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REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT – THIRD SESSION  
DEPARTMENTAL COMMITTEE ON HEALTH

REPORT ON THE  
WINNOWING PROCESS OF THE PROPOSED AMENDMENTS TO THE ASSISTED  
REPRODUCTIVE TECHNOLOGY BILL, 2022 (NATIONAL ASSEMBLY BILL NO. 61  
OF 2022) BY THE HON. MILLIE ODHIAMBO, MP

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## **LIST OF ANNEXURES**

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## CHAIRPERSON'S FOREWORD

This winnowing report contains the Committee's proceedings on the consideration and winnowing process of amendments from the Committee and individual Members to the Assisted Reproductive Technology Bill, 2022 (National Assembly Bill No. 61 of 2022).

The Assisted Reproductive Technology Bill, 2022 (National Assembly Bill No. 61 of 2022) sponsored by Hon. Millie Odhiambo, MP was published on 24<sup>th</sup> November 2022 and went through First Reading on Wednesday 3<sup>rd</sup> May 2023. The Bill was thereafter committed to the Departmental Committee on Health for consideration and facilitation for public participation pursuant to Article 118 of the Constitution and reporting to the House pursuant to the provisions of Standing Order 127(1).

The Bill has fifty-two (52) clauses and seeks to provide for the regulation of assisted reproductive technology, to prohibit certain practices in connection with assisted reproductive technology, to establish an Assisted Reproductive Technology Directorate and to make provision in relation to children born through Assisted Reproductive Technology processes and for connected purposes.

The Second Reading of the Bill was done on 18<sup>th</sup>, 25<sup>th</sup> October, 2023 and 8<sup>th</sup> and 22<sup>nd</sup> November 2023. On the 17<sup>th</sup> April 2024 before the commencement of the Committee of the Whole House the following three Honourable Members proposed further amendments to the Bill, namely: -

1. Hon. Peter Kaluma, MP;
2. Hon. Irene Mayaka, MP;
3. Hon. Shakir Shabbir, MP

The outcome of winnowing would inform the Speaker on how best to guide the House before the Bill is considered at the Committee of whole House. The Hon. Speaker directed that the proposed amendments be committed to the Committee on Health for harmonization before consideration at the Committee of the Whole House

During consideration of the proposed amendments, the Committee held a total of two (2) sittings during which it heard submissions from the three Honourable Members who proposed amendments.

Further, the Committee in a Sitting held on Thursday 14<sup>th</sup> November, 2024 resolved to reconsider all proposed amendments to the Clauses of the Bill and withdraw its report on the same tabled to enable it table a revised report. The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings.

On behalf of the Committee, and pursuant to Standing Order 127(4), it is my pleasant duty to table the Report on the winnowing process of the Departmental Committee on Health on its Consideration of the Assisted Reproductive Technology Bill, 2022 (National Assembly Bill No. 61 of 2022).

  
HON. DR. ROBERT PUKOSE, CBS, MP

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

## CHAPTER ONE

### 1.0 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

1. The Departmental Committee on Health is established pursuant to the provisions of Standing Order 216 of the National Assembly Standing Orders and in line with Article 124 of the Constitution which provides for the establishment of the Committees by Parliament. The mandate and functions of the Committee include:
  - a) *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;*
  - b) *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
  - ba) *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
  - c) **To study and review all legislation referred to it;**
  - d) *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;*
  - e) *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;*
  - f) *Vet and report on all appointments where the constitution or any other law requires the national Assembly to approve, except those understanding Order 204 (Committee on appointments);*
  - g) *To examine treaties, agreements and conventions;*
  - h) *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
  - i) *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
  - j) *To examine any questions raised by Members on a matter within its mandate.*
2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider matters related to health, medical care and health insurance including universal health coverage.
3. In executing its mandate, the Committee oversees the Ministry of Health with its two State Departments namely the State Department for Medical Services and the State Department for Public Health and Professional Standards.

## 1.2 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Health was constituted by the House on 27<sup>th</sup> October 2022 and comprises of the following Members:

### **Chairperson**

Hon. (Dr.) Robert Pukose, MP  
Endebes Constituency  
**UDA Party**

### **Vice-Chairperson**

Hon. Ntwiga, Patrick Munene, MP  
Chuka/Igambang'ombe Constituency  
**UDA Party**

Hon. Owino Martin Peters, MP  
Ndhiwa Constituency  
**ODM Party**

Hon. Muge Cynthia Jepkosgei, MP  
Nandi (CWR)  
**UDA Party**

Hon. Wanyonyi Martin Pepela, MP  
Webuye East Constituency  
**Ford Kenya Party**

Hon. Kipngok Reuben Kiborek, MP  
Mogotio Constituency  
**UDA Party**

Hon. (Dr.) Nyikal James Wambura, MP  
Seme Constituency  
**ODM Party**

Hon. Kibagendi Antoney, MP  
Kitutu Chache South Constituency  
**ODM Party**

Hon. Julius Ole Sunkuli Lekakeny, MP  
Kilgoris Constituency  
**KANU**

Hon. Maingi Mary, MP  
Mwea Constituency  
**UDA Party**

Hon. Mathenge Duncan Maina, MP  
Nyeri Town Constituency  
**UDA Party**

Hon. Lenguris Pauline, MP  
Samburu (CWR)  
**UDA Party**

Hon. Oron Joshua Odongo, MP  
Kisumu Central Constituency  
**ODM Party**

Hon. (Prof.) Jaldesa GuyoWaqo, MP  
Moyale Constituency  
**UPIA Party**

Hon. Mukhwana Titus Khamala, MP  
Lurambi Constituency  
**ANC Party**

### 1.3 COMMITTEE SECRETARIAT

5. The Committee is supported by the following secretariat:

Mr. Hassan Abdullahi Arale  
**Clerk Assistant I/Head of Secretariat**

Ms. Gladys Jepkoech Kiprotich  
**Clerk Assistant III**

Mr. Timothy Kimathi  
**Clerk Assistant III**

Ms. Marlene Ayiro  
**Principal Legal Counsel II**

Ms. Faith Chepkemoi  
**Legal Counsel II**

Hillary Mageka  
**Media Relations Officer II**

Ms. Rahab Chepkilim  
**Audio Recording Officer II**

Ms. Abigael Muinde  
**Research Officer III**

Mr. Hiram Kimuhu  
**Fiscal Analyst III**

Ms. Sheila Chebotibin  
?

## CHAPTER TWO

### **2.0 OVERVIEW OF THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL, 2022, NATIONAL ASSEMBLY BILL NO. 61 OF 2022.**

6. The Bill seeks to provide for the regulation of assisted reproductive technology, to prohibit certain practices in connection with assisted reproductive technology, to establish an Assisted Reproductive Technology Directorate and to make provision in relation to children born through assisted reproductive technology processes and for connected purposes.
7. **PART I** (Clause 1-4) of the Bill contains the preliminary provisions on the short title, interpretation, application and object and purpose of the Act.
8. **PART II** (Clause 5-10) of the Bill provides for the establishment of the Assisted Reproductive Technology Directorate, its composition and functions. It also sets out the obligations of the National Government and County Governments in matters of Assisted Reproductive Technology.
9. **PART III** (Clause 11-19) of the Bill provides for matters regulating prohibited activities in relation to the use of embryos, use of gametes, use of gametes obtained from a minor. It also provides for obtaining the consent of parties who go through assisted reproductive technology processes, and sets out the circumstances for undertaking assisted reproductive technology and circumstances under which assisted reproductive technology is precluded.
10. **PART IV** (Clause 20-32) of the Bill provides for the rights of commissioning parents, donors and children in relation to the right to assisted reproductive technology, the right to assisted reproductive technology by intersex persons. It also makes provisions on the use of sperm after the death of a man, consent to assisted reproductive technology services, the duties of assisted reproductive technology experts, the rights that accrue to children born through assisted reproductive technology, obligations under surrogacy agreements, prohibition of sex selection and commercial artificial reproductive technology and sale of human gametes, zygotes and embryos.
11. **PART V** (Clause 33-37) of the Bill provides for matters regulating access to information as regards assisted reproductive technology including the establishment of an assisted reproductive technology register, the processing and provision of information by the Assisted Reproductive Technology Directorate and restrictions on disclosure of information.
12. **PART VI** (Clause 38-49) of the Bill provides for the regulation of licensing to offer assisted reproduction related services. It also sets out the conditions to be met before a licence is issued and revoked as well as the right of review and appeal where a licence is denied.
13. **PART VIII** (Clause 50 and 51) of the Bill contains miscellaneous provisions on general penalty and offences related to the regulation of assisted reproductive technology.



14. **PART IX** (Clause 52) of the Bill provides for the making of Regulations by the Cabinet Secretary responsible for health in consultation with the Assisted Reproductive Technology Directorate.

## CHAPTER THREE

### **3.0 CONSIDERATION AND WINNOWING OF PROPOSED AMENDMENTS TO THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL (NATIONAL ASSEMBLY BILL NO. 61 OF 2022)**

#### **3.1 Referral of the Assisted Reproductive Technology Bill (National Assembly Bill No. 61 of 2022)**

15. The Assisted Reproductive Technology Bill (National Assembly Bill No. 61) sponsored by Hon. Millie Odhiambo, MP was read a First Time on 3<sup>rd</sup> May, 2023 and committed to the Departmental Committee on Health for facilitation of public participation pursuant to Article 118 of the Constitution and reporting to the House, pursuant to Standing Order 127(1).
16. The Second Reading of the Bill was done on 18<sup>th</sup>, 25<sup>th</sup> October, 2023 and 8<sup>th</sup> and 22<sup>nd</sup> November 2023. On the 17<sup>th</sup> NOVEMBER 2024 before the commencement of the Committee of the whole house the following three Honourable Members proposed further amendments to the Bill, namely: -
  4. Hon. Peter Kaluma, MP;
  5. Hon. Irene Mayaka, MP;
  6. Hon. Shakir Shabbir, MP
17. Pursuant to the provisions of Standing Order 131, the Speaker directed that all the amendments received be referred to the Departmental Committee on health and be subjected to the winnowing process for harmonization.

#### **3.2 COMMITTEE CONSIDERATION OF THE SUBMISSIONS**

18. All the members namely, Hon. Peter George Kaluma, MP, Hon. Shabir Shakil, MP, Hon. Irene Mayaka, MP with proposed amendments, and the Hon. Millie Odhiambo (the sponsor of the Bill) were invited by the Committee to prosecute the same before the Committee on 14<sup>th</sup> November 2024, Hon. Peter George Kaluma, MP and the Hon. Millie Odhiambo (the sponsor of the Bill) appeared before the Committee.
19. The Committee thereafter considered and made observations and recommendations on each of the proposed amendments.

## CHAPTER FOUR

### **4.0 COMMITTEE OBSERVATIONS ON THE WINNOWING OF PROPOSED AMENDMENTS TO THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL (NATIONAL ASSEMBLY BILL NO. 61 OF 2022)**

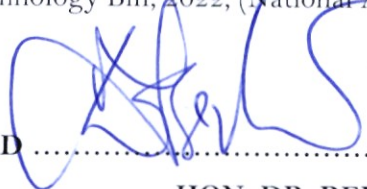
20. The Committee having considered the amendments as proposed to the Assisted Reproductive Technology Bill, 2022 by the Committee and Honourable Members, the Committee made the following observations:

- (a) There is a need to restrict the provision of assisted reproductive technology services to only Kenyan citizens so as to prevent the exploitation of the citizens of Kenya;
- (b) Commercial surrogacy needs to be expressly prohibited so that assisted reproductive technology services are not misused;
- (c) The Bill also protects the rights of children born out of assisted reproductive technology including in their registration in line with Article 53 of the Constitution and the Children Act, (Cap. 141);
- (d) The Regulations under the proposed Bill are too technical, substantive and of great significance and as such they require affirmative resolution, that is they should be approved in draft form by both Houses of Parliament before they are published by the Cabinet Secretary for health; and
- (e) The Bill is pertinent as it seeks to establish a framework of assisted reproductive technology in the country so that persons who need the assisted reproductive technology services may benefit from them.


CHAPTER FIVE

5.0 COMMITTEE RECOMMENDATIONS ON THE WINNOWING OF PROPOSED AMENDMENTS TO THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL (NATIONAL ASSEMBLY BILL NO. 61 OF 2022)

21. The Committee having considered the amendments to the Assisted Reproductive Technology Bill, 2022, National Assembly Bill No. 61 of 2022 as proposed by the Committee and the Honourable Members, the Committee agreed upon the following harmonized version of amendments. The Committee, therefore, recommends that the House adopts the report of the winnowing process on the proposed amendments to the Assisted Reproductive Technology Bill, 2022, (National Assembly Bill No. 61 of 2022).

SIGNED  DATE 19/11/2024

HON. DR. REBERT PUKOSE, CBS, MP  
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 26 NOV 2024	
DAY: TUE	
TABLED BY:	HON. NAOMI WAGO MP DEP. MAJORITY PARTY WHIP
CLERK OF THE TABLE:	MERCY CHUMBO

## CHAPTER SIX

### 6.0 SCHEDULE OF AMENDMENTS

22. Having considered all the proposed amendments as proposed by the Committee and the honourable members, the following is the harmonized schedule of amendments;

#### CLAUSE 2

THAT, Clause 2 of the Bill be amended —

- (a) by deleting the definition of the term “assisted reproductive technology” and substituting therefor the following new definition—

“Assisted reproductive technology” means the manipulation of eggs, sperm or embryos outside the human body and transferring the gamete or embryo into the reproductive system of a woman to increase the likelihood of a successful pregnancy;

**Justification: To cover all techniques in assisted reproductive technology.**

- (b) in the definition of the term “assisted reproductive technology expert” by inserting the words “and other professionals whose expertise is required in assisted reproductive technology” immediately after the words “fertility medicine”;

**Justification: To expand the scope to include other professionals that have technical expertise in matters of assisted reproductive technology.**

- (c) by deleting the definition of the term “child” and substituting therefor the following new definition—

“Child” means an individual who has not attained the age of eighteen years;

**Justification: For alignment with the Constitution and the Children Act, (Cap. 141).**

- (d) in the definition of the word “couple” by inserting the words “or intersex person” immediately after the word “female”;

**Justification: To allow intersex persons to access assisted reproductive technology services.**

- (e) by deleting the definition of the term “cryo-preservation” and substituting therefor the following new definition—

“cryo-preservation” means the assisted reproductive technology of freezing and storing of gametes, zygotes, embryos, ovarian and testicular tissues;

**Justification: The new definition is more comprehensive.**

- (f) by deleting the definition of the term “donor” and substituting therefor the following new definition—

“gamete donor” means a person who provides sperm or oocyte with the objective of enabling an infertile person to have a child and the person need not be the spouse of the person he or she is donating the gametes to;

**Justification: To remove the element of voluntary donation of gametes.**

- (g) by deleting the definition of the term “embryo” and substituting therefor the following new definition—

“embryo” means a cell or group of cells containing a diploid complement of chromosomes or group of such cells, not a gamete or gametes, that has the potential to develop into a live born human being if transferred into the body of a person under conditions in which gestation may be reasonably expected to occur;

**Justification: To align with internationally accepted definitions for instance by the World Health Organization (WHO) in the International Committee for Monitoring Assisted Reproductive Technology (ICMART) and WHO revised glossary on Assisted Reproductive Technology terminology, 2009.**

- (h) in the definition of the term “embryologist” by inserting the words “the creation, development, storage and transfer of embryos and” immediately after the words “deals with”;

**Justification: For a more comprehensive definition of the term.**

- (i) in the definition of the term “embryology” by deleting the words “gametes and development of embryos” and substituting therefor the words “creation, development, storage and transfer of gametes or embryos”;

**Justification: For a more comprehensive definition of the term.**

- (j) in the definition of the term “endoscopic surgery” by deleting the words “and passing a telescope with a video camera through the incision into the body cavity”;

**Justification: For a more comprehensive definition of the term.**

- (k) in the definition of the term “father” by —

- (i) inserting sub-paragraph (iii) immediately after sub-paragraph (ii) appearing in paragraph (b) in this definition —

“(iii) the man is a commissioning or intending parent at the time of assisted reproductive technology”;

**Justification: To ensure that a man making use of assisted reproductive technology has the intention to parent.**

- (ii) deleting the words “placing in a woman” in this definition and substituting therefor the words “transferring into a uterus”; and

**Justification: Eggs are transferred into a womb.**

- (iii) deleting the words “artificial insemination” wherever it appears in this definition and substituting therefor the words “intrauterine insemination”;

**Justification: Intrauterine insemination is for human beings while artificial insemination is for animals generally.**

- (l) in the definition of the term “in-vitro fertilization” by deleting the words “in a test-tube or elsewhere”;

**Justification: In-vitro fertilization is not only done in test-tubes.**

- (m) by deleting the definition of the term “mother” and substituting therefor the following new definition—

“mother” means a woman who—

- (i) is carrying or has carried a child as a result of placing in her an embryo or sperms;
- (ii) was party to a marriage with the man whose sperm was utilized to create an embryo;
- (iii) has in agreement with the man, written a parental agreement acquiring parental rights of a mother; or
- (iv) is a commissioning or intending parent at the time of assisted reproductive technology;

**Justification: To ensure that the woman seeking to use assisted reproductive technology has the intention to parent.**

- (n) in the definition of the term “oocyte” by deleting the word “oocyte” and substituting therefor the word “egg”;

**Justification: To avoid using the same word in the definition of the term “oocyte”.**

- (o) by deleting the definition of the term “parties to a marriage”;

**Justification: Marriage is not a condition to access to assisted reproductive technology services.**

- (p) in the definition of the term “pre-implantation genetic diagnosis” by deleting the words “and eliminating the same”;

**Justification: To deal with the vagueness on what is being eliminated which may cause eugenic tendencies.**

- (p) in the definition of the term “pre-implantation screening” by deleting the words “to determine the number of chromosomes” and substituting therefor the words “to determine the viability or euploidy of an embryo before transferring to the woman’s womb”;

**Justification: Pre-implantation screening is not just for the number of chromosomes but also for the viability of the embryo so as to improve the success rates of in vitro fertilization.**

- (q) by deleting the definition of the term “primitive streak”;

**Justification: The definition is unnecessary as by the time the primitive streak appears the embryo has implanted and the pregnancy test is positive.**

- (r) by deleting the definition of the word “sperm” and substituting therefor the following new definition—

“sperm” means the mature male human gamete;

**Justification: The new definition is more comprehensive and straightforward.**

- (s) in the definition of the term “surrogacy” by deleting the words “a commissioning parent or couple” and substituting therefor the words “an intended parent”;

**Justification: To provide for the intention to parent in surrogacy.**

- (t) in the definition of the word “surrogate mother” by deleting the words “another woman” and substituting therefor the words “another person or a couple”

**Justification: To allow extend the use of surrogacy to a couple or any person and not only by a woman.**

- (u) by inserting the following new definitions in the proper alphabetical sequence—

“abandonment” means failure to continue to pay for cryopreservation storage of gametes or embryos;

Cap. “best interest of the child” has the meaning assigned to it under section 2 of the  
141. Children Act;

“clinic” means a health facility licensed under this Act for the purpose of conducting assisted reproduction procedures;

“cryo bank” means a facility set up to store and supply human gametes or embryos;

“foetus” means the developing human offspring after the embryonic stage prior to birth;

“gestational carrier” means a woman in whom a pregnancy resulted from fertilization with third-party sperm and oocytes and who carries the pregnancy with the intention or agreement that the offspring will be parented by one or both of the persons that produced the gametes;

“gestational surrogacy” means the process where a woman who did not provide or donate an egg, carries a pregnancy for the intended parents;

“intended parents” means a couple or commissioning parents who enter into a surrogacy arrangement seeking assistance in procreation through the help of a surrogate mother or donor;

“intersex” means a person with a congenital condition in which the biological sex characteristics cannot be exclusively categorized in the common binary male or female due to inherent and mixed anatomical, hormonal, gonadal or chromosomal patterns;

“ovum” means a single cell released from either of the female reproductive organs that is capable of developing into a new organism when fertilized with a sperm cell;



“pre-implantation genetic testing” means all techniques used to identify genetic defects and aneuploidy in embryos created through in-vitro fertilization before transfer;

“supervisor” means the person responsible for activities authorized under the licence issued under this Act;

“surrogacy agreement” means an agreement between a surrogate and an intended parent or intended parents that the surrogate is to undergo an assisted reproduction procedure for purposes of having a child born as a result of such procedure being treated in law as—

- (a) the child of the intended parent or parents; and
- (b) not being the child of the surrogate or any other individual; and

“zygote” means a diploid cell resulting from the fusion of two haploid gametes.

**Justification:** The proposed definitions are used in the Bill as proposed for amended.

### **CLAUSE 3**

**THAT**, the Bill be amended by deleting Clause 3 and substituting therefor the following new clause 3—

Application. 3. This Act applies to a medically assisted reproductive process whether or not the process is completed outside the human body.

**Justification:** To cover all aspects of assisted reproduction done both outside and inside the human body.

### **CLAUSE 4**

**THAT**, Clause 4 of the Bill be amended by—

- (a) deleting the words “object and purpose” appearing in the marginal note and substituting therefor the word “objects”; and
- (b) inserting the following new paragraphs immediately after paragraph (c) —
  - “(d) ensure the best interest of children;
  - (e) facilitate the registration of children born out of gestational surrogacy arrangements;
  - (f) promote research into the incidence, causes and prevention of infertility;
  - (g) provide a framework for surrogacy arrangements;
  - (h) prohibit commercial surrogacy; and
  - (i) establish an assisted reproduction Directorate”.

**Justification:** To include the important aspects in the use of assisted reproductive technology. The words “objects” and “purpose” are synonymous.

### **NEW CLAUSE**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 4—

Guiding principles.

4A. The application of this Act shall be guided by principles including—

- (a) the best interest of the child born as a result of assisted reproductive procedures;
- (b) non-exploitation of parties;
- (c) non-discrimination including on marital status; and
- (d) affordability of procedures under this Act.

**Justification: To make provision for the principles that will guide all persons implementing this Bill.**

**CLAUSE 7**

**THAT**, Clause 7 of the Bill be amended by deleting the words “National Government” and substituting therefor the words “Cabinet Secretary”.

**Justification: To place responsibility on a specific office for accountability in the performance of the obligations placed on the National Government.**

**CLAUSE 8**

**THAT**, Clause 8 of the Bill be amended—

- (a) inserting the word “training,” immediately after the words “National Government in” appearing in paragraph (a);

**Justification: To provide for collaboration between the National and County Governments on training on assisted reproductive technology services.**

- (b) deleting the word “adequate” in paragraph (b); and
- (c) deleting the words “sufficient” and “adequately” in paragraph (c).

**Justification: To remove ambiguity on the level and scope of the various assisted reproductive technology services to be offered by the County Governments.**

**CLAUSE 9**

**THAT**, Clause 9 of the Bill be amended by inserting the following new sub-clause (3) immediately after sub-clause (2)—

“(3) A person shall be qualified for appointment as a Director if the person—

- (a) holds a bachelor’s degree in medicine from a university recognized in Kenya;
- (b) holds a master’s degree in obstetrics, gynaecology, embryology, fertility medicine or other relevant field from a university recognized in Kenya;
- (c) has at least ten years’ experience in assisted reproductive technology;
- (d) has served in a senior management position for at least five years;
- (e) is a member in good standing of a professional body; and

(f) meets the requirements of Chapter six of the Constitution.”

**Justification: To ensure that the Director in charge of matters relating to assisted reproductive technology in the country is qualified and has specialized knowledge and technical expertise in matters of assisted reproductive technology.**

**CLAUSE 12**

**THAT**, Clause 12 of the Bill be amended in sub-clause (1) by deleting the words “written consent, in accordance with the prescribed Regulations, to its use for that purpose” and substituting therefor the words “written informed consent”.

**Justification: To ensure that proper consent is obtained for the use of any human reproductive material.**

**CLAUSE 13**

**THAT**, Clause 13 of the Bill be amended in sub-clause (1) by deleting the words “written consent, in a manner prescribed by Regulations, to its removal for that purpose” and substituting therefor the words “written informed consent”.

**Justification: To ensure that proper consent is obtained for the use of any human reproductive material.**

**CLAUSE 14**

**THAT**, Clause 14 of the Bill be amended by deleting the words “medical doctor that the person requires assisted reproductive technology on medical or health grounds” and substituting therefor the words “a doctor who is an assisted reproductive technology expert, that the person requires assisted reproductive technology”.

**Justification: To give all persons access to assisted reproductive technology services subject to certification by a doctor with specialized knowledge in assisted reproductive technology.**

**CLAUSE 16**

**THAT**, Clause 16 of the Bill be amended in sub-clause (1) by inserting the following new paragraph (c) immediately after paragraph (b)—

“(c) a gamete or embryo other than that consented to by the woman;”

**Justification: To prevent admixing without the consent of the woman into whom a gamete or embryo is being placed into.**

**CLAUSE 17**

**THAT**, Clause 17 of the Bill be amended by—

(a) deleting sub-clause (1) and substituting therefor the following new sub-clause (1)—

“(1) A person shall not obtain a sperm or ovum from a child or use any sperm or ovum obtained from a child except for medical reasons and future human procreation by the child and with informed consent of the minor, parent or legal guardian of the child.”; and

**Justification: To prevent abuse of the assisted reproductive technology process.**

- (b) deleting the word “minor” appearing in the marginal note and substituting therefor the words “a child”.

**Justification: For consistency within the Bill as the term child is used throughout the Bill.**

#### **CLAUSE 18**

**THAT**, Clause 18 of the Bill be amended by—

- (a) deleting the marginal note and substituting the following new marginal note—

“Restrictions on the use of embryos”

- (b) deleting sub-clause (1) and substituting therefor the following new sub-clause (1)—

“(1) A person shall not—

- (a) keep or use an embryo other than a human embryo;
- (b) place a human embryo in any animal;
- (c) transfer an embryo in a woman other than a human embryo;
- (d) keep or use a human embryo in circumstances prohibited under this Act or as prescribed by regulations;
- (e) replace any part of a human embryo with another part from a cell of any person or embryo or any subsequent development of an embryo except where such replacement is for purposes of solving a medical problem; or
- (f) undertake any form of human cloning.”

**Justification: To distinguish between human and animal embryos and to place restrictions on persons who misuse embryos and not on the Directorate.**

#### **CLAUSE 19**

**THAT**, Clause 19 of the Bill be amended in sub-clause (1) by—

- (a) inserting the word “informed” immediately after the words “without his” appearing in paragraph (b);

**Justification: To ensure that proper consent is obtained for the use of any human reproductive material.**

- (b) inserting the word “informed” immediately after the words “without her” appearing in paragraph (c);

**Justification: To ensure that proper consent is obtained for the use of any human reproductive material.**

- (c) deleting the words “place sperm and eggs or embryo in a woman” appearing in paragraph (e) and substituting therefor the words “transfer sperms or embryo into a womb”; and

**Justification: Eggs and sperm cannot be transferred into the womb at the same time.**

- (d) by inserting the following new paragraph (f) immediately after paragraph (e)—

“(f) in the course of providing assisted reproductive treatment services for any woman, use the sperm of any man without the woman’s informed consent;”.

**Justification: To protect women from insemination with a sperm that they have not consented to.**

**NEW CLAUSES**

**THAT**, the Bill be amended by inserting the following new clauses immediately after clause 19—

- Number of times one can donate gametes or embryos or be a surrogate. **19A.** (1) A person shall not donate their gametes or embryos more than ten times.
- (2) A person shall not perform a treatment procedure using gametes or an embryo produced by a donor if such procedure may result in more than ten children who are genetic siblings.

- (3) A surrogate mother shall not enter into a surrogacy agreement more than three times in her lifetime and shall be required to wait for two years between each birth to be eligible for another surrogacy agreement.

**Justification: To limit the number of donations of gametes and surrogacies for the health and well-being of surrogate mothers.**

- Donation of gametes or embryos. **19B.** (1) A cryo bank shall obtain—

- (a) male gametes from males between twenty-one years of age and thirty-five years of age; or
- (b) oocytes from females between twenty-three years of age and thirty-five years of age.

- (2) An assisted reproductive clinic under this Act shall examine donors for diseases as may be prescribed by the Directorate.

**Justification: To provide an age limit for gametes donors to ensure its quality.**

Disposal of gametes. **19C.** (1) The Directorate may, under such conditions as may be prescribed, permit—

- (a) disposal of gametes after ten years of preservation;
- (b) donation of gametes to other couples pursuing assistive reproductive technology; or
- (c) the conduct of research on stem cells and zygotes that are not more than fourteen days old on a written application and where;
  - (i) the applicant undertakes to document the research for record purposes; and
  - (ii) prior consent is obtained from the donor of the stem cells or zygotes.

(2) A person who contravenes this provision is guilty of an offence and is liable on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

**Justification: To provide for the disposal of gametes for instance through donations to couples who need assistance in the event that gametes have not been utilized in the purpose originally intended.**

**CLAUSE 20**

**THAT**, Clause 20 of the Bill be amended by—

- (a) deleting the marginal note and substituting therefor the following new marginal note—  
“Posthumous reproduction”
- (b) renumbering the clause as sub-clause (1);
- (c) deleting paragraph (b) of the renumbered sub-clause (1) and substituting therefor the following new paragraph (b) —  
  
“(b) there was informed consent in writing by the man.”

**Justification: To ensure that proper consent for parentage was obtained prior to the death of the man.**

- (d) inserting the following new sub-clause immediately after the renumbered sub-clause (1)  
—

“(2) Where the ovum of a woman or an embryo, the creation of which resulted from the ovum of that woman, was used after the death of that woman, that woman shall not be treated as the mother of the child born out of that ovum or embryo unless the —

- (a) father was married to the woman at the time of the death of the woman; and
- (b) woman had given informed consent in writing”.

**Justification: To provide for post-humous reproduction by a woman and to ensure that proper consent for parentage was obtained prior to the death of the woman.**

#### **NEW CLAUSE**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 22—

Right to **22A**. The national and county governments shall put in place measures to assisted ensure that persons with disability have access to appropriate assisted reproductive reproductive technology services.  
technology  
by persons  
with  
disability.

**Justification: To make provision for the rights of persons with disability in line with the National Reproductive Health Policy 2022-2032 which recognizes that persons with disability have special reproductive needs.**

#### **CLAUSE 23**

**THAT**, Clause 23 of the Bill be amended—

(a) by deleting sub-clause (2) and substituting therefor the following new sub-clause (2)—

“(2) The consent under subsection (1) shall make express provisions on—

- (a) the ownership of the gametes or embryos;
- (b) the number of embryos to be implanted; and
- (c) what should be done with the gametes or embryos in case of—
  - (i) the death of any of the parties seeking assisted reproductive technology services;
  - (ii) incapacity of any of the parties seeking assisted reproductive technology services;
  - (iii) abandonment of the gametes or embryos;
  - (iv) dispute;
  - (v) divorce; or
  - (vi) separation.”

**Justification: To make provision for obtaining of prior consent in the event of unforeseeable circumstances such as death or divorce.**

(b) in sub-clause (3) by deleting the words “death or incapacity of any of the parties” and substituting therefor the words “the circumstances set out in subsection 2(c)”; and

**Justification: To make provision for obtaining of prior consent in the event of unforeseeable circumstances such as death or divorce.**

(c) in sub-clause (4) by deleting the word “implanting” and substituting therefor the words “transfer of”.

**Justification: Embryos are transferred into a womb.**

#### **CLAUSE 24**

**THAT**, Clause 24 of the Bill be amended in—

(a) sub-clause (1) by deleting the word “all” appearing in paragraph (b) and substituting therefor the words “possible hereditary”;

**Justification: It is impractical to screen all diseases.**

(b) sub-clause (2) by—

(i) inserting the words “if any” immediately after word “skills” appearing in paragraph (g); and

**Justification: To avoid locking out donors who do not possess any professional qualifications and skills.**

(ii) inserting the following new paragraphs immediately after paragraph (g) —

“(h) consent or otherwise to disclosure of identity to possible offspring”;

“(i) consent or otherwise for the use of donated material for research”;

**Justification: To require consent which will facilitate the use of donated material for research and disclosure of information in relation to assisted reproductive technology while respecting the right to privacy.**

#### **NEW CLAUSE**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 24—

**Pre-implantation diagnosis or testing.**  
**24A.** (1) A donor shall undergo a pre-implantation diagnosis or testing for purposes of screening the human embryo or gamete for known, pre-existing, heritable or genetic diseases.

(2) The donation of an embryo after pre-implantation genetic diagnosis to an approved research laboratory for research purposes shall be done —

(a) with the approval of the commissioning couple or woman; and



- (b) when the embryo suffers from pre-existing, heritable, life-threatening or genetic diseases.

**Justification: To ensure that no diseases are passed to the resulting child and to place limitations on research undertaken on human embryos.**

**CLAUSE 25**

**THAT**, the Bill be amended by deleting Clause 25.

**Justification: Marriage is not a requirement to accessing assisted reproductive technology services.**

**CLAUSE 26**

**THAT**, Clause 26 of the Bill be amended by—

- (a) deleting the words “sexual intercourse” appearing in sub-clause (1) and substituting therefor the words “natural conception”;

**Justification: Natural conception is more ideal in comparison to assisted reproductive technology.**

- (b) deleting the words “both partners reserve the right to withdraw consent of the implantation of the embryo which has been created by their own sperm or ovum” appearing in sub-clause (3) and substituting therefor the words “both parties will be bound by the agreement and the consent given for the procedure”; and

**Justification: To make parties accountable for the commitments in the surrogacy agreement.**

- (c) deleting sub-clause (5) and substituting therefor the following new sub-clause (5)—  
“(5) A child born out of surrogacy or any procedure under this Act shall acquire the citizenship of the intended parent.”

**Justification: To specify that a child born as a result of assisted reproductive technology takes the citizenship of the intended parent irrespective of the citizenship of the surrogate or donor.**

**CLAUSE 27**

**THAT**, Clause 27 of the Bill be amended—

- (a) by deleting sub-clause (1) and substituting therefor the following new sub-clause (1)—

“(1) A woman of who—

- (a) has attained the age of twenty-five years;
- (b) is below the age of forty years;
- (c) has given birth at least to one child;

- (d) understands the rights and obligations accruing under a surrogacy agreement; and
- (e) has undergone comprehensive mental and physical health assessments

may consent to a process of assisted reproduction for purposes of surrogate motherhood.”

**Justification: To limit the age of the surrogate mother to above twenty-five and below forty years old which will ensure the safety of the foetus and the surrogate mother, and to provide for comprehensive health assessment which is crucial for the surrogate mother’s well-being.**

- (b) in sub-clause (2) by—
  - (i) deleting the word “child “appearing immediately after the words “carry the” and substituting therefor the word “foetus”; and
  - (ii) deleting the words “parties to a marriage or couple” and substituting therefor the words “intended parents”

**Justification: A child is one who has been born. Reference to parties to a marriage or couple is discriminatory.**

- (c) inserting the following new sub-clause (3) immediately after sub-clause (2) —

“(3) The intended parent —

- (a) is a Kenyan; and
- (b) has attained the age of twenty-five years; and
- (c) is below the age of fifty-five years.”

**Justification: To limit access to assisted reproductive technology provided in the country to Kenyan citizens and set the age of the intended parent using assisted reproductive technology to be above the age of twenty-five years but not more than fifty-five years. This will extend the age limit to follow the normal age of natural conception for the best interests of the child born out of assisted reproductive technology.**

#### NEW CLAUSE

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 27—

Leave related to surrogacy. **27A.** (1) A surrogate mother under this Act shall be entitled to three months lochia leave.

(2) An intended mother under this Act shall be entitled to three months maternity leave.

(3) An intended father under this Act shall be entitled to two weeks paternity leave.

**Justification: To provide for leave for intended parents' after the birth of children born out of assisted reproduction.**

**CLAUSE 28**

**THAT**, Clause 28 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words “Parties to a marriage” and substituting therefor the words “Intending parents”;

**Justification: Reference to parties to a marriage or couple is discriminatory.**

- (b) in sub-clause (3) by inserting the following new paragraphs immediately after paragraph (g)—

“(h) where the surrogate appoints a next of kin and provides the identity information of the appointed guardian;

(i) where the intending parents appoint a guardian and provides the identity information of the appointed guardian;”

**Justification: To require the provision of an alternative contact person in the event the surrogate or intending parents die or are unable to take custody of the child born out of assisted reproductive technology.**

- (c) by deleting sub-clause (5) and substituting therefor the following new sub-clause (5)—  
“(5) The Directorate shall carry out pre-approval checks and shall satisfy itself that the—

- a. surrogate and the intended parent or parents have undergone appropriate medical assessments including an assessment on the health of the surrogate, pre-implantation genetic testing or diagnosis;
- b. surrogate and the intended parent or parents have received appropriate counselling and legal advice about the implications of signing the surrogacy agreement and that a report by a counsellor reveals the positive welfare of a child who may be born as a result of an assisted reproduction procedure and the positive welfare of other children who may be affected by any such birth; and
- c. intended parents have taken out an appropriate insurance policy to cover the surrogate becoming ill, with protection under the policy starting no later than the day on which the first assisted reproduction procedure is to be carried out under the surrogacy agreement and ending five years after the surrogate has given birth.”

**Justification: To provide for pre-approval checks that must be undertaken before a person is allowed to use assisted reproductive technology services.**

- (d) by inserting the following new sub-clause immediately after the new sub-clause (5)—

“(5A) A person may apply to the High Court for any necessary orders on matters relating to—

- a. the validity of a surrogacy agreement;
- b. a dispute relating to parentage of a child born as a result of an assisted reproduction procedure; or
- c. the citizenship of a child born as a result of an assisted reproduction procedure.”

**Justification: To provide for the instances under which a person may go to High Court in relation to matters relating to the use of assisted reproductive technology.**

- (e) in sub-clause (7) , by deleting the words “in the process” and substituting therefor the words “as a consequence”; and

**Justification: To specify that the person entering a surrogacy agreement shall only receive benefits as a consequence of surrogacy and not in the process of surrogacy.**

- (f) by inserting the following new sub-clauses immediately after sub-clause (7)—

“(8) A surrogacy agreement may indicate the terms of the agreement including terms prohibiting the surrogate from—

- a. partaking alcohol;
- b. smoking;
- c. using unprescribed drugs;or
- d. engaging in dangerous activity that may affect the health or life of a child conceived through assisted reproduction technology.

(9) The terms of the agreement under subsection (8) shall not be overly tasking or prejudicial to the surrogate.

(10) The Cabinet Secretary shall make regulations for the better carrying out of the provisions of subsection (8).”

**Justification: To protect the foetus as the intended parents do not have control over a surrogate’s actions.**

#### **NEW CLAUSES**

**THAT**, the Bill be amended by inserting the following new clauses immediately after clause 28—

Surrogacy agreements third parties.	by	<b>28A.</b> (1) No person shall on a commercial basis engage in acts in Kenya or knowingly cause another person to engage in acts on a commercial basis including—
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- (a) initiating or taking part in any negotiations with the intention of the making of a surrogacy arrangement;

- (b) offering or agreeing to negotiate the making of a surrogacy arrangement; or
- (c) compiling any information with the intent of using such information in making or negotiating the making of surrogacy arrangements.

(2) For the purposes of this section, a person engages in an act on commercial basis where—

- (a) any payment is at any time received by himself or another in respect of that act; or
- (b) the person engages in that act with the purpose of any payment being received by himself or another in respect of making, negotiating or facilitating the making of any surrogacy arrangement.

(3) In this section, “payment” does not include payment to or for the benefit of a surrogate mother or prospective surrogate mother.

**Justification: To make provision for negotiations of surrogacy agreements by third parties for financial gain.**

Commercialization of surrogacy. **28B.** (1) No person, organization, surrogacy clinic, laboratory or clinical establishment of any kind shall—

- (a) undertake commercial surrogacy, provide commercial surrogacy or its related component procedures or services in any form or run a racket or an organized group to empanel or select surrogate mothers or use individual brokers or intermediaries to arrange for surrogate mothers and for surrogacy procedures at such clinics, laboratories or at any other place;
- (b) issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated, any advertisement in any manner regarding commercial surrogacy by any means, scientific or otherwise;
- (c) abandon or disown or exploit or cause to be abandoned, disowned or exploited in any form, the child or children born through surrogacy;
- (d) exploit or cause to be exploited the surrogate mother or the child born through surrogacy in any manner whatsoever;

- (e) sell human embryo or gametes for the purpose of surrogacy and run an agency, a racket or an organization for selling, purchasing or trading in human embryos or gametes for the purpose of surrogacy;
- (f) import or assist in the importation in any manner of human embryos or human gametes for surrogacy or for surrogacy procedures; and
- (g) conduct sex education in any form for surrogacy.

(2) Despite anything contained in any other written law, a person who contravenes subsection (1) commits an offence and shall on conviction be liable to pay a fine not exceeding ten million shillings or to imprisonment for a term not exceeding ten years, or to both.

(3) For the purposes of this section, the term “advertisement” includes any notice, circular, label, wrapper or any other document including advertisement through internet or any other media, in electronic or print form.

(4) A registered medical practitioner, fertility expert, embryologist or a person who owns a fertility clinic or is employed by a fertility clinic, centre or laboratory and renders his or her professional or technical services to or at such a clinic or centre or laboratory including on honorary basis or otherwise, and who contravenes any of the provisions of this section, commits an offence and shall on conviction, be liable to pay a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

**Justification: To make provision for the prohibition of commercialization of surrogacy by medical practitioners and other relevant actors. To prohibit the use, abuse and mistreatment of surrogates and the gestational surrogacy process generally and to also adhere to international standards as medical advertisement is frowned upon.**

**CLAUSE 29**

**THAT**, Clause 29 of the Bill be amended—

- (a) in sub-clause (1) by—
  - (i) deleting the words “this Act or any other written law” appearing in paragraph (a) and substituting therefor the words “the Constitution”;

**Justification: To cross reference the Constitution which is the supreme law on matters of termination of pregnancy.**

- (ii) deleting the word “implantation” appearing in paragraph (b) and substituting therefor the word “transfer”.

**Justification: Implantation occurs after transfer of the fertilized embryo.**

- (b) by inserting the following new sub-clause immediately after sub-clause (2)—

“(3) Where a dispute arises over matters related to assisted reproductive technology, the disputes may be resolved through mediation, arbitration or court intervention, as may be appropriate.”

**Justification: To provide for a dispute resolution mechanism in disputes relating to assisted reproductive technology.**

#### **CLAUSE 30**

**THAT**, Clause 30 of the Bill be amended—

- (a) by deleting subclause 2 and substituting therefor the following new clause —

“(2) In the event of multiple pregnancies arising out of a surrogacy agreement or where a child born out of a surrogacy agreement has congenital abnormalities all the children born out of the pregnancy shall be the children of the commissioning parent or commissioning parents and the rights and obligations for all parties shall vest as if the pregnancy had borne only one child or normal child.”

**Justification: To ensure that the commissioning parents do not abandon a child with congenital abnormalities who is legally their child.**

- (b) in sub-clause (4) by—
  - (i) deleting the words “Notwithstanding the provisions of section 28(7) appearing immediately before the words “the surrogate”;
  - (ii) inserting the following new paragraph immediately after paragraph (c)—

“(d) compensation irrespective of the pregnancy outcome”;

**Justification: To allow for payment of compensation to surrogates so as to safeguard the wellbeing of surrogates.**

- (c) in sub-clause (5) by—
  - (i) deleting the word “law” appearing immediately after the words “provisions of the law” in paragraph (a) and substituting therefor the word “Constitution”; and

**Justification: To cross reference the Constitution which is the supreme law on matters of termination of pregnancy.**

(6) Nothing in this Act shall proscribe a party from providing greater protections to a surrogate.

(5) Parties to a surrogate agreement shall not vary the discretionary payment during the protected period unless with the mutual consent of all parties and after proof of consultation with an advocate.

(4) An intended parent shall give notice to the Director, in accordance with this Act and the regulations made under this section, where that intended parent wants to make a discretionary payment to a surrogate within the protected period.

(3) Discretionary costs shall only be made during the protected period.

(2) The surrogate may claim permitted costs incurred for any duration of time.

- (a) a description of permitted costs;
- (b) a description of discretionary costs; and
- (c) the length of the payment period in relation to a particular cost.

surrogacy.

Payments in relation to a surrogacy agreement—

30A. (1) The surrogate and the intended parent or parents may include within THAT, the Bill be amended by inserting the following new clause immediately after clause 30—

**NEW CLAUSE**

**Justification: To prevent child abandonment.**

- (a) genetic defect;
- (b) birth defect;
- (c) defects developing subsequent to the birth;
- (d) the sex of a child born out of surrogacy;
- (e) conception of more than one child; or
- (f) any other medical condition.

(8) The intending couple or intending parent shall not abandon the child, born out of a surrogacy procedure, whether within Kenya or outside, for any reason including—

(d) by inserting the following new sub-clause immediately after sub-clause (7)—

**Justification: To cater for the health and wellbeing of a surrogate mother.**

“(8) be entitled to psychological support during and after the pregnancy, provided by the intended parents”.

(ii) inserting the following new paragraph immediately after paragraph (d)—



(7) The Cabinet Secretary shall make regulations on the discretionary and permitted payments to be made under a surrogacy agreement.

(8) The Cabinet Secretary shall, in making regulations under subsection (7) determine the maximum sum of discretionary costs based on the principles of affordability, non-exploitation of the surrogate and non-exploitation of the intended parents.

(9) In this section—

“discretionary payment” means a payment prescribed in regulations made by the Cabinet Secretary and includes the compensatory consideration paid in addition to the permitted payment;

“permitted costs” includes—

- (a) the costs of travel and subsistence including accommodation incurred in connection with the surrogate—
  - (i) meeting with the intended parent or parents; or
  - (ii) attending medical appointments in connection with surrogacy matters;
- (b) the costs of medical care and legal costs incurred in connection with surrogacy matters;
- (c) the costs incurred in ensuring the surrogate’s physical, mental and emotional well-being in connection with surrogacy matters including the costs of counselling, physiotherapy, antenatal classes and fitness classes;
- (d) the costs of pregnancy-related items for use by the surrogate including maternity clothes;
- (e) any increase in food costs attributable to the surrogate pregnancy or to the surrogate entering the surrogacy agreement;
- (f) any costs incurred in securing assistance with the performance of any day-to-day household task that would normally be performed by the surrogate and which she is unable to perform as a result of carrying or giving birth to a child conceived as a result of surrogacy; and
- (g) the costs of compensating for loss of earnings suffered as a result of the surrogate entering into the surrogacy agreement;

“permitted payments” means the payment incurred by the surrogate to cover the costs of the surrogate pregnancy that must be paid by the intended parents except where the surrogate waives that payment; and

“protected period” means the period beginning when the surrogacy agreement is entered into and ending when the—

- (a) surrogate gives birth to a child, at the end of the period of twelve weeks beginning with the day of the birth;
- (b) surrogacy agreement expires without a child having been conceived, on the expiry of the agreement; or
- (c) resulting child is stillborn or miscarried at the end of twelve weeks of death.

**Justification: To provide the permitted payments to a surrogate to prevent exploitation of the parties to a surrogacy agreement.**

**CLAUSE 31**

**THAT**, the Bill be amended by deleting Clause 31 and substituting therefor the following new clause 31—

Prohibition of sex selection. **31.** (1) A person shall not intentionally do any act, at any stage of an assisted reproductive process, to select or determine the sex or physical characteristics or features of a child to be born through the process of assisted reproductive technology.

(2) A person shall not perform any procedure or provide, prescribe or administer anything that shall ensure or increase the probability that an embryo shall be of a particular sex, or that shall identify the sex of an in vitro embryo, except to diagnose, prevent or treat a sex-linked disorder or disease.”

**Justification: To prevent sex selection which raises many ethical concerns except for medical grounds.**

**CLAUSE 32**

**THAT**, Clause 32 of the Bill be amended by—

- (a) deleting sub-clause (1);
- (b) inserting the words “except in the case of transfer of own gametes and embryos for personal use” immediately after the word “Kenya” in sub-clause (2);
- (c) renumbering the existing sub-clause (2) as sub-clause (1) and inserting the following new sub-clause immediately after the renumbered sub-clause (1)—

“(2) The sale or transfer of gametes and embryos to any party outside Kenya shall be prohibited except in the case of transfer of a person’s own gametes and embryos for personal use”.

**Justification: To prohibit the sale or transfer of gametes and embryos outside Kenya except for personal use.**

**NEW CLAUSES**

**THAT**, the Bill be amended by inserting the following new clauses immediately after clause 32—

Offences relating to matching services.

**32A.** (1) A person who provides surrogacy matching services in return for a payment commits an offence and on conviction, shall be liable to pay a fine not exceeding five hundred thousand shillings or to imprisonment to a term not exceeding one year, or to both, and to a fine not exceeding ten million shillings in the case of a body corporate.

(2) Despite subsection (1), a person does not commit an offence by making use of services which another person is prohibited by this section from providing.

(3) In this section—

“surrogacy matching services” means services provided for purposes of assisting a person who wants to enter into a surrogacy agreement to find a person or persons with whom to enter into the surrogacy agreement.

**Justification: To prevent over commercialization of surrogacy.**

Prohibition on certain publications.

**32B** (1) A person shall not publish, or cause to be published, an advertisement or notice to the effect that a person—

- (a) is or may be willing to enter into a surrogacy arrangement;
- (b) is seeking another person who is or may be willing to enter into a surrogacy arrangement, to act as a surrogate mother or to arrange a surrogacy arrangement;
- (c) is or may be willing to accept any benefit under a surrogacy arrangement for himself or herself;
- (d) is or may be willing to accept any benefit under a surrogacy arrangement for another person that is intended or likely to counsel or procure a person to agree to act as a surrogate.

(2) A person who contravenes this section commits an offence and on conviction, shall be liable to pay a fine not exceeding five hundred thousand shillings or to imprisonment to a term not exceeding one year, or to both, and to a fine not exceeding ten million shillings in the case of a body corporate.

**Justification: To prevent over commercialization of surrogacy.**

**CLAUSE 33**

**THAT**, Clause 33 of the Bill be amended by—

(a) inserting the following new paragraph immediately after paragraph (e)—

“(f) the destruction or disposal by a registered assisted reproductive technology provider of any gametes or an embryo formed outside the body of a woman”;

**Justification: To ensure that disposal is done within the stipulated period of ten years.**

(b) renumbering the clause as sub-clause (1);

(c) inserting the following new sub-clauses immediately after the re-numbered sub-clause (1)—

“(2) The Directorate shall ensure that all information contained in the register is protected and maintained in a confidential manner in accordance with the relevant data protection and privacy laws.

(3) The Directorate shall maintain all records, charts, forms, reports, consent letters, agreements.

(4) All the documents under this Act shall be preserved for a period of twenty-five years or such period as may be prescribed:

provided that where any criminal or other proceedings are instituted against any surrogacy clinic, the records and all other documents of such clinic shall be preserved until the final disposal of such proceedings.

(5) All records under subsection (3) and (4) shall, at all reasonable times, be made available for inspection to the appropriate authority or to any other person authorized by the appropriate authority.”

**Justification: To ensure compliance with the right to privacy as guaranteed under Article 31 of the Constitution and to ensure preservation of medical records relating to surrogacy in matters of the health of the surrogate, child born out of surrogacy and the commissioning parents.**

**CLAUSE 34**

**THAT**, Clause 34 of the Bill be amended by deleting the words “twenty-one” appearing in sub-clause (1) and substituting therefor the word “eighteen”.

**Justification: For conformity with age of consent to marry so as to prevent incest.**

**CLAUSE 42**

**THAT**, Clause 42 of the Bill be amended —

(a) by deleting sub-clause (1);

(b) by deleting sub-clause (2) and substituting therefor the following new sub-clause —

“(1) The Directorate may, in accordance with this Act, attach conditions to a licence including—”

**Justification: To merge subclause (1) and (2).**

(c) in the new sub-clause (1) by—

- (i) inserting the word “authorized” immediately before the word “member” appearing in paragraph (b); and

**Justification: To remove ambiguity on the persons authorized to enter and inspect premises offering assisted reproductive services.**

- (ii) deleting the words “unless authorized by the Directorate” appearing in paragraph (d);

**Justification: To remove the requirement of authorization of compensation to be paid for the supply of gametes or embryos.**

(d) by renumbering the existing sub-clause (3), (4), (5) and (6) as (2), (3), (4) and (5) respectively.

**Justification: For proper numbering due to the merging subclause (1) and (2).**

#### **CLAUSE 43**

**THAT**, Clause 43 of the Bill be amended—

- (a) in sub-clause (1) by inserting the following new paragraphs immediately after paragraph (f)—

“(g) the cryo bank makes provision for adequate safety and security for the stored gametes or embryos;

(h) the storage tubes are labelled with a unique identifier;

(i) there is a register linking the unique identifier to the identity of the donors, date of storage and any other relevant information;

(j) there is maintenance of a movement register of storage and retrieval of stored gametes or embryos; and

(k) the cryo bank has adequate facilities to ensure privacy and confidentiality of the owner of the stored gamete or embryo and the identity of the donor.”

**Justification: To make provision on storage requirements to be observed in preservation of embryos or gametes.**

- (b) by deleting sub-clause (2) and substituting therefor the following new sub-clause (2)—

“(2) Where a donor or person wishing to store their gamete or embryo in a cryo bank through cryo-preservation, the cryo bank shall only store such gamete or embryo for as long as the owners of the gamete or embryo are alive or for a period not exceeding ten years, and the end of this period the embryo or gamete shall be allowed to perish or be donated to

a research organization registered under this Act for research purposes with the consent of the commissioning couple or parent in such manner as may be prescribed”.

(c) by inserting the following new sub-clauses immediately after the new sub-clause (2)—

“(3) Where a child wishes to store their gametes or embryo pursuant to this Act, a cryo bank shall preserve such embryo or gamete for a period of twenty years.

(4) A person wishing to store their gametes or embryo for a longer period than the period specified in subsection (2) and (3) shall make an application to the Directorate to approve longer or further storage of a gamete or embryo.

(5) The Directorate may approve the longer storage period where it considers that there are reasonable grounds to do grant a longer period including in the case of a chronic illness or any other ground as prescribed in regulations.

(6) The Directorate shall, in deciding to approve a longer or further storage period under subsection (5), have regard to the age of the applicant and ensure that the applicant shall not be exceed the age of fifty-five years in the proposed extension period.

(7) A person may, in case of a pending application to the Directorate under this section, cause or permit gametes or embryos to remain in storage until the Directorate makes a decision on the application.”

**Justification: To allow for flexibility to accommodate exceptional circumstances.**

**CLAUSE 46**

**THAT**, Clause 46 of the Bill be amended in sub-clause (1) by—

(a) deleting paragraph (d);

**Justification: There is uncertainty on the circumstances that would warrant the revocation of a licence.**

(b) deleting paragraph (e) and substituting therefor the following new paragraph —

“(e) that the person responsible has committed a professional malpractice or has been removed from office for contravening the provisions of the Constitution or any other written law”; and

(c) inserting the words “or any other law and sentenced to imprisonment for a term exceeding six months” immediately after the word “Act” appearing in paragraph (f).

**Justification: To empower the Directorate to revoke licences for persons who have committed serious offences and are of questionable character.**

**CLAUSE 50**

**THAT**, Clause 50 of the Bill be amended in sub-clause (1) by inserting the following proviso immediately after paragraph (c)—

“and is liable upon conviction, to a fine not exceeding two million or to imprisonment for a term not exceeding five years, or to both”.

**Justification: To provide a penalty for the offences committed under clause 50.**

**NEW CLAUSES**

**THAT**, the Bill be amended by inserting the following new clauses immediately after clause 51—

Transitional provisions. **51A.** (1) Every clinic or cryo bank which conducts assisted reproductive technology, partly or exclusively shall, within a period of sixty days from the date of establishment of the Directorate, apply for licences provided that such clinics and cryo banks shall cease to conduct any assisted reproduction procedures on the expiry of six months from the date of commencement of this Act, unless such clinics and cryo banks have applied for registration.

(2) On receipt of the application under subsection (1), the Directorate shall, subject to the provisions of this Act and within a period of thirty days—

- (a) issue a certificate of registration and a registration number to the applicant; or
- (b) reject the application in writing with reasons for the rejection.

**Justification: To provide for savings and transitional provisions on licensing of existing clinics and cryo banks.**

**CLAUSE 52**

**THAT**, Clause 52 of the Bill be amended —

- (a) in paragraph (c) by deleting the words “planted in” and substituting therefor the words “transferred into”;

**Justification: Fertilized embryos are transferred into a womb.**

- (b) in paragraph (g) by inserting the word “informed” immediately after the words “giving of”;

**Justification: To ensure that proper consent is provide for the use of human reproductive material in assisted reproductive processes.**

- (c) in paragraph (h) by deleting the word “children” and substituting therefor the word “embryos”; and

**Justification: Embryos are created from gametes.**

(d) by renumbering the clause as sub-clause (1) and inserting the following new sub-clause immediately after the renumbered sub-clause (1)—

“(2) The power to make regulations shall be exercised only after a draft of the proposed regulations has been approved by Parliament.”

**Justification: The Regulations under the proposed Bill are too technical, substantive and of great significance and as such they require affirmative resolution, that is they should be approved in draft form by both Houses of Parliament before they are published by the Cabinet Secretary for health.**

**THAT**, the Bill be amended by inserting the following new part immediately after Part IX—

**PART X- CONSEQUENTIAL AMENDMENTS**

Amendment 51A. The Births and Deaths Registration Act is amended in section 2 by of section 2 of inserting the following new definitions in their proper alphabetic Cap. 149. sequence—

“intended parent” has the meaning assigned to it under the Assisted reproductive technology Act;

“surrogate mother” has the meaning assigned to it under the Assisted reproductive technology Act.

Amendment 51B. The Births and Deaths Registration Act is amended in section 12 by of section 12 inserting the words “or by presenting a surrogacy agreement indicating the particulars of the intended father” immediately after the words “some of Cap. 149. recognized custom”.

Insertion of a new section 51C. The Births and Deaths Registration Act is amended by inserting the into Cap. following new section immediately after section 12— 149.

Register of persons born through assisted reproductive technology. 12A. The registrar shall cause to be entered in a certificate of birth of a child born out of assisted reproductive technology procedure, the name of the intended parents upon presentation of a valid surrogacy agreement and verification of the agreement by the Directorate established under section 5 of the Assisted Reproductive Technology Act”.

**Justification: To facilitate the registration of children born via assisted reproductive technology.**



**MINUTES OF THE 83RD SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN COMMITTEE ROOM 17, 3<sup>RD</sup> FLOOR, BUNGE TOWER, ON TUESDAY, 19TH NOVEMBER 2024 AT 10:00 AM**

**PRESENT**

- |  |                   |
|--|-------------------|
| 1. The Hon. Dr. Pukose Robert, MP        | -Chairperson      |
| 2. The Hon. Ntwiga Patrick Munene, MP    | -Vice-Chairperson |
| 3. The Hon. Owino Martin Peters, MP      | -Member           |
| 4. The Hon. Oron Joshua Odongo, MP       | -Member           |
| 5. The Hon. Prof. Jaldesa Guyo Waqo, MP  | -Member           |
| 6. The Hon. Lenguris Pauline, MP         | -Member           |
| 7. The Hon. Dr. Nyikal James Wambura, MP | -Member           |
| 8. The Hon. Mary Maingi, MP              | -Member           |
| 9. The Hon. Mathenge Duncan Maina, MP    | -Member           |

**ABSENT WITH APOLOGY**

- |   |         |
|---|---------|
| 1. The Hon. Kipngor Reuben Kiborek, MP                | -Member |
| 2. The Hon. Cynthia Muge, MP                          | -Member |
| 3. The Hon. Wanyonyi Martin Pepela, MP                | -Member |
| 4. The Hon. Kibagendi Antoney, MP                     | -Member |
| 5. The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, MP | -Member |
| 6. The Hon. Titus Khamala, M. P                       | -Member |

**COMMITTEE SECRETARIAT**

- |                          |                          |
|--------------------------|--------------------------|
| 1. Mr. Hassan A. Arale   | -Clerk Assistant I       |
| 2. Mr. Timothy Kimathi   | -Clerk Assistant III     |
| 3. Ms. Faith Chepkemoi   | - Legal Counsel II       |
| 4. Ms. Abigael Muinde    | - Research Officer III   |
| 5. Ms. Sheila Chebotibin | -Senior Serjeant At Arms |
| 6. Ms. Abigael Mwanga    | - Legal Counsel Intern   |
| 7. Ms. Wahu Diana        | - Intern Hansard         |

**IN ATTENDANCE**

**MEMBERS OF PARLIAMENT**

- |                             |                      |
|-----------------------------|----------------------|
| 1. The Hon. Millie Odhiambo | -Sponsor of the Bill |
|-----------------------------|----------------------|

**AGENDA**

1. Prayers;
2. Adoption of the Agenda;
3. Confirmation of Minutes of the previous meetings;
4. Matters Arising;
5. **Consideration and adoption of the Report on the Winning process of the proposed amendments to the Assisted Reproductive Technology Bill, No. 61 of 2022**
6. Any other business and;
7. Adjournment/Date of the Next Meeting.

**MIN. NO. NA/DC-H/2024/518: PRELIMINARIES/INTRODUCTION**

The Chairperson called the meeting to order at ten minutes past ten o'clock,

followed by the Prayer and self-introductions.

**MIN. NO. NA/DC-H/2024/519: ADOPTION OF AGENDA**

The agenda of the meeting was adopted having been proposed by Hon. Mary Maingi, MP, and seconded by Hon. Oron Joshua Odongo, M. P

**MIN. NO. NA/DC-H/2024/520: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETINGS**

This agenda item was deferred to a later date for Consideration.

**MIN. NO. NA/DC-H/2024/521: MATTERS ARISING**

There were no matters arising.

**MIN. NO. NA/DC-H/2024/522: CONSIDERATION OF THE WINNOWING OF THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL, NO. 61 of 2022**

The Committee having considered the report on the winnowing process of the proposed amendments to the Assisted Reproductive Technology Bill, 2022 (**National Assembly Bill no. 61 of 2022**) by the **Hon. Millie Odhiambo, MP** made the following observations;

- (a) There is a need to restrict the provision of assisted reproductive technology services to only Kenyan citizens so as to prevent the exploitation of the citizens of Kenya;
- (b) Commercial surrogacy needs to be expressly prohibited so that assisted reproductive technology services are not misused;
- (c) The Bill also protects the rights of children born out of assisted reproductive technology including in their registration in line with Article 53 of the Constitution and the Children Act, (Cap. 141);
- (d) The Regulations under the proposed Bill are too technical, substantive and of great significance and as such they require affirmative resolution, that is they should be approved in draft form by both Houses of Parliament before they are published by the Cabinet Secretary for health; and
- (e) The Bill is pertinent as it seeks to establish a framework of assisted reproductive technology in the country so that persons who need the assisted reproductive technology services may benefit from them.

**MIN. NO. NA/DC-H/2024/523: ADOPTION OF THE REPORT ON THE WINNOWING PROCESS OF THE PROPOSED AMENDMENTS TO THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL, NO. 61 of 2022**

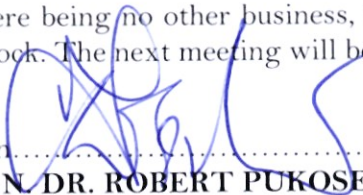
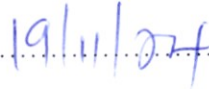
The Committee adopted the report on the winnowing process of the proposed amendments to the assisted reproductive technology Bill No.61 of 2022 having been proposed by Hon. Ntwiga Patrick Munene, MP, and seconded by Hon. Oron Joshua Odongo, MP

**MIN. NO. NA/DC-H/2024/524: ANY OTHER BUSINESS**

No other matter arose.

**MIN. NO. NA/DC-H/2024/525: ADJOURNMENT**

There being no other business, the meeting was adjourned at forty-eight minutes past ten o'clock. The next meeting will be by notice.

Sign.......... Date..........

**HON. DR. ROBERT PUKOSE, CBS, M.P.**  
**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH**



THE NATIONAL ASSEMBLY  
13TH PARLIAMENT - THIRD SESSION - 2024  
DEPARTMENTAL COMMITTEE ON HEALTH  
MEMBERS REPORT ADOPTION LIST

DATE: 19/11/2024

VENUE: Bunge Tower 3<sup>rd</sup> floor Room 16

AGENDA: Consideration of the Report on the Winning Process of the Proposed Amendments to the Accredited Reproductive Technology Bill, 2022

NO.	NAME	SIGNATURE
1.	The Hon. Dr. Pukose Robert, CBS, M.P.- Chairperson	
2.	The Hon. Ntwiga Patrick Munene, M.P.-Vice-Chairperson	
3.	The Hon. Maingi Mary, M.P.	
4.	The Hon. Muge Cynthia Jepkosgei, M. P	
5.	The Hon. Kipngor Reuben Kiborek, M.P.	
6.	The Hon. Wanyonyi Martin Pepela, M. P	
7.	The Hon. Mathenge Duncan Maina, M.P.	
8.	The Hon. Lenguris Pauline, M.P.	
9.	The Hon. Oron Joshua Odongo, M.P.	
10.	The Hon. Dr. James Nyikal Wambura, M.P.	
11.	The Hon. Kibagendi Antoney, M.P.	
12.	The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS M.P.	
13.	The Hon. Prof. Jaldesa Guyo Waqo, M.P.	
14.	The Hon. Titus Khamala, M. P	
15.	The Hon. Owino Martin Peters, M.P.	



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Ref. NA/DDC/DC-H/2023/ (045)

20<sup>th</sup> July, 2023.

Prof. Abdulghafur El-Busaidy,  
Chairman,  
The Supreme Council of Kenya Muslims, (SUPKEM)  
P.O. Box 45163.  
NAIROBI.

Dear *Prof. El-Busaidy*

**RE: CONSIDERATION OF THE ASSISTED REPRODUCTIVE TECHNOLOGY  
BILL OF (NA BILL NO. 61) 2022**

The Departmental Committee on Health is established under Standing Order 216 (5) (c) and is mandated to, among others, "*study and review all legislation referred to it*".

The Assisted Reproductive Technology Bill, 2022 (*National Assembly Bill No. 61 of 2022*) is before the Committee for consideration and reporting to the House pursuant to the provisions of Standing Order 127(1).

Article 118(1) (b) of the Constitution of Kenya and National Assembly Standing Order 127(3) requires Parliament and its Committees to facilitate public participation on business under consideration.

Towards facilitating public participation, the Committee hereby invites you to submit memoranda on the Bill (*copy attached*). It will be appreciated if the memoranda reaches the Office of the Clerk of the National Assembly, First Floor, Main Parliament Building not later than **Tuesday, 1<sup>st</sup> August, 2023**. A soft copy of the memoranda may be emailed to [cna@parliament.go.ke](mailto:cna@parliament.go.ke).

Our Liaison Officers on this subject are **Mr. Hassan A. Arale**, Committee Clerk who may be contacted on Tel No. 0721480578 or email: [hassan.arale@parliament.go.ke](mailto:hassan.arale@parliament.go.ke) and **Ms. Gladys Kiprotich**, Tel No. 0718721253 or email: [gladys.kiprotich@parliament.go.ke](mailto:gladys.kiprotich@parliament.go.ke).

Yours *Sincerely,*

*Peter K. Chemweno*  
PETER K. CHEMWENO.

For: CLERK OF THE NATIONAL ASSEMBLY



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Ref. NA/DDC/DC-H/2023/ (024)

10<sup>th</sup> May, 2023.

**Hon. Justin B. N. Muturi, E.G.H**  
Attorney General of the Republic of Kenya  
Office of the Attorney General and Department of Justice  
Sheria house  
Harambee Avenue  
**NAIROBI**

**Dr. Josephine Mburu**  
Principal Secretary  
State Department for Health Standards and Professional Management  
Ministry of Health  
Afya House  
**NAIROBI**

**Eng. Peter Kiplagat Tum, CBS**  
Principal Secretary  
State Department for Medical Services  
Ministry of Health  
Afya House  
**NAIROBI**

**Mr. Joash Dache,**  
Secretary /Chief Executive Officer,  
Kenya Law Reform Commission (K.L.R.C),  
P.O. Box 34999-00100  
**NAIROBI**

Dear **Eng Tum**

RE: **CONSIDERATION OF THE KENYA DRUGS AUTHORITY BILL (NA BILL NO. 54) 2022 AND THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL OF (NA BILL NO. 61) 2022**

The Departmental Committee on Health is established under Standing Order 216 (5) (c) and is mandated to, among others, “*study and review all legislation referred to it*”.

Pursuant to the provisions of standing order 127(1) the Kenya Drugs Authority Bill (NA Bill No. 54) 2022 and the Assisted Reproductive Technology Bill of (NA Bill No. 61) 2022 were committed to the Committee for consideration

The principal objective of the Kenya Drugs Authority Bill of (NA Bill No 61) 2022 is to regulate of medicines, pharmaceutical practice, drugs, scheduled substances, therapeutic cosmetics, medical devices and related substances. Further the Bill proposes national health products regulatory system to safeguard the health of the public by ensuring the quality, safety and efficacy/effectiveness of medicines and related health products based on principles of sound science, evidence and transparency and matters connected thereto.

The principal objective of the Assisted Reproductive Technology Bill of 2022 is to provide for the regulation of assisted reproductive technology; to prohibit certain practices in connection with assisted reproductive technology; to establish an Assisted Reproductive Technology Directorate; to make provision in relation to children born of assisted reproductive technology processes and matters connected thereto.

Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly, the Committee resolved to invite relevant stakeholders to submit memoranda on the said Bills (copies attached).

In view of short timeline within which the Committee is required to consider the Bills and report to the House, we will appreciate if the memoranda reaches the Office of the Clerk of the National Assembly, First Floor, Main Parliament Building not later than **Tuesday, 24<sup>th</sup> May, 2023**. Soft copies of the memoranda may be emailed to [na@parliament.go.ke](mailto:na@parliament.go.ke).

Our Liaison Officers on this subject are **Mr. Hassan A. Arale**, Committee Clerk who may be contacted on **Tel No. 0721480578** or email: [hassan@parliament.go.ke](mailto:hassan@parliament.go.ke) or **Mr. Gladys Kiprotich**, Tel No. **0718721253** or email: [gladys@parliament.go.ke](mailto:gladys@parliament.go.ke)

Yours



**JEREMIAH W. NDOMBI, MBS**

**FOR: CLERK OF THE NATIONAL ASSEMBLY**

Copy to: -

Ms. Susan Watula

Cabinet Secretary,

Ministry of Health

Alya, House

**NAIROBI**



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Ref. NA/DDC/DC-H/2023/ (024)

10<sup>th</sup> May, 2023.

**Hon. Justin B. N. Muturi, E.G.H**

Attorney General of the Republic of Kenya  
Office of the Attorney General and Department of Justice  
Sheria house  
Harambee Avenue

**NAIROBI**

**Dr. Josephine Mburu**

Principal Secretary  
State Department for Health Standards and Professional Management  
Ministry of Health  
Afya House

**NAIROBI**

**Eng. Peter Kiplagat Tum, CBS**

Principal Secretary  
State Department for Medical Services  
Ministry of Health  
Afya House

**NAIROBI**

**Mr. Joash Dache,**

Secretary /Chief Executive Officer,  
Kenya Law Reform Commission (K.L.R.C),  
P.O. Box 34999-00100

**NAIROBI**

Dear

*Dr Mburu*

RE: **CONSIDERATION OF THE KENYA DRUGS AUTHORITY BILL (NA BILL NO. 54) 2022 AND THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL OF (NA BILL NO. 61) 2022**

The Departmental Committee on Health is established under Standing Order 216 (5) (c) and is mandated to, among others, “*study and review all legislation referred to it*”.



Pursuant to the provisions of standing order 127(1) the the Kenya Drugs Authority Bill (NA Bill No. 54) 2022 and the Assisted Reproductive Technology Bill of (NA Bill No. 61) 2022 were committed to the Committee for consideration

The principal objective of the Kenya Drugs Authority Bill of (NA Bill No 61) 2022 is to regulate of medicines, pharmaceutical practice, drugs, scheduled substances, therapeutic cosmetics, medical devices and related substances. Further the Bill proposes national health products regulatory system to safeguard the health of the public by ensuring the quality, safety and efficacy/effectiveness of medicines and related health products based on principles of sound science, evidence and transparency and matters connected thereto.

The principal objective of the Assisted Reproductive Technology Bill of 2022 is to provide for the regulation of assisted reproductive technology; to prohibit certain practices in connection with assisted reproductive technology; to establish an Assisted Reproductive Technology Directorate; to make provision in relation to children born of assisted reproductive technology processes and matters connected thereto.

Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly, the Committee resolved to invite relevant stakeholders to submit memoranda on the said Bills (copies attached).

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Yours



**JEREMIAH W. NDOMBI, MBS**  
**For: CLERK OF THE NATIONAL ASSEMBLY**

Copy to: - **Ms. Susan Wafula**  
Cabinet Secretary,  
Ministry of Health  
Afya, House  
**NAIROBI**



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Ref. NA/DDC/DC-H/2023/ (044)

19<sup>th</sup> July, 2023

**Archbishop Dr. Timothy Nzyoki Ndambuki, Chairman**  
The National Council of Churches of Kenya (NCCCK)  
3rd Fr, Jumuia Place, Lenana Road  
P. O. Box 45009 – 00100,  
**NAIROBI**

Dear, *Arch. Ndambuki,*

**RE: CONSIDERATION OF THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL, 2022 (NATIONAL ASSEMBLY BILL NO. 61 OF 2022)**

The Departmental Committee on Health is established under Standing Order 216 (5) (c) and is mandated to, among others, “*study and review all legislation referred to it*”.

The Assisted Reproductive Technology Bill, 2022 (*National Assembly Bill No. 61 of 2022*) is before the Committee for consideration and reporting to the House pursuant to the provisions of Standing Order 127(1).

Article 118(1) (b) of the Constitution of Kenya and National Assembly Standing Order 127(3) requires Parliament and its Committees to facilitate public participation on business under consideration.

Towards facilitating public participation, the Committee hereby invites you to submit memoranda on the Bill (*copy attached*). It will be appreciated if the memoranda reaches the Office of the Clerk of the National Assembly, First Floor, Main Parliament Building not later than **Tuesday, 1<sup>st</sup> August, 2023**. A soft copy of the memoranda may be emailed to [cna@parliament.go.ke](mailto:cna@parliament.go.ke).

Our Liaison Officers on this subject are **Mr. Hassan A. Arale**, Committee Clerk who may be contacted on **Tel No. 0721480578** or email: [hassan.arale@parliament.go.ke](mailto:hassan.arale@parliament.go.ke) and **Ms. Gladys Kiprotich**, **Tel No. 0718721253** or email: [gladys.kiprotich@parliament.go.ke](mailto:gladys.kiprotich@parliament.go.ke).

Yours *Sincerely,*

**PETER K. CHEMWENO**  
**For: CLERK OF THE NATIONAL ASSEMBLY**



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Ref. NA/DDC/DC-H/2023/ (057)

9<sup>th</sup> July, 2023

Dr. Kireki Omanwa  
The President  
The Kenya Obstetrical and Gynaecological Society  
KMA Center, Mara Road, Off Hospital Road, Upper Hill  
P.O. Box 19459-00202  
NAIROBI.

Dear *D. Omanwa*

RE: CONSIDERATION OF THE THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL OF (NA BILL NO. 61) 2022 BY THE DEPARTMENTAL COMMITTEE ON HEALTH

The Departmental Committee on Health is established under National Assembly Standing Order 216 (5) (c) and is mandated to, among others, "*study and review all legislation referred to it*".

As you are aware, the Assisted Reproductive Technology Bill (National Assembly Bill No. 61 of 2022) is before the Departmental Committee on Health for consideration and reporting to the House in line with Standing Order 127(1).

You will recall that during a Sitting of the Committee held Thursday 3<sup>rd</sup> August, 2023 which you were in attendance, you requested to be invited for the Committee's retreat to be held on Saturday, 19<sup>th</sup>, August 2023 in Mombasa to discuss the Bill.

This is to inform you that, the Committee has considered and granted your request. You are expected to meet your travel and accommodation expenses for the retreat.

The retreat venue will be at English Point Hotel in Mombasa.

Our Liaison Officers on this subject are Mr. Hassan A. Arale, who may be contacted on Tel No. 0721480578 or email: [hassan.arale@parliament.go.ke](mailto:hassan.arale@parliament.go.ke) and Ms. Gladys Kiprotich, Tel No. 0718721253 or email: [gladys.kiprotich@parliament.go.ke](mailto:gladys.kiprotich@parliament.go.ke).

Yours

JEREMIAH NDOMBI, MBS  
For: CLERK OF THE NATIONAL ASSEMBLY



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Ref. NA/DDC/DC-H/2023/ (056)

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

Prof. Marion Mutugi, EBS  
Kenya National Commission on Human Rights (KNCHR)  
P.O. Box 74359-00200  
**NAIROBI**

Dear *Prof Mutugi*

RE: CONSIDERATION OF THE THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL OF (NA BILL NO. 61) 2022 BY THE DEPARTMENTAL COMMITTEE ON HEALTH

The Departmental Committee on Health is established under National Assembly Standing Order 216 (5) (c) and is mandated to, among others, "*study and review all legislation referred to it*".

As you are aware, the Assisted Reproductive Technology Bill (National Assembly Bill No. 61 of 2022) is before the Departmental Committee on Health for consideration and reporting to the House in line with Standing Order 127(1).

You will recall that during a Sitting of the Committee held Thursday 3<sup>rd</sup> August, 2023 which you were in attendance, you requested to be invited for the Committee's retreat to be held on Saturday, 19<sup>th</sup> August 2023 in Mombasa to discuss the Bill.

This is to inform you that, the Committee has considered and granted your request. You are expected to meet your travel and accommodation expenses for the retreat.

The retreat venue will be at **English Point Hotel** in Mombasa.

Our Liaison Officers on this subject are Mr. Hassan A. Arale, who may be contacted on Tel No. 0721480578 or email: [hassan.arale@parliament.go.ke](mailto:hassan.arale@parliament.go.ke) and Ms. Gladys Kiprotich, Tel No. 0718721253 or email: [gladys.kiprotich@parliament.go.ke](mailto:gladys.kiprotich@parliament.go.ke).

Yours

JEREMIAH NDOMBI, MBS  
For: CLERK OF THE NATIONAL ASSEMBLY



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Ref. NA/DDC/DC-H/2023/ (055)

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

Ms. Ayieta Lumbasyo  
Legal Officer-Nairobi IVF Centre  
Nairobi In vitro fertilization (IVF) Centre  
NAIROBI.

Dear *Ms Lumbasyo*

RE: CONSIDERATION OF THE THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL OF (NATIONAL ASSEMBLY BILL NO. 61 OF 2022) BY THE DEPARTMENTAL COMMITTEE ON HEALTH

The Departmental Committee on Health is established under National Assembly Standing Order 216 (5) (c) and is mandated to, among others, "*study and review all legislation referred to it*".

As you are aware, the Assisted Reproductive Technology Bill (National Assembly Bill No. 61 of 2022) is before the Departmental Committee on Health for consideration and reporting to the House in line with Standing Order 127(1).

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Yours

JEREMIAH NDOMBI, MBS  
For: CLERK OF THE NATIONAL ASSEMBLY

**SUMMARY OF THE AMENDMENTS TO THE BILL AS PER THE ORDER PAPER**

Clause	Committee	Hon. Mayaka	Hon. Shakeel	Hon. Kaluma
3	Delete and substitute	-	-	-
4	Amendments in marginal note  Insertion of new paragraphs New Clause 4 on Guiding Principles	Insertion of new paragraphs  New Clause 4 on Guiding Principles  (Similar to the Committee)	Similar to Hon. Mayaka and DC	Delete and substitute
PART II	-	-	-	Delete
5	-	-	-	Delete
6	-	Insertion of new paragraphs	Similar to Hon. Mayaka	Delete
7	Amendment of clause	-	-	Delete
8	Amendment in paragraph a, b, c	-	-	Delete
9	Insert new sub-clause (3)	-	-	Delete
10	-	-	-	Delete
12	Amendment in sub-clause (1).	-	-	Amendment in sub-clause (1)
13	-	-	-	Amendment in sub-clause (1)
14	Amendment through deletion and substitution of some words.	-	-	-
16	Amendment in sub-clause (1)- insert new paragraph	-	-	-
17	Amendment in marginal note Delete and substitute sub-clause (1)	-	Delete and substitute	Amendment in sub-clause (1)
18	Delete and substitute of new marginal note and sub-clause (1)	-	-	Delete

**SUMMARY OF THE AMENDMENTS TO THE BILL AS PER THE ORDER PAPER**

19	<p>Amendment in sub-clause (1) in paragraph b, c, e,</p> <p>Insertion of new paragraph f</p> <p>NEW CLAUSES after clause 19 Number of times one can donate gametes or embryos or be a surrogate. (same proposal by Hon. Shakeel and Mayaka in clause 26)</p> <p>Donation of gametes or embryos.</p> <p>Disposal of gametes</p>	Insertion of a new paragraph in sub-clause (1)	Similar to Hon. Mayaka	-
20	<p>Delete and substitute marginal note</p> <p>Renumbering as sub-clause (1)</p> <p>Delete and substitute paragraph (b)</p> <p>Insert new sub-clause after the re-numbered sub-clause (1)</p>	-	-	-
21	-	NEW CLAUSE after clause 21- Regulation of counselling services.	Similar to Hon. Mayaka	Amendment in sub-clause (2) and (3)
22	Insert new clause after clause 22 on Right to assisted reproductive technology by persons with disability.	-	-	Delete

**SUMMARY OF THE AMENDMENTS TO THE BILL AS PER THE ORDER PAPER**

23	Delete and substitute subclause (2)  Amendments in sub-clause (3) and (4).	-	-	Insertion of new clause after sub-clause (2) Delete and substitute sub-clause (3) Amendment in sub-clause (4)
24	Amendments in sub-clause (1)(b)  Amendments in sub-clause (2) in paragraph (g) and insertion of new paragraphs  Insert a new clause 24A on Pre-implantation diagnosis or testing.	NEW CLAUSE - after clause 24 on Pre-implantation diagnosis or testing.	Similar to Hon. Mayaka	Amendment in sub-clause (1)(c)
25	Delete	Delete clause	Similar to Hon. Mayaka	Amendment in paragraph (a) and (b)
26	Amendments in sub-clause 1 and 3  Delete and substitute subclause 5- similar to hon. Mayaka and Shakeel	Delete sub-clause (5) and substitute with a new one  Insert NEW CLAUSE After 26 on the Number of times one can donate gametes or embryos or be a surrogate. (similar to the Committee)	Similar to Hon. Mayaka/ Committee.	Delete sub-clause (2) and (3); Amendments in sub-clause (4) and (5)
27	Delete and substitute subclause 1  Amendments in sub-clause 2	NEW CLAUSE after clause 27 on Leave related to surrogacy.	Insert new sub-clause immediately after sub-clause (3)	delete



**SUMMARY OF THE AMENDMENTS TO THE BILL AS PER THE ORDER PAPER**

	<p>Insertion of new subclause 3</p> <p>Insertion of new clause after clause 27 on leave (similar to Hon. Shakeel and Mayaka)</p>			
28	<p>Amendments in subclause 1, 3</p> <p>Insertion of 3 new sub-clauses(similar to Hon. Mayaka/ Shakeel)</p> <p>Insertion of new clauses after 28- 28A- Surrogacy agreements by third parties, commercialization of surrogacy,</p>	<p>Amendments to sub-clause (1) and sub-clause (5)</p> <p>NEW sub-clause 5A</p> <p>Delete sub-clause 7</p> <p>3 NEW sub-clause after sub-clause (6)</p> <p>NEW CLAUSE after 28- Power to make parental orders.</p>	<p>Amendments to sub-clause (1) - varies a bit with Hon. Mayaka</p> <p>Amendments to sub-clause (5)- Delete and substitute sub-clause 5</p> <p>New sub-clause 5A</p> <p>Delete sub-clause 7</p> <p>Insert two new sub-clauses after sub-clause (6)</p> <p>NEW CLAUSE after 28- Power to make parental orders.</p>	Delete
29	<p>Amendment in subclause (1)</p> <p>Insertion of new subclause (3)</p>	-	-	Delete
30	<p>Amendment in sub-clause (2, 4, 5</p> <p>Insertion of a new sub-clause (8)</p> <p>NEW CLAUSES after 30 on Payments in relation to surrogacy.</p>	<p>2 NEW CLAUSES after 30 on Payments in relation to surrogacy.</p> <p>Prohibition on certain publications.</p>	<p>Similar to Hon. Mayaka</p>	Delete

**SUMMARY OF THE AMENDMENTS TO THE BILL AS PER THE ORDER PAPER**

31	Delete and substitute	Delete and substitute	Delete and substitute	-
32	Delete sub-clause (1) Amendment in sub-clause (1)  Insertion of new sub-clause (2)  NEW CLAUSES after 32 Offences relating to matching services.  Prohibition on certain publications.	NEW CLAUSES after 32 Offences relating to matching services.  Sale or transfer of gametes outside of Kenya.	Similar to Hon. Mayaka	-
33	Insert a new paragraph (f) Renumber provision as sub-clause (1)  Insert new sub-clauses	Insert new paragraph	Similar to Hon. Mayaka	Delete
34	Amendment in sub-clause (1)- similar to all	Amendment in sub-clause (1) Delete subclause (3)	Amendment in sub-clause (1)	Delete
35	-	-	-	Delete
36	-	-	-	Delete
37	-	-	-	Amendments on sub-clause (1), 2 and 3
38	-	-	--	Delete
39	-	-	-	Delete
40	-	Insert new sub-clauses (3)	Similar to Hon. Mayaka	Delete
41	-	-	-	Delete
42	Delete sub-clause (1) Delete and substitute sub-clause (2)  Amendments in sub-clause (2)	Amendment in sub-clause (2) by deleting paragraph (d).	-	Delete

**SUMMARY OF THE AMENDMENTS TO THE BILL AS PER THE ORDER PAPER**

	renumbering			
43	Amendment in sub-clause (1)  Delete and substitute sub-clause (2)  Insert new sub-clauses after (2)	Delete and substitute sub-clause (2)  Insert new sub-clauses immediately after the new sub-clause (2)	Similar to Hon. Mayaka	Amendment in sub-clause 1  Delete and substitute sub-clause (2)
44	-	-	-	Delete
45	-	-	--	Delete
46	Delete paragraph (d) Delete and substitute e Amend paragraph f	-	-	Delete
47	-	-	-	Delete
48	-	-	-	Delete
49	-	-	-	Delete
PART VIII	Amendment of expression	-	-	-
50	Amendment in subclause (1) by inserting a proviso	-	-	Amendment in sub-clause (1)
51	Insert new clause after clause 51 on transitional provisions (similar amendments to clause 40 for Hon. Shakeel/Mayaka	-	-	-
PART IX	Amendment of part title	-	-	
52	Amendments in paragraph c,g,h	-	-	Amendments in opening sentence, delete paragraph f,g,h,i,j,k and l.
NEW PART	Consequential amendments 3 new clauses	Consequential amendments 3 new clauses	Similar to Hon. Mayaka	

**Consideration of Amendments by Hon. Shakeel Shabbir**

NO.	CLAUSE	COMMENT	RESOLUTION
1	Clause 2	Similar to the Committee	Dropped
2	Clause 4	Similar to the Committee	Dropped
3	Clause 6	Similar to Hon. Mayaka	Not adopted; it was resolved that the Bill should focus on the function of counselling rather than on the qualifications of counsellors
4	Clause 17		Not adopted-amendment by the Committee adopted.
5	Clause 19	Similar to the Committee	Dropped
6	Clause 25	Similar to the Committee	Dropped
7	Clause 26	Similar to the Committee	Dropped
8	Clause 27	Similar to the Committee	Adopted with amendments.
9	Clause 28	Some are similar to the Committee	Not adopted; save for the amendment relating to subclause (5) which was adopted with amendment increasing the period of "one year" to "five years".
10	Clause 31		Not adopted; Committee amendment adopted
11	Clause 33		Not adopted
12	Clause 34	Similar to the Committee	Dropped
13	Clause 40		Adopted
14	Clause 43		Dropped
15	New Clause 4A	Similar to the Committee	Dropped
16	New Clause 21A	Similar to Hon. Mayaka	Not adopted; it was resolved that the Bill should focus on the function of counselling rather than on the qualifications of counsellors.
17	New Clause 24A	Similar to the Committee	Dropped
18	New Clause 26A	Similar to the Committee	Dropped
19	New Clause 27A	Similar to the Committee	Dropped
20	New clause 28A		Not adopted; instead the Bill to provide for grounds for going to court.
21	New Clauses 30A and 30B	Similar to the Committee	Dropped
22	New Clauses 32A and 32B	Similar to the Committee	Dropped
23	New Part X	Similar to the Committee	Dropped

**Consideration of Amendments by Hon. Irene Mayaka**

<b>NO.</b>	<b>CLAUSE</b>	<b>COMMENT</b>	<b>RESOLUTION</b>
1	Clause 2	Similar to the Committee	Dropped
2	Clause 4	Similar to the Committee	Dropped
3	Clause 4A	Similar to the Committee	Dropped
4	Clause 6	Similar to Hon. Shakeel	Not adopted; it was resolved that the Bill should focus on the function of counselling rather than on the qualifications of counsellors.
5	Clause 19	Similar to the Committee	Dropped
6	Clause 21	Similar to the Committee	Not adopted; it was resolved that the Bill should focus on the function of counselling rather than on the qualifications of counsellors.
7	Clause 24	Similar to the Committee	Not adopted
8	Clause 25	Similar to the Committee	Dropped
9	Clause 26	Similar to the Committee	Dropped
10	New Clause 26A an 27A	Similar to the Committee	Dropped
11	Clause 28	Some provisions	Dropped; save for the amendment relating to subclause (5) which was adopted with amendment increasing the period of "one year" to "five years".
12	Clause 28A	Similar to the Committee	Dropped
13	Clause 30A and 30B	Similar to the Committee	Dropped
14	Clause 31	Similar to the Committee	Dropped
15	Clause 32A and 32B	Similar to the Committee	Dropped
16	Clause 33	Similar to Hon. Shakeel	Not adopted
17	Clause 34	Similar to the Committee	Not adopted
18	Clause 40	Similar to Hon. Shakeel	Adopted
19	Clause 42		Not adopted
20	Clause 43	Similar to the Committee	Dropped
21	New Part X	Similar to the Committee	Dropped

Note: The amendments dropped means that the Committee amendment was adopted.