



## An examination of the legal and ethical implications of unregulated surrogacy arrangements in Nigeria

Timibeledi Tonyekiri<sup>1</sup>, Ifeoluwayimika Bamidele<sup>2</sup>, Abisola Akinleye<sup>3</sup>

<sup>1</sup> Department of Private and Business Law, College of Law, Afe Babalola University, Ado-Ekiti, Ekiti State, Nigeria

<sup>2</sup> Senior Lecturer and Head, Department of Private and Business Law, Afe Babalola University, Ado-Ekiti, Ekiti State, Nigeria

<sup>3</sup> Lecturer, Department of Private and Business Law, Afe Babalola University, Ado-Ekiti, Ekiti State, Nigeria

### Abstract

The human need for reproduction and the continuation of lineage has persisted throughout life. There is a societal expectation of having children once married. However, some couples are faced with the issue of infertility and now resort to different measures to have children. Surrogacy being one of the methods of Assisted Reproductive Technology (ART) resorted to, is a growing practice which involves a woman agreeing to carry and birth a child for another. A surrogate mother may or may not be genetically connected to the child depending on the type used. Surrogacy is often supported with an agreement for ease of enforcement but in Nigeria, it remains unregulated. The article sought to explore the legal and ethical implications of the unregulated surrogacy arrangements in Nigeria. Employing a doctrinal methodology which connotes reviewing primary and secondary sources, this work finds that the absence of a legal framework has the effect of exploiting women, commercialising children, increasing issue of paternity and baby factories. The study suggested that the Nigerian legislature should enact a statute that comprehensively addresses all legal and ethical concerns on surrogacy in order to meet up technological advancement in relation to artificial insemination. The law should also address the issue of commercialising children by addressing the legal status of commercial surrogacy. The article also recommended that the Surrogacy Bill of 2024 be taken into utmost consideration as it could be a start for the country to meet up globalisation. Law makers should also ensure sensitization of all parties involved.

**Keywords:** Assisted reproductive technology, baby factories, legal framework, surrogacy, Nigeria

### Introduction

The general view is that surrogacy is a growing practice that is seen as a way for infertile couples to have a child without going through adoption. It is a way to avoid the stigma that accompanies infertility. This form of reproduction has gained different reception from people, while some see it as a positive way to assist infertile couples to have children, others see it as an exploitative practice that devalues women and commodifies children <sup>[1]</sup>.

There is a debate around the ethics of surrogacy. In considering some cultural perceptions, some African cultures places high value on procreation, thus, infertility is seen as a curse <sup>[2]</sup>. Consequently, the rite of passage to womanhood is seen as the ability of a woman to conceive and carry a child.

There are also legal concerns about the rights of the surrogate mother, the intending parents, and the child. While some worry about the potential for exploitation of surrogate mothers, particularly in commercial surrogacy, others question the validity of consent in surrogacy arrangements. Also, there is a lack of legal frameworks for surrogacy in many countries, Nigeria being one of them, creates loopholes for abuse and exploitation.

The discourse surrounding the regulation of surrogacy arrangement differs according to jurisdictions. Some countries have banned surrogacy, while others allow non-commercial surrogacy with regulations. Some countries allow all types of surrogacy but some have not taken any position about regulating surrogacy <sup>[3]</sup>.

Nigeria being one of the many countries that is yet to provide a legal framework or make a law reform that addresses surrogacy services and agreement shows the

country's regression and reluctance to meet with contemporary needs. Examining the legal and ethical implication of the absence of a legal framework gives an insight of the far-reaching consequences such as endangering the welfare of surrogates and placing children born under these circumstances in vulnerable positions. This study will examine the legal and ethical implication of unregulated surrogacy arrangement and suggest recommendations that meets contemporary needs.

### Conceptual Clarification

#### Surrogacy

The word surrogate is gotten from a Latin word "surrogatus" and it means "a substitute" or "someone designated to act in place of another" <sup>[4]</sup>. Surrogacy is regarded as one of the types of Assisted Reproductive Technology (ART) <sup>[5]</sup>. Surrogacy is 'the practice in which a woman bears a child for a couple unable to produce children in the usual way' <sup>[6]</sup>. It is a procedure that employs other types of ART like In Vitro Fertilization (IVF) to aid transfer of embryo <sup>[7]</sup>. IVF is a procedure that includes creating an embryo from the intended parents or donor's gametes, which is then transferred to the surrogate <sup>[8]</sup>. Surrogacy can also be defined as an agreement between parties where one party (the surrogate mother) agrees to birth a child for another (intended or commissioning parents) on the agreement that the latter will become the child's parent after birth.

In the Yoruba culture, surrogacy is translated as 'agbabi odi omo eni,' meaning 'contracted pregnancy does not become yours'. This suggests that surrogacy is not a natural process and that it goes against God's plan for procreation <sup>[9]</sup>.

## Types of Surrogacy

Surrogacy is divided into two types, namely; traditional surrogacy and gestational surrogacy

### Traditional Surrogacy

This type of surrogacy entails using the surrogate mother's egg for conception mainly by intrauterine insemination (IUI) <sup>[10]</sup>. The surrogate mother contributes genetically to the child as her egg is combined with the intended father's sperm or a donor's sperm or her own oocyte is used. Modern technological advancement which made provisions for the creation of embryos outside the womb was what made this form of surrogacy to be less practiced. A lot of people now opt out from using traditional surrogacy as it comes with a lot of legal and emotional implication. There is little or no regulation to prevent the surrogate from exercising parental rights over the child. Some countries presently ban the practice of this type of surrogacy <sup>[11]</sup>.

### Gestational Surrogacy

This type of surrogacy is the modern form of surrogacy that has gained better reception. In this type of surrogacy, the surrogate mother has no DNA relation to the child <sup>[12]</sup>. The Surrogate Parenting Act 199 of 1988 defines gestational surrogacy as 'the procedure that occurs when the eggs of intended mother and the intended father's sperm are used to create an embryo (via IVF) that is transferred into and carried by the surrogate mother' <sup>[13]</sup>. In gestational surrogacy, the surrogate mother carries and gives birth to a child generated through IVF using the gametes of one or both of the intended parents. The surrogate mother does not genetically contribute to the child.

A surrogacy agreement or arrangement can either be altruistic or commercial. Where a woman, that is, the surrogate mother, agrees to carry and birth the child without receiving any compensation besides reimbursement of medical costs, insurance coverage related to the pregnancy, legal charges, it is known as altruistic surrogacy. Altruistic surrogacy is legalised in countries like Canada, United Kingdom, New Zealand, Belgium, Greece, Portugal <sup>[14]</sup>. Commercial surrogacy, on the other hand, is a surrogacy arrangement that involves paying the surrogate mother for carrying and birthing a child. The compensation given to the surrogate mother is in addition to the payment of all medical costs incurred <sup>[15]</sup>. The agreement is made conditional such that, the child will be given to the intending parents only upon payment of monetary compensation to the surrogate mother. This arrangement is legal in countries like Ukraine, Israel, Georgia, United States, India, Russia <sup>[16]</sup>. Both forms of surrogacy arrangement can come under either the traditional surrogacy or the gestational surrogacy.

## Legal and Institutional Framework regulating Surrogacy in Nigeria

At present, Nigeria lacks a comprehensive and authoritative legal and institutional framework governing surrogacy arrangement. However, although surrogacy lacks specific regulatory oversight, the practice is not technically outlawed or prohibited in Nigeria <sup>[17]</sup>.

Due to the lack of legislation regulating surrogacy in Nigeria, numerous ART facilities in the nation adhere to the rules established by the Human Fertilization and Embryology Authority (HFEA) of the United Kingdom <sup>[18]</sup>. The Nigerian Law Reform Commission has explicitly

suggested that any child conceived through artificial insemination or embryo implantation during a woman's marriage should be legally acknowledged as the husband's child. Furthermore, in instances of surrogacy, the Commission recommends that the intended parents, referred to as commissioning parents, should legally adopt the child, irrespective of any biological connection <sup>[19]</sup>. This guideline seeks to avert potential issues, such as the surrogate mother reclaiming the child, which has occurred in several occasions.

In 2012, there was a Surrogacy Bill to which sought to establish a Nigerian Assisted Reproduction Authority <sup>[20]</sup>. Nevertheless, the Bill failed to become law due to insufficient support from the majority of the Nigerian National Assembly. Only Lagos State has made a law regulating ART. This is however a state legislation and cannot be applicable to the entire country.

It is essential to recognize that, although Nigeria lacks complete legislation explicitly governing surrogacy, some provisions within existing laws, such as the National Health Act 2014, may cover aspects of surrogacy. A pertinent provision on this subject is as follows:

1. A person shall not
  - a. manipulate any genetic material, including genetic material of human gametes, zygotes or embryos; or
  - b. Engage in any activity including nuclear transfer of embryo splitting for the purpose of the cloning of human beings;
  - c. Import or export human zygotes or embryos.
2. A person who contravenes or fails to comply with the provision of this section commits an offence and is liable on conviction to imprisonment for a minimum of five years with no option of fine <sup>[21]</sup>.

This in essence means that an individual shall not alter any genetic material, including that of human gametes or embryos, or participate in any action, including nuclear transfer or embryo splitting, aimed at the cloning of human beings, import or export human zygotes or embryos. This clause outlaw's genetic modification and bans human cloning, rendering the creation of a human being by cloning illegal <sup>[22]</sup>. Furthermore, it limits the importation and exportation of embryos. It imposes criminal penalties on individuals who violate the stipulations of that section.

Additionally, the Child Right's Act provides that, 'No person shall buy, sell, hire, let on hire, dispose of or obtain possession of or otherwise deal in a child' <sup>[23]</sup>. It can be inferred from this provision that the Act prohibits commercial surrogacy as it can be said to be commercialising children. This provision also makes the operation of baby factories illegal.

The Code of Medical Ethics in Nigeria also make a provision concerning surrogacy. It acknowledges gestational surrogacy and authorises the donation of gametes for this reason. It indicates that essential legislation for regulating assisted reproduction has not yet been enacted; therefore, medical professionals must address all ethical dilemmas related to donor counselling and consent. The Code stipulates that the donation of gametes and embryos must not be commercialised. It further provides that, in the absence of a legislative framework safeguarding children in these agreements, the fundamental principles stipulated in child adoption proceedings shall be regarded as best practice <sup>[24]</sup>.

Individuals choose surrogacy for numerous reasons. Health issues including multiple and recurring miscarriages, infertility, and other health conditions may necessitate the pursuit of surrogacy. Moreover, in modern culture, certain individuals may opt to become 'single parents' and surrogacy offers a method for them to indirectly conceive children. Besides a medical condition, there are other legal and ethical concerns regarding surrogacy that merit scrutiny<sup>[25]</sup>.

### **Nigerian Surrogacy Regulatory Commission Bill 2024**

The introduction of the Nigeria Surrogacy Regulatory Commission Bill by the House of Representatives marks a significant development in the legal landscape surrounding reproductive technologies in the country<sup>[26]</sup>. This legislative initiative aims to provide a structured framework for surrogacy practices, ensuring that the rights and responsibilities of all parties involved are clearly defined and protected. By establishing a regulatory body, the bill seeks to address the complexities and ethical considerations inherent in surrogacy arrangements, promoting transparency and accountability. The proposed commission will be tasked with overseeing surrogacy agreements, setting standards for medical practices, and safeguarding the welfare of surrogate.

The Surrogacy Bill 2024 aims to create the National Surrogacy Regulatory Commission (NSRC)<sup>[27]</sup>, which will oversee and supervise surrogacy arrangements within Nigeria. Additionally, the bill intends to facilitate the registration, regulation, and monitoring of surrogacy agents operating in the country. The legislation establishes the NSRC, which will function as a corporate entity endowed with perpetual succession<sup>[28]</sup>.

The body is tasked with a variety of essential functions. The coordination of these functions is paramount, as they collectively support growth, development, and create a balance. The establishment and ongoing management of a Surrogate Registry within the Federal Capital Territory, as well as in each state across the Federation, is very important. This initiative entails the regulation and oversight of all matters pertaining to surrogacy within Nigeria. The fundamental elements of the proposed legislation stipulates that no individual or organization may function as a surrogacy agency unless duly registered with the Corporate Affairs Commission (CAC) and the National Surrogacy Regulatory Commission (NSRC)<sup>[29]</sup>.

While the Bill does not provide a precise definition of a surrogacy agency, it can be inferred that such an entity serves to facilitate the surrogacy process, functioning as an intercessor between intended parents and surrogate mothers. The legislation requires each registered surrogacy agency to create and uphold a confidential registry encompassing all individuals engaged in surrogacy arrangements facilitated by the agency. The private registry is anticipated to encompass various details, including the names, addresses, and contact information of the surrogates, intended parent(s), and any other individuals pertinent to the surrogate arrangement.

Additionally, the proposed legislation stipulates a penalty of one million naira or a term of imprisonment not exceeding five years, or both<sup>[30]</sup>, for any individual or organization that engages in the operation of a surrogacy agency without the requisite registration with the National Surrogacy Regulatory Commission (NSRC). It also aims to impose a

ban on commercial surrogacy within the borders of Nigeria. Consequently, it is expected that no individual or organization shall provide or accept any form of payment, advantage, or compensation in any capacity related to the facilitation of surrogacy, the role of a surrogate, or the establishment of a surrogate agreement. The noncompliance with this stipulation results in a penalty as delineated by the Act. Therefore, acting in opposition to the stipulated provision constitutes an act of illegality.

The proposed legislation provides the criteria for eligibility regarding surrogacy in Nigeria, stipulating that only individuals who have received medical certification indicating their inability to conceive or carry a child to term may partake in this arrangement<sup>[31]</sup>. This provision applies equally to both married couples and single individuals, thereby establishing a clear framework for those seeking to engage in surrogacy within the legal parameters set forth by the bill. The stipulated minimum age for an individual to serve in the capacity of either a gestational or genetic surrogate is set at 21 years<sup>[32]</sup>. Significantly, the proposed legislation stipulates a penalty of 500,000.00 naira (five hundred thousand naira) or a term of imprisonment not exceeding three years, or a combination of both, for any individual found in violation of this provision.

### **Legal and Ethical Implications of Unregulated Surrogacy Arrangement in Nigeria**

The absence of a legal framework regulating surrogacy in Nigeria presents significant implications legally as well as ethically. It creates a society suitable for exploitation, abuse, human right violations etc. Due to the fact that Nigeria is heterogeneous in nature, it is not untoward that religious beliefs shape the perception of family, motherhood and procreation. It is to this extent that it becomes necessary to discuss these legal and ethical implications of unregulated surrogacy arrangement in Nigeria.

### **Legal Implications of Unregulated Surrogacy Arrangement in Nigeria**

#### **Ambiguity surrounding enforceability of contracts**

Although Nigerian contract law generally recognizes contracts which includes elements like offer, acceptance and consideration needed for enforcement can be used to examine surrogacy arrangements in Nigeria. There remains an uncertainty because there is no explicit legislation regarding surrogacy and the interests of all parties are not sufficiently protected. Some critics say that these contracts are enforceable, while others argue that they might be null and void if they are found to be exploitative, unlawful or against public policy, especially with reference to the Child Rights Act, which forbids the purchase or sale of children<sup>[33]</sup>. In addition, intended parents have no legal remedy to protect their rights if the surrogate mother decides she does not want to give up the child after it is born. When the intended parents' rights clash with the surrogate's, such circumstances may give rise to ethical dilemmas<sup>[34]</sup>.

#### **Baby Factories**

This refers to illegitimate institutions where young women are frequently enticed, detained against their will, impregnated, and coerced into giving birth<sup>[35]</sup>. This is possible because there are no laws and institutions put in place to regulate surrogacy arrangement and services, so these baby factories usually operate under the cover of

private medical clinics or orphanages and smuggle infants for the illegal market. The earliest cases of baby factories in Nigeria were documented by UNESCO in 2006. This investigation pinpoints human trafficking associated with baby factories as the third most prevalent crime in Nigeria, following drug trafficking and financial fraud<sup>[36]</sup>. Criminal syndicates, which are well-organised, operate the factories and their prevalence in Nigerian society has increased.

In Nigeria, there is a high demand for children due to the social expectation of bearing children after getting married. Desperate couples may indulge in unlawful measures to have children, which feeds the demand for these illicit activities<sup>[37]</sup>. Usually, fake promises of employment are made to young women and girls whom are exposed to socio-economic pressures and come from disadvantaged homes. In this light, it can be inferred that there are two set of actors pushing this practice, the desperate infertile couple that wants to avoid the stigma associated with infertility and on the other hand, the fear of poverty due to socio-economic pressures. This practice is persistent in states like Abia, Lagos, Anambra, Ebonyi, Enugu and Imo.

Police officers were able to rescue 16 pregnant girls from a so called baby factory in Abia as of March 2024. The girls rescued were between the ages of 17 and 27 and were informed that they would be paid to leave the factories without their babies. In June of the same year, 22 pregnant girls and 2 babies were rescued from a 'factory' in the same state<sup>[38]</sup>.

Young women and girls once within these institutions, may be raped and forcibly impregnated by hired men. After giving birth, the children are sold to couples seeking children for huge amount depending on the gender. The male babies are sold at a higher price than the female babies. Over the years, Nigerian authorities have rescued hundreds of women and children by numerous raids on alleged baby factories<sup>[39]</sup>, a report shows that between 2019 to 2024, about two hundred underground baby factories have been raided and closed<sup>[40]</sup>. However, with struggles concerning regulation and implementation, new factories develop as older ones are shut down.

### **Paternity Issue**

The legal status of children born through surrogacy arrangement is also complicated. Establishing parental rights can be difficult for intended parents, especially where a donor or surrogate mother's gamete is used. The intended parents may need to go through challenging and laborious legal procedures to obtain their position as legitimate parents in the absence of a statute to transfer parental rights after birth<sup>[41]</sup>. This lack of regulation can ultimately result to conflicting outcomes and injustice for both surrogates and intended parents.

### **Custody and Guardianship**

The rights and welfare of children born through surrogacy are likewise seriously threatened by the absence of legislation. Conflicts over guardianship and custody may arise in Nigeria because there are no explicit rules establishing parentage in surrogacy agreements<sup>[42]</sup>. Consequently, children may find themselves in precarious situations where their best interests are not given priority. Additionally, there have been allegations of commissioning parents abandoning surrogate moms after they give birth or force them to give up their children.

## **Ethical Implications of Unregulated Surrogacy Arrangement in Nigeria**

### **Commercialization and Commodification of Children**

Unregulated surrogacy arrangement raises significant concern regarding objectifying children and women particularly with regards to commercial surrogacy as it turns reproduction into a commercial enterprise<sup>[43]</sup>. There are arguments that commercial surrogacy commodifies the womb of the surrogate and treats children as products to be bought and sold. Nigeria is a signatory to the Optional Protocol to the Convention on the Rights of the Child on the sale of Children, child prostitution and pornography, and sale of children is defined as any transaction whereby a child is handed over by a person(s) to another for monetary compensation or any other kind of consideration<sup>[44]</sup>. This definition is synonymous to the meaning of commercial surrogacy. Furthermore, the Child's Right Act of Nigeria states that no person shall engage in the act of buying, selling, hiring or dealing with a child<sup>[45]</sup>. It is therefore submitted that the process of the surrogate mother bearing the child and handing over the child to the intending parents upon payment of some sort of monetary compensation justifies the process as selling the child and this is a violation of the rights of the child. This dilemma will be persistent if there are no clear laws to regulate surrogacy.

### **Exploitation of the Surrogate**

This is another pressing ethical implication as surrogate mothers can be exploited financially and emotionally. Most surrogates are young women of poor backgrounds with little or no nothing to do. In the absence of laws safeguarding their rights, these women enter into contracts under coercion or without their informed consent<sup>[46]</sup>. Surrogates may be enticed by money rewards but they face an imminent risk of experiencing emotional and psychological problems. Exploitation can be displayed in different ways often including insufficient medical care or inadequate support for surrogates post delivery. Often times, they are even paid less by the agency in comparison to the amount paid by intended parents for the surrogacy services. This raises concern about consent and justice.

### **Informed consent and autonomy**

Informed consent means a when an individual is fully aware of the implications, benefits, risks related to a medical or legal procedure. Autonomy on the other hand, is the right of an individual to make choices pertaining to their own lives and body<sup>[47]</sup>. In the context of surrogacy, it is imperative that all parties involved especially the surrogate mother fully understands the nature of the agreement and consent to it voluntarily. The surrogate mother has a right to decide whether she wants to bear a pregnancy for another individual without any form of coercion<sup>[48]</sup>. In Nigeria, where there is an alarming lack of awareness of surrogacy as a result of the absence of a legislature, the likelihood of not having informed consent is high and principle of autonomy may be compromised. Surrogate mothers, sometimes from economically poor families, may experience coercion to engage in contracts without fully comprehending their rights or the enduring consequences of their choices. This condition may result in circumstances where surrogates are manipulated or pressured into agreements that may not serve their best interests<sup>[49]</sup>. In contexts where financial imperatives compel women to

assume the role of surrogates, their decisions may lack complete autonomy. They may also encounter cultural influences that undermine their capacity to make independent judgement. This raises ethical problems regarding whether these women are authentically opting for surrogacy or if they are being coerced by circumstances beyond their control.

#### 4.2.4 Privacy and confidentiality

Right to privacy and confidentiality is essential in all medical or legal agreements, including surrogacy. They safeguard confidential information about to the surrogate's health, the identity of the surrogate as well as the intending parents depending on the circumstances, and the specifics of the agreement. The absence of regulation in surrogacy agreements in Nigeria heightens the danger of violations of privacy and confidentiality. In the absence of defined legal frameworks, the protection of sensitive information cannot be assured<sup>[50]</sup>. This may result in the public disclosure of personal information regarding surrogates or intended parents, perhaps leading to significant social consequences.

#### 5. Recommendation

The study focuses on the implication of unregulated surrogacy arrangement in Nigeria, particularly with genetic commercial surrogacy. The research presents the subsequent recommendations.

First, an inclusive health law must be enacted to regulate the nation's medical sector. The legislators and the executive must formulate and enforce laws that will eliminate impunity in that area. The National Health Act must be amended and rigorously implemented to prevent the escalation of the consequences of the unregulated surrogacy arrangement. Precedence can be gotten from the legal framework of other countries like the United Kingdom to draft Nigeria's law.

Also, it is important for legislators to remain abreast of contemporary developments and global advancements, particularly as they pertain to our nation. Numerous laws in Nigeria remain antiquated, obsolete, and inadequate for contemporary advances in daily life. Technology is advancing and these artificial reproduction technologies are here to stay, so it is important to make laws that meet with these advancement.

There should be a creation of a regulatory body to certify professional surrogacy practitioners or agencies. This will help to avert unethical and unlicensed practices of the operation within the country, by extension, reduce the practice of baby factories. The creation of the National Surrogacy Regulatory Commission (NSRC) under the Nigerian Surrogacy Bill 2024 serves this purpose and will be a great innovation if passed into law.

Furthermore, a clear disparity exists between the awareness of surrogacy and its practice, primarily stemming from the fear of victimisation due to the absence of a legal framework. In this light, this study suggests that there should be proper sensitization of surrogacy and its benefit to citizens. Human rights non-governmental organizations in Nigeria should make it an agenda to educate the law makers, as well as all parties involved in a surrogacy agreement on the correct processes and procedures of surrogacy, their respective rights and obligations and what indicates a human rights violation. This will facilitate the execution of an agreement that is fair and just and will remove the stigma

that comes with resorting to surrogacy and infertility as a whole.

Lastly, on the issue of commodification and commercialisation of children and women, it is pertinent that the issue of the legality or illegality of the concept of commercial surrogacy be put straight in clear words so that the Nigerian populace can understand. The Surrogacy Bill 2024 takes a stand on this by making commercial surrogacy illegal and this is a great step in ensuring that young women and girls are not deceived and exploited, and consequently, the creation and patronage of baby factories will be gradually reduced.

#### Conclusion

Surrogacy is practiced in Nigeria but remains largely unregulated, resulting in many legal and ethical dilemmas. Nelson Mandela's wise remarks, '*the future belongs to those who believe in the beauty of their dreams,*' remind us that surrogacy offers a ray of hope for many Nigerian women and couples starting their families. But the lack of a thorough legislative framework has turned this lighthouse into a horror typified by exploitation, complexity, paternity issue, informed consent, commercialising children and causing harm. Couples experiencing infertility now resort to both legal and illegal approaches to have children. These approaches are not limited to but includes using assisted reproductive technologies, patronizing baby factories, trafficking infants.

This study has shown how far-reaching and detrimental unregulated arrangements for surrogacy in Nigeria are, ethically and legally. With many surrogates and intended parents running major physical, mental, and financial risks, the lack of defined rules and supervision has made a rich field for exploitation available. Thus, this paper, stresses the urgent need for attention and swift action in this regard.

It is essential to implement laws that uphold the rights of all parties involved in the surrogacy arrangement, prioritising the best interests of the child above all else. It is equally important to have bodies in place to ensure compliance with the laws. Surrogacy being a complicated social phenomena, not just a medical or legal one, makes it important to remember that a sophisticated and multidimensional approach is necessary in its regulations. When surrogacy is properly regulated to protect the child's well being and other parties involved, it could help eradicate specific illegal activities in Nigeria, such as the rise of baby factories and other unauthorised practices.

#### References

1. Oluwatobi Alabi, 'Perceptions of Surrogacy within the Yoruba Socio-Cultural Context of Ado-Ekiti, Nigeria', (PubMed Central, 11 February 2020) <<https://pmc.ncbi.nlm.nih.gov/articles/PMC7921890/>> accessed 7 December 2024
2. A Aina, 'An African Perspective on Surrogacy and the Justification of Motherhood', 2017 *Bangladesh Journal of Bioethics* 8(3):18-25
3. O Alabi, 'Perceptions of Surrogacy within the Yoruba Socio-Cultural Context of Ado-Ekiti, Nigeria', (PubMed Central, 11 February 2020) <<https://pmc.ncbi.nlm.nih.gov/articles/PMC7921890/>> accessed 7 December 2024
4. P Raj, N Gupta, P Tiwari, V Kaniya, Y Sharma, 'Legality and Enforceability of Surrogacy Contracts:

- Challenges to Face' (2023) *Journal of Survey in Fisheries Science* 10(25) 1486-1502
5. O Adeniyi and V Monehin, 'The use of Artificial Intelligence (AI) in Assisted Reproductive Technology (ART): Examining the Legal and Ethical Implications' (2024) 12(1), *Abuad Law Journal* 135-152 <<https://doi.org/10.53982/alj.2024.1201.08-j>> accessed 7 December 2024
  6. Surrogacy in New Encyclopedia, Britannica, <<http://www.britannica.com/EBchecked/topic/575390/surrogate-motherhood>> accessed 8 December 2024
  7. *ibid*
  8. S Olajumoke, D Adeoye, M Bello, 'The Ethical, Legal, and Social Consideration of Surrogacy in Nigeria and Ghana' (2022) Vol 1 African Journal of Law, Ethics and Education 2
  9. *ibid*
  10. A Oyinlade et al, 'Surrogacy in Nigeria: Can Surrogacy Contracts and Agreements be Enforced?', <<https://www.legal500.com/developments/thought-leadership/surrogacy-in-nigeria-can-surrogacy-contracts-and-agreements-be-enforced/>> accessed 7 December 2024
  11. ConceiveAbilities, <<https://www.conceiveabilities.com/about/blog/the-different-types-of-surrogacy>> accessed 7 December 2024
  12. *ibid* n11
  13. C Adamu, 'Ethical Issues In Commercial Gestational Surrogacy' (2020) Vol 18 *Journal of Applied Philosophy* No. 4
  14. S Nweze, M Ezenwaeze, J Onyekpa, 'Absence of a Legal Framework, a Limitation to the Practice of Surrogacy in Nigeria' (2022) Vol 9 *International Journal of Research and Review*
  15. O Ogunwande and G Ozuru, 'Socio-Legal Issues of Surrogacy In Nigeria: A Quagmire' (2020) *AJLHR* 4 (1)
  16. S Nweze, M Ezenwaeze, J Onyekpa, 'Absence of a Legal Framework, a Limitation to the Practice of Surrogacy in Nigeria' (2022) Vol 9 *International Journal of Research and Review*
  17. E Akporube, 'The Regulation of Surrogacy Practice in Nigeria: Are Surrogacy Agreements Enforceable by the Courts?', (Mondaq 26 April 2024) <<https://www.mondaq.com/nigeria/healthcare/1455704/the-regulation-of-surrogacy-practice-in-nigeria-are-surrogacy-agreements-enforceable-by-the-courts>> accessed 20 December 2025
  18. Human Fertilization and Embryology Act 2008, Cap 22
  19. Law Reform Commission 'Reform of Nigerian Family Law' III, 15 & 16
  20. A Bill for an Act to amend the National Health Act to Provide for the Regulation of Assisted Birth Technology, for Safe and Ethical Practice of Assisted Reproductive Technology Services and for other Related Matters (2016) HB 16.05.610 C 3203
  21. National Health Act 2014, S 50
  22. O Adelakun, 'The Concept of Surrogacy in Nigeria: Issues, Prospects and Challenges', (2018) AHRLJ <[https://www.scielo.org.za/scielo.php?pid=S1996-20962018000200009&script=sci\\_arttext#back\\_fn73](https://www.scielo.org.za/scielo.php?pid=S1996-20962018000200009&script=sci_arttext#back_fn73)> accessed 27 December 2024
  23. Child's Right Act 2003, S 30(1)
  24. Code of Medical Ethics in Nigeria 2004, Rule 23
  25. E Akporube, 'The Regulation of Surrogacy Practice in Nigeria: Are Surrogacy Agreements Enforceable by the Courts?', (Mondaq 26 April 2024) <<https://www.mondaq.com/nigeria/healthcare/1455704/the-regulation-of-surrogacy-practice-in-nigeria-are-surrogacy-agreements-enforceable-by-the-courts>> accessed 27 December 2024
  26. O Atoyebi, 'Analysis of the Nigerian Surrogacy Regulatory Commission Bill', (9 December 2024) <<https://omaplex.com.ng/analysis-of-the-nigeria-surrogacy-regulatory-commission-bill-2024>> accessed 3 January 2025
  27. Nigeria Surrogacy Bill 2024, S 1(1)
  28. *ibid*, S 1(2)
  29. *ibid*, S 7(1)
  30. Nigeria Surrogacy Bill 2024, S 9(3)
  31. *ibid*, S 10(1)
  32. Southern Surrogacy, 'A Step-by-Step Guide to the Medical Surrogacy Process', <<https://www.southernurrogacy.com/surrogates/medical-process/>> accessed 3 January 2025
  33. Child's Right Act 2003, S 30
  34. A Oyinlade et al, 'Surrogacy in Nigeria: Can Surrogacy Contracts and Agreements be Enforced?', <<https://www.legal500.com/developments/thought-leadership/surrogacy-in-nigeria-can-surrogacy-contracts-and-agreements-be-enforced/>> accessed 3 January 2025
  35. B Onovae and F Adewumi, 'Evaluation of the Consequences of the Absence of Legal Framework on Genetic Commercial Surrogacy in Nigeria', (2022) Vol. 8 *RUJMASS* No 1
  36. W Ombelet and M Johnson, 'Baby Factories in Nigeria: a new and challenging source of abuse' (Reproductive BioMedicine Online 2016) <<https://www.rbmojournal.com/action/showPdf?pii=S1472-6483%2815%2900555-6>> accessed 7 January 2025
  37. B Shemang, 'Why Nigeria's baby factories continue to thrive', (18 March 2024) <<https://www.dw.com/en/why-nigerias-baby-factories-remain-a-grim-reality/a-68595335>> accessed 7 January 2025
  38. *ibid*
  39. A Filani and T Fateropa, 'An examination of the legal framework for surrogacy in Nigeria' (2023) Vol 9 *International Journal of Law* 143-151
  40. B Shemang, 'Why Nigeria's baby factories continue to thrive', (18 March 2024) <<https://www.dw.com/en/why-nigerias-baby-factories-remain-a-grim-reality/a-68595335>> accessed 7 January 2025
  41. A Filani and T Fateropa, 'An examination of the legal framework for surrogacy in Nigeria' (2023) Vol 9 *International Journal of Law* 143-151

42. A Oyinlade et al, 'Surrogacy in Nigeria: Can Surrogacy Contracts and Agreements be Enforced?', <<https://www.legal500.com/developments/thought-leadership/surrogacy-in-nigeria-can-surrogacy-contracts-and-agreements-be-enforced/>> accessed 7 January 2025
43. C Adamu, 'Ethical Issues In Commercial Gestational Surrogacy', (2020) Vol. 18 *Journal of Applied Philosophy* No. 4
44. B Onovae and F Adewumi, 'Evaluation of the Consequences of the Absence of Legal Framework on Genetic Commercial Surrogacy in Nigeria', (2022) Vol. 8 *RUJMASS* No 1
45. Child's Right Act 2003, S 30(1)
46. O Ogunwande, 'Socio-Legal Issues of Surrogacy In Nigeria: A Quagmire', (2020) *AJLHR* 4 (1)
47. Ifeoluwayimika Bamidele, Health Law Lecture given on 2<sup>nd</sup> October 2024
48. O Alabi, 'Perceptions of Surrogacy within the Yoruba Socio-Cultural Context of Ado-Ekiti, Nigeria', (PubMed Central, 11 February 2020) <<https://pmc.ncbi.nlm.nih.gov/articles/PMC7921890/>> accessed 11 January 2025
49. O Atoyebi, 'Surrogacy as an Assisted Reproductive Technologies: Legal and Ethical Consideration', (13 August 2024) <<https://omaplex.com.ng/surrogacy-as-an-assisted-reproductive-technologies-legal-and-ethical-considerations/>> accessed 11 January 2025
50. O Atoyebi, 'Analysis of the Nigerian Surrogacy Regulatory Commission Bill', (9 December 2024) <<https://omaplex.com.ng/analysis-of-the-nigeria-surrogacy-regulatory-commission-bill-2024>> accessed 11 January 2025