

## NAVIGATING THE LEGAL LANDSCAPE FOR REGULATING PATERNITY FRAUD

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### Abstract

Paternity fraud, the act of falsely identifying a person as the biological father of a child, has emerged as a significant issue in Nigeria, raising legal, ethical, and social concerns. This phenomenon has raised questions about parental rights, inheritance laws, and the overall integrity of family structures. While Nigeria currently lacks a cohesive legal framework dedicated explicitly to paternity fraud, various legal frameworks are applicable in addressing and regulating this issue. The interplay between constitutional rights, child welfare legislation, family law, and judicial precedents provides a foundation for individuals affected by paternity fraud to seek justice. This paper examines the existing legal framework surrounding paternity fraud in Nigeria and its implications for justice and parental rights. It explores relevant statutes that touch on fraudulent paternity misattribution in Nigeria and the various arguments for the criminalization of the act. The analysis reveals that while there are legal mechanisms to address paternity-related disputes, gaps exist in the framework and the enforcement of these laws. Factors such as cultural perceptions of masculinity, societal stigmas, and inadequate legal recourse hinder effective resolutions. The findings underscore the need for comprehensive reforms incorporating modern scientific methods, promoting awareness, and enhancing access to justice for victims of paternity fraud. Nigeria can foster a more equitable legal environment conducive to familial integrity and accountability by bridging legislative gaps and ensuring robust protections.

**Keywords:** Criminal and civil liabilities, fraud, paternity, deception, foist, justice, child support

### 1 Introduction

Mr Gyang used the backs of his palms to massage both eyes and struggled to hold the tears that were threatening to flood down his face, what he perceived as the truth was unclear to him. He pondered, "How can four kids who call me father not be mine?" He got the shock of his life after surreptitiously testing the paternity of his first son with a deoxyribonucleic acid (DNA) test at the CNN DNA Diagnostic Centre in Jos, Plateau State. The 43-year-old civil servant sobbed as he recounted his story on a radio station in Jos. He said that his wife, whom he married in 2006, took in for other men and passed off the children as his. The 16, 12, 8, and 5-year-old children were evaluated after Gyang began to suspect his wife's promiscuous move. His suspicion grew when the children's genotype did not match his and the wife's. Crying profusely, he said, "I want Nigerians to come to my rescue because I must not suffer this in vain. I married Kosi in 2006, and she gave birth to four children. But none of the children belong to me after subjecting them to DNA tests." Mr Gyang's plight is a growing concern in Nigeria. Many men have lamented the discovery of wrongful attribution of paternity and the lack of a robust legal framework to seek justice.

Paternity, a fundamental aspect of human existence, has always been immensely valued in society. It is the cornerstone of emotional ties, legal rights, and family structures. Paternity is quickly established, assumed, and recognised when the mother is married or when the man she attributes paternity to accepts the baby as his own. However, as people become more enlightened or sceptical about the possibility of misattributed paternity, they have turned to technology to confirm or ascertain their suspicions, leading to a staggering discovery of paternity deception and fraud. Paternity fraud is a complex and often emotionally charged issue that profoundly impacts individuals and families.

This paper delves into the multifaceted nature of paternity fraud, exploring its prevalence, causes, and impact on individuals and society, as well as the legal and ethical implications it raises. This paper argues paternity fraud has significant legal, financial, and psychological consequences, necessitating legal reforms to ensure fairness. Paternity fraud occurs when a mother misidentifies a man as the biological father of her child, leading to disputes and emotional distress. Many legal systems lack uniform approaches, prioritising the child's interests over the rights of the wrongly identified father. Social stigma further discourages men from seeking legal redress, perpetuating the issue.

One of the critical consequences of paternity fraud is the financial burden imposed on the misidentified father. Legal systems often enforce child support payments based on presumed paternity, sometimes without mechanisms to challenge fraudulent claims. Financial obligations may remain binding even after discovering the truth, causing unfairness. The child involved may also suffer emotional distress, leading to long-term psychological challenges. Legal reforms must balance the child's well-being with the rights of the falsely identified father.

DNA testing has been pivotal in exposing paternity fraud, yet legal and ethical concerns limit its application. Universal DNA testing at birth could prevent wrongful obligations but raises privacy concerns. Proponents argue such measures would promote transparency and fairness. Legal reforms should introduce standardised paternity verification before imposing financial commitments. Courts need more precise guidelines for handling fraud cases to ensure justice. Without legal clarity, paternity fraud will continue to spark contentious debates in legal and social spheres.

In shedding light on this often-overlooked aspect of human relationships, such as paternity, this study aims to foster more informed dialogue, promote legal reforms, and advocate for developing support systems that address the needs of those affected by paternity fraud. By conducting a thorough examination of the multiple facets associated with this issue, we can attain a more nuanced understanding of its intricate complexities. This comprehensive analysis will allow us to delve into the underlying factors, explore the various stakeholders involved, and identify their unique challenges. Furthermore, this exploration will enable us to consider a range of potential solutions that could effectively address the obstacles presented by this situation, fostering a more informed and thoughtful approach to resolving it.

## **2 Paternity Fraud in Nigeria**

Paternity fraud (also known as parentage fraud) refers to a situation where a man is misled or deceived into believing that he is the biological father of a child when he is not genetically

related to the child.<sup>1</sup> Paternity fraud is used simultaneously with misattributed paternity. Paternity misattribution can be unintentional or deliberate. A woman who has had multiple sexual partners around the time of conception may inadvertently mistake one of them for the biological father without any intent to deceive. The hospital can switch a child after birth, which invariably creates a paternal discrepancy.<sup>2</sup> The foregoing applies more to paternity misattribution than paternity fraud, which requires an element of deliberate or reckless deception. Paternity fraud is, therefore, an intentional sort of deception that legally places the social father in the role of a genetic father. Paternity fraud is said to occur when a man is intentionally or incorrectly identified to be the biological father of a child, often by the mother of the child. Although the biological mother is typically involved in paternity fraud, other people may also be part of the deception. A couple may consensually commit paternity fraud against another man. For example, a man and an adulterous woman may connive to foist the child on the husband.<sup>3</sup> Paternity fraud may also occur when where an infertile couple (the husband and wife) agree to engage another man in the wife's conception without disclosing the nature of the arrangement or identifying the man as the father of the baby. A mistress and her boyfriend can also connive with the biological father to pin the baby on another man.

In most cases, paternity fraud results in legal, financial, social, and psychological consequences for all parties involved. This revelation can profoundly affect the individual, the child, and the entire family unit. Cases of paternity fraud are not confined to a particular region or culture but can arise in any societal context, regardless of socioeconomic status or educational background. Ramifications of paternity fraud extend beyond the individuals directly implicated, impacting families, communities, and even public policy. Specifically, in Nigeria, a society deeply rooted in patriarchy, lineage and inheritance are conventionally transmitted through the male line, underscoring the significance of children's legitimacy and paternity in family structure and heritage. Numerous instances, through DNA testing, have come to light where men have discovered they are not the biological fathers of the children they have been nurturing. This revelation frequently triggers marital dissolution, legal disputes over custody and grievances over child support, in addition to considerable emotional distress for all parties involved.<sup>4</sup>

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<sup>1</sup> Crisp & Co, 'What is Paternity Fraud, and is it a crime?' <https://www.crispandco.com/site/blog/family-law-blog/what-is-paternity-fraud-and-is-it-a-crime>.

<sup>2</sup> Alyona Cerfontyne, Levita D'Souza, Lefteris Patlamazoglou 'Psychosocial Consequences of Disclosing Misattributed Paternity: A Narrative Review' *Journal of Family Issues* (2023) 45(7)

<sup>3</sup> Martin Kasindorf, 'Men Wage Battle on 'Paternity Fraud'', USA TODAY, Dec. 12, 2002, at A23

<sup>4</sup> Shawn Seliber, Taxation Without Duplication: Misattributed Paternity And The Putative Father's Claim For Restitution Of Child Support, 14 Wash. & Lee J. Civ. Rts. & Soc. Just. (2007) 97; Ronald K. Henry, The Innocent Third Party: Victims of Paternity Fraud, 40 FAM L.Q. (2006) 51, 74

Determining the prevalence of paternity fraud in Nigeria is challenging due to underreporting, stemming from the associated stigma and the potential for grave familial and social repercussions.

While the exact prevalence of paternity fraud remains elusive due to its secretive nature, emerging research and anecdotal evidence suggest that it is a more prevalent issue than previously acknowledged. With the advent of modern technology and DNA testing, the incidence of paternity fraud has become more apparent, leading to increased scrutiny and the need for legal action.<sup>5</sup> DNA testing has provided a reliable and accurate method for determining biological parentage, making it more difficult for individuals to claim paternity or deceive others falsely.<sup>6</sup> However, the law is not yet to catch up with the emerging prevalence and regulation of paternity fraud in Nigeria.

A report from Smart DNA, a DNA testing and diagnostic centre in Lagos, revealed concerning findings about paternity in Nigeria.<sup>7</sup> The study found that 25% of men who visited the clinic were not the biological fathers of their children.<sup>8</sup> Additionally, the Nigerian Institute of Medical Research conducted a study in Lagos State, which revealed that 27% of paternity tests showed cases of misattributed paternity.<sup>9</sup> These findings point to a troubling trend of deceit that is impacting numerous families in Nigeria.<sup>10</sup>

### **3 Impact of Paternity Fraud**

The impact of a discovered paternity fraud cannot be overstated. Uncovering such profound deception can unleash a maelstrom of emotions, from profound betrayal to seething anger and profound confusion. All the parties directly affected, and their families may find themselves engulfed in a tempest of conflicting emotions as they grapple with the truth. Studies have shown how the discovery of wrongful paternity can lead to depression, anxiety, and suicidal ideations.<sup>11</sup> Picture the devastating blow of discovering that the child you have cherished and nurtured is not biologically yours.<sup>12</sup> The seemingly unbreakable bond suddenly feels shattered, leaving you adrift in a sea of doubt, questioning the core of your identity and

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<sup>5</sup> Mary R. Anderlik & Mark A. Rothstein, 'DNA-Based Identity Testing and the Future of the Family: A Research Agenda' *AM. J.L. & MED.* (2002) 28, 215, 221-22

<sup>6</sup> *Ibid.*

<sup>7</sup> [Temitayo Ayetoto-Oladehinde](https://businessday.ng/news/article/dna-test-one-in-four-nigerian-men-not-biological-fathers-of-their-children-report/), 'DNA test: One in four Nigerian men not biological fathers of their children – Report' September 4, 2024. *Business Day*. <https://businessday.ng/news/article/dna-test-one-in-four-nigerian-men-not-biological-fathers-of-their-children-report/>

<sup>8</sup> *Ibid.*

<sup>9</sup> *Punch*, '27% of Nigerian men not biological fathers – DNA report' *Punch*, 1st September 2024. [https://punchng.com/27-of-nigerian-men-not-biological-fathers-dna-report/#google\\_vignette](https://punchng.com/27-of-nigerian-men-not-biological-fathers-dna-report/#google_vignette)

<sup>10</sup> [Jayne Augoye](https://www.premiumtimesng.com/news/headlines/485520-interview-six-of-10-children-in-nigeria-brought-for-dna-testing-not-fathered-by-supposed-fathers-geneticist.html), 'Interview: Six of 10 children in Nigeria brought for DNA testing not fathered by supposed fathers – Geneticist' *Premium Times*. [September 18, 2021](https://www.premiumtimesng.com/news/headlines/485520-interview-six-of-10-children-in-nigeria-brought-for-dna-testing-not-fathered-by-supposed-fathers-geneticist.html). <https://www.premiumtimesng.com/news/headlines/485520-interview-six-of-10-children-in-nigeria-brought-for-dna-testing-not-fathered-by-supposed-fathers-geneticist.html>

<sup>11</sup> Dana Sinai, Uri Blasbalg, Paz Toren, 'Discovering your presumed father is not your biological father: Psychiatric ramifications of independently uncovered non-paternity events resulting from direct-to-consumer DNA testing' *Psychiatry Research*, (2023), 323, 115142,

<sup>12</sup> Ronald K. Henry, *The Innocent Third Party: Victims of Paternity Fraud*, *FAM L.Q.* (2006) 40 51, 74

purpose. The subsequent emotional whirlwind is all-encompassing as you endeavour to process the deception and navigate the intricate web of emotions that unfold. For the individual who learns that they are not the child's biological parent, the sense of betrayal and loss can be utterly consuming. Victims of paternity fraud, often men who believe they are biological fathers, can experience emotional and psychological distress.<sup>13</sup> They may find themselves engulfed by a profound sense of mourning for the relationship they thought they had with their child. The crushing weight of the perpetrated fraud now mars the emotional pillar that once formed the bedrock of their family.

In Nigeria, familial relationships and patrilineal lineage are highly esteemed. The revelation of paternity fraud can have significant repercussions, including the potential to harm family relationships and social standing.<sup>14</sup> The child who finds out that their assumed father is not their biological parent can go through a significant sense of confusion and identity crisis. They may start to doubt where they belong in the family and deal with feelings of abandonment or rejection. This can have a long-term emotional impact on the child, affecting their self-esteem, relationships, and overall well-being.

#### **4 Understanding the Causes of Paternity Fraud in Nigeria**

The reasons for paternity fraud can vary. Some of the factors are identified as follows.

**4.1 Financial Security:** Paternity fraud can be utilised to keep a marriage or relationship together and derive the economic benefits associated with marriage. In other words, it may be driven by financial gain or a quest for support.

**4.2 Shame and Stigma:** In other instances, it may be a result of fear or shame, as the child's birth mother may want to avoid the stigma associated with having a child out of wedlock or from a previous relationship.

**4.3 Cultural and Social Pressures:** In Nigeria, there is a cultural expectation for women to have children, and infertility is often unaccepted or not tolerated. As a result, some women may choose to have someone else bear a child with them if they suspect that their husbands are incapable.

**4.4 Infidelity and Adultery in Marriage:** Like many other civilisations, adultery is a delicate topic in Nigeria. When a woman has an extramarital affair and gets pregnant, she may decide to hide the affair and name her spouse as the child's father. Fear of stigmatisation, judgment from society, and possible repercussions—like divorce or loss of financial support—are frequently the driving forces behind this choice.<sup>15</sup>

**4.5 The decline in Moral Values:** A decrease in personal integrity and honesty can lead individuals to engage in deceitful behaviours, including paternity fraud. When societal values that emphasise honesty and responsibility diminish, people may be more willing to lie about a

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<sup>13</sup> Ibid.

<sup>14</sup> Heather Draper H. Paternity fraud and compensation for misattributed paternity. *J Med Ethics*. (2007) 33(8):475-80.

<sup>15</sup> Godson F.H, "The Rise of Paternity Fraud in Nigeria — Why We Should Be Worried", Within Nigeria Web-blog, (September 17, 2021) Retrieved from <<https://www.withinnigeria.com/piece/2021/09/17/the-rise-of-paternity-fraud-in-nigeria-why-we-should-be-worried/>> 13/10/2023.

child's paternity for personal gain or to avoid accountability.<sup>16</sup> The declining moral and cultural standards have also led to a prevalent culture of these transgressions. The adoption of a more permissive attitude towards sexual encounters, influenced by liberal values, has further contributed to a decline in sexual responsibility among married and single individuals, affecting trust in marriages and increasing the likelihood of paternity fraud.<sup>17</sup>

A decline in societal norms that enforce ethical behaviour can also contribute to this mindset. Individuals may be more inclined to commit fraud in environments with a perceived lack of accountability, or moral corruption or where the consequences for fraudulent behaviour are minimal. In some cases, the decline in moral values is linked to the ineffective enforcement of ethical standards within communities or institutions. Furthermore, when societal or legal mechanisms to address and rectify moral breaches are weak, fraudulent behaviours like paternity fraud may become more prevalent.

**4.6 Medical Negligence:** Although this is rare, paternity misattribution could also result from unethical behaviour by healthcare professionals, such as deliberately swapping babies or negligently attributing the wrong paternity.<sup>18</sup> This can mislead a child's biological father about their parental status. Monetary incentives, personal biases, negligence, or malevolent intent may drive these behaviours by healthcare professionals.<sup>19</sup> For instance, in 2015, a Zambian nurse confessed on her deathbed that she had swapped over five thousand (5000) babies between the years 1983 and 1995.<sup>20</sup> The likely outcome of this behaviour is that the assumed fathers of these children could be misled into thinking they are the children's biological fathers.<sup>21</sup>

## **5 Legal Liability for Paternity Fraud in Nigeria**

Currently, there is no specific written legislation addressing paternity fraud in Nigeria. However, the matter can be addressed through legal avenues such as family law and civil litigation. Nigerian family law primarily falls under the Marriage Act, the Matrimonial Causes Act, and customary laws. These laws do not explicitly address paternity fraud, so cases are often handled under the general principles of equity and justice in the family courts. In a similar vein, this type of deceit primarily involves personal injury related to financial losses from child support and emotional distress, aligning more closely with civil liability.<sup>22</sup> A person who has been defrauded may, therefore, sue for damages in civil or tortious liability. It is worth noting that civil liability in paternity fraud cases focuses on compensating the victim rather than punishing the perpetrator.<sup>23</sup>

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<sup>16</sup> Ibid. Olatunde Olayinka Damilola, 'Paternity Fraud in Nigeria: A Proposal For A Legal Remedial Approach In Curtailing The Problem' (2023),

[https://www.academia.edu/111495850/PATERNITY\\_FRAUD\\_IN\\_NIGERIA\\_A\\_PROPOSAL\\_FOR\\_A\\_LEGAL\\_REMEDIAL\\_APPROACH\\_IN\\_CURTAILING\\_THE\\_PROBLEM?uc-sb-sw=69421752](https://www.academia.edu/111495850/PATERNITY_FRAUD_IN_NIGERIA_A_PROPOSAL_FOR_A_LEGAL_REMEDIAL_APPROACH_IN_CURTAILING_THE_PROBLEM?uc-sb-sw=69421752).

<sup>17</sup> Damilola (note 16)

<sup>18</sup> The Guardian, 'Baby Switching a Booming Trade Behind Increasing Paternity Crisis' 27 April 2024. [https://guardian.ng/saturday-magazine/baby-switching-a-booming-trade-behind-increasing-paternity-crisis/#google\\_vignette](https://guardian.ng/saturday-magazine/baby-switching-a-booming-trade-behind-increasing-paternity-crisis/#google_vignette)

<sup>19</sup> Ibid.

<sup>20</sup> U Sheraz, "Zambian Nurse Confesses to Swapping 5,000 Babies In 12 Years 'Just for Fun'" Lens, (February 24, 2021).

<sup>21</sup> Damilola (note 16)

<sup>22</sup> Ibid.

<sup>23</sup> Seliber (Note 4); Sheraz (note 20)

The deceived party may typically have recourse to the following remedies in torts.

**5.1 Breach of Marital Fidelity and Trust:** The non-breaching spouse may bring a civil lawsuit if the other has violated their marital fiduciary obligation. When one partner fails to behave in their partner's best interests, this can be considered a violation of fiduciary responsibility. Although no specific legislation in Nigeria addresses breaking a marital trust or fiduciary duty, the country's legal system acknowledges the idea under the larger umbrella of contract law. In such circumstances, the Nigerian Contract Act and common law rules apply, treating a violation of a marriage vow as a breach of contract. An example is the case of *Ezeanah v Atta*, where the Supreme Court of Nigeria has held that a marriage, which is an agreement between two persons under the law to become husband and wife, is a form of an enforceable contract in law.<sup>24</sup>

**5.2 The Tort of Deceit/ Concealment or Fraudulent Misrepresentation:** A person commits the civil wrong known as the tort of deceit, also commonly referred to as the tort of fraud or fraudulent misrepresentation, when they give false information to another person, and that person later suffers as a result of their false representation. This tort of fraud typically occurs when one party intentionally makes false representations or statements to induce another party to act in a particular manner to their detriment<sup>25</sup>. The case of *Derry v Peek (1889)*<sup>26</sup> is a landmark decision in English law that established principles regarding fraudulent misrepresentation. The House of Lords (now the Supreme Court) held that to establish liability for fraudulent misrepresentation, the claimant must prove that the defendant made the statement with knowledge of its falsity or with reckless disregard for the truth. The court defined fraud as requiring "knowledge of the falsehood" or "reckless indifference" to the truth. The fraudulent statement must have been a significant factor in the party's decision-making process that suffered the loss.

**5.3 False Representation or Intent to Deceive:** Similar to concealment, paternity fraud can be ascertained through the establishment that the mother misrepresented the deceived party as the biological father of a child despite this not being the case. It is worth noting that within the context of marriage, the burden of proving this element is significant due to the presumption that offspring born during matrimony are the biological offspring of the father.<sup>27</sup> To prove false representation, a similar landmark case of *Pasley v Freeman (1789)*<sup>28</sup> outlines the essential elements that typically need to be proven as follows:

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<sup>24</sup> Damilola (note 16)

<sup>25</sup> Ibid

<sup>26</sup> (1889) 14 App. Cas 337, p.213

<sup>27</sup> Boitumelo Mmusinyane, "Demanding Equal Rights and Treatment of Husbands/Partners in Paternity Disputes: A South African Perspective," *African Journal of Legal Studies* (2016) 9, no. 3 147–76, <https://doi.org/10.1163/17087384-12340009>.

<sup>28</sup> *Pasley v Freeman* (1789), 100 E.R. 450.

1. The defendant made a representation of fact through words or conduct.
2. The defendant intended for the representation to be relied upon and acted upon by the plaintiff or a group of people, including the plaintiff. The plaintiff did rely on the representation and suffered harm as a result.
3. The defendant knew that the representation was false, or at least did not genuinely believe it to be true.

The tortious liability for false representation is very similar to fraudulent misrepresentation. In the latter, however, the claimant must provide evidence of the defendant's fraudulent intent. Simply proving that the statement was false is not enough; there must be proof of dishonesty or recklessness in making the statement. In both cases, the claimant must demonstrate that they relied on the false statement and suffered losses as a direct result of that reliance.

In civil law, intent to deceive plays a central role, especially under the tort of fraudulent misrepresentation. In instances of paternity fraud, the act of deceiving someone may involve intentionally leading them to believe that they are the biological father of a child. The deceived party may then provide financial and emotional support for the child based on this false belief.

#### **5.4 Proof**

Substantial evidence proving the fraudulent intent or reckless behaviour of the person who made the false statement about paternity is crucial. Evidence of the harm suffered (e.g., payment of child support, emotional and psychological distress, and reputational harm) is also relevant in paternity fraud suits.

#### **5.5 Legal Remedies for Civil Liability**

Victims of paternity fraud may seek damages for any financial or personal losses suffered due to the fraudulent and false misrepresentation.<sup>29</sup> This could include costs related to child support, emotional distress, and other economic impacts.<sup>30</sup> Courts may also consider the effect on the child and the broader implications of any legal action taken. Civil action can also result in correcting records and addressing the misrepresentation.

#### **5.6 Liabilities Relating to Adultery under Civil Liability**

Section 15(2)(b) of the Matrimonial Causes Act states that the court may grant a dissolution of marriage if it is proven that the marriage has irretrievably broken down due to an alleged act of adultery committed by the respondent, which the petitioner finds intolerable to live with. In Nigerian law, a man can potentially sue for damages in certain situations involving his wife and another man, though the legal basis and specifics can be complex. While Nigerian law does not provide a direct cause of action for damages solely based on adultery or the harbouring of a spouse by another individual, there are related legal avenues that may be explored. For example, alienation of affection is a tort that allows a married or formerly married person to sue a third party for damaging their marriage. Claims related to emotional

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<sup>29</sup> E, Richmond 'Paternity Fraud: Examining its Causes, Tort of Deceit and Victims Compensation' *Global Scientific Journal*, (2021) 9(12) 736-747.

<sup>30</sup> Seliber (note 4).

distress or intentional interference with marital relationships might be pursued under tort principles, though these cases can be complicated and require substantial proof.

It is worth noting that the concept of enticement or harbouring of a spouse by a third party is not a well-established cause of action in Nigerian law. However, if there is evidence of intentional interference in the marital relationship, it might be explored under tort principles. To succeed in a claim for damages related to adultery or interference with matrimonial relations, significant evidence would be required, including:

Proof of Adultery- Evidence that the spouse has engaged in sexual relations with another person and

Proof of Interference- Evidence that the third party intentionally interfered with the marital relationship.

Although civil liabilities can help recover costs wrongfully incurred and ensure that individuals are not unfairly burdened by financial responsibilities that were deceitfully imposed, this approach may place greater emphasis on restitution than punishment, seeking to make up for the victim's losses rather than punishing the offender. This is why the call for criminal prosecution is gathering momentum.

## **6 Paternity Fraud as a Criminal Offense**

Paternity fraud is generally considered a civil rather than a criminal matter in many jurisdictions, including Nigeria. There is also no documented case of paternity fraud conviction in Nigeria. Nonetheless, paternity fraud can have elements that might intersect with criminal law depending on the case's specifics and the nature of the deceit involved. While Nigerian law does not explicitly criminalize paternity fraud *per se*, if the fraud involves falsification of documents or other criminal activities, it could fall under general fraud or forgery in criminal statutes. Sections of the Nigerian Criminal Code Act and the Penal Code Act (including the Economic and Financial Crimes Commission (EFCC) Act) address various types of fraud. These provisions might be applied if paternity fraud involves deceitful practices for financial gain.

### **6.1 Fraud as an Element of Paternity Crime**

Typically, "fraud" connotes dishonest criminal activity or other reprehensible behaviour. In *Aina v Jinaudu*,<sup>31</sup> Tobi JCA (as he then was) stated that '... Fraud has the elements of deceit, imposture, a snare, and a deceptive trick. It also colloquially connotes a cheat and a swindler.' According to a legal dictionary, fraud is the deliberate misrepresentation of a fact, whether through words or deeds, false or misleading accusations, or the withholding of information that should have been disclosed, to mislead and deceive another person for that person to act on it to their legal detriment.<sup>32</sup>

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<sup>31</sup> (1992) 4 NWLR (Pt. 233) 91, 110.

<sup>32</sup> News Wire, 'Paternity Fraud: Legal and Social Implications', Newswire, May 28, 2021

<https://newswirelawandevents.com/paternity-fraud-legal-and-social-implications/>.

In Nigeria, the Criminal Code Section 419 states: “Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a felony...” Thus, anyone who intentionally makes a false representation to defraud to obtain financial support may be liable under the criminal laws of Nigeria. Similarly, section 422 on Conspiracy to defraud states that any person who conspires with another by deceit ...to defraud the public or any person, whether a particular person or not, or to extort any property from any person, is guilty of a felony...’

The Penal Code Act makes analogous provisions to the criminal code. In section 324, it is an offence to cheat through personation. Section 325 states further that anyone who cheats and thereby fraudulently or dishonestly induces the person deceived to deliver any property to any person is liable for an offence. A cursory study of these criminal statutes indicates that if paternity fraud involves misrepresentation for financial gain, it could be charged under fraud statutes if it meets the criteria of deceit and economic loss. In addition, if the fraud involves creating or altering documents (such as birth certificates), charges of forgery or falsification may be applicable.

## **6.2 Adultery Criminal Laws**

The Criminal Code Act of Nigeria, which applies to the southern part of the country, does not explicitly criminalize adultery. However, the Penal Code Act and Sharia Laws of some states, applicable primarily in northern Nigeria and certain parts of the country that follow Islamic law, criminalise adultery. Section 387 and 388 of the Penal Code Act define adultery as engaging in extramarital affairs by a married person with someone other than their spouse (provided the man or woman is subject to any customary laws in which extra-marital sexual relations is considered a criminal offence). In states or regions in Nigeria where Islamic law is applied (particularly in the northern states), adultery (zina) is considered a serious offence under the Sharia laws. In these two laws, paternity fraud could be proof of adultery, although this interpretation is subject to legal pronouncement.

## **6.3 Perjury and Falsification of Records and Evidence**

Perjury related to paternity proceedings or intentionally making false statements on a public record like a birth certificate can attract criminal sanctions. It is against the law to deliberately misrepresent or falsely identify someone as the biological father of a child on a birth certificate if that individual is not the actual father of the child. The act of making the false statement constitutes the crime, not the paternity fraud *per se*.<sup>33</sup> Sections of the Criminal Code Act that may apply to paternity fraud include Section 391- Concealing birth registers; Section 421- the offence of Cheating; Section 441- Acts done with intent to defraud; Section 468- Uttering false documents and counterfeit seals, etc.

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<sup>33</sup> Maryam Olaitan ‘Addressing Paternity fraud: Legal aspect in Nigeria’  
<https://www.linkedin.com/pulse/addressing-paternity-fraud-legal-aspects-nigeria-bello-6hymf/>

Other relevant examples in the Penal Code Act include Sections 156-158 and 178 on falsifying evidence and public records (in a paternity suit) and Section 362-371-making a false paternity document, forgery and using forged documents.

#### **6.4 Criminal Prosecution**

Criminal proof of paternity-related fraud may be difficult. For criminal prosecution, there must be sufficient evidence to prove beyond a reasonable doubt that the fraud was committed with intent to deceive or involved criminal activities such as forgery. Criminal penalties can vary but might include fines, imprisonment, or both, depending on the offence's jurisdiction and severity.

### **7 Argument for the Criminalization of Paternity Fraud**

Some may argue that it is appalling that intentional paternity fraud is not explicitly addressed by Nigerian laws, despite being a terribly unjust and distressing 'crime' to the misattributed father and even the child affected. The emotional harm that men suffer after discovering that they have raised children who are not theirs biologically or the complicated situation for the child are strong reasons to canvass for criminal liability. This is especially disheartening as it involves the severance of deep emotional bonds that have been formed between a man and the child upon the revelation of biological parentage. Criminalising this act may, therefore, contribute to addressing the wrongdoing.

Paternity fraud often involves deliberate deception, leading to significant personal and financial harm. Punishing individuals who commit paternity fraud is viewed as a matter of holding them accountable for their wrongful actions and ensuring justice is served for those who have been deceived. Secondly, it could be argued that the punishment helps restore a sense of balance and fairness. When individuals are held accountable for their deceit, it reinforces the principle that wrongdoing, particularly with intent to deceive, will have consequences.

The deterrent effect of criminal liability is an argument that has also been put forth to criminalise paternity fraud. In this sense, implementing legal penalties for paternity fraud can warn others who might be engaging in similar deceitful behaviour. Knowing paternity fraud can lead to criminal charges or significant civil liabilities can discourage individuals from committing such acts. Imposing legal liabilities would further ensure that children are raised in environments where familial relationships are based on truth and trust, contributing to healthier family dynamics. This consequently allows a child to be raised with the full knowledge of the family's medical history and to benefit from inheritance laws.

In a more social sense, punishing paternity fraud can encourage honesty and transparency in personal and family matters. It promotes ethical behaviour by clarifying that deceitful actions, particularly those involving personal relationships and financial responsibilities, will be met with serious consequences. Penalising paternity fraud can further provide victims with recourse. Those who have been wrongfully led to believe they are a child's biological parent would have legal recourse to address the financial and emotional impact of the fraud.

### **8 Argument Against Criminal Legal Liabilities**

While criminal liabilities may be apt in paternity fraud, the counterargument is also compelling. Despite the necessity to try and regulate the crimes, it seems unlikely that any law-making paternity fraud illegal will be successful in Nigeria. Arguments against

criminalising paternity fraud often centre on concerns about fairness, practicality, and the potential for additional negative consequences. In the first instance, not all cases of misattributed parentage involve intentional deceit. Some situations arise from misunderstandings, mistaken beliefs, medical negligence, careless attribution, or errors. Criminalising paternity fraud may, therefore, unfairly penalise those who did not deliberately engage in fraudulent behaviour. Without a doubt, family dynamics and personal relationships are complex. In Nigeria, where the man is often the provider, the woman may seek better financial security for the child. The imposition of criminal penalties might not account for the nuanced and usually deeply personal reasons behind such situations. Mediation and counselling may be more appropriate for resolving these issues.

From a legal angle, proving intent or fraudulent misrepresentation in paternity fraud cases can be challenging. Legal systems would need to establish that deception was deliberate, which may be difficult and costly to prove, potentially leading to inconsistent application of justice. It has been argued in certain quarters that any legislation attempting to make paternity fraud illegal in Nigeria might be just as unsuccessful as criminal bigamy laws.<sup>34</sup> This is not to say that no laws have criminalised family-related actions in some way. For example, we have criminal statutes that deal with family matters, including adultery, bigamy, child abuse and molestation, and spousal assault. However, criminalising paternity fraud could increase the burden on the legal system, with more cases to prosecute and additional resources needed. This might divert attention and resources away from other pressing criminal matters.

Criminal penalties might lead to other negative consequences by exacerbating family conflicts and emotional distress. Instead of fostering resolution, criminalisation could lead to further estrangement and conflict among family members. The situation can result in the mother obtaining a criminal record, which may impact her ability to care for the child, mainly if the biological father is unknown or not involved. Ultimately, this situation may lead to adverse outcomes for the child, as the mother could end up in prison or lack the necessary support for the child's normal development. Labelling paternity fraud as a criminal act could stigmatise individuals involved, potentially harming their reputations and affecting their social and professional lives, even if their actions were not malicious. In some Nigerian societies, children born during the subsistence of a marriage belong to the husband of the mother. These cultures are not concerned with whether or not the man is the child's biological father. Raising paternity fraud may disrupt social order or cultural norms in such a case.

Civil remedies, such as financial restitution or modification of child support arrangements, might be more appropriate for addressing the harm caused by paternity fraud without resorting to criminal penalties. However, this will impose a heavy financial burden on the woman, especially if she depends on the husband or man. Focusing on supportive measures, such as counselling and family mediation, can help resolve issues related to paternity fraud more constructively. These approaches can address the underlying issues and promote reconciliation.

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<sup>34</sup> Ibid.

## **9 Challenges Facing Legal Framework, Regulation and Redress for Paternity Fraud**

Addressing the issue of paternity fraud in Nigeria is a complex task due to various social, cultural, and legal factors. As mentioned earlier, Nigerian laws lack explicit provisions to comprehensively deal with paternity fraud. The current legal lacuna allows potential gaps that assail the integrity of paternal rights and responsibilities. The judicial system also lacks clear standards for determining remedies and holding those responsible for the fraud accountable. This lack of clarity contributes to the high prevalence of individuals resorting to self-help methods and social media exposure upon discovering paternity fraud. Moreover, establishing paternity fraud in Nigeria can be challenging. Victims must meet stringent evidentiary requirements and provide convincing proof of the deception. This becomes particularly difficult when the biological father, mother, and child are unwilling to participate in the process.

Furthermore, unless it is in a child's best interest—that is, if the child in question is an infant rather than an adult—it is unlikely that the court will order a DNA test.

Nigerian culture also places a strong emphasis on the value of blood connections and family. Thus, in the sociocultural setting, paternity fraud is regarded as a particularly delicate and stigmatized subject. Paternity fraud victims may be reluctant to come forward for fear of social reaction and reputational harm to their families. Additionally, DNA testing could be avoided to prevent instances of privacy invasion and defamation, which is seen to have a negative impact on the family.<sup>35</sup> Many individuals may not be aware of their legal rights and the options available to them in cases of paternity fraud. It is crucial to empower victims by increasing awareness of legal remedies and support services. However, it is also important to consider the potential challenges related to accessibility and cost, as legal proceedings can be expensive and time-consuming.

Another major challenge to the legal framework on paternity fraud is the lack of specific legal criteria for determining custody and child support obligations in cases where there is a denial or challenge of paternity. This is also the case where there is a pending paternity suit. In the age of reproductive technological advancement, another area of legal focus would be paternity fraud where the child was conceived via artificial insemination.

Additionally, children are often caught in the midst of paternity fraud battles, making it difficult to determine what is in their best interest. When the paternity determination process is not handled with care and sensitivity, it can lead to emotional distress for the child and potential abandonment by the parents. Given the circumstances, the legal system must ensure a fair and just balance of rights and interests for all parties involved, including the child. Furthermore, limited access to DNA testing poses a significant obstacle to seeking redress for paternity fraud. The high cost of DNA tests means that only a small percentage of the population can afford them. Consequently, individuals who are suspicious of a wrong attribution of paternity may not be able to pursue remedies for that wrongdoing. There is also the question of who pays for the paternity testing, the party claiming wrongful attribution, the mother or the state in the interests of justice and fairness?

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<sup>35</sup> Ibid.

There have also been calls to make DNA testing compulsory at the time of birth to forestall wrongful attribution and establish parentage. It is unlikely that this approach would be accepted.

For example, in July 2015, Kuwait passed a controversial law that required all 1.2 million citizens and 2.3 million foreigners living in the country to provide DNA samples for a new government database.<sup>36</sup> Proponents of the law argued that it was necessary for national security, as it would help the government track criminals and terrorists. However, this mandate faced significant opposition from geneticists and human rights groups, who criticized it as a severe breach of privacy. In 2017, the Constitutional Court ruled that the law violated the constitutional protections of personal liberty and privacy, leading to its overturn.<sup>37</sup> The Marriage Act and other family laws often assume paternity based on marriage, which can complicate cases of fraud. The laws that govern issues of marriage and legitimacy also need to be amended to align with the emerging paternity issues.

## **10 Conclusion**

The issue of paternity fraud must be addressed with the utmost seriousness, utilizing a comprehensive approach that incorporates both legal and criminal procedures. As society evolves, there is a growing need for lawmakers to consider formalizing regulations surrounding paternity fraud to foster fairness and integrity in familial relationships. This approach should prioritize restitution, disincentives, and rehabilitation to ensure that all parties' rights, especially those of the child, are safeguarded. It is crucial to establish a legal framework that not only outlines laws pertaining to paternity fraud and its criminalisation but also implements measures to ensure the protection of the child's rights and best interests. Advocating for more explicit legal provisions could enhance protection against such fraud and ensure children's rights to know their biological heritage. Paternity laws will also eliminate the requirement of paying child support for children who are not biologically the responsibility of the individual. In the United States of America, in some states, such as Texas, laws have been passed to treat paternity fraud as a civil matter.<sup>38</sup> In Texas, a recent law has been enacted to permit men to utilize the findings of a genetic test as evidence to demonstrate that they are not the biological fathers of children. As a result, they can request the courts to end the legal parent-child relationship and terminate the obligation to pay child support.<sup>39</sup> Ultimately, addressing paternity fraud in Nigeria requires a comprehensive approach that includes legal reforms, public awareness, and support for affected individuals.

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<sup>36</sup> Megan Thielking, 'Opposition Stirring To Kuwaiti Law Mandating DNA Tests For All Residents' Stat News, (Sept. 29, 2016) <https://www.statnews.com/2016/09/29/dna-tests-kuwait-mandate/#:~:text=The%20controversial%20law%2C%20passed%20in,track%20of%20criminals%20and%20terrorists.>

<sup>37</sup> Human Rights Watch. 'Kuwait: Court Strikes Down Draconian DNA Law Any Revision Should Fully Respect Right to Privacy' October 17, 2017

<sup>38</sup> The Shapiro Law Firm, 'Texas Passes Law to Correct Unfair Treatment of Paternity Fraud Victims' <https://www.theshapirolawfirm.com/news-and-resources/articles/tx-passes-law-to-correct-unfair-treatment-of-paternity-fraud-victims/>

<sup>39</sup> Ibid.

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