



East Africa Centre for Law and Justice
Chaka Place, 1st Floor
P. O. Box 19784 - 00100
Argwings Kodhek Road
NAIROBI
Email: info@eacj.org
www.eacj.org

29th May, 2017

Clerk of the Senate
Parliament Buildings,
P.O. BOX 41842-00100
Nairobi

**MEMORANDUM TO THE SENATE STANDING COMMITTEE ON LABOUR AND
SOCIAL WELFARE ON THE CARE AND PROTECTION OF CHILD PARENTS
BILL, 2016**

ABOUT EACLJ

The East Africa Centre for Law and Justice (EACLJ) is a non-governmental, non-profit making organization whose main role is to promote and defend human rights across the length and breadth of Kenya. We fulfill the purpose through public interest petitions to state agencies, constitutional petitions, civic education and legal aid. **EACLJ** has been operational since 2010, and is a locally registered Trust that has engaged with various relevant state and non-state actors in the quest to promote the rule of law and Justice in Kenya.

GENERAL OBSERVATIONS

The Republic of Kenya has been hit with an epidemic of rising cases of teenage pregnancy which has resulted in thousands of girls abandoning their education early, stunting the development of nearly half the nation. The high number of cases has been attributed to a multitude of causes among them early marriage, broken families, rape, peer pressure, inadequate sex education and alcohol and substance abuse.

A recent case saw 22 girls in a secondary school in Uasin Gishu County fall pregnant around the same time. The Principal of the school was quoted to have laid the blame on the fact that the girls were day scholars. She proposed a solution of building a dormitory to house all students "...so that they don't fall prey to such incidents".

PARLIAMENT
OF KENYA
LIBRARY

Whereas the sheltering of teenage girls could help in reducing the number of pregnancies, unfortunately, there are more factors at play that will need consideration. According to a recent report by the Kenyan Government and the United Nations Population Fund, 13,000 girls leave school early every year due to pregnancy. The report states that low income, low levels of education and little or no access to contraception and reproductive health are the major factors behind high teenage pregnancy rates in Kenya.

The Reproductive Health Care Bill 2014 proposed access to comprehensive sexual education and provision of contraception to teens from ages 10 to 17 years. It was intended to reduce the high number of teenage pregnancies and engagement in risky sexual behaviors. However, it has been met by opposition from the Kenya Union of Post Primary Education Teachers (KUPPET), The Kenya National Parents and Teachers Association and the Cabinet Secretary of Education, who all claimed the Bill is 'immoral'.

These circumstances, we believe, were the motivation behind the care and protection of child parent bill sponsored by Hon. Elizabeth Ongoro. The bill purposes 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; and for connected purposes.

The bill has elicited similar views and seems to only complement existing policies in a general manner. In lieu of the debate that the said bill might have aroused, we wish to DRAW the attention of the committee on the following issues;

(a) Re-Entry Policy

Kenya introduced a return to school policy in 1994 requiring all schools to ensure that girls who drop out due to pregnancy and related issues are admitted back to school. The fact that schools have not been implementing the said policy does not necessarily prove its failure but has rather been attributed to the lack of awareness on its mere existence. The proposed bill does not offer any solutions on the sensitization of both the community and the school about returning to school but rather seems to replace it entirely. In doing so, the bill offers no development at all to the cases of school drop-outs occasioned by teenage pregnancy.

(b) Ambiguity in the Provisions

The bill purports to provide directions for both the National and County governments under Part II and Part III in ensuring the protection of the child parents. The said

provisions offer nothing more than 'suggestive' and general obligations for the levels of government. The use of phrases such as 'the government shall promote' and 'put in place appropriate mechanisms' in the provisions of the two parts express no clear or specific acts or roles for the authorities. It is therefore our humble submission that the drafters of the bill need to rethink the provisions under part II and part III to come up with clear cut provisions on the roles of each level of government with respect to their functions under the devolved system of governance.

(c) Contradictory sections

The bill introduces provisions that appear to be in contrast with other sections, laws and general principles. They include;

Section 10 - The section gives the teachers, staff and principals the discretion to determine the likelihood of a girl's pregnancy. It also goes further to provide that a girl shall not be compelled to undergo a medical report and if she refuses the institution shall not be held liable for any consequences.

Section 13 - The section provides that before returning to school, a child shall produce a medical report declaring that she is fit to resume classes.

Section 14 - This section provides that a child shall not be re-admitted to the institution of basic education unless a period of twelve months has lapsed from the date the child delivers the baby.

(d) Overlooking key issues affecting the child parents

The bill has concentrated on the re-admission, counseling and non-discrimination of the teenage mothers so much that it barely touches on the pertinent issues surrounding teenage pregnancy. Research shows that only 49% of the mothers between 13-19 years receive less than the WHO-recommended four antenatal visits while 40% of them give birth without the assistance of a trained health profession. In addition, the greatest anchor on demonizing teenage pregnancy has always been the community perception and stigmatization by members of the society. This has been a contributing factor to abortions, parents neglect and the expectant girls not seeking medical attention. It is our contention that the bill should focus more on the sensitive and pertinent issues rather than create an umbrella bill for existing policies. We have also noted that the bill has no mention of the teenage mothers' partners. It has been reported that most of their male counterparts fail to take responsibility for fear of prosecution. While that is very much encouraged when the father is an adult of sound mind especially the teachers and close relatives, it is inconsiderate to legislate on the child parents without any reference to the underage fathers. Research shows that teenage pregnancy is rampant in places with low income levels, low education levels and backward cultural practices. The bill pays no respect to these factors and therefore overlooks the possibility of the girls being married off or the boys having to quit school to start a family.

(e) Care Centres and Regulations thereto

The bill makes provisions on establishment, licensing and regulations of care centres by the county governments under Parts III, IV and V. The provisions are not only contradictory but do not seem to reflect the reality on the ground. For example, we have been privileged to work with Josephine Kulea, founder of the Samburu Girls Foundation, and our experience with 'rescue centres' for victims of early marriages and female genital mutilation has dwelled more on the security of the centres and hostility from the community. The bill instead establishes education-like institutions which, in our view, will widen the gap for those teenage mothers in need of assistance.

In conclusion, EACLJ makes an appeal to the committee to return the bill for re-evaluation. We appreciate the gesture and good will of the sponsors but it is our recommendation that the drafters of the bill should go back to the drawing board. The bill, as is, will only work to antagonize the girls from the community

We look forward to a legally sound report to the House.

Kind regards

For:  (MURIMI KARANI)

**Joy Mdivo,
Executive Director, EACLJ**

EACLJ
EAST AFRICA CENTRE
FOR LAW & JUSTICE