

## Chapter

## 29

# Gestational Surrogacy in Nigeria

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## Introduction

There is a strong human desire to reproduce one's kind. This is particularly important in sub-Saharan Africa. In most cultures in Nigeria, a woman is not believed to be "complete" if she is yet to bear a child of her own. Adoption is not particularly common because it is not entirely acceptable as an option for childbearing [1]. The process of adoption also can be complicated, requiring years to conclude. Fostering is one of the more common options, but that innate desire to bear one's own offspring with some genetic material of either the woman or her male partner remains.

The incidence of infertility is believed to be approximately one in four couples in Nigeria. For those affected by infertility, the pressure from family and friends can be overwhelming, sometimes leading to psychological and emotional problems. Marriages have broken up because of the inability of the woman to bear a child. This is so because regardless of the true cause of infertility, the woman is more often than not regarded as the infertile one. Infertile couples sometimes avoid attending family gatherings because they are constantly reminded of their infertility. Sometimes the issues revolve around the woman's inability to carry a pregnancy herself for several possible reasons.

"Surrogacy" simply refers to an arrangement whereby a woman agrees to carry and deliver a child for another woman who is unable to do so herself. It is like "renting out a womb." Such a woman who carries the pregnancy and bears the child is called a "surrogate." The couple who is seeking the services of a surrogate is called the "commissioning couple."

Surrogacy can be "traditional," where the surrogate has a genetic contribution in the conception of the baby, such as the use of her own oocytes in *in vitro* fertilization (IVF) or by being inseminated with the man's semen.

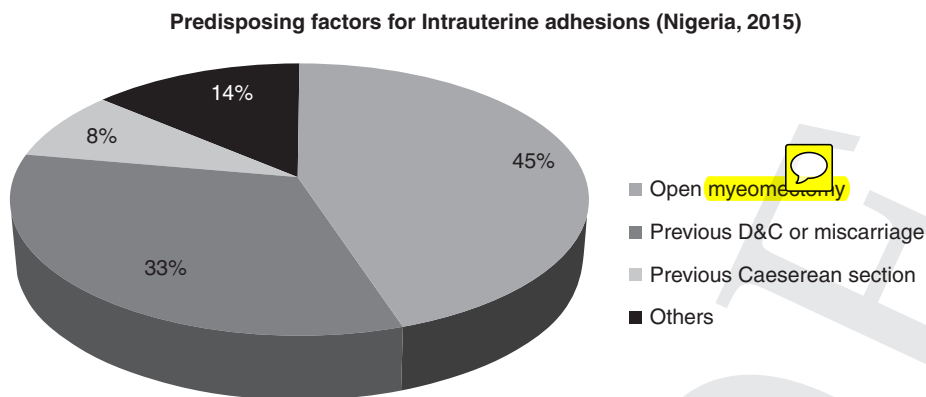
Alternatively, surrogacy can be "gestational" (host), where the surrogate has no such contribution and is only a carrier of the pregnancy. In Nigeria, gestational surrogacy is the more common type.

In Nigeria, surrogacy is done mostly by women of advanced age who already have a compromised ovarian reserve. The use of donor eggs is the norm, and most commissioning couples will use a separate woman to donate oocytes.

## Reasons for Surrogacy

Some of the reasons why women need surrogacy in Nigeria include being born without a uterus or having an atrophic, poorly developed uterus as in Turner syndrome; loss of the uterus at childbirth, for example, following hysterectomy for severe postpartum hemorrhage from poorly managed labor and delivery; and badly damaged uterus following open myomectomy for large, multiple fibroids, which is relatively common in these parts. In Nigeria, unsafe termination of pregnancy is relatively common because abortion is not legal in this jurisdiction. This is another cause of uterine damage because conditions such as Asherman syndrome may result. Severe Asherman syndrome may not be amenable to treatment, and surrogacy may be an option.

In a 2015 study conducted at Nordica Fertility Centre, in Lagos, Nigeria, intrauterine adhesions were the leading abnormality (30.3 percent) among 1115 infertile women who had hysteroscopy. The top three predisposing factors identified were previous open myomectomy (45.0 percent), previous dilation and curettage for unwanted pregnancy or miscarriage (32.8 percent), and previous cesarean section (8.3 percent) (data presented at the 1st AFOG and 39th KOG Congresses, Nairobi, Kenya) (Figure 29.1).



**Figure 29.1** Predisposing factors for intrauterine adhesions.

Other reasons for gestational surrogacy in Nigeria include medical conditions such as severe hypertension or heart diseases, advanced maternal age, and desire for a certain gender child after having completed child-bearing. One postmenopausal woman who had two girls and one boy (who was her last child) wanted surrogacy and sex selection for another male child because her only son had a life-threatening health challenge. Another woman wanted surrogacy because of repeated miscarriages and several failed *in vitro* fertilization (IVF) cycles where a uterine factor was strongly suspected. “Vanity surrogacy” (i.e. surrogacy for personal or cosmetic reasons) is not common in Nigeria.

## Who Can Be a Surrogate?

Surrogacy can be altruistic or commercial; both are practiced in Nigeria. However, most of the time the surrogate’s motive is commercial, although a few do it to assist relatives. There are no registered surrogacy agencies in Nigeria, and most of the commissioning couples seek out their own surrogates. Potential surrogates undergo evaluation. Age is taken into consideration (the younger the better), as well as whether the potential surrogate has children of her own. Also considered are the potential surrogate’s general health status and medical fitness, infectious disease screening, and the state of her uterine cavity and its suitability for childbearing (Figure 29.2).

## Legal Aspects

The legality of surrogacy varies from country to country. The process of surrogacy is still not fully accepted in all countries of the world. Commercial surrogacy is legal in India, Ukraine, and California but illegal in England,

many states of the United States, and Australia. These only recognize altruistic surrogacy. In Germany, Sweden, Norway, and Italy, no form of surrogacy is recognized [2]. Our experience with the legal aspects of surrogacy in Nigeria started about eight to nine years ago. There was an underdevelopment of the practice of surrogacy and its legal aspects in the first couple of years, but this has improved significantly.

Still, we find that couples are not fully knowledgeable about the legal implications of surrogacy. It is important to properly counsel intending commissioning couples and surrogates and make the process and implications clear to them because most of the time it is evident that they do not truly understand what they are about to get involved in. One man thought he was required to have sexual intercourse with the surrogate, and it turned out that he was HIV positive.

It is important to take the legal aspects very seriously because there are not a few illegal “baby factories” that run baby-selling franchises. Most of these babies are criminally acquired either by kidnapping or by organizing and paying for young girls to get pregnant and sell their babies to infertile couples. A typical registered clinic will not proceed with surrogacy arrangements until the rights of the surrogate and those of the commissioning parents are protected in writing.

In Nigeria, surrogacy is legal even though there is no formal legal framework in place. Legal practitioners model surrogacy agreements after the recommendations of the Human Fertilization and Embryology Authority [3] and the Surrogacy Arrangements Act of the United Kingdom [4] primarily because Nigerian laws are generally modeled after British laws, Nigeria being a former British colony.

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# GESTATIONAL SURROGACY

## in Nigeria

1 in 4 couples in Nigeria are infertile.

### SURROGACY

An arrangement whereby a woman agrees to carry and deliver a child for another woman who is unable to do so herself.

There are 2 types of surrogacy:  
Traditional surrogacy  
Gestational surrogacy



Surrogate  
Carries the pregnancy and bears the child.



Commissioning Couple  
The couple seeking the services of a surrogate.

### GESTATIONAL SURROGACY

Used in cases where the woman is unable to carry a pregnancy to term.

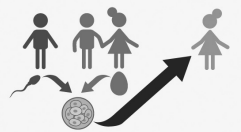


Surrogate is not genetically related to the child and acts only as a gestational carrier for the pregnancy.

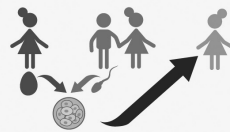
### TYPES OF TREATMENT



Implanting the couple's IVF embryos into a surrogate.



Implanting the embryos created from donor sperm and mother's eggs into a surrogate.



Implanting the embryos created from donor egg and father's sperm into a surrogate.



Implanting the embryos created from donor egg and donor sperm into a surrogate.

### WHO NEEDS IT?

a woman that has



no uterus  
a damaged uterus  
significant uterine abnormalities  
e.g. severe Asherman's Syndrome  
chronic reproductive loss



severe hypertension  
or heart diseases



a woman too old to conceive and carry her baby



### WHO CAN BE A SURROGATE?



age 21-42



has children of her own



has good understanding of the treatment procedure and is empathetic.  
medically and psychologically fit

altruistic or commercial



### THE PRACTICE IN NIGERIA IS BASED ON BRITISH LAW



A surrogacy contract is drawn and signed at the beginning by both parties with a lawyer. The surrogate's husband is a signatory, if she's married.

Figure 29.2 Gestational surrogacy in Nigeria.

A surrogacy contract is drawn, presented to a notary public, and signed by all parties before any treatment begins. This must be done before the process can proceed. The ensuing contract is enforceable in a Nigerian court of law. The underlying principle of the contract is that the terms must satisfy the rules of natural justice, good conscience, and equity.

It is important to note that the remuneration paid to the surrogate is not a salary or contractual fee. It is compensation for time she will carry the baby and other inconveniences. But legal arrangements must be reached about this compensation.

The surrogacy contract must protect the rights of both the intending parents and the surrogate. Surrogates especially need special protection because they are often poor (sometimes illiterate) women who may not know their rights and can be easily exploited – especially by middlemen and fraudulent agencies that want to make money at the expense of the surrogate. Abandonment of the surrogate in cases of unfavorable pregnancy outcome must be prevented. The commissioning couple also must agree to take the child regardless of the outcome in terms of number of babies and any unforeseen abnormality in the offspring. Other challenges encountered include the fact that sometimes the surrogates wish to remain anonymous, and the commissioning couple also may not want to meet the surrogate.

After all is said and done, in many jurisdictions the enforceability of commercial surrogacy is questionable, and this was addressed and scrutinized for the first time in the celebrated case of Baby M., though this was a case of traditional surrogacy [5].

## Counseling and Psychological Support

These are very important aspects of surrogacy. Living with infertility can be challenging, and it could get worse when the only option is surrogacy. Finding a surrogate can be difficult for the commissioning couple because there are no registered agencies in Nigeria, and some couples may not want to use a close family relative as a surrogate. It is a sensitive issue, and both the commissioning couple and the surrogate need effective counseling.

The issues couples face in closely knit extended family settings in Nigeria (and most of Africa) include

what to tell relatives when you suddenly bring a baby home without a pregnancy, especially a baby you may not breast-feed. It is commonplace in the traditional African setting for a woman to breast-feed her newborn. There could be a lot of pressure from the family regarding this.

There are also cross-border surrogacy arrangements, where commissioning couples based abroad in such countries as the United Kingdom come to Nigeria to access surrogacy. Issues with citizenship and nationality of the child may arise, and commissioning couples may have difficulty getting the same nationality as theirs for their child. This brings into focus the need to be prepared with explanations for immigration officials.

Providing psychological support and counseling for the surrogate is very important because she faces some difficulties, especially if she is married with her own children. If she becomes pregnant for a surrogacy arrangement, how will she explain being pregnant with another person's child? How will she explain to family, friends, and neighbors who had seen her pregnant when she comes back home without a child after the delivery? According to public opinion, women giving up babies still fall outside the acceptable remit, and normal populations are less accepting of third-party reproduction [6]. Would she live in her home or move in with the commissioning couple? She could have bonded with the baby over the last nine months and may find it difficult to hand over the baby. This needs to be fully discussed during pretreatment counseling. If she is married, how will her husband handle not having sexual intercourse with his wife for the period of the pregnancy? If the surrogate is married, her husband's consent is very important and is sought before proceeding with the surrogacy arrangement.

## Other Considerations

Other factors taken into consideration are the proposed management of pregnancy complications should they arise in the surrogate. It is important for all parties to realize and acknowledge that the surrogate's life comes first. The surrogate also must realize the rights of the commissioning couple when decisions need to be taken in any case involving the baby, for instance, continuing the pregnancy or otherwise in the face of certain congenital anomalies.

## Representative Profiles of Gestational Surrogacy in Nigeria

Surrogate S.A. was 29 years old, married, and para 5 + 0. She was non-Nigerian but from a West African country. She was unrelated to the commissioning couple. The mother (intended parent) was 52 years old and had three children but wanted another male child because her 11-year-old only son had been diagnosed with nephrotic syndrome.

Surrogate A.B. was a 33-year-old single businesswoman who had three living children. She was a surrogate for a 42-year-old woman who had severe health challenges including renal impairment.

Surrogate E.D. was a 27-year-old single fashion designer who had a six-year-old daughter. She was a surrogate for a 44-year-old woman who had experienced six miscarriages and an ectopic pregnancy.

Surrogate F.B. was a single 24-year-old trader with two living children from a neighboring West African country. She served as a surrogate for a 46-year-old woman with a 32-week size uterine fibroid.

Surrogate P.W. was a 26-year-old student who was para 2, with one living child. She was a surrogate for a 46-year-old woman with multiple unsuccessful IVF cycles and who had a strong family history of breast cancer (including a first-degree relative).

Surrogate S.A. was a 35-year-old trader with three living children. She was a surrogate for a 33-year-old woman who lost her only child at birth and also had a hysterectomy on account of primary

postpartum hemorrhage due to severe abruptio placentae.

Surrogate A.I. was a 28-year-old single caterer who had a set of living twins. She was a surrogate for a 42-year-old woman with two previous failed attempts at IVF and who had also suffered a cardiovascular accident.

## Conclusion

Gestational surrogacy is still developing in Nigeria. The legal aspects need strengthening, and special laws guiding its practice are important to avoid abuse of the process. Nigeria will benefit from formal registration of surrogacy agencies as well as adequate public enlightenment on gestational surrogacy.

## References

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