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SURROGACY AS A PATHWAY TO MODERN DEVELOPMENT IN NIGERIA: THE NECESSITY OF A LEGAL FRAMEWORK

Abstract

Talking about surrogacy in Nigeria is equivalent to talking about hope trapped in uncertainty. Science has made it possible for couples battling infertility to have children through assisted reproductive technology, but Nigeria's silence on clear laws has left the practice vulnerable to abuse, stigma and confusion. This paper examines surrogacy not just as a medical option, but as a pathway to getting in-step with modern developments, with potential benefits for healthcare, the economy and family life in Nigeria. It also proposes a legal framework suited to Nigeria's realities.

Keywords: *Economy, Family, Healthcare, Nigeria, Surrogacy.*

1. Introduction

If surrogacy had emerged in Nigeria decades ago, one might wonder how lawmakers would have responded. ***Would they have embraced it as a medical advancement capable of addressing infertility challenges? Or would they have deemed it too complex to regulate under Nigeria's legal framework?*** Today, those questions are no longer hypothetical. Surrogacy is here, and while it offers real hope, it is unfortunate that it exists in a legal vacuum.

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Infertility is a major concern in Nigeria, with research showing that about 30% of people in some rural communities experience it.[2] For many of these individuals, surrogacy offers a path to parenthood. However, despite its increasing relevance, Nigeria's silence on surrogacy laws leaves intended parents, surrogate mothers and children vulnerable.[3]

The need for a proper legal framework is urgent, one that defines rights, protects vulnerable parties and ensures surrogacy is practiced ethically.[4]

2. CONCEPT OF SURROGACY

Surrogacy is an agreement in which a woman (the surrogate) agrees to carry and give birth to a child on behalf of another person or couple (the intended parent/s).[5] This agreement is typically formalized through a contractual agreement that outlines the rights, responsibilities and expectations of all parties involved. It may take two primary forms:

2.1 **Traditional Surrogacy**: In this form, the surrogate's own egg is fertilized, making her the child's biological mother, mainly by intrauterine insemination (IUI). This method is less common due to its legal and emotional complexities.

2.2 **Gestational Surrogacy**: Here, the surrogate has no genetic link to the child. An embryo created through in vitro fertilization (IVF) is implanted in her womb.

The practice of surrogacy has been given a wide reception in countries like the United Kingdom, United States of America, India, amongst others. For instance, the United Kingdom has the ***Human Fertilisation and Embryology Act 2008***, and India has the ***Surrogacy Regulation Act of 2021***.[6]

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2 O. O. Adetoro and others, 'The Prevalence of Infertility in a Rural Nigerian Community' (1992) *International Journal of Gynaecology & Obstetrics* <https://pubmed.ncbi.nlm.nih.gov/1905466/#:~:text=Abstract,and%2021.1%25%20for%20secondary%20infertility> accessed 11 March 2025.

3 Adeola Oyinlade and Co Law Firm, 'Surrogacy in Nigeria: Can Surrogacy Contracts and Agreements Be Enforced' The Legal 500 <https://www.legal500.com/developments/thought-leadership/surrogacy-in-nigeria-can-surrogacy-contracts-and-agreements-be-enforced/#:~:text=Even%20though%20there%20are%20no,it%20becomes%20valid%20and%20enforceable> accessed 11 March 2025.

4 Hanniel Noble Legal Practitioners, 'Surrogacy as a Pathway to Modern Development in Nigeria Fertility Industry: Need for a Robust Legal Framework' (Medium, 11 March 2025) <https://medium.com/@ofalana.hannielsnoble/surrogacy-as-a-pathway-to-modern-development-in-nigeria-fertility-industry-need-for-a-robust-30661bf59d08> accessed 11 March 2025.

5 Better Health Channel, 'Surrogacy' <https://www.betterhealth.vic.gov.au> accessed 11 March 2025.

6 Hanniel Noble Legal Practitioners, 'Surrogacy as a Pathway to Modern Development in Nigeria Fertility Industry: Need for a Robust Legal Framework' (Medium, 11 March 2025)

In Nigeria, it is unfortunate that no specific statute governs surrogacy. This absence of legislation means practices are left to personal agreements and foreign guidelines, a situation that creates uncertainty and leaves intended parents, surrogate mothers, and even children without adequate legal protection.

3. SURROGACY AS A TOOL FOR MODERN DEVELOPMENT IN NIGERIA

In a culturally diverse country like Nigeria, surrogacy is a topic that is met with mixed reactions. While some see it as a medical breakthrough for couples battling infertility, the Catholics[7] and Protestants groups, for instance, see it as an immoral act that violates the child's dignity. However, beyond these beliefs lies an undeniable truth. With proper regulation, surrogacy has the potential to contribute significantly to Nigeria's development in various ways.

3.1 Healthcare Advancements

Surrogacy is possible today, largely because of healthcare advancements in assisted reproductive technology (ART), such as in vitro fertilization (IVF) and embryo transfer. These procedures have helped many couples overcome infertility and achieve parenthood. Despite this progress, Nigeria's lack of clear surrogacy statute leaves fertility clinics to rely on the **Human Fertilisation and Embryology Authority Guidelines of the United Kingdom**[8] for direction. Now, this is not to say that these guidelines are without value, in fact, they remain very useful in setting medical and ethical standards. But the truth is, they were created for the UK's cultural and legal environment, and they are not binding in Nigeria. At best, they can only serve as persuasive authority, not enforceable rules. This gap leaves intended parents, surrogates, and even children exposed to uncertainty and risk. Establishing clear Nigerian laws would not only protect all parties involved but also build public trust in the process.

<https://medium.com/@ofalana.hannielsnoble/surrogacy-as-a-pathway-to-modern-development-in-nigeria-fertility-industry-need-for-a-robust-30661bf59d08> accessed 11 March 2025.

7 See, *Congregation for the Doctrine of the Faith*, Donum Vitae (1987); John Paul II, *Evangelium Vitae* (1995); *Congregation for the Doctrine of the Faith*, Dignitas Personae (2008). The Church says "no" to IVF due to the massive destruction of embryonic life, the assault on the meaning of the conjugal act and the treatment of the child as a product not a gift.

8 J.O. Fadare and AA Adeniyi, 'Ethical Issues in Newer Assisted Reproductive Technologies: A View from Nigeria' (2015) 18 *Nigerian Journal of Clinical Practice* S57.

4. Economic Growth

Surrogacy also has the potential to strengthen Nigeria's economy if properly regulated. A clear legal framework could open doors for medical tourism, attracting foreigners who are seeking affordable and reliable fertility treatments. We have seen this play out in countries like India,[9] where regulated surrogacy once created an entire industry that brought in revenue, created jobs, and positioned the country as a global hub for fertility services.

Currently, many Nigerian families travel abroad for these services, spending huge sums of money and directing potential revenue away from our healthcare system. If Nigeria puts the right laws in place, it can reverse this trend. Instead of driving potential revenue abroad, Nigeria could become a fertility destination in Africa, offering safe and reliable options at home. This would not only make the process more affordable for Nigerians but also create jobs for doctors, nurses, lawyers, counselors, and other professionals connected to the system.

5. Social and Cultural Impact

In Nigeria, where marriage and childbirth are highly valued, infertility can be challenging. Surrogacy offers these couples hope, but without legal protection, disputes can arise. For instance, a surrogate mother may decide to keep the child, or the intended parents may struggle to gain legal recognition as the child's rightful parents.

To minimize these risks, the Nigerian Law Reform Commission has recommended that the intended parents adopt children born through surrogacy, regardless of biological ties.[10] While this offers some protection, it remains limited because adoption only comes after birth and does not immediately settle the key questions of parentage or the surrogate's rights during the process. Asides this, we should not also neglect the fact that adoption itself is an entirely separate process that can be costly, time consuming, and emotionally draining for commissioning parents who have already invested so much in surrogacy. It also delays their right to take immediate custody of their child at birth.

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9 By virtue of its *Surrogacy Regulation Act* 2021 (India).

10 Nigerian Law Reform Commission, 'Reform of Nigeria Family Law' (Vol III, 2016).

This makes it clear that Nigeria needs a direct legal framework on surrogacy, one that gives certainty from the beginning, instead of pushing families into another lengthy process after the child has already been born

6. CHALLENGES OF SURROGACY IN NIGERIA

It would be incomplete to talk about surrogacy in Nigeria without addressing its challenges. The practice is surrounded by issues that make it difficult to accept and even more complex to regulate. From cultural resistance to legal uncertainty, these issues have created fear, confusion and exploitation, leaving intended parents, surrogate mothers and even the children born from this arrangement caught in difficult situations.

A major concern is the **exploitation of surrogate mothers.** Financial struggle is not uncommon to Nigeria, and due to this, people are willing to do anything at any cost to make money. With no legal protection, some young women willingly offer themselves as surrogates, even though online platforms.[11] Fertility clinics have also been accused of exploiting vulnerable women. Investigative reports, such as by one commentator,[12] has revealed how some fertility clinics harvest eggs without proper counseling or informed consent, exposing them to medical risks.

The rise of baby factories has worsened public perception of surrogacy. In these illegal operations,[13] vulnerable women, mostly teenagers are usually coerced or forced into giving birth to babies that are later sold or trafficked.[14] Disturbingly, some baby factories disguise themselves as fertility clinics, further blurring the line between legitimate surrogacy and criminal activities.

The **social stigma** surrounding surrogacy remains another challenge. Out of fear of judgement, some commissioning parents hide their decision to pursue surrogacy.[15] According to The BBC, some women even pretend to be pregnant while a surrogate

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11 O.S. Adelakun, 'The Concept of Surrogacy in Nigeria: Issues, Prospects and Challenges' (2018) 18 *African Human Rights Law Journal* 605 <http://dx.doi.org/10.17159/1996-2096/2018/v18n2a8> accessed 12 March 2025.

12 M. Joel, 'Ovum Trading: Inside Nigeria's Multi-Million Naira Human Egg Business' Punch (8 August 2015) <https://punchng.com/ovum-trading-inside-nigerias-multi-million-naira-human-egg-business> accessed 12 March 2025.

13 *Criminal Code Act* Cap C38, Laws of the Federation of Nigeria 2004; *Child's Rights Act* 2003; *Violence Against Persons (Prohibition) Act* 2015; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (adopted 25 May 2000, entered into force 18 January 2002) 2171 *UNTS* 227 (Nigeria signed 2000, ratified 2010).

14 OBA van den Akker '*Surrogate motherhood families'* (2017) 218

15 O. A. Ojelabi, P Osamor and BE Owumi, 'Policies and Practices of Child Adoption in Nigeria: A Review Paper' (2015) 6 *Mediterranean Journal of Social Sciences* 75.

carries their child.[16] Sadly, this secrecy has driven some families to patronize unethical services like baby factories which damages public trust in surrogacy,[17] as many might be confused as to the difference between baby factories and surrogacy.

Finally, children born through surrogacy **face legal uncertainty** regarding their identity. Since Nigerian law does not clearly define parental rights in surrogacy arrangements, disputes are bound to arise. Though, one may argue that the Nigerian Law Reform Commission has recommended that children born through surrogacy be legally recognized as the biological children of the commissioning parent.[18] However, with due respect to this body, this recommendation has not yet been made law.

7. PROPOSED LEGAL FRAMEWORK FOR NIGERIA

Surrogacy offers hope, but in Nigeria, that hope comes with risk. Without regulations, families are left in legal limbo, surrogate mothers risk exploitation and even children born through surrogacy remain vulnerable. While countries like the United Kingdom and India have established laws to address these concerns, Nigeria lags behind and consequences keep growing. It is the opinion of this writer that to ensure surrogacy is practiced safely and ethically, Nigeria must introduce a legal framework that provides clarity, protects rights and also promotes accountability through the following measures:

To begin with, **the law must define surrogacy in clear terms.** It should distinguish between gestational surrogacy, where the surrogate has no genetic link and traditional surrogacy, where the surrogate's egg is used. This will help the courts to interpret surrogacy agreements more effectively and help families proceed with confidence rather than confusion.

While surrogacy contracts, as private contracts are already enforceable in Nigeria,[19] there is a pressing need for **clear guidelines on what these agreements should include**. It is recommended that surrogacy should clearly state: the parental rights of

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16 BBC News, 'Judge Raises Nigeria Baby Selling Scams Concerns' (25 October 2012) <https://www.bbc.com/news/uk-england-london-20082389> accessed 12 March 2025.

17 O. A. Makinde and others, 'Baby Factories Taint Surrogacy in Nigeria' (2015) *Reproductive BioMedicine Online* 1 <https://doi.org/10.1016/j.rbmo.2015.10.001> accessed 12 March 2025.

18 Nigerian Law Reform Commission, 'Reform of Nigeria Family Law' (Vol III, 2016) 16.

19 Adeola Oyinlade and Co Law Firm, 'Surrogacy in Nigeria: Can Surrogacy Contracts and Agreements Be Enforced' The Legal 500 <https://www.legal500.com/developments/thought-leadership/surrogacy-in-nigeria-can-surrogacy-contracts-and-agreements-be-enforced> accessed 12 March 2025.

the intended parents; the surrogate's medical care before, during and after pregnancy and detailed financial terms to ensure the surrogate is properly supported.

Equally important is **the legal recognition of parental rights.** One of the biggest concerns in surrogacy is *'Who are the legal parents?'* Without clear laws, commissioning parents may find themselves powerless if a surrogate refuses to give up the child.

Nigeria should adopt a system familiar to the United Kingdom's Parental Order Process, where commissioning parents apply to a court for full parental rights after the child's birth.[20] This will ensure that the surrogate mother is legally protected from future responsibilities and will also ensure certainty for both the parents and surrogate.

Surrogacy is physically and emotionally demanding and surrogate mothers must be protected from abuse or neglect.[21] The law should require that surrogates give **informed consent** before signing any legal agreement and receive proper medical care throughout the process. These measures will prevent exploitation and promote safer surrogacy practices.

Finally, Nigeria urgently needs **a regulatory body** dedicated to monitoring surrogacy practices. Drawing inspiration from the United Kingdom's Human Fertilisation and Embryology Authority (HFEA),[22] it is the opinion of this writer that this body should license fertility clinics, register surrogacy agreements, provide counseling services and resolve disputes. Establishing such a body would promote accountability and protect everyone involved in the surrogacy process.

8. THE NSRC BILL: A STEP IN THE RIGHT DIRECTION

Encouragingly, Nigeria has already taken a promising step with the proposed *Nigeria Surrogacy Regulation Commission (NSRC) Bill* 2024. The Bill introduces several of the solutions mentioned above, including contracts requirements, medical evaluations and the creation of a regulatory body.[23]

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20 NGA Law, 'Parental Orders (Surrogacy Law)' <https://www.ngalaw.co.uk> accessed 12 March 2025.

21 O. S. Adelakun, 'The Concept of Surrogacy in Nigeria: Issues, Prospects and Challenges' (2018) 18 *African Human Rights Law Journal* 605 <http://dx.doi.org/10.17159/1996-2096/2018/v18n2a8> accessed 12 March 2025.

22 J. O. Fadare and A. A. Adeniyi, 'Ethical Issues in Newer Assisted Reproductive Technologies: A View from Nigeria' (2015) 18 *Nigerian Journal of Clinical Practice* S57.

23 O. M. Atoyebi 'Analysis of the Nigeria Surrogacy Regulatory Commission Bill'(2024) <https://omaplex.com.ng/analysis-of-the-nigeria-surrogacy-regulatory-commission-bill-2024>, assessed 12th March, 2025.

However, this progress will mean little if the Bill suffers the same fate as the *Nigerian Assisted Reproduction Authority Bill and Assisted Reproductive Technology Bill*, which were introduced in 2012 and 2016, but never became law due to lack of legislative support.[24] To secure the future of surrogacy in Nigeria, the lawmakers must resist allowing the NSRC Bill to gather dust. Nigerian law makers should prioritize passing this Bill into law without delay.

9. CONCLUSION

Surrogacy may not yet be mainstream in Nigeria, but it is also no longer a distant idea. It is here to stay, and our local laws cannot afford to keep silent. To ignore it is to leave families, surrogates and children in uncertainty. Nigeria cannot continue to leave families and surrogate mothers unprotected.

The NSRC Bill 2024 presents a vital opportunity to do what is right. Nigerian lawmakers must prioritize its passage before more families are left to navigate this uncertain journey alone, because for many families, surrogacy is not just an option, it is the answer they have been desperately waiting for and they should not have to wait any longer.

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[24] House of Representatives 'Votes and Proceedings' (2 May 2012) 97 <http://nass.gov.ng/document/download/5555> assessed 12th March 2025.