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Occasion: A Global Conference on Child Justice in Africa.

Conference Theme: Deprivation of Children's Liberty as the Last Resort.

Topic: Children with their Mothers in Nigeria Prisons: A Grave Threat to Future Security, a Slap at the Efforts Towards the Attainment of the MGDs and a Serious Violation of their Rights to Life, Education, Liberty, Healthcare and recreation.

Table of Contents

1.	Acknowledgement	3
1.1.	The Man and the Organisation.....	3
1.2.	Executive Summary	3
2.	Unpacking the Issues.....	4
3.	Important International Provisions.....	6
4.	Regional Provisions	7
4.1.	African.....	7
5.	Some Proactive and Best Practices.....	7
5.1	Africa.....	7
5.2.	Europe.....	8
5.3.	Nepal.....	8
6.	The Real State of Affairs: The Risk Factors.....	8
7.	Conclusion.....	10
8.	The Way Forward: Recommendations.....	10
9.	Bibliography.....	12

Acknowledgement

I am most grateful to Defence for the Child International and the African Child Policy Forum for giving me the opportunity to speak at this global conference on child justice in Africa. It is certainly a great privilege to speak on the topic: "Children with Parents in Nigerian Prisons: A Grave Threat to Future Security, a Slap at the Efforts Towards the Attainment of the MGDs and a Serious Violation of their Rights to Life, Education, Liberty and Health Amenities". I thank Sarah, David, Ileana and the entire conference technical and logistic team for working so hard to organize this event.

The Man and the Organisation

My name is Mr. Sylvester Terhemen Uhaa, the Country Director of CURE-Nigeria, a chapter of international CURE, an international organization that advocates and educates for criminal justice and prison reforms in the world. For more information about CURE-Nigeria, visit www.curenigeria.org. CURE-Nigeria has a single goal, to ensure that prisons are used only for those who must be incarcerated, and that those in prison are given every opportunity to change their lives. This goal explains why CURE-Nigeria is concerned about children with a parent in prison, a place they do not belong. My background is both simple and involves a turning point. I spent over 10 years of my life training to be a Jesuit Priest. But in 2007, I met an old woman on pretrial in Benin prison, Edo State, South-South, Nigeria. She moved me to tears and altered my vocation to the priesthood to one in prison advocacy.

Executive Summary

Children living with a parent in prison belong to the most vulnerable group of children, who are both exposed to diseases, different forms of abuses, inhuman and degrading conditions that are physical, emotional and spiritual among others. They are also denied the right to education, decent living and healthcare. The continuous presence of children in prison constitutes a grave threat to national security and casts profound doubt on the seriousness and commitment of governments to the Millennium Development Goals (MDGs). While the MDGs appears to be another avenue used by those in position to enrich themselves, our governments are legally, constitutionally and morally bound to show commitment to the protection of the fundamental rights and dignity of these innocent children entangled by the criminal justice and prison systems that are notoriously punitive.

But what possible justifications are there for children to co-serve terms with their mothers in prison? Is the fact that a child is too tender to be separated from the mother, 'in the best interest of the child' the underlying objective? Are there the necessary structures and facilities to ensure quality healthcare, education, nutrition, early childhood development, and appropriate or 'free world' socialization for children living in prison? Of course, some developed countries of the world have provided facilities that aim to enable children living with their mothers in prison make the best of an avoidable, unfortunate and shameful situation. However, in impoverished parts of the world, especially Africa and Nigeria in particular, these facilities are hardly available. The consequences that result from the lack of these facilities are grave, first for the child, then the family, the community and ultimately, the state. The absence of quality healthcare and nutrition mean that both mother and child are vulnerable to diseases, the lack of educational programmes mean that the child is denied early childhood education and its accompanying advantages, while lack of proper early childhood development

mentoring and counseling would mean the child grows up encountering complex psychological challenges, and if a child does not receive the necessary socialization, the likelihood is that such a child may become antisocial and unappreciative of societal values when released to the outside world, and pose great security threats to the society. This is my summation, that the attainment of the MDGs and the huge resources, time and energies expended on achieving security of lives and properties, to a very large extent, will remain an ideal if nothing is done for reasons enumerated.

Unpacking the Issues

What are the issues for CURE-Nigeria? There are three major issues: Rights, Rights and Rights. These rights are, Right to Life, Right to Liberty and Right to Wellbeing, which are often violated and affect both mother and child. When these rights are not guaranteed by the criminal justice system, the entire incarceration project as machinery that serves the dual purposes of securing the society and reforming the offender can become a waste of scarce resources and time. The State's mandate to detain those who are perceived threats to security of lives and property, also involves the obligation to ensure just and humane treatment and wellbeing of detainees to consolidate the objectives of such mandate. These are two non-negotiable sides of the same coin, criminal justice administration.

Of particular concern to CURE-Nigeria is the threat to the right to life. The right to life does not simply mean to 'live and let live'. While this understanding could be part of the package, a fundamental aspect of the right to life is the acknowledgment of the existence of the other as a human being. For it is on the basis of such acknowledgement that judgments and decisions are made about people. In many prisons in Nigeria and the world over, there is so much secrecy in the prison system about the statistics of children living with their mothers in prison. In this regard, the statistics given by the USHRR of 2010 of 300 children living with their mothers in Nigerian prisons may hardly be a near accurate approximation of the real situation. The children in there may even be more. If one succeeds in squeezing out information about numbers, getting accurate information on age becomes another huddle. The little information one gets on age places such children in the region of between 0 – 1 1/2 years old. Usually, this seemingly customized response to age range gives the inquirer the impression of an underlying reproach that goes, 'whatever your interests in the numbers and age of children in prison, the few we have here necessarily need to be here (prison) because of their tender age and their need for maternal care'. Thus, you are provided justification for the children's presence in prison when you have not even asked, why? If you push harder on the issue of children in prison, you can turn an initially warm conversation into a defensively cold one. This attitude makes me wonder why on the one hand, we should continue to sanction the detention of pregnant or nursing mothers, while on the other hand we seem too embarrassed and shy away from conversations bothering on children in prison.

But how is anyone to know the actual number of children in prison if officials are not forthcoming with information on this issue? Without such information, how might policy makers know the true state of affairs and make policies that will alter this trend? Does it not constitute a gross violation of the rights to life, liberty and wellbeing if the information that could change the lives of children in prison, by reaching a wider audience, was concealed under whatever guise? The worst injustice, abuse and cold blooded violation one can suffer involves the denial of one's very existence. Any system that does not acknowledge one's existence even as routine statistics, cannot guarantee that same

person's rights as a human being. Within this context, whatever violations and lack undocumented children living in prisons worldwide suffer, sadly, remain unaccounted for: For to have rights is to first exist. How can anyone ensure the rights of these vulnerable children if the system tactically makes them nonexistent? The United Nations envisaged such an unacceptable act and moved to guard against it through the Article 1(2) of the Declaration on the Protection of All Persons from Enforced Disappearance:

Any act of enforced disappearance places the person subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person [...]. It also violates or constitutes a grave threat to the right to life.

In Nigeria, the issue of children living with their mothers in prison has not yet attracted so much attention and interest. CURE-Nigeria is about the first group to take a bold step in creating awareness, advocating policy formulation and implementation to prevent children residing in prisons, and canvassing social services to the children already in there. The preoccupation of the justice sector actors has so far been on the nagging upsurge of violent crimes in the country and talks about children in prison may just sound trivial, especially if it is established that the mothers jailed are actually guilty of the crimes they are accused of. The plight of children living in prison at the moment is to some persons a non-issue, and for others, it is negligible collateral of a criminal justice system besieged by waves of criminality. The police therefore, become preoccupied, it seems, with the mandate of arresting, detaining and charging suspects to court rather than intensifying efforts in the area of investigation, which has more potentials of exonerating detainees, including mothers with little children, on account of innocence, minor and bail-able offences among others. As for the judiciary, it appears the more people accused of crime it sends behind bars, the safer it makes our streets to become. Speedy trials are hardly tenable. It is a catalogue of adjourned cases all through the system, unfortunately, even for cases of detained nursing mothers. A prison warden lamenting the arbitrary warrants of adjournment issued by judges during one of CURE-Nigeria's prison visits testified that "some judges even issue warrants of adjournment in advance and then travel. It is the prosecutor who comes to discharge the warrant on the due date of court sitting". But even among prison staff, some lament the situation of children in prison mostly as it affects or add extra work to their schedule, rather than as it concerns the best interest of the child. Some female wardens however, have appeared to show genuine concern for children living in prison, a concern CURE-Nigeria recons derives from their maternal disposition. Nonetheless, this fraction in the criminal justice system can hardly make any difference in terms either of cogent policy formulation or effective service provision scheme, because it is an inconsequential part of the decision making hierarchy of the justice sector actors.

Similarly, the issue of children living with their mothers in prison has not been an issue of priority to politicians and policy makers. The attention has been on devising measures to contain (in the immediate and short term) concrete criminal activities and insecurity in the country. Unfortunately, if adequate attention is not drawn to the reality of children in prison as a long term security measure, crime and insecurity will continue for generations. The society has also not helped in pursuing the cause of children living in prison, partly from ignorance of the situation but also from prejudice. Some people do not want to see these children, especially if they were conceived and born in prison. They are considered a personification of the embarrassment that has besieged the

society as a result of a mother's imprisonment. For some, these children are nothing other than a taboo or plague that must be ostracized or avoided to say the least. Here, it becomes pertinent to design awareness programs that sensitize the citizenry against stigmatizing these innocent children. They must not be conditioned to be victims of circumstance all their lives, being 'free people' in prison and 'prisoners' in the free world. In this complex situation, it is most ideal to seek better ways of proceeding and some international and regional provisions may provide some desired acumen. My goal here is to bring to the fore the plight of these children and push their case on the agenda of the ACF and DCI, other NGOs and societies represented here, as well as in the consciousness of all participants at this conference so that together we can demand the ACHPR, AU and regional bodies and governments to legislate and implement preventive and monitoring mechanisms to protect these children.

Important International Provisions

There are many international provisions that deal with the humane treatment of incarcerated offenders, especially pregnant women and nursing mothers or mothers living with young children in prison. Provisions are also made for the protection, respect, liberty and wellbeing of children living with their mothers in prison. Below is an outline of a few of the numerous provisions available, which may be helpful tools for justice systems to respond appropriately to the situation of children living in prison.

Resolution 19: Management of Criminal Justice and Development of Sentencing Policies of the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders reads:

The use of imprisonment for certain categories of offenders such as pregnant women or mothers with infants or small children should be restricted and a special effort made to avoid the extended use of imprisonment as a sanction for these categories."

Human Rights Committee, General Comment 28 on Article 3: Equality of Rights between Men and Women, Sixty-eighth session (2000):

Pregnant women who are deprived of their liberty should receive humane treatment and respect for their inherent dignity at all times, and in particular during the birth and while caring for their newborn children; States parties should report on facilities to ensure this and on medical and health care for such mothers and their babies.

Report of the 8th UN Congress on the Prevention of Crime and Treatment of Offenders (Havana, 27 August –7 September, 1990), UN Doc. A/Conf.144/28/Rev. 1, p. 164. Standard Minimum Rules for the Treatment of Prisoners (Rule 23(1) and (2)

Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

Similarly, The United Nation Declaration of Human Rights of 1948 proclaims that motherhood and childhood are entitled to special care and assistance, the right to standard of living adequate for their health and well being and that all human beings are born free, the right to life, liberty and security of persons, as well as the right not to be subjected to torture, cruel, inhuman and degrading treatment or punishment. The Convention on the Rights of the Child makes specific provision for the special protection

and care of the child citing the principle of “the best interest of the child” (Article 3(1)), and places the responsibility of such protection on the State. “States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being ...” (Article 3(2)). In furtherance of this provision, the Committee on the Rights of the Child requires State Parties to:

[...] develop rights-based, multidimensional and multi-sectoral strategies that promote a systematic and integrated approach to law and policy development, and provide comprehensive and continuous programmes in early childhood development, taking into consideration children’s evolving capacity [...]

Regional Provisions

African

While there are very helpful regional provisions that can provide invaluable resources, I will refer only to Africa for the purpose of my topic. There are two key instruments that promote human rights in Africa: The African Charter on Human and People’s Rights and the African Charter on the Rights and Welfare of the Child. Article 30 (Children of Imprisoned Mothers) of the African Charter on the Rights and Welfare of Children has this provision:

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;
 - 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. The essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.

Some Proactive and Best Practices

Africa

The African Charter on the Rights and Welfare of the Child contains a specific article on the situation of children of imprisoned mothers. It recognizes ‘expectant mothers’, ‘mothers of infants who have been accused or found guilty of infringing the penal law’ and their ‘young children’, as persons in need of special treatment. It promotes the idea of considering non-custodial sentences and measures alternative to institutional confinement for women offenders. This Charter is inspired by the Convention on the Rights of the Child, which recognizes children as rights-holders and addresses the specific situation of children of imprisoned mothers. Also States Parties have established within the African human rights protection system and mechanism an African Human Rights Commission and an African court on Human and People’s Rights. In 1996, the First Pan African Seminar on Prison Conditions in Africa was held in Uganda and the Kampala Declaration on Prison Conditions in Africa was adopted. Participants recommended the appointment of a Special Rapporteur on prisons and conditions of

detention in Africa, who visits detention centres to assess conditions. After these visits, the Special Rapporteur recommended that expecting and breastfeeding mothers and elderly women should not be sent to prison. While this is a good recommendation that holds great potentials in preventing vulnerable mothers and children from going to prison, very little has happened in the area of practical implementation and pregnant women, nursing mothers and children helplessly flock our prisons unabated. <http://www.africa-union.org>

Europe

Europe also has a good practice model that resulted from Parliamentary Assembly Recommendation 1469 (2000) and deals with 'Mothers and Babies in Prison'. This document draws its strength and appeal for its recognition of the situation of children affected by the imprisonment of the mother. It addresses the issue of the separation of children from their mothers and the adverse effects this can have on the development of the child. It recommends the use of imprisonment of mothers with babies or young children as a last resort and encourages the use of community-based penalties instead. It also highlights the importance of facilitating training for criminal justice professionals, including on the UN Convention on the Rights of the Child.

Nepal

In Nepal, the Legal Aid and Rehabilitation Programme for Women Prisoners and their Dependent Children provides assistance to children of women prisoners specifically, to help them better integrate into their community while their mother remains imprisoned, or place them in a house for children if needed. Assistance to ensure their education, access to medical services and the facilitation of regular visits to their mothers in prison is also provided by the programme. http://www.penalreform.org/english/vuln_womennepal.htm

The Real State of Affairs: The Risk Factors

In spite of all these instruments and recommendations that can also be christened 'bold steps', not much has happened in terms of implementation by State Parties. The documents are largely reference material cited by human rights groups and NGOs in advocating human rights. For instance, you and I know that pregnant women and nursing mothers are still sent to prison on daily basis and in some cases, for minor offences that could be settled without recourse to the formal justice system. The United States Human Right Report of 2010 gives some statistics and highlights the condition of children living in prison in Africa. In Nigeria for example, the report says that there are about 300 children with their mothers in prison, most of whom are born there. In Uganda, the report says that the number of infants in prison is increasing. A report by Felix Warom Okello on 21th October 2011 "Children Share Tough Jail Life with Mothers", says that children with mothers in Arua government prison are facing tough times due to lack of proper bedding, food, and medication. The report quoted a woman who is with her child as saying "if I leave my child at home, who will feed her? I feel sad that my child is suffering but with the poverty at home, she could be sleeping hungry. It is better to eat beans and posho with her here if meat or fish is not provided". In Cote D'Ivoire, the report says pregnant prisoners went to hospital to give birth and their children often lived

with them in prison. The prison accepted no responsibility for the care and feeding of the infants.

A child whose first environment of socialization is the prison is likely to view whatever goes on in the prison walls as normative, and the prison as a home. It is sheer naivety to imagine that the phenomenon of children living in prison is either a non-issue or negligible collateral. World over, it is the case that children with prison history are highly likely to offend someday due to the criminogenic influence they would have been encountered.

The risks of prison life for the child are enormous. Many countries across Africa either do not have the resource base to invest on prison systems (including staff and inmates' welfare, infrastructure provision/maintenance and service provision) or simply lack the political will to do so. Consequently, the inability to carryout these expectations result in many undesired and avoidable consequence for the child, mother, family, society and the state. Prisons are known to provide very poor meals that are insufficient both in quality and quantity. The story is the same for medical care and for education. A child that grows in an environment with such realities is condemned to be malnourished, vulnerable to diseases and even sick without proper medical attention. The same child will lack basic and early childhood education, an important aspect of a child's growth to responsible adult life. On return from prison, some children face rejection from other members of the family, especially if they were conceived and born in prison. Others have been scorned and called names such as 'prison boy' by their peers. Some have suffered psychological trauma as a result of the rejection and scorn, leading to low self-esteem, self alienation, self pity and self hatred. The combination of the feelings of alienation and self hatred can result in deep hatred for the society. When someone has reached this point; you do not need to give them any material incentives for them to take to violent criminal activities. Perpetuating violent crime for its sake becomes a driving force that satisfies the inner feeling of hatred and the desire for vengeance. Sadly, an innocent child that went to the prison, or was born there against his or her will, comes to the society as a lethal weapon of mass destruction and would some day return to the prison as an offender. Our policy makers and politicians cannot afford to again view the presence of children living in prison as non-issue or as negligible collateral, if not to protect and respect the rights of these children, at least, it should be to avert the insecurity that this trend poses to the entire African continent and Nigeria in particular.

The family also encounters risks relating to the imprisonment of either a pregnant woman or a mother with children in prison. Some women have returned from prison to find their husbands have remarried. Reintegration for these women and the children that accompanied them to prison is often very difficult. Often, such women get divorced (and go with the children they co-served prison term) by their husbands whose priorities are their new wives and children. The woman is left without any financial support by her husband and relatives. Here in Africa and in Nigeria, the prison system hardly prepares inmates with the necessary skills to survive life outside the prison walls, with or without the support of others. In the bid to ensure their survival and that of their children without the needed care and assistance, some of these women would re-offend again and again. As for the children, their future hangs in the balance.

The risks are not limited to the child and the family alone. There are risks also for the state. Some children who return from the prison and do not have the necessary education and socialization will end up being street kids and the state would have to deal

with this phenomenon and its attendant menace, part of which in the long term, is lost productivity. Some of these children would not be properly educated, meaning increase in the level of illiteracy, and lost productivity. When you have a platoon of unproductive citizens, especially those of productive age, you have insecurity staring you in the face. In the presence of insecurity, it becomes mere wishful thinking talking about achieving socio-economic development. Also within this context, attaining the MDGs is but a mirage. Given the risk factors before us, who, amongst us, or anywhere in the world can void the significance and timeliness of these lines: “Children with Parents in Nigerian Prisons: A Grave Threat to Future Security, a Slap at the Efforts Towards the Attainment of the MGDs and a Serious Violation of their Rights to Life, Education, Liberty and Health Amenities”.

Conclusion

Even where the best of facilities are provided to ensure that both mothers and children living in prison receive the best services possible, the prison is not a home, not even for those who were born there. Prisons are originally and primarily designed as correctional facilities for ‘errant’, even though innocent persons get caught up in the system. Since children living with their mothers in prison are not offenders or errants, there is hardly any way someone should suppose that the best of prisons can adequately carter for the needs of and protect the rights of children in prison. Early childhood development psychologists have consistently maintained that what a person becomes in his or her adult life is the result of the environment in which the person grew as a child. Simply put, some environments are more likely to produce responsible people than others. Thus, enabling environments often produce responsible persons than environments that are not. Prisons are certainly not enabling environments and urgent steps must be taken to first prevent children from residing in them, and concerted efforts must be made to protect, as best as possible those presently and unavoidably living in prison. In addition, children of mature age should be taken out of detention centers and returned to relatives or alternative residence or foster homes. These measures are of priority not only for the good of the children involved, but for the overall triumph of the values of human rights, justice, peace, security and development of Nigeria, Africa and the entire world. The only way Nigerian policy makers can show commitment to the achievement of the MDGs is to be proactive to the plight of children living with their mothers in prisons.

The Way Forward: Recommendations

- In line with the provision of the African Charter on the Rights and Welfare of the Child, the use of incarceration for pregnant and nursing mothers should be a matter of last resort.
- Where incarceration of pregnant and nursing mothers is unavoidable, special care should be taken to ensure separate accommodation and child enhancing facilities for parents and children are made available by the prison system. Recreation and education facilities should be readily accessed by these children.
- To ensure the protection of children living in prison, prison policies should be designed to promote awareness of children’s rights as an essential part of the work of prison officials and others working with children.

- Provision should be made to facilitate the contact of children residing in prison with their families outside the prison without restrictions.
- Prison staff should be more receptive of persons monitoring prison conditions to make periodic and unannounced visits to the premises, to meet and to speak freely and in private with imprisoned pregnant women and children residing in prisons.
- There should be synergy among the relevant criminal justice and prison system actors as well as non-governmental organizations and the civil society in addressing the issue of pregnant women, nursing mothers and children in prison.
- Provisions contained in the Convention on the Rights of the Child recognizing children as rights-holders, as well as the general principles of non-discrimination, the best interests of the child, the right to life, survival and development of the child and the right of a child to express his/her views on all matters affecting him/her and to have those views given due weight, should be integrated in all relevant domestic legislation and the Constitution.
- Legislation should also ensure the necessary support and assistance to families and to imprisoned parents in the performance of their parental and child-rearing responsibilities to secure the child's survival, well-being and development, taking due consideration of the individual and family circumstances, the social services available, the duration of the prison term, the prison facilities and other issues that may directly affect the child.
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- The judiciary should ensure speedy trial of the cases involving pregnant women, nursing mothers and mothers with young children to facility early verdict. Regardless of the outcome of the judgment, efforts should be made at the use of non-custodial measures than imprisonment.
- There should be legislation to facilitate investigation into cases of women that become pregnant in prison due to alleged sexual exploitation that take place from the point of arrest through pretrial detention to actual imprisonment. There should be sanction for those found guilty of such violations and abuse.

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