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## LEGAL RESPONSIBILITY OF A FATHER TOWARDS A CHILD UNDER THE NIGERIAN CHILD'S RIGHT ACT OF 2003

Ifeoma Pamela Enemo\* & Portia Ozioma Chigbu\*\*

### Abstract

*A father, as the parent of a child may be a biological, foster, adoptive, stepfather or even a grandfather. He may also be the one who has legal custody of the child and may or may not be resident in the same state as the child. In essence, anyone can father a child, but it does not end there because, every father has an important role to play in a child's life. Fathers are specifically assigned with legal responsibilities towards for their children. This ranges from the provision of physical and mental support to psychological and financial support, among others. Unfortunately, in recent times, the role of fathers is fast becoming an abandoned trend with several fathers not living up to their legal responsibilities. The aim of this research is to examine whether there are legal obligations of a father towards a child under the Child's Right Act. This research discovered that that there are legal obligations for fathers as imposed by the law. However, some fathers fail to fulfil their responsibilities towards their children despite the provisions of the law. This research adopts the doctrinal research methodology.*

**Keywords:** Father, child, legal responsibility, punishment, Child's Right Act, Nigeria.

### 1. Introduction

Fatherhood is the state or time of being a father.<sup>1</sup> It is a lifelong responsibility which can be a real pain, yet some fathers get the job done. Routinely, fathers oversee the evolution of little boys and girls into productive men and women and even into responsible, caring fathers and mothers.<sup>2</sup> They accomplish this miracle by sponsoring a crucial transition in their child's development. The father enforces a major rule of masculine development.<sup>3</sup> This is recognised, in ritual and in common practice by all successful human societies because at some culturally designated point, boys have to separate, in the psychological sense, from their mothers.<sup>4</sup> Unlike girls, who share a common biological destiny with

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<sup>1</sup> AS Hornby (ed), *Oxford Advanced Learner's Dictionary of Current English* (8th edn. Oxford University Press 2010) 576.

<sup>2</sup> Jeffrey Rosenberg and W Bradford Wilcox, 'The Importance of Fathers in the Healthy Development of Children, Child Abuse and Neglect User Manual Series' [2006] <<http://nccanch.acf.hhs.gov/profess/tools/usermanual.cfm>> 7.

<sup>3</sup> David Gutmann, 'Psychology: The Paternal Imperative' (1988) 67 (1) *The American Scholar* <<http://www.jstor.org/stable/41212725>> 119.

<sup>4</sup> Ibid.

their mothers, most boys will become fathers; and like their fathers, their work will engage them - whether as hunters, soldiers or traveling salesmen - on the communal periphery with other men, rather than close to home, with their mothers or wives.<sup>5</sup> Men exemplify the principle of closeness through distance: they sustain the home by their readiness, when called upon, to leave the home.<sup>6</sup>

Fathers generally have duties towards their children, same as rights, and also under the law. Unfortunately, some do not know the extent of that responsibility and tend to ignore or not take it up fully. This paper discusses the legal responsibilities of a father in a child's life under the Child's Rights Act<sup>7</sup> (CRA) as a legal obligation and not just a right. This is to show that a 'new fatherhood' is an emerging concept.

## 2. Who is a Father?

Generally, a father is the male parent of a child.<sup>8</sup> A father may be a biological, foster, or adoptive father, a stepfather or even a grandfather.<sup>9</sup> A biological father is one whose semen fertilized the ovum from which a child was born.<sup>10</sup> A foster father is a man who looks after or brings up a child or children as a father, in place of the natural or adoptive father.<sup>11</sup> An adoptive father is one who adopts a child. He is not biologically or genetically related to the child but steps into the role of a biological father and plays the same role upon adoption.<sup>12</sup> Similarly, a guardian is one who has legal rights and responsibilities of taking

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<sup>5</sup> 'The Significance of a Father's Influence' <<https://www.focusonthefamily.com/family-qa/the-significance-of-a-fathers-influence/>> accessed 24 November 2021.

<sup>6</sup> Rosenberg and Wilcox, 'The Importance of Fathers in the Healthy Development of Children' [2006] *US Department of Health and Human Services Administration for Children and Families Administration on Children, Youth and Families Children's Bureau Office on Child Abuse and Neglect* (2006) 7.

<sup>7</sup> Child's Rights Act Laws of the Federation of Nigeria (LFN) 2004.

<sup>8</sup> Hornby (n 1).

<sup>9</sup> M Yogman, 'Fathers' roles in the care and development of their children: The Role of Paediatricians' [2016] *CF Garfield and Committee on Psychosocial Aspects of Child and Family Health* <<https://www.pediatrics.aappublications.org>> assessed 9 November 2021.

<sup>10</sup> *Collins English Dictionary* (HarperCollins Publishers 2022) <<https://www.collinsdictionary.com/dictionary/english/biological-father>> accessed 13 April 2022.

<sup>11</sup> Ibid.

<sup>12</sup> Merriam Webster *Merriam-Webster.com Dictionary* < <https://www.merriam-webster.com/dictionary/adoptive%20parent>. > accessed 15 April 2022.

care of someone who cannot take care of himself or herself, such as a child whose parents have died.<sup>13</sup>

In all these, a biological or adoptive father as well as a guardian or foster parent plays the same roles. They naturally step into the shoes of a father and must carry out the legal responsibilities imposed by the law. A father may or may not be in legal custody of a child and may be resident or non-resident. Therefore, it follows that any man can father a child. However, it does not end in just fathering a child as every father has an important role to play in a child's life.<sup>14</sup> Under the law, a legal father is someone that has not just parental responsibilities towards a child but carries them out. This could be by way of adoption or if his name is on the birth certificate of the child or he is the biological father of the child.<sup>15</sup>

A man's name may appear on the birth certificate of a child even though he is not married to the mother or is not the biological father of the child. Thus, the paternity of a child in Nigeria may be determined as follows:

- a. Acknowledgement – where the man admits being the father of the child. Ordinarily, no issue arises.<sup>16</sup>
- b. Presumption – where a man is presumed to be the father of the child because the child is born within wedlock or during the subsistence of the marriage to the mother. Again, here, there will be no problem even if the child was conceived by another man without the knowledge of the woman's husband.<sup>17</sup> This provision is supported by section 165 of the Evidence Act.<sup>18</sup> However, parties may rely on the provisions of Section 84 of the Matrimonial Causes Act to show that parties did not have sexual intercourse during the subsistence of the marriage, but cannot be compelled to give evidence that a child born during the marriage is illegitimate. These provisions protect the child and the presumption that when a child is born within marriage, he is presumed to be legitimate. This was the position of the court in *Oduche v*

<sup>13</sup>Cambridge Dictionary Editors, *Cambridge Dictionary* (Cambridge University Press 2022) < <https://dictionary.cambridge.org/dictionary/english/guardian> > accessed 14 April 2022.

<sup>14</sup>Ibid.

<sup>15</sup> Infolaw, 'Legal Father v. Biological Father: What are your Rights?' [2018] <[www.infolaw.co.uk](http://www.infolaw.co.uk)> accessed 9 November 2021; see also, *Ukeje v Ukeje* (2014) 11 NWLR (Pt 1418) 384.

<sup>16</sup> Jessica A Ajonumah and Ogechi Dublin-Green, 'Paternity, Illegitimacy and Customary Acknowledgment in Nigeria: A Re-Evaluation' (2019) 7 (2) *International Journal of Business & Law Research* 113.

<sup>17</sup> Ibid; *Anozia v Nnani & Anor* (2015) 8 NWLR pt. 1461 256; *Duru v Duru* (2016) LPLER 40444 (CA); Afromums, 'Motherhood: What the Law says about Paternity of a Child or an Adult in Nigeria' [2018] [www.afromums.ng](http://www.afromums.ng)

<sup>18</sup> Evidence Act, 2011.

*Oduche*<sup>19</sup> where it was held that where the husband and wife have cohabited together and no impotence is proved to the satisfaction of the court, the child or children are conclusively presumed to be legitimate even though the wife is shown to have been guilty of infidelity.

- c. Proof – where a woman is able to prove that the man is the father of her child. This may not be easy especially where a man denies paternity of the child. However, the Deoxyribonucleic Acid (DNA) test would most likely bring about solution.<sup>20</sup> By section 63 of the CRA, the court may, on application, give direction for the use of scientific tests, including blood tests and DNA tests to show that the person is or is not the father of that child.<sup>21</sup>

### ***2.1 Effect of a Father's Involvement in the Development of a Child***

Fathers are pillars in the development of a child's well-being. Children look up to their fathers to lay the house rules for them and enforce same. They look up to fathers for protection, words of affirmation, love, and care. Studies have shown that when a father is affectionate, loving and understanding, it positively impacts on the child's intellectual and social development.<sup>22</sup>

It is important to note that a guardian appointed at the death of a father can acquire the legal responsibilities of a father. Section 68 of the CRA provides that: where the father and mother of a child were not married to each other at the time of the birth of the child, the Family Court may on the application of the father or mother (jointly and severally) order that he shall have parental responsibilities for the child.<sup>23</sup>

A father's involvement in a child's life makes a positive difference in the areas of intellectual, physical, sociological, and psychological development, among others. This creates a positive atmosphere for the child and ensures that he lacks nothing. Families that have supportive fathers are strengthened because it ensures there is effective communication and emotional support.<sup>24</sup> Also, when children have close relationships with father figures, they are more likely to

<sup>19</sup> (2006) 5 NWLR pt 972 101.

<sup>20</sup> *Olayinka v Adeparusi & Anor* (2011) LPELR 8691 (CA).

<sup>21</sup> CRA, s 63; (n 5).

<sup>22</sup> Pediatric Associates of Franklin, 'The Importance of a Father in a Child's Life,' [2022] <<https://www.pediatricsoffranklin.com/resources-and-education/pediatricsoffranklin.com/resources-and-education/pedatric-care/the-importance-of-a-father-in-a-childs-life/#:-:text=Children%20want%20to%20make%20their,well%2Dbeing%20and%20self%20confidence.>> accessed 14 April 2022.

<sup>23</sup> CRA, ss 68 and 153.

<sup>24</sup> Child and Family Research Partnership, '5 Things You Should Know about the Importance of Fathers, The University of Texas Austin' <<https://childandfamilyresearch.utexas.edu/5-things-you-should-know-about-importance-fathers>> accessed 14 April 2022.

avoid high risk behaviours, less likely to have sex at a young age, have healthy and stable relationships and high-paying jobs.<sup>25</sup> In all these, it can be safely said that fathers are irreplaceable in the growth of young children. This is because a father's involvement has a positive impact in the development of that child.<sup>26</sup>

Whilst acknowledging this, the law goes a step further to acknowledge this stance by imposing legal obligations on fathers. This is because there has been a surge lately on irresponsible fathers who refuse to take up responsibility for their own children as expected and required by the law. They desert the mothers with the children refusing to pay parental support, or are drunkards, lazy and therefore as good as dead.<sup>27</sup> In examining the responsibility of fathers towards children, it is important to understand the meaning of a child under extant Nigerian law.

## 2.2 Who is a Child?

There are many definitions of the word 'child.' The Black's Law Dictionary defines a child as 'a person under the age of majority.'<sup>28</sup> The Oxford Dictionary defines a child as 'a young human who is not yet an adult.'<sup>29</sup> These definitions are vague as they do not determine the age of majority or when one is considered an adult. The Merriam Webster dictionary defines a child as 'a person not yet of age; a young person; an unborn or recently born person.'<sup>30</sup>

The common denominator amongst all these definitions is that they dwell heavily on psychology and mental development. However, for the purposes of this paper, we shall dwell on the formal legal aspect which deals with age. By Article 2 of the Children and Young Persons Act (CYPA), a child is a person under the age of 14 years, while a young person is a person who has attained the age of 14 years but is under the age of 17 years.<sup>31</sup> The United Nations Convention on the Rights of a Child (CRC) defines a child as a person below the age of eighteen years except in the law applicable to the child, the age of

<sup>25</sup> Joshua Kirsch, 'The Science of Dad and the "Father Effect"' *Fatherly* [2018] <<https://www.fatherly.com/health-science/science-benefits-of-fatherhood-dads-father-effect/amp/>> accessed 15 April 2022.

<sup>26</sup> Xiaohong Liu, 'A Review of the Study on Father Involvement in Child Rearing' *Asian Social Science* 15(9) 82.

<sup>27</sup> Pediatrics Associates of Franklin, 'The Importance of a Father in a child's life' <<https://www.pediatricsoffranklin.com/resources-and-education/pediatric-care/the-importance-of-a-father-in-a-childs-life/>> accessed 20 October 2021.

<sup>28</sup> BA Gardner (ed), *Black's Law Dictionary* (8<sup>th</sup> edn, West Publishing Co 2004).

<sup>29</sup> AS Hornby (ed), *Oxford Advanced Learner's Dictionary of Current English*. (8th edn Oxford University Press 2010).

<sup>30</sup> Merriam Webster's Collegiate Dictionary (11<sup>th</sup> edn., Merriam Webster Inc 2007).

<sup>31</sup> CYP Act Cap 32 LFN 1958 <<http://www.cleen.org/Juvenile%20Justice%20Report>> accessed 20 October 2021.

majority is attained earlier.<sup>32</sup> The African Charter on the Rights and Welfare of the Child (ACRWC) also defines a child as every human being below the age of eighteen years.<sup>33</sup> For the CRA, Section 277 provides that a child is anyone below the age of 18 years. This paper adopts the definition provided by the CRA and notes that every child due to their development must be protected at all costs.

## 2. The Protection of the Child under the Child Rights Act

Children are the future leaders and hope of any civilized society. However, due to the fact that they lack the physical, emotional and mental maturity required to face life, they require special care and protection.<sup>34</sup> Unfortunately, many Nigerian children face a lot of problems ranging from domestic violence to discrimination, trafficking, abuse and exploitation among others.<sup>35</sup> All these challenges faced by these children call for serious protective measures, legally and otherwise, hence, laws have been enacted to help address these issues effectively in Nigeria. The CYP A provides for the welfare and the treatment of young offenders and the establishment of juvenile courts.<sup>36</sup> Section 21 of the Criminal Code (CC) protects the child and the dignity of his or her person, and section 306 of CC prohibits unlawful killing of a child as guaranteed by the Nigerian Constitution.<sup>37</sup> Thus, a child becomes a person capable of being killed as soon as it is born. Section 328 of the CC also protects a child from being unlawfully killed during delivery.<sup>38</sup> The 1999 Constitution contains the Bill of Rights, guaranteeing the rights to life, personal liberty, fair hearing, and freedom of movement.<sup>39</sup> Section 42 prohibits discrimination.<sup>40</sup> Other sections of the Constitution are also protective of the child.

<sup>32</sup>Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with Article 49

<sup>33</sup>African Charter on the Rights and Welfare of the Child, art 14, OAU Doc. CAB/LEG/24.9/49 (1990), *entered into force* 29 November 1999.

<sup>34</sup>OI Tajudeen, 'Legal Framework for the Protection of Child Rights in Nigeria' [2015] *AGORA International Journal of Juridical Sciences* <<http://univagora.ro/jour/index.php/aij>> assessed 22 October 2021.

<sup>35</sup>Ifeoma Enemo, 'Effectiveness of Nigeria's International Obligations in Curbing Domestic Violence' (2018) 9 (1) *Nnamdi Azikiwe Univ Jour of Intl Law* 4.

<sup>36</sup>'The Child Rights Manual: Trainers' Manual, Nigeria' [2013] <[www.barhumanrights.org.uk](http://www.barhumanrights.org.uk)> accessed 20 October 2021.

<sup>37</sup>CCA Cap 77 LFN 2004, ss 21 and 306.

<sup>38</sup>Criminal Code s 328.

<sup>39</sup>CFRN (as amended) 1999, ss 307-309.

<sup>40</sup>That is, discrimination on the basis of ethnic group, place of origin, sex, religion, or political opinion.

Nigeria ratified many international conventions that protect the child especially the CRC.<sup>41</sup> There is also the ACRWC,<sup>42</sup> among others. The Labour Act is also available to protect children from exploitation.<sup>43</sup> Again, institutional measures are also taken to ensure the protection of the child.<sup>44</sup> The rights contained in the CRC and ACRWC were actually incorporated and consolidated in the CRA.<sup>45</sup> The rights as provided by the CRA are therefore as follows:

- a. Section 1 - the child's best interests shall be paramount. The principle of the best interest of the child is provided in the CRC. It is a complicated concept and defined as a dynamic concept that requires an assessment appropriate to the specific context.<sup>46</sup> The principle of 'best interest of the child' applies in all issues related to children such as health decisions, custody, and guardianship, among others.<sup>47</sup> In determining what the best interest of the child is in any situation, different values, perspectives and views to come to place from different States Parties, resulting in various laws relating to children. This is because consideration is given to culture, religion, and practice in each area.<sup>48</sup>
- b. Section 4 – Every child has the right to survival and development.
- c. Section 7 – Every child has the right to freedom of thought, conscience, and religion.
- d. Section 8 – Every child is entitled to privacy.
- e. Section 10 - Every child has the right to freedom from discrimination.
- f. Section 11 - The dignity of the child shall be respected at all times.
- g. Section 15 – Every child has the right to basic education.

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<sup>41</sup> The provisions of the CRA are same as the CRC, borrowing a leaf too from the African U Charter.

<sup>42</sup> African Charter on the Rights and Welfare of the Child, art 14 OAU Doc CAB/LEG/24.9/49.

<sup>43</sup> Labour Act Cap L1 LFN 2004.

<sup>44</sup> For example, Nigerian Agency for the Prohibition of Trafficking in Persons, Nigerian Children's Parliament, National Council of Child Rights Advocates of Nigeria (NACCARAN), the umbrella NGO involved in Child's Rights Advocacy, Child Development Departments in the Federal and State Ministries of Women Affairs, and others.

<sup>45</sup> SO Akinwumi, 'Legal Impediments on the Practical Implementation of the Child Rights Act 2003' (2009) 37 (3) *International Journal of Legal Information*.

<sup>46</sup> United Nations Committee on the Rights of the Child, 2003 para 12 2009.

<sup>47</sup> Aron Degol and Shimelis Dinku, 'Notes on the Principle Best Interest of the Child: Meaning, History and its Place under Ethiopian Law' (2011) 5 (2) *Mizan Law Review* 320.

<sup>48</sup> Mary George and Noor Aziah Mohd Awal, 'The Best Interest Principle Within Article 3(1) of the United Nations Convention on the Rights of the Child' (2019) 19 (4) *International Journal of Business, Economics and Law* 33.



- h. Section 11; 32 - Every child has the right to freedom from physical, mental, or emotional injury, abuse or neglect, sexual abuse, maltreatment, torture, inhuman or degrading punishment.
- i. Section 12 – every child has the right to rest and leisure.
- j. Section 13 – Every child has the right to enjoy the best possible state of physical, mental, and spiritual health.
- k. Section 16 - provides for the right of mentally and physically disabled children and street children to be protected so that they can socially integrate and develop.
- l. Section 21 and 22 - prohibits the betrothal and marriage of children.
- m. Section 24 – Prohibits causing of tattoos, marks, and female genital mutilation.
- n. Section 26 – Prohibits using children in criminal activities.
- o. Section 27 – Prohibits trafficking, abducting or unlawfully removing children from lawful custody.
- p. Section 28 – Prohibits forced or exploitative labour and the employment of children as domestic help outside their own home or family.
- q. Section 30 – Prohibits buying, selling, hiring, or otherwise dealing in children for the purpose of begging, hawking, prostitution or for other unlawful immoral purposes; also prohibits recruiting children into the armed forces.
- o. Section 35 – Prohibits exposing children to pornographic or other harmful materials.<sup>49</sup>

In the light of the provisions above, the question is: are fathers responsible for the protection of their children? This will be answered below.

#### **4. Father's Responsibilities under the Law**

The CRA provides for the rights and responsibilities of parents, governments, institutions for the protection of children. It also provides that the best interest of the child is of primary or paramount consideration in all actions to be taken concerning a child.<sup>50</sup> For the CRA to be enforceable in any state, it must be passed into law by the House of Assembly of the State.<sup>51</sup> For example, the Enugu House of Assembly on August 16, 2016, passed the Child's Right and Responsibility Law on the same premise with the CRA.<sup>52</sup> Generally, it is the

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<sup>49</sup> See the provisions of the CRA generally and the Child Rights Manual (n 23).

<sup>50</sup> CRA (Part I), ss. 1-2.

<sup>51</sup> Presently, the CRA has been promulgated into law in some states such as Abia, Anambra, Bayelsa, Ebonyi, Ekiti, Imo, Jigawa, Kwara, Lagos, Nassarawa, Ogun, Ondo, Plateau, Rivers and Taraba States.

<sup>52</sup> Childs Rights and Responsibility Laws of Enugu State, 2016. Enugu State in line with many other states in Nigeria passed its own Child's Rights and Responsibility Law (CRRL) in 2016, in bid to achieve a successful implementation of Child's Rights in the state.

responsibility of a father to live an exemplary life: in character, action, speech, among others. He is a priest, provider, protector, playmate, companion, teacher, trainer, servant of the child. He is a primary care giver ordained by God and therefore, his responsibilities towards a child are inevitable.

Under the law, a father has legal responsibilities which are termed 'parental responsibilities.'<sup>53</sup> In the United Kingdom, 'parental responsibility' is defined as 'all rights, duties, powers, responsibilities and authority which by law, a parent of a child has in relation to the child and his property.'<sup>54</sup> Section 277 of the CRA also defines parental responsibility as 'all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.' The South African Children's Act, in section 18 (2) clearly provides that, 'the parental responsibilities and rights that a person may have in respect of a child include, the responsibility and right to (a) care for the child; (b) maintain contact with the child; (c) act as guardian of the child; and (d) contribute to the maintenance of the child.'<sup>55</sup>

Parental responsibility thus consists of such duties as to:

- i. Safeguard and promote the child's health, education, development and welfare;
- ii. Provide care, direction, guidance and control in a manner appropriate to the child's age and understanding;
- iii. Determine all aspects of upbringing;
- iv. Provide a home, either directly or indirectly;
- v. Maintain relations or regular contact if not living with the child;
- vi. Act as the child's legal representative; and
- vii. Safeguard and deal with any property.<sup>56</sup>

A reading of section 20 of the CRA confirms that a father has the responsibilities stated above. These include the responsibilities to provide the necessary guidance, discipline, education, and training for the child. Additionally, a father has the responsibility to generally safeguard and protect the child from any activity that is harmful to him or not in his best interest. Such

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<sup>53</sup> Responsibilities for care and protection are also placed on the other parent, guardian, institutions, persons and authority responsible for the care, maintenance, upbringing, education, training, socialization, employment and rehabilitation of the child.

<sup>54</sup> United Kingdom Children Act 1989, s 3(1) <<https://www.legislation.gov.uk/ukpga/1989/41/section/3>> accessed 25 October 2021.

<sup>55</sup> Children's Act 38 2005 (2006) 492 (28944) <[https://www.gov.za/sites/default/files/gcis\\_document/201409/a38-053.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a38-053.pdf)> accessed 12 November 2021.

<sup>56</sup> Guernsey and Alderney Annual Report, 'Islands Safeguarding Children Partnership: Parental Responsibility- Child Protection Guidelines' [2017] <<http://iscp.gg/CHttpHandler.ashx?id=113398&p=0>> accessed 22 October 2021.

activities can be gleaned from Part III sections 21-40, (Part IV) and 41-49 of the CRA.

The legal responsibility of a father cannot be surrendered but can be delegated, transferred, or shared with another person. Delegation derives from the word 'delegate' and refers to giving a particular job, duty, right, among others to someone else so that they do it for you.<sup>57</sup> Delegation is the act of delegating a particular job, duty or right to someone.<sup>58</sup> On the other hand, transfer refers to moving something from one person to another.<sup>59</sup> In relation to the legal responsibilities of a father, it can be delegated as well as transferred depending on the situation. Delegation of fatherly responsibility arises where the roles are delegated to a guardian by a biological father. In this case, the legal responsibilities are transferred to such guardian for the period of guardianship. Thus, fatherly responsibilities are shared between the biological father and guardian. This also shows that the legal responsibilities of a biological father last till eternity. They do not abate when the responsibilities are transferred but are in abeyance or runs concurrently with that of the guardian. This also applies where the father has failed to exercise responsibility over the child. However, it is only upon the death of a biological father that parental responsibilities can elapse as such death brings the responsibilities to an end. It is important to note that in all cases, one must do what is necessary to promote the welfare of any child in his custody and take care of him or her. Examples include seeking medical attention in an emergency, refusing to release a child to a mentally ill or intoxicated father to resume care of the child until the police or larger family intervenes, etc.

The legal responsibilities towards a child as already noted, could be exercised by the child's biological father who is married to his/her mother, the child's unmarried biological father, his adopted father, or the legal guardian. Thus, the CRA provides in sections 68-81 that where the father and the mother of a child were not married to each other at the time of the birth of the child, the Family Court (established under section 135 of the Act) may on the application of the father or mother, order that he or she shall have parental responsibility for the child, or the father and mother may by agreement have joint parental responsibility for the child.<sup>60</sup> It is possible and easier when an unmarried father and mother agree to have joint parental responsibilities as the father automatically gets involved and takes up his responsibilities.

In the Nigerian society today, it is very difficult and rare for a young man who is not married to the mother of his child to apply for parental responsibility.

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<sup>57</sup> Cambridge Dictionary (Cambridge University Press 2022) <<https://dictionary.cambridge.org/dictionary/english/delegate>> accessed 15 April 2022.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Sections 68-81 deal with possession and custody of children.

This does not mean that there are no cases where young fathers take up responsibilities of childcare irrespective of the legitimacy of the children, but they are not common.<sup>61</sup> Such young men go as far as relying on arguments such as denial of paternity of the children in question or the issue of their illegitimacy, especially if they are born outside wedlock. This is despite the fact that Section 42 of the 1999 Constitution provides that no child shall be discriminated on by reason of circumstances of his birth. Even with the provision of the Constitution, children are still regarded as illegitimate and denied their rights to fatherhood based on this in some communities.<sup>62</sup>

In fact, in some cases, the issue of illegitimacy is used as an excuse by some men to escape their parental responsibilities. This results in the mothers raising the children single-handedly, abandoning or selling them off to the highest bidder. Some boys/men even deny paternity of their children in order to avoid parental responsibility. The result is that the society is flooded with many children who end up being discriminated against especially in matters of inheritance. Such children can only inherit from their biological father if he accepts paternity, or he adopts them.<sup>63</sup>

Under customary law in some parts of Igbo land, a father's legal responsibility arises only when he is married to the child's mother. Thus, where a father is unmarried, even his biological child does not belong to him unless he pays the bride price on the mother of the child. Therefore, he is not expected to perform his responsibilities as a parent. Any attempt to do so would be regarded as futile as the child is deemed to belong to his or her maternal grandfather who should be the one to carry out parental responsibilities towards the child. This custom is repugnant to natural justice, equity, and good conscience because the responsibilities of a father should be vested in him naturally and not as a result of marriage. It also leads to irresponsibility on the part of a father who may be trying to escape the responsibilities of being a father. In such a case, he may deliberately refuse to marry the mother of his child to escape his legal responsibilities. However, a father's attempt to shirk his responsibility of maintaining his child was halted by the court in the case of *Anene Chikezie v Ifeoma Anene*.<sup>64</sup> Here, a husband argued that he had no obligation to maintain the children of the marriage, and that at that time, he was living separately from them. He therefore stated that the court could not make an order for such

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<sup>61</sup> We see such possibility though in cases of such rich celebrities like David Adeleke (Davido), Innocent Idibia (TuBaba), Ayodeji Balogun (Wizkid), Oladapo OyeBanjo (D'Banj), Chinedu Okoli (Flavour), among others who even show off their children and their mothers called 'baby mamas.'

<sup>62</sup> VE Onuoha and Michael Attah, 'The Right to Inherit: Illegitimacy and Constitutional Liberation in Nigeria- Just a Legal Shield' (2014) 36 (3) *Journal of Social Welfare and Family Law* 226.

<sup>63</sup> Ajonumah and Dublin-Green (n 16)114.

<sup>64</sup> ESLR 190 207-208.

maintenance by him, as there was at the time, no petition for dissolution of the marriage. Justice Nnamani of the Customary Court of Appeal, Enugu, in the lead judgment asked a salient question thus: ‘... does a man have an obligation to provide for his child or children whether or not there is a petition for the dissolution of his marriage to the mother of the child or children?’ According to him, ‘the answer is a quick aye.’ A man has both moral and legal obligations to provide for his child or children. The moral obligation stems from a code of paternity which is written by the creator with the ink of love in the hearts of men, which incidentally, most animals, though bereft of the quality of humanity, observe. Legislation is not needed for the observance of this code. He further stated that: the legal obligation is embodied in our laws. By the Customary Court Rules, 2004:

Whenever it appears to a court that an order for the maintenance of a child should be made, the court may make an order directing the putative father or the natural father of such a child, as the case may be, to pay (a) the mother of the child, or (b) where the mother of the child is dead or is for any reason unable to take care of the child, then the father, mother, brother or sister of the mother of the child or any other person who acts in the place of the parent of that child, a regular monthly allowance which the court considers reasonable for the maintenance of that child until he attains the age of sixteen years.<sup>65</sup>

Therefore, in cases of divorce, where a mother is granted custody of the child in the child’s best interest,<sup>66</sup> the father provides for maintenance of the child. A father who takes custody of a child goes further to provide attention, care and nurture in addition to material needs and the day to day living arrangements.

### **5. Towards Living up to the Responsibilities of Fatherhood**

The question is; have fathers lived up to the obligations of the law? The answer is no. Married fathers have generally relied on their wives to give all manner of support to their children under the pretext of being the bread winners in the families. This is not to say that revision of financial support is not necessary in the development of a child. But there are other responsibilities a father has towards his children such as emotional, psychological, mental support, among others. Similarly, some fathers deny paternity of children born outside wedlock, abandoning the mother to perform their legal obligations in their stead. This has created a vacuum in the developmental growth of children born in similar situations occasioning the rising cases of morally decadent children in the society.

In addition, some fathers have taken a negative step further by betraying the trust imposed on them as parents. A good example is by defiling their daughters at tender ages, using them for rituals or contracting them for criminal

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<sup>65</sup> Customary Courts Rules 2004, Order 10 Rule 4.

<sup>66</sup> Matrimonial Causes Act Cap M8, LFN 2004, s 71.

activities (such as drug peddling). Despite the provisions of the law detailing a father's legal responsibility to a child, some fathers continue to do abominable and unthinkable acts to their children. A few examples below buttress this stance:

- (a) Chidi Onyishi father accused of killing his 7-year-old son, Chukwudalu Richards for money rituals in Enugu;<sup>67</sup>
- (b) Christopher Sule, an evangelist was arrested and arraigned for allegedly persistently torturing his six- and eight-year-old children in an unimaginable manner over a period of time, with electric cables, resulting to severe injuries and scars which were very unsightly.<sup>68</sup>
- (c) In Ogun State, a father was caught and arrested for chaining his 12-year-old son in the house for three years with bare necessities and a sparse meal a day.<sup>69</sup>
- (d) A father was arrested and arraigned in Lagos for inserting pepper into the private part of his 12-year-old daughter.<sup>70</sup>
- (e) A father allegedly beat his 13-year-old son and in the process ruptured his intestine.<sup>71</sup>
- (f) 15-year-old Bidemi Olarenle's father had carnal knowledge of her at the tender age of 10 and continued till she was 15 when she became pregnant.<sup>72</sup>
- (g) A 12-year-old girl testified that her father, Emmanuel Idoko, a commercial motorcyclist defiled her by using his manhood and finger to test if she was a virgin.<sup>73</sup>

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<sup>67</sup> Geoffrey Anyanwu, 'Evil Father: How my Husband killed our son to make money-Wife' <<https://www.sunnewsonline.com/evil-father-how-my-husband-killed-our-son-to-make-money-wife/>> accessed 24 November 2021.

<sup>68</sup> Isaac Shobayo, 'Pastor Beats Wife, Daughters to Stupor in Plateau' *Nigerian Tribune* (2017) <<https://tribuneonline.ng.com/pastor-beat-wife-daughters-stupor-plateau/>> accessed 14 April 2022.

<sup>69</sup> Evelyn Usman, 'Father Chains 13-year-old son over N2000' *Vanguard* (2017) <<https://www.vanguardngr.com/2017/06/father-chains-13-yr-old-son-n2000/amp/>> accessed 14 April 2022.

<sup>70</sup> Vanguard, 'Father puts Pepper in Daughter's Private Part' *Vanguard* (2016) <<https://www.vanguardngr.com/2016/08/father-puts-pepper-daughters-private-part/amp/amh>> accessed 14 April 2022.

<sup>71</sup> George, 'Boy Suffers Ruptured Intestines After Father's Brutality' <<https://www.tori.ng/amp/13362/boy-suffers-ruptured-intestines-after-fathers-brut.html>> accessed 14 April 2022.

<sup>72</sup> Vanguard, 'Abomination! Father impregnates daughter' *Vanguard* (18 October 2010) <<https://www.vanguardngr.com/2010/10/a-b-o-m-i-n-a-t-i-o-n-father-impregnates-daughter/>> accessed 20 October 2021.

<sup>73</sup> R Okoye, 'Violated by Their Fathers' *Sun Newspaper* (28 March 2019) <<https://www.sunnewsonline.com/violated-by-their-fathers/>> accessed 24 October 2021.

- (h) A 46-year-old fashion designer, Wale Akanusi, who impregnated his daughter twice and aborted the pregnancies. After the atrocities were discovered: it is not a new thing that a man had sex with his daughter.<sup>74</sup>

Stories such as these abound of atrocities committed by fathers on their children. These include all forms of sexual abuse and exploitation, domestic violence, rape, slavery, human trafficking, child labour, rituals, organ trafficking such as the examples above. It is disturbing that these fathers who have the responsibility to protect their children are the ones abusing them. Some do not even care and cannot provide food, clothes, access to medical treatment, accommodation, and other necessities of life for these children. All these may have worked in the mind of the court in *Anene Chikezie v Ifeoma Anene*,<sup>75</sup> Justice Nnamani stated that:

To argue, as the appellant's counsel did, that a court cannot order an abdicative father to pay for arrears of due and unpaid maintenance allowance for the simple reason that, at the time they accrued, there was no pending divorce petition, would amount to saying that a man has no obligation to fend for his child. It is an incorrect legal proposition which, if bought, can reduce a man to the paternal rascality of the billy goat, which gleefully mounts the nanny goat for copulation but runs away as soon as the deed is done, and is never held accountable for the responsibility of rearing the resultant kid.

There is therefore an urgent need for a solution. The law it seems would always come handy in this respect and ensure that such men are punished for their irresponsible acts. However, this is dependent on if we adopt an activist approach and make cases for enforcement in courts.

## **6. Legal Liabilities Imposed on a Father for Failure in Carrying Out His Fatherly Responsibilities**

The law makes provisions for punishment of fathers who are in breach of their obligations towards their children. This is justified under the principle of the best interest of the child as the primary consideration in issues related to children.<sup>76</sup> In line with this, responsibilities are imposed on parents and guardians as fathers.<sup>77</sup> For example, parents are to provide the best attainable health care for the child.<sup>78</sup> Therefore if any of them has custody of a child who is less than two years, he or she must ensure that the child is fully immunized. Failure to do so makes it a punishable offence and liable for a fine in the first instance and a term of imprisonment not exceeding one month in the second and

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<sup>74</sup> Ibid.

<sup>75</sup> *Anene Chikezie v Ifeoma Anene* ESLR 190 207-208, per Justice Nnamani.

<sup>76</sup> CRA, s 1.

<sup>77</sup> Sections 7, 13, 15, 17, 20, 22 of the CRA provides for different responsibilities of parents.

<sup>78</sup> CRA, s13.

subsequent instances.<sup>79</sup> Again, failure to protect a child's rights listed in sections 3 - 40 of the CRA, such as child marriage,<sup>80</sup> tattoos and skin marks,<sup>81</sup> forced labour,<sup>82</sup> unlawful sexual intercourse,<sup>83</sup> sexual exploitation,<sup>84</sup> among others, will lead to various prison terms ranging from one month to life imprisonment, and such fine as ranging from five thousand naira to five hundred thousand naira only.

It is important to mention that a child whose father or other parent has breached the obligations bestowed on him by the law can enforce his or her rights in the Family Court. Unfortunately, Nigerian culture does not support the idea of a child taking his/her father/mother to court. It is unheard of and considered a taboo. That child will be regarded as evil, an ingrate, wicked and may even be cursed not just by parents and relations, but neighbours and family friends. This is so even though the act of child abuse and neglect, ordinarily, should be more repulsive, repugnant, and offensive. All hands must therefore be on deck, to speak out to condemn the irresponsibility of some fathers. In the words of Nnamani, he advised fathers thus: '... go ye and read, nay, study the Child's Right Act and Child's Right Laws of different states, as fatherhood is no longer business as usual.'<sup>85</sup> This means that the face of fatherhood has changed, and acts required of a father have legal implications attached. There is no exception for fathers that are illiterate and cannot read. This is because of the saying that 'ignorance of the law is no excuse under the law.' However, one way of carrying them along is through programmes that will create massive awareness creation and sensitization by non-governmental organizations (NGOs) and community-based organizations (CBOs) with the support of government at the local government, state, and federal levels.

## 7. Conclusion

It is very clear that the Nigerian child is not safe because he/she is exposed to lots of dangers even in the hands of an irresponsible father who is in a trusted position and constitutes the first line of protection. A father who fails to perform his legal responsibilities of protecting and promoting the rights of his child should be dealt with, in accordance with the dictates of the law. Unfortunately, till date, there are still some states especially in Northern Nigeria, which are yet

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<sup>79</sup> CRA, ss13(4) & (5).

<sup>80</sup> CRA, ss 21-23.

<sup>81</sup> CRA, s 24.

<sup>82</sup> CRA, s28.

<sup>83</sup> CRA, s31.

<sup>84</sup> CRA, s32.

<sup>85</sup> G Nnamani, 'The Imperatives of Fatherhood Under the Child's Right Law' being a paper presented by His Lordship, Hon. Justice George Chibueze Nnamani, FCI Arb, President of the Customary Court of Appeal Enugu State Nigeria during the 2017 International Federation of Women Lawyers (FIDA) Week Celebration on November 7 2017 at Hon Justice IA Umezulike Auditorium High Court Enugu.



to domesticate the CRA and pass their own Child Rights Law. Also, for states that have passed their own Child's Law, there have been no test cases. Be that as it may, as we rely on the law to protect a child from an uncaring father, there should be programmes embarked upon by NGOs like International Federation of Women Lawyers (FIDA) and CBOs, to sensitise and enlighten all fathers on the consequences of their likely positive or negative actions on children and the need for change. The cost implications of investigating, arresting, and imprisoning an erring father outweigh the awareness creation and sensitization. In line with the maxim, 'prevention is better than cure', it is better to sensitise and enlighten than to enforce the law against such fathers. Sensitisation and enlightenment will definitely prevent these fathers from inflicting further harm to the children in whatever way. They will become better equipped with adequate knowledge, to effectively preserve, protect and defend the rights of the child. They would also have a change of attitude to enable them carry out their legal responsibilities as fathers because, once a father, you are a father for life and cannot run away from your responsibilities.