Annex 1:

Minutes of the Committee Sittings

13TH PARLIAMENT |5TH SESSION

MINUTES OF THE FIFTEENTH (15TH) SITTING OF THE STANDING COMMITTEE ON HEALTH HELD ON, MONDAY 23RD MARCH, 2026 AT 2.00 PM AT GLEE HOTEL, KIAMBU COUNTY

MEMBERS PRESENT

1. Sen. Mariam Sheikh Omar, MP - **Vice-Chairperson**
2. Sen. Justice (Rtd) Stewart Madzayo, EGH, MP - Member
3. Sen. Ledama Olekina, CBS, MP - Member
4. Sen. Richard Onyonka, MP - Member
5. Sen. Joseph Githuku Kamau, MP - Member
6. Sen. Tabitha Mutinda, CBS, MP - Member
7. Sen. Hamida Kibwana, MP - Member

ABSENT WITH APOLOGY

1. Sen. Jackson K. Arap Mandago, EGH, MP - Chairperson
2. Sen. Vincent Kiprono Chemitei, MP - Member

SENATE SECRETARIAT

1. Mr. Humphrey Ringera - Senior Research Officer
2. Mr. Amos Kiangwe - Senior Clerk Assistant
3. Mr. David Ngamate - Clerk Assistant
4. Mr. Gilbert Juma - Legal Counsel
5. Mr. Ian Otieno - Audio Recording Officer
6. Mr. Stanley Gekore - Media Officer
7. Ms. Yvonne Momanyi - Legal Intern
8. Mr. Ham Juma - Legal Intern
9. Ms. Rose Omboke - Office Assistant

MIN/SEN/SCH/073/2026 PRELIMINARIES

The Chairperson called the meeting to order at sixteen-six minutes past two o'clock and the proceedings commenced with a word of prayer followed by brief introduction of those present.

MIN/SEN/SCH/074/2026 — ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as listed below upon being proposed by Sen. Hamida Kibwana, MP and seconded by Sen. Tabitha Mutinda, CBS, MP.

1. Preliminaries;
   a) Prayer
   b) Introductions
2. Adoption of the Agenda;
3. Consideration and adoption of the Committee Report the Assisted Reproductive Technology Bill, 2022 (National Assembly Bill No. 6 of 2022). **(Committee Paper No. 167);**
4. Any other Business; and
5. Adjournment/Date of the Next Meeting

MIN/SEN/SCH/075/2026 — CONSIDERATION AND ADOPTION OF THE COMMITTEE REPORT THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL, 2022 (NATIONAL ASSEMBLY BILL NO. 6 OF 2022). (COMMITTEE PAPER NO. 167);

1. The Secretariat presented the Committee Report on Petition by the Assisted Reproductive Technology Bill, 2022 (National Assembly Bill No. 6 of 2022). **(Committee Paper No. 167).**
2. The Assisted Reproductive Technology Bill, 2022 (National Assembly Bills No. 19 of 2022) was published on 16th December, 2022 and after it passage by the National Assembly, the Bill was referred to the Senate for consideration.
3. The Committee had received a total of twenty-five (25) submissions memoranda from the public.
4. The Public memoranda had been collated into a matrix which the Committee had duly considered.

Observations

5. The Committee observed that Kenya currently lacks a comprehensive legislative framework governing assisted reproductive technology despite the technology being in use.
6. The unregulated practice therefore leaves patients, practitioners, children born out of assisted reproductive technology procedures and surrogate mothers without adequate legal protection.

7. The Committee further noted that, currently, according to the Kenya Association of Urological Surgeons, approximately 10 to 15 percent of couples in Kenya are unable to conceive naturally, underscoring the urgent public health need for regulated Assisted Reproductive Technology services as a treatment for infertility in Kenya

Committee Deliberations and Resolutions

After deliberations, members adopted the Committee Report on the Assisted Reproductive Technology Bill, 2022 (National Assembly Bill No. 6 of 2022). for tabling before the House after having been proposed by Sen. Joseph Githuku, MP and seconded by Sen. Hamida Kibwana, MP.

MIN/SEN/SCH/076/2026 ADJOURNMENT

There being no other business, the meeting ended at thirty minutes past twelve o'clock. The next meeting shall be held twelve noon at the same venue.

SIGNED... **DATE** 24/3/2026

SEN. JACKSON K. ARAP MANDAGO, EGH, MP
(CHAIRPERSON, COMMITTEE ON HEALTH)

13TH PARLIAMENT |5TH SESSION

MINUTES OF THE TWELFTH (12TH) SITTING OF THE STANDING COMMITTEE ON HEALTH HELD ON, MONDAY 16TH MARCH, 2026 AT 12.00 NOON AT GLEE HOTEL, KIAMBU COUNTY

MEMBERS PRESENT

1. Sen. Jackson K. Arap Mandago, EGH, MP - **Chairperson**
2. Sen. Mariam Sheikh Omar, MP - **Vice-Chairperson**
3. Sen. Tabitha Mutinda, CBS, MP - Member
4. Sen. Hamida Kibwana, MP - Member
5. Sen. Vincent Kiprono Chemitei, MP - Member

ABSENT WITH APOLOGY

1. Sen. Justice (Rtd) Stewart Madzayo, EGH, MP - Member
2. Sen. Ledama Olekina, CBS, MP - Member
3. Sen. Richard Onyonka, MP - Member,
4. Sen. Joseph Githuku Kamau, MP - Member

SENATE SECRETARIAT

1) Mr. Humphrey Ringera - Senior Research Officer
2) Mr. Amos Kiangwe - Senior Clerk Assistant
3) Mr. David Ngamate - Clerk Assistant
4) Mr. Gilbert Juma - Legal Counsel
5) Mr. David Munene - Research Officer
6) Mr. Ian Otieno - Audio Recording Officer
7) Mr. Jack Lemeteki - Media Relations Officer
8) Ms. Yvonne Momanyi - Legal Intern
9) Mr. Ham Juma - Legal Intern
10) Mr. David Barasa - Serjeant – At - Arms

INATTENDANCE -KENYA OBSTETRICAL AND GYNECOLOGICAL SOCIETY

1) Dr. Kireki Omanwa - President, Kenya Obstetrical & Gynecological Society
2) Prof. Moses Obimbo - Member, KOGS and Senior Lecturer, University of Nairobi
3) Dr. Maureen Owiti - Member, Kenya Obstetrical and Gynecological Society
4) Dr. Wanjiru Ndegwa - Member, Kenya Obstetrical and Gynecological Society
5) Ms. Winrose Njuguna - Legal Advisor, Kenya Obstetrical and Gynecological Society

MIN/SEN/SCH/059/2026 **STAKEHOLDERS ENGAGEMENT REGARDING THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL, 2022 (NATIONAL ASSEMBLY BILLS NO.61 OF 2022) *(COMMITTEE PAPER NO. 163)***

1. The Chairperson called the meeting to order at ten minutes past twelve o'clock invited the Committee to seek clarification and supplementary issues from the submission by the Kenya Obstetric and Gynecological Society (KOGS);

2. During deliberations the Committee made the following observations-
   a) There is no comprehensive national registry tracking the total number of children born through Assisted Reproductive Technology (ART) in Kenya. The data available is fragmented, drawn from individual clinic reports, regional registries, and academic studies. Further there is no legal framework requiring clinics to report outcomes and majority operate without mandatory reporting;
   b) In other similar jurisdictions, the most common approach is a requirement that every licensed ART clinic report cycle data and outcomes, including live births, to a central body. With the foregoing, each country balances two competing imperatives; the need to collect detailed data on ART treatments and births for safety monitoring, and the obligation to protect the privacy of patients, donors and children.
   c) In practice, the following surrogacy agents and intermediaries operate in the Country albeit within a legal vacuum-
      (1) Surrogacy agencies/brokers who match intended parents with surrogates; coordinate the process end-to-end posing risks such as financial fraud, exploitation, coercion of surrogates;
      (2) Fertility clinics (ART centres), who provide medical procedures (IVF, embryo transfer) and poses risks such as unlicensed practice, failure to screen, unauthorized use of gametes; and
      (3) Independent facilitators/coordinators who are usually informal matchmakers, "fixers," often operating without regulation and poses risks such as exploitation, lack of accountability, commercial profiteering.

d) There is no explicit licensing or registration regime for surrogacy agencies or facilitators as distinct from ART clinics; no regulation of escrow or financial intermediaries handling surrogacy funds; no specific provisions on online platforms or advertisements soliciting surrogacy; no specific requirement for intermediaries to maintain identity records for children's future access to origins;

e) The ART Bill's ban on commercial surrogacy and licensing of ART facilities provides a foundation but falls short of comprehensively regulating the full chain of intermediaries. International experience, from the UK, India and South Africa, demonstrates that effective regulation requires, a clear definition of all intermediaries; mandatory licensing; financial transparency and escrow protections; criminal sanctions for unlawful facilitation; data preservation obligations; and a designated competent authority with monitoring powers;

f) There is need to revisit the definition of- "Intended parent" and that there is need to ensure that the provision of the Act is to be interpreted consistently with Article 45(2) of the Constitution and that nothing in it shall be construed to recognize, promote, or facilitate same-sex unions. This would foreclose creative judicial interpretation.

3. The Committee resolved to hold a working retreat in Kiambu County from 22nd to 24th March, 2026 to consider Committee stage amendments on the two bills pending before the Committee.

MIN/SEN/SCH/060/2026 ADJOURNMENT

There being no other business, the meeting ended at fifty-five minutes past two o'clock in the afternoon. The next meeting shall be held on notice.

SIGNED.. **DATE** 24/3/2026

SEN. JACKSON K. ARAP MANDAGO, EGH, MP
(CHAIRPERSON, COMMITTEE ON HEALTH)

13TH PARLIAMENT |5TH SESSION

MINUTES OF THE FOURTH (4TH) SITTING OF THE STANDING COMMITTEE ON HEALTH HELD ON TUESDAY, 3RD MARCH, 2026 AT 11.00 AM AT COMMITTEE ROOM 6, BUNGE TOWER, NAIROBI

MEMBERS PRESENT

1. Sen. Mariam Sheikh Omar, MP - **Vice-Chairperson**
2. Sen. Hamida Kibwana, MP - Member
3. Sen. Vincent Kiprono Chemitei, MP - Member

ABSENT WITH APOLOGY

1. Sen. Jackson K. Arap Mandago, EGH, MP - **Chairperson**
2. Sen. Justice (Rtd) Stewart Madzayo, EGH, MP - Member
3. Sen. Ledama Olekina, CBS, MP - Member
4. Sen. Richard Onyonka, MP - Member
5. Sen. Tabitha Mutinda, CBS, MP - Member
6. Sen. Joseph Githuku Kamau, MP - Member

SENATE SECRETARIAT

a) Mr. Humphrey Ringera - Senior Research Officer
b) Mr. Amos Kiangwe - Senior Clerk Assistant
c) Mr. David Ngamate - Clerk Assistant
d) Mr. Gilbert Juma - Legal Counsel
e) Ms. Lilian Onyari - Fiscal Analyst
f) Mr. David Munene - Research Officer
g) Mr. Ian Otieno - Audio Recording Officer
h) Mr. Jack Lemeteki - Media Officer

INATTENDANCE

1. Dr. Kireki Omanwa - Kenya Obstetrical and Gynecological Society
2. Dr. Maureen Owiti - Kenya Obstetrical and Gynecological Society
3. Dr. Wanjiru Ndegwa - Kenya Obstetrical and Gynecological Society

4. Ms. Winrose Njuguna - Legal Advisor, KOGS
5. Ms. Ayieta Lumbasyo - Fertility Law Centre

MIN/SEN/SCH/020/2026 PRELIMINARIES

The Chairperson called the meeting to order at twenty-six minutes past eleven o'clock and the proceedings commenced with a word of prayer followed by brief introduction of those present.

MIN/SEN/SCH/021/2026 ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as listed below upon being proposed by Sen. Hamida Kibwana, MP and seconded by Sen. Vincent Chemitei Cheburet, MP.

1. Preliminaries;
   a) *Prayer*
   b) *Introductions*
2. Adoption of the Agenda;
3. Confirmation of the Minutes
4. Matters arising
5. Consideration of the Assisted Reproductive Technology Bill, 2022 (National Assembly Bills No.61 of 2022) (*Committee Paper No. 163*);
6. Any other Business; and
7. Adjournment/Date of the Next Meeting

MIN/SEN/SCH/022/2026 CONFIRMATION OF THE MINUTES

Confirmation of Minutes was pended to the next Committee Meeting.

MIN/SEN/SCH/023/2026 CONSIDERATION OF THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL, 2022 (NATIONAL ASSEMBLY BILLS NO.61 OF 2022) (*COMMITTEE PAPER NO. 163*)

1. The Secretariat presented the Assisted Reproductive Technology Bill, 2022 (National Assembly Bills No. 61 of 2022) as contained in *Committee Paper No. 163* for consideration.

2. The Committee was informed that at its Sitting held on Tuesday, 24th February 2026, the Committee the Committee observed that due to its technical nature, there is need to invite the Ministry of Health, the Kenya Medical Practitioners and Dentists Council (KMPDC) and the Kenya Obstetrical and Gynecological Society to a meeting of the Committee scheduled to take place on Tuesday, 3rd March, 2026, to provide technical advice, clarifications and supplementary information on the provision of the Bill.

3. The Committee was further informed that vide a letter, **Ref. No. MOH/CS/004/2026** dated 25th February, 2026, the Cabinet Secretary had requested adjournment of his appearance to a later date convenient to the Committee and had further requested to submit written submissions ahead of the said meeting for the Committee's consideration. The Committee considered and acceded to the requests.

4. Upon invitation to provide clarification and supplementary information on the written submission presented to the Committee, the Kenya Obstetric and Gynecological Society (KOGS) informed the Committee that their proposals are anchored on four principles namely-
    i. strengthening safeguards;
    ii. closing regulatory gaps;
    iii. enhancing constitutional compliance; and
    iv. ensuring enforceable oversight

5. The Kenya Obstetric and Gynecological Society requested the Committee to broaden the policy objectives of the Bill and ensure that the proposed changes are clinically sound, ethically defensible and enforceable and are designed to make the law workable in real-world practice while protecting all parties involved. They further proposed that the Committee should reflect on multidisciplinary expertise in assisted reproductive clinical practice, embryology, nursing, bioethics, law and public interest representation.

6. The Committee was requested to ensure that the Bill employs terminology that are scientifically accurate and operationally workable, enabling regulators and clinicians to interpret the law correctly while safeguarding patient welfare. It was proposed that amendments to the Bill should endeavor to ensure that definitions are aligned with contemporary clinical practice and international standards.

7. The Fertility Law Centre informed the Committee that the Bill should have a legal provision for the transfer of parentage to avoid child trafficking, child stealing and other such related vices. Further the law should create a centralized surrogacy agency that is non-profit run akin to adoption agencies to standardize the practice and avoid exploitation of surrogates. The proposed the composition of the council or committee should incorporate the various professions that are stakeholders in Assisted Reproductive Technology.

<u>Committee Deliberations and Resolutions</u>

8. Upon deliberations, the Committee resolved to hold a one-day retreat on Monday, 16th March, 2026, with the stakeholders and the Ministry of Health to deliberate further on their submissions and consider the provisions of the Assisted Reproductive Technology Bill, 2022 (National Assembly Bill No. 6 of 2022).

MIN/SEN/SCH/024/2026 ANY OTHER BUSINESS

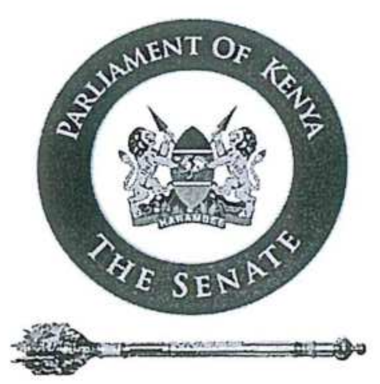
The Committee resolved to expedite consideration of the Autism Management Bill, 2025 (Senate Bill No. 19) and consequently scheduled its consideration on Thursday 5th March, 2026.

MIN/SEN/SCH/025/2026 ADJOURNMENT

There being no other business, the meeting ended at fifty minutes past one. The next meeting shall be held on notice.

SIGNED.. DATE 17/3/2026..............................

SEN. JACKSON K. ARAP MANDAGO, EGH, MP
(CHAIRPERSON, COMMITTEE ON HEALTH)



13TH PARLIAMENT |5TH SESSION

MINUTES OF THE THIRD (3RD) SITTING OF THE STANDING COMMITTEE ON HEALTH HELD ON TUESDAY, 24TH FEBRUARY, 2026 AT 11.00 AM AT COMMITTEE ROOM 6, BUNGE TOWER, NAIROBI

MEMBERS PRESENT

1. Sen. Jackson K. Arap Mandago, EGH, MP - **Chairperson**
2. Sen. Mariam Sheikh Omar, MP - Vice-Chairperson
3. Sen. Tabitha Mutinda, CBS, MP - Member
4. Sen. Hamida Kibwana, MP - Member
5. Sen. Joseph Githuku Kamau, MP - Member

ABSENT WITH APOLOGY

1. Sen. Justice (Rtd) Stewart Madzayo, EGH, MP - Member
2. Sen. Ledama Olekina, CBS, MP - Member
3. Sen. Richard Onyonka, MP - Member
4. Sen. Vincent Kiprono Chemitei, MP - Member

SENATE SECRETARIAT

1. Mr. Humphrey Ringera - Senior Research Officer
2. Mr. Amos Kiangwe - Senior Clerk Assistant
3. Mr. David Ngamate - Clerk Assistant
4. Mr. Gilbert Juma - Legal Counsel
5. Ms. Lilian Onyari - Fiscal Analyst
6. Mr. David Munene - Research Officer
7. Mr. Ian Otieno - Audio Recording Officer
8. Ms. Violet Nalianya - Media Relations Officer

MIN/SEN/SCH/013/2026 PRELIMINARIES

The Chairperson called the meeting to order at twenty-five minutes past eleven o'clock and the proceedings commenced with a word of prayer and brief introductions of those present.

MIN/SEN/SCH/014/2026 ADOPTION OF THE AGENDA

The agenda of the meeting was adopted with after being proposed by Sen. Joseph Githuku, MP and seconded by Sen. Mariam Sheikh Omar, MP as listed below-

1. Preliminaries;
   a. *Prayer*
   b. *Introductions*
2. Adoption of the Agenda;
3. Confirmation of the Minutes of the Previous Committee meetings-
   i. *Minutes of the 1st Sitting of the Committee held on 17th February 2026; and*
   ii. *Minutes of the 2nd Sitting of the Committee held on 19th February 2026*
4. Matters arising from the Minutes of Previous Meetings;
5. Consideration of the Assisted Reproductive Technology Bill, 2022 (National Assembly Bills No.61 of 2022) (*Committee Paper No. 161*);
6. Any other Business; and
7. Adjournment/Date of the Next Meeting

MIN/SEN/SCH/015/2026 CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTINGS

1. The Minutes of the 1st meeting held on Tuesday 17th February, 2026 at 11.00 am were confirmed as a true record of the proceedings having been proposed by Sen. Hamida Kibwana, MP and seconded by Sen. Mariam Sheikh Omar, MP; and
2. The Minutes of the 2nd meeting held on Thursday 19th February, 2026 at 1.00 am were confirmed as a true record of the proceedings having been proposed by Sen. Mariam Sheikh Omar, MP and seconded by Sen. Joseph Githuku, MP.

MIN/SEN/SCH/016/2026 MATTERS ARISING FORM THE PREVIOUS MINUTES

EX-MIN/SEN/SCH/003/006 ***3. Committee Resolutions***

The Committee recommendations and resolutions should bear strict implementation timelines and the Committee to continually follow up on their implementation status.

MIN/SEN/SCH/017/2026 CONSIDERATION THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL, 2022 (NATIONAL ASSEMBLY BILLS NO.61 OF 2022) (*COMMITTEE PAPER NO. 161*)

1. The Legal Counsel presented for consideration the Assisted Reproductive Technology Bill, 2022 (National Assembly Bills No. 61 of 2022) as contained in *Committee Paper No. 161* for consideration.

2. The Committee was informed that the was published on 16th December, 2022 and after it passage by the National Assembly, the Bill was referred to the Senate for consideration. Consequently, the Bill was introduced in the Senate by way of First Reading on 4th December, 2025 and thereafter stood committed to the Committee on Health for consideration.

3. The principal object of the Bill is to provide a legal framework for the provision of assisted reproductive technology services, prohibit certain practices in connection with assisted reproductive technology, regulate surrogacy arrangements, protect the rights of parents, surrogate mothers, donors and children born through assisted reproductive technology, and establish an institutional framework for the licensing and oversight of assisted reproductive technology facilities.

4. In accordance with the provisions of Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committee invited interested members of the public to submit any representations that they may have on the Bill by way of written memoranda. By close of public participation period the Committee had received twenty-three (23) submissions that had been collated into a matrix for Committee consideration.

Committee Resolutions

5. Following consideration of the provisions of the Bill, the Committee observed that due to its technical nature, there is need to invite the Ministry of Health, the Kenya Medical Practitioners and Dentists Council (KMPDC) and the Kenya Obstetrical and Gynecological Society to a meeting of the Committee scheduled to take place on Tuesday, 3rd March, 2026, to provide technical advice, clarifications and supplementary information on the provision of the Bill.

MIN/SEN/SCH/018/2026 ANY OTHER BUSINESS

The Committee resolved to expedite consideration of the Autism Management Bill, 2025 (Senate Bill No. 19) and consequently scheduled its consideration on Thursday 26th February, 2026.

MIN/SEN/SCH/019/2026 ADJOURNMENT

There being no other business, the meeting ended at forty -one minutes past noon. The next meeting shall be held on notice.

SIGNED.. DATE...17/3/2026...........

SEN. JACKSON K. ARAP MANDAGO, EGH, MP
(CHAIRPERSON, COMMITTEE ON HEALTH)

Annex 2:

The Assisted Reproductive Technology Bill (*National Assembly Bills. No 61 of 2022)*

REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS
(Bill No. 61 of 2022)

THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL,2022

(A Bill published in the Kenya Gazette Supplement No. 201 of 2022 and passed by the National Assembly, with amendments, on Tuesday, 11th November, 2025)

N.A. /B/No. 61/2022

THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL, 2022

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

1—Short title.

2—Interpretation.

3—Application of the Act.

4—Objects of the Act.

PART II —THE ASSISTED REPRODUCTIVE TECHNOLOGY COMMITTEE

5—Assisted Reproductive Technology Committee.

6—Functions of the Council.

7—Obligations of the Cabinet Secretary.

8—Obligations of County Governments.

PART III—PROHIBITED ACTIVITIES

9—Use of embryo.

10—Consent of parties.

11—Posthumous use without informed consent.

12—Circumstances for undertaking assisted reproductive technology.

13—Circumstances under which assisted reproductive technology is precluded.

14—Use of embryo in a woman.

15—Gametes obtained from a child.

16—Restrictions on the use of embryos.

17—Use of gametes.

18—Number of times one can donate gametes or embryos or be a surrogate.

19—Donation of gametes or embryos.

20—Disposal of gametes.

PART IV—RIGHTS OF PARENTS, SURROGATE MOTHERS, DONORS AND CHILDREN

21—Posthumous reproduction.

22—Right to assisted reproductive technology.

23—Consent to assisted reproductive technology service.

24—Duties of an assisted reproductive technology expert.

25— Pre-implantation diagnosis and testing.

26—Rights to accrue to a child.

27—Surrogate motherhood.

28—Intended parents.

29— Leave related to surrogacy.

30—Surrogacy agreements.

31—Surrogacy agreements by third parties.

32— Commercialisation of surrogacy.

33—Termination of surrogacy agreements.

34—Obligations under surrogacy agreement.

35—Prohibition of sex selection.

36—Restriction on sale of human gametes, zygotes and embryos.

37— Prohibition on certain publications.

PART V—ACCESS TO INFORMATION

38—Assisted reproductive technology register.

39—Provision of information by the Council.

40—Minor not to be given information.

41—Information from the Council.

42—Restriction on disclosure of information.

PART VI—LICENSING

43—Licence.

44—Requirement for licence.

45—Application for licence.

46—Inspection of premises before license is issued.

47—General conditions for licences.

48—Conditions for storage of gametes and embryos.

49—Grant of licence.

50—Responsibility of a supervisor.

51—Revocation of licence.

52—Application to the Cabinet Secretary for review.

53—Appeal to the High Court.

54—Temporary suspension of a licence.

PART VII—MISCELLANEOUS PROVISIONS

55—Offences.

56—General penalty.

57—Transitional provisions.

PART VIII—PROVISIONS ON DELEGATED POWERS

58—Regulations.

SCHEDULE

CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMITTEE

THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL, 2022

A Bill for

AN ACT of Parliament to provide for the regulation of assisted reproductive technology; to prohibit certain practices in connection with assisted reproductive technology; to make provision in relation to children born of assisted reproductive technology processes and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Assisted Reproductive Technology Act, 2022.

Interpretation.

2. In this Act, except where the context otherwise requires—

"abandoned child" means a child born out of a surrogacy procedure who has been deserted by his or her intended parents and the surrogate and declared as such by the court after due process;

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

"altruistic surrogacy" means the surrogacy in which no charges, expenses, fees, remuneration or monetary incentive of whatever nature, except the medical expenses or the insurance coverage for the surrogate mother, are given to the surrogate mother or her dependents or her representative;

"assisted reproductive technology" means all techniques that attempt to obtain a pregnancy by handling the sperm or the oocyte outside the human body and transferring the gamete or the embryo into the reproductive system of a woman;

"assisted reproductive technology expert" means an obstetrician or gynaecologist that has sub-specialised in reproductive endocrinology and fertility medicine;

"assisted reproductive technology services" includes the diagnostic and screening, endoscopic surgery, intra-uterine insemination, in-vitro fertilisation,

intracytoplasmic sperm injection, cryo-preservation, pre-implantation genetic screening, pre-implantation genetic diagnosis, onco-fertility, gamete and embryo donation, or surrogacy provided to infertile and sub- fertile man or woman;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for health;

"child" means an individual who has not attained the age of eighteen years;

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

"commercial surrogacy" means the commercialisation of surrogacy services or procedures or its component services or component procedures including the selling or buying of human embryo or trading in the sale or purchase of human embryo or gametes or hiring, selling or buying or trading the services of surrogate motherhood by way of giving payment, reward, benefit, fees, remuneration or monetary incentive in cash or in kind, to the surrogate mother or her dependents or her representative, except the medical expenses or the insurance coverage for the surrogate mother;

"Council" means the Kenya Medical Practitioners and Dentists Council established under section 3 of the Medical Practitioners and Dentists Act;

Cap. 253.

"couple" means a male and a female who are married or are cohabiting under the laws of Kenya;

"court" means the High Court of Kenya;

"cryo bank" means a facility for the collection and storage of gametes and embryos and the supply of gametes to the assisted reproductive technology clinics or their patients;

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

"diagnosis" means the process of testing and screening to ascertain the proper functioning of the reproductive systems and its processes at the beginning of

the assisted reproductive technology process;

"donation" means a process in assisted reproductive technology of voluntarily giving gametes for purposes of procreation;

"egg" means a live human ovum;

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

"embryologist" means a specialist who deals with the development, storage and transfer of embryos, and gametes and assists in the process of fertilisation in the laboratory;

"endoscopic surgery" means a surgery in assisted reproductive technology involving techniques that limit the size of incisions performed with one or more small incisions instead of large incisions;

"father" means a male intended parent;

"foetus" means a developing human offspring after the embryonic stage prior to birth;

"gamete" means a mature sperm from a man or a mature egg from a woman capable of fusing with a gamete of the opposite sex to produce an embryo;

"gamete donor" means a person who voluntarily gives his or her gametes for the purpose of fertilisation in an assisted reproductive technology process;

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

"infertile or sub-fertile client" means a man and woman whether a couple or parties to a marriage who are not able to procreate naturally;

"infertility" means the inability to conceive after one year of unprotected coitus or other proven medical condition preventing a couple from conception;

"intended parent" means a woman or couple who

enters into a surrogacy arrangement seeking assistance in procreation through the help of a surrogate mother or donor;

"intracytoplasmic sperm injection" means an assisted reproductive technology process whereby a single healthy sperm is injected directly into the cytoplasm of a female egg outside the body;

"in-vitro fertilisation" means an assisted reproductive technology process where fertilisation takes place outside the body;

"mother" means a female intended parent;

"oocyte" means naturally ovulating egg in the female genetic tract;

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

"parent" has the meaning assigned to it under section 2 of the Children Act; Cap. 141.

"pre-implantation genetic diagnosis" means a process in assisted reproductive technology which involves assessment of the embryo for pre-existing hereditary diseases before the transfer of the embryo to a woman's womb;

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

"pre-implantation screening" means a process in assisted reproductive technology to determine the viability or euploidy of an embryo before transferring to the woman's womb;

"procreation" means the process of conceiving and delivering a baby including through assisted reproductive technology;

"sperm" means a mature male human gamete;

"supervisor" means the person responsible for activities authorised under the licence issued under this

Act;

"surrogacy" means a practice whereby a woman bears and gives birth to a child for an intended parent or couple;

"surrogacy agreement" means an agreement between a surrogate and an intended parent or couple that the surrogate is to undergo an assisted reproduction procedure for purposes of having a child born as a result of such a procedure for the intended parent or couple;

"surrogate mother" means a woman who has agreed to carry a pregnancy to term for another woman or couple;

"treatment services" means medical, surgical or obstetric services provided to the public or a section of the public for the purpose of assisting women to get pregnant and to carry the pregnancies to term; and

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

Application of the Act.

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

Objects of the Act.

4. The objects of this Act are to—

(a) provide a framework for assisted reproductive technology services for every person;

(b) create an enabling environment for the reduction of infertility and sub- fertility in Kenya;

(c) ensure access to quality and comprehensive assisted reproductive technology services in line with Article 43(1)(a) of the Constitution;

(d) ensure the best interest of children;

(e) facilitate the registration of children born out of gestational surrogacy arrangements;

(f) promote research into the incidence, causes and prevention of infertility;

(g) provide a framework for surrogacy arrangements;

(h) permit altruistic surrogacy;

(i) prohibit commercial surrogacy; and

(j) establish an Assisted Reproductive Technology Committee.

PART II—THE ASSISTED REPRODUCTIVE TECHNOLOGY COMMITTEE

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.

Functions of the Council.

6. The functions of the Council shall be to—

(a) develop standards, regulations and guidelines on assisted reproductive technology;

(b) advice the Cabinet Secretary on matters relating to the treatment and care of persons undergoing assisted reproductive technology and to advise on the relative priorities to be given to the implementation of specific measures in regard to assisted reproductive technology;

(c) promote research on the conduct, control and treatment of assisted reproductive technology;

(d) develop programs for awareness creation on the methods of assisted reproductive technology treatment;

(e) prescribe minimum requirements for the physical infrastructure for assisted reproductive technology clinics;

(f) prescribe, in consultation with the relevant government agency, the minimum educational requirements for assisted reproductive technology experts and embryologists;

(g) in consultation with the relevant government agency, inspect and accredit the facilities for the training of experts and embryologists to ensure compliance with set standards;

(h) maintain and make available to the public a register of information on all the licenced

assisted reproductive technology facilities in Kenya;

(i) maintain and make available to the public a register of information on all the licenced assisted reproductive technology experts and embryologists;

(j) grant, vary, suspend and revoke licenses;

(k) keep under review information about embryos and any subsequent development of embryos;

(l) provide advice and information to persons receiving assisted reproductive technology treatment including persons providing gametes or embryos under this Act;

(m) disseminate information to the public on reproductive health that may relate or affect assisted reproductive technology;

(n) establish and maintain a confidential national database on persons receiving assisted reproductive technology treatment services or providing gametes or embryos for use; and

(o) perform such other functions as may be necessary for the better carrying out of the functions of the Council under this Act.

Obligations of the Cabinet Secretary.

7. The Cabinet Secretary shall—

(a) put in place the necessary mechanisms and infrastructure to ensure access to the highest attainable standard and quality of cost-effective assisted reproductive technology services;

(b) provide adequate resources necessary to ensure access to the highest attainable standard and quality of cost-effective assisted reproductive technology services;

(c) provide regulations to ensure assisted reproduction health services are covered by every health insurance provider including the Social Health Authority; and

(d) collaborate with the county governments in

expanding and strengthening the access and delivery of assisted reproductive health services in counties.

Obligations of County Governments.

8. Each County Government shall—

(a) allocate in the county budget, the funds necessary for the provision of quality, cost-effective assisted reproductive technology services in the county health systems;

(b) procure equipment, medicine and medical supplies required to cater for assisted reproductive health care services in the respective counties;

(c) carry out sensitisation programmes related to assisted reproductive technology; and

(d) establish linkages and networks with local and international development partners to mobilise and source for funding to promote the delivery of quality and cost-effective assisted reproductive technology services in the county.

PART III — PROHIBITED ACTIVITIES

Use of embryo.

9. A person shall not create, keep or use an embryo at any stage of development, either from fertilisation or conception until a transfer to a woman except as provided under this Act.

Consent of parties.

10.(1) No person shall make use of any human reproductive material for the purpose of creating an embryo unless the donor of the material has given written informed consent.

(2) A person who contravenes the provisions of this section commits an offence and shall, upon conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

Posthumous use without informed consent.

11.(1) No person shall remove a human reproductive material from the body of a donor after the death of the donor for the purpose of assisted reproductive technology unless the donor of the material had given a written informed consent.

(2) A person who contravenes the provisions of this section commits an offence and shall, upon conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

Circumstances for undertaking assisted reproductive technology.

12.A person qualifies to undertake assisted reproductive technology, where it is certified by an assisted reproductive technology expert that the person requires assisted reproductive technology on medical or health grounds.

Circumstances under which assisted reproductive technology is precluded.

13.(1) A person shall not undertake assisted reproductive technology for—

(a) any purpose other than human procreation;

(b) experimental purposes aimed at modifying the human race; or

(c) speculative and commercial purposes.

(2) A person who contravenes the provisions of this section commits an offence and shall, upon conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

Use of embryo in a woman.

14.(1) A person shall not for purposes of assisted reproductive technology place in a woman –

(a) an embryo other than a human embryo;

(b) a gamete other than a human gamete; or

(c) a gamete or embryo other than that consented to by the woman.

(2) A person who contravenes the provisions of this section commits an offence and shall, upon conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

Gametes obtained from a child.

15.(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 the informed consent of the child, parent or legal guardian of the child.

(2) A person who contravenes the provisions of this section commits an offence and shall, upon conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

Restrictions on the use of embryos.

16.(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.

(2) A person who contravenes the provisions of this section commits an offence and shall, upon conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

Use of gametes.

17.(1) A person shall not—

(a) store or use any gametes save as provided under this Act;

(b) in the course of providing assisted reproductive technology treatment services to a woman, use the sperm of any man without his informed consent;

(c) in the course of providing assisted reproductive treatment services to a woman, use the egg of another woman without her informed consent;

(d) mix human gametes with the live gametes of an

animal;

(e) transfer sperms or embryo into a womb except in pursuance of a license as provided for under this Act; or

(f) in the course of providing assisted reproductive treatment services to any woman, use the sperm of any man without the woman's informed consent.

(2) A person who contravenes the provisions of this section commits an offence and shall, upon conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

Number of times one can donate gametes or embryos or be a surrogate.

18. (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 of gametes or embryos.

19. (1) A cryo bank shall obtain—

(a) male gametes from males between twenty-one years of age and thirty-five years of age;

(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.

Disposal of gametes.

20. (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.

PART IV—RIGHTS OF PARENTS, SURROGATE MOTHERS, DONORS AND CHILDREN

Posthumous reproduction.

21.(1)Where the sperm of a man, or any embryo the creation of which was brought about with the sperm of the man was used after the death of the man, the man shall not be treated as the father of the child unless—

(a) the mother was married to the man at the time of the death of the man; and

(b) there was informed consent in writing by the man.

(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; or

(b) woman had given informed consent in writing.

Right to assisted reproductive technology.

22.(1) Every person has the right to access the highest standard and quality of attainable and cost-effective assisted reproductive technology services.

(2) Assisted reproductive technology services shall be provided by qualified experts licensed by the Council.

(3) An assisted reproductive technology expert shall,

before providing assisted reproductive technology service—

(a) provide information necessary to assist in the making of an informed decision to all parties concerned, and in particular, information concerning—

(i) the various assisted reproductive technology methods available;

(ii) the chances of success for various assisted reproductive technology methods;

(iii) the advantages, disadvantages and risks of the various assisted reproductive technology methods;

(iv) the cost of treatment for different assisted reproductive technology methods; and

(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;

(b) advise the parties on the need for professional counselling and have them undergo the same on the implications of the various methods; and

(c) ensure promotion and preservation of the health, safety and dignity of the parties seeking assisted reproductive technology services.

Consent to assisted reproductive technology service.

23. (1) An assisted reproductive technology expert shall obtain prior informed and written consent from the parties before providing any assisted reproductive technology service under the Act or any other law.

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

(a) the ownership of 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.

(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).

(4) The consent of any of the parties obtained under this section may be withdrawn at any time prior to the process of transfer of the gametes into the woman's uterus.

Duties of an assisted reproductive technology expert.

24. (1) An assisted reproductive technology expert shall ensure—

(a) confidentiality is maintained throughout the entire process of provision of assisted reproductive technology services;

(b) the donor has been screened for all diseases and conditions that may endanger the health of the parents, the surrogate or the child; and

(c) all parties are aware and understand the rights of the child born through the assisted reproductive technology process.

(2) An assisted reproductive technology expert, shall, before receiving gamete or embryo donation, collect the following information from the donor—

(a) a passport size photo;

(b) physical characteristics;

(c) ethnic origin;

(d) family history;

(e) medical history;

(f) interests and hobbies; and

(g) professional qualifications and skills.

(3) The information obtained under subsection (2) shall be held by the licensed facility, and shall not be disclosed in any way that may identify the receiver and donor.

Pre-implantation diagnosis and testing.

25.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.

Rights to accrue to a child.

26. (1) A child born out of assisted reproductive technology under this Act shall have the same legal rights under the Constitution or any other written law as that of a child born through natural conception.

(2) Where a married couple obtains a divorce after the creation of an embryo, both partners reserve the right to withdraw consent of the implantation of the embryo which has been created by their sperm or ovum.

Surrogate motherhood.

27. (1) A woman who—

(a) has attained the age of twenty-five years;

(b) is below the age of forty-five years;

(c) has given birth to at least one child;

(d) understands the rights and obligations accruing under a surrogacy agreement; and

(e) has undergone comprehensive mental and physical health assessments

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

(2) The surrogate mother under subsection (1) shall carry the foetus on behalf of intended parents and shall relinquish all parental rights at birth over the child.

(3) Where the surrogate mother or intended parents has no genetic connection with the child, the surrogate mother shall subject to a court order relinquish all parental

rights and responsibilities at birth over the child to the intended parents.

Intended parents.

28. 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.

29. (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.

Surrogacy agreements.

30.(1) Intended parents intending to enter into a surrogacy agreement with any woman shall sign a surrogacy agreement in a prescribed form before the process is undertaken.

(2) A person may enter into a surrogacy agreement under subsection (1) only if—

(a) the person has the capacity to enter into the agreement under this Act and any other relevant written law in Kenya; and

(b) understands the rights and obligations that may arise or accrue under this Act and the agreement.

(3) A surrogacy agreement under subsection (1) is valid only—

(a) if the agreement is in writing and signed by all the parties;

(b) if the agreement is entered into within the Republic of Kenya;

(c) if the agreement includes provisions for the contact, care, upbringing and general welfare of the child that is born, including the position of the child in the event of—

(i) death of the commissioning parent, or if a couple or parties to a marriage, death of one of the commissioning parents before

the birth of the child; or

(ii) separation or divorce of the commissioning parents who were a couple or parties to a marriage, before the birth of the child;

(d) where the commissioning parent or commissioning parents agree to meet the prenatal regiment and birth expenses of the surrogate mother;

(e) where signatures to the surrogacy agreement are witnessed by a minimum two witness from each of the parties to the agreement;

(f) where there are separate and independent advocates of the High Court of Kenya representing the parties to the agreement;

(g) where legal fees are paid by the commissioning parent, commissioning parents or parties to marriage;

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

(i) where the intended parents appoint a guardian and provides the identity information of the appointed guardian.

(4) The surrogacy agreement shall indicate the names of the parents of the child to be born through assisted reproductive process.

(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.

(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.

(7) Where there is a dispute as to the parentage of a child born out of assisted reproductive process, the aggrieved party may apply to Court within sixty days of the birth of the child for determination of the parentage of the child.

(8) The intended parents shall not give any monetary or other benefits to the surrogate mother other than for expenses reasonably incurred as a consequence of surrogacy.

(9) 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.

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

(11) The Cabinet Secretary shall make regulations for the better carrying out of the provisions of subsection (9).

Surrogacy agreements by third parties.

31. (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.

Commercialisation of surrogacy.

32. (1) No person, organisation, 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 organised 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 organisation 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; or

(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.

Termination of surrogacy agreements.

33.(1) A surrogacy agreement may be terminated—

(a) automatically, following the termination of

pregnancy in accordance with the Constitution;

(b) before the transfer of a fertilised embryo in the surrogate mother's womb; or

(c) where a dispute arises between intended parents, and before the fertilised embryo is implanted in the surrogate mother.

(2) Parties shall not terminate the agreement after the transfer of the embryo or embryos into the womb of the surrogate mother.

Obligations under surrogacy agreement.

34.(1) The intended parent or parents under the surrogacy agreement shall, where the child is genetically connected to them or subject to a court order, be the legal parent or parents of the child and not discriminate against the child.

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

(3) Where a child is born out of a surrogacy arrangement and—

(a) where the creation of an embryo was brought about with a sperm and an egg of a couple, or where the couple or intended parent is genetically connected to the child, the couple or intended parent shall be the parents of the child and shall be listed as the parents in the birth notification and in the birth certificate; or

(b) where the creation of an embryo was brought about with the gametes other than the gamete of a couple or the intended parent or where the couple or intended parent is not genetically connected to the child, the couple or intended parent shall only be the parents of the child and shall be listed as the parents in the birth notification and in the birth certificate following a court order.

(4) The surrogate mother may claim from the intended parent or intended parents the following—

(a) compensation directly relating to the process of in-vitro fertilisation, pregnancy, ante-natal, birth, post-natal care and post- delivery complications;

(b) loss of earnings by the surrogate mother as a result of the surrogacy; and

(c) insurance to cover the surrogate mother for any acts that may lead to death or disability of the surrogate mother as a result of the surrogacy.

(5) The surrogate mother shall—

(a) not terminate the pregnancy except under the provisions of the Constitution;

(b) hand over the child to the intended parent or intended parents immediately upon the birth of the child;

(c) have no rights or obligation regarding the child;

(d) not contact the child, whether directly or by use of proxy, unless provided for in the agreement; and

(e) be entitled to psychological support during and after the pregnancy, provided by the intended parent or intended parents.

(6) A child born as a result of a surrogacy agreement shall not be considered a dependant of the surrogate under the Law of Succession Act.

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(7) A person shall not accept consideration for arranging for the services of a surrogate mother, make such an arrangement for consideration or advertise the arranging of such services.

(8) The intended parent or couple shall not abandon a child born out of an assisted reproductive technology or surrogacy procedure.

(9) A person who contravenes subsection (8) commits an offence and shall, on conviction, be liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.

Prohibition of sex selection.

35. A person shall not do any act, at any stage of an assisted reproductive process, to determine the sex of the child to be born through the process of assisted reproductive technology.

Restriction on sale of human gametes, zygotes and embryos.

36.A person shall not sell, transfer or use gametes, zygotes and embryos, or any part thereof or information related thereto, directly or indirectly to any party within and outside Kenya except in the case of transfer of own gametes and embryos for personal use.

Prohibition on certain publications.

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

(a) is or may be willing to enter into a surrogacy arrangement;

(b) is seeking another person who is or may be willing to enter into a surrogacy arrangement, to act as a surrogate mother or to arrange a surrogacy arrangement;

(c) is or may be willing to accept any benefit under a surrogacy arrangement for himself or herself; or

(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 shall on conviction, 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.

PART V—ACCESS TO INFORMATION

Assisted reproductive technology register.

38. (1)The Council shall keep and maintain a register containing particulars on—

(a) the assisted reproductive treatment services provided to persons;

(b) the keeping or use of gametes of persons or of

an embryo taken from any particular woman;

(c) persons who undergo assisted reproduction process;

(d) donors of embryos and gametes;

(e) persons conceived in consequence of assisted reproduction treatment services; and

(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.

(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 authorised by the appropriate authority.

Provision of information by the Council.

39. (1) A person who has attained the age of eighteen may by notice to the Council require the Council to—

(a) avail information on whether the applicant was conceived by means of assisted reproduction; and

(b) state whether or not the information contained in the register shows that the applicant, and a person specified in the request as a person whom the applicant proposes to marry would or might be relatives.

(2) The Council shall comply with the request of the applicant made under subsection (1) if—

(a) the information contained in the register shows that the person was, or may have been, born in consequence of assisted reproduction treatment services, and

(b) the person has been given an opportunity to receive counseling in regard to the implications of compliance with the request.

(3) The Council shall not give information regarding the identity of a person whose gametes have been used or from whom an embryo has been taken if a person to whom a license applied was provided with the information at a time when the Council was not required to give the information.

Minor not to be given information.

40. (1) The Council shall not avail information to a person below the age of eighteen years unless the information is necessary for a medical procedure relating to the minor.

(2) Where a minor seeks such information, the minor may, through a legal guardian, give notice to the Council requesting the Council to give the information and the Council shall give the information, if—

(a) the information contained in the register shows that the minor was, or may have been, born in consequence of assisted reproduction process; and

(b) the minor has been given an opportunity to receive counseling on the implications of compliance with the request.

Information from the Council.

41. (1) Where a government agency makes a claim to the Council seeking to verify whether a man is or is not the father of a child, the Council shall comply with the request made by the government agency unless it appears to the Council that there is not sufficient reason to seek for that information.

(2) Where the government agency is aggrieved by the decision of the Council, the agency may appeal to the Court for determination of the matter.

Restriction on disclosure of information.

42. (1) A person who is or has been a member or employee of the Council shall not disclose any information which the person holds or has held as a member or employee of the Council.

(2) The information specified under subsection (1) is—

(a) information contained in the register kept pursuant to section 38 of this Act; and

(b) any other information obtained by any member or employee of the Council on terms or circumstances requiring it to be held in confidence.

(3) Subsection (1) does not apply to disclosure of information specified under subsection (2) (a) made—

(a) to a person as a member or employee of the Council;

(b) to a person to whom a license applies for the purposes of the functions under this Act;

(c) with the consent of a person or persons whose confidence would otherwise be protected;

(d) in pursuance of an order of a court under this Act; or

(e) to any government agency in pursuance of a request under section 41 of this Act.

(4) A person who contravenes the provisions of this section commits an offence and shall, upon conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

PART VI—LICENSING

Licence.

43. The Council shall, in accordance with this Act issue, vary, revoke or renew a licence in relation to activities under this Act.

Requirement for licence.

44.(1) No person shall carry out assisted reproduction unless the person is issued with a valid licence under this Act.

(2) A person who contravenes the provisions of this

section commits an offence and shall, upon conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

Application for licence.

45. (1) An application for a licence under this section shall be made to the Council in duplicate, signed by the applicant, specifying his name and place of business.

(2) Every application under this section shall be accompanied by the prescribed fee.

(3) Where an application is made by a person in accordance with this section, the Council shall issue the person a license to carry out assisted reproduction, if satisfied that the person meets such other requirement as may be prescribed, and if not satisfied, shall refuse the application.

Inspection of premises before license is issued.

46.(1) The Council shall, before considering an application authorising a person to undertake assisted reproductive technology on premises, arrange for the premises where assisted reproduction process is to be carried on to be inspected, and a report made regarding the inspection.

(2) Subject to subsection (1), the Council shall inspect at least once in each calendar year, any premises where assisted reproduction process is to be carried and a report made on the inspection.

General conditions for licences.

47. (1) The Council may, in accordance with this Act, attach conditions to a license.

(2) The conditions specified under subsection (1) are that—

(a) the activities authorised by the license shall be carried on only on the premises to which the license relates and under the supervision of the person responsible;

(b) any authorised member or employee of the Council, shall upon identification be permitted, at all reasonable times to enter premises to which the license relates and inspect the premises including the inspection of any equipment, records and observing any activity;

(c) proper records shall be maintained in such form as the Council may direct;

(d) no money or other benefit shall be given or received in respect of any supply of gametes or embryos;

(e) where gametes or embryos are supplied to a person to whom another license applies, the person shall be provided with information as may be specified by the Council; and

(f) the Council shall be provided with copies or extracts from the records or information, in such form and at such intervals as it may specify.

(3) Every licensee shall keep and provide information to the Council and any government bodies on—

(a) the persons to whom assisted reproductive technology services are provided;

(b) the number of persons seeking assisted reproductive technology services, segregated by type of service sought, gender and outcome;

(c) the kind of assisted reproductive technology services provided;

(d) the persons whose gametes are kept or used for the purposes of assisted reproductive technology services;

(e) the persons whose gametes have been used in bringing about human procreation; and

(f) such other matters as the Council may specify.

(4) No information shall be removed from any records maintained in pursuance of a license before the expiry of a period specified by the Council.

(5) A woman shall not be provided with any treatment services that involve—

(a) the use of any gametes of any person, if the consent of the person is required under this Act and the consent has not been obtained;

(b) the use of any embryo taken from another woman, if the consent of the woman from whom

it was taken has not been obtained; or

(c) the procedures specified under paragraph (a) and (b), unless the woman has been provided with relevant information and given an opportunity to receive counseling on the implications of taking the proposed steps.

(6) A person who contravenes the provisions of this section commits an offence and shall, upon conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

Conditions for storage of gametes and embryos.

48. (1) Every licence authorising 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.

(2) Every licence authorising 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.

(3) 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.

Grant of licence.

49. (1) Where an application for a license is made to the Council, the Council shall issue the person a license if satisfied that—

(a) the application is for a license designating the applicant as the person under whose supervision the activities to be authorised by the license are to be carried on;

(b) either the person is the applicant or—

  (i) the application is made with the consent of the person; and

  (ii) the applicant is a suitable person to hold a license.

(c) the character, qualifications and experience of the person making the application are such as are required for the supervision of the activities under this Act and that the person is qualified to discharge the duties under this Act;

(d) the premises in respect of which the licence is to be granted are suitable for the activities, and

(e) all other requirements under this Act in relation to granting of a licence are satisfied.

(2) The Council may grant a licence to any person by way of renewal whether on the same or different terms.

(3) Where the Council is of the opinion that the information provided in the application is insufficient to enable it to determine the application, the Council shall not consider the application until the applicant has provided further information as the Council may require.

(4) The Council shall not grant a license unless a copy of the conditions to be imposed by the licence have

been provided to, and acknowledged in writing by the applicant and the person under whose supervision the activities are to be carried on.

(5) The fee specified under section 45(2) means a fee of such amount as may be fixed from time to time by the Council with the approval of the Cabinet Secretary.

(6) In determining the amount of fee under subsection (5), the Council may have regard to the costs of performing all its functions.

(7) The Council may fix different fees for different circumstances and any fees paid under this section shall not be refundable.

Responsibility of a supervisor.

50. (1) It shall be the responsibility of a person under whose supervision the activities authorised by a licence are carried on to ensure—

(a) that the persons to whom the licence applies are of such character, and are qualified by training and experience, to be suitable persons to participate in the activities authorised by the licence;

(b) that proper equipment is used;

(c) that proper keeping of gametes and embryos and for the disposal of gamete or embryos that have been allowed to perish; and

(d) that the conditions of the licence are complied with.

(2) The persons to whom a licence applies under this Act are—

(a) persons under whose supervision the activities authorised by a licence are carried on;

(b) any person designated in the licence, or in a notice given to the Council by the person who holds the licence or the person responsible, as a person to whom the licence applies; and

(c) any person acting under the direction of the person responsible or of any person designated.

Revocation of licence.

51. (1) The Council may revoke a license if satisfied—

(a) that the information given for the purposes of the application for the grant of the licence was false or misleading;

(b) that the premises to which the licence relates are no longer suitable for the activities authorised by the licence;

(c) that the person responsible has failed to discharge, or is unable because of incapacity to discharge, the duty under this Act or has failed to comply with directions given in connection with any licence;

(d) 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; or

(e) the person responsible dies or is convicted of an offence under this Act or any other law and sentenced to imprisonment for a term exceeding six months.

(2) Where the Council has power to revoke a license under subsection (1), the Council may vary any terms of the licence.

(3) The Council may, on application by the person responsible or the nominal licensee, vary or revoke the licence.

(4) The Council may, on an application by the nominal licensee, vary the licence so as to designate another person in place of the person under whom supervision is authorised by a licence, if the Council is satisfied that the character, qualifications and experience of the other person are such as are required for the supervision of the activities authorised by the licence and that the person shall discharge the duties under this Act, and the application is made with the consent of the other person.

(5) Except on an application under subsection (4), the Council may vary a licence under this section—

(a) if it relates to the activities authorised by the licence, the manner in which they are conducted

or the conditions of the licence, or

(b) so as to extend or restrict the premises to which the licence relates.

(6) The Cabinet Secretary shall make Regulations for the refusal, variation and revocation of licenses by the Council under this Act.

Application to the Cabinet Secretary for review.

52. (1) Where the Council refuses to issue a licence or refuses to vary a licence—

(a) the applicant may apply for review to the Cabinet Secretary within thirty days of the date on which the decision was communicated to the applicant; and

(b) the Cabinet Secretary may make such determination on the review as they deem fit.

(2) The Cabinet Secretary shall give notice of its decision to the appellant and, if it is a decision to refuse a licence or to refuse to vary a licence so as to designate another person in place of the person under whom supervision is authorised by a licence, or a decision to vary or revoke a licence, shall include in the notice the reasons for the decision.

Appeal to the High Court.

53. Where the Cabinet Secretary, upon an application for review under section 52 of this Act determines—

(a) to refuse a licence or refuse to vary a licence so as to designate another individual in place of the person under whom supervision is authorised by a licence; or

(b) to vary or revoke a licence,

the person on whom notice of the determination was served may appeal to the High Court.

Temporary suspension of a licence.

54. (1) Where the Council —

(a) has reasonable grounds to suspect that there are grounds for revoking the licence for non-compliance with this Act, and

(b) is of the opinion that the licence should immediately be suspended,

the Council may by notice suspend the licence for a

period not exceeding three months.

(2) The Council shall give notice under subsection (1) to the person under whom supervision is authorised by a licence or, where the person under whom supervision is authorised by a licence is dead or appears to the Council to be unable because of incapacity to discharge the duty imposed on him under this Act, to some other person to whom the licence applies or the nominal licensee and the Council may, by a further notice to that person, renew the notice under subsection (1) specified in the renewal notice.

PART VII—MISCELLANEOUS PROVISIONS

Offences.

55. (1) A person commits an offence under this Act where the person—

(a) contravenes any of the provisions of the Act;

(b) contravenes any of the provisions of a notice issued under this Act; or

(c) obstructs a person in the execution of the person's duty under the Act;

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.

(2) Where an offence against this section is committed by a body corporate, the body corporate shall be liable to a fine not exceeding five million shillings.

General penalty.

56. Any person convicted of an offence under this Act for which no penalty is provided shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

Transitional provisions.

57. (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.

PART VIII—PROVISIONS ON DELEGATED POWERS

Regulations.

58. (1) The Cabinet Secretary, in consultation with the Council, may make regulations generally for the better carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing, may make regulations—

(a) for the eligibility of donors;

(b) for the storage of gametes and embryos;

(c) for the number of embryos that can be transferred into a woman;

(d) for settling disputes arising out of assisted reproduction;

(e) for the maintenance of records;

(f) regarding rights and duties of patients, donors surrogates and children;

(g) in respect of the giving of informed consent for the use of human reproductive material or an embryo from assisted reproductive process or for the removal of human reproductive material;

(h) in respect of the number of embryos that may be created from the gametes of one donor through the application of assisted reproduction procedures;

(i) in respect of the terms and conditions of licenses;

(j) in respect of the qualifications for licenses;

(k) in respect of the issuance, amendment, renewal, in respect of suspension, restoration and revocation of licenses;

(l) in respect of the information to be provided in

respect of applications for a license or for the renewal or amendment of a license;

(m) in respect of the identification and labeling of human reproductive materials and embryos from assisted reproductive process used in treatment services;

(n) in respect of the collection, use and disclosure of information regarding assisted reproduction processes; and

(o) in respect of counseling services.

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

SCHEDULE **(s. 5(2))**

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

2. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to

instruments.

be under seal, may be entered into or executed on behalf of the Council by any person generally or specially authorised by the Council for that purpose.

Disclosure of Interest.

3. (1) If a member of the Committee is present at a meeting of the Committee or any meeting 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 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.

I certify that this printed impression is a true copy of the Bill passed by the National Assembly on the 11th November, 2025.

Clerk of the National Assembly

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly Standing Orders.

Speaker of the National Assembly

Annex 3:

The Bill Digest

PARLIAMENT OF KENYA

THE SENATE

SENATE BILLS DIGEST

THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL, 2022

(NATIONAL ASSEMBLY BILLS NO. 61 OF 2022)

Sponsor:	Hon. Millie Odhiambo Mabona, M.P, co-sponsored by Sen. Catherine Muyeka Mumma, MP.
Date of Publication:	16th December, 2022
Date of First Reading:	4th December, 2025
Committee referred to:	Standing Committee on Health
Type of Bill:	Ordinary Bill

1. PURPOSE OF THE BILL

The principal object of the Assisted Reproductive Technology Bill (National Assembly Bills No. 61 of 2022) is to provide a legal framework for the provision of assisted reproductive technology services, prohibit certain practices in connection with assisted reproductive technology, regulate surrogacy arrangements, protect the rights of parents, surrogate mothers, donors and children born through assisted reproductive technology, and establish an institutional framework for the licensing and oversight of assisted reproductive technology facilities.

2. BACKGROUND OF THE BILL

What is Assisted Reproductive Technology?

Assisted reproductive technology ("ART") refers to all techniques that attempt to obtain a pregnancy by handling the sperm or the oocyte (egg) outside the human body and transferring the gamete or the embryo into the reproductive system of a woman. These techniques include in-vitro fertilization ("IVF"), intracytoplasmic sperm injection, intra-uterine insemination, cryo-preservation, pre-implantation genetic screening and diagnosis, gamete and embryo donation, and surrogacy.

What problem does the Bill address?

Infertility is a significant public health concern affecting many Kenyan couples and individuals. According to the Kenya Association of Urological Surgeons, about 10 – 15% of couples in Kenya are unable to conceive. In Kenya, there has been a growing demand for assisted reproductive technology services as a solution to infertility problems yet there exists no legal framework specifically addressing the provision, regulation, and ethical considerations of these services. Lack of regulation of ART services has led to unclear legal status of children born through surrogacy, exploitation of surrogate mothers through commercial surrogacy arrangements, lack of protection for gamete donors and recipients, absence of guidelines on the storage and disposal of gametes and embryos, and inadequate safeguards against unethical practices such as sex selection and human cloning.

What does the law currently provide?

Currently, there is no legislation in Kenya that comprehensively addresses the delivery of assisted reproductive services. The legal landscape is governed by fragmented provisions in various laws including the Constitution of Kenya, 2010, particularly Article 43(1)(a) on the right to health, the Health Act Cap. 241, and the Children Act, Cap. 141.

Why the Bill?

The Bill is anchored in Article 43(1)(a) of the Constitution which guarantees every individual the right to the highest attainable standard of health, including reproductive health. The Bill seeks to fill the legislative gap by establishing a comprehensive framework that ensures access to quality ART services while protecting the rights and dignity of all parties involved, particularly children born through ART processes and surrogate mothers. The Bill also aligns Kenya with international best practices in reproductive medicine and bioethics.

3. OVERVIEW OF THE BILL

What does the Bill regulate?

The Bill provides for the regulation of assisted reproductive technology in Kenya, including licensing of ART facilities and practitioners, the provision of ART services,

surrogacy arrangements, rights of parents, surrogates, donors and children, prohibited activities and practices, storage and disposal of gametes and embryos, access to information and record-keeping, and penalties for violations.

The Assisted Reproductive Technology Committee

Clause 5 of the Bill mandates the Kenya Medical Practitioners and Dentists Council to establish an Assisted Reproductive Technology Committee to oversee the implementation of the Act. Its functions as set out under clause 6 include –

(a) developing standards, regulations and guidelines on assisted reproductive technology;
(b) prescribing minimum requirements for the establishment of physical infrastructure of ART clinics and minimum educational requirements for ART experts and embryologists;
(c) inspecting and accrediting facilities for training of experts and embryologists;
(d) granting, varying, suspending and revoking licenses; and
(e) keeping under review information about embryos and their subsequent development.

Responsibilities of the National Government

Clause 7 mandates the Cabinet Secretary to –

(a) put in place the necessary mechanisms and infrastructure to ensure access to the highest attainable standard and quality of cost-effective assisted reproductive technology services;
(b) provide adequate resources necessary to ensure access to quality ART services;
(c) provide regulations to ensure assisted reproduction health services are covered by every health insurance provider including the Social Health Authority; and
(d) collaborate with county governments in expanding and strengthening the access and delivery of assisted reproductive health services.

Responsibilities of County Governments

Clause 8 mandates each County Government to –

a) allocate in the county budget the funds necessary for the provision of quality, cost-effective assisted reproductive technology services in the county health systems;

b) procure equipment, medicine and medical supplies required for assisted reproductive health care services;
c) carry out sensitization programmes related to assisted reproductive technology; and
d) establish linkages with local and international development partners to mobilize funding to promote the delivery of quality ART services.

Prohibited Activities

The Bill prohibits several activities to ensure ethical practice and protect human dignity.

Clauses 9-20 prohibit –

(a) creating, keeping or using embryos except as provided under the Act;
(b) use of human reproductive material without written informed consent;
(c) posthumous use of reproductive material without prior written consent;
(d) undertaking ART for purposes other than human procreation;
(e) undertaking ART for experimental purposes aimed at modifying the human race;
(f) placing non-human embryos or gametes in a woman;
(g) obtaining gametes from children except for medical reasons with informed consent;
(h) keeping or using non-human embryos;
(i) placing human embryos in animals;
(j) any form of human cloning;
(k) mixing human gametes with live animal gametes;
(l) donating gametes or embryos more than ten times;
(m) a surrogate mother entering into surrogacy agreements more than three times; and
(n) commercial surrogacy and related practices.

Violations of these provisions carry penalties of fines not exceeding five million shillings or imprisonment for terms not exceeding five years, or both. Commercial surrogacy violations carry harsher penalties of up to ten million shillings or ten years imprisonment.

Rights of Parents, Surrogate Mothers, Donors and Children

Clauses 21-37 of the Bill sets out the rights and obligations of all parties involved in the use of ART services as follows –

(a) **Right to Access ART Services:** Every person has the right to access the highest standard and quality of attainable and cost-effective assisted reproductive technology services provided by qualified experts licensed by the Council.

(b) **Informed Consent:** ART experts must obtain prior informed and written consent from all parties before providing any ART service. The consent must include provisions on ownership of gametes, number of gametes to be implanted, and what should be done with gametes in case of death, incapacity, abandonment, dispute, divorce or separation.

(c) **Rights of Children:** A child born out of assisted reproductive technology shall have the same legal rights under the Constitution and any other written law as a child born through natural conception. The Bill ensures children born through ART are not discriminated against and have full legal parentage rights.

(d) **Surrogacy Arrangements:** The Bill permits only altruistic surrogacy (where no charges, fees or monetary incentive except medical expenses are given to the surrogate mother). A woman may consent to surrogate motherhood if she has attained the age of 25 years, is below 45 years, has given birth to at least one child, understands the rights and obligations under a surrogacy agreement, and has undergone comprehensive mental and physical health assessments.

(e) **Surrogacy Agreements:** Must be in writing, signed by all parties, entered into within Kenya, and include provisions for the contact, care, upbringing and general welfare of the child. The agreement must be witnessed by at least two witnesses from each party and represented by separate independent advocates. The Council must carry out pre-approval checks including medical assessments, counseling, and verification that appropriate insurance is in place.

(f) **Leave Provisions:** The Bill provides for three months leave for surrogate mothers, three months maternity leave for intended mothers, and two weeks paternity leave for intended fathers.

(g) **Prohibition on Sex Selection:** The Bill prohibits any act to determine the sex of a child to be born through assisted reproductive technology.

Licensing Framework

Clauses 43-54 prescribe a licensing system for persons intending to carry out ART services and in particular–

(a) prohibits a person from carrying out assisted reproduction unless issued with a valid license by the Council;
(b) requires the Council shall inspect premises before granting licenses;
(c) empowers the Council to issue, suspend for up to three months, and revoke licences and impose conditions for the issuance of licences including supervision requirements, record-keeping, prohibition on payment for gametes/embryos, and regular reporting to the Council;
(d) provides for specific conditions that apply to storage of gametes and embryos including safety, security, labeling, and maintenance of registers; and
(e) provides for appeals by applicants against a refusal or revocation to the Cabinet Secretary and subsequently to the High Court.

Access to Information

Clauses 38-42 provide for access to information by mandating the Council to maintain a register containing particulars on ART treatment services provided, persons who undergo ART processes, donors of embryos and gametes, persons conceived through ART, and disposal of gametes or embryos. The Bill provides that the information shall be protected and maintained confidentially in accordance with data protection and privacy laws. The Bill further provides for the preservation of the records for a period of twenty-five years.

The Bill also provides that persons who have attained eighteen years may request information on whether they were conceived through ART and whether a proposed marriage partner might be a relative. It must however be noted that minors may only access information where necessary for medical procedures. The Bill also allows government agencies to request information for purposes of verification of paternity.

The law prohibits the members and employees of the Council from disclosing confidential information except in prescribed circumstances.

Regulations

Clause 58 empowers the Cabinet Secretary, in consultation with the Council, to make regulations for the better carrying out of the provisions of the Act, including regulations on eligibility of donors, storage of gametes and embryos, number of embryos that can be

transferred, dispute resolution, maintenance of records, rights and duties of patients, donors, surrogates and children, informed consent procedures, licensing terms and conditions, and counseling services.

4. CONSEQUENCES OF THE BILL

The Bill, once enacted, will establish a legal and institutional framework for assisted reproductive technology in Kenya. It will ensure that —

(a) every person has access to quality, affordable and ethical assisted reproductive technology services provided by licensed and qualified professionals;
(b) children born through assisted reproductive technology have full legal rights and protection equal to those born through natural conception;
(c) surrogate mothers are protected from exploitation through the prohibition of commercial surrogacy while allowing altruistic surrogacy;
(d) clear legal parentage is established for children born through surrogacy, reducing disputes and providing certainty;
(e) donors and recipients of gametes and embryos are protected through consent requirements, confidentiality provisions, and regulated storage practices;
(f) unethical practices such as human cloning, sex selection, and commercial surrogacy are prohibited and penalized;
(g) comprehensive standards and guidelines are established for the provision of ART services;
(h) there is a proper licensing system ensuring only qualified facilities and practitioners provide ART services;
(i) adequate resources are allocated at both national and county levels for the provision of ART services; and
(j) health insurance, including the Social Health Authority, covers assisted reproduction health services.

The Bill will promote reproductive health rights in line with Article 43(1)(a) of the Constitution, reduce infertility through improved access to treatment, protect vulnerable parties from exploitation, establish Kenya as a regional leader in regulated and ethical assisted reproductive technology, and provide legal certainty for families created through assisted reproductive technology.

5. WAY FORWARD

What next?

The Bill was Read a First Time in the Senate on 4th December, 2025. Pursuant to standing order 145 of the Senate Standing Orders, the Senate Standing Committee on Health shall facilitate public participation and shall take into account the views and recommendations of the public when the committee submits it report to the Senate.

What is expected of members of the public

Members of the public are expected to present their views to the Senate Standing Committee on Health for consideration.

Note:

1. This Digest reflects the Bill as passed by the National Assembly and does not cover any subsequent amendments to the Bill made thereafter.
2. The Digest does not have any official legal status.

Annex 4:

Advertisement as published in the Media

Teachers, TSC at war over Ruto's promises

- Fallout from the Naivasha meeting has hardened positions, with unions warning their patience is wearing thin.

- For the TSC, the challenge lies in balancing budgetary allocation, bureaucratic processes and rising expectations.

MIKE KIHAKI, NAIROBI

Barely three months after President William Ruto made promises to teachers at State House, Nairobi, cracks are emerging between the teachers' unions and the Teachers Service Commission (TSC) over implementation, trust and accountability.

This emerged after a two-day meeting between TSC and the Kenya Union of Post-Primary Education Teachers (Kuppet) ended in disarray.

The talks, convened to assess progress on commitments made by the President on September 13, collapsed amid accusations that the commission is deliberately dragging its feet on issues that directly affect teachers' welfare.

At the heart of the dispute are pledges that raised rare optimism among teachers after years of stalled reforms, slow promotions and bitter industrial standoffs, with the union saying the State House meeting promises have since evaporated into thin air.

According to Kuppet Secretary General Akelo Misori, the Naivasha talks revealed a worrying gap between promises and implementation.

"The union is concerned by the slow pace of action on all the issues," Misori said.

Kuppet faulted the commission for not taking bold steps towards implementing the critical commitments.

"We were shocked that the TSC had not made any funding request to Parliament for the promotion of 25,000 more teachers during the upcoming supplementary budget due by the end of January 2026," Misori said.

President Ruto's extraordinary meeting with more than 10,000 teachers from across the country was framed as a turning point to embrace dialogue over strikes, and a promise that teachers' long-standing grievances would finally be addressed.

Among the key commitments under review were proposals to reduce the 2025-2029 Collective Bargaining Agreement (CBA) cycle from four years to two, promote an additional 25,000 teachers and allocate 20 per cent of Affordable Housing Programme units to teachers.

Other issues include confirming 20,000 intern teachers to permanent and pensionable terms, provide a superior medical cover, review the Career Progression Guidelines (CPGs), and reform pension administration.

Speaking at State House, President Ruto acknowledged that teachers' concerns were legitimate and overdue.

"There is no need for teachers to go to the streets over matters that can be solved amicably," he said.

On salaries, the President accepted the teachers' request to shorten the CBA review cycle, directing the TSC, the Ministry of Education and unions to deliberate and propose the appropriate period.

"We are going to review the medical cover for teachers because the current one does not meet the medical needs of the teaching fraternity," the President added, pledging parity with schemes enjoyed by other civil servants.

The President also presided over the signing of a Memorandum of Understanding between teachers' unions and the Affordable Housing Board, guaranteeing that 20 per cent of affordable housing units would be reserved for teachers.

"Through the Housing Levy, teachers contribute Sh900 million every month. They deserve decent homes like the rest of Kenyans," he said.

On promotions, Ruto announced that the government would double the annual promotions budget from Sh1 billion to Sh2 billion, allowing up to 50,000 teachers to be promoted each year.

He disclosed that 151,000 teachers had been promoted in the past three years but admitted that a huge backlog remained. He also introduced a "First In, First Out" policy for recruitment to prioritise long-serving unemployed teachers, including those aged 45 and above.

"Teachers are the greatest patriots and heroes of the Republic of Kenya. They mind the children of others and spend sleepless nights thinking about them," he said.

The union is now faulting the commission for failing to convene a technical committee tasked with reviewing teachers' job descriptions, a necessary step before revising the much-criticised Career Progression Guidelines.

"The technical committee charged with reviewing the Job Description for teachers, which is a precondition for the review of CPGs, has not met for more than five months since its formation," Misori noted.

Intern teachers remain another flashpoint. Kuppet expressed dissatisfaction with new policy guidelines that, it argues, risk turning teachers into casual workers.

"The guidelines provide for open-ended internship service, without specific timelines for confirmation into permanent terms," Misori said.

Most controversially, the union accused the TSC of hiding behind funding constraints to justify its failure to confirm 20,000 intern teachers, despite not seeking the necessary funds from Parliament.

"Most regrettably, the commission blames funding for its failure to convert 20,000 current interns into permanent employment, yet it had not sought such funding from Parliament," he said.

"It is a case of the TSC eating its cake and having it (sic) at the same time."

The fallout from the Naivasha meeting has hardened positions, with unions warning that patience is wearing thin. While no immediate industrial action has been announced, the tone has shifted from cautious engagement to open suspicion.

For the TSC, the challenge lies in balancing the budgetary allocation, bureaucratic processes and rising expectations fuelled by presidential pronouncements.

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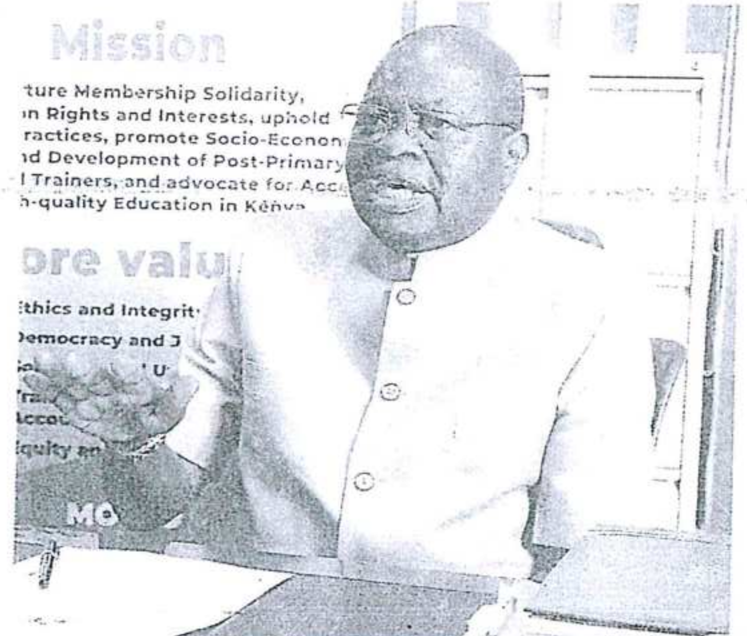

Kenya Union of Post-Primary Education Teachers Secretary General Akello Misori. [Wilberforce Okiwiri, Standard]

Job security

20,000
INTERNS

KUPPET accuses the Teachers Service Commission of dragging its feet in confirming them to permanent and pensionable terms.

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT | FOURTH SESSION
THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA
THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL
(NATIONAL ASSEMBLY BILLS NO. 61 OF 2022)

The Assisted Reproductive Technology Bill, 2022 (National Assembly Bills No. 61 of 2022) was read a First Time in the Senate on Thursday, 4th December, 2025 and committed to the Standing Committee on Health for consideration.

The Committee is required, under standing order 145(5) of the Senate Standing Orders, to facilitate public participation on the Bill and to take into account the views and recommendations of the public when the Committee makes its report to the Senate.

The Bill seeks to provide a legal framework for the provision of assisted reproductive technology services, prohibit certain practices in connection with assisted reproductive technology, regulate surrogacy arrangements, protect the rights of parents, surrogate mothers, donors and children born through assisted reproductive technology and establish an institutional framework for the licensing and oversight of assisted reproductive technology facilities.

In accordance with the provisions of Article 118 (1) (b) of the Constitution and standing order 145(5) of the Senate Standing Orders, the Standing Committee on Health now invites interested members of the public to submit any representations that they may have on the Bill by way of written memoranda.

The memoranda may be submitted to the Clerk of the Senate, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi or emailed to clerk.senate@parliament.go.ke and copied to healthcommittee.senate@parliament.go.ke, to be received on or before **Friday, 23rd January, 2026** at **5.00 p.m.**

The Bill and a digest that summarizes the contents and context of the Bill may be accessed on the Parliament website at http://www.parliament.go.ke/the-senate/house-business/bills.

J. M. NYEGENYE, CBS,
CLERK OF THE SENATE.

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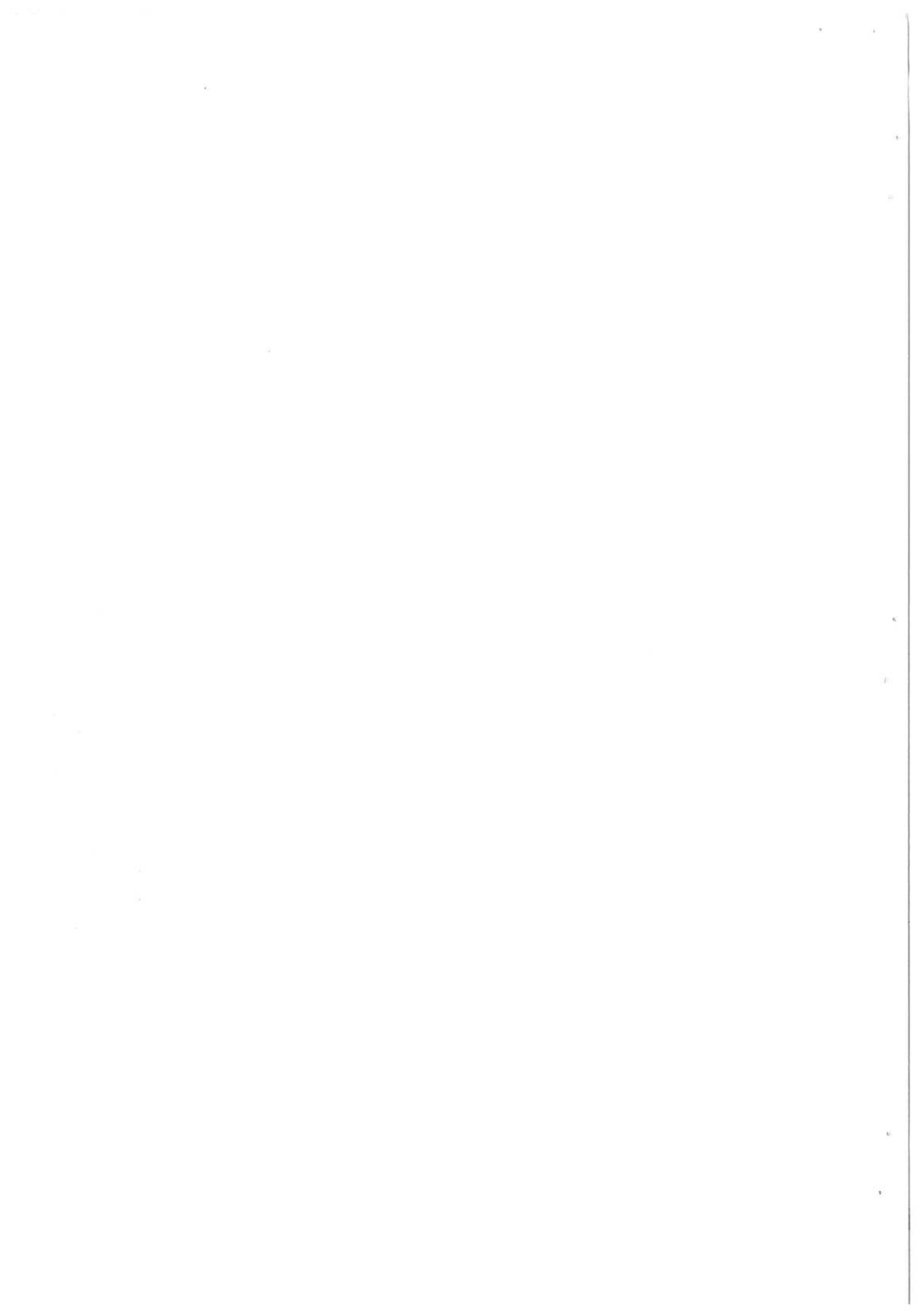
Annex 5:

Matrix of Stakeholder Submissions to the Bill



THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL, 2022
(NATIONAL ASSEMBLY BILLS NO. 61 OF 2022)

MATRIX OF STAKEHOLDERS SUBMISSIONS

Stakeholders:

1. Timothy Mugo Gakaria, Junior Embryologist
2. Strathmore Institute for Family Studies & Ethics
3. Center for Reproductive Rights (CRR)
4. Kenya Obstetrical and Gynaecological Society (KOGS)
5. Casablanca Declaration for the Universal Abolition of Surrogacy & co-signing international NGOs
6. La Manif Pour Tous (France)
7. Law Society of Kenya (LSK)
8. The Cradle, The Children Foundation
9. National Council of Churches of Kenya (NCCK)
10. Emma Sila, MSc Clinical Embryology
11. Enricah Dulo, Adv. (Legal Expert on Transfer of Parental Rights)
12. Winrose Njuguna, Advocate
13. Horn of Africa Youth Network (HoAYN)
14. Eugine Shimoka, Clinical Embryologist
15. International Coalition for the Abolition of Surrogate Motherhood (ICASM)
16. Protecting Life Movement Trust (PLMT)
17. Not All Gays (Ireland)
18. World Youth Alliance Africa
19. Ayieta R. Lumbasyo, Advocate / Fertility Law Centre
20. Commission on Revenue Allocation (CRA)
21. Dr. Sarita Sukhija, MD, Director, Myra IVF and Medical Center, Nairobi
22. Beatrice Namunyak John
23. International Coalition for Abolition of Surrogate Motherhood.
24. Mugane Kaburi
25. Ministry of Health (MOH).

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Title of the Bill	Ministry of Health (MOH)	The title "Assisted Reproductive Technology Act" is narrow and fails to capture the full scope of the Bill, which includes surrogacy, donation, and broader health services.	Amend to "Assisted Reproductive Health Act" to reflect the comprehensive nature of the legislation.	Agree
Clause 2	Ministry of Health (MOH)	The definition of the term "Child" has adopted the general definition in the Constitution and Children Act, Cap. 141.	In line with best practice in various jurisdictions such as India, it is preferable to adopt a definition that has been contextualized to matters of assisted reproductive technology. The Bill to therefore define the term "child" for purposes of assisted reproductive technology as follows: "child" means any individual born through the use of the assisted reproductive technology.	Agree
Clause 2	Ministry of Health (MOH)	The definition of "infertility" does not make provision for diagnosis by an assisted reproductive technology expert.	The criteria of determining infertility in the definition is subjective and may be open to abuse. It is imperative that an assisted reproductive technology expert makes a determination on infertility and other medical conditions preventing natural conception.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Clause 2	Ministry of Health (MOH)	The definition of the term "embryo" is convoluted. As presently framed, the definition is scientifically problematic because: a) "potential to develop into a live born human being" is subjective and unverifiable; b) it conflates biological definition with legal consequences; c) it could be interpreted to include embryos that are not viable, creating uncertainty; and d) it does not align with standard scientific definitions used internationally.	In line with best practice in various jurisdictions such as India, it is preferable to adopt a simple and scientific definition for clarity and ease of interpretation. The Bill to define the term "embryo" as follows: "embryo" means a developing or developed organism after fertilisation till the end of fifty-six days from the day of fertilisation. This definition is clear, objective, and aligns with medical and scientific understanding.	Agree
	Ministry of Health	The term "intended parent" is defined to mean a woman or a couple who enter into a surrogacy arrangement. However, throughout the Bill, the intended couple or woman are used separately	The Bill needs to be clear on the use of the terms "intended parent", "intended woman" and "couple" and the context within which they are used so as to prevent ambiguity.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		which brings about ambiguity.		
Clause 2 – Interpretation: Definition of "embryo"	Strathmore Institute for Family Studies & Ethics	Amend definitions to explicitly recognize the embryo as a human life deserving full moral respect.	The embryo is defined biologically but without explicit recognition of moral status, weakening its protection. Human life begins at fertilization and possesses intrinsic dignity regardless of stage of development.	Agree
Clause 2 – Interpretation: Definition of "assisted reproductive technology services"	Kenya Obstetrical and Gynaecological Society (KOGS)	Replace the word "services" with "procedures". Remove the term "endoscopic surgery" from the interpretation. Revise to read: "Assisted reproductive technology procedures" includes the diagnostic and screening procedures, intrauterine insemination, in vitro fertilisation, intracytoplasmic sperm injection, cryo-preservation, pre-implantation genetic screening, pre-implantation genetic diagnosis, onco-	Reinforces the medical distinction between services (evaluation, management or advice) and procedures (technical interventions). Endoscopic surgery is not an ART procedure but rather a general surgical technique used across multiple specialties. Its inclusion extends the scope of the law beyond ART-specific procedures, duplicating regulation already addressed under existing health frameworks.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		fertility, gamete and embryo donation, or surrogacy provided to infertile and sub-fertile individuals.		
Clause 2 – Interpretation: Definition of "surrogate mother"	Center for Reproductive Rights (CRR)	Replace the term "surrogate mother" with "person acting as surrogate" throughout the Bill and amend the definition to: "Person acting as surrogate" means an adult person, not an intended parent, who enters into a surrogacy agreement to bear a child who will be the legal child of the intended parent or parents.	The Bill should not use "mother" while defining the surrogate because the surrogate is not a mother (as defined by the Bill) during this process. The term "person acting as surrogate" recognizes the person as a full participant and serves as a reminder of the need to protect their human rights throughout the arrangement.	Reject: The term mother and surrogate mother are defined terms in the Bill.
Clause 2 – Interpretation: Definition of "mother"	Kenya Obstetrical and Gynaecological Society (KOGS)	Delete the word "intended" so that the definition reads: "mother" means a female parent.	This amendment recognises biological determinism (mother is always certain) as distinct from legal parenthood which is catered for by the definition of "intended parent" as well as implied in sections 27(2) and 34(1).	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Clause 2 – Interpretation: Definition of "commercial surrogacy"	Kenya Obstetrical and Gynaecological Society (KOGS)	Simplify definition to read: "commercial surrogacy" means any surrogacy arrangement involving payment, reward, benefit, or financial advantage, whether direct or indirect, to the surrogate mother or any intermediary, other than compensation or benefits expressly permitted under this Act.	The definition should be simplified while preserving its scope and aligned with the permissible benefits and non-commercial compensation framework set out in section 34(4).	Agree
Clause 2 – Interpretation: Definition of "donation" / "gamete donor"	Kenya Obstetrical and Gynaecological Society (KOGS)	Replace the word "giving" with "providing" in the definition of "donation" and "gives" with "provides" in the definition of "gamete donor".	The term "providing" reflects neutral clinical usage and avoids unintended proprietary connotations associated with the term "giving". Ensures terminology harmonisation.	Agree
Clause 2 – Interpretation: Definition of "endoscopic surgery"	Kenya Obstetrical and Gynaecological Society (KOGS)	Delete the definition of "endoscopic surgery" entirely.	Endoscopic surgery is not an ART procedure. Its definition should be deleted to avoid unnecessary expansion of the Bill's scope.	Agree
Clause 2 – Interpretation: Definition of "gestational surrogacy"/ New	Kenya Obstetrical and Gynaecological Society (KOGS)	Insert a new definition: "traditional surrogacy" means the process where a woman provides or donates an egg and carries a	Allows for the legal recognition of both forms of surrogacy for clarity in consent, parentage, and oversight. The inclusion provides legal clarity and internal	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
definition of "traditional surrogacy"		pregnancy for the intended parents or couple.	consistency within the Bill by expressly recognising a form of surrogacy already implied under section 27(3).	
Clause 2 – Interpretation: Definition of "infertility"	Kenya Obstetrical and Gynaecological Society (KOGS)	Replace the word "coitus" with "sexual intercourse".	Updates language to align with modern clinical standards and patient-friendly language.	Agree
Clause 2 – Interpretation: Definition of "oocyte"	Kenya Obstetrical and Gynaecological Society (KOGS)	Change definition to: "oocyte" means immature female egg cell produced by the ovary, which upon maturation may be capable of fertilisation.	The current definition conflates oocyte and ovum and inaccurately limits the term to natural ovulation, which does not reflect ART practice. This amendment aligns with established medical usage.	Agree
Clause 2 – Interpretation: Definition of "ovum"	Kenya Obstetrical and Gynaecological Society (KOGS)	Revise definition to read: "ovum" means a fully mature female gamete, produced by the ovaries, that has completed meiosis and is capable of being fertilised by a sperm cell to form a zygote.	The proposed definition aligns with established reproductive biology, specifying the ovum's maturity and origin, ensuring legal clarity and reducing potential interpretive disputes.	Agree
Clause 2 – Interpretation: Definition of "pre-implantation genetic screening"	Kenya Obstetrical and Gynaecological Society (KOGS)	Revise definition to read: "pre-implantation genetic screening" means a group of genetic tests used to evaluate the genetic health	The revised definition preserves scientific meaning and accurately reflects clinical practice using language that is accessible to non-specialists.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		of embryos before transfer to the uterus.		
Clause 2 – Interpretation: Definition of "sperm"	Kenya Obstetrical and Gynaecological Society (KOGS)	Delete the word "mature" so that the definition reads: "sperm" means a male human gamete.	Removing "mature" reflects the clinical reality that ART serves patients who may need to harvest and preserve immature sperm (e.g., cancer patients). Immature sperms can be matured in vitro for treatment.	Agree
Clause 2 – Interpretation: Use of terms ("intended parents" vs "commissioning parents")	Strathmore Institute for Family Studies & Ethics	The Bill should use one term for uniformity. Section 2 provides for the term "intended parent(s)" but successive provisions (e.g. section 30(3)(c)(i)(ii), (d), and (g)) use "commissioning parents".	Ensures consistency and avoids confusion in interpretation.	Agree
Clause 2 – New Definitions	The Cradle, The Children Foundation	Insert new definitions for: "Best interest of the child"; "Clinic"; "Cryo bank"; "Identifying information"; "Insurance"; "Intersex".	The Bill lacks definitions for key terms. "Best interest of the child" is important for guiding courts and child rights officers. The Bill further references intersex persons but fails to define the term. Insurance definition ensures surrogates and oocyte donors are	Partly agree: There is need for the definition of the term cryo-bank.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
			covered for death and health complications.	
Clause 2 – Interpretation: Definition of "abandoned child" / "abandonment"	Protecting Life Movement Trust (PLMT)	The Act should put in place provisions to discourage and criminalise abandonment instead of creating loopholes. The fate of the embryo in case of abandonment should be clarified, as embryonic life is protected by the Kenyan Constitution.	The Act anticipates abandoned child and abandonment; it should discourage and criminalise such acts instead of creating loopholes that are likely to encourage the ill.	Agree
Clause 2 – Interpretation: Definition of "child"	Protecting Life Movement Trust (PLMT)	The definition of "child" should align with the Constitution; use "person" not "human" and for purposes of this Act should mean embryo even before introduction into the surrogate's womb since fertilization/conception has happened.	Constitutional alignment requires recognising the embryo as a person from the point of conception.	Reject: life begins at implantation and not upon the creation of the embryo.
Clause 2 – Interpretation: Definition of "couple"	Protecting Life Movement Trust (PLMT)	Drop "cohabiting" from the definition and maintain "married" only. The definition should read:	Cohabiting is not allowed under the laws of Kenya and should be dropped.	Reject: courts have affirmed cohabitation as a form of marriage.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		"couple" means a male and a female who are married under the laws of Kenya.		
Clause 2 – Interpretation: Definition of "primitive streak" / Clause 18(1)(a)	World Youth Alliance Africa	Remove the primitive streak definition as the threshold for legal protection. Article 26(2) of the Constitution provides that life begins at conception; Parliament lacks authority to introduce a later developmental threshold.	The 14-day rule originated in foreign policy guidance and was never grounded in constitutional text. The Constitution does not condition the right to life on implantation, individuation, viability, or neurological development. Once fertilisation has occurred, constitutional protection attaches. The definition creates a permissive zone where embryos may be manipulated and destroyed.	Agree
Clause 2 – Interpretation: Definition of "mother" (exclusion of surrogate)	World Youth Alliance Africa	Reconsider the exclusion of the surrogate from the definition of "mother". The Bill creates a category of women who carry and give birth but are not legally mothers – an unprecedented departure from Kenyan legal tradition.	This severs the legal bond between gestation and motherhood and replaces it with contractual parenthood. The child's primary maternal relationship is erased at birth by operation of law. Raises concerns under Articles 26 and 28 (human dignity). Declaring that a woman who has given birth is not a mother diminishes the dignity of pregnancy.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Clause 2 – New Definition: "Assisted reproductive technology bank"	Ayieta R. Lumbasyo, Advocate / Fertility Law Centre	Insert definition: "Assisted reproductive technology bank" means a facility responsible for collection, storage and supply of gametes and embryos to ART clinics and/or their patients.	The term is mentioned in the Bill but not defined. It may be an egg bank, sperm bank, embryo bank or combination. Needs a definition for clarity.	Agree a
Clause 2 – Interpretation: Definition of "embryologist" (amended)	Ayieta R. Lumbasyo, Advocate / Fertility Law Centre	Amend to include: "and who possesses any post-graduate medical qualification or any degree in embryology or clinical embryology from a recognised university with not less than two years of clinical experience or such other qualifications as the respective regulatory board or council may propose."	Sets minimum level of education and skill requirements for embryologists. Embryologists are the backbone of IVF/ART processes and should have minimum education and expertise levels like other professionals involved.	Agree
Clause 2 – New Definition: "Sex selection"	Ayieta R. Lumbasyo, Advocate / Fertility Law Centre	Insert definition: "Sex selection" includes any procedure, technique or test for the purpose of ensuring or increasing the probability that an embryo will be of a particular sex.	The terminology has been used in the Bill and requires a definition.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Clause 2 – Interpretation: Definition of "intended parent"	Protecting Life Movement Trust (PLMT)	Intended parent should not be entertained; surrogacy and ART should be for two parents, male and female, for the best interest of the resulting child and married couple under Kenyan law. At least one intended parent should have a biological relationship with the resulting child.	Surrogacy and ART should be limited to married couples for the best interest of the child. Variations such as "intended parent", "client", "party to marriage" should be avoided.	Agree
Clause 2 – Interpretation: Definition of "surrogacy"	Protecting Life Movement Trust (PLMT)	Surrogacy should be for a married couple according to the proposed new definition of couple; avoid loopholes to allow single parents.	Surrogacy should simulate the natural process as much as possible. A child should be born and brought up by a male father and female mother.	Agree
Clause 2 – Interpretation: Definition of "embryologist"	Emma Sila, MSc Clinical Embryology	Define an embryologist as: "a person who possesses any post-graduate medical qualification (MS/MD) or doctoral degree in the field of embryology or clinical embryology from a recognised university with not less than two years of clinical experience." Core requirement: Post Graduate (M.Sc.) degree in	Based on the Assisted Reproductive Technology (Regulation) Rules, 2022 (India). Ensures minimum qualification standards for embryologists who handle human gametes and embryos.	Partly agree: the qualifications of embryologists to be provided for in the Bill

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		Clinical Embryology from a recognised University (full-time program with a minimum of 4 semesters), combined with at least three years of human ART laboratory experience.		
Clause 3	Ministry of Health (MOH)	The provision that the Act applies to "a medically assisted reproductive process whether or not the process is completed outside the human body" is unclear in its extraterritorial application.	Clarify that the Act applies to all ART services provided in Kenya and to Kenyan citizens accessing ART services abroad to the extent specified in the Act. The application should clarify on geography of reach.	Agree
Clause 4 – Objects of the Act	Strathmore Institute for Family Studies & Ethics	Reframe objectives to prioritize ethical limits, child welfare, and dignity over access alone. Clause 4(a) and (h) emphasis on access and enabling environments risks prioritizing adult autonomy over ethical limits.	The emphasis on access and enabling environments risks prioritizing adult autonomy over ethical limits. The child as a subject of rights should be the primary consideration.	Reject: the Bill already recognizes the principle of the best interest of the child.
Clause 4(b) – Objects of the Act	International Coalition for the	Surrogacy should not be listed among ART. Only	Surrogate motherhood does not treat infertility. Surrogacy is the	Reject

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
	Abolition of Surrogate Motherhood (ICASM)	IVF should be listed among assisted reproductive technologies. Surrogacy does not restore fertility to infertile individuals; it merely enables childless individuals to have children while the infertility remains.	social practice of recruiting a woman to bear children with the intention of handing them over. It should be distinguished from medical treatment of infertility.	
Clause 4(e) – Registration of children born out of surrogacy	Kenya Obstetrical and Gynaecological Society (KOGS)	Strike out the word "gestational" so that the provision encompasses both gestational and traditional surrogacy. Revised: "(e) facilitate the registration of children born out of surrogacy."	Consequential to the proposed inclusion of "traditional surrogacy" within the Act. Restricting registration to gestational surrogacy would result in unequal treatment of children born through lawful surrogacy arrangements.	Agree
New Clause 4(j) – Cryopreservation framework	Kenya Obstetrical and Gynaecological Society (KOGS)	Insert new paragraph: "(j) provide a clear and coherent regulatory framework for the safe, ethical and lawful cryopreservation of human reproductive tissue and cells used in assisted reproductive technology."	Cryopreservation is central to modern fertility care, including for patients undergoing medical treatments that may impair future reproductive capacity. Including it as an object anchors governance of stored reproductive tissue in statute.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
New Clause after Clause 4 – Guiding Principles	The Cradle, The Children Foundation	Insert new Clause 5 (Guiding Principles): (a) the best interest of the child born as a result of ART procedures; (b) Non-exploitation of parties; (c) Non-discrimination including based on marital status; (d) Affordability of procedures under this Act.	The principles ensure that best interests are observed in interpretation of the Act, that parties are not exploited, and that procedures are affordable to all.	Agree
Clause 5	Ministry of Health (MOH).	Assisted reproductive services ought to be regulated and administered similar to other healthcare services and other specialized services.	The Kenya Medical Practitioners and Dentists Council is a professional body responsible for the regulation of the practice of medical practitioners and dentists. It also registers specialist medical practitioners. The government policy direction presently is to separate the regulation of services from the regulation of practitioners for uniform regulation in the provision of all healthcare services including assisted reproduction services. The regulation and administration of healthcare services is a function of the Ministry of Health. The Bill should therefore	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
			establish an independent ART Technical and Bioethics Committee directly under the Ministry of Health with its own secretariat and budget. The Committee should have multidisciplinary membership including reproductive medicine specialists, embryologists, bioethicists, legal experts, and patient representatives. This will ensure seamless transfer of function to the proposed Quality of Healthcare and Patients Safety Authority which is proposed under a Bill (Quality Healthcare and Patient Safety Bill) currently under active consideration by the National Assembly.	
New Clause 5(2) – Composition of ART Committee	Kenya Obstetrical and Gynaecological Society (KOGS)	Insert new sub-clause on Committee structure: "The Committee shall be chaired by a person with demonstrable expertise in ART and shall comprise persons with relevant expertise in assisted reproductive clinical practice, embryology, nursing, bioethics, health	The Bill is currently silent on the composition of the Committee despite conferring on it significant regulatory, oversight and decision-making powers. This ensures the body is properly constituted, credible and fit-for-purpose.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		regulation and law, and shall ensure representation of patients and the public interest."		
Clause 5 – Regulatory Oversight (Embryology Board)	Timothy Mugo Gakaria (Junior Embryologist)	Establish a dedicated Embryology Board/Council to oversee licensing and registration, training accreditation, scope of practice, and ethical and disciplinary matters. Core membership must include current practising Kenyan embryologists. Both the National ART Board and all County ART Committees must include at least one practising local embryologist.	Regulation should not be vested in physicians, gynecologists, or the KMLTTB, as embryology is a distinct laboratory-based scientific profession. External (foreign-trained) embryologists must register before practising. Foreign practitioners should be limited in number.	Reject
Clause 5(3) – Staff of the Council/Committee (New Sub-section)	Ayieta R. Lumbasyo, Advocate / Fertility Law Centre	Specify the composition of the Council/Committee to include: two medical doctors with reproductive health experience (nominated by KMPDB); two lawyers with ART knowledge; one KNHRC representative; two lay	The Bill eschews listing the professions and qualifications of management/staff of the oversight entity. There must be minimum standards specified, including persons with legal, embryology, ethical, and other relevant expertise.	Agree

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		members; one clinical embryologist; a Director as Secretary; and such other staff as necessary.		
Clause 5(3)(b) – Term of office for Council/Committee (New clause)	Ayieta R. Lumbasyo, Advocate / Fertility Law Centre	The Chairperson and members shall hold office for a term of three years and be eligible for re-appointment for one further term of three years.	Like all other statutory bodies, it is imperative to set the term of the board/directorate.	Agree
Clause 5 – Assisted Reproductive Technology Committee	Commission on Revenue Allocation (CRA)	Recommendations: (a) Include provisions on the membership, term of office and appointment of the Committee; (b) Move this clause to be Clause 6 and renumber the latter to Clause 5 respectively.	For coherence and good order. The provision establishes a Committee but omits essential governance details such as composition, qualifications, appointment, and term of office.	Agree: there is need for provision as to the composition and qualifications of members of the committee
Clause 5 / Clause 6 – Regulatory Body and Practising Licence for Clinical Embryologists	Dr. Sarita Sukhija, MD, Director, Myra IVF and Medical Center, Nairobi	Clinical Embryologists should be brought under a regulatory body and required to hold a practising licence equivalent to that required of clinicians. Where a complaint of a gamete or embryo mix-up in the IVF laboratory arises, the	Clinical embryologists are fully responsible for IVF laboratory work, including the handling of irreplaceable human reproductive material. The absence of a dedicated regulatory body and practising licence creates an accountability gap. Individual professional accountability, including compensation liability for mix-ups,	Agree

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		responsible embryologist should be held accountable and required to compensate the affected parties.	is essential to maintain the integrity and safety of ART laboratory practice.	
Clause 6 – Functions of the Council/Committee	Kenya Obstetrical and Gynaecological Society (KOGS)	Replace the word "Council" with "Committee" throughout Clause 6. Part II is about the ART Committee established under section 5; section 6 should therefore refer to the Committee.	Ensures internal consistency within the governance provisions of Part II.	Agree
Clause 6(n) – National database	Kenya Obstetrical and Gynaecological Society (KOGS)	Insert the words "and anonymised' after "confidential": "(n) establish and maintain a confidential and anonymised national database on persons receiving ART treatment services or providing gametes or embryos for use."	ART data is uniquely sensitive medical data. Explicitly requiring anonymisation clarifies that the database is for regulatory oversight, planning, and policy — not individual tracking — thereby strengthening data protection, public trust and constitutional compliance with the right to privacy.	Agree
Clause 6(p) and (q) – Functions of the Council (New addition)	Ayieta R. Lumbasyo, Advocate / Fertility Law Centre	Add functions: (p) Establish and maintain a national surrogacy agency for identifying,	Ensures ethical surrogacy, standardised requirements, and protects surrogates from exploitation by agencies. Since the Bill bans commercial surrogacy, a	Reject

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		screening surrogates, facilitating matches, and issuing administrative orders for birth registration; (q) Alternatively, authorise and license non-profit organisations to handle these functions while ensuring ethical standards.	state or licensed non-profit agency framework is needed.	
Clause 6 – Functions of the Council	Commission on Revenue Allocation (CRA)	Recommendations: (a) Specify the linkage between the overall functions of the Council on ART vis-à-vis the ART Committee; (b) Clarify whether this provision sets out functions of the Council or those of the Committee, given that Clause 5 establishes a committee.	For efficiency and ease of implementation. The relationship between the Council and the Committee is not clearly defined, and the heading of Clause 6 refers to the Council while the preceding clause establishes a Committee.	Agree
Clause 7	Ministry of Health (MOH)	Subsection (c) requiring regulations to ensure ART coverage by "every health insurance provider including the Social Health Authority" is impractical without corresponding	Modify insurance provision to "develop a plan for progressive inclusion of ART services in the national health benefit package".	Reject

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		amendments to insurance legislation.		
Clause 7 – Licensing, Regulation, and Oversight (General)	Mugane Kaburi	Establish independent oversight bodies, transparent licensing procedures, and regular audits of ART facilities and practitioners. Mandate minimum staffing, training, and capacity requirements for the Directorate and county authorities.	Concerns about the capacity, funding, and expertise of the Directorate, especially at county level. The Bill does not specify minimum staffing, training requirements, or mechanisms for stakeholder engagement. Comparative analysis shows effective regulation requires independent oversight bodies as seen in the UK's HFEA.	Reject
Clause 8	Ministry of Health (MOH)	Imposes significant financial obligations on counties without clarity on funding sources, potentially violating Article 6 of the Constitution on intergovernmental relations.	Delete specific funding obligations contained in paragraph (a).	Reject
Clause 10 (1) – Consent for use of reproductive material	The Cradle, The Children Foundation	Delete Clause 10(1) and substitute to read — "10. (1) No person shall make use of any human reproductive material for	While Clause 10(1) protects donors from having gametes used without consent, there is no protection for women who may be inseminated with sperm they have not consented to. Cases have emerged where	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		the purpose of creating an embryo or for inseminating a woman unless — (a) the donor of the material has given written informed consent to such use; and (b) the woman undergoing insemination has given written informed consent to the specific reproductive material to be used."	doctors inseminate women with sperm other than their husband's or the consented donor's.	
Clause 11	Ministry of Health (MOH)	Post-humous use of human reproductive material should be fully prohibited by deleting the words "unless the donor of the material had given a written informed consent" in clause 11(1). The prohibition should not be negated on the basis of the consent of a person who is no longer alive.	Allowing for post-humous use of human reproductive material is not in the best interests of the child. Best interests of the child would ideally dictate that the child be born to parents who are alive and who would be able take care of that child when they are born.	Agree
Clause 11 – Use, creation, and keeping of embryos	World Youth Alliance Africa	Impose strict numerical limits on embryo creation. Require that every embryo created be afforded a reasonable opportunity for implantation.	The Bill normalises embryo production as a means to an end. ART relies on creating multiple embryos knowing many will never be implanted. The absence of safeguards allows foreseeable embryo loss and destruction,	Agree

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			conflicting with constitutional protections for life under Article 26.	
New Clause 11 – Prohibition on sale/transfer of gametes abroad	The Cradle, The Children Foundation	Insert new clause: "The sale or transfer of gametes and embryos to any party outside Kenya shall be prohibited except in the case of transfer of a person's own gametes and embryos for personal use."	Safeguards against commodification and exploitation of human reproductive material. International trade raises significant ethical, legal, and public health concerns including trafficking risks and loss of donor protections.	Agree
Clause 11 / Clause 2 – Gametes as Property of the Couple; International Transfer	Dr. Sarita Sukhija, MD, Director, Myra IVF and Medical Center, Nairobi	The gametes of a couple are their property and should be permitted to be transferred anywhere in the world as required by their circumstances.	Couples may need to transfer their gametes internationally due to medical, personal, or logistical circumstances. A blanket restriction on international transfer would infringe on their reproductive autonomy and property rights over their own biological material. Appropriate safeguards for international transfer should be prescribed rather than an outright prohibition.	Reject
Clause 12	Ministry of Health (MOH)	The clause ought to set out some of the medical or health grounds that may necessitate the use of assisted reproductive technology services. There is also need to prescribe	As presently framed, the clause may be subject to misuse and abuse especially by persons who do not have infertility issues but who assisted reproductive technology services just because such services are available.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		explicitly whether these grounds ought to be limited to or related to reproduction in terms of conditions preventing natural conception.		
Clause 12 – ART expert certificate enforceability	Winrose Njuguna, Advocate	Include a sub-section: "12(2) An assisted reproductive technology expert or clinic that provides ART services in contravention of subsection (1) commits a regulatory breach and is liable to administrative sanctions, including suspension or revocation of licence or a fine not exceeding [insert amount], or both."	The requirement for an ART expert certificate is not enforceable, undermining compliance and regulatory intent. Most ART patients are psychologically, emotionally and financially vulnerable; criminalising them is inappropriate. Enforcement should focus on ART experts and facilities.	Agree
Clause 13 – Prohibition of experimentation and commercialization	Strathmore Institute for Family Studies & Ethics	**Commendable provision.** The prohibition aligns with the dignity of the person even at the embryo stage.	Ethically commendable – protects embryos from experimentation and commercialization.	Agree
Clause 13	Ministry of Health (MOH)	Subsection 1(b) fully prohibits the use of assisted reproductive technology for experimental purposes. This is vague and may limit use of such technology in research, in particular	Clarify to specifically prohibit: a) human reproductive cloning; b) heritable germline genetic modification; c) creation of human-animal chimeras for reproductive purposes; and	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		experimental medicine which is allowed in some jurisdictions including India. Subsection (1)(c) prohibits "speculative and commercial purposes," which is undefined.	d) commercial surrogacy.	
Clause 13(1)(c) – "Purely speculative" purposes	Ayieta R. Lumbasyo, Advocate / Fertility Law Centre	Delete the phrase "purely speculative" from the prohibition.	It is discriminative especially for persons who for non-medical reasons wish to delay starting a family, since gamete (egg and sperm) banking is now commonplace. However, age of starting family should also be considered for the best interest of the child.	Reject
Clause 15(1) – Gametes from children	Center for Reproductive Rights (CRR)	Amend clause to add the word "and" to read: "and with the informed consent of the child."	The addition of "and" will make the informed consent of the child the primary consideration prior to collecting sperm or ova. In line with international principles on best interests and participation, parental consent should only be supportive of, and not override, the child's informed consent.	Agree
Clause 15 – Gametes from children	Strathmore Institute for Family Studies & Ethics	Restrict gamete collection from children strictly to therapeutic reasons, not for	While the prohibition on obtaining gametes from children is commendable, it should be	Reject

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		preservation or future use as suggested by the Bill.	restricted to therapeutic reasons to safeguard minors from exploitation.	
Clause 15(1) – Donor under eighteen	Ayieta R. Lumbasyo, Advocate / Fertility Law Centre	Add the phrase: "and only after the minor has undergone psychological analysis and counseling and has a medical report to show the need for speculative reproduction."	To avoid abuse of the process and ensure that the minor is fully informed of the choices and consequences.	Agree
Clause 16 – Embryo storage / Surplus embryos	Strathmore Institute for Family Studies & Ethics	Introduce a clear prohibition on creation of surplus embryos and strict limits on cryopreservation. The absence of a ban permits foreseeable embryo loss, which is essentially the loss of human life.	Permits embryo storage without clear limits on number, duration, or fate, risking indefinite cryopreservation. Any legal framework must treat the human embryo not as biological material or property, but as a subject of moral and legal concern.	Reject
Section 18(1) – Donor/sibling/surrogacy limits	Winrose Njuguna, Advocate	Expand section 18 to provide for the establishment of a central donor and surrogate database or registry, with mandatory reporting by all licensed facilities, to ensure effective monitoring and enforcement. Include	The restrictions on donation (10 times), siblings (10), and surrogacy (3 agreements) are sound policy but compliance is impractical without centralised, interoperable registries accessible across clinics.	Reject

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		regulatory breach provisions for non-compliant clinics.		
Clause 19(1) – Cryo bank age limits for gamete collection	Kenya Obstetrical and Gynaecological Society (KOGS)	Insert the word "donor" to distinguish donor gametes from patient gametes. Add new sub-clause (c): "gametes from male and female patients, where such gametes are collected and preserved for that patient's future personal use on medical grounds, including for fertility preservation necessitated by disease, medical treatment or other clinically indicated circumstances."	Clarifies the scope by distinguishing gamete donation from patient-specific gamete collection for medical necessity. Treating patients requiring fertility preservation (e.g. cancer patients) as "donors" would be clinically inaccurate and could restrict access to necessary care.	Agree
Clause 19 / Clause 18 – Age and Donation Limits for Egg Donors	Dr. Sarita Sukhija, MD, Director, Myra IVF and Medical Center, Nairobi	The egg donor should be between the ages of 23 and 35 years and should be permitted to donate on a maximum of 5 to 6 occasions, irrespective of marital status.	Prescribing a clear age range and donation frequency limit for egg donors safeguards donor health and prevents over-exploitation. The limit should apply regardless of marital status to ensure consistency and equality of treatment.	Agree
Clause 19 / Clause 18 – Age and Donation	Dr. Sarita Sukhija, MD, Director, Myra	The sperm donor should be between the ages of 23 and	A prescribed age range and donation frequency cap for sperm	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Limits for Sperm Donors	IVF and Medical Center, Nairobi	40 years and should be permitted to donate on a maximum of 6 occasions.	donors promotes genetic health standards and prevents any single donor from fathering an excessive number of donor-conceived children, raising welfare and identity concerns for those children.	
Clauses 19–20 – Disposal or donation of embryos	Strathmore Institute for Family Studies & Ethics	Disposal or donation of embryos treats embryos as property rather than human lives. These provisions are ethically incompatible with the recognition of embryos as human life.	The disposal or donation of embryos treats embryos as property rather than human lives, undermining the inherent dignity of the human embryo.	Agree
Clause 20(1)(a) – Gamete disposal after 10 years	Kenya Obstetrical and Gynaecological Society (KOGS)	Reduce from 10 years to 5 years for disposal, with extensions upon client request. Include mandatory written notice requirement before disposal.	The reduced period with mandatory notice encourages periodic, informed decision-making by patients regarding continued storage or disposal. Strengthens patient autonomy and promotes responsible cost-management and long-term storage practices.	Agree
Clause 20(1)(b) – Donation of gametes to other couples	Kenya Obstetrical and Gynaecological Society (KOGS)	Delete in entirety.	The allocation and use of donated gametes is governed by clinical protocols and informed consent of donors and recipients. The clause incorrectly empowers the regulator to make unilateral decisions on gamete allocation, which is	Agree

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			unnecessary and inconsistent with established ART practice.	
Clause 20(1)(c) – Research on stem cells and zygotes	Protecting Life Movement Trust (PLMT)	Stem cell and zygote research opens a door for malpractice and abuse of the process. This Act is for supporting infertile couples to get children, not for research.	Research provisions risk abuse of the ART process. The Act should remain focused on its stated purpose of supporting infertile couples.	Reject
New Clause – Gamete storage period	The Cradle, The Children Foundation	Provide for gamete storage of 20 years with possibility of extension by the Directorate on reasonable grounds (e.g. chronic illness). Pending applications prevent premature disposal.	Accommodates evolving medical and social needs. Ensures individuals facing circumstances such as chronic illness are not disadvantaged by rigid timelines, while protecting reproductive rights and individual autonomy.	Reject
Clause 22 – Right to ART / Access	Strathmore Institute for Family Studies & Ethics	Replace "right to ART" language with regulated access subject to ethical and child-centered safeguards. Access to ART irrespective of marital context undermines the family as the natural environment for procreation.	Language of a "right to assisted reproductive technology" risks implying entitlement to a child. A family (complete with a mother and a father) is the best institution for the raising and care of a child. Article 53, Constitution of Kenya 2010.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Clause 22 – Access and Eligibility (Non-discrimination)	Mugane Kaburi	Revise clauses to permit access to ART services for all individuals, regardless of marital status, sexual orientation, or nationality, in line with Article 27 of the Constitution. Model Clause: "No person shall be denied access to ART services on the basis of sex, marital status, sexual orientation, nationality, or any other ground prohibited under Article 27."	The Bill's exclusion of same-sex couples, LGBTQ+ individuals, and foreigners contravenes Article 27 of the Constitution which guarantees equality and freedom from discrimination. It perpetuates stigma and barriers to reproductive health care.	Reject
Clause 23 – Consent provisions	Strathmore Institute for Family Studies & Ethics	Expand consent provisions to include: Legal Consent (informed, free from coercion, explained in an understandable way, with sufficient time); and Medical Consent (access to independent medical advice, right to control one's body, right to decide on birth conditions, and information on post-birth health implications).	To ensure self-determination of the surrogate mother. Aligned with the Verona Principles (2021), Para. 7.3.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Clause 23(4) / 29 – Surrogate barred from abortion	Not All Gays (Ireland)	Declare any abortion-control clause void as contrary to public policy. All clinical decisions must rest exclusively with the pregnant woman and her treating clinicians.	Any prohibition on termination contracts away bodily autonomy, effectively compelling gestation for third parties and exposing women to serious health and rights violations.	Reject
Clause 23(2) – Consent on ownership of gametes and embryos	Kenya Obstetrical and Gynaecological Society (KOGS)	Amend: (a) to add the words "and embryos" after the word "gametes"; (b) Replace the word "gametes" with the word "embryos" and "implanted" with the word "transferred"; (c) Add the words "and embryos" after "gametes" in sub-section (c).	In clinical practice, only embryos (not individual gametes) can be counted and transferred. Gametes are inseminated. "Implantation" is what occurs subsequently in the uterus when the embryo attaches to the uterine lining. These amendments reflect accurate clinical terminology.	Agree
Clause 24	Ministry of Health (MOH)	The clause allows the collection of information from donors including physical characteristics, family history, professional qualifications and skills. Care should be taken in this aspect so as not to encourage selection of gametes or embryos based on the positive or popular attributes.	This criteria is unnecessary as the same may be abused.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Clause 24(1)(b) – Donor screening	Kenya Obstetrical and Gynaecological Society (KOGS)	Replace "all" with "relevant", insert "the recipient," before "surrogate", and insert "resulting" before "child".	Ensures risk-based donor screening focuses on conditions that are clinically significant and pose genuine risk to all relevant third parties. Aligns with international ART practice.	Agree
Clause 25 – Pre-implantation genetic diagnosis	Kenya Obstetrical and Gynaecological Society (KOGS)	Delete Clause 25 in its entirety.	In ART practice, pre-implantation genetic testing is applied to IVF-created embryos before transfer, not to donors as framed in this clause. The provision is misaligned with established ART practice and risks imposing obligations that are clinically unworkable.	Agree
Clause 25 – Pre-implantation genetic diagnosis (Ethical restriction)	Strathmore Institute for Family Studies & Ethics	Restrict pre-implantation genetic diagnosis strictly to therapeutic, non-selective purposes.	Pre-implantation genetic diagnosis is insufficiently restricted, creating risk of eugenic selection.	Reject
Clause 26(2) – Consent withdrawal on divorce	Kenya Obstetrical and Gynaecological Society (KOGS)	Replace the words "of the implantation" with "for the transfer" and amend to plural forms: "embryo(s)", "sperms" and "ova".	The correct clinical terminology for placing embryos into a female uterus is "transfer", with implantation occurring subsequently intrauterine.	Agree
Clause 26(2) – Withdrawal of	Law Society of Kenya (LSK)	Delete Clause 26(2) in its entirety.	Article 26(1) of the Constitution provides for the right to life and	Reject

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Consent to Implantation			Article 26(2) provides that the life of a person begins at conception. Once fertilisation has occurred and an embryo is created, it is constitutionally protected. Permitting withdrawal of consent to implantation after conception effectively sanctions the termination or denial of the continued development of life, in total violation of the right to life guaranteed under the Constitution.	
Clauses 27–35 – Surrogacy provisions (General: Remove entirely)	Strathmore Institute for Family Studies & Ethics	Remove surrogacy provisions completely. Surrogacy (including altruistic) separates gestation from motherhood, commodifies women's bodies, and fractures maternal–child unity.	Altruistic surrogacy as provided in the Bill risks being commercialized. To prevent the risk of commodification, the Bill should include a statutory schedule of permissible expenses. Derived from the South African case of Ex Parte WH (2011).	Reject
Clauses 27–35 – Surrogacy provisions (General: Prohibit all forms)	Casablanca Declaration for the Universal Abolition of Surrogacy & co-signing international NGOs	Renounce any provision authorising or facilitating surrogacy, even under the guise of ethics or altruism, and explicitly exclude surrogacy from the scope of the law.	Ethical surrogacy does not exist. Surrogacy is always based on: contractual use of a woman's body; planned separation of child from birth mother; and transformation of pregnancy and child into objects of agreement. The UN Special Rapporteur on violence against women called on States to condemn	Reject

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			surrogacy in all its forms (A/80/158, October 2025).	
Clauses 27–35 – Surrogacy provisions (General: Prohibit all forms)	La Manif Pour Tous (France)	Adopt a law clearly prohibiting all forms of surrogacy. Effectively prosecute Kenyan nationals who engage in commercial surrogacy internationally. Initiate work within the East African Legislative Assembly to amend the 2021 Sexual and Reproductive Health Act by introducing a total ban.	Surrogacy constitutes reproductive exploitation and violence against women regardless of whether it is commercial, regulated," ethical" or "altruistic". Greece's regulated surrogacy model failed when the Mediterranean Fertility Institute scandal exposed exploitation of 169 vulnerable women. The UK's regulation has not curbed surrogacy but sent a message of tolerance, with 69% of British citizens seeking surrogacy abroad.	Reject
Clause 27(2) – Relinquishment of parental rights	International Coalition for the Abolition of Surrogate Motherhood (ICASM)	Oppose the requirement that the surrogate mother relinquish all parental rights at birth. The child will be deprived of knowledge of their origins if the surrogate is erased from any document.	A woman should not cease to be a mother when she gives birth. Separating a baby from its mother at birth causes significant emotional and physical distress. The woman who gives birth is universally recognised as the legal mother (mater semper certa est).	Reject
Clause 27(2) / 34 – Automatic transfer of parentage at birth	Not All Gays (Ireland)	Prohibit pre-birth/automatic transfers. If any transfer is contemplated, require a	Pre-assignment of parentage erases the legal motherhood of the woman who gives birth and forecloses post-birth judicial scrutiny. Where	Reject

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		post-birth court process after a cooling-off period with freely revocable consent and a best-interests assessment.	payment hinges on immediate surrender, the structure resembles a sale of a newborn.	
Clause 27(3) – No genetic connection / Relinquishment of parental rights	Center for Reproductive Rights (CRR)	Delete Clause 27(3).	This provision is unclear and appears to contradict Clause 27(2) and Clause 34. It suggests a court order would be required to transfer parental rights even where there is no genetic link between the surrogate and the child, or the intended parents and the child. Transfer of parental rights can be covered under Clause 27(2) and the surrogacy agreement.	Agree
Clause 27(3) – No genetic connection (Regulatory framework)	Kenya Obstetrical and Gynaecological Society (KOGS)	Amend to bring "no genetic link" surrogacy under strict regulatory and judicial oversight: "Where the surrogate mother or intended parents have no genetic connection with the child, such arrangements may be permitted subject to approval by the ART Committee, which shall oversee and regulate the	The current drafting acknowledges no-genetic-link surrogacy but fails to situate it within a structured ethical and regulatory framework. The amendment imposes strict conditions ensuring these exceptional arrangements are subject to regulatory and judicial oversight.	Reject: no genetic link surrogacy should be completely prohibited. Parties can utilize adoption instead.

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		process to ensure enforceable legal arrangements, informed consent, and safeguarding of the child's welfare."		
Section 27(3) – Surrogacy with no genetic link to intended parents	Winrose Njuguna, Advocate	Delete Section 27(3) and instead provide for a simplified legal process to confer parentage where intended parents are genetically linked to the child. Maintain the best interests of the child as the governing principle.	The clause introduces conceptual inconsistency with the Bill's definition of gestational surrogacy and raises concerns regarding the best interests of the child, identity, dignity, and protection against purely transactional arrangements resembling adoption without safeguards.	Agree
Clauses 27–30 – Surrogacy Framework	World Youth Alliance Africa	Reconsider and remove provisions permitting surrogacy. Surrogacy involves the contractual use of a woman's body and reproductive capacity. Pre-arranged separation of child from birth mother conflicts with the best interests principle.	The UN Special Rapporteur on violence against women (A/80/158) identified surrogacy as an emerging form of sex-based exploitation and called on States to reject surrogacy in all forms including altruistic surrogacy. Age and prior childbirth requirements do not eliminate economic pressure, family coercion, or unequal bargaining power.	Reject

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Clause 27 / Clause 18 – Age and Frequency Limits for Surrogates	Dr. Sarita Sukhija, MD, Director, Myra IVF and Medical Center, Nairobi	The surrogate should be between the ages of 25 and 38 years and should be permitted to undertake a maximum of 2 surrogacies.	A defined age range and strict frequency limit for surrogates is necessary to protect surrogate health and wellbeing. Limiting surrogacy to two arrangements reduces the physical and psychological burden on the surrogate and helps prevent exploitation.	Agree
Clause 28(a) – Eligibility: Kenyan citizenship	Kenya Obstetrical and Gynaecological Society (KOGS)	Amend to read: "(a) is a Kenyan or a lawful resident of Kenya. (b)The Committee may make regulations and prescribe safeguards for cross-border surrogacy arrangements to ensure compliance with Kenyan law."	Expanding eligibility to include lawful residents ensures that intended parents who live and work in Kenya, including non-Kenyan spouses of Kenyans, are not unfairly excluded. The qualification empowers the Committee to regulate cross-border surrogacy.	Agree
Clause 28(a) – Eligibility: Nationality restriction	Mugane Kaburi	Revise to permit access regardless of nationality. The restriction to Kenyan citizens raises questions about the right to health for non-citizens ordinarily resident in Kenya, as recognized in the Social Health Insurance Act, 2023.	The exclusion of foreigners from ART effectively bans fertility tourism but also excludes lawful residents. Comparative jurisdictions such as South Africa permit access for foreigners subject to oversight.	Reject

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Clause 28(b) – Eligibility: Minimum age of 25 years	Center for Reproductive Rights (CRR)	Amend to read: "(b) Is above 18 years and has the medical capacity to safely undergo assisted reproductive procedures, as determined by a qualified medical practitioner."	The clause introduces rigid age-based eligibility criteria that appear arbitrary and are not clearly grounded in medical evidence. ART access is ordinarily assessed on individual clinical basis, and fixed age limits risk unjustifiably restricting reproductive autonomy and amounting to indirect discrimination.	Agree
Clause 28(b) – Eligibility: Minimum age of 25 years	Kenya Obstetrical and Gynaecological Society (KOGS)	Lower the minimum age from 25 to 18 years, with safeguards: mandatory counselling on medical, ethical and social implications; informed written consent; and compliance with additional clinical or legal safeguards as prescribed.	Fertility potential declines with age, and younger patients experiencing early medical infertility (premature ovarian insufficiency, cancer treatments, congenital anomalies) may only have viable gametes at younger ages. Restricting access until 25 could deny these patients the opportunity for genetically related parenthood.	Agree
Clause 28(7) – Compensation of surrogates	International Coalition for the Abolition of Surrogate Motherhood (ICASM)	If the bill includes provision to regulate money allotted to surrogates, it should also regulate amounts paid to various stakeholders involved. "Reasonable expenses" constitute	The UN Special Rapporteur on violence against women and girls (2025) stated there is no meaningful distinction between commercial and altruistic models; 'altruistic' expenses constitute a commercial payment.	Reject

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		income and must be declared.		
Clause 28 – Intended Parents: Age Bracket	Commission on Revenue Allocation (CRA)	Recommendation: The rationale for the age bracket of 25–55 years for persons intending to use ART is unclear and should be removed or left open to avoid discrimination.	To align with freedom from non-discrimination as espoused under Article 27 of the Constitution. An arbitrary age restriction that is not clinically justified may amount to unjustifiable discrimination.	Agree a
Clause 28 – Intended Parents: Minimum Age Requirement	Law Society of Kenya (LSK)	Amend the minimum age requirement under Clause 28 from 25 years to 18 years.	The ideal minimum age for access to ART is 18, the age of legal adulthood in Kenya. The current 25-year threshold is arbitrary, discriminatory, and medically unjustified. It unjustifiably limits reproductive autonomy and the right to health under Article 43 of the Constitution. Safeguards for younger adults should rely on medical assessment, not an arbitrary age bar.	Agree
Clause 28 – Maximum Age Limit for Intended Parents Undergoing IVF	Dr. Sarita Sukhija, MD, Director, Myra IVF and Medical Center, Nairobi	A maximum age limit should be set for both the husband and wife who may undergo IVF treatment.	Prescribing an upper age limit for intended parents undergoing IVF is necessary on medical grounds to protect patient health and to ensure the welfare of any resulting child. Advanced parental age carries recognised clinical risks for both the patient and the child.	Reject

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Clause 28 – Access to ART Services by Foreign Nationals	Dr. Sarita Sukhija, MD, Director, Myra IVF and Medical Center, Nairobi	There should not be a blanket ban on foreign nationals accessing ART services in Kenya. Access may be restricted to married couples and single women.	A blanket prohibition on foreigners using ART services is overly restrictive and may adversely affect Kenya's medical tourism sector and the availability of specialised reproductive services. A proportionate approach — restricting access to married couples and single women — addresses legitimate policy concerns without an outright ban.	Reject
Clause 29(2) – Post-birth contact bans	Not All Gays (Ireland)	Declare any no-contact clause void and empower courts to order contact where consistent with the child's interests.	Contractual bans on the birth mother's contact with the child protect contract integrity, not child welfare. They intensify psychological harm for women and may undermine the infant's transition.	Agree
Section 29(1) – Lochia leave alignment with labour law	Winrose Njuguna, Advocate	Amend Section 29 of the Employment Act CAP 226 to include lochia leave for surrogate mothers (3 months with full pay), maternity leave for intended mothers (3 months with full pay), and paternity leave for intended fathers (2 weeks with full pay).	The provision introduces lochia leave for surrogates while reaffirming maternity and paternity leave for intended parents. However, this entitlement is not reflected in the Employment Act, creating misalignment with existing labour law.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Clause 30	Ministry of Health (MOH)	The provisions on surrogacy agreement are too prescriptive and yet such agreements are made between two consenting adults and without vitiating factors.	Issues such as prohibitions of smoking, among other would best be addressed in the surrogacy agreement itself rather than being prescribed in law.	Agree
Clause 30 – Transfer of legal parentage (post-birth consent)	Strathmore Institute for Family Studies & Ethics	The law should provide for an appropriate procedure requiring the surrogate mother, post birth, to freely confirm or revoke her consent that the intended parent(s) have exclusive legal parentage. She should provide consent without financial consequences.	The premise that the child is automatically the child of the intending parent(s) is flawed and undermines the surrogate mother's welfare. This aligns with the Verona Principles (2021), para. 10.5, and is in line with the UN Human Rights Council Special Rapporteur's Report (2018).	Reject
Clause 30(3)(j) – Genetic link requirement for surrogacy (New addition)	Ayieta R. Lumbasyo, Advocate / Fertility Law Centre	Add requirement: the conception of the child shall be effected by use of gametes of both commissioning parties or, if not possible, at least one commissioning parent, or in case of a single person, their gamete.	Genetic link avoids "creation" of children with no genetic links and no genetic parents. Gestational surrogacy is fertility treatment for those with uterine problems. Those with no genetic link can adopt instead. Prevents child trafficking.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Clause 30(3) – Validity of surrogacy agreement: Insurance	Center for Reproductive Rights (CRR)	Amend to include insurance as a requirement for validity: "(j) the intended parent or parents have taken out an appropriate insurance policy to cover the surrogate becoming ill, such insurance policy to cover all illnesses or attendant conditions either physical or psychosocial that may be related to the surrogacy process, with protection starting no later than the first procedure and ending five years after birth."	Ensures the insurance cover for the surrogate's medical expenses is made part of the surrogacy agreement and therefore enforceable. Stipulates what the policy should cover, ensuring appropriate insurance for all illnesses or conditions arising from pregnancy and birth.	Agree
Clause 30(3)(b) – Surrogacy agreement validity	Protecting Life Movement Trust (PLMT)	Should capture "by Kenyans" to avoid foreigners coming to have surrogacy and opening a door for international human trafficking. Limit surrogacy to once. Cap compensation amounts. Outlaw non-Kenyan intended parents.	Prevents commercialisation of surrogacy and international human trafficking. Foreigners should be barred from using Kenyan surrogates.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Clause 30(5) – Pre-approval checks by Council	Kenya Obstetrical and Gynaecological Society (KOGS)	Delete Clause 30(5) in its entirety.	The clause introduces significant procedural bottlenecks through subjective pre-approvals without clear standards, creating delays and uncertainty. Regulatory objectives are better achieved through licensing, professional standards, contractual safeguards and insurance regulation.	Agree
Section 30(5)(c) – Insurance cover duration	Winrose Njuguna, Advocate	Amend to provide that insurance coverage ends five years after birth unless the surrogate enters into another surrogacy arrangement within that period, in which case the new intended parents take out a new policy discharging any prior overlap.	Requiring insurance coverage for five years post-birth is inconsistent with the Act's allowance for a surrogate to enter a new arrangement after two years, creating ambiguity on coverage overlap.	Agree
Clause 30(6) – Court applications on surrogacy matters	Center for Reproductive Rights (CRR)	Amend to include a sub-clause (c): "(c) The enforcement of any provisions of the surrogacy agreement."	Ensures the surrogate can initiate court action to compel performance of obligations, particularly regarding payment of medical expenses and provision of medical cover.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Clause 30(6) – Court applications: Standing	Kenya Obstetrical and Gynaecological Society (KOGS)	Replace "A person" with "The parties involved".	Aligns with principles of legal standing and privity of contract, and prevents speculative or third-party litigation.	Agree
Clause 30(6) – Child not a legal dependent of surrogate	Not All Gays (Ireland)	Do not pre-emptively strip default parentage. Impose strict, joint and several liability on commissioning adults from embryo transfer onward, backed by escrowed funds and criminal penalties for abandonment.	If commissioning adults abandon the child (e.g., due to disability or multiples), no adult holds parental responsibility, leaving hospitals and the State to assume urgent care.	Reject
Clause 31 – Agencies	Enricah Dulo, Adv. (Legal Expert on Transfer of Parental Rights)	The Bill should provide for the licensing and regulation of Agencies rather than banning them outright. Agencies play a critical role as the link between fertility clinics, surrogates, advocates and intended parents.	Agencies offer critical services including accompanying surrogates to appointments where IPs cannot. Some agents are medical professionals with clinical expertise. Failing to license may lead to underground mushrooming of more agencies with zero regulatory framework and no protection for surrogates.	Agree
Section 31(1) – Criminalisation of surrogacy agencies	Winrose Njuguna, Advocate	Redraft section 31(1) to permit licensed surrogacy agencies to coordinate arrangements while retaining the prohibition	Surrogacy agencies serve as professional intermediaries between surrogates and intended parents, and between surrogates and ART clinics. A blanket prohibition would	Agree: the agencies should be tied to the assisted reproductive health clinics

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		against unlicensed or exploitative commercial activity.	be counterproductive, resulting in operational chaos and increasing risks of unregulated or informal arrangements.	
Clauses 30–31 – Agency Accountability for Embryos	Dr. Sarita Sukhija, MD, Director, Myra IVF and Medical Center, Nairobi	Where embryos are brought to a clinic by an agency, the agency should be held accountable for those embryos, not the clinic.	A clinic that receives embryos from an agency is not in a position to verify the provenance or chain of custody of those embryos. Placing liability on the agency — which procured and handled the embryos — allocates responsibility appropriately and incentivises proper handling and record-keeping by intermediaries.	Reject
Clause 32	Ministry of Health (MOH)	Subsection (1) lists prohibited commercial activities, including running a "racket" or "organised group" – terms that are vague and unprofessional in legislation.	Replace with clear prohibitions on: a) operating an unregistered surrogacy organization; b) advertising commercial surrogacy; c) selling embryos or gametes for surrogacy; and d) importing embryos for commercial surrogacy.	Agree
Clause 32 – Altruistic surrogacy	Strathmore Institute for Family Studies & Ethics	Even "altruistic" surrogacy fails to eliminate inherent exploitation and objectification.	Surrogacy offends the dignity of the woman by separating her from the child she carries and reducing her to a means for the desires of others.	Reject

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Clause 32(1)(f) – Importation of embryos/gametes for surrogacy	Kenya Obstetrical and Gynaecological Society (KOGS)	Insert a proviso to allow importation for Kenyans living abroad who have lawfully created embryos or gametes in their countries of residence but wish to undertake surrogacy in Kenya. Importation must be approved by the Council.	A blanket prohibition fails to account for Kenyans living abroad who may already have lawfully created embryos or gametes in their countries of residence and would need to transport them to Kenya for surrogacy.	Agree
Section 32(1)(c) – Broad duty on non-parental actors	Winrose Njuguna, Advocate	Redraft the provision to clearly identify duty bearers and the nature of prohibited conduct, ensuring alignment with principles of legality and proportionality and legal parentage frameworks.	The clause imposes a broad duty on all persons, organisations, clinics and laboratories not to "abandon, disown or exploit" children born through surrogacy. This creates overlapping and ambiguous responsibilities for entities that have no parental role. Section 34 correctly places parental responsibility on intended parents.	Agree
Section 32(1)(f) – Ban on importing embryos/gametes	Winrose Njuguna, Advocate	Introduce a narrowly tailored exception permitting importation subject to regulatory approval, traceability, and compliance with Kenyan law, where the embryos or gametes are the biological tissue of a Kenyan citizen.	The absolute prohibition fails to account for Kenyans living abroad who may already have lawfully created embryos or gametes and meet eligibility requirements under Section 28.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Clause 33(1)(b) and (c) – Termination of surrogacy agreement	Kenya Obstetrical and Gynaecological Society (KOGS)	For (b), delete "a fertilized" and add "an": "before the transfer of an embryo". For (c), delete "the fertilized" and add "an": "before an embryo is implanted".	An embryo is an already fertilised and developing egg. These amendments correct a technical inaccuracy.	Agree
Clause 34 (3) (b)	Ministry of Health (MOH)	Clause 34(3)(b) should be deleted. The clause makes provision for the use of assisted reproduction technology services and surrogacy services where there is no genetic link between an intended parent or	The Bill should not permit the use of assisted reproduction technology services and surrogacy services where none of the intended parents are related to the child to be born. Genetic link is vital in ensuring the best interests of the child gametes or embryos, as the case may be. Requiring a genetic connection between the child and the intended parents protect Kenyans against coercion, human trafficking, and commercial abuse of economically vulnerable women.	Agree
Clause 34(3)(b) – No genetic connection parentage	Kenya Obstetrical and Gynaecological Society (KOGS)	Delete in entirety.	Permits surrogacy arrangements in which the child has no genetic link to either the surrogate or the intended parents, creating legal ambiguity around parentage, inheritance, citizenship and identity rights. Deleting safeguards the best interests of the child.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Clause 34(4)(a) – Surrogate compensation	Kenya Obstetrical and Gynaecological Society (KOGS)	Replace "in-vitro fertilization" with "embryo transfer".	What surrogates undergo is preparatory clinical procedures before embryo transfer. This ensures medical accuracy and prevents misinterpretation of compensable procedures.	
Clause 34/35 – Parental Orders (Insert new section)	Ayieta R. Lumbasyo, Advocate / Fertility Law Centre	Insert new section for Parental Orders: Court may make an order providing for a child to be treated as the child of the applicants if gametes of at least one applicant were used, genetic link can be proved by DNA, a surrogacy agreement is in place, the surrogate consents freely, and no money beyond expenses has been exchanged.	Provides for legal registration of children born via gestational surrogacy. Adheres to international protocols on surrogacy and child trafficking. A legal process protects all parties including the child. Kenya falls under tier 3 of child trafficking.	Agree: this ca n be tied to the rights under the Children Act
Clause 34 – Compensation for surrogates (General)	Mugane Kaburi	Amend provisions to allow fair compensation for surrogate mothers reflecting the physical, emotional, and economic burdens of surrogacy, while preventing exploitation. Mandate independent counselling,	The prohibition of compensation beyond expenses is problematic. Surrogacy involves significant physical, emotional, and social burdens, and the lack of fair compensation may lead to covert payments, exploitation, or coercion, especially among economically disadvantaged women.	Reject

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		legal advice, and ongoing support. Model Clause: "A surrogate mother shall be entitled to fair compensation including medical expenses, loss of earnings, and reasonable remuneration for physical and emotional labor."		
Clause 34 / Surrogacy – Insurance and Minimum Compensation for Surrogates	Dr. Sarita Sukhija, MD, Director, Myra IVF and Medical Center, Nairobi	There should be a mandatory insurance cover policy for surrogates and a minimum compensation amount should be fixed by regulation to avoid exploitation by agencies.	Without statutory minimum standards for insurance and compensation, surrogates are vulnerable to exploitation by intermediary agencies. Mandatory insurance provides financial protection in the event of medical complications, while a regulated minimum amount ensures fair and transparent treatment.	Agree
Clauses 34 –35 – Donor-conceived disclosure	Not All Gays (Ireland)	Establish a Central Origins Register ensuring on-demand access to non-identifying data from birth and earlier access to identifying data for identity, medical, and kinship reasons – not merely consanguinity.	Limiting disclosure to a late-life check to avoid marrying a sibling denies broader identity rights and medical-history access. Children should be informed of circumstances of their birth by age seven.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Clause 35 – Sex determination (Amend)	Ayieta R. Lumbasyo, Advocate / Fertility Law Centre	Rephrase to: "A person shall not do any act, at any stage of embryo development, to determine the sex of the child except on medical grounds to determine, diagnose and prevent genetic/hereditary sex-linked disorder or disease. This does not restrict sperm sorting before fertilization."	Curbs sex selection for "social" purposes which are veiled infanticide. Recognises the need for sex selection on medical grounds for hereditary and sex-linked diseases. Sperm sorting before fertilization prevents creation of extra unwanted embryos possessing sex-linked diseases.	Agree
Clause 35 – Prohibition on sex determination	Center for Reproductive Rights (CRR)	Delete the phrase "determine the sex of the child" and replace with "select the sex of the fetus".	Strictly interpreted, the current provision would prohibit anything that reveals the sex of the fetus, including routine scans necessary for pregnancy care. The intention is to prohibit selection of sex, not determination.	Reject
Clause 35 – Prohibition on sex determination (Medical exception)	Kenya Obstetrical and Gynaecological Society (KOGS)	Retain prohibition but introduce a narrowly defined medical exception: "except where sex determination is clinically necessary to prevent or manage a serious sex-linked genetic or heritable disorder, and is carried out in accordance with prescribed medical	The prohibition appropriately prevents social or non-medical sex selection. However, a narrowly framed exception is required to permit sex determination where clinically necessary, such as to avoid sex-linked genetic disordaers.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		standards, regulatory approval, and documented informed consent."		
Clauses 38–42 – Child's right to identity and genetic origins	Strathmore Institute for Family Studies & Ethics	Strengthen the child's right to identity, including access to genetic origins at maturity.	The child's right to identity and genetic origins is inadequately protected in donor conception contexts.	Agree: this can be achieved through banning of no-genetic link surrogacy
Clause 38(1) – Register (Replace "Council" with "Committee")	Kenya Obstetrical and Gynaecological Society (KOGS)	Replace "Council" with "Committee" to align with the governance structure under Part II.	Ensures consisatency with the regulatory structure established under the Act.	Agree
Clause 38(3) – Record retention by Council	Kenya Obstetrical and Gynaecological Society (KOGS)	Delete Clause 38(3) in its entirety.	Primary medical records should be retained by licensed ART facilities under defined professional and data-protection standards. The regulator's role should be limited to oversight, audits and anonymised data, avoiding unnecessary centralisation of sensitive patient records.	Agree
Clause 38(4) – Document preservation ("surrogacy clinic" terminology)	Kenya Obstetrical and Gynaecological Society (KOGS)	Replace "surrogacy clinic" with "fertility clinic".	Surrogacy is just one component of ART services delivered through licensed fertility clinics. Ensures terminology consistency and avoids creation of artificial or fragmented categories of regulated facilities.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Clause 39	Ministry of Health (MOH)	The availing information to any person who has attained the age of eighteen on whether they were conceived through assisted reproduction may contravene the right to privacy of a donor especially where the latter made an anonymous donation.	The right to access to information vis-the right to privacy needs to be properly balanced so as to not only ensure the best interests of the child but also enhance access to assisted reproduction services. Therefore, any information disclosed should be strictly limited to confirming whether a person was conceived through assisted reproductive technology, without divulging any details relating to the donor.	Reject
Clause 39 – Access to origin information by adults	Kenya Obstetrical and Gynaecological Society (KOGS)	Delete Clause 39 in its entirety.	These provisions create a statutory right to access deeply personal origin and consanguinity information, shifting a parental responsibility to the State. Where concerns about genetic relatedness arise, voluntary DNA testing provides a more accurate, proportionate and privacy-respecting mechanism than State-mediated disclosure.	Reject
Clause 40 – Access to information by minors	Center for Reproductive Rights (CRR)	Amend to allow a child, in certain circumstances, access to information from the Council. Delete the phrase "through a legal guardian".	Takes into account the evolving capacities of the child, particularly where the child is of sufficient maturity to receive and understand the information. Recognizes the right of a child born through	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		Provision to read: "The Council may provide information to a minor where it is satisfied that the child is of sufficient maturity to understand the information and its implications."	surrogacy to know the identity of their birth parents. Aligns with the FIGO position statement on surrogacy.	
Clause 40 – Access to information by minors	Kenya Obstetrical and Gynaecological Society (KOGS)	Replace "Council" with "Committee" and delete sub-clause 40(2)(a) in its entirety.	Medical necessity is already addressed under Section 40(1). State-mediated disclosure of conception history to minors raises privacy, consent and child-welfare concerns, making this provision unnecessary and intrusive.	Agree
Clause 48	Ministry of Health (MOH)	The clause provides that after the expiry of ten years, gametes or embryos will be allowed to perish where they remain unused. This raises a serious policy concern in terms of the destruction of embryos which are already viable for implantation. The Bill further does not set out clearly how this aspect of perishing will be	Some jurisdictions make provision for the donation of embryos for research for therapeutic purposes. This is because destruction of embryos raises morality concerns in relation to the sanctity of human life.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		effected? Will it be through destruction?		
Clause 48(2)(a) – Embryo storage licence	Kenya Obstetrical and Gynaecological Society (KOGS)	Replace "person" with "clinic".	Embryos are created, handled, stored and transferred within licensed clinical environments, not by individuals. Reflects clinical reality and strengthens regulatory control.	Agree
Clause 48(2)(d) – Priority for untransferred embryos	Kenya Obstetrical and Gynaecological Society (KOGS)	Delete sub-clause (d) entirely.	Automatic "priority" is clinically inappropriate as embryo transfer decisions depend on medical readiness, consent and updated clinical assessment. The clause risks creating an entitlement inconsistent with patient autonomy and clinical judgment.	Agree
Clause 48(2)(e) – Statutory storage period for embryos	Kenya Obstetrical and Gynaecological Society (KOGS)	Align with amended Section 20(1)(a) by cross-reference: "No embryos shall be kept in storage for longer than the statutory storage period provided under section 20(1)(a)."	Consistency across the Act ensures clarity on storage duration and lawful extensions, avoiding conflicting statutory timelines.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
Clause 45 – Application for a Licence	Commission on Revenue Allocation (CRA)	Recommendations: (i) Prescribe a form for application under this provision, given the sensitivity and conditionalities of the ART process; (ii) Specify the duration of any licence granted under Clause 45(3).	For clarity and ease of implementation. A prescribed application form and clear licence duration period are necessary to ensure consistent and transparent administration of the licensing process.	Agree
Clause 49 – Grant of Licence	Commission on Revenue Allocation (CRA)	Recommendations: (i) Indicate the timeline within which the Council will act on an application for a licence; (ii) Under Clause 49(6), substitute the phrase "costs of performing all its functions" with "cost of offering the licensing service".	For clarity and to avoid overpricing of services. User fees should generally be proportional to the cost-of-service provision, not to the Council's overall operating costs.	Agree
Clause 50	Ministry of Health (MOH)	The use of the term "Supervisor" is vague. The Bill already defines and	For clarity, the terms "cryobank" and "assisted reproduction	Agree a

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		uses the terms "cryobank" and assisted reproduction technology clinic.	technology clinic" should be used in the Bill.	
Clause 51 – Revocation of Licence	Commission on Revenue Allocation (CRA)	Recommendation: Add a sub-clause requiring that revocation of a licence must be communicated with reasons and in writing.	To align with the rules of natural justice. An affected licensee has a right to know the grounds for revocation in order to exercise any right of appeal or review.	Agree
Clause 52 – Application to the Cabinet Secretary for Review	Commission on Revenue Allocation (CRA)	Recommendation: Under Clause 52(1)(b), add the phrase "within 21 days" immediately after the word "determination" to read: "the Cabinet Secretary may make such determination as they deem fit within 21 days".	To ensure feedback within a specific period of time on the review. An applicant should not be left in indefinite uncertainty following a request for review.	Agree
Section 56 – General penalty clause	Winrose Njuguna, Advocate	Option 1: Delete section 56 entirely since all offences have specific penalties. Option 2: Redraft as a residual clause applicable only in the event of inadvertent omission.	The general penalty clause creates legal uncertainty and legislative redundancy. All identified offences already carry specific penalties. Risks violating the principle of legality and transferring excessive discretion to enforcement authorities.	Reject
Clause 56 – General Penalty Clause	Law Society of Kenya (LSK)	Delete the general penalty clause in Clause 56.	The principle of legality and legal certainty requires that offences and their corresponding penalties be	Reject

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
			clear, precise, and unambiguous. A general penalty clause offends these principles. The Bill addresses serious offences that demand heightened precision. A general penalty clause introduces excessive judicial discretion, increasing the risk of arbitrariness or inconsistency. It would also be inconsequential given that the Bill already prescribes specific penalties for each offence.	
Section 58 – Regulation-making power	Winrose Njuguna, Advocate	Amend section 58(1) to require ("shall" instead of "may") the Cabinet Secretary to make regulations within a defined timeframe, in consultation with the Council and key stakeholders.	Regulation-making power is permissive rather than mandatory. Given the technical and ethical complexity of ART, leaving regulation-making to discretion may undermine the effectiveness of the Act. Without regulations, primary legislation may be insufficient to operationalise key provisions safely.	Agree
Clause 58 (1)	Ministry of Health (MOH)	Some of the issues that are to be provided for in subsidiary legislation are too substantive and need to be addressed in the substantive provisions of the Bill. These include the eligibility of donors, the	Best practice dictates that substantive issues are best addressed in a primary law.	Agree a

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		rights of donors, surrogates and child born through assisted reproduction.		
Clause 58 (2)	Ministry of Health (MOH)	The requirement that the power to make regulations can only be exercised after a draft of proposed regulations has been approved by Parliament may adversely affect access to the reproductive healthcare services. Further, the Statutory Instruments Act clearly lays out the procedure for the development of such Regulations, including the stage at which Parliament is to be engaged i.e., at the tabling stage, following publication of the Regulations.	Assisted reproduction services, just like other healthcare services are provided as part of the routine healthcare services. Development of regulations to give effect to the procedural aspects in relation to assisted reproduction services do not need to be subjected to affirmative resolution.	Agree a
Clause 58 – Regulation-Making Power	Law Society of Kenya (LSK)	Amend Clause 58 to replace the word "may" with "shall" in the regulation-making provision.	The Bill is highly technical and ethically sensitive. Operational, procedural, and compliance details cannot be addressed in primary legislation alone, making regulations essential. The use of "may" renders the regulation-making power discretionary, risking	Agree a

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
			a regulatory vacuum. Replacing it with "shall" imposes a mandatory obligation to make regulations for effective implementation.	
Births and Deaths Registration Act – Consequential Amendment	The Cradle, The Children Foundation	Amend the Births and Deaths Registration Act to: (a) Create definitions for "intended parents", "surrogate-born child", and "surrogate mother"; (b) Amend Section 12 to allow registration of father upon presentation of a surrogacy agreement; (c) Insert new clause requiring registrar to enter intended parents' names upon issuing of a valid surrogacy agreement verified by the Directorate.	Aligns statutory frameworks ensuring consistency between the ART Act and Births Registration Act. Protects children's rights under Article 53 of the Constitution. Provides administrative clarity for registrars, reducing disputes. Prevents legal gaps that could disadvantage surrogate-born children.	
General Comments	Ministry of Health (MOH)	The Bill only provides for licensing of assisted reproductive technology clinics however it is silent on the modalities of registration to operate such clinics.	The Bill proceeds on the assumption that all assisted reproductive technology clinics are health facilities. Some assisted reproductive technology clinics operate as stand-alone clinics that solely offer assisted reproduction services and surrogacy services. The Bill therefore needs to provide	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
			the modalities for both their registration and licensing.	
General Comments	Ministry of Health (MOH)	Although the Bill defines the term "abandoned child" and prohibits the abandonment of children born through assisted reproduction services, it does not provide what would happen to an abandoned child or abandoned gamete or embryo.	The Bill makes provision for the surrogate and parents in terms of offence and penalty however there are no provisions as to the care and protection of the abandoned child. Abandonment of a child born through assisted reproduction services as well as of gametes or embryos is a major issue that requires proper safeguards in law. This includes the actions that can be taken to protect abandoned children since these children are special especially where there is a conflict between the intended parent and the surrogate mother.	Agree a
General – Privacy, Data Protection, and Registry	Mugane Kaburi	Mandate compliance with the Data Protection Act, 2019. Specify data protection standards, retention periods, procedures for correcting or deleting inaccurate information, and provide for independent oversight of the registry.	The Bill does not reference the Data Protection Act, 2019 or provide for independent oversight of the registry. Comparative jurisdictions mandate strict data protection and regular audits of ART registries.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
General – Embryologist Qualifications	Timothy Mugo Gakaria (Junior Embryologist)	The ART Bill should explicitly define an embryologist based on formal academic training, structured clinical embryology education, and verified competence. Adopt qualification standards modeled on India's ART Regulation Rules (2022): MSc in Clinical Embryology + 3 years' experience; PhD in Embryology + 1 year experience; MBBS/BVSc + PG in Clinical Embryology + 2 years; or PG in Life Sciences + 1 year formal training + 4 years' experience.	Prevents unsafe practice, misclassification, and regulatory ambiguity. Ensures competence, patient safety, and professional credibility.	Agree
General – Transitional Provision for Current Practitioners	Timothy Mugo Gakaria (Junior Embryologist)	Embryologists already practising in Kenya at enactment shall continue under existing qualifications, subject to formal registration. Eligibility requires: relevant degree, at least 3 months of formal ART training, minimum 2 years' hands-on experience, and	Ensures continuity of services while maintaining professional standards and patient safety.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		documented participation in at least 40 embryo cryopreservation cycles.		
General – Compensation Framework for Embryologists	Timothy Mugo Gakaria (Junior Embryologist)	The ART Bill should establish a lower cap on embryologist compensation for both local and foreign practitioners to prevent overcharging and unfair fee structures.	Compensation levels should reflect market standards, technical expertise, and patient safety considerations, while ensuring affordable access to ART services.	Reject
General – Insurance, Affordability and Access	Mugane Kaburi	Include ART services in the essential benefits package under the Social Health Insurance Act, 2023, and provide subsidies or public funding for low-income individuals. Mandate insurance coverage for all ART participants.	The high cost of ART procedures creates significant barriers to access, perpetuating inequality and limiting reproductive choices for ordinary Kenyans. The Social Health Insurance Act, 2023 establishes universal health coverage, but it is unclear whether ART services are included.	Agree
General – Enforcement, Penalties, and Dispute Resolution	Mugane Kaburi	Establish independent tribunals, mediation, and alternative dispute resolution mechanisms for ART-related disputes. Ensure penalties are proportionate, rights-	The Bill's enforcement mechanisms are punitive but lack independent oversight and alternative procedures. Comparative jurisdictions provide for judicial oversight, mediation, and specialized tribunals.	Reject

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		based, and subject to judicial review.		
General – Qualification of staff in ART (Embryologist)	Emma Sila, MSc Clinical Embryology	Clinics shall hire embryologists only with the following qualifications: (i) post-graduate in clinical embryology (full-time, minimum 4 semesters) + 3 years ART lab experience; (ii) PhD in Clinical Embryology/ART + 1 year ART lab experience; (iii) Medical graduate (MBBS) or Veterinary graduate (BVSc) + PG in Clinical Embryology + 2 years ART lab experience; or (iv) PG in life sciences/biotechnology + 1 year full-time clinical embryology training + 4 years ART experience in a registered Level 2 clinic.	Borrowed from best practice in India's ART bill. Ensures that embryologists possess adequate training before handling human gametes and embryos. Prevents unsafe practice and regulatory ambiguity.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
General – ART Clinic Staffing Requirements	Emma Sila, MSc Clinical Embryology	ART clinics shall have a minimum of one gynaecologist, one anaesthetist, one embryologist and one counsellor. All ART clinics should display a certificate of an Embryologist.	Based on India's ART bill staffing requirements. Ensures minimum staffing standards for patient safety.	Agree
General – Creation of Embryologist Board or Council	Emma Sila, MSc Clinical Embryology	Recommend creation of an Embryologist Board or Council responsible for: (1) Certification and licensing of embryologists; (2) Standard setting and regulation including practice guidelines and code of ethics; (3) Oversight and quality assurance including laboratory accreditation, CPD requirements, and disciplinary action; (4) Advocacy and research including policy influence and research licensing.	An Embryologist Board or Council serves as the regulatory and professional governing body for clinical embryologists, ensuring safe, ethical, and high-quality operation of ART laboratories. Similar bodies exist in the UK (HFEA, HCPC) and other jurisdictions.	Reject

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
General – Separate legal system for ART and Surrogacy	Enricah Dulo, Adv. (Legal Expert on Transfer of Parental Rights)	Separate ART and Surrogacy into two distinct legislative instruments. Whereas all surrogacy cases have an element of ART, not all ART cases involve third party reproduction.	Countries that have legislated on both (South Africa, India, Israel, UK) have separate legislations treating ART and surrogacy as separate and distinct legal issues.	Reject
General – Foreigners / Ban on foreign intended parents	Enricah Dulo, Adv. (Legal Expert on Transfer of Parental Rights)	Remove the ban on foreigners. Instead, impose stricter legal provisions if the mischief behind the ban is to deter gay men from using Kenya as a destination country for ART/surrogacy services, by invoking constitutional provisions and citing the same in the Bill.	The ban can be addressed by invoking the Constitution of Kenya and Children Act, Cap. 141 provisions. Once such a provision is legislated, any gay person previously interested will be made aware of what the law provides.	Reject
General – Legal Process for Transfer of Parental Rights	Enricah Dulo, Adv. (Legal Expert on Transfer of Parental Rights)	Support the need for a legal process for the transfer of parental rights from the surrogate to the intended parent(s). One requirement should be a record of genetic link with one or both IPs. The process should be simplified.	Kenya is a source, transit and destination country for human trafficking. Without a legal process requiring genetic link, there is risk of human trafficking. IPs who are not residents cannot exit Kenya with the child without a court order transferring parental rights.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
General – Legal and Policy Framework	Horn of Africa Youth Network (HoAYN)	Explicitly recognise ART services as an integral component of the right to health under Article 43. Include a clear non-discrimination provision guaranteeing equitable access irrespective of marital status, disability, socio-economic position, or geographic location. Harmonise the Bill with the Children Act (2022), Mental Health Act (2022), and Data Protection Act (2019).	ART services should be situated within Kenya's broader reproductive and public health obligations. Alignment with Article 27 of the Constitution, CEDAW, and SDGs 3 and 5 is required. Harmonisation ensures coherence in implementation and protection of rights across health, family, and child welfare sectors.	Agree
General – Ethical Governance and Protection Against Exploitation	Horn of Africa Youth Network (HoAYN)	Introduce stringent consent, eligibility, and compensation guidelines for surrogates. Mandate psychosocial screening and access to continuous mental health and psychosocial support (MHPSS) for surrogates, donors, and commissioning parents.	In contexts of economic inequality, unregulated "altruistic" surrogacy may still amount to indirect exploitation. Consistent with Article 28 of the Constitution, Article 14 of the Maputo Protocol, CEDAW General Recommendation No. 24, and the Mental Health Act (2022).	Agree
General – Institutional Oversight and Accountability	Horn of Africa Youth Network (HoAYN)	Strengthen the independence and accountability of the	Clear reporting obligations and parliamentary oversight are needed in accordance with Article 10 on	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		proposed ART regulatory authority. Establish a centralised, confidential national ART registry compliant with the Data Protection Act (2019). Recommend routine audits, inspections, and enforceable sanctions for non-compliant facilities.	transparency and accountability. The Health Act (2017) supports enforceable sanctions for malpractice.	
General – Access, Equity, and Public Health	Horn of Africa Youth Network (HoAYN)	Progressively explore mechanisms for subsidisation or partial financing of ART services through public health financing frameworks, including the Social Health Insurance Fund (SHIF). Invest in public health facilities to build institutional capacity for ART services.	ART services remain predominantly privatised and inaccessible to low-income individuals, young people, and rural populations, reinforcing health inequities contrary to Article 43 and SDG 10. Reproductive health innovations should not remain the preserve of economic privilege.	Agree
General – Rights and Welfare of Children Born Through ART	Horn of Africa Youth Network (HoAYN)	Ensure children born through ART enjoy equal legal status and identity rights. Include safeguards protecting the child's right to identity and information regarding genetic origins. Address risks of	Children born through ART must enjoy equal protection under Article 53 of the Constitution and the Children Act (2022). The African Charter on the Rights and Welfare of the Child guides age-appropriate disclosure and best interests of the child.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		statelessness, legal parentage disputes, and cross-border ART arrangements.		
General – National ART Registry for Gamete Donors	Eugine Shimoka, Clinical Embryologist	All oocytes and embryos must be registered with a unique national identifier. Records to include: origin, consent status, storage location, usage, and disposal. Registry access limited but auditable by regulators.	There is a risk that embryos or oocytes from a patient's treatment cycle may be retained without knowledge, reallocated as "donor embryos", or withheld while patients are falsely informed no viable embryos remain. Such acts constitute biological theft, medical fraud, and gross ethical violations.	Agree
General – Dual-Consent and Dual-Witness Embryo Handling	Eugine Shimoka, Clinical Embryologist	Any embryo freezing, transfer, donation, or discard must require written patient consent and independent witnessing by two licensed professionals. Severe penalties for undocumented embryo movement.	Patients depend entirely on embryology reports they cannot independently verify. Without safeguards, records may be altered or selectively disclosed to conceal embryo retention or diversion.	Agree
General – Independent Patient Embryo Audits	Eugine Shimoka, Clinical Embryologist	Patients must have a legal right to request an independent embryology audit, conducted by accredited third-party embryologists. Audit	Some facilities may avoid ethical donor recruitment costs by illegally repurposing patient embryos or misrepresenting embryo origin to recipients. This undermines	Agree

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		results provided directly to patients and regulators.	informed consent and risks genetic, legal, and psychological harm.	
General – Regulation of Donor Embryo Programs	Eugine Shimoka, Clinical Embryologist	Proof of donor recruitment, screening, and consent must be documented. Absolute prohibition of converting patient embryos into donor embryos. Criminal liability for misrepresentation of embryo origin.	Protects against abuse of donor programs where facilities may repurpose patient embryos and misrepresent their origin to recipients.	Agree
General – Licensing of Foreign ART Practitioners	Eugine Shimoka, Clinical Embryologist	Mandatory registration of foreign practitioners with Kenyan regulatory bodies. Disclosure of prior practice locations and disciplinary history. Joint liability between facility and practitioner for violations.	Foreign gynaecologists and embryologists may operate without proper Kenyan registration, evade accountability by moving between facilities or countries, and exploit weak enforcement of ART regulations.	Agree
General – Whistleblower Protection in ART Settings	Eugine Shimoka, Clinical Embryologist	Legal protection for staff reporting unethical practices. Invalidity of confidentiality clauses that conceal patient harm. Anonymous reporting channels under the Ministry of Health.	Any system that allows secrecy, unaccountable power, and silencing of junior professionals inevitably places patients at risk. Whistleblower protections are essential to deter malpractice.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
General – Total Ban on Surrogacy	International Coalition for the Abolition of Surrogate Motherhood (ICASM)	Implement a total ban on surrogacy in line with international human rights standards. The Bill would further normalise surrogacy rather than preventing the exploitation of women and children.	Surrogacy violates women's rights (treats pregnancy as a detachable service), violates children's rights (pre-programmed abandonment, commodification), and constitutes a form of human trafficking under the Palermo Protocol. UNICEF (2022): "A contract where the transfer of a child is a precondition of payment is a form of child trafficking."b	Reject
General – Total Prohibition of Surrogacy	Not All Gays (Ireland)	Remove all provisions that recognise, authorise, or facilitate surrogacy in the ART Bill. Void all surrogacy contracts as against public policy; criminalise brokerage, advertising, and facilitation. Restrict ART to therapeutic infertility care that does not entail contracting for pregnancy and transfer at birth.	Surrogacy structurally exploits women, commodifies children, and deliberately engineers separation at birth. These are core features of the surrogacy model, not incidental risks that regulation can cure. International experience shows heightened medical and psychosocial harms to women, and identity and attachment harms to children.	Reject a
General Comments	Commission on Revenue Allocation (CRA)	General Recommendations: (1) Standardise all instances of "informed consent" in the Bill to require written consent for consistency, given the sensitivity of the	For consistency, clarity, and modern legislative drafting practice. Inconsistent consent standards and repetitive or poorly worded provisions undermine legal certainty and ease of implementation.	Agree

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	JUSTIFICATION/RATIONALE	COMMITTEE OBSERVATIONS AND RECOMMENDATIONS
		subject matter. (2) Eliminate repetitive offence provisions, e.g., aspects of Clause 15 vis-à-vis Clause 16. (3) Clean up editorial issues throughout the Bill, including substituting "wishing" with "wishes" in Clauses 48 and 30, and replacing gender-specific words with gender-neutral terms.		
General – Responsibility for Externally Procured Gametes	Dr. Sarita Sukhija, MD, Director, Myra IVF and Medical Center, Nairobi	For semen samples or eggs procured from outside banks by an individual on their own initiative, that individual should bear personal responsibility for the material procured.	Where a person independently procures gametes from an external source without going through a licensed clinic or regulated agency, it is appropriate for that person to bear the legal and regulatory responsibility for the material. This prevents clinics from bearing liability for materials they did not procure or verify.	Reject