



Centre for Health Ethics Law and Development



# **Protecting the Rights of Surrogates under the Proposed Legal Regime on Surrogacy in Nigeria**

The Surrogacy Bill 2024 is currently before the House of Representatives. The Bill, which has passed its second reading, aims to regulate the practice of surrogacy in Nigeria. Surrogacy is increasingly becoming an alternative reproductive option for many families in Nigeria who face infertility or other challenges to natural conception. However, the current legal framework surrounding surrogacy in the country is underdeveloped, often leaving the surrogates in such arrangements vulnerable to exploitation. Without a clear legal framework, surrogates face risks such as inadequate healthcare, emotional distress, and uncertainty regarding their legal rights in such arrangements. This absence of clear regulation leaves surrogates in vulnerable positions. Addressing these gaps and advocating for the protection and welfare of surrogates is critical for the development of a fair and humane assisted reproductive system in Nigeria.

At the Centre for Health Ethics Law and Development (CHELD), we welcome the introduction of the Surrogacy Bill 2024. This Bill marks a significant step towards addressing the legal complexities surrounding surrogacy in the country. However, while the Bill represents progress in reproductive health policy, we have concerns regarding the seemingly inadequate legal protection for surrogates. A review of the Bill indicates that it aims to regulate surrogacy by establishing a framework for ethical practices, ensuring the protection of all parties involved, and prohibiting commercial surrogacy. Thus, there are key provisions around eligibility requirements of parties to the arrangement, the registration of surrogacy agreements and surrogacy agencies with the Nigeria Surrogacy Regulatory Commission (NSRC), the proposed regulator. Notably, the Bill mandates voluntary and informed consent to a surrogacy arrangement. It also mandates medical and psychological evaluation for all parties to the arrangement, including the surrogate. The Bill criminalises commercial surrogacy.

While the Bill introduces important regulatory measures such as the mandatory registration of surrogacy agencies and surrogacy agreements and the informed consent requirement, it does not adequately address the issue of legal protections for surrogates. There are concerns that the Bill does not seem to provide sufficient legal protection for surrogates. For instance, while the Bill mandate the registration of surrogacy agreements with the NSRC, the NSRC is not authorised to perform checks on those agreements to confirm compliance with the voluntariness and informed consent requirements of the Bill. Also, the Bill mandates medical and psychological evaluation for the surrogates prior to the commencement of the surrogacy process. However, it does not explicitly provide for ongoing psychological support or post-pregnancy care for surrogates, leaving them vulnerable to exploitation and neglect. Further, the Bill does not recognise the rights of surrogates to legal representation, and thus makes no provision for such. Access to legal representation is critical to reduce chances of exploitation of the surrogates. Finally, while the Bill's prohibition of commercial surrogacy aligns with the need to prevent exploitation of surrogates, there are concerns around ensuring that surrogates are not financially disadvantaged as a result of the process. There is also the need to protect the interest of rural and low-income women, who are typically most affected by reproductive policies.

Given the concerns above and our work around reproductive health rights, we recommend the following to ensure that the rights and well being of surrogates are adequately protected under the Surrogacy Bill 2024:

- The introduction into the Bill provisions mandating continued psychological and post-pregnancy care for the surrogates to ensure the physical and mental health of surrogates are safeguarded throughout the surrogacy process;

- Provide in the Bill robust protective measures to ensure that the surrogacy arrangements are devoid of exploitation and align with standard best practices;
- Introduce specific legal provisions addressing issues around termination of pregnancy at the request of the intending parents, gender selection and multiple pregnancies;
- Make it a requirement of the law for the Nigeria Surrogacy Regulatory Commission (NSRC) to implement public awareness programmes to educate the public about surrogacy, its legal implications, and the rights of surrogates, to help facilitate informed decision-making by potential surrogates;
- Make it a requirement of the law for surrogates to have access to legal representation paid for by the intending parent(s) throughout the duration of the process.

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