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Surrogate motherhood in Nigeria: Critical evaluation of proposed Bills

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This study critically examines four major legislative attempts to regulate surrogacy in Nigeria: the in-vitro fertilization bill 2015, the assisted reproductive technology (Regulation) Bill 2016, the Surrogacy Bill 2024, and the Women's Health and Surrogacy Protection Bill 2025. Using a doctrinal and analytical legal methodology, the study evaluates the strengths, limitations, and ethical implications of these proposed Bills within Nigeria's constitutional, cultural, and human rights milieu. The analysis reveals a gradual legislative evolution from a predominantly medical and institutional regulation of assisted reproduction toward a more explicit concern for the protection of women's health and dignity. The study argues for a more comprehensive and ethically grounded regulation that will protects women, children, and reflects Nigeria's socio-legal realities, even if it could be achieved by an administrative ban.

Key words: Surrogacy, surrogate mother, commodification, exploitation.

INTRODUCTION

Rapid growth in In vitro fertilization (IVF) and surrogacy in Nigeria is giving infertile couples new ways to have genetically related children. But these practices are far ahead of social acceptance, ethical protection, and law. Research highlights increasing clinical use, mixed public and religious attitudes, and serious regulatory and rights concerns (Aderonmu et al., 2023). A surrogate mother refers to a woman who is contracted to carry and deliver a child on behalf of another. Besides, there are different forms of surrogate arrangements. There is the traditional which is known as genetic surrogacy or referred to as "straight" or "partial" surrogacy. Here, the woman who agrees to carry the pregnancy also provides the ovum that is fertilized by the commissioning father's or donor's sperm. The other is referred to as gestational surrogacy. In this case, an embryo is created using the egg and sperm of the commissioning parents or donors, through invitro IVF. The embryo is then transferred into the surrogate mother's womb. Even though she carries the pregnancy, she has no genetic connection to the child.

More still, surrogacy arrangements could either be altruistic of commercial. In the former, the surrogate mother does not receive any financial compensation beyond reimbursement for expenses related to the pregnancy. While payment is made for the reproductive services carried out by the surrogate mother as well as the intervening agency in commercial arrangement. However, the risks of transforming human procreation into a contractual and commercial enterprise in which the bodies of women and the status of children become

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objects of negotiation raise serious ethical concern (Dubawa, 2025; Ezenwa et al., 2024). This is because surrogacy arrangements are often governed by private agreements between commissioning parents, surrogate mothers and medical practitioners. There is no national legislative guideline and the absence of a legal framework that regulates these activities has given room to the exploitation of economically vulnerable women, the commodification of children, and disputes regarding parental rights and responsibilities (Ikechebelu et al., 2017; Olawuyi, 2021; Oluwayemisi, 2025). Consequently, Nigerian lawmakers have made several attempts to introduce legislation that will regulate assisted reproductive technologies and surrogacy. These efforts include the IVF Bill 2015, the Assisted Reproductive Technology (Regulation) Bill 2016, the Surrogacy Bill 2024, and the Women's Health and Surrogacy Protection Bill 2025. Each of these legislative initiatives seeks, in different ways, to establish institutional oversight and ethical guidelines for reproductive practices in the country. So, to what extent do these proposed Bills adequately address the ethical, legal, and socio-cultural challenges associated with surrogate motherhood in Nigeria?

Certainly, this article will contribute to the body of scholarship on reproductive technology in Nigeria as well as discussions on the protection of human dignity, women's right and child welfare. Besides, while other works focus primarily on ethical debates, this work examines the concrete legal mechanisms proposed by Nigerian lawmakers and evaluates their adequacies and the evolution of regulatory policy on surrogacy in Nigeria.

METHODOLOGY

This study adopts a doctrinal and analytical legal methodology which involves a critical examination and comparison of the proposed legislative Bills on assisted reproduction. The analysis draws on constitutional principles, human rights norms, and Nigerian family law traditions to evaluate the strengths and limitations of the proposed Bills. In addition, it engages with scholarly literature in bioethics, law, and reproductive technology. The study evaluates, through this approach, the coherence, ethical implications, and practical feasibility of the proposed regulatory Bills within the Nigeria's socio-cultural and legal milieu.

Hence, the study is organised into five main sections with an introduction and conclusion. After the introduction, it critically analyses four Nigerian legislative proposals on surrogacy. Each section explains the key provisions of the Bill and evaluates its ethical, legal, and regulatory weaknesses. It also makes a comparative analysis to highlight the legislative evolution of surrogacy governance.

DISCUSSION

The In-vitro Fertilization Bill 2015 (SB. 127)

This Bill represents one of the earliest legislative attempts to regulate assisted reproductive technologies in Nigeria, including surrogate motherhood (Federal Republic of Nigeria 2015. The Bill was sponsored by Senator Barau Jibrin (APC, Kano North). He sought to present a legislation that will govern the practice of artificial fertilization in Nigeria. According to the sponsor of the Bill, it is aimed at regulating IVF procedures, prohibit certain unethical practices associated with assisted reproduction, establish a regulatory board, and make provisions regarding the legal status of children born through IVF. It also addresses the practice of surrogate motherhood.

It defines a surrogate mother as a woman who enters into a surrogacy agreement to carry a pregnancy on behalf of another woman (art 2). Under the proposed law, the surrogate mother would have no legal claim to the child, as the child is carried for the commissioning couple. Consequently, the surrogate is required to relinquish the child after birth (art. 32(2)). The Bill also sets out conditions for entering a surrogacy arrangement (sections 32 and 33). Both the surrogate mother and the commissioning couple must be adults (at least eighteen years old). Furthermore, the process must be initiated by two persons consisting of a male and a female, thereby excluding single individuals from accessing surrogacy services. The commissioning parents are also required to sign a formal surrogacy agreement before the commencement of the procedure.

Regarding legal parentage, the Bill establishes a mechanism for the transfer of parental rights from the surrogate mother to the commissioning couple. To be recognised as the legal parents, the commissioning parents must apply to the High Court of Nigeria for a parental order. However, the court may grant such order only when certain conditions are satisfied. These include: the child must be genetically related to at least one of the commissioning parents; the application must be filed within one year of the child's birth; at least one of the commissioning parents must be domiciled in Nigeria at the time of the application; and the surrogate mother and any person recognised as the father must have freely and fully understood the agreement and consented to the parental order. In addition, the Bill empowers the Minister of Health to make further regulations concerning the rights and responsibilities of surrogate mothers, as well as the eligibility requirements for gamete donors.

Notably, the Bill was first read in the Senate on April 12, 2016, and later read for the second time on October 24, 2017 and was referred to the Committees on Health. However, it failed to secure legislative support and didn't see the light of day. The failure was attributed to the lack of wider consultation with relevant stakeholders. It was

reported that the Nigerian Medical Association (NMA) and the Society for Obstetrics and Gynaecology of Nigeria (SOGON) admitted not knowing the source of the Bill or contributing to its content (Okafor, 2012). Some felt the Bill was copied verbatim from another jurisdiction. With these and other moral, cultural and human rights considerations, it was abandoned.

Critique

There is no doubt that the goal of the Bill was to guide modern human reproduction technologies. Nonetheless, several areas pose great risks to the lives and dignity of the human person.

Ambiguous compensation rule: One of the most important provisions of this Bill is Article 33(9) that prohibits commercial surrogacy. However, it allows for "expenses reasonably incurred". Of course, it is expected that the commissioning parents should be appreciative of the effort of the surrogate mother by assisting her cover the expenses incurred during pregnancy. Besides, proponents see surrogacy as a gestational service which demands its corresponding payment (Pande 2014). Nevertheless, the term "expenses reasonably incurred" is highly subjective. Who determines what a reasonable expense is? This lack of objective definition can lead the practice into a commercial enterprise. In a neoliberal society like Nigeria where reproductive care is market-driven, private clinics could recruit vulnerable women with minimal compensation while charging commissioning parents high fees.

A practical example is the case involving a Nigerian couple who entered an anonymous surrogacy arrangement. The court judgment highlighted how reimbursement arrangements could blur the boundary between legitimate compensation and commercialisation, particularly in cross-border surrogacy involving countries with weaker regulatory systems (McFarlane, 2025). Critics have argued that, given the current understanding of monetary exchange, allowing commercial surrogacy would lead to the commodification of human reproduction and the treatment of children and women as market commodities (Ertman and Williams, 2005; Wilkinson, 2003).

Institutional regulation over human protection: The language of the Bill gives a clear indication that its focus is on the registration and licensing of clinics, and the transfer of parentage, than the welfare of the surrogate mother. A significant portion of the Bill is dedicated to administrative regulation of fertility clinics. This is welcome development as it is the first step to regulating the practice. Part IV is entirely dedicated to licensing. However, it lacks explicit, enforceable rights regarding the long-term health and psychological recovery of the surrogate mother. Unlike a woman who carries and raises her own child, a surrogate mother must come to terms with the biological and emotional reality that the child she had carried for nine months has been given to another. It is a common surrogacy practice that once a contract is fulfilled, the surrogate is often discarded, and the right to medical care becomes secondary to the success of the birth transaction (Centre for Health Ethics Law and Development [CHELD], 2025). Besides, rather than making provisions for surrogate rights in the primary text, the Bill merely grants the Minister the power to make future regulations regarding the rights and duties of patients, donors, surrogates and children (section 60). Sadly, it is the Minister who decide the number of embryos that can be implanted in a woman, for instance.

Infrastructure deficits and medical risk: The Bill's "Memorandum of objects and reasons" admits that many women rely on unqualified doctors, leading to "the deaths of many women and children" (Schedule (s.9) 13). This acknowledges the gross inadequacies that plague health care service delivery in Nigeria. Persistent challenges such as unreliable electricity supply, poor water systems, etc., pose serious risks to technologically intensive procedures like IVF and cesarean delivery (Balogun 2021: 23). The Bill does not address these issues which are critical to the welfare of women and children. Certainly, addressing these issues may go beyond the scope of the regulatory body. But, simply establishing a regulatory body without addressing these fundamental health infrastructure inadequacies, defeats the aim of the Bill.

Contract over motherhood: The Bill provides in article 32(2), that a surrogate "shall relinquish all parental rights" upon birth unless a contrary intention is proven. One is morally bound to keep promises he or she has made. It will not be right for a surrogate mother to make of giving out the child but renege on her promise. Nonetheless, this rigid contract structure overlooks the emotional and physiological bond that develops during pregnancy and childbirth. This neglect shows that the drafters of the Bill are more interested in the desire of the commissioning parents than the wellbeing of the surrogate. It treats the surrogate woman as a mere tool or a childbearing machine. According to Anderson (1990) "surrogate contracts should not be enforceable. Surrogate mothers should not be forced to relinquish their children" (Anderson 1990). This is because surrogacy contracts treat the surrogate's gestational labour as a commodity and require her to relinquish parental claims, thereby denying the moral significance of the pregnancy relationship. According to Danna (2019), "contractual law invalidates family law and puts maternal and filial status

on the market: this is essentially what occurs through surrogacy".

The Assisted Reproductive Technology (Regulation) Bill 2016 (SB. 325)

Senator Lanre Tejuoso, a member of the Nigerian Parliament sponsored this Bill for the regulation and supervision of assisted reproductive technology (ART), including specific and detailed provision regarding surrogacy in Nigeria. This Bill was first read in the parliament on November 3, 2016, and later read for the second time on October 24, 2017. Federal Republic of Nigeria 2016).

In the preliminary chapter, the Bill defines surrogacy as an arrangement where a woman agrees to a pregnancy achieved through ART in which neither of the gametes belongs to her nor the husband, with the intention of handing over the child to the commissioning parents (section 2(t)). It defines surrogate mother as a woman who carries an embryo, generated from the sperm of a man who is not her husband and the oocyte of another woman, with the intention to carry it to term and deliver the child to its commissioning parent(s) (section 2(u)). And all such arrangements are to be governed by an agreement between the parties involved which is legally enforceable.

Specifically, surrogacy is treated in chapter VII. Section 34 precisely addresses the issue of surrogate motherhood. The first step in the surrogacy journey begins with an agreement between the surrogate mother and the commissioning couple/person which shall be legally enforceable (number 1). If the surrogate is married, the consent of her husband is required (number 16). And all expenses that are related to the pregnancy and delivery of the child is borne by the commissioning couple or individual who sought for the surrogacy service (number 2).

The eligibility criteria for the surrogate are that she must be between 21 and 45 years of age and must be free from diseases such as sexually transmitted or communicable diseases which may endanger the health of the child (numbers 5 and 6). Likewise, a surrogate mother cannot undergo embryo transfer for the same couple for more than three times. The Bill also forbids her to act as an oocyte donor and a surrogate mother at the same time (number 13). Interestingly, the surrogate mother is given a certificate by the commissioning couple/person, at the end of the process, stating unambiguously that she has acted as a surrogate for them or for him/her (number 17). And the birth certificate shall bear the names of the commissioning parent(s) (number 10). In addition, the surrogate mother must relinquish all parental rights over the child to the commissioning couple and may also receive compensation for her services (numbers 3 and 4). On their part, the commissioning parents are legally bound to accept the custody of the child irrespective of the child's condition (number 11).

As regards cross-border surrogacy arrangement, the commissioning parent(s) outside Nigeria must employ the services of a local guardian who will be legally responsible for taking care of the surrogate mother during and after pregnancy till the child is delivered to the commissioning parent(s) (number 19). According to this Bill, surrogate arrangement is only meant for a "patient" for whom it would normally be impossible to carry a pregnancy to term (clause 20(10)). Punishment for those who contravene the provisions of the law ranges between three to five years of imprisonment with a fine (clause 37(3)).

Certainly, the Bill contains several provisions designed to provide legal clarity, ensure medical safety, and uphold ethical standards within the Nigerian reproductive health sector. One of the most significant points is the legal clarity of the child born through these procedures. It explicitly states that a child born through ART is the legitimate child of the commissioning parents, regardless of whether they are a married couple, an unmarried couple, or a single person (section 35). In ensuring medical safety, the Bill mandates ART clinics to perform medical testing for sexually transmitted diseases and other communicable diseases on surrogates to guarantee the health of the parents and the child (section 26(3)). Clinics are also required to provide professional counselling to surrogates regarding the success rates, medical side effects, and legal implications of the procedures (section 20(6)). Besides, there is a ban on pre-determined sex selection to ensure that ART is used for therapeutic rather than aesthetic purpose (section 25).

Another strong point of the Bill is the composition of the National Advisory Board and State Boards that are responsible for the regulation of ART. These boards will comprise diverse experts, including those in bioethics, law, human rights, and medical genetics, ensuring a multi-dimensional approach to ART regulation (section 3). Undoubtedly, the Assisted Reproductive Technology (Regulation) Bill, 2016 is one of the legislative efforts made by the Nigeria State to institutionalise ethical and professional standards in reproductive medicine. However, it failed to see surrogacy as a distinct and complex legal, ethical, and social issue.

Critique

Surrogacy treated as a subset of ART: One of the limitations of the Bill lies in the manner in which it conceptualises surrogacy. While it is indeed a form of ART and is often practiced alongside procedures such as IVF, gamete donation, and embryo transfer, the Bill appears to treat it primarily as a technical extension of

these medical procedures. Such an approach overlooks the distinctive ethical and legal dimensions that surrogacy arrangements entail. Unlike other ART procedures, surrogacy involves a prolonged gestational relationship and a contractual arrangement between multiple parties, thereby raising complex questions concerning bodily autonomy, consent, parental rights, and the welfare of the child.

Medicalisation of a social and legal arrangement: Closely related to the above concern is the Bill's tendency to view surrogacy primarily as a medical intervention rather than as a socio-legal relationship. Surrogacy arrangements inherently involve multiple actors - surrogate mothers, commissioning parents, medical practitioners, and sometimes intermediaries - each with distinct rights and responsibilities. Surrogacy arrangements raise important legal issues regarding consent, parentage, custody, and the welfare of the resulting child. Thus, by viewing surrogacy largely from the clinical perspective, the Bill gives limited attention to the broader socio-ethical concerns associated with gestational labour, the potential vulnerability of surrogate mothers, and the risk that both women's reproductive capacities and the resulting children may be treated in instrumental or commodified terms.

Explicit commercialisation of surrogacy: The Bill explicitly states that a surrogate may receive "monetary compensation" from the commissioning parents for "agreeing to act as such surrogate" (section 34(3)). Likewise, section 26 (6) allows semen banks to advertise for surrogates and compensate them financially. In other words, it gives approval to commercial surrogacy. Some have argued that the payment is justified since it is for the legitimate investment of time, effort, and assumption of risk by the surrogate mother. According to Stile (2024: 64), the job of a surrogate mother is less hazardous compared to that of industrial workers, miners, construction professionals, etc. Nonetheless, this can be very dangerous for a country like Nigeria. Women risk being commodified and used as tools that can be rented out for nine months. In a society where women's bodies are already highly commodified by advertisers, pornographers, and promoters of prostitution, this would mean a further violation to the dignity of the woman.

Absence of a clear mechanism for transfer of parentage: The Bill clearly provides that the surrogate mother shall relinquish all parental rights to the commissioning couple. This provision tends to remove all forms of controversies in relation to ownership of the child at the end of the process. However, it does not establish a clear legal pathway for determining the transfer of parentage after the birth of the child. In Nigerian legal tradition, the long-standing principle of *mater semper certa est*, that is, the woman who gives birth to the child is the legal mother, continues to prevail. In principle, since the Bill does not explicitly provide procedures for transferring legal parentage to the commissioning parents, the surrogate mother would remain the legal mother of the child irrespective of genetic links or contractual agreements. This omission may generate disputes concerning custody, parental responsibility, and the legal status of the child.

Risk of surrogacy tourism and commercial intermediation: Section 34(19) permits foreigners and non-resident Nigerians to access surrogacy services within the country, provided they appoint a "local guardian" responsible for overseeing the surrogate mother and the child until delivery. The local guardian would likely act as the legal representative of the commissioning parents within Nigeria. Since the commissioning parents are not physically present in the country, the guardian could serve as the contact person for clinics, regulatory authorities, and courts, ensuring that administrative and legal procedures related to the surrogacy arrangement are followed. However, despite these possible regulatory intentions, these "local guardians" could begin to operate as middlemen facilitating profit-driven surrogacy markets. The already documented proliferation of so-called "baby factories" in Nigeria gives credence to this fact (Eseadi et al., 2015; Eniola and Omoleye, 20181). This provision risks institutionalising a system of intermediaries who function as brokers for commercial surrogacy arrangements. This could lead to a situation where wealthy individuals, particularly from abroad, exploit the economic vulnerability of Nigerian women. Besides, many women may enter these "legally enforceable" contracts out of financial desperation (section 34(1)).

Risk of political influence in regulatory oversight: Finally, the governance structure proposed by the Bill raises concerns regarding regulatory independence. Section 3(2) provides that all twenty-one members of the governing board are to be appointed by the President on the recommendation of the Minister. This centralised appointment process, without independent confirmation or nomination from professional bodies or civil society organisations, may expose the regulatory authority to political influence. In the absence of institutional independence, the board's ability to act impartially in the interest of justice and public welfare may be compromised.

Certainly, ART especially surrogacy, and gamete donations are highly controversial issues in Nigeria because they raise concerns about the commodification of women's reproductive capacity, the legal status of children born, and potential conflicts with religious and cultural values regarding family and procreation

(Ekwowusi, 2025). Consequently, the Bill could not garner the legislative momentum needed. However, another was introduced specifically for surrogacy regulation.

The Surrogacy Bill 2024 (HB 1137)

The Surrogacy Bill 2024 represents the first legislative attempt in Nigeria to provide a federal legal regulation specifically for surrogacy (Federal Republic of Nigeria 2024). It is meant to put some regulatory measures to the unregulated system governed by private contracts and foreign medical ethics. This move was made by a member of the House of Representative, Hon. Olamijuwonlo Alao-Akala, representing Ogbomoso North and Oriire federal constituencies.

This Bill is divided into four major parts; establishment and composition of the Nigeria surrogacy regulatory commission (sections 1 to 6); registration and regulation of surrogacy (section 7 to 14); financial provision (sections15 and 16); and miscellaneous (sections 17 to 21). The first part speaks of a proposal for the establishment of a body known as the Nigerian Surrogacy Regulatory Commission (NSRC). The NSRC is designated as a corporate body with perpetual succession. It shall possess a common seal, and the legal capacity to sue or be sued in its corporate name. The proposal authorises the NSRC to acquire and own movable or immovable property both within Nigeria and elsewhere. Its principal office shall be located in the Federal Capital Territory, Abuja, and can also establish additional offices in other parts of Nigeria if deemed necessary for the proper discharge of its functions. It speaks of the composition of the Commission as comprising a diverse group of professionals and representatives, viz: registrar general; a legal expert in family law; a medical doctor specialised in reproductive health; a mental health professional; and a representative from the ministry of health, women's right organisation, advocacy group, religious organisation, and child welfare. The Commission would be led by a Registrar-General, who will serve as the Registrar of Surrogate and the chief accounting officer. Besides, he or she must be a medical practitioner with at least 15 years of experience, appointed by the Minister for a single 6-year term. The commission shall be responsible for the regulation, oversight, monitoring, and registration of all surrogacy-related matters in Nigeria.

The second part of the Bill establishes the registration and regulatory framework for surrogacy in Nigeria. It provides the practical infrastructural guideline for lawful surrogacy practice. It moves beyond mere prohibition of commercial surrogacy to creating a regulated, rights-based system, ensuring that only suitable persons and institutions engage in surrogacy. It provides that the commissioning couple must be married and must have been medically certified as unable to conceive or carry a child to term. Likewise, the surrogate mother shall not be less than 21 years of age. Both parties are obliged to undergo medical and psychological evaluations before embarking on the surrogacy process. The Bill goes further to ensure that women's health and autonomy are safeguarded through informed consent, transparency, documentation, and professional oversight. It specifically says that the "surrogacy agreement must be in writing and signed by all parties involved, and it must outline the rights, responsibilities, and obligations of each party, including provision for medical care, compensation, and the legal status of the child" (section 12(2)).

Part three outlines the economic structure and accountability requirements for the Commission. The commission is to be funded from: Annual budgetary allocations by the Federal Government; Fees and charges for registration, licensing, and accreditation paid by surrogacy agencies, fertility clinics, and individuals participating in surrogacy arrangements; Donations, grants, and endowments from local or international organizations. To build a credible and transparent regulatory body, the commission shall submit an annual report of its activities including an audited financial statement to the Board. Part IV of the Bill establishes the legal structure for the implementation, enforcement, and interpretation of the proposed surrogacy law. It states clear offences, appropriate penalties, and provides transition plan for existing surrogacy arrangements, that has been entered into before the promulgation of the law, to adjust to the new legal regime. The Bill concludes by defining some common vocabulary associated with surrogacy. Certainly, these definitions will be critical in guiding courts, policymakers, and medical practitioners when interpreting the future law on surrogacy.

Critique

Generally, the Bill looks pretty much like the previous ones but with some remarkable changes. It provides that every person or entity that operates as a surrogacy agency shall be registered with the Corporate Affairs Commission (CAC) and the NSRC (art. 7 and 12(3)). And every registered surrogacy arrangement shall be notarised or executed before a commission of oath (art. 14). Besides, the registered surrogacy agency shall establish and maintain a private registry of all parties involved in surrogacy arrangements with their names, addresses and contact details (art. 8). This is a step in the right direction in supervising especially the private health sector that is largely into surrogacy.

Moreover, before entering a surrogacy arrangement, the Bill makes a vital provision to the effect that the arrangement must be made voluntarily and based on informed consent of all the parties. It also demands that

the commissioning parent(s) and surrogate mother must undergo not just medical but also psychological evaluation to assess their physical and mental suitability for the surrogacy process (art 12 and 13). At least this will ensure that parties are in the right frame of mind and are fully aware of the consequences of their action. Unlike previous Bill, surrogate arrangement for commercial purpose is prohibited. Article 9 number 2 clearly states that “no person or entity shall offer or received any payment, benefit, or consideration in exchange for arranging a surrogacy, acting as a surrogate, or entering into a surrogacy arrangement.”

As regards contractual agreement, it mandates that the agreements, which are to be done in writing, must be duly signed by the surrogate mother, the commissioning parents, and any other party involved. In addition, the proposed law requires that the contract clearly defines the rights, responsibilities, and obligations of each participant, including provisions relating to medical care, compensation, and the legal status of the child. Before the commencement of any surrogacy process, the agreement must be lodged with the designated Regulatory Body following medical and psychological evaluations to assess the physical and mental suitability of both the commissioning parents and the surrogate mother (Art. 13). Furthermore, the Bill provides for the notarization of the contract, which shall serve as formal evidence of the parties’ consent and understanding of the terms and conditions governing the surrogacy arrangement (Art. 14). So, when these steps are taken, and the agreement formalised, a contract would have been said to be created, and the commissioning parents automatically become the legal parents. However, there are fundamental lapses in the Bill.

Institutional and governance concern: The Bill provides that the Commission shall be headed by a Registrar-General, who also serves as the chief accounting officer and must be a medical practitioner with at least fifteen years of professional experience (section 3(1)). The intention to appoint an experienced professional to head the Commission is commendable, particularly given the technical and medical complexities associated with surrogacy and assisted reproductive technologies. Such expertise will contribute significantly in the discharge of his duties. However, placing the leadership in the hands of a medical practitioner may lead to a “medicalised” oversight of surrogacy. Furthermore, assigning the same individual the dual role of chief executive and chief accounting officer may raise concerns regarding administrative efficiency and financial governance. The management of public finances typically requires specialised administrative and financial competencies that are often better handled by trained public administrators or financial professionals.

Additionally, the appointment of Commission members by the Minister without an independent nomination or confirmation process may expose the regulatory body to political influence. The lack of an independent nomination process (such as confirmation by the National Assembly or nomination by professional bodies like the Nigerian Bar Association or the Nigerian Medical Association) may compromise the Commission’s independence. Notably, the Bill does not include a bioethicist, despite the ethical complexities surrounding surrogacy. The absence of a dedicated ethics expert could limit the depth of the Commission’s moral and philosophical analysis.

Legal inconsistencies: The Bill defines surrogacy as an arrangement whereby a woman agrees to bear a child for another who will become the child’s legal parent(s) after birth. in this sense, the transfer of parentage appears to be based on administrative registration of the process rather than a judicial or statutory declaration of parenthood. It is understandable that the drafters sought to clarify from the outset who the legal parents of the child would be, presumably to prevent disputes and ensure certainty for all parties involved. Nevertheless, the absence of a clearly articulated procedural details for the transfer of parental rights may create litigations, particularly in situations where conflicts arise between the surrogate mother and the commissioning parents. Furthermore, the Bill contains an internal inconsistency regarding financial arrangements in surrogacy.

While section 9 prohibits any “payment, benefit, or consideration” for arranging or acting as a surrogate, section 12(2) requires surrogacy agreements to include provisions for “compensation.” The absence of a clear distinction between prohibited payments and permissible compensation leaves room for wider interpretation. Moreover, the Bill prescribes penalties only for unregistered agencies and age violations, but not for individuals directly involved in unlawful surrogacy arrangements (section 18).

Financial sustainability and regulatory independence: The financing structure of the NSRC, as outlined in Part III of the Bill, presents a hybrid model of state funding, internally generated revenue, and external aid. While this provides multiple streams of income, it portends several potential risks regarding the Commission’s independence, regulatory integrity, and long-term sustainability. It is ironic that the commission established as a corporate body with the power to own movable or immovable property in Nigeria and elsewhere will remains heavily reliant on “annual budgetary allocations from the Federal Government”. This ties the Commission’s operational capacity to Nigeria’s broader economic problem. Hence, if the Federal Government faces a deficit, the Commission’s ability to “investigate and resolve disputes” may be compromised.

Furthermore, the Commission is authorised to generate

revenue through “fees and charges for the registration and licensing of surrogate bodies and institutions”. This arrangement may inadvertently create a financial incentive to approve more agencies to increase operating revenue. And since the Commission’s financial strength depends on the volume of registered “bodies”, it may be less inclined to revoke licences or enforce strict, or costly standards that could lead to agency closures. Likewise, the acceptance of grants from international organisations and development partners also raises concerns. Such funding often comes with policy conditions that may not align with local ethical, cultural, or religious perspectives. This might lead to a clash between foreign reproductive health ideologies and local ethical, cultural or religious values, which will undermine the Commission’s domestic legitimacy.

It is worthy to note that the staff of the Commission are on “pensionable employment” subject to civil service rules. Thus, the Commission carries a long-term financial liability that it may not be able to meet if government funding fluctuates or the surrogacy market fails to generate sufficient internal fees.

Transparency and accountability concerns: The Bill provides that the Registrar-General has up to six months after the end of the financial year to submit audited statements to the Minister. A six-month period allows for sufficient time for gathering financial records, verifying transactions, reconciling accounts to ensure accuracy. Yet, this length of time has a potential risk for financial mismanagement or the misappropriation of registration fees that could go undetected for half a year before reaching the oversight of the Ministry. This lag, combined with the fact that the “Board” appoints the external auditors, could weaken the transparency necessary for a body handling sensitive reproductive issues.

Insufficient protection for surrogate mothers: Another notable omission concerns the age and frequency limits for surrogacy participation. The Bill does not specify a maximum age for surrogate mothers, nor does it limit the number of times a woman may serve as a surrogate. The omission of such statutory safeguard would expose women especially teenagers to significant health risks and increase the likelihood of repeated exploitation.

Above all, this Bill scaled second reading in the House of Assembly in October 2024 and was referred to the House Committee on Healthcare Services. Nonetheless, a fresh Bill on the same subject has been introduced. This may suggest that the earlier Bill has been set aside since another related Bill has been introduced.

The Women’s Health and Surrogacy Protection Bill 2025 (HB 2340)

On the 21st of May 2025, a legislative proposal was made by Hon. Uchenna Harris Okonkwo in respect to surrogate motherhood regulation. A Bill for an Act to protect the health and well-being of women, particularly in relation to surrogacy and for related matters was presented on the floor of the House of Representatives Federal Republic of Nigeria 2025). The Bill is divided into four parts:

(1) Part I sets out the preliminary provisions of the Bill, including its objectives and the definition of key terms related to surrogacy and reproductive practices.
(2) Part II establishes the regulatory framework for surrogacy in Nigeria, permitting only altruistic surrogacy while prohibiting commercial surrogacy and outlining the conditions under which such arrangements may occur.
(3) Part III focuses on the protection of women, particularly surrogate mothers, by emphasizing informed consent, medical care, and safeguards against coercion and exploitation.
(4) Part IV provides for offences, penalties, and other miscellaneous provisions necessary for the enforcement and effective implementation of the law.

The Bill is the most recent legislative attempt to regulate surrogacy practices in Nigeria. Its primary objective was to establish a regulation that protects the health, dignity, and rights of women involved in surrogacy arrangements. A central feature of the Bill is the prohibition of commercial surrogacy in Nigeria. In other words, only altruistic surrogacy, where a woman voluntarily agrees to carry a pregnancy for another individual or couple without receiving financial compensation - apart from reimbursement for medical and pregnancy-related costs - is allowed.

The Bill also emphasizes the protection of surrogate mothers’ rights. It guarantees their right to informed consent, ensuring that no woman may be coerced or forced into a surrogacy arrangement. In addition, surrogate mothers are entitled to adequate medical care during and after pregnancy, as well as compensation for legitimate expenses related to the pregnancy and childbirth. The Bill also establishes conditions under which altruistic surrogacy may take place. For instance, the surrogate mother must be at least 21 years old, must provide informed consent, and both the surrogate and the commissioning parents are required to undergo counselling before entering the arrangement. These requirements aim to ensure that surrogacy agreements are entered into with full understanding of their medical, legal, and psychological implications. The Minister of Health is empowered to issue regulations necessary for implementing and supervising surrogacy practices in the country. Furthermore, it specifies offences and penalties to enforce compliance.

Critique

Overall, this Bill reveals a significant shift in legislative

intent compared to previous Bills. Its focuses on the holistic health of the woman than on the administrative registration of clinics and the commercial viability of contracts. A major advancement in this Bill is its explicit objective to protect the "physical, emotional, and psychological health" of women. The 2015 IVF Bill was criticised for its procedural and product-oriented focus, where rights were relegated to discretionary future regulations. Conversely, this Bill embeds these protections into the "General Objective". The woman's health is elevated from a secondary administrative detail to the primary legal purpose of the regulation.

The 2025 Bill introduces mandatory counselling for both the surrogate mother and the commissioning parents. While previous Bills, like SB325/2016, treated surrogacy as a market transaction, focusing on the monetary compensation for surrogate mothers, the current Bill emphasis is on inform consent, health protection, and anti-coercion safeguards. It obliges both surrogate mothers and commissioning parents to undergo counselling before embarking on the process. This is an acknowledgement that surrogacy is not just a mechanical biological process but a complex emotional journey. This also recognises the "biological and emotional bonds" that form during pregnancy.

Section 7 of this Bill provides a right to medical care and treatment for surrogate mothers "during and after the pregnancy". By extending the right to care "after the pregnancy", the bill acknowledges that the surrogate's needs do not end once the baby is delivered. This directly addresses the issue of abandonment of surrogate mothers after delivery. Notably, the 2025 Bill raises the minimum age for a surrogate mother to 21 years old as compared to 18 years in previous Bill. This higher age threshold suggests a more cautious approach to reproductive agency. It assumes that a 21-year-old may have a more mature autonomous perspective to resist the "irresistible" financial temptations often found in Nigeria's unregulated reproductive market.

Moreover, the evolution of penalties across the four bills illustrates a gradual shift from technical regulatory sanctions aimed at medical institutions toward criminal sanctions addressing exploitation, coercion, and the protection of surrogate mothers (Table 1). However, the fact that altruistic surrogacy is permitted has generated debate among civil society groups, scholars, and policy stakeholders regarding its potential social and ethical implications.

Commodification and exploitation of women: There have been growing calls within the United Nations system urging member states to work "towards adopting an international legally binding instrument prohibiting all forms of surrogacy". This position is based on the concern that surrogacy, irrespective of its form, entails the direct and potentially exploitative use of a woman's bodily and reproductive capacities for the benefit of others. This practice has been characterised as one that may involve various forms of exploitation and violence against women and children, including girls, particularly within contexts marked by socio-economic inequality (United Nations, 2025). According to Hadd (1991: 170), "a society that permits this, and worse yet, creates a situation for women where they have an economic need to use themselves in this way, is a society that desecrates the inherent intrinsic value of humanity". And once we fail to respect the intrinsic value of a human person, exploitation is easy. According to Nussbaum (2000: 2), one might sum all this up by saying that all too often women are not treated as ends in their own right, persons with a dignity that deserves respect from laws and institutions. Instead, they are treated as mere instruments of the ends of others - reproducers, caregivers, sexual outlets, agents of a family's general prosperity.

For example, in Finland the decision to ban surrogacy, after a prolonged political, legal and media debate was based not only on moral and normative considerations, but also by concrete domestic experience of reproductive exploitation (Eriksson, 2017).

Finland did not approach the question of surrogacy purely as a hypothetical or abstract ethical dilemma, but rather with direct knowledge of how such arrangements functioned in practice. Treating the woman's womb as a piece of property that can be used by another, in a society where their bodies are already highly commodified by advertisers, pornographers, and promoters of prostitution, would mean a further dent to the dignity of the women. This is the reason women are exploited.

Potential conflict with existing Nigerian laws: Some legal scholars have also argued that any legislation permitting surrogacy, whether commercial or altruistic, may conflict with existing Nigerian laws and constitutional provisions (Ekwowusi, 2025; Tijani and Abraham, 2023). In France, all forms of surrogacy were ban because it was contrary to public policy (Scherpe et al., 2019: 18). Critics contend that surrogacy arrangements could undermine laws governing family relations, human dignity, and the protection of women and children. In particular, potential conflicts have been identified with the Child Rights Act (2003), the Trafficking in Persons (Prohibition) Enforcement and Administration Act (2015), relevant provisions of the Criminal Code, the African Charter on Human and Peoples' Rights, and sections of the 1999 Constitution of the Federal Republic of Nigeria that protect human dignity and prohibit the commercialisation of human persons (Ekwowusi, 2025).

The explicit ban on surrogacy by countries like Germany (Embryo Protection Act 1990), Spain (Ley 35/1988; Ley 14/2006), Italy (Law No. 40/2004; Law No 169/2024), Malta (Embryo Protection Act No. XXI 2012);

Table 1. A comparative table of the four bills and the evolution overtime.

Key issue	Bill 2015	Bill 2016	Bill 2024	Bill 2025	Evolution
Primary focus	Regulation of IVF	Regulation of ART	Regulation of surrogacy	Protection of women's health in surrogacy	Shift from general ART regulation to women-centred protection
Legal status of surrogacy	Recognised but minimally regulated	Explicitly regulated within ART framework	Surrogacy treated as a distinct practice	Surrogacy recognised but limited to altruistic	Increasing legal recognition and specificity
Types of surrogacy allowed	Prohibits commercial surrogacy.	Allows compensation to surrogate mother	Prohibits commercial surrogacy	Prohibits commercial surrogacy	Gradual attempt to restrict commercialisation.
Legal parentage	Requires court order	Surrogate must relinquish parental right with procedure unclear	Commissioning parents recognised through contractual agreement	Not stated	Persistent legal uncertainty regarding parental transfer
Eligibility of commissioning parents	Must be heterosexual	Allows both married and unmarried as well as single persons	Only married couples with medical infertility	Not stated	Movement towards more restrictive eligibility criteria
Rights and protection of surrogate mother	Minimal protection; largely contractual.	Medical screening and counselling required.	Psychological and medical assessment required	Emphasis on informed consent, health protection, anti-coercion safeguards.	Increasing attention to surrogate welfare.
Regulatory institution	Regulatory board proposed.	National and State ART Boards.	Nigeria Surrogacy Regulatory Commission	Ministry of Health	Increasing awareness of the need for a specific regulation
Penalties for offences	Fines and possible imprisonment for violations of regulatory provisions.	Imprisonment ranging from 3 to 5 years and/or financial fines for those who contravene the provisions of the Act.	Fines or regulatory sanctions against agencies.	Fine up to ₦2,000,000, imprisonment up to 2 years, or both for those who coerce or force a woman into surrogacy	Criminalizes coercion and commercial surrogacy, reflecting a stronger human-rights and women-protection approach.
Overall orientation	Medical and technical regulation.	Medical and institutional regulation	Administrative and regulatory oversight.	Ethical protection of women	Gradual shift from medical regulation to ethical and human right concerns

Switzerland ((Swiss Confederation 1999) Federal Constitution, art 119, par 2); etc., was driven mainly by surrogacy's violation of human dignity. All forms of surrogacy have also been prohibited in Austria (Republic of Austria 1992) Reproductive Medicine Act 27/1992); Bulgaria (Ordinance 28 on Assisted Reproduction); Macao (Article 1726 Macao Civil Code), just to mention a few based on the moral understanding of marriage and parenthood (De Groot 2025). According to these jurisdictions assisted reproduction is only permissible within a marriage. For example, all third-party assisted reproductive technologies, including surrogacy, have been banned in Turkey since 2018 (Ebrahimi and Ghodrati, 2025: 4527).

Institutional and systemic limitations: Discussions from a webinar, organised by the CHELD in Nigeria, reveal a wide consensus that legislative reform alone cannot adequately address the complexities of surrogacy in Nigeria. The Honourable Minister of Women Affairs reiterated that surrogacy governance must be treated as a moral responsibility rather than merely a legal exercise (CHELD 2025: 5). Likewise, participants, including parliamentarians who sponsored Bills related to human procreation, emphasised that the absence of strong institutions, effective oversight, and adequate healthcare infrastructure makes the implementation of surrogacy regulation particularly challenging. Countries like Cambodia (Kodama, 2017), China (Raposo and Wai, 2017), Japan (Parks, 2014), South Korea (Scherpe et al., 2019), etc have placed a regulatory ban on surrogacy pending a substantive and comprehensive legislation. Determining what constitutes "protection" in the context of surrogacy is not straightforward without careful moral analysis. For instance, some may argue that failing to compensate a surrogate mother amount to exploitation of her reproductive labour, while others may contend that paying for such services risks commodifying both the woman's body and the child.

Moreover, testimonies from surrogate mothers highlight persistent problems such as inadequate medical supervision and care, inconsistent financial agreements, poor counselling services, and limited protection of surrogate mothers' rights. In brief, the webinar concluded that the challenge of surrogacy in Nigeria is not merely legislative but systemic. "An effective legislation is one enforced by capable institutions" (CHELD, 2025: 4). And where this is lacking, an administrative ban is advisable to protect live and preserve the dignity of the human person.

CONCLUSION

The attempts made by the legislative arm of government to provide law to guide surrogacy practice in Nigeria has been seen. These initiatives show the growing awareness among legislators of the need to protect the lives of especially vulnerable women and innocent children. Remarkably, there is an evolution in legislative perspective in the progressive trajectory of the bills reviewed in this study. The 2015 and 2016 bills primarily treated surrogacy as an extension of ART regulation, situating it within the medical domain of fertility treatment. By contrast, the Surrogacy Bill 2024 began to introduce a more explicit regulatory provisions specifically addressing surrogacy arrangements, institutional oversight and contractual procedures. The Women's Health and Surrogacy Protection Bill 2025, goes further by explicitly framing surrogacy within the language of women's protection, informed consent, and protection against coercion and exploitation, especially of vulnerable women.

Certainly, with this legislative evolution, we can say that the Women's Health and Surrogacy Protection Bill 2025 attempts to reposition the regulatory conversation from purely technological governance toward the protection of women's dignity, health, and rights. Whether the Bill, if eventually passed, would achieve this objective remains a matter of ongoing debate among scholars, policymakers, and civil society actors. Admittedly, the United Nations had acknowledged that enforcement and oversight mechanisms for surrogacy arrangements are frequently weak or non-existent (UN, 2025). It therefore asks members states to work towards the prohibition of surrogacy in all its forms.

CONFLICT OF INTERESTS

The author has not declared any conflict of interest.

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