

## MORAL AND PSYCHOLOGICAL FILICIDE: EXAMINING THE CONSEQUENCES AND THE RIGHTS OF NIGERIAN CHILDREN LIVING WITH THEIR MOTHERS IN BROTHELS AND PRISONS<sup>1</sup>

### **Abstract**

*Children are like 'Mary's Lamb'.<sup>2</sup> Generally, they follow and can be found at the abode of their mother. Ordinarily, this celestially ordained filial relationship ought to be treated as sacred and should not be severed on flimsy grounds. However, there are instances that would make it anathema to the welfare of a child for him or her to reside with the mother as it could negatively affect the whole of the personality of the child presently and in the future. Such instances include where a child lives with his or her mother in a prison yard, a brothel or any other place that is not conducive for the nurturing of a child. Such situations constitute child abuse<sup>3</sup> and could also amount to filicide<sup>4</sup> though in a moral and psychological sense. It is the examination of the consequences of such habitation and the rights of children in this situation that forms the theme of this paper.*

**Keywords:** *Filicide, Morality and Psychology, Rights of Nigerian Child, Brothels, Prisons*

### **1. Introduction: Prostitution in Nigeria**

'The term 'prostitution' is defined as providing sexual services in exchange for money or other material goods. By its nature, it is an activity that makes women vulnerable to pregnancy and maternity'.<sup>5</sup> In Nigeria, Prostitution and the keeping of a Brothel are offences.<sup>6</sup> In a bid to tackle the menace of prostitution in the Country, the Deputy Senate President of Nigeria, Senator Ike Ekweremadu is quoted to have said that 'it has become impossible to stop prostitution in the land; the Senate should consider regulating the act in the country'.<sup>7</sup> Naturally, Nigerians reacted to this call which was mostly in opposition to the view expressed by the Senator. One of those that expressed his view argued that if 'poverty and trafficking in persons is alleviated, prostitution would become history in Nigeria as Nigerians are naturally well-cultured people'.<sup>8</sup> Others say that 'the issue of prostitution is a serious issue. However, if the Nigerian Senate can make legislations that will improve the welfare of poor Nigerians, the issue of prostitution will be reduced to the barest minimum. In a society where there is no good hospital, employment opportunity or social infrastructure and where poverty level is over 300%, how will you expect a family to reject the gains from anti-social activities when it is offered to them? It is time our legislators start being more focused on things that will improve the welfare of Nigerians rather than wasting time on frivolous issues'.<sup>9</sup> Likewise, a concerned Nigerian called for

<sup>1</sup> By T.A YUSUF, LL.B (Hons), (Unilorin), LL.M (Ife), Senior Lecturer, Nigerian Law School, Kano Campus, Nigeria. taofikyusuf@yahoo.co.uk

<sup>2</sup> A popular Nursery rhyme about a girl whose pet (a Lamb) follows her every where she goes.

<sup>3</sup> Child abuse means an act or failure to act that presents an imminent risk of serious harm to a child. Black's Law Dictionary (Ninth Edition) Bryan A. Garner (U.S.A) 11.

<sup>4</sup> One who kills his child or the act of killing one's child. *The New International Webster's Comprehensive Dictionary of the English Language*, Standard International Media Holdings 2013 edition (USA) 473.

<sup>5</sup> Ana-Maria Mandiuc: The impact of a prostitute mother on the child life circumstances; *European Journal of Research on Education*, <http://iassr.org/journal> 2013(c) EJRE published by International Association of Social Science Research – Research – IASSR accessed on 3/03/ 2017.

<sup>6</sup> For example, section 142 and 143 of the Criminal Law of Lagos State, 2011.

<sup>7</sup> Abdul-Rahman Abubakar: 'Ekweremadu asks Senate to legalise prostitution', *Daily Trust Newspaper*, (Abuja, Wednesday, October 5, 2011) 3.

<sup>8</sup> Jafar Abubakar, [jaaf0810@gmail.com](mailto:jaaf0810@gmail.com), Online Reactions: 'Ekweremadu asks Senate to legalise prostitution', *Daily Trust Newspaper*, (Abuja, Thursday, October 6, 2011) 28.

<sup>9</sup> Muazu Dikwa, [dikwa2003@yahoo.com](mailto:dikwa2003@yahoo.com), Online Reactions: 'Ekweremadu asks Senate to legalise prostitution', *Daily Trust Newspaper*, (Abuja, Thursday, October 6, 2011) 28.

caution. She says prostitution is an easy way out and that if anyone wants to ruin her life; the National Assembly should not aid her. She maintained that those who engage in prostitution are those who do not want to use their God given talent to do something meaningful.<sup>10</sup>

The Daily Trust Newspaper in its editorial opined on the call for regulation of prostitution in the country thus:

Reactions and comments from the Nigerian public, largely negative, have continued to trail Senator Ekweremadu's proposal. Believing that no culture in Nigeria celebrates prostitution, Nigerians continue to express disappointment over the strange cure for tackling the seemingly intractable challenge of man's oldest trade. Nigerians are surprised that the proposal which is not only unhealthy but also un-African came from the Deputy Senate President of the Federal Republic of Nigeria, a highly placed public officer who makes laws for the country. The moral responsibility placed upon Senator Ekweremadu by his respectable office makes him a personality from whom such a position is least expected. Nigerians are aware of countries including Holland where prostitution has been legalized. However, such is not good enough to justify the call for its legalization in Nigeria. Prostitution is a debasement of the womanhood, and any attempt to legalize it would amount to undermining our values. While we recognize and appreciate the fact that factors which compel some of those who profess this trade are largely socio-economic, prostitution should be the last thing a lawmaker would wish a citizen to do for a living. Our leaders ought to realize that abandoning our values cannot provide any workable solution to the evils bedeviling the Nigerian society. It may only complicate them. The claim by Senator Mark that the FCT administration has been facing stiff resistance in the attempt to stop prostitution in Abuja is not a reasonable argument for defending Senator Ekweremadu's proposal. If the only reason for his argument is that prostitution has remained intractable, why then have the lawmakers not enacted laws to legalize corruption, smuggling, robbery, rape, murder and drug trafficking since each of these is no less challenging than prostitution in Nigeria?<sup>11</sup>

The upshot of the above is that even though Prostitution may have become endemic in the Nigerian Society and practitioners and patrons alike do it overtly or covertly<sup>12</sup>, Nigerians as a people do not subscribe to it.

## **2. The Nexus between the Brothel and the Prison Yard**

There is a direct correlation between a Brothel and a Prison yard with regards to the theme of this paper. The residence and place of business of Prostitutes also known as commercial sex workers is called a Brothel. As has been stated above, commercial sex practice in Nigeria is an offence and those that engage in it may find themselves in prison whether as awaiting trial inmates or convicts. A brothel is also a place where other types of crimes do occur frequently like brawls, pimping etc which could also lead this category of people into the prison yard. Some of these women then go to their prison custodial

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<sup>10</sup> Femi Akinola: 'Don't legalize prostitution, Fashola's wife warns', *Daily Trust Newspaper*, (Abuja, Wednesday, October 12, 2011) 12.

<sup>11</sup> Editorial: 'Let prostitution remain illegal', *Daily Trust Newspaper*, (Abuja, Wednesday, October 12, 2011) 28.

<sup>12</sup> In Nigeria, there are terms like 'Runs girls' and 'Aristotle' or 'Uncles'. Runs girls are scarlet young women on Nigerian campuses of higher learning or the like that engage in sex for money and Aristotles are their patrons who are mostly rich and powerful men of repute in the society.

residence with their children who are mostly the offspring of their professional activities. We must quickly point out at this juncture that other women aside from commercial sex workers could also find themselves in prison with their children for crimes not connected with prostitution. Ordinarily, a child not being a prisoner ought not to be admitted into prison custody. However, the law while prohibiting the admittance into prison of anyone not being a prisoner provides that the child of a female prisoner may be admitted into a prison with its mother if it is at the breast and less than eighteen months old.<sup>13</sup> As an allusion, in Kenya, ‘an infant of a female prisoner may be received into prison with her mother and may be supplied with clothing and necessities at public expense’.<sup>14</sup> The above is to show how a child born outside the prison yard could find him or herself in prison custody.

### **3. When an Inmate is found to be Pregnant or becomes Pregnant while in Prison Custody**

It is a notorious fact that women do conceive while in prison custody. Our research into the Prison Regulations does not reveal any right of conjugal visit and prison regulations provide that male and female prisoners should be confined in separate parts of the prison.<sup>15</sup> So how then does a woman who was not pregnant as at the time she was remanded in prison custody become pregnant while in incarceration? It would appear that there is complicity on the part of Prison Authorities and personnel in this regard. The Administration of Criminal Justice Act, 2015, provides that where a woman found guilty of a capital offence is pregnant, the sentence of death shall be passed on her but its execution shall be suspended until the baby is delivered and weaned.<sup>16</sup> Where a woman convicted of an offence punishable with death alleges that she is pregnant, the court shall, before sentence is passed on her, determine the question whether or not she is pregnant. The question whether the woman is pregnant or not shall be determined by the court on such evidence as may be presented to the court by the woman or on her behalf or by the prosecutor. Where in proceedings under this section the court finds that the woman in question is not pregnant, the court shall pronounce sentence of death upon her. Where in the proceedings under this section, the court finds the woman in question to be pregnant; the court shall sentence her to death subject to the provision of section 404 of this Act.<sup>17</sup>

However, the Criminal Procedure Code (CPC) applicable in the states of the former northern region of Nigeria provides that if a woman sentenced to death is subsequently alleged to be pregnant the Provincial Commissioner of the province in which she is detained shall report such allegation to the Minister who shall thereupon order the sentence of death to be postponed until a medical officer to be appointed in writing by the Minister has determined whether or not the woman is pregnant, and made a report in writing of his finding to the Minister.<sup>18</sup> If the Minister decides to recommend to the Governor that he should exercise a power referred to in section 295 (i.e. Recommendation of pardon or reprieve.), he shall forthwith communicate such decision to the Governor. When the Governor exercises such a

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<sup>13</sup> Regulation 2 of the Prison Regulations made pursuant to the Prison Act, 1972, provides that ‘No person may be admitted into a prison unless accompanied by a warrant of arrest, a warrant or order of detention, or a warrant of conviction or commitment; and the superintendent shall verify that the prisoner is the person named in the warrant or order, that the crime, sentence, and date of conviction are recorded therein, and that the warrant or order bears the signature of the proper authority: Provided always that the child of a female prisoner may be admitted into a prison with its mother if it is at the breast and less than eighteen months old.

<sup>14</sup> Cap 63 of the Kenyan Prisons Standing Orders cited in Vincent Achuka: ‘*Victims of fate: The sorry plight of children jailed with their mothers*’, Saturday, June 25, 2016, [www.nation.co.ke/news/sorry-plight-of-children](http://www.nation.co.ke/news/sorry-plight-of-children), accessed on 2/03/2017 at 10.52am.

<sup>15</sup> Regulation 15, Prison Regulation.

<sup>16</sup> Section 404 of the Administration of Criminal Justice Act (ACJA), 2015. Section 2 of this Act makes it applicable to all criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja but does not apply to a Court Martial.

<sup>17</sup> Section 415 of the Administration of Criminal Justice Act (ACJA), 2015.

<sup>18</sup> Section 300 CPC.

power he shall issue an order, which shall be countersigned by the Minister, directing that the execution be not proceeded with, and, as the case may be, that the convicted person be released, or that she be imprisoned for such a term as may be specified in the order subject to any condition as may be specified therein. The Minister shall send to the superintendent or other officer in charge of the prison in which the convicted person is confined a copy of any order issued the Governor in accordance with the provisions of this section. The Superintendent or other officer in charge of the prison in which the convicted person is confined shall comply with and give effect to every such order sent to him under the provisions of this section.<sup>19</sup> The above provisions of the Criminal Procedure Code are in line with the provisions of the Prison Regulations. Regulation 71 thereof provides that ‘In the event of pregnancy being declared in the case of a female prisoner sentenced to capital punishment that fact, as certified by the medical officer, is at once to be reported to the President through the Minister or, for orders, and the execution of the criminal shall be stayed pending receipt of those orders’.

#### **4. Effects on a Child Living in a Brothel or Prison**

A woman could become pregnant in the course of her practice as a commercial sex worker, give birth to the child and continue residing with him or her in a Brothel. She could also take up residence in a Brothel with a child she has given birth to already. Some children living under this condition may have to be separated from their mothers for proper care by relatives and well wishers. However, this is against the promotion of family life which is enjoined by the Constitution.<sup>20</sup> Also commercial sex workers tend to move frequently from place to place because patronage is fueled by the desire for ‘new faces’ and that desire is quenched by satiation. In order to remain in profitable business, they have to move to new places as new faces and since the child has to move frequently with the mother he or she would find it difficult to make enduring and lasting friendships with children of his age grade.

Ana-Maria Mandiuc<sup>21</sup> contributes towards the discourse thus:

...three of them perceived as incompatible the roles of mother and woman practicing prostitution, which negatively affected self-esteem, generating shame and a desire to stop the practice’ ...a living environment characterized by poor conditions, inadequate for child development. The reports show that this is due to reduced earning obtained by practicing prostitution, but also to the directing incomes to cover adult vices: cigarettes, alcohol, drugs... In terms of mothers, as well, experts bring to attention the arrangement which mother make for entrusting the child when they are on the street. From this perspective, more often such arrangement are perceived as being unsafe for children and causing various risks to the child safety...Prostitution is concerned by experts as having the potential to lead to the separation of children from their families by the mother’s imprisonment, abandonment of children, for long periods, under the care of the extended family or by mother’s death in contexts related to prostitution. Also experts believe prostitution entails the risk of unrecognized paternity of the child born in such a context. According to experts, the mother practicing prostitution has no direct influence on the educational process of the child, but rather the educational level of the mother can influence the education that the child receives. Socialization of children with prostitute mothers is seen as a negative factor in the development of the child’s personality. She satisfies the primary needs of the child. The child does not

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<sup>19</sup> Section 301 (1) – (4) CPC.

<sup>20</sup> Section 17(3) (h) CFRN, 1999 which provides that ‘The State shall direct its policy towards ensuring that the evolution and promotion of family life is encouraged’.

<sup>21</sup> *Op.cit.*

socialize anywhere, not even the mall, for instance. She/he socializes with other prostitute's children. This is their environment. Experts identify the risk of discrimination and marginalization of children by society due to the expansion of the stigma to the child, applied by society to the prostitute mother. On a long term, experts predict that girls will become prostitutes and boys will become abusers, rapists, pimps, felons, due to the model that the mother provides and the normalization of this occupation by the people from the social environment of the child.<sup>22</sup>

As have been stated at the outset, the residence in a Brothel could transmute in to habitation in Prison custody. This could arise from the mother be arrested and remanded for the offence of prostitution or other offences and circumstances could compel her to take along her child. The adverse effects of residing in prison custody with the mother on a child are no better than residing in a Brothel. However, there is the added negative effect of restriction to the freedom of movement on the child and the imbibing consciously or unconsciously of criminal traits by his or interaction with criminals. There is also the restriction to access to good education/schools. The Vanguard Newspaper<sup>23</sup> in its Law and Human Rights column reports that:

...it is an anomaly for children to be incarcerated alongside their mothers in unsanitary conditions given the deplorable and unhygienic conditions of detention facilities in Nigerian prisons. These children are at best denied the chances of having a normal childhood with no provision by the government to ensure that those within school age have access to education. Although it is generally argued that most infants accompany their mother to the prisons because it is not advisable to separate a sucking child from the mother. The same reason is adopted for babies born in prison to female detainees and nursing mothers in prisons must be given special consideration in the penal system. The Nigerian government must begin to consider alternatives and specific institutional strategies in handling these special classes of inmates who are vulnerable due to their special circumstances. While the practice of allowing female nursing detainees to keep their babies with them for up to 18months gives room for bonding of mother and child, the infants are arguably exposed to higher medical risks due to the unhygienic and unhealthy prisons environment which compromise the health of adult prisoners let alone babies in Prisons. Nigerian prisons have acquired notoriety for infrastructural decay, overcrowding and the harsh and poor sanitary conditions. Detainees are forced to live by conditions which pose a real threat to the life of inmates, majority of who are still awaiting trial.<sup>24</sup>

'Worse, despite not being considered as prisoners, the children, just like their mothers, have to follow the unvarying prison timetable designed to punish and rehabilitate adult offenders'.<sup>25</sup> 'The first five years are particularly important for the development of the child's brain. Early experiences provide the base for organizational development. Having been cut off from society and being treated as criminals, such children are likely to develop emotional distress, behavioural and attention difficulties and general mistrust of the world. It would not be surprising if they end up being criminals because that is the world they know'.<sup>26</sup> It was reported from the same source that: 'Two years ago, authorities at the prison had

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<sup>22</sup> *Ibid.*

<sup>23</sup> Law & Human Rights: '*Highlighting the plight of pregnant women and babies in Nigerian prisons*', September, 26, 2013, [www.vanguard.com/2013/09/highlight](http://www.vanguard.com/2013/09/highlight), accessed on 2/03/2017 at 10am.

<sup>24</sup> *Ibid.*

<sup>25</sup> Vincent Achuka: '*Victims of fate: The sorry plight of children jailed with their mothers*', *op.cit.*

<sup>26</sup> *Ibid.*

to give up a child for adoption and charge the mother afresh after it was discovered the baby was being used to smuggle cigarettes from one point to the other of the compound. The contraband was stuffed in his pocket and because the officers would rarely search a child, he moved it around easily'.<sup>27</sup> There is no justification for a child to be made to incarcerated with the mother. Such a situation shows a failure on the part of government in its obligations to its citizens. A responsive and responsible government should put adequate measures in place to take care of children that find themselves in this type of condition. More would be said on this *anon*. It suffices however to state at this juncture, that no amount of indemnity would indemnify a child for the trauma he or she is likely to face by living in such habitation.<sup>28</sup>

A Guardian Newspaper report shares its perspective on this discourse thus:

A practicing psychologist, Dr. 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. He said: "When the child grows up, it would 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 would 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, who has a Doctorate Degree in Psychology from the University of Ibadan 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 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 a 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

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<sup>27</sup> *Ibid*.

<sup>28</sup> Kenny Odunukan writes on the '*Plight of nursing mothers, babies behind bars*' [nationalmirroronline.net/new/plight-of-nursing-mothers-babies-behind-bars](http://nationalmirroronline.net/new/plight-of-nursing-mothers-babies-behind-bars), accessed on 2/03/2017 at 16.31pm, that: '...there was the prevalence of problems of inadequate ante-natal and post-natal care for women in prison and lack of children crèche in the female section of the prison. 'Standard Minimum Rules for the Treatment of Prisoners states that 'All accommodation provided for the use of prisoners and, in particular, all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.' 'In her view, another lawyer and the programme officer of Access to Justice (AJ) Mrs. Chinelo Chimweze, says that it was wrong for babies to be kept in prison, adding that 'they did not commit any alleged crime'. Her words 'It is the failure of our welfare system. I think the welfare system should take care of such babies until the mother completes her jail term. Babies may be reunited with their mothers after jail terms.' 'The United nations SMR is intended to promote greater community involvement in the management of criminal justice and the treatment of offenders. Efforts should, therefore, be put in place by the member-states of the international instrument to formulate non-custodial measures and safeguards for the treatment of offenders, especially nursing mothers'.

woman. Children in prison should be seriously discouraged, the psychological implications can be very harmful, he said.<sup>29</sup>

### **5. The Rights of Children Living in Brothels and Prisons**

Children living in a prison yard by the mere fact that the mother is an inmate are not prisoners and should not be subjected to the restrictions imposed on those in prison custody.<sup>30</sup> ‘The rights of children of incarcerated parents remain largely unacknowledged within the criminal justice system. Such children are victims of lack of clarity in law because they are denied liberties to the extent that their right to freedom is inalienable, although a child is entitled to the same rights as any other person’.<sup>31</sup> In Nigeria, it is one of the fundamental objectives and directive principles of state policy that ‘the State shall direct its policy towards ensuring that children; young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect’.<sup>32</sup>

Every child is entitled to respect for the dignity of his person and accordingly no child shall be subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse, torture, inhuman or degrading treatment or punishment, attacks upon his honour or reputation, held in slavery or servitude, while in the care of a parent, legal guardian or school authority or any other person or authority having the care of the child.<sup>33</sup> The right to the dignity of human person is also provided for in the Constitution.<sup>34</sup> It is also prohibited to subject any child to forced or exploitative labour or to work in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural or domestic character or required in any case to lift, carry or move anything so heavy as to be likely to adversely affect his physical, mental, spiritual, moral or social development or employed as a domestic help outside his own home or family environment.<sup>35</sup> Any person who contravenes the above commits an offence and is liable on conviction to a fine not exceeding fifty thousand naira or imprisonment for a term of five years or both such fine and imprisonment.<sup>36</sup>

Every child has a right to parental care and, protection and accordingly, no child shall be separated from his parents against the wish of the child except for the purpose of his education and welfare; or in the exercise of a judicial determination in accordance with the provisions of this Act, in the best interest of the child. Likewise, every child has the right to maintenance by his parents or guardians in accordance with the extent of their means, and the child has the right, in appropriate circumstances, to enforce this right in the family court.<sup>37</sup> It is also submitted that the right to life guaranteed under the Constitution<sup>38</sup>

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<sup>29</sup> *The Guardian Newspaper*, (Lagos, Tuesday July 31, 2012)10.

<sup>30</sup> Section 3(1) of the Prison Act deals with legal custody of prisoners. It provides that ‘Subject to subsection (2) of this section, every prisoner confined in a prison shall be deemed to be in the legal custody of the superintendent and shall be subject to prison discipline and regulations made under this Act whether or not he is within the precincts of the prison. While section 3(3) of the Act provides that ‘Subject to this Act, every superintendent is authorized and required to keep and detain all persons duly committed to his custody by any court, judge, magistrate, justice of the peace or other authority lawfully exercising civil or criminal jurisdiction, according to the terms of any warrant or order by which any such person has been committed, until that person is discharged by due course of law.

<sup>31</sup> Vincent Achuka: ‘*Victims of fate: The sorry plight of children jailed with their mothers*’, *op.cit.*

<sup>32</sup> Section 17(3) (f) CFRN, 1999.

<sup>33</sup> Section 11 of the Child Rights Act, 2003.

<sup>34</sup> Section 34(1), Constitution of the Federal Republic of Nigeria, 1999.

<sup>35</sup> Section 28(1)(a),(b),(c) and (d) of the Child Rights Act, 2003.

<sup>36</sup> Section 28(3) Child Rights Act, 2003.

<sup>37</sup> Section 14(1) and (2) Child’s Rights Act, 2003.

<sup>38</sup> Section 33(1) of the Constitution of the Federal Republic of Nigeria, 1999.

extends and covers situations or circumstances that derogate from the fullest enjoyment of this right one of which, we believe is the theme of this discourse.

The Penal Code applicable in the Northern States of Nigeria provide that ‘Whoever being the father or mother or having the care of a child under the age of twelve years exposes or leaves such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both’.<sup>39</sup> The Code also provides that ‘Whoever having the charge or care of a child under the age of fifteen years or being in a position of authority over him willfully ill treats or neglects him in such a way as to cause him unnecessary suffering, shall be punished with imprisonment for a term which may extend to two years or with fine or with both; and If the ill treatment or neglect results in serious injury to the health of such child, the offender shall be punished with imprisonment for a term which may extend to five years or with fine or with both.’<sup>40</sup>

Any person having the custody, charge or care of a child who has attained the age of four (4) years and allows that child to reside in or frequent a brothel shall be liable to a fine of Ninety Thousand Naira (N 90, 000.00) or to imprisonment for six (6) months or to both.<sup>41</sup> If at the trial of a person charged with an offence under this law, the facts proved in evidence justify a conviction for an offence against this section, the person charged may be convicted of the offence against this section although he was not charged with that offence.<sup>42</sup>

A woman residing in a Brothel or Prison yard may excuse herself from the care of her child and hand over the child to appropriate authorities or else, she would be guilty of an offence. The Criminal Law of Lagos State provides that ‘Any person having charge of another who is unable by reason of age, sickness, unsoundness of mind, *detention* or any other cause and is unable to discharge his duties under the charge may withdraw himself from such charge or will be held liable to have caused any consequence which may result to the life and health of the other person by reason of any omission to perform that duty.’<sup>43</sup> ‘A charge under subsection (1) of this section may, be imposed by Law, a contract or by reason of an act, whether lawful or unlawful, of the person having such a charge’.<sup>44</sup> ‘It is the duty of every person who, as head of a family, has charge of a child, being a member of his household, to provide the necessaries of life for such child; and he shall be held to have caused any consequence which results to the life or health of the child by reason of any omission to perform that duty, whether the child is helpless or not’.<sup>45</sup> ‘Any person who being the parent, guardian or other person having the lawful care or charge of a child under the age of twelve years, and being able to maintain such child, willfully and without lawful or reasonable cause deserts the child and leaves him without means of support, is guilty of a misdemeanor, and is liable to a fine of One Hundred Thousand Naira (N100, 000.00) without prejudice to the recovery of any cost any other person may have reasonably incurred with respect to the upkeep of the child’.<sup>46</sup> The keeping of children in these places also violate section

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<sup>39</sup> Section 237 Penal Code.

<sup>40</sup> Section 238 Penal Code.

<sup>41</sup> Section 139(1) Criminal Law of Lagos State.

<sup>42</sup> Section 139(2) Criminal Law of Lagos State.

<sup>43</sup> Section 204(1) Criminal Law of Lagos State.

<sup>44</sup> Section 204(2) Criminal Law of Lagos State.

<sup>45</sup> Section 205 Criminal Law of Lagos State.

<sup>46</sup> Section 276 Criminal Law of Lagos State.

34 of the Constitution which provides for the right to the dignity of the human person and no one should be subjected to any form of degrading treatment.

## **6. Conclusion and Recommendations**

Where a woman is remanded in prison custody with her child particularly where she has not been convicted, the Chief Justice of Nigeria or the Chief Judge of a State may exercise its power under the Criminal Justice (Release from Custody) (Special Provisions) Act and release such a woman with her child. The Act provides that 'where in respect of any person detained in any prison in Nigeria, not being a person detained in execution of a sentence of a court or tribunal duly constituted by law, the Chief Justice of Nigeria or the Chief Judge of a State is satisfied that the detention of that person is manifestly unlawful; or the person detained has been in custody, whether on remand or otherwise, for a period longer than the maximum period of imprisonment which the person detained could have served had he been convicted of the offence in respect of which he was detained, the Chief Justice or the Chief Judge may issue an order of release to the officer in charge of the prison and such officer shall on receipt of the order release the person named therein.<sup>47</sup> Secondly, such children could be taken to the motherless babies' home where their father cannot be traced or would not be reasonable in the circumstances to keep the child with him. Thirdly, the law could provide for the woman to wean the child before starting the serving of her term in prison or convert the term to other forms of sentence for example, community service, fine; canning e.t.c. This is in line with the position under the Criminal Procedure Code. However, it could provide a lee way for criminals or convicts as they may just get pregnant just to avoid being in prison. This may be the reason why under the Administration of Criminal Justice Act, the position has been amended.

Of all the resources of a country, the most important in our opinion is its people. This is because they co-ordinate other resources that constitute the wealth of the nation. The background of an individual is germane to the type of person he turns out to be eventually. Hence, the period of childhood should not be left to the vicissitudes of life as it is an age where things learnt or imbibed maybe difficult to unlearn in adulthood. The government of Nigeria is implored to take immediate steps in ensuring that children no longer reside in Brothels, Prisons and similar places which are improper or unsatisfactory for the total development of a child.

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<sup>47</sup> Section 1 Criminal Justice (Release from Custody) (Special Provisions) Act.