

# Motherhood For Hire?

Inside Nigeria's Controversial  
New Surrogacy Bill





In recent times, surrogacy has become a prominent topic of global discussion, ranging from individuals or couples who choose not to carry their children naturally to those who face serious health complications and are physically unable to do so. Amidst the growing discourse on this deeply personal yet globally significant issue, a pertinent question arises: What exactly is surrogacy?

According to the Victorian Assisted Reproductive Treatment Authority, surrogacy is an arrangement in which a woman (the surrogate) agrees to carry and give birth to a child on behalf of another person or couple (the intended or commissioning parents).



There are **two main types of surrogacy**:

**Gestational Surrogacy:** The surrogate's egg is not used for conception. The embryo is created using the egg and sperm of the intended parents (or donors), meaning the surrogate has no genetic link to the child.

**Traditional Surrogacy:** The surrogate uses her own egg and is artificially inseminated with the intended father's sperm. This results in a genetic connection between the surrogate and the child.



Surrogacy also exists in **two legal/contractual forms**:

**Altruistic Surrogacy:** The surrogate receives no financial compensation beyond reimbursement for medical and related pregnancy expenses.

**Commercial Surrogacy:** The surrogate is paid beyond medical expenses, effectively turning the arrangement into a commercial transaction.

Globally, **most countries permit only altruistic surrogacy** while banning commercial surrogacy. Some countries, like **France, Germany, Italy, and Spain**, ban all forms of surrogacy. Others, like **Guatemala, Kenya, and North Cyprus**, have no regulation at all. Countries such as **South Africa and the United Kingdom** permit only altruistic surrogacy under strict conditions.

In Nigeria, surrogacy practices remain largely **unregulated**, despite the growing interest and participation in surrogacy arrangements. However, this may be about to change. On **21 May 2025**, a legislative proposal titled *“A Bill for an Act to Protect the Health and Well-being of Women, Particularly in Relation to Surrogacy and for Related Matters”* (“the Surrogacy Bill”) passed its first reading in the House of Representatives. This development has brought hope that Nigeria may soon have a clear legal framework for surrogacy.

## Why Regulation Matters

With a population exceeding 200 million people, over half of whom are young women, Nigeria is particularly vulnerable to exploitation if surrogacy is not adequately regulated. According to the 2020 National Bureau of Statistics (NBS) Survey, over 51% of Nigerian females are young. Additionally, the 2022 NBS Multidimensional Poverty Report shows that 63% of Nigerians live in multidimensional poverty. These factors create a potentially exploitative environment for unregulated surrogacy.

## Overview of the Nigerian Surrogacy Bill

The Nigerian Surrogacy Bill, introduced to the House of Representatives on 21 May 2025, marks Nigeria’s second significant legislative attempt to regulate surrogacy arrangements within its jurisdiction. Though relatively brief, spanning only two pages, the bill is structured



into six distinct parts, each addressing critical aspects of the proposed regulatory framework. Its overall goal is to establish legal, ethical, and medical safeguards that protect women involved in surrogacy, while ensuring that the process remains free from exploitation and abuse.

The first part of the Bill sets out its objectives, application, and scope. At its core, the bill seeks to ensure that all surrogacy arrangements in Nigeria are conducted safely and ethically, with a strong emphasis on the protection of women's health and the prevention of exploitative practices. It expressly prohibits commercial surrogacy which is any arrangement where the surrogate is paid beyond the reimbursement of medical and pregnancy-related expenses, and criminalises such conduct. Conversely, altruistic surrogacy is permitted. The bill also provides that surrogate mothers shall be entitled to informed consent, necessary medical care, and compensation limited to actual expenses incurred due to the pregnancy and childbirth. The proposed law is to apply to all surrogate arrangements carried out within Nigeria and extend its reach to all surrogacy agencies operating in the country.

The second part of the Bill is dedicated to the protection of women's health. It mandates that all women must give their informed consent before undergoing any surrogacy-related procedures. It further emphasises that no woman may be coerced or pressured into entering a surrogacy agreement, thereby safeguarding their autonomy and bodily integrity.





In the third part, the bill outlines the core requirements for engaging in surrogacy. It reiterates the ban on commercial surrogacy and allows altruistic surrogacy only under specific conditions: the surrogate mother must be at least 21 years of age, she must have given her informed consent, and both she and the intended parents must have undergone appropriate counselling. These provisions aim to ensure that all parties involved are psychologically and physically prepared for the surrogacy process.

Part four focuses on the protection of surrogate mothers during and after pregnancy. It guarantees the right to adequate medical care throughout the process and reinforces the surrogate's entitlement to reasonable reimbursement for expenses directly related to the pregnancy and childbirth.

In part five, the Bill introduces offences and penalties for breaches. Any person found to have coerced a woman into a surrogacy arrangement, engaged in commercial surrogacy, or violated the conditions applicable to altruistic surrogacy, shall be guilty of an offence. Upon conviction, such a person may face a fine of up to ₦2,000,000 or imprisonment for a term not exceeding two years, or both.

The sixth and final part of the Bill contains miscellaneous provisions, including definitions. "Surrogacy" is defined as an arrangement in which a woman agrees to carry and give birth to a child for another individual or couple, while "surrogate mother" refers to the woman who carries and gives birth to the child under such an arrangement.

While this proposed legislation represents an important move toward regulating a growing practice in Nigeria, it remains basic and leaves several important issues unaddressed. For a country as populous and diverse as Nigeria, a more robust and comprehensive legal framework is necessary to cover the various ethical, legal, and procedural nuances of surrogacy.

### **A Comparative Review: Lessons from the UK and South Africa**

In evaluating the adequacy of Nigeria's proposed Surrogacy Bill, it is helpful to examine the legal frameworks of other countries that have longer histories of regulating surrogacy. The United Kingdom and South Africa, in particular, offer instructive examples of how surrogacy can be ethically managed through detailed legislation and institutional oversight.



The United Kingdom's surrogacy regime is primarily governed by the **Surrogacy Arrangements Act 1985 (SAA 1985)**. Like Nigeria's proposed bill, the SAA 1985 prohibits commercial surrogacy and permits only altruistic arrangements. However, it goes several steps further. One of its key provisions is the regulation of third-party involvement. The Act strictly controls the activities of surrogacy agencies and bars the advertisement of surrogacy services, whether by intended parents or by those seeking to act as surrogates. This provision is entirely absent from the Nigerian bill, which mentions surrogacy agencies only in passing, without any express regulation of their conduct or commercial practices.

Another significant feature of the UK law is the non-enforceability of surrogacy agreements. Under UK law, even where a written surrogacy agreement exists, it is not legally binding. Instead, intended parents must apply for a parental order after the child's birth to gain legal **parenthood**. This procedure ensures that final decisions about custody and parental rights are made with the child's welfare in mind. Unfortunately, Nigeria's bill is silent on this issue, leaving a potentially dangerous legal vacuum regarding the transfer of parental rights.

South Africa offers an even more comprehensive legal framework under **Chapter 19 of the Children's Act 38 of 2005**, which governs surrogate motherhood. The South African model stands out for its insistence on court approval and legal oversight. Surrogacy agreements must be in writing, signed by all parties, and submitted to the High Court for confirmation prior to any medical procedures. The Act also requires that such agreements be concluded within South Africa, and that at least one of the commissioning parents must contribute genetic material to the conception of the child. This genetic link requirement serves to clearly establish legal parenthood from the moment of birth.

Moreover, South African law provides that in cases where the surrogate is also the genetic mother, she retains the right to terminate the surrogacy agreement within 60 days after the birth of the child. This nuanced provision recognises the complex emotional and ethical considerations that may arise during and after pregnancy, providing an additional safeguard for the surrogate.

When compared to the Nigerian Surrogacy Bill, the legislative frameworks in both the UK and South Africa reveal critical omissions in the current Nigerian proposal. These include the lack of provisions addressing the enforceability of surrogacy agreements, the absence of guidelines for establishing parental rights, the failure to regulate the conduct and role of surrogacy agencies, and the lack of judicial oversight to validate surrogacy arrangements



before conception.

## Conclusion

To build a robust and ethical surrogacy regime, Nigeria must adopt a more detailed approach, one that learns from these international best practices while being sensitive to local realities. Although the Bill empowers the Minister in charge of Health and Social Welfare to make regulations to give effect to its provisions, this alone is insufficient; the primary legislation itself must be comprehensive and robust enough to address the complexities of surrogacy. Without such revisions, the current Surrogacy Bill, while noble in intention, risks falling short of delivering meaningful protections or clarity to those it seeks to serve.

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