



## THE CONSTITUTION OF KENYA

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

#### MEMORANDUM

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

Submitted to the Hon. Speaker of the National  
Assembly.

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

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



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

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

**1. With respect to: - CLAUSE 3**

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



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

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

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



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

#### RECOMMENDATION:

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

Dated the 2<sup>nd</sup> November....., 2020.

UHURU KENYATTA,  
President.

