



Contextualising the Concept of Parental Responsibilities and Child Protection in a Legal Pluralistic Nigeria

Wilson Diriwari

Lecturer in Law, Niger Delta University, Nigeria

Correspondence

Wilson Diriwari
Lecturer in Law, Niger Delta University, Nigeria
Email: wods234_ola@yahoo.com, wilson@wsolicitors.co.uk

Abstract

The concept of parental responsibility has obviously been coined in the English legal system. The significance of the concept appears to reside in its practicality. This paper aims to analyse the concept of parental responsibility in the Nigerian context. The paper seeks to determine whether parental responsibility can be effectively excised in Nigeria. Although it is characterised by its practicality in terms of guarantees of child protection in a legal system, the complexity of the Nigerian legal system could generate some contextual paradoxes. Hence this paper attempts to determine the possible paradoxes in the context of the Nigerian legal system, that is underpinned by legal pluralism, and explore the new paradigms. .

Introduction

The concept of parental responsibility can be traced back to ancient times when parenting was seen as a duty and responsibility. In early societies, children were primarily viewed as property and were expected to serve the needs of their parents or the larger community. However, as civilisations evolved, so did the perception of parenthood. One of the earliest known legal codes that recognised parental responsibility was the Code of Hammurabi, issued in Babylon in 1754 BC [1]. This code required fathers to provide financially for their children and held them responsible for their children's behaviour. In the Western world, the concept of parental responsibility was heavily influenced by Judeo-Christian teachings. The Bible emphasises the importance of raising children with love, discipline, and guidance and treating them as gifts from God. During the 19th century, the idea of parental responsibility was further developed in legal and social contexts. In England, laws were passed that required fathers to support their children financially and gave mothers the right to seek child support from negligent fathers. In the United States, the first juvenile court was established in 1899, which aimed to protect children from neglectful or abusive parents. Today, parental responsibility is recognised as an important aspect of child-rearing and is enshrined in various laws and policies around the world. It emphasises the rights and obligations of parents to provide their children with physical, emotional, and psychological care and support, and to guide

them towards becoming responsible members of society.

It could be agreed and reiterated that parental responsibility has revolutionised the perception of parents' natural role or duty owed to their children in the legal environment of England and Wales [2]. The concept of parental responsibility, which is not to be confused with the natural duty of parents to take care of their children, is a legal concept that reinforced and guarantees child rights in specific circumstances. The contextualisation of the concept of parental responsibility relates to the exercise or application of the principle in Nigeria. Introducing the concept and its application in Nigeria could certainly be evidence that parental responsibility has proven efficient and practical in its jurisdiction of origin. Meanwhile, the Nigerian legal system is often deemed complex due to its specific characteristics. Nigeria is a legal pluralist country. In addition to legal pluralism which has often revealed lingering problems of law implementation and enforcement in the country because of contextual realities, parental responsibility might come as an extra burden in the sociolegal environment. There is also the recurring argument that parental responsibility is the perfect answer to situations where a child was at risk of being left without proper care and protection if parental responsibility is not granted to individuals who do not have a natural duty to care for the child [3]. The evaluation of the concept of parental responsibility in the Nigerian context will help to gauge the level of child protection knowing that there are

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paradoxical realities that often thwart the consecration of child protection instruments in the country.

It must be emphasised that the purpose of the act is to reform the statutory framework for the care system in England and Wales by implementing the proposals in the White Paper that require primary legislation, forms part of the government's programme to ensure children and young people receive high-quality care and support. This reinforces the idea that parental responsibility is a key concept that was introduced by the Child Care Act 2008. It broadly replaces the Guernsey and Alderney concept of custody: the parental rights and obligations involved in the raising of children [4].

Parental Responsibility in Context

Parental responsibility in Nigeria is a legal and moral obligation that parents have to provide for the well-being, development, and protection of their children until they become adults. It involves a wide range of duties that parents are expected to fulfil to ensure that their children grow up in a safe and nurturing environment. Indeed parental responsibility in Nigeria is an essential aspect of the country's social fabric. It primarily involves the legal duties and obligations that parents have towards their children, including providing for their basic needs, such as food, shelter, healthcare, and education. In Nigeria, the Child Rights Act of 2003 provides clear guidelines on parental responsibilities. According to this Act, parents are expected to provide their children with a safe and healthy environment conducive to their growth and development. They are also responsible for ensuring that their children receive proper nutrition, clothing, and medical care. Parents in Nigeria are mandated to enrol their children in school from the age of six to sixteen, ensuring that they receive a quality education. Additionally, parents must ensure that their children are protected from abuse, exploitation, and neglect. While parental responsibility falls primarily on both parents, the law recognises that sometimes, situations arise where one parent may be absent, uninvolved, or unable to fulfil their obligations. In such cases, the burden of responsibility falls on the other parent. It is worth noting that Nigeria also recognises the rights of children to have a say in matters that affect them, and this includes decisions about their welfare. Therefore, parents are expected to take into account their children's opinions when making important decisions concerning their lives. Hence parental responsibility in Nigeria is a crucial aspect of ensuring that children grow up in a safe, healthy, and nurturing environment. The government has put in place laws and policies that aim to protect children's rights and ensure that parents fulfil their obligations towards their children.

Section 3(1) of the Children Act 1989 provides that In this Act "parental responsibility" means 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. This law appears to be the first instrument to determine what parental responsibility is. Lawmakers in the United Kingdom parliament explicitly gave meaning to what is seen as a legal duty imposed on parents and any recognised and designated individual that must exercise the duty stated in section 3 of the law. In terms of the legal system, it is understood that Nigeria has inherited from the English since the colonial era. The legal system established by the colonial administration has never been abandoned instead it had evolved to adapt to contemporaneous realities. Moreover, there have often been some new English legal instruments borrowed and

transposed into the Nigerian legal system. The borrowing and transposition per se have never been an issue since the core of the Nigerian legal system rests on the legal system established by the English coloniser. However, in some circumstances, the borrowed instrument or legal concept has proven ineffective due to contextual paradoxes.

Parental Responsibility and Child Protection

The concept of parental responsibility is regarded as a concept that participates in guaranteeing the welfare of the child, and can evidently be welcomed in any jurisdiction. The perspective of child rights protection and promotion of such concepts should be recommended to other jurisdictions than where they have been coined. From the standpoint that parents have the natural duty to care for their children, it should have been a tautology to elaborate on the question through a concept such as parental responsibility. However, misjudgement and wrong parenting could trigger the authorities' intervention without being perceived as an invasion of privacy. The discourse on child protection in Nigeria is one of the most vibrant. Nigeria as a modern nation has always endeavoured to be at the best possible stage in the debate about children's welfare and their rights. Nigeria's willingness to engage in international agreements on children's rights is evidenced by the ratification and domestication of legal instruments such as the United Nations Convention on the Rights of the Child 1989. It is therefore understandable that concepts that relate to the promotion and protection of child rights and welfare are grasped by Nigerian authorities and lawmakers alike. Indeed parental responsibility is intended to guarantee the perpetuation of child protection.

In Nigeria, the court plays an important role in determining parental responsibility and disputes related to it [5]. The Children's Rights Act of 2003 outlines the legal framework for parental responsibilities in Nigeria. According to the Act, both parents have equal rights and responsibilities for the care, maintenance, protection, and education of their children. However, if there is a dispute between the parents regarding any of these issues, the court may intervene to resolve the matter. The court has the power to make orders regarding custody, access, and maintenance. Custody refers to the physical and legal care of the child, which can be joint or sole. Access refers to the right of a parent to visit and spend time with their child. Maintenance refers to the financial support provided by a parent for the upbringing of their child. The court may also take into consideration the best interests of the child when making decisions regarding parental responsibility. Factors such as the child's age, health, education, and welfare may be considered. In conclusion, the court plays a vital role in determining parental responsibility in Nigeria, and its decisions are based on the best interests of the child.

In Nigeria, parental responsibility and child protection are taken seriously by the government and society. Section 37 of the Constitution of the Federal Republic of Nigeria provides that the privacy of citizens, their homes, correspondence, telephone conversations, and telegraphic communications is hereby guaranteed and protected. Therefore, the family environment must be safeguarded. The Nigerian Constitution recognises that children are vulnerable and need special care, protection, and guidance from their parents and other relevant authorities. One of the primary laws that protect children's rights in Nigeria is the Child Rights Act, which was enacted in 2003. This act seeks to promote and protect the welfare, rights, and development of all

children in Nigeria. It covers a wide range of issues, including parental responsibility, custody, guardianship, adoption, abuse, neglect, and exploitation of children. Under the Child Rights Act, every parent or guardian has a legal obligation to provide for their child's basic needs, including food, health care, education, and shelter. Parents are also responsible for protecting their children from harm, abuse, and exploitation. Failure to fulfil these responsibilities can result in criminal charges and penalties. The Nigerian government has established several agencies and organisations to protect children's rights and ensure their well-being. These include the National Agency for the Prohibition of Trafficking in Persons (NAPTIP), the Federal Ministry of Women Affairs and Social Development, and the National Child Welfare Policy.

It is worth noting that parental responsibility and child protection are important aspects of Nigerian law and society. Indeed parents and guardians have legal obligations to provide for the basic needs of their children and protect them from harm. The government has established several agencies and laws to safeguard children's rights and ensure their well-being.

Paradoxical Realities

The paradoxical realities in the materialisation and of parental responsibility can be partly blamed on the legal system. It is worth recalling that the Nigerian legal system is characterised by legal pluralism. Legal pluralism refers to the coexistence of multiple legal systems within a single society or jurisdiction. In Nigeria, legal pluralism is complex and multifaceted due to the presence of various legal systems operating simultaneously [6]. The Nigerian legal system can be broadly categorised into three main sources: customary law, Islamic law (also known as Sharia), and statutory law (also referred to as modern or formal law). Customary law is derived from the customs and traditions of indigenous communities, while Islamic law is based on the teachings of the Quran and Sunnah. Statutory law, on the other hand, is enacted by the government through legislative processes. One of the major challenges of legal pluralism in Nigeria is the conflict that arises between different legal systems. For example, there have been cases where customary law clashes with statutory law, leading to confusion and ambiguity in the legal system.

Additionally, the implementation of Islamic law has been a controversial issue, with some arguing that it undermines the secular nature of the Nigerian state.

Another challenge is the lack of harmonisation between the different legal systems [7]. There is no clear hierarchy among the legal sources, leading to inconsistency in the application of the law. This has led to situations where individuals may be subject to different laws depending on their location, religion, or ethnicity. Furthermore, the legal system in Nigeria is often plagued by corruption and inefficiency, which exacerbates the difficulties of legal pluralism. The lack of a centralised legal system, coupled with the influence of traditional rulers in some areas, makes it even more challenging to overcome these issues. The complexity of legal pluralism in Nigeria is a reflection of the diverse cultural, religious, and historical factors that shape the country. Addressing these challenges will require a concerted effort from all stakeholders in the legal system to ensure that justice is accessible and equitable for all.

One common conflict of law in Nigeria is the clash between customary law and statutory law. Customary law is based on

the traditions and practices of local communities and is often unwritten [8]. In contrast, statutory law is created by the government and is written down in statutes and regulations. When there is a conflict between the two legal systems, it can be challenging to determine which law should take precedence. Another conflict of law arises between Islamic law and statutory law [9]. Islamic law is based on the teachings of the Quran and the Hadith, while statutory law is created by the government. In some cases, individuals may choose to resolve disputes according to Islamic law instead of statutory law, which can lead to conflicts. To address these conflicts, the Nigerian legal system has developed several approaches, including the use of alternative dispute resolution mechanisms such as mediation and arbitration. Additionally, the courts have developed principles of legal interpretation to help reconcile conflicting laws and ensure that justice is served. Overall, the legal system in Nigeria must balance the competing demands of different legal systems to create a fair and just society.

There are several traditional challenges to parental responsibility law in Nigeria, including Cultural and Religious Beliefs: Some cultural and religious beliefs view the child as solely belonging to the extended family or community, and not just to the parents [2]. Obviously, this can complicate matters when determining who is responsible for a child's care and upbringing. Lack of Education and Awareness: Many parents may not be fully aware of their legal rights and responsibilities towards their children. This can lead to neglect or maltreatment, which can have serious consequences for the child's well-being. In regard to poverty, it is evident that many families in Nigeria live in poverty, which can make it difficult for parents to provide for their children's basic needs such as food, shelter, and education. This can result in neglect and abuse. In regard to traditional gender roles, it is a fact that in many Nigerian communities, women are still expected to take on the majority of childcare responsibilities while the men provide financially. This can put women at a disadvantage, especially if they are financially dependent on their husbands. Lack of effective implementation of laws: Despite the existence of parental responsibility laws in Nigeria, they are not always effectively enforced due to limited resources, corruption, and inadequate training of law enforcement officials. This can lead to situations where children are not adequately protected by the law.

The state of child rights and parental responsibility in northern Nigeria is a complex issue with various challenges. Child rights are protected under international conventions such as the United Nations Convention on the Rights of the Child (UNCRC), which Nigeria has ratified. However, in practice, many children in Northern Nigeria continue to face various forms of exploitation, abuse, and neglect, including child labour, forced marriage, and violence [10]. It is worth emphasising that parents in northern Nigeria have the primary responsibility to provide for the basic needs of their children, including food, shelter, education, and healthcare. However, poverty, illiteracy, and cultural practices such as child marriage can hinder their ability to fulfil these responsibilities. Additionally, some parents may prioritise certain children over others, leading to neglect or mistreatment of some children within the family unit. The Nigerian government has taken steps to address these issues through various policies and programmes, including the National Child Welfare Policy and the Child Rights Act 2003. However, implementation and enforcement of these policies are often weak in Northern Nigeria due to factors such as insufficient resources, corruption,

and resistance to change from traditional and religious leaders. Overall, while progress has been made in protecting child rights and promoting parental responsibility in northern Nigeria, much more needs to be done to ensure that all children are able to enjoy their basic human rights and live healthy and fulfilling lives. Corruption and lack of law enforcement in Nigeria can have severe consequences on abuses of parental responsibility [11]. Some of the possible consequences are child abuse. Indeed parents or guardians abuse their children physically, emotionally, or sexually. The lack of accountability for such actions can further perpetuate such behaviour, leading to lasting physical, mental, and emotional harm to the child.

New Paradigms

Parental responsibility in Nigeria has evolved over the years, and new paradigms have emerged in its exercise. Some of these new paradigms include collaborative parenting which is translated as the fact more parents work together to raise their children. Parenting is a natural process and natural duty owed to children. Therefore, greater emphasis should be placed on it. This approach demands that parenting is a shared responsibility and that both parents contribute equally to the upbringing of their children as it has happened over the centuries. There is also a way of technology-assisted parenting where parents can now use various tools and resources to assist them in their parenting responsibilities [12]. From parenting apps to online parenting guides, technology has made it easier for parents to access information and stay connected with their children. There is also the concept of mindful parenting which is a holistic approach that emphasises being present and attentive to the child's needs and development. This approach encourages parents to be fully engaged and responsive to their child's emotional, physical, and cognitive needs, and to create a supportive and nurturing environment for their growth and development. There is also positive discipline which is a discipline technique that has become more popular in Nigeria, as parents seek to raise their children in a non-violent and respectful manner. There is also the option of positive discipline which emphasises building strong relationships with children, communicating effectively, setting clear boundaries, and reinforcing positive behaviour [13]. Overall, these new paradigms reflect the changing attitudes and priorities of Nigerian parents, who are increasingly focused on raising confident, independent, and emotionally intelligent children in a rapidly evolving world. On the other side authorities and the judicial system can be reassured that parental responsibility is effectively exercised and child rights in Nigeria are promoted and protected.

Conclusion

Parental responsibility in Nigeria is highly valued and considered a fundamental aspect of parenting. It is believed that parents have a moral obligation to provide for, protect and guide their children toward becoming responsible adults. This includes ensuring that children are well-nourished, educated, and have access to healthcare. In Nigerian culture, parents are also responsible for instilling values such as honesty, respect, and hard work in their children. The importance of

parental responsibility is reflected in the laws of the country, which hold parents legally accountable for the actions of their children until they reach adulthood. Overall, the concept of parental responsibility in Nigeria is regarded as vital for the development and success of children. However, according to the Child Rights Act of 2003 in Nigeria, parents or guardians have a legal duty to provide for and protect their children's well-being and upbringing. This includes ensuring that their children have access to education, health care, and protection from abuse and neglect. However, there have been reports of child abuse and neglect in Nigeria, suggesting that parental responsibility may not always be satisfactory. It is important for authorities to enforce the law and hold parents accountable for their responsibilities towards their children.

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