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REPUBLIC OF KENYA



PARLIAMENT  
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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION (2021)

DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

REPORT ON

THE CHILDREN (AMENDMENT) BILL, 2020

*(National Assembly Bill No. 46 of 2020)*

AUGUST, 2021

THE NATIONAL ASSEMBLY  
PAPERS LAID

DATE: 05 AUG 2021

DAY:

THUR

TABLED  
BY:

Hon. Josphat Kabinga  
Chair, Labour

CLERK AT  
THE TABLE:

Mairah wanjiku

Directorate of Committee Services,  
National Assembly,  
Parliament Buildings,  
**NAIROBI.**





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## LIST OF ABBREVIATIONS AND ACRONYMS

|             |                      |
|-------------|----------------------|
| <b>Hon.</b> | Honourable           |
| <b>M.P.</b> | Member of Parliament |
| <b>NA</b>   | National Assembly    |

## **CHAIRPERSON'S FOREWORD**

The Children (Amendment) Bill, 2020 (*National Assembly Bill No. 46 of 2020*), having undergone First Reading on **Tuesday, 22nd December, 2020**, was committed to the Committee on Labour and Social Welfare for review and report to the House pursuant to the provisions of Standing Order 127(1).

The Bill seeks to amend provisions of the Children Act (No. 8 of 2001) to align them with the Constitution. The Bill seeks to vest equal responsibility for parental care and protection of a child in both the mother and the father whether they are married to each other or not. The Bill further provides that neither the father nor the mother of the child shall have a superior right or claim against the other in the exercise of such parental responsibility.

The Committee, pursuant to the provisions of Article 118 of the Constitution and Standing Order 127 (3), invited submissions on the Bill from the public via advertisements in the national daily newspapers of 22<sup>nd</sup> February, 2021. The Committee received submissions which it took into account while arriving at proposed amendments. At its sitting of 23<sup>rd</sup> July, 2021, the Committee considered the Bill and resolved to recommend to the House to pass it in its current form.

I take this opportunity to commend the Committee Members for their devotion and commitment to duty in the consideration of the Bill. I also wish to express gratitude to the Offices of the Speaker and Clerk of the National Assembly for providing technical and logistical support.

On behalf of the Departmental Committee on Labour and Social Welfare and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and duty to present to the House a report of the Committee on the Children (Amendment) Bill (*National Assembly Bill No. 46 of 2020*).

**Hon. Josephat Kabinga Wachira, M.P.**

**Chairperson, Departmental Committee on Labour and Social Welfare**

## 1.0 PREFACE

### 1.1. Establishment of the Committee

The Departmental Committee on Labour and Social Welfare is established in accordance with the provisions of Standing Order 216 of the National Assembly. Its mandate as provided for in S.O. 216(5) is to *inter-alia*:-

- i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.*
- iii. ***To study and review all legislation referred to it;***
- iv. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- v. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;*
- vi. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments); and*
- vii. ***To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.***

### 1.2. Mandate of the Committee

In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider the following subjects-

- i. Labour;
- ii. Labour relations,
- iii. Manpower or Human Resource Planning,
- iv. Gender,
- v. Youth,
- vi. Social Welfare and Security,
- vii. Children`s Welfare; and
- viii. Persons living with disability.



In executing its mandate, the Committee oversights the following government Ministries and departments:

- i. The State Department for Labour
- ii. The State Department for Social Protection
- iii. The State Department for Gender
- iv. The State Department for Youth
- v. The State Department for Arid and Semi-Arid Lands
- vi. National Gender and Equality Commission

### 1.3. Committee Membership

The Committee comprises the following Members-

The Hon. Josephat Kabinga Wachira, M.P (**Chairperson**)  
Mwea Constituency  
**Jubilee Party**

The Hon. Gideon Koske Kimutai, M.P (**Vice Chairperson**)  
Chepalungu Constituency  
**Chama Cha Mashinani (CCM)**

The Hon. James Onyango Koyoo, M.P.  
Muhoroni Constituency  
**Orange Democratic Movement (ODM)**

The Hon. Gideon Keter, M.P.  
Nominated  
**Jubilee Party**

The Hon. Nelson Koech, M.P.  
Belgut Constituency  
**Jubilee Party**

The Hon. Janet Marania Teyiaa, M.P.  
Kajiado County  
**Jubilee Party**

The Hon. Moses Malulu Injendi, M.P.  
Malava Constituency  
**Jubilee Party**

The Hon. Ronald Kiprotich Tonui, M.P.  
Bomet Central  
**Jubilee Party**

The Hon. Rose Museo, M.P.  
Makueni County  
**Wiper Democratic Movement (WDM)**

The Hon. Tom Odege, M.P.  
Nyatike Constituency  
**Orange Democratic Movement (ODM)**

The Hon. Omboko Milemba, M.P.  
Emuhaya Constituency  
**Amani National Congress Party (ANC)**

The Hon. Caleb Amisi, M.P.  
Saboti Constituency  
**Orange Democratic Movement (ODM)**

The Hon. Fabian Kyule Muli, M.P.  
Kangundo Constituency  
**Muongano Party**

The Hon. Charles Kanyi Njagua, M.P.  
Starehe Constituency  
**Jubilee Party**

The Hon. Titus Mukhwana Khamala, M.P.  
Lurambi Constituency  
**Amani National Congress Party (ANC)**

The Hon. Abdi Mude Ibrahim, M.P.  
Lafey Constituency  
**Economic Freedom Party (EFP)**

The Hon. Ole Sankok David, M.P.  
Nominated  
**Jubilee Party**

The Hon. Safia Sheikh Adan, M.P.  
Marsabit County  
**Jubilee Party**



The Hon. Wilson Sossion, M.P.

Nominated

**Orange Democratic Movement (ODM)**

**1.4. Committee Secretariat**

The Committee's secretariat comprises the following officers-

Ms. Susan Maritim

**Senior Clerk Assistant/Head of the Secretariat**

Mr. John Mugoma  
**Clerk Assistant II**

Ms. Doreen Karani  
**Legal Counsel I**

Mr. James Muguna  
**Research Officer**

Mr. Adan Ahmed Abdi  
**Fiscal Analyst**

Mr. Nickson Mutai  
**Audio Officer**

## CHAPTER TWO:

### 2.1 OVERVIEW OF THE CHILDREN (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 46 OF 2020)

1. The Children (Amendment) Bill, 2020 seeks to amend the Children Act, (No. 8 of 2001) (hereinafter referred to as “the principal Act”) to align it with the Constitution. The Bill seeks to vest equal responsibility for parental care and protection of children in both the mother and the father whether they are married to each other or not so that neither the father nor the mother of the child shall have a superior right or claim against the other in the exercise of such parental responsibility.
2. The Bill was upon First Reading on 22<sup>nd</sup> December, 2020 referred to the Departmental Committee on Labour and Social Welfare for review and report to the House in line with the provisions of Standing Order 127.
3. Clause 2 of the Bill seeks to amend section 24 of the principal Act to make it mandatory for the father and mother of a child born to have parental responsibility of the child whether the parents were married at the time the child was being born or did not subsequently get married.
4. Clause 3 of the Bill intends to repeal section 25 of the principal Act that provides for acquisition of parental responsibility by a father. Section 25 of the Act provides that-*Where a child’s father and mother were not married at the time of his birth-*
  - (a) *the court may, on application of the father, order that he shall have parental responsibility for the child; or;*
  - (b) *the father and mother may by agreement (“a parental responsibility agreement”) provide for the father to have parental responsibility for the child.*

(2) *Where a child’s father and mother were not married to each other at the times of his birth but have subsequent to such birth cohabited for a period or periods which amount to not less than twelve months, or where the father has acknowledged paternity of the child or has maintained the child, he shall have acquired parental responsibility for the child, notwithstanding that parental responsibility agreement has not been made by the mother and father of the child*
5. Clause 4 of the Bill proposes amendment of section 27 of the principal Act as a consequential amendment to the proposed repeal of section 25 on the need for one to acquire parental responsibility

6. The Bill does not limit rights and fundamental freedoms in the Bill of Rights and it does not delegate legislative powers.
7. The enactment of this Bill shall not occasion additional expenditure of public funds.
8. The Bill does not concern county governments in terms of Article 110 of the Constitution as it does not contain provisions that affect the functions or powers of county governments. The Bill proposes amendments to the Children Act, a function which is not assigned to either of the two levels of government, hence it is a National Government function pursuant to Article 186(3) of the Constitution.

## **2.2 PUBLIC PARTICIPATION**

9. Through an advertisement in daily newspapers of 22<sup>nd</sup> February, 2021 (**Annexure 4**), the Committee invited the public to make representations on the Bill as required by the provisions of Article 118 of the Constitution and Standing Order 127(3)

10. The Committee received written submissions from-

- (a) Ms. Jane Wambui;
- (b) The National Gender and Equality Commission; and
- (c) Joint memoranda from the Kenya Association of Child and Youth Care Workers and Make Me Smile Kenya.

11. The details of the submissions are annexed to this Report as **Annexure 5**.

### **2.1.1 Submissions by the National Gender and Equality Commission**

12. The National Gender and Equality Commission through a written memoranda dated 17<sup>th</sup> March, 2021 supported the Bill and recommended that the Committee takes advantage of the constitutional and legal reforms prevailing in the country to draft a comprehensive law to guide all matters affecting children. The Commission submitted as follows –

- i. Clause 2: the proposed amendment aligns the clause with the provisions of the African Charter on the Rights and Welfare of the Child and Convention on the Rights of the Child which gives parents equal responsibility. Parental responsibility agreements must be made in the interest of the child in line with Article 3 of the Convention on the Rights of the Child. In all actions concerning children, whether undertaken by public or private social



welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

- ii. Clause 3: the repeal is necessitated by the amendment in section 24 because the provisions in this section are now rendered redundant.
- iii. Clause 4: the provisions amended have been declared redundant on amendment of section 24 (3) and repeal of section 25.

### 2.1.2 Submissions by Ms. Jane Wambui

13. Ms. Jane Wambui vide an email dated 3<sup>rd</sup> March, 2021 proposed addition of a penal provision for default of a parental agreement or 'deadbeat parents'. In her submission she opined that this was important because that's where most of the Kenyan children miss out hence imposing stringent measures on deadbeat parents is necessary.

### 2.1.3 Submissions by the Kenya Association of Child and Youth Care Workers and Make Me Smile Kenya

14. The Kenya Association of Child and Youth Care Workers and Make Me Smile Kenya presented a joint memorandum proposing the following amendments-
15. Where one of the parents decides to neglect the child for a period of six or more months, some of the rights should be withdrawn or suspended.
  16. In a case where one of the parents presence is toxic to the child, with the guidance of the court, some of the rights of such a parent should be withheld.
  17. In a case where a woman or man with a child is married but the spouse is not the biological parent of the child, the spouse should take full responsibility of the child.
  18. On the provision regarding transfer of responsibility, the Act outlines that a person who has parental responsibility for a child may not surrender or transfer any part of the responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf. **It is proposed that** Parental rights and responsibilities should be transferrable in situations where the biological parental status has changed from one person to another through avenues such as DNA tests results that prove that another person other than the person who has been taking care of the child is the biological parent of the child.
  19. Section 24(5) states that a person who has parental responsibility for a child at any time shall not cease to have that responsibility for the child. **It is proposed that** in a situation where one of the parents

through DNA tests has confirmed that the child does not belong them they may cease taking up parental responsibilities.

## **2.2 COMPARATIVE ANALYSIS ON PARENTAL RESPONSIBILITIES FOR UNMARRIED PARENTS**

### **2.2.1 Introduction**

20. Article 53 (1) of the Constitution of Kenya (2010) guarantees every child the right to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not. Further, the Children Act No. 8 of 2001 defines parental responsibility in section 23 as all the duties, rights, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child's property in a manner consistent with the evolving capacities of the child. The Act provides that the fact that a person has or does not have parental responsibility shall not affect any obligation which such person may have in relation to the child (such as a statutory duty to maintain the child); or any rights which in the event of the child's death, such person (or any other person) may have in relation to the child's property.

### **2.2.2 Parental Responsibilities of Unmarried Fathers in Other Jurisdictions**

#### **2.2.2.1 South Africa**

21. Section 19 of the *Children Act (No. 38 of 2005)* clearly indicates that a mother, whether married or unmarried, has full rights and responsibilities towards her child while a married father also has full rights and responsibilities in terms of section 20. Section 21 regulates the position of an unmarried biological father stating that he will only have automatic parental rights if he is living with the mother in a permanent life partnership and, additionally, consents to being identified as the father. Section 18 allows for fathers who are in a cohabitation relationship with the mother to have an inherent right to contact, care and guardianship<sup>1</sup>. A father does not have any automatic parental rights unless he was in a relationship with the mother. A father has the option to apply under section 2(1) of the *Natural Fathers Born Out of Wedlock Act 86 of 1987* for access rights to or custody or guardianship of the child.

22. The Children Act also provides that parents, whether in a relationship or not, must make necessary financial contributions to the care, upbringing and development of their children. Both parents have a

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<sup>1</sup> Scheepers, W. (Jan 28, 2020). Children born out of wedlock- The rights of the biological father. Go Legal Website. Retrieved from <https://www.golegal.co.za/children-wedlock-biological-father/>



duty to maintain each child. Typically, a divorce agreement or maintenance order from the court will stipulate the cash amount a parent needs to pay to the parent who has primary care of the child. The duty to pay child maintenance also applies if the child was adopted or born out of wedlock. This legal duty also extends to legal guardians, and biological grandparents (if the parents cannot afford to pay). Maintenance payments should continue until a child is self-supporting<sup>2</sup> (*a child over the age of 18 may have to claim maintenance from the non-primary care parent personally*).

#### 2.2.2.2 United Kingdom

23. According to Section 3(1) of the Children Act 1989, parental responsibility means "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property." Further, section 3(4) states that, "the fact that a person has, or does not have, parental responsibility for a child shall not affect any obligation which he may have in relation to the child (such as a statutory duty to maintain the child); or any rights which, in the event of the child's death, he (or any other person) may have in relation to the child's property."
24. A mother automatically has parental responsibility for her child from birth. A father usually has parental responsibility if he's either married to the child's mother or listed on the birth certificate (after a certain date, depending on which part of the UK the child was born in)
25. For Births registered in **England and Wales**<sup>3</sup> if the parents of a child are married when the child is born, or if they've jointly adopted a child, both have parental responsibility. They both keep parental responsibility if they later divorce. For unmarried parents an unmarried father can get parental responsibility for his child by jointly registering the birth of the child with the mother (from 1 December 2003); or getting a parental responsibility agreement with the mother; or getting a parental responsibility order from a court
26. For Births registered in Scotland a father has parental responsibility if he's married to the mother when the child is conceived or marries her at any point afterwards. An unmarried father has parental responsibility if he's named on the child's birth certificate (from 4 May 2006).

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<sup>2</sup> Paying child maintenance in South Africa. Retrieved from <https://www.lawforall.co.za/family-relationships/parenting/child-maintenance-south-africa/>

<sup>3</sup> Parental rights and responsibilities. Retrieved from <https://www.gov.uk/parental-rights-responsibilities/who-has-parental-responsibility>

27. For Births registered in **Northern Ireland** a father has parental responsibility if he's married to the mother at the time of the child's birth. If a father marries the mother after the child's birth, he has parental responsibility if he lives in Northern Ireland at the time of the marriage. An unmarried father has parental responsibility if he's named, or becomes named, on the child's birth certificate (from 15 April 2002).
28. Child maintenance or child periodical payments are regular payments made by a non-resident parent to the person or parent with care of the child to meet the day-to-day living expenses of a child following marriage, civil partnership or relationship breakdown. Child maintenance payments can be agreed between the parents, calculated by the Child Maintenance Service (CMS)<sup>4</sup> or ordered by the court in prescribed circumstances or where the CMS does not have jurisdiction<sup>5</sup>.

### 2.2.2.3 Philippines

29. In the Philippines, children born out wedlock have their legal status governed by the Civil Code of the Philippines of 1949 and the Family Code of 1987<sup>6</sup>. According to Article 176 of the Philippine Family Code, a child is considered illegitimate if the child is born out of wedlock, and in such cases, the parental authority and custody of the child fall on the mother. A 2004 amendment enables the children to use their father's surname if the father expressly recognizes him/ her through the record of birth appearing in the civil register, or through an admission in a public document or private handwritten instrument<sup>7</sup>. A single mother has the sole parental authority over her child. Nevertheless, the child's father can exercise his parental rights to have access to the child through legal means which can also include temporary custody of the child. Regardless of marriage status, the father is required to provide support in accordance with capacity and resources.<sup>8</sup> Children born out of wedlock to an unwed mother have the right to be supported by their father provided the father recognizes the relation

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<sup>4</sup> This is a service run by the Government to arrange and collect child maintenance from the non-resident parent and pay it to the receiving parent if this is necessary. Definition retrieved from <https://rightsofwomen.org.uk/get-information/family-law/children-law-child-maintenance/>

<sup>5</sup> Glossary- Child maintenance. Thomas Reuters Practical Law. Retrieved from <https://uk.practicallaw.thomsonreuters.com/>

<sup>6</sup> The Family Code of the Philippines. Retrieved from [https://amslaw.ph/philippine-laws/civil-law/the-family-code-of-the-philippines\(2\)](https://amslaw.ph/philippine-laws/civil-law/the-family-code-of-the-philippines(2))

<sup>7</sup> European Asylum Support Office (March 6, 2020). COI Query. Retrieved from <https://www.justice.gov>

<sup>8</sup> Pinoy Attorney. (November 27, 2017). Guidelines on filing for child support. Retrieved from <https://attorney.org.ph/legal-news/tag/5-child-custody>



**30.** Under the Family Code, child support has the following basic principles:

- a. It is everything indispensable for food, shelter, clothing, medical attendance, education, and transportation in keeping with the financial capacity of the family.
- b. It is joint (whether married or not) and will be taken from the absolute community property. The same also applies to the provision of the child support of one spouse by a previous marriage or partnership.
- c. It is in proportion to the resources and means of the parent and the needs of the child. At the same time, it can be reduced or increased proportionately, based on the reduction or increase of the parent's resources and means, or on the reduction or increase of the child's needs. Hence, it is never final.
- d. It must also be noted if the child's father does not have the means nor capacity to find sufficient child support, then the obligation can pass to his family — including his parents (the child's grandparents) if they have the means to do so<sup>9</sup>.

#### **2.2.2.4 United States of America**

**31.** When a child is born outside of marriage, there is no legal presumption of paternity. Without establishing paternity, an unwed father has no legal standing as it relates to visitation, shared custody or the ability to make decisions about the welfare of the child<sup>10</sup>. An unwed father can establish paternity by ensuring that his name is on the baby's birth certificate or he can complete a Voluntary Acknowledgment of Paternity form. Once paternity is established, there is need to determine his custody status. An unwed man who is legally designated as the father has the same custody rights as a married father. If the parents are not living together or are not intending to raise the child together, the father will also need to petition the court to establish custody rights. These rights range from joint or shared custody or allowing the mother to have full custody with the father only having visitation rights or if the mother is unfit to have custody of the child, the father can petition for full legal custody. Regardless of their custody status, fathers have financial responsibilities. If the parents live separate, child support will become a formal legal obligation which can be enforced by government agencies. Child support is determined based on a number of factors including the parents' individual income

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<sup>9</sup> Guzman- Cruz, E. (April 19, 2018). What single moms should know about child custody and support. Mom Center Website. Retrieved from <https://momcenter.com.ph/2018/04/19/what-single-moms-should-know-about-child-custody-and-support/>

<sup>10</sup> Parker, W. (June 03, 2020). Rights of a father when he is not married. Very Well Family website.

levels and obligations, availability of other financial support, and the needs of the children. Each child support case is unique and the amounts of child support needed will be individually determined.

32. Child support in the United States is an ongoing obligatory payment for the financial care and support of children of a relationship or a (possibly terminated) marriage. The Office of Child Support Enforcement (OCSE)<sup>11</sup> is the federal government agency that oversees the national child support program. OCSE helps child support agencies in States and tribes (Native Americans) develop, manage, and operate their programs according to federal law using effective child support enforcement tools to encourage parental responsibility so that children receive financial, emotional, and medical support from both parents, even when they live in separate households. Each individual State and federally recognized tribe is responsible for developing its own guidelines for determining child support. Penalties for non-payment of child support vary from State-to- state and include revoking driver's licences, deductions from wages, interception by child enforcement agencies of any money due from state or federal sources, or jail term for past due child support.

### **2.3 CLAUSE BY CLAUSE CONSIDERATION OF THE BILL**

33. This Part deals with the clause-by-clause consideration of the Bill by the Committee after taking into consideration the views of the aforementioned stakeholders.

#### **2.3.1 Clause 2 (Amendment of Section 24 of the Children Act)**

34. The Children Act is amended in section 24 by deleting subsection (3) and substituting therefor the following new subsection—

*Where a child's father and mother were not married to at the time of the child's birth the father and mother may by agreement ("a parental responsibility agreement") provide for the parental responsibility of the Child.*

### **Committee Observations and Recommendation on the Amendment**

**The Committee observed the following—**

35. The amendment seeks to make it mandatory for the father and mother of a child born to have parental responsibility of the child whether the parents were married at the time the child was being born or did not subsequently get married.

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<sup>11</sup> Office of Child Support Enforcement- an office of the Administration for Children & families. Retrieved from <https://www.acf.hhs.gov/css>



36. Currently the Act places primary parental responsibility on an unmarried mother of a child and requires a father to assume such responsibility. The amendment proposes that the unmarried parents may enter into a parental responsibility agreement.

37. The provision aligns the statutory provisions to Article 53 (1)(e) of the Constitution which provides-

*“Every parent has the right to...parental care of protection<sup>24</sup>, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not”*

**38. The Committee was agreeable to Clause 2 as appearing in the Bill.**

### **2.3.2 Clause 3 (Repeal of Section 25 of the Children Act)**

39. Clause 3 provides for amendment of the Principal Act by repealing section 25.

#### **Committee Observations and Recommendation on Clause 3**

40. The Committee observed that currently section 25 of the Act requires that where the father and mother of a child are unmarried, the father of a child may only acquire parental responsibility over the child if he applies to the court for an order or enters into an agreement with the mother. Responsibility for the father is also presumed where the father and mother, though unmarried, cohabit for a period exceeding 12 months.

41. The amendment does away with the entire section thus placing parental responsibility on both parents of a child by default.

**42. The Committee was agreeable to Clause 3 as appearing in the Bill.**

### **2.3.3 Clause 4 (Amendment of Section 27 of the Children Act)**

43. Clause 4 provides

*Section 27 of the principal Act is amended subsection (2) —*

*(a) by deleting the words “if he has acquired parental responsibility under the provisions of this Act appearing in paragraph (a);*

*(b) by deleting the words “who has acquired parental responsibility under the provisions of this Act” appearing in paragraph (b).*

#### **Committee Observations and Recommendation on Clause 4**

44. The Committee observed that the current S. 27(2) of the Act provides for the transmission of parental responsibility, in the event of the death of a mother, to a father who has acquired parental responsibility if the father and mother were unmarried at the time of birth of the child. Also, it provides that in event of death of a father who has acquired parental responsibility, the parental responsibility is exercised by the mother.
45. The amendment deletes the portions of the Act referring to acquisition of parental responsibility in view of the earlier amendments.
46. **The Committee was agreeable to Clause 4 as appearing in the Bill.**

**CHAPTER THREE:**

**COMMITTEE RECOMMENDATION**

47. The Committee, having considered the Children (Amendment) Bill (*National Assembly Bill No. 46 of 2020*) recommends that the House passes the Bill as it is.

SIGNED.......... DATE.....*5/8/2020*.....

**HON. JOSEPHAT KABINGA WACHIRA, M.P.,**

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE**

**MINUTES OF THE 41<sup>ST</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
LABOUR AND SOCIAL WELFARE HELD ON FRIDAY, 23<sup>RD</sup> JULY, 2021 AT 2.30 P.M.  
IN NDOVU CONFERENCE ROOM, BOMA HOTEL**

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**PRESENT**

1. **The Hon. Josphat Kabinga Wachira, M.P.** - Chairperson
2. The Hon. Ronald Kiprotich Tonui, M.P.
3. The Hon. Abdi Mude Ibrahim, M.P.
4. The Hon. Caleb Amisi, M.P.
5. The Hon. Charles Kanyi Njagua, M.P.
6. The Hon. David Ole Sankok, M.P.
7. The Hon. Fabian Kyule Muli, M.P.
8. The Hon. Gideon Keter, M.P.
9. The Hon. Nelson Koech, M.P.
10. The Hon. Omboko Milemba, M.P.
11. The Hon. Safia Sheikh Adan, M.P.
12. The Hon. Titus Mukhwana Khamala, M.P.
13. The Hon. Tom Mboya Odege, M.P.
14. The Hon. Wilson Sossion, M.P.

**APOLOGY**

1. **The Hon. Gideon Koske Kimutai, M.P.** - Vice Chairperson
2. The Hon. Janet Marania Teyiaa, M.P.
3. The Hon. Moses Malulu Injendi, M.P.
4. The Hon. Rose Museo Mumo, M.P.

**IN ATTENDANCE**

**Committee Secretariat**

- |                           |   |                        |
|---------------------------|---|------------------------|
| 1. Ms. Susan Maritim      | - | Senior Clerk Assistant |
| 2. Mr. Adan Sora Gindicha | - | Senior Clerk Assistant |
| 3. Mr. John Mugoma        | - | Clerk Assistant II     |
| 4. Mr. Ronald Walala      | - | Legal Counsel          |
| 5. Mr. James Muguna       | - | Researcher             |
| 6. Mr. Nickson Kibet      | - | Audio Officer          |
| 7. Mr. Said Mohamed       | - | Sergeant-At-Arms       |

**AGENDA**

1. Prayers
2. Preliminaries
  - i. Introductions
  - ii. Communication from the Chairperson
  - iii. Confirmation of Minutes of previous Sitings
  - iv. Matters Arising
3. **Consideration and adoption of the report on Children (Amendment) Bill, 2020**
4. Any Other Business
5. Adjournment/Date of the next Sitting



**MIN.NO. DC/LSW/2021/202            PRELIMINARIES**

The meeting commenced at 2.30 p.m. with the Prayer followed by welcoming remarks.

**MIN.NO. DC/LSW/2021/203            ADOPTION OF THE AGENDA**

The Agenda was adopted without amendments, having been proposed and seconded by the Hon. Gideon Keter M.P. and the Hon. Tom Mboya Odege, M.P. respectively.

**MIN.NO. DC/LSW/2021/204            CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING**

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

**MIN.NO. DC/LSW/2021/205            CONSIDERATION AND ADOPTION OF THE REPORT ON THE CHILDREN (AMENDMENT) BILL, 2020**

The Committee considered the Report on the Consideration of the Children (Amendment) Bill, 2020 and **approved it without amendments** as proposed by the Hon. David Ole Sankok, M.P. and seconded by the Hon. Gideon Keter, M.P.

**Committee Observations**

**Clause 2**

The Committee observed that the Act seeks to align the statutory provisions of Article 53 (1)(e) of the Constitution by making it mandatory for the father and mother of a child born to have parental responsibility of the child whether the parents were married at the time the child was being born or did not subsequently get married.

The current Act places primary parental responsibility on an unmarried mother of a child and requires a father to assume such responsibility. The amendment proposes that the unmarried parents may enter into a parental responsibility agreement.

**Clause 3**

The Committee observed that section 25 of the Act requires that where the father and mother of a child are unmarried, the father of a child may only acquire parental responsibility over the child if he applies to the court for an order or enters into an agreement with the mother. Responsibility for the father is also presumed where the father and mother, though unmarried, cohabit for a period exceeding 12 months.

Clause 3 does away with the entire section thus placing parental responsibility on both parents of a child by default.

**Clause 4**

The Committee observed that the current section 27(2) of the Act provides for the transmission of parental responsibility, in the event of the death of a mother, to a father who has acquired parental responsibility if the father and mother were unmarried at the time of birth of the child. It also



provides that in event of death of a father who has acquired parental responsibility, the parental responsibility is exercised by the mother.

Clause 4 deletes section of the Act referring to acquisition of parental responsibility in view of the earlier amendments.

**Committee Resolution**


The Committee resolved that the Title, Clauses 1, 2, 3 and 4 be agreed to as they appear in the Bill.

**MIN.NO. DC/LSW/2021/206      ANY OTHER BUSINESS**

No other business arose.

**MIN.NO. DC/LSW/2021/207      ADJOURNMENT**

There being no other business, the meeting was adjourned 4.05p.m. until Saturday, 23<sup>rd</sup> July, 2021 at 10.00a.m., same venue.

SIGNED: .....  .....

**THE HON. JOSPHAT KABINGA WACHIRA , M.P  
(CHAIRPERSON)**

DATE: ..... 03/08/2021 .....

**MINUTES OF THE 17<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
LABOUR AND SOCIAL WELFARE HELD ON FRIDAY 5<sup>TH</sup> MARCH 2021 AT 2.45PM  
AT BEST WESTERN HOTEL, KISUMU**

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**PRESENT**

1. **The Hon. Peter Mwathi, MP** - Chairperson
2. **The Hon. Gideon Koske Kimutai, M.P.** - Vice Chairperson
3. The Hon. James K'Oyoo, M.P
4. The Hon. Ronald Kiprotich Tonui, M.P
5. The Hon. Fabian Kyule Muli, M.P
6. The Hon. Tom Mboya Odege, MP
7. The Hon. Abdi Mude Ibrahim, MP
8. The Hon. Safia Sheikh Adan, M.P
9. The Hon. Titus Mukhwana Khamala, M.P
10. The Hon. Nelson Koech, M.P
11. The Hon. Wilson Sossion, MP
12. The Hon. David Ole Sankok, MP
13. The Hon. Gideon Keter, MP

**APOLOGY**

1. The Hon. Janet Marania Teyiaa, MP
2. The Hon. Rose Museo Mumo, MP
3. The Hon. Moses Malulu Injendi, M.P
4. The Hon. Caleb Amisi, M.P.
5. The Hon. Omboko Milemba, MP
6. The Hon. Charles Kanyi Njagua, MP

**The National Assembly Secretariat**

1. Mr. Adan Sora Gindicha -Senior Clerk Assistant
2. Mr. John Mugoma -Clerk Assistant II
3. Ms. Doreen Karani -Legal Counsel
4. Ms. Sheila Chebotibin -Sargent-At-Arms
5. Mr. Nickson Kibet - Audio Officer

**AGENDA**

1. Prayers
2. Preliminaries
  - i. Introductions
  - ii. Communication from the Chairperson
  - iii. Confirmation of Minutes
  - iv. Matters Arising
3. **Clause by Clause Consideration of Institute of Social Work Professionals Bill, 2020**
4. **Consideration of the Children Amendment Bill, 2020**
5. Any Other Business
6. Adjournment/Date of the next Sitting

**MIN.NO. DC/LSW/082/2021: - PRELIMINARIES**

The meeting was called to order at 2.50pm and thereafter a prayer was said.

**MIN.NO. DC/LSW/083/2021: - ADOPTION OF THE AGENDA**

The agenda of the meeting were adopted having been proposed and seconded by the Hon. Abdi Mude Ibrahim, MP and the Hon. Tom Mboya Odege, MP respectively.

**MIN.NO. DC/LSW/084/2021: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING**

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

**MIN.NO. DC/LSW/085/2021: CLAUSE BY CLAUSE CONSIDERATION OF INSTITUTE OF SOCIAL WORK PROFESSIONALS BILL, 2020**

The Committee considered the Bill Clause by Clause and made the following Observations and Recommendations:-

1. Clause 5(g) There was need to make clarification to avoid confusion as to who conducts the professional examinations.
2. Clause 6(1) –
  - a) there was no rationale on the qualification of the Chairperson.
  - b) that once professional bodies from the Government are represented in the Council then it will be a State Corporation hence it qualifies for exchequer from the government.
  - c) there should be a representation from each category of academic qualification i.e certificates, degree, diploma and masters.
3. Clause 7 (1) – The Executive Director must have a degree.
4. Clause 7 (2) – The drafting language should be reviewed; it should be positive. Further, there is no academic qualification but only academic experience as a qualification for one to be appointed as an Executive Director.
5. Clauses 9 to 10 are standard clauses in a Bill.
6. That clause 9 be amended by deleting the words “on the advice of the Executive Director”.
7. Clause 14 is where personal liability applies.
8. Clause 16 – there is need to define what professional examination is i.e for registration purposes. It also mixes membership and regulations.  
Clause 16 (j) is not a function and should be moved to a different section. That clause 16 be amended by- deleting paragraphs (e), and (i)
9. Clause 18 (1)(c) was not necessary and should therefore be deleted.
10. Clause 20 be amended by deleting the words “certificate of incorporation” in paragraph (a) and “principal shareholder” in paragraph (b)
11. Clause 24: Rename practicing certificate to practicing license.
12. Clause 29 (p) should read, ‘does or fail to do any other act which may be prescribed by this Act’. Delete the words “of a sexual kind” in paragraph (g)
13. Clause 32(5) there should be a specific timelines (30 days) and not ‘as soon as possible’
14. Clause 37 (2) - the Auditor General may reconsider or may appoint a private auditor.
15. Clause 41(2)(a) be removed or deleted or amend ‘for purposes of registration.’ The word ‘may’ to be replaced with ‘shall’ as the term ‘may’ signals ‘optional’.

**MIN.NO. DC/LSW/086/2021: CHILDREN AMENDMENT BILL, 2020**

The Committee was briefed that:-

- I. The Bill seeks to amend various provisions of the principal Act to align them with the Constitution. The Bill seeks to vest equal responsibility for parental care and protection of a child in both the mother and the father whether they are married to each other or not. The Bill further provides that neither the father nor the mother of the child shall have a superior right or claim against the other in the exercise of such parental responsibility.
- II. The Act places primary parental responsibility on an unmarried mother of a child and requires a father to assume such responsibility. The amendment proposes that the unmarried parents may enter into a parental responsibility agreement.
- III. Section 25 of the Act requires that where the father and mother of a child are unmarried, the father of a child may only acquire parental responsibility over the child if he applies to the court for an order or enters into an agreement with the mother. Responsibility for the father is also presumed where the father and mother, though unmarried, cohabit for a period exceeding 12 months. The amendment does away with the entire section thus placing parental responsibility on both parents of a child by default.
- IV. Section 27(2) of the Act provides for the transmission of parental responsibility, in the event of the death of a mother, to a father who has acquired parental responsibility if the father and mother were unmarried at the time of birth of the child. Also it provides that in event of death of a father who has acquired parental responsibility, the parental responsibility is exercised by the mother. The amendment deletes the portions of the Act referring to acquisition of parental responsibility in view of the earlier amendments.

The Committee was also taken through Parental responsibilities for unmarried father in other jurisdictions like South Africa, United Kingdom, USA and Philippines.

**Committee Recommendation**

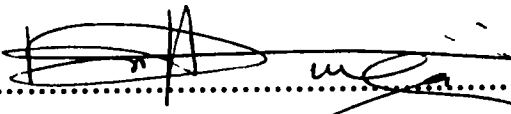
The Committee having considered the Bill Clause by Clause recommended that Clause 2, 3 & 4 be agreed to as they appear in the Bill.

**MIN.NO. DC/LSW/ 087/2021: ANY OTHER BUSINESS**

No Any Other Business Arose

**MIN.NO. DC/LSW/088/2021: ADJOURNMENT**

There being no other business, the meeting was adjourned 4.40pm

**SIGNED:** .....  .....

**The Hon. Peter Mwathi, M.P**

**(Chairperson)**

**DATE:** ..... 21/4/2021 .....









THE NATIONAL ASSEMBLY  
12TH PARLIAMENT - FIFTH SESSION (2021)  
DC- LABOUR AND SOCIAL WELFARE

REPORT ADOPTION SCHEDULE

REPORT ON THE CONSIDERATION OF CHILDREN (AMENDMENT) BILL, 2020

DATE: 23<sup>RD</sup> JULY, 2021

| No. | HON MEMBER  | SIGNATURE |
|-----|---|-----------|
| 1.  | The Hon. Josphat Kabinga Wachira, M.P –<br>(Chairperson)  |           |
| 2.  | The Hon. Gideon Koske Kimutai, M.P.<br>(Vice Chairperson) |           |
| 3.  | The Hon. Ronald Kiprotich Tonui, MP                       |           |
| 4.  | The Hon. Abdi Mude Ibrahim, MP                            |           |
| 5.  | The Hon. Caleb Amisi, M.P.                                |           |
| 6.  | The Hon. Charles Kanyi Njagua, MP                         |           |
| 7.  | The Hon. Fabian Kyule Muli, MP                            |           |
| 8.  | The Hon. Gideon Keter, M.P.                               |           |
| 9.  | The Hon. James Onyango K'Oyoo, MP                         |           |
| 10. | The Hon. Janet Marania Teyiaa, MP                         |           |
| 11. | The Hon. Moses Malulu Injendi, M.P                        |           |
| 12. | The Hon. Nelson Koech, M.P                                |           |
| 13. | The Hon. Ole Sankok David, MP                             |           |

| No. | HON MEMBER                            | SIGNATURE   |
|-----|---------------------------------------|---|
| 14. | The Hon. Omboko Milemba, MP           |   |
| 15. | The Hon. Rose Museo, MP               |   |
| 16. | The Hon. Safia Sheikh Adan, MP        |  |
| 17. | The Hon. Titus Mukhwana Khamala, M.P. |  |
| 18. | The Hon. Tom Mboya Odege, MP          |  |
| 19. | The Hon. Wilson Sossion, MP           |  |



**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 209 (National Assembly Bills No. 46)*



REPUBLIC OF KENYA

**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2020**

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**NAIROBI, 20th November, 2020**

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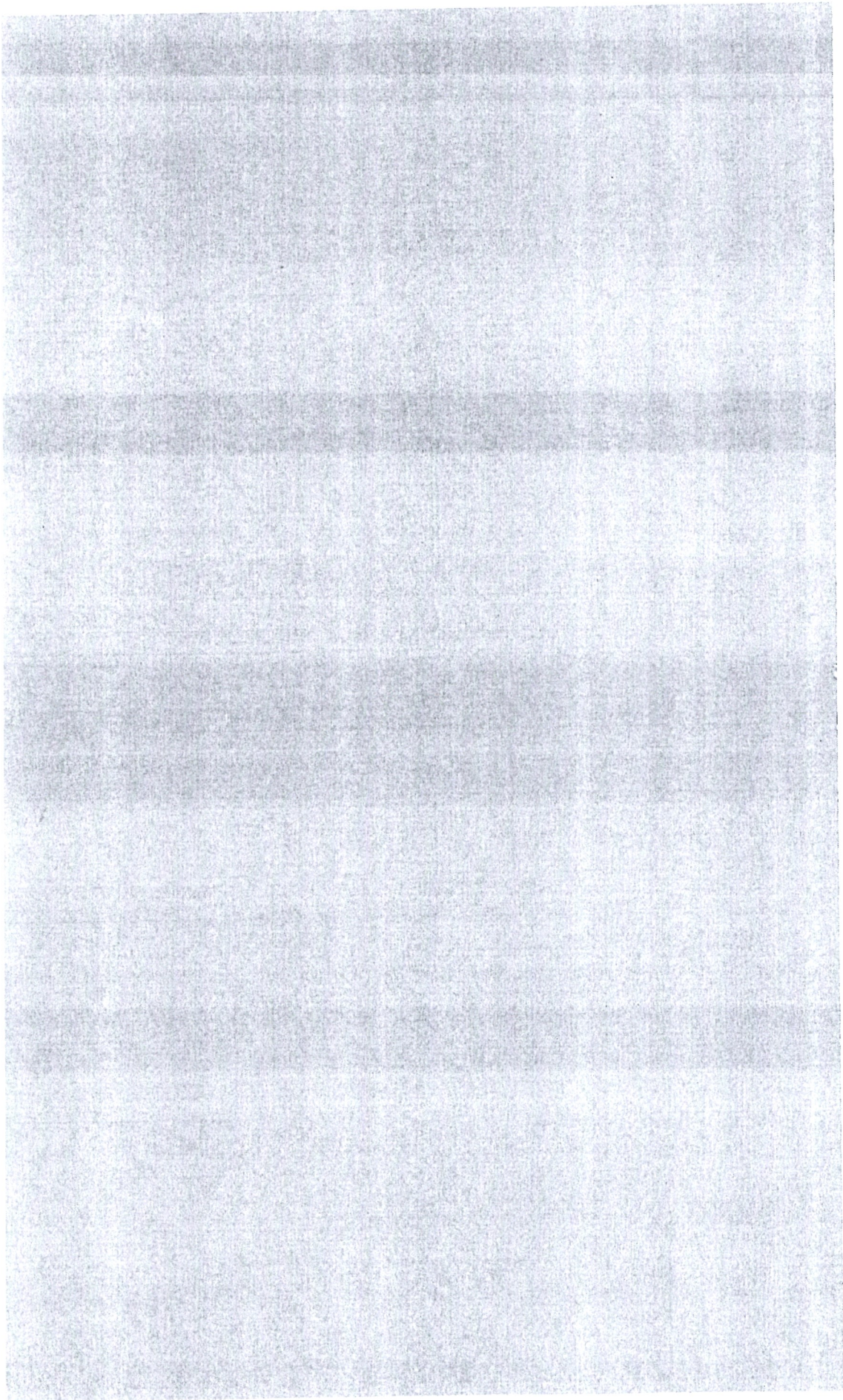
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**CONTENT**

Bill for Introduction into the National Assembly—

|  | PAGE |
|--|------|
| The Children (Amendment) Bill, 2020..... | 1047 |







**THE CHILDREN (AMENDMENT) BILL, 2020****A Bill for****AN ACT of Parliament to amend the Children Act and for connected purposes.**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Children (Amendment) Act, 2020.

Short title

2. The Children Act, (in this Act referred to as the “principal Act”), is amended in section 24 by deleting subsection (3) and substituting therefor the following new subsection—

Amendment of section 24 of No. 8 of 2001.

“(3) Where a child’s father and mother were not married to at the time of the child’s birth the father and mother may by agreement (“a parental responsibility agreement”) provide for the parental responsibility of the Child.

3. The principal Act is amended by repealing section 25.

Repeal of section 25 of No. 8 of 2001.

4. Section 27 of the principal Act is amended subsection (2)—

Amendment of section 27 of No. 8 of 2001.

- (a) by deleting the words “if he has acquired parental responsibility under the provisions of this Act appearing in paragraph (a);
- (b) by deleting the words “who has acquired parental responsibility under the provisions of this Act” appearing in paragraph (b).



**MEMORANDUM OF OBJECTS AND REASONS****Statement of the Objects and Reasons for the Bill**

The principal object of this Bill is to amend the Children Act, (No. 8 of 2001) to be in conformity with the Constitution. The Bill seeks to vest equal responsibility for parental care and protection of a child in both the mother and the father whether they are married to each other or not. The Bill further provides that neither the father nor the mother of the child shall have a superior right or claim against the other in the exercise of such parental responsibility.

**Clause 1** of the Bill provides for the short title.

**Clause 2** of the Bill amends section 24 of the principal Act to make it mandatory for the father and mother of a child born to have parental responsibility of the child whether the parents were married at the time the child was being born or did not subsequently get married.

**Clause 3** seeks repeal section 25 of the Children Act that provides for acquisition of parental responsibility by a father.

**Clause 4** of the Bill seeks to amend section 27 of No. 8 of 2001 as a consequential amendment to the repeal made in clause 4 and 5 above on the need for one to acquire parental responsibility.

**Statement of how the Bill concerns County governments**

The Bill does not concern county governments in terms of Article 110 (a) of the Constitution.

**Statement of delegation of legislative powers and limitation of fundamental rights and freedoms.**

The Bill does not contain any provision limiting any fundamental rights or freedoms.

**Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution.**

The enactment of this Bill shall occasion additional expenditure of public funds.

GEORGE PETER KALUMA,  
*Member of Parliament.*



*Section 11 of the Children Act No 8 of 201 which it is proposed to amend—*

24.(1) Where a child's father and mother were married to each other at the time of his birth, they shall have parental responsibility for the child and neither the father nor the mother of the child shall have a superior right or claim against the other in exercise of such parental responsibility.

Who has parental responsibility

(2) Where a child's father and mother were not married to each other at the time of the child's birth and have subsequently married each other, they shall have parental responsibility for the child and neither the father nor the mother of the child shall have a superior right or claim against the other in the exercise of such parental responsibility.

(3) Where a Child's father and mother were not married to each other at the time of the Child's birth and have not subsequently married each other.

(a) The mother shall have parental responsibility at the first instance;

(b) The father shall subsequently acquire parental responsibility for the child in accordance with the provisions of section 25.

(4) More than one person may have parental responsibility for the same child at the same time.

(5) A person who has parental responsibility for a child at any time shall not cease to have that responsibility for the child.

(6) Where more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in that responsibility; but nothing in this Part shall be taken to affect the operation of any enactment which requires the consent of more than one person in a matter affecting the child.

(7) The fact that a person has parental responsibility for a child may not entitle that person to act in any way which would be incompatible with any order made with respect to the child under this Act.



- (8) (a) A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf
- (b) The person with whom such arrangement is made may himself be a person who already has parental responsibility for the child concerned.
- (c) the making of any such arrangement shall not affect any liability of the person making it which may arise from any failure to meet any part of such person's parental responsibility for the child concerned.

*Section 26 of the Children Act which it is proposed to amend—*

26. (1) A parental responsibility agreement shall have effect for the purposes of this Act if it is made substantially in the form prescribed by the Chief Justice.

Parental  
responsibility  
agreement.

(2) A parental responsibility agreement may only be brought to an end by an order of the court made on application by—

- (a) any person who has parental responsibility for the child; or
- (b) the child himself with the leave of the court.

(3) The Court may only grant leave under subsection (2) (b) if it is satisfied that the child has sufficient understanding to make the proposed application.

*Section 27 Children Act which it is proposed to amend—*

27. (1) Where the mother and father of a child were married to each other at the time of the birth of the child or have subsequently married each other—

Transmission of  
parental  
responsibility.

- (a) on the death of the mother the father shall exercise parental responsibility for the child either alone or together with any testamentary guardian appointed by the mother
- (b) on the death of the father, the mother if living shall exercise parental responsibility for the child either



alone or together with any testamentary guardian appointed by the father;

(c) where both the mother and the father of the child are deceased, parental responsibility shall be exercised by—

(i) any testamentary guardian appointed by either of the parents or

(ii) a guardian appointed by the court; or

(iii) the person in whose power a residence order was made prior to the death of the child's father and mother, and which order is still in force; or

(iii) the person in whose power a residence order was made prior to the death of the child's father and mother, and which order is still in force; or

(iv) a fit person appointed by the court; or

(v) in the absence of the person specified in paragraphs (i), (ii), (ii) and (iv), a relative of the child

(2) Where the father and mother of a child were not married at the time of the birth of the child and have not subsequently married each other—

(a) on the death of the mother of the child, the father of the child, if he has acquired parental responsibility under the provisions of this Act, shall if he is still living, have parental responsibility for the child either alone or with any testamentary guardian appointed by the mother or relatives of the mother;

(b) on the death of the father of a child who has acquired parental responsibility under the provisions of this Act, the mother of the child shall exercise parental responsibility in respect of the child either alone, or with any testamentary guardian appointed by the father;

(c) the surviving mother or father of the child, as the case may be, shall be entitled to object to any testamentary guardian appointed by either of them acting and may apply to the court for the



revocation of the appointment of the testamentary guardian and the relatives of the deceased mother or father of the child as the case may be, to be unfit to exercise parental responsibility for the child, apply to the court to make such appropriate orders as shall be necessary in the circumstances of the case to safeguard the best interest of the child.



**REPUBLIC OF KENYA**



**NATIONAL ASSEMBLY**

**TWELFTH PARLIAMENT - FIFTH SESSION  
INVITATION FOR PUBLIC PARTICIPATION & SUBMISSION OF MEMORANDA**

Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders

- In the Matter of consideration by the National Assembly -
- i) Institute of Social Work Professionals Bill (National Assembly Bill No.32 of 2020)
- ii) Children(Amendment) Bill (National Assembly Bill No. 46 of 2020)

**SUBMISSION OF MEMORANDA**

Article 118(1) (b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House".

**The Institute of Social Work Professionals Bill, 2020(National Assembly Bill No. 32 of 2020):** Introduced by Hon. Joseph Kimili, seeks to provide for the establishment of the Institute of Social Work and the Social Work Professionals Board; to provide for the examination, registration and regulation of the Standards, practice of Social Work and for connected purposes.

**The Children(Amendment) Bill, 2020(National Assembly Bill No.46 of 2020):** Introduced by Hon. Opondo Kaluma, seeks to amend the Children Act (No. 8 of 2001) to be in conformity with the Constitution. It further seeks to vest equal responsibility for parental care and protection of a child in both the mother and father whether they are married to each other or not.

The two Bills have undergone First Reading pursuant to Standing Order 127 (3) and stand committed to the **Departmental Committee on Labour and Social Welfare** for consideration and thereafter report to the House.

Pursuant to the provisions of Article 118(1) (b) of the Constitution of Kenya and Standing Order 127(3), the Committee invites interested members of the public to submit any representations they may have on the said Bills. The submissions may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi;** hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi;** or emailed to **clerk@parliament.go.ke;** to be received **not later Wednesday 3rd, March, 2021 at 5.00pm.**

Copies of the Bills may be downloaded from the Parliamentary website:  
<http://www.parliament.go.ke/the-national-assembly/house-business/bills>

**MICHAEL R. SIALAI, CBS  
CLERK OF THE NATIONAL ASSEMBLY**

**From:** Jane Wambui <[wambuijm2003@gmail.com](mailto:wambuijm2003@gmail.com)>  
**Sent:** 03 March 2021 16:08  
**To:** clerk <[clerk@parliament.go.ke](mailto:clerk@parliament.go.ke)>  
**Subject:** CHILDREN AMMENDMENT BILL 2020

I highly recommend the amendment of the bill.

I would also like for the government to add a clause on the punishment for defaulting the parental agreement or deadbeat parents because that's where most of the kenyan children are missing out. kindly enact stringest measures on deadbeat parents. there are many. In connection with this, I would propose a simultaneous bill to be raised on the Deadbeat parent punishment act.

thank you.

**JOINT MEMORANDA FROM THE KENYA ASSOCIATION OF CHILD AND YOUTH CARE WORKERS AND MAKE ME SMILE KENYA**

**PROPOSED AMENDMENTS FOR CHILDREN'S ACT**

**Section 11 article 1**

This section states that both biological parents of a child should have equal rights and responsibilities over the child.

**Amendments**

1. In a case where one of the parents decides to neglect the child for a period of six or more months some of the right should be withdrawn or suspended.
2. In a case where one of the parents presence is toxic to the child, with the guidance of the court some of the rights of such a parent should be withheld.
3. In a case where a woman or man with child is married to a spouse who is not the biological parent of the child, the spouse should take full responsibility of the child.

**Article 11 section 8 clause**

Act no. 8 sub section ( a ) outlines that a person who has parental responsibility for a child may not surrender or transfer any part of the responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf

**Amendment**

Parental rights and responsibilities should be transferrable in situations where the biological parental status has changed from one person to another through avenues such as DNA tests results that prove that another person other than the person who has been taking care of the child is the biological parent of the child.

**Article 24 section 5**

A person who has parental responsibility for a child at any time shall not cease to have that responsibility for the child.

**Amendment**

In a situation where one of the parent through DNA tests has confirmed that the child does not belong them they may cease taking up parental responsibilities.

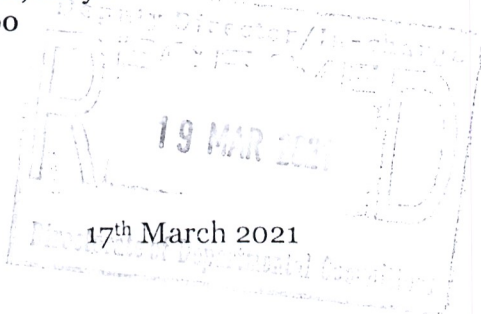




② Gondicha  
Please deal  
19/03

DDcmtees  
① 8/18/03

National Gender and Equality Commission  
1st Floor, Solution Tech Place, 5 Longonot Road, Upper Hill, Nairobi  
P.O. OX 27512-00506 Nairobi, Kenya  
Landline: +254 (020)3213100  
Mobile: +254 (020)375100  
Toll Free: 0800720187  
www.ngeckeny.org  
Email: info@ngeckeny.org



When replying please quote

Ref: No:.....NGEC/CS/NAS/005/VOL. I (30)

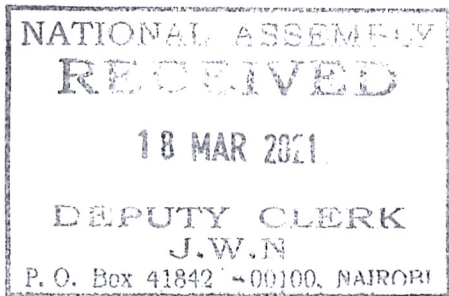
17<sup>th</sup> March 2021

NATIONAL GENDER AND EQUALITY COMMISSION

**Michael R. Sialai, CBS**  
Clerk of the National Assembly  
Parliament Building  
P.O Box 41842-00100  
NAIROBI

[clerk@parliament.go.ke](mailto:clerk@parliament.go.ke)

Dear Mr. Sialai,



**CHILDREN (AMENDMENT) BILL 2020 NATIONAL ASSEMBLY BILL NO 46 OF 2020**

We make reference to your submission of memoranda on the Children (Amendment) Bill 2020 (National Assembly Bill No 46 of 2020).

The National Gender and Equality Commission (NGEC) is a Constitutional Commission established by the National Gender and Equality Commission Act, 2011 pursuant to Article 59 (4) & (5) of the Constitution of Kenya. The Commission's mandate is to promote and ensure gender equality and freedom from discrimination for all persons in Kenya with a focus on the following special interest groups (SIGs): women, children, youth, persons with disability, older members of society, minorities and marginalized groups.

Section 8 (b) of the National Gender and Equality Commission Act, 2011 mandates the Commission to monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions. **Children** are one of the special interest groups that the Commission is mandated to focus on.

In review of the Bill the Commission was guided by Article 53 of the Constitution of Kenya, 2010, the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child and the fundamental principle of the 'best interest of the child must always prevail'.


The Commission also requests the Committee to take advantage of the constitutional and legal reforms prevailing in the country at the moment to draft a comprehensive law to guide on all matters affecting children.

In line with our mandate and functions, the Commission submits the enclosed Memorandum with our comments, suggestions and inputs to improve the proposed Bill.

*"Gender Equality and Non-Discrimination"*

The Commission is also available to present its comments, suggestions and inputs to the Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Betty Sungura-Nyabuto'. The signature is written in a cursive style with a large initial 'B' and several loops.

Betty Sungura- Nyabuto, **MBS**  
**COMMISSION SECRETARY/CEO**

Encl.



**MEMORANDUM WITH COMMENTS AND INPUTS ON THE CHILDREN (AMENDMENT) BILL, 2020 (NATIONAL ASSEMBLY BILL NO 46 OF 2020)**

**PREAMBLE**

**Guiding legal framework:** The Constitution of Kenya, 2010, Article 53; the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child and the principle of 'a child's best interests'.

| <b>S/NO</b> | <b>SUBSTANTIVE SECTION</b>   | <b>PROPOSED AMENDMENT</b>   | <b>COMMENTS/ REMARKS</b>   |
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| 1           | <p><b>Section 24. Who has parental responsibility</b></p> <p>(1) Where a child's father and mother were married to each other at the time of his birth, they shall have parental responsibility for the child and neither the father nor the mother of the child shall have a superior right or claim against the other in exercise of such parental responsibility.</p> <p>(2) Where a child's father and mother were not married to each other at the time of the child's birth and have subsequently married each other, they shall have parental</p> | <p><b>Clause 2</b></p> <p>The Children Act, (in this Act referred to as the "principal Act"), is amended in section 24 by deleting subsection. (3) and substituting therefore the following new subsection-"(3) Where a child's father and mother were not married at the time of the child's birth the father and mother may by agreement ("a parental</p> | <p><b>Article 18 of the Convention on the Rights of the Child states that</b></p> <p>1. States parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibility for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and</p> |



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|  | <p>responsibility for the child and neither the father nor the mother of the child shall have a superior right or claim against the other in the exercise of such parental responsibility.</p> <p>(3) Where a child's father and mother were not married to each other at the time of the child's birth and have not subsequently married each other—</p> <p>(a) the mother shall have parental responsibility at the first instance;</p> <p>(b) the father shall subsequently acquire parental responsibility for the child in accordance with the provisions of section 25</p> | <p>responsibility agreement") provide for the parental responsibility of the Child.</p> | <p>development of the child. The best interests of the child will be their basic concern.</p> <p><b>Article 20 of the African Charter on the Rights and Welfare of the Child.</b></p> <p>This article provides for parental responsibility</p> <p><b>Article 53. of the Constitution provides that</b></p> <p>Children</p> <p>(1) Every child has the right—</p> <p>(a) to a name and nationality from birth;</p> <p>(e) to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not; and</p> <p><b>Our Comment</b></p> |
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|  |  |  | <p>The proposed amendment aligns the clause with the provisions in the Constitution, the African Charter on the Rights and Welfare of the Child (ACRWC) and Convention on the Rights of the child (CRC) which gives parents equal responsibility.</p> <p>The amendment introduces the aspect of a parental responsibility agreement which is provided for extensively in Section 26 of the Children's Act and builds on the private ordering agreements within family law.</p> <p>What is required is to ensure that the agreement even if made in accordance with the prescribed format by the Chief Justice should take care of the best interest of the child in line with <b>Article 3 of the CRC</b></p> <p>1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or</p> |
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|   |  |  | legislative bodies, the best interests of the child shall be a primary consideration  |
| 2 | <p><b>Section 25. Acquisition of parental responsibility by father</b></p> <p>(1) Where a child's father and mother were not married at the time of his birth— (a) the court may, on application of the father, order that he shall have parental responsibility for the child; or (b) the father and mother may by agreement ("a parental responsibility agreement") provide for the father to have parental responsibility for the child. (2) Where a child's father and mother were not married to each other at the time of his birth but have subsequent to such birth cohabited for a period or periods which amount to not less than twelve months, or where the father has acknowledged paternity of the child or has maintained the child, he shall have acquired parental responsibility for the child, notwithstanding that a parental responsibility agreement has not been made by the mother and father of the child</p> | <p><b>Clause 3</b></p> <p>The principal Act is amended by repealing section 25</p> | <p>The repeal is necessitated by the amendment in Section 24 because the provisions in this section are now rendered redundant.</p> |
| 3 | <p><b>Section 27. Transmission of parental responsibility</b></p>  | <p><b>Clause 4</b></p>   |   |



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| <p>(2) Where the father and mother of the child were not married at the time of the birth of the child and have not subsequently married each other—</p> <p>(a) on the death of the mother of the child, the father of the child, if he has acquired parental responsibility under the provisions or this Act, shall if he is still living, have parental responsibility for the child either alone or with any testamentary guardian appointed by the mother or the relatives of the mother;</p> <p>(b) on the death of the father of a child who has acquired parental responsibility under the provisions of this Act, the mother of the child shall exercise parental responsibility in respect of the child either alone, or with any testamentary guardian appointed by the father;</p> <p>(c) the surviving mother or father of the child, as the case may be, shall be entitled to object to any testamentary guardian appointed by either of them acting and may apply to the court for the revocation of the appointment of the testamentary guardian and the relatives of the deceased</p> | <p>Section 27 of the principal Act is amended subsection (2)-(a) by deleting the words "if he has acquired parental responsibility under the provisions of this Act appearing in paragraph (a), (b) by deleting the words "who has acquired parental responsibility under the provisions of this Act" appearing in paragraph (b)</p> | <p>The provisions amended have been declared redundant on amendment of section 24 (3) and repeal of section 25.</p> |
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| 4 | <p>mother or father of the child, may, if they consider the surviving father or mother of the child, as the case may be, to be unfit to exercise parental responsibility for the child, apply to the court to make such appropriate orders as shall be necessary in the circumstances of the case to safeguard the best interests of the child.</p> <p>Clause 3</p> | <p>Where a child's father and mother were not married to at the time of the child's birth the father and mother may by agreement ("a parental responsibility agreement" to provide for the parental responsibility of the Child)</p> |  | <p>We propose that<br/> Insert 'each other' between the words 'married to' and 'at the time'</p> <p>The word "may" gives parents in such circumstances the leeway to abscond responsibility by either party. The best interest of the child principle should apply so that the children interests are safeguarded.<br/> Replace 'may' with 'shall'.</p> |
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