: A committee opinion. *Fertility and Sterility*, 107(2), e3-e10.

⁹ Choudhury, S., &Sahu, S. K. (2021). Ethical and legal aspects of surrogacy: A global perspective. *Journal of Clinical and Diagnostic Research*, 15(3), IE01-IE05.

- Accuracy of information by parties to the Agreement
- Evaluations, examinations, screening, medical procedures and instructions
- Release of information by gestational carrier or surrogate mother
- Sexual activity of the gestational carrier or surrogate mother
- Medical instructions, diet, and prenatal vitamins of the gestational carrier or surrogate mother
- Restrictions regarding the use of substances; harmful exposure by gestational carrier or surrogate mother
- Strenuous activity, travel, residence by gestational carrier or surrogate mother
- Payment and reimbursement
- Gestational carrier's medical expenses
- Possession of child after delivery and breast milk
- Termination of pregnancy
- Parent-child relationship
- Confidentiality
- Change of circumstances
- Termination of agreement
- Breach of agreement and remedies
- Governing Law

Surrogacy contracts must carefully protect the interests of all parties involved, particularly the intended mother and surrogate.

In traditional surrogacy arrangements, it is critical to include clauses that protect the intended mother and parents against disputes over parental rights. Contracts for all surrogacy kinds should stipulate that any unauthorized keeping of the child by the surrogate is considered abduction, stressing the gravity of such actions and ensuring legal protection for the intended parents.

4.0. THE ENFORCEMENT OF SURROGACY AGREEMENT IN NIGERIA

In Nigeria, there is no specific legislation or legal framework regulating surrogacy.¹⁰ While assisted reproductive technologies like in-vitro fertilization (IVF) have gained some acceptance, the practice of surrogacy remains largely unregulated. This lack of formal legal provisions means that surrogacy arrangements in Nigeria are usually handled on a case-based basis, often through private contracts or informal agreements between the surrogate mother and

¹⁰ Pande, A. (2010). Commercial surrogacy in India: Manufacturing a perfect mother-worker. *Signs: Journal of Women in Culture and Society*, 35(4), 969-992.

the intended parents. These agreements are generally not recognized as legally binding by Nigerian law, making enforcement difficult if disputes arise.¹¹

The absence of a surrogacy law creates a legal vacuum in which the rights of the parties involved — particularly the surrogate mother, intended parents, and the child — are not adequately protected. For example, parental rights can become a contentious issue in cases of custody disputes or disagreements over compensation, especially in the absence of a legally recognized contract. There is no clear legal provision that outlines the responsibilities of each party or ensures that surrogacy agreements are respected and enforceable in Nigerian courts.

The Nigerian legal system permits the enforcement of contracts that meet certain essential requirements. As a result, despite the lack of particular legislation governing surrogacy, surrogacy contracts are considered with the same respect and consideration as other legally binding transactions. Surrogacy contracts are based on mutual consent and the exchange of value, essential for their validity and enforceability. Even though there are no specific surrogacy laws in Nigeria, these agreements are recognized under general contract law principles, which mean that once the contract includes a clear and definitive offer, acceptance, and consideration, it becomes valid and enforceable¹². A surrogate contract entered into through threat, coercion, or deception, or terms that are impossible to fulfill by either party, like any other contract, will not be enforced by the court. It is important to note that commercial surrogacy contracts, in which the surrogate is compensated, are seen differently across jurisdictions, with some equating them to the sale of children, which is both legally and ethically objectionable. Despite the fact moral and public policy debates may indicate a reluctance to enforce surrogacy contracts, it is important to note that surrogacy agreements are legally enforceable once they meet the requirements of a valid contract. If there are any complications with a surrogacy contract, the parties involved have the right to seek legal redress and possibly have their case heard and decided in court. After the birth of the child through surrogacy, the intended parents must get a custody order in Nigeria. This legal procedure is vital for ensuring that their parental rights are completely and legally recognized and protected. Obtaining a custody order confirms the intending parents' legal status as the child's parents, offering peace of mind and legal protection for the family's future.¹³

Court Cases and Legal Precedents

While surrogacy is not officially regulated, there have been instances where Nigerian courts have had to deal with cases related to surrogacy arrangements, often concerning custody and parental rights. One of the most notable cases occurred in 2018 in Lagos, where the *Lagos High Court* ruled in favor of a couple who had entered into a surrogacy arrangement. The court held that the intended parents, rather than the surrogate mother, should be recognized as the legal parents of the child, even though the surrogate was biologically related to the child. This case highlighted a significant issue in Nigerian surrogacy arrangements — the lack of legal clarity around parental rights. The decision indicated that intended parents could be recognized as the legal parents of a child born through surrogacy, but the ruling did not address the legality of surrogacy itself or establish a formal legal framework for surrogacy agreements. Despite the ruling, Nigerian courts have not provided comprehensive guidance on the enforcement of surrogacy arrangements, especially in cases where there is no formal contract or where the

¹¹BarristerNG – "The Legal Framework for Surrogacy in Nigeria: An In-depth Overview" by Usman AbdulsemiuTemitope Esq. Available at: <https://barristerng.com/the-legal-framework-for-surrogacy-in-nigeria-an-in-depth-overview-by-usman-abdulsemiu-temitope-esq/>

¹²Okonjo, B. (2015). *Infertility and Family Continuity: Social and Cultural Solutions in Nigeria*. Ibadan: Academic Press.

¹³Barrister NG – "The Legal Framework for Surrogacy in Nigeria: An In-depth Overview" by Usman AbdulsemiuTemitope Esq. Available at: <https://barristerng.com/the-legal-framework-for-surrogacy-in-nigeria-an-in-depth-overview-by-usman-abdulsemiu-temitope-esq/>

agreement is disputed. In the absence of specific surrogacy laws, Nigerian courts often rely on general family law principles to resolve surrogacy-related disputes, which can lead to inconsistent rulings.¹⁴

One of the legislations that inadvertently regulates the practice of surrogacy is the National Health Act, of 2014 ('NHA'). The NHA is a statute that was aimed at providing a legal framework for managing the Nigerian health system by setting minimum standards for the provision of health services. It is our position that the NHA inadvertently regulates surrogacy because, in all sixty-five sections of the NHA, there is not a single mention or reference to surrogacy. However, Section 50(1)(a) & (c) of the Act, read together with the definitions in Section 64 of the Act, provides that a person shall not: a. Manipulate any genetic material, including genetic material of human gametes (i.e., sperm or egg), zygotes (the union of a male and female zygote), or embryos (a human offspring in the first eight weeks of conception); b. Import or export human zygotes or embryos.

Having prohibited these acts, Section 50(2) of the NHA provides that a person who engages in the prohibited actions commits an offense, and if convicted, would be sent to prison for a minimum term of five years. The language of Section 50(1) of the NHA reveals the difficulty that often arises when a draftsman is forced to deploy scientific language in drafting legislation. It is unclear in what context the Act uses the word manipulate.

Secondly, another statute inadvertently outlawed the practice of commercial surrogacy. The statute is the Child's Right Act 2003 ('CRA'), which is the law that codifies and guarantees the rights of all children in Nigeria. Section 30(1) & (3) of the CRA provides that:

- 1) No person shall buy, sell, hire, let on hire, dispose of, or obtain possession of or otherwise deal in a child. 3) A person who contravenes the provisions of subsection (1) of this section commits an offense and is liable on conviction to imprisonment for a term of ten years.

It must be recalled that in commercial surrogacy, the surrogate is paid a fee for the purpose of carrying and birthing the child, with the expectation that after birth, the surrogate would hand over custody of the child to the intending parent or parents. Accordingly, within the language of the CRA, intending parents buy the child, because they obtain custody (i.e., possession) of the child as a result of a fee paid to the surrogate.

¹⁵Ethical and Practical Concerns Surrounding Surrogacy

The lack of legal regulation of surrogacy in Nigeria presents several ethical and practical challenges, particularly regarding the enforcement of surrogacy agreements and as affecting parties to surrogacy agreements.

- a. *Exploitation of Surrogate Mothers:* One of the primary concerns surrounding the enforcement of surrogacy in Nigeria is the potential exploitation of surrogate mothers. In many cases, surrogate mothers are from economically disadvantaged backgrounds, and surrogacy may be seen as a way to earn money. Without legal protection, there is a risk that surrogate mothers may be coerced into surrogacy arrangements or may not receive fair compensation. Furthermore, without clear legal contracts, surrogate mothers may find it difficult to enforce their rights or seek redress in the event of a dispute.
- b. *Custody Disputes:* Another challenge in enforcing surrogacy arrangements is the risk of custody disputes. If a surrogate mother changes her mind after giving birth, or if there is disagreement between the surrogate

¹⁴ Ikechukwu, O., & Omotayo, F. (2019). Surrogacy and Parental Rights in Nigeria: Legal Implications and Challenges. Lagos: Nigerian Law Review.

¹⁵ Law Journals – "The Legal and Ethical Issues of Surrogacy in Nigeria." Available at: <https://www.lawjournals.org/assets/archives/2023/vol9issue5/9168-1696681608054.pdf>

and the intended parents, there may be a legal battle over the child's custody. In the absence of surrogacy laws, the outcome of such disputes is uncertain, and the courts may struggle to determine the legal parentage of the child.

- c. *Legal Uncertainty and Lack of Regulation:* One of the most significant challenges faced by surrogacy in Nigeria is the absence of clear, enforceable laws. Nigerian law does not have specific regulations governing surrogacy, which creates a legal grey area where the rights of surrogate mothers, intended parents, and children are not clearly defined. Without formal legal recognition, surrogacy agreements are often informal and based on private contracts between the surrogate and the intended parents. These contracts are typically not legally binding, meaning that in the event of disputes—whether over custody, compensation, or parental rights—the resolution may be unclear and inconsistent. For instance, if a surrogate mother decides she wants to keep the child after birth or if there is a disagreement about parental rights, the legal system lacks a solid framework for enforcing agreements or ensuring fair outcomes.
- d. *Ethical Concerns and Exploitation:* Surrogacy in Nigeria is often seen as an opportunity for financial gain, especially for women in economically vulnerable positions. However, this has led to concerns about the potential exploitation of surrogate mothers. Many surrogates in Nigeria come from lower socio-economic backgrounds, and they may be coerced or pressured into surrogacy arrangements due to financial difficulties, making them particularly vulnerable.
- e. *Cultural and Religious Opposition:* Cultural and religious beliefs play a significant role in shaping views on surrogacy in Nigeria, and these factors contribute to the challenges the practice faces.¹⁶ In many Nigerian communities, there is a strong cultural emphasis on biological motherhood, and surrogacy is often viewed as unnatural or morally wrong. Some Nigerians see surrogacy as interfering with the natural order of reproduction and family life, which can lead to stigma against surrogate mothers and intended parents who engage in the practice¹⁷.
- f. *Psychological and Emotional Impact:* Surrogacy can have significant psychological and emotional consequences for both the surrogate mother and the intended parents. Surrogate mothers may experience emotional attachment to the child during pregnancy and find it difficult to relinquish the child after birth. This bond can lead to complicated emotions and potential distress when the time comes to part with the child. If the surrogate mother faces societal stigma or feels pressured to give up the child, it can worsen her emotional well-being.
- g. *Medical and Health Concerns:* There are also significant health risks involved in surrogacy, particularly for the surrogate mother. Surrogacy procedures, especially when combined with IVF, can involve complex medical interventions, and the health risks of multiple pregnancies or complications during childbirth are not insignificant. Surrogate mothers may face risks during the pregnancy, including high blood pressure, gestational diabetes, or preterm labor. In Nigeria, where access to quality healthcare is not always guaranteed, these medical risks can be exacerbated by inadequate prenatal care. The lack of proper medical infrastructure and health insurance coverage for surrogacy pregnancies further complicates the situation, leaving surrogate mothers vulnerable to health complications without adequate support.
- h. *Custody and Parental Rights Disputes:* The issue of custody and parental rights remains one of the most contentious challenges in surrogacy arrangements in Nigeria. In the absence of clear legal guidelines,

¹⁶ Within Nigeria – “Surrogacy in Nigeria: Is it Legal? How to Go About It and All You Need to Know.” Available at: <https://www.withinnigeria.com/piece/2023/06/23/surrogacy-in-nigeria-is-it-legal-how-to-go-about-it-and-all-you-need-to-know/>

¹⁷ibid

questions about who is the legal parent of a child born through surrogacy are difficult to answer. In cases where the surrogate is biologically related to the child, there may be confusion or disputes over parental rights. Nigerian courts have occasionally ruled in favor of intended parents in surrogacy cases, but these rulings have been inconsistent, and there is no set legal standard for how surrogacy-related cases should be handled. Without a formal framework for addressing these issues, intended parents may face prolonged legal battles over custody, and surrogate mothers may be denied legal recognition as the biological parents, even if they have been involved in the child's upbringing.

- i. *Financial Costs:* Surrogacy in Nigeria is an expensive process, and the high cost is a major barrier to many couples who seek it as a fertility option. The cost includes medical expenses, legal fees, agency fees, and compensation for the surrogate mother. The financial burden of surrogacy can limit access to this option, particularly for lower-income families. As the practice is largely unregulated, the financial arrangements and terms are often not standardized, leading to potential disputes over compensation and unclear expectations between the surrogate and the intended parents.

5.0. FERTILITY CLINICS AND SURROGACY AGENCIES

In Nigeria, fertility clinics and surrogacy agencies typically serve as intermediaries between intended parents and surrogate mothers. These agencies often facilitate surrogacy arrangements, helping to match intended parents with a surrogate and providing support services. However, since surrogacy is not officially regulated by Nigerian law, these agencies operate without the protection and oversight of the government. The contracts they draft are usually not legally enforceable, and the enforcement of these agreements relies on the willingness of the parties involved to adhere to the terms. Some surrogacy agencies may include clauses in their contracts regarding the rights and responsibilities of the surrogate and the intended parents. These contracts may cover compensation, medical care, and the surrogate's obligations, but they do not have the force of law. If disputes arise, there is no clear legal process for enforcing the terms of these contracts.¹⁸

6.0. THE FUTURE OF SURROGACY IN NIGERIA

The future of surrogacy in Nigeria is shaped by a range of social, legal, and cultural factors. Currently, surrogacy lacks clear legal guidelines in the country, creating uncertainty for all parties involved, including the surrogate mothers, the intended parents, and the children born through surrogacy. While some legal reforms could clarify the process in the future, Nigeria's current absence of specific surrogacy regulations leaves many questions unanswered, such as the rights of surrogates and parents and how parental rights and citizenship are handled.¹⁹

Cultural and religious attitudes also play a major role in how surrogacy is viewed in Nigeria. There is a strong adherence to traditional family values, and surrogacy challenges conventional views on marriage and childbearing.

Additionally, the country's religious landscape, dominated by Islam and Christianity, influences perspectives on assisted reproductive technologies. Religious opposition to surrogacy could be a barrier, although societal attitudes might evolve as more people face fertility challenges. In terms of healthcare, surrogacy requires advanced medical procedures such as in vitro fertilization (IVF), which may be difficult for many Nigerians to access due to the high

¹⁸ Within Nigeria – "Surrogacy in Nigeria: Is it Legal? How to Go About It and All You Need to Know." Available at: <https://www.withinnigeria.com/piece/2023/06/23/surrogacy-in-nigeria-is-it-legal-how-to-go-about-it-and-all-you-need-to-know/>

¹⁹ Law Journals – "The Legal and Ethical Issues of Surrogacy in Nigeria." Available at: <https://www.lawjournals.org/assets/archives/2023/vol9issue5/9168-1696681608054.pdf>

cost and limited availability of specialized medical services. However, the growing demand for fertility treatments in the country could lead to more fertility clinics offering surrogacy services in the future, especially in major cities.²⁰

As more people seek alternatives to natural conception, the surrogacy industry may begin to expand. While commercial surrogacy could become more widespread in Nigeria, concerns about the potential exploitation of lower-income women may arise, especially if surrogates are paid for their services. This could prompt discussions about regulation to ensure that surrogate mothers are not exploited and have access to proper healthcare and support throughout the process. On the other hand, altruistic surrogacy might emerge as a more common practice in the future, especially if it is viewed as a more ethically sound option. With Nigeria's growing middle class and increasing access to private healthcare, surrogacy could become more accessible to wealthier Nigerians, though the practice may still carry a stigma for some. Over time, greater awareness and more open conversations could help normalize the practice. Additionally, the global rise in surrogacy acceptance could influence local attitudes and create opportunities for cross-border surrogacy.²¹

Nigerians already travel abroad for surrogacy services in countries with clearer legal frameworks, which may, in turn, encourage local reforms. Ultimately, the future of surrogacy in Nigeria will depend on how legal, cultural, and social factors converge, with the potential for more structured laws, changing societal perceptions, and increased access to fertility treatments.

It is however expedient to note that the House of Representatives has approved a bill; the Surrogacy Bill 2024, seeking to establish Nigeria Surrogacy Regulatory Commission for monitoring and supervision of surrogacy arrangements in Nigeria. The bill which at the date of this article has passed its second reading also seeks to "provide for the registration, regulation and monitoring of surrogacy agencies in Nigeria and for related matters."

Leading the debate on the general principles of the proposed legislation, the sponsor of the bill, Olamijuwonlo Alao-Akala, stated that the bill aimed to regulate and evaluate surrogacy in Nigeria thereby ensuring medical and health laws are not flouted.

It is however noteworthy that Lagos State has taken a proactive approach by establishing guidelines on Assisted Reproductive Technology in 2019, which covers clinical and ethical issues, including surrogacy and which has been enacted by the Lagos State Assembly as the Assisted Reproductive Technology (ART) 2021.

7.0. CONCLUSION

Surrogacy in Nigeria exists in a legal and social vacuum, with many unanswered questions about the rights and responsibilities of the parties involved. The practice is not widely accepted due to cultural and religious reasons, and there is no formal legal framework to govern surrogacy arrangements. However, with growing awareness and demand for assisted reproductive technologies, it is possible that surrogacy will become more structured and regulated in the future. Surrogacy in Nigeria faces a host of challenges, including legal uncertainty, ethical concerns, cultural and religious opposition, lack of public awareness, medical risks, and emotional complexities. These challenges complicate the practice and make it difficult for intended parents and surrogates to navigate the process with clarity and security. Without legal reforms and a comprehensive framework to address these issues, surrogacy will continue to be fraught with obstacles, leaving many questions unanswered for those seeking to pursue it. The

²⁰Olawale, S., & Oyinlade, A. (2020). Religious Perspectives on Surrogacy in Nigeria. *African Journal of Religion and Society*, 18(3), 55-70.

²¹ Within Nigeria – "Surrogacy in Nigeria: Is it Legal? How to Go About It and All You Need to Know." Available at: <https://www.withinnigeria.com/piece/2023/06/23/surrogacy-in-nigeria-is-it-legal-how-to-go-about-it-and-all-you-need-to-know/>

Surrogacy Bill 2024 is therefore one that is long overdue and our lawmakers must expedite actions towards the promulgation of the Surrogacy Act itself.

8.o. RECOMMENDATION

Given the growing demand for surrogacy in Nigeria, there have been discussions among legal scholars, medical professionals, and advocacy groups about the need for a formal legal framework to govern surrogacy. The introduction of comprehensive surrogacy laws could provide clearer guidelines for the enforcement of surrogacy agreements and address the legal and ethical challenges associated with the practice²². Some potential areas for reform include:

- a. *Establishing Legal Recognition of Surrogacy Contracts:* A legal framework that recognizes surrogacy contracts could provide clarity on the rights and obligations of all parties involved. This would help ensure that intended parents are legally recognized as the child's parents and that surrogate mothers are adequately compensated and protected from exploitation.
- b. *Regulating Surrogate Compensation:* A formal legal framework could help regulate how surrogate mothers are compensated, ensuring that they are not exploited and that compensation is fair and transparent. Clear guidelines on compensation could help prevent potential abuse, particularly among economically vulnerable women.
- c. *Addressing Parental Rights and Custody:* A clear legal process for determining parental rights in surrogacy arrangements would help resolve custody disputes and ensure that the intended parents' rights are respected. This could also help ensure that children born through surrogacy are not left in legal limbo.
- d. *Protecting the Rights of Surrogate Mothers:* Legal reforms could also include protections for surrogate mothers, ensuring that they are fully informed about the surrogacy process and that their health and well-being are prioritized. This could help prevent coercion or exploitation and provide surrogate mothers with a clearer path for seeking redress in case of a breach of contract.

²²Barrister NG – "The Legal Framework for Surrogacy in Nigeria: An In-depth Overview" by Usman AbdulseimuTemitope Esq. Available at: <https://barristerng.com/the-legal-framework-for-surrogacy-in-nigeria-an-in-depth-overview-by-usman-abdulseimu-temitope-esq/>