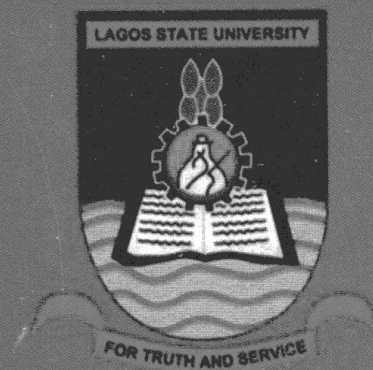


LASU Law Journal



Vol. VIII, Nos. 2 & 3 Dec. 2011/Jan. 2012 LASU LJ 1-213 ISSN 1115-8387

Articles

- i. Tackling Climate Change through Promotion of Transfer of Technology to Developing Countries: The TRIPS Agreement Option
A. A. Adedeji
- ii. Rules of Engagement in Tax Audits and Investigations under the Nigerian Personal Income Tax Act of 2004
M. T. Abdulrazaq
- iii. Relevance of Plea Bargaining in the Administration of Justice System in Nigeria
Oluseyi Olayanju
- iv. Guarding the Seas against Invasive Aquatic Species: Responses of the Law of the Sea Convention
Bose Lawal
- v. Transparency and Accountability in the Supervision of the Nigerian Insurance Industry: A Review of Statutory Provisions
Yeside Abiodun Oyetayo
- vi. Lawful and Ethical Use of the Media: A Veritable Tool for Good Governance in Nigeria
Maurice O. Izunwa
- vii. Introducing the Tort of Wrongful Birth/Life into Nigerian Law: Impact of Section 17(1) of Child Rights Act 2003 on Reproductive Technology
F. A. R. Adeleke
- viii. Remand Proceedings and the Right to Personal Liberty in Nigeria: Revisiting Supreme Court Decision in Lufadeju's Case
A. O. Yekini
- ix. The Law for the Establishment of the Committee for Blood Transfusion and Other Incidental Matters in Lagos State: A Critique
Lateef Ogboye
- x. Intestate Succession under Customary Law in Nigeria: Whither Women Empowerment?
Adetokunbo Animasaun
- xi. An appraisal of the 2008 Ogun State High Court (Civil Procedure) Rules
Olusesan Oliyide & Taiwo Odumosu
- xii. Are Shareholders' Claims Always Subordinated in Corporate Insolvency?
H. Y. Bhadmus
- xiii. An Overview of the Practice of Sharia and its Procedure in Nigeria Courts
Iyasa Ade Bello & Lateef Kelani
- xiv. The Right to Health in Nigeria: Turning Policy to Reality
Omowamiwa Kolawole
- xv. Carnal Knowledge in Sexual Offenses: The Criminal Liability of a Female Procurer
Okey Onunkwo & Ikenga Oraegbunam
- xvi. Forced Incarceration of Children with Convicted Mothers: Africa in Focus
Gbadebo Olagunju & Kevin Mandopi
- xvii. Reading Culture of Nigerian Law School Students: A Model for University Students
Harriet 'Seun Dapo-Asaju
- xviii. Legal Application of *Musharakah* Mode of Finance in Islamic Banking
Olatoye Kareem Adebayo

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Contents

i.	Tackling the Challenges of Climate Change through Promotion of Transfer of Technology to Developing Countries: The TRIPS Agreement Option—A. A. Adedeji.....	5
ii.	Rules of Engagement in Tax Audits and Investigations under the Nigerian Personal Income Tax Act of 2004—M. T. Abdulrazaq.....	18
iii.	The Relevance of Plea Bargaining in the Administration of Justice System in Nigeria—Oluseyi Olayanju.....	35
iv.	Guarding the Seas against Invasive Aquatic Species: Responses of the Law of the Sea Convention—Bose Lawal	46
v.	Transparency and Accountability in the Supervision of the Nigerian Insurance Industry: A Review of Statutory Provisions—Yeside Abiodun Oyetayo	57
vi.	Lawful and Ethical Use of the Media: A Veritable Tool for Good Governance in Nigeria—Maurice O. Izunwa	67
vii.	Introducing the Tort of Wrongful Birth and Wrongful Life into Nigerian Law: The Impact of Section 17(1) of Child Rights Act 2003 on Reproductive Technology—F. A. R. Adeleke	85
viii.	Remand Proceedings and the Right to Personal Liberty in Nigeria: Revisiting Supreme Court Decision in Lufadeju's Case—A. O. Yekini.....	99
ix.	The Law for the Establishment of the Committee for Blood Transfusion and Other Incidental Matters in Lagos State: A Critique—Lateef Ogboye	111
x.	Intestate Succession under Customary Law in Nigeria: Whither Women Empowerment?—Adetokunbo Animasaun.....	122
xi.	An appraisal of the 2008 Ogun State High Court (Civil Procedure) Rules —Olusesan Oliyide & Taiwo Odumosu.....	135
xii.	Are Shareholders' Claims Always Subordinated in Corporate Insolvency?—H. Y. Bhadmus	146
xiii.	An Overview of the Practice of Sharia and its Procedure in Nigeria Courts —Iysa Ade Bello & Lateef Kelani.....	155
xiv.	The Right to Health in Nigeria: Turning Policy to Reality—Omowamiwa Kolawole ...	170
xv.	Carnal Knowledge in Sexual Offenses: Contentious Issues on the Criminal Liability of a Female Procurer—Okey Onunkwo & Ikenga Oraegbunam.....	184
xvi.	Forced Incarceration of Children with Convicted Mothers: Time for a Review of the Practice in International Law: Africa in Focus —Gbadebo Olagunju & Kevin Mandopi	196
xvii.	Reading Culture of Nigerian Law School Students: A Model for University Students—Harriet 'Seun Dapo-Asaju	210
xviii.	Legal Application of Musharakah Mode of Finance in Islamic Banking —Olatoye Kareem Adebayo	218



XVI.

Forced Incarceration of Children with Convicted Mothers: Time for a Review of the Practice in International Law: Africa in Focus

*Gbadebo Olagunju & Kevin Mandopi*¹

1. Introduction

On November 20 1989, the UN Convention on the Rights of the Child (CRC) was opened for signatures and by September 2, 1990, in accordance with Article 49 (1), the Convention entered into force with 140 signatories and 193 parties.² Ten years later, in 1999, 53 African countries gathered together in Addis Ababa, Ethiopia, to sign the African Charter on the Rights and Welfare of the Child (ACRWC).³ Twenty-two years after the CRC entered into force and 13 years after the ACRWC was ratified, many countries are yet to implement the provisions contained in the treaty or the charter. The ACRWC,⁴ under its article 30, advocates for alternatives against confinement of infants and young children with their convicted mothers in prisons. The Convention, as well

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2 Out of these signatories, Ghana was the first to ratify the Convention on 05-02-90 in Africa and indeed the whole world. This was followed by a number of other African countries including Sierra Leone, Egypt, Guinea, Kenya, Senegal, Togo, Benin, Sudan, Gambia, Uganda etc. Then on 19-04-91 Nigeria ratified while Tanzania joined the list on 10-06-91. See *United Nations Treaty Collection*, available at http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en.

3 Out of these 53, 45 ratified and deposited instruments of accession.

4 This instrument was passed by the Organization of African Unity (now African Union) through Resolution CAB/LEG/24.9/49 (1990), which entered into force Nov. 29, 1999.

as the Charter, makes it mandatory that each State party to them should enact law banning infants and young children from incarceration with convicted mothers. However, despite the existence of this law in the statute books of many African countries, they are not strictly enforced, while some countries have simply refused to incorporate it into their laws. Either way, the right of the child in Africa (and indeed the whole world) continues to be violated in this regard, despite the existence of international and regional legal instruments on the subject matter.

The aim of this work therefore is to discuss legal instruments relating to the rights of the child in African countries with a view to examining whether these countries make provisions for the banning of confinement of children (especially those breast-feeding and infants) with convicted mothers in adult prisons. If so, are these provisions strictly enforced or complied with? The paper will focus particularly on four African countries as case studies—Tanzania, Botswana, Ghana, and Nigeria. The term child is used in this article loosely to cover both infants and young children of at least below the age of six years, who are still too tender for adoption or a similar alternative which the State may provide in the event of convicting the mother. This article particularly focuses on Africa, because in this society the concept of taking children away from their parents at young ages (for adoption) is alien to their culture, whereas such practice is rife in Western societies.

Legal Protection of the Child in Africa

Africa has taken steps at protecting the rights of the child by enacting the ACRWC in 1999. According to the Charter, the African child has been experiencing critical conditions “due to the unique factors of their socioeconomic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child’s physical and mental immaturity.”⁵ These conditions have created a necessity whereby the child needs special safeguards and care relating to “health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security.”⁶ The protection of the child’s rights is also aimed at enabling the child to grow up within the family environment, full of happiness and love. Therefore, each Member State comprising the African Union is enjoined to abide by this Charter with a view to protecting the rights of the child in Africa within their countries.

The Charter provides for special treatment to expectant mothers and mothers of infants and young children standing trial or convicted of any offense. According to article 30, titled “Children of Imprisoned Mothers”—

1. States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular:
 - a. ensure that a non-custodial sentence will always be first considered when sentencing such mothers;

⁵ See the preamble to the Charter.

⁶ *Idem.*

- b. establish and promote measures alternative to institutional confinement for the treatment of such mothers;
- c. establish special alternative institutions for holding such mothers;
- d. ensure that a mother shall not be imprisoned with her child;
- e. ensure that a death sentence shall not be imposed on such mothers;
- f. the essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.

The main focus of this paper is article 30 (1) (d), which is to the effect that a mother standing trial or in the event of being convicted, shall not be imprisoned with her child. The argument is even stronger in the event of the child being an infant (and perhaps undergoing breastfeeding) or still very young. The rationale for not imprisoning the mother with her child (particularly if an infant) in prison is to protect the interest of the child.

From both medical and psycho-legal perspectives, a child should be under the care of its mother in a friendly environment. There is no gainsaying the fact that prison is the least of a friendly environment for a child. We therefore argue strongly that mothers—particularly those carrying infants and very young children—should not be sent to prison so as to protect such children from being made prisoners along with their mothers. In protecting a child from being sent to prison alongside its mother, a mother facing conviction may be given the option of non-custodial sentences, or the State may establish special alternative institutions for holding such mothers, as provided for under the Charter above.⁷

An examination of article 14 (1), (2) a–c, e and h will further elucidate the duty placed on States with respect to the particular needs of infants and young children. For example, article 14 (1) states that “every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.” How best can a child enjoy these if imprisoned with his/her convicted mother, or alternatively deprived of being nurtured by the love of his/her mother, as a result of the latter’s imprisonment, is a million-dollar question. That article in paragraph (2) goes further to provide that State Parties “shall undertake to pursue the full implementation of the above right, and in particular shall take measures to reduce infant and child mortality rate; to ensure the provision of necessary medical assistance and healthcare to all children, with emphasis on the development of primary healthcare; to ensure the provision of adequate *nutrition* and safe drinking water; to ensure appropriate healthcare for expectant and nursing mothers; and finally, to ensure that all sectors of the society, in particular, parents, children, community leaders and community workers, are informed and supported in the use of basic knowledge of *child health and nutrition*, the *advantages of breastfeeding*, hygiene and environmental sanitation, and the prevention of domestic and other accidents.”⁸

It is submitted that the duty placed on States here is mandatory, not obligatory. This is supported by the usage of the word “shall” in the provision, as against “may.” The question that arises then is, How can this be achieved where the State decides to

⁷ The African Charter on the Rights and Welfare of the Child, 1999, Article 30 (1) (a) & (c)

⁸ See Article 14 (2) a–c, e and h. Underlining ours for emphasis.

incarcerate infants and children with their convicted mothers? In order that the above may be attained, provision must be made whereby the child remains outside the prison with his/her mother so as to attend to this all-important need.

Because of the mandatory nature of the above provision, it is submitted that each State is required under the Charter to enact a provision within its child rights law to ban or, more appropriately, to suspend the incarceration of any convicted mother still nurturing an infant or a young child. Incarcerating a child with its mother will amount to the abuse of the child's rights under the Charter and the various State laws enacted pursuant to it.

A further look at articles 4 and 5 of the Charter, both of which are concerned with the "best interest" cum "development and survival" of the child, reveals the enormous duty and task placed on State Parties to ensure that all actions taken by any person or authority regarding a child must be in that child's best interest. In fact, "the primary consideration" for taking such action must be in the best interest of the child. Besides this, the inherent right of every child to life must be protected by law, and to this end every State Party must ensure, to the maximum extent possible, the survival, protection and development of the child.⁹

It is argued and submitted here that the "best interest" of a child can only be served if that child is not deprived of his freedom. In other words, the child is not confined with the mother and made to suffer for the offense not committed by him/her.¹⁰ This, taken with article 5 (1) and (2), which makes it mandatory for the State to ensure the survival, protection and development of the child to the maximum extent possible, puts a heavy burden on States to make sure that a child's right concerning his/her growing environment is not only preserved, but adequately guarded and protected. Certainly the survival, protection and development of a child cannot be guaranteed in a confined environment such as a prison, especially given that African prisons are next to nothing but hell.¹¹

3. Legal Protection of the Child at National Level

As at the time of this research, 53 African countries have either signed, ratified and/or acceded to the Charter.¹² As noted earlier, the Charter was adopted in Addis Ababa on July 11, 1990 and entered into force November 29, 1999. It is expected that, 22 years after its adoption and 13 years after coming into force, all State Parties to this all-important Charter will have domesticated it into their laws. Such States are required to have enacted law/s aimed at protecting the rights of the child, including banning any possibility of incarcerating infants and young children with their convicted mothers. This part therefore discusses a child's legal instruments in selected African countries with

⁹ Art. 5 (1) and (2).

¹⁰ See *The Guardian*, "Children in Prison as Mother's Sin Passes onto the Child," July 30, 2012.

¹¹ See *The Guardian*, "Tales From Nigerian Prison You'd Never Heard," Monday, July 30 2012.

¹² These include Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Cape Verde, Chad, Cote d'Ivoire, Comoros, Congo, Djibouti, Democratic Republic of Congo, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea-Bissau, Guinea, Kenya, Libya, Lesotho, Liberia, Madagascar, Mali, Malawi, Mozambique, Mauritania, Mauritius, Namibia, Nigeria, Niger, Rwanda, South Africa, Sahrawi Arab Democratic Republic, Senegal, Seychelles, Sierra Leone, Somalia, Sao Tome & Principe, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

a view at scrutinizing whether these countries have, or are indeed, enforcing the provisions of the Charter dealing with the banning of confinement of infants and young children with convicted mothers in adult prisons.

Tanzania

Tanzania as a State Party to the Charter, has enacted a law protecting the rights of the child. This law is called the Law of the Child Act 2009.¹³ This law, however, does not ban the imprisonment of infants or young children with their convicted mothers. In other words, children are imprisoned with their mothers in adult prisons. This is unjustifiable and we submit that it is an abuse of the right of the child in Tanzania. It is an injustice to the child which is committed by the law itself, intended to protect that same child. It is a violation of the child rights committed by the system meant to protect the rights of persons in Tanzania. The provisos under s.30 of the Charter on the Rights and Welfare of the Child aforementioned were clearly sidetracked and omitted in Tanzanian law. Hence, infants and young children are imprisoned with their mothers with impunity and without due regard to the welfare of the child. We submit that this is patently and manifestly an abuse of the rights of the child in Tanzania. Imprisoning or incarcerating a child with his/her mother shows that the child is not sufficiently protected by the so-called Child Act of Tanzania, and therefore puts a question mark on the entire system of administration of justice in that country.

According to the report of the Commission for Human Rights and Good Governance of Tanzania,¹⁴ there are pregnant women and mothers in prison with their babies, who are still undergoing breastfeeding.¹⁵ The report noted 22 babies with their mothers in various prisons visited and covered by the study. The pregnant women and mothers with their babies were not provided with adequate services such as health service, food, sleeping facilities and recreation services.¹⁶ The report reveals that the 22 children found with their mothers in prison looked like prisoners themselves. They were filthy, dirty and unkempt.¹⁷ According to the report, the children were found in the following prisons, in the following order: 5 in Arusha; 2 in Babati district prison; 4 in Singida district prison; 5 in Isanga prison in Dodoma; 4 in Karanga central prison in Moshi; and 2 in remand prisons in Morogoro.¹⁸

The findings show that some of these children went to prison with their mothers shortly after birth, while others were born right inside the prisons. These children and their mothers sleep on the bare floor while sharing the same accommodation with other fellow prisoners as well. In an interview conducted by these researchers with the members of the Judiciary,¹⁹ infants and young children with their mothers in prisons

¹³ The Law of the Child Act, 2009, Act No. 21 of 2009, Section 144(1).

¹⁴ The Commission for Human Rights and Good Governance is established by the Constitution of the United Republic of Tanzania, Cap. 2 (R.E. 2002), Article 129, 130 & 131, and its operations are governed by the Commission for Human Rights and Good Governance Act. Among others, the Commission has the duty to promote the protection and the preservation of human rights in Tanzania.

¹⁵ Legal and Human Rights Center, "The State of Juvenile Justice in Tanzania: A Fact-Finding Report on Legal and Practical Considerations," Dar-es-Salaam 2003, 9.

¹⁶ *Ibid.*, 8.

¹⁷ Legal and Human Rights Centre, 9.

¹⁸ *Idem.*

¹⁹ The Primary Court Magistrates, Iringa Tanzania.

are not provided with any extra and relevant services other than the ones afforded any ordinary Tanzanian citizen. It is therefore no news that such infants and children sleep on the bare floor with their mothers, in overcrowded prisons. This, we contend, should not be the case in a modern juvenile justice system. This is buttressed by the following argument, similarly canvassed by Save the Children U.K. country program, when it stated as follows:

Women in prison who have children represent a special case that needs to be addressed. This is a complex issue and there is no internationally accepted best practice regarding the question of whether or not children should be kept in detention with their mothers. There are various strands to the argument. On the one hand, children need to be with their mothers in the formative years; on the other hand, prison provides possibly the worst environment for a young child to grow up in.²⁰

Infants and young children who are in prison suffer deprivation for lack of the right services to cater for their welfare and development.²¹ Confining a child in custody for the offense committed by his/her mother amounts to an abuse of the rights of the child in the system of administration of justice.²²

The Commission for Human Rights and Good Governance inspection conducted up to June 2011 found 12 breastfeeding children among the infants in some prisons visited.²³ This speaks volumes and shows that the child is not protected as required under international and regional laws in Tanzania. All that the law prescribes is that the prison authorities should take measures to ensure that the mother who is in prison with her child receives the required child care in the form of adequate diet, nutrition, child health care, and immunization.²⁴ As noted by the Commission, this is not provided, however, to the child for lack of finances and usually no provision made for such in the prison budget, a situation which makes the condition of these children and their mothers in prison to be poor and deplorable.²⁵

The law in Tanzania requires the child to live with his/her mother in prison, at least until it stops breastfeeding. In such occasions, the prison authorities should inform the district social welfare officer about the child.²⁶ Such information is conveyed with a view of determining the most suitable place for the child.²⁷ The district social welfare officer has to look for such a good place from any of the following: the parent who is not in prison, a relative, a guardian, or a fit person. Where the social welfare officer finds that such places are not good for the child, he has an option of causing the

20 Save the Children U.K., *Juvenile Justice: Modern Concepts of Working with Children in Conflict with the Law*, London 2004, 50 available online at http://www.essex.ac.uk/armedcon/story_id/save_jj_modern_concepts.pdf.

21 See Commission for Human Rights and Good Governance, 34.

22 Save the Children U.K., 50.

23 Commission for Human Rights and Good Governance, 34.

24 See S.144(1), The Law of the Child Act, 2009, Act No. 21 of 2009.

25 The Commission for Human Rights and Good Governance, 34.

26 S.144(2).

27 *Ibid.*, s.144(3).

child to be admitted in an approved residential home until such a time when the mother is discharged from prison.²⁸

It is submitted that the above provision which separates the child from the mother, in an effort not to keep the child in prison, violates the sacrosanct principle of the Marriage Act, which states that a child who is under the age of seven years ought to live with its mother.²⁹ This means that even such decision is not in the best interest of the child. The best decision in the “best interest” of the child would have been that the pregnant mother or a mother with an infant baby be subjected to sentences under article 30 aforementioned, for the sake of the welfare of the child.³⁰

We also hereby argue that abiding by the principle of the “best interest” of the child means that a convicted mother who has a child should be provided with the parole orders through the Parole Boards Act in Tanzania.³¹ The parole authorities should take initiative action to remove the child from prison with a view of providing the child with the best-interest rights as required under the law. Where the mother of the child has been brought to court while pregnant, or the child is an infant, the court should take into account such condition, and only impose on the offender the non-custodial sentences on the mother when found guilty of the offense charged. In such circumstances, the child would be protected from the harmful prison conditions.

Botswana

Botswana has the Children’s Act 2009³² which generally protects the rights of the child in that country. The law confers the primary responsibility to care and protect the child under the hands of the biological parents.³³ In this regard the parent is duty-bound to ensure that the basis of every decision and action he or she takes concerning the child is in the child’s best interests,³⁴ including doing all such other things as are necessary to ensure the good health, safety, educational development and general well-being of the child.³⁵

The above notwithstanding, Botswana has not in, its Children’s Act, made enough provisions for special treatment of expectant mothers and infants. The law altogether does not ensure that a child shall not be imprisoned with its mother. This is a contravention of the ACRWC and amounts to the abuse of the rights of the child in Botswana. In fact, in the whole of the Act, the only provision found similar to Art. 30 of the ACRWC is s.64 (1), which provides:

Where a parent, other relative or guardian, or other person having custody of a child, is convicted under this Act, a social worker shall, within 14 days of such conviction, apply to a Children’s Court for an order to place the child into alternative care.

28 *Idem.*

29 The Law of Marriage Act, Cap. 29 (R.E. 2002), s.125(3); Law of the Child Act 2009, s.25(2).

30 The Law of the Child Act, s.4(2).

31 The Parole Boards Act, Cap. 400 (R.E 2002) of The Laws of Tanzania.

32 Act No. 8, 2009.

33 The Children’s Act, s.27(1).

34 *Ibid.*, s.27(4)(a).

35 *Ibid.*, s.27(4)(a)& (j).

We submit that this provision is very narrow in scope. It only speaks of conviction of a parent or others in custody of a child under the Act. What of conviction of such persons under other acts and penal laws. In such instance, what becomes of the fate of the child under their care? In this regard the provision is a far cry from what article 30 of the ACRWC intends to achieve. Ironically, ss.82–90 of the Act deals extensively with the charging, conviction and imprisonment of a child except that in cases of murder, a child cannot be sentenced to death.³⁶

In order for the rights of the child to be properly protected in Botswana therefore, we urge the State to fully incorporate in its Children's Act 2009 provision banning imprisoning mothers who carry infants and/or nurturing young children. This, it is submitted, will be in the "best interest" of the child in accordance with the Charter.

Ghana

The Republic of Ghana is a signatory to the ACRWC. This country has the Children's Act 1998.³⁷ This act is very comprehensive and requires the child to grow up with the parents in a caring and peaceful environment. This environment should not be harmful to the child, and should not subject the child to any form of abuse. Such environment should always take into account the "best interest" of the child.³⁸

Ironically, Ghana, which was the first to ratify the CRC, from which ACRWC took its cue, does not make provision for children of imprisoned mothers, like article 30 of the ACRWC. It may be argued that the environment alluded to in the Children's Act means a conducive and friendly environment. This definitely cannot include the prison walls. In order to achieve its set goals, the Children's Act should incorporate in its law article 30 of the ACRWC and ban the imprisonment of infants/young children with their convicted mothers. This will go a long way in protecting the rights of the child in Ghana.

Nigeria

The Child's Rights Act was passed in Nigeria in 2003 as a federal enactment.³⁹ The Act, a follow-up to the CRC and the ACRWC, is divided into 24 parts and 11 schedules, with the various parts highlighting to some extent in details the rights and responsibilities, protection and welfare of children, duties and responsibilities of government, institutions for children, and other miscellaneous matters. The attached schedules deal with rules, regulations, procedures and specified forms in relations to certain provisions of the act. Part I (ss.1 and 2) provides, *inter alia*, that the "best interest" of the child shall be the primary and paramount consideration in all actions to be taken, whether by individual, public or private body, institutions, courts of law, administrative or legislative authority. Part II (ss.3–20) provides for the child's rights to survival and development; to be given a name; to freedom of association and peaceful assembly; freedom of thought, conscience and religion; to private and family life; freedom of movement; freedom from discrimination; dignity of the child; health and healthcare services, etc. Part III (ss.21–40) prohibits child marriage; child betrothal; infliction of marks or tattoos on

³⁶ See s.82 (2)

³⁷ This law was assented to on December 30, 1998.

³⁸ The Children's Act 1998, s.5.

³⁹ Nigeria is a federal republic with 36 states, so the federal enactment is not binding on the states. Each state is still expected to enact its own Child Rights Law. As at today, not all the states have the Law, just only about 15 have adopted the law.

children; using of children for drug production and/or trafficking/abuse; criminal activity; child labor; sexual intercourse and other forms of sexual abuse; and exploitation prejudicial to the welfare of the child. Part IV (ss.41–49) deals with civil and welfare proceedings concerning the child. In Part V (ss. 50–52), the protection of children in need of care and physical or moral danger are addressed. Part VI (ss.53–62) provides for the making and supervision orders concerned with placing children in care and supervision of designated persons, authority and state governments, for the purpose of safeguarding and promoting the welfare of the child, where the need arises. Part VII (ss.63–67) deals with use of scientific test in determining the paternity or maternity of a child, where that is in contention. This includes blood tests and DNA tests to ascertain whether a person is the father or mother of a child in any civil proceedings before a court. Part VIII (ss.68–81) addresses issues relating to possession and custody of children. Issues such as parental responsibilities and the acquisition of parental/quasi-parental authority are covered therein. Parts IX, X, XI (ss.82–148) deal comprehensively with issues pertaining to guardianship, wardship, fostering and adoption of children. Parts XII–XIX (ss.149–203) make provision regarding the establishment of family court, child minding, daycare center and allied homes. Part XX (ss.204–238) deals with child justice administration, which replaces the Juvenile Justice System hitherto in application in the country. Under this new system the subjection of any child to the criminal justice process is prohibited, due process is guaranteed to any child subjected to the Child Justice System, right through investigation, adjudication, to the disposal of the case. The provision of the part prohibits the use of capital punishment, imprisonment or corporal punishment for children. By extension, the provision of this part also prohibits the use of death penalty for expectant and nursing mothers. Of particular importance to this research is s.221 titled “Restriction on Punishment,” which incorporates and is closely related to s.30 of the ACRWC under consideration. The section provides:

1. No child shall be ordered to be—
 - a. imprisoned; or
 - b. subjected to corporal punishment; or
 - c. subjected to the death penalty or have the death penalty recorded against him.
2. No expectant mother or nursing mother shall be subjected to the death penalty or have the death penalty recorded against her.
3. A court shall, on sentencing an expectant or nursing mother, consider the imposition of a non-institutional sentence as an alternative measure to imprisonment.
4. When institutional sentence is mandatory or desirable, an expectant or nursing mother shall be committed to and be held or detained at a Special Mothers Center.⁴⁰
5. No mother and child shall be held or detained at a Special Mothers Center for a period longer than the time the child would have attained the age of six years.

⁴⁰ Italics for emphasis.

Part XXIII (ss.260–271) makes provision for the establishment, membership and functions of Child Rights Implementation Committees at various levels from the national, through the states and local government. Finally part XIV (ss.272–279) deals with miscellaneous matters such as service of documents, the supremacy of the act over all other enactments dealing with children's rights in the country, interpretation and citation of the act, and the schedules.

Even though s.221 replicates the provisions of article 30 of the ACRWC, it is observed that the rights of the child are still largely violated in this regard. In Nigeria, expectant and nursing mothers are still imprisoned and detained without due regard to the provisions of s.221 (3) and (4), which prohibits such action. In line with s.221 (4), we fail to find any "Special Mothers Center" anywhere in Nigeria, except if that is located within the prison walls. In fact, the only prison facility for women in Nigeria is the Kirikiri Female Prisons, located in Lagos. The following story from *The Guardian* reflects what goes on in Nigeria in this regard:

It is a heart-rending story. Many female prisoners now have the misfortune of raising their children in the midst of hardened criminals, accused prostitutes, persons on death row and others jailed for various felonies. And the children are innocent. Some of the female prisoners at the Kirikiri Female Prisons . . . the only specialized facility for women in the country, want the government to save children born behind bars. In a three-month-long investigation of the ordeal of women who went into prisons with pregnancy or became pregnant while serving their terms, *The Guardian* learned the shocking truth about being born in the "manger." Psychologists and medical doctors say that babies raised by mothers behind bars will constantly find it hard to live normal lives. Two female convicts who are serving six-month sentences each for child abuse with an 11-month-old and nine-month-old babies each at Kirikiri, appealed to the government to consider alternate forms of punishment for those involved in cases that can be considered as "medium or minimum degree" offenses while nursing. They claim that the prisons are not equipped to handle babies and so women with babies should be pardoned or punished in a different way. On the other hand, the mother of the 11-month-old places more emphasis on the psychological ramifications of a mother and child in prison. "When the government knows that the prisons is (sic) ill-equipped to handle children, why should they imprison us together? Have they never heard of community service? If we are to tell the truth, does this demeaning experience reform or harden us the more?" A lawyer, Mrs. Bisi Ajayi-Kayode, who has been reaching out to women prisoners and done some studies on their situation, subscribed to the two women's argument. Mrs. Amoiho Isi, who was once in prison for three months on a case of mistaken identity and now runs an NGO that specializes on prisoners, says: "From experience, I know that virtually everything is poor in the prisons—the food, treatment from wardens, welfare, name it." Pediatrician Yemi Gbenro, says that the harsh punitive environment of prisons can permanently damage the psychological and mental wellbeing of children. "This is why you find children in this category having consistently recurring cases of psychological problems. including depression, aggressive behavior, regression, sleeping problems, eating problems, running away, truancy, poor school grades and delinquency." But the

public relations officer of the Nigeria Prisons Service, Chuks Njoku, disagrees that Nigerian prisons are worse than others in the world. On medical care for pregnant women, nursing mothers and infants in prisons, he disagrees with the claims of the inmates. Njoku says that the prison system has several doctors in its employment who draw up a dietary chart for pregnant women and nursing mothers and this is what they are fed.⁴¹

To say the least, the PRO's defense can only be taken with a pinch of salt. Even for those outside the prison walls, how many people in Nigeria receive adequate medical care, let alone those behind bars? Besides, there is a big hole in the assertion that "dietary chart" is drawn up for "pregnant women and nursing mothers and this is what they are fed." This is sheer hypocrisy and an attempt to defend the indefensible.

In "Tales from Nigerian Prisons you'd never heard," Abimbola Thomas conducted several investigations on women behind bars in Nigeria and this is one of them:

Joy James is in her mid-20s. She never imagined that a short fainting spell would land her in prison. With a "good job" as a chef in highbrow Ikoyi, Lagos, Joy's joy was full as she enjoyed all the perks that come with working for a top expatriate banker. On the domestic front, she had not only moved into her own apartment, there was a man in her life and they were madly in love. To crown it all, Joy was pregnant with their first child. But Joy's joy came to a brutal end a few months ago when, after a hard day's work, she decided to withdraw some money at the bank, which was intended for buying drugs. Feeling faint, she stopped to rest on the side of the road. "A little boy came to ask if I was okay, and before I knew it, a crowd had gathered. Next thing I knew, I landed in court where I was accused of attempted kidnapping." Joy, who was seven months pregnant then, is now an inmate at the 184-women-strong Kirikiri Prisons. Technically, she is not a convict; she is one of the 154 inmates awaiting trial behind the high walls of Kirikiri. To a first-time visitor, the prisons building could be any structure housing any fellowship meeting. The enthusiastic clapping and singing of praise-and-worship songs was with the kind of fervor that would motivate any Christian gathering. Joy, *The Guardian*, a small group of church fellowship and other inmates, were into deep praise-singing and dancing at the prisons that Sunday afternoon in May. To the uninitiated, these women inmates could be mistaken for any other religious gathering of the dark and fair-skinned, tall, young, slim and old. But some of their tales locked in their hearts are unmistakably pathetic. While the fellowship lasted, they were radiant and cheerful, but the moment it ended, they returned to regimented solitude, telling heart-moving stories in some cases. After the day's fellowship, Joy bemoaned fate's cruelty to her. The father of her unborn child had run away since her ordeal began. Efforts to reach him by telephone or through emissaries yielded no positive result. Her employer she regarded as her new family, did not only fail to render any assistance to her, but denied knowing her. Joy's bail was set at N25,000 but her family could not raise the amount. If she could be let out on bail, Joy reasoned that she would be able to take care of herself and eat a balanced diet so that the unborn child

⁴¹ See *The Guardian*, available online at http://www.ngrguardiannews.com/index.php?option=com_content&view=article&id=93894:children-in-prison-as-mothers-sin-passes-onto-the-child-&catid=1:national&Itemid=559.

would then survive. The food they are served "is most times inedible, with no extra nutrition from things like fruits and vegetables," she said. As she tells it, apart from the food, the sleeping condition is horrible, while access to good antenatal services, scan and other essential services during pregnancy do not exist. "Sometimes, when my case comes up in court, the warden asks for money to fuel the vehicle and since I have no money, there is nothing I can do but remain here and pray."⁴²

The investigation went further:

Practicing psychologist Robinson Okosun believes that the act of incarcerating a child with the mother only creates a new generation of criminals. While he agrees that the intention of not wanting to separate a mother and child is good, the effect, though, is far from good because this creates a taint that will affect the child for life. "When the child grows up, it will affect his self-esteem. His identity will be distorted by the fact that he has had a taste of prison, especially if he was born while the mother was there. His friends in school will tease him about it and he will want to question what led the mother to prison. Nightmares might begin and he will have problems mixing with his peers. Even if he is intelligent, his dignity is robbed to an extent and his work rate will be affected."

Okosun further stresses that the child's performance in life's affairs will be faced with several mental challenges, which will lead to something similar to a split-personality disorder, with positive and negative sides. If not well-managed, a confused thinking emerges and stress levels heighten in him. A bid to escape this confusion could push this individual to criminal elements. Traits like drinking, drug abuse and heavy smoking could emerge. As he matures, a need for therapy to reintegrate him into society is needful. "A comment by a friend could knock back a process that took a long time to build. Wayward people will welcome him, and before you know it, we'll see a new generation of a human being pushed to criminal behavior from the troubles that arose in the mind by being born in prison. While the intentions are genuine for not wanting to separate a mother and child, the resultant effect can be disastrous. I will say that women in pregnancy or with children should be punished in other ways rather than incarceration with the child. If the offense is so terrible that no alternative can be sought, then, the child should be taken from the woman. Children in prison should be seriously discouraged, the psychological implications can be very harmful," he said.⁴³

In 2008, Amnesty International claimed that somewhere over 300 babies are in Nigerian prisons. Even though this claim was debunked by the then Minister of Internal Affairs, whose ministry was in charge of prisons, he still admitted that children are found within the prison walls. This was contained in a letter sent to his Justice Ministry counterpart that year, which reads in part:

⁴² See http://guardiannewsngr.com/index.php?option=com_content&view=article&id=93842:tales-from-nigerian-prisons-you-d-never-heard-&catid=72:focus&Itemid=598.

⁴³ Abimbola Thomas.

1. My attention has been drawn to the series of publications to the effect that there are over 300 babies in the Nigerian Prisons Service. Some of these publications even sarcastically allude that the babies were made by females in custody with the connivance of prisons staff. I was disturbed by these publications because I know, as the supervising Minister of the Nigerian Prisons Service, that these stories are false.
2. Well inasmuch as I do not know the source of your information, I do feel that it is my duty to give you the actual figure of babies in the Prisons. Besides, it is also my duty to state how these babies come about.
3. To put the records straight, there are only 19 babies in the 227 prisons nationwide. One of the babies was born by a convict while 8 were born by unconvicted inmates. The remaining 10 were brought to the prison with their convicted or remanded mothers
4. The truth is that babies could be born in the prison if a female being pregnant is convicted/remanded, or a nursing mother whose child is less than 18 months old, is convicted or remanded in the prisons. This is so because by law Prisons Officers are duty-bound to keep the woman and her baby until the child is 18 months old. It is when the child is 18 months that arrangements are made to get the relations of the woman to take the baby away. Arrangements could also be made for temporary adoption through foster by faith-based organizations if no relations of the woman come forward to claim the baby. On the other hand, a pregnant woman convicted or remanded in custody could be delivered of a baby if she stays long enough to get to her delivery period. When this time comes, the Prisons Medical and Social Welfare officers come together to ensure that the woman is delivered of her baby safely.
5. In both instances, it is the local prison staff in collaboration with NGOs and other faith-based agencies that take care of the new babies. This is because the prison regulations do not provide for babies in custody, even up to this day. Amnesty International observed this development in the prisons and commended local prisons staff for their extraordinary assistance to babies and their mothers in prisons. They were however quick to point out that in their tours of the prisons they did not see the huge number of babies they heard of.⁴⁴

The question is, even if we agree that the 300 figure quoted was outrageous as the minister sought to allege, is 19 or any number which he asserted justifiable at all? Has the situation changed even today, four years later, with respect to infants and young children kept in Nigerian prisons with their mothers, whether in their hundreds or units? The answer is no. Infants and young children are still imprisoned with their incarcerated mothers in Nigeria, and this is against article 30 of the ACRWC and s.221 of the Nigerian CRA.

⁴⁴ *The Reformer* (a publication of the Nigeria Prisons Service), Vol. 2, No. 5, "Babies in Prisons: Minister Reacts," 16.

Conclusion

Despite the fact that a number of African countries are signatories to the African Charter on the Rights and Welfare of the Child, most have failed to accord their laws in line with the Charter. In order to correct this anomaly and save African children from prison abuses, African countries should as a matter of necessity incorporate article 30 in their various child rights laws, like what is already done in Nigeria. However, incorporating the provision is not enough. They must also ensure that they enforce the provision after it has been incorporated.

Courts handling cases involving pregnant women and nursing mothers must always carefully take into consideration the peculiar case of the family structure in Africa, which prefers children to stay close to their parents (especially their mothers), rather than being adopted or fostered, as is usually the case in Western societies. Because of the extended-family system in Africa, fostering and adoption is alien to us. It was merely imported into our system because of our inherited laws from the colonialism. Now that Africa is free from the shackles of colonialism, our courts must free their minds in dispensing justice so as to let their dispensation suit our environment. We believe this is why article 30 of the ACRWC laid particular emphasis on non-custodial sentence and alternatives to institutional sentence, so that a child will not be removed from the mother at any point in time. even while serving her term. ⚖️