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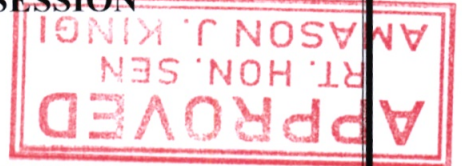
REPUBLIC OF KENYA



THE SENATE

*Hon. Speaker  
for you may approve  
for tabling 4/11/23*

THIRTEENTH PARLIAMENT | SECOND SESSION



STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

*[Signature]*  
04/11/23

REPORT ON THE CARE AND PROTECTION OF CHILD PARENT BILL, 2023 (SENATE BILLS NO. 29 OF 2023)

PAPERS LAID	
DATE	11/10/2023
TABLED BY	Chairperson Labour & Social Welfare
COMMITTEE	Labour & Social Welfare
CLERK AT THE TABLE	A. Macharia

Clerk's Chambers,  
The Senate,  
Parliament Buildings,  
NAIROBI.

September, 2023

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## PRELIMINARIES

### Establishment and Mandate of the Committee

The Senate Standing Committee on Labour and Social Welfare is established pursuant to standing order 228 of the Senate Standing Orders. The Committee is mandated to consider all matters related to - *Manpower and human resources planning, pension, gender, culture and social welfare, youth, National Youth Service, children's welfare; national heritage, betting, lotteries and sports, public entertainment, public amenities and recreation.*

### Membership of the Committee

The Committee is comprised of –

- |  |                           |
|--|---------------------------|
| a) <b>Sen. Julius Murgor Recha, MP,</b>          | - <b>Chairperson</b>      |
| b) <b>Sen. George Mungai Mbugua, MP,</b>         | - <b>Vice Chairperson</b> |
| c) Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP, | - Member                  |
| d) Sen. Mohamed Faki Mwinyihaji, MP,             | - Member                  |
| e) Sen. Erick Okong'o Mogeni, SC, MP,            | - Member                  |
| f) Sen. Alexander Munyi Mundigi, MP,             | - Member                  |
| g) Sen. Crystal Kegehi Asige, MP,                | - Member                  |
| h) Sen. Miraj Abdullahi Abdulrahman, MP,         | - Member                  |
| i) Sen. Gloria Magoma Orwoba MP,                 | - Member                  |

## CHAIRPERSON'S FOREWARD

### **Hon. Speaker,**

The Care and Protection of Child Parents Bill, 2023 (Senate Bills No. 29 of 2023), sponsored by Senator Miraj Abdillahi Abdulrahman, MP was published *vide* Kenya Gazette Supplement No. 107 of 30<sup>th</sup> June, 2023. The Bill was read a First Time in the Senate on Tuesday, 2<sup>nd</sup> August, 2023 and thereafter stood committed to the Standing Committee on Labour and Social Welfare for consideration.

The Bill seeks to provide a framework for the care and protection of child parents within the Counties; to provide a framework through which an expectant girl child or a child parent may actualize their right to basic education and at the same time ensure the care of their children.

### **Hon. Speaker,**

Pursuant to Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee published an advertisement in the Daily Nation and Standard Newspapers on Thursday, 10<sup>th</sup> August, 2023, inviting members of the public to submit written memoranda to the Committee on the Bill. The advertisement was also posted on the Parliament website and social media platforms. Following the call for submissions, the Committee received written memoranda from stakeholders.

The Committee proceeded to consider the Bill extensively, scheduled and held meetings with various stakeholders including the Ministry of Labour and Social Protection, the Council of Governors, the County Assemblies Forum, the Health Rights Advocacy Forum, World Youth Alliance Africa, the National Gender and Equality Commission and Nyeri County Budget Coalition (NCBC).

The Committee received proposals for amendments to the Bill, including reservations on the Bill. The Committee observes that most of the issues in the Bill are addressed by existing laws which provide support for re-entry of learners who have been out of school. The Committee therefore recommends full implementation of the existing laws that would address the care and protection of children, in particular the Basic

Education Act, 2022, the Children Act, 2022 and the National Guidelines for School Re-entry in Early Learning and Basic Education, 2020.

**Hon. Speaker,**

May I take this opportunity to commend the Members of the Committee for their devotion and commitment to duty, which made the consideration of the Bill successful. I also wish to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking this assignment.

**Hon. Speaker,**

It is now my pleasant duty, pursuant to standing order 148(1) of the Senate Standing Orders, to present the Report of the Standing Committee on Labour and Social Welfare on the Care and Protection of Child Parents Bill, 2023 (Senate Bills No. 29 of 2023).

Signed .....



Date .....

2<sup>nd</sup> September, 2023.

**SEN. JULIUS MURGOR RECHA, MP**  
**CHAIRPERSON, STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE**

## CHAPTER ONE: INTRODUCTION

### 1.0 Background

1. The Care and Protection of Child Parents Bill, 2023 (Senate Bills No. 29 of 2023), sponsored by Senator Miraj Abdillahi Abdulrahman, MP, was published *vide* Kenya Gazette Supplement No. 107 of 30<sup>th</sup> June, 2023. The Bill was read a First Time in the Senate on Wednesday, 2<sup>nd</sup> August, 2023 and thereafter stood committed to the Standing Committee on Labour and Social Welfare for consideration. A copy of the Bill is annexed to this Report as *Appendix 2*.
2. Pursuant to Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee published an advertisement in the Daily Nation and Standard Newspapers on Thursday, 10<sup>th</sup> August, 2023, inviting members of the public to submit written memoranda to the Committee on the Bill. The advertisement was also posted on the Parliament website and social media platforms. A copy of the advertisement is attached as *Appendix 3*.
3. Following the call for submissions, the Committee received written memoranda from various stakeholders including the Ministry of Labour and Social Protection, the Council of Governors, the County Assemblies Forum, the Health Rights Advocacy Forum, World Youth Alliance Africa and the National Gender and Equality Commission.
4. The Care and Protection of Child Parents Bill, 2023 (Senate Bills No. 29 of 2023), seeks to provide a framework for the care and protection of child parents within the Counties; to provide a framework through which an expectant girl child or a child parent may actualize their right to basic education and at the same time ensure the care of their children.

### 1.1. Overview of the Bill

5. Currently, the School Re-entry Policy that was passed in 1994 for pregnant girls and the National School Health Policy, 2009 have failed to address the care, protection

and reintegration of child parents back to school and society. This Bill therefore seeks to provide a legal framework—

- (a) for the protection of the rights set out under Article 53(1)(c) and (d) of the Constitution in relation to child parents;
- (b) through which the expectant girl child and a child parent can realise their right to education and at the same time, ensure the care and protection of his or her child; and
- (c) of standards for the establishment and regulation of care centres for child parents by county governments.

### **1.2. Purpose of the Bill**

- 6. The principal objective of the Bill is to provide a legal framework for the care and protection of child parents within the counties. The framework is intended to ensure that an expectant underage girl or a child parent may actualize their right to basic education and at the same time ensure proper care of their children as enshrined in Article 53 of the Constitution which states—

*(1) Every child has the right—*

- (a) to a name and nationality from birth;*
- (b) to free and compulsory basic education;*
- (c) to basic nutrition, shelter and health care;*
- (d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour;*

*(2) A child's best interests are of paramount importance in every matter concerning the child*

### **1.3. Key provisions of the Bill**

- 7. The Bill prohibits schools from expelling students who become pregnant, disallows compulsory pregnancy tests on girls and requires schools to ensure harassment-free environments for child parents.
  
- 8. In particular, the Bill provides, among other things—

- (a) obligations of the National Government with respect to child parents that include through the National Council for Children's Services established under section 30 of the Children Act to—
- (i) put in place mechanisms to establish a comprehensive capacity building programme for child parents to ensure they practice responsible family life; and
  - (ii) establish, in consultation with the Cabinet Secretary responsible for matters relating to education, non-discriminatory enrolment, back to school or other training programmes;
- (b) obligations of a county government with respect to the care of neglected children which include collaboration with the County Education Board and the county executive committee member responsible for education in—
- (i) establishing programmes to ensure that expectant children and child parents have access to education services; and
  - (ii) formulating and implementing county specific programmes for the integration of expectant children and child parents into society and institutions of basic education within the respective County; and
  - (iii) establishing child care centres for child parents for child parents who intend to enrol back to school and who do not have access to support services for the care of their child;
- (c) role of national and county governments in the prevention of school drop out by formulating policies and developing programmes and interventions for the re-admission and integration of children who have dropped out of school by reason of pregnancy;
- (d) rights of pregnant and parenting students be readmitted or enrolled into an institution of basic education;
- (e) management of teenage pregnancies in school; and

(f) obligations of parents and guardian.

9. The Bill further provides for transition of existing care centres that are currently registered under the Children's Act, 2001 to be considered as registered under the Bill.

#### **1.4 How the Bill concerns County Governments**

10. The Bill provides a framework for the implementation of the right to education for all children including child parents. It imposes an obligation on the national and county governments to put mechanisms in place and establish programmes that ensure that not only is this right realized in relation to child parents, but also ensure that the rising cases of child pregnancies and the dropping out of school by child parents is curbed.
11. In addition, the Bill imposes an obligation on the county governments to establish care centres for child parents and sets out the standards that a county government or any other person who intends to establish a care centre is required to meet. The Bill empowers the county governments to provide a county specific framework for the registration, licensing, monitoring and inspection of the care centres.

## CHAPTER TWO: PUBLIC PARTICIPATION ON THE BILL

### 2.0 Committee Undertakings

12. The Committee published an advertisement in the Daily Nation and Standard newspapers on Tuesday, 8<sup>th</sup> August, 2023, inviting members of the public to submit written memoranda on the Bill. The advertisement was also posted on the Parliament website and social media platforms. A copy of the advertisement is annexed to this Report as *Appendix 4*.
13. Subsequently, during consideration of the Bill, the Committee also resolved to invite additional submissions from the key stakeholders, including –
  - a) Ministry of Labour and Social Protection;
  - b) Council of Governors; and
  - c) County Assemblies Forum.
14. In response to the said invitations, the Committee received submissions from the Ministry of Labour and Social Protection, the Council of Governors, the County Assemblies Forum, the Health Rights Advocacy Forum, World Youth Alliance Africa and the National Gender and Equality Commission and Nyeri County Budget Coalition (NCBC).
15. The Ministry of Labour and Social Protection were not in support of the Bill arguing that all the Clauses in the Bill are addressed in the Children Act, 2022 and the Basic Education Act. 2013 while the other Organizations proposed amendments to the Bill.
16. Copies of the written submissions are attached to this Report as *Appendix6(a) – (g)*. Additionally, a matrix analysing the stakeholder submissions clause-by-clause is annexed as *Appendix 5*.
17. The Committee proceeded to consider the Bill extensively, together with the stakeholder submissions received thereon.

## 2.1 Overview of Stakeholder Submissions on the Bill

18. Below is an overview of the stakeholder submissions on the Care and Protection of Child Parents Bill, 2023 (Senate Bills No.29 of 2023).

19. The Ministry of Labour and Social Protection submitted as follows –

### (a) PRELIMINARIES

- (i) On Clause 2 definition of the term “child parent”, Section 144 of the Children Act, 2022 categorizes a child in need of care and protection. In particular, the children whose plight the Bill intends to address are captured under section 144 (i) (l) (q) (r) (u) (v) (y) (dd) (ee) and (ff). All these provisions when read together caters for a child parent as proposed in the Bill.
- (ii) On clause 2, the definition of the term principal in the Teachers Service Commission Act No.20 of 2012 (TSC Act) is more comprehensive as it proceeds to state the Body that appoints the principal and further proceeds to give the responsibility of the principal which is to implement education policy guidelines and professional practices. This definition has also been adopted under the Basic Education Act, 2013. The definition in the TSC Act does not include borstal institution. However, the Borstal Institutions Act (Cap 92) Laws of Kenya, outlines the establishment and administration of these institutions. Additionally, section 88 of the Children Act,2022 empowers the Cabinet Secretary to appoint an inspection committee to inspect rehabilitation any rescue centre, child protection centre, charitable children’s institutions, remand homes or rehabilitation school or a borstal institutions.
- (iii) Clause 3—
  - (1) The Children Act, 2022 was enacted to give effect to Article 53 of the Constitution of Kenya 2010. Specifically, part II of the Act provides for the safeguards for the rights and best

interests of the child with sections 5-29 elaborately making provisions for every child.

(2) Section 13 of the Children Act, 2022 provides for the right to basic education for every child. The provisions of this section as read together with section 9, which makes a provision for non-discrimination, ensures that an expectant girl child and child parent have access to education and receive requisite care. Section 9 provides: No person shall discriminate against a child on the grounds of age, origin, sex, religion, creed, custom, language, opinion, conscience, color, birth, health status, pregnancy, social, political, economic or other status, race, disability, tribe, residence or local connection or any other status.

(3) Section 63(1) of the Children Act 2022 assigns the responsibility of establishing children rescue centres in every County to the Cabinet Secretary responsible for matters relating to children's affairs. This is done in consultation with the National Council for Children's Services. In doing so, the Cabinet Secretary may collaborate with a County government for purposes of establishing these centres as demonstrated in s.63(6). Part VI of the Children Act,2022 recognises the role of county governments in the discharge of its functions as specified in part II of the Fourth Schedule of the Constitution of Kenya 2010. County governments are responsible for providing or facilitating the provision of pre-primary education and childcare facilities. This is done in consultation with Cabinet Secretary responsible for children matters as both the national and county governments are required to develop policies and guidelines for carrying out these specified functions. This provides an opportunity for the

National and County government to collaborate and carry out this function.

**(b) PART II- CARE OF EXPECTANT MOTHERS AND CHILD PARENTS**

(i) On clause 4 (2)—

- (1) This is a duplication of one of the functions assigned to the Council under section 42 of the Children Act. It is the responsibility of the National Council for Children's Services to inter alia, formulate, approve, evaluate and monitor implementation of programmes to create public awareness in all matters relating to the rights and welfare of children.
- (2) The National Guidelines for School Re-entry Learning and Basic Education, 2020, a national guideline formulated by the Ministry of Education, outlines guidelines for the implementation of the Basic Education Act of 2013. These Guidelines together with the Children Act, 2022 are adequate to cater for the needs of child parents and ensure that they continue with their education. The emphasis should be to implement these provisions rather than enact a new law.
- (3) National Social Assistance Authority is established under the Social Assistance Act, 2013. This Act was passed without policy guidance from the Ministry as well as the National Treasury hence has not been implemented to date due to governance challenges. The Act is currently in the process of being reviewed in order to come up with a comprehensive law to handle the social protection and social security in the country.
- (4) Funding is based on budgetary provision. The resources available to the Ministry cannot guarantee funding and sustainability to the initiative unless adequate funds are allocated for this purpose.

- (ii) On clause 4 (3), section 42 of the Children Act has outlined the functions of the Council. Thus, it cannot be assigned more functions by another legislation which has not created it.
- (iii) On clause 5, the Children Act, 2022 is the main legislation on child protection. It assigns roles to various actors and specifically to the County governments as captured under sections 61 and 62 of the Act which gives effect to the Fourth Schedule part 2 paragraph 9 of the Constitution of Kenya 2010. Section 63(6) of the Act also provides for room for collaboration between the National and County governments in establishing children rescue centres.

**(c) PART III SCHOOL DROPOUT PREVENTION AND RE-ENTRY PROGRAMMES**

- (i) On clause 6 (1), the roles of both the National and County Government is stipulated in the Children Act, 2022. Further, the National Guidelines for School Re-entry in Early Learning and Basic Education, 2020, a national guideline formulated by the Ministry of Education should be fully implemented in order to address this concern.
- (ii) On clause 10 (3), the Clause contravenes the provisions of section 146 of The Children Act, 2022 which requires an authorised officer to take such a child to a registered child health institution so as to receive the appropriate treatment and care. The authorised officer is thereafter required to notify the parent/guardian or a person who has parental responsibility over the child or the Secretary/his representative.
- (iii) On clause 11 (1), section 144 of the Children Act, 2022 deems such a child to be in need of care and protection: Section 146 of the Children Act,2022 empowers an authorised officer to take such a child to a registered child health institution so as to receive the appropriate treatment and care. The issue of informed consent when

conducting medical examination especially on a minor has not been addressed in the Bill. It is noted that it is the principal, who is not an authorised officer as per the Children Act, 2022, who refers the child to a health institution or medical examination.

- (iv) On clause 14, it can only be carried out by authorized officers as per the Children Act, 2022 and not the management of the institution. If the pregnancy is as a result of sexual violence including defilement, then such are handled in accordance with the provisions of the Sexual Offences Act, 2006 and Penal Code (Cap 63) Laws of Kenya.
- (v) On clause 15, perpetrators of sexual violence should be dealt with in accordance with the provisions of the Sexual Offences Act, 2006 and the Penal Code (Cap 63) Laws of Kenya and not handled administratively as proposed in the Bill. In addition, Section 29 of the Children Act allows any person to institute court proceedings in order to safeguard the rights of a child which are deemed to have been denied, violated or infringed, or is threatened.

**(d) PART IV – ESTABLISHMENT OF CARE CENTRES**

- (a) The establishment of care centres should be in accordance with section 61, 62 and 63(6) of the Children Act, 2022. Further, section 67(2) of the Children Act, 2022 guides on the placement of children in Charitable Children’s Institutions (CCI): the placement of a child in a CCI shall be done a last resort.
- (b) This is further retaliated in the seventh schedule 16(1) that CCI that is registered under section 65 of the Children Act, 2001 shall not undertake any activity after 10 years from the date of commencement of the Act. The 2019 UN General Assembly Resolution on the Rights of the Child also focused on the promotion of family and community care rather institutional care.
- (c) This approach is in line with Article 45 of the Constitution of Kenya 2010 which provides that the family is the natural and fundamental unit of

society and the necessary basis of social order and shall enjoy the recognition and protection of the state. It is to this end that the National Care Reform for Children in Kenya was developed in 2022.

- (d) The establishment of these care centres therefore goes against the family promotion and protection spirits and it impedes the effects implementation of the National Care Reform Strategy.
- (e) On clause 31, this is a function of the Secretary Children's Services and not that of the County Executive Committee Member. The term "Authorized officers" is not defined in the Bill but under the Children Act, 2022.

20. The World Youth Alliance submitted as follows–

- (a) grants children autonomy without considering their legal capacity, potentially leading to decisions beyond their understanding and maturity;
- (b) lacks emphasis on parental roles and responsibilities, allowing institutions to withhold information from parents and protecting decision-makers from consequences; and
- (c) overlooks the critical issue of defilement, not adequately protecting children from exploitation and abuse.

21. The Nyeri County Budget Coalition (NCBC) submitted as follows-

- (a) obligations of parents or guardians and institutions of special education; and
- (b) exemption for special needs children above the age of 3 years in the indicated statement.

22. The Council of Governors submitted as follows -

- (a) to have a robust record management system under the Bill for purposes of tracking of child parents who are being supported under the Bill until they can support themselves. This will enable good use of resources on children who are actually in need of the same at a particular time;
- (b) for implementers of the Bill to provide psychosocial support to the male child parents as the Bill focuses on the female child parents; and

(c) for more robust support mechanisms for the children of the child parents beyond putting them in the care centres and follow-up mechanisms to ensure their welfare.

23. The National Gender and Equality Commission submitted as follows-

- (a) align the definition of the term “learner” with other laws;
- (b) include training institutions in the Bill;
- (c) provide a definition of “special needs”;
- (d) delete clause 10 (3);
- (e) delete clause 11(3) as medical diagnosis of pregnancy is needed;
- (f) registers of pregnancies should be provided for records and data; and
- (g) the care centres should be affordable.

## **CHAPTER THREE: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS**

### **3.0 Committee Observations on the Bill**

24. Based on extensive deliberations on the Bill, the Committee made the following observations-

- a) The Bill does not provide the process of admission of the targeted children to the proposed care centers which is against the existing practice where children have to be admitted in childcare facilities through care orders by a court of law.
- b) The Bill contradicts the spirit of Article 45 of the Constitution which states that the family is the natural and fundamental unit of society and the necessary basis of social order and shall enjoy the recognition and protection of state.
- c) The Bill does not promote family-based care for children in need of care and protection and only elevates institutionalization which should only come as a last resort.
- d) Most of the issues in the Bill are addressed by the provisions of the Children Act, 2022. The Children Act, 2022 has detailed provisions on—
  - i. safeguarding the rights and best interests of the child;
  - ii. right to social security;
  - iii. role of county governments including provision of childcare facilities.;
  - iv. establishment of children's institutions;
  - v. judicial intervention for the care and protection of children;
  - vi. children in need of care and protection; and
  - vii. foster care placement.
- e) The Basic Education Act, 2013 and the National Guidelines for School re-entry in Early Learning and Basic Education, 2020 by the Ministry of Education provide support services for the re-entry of learners who, for whatever circumstances including pregnancy, have been out of school.

### **3.1 Committee Recommendations**

Arising from the above observations, the Committee recommends full implementation of the existing laws on care and protection of children, in particular the Basic Education Act, 2022, the Children Act, 2022 and the National Guidelines for School Re-entry in Early Learning and Basic Education, 2020.

## APPENDICES

*Appendix 1:* Minutes of the sittings

*Appendix 2:* The Care and Protection of Child Parents Bill, 2023 (Senate Bills No. 29 of 2023)

*Appendix 3:* Advertisement published in the *Daily Nation* and *Standard* Newspapers on Thursday, 10<sup>th</sup> August, 2023.

*Appendix 4:* Public Participation Submissions



**MINUTES OF THE SEVENTY NINTH (79<sup>TH</sup>) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON SATURDAY, 2<sup>ND</sup> SEPTEMBER, 2023 AT 11:00 AM. IN AT THE PRIDE INN PARADISE BEACH RESORT, MOMBASA COUNTY.**

**MEMBERS PRESENT**

- |   |                    |
|---|--------------------|
| 1. Sen. Julius Murgor Recha, MP                 | - Chairperson      |
| 2. Sen. George Mungai Mbugua, MP                | - Vice-Chairperson |
| 3. Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP | - Member           |
| 4. Sen. Mohamed Faki Mwinyihaji, MP             | - Member           |
| 5. Sen. Alexander Munyi Mundigi, MP             | - Member           |
| 6. Sen. Crystal Asige, MP                       | - Member           |

**APOLOGIES**

- |  |          |
|--|----------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP   | - Member |
| 2. Sen. Gloria Orwoba, MP              | - Member |
| 3. Sen. Miraj Abdulahi Abdulrahman, MP | - Member |

**SECRETARIAT**

- |                        |                          |
|------------------------|--------------------------|
| 1. Ms. Mwanate Shaban  | - Senior Clerk Assistant |
| 2. Ms. Getrude Nthiiri | - First Clerk Assistant  |
| 3. Mr. Jeremy Chabari  | - Legal Counsel I        |
| 4. Mr. Rhyan Injendi   | - Research Officer III   |
| 5. Mr. Erick Kiboye    | - Accountant             |
| 6. Mr. Joseph Otieno   | - Audio Officer          |
| 7. Mr. John Chege      | - SAA III                |
| 8. Ms. Alice Nanyama   | - Secretary, DSEC        |

**MIN/SEN/SCLSW/394/2023: PRAYERS**

The Chairperson called the meeting to order at 11.29 am followed with a word of prayer.

**MIN/SEN/SCLSW/395/2023: ADOPTION OF AGENDA**

The Agenda of the meeting was adopted having been proposed by Sen. Mohamed Faki Mwinyihaji, MP and seconded by Sen. Alexander Munyi Mundigi, MP as follows –

1. Prayers & Introductions;
2. Adoption of the Agenda;
3. **Adoption of the Report of the County Hall of Fame Bill, 2023 (Senate Bills No. 18 of 2023);**
4. **Adoption of the Report of the Care and Protection of the Child Parent Bill, 2023 (Senate Bills No. 29 of 2023);**
5. **Adoption of the Report on the Petition concerning the unfair terms and conditions for Universal Health Coverage (UHC) staff and delay in internship posting;**
6. **Adoption of the Report on the Petition concerning unlawful salary deductions by Kenya Women Teachers Association (KEWOTA); and**
7. **Adoption of the Report on the Petition concerning alleged fraud by the First Choice Recruitment and Consultancy Agency Ltd.**
8. **Consideration of correspondences before the Committee;**
9. Any Other Business; and
10. Adjournment/Date of the Next Meeting.

**MIN/SEN/SCLSW/396/2023 ADOPTION OF THE REPORT OF THE COUNTY HALL OF FAME BILL, 2023 (SENATE BILLS NO. 18 OF 2023);**

1. The Committee considered the draft report and amended the recommendation to state that the Committee does not wish to proceed with the Bill however, the Sponsor of the Bill can continue with the Bill if she so wishes; and
2. The report was adopted having been proposed by Sen. Alexander Munyi Mundigi, MP and seconded by Sen. George Mungai Mbugua, MP.

**MIN/SEN/SCLSW/397/2023 ADOPTION OF THE REPORT OF THE CARE AND PROTECTION OF CHILD PARENT BILL, 2023 (SENATE BILLS NO. 29 OF 2023).**

1. The Committee considered the draft report and recommended the full implementation of the existing laws that would address the Care and Protection of Child Parent Bill, 2023; and
2. The report was adopted having been proposed by Sen. Mohamed Faki Mwinyihaji, MP and seconded by Sen. Alexander Munyi Mundigi, MP.

MIN/SEN/SCLSW/398/2023

ADOPTION OF THE REPORT ON THE  
PETITION CONCERNING THE UNFAIR TERMS  
AND CONDITIONS FOR UNIVERSAL HEALTH  
COVERAGE (UHC) STAFF AND DELAY IN  
INTERNSHIP POSTING;

1. The Committee considered the draft report and proposed that the recommendations indicate a time frame to allow for reporting back to the Committee; and
2. The report was adopted having been proposed by Sen. Alexander Munyi Mundigi, MP and seconded by Sen. Crystal Asige, MP.

MIN/SEN/SCLSW/399/2023

ADOPTION OF THE REPORT ON THE  
PETITION CONCERNING UNLAWFUL SALARY  
DEDUCTIONS BY KENYA WOMEN TEACHERS  
ASSOCIATION (KEWOTA);

1. The Committee considered the draft report and recommended that KEWOTA refunds all monies owed to the female teachers who had not voluntarily joined KEWOTA; and
2. The report was adopted having been proposed by Sen. Crystal Asige, MP and seconded by Sen. Alexander Munyi Mundigi, MP.

MIN/SEN/SCLSW/400/2023

ADOPTION OF THE REPORT ON THE  
PETITION CONCERNING ALLEGED FRAUD  
BY THE FIRST CHOICE RECRUITMENT AND  
CONSULTANCY AGENCY LTD.

The Committee considered and adopted the report having been proposed by Sen. George Mungai Mbugua, MP and Seconded by Sen. Crystal Asige, MP.

MIN/SEN/SCLSW/401/2023

CONSIDERATION OF CORRESPONDENCE  
BEFORE THE COMMITTEE

The Committee was briefed on all the correspondences before the Committee for it and resolved that it be put in a tabular form for consideration in the next in-house meeting.

MIN/SEN/SCLSW/402/2023      ANY OTHER BUSINESS

1. Members noted that there were many pending Statements, which the Ministries had not responded to and in particular, the Ministry of Youth Affairs, Sports. It was resolved since the Cabinet Secretary was scheduled to appear before the Committee on Thursday 7<sup>th</sup> September, 2023 the secretariat provides a summary of all the pending Statements for his attention.
2. It was proposed that the Committee conducts investigations as opposed to waiting for the public to present Petitions for the Committees consideration.
3. Sen. Crystal Asige, MP noted that she had not received a response to the Statement on Management and Collection of Music Royalties in Kenya. It was resolved that the same be presented for her attention.

MIN/SEN/SCLSW/403/2023      ADJOURNMENT AND DATE OF THE NEXT MEETING

The meeting was adjourned at 14.35 pm, the date of the next meeting was scheduled for 7<sup>th</sup> September, 2023 at 9:00am.

SIGNED.......... DATE..........

**CHAIRPERSON: SEN JULIUS MURGOR RECHA, MP**  
**STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE**



**MINUTES OF THE SEVENTY SIXTH (76<sup>TH</sup>) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON FRIDAY, 1<sup>ST</sup> SEPTEMBER, 2023 AT 10:00 AM IN WITU CONFERENCE ROOM AT THE PRIDE INN PARADISE BEACH RESORT, MOMBASA COUNTY.**

**MEMBERS PRESENT**

- |   |                    |
|---|--------------------|
| 1. Sen. Julius Murgor Recha, MP                 | - Chairperson      |
| 2. Sen. George Mungai Mbugua, MP                | - Vice-Chairperson |
| 3. Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP | - Member           |
| 4. Sen. Mohamed Faki Mwinyihaji, MP             | - Member           |
| 5. Sen. Miraj Abdulahi Abdulrahman, MP          | - Member           |
| 6. Sen. Crystal Kegehi Asige, MP                | - Member           |

**APOLOGIES**

- |                                      |          |
|--------------------------------------|----------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP | - Member |
| 2. Sen. Alexander Munyi Mundigi, MP  | - Member |
| 3. Sen. Gloria Orwoba, MP            | - Member |

**SECRETARIAT**

- |                        |                          |
|------------------------|--------------------------|
| 1. Ms. Mwanate Shaban  | - Senior Clerk Assistant |
| 2. Ms. Getrude Nthiiri | - First Clerk Assistant  |
| 3. Mr. Jeremy Chabari  | - Legal Counsel I        |
| 4. Mr. Rhyan Injendi   | - Research Officer III   |
| 5. Mr. Joseph Otieno   | - Audio Officer          |
| 6. Mr. John Chege      | - SAA III                |
| 7. Ms. Alice Nanyama   | - Secretary, DSEC        |

**MIN/SEN/SCLSW/375/2023: PRAYERS**

The Chairperson called the meeting to order at 10.30 am followed with a word of prayer. He thereafter, requested for a round of introductions.

**MIN/SEN/SCLSW/376/2023: ADOPTION OF AGENDA**

The Agenda of the meeting was adopted having been proposed by Sen. Stewart Madzayo, CBS, MP and seconded by Sen. George Mbugua, MP as follows –

1. Prayers & Introductions;
2. Adoption of the Agenda;
3. **Consideration of the Public Participation Matrix of the County Hall of Fame Bill, 2023 (Senate Bills No. 18 of 2023);**
4. **Consideration of the Public Participation Matrix of the Care and Protection of the Child Parent Bill, 2023 (Senate Bills No. 29 of 2023);**
5. Any Other Business; and
6. Adjournment/Date of the Next Meeting.

**MIN/SEN/SCLSW/377/2023 CONSIDERATION OF THE PUBLIC PARTICIPATION MATRIX OF THE COUNTY HALL OF FAME BILL, 2023 (SENATE BILLS NO. 18 OF 2023);**

1. The Committee was taken through the Public Participation matrix arising from the submissions by the stakeholders.
2. In the presentation, it was noted that-
  - i. The Bill is sponsored by Sen. Miraj Abdullahi, a Member of the Committee;
  - ii. There were existing legislations (Kenya Heroes Act 2014 and the National Honours Act, 2013) that addressed the issues that the Bill was trying to address;
  - iii. The Bill did not under go pre-publication scrutiny thus the Committee did not get an opportunity to give its comments;
  - iv. That the Sponsor of the Bill has the options of withdrawing the Bill and introducing amendments to the existing legislation.
3. The Committee resolved not to proceed with the County Hall of Fame Bill, 2023 (Senate Bills No. 18 of 2023); and to table the report of the Bill.

**MIN/SEN/SCLSW/378/2023 CONSIDERATION OF THE PUBLIC PARTICIPATION MATRIX OF THE CARE AND PROTECTION OF THE CHILD PARENTS BILL, 2023, (SENATE BILLS NO. 29 OF 2023);**

1. The Committee was taken through the Public Participation matrix arising from the submissions by the stakeholders; and

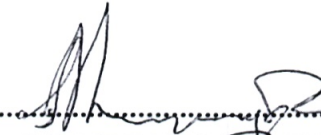
2. In the presentation, it was noted that the issues the Bill ought to address were already catered for in the Children Act, 2023.
3. The Committee resolved not to proceed with the Care and Protection of the Child Parent Bill 2023, (Senate Bills No. 29 of 2023); and to table the Report of the Bill.

MIN/SEN/SCLSW/379/2023      ANY OTHER BUSINESS

There was no other business.

MIN/SEN/SCLSW/380/2023      ADJOURNMENT AND DATE OF THE NEXT MEETING

The meeting was adjourned at 11.44 am, in readiness for the next meeting at noon.

SIGNED.......... DATE Thursday, 21<sup>st</sup> September, 2023.....  
CHAIRPERSON SEN JULIUS MURGOR RECHA, MP  
STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE



**MINUTES OF THE SEVENTY SECOND (72<sup>ND</sup>) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON MONDAY, 28<sup>TH</sup> AUGUST, 2023 AT 9:00 AM ON ZOOM ONLINE PLATFORM**

**MEMBERS PRESENT**

- |   |                    |
|---|--------------------|
| 1. Sen. George Mungai Mbugua, MP                | - Vice-Chairperson |
| 2. Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP | - Member           |
| 3. Sen. Mohamed Faki Mwinyihaji, MP             | - Member           |
| 4. Sen. Alexander Munyi Mundigi, MP             | - Member           |
| 5. Sen. Miraj Abdulahi Abdulrahman, MP          | - Member           |
| 6. Sen. Chrystal Asige, MP                      | - Member           |

**APOLOGIES**

- |                                      |               |
|--------------------------------------|---------------|
| 1. Sen. Julius Murgor Recha, MP      | - Chairperson |
| 2. Sen. Erick Okong'o Mogeni, SC, MP | - Member      |
| 3. Sen. Gloria Orwoba, MP            | - Member      |

**IN ATTENDANCE**

- |                           |  |
|---------------------------|--|
| 1. Hon. Florence Bore     | - CS, MLSP   |
| 2. Mr. Joseph Motari, MBS | - PS, Social Protection                                |
| 3. Mr. Abdi Noor Mohamed  | - CEO, National Council for Children Services.         |
| 4. Ms. Emily Kimosop      | - Technical Advisor, MLSP                              |
| 5. Ms. Janet Mwema        | - Child Officer, National Council for Children Service |
| 6. Mr. Anold Mwanake      | - National Council for Children Services               |
| 7. Mr. Austin Munene      | - County Assemblies Forum                              |

**SECRETARIAT**

- |                        |                         |
|------------------------|-------------------------|
| 1. Ms. Getrude Nthiiri | - First Clerk Assistant |
| 2. Mr. Jeremy Chabari  | - Legal Counsel I       |
| 3. Mr. Rhyan Injendi   | - Research Officer III  |
| 4. Mr. Joseph Otieno   | - Audio Officer         |
| 5. Ms. Swaluha Yusuf   | - Protocol Officer III  |

**MIN/SEN/SCLSW/355/2023: PRAYERS**

The Chairperson called the meeting to order at 9.06 am followed with a word of prayer. He thereafter, requested for a round of introductions.

**MIN/SEN/SCLSW/356/2023: ADOPTION OF AGENDA**

The Agenda of the meeting was adopted having been proposed by Sen. Crystal Asige, MP and seconded by Sen. Miraj Abdulahi, MP as follows –

1. Prayers and Introductions;
2. Adoption of the Agenda;
3. **Stakeholders engagement on the Care and Protection of Child Parent Bill, 2023, (Senate Bills No. 29 of 2023) (Committee Paper No. 30 (b));**
4. Any Other Business; and
5. Adjournment/Date of the Next Meeting.

**MIN/SEN/SCLSW/357/2023**      **STAKEHOLDERS ENGAGEMENT ON THE  
CARE AND PROTECTION OF CHILD PARENT  
BILL, 2023, (SENATE BILLS NO. 29 OF  
2023) (COMMITTEE PAPER NO. 30 (B));**

The Chairperson welcomed all the participants and invited the stakeholders to make their submissions.

**a) Submissions by the Ministry of Labour and Social Protection-**

1. The Ministry representative, made submission on the following-
  - i. Part 1 - Preliminary with reference to Clauses 2 and 3
  - ii. Part II - care of expectant children and child parent with reference to clauses 4 and 5
  - iii. Part III – School drop out prevention and re-entry programmes with reference to clauses 6, 10, 11, 14 and 15
  - iv. Part IV – Establishment of care Centre’s with reference to Clause 21 and 31
  - v. Part VI – Inspection and Evaluation of safety in a care centre with reference to clauses 37 to 39
  - vi. Part VIII – Miscellaneous provisions with reference to clauses 40 to 42.
2. In conclusion, the Ministry of Labour & Social Protection objected to the enactment of the Bill as it was in the process of developing key regulations and guidelines in order to fully implement the Children Act, 2022.

**b) Submission by the County Assemblies Forum (CAF)**

3. The County Assemblies forum informed the Committee that -
- i. CAF noted that the Bill provisions go beyond simply allowing readmission as it proposes access to prenatal, post natal health information, and counseling support services to pregnant students still in school
  - ii. The Bill emphasizes on the collaboration between various stakeholders, such as schools, parents, local government and the National Council for Children's Services.
  - iii. The Bill focuses on preventing child pregnancies and school dropouts is a proactive approach that aims to tackle the root causes of the problem.
  - iv. Enabling teenage parents to continue their education can have far reaching positive effects on their lives and their children's lives.

**c) Committee Observations and Interventions –**

4. The Committee had received written submissions from five organizations namely;
- i. The Council of Governors;
  - ii. Ministry of Labour and Social Protection;
  - iii. Health Rights Advocacy Forum;
  - iv. World Youth Alliance Africa; and
  - v. The County Assemblies Forum
5. The Ministry had taken long in drafting the regulations to operationalize the Children Act, 2022 however, the Regulations were undergoing stakeholder's engagement before being subjected to public participation; and
6. The Committee resolved to retreat and consider all the submissions and prepare a report.

**MIN/SEN/SCLSW/358/2023**      **ANY OTHER BUSINESS**

There was no other business.

**MIN/SEN/SCLSW/359/2023**      **ADJOURNMENT AND DATE OF THE NEXT MEETING**

The meeting was adjourned at 10.10 am, in readiness for the next meeting at 10:30am.

SIGNED.......... DATE 15<sup>th</sup> SEPTEMBER 2023

**CHAIRPERSON: SEN JULIUS MURGOR RECHA, MP**  
**STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE**



**MINUTES OF THE SIXTY-NINTH (69<sup>TH</sup>) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON THURSDAY, 10<sup>TH</sup> AUGUST, 2023 AT 9.30 AM IN THE COMMITTEE ROOM 22, 5<sup>TH</sup> FLOOR, BUNGE TOWERS, PARLIAMENT BUILDINGS.**

**MEMBERS PRESENT**

- |  |                      |
|--|----------------------|
| 1. Sen. Julius Murgor Recha, MP        | - Chairperson        |
| 2. Sen. George Mungai Mbugua, MP       | - Vice-Chairperson   |
| 3. Sen. Alexander Munyi Mundigi, MP    | - Member             |
| 4. Sen. Miraj Abdulahi Abdulrahman, MP | - Member (Virtually) |
| 5. Sen. Crystal Asige, MP              | - Member (Virtually) |

**APOLOGIES**

- |   |          |
|---|----------|
| 1. Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP | - Member |
| 2. Sen. Erick Okong'o Mogeni, SC, MP            | - Member |
| 3. Sen. Mohamed Faki Mwinyihaji, MP             | - Member |
| 4. Sen. Gloria Orwoba, MP                       | - Member |

**SECRETARIAT**

- |                        |                               |
|------------------------|-------------------------------|
| 1. Ms. Mwanate Shaban  | - Senior Clerk Assistant      |
| 2. Ms. Getrude Nthiiri | - First Clerk Assistant       |
| 3. Mr. Jeremy Chabari  | - Legal Counsel I             |
| 4. Ms. Sande Marale    | - Principal Research Officer  |
| 5. Mr. Rhyan Injendi   | - Research Officer III        |
| 6. Mr. John Chege      | - SAA III                     |
| 7. Ms. Felistas Mutune | - Media Relations Officer III |
| 8. Mr. Joseph Otieno   | - Audio Officer               |
| 9. Ms. Swaluha Yusuf   | - Protocol Officer III        |
| 10. Mr. Onganyi Elphus | - Attachee                    |

**MIN/SEN/SCLSW/340/2023: PRAYERS**

The Chairperson called the meeting to order at 9.46 am followed with a word of prayer.

**MIN/SEN/SCLSW/341/2023: ADOPTION OF AGENDA**

The Agenda of the meeting was adopted having been proposed by Sen. Miraj Abdulahi Abdulrahman, MP and seconded by Sen. George Mbugua, MP as follows –

1. Prayers;
2. Adoption of the Agenda;
3. Briefing on the Bills before the Committee on the County Hall of Fame Bill, 2023 and the Care and Protection of Child Parents Bill, 2023 (Committee Paper No. 30);
4. Any Other Business; and
5. Adjournment/Date of the Next Meeting.

**MIN/SEN/SCLSW/342/2023 BRIEFING ON THE BILLS BEFORE THE COMMITTEE – THE COUNTY HALL OF FAME BILL, 2023 AND THE CARE AND PROTECTION OF CHILD PARENTS BILL, 2023 (COMMITTEE PAPER NO. 30);**

**a) The County Hall of Fame Bill, 2023**

The meeting was informed that-

1. The Bill seeks to establish a platform through which county governments honour individuals, within the respective counties, who have made significant contributions in any profession or activity as this was envisioned in Fourth Schedule of the Constitution which provides that cultural activities, public entertainment and public amenities including sports and cultural activities and facilities some of the functions and powers of county governments.
2. Currently, the National Honours Act, 2013 provides a legal framework for the procedures and mechanisms for conferring of national honours by the President under Article 132(4)(c) of the Constitution nationally.
3. The legal framework for counties to confer county honours is yet to be developed. The Bill therefore proposed the establishment of a county hall of fame as a means through which exceptional individuals will be recognised by county governments

**b) Care and Protection of Child Parent Bill, 2023**

The meeting was informed that -

1. The principal objective of the Bill was to provide a legal framework for the care and protection of child parents within the counties.
2. The framework is intended to ensure that an expectant underage girl or a child parent may actualize their right to basic education and at the same time ensure proper care of their children as enshrined in Article 53 of the Constitution.

c) Committee Observations and Resolutions

The Committee noted the submissions and resolved that public participation of the County Hall of Fame Bill and the Care and Protection of the Child Parents Bill be held on Tuesday 23<sup>rd</sup> August, 2023.

MIN/SEN/SCLSW/343/2023      ANY OTHER BUSINESS

There was no other business.

MIN/SEN/SCLSW/344/2023      ADJOURNMENT AND DATE OF THE NEXT MEETING

The meeting was adjourned at 10.31 am, in readiness for the next meeting.

SIGNED..........DATE.....1<sup>st</sup> SEPTEMBER, 2023.....

CHAIRPERSON: SEN JULIUS MURGOR RECHA, MP  
STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 107 (Senate Bills No. 29)*

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REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**SENATE BILLS, 2023**

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**NAIROBI, 30th June, 2023**

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**THE CARE AND PROTECTION OF CHILD  
PARENTS BILL, 2023**

**ARRANGEMENT OF CLAUSES**

*Clause*

**PART I – PRELIMINARY**

- 1 – Short title.
- 2 – Interpretation.
- 3 – Objects.

**PART II – CARE OF EXPECTANT CHILDREN AND  
CHILD PARENTS**

- 4 – Obligations of the National government with respect to child parents.
- 5 – Obligations of a county government with respect to the care of neglected children.

**PART III – SCHOOL DROPOUT PREVENTION  
AND RE-ENTRY PROGRAMMES**

- 6 – Role of national and county governments in the prevention of school drop-out.
- 7 – Management plans.
- 8 – Rights of pregnant and parenting students.
- 9 – Role of governments in ensuring re-admission of drop out children.
- 10 – Management of teenage pregnancies in school.
- 11 – Medical examination.
- 12 – Provision of pre and post-natal health information.
- 13 – Provision of counselling and support services.
- 14 – Confidentiality.
- 15 – Disclosure of the identity of the person responsible for a child's pregnancy.
- 16 – Right to re-admission.
- 17 – Re-admission.
- 18 – Obligations of parents and guardians.

19 — Obligations of the institution of basic education.

20 — Offence.

### **PART III – ESTABLISHMENT OF CARE CENTRES**

21 — Establishment of care centres.

22 — Services rendered in a care centre.

23 — Requirements in relation to a care centre.

24 — Requirement for registration and licensing a care centre.

25 — Registration of care centres and licensing of applicants by a county government.

26 — Location assessment of intended care centre.

27 — Cancellation of a licence.

28 — Notice of non-compliance.

29 — Closure of a care centre.

30 — Submission of reports on the management of a care centre.

31 — Establishment of committees and appointment of authorised officers.

### **PART IV – CARE FOR CHILDREN WITHIN A CARE CENTRES**

32 — Delivery of child care in a care centre.

33 — Management of a care centre.

34 — Records relating to children in a care centre.

35 — Services rendered within a care centre.

36 — Role of management of a care centre.

### **PART V – INSPECTION AND EVALUATION OF SAFETY IN A CARE CENTRE**

37 — Safety in a care centre.

38 — Appointment of inspectors.

39 — Powers of an inspection officer.

### **PART VI – MISCELLANEOUS PROVISIONS**

40 — General penalty.

41 — Regulations.

42 — Existing care centres.

**THE CARE AND PROTECTION OF CHILD  
PARENTS BILL, 2023**

**A Bill for**

**AN ACT of Parliament to provide a framework for the care and protection of child parents within the Counties; to provide a framework through which an expectant girl child or a child parent may actualise their right to basic education and at the same time ensure the care of their children; and for connected purposes.**

**ENACTED** by the Parliament of Kenya, as follows —

**PART I—PRELIMINARY**

**1.** This Act may be cited as the Care and Protection of Child Parents Act, 2023.

Short title.

**2.** In this Act—

Interpretation.

“Cabinet Secretary” means the Cabinet Secretary responsible for matters related to children;

“child care” means services that have as their primary purpose the care and supervision of children as defined under this Act;

“child parent” means a person who has not attained the age of eighteen years and is a mother or a father of a child;

No. 29 of 2022.

“care centre” means facility that provides child care services, but does not include a family home;

“Council” means the National Council for Children’s Services established under section 41 of the Children Act;

No. 20 of 2012.

“county executive committee member” means the county executive committee member responsible for matters relating to social services; and

“learner” has the meaning assigned to it under the Teachers Service Commission Act.

No. 14 of 2013.

“principal” means the lead educator or administrator in an institution of basic education and training and includes the proprietor or director of a private school or a person in charge of a borstal institution;

“institution of basic education and training” a public or private institution or facility used wholly or partly, regularly or periodically for conducting basic education and training and includes a school, a tuition facility, an educational centre, an academy, a research institution, a school correctional facility or a borstal institution;

3. The object of this Act are to—

Objects.

- (a) provide a framework for the protection of the rights set out under Article 53(1)(c) and (d) of the Constitution in relation to child parents;
- (b) provide a framework through which the expectant girl child and a child parent can realise their right to education and at the same time, ensure the care and protection of his or her child; and
- (c) provide a framework of standards for the establishment and regulation of care centres by county governments.

## **PART II – CARE OF EXPECTANT CHILDREN AND CHILD PARENTS**

4. (1) The national government shall, to the extent of its constitutional mandate, promote the care and protection of expectant children and child parents.

Obligations of the National Government with respect to child parents.

(2) In ensuring that the National Government fulfils its obligations under subsection (1), the Council shall —

- (a) put in place mechanisms that will help establish a comprehensive capacity building programme for child parents to ensure they practice responsible parenting;
- (b) establish, in consultation with the Cabinet Secretary responsible for matters relating to education, non-discriminatory enrolment, back to school or other training programmes and initiate necessary strategies that will identify persons within this group to benefit from the programmes;
- (c) collaborate with the National Social Assistance Authority to ensure that needy child parents of children born with special needs or care takers of such needy parents, are beneficiaries of social assistance;

No. 24 of 2013.

- (d) identify, in consultation with personnel of institutions of basic learning and such other institutions as it may consider appropriate, children who are pregnant and who are in need of interventions to enable them realise the rights conferred on a child under Article 53 of the Constitution;
- (e) address any educational and related barriers faced by pregnant and parenting learners; and
- (f) guarantee funding and sustainability of the initiative and other child welfare programmes aimed at benefiting child parents.

(3) In performing its functions under subsection (1), the Council shall —

- (a) collaborate with the relevant public entities in the establishment of mechanisms that ensure that expectant children and child parents have access to community and State based care support systems;
- (b) collaborate with the county governments and relevant State and private agencies in carrying out activities for the provision of such pre-natal, post-natal and other health services, education and other support services to expectant children and child parents within the respective counties;
- (c) conduct research, analysis of data and disseminate information on the welfare of expectant children and child parents in the Republic; and
- (d) collaborate with the county governments in —
  - (i) establishing a mechanism for the care of expectant children and child parents to ensure that the rights conferred on a child under Article 53 of the Constitution are attained with respect to such children; and
  - (ii) expanding and strengthening the educational framework and the community and family based care and support systems for the care of expectant children and child parents; and
- (e) perform such other functions as may be necessary for the implementation of this Act.

(4) The Council may, for the purpose of subsection (3), conduct inquiries, including public inquiries, into any matter relating to the welfare, care and protection of expectant children and child parents within a County.

5. Each county executive committee member shall—

- (a) put in place management plans and strategies for the delivery of social services and child care support services to expectant children and child parents within the County;
- (b) collaborate with the County Education Board and the county executive committee member responsible for education in establishing –
  - (i) programmes to ensure that expectant children and child parents have access to education services; and
  - (ii) academic support programmes that ensure that learners with extended absences for reasons related to pregnancy and parenting are able to enrol back into school or to such other education facility in order to access education services;
- (c) formulate and implement county specific programmes for the integration of expectant children and child parents into society and institutions of basic education within the respective County;
- (d) design, in collaboration with the Council and within the policy framework established by the national government, county specific programmes for the prevention of child pregnancies and programmes for the support, mentorship and development of expectant children and child parents;
- (e) put in place and implement in consultation with the relevant public entities, interventions for the care, protection and alleviation of the plight of expectant children and child parents –
  - (i) with special needs or requiring special care and attention within the County; and

Obligations of a county government with respect to the care of neglected children.

- (ii) living in conditions of acute hardship including street children and children who abuse drugs or who suffer any form of child abuse;
- (f) establish such child care centres and implement such programmes as may be necessary for the provision of child care services to child parents who intend to enrol back to school and who do not have access to support services for the care of their child; and
- (g) collaborate with the Council in the provision of such technical assistance, information and facilities as may be necessary to ensure the efficient delivery of social services with respect to expectant children and child parents within the county.

**PART III — SCHOOL DROPOUT PREVENTION AND RE-ENTRY PROGRAMMES**

- 6.** (1) The National and county governments shall –
- (a) formulate policies for the re-admission and integration of children who have dropped out of school by reason of pregnancy;
  - (b) put in place programmes and interventions—
    - (i) for the identification of factors leading to child pregnancies and the dropping out of institutions of basic education and training, by children; and
    - (ii) that prevent the dropping out of children from institutions of basic education and training; and
  - (c) put in place programmes for the assistance and education of vulnerable children and children in areas identified as having a high dropout rate owing to child pregnancy;
  - (d) collaborate with the relevant stakeholders in the establishment of dropout prevention programmes that provide information and education to build upon the children’s own knowledge, skills, values and attitudes; and
  - (e) put in place programmes—

Role of national and county governments in the prevention of drop out.

(i) aimed at capacity building for child parents to ensure that they are able to support their families; and

(ii) for responsible parenting.

(2) Prevention programmes established under subsection (1) shall –

- (a) involve the parents and guardians of the children in the governance of institutions of basic education and training and in the development of the code of conduct of the institution and strategies to prevent teenage pregnancies;
- (b) encompass the provision of relevant information and support for the prevention of teenage pregnancies;
- (c) include the sensitisation of children and their parents on issues that have a negative impact on the school attendance of children;
- (d) create linkages between institutions of basic education and training and the communities they serve with the aim of encouraging school attendance, sensitization and collaboration on issues affecting school attendance; and
- (e) promote healthy lifestyles through positive role modelling and encouraging children to participate in activities and advocacy and awareness programmes that have a positive impact and encourage a healthy lifestyle.

7. (1) Each institution of basic education and training shall develop a management plan for the support of any learner who falls pregnant while enrolled in the institution.

Management plans.

(2) The management board of an institution of basic education and training shall –

- (a) put in place programmes with the aim of preventing teenage pregnancies;
- (b) treat each case of a learner who falls pregnant while in an institution of basic education and training confidentially and professionally;

- (c) adopt an inclusive approach that involves the support of the child and parents or guardians of the affected child or children who are at risk of dropping out of school; and
- (d) in putting in place interventions or responses in situations of child drop out, ensure that the educational interests of the child are upheld.

**8.** (1) Every child who —

Rights of pregnant and parenting learners.

- (a) While enrolled in an institution of basic education and training, falls pregnant and as a result, drops out of school; or
- (b) is of school going age but falls pregnant while out of school,

shall have the right to be readmitted or enrolled into an institution of basic education and training.

(2) Every child under subsection (1) shall have the right to —

- (a) remain in school and to receive the necessary support to continue with their education and participate fully during their pregnancy or as a parent learner;
- (b) fully participate in educational programs and activities of the institution ;
- (c) guidance and support to enable the child to return to her regular education programme after delivery and after the baby is weaned; and
- (d) be re-admitted at the same level the child was in before they left the institution to deliver the baby unconditionally.

(3) Where a child intends to join an institution of basic education and training other than that which the child was in prior to her pregnancy, the principal shall, in consultation with the Sub-County Director of Education facilitate the child in gaining admission into another institution of basic education and training .

**9.** (1) The National and county governments shall —

Role of governments in ensuring re-admission of drop out children.

- (a) develop and implement a plan for identifying and re-engaging —

- (i) children who have dropped out of institutions of basic education owing to teenage pregnancies; and
- (ii) vulnerable children who have dropped out of, or who are likely to drop out of institutions of basic education and training owing to factors beyond their control,

in order to ensure that they are readmitted and integrated into the education system;

- (b) establish partnerships with community based organisations, education providers and other relevant stakeholders in order to –
  - (i) provide a broad range of educational options and services for children who drop out of school under this Part; and
  - (ii) counsel children in schools on adolescent sexuality, responsible behaviour and the consequence of child pregnancies; and
- (c) ensure that the education system in place takes into account the best interests of children who fall pregnant while in school.

(2) In this section, a “vulnerable child” means a child who faces circumstances that increase the likelihood of dropping out of an institution of basic education owing to child pregnancy.

**10. (1)** Where a child falls pregnant or a teacher or person in authority within an institution of basic education and training has a reason to believe that a child within the institution is pregnant, the matter shall be referred to the principal of the institution.

Management of  
teenage  
pregnancies in  
school.

(2) The principal shall, upon receipt of the information under subsection (1) and before any action is taken, inform the parent or guardian of the child’s pregnancy.

(3) The principal shall not inform the parent or guardian of the child’s pregnancy where they have sufficient grounds to believe that it may prejudice the safety and wellbeing of the pregnant child.

**11.** (1) Where the principal of the institution of basic education is of the opinion that child may be pregnant, the principal shall refer the child to a health institution for a medical examination and such other health examination as may be necessary to determine the status of the child.

Medical examination.

(2) A child shall not be compelled to undergo a medical examination where she refuses to undergo the examination.

(3) Where a child refuses to undergo a medical examination under subsection (2), the institution of basic education shall not be held liable for any consequences that may arise from the failure by the child to undergo the medical examination.

**12.** The health professionals under section (11) shall provide the child with pre and post-natal health information and such other information as may be necessary, including any risks that may arise, to ensure the health and best welfare of the child is maintained.

Provision of pre and post-natal health information.

**13.** The institution of basic education and training shall provide the necessary counselling services to the pregnant child and to her parents or guardians regarding the management of the pregnancy, the provision of support services to the child and the parents to ensure the child's emotional stability and wellbeing during and after pregnancy and the importance of continuing with education after delivery.

Provision of counselling and support services.

**14.** Every case of a child who falls pregnant in an institution of basic education and training shall be handled by the management of the institution in a manner that ensures confidentiality.

Confidentiality.

**15.** (1) Where it is determined that the person responsible for the pregnancy is an adult, the principal shall report the case to the County Director of Education, the nearest police station and the Council.

Disclosure of the identity of the person responsible for a child's pregnancy.

(2) Where the person responsible for the pregnancy is determined, under subsection (1) to be a teacher, the principal shall make a report to the Teacher's Service Commission, in addition to the persons under subsection (1).

**16.** (1) Every child who drops out of an institution of basic education and training by reason of pregnancy shall, subject to the provisions of this Act, be admitted back into an institution of basic education and training unconditionally upon weaning the baby and shall be allowed to join at the level at which she left prior to dropping out.

Right to re-admission.

(2) The Cabinet Secretary responsible for matters relating to basic education shall issue guidelines for the conditions for the re-admission of children into institutions of basic education and training under subsection (1).

**17.** An institution of basic education shall not discriminate against a child who falls pregnant while in school or who is readmitted in school and shall put in place measures to ensure the re-integration of the child back into the school.

Re-admission.

**18.** A parent or guardian of a child who falls pregnant shall not be discharged from their responsibilities regarding the pregnant child and shall collaborate with the institution of basic education in supporting and monitoring the health of the child and ensuring that the child continues with her education after delivery and the baby is weaned.

Obligations of parents and guardians.

**19.** (1) The management of an institution of basic education and training shall—

Obligations of the institution of basic education.

- (a) allow a child who falls pregnant while in school to continue with classes for as long as possible prior to delivery;
- (b) counsel the child and her parents or guardians on the importance of ensuring good outcome of the pregnancy by attending ante-natal clinic and ensuring safe delivery, and the possibilities of continuing with education after delivery;
- (c) provide academic support, parenting and life skills classes and strategies to prevent future unplanned pregnancies; and
- (d) assist pregnant and parenting learners to gain access to affordable child care facilities.

(2) The management of an institution of basic education of training shall not discriminate against a child

who falls pregnant while in school and shall put in place, enforceable rules and such other mechanisms to ensure that the other children within the school do not mistreat or in any way discriminate against the child.

(3) The management of an institution of basic education and training shall not exclude a child under this part from any programmes of the school or force the child to attend different programs from those of her peers only for the reason of the child being pregnant.

(4) A child who falls pregnant while in school shall be given an opportunity to make up for any missed classes or examinations in the case of pregnancy-related absences.

**20.** Where an institution of basic education and training refuses to re-admit a child under this Part, the principal and each member of the management board of the institution commits an offence and shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

Offence.

#### **PART IV – ESTABLISHMENT OF CARE CENTRES**

**21.** (1) A county government may establish and maintain such care centres as it may consider necessary for the care of children of not more than three years of age.

Establishment of care centres.

(2) A county government may, for the purposes of sub-section (1), establish care centres in, or within the vicinity of an institution of basic education and training in order to ensure access to such facilities by a child parent.

(3) A person shall not establish or manage a care centre unless the centre is registered and a licence issued in accordance with the provisions of this Act.

(4) The provisions of subsection (3) shall not apply with respect to a care centre that is established by a county government.

**22.** A care centre established under this Act may render services for the care of children who are not more than three years and who are born to—

Services rendered in a care centre.

- (a) child parents who intend to resume with their education and who have no access to care services;
- or

- (b) such other persons within the county who have no person to care for the child or access to child care services.

**23.** In establishing a care centre, a county government shall ensure that the –

Requirements in relation to a care centre.

- (a) premises of the care centre meet the requirements set out under this Act and prescribed under the relevant county legislation;
- (b) design of the care centre premises allows for adequate supervision of children;
- (c) day care services delivered in the care centre are affordable;
- (d) care centre is accessible, taking into account the needs of a child and any special needs that a child may have;
- (e) children cared for in the care centre will not be exposed to any undue threat to their health or safety arising from the nature of the premises or their environs;
- (f) personnel within the care centre are qualified to provide day care services and handle any illnesses and emergencies that may arise in relation to a child cared for in the care centre; and
- (g) care centre is equipped with suitable equipment for the delivery of child care services as may be prescribed by the county executive committee member.

**24.** (1) A person shall not own or operate a care centre unless—

Requirement for registration and licensing of a care centre.

- (a) the care centre is registered in accordance with this Act; and
- (b) such person is issued with a licence to operate the care centre under this Act.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

**25.** (1) A person who intends to establish a care centre shall make an application to the county executive committee member in the prescribed form for registration and the issuance of a licence to operate the care centre.

Registration of care centres and licensing of applicants by a county government.

(2) Legislation by each county government shall set out the –

- (a) criteria for the registration of care centre within the respective county;
- (b) information required to be submitted by an applicant for registration;
- (c) process of determination of an application for registration of a care centre;
- (d) the conditions for the issuance of a licence under this Act;
- (e) the grounds for and the process of rejecting an application or cancelling a licence issued under this Act; or
- (f) the process of issuance of a licence to an applicant for the management of a care centre; and
- (g) process of application for the renewal of licences, de-registration and revocation of a licence issued to an applicant under this Act.

**26.** (1) An application for registration and licencing shall undertake and submit, together with the application for registration under section 25, a location assessment report setting out evidence of the steps taken to ensure that the premises used for the purposes of the care centre are appropriately and suitably located.

Location assessment of intended care centre.

(2) A location assessment report shall contain the following information—

- (a) whether the premises are suitably located so that children cared for in the care centre are –
  - (i) effectively safeguarded; and
  - (ii) able to access services to meet the needs identified for their care;
- (b) accessibility of the care centre and distance from institutions of basic education and training within the county;

(c) whether there are environmental factors that would represent a hazard to children within the care centre; and

(d) such other criteria as the county executive committee member shall determine.

(3) A person who is licensed under this Act shall undertake a location assessment to review the appropriateness and suitability of the location of the premises at least once in every four calendar years.

**27.** (1) The county executive committee member may, subject to the provisions of section 28, cancel a licence issued to an applicant under this Act in accordance with regulations made under subsection (4).

Cancellation of a licence.

(2) The county executive committee member shall not cancel a license under subsection (1) unless the committee member—

(a) issues to the licensee, a notice in writing, of at least fourteen days of the intention to revoke the licence; and

(b) grants the licensee, an opportunity to be heard on the revocation.

(3) The county executive committee member shall cancel the licence issued to an applicant in relation to, and de-register, a care centre which has ceased to be a care centre or which has been closed down.

(4) County legislation shall prescribe the grounds for, and the process of, cancelling a licence issued to a person to manage a care centre under this Act.

**28.** (1) A county executive committee member shall, before cancelling the licence issued to a person to manage a care centre under this Act issue to the licensee a compliance notice in the prescribed form.

Notice of non-compliance.

(2) A compliance notice issued under subsection (1) shall—

(a) be in writing;

(b) notify the licensee of the non-compliance and the steps required to be undertaken in order to comply; and

(c) inform the licensee of the time period within which the manager is required to comply with the notice.

(3) The county executive committee member may, upon request by the licensee and, where there are sufficient grounds shown by the licensee, extend the period of compliance for such period as the committee member may consider necessary to ensure compliance.

**29.** (1) Where a licensee intends to close down a care centre for any other reason other than the de-registration of the care centre, the licensee shall –

Closure of a care centre.

(a) inform the county executive committee member of the intention to close down the care centre and submit a report to the committee member containing information regarding–

(i) the children that have been cared for in the care centre;

(ii) the management and persons employed in the care centre;

(iii) any investigations or cases that may have been carried out or instituted against the care centre or that are pending in relation to the care centre; and

(iv) such other information as the county executive committee member may require.

(2) A licensee shall not close down the care centre unless the licensee has applied for and obtained the approval of the county executive committee member in the prescribed form.

(3) The county executive committee member shall, upon receipt of an application to close a care centre under subsection (2), consider the application within a period of thirty days and approve the application for such closure except where –

(a) the manager fails to comply with subsection (2); or

(b) such closure would be against public interest.

**30.** (1) The licensee under this Act shall, within three months from the end of each financial year, submit to the county executive committee member and the Council, a report on the management of the care centre containing the following information—

Submission of reports on the management of a care centre.

- (a) compliance with the standards for service delivery, prescribed in this Act for any other law;
- (b) the average number of children that are cared for on a daily basis in the care centre;
- (c) compliance with principles of sound management systems;
- (d) compliance with the conditions for continued registration; and
- (e) such other information as the county executive committee member may require.

(2) When the manager of a care centre fails to submit a report in accordance with sub-section (1), the county executive committee member may revoke the licence issued to the licensee and de-register of the care centre or take such action, as the county executive committee member may consider necessary to ensure compliance.

**31.** A county executive committee member may establish a committee and appoint such authorized officers as may be necessary for the implementation of the provisions of this Act.

Establishment of committees and appointment of authorised officers.

#### **PART V — CARE OF CHILDREN WITHIN A CARE CENTRE**

**32.** In delivering child care services under this Act, a licensee shall ensure—

Delivery of child care in a care centre.

- (a) that there is established a system for sharing with parents, information on matters that may affect the children cared for in the care centre;
- (b) the protection and promotion of the welfare of each child in the care centre;
- (c) that every child receives personalised care;
- (d) that all children are within the sight and sound of the personnel in the care centre; and

(e) that each child is provided with the basic necessities including food.

**33.** A licensee shall ensure that—

Management of a care centre.

(a) the number of children resident in the care centre at any time shall not exceed the number specified in the licence;

(b) a child who is not within the age limits specified in the licence is not admitted into the care centre;

(c) the standards set out in -

(i) legislation enacted by the county government pursuant this Act; or

(ii) any other legislation applicable to a care centre, issued,

are observed in relation to the care centre; and

(d) the licence is displayed in a conspicuous place in the care centre.

**34.** The licensee of a care centre shall keep or cause to be kept a register containing all available information on the status, health and welfare of a child and such information as relating to the parents of the child as the county executive committee member may prescribe.

Records relating to children in a care centre.

**35.** The licensee of a care centre registered under this Act shall ensure that the following services are provided in the care centre—

Services rendered within a care centre.

(a) continuous care services to children in the care centre;

(b) care and supervision services to children in the care centre who may have special needs and those in need of special care and attention;

(c) counselling and rehabilitation to a child parent who has sought the services of the care centre;

(d) outreach programmes; and

(e) recreational activities.

**36.** (1) The licensee of a care centre shall—

Role of management of a care centre.

(a) ensure that the premises used for the purposes of the care centre are designed and furnished so as to—

- (i) meet the needs of each child; and
  - (ii) enable each child to participate in the daily life of the care centre;
  - (b) ensure that any care that is arranged or provided for a child that relates to the child's development;
  - (c) seek to develop and maintain effective professional relationships with such persons, bodies or organizations as may be appropriate having regard to the range of needs of children to whom the care centre provides care and accommodation;
  - (d) ensure the provision of quality service in the care centre;
  - (e) ensure the continuous training of the personnel in the care centre;
  - (f) apply principles of sound financial management and submit quarterly financial reports to the county executive committee member; and
  - (g) monitor activities at the care centre in order to deal speedily with any incidents of abuse of the children in the care centre and takes steps to report such incidents to the appropriate authority.
- (2) The licensee of a care centre shall ensure that –
- (a) the standard of care provided in the care centre is reviewed from time to time to ensure that the obligations with respect to the provision of care in the care centre under this Act are met;
  - (b) the care is delivered by persons who –
    - (i) have the experience, knowledge and skills to deliver that care; and
    - (ii) are under the supervision of a person who is appropriately skilled and qualified to supervise that care; and
  - (c) there is in place a medical facility within the vicinity of the care centre.

**PART VI – INSPECTION AND EVALUATION OF  
SAFETY IN A CARE CENTRE**

**37.** (1) The licensee of a care centre under this Act shall— Safety in a care centre.

- (a) maintain premises that meet the requirements of the occupational health, safety regulations and building standards;
- (b) ensure the welfare and safety of the children within the care centre;
- (c) put in place fire fighting equipment, first aid and other emergency equipment and non-prescription medicine as the county executive committee member may prescribe; and
- (d) have a list of the contacts of emergency service providers including hospitals, readily available to all members of staff.

(2) In providing the equipment specified under subsection (1)(c), the licensee shall ensure that such equipment is accessible during an emergency.

(3) The equipment and medicine under subsection (1) shall be maintained or kept by a centre in such manner as to ensure that it is out of the reach of children and ensures that the safety of the children is not compromised.

(4) The county executive committee member shall prescribe minimum standards for the health and safety of children and for a satisfactory environment for the housing of the children in the care centre.

**38.** (1) The county executive committee member shall, for the purposes of monitoring and evaluating the provision of services by care centres registered under this Act, designate such authorised officers or other county public officers as inspectors as the county executive committee member may consider appropriate. Appointment of inspectors.

(2) The County Public Service Board shall, in consultation with the county executive committee member, issue to every inspector appointed under subsection (1) in writing or in such form as the County Public Service Board may determine, a certificate of appointment and authority to act as an inspector.

(3) A person appointed as an inspector under subsection (1) may, at all reasonable times, enter a care centre and—

- (a) enter the care centre and to have access to every part thereof;
- (b) interview any personnel in the care centre;
- (c) inspect, photocopy, print out, or copy onto disk any documents, whether held in electronic or paper form, that the person believes on reasonable grounds to be those of the care centre; or
- (d) remove any document specified in paragraph (c), whether in its original form or as an electronic or paper copy.

(4) Every person exercising any power under this section shall, at the time of inspection, possess the appropriate written authorisation and evidence of identity, and shall produce them to the person in charge of the care centre concerned or, as the case may be, the person having possession or control of the books, records, or accounts concerned—

- (a) on first entering the premises; and
- (b) whenever subsequently reasonably required to do so by the person in charge.

(5) For the purposes of this section, inspection, in relation to any care centre, includes meeting and talking with the children residing in the care centre.

(6) The county executive committee member shall make regulations for the conduct of inspections of care centres under this Act.

**39.** (1) Every written authorisation issued to an inspector under section 38 shall contain—

- (a) a reference to this section;
- (b) the full name of the person authorised; and
- (c) a statement of the powers conferred on that person by this section.

Powers of an  
inspection officer.

**PART VII - MISCELLANEOUS PROVISIONS**

**40.** A person who is convicted of an offence under this Act for which no penalty is provided is liable to a fine not exceeding three million shillings, or to imprisonment for a term not exceeding two years, or to both.

General penalty.

**41.**(1) The Cabinet Secretary may, in consultation with the Council, make regulations generally for the better carrying out of the provisions of this Act.

Regulations.

(2) Notwithstanding the generality of subsection (1), the Cabinet Secretary may make regulations –

- (a) setting out the standards required to be adhered to by County Governments in the establishment of care centres;
- (b) prescribing the programmes that may be administered in a care centre; and
- (c) prescribing the qualifications required to be held by persons managing, employed in or rendering services in a care centre.

Cap. 2.  
No. 23 of 2013.

(3) Regulations made under subsection (2) may prescribe different standards and other requirements—

- (a) for services of different types or descriptions rendered in relation to children cared for in a care centre; and
- (b) in respect of different types of licences.

(4) For the purposes of Article 94(6) of the Constitution –

- (a) the authority of the county executive committee member to make regulations shall be limited to bringing into effect the provisions of this Act and the fulfilment of the objectives specified under subsection (1); and
- (b) the principles and standards set out under the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013 in relation to subsidiary legislation shall apply to regulations made under this Act.

**42.** (1) Subject to subsections (2), (3) and (6), every care centre that, immediately before the commencement of this Act, was registered as a care centre under any other law shall be deemed to be registered as a care centre under this Act, and continues to be so registered for the relevant period of registration subject to such conditions of registration as may be imposed under this Act.

Saving of existing care centres.

No. 8 of 2001.

(2) Despite subsection (1), the county executive committee member may give written notice to the registered owner of a care centre registered under subsection (1), requiring a person who manages that centre to apply for registration under section 21 within three months of the date of that notice, and if the person —

- (a) fails to apply for registration within the specified period, the care centre ceases to be registered under subsection (1) at the end of that period; or
- (b) applies for registration within the required period, the centre shall continue to be a registered care centre under subsection (1) until that application has been determined.

(3) Despite subsection (1), if subsection (4) applies, the county executive committee member may, by written notice to a person who operates a care centre that is deemed to be registered under subsection (1), declare that the care centre is no longer registered under subsection (1) and the notice has effect accordingly.

(4) The county executive committee member may give a notice under subsection (3) only if it is satisfied that the person managing the care centre has failed to comply with —

- (a) this Act on the requirements of registration; or
- (b) any conditions for registration.

(5) The county executive committee member may, despite the fact that the care centre concerned does not meet the minimum requirements for registration prescribed under this Act, issue to the person managing the care centre a transitional certificate in such manner as the county executive committee member may prescribe and subject to such conditions as the committee member may impose.

(6) Where the county executive committee member is not satisfied that the conditions specified in a certificate issued under subsection (5) are being complied with, the county executive committee member may, by written notice to the person managing the care centre, cancel the certificate of registration.

(7) Every notice under subsection (3) or subsection (6) shall set out the reasons for the action taken.

(8) Subsections (1) to (6) shall not limit any powers to cancel or suspend the registration of a care centre in the manner prescribed by the county executive committee member.

## MEMORANDUM OF OBJECTS AND REASONS

### Statement of the Objects and Reasons for the Bill

In Kenya, a sizeable number of girls drop out from school and are unable to complete education when they become expectant while undertaking their basic education. In some instances, the school where the child was attending refuses to readmit the child thus denying them the opportunity to complete their basic education, stigma from the society and other learners while in other instances, the expectant children come from needy families and have to drop out of school so as to take care of their children once they give birth.

Although the Ministry of Education formulated the National Guidelines for School Re-Entry in Early Learning and Basic Education in 2020, the problem still persists, hence the need to ensure collaboration of the National Government and county governments in protecting such children and ensuring that there are structures supporting them to continue with their education.

The principal object of the Bill is to create a framework for the care and protection of pregnant children and child parents so as to ensure that their rights to education and health are protected, and additionally, to ensure that the needy child parents and their caretakers receive assistance from the National and county governments so as to enable them return to school and give them better prospects in life.

**Part I** of the Bill provides for preliminary matters. These are the short title and definition of various words used in the Bill.

**Part II** of the Bill describes the obligations of the National Government in the care and protection of expectant children and child parents, as well as the role of the county governments in ensuring the care and support of neglected children.

**Part III** provides for the role of both the National and county governments in preventing child parents from dropping out of schools and also for the re-entry of such children once the child is weaned. It also provides for the rights of expectant children and child parents, and also for how the school management should handle issues of expectant children.

**Part IV** of the Bill creates a framework for the establishment of care centres which would provide facilities for the care of children born to child parent and who would wish to resume with their studies but have no person to take care of their child. The Bill imposes an obligation on the county governments to establish care centres for this purpose and sets out the standards that a county government or any other person who intends to

establish a care centre is required to meet. The Bill also provides for the registration, licensing, monitoring and inspection of the centres.

**Part V** of the Bill deals with management of care centres and the services to be provided in care centres.

**Part VI** of the Bill contains provisions on inspection of care centres so as to ensure the health and safety of children in the centres.

**Part VII** of the Bill provides for miscellaneous provisions including formulation of regulations by the Cabinet Secretary, general offence and transition of existing care centres.

**Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

Clause 41 of the Bill confers on the Cabinet Secretary the powers to make regulations under the Act for the purposes of carrying into effect the provisions of the Act. The Bill does not limit any fundamental rights or freedoms.

**Statement on how the Bill concerns county governments**

The Bill provides a framework for the implementation of the right to education for all children including teenage parents. It imposes an obligation on the National and county governments to put mechanisms in place and establish programmes that ensure that not only is this right realised in relation to teenage parents, but also ensure that the rising cases of teenage pregnancies and the dropping out of school by teenage parents is curbed. The Bill is therefore a Bill concerning county governments in terms of Article 110(1)(a) of the Constitution.

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

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 23rd June, 2023.

MIRAJ ABDILLAHI ABDULRAHMAN,  
*Senator.*



REPUBLIC OF KENYA THE NATIONAL ASSEMBLY THIRTEENTH PARLIAMENT—SECOND SESSION-2023

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

- 1. THE PARLIAMENTARY PENSIONS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 15 OF 2023)
2. THE ANTI-CORRUPTION AND ECONOMIC CRIMES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 30 OF 2023)

INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution provides Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 15 of 2023); and the Anti-Corruption and Economic Crimes (Amendment) Bill (National Assembly Bill No. 30 of 2023) were read a First Time on Wednesday, 2nd August, 2023 and thereafter referred to the relevant Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that:

- 1. The Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 15 of 2023) sponsored by the Member for Sirisia Constituency (The Hon. John Waluke, MP) with the principal object being to amend the Parliamentary Pensions Act, Cap 196. It proposes to raise the amount of pension due to former Members of Parliament who served between 1st July 1984 and 1st January 2001 to a minimum sum of Kenya Shillings one hundred thousand (KShs 100,000).
2. The Anti-Corruption and Economic Crimes (Amendment) Bill (National Assembly Bill No. 30 of 2023) sponsored by the Member for Homa Bay Constituency (The Hon. George Peter Kaluma, MP) with the principal object being to amend the Anti-Corruption and Economic Crimes Act, 2003 to delete the provisions providing for the disqualification of persons convicted of corruption or economic crimes from being elected or appointed as public officers.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the respective Departmental Committees as listed below:

Table with 2 columns: BILL and COMMITTEE. Row 1: The Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 15 of 2023) - Finance and National Planning. Row 2: The Anti-Corruption and Economic Crimes (Amendment) Bill (National Assembly Bill No. 30 of 2023) - Justice and Legal Affairs.

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda 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 cna@parliament.go.ke to be received on or before Tuesday 22nd August, 2023 at 5.00 p.m.

S. NIROGGE CLERK OF THE NATIONAL ASSEMBLY 10th August 2023

For the Welfare of Society and the just Government of the People

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | SECOND SESSION THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At sittings of the Senate held on Wednesday, 2nd August, 2023, Thursday, 3rd August, 2023 and Tuesday 8th August, 2023, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and standing order 145(5) of the Senate Standing Orders, the respective Senate Standing Committees now invite interested members of the public to submit any representations that they may have on the Bills.

The representations may be made by way of written memoranda on email to the Clerk of the Senate on the address clark.senate@parliament.go.ke and copied to the email addresses of the respective Committee indicated at the fourth column below, to be received on or before Friday, 25th August, 2023 at 5.00 p.m.

Table with 3 columns: BILL, COMMITTEE REFERRED TO, EMAIL ADDRESS. Rows include: a) The Maternal, Newborn and Child Health Bill (Senate Bills No. 17 of 2023) - Standing Committee on Health; b) The County Hall of Fame Bill (Senate Bills No. 16 of 2023) - Standing Committee on Labour and Social Welfare; c) The Rice Bill (Senate Bills No. 19 of 2023) - Standing Committee on Agriculture, Livestock and Fisheries; d) The County Governments (Amendment) Bill (Senate Bills No. 25 of 2023) - Standing Committee on Devolution and Intergovernmental Relations; e) Care and Protection of Child Parents Bill (Senate Bills No. 29 of 2023) - Standing Committee on Labour and Social Welfare.

The Bills may be accessed on the Parliament website at http://www.parliament.go.ke/the-senate/house-business/bills.

J.M. NYEGENYE, CBS, CLERK OF THE SENATE.

Telegraphic Address Telephone: 053 2062077, 053 2033507 Email: info@ugcountyassembly.or.ke Web: www.ugcountyassembly.or.ke



County Assembly P.O. Box 100-30100 Eldoret, Kenya

UASIN GISHU COUNTY ASSEMBLY OPEN TENDER NOTICE

Uasin Gishu County Assembly invites sealed tenders and pre-qualification from reputable, competent and interested companies for the supply and delivery of the following goods, works and services for the 2023/2024 Financial Year. Bidders are informed that goods, works and services will be procured on 'as and when required basis'. The tender documents are available at county assembly website. Interested bidders are encouraged to download the forms from our website www.ugcountyassembly.or.ke

Table with 4 columns: NO, TENDER NO, DESCRIPTION, ELIGIBILITY. Includes categories for Tenders FY 2023/2024 and Pre-qualification of Suppliers for FY 2023/2024.

Interested eligible candidates may obtain further information from supply chain management, procurement department Uasin Gishu county assembly. The tender document containing detailed information on the tenders can freely be downloaded from Uasin Gishu county Assembly website: www.ugcountyassembly.or.ke. IFMIS Portal: www.treasury.go.ke or PPIP Portal: www.tenders.go.ke

Complete tender documents must be submitted through the IFMIS supplier portal supplier.treasury.go.ke as per the requirements contained in the document so as to be received on or before 24th August, 2023 at 12:00 Noon. Kindly note that manual submission will not be accepted for tenders under category A. All tenders must be submitted through IFMIS Portal

NOTE: For pre-qualification the tender document must be paginated in the format (1, 2, 3, 4...) and be submitted manually (hard copies) so as to be deposited into tender box on or before 24th August, 2023 12:00 Noon.

Clerk to Uasin Gishu County Assembly, P.O. Box 100-30100, Eldoret



SONYSUGAR Simply The Sweetest



South Nyanza Sugar Company Limited invites sealed tenders from competent vendors for the provision of the below listed services/works and supply of goods. Tenders are open to all candidates meeting the eligibility criteria set in the tender document including AGPO group.

TENDER NOTICE

Table with 4 columns: S/No, Item Description, Type of Tender, Closing Date. Lists 6 items including Provision of Actuarial valuation, Provision of Tax Services, and Installation & Commissioning of various equipment.

The tender documents containing detailed information on the tenders can freely be downloaded from the official company website (www.sonyosugar.co.ke) & PPIP Portal

Duly filled and completed tender documents clearly marked "Tender reference No. and Closing date" should be addressed to.

The Managing Director, South Nyanza Sugar Company Ltd, Off Kisii-Migori Road, P.O. Box 107-40405, Sare-Awendo. Tel. no. 020-8029203 or 020-8029043 Fax. no. 020-8029204 Email: administration@sonyosugar.co.ke

and be deposited in the tender box at our Headquarters in Awendo by 24th August 2023 at 02.00 p.m. Tenders will then be opened thereafter at the Company's Training Centre in the presence of tenderers or their representatives who choose to attend. (This is optional)

Sonyosugar Company Limited reserves the right to accept or reject any application and is not bound to give any reasons thereof.

ISO 9001:2015 QMS CERTIFIED COMPANY CHANGE TOWARDS A SWEETER, INTEGRATED AND RESPONSIVE SONYOSUGAR!

**THE SENATE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE**

**STAKEHOLDER VIEWS ON THE CARE AND PROTECTION OF CHILD PARENTS BILL, 2023  
(SENATE BILLS NO. 29 OF 2023)**

<b>No</b>	<b>CLAUSE</b>	<b>STAKEHOLDER</b>	<b>PROPOSED AMENDMENT</b>	<b>JUSTIFICATION</b>	<b>COMMITTEE RESOLUTION</b>
1.	2	Council of Governors	Align the definition of the word “principal” with other laws	To align the term with other laws especially the Teachers Service Act.	Not adopted.
			Amend the definition of—  “county executive committee member” means the county executive committee member responsible for matters relating to matters related to children;	There is a need for narrowing down the CECM mandate to the CECM responsible for matters related to children which is more specific.	Not adopted.
2.	7	Council of Governors	Add a subclause (3) to provide: (3) The County Director of Education shall ensure that each institution develops a management plan for the support of any learners who fall pregnant while enrolled in the institutions.	There is a need for a mechanism of checks to ensure that the institutions develop these management plans.	Not adopted.

## **OTHER COMMENTS**

1. The Ministry of Labour and Social Protection made the following observations—

### **(a) PRELIMINARIES**

- (i) On Clause 2 definition of the term “child parent”, Section 144 of the Children Act, 2022 categorizes a child in need of care and protection. In particular, the children whose plight the Bill intends to address are captured under section 144 (i) (l) (q) (r) (u) (v) (y) (dd) (ee) and (ff). All these provisions when read together caters for a child parent as proposed in the Bill.
  
- (ii) On clause 2, the definition of the term principal in the Teachers Service Commission Act No.20 of 2012(TSC Act) is more comprehensive as it proceeds to state the Body that appoints the principal and further proceeds to give the responsibility of the principal which is to implement education policy guidelines and professional practices. This definition has also been adopted under the Basic Education Act.,2013. The definition in the TSC Act does not include borstal institution. However, the Borstal Institutions Act (Cap 92) Laws of Kenya, outlines the establishment and administration of these institutions. Additionally, section 88 of the Children Act,2022 empowers the Cabinet Secretary to appoint an inspection committee to inspect rehabilitation any rescue centre, child protection centre, charitable children’s institutions, remand homes or rehabilitation school or a borstal institutions.

(iii) Clause 3—

- (1) The Children Act, 2022 was enacted to give effect to Article 53 of the Constitution of Kenya 2010. Specifically, part II of the Act provides for the safeguards for the rights and best interests of the child with sections 5-29 elaborately making provisions for every child.
- (2) Section 13 of the Children Act, 2022 provides for the right to basic education for every child. The provisions of this section as read together with section 9, which makes a provision for non-discrimination, ensures that an expectant girl child and child parent have access to education and receive requisite care. Section 9 provides: No person shall discriminate against a child on the grounds of age, origin, sex, religion, creed, custom, language, opinion, conscience, color, birth, health status, pregnancy, social, political, economic or other status, race, disability, tribe, residence or local connection or any other status.
- (3) Section 63(1) of the Children Act 2022 assigns the responsibility of establishing children rescue centres in every County to the Cabinet Secretary responsible for matters relating to children's affairs. This is done in consultation with the National Council for Children's Services. In doing so, the Cabinet Secretary may collaborate with a County government for purposes of establishing these centres as demonstrated in s.63(6). Part VI of the Children Act,2022 recognises the role of county governments in the discharge of its functions as specified in part II of the Fourth Schedule of the Constitution of Kenya 2010. County governments are responsible for providing or facilitating the provision of pre-primary education and childcare facilities. This is done in consultation with Cabinet Secretary responsible for children matters as both the national and county governments are required

to develop policies and guidelines for carrying out these specified functions. This provides an opportunity for the National and County government to collaborate and carry out this function.

**(b) PART II- CARE OF EXPECTANT MOTHERS AND CHILD PARENTS**

(i) On clause 4 (2)—

- (1) This is a duplication of one of the functions assigned to the Council under section 42 of the Children Act. It is the responsibility of the National Council for Children's Services to inter alia formulate, approve, evaluate and monitor implementation of programmes to create public awareness in all matters relating to the rights and welfare of children.
- (2) The National Guidelines for School Re-entry Learning and Basic Education, 2020, a national guideline formulated by the Ministry of Education, outlines guidelines for the implementation of the Basic Education Act of 2013. This Guidelines together with the Children Act,2022 are adequate to cater for the needs of child parents and ensure that they continue with their education. The emphasis should be to implement these provisions and rather than enact a new law.
- (3) National Social Assistance Authority is established under the Social Assistance Act,2013. This Act was passed without policy guidance from my Ministry as well as the National Treasury hence has not been implemented to date due to governance challenges. The Act is currently in the process of being reviewed in order to come up with a comprehensive law to handle the social protection and social security in the country.
- (4) Funding is based on budgetary provision. The resources available to the Ministry cannot guarantee funding and sustainability to the initiative unless adequate funds are allocated for this purpose.

(ii) On clause 4 (3), section 42 of the Children Act has outlined the functions of the Council. Thus, it cannot be assigned more functions by another legislation which has not created it.

(iii) On clause 5, the Children Act,2022 is the main legislation on child protection. It assigns roles to various actors and specifically to the County governments as captured under sections 61 and 62 of the Act which gives effect to the Fourth Schedule part 2 paragraph 9 of the Constitution of Kenya 2010. Section 63(6) of the Act also provides for room for collaboration between the National and County governments in establishing children rescue centres.

**(c) PART III SCHOOL DROPOUT PREVENTION AND RE-ENTRY PROGRAMMES**

(i) On clause 6 (1), the roles of both the National and County Government is stipulated in the Children Act, 2022. Further, the National Guidelines for School Re-entry in Early Learning and Basic Education, 2020, a national guideline formulated by the Ministry of Education should be fully implemented in order to address this concern.

(ii) On clause 10 (3), The Clause contravenes the provisions of section 146 of The Children Act,2022 which requires an authorised officer to take such a child to a registered child health institution so as to receive the appropriate treatment and care. The authorised officer is thereafter required to notify the parent/guardian or a person who has parental responsibility over the child or the Secretary/his representative.

- (iii) On clause 11 (1), section 144 of the Children Act,2022 deems such a child to be in need of care and protection. Section 146 of the Children Act,2022 empowers an authorised officer to take such a child to a registered child health institution so as to receive the appropriate treatment and care. The issue of informed consent when conducting medical examination especially on a minor has not been addressed in the Bill. It is noted that it is the principal, who is not an authorised officer as per the Children Act 2022, who refers the child to a health institution or medical examination.
- (iv) On clause 14, it can only be carried out by authorized officers as per the Children Act, 2022 and not the management of the institution. If the pregnancy is as a result of sexual violence including defilement, then such are handled in accordance with the provisions of the Sexual Offences Act, 2006 and Penal Code (Cap 63) Laws of Kenya.
- (v) On clause 15, perpetrators of sexual violence should be dealt with in accordance with the provisions of the Sexual Offences Act, 2006 and the Penal Code (Cap 63) Laws of Kenya and not handled administratively as proposed in the Bill. P Section 29 of the Children Act allows any person to institute court proceedings in order to safeguard the rights of a child which are deemed to have been denied, violated or infringed, or is threatened.

(d) **PART IV – ESTABLISHMENT OF CARE CENTRES**

- (i) The establishment of care centres should be in accordance with section 61,62 and 63(6) of the Children Act,2022 Further, section 67(2) of the Children Act 2022 guides on the placement of children in charitable children’s institutions(CCI): the placement of a child in a CCI shall be done a last resort.
  
- (ii) This is further retaliated in the seventh schedule 16(1) that CCI that is registered under section 65 of the Children Act 2001 shall not undertake any activity after 10 years from the date of commencement of this Act. The 2019 UN General Assembly Resolution on the Rights of the Child also focused on the promotion of family and community care rather institutional care.
  
- (iii) This approach is in line with Article 45 of the Constitution of Kenya 2010 which provides that the family is the natural and fundamental unit of society and the necessary basis of social order and shall enjoy the recognition and protection of the state. It is to this end that the National Care Reform for Children in Kenya was developed in 2022.
  
- (iv) The establishment of these care centres therefore goes against the family promotion and protection spirits and it impedes the effects implementation of the National Care Reform Strategy.
  
- (v) On clause 31, this is a function of the Secretary Children’s Services and not that of the County Executive Committee Member.
  
- (vi) The term “Authorized officers” is not defined in the Bill but under the Children Act, 2022.

(e) **GENERAL OBSERVATIONS AND RECOMMENDATION**

- (i) Under section 88 of the Children Act, 2022, the Cabinet Secretary responsible for matters relating to children can appoint an inspection committee to inspect rehabilitation any rescue centre, child protection centre, charitable children institutions, remand home or rehab schools or a borstal institution. The functions of the Inspection Committee are outlined in section 88(3) of the Act. The report on the recommendations of the Inspection committee are implemented by the Secretary of Children's Services.
- (ii) The Children Act, 2022 is the main legislation that makes provision for children rights, the care and protection of children, parental responsibility, alternative care of children and regulation of administration of children services. The Act further provides areas in which the national and county government may collaborate to ensure that the provisions of the Act are effected.
- (iii) No gap has been identified as all the Clauses in the Bill are addressed by the provisions of the Children Act, 2022. Further, the Basic Education Act, 2013 and the *National Guidelines for School Re-entry in Early Learning and Basic Education, 2020* by the Ministry of Education provide support services for the re-entry of learners who, for whatever circumstances including pregnancy, have been out of school. The Guidelines outline the necessary support services for this category of children. In the circumstances, the Ministry of Labour & Social Protection objects to enactment of this Bill.

(iv) We are in the process of developing key regulations and guidelines in order to fully implement the Children Act, 2022. Enactment of this Bill into law will lead to a duplication as all the areas have already been addressed by existing law

2. World Youth Alliance Africa noted that the Bill—

- (a) grants children autonomy without considering their legal capacity, potentially leading to decisions beyond their understanding and maturity;
- (b) lacks emphasis on parental roles and responsibilities, allowing institutions to withhold information from parents and protecting decision-makers from consequences; and
- (c) overlooks the critical issue of defilement, not adequately protecting children from exploitation and abuse.

3. Nyeri County Budget Coalition (NCBC) requested the Committee to include—

- (a) obligations of parents or guardians and institutions of special education; and
- (b) exemption for special needs children above the age of 3 years in the indicated statement.

4. The Council of Governors noted the need—

- (a) to have a robust record management system under the Bill for purposes of tracking of child parents who are being supported under the Bill until they can support themselves. This will enable good use of resources on children who are actually in need of the same at a particular time;
- (b) for implementers of the Bill to provide psychosocial support to the male child parents as the Bill focusses
- (c) on the female child parents; and

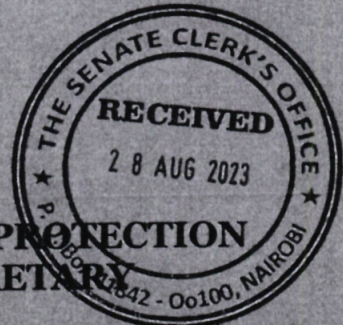
(d) for more robust support mechanisms for the children of the child parents beyond putting them in the care centres and follow-up mechanisms to ensure their welfare.

5. The National Gender and Equality Commission made the following submissions—

- (a) align the definition of the term “learner” with other laws;
- (b) include training institutions in the Bill;
- (c) provide a definition of “special needs”;
- (d) delete clause 10 (3);
- (e) delete clause 11(3) as medical diagnosis of pregnancy is needed;
- (f) registers of pregnancies should be provided for records and data; and
- (g) the care centres should be affordable.

#### **LIST OF STAKEHOLDERS**

- 1. The Ministry of Labour and Social Welfare
- 2. The Council of Governors
- 3. Nyeri County Budget Coalition (NCBC)
- 4. World Youth Alliance Africa
- 5. The National Gender and Equality Commission



**MINISTRY OF LABOUR AND SOCIAL PROTECTION  
OFFICE OF THE CABINET SECRETARY**

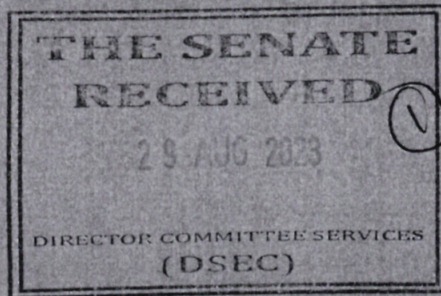
Tel: +254 (020) 2729805  
Website: [www.labour.go.ke](http://www.labour.go.ke)  
Email: [cs@labour.go.ke](mailto:cs@labour.go.ke)  
When replying, please quote

Social Security House, Bishops Road  
Block "A"  
P.O. Box 40326-00100  
Nairobi, KENYA

Ref. No: ML&SP/37/3/Vol.I (41)

25<sup>th</sup> August, 2023

**J. M. Nyegenye, CBS**  
Clerk of Senate  
P.O BOX 41842 -00100  
NAIROBI



DSEC  
~~DSEC~~  
DLS  
Note and deal  
29/08/2023

Dear *J.M. Nyegenye,*

**RE: SUBMISSION OF RESPONSES- STAKEHOLDERS' ENGAGEMENT  
ON THE CARE AND PROTECTION OF CHILD PARENT BILL**

Reference is made to your letter Ref. SEN/DSEC/SCLSW/2023/167 dated 17<sup>th</sup> August, 2023 inviting me to appear before the Senate Standing Committee on Labour and Social Welfare to provide stakeholders input to the Care and Protection of Child Parent Bill, 2023.

This is therefore to forward the responses ahead of virtual presentation to the Committee on Monday on 28<sup>th</sup> August, 2023.

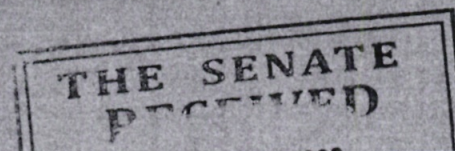
Yours *sincerely,*

Hon. Florence Bore  
**CABINET SECRETARY**

② *Hon. Ms. Kibaki*  
*Kindly deal*  
*[Signature]*  
29/08/2023

③ *Ms. Mwanate*  
*Kindly deal*  
*Wobah*  
29/08/2023

**Copy to: Mr. Joseph J. Motari, MBS**  
Principal Secretary  
State Department for Social Protection and Senior Citizens Affairs  
Ministry of Labour and Social Protection  
P. O. BOX 40326-00100  
NAIROBI







## MINISTRY OF LABOUR AND SOCIAL PROTECTION

### **STAKEHOLDERS SUBMISSIONS ON THE CARE AND PROTECTION OF CHILD PARENTS BILL, 2023 TO THE SENATE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE**

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The following is the Ministry's position on the Care and Protection of Child Parents Bill No.29 of 2023 (hereinafter "the Bill") sponsored by Hon. Miraj Abdillahi Abdulrahman.

#### **A. INTRODUCTION**

Children welfare, care and penal protection are functions performed by the State Department for Social Protection & Senior Citizen Affairs within the Ministry of Labour and Social Protection. These functions are performed through the implementation of the Children Act, 2022. This Act is the main legislation which outlines provisions on protection of children. It gives effect to Articles 53 of the Constitution of Kenya, 2010 on matters relating to children. The Act also gives effect to other Articles of the Constitution of Kenya *to wit* Articles 27, 47, 48, 49, 50 and 51 as they touch on the rights of children.

#### **B. COMMENTS ON THE BILL**

The Object and Basic principles of the Bill is to provide a framework for the care and protection of child parents within the Counties; to provide a framework through which an expectant girl child or a child parent may actualize their right to basic education and at the same time ensure the care of their children; provide a framework of standards for the establishment and regulation of care centres by county governments.

We respond as thus:

#### **PART I-PRELIMINARY**

These are Clauses 1 to 3 of the Bill.

1. **Clause 2** of the Bill defines a child parent as:

In this Act-

“child parent” means a person who has not attained the age of eighteen years and is a mother or a father of a child.

**Comment: -**

Section 144 of the Children Act, 2022 categorizes a child in need of care and protection. In particular, the children whose plight the Bill intends to address are captured under section 144 (i) (l) (q) (r) (u) (v) (y) (dd) (ee) and (ff).

All these provisions when read together caters for a child parent as proposed in the Bill.

2. **Clause 2** of the Bill defines principal as:

“principal” means the lead educator or administrator in an institution of basic education and training and includes the proprietor or director of a private school or a person in charge of a borstal institution; -

**Comment:**

The definition of the term *principal* in the Teachers Service Commission Act No.20 of 2012(TSC Act) is more comprehensive as it proceeds to state the Body that appoints the principal and further proceeds to give the responsibility of the principal which is to implement education policy guidelines and professional practices. This definition has also been adopted under the Basic Education Act,2013.

The definition in the TSC Act does not include borstal institution. However, the Borstal Institutions Act (Cap 92) Laws of Kenya, outlines the establishment and administration of these institutions. Additionally, section 88 of the Children Act,2022 empowers the Cabinet Secretary to appoint an inspection committee to inspect rehabilitation any rescue centre, child protection centre, charitable children’s institutions, remand homes or rehabilitation school or a borstal institutions

3. **Clause 3** of the Bill focuses on the objects as follows:

The object of this Act are to—

- (a) provide a framework for the protection of the rights set out under Article 53(1)(c) and (d) of the Constitution in relation to child parents; -

**Comment:**

The Children Act, 2022 was enacted to give effect to Article 53 of the Constitution of Kenya 2010. Specifically, part II of the Act provides for the safeguards for the rights and best interests of the child with sections 5-29 elaborately making provisions for every child.

- (b) provide a framework through which the expectant girl child and a child parent can realize their right to education and at the same time, ensure the care and protection of his or her child; and

**Comment: -**

Section 13 of the Children Act, 2022 provides for the right to basic education for every child. The provisions of this section as read together with section 9, which makes a provision for non-discrimination, ensures that an expectant girl child and child parent have access to education and receive requisite care.

Section 9 provides: No person shall discriminate against a child on the grounds of age, origin, sex, religion, creed, custom, language, opinion, conscience, color, birth, health status, **pregnancy**, social, political, economic or other status, race, disability, tribe, residence or local connection or any other status.

- (c) provide a framework of standards for the establishment and regulation of care centres by county governments.

**Comment: -**

Section 63(1) of the Children Act 2022 assigns the responsibility of establishing children rescue centres in every County to the Cabinet Secretary responsible for matters relating to children's affairs. This is done in consultation with the National Council for Children's Services.

In doing so, the Cabinet Secretary may collaborate with a County government for purposes of establishing these centres as demonstrated in s.63(6).

Part VI of the Children Act, 2022 recognises the role of county governments in the discharge of its functions as specified in part II of the Fourth Schedule of the Constitution of Kenya 2010. County governments are responsible for providing or facilitating the provision of pre-primary education and childcare facilities. This is done in consultation with Cabinet Secretary responsible for children matters as both the national and county governments are required to develop policies and guidelines for carrying out these specified functions.

This provides an opportunity for the National and County government to collaborate and carry out this function.

## **PART II – CARE OF EXPECTANT CHILDREN AND CHILD PARENTS**

These are Clauses 4 and 5 of the Bill

### **4. Clause 4(2) of the Bill provides that:**

In ensuring that the National Government fulfils its obligations under subsection (1), the Council shall —

- (a) put in place mechanisms that will help establish a comprehensive capacity building programme for child parents to ensure they practice responsible parenting;

#### **Comment: -**

This is a duplication of one of the functions assigned to the Council under section 42 of the Children Act. It is the responsibility of the National Council for Children's Services to *inter alia* formulate, approve, evaluate and monitor implementation of programmes to create public awareness in all matters relating to the rights and welfare of children.

- (b) establish, in consultation with the Cabinet Secretary responsible for matters relating to education, non-discriminatory enrolment, back to school or other training programmes and initiate necessary strategies that will identify persons within this group to benefit from the programmes;

#### **Comment: -**

The *National Guidelines for School Re-entry Learning and Basic Education, 2020*, a national guideline formulated by the Ministry of Education, outlines guidelines for the implementation of the Basic Education Act of 2013.

This Guidelines together with the Children Act, 2022 are adequate to cater for the needs of child parents and ensure that they continue with their education. The emphasis should be to implement these provisions and rather than enact a new law.

- (c) collaborate with the National Social Assistance Authority to ensure that needy child parents of children born with special needs or care takers of such needy parents, are beneficiaries of social assistance

**Comment:**

National Social Assistance Authority is established under the Social Assistance Act,2013. This Act was passed without policy guidance from my Ministry as well as the National Treasury hence has not been implemented to date due to governance challenges. The Act is currently in the process of being reviewed in order to come up with a comprehensive law to handle the social protection and social security in the country.

- (d) address any educational and related barriers faced by pregnant and parenting learners; and

**Comment: -**

This is the responsibility of the Ministry of Education.

- (e) guarantee funding and sustainability of the initiative and other child welfare programmes aimed at benefiting child parents

**Comment: -**

Funding is based on budgetary provision. The resources available to the Ministry cannot guarantee funding and sustainability to the initiative unless adequate funds are allocated for this purpose.

**5. Clause 4(3) of the Bill provides:**

In performing its functions under subsection (1), the Council shall —

- (a) collaborate with the relevant public entities in the establishment of mechanisms that ensure that expectant children and child parents have access to community and State based care support systems;

**Comment: -**

Section 42 of the Children Act has outlined the functions of the Council. Thus, it cannot be assigned more functions by another legislation which has not created it.

**6. Clause 5 of the Bill provides for obligations of the county government with respect to the care of neglected children.**

**Comment: -**

The Children Act,2022 is the main legislation on child protection. It assigns roles to various actors and specifically to the County governments as captured under sections 61 and 62 of the Act which gives effect to the Fourth Schedule part 2 paragraph 9 of the Constitution of Kenya 2010. Section 63(6) of the Act also provides for room for collaboration between the National and County governments in establishing children rescue centres.

**PART III - SCHOOL DROP OUT PREVENTION AND RE-ENTRY PROGRAMMES**

This part tackles Clauses 6 to 20 of the Bill.

7. **Clause 6(1)** of the Bill makes provisions for the role of national and county governments in the prevention of drop out.

**Comment: –**

The roles of both the National and County Government is stipulated in the Children Act, 2022. Further, the *National Guidelines for School Re-entry in Early Learning and Basic Education, 2020*, a national guideline formulated by the Ministry of Education should be fully implemented in order to address this concern.

8. **Clause 10** of the Bill on management of teenage pregnancies in school:  
10(3) The principal shall not inform the parent or guardian of the child's pregnancy where they have sufficient grounds to believe that it may prejudice the safety and wellbeing of the pregnant child.

**Comment: -**

This Clause contravenes the provisions of section 146 of The Children Act,2022 which requires an authorised officer to take such a child to a registered child health institution so as to receive the appropriate treatment and care. The authorised officer is thereafter required to notify the parent/guardian or a person who has parental responsibility over the child or the Secretary/his representative.

(\* Secretary here is the Secretary of Children's Services appointed in accordance with section 37 of the Children Act,2022)

**9. Clause 11(1) of the Bill provides that:**

Where the principal of the institution of basic education is of the opinion that child may be pregnant, the principal shall refer the child to a health institution or a medical examination and such other health examination as may be necessary to determine the status of the child.

**Comment: -**

Section 144 of the Children Act,2022 deems such a child to be in need of care and protection. Section 146 of the Children Act,2022 empowers an authorised officer to take such a child to a registered child health institution so as to receive the appropriate treatment and care.

The issue of informed consent when conducting medical examination especially on a minor has not been addressed in the Bill. It is noted that it is the principal, who is not an authorised officer as per the Children Act 2022, who refers the child to a health institution or medical examination.

**10. Clause 14 of the Bill provides that:**

Every case of a child who falls pregnant in an institution of basic education and training shall be handled by the management of the institution in a manner that ensures confidentiality.

**Comment: -**

This can only be carried out by authorized officers as per the Children Act, 2022 and not the management of the institution. If the pregnancy is as a result of sexual violence including defilement, then such are handled in accordance with the provisions of the Sexual Offences Act, 2006 and Penal Code (Cap 63) Laws of Kenya.

**11. Clause 15 of the Bill provides that:**

Where it is determined that the person responsible for the pregnancy is an adult, the principal shall report the case to the County Director of Education, the nearest police station and the Council.

**Comment: -**

Perpetrators of sexual violence should be dealt with in accordance with the provisions of the Sexual Offences Act, 2006 and the Penal Code (Cap 63) Laws of Kenya and not handled administratively as proposed in the Bill.

In addition, Section 29 of the Children Act allows any person to institute court proceedings in order to safeguard the rights of a child which are deemed to have been denied, violated or infringed, or is threatened.

#### **PART IV - ESTABLISHMENT OF CARE CENTRES**

12. These are Clauses 21 to 31 of the Bill.

The establishment of care centers, services rendered thereto, the requirements for the registration and licensing of care centres are captured in part IV of the Bill.

**Comment: -**

As mentioned in paragraph 3 above, establishment of care centres should be in accordance with section 61,62 and 63(6) of the Children Act,2022

Further, section 67(2) of the Children Act 2022 guides on the placement of children in charitable children's institutions(CCI): the placement of a child in a CCI shall be done a last resort. This is further retaliated in the seventh schedule 16(1) that CCI that is registered under section 65 of the Children Act 2001 shall not undertake any activity after 10 years from the date of commencement of this Act.

The 2019 UN General Assembly Resolution on the Rights of the Child also focused on the promotion of family and community care rather institutional care. This approach is in line with Article 45 of the Constitution of Kenya 2010 which provides that the family is the natural and fundamental unit of society and the necessary basis of social order and shall enjoy the recognition and protection of the state. It is to this end that the National Care Reform for Children in Kenya was developed in 2022.

The establishment of these care centres therefore goes against the family promotion and protection spirits and it impedes the effects implementation of the National Care Reform Strategy.

13. **Clause 31** of the Bill provides that:

A county executive committee member may establish a committee and appoint such authorized officers as may be necessary for the implementation of the provisions of this Act.

**Comment:** -

This is a function of the Secretary Children's Services and not that of the County Executive Committee Member.

The term "Authorized officers" is not defined in the Bill but under the Children Act, 2022.

**PART V – CARE OF CHILDREN WITHIN A CARE CENTRE**

14. These are Clauses 32 to 36 of the Bill

**Comment:**

Section 65 of the Children Act, 2022 mandates the Council to put in place the necessary regulations that the Bill proposes in its provisions.

**PART VI – INSPECTION AND EVALUATION OF SAFETY IN A CARE CENTRE**

15. These are Clauses 37 to 39 of the Bill

**Comment:**

Under section 88 of the Children Act, 2022 the Cabinet Secretary responsible for matters relating to children can appoint an inspection committee to inspect rehabilitation any rescue centre, child protection centre, charitable children institutions, remand home or rehab schools or a borstal institution.

The functions of the Inspection Committee are outlined in section 88(3) of the Act. The report on the recommendations of the Inspection committee are implemented by the Secretary of Children's Services.

**PART VII – MISCELLANEOUS PROVISIONS**

16. These are Clauses 40-42 of the Bill.

**Comment:** -

These provisions for general offences, general penalty and formulation of Regulation by the Cabinet Secretary should be addressed once the Children Act, 2022 on its full implementation.

### **C. CONCLUSION**

The Children Act, 2022 is the main legislation that makes provision for children rights, the care and protection of children, parental responsibility, alternative care of children and regulation of administration of children services. The Act further provides areas in which the national and county government may collaborate to ensure that the provisions of the Act are effected. No gap has been identified as all the Clauses in the Bill are addressed by the provisions of the Children Act, 2022.

Further, the Basic Education Act, 2013 and the *National Guidelines for School Re-entry in Early Learning and Basic Education, 2020* by the Ministry of Education provide support services for the re-entry of learners who, for whatever circumstances including pregnancy, have been out of school. The Guidelines outline the necessary support services for this category of children.

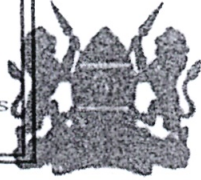
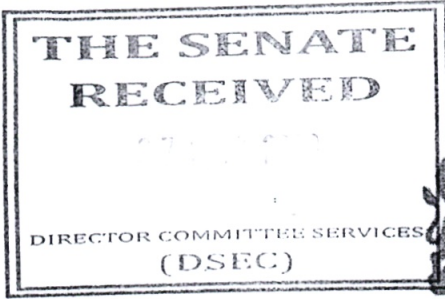
In the circumstances, the Ministry of Labour & Social Protection objects to enactment of this Bill. We are in the process of developing key regulations and guidelines in order to fully implement the Children Act, 2022. Enactment of this Bill into law will lead to a duplication as all the areas have already been addressed by existing laws.

SUBMISSIONS BY



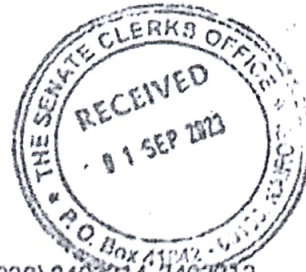
Hon. Florence Bore

**CABINET SECRETARY FOR LABOUR AND SOCIAL PROTECTION**

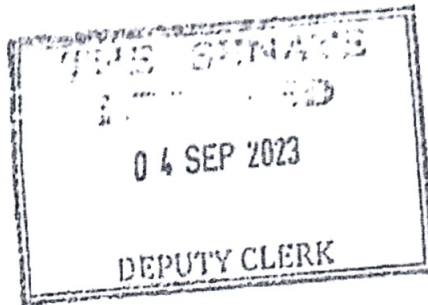


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Our Ref: COG/2/10 Vol. 19

31<sup>st</sup> August 2023

The Clerk of the Senate  
P.O Box 41482-00100  
Nairobi.

**LEGISLATIVE MEMORANDA ON THE CARE AND PROTECTION OF CHILD PARENTS BILL  
(SENATE BILLS NO. 29 OF 2023)**

Greetings from the Council of Governors.

Reference is made to the above matter.

Attached herewith, please find a memorandum on the Care and Protection of Child Parents Bill (Senate Bills No. 29 of 2023) for your kind consideration.

Please accept our highest esteem and regards.

Mary Mwiti  
Chief Executive Officer

D.S.L.C  
D.H.S

Kindly deal

*Ms. Mwanate  
Randy deal  
Kibati  
11/09/2023*

*Soj/09/2023*



## COUNCIL OF GOVERNORS

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Greetings from the Council of Governors.

Reference is made to the above matter.

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Please accept our highest esteem and regards.

**Mary Mwiti**  
**Chief Executive Officer**



**COUNCIL OF GOVERNORS**

**LEGISLATIVE MEMORANDUM ON THE CARE AND PROTECTION OF CHILD PARENTS BILL, 2023**

**TO**

**THE SENATE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE**

**FROM**

**THE COUNCIL OF GOVERNORS**

**THURSDAY, 31<sup>ST</sup> AUGUST, 2023**

The Council of Governors,

**In recognition** of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the national level and the county level;

**In further recognition** of Article 6 (2) that governments at the national and county levels are distinct; and

**Aware** of the need for coordination and consultation between the National Government and County Governments to ensure that legislation responds to the key issues facing devolution, and further reflects the spirit and objects of devolution.

The Council lauds the efforts to enact the Care and Protection of Child Parents Bill, 2023 (the “**Bill**”) as a step in the right direction towards implementation of Article 53 of the Constitution of Kenya on the rights of children. Article 53 (b) provides for compulsory education and does not provide any exemption thereto. The Council also recognizes that enactment of the Bill is in keeping with the State’s duty under Article 21 (3) of the Constitution to address the needs of vulnerable groups within society including among others children and to fulfil its international obligations in respect of human rights and fundamental freedoms.

#### **A. General comments on the Bill**

1. The Council notes that existing laws in Kenya provide for the right to education for all children, including expectant children and child parents. The Basic Education Act, 2013 and the Children Act, 2022 provide for free and compulsory education without exemptions. In particular, Section 13 of the Children Act, 2022 provides for the right to **basic education** for every child. Further, Section 9 of the Children Act provides that no person shall discriminate against a child on the grounds of among others **pregnancy**. These Sections, as read together ensure that an expectant girl child and child parent have access to education and receive requisite care. Section 144 provides for categories of children to be considered as in need of care and protection which includes a child (i) whose parent or guardian is below eighteen years of age; (k) who is being denied education; (r) who is pregnant or who is responsible for the pregnancy of another child; and (dd) who heads or lives in a child-headed household.
2. Most countries do not have stand-alone laws on the subject matter of child parents. Most of their provisions are enshrined in their Children Act and regulations developed/ policies/ guidelines developed to give effect to the provisions. This position could offer

guidance in whether we require the Bill seeing as the right to education is already provided for in our laws which could be amended and Regulations thereto enacted to cater for what is not in the Bill.

3. The Council notes that the Bill should **not** be a **County legislation** as county functions are limited to education in ECDE and childcare facilities management in Part 2 of the Fourth Schedule of the Constitution. Noting that child parents would ordinarily not be in ECDE level, there is need to rationalize the obligations of county governments in the Bill since it repeatedly delineates county functions and those of the national government.
4. The Council notes the need for clarity on whether the child care centres envisaged in the Bill are the same as the Childcare facilities provided for in Paragraph 9 of Part 2 of the Fourth Schedule as read with Section 62 of the Children Act. If they are the same, providing for them under the Bill would be limiting their services to the population covered by the Bill.
5. The Council notes that some provisions of the Bill are contained in and contradict the *National Guidelines for School Re-entry in Early Learning and Basic Education, 2020* and there is need to harmonize the two documents. These provisions include:
  - a) **Clause 10 (3)** of the Bill allows the principal to fail to inform the parent/guardian of the child's pregnancy where they have sufficient grounds to believe that it may prejudice the safety and wellbeing of the pregnant child. However, **Paragraph 3.2** of the Guidelines make it mandatory for the principal to inform the child's parents/guardians. The key consideration should be the best interest of a child.
  - b) **Clause 8 (2) (c)** of the Bill provides that the child can return to her regular education programme after delivery and after the baby is weaned. **Paragraph 3.2** of the Guidelines however provides that the child is to re-enter school **six (6) months** after delivery which is supposed to be at the beginning of the next calendar year.
  - c) **Clause 15 (1)** of the Bill provides that the principal shall report the case to the County Director of Education, the nearest police station and the Council yet **Paragraph 3.2** of the Guidelines require that the principal reports to the Ministry of Education office, the police and the children department.

Section 4 of the Children Act states that the Act shall prevail in the case of any inconsistency between the Children Act and any other legislation on children matters. It further states that the other legislation prevails if they offer a greater benefit in law to a child. This requires rationalization.

6. The above notwithstanding, the Council also notes the need to have a robust record management system under the Bill for purposes of tracking of child parents who are being supported under the Bill until they can support themselves. This will enable good use of resources on children who are actually in need of the same at a particular time.
7. Moreover, there is need for implementers of the Bill to provide psychosocial support to the male child parents as the Bill focusses on the female child parents.
8. There is also need for robust support mechanisms for the children of the child parents beyond putting them in the care centres and follow-up mechanisms to ensure their welfare.
9. The Bill also needs to clearly delineate the functions of the national and county governments in the prevention of drop out and re-admission of dropout children under Clauses 6 and 9 respectively.

In conclusion, the Council is of the view that the rights of child parents sought to be provided for in the Bill are contained in existing laws on children. In the upshot, we do not require a standalone law on child parents as any legislative gaps can be addressed by amendments or regulations. However, the Bill can be revised to provide a framework for childcare centres generally, beyond the scope of child parents. This view notwithstanding, we give our specific comments to the Bill as hereunder.

#### B. Specific Comments

CLAUSE OF THE BILL	PROVISION IN THE BILL	PROPOSED CHANGE	RATIONALE/JUSTIFICATION
Long title	AN ACT of Parliament to provide a framework for the care and protection of child parents <b>within the Counties</b> ; to provide a framework through which an expectant girl child or a child parent may actualise their right to basic education and at the same time ensure the care of their	<b>Amend the long title to provide as follows:</b>  AN ACT of Parliament to provide a framework for the care and protection of child parents <del>within the Counties</del> ; to provide a framework through which an expectant girl child or a child parent may actualise their right to basic education and at the same time ensure the care of	The Bill is not entirely a county legislation as county functions are limited to education in ECDE and childcare facilities management. There is a need for the Bill to have a national outlook because the right to educating a child is a responsibility of the State under Article 53 of the Constitution.

	children; and for connected purposes.	their children; and for connected purposes.	
Clause 2	“principal” means the lead educator or administrator in an institution of basic education and training and includes the proprietor or director of a private school or a person in charge of a borstal institution;	<b>Amend the definition to provide as follows:</b>  “principal” means the lead educator or administrator in an institution of basic education and training and includes the proprietor or director of a private school or a person in charge of a borstal institution or a rehabilitation school;	The definition should include Rehabilitation schools as they form part of the children institutions that offer education/ training for children. This is pursuant to Sections 78 of the Children Act.
	“county executive committee member” means the county executive committee member responsible for matters relating to <b>social services</b> ;	<b>Amend the definition to provide as follows:</b>  “county executive committee member” means the county executive committee member responsible for matters relating to <b>matters related to children</b> ;	There is a need for narrowing down the CECM mandate to the CECM responsible for matters related to children which is more specific.
Clause 4 (2)	(2) In ensuring that the National Government fulfils its obligations under subsection (1), <b>the Council</b> shall-	<b>Amend the clause to provide as follows:</b>  (2) In ensuring that the National Government fulfils its obligations under subsection (1), <b>the National Government</b> shall-	There is need to maintain consistency of who is being assigned the obligations under this Clause.
Clause 7- Management plans.	7. (1) Each institution of basic education and training shall develop a management plan for	<b>Add a sub clause (3) to provide:</b>	There is a need for a mechanism of checks to ensure that the institutions develop these management plans.

	<p>the support of any learner who falls pregnant while enrolled in the institution.</p> <p>(2) The management board of an institution of basic education and training shall –</p> <p>(a) put in place programmes with the aim of preventing teenage pregnancies;</p> <p>(b) treat each case of a learner who falls pregnant while in an institution of basic education and training confidentially and professionally;</p> <p>(c) adopt an inclusive approach that involves the support of the child and parents or guardians of the affected child or children who are at risk of dropping out of school; and</p> <p>(d) in putting in place interventions or responses in situations of child drop out, ensure that the educational interests of the child are upheld.</p>	<p>(3) The County Director of Education shall ensure that each institution develops a management plan for the support of any learners who fall pregnant while enrolled in the institutions.</p>	
<p>Clause 10- Management of teenage pregnancies in school.</p>	<p><b>(3) The principal shall not inform the parent or guardian of the child's pregnancy where they have sufficient grounds to believe that it may prejudice the safety</b></p>	<p>Delete Clause 10 (3)</p>	<p>The provision contradicts Clause 15 (1) of the National Guidelines for School Re-entry in Early Learning and Basic Education, 2020 and does not provide for what the principal does with this</p>

	and wellbeing of the pregnant child.		information if the parent/guardian of the child is not informed.
Clause 11- Medical examination	<p>11. (1) Where the principal of the institution of basic education is of the opinion that child may be pregnant, the principal shall refer the child to a health institution for a medical examination and such other health examination as may be necessary to determine the status of the child.</p> <p>(2)A child shall not be compelled to undergo a medical examination where she refuses to undergo the examination.</p>	<p><b>Amend Clause 11 (1) and (2) as follows:</b></p> <p>11. (1) Where the principal of the institution of basic education is of the opinion that child may be pregnant, the principal shall refer the child to a health institution for a medical examination and such other health examination as may be necessary to determine the status of the child and shall inform the parent or guardian of the child.</p> <p>(2)A child shall not be compelled to undergo a medical examination where she refuses to undergo the examination and such refusal shall be communicated to the parent or guardian of the child.</p>	<p>This will align the provision with the National Guidelines for School Re-entry in Early Learning and Basic Education, 2020.</p> <p>The child's parent/guardian needs to be informed of the medical examination of their child and any refusal to be examined, if at all. This will align the provision with the National Guidelines for School Re-entry in Early Learning and Basic Education, 2020.</p>
Clause 15- Disclosure of the identity of the person responsible for a child's pregnancy.	<p>15. (1) Where it is determined that the person responsible for the pregnancy is an adult, the principal shall report the case to the County Director of Education, the nearest police station and the Council.</p>	<p><b>Amend Clause 15 (1) and (2) to:</b></p> <p>15. (1) Where it is determined that the person responsible for the pregnancy is an adult, the principal shall report the case to the County Director of Education the nearest police station and the Council within a period of seven days.</p>	<p>The provision also needs to provide a timeline for filing such reports for accountability purposes.</p>

<p>Clause 38 (2)</p>	<p>(2) The County Public Service Board shall, in consultation with the county executive committee member, issue to every inspector appointed under subsection (1) in writing or in such form as the County Public Service Board may determine, a certificate of appointment and authority to act as an inspector.</p>	<p>(2) <b>The county executive committee member shall issue</b> to every inspector appointed under subsection (1) in writing or in such form as <b>the county executive committee member</b> may determine, a certificate of appointment and authority to act as an inspector. <b>The County Public Service Board may set standards for such appointments.</b></p>	<p>This should be the mandate of the CECM who already designated officers as inspectors as opposed to that of the CPSB as it is not a new appointee.</p>
<p>Clause Regulations 41-</p>	<p>41. (1) The Cabinet Secretary may, in consultation with the Council, make regulations generally for the better carrying out of the provisions of this Act.</p>	<p><b>Amend Clause 39 (1) to provide as follows:</b></p> <p>(1) The Cabinet Secretary may, in consultation with the Council <b>and County Governments</b>, make regulations generally for the better carrying out of the provisions of this Act.</p>	<p>This will align the Clause with Paragraph 9 of Part 2 of the Fourth Schedule to the Constitution which provides that County Government shall be responsible for pre-primary education, village polytechnics, home craft centers and <u>childcare facilities</u>. Giving the CS the mandate to make Regulations without involving county governments may claw back on this function.</p>



**COUNCIL OF GOVERNORS**

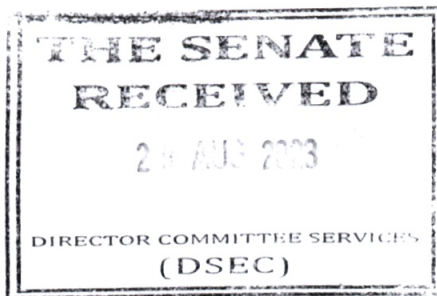
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**Our Ref: COG/6/10 Vol. 12 (33)**

25<sup>th</sup> August 2023

**J. M. Nyegenye, CBS,**  
The Clerk of the Senate,  
P.O Box 41482-00100,  
Nairobi.



① DSEC. ✓  
DLS.  
Note and deal.  
J  
29/8/2023

Dear Clerk,

**SUBMISSION OF LEGISLATIVE MEMORANDUM ON THE COUNTY HALL OF FAME BILL, 2023 (SENATE BILLS NO. 18 OF 2023)**

The above matter refers.

The Council of Governors has reviewed the County Hall of Fame Bill, 2023 (**Senate Bill No. 18 of 2023**) and hereby forwards the legislative memorandum attached herewith for your consideration.

Please accept our highest esteem and regards.

Yours sincerely,

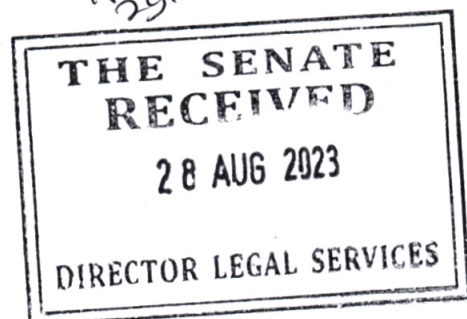
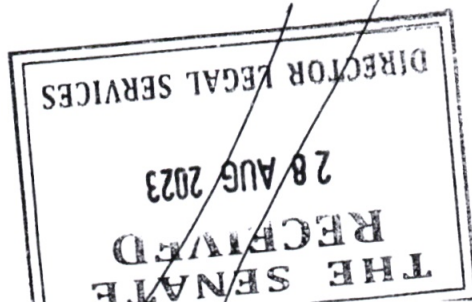
**Mary Mwiti**  
**Chief Executive Officer**

② HOD - Ms. Kibati

Kindly deal

29/08/2023

③ Ms. Mwanate  
Kindly deal  
Kibati  
29/08/2023





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**COUNCIL OF GOVERNORS**

**LEGISLATIVE MEMORANDUM ON THE COUNTY HALL OF FAME BILL, 2023**

**From  
THE COUNCIL OF GOVERNORS**

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## MEMORANDUM ON THE THE COUNTY HALL OF FAME BILL, 2023

The Council of Governors,

**In recognition** of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the national level and the county level;

**In further recognition** of Article 6 (2) that governments at the national and county levels are distinct; and

**Aware** of the need for coordination and consultation between the National Government and County Governments to ensure that legislation responds to the key issues facing devolution, and further reflects the spirit and objects of devolution.

### **A. GENERAL COMMENTS**

1. Article 96 of the Constitution endows Senate with the law-making function of parliament by considering, debating and approving Bills concerning Counties, as provided in Articles 109 and 110.
2. The Council of Governors lauds the efforts geared towards the enactment of the County Hall of Fame Bill, 2023 and is in support of the same as it purely concerns County Governments and provides a framework for County Governments to honor persons who may not necessarily be recognized at the National Level but are heroes and heroines within their respective counties.
3. Further, the Bill is a step in the right direction towards the preservation of the history, heritage and culture of respective counties
4. The Council is further cognizant of the Protection Of Traditional Knowledge And Cultural Expressions Act,2016 which provides a framework for the protection and promotion of traditional knowledge and cultural expressions; to give effect to Articles 11, 40 and 69(1)(c) of the Constitution. Section 4 of The Act endows County Governments with the responsibility of protection and preservation of cultural knowledge within the County as similarly expressed under Clause 18 of the Bill.

**B. SPECIFIC COMMENTS**

The Council proposes the following specific amendments to the Bill;

CLAUSE/ SUB-CLAUSE OF THE BILL	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
<p><b>Clause 6</b></p> <p><b>County hall of fame selection Committee.</b></p>	<p>There is established a Selection Committee which shall consist of —</p> <p>(a) the county executive committee member responsible for culture and heritage who shall be the chairperson;</p> <p>(b) the Clerk of the County Assembly;</p> <p>(c) the chairperson of the County Public Service Board;</p> <p>(d) two public officers nominated by the county Public service Board.</p>	<p>Amend the membership of the committee to include additional members as follows:</p> <p>There is established a Selection Committee which shall consist of —</p> <p>(a)The county executive committee member responsible for culture and heritage who shall be the chairperson.</p> <p><b>b.)The County Director responsible for Culture and heritage who shall be the secretary of the Committee</b></p> <p>(c)The Clerk of the County Assembly;</p> <p>(d)the chairperson of the County Public Service Board;</p> <p>(e) Two public officers nominated by the county Public service Board.</p> <p><b>(f) The County Attorney</b></p> <p><b>(g)Two representatives, one for the youth and another for persons</b></p>	<p>The director responsible for culture and heritage should form part of the membership as the secretary of the committee due to the technocrat expertise in matters culture and heritage. Further, there should be representatives from the youth and persons with disabilities. Inclusion of the two additional representatives will address the issue of inclusivity and equality in line with the Constitutional values.</p>

		<p><b>with disabilities</b></p> <p>6 (2) <b>The members of the Selection Committee shall hold office for a period of 5 years and shall be eligible for reappointment for a further 5 years</b></p>	<p>The Bill should be clear on the tenure of the committee members; also alive to the fact that a new regime may come to place after 5 years.</p>
<p><b>Clause 7</b></p> <p><b>Functions of the selection Committee</b></p>	<p>The functions of the Selection Committee shall be to —</p> <p>(a) Receive and consider representations from any person, body, association of persons or corporation recommending the induction of a person into the county hall of fame.</p> <p>(b) recommend to the governor, on its own motion or on a representation made under paragraph (a), persons who may be considered for induction into the county hall of fame;</p>	<p>Insert a new sub-clause (e) as follows: -</p> <p><b><u>e.) Officially receive donations and gifts on historical/ cultural items or artefacts made to the County</u></b></p>	<p>All donations in the form of artefacts or other historical items made to the County should be received by the Selection committee for preservation in the Hall of fame.</p>

	<p>(c) advise the governor on the suitability or otherwise of a person who is proposed for induction into the county hall of fame;</p> <p>(d) propose to the governor, the types, classes or categories of inductees into the county hall of fame; and</p> <p>(e) perform any other function that may be conferred</p>		
<p><b>Insertion of a new clause (10)</b></p> <p><b>Decision of the committee</b></p>	<p>Insert a new clause regarding decision of the committee</p>	<p>Insert a new clause (10) to read as follows:</p> <p><u>A decision of the selection committee shall be made by consensus but where there is no consensus, a decision shall be made by a majority of all the members of the Committee.</u></p>	<p>It is imperative for the Bill to expressly provide for the modalities of decision making by the selection committee both in instances of consensus or lack of it.</p>
<p><b>Clause 14</b></p> <p><b>Notification and</b></p>	<p>14. (1) Where the Selection Committee receives a petition under section 13, it shall, prior</p>	<p>Amend to read as follows:</p> <p>(1) Where the Selection</p>	<p>It is essential to set specific timelines within which the petition should be</p>

<p><b>public hearing</b></p>	<p>to forwarding its recommendation to the governor, publish and notify the members of the public within the county through such media and platforms established in the County pursuant to section 91 of the County Governments Act as it considers appropriate.</p> <p>(2) The Selection Committee shall invite views of the members of the public on the intended induction into the county hall of fame in the form of written submissions or through oral submissions made at a public forum held by the Selection Committee in such manner as it shall consider appropriate.</p>	<p>Committee receives a petition under section 13, it shall, prior to forwarding its recommendation to the governor, publish and notify the members of the county <u>within seven (7 days)</u> through such media and platforms established in the County pursuant to section 91 of the County Governments Act as it considers appropriate.</p> <p>2.) The Selection Committee shall invite views of the members of the public on the intended induction into the county hall of fame in the form of written submissions or through oral submissions made at a public forum held by the selection committee <u>within 14 days</u></p>	<p>published, receive views from the public and eventually forward the final recommendation to the governor. This will help in smooth execution of the exercise without unnecessary delays which may be inevitable if this provision is left open-ended</p>
<p><b>Clause 14(3)</b> <b>Notification and public hearing</b></p>	<p>14(3) The Selection Committee may, in the performance of its functions under this Act, consult with such other persons or bodies as it may</p>	<p>Amend to read as follows: 14(3) The Selection Committee may, in the performance of its functions under this Act, consult with such</p>	<p>The persons consulted by the selection committee in the performance of its functions should not have any conflict of interest</p>

	consider necessary.	other Persons or bodies as it may consider necessary <b><u>provided that such persons shall disclose any interest they may have in the matter or any subsequent interest acquired relating to the matter in question.</u></b>	whatsoever in the subject matter.
<b>Clause 14(6)</b>  <b>Notification and public hearing</b>	14 (6.) The provisions of this section shall, with such Modifications as may be necessary, apply to a petition by a resident of the county for the induction of a person into the County hall of fame.	14 (6.) The provisions of this section shall, with such modifications as may be necessary, apply to; a) A petition by a resident of the county for the induction of a person into the county hall of fame. b) <b><u>A recommendation from the selection committee on its own motion for persons who may be considered for induction into the county hall of fame;</u></b>	Recommendations made by the selection committee on its own motion should also be subjected to views from the public; similar to the petitions submitted by other County residents. This will enhance transparency and accountability in the selection process in line with Article 10 of the Constitution of Kenya 2010.
<b>14(8)</b>  <b>County specific legislation</b>	(8) A county government may enact county specific legislation to provide for — (a) the procedure for the consideration of petitions for induction into a county hall of fame under this Act (b) the types, categories or classes of persons that may be inducted into a county hall of	Delete the entire clause	The issues raised in sub-clause 8 (a) to (f) can be provided for the schedules or regulations inbuilt in the Bill as opposed to developing new legislation on the same

	<p>fame;</p> <p>(c) the precedence to be accorded to different categories of persons inducted into a county hall of fame;</p> <p>(d) the number of persons who may be inducted into a county hall of fame at a particular time;</p> <p>(e) the procedure for the suspension or revocation of an inductee from the county hall of fame; and 608 The County Hall of Fame Bill, 2023</p> <p>(f) The privileges or benefits that shall be accorded to a person who is admitted to a county hall of fame.</p>		
<p><b>Clause 17</b></p> <p><b>Regulations</b></p>	<p>The Cabinet Secretary may, with the approval of Senate, make Regulations for the better carrying out of this Act.</p>	<p>Amend to read as follows:</p> <p><b><u>The Executive Committee Member may make regulations for the better carrying out of the provisions of this Act within 6 months</u></b></p>	<p>The Executive Committee Members of the respective Counties should develop the Regulations to allow Counties to regulate on issues specific to their counties. This is owing to the fact that each County has its unique needs and priorities</p>



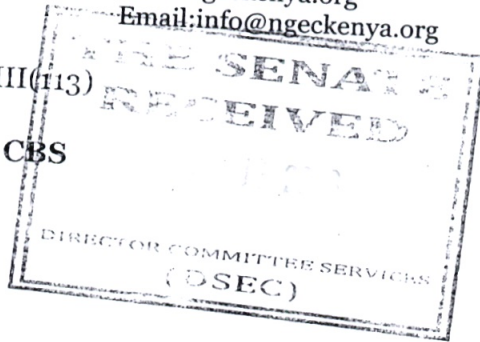
National Gender and Equality Commission  
 1st Floor, Solution Tech Place, 5 Longonot Road, Upper Hill, Nairobi  
 P.O Box 27512-00506 Nairobi, Kenya  
 Landline: +254(020) 3213100  
 Mobile: +254(020) 375100  
 Toll Free :0800 720187  
 www.ngeckkenya.org  
 Email:info@ngeckkenya.org

DSEC  
 DLS  
 Note and deal  
 25/8/2023

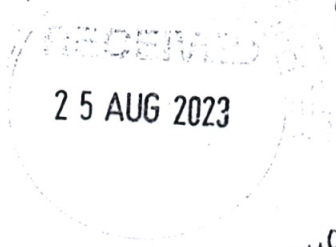
Ms. Kibati  
 Kindly deal  
 28/8/2023

When replying please quote

Ref: No:.....NGEC/CS/NAS/005/VOL.III(i13)



24th August, 2023



**Jeremiah M. Nyegenye. CBS**  
 The Clerk  
 Clerk's Chambers  
 Parliament Building  
 P.O. Box 41842-00100  
 NAIROBI

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

Dear *Jeremiah,*

Ms. Muscuate  
 Kindly deal  
 Robert  
 28/8/2023

**SUBMISSION OF THE MEMORANDA ON THE CARE AND PROTECTION OF CHILD PARENTS BILL (SENATE BILL No. 29 Of 2023)**

Reference is made to your call for the submission of memoranda on the Care and Protection of Child Parents Bill (Senate Bill No 20 of 2023).

The National Gender and Equality Commission (NGEC) is a Constitutional Commission with the mandate of promoting gender equality and non-discrimination for all persons in Kenya, with a focus on Special Interest Groups (SIGs) who include women, children, Persons with Disabilities (PWDs), youth, older members of society and minority and marginalized groups.

Section 8 (b) of the National Gender and Equality Commission Act, No. 15 of 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;

In line with its mandate, the Commission presents to you a memoranda analyzing the proposed Bill and making proposals for amendment where necessary.

Yours *Sincerely,*

*[Signature]*

Betty Sungura, MBS  
 COMMISSION SECRETARY/ CEO

NATIONAL GENDER AND EQUALITY COMMISSION



**MEMORANDA: THE CARE AND PROTECTION OF CHILD PARENTS BILL (SENATE BILL NO 29 OF 2023)**

S/No	Clause	Provisions of the clause	Proposed Amendment	Rationale
1.	Long Title	An ACT of Parliament to provide a framework for the care and protection of child parents within the Counties; to provide a framework through which an expectant girl child or a child parent may actualise their right to basic education and at the same time ensure the care of their children; and for connected purposes	Amend by substituting the phrase “at the same time ensure the care of their children” with “Establishment of care centres”	Part IV-VI of the proposed Bill deals with the establishment and regulation of care centres
2.	Interpretations	“learner” has the meaning assigned to it under the Teachers Service Commission Act, 2012.	Amend by substituting “Teachers Service Commission Act with “Basic Education Act”	The citation No. 14 thereto of 2013 is the Basic Education Act
		“institution of basic education and training” a public or private institution or facility used wholly or partly regularly or periodically for conducting basic education and training and includes a school, a tuition facility, an educational centre, an academy, a research institution, a school correctional facility or a borstal institution;	Amend by inserting the terms “training” after the term “basic education” whenever the term has been omitted in the Bill.	The term institution in the proposed Bill refers to both basic education and training whilst in some provisions it excludes “training”

3.	New proposal interpretation	To interpret the term “special needs”	Special need means an emotional, behavioural, physical or personal need of a child requiring more than the usual amount of care and supervision.	The term has been used in the proposed Bill but has not been interpreted
4.	Clause 4 Obligations of the National Government with respect to child parents.	(c) collaborate with the National Social Assistance Authority to ensure that needy child parents of children born with special needs or caretakers of such needy parents are beneficiaries of social assistance;	Amend by substituting the phrase” National Social Assistance Authority” with “the body responsible for Social Assistance”	The National Assistance Authority has never been established because the Social Assistance Act has not been operationalized. In the event that the Act is operationalized, or repealed whichever body that will be established will take up the function, if this proposed Bill is enacted
5.	Clause 10 Management of teenage pregnancies in school	10. (1) Where a child falls pregnant or a teacher or person in authority within an institution of basic education and training has a reason to believe that a child within the institution is pregnant, the matter shall be referred to the principal of the institution. (2) The principal shall, upon receipt of the information under subsection (1) and before any action is taken, inform the parent or guardian of the child’s pregnancy. (3) The principal shall not inform the parent or guardian of the child’s pregnancy where they have sufficient grounds to believe that it may prejudice the safety and well-being of the pregnant child.	Delete clause 10(3) without any replacement	It is presumptuous that the pregnant child is not safe with the parents or guardians before they are even informed  The institution has a duty to inform the parents/guardians in the first instance and take the next course of action depending on the response thereto because parental responsibility can not be transferred to any other party  Clause 10(3) is also in contradiction with clause 18 which states as follows-;  18. A parent or guardian of a child who falls pregnant shall not be discharged from their responsibilities regarding the pregnant child and shall collaborate with the institution

				of basic education in supporting and monitoring the health of the child and ensuring that the child continues with her education after delivery and the baby is weaned
6.	Clause 11 Medical examination	11. (1)Where the principal of the institution of basic education is of the opinion that child may be pregnant, the principal shall refer the child to a health institution for a medical examination and such other health examination as may be necessary to determine the status of the child. (2)A child shall not be compelled to undergo a medical examination where she refuses to undergo the examination. (3) Where a child refuses to undergo a medical examination under subsection (2), the institution of basic education shall not be held liable for any consequences that may arise from the failure by the child to undergo the medical examination.	Delete clause 11(3) without any replacement	The pregnancy can only be confirmed through medical examination otherwise the pregnancy will be based on suspicion  The child may not even be aware that they are expectant nor appreciate the importance of the medical examination.  For as long as the child who is a minor is under the care of an institution they have a duty to ensure that she is healthy. Liability cannot be shift elsewhere The consequences of refusal to be examined may be dire and irreversible. The child will not be able to bear them.  The sub-clause does not serve the <b>best interests of the child</b> and envisaged gains
7.	Clause 19 Obligations of the institution	19. (1) The management of an institution of basic education shall— (a) allow a child who falls pregnant while in school to continue with	Amend 19(1)by inserting another subclause (e) thus;	A register is essential for records and data

	of basic education.	<p>classes for as long as possible prior to delivery;</p> <p>(b) counsel the child and her parents or guardians on the importance of ensuring good outcome of the pregnancy by attending ante-natal clinic and ensuring safe delivery, and the possibilities of continuing with education after delivery;</p> <p>(c) provide academic support, parenting and life skills classes and strategies to prevent future unplanned pregnancies; and</p> <p>(d) Assist pregnant and parenting students to gain access to affordable child care facilities. 19</p>	(e) . Maintain a register for such occurrences and report to the Ministry of Education and Ministry of Health.	
10.	<p>PART IV ,V &amp;VI</p> <p>Clauses 21-39</p> <p>Establishment of care centres</p>	<p>21. (1) A county government may establish and maintain such care centres as it may consider necessary for the care of children of not more than three years of age.</p> <p>(2) A county government may, for the purposes of sub-section (1), establish care centres in, or within the vicinity of an institution of basic education in order to ensure access to such facilities by a child parent.</p> <p>3) A person shall not establish or manage a care centre unless the centre is registered and a licence issued in accordance with the provisions of this Act.</p>	<p>The Commission proposes for an amendment in this section that obligates the institutions to create a room within the institution where the babies/ toddlers can be looked after especially in cases where the private or Government care centres are unaffordable or far from the institution.</p> <p>As follows-;</p> <p>3A) Institutions shall endeavour to reserve some space within the premises to</p>	<p>The proposed Bill has very many detailed provisions on the establishment and regulation of child care centres which are enough objectives for another substantive law.</p> <p>The Bill proposes privately run child centres which means it has a cost implication. What about the situations where the services are unaffordable? The primary objective of the Bill which is the care and the protection of the child parent would then be defeated.</p>

		<p>(4) The provisions of subsection (3) shall not apply with respect to a care centre that is established by a county government.</p>	<p>accommodate children whose parents /guardians are unable to meet the costs of privately run care centres.</p>	<p>The question is whether this is what is envisaged in Clause 5(f)-</p> <p>(f) establish such child care centres and implement such programmes as may be necessary for the provision of child care services to child parents who intend to enroll back to school and who do not have access to support services for the care of their child;</p>
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**Memorandum**

**25<sup>th</sup> August, 2023**

**To: The Clerk of the Senate**

**From: Nyeri County Budget Coalition (NCBC) & HERAF**

**Subject: Submissions on the Care and Protection of Child Parents Bill, 2023  
(Senate Bill No. 29 of 2023)**

Nyeri County Budget Coalition (NCBC) was established in 2016 as a loose network of professionals, Non-Governmental Organizations (NGOs), Faith based Organization (FBOs) and grassroots CBOs in Nyeri County. We seek to promote transparency and accountability in government policy, planning and budgeting processes through enhanced public participation.

Health Rights Advocacy Forum (HERAF) is a national NGO registered with the NGO coordination Board since 2007. HERAF promotes a health system that respects human rights and is responsive, equitable and accountable through enhanced constitutional processes for health and quality of life, equity and inclusivity in the provision of quality health care services and stakeholder's engagement in healthcare governance and accountability processes. HERAF is a convener and constitutes the secretariat of the Nyeri County Budget Coalition.

We laud the initiative to promote equitable access to education and health for child parents and wish to make the following submission for consideration. ***The Care and Protection of Child Parents Bill, 2023 (Senate Bill No. 29 of 2023)*** is silent on:

- a) *The plight of special needs learners especially those with intellectual disorders and most vulnerable to sexual predation and*
- b) *Special needs children born to teen moms and in need of care beyond the 3-year age cap for established care centres*

We pray that consideration is made to address the plight of the above groups as a special needs' category by amending the following clauses:

Clause	Provision	Proposed Amendment	Remarks/Justification
Part IV 18,19	Obligations of parents/guardians and institutions of basic education	Include obligations of parents/guardians and institutions of special education	Enhance responsiveness to the unique needs of children with special needs and are pre/post-natal
Part IV	<b>Services rendered</b>	Include exemption for	<i>Special needs children born to</i>



22	<p><b>in a care centre:</b> A care centre established under this Act may render services for the care of children who are <b>not more than three years...</b></p>	<p>special needs children above the age of 3 years in the indicated statement</p>	<p><i>teen moms need care beyond the 3-year age cap. Amending this clause will ensure that special consideration is made to ensure rights of special needs children of teen moms.</i></p>
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Signed,

Jemimah Muthoni  
**NCBC Secretary and HERAF Programmes Officer**

World Youth Alliance Africa

P.O. Box 24021, 00100

Nairobi.

Clerk of the Senate,

P.O. Box 41842-00100

Nairobi.

Friday 25<sup>th</sup> August 2023

Dear Sir/Madam,

Thank you for the opportunity for public comment on The Care and Protection of Child Parents Bill, 2023, in light of public concerns. World Youth Alliance (WYA) is a global coalition of young people dedicated to the promotion and defense of human dignity in policy and culture. Africa is our fastest-growing region for members, and our office for the region is located in Nairobi.

As part of our work with and focus on youth, we examine the programs and policies often promoted at national and international levels to address key concerns such as gender equality, sexually transmitted infections, and early childbearing. We have monitored the developments related to this Bill and have grave concerns detailed below. We appreciate the opportunity to share our perspective and work with you.

### **Opinion on the Kenya Care and Protection of Child Parents Bill**

It is the opinion of World Youth Alliance Africa that the Care and Protection of Child Parents Bill is unconstitutional, violates fundamental human rights, and should for these reasons be revised. This Memo will focus on three critical problem areas:

#### **1. Autonomy Regardless of Legal Capacity:**

The bill grants children autonomy without considering their legal capacity, potentially leading to decisions beyond their understanding and maturity.

#### **2. Disregard for Parental Roles and Consequences:**

The bill lacks emphasis on parental roles and responsibilities, allowing institutions to withhold information from parents and protecting decision-makers from consequences.

#### **3. Failure to Address Defilement:**

The bill overlooks the critical issue of defilement, not adequately protecting children from

exploitation and abuse.

### **Introduction**

Constitutionally a child is an individual who has not attained the age of 18 years. Every Child in Kenya has 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

The responsibility of the child falls on the parent until they attain the age of 18 yet the bill continuously; gives autonomy to the child regardless of their legal capacity; disregards the role of parents while protecting the new decision-makers from consequences that fall back on the parents and fails to address defilement

### **Problem Area 1: Autonomy of Children Regardless of Legal Capacity:**

The bill introduces the concept of child autonomy once they become pregnant. For instance, Article 5(f) enables children to decide whether to return to school or not, which presents a question beyond their legal comprehension, and Article 6 (e) introduces capacity building and responsible parenting to children.

The principal decision-maker in a child's life is typically their parent, as the child's right to free and compulsory basic education is acknowledged. The bill's vagueness in recognizing parental rights and responsibilities can disrupt the balance between child autonomy and parental guidance. While special consideration may be given to those in dysfunctional homes, parental responsibility should remain the norm.

### **Problem Area 2: Disregarding Parental Roles and Shielding Decision-Makers:**

Article 10(3) allows schools to withhold information about a child's pregnancy from their legal guardian, bypassing parental rights and responsibilities. Article 11(1) enables a child to undergo a medical examination without parental consent and further grants the child autonomy to make the final decision regarding the examination. The bill thus protects institutions from potential consequences arising from the child's decisions.

The proposed provisions in this bill would undermine the role of countries as outlined in the Convention on the Rights of the Child. According to this international agreement, countries have a responsibility to support parents and caregivers in ensuring that every child has the necessary conditions for their physical, mental, spiritual, moral, and social development. The government's role shouldn't be to sideline parents from discussions, but rather to help them fulfill their role in caring for their children.

### **Problem Area 3: Failure to Address Defilement:**

In Kenya, the Penal Code specifically characterizes defilement as an act involving penetration with a child. This definition is integral, considering that child pregnancies stem exclusively from such acts. The absence of any reference to defilement within the proposed bill underscores a significant flaw, as it neglects to address a pivotal concern: the widespread issue of child pregnancies resulting from

defilement. While Article 9(2) outlines the profile of a "vulnerable child" at risk of dropping out of education due to pregnancy, the bill falls short in confronting the underlying cause of these distressing situations—predators who perpetrate acts of defilement against children and early sexual debut of peers.

Article 9(1)(b)(ii) of the bill mandates the collaboration of National and county governments with community-based organizations, education providers, and pertinent stakeholders to provide counseling for children in schools regarding adolescent sexuality, responsible conduct, and the implications of child pregnancies. However, it is notable that this provision lacks explicit reference to the prevention of abuse, delayed sexual debut, and the necessity of training parents to effectively counsel their children in these matters.

### **Conclusion**

The proposed bill seeks to provide a framework through which an expectant girl child or a child-parent may actualize their right to basic education and at the same time ensure the care of their children. However, the identified problem areas significantly impact the bill's effectiveness. Clarifying child autonomy based on legal capacity, recognizing parental roles, and addressing defilement comprehensively are imperative for crafting legislation that safeguards children's well-being and supports a balanced family structure. A collaborative effort is needed to ensure that the bill adequately protects children's rights while preserving the integrity of family dynamics.

Thank you for the opportunity to raise these concerns with you.

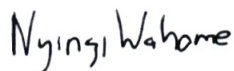
Sincerely,



Cynthia Maingi

Regional Director

World Youth Alliance Africa



Nyingi Wahome

Regional Advocacy Fellow

World Youth Alliance Africa

On behalf of World Youth Alliance Africa members from Kenya.

**Contact Persons:**

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