



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT

NATIONAL ASSEMBLY

THE HANSARD

THE HANSARD

Wednesday, 8th October 2025

The House met at 9.30 a.m.

[The Deputy Speaker (Hon. Gladys Boss) in the Chair]

PRAYERS

QUORUM

Hon. Deputy Speaker: Serjeant-at-arms, ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

Hon. Millie, help us whip more Members since you have your important Bill on the Order Paper. Hon. Salasya, I make you a temporary Whip. Whip the Members for us. Hon. Salasya, I have given you the position of Whip. Go to the Lounge and whip Members.

Serjeant-at-Arms, ring the Quorum Bell for another 5 minutes.

(The Quorum Bell was rung)

Hon. Members, I think we are ready to proceed.

(Hon. Gideon Kimaiyo walked into the Chamber)

Hon. Kimaiyo, if you can come in, we can begin.

QUESTIONS AND STATEMENTS

REQUESTS FOR STATEMENTS

Hon. Deputy Speaker: Hon. Members, we had a request for a statement to be read by Hon. Naomi Waqo. She is not present, so we will hold that in abeyance as we wait for her. Then there is one by Hon. Umul Kheir Kassim.

Hon. Umu Kassim, are you ready with your statement?

Hon. Umu Kheir Kassim (Mandera County, UDM): Yes, Hon. Deputy Speaker.

Hon. Deputy Speaker: Please, proceed.

ABSENCE OF COMMUNICATION NETWORK IN MANDERA COUNTY

Hon. Umu Kheir Kassim (Mandera County, UDM): Hon. Deputy Speaker, pursuant to the provisions of Standing Order 44(2)(c), I rise to request for a statement from the Chairperson of the Departmental Committee on Communication, Information and Innovation regarding the absence of communication network in Lulis Location, Banissa Sub-County, Mandera County.

Lulis Location comprises several major settlements including Andarak, Hardawa, Domal, Awaliatani, Ardamachi, Soroba, Kabil, Bughe, Ogonicho and Shobtoy. According to the 2019 National Census, this area is home to more than 50,000 residents and also hosts over 10 primary schools, two secondary schools and more than three dispensaries serving the local population. In today's digital era, access to reliable communication services is a fundamental necessity that underpins security, governance, education, commerce and social cohesion. The absence of mobile network coverage in the area has had far-reaching negative implications on education, healthcare, emergency response, security coordination and socio-economic development.

The continued exclusion of Lulis Location from network coverage has subjected residents to marginalisation and digital exclusion, thereby negating the principles of equity, inclusivity and the right to information. It is also deeply concerning that despite Government investment in the Universal Service Fund and Information and Communication Technology (ICT) expansion programmes in various parts of the country, this region remains unconnected.

It is against this background that I seek a statement from the Chairperson of the Departmental Committee on Communication, Information and Innovation on the following:

1. Clarification on why Lulis Location in Banissa Sub-County, Banissa Constituency, Mandera County, has been left out of the national communication network despite the existence of the Universal Service Fund and other ICT expansion programmes targeting underserved areas.
2. Details on the immediate and long-term measures by the Ministry of ICT and the Communications Authority of Kenya to connect the region to mobile and internet services and the timelines for their implementation.
3. A report on the allocation and utilisation of resources under the Universal Service Fund in Mandera County and reasons Lulis Location has not benefited from such programmes.
4. Clarification on the public-private partnership interventions, whether ongoing plans by private telecommunications companies such as Safaricom to extend coverage to Lulis Location and how the Communications Authority of Kenya intends to collaborate with or incentivise such providers to close the connectivity gap.

I thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Is the Chairperson of the Departmental Committee on Communication, Information and Innovation present? Is there a Member who can give an undertaking on behalf of the Committee? Is there a Member of that Committee present? On behalf of the Leader of the Majority Party, Hon. Waqo, please respond to this.

Hon. Naomi Waqo (Marsabit County, UDA): Thank you, Hon. Deputy Speaker. We will make sure that the Chairman gives the response in two weeks' time.

Hon. Deputy Speaker: Thank you.

DISAPPEARANCE OF MR GALGALLO BAGAJA MALICHA

Hon. Deputy Speaker: Let us have Hon. Naomi Waqo, Member for Marsabit County.

Hon. Naomi Waqo (Marsabit County, UDA): Hon. Deputy Speaker, pursuant to Standing Order 44(2)(c), I rise to seek a statement from the Chairperson of the Departmental Committee on Administration and Internal Security regarding the disappearance of Mr Galgallo Bagaja Malicha, ID No.44041644. To date, there are many others, especially Guyo Jilo, who has disappeared for some days now.

Mr Galgallo Bagaja Malicha, ID No.44041644, a resident of Golole in Sololo Sub-County, Marsabit County, was reported missing on 31st August 2025 and has been missing

since then. Despite widespread efforts by his family and community to trace him, Mr Galgallo's whereabouts remain unknown. The incident was officially reported at Sololo Police Station on 3rd September 2025 under Occurrence Book (OB) No.63/9/25. However, as of today, there has been little progress in the investigation. Mr Galgallo's family and the wider community are growing increasingly anxious about his safe return.

Since his disappearance three weeks ago, the family is yet to receive any official updates or information from security agencies regarding the circumstances of his disappearance or his current whereabouts. Additionally, this incident highlights serious concerns about the protection of fundamental rights, specifically as enshrined in Article 29 of the Constitution. It is against this background that I seek a statement from the Chairperson of the Departmental Committee on Administration and Internal Security on the following:

1. A status report on the disappearance of Mr Galgallo Bagaja Malicha, ID No.44041644, and investigations by the police into this incident as reported under OB No.63/9/25.
2. Actions being taken by the security agencies to update the family and ensure that the missing person is expeditiously traced and reunited with his family and that the perpetrators of this heinous act are brought to book.
3. Measures put in place by the Ministry of Interior and National Administration to ensure the safety of residents of Sololo Sub-County in Marsabit County.

Hon. Deputy Speaker, this has become very common in Marsabit and especially Sololo. In the last one week, over seven people have disappeared and Guyo Jilo disappeared about five days ago. His family, together with other families, are in great distress. It is my prayer that this matter will be given special attention and proper protection be accorded to residents of Sololo and the surrounding areas.

Thank you.

Hon. Deputy Speaker: Thank you. That is directed to the Departmental Committee on Administration and Internal Security. Is the Chairperson or any Member here?

(Hon. Charles Nguna rose on his feet)

Hon. Ngusya are you a Member? How come you are on your feet?

(Hon. Charles Nguna took his seat)

There being no Member present, Hon. Waqo, please respond.

Hon. Naomi Waqo (Marsabit County, UDA): Thank you Hon. Deputy Speaker, we will take note of that, and within the next two weeks, we should be given the response.

Thank you.

STATEMENTS

Hon. Deputy Speaker: Now, we move to the statements that were supposed to be responded to. Hon. Harun, nominated Member of Parliament. She is not here? Because the owner of the Statement is not here, we will pass it and move on. The next one is a response to a Request for a Statement by Hon. Nabuin, Member of Parliament for Turkana North. He is also not here.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Deputy Speaker. I just want to go on record that I have the responses for the request for statements by Hon. Ekwom Nabuin and Hon. Suleka Harun but both of them are not in the House.

An hon. Member : He is here.

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Hon. Millie Odhiambo-Mabona (Suba North, ODM): Sorry, I did not notice the Member for Turkana North is in.

Hon. Deputy Speaker: The Member for Turkana North is here. So, proceed with his response.

Hon. (Dr) Makali Mulu (Kitui Central, WDM): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order, Hon. Makali?

Hon. (Dr) Makali Mulu (Kitui Central, WDM): Thank you very much, Hon. Deputy Speaker. Indulge me on this matter which I think is very serious. It is now Questions and Statement time, and we see that Hon. Waqo is taking care of all the Chairpersons. I do not know whether people are tired or what is happening. I expect this House to be full with Chairpersons of Committees to respond to issues raised by Members. It looks like the Deputy Whip of the Majority Party is the one who is taking all the heat. That is unfair to Members.

Being the head of this House, Hon. Deputy Speaker, you really need to put our House in order. It does not look very good to the public that Members are asking important questions, which touch on public interest, but we do not get answers. This applies to both sides. I thank you Hon. Millie and Hon. Waqo for being here. If they would not have been here, I would have wondered what was happening. At that high level, we need to discuss this matter because it is of concern.

Thank you.

Hon. Deputy Speaker: Thank you. We will take it up with the Liaison Committee; the Committee of Chairpersons. Hon. Millie, you may now proceed to give the response.

STATUS OF INVESTIGATIONS INTO TODONYANG MASSACRE

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Deputy Speaker. I think the challenge is with the Chairpersons. Members are in the House. Many of them have come in and some are at the tea places.

Hon. Deputy Speaker, I want to respond to a Request for a Statement by Hon. Ekwom Nabuin, Member of Parliament for Turkana North Constituency on the Todonyang massacre.

Hon. Deputy Speaker, further to the earlier response tabled before the House regarding the Statement sought by the Member for Turkana North Constituency, Hon. Ekwom Nabuin on Todonyang massacre, the Committee sought additional information from the Ministry of Foreign and Diaspora Affairs in relation to the incident, and Kenya's engagement with the Government of Ethiopia.

The Committee specifically organised a meeting in which the Member and the Cabinet Secretary for Defence appeared and deliberated on the matter and reached an amicable way forward.

Further, the committee sought clarification from the Cabinet Secretary for Foreign and Diaspora Affairs on the following:

1. Specific diplomatic action taken by the Ministry in response to the Todonyang incident, including whether a formal protest has been lodged with the Government of Ethiopia regarding the violation of Kenya's territorial integrity and the killing of its citizens.
2. Details of any on-going or concluded diplomatic engagements aimed at addressing the security situation along the Kenya and Ethiopia border and preventing recurrence.
3. Progress made in securing accountability for the perpetrators and in obtaining assurances from the Government of Ethiopia on the safety of Kenyan citizens in the affected areas.

Hon. Deputy Speaker, on the diplomatic engagements and actions undertaken in response to the massacre, the Ministry of Foreign and Diaspora Affairs stated that they initiated a series of consultations between Kenyan and Ethiopian authorities. These engagements involved Cabinet Secretary for Interior and National Administration and Ethiopia Ministry of Peace leading to the establishment of a joint operations team on 24th February 2025 to strengthen intelligence sharing, coordinate search and rescue missions, and improve cross-border security management. The Ministry noted that it facilitated community-level dialogues involving elders, local leaders, and religious institutions from both sides. Bilateral discussions were later convened in Lodwar, Turkana County, in March 2025, where the two governments emphasised reconciliation and community-driven peace-building.

At a security level, the Ministry stated that joint patrols between Kenyan and Ethiopian security forces were initiated to monitor hotspots and restore confidence among residents.

On the humanitarian front, the Ministry coordinated access for Kenyan officials into affected areas to support recovery and repatriation efforts. As of 7th March 2025, three bodies had been recovered, 66 survivors rescued and 38 persons remained unaccounted for. The Ministry further stated that the appointment of Hon. John Munyes Kiyonga as special peace envoy for Ateker Region reinforced Kenya's commitment to sustainable peace among the Turkana, Karamojong, Jie, Toposa, Nyangatom, Teso, and Lang'o communities which inhabit the fragile border corridors of Kenya, Uganda, South Sudan, and Ethiopia.

On the details of any on-going or concluded diplomatic engagements aimed at addressing the security situation at the border, the Ministry stated that diplomatic engagements have continued through structured bilateral cooperation mechanisms. This includes coordination under the Kenya-Ethiopia Joint Operation Committee and on-going preparations to convene the 33rd Kenya-Ethiopia Joint Border Commission to deliberate on broader cross-border security, water resource management, and livelihood programmes.

A joint security meeting was held at Lopei Mukat Village, South Omo Region of Ethiopia, to coordinate such and tribal operations on Lake Turkana, which marked a significant step toward operational collaboration and peace restoration. These on-going engagements, alongside the deployment of security forces by Kenya and the active involvement of local communities, are aimed at addressing the root causes of violence, particularly competition over fishing grounds and grazing land, while promoting peaceful coexistence.

Regarding accountability and assurances from the Ethiopian Government on the safety of Kenyan citizens in the affected areas, the Ministry points that joint cross-border investigations are underway under the auspices of the Joint Operations Team. The objective is to identify and bring to justice those responsible for the attacks while reinforcing preventive mechanisms against future incursions. Kenya continues to advocate for the safety and protection of its citizens through bilateral engagements, while maintaining a strong security presence in the affected areas. Despite subsequent security incidents in May 2025, the Ministry affirms that border patrol surveillance and intelligence sharing have been intensified to deter further hostilities.

The Ministry of Foreign and Diaspora Affairs states that it continues to engage the Ethiopian authorities regarding the cooperation between border residents and long-term peace in the Kenya-Ethiopia frontier.

I submit and thank you. This is read on behalf of Hon. Nelson Koech, Chairperson, Departmental Committee on Defence, Intelligence, and Foreign Relations. I note the Vice-Chairperson of the Committee is here in case of any further clarifications.

Thank you.

Hon. Deputy Speaker: Thank you. Members, our next order was order No.8 but I will exercise my discretion under Standing Order No. 40 to reorder the Order Paper as we cannot put the question on Order No.8. We shall move to Order No.9.

Hon. Nabuin, Member for Turkana North, I am told you want to comment before we move to the next order.

Hon. Paul Nabuin (Turkana North, ODM): Thank you, Hon. Deputy Speaker. I was expecting to be given a chance to make a comment on this...

Hon. Deputy Speaker: Usually, you have to make a request. You have not logged in your card. I thought you were satisfied.

Hon. Paul Nabuin (Turkana North, ODM): Sorry, Hon. Deputy Speaker. I am satisfied with the engagement of the Committee and their response. I also want to confirm that in the last two weeks, together with the special envoy, Hon. John Munyes, we engaged the Ethiopian authorities at a higher level in Addis Ababa and at the regional level and so, the happenings now are good. Both communities across the border are engaging. There are peace committees that have already been formed.

In a meeting with the Cabinet Secretary, the Permanent Secretary and the team from KDF, we agreed that the Luwan KDF Camp be set up immediately. We should have a Liaison Officer across the border. That is what we are missing. Once we have a Liaison Officer from KDF, we will engage with the Ethiopian Army. A lot of activities are happening there. Our people are harassed. We feel that if we have a Liaison Officer, he will support the course by engaging with the team from the other side.

Thank you.

Hon. Deputy Speaker: Is there any other comment on that response. If there is none, we can move to the next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[The Deputy Speaker (Hon. Gladys Boss) left the Chair]

IN THE COMMITTEE

[The Temporary Chairlady (Hon. (Dr) Rachael Nyamai) in the Chair]

THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL (National Assembly Bill No.61 of 2022)

(Resumption of consideration interrupted on 27.11.2024 - Morning Sitting)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Order, Members. We are in the Committee of the Whole House to consider the Assisted Reproductive Technology Bill (National Assembly Bill No.61 of 2022).

We shall resume from Clause 5.

Clause 5

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairman, you have an amendment.

Hon. (Dr) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Chairlady. I have an amendment.

I beg to move:

THAT, the Bill be amended by deleting Clause 5 and substituting therefor the following new clause 5—

Assisted
Reproductive
Technology
Committee.

5. (1) The Council shall establish a Committee to be known as the Assisted Reproductive Technology Committee.
(2) The Committee shall conduct its business and affairs in accordance with the provisions of the Schedule.

The justification is to make provision for the Kenya Medical Practitioners and Dentists Council (KMPDC) to establish a committee to be known as: “Assisted Reproductive Technology Committee.” This will be responsible for the functions relating to the provisions of assisted reproductive technology services in the country.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. (Dr) Nyikal, I suggest that if the amendments are too long you can just say; “as it appears in the Order Paper” so that we make progress.

Members I believe that you have the Order Paper to make it easier for the Chair.

(Question of the amendment proposed)

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Chairlady. My preference was more of a directorate. However, as part of harmonisation, I was willing to let go. I support the amendment towards the KMPDC and a Committee of the KMPDC that was proposed by Hon. Kaluma.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you, Hon. Millie. Hon. Naomi Waqo. Do you have interest in this?

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in
place thereof be inserted, put and agreed to)*

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): We have another amendment by Hon. Peter Kaluma.

Hon. Millie, do you have comment? Hon. Kaluma is not in the House.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): This is just to inform the House that Hon. Kaluma is not in. However, we had agreed on most of the amendments as part of the harmonisation process. There may be about three that we did not agree on and the Chair will alert the House about them. Hon. Kaluma is not in and it is just fair that I alert the House.

On this amendment, the Committee proposal carries the day. In fact, the council was proposed by Hon. Kaluma. Actually, it is his amendment that has carried the day.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairman, would you like to add something?

Hon. (Dr) James Nyikal (Seme, ODM): Yes, Hon. Temporary Chairlady. The issue here was that the Bill was creating a directorate but it was agreed that that would be creating a whole new structure. We agreed that we should have a council within the KMPDC. A lot of other amendments will be relating to that. We agreed we have a council instead of a directorate. Therefore, the amendment is just aligning with that.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): The proposed amendment by Hon. Kaluma is dropped.

(Proposed amendment by Hon. Peter Kaluma dropped)

(Clause 5 as amended agreed to)

Clause 6

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Chairman, Hon. (Dr) Nyikal.

Hon. (Dr) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Chairlady.

I beg to move:

THAT, Clause 6 of the Bill be amended in—

- (a) the opening sentence by deleting the word “Directorate” and substituting therefor the word “Council”;
- (b) paragraph (i), by deleting the words “in consultation with the Medical Practitioners and Dentist Council,”; and
- (c) paragraph (o), by deleting the word “Directorate” and substituting therefor the word “Council”.

The justification is that for alignment with the proposed amendment, the Assisted Reproductive Technology Committee is to be established by the KMPDC so that we do not have the word “directorate” where we have it. That amendment will appear in Clause 6.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Millie Odhiambo.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Chairlady, in light of what I had said earlier, I support.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you. I do not see any other interest in this.

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in
place thereof be inserted, put and agreed to)*

*(Question, that the words to be left out
be left out, put and agreed to)*

(Proposed amendment by Hon. Peter Kaluma dropped)

(Clause 6 as amended agreed to)

Clause 7

The Temporary Chairlady (Hon (Dr) Rachael Nyamai): Hon. Chairman has an amendment.

Hon (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:

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

Basically, we are deleting the words “National Government” and replacing them with the words “Cabinet Secretary” to be more specific. It is the most specific terminology.

(Question of the amendment proposed)

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Chairlady. Before we put the Question, I need directions because I want to propose a further amendment on the Floor of the House. We harmonised the amendments, but I noticed there was a problem in Clause 7(c) of the Bill. It talks about National Health Insurance Fund (NHIF) which does not exist anymore. I want to propose a further amendment to replace it with Social Health Authority (SHA) or Social Health Insurance Fund (SHIF). I do not know whether we will dispose of Hon. Nyikal's amendment because I am allowed to move an amendment on the Floor of the House and then I write it. I had done this in the past.

The Temporary Chairlady (Hon (Dr) Rachael Nyamai): I would like to establish whether the amendment that you are proposing now is related to the amendment that has been prosecuted by Hon (Dr) Nyikal.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): The amendment is in the same clause, but it is not related to Hon. Nyikal's amendment. His amendment is in the main part of Clause 7 of the Bill. He proposes to delete the words "National Government" and substitute them with the word "Cabinet Secretary". I am talking about Clause 7(c) of the Bill. I seek direction on whether we dispose of his amendment first and then I propose a further amendment to Clause 7(c) of the Bill to replace the words "NHIF" or we recommit the Clause. Advise me on which one is easier. Do we recommit the Clause or I propose amendments on the Floor of the House? It is a very simple amendment because NHIF does not exist anymore.

The Temporary Chairlady (Hon (Dr) Rachael Nyamai): This seems to be part of cleaning up. Yes, Hon. Raso.

Hon. Ali Raso (Saku, UDA): Thank you very much, Hon. Temporary Chairlady. According to what Hon. Millie is proposing, this is a House of traditions. If you wish to move an amendment on the Floor of the House, you should have a discussion with the Chairperson of the Committee so that you agree before moving that amendment on the Floor.

Thank you, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon (Dr) Rachael Nyamai): First of all, Hon. Millie is raising an important matter. I believe that there were a lot of consultations on this Bill so, it is not a problem at all. Our Standing Order 152(3) specifically gives the Speaker authority. It says:

At any time before the certification of the Bill, the Speaker may correct formal errors or oversights therein without changing the substance of the Bill and thereafter submit the Bill to the President for assent.

This matter can be handled at that stage where NHIF will be replaced with SHIF. Members, I suggest that we make progress. It will be handled during cleaning up where NHIF will be replaced with SHIF. That is clear. We can proceed.

(Hon (Dr) James Nyikal spoke off the record)

You may proceed, Hon. Chairman.

Hon (Dr) James Nyikal (Seme, ODM): I would like to add a word when that cleaning is being done. An issue has come up on whether we are talking about SHA or SHIF which makes a big difference. If you talk about SHIF, you are only talking about one fund. If you talk about SHA, you should realise we are talking about the other two Funds which are the Emergency, Chronic and Critical Illness Fund and Primary Healthcare Fund. This is very important because in the cover for some disease, you may need to use any of the three Funds. Whoever will clean up the Bill needs to be very careful.

The Temporary Chairlady (Hon (Dr) Rachael Nyamai): In that case, Hon. Chairman, I would like to give an opportunity to Hon. Millie to move the amendment. We will give you two minutes or a minute to consult, so that we do not have confusion with the different funds.

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Hon. Millie Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Chairlady, can I then propose that Hon. Nyikal's amendment is passed and then I move my amendment in Clause 7(c) of the Bill? I do not know whether we have already passed Hon. Nyikal's amendment.

The Temporary Chairlady (Hon (Dr) Rachael Nyamai): Get ready. It will be a further amendment to this one.

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

I will now give an opportunity to Hon. Millie to move further amendment.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 7 of the Bill be further amended in sub-clause (c) by deleting the words "National Health Insurance Fund (NHIF) and substituting therefor the words "Social Health Authority (SHA)".

I have been advised by Hon. (Dr) Nyikal.

The Temporary Chairlady (Hon (Dr) Rachael Nyamai): This is noted.

(Question of the further amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

We also have an amendment by Hon. Kaluma in Clause 7 of the Bill which is hereby dropped.

*(Proposed amendment by
Hon. Peter Kaluma dropped)*

(Clause 7 as amended agreed to)

Clause 8

The Temporary Chairlady (Hon (Dr) Rachael Nyamai): I would like to start with the proposed amendment by Hon. Kaluma. He proposes a deletion, but there is no one to prosecute it. It is hereby dropped.

*(Proposed amendment by
Hon. Peter Kaluma dropped)*

There is another amendment by Hon. Chairman; please proceed.

Hon (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 8 of the Bill be amended by—

(a) deleting paragraph (a);

- (b) deleting the words “including finances required to hire adequate personnel” appearing in paragraph (b); and
- (c) deleting the words “sufficient” and “adequately” appearing in paragraph (c).

The amendment ensures collaboration between the national Government and county governments in the access and delivery of assisted reproductive services to all. This is already provided for in Clause 7(d) of the Bill.

The Temporary Chairlady (Hon (Dr) Rachael Nyamai): Members, the proposed amendments by Hon. Kaluma appear in so many clauses, but he is not in the House, and there is no one to prosecute them on his behalf. He also participated in the winnowing process of the Bill. I would like to drop all his amendments instead of calling them out in every clause.

*(Proposed amendments by
Hon. Peter Kaluma dropped)*

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Chairlady, if you allow, I may want to consult with Hon. Millie on what you have just said then we proceed. It is just for a minute or two, regarding dropping all of Hon. Kaluma’s amendments.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Is it going beyond Clause 8?

Hon. (Dr) James Nyikal (Seme, ODM): That is what I want to consult about so that we are quite clear they are all dropped as we move forward. I will tell you my concern. If we are dropping amendments of an absent Member, we do not know how he will behave toward the whole Bill and even the resulting Act when it is passed. That is why I want this consultation.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Whom do you want to consult?

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Millie.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Okay. Can we give you a minute to do that?

(Hon. (Dr) James Nyikal consulted Hon. Millie Odhiambo-Mabona)

Hon. Millie, you may proceed.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Chairlady.

Hon. Nyikal is worried about something over which he wants to go on record because we agreed 90 per cent during the harmonisation process. We did not agree on about three clauses that Hon. Kaluma wanted to prosecute himself. He is not here. Out of goodwill, because I know we are not obligated to take that into account, we agreed that we could request recommitment of the clauses.

Therefore, Hon. Nyikal is worried whether dropped clauses can be subjected to recommitment.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Well. Hon. Millie Odhiambo and the Chair, are you to identify the three clauses? I can give opportunity to the Chair when it comes to the specific amendments given the fact that Hon. Kaluma has not given you any document in writing indicating that you could move them on his behalf. For those you have agreed on, you can move the amendment then move in an amended form to take care of Hon. Kaluma’s amendments. Hon. Millie?

Hon. Millie Odhiambo-Mabona (Suba North, ODM): I think we are just being magnanimous. The Committee and I do not agree with Hon. Kaluma on the amendments. He wanted to prosecute his disagreement and we have graciously agreed to allow him to prosecute

them even though we disagree with him. If we were to move his amendments now, it would imply that we support them. We do not. The Committee does not support neither do I.

However, we wanted to be gracious enough to allow him to move his opposition. We have had a gentleman-gentlelady agreement, to recommit them so that he can come and persuade Members on the three items. Would it be okay if we just moved all of them and notify the House when we come to those three so that he is allowed to recommit them later?

(The Temporary Chairlady consulted the Clerks-at-the-Table)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): As you do so, bear in mind that the Bill now belongs to the House. It does not belong to Hon. Kaluma.

You may proceed, Hon. (Dr) Nyikal.

Hon. James Nyikal (Seme, ODM): That is exactly why we urge you to consider this request. We went through a very rigorous winnowing almost twice. I have the list of all the clauses we could not agree on. We allowed him to prosecute them on the Floor of the House.

My concern is that he may later on raise issues of process and that he was away. We know that the Acts we have passed have been challenged on process. If we do not finish today and the Member returns next week, is he procedurally allowed to recommit his clauses dropped in his absence? Clarifying this now would allow us to proceed knowing that we offered every possible opportunity, even to the very last minute.

I say this because, despite knowing the law, I anticipate that implementation will still raise challenges. I want Hon. Kaluma to have a maximum chance to speak, present his case, and have the matter settled right here on the Floor. This will prevent him from later on stating that he was not given a chance. Our request is about process and procedure.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Members, recommitting these Bills will be opening these particular clauses to fresh deliberations. So, I advise that, based on Standing Order 133(10), which says “consideration of any part of a clause of a Bill may be postponed until such later stage of the proceedings into Committee on such Bill as the Committee may determine”, you may identify the three clauses so that we deal with all the other clauses and leave those particular clauses to be handled at a later time. So, let us proceed. Please give him the microphone.

Hon. James Nyikal (Seme, ODM): In line with what you have said, I have listed all the clauses where we have this, and I would like to present them to you so that when you reach them...

(Hon. Millie Odhiambo-Mabona spoke off the record)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): We need to make progress, Hon. Members.

(Hon. Millie Odhiambo-Mabona spoke off the record)

Hon. (Dr) James Nyikal (Seme, ODM): It is one of them. Therefore, we will save all of them as we move on.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Please, enumerate all of them.

Hon. (Dr) James Nyikal (Seme, ODM): They are Clauses 8, 14, 27, 30(f), 38 and 52.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Therefore, there is no Clause 8.

Hon. (Dr) James Nyikal (Seme, ODM): Actually, they include Clauses 18, 30 and 52.

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The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): You have added eighteen.

Hon. (Dr) James Nyikal (Seme, ODM): No. Clauses 14, 27, 30 and 52

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): So, Clause 8 is not there?

Hon. (Dr) James Nyikal (Seme, ODM): No. We have already passed Clause 7. That is gone. I do not want to take the House back. Therefore, they include Clauses 8, 14, 27, 30 and 52.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): You said 30(f).

Hon. (Dr) James Nyikal (Seme, ODM): I think there may be another part of Clause 30. Probably, let us just exclude the whole of Clause 30.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Noted. Pursuant to Standing Order 133(10), consideration of Clauses 8, 14, 27, 30 and 52 is hereby postponed until later on during these proceedings. The fate of these clauses will be determined later.

(Clauses 8, 14, 27, 30, and 52 deferred)

Hon. Members, we can now proceed.

Clause 9

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:

THAT, the Bill be amended by deleting Clause 9.

The justification is for the alignment with the proposed amendment that the assisted reproductive technology be established under Kenya Medical Practitioners and Dentists Council. As I said earlier, whenever the word 'directorate' appears, it will be amended to read 'council' or be deleted as appropriate.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Andrew Okuome, Member for Karachuonyo.

(Technical Hitch)

Please, use the next microphone. Are you trying to fix the microphone?

Hon. Adipo Okuome (Karachuonyo, ODM): Yes, it is stuck and I am trying to get it out.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Just use the microphone next to you. It is on.

Hon. Adipo Okuome (Karachuonyo, ODM): Okay. Hon. Temporary Chairlady, I am sorry, I did not ask to be given a chance to comment.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): That is noted, Hon. Okuome. I will proceed to put the question.

*(Question, that the words to be left out
be left out, put and agreed to)*

(Clause 9 deleted)

Clause 10

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Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:
THAT, the Bill be amended by deleting Clause 10.
The reason is the same as that in Clause 9 on the change from ‘directorate’ to ‘council’.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Joshua Kimilu, Member for Kaiti.

Hon. Joshua Kimilu (Kaiti, WDM): Hon. Temporary Chairlady, I support the amendment.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

*(Question, that the words to be left out
be left out, put and agreed to)*

(Clause 10 deleted)

(Clause 11 agreed to)

Clause 12

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:
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”.
The justification for this is to add the word ‘informed’ between the words ‘written consent’. That is for more accuracy that the consent should be written, not verbal.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

(Question of the amendment proposed)

Hon. Millie Odhiambo.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Chairlady. This is one of the clauses that we agreed on. Currently, this area is not regulated. This basically means that no person shall make use of any human reproductive material for purposes of creating an embryo unless the donor of the material has given written informed consent. This is to regulate the sector so that it is not misused because it is a very delicate area. I support.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 12 as amended agreed to)

Clause 13

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:
THAT, Clause 13 of the Bill be amended in—

- (a) the marginal note by inserting the word “informed” immediately before the word “consent”; and
- (b) 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”.

The justification is the same reason given under Clause 12. We need ‘informed consent’ in all these clauses. We would like the ‘informed consent’ to be in writing.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Millie Odhiambo.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Chairlady, I support the amendment, except that this amendment talks to the removal of a human reproductive material from a body of a donor after their death. That cannot happen unless the person gave informed written consent. Organ donation has to be done with written informed consent.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

*(Question, that the words to be inserted
be inserted, put and agreed to)*

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 13 as amended agreed to)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Members, before we proceed, I would like to take this opportunity to welcome our guests. Seated in the Speaker’s Gallery are students of Elim Group of Schools from Mavoko Constituency, Machakos County. In the Public Gallery, we have students of Nthongoni Glorious Hope Academy from Kaiti Constituency, Makueni County. You are welcome to observe the proceedings of the House.

(Applause)

I would like to give this opportunity to the Member for Kaiti, Hon. Joshua Kimilu, to welcome all the students.

Hon. Joshua Kimilu (Kaiti, WDM): Thank you, Hon. Temporary Chairlady. I take this opportunity to welcome the students to Parliament. I would like to tell them that we were also once seated where they are seated now, following the proceedings of Parliament, and today we are here as Members of Parliament. I encourage them to focus and one day they will also be here as Members or in other fields doing good jobs.

Thank you, Hon. Temporary Speaker.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you very much, Member for Kaiti. Hon. Members, we agreed to defer consideration of Clause 14. Therefore, we will proceed to Clause 15.

Clause 15

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Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 15 of the Bill be amended in sub-clause (1) by deleting the word “purely” appearing in paragraph (c).

This is just for wording purposes. Initially, Clause 15 indicated that “A person shall not undertake assisted reproductive technology for purely speculative and commercial purposes.” The word ‘purely’ is superfluous. It should just read: “...for speculative and commercial purposes”. We are deleting the word ‘purely’.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): I can see three Members on my screen, including Hon. Joshua and the Member for Karachuonyo. Member for Karachuonyo, you told me that you did not have interest in speaking to the earlier clause. Do you have interest in speaking to this one?

Hon. Adipo Okuome (Karachuonyo, ODM): Hon. Temporary Chairlady, I have interest in other clauses, not this one.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): On that note, Hon. Members, I request those who have interest in this particular Bill to press the intervention button. It will be easier for me to identify you.

*(Question, that the word to be left out
be left out, put and agreed to)*

(Clause 15 as amended agreed to)

Clause 16

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:

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

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

The justification for this is what Clause 15 states – ‘You shall not, for the purposes of technology, place into a woman an embryo other than a human embryo, or a gamete other than a human gamete.’ However, this one says ‘a gamete or embryo other than that consented to by the woman.’ This is a complex area, and we want to ensure that whatever is used, the woman has given consent to it. That is the essence of the amendment on Clause 16.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Millie Odhiambo.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Chairlady. Let me also take this opportunity to welcome the students who are here, and especially to encourage the young girls. I know the Hon. Member was saying earlier that he sat there at one time and looked down, and now he is in Parliament. When I came in and sat there many years ago, there were no women in this House. At least now we can see women. There were, I think, one or two women. Now we see women, and we hope that by the time they are here, more than half the House will be women. Let the imbalance be on the men for once.

Having said that, I support the proposed amendment by the Chair because the area of assisted reproduction is very new. There is a lot of abuse that goes on. There is a case that was reported where a doctor, who was an assisted reproduction technology expert, instead of using the gametes that were supplied, used his own gametes. It ended up with more than 100 siblings

who did not know each other and could end up marrying each other, brother and sister. Because of that, I agree with the Hon. Chair that a gamete or embryo cannot be put inside a woman unless it is that which is consented to by the woman. So, even if you are a doctor, if you go against what the law provides, it is a crime.

I support the Chairperson.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you, Hon. Millie.

*(Question, that the words to be inserted
be inserted, put and agreed to)*

(Clause 16 as amended agreed to)

Clause 17

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 17 of the Bill be amended by—

- (a) deleting the word “minor” appearing in the marginal note and substituting therefor the words “a child”; and
- (b) 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 child, parent or legal guardian of the child.”

The justification for this is that we are replacing the word ‘minor’ with the word ‘child’ so that we are quite sure we are using the legal word. The bigger meaning of this is that you can obtain sperm or an ovum from a child. The question would be, why would you do that? The answer is that this is intended for situations where a child, for example, has fatal illness that can later be treated, or the treatment itself is such that it may destroy the reproductive capacity of the child, like leukaemia, and so on. So, this is done earlier so that you can preserve that and use them later. We then have to use the correct word as in law.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

(Hon. Millie Odhiambo spoke off the record)

No! Wait. First of all, I want to propose the question.

(Question of the amendment proposed)

Hon. Millie Odhiambo.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): I just wanted a clarification. Hon. Temporary Chairlady, I have heard the Chair of the Committee saying that he is only amending the word ‘child.’ What I have here indicates that we are doing much more than that. I do not know if I am the one who has it wrong. The proposed amendment that I got from the Committee Report is that 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 and with the firm consent of the minor’s parents, or legal guardian. If that is the case, then I would support. If that is not the case, then could I please move a further amendment? That is what we agreed with the Committee during harmonisation. The idea is to protect a child, especially children who may be going, as he has said, through medical conditions like

leukaemia or other cancers that may affect their future abilities to have children and, therefore, you need to freeze their eggs or sperm for future procreation. The Chair can clarify.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairperson, please clarify briefly. Hon. Members, remember that we debated on this Bill for a very long time. So, we can just make sure that we are on point. Are you amending the word ‘child’ alone, or is it beyond that word as it has been explained by Hon. Millie Odhiambo?

Hon. (Dr) James Nyikal (Seme, ODM): It is beyond and in the context that she has said. That is why I earlier on said that you may harvest the ovum or sperm from a child for later use by the same child if they are sick and the cost of treatment will reduce them. We can save these for later use when they have recovered, and now they can be used by the same child with the child's consent or the guardian's consent. We concur completely.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Listening to the two of you, you agree with each other.

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 17 as amended agreed to)

Clause 18

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move: 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”; and

(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.”

This is, again, to protect the use of embryos by ensuring that only human embryos consented to can be used. In this technical area, it is possible to use embryos that are not human. So, this is protective so that we only use a human embryo. That is the gist of the amendment.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

(Question of the amendment proposed)

Hon. Millie Odhiambo.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Chairlady. I know it is in my interest and in the interest of the House that we move very quickly but because there has also been a bit of misinformation about this Bill, it is good to put some things on record, and part of what the Chair is proposing in this amendment is that there shall be no form of human cloning. I support, amongst other things, including using or mixing human organs with animals. So, there is no form of human cloning.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

*(Question, that the words to be left
out be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 18 as amended agreed to)

Clause 19

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Chairlady, I beg to move:

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

The justification is twofold. First, is with regard to the use of the word “consent”. As I explained earlier, it must be written consent. Second, we want to remove the words “placing sperm and eggs or embryo in a woman”. We want to be more specific and say “in the womb”. Saying “in a woman” is too general; we do not know where exactly it is being placed. So, this is specifically in the womb. Also, sperm, eggs, and embryos cannot all be placed at the same time. Once you have the word embryo, you definitely do not need to have sperm or an egg because the embryo has taken care of both.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

(Question of the amendment proposed)

There being no interest, I put the question.

*(Question, that the words to be inserted
be inserted, put and agreed to)*

*(Question, that the words to be left
out be left out, put and agreed to)*

(Question, that the words to be inserted in place)

thereof be inserted, put and agreed to)

(Clause 19 as amended agreed to)

Clause 20

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:

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 existing 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.”

(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”.

This is just changing the marginal notes and replacing with the word posthumous reproduction. As we indicated earlier, it is possible that when people are sick and are likely to die, one can take their sperms or eggs, freeze them and use them later. That is if the person dies. That is called posthumous reproduction. We want this to be clear, and posthumous is the correct word. Not the current side note.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): On a point of order, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Let me call first before we have a point of order. Actually Chairman, you still have more to move because we called the whole of clause 20. Would you like to prosecute all amendments now? Maybe, that is the same matter that Hon. Millie Odhiambo wants to raise. You have only talked about posthumous production. We still have parts (b), (c) and (d). You can give us justification for each one of them. Make it brief.

Hon. (Dr) James Nyikal (Seme, ODM): Okay. Parts (b) and (c) are about renumbering and deleting. The most important one there is part (d). I think that is what Hon. Millie may be concerned about. When you do posthumous reproduction, a question arises – which is, how you place the ovum of a woman or the embryo must be in consent with what the woman wanted in terms of parentage. You cannot take that and put it in another woman, then when the baby is born you attribute the parentage to the woman who has died, while she did not give consent for that. That could be the issue that Hon. Millie is concerned about.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you. From our desk, you have covered all amendments.

(Question of the amendment proposed)

Hon. Millie Odhiambo.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Chairlady. In fact, in line with what the Chairman has said, I wanted to propose a further amendment to delete the word ‘and’ between parts (a) and (b) in subclause 2, which says:

“(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”.

When you have that word ‘and’ there, there is an implication. For instance, I am now married and we decide to go through assisted reproduction technology with my husband. Unfortunately, I, the woman, die. It means that the child shall not be considered mine unless I gave a written consent to my husband. It does not make sense. Where people are married, there is no reason for written consent, and even posthumous does not apply. You understand me?

Hon. (Dr) James Nyikal (Seme, ODM): Yes, I get you.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): For example, if you are married with a child even if the child is not through assisted reproduction, if your wife dies, that is your child. You do not need to sign anywhere. With the word ‘and’ there, this clause has a totally different meaning.

I am, therefore, proposing that we delete the word ‘and’, so that it remains as ‘father was married to the woman at the time of the death of the woman.’

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): I would like to give a chance to the Chairman.

Hon. (Dr) James Nyikal (Seme, ODM): We concur. If you put the word ‘and’, then the two conditions in parts (a) and (b) must be met together. Whereas if you delete ‘and’, then part (a) stands on its own – ‘father was married to the woman at the time of the death of the woman.’ This shows there is no need for consent. Then part (b), which says, ‘woman had given informed consent in writing’, can be in a case where the woman was probably not married and she had agreed to this. In such a case, you would have needed her consent. The two conditions in parts (a) and (b) need not be tied. Maybe we can use the word ‘or’ but whether we use the word ‘or’ or we delete it, it will have the same meaning.

Hon. Julius Sunkuli (Kilgoris, KANU): On a point of order, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Yes, Hon. Ole Sunkuli.

Hon. Julius Sunkuli (Kilgoris, KANU): I am of the opinion that if you really do not want those two conditions, then just drop that particular amendment. If informed consent is essential for all these things, why would you need to say that...

Hon. Millie Odhiambo-Mabona (Suba North, ODM): They are married.

Hon. Julius Sunkuli (Kilgoris, KANU): If they are married then why do we have to legislate? Why do we not just leave it?

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): It is very sensitive. I would like to hear the final word from the Chairman.

Hon. (Dr) James Nyikal (Seme, ODM): You would need to legislate because you may be dealing with a married woman. In that case, part (a) applies and no one can raise an issue.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Ole Sunkuli, I thought you would stay close to Hon. (Dr) Nyikal so that you can be more useful to the House.

Hon. Julius Sunkuli (Kilgoris, KANU): But he is very close to his officers.

(Laughter)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Okay.

Hon. (Dr) James Nyikal (Seme, ODM): Part (b) will apply when the woman is not married and, therefore, requiring a written consent. Where they are married, written consent is not needed. People can, however, still raise an issue because what we are dealing with here is a case where the woman gave her ovum when she was alive and it was used, but then she died. This ovum was then put in another woman later on. If that woman is now married to the man, then there is absolutely no issue because there is a link between the baby and the man. If the woman is not married or is married to a different man, then there is no link whatsoever.

In such case an earlier written consent is necessary. That means there has to have been consultations. Someone cannot just go to an ovum bank where some of the women owners of the ovum have died, and just take an ovum and use it to get pregnant. Then when they get pregnant and get the child, they turn around and say that that ovum belonged to the woman who has died and, therefore, the child belongs to the dead woman too.

Hon. Sunkuli, we are imagining of a case where somebody has mischievously used the ovum of the dead woman seeking to have the child. Then when the child is born, they want to abandon the child and say it belongs to the dead woman. If there was no consent from the dead woman, that would not happen. They must take responsibility for this child otherwise the child will remain parentless, with nobody to look after it. That is the essence of splitting the two.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Millie, I would like you to approach the Table as we give a chance to Hon. Ole Sunkuli.

Hon. Julius Sunkuli (Kilgoris, JP): Hon. Temporary Chairlady, in that case, if we want those two conditions to exist, then why not delete the word “and” and replace it with “or”?

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Let us hear Hon. Ole Sunkuli.

Hon. Julius Sunkuli (Kilgoris, JP): I am just saying that we delete the word “and” and replace it with the word “or”, so that there are two conditions.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Noted. Thank you very much, Hon. Ole Sunkuli. I will give Hon. Millie a chance to move a further amendment to the amendment by the Chairman.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Chairlady. I beg to move a further amendment to the amendment by the Chairman:

THAT, Clause 20 of the Bill be amended in subclause (2) by deleting the word “and” appearing after subclause 2(a) and substituting therefore the word “or”.

Thank you.

(Question of the further amendment proposed)

*(Question, that the words to be left
out be left out, put and agreed to)*

*(Question, that the words to be inserted in
place thereof be inserted, put and agreed to)*

*(Question, that the words to be inserted
be inserted, put and agreed to)*

(Clause 20 as amended agreed to)

Clause 21

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The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairman

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Chairlady, I beg to move:

THAT, Clause 21 of the Bill be amended by—

- (a) by deleting the word “Directorate” appearing in sub-clause (2) and substituting therefor the word “Council”; and
- (b) in sub-clause (3) by inserting the following new sub paragraph immediately after sub paragraph (iv) —
“(v) the right of a child born through assisted reproductive technology to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not”.

In (a), as I said earlier, it is just the word Directorate being replaced by Council because of the earlier amendment. In (b), the justification is that children born through assisted reproductive technology also have a right to parental care and protection as guaranteed under the Constitution. How they came into this world should not be an issue. That is the essence of the second part of that amendment.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Millie, I see you have interest in this.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Yes, Hon. Temporary Chairlady. I support the Chairman's amendment, which gives better protection to children born of assisted reproduction. I just noticed, and you will guide me on this, that I wanted to make a further amendment to the title, which is Part Four - Rights of Parents, Donors and Children.

I noticed the Chairman did not have an amendment there, but I realised that we have not focused much on the rights of surrogates. I would have liked to include something on surrogates, but that would require changing the title, which is a bit late at this stage.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): We are not able to deal with the title at this moment.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Since you have supported it, I will put the Question.

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Question, that the words to be inserted be inserted, put and agreed to)

(Clause 21 as amended agreed to)

Clause 22

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairman, move your amendment.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Chairlady, I beg to move:

THAT, the Bill be amended by deleting Clause 22.

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The essence of this is that nearly all the services provided are actually on medical grounds. This was intended to ask the national Government to implement services that were already addressed in another clause. So, we do not need it at this point.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): So, you are deleting?

Hon. (Dr) James Nyikal (Seme, ODM): We are deleting.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Millie, do you have any interest in this? Yes, you may proceed to prosecute.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Yes, Hon. Temporary Chairlady. This is one of the areas where I disagreed with the Committee. They said that once you provide rights for everyone, that is sufficient. However, because we know that intersex persons have very unique needs, I thought it necessary to mention them specifically. Clause 22 provides that the national Government and county governments should put in place measures to ensure that all intersex persons have access to assisted reproductive technology services.

When a special category is not given enough focus, you need to provide it with specific attention. On this one, I wish to oppose the proposed amendment by the Committee.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): In that case, the House will decide. Yes, Hon. Ole Sunkuli.

Hon. Julius Sunkuli (Kilgoris, JP): If you look, for instance, at Clause 14, it says that a person qualifies to undertake assisted reproductive technology where it is certified by a medical doctor that the person requires assisted reproductive technology on medical or health grounds.

That is why there is opposition to Clause 22, which is really...

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): We are on Clause 22.

Hon. Julius Sunkuli (Kilgoris, JP): Yes, I am trying to show that the county government... Perhaps I should leave that to the Chairman.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, may I intervene?

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): The point of contention is that the Chair is proposing a deletion, and Hon. Millie Odhiambo is suggesting that the deletion should not happen. She has given her justification. It is a matter of asking whether intersex persons also have human rights, just as we earlier discussed that children born through surrogacy are automatically provided with human rights.

Hon. (Dr) James Nyikal (Seme, ODM): May I explain?

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Please explain. For the sake of progress, I will put the Question after that.

Hon. (Dr) James Nyikal (Seme, ODM): The issue is that under Clause 14, we already provided that those who need the services will get them on medical grounds. Clause 22 seeks to specify that intersex people should get it, but if we do that, then we would also need to mention people with disabilities, or people who are deaf, or those with other medical challenges. If you begin affirmative action for one group, will you not then have to do so for all groups?

That is why we said that Clause 14 suffices. You cannot discriminate against intersex persons, because the clause already states that everybody deserves the service. Since you have said that everybody deserves it, why are we repeating that people with intersex should also get it? As long as you say everybody should get it is the point.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Yes, Hon. Millie.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Chairlady. The reason I disagreed with the Committee on this is that you cannot compare an intersex person with a deaf person when you are talking about reproductive issues.

An intersex person presents two organs, both male and female. That, therefore, means they will unnecessarily face serious challenges of reproductive nature, especially if they are looking for assisted reproduction. That cannot be compared with a person who is deaf or blind. They will face challenges, but not as many as an intersex person. That is why, for instance, when you are talking about leadership, we know that women will face its challenges. When it comes to issues of reproduction, no category will suffer as much as the intersex. That is why I thought we must provide very specifically for intersex persons so that when they go to hospitals, they will be treated specially. I am sure, Chair, you have come across people who do not know if they are Millie or Mark due to that. When they go to hospitals, they are treated in the same way. When they go to banks, the police are called on them, yet it is not their fault that they have two organs.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Millie, I think I only have an opportunity to ask the House to decide.

(Question, that the words to be left out be left out, put and agreed to)

(Clause 22 deleted)

Clause 23

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:

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;
 - (b) the number of gametes to be implanted; and
 - (c) what should be done with the gametes 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;
 - (iv) dispute;
 - (v) divorce; or
 - (vi) separation.
- (b) by deleting sub-clause (3) and substituting therefor the following new sub-clause (3)—
 - (3) The assisted reproductive technology clinics and assisted reproductive technology banks shall not cryo preserve any human gametes without specific instructions and consent in writing from all the parties seeking assisted reproductive technology in respect of what should be done with the gametes in case of the circumstances set out in subsection 2(c); and
- (c) in sub-clause (4) by deleting the words “implanting the embryos or” and substituting therefor the words, “transfer of”.

This is to make provisions for obtaining prior consent in the event of unforeseeable circumstances such as death or divorce. Once the agreement has been reached on the use of the gametes, then we will need some consent on how they will be used later on. That is the essence, ensuring that gametes are not produced and are either abandoned or used in ways that those who created them did not intend.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. Rachael Nyamai): I am only seeing Hon. Millie Odhiambo interested in this.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Chairlady. I wish to support that provision by the Committee. They are providing clarity on what should be done with gametes in the future. This is not really my area, but the Committee provided excellent technical expertise. This is one of those areas where I appreciate what they did.

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 23 as amended agreed to)

(Clause 24 agreed to)

Clause 25

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Chairman.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move: THAT, the Bill be amended by deleting Clause 25.

It has listed conditions, but the fundamental issue here is that all those conditions are placing marriage as the primary qualification for having assisted reproductive technology services. The Committee's position is that marriage should not be a hindrance; if you want assisted reproductive technology. Whether you are married or not, you should get the services. That is the justification for that deletion.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): I do not see any interest in this.

(Question, that the words to be left out be left out, put and agreed to)

(Clause 25 deleted)

Clause 26

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move: 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”;
- (b) deleting sub-clause (2);
- (c) deleting sub-clause (4); and
- (d) deleting sub-clause (5).

The justification for this in (a) is that it indicates how people or children who come from assisted reproductive technology should be treated just like others. The word that was being used was different from the children that arose from sexual intercourse. We felt that was rather crude. Thus, we used the word natural conception. It means the same thing, but it is more civil. This is already provided for in (b). In (c), it is proposed that the Bill shall only apply to Kenyan citizens. Hence, the question of a child’s citizenship born as a result of assisted reproductive technology does not arise.

This Bill, as it is now, states that the services will be available to Kenyans. When children come out of this process, there is no question, they will be Kenyans. That is what we have indicated there.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Millie.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): I support this. I wanted to remind the Chair that we have not yet moved the amendment regarding the preservation of this Bill for Kenyans. I notice it is coming much earlier, so we might have to recommit to provide for Kenyans. Otherwise, I support.

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 26 as amended agreed to)

Clause 28

The Temporary Chairlady (Hon. Rachael Nyamai): We have skipped Clause 27 as agreed earlier. It is among the clauses that we agreed would be handled at a later date, as the House Business Committee will schedule.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 28 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words “Parties to a marriage or commissioning parents” and substituting therefor the words “Intended parents”;
- (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 next of kin;
 - (i) where the intending parents appoint a guardian and provides the identity information of the appointed guardian;”
- (c) in sub-clause (4), by deleting the word “form” and substituting therefor the word “surrogacy agreement”;

- (d) by deleting sub-clause (5) and substituting therefor the following new sub-clause (5)—
- (5) The Council 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.”
- (e) by inserting the following new sub-clause immediately after new sub-clause (5)—
- (6) A person may apply to the High Court for any necessary orders on matters relating to—
- (a) the validity of a surrogacy agreement; or
- (b) a dispute relating to parentage of a child born as a result of an assisted reproduction procedure.”
- (f) in sub-clause (7) by—
- (i) deleting the word “parties to a marriage” and substituting therefor the words “intended parents”; and
- (ii) deleting the words “in the process” and substituting therefor the words, “as a consequence”; and
- (g) 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).

In (a), we are removing the phrase ‘parties to a marriage’ and replacing it with the phrase ‘intended parents’. Once more, the reason is fundamental because if one is not party to a marriage, we are limiting it only to married people. If we say “intended parents,” they could be a couple but not married.

In (b), there is a need for a contact person. Therefore, if one has surrogacy, the person involved should indicate who the next of kin is. That should be made clear in that clause.

On the justification to cross-reference to the name of the child born, basically, here the issue is if the person who provides the ovum, the egg, that is used in surrogacy, is such that those people who produce them are not linked to the surrogate parents. So, when the naming or parentage of the child comes up, it should not automatically be assumed that the people who intended to have a child will be the parents. They will need a court order.

The reason for this is that if the sperm or the ovum is with someone related to the child, later on, obviously, the child will have a genetic link. Therefore, the Committee's position is that it is safer if they are not. The Committee is of the view that these are people who can...

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. (Dr) Nyikal, I know you are a medical doctor, and you want to make it simple for all of us to understand. But no matter how much you explain, we may not understand. Since Bill has been debated and the Committee has done a lot of work on it, and we are now in Committee of the whole House, please make it brief so that we can make progress.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): On a point of order, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): What is out of order, Hon. Millie Odhiambo?

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you Hon. Temporary Chairlady. I am just trying to make your life a little more difficult based on what you have just said. If you notice, the proposed amendments to Clause 28 are quite a number. I agree with all of them except one. When we move all of them together, it will deny me the opportunity to oppose the one I want to. Therefore, I wish to request that, in relation to this matter, we proceed with them by sub-clauses. This is because there are some of them I agree with, but there is a sub-clause I disagree with.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): That is okay. Hon. Millie, you will allow the House to propose the Question for debate. When we get to that particular clause, you will identify it and see whether the House will agree with you.

I want to give the Hon. Chairperson a chance to finalise, then I propose the Question, and we will see how we can assist Hon. Millie Odhiambo. Finalise, Hon. (Dr) Nyikal.

Hon. (Dr) James Nyikal (Seme, ODM): The only justification that was remaining is that the persons entering a surrogacy agreement shall only seek benefits as a consequence of surrogacy and not the process of surrogacy. The deletion is on the issue of whether people will go into surrogacy for commercial reasons. In our view, that should not be encouraged. But if, by chance, due to surrogacy, they need some material or financial support because of the process, that should be allowed. I think that is what the last justification is about. In addition, this refers to all conditions of surrogacy.

The last one, which is to protect the foetus, as the intended parents do not have control over a surrogate's actions. This means that once you get into surrogacy and conception has occurred, Clause 28 says that surrogacy may indicate the terms of the agreement, including terms prohibiting the surrogate mother from partaking alcohol, smoking, and using prescribed drugs. That means they go into surrogacy, but we are putting conditions on them because we need to protect the child who is inside. So, that is what it means. I also want to hear the particular issue Hon. Millie has so that we can discuss it.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you. That is okay.

(Question of the amendment proposed)

Hon. Millie Odhiambo,

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you Hon. Temporary Chairlady. I wish to support the proposed amendments by the Hon. Chairperson of the

Committee. Upon reflection on where I wanted to oppose, I have seen that I can live with the wording. My concern is about something that came up when we debated this in the last Parliament. Hon. Joyce Lay indicated that when she had her own child, she was forced to go to court to get a court order. That is really demeaning for a person who is struggling very hard to have a child, considering that not many people are that brave to go to court. The wording provided here is somewhat mid-way. It states that a person may apply to the High Court for any necessary orders concerning the validity of a surrogacy agreement. It presupposes that there may be a dispute. It is not mandating...

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Which sub-clause is that? We have one to 10.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): It is 6.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Okay.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): By inserting a new sub-clause immediately after new sub-clause 5, which is the new sub-clause 6. That is a proposed new sub-clause 6 of the same 28. One of my concerns regarding the heading, aside from Clause 28, which we have deferred, and also protects the surrogate, is that there is a bit of protection for the surrogate in this part. I want us to have a balance of protecting intended parents and protecting the surrogates.

I support.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you. Let us now make progress.

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

*(Question, that the words to be inserted
be inserted, put and agreed to)*

(Clause 28 as amended agreed to)

Clause 29

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Chairperson, you have an amendment.

Hon. James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 29 of the Bill be amended in sub-clause (1) by—

- (a) deleting the words “this Act or any other written law” appearing in paragraph (a) and substituting therefor the words “the Constitution”; and
- (b) deleting the word “implantation” appearing in paragraph (b) and substituting therefor the word “transfer”; and
- (c) deleting the word “commissioning” appearing in paragraph (c) and substituting therefor the word “intended”.

That is essentially making it stronger to ensure we adhere to the Constitution. Removing the word “implantation” and talking of the word “transfer” is for the reason that implantation occurs after transfer of a fertilised ovum. That is a little more technical because the implantation is actually more accurate. You can transfer, but there is no implantation. So, we need that to be very clear.

In the last one, it deletes the word “commissioning” appearing in paragraph (c) and substitutes it with the word “intended”. Commissioning gives the impression that this is a commercial process. That is why we are using the phrase “intended parent,” and that is the justification.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Millie, do you want to contribute to this amendment?

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Yes.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Okay. You may proceed.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Chairlady. I support Hon. (Dr) Nyikal. He is technical sometimes because of brevity. He is not explaining that the reason he is deleting some words and substituting them with the word “Constitution” is because of the issue of termination of pregnancy. Some people want to dwell on abortion issues. We are only following what is in the Constitution. If there is any termination of pregnancy, it is as per the Constitution. We are not providing anything new.

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 29 as amended agreed to)

(Hon. Irene Njoki spoke off the record)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Clause 30 of the Bill is one of the clauses that we agreed that would be handled at a later time because there were proposed amendments by Hon. Kaluma. For Members who have come in after that decision was made, that is the reason for skipping Clause 30 of the Bill. Is that okay?

(Hon. Jematiah Sergon spoke off the record)

I can hear the voice of the Member for Baringo. I am sorry when I am seated here I am unable to see you when you lift your hand.

Hon. Jematiah Sergon (Baringo County, UDA): Thank you, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): The best way to catch my attention is to press the intervention button.

Hon. Jematiah Sergon (Baringo County, UDA): Sure.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Proceed.

Hon. Jematiah Sergon (Baringo County, UDA): Thank you, Hon. Temporary Chairlady. I have a concern with Hon. Irene here. I want to take you back a bit to Clause 28 of the Bill. I do not know whether that is possible. It is not possible, but I will raise it.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): The rules of the House do not allow it to happen.

Hon. Jematiah Sergon (Baringo County, UDA): Yes, I know.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): They do not allow you to go back to Clause 28 of the Bill, Member for Baringo.

Hon. Jematiah Sergon (Baringo County, UDA): Yes, I know that, but I have a concern in Clause 28(7) of the Bill.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Even if you do it, it will not make a difference, but I can allow you to raise it.

Hon. Jematiah Sergon (Baringo County, UDA): Can I raise it?

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Yes.

Hon. Jematiah Sergon (Baringo County, UDA): Clause 28(7) of the Bill says:

“The parties to a marriage shall not give any monetary or other benefits to the surrogate mother other than for expenses reasonably incurred in the process of surrogacy.”

This is debatable because what then should be the reason someone should be a surrogate? I need money.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): On a point of information, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Members, it is completely out of order. I can do it when I am not seated where I am now. I can encourage that debate. Unfortunately, I cannot go to Clause 28 of the Bill. Whom do you want to inform? There is nobody on the Floor of the House to inform, Hon. Millie.

(Laughter)

Hon. Millie Odhiambo-Mabona (Suba North, ODM): I can inform the House.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Members, let us just make progress. Before we continue, Hon. Members, we have students seated in the Public Gallery this morning. We have students from Mary Happy School from Kamukunji Constituency, Nairobi City County. I want to identify a Member from Nairobi City County to welcome the students. Yes, you may proceed, Member for Kibra.

Hon. Peter Orero (Kibra, ODM): Thank you, Hon. Temporary Chairlady. I take this opportunity as the Member for Kibra, which is in Nairobi City County, to welcome these students in this august House. Let the presence of the Members of this House give them inspirations of their future endeavours. On behalf of all the Members in this House feel welcome. These children are watching the proceedings on the Bill that is being debated today in the Committee of the whole House, so that they can know the procedures. Some of them will be Members of Parliament in future. I welcome you.

Thank you.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you very much, Member for Kibra in Nairobi City County.

(Clause 31 agreed to)

Clause 32

The Temporary Chairlady (Hon. Rachael Nyamai): Hon. Chairman.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 32 of the Bill be amended by—

- (a) deleting sub-clause (1); and
- (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).

If you allow people to determine the sex of a foetus before, the implication sometimes will be that they will choose which foetus to allow to grow and not to grow. At the end of it, there is the issue of sex-linked diseases. Once you provide that, people can make diagnosis with the provision to terminate or allow foetus to grow.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. (Dr) Nyikal, the Members have understood.

Hon. (Dr) James Nyikal (Seme, ODM): Okay. The amendment in Clause 32(b) of the Bill prohibits the sale or transfer of embryos.

(Question of the amendment proposed)

(Hon. Irene Njoki spoke off the record)

The Temporary Chairlady (Hon. Rachael Nyamai): Member for Bahati, Hon. Irene Mrembo.

Hon. Irene Njoki (Bahati, JP): Thank you, Hon. Temporary Chairlady. This topic is close to my heart. If we honestly decide to say that you cannot choose the sex, I will not go for it because I know what I want. Maybe I have boys, and I want a girl. If I have a choice, I cannot go for it. It should be open.

Many couples will go for it because of choices. I would like to choose a boy or girl. We should not limit what people want. Remember, I am spending money to do this. I am doing this out of choice. I will also choose whether they will have blue, black or brown eyes. Remember, this is my choice. You should not limit it.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): That is okay, Member for Bahati. Hon. Sunkuli, Member for Kilgoris and a Member of the Departmental Committee on Health.

Hon. Julius Sunkuli (Kilgoris, KANU): Hon. Temporary Chairlady, the problem that is being raised by our Hon. colleague from Bahati is a huge moral and ethical issue that cannot be finalised in this Committee of the whole House. This is one of the biggest problems some of us have. If you have to choose the child's colour or sex, that means you are encouraging termination of that pregnancy. You are going into a world which is full of ethical issues.

This is about life, but not a simple matter. The most important thing is that we have gone through this debate. During winnowing of the amendments, we raised these issues. It is only fair for the House to look at it and say, let us not get into that deep water of ethical issues. Do you want to kill the foetus that you do not like so that you can survive?

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Jematiah.

Hon. Jematiah Sergon (Baringo County, UDA): Thank you very much, Hon. Temporary Chairlady. I also want to add to what Hon. Irene and Hon. Sunkuli have said. We are allowing science to play. When we do it, we are not looking at it from the negative perspective. I like what the Chairperson of the Committee has said. We do not want to encourage abortion. We will strictly abide by the Constitution. I do not think you want to kill because of the sex because you can still predetermine it before the foetus grows. That is science.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairman, you will be the last one to comment before I put the Question.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you. I know this is one of those difficult issues. I understand Hon. Irene that culturally, sometimes there are people who are divorced because they do not have sons or daughters. There are people who may mainly want sons. Some people may want to go into assisted reproduction so that they save their marriage by getting a son.

However, I also agree with Hon. Sunkuli that, there are many serious ethical issues when we think about assisted reproduction. The example by Hon. Irene puts us in that murky water. We are talking about designer babies when we talk about their colour as black, white, green, or yellow. We are less concerned about designer babies from our Kenya's perspective but more about social issues.

Having said that and even though I agree with the deletion by Chair, it is not for the reasons that he gave. It is because of Clause 31 that already speaks to Clause 32. It says:

“A person shall not knowingly provide, prescribe, or administer anything that shall ensure or increase the probability that an embryo shall be of a particular sex....” He is saying the opposite of what this says.

Chair, you are supporting Hon. Irene if Clause 31 was not there. However, Clause 31 still opposes Hon. Irene. Otherwise, Chair, I support you but for the reason that it is already catered for in Clause 31.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Chairman, you can make your comments brief so that I put the Question.

Hon. (Dr) James Nyikal (Seme, ODM): I take Hon. Millie's point on Clauses 31 and 32. If we come back to moral issues, we have to realise that people will still raise these issues even when this Bill is in effect. Therefore, we would like to have a very sound basis for what we are seeing or doing at this point. You must go to the definition of when life starts if you say you want to make a choice but not committing abortion or killing somebody. In our Constitution, life starts at conception. Conception means implantation. Now, that will be termination of life if you went to the level of implantation. Constitutionally, we will still not be in order.

*(Question, that the words to be left
out be left out, put and agreed to)*

*(Question, that the words to be inserted
be inserted, put and agreed to)*

(Clause 32 as amended agreed to)

Clause 33

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairman, move your amendment.

Hon. (Dr) James Nyikal (Seme, ODM): I beg to move:

THAT, Clause 33 of the Bill be amended –

- (a) in the opening sentence, by deleting the word “Directorate” and substituting therefor the word “Council”;
- (b) renumbering the clause as sub-clause (1);
- (c) 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.”; and
- (d) inserting the following new sub-clauses immediately after the re-numbered sub-clause (1)-
“(2) The Council 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 Council shall maintain all records, charts, forms, reports, consent letters and agreements.

(4) All the documents under this Act shall be preserved for a period of twenty-five years or such longer 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."

As I said earlier, this is just because we have removed the word "directorate" and replaced it with "council". We have agreed to replace with the word "council" wherever there is "directorate".

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): The House already made that decision.

(Question of the amendment proposed)

I do not see any interest in this.

(Question, that the word to be left out be left out, put and agreed to)

(Question, that the word to be inserted in place thereof be inserted, put and agreed to)

(Question, that the words to be inserted be inserted, put and agreed to)

(Clause 33 as amended agreed to)

Clause 34

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairman, move your amendment.

Hon. (Dr) James Nyikal (Seme, ODM): I beg to move:

THAT, Clause 34 of the Bill be amended-

(a) in sub-clause (1) by-

(i) deleting the word "Directorate" wherever it appears and substituting therefor the word "Council"; and

(ii) deleting the words "twenty-one" appearing in sub-clause (1) and substituting therefor the word "eighteen";

(b) in sub-clause (2) by deleting the word "Directorate" and substituting therefor the word "Council"; and

(c) in sub-clause (3) by deleting the word "Directorate" wherever it appears and substituting therefor the word "Council".

On sub-clause 34(a)(i), the justification is because it is related to the council. We already dealt with that. In sub-clause 34(a)(ii), we are conforming to consent in age in conformity with the age to marry. Sub-clauses 34(b) and 34(c) are for alignment with the proposed amendment that links with council and directorate.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 34 as amended agreed to)

Clause 35

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairman, move your amendment.

Hon. (Dr) James Nyikal (Seme, ODM): I beg to move:

THAT, Clause 35 of the Bill be amended by deleting the word “Directorate” wherever it appears and substituting therefor the word “Council”.

This is in relation to the functions of the council instead of the directorate.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

(Question of the amendment proposed)

There is no interest.

(Question, that the word to be left out be left out, put and agreed to)

(Question, that the word to be inserted in place thereof be inserted, put and agreed to)

(Clause 35 as amended agreed to)

Clause 36

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairman, move your amendment.

Hon. (Dr) James Nyikal (Seme, ODM): I beg to move:

THAT, Clause 36 of the Bill be amended by deleting the word “Directorate” wherever it appears and substituting therefor the word “Council”.

It is for the same reason. However, now we have to replace the word “directorate” with “council”.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

(Question of the amendment proposed)

(Question, that the word to be left out be left out, put and agreed to)

(Question, that the word to be inserted in place thereof be inserted, put and agreed to)

(Clause 36 as amended agreed to)

Clause 37

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairman, move your amendment.

Hon. (Dr) James Nyikal (Seme, ODM): I beg to move:

THAT, Clause 37 of the Bill be amended by deleting the word “Directorate” wherever it appears and substituting therefor the word “Council”.

The justification is in alignment with the decision of the council instead of directorate.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

(Question of the amendment proposed)

(Question, that the word to be left out be left out, put and agreed to)

(Question, that the word to be inserted in place thereof be inserted, put and agreed to)

(Clause 37 as amended agreed to)

Clause 38

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairman, move your amendment.

Hon. (Dr) James Nyikal (Seme, ODM): I beg to move:

THAT, Clause 38 of the Bill be amended by deleting the words “Directorate in consultation with the Medical Practitioners and Dentists Council” and substituting therefor the word “Council”.

This is again for the same reason of the council and the directorate.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the word to be inserted in place thereof be inserted, put and agreed to)

(Clause 38 as amended agreed to)

(Clause 39 agreed to)

Clause 40

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairman, move your amendment.

Hon. (Dr) James Nyikal (Seme, ODM): I beg to move:

THAT, Clause 40 of the Bill be amended by deleting the word “Directorate” wherever it appears and substituting therefor the word “Council”.

Once again, it is because we have deleted the word directorate and replaced it with the word council to align.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

(Question of the amendment proposed)

(Question, that the word to be left out be left out, put and agreed to)

(Question, that the word to be inserted in place thereof be inserted, put and agreed to)

(Clause 40 as amended agreed to)

Clause 41

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 41 of the Bill be amended by deleting the word “Directorate” wherever it appears and substituting therefor the word “Council”.

This is because we have to replace the word “Directorate” with the word “Council”.

(Question of the amendment proposed)

(Question that the word to be left out be left out, put and agreed to)

(Question, that the word to be inserted in place thereof be inserted, put and agreed to)

(Clause 41 as amended agreed to)

Clause 42

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 42 of the Bill be amended—

(a) by deleting the word “Directorate” wherever it appears and substituting therefor the word “Council”; and

(b) in sub-clause (2) by—

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

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

For Clause 42(a), it is for the same reason as Clause 41. In Clause 42(b), we are just adding the words “authorised member” in relation to inspection. Clause 42(2), seeks to get rid of the word “Directorate” as above.

(Question of the amendment proposed)

(Hon. Cynthia Muge raised her hand)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Cynthia Muge, Member for Nandi County.

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Hon. Cynthia Muge (Nandi County, UDA): Hon. Temporary Chairlady, I support the inclusion of the word “authorised”. As it was, “any” was very dangerous because “any” means anything or anyone. Including “authorised” makes it more rigid and it will control what happens in the licensing process.

Thank you, Hon. Temporary Chairlady.

(Question that the words to be left out be left out, put and agreed to)

(Question, that the word be inserted in place thereof be inserted, put and agreed to)

(Question that the words to be inserted be inserted, put and agreed to)

(Clause 42 as amended agreed to)

Clause 43

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Chairman.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 43 of the Bill be amended —

- (a) in the marginal note by inserting the words “and embryos” immediately before the word “gametes”;
- (b) by deleting sub-clause (1) and substituting therefor the following new sub-clause (1)—
 - (1) Every licence authorizing the storage of gametes shall have the condition that —
 - (a) the gametes of a person shall be placed in storage only if received from that person or acquired from a person to whom a licence applies;
 - (b) gametes which are stored shall not be supplied to a person other than in the course of providing treatment services unless that person is a person to whom a license applies;
 - (c) no gametes shall be kept in storage for longer than the statutory storage period;
 - (d) information regarding persons whose consent is required under this Act, the terms of their consent and the circumstances of the storage shall be included in the records maintained;
 - (e) there is provision for adequate safety and security for the stored gametes;
 - (f) the storage tubes are labelled with a unique identifier;
 - (g) there is a register linking the unique identifier to the identity of the donors, date of storage and any other relevant information;
 - (h) there is maintenance of a movement register of storage and retrieval of stored gametes; and
 - (i) there are adequate facilities to ensure privacy and confidentiality of the owner of the stored gamete and the identity of the donor.”
- (c) by inserting the following new sub-clause immediately after the new sub-clause (1)—

1A). Every licence authorizing the storage of embryos shall have the condition that —

- (a) the resultant embryo taken from a person shall be placed in storage only if received from that person or acquired from a person to whom a license applies;
 - (b) an embryo the creation of which has been brought about by assisted reproductive technology than in pursuance of the license shall be placed in storage only if acquired from a person to whom the license applies;
 - (c) embryos which are stored shall not be supplied to a person other than in the course of providing treatment services unless that person is a person to whom a license applies;
 - (d) an embryo which is created but is not transferred to the surrogate or intended mother for any reason shall be stored and shall be given priority in the succeeding application for assisted reproductive technology;
 - (e) no embryos shall be kept in storage for longer than the statutory storage period;
 - (f) information regarding persons whose consent is required under this Act, the terms of their consent and the circumstances of the storage shall be included in the records maintained;
 - (g) there is provision for adequate safety and security for the stored 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 embryos; and
 - (k) there are adequate facilities to ensure privacy and confidentiality of the owner of the stored embryo and the identity of the donor.”
- (d) 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 at the end of this period the embryo or gamete shall be allowed to perish.”

In Clause 43(a), the justification is that in the marginal notes, we are inserting the words “and embryos” immediately before the word “gametes” because that refers to both embryo and gamete.

The justification of the second one is to separate the license for storage for gametes and those for embryos as both require different conditions of storage so you cannot have the same conditions for them. For the last one, the embryos and the gametes shall be stored until they perish, owing to the sanctity of the right of life. Again, what we are doing is because of the sensitivity of these, we do not want to interfere with the embryos and the gametes. That is probably just for now as we look into the future.

(Question of the amendment proposed)

(Question that the words to be inserted)

be inserted, put and agreed to)

*(Question that the words to be left
out be left out, put and agreed to)*

*(Question, that the words be inserted
in place thereof be inserted, put and agreed to)*

(Clause 43 as amended agreed to)

Clause 44

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Chairman.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 44 of the Bill be amended by deleting the word “Directorate” wherever it appears and substituting therefor the word “Council”.

The justification, as we had said earlier, is the issue of the Council and the Directorate. We are just replacing the two words to harmonise the whole Bill.

(Question of the amendment proposed)

*(Question that the word to be left
out be left out, put and agreed to)*

*(Question, that the word be inserted
in place thereof be inserted, put and agreed to)*

(Clause 44 as amended agreed to)

*(The Temporary Chairlady (Hon. (Dr) Rachael Nyamai)
consulted with the Clerk-at-the-Table)*

Clause 45

(Hon. Irene Njoki raised her hand)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Yes, Hon. Irene, Member for Bahati.

Hon. Irene Njoki (Bahati, UDA): Sorry, I hope I am not taking you back. Looking at this Bill, I wonder if after licensing these hospitals or doctors, there is any chance that I may have my embryos stored and sold without my authority. Is there a clause that protects my embryos?

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. (Dr) Nyikal, I give you a chance to respond to that question.

Hon. (Dr) James Nyikal (Seme, ODM): We actually have a provision to that. Nobody can handle any embryo without the consent of the owner of the embryo.

Hon. Irene Njoki (Bahati, UDA): What about commercialisation?

Hon. (Dr) James Nyikal (Seme, ODM): If you look back, we have gone through a number of clauses on commercialisation of the process.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Irene, we have several Clauses that are securing the embryos, so a situation like that cannot happen. Look from Clause

11 which speaks to the use of embryos, consent of parties, post-humous use without consent, circumstances for undertaking assisted... You just need to go to the Bill and you will see the Committee did a very good job. Actually, the whole House since this Bill has been here since the 11th and 12th Parliaments to date. We thank God that it is happening in the 13th Parliament and there is a possibility of closure.

Is anything out of order, Hon. Member for Nandi County?

(Hon. Cynthia Muge spoke off the record)

So that we are orderly, is it something to do with Clause 45 or is something out of order?

(Hon. Cynthia Muge spoke off the record)

You want to inform? You may want to go on record to say that.

Hon. Cynthia Muge (Nandi County, UDA): Thank you, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): It is a point of information, right?

Hon. Cynthia Muge (Nandi County, UDA): Yes.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Who would you like to inform?

Hon. Cynthia Muge (Nandi County, UDA): I would like to inform the Hon. Member for Bahati.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): I am obliged to ask the Member for Bahati whether she would like to be informed by the Member for Nandi.

Hon. Irene Njoki (Bahati, UDA): Yes.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Proceed.

Hon. Cynthia Muge (Nandi County, UDA): Hon. Temporary Chairlady, for the comfort of the Member for Bahati, I have sat through this Bill with passionate submissions from Hon. Millie and other contrary submissions from Members who appeared before the Committee. Part of the issues raised were exactly what she has raised. Having gone through the Bill together with my very able Chairperson and having combed through every statement within the Bill, considering the sensitivity of this matter, her concern is properly taken care of in four clauses.

Hon. Millie and the Committee did a very good job as well as the Members who have been able to contribute to this Bill in legally safeguarding the privacy of the embryos that will be stored for whatever reason. Hon. Njoki, you are properly and legally covered.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you. Hon. Members, let us make progress.

Clause 45

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move;

THAT, Clause 45 of the Bill be amended in subclause (2) by deleting the word "Directorate" appearing in paragraph (b) and substituting therefor the word "Council". This has to do with the functions of the directorate which now we want to be in the Council. So, it is just alignment.

(Question of the amendment proposed)

*(Question, that the word to be left out
be left out, put and agreed to)*

*(Question, that the word to be inserted in place thereof
be inserted, put and agreed to)*

(Clause 45 as amended agreed to)

Clause 46

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:
THAT, Clause 46 of the Bill be amended—

- (a) by deleting the word “Directorate” wherever it appears and substituting therefor the word “Council”; and
- (b) in sub-clause (1) by—
 - (i) deleting paragraph (d);
 - (ii) 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
 - (iii) 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).

In (a), again, the issue is because of the Council. So, we are just aligning that. In (b), the provision that you delete paragraph (d) is because it is actually a morpheme saying if the circumstances change. You cannot introduce something in law that is not certain. The other one is to empower the Council to revoke licences for persons who have committed serious offences and are of questionable character. Again, it is protective.

(Question of the amendment proposed)

Hon. Temporary Chairlady (Hon. (Dr) Rachael Nyamai): I do not see any interest. Hon. Eric Muchangi, Member for Runyenjes. Hon. Cynthia Muge, Member for Nandi County. So, we proceed.

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof
be inserted, put and agreed to)*

*(Question, that the words to be inserted
be inserted, put and agreed to)*

(Clause 46 as amended agreed to)

Clause 47

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move;
THAT, Clause 47 of the Bill be amended by deleting the word “Directorate” appearing in sub-clause (1) and substituting therefor the word “Council”

Once again, it is to do with the functions of the directorate and the Council. So basically we are just harmonising with that change that we have already made.

(Question of the amendment proposed)

Hon. Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Cynthia Muge.

Hon. Cynthia Muge (Nandi County, UDA): Hon. Temporary Chairlady, I support the conformity proposed by Hon. (Dr) Nyikal. But allow me to state my discomfort regarding provision 47(b). It talks about the application, if the Council refuses to give you a licence, you can then appeal to the Cabinet Secretary. My discomfort is that the Council is made up of competent and skilled people in that sector. When the Council refuses, it gives another leeway to apply to a Cabinet Secretary who, most of the time, is not a medic and probably, not conversant with what happens. This is quite uncomfortable for me. I think I have stated it clearly. I just wanted to bring it to the attention of the Chair and the Hon. Members, so that we can see what happens to it. I feel it is not very good in terms of professionalism.

Hon. Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Chairman.

Hon. (Dr) James Nyikal (Seme, ODM): Chair, that may be true and it actually appeals to my feelings as well. But what we have before me did not include it. So, you can guide us on whether, at this time, we can move an amendment to that part.

Hon. Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Why are you saying that you cannot?

Hon. (Dr) James Nyikal (Seme, ODM): Because we only dealt with 47(1). I do not think we have covered that. So, if you are going to move that amendment, can I do it now?

What we did was 47, where the Director refuses to issue a licence and the Cabinet Secretary may make such amendments. Well, if an amendment is being made or is in process, I can accommodate it. We have to say where we move the amendment.

Hon. Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Here is a directorate, it has refused to issue a licence and it has also refused to vary. What the Member of Parliament for Nandi is uncomfortable with, is that you can go to the Cabinet Secretary. Therefore, that is the one we wanted you to make a comment on and then we put the question.

Before the Chair thinks, let us hear from the Member for Kibra.

Hon. Peter Orero (Kibra, ODM): Thank you, Hon. Temporary Chairlady. I think before the Chair comments, as much as health is a devolved function, we still have a national umbrella. We must always have a pathway in all our systems so that we never have a gap. We must always have a bridge so that if you cannot get an opportunity, then you have a place to appeal. You can never say that if a Cabinet Secretary is not a medic, he cannot make a decision. We have personnel within the ministry and within medical circles who advise the Cabinet Secretary. I think this is just a provision to ensure people are not stopped at the county level.

We give this leeway so that people have an opportunity to pursue their courses, especially when they are denied certificates at the local level. This is just a pathway to give people room for appeal. It does not limit or necessarily bar them from pursuing. Otherwise, I think we must make a pathway for those who do not get justice at certain levels.

Hon. Temporary Chairlady (Hon. (Dr) Rachael Nyamai): So, for the comfort of the Member of Parliament for Nandi, you have the directorate, and when they make a decision, you are not comfortable with you can go to the Cabinet Secretary. Clearly, the Cabinet Secretary is advised; they have advisors. But you can also go to court. I think we will get there.

I would like to go to the Chairman. Can we go to the Member of Parliament for Kilgoris? Hon. Millie, we come to you first. I would like to go to the Member for Kilgoris then we can come to you. Sorry, she takes precedence. Member of Parliament for Kilgoris, women first. Hon. Millie Odhiambo.

(Laughter)

Hon. Millie Odhiambo-Mabona (Suba North, ODM): I like it when you help, Hon. Temporary Chairlady.

Hon. Temporary Chairlady (Hon. (Dr) Rachael Nyamai): In terms of order of precedence, she speaks first. So, let her go ahead.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Chairlady.

Other than the fact that I love it when there are Hon. Lady Speakers, I am not too sure where the Hon. Member for Nandi is getting that from. I have looked at the proposed amendments by the Chair and I have also looked at the Bill.

The Bill, in subclause (6), says the Cabinet Secretary shall make regulations for the refusal, variation and revocation of licences by the Directorate, which is now the Council, under this Act. So, the Cabinet Secretary shall only make regulations. I am not aware, unless you can point me to where there is an appeal, because I have looked at what the Committee is proposing and I am not seeing any appeal in the Bill. In what subclause? Sorry, I was in Clause 46. No wonder. If that is the case, I will also agree with her. This is especially if we are talking about health being devolved and then you say the Cabinet Secretary may make such determination on the review as deemed fit. I think it would be prudent to leave it to the High Court. But still, even if you have the Cabinet Secretary and they are arbitrary, you can still go to the High Court. However, I think it is one of those clauses we should have deleted.

Hon. Temporary Chairlady (Hon. (Dr) Rachael Nyamai): She started by saying she was not opposing. Unless you are opposing now the Member of Parliament for Nandi. No, I will go to the Member of Parliament for Kilgoris first. It is good to be consistent.

Hon. Julius Sunkuli (Kilgoris, JP): Not only that, but also when it comes to precedence, because the Whip of the Majority/Minority Party takes precedence. I also take precedence over her. Hon. Temporary Chairlady, you are the overall boss.

Having come from the Committee, we could retain this as it is. First, it is a human rights issue. When you apply for a licence and the Council rejects it, you then appeal to the Cabinet Secretary. Clause 48 provides that where the Cabinet Secretary, upon application for review under Section 47, determines to refuse, there is still the avenue of the High Court. What is more consoling, as a member of the Delegated Legislation Committee is that any decision or action taken by the Cabinet Secretary must form part of delegated legislation. Under Section 47, they can make regulations, and since Section 47 comes before Section 48, this determination is not blanket. It must relate to the regulations made under Section 47. The process is sound.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

(Question, that the word to be left out be left out, put and agreed to)

(Question, that the word to be inserted in place thereof be inserted, put and agreed to)

(Clause 47 as amended agreed to)

(Clause 48 agreed to)

Clause 49

Hon. (Dr) James Nyikal (Seme, ODM): I beg to move:

THAT, Clause 49 of the Bill be amended by deleting the word “Directorate” wherever it appears and substituting therefor the word “Council”.

This is necessary to harmonise with our earlier decision to remove the word Directorate and replace it with the word Council.

(Question of the amendment proposed)

(Question, that the word to be left out be left out, put and agreed to)

(Question, that the word to be inserted in place thereof be inserted, put and agreed to)

(Clause 49 as amended agreed to)

Clause 50

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Chairman.

Hon. (Dr) James Nyikal (Seme, ODM): I beg to move:

THAT, Clause 50 of the Bill be amended in sub-clause (1) by—

(a) deleting the words “knowingly or recklessly” appearing in sub-clause (1); and

(b) inserting the following proviso immediately after paragraph (c)—

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

This essentially provides a clear penalty for offences committed under Clause 50.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Cynthia.

Hon. Cynthia Muge (Nandi County, UDA): I support the amendment because anything done can easily be excused as having been done unknowingly or without recklessness. Removing those words ensures accountability. If you commit the offence, you are guilty and must be punished. This is a delicate matter.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted be inserted, put and agreed to)

(Clause 50 as amended agreed to)

(Clause 51 agreed to)

New Clauses 19A, 19B, and 19C

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.

Donation gametes embryos.	of or	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 Council.
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Disposal gametes.	of	19C. (1) The Council 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.
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(The new clause was read a First Time)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Clause 51 is one of those in which Hon. Kaluma had proposed amendments, and we agreed on how to proceed. I call upon the Mover to move the Second Reading of the new clauses. Dr Nyikal, I suggest that you move all the new clauses together, under 19. There are 19A, 19B and 19C.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move that New Clauses 19A, 19B and 19C be now read a Second Time.

The justification for Clause 19A is to limit the number of donations of gametes and surrogacies for the health and well-being of surrogate mothers and fetuses. It sets a reasonable cap on how many donations an individual can make.

New Clause 19B provides the age limit of donors to ensure the quality of gametes and improve the chances of successful transfers.

Clause 19C provides for the disposal of gametes, either through donation or research. This is extremely important because if we do not specify how gametes are disposed of or how

long they can be stored, there could be misuse, especially in research, which is particularly concerning.

I, therefore, beg to move.

(Question, that the new clause be read a Second Time, proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): I see interest from the Member for Kibra.

Hon. Peter Orero (Kibra, ODM): Hon. Temporary Chairlady, when we were growing up, many of our mothers gave birth to 15 or even 20 children. But this Bill says a person cannot donate embryos more than 10 times. I do not know what the Committee considered because some of the ladies I see here are very fertile. Even the Hon. Temporary Chairlady looks like one who could give embryos more than 10 times. I think it should be limitless because some give birth every year.

I have also noted that an age limit has been set for men who donate sperm. But you know, even wine matures with age. The longer it stays, the better it gets.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Order! Are you comparing sperm to wine? That the longer it stays, the better.

(Laughter)

Hon. Peter Orero (Kibra, ODM): It is just an analogy I am giving because some men are very productive even at 70 years. This includes my brother here, Dr Nyikal. I support the Bill, but let us not limit the age.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Well, this is a House of debate. Yes, the Member for Baringo County.

(Hon. Jematiah Sergon Spoke off the record)

Wait for the microphone.

Hon. Jematiah Sergon (Baringo County, UDA): Thank you, Hon. Temporary Chairlady.

I also, generally, support this Bill. I agree with Member for Kibra that there should be no limitation. First of all, it is a wish...

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): The Member for Kibra is called Hon. Orero.

Hon. Jematiah Sergon (Baringo County, UDA): Hon. Temporary Chairlady, Hon. Orero is also my friend. We are more than 14 siblings in my home which is beyond what the committee is trying to restrict here. I know women who have up to 18 children. This is not debatable. I think the Committee should not restrict the number of eggs one can donate. We can allow this because some genes are better than others. Many people would probably want to have children of a particular lineage or genotype because of many factors like resistance and height and other factors. So, these are factors to consider when dealing with such Bills. It should be free. We were given the power to procreate and reproduce.

Thank you, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you. Member for Suba North, Hon. Millie Odhiambo.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Chairlady.

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I wish to support the Committee, especially on New Clause 19A to limit the number of times a person can donate their gametes or embryos to 10. The reason being that if you have more children born through donation, there is a likelihood of people marrying their relatives.

Secondly, I thank the Hon. Member for raising that her mother has 14 children. Those are her children. For a surrogate, these are not her children. She will still need to have her own children. If we let a woman carry 10 children for someone else, we are compromising their own right or possibility of having their own. Even though we are prohibiting commercialisation, due to poverty, we know some people may try to commercialise. Some may go in because of commercialisation, compromising their health. We are, therefore, protecting the surrogate. We are also limiting commercialisation by limiting the number of times one can enter into surrogacy in their lifetime to three.

I also support the New Clause 19C on disposal of gametes. However, I wish to propose an amendment to New Clause 19B by deleting the word 'or'. New Clause 19B(1) says that:

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.

This means that they either have male or female and not both. I propose we delete the word 'or' so that the cryo bank can have both oocytes and gametes from males and females.

Thank you.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Chairperson, I would like you to take note of what Hon. Millie said. We will come back to you. Proceed, Member for Kericho, Hon. Beatrice Kemei.

Hon. Beatrice Kemei (Kericho County, UDA): Thank you, Hon. Temporary Chairlady.

As Hon. Millie has said regarding supporting the Committee's proposal of limiting the donation of embryo and gametes, I wonder how they arrived at 10, not more or less. Can I be informed why it is ten times?

Hon. Temporary Chairlady, I understand Hon. Millie's explanation that if one donates gametes more than 10 times, people can marry their blood relatives. Why is it 10 times? Let me get that information.

(Several Hon. Members spoke off the record)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Members, for the purpose of making progress, I give this chance to the Chair. Are you the one who is prosecuting on behalf of the Chair of that Committee?

(Hon. Julius Sunkuli and Hon. (Dr) James Nyikal spoke off the record)

Let Hon. Sunkuli speak and then we will come to you because you have a decision to make on Hon. Millie's matter. We realised that the microphone is faulty.

Hon. Julius Sunkuli (Kilgoris, KANU): How about this one?

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): It is working.

Hon. Julius Sunkuli (Kilgoris, KANU): Hon. Temporary Chairlady, there are two points.

First of all, I totally agree that if we allow someone to go on a random production of children, we will end up reproducing bad genetics because incest will occur. At any rate, it is

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not good for one man to populate the world. There is the issue of the word ‘or’ in this Clause. I want us to read it correctly. New Clause 19B of the Bill says:

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

A cryo bank can choose between the two. But if you say ‘and’, it means you are compelling them....

(Hon. Millie Odhiambo-Mabona spoke off the record)

For drafting purposes, how will it be? If you move from New Clause 19B(a) to (b) without the word ‘and’ or ‘or’, it will be okay grammatically. It gives two options. That is why we are using the word ‘or’.

If you choose between males and females, males are between 21 years and 35 years but females are between 23 years to 35 years. If it describes males and females of the same ages, we can have it in one paragraph. If you are varying the qualifications of a man and woman, we definitely need the two paragraphs.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairman.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, New Clause 19A(2) says:

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 10 children who are genetic siblings.

Hon. Millie has indicated that there is a danger in having many children with the same genetic pattern. Many of these deductions are from scientific observations. In places where these procedures have been done many times, the probability becomes higher; beyond 10. However, if science disapproves this theory later on, we will amend the Bill.

Surrogacy is a very strenuous thing. It is not similar to normal conception where you go through hormonal preparations then procedures. It is something that you are not doing for yourself; you are doing it for other people. If you allow people to become professional surrogates, that will not be altruistic. This Bill is trying to be as altruistic as possible to people who need fertility services, and not for those who want to gain commercially.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairman, the only part where we had a problem was Clause 19(b). The rest was not being contested.

Hon. (Dr) James Nyikal (Seme, ODM): Okay. In Clause 19(b), two things are independent. Gametes from males will be totally different from oocytes from females. I do not see why we should link them. When somebody comes to you to donate an ovum, that will be a lady coming to donate. I do not see where they will come with a man.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Does the word “or” remain?

Hon. (Dr) James Nyikal (Seme, ODM): We delete the word “or”. Advise me on how to handle the word “or” and then we delete it. Therefore, I propose a further amendment that we delete the word “or” in Clause 19(b).

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): You move in an amended form.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:

THAT, the Bill be further amended in Clause 19 (b) by deleting the word “or.”

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Well noted.

Hon. (Dr) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Chairlady.

*(Question, that the word to be left out
be left out, put and agreed to)*

*(Question, that the new clauses be read
a Second Time, put and agreed to)*

*(Question, that the new clauses be
added to the Bill, put and agreed to)*

New Clause 24A

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

Pre-implantation
diagnosis or
testing. 24A. 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.

(The new clause was read a First Time)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairman.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move that the new clause 24A be now read a Second Time.

The proposal states that a donor must undergo pre-implantation genetic diagnosis or testing to screen the human embryo or gamete for known, pre-existing, hereditary genetic diseases. Certain genetic diseases can be inherited from either the mother or the father through their sperm or ovum, and some of these diseases can be quite debilitating. If individuals are seeking fertility assistance to have a child, it is crucial for them to know if there is a possibility of passing on hereditary diseases, even if those diseases are recessive.

Therefore, there is a need to screen people for such diseases before they donate the ovum or the sperm. We need to protect the foetuses that will come from this process.

I beg to move.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you, very much.

*(Question, that the new clause be
read a Second Time, proposed)*

Hon. Cynthia Muge, I can see that you have interest in this new clause.

Hon. Cynthia Muge (Nandi County, UDA): I resisted when this proposal was put forward previously because I thought it wanted you to predetermine what you want to get. Looking at a number of people born with sickle cell anaemia, you do not want to undertake such risk when seeking surrogacy.

I support and highly recommend the clause because it will help us with some preventable diseases that can be detected before implantation happens. Therefore, I support this clause.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

*(Question, that the new clause be read
a Second Time, put and agreed to)*

(Question, that the new clause be added to the Bill, put and agreed to)

New Clauses 27A and 27B

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

Intended parents. 27A. An intended parent may use assisted reproductive technology where the intended parent—
 (a) is a Kenyan;
 (b) has attained the age of twenty-five years; and
 (c) is below the age of fifty-five years.”

Leave related to surrogacy. 27B. (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.

(The new clause was read a First Time)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): I call upon the Mover, to move Second Reading of New Clauses 27A and 27B.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move that the new clauses 27A and 27B be now read a Second Time.

In New Clause 27A, an intended person may use assisted reproduction where the person is a Kenyan, has attained the age of 25 years, and is below the age of 55 years.

This introduces two important factors in assisted reproduction. The first one, as indicated earlier, is that we want to limit this law to Kenyans only. The purpose for that is, we do not intend to open this country for assisted reproductive services tourism. People will come to Kenya to seek these services because it is not available in their own countries or for commercial purposes.

Let me give you an example to justify that. If you allow such, it is possible that people may come to this country to get it done but you will not know the arrangement behind it. When I was practising medicine, we had a baby that was delivered. At the time the mother came into the labour ward, they had a name of somebody else who flew in from another country. For all practical purposes, the lady who delivered never did it but the one who came from abroad, is the one who “delivered”. They were seeking to travel abroad with the baby, which is a form of child trafficking. Again, the issue of how you handle embryos and gametes that are stored can be a subject of research. If you allow people to come in, you may find that you are making it available for people to do research that may be unorthodox.

The second part is about age. It also has the optimal reproductive age when they should be involved in surrogacy. New Clause 27(B) is basically meant to let the surrogate mothers and fathers have maternity leave and paternity leave, respectively, like in all other deliveries without discrimination. In this case, the surrogate mother under this Act is entitled to three months lochia or post-partum leave. An intended mother is entitled to three months maternity leave so that the mother who has given birth is resting and the mother who has taken over the new baby has time to also acquaint with the baby. Definitely, the father needs a little less time, so he will be given two weeks leave.

Hon. Temporary Chairlady, I beg to move.

*(Question, that the new clauses be read
a Second Time, proposed)*

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Millie Odhiambo.

Hon. Millie Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Chairlady, I wish to support this proposal because of the possibility of tourism. I agree with the Committee on restricting this to Kenyan citizens only. This consideration is in the best interest of the child, as it allows for better monitoring of children born through assisted reproduction within Kenya. It is also in the interest of women who deliver under assisted reproduction. The intended parent, the surrogate, and the father all deserve to have leave. I support.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Cynthia Muge.

Hon. Cynthia Muge (Nandi County, UDA): Hon. Temporary Chairlady, I definitely support the new clause. There were concerns regarding provision (c), which states that the parent should be below the age of 55 years. I support this with every part of me because parenting is not an easy job; it is a responsibility that must be taken seriously. I also advocate for the normalisation of surrogacy. Part of this normalisation, as outlined in the New Clause 27B, is that the intended mother will go on leave just like a biological mother. This approach fosters a sense of belonging and ownership for the child.

I support.

*(Question, that the new clauses be read
a Second Time, put and agreed to)*

*(Question, that the new clauses be added
to the Bill, put and agreed to)*

New Clauses 28A and 28B

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

Surrogacy

agreements by third
parties.

28A. (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—

- (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.

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 education in commercial surrogacy.

(2) 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 ten million shillings or to imprisonment for a term not exceeding ten years, or to both.

(The new clauses were read a First Time)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): I now call upon the Mover to move Second Reading of the two new clauses.

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Hon. (Dr) James Nyikal (Seme, ODM): I beg to move that New Clauses 28A and 28B be now read a Second Time.

New Clause 28A prohibits commercialisations of surrogacy. This clause forbids anyone from initiating negotiations, offering agreements, or involving any payments that would lead to the process being commercialised or of a commercial nature. New Clause 28B outlines all the possible methods of commercialisation of surrogacy. Additionally, it provides for the undertaking of public education, the distribution of information, and the prevention of exploitation following surrogacy. It details the offences related to any efforts to commercialise surrogacy.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you, Hon. Chairperson. I will proceed to propose the question.

(Question, that the new clauses be read a Second Time, proposed)

(Question, that the new clauses be read a Second Time, put and agreed to)

(Question, that the new clauses be added to the Bill, put and agreed to)

New Clause 32A

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

Prohibition on 32A. (1) A person shall not publish, or cause to be published, an advertisement or notice to the effect that a person—
certain publications.

- (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.

(The new clause was read a First Time)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): I now call upon the Mover to move Second Reading of the new clause.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move that New Clause 32A be now Read a Second Time. The purpose of this Clause relates to regulating commercialising surrogacy. It provides for the offence if that happens. Hon. Temporary Chairlady I beg to move.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

*(Question, that the new clause be read
a Second Time, proposed)*

*(Question, that the new clause be read
a Second Time, put and agreed to)*

*(Question, that the new clause be added to the Bill,
put and agreed to)*

New Clause 51A

THAT, the Bill be amended by inserting the following new clause 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 Committee, 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 Council 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.

(The new clause was read a First Time)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): I now call upon the Mover to move Second Reading of New Clause 51A. Chairman, Dr Nyikal.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move that the New Clause 51A be now read a Second Time.

The New Clause 51A recognises the fact that at the moment there is no law regulating this yet there are processes that are going on. Therefore, what we are providing for is transition for those who have already started this process.

I beg to move.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

*(Question, that the new clause be read
a Second Time, proposed)*

*(Question, that the new clause be read
a Second Time, put and agreed to)*

*(Question, that the new clause be added to the Bill,
put and agreed to)*

New Schedule

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THAT, the Bill be amended by inserting the following New Schedule —
(s. 5(2))

SCHEDULE

CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMITTEE

Meetings.

1. (1) The Committee shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) The chairperson may call a special meeting of the Committee at any time the chairperson deems fit for expedient transaction of the business of the Committee.

(3) The notice for a meeting of the Committee shall be given in writing to each member of the Committee at least fourteen days before the day of the meeting.

(4) In the case of a special, or extra-ordinary meeting, a notice of less than fourteen days' notice shall be considered sufficient.

(5) Despite the provisions of subparagraph (2), the chairperson may, upon requisition in writing by at least two thirds of the members, convene a special meeting of the Committee at any time for the transaction of the business of the Committee.

(6) The notice to be given under subparagraph (2) and (3) shall state the—

(a) venue and time of the meeting; and

(b) agenda with sufficient details of business to be discussed at the meeting.

(7) The chairperson shall preside at every meeting of the Committee at which the chairperson is present but in the chairperson's absence, the members present shall elect from among themselves a chairperson who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(8) Unless a unanimous decision is reached, a decision on any matter before the Committee shall be by the concurrence of a majority of all the members present and voting at the meeting.

(9) The Committee may, with approval of the Cabinet Secretary, co-opt or invite any number of persons to act as advisors or consultants at any of its meetings or form such committees to perform such functions or duties of the Committee as the Committee shall determine.

(10) Subject to the provisions on quorum, no proceedings shall be invalid by reason only of a vacancy among the members of the Committee.

(11) Subject to the provisions of this Schedule, the Committee may determine its own procedure and the procedure for any committee of the Committee.

(12) The quorum for the meetings of the Committee shall be five members. Co-opted or invited persons shall not be counted in the quorum of the meetings of the Committee and shall not be eligible to vote.

Contracts and instruments.

2. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Institute by any person generally or specially authorized by the Institute for that purpose.

Disclosure of Interest.

3. (1) If a member of the Committee is present at a meeting of the Committee or any committee at which any matter is the subject of consideration and in which matter that person is directly or indirectly interested in a private capacity, that person shall as soon as is practicable before the commencement of the meeting, declare such interest.

(2) The person making the disclosure of interest under paragraph (1) shall not, unless the Committee or committee otherwise directs, take part in any consideration or, discussion of, or vote on any question touching on the matter.

(3) A person who contravenes subparagraph (1) commits an offence and shall be liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding six months, or to both.

(4) No member of the Committee or officer, employee or agent of the Committee shall enter into a service contract or trade with the Committee.

(5) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

Minutes.

4. The Committee shall cause minutes of all resolutions and proceedings of meetings of the Committee to be entered in books kept for that purpose.

(The New Schedule was read a First Time)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): I call upon the mover to move Second Reading of the New Schedule.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move that the New Schedule be now read a Second Time.

The purpose of this Schedule is to provide for how to conduct the businesses that relate to the Committee that we formed in the Kenya Medical Practitioners and Dentists Council (KMPDC) instead of the Directorate. This Committee will have very specific functions noting

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that there are usually requirements on how committees operate and how the membership is approved. This Schedule seeks to provide for the business that shall be conducted by that Committee.

I beg to move.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

*(Question, that the New Schedule be read
a Second Time, proposed)*

*(Question, that the New Schedule be read
a Second Time, put and agreed to)*

*(Question, that the New Schedule be added to the Bill,
put and agreed to)*

Clause 2

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Chairman.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, it has been brought to my attention that when we provided the list of clauses that Hon. Kaluma had amendments and was interested in, we excluded Clause 2. It is my plea that Clause 2 be treated in the same way as the other clauses that Hon. Kaluma had amendments to.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Would you like to include it?

Hon. (Dr) James Nyikal (Seme, ODM): I would like to include it in the list that I provided.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): In accordance with Standing Order 133 (10), we now include Clause 2 among the clauses that will be discussed at a later date.

Thank you.

Long Title

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairman.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I beg to move:

THAT, the Long Title of the Bill be amended by deleting the words “to establish an Assisted Reproductive Technology Directorate”.

As we had indicated earlier, we have decided that we do not need the directorate and this will be a Committee under the Medical Practitioners and Dentist Council.

(Question of the amendment proposed)

*(Question, that the words to be left,
out be left out, put and agreed to)*

(Long Title as amended agreed to)

(Clause 1 agreed to)

I now call the Mover to move.

Hon. Millie Odhiambo- Mabona (Suba North, ODM): Hon. Temporary Chairlady, I beg to move that the Committee report to the House its consideration of the Assisted

Reproductive Technology Bill (National Assembly Bill No.61 of 2022) except for Clauses 3, 8, 14, 27, 30 and 52 and its approval thereof with amendments and seek leave to sit again.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairperson, the first one is Clause 2 and not 3.

Hon. Millie Odhiambo Mabona (Suba North, ODM): I am sorry. It is Clause 2

(Question put and agreed to)

(The House resumed)

IN THE HOUSE

[Hon. Deputy Speaker (Hon. Gladys Boss) in the Chair]

Hon. Deputy Speaker: Hon. Members, can the Chairperson Report to the House.

Hon. (Dr) Rachael Nyamai (Kitui South, JP): Hon. Deputy Speaker, I beg to report that the Committee of the whole House has considered the Assisted Reproductive Technology Bill (National Assembly Bill No.61 of 2022) except for Clauses 2, 8, 14, 27, 30 and 52, and approved the same with amendments and seek leave to sit again.

Thank you, Hon. Temporary Speaker.

Hon. Deputy Speaker: Mover.

Hon. Millie Odhiambo- Mabona (Suba North, ODM): Hon. Deputy Speaker, I beg to move that the House do agree with the Committee in the said report.

I request Hon. Sunkuli to second the Motion for agreement with the report of the Committee of the whole House.

Hon. Julius Sunkuli (Kilgoris, JP): Hon. Temporary Speaker, I beg to second.

Hon. Deputy Speaker: Thank you.

(Question proposed)

(Question put and agreed to)

ADJOURNMENT

Hon. Deputy Speaker: Hon. Members, the time being 1.05 p.m. the House stands adjourned until this afternoon at 2.30 pm.

The House rose at 1.05 p.m.

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