

# **AN APPRAISAL OF THE ENFORCEMENT OF THE RIGHT TO MAINTAINANCE FOR CHILDREN OF DIVORCED/SEPARATED PARENTS IN NIGERIA**

**BY**

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## **Abstract**

This paper renders a comprehensive appraisal of the enforcement of the right to maintenance for children of divorced or separated parents in Nigeria recognizing its multi-dimensional nature which extends beyond financial support. By critically analyzing legal frameworks, socio-cultural dynamics, and practical challenges, this work investigates the effectiveness of maintaining the well-being and holistic development of children in such circumstances. Through an integrated approach - involving legal analysis, case studies, and qualitative exploration - this paper delves into the complex layers of child maintenance enforcement. It examines the intricate interplay between legal provisions, societal perceptions, and the diverse elements contributing to a supportive environment for children post-divorce or separation. This study sheds light on the comprehensive scope of maintenance, encompassing emotional, psychological, and social aspects, and aims to inform policy enhancements and legal reforms. Ultimately, it advocates for an inclusive approach that prioritizes the all-encompassing welfare of children navigating the intricate challenges of parental separation.

Keywords: child rights, enforcement, divorce, separation, maintenance

## **1.0 Introduction**

The right of children to maintenance is a fundamental right which every child all over the world are entitled to enjoy because they are young and are unable to provide for themselves and therefore depend on others for survival. Parents are duty bound to provide for their children

and make their welfare top priority which will enhance their all-round development and well-being. There is a rising incidence of separation and divorce among young couples— in Nigeria.<sup>1</sup> Marriage counselling experts are also concerned about the growing global number of separation and divorce among married couples.<sup>2</sup> Statistics have shown that there are about two hundred and ninety-eight (298) million parents living apart globally.<sup>3</sup> In Britain alone, there were Two and a half million separated families with about four million children, at the end of the 2022 financial year. For the continued wellbeing of those children, fifty-nine percent of those separated families had a child maintenance arrangement.<sup>4</sup> These maintenance arrangements were either made privately by the parents themselves via applying to Child Maintenance Services (CMS), Britain's authorized child maintenance service.

The Child Maintenance Service has a duty to work out an amount to be paid to the custodial parent for the child's maintenance. Where the parents were unable to arrange payments between themselves or where the paying parent failed to keep up with the payments, the British child care institutional framework offers the Collect and Pay Service.<sup>5</sup> These services basically compound the due care and attention the British consider that its child population deserves where parents' 'break-up'.

Nigeria has also added to the international numbers of the growing incidence of divorcees and separated couples. For instance, in the south-south part of the country alone, it was reported that thirty (30) percent of women among the Yako Tribe in Cross River State were divorced.<sup>6</sup> Unlike Britain, Nigeria does not have terms of the implementation of child enforcement laws because it has no Child Maintenance Services equivalent.

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<sup>1</sup> S. Osaji, 'Marriage experts worry over rising divorce among young couples' *Punch Newspaper* [Lagos, 23<sup>rd</sup> April 2023] <<https://punchng.com/marriage-experts-worry-over-rising-divorce-among-young-couples/>> accessed: 6 June, 2023

<sup>2</sup> L.F.CNtimo, and M.FAkokuwebe, 'Prevalence and Patterns of Marital Dissolution in Nigeria', (2014) (12) (2) *The Nigerian Journal of Sociology and Anthropology* (2014) 12 (2) 1-15

<sup>3</sup> S. Atwood, 'Child Support Facts and Statistics' <<https://supportpay.com>> accessed 6 June, 2023.

<sup>4</sup> Department for Work and Pensions, 'Official Statistics Child Maintenance Statistics: data to December 2022 (experimental)' [United Kingdom 28 March, 2022] <<https://www.gov.uk>> accessed 6 June, 2023.

<sup>5</sup> *ibid*

<sup>6</sup> S. Osaji (n1)

It is imperative to note that the issue of maintenance for children of divorced or separated parents is a very crucial aspect of family law; as it ensures that concerns regarding the financial support and material well-being needs of such children are catered for. It also ensures that available financial resources necessary for providing education, healthcare, and overall welfare of children are harnessed and applied.

Thus, child maintenance is a right which is aimed at providing care for children; especially where an 'unnatural' gap is created by a divorce or legal separation of their parents. Where maintenance is adequately provided for, it can significantly help in reducing the hardship faced by children from divorced or separated parents as against children in stable homes.<sup>7</sup>

Adequate child maintenance also plays a significant role in addressing child poverty. That argument may be based on the premise that it ensures that there is no significant drop in the standard of living of the child as this could negatively affect the child's development.<sup>8</sup>

In Nigeria there are institutions and laws in place which protect and ensure that the rights of children are respected and enforced. Such laws and organizations include; the Child's Rights Act<sup>9</sup> which was adopted in 2003, the Matrimonial Causes Act of 1970<sup>10</sup> the National, State and Local Government Child Rights Implementation committee, UNICEF Child protection Programme amongst others.

The enforcement of the right of maintenance for children is a complex issue as various factors can affect effective implementation and enforcement of maintenance laws and policies. Factors affecting its effective implementation may include but is not limited to, legal factors, lack of awareness, cultural and societal factors, illiteracy, socio-economic factors amongst others.

In spite of the extant national, international law and institutions for the protection of the right to child maintenance for children of divorced or separated parents in Nigeria, the implementation and enforcement of these rights are still far from being actualized. There are cases of children neglected by parents and the number of cases are on the increase in our society.<sup>11</sup> Every now and

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<sup>7</sup> 'Children and the law: child maintenance'. <<https://rightsofwomen.org.uk/get-information/family-law/children-law-child-maintenance/>> accessed 6 June, 2023

<sup>8</sup> M.Hakovirta, 'Child Maintenance and Child Poverty: A Comparative Analysis'(2011) (19) (3)*Journal of Poverty and Social Justice* 249-262

<sup>9</sup> Act No.26 of 2003

<sup>10</sup> Matrimonial causes Act, Cap M7, Laws of the Federation of Nigeria, 2010.

<sup>11</sup> G Hornor, 'Child Neglect: Assessment and Intervention' (2014) *Journal of Pediatric Health Care*.

<<https://www.jpeds.org> > article > fulltext.>See also O Olusegun and AAdegbite 'An Appraisal of Child Neglect in Nigeria, a Legal Perspective' (2023) *Research Gate*.

then, cases of child abandonment due to lack of maintenance are reported via the electronic media and also by personal interactions of fathers who abandon their families, leaving the care of the children solely in the hands of their mother who might not have the capacity to adequately cater for the welfare of such children. Where divorce is complete, order of child maintenance by the court is not adhered to, hence the percentage of families in Nigeria consisting of single-parents is on the increase.<sup>12</sup>

This paper seeks to appraise the enforcement of the right to maintenance of children of divorced and separated parents in Nigeria. The paper is in 6 parts; the introduction is followed by conceptual clarification, part 3 examines the extant laws on child rights to maintenance in Nigeria, part 4 x-rays the challenges to the enforcement of the right of children to maintenance by their divorced /separated parents, case laws relating to children's right to maintenance are examined in part 5 while the final part concludes and makes recommendation to enhance effective implementation and enforcement of the right to maintenance of children of divorced /separated parents in Nigeria.

## **2.0 Relevant Concepts**

The relevant concept in this paper include: Rights, Divorce, Marriage, Child, Separation, and Maintenance which will be discussed in seriatim

### **2.1 Rights**

There is generally no accepted definition of the word 'right' because the term has been used by different jurists and group of people to mean different things and for different purposes.

Black's law dictionary defines rights as that due to a person by just claim, legal guarantee, or moral principles<sup>13</sup>. Rights can be defined as any interest or privilege recognized and protected by law. It also is the freedom to exercise any power conferred by law.<sup>14</sup> Vinogradoff a jurist sees rights as a kind of claim; Gray describes the term as essentially powers; to Salmond, it is an interest or benefit recognized by law; Raz has asserted that a person has a right when an aspect of

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| <[https://www.researchgate.net/publication/370527799\\_An\\_Appraisal\\_of\\_Child\\_Neglect\\_in\\_Nigeria\\_a\\_Legal\\_Perspective](https://www.researchgate.net/publication/370527799_An_Appraisal_of_Child_Neglect_in_Nigeria_a_Legal_Perspective)> accessed 6 June, 2023

| <sup>12</sup>L.F.C Ntimo, And M.F Akokuwebe, 'Prevalence and Patterns of Marital Dissolution in Nigeria'(n2).

<sup>13</sup>A. Bryan Garner Black's Dictionary of Law (8<sup>th</sup> Edition, Thomson West, St. Paul MN, 2004)

<sup>14</sup> Oxford Dictionary of law, (6<sup>th</sup> Edition Oxford University Press Inc. 2006)

his well-being is sufficient reason for holding some other person or persons under a duty and Holmes defines it as being prophecies or expectations.<sup>15</sup>

Rights are often considered to be of great importance to civilization as they structure the forms of governments, the content of laws and shape the perception of morality.<sup>16</sup> Furthermore, there are various types of rights-Natural rights which is derived from human nature, legal rights are interests accepted and protected by law of which any infringement attracts the punishment of law,<sup>17</sup> and moral rights which protects persons and reputations rather than purely monetary value of a work to its creator.

### 2.1.2 Child

In Nigeria a child is a person who has not attained the age of 18 years by virtue of the Child's Rights Act, 2003.<sup>18</sup> The Convention on the Rights of the child (CRC) which is a global instrument providing for children's rights, defines a child as "every human being below the age of eighteen years<sup>19</sup>", unless the national law considers majority attained at an earlier age. The African Charter on the Rights and Welfare of the Child 1990<sup>20</sup> definition is similar to that of the Child's Rights Act of 2003 on the meaning of a child. The Administration of Criminal Justice Act 2014 for the purpose of criminal responsibility recognizes a child to mean a person below the age of 14 years<sup>21</sup>. These definitions ensure that children receive special rights and protections due to their vulnerability arising from their age and stage of development.

The definition of the word "child" has been shaped and clarified through legal precedents and case laws. These judicial decisions have provided specific interpretations and parameters regarding who can be considered a child under different legal contexts. For instance, in the case of *Nanak Chanda v Chandra Kishore*<sup>22</sup> it was explained that the word 'child' is used in correlation with father or parents and it means the off spring male or female of human parents.

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<sup>15</sup> J.M. Elegido, *Jurisprudence*, (Spectrum Books Limited Ibadan 1994), 155

<sup>16</sup> C.Nwagbara, 'The Concept of Rights – To Be Or Not To Be,' (2015) (3) (3) *International Journal Of Business and Law Research* <<https://seahipaj.org/journals-ci/sep-2015/IJBLR/full/IJBLR-s-5-2015.pdf>> accessed 7 July, 2023

<sup>17</sup> 'Legal Rights – Rights Kinds' <https://www.toppr.com/guides/legal-aptitude/jurisprudence/legal-rights-rights-kinds/> accessed 7 July, 2023.

<sup>18</sup> Child's Rights Act 2003, s. 277

<sup>19</sup> Convention on the Rights of the Child 1989, art. 1

<sup>20</sup> African Charter on the Rights and Welfare of the child 1990, art.2

<sup>21</sup> H O.Okunrobo, 'Children's Participation Right in the Changing Faces of Family Law' (2017) (20) (2) *The Nigerian Law Journal*, 369

<sup>22</sup> (1969) 1 SCWR, 1776

In *Okoye v State*<sup>23</sup> the court held that a child is a person in the formative period of life. In *Labinjo v Abake*<sup>24</sup> the court held that a person under the age of 21 is a minor and therefore lacks the capacity for contractual obligations.

These case laws play a significant role in shaping the legal framework surrounding children's rights, protections, and responsibilities.

Wife and the legal obligation arising from that status. Marriage is also defined as an agreement entered into between a man and a woman, formalized by certain legal rules and procedures, which creates and imposes rights and obligations between them relating to matters such as finances, property, inheritance, pensions and children<sup>25</sup>. It is a civil and religious contract by marriage was described as the voluntary union for life of one man and one woman to the exclusion of all others until divorce or death.<sup>26</sup>

Two types of marriages are legally recognised in Nigeria and they are; Marriage under the Act (Statutory Marriage) and Customary Marriage.<sup>27</sup>

Statutory Marriage (Marriage under the Act): As the name implies, statutory marriage is one which is contracted under the Act. In Nigeria, a statutory marriage, commonly referred to as a registry marriage is a consensual and enduring union between a man and a woman, specifically designed to exclude any additional spouses according to legal provisions.

Customary Marriage is also referred to as traditional marriage, a marital union that follows the customs and traditions based on the native or customary laws of a specific society.<sup>28</sup> This type of marriage is rooted in the customs practiced by the bride's community or ethnic group, where the customary marriage ceremony takes place. Customary law marriage varies from one community to the other. Islamic marriage which is a class of customary law marriage is regulated by Islamic personal law in the Northern part of Nigeria.<sup>29</sup>

#### 2.1.4 Separation

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<sup>23</sup>[\(1972\) 12 SC, 115 at 125](#)

<sup>24</sup> (1924) 5, NLR 33

<sup>25</sup> Webb Julian's Penguin Dictionary of law (Penguin Uk, 2009)

<sup>26</sup> (1886) 1. R.I.P&D 130, 133

<sup>27</sup> The Marriage Act, CapM6 LFN 2004, ss 33,46 and 47.

<sup>28</sup> (2013) LEPELR 21863 (SC) 61

<sup>29</sup> M.O Oseghale 'Dissolution of Statutory Marriage In Nigeria; Always Remainder One' (2018) (1) (1) *Journal of Contemporary Legal and Allied Issues* 113

Separation is the living apart of a husband and wife, if they cannot agree to carry out their union.<sup>30</sup> This statutory decree was established to substitute the previous ecclesiastical decree of divorce a *mensa et thoro*, which essentially meant separation from "table and bed."<sup>31</sup> Its primary objective is to release the petitioner from the obligation of cohabiting with the respondent. Instances of this legal measure being pursued are infrequent, and courts exhibit considerable reluctance in issuing the order<sup>32</sup>. This is due to the fact that it effectively maintains the parties' legal ties in a defunct marriage while allowing them to live apart<sup>33</sup>.

Reconciliation with the other party, or because they hold religious beliefs that oppose divorce. In reluctance to entertain the dissolution of their marriage, stating that if their issues were resolved satisfactorily, they could continue living together as a married couple. The reasons upon which a petition for judicial separation can be filed align with those for divorce. Nearly all the factors associated with a divorce petition, such as limitations and prohibitions are equally relevant in the case of judicial separation<sup>34</sup>.

Consequently, as long as a judicial separation decree remains in effect, neither spouse can be said to be in desertion<sup>35</sup>. The marriage remains unaltered, and the rights and responsibilities of the parties involved remain unaffected by the petition for judicial separation.

Parties or in consequence of proceedings at law.<sup>36</sup> Divorce also means the dissolution of a marriage contract.<sup>37</sup> Divorce signifies the end of a marital relationship; it is the last resort when the marriage has broken down irretrievably<sup>38</sup> resulting in the legal dissolution of a marriage by a court of competent jurisdiction.<sup>39</sup> *In Harriman v Harriman*<sup>40</sup> the court held as follows ... there is only one ground for the dissolution of marriage under the Matrimonial Causes Act, to wit, "that the marriage has broken down irretrievably" ...

### 2.1.6 Child Maintenance

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<sup>30</sup>KJ AIYER'S Judicial Dictionary, (14<sup>th</sup> edition, The Law Book Company 2007)

<sup>31</sup>I. Sagay *Nigerian Family Law, Principles, Cases, Statutes and Commentaries* (Malthouse Press Ltd, 1999) 122

<sup>32</sup>*Ibid.*

<sup>33</sup>*ibid*

<sup>34</sup>*ibid*

<sup>35</sup> (1914) N.L.R. 941

<sup>36</sup>KJ AIYER'S Judicial Dictionary\_(n 31)

<sup>37</sup> Jowitt's Dictionary of English Law(3<sup>rd</sup> edition, Sweet and Maxwell Ltd 2010)

<sup>38</sup>M.O Oseghale, 'Dissolution of Statutory Marriage In Nigeria; Always Remainder One' (2018)(1) (1)*Journal of Contemporary Legal and Allied Issues* 113

<sup>39</sup>*ibid*

<sup>40</sup> (1989) 5 NWLR, [Pt.119] 6 CA

Ensuring the provision of essential necessities such as food, clothing, housing, healthcare, and education and determines how these responsibilities are shared and allocated between the parents. All parents, whether married or not, living together, separated, or divorced and parents of adopted children are required to support the financial needs of their children<sup>41</sup>. Any individual who bears the responsibility for raising a child, such as a legal guardian, adoptive parents, or the child's grandparents has the responsibility of providing for his/her maintenance.<sup>42</sup> Maintenance is required to be paid until a child can support or fend for himself /herself.

### **3.0 Legal and Institutional Frameworks Protecting the Right to Child Maintenance in Nigeria**

The recognition and enforcement of human rights depend on the presence of suitable legal and institutional structures. These frameworks play a crucial role in ensuring the efficient operation of the system, preventing redundancies, duplications, unnecessary complexities and any potential gap in implementation.<sup>43</sup> This part examines the international legal frameworks, national laws as well as institutions regulating the right to maintenance for children. However, more emphasis will be on the national legislations and institutions protecting the right to child maintenance in Nigeria.

#### **3.1 International Legal Frameworks**

International legal frameworks are instruments protecting the rights of children and ensuring be

##### **3.1.2 Universal Declaration of Human Rights 1948**

Second-generation rights. UDHR provides that everyone has the right to a standard of living adequate for the health and well-being of the family, including food, clothing, housing and medical care and necessary social services<sup>44</sup> It also provides that Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.<sup>45</sup> Children are humans and so are entitled to enjoy adequate

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<sup>41</sup> Department of Justice and Constitutional Development (National) (The Government of South Africa), 'All you need to know about child maintenance' *Western Cape Government* [18 July, 2019] <<https://www.westerncape.gov.za/general-publication/all-you-need-know-about-child-maintenance>> accessed 9 July, 2023

<sup>42</sup> *ibid*

<sup>43</sup> 'Legal and Institutional Frameworks' *Social Protection and Human Rights* [January 2015] <<https://socialprotection-humanrights.org/key-issues/governance-accountability-and-democracy/legal-and-institutional-frameworks/>> accessed 15 July 2023

<sup>44</sup> UDHR 1948, art. 25.

<sup>45</sup> *Ibid*, art 25(2)

standards of living which include adequate provisions of food, clothing medical care amongst others.

Before the law as well as equal protection of the law to all persons without discrimination.<sup>46</sup> The UDHR ensures the entitlement of every individual to seek efficient recourse through competent national courts when their fundamental rights, as granted to them by the constitution or by law, are violated.<sup>47</sup> This means that children can seek redress in a court of competent jurisdiction where their rights to maintenance have been breached either through representatives acting on their behalf or by themselves.

November 1989, but it came into force on the 2<sup>nd</sup> of November 1990.<sup>48</sup> The Convention states that a child means every human being below the age of 18 years, unless under the law applicable to the child, majority is attained earlier.<sup>49</sup> It provides that the paramount consideration in all matters pertaining to children, regardless of whether they are carried out by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, should be the best interests of the child.<sup>50</sup> Additionally, a decade later, two Optional Protocols were adopted to facilitate the enforcement of the CRC and provide a mechanism for addressing complaints related to violations of children's rights.<sup>51</sup> It is noteworthy that the CRC holds the distinction of being the most extensively ratified International Human Rights Treaty with 194 states having ratified it.<sup>52</sup>

Reinforce the provisions outlined in the Convention on the Rights of the Child.<sup>53</sup> In situations of dissolution, adequate provisions must be put in place to ensure the essential protection of the child. The maintenance of a child shall not be withheld based on the marital status of their parents.<sup>54</sup> According to the charter, every child is entitled to parental care and protection.<sup>55</sup> The subsequently.

### **3.2.1 The Constitution of the Federal Republic of Nigeria (CFRN) 1999 as amended**

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<sup>46</sup> *Ibid*, art 7

<sup>47</sup> *Ibid*, rt 8

<sup>48</sup> P I Gbobo, *Legal Appraisal of Child Rights Protection in Nigeria and Other Jurisdictions* (Unpublished PhD Thesis, Faculty of Law, Rivers State University 2022)136

<sup>49</sup> CRC 1989, art. 1

<sup>50</sup> CRC 1989, art. 3(1)

<sup>51</sup> *Ibid*, art.3(1).

<sup>52</sup> *ibid*

<sup>53</sup> African Charter on the Right and Welfare of the Child, 1990.

<sup>54</sup> *ibid* art. 18 (2) and (3)

<sup>55</sup> *ibid* art.19 (1)

Chapter 2 (The Fundamental Objectives and Directive Principles of State Policy). These fundamental principles and objectives ensure adequate medical and health services for all citizens<sup>56</sup> of which children are included. Children are entitled to these facilities as well as it is essential for their development and overall well-being. It provides that citizens should be provided with adequate shelter and food<sup>57</sup> of which children are entitled to enjoy as they qualify as citizens of Nigeria. Children should also be protected from moral and material neglect.<sup>58</sup> Section 18 (1) provides for compulsory education for citizens to eradicate illiteracy, this right is also of great importance to the development of a child, unfortunately, these rights are not justiciable.

To provide for and protect the rights of children.<sup>59</sup> It integrates all the rights and responsibilities of children, consolidates all child-related laws into a single piece of legislation and specifies the duties and obligations of the government, parents, and other authorities, organizations, and bodies in respect to children.<sup>60</sup> The Act extensively provides for the rights of children including the right to their maintenance. Section 14(2) of the Act provides that every child has the right to maintenance from his or her parents or guardians in line with the extent of their means, and the child has the right to assert this right in a family court in proper situations.

It also provides that every parent, guardian or institution saddled with the responsibility and maintenance of a child must provide essential guidance, discipline, education, and training for such child in order to enable him perform his responsibilities as stipulated in the section.<sup>61</sup> The court has the power to order the parent of a child, guardian or any other person in whose care and custody the child is under to contribute to his maintenance.<sup>62</sup> According to the Act, the court can issue a Care Order for a child if it determines that the care the child has is inadequate and such order is necessary to rectify the situation.<sup>63</sup> The court also has the power to make an order

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<sup>56</sup> CFRN 1999, s. 17(3) (c)

<sup>57</sup> *ibid*, s. 16 (2) (d)

<sup>58</sup> *Ibid*, s. 17 (3) (f)

<sup>59</sup> 'Overview Of The Child Right Act (2003)' *Chaman Lawfirm* [June 17, 2020] <<https://www.chamanlawfirm.com/overview-of-the-child-right-act-2003>> accessed 17 July 2023

<sup>60</sup> MT Ladan, 'An Overview of the Child Rights Act, 2003' [15 – 19 NOVEMBER, 2021] <<https://nji.gov.ng/wp-content/uploads/2021/12/AN-OVERVIEW-OF-THE-CHILD-RIGHTS-ACT-2003-L>> accessed 17 July, 2023

<sup>61</sup> CFRN 1999, s.20

<sup>62</sup> *Ibid*, s.52 (1) and (2)

<sup>63</sup> *ibid*, s.53 (2)

requiring either or both parents of a child, who is a ward of the court to pay a sum of money which the court thinks is reasonable towards the maintenance and education of such child.<sup>64</sup>

Order, the foster parent assumes the rights, duties, obligations, and liabilities associated with the child's maintenance.<sup>65</sup> The foster parent is responsible for the custody and upkeep of the child, as if he (the child) was born to him under a lawful marriage<sup>66</sup> and if a fostering order is issued for a child while there is an existing maintenance order, the maintenance order still subsists.<sup>67</sup>

Section 149 establishes the Family court which has the jurisdiction to hear civil matters in which a child's right, claim or interest is in issue.<sup>68</sup> Section 178 (1) and (2), stipulates that the government should make provisions for the accommodation and maintenance of a child under its care. The National Child Rights Implementation Committee, State Child Rights Implementation, The Matrimonial Causes Act,1970<sup>69</sup>, primarily deals with matters related to the dissolution of marriage, child custody, and the well-being of children in Nigeria<sup>70</sup>.For matters relating to maintenance, the Matrimonial Causes Act provides for the maintenance of both children and parties to the marriage. The specifically grants the Court the authority to issue an order pertaining to the financial support and maintenance of both the spouse and children involved in the marriage<sup>71</sup>.The Act also empowers the Court in a proceeding with respect to the maintenance of a party to the marriage or of children of the marriage to make an order of maintenance pending the disposal of proceedings having<sup>72</sup> regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances”.

Based on the aforementioned section, the court is authorized to issue two types of maintenance orders: maintenance order pending the finalization of the legal proceedings and maintenance order after the proceeding has been finalized<sup>73</sup>. The court while granting this order is to take into cognizance the criteria stipulated in the section which are the means of the party (certificate of means with respect to the pecuniary resources of the parties and their capacity to earn income),

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<sup>64</sup> *Ibid*, s.95 (1)

<sup>65</sup> *Ibid*s.110 (1)

<sup>66</sup> *ibid* (2)

<sup>67</sup> *Ibid*, s.111

<sup>68</sup> *Ibid*, s.151 (1) (a)

<sup>69</sup> Cap M7 Laws of the Federation, 2004

<sup>70</sup> *Ibid*.

<sup>71</sup> *Ibid*, s.70.

<sup>72</sup> *Ibid*, s. 70(1)(2).

<sup>73</sup> E I Nwogugu, *Family law in Nigeria* [HEBN publishers,2014] 257

conduct of the parties and all other relevant circumstances.<sup>74</sup> From the section it is evident that children as well as parties to the marriage are entitled to the right to maintenance. In *Dawodu v Dawodu*<sup>75</sup> it was expressed that in Nigeria, one owes one's parents some moral but not legal obligation to assist with their maintenance, therefore one's parents' claim can of course not rank higher than that of one's wife and children. Parent's claim is not legally enforceable whereas that of the wife and the children are legally enforceable.

In *Williams v Williams*<sup>76</sup> the court also affirmed the view that child maintenance is imperative and that custody of a child essentially concerns not only control but also carries with it the necessary implication of the preservation and care of the child's person, physically, mentally and morally. In other words, responsibility for the child in regard to his/her needs - food, instruction, clothing and the like.

The Procedural Rules<sup>77</sup> also state that a petitioner seeking maintenance must furnish details regarding the spouse's known earning capacity, as well as the income and financial obligations of both parties involved. This includes disclosing the petitioner's own income, assets, and financial responsibilities, among other relevant information. The Act also mandates that the court prioritize the best interests and welfare of the child above all else when deciding matters related to custody, guardianship, well-being, progress, and education of the child.<sup>78</sup> It also gives power to the court to make orders by requesting for the payment of unsecured maintenance<sup>79</sup>.

However, there are factors which constitute challenges to the enforcement of child maintenance in divorce or separation in marriage in Nigeria. These challenges include but not limited to the following:

Obstacle to effectively enforcing child support. When parents lack a comprehensive understanding of their obligations and the legal options at their disposal, it can result in non-compliance and a diminished grasp of the significance of providing financial assistance for their children. A lot of custodial parents may be unaware of their rights to request child maintenance

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<sup>74</sup> *ibid*

<sup>75</sup> [1974] 5 CCIICJ 617

<sup>76</sup> [1987] 2NWLR [Pt 54] 66

<sup>77</sup> Rule XIV. Order 4

<sup>78</sup> Matrimonial Causes Act, s.71.

<sup>79</sup> *ibid*, s.73(1).

from non-custodial parents<sup>80</sup>, particularly if there's no legal marriage involved. This lack of awareness can lead to custodial parents choosing not to pursue child maintenance orders, even though they have a rightful claim to receive such support. Non-custodial parents' limited understanding of their legal duty to financially support their children can result in them unilaterally ceasing child support. This can leave custodial parents without the necessary means to care for their children.

Support agreements. These informal arrangements are typically not legally enforceable<sup>81</sup> and can result in disputes and irregular payments. The legal process for securing and enforcing child maintenance orders can be intricate and intimidating, particularly for individuals without legal training. Insufficient awareness of the necessary legal steps and where to obtain assistance can discourage parents from seeking child maintenance measures through formal legal avenues.

family expectations. This is amplified when parents are unaware of their rights and legal options to safeguard their children's financial well-being. Limited awareness can cause delays in pursuing child maintenance orders, causing financial difficulties for custodial parents during the legal process and potentially negatively affecting the child's welfare. In societies emphasizing traditional family norms, the stigma attached to single parenthood can deter custodial parents from pursuing child maintenance due to the fear of being judged.<sup>82</sup> Cultural focus on reputation can dissuade custodial parents from seeking maintenance, fearing that such actions could reveal private family matters.<sup>83</sup> There is also the case of cultures prioritizing family or community conflict resolution over enforcing legal actions, this discourages custodial parents from pursuing legal remedies for child maintenance<sup>84</sup>. Gender norms can prevent custodial parents, particularly women, from asserting child maintenance rights if it challenges traditional roles of the primary when custodial parents lack funds for legal proceedings or complex systems, obtaining necessary

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<sup>80</sup>O.I Igwe ,A.S Amaramiro and E.N Mathew 'Enforcement of Fundamental Rights in Nigeria and the Unsolved Issue of Poverty among the Citizens: An Appraisal' *BLR* [2019] 10 (1)  
<[https://www.scirp.org/journal/paperinformation.aspx?paperid=89952 - ref15](https://www.scirp.org/journal/paperinformation.aspx?paperid=89952-ref15)> accessed 13 August 2023

<sup>81</sup> 'Child Maintenance Agreements' *The Glasgow Law Practice*  
<<https://www.theglasgowlawpractice.co.uk/services/family-law/child-maintenance-agreements.html>> accessed 13 August 2023

<sup>82</sup> B Afolabi, 'Our status attracts stigma but we desire love – Single mums'[16 July, 2022]  
<<https://punchng.com/our-status-attracts-stigma-but-we-desire-love-single-mums/>> accessed 14 August 2023

<sup>83</sup>A. Armstrong, 'Maintenance Payments for Child Support in Southern Africa: Using Law to Promote Family'  
*National Library of Medicine*, [July – August 1992.] <<https://pubmed.ncbi.nlm.nih.gov/1412595/>> accessed 13 August 2023

<sup>84</sup>*Ibid.*

child support from non-compliant parents becomes difficult. Limited resources hinder access to legal representation, leading to delays and abandoned cases.<sup>85</sup> This results in inadequate financial support, harming children's well-being and education. Financial constraints may deter custodial parents from pursuing their rights, enabling non-compliance. Addressing this requires legal aid, simplified procedures, and support mechanisms to effectively uphold children's right to proper maintenance.<sup>86</sup>

#### 4.4 Geographical Challenges

Vast size, diverse regions, and weak infrastructure make access to legal resources difficult.<sup>87</sup> Remote areas lack legal infrastructure, complicating custodial parents' efforts to enforce maintenance orders.<sup>88</sup> Travel costs and time also discourage the pursuit of legal action. Inconsistent enforcement due to varying accessibility and resources leads to unequal treatment. Priorities and allowing non-compliant parents to evade responsibilities through manipulation and bribery. When corruption permeates the legal system and enforcement agencies, it can lead to distorted priorities and unjust outcomes,<sup>89</sup> non-compliant parents might exploit these corrupt practices to evade their child maintenance obligations by offering bribes or using connections to manipulate the process.<sup>90</sup> This compromise custodial parents' entitlement to support and adversely affects children's well-being and development. Furthermore, corruption erodes public trust in the legal system, discouraging custodial parents from seeking their rights due to perceived unfairness.

Enforce their maintenance rights, reason being that they are minors and so are legally incapacitated. This constraint can impede the effective enforcement of their rights. Nonetheless, they can pursue legal measures through competent representatives acting on their behalf.<sup>91</sup> Regrettably, in certain communities, children in attempting to enforce maintenance orders against their parents might encounter social stigma and negative perception. This prevailing societal outlook can further obstruct the realization of the child's right to proper maintenance.

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<sup>85</sup> Ibid,

<sup>86</sup> Ibid

<sup>87</sup> A Lapkin, 'The problems of access to justice in rural areas (on the example of Ukraine)', *SHS Web of Conferences* September, 2019 <[https://www.shs-conferences.org/articles/shsconf/pdf/2019/09/shsconf\\_shw2019\\_01018.pdf](https://www.shs-conferences.org/articles/shsconf/pdf/2019/09/shsconf_shw2019_01018.pdf)> accessed 14 August 2023

<sup>88</sup> A Lapkin, 'The problems of access to justice in rural areas (on the example of Ukraine)' (n95)

<sup>89</sup> T\_Aderoju, 'The Impact of Corruption on the Rule of Law and the Effective Administration of Justice using Nigeria as a Case Study' *International Bar Association* accessed 14 August 2023

<sup>90</sup> Ibid.

<sup>91</sup> 'Why the Child's Rights Act still doesn't apply throughout Nigeria', *The Conversation* [September 24 2020]

Parents have the obligation to fully disclose their income during custodial proceedings.<sup>92</sup> Where parents do not disclose their income or all of it, it creates a significant hurdle in enforcing child maintenance rights. Inaccurate income reporting complicates the calculation of appropriate support, leading to unjust payments that affect the child's well-being. Furthermore, incomplete disclosure undermines the custodial parent's legal actions for fair enforcement. Where parents fail to fully disclose their income, the court can make some orders requesting that they declare all of same.<sup>93</sup> Transparent mechanisms are crucial to ensure accurate financial information, upholding the child's right to proper maintenance.

### **5.0 Judicial Decisions on the Right of Children to Maintenance in Nigeria**

Maintenance has not been statutorily defined, the courts in Nigeria have attempted to define it. In *Alabi v Alabi*<sup>94</sup> it was stated that custody of a child connotes not only the control of a child, but carries with it the concomitant implication of the preservation and adequate care of the child's well-being physical, mental and moral; this responsibility includes his or her needs in terms of food, shelter, clothing among others. In *Okueze v Okueze*<sup>95</sup> the Supreme Court, when dealing with the right to custody of children of a dissolved marriage which was conducted under Native Law and custom stated that a father of a legitimate child has absolute right to custody of the child, but such right can be derogated against, where it will be detrimental to the welfare or well-being of the child.

In *Odogwu v. Odogwu*<sup>96</sup> the Supreme Court established that when parents are separated and have a young child, there is a presumption that the child's well-being is better with the mother. This presumption can only be overturned if there is strong evidence that the mother is unfit due to reasons like immorality, illness, insanity, or cruelty towards the child. Custody proceedings might even occur privately in the judge's chambers, where the child's perspective can be informally considered.

The provision of maintenance for a wife and the well-being of children within a marriage are not standalone matters. They are connected to the primary legal actions such as marriage dissolution, nullity, separation, or conjugal rights restoration. As a result, pursuing child maintenance cannot

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<sup>92</sup>Fact Sheet - Income Disclosure for Child Support Purposes, *Government of Canada*  
<<https://www.justice.gc.ca/eng/fl-df/fact2-fiches2.htm>> accessed 14 August 2023

<sup>93</sup> Ibid

<sup>94</sup>(2008) All FWLR (Pt 418) 245, 296

<sup>95</sup>(1989) 3 NWLR (Pt. 109) P. 321 at 334

<sup>96</sup>(1992) 2 NWLR (Pt. 225) P.539 at 560

This position of the court is in contrast to what is obtainable in Western countries where child maintenance claims are treated with much seriousness that they can come before the court as maintenance can only be valid within the context of Matrimonial Causes like marriage dissolution, judicial separation, marriage nullity, or the restoration of conjugal rights. There seem to be two schools regarding when a claim for maintenance can commence, in *Nakanda v. Nakanda*<sup>97</sup> the Court of Appeal ruled that a spouse can file a standalone action for maintenance without needing to include it with other primary claims like divorce or marriage nullity. The Court affirmed that it's feasible to pursue a maintenance case independently under Section 70(1) without it being linked to any ongoing proceedings concerning Matrimonial Causes as outlined in the main decree. In the case of *Nanna v Nanna*<sup>98</sup> the Court recommended that when determining maintenance for parties and their children, fairness and equity should guide the decision. The Court will rely on the evidence presented during the trial and take into account economic trends as well as the previous standard of living maintained by the married couple before the relevant legal proceedings.

Notably, Child maintenance will not be awarded to a person above the age of 21 years. In *Ajai-Ajagbe v Ajai-Ajagbe*<sup>99</sup> the court declined to give maintenance order support to the 27-year-old youngest child of the marriage. Where a person has consistently failed to make maintenance payments for either four weekly payments or two payments in other intervals, or has shown a deliberate and continuous pattern of not paying, the court can authorize the recipient to deduct the owed amount from the person's earnings through their employer as decided in the case of *Bairbre Oloyede v Hector Oloyede*.<sup>100</sup>

In the case of *Dawodu v Dawodu*<sup>101</sup> it was held that both judicial and administrative bodies in the Western region of Nigeria have the authority to acknowledge and enforce child maintenance decisions. The child's best interests should be the most important consideration in determining maintenance; in the case of *Buwanhot v Buwanhot*<sup>102</sup> it was stated that the court must prioritize the well-being of children when evaluating maintenance and education arrangements in cases involving a marriage. The child's best interests should be the most important consideration in

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<sup>97</sup>Suit No: CA/1/99/81 delivered 17th June 1988

<sup>98</sup> (2006) 3 NWLR (Pt. 966) 1 at 414

<sup>99</sup> (1979) HCLLR 183, 191

<sup>100</sup> (1971) 2 UILR 13

<sup>101</sup> (Unreported) CCHCJ/5/74

<sup>102</sup> [2009] 16 NWLR (Pt 1166) 22;

determining maintenance. In total, the primary focus when evaluating maintenance should be the utmost consideration of the child's best interests.<sup>103</sup>

In *Price v Price*<sup>104</sup> a wife took legal action against her husband, alleging deliberate negligence towards her and their child. The Court agreed with the wife's claim and instructed the husband to man who failed to maintain his children for years and never bothered to see them was held not to be entitled to their custody.

Evolving the custody, guardianship, welfare, advancement, or education of children from a marriage, the court must prioritize the best interests of the children above all else. It was also stated that the court is allowed to issue orders regarding these matters based on what it deems appropriate while keeping the children's welfare as the primary concern.

In respect to the welfare of the child, Chidi NwaomaUwa, JCA, in *Ojeniran V Ojeniran*<sup>105</sup> was of the opinion that in determining child custody, the court prioritizes the overall well-being of the child. This encompasses their daily care, moral upbringing, physical health, mental well-being, education, and achieving a balanced life. The court's focus is on ensuring the child's welfare,

### **Conclusion and Recommendation**

Parents have the legal and moral obligations to provide for their children whether in or out of wedlock. It is imperative to note that provision of maintenance for children in a separated or divorced marriage remain inadequate in Nigeria mainly due to lack of enforcement of the right of children to maintenance and provision of necessities for survival. This study observed that child rights to maintenance is provided by the constitution and more comprehensive by the Child Rights Act 2003 but the challenge is that of enforcement of these rights in children from separated or divorced marriages. However, several judicial decisions have reiterated the rights of children to maintenance by their parent whether or not such marriage is subsisting. In order to improve the enforcement of the rights of children to maintenance in Nigeria, the following recommendations are proffered:

1. Advocating for shared parenting responsibilities whilst emphasizing the fact that parents of the children have a legal duty to contribute to the well-being of their children.
2. Educational programmes addressing gender norms and promoting equitable co-parenting arrangements should be held.

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<sup>103</sup> *Anyaso vAnyaso* [1998] 9 NWLR (Pt 564) 150

<sup>104</sup> (1927) 43 TLR 6<sup>104</sup>(1961) WNLR, 209,211

<sup>105</sup> (2018)\_LPELR-45697(CA)

3. Financial incentives should be given to parents who are consistent in paying child support through legal aid/covering of legal fees.
4. Support programmes that offer financial aid to custodial parents facing economic hardship should be established.
5. Harsher penalties should be given for non-compliance with child maintenance orders to discourage parents from evading their responsibilities.