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REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT

THE SENATE

STANDING COMMITTEE ON HEALTH

PAPERS LAID
DATE 2/4/2026
TABLED BY Vice - chairperson
COMMITTEE —
CLERK AT THE TABLE

REPORT OF THE STANDING COMMITTEE ON HEALTH ON CONSIDERATION OF THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL, 2022 (NATIONAL ASSEMBLY BILLS NO. 61 OF 2022)

Rt. Hon. Speaker
You may approve for tabling
J. M. Nyegenye, C.B.S.,
Clerk of the senate/ secretary, PSC
Date: 31/03/26

Clerks Chambers,
Parliament Buildings,
NAIROBI

March, 2026

31/04/26

APPROVED
RT. HON. SEN
AMASON J. KINGI

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LIST OF ABBREVIATIONS

ART	-	Assisted Reproductive Technology
CEDAW	-	Convention on the Elimination of All Forms of Discrimination Against Women
CRA	-	Commission for Revenue Allocation
CRR	-	Centre for Reproductive Rights
HoAYN	-	Horn of Africa Youth Network
ICASM	-	International Coalition for the Abolition of Surrogate Motherhood
IVF	-	In-vitro Fertilization
KOGS	-	Kenya Obstetrical and Gynecological Society
MoH	-	Ministry of Health
PLMT	-	Protecting Life Movement Trust
SDG	-	Sustainable Development Goals

PRELIMINARIES

Establishment and Mandate of the Committee

The Standing Committee on Health is established pursuant to standing order 228 (3) and the Fourth Schedule of the Senate Standing Orders and is mandated to *consider all matters relating to medical services, public health and sanitation.*

Pursuant to Standing Order 228(4), the Committee is specifically mandated to-

1) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration and operations of the Ministry of Health and its departments;*
2) *study the programme and policy objectives of the Ministry of Health and its departments, and the effectiveness of the implementation thereof;*
3) *study and review all legislation referred to it;*
4) *study, assess and analyze the success of the Ministry of Health and departments assigned to it as measured by the results obtained as compared with their stated objectives;*
5) *consider the Budget Policy Statement in line with the Committee's mandate;*
6) *report on all appointments where the Constitution or any law requires the Senate to approve;*
7) *make reports and recommendations to the Senate as often as possible, including recommendations for proposed legislation;*
8) *consider reports of Commissions and Independent Offices submitted to the Senate pursuant to the provisions of Article 254 of the Constitution;*
9) *examine any statements raised by Senators on a matter within its mandate; and*
10) *follow up and report on the status of implementation of resolution within its mandate;* and
11) *follow up and report on the status of commitments made by the Cabinet Secretaries in their response to questions under Standing Order 51C*

Committee Membership

The Committee is comprised of the following members-

1. Sen. Jackson K. Arap Mandago, EGH, MP - **Chairperson**
2. Sen. Mariam Sheikh Omar, MP - **Vice-Chairperson**
3. Sen. Justice (Rtd.) Stewart Madzayo, EGH, MP - Member
4. Sen. Ledama Olekina, CBS, MP - Member
5. Sen. Richard Onyonka, MP - Member
6. Sen. Tabitha Mutinda, CBS, MP - Member
7. Sen. Hamida Kibwana, MP - Member
8. Sen. Joseph Githuku Kamau, MP - Member
9. Sen. Vincent Kiprono Cheburet Chemitei, MP - Member

CHAIRPERSON'S FOREWORD

The Assisted Reproductive Technology Bill, 2022 (National Assembly Bills No. 61 of 2022) was published in the Kenya Gazette Supplement No. 201 of 2022 on 16th December, 2022, passed by the National Assembly with Amendments on Tuesday 11th November, 2025. Thereafter, the Bill was referred to the Senate for consideration. 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.

The principal object of the Bill, 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.

In accordance with the provisions of Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committee through public advertisements that appeared in the *Daily Nation* and *Standard* newspapers that appeared on Friday, 19th December, 2025 invited the interested members of public to submit any representations that they may have on the Bill by way of written memoranda. The memoranda were to be received by the Senate on or before Friday, 23rd January, 2026 at 5.00 p.m.

At the close of public participation period, the Committee received written memoranda from twenty - five (25) different stakeholders, including the Ministry of Health, the Kenya Obstetrical and Gynecological Society (KOGS), The Cradle – The Children Foundation, the Centre for Reproductive Rights, the Protecting Life Movement Trust, the Strathmore Institute of Family Studies and Design, the International Coalition for the Abolition of Surrogate Motherhood (ICASM), the Horn of Africa Youth Network (HoAYN), La Manif Pour Tous, the Casablanca Declaration signatories, individual medical practitioners, embryologists, advocates, and civil society organizations. These submissions and proposed amendments were prepared into a comprehensive matrix for Committee consideration.

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

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.

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.

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.

It was further observed that nonetheless, 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; and no specific requirement for intermediaries to maintain identity records for children's future access to origins.

As I conclude, I wish to sincerely thank the Office of the Speaker and the Office of the Clerk of the Senate for the support extended to the Committee in execution of its mandate. I also wish to extend my gratitude to the Committee members for their diligence, commitment and insightful contributions throughout consideration of this Bill.

It is now my pleasant duty, pursuant to standing order 148 (1) of the Senate Standing Orders, to present the Report of the Standing Committee on Health on its consideration of the Assisted Reproductive Technology Bill, 2022 (National Assembly Bills No. 61 of 2022).

Signed..... Date 30/3/2026

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

CHAPTER ONE

1. INTRODUCTION

1) The Assisted Reproductive Technology Bill, 2022 (National Assembly Bills No. 61 of 2022) was published in the Kenya Gazette Supplement No. 201 of 2022 on 16th December, 2022 and passed by the National Assembly on 11th November, 2025.

2) The Bill was introduced in the Senate by way of First Reading on 4th December, 2025 and thereafter stood committed to the Standing Committee on Health for consideration. A copy of the Bill as passed by the National Assembly and introduced to the Senate and the Bill Digest are attached to this report as *Annex 2 and 3.*

3) In compliance with the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the Daily Nation and Standard newspapers on 19th December, 2025 inviting members of the public to submit written memoranda to the Committee on the Bill. A copy of the advertisement as published has been attached to this report as *Annex 4.*

4) At the close of public participation period, the Committee received written memoranda from twenty - five (25) different stakeholders. These submissions and proposed amendments were prepared into a comprehensive matrix for Committee consideration. The matrix of stakeholder submissions is attached to this report as *Annex 5.*

1.1. Objectives of the Bill

5) 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.

1.2. The Problem that the Bill Seeks to Cure

6) 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.

7) 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.

8) Currently, there is no specific legislation in Kenya that comprehensively addresses assisted reproductive technology. 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.

9) 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.

1.3. Overview of the Bill

10) 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, record-keeping and penalties for violations.

11) 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.

12) Clause 6 sets out the functions of the Council, which include –

(a) developing standards, regulations and guidelines on assisted reproductive technology;
(b) advising the Cabinet Secretary on matters relating to the treatment and care of persons undergoing assisted reproductive technology;
(c) promoting research on the conduct, control and treatment of assisted reproductive technology;

(d) developing programs for awareness creation on the methods of assisted reproductive technology treatment;
(e) prescribing minimum requirements for the physical infrastructure of ART clinics;
(f) prescribing minimum educational requirements for ART experts and embryologists;
(g) inspecting and accrediting facilities for training of experts and embryologists;
(h) maintaining and making available to the public a register of all licensed ART facilities, experts and embryologists;
(i) granting, varying, suspending and revoking licenses;
(j) keeping under review information about embryos and their subsequent development;
(k) providing advice and information to persons receiving ART treatment;
(l) disseminating information to the public on reproductive health;
(m) establishing and maintaining a confidential national database on persons receiving ART treatment services or providing gametes or embryos; and
(n) performing such other functions as may be necessary for carrying out the functions of the Council.

13) 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.

14) 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.

15) The Bill prohibits several activities to ensure ethical practice and protect human dignity. Clauses 9-20 of the Bill prohibits –
(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;
(n) commercial surrogacy and related practices

16) 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.

17) Clauses 21-37 of the Bill establish 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.

18) Clauses 43-54 establish a licensing system for persons intending to carry out ART services. The Bill among others, makes the following provisions –

(a) No person shall carry out assisted reproduction unless issued with a valid license by the Council;
(b) Applications must be made in duplicate with prescribed fees;
(c) The Council shall inspect premises before granting licenses;
(d) Licenses may have conditions attached including supervision requirements, record-keeping, prohibition on payment for gametes/embryos, and regular reporting to the Council;
(e) Specific conditions apply to storage of gametes and embryos including safety, security, labeling, and maintenance of registers;
(f) The Council may revoke licenses for false information, unsuitable premises, failure to discharge duties, professional malpractice, or conviction of offences;
(g) Applicants may appeal refusals or revocations to the Cabinet Secretary and subsequently to the High Court; and
(h) The Council may temporarily suspend licenses for up to three months where there are reasonable grounds to suspect non-compliance

19) 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 25 years.

20) The Bill also provides that persons who have attained 18 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.

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

22) 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.

23) 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

24) 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.

CHAPTER TWO

2. STAKEHOLDER SUBMISSIONS

25) This Chapter sets out the Committee's analysis of the Assisted Reproductive Technology Bill (National Assembly Bills No. 61 of 2022), as passed by the National Assembly on 11th November 2025, together with the submissions received from stakeholders during the public participation process.

26) The Committee received written and oral submissions from a total of twenty-five (25) stakeholders, including professional medical bodies, civil society organizations, religious and faith-based organizations, legal practitioners, patient advocacy organizations, youth networks, and individual citizens. A summary of the submissions is provided below.

TITLE OF THE BILL

27) The Ministry of Health (MOH) submitted that the title of the Bill should be amended from "Assisted Reproductive Technology Bill" to "Assisted Reproductive Health Act." The MOH's justification is that the Bill's scope goes beyond technology to encompass broader health aspects relating to assisted reproduction.

DEFINITIONS (CLAUSE 2)

Definition of "Embryo"

28) The Ministry of Health (MOH) proposed that the definition of "embryo" be amended to read: "a developing or developed organism after fertilization till the end of fifty-six days from the day of fertilization." The MOH's rationale is that this definition aligns with established scientific and medical standards.

Definition of "Primitive Streak"

29) The World Youth Alliance Africa submitted that the "primitive streak" should be removed as the threshold for legal protection of an embryo. The World Youth Alliance noted that Article 26(2) of the Constitution of Kenya provides that life begins at conception, and therefore the legal protection of the embryo should commence from fertilization, not from the appearance of the primitive streak.

"Services" versus "Procedures"

30) The Kenya Obstetrical and Gynecological Society (KOGS) proposed that the word "services" be replaced with "procedures" throughout the Bill where applicable. KOGS submitted that ART encompasses specific medical procedures and that the term "procedures" is more clinically precise.

Definition of "Endoscopic Surgery"

31) KOGS further proposed that the definition of "endoscopic surgery" be deleted from the Bill, on the grounds that it is not specific to assisted reproductive technology and its inclusion creates confusion in an ART-specific statute.

Definition of "Traditional Surrogacy"

32) KOGS submitted that a definition of "traditional surrogacy" be inserted in Clause 2. KOGS noted that the Bill regulates gestational surrogacy but does not define or expressly address traditional surrogacy, creating a legislative gap.

"Coitus" versus "Sexual Intercourse"

33) KOGS proposed that the term "coitus" be replaced with the term "sexual intercourse" throughout the Bill. The justification offered was that "sexual intercourse" is the standard legal term consistent with usage in other Kenyan legislation.

Definition of "Sperm" – Deletion of "Mature"

34) KOGS also proposed that the word "mature" be deleted from the definition of sperm. The Society submitted that the adjective "mature" is scientifically unnecessary and potentially misleading, as sperm at various stages of development may be used in ART procedures.

"Surrogate Mother" versus "Person Acting as Surrogate"

35) The Centre for Reproductive Rights (CRR) proposed that the term "surrogate mother" be replaced throughout the Bill with the term "person acting as surrogate." CRR proposed the following definition: "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 justification offered is that the term "surrogate mother" is conceptually problematic as it implies a maternal relationship that the Bill seeks to vest in the intended parent(s).

Definition of "Child" – Protecting Life Movement Trust

36) The Protecting Life Movement Trust (PLMT) submitted that the definition of "child" should be amended to cover an embryo even before it is introduced into the surrogate's womb. PLMT's position is that this would ensure that the Bill's protective provisions extend to all stages of the child's development from fertilization.

Definition of "Couple"

37) The Protecting Life Movement Trust (PLMT) further submitted that the definition of "couple" should be amended to mean "a male and a female who are married under the laws of Kenya." The PLMT's rationale is to align the Bill with the constitutional definition of marriage under Article 45 of the Constitution.

Proposed New Guiding Principles (New Clause after Clause 4)

38) The Cradle, the Children Foundation indicate that the Bill currently lacks an overarching statement of guiding principles to direct the interpretation and implementation of its provisions, particularly with respect to the best interests of children born through ART.

ART Technical and Bioethics Committee (Clause 5 / Governance)

39) The Ministry of Health (MOH) submitted that an independent ART Technical and Bioethics Committee should be established directly under the Ministry of Health. The MOH's justification is that such a committee would provide independent technical and bioethical oversight of ART practices in Kenya, which is not adequately provided for under the governance structure proposed in the Bill.

ACCESS TO ART SERVICES

40) The Strathmore Institute for Family Studies and Ethics submitted that the language conferring a "right to ART" in Clause 22 should be replaced. The Strathmore Institute's justification is that framing access to ART as a right creates obligations that may conflict with medical ethics, clinical judgment and the interests of the child to be born. The Strathmore Institute argued that the provision should be re-framed to regulate access rather than to confer an unqualified right.

41) Mugane Kaburi submitted that Clause 22 should include a robust non-discrimination provision to ensure that no person is denied access to ART services on grounds such as disability, marital status or other protected characteristics. The justification offered is that the Bill in its current form may permit discriminatory denial of access to ART services.

42) The Horn of Africa Youth Network (HoAYN) submitted that the Bill should explicitly recognize ART services as an integral component of the right to health under Article 43 of the Constitution. HoAYN further proposed that a clear non-discrimination provision be included guaranteeing equitable access irrespective of marital status, disability, socio-economic position or geographic location. The HoAYN also submitted that the Bill should be harmonized with the Children Act (2022), Mental Health Act (2022) and Data Protection Act (2019). The justification is that ART services should be situated within Kenya's broader reproductive and public health obligations and in alignment with Article 27 of the Constitution, CEDAW and Sustainable Development Goals (SDGs) 3 and 5.

Posthumous Use of Gametes (Clause 11)

43) The Ministry of Health (MOH) submitted that posthumous use of gametes should be fully prohibited under the Bill. The MOH's justification is that posthumous use raises serious ethical, legal and social concerns, particularly in relation to the rights and interests of the child to be born and that allowing it would create unresolvable issues relating to consent, inheritance and parentage.

44) The World Youth Alliance Africa submitted that strict numerical limits should be imposed on the creation of embryos. The World Youth Alliance's position is that the creation of surplus embryos whose fate is uncertain or which may be discarded raises profound ethical concerns, particularly in light of the constitutional protection of life from conception.

Funding and Financing of ART Services (Clause 8)

45) The Ministry of Health (MOH) submitted that the specific funding obligations set out in paragraph (a) of Clause 8 should be deleted. The MOH's justification is that the clause as drafted imposes prescriptive and potentially unworkable financial obligations on the Government.

46) Mugane Kaburi submitted that ART services should be included in the essential benefits package under the Social Health Insurance Act, 2023 and that public subsidies or public funding should be provided for low-income individuals. Insurance coverage should be mandated for all ART participants. The justification is that 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.

47) The Horn of Africa Youth Network (HoAYN) submitted that the Bill should progressively explore mechanisms for subsidization or partial financing of ART services through public health financing frameworks, including the Social Health Insurance Fund (SHIF) and should invest in public health facilities to build institutional capacity for ART services. The justification offered is that ART services remain predominantly privatized and inaccessible to low-income individuals, young people, and rural populations, reinforcing health inequities contrary to Article 43 and SDG 10.

CONSENT PROVISIONS

48) The Strathmore Institute for Family Studies and Ethics submitted that the consent provisions in Clause 23 should be expanded to ensure that all parties involved in ART procedures—including gamete donors, surrogates, and intended parents—provide free, prior and informed consent at every stage of the ART process. The Strathmore Institute's justification is that the current consent provisions are insufficiently detailed to adequately protect all parties.

49) The Commission on Revenue Allocation (CRA) submitted general recommendations on consent, proposing that all instances of "informed consent" in the Bill be standardized to require written consent for consistency, given the sensitivity of the subject matter. The CRA's justification is that inconsistent consent standards and repetitive or poorly worded consent provisions undermine legal certainty and ease of implementation.

50) The Horn of Africa Youth Network (HoAYN) submitted that stringent consent, eligibility, and compensation guidelines for surrogates should be introduced, with a mandate for psychosocial screening and access to continuous mental health and psychosocial support (MHPSS) for surrogates, donors, and commissioning parents. The justification is that in contexts of economic inequality, unregulated "altruistic" surrogacy may still amount to indirect exploitation.

EMBRYO MANAGEMENT

Disposal and Donation of Embryos (Clauses 19–20)

51) The Strathmore Institute for Family Studies and Ethics submitted that the provisions on disposal and donation of embryos under Clauses 19 and 20 treat embryos as property, which is ethically objectionable. The Strathmore Institute's position is that embryos, as potential human life, should not be subject to the same legal regime as property and that the Bill should recognize this.

52) The Kenya Obstetrical and Gynecological Society (KOGS) submitted that the period for disposal of stored embryos under Clause 20(1)(a) should be reduced from ten (10) years to five (5) years. KOGS's justification is that a ten-year period is excessively long from a clinical perspective and creates unnecessary storage burdens for ART facilities.

Embryo Storage and Perishing (Clause 48)

53) The MOH submitted that Clause 48, which provides that after the expiry of ten years, gametes or embryos will be allowed to perish where they remain unused, raises a serious policy concern in terms of the destruction of embryos which are already viable for implantation. The MOH further noted that the Bill does not set out clearly how the perishing will be effected whether through destruction and submitted that some jurisdictions make provision for the donation of embryos for research for therapeutic purposes, an option that should be considered.

54) The Kenya Obstetrical and Gynecological Society (KOGS) submitted a series of amendments to Clause 48 as follows—

(a) Clause 48(2)(a): Replace "person" with "clinic," on the ground that embryos are created, handled, stored and transferred within licensed clinical environments, not by individuals, and this reflects clinical reality and strengthens regulatory control.

(b) Clause 48(2)(d): Delete the sub-clause providing for priority for untransferred embryos in its entirety, on the ground that automatic "priority" is clinically inappropriate as embryo transfer decisions depend on medical readiness, consent and updated clinical assessment.

(c) Clause 48(2)(e): Align the statutory storage period with amended Section 20(1)(a) by cross-referencing: "No embryos shall be kept in storage for longer than the statutory storage period provided under section 20(1)(a)." The justification is that consistency across the Act ensures clarity on storage duration and lawful extensions.

Embryo Registry, Handling, Safety and Audit

National ART Registry for Gamete Donors

55) Eugine Shimoka submitted that all oocytes and embryos must be registered with a unique national identifier. Records should include: origin, consent status, storage location, usage, and disposal. Registry access should be limited but auditable by regulators. The justification is that 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.

Dual-Consent and Dual-Witness Embryo Handling

56) Eugine Shimoka submitted that any embryo freezing, transfer, donation or discard must require written patient consent and independent witnessing by two licensed professionals, with severe penalties for undocumented embryo movement. The justification is that patients depend entirely on embryology reports they cannot independently verify and without such safeguards, records may be altered or selectively disclosed to conceal embryo retention or diversion.

Independent Patient Embryo Audits

57) Eugine Shimoka submitted that patients must have a legal right to request an independent embryology audit, conducted by accredited third-party embryologists, with audit results provided directly to patients and regulators. The justification is that some facilities may avoid ethical donor recruitment costs by illegally repurposing patient embryos or misrepresenting embryo origin to recipients, which undermines informed consent and risks genetic, legal, and psychological harm.

Regulation of Donor Embryo Programmes

58) Eugine Shimoka submitted that proof of donor recruitment, screening, and consent must be documented, with an absolute prohibition on converting patient embryos into donor embryos and criminal liability for misrepresentation of embryo origin. The justification is that this protects against abuse of donor programmes where facilities may repurpose patient embryos and misrepresent their origin to recipients.

Licensing of Foreign ART Practitioners

59) Eugine Shimoka submitted that mandatory registration of foreign practitioners with Kenyan regulatory bodies should be required, with disclosure of prior practice locations and disciplinary history and joint liability between facility and practitioner for violations. The justification is that foreign gynecologists and embryologists may operate without proper Kenyan registration, evade accountability by moving between facilities or countries, and exploit weak enforcement of ART regulations.

Whistleblower Protection in ART Settings

60) Eugine Shimoka submitted that legal protection should be provided for staff reporting unethical practices, with invalidity of confidentiality clauses that conceal patient harm and anonymous reporting channels under the Ministry of Health. The justification is that any system that allows secrecy, unaccountable power and silencing of junior professionals inevitably places patients at risk and whistleblower protections are essential to deter malpractice.

SURROGACY

Eligibility to Act as Surrogate (Clause 27)

61) The International Coalition for the Abolition of Surrogate Motherhood (ICASM) submitted proposals in relation to Clause 27(2) aimed at restricting the conditions under which surrogacy may be permitted.

62) Not All Gays (Ireland) submitted proposals in relation to Clause 27(2) proposing that the eligibility conditions for surrogates be reviewed to ensure adequate protection against exploitation.

63) The Centre for Reproductive Rights (CRR) submitted that Clause 27(3) should be deleted in its entirety. The CRR's justification is that Clause 27(3) as drafted creates an unduly restrictive framework that limits access to surrogacy services without adequate justification.

64) The Kenya Obstetrical and Gynecological Society (KOGS) submitted that Clause 27(3) should provide a comprehensive regulatory framework for gestational surrogacy arrangements in which there is no genetic link between the surrogate and the child. KOGS's justification is that such arrangements require a distinct regulatory approach to ensure they are conducted safely and ethically.

65) Winrose Njuguna, Advocate, submitted proposed amendments to Section 27(3) to clarify the conditions applicable to surrogacy arrangements and to ensure adequate safeguards for surrogates.

66) The World Youth Alliance Africa submitted that Clauses 27 to 30 of the Bill, dealing with surrogacy, should be reviewed to ensure that the best interests of the child are placed at the centre of the regulatory framework. The World Youth Alliance's position is that children born through surrogacy have unique rights and vulnerabilities that require specific protective provisions.

67) Dr. Sarita Sukhija, MD, Director, Myra IVF and Medical Center, Nairobi, submitted that the Bill should specify that a surrogate must be between the ages of 25 and 38, and should not have carried more than two (2) previous surrogacies. The justification is to ensure that only persons who are of sufficient physical and emotional maturity, and who have not been overexposed to the physical demands of surrogacy, are permitted to act as surrogates.

The Protecting Life Movement Trust (PLMT) submitted that Clause 30(3)(b) should be amended to capture the words "by Kenyans" to avoid foreigners coming to have surrogacy and opening a door for international human trafficking, that surrogacy should be limited to once, that compensation amounts should be capped, and that non-Kenyan intended parents should be outlawed. The justification is to prevent commercialization of surrogacy and international human trafficking, and because foreigners should be barred from using Kenyan surrogates.

Eligibility of Intended Parents (Clause 28)

68) KOGS submitted proposed amendments to Clause 28(a) to revise the eligibility conditions for intended parents to align with clinical best practice and to remove provisions that may operate as unnecessary barriers to ART services.

69) Mugane Kaburi submitted proposed amendments to Clause 28(a) relating to the eligibility conditions for intended parents, including a proposal to strengthen non-discrimination protections.

70) The Centre for Reproductive Rights (CRR) submitted proposed amendments to Clause 28(b) to ensure that the eligibility conditions for intended parents do not create barriers that are inconsistent with the right to reproductive health.

71) The International Coalition for the Abolition of Surrogate Motherhood (ICASM) submitted proposed amendments to Clause 28(7) to impose stricter eligibility conditions on intended parents.

72) The Commission on Revenue Allocation (CRA) submitted proposed amendments to Clause 28 relating to the eligibility conditions for intended parents, focusing on ensuring clarity and consistency in the application of the provisions.

73) The Law Society of Kenya (LSK) submitted proposed amendments to Clause 28 to address concerns about the legal framework governing the eligibility of intended parents, including concerns about legal certainty and the potential for discriminatory application.

74) Dr. Sarita Sukhija submitted that a maximum age limit should be specified for intended parents under Clause 28, to ensure that children born through surrogacy are born to parents who are of a reasonable age to provide adequate care.

75) Dr. Sarita Sukhija also submitted that there should not be a blanket ban on foreign intended parents. The justification offered is that a blanket prohibition fails to account for legitimate cases where foreign nationals, including Kenyans in the diaspora, may have genuine and lawful reasons to engage in surrogacy in Kenya.

76) Enricah Dulo, Advocate – Legal Expert on Transfer of Parental Rights, submitted that the ban on foreign intended parents should be removed and that instead, stricter legal provisions should be imposed 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 justification is that the ban can be addressed by invoking the Constitution of Kenya and Children Act, Cap. 141 provisions, and once such a provision is legislated, any gay person previously interested will be made aware of what the law provides.

Recuperation Leave for Surrogates (Clause 29)

77) Ms. Winrose Njuguna, Advocate, submitted that Section 29(1) should be amended to provide surrogates with adequate recuperation leave following delivery. The justification is that surrogates undergo significant physical exertion in carrying a pregnancy and delivering a child, and they are entitled to adequate time to recover.

78) Not All Gays (Ireland) submitted proposed amendments to Clause 29(2) to ensure that the provisions on recuperation leave are adequate and do not place undue burdens on surrogates.

Surrogacy Agreements (Clause 30)

79) The MOH submitted that the provisions on surrogacy agreements are too prescriptive and yet such agreements are made between two consenting adults and without vitiating factors. The MOH's justification is that issues such as prohibitions of smoking, among others, would best be addressed in the surrogacy agreement itself rather than being prescribed in law.

80) The Strathmore Institute for Family Studies and Ethics submitted that 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 justification is that 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).

Genetic Link Requirement

81) Ayieta R. Lumbasyo, Advocate/Fertility Law Centre, submitted that Clause 30(3)(j) should be amended to add the requirement that 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. The justification is that a 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, and this prevents child trafficking.

Insurance

82) The Centre for Reproductive Rights (CRR) submitted that Clause 30(3) should be amended 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." The justification is that this ensures the insurance cover for the surrogates' medical expenses is made part of the surrogacy agreement and therefore enforceable, and stipulates what the policy should cover, ensuring appropriate insurance for all illnesses or conditions arising from pregnancy and birth.

Pre-Approval Checks

83) The Kenya Obstetrical and Gynecological Society (KOGS) submitted that Clause 30(5) should be deleted in its entirety. KOGS's justification is that 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.

84) Ms. Winrose Njuguna, Advocate, submitted that Section 30(5)(c) should be amended 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. The justification is that 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.

Court Applications

85) The Centre for Reproductive Rights (CRR) submitted that Clause 30(6) should be amended to include a sub-clause (c): "The enforcement of any provisions of the surrogacy agreement." The justification is that this ensures the surrogate can initiate court action to compel performance of obligations, particularly regarding payment of medical expenses and provision of medical cover.

86) KOGS submitted that the phrase "A person" in Clause 30(6) should be replaced with "The parties involved." The justification is that this aligns with principles of legal standing and privity of contract and prevents speculative or third-party litigation.

87) Enricah Dulo, Advocate and legal expert on Transfer of Parental Rights, submitted that 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. The justification is that agencies offer critical services including accompanying surrogates to appointments where intended parents 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.

88) Ms. Winrose Njuguna, Advocate, submitted that Section 31(1) should be redrafted to permit licensed surrogacy agencies to coordinate arrangements while retaining the prohibition against unlicensed or exploitative commercial activity. The justification is that surrogacy agencies serve as professional intermediaries between surrogates and intended parents, and between surrogates and ART clinics. A blanket prohibition would be counterproductive, resulting in operational chaos and increasing risks of unregulated or informal arrangements.

Agency Accountability for Embryos

89) Dr. Sarita Sukhija, MD, Director, Myra IVF and Medical Center, Nairobi, submitted that where embryos are brought to a clinic by an agency, the agency should be held accountable for those embryos, not the clinic. The justification is that 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 incentivizes proper handling and record-keeping by intermediaries.

Prohibited Surrogacy Activities and Importation (Clause 32)

90) The Ministry of Health (MOH) submitted that the provisions of Clause 32(1) should be replaced 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.

The MOH's objection is to the current use of terms such as "racket" and "organized group" which are vague and unprofessional in legislation.

91) The Strathmore Institute for Family Studies and Ethics submitted that even "altruistic" surrogacy fails to eliminate inherent exploitation and objectification. The justification is that 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.

92) KOGS submitted that Clause 32(1)(f) should be amended to 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. The justification is that 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.

93) Ms. Winrose Njuguna, Advocate, submitted that Section 32(1)(c) should be redrafted to clearly identify duty bearers and the nature of prohibited conduct, ensuring alignment with principles of legality and proportionality and legal parentage frameworks. The justification is that the clause imposes a broad duty on all persons, organizations, clinics and laboratories not to "abandon, disown or exploit" children born through surrogacy, creating overlapping and ambiguous responsibilities for entities that have no parental role.

94) Ms. Winrose Njuguna further submitted that Section 32(1)(f) should be amended to 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 justification is that the absolute prohibition fails to account for Kenyans living abroad who may already have lawfully created embryos and gametes and meet eligibility requirements under Section 28.

Termination of Surrogacy Agreement (Clause 33)

95) KOGS submitted technical corrections to Clauses 33(1)(b) and (c) relating to the termination of a surrogacy agreement. For (b), KOGS proposed deleting the words "a fertilized" and adding "an" before the words "before the transfer of an embryo". For (c), KOGS proposed deleting "the fertilized" and adding "an' before the words "before an embryo is implanted". The justification is that an embryo is an already fertilized and developing egg, and these amendments correct a technical inaccuracy.

Parentage, Parental Orders and Compensation (Clauses 34–35)

96) MOH submitted that 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 child to be born. The MOH's justification is that the Bill should not permit the use of ART 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, as gametes or embryos may be. Requiring a genetic connection between the child and the intended parents protects Kenyans against coercion, human trafficking, and commercial abuse of economically vulnerable women.

97) KOGS submitted that Clause 34(3)(b) should be deleted in its entirety. The justification is that the clause 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 it safeguards the best interests of the child.

KOGS submitted that in Clause 34(4)(a), the phrase "in-vitro fertilization" should be replaced with "embryo transfer." The justification is that what surrogates undergo is preparatory clinical procedures before embryo transfer, and this ensures medical accuracy and prevents misinterpretation of compensable procedures.

98) Ayieta R. Lumbasyo, Advocate/Fertility Law Centre, submitted that a new section should be inserted for Parental Orders between Clauses 34 and 35. The proposed provision reads: 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. The justification is that this provides for legal registration of children born via gestational surrogacy, adheres to international protocols on surrogacy and child trafficking, and protects all parties including the child. Kenya falls under tier 3 of child trafficking.

Fair Compensation for Surrogates

99) Mugane Kaburi submitted that Clause 34 should be amended to allow fair compensation for surrogate mothers reflecting the physical, emotional, and economic burdens of surrogacy, while preventing exploitation. Mandatory independent counselling, legal advice, and ongoing support should be required. A model clause was proposed: "A surrogate mother shall be entitled to fair compensation including medical expenses, loss of earnings, and reasonable remuneration for physical and emotional labor." The justification is that 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.

100) Dr. Sarita Sukhija, MD, Director, Myra IVF and Medical Center, Nairobi, submitted that 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. The justification is that 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.

Insurance and Minimum Compensation

101) Dr. Sarita Sukhija, MD, Director, Myra IVF and Medical Center, Nairobi, submitted that 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. The justification is that 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.

Legal Process for Transfer of Parental Rights

102) Enricah Dulo, Advocate and Legal Expert on Transfer of Parental Rights, submitted that the Bill should 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 intended parents. The process should be simplified. The justification is that Kenya is a source, transit and destination country for human trafficking. Without a legal process requiring genetic link, there is risk of human trafficking. Intended parents who are not residents cannot exit Kenya with the child without a court order transferring parental rights.

Prohibition on Sex Determination (Clause 35)

103) Ayieta R. Lumbasyo, Advocate/Fertility Law Centre, submitted that Clause 35 should be rephrased to read: "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." The justification is that this curbs sex selection for "social" purposes which are veiled infanticide, while recognizing 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.

Centre for Reproductive Rights (CRR)

104) The Centre for Reproductive Rights (CRR) submitted that Clause 35 should be amended to delete the phrase "determine the sex of the child" and replace with "select the sex of the fetus." The justification is that 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.

KOGS submitted that the prohibition in Clause 35 should be retained but that a narrowly defined medical exception should be introduced: "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 standards, regulatory approval, and documented informed consent."

The justification is that 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 disorders.

Calls for Total Ban on Surrogacy

105) The International Coalition for the Abolition of Surrogate Motherhood (ICASM) submitted that a total ban on surrogacy should be implemented in line with international human rights standards. ICASM submitted that the Bill would further normalize surrogacy rather than preventing the exploitation of women and children. The justification advanced is that surrogacy violates women's rights (treating pregnancy as a detachable service), violates children's rights (pre-programmed abandonment, commodification), and constitutes a form of human trafficking under the Palermo Protocol. ICASM cited UNICEF (2022): "A contract where the transfer of a child is a precondition of payment is a form of child trafficking."

106) Not All Gays (Ireland) submitted that all provisions that recognize, authorize, or facilitate surrogacy in the ART Bill should be removed. All surrogacy contracts should be voided as against public policy; brokerage, advertising and facilitation should be criminalized; and ART should be restricted to therapeutic infertility care that does not entail contracting for pregnancy and transfer at birth. The justification is that 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.

Separate Legal Instruments for Surrogacy and other ART procedures

107) Enricah Dulo, Advocate and Legal Expert on Transfer of Parental Rights, submitted that ART and surrogacy should be separated into two distinct legislative instruments. Whereas all surrogacy cases have an element of ART, not all ART cases involve third party reproduction. The justification is that countries that have legislated on both (South Africa, India, Israel, UK) have separate legislations treating ART and surrogacy as separate and distinct legal issues.

RIGHTS OF CHILDREN BORN THROUGH ART

Child's Right to Identity and Genetic Origins (Clauses 38–42)

108) The Strathmore Institute for Family Studies and Ethics submitted that the child's right to identity should be strengthened in Clauses 38 to 42, including access to genetic origins at maturity. The justification is that the child's right to identity and genetic origins is inadequately protected in donor conception contexts.

109) Not All Gays (Ireland) submitted in relation to Clauses 34 and 35 that a Central Origins Register should be established 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. The justification is that 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.

110) The Horn of Africa Youth Network (HoAYN) submitted that the Bill should ensure children born through ART enjoy equal legal status and identity rights, including safeguards protecting the child's right to identity and information regarding genetic origins, and should address risks of statelessness, legal parentage disputes, and cross-border ART arrangements. The justification is that children born through ART must enjoy equal protection under Article 53 of the Constitution and the Children Act (2022), and the African Charter on the Rights and Welfare of the Child guides age-appropriate disclosure and best interests of the child.

Access to Information by Donor-Conceived Persons (Clauses 39–40)

111) The Ministry of Health (MOH) submitted that 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 MOH's position is that the right to access to information vis-à-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. The MOH submitted that 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.

112) The Kenya Obstetrical and Gynecological Society (KOGS) submitted that Clause 39 should be deleted in its entirety. KOGS's justification is that 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.

113) The Centre for Reproductive Rights (CRR) submitted that Clause 40 should be amended to allow a child, in certain circumstances, access to information from the Council, and the phrase "through a legal guardian" should be deleted. The provision should be amended 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."

114) The justification is that this takes into account the evolving capacities of the child, particularly where the child is of sufficient maturity to receive and understand the information, and recognizes the right of a child born through surrogacy to know the identity of their birth parents. This aligns with the FIGO position statement on surrogacy.

Registry and Records Management

115) KOGS submitted the following proposals in relation to Clause 38 –

(a) Clause 38(1): Replace "Council" with "Committee" to align with the governance structure established under Part II of the Act. KOGS's justification is that this ensures consistency with the regulatory structure established under the Act.

(b) Clause 38(3): Delete Clause 38(3) in its entirety. The justification is that 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 anonymized data, avoiding unnecessary centralization of sensitive patient records.

(c) Clause 38(4): Replace "surrogacy clinic" with "fertility clinic." The justification is that surrogacy is just one component of ART services delivered through licensed fertility clinics. This ensures terminology consistency and avoids creation of artificial or fragmented categories of regulated facilities.

116) Eugine Shimoka, Clinical Embryologist, submitted that 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 should be limited but auditable by regulators. The justification is to prevent biological theft, medical fraud, and gross ethical violations arising from embryo misappropriation.

LICENSING AND REGULATION

Application and Grant of Licence (Clauses 45 and 49)

117) The Commission on Revenue Allocation (CRA) submitted that a prescribed form for application under this provision should be provided, given the sensitivity and conditionalities of the ART process and the duration of any licence granted under Clause 45(3) should be specified. The justification is that 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.

118) The CRA further submitted that the timeline within which the Council will act on an application for a licence should be indicated; and under Clause 49(6), the phrase "costs of performing all its functions" should be substituted with "cost of offering the licensing service." The justification is that 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.

Revocation and Review of Licence (Clauses 51 and 52)

119) The Commission on Revenue Allocation (CRA) submitted that a sub-clause should be added requiring that revocation of a licence must be communicated with reasons and in writing. The justification is that this is 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.

Application for Review

120) The CRA submitted that under Clause 52(1)(b), the phrase "within 21 days" should be added immediately after the word "determination" to read: "the Cabinet Secretary may make such determination as they deem fit within 21 days." The justification is that this is 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.

Qualification and Staffing of ART Clinics

121) Timothy Mugo Gakaria (Junior Embryologist) submitted that the ART Bill should explicitly define an embryologist based on formal academic training, structured clinical embryology education, and verified competence. Qualification standards modelled on India's ART Regulation Rules (2022) should be adopted. These incluse an MSc in Clinical Embryology in addition to 3 years' experience, a PhD in Embryology in addition to 1-year experience; MBBS/BVSc in addition to a post graduate degree in Clinical Embryology and 2 years' experience; or post graduate degree in Life Sciences in addition to 1-year formal training and 4 years' experience. The justification is that this prevents unsafe practice, misclassification, and regulatory ambiguity, and ensures competence, patient safety, and professional credibility.

122) Emma Sila, MSc Clinical Embryology, submitted that clinics shall only hire embryologists with a post-graduate degree in clinical embryology plus 3 years ART lab experience, or PhD in Clinical Embryology/ART plus 1 year ART lab experience, Medical graduate (MBBS) or Veterinary graduate (BVSc) plus Post Graduate degree in Clinical Embryology and two years ART lab experience; or post graduate in life sciences/biotechnology in addition to 1 year full-time clinical embryology training and years ART experience in a registered Level 2 clinic. The justification is that this ensures embryologists possess adequate training before handling human gametes and embryos, prevents unsafe practice, and removes regulatory ambiguity.

123) Emma Sila further submitted that there is need for creation of an Embryologist Board or Council responsible for certification and licensing of embryologists, standard setting and regulation including practice guidelines and code of ethics, oversight and quality assurance including laboratory accreditation, CPD requirements, and disciplinary action and advocacy and research including policy influence and research licensing.

The justification is that 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.

PENALTIES AND REGULATION-MAKING POWER

124) Winrose Njuguna, Advocate, submitted two options when it comes to penalties, first, is to delete Section 56 entirely since all offences have specific penalties and the second option is to redraft Section 56 as a residual clause applicable only in the event of inadvertent omission. The justification is that the general penalty clause creates legal uncertainty and legislative redundancy. All identified offences already carry specific penalties. A general penalty clause risks violating the principle of legality and transferring excessive discretion to enforcement authorities.

125) The Law Society of Kenya (LSK) submitted that the general penalty clause in Clause 56 should be deleted. The justification is that the principle of legality and legal certainty requires that offences and their corresponding penalties be 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.

126) Ms. Winrose Njuguna, Advocate, submitted that Section 58(1) should be amended to require ("shall" instead of "may") the Cabinet Secretary to make regulations within a defined timeframe, in consultation with the Council and key stakeholders. The justification is that 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 operationalize key provisions safely. This position was supported by the Law Society of Kenya.

127) MOH submitted that 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 rights of donors, surrogates and child born through assisted reproduction. The justification is that best practice dictates that substantive issues are best addressed in a primary law.

128) The MOH submitted that 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. The justification is that 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.

GENERAL AND CROSS-CUTTING ISSUES

Abandoned Children, Gametes and Embryos

129) The MOH submitted that 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 MOH submitted that 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. The MOH stated that 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, including 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.

Registration and Licensing of ART Clinics

130) The MOH submitted that 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 MOH further submitted that 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 the modalities for both their registration and licensing.

Births and Deaths Registration Act – Consequential Amendment

131) The Cradle, The Children Foundation submitted that the Births and Deaths Registration Act should be amended to provide for the definitions of "intended parents," "surrogate-born child," and "surrogate mother", amend Section 12 to allow registration of father upon presentation of a surrogacy agreement and insert a new clause requiring registrar to enter intended parents' names upon issuing of a valid surrogacy agreement verified by the Directorate.

The justification is that this 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, and prevents legal gaps that could disadvantage surrogate-born children.

Institutional Oversight, Accountability and Governance

132) The Horn of Africa Youth Network (HoAYN) submitted that the independence and accountability of the proposed ART regulatory authority should be strengthened, and that a centralised, confidential national ART registry compliant with the Data Protection Act (2019) should be established. Routine audits, inspections, and enforceable sanctions for non-compliant facilities should be recommended. The justification is that clear reporting obligations and parliamentary oversight are needed in accordance with Article 10 on transparency and accountability. The Health Act (2017) supports enforceable sanctions for malpractice.

Responsibility for Externally Procured Gametes

133) Dr. Sarita Sukhija, MD, Director, Myra IVF and Medical Center, Nairobi, submitted that 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. The justification is that 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.

CHAPTER THREE

3. COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.1. Committee Observations

134) Having considered the Assisted Reproductive Technology Bill (National Assembly Bills No. 61 of 2022), and submissions from stakeholders, the Committee made the following observations —

(1) The Assisted Reproductive Technology Bill, 2022 is a significant and necessary step towards providing a legal and regulatory framework for Assisted Reproductive Technology practice in Kenya. Kenya currently has no comprehensive legislation governing ART, resulting in a regulatory vacuum that exposes patients, donors, surrogates and children born through ART to significant legal and medical risks;

(2) 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;

(3) In other 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; and

(4) 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.

135) The Committee further observed that-

(5) The Title of the Bill does not adequately capture the full scope of the legislation, which extends beyond ART procedures to broader assisted reproductive health services;

(6) A number of the definitions as provided for under clause 2 of the Bill are ambiguous, scientifically inaccurate or inconsistent while other key terms used in the Bill are undefined;

(7) The Bill establishes an Assisted Reproductive Technology Committee under Clause 5 but is silent on the composition, qualifications, appointment process, and term of office of the Committee members. The omission undermines the credibility and effectiveness of the regulatory body. Furthermore, the Bill refers to both a "council" and "Committee" inconsistently throughout the Bill, creating confusion as to the nature of the regulatory body;

(8) While embryologists occupy a role in ART practice, handling human gametes and embryos in the most sensitive stages of laboratory work, the Bill does not establish minimum qualification standards for embryologists nor does it create a regulatory framework for accountability purposes;

(9) The Bill contains no explicit framework for liability arising from errors in gamete or embryo handling and recommends that the same be included for accountability purposes owing to the far-reaching identification, genetic and legal implications that such acts cause;

(10) The Bill restricts its applicability to Kenyan citizens residing in Kenya at the exclusion of the Kenyan citizens living abroad which may lock out Kenyan citizens abroad from accessing ART services in Kenya. Further, the Bill overly restricts the age for accessing ART services to 25 years which is discriminatory considering that legal age of adulthood is eighteen (18) years;

(11) The issue of recognizing surrogacy arrangements as part of the assisted reproductive technology services is a heavily contested issue by the stakeholders on human rights and social grounds. The Committee recognizes that surrogacy raises profound ethical, legal, medical, and social questions and therefore the need for proper regulation;

(12) While Clause 11 of the Bill allows for post-humous conception, a position supported by KOGS and other stakeholders, the committee notes opposition to this proposal by the Ministry of Health for reason that it defeats the principle of the best interests of the child. The Ministry indicates that the best interest of the child would dictate that the child be born to parents who are alive and who would be able to take care of that child when born; and

(13) The requirement in Clause 7 of the Bill that every health insurance provider, including the Social Health Authority, cover ART services is impractical without corresponding amendments to insurance legislation. The Committee also notes that ART services are currently unaffordable to the majority of Kenyans, creating significant inequities in access to reproductive healthcare.

3.2. Committee Recommendations

136) The Committee makes the following recommendations-

1) That the title of the Bill be amended to read "Assisted Reproductive Health Bill" as suggested by the Ministry of Health;

2) That the definition of the term **"embryo"** be revised to read "embryo means a developing or developed organism after fertilization till the end of fifty-six days from the day of fertilization", consistent with established medical and scientific understanding and aligned with best practice in comparable jurisdictions. The current definition refers to the words "potential to develop into a live born human being" which is subjective and ambiguous;

3) That the definition of the term **"child"** be contextualized to assisted reproductive technology. The definition should be amended to provide "child means any individual born through the use of assisted reproductive technology". This is in line with international practice such as the Indian law on Assisted reproductive technology;

4) That the definition of the term **"infertility"** be amended to require diagnosis by a qualified ART expert, so as to prevent misuse of ART services by unqualified persons;

5) That the term **"coitus"** in the definition of the word "infertility" be deleted and replaced with the term "sexual intercourse" in line with modern clinical and patient-friendly language;

6) That the definition of **"assisted reproductive technology services"** be amended by replacing "services" with "procedures" and by removing "endoscopic surgery", which is a general surgical technique and not an ART-specific procedure;

7) That the definition of the term **"mother"** be amended to read "mother means a female parent". The purpose is to delete the word "intended", so as to recognize biological determinism while legal parenthood is addressed separately through the definition of "intended parent" and the surrogacy provisions;

8) That the definition of the term **"commercial surrogacy"** be simplified to make it clear;

9) That the definition of the word **"sperm"** be amended by deleting the word "mature" in the definition. The purpose of the amendment is to ensure ART practice allows the harvesting and in vitro maturation of immature sperm, including for cancer patients;

10) That new definitions of the words "ART bank" and "Infertility clinics" be introduced to the Bill;

11) That the term "council" be deleted appropriately throughout the Bill to ensure clarity that the regulatory body being created is the Assisted Reproductive Technology committee."

12) That the Committee accepts the Ministry of Health's recommendation that the Bill provides for an independent ART Technical and Bioethics Committee under the Ministry of Health, rather than the Kenya Medical Practitioners and Dentists Council;

13) That clauses 5 and 6 be amended to provide for the composition, qualifications and terms of service of the members of the committee;

14) That the Bill be amended to define minimum qualifications for embryologists to include a postgraduate degree in clinical embryology;

15) That all licensed ART clinics be required to display the certificate of their principal embryologist in a conspicuous place within the facility;

16) That foreign ART practitioners, including embryologists, be required to register with Kenyan regulatory bodies before practicing in Kenya;

17) That the minimum age for access to ART services be reduced to 18 years, in line with the age of legal adulthood in Kenya, with safeguards including mandatory counselling on medical, ethical and social implications, and informed written consent as proposed by Kenya Obstetrical and Gynecological Society (KOGS, the Law Society of Kenya, Centre for Reproductive Rights (CRR) and the Commission for Revenue Allocation (CRA);

18) That the eligibility for access to ART and surrogacy services be extended to lawful residents of Kenya and Kenyans living abroad subject to strict regulation of handling of the embryos in such circumstances;

19) That the committee rejects the proposal for the complete ban of surrogacy arrangements in Kenya on the grounds that the practice is already happening in Kenya and therefore the need for strict regulation to allow a safe process;

20) That the use of surrogacy as a treatment for infertility be restricted to only married couples experiencing infertility issues;

21) That clause 34(3)(b), which permits ART and surrogacy services where there is no genetic link between the intended parents and the child, be deleted as proposed by the Ministry of Health and KOGS that at least one of the intended parents must have a genetic connection to the child. This is essential to protect against child trafficking, abandonment, commercial exploitation, and legal ambiguity regarding parentage, inheritance, and citizenship;

22) That mandatory insurance coverage for surrogates be introduced, covering all medical conditions arising out of the surrogacy process, commencing no later than the first procedure and continuing for an appropriate period after birth;

23) That surrogacy agencies be regulated by the ART Committee rather than prohibited for accountability purposes;

24) That the Bill be amended by deleting all clauses allowing for post-humous conception as such provisions violate the principle of the best interests of the child;

25) That the insurance provisions as contained in the Bill be retained; and

26) That the insurance legislation be amended to provide for insurance coverage of ART services by all other insurance providers.

137) The Committee further recommends that the Senate passes the Bill with the proposed amendments.

30th March, 2026

The Clerk of the Senate,
Parliament Buildings,

NAIROBI.

RE: COMMITTEE STAGE AMENDMENTS TO THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL, 2022 (NATIONAL ASSEMBLY BILLS NO. 61 OF 2022)

NOTICE is given that the Chairperson of the Senate Standing Committee on Health, Sen. Jackson Mandago, EGH, M.P, intends to move the following amendments to the Assisted Reproductive Technology Bill 2022 (National Assembly Bills No. 61 of 2022) at the Committee Stage –

Clause 4

THAT clause 4 of the Bill is amended –

(a) by deleting paragraph (a) and substituting therefor the following –
(a) provide a framework for assisted reproductive technology procedures in Kenya.

(b) In paragraph (c) by deleting the words "assisted reproductive technology services" appearing immediately after the words "and comprehensive" and substituting therefor the words "assisted reproductive technology procedures"

(c) by deleting paragraph (j) and substituting therefor the following –
"establish the Assisted Reproductive Technology Technical and Bioethics Committee";

(d) by inserting a new paragraph immediately after paragraph (j) as follows –
(k) provide a framework for the safe, ethical and lawful cryopreservation of human reproductive tissue and cells used in Assisted Reproductive Technology.

Justification

The amendments to clause 4 (a) and (c) ensure that proper clinical terminologies are used.

The amendment to clause 4(j) ensures that reference is made to a proper committee.

The purpose of introducing a new paragraph (k) is to expand the objects to include cryopreservation of human reproductive tissues.

Clause 6

THAT clause 6 of the Bill is amended –

(a) In the introductory clause by deleting the word "Council" appearing immediately after the words "functions of the" and substituting therefor the word "Committee";

(b) In the marginal note by deleting the word "Council" appearing immediately after the words "functions of the" and substituting therefor the word "Committee"; and
(c) In paragraph (o) by deleting the word "Council" appearing immediately after the words "functions of the" and substituting therefor the word "Committee"

Justification

These amendments ensure that reference is made to the correct authority.

Clause 7

THAT clause 7 of the Bill is amended –

(a) In paragraph (a) by deleting the words "assisted reproductive technology services" appearing immediately after the words "of cost-effective" and substituting therefor the words "assisted reproductive technology procedures";
(b) In paragraph (b) by deleting the words "assisted reproductive technology services" appearing immediately after the words "of cost-effective" and substituting therefor the words "assisted reproductive technology procedures";
(c) In paragraph (c) by deleting the words "assisted reproduction health services" appearing immediately after the words "regulations to ensure" and substituting therefor the words "assisted reproductive health procedures"

Justification

The amendments ensure that correct clinical terminologies are used.

Clause 8

THAT clause 8 of the Bill is amended –

(a) in paragraph (a) by deleting the words "assisted reproductive technology services" appearing immediately after the words "quality, cost-effective" and substituting therefor the words "assisted reproductive technology procedures"; and
(b) in paragraph (d) by deleting the words "assisted reproductive technology services" appearing immediately after the words "and cost-effective" and substituting therefor the words "assisted reproductive technology procedures";

Justification

The amendments ensure that correct clinical terminologies are used.

Clause 19

THAT clause 19 of the Bill is amended –

(a) In subclause (1)—

i. Paragraph (a) by inserting the word "donor" immediately before the words "gametes from males"; and

ii. Paragraph (b) by inserting the word "donors" immediately after the words "oocytes from females";

iii. Inserting a new paragraph (c) as follows –

(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

(b) in subclause (2) by deleting the word "Council" appearing immediately after the words "prescribed by the" and substituting therefor the word "Committee"

Clause 20

THAT clause 20 of the Bill is amended in sub-clause (1) —

(a) by deleting the word "Council" appearing immediately after the word "the" in the introductory phrase and substituting therefor the word "Committee"

(b) deleting paragraph (a) and substituting therefor the following –
"disposal of gametes after five years of preservation, provided that a written notice of the impending lapse of the preservation period is issued to the person to whom the gametes relate, affording that person an opportunity to request an extension or to waive any future preservation;

(c) deleting paragraph (b)

Justification

The amendments seek to reduce the period for disposal of gametes from 10 years to 5 years with a mandatory written notice requirement which encourages periodic, informed decision making by patients regarding the continued storage or disposal of their gametes.

The amendment also deletes paragraph 20 (1)(b) which allows donation of gametes to other couple pursuing assistive reproduction. Surrogacy and other ART procedures are established on the basis of consent and agreement and therefore donation of gametes risks bypassing these safeguards.

Clause 21

THAT the Bill is amended by deleting clause 21

Justification

Allowing procreation after the death of a person would be to legally sanction single parenthood which will deny the child the love of one of the parents. This is against the principle of the best interests of the child.

Clause 22

THAT clause 22 of the Bill is amended –

(a) in subclause (1) by deleting the word "services" appearing immediately after the words "reproductive technology" and substituting therefor the words "procedures"

(b) in sub-clause (2) by –

i. deleting the word "Council" appearing immediately after the words "licensed by the" and substituting therefor the word "Committee";

ii. deleting the word "services" appearing immediately after the words "reproductive technology" and substituting therefor the word "procedures"

(c) in subclause 3 —

i. by deleting the word "services" appearing immediately after the words "reproductive technology" in the introductory phrase and substituting therefor the word "procedures"

ii. by deleting the word "services" appearing immediately after the words "assisted reproductive" and substituting therefor the word "procedures"

Justification

The amendment ensures proper use of clinical terminologies

Clause 23

THAT clause 23 of the Bill is amended –

(a) in the marginal note by deleting the word "service" appearing immediately after the words "reproductive technology" and substituting therefor the word "procedure"

(b) in subclause (1) by deleting the word "service" appearing immediately after the words "reproductive technology" and substituting therefor the word "procedure"

(c) in subclause (2) –

i. paragraph (a) by inserting the words "and embryos" immediately after the words "ownership of the";

ii. paragraph (b) —

(a) by deleting the word "gametes" appearing immediately after the words "number of" and substituting therefor the word "embryos"; and

(b) by deleting the word "implanted" and substituting therefor the word "transferred"

iii. in paragraph (c) —

(a) by inserting the words "and embryos" immediately after the words "the gametes" in the introductory phrase;

(b) by deleting the word "services" appearing immediately after the words "reproductive technology" and substituting therefor the words "procedures" in sub-paragraph (i)

(c) by deleting the word "services" appearing immediately after the words "reproductive technology" and substituting therefor the words "procedures" in sub-paragraph (ii)

(d) by inserting the words "and embryos" immediately after the words "the gametes" in sub-paragraph (iii)

Justification

The amendment ensures a consistent use of clinical terminologies. ART involves both gametes and embryos. In clinical practice, only embryos, not individual gametes, can be counted and transferred. Gametes are inseminated. Implantation is what occurs to a transferred embryo subsequently in the uterus, whereby the embryo attaches/ burrows into the uterine lining. These amendments provide clarity for consent, ownership and clinical decision making.

Clause 24

THAT clause 24 (1) of the Bill is amended –

(a) In paragraph (a) by deleting the word "services" appearing immediately after the words "reproductive technology" and substituting therefor the word "procedures"

(b) In paragraph (b) –

i. by deleting the word "all" appearing immediately after the words "screened for" and substituting therefor the word "relevant";

ii. by inserting the word "recipient" immediately after the phrase "parents, the";

iii. by inserting the word "resulting" immediately after the words "surrogate or the"

Justification

The amendment ensures that risk-based donor screening focuses on conditions that are clinically significant and pose genuine risk to all relevant third parties. It aligns the Bill with

international ART practice, safeguards patient and child health and allows professional standards to define the scope of required screening.

Clause 25

THAT clause 25 of the Bill is amended by deleting the word "donor" appearing immediately before the words "shall undergo" and substituting therefor with the word "embryo"

Justification

The amendment seeks to ensure the use of correct terminology. It is the embryo that undergoes pre-implantation screening and not the donor.

Clause 26

THAT the Bill is amended by deleting clause 26 (2) and substituting therefor the following –

(2) Where a married couple obtains a divorce after the creation of an embryo, both partners reserve the right to withdraw consent of the transfer of the embryo (s) which have been created by their sperms or ova.

Clause 27

THAT clause 27 of the Bill is amended in subclause (3) by deleting the words "or intended parents" appearing immediately after the words "surrogate mother or"

Justification

The purpose of the amendment is to ensure that surrogacy is only undertaken where there is a genetic link between the resulting child and one of the intended parents to alleviate instances of human trafficking. Kenyan law already allows for adoption of children (usually with no genetic link) and this route can be utilized in instances where the intended parents do not intend to have the resulting child have a genetic link to them.

Clause 28

THAT clause 28 of the Bill is amended –

(a) by deleting paragraph (a) and substituting thereof the following new paragraph –
(a) is a Kenyan citizen or lawful resident of Kenya;

(b) by deleting paragraph (b) and substituting thereof the following new paragraph –
(b) has attained the age of eighteen years, provided that any intended parent who is below the age of twenty-five years shall undergo mandatory counselling on the medical, ethical

and social implications of parenthood in addition to other clinical or legal safeguards as may be prescribed under regulations.

Justification

The justification for paragraph (a) is that expanding eligibility to include lawful residents of Kenya ensures that intended parents who live and work in Kenya, including non-Kenyan spouses of Kenyans are not unfairly excluded from accessing ART services.

The justification for the amendment to paragraph (b) is that fertility potentially declines with age and younger patients who experience early medical infertility (due to conditions such as premature ovarian insufficiency, cancer treatments, or congenital anomalies) may only have viable gametes or embryos at younger ages. Restricting access to ART services to only persons above 25 years could effectively deny these patients the opportunity for genetically related parenthood. In any case, the age of legal adulthood in Kenya is 18 years and as such restrictions would be discriminatory.

Clause 30

THAT clause 30 of the Bill is amended –

(a) in sub-clause (3) —

i. paragraph (c) (i) by deleting the words "commissioning parent" whenever it appears and substituting therefor the words "intended parent"

ii. paragraph c (ii) by deleting the words "commissioning parent" appearing immediately after the words "divorce of the" and substituting therefor the words "intended parents"

iii. paragraph (d) by deleting the words "commissioning parents" whenever they appears and substituting therefor the words "intended parents"

iv. by inserting the following new paragraphs immediately after paragraph (d) —

(da) where the intended parents are a couple; and

(db) where the conception of the child shall be achieved using the gametes of both intended parents or, where it is not possible for both intended parents to provide gametes owing to biological or medical reasons certified in writing by a registered assisted reproductive technology expert, the gamete of at least one of the intended parents.

v. In paragraph (g) by deleting the words "commissioning parents" whenever they appear and substituting therefor the words "intended parents"

(b) by deleting sub-clause (5) and substituting therefor the following –

(5) A fertility clinic shall not undertake any surrogacy procedure on behalf of any intended parents or couple unless the 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.

(c) In subclause (6) –

i. by deleting the word "person" appearing immediately before the words "may apply to" in the introductory phrase and substituting therefor the words "Any party to a surrogacy agreement"; and

ii. inserting a new paragraph (c) as follows –

(c) the enforcement of any provisions of the surrogacy agreement.

Justification

The amendments to clause 30 (3) are aimed at ensuring that surrogacy is only available to married partners in Kenya and also to use the defined terminology "intended parents" as opposed to "commissioning parents". It should be noted that, the word couple is already defined under clause 2 and does not include same sex couple. The amendment further ensures that surrogacy is allowed where there is at least a genetic link between one of the parents and the resulting child. These amendments are part of a tight regulation of surrogacy arrangements in Kenya to avoid instances of child trafficking

Clause 30 (5) as currently in the Bil introduces significant procedural bottlenecks through subjective pre-approvals by the Kenya Medical Practitioners and Dentists Council without clear standards, creating delays and uncertainty. These can be achieved through licensing, professional standards and contractual safeguards. The amendment therefore removes the need for these pre-approval checks by the council and retains the mandatory insurance coverage of the surrogate.

In addition, the amendment to sub-clause (6) is aimed at ensuring only parties to the surrogacy agreement challenge the validity of the agreement. This ensures that only proper parties approach the court.

Further, the proposed amendment for the introduction of a new clause 30 (6) (c) would ensure that even the surrogate can initiate court action to compel the performance of the obligations of the agreement, particularly with regards to payment of the medical expenses and provision of medical cover.

Clause 32

THAT clause 32 (1)(f) of the Bill is amended by inserting the words "except where the embryos or gametes are the biological tissue of a Kenyan citizen or lawful residents of Kenya who intend to use them in a surrogacy arrangement in Kenya, and such importation is approved by the committee in accordance with regulations."

Justification

A blanket prohibition on the importation of embryos and gametes fail to account for Kenyans living abroad and lawful residents of Kenya who may already have lawfully created embryos or gametes in their countries of residence and would need to transport those embryos and gametes to Kenya for surrogacy. The amendment therefore seeks to introduce an exception to the ban.

Clause 33

THAT clause 33 (1) of the Bill is amended –

(a) In paragraph (b) by deleting the words "a fertilized" appearing immediately after the words "the transfer of" and substituting therefor the word "an"; and
(b) In paragraph (c) by deleting the words "the fertilized" appearing immediately after the words "and before" and substituting therefor the article "a".

Justification

An embryo is an already fertilized and developing egg. These amendments correct a technical accuracy inline with clinical practice.

Clause 34

THAT the Bill is amended –

(a) by deleting sub-clause (3) and substituting therefor the following –

(3) Where a child is born through a surrogacy arrangement, the female intended parent shall be the mother of the child and the male intended parent shall be the father of the child for all purposes under this Act, the Children's Act and under the Births and Deaths Registration Act, and the two shall accordingly be listed as the parents of the child in the birth notification and in the birth certificate, without any reference to the surrogacy arrangement or to the surrogate mother.

(b) In sub-clause (4)(a) by deleting the words "in-vitro fertilization" appearing immediately after the words "the process of" and substituting thereof the words "embryo transfer"

Justification

The amendment to clause 34 (3) allows for the registration of the intended parents as the father and mother of the child for the purpose of entry of their names in the Birth notification and Birth Certificate and for parental responsibility under the Children's Act The same amendment further deletes clause (b) which permits surrogacy arrangements in which the child has no genetic link to one of the intended parents creating a legal ambiguity around parentage, inheritance, citizenship and identity rights. This is in the best interests of the child.

Further, the amendment on subclause (4)(a) is to ensure proper use of terminology. What surrogates undergo is preparatory clinical procedures before embryo transfer, cost of which is now captured in the proposed amendment. This amendment ensures that there is no misinterpretation.

Clause 35

THAT the Bill is amended by deleting clause 35 and substituting therefor the following –

35. A person shall not do any act, at any stage of an assisted reproductive process, to determine the sex of a child to be born through the use of assisted reproductive technology 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 standards, regulatory approval, and documented informed consent.

Justification

The current provision appropriately prevents social or non-medical sex selection. However, the amendment is necessary to permit determination where clinically necessary such as to avoid sex-linked genetic disorders. This preserves ethical objectives while protecting legitimate medical practice.

Clause 38

THAT clause 38 of the Bill is amended –

(a) in sub-clause (1) by deleting the word "council" appearing immediately after the word "the" in the introductory phrase and substituting therefor the word "Committee";
(b) in sub-clause (2) by deleting the word "council" appearing immediately after the word "the" and substituting therefor the word "committee"; and
(c) in sub-clause (3) by deleting the word "council" appearing immediately after the word "the" and substituting therefor the word "committee"

Justification

These are clean up provisions to change the term "council" to "Committee"

Clause 39

THAT the Bill is amended by deleting clause 39

Clause 40

THAT clause 40 of the Bill is amended –

(a) in sub-clause (1) by deleting the word "Council" appearing immediately after the word "the" and substituting therefor the word "Committee";
(b) in sub-clause (2) by deleting the word "Council" whenever it appears and substituting therefor the word "committee"; and
(c) deleting subclause (2).

Justification

These are clean up provisions to change the term "council" to "Committee"

Clause 41

THAT clause 41 of the Bill is amended –

(a) in sub-section (1) by deleting the word "council" whenever it appears and substituting therefor the word "committee"
(b) in sub-clause (2) by deleting the word "council" appearing immediately after the words "decision of the" and substituting therefor the word "committee"
(c) in the marginal note by deleting the word "council" appearing immediately after the words "information of the" and substituting therefor the word "committee"

Justification

These are clean up provisions to change the term "council" to "Committee"

Clause 42

THAT clause 42 of the Bill is amended –

(a) in sub-clause (1) by deleting the word "council" whenever it appears in the introductory phrase and substituting therefor the word "committee";
(b) in sub-clause (2) (b) by deleting the word "council" appearing immediately after the words "employee of the" and substituting therefor the word "committee"; and
(c) in sub-clause 3 (a) by deleting the word "council" appearing immediately after the words "employee of the" and substituting therefor the word "committee"

Justification

These are clean up provisions to change the term "council" to "Committee"

Clause 44

THAT the Bill is amended by deleting clause 44 and substituting therefor the following –

Requirements for licensing of ART facilities

44. (1) No person shall provide assisted reproductive technology procedures or operate a cryobank –

(a) unless that person holds a valid licence issued under this Part; and

(b) at any premises unless those premises are the subject of a valid licence issued under this Part in respect of those premises.

(2) A licence issued under this Part in respect of a person is not transferable to another person, and a licence issued in respect of premises is not transferable to other premises.

(3) A person who carries out any assisted reproductive technology procedures contrary to 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.

Justification

This amendment ensures that only qualified, licensed practitioners can provide ART services, and only at approved premises. It prevents licences from being transferred or misused. The penalty matches similar offences in the Bill and discourages unlicensed practice, thereby protecting patients from harm.

Clause 47

THAT clause 47 of the Bill is amended in subclause (2) by inserting the following new paragraph immediately after paragraph (a) –

(aa) the licensee shall display at a conspicuous place on the licensed premises the licences of the principal medical practitioner and the principal embryologist.

Justification

The amendment ensures patients, staff and inspectors can identify the specific people who are legally responsible for clinical and laboratory practice at that facility, not merely the facility itself.

Clause 48

THAT clause 48 of the Bill is amended in subclause (2) –

(a) paragraph (a) by deleting the word "person" whenever it appears and substituting thereof the word "clinic"

(b) by deleting paragraph (d)

(c) paragraph (e) by inserting the words "provided under section 20 (1) (a)" immediately after the words "statutory storage period"

Justification

Automatic "priority" for use of embryos is clinically inappropriate as embryo transfer decisions depend on medical readiness, consent and updated clinical assessment. The deletion of paragraph (d) therefore addresses this concern.

Clause 58

THAT clause 58 of the Bill is amended in subclause (1) by inserting the word "and the committee" immediately after the words "with the council"

NEW CLAUSES

New Clause 5A and 5B

THAT the Bill is amended by inserting the following new clauses immediately after clause 5 —

Composition of the committee

5A. (1) The committee shall comprise of the following members –

(a) a chairperson who shall be a licenced medical practitioner with a specialty in obstetrics and gynaecology with at least ten years' experience in assisted reproductive health and a member of the Kenya Obstetrical and Gynaecological Society;
(b) The Director-General for Health or a representative designated in writing;
(c) Two Assisted Reproductive Technology Experts being obstetricians or gynecologists with a specialty in reproductive endocrinology and fertility medicine and are registered and licensed by the Council under this Act;
(d) An embryologist registered or recognised under applicable professional standards, with not less than five years' experience in assisted reproductive technology;
(e) A registered nurse with training and experience in assisted reproductive health nominated by the Nursing Council of Kenya;
(f) An advocate of the High Court of Kenya, with ten years post admission experience in health law and regulatory practice, nominated by the Law Society of Kenya; and
(g) one person representing non-governmental organizations involved in Assisted Reproductive Health; and
(h) a registered counselor or psychologist

(2) The members of the committee under 5A (a), (c)(d)(e)(f)(g) and (h) shall be appointed by the Cabinet Secretary by a notice in the Kenya Gazette.

Tenure of office of the members of the committee

5B. The members of the committee shall hold office for a term of three years and are eligible for re-appointment for a further term of three years.

Justification

The amendment provides for membership of the committee and the tenure of office. This ensures that the committee is made up of experts.

New Clause 24A, 24B and 24C

THAT the Bill is amended by inserting the following new clauses immediately after clause 24 –

Registration And Licensing of Embryologists

24A. (1) A person shall not practice as an embryologist in Kenya unless the person is registered and holds a valid licence issued by the Council under this section.

(2) A person qualifies for registration as an embryologist if the person —

(a) holds a degree in biomedical science, clinical embryology, reproductive biology, medicine or a similar field from a recognized institution;

(b) has completed a post - graduate qualification or structured clinical training programme in clinical embryology of not less than two years' duration, accredited by the Council;

(c) has completed a supervised clinical attachment in an assisted reproductive technology clinic licensed under this Act of not less than twelve months; and

(d) satisfies any additional requirements prescribed by the Council through regulations

(3) The Council shall maintain a register of all registered embryologists which shall —

(a) be accessible to the public on the Council's website; and

(b) record the name, registration number, category of practice, and status of each registered embryologist.

Scope of Practice of a Clinical Embryologists

24B. (1) A registered embryologist shall only perform the procedures falling within the category of practice specified on the embryologist's license by the Council.

(2) A registered embryologist shall, in the performance of embryology procedures –

(a) comply with the standards, guidelines and protocols issued by the Council;

(b) maintain accurate and complete laboratory records of every procedure performed, in such form as the Council may prescribe;

(c) ensure the correct identification, labelling and traceability of all gametes, zygotes and embryos handled, in accordance with the conditions of the licence of the clinic;

(d) report to the responsible supervisor and to the Council any error or adverse event in laboratory practice that has or may have affected a patient, donor or gamete or embryo within forty-eight hours of becoming aware of it;

(e) maintain strict confidentiality regarding the identity and medical information of patients and donors in accordance with this Act and any other relevant laws; and

(f) obtain or confirm the existence of valid informed consent before performing any procedure involving a patient's gametes or embryo.

(3) A registered embryologist commits a professional misconduct if he or she –

(a) performs a procedure beyond the embryologist's licenced category of practice without supervision;

(b) misidentifies, mislabels or incorrectly transfers a gamete or embryo;

(c) falsifies, alters or destroys laboratory records;

(d) uses gametes or embryos without the valid informed consent of the donor or owners;

(e) accepts any financial benefit or inducement from a patient, donor or surrogate to influence any procedure to the detriment of a patient, donor or surrogate mother;

(f) discloses confidential patient or donor information without lawful authority; or

(g) engages in any conduct that is dishonest, fraudulent or likely to bring the profession into disrepute.

Disciplinary proceedings

24C. (1) Where the Council receives a complaint against a registered embryologist, or on its own motion has reasonable grounds to believe that a registered embryologist has committed professional misconduct, the Council shall investigate the matter.

(2) Before commencing an investigation under subsection (1), the Council shall serve the embryologist with a written notice setting out –

(a) the nature of the alleged professional misconduct;

(b) the evidence or grounds relied upon; and

(c) the embryologist's right to respond in writing within twenty-one days of the date of the notice.

(3) Upon considering the response of the embryologist, or where no response is received within the period specified in subsection (2)(c), the Council shall appoint a disciplinary panel to conduct a hearing into the matter.

(4) The disciplinary panel shall conduct the hearing in accordance with the rules of natural justice and shall complete the hearing and submit its findings and recommendations to the Council within ninety days of its appointment.

(5) Where the Council, upon considering the findings and recommendations of the disciplinary panel, is satisfied that an embryologist has committed professional misconduct, the Council may, having regard to the gravity of the misconduct, do one or more of the following –

(a) issue a warning to the embryologist;

(b) impose conditions or restrictions on the embryologist's licence;

(c) require the embryologist to undergo further training or a competency reassessment before continuing to practise;

(d) suspend the embryologist's licence for a specified period not exceeding twelve months; or

(e) cancel the embryologist's licence and strike off the embryologist's name from the register

(6) The Council shall communicate its decision under subsection (5) to the embryologist in writing, with reasons, within fourteen days of making the decision.

(7) An embryologist aggrieved by a decision of the Council under this section may, within thirty days of being notified of the decision, appeal to the High Court.

Justification

While embryologists play a critical role in assisted reproductive technology, the remain unregulated and therefore the need for a legal framework for their regulation. This Amendments therefore ensure that embryologists just like other medical practitioners are licensed by KMPDC

Clause 2

THAT clause 2 of the Bill is amended –

(a) by deleting the definition of the term "assisted reproductive technology services" and substituting therefore the following –
"assisted reproductive technology procedures" includes diagnostic and screening, intrauterine insemination, in-vitro fertilisation, intracytoplasmic sperm injection, cryo-preservation, preimplantation genetic screening, pre-implantation genetic diagnosis, onco-fertility, gamete and embryo donation, or surrogacy provided to infertile and sub- fertile man or woman;

(b) by deleting the definition of the term "commercial surrogacy" and substituting therefor the following –
"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.

(c) In the definition of the term "donation" by deleting the word "giving" appearing immediately after the words "of voluntary" and substituting therefor the word "providing"

(d) by deleting the definition of the term "endoscopic surgery";

(e) in the definition of the term Assisted Reproductive Technology Services by deleting the words "endoscopic surgery" appearing immediately after the words "diagnostic and screening";

(f) in the definition of the term "gamete donor" by deleting the word "gives" appearing immediately after the word "who voluntarily";

(g) in the definition of the word "infertility" by deleting the word "coitus" appearing immediately after the words "year of unprotected" and substituting therefor the words "sexual intercourse";

(h) in the definition of the word "mother" by deleting the word "intended" appearing immediately after the words "a female";

(i) by deleting the definition of the word "oocyte" and substituting therefor the following –
"oocyte" means an immature female egg cell produced by the ovary, which upon maturation may be capable of fertilization;

(j) by deleting the definition of the word "ovum" and substituting therefor the following –

"ovum" means a fully mature female gamete, produced by the ovaries, that has completed meiosis and is capable of being fertilized by a sperm cell to form a zygote;

(k) by deleting the definition of the term "pre-implantation genetic screening" and substituting therefor the following –

"pre-implantation genetic screening" means a group of genetic tests used to evaluate the genetic health of embryos before transfer to the uterus;

(l) by deleting the definition of the word "sperm" and substituting therefor the following –

"sperm" means a male human gamete;

(m) by inserting the following new definitions in a proper alphabetical sequence –

"cryobank" means a facility or premises registered under this Act in which human gametes, embryos, or reproductive cells and tissues are collected, screened, cryopreserved, stored, and released for the purposes of assisted reproduction or research;

"sex selection" means any procedure, technique, or test undertaken with the intent of determining, influencing, or increasing the likelihood that a resulting embryo, foetus, or child shall be of a particular sex

Justification

The purpose of amending the definitions is to ensure the words retain their clinical and scientific meanings.

THAT clause 1 of the Bill is amended by deleting the short title and substituting therefor the following –

"The Assisted Reproductive Health Bill, 2022"

Justification

The Bill is not limited to Assisted reproductive technology but rather speaks to the Assisted reproductive health. The amendment of the short title is therefore to reflect this scope.

Date.....13......, 2026.

Sen. Jackson Mandago, EGH, M.P
Chairperson, Senate Standing Committee on Health.