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A LEGAL EVALUATION OF THE PROTECTION OF RIGHTS OF PREGNANT WOMEN AND CHILDREN AIR PASSENGERS IN THE NIGERIAN AIRSPACE

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Abstract

The health, safety, and comfort of a pregnant air passenger is often considered before other considerations that may necessitate her being on board an aircraft. Arguably, it is generally safe to fly up to 36 weeks of pregnancy. The challenges pregnant women and children encounter while flying include stress arising from queuing up for checking-in and boarding, uncomfortable seating, sleep struggles due to unfamiliar environment, pain from ear pressure during takeoff and landing. This paper evaluated the protection of rights of pregnant women and children air passengers in the Nigerian airspace. The paper employed the doctrinal research methodology wherein primary and secondary sources of law such as the Constitution of the

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Federal republic of Nigeria, 1999 (as amended), Civil Aviation Act 2022, Nigeria Civil Aviation Regulations 2023, international instruments, journal articles, internet sources, and periodicals were collected and reviewed. The paper found, inter alia, that save for international instruments on the general rights of women and implied rights of expectant mothers, there appears to be no concrete provision for pregnant women and especially the fetus in the principal legislation on aviation in Nigeria. The paper recommended that the National Assembly should amend the CAA 2022 to include specific provisions that expressly protect the rights of pregnant women children and unborn child while onboard an aircraft. These rights to care and comfort should be robustly enshrined therein. Air carriers, too, should incorporate special seats clearly marked for expectant mothers and children in their cabin, so these vulnerable passengers feel comfortable and cared for during the course of their short domestic flight.

Keywords: Rights, Women, Children, Passengers, Nigerian Airspace, Airborne

1.0 Introduction

Women play an integral role in society. Besides being the pillar of a home and central to the smooth functioning of the family, women also impact the wider community and the world at large. The importance of preserving the health and lives of women especially as expectant mothers cannot be overemphasised. The future of the next generation of humans lies with

them. As much as they are the channel through which new lives are birthed, these children, likewise, deserve to be protected from harm and neglect. This may avert the physical and mental health challenges that are probable consequences of dangerous exposure.

The health, safety, and comfort of a pregnant air passenger is often considered before other considerations that may necessitate her being on board an aircraft. Arguably, it is generally safe to fly up to 36 weeks of pregnancy,[1] especially where the expectant mother is in free from complications—physically and otherwise. This position is made subject to the report and recommendation of a certified healthcare provider and an airline's policy on the subject matter. Similar principle applies for young children onboard an aircraft.[2]

Notably, there are challenges pregnant women and children encounter as flying is embraced as their preferred means of transportation. Amongst them include stress arising from queuing up for checking-in and boarding, uncomfortable seating, sleep struggles due to unfamiliar environment, pain from ear pressure during takeoff and landing. Therefore, it is expedient to consider the following salient questions: to what extent is the legal framework for protection of pregnant women and children efficient? In what way may the issues relevant to the protection of rights of this class of persons be managed? How satisfactory is the performance by

[1] Jessica TravelLikeABoss, 'Is It Safe to Travel in Plane During Pregnancy: Essential Tips and Expert Advice for Expecting Moms' Is It Safe to Travel in Plane During Pregnancy: Essential Tips and Expert Advice for Expecting Moms accessed 30 December 2024.
[2] ibid.

institutions with oversight function for the protection of the rights of pregnant women and children?

2.0 Definition of Key Concepts

To strengthen our appreciation of the laws which regulate the protection of rights of pregnant women and children in the aviation industry, it is necessary to expound on the following concepts: rights, women, children, Nigerian airspace, and airborne.

2.1 Rights

Garner,[3] defines right as 'something that is due to a person by just claim, legal guarantee, or moral principle.'[4] In Woodford and Jackson's description, right is 'what is considered to be morally good or acceptable; the claim which a person or animal has to be treated in a fair, morally acceptable or legal way, or to have the things that are necessary for life.'[5] In the context of this paper, rights pertains to the legal assurance accorded to an air passenger in the contract of carriage by air.

2.2 Women

Women are all the females of the human species who have attained the age of puberty.[6] By puberty is meant the point at which a human female develops physiologically, that is, by the growth of sexual reproductive organs. This is evidence by a maturation of the female genitalia and ancillary sexual features, including the first incidence of menstruation for

[3] Bryan A Garner (ed), *Black's Law Dictionary* (8th edn, West Group 1999) 1347.
[4] ibid.
[5] Kate Woodford and Guy Jackson (eds), *Cambridge International Dictionary of English* (Cambridge University Press 2003) 1472.
[6] The Law Dictionary, 'Women' WOMEN accessed 30 December 2024; Microsoft Encarta, 'Puberty' (Microsoft Corporation 2009).

girls.[7] Consequently, female is the specific gender that conceives and births young.

2.3 Children

A child is a young human that is halfway through infancy and puberty.[8] Children refers to boys and girls from the period of birth to the attainment of adulthood. In ascertaining the legal age of maturity, the Child's Rights Act 2003 (CRA 2003) defines a child to be 'a person under the age of eighteen years.'[9] The Nigerian Civil Aviation Regulations 2023 (NCARs 2023) makes provision for special preference to be given to families with child passengers aged five years or under in certain situations like boarding, care, and so on.[10] In the definition section of its Terms and Conditions, a Nigerian carrier, Air Peace, provides that children are those 'from 2 (two) years to 11 (eleven) years old.'[11]

2.4 Passengers

Passenger means 'a person in whose name a ticket and a reservation is made and or confirmed and who is eligible to travel upon the stated flight pursuant to that ticket whether the ticket is purchased by the person or not and whether the ticket is zero fare ticket for which no fees or fare is paid.[12] Air Passenger is any person, except for members of the crew,

[7] ibid.
[8] Merriam-Webster, 'Child' Child Definition & Meaning - Merriam-Webster accessed 30 December 2024; Cambridge, 'Child' CHILD | English meaning - Cambridge Dictionary accessed 30 December 2024.
[9] (CRA 2003) s 277.
[10] (NCARs 2023) regs 19.6 & 19,12.
[11] Air Peace, 'Terms and Conditions' Terms and Conditions - Air Peace 30 December 2024.
[12] (n 10) regs 19.1.2.1(23).

carried or to be carried in an aircraft with the consent of the carrier, pursuant to a valid contract of carriage.[13]

2.5 Nigerian Airspace

Airspace is the atmospheric region above a country over which the said country has and exercise legal control.[14] Nigerian Airspace has a territorial area spanning 988,885 square kilometres and adjoining territorial water equal to 250 nautical miles of the seashore.[15] Notably, Nigerian has 25 operational airports with four most functional international airports.[16] Also, there are two area control divisions situate in Kano and Lagos, in charge of movement of aircraft in and out of Nigeria's airports, as well as other traffic flying over her airspace.[17]

2.6 Airborne

An aircraft is said to be airborne when it is suspended in the air and flying. The aircraft has set off from the ground and has no physical contact with any landmass whatsoever.[18] Thus, an aircraft is airborne when it is driven and propelled by the force of air or is being supported by aerodynamic forces.[19]

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[13] Law Insider, 'Passenger' Search Legal Contracts, Clauses and Legal Definitions | Law Insider accessed 30 December 2024.
[14] The Britannica Dictionary, 'Airspace' Airspace Definition & Meaning | Britannica Dictionary accessed 30 December 2024.
[15] ICAO, 'Nigeria' nigeria.pdf accessed 30 December 2024.
[16] ibid.
[17] ibid.
[18] Pilot Passion, 'Aviation Terminology & Jargon' Aviation Terminology & Jargon - Pilot Passion accessed 30 December 2024.
[19] Merriam-Webster, 'Airborne' Airborne Definition & Meaning - Merriam-Webster accessed 30 December 2024.

3.0 Legal and Institutional Frameworks Towards Protection of Pregnant Women and Children in Nigeria

The legal framework for protection of rights of pregnant women and children will be classified and discussed under international/regional legal instruments and domestic legislation.

3.1 International/Regional Instruments for Protection of Pregnant Women and Children

International Conventions and Treaties are soft laws having persuasive effect on State Party signatories. These laws—albeit non-binding— have the capacity to compel compliance when domesticated into a country's body of laws. The international/regional legal instruments relevant to protecting rights of pregnant women and children are: Universal Declaration of Human Right 1948 (UDHR 1948),[20] Convention for the Unification of Certain Rules for International Carriage by Air 1999,[21] Convention on the Elimination of all Forms of Discrimination Against Women 1979 (CEDAW 1979),[22] and Convention on the Rights of a Child 1989 (CRC 1989).[23]

3.1.1 Universal Declaration of Human Right 1948

[20] OHCHR, 'Universal Declaration of Human Rights' eng.pdf (ohchr.org) accessed 30 December 2024.
[21] ICAO, 'Convention for the Unification of Certain Rules for International Carriage by Air' Convention for the Unification of Certain Rules for International Carriage by Air accessed 30 December 2024.
[22] OHCHR, 'Convention on the Elimination of all Forms of Discrimination Against Women' Microsoft Word - Document1 (ohchr.org) accessed 30 December 2024.
[23] OHCHR, 'Convention on the Rights of a Child' Microsoft Word - Document1 (ohchr.org) accessed 30 December 2024.

The UDHR 1948 is a resolution of the meeting of the United Nations General Assembly (UNGA) in 1948 where human rights were universalised, albeit, with a degree of demarcation. The said UDHR 1948 recognises the dignity inherent in every human, alongside the equal and inalienable rights of all members of the human family as foundational for world peace, freedom, and justice.[24] Consequently, article 2 of the UDHR 1948 provides thus,

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Notwithstanding that the UDHR 1948 itself may not count as international law properly so called, the fact that it is a forerunner to several international instruments on human rights, such as the Convention on the Rights of a Child 1989 (CRC 1989), African Charter on Human and Peoples' Rights 1981, bestows the UDHR 1948 with a prime international soft law status. In fact, it was stated that the 'United Nations resolutions may in some instances… contribute to the formation of new customary

[24] (n 20) Preamble.

law.'[25] Therefore, the provisions in the UDHR 1948 are a pillar upon which pregnant women could find protection as they are equally entitled to fly just like every other person, subject to permissible safety measures in place.

3.1.2 Convention for the Unification of Certain Rules for International Carriage by Air 1999

The CUCRICA 1999, also known as Montreal Convention (MC99) was signed at Montreal, Canada, in 1999 but entered into force in 2003.[26] The CUCRICA 1999 is a recognition of the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on restitution principles, with the conviction that all State parties need to collectively harmonise and codify these rules in order to assure equitable balance of interests.[27] The CUCRICA 1999 unifies all the different international treaty regimes which covers airline liability that had existed since 1929.[28]

It governs airline liability to passengers, baggage, and cargo on international flights in the event of injury or death and compensation thereto,[29] or delays and limits of liability thereto,[30] and the novel

[25] M Olivier, 'The Relevance of "Soft Law" as a Source of International Human Rights' (2002) (35) *The Comparative and International Law Journal of Southern Africa*, 292-293.
[26] ICAO, 'Administrative Package for Ratification of or Accession to the Convention for the Unification of Certain Rules for International Carriage by Air, Done at Montreal on 28 May 1999' ADMINISTRATIVE PACKAGE; Tim Colehan, 'Montreal Convention 1999: A Global Standard' PowerPoint Presentation accessed 30 December 2024.
[27] (n 21) preamble.
[28] IATA, 'The Montreal Convention 1999' https://www.iata.org/en/programs/passenger/mc99/ accessed 30 December 2024.
[29] (n 21) arts 17 & 21.

provisions of electronic air waybills.[31] The CUCRICA 1999 also honours freedom to contract so long as the said freedom does not conflict with its provisions.[32] Thus, air passengers—pregnant women too, are bound to benefit from fairer compensation and greater protection.

3.1.3 Convention on the Elimination of all Forms of Discrimination Against Women 1979

The CEDAW 1979 was adopted, opened for signature and ratification in December 1979 but entered into force in September 1981. In defining the term 'discrimination against women', the CEDAW 1979 states that it shall mean any distinction, exclusion or restriction made on the basis of sex which is capable of affecting, impairing or nullifying the recognition, enjoyment or exercise by women, regardless of marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any field whatsoever.[33]

From the above provision, it is submitted that pregnancy is a normal process of bringing a new human to be, and not a despicably stigmatised medical condition. Thus, the decision by pregnant women to board an aircraft to a given destination for whatever valid reason is not a privilege but a human right worth protecting by State Parties—Nigeria inclusive, through appropriate aviation laws and transparent policy decisions.[34]

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[30] ibid, arts 19 & 22.
[31] ibid, art 5.
[32] ibid, art 27.
[33] (n 22) art 1.
[34] (n 23) art 2.

3.1.4 Convention on the Rights of a Child 1989

The CRC 1989 was adopted and opened for signature on November 1989, but came into force on September 1990. It enjoins State Parties to respect and implement within their jurisdiction the rights as enshrined therein so that each child should not be discriminated against on the basis of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.[35] This international instrument has a domestic prototype—Child's Rights Act 2003 (CRA 2003).[36] The principles embedded in the CRC 1989 and CRA 2003 gives all children the same level-playing ground and protects their rights to fly onboard an aircraft to whatever destination of choice.

3.2 Domestic Legislation for Protection of Rights of Pregnant Women and Children

While the rights of children are recognised in NCARs 2023, a subsidiary aviation legislation, it appears that those of pregnant women are not directly captured. In any event, the rights of these set of vulnerable Nigerian citizens are expressly and/or impliedly protected under the following legislation: The Constitution of the Federal Republic of Nigerian 1999 (as amended) (CFRN 1999),[37] and African Charter on Human and Peoples' Rights (Ratification & Enforcement) Act 1983 (AfCHPRA 1983).[38]

[35] ibid, art 2(1).
[36] Cap C50 LFN 2004.
[37] Cap C23 LFN 2004.
[38] Cap A9 LFN 2004.

3.2.1 Constitution of the Federal Republic of Nigerian 1999 as amended

The express provisions of Chapter IV of the CFRN 1999 on right to life, dignity, personal liberty, and freedom of movement,[39] underscores the sacrosanctity of human rights—pregnant women inclusive. Accordingly, in exercise of these rights, a pregnant woman of sound health is at liberty to purchase an air ticket and embark on a trip for work, vacation, or whatever valid cause she has in mind.

3.2.2 African Charter on Human and Peoples' Rights (Ratification & Enforcement) Act 1983

The AfCHPRA 1983 is a brainchild of the African Charter on Human and Peoples' Rights 1981 (AfCHPR 1981),[40]—a international human rights treaty made in Banjul on the 19th day of January 1981, which, upon ratification and domestication, became part of our municipal laws. The AfCHPRA 1983 was enacted to give legal effect throughout the Federal Republic of Nigeria the promotion and protection of human rights and basic freedoms in the African continent. The scope of the ratified AfCHPRA 1983 is to 'have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.'[41]

Article 2 of the AfCHPRA 1983 provides that 'every individual shall be entitled to the enjoyment of the rights and freedom recognised and

[39] (n 37) ss 33, 34, 35, 41.
[40] ACHPR, 'African Charter on Human and Peoples' Rights' African Charter on Human and Peoples' Rights | African Commission on Human and Peoples' Rights (au.int) accessed 30 December 2024.
[41] (n 38) art 1.

guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.' Amongst those 'rights and freedoms' are equality and equal protection before the law, respect for human life, liberty, the security of a human person, and appeal to competent national organs against acts of fundamental rights' violations.[42] Thus, it will be sexist to disallow a healthy expectant mother from flying just because she is a woman capable of being pregnant.

3.2.3 Nigeria Civil Aviation Regulations 2023

In keeping with their constitutional mandate to legislate on aviation matters, the Civil Aviation Act 2022 was enacted by the National Assembly to regulate civil aviation operations in Nigeria. Amongst the objectives of the CAA 2022 are the provision for an effective legal and institutional framework for the regulation of civil aviation in Nigeria in conformity with the standards and recommended practices set by the International Civil Aviation Organisation (ICAO). Pursuant to *section* 55 (1)(2) of CAA 2022, Modifications to the Convention for the Unification of Certain Rules Relating to International Carriage by Air (Modifications to the CUCRICA) was annexed to the CAA 2022.[43]

Furthermore, effective 10 July 2023, Part 19 of NCARs 2023 is the operational regulation on consumer protection.[44] Essentially, it deals with passengers' rights and responsibilities, and airlines obligations to

[42] ibid, arts 3-7.
[43] Second Schedule to the CAA 2022.
[44] NCAA, 'Publication and Implementation of Nig.Cars 2023' Publication and Implementation of Nig.Cars 2023 – Fourth Amendment to Nigeria Civil Aviation Regulations. NCAA accessed 30 December 2024.

passengers. Although expansive in scope, the applicability of NCARs 2023 covers passengers departing from one Nigerian airport to another. It also addresses consumer protection issues, including, compensations for denied boarding, delays, and cancellations of flights.[45] The legal frameworks have been silent on the insurance provisions for the unborn child onboard an aircraft which is also a life with some privileges and rights. A fetus of 30 – 36 months already has a life and should be protected with adequate protocols and protective measures. It is not enough to prevent certain categories of pregnant women to board an aircraft except with medical recommendations but to ensure that pregnant women and especially the incoming foetus is protected by some insurance products.

3.3 The Role of Nigeria's Domestic Institutions in the Protection of Rights of Pregnant Women and Children

To give effect to the legislative framework on protection of rights of pregnant women and children, certain institutions must be active and alive to their responsibilities. These include the National Human Rights Commission (NHRC) of Nigeria and the Judiciary.

3.3.1 Nigerian Civil Aviation Authority

The NCAA is the regulatory body for aviation in Nigeria. The NCAA assumed its autonomy with the passage of the CAA 2022.[46] The oversight duty of the NCAA includes compelling air carriers to maintain reasonable and adequate compensation rates. Thus, where there is a perceived or

[45] (n 10) regs 19.4; Introduction.
[46] (CAA 2022) s 4(1); NCAA, 'Who We Are' https://ncaa.gov.ng/about/ accessed 30 December 2024.

actual denial of boarding of an expectant woman, that is a matter that falls under the Part 19 for which the NCAA could adjudicate over.

3.3.2 National Human Rights Commission of Nigeria

The NHRC was instituted pursuant to the resolution of the UNGA in 1948 which charges all State Parties to set up an independent body for promoting, protecting, and enforcing human rights and gender equality.[47] Consequently, the NHRC serves as an additional-judicial apparatus to promote respect for human rights and their benefits thereof. The vision of the NHRC is to be a pioneer advocate for entrenching a culture of respect for human rights, founded on such values as democracy, accountability, and respect for rule of law.[48] The NHRC is committed to respond promptly to alleged human rights violations, education, advocacy, and embark on interventions which promote nationhood and respect for human and peoples' rights.[49]

3.3.3 The Judiciary

An aggrieved pregnant air passenger whose civil rights have been infringed by a service provider airline may approach the courts for redress, as the right to judicial redress is provided for in the CAA 2022. *Section* 86(1) states that jurisdiction to hear and determine proceedings arising therefrom, lies with the Federal High Court. It is hoped that

[47] NHRC, 'About National Human Rights Commission' Overview - National Human Rights Commission (nigeriarights.gov.ng) accessed 30 December 2024.
[48] NHRC, 'Vision and Mission Statement' Vision & Mission Statement - National Human Rights Commission (nigeriarights.gov.ng) accessed 30 December 2024.
[49] (n 48).

judicial activism will help promote and protect the rights of vulnerable air passengers like pregnant women and children as exemplified in the celebrated case of *General Sani Abacha & Ors v Chief Gani Fawehinmi*.[50] There the suspension of the 1979 Constitution and ousting of the court from hearing matters of human rights infringement did not deter the erudite justices of the apex court from applying the extant provisions of the AfCHPRA 1983 as being valid to empower the court to hear the human rights infringement claim of the appellant, thus entitling him to damages for the period of illegal detention. Various judicial pronouncements with regards to air passengers' rights should by way of judicial activism factor in insurance protection for the unborn child in cases of discomfort, negligence on the part of the regulator or the airline operator. At least the Civil Aviation regulations should make such provisions prior to an amendment of the principal legislation.

4.0 An Overview of the Rights of Pregnant Women and Child Passengers in Nigerian Airspace

Air passengers are consumers of services. Pregnant women and children are passengers which accords them an entitlement to certain rights and privileges. Amongst them are right to comfortable seats and adequate care. They will be discussed briefly.

4.1 Right to Comfortable Seats for Pregnant Women and Children

The right of pregnant women and children to have comfortable seats fit for their unique situation while airborne are rooted in the constitutional provisions of rights to life and dignity of the human person.[51] Thus, it behooves on an air carrier to fashion a given number of seats for special-

[50] (2000) FWLR (Pt 4) 533, 585-6.
[51] (n 37) ss 33 & 34.

needs passengers by incorporating certain special features thereon to assure more comfort and safety throughout the duration of the travel. These passengers are also entitled to boarding priority.[52] By implication, comfortable seats for the pregnant woman furthers assures of the safety of the fetus who is also a living soul on board despite the seemingly not too physical visibility.

4.2 Right of Adequate Care

It is expedient that air carriers ensure the welfare of pregnant women and children, especially in situations of delayed flight and cancellation of boarding. This right is enshrined in *section* 34 of the CFRN 1999 which provides borders on respect for the dignity of a human person. Therefore, pregnant women and children air passengers have a right to the timely performance and completion of air carriage services from departure point to arrival destination. In the event of flight delay and following a specified timeframe, pregnant women and children air passengers particularly reserve a right from air carriers to free-of-charge refreshments such as water, soft drinks, confectioneries/snacks, a meal, hotel accommodation, transport between airport and hotel or other accommodation which must be spacious enough for them.[53]

Moreover, by *section* 130(1)(a) of the Federal Competition and Consumer Protection Act (FCCPA 2018), it is suggested that these passengers are especially entitled to 'timely notice', in the probable event of unavoidable delays by air carriers to effect performance of flight services as agreed by the parties. Save for exceptional circumstances, it is most humiliating and totally unacceptable for an airline to delay passengers for extended period

[52] (n 10) reg 19.5.1.2(g).
[53] (n 10) regs 19.6.1.1 & 19.10.1.1.

with little or no explanation or alternate arrangements. In the likely event of minor medical emergencies requiring first aid, these set of passengers have a right to call the flight attendant for assistance.

5.0 Air Carriers' Policies on Pregnant Women and Child Passengers

It has been established that in the absence of any medical and/or obstetric complications, occasional air travels by pregnant women are safe.[54] However, due to certain conditions that are exclusive to being airborne, such as airplane interior pressure, less than ideal humidity, there may be physiologic alterations of pregnancy, heightened heart rate and blood pressure, even blood clotting and edema.[55] Consequently, air carriers have established some policies to regulate the safety of pregnant passengers. Furthermore, the policies also cover child passengers as there is a high likelihood of child tantrums while airborne due to boredom, nausea and ear pain due to noise and pressure from the aircraft during takeoff and landing, and some minor cases of emergency.[56]

While it is true that air carriers owe a corresponding duty of performance under the contract of carriage which becomes activated upon the purchase of a ticket and, *ceteris paribus*, the subsequent embarkation onto the aircraft, this said duty is not absolute. There are some qualifications

[54] Benet Wilson, 'Flying While Pregnant? Check out the Policies on 25 Global Airlines' Flying While Pregnant? Check Out the Policies on 25 Global Airlines accessed 31 December 2024.
[55] ibid.
[56] Jacqueline Junginger, 'Flying with Families: Common Problems and Your Rights as Passengers' Flying with families: Common problems and your rights as passengers | AirHelp accessed 31 December 2024.

thereof which is airline-specific. For instance, a domestic carrier, Ibom Air,[57] stipulates the following policy for pregnant women passengers:

i. Ibom Air recommends that pregnant passengers (at any stage of pregnancy) should consult with their doctor(s) prior to air travel.
ii. Pregnant women from 28 weeks of pregnancy are required to present a valid medical report declaring fitness for travel in their condition.
iii. Fit-To-Fly certificates for PREGNANT WOMEN must have a date of issue on the document and are only considered valid provided they confirm the woman's pregnancy is safe for air travel and not exceeding 33 weeks Only. Women who are 34 weeks pregnant and above are not accepted for travel on Ibom Air.
iv. To be tenable on Ibom Air flights, all other FIT-TO-FLY certificates for intending passengers on Ibom Air must have an issue date not earlier than 72 hours before travel date. However, on grounds of safety and duty of care, Ibom Air, reserves the right to refuse for carriage, any affected intending passenger.
v. All pregnant passengers will be required to fill and sign a waiver/indemnity document indemnifying Ibom Air from any consequences of their decisions to travel. These additional travel

[57] Ibom Air, 'FAQs' Frequently Asked Questions - Ibom Air accessed 31 December 2024.

arrangements should be done no later than 24 hours before flight departure.

i. Ibom Air does not accept for travel women 34 weeks pregnant and above.
ii. Pregnant women are required to present a medical report certifying that they are fit to fly, while the pregnancy carriage limit on Air Peace flights is 32 weeks.

The directive of another indigenous carrier, Air Peace,[58] is that pregnant women are to submit a fit to fly certified medical report, and the maximum limit for pregnant women is 32 weeks, without more. For child passengers, Ibom Air provides that no infants younger than 7 days old for their first flight will be admitted into its aircraft. It further makes allowances for free baggage of 10kg, and other necessaries such as baby buggies, car seats, and wheelchairs, all free of charge.[59] However, children between 2 -11 years have a right to child tickets, which is 75% of the accompanying adult's ticket.[60] A query is in order for infants that are not up to 2 years. The fact that they are made to pay 10% of the fare of the accompanying adult's ticket while sitting on adult's lap,[61] seems to be overreaching and unacceptable.

[58] Air Peace, 'Terms and Conditions' Terms and Conditions - Air Peace accessed 31 December 2024.
[59] Ibom Air, 'Terms and Conditions' Terms and Conditions - Ibom Air accessed 31 December 2024.
[60] Ibom Air, 'On Board' On Board Services - Boarding Information - Ibom Air accessed 31 December 2024.
[61] ibid.

As laudable as these policies are, nonetheless, some lacunae are worth highlighting. The fact that no special provision is made by the air carriers to make the flight for children a little less traumatic is palpably inadequate. In addition, the absence of tangible provisions for the comfort of pregnant women is grossly disadvantageous.

6.0 Summary of Findings

The summary of findings of this paper are that:

1. Save for international instruments on the general rights of women and implied rights of expectant mothers, there appears to be no concrete provision for pregnant women in the principal legislation on aviation in Nigeria.

   Moreso, the rights of child passengers to comfort and care are insufficiently covered, thus ineffectively protected.

2. There is need for the strengthening of existing aviation laws to accommodate certain rights of pregnant women and children that are glossed over by air carriers as a consequence of inadequate legal protection.

3. The institutions, *to wit,* Nigerian Civil Aviation Authority, National Human Rights Commission, and the Judiciary, saddled with oversight function over aviation matters, and consumer protection in particular, cannot work in vacuity. There is little or no provision in the CAA 2022 upon which they will enforce protection of the rights of pregnant women and children.

4. No express or implied provision for insurance for the unborn fetus in the mother's womb in case of air crash or other forms of aviation accidents.

7.0 Conclusion and Recommendations

Pregnancy is not a disease deserving of isolation, ostracism, or denial of certain inalienable human rights. As such, pregnant women could lead normal lives—including flying—albeit, within the confines of their health and safety as directed by their obstetrician. Likewise, children are human beings entitled to certain level of protection while embarking on a flight journey within the Nigerian airspace. Save for international legislation, which, at best, has a persuasive effect on Nigeria, there is no national legal framework for the protection of the rights of pregnant women onboard an aircraft, while that of children are regrettably inadequate. Granted, there are safety considerations for certain policy decisions on pregnant women and children, these should not be left entirely at the discretion of air operators. Furthermore, there appears to be some gaps in the right to care and comfort of pregnant women and children during a domestic flight, which must not be left solely at the regulation of air carriers who are essentially capitalists in business for profits.

Consequently, it is on this note that the following recommendations are hereby proffered for consideration:

i. The National Assembly should amend the CAA 2022 to include specific provisions that expressly protect the rights of pregnant women and children while onboard an aircraft within the Nigerian airspace. These right to care and comfort should be robustly enshrined therein.

ii. The NCAA, in collaboration with its sister agency, the Federal Airports Authority of Nigeria, should secure private partnerships for the establishment of creches at all Nigerian airports for ease of stay of children during flight delays, as well as to honour nursing mothers who could use some privacy while attending to their young children.

Air carriers, too, should incorporate special seats clearly marked for expectant mothers and children in their cabin, so these vulnerable passengers feel comfortable and cared for during the course of their short domestic flight.

iii. Consequent upon the amendment of the CAA 2022, the NCAA, NHRC, and the Judiciary should come alive to their responsibility to balance the concerns of safety of expectant mother and young children with protecting the rights of these vulnerable air passengers from any perceived or actual infringements. Moreover, the Judiciary, especially, should apply some level of judicial activism in advancing the growth of the Part 19 of the NCARs 2023 on consumer protection such that the rights of pregnant women and children are protected and upheld in the event of a claim by aggrieved passengers.

iv. Provision of clear insurance policies for the protection of the unborn child would assure the life of the fetus.