

REPUBLIC OF KENYATHIRTEENTH PARLIAMENT – (THIRD SESSION)THE NATIONAL ASSEMBLYORDERS OF THE DAYWEDNESDAY, APRIL 17, 2024 AT 9.30 A.M.ORDER OF BUSINESSPRAYERS

1. Administration of Oath
2. Communication from the Chair
3. Messages
4. Petitions
5. Papers
6. Notices of Motion
7. Questions and Statements

8*. MOTION: 025/2023 – PROVIDING A SAFETY NET FOR CAREGIVERS OF PERSONS WITH SEVERE DISABILITIES

(The Hon. Dorothy Ikiara, M.P.)

THAT, aware that, Article 21(3) of the Constitution provides that all State Organs have the duty to address the needs of vulnerable groups within the society; further aware that the persons with severe disabilities cash transfer programme (PWSD-CT) is one of the four cash transfer programmes implemented by the government as part of the overall social protection interventions; noting that caregivers undertaking the immense responsibility of providing daily care and assistance to persons with severe disabilities (PWSD) are oftentimes the immediate family members of the PWSD; concerned that, this causes a disproportionate burden on these families as persons who would otherwise be engaged in gainful employment or other activities to provide for the families are limited by these immense responsibilities; further concerned that, this loss of income opportunities and resources exacerbates the challenges faced by these families; cognizant that, the government ought to take action to recognize the invaluable contributions of caregivers and support them in caring for individuals with severe disabilities; now therefore, this House **resolves** that the Government, through the Ministry of Labour & Social Protection, recognizes primary caregivers of persons with severe disabilities (PWSD) as a distinct category requiring social protection and support, and further, develops and implements a cash transfer programme for these primary caregivers.

(Resumption of debate interrupted on Wednesday, March 20, 2024 – Morning Sitting)

(Balance of time – 31 minutes)

9*. COMMITTEE OF THE WHOLE HOUSE

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

(The Hon. Millie Odhiambo-Mabona, M.P.)

10*. MOTION: 019/2023 – POLICY FOR THE PROVISION OF MENTAL HEALTH SERVICES IN ALL HEALTHCARE FACILITIES

(The Hon. Mishi Mboko, M.P.)

THAT, aware that Article 43(1)(a) of the Constitution provides that every person has the right to the highest attainable standard of health including the right to health care services; further aware that mental health is a key determinant of overall health and socio-economic development; recognizing that the Constitution assigns to the national government the responsibility of matters of health policy; concerned that according to the World Health Organization (WHO), mental and neurological disorders are common and about ten (10) percent of the global population suffer from at least one mental health disorder at any given time; concerned that psychiatric units are only available in a few facilities in the country and patients requiring psychiatric services have limited or no access to these facilities; acknowledging that, access to healthcare facilities would lead to improved overall health, increased economic productivity, social equity and improved quality of life for all; now therefore, this House **urges** the national government, through the Ministry of Health to collaborate with county governments to develop a policy integrating mental healthcare services in all healthcare facilities in the country.

11*. MOTION: 028/2023 – ESTABLISHMENT OF A SCIENCE MUSEUM

(The Hon. John Kiarie, M.P.)

THAT, aware that, Article 11(2)(b) of the Constitution provides that the government shall recognize the role of science and indigenous technologies in the development of the nation; further aware that the Vision 2030 provides for the integration of information, communication and technology in the country’s transformative agenda; concerned that, there exists no science museum for consolidating indigenous scientific and technological innovations, training and research purposes in the East Africa Region; appreciating that, integration of science and technology would greatly enhance Kenya’s economic and societal success; noting that there is potential for growth in the technology sector by establishing a science museum; further noting that, the informal science education plays a key role in the progression of Science, Technology, Engineering and Mathematics (STEM); acknowledging that science museums operate as the nexus between science practitioners, policy-makers and the public; cognizant of the fact that, a science museum in the country would greatly impact on the economy of the country in the quest to become an industrialized nation; now therefore, this House **resolves** that, the national Government through the relevant Ministries establishes and operationalizes a science museum in the country.

12*. MOTION: 033/2023 – SUPPORTING AND PROMOTING LOCAL FERTILIZER MANUFACTURING INDUSTRIES

(The Hon. Samuel Atandi, M.P.)

THAT, aware that, the Fertilizer and Animal Foodstuff Act, 2015 provides for the regulation of fertilizer importation in the country; further aware that, the Fertilizer and Animal Foodstuffs Board regulates the fertilizer and animal foodstuffs industry including the manufacture and production of fertilizers; noting that, the country currently relies heavily on imported fertilizer due to inadequate local production capacity; further noting that, the low local production leads to high costs for farmers, reducing their profits and results in an unhealthy reliance on imported fertilizer; concerned that, this scenario threatens the country’s food security in case of supply disruptions and discourages local production; recognizing that local fertilizer production could lead to improved fertilizer quality, increased crop yields and a reduction in environmental harm caused by the use of substandard fertilizers; recalling that the country has the potential to produce fertilizer that could meet the country’s domestic demand and also supply the regional market; further recognizing that there is need for the government to work with local producers to develop high quality fertilizer tailored to the needs of Kenyan farmers and crops; now therefore this House **resolves** that the National Government through the Ministry of Agriculture and Livestock Development, supports and promotes local fertilizer manufacturing industries by investing in research and development to bolster the domestic fertilizer manufacturing sector.

13*. MOTION: 035/2023 – GOVERNMENT-TO-GOVERNMENT (G2G) MODEL TO ACQUIRE AND SUPPLY FERTILIZERS TO FARMERS AT SUBSIDIZED COST

(The Hon. Geoffrey Ruku, M.P.)

THAT, aware that, Kenya is an agricultural-based economy with a significant portion of its population relying on farming for their livelihood; noting that, the quality and quantity of crop yields in Kenya has been hampered to a large extent by lack of adequate and quality fertilizers leading to decreased agricultural productivity and economic losses; further noting that, the government has committed to improving agricultural productivity through various initiatives including provision of subsidized fertilizers; concerned that the cost, quantity and quality of fertilizers and subsequently the cost of production of food crops and cash crops including coffee, tea and Miraa has increased due to a number of factors, among them high cost of fertilizers due to markup by private suppliers of fertilizers; further concerned that threat to food security is a threat to national security; recognizing that the Government-to-Government model has been noted to lower cost of products; further recognizing that, there are countries willing to enter into a G2G agreement; appreciating that G2G has been proven to be effective in provision of services that have a direct impact on citizens’ livelihood including the cost of living

such as the supply of fertilizers, particularly in countries with similar agricultural conditions as Kenya; **this House, therefore resolves that**, the government, through the Ministry of Agriculture and Livestock Development and its agencies adopts-

- (i) the Government-to-Government (G2G) model in the acquisition and supply of fertilizers by identifying potential partner countries that have surplus and quality fertilizers; and
- (ii) a comprehensive programme for Government-to-Government (G2G) acquisition and distribution of fertilizers through, among others, Kenya Farmers Association (KFA), Kenya Tea Development Agency (KTDA), Coffee Board of Kenya, Kenya Planters Cooperative Union (KPCU), Kenya Grain Growers Cooperative Union, Pyrethrum Board of Kenya for increased agricultural productivity.

14*. MOTION: 040/2023 – ESTABLISHMENT OF A NATIONAL POLICY TO COMBAT DISRESPECTFUL CHILDBIRTH PRACTICES IN KENYA
(The Hon. Gathoni Wamuchomba, M.P.)

THAT, aware that, Article 43(1)(a) of the Constitution provides for the right of every person to access the highest attainable standard of health; further aware that, poor quality of health services especially maternal care has been a recurring concern among women in the country; noting that, there is increased pre- and post-partum mistreatment and dehumanized care of women by healthcare providers, also known as *obstetric violence (OBV)*; further noting that, obstetric violence includes, but is not limited to, disrespectful and abusive behaviour, physical and verbal abuse, neglect, forced medical procedures, humiliation and assault in healthcare settings; concerned that, sustained class-based disparities shape different maternal and infant health outcomes with women of low socio-economic status experiencing greater levels of obstetric violence; further concerned that, this not only affects women's physical and mental health, but also impacts on the overall health outcomes of mothers and their newborns, significantly contributing to high maternal mortality rates; cognizant of the fact that, there exists no national policy or framework to address and prevent obstetric violence; now therefore, this House **resolves** that, the National Government, through the Ministry of Health, develops a policy on prevention of obstetric violence in healthcare facilities in the country and provides a framework for regular monitoring and reporting of cases to curb incidences of pre- and post-partum mistreatment of women seeking health services.

15*. MOTION: 041/2023 – ESTABLISHMENT OF A PRIORITY BOARDING PROTOCOL FOR KENYA DEFENCE FORCES AND KENYA SPECIAL FORCES PERSONNEL ON LOCAL AIRLINES
(The Hon. (Capt.) Ruweida Obo, M.P.)

THAT, aware that, Article 239 provides for the National Security Organs, including the Kenya Defence Forces; further aware that, the Kenya Defence and Kenya Special Forces play an indispensable role in promoting and safeguarding

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national security in accordance with the Constitution; recognizing that, members of the Forces face life-threatening risks as they carry out their duties to protect our citizens, particularly in high-risk and volatile areas; noting that there is currently no token of appreciation for the remarkable dedication, service and sacrifices made by the Kenya Defence and Special Forces; acknowledging that it is important to accord special privileges and honours to our military and veteran personnel, akin to the practice observed in other countries including being allowed to access services like banking hall and boarding of flights ahead of the general public; further acknowledging that this practice would not only instill a sense of pride among the Kenya Defence and Kenya Special Forces personnel, but also enhance their morale and motivation, thereby boosting their performance and commitment to our national security; cognizant of the fact that there exists no national policy or framework to facilitate the implementation of such a practice; now therefore, this House **urges** that the National Government, through the Ministry of Roads and Transport, encourages local airlines to establish a priority boarding protocol for the Kenya Defence and Kenya Special Forces personnel which grants them the privilege to board local aircrafts before the general public.

16*. MOTION: 045/2023 – **REVIEW OF THE ELIGIBILITY AGE FOR ENROLMENT OF OLDER MEMBERS OF SOCIETY TO THE INUA JAMII CASH TRANSFER PROGRAMME**

(The Hon. Majimbo Kalasinga, M.P.)

THAT, aware that Article 57 of the Constitution provides that the State shall take measures to secure the rights of older persons to live in dignity and to receive reasonable care and assistance from the State; noting that to actualize the provisions of Article 57 of the Constitution, the Government rolled out the *Inua Jamii* Cash Transfer Programme in 2015 to provide regular and predictable cash transfers to older persons aged seventy (70) years and above and who are not in receipt of a civil service pension; appreciating the success that the programme has recorded in alleviating poverty and suffering among older members of the society since its inception; noting that the government intends to progressively net more vulnerable and under-privileged members of the society with a view to reaching 2.5 million beneficiaries in the next three (3) years; concerned that, with respect to eligibility to the programme for older members of society, the guidelines requires them to have attained the age of seventy years; noting that, Article 260 of the Constitution defines an “older member of society” as one who has attained the age of sixty (60) years; concerned that capping the eligibility for enrolment to the *Inua Jamii Programme* at the age of seventy years is discriminatory to the older members of society and negates the spirit of the Constitution entitling support to older members of the society; **now** therefore, this House **urges** the national Government, through the Ministry of Labour and Social Protection, to revise the age requirement for eligibility of elderly members to be enrolled to the *Inua Jamii Programme* from seventy (70) years to sixty (60) years in line with the Constitution.

17*. MOTION: 001/2024 – FORMULATION OF A REWARD SCHEME FOR ACCOMPLISHMENTS BY SPORTS PERSONS IN INTERNATIONAL COMPETITION

(The Hon. Charles Ngusya, M.P.)

THAT, aware that, sports play an integral role in promoting cultural heritage, national identity, national development, the well-being of the people and sustenance of livelihoods, particularly of the youth; appreciating that, *Sessional Paper No. 3 of 2005* provides a framework for sports development and operationalization in the country; further appreciating that the *Sector Plan For Sports, Culture and Arts – 2018* by the Ministry of Sports, Culture and Arts mainstreamed sports development in the Third Medium Term Plan (MTP III) for 2018-2022, under Kenya’s Vision 2030; recognizing that, the Vision 2030 aims at capitalizing on the country’s international reputation as a world-class sports powerhouse whose sportsmen and women have won international accolades and recognition, especially for their prowess in athletics; concerned that, despite bringing honour and national pride to the country, most sports men and women face a myriad of challenges such as lack of psychosocial support and social protection, hence pushing many to alarming levels of mental health challenges during their careers and even after retirement; noting that *Sessional Paper No. 3 of 2005* contemplated motivation of sportspersons by the State through cash and material prizes, conferring State Honours, appointments as goodwill ambassadors and establishing contributory insurance and savings schemes among other forms of motivation; cognizant of the fact that, the prospect of receiving State recognition, financial grants, and other perks inspires sportsmen to push their limits in attaining their full potential as well as fostering a collective sense of pride in sporting achievements; now therefore, this House **urges** that the Government, through the Ministry of Youth Affairs, Sports and Arts, develops a policy and standardized sports reward scheme for recognizing the achievements made by sports persons in internationally recognized competitions, through–

- (i) financial rewards of Kshs. 6 million for setting new world records; Kshs. 4 million for Gold medalists; Kshs. 3 million for Silver medalists and Kshs. 2 million for Bronze medalists;
- (ii) non-financial motivation, including facilitation with issuance of diplomatic passports for established sportsmen and women, appointment as goodwill ambassadors and conferring national honours and privileges; and,
- (iii) establishing medical cover and a post-retirement social protection scheme, including establishing contributory insurance and savings schemes to support sports persons who retire from active sporting due to injuries or age.

Denotes Orders of the Day

NOTICES

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

- 1) Notice is given that the Chairperson of the Departmental Committee on Health intends to move the following amendments to the Assisted Reproductive Technology Bill, 2022 at the Committee Stage—

CLAUSE 2

THAT, Clause 2 of the Bill be amended —

- (a) by deleting the definition of the term “assisted reproductive technology” and substituting therefor the following new definition—

“assisted reproductive technology” means the manipulation of eggs, sperm, or embryos outside the human body and transferring the gamete or the embryo into the reproductive system of a woman to increase the likelihood of a successful pregnancy;

- (b) in the definition of the term “assisted reproductive technology expert” by inserting the words “and other professionals whose expertise is required in assisted reproductive technology” immediately after the words “fertility medicine”;

- (c) by deleting the definition of the term “child” and substituting therefor the following new definition—

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

- (d) by deleting the definition of the term “commissioning parents.”;

- (e) in the definition of the word “couple” by inserting the words “or intersex person” immediately after the word “female”;

- (f) by deleting the definition of the term “cryo-preservation” and substituting therefor the following new definition—

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

- (g) by deleting the definition of the term “donor”;

- (h) by deleting the definition of the term “embryo” and substituting therefor the following new definition—

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

- (i) by deleting the definition of the term “embryologist” and substituting therefor the following new definition—

“embryologist” means a specialist who deals with creation, development, storage and transfer of embryos, gametes and assists in the process of fertilization in the laboratory;

- (j) by deleting the definition of the term “embryology” and substituting therefor the following new definition—

“embryology” means a branch of biology that deals with creation, development, storage and transfer of gametes of embryos;

- (k) by deleting the definition of the term “endoscopic surgery” and substituting therefor the following new definition—

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

- (l) in the definition of the term “father” by —

(i) deleting the words “placing in a woman” in this definition and substituting therefor the words “transferring into a uterus”;

(ii) inserting a new sub-paragraph immediately after sub-paragraph (ii) appearing in paragraph (b) in this definition —

“(iii) the man is a commissioning or intending parent at the time of assisted reproductive technology”; and

(iii) deleting the words “artificial insemination” wherever they appear in this definition and substituting therefor the words, “intrauterine insemination;

- (m) in the definition of the term “in-vitro fertilization” by deleting the words “in a test-tube or elsewhere”;

- (n) by deleting the definition of the term “mother” and substituting therefor the following new definition—

“mother” means a woman who—

- (i) is carrying or has carried a child as a result of placing in her an embryo or sperms;
 - (ii) was party to a marriage with the man whose sperm was utilized to create an embryo;
 - (iii) has in agreement with the man, written a parental agreement acquiring parental rights of a mother; or
 - (iv) is a commissioning or intending parent at the time of assisted reproductive technology;
- (o) in the definition of the term “oocyte” by deleting the word “oocyte” and substituting therefor the word “egg”;
- (p) by deleting the definition of the term “parties to a marriage”;
- (q) in the definition of the term “pre-implantation genetic diagnosis” by deleting the words, “and eliminating the same”;
- (p) in the definition of the term “pre-implantation screening” by deleting the words “to determine the number of chromosomes” and substituting therefor the words “to determine the viability or euploidy of an embryo before transferring to the woman’s womb”;
- (q) by deleting the definition of the term “primitive streak”;
- (r) by deleting the definition of the word “sperm” and substituting therefor the following new definition—
- “sperm” means the mature male human gamete;
- (s) in the definition of the term “surrogacy” by deleting the words “a commissioning parent or couple” and substituting therefor the words “an intended parent”;
- (t) in the definition of the word “surrogate mother” by deleting the words “another woman” and substituting therefor the words “another person or a couple”;
- (u) by inserting the following new definitions in the proper alphabetical sequence—
- “abandonment” means failure to continue to pay for cryopreservation storage of gametes or embryos;
- “best interest of the child” has the meaning assigned to it under section 2 of the Children Act, No 29 of 2022;
- “clinic” means a health facility licensed under this Act for the purpose of conducting assisted reproduction procedures;
- “cryo bank” means a facility set up to store and supply human gametes or embryos;

“foetus” means the developing human offspring after the embryonic stage prior to birth;

“gamete donor” means a person who provides sperm or egg with the objective of enabling an infertile person to have a child and the person need not be the spouse of the person she or he is donating the gametes to.

“gestational carrier” means a woman in whom a pregnancy resulted from fertilization with third-party sperm and eggs and who carries the pregnancy with the intention or agreement that the offspring will be parented by one or both of the persons that produced the gametes;

“gestational surrogacy” means the process where a woman carries a pregnancy for the intended parents;

“intended parents” means a couple or commissioning parents who enter into a surrogacy arrangement seeking assistance in procreation through the help of a surrogate mother or donor

“intersex” means a person with a congenital condition in which the biological sex characteristics cannot be exclusively categorized in the common binary male or female due to inherent and mixed anatomical, hormonal, gonadal or chromosomal patterns;

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

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

“supervisor” means the person responsible for activities authorized under the licence issued under this Act;

“surrogacy agreement” means an agreement between a surrogate and an intended parent or intended parents that the surrogate is to undergo one or more relevant assisted reproduction procedures for purposes of having a child born as a result of such procedure being treated in law as—

- (a) the child of the intended parent or parents; and
- (b) not being the child of the surrogate or any other individual; and

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

CLAUSE 3

THAT, the Bill be amended by deleting Clause 3 and substituting therefor the following new Clause 3—

Application.

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

CLAUSE 4

THAT, Clause 4 of the Bill be amended by—

- (a) deleting the words, “object and purpose” appearing in the marginal note and substituting therefor the word “objects”.
- (b) inserting the following new paragraphs immediately after paragraph (c) —
 - “(d) ensure the best interest of the child;
 - (e) facilitate the registration of children born out of a gestational surrogacy arrangement;
 - (f) promote research into the incidence, causes and prevention of infertility;
 - (g) provide a framework for surrogacy arrangements; and
 - (h) establish an assisted reproduction Directorate”.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 4—

Guiding principles.

4A. The application of this Act shall be guided by principles including—

- (a) the best interest of the child born as a result of assisted reproductive procedures;
- (b) non-exploitation of parties;
- (c) non-discrimination including based on marital status; and
- (d) affordability of procedures under this Act.

CLAUSE 7

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

CLAUSE 8

THAT, Clause 8 of the Bill be amended by—

- (a) inserting the word “training,” immediately after the words “National Government in” appearing in paragraph (a);

- (b) deleting the word “adequate” in paragraph (b); and
- (c) deleting the words “sufficient” and “adequately” in paragraph (c).

CLAUSE 9

THAT, Clause 9 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2)—

“(3) A person shall be qualified for appointment as a Director if the person—

- (a) holds a bachelor’s degree in medicine from a university recognized in Kenya;
- (b) holds a master’s degree in obstetrics, gynaecology, embryology, fertility medicine or other relevant field from a university recognized in Kenya;
- (c) has at least ten years’ experience in assisted reproductive technology;
- (d) has served in a senior management position for at least five years;
- (e) is a member in good standing of a professional body; and
- (f) meets the requirements of Chapter six of the Constitution.”

CLAUSE 12

THAT, Clause 12 of the Bill be amended sub-clause (1) by inserting the word “informed” immediately after the word “written”.

CLAUSE 14

THAT, Clause 14 of the Bill be amended by deleting the words “medical doctor that the person requires assisted reproductive technology on medical or health grounds” and substituting therefor the words “a doctor who is an assisted reproductive technology expert, that the person requires assisted reproductive technology”.

CLAUSE 16

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

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

CLAUSE 17

THAT, Clause 17 of the Bill be amended by—

- (a) deleting the word “minor” appearing in the marginal note and substituting therefor the words “a child”.
- (b) deleting sub-clause (1) and substituting therefor the following new sub-clause (1)—

“(1) A person shall not obtain a sperm or ovum from a child, or use any sperm or ovum obtained from a child except for medical reasons and future human procreation by the child and with informed consent of the minor, parent or legal guardian of the child.”;

CLAUSE 18

THAT, Clause 18 of the Bill be amended by—

(a) deleting the marginal note and substituting the following new marginal note—

“Restrictions on the use of embryos”

(b) deleting sub-clause (1) and substituting therefor the following new sub-clause (1)—

“(1) A person shall not—

(a) keep or use an embryo other than a human embryo;

(b) place a human embryo in any animal;

(c) transfer an embryo in a woman other than a human embryo;

(d) keep or use a human embryo in circumstances prohibited under this Act or as prescribed by Regulations;

(e) replace any part of a human embryo with another part from a cell of any person or embryo or any subsequent development of an embryo except where such replacement is meant to solve a medical problem; or

(f) undertake any form of human cloning.”

CLAUSE 19

THAT, Clause 19 of the Bill be amended in sub-clause (1) by—

(a) inserting word “informed” immediately after the words “without his” appearing in paragraph (b)”;

(b) inserting word “informed” immediately after the words “without her” appearing in paragraph (c);

(c) deleting the words “place sperm and eggs or embryo in a woman” appearing in paragraph (e) and substituting therefor the words “transfer sperms or embryo into a womb”; and

(d) inserting the following new paragraph immediately after paragraph (e)—

“(f) in the course of providing assisted reproductive treatment services for any woman, use the sperm of any man without the woman’s informed consent;”.

NEW CLAUSES 19A, 19B & 19C

THAT, the Bill be amended by inserting the following new clauses immediately after clause 19—

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

19A. (1) A person shall not donate their gametes or embryos more than ten times.

(2) A person shall not perform a treatment procedure using gametes, or an embryo produced by a donor if such procedure may result in more than ten children who are genetic siblings.

(3) A surrogate mother shall not enter into a surrogacy agreement more than three times in her lifetime and shall be required to wait for two years between each birth to be eligible for another surrogacy agreement.

Donation of gametes or embryos.

19B. (1) A cryo bank shall obtain—

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

(b) oocytes from females between twenty-three years of age and thirty-five years of age.

(2) An assisted reproductive clinic under this Act shall examine donors for diseases as may be prescribed by the Directorate.

Disposal of gametes.

19C. (1) The Directorate may, under such conditions as may be prescribed, permit—

(a) disposal of gametes after ten years of preservation;

(b) donation of gametes to other couples pursuing assistive reproductive technology; or

(c) the conduct of research on stem cells and zygotes that are not more than fourteen days old on a written application and where;

(i) the applicant undertakes to document the research for record purposes; and

(ii) prior consent is obtained from the donor of the stem cells or zygotes.

(2) Any person who contravenes this provision is guilty of an offence and is liable on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

CLAUSE 20

THAT, Clause 20 of the Bill be amended by—

- (a) deleting the marginal note and substituting therefor the following new marginal note—

“Posthumous reproduction”

- (b) renumbering the existing clause 20 as sub-clause (1);
- (c) by deleting paragraph (b) of the renumbered sub-clause (1) and substituting therefor the following new paragraph (b) —

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

- (d) inserting the following new sub-clause immediately after the renumbered sub-clause (1) —

“(2) Where the ovum of a woman or any embryo, the creation of which was resulted from the ovum of the woman, was used after the death of the woman, the woman shall not be treated as the mother of the child unless the —

- (a) father was married to the woman at the time of the death of the woman; and
- (b) woman had given informed consent in writing”.

NEW CLAUSE 22A

THAT, the Bill be amended by inserting the following new clause immediately after clause 22—

Right to assisted reproductive technology by persons with disability.

22A. The national and county governments shall put in place measures to ensure that persons with disability have access to appropriate assisted reproductive technology services.

CLAUSE 23

THAT, Clause 23 of the Bill be amended—

- (a) by deleting sub-clause (2) and substituting therefor the following new sub-clause (2)—

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

- (a) ownership of the gametes or embryos;
- (b) number of embryos to be implanted; and
- (c) what should be done with the gametes or embryos in case of—

- (i) the death of any of the parties seeking assisted reproductive technology services;
 - (ii) incapacity of any of the parties seeking assisted reproductive technology services;
 - (iii) abandonment of the gametes or embryos;
 - (iv) dispute;
 - (v) divorce; or
 - (vi) separation.”
- (b) in sub-clause (3) by deleting the words “death or incapacity of any of the parties” and substituting therefor the words “the circumstances set out in subsection 2(c)”;
- and
- (c) in sub-clause (4) by deleting the word “implanting” and substituting therefor the words “transfer of”.

CLAUSE 24

THAT, Clause 24 of the Bill be amended in—

- (a) sub-clause (1) by deleting the word “all” appearing in paragraph (b) and substituting therefor the words “possible hereditary”;
- (b) sub-clause (2) by—
 - (i) inserting the words “if any” immediately after word “skills” appearing in paragraph (g); and
 - (ii) inserting the following new paragraphs immediately after paragraph (g)
 -
 - “(h) consent or otherwise of disclosure of identity to possible offspring”;
 - “(i) consent or otherwise for use of donated material for research”;

NEW CLAUSE 24A

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

Pre-implantation
diagnosis or
testing.

24A. (1) A donor shall undergo a pre-implantation diagnosis or testing for purposes of screening the human embryo or gamete for known, pre-existing, heritable or genetic diseases.

(2) The donation of an embryo after pre-implantation genetic diagnosis to an approved research laboratory for research purposes shall be done only—

- (a) with the approval of the commissioning couple or woman; and
- (b) when the embryo suffers from pre-existing, heritable, life-threatening or genetic diseases.

CLAUSE 25

THAT, that the Bill be amended by deleting Clause 25.

CLAUSE 26

THAT, Clause 26 of the Bill be amended by —

- (a) deleting the words “sexual intercourse” appearing in sub-clause (1) and substituting therefor the words “natural conception”;
- (b) deleting the words “both partners reserve the right to withdraw consent of the implantation of the embryo which has been created by their own sperm or ovum” appearing in sub-clause (3) and substituting therefor the words “both parties will be bound by the agreement and the consent given for the procedure”; and
- (c) deleting sub-clause (5) and substituting therefor the following new sub-clause (5)—

“(5) A child born out of surrogacy or any procedure under this Act shall acquire the citizenship of the intended parent unless there is a prohibition under the laws of the country of the intended parent in which case the child shall acquire Kenyan citizenship.”

CLAUSE 27

THAT, Clause 27 of the Bill be amended—

- (a) by deleting sub-clause (1) and substituting therefor the following new sub-clause (1)—

“(1) A woman who—

- (a) has attained the age of twenty-five years;
- (b) is below the age of forty years;
- (c) has given birth at least to one child;
- (d) understands the rights and obligations accruing under a surrogacy agreement; and
- (e) has undergone comprehensive mental and physical health assessments

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

- (b) in sub-clause (2) by—

- (i) deleting the word “child” appearing immediately after the words “carry the” and substituting therefor the word “foetus”; and

(ii) deleting the words “parties to a marriage or couple” and substituting therefor the words “intended parents”

(c) inserting the following new sub-clause immediately after sub-clause (2) —

“(3) The intended parents are above the age of twenty-five years but below the age of fifty-five years.”

NEW CLAUSE 27A

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

Leave related to
surrogacy.

27A. (1) A surrogate mother under this Act shall be entitled to three Months’ lochia leave.

(2) An intended mother under this Act shall be entitled to three months’ maternity leave.

(3) An intended father under this Act shall be entitled to two weeks paternity leave.

CLAUSE 28

THAT, Clause 28 of the Bill be amended—

(a) in sub-clause (1) by deleting the words “Parties to a marriage” and substituting therefor the words “Intending parents”;

(b) in sub-clause (3) by inserting the following new paragraphs immediately after paragraph (g)—

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

(i) where the intending parents appoint a guardian and provides the identity information of the appointed guardian;”

(c) by inserting the following new sub-clauses immediately after sub-clause (7)—

“(8) A surrogacy agreement may indicate terms of the agreement including terms prohibiting the surrogate from —

(a) partaking any alcohol;

(b) smoking;

(c) using unprescribed drugs; or

(d) engaging in dangerous activities that may affect the health or life of a child conceived through assisted reproduction technology.

(9) The terms of the agreement under subsection (8) shall not be overly tasking or prejudicial to the surrogate.

(10) The Cabinet Secretary shall make regulations for the better carrying out of subsection (8).”

NEW CLAUSES 28A & 28B

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

Surrogacy
agreements
third parties.

by **28A.** (1) No person shall on a commercial basis engage in acts in Kenya or knowingly cause another person to engage in acts on a commercial basis including—

- (a) initiating or taking part in any negotiations with the intention of the making of a surrogacy arrangement;
- (b) offering or agreeing to negotiate the making of a surrogacy arrangement; or
- (c) compiling any information with the intent of using such information in making or negotiating the making of surrogacy arrangements.

(2) For the purposes of this section, a person engages in an act on commercial basis where—

- (a) any payment is at any time received by himself or another in respect of that act; or
- (b) the person engages in that act with the purpose of any payment being received by himself or another in respect of making, negotiating or facilitating the making of any surrogacy arrangement.

(3) In this section, “payment” does not include payment to or for the benefit of a surrogate mother or prospective surrogate mother.

Commercialization
of surrogacy.

28B. (1) No person, organization, surrogacy clinic, laboratory or clinical establishment of any kind shall—

- (a) undertake commercial surrogacy, provide commercial surrogacy or its related component procedures or services in any form or run a racket or an organized group to empanel or select surrogate mothers or use individual brokers or intermediaries to arrange for surrogate mothers and for surrogacy procedures at such clinics, laboratories or at any other place;
- (b) issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated, any advertisement in any manner regarding commercial surrogacy by any means, scientific or otherwise;
- (c) abandon or disown or exploit or cause to be abandoned, disowned or exploited in any form, the child or children born through surrogacy;
- (d) exploit or cause to be exploited the surrogate mother or the child born through surrogacy in any manner whatsoever;
- (e) sell human embryo or gametes for the purpose of surrogacy and run an agency, a racket or an organization for selling, purchasing or trading in human embryos or gametes for the purpose of surrogacy;
- (f) import or assist in the importation in any manner of human embryos or human gametes for surrogacy or for surrogacy procedures; and
- (g) conduct sex education in any form for surrogacy.

(2) Despite anything contained in any other written law, a person who contravenes subsection (1) commits an offence and on conviction, shall be liable to pay a fine not exceeding ten million shillings or to imprisonment to a term not exceeding ten years, or to both.

(3) For the purposes of this section, the term “advertisement” includes any notice, circular, label, wrapper or any other document including advertisement through internet or any other media, in electronic or print form.

(4) Any registered medical practitioner, fertility expert, embryologist or any person who owns a fertility clinic or is employed by a fertility clinic, centre or laboratory and renders his or her professional or technical services to or at such a clinic or centre or laboratory including on honorary basis or otherwise, and who contravenes any of the provisions of this section and regulations made under the Act, commits an offence and on conviction, shall be liable to pay a fine not exceeding five million shillings or to imprisonment to a term not exceeding five years, or to both.

CLAUSE 29

THAT, Clause 29 of the Bill be amended—

(a) in sub-clause (1) by—

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

(b) by inserting the following new sub-clause immediately after sub-clause (2)—

“(3) Where a dispute arises over matters related to assisted reproductive technology, the disputes may be resolved through mediation, arbitration or court intervention, as may be appropriate.”

CLAUSE 30

THAT, Clause 30 of the Bill be amended—

(a) by deleting subclause 2 and substituting therefor the following new clause —

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

(b) in sub-clause (4) by—

- (i) deleting the words “Notwithstanding the provisions of section 28(7) appearing immediately before the words “the surrogate””
- (ii) inserting the following new paragraph immediately after paragraph (c)—

“(d) compensation irrespective of the pregnancy outcome”;

(c) in sub-clause (5) by—

- (i) deleting the word “law” appearing immediately after the word “provisions of the law” in paragraph (a) and substituting therefor the word “Constitution”; and
- (ii) inserting the following new paragraph immediately after paragraph (d)—

“(e) be entitled to psychological support during and after the pregnancy, provided by the Commissioning parents”.

(d) by inserting the following new sub-clause immediately after sub-clause (7)—

“(8) The intending couple or intending parent shall not abandon the child, born out of a surrogacy procedure, whether within Kenya or outside, for any reason including—

- (a) genetic defect;
- (b) birth defect;
- (c) defects developing subsequent to the birth;
- (d) the sex of a child born out of surrogacy;
- (e) conception of more than one child; or
- (f) any other medical condition.

NEW CLAUSE 30A

THAT, the Bill be amended by inserting the following new clause immediately after clause 30—

Payments
relation
surrogacy.

in to **30A.** (1) The surrogate and the intended parent or parents may include within a surrogacy agreement—

- (a) a description of permitted costs;
- (b) a description of discretionary costs; and
- (c) the length of the payment period in relation to a particular cost.

(2) The surrogate may claim permitted costs incurred for any duration of time.

(3) Discretionary costs shall only be made during the protected period.

(4) An intended parent shall give notice to the Directorate, in accordance with this Act and the Regulations made under this section, where the intended parent wants to make a discretionary payment to a surrogate within the protected period.

(5) Parties to a surrogate agreement shall not vary the discretionary payment during the protected period unless with the mutual consent of all parties and after proof of consultation with an advocate.

(6) Nothing in this Act shall prohibit a party from providing greater protections to a surrogate.

(7) The Cabinet Secretary shall make regulations on the discretionary and permitted payments to be made under a surrogacy agreement.

(8) The Cabinet Secretary shall, in making regulations under subsection (7) determine the maximum sum of discretionary costs based on the

principles of affordability, non-exploitation of the surrogate and non-exploitation of the intended parents.

(9) In this section—

“discretionary payment” means a payment prescribed in Regulations made by the Cabinet Secretary and includes the compensatory consideration paid in addition to the permitted payment;

“permitted costs” includes—

(a) the costs of travel and subsistence including accommodation incurred in connection with the surrogate—

- (i) meeting with the intended parent or parents; or
- (ii) attending medical appointments in connection with surrogacy matters;

(b) the costs of medical care and legal costs incurred in connection with surrogacy matters;

(c) the costs incurred in ensuring the surrogate’s physical, mental and emotional well-being in connection with surrogacy matters including the costs of counselling, physiotherapy, antenatal classes and fitness classes;

(d) the costs of pregnancy-related items for use by the surrogate including maternity clothes;

(e) any increase in food costs attributable to the surrogate pregnancy or to the surrogate entering the surrogacy agreement;

(f) any costs incurred in securing assistance with the performance of any day-to-day household task that would normally be performed by the surrogate and which she is unable to perform as a result of carrying or giving birth to a child conceived as a result of surrogacy; and

(g) the costs of compensating for loss of earnings suffered as a result of the surrogate entering into the surrogacy agreement;

“permitted payments” means the payment incurred by the surrogate to cover the costs of the surrogate pregnancy that must be paid by the intended parents except where the surrogate waives that payment; and

“protected period” means the period beginning when the surrogacy agreement is entered into and ending when the—

(a) surrogate gives birth to a child, at the end of the period of twelve weeks beginning with the day of the birth;

- (b) surrogacy agreement expires without a child having been conceived, on the expiry of the agreement; or
- (c) resulting child is stillborn or miscarried at the end of twelve weeks of death.

CLAUSE 31

THAT, the Bill be amended by deleting Clause 31 and substituting therefor the following new Clause 31—

Prohibition of sex selection.

31. (1) A person shall not intentionally do any act, at any stage of an assisted reproductive process, to select or determine the sex or physical characteristics or features of a child to be born through the process of assisted reproductive technology.

(2) A person shall not perform any procedure or provide, prescribe or administer anything that shall ensure or increase the probability that an embryo shall be of a particular sex, or that shall identify the sex of an in vitro embryo, except to diagnose, prevent or treat a sex-linked disorder or disease.”

CLAUSE 32

THAT, Clause 32 of the Bill be amended by—

- (a) deleting sub-clause (1);
- (b) inserting the words “except in the case of transfer of own gametes and embryos for personal use” immediately after the word “Kenya” appearing in sub-clause (2);
- (c) renumbering the existing sub-clause (2) as sub-clause (1) and inserting the following new sub-clause immediately after the renumbered sub-clause (1)—

“(2) The sale or transfer of gametes and embryos to any party outside Kenya shall be prohibited except in the case of transfer of a person’s own gametes and embryos for personal use”.

NEW CLAUSES 32A & 32B

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

Offences relating to matching services.

32A. (1) A person who provides surrogacy matching services in return for a payment commits an offence and on conviction, shall be liable to pay a fine not exceeding five hundred thousand shillings or to imprisonment to a term not exceeding one year, or to both, and to a fine not exceeding ten million shillings in the case of a body corporate.

(2) Despite subsection (1), a person does not commit an offence by making use of services which another person is prohibited by this section from providing.

(3) In this section—

“surrogacy matching services” means services provided for purposes of assisting a person who wants to enter into a surrogacy agreement to find a person or persons with whom to enter into the surrogacy agreement.

Prohibition
certain
publications.

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

- (a) is or may be willing to enter into a surrogacy arrangement;
- (b) is seeking another person who is or may be willing to enter into a surrogacy arrangement, to act as a surrogate mother or to arrange a surrogacy arrangement;
- (c) is or may be willing to accept any benefit under a surrogacy arrangement for himself or herself;
- (d) is or may be willing to accept any benefit under a surrogacy arrangement for another person that is intended or likely to counsel or procure a person to agree to act as a surrogate.

(2) A person who contravenes this section commits an offence and on conviction, shall be liable to pay a fine not exceeding five hundred thousand shillings or to imprisonment to a term not exceeding one year, or to both, and to a fine not exceeding ten million shillings in the case of a body corporate.

CLAUSE 33

THAT, Clause 33 of the Bill be amended by—

(a) inserting the following new paragraph immediately after paragraph (e)—

“(f) the destruction or disposal by a registered assisted reproductive technology provider of any gametes or an embryo formed outside the body of a woman”;

(b) renumbering the clause as sub-clause (1);

(c) inserting the following new sub-clauses immediately after the re-numbered sub-clause (1)—

“(2) The Directorate shall ensure that all information contained in the register is protected and maintained in a confidential manner in accordance with the relevant data protection and privacy laws.

(3) The Directorate shall maintain all records, charts, forms, reports, consent letters, agreements.

(4) All the documents under this Act shall be preserved for a period of twenty-five years or such period as may be prescribed:

provided that where any criminal or other proceedings are instituted against any surrogacy clinic, the records and all other documents of such clinic shall be preserved until the final disposal of such proceedings.

(5) All records under subsection (3) and (4) shall, at all reasonable times, be made available for inspection to the appropriate authority or to any other person authorized by the appropriate authority.”

CLAUSE 34

THAT, Clause 34 of the Bill be amended by deleting the words “twenty-one” appearing in sub-clause (1) and substituting therefor the word “eighteen”.

CLAUSE 42

THAT, Clause 42 of the Bill be amended —

(a) by deleting sub-clause (1);

(b) by deleting sub-clause (2) and substituting therefor the following new sub-clause —

“(1) The Directorate may, in accordance with this Act, attach conditions to a licence including—”

(c) in the new sub-clause (1) by—

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

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

(d) by renumbering the existing sub-clause (2) (3), (4), (5) and (6) as (1) (2), (3), (4) and (5) respectively.

CLAUSE 43

THAT, Clause 43 of the Bill be amended—

(a) in sub-clause (1) by inserting the following new paragraphs immediately after paragraph (f)—

“(g)the cryo bank makes provision for adequate safety and security for the stored gametes or embryos;

(h) the storage tubes are labelled with a unique identifier;

- (i) there is a register linking the unique identifier to the identity of the donors, date of storage and any other relevant information;
- (j) there is maintenance of a movement register of storage and retrieval of stored gametes or embryos; and
- (k) the cryo bank has adequate facilities to ensure privacy and confidentiality of the owner of the stored gamete or embryo and the identity of the donor.”

- (b) by deleting sub-clause (2) and substituting therefor the following new sub-clause (2)—

“(2) Where a donor or person wishing to store their gamete or embryo in a cryo bank through cryo-preservation, the cryo bank shall only store such gamete or embryo for as long as the owners of the gamete or embryo are alive or for a period not exceeding ten years, and the end of this period the embryo or gamete shall be allowed to perish or be donated to a research organization registered under this Act for research purposes with the consent of the commissioning couple or parent in such manner as may be prescribed”.

- (c) by inserting the following new sub-clauses immediately after the new sub-clause (2)—

“(3) Where a child wishes to store their gametes or embryo pursuant to this Act, a cryo bank shall preserve such embryo or gamete for a period of twenty years.

(4) A person wishing to store their gametes or embryo for a longer period than the period specified in subsection (2) and (3) shall make an application to the Directorate to approve longer or further storage of a gamete or embryo.

(5) The Directorate may approve the longer storage period where it considers that there are reasonable grounds to grant a longer period including in the case of a chronic illness or any other ground as prescribed in Regulations.

(6) The Directorate shall, in deciding to approve a longer or further storage period under subsection (5), have regard to the age of the applicant and ensure that the applicant shall not be older than fifty-five years in the proposed extension period.

(7) A person may, in case of a pending application to the Directorate under this section, cause or permit gametes or embryos to remain in storage until the Directorate makes a decision on the application.”

CLAUSE 46

THAT, Clause 46 of the Bill be amended in sub-clause (1) by—

- (a) deleting paragraph (d);
- (b) deleting paragraph (e) and substituting therefor the following new paragraph—

“(e) that the person responsible has committed a professional malpractice or has been removed from office for contravening the provisions of the Constitution or any other written law”;

- (c) inserting the words “or any other law and sentenced to imprisonment for a term exceeding six months” immediately after the word “Act” appearing in paragraph (f).

PART VIII

THAT, the title of Part VIII of the Bill be amended by deleting the expression “PART VIII” and substituting therefor the expression “PART VII”.

CLAUSE 50

THAT, Clause 50 of the Bill be amended in sub-clause (1) by inserting the following proviso immediately after paragraph (c)—

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

NEW CLAUSE 51A

THAT, the Bill be amended by inserting the following new clause immediately after clause 51—

Transitional provisions.

51A. (1) Every clinic or cryo bank which conducts assisted reproductive technology, partly or exclusively shall, within a period of sixty days from the date of establishment of the Directorate, apply for licences provided that such clinics and cryo banks shall cease to conduct any assisted reproduction procedures on the expiry of six months from the date of commencement of this Act, unless such clinics and cryo banks have applied for registration.

(2) On receipt of the application under subsection (1), the Directorate shall, subject to the provisions of this Act and within a period of thirty days—

- (a) issue a certificate of registration and a registration number to the applicant; or
- (b) reject the application in writing with reasons for the rejection.

PART IX

THAT, the title of Part IX of the Bill be amended by deleting the expression “PART IX” and substituting therefor the expression “PART VIII”.

CLAUSE 52

THAT, Clause 52 of the Bill be amended—

- (a) in paragraph (c) by deleting the words “planted in” and substituting therefor the words “transferred into”;
- (b) in paragraph (g) by inserting the word, “informed” immediately after the words “giving of”; and
- (c) in paragraph (h) by deleting the word, “children” and substituting therefor the word “embryos”.

NEW PART X

THAT, the Bill be amended by inserting the following new part immediately after Part IX—

PART X- CONSEQUENTIAL AMENDMENTS

Amendment of section 2 of Cap. 149.

51A. The Births and Deaths Registration Act is amended in section 2 by inserting the following new definitions in their proper alphabetic sequence—

“intended parent” has the meaning assigned to it under the Assisted reproductive technology Act;

“surrogate mother” has the meaning assigned to it under the Assisted reproductive technology Act.

Amendment of section 12 of Cap. 149.

51B. The Births and Deaths Registration Act is amended in section 12 by inserting the words “or by presenting a surrogacy agreement indicating the particulars of the intended father” immediately after the words “some recognized custom”.

Insertion of new section into Cap. 149.

51C. The Births and Deaths Registration Act is amended by inserting the following new section immediately after section 12—

Register of persons born through assisted reproductive technology.

12A. The registrar shall cause to be entered in a certificate of birth of a child born out of assisted reproductive technology procedure, the name of the intended parents upon presentation of a valid surrogacy agreement and verification of the agreement by the Directorate established under section 5 of the Assisted Reproductive Technology Act”.

2) Notice is given that the Member for Homa Bay Town (Hon. Peter Kaluma) intends to move the following amendments to the Assisted Reproductive Technology Bill, 2022 at the Committee Stage—

CLAUSE 2

THAT, Clause 2 of the Bill be amended —

- (a) by deleting the definition of the term “couple” and substituting therefor the following new definition—

“couple” means a male and female who are in a marriage under the Marriage Act;

- (b) by deleting the definition of the term “directorate”;
(c) in the definition of the term “donation” by deleting the words “or embryos”;
(d) by deleting the definition of the term “embryo” and substituting therefor the following new definition—

“embryo” means an unborn person during the period from the second to the eight week after fertilization or conception;

- (e) by deleting the definition of the term “embryologist”;
(f) by deleting the definition of the term “embryology”;
(g) in the definition of the term “father” by deleting paragraph (b);
(h) in the definition of the term “gamete” by deleting the words “capable of fusing with a gamete of the opposite sex to produce an embryo”;
(i) in the definition of the term “infertility” by deleting the words “after one year of unprotected coitus or other proven medical condition preventing a couple from conception”;
(j) by deleting the definition of the term “mother” and substituting therefor the following new definition—

“mother” means a female biological parent;

- (k) by deleting the definition of the term “pre-implantation genetic diagnosis”;
(l) by deleting the definition of the term “pre-implantation screening”;
(m) by deleting the definition of the term “primitive streak”;
(n) in the definition of the term “sperm” by deleting the words “produced in the testicles and contained in semen”;
(o) in the definition of the term “surrogacy” by deleting the words “reproductive technology” and substituting therefor the word “reproduction”;
(p) in the definition of the term “surrogate mother” by deleting the words “and lays no legal claim to the born child”; and
(q) by deleting the definition of the words “treatment services”.

CLAUSE 4

THAT, the Bill be amended by deleting Clause 4 and substituting therefor the following new Clause 4—

Object and Purpose
of the Act 4. The object and purpose of this Act is to provide a framework for assisted reproduction in Kenya.

PART II

THAT, the Bill be amended by deleting Part II.

CLAUSE 5

THAT, the Bill be amended by deleting Clause 5.

CLAUSE 6

THAT, the Bill be amended by deleting Clause 6.

CLAUSE 7

THAT, the Bill be amended by deleting Clause 7.

CLAUSE 8

THAT, the Bill be amended by deleting Clause 8.

CLAUSE 9

THAT, the Bill be amended by deleting Clause 9.

CLAUSE 10

THAT, the Bill be amended by deleting Clause 10.

CLAUSE 12

THAT, Clause 12 of the Bill be amended in sub-clause (1) by deleting the words “in accordance with the prescribed Regulations” appearing immediately after the words “written consent”.

CLAUSE 13

THAT, Clause 13 of the Bill be amended in sub-clause (1) by deleting the words “unless the donor of the material had given written consent, in a manner prescribed by Regulations, to its removal for that purpose” appearing immediately after the words “written consent”.

CLAUSE 17

THAT, Clause 17 of the Bill be amended by deleting sub clause (1) and substituting with the following new sub clause—

“(1) No person shall obtain a sperm or ovum from a child”

CLAUSE 18

THAT, the Bill be amended by deleting Clause 18.

CLAUSE 21

THAT, Clause 21 of the Bill be amended —

- (a) by deleting the words “licensed by the Directorate” appearing in sub-clause (2);
and
- (b) in sub-clause (3) by inserting the following new sub paragraph immediately after sub paragraph (iv) —

“(v) the right of a child born through assisted reproductive technology to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not”.

CLAUSE 22

THAT, the Bill be amended by deleting Clause 22.

CLAUSE 23

THAT, Clause 23 of the Bill be amended by—

- (a) inserting the following new sub-clause immediately after sub-clause (2)—

“(2A) The consent under subsection (1) shall provide for the right of the child born through assisted reproductive technology to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not”.

- (b) deleting sub-clause (3) and substituting therefor the following new sub-clause—
“(3) The assisted reproductive technology clinics and assisted reproductive technology banks shall not cryo preserve any gamete without specific instructions and consent in writing from all the parties seeking assisted reproductive technology in respect of what should be done with the gametes in case of death or incapacity of any of the parties”.

- (c) deleting the words “the embryos or” appearing in sub-clause (4).

CLAUSE 24

THAT, Clause 24 of the Bill be amended in sub-clause (1) (c) by inserting the words “under Article 53 of the Constitution including the right to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not” immediately after the word “process”.

CLAUSE 25

THAT, Clause 25 of the Bill be amended by—

- (a) deleting the words “recognized under any of the systems of laws in Kenya, and subsisting at that time” appearing in paragraph (a) and substituting therefor the words “under the Marriage Act; and
- (b) deleting paragraph (b).

CLAUSE 26

THAT, Clause 26 of the Bill be amended by—

- (a) deleting sub-clause (2);
- (b) deleting sub-clause (3);
- (c) deleting the words “intended parents” appearing in sub-clause (4) and substituting therefor the words “infertile parent”; and
- (d) deleting the words “intended parents” appearing in sub-clause (5) and substituting therefor the words “infertile parent”.

CLAUSE 27

THAT, the Bill be amended by deleting Clause 27.

CLAUSE 28

THAT, the Bill be amended by deleting Clause 28.

CLAUSE 29

THAT, the Bill be amended by deleting Clause 29.

CLAUSE 30

THAT, the Bill be amended by deleting Clause 30.

CLAUSE 33

THAT, the Bill be amended by deleting Clause 33.

CLAUSE 34

THAT, the Bill be amended by deleting Clause 34.

CLAUSE 35

THAT, the Bill be amended by deleting Clause 35.

CLAUSE 36

THAT, the Bill be amended by deleting Clause 36.

CLAUSE 37

THAT, Clause 37 of the Bill be amended by —

- (a) deleting the word “Directorate” appearing in sub-clause (1) and substituting therefor the word “facility” wherever it appears;
- (b) deleting the word “Directorate” appearing in sub-clause (2) (b) and substituting therefor the word “facility”; and
- (c) deleting the word “Directorate” appearing in sub-clause (3) (a) and substituting therefor the word “facility”.

CLAUSE 38

THAT, the Bill be amended by deleting Clause 38.

CLAUSE 39

THAT, the Bill be amended by deleting Clause 39.

CLAUSE 40

THAT, the Bill be amended by deleting Clause 40.

CLAUSE 41

THAT, the Bill be amended by deleting Clause 41.

CLAUSE 42

THAT, the Bill be amended by deleting Clause 42.

CLAUSE 43

THAT, Clause 43 of the Bill be amended —

(a) in sub-clause (1) by—

- (i) deleting the words, “or embryos” appearing in the opening sentence;
- (ii) deleting paragraph (a);
- (iii) deleting paragraph (b);
- (iv) deleting paragraph (c);
- (v) deleting paragraph (d);
- (vi) deleting the words, “or embryos” appearing in paragraph (e); and
- (vii) deleting paragraph (f) and substituting therefor the following new paragraph —

“(f) information regarding persons whose consent is required under this Act, the terms of their consent and the circumstances of the storage shall be included in the records maintained”.

(b) by deleting sub-clause (2) and substituting therefor the following new sub-clause

—
“(2) The storage period in respect of gametes shall be a period not exceeding three years”.

CLAUSE 44

THAT, the Bill be amended by deleting Clause 44.

CLAUSE 45

THAT, the Bill be amended by deleting Clause 45.

CLAUSE 46

THAT, the Bill be amended by deleting Clause 46.

CLAUSE 47

THAT, the Bill be amended by deleting Clause 47.

CLAUSE 48

THAT, the Bill be amended by deleting Clause 48.

CLAUSE 49

THAT, the Bill be amended by deleting Clause 49.

CLAUSE 50

THAT, Clause 50 of the Bill be amended by deleting the words “knowingly or recklessly” appearing in sub-clause (1).

CLAUSE 52

THAT, Clause 52 of the Bill be amended by—

- (a) deleting the words “in consultation with the Directorate, may make regulations generally for the better carrying out of the provisions of this Act” appearing in the opening sentence;
- (b) deleting paragraph (f);
- (c) deleting paragraph (g);
- (d) deleting paragraph (h);
- (e) deleting paragraph (i);
- (f) deleting paragraph (j);
- (g) deleting paragraph (k); and
- (h) deleting paragraph (l).

3) **Notice is given that the Member for Kisumu East (Hon. Shakeel Shabbir) intends to move the following amendments to the Assisted Reproductive Technology Bill, 2022 at the Committee Stage—**

CLAUSE 2

THAT, Clause 2 of the Bill be amended by—

- (a) deleting the definition of “commissioning parents”;

- (b) deleting the definition of “diagnosis”;
- (c) deleting the definition of “surrogacy” and substituting therefor the following new definition—
- “surrogacy” means the process of a woman carrying and delivering a baby for an intended parent;

- (d) inserting the following new definitions in their proper alphabetic sequence—

“best interest of the child” means the principles that prime the child’s right to survival, protection, development above other considerations and includes the rights contemplated under Article 53(1) of the Constitution and section 8 of the Children Act, 2022;

“clinic” means a medical facility licensed under this Act for the purpose of conducting assisted reproductive procedure;

“cryo bank” means a facility that is set up to store and supply human gametes or embryos;

“identifying information” means information enabling an individual to be identified as an individual whose gametes were used to bring about the creation of an embryo from which an individual developed;

“insurance” means an arrangement by which an intended parent undertakes to provide a guarantee of compensation for specified loss, damage, complication or death of an oocyte donor or surrogate as a result of the process of oocyte retrieval or surrogate pregnancy;

“intended parents” means a man and woman, whether a couple or parties to a marriage, who enter into a surrogacy agreement seeking assistance in procreation through the help of a surrogate mother or donor;

“intersex” means a person with a congenital condition in which the biological sex characteristics cannot be exclusively categorized in the common binary male or female due to inherent and mixed anatomical, hormonal, gonadal or chromosomal patterns;

“pre-implantation genetic diagnosis” means the genetic diagnosis performed to determine any genetic abnormality;

“pre-implantation genetic testing” means a technique used to identify genetic defects in embryos created through in-vitro fertilization before pregnancy;

“surrogacy agreement” means an agreement between a surrogate mother and another individual or two other individuals that the surrogate mother is to undergo one or more relevant assisted reproductive procedures with a view to any child born as a result of such procedure being treated in law—

(c) as the child of the intended parent or parents; and

(d) as not being the child of the surrogate mother or any other individual.”

CLAUSE 4

THAT, Clause 4 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (c)—

- “(d) ensure the best interest of children;
- (e) promote research into the incidence, causes and prevention of infertility;
- (f) make provision with respect to surrogacy arrangements;
- (g) establish an assisted reproductive technology directorate; and
- (h) provide for the keeping of the register of procedures under this Act.”

CLAUSE 6

THAT, Clause 6 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (n)—

- “(na) set standards for the qualifications of counsellors under this Act; and
- (nb) establish guidelines for payments to be made under this Act.”

CLAUSE 17

THAT, Clause 17 of the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause—

- “(1) No person shall obtain a sperm or ovum from a donor under eighteen years of age, or use any sperm or ovum obtained from a donor under eighteen years of age except for the future human procreation by the minor when they become an adult with the express consent of the minor’s parent or legal guardian, and only in circumstances when this procedure is necessary owing to health complications suffered by the minor.”

CLAUSE 19

THAT, Clause 19 of the Bill be amended in sub-clause (1) by inserting the following new paragraph immediately after paragraph (c)—

- “(ca) in the course of providing assisted reproductive technology treatment services for any woman, use the sperm of any man without the man’s consent;”

CLAUSE 25

THAT, the Bill be amended by deleting Clause 25.

CLAUSE 26

THAT, Clause 26 of the Bill be amended by deleting sub-clause (5) and substituting therefor the following new sub-clause (5)—

“(5) A child born in Kenya out of surrogacy or any procedure under this Act shall acquire the citizenship of the intended parent unless there is a prohibition under the laws of the country of the intended parent in which case the child shall acquire Kenyan citizenship.”

CLAUSE 27

THAT, Clause 27 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2)-

“(3) The intended parents to a surrogacy agreement shall be persons below the age of fifty-five years.”

CLAUSE 28

THAT, Clause 28 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words “Parties to a marriage or commissioning parents” and substituting therefor the words “A couple or parties to a marriage”;
- (b) by deleting sub-clause (5) and substituting therefor the following new sub-clause (5)—

“(5) The Directorate shall carry out pre-approval checks and shall satisfy itself that—

- (a) the surrogate and the intended parent or parents have undergone appropriate medical assessments including an assessment on the health of the surrogate, pre-implantation genetic testing or diagnosis;
 - (b) the surrogate and the intended parent or parents have received appropriate counselling and legal advice about the implications of signing the surrogacy agreement and that a report by a counsellor reveals the positive welfare of a child who may be born as a result of an assisted reproductive procedure and the positive welfare of other children who may be affected by any such birth; and
 - (c) 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 reproductive procedure is to be carried out under the agreement and ending one year after the surrogate has given birth.
- (c) by inserting the following new sub-clauses immediately after the new sub-clause (5)—

“(5A) Upon satisfying the conditions in subsections (1) to (5), the surrogate shall make an application to the court providing for the child to be treated in law as the child of the intended parents.

(5B) The application referred to in subsection (5A) shall be made prior to the birth of the child.”

(d) by deleting sub-clause (7) and substituting therefor the following new sub-clause—

“(7) A surrogacy agreement may indicate terms of the agreement including terms prohibiting the surrogate from partaking any alcohol, smoking, using un-prescribed drugs or engaging in any dangerous activity that may affect the health or life of a child conceived via assisted reproductive technologies.”

(e) by inserting the following new sub-clause immediately after sub-clause (7)—

“(8) The terms of the agreement referred to in subsection (7) shall not be prejudicial to the surrogate.”

CLAUSE 31

THAT, the Bill be amended by deleting Clause 31 and substituting therefor the following new clause 31—

“(31) A person shall not perform any procedure or provide, prescribe or administer anything that would ensure or increase the probability that an embryo shall—

- (a) be of a particular sex, or that would identify the sex of an in-vitro embryo except to prevent a sex-linked disorder or disease where pre-genetic diagnosis or testing has determined that the couple or person is pre-disposed to such a disorder; or
- (b) have pre-selected physical features or characteristics.”

CLAUSE 33

THAT, Clause 33 of the Bill be amended by inserting the following new paragraph immediately after paragraph (e)—

“(f) the function or disposal by the registered assisted reproductive technology provider of any gametes or embryos formed outside the body of a woman;”

CLAUSE 34

THAT, Clause 34 of the Bill be amended in sub-clause (1) by deleting the words “twenty-one” and substituting therefor the word “eighteen”

CLAUSE 40

THAT, Clause 40 of the Bill be amended by inserting the following new sub-clauses immediately after sub-clause (3)—

“(4) A clinic or cryo bank which conducts assisted reproductive technology shall, within a period of sixty days from the date of establishment of the Directorate, apply for a license under this Act:

Provided that such clinic and cryo bank shall cease to conduct any assisted reproductive procedures on the expiry of six months from the date of commencement of this Act, unless such clinic or cryo bank has applied for registration.

(5) On receipt of the application under subsection (1), the Directorate shall, within a period of thirty days—

- (a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number to the applicant; or
- (b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder.”

CLAUSE 43

THAT, Clause 43 of the Bill be amended—

(d) by deleting sub-clause (2) and substituting therefor the following new sub-clause (2)—

“(2) Where a donor or person wishes to store a gamete or embryo in a cryo bank through cryo-preservation, the cryo bank shall only store such gamete or embryo for as long as the owners of the gamete or embryo are alive or for a period not exceeding ten years upon which time the embryo or gamete shall be allowed to perish or be donated to a research organization registered under this Act for research purposes with the consent of the commissioning couple or individual, in such manner as may be prescribed”.

(e) by inserting the following new sub-clauses immediately after sub-clause (2)—

“(3) Where a minor wishes to store their gametes or embryo by virtue of section 17(1) of this Act, a cryo bank shall preserve such embryo or gamete for a period of twenty years.

(4) A person wishing to store their gametes or embryo for a longer period of time than otherwise stipulated in subsection (2) and (3) shall make an application to the Directorate to approve the further storage of the gamete or embryo.

(5) The Directorate may approve the longer storage period if it considers that there are reasonable grounds to do so in the particular case.

(6) The reasonable grounds referred to in subsection (5) shall include—

(a) chronic illness; and

(b) any other ground as may be prescribed in regulations.

(7) In deciding to approve a further storage period, the Directorate shall have regard to the age of the applicant and ensure that such applicant shall not be over the age of fifty-five years in the proposed extension period.

(8) In case of a pending application to the Directorate under this section, a person shall cause or permit gametes to remain in storage until the Directorate approves or declines the further storage period.”

NEW CLAUSE 4A

THAT, the Bill be amended by inserting the following new clause immediately after clause 4—

Guiding principles. **4A.** The following principles shall guide the application of this Act—

(e) the best interest of the child;

(f) non-exploitation of parties;

(g) non-discrimination including based on marital status; and

(h) affordability of procedures under this Act.

NEW CLAUSE 21A

THAT, the Bill be amended by inserting the following new clause immediately after clause 21—

Regulation of counselling services. **21A.** (1) The Directorate shall ensure that persons providing counselling services under this Act meet the prescribed requirements.

(2) A person providing counselling services under this Act shall indicate whether the carrying out of an assisted reproductive technology procedure, whether generally or of a specified kind—

(a) is intended for a therapeutic or cosmetic goal; and

(b) is consistent with the best interests of a child who would be born as a result of the assisted reproduction technology procedure.

NEW CLAUSE 24A

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

Pre-implantation
diagnosis or
testing.

24A. A donor shall undergo a pre-implantation diagnosis or testing in order to screen the human embryo or gamete for known, pre-existing, heritable or genetic diseases.

NEW CLAUSE 26A

THAT, the Bill be amended by inserting the following new clause immediately after clause 26—

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

26A. (1) A person shall not perform a treatment procedure using gametes, or an embryo produced by a donor if the person knows the procedure may result in more than ten children who are genetic siblings.

(2) A person shall not enter into a surrogacy agreement more than three times in their lifetime and shall be required to wait for three years between each birth to be eligible for another surrogacy agreement.

NEW CLAUSE 27A

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

Employment
leave.

27A. (1) A surrogate mother under this Act shall be entitled to twenty one days' lochia leave.

(2) An intended mother under this Act shall be entitled to three months maternity leave.

(3) An intended father under this Act shall be entitled to two weeks paternity leave.

NEW CLAUSE 28A

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

Power to make
parental orders.

28A. (1) Subject to this Act, the Court may, on an application made in the prescribed form, make an order in this Act, referred to as parental orders, authorizing an intended parent to acquire legal responsibility over the child under section 31 of the Children Act.

Cap. 141.

(2) The Court shall ascertain that—

- (a) the surrogate freely and with full understanding after being advised by separate legal counsel from that of the intended parent, understands the implications of the parental orders;
- (b) all procedures leading to the surrogacy agreements have been carried out; and
- (c) the best interest of the child and siblings of the child born as a result of assisted reproductive technology have been observed.

NEW CLAUSES 30A AND 30B

THAT, the Bill be amended by inserting the following new clauses immediately after clause 30—

Payments
relation
surrogacy.

in
to **30A.** (1) A surrogate and the intended parent or parents may indicate within a surrogacy agreement—

- (a) a description of permitted costs;
- (b) a description of discretionary costs; and
- (c) the length of the payment period in relation to a particular description of costs.

(2) Nothing in this Act shall prohibit a party from providing greater protections to a surrogate.

(3) The Cabinet Secretary shall make regulations relating to the permitted and discretionary payments of a surrogacy agreement.

(4) A surrogate may lay claim to permitted costs incurred for any duration of time.

(5) Discretionary payments shall only be made to a surrogate during the protected period.

(6) Where within the protected period the intended parent or either or both of the intended parents give notice to the Directorate that they intend to make discretionary payment to the surrogate, the discretionary payment shall be made in accordance with any other requirements prescribed in the regulations made under subsection (3).

(7) In making regulations as to the maximum sum of discretionary costs, the Cabinet Secretary shall decide such sum based on the principle of affordability, non-exploitation of the surrogate and non-exploitation of the intended parents.

(8) The parties to the surrogate agreement shall not vary discretionary payment during the protected period unless by mutual consent of all parties and after consultations with an advocate.

(9) In this section—

“discretionary payment” means a payment of a description prescribed in regulations made by the Cabinet Secretary and includes compensatory consideration which are above the permitted costs;

“permitted payments” includes—

- (a) the costs of travel and subsistence, including accommodation, incurred in connection with—
 - (i) the surrogate meeting with the intended parent or parents; and
 - (ii) the surrogate attending medical appointments in connection with surrogacy matters;
- (b) the costs of medical care and legal costs incurred in connection with surrogacy matters;
- (c) costs incurred with a view to ensuring the surrogate’s physical, mental and emotional well-being in connection with surrogacy matters, including the costs of counselling, physiotherapy, antenatal classes and fitness classes;
- (d) the costs of pregnancy-related items for use by the surrogate, including maternity clothes;
- (e) any increase in food costs that are attributable to the surrogate pregnancy or otherwise to her entering the surrogacy agreement;
- (f) any costs incurred in securing assistance with the performance of any day-to-day household task that would normally be performed by the surrogate, but that she is unable to perform as a result of carrying, or giving birth to, a child conceived as a result of surrogacy; and
- (g) the costs of compensating for loss of earnings suffered as a result of the surrogate entering into the surrogacy agreement;

“protected period” means the period beginning when the surrogacy agreement is entered into and ending—

- (a) if the surrogate gives birth to a child, at the end of the period of twelve weeks beginning with the day of the birth of the child;
- (b) if the surrogacy agreement expires without a child having been conceived, on the expiry of the agreement, or
- (c) if, the resulting child is stillborn or miscarried, at the end of twelve weeks after the death of the child.

Prohibition on certain publications.

30B. (1) A person shall not publish or cause to be published, an advertisement or notice to the effect that a person—

- (a) is or may be willing to enter into a surrogacy arrangement;
- (b) is seeking another person who is or may be willing to enter into a surrogacy arrangement or to act as a surrogate or to arrange a surrogacy arrangement; or
- (c) is or may be willing to accept any benefit under a surrogacy arrangement, whether for himself or herself or for another person that is intended or likely to counsel or procure a person to agree to act as a surrogate.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall on conviction be liable—

- (a) in the case of a natural person, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both; or
- (b) in the case of a juristic person, to a fine not exceeding ten million shillings.

NEW CLAUSES 32A AND 32B

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

Prohibition relating to matching services.

32A. (1) A person shall not provide surrogacy matching services in return for a payment.

(2) A person does not commit an offence merely by making use of services which another person is prohibited by this section from providing.

(3) A person who contravenes the provisions of this section commits an offence and shall on conviction be liable—

- (a) in the case of a natural person, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both; or
- (b) in the case of a juristic person, to a fine not exceeding ten million shillings.

(4) In this section, “surrogacy matching services” means services provided with a view to assisting an individual who wants to enter into a surrogacy agreement to find another individual or individuals with whom to enter into the agreement.

Sale or transfer of gametes outside of Kenya.

32B. (1) A person shall not sell, transfer or use gametes and embryos, or any part thereof or information related thereto, directly or indirectly to any party within or outside Kenya except in the case of transfer of own gametes and embryos for personal use.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall on conviction be liable—

- (a) in the case of a natural person, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both; or
- (b) in the case of a juristic person, to a fine not exceeding ten million shillings.

NEW PART X

THAT, the Bill be amended by inserting the following new part immediately after Part IX—

PART X- CONSEQUENTIAL AMENDMENTS

Amendment of section 2 of Cap. 149.

51A. The Births and Deaths Registration Act is amended in section 2 by inserting the following new definitions in their proper alphabetic sequence—

“intended parent” means a person or a couple who undertakes to enter into a surrogacy agreement as per the Assisted Reproductive Technology Act;

“surrogate mother” has the meaning assigned to it in the Assisted Reproductive Technology Act;”

Amendment of section 12 of Cap. 149.

51B. The Births and Deaths Registration Act is amended in section 12 by inserting the words “or by presenting a surrogacy agreement

indicating the particulars of the intended father” immediately after the words “some recognized custom”.

Insertion of new section into Cap. 149.

51C. The Births and Deaths Registration Act is amended by inserting the following new section immediately after section 12—

Register of persons born through assisted reproductive technology.

12A. The registrar shall cause to be entered in a certificate of birth of a child born out of assisted reproductive technology procedure, the name of the intended parents upon presentation of a valid surrogacy agreement and verification of the agreement by the Directorate established under section 5 of the Assisted Reproductive Technology Act”.

4) **Notice is given that the Nominated Member (Hon. Irene Mayaka) intends to move the following amendments to the Assisted Reproductive Technology Bill, 2022 at the Committee Stage—**

CLAUSE 2

THAT, Clause 2 of the Bill be amended—

(e) by deleting the definition of the term “commissioning parents” and substituting therefor the following new definition—

“commissioning parent” means a person who uses his or her gametes to create an embryo and has a genetic link to the child born out of assisted reproductive technology;

(f) in the definition of the word “donor” by deleting the word “voluntarily” appearing immediately after the words, “a person who”;

(g) in the definition of the word “infertility” by deleting the word “conception” and substituting therefor the words “conceiving or safely carrying a pregnancy”;

(h) by deleting the definition of the term “surrogacy” and substituting therefor the following new definition—

“surrogacy” means a woman carrying and delivering a baby for an intended parent;

(i) by inserting the following new definitions in their proper alphabetical sequence—

“best interest of the child” has the meaning assigned to it under the Children Act;

“clinic” means a medical facility licensed under this Act for the purpose of

conducting assisted reproduction procedure;

“cryo bank” means a facility set up to store and supply human gametes or embryos;

“insurance” means an arrangement by which an intended parent undertakes to provide a guarantee of compensation for specified loss, damage, complication or death of an oocyte donor or surrogate as a result of the process of oocyte retrieval or surrogate pregnancy;

“intended parent” means a person who shall have legal custody of the child born out of assisted reproductive technology procedure whether or not that person has a genetic link to that child;

“intersex” means a person with a congenital condition in which the biological sex characteristics cannot be exclusively categorized in the common binary male or female due to inherent and mixed anatomical, hormonal, gonadal or chromosomal patterns;

“pre-implantation genetic diagnosis” means the genetic diagnosis performed to determine any genetic abnormality;

“pre-implantation genetic testing” means a technique used to identify genetic defects in embryos created through in-vitro fertilization before pregnancy; and

“surrogacy agreement” means an agreement between a surrogate and another individual or two other individuals that the surrogate is to undergo one or more relevant assisted reproduction procedures for purposes of having a child born as a result of such procedure being treated in law as—

- (e) the child of the intended parent or parents, and
- (f) not being the child of the surrogate or any other individual.

CLAUSE 4

THAT, Clause 4 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (c) —

- “(d) ensure the best interest of children;
- (e) facilitate the registration of children born out of a gestational surrogacy arrangement;
- (f) promote research into the incidence, causes and prevention of infertility;
- (f) make provision with respect to surrogacy arrangements;
- (g) establish an assisted reproductive technology Directorate; and
- (h) provide for the keeping of the register of procedures under this Act.”

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 4—

Guiding principles. **4A.** The application of this Act shall be guided by principles including—

- (i) the best interest of the child born out of assisted reproductive technology procedures;
- (j) non-exploitation of parties;
- (k) non-discrimination including based on marital status; and
- (l) affordability of procedures under this Act.

CLAUSE 6

THAT, Clause 6 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (n) —

“(na) set standards for the qualifications of counsellors under this Act; and

(nb) establish guidelines for payments to be made under this Act.”

CLAUSE 19

THAT, Clause 19 of the Bill be amended in sub-clause (1) by inserting the following new paragraph immediately after paragraph (c)—

“(ca) in the course of providing assisted reproductive technology treatment services for any woman, use the sperm of any man without the woman’s consent;”.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 21—

Regulation of counselling services. **21A.** (1) The Directorate shall ensure that persons providing counselling services under this Act meet the prescribed requirements for counselling under section 6 of this Act.

(2) The counsellor shall indicate whether the carrying out of an assisted reproductive technology procedure, whether generally or of a specified kind, on a person is—

- (c) for a therapeutic or cosmetic goal; and
- (d) consistent with the best interests of a child who would be born as a result of the assisted reproduction technology procedure.

NEW CLAUSE

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

Pre-implantation
diagnosis or
testing.

24A. A donor or commission parent shall undergo a pre-implantation diagnosis or testing for purposes of screening the human embryo or gamete for known, pre-existing, heritable or genetic diseases.

CLAUSE 25

THAT, the Bill be amended by deleting Clause 25.

CLAUSE 26

THAT, Clause 26 of the Bill be amended by deleting sub-clause (5) and substituting therefor the following new sub-clause —

“(5) A child born out of surrogacy or any procedure under this Act shall acquire the citizenship of the intended parent unless there is a prohibition under the laws of the country of the intended parent in which case the child shall acquire Kenyan citizenship.”

NEW CLAUSE 26A

THAT, the Bill be amended by inserting the following new clause immediately after Clause 26—

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

26A. (1) A person shall not donate their gametes or embryos more than ten times.

(2) A person shall not perform a treatment procedure using gametes, or an embryo produced by a donor if such procedure may result in more than ten children who are genetic siblings.

(3) A surrogate mother shall not enter into a surrogacy agreement more than three times in her lifetime and shall be required to wait for three years between each birth to be eligible for another surrogacy agreement.

NEW CLAUSE 27A

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

Leave related to
surrogacy.

27A. (1) A surrogate mother under this Act shall be entitled to fourteen days lochia leave.

(2) An intended mother under this Act shall be entitled to three months maternity leave.

(3) An intended father under this Act shall be entitled to two weeks paternity leave.

CLAUSE 28

THAT, Clause 28 of the Bill be amended by —

- (f) deleting the words “Parties to a marriage or commissioning parents” appearing in sub-clause (1) and substituting therefor the words “A couple”;
- (g) deleting sub-clause (5) and substituting therefor the following new sub-clause —

“(5) The Directorate shall carry out pre-approval checks and shall satisfy itself that the—

(a) surrogate and the intended parent or parents have undergone appropriate medical assessments including an assessment on the health of the surrogate, pre-implantation genetic testing or diagnosis;

(b) surrogate and the intended parent or parents have received appropriate counselling and legal advice about the implications of signing the surrogacy agreement and that a report by a counsellor reveals the positive welfare of a child who may be born as a result of an assisted reproduction procedure and the positive welfare of other children who may be affected by any such birth; and

(c) intended parents have taken out an appropriate insurance policy to cover the surrogate becoming ill, with protection under the policy starting no later than the day on which the first assisted reproduction procedure is to be carried out under the surrogacy agreement and ending one year after the surrogate has given birth.

- (h) inserting the following new sub-clauses immediately after the new sub-clause (5)—

“(5A) Upon satisfying the conditions in subsection (1) to (5), the surrogate shall make an application to the court for the child to be treated in law as the child of the intended parents.

(5B) The application referred to in subsection (5A) shall be made prior to the birth of the child.”

- (i) deleting sub-clause (7);
- (j) inserting the following new sub-clauses immediately after sub-clause (6)—

“(7) A surrogacy agreement may indicate terms of the agreement including terms prohibiting the surrogate from —

- (a) partaking any alcohol;
- (b) smoking;

- (c) using unprescribed drugs; or
- (d) engaging in dangerous activity that may affect the health or life of a child conceived through assisted reproduction technology.

(8) The terms of the agreement under subsection (7) shall not be overly tasking or prejudicial to the surrogate.

(9) The Cabinet Secretary shall make regulations for the better carrying out the provisions of this Section.”

NEW CLAUSE 28A

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

Power to make parental orders.

28A. (1) Subject to this Act, the High Court may, on an application made in the prescribed form, make an order, in this Act referred to as “parental orders”, authorizing an intended parent to acquire legal responsibility over a child born out of assisted reproduction.

(2) The Court shall ascertain that—

- (a) the surrogate freely and with full understanding after being advised by separate legal counsel from that of the intended parent, understands the implications of the parental orders;
- (b) all procedures leading to the surrogacy agreement have been effected; and
- (c) the best interest of the child and siblings of the child born as a result of assisted reproduction has been observed.

NEW CLAUSES 30A & 30B

THAT, the Bill be amended by inserting the following new clauses immediately after clause 30—

Payments relation surrogacy.

in to

30A. (1) The surrogate and the intended parent or parents may include within a surrogacy agreement—

- (d) a description of permitted costs;
- (e) a description of discretionary costs; and
- (f) the length of the payment period in relation to a particular cost.

(2) The surrogate may claim permitted costs incurred for any duration of time.

- (3) Discretionary costs shall only be made during the protected period.
- (4) An intended parent shall give notice to the Directorate, in accordance with this Act and the Regulations made under this section, where that intended parent wants to make a discretionary payment to a surrogate within the protected period.
- (5) Parties to a surrogate agreement shall not vary the discretionary payment during the protected period unless with the mutual consent of all parties and after proof of consultation with an advocate.
- (6) Nothing in this Act shall proscribe a party from providing greater protections to a surrogate.
- (7) The Cabinet Secretary shall make regulations on the discretionary and permitted payments to be made under a surrogacy agreement.
- (8) The Cabinet Secretary shall, in making regulations under subsection (7) determine the maximum sum of discretionary costs based on the principles of affordability, non-exploitation of the surrogate and non-exploitation of the intended parents.
- (9) In this section—
- “discretionary payment” means a payment prescribed in Regulations made by the Cabinet Secretary and includes the compensatory consideration paid in addition to the permitted payment;
- “permitted costs” includes—
- (i) the costs of travel and subsistence including accommodation incurred in connection with the surrogate—
 - (iii) meeting with the intended parent or parents; or
 - (iv) attending medical appointments in connection with surrogacy matters;
 - (j) the costs of medical care and legal costs incurred in connection with surrogacy matters;
 - (k) the costs incurred in ensuring the surrogate’s physical, mental and emotional well-being in connection with surrogacy matters including the costs of counselling, physiotherapy, antenatal classes and fitness classes;

- (l) the costs of pregnancy-related items for use by the surrogate including maternity clothes;
- (m) any increase in food costs attributable to the surrogate pregnancy or to the surrogate entering the surrogacy agreement;
- (n) any costs incurred in securing assistance with the performance of any day-to-day household task that would normally be performed by the surrogate and which she is unable to perform as a result of carrying or giving birth to a child conceived as a result of surrogacy; and
- (o) the costs of compensating for loss of earnings suffered as a result of the surrogate entering into the surrogacy agreement;

“permitted payments” means the payment incurred by the surrogate to cover the costs of the surrogate pregnancy that must be paid by the intended parents except where the surrogate waives that payment; and

“protected period” means the period beginning when the surrogacy agreement is entered into and ending when the—

- (d) surrogate gives birth to a child, at the end of the period of twelve weeks beginning with the day of the birth;
- (e) surrogacy agreement expires without a child having been conceived, on the expiry of the agreement; or
- (f) resulting child is stillborn or miscarried at the end of twelve weeks of death.

Prohibition
certain
publications.

on **30B.** (1) A person shall not publish, or cause to be published, an advertisement or notice to the effect that a person—

- (e) is or may be willing to enter into a surrogacy arrangement;
- (f) is seeking another person who is or may be willing to enter into a surrogacy arrangement, to act as a surrogate mother or to arrange a surrogacy arrangement;
- (g) is or may be willing to accept any benefit under a surrogacy arrangement for himself or herself;
- (h) is or may be willing to accept any benefit under a surrogacy arrangement for another person that is intended or likely to counsel or procure a person to agree to act as a surrogate.

(2) A person who contravenes this section commits an offence and on conviction, shall be liable to pay a fine not exceeding five hundred thousand shillings or to imprisonment to a term not exceeding one year, or to both, and to a fine not exceeding ten million shillings in the case of a body corporate.

CLAUSE 31

THAT, the Bill be amended by deleting Clause 31 and substituting therefor the following new clause 31—

Prohibition of sex selection.

31. (1) A person shall not intentionally do any act, at any stage of an assisted reproductive process, to select or determine the sex or physical characteristics or features of a child to be born through the process of assisted reproductive technology.

(2) A person shall not perform any procedure or provide, prescribe or administer anything that shall ensure or increase the probability that an embryo shall be of a particular sex, or that shall identify the sex of an in vitro embryo, except to diagnose, prevent or treat a sex-linked disorder or disease.”

NEW CLAUSES 32A & 32B

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

Offences relating to matching services.

32A. (1) A person who provides surrogacy matching services in return for a payment commits an offence and on conviction, shall be liable to pay a fine not exceeding five hundred thousand shillings or to imprisonment to a term not exceeding one year, or to both, and to a fine not exceeding ten million shillings in the case of a body corporate.

(2) Despite subsection (1), a person does not commit an offence by making use of services which another person is prohibited by this section from providing.

(3) In this section—

“surrogacy matching services” means services provided for purposes of assisting a person who wants to enter into a surrogacy agreement to find a person or persons with whom to enter into the surrogacy agreement.

Sale or transfer of gametes outside of Kenya.

32B. The sale, transfer or use of gametes and embryos or any part or information related to such sale, transfer or use, directly or indirectly to any party within or outside Kenya, shall be prohibited except in the case of transfer of own gametes and embryos for personal use.

CLAUSE 33

THAT, Clause 33 of the Bill be amended by inserting the following new paragraph immediately after paragraph (e)—

“(f) the function or disposal by the registered assisted reproductive technology provider of any gametes or embryos formed outside the body of a woman;”.

CLAUSE 34

THAT, Clause 34 of the Bill be amended by—

- (a) deleting the words “twenty-one” appearing in the opening paragraph to sub-clause (1) and substituting therefor the word “eighteen”; and
- (b) deleting sub-clause (3).

CLAUSE 40

THAT, Clause 40 of the Bill be amended by inserting the following new sub-clauses immediately after sub-clause (3)—

“(4) Every clinic or cryo bank which conducts assisted reproductive technology, partly or exclusively shall, within a period of sixty days from the date of establishment of the Directorate, apply for licences provided that such clinics and cryo banks shall cease to conduct any assisted reproduction procedures on the expiry of six months from the date of commencement of this Act, unless such clinics and cryo banks have applied for registration.

(5) On receipt of the application under subsection (1), the Directorate shall, subject to the provisions of this Act and within a period of thirty days—

- (a) issue a certificate of registration and a registration number to the applicant; or
- (b) reject the application in writing with reasons for the rejection.”

CLAUSE 42

THAT, Clause 42 of the Bill be amended in sub-clause (2) by deleting paragraph (d).

CLAUSE 43

THAT, Clause 43 of the Bill be amended—

- (f) by deleting sub-clause (2) and substituting therefor the following new sub-clause (2)—

“(2) Where a donor or person wishing to store their gamete or embryo in a cryo bank through cryo-preservation, the cryo bank shall only store such gamete or embryo for as long as the owners of the gamete or embryo are alive or for a period not exceeding ten years, and the end of this period the embryo or gamete shall be allowed to perish or be donated to a research organization registered under this Act for research purposes with the consent of the commissioning couple or parent in such manner as may be prescribed”.

- (g) by inserting the following new sub-clauses immediately after the new sub-clause (2)—
 - “(3) Where a child wishes to store their gametes or embryo pursuant to this Act, a cryo bank shall preserve such embryo or gamete for a period of twenty years.
 - (4) A person wishing to store their gametes or embryo for a longer period than the period specified in subsection (2) and (3) shall make an application to the Directorate to approve longer or further storage of a gamete or embryo.
 - (5) The Directorate may approve the longer storage period where it considers that there are reasonable grounds to do grant a longer period including in the case of a chronic illness or any other ground as prescribed in Regulations.
 - (6) The Directorate shall, in deciding to approve a longer or further storage period under subsection (5), have regard to the age of the applicant and ensure that the applicant shall not exceed the age of fifty-five years in the proposed extension period.
 - (7) A person may, in case of a pending application to the Directorate under this section, cause or permit gametes or embryos to remain in storage until the Directorate makes a decision on the application.”

NEW PART X

THAT, the Bill be amended by inserting the following new part immediately after Part IX—

PART X- CONSEQUENTIAL AMENDMENTS

Amendment of section 2 of Cap. 149.

51A. The Births and Deaths Registration Act is amended in section 2 by inserting the following new definitions in their proper alphabetic sequence—

“intended parent” has the meaning assigned to it under the Assisted Reproductive Technology Act; and

“surrogate mother” has the meaning assigned to it under the Assisted Reproductive Technology Act.”

Amendment of section 12 of Cap. 149.

51B. The Births and Deaths Registration Act is amended in section 12 by inserting the words “or by presenting a surrogacy agreement indicating the particulars of the intended father” immediately after the words “some recognized custom”.

Insertion of new section into Cap. 149.

51C. The Births and Deaths Registration Act is amended by inserting the following new section immediately after section 12—

Register of
persons born
through assisted
reproductive
technology.

12A. The registrar shall cause to be entered in a certificate of birth of a child born out of assisted reproductive technology procedure, the name of the intended parents upon presentation of a valid surrogacy agreement and verification of the agreement by the Directorate established under section 5 of the Assisted Reproductive Technology Act”.



LIMITATION OF DEBATE

The House resolved on Wednesday, February 14, 2024 as follows—

Limitation of Debate on Motions

- II.** THAT, each speech in a debate on any **Motion, including a Special motion** shall be limited as follows: A maximum of three hours with not more than twenty (20) minutes for the Mover and ten (10) minutes for each other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen (15) minutes each, and that ten (10) minutes before the expiry of the time, the Mover shall be called upon to reply; and that priority in speaking be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in that order.

Limitation of Debate on Individual Members' Bills

- III.** THAT, each speech in a debate on **Bills NOT sponsored by a Committee, the Leader of the Majority Party or the Leader of the Minority Party** shall be limited as follows: A maximum of three hours and thirty minutes, with not more than thirty (30) minutes for the Mover, in moving and ten (10) minutes in replying, a maximum of thirty (30) minutes for the Chairperson of the relevant Committee and a maximum of ten (10) minutes for any other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen minutes (15) each; and that priority in speaking shall be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in that order.



NOTICE PAPER

Tentative business for

Wednesday (Afternoon), April 17, 2024

(Published pursuant to Standing Order 38(1))

It is notified that the following business is *tentatively* scheduled to appear in the Order Paper for Wednesday (Afternoon), April 17, 2024 –

A. SPECIAL MOTION – CONSIDERATION OF NOMINEES FOR APPOINTMENT TO VARIOUS DIPLOMATIC OFFICES

(The Chairperson, Departmental Committee on Defence, Intelligence and Foreign Relations)

B. THE NATIONAL LAND COMMISSION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 43 OF 2023)

(The Hon. Owen Baya, M.P.)

Second Reading

(Resumption of debate interrupted on Tuesday, April 16, 2024)

(Balance of time – 3 hours 5 minutes)

C. THE COUNTY LICENSING (UNIFORM PROCEDURE) BILL (SENATE BILLS NO. 9 OF 2022)

(The Chairperson, Departmental Committee on Trade, Industry and Cooperatives)

Second Reading

D. MOTION– RATIFICATION OF THE AFRICAN UNION CONVENTION ON CROSS-BORDER COOPERATION

(The Chairperson, Departmental Committee on Defence, Intelligence and Foreign Relations)

E. THE LAND LAWS (AMENDMENT) (No. 2) BILL (NATIONAL ASSEMBLY BILL NO. 76 OF 2023)

(The Leader of the Majority Party)

Second Reading

F. MOTION – REPORTS OF THE AUDITOR-GENERAL ON THE NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND FOR NINE CONSTITUENCIES IN BUNGOMA COUNTY

(The Chairperson, Decentralized Funds Accounts Committee)

G. MOTION – REPORTS OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENTS OF SPECIFIED STATE CORPORATIONS

(The Chairperson, Public Investments Committee on Social Services, Administration and Agriculture)

H. THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2024)

(The Leader of the Majority Party and the Leader of the Minority Party)

Second Reading

I. THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 67 OF 2023)

(The Leader of the Majority Party)

Second Reading

J. MOTION – PUBLIC PETITION ON FUNDS SPENT CONTRARY TO THE PROVISIONS OF ARTICLE 223 OF THE CONSTITUTION

(The Chairperson, Public Petitions Committee)

K. MOTION – ENHANCING REPORTING OF PARLIAMENTARY BUSINESS ON ONLINE PLATFORMS

(The Chairperson, Committee on Parliamentary Broadcasting and Library)

L. MOTION – INSPECTION VISIT TO SEMI-AUTONOMOUS INSTITUTIONS OF THE EAST AFRICAN COMMUNITY IN UGANDA

(The Chairperson, Committee on Regional Integration)

M. MOTION – IMPLEMENTATION STATUS OF REPORTS ON PETITIONS AND RESOLUTIONS PASSED BY THE HOUSE

(The Chairperson, Committee on Implementation)

N. MOTION – ALLEGED UNFAIR TRADE PRACTICES BY FOREIGN INVESTORS IN KENYA

(The Chairperson, Departmental Committee on Trade, Industry and Cooperatives)

APPENDIX

NOTICE OF PETITIONS, QUESTIONS & STATEMENTS

ORDER NO. 4 - PETITIONS

It is **notified** that, pursuant to the provisions of Standing Order 225, the following Petition will be presented –

No.	Subject	Petitioner(s)	Relevant Committee
08/2024	Amendment of the Penal Code to provide for the offense of sextortion	<i>To be presented by the Hon. Esther Passaris, MP (Nairobi City County) on behalf of concerned citizens of Kenya</i>	Public Petitions

ORDER NO. 7 - QUESTIONS

(Questions to Constitutional Commissions and Independent Offices pursuant to Standing Order 42G)

It is notified that, pursuant to the provisions of Standing Order 42G, the following Member will ask a **Question** to a Constitutional Commission for reply before the specified Committee—

QUE. NO.

ORDINARY QUESTION

123/2024

The Member for Kisii County (Hon. Dorice Donya, MP) to ask the Ethics and Anti-Corruption Commission: -

Could the Commission –

- (i) state the criteria used by the Ethics and Anti-Corruption Commission (EACC) to undertake the ongoing interviewing of staff of Kisii County Government that seeks to authenticate their academic certificates?
- (ii) explain why only junior officers' certificates are being scrutinized, leaving behind the senior officers such as County Executive Committee Members and Chief Officers?
- (iii) consider restarting the entire exercise, by commencing with the topmost positions in the County Executive, including elected leaders in the County?

(To be replied before the Departmental Committee on Justice and Legal Affairs)

ORDER NO. 7 - STATEMENTS

It is **notified** that, pursuant to the provisions of Standing Order 44(2)(c), the following Statement will be **requested**—

Subject	Member	Relevant Committee
Rampant killings in Kisii County	<i>Hon. Dorice Donya, MP (Kisii County)</i>	Administration and Internal Security
