

Approved for tabling.

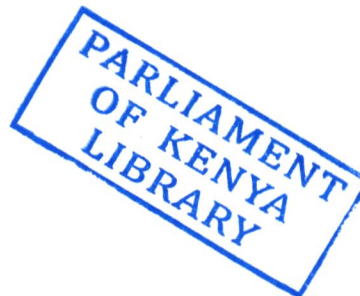
Signature
SNA
25/2/2021



REPUBLIC OF KENYA




THE NATIONAL ASSEMBLY



TWELFTH PARLIAMENT – FIFTH SESSION – 2021

DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

REPORT ON THE CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON THE EMPLOYMENT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 15 OF 2019)

 THE NATIONAL ASSEMBLY PADOOSIATD	
DATE: 25 FEB 2021	DAY: THURSDAY
TABLED BY:	VICE CHAIRPERSON HON. GIDEON KOSKE K.
CLERK-AT-TABLE:	HALIMA SULEIMAN

CLERKS CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEE
PARLIAMENT BUILDINGS
NAIROBI

FEBRUARY 2021

Signature



TABLE OF CONTENTS

CHAIRPERSON'S FOREWORD.....	3
1. PREFACE.....	4
1.1 ESTABLISHMENT OF THE COMMITTEE.....	4
1.2 MANDATE OF THE COMMITTEE.....	4
1.3 COMMITTEE MEMBERSHIP.....	6
1.4 COMMITTEE SECRETARIAT.....	7
2. THE PRESIDENT'S RESERVATIONS TO THE EMPLOYMENT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 15 OF 2019).....	8
2.1 PRESIDENT'S RESERVATION.....	8
2.2 REASONS FOR REFUSAL TO ASSENT.....	8
3. CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON THE EMPLOYMENT (AMENDMENT) BILL (N.A. BILL NO. 15 OF 2019).....	9
4. COMMITTEE RECOMMENDATION.....	9



CHAIRPERSON'S FOREWORD

The Employment (Amendment) Bill (National Assembly Bill No. 15 of 2019) was passed by the National Assembly on **Thursday, 17th September, 2020**. The Bill was seeking to amend the Employment Act in order to provide for pre-adoptive leave to persons intending to adopt children. In line with the powers conferred by Article 115 of the Constitution, H.E. the President expressed his reservation to assent to the Employment (Amendment) Bill, 2019. Consequently, the Memorandum was sent to the National Assembly on **5th November, 2020** detailing the reasons for his reservations. Thereafter, the Speaker vide a communication dated **Tuesday, February 9, 2021** conveyed the President's Memorandum on the Bill and subsequently referred it to the Departmental Committee on Labour and Social Welfare for consideration.

The President expressed reservations on sub-clauses (4), (5) and (6) of Clause 3 of the Bill which sought to insert a new section 29A to provide for pre-adoptive leave and parental leave for the parents of a child who is born as a result of a surrogate motherhood agreement.

In line with the Speakers Communication, the Committee proceeded to consider the President's Memorandum in a meeting held on **Monday, 15th February, 2021**. The deliberations formed the basis on which the committee made its decision and accordingly adopted a report on the same on **Wednesday, 24th February, 2021**.

The Committee thanks the Offices of the Speaker and the Clerk of the National Assembly for the technical support extended to it in the process of considering the President's reservations to the Employment (Amendment) Bill (N.A. Bill No.15 of 2019). In addition, I thank Members of the Committee and the secretariat for their sacrifice and commitment to duty.

Hon. Speaker, the Committee having considered the President's Memorandum and recommendations therein **AGREES TO** the President's recommendation that Clause 3 of the Bill be amended by deleting subclauses (4), (5) and (6).


Hon. Peter Mwathi, MP
Chairperson, Departmental Committee on Labour and Social Welfare

24th Feb. 2021.



1. PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Labour and Social Welfare is established in accordance with the provisions of Standing Order 216 of the National Assembly. Its mandate as provided for in S.O. 216(5) is to *inter-alia*-
 - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.*
 - iii. ***To study and review all legislation referred to it;***
 - iv. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - v. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;*
 - vi. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments); and*
 - vii. ***To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.***

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandate to consider the following subjects-
 - i. Labour;
 - ii. Labour relations,
 - iii. Manpower or Human Resource Planning,
 - iv. Gender,
 - v. Youth,
 - vi. Social Welfare and Security,
 - vii. Children`s Welfare; and
 - viii. Persons living with disability.



3. In executing its mandate, the Committee oversees the following government Ministries and departments and agencies, namely:
 - i. The State Department for Labour
 - ii. The State Department for Social Protection
 - iii. The State Department for Gender
 - iv. The State Department for Youth
 - v. The State Department for Arid and Semi-Arid Lands*
 - vi. National Gender and Equality Commission



1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on comprises the following members-

The Hon. Peter Mwathi, MP (**Chairperson**)
M.P for Limuru Constituency
Jubilee Party

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

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

The Hon. Janet Marania Teyiaa, MP
M.P for Kajaiido County
Jubilee Party

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

The Hon. Ronald Kiprotich Tunoi, MP
M.P for Bomet Central
Jubilee Party

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

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

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

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

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

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

The Hon. Fabian Kyule Muli, MP
M.P for Kangundo Constituency
Muungano Party

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

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

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

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

The Hon. Wilson Sossion, MP
Nominated M.P
Orange Democratic Movement (ODM)

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



1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Secretariat-

Mr. Adan Gindicha
Senior Clerk Assistant/Head of the Secretariat

Mr. John Mugoma
Clerk Assistant II

Ms. Doreen Karani
Legal Counsel I

Ms. Fiona Musili
Research Officer

Mr. Adan Ahmed Abdi
Fiscal Analyst

Ms. Noelle Chelagat
Media Relations Officer

Mr. Nickson Mutai
Audio Officer



2. THE PRESIDENT'S RESERVATIONS TO THE EMPLOYMENT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 15 OF 2019)

6. In his Memorandum, the President submitted that-

- i. Clause 3 of the Bill proposes the insertion of a new section 29A, to provide for pre-adoptive leave and parental leave for parents of a child born because of a surrogate motherhood agreement. The provision proposes parental leave with full pay and sets out the procedure for applying for such leave;
- ii. Whereas the Bill recognises surrogate motherhood agreements, surrogacy is a novel reproductive science which remains unregulated in Kenya. Consequently, if the Bill is enacted into law in its present form, surrogacy agreements recognised by it would operate in a vacuum in terms of the absence of a substantive legal and regulatory framework to govern surrogacy in Kenya. As this is an area that touches on children, reproductive rights and the concept of family and our nation must put in place a rigorous substantive legal and regulatory framework to protect all parties within a surrogacy arrangement;
- iii. Additionally, the provisions relating to surrogate motherhood agreements are of a substantive nature, hence necessitating the formulation of a comprehensive policy arrived at after broad public participation and stakeholder engagement which would inform legislative positions;
- iv. Accordingly, for legislative harmony and ease of interpretation, administration and enforcement, the rights accruing to and obligations on the various parties in surrogate motherhood should be contained in their entirety within bespoke legislation only dealing with the same and which legislation has been based on feedback received from broad public participation and stakeholder engagement.

2.1 PRESIDENT'S RESERVATION

7. H.E. the President refused to assent to the Employment (Amendment) Bill, 2019 because of subclauses (4), (5) and (6) of Clause 3 the Bill which sought to provide for pre-adoptive leave and parental leave for parents of a child born as a result of a surrogate motherhood agreement and the procedure for applying for such leave.

2.2 REASONS FOR REFUSAL TO ASSENT

8. H.E. the President refused to assent to the Bill because of the following reasons-

- i. The Bill recognises surrogate motherhood agreements, while surrogacy is a novel reproductive science which remains unregulated in Kenya. Consequently, if the Bill is enacted into law in its present form, surrogacy agreements recognised by it would operate in a vacuum in terms of the absence of a substantive legal and regulatory framework to govern surrogacy in Kenya.
 - ii. The provisions relating to surrogate motherhood agreements are of a substantive nature, hence necessitating the formulation of a comprehensive policy arrived at after broad public participation and stakeholder engagement which would inform legislative positions;
9. It is for the above reasons that H.E. the President recommended that Clause 3 of the Bill be amended by deleting subclauses (4), (5) and (6).

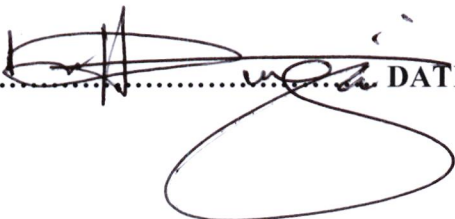


3. CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON THE EMPLOYMENT (AMENDMENT) BILL (N.A. BILL NO. 15 OF 2019)

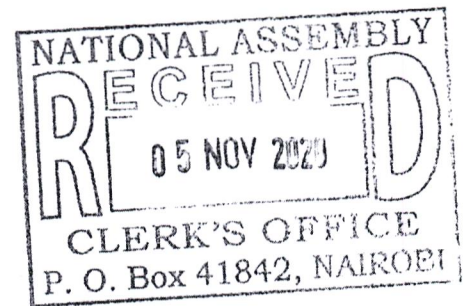
10. The Committee held a meeting on **Monday, 15th February, 2021** to deliberate on the President's reservations to the Employment (Amendment) Bill, 2019. In considering the Memorandum, the Committee was persuaded that the President's reasons for refusal to assent to the Bill were valid and observed that-
- i. the proposed provisions granting parental and paternal leave to parents of a child born out of surrogate motherhood agreements were adopted by the Committee after receiving submissions proposing the same from stakeholders during public participation. At the time, the Committee was convinced that owing to the unique circumstances presented, it would be prudent to accord special consideration to parents who intend to obtain leave from work to care for and apply for adoption of their biological children born as a result of surrogate motherhood agreements;
 - ii. surrogacy is still a novel reproductive science in Kenya and as such, it operates in an unregulated manner. If enacted as it was, the Committee concurs that the provision would operate in a legislative vacuum.
 - iii. There is need for the Nation to formulate a comprehensive policy arrived at after broader public participation and stakeholder engagement which would inform a rigorous substantive legal and regulatory framework to protect all parties within a surrogacy arrangement. Indeed, there was keen interest in the area as evidenced by the submissions received by the Committee in that regard;
 - iv. For legislative harmony and ease of interpretation, administration and enforcement, the rights accruing to and obligations on the various parties in a surrogacy, including right to maternal, paternal or parental leave, should be contained in bespoke legislation only dealing with that subject matter.

4. COMMITTEE RECOMMENDATION

11. The Committee having considered the President's reservations to the Employment (Amendment) Bill, 2019 and pursuant to Article 115 of the Constitution, recommended that the House **AGREES WITH** the President's recommendation that Clause 3 of the Bill be amended by deleting subclauses (4), (5) and (6).

SIGNED.......... DATE..... 24th Feb, 2021

HON. PETER MWATHI, MP
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE



THE CONSTITUTION OF KENYA

REFERRAL OF THE EMPLOYMENT (AMENDMENT) BILL, 2020 FOR RECONSIDERATION BY THE NATIONAL ASSEMBLY

MEMORANDUM

By His Excellency, the Honourable Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces.

Submitted to the Hon. Speaker of the National Assembly.

WHEREAS a Bill titled "*An Act of Parliament to amend the Employment Act*", the short title of which is "*The Employment (Amendment) Bill, 2019*", was passed by the National Assembly on the 17th September, 2020;

AND WHEREAS the Employment (Amendment) Bill, 2019 was presented to me for presidential assent in



accordance with the provisions of the Constitution on the 28th day of the month of October in the year 2020;

NOW THEREFORE, in exercise of the powers conferred on me by Article 115 of the Constitution, I decline to assent to the Employment (Amendment) Bill, 2019; and refer the Bill for Reconsideration by the National Assembly, for the reasons set out hereunder:

1. With respect to: - CLAUSE 3

Clause 3 of the Bill proposes the insertion of a new Section 29A, which would provide for pre-adoptive leave and also leave for the parents of a child who has been born as a result of a surrogate motherhood agreement. The proposed new section provides that an adoptive parent or a parent of a child born through surrogacy shall be entitled to parental leave with full pay, and thereafter sets out the procedure for applying for such leave.



WHEREAS the Bill recognizes surrogate motherhood agreements, surrogacy in itself is a novel reproductive science which remains unregulated in Kenya. Consequently, if the Bill is enacted into law in its present form, surrogacy agreements recognized by it would operate in a vacuum in terms of the absence of a substantive legal and regulatory framework to govern surrogacy in Kenya. As this is an area that touches on children, reproductive rights, and the concept of Family; our Nation must put in place a rigorous substantive legal and regulatory framework to protect all parties within the surrogacy arrangement.

Additionally, the provisions relating to surrogate motherhood agreements are of a substantive nature, hence necessitating the formulation of a comprehensive policy arrived at after broad public participation and stakeholder engagement; which would inform the legislative positions.

Accordingly, for legislative harmony and ease of interpretation, administration, and enforcement; the



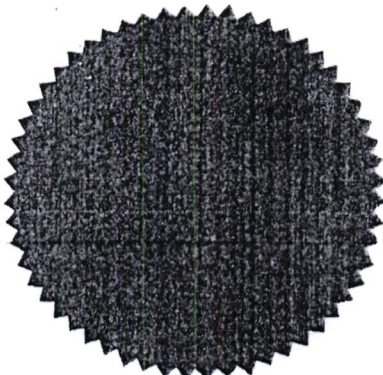
rights accruing to and obligations on the various parties in surrogate motherhood should be contained in their entirety within bespoke legislation only dealing with the same, and which legislation had been based on feedback received from broad public participation and stakeholder engagement.

RECOMMENDATION:

In view of the foregoing, I recommend that Clause 3 of the Bill be amended by deleting sub-clauses (4), (5) and (6).

Dated the 2nd November....., 2020.

UHURU KENYATTA,
President.



**MINUTES OF THE 5TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
LABOUR AND SOCIAL WELFARE HELD ON WEDNESDAY 15TH FEBRUARY, 2021
AT 10.00AM AT SAWELA LODGE**

PRESENT

- | | |
|---|---------------------------|
| 1. The Hon. Peter Mwathi, MP | - Chairperson |
| 2. The Hon. Gideon Koske Kimutai, M.P. | - Vice Chairperson |
| 3. The Hon. Ronald Kiprotich Tonui, MP | |
| 4. The Hon. James K'Oyoo, M.P | |
| 5. The Hon. Charles Kanyi Njagua, MP | |
| 6. The Hon. Caleb Amisi, M.P. | |
| 7. The Hon. Titus Mukhwana Khamala, M.P | |
| 8. The Hon. Safia Sheikh Adan, MP | |
| 9. The Hon. David Ole Sankok, MP | |
| 10. The Hon. Gideon Keter, MP | |
| 11. The Hon. Omboko Milemba, MP | |

APOLOGY

1. The Hon. Janet Marania Teyiaa, MP
2. The Hon. Rose Museo Mumo, MP
3. The Hon. Moses Malulu Injendi, M.P
4. The Hon. Omboko Milemba, MP
5. The Hon. Tom Mboya Odege, MP
6. The Hon. Abdi Mude Ibrahim, MP
7. The Hon. Fabian Kyule Muli, MP
8. The Hon. Wilson Sossion, MP

The National Assembly Secretariat

1. Mr. Adan Sora Gindicha -Senior Clerk Assistant
2. Ms. Doreen Karani - Legal Counsel
3. Mr. Job Owaga - Audio Officer

AGENDA

1. Prayers
2. Preliminaries
 - i. Introductions
 - ii. Communication from the Chairperson
 - iii. Confirmation of Minutes
 - iv. Matters Arising
3. **Consideration of the President's Memoranda on the Employment(Amendment) Bill, 2019**
4. Any Other Business
5. Adjournment/Date of the next Sitting

MIN/DCLSW/021/2021: Consideration of the Presidents Memoranda on the Employment

(Amendment) Bill, 2019

The Committee noted the following:

- i. Clause 3 of the Bill proposes the insertion of a new section 29A, which would provide for pre-adoptive leave and parental leave for parents of a child born as a result of a surrogate motherhood agreement. The provision proposes parental leave with full pay and sets out 2 procedures for applying for such leave;
- ii. Whereas the Bill recognises surrogate motherhood agreements, surrogacy in itself is a novel reproductive science which remains unregulated in Kenya. Consequently, if the Bill is enacted into law in its present form, surrogacy agreements recognised by it would operate in a vacuum in terms of the absence of a substantive legal and regulatory framework to govern surrogacy in Kenya. As this is an area that touches on children, reproductive rights and the concept of family and our nation must put in place a rigorous substantive legal and regulatory framework to protect all parties within a surrogacy arrangement;
- iii. Additionally, the provisions relating to surrogate motherhood agreements are of a substantive nature, hence necessitating the formulation of a comprehensive policy arrived at after broad public participation and stakeholder engagement which would inform legislative positions;
- iv. Accordingly, for legislative harmony and ease of interpretation, administration and enforcement, the rights accruing to and obligations on the various parties in surrogate motherhood should be contained in their entirety within bespoke legislation only dealing with the same and which legislation has been based on feedback received from broad public participation and stakeholder engagement.

PRESIDENT'S RESERVATION

The Committee considered the Memoranda as follows:

H.E. the President refused to assent to the Employment (Amendment) Bill, 2019 because of sub clauses (4), (5) and (6) of Clause 3 the Bill which sought to provide for pre-adoptive leave and parental leave for parents of a child born as a result of a surrogate motherhood agreement and the procedure for applying for such leave.

In particular, the following reasons were advanced for the refusal:

1. H.E. the President refused to assent to the Bill because of the following reasons-
 - i. The Bill recognises surrogate motherhood agreements, while surrogacy in itself is a novel reproductive science which remains unregulated in Kenya. Consequently, if the Bill is enacted into law in its present form, surrogacy agreements recognised by it would operate in a vacuum in terms of the absence of a substantive legal and regulatory framework to govern surrogacy in Kenya.
 - ii. The provisions relating to surrogate motherhood agreements are of a substantive nature, hence necessitating the formulation of a comprehensive policy arrived at

after broad public participation and stakeholder engagement which would inform legislative position

The Committee made the following observation:

In considering the Memorandum, the Committee was persuaded that the President's reasons for refusal to assent to the Bill were valid and observed that:-

- i. The proposed provisions granting parental and paternal leave to parents of a child born out of surrogate motherhood agreements were adopted by the Committee after receiving submissions on the same from various stakeholders during public participation. At the time, the Committee was convinced that these situations presented unique circumstances and found it prudent to accord special consideration to parents who intend to obtain leave to enable them care for and apply for adoption of children born as a result of surrogate motherhood agreements;
- ii. Surrogacy is still a novel reproductive science in Kenya and as such, it operates in an unregulated manner. If enacted as it was, the provision would operate in a legislative vacuum.
- iii. There is need for the Nation to formulate a comprehensive policy arrived at after broader public participation and stakeholder engagement which would inform a rigorous substantive legal and regulatory framework to protect all parties within a surrogacy arrangement;
- iv. For legislative harmony and ease of interpretation, administration and enforcement, the rights accruing to and obligations on the various parties in surrogate motherhood, including right to maternal, paternal or parental leave, should be contained in bespoke legislation only dealing with that subject matter.

RECOMMENDATION

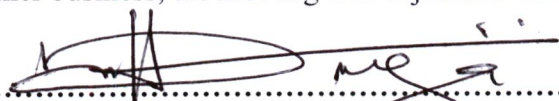
The Committee having considered the President's reservations to the Employment (Amendment) Bill, 2019 and pursuant to Article 115 of the Constitution, recommended that the House **Agrees with** the President's recommendation that Clause 3 of the Bill be amended by deleting sub clauses (4), (5) and (6)

MIN.NO. DC/LSW/022/2021: ANY OTHER BUSINESS

Members were informed of a Committee retreat to consider the Budget Policy Statement 2021 and the First Supplementary Estimates for 2020/2021 Financial Year

MIN.NO. DC/LSW/023/2020: ADJOURNMENT

There being no other business, the meeting was adjourned 12 Noon

SIGNED: 

The Hon. Peter Mwathi, MP

(Chairperson)

DATE: 

**MINUTES OF THE 10TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
LABOUR AND SOCIAL WELFARE HELD ON WEDNESDAY 24TH FEBRUARY 2021
AT 9.45AM AT HILTON GARDEN INN HOTEL**

PRESENT

- | | |
|---|---------------------------|
| 1. The Hon. Peter Mwathi, MP | - Chairperson |
| 2. The Hon. Gideon Koske Kimutai, M.P. | - Vice Chairperson |
| 3. The Hon. James K'Oyoo, M.P | |
| 4. The Hon. Ronald Kiprotich Tonui, M.P | |
| 5. The Hon. Caleb Amisi, M.P. | |
| 6. The Hon. Omboko Milemba, MP | |
| 7. The Hon. Tom Mboya Odege, MP | |
| 8. The Hon. Abdi Mude Ibrahim, MP | |
| 9. The Hon. Safia Sheikh Adan, M.P | |
| 10. The Hon. Charles Kanyi Njagua, MP | |
| 11. The Hon. Wilson Sossion, MP | |
| 12. The Hon. David Ole Sankok, MP | |
| 13. The Hon. Gideon Keter, MP | |

APOLOGY

1. The Hon. Janet Marania Teyiaa, MP
2. The Hon. Rose Museo Mumo, MP
3. The Hon. Moses Malulu Injendi, M.P
4. The Hon. Fabian Kyule Muli, M.P
5. The Hon. Titus Mukhwana Khamala, M.P
6. The Hon. Nelson Koech, M.P

The National Assembly Secretariat

- | | |
|---------------------------|-------------------------|
| 1. Mr. Adan Sora Gindicha | -Senior Clerk Assistant |
| 2. Mr. John Mugoma | -Clerk Assistant II |
| 3. Mr. Doreen Karani | - Legal Counsel |
| 4. Mr. Nickson Kibet | - Audio Officer |

AGENDA

1. Prayers
2. Preliminaries
 - i. Introductions
 - ii. Communication from the Chairperson
 - iii. Confirmation of Minutes
 - iv. Matters Arising
3. **Consideration and adoption of the report on the consideration of the President's Memorandum on the Employment (Amendment) Bill (National Assembly Bill No. 15 of 2019)**
4. Any Other Business
5. Adjournment/Date of the next Sitting

MIN.NO. DC/LSW/042/2021: - PRELIMINARIES

The meeting was called to order at 9.45am and thereafter a prayer was said.

MIN.NO. DC/LSW/043/2021: - ADOPTION OF THE AGENDA

The agenda of the meeting were adopted having been proposed and seconded by the Hon. Abdi Mude Ibrahim MP and the Hon. Gideon Koske Kimutai, MP respectively.

MIN.NO. DC/LSW/044/2021: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

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

MIN.NO. DC/LSW/045/2021: CONSIDERATION AND ADOPTION OF REPORT ON THE CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON THE EMPLOYMENT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 15 OF 2019)

The Committee considered the memorandum and made the following observations: -

- i. That the proposed provisions granting parental and paternal leave to parents of a child born out of surrogate motherhood agreements were adopted by the Committee after receiving submissions proposing the same from stakeholders during public participation.
- ii. The Committee was convinced that owing to the unique circumstances presented, it would be prudent to accord special consideration to parents who intend to obtain leave from work to care for and apply for adoption of their biological children born because of surrogate motherhood agreements.
- iii. Surrogacy is still a novel reproductive science in Kenya and as such, it operates in an unregulated manner. If enacted as it was, the Committee concurs that the provision would operate in a legislative vacuum.
- iv. There was need for the Nation to formulate a comprehensive policy arrived at after broader public participation and stakeholder engagement which would inform a rigorous substantive legal and regulatory framework to protect all parties within a surrogacy arrangement.
- v. There was keen interest in the Bill as evidenced by the submissions received by the Committee.
- vi. That for legislative harmony and ease of interpretation, administration and enforcement, the rights accruing to and obligations on the various parties in a surrogacy, including right to maternal, paternal or parental leave, should be contained in bespoke legislation only dealing with that subject matter.

Committee Recommendation: -

The Committee having considered the President's reservations to the Employment (Amendment) Bill, 2019 and pursuant to Article 115 of the Constitution, recommended that Clause 3 of the Bill be amended by deleting subclauses (4), (5) and (6).

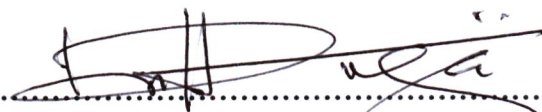
MIN.NO. DC/LSW/ 046/2021: ANY OTHER BUSINESS

Consideration of BPS FY 2021/22 and First Supplementary FY 2020/21

Members were notified that the Committee was scheduled to meet with NGECC, State Department for Housing and National Youth Service regarding the Budget Policy Statement for FY 2021 and First Supplementary Budget for FY 2020/21 at noon.

MIN.NO. DC/LSW/047/2021: ADJOURNMENT

There being no other business, the meeting was adjourned 11.30AM

SIGNED: 

The Hon. Peter Mwathi, M.P
(Chairperson)

DATE: 24/02/2021



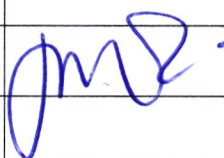





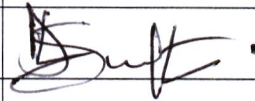
DEPARTMENTAL COMMITTEE ON LABOUR & SOCIAL WELFARE

REPORT ADOPTION SCHEDULE

REPORT ON THE CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON
THE EMPLOYMENT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 15
OF 2019)

DATE: ~~23rd~~ ^{7th} FEBRUARY, 2021

~~24th~~

No.	NAME	SIGNATURE
1.	The Hon. Peter Mwathi, MP – Chairperson	
2.	The Hon. Gideon Koske Kimutai, MP – Vice Chairperson	
3.	The Hon. Ronald Kiprotich Tonui, MP	
4.	The Hon. Janet Marania Teyiaa, MP	
5.	The Hon. James Onyango K'Oyoo, MP	
6.	The Hon. Rose Museo, MP	
7.	Hon. Moses Malulu Injendi, M.P	
8.	Hon. Nelson Koech, M.P	
9.	The Hon. Fabian Kyule Muli, MP	
10.	The Hon. Abdi Mude Ibrahim, MP	
11.	The Hon. Omboko Milemba, MP	
12.	The Hon. Safia Sheikh Adan, MP	
13.	The Hon. Tom Mboya Odege, MP	
14.	The Hon. Caleb Amisi, M.P	
15.	The Hon. Charles Kanyi Njagua, MP	
16.	The Hon. Titus Mukhwana Khamala, M.P	
17.	The Hon. Ole Sankok David, MP	
18.	The Hon. Wilson Sossion, MP	
19.	The Hon. Gideon Keter, M.P	