



Parental Responsibility In Conflict And Displacement

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ABSTRACT

Parental responsibility is a fundamental aspect of family law, including but not limited to child custody, decision-making, financial support, and protection. It ensures children's well-being and rights and that parents and caregivers always carry out their responsibilities. Children are the most vulnerable group in any society or state, which is why their well-being needs to be secured and mainstreamed in both peaceful and conflict periods. This paper highlights the difficulty in dispensing efficient and effective parental responsibility in conflict and displacement. Drawing on existing literature and empirical evidence, this paper argues that parental responsibility is possible even during conflict, flight and displacement if the proper and necessary legal and non-legal support is provided. A doctrinal legal research method is adopted and runs central to this paper to address the critical issue of ensuring parental responsibility in conflict. This paper contends that the government has a role in shaping policies and regulations that guide parents in providing their children's well-being, education, and development. It also emphasises the need for continued efforts to bridge the gap between legal provisions and their implementation in peacetime and conflict. It proposes practical strategies for policymakers, practitioners, and communities to enhance parental responsibility and mitigate the negative impact of conflict and displacement.

Keywords: Parent, Parental Responsibility, Conflict, Displacement, Parenting

1.0 INTRODUCTION

Parental responsibility refers to parents' legal and moral obligations and duties towards their children. It encompasses parents' rights, duties, and responsibilities in providing care, protection, guidance, and support for their children's well-being and development. Parental responsibility includes decision-making, financial support, education, healthcare, and moral upbringing. Conflict and displacement profoundly affect families, particularly parents who bear the responsibility of caring for their children. Such conflict and displacement do not detach the parental responsibility.

Parental responsibility is the rights, powers and duties of an adult, who could be either a parent or guardian, over a child who is a minor in a parent-child relationship.¹ A child is any person of a younger age. Article 1 of the United Nations Convention on the Rights of the Child defines a child as any person under the age of 18. Parents have parental responsibilities, which come as duties over their children, including providing financial support and care. Parental responsibility and parenting are related but refer to different aspects of the relationship between adults and children. For instance, parental responsibility typically refers to the legal rights, duties, powers, and responsibilities that parents have about their children.² It encompasses decisions regarding the child's upbringing, welfare, education, and medical

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¹ Bryan A. Garner, *Black's Law Dictionary* 11th Edition (Texas, Thomson Reuters) 1342

² S. 3 (1) Children Act, 1989

care, among other things. In many legal systems, parental responsibility is conferred automatically on biological or adoptive parents, but a court can also assign it in cases such as guardianship or custody arrangements. Parenting, on the other hand, refers to the everyday activities, behaviours, and practices that parents or caregivers engage in to raise and nurture children under their care. It encompasses many tasks, including providing emotional support, setting boundaries, teaching life skills, and fostering the child's physical, emotional, and intellectual development. Parenting involves the practical aspects of caring for and guiding a child through various stages of development.

Parenting is, therefore, not limited to biological or adoptive parents. While parents typically play the primary role in parenting their children, other individuals or entities can also engage in parenting-like roles to raise and support children within that framework. However, parental responsibility is the legal framework that outlines a parent's rights and obligations toward their child, and it is limited to those with such responsibility. The essence of parental responsibility is always to ensure the child's well-being. Parental responsibility is not automatic for all parents. Thus, in ensuring a child's well-being and assigning responsibility to an individual or agency, the relevant order to apply for will depend on the circumstances and needs of that child. The onus is on parents to make proper arrangements for their children.

2. Who is a Parent?

A parent is an individual who has biologically or legally produced or adopted an offspring. Genetically, a parent is the biological father or mother of someone, the woman who provides the egg or the man who delivers the sperm to form the zygote that grows into an embryo. Recently, this definition of parent became problematic as a result of some factors, which include the advent of new reproductive technologies, three increases in divorce and separation³, and a child can also have a series of adults who perform parental roles at one point or the other. Thus, the concept of parent is far from straightforward. In ordinary usage, the term denotes more than responsibility for conception and birth. The term commonly includes (1) either the natural father or the natural mother of a child, (2) either the adoptive father or adoptive mother of a child, (3) a child's putative blood parent who has expressly acknowledged paternity, and (4) an individual or agency whose status as guardian has been established by judicial decree.⁴ Biologically, a parent contributes genetic material to the creation of a child through reproduction. Legally, a parent is recognised as having parental rights and responsibilities for a child, which may include providing care, support, and guidance, and these responsibilities culminate in the concept of parenthood.

Parenthood, conversely, refers to the state or experience of being a parent. It encompasses the roles, responsibilities, emotions, and experiences of raising and caring for children. Parenthood involves biological ties and emotional and social bonds formed through the nurturing and upbringing of a child. Parenthood can be a fulfilling and challenging journey encompassing various aspects of caregiving, decision-making, and relationship-building. While a parent refers to an individual with a biological or legal relationship with a child, parenthood includes the broader concept of the experiences, duties, and relationships involved in raising and nurturing children.

Therefore, we have legal, genetic, and social parenthood. Legal parenthood concerns who are deemed the parents in the eyes of the law. Genetic parenthood relates to whose sperm or eggs led to the creation of the child. Social parenthood is the person who carries out the day-to-day nurturing role of a parent.⁵ This paper is more interested in legal parenthood, though other types of parenthood will be sparingly considered.

³ This necessitate that a child will be care for by someone who is not necessary a genetic parent such as stepparent or adoptive parent

⁴ Bryan A. Garner, *Black's Law Dictionary* 11th Edition (Texas, Thomson Reuters) 1340

⁵ Jonathan Herring, *Family Law: Fourth Edition* (UK Longman) 326.

3. What is parenting?

Parenting is a multifaceted process that significantly influences a child's growth, development, and overall well-being. How parents interact with their children sets expectations, provides support, and shapes the child's personality, behaviour, and future outcomes. Parents tend to rear their children in the way they consider "right" for them and their children's healthy development. Scholars have identified various parenting styles with distinct parental behaviour and attitude patterns. These styles, authoritative, authoritarian, permissive, and neglectful parenting, have been extensively studied to understand their implications for child development. However, for this study, an overview of existing research on parenting styles, highlighting their impact on different aspects of child development, is provided hereunder.

- a) **Authoritative Parenting:** Authoritative parenting is characterised by high warmth, responsiveness, support, and clear expectations and boundaries. It allows children to view their parents' behaviour as responsive while adequately controlling and not responsive to their children's needs. It facilitates the development of a child's competent behaviour.⁶ Parents adopting this style are nurturing and emotionally available while setting reasonable limits and rules. Research indicates that authoritative parenting is associated with positive outcomes across various domains of child development. Children raised by authoritative parents tend to exhibit higher academic achievement, self-esteem, and social competence.⁷ They also demonstrate greater emotional regulation and resilience in facing challenges.
- b) **Authoritarian Parenting:** Contrary to authoritative parenting, high levels of control, strictness, and discipline with limited warmth and responsiveness mark authoritarian parenting. Parents following this style emphasise obedience and adherence to rules, often employing punitive measures for non-compliance. While authoritarian parenting may lead to immediate compliance, it is associated with adverse outcomes in the long term. Children raised in authoritarian households may experience lower self-esteem, higher levels of anxiety, and poorer social skills. They may also exhibit rebellious behaviour or engage in covert defiance due to resentment towards parental authority.
- c) **Permissive Parenting:** Permissive parenting is characterised by high warmth and indulgence coupled with few demands or expectations. It is more responsive towards the child than demanding. Parents adopting this style are lenient and non-confrontational, allowing children considerable freedom to make decisions. While permissive parents may be affectionate and nurturing, their lack of structure and boundaries can have detrimental effects on child development. Research suggests that children raised in permissive environments may struggle with self-discipline, exhibit impulsive behaviour, and experience difficulties in academic or social settings. They may also demonstrate entitlement or disregard for authority figures due to a lack of precise guidance.⁸
- d) **Neglectful Parenting:** Neglectful parenting, also called uninvolved parenting, is characterised by low levels of warmth and control. Neglectful parental style refers to parents who exhibit little or no responsiveness to their children and show little or no effort to control their child's behaviour. Parents following this style are disengaged and emotionally distant, often neglecting their children's physical, emotional, and psychological needs. Neglectful parenting can have profound and enduring consequences for child development. Children raised in such environments may

⁶ Baumrind D, Parenting Styles and Adolescent Development, J Brooks-Gunn et al (Eds.) *The Encyclopedia of Adolescence* (New York Garland) 746 - 758

⁷ Panayiotis Stavrinides and Militsa Nikiforou, Parenting: Challenges, Practices, and Cultural Influences <https://www.researchgate.net/publication/236160965_Parenting_Challenges_Practices_and_Cultural_Influences/citations> accessed on 30 March 2024 at 5:49pm

⁸ Miller J M, Diiorio C, & Dudley W, Parenting Style and Adolescent's Reaction to Conflict: Is there a Relationship? *Journal of Adolescent Health* (2002) (31) (6) 463 -468.

experience feelings of abandonment, insecurity, and low self-worth. They may struggle with forming healthy relationships, coping with stress, and achieving academic or vocational success. Moreover, neglectful parenting increases the risk of various adverse outcomes, including substance abuse, delinquency, and mental health disorders.⁹

- e) Cultural Variations in Parenting: It is essential to recognise that parenting styles are influenced by cultural norms, values, and beliefs, resulting in variations across different societies and ethnic groups. While certain parenting styles may predominate in specific cultural contexts, the underlying principles of warmth, responsiveness, and guidance remain universal. Cultural variations in parenting practices contribute to diverse developmental outcomes among children, highlighting the importance of considering cultural sensitivity in research and intervention efforts. Moreover, understanding cultural differences in parenting can facilitate cross-cultural communication and collaboration in promoting positive parenting practices worldwide.

Parenting styles are crucial in shaping a child's development and behaviour. Parenting styles, including cognitive, social, emotional, and behavioural domains, affect child development. Parenting styles are pivotal in shaping children's development and future trajectories. The authoritative parenting style, characterised by a balance of warmth and firmness, emerges as particularly beneficial for fostering positive outcomes across cognitive, social, emotional, and behavioural domains. In contrast, authoritarian, permissive, and neglectful parenting styles are associated with various challenges and adverse outcomes for children. Recognising the influence of cultural factors on parenting practices is essential for promoting culturally sensitive approaches to child-rearing. This review aims to inform interventions, policies, and programs to support parents in nurturing healthy and thriving children by enhancing their understanding of parenting styles and their impact on child development.

3.1 Duties of Parents

Parents as caregivers have various degrees of duties towards a child in their care¹⁰, and these include:

- a) Providing a home, care, guidance, and unconditional love for the child. Every child needs to be engaged in activities that will keep them from danger.
- b) Protecting and maintaining the child's welfare, rights, and property.
- c) Making important decisions on behalf of the child, such as their name, religion, education, and medical treatment.
- d) Teaching, encouraging, and disciplining the child.
- e) Creating a safe, stable, and routine home environment for the child.

The same person often performs these duties, but different people can carry them out. For instance, a stepparent may be the social parent of a child without being the genetic or legal parent.

4. The Concept of Parental Responsibility

The duties of parents culminate into parental responsibility. Parental responsibility includes the rights, duties and powers a parent has over a child while they are a minor. The Children Act of 1989 used parental responsibility to describe parents' interests in children. Sections 3 (1) and (2) of the Children Act defined parental responsibility as all the rights, duties, powers, responsibilities, and authority that, by law, a parent of a child has about the child and his property. It also includes the rights, powers and duties a guardian of the child's estate would have had about the child and his property.

The idea of parental responsibility tilts to the fact that children are persons to whom duties are owed and not just persons over whom power is wielded. Parents are responsible for their children, who are entrusted

⁹ Lamborn S D, Mounts N S *et al*, Patterns of Competent and Adjustment among Adolescent from Authoritative, Authoritarian, Indulgence and Neglectful Families, *Child Development* (1991) (62) 1049 -1065.

¹⁰ See Jayanand V Hatti & Chirag Patel, 'Responsibilities In Of Parents Overall Development Of Their Children' IJRAR (2021) (8) (4) <[\(19\) \(PDF\) RESPONSIBILITIES IN OF PARENTS OVERALL DEVELOPMENT OF THEIR CHILDREN \(researchgate.net\)](#)> accessed on 18 April 2024 @ 4:04pm

to their care. According to Eekelaar,¹¹ parental responsibility represents two ideas: one, that parents must behave dutifully towards their children, and the other, that responsibility for childcare belongs to parents, not the state. The Holy book agrees with the second idea of Eekelaar and admonishes parents: "Children are a heritage from the Lord."¹² Parents should see their children as precious gifts from the Lord, and they, therefore, have the divine duty of bringing them up in the way of the Lord.¹³ If they fail in this responsibility, they risk being punished by God.

4.1 Who has Parental Responsibility?

Statutorily, mothers are responsible for their children, except when the child's father and mother are married at birth.¹⁴ Where the parents of a child are married to each other at the time of his/her birth, they shall each have parental responsibility over the child. In other words, the Children Act abolishes the general rule that the father is the natural guardian of his legitimate child.¹⁵ Where a child's father and mother were not married to each other at the time of his birth, the father shall not have parental responsibility for the child unless he acquires it under the provisions of the Children Act. Parental responsibility in person over a child at any time shall not cease solely because some other person subsequently acquires parental responsibility for the child.¹⁶ This is explained better in the subsection on acquiring parental responsibility.

According to section 2(5) of the Children Act, more than one person can be responsible for a particular child. Except where there is an enactment which requires the consent of more than one person in a matter affecting the child, where more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility.¹⁷

It should be noted that any part of parental responsibility may neither be surrendered nor transferred to another person, but an arrangement may be made on how part or all of it could be met by another person acting on behalf of the person with the actual parental responsibility.¹⁸

4.2 Acquisition and Termination of Parental Responsibility

Parental responsibility can be acquired by someone who does not naturally or statutorily have the same. By virtue of section 2 (5) of the Children Act 1989, parental responsibility can be possessed by more than one person in respect of a particular child. Except in the case or instance of adoption, another person's acquisition of parental responsibility does not terminate that originally on the other person.¹⁹

Each of the married parents has parental responsibility for their child. However, where a child's father and mother were not married to each other at the time of their birth, the father does not automatically acquire parental responsibility but may acquire parental responsibility by applying to the court, which may make an order granting him parental responsibility over the child or the father and mother may by an agreement known as "a parental responsibility agreement" provide for the father to have parental responsibility for the child.²⁰ Such orders or parental responsibility agreements are not perpetual. They may be brought to an end by an order of the court made on the application: (a) of any person who has parental responsibility for the child or (b) with leave of the court, of the child himself.²¹ Even in a void marriage, parents still

¹¹ John Eekelaar, 'Parental Responsibility: State of Nature or Nature of the State?' *Journal of Social Welfare and Family Law* (13) (1) 37 (London, Routledge Informa Ltd.)

¹² (psalm 127:3)

¹³ Proverbs 22:6

¹⁴ S. 2(1) and (2) (a) Children Act 1989

¹⁵ S. 4 Children Act, 1989

¹⁶ S. 6 Children Act, 1989

¹⁷ S. 2 (7) Children Act 1989

¹⁸ S. 2 (9) of Children Act 1989

¹⁹ S. 2 (6) of Children Act, 1989

²⁰ S. 4 (1) of Children Act

²¹ S. 4 (3) Children Act 1989

have parental responsibility in so far as the parents or either of them reasonably believed, as at the time the child was conceived, that the marriage was valid.²²

Parental responsibility could be acquired by way of adoption. Parental responsibility terminates upon the child reaching the age of majority or by adoption or order of the court. Adoption of a child is effected by a court order known as an adoption order, which extinguishes the parental responsibility of the child's birth parents and other persons and vests it in the adopter(s).²³ This is more so as it is required that at every point in time, a child must be under the care and provision of an adult. Upon adoption, the parental responsibility of the birth parents or any other person is transferred to the adopter(s) for onward care and provision for the child.

Grandparents acquire parental responsibility over a grandchild by an agreement or court order and not necessarily by adoption. It is unsatisfactory for grandparents to acquire parental responsibility over their grandchildren by adoption as a child may grow up mistakenly believing, for instance, that he has a sister when it is her mother.²⁴ Stepparents are less well expected to acquire parental responsibility over their stepchildren by adoption but by an agreement or court order or by applying and getting special guardianship or a residence order.²⁵ This is to avoid a bizarre situation where a child's birth parent had to adopt their child. Where a child does not have anyone to care for him/her with parental responsibility,²⁶ the court can appoint a guardian. That appointment can be overturned on the parent's application with parental responsibility, by the child or in family proceedings.²⁷ The child can only apply for the termination of the parental responsibility with the leave of court, and the court can only grant such leave to the child if it is satisfied that the child has sufficient understanding to make the proposed application.²⁸

It should be noted that parental responsibility may not be transferrable. A person with parental responsibility cannot transfer or surrender any part of such responsibility to another person. However, an arrangement could be made as to how any of such responsibility could be met by one or more persons acting on behalf of the person with parental responsibility²⁹, including a person who already has parental responsibility over a child.³⁰ Such a person so appointed becomes a guardian and acquires social parenthood. The law requires that at every time, a child should be under the care and supervision of an adult; thus, it is lawfully permissible to place the child with a person acting in *loco parentis*, and such person could be a child-minder, babysitter, friend or relative who will bear the parental responsibility. A guardian can be appointed by a parent, another guardian or by order of a court.³¹ Despite this relief arrangement favouring one with parental responsibility, the person with parental responsibility cannot escape liability under civil or criminal law by delegating such responsibility to another person.³²

Any person or local authorities can also acquire parental responsibility by obtaining a care or emergency protection order. Section 44 (1) (a) (b) and (c) of the Children Act 1989 expressly provides that:

²² Kate Standley, *Family Law* (UK Palgrave Macmillan, 2006) 282.

²³ Kate Standley, *ibid*, 478.

²⁴ Kate Standley, *ibid*, 479.

²⁵ Ss. 5, 14A Children Act, 1989

²⁶ That is in a situation where the child has no parent with parental responsibility for him/her; or parent, guardian or special guardian of the child's as named in a child arrangements order as a person with whom the child was to live has died while the order was in force; or the child's only or last surviving special guardian dies. See generally section 5 (1) of Children Act, 1989.

²⁷ S. 6 Children Act, 1989

²⁸ S. 4A (4) Children Act 1989.

²⁹ S. 2 (9) Children Act 1989.

³⁰ S. 2 (10) Children Act 1989.

³¹ Jonathan Herring, *Family Law: Fourth Edition* (UK Longman) 340 – 341.

³² S. 2 (11) Children Act 1989.

Where any person ("the applicant") applies to the court for an order to be made under this section concerning a child, the court may make the order if, but only if, it is satisfied that-

- a) there is reasonable cause to believe that the child is likely to suffer significant harm if-
 - i. he is not removed from accommodation provided by or on behalf of the applicant or
 - ii. he does not remain in the place in which he is then being accommodated.
- b) In the case of an application made by a local authority-
 - i. enquiries are being made with respect to the child under section 47(1)(b) and
 - ii. those enquiries are being frustrated by access to the child being unreasonably refused to a person authorised to seek access and that the applicant has reasonable cause to believe that access to the child is required as a matter of urgency or
- c) in the case of an application made by an authorised person-
 - i. the applicant has reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm;
 - ii. the applicant is making enquiries about the child's welfare and
 - iii. those enquiries are being frustrated by access to the child being unreasonably refused by a person authorised to seek access, and the applicant has reasonable cause to believe that access to the child is required as a matter of urgency.

Where acquired, such responsibility can also be terminated naturally, by court order, or in an event where the child is adopted. In other words, a person ceases to be a legal parent if that person's status as a parent has been terminated in a legal proceeding. For instance, section 6 of the Children Act 1989

5. International and Regional Legal Frameworks on Parental Responsibility

Understanding the legal foundations of parental responsibility is crucial for promoting stable family environments and safeguarding children's rights. Due to their vulnerability, children have been given special status and legal protection within the United Nations framework, regional human rights treaties, and national legal frameworks. They enjoy the same human rights and fundamental freedoms as all individuals. The international legal framework for protecting children assures the states' positive obligations to safeguard and protect children's rights. United Nations affirms the 'Best Interests of Child' principle in letter and spirit with an aspiration that the international community will pave a path to sensitise the domestic justice delivery justice system of the states and to move in sync with International legal frameworks for the protection of Child Rights. The following international, regional and national legal framework on parental responsibility will be considered:

a) United Nations Convention on the Rights of the Child (UNCRC)

The United Nations Convention on the Rights of the Child, 1989, was signed on 20th November 1989. This convention provides children civil, political, economic, social, health and cultural rights. Article 6 of the convention provides that every child has the right to life. Governments must do all they can to ensure children's survival and growth are up to standard. Article 7 provides that every child has the right to a legally registered name and nationality and the right to know and, as far as possible, to be cared for by their parents. Article 12 envisages that every child has the right to say what they think about all matters affecting them and to have their views taken seriously.

Article 1 of the Convention provides that it applies to anyone under 18 years who enjoys all the protection under the Convention without discrimination.³³ Parents, in carrying out their parental responsibility, are admonished always to consider the child's best interest.³⁴ When decisions affect children's lives, the Convention says it is essential to consider what is best for them. This principle relates to decisions by parents, courts of law, administrative authorities, legislative bodies, and public and private social welfare institutions. This is, of course, a fundamental message of the Convention. Article 18 of the Convention, in providing for parental responsibilities, states that both parents share responsibility for bringing up their child and should always consider what is best for the child. Governments are mandated to support parents by creating support services for children and giving parents the help they need. There is no denying that in conflict and displacement, parents require a lot of support in carrying out their responsibilities towards their children, and the Convention made it the duty of the government to provide the necessary support. Article 20 of the Convention states that if a child cannot be looked after by their immediate family, the government must give them special protection and assistance. This includes ensuring the child is provided with continuous alternative care that respects the child's culture, language and religion. When a child is placed away from home for care or protection, the government must review their treatment regularly, how they are cared for and their broader circumstances.³⁵

During wars and armed conflict, governments must not allow children under the age of 15 to take part in war or join the armed forces. Governments must do everything they can to protect and care for children affected by war and armed conflicts.³⁶ If a child is seeking refuge or has refugee status, governments must provide appropriate protection and assistance to help them enjoy all the rights in the Convention. Governments must help refugee children who are separated from their parents to be reunited with them.³⁷ Children who have experienced neglect, abuse, exploitation, torture or who are victims of war must receive exceptional support to help them recover their health, dignity, self-respect and social life.³⁸

b) Declaration of Geneva on Children's Rights 1924 (Declaration)

At its 841st meeting, held on November 20, 1959, the United Nations General Assembly adopted a "Declaration of the Rights of the Child" on the report of the Third Committee. The Declaration recognises the importance of the family in the upbringing of children. It states that the child should, wherever possible, grow up in the care and under the responsibility of his parents. This implies that parents have a primary responsibility for the care and upbringing of their children, including providing a supportive and nurturing family environment. Principle 6 of the Declaration states that the child needs love and understanding for his personality to develop fully and harmoniously. He shall, wherever possible, grow up in the care and under the responsibility of his parents and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, in exceptional circumstances, be separated from his mother. Society and the public authorities shall be obliged to extend particular care to children without a family and those without adequate support. Payment of State and other assistance towards maintaining children of large families is desirable. Principle 7 of the Declaration, also emphasises the principle of the best interest of the child and on whom the principle first lies when it provides: "The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with the parents." The child shall be among the first to receive protection and relief in all circumstances.³⁹

³³ See art. 2 United Nations and United Nations Convention on the Rights of the Child (UNCRC).

³⁴ Art. 3, *ibid.*

³⁵ Art. 25, *ibid.*

³⁶ Art. 38, *ibid.*

³⁷ Art. 22, *ibid.*

³⁸ Art. 39, *ibid.*

³⁹ Principle 8, Declaration of Geneva on Children's Rights 1924.

While the Declaration does not explicitly enumerate parental responsibilities, it articulates principles that underscore the importance of parental care, protection, and support in ensuring the well-being and development of children.

c) United Nations Declaration of Human Rights (UDHR)

The United Nations General Assembly adopted the United Nations Declaration of Human Rights on December 10, 1948. It came into force immediately upon its adoption. Although parental responsibility is not explicitly provided for under the UDHR, it remains a milestone document in the history of human rights. Article 25 of the Declaration provides as follows:

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, born in or out of wedlock, shall enjoy the same social protection.

The Declaration emphasised an adequate standard of living for everyone, including a child, and that a child, whether adopted, born out of wedlock or otherwise, is entitled to special care and assistance. In addition, parents are expected to carry out their parental responsibility to accord their children an adequate standard of living. It should be noted that parents can only carry out this task where and when they can afford it under the principle of *nemo that quad non habet*.⁴⁰ Thus, in this context, parents who are deprived by their government or circumstances, which include the war of this right, would be unable to provide this right to their children.

It should be noted that the UDHR is not a binding legal document, but many binding human rights treaties have emerged based on the declarations it sets forth. Therefore, cases relating to adequate living standards will be considered under the CRC.

d) United Nations Convention on the Rights of the Child (CRC)

CRC was adopted by the UN General Assembly and opened for ratification on 20th November 1989. It came into force on 2nd September 1990. It was signed on 26th June 1990.

This reasoning that parents can only carry out their parental responsibility as much as they can flow in the provision of the same right under the Convention on the Rights of the Child in article 27 thus:

1. States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child are primarily responsible for securing the living conditions necessary for their development within their abilities and financial capacities.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the

⁴⁰ A Latin legal principle that translates to "no one can give what they do not have."

accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Therefore, states are expected to make adequate provisions enabling parents to carry out their responsibilities. Where and when circumstances deny parents the opportunity to carry out these responsibilities, states are expected to step in to maintain an adequate standard of living for a child.

e) The African Charter on Human and Peoples Rights (Banjul Charter)

Inspired by the International Bill of Rights (UDHR, the ICCPR and the ICESCR), the Banjul Charter was adopted in 1981 by the Organization of African Unity (now the African Union). It entered into force on 21 October 1986. It contains a thorough list of human rights and civil, political, economic, social, and cultural rights.

While the Charter primarily focuses on the rights of individuals and peoples, it does not explicitly address parental responsibility like other international human rights instruments, such as the Convention on the Rights of the Child, do.

However, several provisions within the African Charter on Human and Peoples' Rights indirectly touch upon parental responsibility:

- i. **Article 18 (1):** This article recognizes the family as the natural unit and the custodian of morals and traditional values recognized by the community. It further recognises the family as the basis of society and states that it shall be protected by the state, which shall care for its physical health and morals. While it does not explicitly mention parental responsibility, it implies that the state has an obligation to support and protect families, which includes ensuring that parents can fulfil their responsibilities towards their children.
- ii. **Article 18 (4):** This article states that the elderly and people with disabilities shall also have the right to special measures of protection in keeping with their physical or moral needs. While not explicitly mentioning parents, it implies a broader societal responsibility to support vulnerable individuals, including children who may rely on their parents for care and support.

Although the African Charter on Human and Peoples' Rights does not explicitly outline parental responsibilities, its provisions regarding the protection of the family unit and the rights of individuals within families indirectly suggest that parents have responsibilities towards their children, and the state has obligations to support families in fulfilling these responsibilities. It guarantees the right of society and the state to protect the family. It emphasises the importance of support for families and implies that parents are responsible for providing for and protecting their children, with the state playing a supportive role.

f) The African Charter on the Rights and Welfare of the Child (Children's Charter)

The Children's Charter was adopted on July 11, 1990, by the organisation of Africa Unity⁴¹ and entered into force on November 29, 1999. The question becomes crucial: "Why did it take so long?" This is especially so because the necessary ratification of the CRC, which was not difficult for African Countries and which they rushed to do, became a problem with regards to the Children's Charter, which now had to come into force nine years later, when 15 states eventually fulfilled the necessity of ratification for the Children's Charter to come into force.

The Children's Charter, with a Preamble and 48 articles, provides a list of rights of the child, which are similar to those in the CRC. It specifically addresses the rights and welfare of children on the African continent. Unlike the African Charter on Human and Peoples' Rights, the Child Declaration explicitly outlines parental responsibilities regarding the well-being and upbringing of children. However, a noticeable dissimilarity between the CRC and the Children's Charter is that the latter also imposes duties on the child. It is a comprehensive instrument that lays out rights and defines universal principles and norms for the status of children. It also covers the whole range of civil, political, economic, social and cultural rights. It strives to shield the child from all sorts of financial exploitation, dangerous employment

⁴¹ Which legally became the African Union in 2001.

that interferes with education, or work that jeopardises the child's health or development on all fronts—physical, social, mental, spiritual, and moral—as well as to protect the child's private life. It demands protection from mistreatment and abuse, harmful social and cultural norms, all types of exploitation or sexual abuse, including commercial sexual exploitation, and the use of illicit drugs. It tries to stop child begging, kidnapping, and trafficking in children.

Some notable provisions under the African Charter on the Rights and Welfare of the Child in relation to parental responsibility include:

- i. **Article 18:** This article recognises the family as the natural unit and basis of society. It recognises that the family shall enjoy the protection and support of the State for its establishment and development. It mandates States Parties to the Charter to take appropriate steps to ensure equal rights and responsibilities of spouses regarding children during marriage and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of the child. Thus, it emphasises the primary responsibility of parents or legal guardians for the upbringing and development of the child. It states that parents or legal guardians have the primary responsibility to ensure the child's survival, protection, and development to the maximum extent possible.
- ii. **Article 19:** This article affirms the right of the child to social, cultural, and spiritual development in a supportive family environment. It recognises the importance of family support in nurturing the child's physical, mental, and emotional well-being. It provides that “Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with their parents. No child shall be separated from his parents against his will, except when a judicial authority determines by the appropriate law that such separation is in the child's best interest.”
- iii. **Article 20:** This article specifically provides for parental responsibility by providing as follows:
 1. Parents or other persons responsible for the child shall have the primary responsibility for the upbringing and development of the child and shall have the duty:
 - (a) to ensure that the best interests of the child are their primary concern at all times;
 - (b) to secure, within their abilities and financial capacities, conditions of living necessary to the child's development and
 - (c) to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.
 2. States Parties to the present Charter shall, in accordance with their means and national conditions, take all appropriate measures;
 - (a) to assist parents and other persons responsible for the child and, in case of need, provide material assistance and support programs, particularly with regard to nutrition, health, education, clothing and housing;
 - (b) to assist parents and others responsible for the child in the performance of child-rearing and ensure the development of institutions responsible for providing care of children; and
 - (c) to ensure that the children of working parents are provided with care services and facilities.

This article calls for state parties to take appropriate measures to assist parents and legal guardians in fulfilling their responsibilities towards the child. It emphasises the importance of supporting families in providing for children's basic needs and rights. It equally highlights the duty of parents, legal guardians, and other persons responsible to ensure that the child's best interests are the primary consideration in all actions concerning the child. It underscores the importance of parental decision-making that prioritises the well-being and development of the child.

- iv. **Articles 22 and 23:** During armed conflict, States Parties to the Charter undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child. States Parties to the Charter shall take all necessary measures to ensure that no child takes a

direct part in hostilities and refrain, in particular, from recruiting any child. As such, States Parties to the Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and take all feasible measures to ensure the protection and care of children affected by armed conflicts. Such rules shall also apply to children in internal armed conflicts, tension and strife.⁴² States Parties to the Charter are mandated to take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee by applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human correct and humanitarian instruments to which the States are parties. States Parties to the Charter are further mandated to cooperate with existing international organisations which protect and assist refugees in their efforts to protect and assist such a child and to trace the parents or other close relatives of an unaccompanied refugee child to obtain information necessary for reunification with the family.⁴³

In furtherance to protection of children in peace and conflict time, the Charter provides that during armed conflict, where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason and that the provisions of the Children Charter apply *Mutatis Mutandis* to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused.⁴⁴

v. **Article 25:** The Children's Charter acknowledges the importance of family and the fact that a child should always be under parental care and thus provides that:

1. Any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance;

2. States Parties to the present Charter:

(a) shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that environment shall be provided with alternative family care, which could include, among others, foster placement, or placement in suitable institutions for the care of children;

(b) shall take all necessary measures to trace and re-unite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflicts or natural disasters.

3. When considering alternative family care of the child and the child's best interests, due regard shall be paid to the desirability of continuity in a child's upbringing and the child's ethnic, religious or linguistic background.⁴⁵

vi. **Article 31:** The Children's Charter placed responsibility on every child towards his family and society, the State and other legally recognised communities and the international community. The child, subject to his age and ability and such limitations as may be contained in the present Charter, shall have the duty:

(a) to work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need;

(b) to serve his national community by placing his physical and intellectual abilities at its service;

(c) to preserve and strengthen social and national solidarity;

⁴² Art. 22, The African Charter on the Rights and Welfare of the Child, 1999.

⁴³ Art. 23 (1) & (2), *ibid.*

⁴⁴ Art 23 (3) & (4), *ibid.*

⁴⁵ Art. 25, *ibid.*

(d) to preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute to the moral well-being of society.⁴⁶ Overall, the African Charter on the Rights and Welfare of the Child recognises the central role of parents and legal guardians in ensuring children's well-being, protection, and development. It emphasises the importance of family support and societal assistance in fulfilling parental responsibilities and safeguarding children's rights across Africa.

6. Parental Responsibility in Conflict and Displacement

Conflict and displacement disrupt the lives of families, often forcing them to flee their homes and seek safety elsewhere. In such circumstances, parents or legal people with parental responsibility play a critical role in ensuring their children's physical and emotional well-being. Parental responsibility always applies and cannot be orchestrated by either conflict or displacement. The vulnerability of children is not in doubt. Caring adults help to protect children in difficult times, especially when they can be warm, supportive, and comforting and help children make sense of frightening events. A person with parental responsibility takes care of the children, and this responsibility may be acquired by another person where necessary. Article 20 of the United Nations Convention on the Rights of the Child explains that every child whose own family cannot look after them has the right to be looked after properly by people who respect their religion, culture, language and other aspects of their life. Therefore, states owe duties of 'special protection and assistance' to children harmed by their families.⁴⁷

Living through conflict and displacement can be incredibly challenging, especially when you are responsible for caring for children. As a parent or caregiver, it's essential to understand your own experiences and emotions while supporting the well-being of the children in your care. Some of the challenges that parents or caregivers encounter in carrying out their duties in conflict and displacement are listed hereunder:

1. **Safety and Security:** Parents must navigate dangerous environments while protecting their children from harm. The constant threat of violence and displacement adds immense stress to their responsibilities.
2. **Emotional Strain:** Witnessing violence, loss, and displacement takes a toll on parents' mental health. Coping with trauma while caring for children is a daunting task.
3. **Resource Scarcity:** Displacement often leads to limited access to necessities such as food, water, and healthcare. Parents must prioritise their children's needs even when resources are scarce.
4. **Parent-Child Separation:** Conflict and displacement can separate families, leaving parents desperate to reunite with their children. The anguish of separation affects parental well-being.

6.1 Ways to mitigate challenges encountered by persons with parental responsibility in conflict time

To mitigate the excruciating effects of the challenges that parents or caregivers encounter in conflict, tremendous support must be given to them. Such support includes:

1. **Community Networks:** Communities should provide emotional support and practical assistance to parents. Community leaders can organise parenting workshops and create safe spaces for parents to share experiences.
2. **Psychosocial Support:** Mental health services should be accessible to parents. Counselling and trauma-focused interventions can help parents cope with emotional strain.
3. **Legal Protections:** International humanitarian law recognises the rights and responsibilities of parents during conflict and displacement. Governments and organisations must uphold these protections.
4. **Education and Awareness:** Parents need information on child protection, nutrition, and hygiene. Educational campaigns can empower parents to make informed decisions.

⁴⁶ Art. 31, *ibid.*

⁴⁷ Jonathan Herring, *Family Law: Fourth Edition* (UK Longman)

7. CONCLUSION

Parental responsibility in conflict and displacement is a complex issue that requires multifaceted solutions. Policymakers, practitioners, and communities must prioritise parental responsibility to mitigate the impact of conflict and displacement on children. This paper recommends that state parties to various international and national legal frameworks be held accountable for ensuring that children are not neglected during conflict. Also, establishing accessible legal aid services for displaced parents can help them navigate legal complexities related to custody, visitation, and child support. Providing the necessary support for parents will enhance their well-being and contribute to the resilience of the entire family unit. This would protect parental rights while promoting a child's best interests.