



REPUBLIC OF KENYA  
ELEVENTH PARLIAMENT – (FOURTH SESSION)  
THE SENATE  
**ORDER PAPER**  
THURSDAY, JULY 21, 2016 AT 2.30 P.M

PRAYERS

1. Administration of Oath
2. Communication from the Chair
3. Messages
4. Petitions
5. Papers (As listed in the Appendix)
6. Notices of Motion
7. Statements (As listed in the Appendix)

8. COMMITTEE OF THE WHOLE

**\*THE REPRODUCTIVE HEALTH CARE BILL (SENATE BILL NO. 17 OF 2014)**  
(Sen. Judith Sijeny)  
*(Resumption of Debate interrupted on Tuesday, 19<sup>th</sup> July, 2016)*  
*(Division)*

9. COMMITTEE OF THE WHOLE

**\*THE COUNTY OUTDOOR ADVERTISING CONTROL BILL (SENATE BILL NO. 11 OF 2015)**  
(Sen. Mutula Kilonzo Jnr.)  
*(Resumption of Debate interrupted on Tuesday, 19<sup>th</sup> July, 2016)*  
*(Division)*

10. COMMITTEE OF THE WHOLE

**\*THE EMPLOYMENT (AMENDMENT) BILL (SENATE BILL NO. 1 OF 2015)**  
(Sen. Martha Wangari)

11. COMMITTEE OF THE WHOLE

**\*THE COUNTY LIBRARY SERVICES BILL (SENATE BILL NO. 6 OF 2015)**  
(Sen. Joy Gwendu)

12. **\*THE CONSTITUTION OF KENYA (AMENDMENT) BILL (SENATE BILL NO. 16 OF 2015)**  
(Sen. Judith Sijeny)

*(Second Reading)*  
*(Resumption of Debate interrupted on Wednesday, 10<sup>th</sup> February, 2016)*  
...../Motion

13. **MOTION** – (Chairperson, Sessional Committee on County Public Accounts and Investments)

**THAT**, this House adopts the Report of the Sessional Committee on County Public Accounts and Investments on the Inquiry into the Financial Operations of Homa-Bay County Executive for the Financial year 2013/2014 laid on the Table of the House on Wednesday, 4<sup>th</sup> November, 2015.

*(Resumption of Debate interrupted on Thursday, 28<sup>th</sup> April, 2016)*

14. **MOTION**–(Sen. Joy Gwendu)

**THAT**, the Senate notes the Report of the Commonwealth Women Parliamentarians Regional Capacity Building Workshop held in Dar Es Salaam, Tanzania on 20<sup>th</sup> – 23<sup>rd</sup> January, 2016 laid on the Table of the House on Thursday, March 17, 2016.

*(Resumption of Debate interrupted on Thursday, 30<sup>th</sup> June, 2016)*

15. **MOTION** -(Sen. Kembi-Gitura)

**THAT**, the Senate notes the Report of the ACP Parliamentary Assembly and the 29<sup>th</sup> Session of the ACP-EU Joint Parliamentary Assembly held at the Grand Pacific Hotel, Suva, Fiji from 10<sup>th</sup> to 17<sup>th</sup> June, 2015, laid on the Table of the House on Wednesday, 25<sup>th</sup> November, 2015.

16. **MOTION** – (Chairperson, Standing Committee on National Security and Foreign Relations)

**THAT**, this House adopts the Report of the Standing Committee on National Security and Foreign Relations on the assessment of the security situation in Mandera County, Laikipia county and Kapedo (Border town of Turkana and Baringo Counties) conducted between 19<sup>th</sup> January and 5<sup>th</sup> February, 2015 and laid on the Table of the House on Wednesday, 29<sup>th</sup> July, 2015.

17. **MOTION** (Sen. Peter Mositet)  
(Standing Committee on Education)

**AWARE** that Article 43 (1) (f) of the Constitution of Kenya provides that every person has the right to education and that Article 53 (1) (b) of the Constitution provides that every child has the right to free and compulsory basic education;

**COGNIZANT** that Article 54 (1) (b) of the Constitution provides that a person with any disability is entitled to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;

**RECOGNIZING** that education in Kenya is a shared function of both the county and national governments;

**CONCERNED** that while significant gains have been made under the Free Education Programme introduced in the year 2003, access and participation of children with special needs is generally low across the country and their needs have not been specifically addressed;

...../Motion

**NOW THEREFORE** the Senate directs the Standing Committee on Education to inquire into the performance of the Ministry of Education, Science and Technology in the implementation of the policy statements and strategies made in the National Special Needs Education Policy Framework, 2009 and report back to the Senate within three months.

18. **MOTION** – (Sen. (Prof.) John Lonyangapuo)  
(Department of Education)

**THAT**, whereas Article 53 (1)(b) of the Constitution provides that every child in Kenya has the right to free and compulsory basic education;

**RECOGNIZING** the importance of education in the alleviation of the main challenges facing Kenya's sovereignty identified at independence, namely; poverty, illiteracy and disease;

**APPRECIATING** the gains made following the implementation of the free primary education program in 2003 and cognizant of the principles set out in the Basic Education Act of 2013 whose objectives include promotion and regulation of free and compulsory basic education besides providing for accreditation, registration and management of basic education institutions;

**NOTING** the substantial resources invested by the national and county governments, parents, sponsors and development partners in the provision of basic education;

**FURTHER NOTING** that pursuant to the Basic Education Act, the County Director of Education is vested with numerous responsibilities including facilitation of auditing of all basic educational institutions in the respective county thereby leaving fundamental gaps of governance especially in the management of the available resources;

**NOW THEREFORE**, the House recommends to the Cabinet Secretary for Education to facilitate the creation of the office of an auditor to specifically audit the basic education institutions' funds to enhance transparency and accountability and improve governance in the management of these institutions.

19. **MOTION** – (Chairperson, Standing Committee on Information and Technology)

**THAT**, the Senate adopts the Report of the Standing Committee on Information and Technology on the County Oversight and Networking Engagement (CONE) to Migori, Bomet and Narok Counties laid on the Table of the Senate on 3<sup>rd</sup> March, 2016.

20. **MOTION** – (Chairperson, Standing Committee on National Security and Foreign Relations)

**THAT**, this House adopts the Report of the Standing Committee on National Security and Foreign Relations on the study visit to Russia laid on the Table of the House on Tuesday, 15<sup>th</sup> March, 2016.

21. **MOTION**–(Sen. (Dr.) Agnes Zani)

**THAT**, the Senate notes the Report of the 3<sup>rd</sup> Global Open Government Partnership (OGP) summit held in Mexico City, from 25<sup>th</sup> October to 1<sup>st</sup> November 2015 laid on the Table of the House on Tuesday, April 19, 2016.

22. **MOTION**–(Sen. George Khaniri)  
(Ministry of Education, Science and Technology)

**WHEREAS** Article 43(1)(f) and 53(1)(b) of the Constitution guarantees every citizen a right to education and every child a right to free and compulsory basic education, respectively;

**NOTING** that the Teachers Service Commission is mandated to handle employment, deployment, remuneration and discipline of teachers in public schools in Kenya;

**CONCERNED** that there are great disparities in the distribution of teachers in public schools across the country leading to oversupply in some schools and undersupply in others and ultimately leading to major teacher shortage especially in rural and marginalized areas;

**APPRECIATING** efforts made by the national government to improve the teacher pupil ratio to international standards in all public schools through yearly employment of teachers;

**FURTHER CONCERNED** that the statistics on the number and distribution of teachers in public schools is not readily available;

**NOW THEREFORE**, the Senate directs the Ministry of Education, Science and Technology to conduct a countrywide audit on the distribution of teachers in all public schools indicating the requisite establishment per school and the corresponding number of teachers who are in-post and further that the Ministry submits a report to the House on the matter within ninety (90) days.

23. **MOTION** – (Sen. (Eng.) Muriuki Karue, MP)  
(Ministry of Interior and Coordination of National Government)

**THAT**,

**CONCERNED** about the numerous reports of the arbitrary arrests of innocent people by the police;

**FURTHER CONCERNED** that a large number of those arrested are allegedly locked up in police cells without being recorded either in the Occurrence Book or elsewhere;

**DEEPLY CONCERNED** that some of the arrested people disappear without a trace and that many who are subsequently traced are found dead away from where they were known to have been locked up;

...../Motion

**ALARMED** by the recent incident where three young men were locked up for hours at Syokimau Police Post without any record indicating they had been at the police post, only for them to be found days later, in another area far from the police post, having been brutally killed;

**APPRECIATING** that the Closed Circuit Television (CCTV) system installed by the Government in Nairobi has helped a lot in criminal investigations;

**NOW THEREFORE** the Senate calls upon the National Government to-

- a) install CCTV cameras in all police stations and police posts in order to record each and every person going in and out of the station;
- b) have the CCTV system designed in such a way that it is capable of capturing the Occurrence Book entries every twelve hours; and
- c) ensure the CCTV system is connected to a central depository in order to minimize chances of subsequent tampering.

### NOTICE

The Senate resolved on 10<sup>th</sup> February, 2016 as follows:-

**THAT**, pursuant to Standing Order 100 (1), the Senate resolves that debate on a Motion not sponsored by the Majority or Minority Party or a Committee shall be limited in the following manner:-

A maximum of three hours with not more than twenty minutes for the Mover, twenty minutes for the Majority Party Official Responder, twenty minutes for the Minority Party Official Responder and fifteen minutes for each other Senator speaking and that fifteen minutes before the time expires, the Mover shall be called upon to reply.

### KEY

**\*\*\*\*\***

■ Denotes a Majority /Minority Party Bill

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■ Denotes a National Assembly Bill

**\*\***

■ Denotes a Committee Bill

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■ Denotes any other Bill

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**NOTICE OF AMENDMENTS****A. \*THE REPRODUCTIVE HEALTH CARE BILL (SENATE BILL NO.17 OF 2014)**

(Sen. Judith Sijeny)

**NOTICE** is given that Sen. Judith Sijeny, intends to move the following amendments to the Reproductive Health Care Bill, 2014, at the Committee Stage-

**CLAUSE 3**

**THAT** clause 3 be amended-

- (a) in paragraph (a) by deleting the words "the women" appearing immediately after the words "rights for" and substituting therefor the words "every person";
- (b) by deleting paragraph (b);
- (c) by deleting paragraph (c) and substituting therefor the following new paragraph-
  - (c)create an enabling environment for the reduction in maternal morbidity, child morbidity and child mortality rate;
- (d) in paragraph (d) by deleting the words "women and children" appearing immediately after the words "services to" and substituting therefor the words "every person".

**CLAUSE 4**

**THAT** Clause 4 be deleted and substituted with the following clause-

4. The National and County Governments shall ensure accessibility of family planning services including contraceptive methods, counseling, and free information and education

**CLAUSE 5**

**THAT** Clause 5 be deleted and substituted with the following clause-

- 5. (1)The County Governments shall ensure availability of information and education on natural family planning methods.
- (2) Every health care provider prescribing a contraceptive method shall provide relevant information to the person to whom the prescription is being given as to its advantages and disadvantages and ensure informed consent.
- (3) A health care provider who provides family planning services shall collate relevant data and forward it to the board under the cover of confidentiality

**CLAUSE 6**

**THAT** clause 6 be amended by-

- (a) deleting the heading appearing immediately before clause 6 and substituting therefor the following new heading –

**ASSISTED REPRODUCTION**

- (b) deleting the word "stable" appearing immediately after the words "means a".

...../ **Amendments**

**CLAUSE 7**

**THAT** the Bill be amended by deleting clause 7 and substituting therefor the following clause-

Provision of  
assisted  
reproduction  
services.

**7. (1)** Every person has a right to assisted reproduction.

(2) The national and county governments shall provide affordable, accessible, acceptable and quality assisted reproduction services.

(3) Assisted reproduction services shall be offered by a person qualified and licensed by the respective regulatory bodies.

(4) For purposes of assisted reproduction services-

(a) the health care provider shall before commencement of treatment, give the parties seeking treatment specific information about their medical condition, the available medical treatment options, the risks, the success rate, cost of treatment and the facilities where that treatment options are available;

(b) the assisted reproduction health care provider shall provide professional counselling to patients about the implications and chances of success of assisted reproduction and shall also inform the patients of the advantages, disadvantages and cost of the procedures;

(c) the health care provider and the health facility shall ensure there is preservation and promotion of the health, safety, and dignity of the parties; and

(d) the health care provider shall give all concerned parties relevant information to enable them make an informed choice and give informed consent before undertaking any assisted reproduction service.

**CLAUSE 8**

**THAT** clause 8 be amended by deleting paragraph (c) and substituting therefor the following paragraph-

(c) in the prescribed form.

**CLAUSE 9**

**THAT** clause 9 be deleted.

**CLAUSE 10**

**THAT** clause 10 be deleted

**CLAUSE 11**

**THAT** clause 11 be amended-

(a) in paragraph (c) by-

...../ *Amendments*

(i) deleting sub-paragraph (i) and substituting therefor the following new sub-paragraph-

(i) is above twenty - one years of age;

(ii) deleting sub-paragraph (iv);

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

(e) the commissioning parents agree to meet expenses for the surrogate mother's prenatal care regimen consisting of sensible diet, prenatal vitamins, regular visits to her obstetrician, and hormonal support as prescribed by the obstetrician or medical providers at the in vitro fertilization clinic.

## **CLAUSE 12**

**THAT** clause 12 be amended by deleting the words "the provisions of section 10 satisfied" and substituting therefor the words "deposited in the assisted reproduction facility together with all relevant medical documents".

## **CLAUSE 13**

**THAT** the Bill be amended by deleting clause 13 and substituting therefor the following clause-

**13.(1)** A surrogate parenthood agreement may be terminated -

- (a) by a termination of pregnancy that may be carried out in terms of the provisions of this Act;
- (b) before implant of the fertilized embryo in the surrogate mother's womb; or
- (c) in case there arises a dispute between commissioning parents before the fertilized embryo is implanted in the surrogate mother.

(2) If a genetic test proves that the child born out of a surrogacy arrangement does not bear the intended genes, the parties shall go through an arbitration process to determine who takes up the parental rights.

(3) If a surrogacy agreement is terminated in accordance with sub-section (1), the commissioning parents shall have a right of first claim to the child born out of the surrogacy arrangement and should they not desire to exercise their right to first claim, the child shall be placed in the care of a charitable children's institution.

(4) In the event of termination of the surrogacy agreement pursuant to sub-section (1) and the commissioning parents do not wish to exercise the right under sub-section (2), the commissioning parents shall have no further duties or responsibilities under this agreement.

## **CLAUSE 14**

**THAT** clause 14 be deleted.

## **CLAUSE 15**

**THAT** clause 15 be deleted.



**CLAUSE 16**

**THAT** clause 16 be amended by deleting paragraph (d) and substituting therefor the following paragraph-

(d)midwives

**CLAUSE 17**

**THAT** clause 17 be amended by deleting all the words appearing immediately after the words "government shall" and substituting therefor the words "ensure access to the highest attainable standard and quality of ante-natal, intra-partum, post-partum, neo-natal and post-natal services".

**CLAUSE 19**

**THAT** the Bill be amended by deleting clause 19 and substituting therefor the following clause-

**19.**(1)A pregnancy may be terminated by a trained health professional, where in the opinion of the trained health professional-

- (a) there is need for emergency treatment;
  - (b) the pregnancy would endanger the life or health of the mother; or
  - (c) there exists a substantial risk that the fetus would suffer from a severe physical or mental abnormality that is incompatible with life outside the womb.
- (2) Trained health professionals shall offer non-directive counselling, before and after the termination of a pregnancy.
- (3)** Termination of pregnancy shall be performed by a trained health professional.

**CLAUSE 20**

**THAT** the Bill be amended by deleting clause 20 and inserting therefor the following clause-

**20.** Subject to the provisions of this Act, termination of pregnancy may takeplace-

- (a) with the consent of the pregnant woman;
- (b) in the case of a pregnant minor, after consultation with the minor's parents, guardian or such other persons with parental responsibility over the said minor, provided that the best interest of the minor shall prevail; or

(c) in the case of a person living with mental disability-

- (i)after consultation with the parents, guardian or such other persons with parental responsibility over the said person; or
- (ii) where the person is in an institution, the senior most health care provider shall give consent and the best interest of the person living with mental disability person shall prevail.

**CLAUSE 21**

**THAT** clause 21 be deleted and substituted with the following clause-

Termination of Pregnancy.	<b>21.</b> Termination of pregnancy on demand is not permitted unless as provided for under this Act.
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...../ *Amendments*

**CLAUSE 22**

**THAT** clause 22 be deleted and substituted with the following clause-

22. The health care facilities offering reproductive health care services shall meet the minimum medical standards.

**CLAUSE 23**

**THAT** clause 23 be deleted and substituted with the following clause-

23. There shall be at least one county referral hospital in every County, which shall be well equipped to offer quality reproductive health services.

**CLAUSE 24**

**THAT** clause 24 be deleted and substituted with the following clause-

24. The County Government shall ensure that every county has-

- (a) a functional referral system;
- (b) at least five ambulances in every county referral hospital;
- (c) a well equipped pharmacy in every county referral hospital.

**CLAUSE 25**

**THAT** clause 25 be deleted.

**CLAUSE 26**

**THAT** clause 26 be deleted.

**CLAUSE 28**

**THAT** clause 28 be deleted and substituted with the following clause-

28. Breach of confidentiality by a health practitioner shall be dealt with by the relevant health professional regulatory body.

**CLAUSE 29**

**THAT** clause 29 be deleted.

**CLAUSE 30**

**THAT** clause 30 be deleted.

**CLAUSE 31**

**THAT** clause 31 be deleted.

**CLAUSE 32**

**THAT** clause 32 be deleted.

**CLAUSE 33**

**THAT** clause 33 be deleted.

**CLAUSE 34**

**THAT** clause 34 be deleted and substituted with the following clause-

**34.** Adolescent friendly reproductive health services shall include age-appropriate –

- (a) mentorship;
- (b) spiritual and moral guidance;
- (c) counseling on-
  - (i) relationships;
  - (ii) abstinence;
  - (iii) consequence of unsafe abortion;
  - (iv) sexually transmitted infections and HIV/AIDS;
  - (v) substance and drug abuse; and
  - (vi) prevention of pregnancy.
- (d) training in livelihood and life skills;
- (e) vocational trainings; and
- (f) such other health services as the Cabinet Secretary shall determine.

**CLAUSE 35**

**THAT** clause 35 be amended by –

- (a) re-numbering the existing provision as sub-clause (1);
- (b) in the new sub-clause (1) by deleting the words “and adolescents” appearing immediately after the words “female genital mutilation”;
- (c) inserting the following new sub-clause immediately after sub-clause (1)-

(2) All persons who get health complications as a result of forced or voluntary genital mutilation shall access treatment from any health care provider without discrimination.

**CLAUSE 36**

**THAT** clause 36 be amended-

- (a) in subsection (2), by deleting paragraphs (b) and (c );
- (b) in subsection (4)-

by deleting the words “and child health care” appearing at the end of paragraph (e) and substituting therefor the words “health care rights”.
- (c) by inserting the following new paragraphs immediately after paragraph (f)-
  - (fa) collate data and carry out research to monitor and evaluate progress on the implementation of laws, rules, guidelines and policies of reproductive health care rights;
  - (fb) develop policies to protect all persons from practices that violate their reproductive health rights; and

**CLAUSE 37**

**THAT** clause 37 be amended-

(a) in subsection (1) by deleting paragraphs (a) to (n) and substituting therefor the following new paragraphs-

- a) a chairperson appointed by the Board from among its members;
- b) the Principal Secretary, responsible for Health or a person designated by the Principal Secretary;
- c) the Principal Secretary responsible for Education or a person designated by the Principal Secretary;
- d) a representative of the County Governments appointed by the Council of County Governors;
- e) the Director of the National Coordinating Agency for Population and Development;
- f) a representative nominated by the Kenya Medical Practitioners and Dentists Board, who shall be either an obstetrician, gynecologist or pediatrician;
- g) a pharmacist nominated by the Pharmacy and Poisons Board;
- h) a representative of the Nursing Council of Kenya;
- i) a representative of faith-based organizations appointed by the Inter-religious Council of Kenya;
- j) two persons representing civil society organizations working in the area of reproductive health care appointed by the Law Society of Kenya; and
- k) two young persons, of either gender, representing the youth with a proven record of knowledge, experience and commitment to advocacy for reproductive health care, one of whom must be a person living with disability, nominated by the Cabinet Secretary.

(b) by deleting subsection (2) and inserting therefor the following new subsection-

(2)A person shall not be eligible for nomination under sub-section (1), if that person does not fulfil the requirements of Chapter Six of the Constitution.

(c) in subsection (3), by deleting paragraph (e).

**CLAUSE 41**

**THAT** clause 41 be deleted.

**CLAUSE 42**

**THAT** clause 42 be deleted.

**CLAUSE 43**

**THAT** clause 43 be deleted.

**CLAUSE 44**

**THAT** clause 44 be deleted.

**CLAUSE 45**

**THAT** clause 45 be deleted.

**CLAUSE 46**

**THAT** clause 46 be deleted.

**CLAUSE 47**

**THAT** clause 47 be deleted.

**CLAUSE 48**

**THAT** clause 48 be deleted.

**CLAUSE 49**

**THAT** Clause 49 be deleted and substituted with the following clause-

**49.** The Cabinet secretary shall in consultation with the Board and other regulatory health bodies make regulations or any other statutory instrument necessary to promote the objects of this Act.

**CLAUSE 50**

**THAT** Clause 50 be deleted.

**CLAUSE 51**

**THAT** Clause 51 be deleted.

**NEW CLAUSES**

**THAT** the Bill be amended by inserting the following new clauses immediately after clause 6

**NEW CLAUSE 6A**

Consent

**6A.** (1) An assisted reproduction health care provider shall not perform any treatment or procedure of assisted reproduction without the consent in writing of all the parties seeking assisted reproduction services.

(2)An assisted reproduction health care provider shall not freeze any human embryos without specific instructions and consent in writing from all the parties seeking assisted reproduction in respect of what should be done with the gametes or embryos in case of death or incapacity of any of the parties.

(3)An assisted reproduction health care provider and facility shall not use any human reproductive material to create an embryo or use an in vitro embryo for any purpose without the specific consent in writing of all the parties to whom the assisted reproduction facility relates.

- (4) The consent of any of the parties obtained under in- vitro fertilization may be withdrawn at any time before implantation of the embryos or the gametes to the woman's uterus.

#### **NEW CLAUSE 6B**

Conditions  
for  
assisted  
reproducti  
on

**6B.** A trained health professional specializing in in-vitro fertilization shall before carrying out any procedure ensure that-

- (a) consent to the collection and use of gametes is obtained from the gamete provider;
- (b) in cases where the gamete provider is deceased, the gamete provider had given their consent for the use of the gametes before their demise;
- (c) gametes to be used for the procedure have been stored for less than ten years after being obtained from a gamete provider;
- (d) the donor has been medically tested for such diseases as may be prescribed and all other communicable diseases which may endanger the health of the parents, surrogate or child;
- (e) all parties to the agreement are aware of the rights of a child born through the use of assisted reproduction service; and
- (f) information about clients, donors and surrogate mothers is kept confidential unless with the consent of the person to whom the information relates, or in a medical emergency.

#### **NEW CLAUSE 6C**

Register

**6C.** (1)(a) A register with information on full names of the donor, physical characteristics of the donor, ethnic origin, family medical history, interests, hobbies and skills of the donor shall be kept at all assisted reproduction facility.

(b)The register shall be strictly confidential.

(2) A donor shall remain anonymous to both the person using the gametes and the child born out of the use of the donated gametes.

(3) A donor shall not acquire any parental responsibility to the child born out of the use of the donated gametes.

(4) Parties using a donated egg or sperm have a right to choose their donor should they wish to do so.

(5) A donor shall not receive any form of compensation for the use of their donated gametes.

(6)An assisted reproduction health specialist shall provide information to the donor to allow the donor make an informed decision.

**NEW CLAUSE 6D**

Limitations

**6D.**The following limitations shall apply to assisted reproduction services-

- (a) gametes shall not be used in research except with the consent of the gamete provider;
- (b) an assisted reproduction health specialist shall not use, supply or export a gamete except with the written consent of the donor and in a manner consistent with the donor's consent;
- (c) gametes shall not be used in assisted reproduction treatment if the gamete provider is deceased unless the gamete provider had given consent to the use of gametes before death; and
- (d) an assisted reproduction health professional shall not use a gamete to create an embryo if the assisted reproduction health specialist has knowledge that the donor is a close family member of the recipient to avoid genetic complications.

**NEW CLAUSE 12A**

**THAT** the Bill be amended by inserting the following new clause immediately after clause 12-

Legal fees

**12A.** (1) Each party shall have a different lawyer and the agreement shall be witnessed by different persons to protect each party's interest.

(2)Any legal fees to the surrogate mother shall be paid by the commissioning parents.

(1) Before the signing of the surrogacy agreement, the parties and their respective lawyers shall be present at the signing of the informed consent in the presence of a qualified medical practitioner, who shall explain to the parties the implications of the surrogacy agreement.

**NEW CLAUSE 13A**

**THAT** the Bill be amended by inserting the following new clauses immediately after clause 13-

Surrogate parenthoo  
d  
agreement

**13A.** A valid surrogate parenthood agreement shall provide that-

- (a) any child born of a surrogate mother in accordance with the agreement is for all purposes the legal child of the commissioning parent or parents from the moment of conception;
- (b) the surrogate mother shall not terminate the pregnancy except as provided or by law;

- (c) the surrogate mother is obliged to hand the child over to the commissioning parent or parents as soon as is reasonably possible after the birth;
- (d) the commissioning parents shall not reject or discriminate against the child under any circumstances;
- (e) the surrogate mother, her spouse, partner or relative shall have no right of parenthood or care of the child;
- (f) the surrogate mother, her spouse, partner or relative shall have no right of contact with the child unless provided for in the agreement between the parties;
- (g) the surrogate parenthood agreement shall not be terminated after the artificial fertilisation of the surrogate mother has taken place; and
- (h) a child born to a surrogate mother shall have no claim for maintenance or succession against the surrogate mother, her spouse, partner, the surrogate mother's relative or surrogate mother spouse's relative.

**NEW CLAUSE 13B**

Obligations

**13B.** In the event of multiple pregnancies, the obligations of the surrogate mother and the commissioning parents remain as provided in this Act.

**NEW CLAUSE 13C**

Citizenship of child

**13C.(1)** The commissioning parents shall be named as the parents of the child in the birth notification, birth certificate and any other official document that requires the names of the parents of the child.

(2) The child shall acquire the citizenship of the commissioning parents in line with Article 14(1) of the Constitution of Kenya.

Compensation

**NEW CLAUSE 13D**

**13D.(1)** Subject to subsection (2), a person may not in connection with a surrogate parenthood agreement give or promise to give to any person, or receive from any person, a reward or compensation in cash or in kind.

(2) A promise or agreement for the payment of any compensation to a surrogate mother or any other person in connection with a surrogate parenthood agreement or the execution of such an agreement is not enforceable, except a claim for –



- (a) compensation for expenses that relate directly to the artificial fertilization and pregnancy of the surrogate mother, the birth of the child and post-delivery complications;
- (b) loss of earnings suffered by the surrogate mother as a result of the surrogacy; or
- (c) insurance to cover the surrogate mother for any acts that may lead to death or disability brought about by the pregnancy.

**THAT** the Bill be amended by inserting the following new clauses immediately after clause 17-

**NEW CLAUSE 17A**

**17A.** The National and County governments shall provide free ante-natal care, delivery services and post-partum care.

**17B.** The county governments shall ensure access to-

- (a) emergency obstetric and gynecological emergency services; and
- (b) information and treatment of –
  - (i) communicable and non-communicable diseases of pregnancy;
  - (ii) sexually transmitted infections; and
  - (iii) reproductive tract infections.

**NEW PART**

**THAT** the following new part be inserted immediately after Part IV-

**PART IVA-- ACCESS TO REPRODUCTIVE HEALTH CARE SERVICES FOR PERSONS LIVING WITH DISABILITIES**

**NEW CLAUSE 18A**

**18A.** The County Executive Member for the time being in charge of health shall-

- (a) provide physical access and resolve transportation and proximity issues to clinics, hospitals and places where public health education is provided, contraceptives are sold or distributed or other places where reproductive health services are provided;
- (b) increase access to information and communication materials on sexual and reproductive health in braille, large print, simple language, sign language and pictures;
- (c) provide continuing education and inclusion of rights of persons with disabilities among health care providers; and
- (d) undertake activities to raise awareness and address misconceptions among the general public on the stigma and their lack of knowledge on the sexual and reproductive health needs and rights of persons living with disabilities.

Right to  
reproducti  
ve health  
rights

**NEW CLAUSE 18B**

Sterilization

**18B.** Sterilization shall not be carried out to persons with mental disability

**NEW CLAUSE 19A**

Duty to refer

**That** the Bill be amended by inserting the following new clause immediately after clause 19-

**NEW CLAUSE 19A**

**19A.** (1) A trained health professional who has a conscientious objection to the termination of pregnancy as envisaged under this Act has a legal duty to refer the pregnant woman to a trained health professional who is willing to provide this service except in case of emergency treatment.

**(2)** A trained health professional in subsection (1) who does not refer a pregnant woman as provided, commits an offence and is liable to three years imprisonment or a fine of one million Shillings or to both fine and imprisonment.

**That** the Bill be amended by inserting the following new clause immediately after clause 21-

**NEW CLAUSE 21A**

**21A.** A trained health professional shall provide post-abortion care for cases of incomplete abortion and related complications.

**NEW CLAUSE 21B**

Data

**21B.** A trained health professional who prescribes termination of pregnancy and post-abortion care shall collate the data and forward it to the board in confidentiality.

**That** the Bill be amended by inserting the following new clause immediately after clause 34-

**NEW CLAUSE 34A**

**34A.** In the provision of adolescent friendly reproductive health services-

Consent

- (a) parental consent shall be required for adolescents aged below 18 years;
- (b) due consideration shall be made on issue of parental consent to children as provided for under section 119 of the Children's Act;
- (c) due consideration shall be made as to the provision of age-appropriate information, education and reproductive health services.

**NEW CLAUSE 34B**

Adolescent - friendly facility

**34B.** (1) An adolescent friendly health care facility shall-

- (a) provide adolescent-friendly reproductive health services; and

(b) facilitate the provision to adolescents of confidential, comprehensive, non-judgmental and accessible reproductive health services.

(2) A health care provider from whom reproductive health services are sought by an adolescent is obligated to refer the adolescent to a qualified person for provision of the necessary services.

## **CLAUSE 2**

**THAT** clause 2 be deleted and substituted therefor with the following clause –

In this Act-

“access to” means the ability of an individual to obtain or receive appropriate, safe, accountable, effective , quality health information and services;

“adolescent” means any person aged between ten and eighteen years;

“adolescent-friendly reproductive health services” means reproductive health services that are accessible, age-appropriate, and safe for adolescents and are designed to attract interest and sustain adolescent motivation to utilize such services;

“antenatal care” includes the correct diagnosis of pregnancy, followed by periodic examinations, screening and management of complications during pregnancy;

“authorized facility” means a facility authorized by the Medical Practitioners and Dentists Board for the purposes of this Act;

“assisted reproduction” means a technique that is used to attempt to obtain a pregnancy by handling or manipulating the sperm or the oocyte outside the human body, and

transferring the gamete or the embryo into the reproductive tract;

“assisted reproduction facility” means any premises used for procedures related to assisted reproduction;

“board” means the Board of Directors established under section 4;

Cap 141

“cabinet Secretary” means the Cabinet Secretary for the time being responsible for health;

Cap 260

“child” has the meaning assigned to it in the Children's Act;

“clinical officer” means a person registered as a clinical officer under the Clinical Officers (Training, Registration and Licensing) Act;

"commissioning parents" means a married couple of opposite gender who seek the help of a surrogate mother to bear them a child through artificial insemination;

"contraception" means the deliberate prevention of pregnancy by measures that prevent the normal process of ovulation, fertilization and implantation;

"contraceptive methods" refers to the means by which deliberate prevention of pregnancy is achieved by use of devices, drugs, or surgery;

'emergency obstetric care' means the basic and comprehensive life-saving interventions performed to treat major birth complications,

"emergency treatment" means treatment immediately necessary to preserve life or prevent a permanent disability;

"family planning" means the conscious effort by a person to plan for and attain the person's desired number of children and to regulate the spacing and timing of the births of the children with the use of contraceptives or natural family planning;

Cap 62B

"female genital mutilation" means female genital mutilation as defined in the Prohibition of Female Genital Mutilation Act;

"health care provider" means any person or institution that has been authorized to deliver health care services;

"health regulatory bodies" refer to an institution authorized by law to regulate the practice of medicine or health care provision;

"in vitro fertilization means" means the process by which an ovum is fertilised by a sperm outside the body;

"informed choice" means a voluntary decision by a patient to use or not to use a reproductive health care service, after receiving adequate information regarding the options, risks, advantages and disadvantages of that service;

"informed consent" means consent obtained freely, without threats or improper inducement, after appropriate disclosure to the patient of adequate and understandable information in a form and language understood by the patient;

"intra-partum services" means the correct diagnosis, followed by periodic examinations, screening and management of complications in the period from onset of labour to the completed delivery of the newborn and the completed delivery of the placenta;

...../ **Amendments**

“life skills education” means a structured programme of needs and outcomes based on participatory learning that aims to increase positive and adaptive behavior by assisting individuals to develop and practice psycho-social skills that minimize risk factors and maximize protective factors;

“maternal care” includes health care of a woman during pregnancy, childbirth and forty two days after childbirth;

“medical practitioner” means a person registered under the Medical Practitioners and Dentist Act, Cap 253;

“natural family-planning” means a method of planning or avoiding pregnancies by observation of the natural signs and symptoms of the fertile and infertile phase of the menstrual cycle;

“neonatal services” means the correct diagnosis of, screening and management of complications in the first four weeks of life;

“parent” means a biological parent, an adoptive parent of a child, a commissioning parent, or a legal guardian;

“post abortion care” means the correct diagnosis and management of incomplete abortion and related complications;

“post-natal” means the first six weeks after birth;

“post-natal services” means the correct diagnosis, followed by periodic examinations, screening and management of complications in the first six weeks after birth;

“post-partum” means the correct diagnosis, followed by periodic examinations, screening and management of complications in the period immediately after the complete delivery of a newborn and the placenta;

“pregnancy” means the presence of a foetus in the womb;

“provider-initiated health care” means the provision of care or testing to ensure public health or advancement of medicine;

“referral services” means the process of seeking appropriate treatment in which a health worker at one level of the health system, having insufficient resources to manage a condition, seeks the assistance of an adequately resourced facility;

“reproductive health” means a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes;

"reproductive rights" include the right of all individuals to attain the highest standard of sexual and reproductive health and to make informed decisions regarding their reproductive lives free from discrimination, coercion or violence;

"right to safe motherhood" means the right to access information and quality service by women throughout pregnancy and childbirth with the desired outcome of a live and healthy mother and baby;

"surrogacy" means the process of a woman carrying and giving birth to a baby for another woman and man who want to have a child, but are unable to have a child;

"termination of pregnancy" means ending a pregnancy before the foetus is viable;

"tier of care" refers to the organization of devolved healthcare services into: community health services, primary care services, county referral services and national referral services; and

"trained health professional" means a registered clinical officer, a registered nurse and a registered midwife who has acquired the relevant skills for decision-making and provision of reproductive health services.

#### **LONG TITLE**

**THAT** the long title of the Bill be amended by deleting the words "free from discrimination, coercion and violence" appearing immediately after the words "regarding reproduction".

#### **B. \*THE COUNTY OUTDOOR ADVERTISING CONTROL BILL (SENATE BILL NO. 11 OF 2015)**

(Sen. Mutula Kilonzo Jnr.)

**NOTICE** is given that Senator Mutula Kilonzo Junior, the Vice-chairperson of the Committee on Information and Technology, intends to move the following amendments to the County Outdoor Advertising Control Bill, 2015, at the Committee Stage-

#### **CLAUSE 3**

**THAT** clause 3(1) of the Bill be amended in paragraph (d) by deleting subparagraph (ii) and substituting therefor the following new sub-paragraphs-

(ii) relating to the location or direction of a religious institution;

(iia) relating to a public education institution or public medical institution;

**CLAUSE 4**

**THAT** clause 4 of the Bill be amended in sub-clause (1) by-

- (a) inserting the words "and who shall be the chairperson" immediately after the word "writing" appearing in paragraph (a);
- (b) inserting the words "nominated by the Kenya National Chamber of Commerce and Industry and" immediately after the words "business community in the county" appearing in paragraph (c);
- (c) inserting the following new paragraph immediately after paragraph (c)-
  - (ca) one person nominated by the most representative association of outdoor advertisers and appointed by the Governor; and

**CLAUSE 5**

**THAT** clause 5 of the Bill be amended

- (a) in sub-clause (1) by deleting the word "a" appearing immediately after the words "application for" and substituting therefor the words "an outdoor advertising"; and
- (b) in sub-clause (2)-
  - (i) by deleting the word "registration" appearing immediately after the words "an application for" and substituting therefor the words "an outdoor advertising license" appearing in the introductory phrase;
  - (ii) by inserting the word "application" immediately after the words "the prescribed" appearing in paragraph (a);
  - (iii) deleting paragraph (c); and
  - (iv) deleting paragraph (d).

**CLAUSE 7**

**THAT** clause 7 of the Bill be amended-

- (a) by inserting the following new sub-clause immediately after sub-clause (1)-
  - (1A) Where the committee receives more than one application for the same advertisement space, the committee shall consider the applications in the order of presentation of the applications.
- (b) in subsection (2) by deleting the word "fourteen" appearing immediately after the words "under subsection (1) within" and substituting therefor the word "seven";
- (c) by deleting subsection (3);

**CLAUSE 9**

**THAT** clause 9 of the Bill be amended in paragraph (a) by inserting the words "and upon payment of the prescribed outdoor advertisement fee" immediately after the words "which it is issued".

**CLAUSE 11**

**THAT** clause 11 of the Bill be amended-

- (a) in sub-clause (1) by deleting the words "the holder of an outdoor advertising license" at the beginning of the sub-clause and substituting therefor the words "The licensee"; and
- (b) in sub-clause (3) by inserting the word "application" immediately after the words "pay the prescribed".

**CLAUSE 14**

**THAT** the Bill be amended in the introductory phrase of clause 14 by deleting the words "the owner of an advertisement" appearing at the beginning of the phrase and substituting therefor the words "The licensee".

**CLAUSE 15**

**THAT** clause 15 of the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause-

- (1) The committee shall cause a notice of an application made under section 4 to be published in the prescribed form on the county website and a place accessible to the public at the premises of the committee.

**CLAUSE 2**

**THAT** clause 2 of the Bill be amended -

- (a) in the definition of the term "advertisement" by inserting the words "including advertisements projected on screens carried on motor vehicles" immediately after the words "whether illuminated or not";
- (b) deleting the definition of the term "county executive committee member"; and
- (c) inserting the following new definition immediately after the definition of the term "hoarding" -

"licensee" means a person who has been licensed to carry out outdoor advertising under this Act;

**NEW CLAUSE 13**

**THAT** the Bill be amended by inserting the following new clause immediately after clause 13-

Removal of **13A.** A licensee shall remove an advertisement  
advertisement. within seven days of the revocation or expiry of an  
outdoor advertising license.

**NEW CLAUSE 16**

**THAT** the Bill be amended by inserting the following new clause immediately after clause 16-



Vandalism of  
advertisement

**16A.** Any person who willfully or recklessly destroys or damages any advertisement belonging to another person commits the offence of vandalism and is liable, upon conviction -

- (a) in the case of a first offence, to imprisonment for a term not exceeding nine months, or to a fine not exceeding two hundred thousand shillings, or to both; and
- (b) for any subsequent offence, to imprisonment for a term not exceeding two years, or to a fine not exceeding five hundred thousand shillings, or to both.

**C. \*THE EMPLOYMENT (AMENDMENT) BILL (SENATE BILL NO. 1 OF 2015)**

(Sen. Martha Wangari)

**NOTICE** is given that Senator Stewart Madzayo, the Chairperson of the Standing Committee on Labour and Social Welfare, intends to move the following amendments to the Employment (Amendment) Bill, 2015, at the Committee Stage-

**Clause 2**

**That** the Bill be amended by deleting clause 2 and substituting therefor the following new clause-

Insertion of new section 29A      **2.** The principal Act is amended by inserting the following new section immediately after section 29-

Pre-  
adoption  
leave.

**29A.** (1) Where pursuant to section 157 of the Children Act, a child is to be placed in the continuous care and control of an applicant who is an employee under this Act-

- (a) the employee shall be entitled to three consecutive months pre-adoption leave with full pay from the date of the placement of the child;
- (b) in the case of a female employee who is married, the employee shall be entitled to three consecutive months pre-adoption leave with full pay from the date of the placement of the child; and

(c) in the case of a male employee who is married, the employee shall be entitled to two weeks pre-adoption leave with full pay.

(2) An employee eligible for leave under subsection (1) shall notify the employer in writing of the intention of the adoption society to place the child in the custody of the employee at least fourteen days before the placement of the child.

(3) A notice under subsection (2) shall be accompanied by documentation evidencing the intention of the adoption society to place the child in the custody of the employee, including a custody agreement between the employee and the adoption society and an exit certificate.

(4) Subsections (2), (3) and (7) of section 29 shall, with necessary modifications, apply to an employee eligible to leave under subsection (1).

#### **New clause**

**That** the Bill be amended by inserting the following new clause immediately after clause 1-

Amendment to section 2 of cap. 141     **1A.** Section 2 of the Employment Act, in this Act referred to as the "principal Act", is amended by inserting the following new definition immediately after the definition of the term "employer"-

"exit certificate" means written authority given by a registered adoption society to a prospective adoptive parent to take the child from the custody of the adoption society;

**D. \*THE COUNTY LIBRARY SERVICES BILL (SENATE BILL NO. 6 OF 2015)**

(Sen. Joy Gwendo)

**NOTICE** is given that Senator Stewart Madzayo, the Chairperson of the Standing Committee on Labour and Social Welfare intends to move the following amendment to the County Library Services Bill, at the Committee Stage-

**Clause 2**

**That** clause 2 of the Bill be amended by inserting the following new definition immediately after the definition of the term “county executive committee member” -

“electronic resources” means any publication in electronic form;

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**APPENDIX**

**1. PAPER**

The Business of the Senate for the coming week;  
*(The Senate Majority Leader)*

**2. STATEMENTS TO BE ISSUED**

- a) The Chairperson, Standing Committee on Finance, Commerce and Budget to issue a statement on financing of the Jaramogi Oginga Odinga hospital in Kisumu County (Sen. (Prof.) Anyang' Nyong'o);
- b) The Chairperson, Standing Committee on Health to issue a statement on free maternity care by Government hospitals (Sen. Judith Sijeny);
- c) Chairperson, Standing Committee on National Security and Foreign Relations to issue a statement regarding assault of a Matatu driver by a police officer along Mombasa-Kilifi road (Sen. Stewart Madzayo);
- d) Chairperson, Standing Committee on National Security and Foreign Relations to issue a statement regarding the disappearance of children in Chesuwe area, Nandi County (Sen. Stephen Sang');)
- e) The Senate Majority Leader on Business of the Senate for the coming week.

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