LEGAL PROTECTION OF THE RIGHTS OF SURROGATE MOTHERS IN SURROGACY ARRANGEMENTS

Abiade Olawanle Abiola*
Dolapo Tolani Olutayo**
Foluke Oluyemisi Abimbola***

Abstract

Surrogacy has emerged as an increasingly utilized reproductive arrangement in Nigeria, driven by rising infertility rates, advancements in assisted reproductive technologies, and evolving societal attitudes toward non-traditional pathways to parenthood. Despite its growing acceptance and practice, Nigeria lacks a comprehensive legal framework governing surrogacy, leaving surrogate mothers vulnerable to exploitation, contractual disputes, and violations of their fundamental rights. This article examines, among others, the legal protection of the rights of surrogate mothers within surrogacy arrangements in Nigeria. Drawing on comparative perspectives from jurisdictions with established surrogacy regulations, the article highlights the need for a balanced legal framework that safeguards the interests of surrogate mothers while accommodating the legitimate expectations of intended parents. It concludes that the absence of specific legislation creates uncertainty and increases the risk of abuse, thereby undermining the dignity and welfare of surrogate mothers. The article therefore recommends the enactment of comprehensive surrogacy

* Department of Private and Business Law, Senior Lecturer at the Faculty of Law, Lead City University, Ibadan, ORCID ID – 0000-0002-7946-3029, Nigeria. abiade.abiola43@gmail.com and ask4abby@yahoo.com

** Senior Lecturer at the Faculty of Law, University of Ibadan (UI).

*** Professor at the Faculty of Law, Lead City University, Ibadan ORCID ID: 0000-0002-7450-0038.

legislation, legal representation, legal and medical information for surrogate mothers, among others.

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1. INTRODUCTION

Surrogacy is a legal and medical arrangement in which a woman, known as the surrogate mother, agrees to carry and give birth to a child on behalf of another individual or couple, referred to as the commissioning or intended parent(s).[1] Surrogacy is when a woman carries and delivers a baby on behalf of someone else, with the plan that the child will be given to the intended parents after birth.[2] Driven by societal, medical, and financial considerations, surrogacy is becoming more and more popular in Nigeria as an alternative to traditional family formation.[3] Though historically obscured by cultural and religious sensitivities, the practice has gained popularity as a result of shifting social perceptions, improvements in reproductive technology, and a growing number of people dealing with infertility issues.[4] Infertility is a significant health issue in Nigeria, with studies estimating that approximately 25-30% of couples experience some form of infertility.[5] Factors such as untreated infections, complications from unsafe abortions, and lifestyle changes contribute to the statistics.

[1] Tatiana Patrone, 'Is Paid Surrogacy a Form of Reproductive Prostitution? A Kantian Perspective' (2018) 27 Cambridge Quarterly of Healthcare Ethics 109.
[2] Ibid.
[3] Adelakun, Olanike S. "The concept of surrogacy in Nigeria: Issues, prospects and challenges." (2018) 18 (2) African Human Rights Law Journal 605-625.
[4] Ibid.
[5] Oluwatobi Joseph Alabi, 'A Qualitative Investigation of Surrogacy as a Panacea for Infertility in Nigeria [Version 1 ; Peer Review : 2 Approved with Reservations]' 1.

For many couples, surrogacy presents a viable solution when other fertility treatments fail.[6]

Surrogacy can be implemented adopting two methods which are Commercial surrogacy and altruistic surrogacy. Commercial Surrogacy refers to a situation where a woman is compensated for giving birth to a child whom she hands over to the commissioning parents in return for payment. When no payment is made, the situation is referred to as altruistic surrogacy.[7] The growth of fertility clinics across Nigeria, particularly in urban centres like Lagos, Abuja, and Port Harcourt has made assisted reproductive technologies (ART), including surrogacy, more accessible. Techniques such as in vitro fertilization (IVF) have facilitated gestational surrogacy, where the surrogate mother carries a child genetically unrelated to her, reducing ethical and emotional complexities.[8] Although cultural and religious norms have historically stigmatised infertility and assisted reproduction, there is a gradual shift in perception.[9] Increased media coverage, advocacy by fertility experts, and success stories from prominent individuals have contributed to normalising surrogacy. Many Nigerians are now more open to exploring surrogacy as a legitimate means of parenthood.[10] For some women, especially those from lower socio-economic backgrounds, becoming a surrogate mother offers a significant financial incentive. While this has helped make surrogacy arrangements possible for intended parents, it also

[6] Ibid.
[7] Oluwaseyi, Olusegun Olaitan, and Olatawura Oladimeji. "Surrogacy agreements and the rights of children in Nigeria and South Africa." (2021) 42 (1) Obiter 20-38.
[8] Oluwatobi Joseph Alabi, "Perceptions of surrogacy within the Yoruba socio-cultural context of Ado-Ekiti, Nigeria." (2021) 9 F1000Research 103.
[9] David Ogunbiyi, “Infertility and the Christian Attitudes to Assisted Reproductive Technologies in Nigeria: A Psychological Investigation (2025) 14 (1) International Journal for Humanitarian Studies 10-18.
[10] Obadina, Ibrahim Abiodun, "Regulating Surrogacy in Nigeria: Issues, Challenges and the Role of Culture." (2026) 70 (2) Journal of African Law 363-380.

raises ethical concerns about potential exploitation in the absence of adequate legal safeguards.[11] The lack of a comprehensive legal framework governing surrogacy in Nigeria has made the practice operate largely in a grey area. Most surrogacy arrangements are private contracts facilitated by fertility clinics or intermediaries. This flexibility has contributed to the practice's popularity, as individuals are not constrained by stringent regulations. However, it also exposes participants to potential risks and disputes.[12]

Nigerians in the diaspora have also contributed to the growing demand for surrogacy services in the country. Many choose to return to Nigeria for surrogacy arrangements due to cultural familiarity, lower costs compared to Western countries, and the availability of willing surrogates. Surrogacy is increasingly being embraced by non-traditional families, including single individuals and unmarried/civil union couples, who see it as a pathway to biological parenthood. While such arrangements remain controversial in certain segments of Nigerian society, they underscore the evolving family dynamics and acceptance of diverse parenting options.

There are different types of surrogacy practice. They are:
1. Traditional Surrogacy – This is when a surrogate mother agrees to use her egg in conjunction with the sperm of the intended father or possible donor, to conceive the surrogate child, with the intention of handing over the baby to the intended mother after delivery. It involves artificially inseminating the surrogate mother with sperm from the donor or intended father.[13] In this type of surrogacy arrangement, the surrogate child is genetically connected to the

[11] Adelakun, n.6.
[12] Ibid.
[13] Celia Burrell and Hannah O'Connor, 'Surrogate Pregnancy: Ethical and Medico-Legal Issues in Modern Obstetrics' (2013) 15 The Obstetrician & Gynaecologist 113.

surrogate mother,[14] that is the surrogate mother is both the genetic and biological mother of the baby.

2. Gestational Surrogacy – This is when an embryo is created through in vitro fertilization (IVF) using the egg and sperm of the intended parents or donors. The embryo is implanted in the surrogate's uterus. The surrogate has no genetic connection to the child.[15] Gestational Surrogacy is the most widely practiced form of surrogacy.

2. CHALLENGES AND ETHICAL CONCERNS

Despite its growing popularity, Surrogacy Practice in Nigeria faces significant challenges:

i. Exploitation of Surrogate Mothers: Inadequate legal protections can lead to unfair treatment.
ii. Stigma and Discrimination: Cultural attitudes toward surrogacy still pose hurdles.
iii. Legal Disputes: The absence of clear laws governing surrogacy practice often leads to conflicts.

In Nigeria, surrogacy is gaining popularity.[16] However, the practice's sustainability and ethical integrity depend on the establishment of a robust legal framework that protects all parties involved.[17] Ensuring informed consent and addressing ethical concerns will be pivotal to its continued acceptance and growth in the country. Most surrogacy arrangements are guided by private agreements, often leaving surrogate mothers vulnerable to exploitation and inadequate

[14] Ibid.
[15] Ibid.
[16] Nwabachili, Chioma O., and Gloria Chinyere Ndielli. "An Appraisal of Regulatory Framework for Surrogacy in Nigeria." (2024) 9 AFJCLJ 41.
[17] Ibid.

protection.[18] This highlights the importance of establishing robust laws and mandating personal legal representation to safeguard the rights of all parties involved.

Surrogacy represents both an opportunity and a challenge for modern reproductive health, requiring careful regulation to ensure ethical practices and equitable treatment of all participants.

3. ETHICAL AND LEGAL CONSIDERATIONS IN SURROGACY

Surrogacy can be governed under various ethical and legal rules to ensure the protection of the rights of all parties in the surrogacy arrangement. The core ethical principles in surrogacy practice generally include Respect for Autonomy, Informed Consent, beneficence, Non-maleficence, Justice and Fairness, Privacy and confidentiality, protection of the child's welfare and Respect for Human Dignity.

Autonomy may be defined as 'the prerogative of the individual to live her own life in accordance with her own values and desires: to live by her own light.'[19] This principle of autonomy protects the rights of all parties to the surrogate arrangement particularly the surrogate mother who has a right to decide whether she intends to be a surrogate mother for the purpose of assisting the intending couple (altruism) or to receive remuneration for the service. This freedom to decide falls under the law of contract where parties enter into an agreement for the purpose of a surrogacy arrangement. Thus, an approach which prioritises the surrogate's right to autonomy and bodily integrity would

[18] Ibid.
[19] Erin Nelson, *Law, Policy and Reproductive Autonomy* (Hart Publishing, 2013) 12. Cited in Sifris, Ronli, Commercial Surrogacy and the Human Right to Autonomy (2015) 23 Journal of Law and Medicine 365, Available at SSRN: https://ssrn.com/abstract=2740817.

permit commercial surrogacy based on a woman's right to decide what to do with her own body.[20]The importance placed on this notion that an autonomous decision requires a decision -maker who understands the nature of the decision and the relevant factors surrounding the decision is reflected in the medico-legal doctrine of informed consent.[21]The necessary element in this arrangement is informed consent ensuring that all parties, especially the surrogate, make voluntary and informed decisions without coercion or undue influence.[22]

Therefore, informed consent is the provision of comprehensive information about the medical, legal, psychological and social implications of surrogacy so that consent is fully granted based on a disclosure of information about medical risks and benefits.[23] Informed consent is a specific type of consent where the individual agrees to an action after being fully informed about all relevant details, including the nature, benefits, risks, and alternatives.[24] It is a deliberate and voluntary agreement made after receiving complete and comprehensible information about the subject-matter and the proposed action or decision. Informed consent ensures the person has the capacity to understand and weigh their options.[25]

[20] Sifris, Ronli, Commercial Surrogacy and the Human Right to Autonomy (2015) 23 Journal of Law and Medicine 365, Available at SSRN: https://ssrn.com/abstract=2740817.
[21] Nelson, Ibid, 15-16.
[22] Ibid.
[23] Sawicki, Nadia N., 'Informed Consent as Societal Stewardship,' (2016) 45 Journal of Law, Medicine and Ethics 41. Available at SSRN: https://ssrn.com/abstract=2794077.
[24] Cocanour, Christine S. "Informed consent—It's more than a signature on a piece of paper," (2017) 214 (6) The American Journal of Surgery 993-997.
[25] Ibid.

Beneficence means promoting the well-being and best interests of the surrogate, intended parents, and the child[26] while non-maleficence involves avoiding harm by minimising medical, psychological, legal, and financial risks associated with surrogacy arrangements.[27] These are critical principles which may determine the success of the process and procedures to be adopted.

The ethical principles of Justice and Fairness can be considered along with respect for human dignity. These principles are derived from Constitutional and human rights norms. Hence, the surrogate mother has a right to equitable treatment, fair compensation and protection against exploitation and discrimination as well as recognising the inherent worth of all individuals involved and avoiding practices that commodify women or children.[28]Another important principle is prioritising the rights, health, and best interests of the child born through surrogacy.

Confidentiality and privacy follow a legally recognised right to privacy. This entails safeguarding personal, medical, and reproductive information of all parties. Surrogacy arrangements involve balancing a woman's constitutional right to privacy and her right to contract away private reproductive choices.[29]

[26] Writing Group on Behalf of the ESHRE Ethics Committee, et al. "Ethical considerations on surrogacy." (2025) 40 (3) Human Reproduction 420-425.
[27] Ibid.
[28] Sifris, Ronli, 'Commercial Surrogacy and the Human Right to Autonomy' (2015) 23 Journal of Law and Medicine 365, at 374. Available at SSRN: https://ssrn.com/abstract=2740817.
[29] Crockin, Susan L., Meagan A. Edmonds, and Amy Altman. "Legal principles and essential surrogacy cases every practitioner should know." (2020) 113 (5) Fertility and Sterility 908-915.

The above ethical principles along with Legal frameworks may effectively protect the rights of the surrogate mother and other parties to the arrangement.

4. SURROGACY PRACTICE IN NIGERIA

Assisted Reproductive Technology (ART) and Surrogacy Practice is still at its infancy in Nigeria. While there is no legislative enactment yet to regulate the ART Industry, it is gaining popularity and acceptance in the country.[30] This section discusses how the rights of the surrogate mother can be protected despite the Lack of a legislative framework for surrogacy arrangements in Nigeria.

In Nigeria, surrogacy arrangements are basically formulated adopting the essential principles of valid contracts.[31] There are, however, certain provisions in Rule 23 of the Code of Medical Ethics, 2004118 that regulate assisted conception and related practices. Rule 23 recognises gestational surrogacy and permits the donation of gametes for that purpose. It states that necessary statutes to govern assisted reproduction have not yet been established; nevertheless, medical practitioners must resolve all ethical issues that may arise with respect to the counselling and consent of the donor. The Code states that gamete and embryo donation should not be commercialised. With respect to children, the Code notes that in the absence of a legal framework protecting them in these agreements, the basic principles applied in child adoption cases should be considered as best practice.[32] Thus, a contract between the intended parent(s) and gestational surrogate (and any spouse or partner) is an essential part of any

[30] NGA Law, 'Two High Court decisions on Nigerian surrogacy,' 19 Dec 2025. Available at https://www.ngalaw.co.uk/thinking-of-surrogacy-in-nigeria/ accessed 8 August 2026.
[31] Oluwaseyi, Olusegun Olaitan, and Olatawura Oladimeji. "Surrogacy agreements and the rights of children in Nigeria and South Africa." (2021) 42 (1) Obiter 20-38.
[32] Ibid.

surrogacy arrangement, and should be drafted and negotiated by separate, independent legal counsel experienced in reproductive law.[33] Having separate, independent legal counsel protects each of the respective parties or couples, helps avoid conflicts of interest, and is not only a generally applicable ethical rule for legal representation but uniformly recommended or required for surrogacy arrangements by medical associations such as the American Society for Reproductive Medicine.[34]

5. PROTECTING THE RIGHTS OF THE SURROGATE MOTHER IN NIGERIA.

The present practice is that the surrogate mother is chosen by the intending parents through an agency, and she is most often than not allowed to meet the intending parents. After the surrogate mother is chosen, the agency connects her with the intended parents' chosen fertility facility.[35] The women that act as surrogate mothers are usually economically and financially vulnerable.[36] However, in 2016, a Bill was introduced in the Nigerian National Assembly to amend the National Health Act and includes the regulation of ART.[37] The Bill mandates the Federal Ministry of Health to regulate the practice of ART and establish a National Registry of Assisted Reproductive Technology Clinics and Banks, which will have the function of

[33] Crockin, Susan L., Meagan A. Edmonds, and Amy Altman. "Legal principles and essential surrogacy cases every practitioner should know." (2020) 113 (5) Fertility and Sterility 908-915.
[34] Ibid.
[35] MS. Ake, M.O, Oseji, 'Social and Ethical Considerations of Gestational Surrogacy in Nigeria. In Science, Technology and Development' [2019] Springer, Cham 369.
[36] F Omorodion, 'Ethical Concerns in Surrogacy:Perspectives from Nigeria' [2018] South African Journal of Bioethics and Law 23.
[37] 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 Servicesand for Related Matters http://placbillstrack.org/upload/HB610.pdf.

creating and maintaining a central database of ART data in Nigeria. Medical tests and screening are required for surrogates and donors to ensure that children are not harmed in any way. Clinics are also to counsel the commissioning or intended parents on the options available to them and the consequences and risks involved. Before surrogacy will be supported, a medical report must confirm the inability of the commissioning mother to carry a child to term.[38] Written consents must also be obtained by all parties to the agreement for every stage of the assisted reproduction process.[39] They may, however, withdraw such consent any time before the surrogate is implanted with the required gametes.[40] There is also a requirement that the surrogate must have had at least one prior live birth.[41] Furthermore, surrogate mothers in Nigeria are usually single mothers, divorcees and widows who are the primary breadwinners of their family, with the huge responsibility of being the provider without any form of support.[42] The huge pressure of their responsibilities coupled with the adverse economic inflation in the country is attracting more and more of women within this category to act as surrogate mothers because of the financial compensation attached to it.[43]

However, despite the pressing economic circumstances, individual surrogacy contracts should cover the surrogate's autonomy over her body, health, and behaviour throughout pregnancy, her freedom to terminate the arrangement, and her right to accept and decide on

[38] Clause 68(10) of the National Health Act (Amendment) Bill 2016.
[39] Clause 69 of the National Health Act (Amendment) Bill 2016.
[40] Ibid.
[41] Clause 76(2) of the draft National Health Act (Amendment) Bill.
[42] M Goodwin 'Reproducing hierarchy in commercial intimacy' (2013) 88 Indiana Law Journal 1290 1293 cited in OS Adelakun 'The concept of surrogacy in Nigeria: Issues, prospects and challenges' (2018) 18 African Human Rights Law Journal 605-624, http://dx.doi.org/10.17159/1996-2096/2018/v18n2a8.
[43] Ibid.

payments.[44] It is for this reason that other jurisdictions that have regulatory framework for the practice of surrogacy like South Africa,[45] United Kingdom[46] and the United States of America require absolute compliance with the laws governing surrogacy for the protection of all parties in the surrogacy arrangement.[47]

6. INTERNATIONAL/ CROSS-BORDER SURROGACY

There are many examples of intended couples who travel to other countries to facilitate surrogacy arrangements. Reasons cited by intended parents for their chosen destinations include availability of surrogates, ease of setting up arrangements, pre-birth protections and/or contracts, and the opportunity for intended parents to be named on the birth certificate.[48] Some felt that the legal certainty over parenthood in the United States of America, offered better protection for surrogates and therefore was a more ethical option.[49] Agencies in some destination countries also promote their surrogacy services as a lower cost alternative.[50]

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[44] Ronli Sifris, 'Commercial Surrogacy and the Human Right to Autonomy' (2015) 23 Journal of Law and Medicine 1 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2740817>.

[45] Julia Sloth-Nielsen and Belinda Van Heerden, 'The "Constitutional Family": Developments in South African Child and Family Law 2003-2013' (2014) 28 International Journal of Law, Policy and the Family 100.

[46] Susan L Crockin, Amy B Altman and Meagan A Edmonds, 'The History and Future Trends of ART Medicine and Law' (2021) 59 Family Court Review 22.

[47] Robert Klitzman, 'Advancing Laws to Permit Surrogacy in Us States: Challenges & Solutions for Art Providers & Others' (2019) 112 Fertility and Sterility e52 <https://doi.org/10.1016/j.fertnstert.2019.07.263>.

[48] Surrogacy UK (2018) Surrogacy in the UK: Further evidence for reform; Jadva V, Prosser H and Gamble N (2018) Cross-border and domestic surrogacy in the UK context: an exploration of practical and legal decision-making.

[49] Ibid.

[50] See, for example, Laos Fertility (2023) Cheapest surrogacy in the world. Cited in Nuffield Council on Bioethics, Surrogacy law in the UK: ethical considerations available at https://www.nuffieldbioethics.org. Accessed 10 August 2026.

Variation in Legal Frameworks and Protections.

Intended parents and surrogates based in the UK may also travel abroad to access assisted reproductive treatments, including in vitro fertilization (IVF). The legal and regulatory requirements governing such treatment differ markedly between jurisdictions and may vary in areas such as informed consent procedures, donor regulation, and embryo transfer practices. For example, some jurisdictions permit the transfer of multiple embryos in circumstances that would be more strictly regulated in the UK, thereby increasing the likelihood of multiple pregnancies and the associated clinical risks. [3]

Under UK law, the surrogate is recognized as the child's legal mother at birth, irrespective of any genetic connection to the child (HFEA 2008, s. 33). Where the surrogate is married or in a civil partnership, her spouse or civil partner may also be treated as the child's legal parent, subject to the statutory provisions in the HFEA 2008. The intended parents do not acquire legal parenthood automatically upon the child's birth. Although they typically assume care of the child immediately after birth, legal parenthood is transferred only upon the making of a parental order by the court pursuant to section 54 (or, where applicable, section 54A) of the *Human Fertilization and Embryology Act 2008*, provided that the statutory criteria are satisfied. [4]

Approaches to the regulation of surrogacy vary considerably across jurisdictions, particularly in relation to the permissibility of payments to surrogates, the enforceability of surrogacy agreements, and the legal determination of parenthood at birth. In the United Kingdom, altruistic surrogacy is permitted, although commercial surrogacy arrangements are prohibited under the *Surrogacy Arrangements Act 1985*. While surrogates may not receive payment for profit, courts may authorise reasonable payments in connection with the surrogacy arrangement,

including expenses incurred during pregnancy and childbirth.[51] The legal framework governing surrogacy in the UK is principally set out in the *Surrogacy Arrangements Act 1985* and the *Human Fertilisation and Embryology Act 2008*. By contrast, some jurisdictions to which UK intended parents are known to travel for surrogacy, including Nigeria and Ghana, do not currently have a comprehensive statutory framework regulating surrogacy arrangements.[52] Intended parents and surrogates who are based in the UK may also travel abroad for IVF treatments. Depending on the destination country, different legal frameworks apply and practice can vary, for example, around consent processes and multiple embryo transfer (which is associated with higher risk multiple pregnancies).[53]In the UK, while intended parents usually assume care of the baby immediately after birth, there is no formal recognition of their relationship with the child until a parental order is granted.[54] The order may be granted once certain conditions are fulfilled.

Such conditions include that:

i. the surrogate must consent to the transfer of legal parenthood;
ii. the application must be made between 6 weeks and 6 months after the birth of the child;
iii. any payments to the surrogate must not exceed "reasonable expenses incurred."

[51] Nuffield Council on Bioethics, *Surrogacy law in the UK: ethical considerations* available at https://www.nuffieldbioethics.org. Accessed 10 August 2026.
[52] Fenton-Glynn C and Scherpe JM (2019) Surrogacy in a globalised world: comparative analysis and thoughts on regulation; Sloth-Nielsen J (2019) Surrogacy in Africa – the new frontier? Cited in Nuffield Council on Bioethics, Surrogacy law in the UK: ethical considerations available at https://www.nuffieldbioethics.org. Accessed 10 August 2026.
[53] Ibid.
[54] Human Fertilisation and Embryology Act 2008, s. 54.

iv. the child must be living with the intended parents, and one or both of the intended parents must be domiciled in the UK.[55]

The requirement under UK law for intended parents to obtain a parental order may have significant implications where a surrogacy arrangement has been lawfully entered into and carried out in another jurisdiction, but the intended parents are habitually resident in the United Kingdom. In such cases, the legal status of the child-parent relationship established abroad may not be automatically recognised under the law of England.

The English High Court has considered several cases involving children born through surrogacy arrangements in Nigeria to intended parents' resident in the United Kingdom.[56] One such case was *Re H (Anonymous Surrogacy)* [2025], heard by Sir Andrew McFarlane, President of the Family Division. The case concerned a UK-based couple of Nigerian heritage whose daughter had been born through a surrogacy arrangement facilitated by a fertility clinic in Nigeria. Throughout the arrangement, the surrogate's identity remained unknown to the intended parents. Their only communication with her was through video calls during which she concealed her face, and they were not provided with any identifying information, including her name. Furthermore, the surrogate was not identified in any of the relevant documentation, and there was no direct surrogacy agreement between the parties setting out her identity, the nature of the arrangement, or the financial and other support to be provided to her. The case therefore raised significant issues regarding transparency, consent, and the evidential basis upon which the court could be

[55] The Human Fertilisation and Embryology (Parental Orders) Regulations 2010 (SI 2010/986); s.1(1) of the Children Act.
[56] NGA Law, 'Two High Court decisions on Nigerian surrogacy,' 19 Dec 2025. Available at https://www.ngalaw.co.uk/thinking-of-surrogacy-in-nigeria/. Accessed 8 August 2026.

satisfied that the statutory requirements for the making of a parental order had been fulfilled.[57] This case raised a number of complex legal issues for the court's consideration. These included whether the surrogate had provided valid and informed consent to the making of a parental order more than six weeks after the child's birth, as required by UK law save where the surrogate cannot be located or lacks the capacity to consent. The court was also required to determine whether the surrogate was married, as this would affect whether her spouse's consent was additionally required for the granting of a parental order. Further issues concerned the nature and extent of any payments made to the surrogate, including whether such payments exceeded reasonable expenses and therefore required specific judicial authorisation. In addition, the court was obliged to consider broader public policy considerations applicable to international commercial surrogacy arrangements, including whether adequate safeguards had been in place to ensure that the surrogate had not been subjected to exploitation, undue influence, or any form of disadvantage in the course of the arrangement.[58]

The proceedings continued over a series of court hearings, during which the court issued numerous directions requiring further evidence and clarification from both the intended parents and the medical director of the fertility clinic in Nigeria. The process was evidently protracted and placed a considerable emotional and practical burden on the applicants. Ultimately, the court granted the parental order, having reached the reluctant conclusion that all reasonable avenues for obtaining further information about the surrogate had been exhausted without success and that the making of the order was necessary to safeguard the welfare of the child. Nevertheless, the decision was not reached lightly. Recognising the significant legal and public policy

[57] Ibid.
[58] Ibid.

concerns raised by the case, the judge issued a detailed written judgment, intended in part to serve as a cautionary reminder to prospective intended parents and those involved in international surrogacy arrangements of the risks and complexities that may arise where sufficient information and safeguards are lacking. He said:

"Not only does anonymity prevent the court from being able to be satisfied that the surrogate mother knows of the application and consents to it, but it also raises the level of suspicion that the arrangement may have been otherwise than it is said to be. Whilst Mr and Mrs H have explained their motivation for opting for an anonymous surrogacy, their decision has, in fact, caused them a great deal of difficulty in presenting the present application. Those who follow in their footsteps in the future would be well advised to avoid engaging with an anonymous surrogate."[59]

The warning issued by the President in Re H (Anonymous Surrogacy) was not followed by the intended parents in the subsequent case of B and C v D and H (2025), which came before Mrs Justice Theis approximately nine months later and likewise concerned a surrogacy arrangement facilitated by the same fertility clinic in Nigeria. As in the earlier case, the intended parents had never met the surrogate who carried their child and possessed no reliable information regarding her identity. This lack of transparency gave rise to significant legal and practical difficulties, including protracted immigration issues affecting the child and substantial delays in the determination of the parental order application, which remained unresolved for over fifteen months and required four separate court hearings. In her judgment, Mrs Justice Theis reiterated the concerns and warnings previously expressed by the President of the Family Division. However, she went further by

[59] Ibid per Sir Andrew McFarlane.

emphasising that intended parents who knowingly enter into anonymous surrogacy arrangements despite such warnings may, in an appropriate case, be refused a parental order. This observation underscored the court's increasing concern regarding the risks posed by arrangements in which the identity, circumstances, and informed consent of the surrogate cannot be adequately verified. She said:

"This court has made clear in a number of recent cases the importance of the intended parents meeting the surrogate and, if possible, having an independent means of contacting the surrogate… If, for example, there is evidence that the intended parents embarking on such a surrogacy arrangement were aware of these concerns but nevertheless continued with such an arrangement (where they did not meet or have means of contacting the surrogate) knowing of the risks, that may be grounds for the court to consider whether it can, in such circumstances, determine the surrogate cannot be found. The court may also need to consider whether there are wider public policy issues engaged in such a situation. The court in those circumstances may have to consider whether it can or should make a parental order."[60]

The above cases concern issues that may arise in cross-border or international surrogacy where the intended parents have the plan to relocate the child born from a surrogacy arrangement to another country where the governing laws have different surrogacy arrangements such as the UK's parental order requirement before the surrogate child can be handed over to them. The conditions are quite stringent as can be seen from the above.

Anonymous surrogacy arrangements give rise to significant ethical and human rights concerns. Where intended parents have never met

[60] Ibid per Mrs. Justice Theis.

the woman who carried their child, they are entirely dependent upon the information provided by the clinic or agency facilitating the arrangement, with little or no opportunity to independently verify the accuracy of that information. This raises important questions regarding whether the surrogate participated willingly, provided fully informed consent, and was treated with dignity, care, and respect throughout the process. It also raises concerns as to the adequacy of safeguards designed to protect surrogates from exploitation, coercion, or undue vulnerability, particularly in jurisdictions where poverty and systemic corruption may increase such risks and where commercial agencies may have financial incentives to prioritise profit over welfare.

In such circumstances, the English Family Court is often placed in the difficult position of scrutinising these issues retrospectively, at a stage when the child has already been born and the child's welfare is the court's paramount consideration. While the court must carefully assess compliance with the statutory requirements for a parental order, its ability to investigate the circumstances of the surrogacy arrangement may be limited by the available evidence. Nevertheless, intended parents bear a significant responsibility to ensure that the process through which their child is born is conducted ethically and in a manner that protects the rights and welfare of all those involved. The warnings issued by the High Court in these cases serve as a clear reminder that intended parents should undertake rigorous due diligence before entering into international surrogacy arrangements and should be satisfied that appropriate safeguards are in place to protect surrogates from harm, exploitation, or abuse.

In many Nigerian surrogacy arrangements, intended parents have direct contact with the surrogate throughout the process, enabling them to establish a relationship with her and gain a fuller understanding of the circumstances in which the arrangement is taking place. Such

transparency allows intended parents to satisfy themselves that the surrogate has provided free and informed consent and has been treated with dignity and respect throughout the pregnancy. It also provides a stronger evidential basis upon which a court may be satisfied that the surrogate has not been subjected to exploitation, coercion, or undue influence, thereby addressing some of the key ethical and legal concerns that can arise in international surrogacy arrangements.[61]

Anonymity is not an inherent or unavoidable feature of surrogacy arrangements in Nigeria. Intended parents may seek to ensure greater openness and transparency throughout the process and can take reasonable steps to satisfy themselves that the surrogate is fully informed, has provided free and informed consent, and receives appropriate medical, emotional, and financial support. Where surrogacy arrangements are conducted in a transparent and ethically responsible manner, many of the concerns relating to consent, exploitation, and the protection of the surrogate's welfare can be substantially mitigated. Adopting such safeguards not only promotes ethical best practice but may also reduce the likelihood of legal and practical difficulties arising subsequently, including immigration complications, delays in the recognition of parenthood, and protracted court proceedings in connection with parental order applications.[62] Also, the likelihood of complications, error, unforeseen health/medical emergencies that can and do occur during pregnancies and after delivery needs to be covered by a medical insurance made by the intended parents for the benefit of the surrogate mother.[63] This is an international best practice in developed jurisdictions with regulatory

[61] Ibid.
[62]NGA Law, 'Two High Court decisions on Nigerian surrogacy,' 19 Dec 2025. Available at https://www.ngalaw.co.uk/thinking-of-surrogacy-in-nigeria/ accessed 8 August 2026.
[63] Ibid.

framework for Surrogacy Practice but is yet to be implemented in surrogacy arrangements in Nigeria.

7. COMPARATIVE ANALYSIS OF SURROGACY PRACTICES: UNITED STATES OF AMERICA AND SOUTH AFRICA AND LESSONS FOR NIGERIA

The United States has no uniform national rules or regulations pertaining to surrogacy, rather, every one of the 50 states has a different policy regarding surrogacy; some allow commercial surrogacy, while others forbid surrogacy in any form.[64] Since there are no federal rules that apply to surrogacy nationwide, prospective surrogates from all over the nation can apply through organisations in states where it is permitted.[65]

Looking at some of the surrogacy laws in some of the states of the United States, the non-uniform approach of the law is obvious. In New York, the Surrogate's Bill of Rights, which is found in Article 6 of the Child Parent Security Act (CPSA), is among the most distinctive features of New York law. Originating from a legislative intent to provide surrogates with tangible medical, legal, and financial safeguards, the Surrogate's Bill of Rights is applicable to anybody serving as a surrogate in New York and cannot be waived or restricted in any manner, not even by a party's agreement.[66] New York may be

[64] Margalit Yehezkel, 'In Defense of Surrogacy Agreements: A Modern Contract Law Perspective, 20 William and Mary Journal of Women and the Law', (2014) 423.
[65] Jose Angel, Martnez-Lopez and Pilar Munuera Gomez, 'Surrogacy in the United States: Analysis of socio demographic profiles and motivations of surrogates.' (2024) RBMO Vol. 49 Issue 4, 10430.
[66] Family Court Advisory (FCA § 581-601). Accessed at www.nycourts.gov on 8/1/25

the most surrogate-friendly and surrogate-protective state in the US because no other state has a similar clause in its surrogacy statute.[67]

The following rights, amongst others, must be explicitly outlined in the Surrogate's Bill of Rights, which must be given to each surrogate at the beginning of her surrogacy journey: The autonomy to make all health and welfare decisions for herself and the pregnancy, such as whether to agree to a multiple embryo transfer or a C-section, and whether to end or shorten the pregnancy.[68] The right to end the surrogacy contract at any time (and for any reason) before getting pregnant[69]and very importantly, the Bill gives the surrogate the freedom to choose her own independent legal representation, provided that it is licensed in New York and funded by the intended parent.[70]

Nevada allows gestational surrogacy, but only if all parties sign a Gestational Carrier Agreement. Marriage is not a requirement in Nevada for parties to a gestational agreement. However, Nevada law mandates that the agreement be in writing and that each party have their own legal counsel.[71]

In California, Sections 7960–7962 of the California Family Law (2013), along with the well-established case law of *Buzzanca v. Buzzanca*[72]and *Johnson v. Calvert,*'[73] allow gestational surrogacy.

[67]Joseph R. Williams, 'New Surrogacy Law Brings Opportunities but Practitioners Beware.'(2021) <https://nysba.org/new-surrogacy-law> Accessed on 11 January 2025.
[68] FCA § 581-602.
[69] FCA § 581-607.
[70] FCA § 581-603.
[71]'Gestational Surrogacy in Nevada', Nevada Revised Statute 126.500-126.810; <https://creativefamilyconnections.com/us-surrogacy-law-map/nevada/> Accessed on 7/1/25.
[72]California Court of Appeal, 61 Cal. App. 4th 1410 (1998)

When negotiating a surrogacy agreement or contract in California,[74] both parties are required by law to be represented by legal counsel.[75] In Johnson v. Calvert, [76] the court stressed that parental rights could only be determined by express agreements.

Illinois upholds the Gestational Surrogacy Act, which specifies the legal conditions for surrogacy contracts, such as the requirement that intended parents and surrogates have legal counsel.[77] In states like Michigan, commercial surrogacy has been completely banned, and is considered illegal, and any contracts in furtherance of same are regarded as null and void. In such areas as these, any legal representation will focus on resolving potential legal problems resulting from unenforceable agreements or protecting parties in altruistic surrogacy arrangements.[78]

From the foregoing states of the United States, California can be said to be the most advanced in laws which protect the surrogates, but even the Californian laws have no provisions which cover the informed consent of the surrogates, albeit the provision for mandatory legal representation for both parties is included therein. This provision does give an opportunity for the surrogates to be protected and give informed consent in whatever decisions have to be made regarding their bodies and health. It has also been noted that there are no health limits on who can be a surrogate in California. This was a lost chance to guarantee that women would not jeopardise their health in order to

[73]California Supreme Court, 851 P 2d 776 (1993) Johnson v. Calvert, 5 Cal. 4th 84 accessed at https://caselaw.findlaw.com/ca-supreme-court/1575291.html on 7/1/25
[74] Courtney G Joslin, '(Not) Just Surrogacy' (*California Law Review*, 2021) <https://www.californialawreview.org/print/not-just-surrogacy/> accessed 2 January 2025.
[75] Ibid @22
[76] Supra.
[77] Illinois Gestational Surrogacy Act, 750 ILCS 47
[78] Michigan Surrogate Parenting Act 1988.

receive the surrogate payment. It would have also been beneficial if the law had stipulated that prior to any embryonic implantation, the intending parents had to provide the surrogate with some kind of health insurance. This would significantly help guarantee that the surrogate's medical requirements are met.[79]

In South Africa, surrogacy is primarily governed by Chapter 19 of the Children's Act 2005.[80] It is of initial importance to note that only non-commercial (altruistic) surrogacy is permitted therein.[81] The Children's Act provides a procedure for court approval of surrogacy contracts prior to the surrogate's pregnancy starting. Actions made in carrying out the surrogacy agreement are legal and the arrangement is enforceable if such confirmation is given beforehand.[82]

Also, the Children's Act outlines the conditions necessary for legitimate surrogacy contracts. Among these are: the written consent of the surrogate; a genetic connection to at least one intended parent and the agreement's acceptance by a court of competent jurisdiction.[83]From some of the case law emanating from South Africa, it is obvious and laudable that the court takes pains to ensure that surrogacy arrangements are above board before granting approval. In cases like *Ex Parte K40,*[84] the court raised concerns because the

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[79] Seema Mohapatra, *'States of Confusion: Regulation of Surrogacy in the United States in Commodification of The Human Body: A Cannibal Market'* (Eds. J.D. Rainhorn & S. El Boudamoussi; Editions de la Fondation Maison des Sciences de l'Homme, Paris) (2015) 151.

[80] Children's Act No. 38 of 2005, <https://www.refworld.org/legal/legislation/natlegbod/2006/> Accessed 11th January, 2025.

[81] Section 301 of the Children's Act No. 38 of 2005

[82] Donrich Thaldar, 'Performing IVF for surrogacy before confirmation of the surrogacy agreement by the court: a critical analysis of recent case law in South Africa. *Humanit Soc Sci Commun*' (2023)10, 15.

[83] Section 292, Children's Act No. 38 of 2005 (South African Laws).

[84] [2018] ZAGPJHC 529.

prospective surrogate was only 20 years old, had met her husband when she was only 13, had given birth to her first child at 16, dropped out of school early, and had another child two years later. The court was concerned that, in terms of her psycho-social status, she did not appear to have made good decisions in her best interests as a teenager, and there was nothing in the documents to suggest that she had matured enough to understand the consequences of her choices. She was deemed unfit to act as a surrogate mother by the court, which also raised questions because it appeared that she was being paid to bear the child. She had no other source of income and appeared to have come from a low socioeconomic background. This was the basis on which the court refused to grant approval

Also, in *Ex Parte JCR and others*,[85] an infertile couple wanted to sign a second surrogacy contract with a woman who carried their first child, who was delivered in May 2021. Together with her spouse, the surrogate mother had two children of their own, ages seven and ten. Since 2019, she had become pregnant three times through surrogacy; the first one ended in miscarriage, the second resulted in twins, and the current commissioning parent's first child was born in 2021. The surrogate mother's children's interests were questioned by the court in this case, notwithstanding the law's provision that a court may uphold a surrogate motherhood agreement if the surrogate mother has a living child of her own. What is the impact of a surrogate pregnancy on the surrogate mother's own child or children, considering that they observe her pregnancy for nine months, know she is pregnant, and witness her going to the hospital to give birth (and possibly spending some time away from them afterward)? The judge was worried about the impact

[85]South Africa: North Gauteng High Court, Pretoria (ZAGPPHC) (Judgment of 16 March 2022) 202.

of having three children in three years on her body.[86] To determine whether the surrogate mother was suitable to serve as a surrogate for the fourth time, the judge mandated that a psychologist perform an evaluation. A follow-up report from a gynaecologist or obstetrician regarding her physical eligibility (and any hazards) to bear a child was also ordered by the judge. The two minor children of the surrogate parent were also to be evaluated by a clinical psychologist, with particular emphasis to any effects the mother's pregnancies may have had on them. The surrogate mother was found to be both psychologically and physically capable of bearing a child through surrogacy throughout the reports. An evaluation of the surrogate mother's offspring revealed that both were aware of surrogacy and took pride in the idea that their mother helps other couples start families. Following receipt of this information, the judge approved the surrogate motherhood agreement and stated that the information she had gathered should be presented to a court in the future to protect the surrogate's interests as well as those of any current children of the commissioning parents and the surrogate.[87]

In *Ex parte WH*,[88] the court took pains to highlight that the presence of agencies increased the actual risk of "wombs for hire" and unlawful payments either from commissioning parents to the agency or from the agency to the surrogate. Also, the court emphasised that only payments approved by the Act are allowed. Claims directly related to artificial fertilisation, pregnancy, and childbirth are listed in Section 301, along with costs associated with confirming the surrogacy agreement, the surrogate's loss of earnings as a result of the surrogacy

[86] Julia Sloth-Nielsen, '*Surrogacy in Africa'. Research Handbook on Surrogacy and the Law, (*In K. Trimmings, S. Shakargy, & C. Achmad (Eds.), Research Handbooks in Family Law series, Edward Elgar Publishing Ltd.) (2024) 503, 523.
[87] Ibid.
[88] Ex parte WH and others 2011 (6) SA 514 (GNP), para. 39.

agreement, insurance for the surrogate mother that covers death or disability, and bona fide professional medical or legal services.[89]

Additionally, the court mandated that the following extra documents be included with the filings in cases where an agency was engaged in the surrogacy arrangement: the agency's operations; whether the agency receives or receives payment for any part of the surrogacy; and the precise nature of the agency's engagement with: (i) the surrogate mother (ii) how the agency acquired the surrogate mother's information; and (iii) whether the surrogate mother received any payment at all from the commissioning parents or the agency.[90]

From these excerpts of case law, it is obvious that the court does not take lightly its oversight function cum responsibility in examining the surrogacy arrangements before approving, and the court's approval cannot be described as a routine procedure in any way. Furthermore, the provisions of the Children's Act on surrogacy as evinced by the detailed nature of Chapter 19 in outlining the terms that must be satisfied for a surrogacy arrangement to be confirmed by the High Court, are quite detailed and proactive in protecting the interests of both parties to the surrogacy agreement, and ensuring the necessary safeguards are in place for an equitable arrangement on both sides.

[89] Julia Sloth-Nielsen, *"South Africa." Chapter in Eastern and Western Perspectives on Surrogacy*, (Edited by Jens M. Scherpe, Claire Fenton-Glynn, and Terry Kaan) (2019) 185–202.
[90] Ibid.

8. RECOMMENDATIONS FOR NIGERIA

A. Legislative and Policy Recommendations to Safeguard Informed Consent for Surrogate Mothers

i. Mandatory Independent Legal Representation - Enact legislation requiring surrogate mothers to retain independent legal counsel during surrogacy arrangement negotiations.

ii. Establish government or non-governmental organizations (NGOs) to provide free or subsidized legal representation for surrogate mothers who cannot afford it.

iii. Standardized Informed Consent Guidelines - Develop and implement national guidelines that detail the requirements for obtaining informed consent in surrogacy agreements. These guidelines should include clear explanations of medical, legal, financial, and psychological implications for surrogate mothers.

B. Comprehensive Surrogacy Laws

i. Draft and pass comprehensive surrogacy legislation that explicitly outlines the rights and responsibilities of all parties involved.

ii. The laws should address issues such as Compensation, Medical Care, Parental Rights, and dispute resolution mechanisms.

C. Mandatory Counselling Sessions

i. Require surrogate mothers to attend pre-arrangement counselling sessions with certified professionals.

ii. These sessions should cover the emotional, physical, and legal implications of surrogacy, ensuring surrogates understand their commitments fully.

D. Written and Plain-Language Agreements

i. Ensure all surrogacy agreements are documented in writing and explained in plain, accessible language.
ii. Contracts should be translated into the surrogate mother's native language if necessary to eliminate potential misunderstandings.

E. Consent Verification Committees

i. Establish independent consent verification committees consisting of legal, medical, and ethical experts.
ii. These committees would review the informed consent process to ensure compliance with legal and ethical standards before the agreement is finalized.

F. Education and Awareness Campaigns

i. Conduct nationwide awareness programs to educate women on their rights in surrogacy arrangements.
ii. Collaborate with community leaders, NGOs, and media outlets to dispel misconceptions and empower potential surrogates with knowledge.

G. Monitoring and Enforcement Mechanisms

i. Create regulatory bodies to oversee surrogacy arrangements and ensure adherence to informed consent protocols.
ii. These bodies should have the authority to investigate complaints and impose penalties for violations.
iii. Prohibit surrogacy arrangements where surrogate mothers are coerced or subjected to undue influence.
iv. Include penalties for intermediaries or commissioning parents who violate ethical guidelines.

H. Periodic Review and Updates

i. Mandate periodic reviews of surrogacy laws and policies to address emerging challenges and align with international best practices.
ii. Engage stakeholders, including surrogate mothers, in the policy review process to ensure their voices are heard.

9. CONCLUSION

By implementing these legislative and policy recommendations, Nigeria can create a robust framework that prioritises the well-being and rights of surrogate mothers while ensuring ethical and transparent surrogacy arrangements. Policymakers, legal practitioners, and stakeholders in Nigeria must prioritise the enactment of a legal framework and the passing of the proposed amendment bill of the National Health Act mentioned above as an essential step toward fostering an ethical, fair, and transparent surrogacy framework. Surrogacy arrangements inherently involve complex medical, financial, and legal considerations, which can place surrogate mothers—often from vulnerable socio-economic backgrounds—at a disadvantage. Without properly drafted laws to protect the surrogate, surrogate mothers may unknowingly consent to unfair terms or expose themselves to significant risks, including inadequate compensation, medical complications, or post-birth disputes. Ensuring that every surrogate mother is protected by legislation and human right norms would ensure that contracts drafted for the surrogacy arrangement will include provisions to protect her interests particularly in commercial arrangements, protect her rights, and uphold her dignity in the face of potential power imbalances with commissioning parents or intermediaries.

Beyond individual protections, ensuring that the surrogate mother has access to legal representation is a constitutional requirement which

will strengthen the credibility and integrity of surrogacy as a family-building option in Nigeria. It signals a commitment to safeguarding vulnerable parties and aligns the surrogacy process with international human rights standards. For legal practitioners, providing counsel to surrogate mothers is not only a professional obligation but also an opportunity to promote justice and equity within the reproductive health system. Stakeholders, including policymakers and fertility clinics, must collaborate to establish accessible legal support systems, such as subsidised legal aid programs, that ensure no surrogate mother is left without adequate representation. By prioritising this initiative, Nigeria can create a robust and ethical surrogacy framework that respects all participants while mitigating disputes and promoting societal trust in assisted reproductive technologies.