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THE SENATE

*Hon. Speaker
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RT. HON. SEN.
ANASON J. KINGI

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	
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TABLED BY	Chairperson Labour & Social Welfare
COMMITTEE	Labour & Social Welfare
CLERK AT THE TABLE	A. Macharia

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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) Sen. Julius Murgor Recha, MP, | - Chairperson |
| b) Sen. George Mungai Mbugua, MP, | - Vice Chairperson |
| 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 30th June, 2023. The Bill was read a First Time in the Senate on Tuesday, 2nd 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, 10th 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.

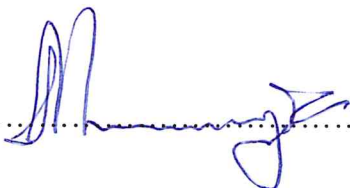
Hon. Speaker,

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

2nd 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 30th June, 2023. The Bill was read a First Time in the Senate on Wednesday, 2nd 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, 10th 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, 8th 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, 10th August, 2023.

Appendix 4: Public Participation Submissions