

## **Navigating Nigeria Surrogacy Laws: A Focus on Domestic Surrogacy and the UK's Surrogacy Bill**

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**ABSTRACT:** Surrogacy, as a method of assisted reproduction, has garnered increasing attention globally, yet remains a complex and controversial issue in many jurisdictions. In Nigeria, the legal framework surrounding surrogacy particularly domestic surrogacy remains largely undeveloped, ambiguous, and influenced by cultural, religious, and ethical considerations. This paper critically examines the current legal and regulatory landscape governing surrogacy in Nigeria, highlighting the gaps in legislation, the reliance on contractual agreements, and the legal status of commissioning parents and surrogates. The article adopts doctrinal method, with primary and secondary sources, which review the roles of both the legal and institutional frameworks. Against this backdrop, the study draws a comparative analysis with the United Kingdom's proposed Surrogacy Bill, which aims to modernize outdated laws by prioritizing the welfare of the child, ensuring clearer parental rights, and providing legal recognition of surrogacy arrangements from the outset. By exploring the UK's legislative approach, the paper proposes recommendations for reforming Nigeria's surrogacy laws to enhance legal clarity, protect the rights of all parties involved, and ensure ethical surrogacy practices. The paper underscores the urgent

need for comprehensive domestic regulation in Nigeria that aligns with global best practices while remaining sensitive to local socio-cultural dynamics.

**Keywords:** *Surrogacy, Laws, Rights, Assisted Reproduction, Infertility.*

## INTRODUCTION

Over the years, different countries have had diverse views and approaches on the concept of surrogacy. Surrogacy, as a form of assisted reproductive technology (ART), offers hope to individuals and couples struggling with infertility<sup>1</sup>. However, the practice raises intricate legal, ethical, and social questions, especially in jurisdictions where the legal framework is underdeveloped or unclear. In Nigeria, surrogacy operates in a legal grey area, lacking a comprehensive statutory structure. Most arrangements are governed by informal agreements and contracts, with limited protection for either the surrogate or the intended parents. This regulatory vacuum has led to ethical concerns, potential exploitation, and uncertainties about the legal status of children born through such arrangements.

Domestic surrogacy in Nigeria, while increasing in popularity, continues to be shaped by cultural sensitivities, religious views, and a lack of cohesive national policy. The absence of legislation not only leaves parties vulnerable but also hinders the development of standardized, ethical surrogacy practices. The House of Representatives recently passed a bill seeking to establish the Nigeria Surrogacy Regulatory Commission (NSRC) for monitoring and supervision of surrogacy arrangement in Nigeria. The Bill aims to provide for the registration, regulation and monitoring of surrogacy agencies in Nigeria and related matters<sup>2</sup>. In contrast, the United Kingdom has moved toward reforming its surrogacy laws through the proposed Surrogacy Bill, which seeks to modernize existing statutes, offer stronger legal certainty, and prioritize child welfare and parental clarity. The UK's legislative effort provides a useful benchmark for nations like Nigeria, where surrogacy is practiced but not well regulated.

This paper explores the state of domestic surrogacy in Nigeria, identifies the legal and ethical challenges it presents, and analyzes how insights from the UK's Surrogacy Bill could inform more effective legislation in Nigeria. The goal is to

provide a framework for legal reform that respects Nigeria's cultural context while aligning with international best practices in reproductive rights and child protection.

## **NIGERIA SURROGACY LAWS.**

Surrogacy in Nigeria is not governed by a specific national law or regulatory framework. Instead, it exists in a legal vacuum, relying largely on private contractual agreements between intended parents and surrogate mothers<sup>3</sup>. While surrogacy is practiced, especially in major cities like Lagos and Abuja, there is no federal legislation that defines or regulates the rights and responsibilities of the parties involved, nor the legal status of the child.

The absence of formal legal recognition for surrogacy in Nigeria generates a host of complex legal and ethical challenges that demand urgent attention from lawmakers and scholars alike<sup>4</sup>. One of the foremost issues is the enforceability of surrogacy agreements. In the absence of statutory guidance or jurisprudential precedent, courts are often reluctant or entirely unable to enforce contracts relating to surrogacy, leaving both surrogate mothers and intended parents without clear legal remedies in the event of a dispute.

Additionally, parental rights in surrogacy arrangements remain deeply ambiguous. In some cases, intended parents are compelled to undergo formal adoption processes for a child that is genetically theirs, simply because the surrogate is legally regarded as the mother by virtue of childbirth. This legal incongruity undermines both parental intent and the child's best interests and reflects a broader failure of the law to accommodate assisted reproductive technologies within existing family law doctrines.

Further compounding these legal uncertainties is the risk of exploitation, particularly among economically disadvantaged women who may feel compelled to enter into surrogacy arrangements under conditions of duress or limited informed consent. The absence of regulation creates an environment in which power imbalances and financial inducements may lead to coercive practices, violating the autonomy and dignity of surrogate women.

Moreover, cultural and religious considerations present additional barriers to the formal regulation and social acceptance of surrogacy in Nigeria. In many

communities, traditional and religious conceptions of family, motherhood, and reproduction view surrogacy with suspicion or outright disapproval, complicating efforts to enact progressive reproductive health policies.

These challenges underscore the need for a coherent legal framework that balances ethical safeguards, cultural sensitivity, and the protection of rights for all parties involved in the surrogacy process<sup>5</sup>.

Despite the growing use of assisted reproductive technologies in Nigeria, legislative reform has been slow. Some professional bodies, such as the Association for Fertility and Reproductive Health (AFRH), offer ethical guidelines, but these are not legally binding. The absence of legal clarity leaves all parties involved in surrogacy, especially children at risk of legal and social uncertainty. However, there is a glimpse of light at the end of the tunnel with the materialization of the Surrogacy Bill 2024; it seeks to establish the Nigeria Surrogacy Regulatory Commission (NSRC) for the monitoring and supervision of surrogacy arrangements in Nigeria and to provide for the registration, regulation and monitoring of surrogacy agents in Nigeria.

Thus, the bill introduces the NSRC, which shall be a body corporation with perpetual succession. The body will be responsible for the following functions:

- i. Establishing and maintaining a Surrogate Registry in the Federal Capital Territory and in each state of the federation.
- ii. Regulating and overseeing all matters relating to surrogacy in Nigeria; and
- iii. Advising the minister on policies and regulations governing surrogacy<sup>6</sup>.

### **Domestic Surrogacy and the United Kingdom's Proposed Surrogacy Reform: Implications for Nigeria**

Domestic surrogacy refers to an arrangement in which both the surrogate and the intended parents reside within the same country. It is increasingly viewed as a preferable alternative to international surrogacy, which is often fraught with legal ambiguities, ethical controversies, and logistical challenges. By operating within a single national legal system, domestic surrogacy enables closer regulatory oversight and potentially stronger protection for all parties involved most importantly, the child<sup>7</sup>. However, in jurisdictions lacking comprehensive legislation, such as Nigeria,

domestic surrogacy arrangements can still give rise to serious legal uncertainties, particularly in matters relating to parentage, enforceability of surrogacy agreements, and the welfare of the child.

In contrast, the United Kingdom has recently acknowledged the need to modernize its surrogacy laws, which are widely considered outdated. Following a series of public consultations and the Law Commission's 2023 report, a new Surrogacy Bill has been proposed to reform the legal landscape governing surrogacy in England and Wales. The bill introduces several progressive provisions aimed at enhancing legal clarity and promoting a child-centered surrogacy process. These include the pre-conception approval of surrogacy arrangements through a formal regulatory pathway, immediate legal parenthood for intended parents at the moment of birth, mandatory welfare assessments and informed consent protocols, and the establishment of a national surrogacy register to safeguard the child's right to know their genetic and gestational origins. This framework, centered on consent, child welfare, and protection from exploitation, represents a comprehensive legal approach to surrogacy.

The United Kingdom's legislative initiative offers valuable lessons for Nigeria, where surrogacy, although increasingly practiced remains legally unregulated. Adopting a structured legal framework modeled on principles of clarity, consent, and child protection could not only mitigate existing legal ambiguities but also ensure that domestic surrogacy arrangements are conducted ethically and transparently.

## **COMPARATIVE ANALYSIS OF NIGERIA SURROGACY AND THE UK BILLS.**

The proposed bill on surrogacy in Nigeria has some similarities with the laws governing surrogacy in UK, although differences abound.

Firstly, both the Nigerian Bill and UK surrogacy laws prohibit commercial surrogacy. However, while Nigerian Bill appears to prohibit every person involved in a surrogacy arrangement entirely without any exception, the SAA 1985 provides that it shall not be an offence for a surrogate mother or intended parent(s) to engage in commercial surrogacy. Thus, it appears to only prohibit third parties from benefitting from the surrogacy agreement. It is an offence for them to do so<sup>8</sup>.

Furthermore, while the SAA 1985 expressly provides that any surrogacy arrangement entered into in the UK is unenforceable, there is no such provision in the NSRC Bill 2024. The Bill rather made provisions that will ensure that a surrogacy arrangement must be in writing and with the informed consent of all parties involved consent of all parties involved, which must be registered by the NSRC. *Prima facie*, it seems that the Bill intends for the arrangement to be enforceable, with surrogacy being regarded as a contractual agreement<sup>9</sup>.

Additionally, pursuant to the HFEA<sup>10</sup> 2008, a parental order must be obtained from the court by intending parents so as to transfer parental rights to the applicants (intending parents). This provision is not embedded in the NSRC Bill 2024. Consequently, this omission in the Bill may translate to mean that there is no requirement for such parental order in the Nigerian jurisdiction once all parties involved comply with the provision of the law, especially with respect to the surrogacy arrangement.

Both the Nigeria Surrogacy Bill (2024) and the UK Surrogacy Bill (2023) aim to regulate surrogacy practices, ensuring the protection of all parties involved. While the UK focuses on modernizing existing laws with an emphasis on transparency and child welfare, Nigeria seeks to establish a comprehensive legal framework to address the current legal vacuum. Both bills emphasize the prohibition of commercial surrogacy and the importance of consent and ethical practices.

Aspect	Nigeria Surrogacy Bill (2024)	UK Surrogacy Bill (2023)
<b>Legal Framework</b>	Establishes a comprehensive legal framework for surrogacy.	Modernizes existing laws, allowing intended parents to become legal parents from birth.
<b>Regulatory Authority</b>	Nigeria Surrogacy Regulatory Commission (NSRC).	Non-profit Regulated Surrogacy Organisations (RSOs) regulated by HFEA.
<b>Eligibility</b>	Married couples or medically certified single persons; surrogates must be at least 21	At least one intended parent must have a genetic link; surrogates must be at least 21

	years old.	years old.
<b>Consent &amp; Documentation</b>	Voluntary, written, and notarized agreements; mandatory medical and psychological evaluations.	Pre-conception assessments; surrogate can withdraw consent up to six weeks after birth.
<b>Commercial Surrogacy</b>	Strictly prohibited; penalties for violations.	Strictly prohibited; only altruistic surrogacy is allowed.
<b>Registration &amp; Monitoring</b>	Agencies must be registered; NSRC monitors compliance and resolves disputes.	Creation of a Surrogacy Register; enhanced transparency and monitoring.
<b>Payments</b>	Not specified in the provided information.	Permitted payments include medical costs, lost earnings, and pregnancy-related expenses

## ETHICAL CONSIDERATION

It is important to state that the various countries in the world should have a comprehensive framework on surrogacy, clearly defining the legal rights of the different parties involved in surrogacy. Thus, it is a laudable development in Nigeria to see that the National Assembly is in the process of enacting a comprehensive legislation on surrogacy to clearly define the rights of the parties involved<sup>11</sup>.

A major principle that is ethical/ key, is the international best practice on surrogacy is ensuring that the best interest of the child must be the paramount consideration in decision making regarding children born through surrogacy<sup>12</sup>.

The ethical challenges surrounding surrogacy in Nigeria largely stem from the absence of clear legal regulations and protective frameworks. Key concerns include the potential exploitation of economically vulnerable women, who may be pressured into surrogacy arrangements without full understanding or consent. The lack of standardized procedures also raises issues around informed consent, child welfare, and the commoditization of reproduction.

In contrast, the UK's proposed Surrogacy Bill addresses many of these ethical concerns through structured processes, including pre-conception legal advice, welfare assessments, and regulated surrogacy organizations. These measures aim to

ensure transparency, protect the rights of surrogates and children, and promote ethical practices.

Cultural and religious sensitivities in Nigeria further complicate the ethical discourse, often stigmatizing both surrogates and commissioning parents. Overall, while both countries prohibit commercial surrogacy, the UK's approach demonstrates how legal clarity and ethical oversight can protect all parties involved. Nigeria can draw valuable lessons from this model to build a surrogacy framework rooted in human dignity, autonomy, and child protection.

## **RECOMMENDATIONS:**

### ***1. Establishment of a Comprehensive Legal Framework.***

Nigeria should enact clear and specific legislation regulating all aspects of surrogacy, including eligibility, consent procedures, the rights of surrogate mothers and intended parents, and the legal status of the child.

### ***2. Create a Regulatory Body.***

A dedicated national regulatory agency similar to the UK's Human Fertilisation and Embryology Authority (HFEA) should be established to oversee, license, and monitor surrogacy arrangements and fertility clinics.

### ***3. Prohibit Commercial Surrogacy While Allowing Reasonable Compensation.***

To prevent exploitation, commercial surrogacy should remain prohibited. However, laws should allow reasonable compensation to cover the surrogate's medical costs, lost income, and other pregnancy-related expenses.

### ***4. Implement Pre-surrogacy Screening and Legal Counseling.***

Mandatory medical, psychological, and legal counseling should be provided to both intended parents and surrogates before agreements are finalized. This ensures informed consent and reduces future disputes.

### ***5. Guarantee Child Welfare and Identity Rights.***

Laws should prioritize the child's best interests by ensuring legal parenthood is clearly established and by creating a national registry that enables children born through surrogacy to access information about their genetic and birth origins.



### ***6. Promote Public Awareness and Ethical Practices.***

National campaigns and training for legal and medical professionals should be launched to foster a better understanding of surrogacy, reduce stigma, and promote ethically sound practices.

## **CONCLUSION**

The rapid emergence and increasing reliance on surrogacy as a means of family formation in Nigeria calls for an urgent and deliberate legislative response. At present, the legal vacuum surrounding surrogacy fosters a climate of uncertainty and vulnerability, exposing surrogate mothers, intended parents, and, most critically, the children to considerable legal, ethical, and psychological risks. Without clear statutory guidance, disputes over parentage, enforceability of surrogacy agreements, and post-birth responsibilities remain unresolved, often to the detriment of the most vulnerable party (The child). Moreover, the absence of legal protections leaves surrogate women at risk of exploitation and coercion, especially in a socio-cultural context where economic disparity and gender inequality are pronounced.

The proposed Surrogacy Bill in the United Kingdom, rooted in the recommendations of the Law Commission, offers a compelling model for reform. It illustrates how modern legal systems can harmonize reproductive autonomy with the imperatives of child welfare, informed consent, and regulatory transparency. Key features of the UK's reform such as pre-conception approval, immediate conferral of parenthood on intended parents, and the establishment of a surrogacy register demonstrate a shift toward proactive legal structuring that Nigeria can critically adapt.

However, any attempt to transplant legal models must be context-sensitive. Nigeria's plural legal system, comprising statutory, customary, and religious laws, demands that any surrogacy legislation be drafted with cultural sensitivity and broad-based stakeholder engagement. This means reconciling modern reproductive technologies with existing family law frameworks, ethical values, and communal norms. Legal reform must also incorporate strong regulatory mechanisms to prevent commercialization and exploitation while promoting education and public awareness to reduce stigma associated with assisted reproduction.

In summary, Nigeria stands at a pivotal juncture. By crafting a comprehensive legal framework informed by international best practices yet tailored to local realities, the country can bring surrogacy within the ambit of lawful and ethical reproductive health services. Such a framework should not merely seek to regularize surrogacy practices but must aim to uphold the dignity, rights, and welfare of every individual involved. Through principled legislation and robust institutional support, Nigeria can move beyond legal ambiguity and establish a surrogacy regime that is just, humane, and sustainable.

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