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## **Legal Issues Concerning Surrogacy in Uganda: Taking a Leap from the United Kingdom**

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### **Article**

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### **Abstrak**

*Pelaksanaan praktik surrogasi di Uganda memiliki beberapa masalah hukum dan implikasi, oleh karena itu penelitian ini bertujuan untuk menganalisis masalah hukum dan implikasi yang terkait dengan surrogasi di Uganda dan melakukan perbandingan di Inggris. Dalam hal ini, penelitian dilakukan dengan metode penelitian doktrinal, mengandalkan bahan penelitian primer dan sekunder. Penelitian ini menemukan hal-hal berikut, undang-undang tentang surrogasi masih dalam tahap pembentukan oleh Pemerintah Uganda, dan undang-undang yang ada tidak secara langsung mengatur surrogasi, yang pada dasarnya menciptakan celah hukum dan kekosongan hukum, selain itu, studi ini menemukan bahwa undang-undang Inggris tampaknya menangani isu-isu yang berkaitan dengan surrogacy secara memadai. Studi ini menyimpulkan dan merekomendasikan bahwa Pemerintah Uganda perlu mempercepat pengesahan undang-undang tentang surrogacy untuk menangani isu-isu yang relevan di masa depan, seperti komodifikasi tubuh perempuan, hak orang tua, kepentingan terbaik anak, dan sebagainya.*

**Kata Kunci:** Hukum; Surrogasi; Kebijakan International

### **Abstract**

The practice of surrogacy in Uganda has several legal issues and implications. Therefore, this study aims to analyze the legal issues and implications related to surrogacy in Uganda and make comparisons with the United Kingdom. In this case, the study was conducted using a doctrinal research method, relying on primary and secondary research materials. This study found the following: legislation on surrogacy is still being developed by the Ugandan government, and existing laws do not directly regulate surrogacy, which essentially creates legal loopholes and legal vacuums. In addition, this study found that UK law appears to adequately address issues related to surrogacy. This study concludes and recommends that the Ugandan government needs to accelerate the enactment of legislation on surrogacy to address relevant issues in the future, such as the commodification of women's bodies, parental rights, the best interests of the child, and so on.

**Keywords:** Legal; Surrogacy; Policy

## INTRODUCTION

Surrogacy laws are more than regulating themselves.<sup>3</sup> There are two types of surrogacy: how babies are conceived; they are about traditional surrogacy, in which the surrogate is defining family structure, regulating impregnated with intended father's sperm and parenthood, and protecting the most uses her egg so the surrogate mother is the vulnerable.<sup>1</sup> This quote demonstrates how genetic mother; and gestational surrogacy, surrogacy is far more complicated than just a which involves an embryo created through medical or legal issue.<sup>2</sup> Throughout the world, IVF which can be made from intended surrogacy is becoming more common, with parents' gametes or gametes donated by reported thousands of arrangements occurring donors.<sup>4</sup> The embryo is implanted into the every year. Surrogacy is a means of assisted surrogate, but there will be no genetic reproduction that occurs when a woman relationship to the child. The surrogacy agrees to carry and give birth to a child for process typically consists of medical another person (or couple) known as the screening, a legal agreement, fertility intended or commissioning parents, who are treatment, and monitoring throughout the unable to conceive or carry a pregnancy pregnancy. Following the birth, in most

<sup>1</sup> Wilson Muyinda Mande dan Eunice Akullo, "Ethics and Assisted Reproductive Technology in Uganda:," *Ugandan Journal of Management and Public Policy Studies* 24, no. 2 (2024): 74.

<sup>2</sup> Adrian Ellenbogen dkk., "Surrogacy - a Worldwide Demand. Implementation and Ethical Considerations," *GREM - Gynecological and Reproductive Endocrinology & Metabolism*, no. Volume 2 (Juni 2021): 068.

<sup>3</sup> Molly Warrington, "Challenging the status quo: the enabling role of gender sensitive fathers, inspirational mothers and surrogate parents in Uganda," *Educational Review* 65, no. 4 (2013): 407, <https://doi.org/10.1080/00131911.2012.689274>.

<sup>4</sup> Julia Sloth-Nielsen, "Chapter 26: Surrogacy in Africa," dalam *Surrogacy in Africa* (Elgaronline, 2024), 506, <https://www.elgaronline.com/edcollchap/book/9781802207651/book-part-9781802207651-34.xml>.

circumstances, the surrogate would complete herself relinquishing her parental rights to the intended parents by either a parental order or adoption, depending on the jurisdiction.<sup>5</sup> Surrogacy may provide hope to many marginalized individuals from achieving a pregnancy or childhood, but raises important ethical, legal, and emotional questions about consent, compensation, rights of the surrogate, and the child.

Many researchers have written about Assisted Reproductive Technologies (ART), but there continues to be a lack of research and information on Uganda's ART and particularly surrogacy. For example, Zahara Nampewo<sup>6</sup> suggests the socio-legal risks associated with ART, but only briefly discusses surrogacy, and does not conduct any legal analysis on the issue.<sup>7</sup> Similarly, Mukasa's<sup>8</sup> anthropological research focuses on Baganda cultural behaviour rather than on the legal, ethical, or contractual implications of surrogacy. In another example, Sophia Shephard looks at international commercial surrogacy as a

broader issue but does not focus specifically on Uganda, nor does she suggest country-specific legal reforms regarding surrogacy. Warden's<sup>9</sup> study on the UK provides an example of how to effectively regulate access to surrogacy by demonstrating how law can be utilized to protect reproductive autonomy in women. This study seeks to address the legal gap by examining the landscape of Uganda's legal void with the more advanced surrogacy policy in the UK, and proposes a legislative roadmap for Uganda that is reflective of the Ugandan context, along with international best practices.

However, most jurisdictions, including Uganda, remain a patchwork of legislation or, worse, an unregulated legal system altogether. The demand for assisted reproductive services in Uganda, due to challenges ranging from infertility or other medical situations, certainly seems to support the notion that there are urgent questions of regulation, rights, and responsibilities of surrogate mothers, commissioning parents, and children.<sup>10</sup> In

<sup>5</sup> Lillian Omutoko, *Ethical and Legal Perspectives of Surrogacy in Developed and Sub-Saharan Countries: Case of Australia and Kenya* (Bioethics from the Global South, 2025), 50, [https://doi.org/10.1007/978-3-031-77669-4\\_7](https://doi.org/10.1007/978-3-031-77669-4_7).

<sup>6</sup> Zahara Nampewo, "Assisted reproductive technologies in Uganda: Law and practice," dalam *Routledge Handbook of Global Health Rights* (Routledge, 2021).

<sup>7</sup> Sophia Shepherd, "Regulating International Commercial Surrogacy: A Balance of Harms and Benefits," *University of Florida Journal of Law & Public Policy* 32, no. 2 (2022): 293, <https://scholarship.law.ufl.edu/jlpp/vol32/iss2/3>.

<sup>8</sup> Martha N Mukasa, "Ethical and Sociocultural Considerations for Use of Assisted Reproductive Technologies Among the Baganda OF Uganda" (Thesis, Georgia State University, 2013).

<sup>9</sup> John Warden, "Surrogacy to Be Reviewed in United Kingdom," *News, BMJ* 314, no. 7097 (1997): 1781, <https://doi.org/10.1136/bmj.314.7097.1781c>.

<sup>10</sup> Sam G. Everingham dan Andrea Whittaker, "Trends in Engagement in Surrogacy by Nationality 2018–2020: A Survey of Surrogacy Agencies," *Global Reproductive Health* 8, no. 1 (2023): 64, <https://doi.org/10.1097/GRH.0000000000000064>.

terms of legislation, surrogacy in Uganda operates in a near-legal vacuum. While some fertility clinics organize surrogacy arrangements, as yet, there is no statute to guide the process, protecting the parties to the contract, or sanctioning the parties to a contract who abuse it.<sup>11</sup> This stands in stark contrast to the number of countries that have developed a legislative response to the framework of surrogacy arrangements, e.g., the UK has developed a policy framework e.g. provisions as contained in the Human Fertilisation and Embryology Act 2008, and the Surrogacy Arrangements Act 1985, which gives guided, structured legal processes.<sup>12</sup> Even on the international scene, however, as examples Ghana's surrogacy agreements is government endorsed and sanctioned, i.e. they have established from a policy perspective guideline for praxis safety and protection; whereas Uganda is a nation among many with a poor history of expert regulation whose framers mix reliance on informal arrangements and poorly conceived and mixed use of judicial actions.<sup>13</sup>

There is an urgent need for this research given the lack of a legal framework that might create a climate of exploitation and insecurity for surrogate mothers, intended parents, and

their child. Countries like the United Kingdom have been able to implement surrogacy policies in a more regulated and structured way. The fact that Uganda does not address the issue of surrogacy at all increases the potential risk of abuse and legal rights violations. This research, therefore, fills a very important gap in the law that has an important relevance to social change.

The research will adopt a doctrinal legal research design, with regard to Ugandan laws, case law, and policy documents, to evaluate the legal position regarding surrogacy. The research will also use some elements of comparative research, looking at the legal framework in the United Kingdom to find relevant lessons for Uganda. The research will also be analyzed using some secondary sources, such as journal articles, reports, and international legal instruments, all of which are designed to assist in the legal analysis. This dual position will ensure that the stage is set to understand Uganda's legal context well and offer practical options for reform.

The relevance of this study lies in the gap it seeks to fill in an overall academic knowledge base on the discussions on reproductive justice and legislative reform in Uganda. As ART proliferates in Uganda more

<sup>11</sup> Paul Atagamen Aidonojie dkk., "A Facile Study Concerning the Legal Issues and Challenges Concerning Doping in Sport," *Synsto Journal of Law* 2, no. 1 (2023): 23.

<sup>12</sup> Aidonojie dkk., "A Facile Study Concerning the Legal Issues and Challenges Concerning Doping in Sport," 23.

<sup>13</sup> Viola Hörbst, "'You Cannot Do IVF in Africa as in Europe': The Making of IVF in Mali and Uganda," *Reproductive Biomedicine & Society Online* 5, no. 2 (2016): 110, <https://doi.org/10.1016/j.rbms.2016.07.003>.

broadly, including surrogacy, the country should consider the legal challenges and gaps that expose prospective surrogate mothers, commissioned parents, and health-care practitioners to potential harm and unmitigated ambiguities. Moreover, without legal regulations in place, surrogacy with a commercial component may devolve into an act of exploitation at the expense of informed consent for surrogate mothers, particularly in low-income communities.<sup>14</sup> To be clear, creating regulations is not only a sensible approach to governing commodities but a matter of protecting rights and public health. Concerning this, the study aims to review the existing legal environment regarding surrogacy in Uganda, identify difficulties and gaps, and offer reform based on the United Kingdom statutory scheme and guidelines. The argument is that Uganda can create a fair, ethical, and rights-based framework for surrogacy based on fumes of existing legal models.

## RESULT DAN DISCUSSION

### Conceptual Issues Concerning the Practice of Surrogacy

The surrogacy process has come to be recognized as a broader and messier social, ethical, and legal scene for reproduction.<sup>15</sup> Such a procedure entails one woman agreeing to bear a child for another person or couple, known as intended or commissioning parents.<sup>16</sup> While surrogacy offers a ray of hope to those facing infertility or other medical challenges, it raises fierce debate and concern over issues of parentage, criminalization of consent, commodification of the human body, and child rights.<sup>17</sup> The practice of surrogacy is greeted with mixed reception in Uganda and the United Kingdom (UK) owing to a lack of legality in Uganda and a stringent regulatory framework in the UK. A juxtaposition of the two would reveal pertinent conceptual issues begging for a balanced legal change in Uganda.<sup>18</sup>

The United Kingdom is older and more orderly in terms of practising surrogacy. Among the earliest cases reported was the “Baby Cotton” case of 1985, which generated significant public outrage when the surrogate refused to hand over the child to the commissioning parents. This situation gave

<sup>14</sup> Nabiwemba L. Elizabeth dkk., “Determining an Anthropometric Surrogate Measure for Identifying Low Birth Weight Babies in Uganda: A Hospital-Based Cross Sectional Study,” *BMC Pediatrics* 13 (April 2013): 2, <https://doi.org/10.1186/1471-2431-13-54>.

<sup>15</sup> Samantha XY Wang dkk., “Peripheral Neuropathy in Primary HIV Infection Associates with Systemic and CNS Immune Activation,” *Journal of acquired immune deficiency syndromes (1999)* 66, no. 3 (2014): 304, <https://doi.org/10.1097/QAI.0000000000000167>.

<sup>16</sup> Bianca Olaye-Felix dkk., “Surrogacy and the law in the UK,” *Postgraduate Medical Journal* 99, no. 1170 (2023): 358, <https://doi.org/10.1136/postgradmedj-2022-141625>.

<sup>17</sup> Amel Alghrani dan Danielle Griffiths, *The Regulation of Surrogacy in the United Kingdom: The Case for Reform*, University of Sussex, 1 Juni 2017, 167, [https://sussex.figshare.com/articles/journal\\_contribution/The\\_regulation\\_of\\_surrogacy\\_in\\_the\\_United\\_Kingdom\\_the\\_case\\_for\\_reform/23445044/2](https://sussex.figshare.com/articles/journal_contribution/The_regulation_of_surrogacy_in_the_United_Kingdom_the_case_for_reform/23445044/2).

<sup>18</sup> Nampewo, “Assisted reproductive technologies in Uganda,” 18.

rise to the Surrogacy Arrangements Act 1985, prohibiting commercial surrogacy. Later, the 2008 Human Fertilisation and Embryology Act would clarify the matter of legal childbearing in surrogacy arrangements.<sup>19</sup> Very notable cases like that of Natalie Gamble's clients in 2011,<sup>20</sup> where an overseas surrogate was used and the subsequent recognition of parenthood proved difficult, and also the 2020 case of *Re C (Surrogacy: Consent)*, whereby the emotional risks for surrogates were at the forefront, cemented the necessity for continued legal supervision.<sup>21</sup> This has shown that, however slow it might be, in the direction of the humanization and regulation of surrogacy, the UK is moving far away from unsatisfactory notions.<sup>22</sup> In Uganda, surrogacy remains unwanted and, for the most part, unregulated, with a few recorded instances setting rapid trends.<sup>23</sup> Though the evil side of surrogacy may not be

documented, however, there are possibilities that in the future such an incident could occur, given the high fertility rate of Ugandan women.<sup>24</sup>

Surrogacy finds applications in Uganda and the UK, addressing and offering glimmers of hope for different social and medical concerns.<sup>25</sup> Among its uses are the obstructions to fertility; in fact, millions of couples in the world often end up in surrogacy because nature would not look with favor on them.<sup>26</sup> For women incapable of carrying to term because of uterine abnormalities, repeated pregnancy loss, or high health risk, surrogacy is their route to biological or social parenthood.<sup>27</sup> Thus, fulfilling their aspirations of parenthood through surrogacy that reflects both identity and autonomy.<sup>28</sup> Surrogacy in Uganda also constitutes a choice; hence, it is a means of earning a livelihood for low-income women willing to become surrogate mothers

<sup>19</sup> Andrea Whittaker, "Surrogacy," dalam *The Routledge Handbook of Anthropology and Reproduction* (Routledge, 2021), 275.

<sup>20</sup> Whittaker, "Surrogacy," 276.

<sup>21</sup> Kirsty Horsey, "Surrogacy in the United Kingdom: Present and Future Challenges," dalam *Handbook of Gestational Surrogacy: International Clinical Practice and Policy Issues*, ed. oleh E. Scott Sills (Cambridge University Press, 2016), 268, <https://doi.org/10.1017/CBO9781316282618.036>.

<sup>22</sup> Horsey, "Surrogacy in the United Kingdom."

<sup>23</sup> Natalie Gamble, "A better legal framework for United Kingdom surrogacy?," dalam *Regulating Reproductive Donation*, ed. oleh John B. Appleby dkk. (Cambridge University Press, 2016), 155, <https://doi.org/10.1017/CBO9781316117446.008>.

<sup>24</sup> Vasanti Jadv dkk., "Cross-Border and Domestic Surrogacy in the UK Context: An Exploration of Practical and Legal Decision-Making," *Human Fertility (Cambridge, England)* 24, no. 2 (2021): 98, <https://doi.org/10.1080/14647273.2018.1540801>.

<sup>25</sup> Helen Prosser dan Natalie Gamble, "Modern Surrogacy Practice and the Need for Reform," *Journal of Medical Law and Ethics* 4, no. 3 (2016): 257, <https://doi.org/10.7590/221354016X14803383336842>.

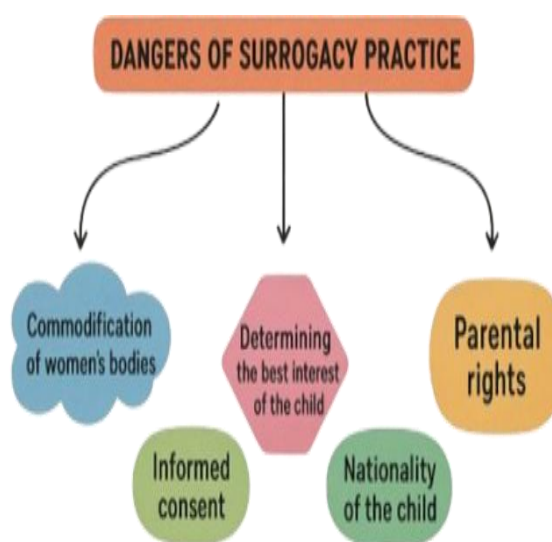
<sup>26</sup> Paul Atagamen Aidonojie dkk., "The Competence and Authority of Midwives in Giving Birth without the Assistance of a Doctor in Nigeria," *Jambura Law Review* 6, no. 1 (2024): 152, <https://doi.org/10.33756/jlr.v6i1.20822>.

<sup>27</sup> Katherine Wade dkk., *Future Directions in Surrogacy Law: Law and Policy Reform in the UK and Beyond* (Bristol University Press, 2025), 37, [https://muse.jhu.edu/pub/345/edited\\_volume/book/126649](https://muse.jhu.edu/pub/345/edited_volume/book/126649).

<sup>28</sup> Valeria Piersanti dkk., "Surrogacy and 'Procreative Tourism'. What Does the Future Hold from the Ethical and Legal Perspectives?," *Medicina* 57, no. 1 (2021): 47, <https://doi.org/10.3390/medicina57010047>.

in exchange for monetary compensation.<sup>29</sup> On the dark side, this brings up serious ethical issues concerning exploitation, insufficient consent, and commercialization of the female body. On the positive side, surrogacy has to do with the broader legal principles of reproductive freedom, including the right to family life acknowledged under various international human rights instruments.<sup>30</sup> Yet, granting it benefits, surrogacy is not without conceptual and practical challenges, especially in environments lacking strong legal and institutional safeguards.<sup>31</sup> Some of the potential dangers of surrogacy are therefore presented in a diagrammatic flow below.

**Figure 1:** dangers and legal issues of surrogacy



**Source:** Design by authors

However, it suffices to state that apart from the above potential dangers of surrogacy, there lack of specific or primary laws on surrogacy, which could pose potential challenges.<sup>32</sup> Although the UK legal framework has sufficiently addressed issues concerning surrogacy within its territory.<sup>33</sup> Uganda must adopt a legal framework for surrogacy that is conscious of the various conceptual and practical aspects of surrogacy sooner rather than later.<sup>34</sup> Structuring the legal and ethical parts of surrogacy imposes action

<sup>29</sup> Gamble, "A better legal framework for United Kingdom surrogacy?," 146.

<sup>30</sup> Nancy Evans, "The Legal Regulation of Surrogacy in the UK: The Need for Change," *Manchester Review of Law, Crime and Ethics* 9 (2020): 32.

<sup>31</sup> Sybil Wolfram, "Surrogacy in the United Kingdom," dalam *New Approaches To Human Reproduction* (Routledge, 1989), 189.

<sup>32</sup> Emily Jackson, "Assisted Conception and Surrogacy in the United Kingdom," dalam *Routledge Handbook of Family Law and Policy*, 2 ed. (Routledge, 2020), 199.

<sup>33</sup> Donna Dickenson dan Britta van Beers, "Surrogacy: New Challenges to Law and Ethics," *The New Bioethics: A Multidisciplinary Journal of Biotechnology and the Body* 26, no. 4 (2020): 296, <https://doi.org/10.1080/20502877.2020.1835205>.

<sup>34</sup> Paul Atagamen Aidonojie dan Ong Argo Victoria, "The Societal and Legal Missing Link in Protecting a Girl Child against Abuse before and Amidst the Covid-19 Pandemic in Nigeria," *Jurnal Hukum* 38, no. 1 (2022): 75, <https://doi.org/10.26532/jh.38.1.61-80>.

to create a legal framework that identifies what will constitute legal parentage, what would form an enforceable surrogacy agreement, to regulate fertility clinics, and attempts to create measures to protect the various parties concerned, especially the unborn child and surrogate mother.<sup>35</sup> Regulation aims to ameliorate misconduct in exploitation, consent, and effectively ensure that surrogacy practice abides by constitutional rights and international human rights standards.<sup>36</sup> What Uganda can borrow from the implementation of the slow and steady but sound legal framework of relationship in the UK is to create a law to be referred to as a basis of measure for protecting Ugandan citizens, whilst not pretending that uses of reproductive technologies are unchanging and static.<sup>37</sup>

### **Legal Regulation Concerning Surrogacy in Uganda and the United Kingdom**

Though surrogacy is considered a potential technological means through which

a woman with a medical condition or who doesn't want to go through the biological process of bearing a child could become a biological mother of a child. However, given its legal and ethical concerns, there is a need for effective regulation. It is in that it will be relevant to consider the extent the which Uganda and the UK address the legal and ethical concerns of surrogacy.

### **Uganda Legal Framework on Surrogacy Regulation**

A cursory review of the Uganda laws reveals that Uganda has no specific laws addressing issues as it concern the legal and ethical issues in Uganda. Though efforts have been put in place to address this peculiar situation as it concerns surrogacy regulation. This is concerning the fact that a bill known as the Human Assisted Reproductive Technology Bill, initiated in 2023, is currently being considered in the Ugandan parliament. The bill has the following objectives represented in a diagram below.

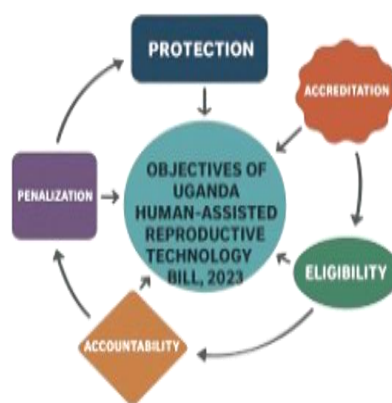
**Figure 2:**

Reflecting objectives of the Uganda Human Assisted Reproductive Technology Bill, 2023

<sup>35</sup> Jackson, "Assisted Conception and Surrogacy in the United Kingdom," 197.

<sup>36</sup> E. Scott Sills, ed., *Handbook of Gestational Surrogacy: International Clinical Practice and Policy Issues* (Cambridge University Press, 2016), 277, <https://doi.org/10.1017/CBO9781316282618>.

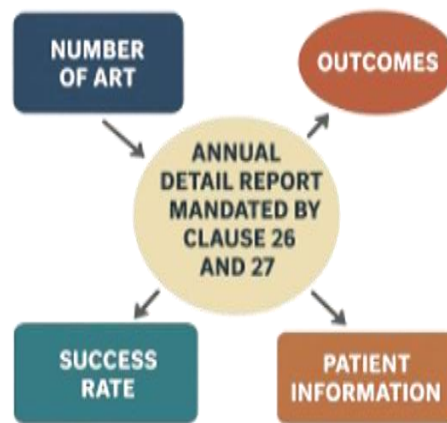
<sup>37</sup> Paul Atagamen Aidonjio dkk., "Prospect, Legal, and Health Risks in Adopting The Metaverse in Medical Practice: A Case Study of Nigeria," *Jurnal Hukum Dan Peradilan* 13, no. 3 (2024): 483, <https://doi.org/10.25216/jhp.13.3.2024.483-522>.



**Source:** Design by authors

The bill has several provisions that seem to address the scope of surrogacy issues. For example, Clause 21 of the bill stipulates that surrogacy should be utilised wherein the parents are proving to be medically unfit to bear a child as a result of a severe health challenge, which may pose a challenge of conception or primary or secondary infertility. Hence, this provision seems to mitigate the use of surrogacy for commercial purposes or for other illegal purposes. Clauses 22 and 23 require a formal written surrogacy agreement for legal clarity and certainty of the fact that the surrogate mother cannot lay legal claim over the child, and legal parenting belongs to the parent who commissioned the surrogate. This is aimed at legalizing and legitimizing surrogacy as a lawful act. To avoid the exploitation of children from being used for surrogacy practice, clause 17 of the bill therefore stipulates that the minimum age for eligibility for a surrogacy mother is 18 years. The said clause, therefore, stipulates that a violation of clause 17 will attract a penalty of 10 years imprisonment or a fine.

Furthermore, to ensure adequate regulation, accountability, and due process are adhered to during the process of surrogacy, clause 11 of the bill stipulates that only accredited centres and licensed practitioners are allowed to provide the services of assisted reproductive technology, which in essence includes surrogacy. In this regard, the clause further stipulates that any individual performing Assisted Reproductive Technology without being license will be liable to ten (10) years imprisonment or a fine of 200 million Uganda Shillings. This tends to place a strict restriction on violating ethical medical standards and ensure effective transparency in surrogacy practice. To properly account for how Assisted Reproductive Technology is carried out, the persons involved, and the success rate. Clauses 26 and 27 further empower the fertility centres to annual report detailing the following, represented in a diagrammatic format below:

**Figure 3:** Details of the annual report to be submitted by the Uganda Fertility Centre

**Source:** Design by authors

The essence of the above annual report is aim at keep a track record, improve on national database, to foster transparency and accountability. Furthermore, it will also aid in informing and shaping future policies as it concerns surrogacy practice. Even though the bill has subsequently in various provisions that place penalties for violating those provisions. However, clauses 30 and 31 seem to place a stricter criminal sanction by providing for life imprisonment against anyone found wanting in unjustly dealing with substituting donor material, authorizing the use of gametes or embryos. Concerning this, it suffices to state that though the bill seems to have adequately addressed issues as it concerns human-assisted reproductive technology, which in essence includes surrogacy practice. However, it has yet to be passed into law, which could pose a major challenge in current or future issues as it concerns surrogacy in Uganda. Concerning this, the passing of this bill into law is considered sacrosanct in addressing the

peculiar issues as it concerns surrogacy practice.

However, further note that their other laws which though not primary in addressing issues on surrogacy but could be quite reliable given some of their provisions. For example, the Uganda Constitution, though not a primary law that regulates surrogacy but has some relevant provisions as it concerns the rights to form a family through surrogacy. This is because Article 31 of the Uganda Constitution provides for the right of a man and a woman to found a family through marriage. Which in essence could mean that the rights to found a family through assisted means of surrogacy, where the couples have medical challenges. Also, article 33(2) of the constitution further places the responsibility on the state to provide all necessary assistance to women to enhance and realize their full potential. Essence establishing an assisted reproductive centre as it concerns surrogacy could be interpreted as one of such necessary facilities that could aid women in attaining their full potential, most

especially women with medical conditions preventing them from conceiving a baby. However, despite the constitutional support of surrogacy, there seem to be major issues as it concerns the interests of child and the rights which is considered fundamental and paramount. The Uganda Constitution seems to create ambiguity and place a question mark as it concerns who is considered the actual parent of a surrogate child. According to article 34(1) of the Uganda Constitution, it stipulates that subject to laws concerning the best interest of the child, a child possesses the right to know who their parent is, be cared for by the parent. In this regard, this tends to put a question mark and create ambiguity on who could be considered as the parent of a surrogate child. However, despite this anomaly, it must be noted that to a certain extent Ugandan constitution is considered relevant as it concerns surrogacy regulation.

Furthermore, other relevant laws as it concerns surrogacy regulation in Uganda include the Children Act, the Birth and Deaths Registration Act, and the Registration of Persons Act. These laws, though not primarily relating to surrogacy but have relevant provisions that could be relied on, especially as they concern regulation. However, concerning this, it suffices to state that, given the reveal and analysis of the Uganda laws, it

is evident that the Uganda laws as they concern surrogacy regulation are currently still in the incubation process. However, it is expected that if the Uganda Human Assisted Reproductive Technology Bill is passed into law, it will, to extent, address pertinent issues as it concerns surrogacy.

### **Legal Framework for Surrogacy Regulation in the United Kingdom**

In the United Kingdom, the practice of surrogacy is not new; in this regard, it suffices to state that in the UK there have been several legal developments as it concern the regulation of surrogacy.<sup>38</sup> It will be relevant to consider and examine some of these laws as follows. One of the foremost UK laws on surrogacy is the Surrogacy Arrangements Act 1985. This law was enacted at a time when there was major concern about the practice of surrogacy, which was a major focus on commercialisation, which was further blown up with the "Baby Cotton Case".<sup>39</sup> For effective regulation of surrogacy, the Act was passed by the UK parliament. Section 2(1) of the UK Surrogacy Arrangements prohibits the commercialisation of surrogacy for financial benefit, and section forbids anyone from advertising for a surrogate mother or a surrogate mother soliciting for a

<sup>38</sup> Paul Atagamen Aidonojie dkk., "International Legal Framework in Curtailing Hazardous COVID-19 Medical Waste: Issues and Challenges," *Decova Law Journal* 1, no. 1 (2025): 8, <https://doi.org/10.71239/dlj.v1i1.51>.

<sup>39</sup> Aidonojie dkk., "International Legal Framework in Curtailing Hazardous COVID-19 Medical Waste," 3.

commissioning parent.<sup>40</sup> In this regard, any individual involved directly or indirectly in participating in surrogacy for the sole purpose of financial benefit commits an offence. In essence, the meaning of section 2(1) of the act could be extended to surrogacy practice in the UK is legal, which must be on the basis of medical challenges of the commissioning parent. Section 4 of the act mandates the court to impose penalties on anyone in violation of the act.

As a supplement to the Surrogacy Arrangements Act, the Human Fertilisation and Embryology Act was enacted in 1990 and amended in 2008. These laws address

pertinent issues as they concern a surrogate parent transferring parental rights to the commissioning parent. The Human Fertilisation and Embryology Act is considered one of the principal laws in the UK regulating surrogacy as an assisted surrogacy.<sup>41</sup> Section 54 of the Act stipulates the order of attaining parenthood of a surrogate child and the legal procedure for transferring parental rights of a surrogate parent to the commissioning parent. However, by said section, for an individual to qualify for commissioning parent, they must fulfil the following conditions presented below in a diagrammatic format.

**Figure 4:**

Qualifications for Parental Order according to the Surrogacy Arrangements Act



**Source:** Design by authors

From the above, it must be noted that one of the applicants must be related to the child genetically. Furthermore, it suffices to

state that the inclusion of unmarried partners and same-sex couples as individuals who qualify for commissioning parents of a

<sup>40</sup> Emmanuel E. Okenwa-Vincent, "Ethics of Surrogacy: A Review of the African Perspective," dalam *Bioethics from the Global South*, ed. oleh Lillian Omutoko dan Walter Jaoko (Springer Nature Switzerland, 2024), 129.

<sup>41</sup> Anthony Kebira Nyamache, "Ethical and Legal Issues on Embryo Adoption, Donation, and Surrogate Motherhood: A Kenyan Perspective," dalam *Bioethics from the Global South*, ed. oleh Lillian Omutoko dan Walter Jaoko (Springer Nature Switzerland, 2024), 146, [https://doi.org/10.1007/978-3-031-77669-4\\_9](https://doi.org/10.1007/978-3-031-77669-4_9).

surrogate child was done during the 2008 amendment. This aims at addressing discrimination and inclusive laws. However, section 54(8) of the Human Fertilisation and Embryology Act prohibits the commercialisation of surrogacy except for the reason of compensation authorized by the court. In this regard, no surrogacy arrangement could take place without the court's involvement to scrutinize if it was meant for commercial purposes and if the best interests of the child have been adequately addressed.<sup>42</sup>

Another notable law as it concerns the regulation of surrogacy is the Parental Order Regulation 2010. This regulation is aimed at assisting and guiding the court in entertaining and deciding cases as they concern parental orders. By regulation 4, it is required that a Parental order reporter should be constituted by the court charged with the responsibility of investigating and reporting as it concerns the grant of an order of surrogate if it is suitable. The essence of this regulation is to ensure at ensuring the applicant and surrogate parent meet the requirements of section 54 of the Human Fertilisation Act. Furthermore, to also ensure that the best interests of the surrogate child are considered and guide the court with credible evidence to make an informed decision in the surrogate order. Furthermore,

reemphasizing the best interest of the surrogate child, regulation 5 requires the reporters of the parental order to ensure their findings encompass the surrogate child's emotional relationship or ties, homes, and implications of the child's proposed parent.

Concerning the above, it suffices to state that the United Kingdom seems to possess specific and primary laws that regulate and address peculiar issues as they concern surrogacy practice and regulation. Hence, it is required that the Ugandan laws, which are still in the parliamentary incubation process, could be improved and advanced by drawing more guidance from the UK laws that seem to have covered a major scope as it concerns salient issues of surrogacy.

### **Legal and Medical Challenges concerning Surrogacy in Uganda**

Surrogacy in Uganda is tangled with numerous legal and medical problems. Perhaps the most glaring legal difficulty is the absence of a statute addressing surrogacy contracts.<sup>43</sup> The Constitution of Uganda states that one has the right to found a family as stipulated in Article 31. However, there is no legislation defining the rights and duties of the surrogate, the intended parents, or the child. This legal vacuum has consequently placed everyone in uncertainty about parental rights, the citizenship of the child, and the resolution

<sup>42</sup> Paul Atagamen Aidonojie, "The Legal and Ethical Issues Concerning Diagnosing and Treatment of Patients by Pharmacists in Nigeria," *Euromentor Journal; Bucharest* 13, no. 2 (2022): 103–4.

<sup>43</sup> KIU, "An Appraisal of Contemporary Issues in Proof of Medical Negligence in Nigeria," *Kampala International University Law Journal (KIULJ)*, ISSN: 2519-9501 6, no. 1 (2024): 329.

of disputes once complications arise. Since there is no legal instrument that would allow for the enforcement of surrogacy contracts, all parties are vulnerable to exploitation or emotional trauma, especially where the surrogate, after giving birth, wants to keep the child or where the intended parents have a change of heart after conception or birth.<sup>44</sup> Furthermore, another significant legal issue arises with regard to parentage and birth registration. Without formal parental orders, alternatively, there are no mechanisms for that purpose similar to those under Section 54 of the Human Fertilisation and Embryology Act in the UK. The person who bears the child is legally the mother under Ugandan law in accordance with the common law of many real commons. This creates difficulties, especially for international commissioning parents, same-sex couples, or any other couples/minorities relying on viable third parties, which may not legally guarantee or provide any legal guardianship and the transfer of parental rights. Add to this the inability to set in place frameworks whereby the courts can oversee surrogacy administration creates further uncertainty in this area of law, which is already highly ambiguous.

Concerning this, surrogacy from the medical perspective is also, within Uganda, poorly regulated regarding clinical standards, the health of the surrogate mother, and facility accreditation. Fertility clinics operate, but in the absence of uniform guidelines on the management of surrogacy cases, they expose surrogate mothers and intended parents to health and safety risks. This is what the still-pending and unenacted Human Assisted Reproductive Technology Bill, 2023, aims to regulate. This bill, if enacted, will regulate surgical, medical, or hormonal interventions that may be done in the process of surrogacy. Before the passage of this legislation, surrogates may have been subjected to hormonal treatments, embryo transfers, and deliveries in facilities that lack proper ethical oversight or adherence to globally accepted best practice standards.<sup>45</sup> Another major medical issue is the informed consent process. In numerous cases, surrogate mothers, many of whom come from economically disenfranchised circumstances, take part in these arrangements without fully understanding the medical implications, liabilities, or their rights.<sup>46</sup> In some cases, they are pictured to be in coercive relationships to do surrogacy based on need, or at minimum,

<sup>44</sup> Paul Atagamen Aidonojie dkk., "Legal Issues Concerning Compulsory COVID-19 Vaccination: Nigeria as a Case Study," *Golden Ratio of Law and Social Policy Review* 3, no. 2 (2024): 74, <https://doi.org/10.52970/grlspr.v3i2.349>.

<sup>45</sup> KIU, "Ethical and Socio-Cultural Dimensions of Human Genome Editing War against Natural Order," *Kampala International University Law Journal (KIULJ)*, ISSN: 2519-9501 5, no. 2 (2023): 138.

<sup>46</sup> KIU, "Ownership of Intellectual Property Rights in Work Relations under OAPI: A Brief Survey," *Kampala International University Law Journal (KIULJ)*, ISSN: 2519-9501 4, no. 1 (2022): 178.

are not aware of potential risks involved, such as complications associated with childbirth, long-term reproductive health issues, or emotional trauma associated with relinquishing custody of a child to whom they are bonded through gestation for nine months.<sup>47</sup> In the absence of robust legal and medical protections, surrogacy may be seen as exploitative rather than empowering, and raises important ethical questions regarding the commodification of women's bodies.

Finally, legal and medical challenges overlap in the international aspect of surrogacy in the context of Uganda.<sup>48</sup> There remain mounting concerns around the increasing trend of foreigners seeking surrogacy services in Uganda, and the potential for child trafficking, cross-border custody disputes, and statelessness of children born of informal surrogacy arrangements.<sup>49</sup> Without the existence of bilateral agreements or signed mediation frameworks for recognizing surrogacy arrangements, children may exist in a legal limbo, particularly in situations where commissioning parents cannot obtain travel documents or citizenship

rights for the children.<sup>50</sup> In short, until such time that Uganda enacts comprehensive legislation to facilitate surrogacy, a process that outlines the process for contracting arrangements, from birth registration to post-natal care, the practice will remain challenged with legal ambiguities and medical issues that could undermine the dignity and rights of all parties involved.

### **Similarities and differences**

Surrogacy is a very sensitive and complex issue that raises legal, ethical, and social concerns. Uganda and the United Kingdom both acknowledge the necessity for regulation of surrogacy, although at different points in the legislative process. Uganda is currently weighing the Human Assisted Reproductive Technology Bill of 2023, while the United Kingdom has a relatively refined legislative framework, including the Surrogacy Arrangements Act of 1985, Human Fertilisation and Embryology Act of 1990 (as amended 2008), and Parental Order Regulations 2010. Although the evolution and details of the legislative framework are different, both Uganda and the United

<sup>47</sup> Paul Atagamen Aidonjje, Eregbuonye Obieshi, Esther Chetachukwu Aidonjje, Ismaila Hassan, and Joshua John Damina. "Paul Atagamen Aidonjje dkk., "The Increase of Child Labour in Nigeria: Legal Custody of Victim by the Nigerian Government as a Panacea," *Journal of Indonesian Constitutional Law* 1 (Desember 2024): 143, <https://doi.org/10.71239/jicl.v1i3.26>." *Journal of Indonesian Constitutional Law* 1, no. 3 (December 15, 2024): 155.

<sup>48</sup> KIU, "An Appraisal of Contemporary Issues in Trade Disputes Resolution in Nigeria," *Kampala International University Law Journal (KIULJ)*, ISSN: 2519-9501 6, no. 1 (2024): 166.

<sup>49</sup> KIU, "The Implications of Emerging Technologies on Intellectual Property Rights in Nigeria: Blockchain and Biometrics in Perspective," *Kampala International University Law Journal (KIULJ)*, ISSN: 2519-9501 6, no. 2 (2024): 22.

<sup>50</sup> Aidonjje dkk., "A Facile Study Concerning the Legal Issues and Challenges Concerning Doping in Sport," 18.

Kingdom attempt to find a balance between protecting parental rights, the welfare of children, and ethical boundaries with respect to reproductive technology. In this regard, it suffices to state that a cursory review of the Ugandan laws reveals that Uganda has no specific laws addressing issues of Surrogacy, except a bill which is still in the incubation process.

Unlike the UK, there have been several legal developments concerning the regulation of surrogacy. These laws include the UK laws on surrogacy, the Surrogacy Arrangements Act 198, the Human Fertilisation and Embryology Act, and the Parental Order Regulation. Hence, the following are the similarities and differences between the Uganda Bill on surrogacy and the UK Laws.

An important element of similarity is that both Uganda and the United Kingdom recognize surrogacy as a legitimate reproductive option, which must occur, but under strict regulation. Both frameworks identify the welfare of the child at the centre of consideration; Uganda through Article 34(1) of its Constitution, and as identified in provisions in the 2023 Bill and the United Kingdom through Section 54(8) of the Human Fertilisation and Embryology Act. Both frameworks also define the role of medical practitioners and institutions and outline supervision and oversight to ensure that reproductive technologies are not exploited. The other similarity relates to the ban or

restriction of commercial surrogacy. Clauses 26 and 27 of the Human Assisted Reproductive Technology Bill in Uganda restrict any financial arrangement to reasonable expenses for the surrogate arrangements. This is comparable to the UK's Surrogacy Arrangements Act 1985, which, in Section 4, explicitly criminalizes commercial surrogacy. This shows a shared ethical position that surrogacy is not a commercial enterprise but a way to help couples who struggle with being childless to build a family.

The most significant difference is in the area of the development of law and maturity. The UK has had nearly forty years of developing practice and evolving legal practices related to surrogacy. The UK has had nearly four decades to amend legislation and received judicial consideration and clarification to develop practices related to surrogacy for families. Uganda is still within the policy considerations of its first bill to consider different policies on surrogacy, which means Uganda's implementation, judicial clarification, and public knowledge around the practice have yet to be developed. Uganda's legislation is in the early or formative stages, while the UK has legislation that has been considered for many years and is more consolidated and reasonably predictable. A further point of contention surrounds the status of enforceability of surrogacy arrangements and parental rights. Under Section 2(1) of the Surrogacy Arrangements

Act in the UK, surrogacy agreements cannot be enforced; this means that intended parents have to go to court to obtain a parental order under Section 54 of the Human Fertilisation and Embryology Act before they are legally recognized as the parents. Alternatively, the 2023 Bill in Uganda recognizes surrogacy contracts (Clauses 21–23; subject to certain conditions), which suggests that surrogacy agreements (in the form of contracts) are likely to be more enforceable in Uganda than in the UK. In addition, Uganda also incorporates constitutional rights (e.g., the right to family and the protection of women) more directly in surrogacy regulation than the UK does.

To summarize, Uganda and the United Kingdom both recognize the importance of regulating surrogacy to protect children from commercialization. Both legislative approaches acknowledge the importance of the regulation of medical procedures involved, and both avow that surrogacy should not become a commodity. However, Uganda is forward-looking and grounded in constitutional law, whereas the UK has an established, medically moderated, and process-oriented framework. The differences in enforceability agreements and the stage of legislative development illustrate the separate directions both countries have followed, while at the same time, both countries desire to mediate reproductive autonomy and the

welfare of children and other ethical precautions.

## CONCLUSION

Uganda is one of the most fertile countries, but the demand for reproductive alternatives has put surrogacy squarely in the spotlight, even within a state of legal ambiguity. With no legislative framework in place, those involved in surrogacy agreements (intended parents, surrogate mothers, or persons working in the health sector) must navigate this uncertainty. The uncertainties surrounding the surrogacy agreement raise important matters under law and ethics, including those of parental rights, consent, child welfare, exploitation, and applicable nationality. The issues surrounding the position of surrogacy in Uganda reinforce the need to consider Uganda's surrogacy framework and compare it to more structured legal frameworks from other jurisdictions. In the meantime, the journey with regard to surrogacy in the UK is much better established and developing, with legislation and policies supported under various Acts, notably the Surrogacy Arrangements Act 1985 and the Human Fertilisation and Embryology Acts 1990 and 2008. These laws offer procedural mechanisms for transferring legal parenthood, provide protective laws for surrogate mothers, and stress the importance of the welfare of the child. Parliament in Uganda could review the statute regularly in a similar way to that which is done in the UK to maintain a framework

able to respond to needs stemming from changing ethics and technology. This study hopes to pave the way for Uganda to develop a clear regulatory framework that meets expectations in addressing new and complex legal and ethical challenges in the area of surrogacy, so that surrogacy can be practiced in a safe, fair, and respectful manner by all parties.

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