



**A SOCIOLOGICAL MEDICO-LEGAL INVESTIGATION ON SURROGACY IN EKITI-
STATE TEACHING HOSPITAL, EKITI STATE AND OYEDEJI AYODELE & CO,
ABUJA.**

BY

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DECLARATION

I, Alabi Oluwatobi Joseph, declare that this study is my own work, it has not been submitted for any degree or examination at any other university. The sources that I have used have been fully acknowledged.

This study is submitted in fulfillment for the requirements for the degree of Masters in Sociology in the faculty of Humanities, School of Social Science, University of KwaZulu Natal, Howard College, Durban, South Africa.

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DEDICATION

I dedicate this work to God Almighty who is ever faithful and true to His promises. I thank Him for where He brought me from, where I am today and where He is taking me. Unto Him alone be all glory. Amen!

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The saying that unto whom much is given, so much is expected has resonated and motivated my continuous zeal for self-development. God has placed several people at different junctures in life to guide, direct and help bring His plan and purpose for our lives to speedy manifestation. I am very grateful to my parent: Mr. and Mrs. Alabi, who above all odds committed so much to my spiritual, academic and moral development. Your contribution to my life is enormous and unquantifiable and I am grateful to God for gifting me with such great pair as parents. The dualism of parenting in my life has produced so much result, I am indebted to my parent also, Mr. and Mrs. Oyedeji, your love, care and tutelage is unbeatable. I love you so much Dad and Mom. The contribution of my siblings to my study is very commendable. I appreciate the way you motivate and believe in me, thank you for your support (Solomon, Olamide, Emmanuel, Miracle, Divine and Tolu).

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LIST OF ACRONYMS

NRT- New Reproductive Technology

IVF- Invitro Fertilization

DI-Donor Insemination

GS- Gestational Surrogacy

ART- Assisted Reproductive Technology

AI- Artificial Insemination

DNA- Deoxyribonucleic Acid

TBA- Traditional Birth Attendant

IDI- In-depth Interview

TA- Traditional Surrogacy

CRG- Council for Reproductive Genetics

CDC- Centre for Disease Control

LMIC- Low Medium Income Country

TMC- Thematic Content Analysis

TRANSLATIONS

Agbabi Odi Omo Eni- Surrogacy

Omo-Oran- Mysterious Child

Omo to ni alebu- A child with deficiency

Ma shey ni ma gbo- Nothing is Secretive

Ba wo ni ti aja shey je ni mossalassi - Discrimination against children not born through natural medium

QUOTATION

“It keeps startling me that at the beginning of the 21st century, at a time when we can explore the depths of the seas and build an international space station, we have not been able to make childbirth safe for all women around the world.... This is one of the greatest social causes of our time (Thoraya Ahmed Obaid was the Executive Director of the United Nations Population Fund and an Under-Secretary General of the United Nations from 2000 to 2010).”

“If one is seriously interested in preventing reproductive cloning, one must stop the process before it starts (Leon Richard Kass is an American physician, scientist, educator, and public intellectual, best known as proponent of liberal education).”

ABSTRACT

Up until recently adoption is basically the only alternative to infertility, however with the advancement in medical technology, it is now possible to procreate through various channels in assisted reproductive technologies. It is noted that the development of surrogacy as an assisted reproductive technique has brought to fore contentious issues about the definition of motherhood, parenthood and the sacredness and cultural sanctity of the family system most especially in an African context. Suffice to say that surrogate arrangement flickers ethical, medical, psychological and socio-cultural concerns that needs to be examined, understood and addressed. This research is a sociological medico-legal investigation of surrogacy in Nigeria that investigates the medical, legal and cultural trepidations eminent in the practice and growth of surrogacy as an assisted reproductive technique through an explorative qualitative lens. The research sample are spread across three categories within the society which are: gynecologist, traditional birth attendant and legal professionals. The research interviewed 20 participants across these categories. The findings of the study revealed that, the growth of surrogacy within the Nigerian context has been hampered by socio-cultural, religious and traditional sentiments that has hitherto manifested itself in gender stereotypes, social stigmatization and prejudice towards fertility as well as the conceptualization of womanhood and family system. It is evident from the findings that the absence of legislation about surrogacy in Nigeria has given way to several vices such as baby farming and the commodification of women and children. The research discusses the medical concerns prioritizing the essence of surrogate practice; brings to fore the socio-cultural and religious narratives surrounding the practice; and, emphasizes the need for appropriate legislations to avoid exploitation, commodification of women and children and address the controversies around fertility treatment in Nigeria.

Keywords: Surrogacy, Socio-culture, Cultural, Reproduction, Fertility

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CHAPTER ONE

1.1. OVERVIEW

The family institution is a very vital and important aspect of human existence in both classical and contemporary study of human society. Undoubtedly elements of modernization and globalization is fast changing traditionally obtainable practices within Africa but the importance of the family remains a sacrosanct nexus to the social life of Africans. Ekane (2013) posited that African societies are highly collectivist with emphatic stress of customary relations such as respect for ancestors and elder; dominance of patriarchy; prevalence of polygamous unions; important kinship networks; and, attachment of substantial importance to lineage continuation. Hence, according to Umeora et al., (2014), the pronatalistic nature of traditional African society emphasizes the importance of procreation as an invaluable family rite and infertility is perceived as a disability and a loss of something, though invisible but so tangible with attendant social, psychological and emotional consequences.

The family institution within Africa is a territory that is highly policed by various cultural, traditional and religious tenets across different communities and ethnicity. Despite the dynamics in the social narratives surrounding the perception of procreation across cultural boundaries, it is eminent that there is great similarity in the ways various African cultures value children and attach an immense importance to the ability of a man and woman to procreate. There are expectations for the man to be biologically capable to father a child by getting a woman pregnant and the expectations for the woman to have the physiological and biological ability to carry a pregnancy to term. These painted scenarios of the gender role of a man and woman represent an ideal social expectation of what is regarded as a complete human. This study examines how surrogacy - an assisted reproductive technique, operates within a society (Nigeria) that is highly patriarchal and socially police reproduction within the lens of cultural, traditional and religious canons. Considering the presence of a thick socio-cultural and religious dictates in Nigeria and most African countries, Amour (2012), opined that, "Although the birth of a child is typically considered a very happy time for parents, SURROGACY - whether traditional or gestational- is

often an uncharted territory that can become very stressful for all parties involved.” The intersection of culture, traditional beliefs, religious doctrines and social practices became a focal point of investigation for this study by collating the informed opinions of gynecologists, traditional birth attendants and legal professionals.

1.2. INTRODUCTION

Surrogacy is a process where a third party (woman) of childbearing age carries pregnancy for a commissioning parent with the intention of relinquishing the baby after birth (Banerjee and Basu, 2009). Surrogate pregnancies may be both ¹gestational and ²traditional (William-Jones, 2002; Bromfield and Rotabi, 2014). Surrogacy gained global attention with the 1986 case of *baby M* in the United States of America. Surrogate mother, Mary Beth Whitehead repudiated giving up the baby; she acted as surrogate for Elizabeth and William Stern (Tieu, 2009). Mary (the surrogate) in less than 24 hours of relinquishing the baby had demanded and collected back the baby, hence, the commissioning parent approached the court to seek legal custody of the child. The Supreme Court in New Jersey therefore formalized the surrogate arrangement between the parties and awarded custody of the child to the commissioning parent. The court rationalized the decision reached based on a critical consideration of the best interest of the child (Tieu, 2009). The case sparked deliberations on the definition of motherhood, a woman’s role in surrogacy as well as the changing nature of the formation of family.

William-Jones, (2001) distinguished surrogacy as a core component of ³New Reproductive Technology (NRT); it had gained global consideration as a socio-medical unease since the 1970s. It developed as one of the alternative solutions for couples facing infertility challenges by exploring opportunities such as ⁴Donor Insemination (*DI*) and ⁵In vitro Fertilization (*IVF*) (Bello,

¹Gestational surrogacy is a process whereby eggs from one woman are used to create an embryo implanted in another. The surrogate therefore becomes the rented womb.

² Traditional surrogacy is a process whereby a woman’s eggs are fertilized with the sperm of the intended father.

³ New Reproductive Technology (NRT)

⁴Donor insemination is the deliberate introduction of sperm into a female’s uterus or cervix for the purpose of achieving a pregnancy through in vivo fertilization by means other than sexual intercourse.

Akinajo and Oladapo, 2014). Surrogacy is advocated to childless couples as an alternative means of procreation (Bello et al., 2014). It is a procedure made possible as a result of progress with ⁶Assisted Reproductive Technique (ART), which addresses the challenges of infertility. Surrogacy has been discussed as the most intense separation between sexual intercourse and procreation (Hatzis, 2009). Hence, it is now imaginable for a woman to bear a child to which she or her partner has no genetic relationship (Horsey and Sheldon, 2012).

The emergence of surrogacy via ART has brought to fore core issues contiguous to definitions of motherhood, parenthood and paternity within the family (Umeora et al., 2014), specifically the biological detachment of pregnancy from genetic relations (Hatzis, 2009; Horsey and Sheldon, 2012). The terrain and definition of surrogacy becomes a highly contested social concern across inter-disciplinary boundaries (Teman, 2008). Several studies have investigated surrogacy in relation to legal and ethical trepidations; socio-cultural, psychological and religious acuity (Umeora et al., 2014; Teman, 2008; Banerjee and Basu, 2009; Bromfield and Rotabi, 2014; William-Jones, 2001; Bello et al., 2014; Baslington, 2002; Jadvá et al., 2003; Van Zyl and Van Niekerk, 2000). This has led to discussions on the commercialization of reproduction, redefinition of paternity and motherhood; and, surrogates' coping mechanisms amongst several others.

However, even though surrogacy is being discussed across disciplines, it is important to note that it studies and debates have not examined the frameworks available for the practice of surrogacy within an African context (Teman, 2008). Suit to say that there is a gap in the explanations proffered surrogacy in various texts, as the operational basis of this phenomenon is yet to be properly examined within the premises of African cultural settings. It is also clear that the conceptualization of motherhood and paternity has now becomes a debate of social construction rather than biological determinism exclusively.

⁵In vitro fertilization (IVF) is a complex series of procedures used to treat fertility or genetic problems and assist with the conception of a child.

⁶Assisted Reproductive Technique (ART)

Umeora et al., (2014), reported that, surrogacy hardly constitute a major aspect of public debate in Nigeria and most empirical investigations have not reported the prevalence of surrogacy in Nigeria, however, some other studies have examined surrogacy as a viable option for infertile couples (Bello et al., 2014). While surrogacy has become a booming industry in countries like India (See, Bromfield and Rotabi, 2014), it is still a grey area struggling for acceptance in Nigeria because of strong socio-cultural and religious dictates guiding fertility process. Attitudes and perceptions about surrogacy in most African countries differ from what is obtainable in most western countries as stated by Teman (2008), the body of scholarship available globally about surrogacy represent a cacophony of western ideological thought and practices. Armour (2012), hence, noted that, the ethical issues related to surrogacy are influenced by the cultural and social norm of the community or population involved.

The pronatalistic nature of most traditional African societies value procreation for lineage continuation and even considers a woman's ability to conceive and carry a pregnancy to term as a proof of her womanhood and a seal of placement in marriage and amidst kin (Golombok et al., 2011). Umeora et al., (2014), discussed that in Africa, womanhood is fulfilled through motherhood. However, it is within this contextual framework that this research investigates surrogacy within the medico-legal context of Nigeria to understand the medico-legal and cultural peculiarities important for the practice of surrogacy in Nigeria.

1.3. CONCEPTUAL CLARIFICATION

Gugucheva (2010) identified some crucial terms in the discussion of surrogacy and provides conceptualizations as deemed appropriate by the American Society of Reproductive Medicine (2006), American College of Obstetricians and Gynecologists (2008) and Council for Reproductive Genetics. The terms will be presented and defined below; they form a core part of the essential conceptualizations required to making meaning in this study.

1. Biological mother/ genetic donor: a woman who contributes her egg to produce the fetus that results as a child.
2. Biological father/ genetic donor: a man who contributes his sperm to produce the fetus that results as a child.
3. Intended/ commissioning parent: the individual (s) who intend to be the parent (s) of the child born through surrogate arrangement. They may or may not have any biological link to the expected child.
4. Traditional surrogacy: this arrangement is obtainable when a surrogate donates her egg and it is fertilized with the sperm from the intended father or from a donor. Most often, it is a process possible through ⁷artificial insemination to avoid the greater cost of in-vitro fertilization. This woman is considered the biological, genetic and gestational mother and will carry the pregnancy until delivery after which she relinquishes all rights and claim to the child.
5. Traditional surrogate mother: the woman who donates her ⁸deoxyribonucleic acid (DNA) and gestates the pregnancy for someone else.
6. Gestational surrogate mother/ carrier: this is the woman who gestates until delivery. She does not have any genetic or biological connection to the child.
7. Gestational surrogacy: this arrangement occurs when a woman undergoes in-vitro fertilization to carry a fetus that has no biological or genetic link to her; she provides “a womb to rent.” She relinquishes all parental right upon the birth of the child. However, the fetus could be genetically linked to one, both or neither of the intended parents if donor DNA was utilized.

1.4. RESEARCH PROBLEM

The intense debates on the growing practice of surrogacy across the globe are of interest to scholars examining its global dynamics and cultural particularity. The diverse perspectives

⁷**Artificial insemination** (AI) is the deliberate introduction of sperm into a female's uterus or cervix for achieving a pregnancy through in vivo fertilization by means other than sexual intercourse.

⁸ DNA-deoxyribonucleic acid, a self-replicating material which is present in nearly all living organisms as the main constituent of chromosomes. It is the carrier of genetic information.

surrounding surrogacy are influenced by cultural and societal beliefs. This study of surrogacy in Nigeria will unravel the hidden narratives within the lens of societal constructs and definitions. Seeking to unravel various cultural beliefs affecting the growing practice of surrogacy and how the Nigerian society influence the general acceptance of the practice as an emerging global alternative to infertility. The role and influence of surrogacy as a practice on the definitions of womanhood in a patriarchal society forms the foundation of this research. The various perceptions on contested debates and how they shape the future practice of surrogacy in Nigeria.

An additional concern to this study is the medico-legal concerns raised in the practice of surrogacy. The health and wellbeing of surrogates and the child is very paramount and attention on this matter must be anticipated. The study examined the provisions made by commissioning parents and other key stakeholders in the pact of surrogacy for the post-natal health care of the surrogate mother. It seeks to unravel the medico-legal concerns of the gestational role of women in surrogacy arrangements and the role of clinicians.

In addition, a concern underlying this study is the legality of surrogacy in Nigeria, a country that has no proscribing or prohibiting legislations. The study explored professional opinions about the legality of surrogate contracts in Nigeria to ascertain the appositeness of the arrangement between commissioning parent and surrogate as well as agents.

1.5. SIGNIFICANCE OF THE STUDY

The premium placed on fertility and parenthood in most African societies makes infertility an anomaly and aberration. The immense value placed on having children creates a feeling of incompleteness for reputable married adults within African societies who have infertility concerns, hence, providing an avenue for medical intervention. However, as the territory of assisted reproductive technology continues to expand and develop, some of its treatments have been perceived as controversial and an invasion of the sacred social space of the traditional family system especially in Africa. Surrogacy as an emerging alternative to infertility across the

globe has not received so much attention in Africa and literatures establishes that, this is because of the strong connection that exist between socio-cultural, religious practices and the reproductive sphere. This study therefore is positioned as an empirical gateway that investigates the operation of surrogacy in Nigeria-a core patriarchal society- within a medico-legal perspective to understand and articulate the socio-cultural, religious, medical and legal trepidations that influence the practice of surrogacy in Nigeria.

1.6. RESEARCH QUESTIONS

Surrogacy is a newly emerging practice in Nigeria, the absence of proscribing or prohibiting legislation makes it problematic to conceptualize. The failure of previous researchers to investigate the social construction of surrogacy in Nigeria guided the impetus of this research. Key questions posed, included:

1. How is surrogacy conceptualized within a medico-legal community in Nigerian?
2. What is the legal framework that guides surrogacy in Nigeria?
3. How does the medical fraternity view surrogacy within a medico-legal context?
4. What are the socio-cultural and religious perspectives surrounding the conceptualization and practice of surrogacy in Nigeria?
5. What are the followed medico-legal processes?
6. What are the legal fears in the practice of surrogacy?

1.7. METHODOLOGY

This research is qualitative and its strategy of enquiry is explorative. An explorative strategy harvests the perception of society by presenting informed opinions of Gynecologist, Traditional Birth Attendants (TBA) and Legal Professionals who are erudite in the field. Creswell (2013) asserts that explorative qualitative research allows the researcher to collect data from persons who are expert about phenomenon and helps develop a composite description of the essence of the experience for all individuals. The strategy for data collection was In-depth interview (IDI) and the tool for this approach was a semi-structured interview schedule, which contains three sets of questions. It was supplemented with the use of an audio recorder and field notes. The first set of questions examined surrogacy within a cultural perspective, the second questioned medical opinions on surrogacy arrangements and the third examined the legal trepidations in the practice of surrogacy. The interview schedule was translated into Yoruba; the local language of this region for the benefit of the TBA's who might not be English speakers to gain more insight into the study.

The study population consists of three categories of participants above the penal code age (18) in Nigeria. These included ten gynecologists, five TBA's and five Legal Professionals. Considering that surrogacy is not a popular practice in Nigeria, purposive sampling was used to select erudite Medical and Legal Professionals who have a composite expertise of surrogacy in confines Nigeria. This study was conducted in two cities in Nigeria. While the Gynecologist and TBA's were recruited from, Ekiti State Teaching Hospital, Ado-Ekiti, Ekiti- State Nigeria, the Legal Professionals were selected from Oyedeji Ayodele & Co, Abuja Nigeria.

1.8. ORGANIZATION

- Chapter two investigates in-depth literatures that had investigated surrogacy across the globe. It examined the understanding of surrogacy, provided a general overview of surrogacy as well as it journeys in Africa, discussed the influence of

culture, tradition, belief system on surrogacy within the African context and provided a legal scope to the practice of surrogacy across the globe.

- Chapter three analyses and interprets relevant sociological theory in relation to surrogacy. This chapter explored the social construction of reality as postulated by Berger and Luckmann (1991) and as a complementing argument on the importance of social narratives about any phenomenon within society draws on Mead's (1934) explanation of society in the formation of popularized perception that translates into norms that serve as framework for expected identity and role construction.
- Chapter four provides an overview of the methodology that has been adopted for this study. It provides the detailed report of the fieldwork phase.
- Chapter five presents the interpretation and analysis of the data collected during the fieldwork.
- Chapter six provides an overall summary of the research and recommendation for further academic studies.

CHAPTER TWO

LITERATURE REVIEW

2.1. INTRODUCTION

Surrogacy is a process whereby a woman becomes pregnant with the intention of giving up the baby to a commissioning parent. Surrogacy can be traced to a Latin word “subrogare” meaning to “substitute”. Debate about various limitations and issues surrounding surrogacy arrangement came into popular parlance in 1987 from the case of “*Baby M*” in New Jersey (Ferguson, 2016). In 1986, a couple (commissioning parent) had approached a woman to carry a pregnancy for them through artificial insemination with the aim of relinquishing the child after birth, but in less than 24 hours after she relinquished the child in 1987, she (the surrogate mother) demanded and collected back the baby from the commissioning parent (See Bartels, Priester, Vawter, and Chaplan, 2012; DiFonzo and Stern, 2011).

The commissioning parent therefore approached the court to seek legal custody of the child. The Supreme Court in New Jersey therefore formalized the surrogacy arrangement between the parties and awarded custody of the child to the commissioning parent. The court rationalized this decision to have been reached considering the best interest of the baby (See Umeora, Umeora, Emma-Echiegu, Chukwuneke, 2014; Bartels et al., 2012). This case pioneered a debate examining surrogacy arrangement and the various issues involved in the process. It started a general discussion interested in the examination of the influence(s) of surrogacy on various aspects of the family and society.

The practice of surrogacy is not popular in Nigeria as there are scarce scholarly investigations of the arrangement and it is rarely publicly discussed. It is therefore difficult to establish the extent to which it is prevalent. According to Umeora et al., (2014), surrogacy hardly constitutes a public debate in Nigeria and studies have not particularly reported its prevalence even though some other scholarships have examined surrogacy as a viable option for infertile couples. For instance, Bello, Akinajo and Olayemi, (2014), opined that surrogacy has become a booming reproductive

tourism in countries like Indian where it has grown into an industry worth millions of dollars (See Bromfield and Rotabi, 2014)

Attitudes and perceptions about surrogacy in most African societies differ from perceptions shared in the western world. Teman (2008) noted that, the body of scholarship available globally represents an aggregation of western thought and perception on surrogacy. Suffice to say that not so many studies have investigated the perception, conception, and practice of surrogacy within the African cultural context as well as in other social context of the globe. The pronatalistic nature of most traditional African societies attaches priority and highly cherishes procreation; in fact, it is a closure of a woman's conjugation to her husband (Umeora et al., 2014). African womanhood is fulfilled through motherhood; the ability to conceive, deliver and nature are all peculiar characteristics of a complete and productive woman (Golombok et al., 2011; Umeora et al., 2014).

This implies that renting a womb and subcontracting pregnancy as in the case of surrogacy is a deviation from the cultural norms guiding motherhood and reproduction and might not be openly accepted by couples that have adopted surrogacy or have plans on adopting it as an alternative for procreation. Surrogacy arrangement is regarded as beneficial by many stakeholders specifically considering the limited number of children available for adoption and the complexities in qualifying for adoption (Ahmad, Ahmed and Patrizio, 2013; Tang, 2016; Abu-Rabia, 2013). However, critics believe surrogacy is unethical and a breach of family sacredness (Panitch, 2013; Banerjee, 2010). There are different motivations supporting surrogacy, nevertheless there are concerns about the gaps in its ethical, legal and psychological nature. This review will examine the arguments available in literature about surrogacy in different forms and segments.

2.2. EARLY EMPIRICAL RESEARCH ON SURROGACY IN EUROPE AND AMERICA

So many scholars have identified the work of Hanafin (1984) and Ragone (1994) to be among the pioneering empirical investigations on surrogacy in Europe and America (Berend, 2016; Baslington, 2002). Hanafin (1984), conducted a study on how “surrogate mothers prepare to relinquish baby’s” in California. In the study, Hanafin selected 21 surrogates from two organizations and 21 non-surrogate mothers.

Hanafin (1984) discovered that knowledge of the commissioning parent gives the surrogate mother’s relief and makes them believe the child is not theirs. The knowledge of the child’s destination reduces the pressure of loss and therefore Hanafin (1984) concludes that surrogate mothers develop attachment with the couple/commissioning parent rather than the child. The generalization of this research to commercial surrogate mothers is hampered because of the inability to substantiate its claim of “attachment development to commissioning parents” from multiple cases, as at the time of the research, only two of the surrogate mothers had relinquished their baby’s.

Hanafin’s (1984) work was from a psychological point of view, so subsequently, another landmark research was Ragone’s (1994) anthropological approach to the study of surrogacy. During the era when Helena Ragone’s (1994) research was the focal point for debates around surrogacy, most popular and generally practiced surrogacy was ⁹traditional surrogacy (TS) whereby artificial insemination formed the basis of conceptions and surrogates were genetically linked to the babies. Sperm came from the commissioning father, who adopts the child afterwards (Berend, 2016). Ragone (1994:123, 124,127) documented that surrogates and couples fascinated with the desire to be parents mentioned “conceptions in the heart” as core process for coping with the guilt and pain of not being able to carry your own child. Surrogates and intended mothers emphasized their sisterhood and bonding and regarded procreation as females’ business. The function of emotional conceptions and shared pregnancy helps to normalize the

⁹ Traditional Surrogacy (TA) is a process of surrogacy whereby the surrogate is genetically connected to the baby.

arrangement, and deemphasizes the husband's and surrogate's symmetrical genetic connection to the baby (Ragone 1994:129, 125). Ragone (1994:136) concluded that although "biogenetic relatedness is the goal of surrogacy, relatedness has to be deemphasized."

At the point when Ragone (1994) was studying surrogacy, ¹⁰gestational surrogacy (GS)- a process whereby embryo is created through ¹¹in-vitro fertilization (IVF) was very scarce as only 3 of the 28 surrogate mothers Ragone examined were gestational (Berend 2016). GS was regarded as more expensive than TS and according to Berend (2016); it is still more expensive and has limited chances of resulting in pregnancy. In the same light, GS now was considered "complete biogenetic remedy" because the fetus will be completely genetically the couple's and both the surrogate and couples emphasized the genetic links (Ragone 1994). Ragone (1994) argued that the parties to surrogacy highlight those features of surrogacy that might be most consistent with American kinship ideology, deemphasizing those features which can be incongruent with this ideology. Ragone maintained that even though the means of accomplishing relatedness could have changed, the rigorous emphasis on the household and on the biogenetic basis of American kinship remains unchanged (Ragone 1994).

Much has changed since Ragone's written work, although there are no dependable insights about these progressions. IVF and ¹²Assisted Reproductive Technologies (ART) have been very successful and progressive that egg and sperm donation has increased (Berend, 2016). According to Berend (2016), the ¹³Council for Reproductive Genetics (CRG) estimated that GS grew 89 percent between 2004 and 2008, leading to the birth of 5,238 babies. Notwithstanding the ¹⁴Centers for Disease Control (CDC) gathers insights on IVF cycles instead of individual cases. CDC's information accumulation on ART has been developing since 1996, and the National

¹⁰ Gestational Surrogacy (GS) is a process whereby an embryo is created through in vitro fertilization

¹¹ In vitro fertilization (IVF) is a medical procedure whereby an egg is fertilized by sperm in a test tube or elsewhere outside the body.

¹² Assisted reproductive technology (ART) is the technology used to achieve pregnancy in procedures such as fertility medication, in vitro fertilization and surrogacy. It is reproductive technology used primarily for infertility treatments, and is also known as fertility treatment.

¹³ Council for Reproductive Genetics (CRG)

¹⁴ Centre for Disease Control (CDC)

ART Surveillance System was propelled in 2006. The 2012 ART national summary report indicated that gestational carriers were utilized for about 1% of ART cycles utilizing new non-donor eggs and sperm. Even after the various advancements in medicine advancing the prospects of surrogacy arrangements, it is still unclear as to how surrogate mothers prepare and cope with relinquishing their baby's, be it through gestational or traditional mediums. As at the time Ragone carried out this research, it is not specified how many of her 28 surrogate participants have relinquished their baby's.

The debate that surrogates always carry somebody's baby is a striking repudiation of longstanding views about biology, gestation, and the bonds they devise. The new prospects inherent in nonsexual conception have given rise to new conceptualizations of relatedness. Such conceptualizations, as researchers have pointed out, do not reinvent relatedness; instead, they construct on, draw from, and spotlight specified elements of present understandings (See, Krolokke, Foss and Pant, 2012; Ragone 1994). Reviews on surrogacy across the globe provide a comparative viewpoint on gestation, genetics, and relatedness, frequently displaying the interweaving nature of genetics and intentionality in parenthood claims (See, Deomampo 2015). Teman (2010) discovered that Israeli surrogates emphasize genetic relatedness between fetus and commissioning parent because this is the usual basis of parenthood and insist that gestation is "neutral"; surrogates are just babysitters. Emphasis is therefore placed on the genetic connection of the commissioning parents to the baby in most part of the world (See, Finkler, 2010; Trowse, 2011).

Ciccarelli (1997) studied 14 Caucasian surrogates selected from one agency that has 3 to 10 years' post surrogacy experience in America and through the research Ciccarelli could properly examine and report the wellbeing of surrogates after relinquishing. The relationship of surrogates with couples causes a satisfaction or dissatisfaction which may affect the bond developed while some others begin to develop a strong nurturing instinct for the baby, it is described as, ".....a strong mothering instinct towards surrogate child" (Ciccarelli 1997:56). As it is difficult to holistically examine surrogate's experiences, it becomes crucial and fundamental from the

literatures presented to examine surrogate coping mechanisms pre, during and post pregnancy stages with the couple and baby.

2.3. CONCERNS ABOUT THE PRACTICE OF SURROGACY GLOBALLY

Although the birth of a child is often celebrated and welcomed in most societies, surrogacy is a grey area that flickers several ethical and moral concerns. Some of these concerns are fueled by the varying legislation about surrogacy across different regions of the world.

Concerns about the practice of surrogacy span through the field of medicine, law, ethics and even sociology. It critically examines the contractual risks associated with surrogacy arrangement and the health hazards associated with surrogate pregnancy. This segment will discuss contractual, moral and social concerns about surrogacy as well as the rights, opportunities and awaiting life of a surrogate child. According to Tieu (2009), in the study, “Altruistic surrogacy: The Necessary Objectification of Surrogate Mothers,” there are so many issues and concerns that should be carefully explored in surrogate pregnancies. In cases of complication and diagnosis of genetic disease and infection, abortion becomes a route of escape and this usually leads to conflict between commissioning parent and surrogate mother. The surrogate might not want to abort the fetus while the commissioning parent will insist, however if the surrogate decides to keep the baby, the commissioning parent backs out, faulting the agreement and it could be vice-versa. Hence, there is a conception of a child that has not been planned for.

ART has brought to fore varying cases of multiple birth and premature birth. This premature birth has been reported to lead to infant mortality in some cases (Tieu, 2009) and on the other hand, multiple births cause contractual breach as issues spring up on whose responsibility it is to cater and care for the second child and in cases where the surrogate refuses to abort one fetus, conflict and disagreement ensues. Tieu (2009) gave an example of a case in the United States of

America (USA) in which multiple births has led to contractual dispute between commissioning parent and surrogate mother:

“a British woman pregnant with twins sued a California couple because they backed out of their surrogacy contract after she refused to abort one of the fetus. Another unfortunate, yet foreseeable outcome where the best interests of the child conflicted with the interests of the commissioning couple is exemplified in the infamous case of Jaycee B versus the Supreme Court of Orange County. In this dispute, the commissioning couple divorced prior to the birth of their surrogate baby Jaycee. However, the commissioning father contended that he was not legally obligated to pay child support, arguing that he was not genetically related, his wife had not given birth to the child, and that he had never formally adopted the child. This also validates the difficulties with providing adequate legislative responses to rapid progress in reproductive technology along with reproductive demands. This issue is in fact a very pertinent one given the diversity of legislative responses on surrogacy observed in the United States of America (USA).” (Tieu, 2009:173)

It goes further to examining the rights of the surrogate in cases of unexpected changes in gestation; what will happen to the surrogate and the child where there are varying and diverse regulations across the globe. The conclusion according to Tieu (2009) is that surrogate pregnancy is quite different from natural pregnancy, while pregnancy in its real sense involves risk, the joy of bearing and raising children becomes the end that sees women through the process but in surrogate arrangement, the woman bears the risk of pregnancy without enjoying the naturalness of motherhood as a solace.

In their review of literature on the Ethical concerns for maternal surrogacy and reproductive tourism, Deonandan, Green and Van Beinum, (2012), identified eight principal concerns in the study of surrogacy arrangement. The first major concern is the intricate nature of informed consent, giving a cursory look at the differential power relations of the parties involved and because most times they belong to unequal social strata. It becomes problematic to separate willingness (agency) from subtle or overt coercion, as stated, “.....given surrogates’

tendency to be poor, illiterate and possibly susceptible to the neocolonial motivator of an impressive medical authority figure, one must consider how best to assess the extent to which consent can be coerced simply through a clinician's bearing, accent, caste/class or social power" (pg. 742). Following is the quality of care given the surrogate, emerging questions quarries to what extent is the health of the patients cared for beyond the gestational role. "What of her social and mental health? If her role as a surrogate requires her to change her diet and perhaps alter her daily physical activities, it is possible that these changes impart an emotional impact (pg. 743)." It is very important to examine the ethical concerns gestational roles have on the social and emotional wellbeing of surrogates and what roles the clinicians and commissioning parent can play. How the surrogate cope with the dual role of being a gestational mother carrying somebody's baby and her roles as a mother and housewife. There are often emotional and social challenges that arise from being a surrogate and it is very crucial to effectively map out plans and strategies to help the surrogate sail out this phase of her life.

Furthermore, it is important to examine the limits to the surrogate care; are surrogates only catered for during the period of gestation or it goes beyond that because it is important to recognize the post-partum injury (depression) that usually accompanies such process and the plans put in place to help the surrogate recover fully. The direction and geographical flow of ¹⁵reproductive tourism has been explained to be piloted by reduced cost giving rise to exploitative concerns (Smerdon, 2008; Whittaker and Speier, 2010). Remuneration is a major drive of commercial surrogacy but it must be properly regulated so as not to exploit surrogates from ¹⁶low medium income countries (LMIC), ".....while remuneration for LMIC surrogate is probably above what she would otherwise earn, it is below the global average (pg. 743)." It is advanced that fair trade international surrogacy should be strengthened to further enhance the ethics of international surrogacy transaction. Multiple embryo transfer and abortion are all ethical concerns that require regulations, while doctors in the west avoid multiple pregnancies,

¹⁵ Reproductive tourism is a type of medical tourism in which patients travel to other states or countries seeking fertility treatments in various forms because those treatments aren't available to them in their own state or country for any number of reasons.

¹⁶Low Medium Income Countries (LMIC)

there are not specific regulations prohibiting these practices in low-developing income countries of the world and it is harmful to the health of the surrogate mother.

The limited extent to which medical agents can act as fair arbitrators in surrogacy arrangement is highly questionable, because, there is an unequal financial power play between commissioning parent and surrogates. Looking at the ethics of medicine where continuous care is of maximum priority, competent business arbitration is therefore not within the premises of medical agents or clinicians in contractual cases such as surrogacy arrangement. Deonandan et al., (2012), summarizes this in a concise but explicit form:

“In absence of an independent advocate, the surrogate is essentially being treated as an independent contractor who must bring her own expertise and resources to the business relationship. The clinic, in this sense, acts as an arbitrator through which a commercial transaction takes place. Beyond the clinic’s legal and professional requirements of diligent care, the surrogate’s interests are limited to those which she manages to negotiate priori. The ethics at play are business ethics, not medical ethics. In business ethics, so long as full disclosure and fair play are in effect, all actors must be content with the scenario negotiated before the actual act of business; and all actors are expected to consider only their own needs, not the needs of the other party. The arbitrator’s role is to enforce fairness. However, in medical ethics, a clinic’s role is to provide continual diligent care, always acting in that patient’s best interests. A clinic is not equipped legally or experientially to act in the role of arbitrator nor is it empowered to do so via the tradition of medical ethics (pg. 744).”

There is yet to emerge an effective framework that could effectively link medicine and commerce after informed consent in surrogacy arrangement without distorting the primary intent of caring for the person under the medical watch.

A final level of critical concern is the exploitation of the poor, since the direction of global reproductive tourism is driven by low sources of reproductive labor especially from the low medium income countries by the developed countries. It is crucial to examine the place of greed, vulnerability, desperation and exploitation. Surrogates are being exploited and taken advantage of financially, the average earning of most of these surrogates might be more than what they could earn but it does not meet up with international average. Proponents of this thought have leveraged on informed consent and declared agency of surrogate to participate as a core negation of exploitative intent, claiming they were not forced or coerced into agreement. But the core question will be that; would it be just and fair to take advantage of a person's impoverished social status to make them do what they would not have done ordinarily? As captured by Deonandan (2012:744),

“To use someone's desperation to leverage an outcome or behavior that the person would not otherwise offer is indeed exploitation. Viewed from a business ethics standpoint, this is a fair play, as the game of commerce is about negotiation from a position of power. However, as in the case of medical advocacy, reproductive tourism represents a grey frontier on which the ethical frameworks of business, medicine, human rights all forms the musical string to which the west and the east dance to an unsteady rhythm.”

A rhythm of exploitation whereby an advantaged group blackmails a disadvantaged group with their improvised social status because of greed and selfish interest.

According to Damelio and Sorensen (2008), in their study, “*Enhancing autonomy in paid surrogacy*,” the gestational surrogate – and her financial and educational vulnerability specifically – is the concentration of a considerable number of the most relentless stresses over commercial surrogacy. The individuals who utilize her, and the individuals who merchant and sort out her services, often have favorable position over her in resources and information. That asymmetry opens her to the likelihood of misuse and abuse. Accordingly, some contend for an outlaw of commercial surrogacy. Others shield legal permission on grounds of surrogate

autonomy; however, there are immense concerns about the morality and legality of surrogacy. Considering the quandary of a boycott versus bald permission, Damelio and Sorensen (2008) propose a 'soft law' approach: a medium that require several hours of training and educating of surrogates – education that will be geared towards informing and enhancing surrogate autonomy.

2.4. MOTIVATIONS FOR SURROGATES

When studying and trying to understand the motives for entering surrogacy or why women decide to be surrogates from a scholarly point of view, it is important to understand the type of surrogacy in question. Studies and reviews of various literatures have revealed that the motives for becoming surrogates can be structured along two lines of debate. The debate opines that the motivation for altruistic surrogate is different from commercial surrogacy (See, Millbank, 2015; Van Zyl and Walker, 2013; Teman, 2008). Altruistic surrogacy is conception with the intent of relinquishing but for the selfless concern for the wellbeing of others, on the other hand commercial surrogacy is carrying pregnancy for others for the sole aim of making financial gain in exchange for the child that will be relinquished. According to Teman (2008), understanding surrogacy arrangement from an altruistic and reparative stance rather than financial point of view perpetuates patriarchal stereotype portraying women as nurturing and self-sacrificial and re-assures society that the surrogates motivation for birthing the child are not pragmatic, financial or self-interest but on the natural intuition of care, love and selflessness.

In furtherance of the concept of reparation in understanding motivation for surrogacy, Solomon (2012) dismisses financial gain as a motive for surrogate and argues that in cases where the surrogate mother has suffered from tragic loss or abuse in the past, surrogacy at this point will be a reparative avenue to compensate or make up for the aggrieved past, failure or loss. The search for the reparative cause is therefore accessible through a careful search and examination of the events that surrounds the surrogate's experiences such as abortion, loss of pregnancy or even death of a family member (Teman, 2008). Although, not so many inferences were deducible through reparation emphasis has been placed on the few cases available and has made reparation

an issue to be examined in the discussion of surrogate motivation (Rotabi and Bromfield, 2016; Raphael-Leff, 2010). Parker (1983:118) found that “out of a sample of 125 surrogates, 9% had relinquished a baby to adoption and 26% had undergone voluntary abortions in the past. He writes of this that only a few consciously felt that they were participating to deal with unresolved feelings associated with prior losses, yet he disproportionately reports in his conclusion that one of the main motivations of the women was often unconscious unresolved feelings.”

The examination of surrogate motivation is very broad and involves critical and scrutiny of varying cases and it must also be understood that there could be multiple factors combining to push a woman to become surrogate. Irrespective of what the cause or motive could be, financial, altruistic, reparation- surrogates are viewed as social deviants whose altruistic intent is an excessive offshoot off normative boundaries. Her desire for money is greed or a function of impoverishment while her reparative motive is classified as indicative of past sin for which she seeks to punish herself through the commodification of her body.

According to Van Zyl and Walker (2013), there are different motivation for surrogacy and this they developed in various models with different relationship patterns. The first is the gift relationship where the principle of voluntarism and debt of gratitude is dominant. It is a type of altruism or better still an explanation of the processes in altruistic relationship in surrogacy. The relationship that exists between friends or family exchanging gifts in applicable also here but not necessarily in expectation of return however, the benefactor feels indebted to return the good gesture either monetary or just by saying thank you. This is captured as;

“Relationship between parties to an altruistic exchange is usually more informal and more enduring than commercial relationships, and although each party may have specific expectations, these are rarely made explicit.” (Van Zyl and Walker 2013:374)

It is therefore very important to distinguish between reciprocal and non-reciprocal altruism. Furthermore, in their explanation of commercial model of surrogacy, money is identified as a major tool or driving force of commercial surrogacy. It is clearly stated that critics of this

approach have noted that entering into surrogacy arrangement purely for monetary reason will make the surrogate mothers distance themselves from the child thereby endangering the health of the child.

Relationships between parties to an altruistic exchange are usually more informal and more enduring than commercial relationships, and although each party may have specific expectations, these are rarely made explicit. “It is feared that contract mothers who are motivated by monetary gain will tend to distance themselves from the unborn baby, making them more likely to put its health at risk. Now, of course, the possibility that a party to a commercial transaction will put the health or safety of others at risk is always present, but it is relatively easy to put regulations in place to protect customers and ensure that they are treated fairly (for example. money-back guarantees, claims for damages, product inspections). In addition, businesses that show a systematic disregard for their customers’ health and safety obtain a bad reputation and may fail as a result, so businesses have a strong financial incentive to provide good service. In the case of commercial contract motherhood, however, matters are quite different. The first and most obvious point to make in this regard is that the stakes are much higher. The fetus and the intending parents are much more vulnerable than the average customer, and the consequences of irresponsible or careless behavior on the part of the contract mother are typically much more serious. In addition, the woman’s right to privacy, together with practical considerations, makes it all but impossible to monitor her behavior to ensure she does not put the health or safety of the fetus at risk. Since the intending parents cannot control all her dietary and life-style choices before conception and during the pregnancy, they have no alternative but to put their trust in her. However, in the same way that paid blood donors are less likely to be trustworthy than unpaid ones. It is feared that contract mothers who are motivated primarily or exclusively by profit are less likely to be trustworthy, whereas those motivated by altruism will tend to care for and have an intimate bond with the intending parent; and tend to do all they can to protect the fetus (Van Zyl and Walker, 2013:378).

However, Van Zyl and Walker (2013), concludes that even though it is argued and critiques of commercial surrogacy has leveraged on the fact that altruistic mothers tend to be more caring, it

still does not rule out the fact that contract mothers should be paid, they stated clearly that “payment does not preclude altruistic motivation.”

Teman (2008), identified in the review of literature, “*The social construction of surrogacy research: an anthropological critique of the psychosocial scholarship on surrogate motherhood*,” important assumptions about the motivations luring women to become surrogates. These adducible factors for women’s desire to take up reproductive roles for others, surrogates are perceived as abnormal women (See, Van den Akker, 2007; Jadvá, Murray, Lycett, MacCallum and Glombok, 2003 and Samama, 2002). this imply that surrogates are women with mental or psychological aberrations and therefore their departure from the appropriate state of mind is the reason they decide to be surrogates; the second assumption is that surrogates are normal women but have good reason to become surrogates (See, Ciccarelli and Beckman, 2005 and Edelman, 2004). Teman questions why ‘normal’ women will make non-normative decisions, and parts of the adducible reasons are financial incentives, altruism and reparation; the third assumption rather than examining the motive for surrogates. It looks at how surrogates feel after relinquishing and it states that, ‘nature gets the better of them,’ meaning that the nurturing intuition of a woman makes her naturally develop bond with the child and will therefore go through psychological or somatic trauma after relinquishing or giving up the baby.

However, Millbank (2015), while rethinking commercial surrogacy in Australia proposes that laws prohibiting surrogacy be revisited. The payment of contact mothers is not a sufficient reason to distinguish between good surrogacy and bad surrogacy and therefore the introduction of professional intermediaries and advertisings are all avenues to regulate surrogacy arrangement.

“I see a role for the State in enhancing opportunities for the exercise of such textured choice in the context of surrogacy and other forms of assisted reproduction, through maintaining minimum clinical and ethical standards of care and preventing demonstrably unsafe practices. In my view, surrogacy is not a

harmful practice when a birth mother makes an informed decision to undertake surrogacy and to relinquish the baby (Millbank, 2015:477).”

Millbank believes a baby birth through surrogacy does not cease to be the surrogate’s child because of genetics or contracts but because she herself (the surrogate) have consciously and rationally relinquished the child however, there should be an effective educative and informative session for the surrogate mother prior to taking up the role. It is duty of the legal agent involved in the arrangement to provide support and information before conception and allow for consensual relinquishment (Millbank, 2015).

2.5. ANONYMITY IN SURROGACY ARRANGEMENT

The issue of anonymity is very controversial and it has raised contending arguments basically around the complete and open identity formation of the surrogate child. Understanding the complexity of anonymity discussion, it is very crucial to examine some germane concerns within this jurisdiction. Can the surrogate mothers or gamete donor’s identity be kept secretive and why? Is the child allowed to know his surrogate mother or gamete donor for complete identity formation later in life? Notwithstanding the positive reports from donors, gamete donation has been debated to be a secretive and anonymous arrangement and this is basically to protect all parties involved (Van den Akkers, 2006). Over the years, it has been discovered that donors prioritize their anonymity and will not consent to donate if the identity was to be disclosed or revealed at any stage (Bernstein, 2012). It is very diversifying will examining identity disclosure for sperm donor. As reported by Daniels and Taylor (1993), sperm donor is excited to share their identity with children conceived from their contribution and more so that their offspring will like to contact them later in life as an assumption (Ravelingien and Pennings, 2013; Harrigan, Dieter, Leinwohl and Marrin, 2015; Elster and Braverman, 2009; Riley, 2012;). Require a photo of them maybe just to know what they looked like develops a sense of responsibility and having thoughts about their offspring’s (Bohannon, 2013).

According to Van den Akker (2003), studies in the United Kingdom have shown unequivocally that it is believed that commissioning parents should always intimate their surrogate child (ren) about the surrogacy arrangement. In fact, it has been reported that where closed surrogacy arrangement has been used, regrets have been reported (Van den Akker, 2002).

However, on the contrary according to Bernstein (2012), the prohibition of anonymity practice in surrogacy arrangement will have grave consequences especially in the United State of America where traditional surrogacy is feared because of the accompanying legal uncertainty. Removal of gamete anonymity will lead to scarcity of donor eggs and because of the feared uncertain territory of traditional surrogacy; ultimately surrogacy might no longer become desirable. In an empirical study carried out by Bernstein, it was revealed that;

“The study suggests that potential donors’ concerns of future contact by the conceived offspring influenced their decision-making. Considering the study’s findings in other jurisdictions, the adoption of prohibitions on anonymity in the United States could play a role in creating shortages in gamete supplies. As was the case abroad, potential donors in the United States may be deterred from donating, fearing future repercussions from contact by the conceived offspring. Since prohibitions on gamete donor anonymity are likely to be adopted on a state-by-state basis and not by the federal government, the effect on gamete supplies would depend on the number of states that would adopt these prohibitions (pg. 10).”

This is therefore evident that the removal of the anonymity clause will affect the demand and supply rate of surrogacy arrangement in the United States of America.

2.5.1. Anonymity issues in donor insemination and surrogacy

Exposure has been liable to extreme examination in beneficiaries of donor gametes. This is because it was realized that many individuals did not tell their child that donor gametes were utilized as a medium for their conception, along these lines imagining they were their genetic parent, when they were most certainly not. While trying to reveal some insight into the act of non-divulgence, Daniels, Gillett and Grace (2009) reviewed scholarly publications on the counseling needs of parents receiving gamete donation. It reveals that there are concerns about not being the genetic or biological parent at the same time creating mixed feelings about revealing the truth about conception to the child.

In a survey investigation of 27 couples with male infertility (Leiblum and Aviv, 1998), almost 3/4 had not revealed donor insemination to their child and had no goal of doing this later. The dominant part (85%), nonetheless, had trusted to no less than one other individual about their donor insemination origination. What was especially fascinating about the after effects of this review was that around 33% of their sample said they did not know how or when to unveil this crucial and sensitive information to their child (Leiblum and Aviv, 1998). Affirming other researches (Kirkman, 2003), and demonstrating an absence of post-donation guidance (Kirkman, 2003), which is as of now perceived in appropriation as essential.

The greater part of the couples considered in Leiblum and Aviv's review were not given guidance proper counseling at any stage. Barman, (2008) reports that a determination to the choice of beneficiaries has not been constantly reached. It is not surprising that without intellectual consonance and proper information, many individuals tend to do nothing, even though this may not be in their own or their child's best advantages). Gottlieb, Lalos and Lindblad (2000) studied Swedish parents who had utilized donor insemination since the 1985 enactment to check what percentage of parent will tell their child they are not the genetic parent. In opposition to desires, the greater part of parents (89%) had not educated their child(ren) about this, and 59% had told another person. The inadmissible result is that these children may

discover from another person how they were conceived. The parent that did not tell their children about their original conception believes they are still young and may not be able to process such sensitive information properly.

Brewaeys et al. (2005) detailed practically indistinguishable outcomes in a Dutch investigation of beneficiaries picking known versus unknown/anonymous sperm donors. They excessively detailed a larger part (63%) settling on identifiable donors (in hetero, and 98% in lesbian couples). As is found in surrogacy, known donor is about constantly joined by divulgence. For all intents and purposes all lesbian families utilizing donor insemination uncover (Brewaeys et al., 2005; Baetens and Brewaeys, 2001; Scheib et al., 2003). The doubtlessly purpose behind divulgence in lesbian families is the plain absence of a male in the family. A review examining the thinking behind hetero parent divulgence of their posterity's hereditary roots found that of 70 men and 86 ladies who had children through donor insemination treatment, 30% said they would uncover this to their children, yet a bigger rate (54%) would not, or stayed undecided (16%) (Baetens and Brewaeys, 2001). The thinking behind the choice to advise was to be 'straightforward', while reasons not to tell were viewed as "privacy" issues. Lycett et al. (2005) detailed fundamentally the same as purposes behind revealing (to maintain a strategic distance from coincidental revelation and a longing for openness) and nondisclosure in beneficiaries (no motivation to advice and to ensure relatives). The expectation to uncover will subsequently rely on upon the states of mind towards the apparent standardizing values (not being a hereditary parent when others are) and control convictions (don't know how/when to unveil).

2.6. GLOBAL OVERVIEW ON LEGISLATIONS ABOUT SURROGACY

Legislations surrounding the practice of surrogacy vary across different states, countries and regions of the world. This is a representation of legislations in some regions around the world.

- **North America:** Regulations concerning surrogacy vary across different states (Bromfield and Rotabi, 2014). States that allow but regulate surrogacy are California,

Arkansas, Florida, Illinois, Nevada, New Hampshire, Texas, Utah and Virginia. Canada bans commercial surrogacy but allows altruistic surrogacy (Stark, 2011).

- **Western Europe:** while surrogacy is legal in the United Kingdom, the surrogate mother can only receive financial remuneration solely related to medical and pregnancy expenses (Engeli, 2009). Surrogacy is banned in Germany, Sweden, Norway and Italy.
- **South East Asia:** there are no clear and definite legislations or governmental stance on surrogacy in most part of the region (Thailand, Malaysia, and Philippines) but surrogacy is banned in Singapore (Whittaker, 2011).
- **East Asia:** there are no laws regulating surrogacy birth in Japan (Kisu et al., 2011).
- **Oceania:** In Australia, the state of Queensland bans all forms of surrogacy while most other states ban commercial surrogacy but allows altruistic surrogacy (Hammarberg et al., 2011).
- **Eastern Europe:** Surrogacy is legalized in Ukraine and Russia (Svitnev, 2011).
- **South Asia:** India has become a place for medical reproductive tourism around the world. According to Umeora et al., (2014), surrogacy is a multi-million-dollar industry in India and most woman and families are having taken this as a source of livelihood. Commercial surrogacy is legal in India and it is regulated with the guidelines of the regulatory bill for assisted reproductive technology (2010). Some of the guiding principles of ART are presented below as extracted.

2.7. FERTILITY AND INFERTILITY WITHIN THE AFRICAN CONTEXT

According to Inhorn and Patrizio (2015:412), “infertility is estimated to affect as many 186 million people worldwide. Although male infertility contributes to more than half of all cases of global childlessness, infertility remains a woman’s social burden.” This imply that the social and cultural attitudes that tail the definition of infertility remains evident and predominant, according to Lunenfeld and Steirteghem (2004), these cultural attitudes are accompanied by personal suffering mitigated by the society through a process of social stigmatization. Furthermore, it is estimated that the prevalence of infertility across the globe is 17%, reported 1 in 6 women experience delayed conception but specifically infertility among women in Nigeria has been

projected to affect 25% (1 in 4) of women in their reproductive age (Ajayi and Dibosa-Osador, 2011). In a country that boast of over 160 million populaces, of which 22% are women in the reproductive age group, hence infertility becomes a very prevalent issue (Ajayi and Dibosa-Osador, 2011). Therefore, over the year's medical technology has offered help for infertile couples through various programs in ART. it is prominent to say that this advancement and infertility treatment progress has raised new medical, social, ethical and legal concerns that requires attentions from not only medical professionals but all reputable stakeholders within the society (See, Sutcliffe and Ludwig, 2007; Inhorn and Birenbaum-carmeli, 2008).

Up to this point, the issue of infertility in Sub-Saharan Africa got relatively little consideration from sociologists, anthropologists and demographers probably because of the reported rate of high fertility in the region that has been reported to be a major concern for development and resource allocation (Thorbecke, 2013). However, now, there is an expanding awareness on infertility in Africa as a genuine social and general medical issue (see, Boerma and Mgalla 2001, Johnson-Hanks 2006) and a developing scholarship that unveils the overwhelming effects of infertility in sub-Saharan Africa for both men and women, however especially for woman.

There are various contentions offered in anthropological and demographic studies for clarifying proceeding with high fertility and the significance of children in sub-Saharan Africa (Inhorn and van Balen 2002). Essentially these depend on the investigation of country social orders and incorporate financial, social and religious elements that boost a framework where the accomplishment of parenthood is of major significance. Dyer, Mokoena, Maritz and van der Spuy, (2007) discussed that the accomplishment of parenthood is viewed as a sine qua non-for the achievement of a complete individual that everyone strives to be I different societies. Additionally, aside from outcomes for people and their personalities, parenthood is a satisfaction of crucial family relationship, religious and political commitments to the group. In the cosmology of African social orders, children speak to an association with the progenitors and their introduction to the world speaks to a continuation of the family in physical as well as in religious terms.

In addition, Dyer, Abrahams, Mokoena and van der Spuy (2004) reports that in conventional African social setting especially the religious practices place high premium on fertility and preaches enormous rewards to procreating. These also include the lots of contribution children bring on boards the family as they grow up, from working of farms to helping organize family function, taking care of older family members and even taking up the responsibility of educating their younger siblings as they grow older (Dyer et al., 2004). The religious conviction teachings additionally 'works specifically to manage high fertility however has likewise shaped public view so as to convey rewards to high fertility. The reward of rehashed parenthood is that it is obeying the religious demand to procreate and remain fruitful as evidence of life and transfer of family lineage in genetic order.

A more recent study, Johnson-Hanks (2006) reveals that, even among educated Beti women of Cameroon, commanding social respect as woman is attached to specifically, monetary, marital and reproductive achievement and honor is so conflated with fertility that woman who have not procreated by age twenty are taken to traditional infertility healers for treatment without considering of individual agency to manage fertility to prevent pregnancy (Johnson-Hanks 2006).

Inhorn and vanBalen (2002) provided a summary of reasons commonly referenced in literatures for the priority placed on procreation in sub-Saharan Africa.

- 1) Children as seen as a social security that enhances family survival and continuity
- 2) Women in patriarchal relationships have seen children as valuable power resource as it is a common belief that a woman's conjugation to her husband is sealed and guaranteed by her ability to procreate.
- 3) Also, for social perpetuity, whereby children are transgenerational agents of transferring family heritage.

However, featuring surrogacy within the context of an African scholarship demands that attention be given to the conceptions of fertility, infertility and family dynamics as presented above. According to Umeora et al., (2014:105), Africa has a unique historical traditional belief about procreation, “the pronatalistic nature of the traditional African society means that procreation is invaluable and infertility is viewed as a disability and loss of something though invisible, but so tangible with attendant psychological and emotional challenges.” The implication of this is that womanhood within most African society is defined by a female’s ability to biological conceive, deliver and nurture a child and this is also considered as an authentication of a woman’s place within her matrimonial home. While fertility is a serious grave concern in most African societies including Nigeria, exploring alternatives to reproduction is limited by social stigma and a disoblging social attitude.

2.8. CONCLUSION

The intense debates on the growing practice of surrogacy across the globe are of interest to scholars examining its global dynamics and cultural particularity. The diverse perspectives surrounding surrogacy is influenced by cultural and societal beliefs. This study of surrogacy in Nigeria will unravel narratives that are hidden within the lens of societal constructs and definitions. Seeking to unravel various cultural beliefs affecting the growing practice of surrogacy and how the Nigerian society influences the general acceptance of the practice as an emerging global alternative to infertility. The role and influence of surrogacy as a practice on the definitions of womanhood in a patriarchal society forms the foundation of this research. The various perceptions on contested debates and how it shapes the future practice of surrogacy in Nigeria.

An additional concern to this study is the medico- legal concerns raised in the practice of surrogacy. The health and wellbeing of surrogates and the child is very paramount and attention on the matter must be anticipated. The study will be examining the provisions made my commissioning parents and other key stakeholders in the pact of surrogacy for the post-natal health care of the surrogate mother. It seeks to unravel the medico-legal concerns of the gestational role of women in surrogacy arrangements and the role of clinicians. In addition, a

concern underlying this study is the legality of surrogacy in Nigeria. A country that has no proscribing or prohibiting legislations. The study will explore professional opinions about the legality of surrogate contracts in Nigeria to ascertain the appositeness of the arrangement between commissioning parent and surrogate as well as agents.

The vacuum and scarcity of knowledge on understanding the growing practice of surrogacy specifically within the African context makes this study fundamental and significant to knowledge creation. It will serve as an empirical research gateway to controversial issues around fertility and reproduction via surrogates in Nigeria by examining the perceptions of medico-legal professionals in the country.

CHAPTER THREE

THEORETICAL FRAMEWORK

3.1. INTRODUCTION

Recently surrogacy has emerged as an important concern and ongoing debate across disciplinary boundaries- medical, social, psychological, legal and bioethics. The development of an entirely different possibility to infertility that transcends the remedy in adoption sparked debates in medicine and other disciplines in humanities. As the most intense separation of conception/pregnancy and genetic relation, it is an ongoing debate within contemporary medical, legal and social discourse unveiling new research interests (Horsey and Sheldon, 2012; Williams-Jones, 2002). Hence, the emergence of surrogacy as an Assisted Reproductive Technique (ART), has pioneered contentious debates on the definition and construction of motherhood, parenthood and paternity across diverse cultural context wherewith it terrain and definition remains highly contested across inter-disciplinary fields (Teman, 2008). Despite the ongoing critics on the morality of surrogacy, it is important to note that surrogacy process and practice is highly influenced by dominant societal culture and tradition.

Discontented with the line of arguments and definitions amplifying surrogacy in literature, Teman (2008), argued that the body of literature central to the definition of surrogacy represent a collection of western ideological construct, therefore there is a need to critically examine the social construction of surrogacy across distinct cultural context. The need to properly examine the social construction of surrogacy within an entirely diverse cultural context as against what is dominant in literature motivated this study, however, it implies that the definition of surrogacy is diverse and it consists of a combination of multiple influences that must be examined to provide a context-specific narrative.

This chapter explored the social construction of reality as postulated by Berger and Luckmann (1991) and as a complementing argument on the importance of social narratives about any

phenomenon within society draws on Mead's (1934) explanation of society in the formation of popularized perception that translates into norms that serve as framework for expected identity and role construction. A major undertaking of social constructionism is to examine the process through which humans subjectively construct a reality within objective social institutions paying attention to experiences of individuals and shared social perceptions (Berger and Luckmann, 1991).

As established from literature that surrogacy is a newly emerging practice in an African context, these theorists will help examine the social construction, dominant beliefs, and traditions, as well as cultural norms that influence the practice of surrogacy in Nigeria by harvesting the informed opinions of Gynecologists, Traditional Birth Attendants and Legal Professionals. However, this is not a study of the experiences of surrogates but an investigation into dominant social practices, beliefs, norms and mores that influence the practice of surrogacy within the Nigerian context.

3.2. NIGERIAN THEORETICAL ANALYSIS ON SURROGACY

There is a dearth of empirical studies that has investigated surrogacy in Nigeria, however, some compelling arguments started as to the nature of the practice in Nigeria when Bello, Akinajo and Olayemi, (2014), carried out a quantitative study in the city of Ibadan Nigeria to investigate the perception of women visiting fertility clinics on in-vitro fertilization, genetic donation, and surrogacy. Aside from the statistically informed recommendations from this study, it noted that fertility is highly influenced by religious and socio-cultural beliefs/practices in Nigeria. Furthermore, Umeora et al., (2014), in a scholarly review of literatures on the various cultural perceptions affecting the practices of surrogacy in Nigeria, opined that social and cultural beliefs make a huge influence on the practice of surrogacy in Nigeria and the lack of legislation causes serious ethical concerns.

This study is part of ongoing scholarly efforts to understand the social construction of surrogacy in Africa. The study, however, is a pioneering work in that it is the first to examine the social

construction of surrogacy in Nigeria from a medico-legal perspective as well as, a cultural specific investigation of surrogacy within a core African setting. As a point of departure into theorizing about surrogacy from a social constructionist point of view, it is important to state the relevance of theory to any academic escapade. Turner (2008), opined that sociology uses theoretical frameworks as a viable empirical foundation to explain how society works to close the schism between theory and practice.

Fundamentally, it is important for any empirical social research to include a theoretical component to provide a foundational knowledge for the study. Suffice to say, a theory is the backbone for validating academic research and a runway for a flight into discussions of relevance, effectiveness, and expediency in any study.

3.3. INTERPRETIVE/CONSTRUCTIVE THEORY AND SOCIOLOGICAL RESEARCH

Interpretive research is primarily concerned with meaning and how social members define situations and phenomenon's (Sarantakos, 2012). This form of theoretical approach in sociology emphasizes the subjective reality of members of the society and it seeks to unravel the social forces that shape these subjectivities. Interpretivist assumes that knowledge and meaning are acts of interpretation, hence, there is no objective knowledge, which is independent of thinking, reasoning humans that are shaped by social forces (Andrade, 2009).

Interpretivist frequently addresses essential elements of shared meanings and understanding whereas constructivism extends this prerogative implying that knowledge is produced and interpreted at an anti-essential level. Constructivist argue that knowledge and truth are the result of perspective, hence, all truths are relative to some meaning, context or perspective (Andrade, 2009). In application, this approach to inquiry is important to fully grasp and comprehend the nature of surrogacy in Nigeria in the development of a global perspective to the operation of surrogacy as an essential ART. It will bring to the purview of empirical knowledge on surrogacy, evident narratives collated from a research setting that is popularly discussed as highly cultural

and traditional in its approach to conceptualizing social issues emphatically fertility (See, Inhorn and Patrizio 2015; Lunenfeld and Van Steirteghen, 2004).

The essence of incorporating interpretive theorists to this study is to draw on their common focus on the social construction of meanings in social interaction (Sarantakos, 2012). Interpretivists opine that the largest factor guarding our interpretation of the social world is culture (Gray, 2013). Cultures always invoke meaning and values that need to be properly understood to comprehend the social world. Culture as a system of meaning in all societies that informs and prioritizes what is relevant within a certain social context and it establishes normative responses in such contexts.

Scholars in macro sociology have critiqued interpretive sociology for its failure to explain the structural constraints on individuals (See, Giddens, 2013; Bleicher, 2014; Jones, Bradbury and LeBoutillier, 2011). However, one cannot study an individual within the context of an everyday life without considering the structural constraints, so in addressing this critique this study has incorporated into its aim and objectives a goal to understand the medico-legal framework guiding the operation of surrogacy in Nigeria. As an explorative study, the major hurdles are in the compilation of the various field notes, tape recording and other data to be analyzed, however, it is important to collect as much information for the study to properly understand the various social narratives surrounding the operation of surrogacy in Nigeria.

3.4. SOCIAL CONSTRUCTION- BERGER AND LUCKMAN (1991)

Sociological theory is complex, broad and multi-phased; hence it needs to be carefully reviewed to fully appreciate the applicable theoretical framework for a study. On commencement of this study, various theoretical frameworks, models and sociological school of thoughts were explored and without much hassle, the objective of the study became the focal point for the adoption of an appropriate theoretical framework. The objective of the study is to examine the social perception of surrogacy in Nigeria within a medico-legal context; therefore, social construction approach became highly significant as a theoretical foundation for the understanding of the social facts that influence the knowledge and practice of surrogacy in Nigeria.

According to Berger and Luckmann (1991: 149), “since society exists as both objective and subjective reality, any adequate theoretical understanding of it must comprehend both these aspects.” The event of everyday life is very important to sociological understanding and a focal point for the construction of social reality. To draw upon the life of a surrogate and the practice of surrogacy in Nigeria is to properly understand the socio-cultural context in which they are perceived. This study will be fostering the process of understanding what socio-cultural, medical and legal elements influence the practice of surrogacy in Nigeria.

The social construction of reality according to Berger and Luckmann (1991), opines that we define social phenomena based on the socialization process we have undergone and primarily what society expects of us. We continue to develop these attitudes within larger social structures as we grow. Individuals seek conformity with social standards and are constantly being shaped by culture, tradition, religion and social expectation. Hence, surrogacy will be examined within the fabrics of cultural, medical and legal contingents in Nigeria to understand what ideas, thoughts, and perspective are dominant, shared and reinforced about its practice.

The major concern with the social construction of reality is understanding how everyday knowledge shapes reality.

“..... the sociology of knowledge must first concern itself with what people know as reality in their every day, non-or pre-theoretical lives. In other words, common sense knowledge rather than ideas must be the central focus for Sociology of Knowledge. It is precisely this knowledge that constitutes the fabrics of meaning without which no society can exist” (Berger and Luckmann, 1991:14).

The essence of this theoretical approach is to help individuals within society understand how knowledge processes are established into reality. The reality in which society creates that we live in serves as the basis for responses in any situation, social issues, and process within different contexts. Hence, society shapes the way we think, react and perceive.

This study is focused on providing an in-depth understanding of the factors that shapes the conception of the reality of surrogacy as a viable fertility alternative in Nigeria. This unexplored territory in literature will provide a lens that illuminates on how social attitudes, cultural notions, traditional practices, religious affirmation, and principles has hitherto affected the practice of surrogacy in Nigeria and generally within most African cultural settings. Berger and Luckmann (1994:152-155), identify four levels of knowledge construction. These levels explicate the processes for generating knowledge or constructing reality in everyday life.

- 1) Linguistics/Language: the use of vocabulary proffers an opportunity to name expressed realities hence admitting it existential nature within society.
- 2) Theoretical propositions: these are the myths, stories, beliefs and anecdotal evidence used to substantiate social events within societies.
- 3) Explicit theories are related to organizations and institutions within societies.
- 4) Symbolic Universe explains how various social institutional environment are related.

Language, myths, cultural beliefs and socialization influences the way and manner individuals perceive and respond to different situations within societies. Social institutions play important roles in the education of a child and this, in turn, shape the way they perceive different realities

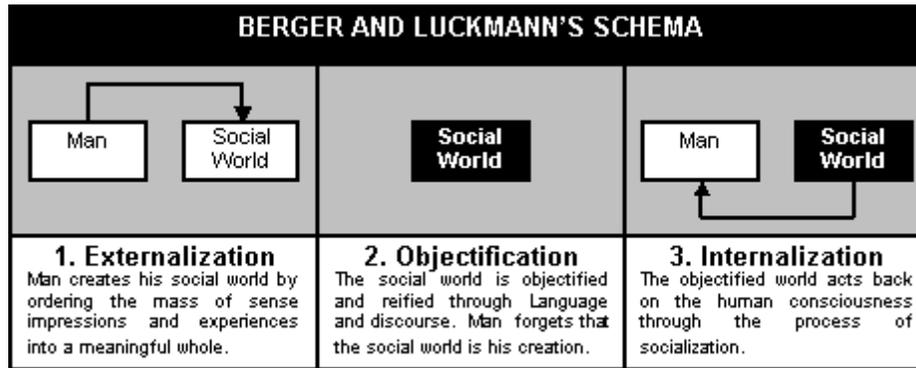
within societies as they grow older. However, this implies that every individual is primarily a product of shared social roles, expectations, and realities that shape their development. The divergence in the social influence individuals go through explains the dynamics in the behavioral patterns and perception of individuals within different social context. Historically, there is a huge cultural gap between family, procreation, and fertility ideology in the west and most African countries. These cultural peculiarities are often tied to notions that a woman can only validate her womanhood by being fertile/procreating, hence shifting that responsibility to another woman is more like a negation of tradition or culture, and hence, surrogacy has been accompanied by hate and dislike as a fertility alternative in Nigeria.

With ability to communicate, a child begins to reflect on situation and may challenge the objective reality of those in authority. However, even though the child can reflect and internalize to make decisions that are believed to be outside the influence of other, this said decision is influenced by the social norms, mores, and values that have already been internalized via socialization in societies. The common sense of reality is a result of the negotiation process wherein reality is produced and reproduced (Berger and Luckmann, 1991).

According to Berger & Luckmann (1991:149), social reality is constructed through a dialectical process involving three moments.

- a) Externalization: our conceptions of social reality are given tangible form, externalized in our performances, rituals, and possessions.
- b) Objectification: these conceptions of reality are given objective status in our lives; we begin to accept things that we have constructed as immutable parts of our reality.
- c) Internalization: the objectivized constructions of past action are internalized through socialization and become separated from the processes that created them.

Figure 3.1: Showing Berger and Luckman Schema for social construction of reality



Source: [www.google.co.za/search?q=berger and Luckmann social construction of reality](http://www.google.co.za/search?q=berger+and+Luckmann+social+construction+of+reality)

Berger and Luckman contend that one must comprehend both the objective and subjective parts of reality. To do as such, one ought to view society as a progressing persuasive process made from the three moments of externalization, objectivation, and internalization. They opined that there is an institutional social world. Institutionalization ensues whenever there is a complementary exemplification of habituated actions by social actors. Thusly, the institution in question is framed by the society. For instance, a society advances an arrangement of principles and regulations that must be obeyed by all social actors.

The strict obedience and compliance to such codes regulating human behavior are the performing shared, habitual actions that create an institution within societies. An institution is created over a period with all members of the society performing and supporting the prescribed regulatory mandates. Hence, a new member of such society is born into a system that is pre-defined and regulated meanwhile this was initially a combination of subjective rules guiding human behaviour that has transformed into an objective social institution.

3.4.1. Externalization

Flowing from the sequence of transforming subjective reality into an objective institution as explained above. The institutionalized social world is thus perceived and experienced as an objective reality and is external to the individual. Individuals externalize this institutionalized social world and interact as a medium of understanding its dynamics and boundaries; hence, the institution of the society is not comprehensible through introspection.

3.4.2. Objectivation

This is the process through which externalized product of human action is objectivated. Despite the objectivity that characterizes the institutionalized social world, it should not be viewed as an ontological status but a process that is produced via human action. This situation creates a paradox in that humans create a world that they later experience as something other than human-made. However, this relationship between the creators and users of the institution remains an ongoing one. Externalization and objectivation are moments in a continuing dialectical process.

3.4.3. Internalization

Internalization creates a process whereby the objectivated social world is retrojected into consciousness during socialization. Essentially, this is the point at which the individual, having experienced the objectivated activities within the institutionalized social world, immediately interprets it and finds personal meaning.

These moments are manifested and processed through various phases of human existence and development.

Table 3.1: Showing moments in human development and processes of realization

Moments	Processes
Society is a human product	Externalization, habituation, typification, sedimentation
Society as an objective reality	Objectivication, institutionalization, legitimation (in various stages) reification (opposing processes like de-institutionalization)
Man is a social product	Internalisation, Socialization (in various stages) producing finally a taken for granted symmetry

Adapted from Berger and Luckmann (1991:23-33)

3.4.4. Society as a human product

Humans are habitual beings, who dwell in groups and relate through interactions with others who share the same or similar characteristics and qualities with them. This, therefore, makes interaction a product of mutual typification and beneficial relationships. Sedimentation is a process whereby humans become highly selective in the information they choose to select, process and retain within them, the process of sedimentation is very crucial to knowledge generation is highly influenced by the ideals, beliefs, and constructs fundamental to a person's life. Surrogacy is largely perceived as discovered from literature that have examined fertility in Africa as a process that breaks procreation sacredness and family sanctity and not as a viable solution to prolonged infertility, however, within this context, humans are habitual and creates recipes for living within their social spaces. These created recipes direct and influences patterns of thoughts and guides human action. It is the recipes and process of thought created within the social world about surrogacy that is important in understanding the processes of typification and sedimentation.

3.4.5. Society as objective reality

Processes of thoughts within societies are often legitimized through institutions and social structure. While surrogacy within the legislative institution of Nigeria is absent, it is undeniably a practice that operates within the medical circle. While it has been argued that culture and religion are against its practice, it is important to note that these vital institutions have a huge influence on the social perception of individuals in Nigeria. Where culture prioritizes the need for a female to fertile by naturally procreating, children (male and female) are taught from very tender stages in life on the need to desire the normalized and cultural family system and process. These ideas taught through various socialization processes become internalized and it shapes our attitudes towards issues within society. As such, humans can be classified as a social product- a being that is born, groomed, molded and continuously influenced by the society in which they live in.

3.4.6. Human as a Social product

According to Seedat (2006:115), “Berger and Luckmann ask us to imagine being stranded on a desert island for a prolonged period. At first, we would preserve our existing ways of life, but eventually, we might decide to change, maybe live in polygamous marriages of letting children be raised by their uncles. We would be able to remember when and how we decided to change things, but for the generations of children born on the island, those arrangements will soon come to appear as natural, fixed.....”. When discussing surrogacy in Nigeria, it is conceivable to argue that the shared perception about the practice are hinged on socio-cultural and religious narratives that have become fixed over the years on how fertility, procreation, and motherhood should be perceived. These ideologies about several issues within society appear to be fixed and natural but it is a product of cultural and social beliefs that have been transferred across generations.

3.5. GEORGE HERBERT MEAD AND SOCIETY

Mead's theory postulates that the idea of self is derived from constant learning and an imitative process of various gestures and practices. Every individual reflects the perceived identity derived from interacting with others in our society. This implies that society establishes pre-conceived roles and expectations for every individual. According to Mead (1934:185), the mind and self is perceived as a social process involving

“the importation of conversation and gestures into the conduct of the individual organism, so that the individual organism takes these organized attitudes of the others called out by its own attitude, in the form of its gestures, and in reacting to that response calls out other organized attitudes in the others from a community to which the individual belongs.”

This process can be understood in relation to his explanation of the “I” and the “me,” the “me” being that group of organized attitudes to which the individual responds as an “I.” the significance of Mead’s view is its ability to theoretically articulate how society influences individual behavior through a process of symbolic manipulation.

Mead’s theory of self-follows a realization process that places at the foundation of identity development a dominant and popularized social perception that is expected of a person. This study will draw on mead’s ideology on society and not the operation of the mind and the development of self. According to Mead (1934:260), “*there is a generalized social attitude that makes an organized self-possible.*” The generalized social attitude about surrogacy will be harvested within a medico-legal context to understand the growing practice of surrogacy in Nigeria. However, Mead noted that for the formation of a generalized social perception in every society, the socio-historical narrative and belief system of any people are very sacrosanct. While the traditional birth attendants in this study will provide insights into what Mead referred to as

the socio-historical perceptions influencing institutions within societies, medical and legal professionals will provide an informed opinion within the Nigerian context.

The core of Mead's theorizing is how to characterize the "me"- the personal (surrogacy in this context within the lens of societal construction). Individuals are conscious, intentional actors that relate with the social world in a logical order. His focal point is that; humans are beings that are influenced by the social milieu in which they are domiciled and not otherwise. Individuals always take the ambit of a set of social relationships, language practices, and normative cues.

Mead (1934) argues that the mind can never be expressed except it has interacted with vital decisive elements of the society that henceforth shape its thoughts and directs its actions. Mead's theory hypothesizes that the self is developed out of prolonged imitative practices, gestures, and conversations; the individual forms a reflective conception of his/herself, others and opinions about social conceptions from engagement with social beliefs, norms, values, cultures, and others within a social space.

The perception of any individual about surrogacy or surrogates in Nigeria or how surrogates perceive themselves is hinged on the notions, definitions, and identities that are predetermined in the society. It is through engagement with a social knowledge that self-awareness and realization come to manifest, which consequently mean my perception about surrogacy is not just my perception but an expression of what society and my social environment have taught me about surrogacy. Mead's theory is not just relevant to the development of self but also the explanations of how and why societal constructs influence perceived and generalized opinions about social concerns.

The self consists of two parts, the I and me. The internalized demands of society and the individual's awareness of these demands are portrayed (Goff, 1980:123). The individual's response to the social world is active, she decides what she will do in the light of the attitudes of

others and her conduct is not mechanically determined by such attitudes (Polanyi, 2015). There are two phases of the self, "that phase which reflects the attitude of the generalized other (me) and that phase which response to the attitude of the generalized other (I)" (Mead, 1934:89). Mead distinguishes between the 'I' and the 'me'.

The "me" is the social self and the "I" is a response to me (Mead, 1934). Although the "I" is not an object of immediate experience, it is in a sense and acquired knowledge (Polanyi, 2015). The "I" is stored in the memory; but in the memory image, the "I" is no longer a pure subject, but "a subject that is now an object of observation (Seedat, 2006). The idea of "I" is constantly in interaction with "Me" and the influences it produces is in relation to social norms, values and socialization processes have undergone in various communities (Kelman, 2006). Therefore, Mead (1934:33-34) opined that "the behavior of an individual can be understood only in terms of the behavior of the whole social group of which he/she is a member. Since individual acts are involved in larger, social acts which go beyond self and which implicate the other members of that group."

In the context of this study, it is important to examine the construct of surrogacy within the Nigerian society and how social norms, more, values, cultural and traditional belief systems affect the operation and practice of surrogacy. This theoretical perspective provides a framework for underscoring the relationship between society and surrogacy. According to, Mead, the "I" and "Me" are the redefining factor for the conceptualization of "self" in the society and in this case, the "I" is composed of all notions and perspectives thriving about surrogacy in Nigeria and "Me" are the dominant beliefs, norms, values that are instrumental in shaping the idea of surrogacy in Nigeria. As a way of understanding the growing practice of surrogacy in Nigeria, this theoretical approach will help understand the social dynamic of conceptualizing surrogacy in Nigeria.

3.6. SUMMARY

Various deliberations above reiterate the importance of examining the subjective perceptions of humans in understanding social phenomenon's. Because of the varieties and complexities in the conception of surrogacy across the globe, adducing factors underlying such variations is only possible if surrogacy is examined across diverse cultural context. Social construction approach provides a solid theoretical platform to develop a joint explanation for surrogate reality from the thoughts and operative ideologies amidst informed stakeholders in the society. The investigation of surrogacy will draw from the process of constructing knowledge framed from subjective human reality regarded as intersubjective sedimentation by Berger and Luckmann (1991). Intersubjective sedimentation also takes place when several individuals share a common biography, an experience of which becomes incorporated in a common stock of knowledge.

CHAPTER FOUR

RESEARCH METHODOLOGY

4.1. INTRODUCTION

Research method is a process through which information about; events, phenomenon and happening within social settings are captured and explained in systematic order with relevant tools and outlined processes (Bryman, 2015). The failure of a study to effectively design an appropriate research method makes the study prone to methodological flaws and taints the quality and reliability of information generated through such a process. The possibility of success of a research study is greatly improved when the process is properly defined and relevant goals and justifications are provided at the commencement of the study. Social science research has been explained to discuss social phenomenon either through quantification or measurement or through explanation or descriptions of events (Creswell, 2013). Hence, this process has provided a methodological underpin for research in social sciences and it is broadly categorized as qualitative and quantitative research methods.

According to Creswell (2013), while quantitative method is an approach in research process that emphasizes the objective measurement and analysis of data through statistical, mathematical mediums and collect data through polls, questionnaire, and survey or by manipulating pre-existing statistical data using computational methods; qualitative method is an approach that investigates and explains social phenomenon through various mediums that seeks to explore and inform. The data collection method includes structured, unstructured or semi-structured techniques, which may generate responses from focus group discussions, individual interviews, and participation or observation. Despite the extensive scholarship review and search, very little have been written on surrogacy in Africa. This study is unique for this reason combined with the scarcity in knowledge identified will be leveraged upon to provide new frontiers in the current surrogacy debate.

This chapter provide insight into the procedural steps and process adopted during this research by highlighting it methods of enquiry, study location, sampling strategy and sample size, data analysis process, ethical consideration and limitations of the study.

4.2. METHODOLOGICAL ORIENTATION

The interview process should be a medium that allows the participants to express themselves openly and frankly to provide answers in-depth. However, for this to be possible, it is the researcher's responsibility to follow suit by showing that the content of what is being discussed is understood through empathized emotional undertone. It is important that this is adhered to from the commencement of the interview as this sets the tone for the entire process (Rubin and Rubin, 2011).

A good research is evaluated on its ability to effectively establish a compatible ground between chosen theoretical approach and methodological foundation. In addition to this compatibility is the ability to fully design components that will efficiently collate relevant and needed information from the research participants. With this foresight, the research adopted qualitative approach as an appropriate approach to investigate surrogacy within a medico-legal context in Nigeria. Qualitative methodology and interpretative theory-social construction of knowledge, are often used and are highly compatible for understanding the social construction of reality (See, Seedat, 2006).

4.3. RESEARCH DESIGN

Steyn (2016) defined research design as the blue print or plan that guide data collection and analysis to effectively answer research question. It is the specific technique of enquiry adopted in a study and according to Steyn (2016), is premised on the following principal factors:

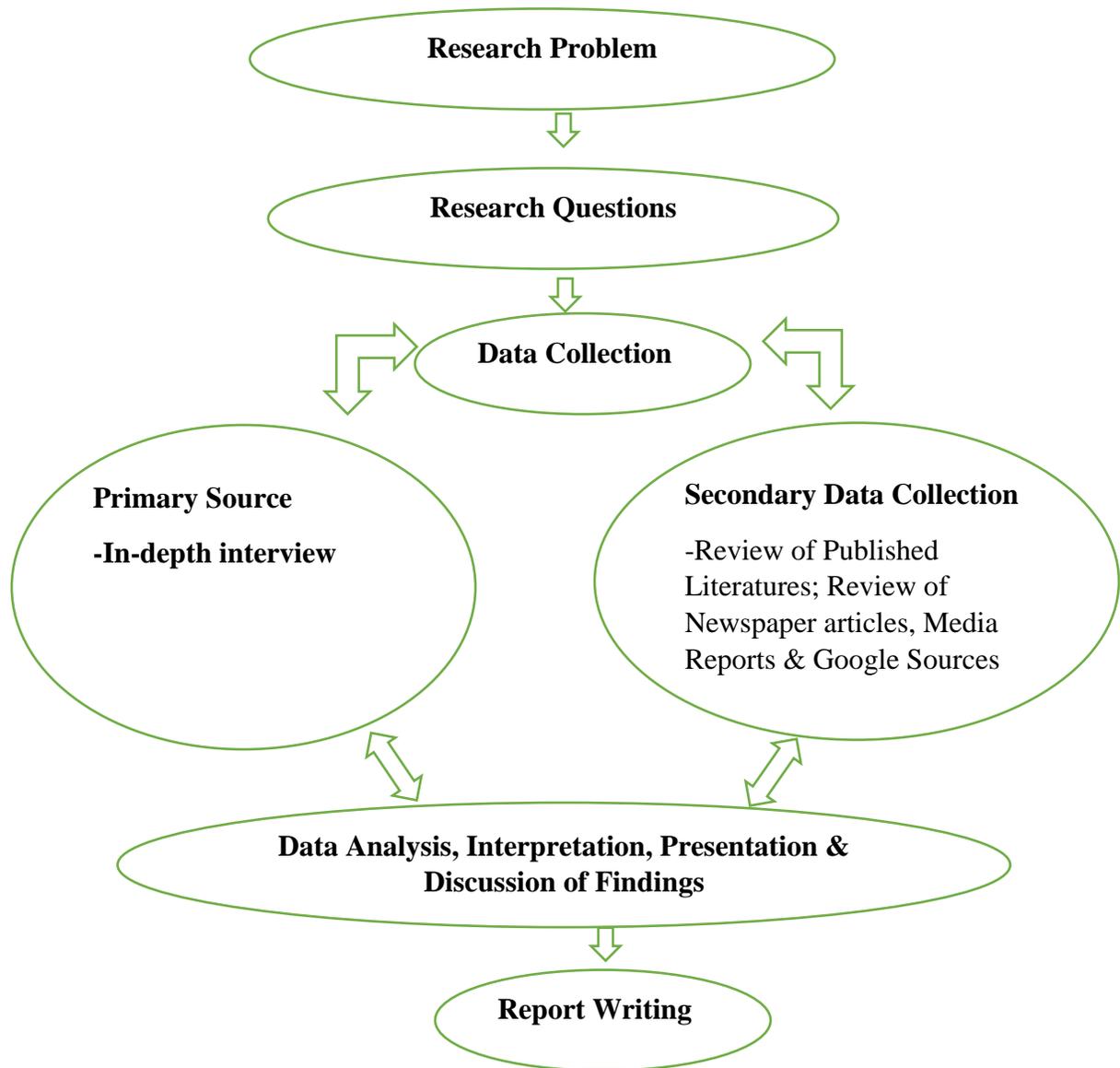
- Effectively defines the purpose of a study- be it descriptive or exploratory
- Specifies the adopted paradigm

- Specific about the location of the study
- States the technique for data collection and analysis

Research design is the approach the researcher has adopted to answer the research questions to achieve the stated aim and objective of the study. Oyefara (2011) opined that it is important to choose an appropriate research design to minimize error and ensure reliability and validity in a study. The essence of a research design is to provide a methodological parlance for the formulation of strategy and appropriate method for gathering the richest possible data in a study.

This research is qualitative and its strategy of enquiry is explorative. An explorative strategy will help harvests the perception of society by presenting informed opinions of Gynecologist, Traditional Birth Attendants (TBA) and Legal Professionals who are erudite in the field. Creswell (2013), claims that explorative qualitative research allows the researcher to collect data from persons who are expert about phenomenon and helps develop a composite description of the essence of the experience for all individuals.

Figure 4.1: Flow Chart showing research design



Source: Researcher's compilation, 2017

4.4. STUDY LOCATION

The study has identified two location as primary point of data collection. These are Abuja, the federal capital territory of Nigeria and Ado-Ekiti, Ekiti State. As a study that investigates surrogacy within a medico-legal context, it is important to harvest opinion from informed stakeholders within the society who are accessible and willing to contribute to the study. Legal professionals are recruited from Oyedele Ayodele legal firm in Abuja while gynecologists and traditional birth attendants were recruited from Ekiti State Teaching Hospital, Ado Ekiti, Ekiti State, Nigeria.

Table 4.1: Showing Nigeria’s socio-demographic profile

Variable	Measure
Population	186,053,386
Age Structure	0-14 years: 42.79% (male 40,744,956/female 38,870,303) 15-24 years: 19.48% (male 18,514,466/female 17,729,351) 25-54 years: 30.65% (male 29,259,621/female 27,768,368) 55-64 years: 3.96% (male 3,595,293/female 3,769,986) 65 years and over: 3.12% (male 2,754,040/female 3,047,002)
Population Growth Rate	2.44%
Birth Rate	37.3 births/1,000 population
Death Rate	12.7 death/1,000 population

Sex Ratio	At birth: 1.06 male(s)/female 0-14 years: 1.05 male(s)/female 15-24 years: 1.04 male(s)/female 25-54 years: 1.05 male(s)/female 55-64 years: 0.95 male(s)/female 65 years and over: 0.91 male(s)/female total population: 1.04 male(s)/female
Mother's mean age at first birth	20.3 years
Infant Mortality Rate	total: 71.2 deaths/1,000 live births male: 76 deaths/1,000 live births female: 66.2 deaths/1,000 live births
Life Expectancy at Birth	total population: 53.4 years male: 52.4 years female: 54.5 years
Total Fertility Rate	5.13 children born/woman
Religion	Muslim 50%, Christian 40%, indigenous beliefs 10%
Child Labour	children ages 5-14: total number: 11,396,823 percentage: 29%
Maternal Mortality Rate	814 deaths/100,000 live births

Source: Researcher's Compilation 2017 from Index Mundi¹⁷

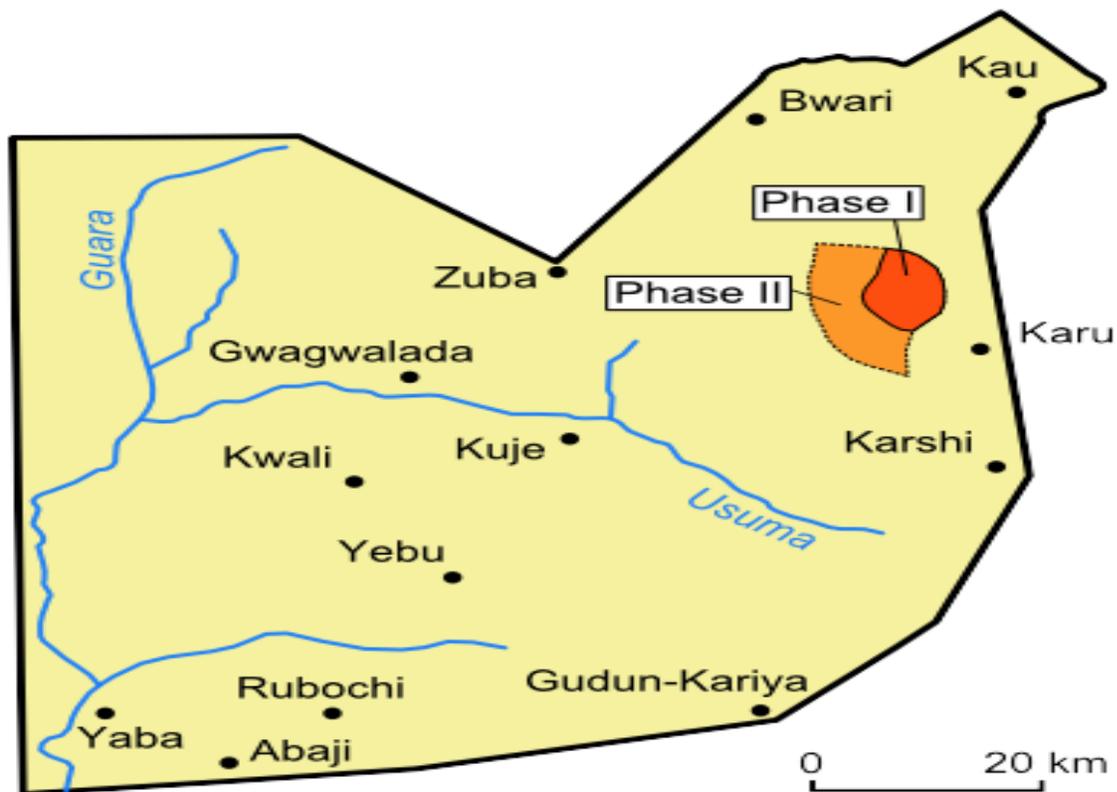
4.4.1. Abuja Nigeria

Abuja is the capital and administrative city of Nigeria. A government planned and designed administrative center that was planned in the 1980s but officially became the federal capital territory of Nigeria on the 12th of December 1991. The city seats on a land area of 8,000 square kilometers and is bounded on the north by kaduna state, on the west by Niger state, on the east and south-east by Nasarawa and on the south-west by Kogi state. The 2006, National Population

¹⁷ Index Mundi is a social demographic internet source that contains informations about the demographic distribution of countries. Accessed via <http://www.indexmundi.com/nigeria/#Demographics> on 8th August, 2017.

Census ranks the city as one of the 10 most populous cities in Nigeria with a population of 776,298 (Babalola, 2012). Abuja is known to be one of the few purpose-built capital cities in Africa and a place for wealthy political office holders, businessmen and others. Surrogacy being a newly emerging practice in the country, Abuja provides a fertile ground to examine the phenomenon among a population that is informed and within a city that host financially empowered people who could adopt the practice. However, the target population for this study is legal professionals at Oyedeji Ayodele & Co, Etang O. Obuli Crescent, Abuja.

Figure 4.2: Showing the Map of Abuja



Source: www.google.co.za/search?q=map+of+abuja&source

4.4.2. Ekiti State

The present day Ekiti State is told to be a conglomeration of various migrants. The state culturally has 17 kingdoms, which are: Otun, Ikole, Ado, Oye, Ijero, Ikere, Ido, Akure, Ise, Emure, Efon, Okemesi, Ara, Isan Itaji, Obo and Ogotun. Ekiti economy has transcended from commercial agriculture to an enterprise in education.

Ekiti state is in the north-eastern part of south western Nigeria. Ekiti state was formerly part of the old Ondo state; it was carved out and became independent on the 1st of October 1996. The land area of Ekiti state is 10898.68 kilometers, with various mountains and hills with prominent rocks and tourist sites. Ekiti or Okiti means hilly land. History has it that the Ekiti people once occupied Kogi state, Akure, and Ilesha but later was ceded over. However, culturally, the Ekiti

people still have very profound influence on Akure, and Ilesha. The language is still very much alike. (Akerele and Adewuyi, 2011).

Figure 4.3: Showing the Map of Ekiti State



Source: www.google.co.za/search?q=ekiti+state+map&source

4.4.2.1. Ekiti State University Teaching Hospital

The University Teaching Hospital, Ado-Ekiti was established for assuring quality treatment to sick people in and beyond Ekiti State. As a Teaching Hospital, the health institution is also aimed at ensuring provision of qualified personnel for the various fields of medical and health services while workers of the hospital are to promote advancement of medical and health services by engaging in researches that will be of benefit to the people.

The Teaching Hospital commenced work in the upgraded State Specialist Hospital, Ado-Ekiti on April 1, 2008. At inception, the hospital inherited 1 consultant, 34 general duty doctors, 250 nurses and 6 pharmacists. At present, the hospital can boast of 29 Consultants, 2 Senior

Registrars, 65 general duty doctors, 288 nurses, 14 Pharmacists, 4 Pharmacy Technicians, 18 Laboratory Scientists and 125 Hospital Attendants.

Figure 4.4: Showing the main gate of Ekiti State University Teaching Hospital



Source: Researchers compilation 2017

4.5. STUDY POPULATION AND SAMPLE SIZE

The study population comprise of three categories of participants from two organization and locations above the country's penal age (18). These categories are gynecologists, traditional birth attendants and legal professionals. The gynecologists and traditional birth were recruited from Ekiti-State Teaching Hospital, Ado-Ekiti, Ekiti State while the legal professionals were recruited from Oyedeji Ayodele & Company law firm, Abuja, Nigeria.

Within these categories: 10 gynecologists; 5 traditional birth attendants and 5 legal professionals participated in the study through an in-depth interview. Hence, a total of 20 research participants were recruited. The technique for determining the sample size is based on tentative judgment considering pragmatic and redundancy criteria; nonetheless, in congruence with the rule of thumb, qualitative sample involving individual interviews often include less than fifty participants; to limit the challenges of data collation and interpretations (Ritchie and Lewis, 2013). The chosen sample population limited the challenges in managing and organizing the information collated from various interview processes and enhanced the analysis and efficacy of the research findings.

Table 4.2: Showing Sample Distribution

Stakeholders	Number Sampled
Gynecologists	10
Traditional Birth Attendants	5
Legal Professionals	5
Total	20

4.5.1. Sampling Technique

For detailed understanding in research, Ritchie, Lewis, Nicholls, and Ormston (2013), opined that purposive or judgmental sampling are often adopted as participant recruitment strategies to recruits informed participants that suits the aim of the research. Understanding surrogacy within a highly cultural and traditional society like Nigeria entails that stakeholders who are knowledge about the practice be recruited to provide thoughts about the phenomenon. Hence, Judgmental of purposive sampling is used in this study. Babbie (2004:166), discussed that, “sometimes it is appropriate for you to select your sample based on your own knowledge of the population, its elements, and the nature of your research aims: in short, based on your judgement and purpose of the study.” This is very relevant to this study as surrogacy is highly stigmatized and viewed as uncultured within the Nigerian context. The participants that were therefore interviewed are those that are knowledgeable about surrogacy and its practices.

4.6. METHIOD OF DATA COLLECTION

The fieldwork for this study was carried out between July and August 2017. A research assistant was recruited from the interview process sequel to which he was trained extensively on how to conduct an IDI with the aid of a semi-structured interview schedule, moreover, his competence was tested before the interview. The research assistant was also abreast of the purpose of the study as well as the ethical consideration involved to ensure the participants are not affected in any way. The researcher and his assistant travelled across the two locations of the study to interview participants. The interviews were recorded on an audio tape and supplemented with a field diary. At the end of each day, recordings were reviewed to check the voice frequency, internal consistency, accurate recording completeness and other related issues on each of the research instrument.

4.6.1. Choosing the Interviewee

The selection of interviewee should be in line with the outlined subject of the research and the intended outcome of the entire study (Rubin and Rubin, 2011). The adoption of judgmental sampling in this process will ensure that the unique nature of the study is taken into consideration (Ritchie et al., 2013). The uniqueness of this study strands from the fact that, it is a grey area in research and that it is been examined from a medico-legal perspective to capture the informed opinions of professionals in these fields about the process of surrogacy. Hence, in the interest of the research objective, all participants are judgmentally selected to suit the study objective by having a fore knowledge of surrogacy. These categories of participants will provide a sound medical, legal and cultural knowledge about the practice of surrogacy within Nigeria.

There are certain prerequisites that interviewees should meet before they are selected in such a specific case study of research. Interviewee should be:

- Knowledgeable about the cultural arena;
- Willing to talk; and,

- Incorporate different perspectives of people in the cultural arena if varying thoughts thus exist (Rubin and Rubin, 2011).

It is very crucial to carefully choose participants in study such as this as the choice made will determine the outcome of the research and the level of success achieved (Babbie, 2004). The participants thus need to have a grounded understanding of the subject of the research, considering, the cultural, social, ethical, legal and medical narratives surrounding surrogacy in Nigeria as a viable medium of assisted reproductive technique. “A research subject that is not willing to share her knowledge and experience can serve no purpose in this study (Seedat 2006:153).” Careful selection of participants is therefore sacrosanct. In the beginning of the study, the entire population seems helpful but after carefully processing the specific knowledge desired and the core themes of the research, gynecologists, traditional birth attendants and legal professionals were identified as the most suitable for the study purpose.

4.6.2. The Researcher

It is very important for researchers to remain objective throughout a research process. Mouton (2001:240), opined that, objectivity and integrity can be maintained through the following processes:

- “Adherence to the highest possible technical standards in their research, teaching and practice.
- Since individual researchers vary in their research modes, skills and experience, they should always indicate the limit of their findings and the methodological constraints that determine the validity of such finding, after a research study,
- In practice or other situations in which scientists are requested to render a professional or expert judgement, they should represent their areas and degrees of expertise accurately and justly.

- In presenting their work, scientists are obliged to always report their findings fully and not to misrepresent their results in any manner. To the best of their ability, researchers should also disclose details of their theories, methods and research designs that might be relevant to interpretations of research findings.”

Compliance to these guidelines ensures that the research remains objective and validates the findings of the research. Haven, highlighted the importance of objectivity and integrity in academic enterprises, this study will be guided by these principles to ensure that the researcher's beliefs, opinion and bias does not influence the research process and findings to ensure accuracy and efficiency in interviews and data analysis.

4.6.3. Description of Key Informants

Key informants are those individuals in society who are privileged to certain knowledge because of their position or experience within a social system. These individuals are grounded in knowledge about other people, processes or happenings that are more extensive, secretive and detailed making them valuable sources of information for the researcher (See, Bowen, 2008; DiCicco-Bloom and Crabtree, 2006). Key informant interview describes a platform whereby the researcher selects specific individuals who are knowledgeable about a given phenomenon and from whom the needed information, idea and insight addressing the research problem can be collated from. Key informant interview is characterized majorly by two processes: selection of small number participants for interviews usually between 15 and 45; and, it is suitable for qualitative studies (See, Payne and Payne, 2004). The study interviewed 20 participants as key informants spread across medical and legal professions. The atmosphere in the interview was informal, resembling a conversation between acquaintance where the interviewer subtly probes informants to elicit information and elaborate salient themes crucial to the research.

The need to critically choose proper informants is bedrock and foundational to addressing research problem. According to Payne and Payne (2004:134), “the quality of key informant

interviews rests largely on choosing the right informant. Undoubtedly, the most important consideration is that informants possess an intimate knowledge of the subject on which they will be interviewed. Such knowledge may be based on their special social positions, experiences, participation in the project or program, or professional expertise.” The selected key informants in this research were deemed appropriate because of their professional expertise in handling issues regarding fertility and family reproductive health as well as contractual stands in Nigeria’s health talk. The gynecologist that were consulted are those who have handled cases of surrogacy especially since the host hospital is a major fertility treatment Centre in the South-Western part of Nigeria, also, the traditional birth attendants were chosen from these area since cases of traditional fertility treatment is very prevalent in this area in western Nigerian. The chosen law firm is popular to have intervened in some cases of child paternity and contested parenthood, so it served as a viable source of relevant information on surrogacy.

4.6.4. Designing Research Instrument

This study adopted the use of a semi-structured interview schedule has the instrument of data collection. This research instrument is commonly adopted in qualitative research to address key themes of enquiries rather than specific questions. It allows flexibility in the interview process giving the researcher an opportunity to probe responses further for more elaborate explanations for a holistic coverage of research themes (Rabionet, 2011). A semi-structured interview is expected to have a flexible structure that can be constructively adjusted to benefit the research purpose. This flexibility is usually provided by an interview guide that lists the key questions for the interview, however, the interviewer can change the sequence of question or probe with further questions for clarity where necessary (Ritchie et al., 2013). Ritchie et al., (2013), discussed that, semi-structured schedule otherwise known as moderately scheduled interview guide is the most useful format for qualitative research. Semi-structured interview schedule was designed to collate response from research participants and was structured in the following way:

Section A

This section collated biographical information about study participants, these include: name; pseudo name; age; occupation; and, gender.

Section B

This segment contained broad questions for all participants investigating the cultural arena in which surrogacy operates in Nigeria. The questions were also designed to harvest opinions of traditional birth attendants because it was designed to probe the social, cultural and traditional elements of the society that influence the practice of surrogacy.

Section C

This section contains questions investigating the medical concerns in the practice of surrogacy. It sought to understand how surrogacy operates within a medical milieu.

Section D

The last section collated opinions of legal professional on the ethical and contractual issues in surrogacy practice. The need to understand the legal fears in the process of surrogacy births the questions in this segment of the interview schedule.

4.6.5. ¹⁸In-depth Interview (IDI)

The research instrument for this study was a semi-structured interview guide but the interview type adopted is IDI. IDI interviews are described as a powerful method for generating description and interpreting peoples' social worlds (Ritchie et al., 2013). This approach to knowledge inquiry values interaction as a medium to generate thick descriptions of social phenomenon. IDI allows researchers to engage those who have knowledge or experience with

¹⁸ IDI means In-depth Interview. A qualitative research technique that involves conducting intensive individual interviews with a small number of respondents to explore their perspectives on an idea, program, or situation.

the problem of interest and by so doing explore in detail the experiences, motives, and opinions of others and learn to view the world from a perspective other than their own (Rubin and Rubin, 2011). IDI is also referred to as a form of conversation between researcher and participant to generate insight into research problems (See, Berg and Lune, 2012; Lofland and Lofland, 2006). Hence, it is not just a conversation but a conversation with purpose.

4.6.6. Method of Data Analysis

The data generated from this research was transcribed and organized into recurrent patterns with the aid of ¹⁹NVivo for identifying themes for discussion. ²⁰Thematic Content Analysis (TCM) was adopted for data interpretation and discussion of identified themes in the study findings. TCM is a qualitative methodological approach that is defined as a systemic, replicable technique of compressing many words of text into fewer content categories based on explicit rules of coding (See, Mouter, and Vonk Noordegraaf, 2012; Marra, 2006; Scott and Albaum, 2005). Oyefara (2011:105), described TCM as “a technique for making inferences, by systematically and objectively identifying specified characteristics of messages.” The interview sessions recorded in Yoruba language were transcribed and interpreted to English before NVivo was used to organize all data into recurrent patterns.

4.7. ETHICAL CONSIDERATION

The significant of ethical consideration in a social science research cannot be overstated because this platform brings to fore crucial issues that can impact negatively on the research participants and ensures that adequate response are out in place by the research to avoid such occurrences. Research ethics refer to a complex set of values, standards and institutional schemes that help constitute and regulate scientific activity (See, Cohen et al., 2013; Ess, 2002). However, Lochner

¹⁹NVivo is a qualitative data analysis (QDA) computer software package produced by QSR International. It has been designed for qualitative researchers working with very rich text-based and/or multimedia information, where deep levels of analysis on small or large volumes of data are required.

²⁰ TMC-Thematic analysis is one of the most common forms of analysis in qualitative research. It emphasizes pinpointing, examining, and recording patterns (or "themes") within data. Themes are patterns across data sets that are important to the description of a phenomenon and are associated to a specific research question.

and Zinn (2015:3), opined that “*ethics can be conceptualized as the practical study of the moral principles that governs a persons’ behavior or the way an activity is conducted.*” Ethical considerations are very important in all social scientific research and must be given a firm attention.

The researcher applied to the University of KwaZulu-Natal ethics committee for ethical clearance, sequel to which, approval was gotten from the various research location to conduct the study within their premises. However, before the commencement of the study, participants were intimated of the nature and purpose of the study and ensured of anonymity. Similarly, they were informed that participation is voluntary and they can freely withdraw from the study at any point. In addition, pseudonyms were used in compiling the research report. Data collected were kept under lock at ²¹University of KwaZulu-Natal (UKZN), where it will be destroyed after five years. Also, research findings were sent in an electronic form to the participants as feedback.

4.7.1. Informed Consent

The consent document is written summary of the information that should be provided to the participant. It is also used as the guide for verbal explanation provided to the participant about the research. This document contains portions that seek the permission of the participants to participate in the process and to be recorded. Informed consent was utilized in this study for the purpose explained above.

4.7.2. Data Protection

This refers to the technical framework and security measures design to guarantee that all data are safe from unforeseen, unintended or malevolent use. For this study, the data collated are secure at the Department of Sociology, UKZN, where they are kept under lock until the next five years when they will be destroyed.

²¹ University of KwaZulu-Natal is the host institution for this research.

4.7.3. Confidentiality and Anonymity

This imply that the information about the research participants must be treated with caution and utmost secrecy. This study did not use participants' names for the compilation of research finding as pseudo names were adopted neither has it or will it in any way divulge the real identities of the study participants.

4.7.4. Code of Conduct and Ethical Consideration Observed during the Study

Haven understood the importance of adhering to principal ethical process, the researcher clearly identified areas of caution in the study. They include:

- 1) The researcher was mandated to put into consideration and provide ways forward for all ethical issues that may infringe on the safety of the participants during and after the research process.
- 2) The research ensured that objectivity was maintained in the process to further promote the validity of the findings. So, doing, personal beliefs, bias and sentiments were totally detached from the entire research process.
- 3) The choice of the research topic is birth from the increased debate surrounding assisted reproductive technology and because of recent infertility is becoming a major concern to Africans. However, it is very crucial to examine a viable alternative for procreation within a highly cultural and traditional society like Nigeria.
- 4) The consequences of then research findings were adequately weighed and to eliminate such negative repercussions on participants, anonymity and confidentiality was ensured and for the benefits of the academic community and society at large, the research findings will be published and made available at different platforms'
- 5) The researcher was always cognizant of any potential harmful effects of the research; in such circumstances, the chosen methods as appeared on the institution's approved ethical clearance application form were used and no alternative methods found after consultation

with colleagues and other experts were employed as contrary to the one earlier stated in the research proposal.

- 6) The research was conducted in a competent fashion, as an objective scientific project and without bias. The research assistant used in the study is qualified to use all the procedures upon which they were employed.
- 7) The research was carried out in full compliance with, and awareness of, local customs, standards, laws and regulations guiding the establishment of the study location.
- 8) The principal researcher and his assistants were familiar with, and respect, the host culture as well as how the research process operates for this study.
- 9) The principal investigator's own ethical principles were made clear to all those involved in the research to allow informed collaboration with the potential participants.
- 10) The researcher avoided undue intrusion into the lives of the individuals or communities he studied. The welfare of the informants was given the highest priority; their dignity, privacy and interests were always protected during the research.
- 11) Freely given informed consent was obtained from all human subjects. Potential participants were informed, in a manner and in language they can understand, of the context, purpose, nature, methods, and procedures research.

4.8. LIMITATIONS OF THE STUDY

Several hurdles were encountered in the research process however, the compelling fact that, the researcher in contributing to knowledge and launching a debate into a grey area of research is a strength that became very useful through the study. Some of the limitation are:

- Busy schedule of legal and medical professionals: Getting hold of these categories of participants for a 45-60 minutes interview was very challenging. The interview process was terminated by urgent calls on medical professionals to attend to emergency cases and some of the lawyers were just too busy to spare 60 minutes at once. However, appointments were cancelled and rescheduled over and over.
- Financial constraint and travel distance: the research sampled participant across two different regions thousands of kilometers apart. It was very challenging funding these

trips across regions. The transport and accommodation also became financially demanding.

- Limited previous empirical research: Surrogacy as an area of research in Africa is very new. Hence, it was very challenging for the researcher to gather adequate local publication for the compilation of the literature review segment of this study. It is encouraging the study will serve as an empirical gateway for more research in this field of enquiry.
- Flaunting electricity supply: the country is characterized by poor power structure and most of the times; a huge financial commitment is made to buying diesel to charger audio recorder and computers. This made the whole interview process very challenging as the recorder becomes dead during an interview process at times. The researcher had to reschedule the interview to power the audio recorder and later an additional recorder was gotten to address the problem.

4.9. CONCLUSION

Summarizing the journey of a research is critical, however, this is only possible if the probing question that birth the study has been answered. Rubin and Rubin (2011), believe, data analysis ends when the research process has empirically generated overarching themes serving as contextual broader theories speaking to research questions. Hence, using the methodological framework as a foundational tool, the study is guided by the information provided in this chapter.

CHAPTER FIVE

DATA ANALYSIS AND INTERPRETATION

5.1. INTRODUCTION

The process of making meaning of the various field notes and transcripts was rigorous but very educative. The pattern through which the research findings illuminates the socio-cultural milieu in which surrogacy operates or could operate in Nigeria is very insightful as it irradiates the hitherto grey area of the practice. More specifically, it provided germane and relatable information about the narratives surrounding fertility, reproduction, motherhood and the entire family system in Nigeria and how it influences the practice of surrogacy as a newly emerging ART. This chapter will critically and analytical present the findings of the research in a manner that stimulate interest and further need for investigation into the very stiff socio-cultural context in which reproduction is delimited in Nigeria.

The interpretation of the information collected through in-depth interviews of 20 participants- gynecologist, traditional birth attendants and legal professionals- followed a thematic content analysis procedure that carefully read and re-read transcripts and filed notes to identify cogent issues that were further classified into similar patterns and finally conceptual themes for discussion. This research investigates surrogacy within the medico-legal context of Nigeria to understand the medico-legal and cultural peculiarities important for the practice of surrogacy in Nigeria.

5.2. KEY RESEARCH QUESTIONS

The dynamic nature of human societies coupled with varying regulatory normative codes across cultural boundaries birth the crucial need to examine the operation of surrogacy within various cultural settings to appreciate the differences and similarities that are obtainable in the growth of the practice as a core ART. The imperative questions that steered the study includes the following:

1. How is surrogacy conceptualized within a medico-legal community in Nigeria?

This question examines how surrogacy is viewed within a medico-legal milieu in Nigeria. It will examine the intersection between the medical concerns eminent in the practice and the legal framework that regulates it contractual basis.

2. What is the legal framework that guides surrogacy in Nigeria?

It is established from literatures that there are no legislations regulating the practice of surrogacy in Nigeria, hence, this segment probed the concerns that might ensue practicing surrogacy within a legal freelancer society like Nigeria and its implications for all the parties involved.

3. How does the medical fraternity view surrogacy within a medico-legal context?

This examines medical opinions about surrogacy fertility, reproduction, ART and how these core factors affect the growth of surrogacy in Nigeria.

4. What are the socio-cultural and religious perspectives surrounding the conceptualization and practice of surrogacy in Nigeria?

Various socio-cultural, religious, traditional beliefs and practices that influence the practice of surrogacy were examined adeptly.

5. What are the medico-legal processes that are followed?

Although there are no legislation regulating surrogacy, these segment probes what legal process are followed to legitimize the agreement between parties.

6. What are the legal fears in the practice of surrogacy?

Various legal fears in the practice of surrogacy were examined to understand what limiting factors are inherent within the legal fraternity regarding the practice of surrogacy.

These questions served as the springboard for the research process and became a crucial navigator for seeking relevant responses that formed the findings of this research. Even though the topic of the study was centered around investigating surrogacy within a medico-legal perspective, the process of engaging the various categories of respondent unraveled crucial social, cultural, traditional and religious beliefs that forms important narratives that reflects elements of cultural policing of the reproductive space in Nigeria. Hence, issues that became pertinent to the analysis of the findings include:

- a) Is the practice of surrogacy influenced by dominant social, cultural, religious and traditional beliefs held sacrosanct by most members of the Nigerian society?
- b) Within a sociological lens, what intersections exist between gender role, reproduction and surrogacy?
- c) What role has these dominant socio-cultural, religious and traditional beliefs played within the medico-legal continuum in the growth of surrogacy in Nigeria?

The research findings flow from the broad probing questions postulated above and there are intersections of numerous factors as presented.

5.3. METHODOLOGY

It is important to have a recap of the methodology adopted for this study. The study relies comprehensively on an in-depth qualitative interview to gather information. Ritchie et al., (2013), described in-depth interviews as a powerful method for generating description and interpreting peoples' social worlds. This has been given appropriate attention in the methodological section but it is crucial to have a recap to understand the methodological parlance from which this interpretation strands.

5.4. THE DATA COLLECTION PROCESS

Appointments were made with the various categories of participants who were randomly selected based on availability from the institutions that served as gatekeepers- Ekiti, State

Teaching Hospital, Oyedele & Co and the Traditional Birth Attendant Association in Ekiti State.

Each selected participant who voluntarily showed interest was invited to participate in the study and was met individually for an in-depth interview. This process helped collate relevant information and gave the participants enough time and space to relate their perspective on surrogacy and its operation in Nigeria.

5.5. THE INTERVIEWS

The core section of the interview questions was open-ended while socio-demographic factors- age, marital status, and occupation- were collected using closed ended questions. The interview adopted a semi-structured instrument that contained 22 questions. Even though all questions did not directly speak to surrogacy but they formed crucial elements to fully grasp the fundamentals in the practice of surrogacy in Nigeria.

5.6. THE FINDINGS

The study found that surrogacy is an uncharted territory in Nigeria because of various socio-cultural, traditional and religious beliefs that negate the practice. The practice is viewed as a threat to the traditional structure of procreation and a negation of natural order for replenishing. These beliefs are held firmly within the mainstream society and have influenced the growth and social acceptance of the practice in Nigeria. The findings are categorized into major themes, which include the following:

- 1) Conceptualizing surrogacy within the Nigerian context
- 2) The intersection of culture and religion in the understanding of infertility and procreation
- 3) Viability of surrogacy as an employable occupational practice within the Nigerian society
- 4) Cultural imperatives of what defines the need to conceive a child in Nigeria
- 5) Cultural peculiarities inherent in the practice of surrogacy
- 6) Thoughts on how and why people choose surrogacy
- 7) Popular stigma, prejudice against all parties in the process of surrogacy

- 8) Gendering infertility
- 9) Socio-cultural definition of womanhood and the infringement of surrogacy on the sacred territory
- 10) Medical imperatives and concerns in the practice of surrogacy
- 11) Legal lapses and the practice of surrogacy
- 12) Rethinking surrogacy within the Nigerian context

The perceptions documented in this study reflect the social construction of surrogacy in Nigeria. The premium placed on children makes fertility highly valued and cherished while the biological and physiological make up of women is hinged on socio-cultural beliefs that ascribes women more with their reproductive abilities. Hence, infertility is frowned upon and is highly gendered- usually thought to be a woman's problem. Notwithstanding the importance placed on having children, there are also normalized beliefs of what this process entails and its appropriate route, so any negation of the normative is considered an aberration and sacrilege and surrogacy is perceived as such sacrilegious negation.

5.7. PARTICIPANTS PROFILE

The following profile provides a brief description of the 20 participants interviewed for this study. This table shows the demographic distribution of the sample and presents their thoughts on the prevalence of surrogacy in Nigeria. Participants' thoughts about the prevalence of surrogacy are presented as articulated without editing.

Table 5.1: SHOWING DEMOGRAPHICS AND PERCEPTION OF PREVELANCE OF GYNEACOLOGISTS

GYNECOLOGISTS				
S/N	NAME	GENDER	AGE	PERCEPTION OF THE PREVALENCE OF SURROGACY
1	Sunday	Male	37	I will describe the growing practice of surrogacy in Nigeria to be at an <i>“infancy level”</i> , not many facilities still subscribe to the practice of surrogacy yet. Maybe because of our socio-cultural beliefs, so it is still not wide spread practice in Nigeria.
2	Mr A	Male	46	The practice is not growing in Nigeria because it’s not widely acceptable in Nigeria
3	Mr Vic	Male	36	Surrogacy in Nigeria is far way <i>“backward”</i> from what is expected, people’s level of knowledge about surrogacy is still poor and that has put surrogacy behind in Nigeria among the countries of the world.
4	Walele	Male	39	It is actually increasing but the practice is still very low but the urban cities in Nigeria like Lagos, Port Harcourt there is more awareness as the young ladies are being employed to help carry pregnancy for an infertile couple. I will say though the <i>“practice is still low but the awareness is increasing”</i> .
5	Taiwo	Male	45	The practice of surrogacy in Nigeria is still at the <i>“evolving stage”</i> , still at a very low level, it has not become so established or popular in the country, so it is still at the infant stage, still growing and still coming up.
6	David	Male	39	The practice of surrogacy in Nigeria is becoming popular majorly because of the economic problems that’s we are facing, though am not aware of any law that is guiding the practice but there are stories that I’ve heard especially in liberal areas like Lagos, Rival state and Abuja, in these places young ladies are encouraged because of the monetary benefits they will get they are encouraged to go into this act. It’s not a common act, although <i>“becoming popular”</i> among our ladies in Nigeria.

7	Akin	Male	Adult	In respect to surrogacy in Nigeria, I am not aware that it's a growing practice; that's the honest truth. <i>"It is something that had been advocated for and has met so much cagey in the will because it has actually not been an accepted practice yet in Nigeria."</i> There are few places in Nigeria where they are finding their faith in respect to surrogacy but it is still a major issue that has actually not finding its faith in Nigeria. I wouldn't say it is growing, I will say it is something that is actually being developed in the developing face rather than something that is already growing.
8	Desola	Male	38	Surrogacy in Nigeria I will say is still in the <i>"preliminary stage"</i> because of our culture, tradition and even our religion it is not a viable option of infertility management in Nigeria for now but it is a common practice in developed countries of the world like United State, United Kingdom and Australia.
9	Drey	Male	40	Due to our culture, the practice of surrogacy in Nigeria has not been so much imbibed and this has been ascribed, the power of womanhood in our culture is when you can actually deliver on your own, so the practice has been so slow, uptake of people in this practice has been <i>"low"</i> .
10	Adejuwon	Male	48	Surrogacy in Nigeria is not a popular practice, it is not that popular because when viewed from socio-cultural lens there are a lot of believes, controversies that surrounds surrogacy, in most quarters in Nigeria surrogacy is not popular at all and I will say the practice is still very rudimentary and since I've been practicing I have never encountered a single one and why is that it is not popular? This could be seen from our socio-cultural views/background, legal factors and possibly spiritual factors which do not solely favor the practice, so all these factors have influenced people developing unfavorable attitude towards adopting the practice of surrogacy. In most nations Nigeria

				inclusive but compared to other nations it is “ <i>grossly rudimentary and it is not popular at all.</i> ”
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Source: ²²Researchers compilation 2017

²² Note that the names presented on this table are pseudonyms and not the original identity of the participants. It is the utmost interest of the study to protect its source of information by ensuring anonymity.

Table 5.2: SHOWING DEMOGRAPHICS AND PERCEPTION OF PREVELANCE OF LEGAL PROFESSIONALS

LEGAL PROFESSIONALS				
S/N	NAME	GENDER	AGE	PERCEPTION OF THE PREVALENCE OF SURROGACY
1	T-Black	Male	34	Right now, surrogacy is still a very “ <i>grey area</i> ” in Nigeria. Culturally we are not keen to adopting the practice. Adoption is still not liked to talk less of surrogacy, so culturally surrogacy is not practiced in Nigeria. It is not even generally recognized because if it was in place and thriving properly, all these baby factories will run out of business.
2	Mayor	Male	34	“ <i>Non-existence</i> ”. I don not know of anybody that has used the medium.
3	Fabs	Male	Adult	“ <i>Virtually non-existence.</i> ”
4	Onyin	Female	Adult	Hmmm.... surrogacy is still very “ <i>grey</i> ” in Nigeria because it is not something you hear about if at all you hear about it is always in harsh tones and it is yet as popular as adoption. It is not a Nigerian thing.
5		Female		The enterprise is still “ <i>relatively new</i> ” and is quite challenging because of the cultural space of the country.

Source: ²³Researchers compilation 2017

²³ Note that the names presented on this table are pseudonyms and not the original identity of the participants. It is the utmost interest of the study to protect it source of information by ensuring anonymity.

Table 5.3: SHOWING DEMOGRAPHICS AND PERCEPTION OF PREVELANCE OF TRADITIONAL BIRTH ATTENDANTS

TRADITIONAL BIRTH ATTENDANTS				
S/N	NAME	GENDER	AGE	PERCEPTION OF THE PREVALENCE OF SURROGACY
1	Ile-anu oluwa kiisu	Female	65	<i>“It is bad and it won’t grow to acceptance”</i> . Even if it coming to societal recognition, God will not allow it to thrive because it isn’t a good thing and we didn’t meet this as a practice culturally within Nigeria.
2	Oreofe Oluwa	Female	49	<i>“It is not a good thing and it won’t work”</i> because how will someone carry pregnancy for you, definitely the woman that they have helped to carry the pregnancy will not know the worth of the child. You cannot know the real worth of child that didn’t live inside you or didn’t take from your blood.
3	Ileri oluwa	Female	58	<i>“Our prayer is that, this act won’t gain prevalence and acceptance in Nigeria”</i> . Because if you are not the carrier of the pregnancy, that child will now the mother someday. So the prayer is that God will give every woman grace to bear their own children.
4	Ini-oluwa	Female	40	It is not something we should want to be prevalent like in the western world because our culture has meaning and it is very connected to religion (either Christianity of Islam). Hence, it is not something that Nigerians should be involved in.
5	Iya-afin	Female	53	God will not allow the practice succeed in Nigeria because it is not something that should be tolerated in Nigeria.

Source: ²⁴Researchers compilation 2017

²⁴ Note that the names presented on this table are pseudonyms and not the original identity of the participants. It is the utmost interest of the study to protect it source of information by ensuring anonymity.

The varying thoughts in the perception of the growth of surrogacy within Nigeria are a pointer to the narratives surrounding the development of the practice as an ART. While opinions of gynecologists seem hopeful about the fact that the practice might gain prominence with global trend, they still describe its current prevalence as a process that is; backward, at infancy level, evolving, grossly rudimentary and not popular at all. It is important to note that the thoughts shared within this medical cycle described surrogacy as a process hampered by cultural sentimental values regulating reproduction. However, surrogacy is becoming a thriving venture in majorly urban settlements like Abuja, Lagos and Port-Harcourt.

While a considerable number of the legal professionals interviewed (3 precisely) believed surrogacy is a belligerent issue in Nigeria with very little patronage, the other two believe the practice is practically non-existence within the country. The thoughts shared by traditional birth attendant are essentially grounded in religious and cultural values. They all share the opinion that surrogacy is becoming a social discussion in Nigeria but however, they pray it would not thrive within the country because it is a negation of cultural and religious norm for procreation.

The enterprise of surrogacy is indeed a very debatable area with very little social cognizance from the Nigerian populace. Surrogacy hardly constitutes an important aspect of public discussion in Nigeria (See, Umeora et al., 2014; Bello et al., 2014).

5.8. CONCEPTUALIZING SURROGACY WITHIN THE NIGERIAN CONTEXT

What surrogacy infer or the reception it generates differs across cultural and social boundaries. Armour (2012), noted emphatically that surrogacy flicker numerous ethical concerns that are derivatives of social, cultural and religious fundamental of the community been examined. Hence, it is important to understand how this practice is perceived and engaged within Nigeria, especially the south-western part (Ekiti State), which forms part of the location for this research. While the opinions shared by gynecologists and legal professionals are in line with what is globally referred to as surrogacy, the thoughts of the traditional birth attendants are grounded on cultural and traditional narratives of description of a phenomenon that is not socially encouraged.

Some gynecologists shared some very interesting thoughts about the meaning of surrogacy from a professional point of view, Adejuwon gave a description from a medical perspective and acknowledges the fact that the process is an emerging assisted reproductive technology alternative as he describes surrogacy in Nigeria as:

“Surrogacy is a form of third party assisted reproductive technology or reproductive provision in which intended parents employ or seek an assistance of a third party or another woman to help them carry a pregnancy following which the baby delivered legally becomes that of the intending parents, it is one of the pick utmost solution or treatment for infertile couples especially in cases where the wife has a challenge with either the womb/uterus or a challenge with egg production, so what they now resort to is to seek an assistance of a third party that is mobilized into the affairs of the intending parents legally. What happens there is either following in-vitro fertilization that make use of the egg of the woman or a donor egg coupled with the sperm of the husband, the embryo being now transferred into the womb of the woman to carry the fetus until delivery, the baby legally becomes that of the intending parents (Adejuwon/MG/IDI).”

While this holistically captures the entire process of surrogacy, another gynecologist, Desola reiterated the same essentials earlier mentioned but went further to state clearly that as against popularized notions, the practice of surrogacy is not new and it has been in existence for centuries and it is recorded by the bible. Desola noted:

“Surrogacy is one of the options in management of infertility both in Nigeria but more common in the developed world and what happens in surrogacy is that you have a couple where the intending mother is unable to carry a child, so what is done is that you get somebody that will be able to carry that baby for the woman and it’s a process that antedate history because it’s something that has been done even in pre-history times even in bible times, but now what is usually done is that we take the egg of the intending mother and the spermatozoa which is the semen of the husband, after the artificial insemination, after in vitro fertilization the

embryo that is formed as a result of combination of the mothers egg and the husband spermatozoa is transferred into a woman that has no relationship with the couple at all, this is the woman that will carry the baby to term and it is the normal custom, it is after delivery the baby is handed over to his parents. It's one of the options in the management of infertility all over the world (Desola/MG/IDI).”

Literatures also reiterate the fact that surrogacy has been improved as a new form of ART but the practice is recorded in biblical narratives. Dana (2015) argued that the Bible presents stories of surrogacy such as Sarah's prolonged infertility and suggestion that Abraham should impregnate Hagar to produce a child on her behalf; there are instances of direct purchase of children; and the story of two female slaves – Bilhah and Zilpah – who bore children for two sisters, Rachel and Leah, in the struggle for their husband's attention. The cases of surrogacy in the Bible constitute traditional methods of surrogacy and exploitation of female slaves.

The prospect of surrogacy and its trans historical ability is borne out of a desire to have a child while contemporary practice is highly hinged on a desire to have a child with a biological connection. The conceptions about surrogacy are also grounded in descriptions that suggest commercialization. A surrogate is referred to as woman who gives out her womb for rent. The womb in this case is regarded as rented vessel and tube required to fulfill a production process. The traditional birth attendants referred to surrogacy as an act that impedes of cultural normative process for procreation. Surrogacy is referred to as “*agbabi odi omo eni*”, meaning contracted pregnancy does not become yours. The narratives shared by traditional birth attendants reflect cultural and traditional values that ascribes women's role with reproduction. Surrogacy is perceived as a way of expressing how one woman was unsuccessful in conceiving a child; this role however has been taken up by another woman who has the physiological capability to conceive and carry a child to term. Teman (2008) argued that socio-cultural normativity about procreation views surrogates as deviants and even in cases of altruism, her altruism is regarded as ranging beyond normative boundaries. The conceptualization of surrogacy in Nigeria is influenced by cultural, social, traditional and religious values that has affected the growth of the practice and influenced popularized perception.

5.9. INTERSECTION OF CULTURAL AND RELIGIOUS BELIEFS IN THE CONCEPTUALIZATION OF FERTILITY, INFERTILITY AND PROCREATION

Nigeria and generally Africa's traditional cultural milieu has established normativity for all issues affecting family life cycle which include reproduction/procreation. Some defining imperatives are obtainable within the religious cycle as regards what it means to have a family and how infertility should be addressed. These strong cultural and religious beliefs are very strong elements that shape the perception of the society about surrogacy or any other issue regarding infertility. Umeora et al., (2014), noted that the Nigerian regulatory cultural norms do not envisage birth through surrogacy, hence, it is very discomfoting situating to have such births within the family or society. One of the participants, a legal practitioner noted in responding to what surrogacy means that it is a negation of the cultural norm for reproduction. Fabs presented this view as:

“Traditionally pregnancy is a product of sexual intimacy between a man and a woman and surrogacy is when a third party is introduced to carry the pregnancy on behalf even though sometimes the genetic material being carried is from the known and defined couple, the introduction of a third party negates cultural process of procreation.....
(Fabs/MG/IDI)”

The connection between cultural and acceptable practice for procreation is not only engrained within the recurrent normative practices within society but also linked to the religious belief that, “*God*” is the giver of children and no one should manipulate a perceived supernatural process that oversees the continuation of human existence. A traditional birth attendant in her view describes the intersection between culture and religion and how it affects the practice of surrogacy, she noted:

“Culturally such it is not supported. God is the one that gives people grace to conceive and deliver. Anyone that has any challenge that will not allow them to carry pregnancy or mother a child should publicly adopt a child and not result to this act. It's against our culture to use the medium or even act as surrogate. (Iya Afin/TBA/IDI)”

There is a constant description of surrogacy as a practice that threatens the sacredness of the family system especially among the traditional birth attendant and these was also reiterated by the gynecologists and legal professionals. It is believed that the growth of surrogacy in Nigeria has been limited by strong cultural and religious beliefs that regulate the family life cycle.

A crucial critique of the practice of surrogacy by the traditional birth attendants who are completely against the process is the fact that, surrogate arrangements commercializes children and women. They shared thoughts that children are gifts from “God” and not commodity and that the perception of children within the cultural system in Nigeria is not that of commodification but a precious gift that should be cherished and loved for the continuation of the family lineage. The conception of fertility is hinged on God’s infinite ability to give children at will, hence, couples that cannot have children are supposed to learn to trust, endure and wait upon God. Lones (2016), while explaining a Christian ethical perspective on surrogacy noted that, the transformation of human society into a more technological space can turn children into pets and consumable goods. The bible text, Psalm 127:3- *“Don’t you see that children are God’s best gift? The fruit of the womb, His generous legacy?”*- is referenced to buttress the biblical injunction that children are precious gifts that are meant to be cared for and nurtured. Individuals within their own capacity that God has entrusted into the hands of the parents. In this light, surrogacy blurs the stewardship that a parent should have for a biological child. Umeora et al., (2014), further corroborated this from a cultural point of view, they opined that, pregnancy in Africa is celebrated and regarded as a sign of fertility. It creates a bond between the wife and her husband’s family and the day of delivery is earnestly awaited by the community, however, getting a child that was delivered by someone else will be perceived as an abomination that has commodified children and the process and persons involved will be stigmatized. When some traditional birth attendants were asked about how religious perception of fertility and reproduction reflects on surrogacy, their responses further substantiate the discussion thus far that there are strong linkages between fertility and religion, however, from the scientific point of view, these thoughts are superstitious. The responses include:

“Christianity is against this act. If you trust God completely, you will know there is nothing he cannot do. If you have not written yourself off completely, you would not think God cannot help you to a point where you start seeking alternative. There are so many examples of women who were infertile for years in the bible but God answered their prayer at the end and made the mother. So, the act is against religious beliefs. The bible says if only you believe, you will see the manifestation of God (Oreofe Oluwa/TBA/IDI).”

Another went further to express the same view substantiating the fact that fertility is a religious affair that should not be treated by any human alternative:

“The act is not in accordance with religious doctrines. If any person can trust God enough and patience, the same God that answered Sarah, Hannah in their old age will answer the person as long as they haven’t lived a reckless life in their youth (Ile Anu oluwa Kiisu/TBA/IDI).”

The following respondent do not condemn the practice of surrogacy but also recaps that there are approved religious and cultural routes for procreation which should not be flouted:

“Religion and culture has an established route for procreation and cutting corners and looking for alternative to procreation is not supported. There are several women in the bible (Hannah and Sarah) who were infertile for years but later became mother. There is only one barren woman (Micah) in the bible and that is because she sinned against God. There is no one that God can’t make to have children but we must be very patient (Iya Afin/TBA/IDI).”

Despite the constant reference made by most of the traditional birth attendant to the biblical examples of women who had prolonged cases of infertility but were supernaturally treated

basically to resound a need for infertile couples to embrace virtues of patience and trust in God. There seems to be a denial of the fact that cases of seeking alternatives to reproduction were adopted by some of these women in the bible. It is recorded in the bible in Genesis 16, Sarah tells Abram, *“The Lord has kept me from having children. Go, sleep with my slave; perhaps I can build a family through her”* (Gen. 16:2). Also in Genesis 30 very much the same scenario occurs but this time it was Rachel who said to her husband Jacob, *“Here is Bilhah, my servant. Sleep with her so that she can bear children for me and I too can build a family through her”* (Gen. 30: 3). Even though these were not referred to as surrogacy, both cases illustrate the distortion of family relationships and societal reproductive norm that results from breaking marital bond to overcome infertility²⁵. Schenker (2003), discussed that it is quite problematic to disassociate the influence of distinctly religious factors from other cultural conditions affecting women’s reproductive health. Further, religious groups often exert influence on civil authorities in matters of reproduction and health.

5.10. CHILDREN AS A FUNDAMENTAL PART OF THE TRADITIONAL FAMILY SYSTEM

Children are highly prioritized in essentially all African cultures as being an integral part of the family and society. While there are several debates about the specific value placed on children within traditional African society about seeing children as cultural heritage or source of economic labor for family prosperity. The essence of procreation for lineage continuity is very resounding. Fawcett (1983:347) opined that, studies in developing countries identified three broad areas of importance in which children are of importance, “(1) studies that estimate actual economic benefits and costs of children, usually in rural households; (2) studies that focus on the role of children in a family or community context, emphasizing their social and cultural functions, as well as their economic value; and (3) studies that assess individual perceptions of the economic, social, and emotional satisfactions and costs of children.” This provides an insight into the various narratives surrounding the perception of children but of cognizance to this study is the second category that emphasizes that children are perceived as having social and cultural

value. Inhorn and van Balen (2002) provided a summary of reasons commonly referenced in literatures for the priority placed on procreation in sub-Saharan Africa.

- 1) Children as seen as a social security that enhances family survival and continuity
- 2) Women in patriarchal relationships have seen children as valuable power resource as it is a common belief that a woman's conjugation to her husband is sealed and guaranteed by her ability to procreate.
- 3) Also, for social perpetuity, whereby children are transgenerational agents of transferring family heritage.

The participants in this study emphatically shared the view that children are prioritized within cultures as evidence of fruitfulness, hence, fertility is highly cherished and of immense importance. However, the importance placed on fertility pose a challenge to the survival of surrogacy within the country because there are cultural imperatives for what defines a child and how to conceive a child.

The narratives begin with the popular perception of the importance of the family. Socio-cultural significance of children as postulated above prioritizes continuity of family lineage, however, this is conceptualized by the symbolic bond between kindred usually passed through the mother of a child at delivery. The traditional birth attendants narrated that there is a very symbolic process that connects a child to the kindred at the process of delivery, which is usually when the birth mother's blood flows on the child. This significance of kindred bond and its delineation of relatedness appeared frequently amongst the traditional birth attendants.

“Surrogacy is not cultural within Nigeria because if you introduce a child that wasn't conceived and birthed with a family into that kindred, it can spoil the bond within kinship. There might be a disease in the lineage of the pregnancy carrier that might not be in the

lineage of the commissioning parent that might surface in the child just by staying in the womb of another woman for 9 months (Ile anu Oluwa Kiisu/TBA/IDI).”

Surrogacy is perceived as a process that will damage kinship bond, further emphasizing this is another TBA:

“If you have such a child in the family, the family won’t be happy with the mother neither will the child become a complete part of the kin. The child can’t even have a part in inheritance because what happens most time is when a couple have recruited a surrogate, the wife then pretends to be pregnant until the surrogate delivers. It’s very deceitful and people know and are watching. The blood that flows from a woman during delivery is very significant to motherhood and builds a strong bond and connection between the mother and child. The surrogate’s blood will definitely reflect on the child someday (Ini Oluwa/TBA/IDI).”

The symbolic importance attached to the blood that flows from the birth mother at delivery in this context is a crucial defining element of relatedness. Ore Ofe Oluwa another traditional birth attendant did not only refer to blood spillage at birth as a fundamental for kinship bond but also noted that children birth via surrogates are prone to name calling and stigmatization;

“In the Yoruba culture, that type of child can be called a bastard because it’s not part of the blood of the family even though it’s the combination of the reproductive semen of the parent but not their blood. So, that child is a bastard in the Yoruba land (Ore Ofe Oluwa/TBA/IDI).”

Another TBA corroborates the argument thus far and added that a child that is not carried in the womb of a woman and breastfed by her cannot be valued optimally:

“There is a woman in my neighborhood that it has been rumored about that she didn’t bear the child, so one day I saw the child and asked him to say me well to his mother, but he

said the woman is not his mother, that he had heard from people and stories that she paid some people off to have him. A child you bore and breastfed is different from a child you took from another. So as the child grow up, there will be stories that will tell him about his birth (Ileri Oluwa/TBA/IDI).”

Flowing from above, the period of gestation is not just about carrying a fetus in the womb but a process that instills in the woman a sense of value for the child and creates a strong bond between the child and the gestating mother. This bond makes the woman to cherish and care for the child as a part of herself, hence, the argument is, a child that was gestated by a surrogate and handed over to the commissioning mother would not experience the same love and value that the birth mother would have given because, the commissioning mother did not gestate and birth this child and thus, she has not developed any bond and attachment to the child that will make her value the child as a part of herself. There is also a mention of what the TBA’s referred to as the first fruit of a woman (the first conceived child), there is a significant cultural attachment to the first fruit of a woman because there are cultural rituals expected of such children. The contentions surrogacy triggers are that the separation of genetic connection and gestation creates a problem as to how the first fruit of a woman will be conceptualized. Iya Afin noted that surrogacy flickers concerns about the essential practices of the traditional family system and it is not a practice that should be encouraged:

“Personally, it is against the definition of womanhood and even the surrogate is not thoughtful enough, what the surrogate will tell her own husband after she must have done something like this. Will she say she has not given birth before or what? What if she cannot put to bed again? Even if she marries and now have a child through the cultural medium with her husband, would she now refer to this present child as her first seed or the surrogate child? This is disturbing and against our culture.

Cultural perceptions and practices pose a great threat to the growth of surrogacy in Nigeria as an ART. The thoughts and perceptions shared thus far establishes that the culture from which the traditional birth attendants were selected (Yoruba Culture), perpetuate the notion that bond between kinship includes the blood that flows from the mother at the birth of a child. This

implies that, surrogacy is perceived as a process that will produce offspring that tarnishes or stains the lineage and kinship tie. The introduction of a third party into reproductive process is a negation of an affair that is culturally between a man and a woman. It is important to note that within this cultural sphere, the traditional conception of being part of the bloodline of some kindred is different. It is not just about possessing the gene of either of the intended parents but the fulfillment of numerous symbolic gestational rites- the day of delivery, the bond a woman develops with a child during gestation, and the blood that flows from the woman to the child on the day of birth. The stigmatization of the entire process of surrogacy is hinged on strong socio-cultural perceptions that police reproduction, fertility and the entire family system.

5.11. SURROGACY AS A BRIDGE OF THE SOCIO-CULTURAL DEFINITION OF WOMANHOOD

The significance of women to the African society cannot be overstated. They play a significant role in the continuity of the community and the operation of social life. Women are considered as the fabricators of life and the mothers of humankind. As a major player in the personal ritual associated with birth, puberty and death, the symbolism of these rituals shows the important cultural meanings of womanhood. There is a link between fertility, culture and religion. While the ability to conceive and carry to term is regarded as a gift and part of the doings of a supernatural being, the cultural definition of a woman is the ability to perform the gestational role of carrying a child to term. Caldwell and Caldwell (1987:415), opined that in Africa, *“high fertility was not only a divine reward but evidence of the right behavior. Among the Chaga of Tanzania, the wife in complying with the divine order has been described in these words: she incorporates with her husband, the ancestors, even God, in creating the child.”* Hence, fertility is a product of complete obedience to God, the ancestors and maintenance of good societal approved behavior. Children are premiums and women are referenced and regarded based on their ability to conceive, carry to term and nurture the child. The birth of a child is celebrated and seen as a sign of divine approval and approbation by both the living and dead/ancestors. However, infertility is regarded most times as a woman’s problem and an evidence of sin and disapproval by both God and the ancestors.

The perceptions shared by the participants are diverse but it all entrenches the fact that fertility and especially children are important part of the African community; a woman's ability to conceive and carry a child to term defines her and serves as a rite of passage to womanhood. Also, religion is very fundamental to the conception of fertility and infertility is an aberration that results from sin. When most of the participants were asked about what influence surrogacy has on the conceptualization of womanhood within their context, narratives that validate the concerns discussed above ensued, Iya Afin narrated that:

“Personally, it is against the definition of womanhood and even the surrogate is not thoughtful enough, what will the surrogate tell her own husband after she must have done something like this. Will she say she has not given birth before or what? What if she cannot put to bed again? Even if she marries and now have a child through the cultural medium with her husband, would she now refer to this present child as her first seed or the surrogate child? This is disturbing and against our culture (Iya Afin/TBA/IDI).”

The idea is that surrogacy encroaches on what defines a woman and it is not a practice any of the parties involved will be proud to identify with. The next participant noted that surrogacy is a negation of both cultural and religious procedure for reproduction:

“God created the man and woman. There is a plan and process design by the creator for procreation. God endowed women for reproduction and he did not sanction in vitro processes or surrogate practice. The bible says there shall be non-barren in the land. That there will be children in your loins, so affects the definition of womanhood (Ini Oluwa/TBA/IDI).”

This clearly shows the intersection between religion and culture in the perception of fertility and procreation. Another respondent, did affirm that surrogacy influence the conception of womanhood, however to reiterate how infertility is regarded as an evidence of sin or recklessness, it was voiced that infertility is often as result of the reckless lifestyle the woman must have lived as a youth:

“We cannot change the gender of the woman because she can’t carry a child but it must be that that woman that requires the service of a surrogate must have lived a reckless life as a youth, maybe she must have aborted 3 to 4 times before marriage. So, she will later have problems with giving birth but the husband won’t know. So, she’s still a woman that has not experience of knowledge of what it means to be pregnant and carry the baby to full term (Ile Anu Oluwa Kiisu/TBA/IDI).”

The perceived thoughts of punishment for being the cause of infertility are built on the usual assumption that women are responsible for infertility. Infertility has been highly gendered and it is usually regarded as a woman’s problem. A legal practitioner mentioned emphatically how infertility in Nigeria is generally perceived as a woman’s challenge and also as a result of unknown/spiritual forces:

“Childlessness is a taboo, as a curse and seen as the woman’s fault mostly. Even our doctors, I was surprised when a doctor said, childlessness is 30% the woman’s fault, 30% the man’s fault and 40% unknown causes. But up until now the way it is treated is as if when you are childless it is the woman’s fault (Onyin/LP/IDI).”

It is observable from the response above that, the perception of infertility being caused by unknown forces are shared by some member of the educated class like the medical professional who had inspired the participants thought on gendering infertility. It further progress to establish the connection between a woman’s ability to birth a child and her attainment of womanhood in the society as more participants shared their thoughts on this:

“Womanhood in this environment is seen in terms of a woman being able to have a delivery, so a woman that adopt the option of surrogacy will not have an opportunity of giving birth by herself and that will put a question on her womanhood, a lot of people will see her as not being woman enough because she has not been seen to be pregnant to deliver, people attach being able to deliver as a mark of womanhood, so surrogacy will affect womanhood negatively especially where people places a lot of emphases on woman

being able to get pregnant and also be able to deliver as a mark of womanhood (Taiwo/MG/IDI).”

Without gestating and carrying a fetus to term, it is considered culturally that the woman is incomplete and has failed in her role and as such transferred this responsibility to another. This participant buttressed this and noted that society regard such women that adopt surrogacy as failures:

“It really doesn’t influence it except to prove that one woman failed and another woman is doing her work for her. In the sense that we have linked womanhood especially in Africa to motherhood, the ability to conceive and birth a child. That’s what we call a complete woman, the average woman too wants to be a mother so when there’s a woman that can’t give birth we might want to re-evaluate what womanhood means. It also means that society is evolving and when things are not the way they should be 100% we have found ways of filling the lacunae and bridging the gap (Fabs/LP/IDI).”

The failure of a woman to fulfill her role as a woman has essentially created a gap that other women have taken either for altruistic reason of making other women fulfill their social expectations of becoming mothers or for the financial gain inherent in the practice of commercial surrogacy. One of the participants opined that while the practice clearly negates the normative ways of procreation, it also fulfils a cultural goal of helping other infertile couple build a family:

“In my own view, how it affects the definition of womanhood is; it depends on how you look at it, especially in an Africa setting where it is believed that if a woman does not bear a child then the woman is not fulfilled or a marriage that does not have a child. However, now we have women coming out to help women in the actualization of their desire to have a baby, so I think this has really gone a long way and as put smile on the faces of lots of females round the world and it as really make the womanhood more appreciated than what you can ever think of (Walele/MG/IDI).”

Embracing the positivity in surrogacy will help put smile on the faces of a lot of people and will help them fulfill the social desired goal of building a family where children are regarded as a premium. Another insightful perspective shared is that, even though surrogacy negates cultural norms, it has redefined the essence of the family institution and parenthood. It brings to fore fundamental reasons why parenthood should go beyond genetic linkages to the uptake of responsibility:

“It redefines it. It makes us think of a woman beyond just bearing children. It reminds us there is more to a woman than just bearing children because at the end of the day even if there is problem with the man, everybody stigmatizes the woman in a childless union. It means a woman can be a woman without necessarily bearing a child (Mayor/LP/IDI).”

This thought was corroborated by another respondent, who after acknowledging the social stigma that is attached to surrogacy and in fact any form of delivery aside the natural such as caesarean session, opined that there is a need to re-examine how parenthood is conceptualized:

“Hmmm.... Well the definition of womanhood as people have defined is complex because in the real sense being a mother is not about giving birth like we also say being a father is not about fathering a child but the roles and responsibilities assumed. However, we find out that being a woman has been defined with being able to conceive in the African sense, so surrogacy thus affect this definition of womanhood. Not being able to conceive is more unless like you are less than a woman, in fact I have seen where people have written that if you give birth through caesarean operation (CS) then you are not a true woman. So, I can imagine that in that circle giving birth through a surrogate tamper with the traditional definition of womanhood, however, the world is evolving and people are defining motherhood and fatherhood by roles and responsibilities assumed in the life of a child (Onyin/LP/IDI).”

It is evident from the cases referred and discussed above how fertility is linked to religion and culture within this setting and how womanhood is conceptualized within the lens of culture and the ability of a woman to conceive and carry a child to term. Also, of significant importance is

that infertility is gendered and generally assumed to be a woman's problem. While women who suffer from such fate are labeled to have been very promiscuous and must have lived a reckless life in their youth. Hence, surrogacy is a process that transfers the rite of passage essential for womanhood to another who is biological and physiological capable to fulfill such role.

5.12. CULTURAL PECULIARITIES INFLUENCING THE GROWTH OF SURROGACY IN NIGERIA

The findings of this research have further strengthened debates that suggest that the terrain of reproduction in most African cultural settings is greatly influenced by socio-cultural and religious factors. This segment will discuss some of the cogent socio-cultural factors influencing the practice of surrogacy in Nigeria. It will be examining social stigmas, stereotypes and prejudice surrounding the conceptualization of infertility, fertility, reproduction and surrogacy in Nigeria. The process of Surrogacy in Nigeria is popularly stigmatized and hardly talked about, Umeora et al., (2014), opined that surrogacy hardly constitute a major aspect of public debate in Nigeria.

5.12.1. Stigmatization

The participants in this research stated emphatically on various occasions that, the entire process of surrogacy and the people involved are stigmatized in Nigeria. Mayor noted that the unfriendly attitude posed at surrogacy in Nigeria is because of the various cultural norms around reproduction. These norms are part of the society and are produced and reproduced through various mediums within the cultural fabrics- like adages and social norms:

“.....Culturally we even have adages about how a woman carry babies for 9 months and all those so it's going to be very difficult to permeate the Nigerian society but modernization will later catch up though. Even though people do it or will do it, they won't want to admit that they used the process for cultural reasons of labeling the couple unproductive and stigmatizing the child as an aberration of the traditional process of delivery (Mayor/LP/IDI).”

A gynecologist, Sunday further affirmed this as he stated that surrogacy is highly influenced by culture and the entire process is looked upon with disdain in the country:

“Cultural beliefs and practices go a long way to affect the practice of surrogacy in Nigeria. It is not an accepted practice yet, because of culture and belief, our people look at it with disdain that a woman who require another woman as a surrogate will be referred to as not been “complete”, so it is still not culturally accepted from our believe and practices and in a way it affect the practice and our culture doesn’t agree with the practice (Sunday/MG/IDI).

The stigmatization of the process of surrogacy is accompanied by denial of inheritance for the child and the adoption of derogative names to describe any child from such process as noted by T-Black:

“It is also important to say that if the parent don’t talk about the circumstances surrounding the birth of the child, no one will know because if people know the child is definitely prone to stigmatization and name calling- some referred to a child via that process in my area as omo-oran (something like a mysterious child), some parent will even warn their children not to play with the child while some people don’t even want to touch the child (T-Black/LP/IDI).”

Another respondent corroborated the fact that children that results from a process such as this are cultural stigmatized with derogative names, Ore Ofe Oluwa opined that:

“In the Yoruba culture, that type of child can be called a bastard because it’s not part of the blood of the family even though it’s the combination of the reproductive semen of the parent but not their blood. So, that child is a bastard in the Yoruba land (Ore Ofe Oluwa/TBA/IDI).

However, another respondent shared different opinion about the reference name bastard, Iya Afin agreed children from such process are stigmatized with different names but it would not be

appropriate to culturally refer to a child birth via surrogate as a bastard because the child possess the genetic component of the parent:

“This child is not a bastard because he carries the genetic component of the father and mother but despite there are somethings that will be in the life of the child that won’t be in the family of the parent but from the surrogate. That child can’t be completely the parents, the child will have traits from the surrogate. Hence, the child will still have some inadequacies as family members will say (Omo ti o ni alebu) (Iya Afin/TBA/IDI).

The other insightful reflection and narrative surrounding the stigmatization of the process of surrogacy is what a respondent described as self-stigmatization especially among intended parents, Mr A noted that:

“In Nigeria, the major problem that affects surrogacy is that there is lots of stigmatization, particularly the self-stigmatization of couples who adopt the process, some people believe that if they have not carried the pregnancy in their womb, then that child is not their own and they want people to see them carry pregnancy. The major issue is about the belief system in Nigeria. However, childlessness will be reduced particularly some people who cannot carry the child can use other people to bring the child to the world (Mr A/MG/IDI).”

These forms of self-imposed stigmatization will be examined in detail below.

5.12.2. Self-stigmatization

This study produced a glaring form of prejudice against self-based on popular social perception about the limitation and inadequacy of a group. Bathje and Marston (2014:1713), described self-stigmatization as, “*a component of the broader social phenomenon known as stigmatization. The process of stigmatization involves labeling differences as undesirable and can result in social exclusion, disempowerment, and discrimination.*” While public/social stigma is popularized as a

form of discrimination against individuals within undesired groups in societies, the stigma against self is usually not recognized as a major challenge. Self-stigma occurs when people imbibe these popular public/social stigmas of which they are labeled and begin to perceive themselves in that light. A gynecologist narrated that the major problem with the adoption of surrogacy as an ART is self-stigmatization. Couples who adopt or might use surrogacy are still not convinced they have their own children despite the genetic connection:

“In Nigeria, the major problem that affects surrogacy is that there is lots of stigmatization, particularly the ‘*self-stigmatization*’ of couples who adopt the process, some people believe that if they have not carried the pregnancy in their womb, then that child is not their own and they want people to see them carry pregnancy. The major issue is about the belief system in Nigeria. However, childlessness will be reduced particularly some people who cannot carry the child can use other people to bring the child to the world (Mr A/MG/IDI).”

Corrigan, Larson and Ruesch, (2009), opined that, the process of self-stigmatization comprises of three steps: awareness of the stereotype, agreement with it and applying it to one’s self. Because of this, people suffer low self-esteem and self-efficacy and as such cannot pursue the type of solution or avenue available to them to live the life they desired. An infertile couple within the Nigerian society for instance who is aware of the various social stigma and stereotypes that labels infertility and is self-stigmatized might not explore avenues or alternatives for reproduction in ART because the stigmatization of self, barricades individuals from seeking help. People may also avoid accessing and using evidence-based practices that help achieve these goals (Corrigan and Rao, 2012).

5.12.3. Denial of inheritance

The distribution of property of deceased parents in Africa is usually very contested and structured along patrilineal and matrilineal cultural practices that regulate inheritance. There is a considerable influence of kinship, marriage and residency rules in the determination of how inheritance is going to be shared. This research findings suggest that inheritance is a major phenomenon within traditional African family institution that reveals the connection shared by

members of the kin- consanguinity or cohabitation—because only people related by blood are culturally entitled to inheritance. It is a moment that reaffirms a sense of belonging to a kin if otherwise; it is also a moment when the circumstances surrounding the birth of any ineligible perceived member of the kin will be told. Ishor, Anzaku and Idyorough (2013), in their *Sociological Analysis of the Changing Patterns of Inheritance and Succession in Traditional African Society*, stated clearly what systems of residence exist in Africa and how it perceives inheritance:

“Marriage and residence rules also figure prominently in determining kinship claims, including succession and inheritance rights. Matrilineal societies for example are characterized by uxorilocal residence in which a husband moves to the wife’s village. Children in matrilineal societies remain in their mother’s village even when their mother dies, because they belong to the mother’s matrilineal kin. Whereas, rules of residence in patrilineal societies are virilocal - meaning that upon marriage a woman moves to live in her husband’s village. A legitimate marriage in many African patrilineal societies requires payment of bride wealth from a husband and his family to the wife’s family (Shipton, 2007; Hakannson, 1994). If bride wealth has been paid, it was traditionally expected that if the husband dies his wife remain in her late husband’s village and in many such societies she is ‘inherited’ or ‘remarried’ to one of her husband’s brothers and she is expected to raise her children among the deceased man’s kin. In some societies, if the deceased widow does not want to be inherited, she is expected to return the bride wealth that was paid for her hand in marriage to the family of her late husband – it upon this that she is given a free hand to leave the family and to also remarry. If no bride wealth was paid upon marriage, a widowed woman was often expected to return to her parents but leave the children with the late husband’s kin. Of course, many expectations to these general rules or patterns have been recorded. For example, while the northern Yoruba of Nigeria have experienced agnatic descent groups, it was also recorded that a son might also inherit farmland from his mother’s descent group. However, in doing so, this son would be expected to take up residence and membership to his father’s descent group. Among the southern Yoruba of Nigeria, however, it was noted that men might farm different plots of land acquired through different descent groups. In this way, a man could exploit claims to membership

both his father's and mother's kin groups as an economic strategy. The only means to claiming simultaneous membership of many descent groups is for the individuals to fulfill membership obligations to the various groups he/she intends to lay claims (e.g. time and money). (Ishor, Anzaku and Idyorough, 2013:63-64)"

This is a description of how inheritance is perceived and valued in traditional African society. Even though there were mention of matrilineal societies, it is less common and the location of this study is a patrilineal western Yoruba cultural setting in Nigeria. Inheritance could include material and immaterial aspects of human life that are considered as a belonging to the family and are expected to be passed to the next generation through linkages of consanguinity. Probing questions of the placement of a child born via surrogates raised varying opinion that are influenced by culture and education. The traditional birth attendants spoke from a culturally induced point of view while the gynecologists where more about the morality surrounding the treatment of human being as an important being irrespective of the circumstances surrounding their birth. While the legal professionals were more emphatic about the legality of inheritance. TBA's believe inheritance is cultural and is a sole right of people related by blood and identified as members of a kin:

"No matter how secretive the couple might be about the arrangement. The extended family will know the woman did not bear the child. The child has no place in inheritance. In fact, inheritance is very cultural and is meant for people linked by blood (Ini Oluwa/TBA/IDI)."

Another female TBA further reiterated that even at instances where the extended family are receptive to the child as a member of the kin, inheritance is usually a very contested process that will unveil the true circumstance of the birth of the child:

"Such a child is not entitled to inheritance within the family because if such claims are made, stories about the birth of the child will be told, which now means that child was never seen as part of the family. There's no secret so no matter how secretive the parent is, it is when it is time for inheritance within the larger family circle that stories about the circumstances of the birth of the child will be told to the surprise of the parent (*ma sha ni*

ma gbo- there is nothing secretive). You will hear things like what's a dog doing in the mosque? (*Bawo ni ti aja sha je ni masalasi*). That's to say the child wasn't birthed in that family (Ileri Oluwa/TBA/IDI)."

Recognizing the germane cultural peculiarities influencing inheritance and the general perception of a child born via surrogate in a traditional African family system, one of the gynecologists opined that there is a need for intending parent to put the child in a social environment that is receptive and this begins with the way they perceive and treat the child:

"The position of a surrogate child in the family depends on 1. Things that surround the surrogacy. 2 the understanding of the intending parents. 3 the nature, direction or the place or the environment of the surrogate mother. 4 the legal entity, the nature of the legal backup. 5 the level of involvement of the extended family members. So, I will say if all these things should form a cycle, at the center of the cycle is the concept of understanding, what is the aim of this concept of understanding? The aim of the concept of understanding is to protect the psyche of the surrogate child, to protect not only the psyche but the interest of the surrogate child, what do I mean? If the understanding is there that no matter what the condition there won't be any aorta of condition that will make the surrogate child detect that it was not actually the intended mother that carried him. If the child will not know if the love is there, the affection and the natural bonding is there, and the undue interference of the extended family members is not there and there is a trust among the parties involved. unshakeable memorandum of understanding between the intending parents, the legal arm, the medical arm especially the four arms, if the trust is there to protect the psyche then in terms inheritance, social acceptance and family perception, there is a very slight difference between a surrogate child and original child carried by the parent. In terms inheritance, social acceptance and family perception there won't be any issue, there won't be any negative issue, there won't be any negative challenges for the child regarding inheritance, social acceptance and family perception if there is agreement, a decision to protect the psyche of a surrogate child, there shouldn't be a problem in all these areas and the position, he won't be essentially different from a position occupied by a normal child (Adejuwon/MG/IDI)."

In contrast to culture and morality standard as opined above, it is important to state that a child born via surrogate is legally entitled to inheritance like any other child in that family. Fabs a male legal professional argued that, there should be no concept like a “surrogate child” because the constitution in Nigeria only recognizes children irrespective of the circumstances of their birth. So, the child is legally entitled to inheritance:

“Personal I don’t think there is anything like a surrogate child because the child is genetically that of the parents, so the child is a childlike another child. The surrogate is just a vessel especially when the egg and sperm is from the parent, so it has nothing to do with inheritance (Fabs/LP/IDI).”

Legal recommendations guiding inheritance distribution are usually according to the will, intent and desire of the property owner, so it is not about blood connection. Another legal professional noted that in inheritance legally people bequeath properties to individuals with whom they share no consanguinity so why not their own child irrespective of how the birth is defined, “*However, in situation of inheritance, people bequeath properties to people not related to them so why not to a child that carries their biological DNA (T-black/LP/IDI).*” This was further emphasized by Onyine who noted that a child born via surrogate enjoys equal legal opportunities like any other child in a family:

“In terms of inheritance, I’m sure a child born via surrogate is going to have the same access. There’s no law to that affect but the constitution states clearly that even for children born outside wedlock, they have the same rights as children born in a union. So, there is nothing like a bastard child. So, if the constitution stresses that far, it means that surrogacy is legal and the child has the constitutional right like any other child (Onyin/LP/IDI).”

Conceptualizing inheritance within this setting requires a careful attention to the narratives of culture especially the kinship system where principles of descent and rules of marriage and residence are sacrosanct (Cooper, 2010). However, it is also important to note that the legality of

the contextual rights of a child born via surrogate transcends cultural sentiments relevantly within an enlightened populace in Nigeria.

5.12.4. Cultural conception of disease

Cultures have a way of understanding diseases and illness. The traditional health system provides explanation of what causes diseases, how it should be cured and the people that should be involved in the process. Oduro and Okoh (2008:9), described Africa as;

“As there is an African way of understanding God ... in the same way, there is an African way of understanding the world, the visible world around us – the cattle, trees, people and cities as well as the unseen world, the supernatural world of spirits, powers, and diseases (Oduro *et al.*2008:9).”

This cultural understanding of health is very significant to the process of surrogacy as described by participants in this study. This study unveils that because surrogacy involves the introduction of a third party into the process of procreation, the role of the surrogates thus go beyond just gestation because culturally she becomes a major contributor to the life cycle of the child. These thoughts were dominant among the TBA who emphasized that if there were diseases within the lineage of the surrogate, she could pass them on to the child even though it is claimed that she is not a genetic contributor to the process. A female traditional birth attendant Ile Anu Oluwa Kiisu described this connection as follows:

“Surrogacy is not cultural within Nigeria because if you introduce a child that wasn't conceived and birthed with a family into that kindred, it can spoil the bond within kinship. There might be a disease in the lineage of the pregnancy carrier that might not be in the lineage of the commissioning parent that might surface in the child just by staying in the womb of another woman for 9 months (Ile Anu Oluwa Kiisu/TBA/IDI).”

This understanding is a formidable force within the social fabrics of the society that do not just affect the perception of surrogacy but influences how illnesses and diseases generally are understood. This long held cultural and traditional beliefs are reinforced via several factors within society and reproduce via socialization factors. Children are taught to respect culture and not offend ancestors who are believed to control the happening in the physical world from the spirit realm. Hence, as described in subsequent sections, culturally surrogacy is perceived as a negation and deviation from sacrosanct traditional process of reproduction, which is a taboo and an anomaly. From this point, also it could be that the ancestors can induce punishment on whoever goes through the process. White (2015), opined that diseases in Africa are believed to be broadly caused by two factors- the manifestation of evil forces and a punishment for haven erred from the ancestors. These phases of occurrence are significant for a good living and health within the African context and involve finding a balance between the visible and invisible in the daily affairs of human life. Culture is highly esteemed and it dictates must be adhered to strictly because deviance is believed to incur profound consequences.

5.12.5. The significance of the period of gestation

Gestation is believed to be a period that builds a strong connection, bond between the gestating woman and the fetus in the womb. It is a moment that is regarded by the TBA's as significant for knowing the worth of a child. Gynecologists when asked about the medical concerns in the relinquishment of a child after birth noted that, it is highly psychological and this is because during the period of gestation, the surrogate must have developed some attachment to the fetus, David described thus: *"Like I said initially, there is usually a form of connection between the surrogate mother and the fetus while the woman is carrying the fetus in-utero (David/MG/IDI)."* This bond was also mentioned and recognized as an important part of gestation by another gynecologist: *"It is a very grave issue particularly to somebody who has carried the pregnancy for nine months. There must have been emotional and psychological attachment during pregnancy in-utero, so it's a challenging task relinquishing immediately after birth (Mr A/MG/IDI)."* The connection that results in bond between surrogate and the fetus is recognized but it becomes a significant process of knowing the worth of a child culturally as postulated by a TBA, Ileri Oluwa opined that there is a difference between a child that is birth by a surrogate and

the one that was gestated by the real mother, she described thus: *“A child you bore and breastfed is different from a child you took from another. So as the child grow up, there will be stories that will tell him about his birth (Ileri Oluwa/TBA/IDI).”* She went further to establish a relation between religion and infertility, emphasizing that people choose surrogacy because they are impatient on God and that they usually forget that, there is no way a child born via surrogate will be valued like the one the woman gestates herself:

“People that choose surrogacy are not patient enough for God, there’s nothing impossible for God. Because the bible says, “there shall be no barren in the land”, so the promise of God is that if you are patient enough, God will give you your own child. No matter how, the child you didn’t bear yourself or pour your blood on through delivery will tell you sooner in the future that you are not the mother. The child that comes through you is usually different from the surrogate child because the surrogate child will always have an inadequacy. If you are patient, there’s nothing God cannot do (Ileri Oluwa/TBA/IDI).”

Gestation is very significant for a woman and the child. It is considered a basis for kinship bond and a defining moment of belonging to a family heritage within the cultural milieu in which the study was conducted. These thoughts are shared mainly among the Traditional Birth attendants, even though the other categories of participants do not deny the existence of these strong traditional and cultural narratives, it is their opinion that they can be jettisoned for modern practices such as surrogacy.

This discussion has unveiled the popular stigmas and prejudices against the process of surrogacy and infertility treatment within the cultural setting of Nigeria. It brought to fore how all stakeholder in the process of surrogacy are stigmatized- denial of inheritance for the child born via surrogate, reference of the child through derogative names, self-stigmatization as a major bane for couples with infertility challenges. The segment also discussed how diseases are considered as highly cultural and genealogical and passed through lineages. There is a case made from the cultural point of view that the introduction of a third party into the reproduction process makes the child prone to inheriting various things-disease included- that might be prevalent in

the lineage of the surrogate mother. Also, the process of gestation is considered very significant for knowing the value and worth of a child.

5.13. MEDICAL IMPERATIVES AND CONCERNS IN THE PRACTICE OF SURROGACY

Surrogacy is not a dominant or prevalent practice in Nigeria, however, as the practice goes through a process of growth and acceptance as an infertility treatment in Nigeria, it is important to understand some medical concerns that might ensue. Surrogacy is regarded as a crucial development in the treatment of infertility that cannot be overemphasized, Walele narrated the role of surrogacy in infertility treatment:

“The role of surrogacy in infertility treatment cannot be over emphasized; it has revolutionized the treatment and management of the infertile couple. Infertility is once scourge that affect the quality of life, the confidence of the couple and it has given them option. Even a woman at age fifty-five or whatever age can still confidently have a child, all she needs to do is; get a donor ovum, the sperm of her husband and a surrogate mother to help her carry the pregnancy. Even woman that has had diseases of the tubes bilaterally, previous tuber ligation, diseases of the uterus or even post hysterectomy; people that does not have hope previously now have hope due to surrogacy. I think has really revolutionized the management of infertility in conjunction with in vitro fertilization (Walele/MG/IDI).”

In the same light, another gynecologist Dr Vic, noted that the practice is important to infertility treatment and should be embraced in Nigeria as an adoptable terrain:

“The role of surrogacy in infertility treatment cannot be over emphasized it is high time we embrace this in this part of the world, it is what is being done in the developed world which we are yet to embrace and I know it will put smile on the

face of many people who are finding it difficult to get pregnant spontaneously (Dr Vic/MG/IDI).

Flowing from above, for surrogacy to permeate the highly regulated cultural area of reproduction in Nigeria, some cultural and religious elements/beliefs that has hitherto affected the growth of surrogacy must be jettisoned.

Surrogacy becomes an alternative when couples are medically unable to go through the natural way of conceiving and carrying a pregnancy to term. It is also noted that some people decide to use surrogacy because of what could be regarded as '*cosmetic reasons*'- *a medium through which women want to preserve their body physique and not allow the period of gestation affect their body*- it is important to note that only individuals with sufficient financial resources will adopt surrogacy for this purpose. There are also some medical conditions that leads to this choice, they include: advancement in age (most times women), congenital malformed uterus, tube bilateral, previous tube ligation, uterus disease, hysterectomy among several others.

Upon inquiring about the medical concerns for playing the role of a gestational surrogate mother. The requirement of a surrogate follows a process where the proposed surrogate will be medically, physiological, legally and psychological screened to be fit and capable of playing the role with a prior full understanding of the pros and cons of the process. However, just like any pregnant woman, the medical concerns are the same and the recommendation is applicable to all, gynecologists Desola described this as follows:

“The same medical concerns that can occur to any woman that gets pregnant, there may be instances where because of the pregnancy they are at risk of hypertensive disorder of pregnancy, increase risk of gestational diabetes, increase risk of infections and hormone suppressions these are conditions that the woman that is a surrogate is exposed to, once they have been counselled that these are situations that happens with pregnancy they will not see it as disadvantage but as

one of the component or one of the consequences of deciding to be a surrogate mother (Desola/MG/IDI).”

The role of a surrogate does not induce new medical conditions, it is the same medical or obstetrics concerns that could surface in any pregnant woman that is applicable in the process. Despite the similarities in the gestational concerns of playing a surrogate role with any other pregnant woman, it is important to understand the post-natal peculiarities in gestational surrogacy. David described this post-natal care requirement as a free trade zone in Nigeria, since there are no specific legalizations claiming such support, however, it is an important phase in the recovery process of the surrogate that should be given serious attention:

“Surrogacy is not a legalize thing in Nigeria, there’s actually no law. The plan put in place may be majorly to take care of the woman after delivery then paying off the mother. Usually, they may not allow the woman to see the baby, once the woman delivers the baby they take the baby and psychological support is done for the woman, the woman is paid, adequate treatment is done to make the woman to pass through the puerperium safely and the financial aspect. Probably, relocating not allowing the woman to have opportunity of getting to know where the baby is to reduce emotional connection or the possibility of the woman becoming an obstacle later in the future especially in the aspect of illegal battle to claim the child and stuffs like that. I think the plan will be between the commissioning parents, the agents and the surrogate mother; there is no need for the commissioning parents and the surrogate mother to be in contact especially in Nigeria, the agent will be the one taking care of the situation, once the woman is stable and paid off other treatment that need to be given to the woman after delivery are put in place reducing breastmilk production, reducing the psychological effect of not having the baby, all these are put in place to reduce the after effect in the surrogate mother (David/MG/IDI).”

While this educates on the need to fully incorporate the post-natal care of the surrogate as an important aspect of the process of surrogacy, Walele further expatiated on the opinion shared above:

“It is best understood that the postnatal care of the surrogate mother is not different from any other mother who has just put to bed whether through caesarean section or the vagina route, it is the same care that is given to other women are given to them. However, with some emphases most surrogate mothers do not breastfeed because most commissioning parents don’t allow it, at that point you she will need a breast support, if through caesarean section you need to do a post-operative care for the patient; breast support so she won’t have breast engorgement, mastitis. Give them antibiotics and are to be monitored just like any other postnatal woman. It is also more important that most of these postnatal care and activities are also well spread out in the contract before the surrogacy and commissioning parents go into the agreement. Basically, the plan is to manage them like the normal postnatal women, but with emphases on breast support, antibiotics and haematinics until the forty-two days of the postnatal period is over (Walele/MP/IDI).”

Controlling breast engorgement in the surrogate is very important process for recovery. While the dominant post-natal concern is psychological as the surrogate must battle with relinquishing the child and fully detaching themselves from a pregnancy they gestated. Consequently, important for the health of the child in this process is establishing from the onset who will breastfeed the baby. Previous cases of surrogacy affirm that most times surrogates are usually not the most preferable choice to breastfeed the baby so as not to further strengthen any bond between them, however it is important to provide a nutritious source of feeding for the complete wellbeing of the child. Dr Vic noted that this concern is a dark area in the process of surrogacy:

“this is the dark area in surrogacy, who breastfeed the baby we know that breastfeeding confer some affinity between the baby and the mother and the medical conditions that could arise when this baby is being separated from the

mother, that means he is being cut short of the breast milk supply which has been noted as an antibody that protects them against so many infections, so the baby is at risk of so many infections but if the intensive care unit is there or they are able to complement some of what the baby actually need to make life fit for him/herself will be better (Dr Vic/MG/IDI).”

There is a need to provide an intensive care for the child within a comprehensive health care system that will cater for the medical and psychological needs of all stakeholders in the process of surrogacy. There are no defined medical conditions that are associated with relinquishing the child for the surrogate as the dominant concerns are psychological. Hence, there is a need to provide an adequate psychological help for surrogate after relinquishing to fully recover and detach themselves from the child.

5.14. NIGERIA’S LEGAL SPHERE AND THE PRACTICE OF SURROGACY

The debate around the legality of surrogacy in Nigeria is a contemporary clamor that has received attention from different stakeholders within the country. An Assistant Research Fellow with the Nigerian Institute of Advanced Legal Studies (NIALS), Oluchi Azoro-Amadi made a call for the legislation of surrogacy in Nigeria, where she opined that this legislation would address pertinent question and regulates the practice within the perimeters of the country. This study navigated the legal space of Nigeria to harvest the thoughts and perceptions surrounding the practice of surrogacy in Nigeria by interrogating legal professionals.

It is evident that, surrogacy is gaining ground within the urban communities of the country and there are no legislations regulating the practice. T-Black described this as follows: *“it makes the process illegal even though some people will say it is an unregulated territory where the participating agents are the referees of their own game (T-Black/LP/IDI).”* Even though the territory is unregulated another legal professional, Mayor opined that this scenario is not good for the process of surrogacy: *“the lack of legislation means we can do anything we want.*

Legislation puts a fine point on issues like ethical concerns and avoidance of exploitation and making sure the child is not also exploited but in its absence anything goes (Mayor/LP/IDI)." The clamor for the need for legislation becomes very sacrosanct for the protection of all parties involved in the process. An emerging concern in the lack of legislation for surrogacy has further increased the social stigma on the process hence making other forms of illicit alternative to infertility treatment that commercializes women and children thrive in Nigeria. Onyin explained that the cultural impediments in the exploration of alternatives to infertility in Nigeria have given rise to illicit acts like ²⁶*'baby factories'*, when asked about how to describe the absence of specific legislation about surrogacy in Nigeria as a legal professional, she noted:

"It shows how deeply cultural we are because the reason why we have not accepted this is because infertility and inability to give in Nigeria is a growing problem maybe because earlier people got married at younger ages and didn't have to be this stressed so now infertility is growing. Our culture makes us blind our eye to a viable alternative to fertility treatment. And this is affecting us, that's why we have rampant baby factories. I'm sure so many couples will be embroiled in cases from informal surrogacy arrangement and can't bring it to the court because there are no legislations. Because honestly, any agreement made wouldn't be recognized (Onyin/LP/IDI)."

There is a need to legislate the practice of surrogacy in Nigeria for various reasons; protect the parties involved; provide legal support for infertile couples to seek help in ART treatments; and to curb the unabated growth of illicit act that commercializes children, exploit women and dehumanizes babies, young girls and women in Nigeria- such as baby factories. It is opined that even at the promulgation of legislation, the choice to become surrogates should be voluntary either for altruistic reasons or for commercial purpose.

²⁶ Baby factory is a place where child harvesting is often done in a **baby factory** or **baby farm**. This is a location where women are encouraged or forced to become pregnant and give up their new-born for sale. Some poverty-stricken women have stated they voluntarily worked at **baby factories**, motivated by the prospect of monetary gain.

5.15. CONCLUSION

Rethinking surrogacy in Nigeria; Over time, the perception of the general populace in Nigeria is fueled by notions that surrogacy is an alien practice that is not found within the shores of the country. The study however brought to fore that, the practice is gradually gaining prominence as a secretive infertility treatment alternative within urban communities in Nigeria that will thrive as a source of income for economically vulnerable women within the country who will be willing to act as surrogate because of the huge economic returns.

Hence, the realization of the fact that surrogacy is growing practice in Nigeria will pave way for legislations that will regulate the practice and protect exploitative tendencies. The continual indoctrination of thoughts that views women as the major source of problem in most cases of infertility as well as attributing causation of infertility to superstitious forces has fueled stigmatization of surrogacy and other forms of ART in Nigeria. It is important to note that as the world becomes globalized and ideological construction about prominent issues such as marriages are altered, the acceptance of ART measures will become sacrosanct.

The conceptualizing of surrogacy in Nigeria is very different as it is influenced by culture and religion. The intersection of religion and culture in the conceptualization of surrogacy is damning the process as an abomination that is produced and reproduced by beliefs and dictates regulating infertility and procreations. Even though surrogacy is culturally and religiously frowned upon, the economic lacunae created by high rate of unemployment and dominant poverty within the country will position surrogacy as a viable source of income for the economically vulnerable. These cultural imperatives are normalized via various beliefs: cultural imperatives of what defines the need to conceive a child; the conception of disease and illnesses as ancestral; equating gestation to knowing the worth and value of a child; stigmatization of all parties involved in the process of surrogacy; gendering infertility; socio-cultural definition of what defines womanhood.

The medical imperatives and concerns as a gestational surrogate is usually not different from a naturally pregnant woman, however, there is a need to provide a comprehensive health care system that will provide psychological help for the recovery of the surrogate after relinquishing the child. The acceptance of surrogacy in Nigeria is constantly being threatened by cultural, traditional and religious beliefs that perceives the practice as an aberration of nature and a procedure that tampers with sacrosanct religious and cultural norms. The possibilities of ART- genetic engineering, invitro fertilization- are qualms that are considered outrageous within most traditional African societies.

CHAPTER SIX

SUMMARY, CONCLUSION AND RECOMMENDATION

6.1. INTRODUCTION

The perception of surrogacy among gynecologist and traditional birth attendants in Ado-Ekiti and among some Abuja based lawyers in Nigeria is tainted by a social environment that normatively regulates fertility and reproduction. These normalized policing agents are entrenched in thick cultural, traditional and religious beliefs that affect all aspects of health and illness. Everyone within the society acts out scripts that predate birth but passed through generation via socialization processes. Marriage is regarded as an ideal social status that every individual who attained the age must proudly embrace which implies starting a family is a social goal for everyone. Within this families' fertility is highly prioritized and children are premiums. The paternalistic nature of this society makes procreation invaluable and frowns at infertility. These are insights into the narratives that permeate the membrane of this entire study. It is important to note that, the findings and recommendations provided in this study are not meant to be generalized and neither do they suggest the holistic opinion of the Nigerian society but are in-depth reports of the perceptions shared by stakeholders within the context examined.

6.2. SUMMARY

Surrogacy has been subject to global debate as an assisted reproductive technique since the 1980s when the case of baby M became popular in America. Researchers have studied the ethics and legality of the process; the motivation for being a surrogate; surrogate coping strategies among several other pending challenges in the process. This is documented and discussed in the literature review section.

However, this is the first-time surrogacy will be studied within a medico-legal context with core emphasis on the socio-cultural environment of where surrogacy could operate. There has been

interesting suggestion as to why there are scarce scholastic literatures on the field in Africa some of which are because of the unpopularity of the practice. However, since culture, tradition and religion are very important aspects of the social life in Africa, this study unraveled, socio-cultural and religious beliefs that has influenced the practice of surrogacy in the country.

Surrogacy is fast becoming a popular practice in the urban cities of Nigeria (Lagos, Port Harcourt and Abuja), because of the financial commitment involved. However, couples going this route are very secretive and personal about the process because of various social concerns. It is also evident that the absence of legislation for the practice is regarded as a salient disapproval among most members of the society.

The development of the practice is constantly influenced by an interplay of socio-cultural and religious factors that mitigate against its social acceptance. Some of these factors include: priority placed on having biological children (defined by self-gestation and birth); stigmatization of infertility, adoption and children born via assisted reproductive technique; self-stigmatization by couples trying to have children; denial of inheritance within the wider kinship network of children born via assisted reproduction; cultural conception of health and illness; and, the significance placed on self-gestation of children. All these factors are very instrumental and measures that has not allowed the practice of surrogacy to thrive in Nigeria.

It is also believed within the socio-cultural community of Nigeria that surrogacy is tantamount to redefining womanhood. This practice is a disregard for sacrosanct definitions of what makes a woman- a woman is expected to conceive and carry a birth to term. These are significant parts of the rite of passage to womanhood. However, surrogacy negates such fundamental practices and it is a deviation and disregard for cultural and traditional practice. It transfers the biological role of reproduction from one woman to another who is considered biologically and physiologically capable to carry pregnancy to term. The intersection between culture and religions became evident at this point as constant reference was being made to biblical examples of cases of infertility and how women were patient enough to wait on God for solutions. Hence, couples

with infertility must learn virtues of patience, perseverance and complete trust in God for intervention.

The study went further to examine the medical concern for playing the role of a surrogate. The role of a surrogate is not different from a normal pregnant woman and does not breed special conditions against the prevalent. However, it is important to properly prepare for the pre-and post-natal face of pregnancy. The surrogate must be given proper breast treatment during antenatal to avoid breast engorgement since she will not be breast-feeding the baby. The recovery phase of the surrogate is also very important, as there is a need to provide effective psychological help as a coping strategy for relinquishing the baby. The essence of surrogacy requires the provision of a complete health care system that will cater for the ethical, legal, medical and psychological essentials of the process.

The absence of legislations about surrogacy in Nigeria has contributed to various vices within the nation. From the operation of the process within an unregulated territory that exposes all parties to exploitation to the emergence and growth of baby factories. This legislative lacuna is a bane to progress and allows for dehumanizing illicit act as referred above, hence, there is a need to rethink surrogacy in Nigeria and properly regulate its practice.

6.3. THEORETICAL CONCLUSION

Social construction theory was the fundamental theoretical parlance adopted for this study (Berger and Luckmann, 1991; Mead, 1934). The theoretical approach helped enhance the understanding on how societal norms, beliefs and practices influence and shape our understanding of social phenomenon.

Socio-cultural and religious beliefs and practices have hitherto influenced the growth of surrogacy as an ART in Nigeria. People live up to the expectation of what society expects from them.

Couples within the Nigerian society think and act on fertility largely on the tenets prescribed by culture and religion. Women are socialized to believe that they are only worthy to be called a woman when they marry and bear children and a man's ability to get a woman pregnant determines his manliness. These are some of the various ways society shapes and influences people's behavior. The social construction of life is a reality and evident within the everyday experience of an individuals. People are like actors in a theatre acting out a written script.

While infertility is highly gendered (women's problem) and attributed to supernatural forces. A woman at very initial stages of development is taught to anticipate and value pregnancy and the process of childbirth. She is also taught that it is God and the ancestors that give children. What these women and individuals generally have been socialized into effect the way and manner they lead their life's. Because there is a social norm that children are given by superb=natural forces, people are usually not motivated to visit fertility clinics for treatments. They see ART alternatives such as surrogacy as a deviation and sacrilege.

These theoretical reflections have been detailed in the theoretical segment of this study and are very insightful in understanding how society influences thought process and actions.

6.4. RECOMMENDATIONS

There is a need for a rethink on surrogacy in Nigeria. The socio-cultural defining elements of reproduction, fertility, womanhood and who a child is needs to be re-examined.

- a) **Ideological/attitudinal change:** there is a need to reexamine the ideological stance that controls our everyday life. The Nigerian society has social, cultural, traditional and religious beliefs that police fertility and reproduction and this has negatively influenced the adoption of ART. Social stigma's needs to be jettisoned and children should be embraced and prominent members of families and societies irrespective of the circumstances surrounding their birth. On attitude, stigmas are reproduced and

perpetuated by individuals. They are the main drivers of unfriendly attitudes towards culturally disapproved issues. Hence, everyone must be enlightened on the opportunities available in surrogacy process for procreation. If the practice is well regulated altruism should be the essential focus not to commercialize the woman's body and child.

b) Correcting popular norm about fertility and infertility: there is a need to correct popular norms and practices that stigmatize infertile couples and adopt derogatory names for children born via assisted reproductive techniques. The social treatment and perception of these categories of people is very detrimental to the individuals and has further birth self-stigmatization. Surrogacy gives an opportunity to infertile couples to have children that are genetically connected to them and should be such and not a sacrilegious or abominable act.

c) Legislation: there is an urgent need to legislations that will guide the process of surrogacy in Nigeria. This will send a message of hope and support to the entire populace and further weaken the effect of social stigma for couples that might want to adopt the process for procreation. It will also help address the unabated growth of baby factories. If people now know that it is legal to seek help from another woman to help procreate, the illegal sales of babies will reduce. Also, the process of surrogacy will be legalized and redress can now be sought in court in cases of breach in contract between parties.

As the study navigated through the complex web of knowledge within the Nigerian social space to understand surrogacy, it was limited in some aspect and could not unravel all relevant segments because of time constraint and study aim. Hence, it is important that the following area becomes a focal point for further studies:

- There is a need to understand the lived experiences of surrogates and commissioning parents in Africa.
- A study of the motivation for surrogates.

- There is a gap in the explanations of the rights of a child born via surrogacy as to knowing the gestational mother. Hence, understanding the legal narratives surrounding this discussion is very imperative.
- The legality of the practice of surrogacy is a contentious area in Nigeria that needs further examination.
- The commercialization of children and women through the practice of baby factories needs to be investigated and addressed.

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APPENDIX 1- ETHICAL CLEARANCE



19 June 2017

Mr Oluwatobi Joseph Alabi (216072991)
School of Social Sciences
Howard College Campus

Dear Mr Alabi,

Protocol reference number: HSS/0705/017M

Project title: A sociological medico-legal investigation on Surrogacy at Ekiti State Teaching Hospital, Ado-Ekiti, Ekiti-State, and Oyediji Ayodele & Co, Abuja Nigeria

Approval Notification – Expedited Application

In response to your application received on 18 May 2017, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol has been granted **FULL APPROVAL**.

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment/modification prior to its implementation. In case you have further queries, please quote the above reference number.

PLEASE NOTE: Research data should be securely stored in the discipline/department for a period of 5 years.

The ethical clearance certificate is only valid for a period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully

Dr Shenuka Singh (Chair)

/ms

Cc Supervisor: Dr Mariam Seedat-Khan
Cc Academic Leader Research: Professor Maheshvari Naidu
Cc School Administrator: Mr N Memela

Humanities & Social Sciences Research Ethics Committee

Dr Shenuka Singh (Chair)

Westville Campus, Govan Mbeki Building

Postal Address: Private Bag X54001, Durban 4000

Telephone: +27 (0) 31 260 3587/8350/4557 Facsimile: +27 (0) 31 260 4609 Email: ximbap@ukzn.ac.za / snymanm@ukzn.ac.za / mohunp@ukzn.ac.za

Website: www.ukzn.ac.za



Founding Campuses: Edgewood Howard College Medical School Pietermaritzburg Westville

APPENDIX 2- ENGLISH TRANSLATION INFORMED CONSENT



Informed Consent Form

Consent Form for Participation of Human Subjects in Research

University of Kwa-Zulu Natal

PROJECT TITLE: *“A Sociological Medico-Legal Investigation on Surrogacy in Ekiti-State Teaching Hospital, Ekiti State and Oyedele Ayodele & Co, Abuja.”*

RESEARCHER: Mr Oluwatobi Alabi **Protocol Reference Number:** HSS/0705/017M

STUDENT NUMBER: 216072991

The Department of Sociology (Society and Social Change)

University of KwaZulu-Natal, Durban South Africa.

DURATION: Please note that the interview will require **sixty minutes** of your time.

Dear Participant

I am a Sociology Masters student at the University of KwaZulu-Natal. I am engaging in a Ma Research project, entitled; *“A Sociological Medico-Legal Investogation on Surrogacy in Ekiti-State Teaching Hospital, Ekiti State and Oyedele Ayodele & Co, Abuja.”*

This study explores perceptions about surrogacy in Nigeria by engaging informed gynecologists, traditional birth attendants and legal professionals. The aim of the study is to understand the social construction of surrogacy in Nigeria.

I kindly request your participation in this study. Participation is **voluntary**. This means that one can choose to take part in the study or decline participation. Anyone who chooses to take part in the study can withdraw at any point should they feel the need to withdraw. If there are any questions that one wishes **not** to respond to during the interview, one should please let me know. For those who participate, the researcher and the supervisor will be aware of your participation in the study.

Pseudonyms will be used in the research report, to protect your identity. The interviews will be **recorded** and the data may be used at a later stage in the research report. Attached below is a consent section. **Please fill in the blank spaces** on this form and do not hesitate to ask any questions regarding the study (now, and during the interviews and or after the interviews).

Name of researcher:	
Signature of researcher:	
Date:	

PERMISSION FROM PARTICIPANT TO BE INTERVIEWED

I _____ (full name) on this day of _____ (date) agree to be interviewed for the above research project. I understand that I will be asked questions that the researcher finds relevant for this study. I also understand that the interview will be recorded and the data may be used at a later stage in the research report. I understand that I can withdraw at any time.

Name of participant:	
Signature of participant:	
Date:	

PERMISSION FOR AUDIO-RECORDED INTERVIEWS

I _____ (full name) on this day of _____ (date) hereby consent / do not consent to have this interview recorded.

Name of participant:	
Signature of participant:	
Date:	

I CAN BE CONTACTED AT:

The School of Social Sciences,
 University of Kwa-Zulu Natal,
 Howard College Campus,
 Durban.

Contact details of researchers:

Email: damilarealabi40@yahoo.com

Mobile: 0735698203

SUPERVISOR:

Dr. Mariam Seedat-Khan
The University of Kwa-Zulu Natal.
The School of Social Sciences,
Howard College
Durban

Contact details:

Email: Seedatm@ukzn.ac.za
Phone number: (031) 260 1056

HSSREC Contact Details:

The Humanities and Social Sciences Research Ethics Committee
Mariette Snyman
University of Kwa-Zulu Natal.
Research Office.
Email: Snymanm@ukzn.ac.za
Phone number: (031) 260 8350/4609

Please tick the appropriate box:

YES

NO

I consent to participating in the semi-structured interview in a place that is convenient to me.		
--	--	--

I..... (Full names of participant) hereby confirm that I understand the contents of this document and the nature of the research project, and I consent to participating in this research project.

I understand that I am at liberty to withdraw from the project at any time, should I so desire.

.....

.....

Signature of Participant

Date

.....

Name of Participant

THANK YOU FOR YOUR CONTRIBUTION.

APPENDIX 3- YORUBA TRANSLATION INFORMED CONSENT



**Èrò Fọọmù fun Ikopa ti Human koko ni Research
University of Fun-Zulu Natal**

Agbese akọle: "Iwadi dokita ati amofin lori abani gbomo ni Ekiti-State Ikqni Hospital, Ekiti State ati Oyedeji Ayodele & Co, Abuja."

Awadi: Mr Oluwatobi Alabi

Protocol Reference Number:HSS/0705/017M

Akeko NOMBA: 216072991

Sakaani ti Sosioloji (Society ati Social Change)

University of KwaZulu-Natal, Durban South Africa.

PIPE: Jọwọ se akiyesi pe awọn lodo yoo beere **ogota işeju** ti rẹ akoko.

Eyin alabaşe

Emi li a Sosioloji Masters omo ile ni University of KwaZulu-Natal. Mo n lowosi ninu a Ma Research ise agbese, ẹto; **"Iwadi larin dokita ati amofin lori abani gbomo ni Ekiti-State Ikqni Hospital, Ekiti State ati Oyedeji Ayodele & Co, Abuja."**

Iwadi yi topinpin erokero nipa surrogacy ni Nigeria nipa lowosi alaye egbogi gynecologists, ibile ibi emewà ati awon ofin akosemose. Awon Ero ti awon iwadi ni lati ni oye awon awujo ikole ti surrogacy ni Nigeria.

Mo jowo beere rẹ ikopa ninu iwadi yi. Ikopa ni atinuwa. Eleyi tumo si wipe okan le yan lati ya apakan ninu iwadi tabi ko ikopa. Enikeni ti o yan lati ya apakan ninu iwadi le yo ni eyikeyi ojuami o ye ki nwon lero ye lati yo. Ti o ba ti nibẹ ni o wa eyikeyi ibeere ti okan wu ko lati dahun si nigba ti lodo, okan ye ki jowo je ki mi mo. Fun awon ti o kopa, awon awadi ati fun iriju rẹ yoo je mo ti rẹ ikopa ninu awon iwadi. Pseudonyms yoo see lo ninu awon iwadi Iroyin, lati dabobo rẹ idanimu. Awon ibere ojukoju yoo gba silẹ ati awon data le see lo ni kan nigbamii ipele ni awon iwadi Iroyin. So ni isale ni a erò apakan. Jowo fowosi ni awon ofo awon alafo lori yi foomu ati ma se siyemeji lati beere eyikeyi ibeere nipa iwadi (bayi, ati nigba ti papa ti awon ojukoju ati tabi lehin awon ibere ojukoju).

Loruko ti awadi:	
Ibuwoju ti awadi:	
ojọ:	

AIYE LATI ALABAŞE TO LE IBEERE

Emi _____ (ni kikun oruko) lori oni yi ti _____
 (ojo) ti gba lati wa ni ibeere fun loke iwadi ise agbese. Mo ye ti mo ti yoo wa ni beere ibeere ti awon awadi ri ti o ye fun awon idi ti iwadi yi. Mo tun ni oye wipe lodo yoo gba silẹ ati awon data le see lo ni kan nigbamii ipele ni awon iwadi Iroyin. Mo ye ti mo ti le yo ni eyikeyi akoko.

Loruko ti alabaṣe:	
Ibuwoḷu ti alabaṣe:	
ojo:	

IGBANILAAYE FUN AUDIO-GBA SILE TI OJUKOJU

Emi _____ (ni kikun oruko) lori oni yi ti _____
 (ojo) ti gba pe awon lodo fun loke iwadi ise agbese, o le je awon iwe-gba silẹ fun iwadi idi ni kan nigbamii ipele ni awon iwadi Iroyin.

Loruko ti alabaṣe:	
Ibuwoḷu ti alabaṣe:	
ojo:	

Mo ti NJE LE farakanra Ni:

The School of Social sayensi,
 University of Fun-Zulu Natal,
 Howard College Campus,
 Durban.

Kan si awon alaye ti awon oluwadi:

Imeeli: damilarealabi40@yahoo.com
 Mobile: 0735698203

Adani Leko:

Dr. Mariam Seedat-Khan
 The University of Fun-Zulu Natal.
 The School of Social sayensi,
 Howard College
 Durban

Olubasoro awon adami leko:

Imeeli: Seedatm@ukzn.ac.za
 Nomba foonu: (031) 260 1056

Olubasoro awon alaye:

The Humanities ati Social Research Sciences Ethics Committee
 Ms. Phumelele Ximba,
 University of Fun-Zulu Natal.
 Research Office.
 Imeeli: ximbap@ukzn.ac.za
 Nomba foonu: (031) 260 3587

Jowo ko ami awon ye apoti:

	BEENI	KO
Mo gba si kopa ninu awon ologbele-ti eleto lodo ni ibi kan ti o je rorun lati mi.		

--	--	--

Mo (Full orukọ ti alabaṣe) bayi jẹrisi ti mo ti ye awon awon akoonu ti yi iwe ati awon iseda ti awon iwadi ise agbese, ki o si Mo gbà si kopa ninu iwadi yi ise agbese.

Mo ye pe emi li ni ominira lati yo lati ise agbese ni eyikeyi akoko, o ye ki Mo be fe.

.....
Ibuwoḷu ti alabaṣe

.....
Ojo

.....
Name of alabaṣe

O ṣeun fun ilowosi.

APPENDIX 4- GYNECOLOGIST INTERVIEW SCHEDULE



INTERVIEW SCHEDULE:

“A Sociological Medico-Legal Investigation on Surrogacy in Ekiti-State Teaching Hospital, Ekiti State and Oyedeji Ayodele & Co, Abuja.”

BIOGRAPHICAL INFORMATION

1. Name?
2. Recommended pseudo name?
3. Age?
4. Gender?
5. Occupation?

GYNECOLOGIST QUESTIONS

1. What is surrogacy?
2. Who is a surrogate mother?
3. How will you describe the growing practice of surrogacy in Nigeria?
4. How will you describe the practice of surrogacy and the traditional function of the family system?
5. Why do people choose surrogacy?
6. How will you describe the position of a surrogate child in the family (inheritance, social acceptance and family perception)?
7. How does the practice of surrogacy influence the definition of womanhood?
8. How does cultural beliefs and practices affect the practice of surrogacy in Nigeria? (demonizing childlessness and pronatalism)
9. Is surrogacy a viable occupation?

10. How will you describe the power play between surrogates, commissioning parents and agents?

Questions continued (Context specific)

1. What are the medical concerns in playing the role of a gestational surrogate mother?
2. What can be done about the medical concerns mentioned above by clinicians and intending couples?
3. What plans are put in place for the post-natal care of the surrogate mother?
4. How will you describe the role of surrogacy in infertility treatment?
5. Who are usually the intending parents in surrogacy arrangement in Nigeria?
6. How will you describe the medical concerns associated with relinquishing a child immediately after delivery?

APPENDIX 5- LEGAL PROFESSIONALS INTERVIEW SCHEDULE



INTERVIEW SCHEDULE:

“A Sociological Medico-Legal Investigation on Surrogacy in Ekiti-State Teaching Hospital, Ekiti State and Oyedele Ayodele & Co, Abuja.”

BIOGRAPHICAL INFORMATION

6. Name?
7. Recommended pseudo name?
8. Age?
9. Gender?
10. Occupation?

GENERAL SECTION

11. What is surrogacy?
12. Who is a surrogate mother?
13. How will you describe the growing practice of surrogacy in Nigeria?
14. How will you describe the practice of surrogacy and the traditional function of the family system?
15. Why do people choose surrogacy?
16. How will you describe the position of a surrogate child in the family (inheritance, social acceptance and family perception)?
17. How does the practice of surrogacy influence the definition of womanhood?
18. How does cultural beliefs and practices affect the practice of surrogacy in Nigeria? (demonizing childlessness and pronatalism)
19. Is surrogacy a viable occupation?

20. How will you describe the power play between surrogates, commissioning parents and agents?

LEGAL PROFESSIONAL QUESTIONS

1. What are the legal concerns in the practice of surrogacy?
2. Does a surrogate child have the right to know his/her biological/conceptual mother in cases of contractual agreement where all rights to claim have been forfeited by the surrogate?
3. What is the place of a surrogate child in inheritance?
4. Should the practice of surrogacy be altruistic (Voluntary without any financial compensation) or commercial?
5. How will you describe the absence of specific legislation about surrogacy in Nigeria and its implication on the process?

THANK YOU!

APPENDIX 6- TRADITIONAL BIRTH ATTENDANT INTERVIEW SCHEDULE



INTERVIEW SCHEDULE:

“A Sociological Medico-Legal Investigation on Surrogacy in Ekiti-State Teaching Hospital, Ekiti State and Oyedeji Ayodele & Co, Abuja.”

BIOGRAPHICAL INFORMATION

11. Oruko?
12. Adape la wujor?
13. Ojo Ori?
14. Obo?
15. Ishe?

TRADITIONAL BIRTH ATTENDANT QUESTIONS

21. Kini agbabi odo omo eni?
22. Tani eni to bay an gbe omo yi?
23. Ba wo ni eshe so oro agbabi odi omo eni ni ilu Nigeria?
24. Ba wo ni eshe so oro agbabi odi omo eni ni pele awan asheda wa gege bi Yoruba?
25. Kilode ti awon eyan loo abeni gbe omo?
26. Kini ipo omo ti afi abagbe ninu idile ni pa ti ogun, ifeni si and abgbe ninu ebi?
27. Ba wo ni oro agbabi odi omo eni ni shey lodi si pipe obirin ninu ishele Yoruba?
28. Ba wo ni eshe asheda ibabanye shey ri agbabi odi omo eni?
29. Shey ishe agbabi je inti oshe shey ni awujo Nigeria gege bi ishe?
30. Ishe agbara wo lon shele larin awon ton lo agbabi, obi omo ati awon oshishe ile iwosan?

APPENDIX 7- GATEKEEPER FROM HOSPITAL

**EKITI STATE UNIVERSITY TEACHING HOSPITAL
ADO-EKITI, NIGERIA.**

ETHICS AND RESEARCH COMMITTEE

CLEARANCE CERTIFICATE

PROTOCOL NUMBER: EKSUTH /A67/2017/05/002

PROJECT TITLE : THE GROWING PRACTICE OF SURROGACY .

INVESTIGATOR(S) : ALABI OLUWATOBI.

SUPERVISOR (S) : DR. MARIAM SEEDAT - KHAN

DEPARTMENT: SOCIOLOGY.

INSTITUTION : UNIVERSITY KWAZULU-NATAL ,232 MAZISI-KUNENE AVENUE ,
DURBAN ,SOUTH AFRICA .

DATE CONSIDERED: 09/05/2017 .

DECISION OF COMMITTEE:

APPROVED

CHAIRMAN: Dr. J.O FADARE

SIGNATURE & DATE: *J.O Fadare*
12/5/17

DECLARATION BY INVESTIGATOR/PRINCIPAL INVESTIGATOR

PROTOCOL NUMBER (Please quote in all enquires) EKSUTH /A67/2017/05/002
*To be completed in three copies and two copies returned to the Secretary; Ethics
and Research Committee, University Teaching Hospital, Ado-Ekiti, Nigeria.*

I/we fully understand the conditions under which I am/we are authorise to
conduct the above-mentioned research and I/we guarantee that I/we will ensure
compliance with these conditions. Should any departure be contemplated from
the research procedure as approved, I/we undertake to resubmit the protocol to
the Ethics and Research Committee.

Signature _____

Date: _____

NB: Any erasure, cancellation or alteration renders this certificate invalid.

APPENDIX 8- GATEKEEPER FROM LEGAL CHAMBER



OYEDEJI AYODELE & CO

(igbayilola Chambers)

SOLICITORS, ADVOCATES AND LEGAL CONSULTANTS

OFFICE ADDRESS:

No. 2, Etang O.
Obuli Crescent,
Off Obafemi Awolowo
way, Jabi - Abuja

TEL: 0805 542 7435, 0809 519 9781
E-mail: igbayilola_solicitors@yahoo.com

Our Ref:..... Your Ref:..... Date:.....

23rd March, 2017

Mr. Oluwatobi Alabi (SN 216072991)
School of Social Sciences,
College of Humanities,
Howard College Campus,
University of Kwazulu-Natal,
Durban, South Africa
Email: seedatm@ukzn.ac.za, damilarealabi40@yahoo.com

Dear Mr. Alabi

RE: PERMISSION TO CONDUCT RESEARCH

Gatekeeper's permission is hereby granted for you to conduct research at **Oyedeji Ayodele & Co. Chamber**, towards your master's studies, provided Ethical clearance and required conditions for field work has been obtained from your institution. We note the title of your research project is: **"the growing practice of surrogacy in Nigeria"**

It is noted that you will be constituting your sample by performing interviews with interested legal professionals in the chamber.

Please ensure that the following appear on your interview guide:

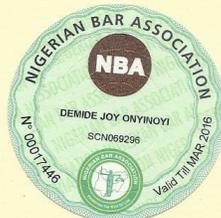
- Ethical clearance number;
- Research title and details of the research, the researcher and the supervisor;
- Consent form is attached to the interview schedule;
- Gatekeepers' approval from the chamber.

Ensure that data collected must be treated with due confidentiality and anonymity.

We look forward to interacting with you and wish you the best in your program.

Yours sincerely

Demide Joy, Esq.
(Counsel in Chamber)



In Chambers: Oyedeji Ayodele Esq. Folorunsho Issac Esq.