

**THE RIGHT OF BETROTHAL AND PROCREATION: BALANCING AUTONOMY  
ON MARRIAGE, REPRODUCTION AND SURROGACY IN NIGERIA**

**BY**

**Praise Edo-Ose IZIBILI**

**LAW1805962**

**FACULTY OF LAW**

**UNIVERSITY OF BENIN**

**BENIN CITY.**

**MAY, 2024**

**THE RIGHT OF BETROTHAL AND PROCREATION: BALANCING AUTONOMY  
ON MARRIAGE, REPRODUCTION AND SURROGACY IN NIGERIA**

**BY**

**Praise Edo-Ose IZIBILI**

**LAW1805962**

**A LONG ESSAY WRITTEN AND SUBMITTED TO THE FACULTY OF LAW,  
UNIVERSITY OF BENIN IN PARTIAL FULFILMENT OF THE REQUIREMENT  
FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS (LL.B) OF THE  
UNIVERSITY OF BENIN, BENIN CITY.**

**MAY, 2024**

## **CERTIFICATION**

I, **Praise Edo-Ose IZIBILI (LAW1805962)**, hereby certify that apart from references to other persons' works which have been duly acknowledged, the entire work is a product of my research, and this project has neither in whole nor in part been presented for another degree, elsewhere.

---

**Praise Edo-Ose IZIBILI**

**LAW1805962**

## **APPROVAL**

We certify that this project was written and completed by **Praise Edo-Ose IZIBILI** with Matriculation Number **LAW1805962** in partial fulfilment of the requirements for the award of a Bachelor of Laws (LL.B) degree.

**DR. JULIUS EDOBOR**  
**PROJECT SUPERVISOR**

\_\_\_\_\_  
**SIGNATURE AND DATE**

**DR. D.T ACHI**  
**PROJECT COORDINATOR**

\_\_\_\_\_  
**SIGNATURE AND DATE**

**PROF. I. O. OMORUYI**  
**DEAN, FACULTY OF LAW**

\_\_\_\_\_  
**SIGNATURE AND DATE**

## **DEDICATION**

This undergraduate long essay is first dedicated to God for his faithfulness , love, compassion and ceaseless support from the beginning of my LLB journey to the end. I also dedicate this long essay to my dad, siblings and my mum, QUEEN AIKHEGBE.

## ACKNOWLEDGEMENTS

My deepest gratitude goes to God whose love, guidance and faithfulness have nurtured me through the years at university of Benin and made me the person I am today and the woman I see myself to be in the nearest future.

First, I am sincerely thankful to my supervisor Dr. Julius Edobor for his tutelage, patience, support and invaluable counsel throughout this research.

I express my gratitude to my lovely dad, Joseph E. Izibili my biggest support system. Thank you for the love ,prayers, somewhat strict counsel and the numerous calls in a day. I love you. To my mom, Queen AIKHEGBE, thank you for being my mum, thank you for being instrumental to my admission process and settling -in in year one, thank you for your prayers, labour of love and show of affection. I love you now and always.

To my siblings, Winnie and Aizen-Ose Izibili, my duo support system, my twin sisters, my gist buddies, my first friends, the ones who know how to successfully get me angry, you guys rock. Thank you for your endless support and hype. Even as I write this the nickname you call me is ringing in my head . I love you guys.

To my second dad, Engr. Anslem Ijebor, thank you for everything. Your support throughout the years is worth emulating and this baby girl is grateful. Thank you.

To my friends Goodness, Prosper, Clinton, Emma, Albert thank you for your encouragement. A special thank you to Louis Ndukwe, my second teacher who always says I pay fees to uniben but he is the one tutoring me and that I need to pay him. Zibs says thank you for all you do. I love you.

I cannot end this without appreciating myself. If there is anyone I know that does exactly what she sets her mind to, is strong, extremely smart and pretty, that would be me. I extend appreciation to myself for embracing the support offered and being a fighter. I am very positive that if I pick this up to read in the next five years I can boldly say that I have come a long way.

## LIST OF STATUTES

### National

<b>Child Right Act 2003</b> , Section 301 - - - - -	26
Contracts (Applicable Law) Act 1990, Chapter 36 - - - - -	- 27,28,31
Matrimonial Causes Act 1970 Cap M7 LFN, 2004 Cap M7 LFN 2004. - - - - -	25
National Health Act 2014	
Section 10 - - - - -	40

### Foreign

Assisted Human Reproduction Act, S.C. 2004, C.2 - - - - -	38,49
Assisted Reproductive Technology (Art) Bill 2016 - - - - -	53
Assisted Reproductive Technology (Regulation) Act 2021 - - - - -	40
California Family Code FAM 7881 - Sections 7960-7962 - - - - -	38
Civil Code (C. civ.) (Civil Code) 2021 (Fr.) article 16(7) - - - - -	39
German Embryo Protection Act 1990, Section 1(1)(7) - - - - -	39
Human Fertilization and Embryology Act 2008, C22 - - - - -	54
The Surrogacy (Regulation) Bill, 2019 - - - - -	48

**LIST OF CASES**

<i>Johnson v Calvert</i> 851 P 2d 776 [1993]	-	-	-	-	-	35
<i>RR v MH</i> 426 Mass 501 [1998].	-	-	-	-	-	36

## TABLE OF CONTENTS

<b>Contents</b>	<b>Pages</b>
Title Page - - - - -	ii
Certification - - - - -	iii
Approval - - - - -	iv
Dedication - - - - -	v
Acknowledgement - - - - -	vi
List of Statutes - - - - -	vii
List of Cases - - - - -	viii
Table of Content - - - - -	ix
Abstract - - - - -	xii

### CHAPTER ONE: INTRODUCTION

1.1 Background To The Study - - - - -	1
1.2. Statement of Problem - - - - -	2
1.3. Aims and Objectives - - - - -	3
1.4. Scope and Limitation Of Study - - - - -	4
1.5. Significance of the Study - - - - -	5
1.6. Research Methodology - - - - -	5
1.7 Chapters Analysis - - - - -	6

## CHAPTER TWO

### CONCEPTUAL CLARIFICATION, THEORETICAL FRAMEWORK AND LITERATURE

#### REVIEW

2.1	Conceptual Clarifications	-	-	-	-	-	-	8
2.2	Theoretical Framework	-	-	-	-	-	-	9
2.3	Literature Review	-	-	-	-	-	-	12
2.3.1	Historical Perspectives On Marriage And Reproduction In Nigeria							12
2.3.2	Social and Cultural Perspectives on Surrogacy in Nigeria	-						15
2.3.4	Healthcare And Medical Practices In Surrogacy	-	-					19
2.3.4	Attitude Towards Surrogacy	-	-	-	-	-	-	22

## CHAPTER THREE

### DEFINING PARENTAL RIGHTS AND OBLIGATIONS IN SURROGACY

3.1	Existing Legal Frameworks	-	-	-	-	-	-	25
3.2	Analysis and Implications	-	-	-	-	-	-	30
3.3	Application to Surrogacy	-	-	-	-	-	-	32
3.4	Case Analysis	-	-	-	-	-	-	34
3.5	Comparative Analysis-	-	-	-	-	-	-	38

## CHAPTER FOUR

### ADVOCATING FOR A REGULATORY LAW

4.1	Arguments For and Against Surrogacy Regulation	-	-	-	-	-	-	42
4.2	Arguments Against Surrogacy Regulation	-	-	-	-	-	-	44
4.3	Benefits of a Regulatory Law	-	-	-	-	-	-	46
4.4	Comprehensive Regulatory Framework For Surrogacy: Drawing From International Best Practices	-	-	-	-	-	-	47

## CHAPTER FIVE

### SUMMARY, RECOMMENDATIONS AND CONCLUSION

5.0	Introduction	-	-	-	-	-	-	-	52
5.1	Summary of Findings	-	-	-	-	-	-	-	52
	5.1.1. Legal Status of Surrogacy	-	-	-	-	-	-	-	52
	5.1.2. Clarity of Rights and Obligations	-	-	-	-	-	-	-	52
	5.1.3. Encroachment on Autonomy	-	-	-	-	-	-	-	53
5.2.	Recommendations	-	-	-	-	-	-	-	53
	5.2.1. The Revisitation of the Assisted Reproductive Technology (Art) Bill 2016	-	-	-	-	-	-	-	53
	5.2.2. Drawing from International Practices.	-	-	-	-	-	-	-	54
5.3.	Contribution to Knowledge	-	-	-	-	-	-	-	54
5.4.	Areas for Future Study	-	-	-	-	-	-	-	54
5.5.	Conclusion	-	-	-	-	-	-	-	55
	Bibliography	-	-	-	-	-	-	-	56

## **ABSTRACT**

In family formation it is an expected occurrence to procreate. In the event that couples are unable to, it could cause heartache disappointment and deprive such individuals of joy. However with the evolution of civilization, parenthood need not be a bother as surrogacy provides a path. Reliance on history indicates that surrogacy is not a new concept as it has been in existence since the time of Abraham and is fast becoming a rising trend in recent times.

In Nigeria surrogacy is gaining popularity however, it is still in its infant stage as Nigeria's legislation neither recognizes it nor forbids it. This has created confusion and ambiguities with regards to rights and duties of parties involved.

The aim of this research is to awaken Nigeria's National Assembly to their mandate; to enact a holistic body of rules to regulate surrogacy arrangements in the country.

# CHAPTER ONE

## INTRODUCTION

### 1.1 Background To The Study

From time immemorial, there has been an expected course of an individual's trajectory in life. One of such events is the joining of a man and a woman in matrimony. However, in anticipation of the marriage ceremony is the “Rite of Betrothal”.

The Rite of Betrothal is the formal commitment of two individual to be married. This rite does not equate marriage. It is merely a public pronouncement of the intention of two people to be married.

Consequent upon the marriage ceremony, it is customary for couples to procreate. However, in the event that procreation is difficult or seems impossible as a result of peculiar circumstances,<sup>1</sup> surrogacy provides a pathway to parenthood.

The word “surrogacy” means to substitute. Biblical history indicates that this phenomenon is not a modern term. The relationship between Jacob, Racheal, Leah, Bilhah and Zipah and the four sons born between them is a classic example of surrogate parenting.<sup>2</sup>

Surrogacy is an arrangement, where a woman (known as the surrogate) agrees to delivery/labor on behalf of another couple or person (called the commissioning parents), who will become the child’s parent (s) after birth.<sup>3</sup>

---

<sup>1</sup> Infertility, medical conditions, age, genetic conditions. For the infertility conditions that may befall an individual, see Shamima Parvin Lasker, ‘Surrogacy’ in Henk ten Have (Editor), *Encyclopedia of Global Bioethics* (Springer, 2016) 2761-2762 <doi: 10.1007/978-3-319-09483-0>

<sup>2</sup> Genesis 16: 1-16 and Genesis 30: 1-13

<sup>3</sup> Oluwatobi Joseph Alabi, ‘Perceptions of Surrogacy within the Yoruba Socio-Cultural Context of Ado-Ekiti, Nigeria’ *F1000Research* (2020) 9(103) [1-23] <<http://dx.doi.org/10.12688/f1000research.20999.2>>

The concept of surrogacy is two faced: Gestational surrogacy and Traditional surrogacy. Gestational surrogacy is the process where the surrogate is impregnated through the use of in vitro fertilization (IVF). In this type of surrogacy, an embryo is created by fertilizing eggs from the intended mother or an egg donor with sperm from the intended father or a sperm donor.<sup>4</sup> The surrogate or gestational carrier is not genetically related to the child because she does not provide the egg for fertilization. On the other hand, traditional surrogacy only requires sperm from the intended father or donor. The surrogate in this case, is the biological mother of the child, as she is the egg donor/ provider.<sup>5</sup>

Over the years, surrogacy has become increasingly popular worldwide. The market for international surrogacy grew by 1000% between 2006 and 2010 according to reports from agencies that operate internationally, with growth of 6000% in 12 years.

The United States is not left out as it is a popular place to get surrogate with about 4000 cases reported each year and a sizable number of IVF centers. Furthermore, major clientele for surrogacy in a number of locations including Kenya, Mexico and Ukraine, comes from nations like China, United States and Australia.

The prevalence of surrogacy differs among nations based on various laws and expenses related to the procedure. Nigerian surrogacy is a complicated topic since there is no established legal guideline. Though surrogacy is not officially forbidden in Nigeria, it is also not recognized by law which presents a number of difficulties and danger to the practice. Another consequence of the lack of legal recognition of surrogacy in Nigeria is that there are more potential for abuse and exploitation.

---

<sup>4</sup> Olusegun Olaitan Oluwaseyi and Olatawura Oladimeji, 'Surrogacy Agreements and the Rights of Children in Nigeria and South Africa' *Obiter* [2021] 42(1) [20-38] retrieved from <[https://scielo.org.za/scielo.php?script=sci\\_abstract&pid=S1682-58532021000100002](https://scielo.org.za/scielo.php?script=sci_abstract&pid=S1682-58532021000100002)>

<sup>5</sup> Ibid.

A few of the difficulties encountered in Nigerian surrogacy arrangements have been brought to light by events. An American couple, for example, claimed that a Nigerian surrogate mother had stolen their twins.<sup>6</sup> Also with the release of a recent video on Facebook of a Nigerian surrogate who refused to release a child to the intending mother, evidences that surrogate arrangements could go sour<sup>7</sup>

These examples and more indicates that surrogacy is becoming a rising and developing trend in modern Nigeria and a mechanized body of rules is therefore imperative. Hence this research.

## 1.2. Statement of Problem

It would not be alien to opine that the essence of law is to stipulate the mode of operation and interactions of people.<sup>8</sup> Like other areas of law (Commercial law, Company law, etc.) that are coated with definite legislation in the regulation of its affairs, it is quite inadequate that surrogacy which is quickly gaining popularity is devoid of a holistic body of rules to govern its usage in Nigeria. This absence may subsequently result in a clash of interest between parties involved (commissioning parent, surrogate mother and by extension the child).

## 1.3. Aims and Objectives

In contemporary times, surrogacy is quickly becoming a trend. It is therefore appalling that a nation like Nigeria lacks a body of laws that governs its affairs. This lacuna places parties involved at risk of competing interest. Hence this study seeks out the following.

---

<sup>6</sup> Oluwakemi Adedagun, 'US-Based Couple Accuses Nigerian Surrogate Mother of Absconding with Twins' *Premium Times* (8 April 2022) <<https://www.premiumtimesng.com/news/top-news/522663-us-based-couple-accuses-nigerian-surrogate-mother-of-absconding-with-twins.html?tztc=1>> accessed 21 February 2024.

<sup>7</sup> <<https://www.facebook.com/reel/703304614520742?mibextid=S40aB7S9Ucbxw6v>>

<sup>8</sup> Michael Anyaehie, 'Rule of law: Panacea for National Development in Nigeria' <[https://www.researchgate.net/publication/275520874\\_Rule\\_of\\_Law\\_Panacea\\_for\\_National\\_Development\\_in\\_Nigeria](https://www.researchgate.net/publication/275520874_Rule_of_Law_Panacea_for_National_Development_in_Nigeria)> accessed 26 January 2024.

1. To analyze existing legal frameworks in Nigeria to identify how they apply to surrogacy arrangements.
2. Investigate the ethical, social and legal considerations involved in surrogacy regulation, examining arguments both for and against implementing regulatory measures in Nigeria.
3. To canvas for a regulatory law as surrogacy is fast becoming a rising trend in Nigeria.
4. To assess international best practices and legal frameworks from countries, to identify key elements that could inform the development of a comprehensive regulatory law for surrogacy in Nigeria.
5. To develop a proposed regulatory framework tailored to the Nigerian context.
6. To provide recommendations for policymakers, legal practitioners and stakeholders on the adoption and implementation of the proposed regulatory framework.

#### **1.4. Scope and Limitation Of Study**

Since surrogacy is not legally recognized in Nigeria, this, therefore results as a limitation to this research. Although parties involved in surrogacy arrangements independently contract to some performance in exchange for another by reason of consideration, the ordinary laws of contract<sup>9</sup> is not sufficient to govern surrogacy arrangements. The reason is that a human life is involved and an organized body of rules is needed to suit the peculiar nature of surrogacy.

Consequently, this study will focus on the areas surrounding surrogacy, including but not limited to right of intending parent (s), surrogate mothers and the role of the Nigerian law makers.

#### **1.5. Significance of the Study**

---

<sup>9</sup> Offer, acceptance and consideration.

Nigeria has a history of laws that have been enacted<sup>10</sup> and overtime, some of these laws have been subjected to scrutiny and consequently, amended. One cogent reason is the need to regulate and curb fraudulence as they arise. I therefore find it lugubrious that the consciousness of the legislature is not awakened to the need for laws on surrogacy seeing as in recent times, its popularity is starting to spread.

Therefore, the importance of this study is the awakening of the National Assembly to their sole mandate of law making.

#### **1.6. Research Methodology**

Surrogacy is not explicitly illegal but the absence of a defined legislation in Nigeria, creates room for ambiguities on the rights and responsibilities of parties involved. As a result of these ambiguities, the majority of studies on surrogacy contain significant methodological restrictions. Notwithstanding these restrictions, this study will utilize an analytical and doctrinal approach as the foundation for it's research technique. Additionally, in order to reach a well-informed conclusion and provide insightful recommendations, this study will compare the surrogacy situation in Nigeria with those of other jurisdictions with reference to real life scenarios.

#### **1.7 Chapters Analysis**

This research is sectioned in five chapters, each addressing different aspects of the research topic viz:

---

<sup>10</sup> An example is the Cybercrimes Prohibition Act, 2015.

## **Chapter One (Introduction)**

The first chapter which is the introduction to the research, gives an overview of aims and objectives, scope and limitation of the research and well as the significance of the research. The first chapter also embodies the background of the study as well as the statement of problem and research methodology

## **Chapter Two (Conceptual Clarifications, Theoretical Frameworks and Literature Review)**

This study's theoretical framework as well as its conceptual clarification is situated in the second chapter. By traversing through significant theoretical stances on surrogacy, it lays the groundwork for a thorough analysis. The literature review presents a comprehensive overview of the body of information regarding the origins, manifestations and current development of surrogacy therefore establishing a framework for subsequent chapters.

## **Chapter Three**

This chapter explores the relationships between parental rights and responsibilities in the context of Nigerian surrogacy agreements. It the current laws and the roles that parents play in these kinds of arrangements. This chapter aims to clarify the nuances surrounding parental rights and obligations by analysing case studies and legal precedents and highlighting areas of disagreement and ambiguity.

## **Chapter Four**

In Chapter 4, the case is made for a legislative structure specifically designed to address surrogacy in Nigeria. It weighs ethical, legal and social issues while providing a thorough analysis of arguments for and against surrogacy regulation. This chapter emphasizes the need for regulatory measures to protect the rights and welfare of all parties engaged in surrogacy arrangements, drawing on global best practices and legal precedents.

## **Chapter Five (Conclusion)**

The last chapter provides a summary of the research process. It is a summary of the research objective in preceding chapters. Chapter Five offers an elaborate and well-reasoned recommendation that contributes to the broader discuss on the need for surrogacy laws in Nigeria. Chapter Five also provides a thorough and thought-provoking conclusion of the research by analyzing the knowledge it intends to add and consequently suggest possible areas of inquiry for future research.

**CHAPTER TWO**  
**CONCEPTUAL CLARIFICATION, THEORETICAL FRAMEWORK AND**  
**LITERATURE REVIEW**

**2.1 Conceptual Clarifications**

**Surrogacy**

In surrogacy, a woman (the surrogate mother) bears and gives birth to a child on behalf of another individual or couple (the commissioning parents). This is an assisted reproductive arrangement. Two primary categories of surrogacy exist:

- i. **Traditional Surrogacy:** Involves the intended father (or sperm donor) fertilising the surrogate mother's own egg through artificial insemination. This indicates that the child and the surrogate mother are connected genetically.
- ii. **Gestational Surrogacy:** Involves implanting an embryo made via in vitro fertilisation (IVF) into the surrogate mother's uterus using the egg and sperm of the commissioning parents (or donor gametes). The child and the surrogate mother are genetically unrelated.

**Parental Rights**

Under Nigerian law, the rights and obligations that biological or adoptive parents have with relation to the upbringing, welfare, education and health care of their children are referred to as parental rights. Usually, relevant case law and laws like the Matrimonial Causes Act specify these rights.

**Commissioning Parents**

The intended parents who sign a surrogacy contract with a surrogate mother in order to become parents are known as commissioning parents. These are the people who intend to raise the surrogate child.

### **Surrogate Mother**

A woman who consents to become a surrogate mother on behalf of another individual or couple is known as a surrogate mother. We will concentrate on gestational surrogacy in this study, in which the surrogate mother is not related to the kid genetically.

### **Nominal Identity**

According to Nigerian family law, a child's nominal identity is their legal affiliation with a specific family. This comprises the surname of the child and, if applicable, the names of their legal parents as seen on birth certificates and other official records. Nominal identity is typically associated with birth parents or, in the event of adoption, adoptive parents.

### **Legal Lacuna**

A "legal lacuna" is a gap or absence in the legal system that fails to address inadequate attention to certain topics or phenomena. Surrogate mothers, commissioning parents and children born through surrogacy are among the parties affected by the legal uncertainties and vulnerabilities surrounding surrogacy in Nigeria, due to the lack of comprehensive laws and regulations governing surrogacy agreements.

## **2.2 Theoretical Framework**

The study's theoretical framework is composed of five major theories that present various perspectives on the ethical, legal and social aspects of surrogacy in Nigeria. Social Contract Theory, Feminist Theory, Symbolic Interactionism, Postmodern Theory and Medicalization Theory are some of the theories that shed light on the intricacies of surrogacy practices and how they may affect legislation. Every theory offers distinct perspectives that contribute to the study's advocacy and recommendation of legislation governing surrogacy in Nigeria.

According to the Social Contract Theory, which was advanced by scholars like John Locke and Thomas Hobbes, laws are the result of social agreements that create order and safeguard individual rights.<sup>1</sup> Social Contract Theory emphasizes the need for legislative rules in the surrogacy context in order to guarantee justice, openness and the safety of all parties (intended parents, surrogate mothers and children).<sup>2</sup>

Gender dynamics, autonomy and reproductive rights are the main focus of feminist theory, which was created by Mary Wollstonecraft in the eighteenth century.<sup>3</sup> In the context of surrogacy in Nigeria, Feminist theory emphasizes the significance of prioritising women's agency, bodily autonomy and reproductive justice. This theory supports efforts to create legal regulations that put women's rights and wellbeing first by challenging patriarchal norms and power structures that may affect surrogacy practices.<sup>4</sup> Advocating for surrogacy laws that protect women's autonomy, dignity and reproductive choices is part of advocating for legal changes influenced by feminist theory.

Another theory that contributes to the theoretical framework of this investigation is symbolic interactionism. This theory, which was created in the early 20th century by George Herbert Mead and Herbert Blumer, examines how people create identities and meanings through their social interactions.<sup>5</sup> Symbolic interactionism provides insights into the ways in

---

<sup>1</sup> Michel Rosenfeld, 'Contract and Justice: The Relation between Classical Contract Law and Social Contract Theory' *Iowa Law Review* [1984] 70 [769]

<sup>2</sup> Yehezkel Margalit, 'In Defense of Surrogacy Agreements: A Modern Contract Law Perspective' *William and Mary Journal of Women and the Law* [2014] 20(2) [423] retrieved from <<https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1382&context=wmjowl>>

<sup>3</sup> Kathy E Ferguson, 'Feminist Theory Today' *Annual Review of Political Science* [2017] 20 [269-286].

<sup>4</sup> Consuelo Corradi, 'Motherhood and the Contradictions of Feminism: Appraising Claims Towards Emancipation in the Perspective of Surrogacy' *Current Sociology* [2021] 69(2) [158-175] <<https://doi.org/10.1177/0011392120964910>>

<sup>5</sup> Michael J Carter and Celene Fuller, 'Symbolic Interactionism' *Sociopedia.isa* [2015] [1-17] <<http://dx.doi.org/10.1177/205684601561>>

which surrogacy participants negotiate identities, roles and relationships. Through an analysis of the symbolic meanings associated with surrogacy practices and interactions, this theory illuminates the varied perspectives and experiences of commissioning parents, surrogate mothers and surrogate children.<sup>6</sup> Promoting openness, communication and understanding amongst surrogacy participants is necessary when advocating for laws influenced by symbolic interactionism. It also involves acknowledging and respecting the various meanings and experiences of surrogacy participants.

Intellectuals like Michel Foucault and Jean-François Lyotard have influenced postmodern theory, which questions essentialist ideas about identity, truth and power.<sup>7</sup> Postmodern Theory calls for a critical analysis of the prevailing narratives and discourses surrounding surrogacy practices in the Nigerian context. It also emphasizes the need for inclusive and responsive legal regulations by recognising the multiplicity of experiences, perspectives and truths within surrogacy arrangements.<sup>8</sup> Promoting legal changes informed by postmodern theory entails embracing a variety of surrogacy-related narratives and lived experiences while dismantling binary conceptions of family, parenthood and identity.

The last theory is the Medicalization Theory, which was developed by scholars like Michel Foucault and Ivan Illich. It investigates the ways in which medical discourses and institutions impact social phenomena, including reproduction.<sup>9</sup> Medicalization Theory looks at

---

<sup>6</sup> Racheli Silvern and Stefan Cojocar, 'Interaction between Surrogate Mother and Intended Mother: Sociological Aspects in Surrogacy' *Revista de Cercetare si Interventie Sociala* [2022] 77 [89-105] <<https://doi.org/10.33788/rcis.77.6>>

<sup>7</sup> Norman K Denzin, 'Postmodern Social Theory' *Sociological theory* [1986] 4(2) [194-204] <<https://doi.org/10.2307/201888>>

<sup>8</sup> Antonio Camorrino, 'Mother Nature and the Nature of Motherhood: Gestational Surrogacy and Ecospirituality as Two Postmodern Forms of Sacralization' *Current Sociology* [2021] 69(2) [212-230] <<https://doi.org/10.1177/0011392120964894>>

<sup>9</sup> Joseph E Davis, 'Medicalization, Social Control and the Relief of Suffering' in William C Cockerham (Editor), *The New Blackwell Companion to Medical Sociology* (Blackwell Publishing Ltd, 2010) 211-241.

how reproduction has become more medicalized and how that has affected surrogacy laws and procedures.<sup>10</sup> This theory provides insight into how medical professionals, technologies and ideologies shape surrogacy practices, which in turn influences efforts to create morally sound and fact-based legal guidelines. Promoting legal changes that are based on Medicalization Theory means that all parties involved in surrogacy agreements should have their health, safety and ethics taken into account. It also means that medical interventions should be used carefully and sensibly.

### **2.3 Literature Review**

This chapter delves deeply into the current body of on about surrogacy. It explores how the practice is influenced by historical, social, cultural and medical viewpoints.

#### **2.3.1 Historical Perspectives On Marriage And Reproduction In Nigeria**

Surrogacy is a relatively new term, but it has an interesting long history. The story of Sarah and Hagar in the Book of Genesis, in which Hagar acts as Sarah's surrogate mother, is an early example of surrogacy.<sup>11</sup> Although the idea may have existed, it was difficult, if not impossible, to implement given the circumstances of the day.

Significant developments in the 20th century cleared the path for contemporary surrogacy. With the invention of artificial insemination in the 1880s, more options for assisted reproduction became available. Then, in 1978, Louise Brown became the first successful IVF (In Vitro Fertilisation) birth worldwide, which signalled a significant turning point.<sup>12</sup>

---

<sup>10</sup> Mahmood Ghazi Tabatabaie and Abu Ali Vedadhir, 'Surrogacy: Medicalization of Motherhood' *Journal of Reproduction & Infertility* [2008] 9(2) [144-164]

<sup>11</sup> Genesis 16:1–16; 17:18–26; 21:1–21

<sup>12</sup> John D Biggers, 'IVF and Embryo Transfer: Historical Origin and Development' *Reproductive Biomedicine Online* [2012] 25(2) [118-127] <<https://doi.org/10.1016/j.rbmo.2012.04.011>>

Gestational surrogacy—in which a carrier uses a fertilised egg that is not genetically related to her—became far more feasible thanks to IVF technology.

The discussions surrounding surrogacy's legality and ethics developed alongside these assisted reproductive technologies. Concerns regarding surrogate mother compensation, parental rights and the practice's ethical ramifications surfaced.<sup>13</sup> These days, surrogacy is a complicated topic. The legal and ethical frameworks that exist in nations vary, reflecting the continuous debates concerning the rights and welfare of all parties.

Due to historical, cultural and socioeconomic influences, marriage and procreation have always been valued in Nigerian society.<sup>14</sup>

Nigerian marriage ceremonies and procreation rituals have changed over the course of centuries in tandem with shifts in societal structures and beliefs, reflecting the diversity of the nation's ethnic groups and geographical areas.<sup>15</sup>

Nigerian marriage customs and traditions have historically been characterised by a rich blending of traditions, with different ethnic groups upholding unique family structures and matrimonial rites. Matrimony was the cornerstone of social structure from pre-colonial to colonial times and beyond, strengthening bonds between families and communities. Many Nigerian societies were characterised by polygamous unions, which were a reflection of cultural norms and religious beliefs that allowed men to have multiple wives.<sup>16</sup>

---

<sup>13</sup> Karen Smith Rotabi and Nicole F Bromfield, *From Intercountry Adoption to Global Surrogacy: A Human Rights History and New Fertility Frontiers* (Routledge, 2016) 124.

<sup>14</sup> Peter Ezeah, 'Marriage and Motherhood: A Study of the Reproductive Health Status and Needs of Married Adolescent Girls in Nsukka, Nigeria' *Journal of Sociology and Social Anthropology* [2012] 3(1) [1-6] <<https://doi.org/10.1080/09766634.2012.11885559>>

<sup>15</sup> May Omogho Esiri, 'Social Change and Marriage Structure in Nigeria' *International Research Journal of Management, IT and Social Sciences* [2021] 8(3) [228-235] <<https://doi.org/10.21744/irjmis.v8n3.1487>>

<sup>16</sup> Ibid.

These practices, which have been around for centuries and are frequently governed by customary laws, have a lasting impact on marriage dynamics in modern-day Nigeria.

The act of having children was regarded as a blessing and a source of pride for families and reproduction in the context of marriage carried substantial cultural and societal significance. The importance of fertility and maintaining a family line was emphasized by traditional beliefs, especially in patriarchal societies where having sons was highly valued. In order to maintain the family name and lineage, women were frequently under pressure to become mothers and bear children. They were also expected to live up to society's expectations regarding motherhood and fertility.<sup>17</sup>

Due to the effects of colonialism, globalisation and modernization, Nigeria's marriage and reproduction environment has witnessed a dramatic change over time. Laws from the colonial era brought in new legal frameworks and Christian missionary influences that put traditional marriage customs and polygamous practices under scrutiny. Changes in family structures, gender roles and attitudes towards marriage and reproduction emerged with urbanisation and industrialization. These changes, along with developments in reproductive technologies and healthcare, paved the way for surrogacy to become a popular alternative to traditional family formation.<sup>18</sup>

Nigerians' interest in surrogacy as a family-building option has increased in recent decades as they have grown more aware of international surrogacy arrangements and assisted reproductive technologies. Globalisation of the economy, migration and information availability have all contributed to the growth of surrogacy, even though Nigerian ethics, laws

---

<sup>17</sup> Olanike S Adedokun, 'The Concept of Surrogacy in Nigeria: Issues, Prospects and Challenges' *African Human Rights Law Journal* [2018] 18(2) [605-625] <<http://dx.doi.org/10.17159/1996-2096/2018/v18n2a8>>

<sup>18</sup> Ibid.

and customs have special implications.<sup>19</sup> Although surrogacy is still a relatively new concept in Nigeria, the country's fast changing culture is reflected in the growing acceptance of surrogacy as a means of family, parenthood and reproductive autonomy.

### **2.3.2 Social and Cultural Perspectives on Surrogacy in Nigeria**

Nigeria, like many other African nations, has a strong cultural emphasis on family lineage and reproduction. As a result, infertile couples may feel under pressure, which could increase the market for surrogacy.

A study by Adedokun (2018)<sup>20</sup> explored the social significance of surrogacy within the Nigerian context. The article argues that cultural emphasis on procreation in African family systems creates pressure on women experiencing infertility. This pressure can lead to societal stigma and potentially exploitative practices. The study identifies a critical gap in Nigerian law - the absence of a specific legal framework for surrogacy. The study highlights the potential for abuse within unregulated arrangements due to the lack of clear guidelines. The work adopts a comparative approach, analysing legal frameworks governing surrogacy in other jurisdictions, like South Africa. This comparison emphasizes the need for a similar legal architecture in Nigeria to provide necessary regulations.

Another study by Makinde and others (2016) addressed the concerning phenomenon of "baby factories" in Nigeria.<sup>21</sup> These facilities, often disguised as hospitals or orphanages, exploit young women and girls by forcing them to give birth for sale on the black market. The

---

<sup>19</sup> Odidika Ugochukwu Umeora and others, 'Surrogacy in Nigeria: Legal, Ethical, Socio-Cultural, Psychological and Religious Musings' *African Journal of Medical and Health Sciences* [2014] 13(2) [105] <doi:10.4103/2384-5589.144579>

<sup>20</sup> Olanike S Adedokun, 'The Concept of Surrogacy in Nigeria: Issues, Prospects and Challenges' *African Human Rights Law Journal* [2018] 18(2) [605-625] <<http://dx.doi.org/10.17159/1996-2096/2018/v18n2a8>>

<sup>21</sup> Olusesan Ayodeji Makinde and others 'Baby Factories Taint Surrogacy in Nigeria' *Reproductive Biomedicine Online* [2016] 32(1) [6-8] <<https://doi.org/10.1016/j.rbmo.2015.10.001>>

target audience can include infertile couples or even human trafficking rings. The study highlights the negative impact of baby factories on the already tenuous acceptance of surrogacy in Nigeria. They argue that both practices offer similar outcomes (children born for others), but baby factories operate outside any legal or ethical framework. This unregulated environment creates a breeding ground for exploitation and raises serious ethical concerns, particularly due to the involvement of medical personnel in operating these facilities. The authors emphasize the urgent need for regulations governing surrogacy and assisted reproductive technologies (ART) in Nigeria. A clear legal framework is crucial to define ethical boundaries and prevent the exploitation associated with baby factories. Without proper regulations, it becomes difficult to prosecute those who operate these facilities, especially when they masquerade as legitimate medical providers.

Bello and others (2014) explores the acceptability of Assisted Reproductive Techniques (ART) among infertile women seeking treatment at a hospital in Ibadan, Nigeria.<sup>22</sup> Their findings offer valuable insights into attitudes and awareness levels surrounding these procedures. A key finding is that while a majority of participants (58.3%) were aware of In-Vitro Fertilization (IVF), a slightly lower percentage (59.3%) expressed willingness to undergo the treatment (Bello and others, 2014). This suggests a potential gap between awareness and acceptance of ART procedures. The study also investigated attitudes towards gamete donation. Acceptance rates were lower for egg donation (35.2%) compared to sperm donation (24.7%), with anticipated spousal resistance being a possible factor (Bello and others, 2014). Surrogacy emerged as another ART with relatively low awareness (35%) but a higher acceptance rate (37.8%) among participants. Interestingly, the study found a preference for strangers as

---

<sup>22</sup> Folasade A Bello, Opeyemi R Akinajo and Oladapo Olayemi, 'In-Vitro Fertilization, Gamete Donation and Surrogacy: Perceptions of Women Attending an Infertility Clinic in Ibadan, Nigeria' *African Journal of Reproductive Health* [2014] 18(2) [127-133] <<https://www.jstor.org/stable/24362174>>

surrogates and most participants believed surrogates should not be financially compensated. The authors also identified factors associated with greater ART acceptance. These included older age, longer duration of infertility, experiencing prior unsuccessful treatments and not having biological children. This suggests that a stronger desire for parenthood may influence a woman's willingness to undergo ART procedures.

Furthermore, Akpambang and Amujo-Akomolafe (2020) conducted a study to examine the legal aspects of surrogacy arrangements in Nigeria.<sup>23</sup> The authors highlight the challenges posed by the absence of specific surrogacy laws in the country. They argue that this lack of regulation creates a breeding ground for unethical practices. The study utilized a comparative approach, analysing the legal frameworks governing surrogacy in other Commonwealth countries like the United Kingdom and South Africa. This comparison underscores the need for a similar legal framework in Nigeria to provide clarity and protect the rights of all parties involved in surrogacy arrangements.

Oluwaseyi and Olatawura (2021) investigated the rights of children born through surrogacy agreements in Nigeria.<sup>24</sup> Their study highlights the importance of legal frameworks to protect the well-being of these children. The research employs a doctrinal approach, analysing existing laws and legal proposals. A key finding is the absence of a comprehensive legal framework governing surrogacy in Nigeria, creating a situation where the rights of children born through these arrangements are potentially at risk. The study offers South Africa, with its regulations outlined in Chapter 19 of the Children's Act (2005), as a model for potential

---

<sup>23</sup> Enobong Mbang Akpambang and Monica Amujo-Akomolafe, 'Legal Position on Surrogacy Arrangements in Nigeria and Some Selected Jurisdictions' *International Journal of Research in Humanities and Social Studies* [2020] 7(3) [18-39] retrieved from <<http://www.ijrhss.org/papers/v7-i3/3.pdf>>

<sup>24</sup> Olusegun Olaitan Oluwaseyi and Olatawura Oladimeji, 'Surrogacy Agreements and the Rights of Children in Nigeria and South Africa' *Obiter* [2021] 42(1) [20-38] retrieved from <[https://scielo.org.za/scielo.php?script=sci\\_abstract&pid=S1682-58532021000100002](https://scielo.org.za/scielo.php?script=sci_abstract&pid=S1682-58532021000100002)>

legal reforms in Nigeria. The authors recommend the enactment of pending bills into a single, comprehensive law to effectively regulate surrogacy and prioritize the best interests of the child.

Okoli and Eze's (2021) study tackles the concerning phenomenon of "baby factories" in Nigeria.<sup>25</sup> They employ a mixed-methods approach, combining existing literature with the authors' own insights, to argue that these facilities exploit young women and children. The research identifies several key drivers for the existence of baby factories. Socio-cultural factors, such as the economic and emotional value placed on childbearing and the stigma surrounding adoption, lead some couples to seek unconventional paths to parenthood. The authors argue that the absence of regulations governing surrogacy in Nigeria creates a space for these exploitative practices to flourish. "Baby factories" essentially operate as a black market for children, treating pregnant women and infants as commodities. The study emphasizes the urgency of enacting proper legislation to curb the proliferation of baby factories. The authors advocate for regulations that can effectively address the shortcomings of current surrogacy and adoption practices in Nigeria.

Okonkoh and Odunaike's (2023) study assessed the legal complexities surrounding surrogacy in Nigeria.<sup>26</sup> Given the absence of specific surrogacy laws, the authors explore the potential application of existing contract principles to these arrangements. The study highlights the lack of comprehensive data on infertility rates in Nigeria, but acknowledges the growing demand for Assisted Reproductive Technologies (ART) like surrogacy. This context raises

---

<sup>25</sup> Al Chukwuma Okoli and Chika Eze, "‘Baby Factories’ Versus the Objectification of Surrogacy Cum Child Adoption in Nigeria" *Human Affairs* [2021] 31(2) [212-222] <<https://doi.org/10.1515/humaff-2021-0017>>

<sup>26</sup> Amarachi Chizaram Okonkoh and Dorcas Odunaike, 'Contract for Gestational Services: Examining the Legal Status and Enforceability of Surrogacy Arrangements in Nigeria' in Olanike S Adalakin and Erebi Ndoni (Editors), *Reproductive Health and Assisted Reproductive Technologies in Sub-Saharan Africa: Issues and Challenges* (Palgrave Macmillan, 2023) 257-290 <[https://doi.org/10.1007/978-981-99-2411-0\\_11](https://doi.org/10.1007/978-981-99-2411-0_11)>

crucial legal questions, particularly regarding the enforceability of surrogacy contracts and the determination of parental rights in the absence of clear regulations.

Overall, these studies highlight the complexities surrounding surrogacy in Nigeria.

#### **2.3.4 Healthcare And Medical Practices In Surrogacy**

Regarding healthcare and medical practices in surrogacy, several studies have been conducted. One study by Baron (2023) challenges the notion of surrogacy as medically necessary, arguing it's a socio-legal intervention, not a medical one.<sup>27</sup> The study critiques policies permitting surrogacy only under medical necessity, contending they obscure its true motivations. Baron argues that surrogacy doesn't directly address health harms and questions the distinction between "social" and "medical" surrogacy. Overall, the study calls for a more nuanced understanding of surrogacy's complexities beyond medical frameworks.

Payne and others (2019) conducted a critical interpretative review of qualitative research on the experiences of surrogates and intended parents, proposing a typology of surrogacy arrangements.<sup>28</sup> Analyzing 39 articles across various disciplines and countries, they categorize relationships into four types: open, restricted, structured and enmeshed. The typology goes beyond altruistic versus commercial and traditional versus gestational surrogacy, considering factors like contact frequency, expectations and cultural contexts. The study aims to inform research, bioethical discussions and policy debates on surrogacy, advocating for a relational justice approach.

---

<sup>27</sup> Teresa Baron, 'Surrogacy and the Fiction of Medical Necessity' *Cambridge Quarterly of Healthcare Ethics* [2024] 33(1) [40-47] <doi:10.1017/S0963180123000269>

<sup>28</sup> Jenny Gunnarsson Payne, Elzbieta Korolczuk and Signe Mezinska, 'Surrogacy Relationships: A Critical Interpretative Review' *Upsala Journal of Medical Sciences* [2020] 125(2) [183-191] <<https://doi.org/10.1080%2F03009734.2020.1725935>>

Brandão and Garrido (2023) conduct a comprehensive review of commercial surrogacy, exploring its legal, ethical, social and cultural dimensions globally in the 21st century.<sup>29</sup> They analyze 248 articles and highlight the increasing demand for surrogacy, particularly from women without a uterus, single men and same-sex male couples. The study underscores significant ethical dilemmas and varying legislative landscapes worldwide, leading to patients seeking surrogacy treatments abroad and potential legal conflicts. Despite concerns about exploitation, commercial surrogacy persists in many countries with limited regulation. The study concludes that the absence of international legal standards leaves the practice largely unregulated.

Tanderup and others (2015) conducted a mixed methods study to examine ethical issues in informed consent for embryo transfer and fetal reduction in commercial gestational surrogacy in Delhi, India.<sup>30</sup> Interviews with doctors, surrogate mothers and agents revealed that surrogate mothers lacked understanding of risks, doctors often made unilateral decisions and commissioning parents were indirectly involved. Themes included difficulties in explaining procedures, autonomy issues, self-payment of fertility treatment and conflicts of interest. The study concluded that clinical decisions were primarily made by doctors, surrogate mothers were inadequately informed and regulation was needed to protect surrogate mothers' interests.

Aznar and Martinez (2019) investigate surrogate motherhood, a practice where a woman carries an embryo not biologically related to her for a contracting couple or individual,

---

<sup>29</sup> Pedro Brandão and Nicolás Garrido, 'Commercial Surrogacy: An Overview' *Revista Brasileira de Ginecologia e Obstetrícia* (2023) 44 [1141-1158] <doi: 10.1055/s-0042-1759774>

<sup>30</sup> Malene Tanderup and others, 'Informed Consent in Medical Decision-Making in Commercial Gestational Surrogacy: A Mixed-Methods Study in New Delhi, India' *Acta obstetrica et gynecologica Scandinavica* [2015] 94(5) [465-472] <<https://doi.org/10.1111/aogs.12576>>

often involving financial compensation.<sup>31</sup> The study focuses on medical concerns, especially potential disabilities in children born through surrogacy and highlights bioethical issues. Surrogacy is criticized for objectifying the surrogate mother, using her body for others' benefit and treating the child as a disposable object. The study underscores ethical dilemmas surrounding surrogacy, emphasizing its commodification of both the surrogate mother and the child.

Söderström-Anttila and others (2015) conducted a systematic review to assess obstetric, medical and psychological outcomes for surrogate mothers, intended parents and children born via surrogacy.<sup>32</sup> They searched databases up to February 2015, identifying 55 relevant articles. The medical outcomes for children were generally favourable, with rates of multiple pregnancies ranging from 2.6% to 75.0%. Surrogate mothers experienced obstetric complications such as hypertensive disorders (3.2–10%) and placenta praevia/placental abruption (4.9%). Most surrogate mothers demonstrated normal psychological profiles, although challenges related to relinquishing the child were noted. Children's psychological well-being was found to be good at ages 5 to 15, comparable to children born via other assisted reproductive technologies or natural conception. The study concluded that most surrogacy arrangements were successful, with little evidence of harm to children, although caution is advised due to methodological limitations.

Overall, these literatures shed light on the health and medical perspectives of surrogacy, emphasizing the issues faced by surrogate mothers, the possible complications and the child born through surrogacy.

---

<sup>31</sup> Justo Aznar and Miriam Martínez Peris, 'Gestational Surrogacy: Current View' *The Linacre Quarterly* (2019) 86(1) [56-67] <<https://doi.org/10.1177/0024363919830840>>

<sup>32</sup> Viveca Söderström-Anttila and others, 'Surrogacy: Outcomes for Surrogate Mothers, Children and the Resulting Families—A Systematic Review' *Human Reproduction Update* [2016] 22(2) [260-276] <<http://dx.doi.org/10.1093/humupd/dmv046>>

### 2.3.4 Attitude Towards Surrogacy

There is a complex mix of perception and attitude toward surrogacy among different populations. This is influenced by a variety of factors.

Saadeh and others (2020) conducted a study to evaluate the attitudes of Jordanian healthcare workers toward surrogacy.<sup>33</sup> They randomly selected municipalities from three regions in Jordan and included various healthcare facilities. Data were collected through self-administered questionnaires from 382 participants. The majority of participants (75%) did not support legalizing surrogacy in Jordan, with negative attitudes toward both commercial (85.1%) and noncommercial (76.4%) surrogacy. Religious considerations were cited as the primary reason for these attitudes. Significant differences in attitudes were observed across different job titles. The study concluded that negative attitudes toward surrogacy were primarily influenced by religious beliefs, although cultural changes in the community may impact attitudes in the future.

Alabi's (2020) study investigates the perception of surrogacy within the Yoruba socio-cultural context of Ado-Ekiti, Nigeria.<sup>34</sup> The research acknowledges the potential benefits of surrogacy but emphasizes the ethical and legal concerns surrounding the practice, particularly in a context with minimal regulation. The study focuses on the potential impact of surrogacy on Yoruba cultural values. The study argues that existing social, cultural and religious beliefs heavily influence attitudes towards reproduction within this community. These beliefs are seen as posing significant challenges to the acceptance and practice of surrogacy. In-depth interviews with stakeholders like traditional birth attendants and gynecologists reveal concerns

---

<sup>33</sup> Rami Saadeh and others, 'Attitude of Jordanian Health Care Workers toward Surrogacy' *Journal of Family & Reproductive Health* [2020] 14(1) [5-13] retrieved from <<https://jfrh.tums.ac.ir/index.php/jfrh/article/view/1259>>

<sup>34</sup> Oluwatobi Joseph Alabi, 'Perceptions of Surrogacy within the Yoruba Socio-Cultural Context of Ado-Ekiti, Nigeria' *F1000Research* (2020) 9(103) [1-23] <<http://dx.doi.org/10.12688/f1000research.20999.2>>

that surrogacy disrupts the "sacredness and cultural sanctity" of the family system. The author highlights the need for a shift in the socio-cultural framing of reproduction within the Yoruba community to accommodate medical interventions like surrogacy. Increased acceptance would require these practices to be seen as less stigmatized and more compatible with existing cultural values.

Poote and van den Akker (2009) investigated British women's attitudes towards surrogacy using components of the theory of planned behavior (TPB).<sup>35</sup> They surveyed 187 women from the general public and found significant socio-demographic differences between those willing and unwilling to become surrogate mothers. Attitudes towards surrogacy differed between these groups and were influenced by factors such as age, attitudes towards advertising and perceptions of the consequences of surrogacy. The study supported the predictive utility of TPB components in differentiating attitudes towards surrogacy. However, further research with larger sample sizes is recommended to determine if reported attitudes translate into actual behaviors. The study concluded that negative attitudes towards surrogacy may be influenced by stigma associated with the practice.

Rodríguez-Jaume (2021) investigates public opinion on surrogate pregnancy (SP) through a scoping review of 31 scientific articles spanning from 1985 to 2017 across 13 countries.<sup>36</sup> The study highlights the scarcity of opinion polls in SP research despite its significance in bioethical, legal and media discussions. The review identifies various subtopics covered by the studies, revealing SP as a complex socio-cultural construct and 'social problem' shaped by conflicting narratives and attitudes globally. Additionally, the article presents

---

<sup>35</sup> Aimee E Poote and Olga BA van den Akker, 'British Women's Attitudes to Surrogacy' *Human Reproduction* [2009] 24(1) [139-145] <<https://doi.org/10.1093/humrep/den338>>

<sup>36</sup> María José Rodríguez-Jaume, María José González-Río and Diana Jareño-Ruiz, 'Cross-Border Reproductive Care: Opinions and Attitudes of Society towards Surrogate Pregnancy' *Current Sociology* [2021] 69(2) [266-285] <<https://doi.org/10.1177/0011392120964892>>

findings from a survey conducted in Spain in 2018, providing insights into the attitudes of the Spanish population towards adoption, fostering and gestational surrogacy, thus contributing to the understanding of SP on a national level.

PHEME and others (2020) conducted a qualitative case study to explore childless women's perceptions of surrogacy as an assistive reproductive technique.<sup>37</sup> The study aimed to identify childless women, assess their awareness and knowledge of surrogacy, understand their values and beliefs regarding surrogacy and determine their willingness to consider surrogacy as an option for addressing infertility. Ten childless women were recruited from a social worker's caseload and semi-structured interviews were conducted. Data analysis revealed that participants were aware of surrogacy and would consider it as an option to address their infertility-related childlessness. Saturation was reached with the seventh participant, indicating rich data collection. The study highlights the importance of understanding the perspectives of childless women on surrogacy in the context of assisted reproductive techniques.

---

<sup>37</sup> Maragane Jerminah PHEME, Sello Levy Sithole and Rambilani Nancy Malema, 'The Perceptions of Childless Women on Surrogacy as an Assisted Reproductive Technique (ART) in Lebowakgomo, Capricorn District, Limpopo Province' *Social Work* [2020] 56(3) [328-346] <<http://dx.doi.org/10.15270/52-2-861>>

## CHAPTER THREE

### DEFINING PARENTAL RIGHTS AND OBLIGATIONS IN SURROGACY

#### 3.1 Existing Legal Frameworks

In Nigeria, surrogacy is neither officially forbidden nor recognised by the law, leaving it in a legal limbo. This implies that someone cannot be held accountable for a crime if they participate in surrogacy or sign such an agreement.<sup>1</sup> However, family law statutes and case law precedents serve as the primary sources of the legal framework governing parental rights and obligations, especially when it comes to child custody disputes, which may introduce bias. The basis for the country's adjudication and enforcement of parental rights is the Marriage Dissolution Act and the rulings of the judiciary. Surrogacy cases that are brought before the court may be challenging even though contracts are written because this type of agreement has not been accepted by the courts. Still, this research will consider certain laws.

#### **Matrimonial Causes Act 1970**

One of the key pieces of legislation governing matrimonial matters, such as divorce, custody and maintenance, is the Matrimonial Causes Act, which was passed in 1970 and has since been amended.<sup>2</sup> In the event of a divorce, the MCA's key provisions offer procedures for settling arguments over child custody, care and upbringing. The guiding principle behind these provisions is that the child's welfare comes first and should be taken into account in all decisions pertaining to guardianship and custody.

The Matrimonial Causes Act, Section 71, grants the court the discretionary power to make decisions about the upbringing, maintenance and custody of children after a marriage

---

<sup>1</sup> Olanike S Adalaku, 'The Concept of Surrogacy in Nigeria: Issues, Prospects and Challenges' African Human Rights Law Journal [2018] 18(2) [605-625] <<http://dx.doi.org/10.17159/1996-2096/2018/v18n2a8>>

<sup>2</sup> Cap M7 LFN 2004.

dissolves. The child's welfare is the court's top priority and it may take into account a number of variables, including the child's age, gender, health, educational needs and any other pertinent circumstances. Crucially, the MCA stresses that choices about guardianship and custody must be made with the child's best interests in mind, giving priority to stability, continuity and the maintenance of family ties.

### **The Child Rights Act 2003**

In Nigeria, the Child Rights Act (CRA) of 2003 is a vital piece of legislation that attempts to protect the rights and welfare of children throughout the nation. Section 301 of the Act, which does not specifically address surrogacy, does contain provisions that are pertinent to comprehending the legal framework surrounding surrogacy arrangements, especially with regard to adoption and guardianship. In this regard, Section 301 emphasizes how critical it is to take the child's best interests into account in all adoption and guardianship-related decisions.

The Child Rights Act (CRA), enacted to adhere to the UNCRC, establishes fundamental principles and prerequisites for the welfare, protection and upbringing of Nigerian children.<sup>3</sup> The Child Rights Act (CRA), enacted to adhere to the UNCRC, establishes fundamental principles and prerequisites for the welfare, protection and upbringing of Nigerian children.

The legal procedures for adoption are outlined in Section 301 of the CRA, which emphasizes the need to obtain consent from relevant authorities, such as the court and government agencies, prior to finalising an adoption. The Act attempts to guarantee that adoptions and consequently surrogacy agreements, are carried out in the child's best interests by mandating clear processes and legal supervision.<sup>4</sup>

---

<sup>3</sup> United Nations Convention on the Rights of the Child, 1989.

<sup>4</sup> Olayinka Silas Akinwumi, 'Legal Impediments on the Practical Implementation of the Child Right Act 2003' *International Journal of Legal Information* [2009] 37(3) [385-396]  
<<https://doi.org/10.1017/S0731126500005400>>

The Act's focus on the child's best interests is consistent with the core ideas that underpin legislation pertaining to surrogacy. It emphasizes how crucial it is to protect the wellbeing, security and mental health of children born via surrogacy. This clause emphasizes how important it is for surrogacy agreements to put the child's rights and long-term welfare first.

In addition, the CRA creates guardianship and custody frameworks and outlines the legal rights and obligations of adoptive parents.<sup>5</sup> Although surrogacy presents unique challenges in defining parental roles, the Act's provisions regarding guardianship and custody provide a fundamental framework for ensuring responsible parenting and caregiving within surrogacy arrangements.

### **Contract Law**

Since surrogacy agreements involve legally binding contracts between intended parents and surrogate mothers, contract law is essential to the regulation of surrogacy arrangements.<sup>6</sup> The legal framework for regulating contractual relationships, including those formed in the context of surrogacy, is provided by the Nigerian Contract Act of 1990 for all states (with the exception of Lagos state, which has its own version). A legally enforceable agreement in which parties exchange promises or obligations with the aim of establishing legal relations is referred to as a contract under this Act. The contract Act of 1990 describes the necessary components of a legitimate contract in the context of surrogacy, including offer, acceptance, consideration, capacity, legality of object and clarity of terms.

---

<sup>5</sup> Ibid.

<sup>6</sup> Agbonika John Musa Alewo, 'The Principle and Nature of Law of Contract in Nigeria: Formation of Binding Contract' *Journal of Politics and Law* [2012] 5(4) [123-128]  
<<http://dx.doi.org/10.5539/jpl.v5n4p123>>

The Contract Act guarantees that surrogacy agreements contain precise and unambiguous terms that clearly define the rights and responsibilities of each party.<sup>7</sup> The Act, for instance, makes sure surrogate mothers are aware of their obligations during pregnancy and childbirth, including following medical guidelines and giving up parental rights following delivery. In a similar vein, intended parents have contractual obligations to offer support and monetary compensation during the surrogacy process.

Also, the enforceability of surrogacy contracts in Nigerian courts is governed by the Contract Act of 1990. It specifies the legal recourse that either party may pursue in the event of a contract breach, guaranteeing that disagreements over contracts resulting from surrogacy agreements are settled in accordance with accepted legal norms. Furthermore, the Act protects surrogacy contracts from coercion or undue influence by guaranteeing that all parties sign agreements willingly and fully comprehend their terms.

### **Case Law Precedents**

Nigerian case law precedents have a big influence on the legal environment surrounding parental rights and responsibilities, especially when it comes to guardianship and custody disputes.<sup>8</sup> These court rulings, which are rendered by higher courts, offer dependable explanations of legal doctrine and set precedents for similar cases in the future. In the field of family law, courts that are deciding cases involving surrogacy and other alternative family arrangements can benefit greatly from consulting case law precedents.<sup>9</sup>

---

<sup>7</sup> Adejoke Oyewunmi and Abiola Sanni, 'Challenges for the Development of Unfair Contract Terms Law in Nigeria' *University of Western Australia Law Review* [2013] 37(1) [86-106] retrieved <<https://www8.austlii.edu.au/cgi-bin/viewdoc/au/journals/UWALawRw/2013/6.pdf>>

<sup>8</sup> Bolaji Owasanoye, 'The Regulation of Child Custody and Access in Nigeria' *Family Law Quarterly* [2005] 39(2) [405-428] <<https://www.jstor.org/stable/25740497>>

<sup>9</sup> Katherine Drabiak and others, 'Ethics, Law and Commercial Surrogacy: A Call for Uniformity' *Journal of Law, Medicine and Ethics* (2007) 35(2) [300-309] <<https://doi.org/10.1111/j.1748-720X.2007.00139.x>>

The Nigerian case law precedents are noteworthy for their observance of the stare decisis principle, which translates to "to stand by things decided." Generally speaking, courts have to follow precedents set by other courts with similar jurisdiction.<sup>10</sup> Consequently, lower courts are bound by judicial decisions made in cases concerning parental rights and obligations, guaranteeing consistency and predictability in the course of the legal system.

Case law precedents in the surrogacy context can shed light on how judges have handled disagreements involving commissioning parents, surrogate mothers and children born via surrogacy agreements. Due to its relatively recent introduction in Nigeria, surrogacy may not have been specifically discussed in previous cases; however, courts may apply existing legal precedents and principles to settle disputes pertaining to surrogacy.<sup>11</sup>

For example, courts may cite well-established family law precepts, like the best interests of the child standard, in cases where disagreements emerge regarding parental rights and custody of a child born via surrogacy. This norm, which is codified in laws such as the Matrimonial Causes Act, places the child's welfare and well-being above all other factors.<sup>12</sup> When deciding on custody arrangements, courts may also take into account elements like the surrogate mother's welfare, the commissioning parents' intentions and the child's biological ties.<sup>13</sup>

Additionally, case law precedents can clarify matters pertaining to the legal standing of surrogacy agreements and the enforcement of contracts. Courts have the authority to review surrogacy contracts for legality and enforceability, taking into account elements like consent,

---

<sup>10</sup> Gaius Ezejiolor, 'Stare Decisis in the Nigerian Courts' *Nigerian Law Journal* [1972] 6 [47-59].

<sup>11</sup> Olanike S Adedokun, 'The Concept of Surrogacy in Nigeria: Issues, Prospects and Challenges' *African Human Rights Law Journal* [2018] 18(2) [605-625] <<http://dx.doi.org/10.17159/1996-2096/2018/v18n2a8>>

<sup>12</sup> Nwudego Nkemakonam Chinwuba, *Family and Succession Law in Nigeria* (Kluwer Law International, 2022)

<sup>13</sup> *Ibid.*

consideration and public policy. In the absence of specific legislative guidance on surrogacy, Nigerian courts may also be influenced by precedents from other jurisdictions with more developed surrogacy legal frameworks.

All things considered, case law precedents offer helpful direction when resolving legal conflicts pertaining to parental rights and obligations in surrogacy, but their applicability may change as the law changes. Courts may be asked to address new legal challenges and modify long-standing legal precepts in order to accommodate the changing needs of families created through surrogacy agreements as surrogacy grows in popularity in Nigeria.

### **3.2 Analysis and Implications**

The majority of artificial reproductive technology clinics in Nigeria operate under the Human Fertilisation and Embryology Authority Guidelines of the United Kingdom due to the lack of legislative measures governing surrogacy in Nigeria.<sup>14</sup> However, the Nigerian Law Reform Commission has suggested that any child born to a woman during her marriage who was the result of artificial insemination or embryo implantation in her body should be considered her husband's child.<sup>15</sup> In addition, even if the child is the commissioning parents' biological child, the Commission suggests that in cases where a child is born through surrogacy, the commissioning parents formally adopt the child.<sup>16</sup> This is being done in order to keep the surrogate mother from coming back to pick up the child.<sup>17</sup>

---

<sup>14</sup> J O Fadare and A A Adeniyi, 'Ethical Issues in Newer Assisted Reproductive Technologies: A View from Nigeria' *Nigerian Journal of Clinical Practice* [2015] 18 [57-61] <<https://doi.org/10.4103/1119-3077.170823>>

<sup>15</sup> Law Reform Commission 'Reform of Nigerian Family Law' (III) 15.

<sup>16</sup> Ibid, 16.

<sup>17</sup> Michael Attah, *Family Welfare Law in Nigeria* (Ambik Press Ltd, 2016) 215.

The examination of relevant case law precedents, the Matrimonial Causes Act, the Child Rights Act and the Contract Act provides important insights into the complexities of surrogacy arrangements in Nigeria and the implications they have for different stakeholders. First of all, in the event of a marital dissolution, the Matrimonial Causes Act provides a fundamental legal framework for settling arguments concerning child custody and guardianship.<sup>18</sup> Its emphasis on putting the child's welfare first emphasizes how crucial it is to make sure that any decisions made regarding surrogacy arrangements are in the child's best interests.<sup>19</sup> The unique nature of surrogacy agreements and the lack of specific provisions addressing such arrangements may present challenges for the Act's applicability to surrogacy scenarios.

In a similar vein, the Child Rights Act offers crucial safeguards for children rights, such as guidelines for adoption, custody and parental duties.<sup>20</sup> The Act's purpose is to protect the welfare of children, but its applicability to surrogacy is still up for debate. This is particularly true when it comes to the legal standing of children born via surrogacy and the division of parental rights and obligations. Furthermore, surrogate mothers and intended parents have rights and obligations that are outlined in the Contract Act of 1990, which also controls the creation and enforcement of surrogacy contracts. Its application to surrogacy agreements, however, can make it more difficult to enforce contracts involving intricate moral and legal issues.

---

<sup>18</sup> Odidika Ugochukwu Umeora and others, 'Surrogacy in Nigeria: Legal, Ethical, Socio-Cultural, Psychological and Religious Musings' *African Journal of Medical and Health Sciences* [2014] 13(2) [105] <doi:10.4103/2384-5589.144579>

<sup>19</sup> Leonard U Ngwu, Martha Uchenna Ogbuke and Raphael Chima Ofoegbu, 'Parenting and Child Welfare in Nigeria' *ESUT Journal of Social Sciences* [2020] 5(1) [194-214] retrieved from <<https://esutjss.com/index.php/ESUTJSS/article/view/50>>

<sup>20</sup> Ibid.

All things considered, this examination of the laws that are currently in place, including statutes, clarifies the complexities of surrogacy agreements in Nigeria. It emphasizes the need for comprehensive regulatory measures that address the ethical, social and cultural issues surrounding assisted reproduction and parental rights, as well as the rights and welfare of all parties involved. Policymakers and legal professionals must work to create inclusive, flexible legal frameworks that protect the rights and dignity of all parties involved in surrogacy arrangements while promoting the welfare of children born via surrogacy.

### **3.3 Application to Surrogacy**

It is extremely difficult to apply current legal frameworks to surrogacy agreements, especially when there are disagreements between commissioning parents and surrogate mothers. Legal frameworks like the Matrimonial Causes Act and family law statutes offer a basis for settling custody disputes, but they might not adequately tackle the intricacies involved in surrogacy agreements. When attempting to apply existing frameworks to surrogacy, several significant challenges come to light:

#### **Lack of Specific Legislation**

One of the primary challenges is the absence of specific legislation addressing surrogacy in Nigeria.<sup>21</sup> Certain ethical, legal and medical issues are specific to surrogacy and may not be sufficiently addressed by current legislation. In the absence of explicit legislative guidance regarding surrogacy rights, obligations and dispute resolution procedures, courts might find it difficult to apply general family law guidelines to surrogacy cases.

---

<sup>21</sup> Olanike S Adedokun, 'The Concept of Surrogacy in Nigeria: Issues, Prospects and Challenges' *African Human Rights Law Journal* [2018] 18(2) [605-625] <<http://dx.doi.org/10.17159/1996-2096/2018/v18n2a8>>

## **Ambiguity in Parental Rights**

Surrogacy blurs traditional notions of parental rights and responsibilities, raising questions about who should be recognized as the legal parents of a child born through surrogacy.<sup>22</sup> When disagreements about custody, guardianship and parental authority occur, it may be difficult to determine parental rights in surrogacy agreements using the current frameworks. Within the parameters of current legal principles, courts may encounter difficulties in striking a balance between the interests of commissioning parents, surrogate mothers and the child's best interests.<sup>23</sup>

## **Complexities of Biological and Gestational Surrogacy**

The distinction between traditional and gestational surrogacy further complicates the application of existing legal frameworks.<sup>24</sup> Parental and maternity rights may come up in traditional surrogacy, where the surrogate mother is genetically related to the child. Legal determinations of parenthood in gestational surrogacy, on the other hand, may place greater weight on contractual agreements and intentions than on biological ties, since the surrogate mother has no genetic connection to the child. The insufficiencies in current legislation could result in inconsistent and unpredictable legal outcomes.

**Contractual Ambiguities and Enforcement:** Commissioning parents and surrogate mothers frequently enter into contractual agreements as part of surrogacy arrangements. However, given the current legal frameworks, surrogacy contracts may be difficult to enforce and resolve contractual disputes. When concerns about consent, payment and the termination of parental

---

<sup>22</sup> Wilson Diriwari, 'Contextualizing the Concept of Parental Responsibilities and Child Protection in a Legal Pluralistic Nigeria' *Japan Journal of Research* (2023) 4(5) [1-4] <<https://journals.sciencexcel.com/index.php/jjr/article/view/453/481>>

<sup>23</sup> Ibid.

<sup>24</sup> Justo Aznar and Julio Tudela, 'Gestational Surrogacy: Ethical Aspects' *Medicina e Morale* [2018] 67(3) [277-290] <<https://doi.org/10.4081/mem.2018.539>>

rights are involved, courts may find it challenging to interpret and uphold surrogacy agreements.<sup>25</sup>

### **Ethical and Human Rights Considerations**

Commissioning parents and surrogate mothers frequently sign complex contracts as part of the surrogacy process. However, given the current legal frameworks, it might be difficult to enforce surrogacy contracts and resolve legal disputes. When questions concerning consent, payment and the relinquishment of parental rights are involved, courts may encounter challenges in interpreting and upholding surrogacy agreements.<sup>26</sup> Courts may find it difficult to uphold the core concepts of justice, fairness and human dignity while balancing conflicting interests and values.

Applying current legal frameworks to surrogacy agreements generally poses a number of difficulties, especially when it comes to settling disagreements between commissioning parents and surrogate mothers. Comprehensive legislative reforms that are based on moral standards, global best practices and stakeholder consultations are needed to address these issues. Legislators can guarantee the efficient and just regulation of surrogacy in Nigeria by creating inclusive, transparent laws that put the rights and welfare of all parties first.

### **3.4 Case Analysis**

As an assisted reproductive technique, surrogacy presents difficult issues regarding parental rights, reproductive autonomy and the best interests of the kid because it entails complex relationships between intended parents, surrogate mothers and the offspring. Diverse

---

<sup>25</sup> Richard A Epstein, 'Surrogacy: The Case for Full Contractual Enforcement' *Virginia Law Review* [1995] 2305-2341] <<https://doi.org/10.2307/1073580>>

<sup>26</sup> Odidika Ugochukwu Umeora and others, 'Surrogacy in Nigeria: Legal, Ethical, Socio-Cultural, Psychological and Religious Musings' *African Journal of Medical and Health Sciences* [2014] 13(2) [105] <[doi:10.4103/2384-5589.144579](https://doi.org/10.4103/2384-5589.144579)>

approaches to defining parental rights, regulating surrogacy agreements and resolving disputes characterize the legal landscape surrounding surrogacy across jurisdictions. In light of this, studying case studies provides invaluable insights into the real-world application of surrogacy laws, how courts interpret contracts and how changing legal precedents affect the rights and obligations of all parties.

In March 1984, the historic *Baby M* case occurred, which was a turning point in surrogacy-related American legal history. Mary Beth Whitehead replied to an Infertility Centre of New York ad looking for women who would help infertile couples become pregnant. A surrogacy agreement was made with Whitehead by Elizabeth Stern and her husband, William Stern, who were worried about the possible risks of pregnancy because of Elizabeth's multiple sclerosis. The plan was for Whitehead to become pregnant with Stern's biological child and then give Elizabeth parental rights. Melissa Elizabeth Stern was the name given by the Sterns to Whitehead's daughter, who was born on March 27, 1986. But shortly after, Whitehead made demands for the baby's return, which resulted in a custody battle. When Whitehead left with the baby and fled to Florida, things got worse. Following legal action, the New Jersey Superior Court first granted the Sterns custody on the grounds that it was in the child's best interests. After Whitehead filed an appeal, the Supreme Court of New Jersey upheld the trial court's decision to grant the Sterns custody while invalidating surrogacy agreements as being against public policy. The decision to grant Whitehead visitation rights set a major legal precedent for surrogacy. Though the Sterns were acknowledged as the child's legal guardians, the court's ruling highlighted the difficulties in balancing intended parents' and surrogate mothers' interests with the child's best interests. The case made clear how important it is to have thorough legal

frameworks controlling surrogacy in order to protect all parties and put the child's best interests first.

Similarly, *Johnson v. Calvert*<sup>27</sup> raised fundamental questions about the determination of parental rights in surrogacy arrangements, particularly concerning genetic versus gestational parenthood. In this case, the plaintiffs, Mark and Crispina Calvert, sought to have a child but were unable to conceive. They made a deal with their friend Anna to use her as a surrogate mother for an in vitro fertilisation baby. But disagreements emerged over insurance plans and Anna's medical background. The California Supreme Court decided in the Calvert's favour, finding that they are the child's biological, natural and genetic parents and that Anna has no parental rights. The primary concerns were whether parental rights could be revoked and whether parental rights should be determined by genetics rather than the act of bearing a child. Given that the Calvert's planned to have the child born and raise it as their own, the court upheld their full parental rights. The California Supreme Court's decision established a precedent for acknowledging intended parents as the legal guardians of children born through surrogacy, emphasizing the significance of the parties' intentions and contractual agreements in establishing parental rights. Dissident views, on the other hand, highlighted worries about possibly commodifying children and stressed the importance of putting the welfare of the child ahead of contractual agreements.

In *RR vs MH*,<sup>28</sup> the court grappled with issues of consent, coercion and the enforceability of surrogacy agreements. The case involved a dispute over custody of a baby girl born in August 1997 in Leominster. The defendant mother and father, who are the biological parents, paid a fee of \$6,000 and signed a surrogacy agreement in 1996 through the New

---

<sup>27</sup> *Johnson v Calvert* 851 P 2d 776 [1993].

<sup>28</sup> *RR v MH* 426 Mass 501 [1998].

England Surrogate Parenting Advisors (NESPA). The father and his spouse, whose infertility prevented them from becoming pregnant, looked into surrogacy after learning about the dangers of in vitro fertilisation and contemplating adoption as a last resort. However, the mother, who was already married and had two kids, answered a NESPA ad because she wanted to help an infertile couple get pregnant again and make money at the same time. After several meetings, evaluations and psychological counselling, the father and mother agreed to be surrogate mothers. The mother agreed to give up custody and the agreement stated that the father would have full parental rights after the child was born. But the mother changed her mind and said she wanted to keep the child after a successful insemination and some compensation. She gave the uncashed payments back, but she didn't try to reimburse the father for any costs he had paid while she was pregnant. The mother voluntarily and free from coercion signed the agreement, the court found and she understood all of its terms. In the end, the surrogacy agreement's legality and the parties' respective rights had to be decided by the court. The mother's parental rights were terminated and the husband's wife was given permission to adopt the child, although the court recognised that giving custody to the father was in the child's best interests. The court further stated that there is no "legal ban on surrogacy when the surrogate mother offers her voluntary services as a surrogate and is granted the freedom to revoke her consent and exercise her parental rights. This case brought to light the intricacies of surrogacy agreements and the significance of guaranteeing informed consent, unambiguous contractual provisions and legal safeguards for all stakeholders.

When taken as a whole, these cases highlight the need for strong legal frameworks and moral standards regulating surrogacy agreements in order to safeguard the welfare and rights of intended parents, surrogate mothers and children. They stress the need for striking a balance

between intended parents' interests and the child's welfare as well as surrogate mothers' autonomy and agency. They also stress the court's role in resolving disputes and preserving the core values of justice, fairness and child welfare.

### **3.5 Comparative Analysis**

Comparative studies of surrogacy laws in various jurisdictions reveal that approaches to defining parental rights differ greatly, reflecting a range of ethical, legal and cultural viewpoints. For example, legal frameworks in the United States, Canada and the United Kingdom recognise intended parents as the biological parents of children born via surrogacy, as long as certain requirements are fulfilled. In the United States, a number of state laws and court rulings have made it easier for intended parents to be legally recognised; California, for example, has set the standard for surrogacy-friendly legislation.<sup>29</sup> For instance, the California Family Code Sections 7960-7962 permit intended parents to obtain pre-birth orders or parental orders following the child's birth, solidifying their parental rights. Similarly, Canada's Assisted Human Reproduction Act 2004 and the UK's Human Fertilisation and Embryology Act 2008 provide mechanisms for intended parents to acquire legal parenthood through court orders or parental orders, ensuring clarity and certainty in surrogacy arrangements. Nonetheless, there is currently no surrogacy-specific legislation in Nigeria. Due to the lack of regulating legislation, surrogacy agreements are essentially unregulated, which raises questions and may result in legal disputes about parental rights and obligations.<sup>30</sup>

---

<sup>29</sup> Pamela M White, 'Commercialization, Altruism, Clinical Practice: Seeking Explanation for Similarities and Differences in Californian and Canadian Gestational Surrogacy Outcomes' *Women's Health Issues* [2018] 28(3) [239-250] <<https://doi.org/10.1016/j.whi.2018.01.004>>.

<sup>30</sup> Olanike S Adedokun, 'The Concept of Surrogacy in Nigeria: Issues, Prospects and Challenges' *African Human Rights Law Journal* [2018] 18(2) [605-625] <<http://dx.doi.org/10.17159/1996-2096/2018/v18n2a8>>

On the other hand, other nations, like France and Germany, take a more restrictive stance towards surrogacy, outlawing or severely restricting the practice.<sup>31</sup> Contracts for surrogacy are null and void in France and intended parents who engage in surrogacy abroad may be subject to legal repercussions.<sup>32</sup> The French Civil Code and the Bioethics Law both codify this position, which reflects the nation's emphasis on upholding human dignity and opposing the commercialization of reproductive services.<sup>33</sup> Similarly, in Section 1(1)(7) of Germany's Embryo Protection Act prohibits surrogacy for commercial purposes and restricts altruistic surrogacy to cases where the surrogate mother is a close relative of the intended parents. These laws reflect Germany's commitment to upholding human dignity and safeguarding against the exploitation of women in reproductive contexts.<sup>34</sup> However, Nigeria does not have any explicit legislative limitations on surrogacy. This legal lacuna leaves intended parents, surrogate mothers and children born through surrogacy without sufficient legal protection, casting doubt on the validity and enforceability of surrogacy agreements.<sup>35</sup>

Moreover, some jurisdictions, like India and Ukraine, have emerged as popular destinations for international surrogacy arrangements due to comparatively lenient regulations and lower costs.<sup>36</sup> However, concerns have been raised about the exploitation of surrogate

---

<sup>31</sup> Nila Bala, 'The Hidden Costs of the European Court of Human Rights' Surrogacy Decision' *Yale Journal of International Law Online* [2014] 40 [11-19] <<https://www.yjil.yale.edu/files/2016/09/bala-proof-v-1-pdf-xqn5h2.pdf>>

<sup>32</sup> French Civil Code, article 16(7).

<sup>33</sup> Ibid

<sup>34</sup> Nila Bala, 'The Hidden Costs of the European Court of Human Rights' Surrogacy Decision' *Yale Journal of International Law Online* [2014] 40 [11-19] <<https://www.yjil.yale.edu/files/2016/09/bala-proof-v-1-pdf-xqn5h2.pdf>>

<sup>35</sup> Olanike S Adedokun, 'The Concept of Surrogacy in Nigeria: Issues, Prospects and Challenges' *African Human Rights Law Journal* [2018] 18(2) [605-625] <<http://dx.doi.org/10.17159/1996-2096/2018/v18n2a8>>

<sup>36</sup> Jenny Gunnarsson Payne, Elzbieta Korolczuk and Signe Mezinska, 'Surrogacy Relationships: A Critical Interpretative Review' *Upsala Journal of Medical Sciences* [2020] 125(2) [183-191] <<https://doi.org/10.1080%2F03009734.2020.1725935>>

mothers and the lack of comprehensive legal protections for all parties involved. In India, the Assisted Reproductive Technology (Regulation) Act 2021 governs surrogacy arrangements, allowing for commercial surrogacy under certain conditions. However, the Indian government has since introduced amendments to restrict surrogacy to altruistic purposes only, addressing concerns about exploitation and ethical considerations.<sup>37</sup> Similarly, Ukraine's Law on Assisted Reproductive Technologies permits surrogacy but requires extensive legal documentation and medical screening to protect the rights of all parties involved and ensure the welfare of the child.<sup>38</sup>

Overall, the comparative analysis underscores the diversity of approaches to surrogacy regulation globally and highlights the complex legal, social and ethical considerations at play. While some countries prioritize the autonomy and rights of intended parents, others prioritize the protection of surrogate mothers and children born through surrogacy.

Though a bill proposing the creation of a Nigerian Assisted Reproduction Authority was brought before the National Assembly in 2012 and read a second time on May 2, 2012. However, because it lacked the majority's support, this bill was not signed into law.<sup>39</sup> Subsequently, in 2014, the National Health Act 2014 was enacted. Section 10 forbids the use of assisted reproductive technologies and forbids anyone from modifying any genetic material, including embryonic DNA, or from performing nuclear transfer or embryo splitting procedures

---

<sup>37</sup> The Assisted Reproductive Technology (Regulation) Act, 2021.

<sup>38</sup> Cabinet of Ministers of Ukraine Registered Draft Law No. 6475 (concerning assisted reproductive technology) 2021.

<sup>39</sup> House of Representatives 'Votes and proceedings' (2 May 2012) 97  
<<http://nass.gov.ng/document/download/5555>> accessed 12 March 2024.

in order to clone humans. Offenders face a minimum sentence of five years in prison without the possibility of a fine.<sup>40</sup>

Therefore, lessons from global best practices and experiences can be applied as Nigeria considers regulatory reforms in this area to create a fair and inclusive legal framework that protects the welfare and rights of all parties involved in surrogacy arrangements.

---

<sup>40</sup> National Health 2014, section 50(2).

## CHAPTER FOUR

### ADVOCATING FOR A REGULATORY LAW

#### 4.1 Arguments For and Against Surrogacy Regulation

A range of perspectives are expressed by different parties in the conversation about surrogacy regulation in Nigeria. These cases gathered from the existing body of knowledge each make strong cases for and against the need for such regulations. The following are arguments made by proponents calling for surrogacy regulations:

##### **Protection of Rights**

Regulation, according to proponents, is required to safeguard the interests and rights of intended parents, children, and surrogate mothers, among other parties involved in surrogacy arrangements.<sup>1</sup> "Fiat justitia ruat caelum" encapsulates this sentiment, emphasizing the importance of justice prevailing even if it leads to drastic consequences.<sup>2</sup> Through the implementation of regulations, the state can guarantee the preservation of individuals' fundamental rights, protecting them against any possibility of exploitation or abuse during the surrogacy process.

##### **Mitigation of Exploitation**

Regulation can lessen the possibility that vulnerable people—especially surrogate mothers from underprivileged backgrounds—will be exploited.<sup>3</sup> "Nemo dat quod non habet" suggests, no one

---

<sup>1</sup> Olanike S Adedokun, 'The Concept of Surrogacy in Nigeria: Issues, Prospects and Challenges' *African Human Rights Law Journal* [2018] 18(2) [605-625] <<http://dx.doi.org/10.17159/1996-2096/2018/v18n2a8>>

<sup>2</sup> Henry Dianto P Sinaga, 'Fiat Justitia, Ruat Caelum: Reflections of Positivism in Enforcing Justice in Indonesia' *Philosophy and Paradigm Review* [2022] 1(1) [17-21] <<https://doi.org/10.56282/ppr.v1i1.199>>

<sup>3</sup> Odidika Ugochukwu Umeora and others, 'Surrogacy in Nigeria: Legal, Ethical, Socio-Cultural, Psychological and Religious Musings' *African Journal of Medical and Health Sciences* [2014] 13(2) [105] <[doi:10.4103/2384-5589.144579](https://doi.org/10.4103/2384-5589.144579)>

can give what they do not have,<sup>4</sup> highlighting the principle of fairness and preventing the exploitation of individuals who may be coerced into surrogacy arrangements due to financial hardship or other circumstances. By establishing guidelines for reasonable compensation, sufficient healthcare, and informed consent, regulations can safeguard the welfare of surrogate mothers.

### **Clarity and Certainty**

Clear legal guidelines can provide clarity and certainty for all parties involved, reducing the likelihood of disputes and ensuring enforceability of agreements.<sup>5</sup> "Dura lex sed lex," or "The law is harsh, but it is the law," underscores the importance of adherence to legal principles even when they may seem strict.<sup>6</sup> Through regulation, stakeholders in surrogacy arrangements can have clear expectations regarding their rights and responsibilities, minimizing ambiguity and promoting fairness in legal proceedings. Nevertheless, opponents may argue that...

### **International Best Practices**

Drawing upon international best practices and legal precedents, regulation can help align surrogacy practices in Nigeria with global standards, promoting ethical conduct and accountability.<sup>7</sup> The Latin phrase "Consensus facit legem," meaning "Consensus creates the law," emphasizes the role of collective agreement in shaping legal norms. By adopting regulations informed by experiences from other jurisdictions, Nigeria can establish a

---

<sup>4</sup> Jonathan G F Powell, 'Legal Latin' in James Clackson (Editor), *A Companion to the Latin Language* (Blackwell Publishing, 2011) 464-484.

<sup>5</sup> Katherine Drabiak and others, 'Ethics, Law and Commercial Surrogacy: A Call for Uniformity' *Journal of Law, Medicine and Ethics* (2007) 35(2) [300-309] <<https://doi.org/10.1111/j.1748-720X.2007.00139.x>>

<sup>6</sup> Jonathan G F Powell, 'Legal Latin' in James Clackson (Editor), *A Companion to the Latin Language* (Blackwell Publishing, 2011) 464-484.

<sup>7</sup> Olanike S Adedokun, 'The Concept of Surrogacy in Nigeria: Issues, Prospects and Challenges' *African Human Rights Law Journal* [2018] 18(2) [605-625] <<http://dx.doi.org/10.17159/1996-2096/2018/v18n2a8>>

framework that reflects universal principles of justice and human rights, fostering trust and confidence in surrogacy arrangements.

## **4.2 Arguments Against Surrogacy Regulation**

### **Infringement on Autonomy**

Opponents argue that excessive regulation may infringe on individual autonomy and reproductive freedoms, limiting personal choices about family formation.<sup>8</sup> "Volenti non fit injuria," which translates to "To a willing person, no injury is done," highlights the principle of individual consent and autonomy.<sup>9</sup> Overregulation may impose unnecessary restrictions on individuals seeking surrogacy as a means of family building, interfering with their right to make informed decisions about their own bodies and reproductive choices.

### **Potential for Underground Practices**

Overly restrictive legislation may drive surrogacy practices underground or abroad, where legal protections may be lacking, leading to greater risks for all parties involved.<sup>10</sup> "Ubi jus ibi remedium," meaning "Where there is a right, there is a remedy," underscores the importance of ensuring that legal avenues are available to address grievances. If regulations in Nigeria are too stringent, individuals may seek surrogacy services in jurisdictions with less oversight, exposing them to potential exploitation and undermining efforts to protect their rights.

**Moral Ambiguity:** Surrogacy involves complex moral and ethical considerations that defy simple regulatory solutions, requiring nuanced approaches that respect diverse values and

---

<sup>8</sup> Helen Prosser and Natalie Gamble, 'Modern Surrogacy Practice and the Need for Reform' *Journal of Medical Law and Ethics* [2016] 4(3) [257-274] <doi: 10.7590/221354016X14803383336842>

<sup>9</sup> Jonathan G F Powell, 'Legal Latin' in James Clackson (Editor), *A Companion to the Latin Language* (Blackwell Publishing, 2011) 464-484.

<sup>10</sup> Helen Prosser and Natalie Gamble, 'Modern Surrogacy Practice and the Need for Reform' *Journal of Medical Law and Ethics* [2016] 4(3) [257-274] <doi: 10.7590/221354016X14803383336842>

beliefs.<sup>11</sup> The legal principle "In dubio pro reo," which translates to "When in doubt, rule for the accused," highlights the importance of erring on the side of caution when moral ambiguity exists.<sup>12</sup> Opponents of surrogacy regulation argue that imposing blanket regulations may overlook the nuanced ethical dilemmas inherent in surrogacy arrangements, potentially disregarding the cultural, religious and personal beliefs of individuals involved.

### **Personal and Intimate Arrangements**

Attempts to regulate deeply personal and intimate arrangements such as surrogacy may inadvertently intrude into private spheres of life, raising questions about the appropriate role of the state in family matters.<sup>13</sup> The phrase "Salus populi suprema lex esto," meaning "The welfare of the people shall be the supreme law," emphasizes the state's duty to prioritize the well-being of its citizens.<sup>14</sup> However, opponents of surrogacy regulation argue that the state should refrain from excessive intervention in private matters such as family formation, respecting the autonomy and privacy of individuals involved in surrogacy arrangements.

These arguments underscore the complexity of surrogacy regulation and highlight the need for careful consideration of ethical, legal and social implications. While proponents advocate for regulation to protect vulnerable parties and ensure ethical practices, opponents raise valid concerns about individual autonomy, potential for underground practices, moral ambiguity and the role of the state in private affairs. Finding a balanced approach that addresses these

---

<sup>11</sup> Ibid.

<sup>12</sup> Jonathan G F Powell, 'Legal Latin' in James Clackson (Editor), *A Companion to the Latin Language* (Blackwell Publishing, 2011) 464-484.

<sup>13</sup> Helen Prosser and Natalie Gamble, 'Modern Surrogacy Practice and the Need for Reform' *Journal of Medical Law and Ethics* [2016] 4(3) [257-274] <doi: 10.7590/221354016X14803383336842>

<sup>14</sup> Jonathan G F Powell, 'Legal Latin' in James Clackson (Editor), *A Companion to the Latin Language* (Blackwell Publishing, 2011) 464-484.

concerns while safeguarding the rights and welfare of all parties involved remains a challenge in the debate surrounding surrogacy regulation.

### 4.3 Benefits of a Regulatory Law

The establishment of a regulatory law tailored to surrogacy arrangements offers numerous advantages, drawing insights from established legal frameworks in countries such as the United States, United Kingdom, Canada and India, which have been examined in this study. Firstly, such legislation would provide clear guidelines regarding parental rights, mirroring provisions found in the Family Code of California, the Human Fertilisation and Embryology Act of the UK and similar statutes in Canada and India.<sup>15</sup> By delineating parental rights through legal mechanisms inspired by these frameworks, the law would establish certainty and stability for all parties involved, mitigating the potential for disputes and confusion.

Moreover, a regulatory law could define the legal status of children born through surrogacy, echoing provisions in the aforementioned legal frameworks.<sup>16</sup> By explicitly recognizing children born via surrogacy as the legitimate offspring of the intended parents, similar to the legal recognition provided in the UK's Human Fertilisation and Embryology Act and India's Assisted Reproductive Technology (Regulation) Act, the law would eliminate legal ambiguities and ensure that children's rights are protected, including citizenship, inheritance and access to healthcare.<sup>17</sup>

---

<sup>15</sup> Robert L Stenger, 'The Law and Assisted Reproduction in the United Kingdom and United States' *Journal of Law and Health* [1994] 9 [135-161] retrieved from <<https://engagedscholarship.csuohio.edu/jlh/vol9/iss1/8/>>

<sup>16</sup> Olanike S Adedokun, 'The Concept of Surrogacy in Nigeria: Issues, Prospects and Challenges' *African Human Rights Law Journal* [2018] 18(2) [605-625] <<http://dx.doi.org/10.17159/1996-2096/2018/v18n2a8>>

<sup>17</sup> Odidika Ugochukwu Umeora and others, 'Surrogacy in Nigeria: Legal, Ethical, Socio-Cultural, Psychological and Religious Musings' *African Journal of Medical and Health Sciences* [2014] 13(2) [105] <[doi:10.4103/2384-5589.144579](https://doi.org/10.4103/2384-5589.144579)>

Furthermore, a regulatory framework could include provisions aimed at protecting surrogate mothers from exploitation. By establishing standards for informed consent, fair compensation and access to healthcare, inspired by practices in these jurisdictions, the law would uphold the dignity and rights of surrogate mothers, preventing their exploitation or coercion into surrogacy arrangements. Finally, regulatory oversight could mirror the monitoring practices employed in these countries, including measures to enforce compliance with ethical standards and prevent abuses and unethical practices within the surrogacy industry.

#### **4.4 Comprehensive Regulatory Framework For Surrogacy: Drawing From International Best Practices**

In response to the complexities surrounding surrogacy arrangements and the need for clear legal guidelines to protect the rights and welfare of all parties involved, this section proposes a comprehensive legislative framework for surrogacy in Nigeria. By examining existing laws and practices from international jurisdictions, Nigeria can adopt and adapt provisions that address key concerns while aligning with ethical principles and human rights standards.

##### **Parental Rights and Recognition**

One crucial aspect of surrogacy legislation is the definition and recognition of parental rights.<sup>18</sup> The United States' approach, as seen in various state laws and case precedents, could serve as a model. Nigeria can adopt provisions that recognize intended parents as the legal parents of children born through surrogacy, provided certain criteria are met.<sup>19</sup> This includes ensuring that

---

<sup>18</sup> Haim Abraham, 'A Family is what You Make It: Legal Recognition and Regulation of Multiple Parents' *American University Journal of Gender, Social Policy and the Law* [2017] 25(4) [405-444] retrieved from <<https://digitalcommons.wcl.american.edu/jgsp/vol25/iss4/2>>

<sup>19</sup> Ibid.

the surrogacy arrangement is voluntary, informed and conducted with the welfare of the child as the paramount consideration.

### **Surrogacy Agreements and Informed Consent**

The United Kingdom's Human Fertilisation and Embryology Act provides detailed criteria for surrogacy agreements, emphasizing informed consent, compensation and medical screening.<sup>20</sup>

Nigeria can incorporate similar provisions into its legislation, requiring surrogacy agreements to be in writing, signed by all parties and subject to review by an independent legal advisor. This ensures that surrogate mothers fully understand the terms and implications of the arrangement, including their rights, obligations and compensation.<sup>21</sup>

### **Protection of Surrogate Mothers**

India's Surrogacy (Regulation) Bill, 2019, offers valuable insights into protecting the rights and well-being of surrogate mothers. Nigeria can adopt provisions that mandate comprehensive health screenings, access to healthcare during and after pregnancy and the right to terminate the agreement under specified circumstances, such as health risks or coercion. Additionally, the legislation can include safeguards against exploitation, ensuring that surrogate mothers are treated with dignity, respect and fair compensation.<sup>22</sup>

### **Child's Legal Status and Welfare**

The United Kingdom's legislation provides procedures for obtaining parental orders, establishing the legal parentage of children born through surrogacy.<sup>23</sup> Nigeria can adopt similar mechanisms to ensure that children's rights and welfare are protected, including the issuance of

---

<sup>20</sup> Human Fertilisation and Embryology Act 2008, section 59.

<sup>21</sup> Summer James, 'Avoiding Legal Pitfalls in Surrogacy Arrangements' *Reproductive Biomedicine Online* [2010] 21(7) [862-867] <<https://doi.org/10.1016/j.rbmo.2010.06.037>>

<sup>22</sup> Olanike S Adedokun, 'The Concept of Surrogacy in Nigeria: Issues, Prospects and Challenges' *African Human Rights Law Journal* [2018] 18(2) [605-625] <<http://dx.doi.org/10.17159/1996-2096/2018/v18n2a8>>

<sup>23</sup> Human Fertilisation and Embryology Act 2008, sections 54 and 55.

birth certificates naming intended parents as the legal parents.<sup>24</sup> This clarity of legal status promotes stability and security for children born through surrogacy, ensuring their rights to care, support and inheritance.

### **Regulatory Oversight and Enforcement**

Canada's Assisted Human Reproduction Act establishes regulatory oversight to monitor assisted reproduction and surrogacy practices. Nigeria can create regulatory bodies or authorities responsible for licensing surrogacy agencies, enforcing compliance with the law and providing guidance on ethical standards.<sup>25</sup> By instituting effective regulatory mechanisms, Nigeria can ensure accountability, transparency and adherence to ethical practices in the surrogacy sector.

### **Breach of Contract Remedies**

The United Kingdom legal framework offers remedies for breach of surrogacy agreements, ensuring that contractual obligations are enforced and parties have access to justice.<sup>26</sup> Nigeria can adopt similar provisions, including mechanisms for mediation, arbitration or legal recourse in case of disputes between parties. Clear guidelines on breach of contract remedies promote fairness, equity and the resolution of conflicts in surrogacy arrangements.

### **Ethical Considerations and Bans on Commercial Surrogacy**

France's Civil Code prohibits commercial surrogacy and enforces strict ethical standards to protect the dignity and integrity of all parties involved.<sup>27</sup> Nigeria can incorporate similar ethical

---

<sup>24</sup> Olanike S Adedokun, 'The Concept of Surrogacy in Nigeria: Issues, Prospects and Challenges' *African Human Rights Law Journal* [2018] 18(2) [605-625] <<http://dx.doi.org/10.17159/1996-2096/2018/v18n2a8>>

<sup>25</sup> Enobong Mbang Akpambang and Monica Amujo-Akomolafe, 'Legal Position on Surrogacy Arrangements in Nigeria and Some Selected Jurisdictions' *International Journal of Research in Humanities and Social Studies* [2020] 7(3) [18-39] retrieved from <<http://www.ijrhss.org/papers/v7-i3/3.pdf>>

<sup>26</sup> Human Fertilisation and Embryology Act, section 30

<sup>27</sup> French Civil Code, article 16(7).

principles into its legislation, banning commercial surrogacy and prioritizing altruistic motives in surrogacy arrangements. By upholding ethical standards and human rights principles, Nigeria can promote the responsible and ethical practice of surrogacy while safeguarding the rights and welfare of all individuals involved.

### **Privacy Protection**

Drawing from the privacy protections outlined in the European Union's General Data Protection Regulation (GDPR), Nigeria can incorporate provisions to safeguard the privacy and confidentiality of all parties involved in surrogacy arrangements.<sup>28</sup> This includes restricting access to sensitive information, such as medical records and personal details and implementing measures to prevent unauthorized disclosure or misuse of such data.

### **Protection of Commissioning Parents**

Nigeria can include measures to protect the rights and dignity of commissioning parents.<sup>29</sup> This may involve establishing support services, counselling and legal assistance to help commissioning parents navigate the surrogacy process and address any stigma or social issues associated with surrogacy. Additionally, the legislation can include anti-discrimination provisions to prevent discrimination against commissioning parents based on their marital status, sexual orientation or other characteristics.<sup>30</sup>

Nigeria can create a strong legislative framework for surrogacy that addresses important issues, safeguards the rights of intended parents, surrogate mothers, and children, and encourages moral behaviour and accountability by learning from the best practices and legal systems

---

<sup>28</sup> European Union's General Data Protection Regulation (GDPR), 2018.

<sup>29</sup> Olanike S Adelokun, 'The Concept of Surrogacy in Nigeria: Issues, Prospects and Challenges' *African Human Rights Law Journal* [2018] 18(2) [605-625] <<http://dx.doi.org/10.17159/1996-2096/2018/v18n2a8>>

<sup>30</sup> Oluwatobi Joseph Alabi, 'Perceptions of Surrogacy within the Yoruba Socio-Cultural Context of Ado-Ekiti, Nigeria' *F1000Research* (2020) 9(103) [1-23] <<http://dx.doi.org/10.12688/f1000research.20999.2>>

around the world. With the help of this extensive regulatory framework, surrogacy agreements will be clear, certain, and protected by the law, guaranteeing that Nigerian surrogacy procedures respect basic human rights and conform to international norms.

## CHAPTER FIVE

### SUMMARY, RECOMMENDATIONS AND CONCLUSION

#### 5.0 Introduction

The legal landscape surrounding surrogacy is diverse and dynamic. With some countries having extensive regulations, others such as Nigeria have little or none at all. The purpose of this chapter is to give an overview of the main conclusions of this study.

#### 5.1 Summary of Findings

##### 5.1.1. Legal Status of Surrogacy

Surrogacy is accepted and controlled in many nations. However, the legal framework regulating it varies greatly in terms of permissibility, qualifying standards and formalities. While some nations<sup>1</sup> have well established legal frameworks that permit compensated or altruistic surrogacy arrangements under certain circumstances, other nations have restrictive laws that either outrightly forbids Surrogacy or only permit altruistic surrogacy within certain bounds. Nigeria's legal system On the other hand is silent with respect to surrogacy as it neither forbids it nor recognizes it.

##### 5.1.2. Clarity of Rights and Obligations

Determining the legal parentage of children born through surrogacy is one crucial aspect in surrogacy arrangements. Intended parents can seek pre- birth orders, post birth- orders or court judgements to establish their parental rights in jurisdictions where surrogacy laws are defined. On the other, hand legal parentage can be ambiguous in nations without clear rules which could consequently lead to disputes and difficulties for all parties.

---

<sup>1</sup> United States, Canada, United Kingdom and some states in Australia.

### 5.1.3. Encroachment on Autonomy

The essence of law is to regulate conduct and inform a mode of behaviour. The autonomous right of individuals seeking to grow their family may be infringed by limiting choices and informing decisions with excessively stringent surrogacy laws.

## 5.2. Recommendations

Nigeria must act quickly to pass laws governing Assisted Reproductive Technology which encompasses surrogacy in order to prevent abuse and exploitation. The step in the right direction would be to revisit the Assisted Reproductive Technology Bill of 2016 in order to provide a legal framework for surrogacy, draw from international best practices which would consequently guarantee the Bill's passage.

### 5.2.1. The Revisitation of the Assisted Reproductive Technology (Art) Bill 2016

The Assisted Reproductive Technology Bill 2016 is the closest Nigeria has come to regulating surrogacy. The Bill aims to govern and oversee Assisted Reproductive Technology in the country. ART is defined as a process that involves working with sperms or oocytes outside of the human body in order to conceive. The Bill guarantees ethical process, safeguard the right of oocyte donors, prohibit ART misuse and provide rule for ART clinics. The Bill also establishes a board for regulation as well as establishes minimum standards for ART clinics and handles concerns relating to surrogacy and gamete donation. Unfortunately, this Bill was never passed into hence the lack of a holistic rule governing the practice of surrogacy in Nigeria. Only Lagos State has guidelines on Assisted Reproductive Technology.<sup>2</sup>

---

<sup>2</sup> Miracle Eme, 'Nigeria: Legal Framework For Surrogacy In Nigeria' *Mondaq* (3 August 2022) <<https://www.mondaq.com/nigeria/family-law/1217952/legal-framework-for-surrogacy-in-nigeria#:~:text=Despite%20this%2C%20surrogacy%20has%20not,punishment%20is%20prescribed%20for%20it.&text=As%20such%2C%20if%20a%20person,to%20have%20committed%20a%20crime>> accessed 3 May 2024.

### 5.2.2. Drawing from International Practices.

In a bid to formulate surrogacy laws, Nigeria could evaluate other jurisdictions with such laws for possible adaptation. Nigeria could assimilate India in the protection and wellbeing of surrogate mothers.<sup>3</sup> It could also look at the United Kingdom and examine how it establishes legal parentage of children born through surrogacy<sup>4</sup> as this would clarify legal status and ensure stability. Canada's Assisted Human Reproductive Act could provide assistance in establishing regulatory bodies in charge of licensing surrogacy agencies, enforce compliance with the law and provide guidance on ethical standard.<sup>5</sup>

### 5.3. Contribution to Knowledge

This study has contributed to knowledge with respect to the legal standing of commissioning parents, surrogate mothers and children born through surrogacy. It has brought attention to the necessity of passing legislation to oversee surrogacy arrangements and safeguard the legal rights of all parties. Since there are no rules in Nigeria governing surrogacy unethical practices including baby factories and the exploitation of weak women, flourish.

### 5.4. Areas for Future Study

This research has established that there is currently no law in Nigeria that specifically governs surrogacy, making the country's legal system immature. That being this research draws attention to other areas for further study.

The minimum age requirement for a prospective surrogate mother must be taken into account.

The Indian Surrogacy Regulation Bill of 2016 specifies an age range of 21 to 35 years. This

---

<sup>3</sup> India Surrogacy Regulation Bill, 2019

<sup>4</sup> Human Fertilization and Embryology Act, 2008

<sup>5</sup> Enobong Mbang Akpambang and Monica Amujo-Akomolafe, 'Legal Position on Surrogacy Arrangements in Nigeria and Some Selected Jurisdictions' *International Journal of Research in Humanities and Social Studies* [2020] 7(3) [18-39] retrieved from <<http://www.ijrhss.org/papers/v7-i3/3.pdf>>

will assist in addressing potential health issues that older women may experience as a result of delayed childbirth.

The need also arises to further examine the citizenship and legal status of surrogate children especially those of international surrogacy arrangements.

### 5.5. **Conclusion**

The practice of surrogacy is a complicated one with many ethical, legal and societal facets. This study on surrogacy has been an eye-opening experience that emphasizes the necessity for a thorough legal framework to safeguard the rights of all parties involved, particularly the child. Analyzing the approaches taken by other countries to address comparable difficulties, can yield insightful information, assist in identifying issues, and suggest alternative solution. It is advisable to contemplate if it will be fitting to reassess or modify the current assumption around parenthood particularly the implicit assumption on maternity.

The concept of autonomy, beneficence and no maleficence should be taken into consideration in surrogacy arrangements, ensuring that the the rights and well-being of all parties involved are protected. Other ethical implications of surrogacy arrangements include the possibility for exploration and the commodification of childbirth. The idea of surrogacy is still on its infancy in Nigeria, and subsequent legislation should prioritize protecting the best interests of the child<sup>6</sup> while also protecting the interests of commissioning parents and surrogate mothers. To ensure that surrogacy arrangements adhere to accepted minimum criteria, the Nigerian government is enjoined to establish regulatory and enforcement bodies.

---

<sup>6</sup> Like the Matrimonial Causes Act, 1970 and Child Right Act, 2003 which are solely after the best interests of a child.

## BIBLIOGRAPHY

### Books

Attah M, *Family Welfare Law in Nigeria* (Ambik Press Ltd, 2016).

Chinwuba N N, *Family and Succession Law in Nigeria* (Kluwer Law International, 2022).

Davis J E, 'Medicalization, Social Control and the Relief of Suffering' in Cockerham W C (Editor), *The New Blackwell Companion to Medical Sociology* (Blackwell Publishing Ltd, 2010).

Lasker S P, 'Surrogacy' in ten Have H (Editor), *Encyclopedia of Global Bioethics* (Springer, 2016) <doi: 10.1007/978-3-319-09483-0>

Okonkoh A C and Odunaike D, 'Contract for Gestational Services: Examining the Legal Status and Enforceability of Surrogacy Arrangements in Nigeria' in Adedokun O S and Ndoni E (Editors), *Reproductive Health and Assisted Reproductive Technologies in Sub-Saharan Africa: Issues and Challenges* (Palgrave Macmillan, 2023) <[https://doi.org/10.1007/978-981-99-2411-0\\_11](https://doi.org/10.1007/978-981-99-2411-0_11)>

Powell J G F, 'Legal Latin' in Clackson J (Editor), *A Companion to the Latin Language* (Blackwell Publishing, 2011).

Rotabi K S and Bromfield N F, *From Intercountry Adoption to Global Surrogacy: A Human Rights History and New Fertility Frontiers* (Routledge, 2016).

### Articles in Journals

Abraham H, 'A Family is what You Make It: Legal Recognition and Regulation of Multiple Parents' *American University Journal of Gender, Social Policy and the Law* [2017] 25(4) [405-444] retrieved from <<https://digitalcommons.wcl.american.edu/jgspl/vol25/iss4/2>>

Adelagun O, 'US-Based Couple Accuses Nigerian Surrogate Mother of Absconding with Twins' *Premium Times* (8 April 2022) <<https://www.premiumtimesng.com/news/top-news/522663-us-based-couple-accuses-nigerian-surrogate-mother-of-absconding-with-twins.html?tztc=1>> accessed 21 February 2024.

- Adelakun O S, 'The Concept of Surrogacy in Nigeria: Issues, Prospects and Challenges' *African Human Rights Law Journal* [2018] 18(2) [605-625]  
<<http://dx.doi.org/10.17159/1996-2096/2018/v18n2a8>>
- Akinwumi O S, 'Legal Impediments on the Practical Implementation of the Child Right Act 2003' *International Journal of Legal Information* [2009] 37(3) [385-396]  
<<http://doi.org/10.1017/S0731126500005400>>
- Akpambang E M and Amujo-Akomolafe M, 'Legal Position on Surrogacy Arrangements in Nigeria and Some Selected Jurisdictions' *International Journal of Research in Humanities and Social Studies* [2020] 7(3) [18-39] retrieved from  
<<http://www.ijrhss.org/papers/v7-i3/3.pdf>>
- Alabi O J, 'Perceptions of Surrogacy within the Yoruba Socio-Cultural Context of Ado-Ekiti, Nigeria' *F1000Research* (2020) 9(103) [1-23]  
<<http://dx.doi.org/10.12688/f1000research.20999.2>>
- Alewo A J M, 'The Principle and Nature of Law of Contract in Nigeria: Formation of Binding Contract' *Journal of Politics and Law* [2012] 5(4) [123-128]  
<<http://dx.doi.org/10.5539/jpl.v5n4p123>>
- Anyahie M, 'Rule of law: Panacea for National Development in Nigeria'  
<[https://www.researchgate.net/publication/275520874\\_Rule\\_of\\_Law\\_Panacea\\_for\\_National\\_Development\\_in\\_Nigeria](https://www.researchgate.net/publication/275520874_Rule_of_Law_Panacea_for_National_Development_in_Nigeria)> accessed 26 January 2024.
- Aznar J and Tudela J, 'Gestational Surrogacy: Ethical Aspects' *Medicina e Morale* [2018] 67(3) [277-290] <<https://doi.org/10.4081/mem.2018.539>>
- Bala N, 'The Hidden Costs of the European Court of Human Rights' Surrogacy Decision' *Yale Journal of International Law Online* [2014] 40 [11-19]  
<<https://www.yjil.yale.edu/files/2016/09/bala-proof-v-1-pdf-xqn5h2.pdf>>
- Baron T, 'Surrogacy and the Fiction of Medical Necessity' *Cambridge Quarterly of Healthcare Ethics* [2024] 33(1) [40-47] <doi:10.1017/S0963180123000269>
- Bello F A, Akinajo O R and Olayemi O, 'In-Vitro Fertilization, Gamete Donation and Surrogacy: Perceptions of Women Attending an Infertility Clinic in Ibadan, Nigeria' *African Journal of Reproductive Health* [2014] 18(2) [127-133]  
<<https://www.jstor.org/stable/24362174>>
- Biggers J D, 'IVF and Embryo Transfer: Historical Origin and Development' *Reproductive Biomedicine Online* [2012] 25(2) [118-127]  
<<https://doi.org/10.1016/j.rbmo.2012.04.011>>

- Brandão P and Garrido N, 'Commercial Surrogacy: An Overview' *Revista Brasileira de Ginecologia e Obstetrícia* (2023) 44 [1141-1158] <doi: 10.1055/s-0042-1759774>
- Camorrino A, 'Mother Nature and the Nature of Motherhood: Gestational Surrogacy and Ecospirituality as Two Postmodern Forms of Sacralization' *Current Sociology* [2021] 69(2) [212-230] <<https://doi.org/10.1177/0011392120964894>>
- Carter M J and Fuller C, 'Symbolic Interactionism' *Sociopedia.isa* [2015] [1-17] <<http://dx.doi.org/10.1177/205684601561>>
- Corradi C, 'Motherhood and the Contradictions of Feminism: Appraising Claims Towards Emancipation in the Perspective of Surrogacy' *Current Sociology* [2021] 69(2) [158-175] <<https://doi.org/10.1177/0011392120964910>>
- Denzin N K, 'Postmodern Social Theory' *Sociological Theory* [1986] 4(2) [194-204] <<https://doi.org/10.2307/201888>>
- Diriwari W, 'Contextualizing the Concept of Parental Responsibilities and Child Protection in a Legal Pluralistic Nigeria' *Japan Journal of Research* (2023) 4(5) [1-4] <<https://journals.scienceexcel.com/index.php/jjr/article/view/453/481>>
- Drabiak K and others, 'Ethics, Law and Commercial Surrogacy: A Call for Uniformity' *Journal of Law, Medicine and Ethics* (2007) 35(2) [300-309] <<https://doi.org/10.1111/j.1748-720X.2007.00139.x>>
- Epstein R A, 'Surrogacy: The Case for Full Contractual Enforcement' *Virginia Law Review* [1995] 2305-2341] <<https://doi.org/10.2307/1073580>>
- Esiri M O, 'Social Change and Marriage Structure in Nigeria' *International Research Journal of Management, IT and Social Sciences* [2021] 8(3) [228-235] <<https://doi.org/10.21744/irjmis.v8n3.1487>>
- Ezeah P, 'Marriage and Motherhood: A Study of the Reproductive Health Status and Needs of Married Adolescent Girls in Nsukka, Nigeria' *Journal of Sociology and Social Anthropology* [2012] 3(1) [1-6] <<https://doi.org/10.1080/09766634.2012.11885559>>
- Ezejiofor G, 'Stare Decisis in the Nigerian Courts' *Nigerian Law Journal* [1972] 6 [47-59].
- Fadare J O and Adeniyi A A, 'Ethical Issues in Newer Assisted Reproductive Technologies: A View from Nigeria' *Nigerian Journal of Clinical Practice* [2015] 18 [57-61] <<https://doi.org/10.4103/1119-3077.170823>>

- Ferguson K E, 'Feminist Theory Today' *Annual Review of Political Science* [2017] 20 [269-286].
- James S, 'Avoiding Legal Pitfalls in Surrogacy Arrangements' *Reproductive Biomedicine Online* [2010] 21(7) [862-867] <<https://doi.org/10.1016/j.rbmo.2010.06.037>>
- Makinde O A and others 'Baby Factories Taint Surrogacy in Nigeria' *Reproductive Biomedicine Online* [2016] 32(1) [6-8] <<https://doi.org/10.1016/j.rbmo.2015.10.001>>
- Margalit Y, 'In Defense of Surrogacy Agreements: A Modern Contract Law Perspective' *William and Mary Journal of Women and the Law* [2014] 20(2) [423] retrieved from <<https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1382&context=wmjowl>>
- Ngwu L U, Ogbuke M U and Ofoegbu R C, 'Parenting and Child Welfare in Nigeria' *ESUT Journal of Social Sciences* [2020] 5(1) [194-214] retrieved from <<https://esutjss.com/index.php/ESUTJSS/article/view/50>>
- Okoli A C and Eze C, '“Baby Factories” Versus the Objectification of Surrogacy Cum Child Adoption in Nigeria' *Human Affairs* [2021] 31(2) [212-222] <<https://doi.org/10.1515/humaff-2021-0017>>
- Oluwaseyi O O and Oladimeji O, 'Surrogacy Agreements and the Rights of Children in Nigeria and South Africa' *Obiter* [2021] 42(1) [20-38] retrieved from <[https://scielo.org.za/scielo.php?script=sci\\_abstract&pid=S1682-58532021000100002](https://scielo.org.za/scielo.php?script=sci_abstract&pid=S1682-58532021000100002)>
- Owasanoye B, 'The Regulation of Child Custody and Access in Nigeria' *Family Law Quarterly* [2005] 39(2) [405-428] <<https://www.jstor.org/stable/25740497>>
- Oyewunmi A and Sanni A, 'Challenges for the Development of Unfair Contract Terms Law in Nigeria' *University of Western Australia Law Review* [2013] 37(1) [86-106] retrieved <<https://www8.austlii.edu.au/cgi-bin/viewdoc/au/journals/UWALawRw/2013/6.pdf>>
- Payne J G, Korolczuk E and Mezinska S, 'Surrogacy Relationships: A Critical Interpretative Review' *Upsala Journal of Medical Sciences* [2020] 125(2) [183-191] <<https://doi.org/10.1080%2F03009734.2020.1725935>>
- PHEME M J, Sithole S L and Malema R N, 'The Perceptions of Childless Women on Surrogacy as an Assisted Reproductive Technique (ART) in Lebowakgomo, Capricorn District, Limpopo Province' *Social Work* [2020] 56(3) [328-346] <<http://dx.doi.org/10.15270/52-2-861>>

- Poote A E and van den Akker O B A, 'British Women's Attitudes to Surrogacy' *Human Reproduction* [2009] 24(1) [139-145] <<https://doi.org/10.1093/humrep/den338>>
- Prosser H and Gamble N, 'Modern Surrogacy Practice and the Need for Reform' *Journal of Medical Law and Ethics* [2016] 4(3) [257-274] <doi: 10.7590/221354016X14803383336842>
- Rodríguez-Jaume M J, González-Río M J and Jareño-Ruiz D, 'Cross-Border Reproductive Care: Opinions and Attitudes of Society towards Surrogate Pregnancy' *Current Sociology* [2021] 69(2) [266-285] <<https://doi.org/10.1177/0011392120964892>>
- Rosenfeld M, 'Contract and Justice: The Relation between Classical Contract Law and Social Contract Theory' *Iowa Law Review* [1984] 70 [769].
- Saadeh R and others, 'Attitude of Jordanian Health Care Workers toward Surrogacy' *Journal of Family & Reproductive Health* [2020] 14(1) [5-13] retrieved from <<https://jfrh.tums.ac.ir/index.php/jfrh/article/view/1259>>
- Silvern R and Cojocar S, 'Interaction between Surrogate Mother and Intended Mother: Sociological Aspects in Surrogacy' *Revista de Cercetare si Interventie Sociala* [2022] 77 [89-105] <<https://doi.org/10.33788/rcis.77.6>>
- Sinaga H D P, 'Fiat Justitia, Ruat Caelum: Reflections of Positivism in Enforcing Justice in Indonesia' *Philosophy and Paradigm Review* [2022] 1(1) [17-21] <<https://doi.org/10.56282/ppr.v1i1.199>>
- Söderström-Anttila V and others, 'Surrogacy: Outcomes for Surrogate Mothers, Children and the Resulting Families—A Systematic Review' *Human Reproduction Update* [2016] 22(2) [260-276] <<http://dx.doi.org/10.1093/humupd/dmv046>>
- Stenger R L, 'The Law and Assisted Reproduction in the United Kingdom and United States' *Journal of Law and Health* [1994] 9 [135-161] retrieved from <<https://engagedscholarship.csuohio.edu/jlh/vol9/iss1/8/>>
- Tabatabaie M G and Vedadhir A A, 'Surrogacy: Medicalization of Motherhood' *Journal of Reproduction & Infertility* [2008] 9(2) [144-164]
- Tanderup M and others, 'Informed Consent in Medical Decision-Making in Commercial Gestational Surrogacy: A Mixed-Methods Study in New Delhi, India' *Acta obstetricia et gynecologica Scandinavica* [2015] 94(5) [465-472] <<https://doi.org/10.1111/aogs.12576>>

Umeora O U and others, 'Surrogacy in Nigeria: Legal, Ethical, Socio-Cultural, Psychological and Religious Musings' *African Journal of Medical and Health Sciences* [2014] 13(2) [105] <doi:10.4103/2384-5589.144579>

White P M, 'Commercialization, Altruism, Clinical Practice: Seeking Explanation for Similarities and Differences in Californian and Canadian Gestational Surrogacy Outcomes' *Women's Health Issues* [2018] 28(3) [239-250] <<https://doi.org/10.1016/j.whi.2018.01.004>>.

### **Website Resources**

<<https://www.facebook.com/reel/703304614520742?mibextid=S40aB7S9Ucbxw6v>>

Eme M, 'Nigeria: Legal Framework For Surrogacy In Nigeria' *Mondaq* (3 August 2022) <<https://www.mondaq.com/nigeria/family-law/1217952/legal-framework-for-surrogacy-in-nigeria#:~:text=Despite%20this%2C%20surrogacy%20has%20not,punishment%20is%20prescribed%20for%20it.&text=As%20such%2C%20if%20a%20person,to%20have%20committed%20a%20crime>> accessed 3 May 2024.