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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – (FIFTH SESSION)

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THE DEPARTMENTAL COMMITTEE ON HEALTH
REPORT ON THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL, 2019
NATIONAL ASSEMBLY BILL NO.34 OF 2019

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 11 MAR 2021	DAY: Thurs
TABLED BY:	Hon. Mathias Doino, MP Member, Health Committee
CLERK-AT THE-TABLE:	Moses Lemura

DIRECTORATE OF COMMITTEE SERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

MARCH, 2021

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ABBREVIATIONS

ART	-	Assisted Reproductive Technology
FIDA	-	Federation of Women Kenya-Lawyers
FHOK	-	Family Health Option-Kenya
HIV	-	human Immunodeficiency Virus
IVF	-	In vitro fertilization
IUI	-	Intrauterine Insemination
KOGS	-	Kenya Obstetricians and Gynaecologists Society
PATH	-	Program for Appropriate Technology in Health

LIST OF ANNEXURES

Volume 1

Annexure 1: Analysis of public submissions on the Bill

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Volume 2

Annexure 4: Adoption schedule

Annexure 5: Copy of the newspaper advertisements of Monday, October 7, 2019, inviting the public to submit memoranda on the Bill and a letter inviting other stakeholders for public hearing meeting that was conducted on Thursday 12th March 2020.

Annexure 6: Minutes of Committee Sitings on consideration of the Bill

CHAIRPERSON'S FOREWORD

The Assisted Reproductive Technology Bill, 2019, National Assembly Bill No.34 of 2019 was published on 15th April, 2019. Pursuant to Standing Order 127(1) the Bill was committed for consideration to the Departmental Committee on Health having been Read a First Time on 26th June, 2019.

The Assisted Reproductive Technology Bill, 2019, seeks to regulate rights and obligations relating to assisted reproductive technology. It aims to regulate the use of assisted reproductive technologies to aid individuals or couples that have challenges conceiving due to factors associated with infertility. Furthermore, the Bill aims to regulate the qualifications of health practitioners who administer assisted reproductive technology in order to protect recipients of the latter services.

Pursuant to the provisions of Article 118 of the Constitution of Kenya and Standing Order 127(3) of the National Assembly Standing Orders, the Committee through local daily newspapers of Friday, 5th July, 2019, published an advert inviting the public to submit memoranda. Further, in a letter dated 5th March, 2020 the Committee invited individuals and institutions to make presentations on the Bill. The meeting was held on Thursday, 12th March 2020 in the Mini Chamber, County Hall, Parliament Buildings.

The Committee received memorandums from the following individuals and institutions-

- | | |
|---|---|
| i. Ministry of Health | vi. Path; |
| ii. Federation of Women Kenya-Lawyers (FIDA-KENYA); | vii. Intersex Persons Society Of Kenya; |
| iii. Family Health Option-Kenya (FHOK); | viii. Kenya Obstetricians and Gynecologists Society (KOGS); |
| iv. The Kenya Medical Association; | and |
| v. The Centre For Citizens Empowerment Programme; | ix. Christine Kipsang (Advocate) |

The report is in two volumes. Volume 1 of the Bill contains the analysis of the public submissions on the Bill, written submission received from the public noting general comments in support or against the Bill and the list of the individuals and institutions that submitted their memoranda and participated in the public hearing meeting.

Volume 2 of the Bill contains adoption schedule, a copy of the newspaper advert of Friday, 5th July, 2019 inviting the public to submit memoranda on the Bill and a letter inviting other stakeholders for public hearing meeting that was conducted on Thursday 12th March 2020 and the minutes of the committee sittings during the consideration of the Bill.

May I take this opportunity to thank and commend Committee Members for their commitment to duty, the Speaker and the Clerk of the National Assembly for providing leadership and direction and finally the Committee Secretariat for exemplary performance in the provision of technical and logistical support. Indeed, their efforts were critical in consideration of the Bill and production of this report. The Committee also reiterates its gratitude to stakeholders who made submissions in relation to the Consideration of the Bill.

On behalf of the Departmental Committee on Health and pursuant to the provisions of Standing Order 127 (4), it is my pleasant privilege and duty to present the House a report of the Committee on its consideration of **The Assisted Reproductive Technology Bill, 2019, National Assembly Bill No.34 of 2019**.

HON. SABINA CHEGE, MP - CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

1.3 Committee Membership

3. The Committee comprises the following Honourable Members;

Chairperson

Hon. Sabina Chege, MP
Murang'a County

Jubilee Party

Vice-Chairperson

Hon. Joshua Kutuny, MP
Cherangan'y Constituency

Jubilee Party

Members

Hon. (Dr.) Eseli Simiyu, MP
Tongaren Constituency

Ford Kenya Party

Hon. Gideon Ochanda, MP
Bondo Constituency

ODM Party

Hon. (Dr.) James Nyikal, MP
Seme Constituency

ODM Party

Hon. Alfred Agoi Masadia, MP
Sabatia Constituency

ANC Party

Hon. (Dr.) James K, Murgor, MP
Keiyo North Constituency

Jubilee Party

Hon. Muriuki Njagagua, MP
Mbeere North Constituency

Jubilee Party

Hon. (Dr.) Mohamed D. Duale, MP
Daadab Constituency

KANU Party

Hon. Beatrice Adagala, MP
Vihiga County

ANC Party

Hon. James G Wamacukuru
Kabete Constituency

Jubilee Party

Hon. Prof. Mohamud Sheikh, MP
Wajir South

Jubilee Party

Hon. Sarah Puleta Korere, MP
Laikipia North Constituency

Jubilee Party

Hon. Capt. Ruweida Mohamed, MP
Lamu County

Jubilee Party

Hon. Kipsengeret Koros, MP
Sigowet-Soin Constituency

Independent Party

Hon. Martin Peters Owino, MP
Ndhiwa Constituency

ODM Party

Hon. Joyce Ekai Emanikor, MP
Turkana County

Jubilee Party

Hon. Said Hirabe, MP
Galole Constituency

Ford Kenya Party

Hon. Tongoyo Gabriel Koshal, MP
Narok West Constituency

CCM Party

1.4 Secretariat

4. The Committee is facilitated by the following members of the Secretariat;

Head of the Secretariat

Mr Benjamin Magut
Senior Clerk Assistant

Mr. Muyodi Meldaki Emmanuel
Clerk Assistant II

Ms. Christine Odhiambo
Legal Counsel I

Mr Erick Kanyi
Fiscal Analyst

Ms Maureen Kweyu
Audio Office

2.0 THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL, 2019, NATIONAL ASSEMBLY BILL NO.34

2.1 Memorandum of Objects and Reasons of the Bill

The Assisted Reproductive Technology Bill, 2019, seeks to regulate rights and obligations relating to assisted reproductive technology. It aims to regulate the use of assisted reproductive technologies to aid individuals or couples that have challenges conceiving due to factors associated with infertility. Furthermore, the Bill aims to regulate the qualifications of health practitioners who administer assisted reproductive technology in order to protect recipients of the latter services

3.0 Public participation in the review of the Bill

3.1 Legal provision on public participation

5. Article 118 (1) (b) of the Constitution of Kenya provides as follows –

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”

6. Standing Order 127(3) provides as follows –

“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendation to the House.”

3.2 The methodology used by the Committee in public participation

7. The Assisted Reproductive Technology Bill, 2019, National Assembly Bill No.34 was published on 15th April 2019 Pursuant to Standing Order 127(1) the Bill was committed for consideration to the Departmental Committee on Health having been read a First Time on 26th June 2019
8. Pursuant to the said provisions of the Constitution and Standing Orders, the Committee through local daily newspapers of Friday, 5th July, 2019, published an advert inviting the public to submit memoranda. Further, in a letter dated 5th March 2020 the Committee invited individuals and institutions to make presentations on the Bill. The meeting was held on Thursday, 12th March, 2020 in the Mini Chamber, County Hall, Parliament Buildings.
9. Volume 1 of the Bill as the contains the analysis of the public submissions on the Bill, written submission received from the public noting general comments in support or against the amendments and the list of the individuals and institutions that submitted their memoranda and participated in the public hearing meeting.
10. Volume 2 of the Bill contains adoption schedule, a copy of the newspaper advert of Friday, 5th July, 2019 inviting the public to submit memoranda on the Bill and a letter inviting other stakeholders for public hearing meeting that was conducted on Thursday, 12th March 2020 and the minutes of the committee sittings during the consideration of the Bill.

4.0 OBSERVATIONS

Upon considering The Assisted Reproductive Technology Bill, 2019, National Assembly Bill No.34 of 2019 and the submissions from the stakeholders. The Committee made the following observations:-

- i. The Assisted Reproductive Technology Bill, 2019 seeks to provide for the regulation of assisted reproductive technology, to prohibit certain practices in connection with assisted reproductive technology, to establish an Assisted Reproductive Technology Authority and to make provision in relation to children born of assisted reproductive technology processes.
- ii. The principal object of the Bill is to regulate rights and obligations relating to assisted reproductive technology. The Bill aims to regulate the use of assisted reproductive technologies to aid individuals or couples that have challenges conceiving due to factors associated with infertility. Furthermore, the Bill aims to regulate the qualifications of health practitioners who administer assisted reproductive technology in order to protect recipients of the latter services.
- iii. In addition, the Bill contains provisions that define rights touching on among others issues relating to consents preceding assisted reproduction; handling of embryos resulting from assisted reproductive technology; protection of the identity, status and welfare of children born out of assisted reproduction; and duties of persons who undergo assisted reproduction and their legal status as parents.
- iv. The Bill establishes an Assisted Reproductive Technology Authority to regulate the processes, licensing, standards, research, and infrastructure relating to assisted reproductive technology. The legislative scheme of the Bill has been modelled in a manner that addresses a balance between the need for regulation of ethics and advancement of modern science and technology.
- v. However, the Committee noted that the Health Act, 2017 enabled the Cabinet Secretary to establish Directorate under the Ministry of Health to deal with specific areas of health. In this regard and taking note for the need for the rationalization of semi-autonomous state agencies under the Ministry of Health, there were no sufficient reasons for establishment of the Authority as there were existing structures that could be realigned to take on the role of the Authority including the MOH's reproductive health unit and the Medical Practitioners and Dentist Council.
- vi. The Committee noted that the Bill lacked sufficient provision to deal with pertinent issues arising from Assisted Reproductive technology such as the prohibition of commercial surrogacy, provision for compensation mechanisms to ensure the service is not exploitative in nature. The need for prohibition of sex selection and abandonment of children born of assisted reproduction, validity of surrogacy agreements and obligations of parties so as to ensure that the process is adequately regulated.
- vii. The Committee notes that section 11 of the Births & Deaths Registration Act needs to be aligned with the proposed Bill to allow for registration of children born of assisted reproduction by the commissioning parent(s). As currently provided registration can only be undertaken with the surrogate mother and this has posed great challenge as the biological parents have to undertake the legal adoption process in order to be registered as parents.
- viii. The Committee finally noted that Senate was in the process of considering the Reproductive Health Bill, 2019 (Senate Bill No.23 of 2019) whose objects is to provide for the right to reproductive health care; to set the standards of reproductive health; provide

for the right to make decisions regarding reproductive health; and for connected purposes. This Bill seeks to provide the legal framework for enforcement and implementation of reproductive health and assisted reproduction is one of the areas it touches. However, the National Assembly Bill specifically deals with Assisted Reproduction and does not delve into the entire realm of reproductive health rights. In this regard some memoranda received were misplaced to the extent they proposed amendments dealing with aspects of reproductive health which would have expanded the scope of the Bill if adopted by the Committee.

5.0 RECOMMENDATIONS

Upon considering The Assisted Reproductive Technology Bill, 2019, National Assembly Bill No.34 of 2019 and the submissions from the stakeholders, the Committee recommended the following amendments.

CLAUSE 2

THAT, clause 2 of the Bill be amended—

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

“assisted reproductive technology” means fertilization in a laboratory dish of processed sperm with processed eggs which have been obtained from an ovary, whether or not the process of fertilization is completed in the laboratory dish;”

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

“couple” means a male and female who are in an association notwithstanding whether such association may be recognized as a marriage under any law in Kenya;”

- (d) by deleting the definition of the word “Director”;
- (e) by deleting the definition of the word “father” and substituting therefor the following new definition—

“father” means a man who in the case of a child who is being carried by a woman as a result of the placing in the woman an embryo or sperm and eggs or the artificial insemination of the woman—

(a) the man donated his sperms for the process of assisted reproduction, and at the time of placing in the woman the embryo or the sperm and eggs or artificial insemination of the woman-

(i) the woman was party to a marriage with the man; or

(ii) the woman was not party to a marriage with the man but has subsequently contracted a a marriage to the man; or

(iii) the man and the woman have never contracted a marriage, but the man has in agreement with the mother, written a parental agreement acquiring parental rights of a father, or

(b) the man did not donate his sperms for the process of assisted reproduction, and at the time of placing in the woman the embryo or the sperm and eggs or artificial insemination of the woman—

- (i) the man was party to a marriage with the woman; and
- (ii) the man has in agreement with the woman, written a parental agreement acquiring parental rights of a father;”

(f) by deleting the definition of the word “gamete” and substituting therefor the following new definition—

“gametes” means a mature sperm or egg capable of fusing with a gamete of the opposite sex to produce the fertilized egg;

(g) by deleting the definition of the word “primitive” and substituting therefor the following new definition—

“primitive streak” means an embryo that develops in the early stages of human reproduction, that is to be taken to have appeared in any embryo not later than the end of the period of fourteen days beginning with the day when the gametes are mixed, not counting any time during which the embryo is stored and the presence of which signifies the creation of a unique human being;

(h) in the definition of the word “procreation” by deleting the words “a facilitated process” and substituting therefor the words “an assisted reproduction technology process”;

(i) in the definition of the word “surrogate” by inserting the word “for” immediately after the word “term”;

(j) in the definition of the word “treatment service” by deleting the words “women to carry children” and substituting therefor the words “a pregnant woman”; and

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

“assisted reproductive technology expert” mean an obstetrician or gynaecologist that has sub-specialized in reproductive endocrinology and fertility medicine;

“assisted reproductive technology services” means the diagnostic and screening, endoscopic surgery, intra-uterine insemination, in-vitro fertilization, intracytoplasmic sperm injection, cryo-preservation, pre-implantation genetic screening, pre-implantation genetic diagnosis, onco-fertility, gamete and embryo donation, and surrogacy provided to infertile and sub-fertile man or woman as the case may be;

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

“cryo-preservation” means the assisted reproductive technology process of cooling and storing gametes, or embryos at very low temperatures to preserve their viability includes also embryo,

egg or sperm freezing;

“diagnosis” means the process of testing and screening to ascertain the proper functioning of the reproductive systems and its processes at the beginning of the Assisted reproductive technology process;

“Directorate” means the Assisted Reproductive Technology Directorate established under section 4;

“donation” for purposes of this Act, means a process in Assisted Reproductive Technology, of voluntarily giving gametes or embryos for purposes of procreation;

“embryologist” means a specialist who deals with gametes and assists in the process of fertilization in the laboratory;

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

“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, and passing a telescope with a video camera through the incision into the body cavity;

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

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

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

“in-vitro fertilization” means an assisted reproductive technology process where an egg is fertilized by a sperm in a test-tube or elsewhere outside the body;

“oocyte” means naturally ovulating oocyte in the female genetic tract

“pre-implantation genetic diagnosis” means a process in assisted reproductive technology which involves assessment of the embryo for pre-existing hereditary diseases and eliminating the same before the transfer of the embryo to a woman’s womb;

“pre-implantation screening” means a process in assisted reproductive technology to determine the number of chromosomes in a developing embryo in specific cases;

“surrogacy” means a term in assisted reproductive technology, of a woman carrying and giving birth to a baby for a commissioning parent or couple;

INSERTION OF NEW CLAUSE 3A

THAT, the Bill be amended by inserting the following new clauses immediately after clause 3 —

Object and purpose
of the Act.

3A.The object and purpose of this Act is to—

- (a) provide a framework for the protection and advancement of assisted reproductive technology services for every person;
- (b) create an enabling environment for the reduction of infertility and sub-fertility in Kenya; and
- (c) ensure access to quality and comprehensive assisted reproductive technology services in line with Article 43(1)(a) of the Constitution.

PART II

THAT, the Bill be amended by in the heading in Part II by deleting the word “Authority” and substituting therefor the word “Directorate”

CLAUSE 4

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

Assisted
Reproductive
Technology
Directorate.
No.21 of
2017.

4. Subject to section 18 of the Health Act, 2017 the Cabinet Secretary shall form a directorate to be known as the Assisted Reproductive Technology Directorate.

CLAUSE 5

THAT, clause 5 of the Bill is amended—

- (a) in the prefatory statement by deleting the word “Authority” and substituting therefor the word “Directorate”;
- (b) in paragraph (c) and by deleting the words “undertake research” and substituting therefor the words “promote research”;
- (c) by inserting the following new paragraph immediately after paragraph(e)—
 - (ea) prescribe, in consultation with relevant government agency, the minimum requirements educational requirements for assisted reproductive technology experts and embryologists;
 - (eb) in consultation with the relevant government agency, inspect and accredit the facilities for the training of experts and embryologists to ensure compliance with set standards;
 - (ec) maintain and make available to the public a register of information on all the licenced assisted reproductive technology facilities in Kenya;

(ed)in consultation with the Medical Practitioners and Dentist Council, maintain and make available to the public a register of information on all the licenced assisted reproductive technology experts and embryologists.

(d) in paragraph (k) by deleting the word “Authority” and substituting therefor the word “Directorate”.

CLAUSE 6

THAT, the Bill be amended by deleting clause 6 and inserting the following new clause 6—

Obligations of the National Government. **6.**The responsibility of the National Government shall be to—

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

CLAUSE 7

THAT, the Bill be amended by deleting clause 7 and inserting the following new clause7—

Obligations
County
Governments.

of 7. The responsibility of the County Governments shall be to—

- (a) collaborate with the National Government in expanding and strengthening the access and delivery of assisted reproductive health services in the respective counties;
- (b) allocate in the county budget, the funds necessary for the provision of quality, cost-effective assisted reproductive technology services in the county health systems, including finances required to hire adequate personnel;
- (c) procure sufficient equipment, medicine, medical supplies required to adequately cater for assisted reproductive health care services in the respective counties;
- (d) carry out sensitization programmes related to assisted reproductive technology; and
- (e) establish linkages and networks with local and international development partners to mobilise and source for funding to promote the delivery of quality and cost-effective assisted reproductive technology services in the county.

CLAUSE 8

THAT, clause 8 of the Bill be deleted.

CLAUSE 9

THAT, clause 9 of the Bill be deleted.

CLAUSE 10

THAT, clause 10 of the Bill be deleted.

CLAUSE 11

THAT, clause 11 of the Bill be deleted.

CLAUSE 12

THAT, the Bill be amended by deleting clause 12 and substituting therefor the following new clause —

Composition
of the
Directorate.

12. (1) The Directorate shall consist of—

- (a) a Director; and
- (b) such staff as the Cabinet Secretary may, in consultation with the Director, consider necessary for the performance of the functions of the directorate under this Act.

(2) The Director and staff of the directorate shall be competitively recruited and appointed on such terms and conditions as Cabinet Secretary shall, in consultation with the Salaries and Remuneration Commission determine.

CLAUSE 13

THAT, the Bill be amended by deleting clause 13 and substituting therefor the following new clause —

Experts and
consultants.

13. The Directorate may engage experts or consultants as it considers appropriate, to assist in the discharge of the functions of the Directorate.

CLAUSE 14

THAT, clause 14 of the Bill be deleted.

CLAUSE 15

THAT, clause 15 of the Bill be deleted.

CLAUSE 16

THAT, clause 16 of the Bill be deleted.

CLAUSE 17

THAT, clause 17 of the Bill be deleted.

CLAUSE 19

THAT, clause 19 of the Bill is amended by—

(a) renumbering clause 19 as 19(1); and

(b) inserting the following new sub clause immediately after sub clause (1)—

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

CLAUSE 20

THAT, clause 20 of the Bill is amended by—

(a) renumbering clause 20 as 20(1); and

(b) inserting the following new sub clause immediately after sub clause (1)—

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

CLAUSE 21

THAT, clause 21 of the Bill be deleted.

CLAUSE 22

THAT, clause 22 of the Bill be amended by deleting the words “a medical doctor” and substituting therefor the words “an assisted reproductive technology expert”.

CLAUSE 23

THAT, clause 23 of the Bill is amended —

(a) by renumbering clause 23 as 23(1);

(b) in sub clause (1)(c) by inserting the word “and commercial purposes” immediately after the word “purposes”; and

(c) by inserting the following new sub clause immediately after sub clause (1);

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

CLAUSE 24

THAT, clause 24 of the Bill is amended by—

- (a) renumbering clause 24 as 24(1); and
- (b) inserting the following new sub clause immediately after sub clause (1) —

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

CLAUSE 25

THAT, clause 25 of the Bill is amended—

- (a) by renumbering clause 25 as 25(1);
- (b) in sub clause (1) by inserting the words “and with the consent of the parent or legal guardian of the minor” and
- (c) by inserting the following new sub clause immediately after sub clause (1); —

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

CLAUSE 26

THAT, clause 26 of the Bill is amended—

- (a) by renumbering clause 26 as 26(1);
- (b) in sub clause (1)—
 - (i) in the prefatory statement by deleting the word “Authority” and substituting therefor the word “Directorate”;
 - (ii) in paragraph (b) by inserting the words “after five days” immediately after the word “streak”;
 - (iii) by deleting paragraph (e) and substituting therefor the following new paragraph—

(e) the replacing of any part of an 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 medical problems;

- (c) by inserting the following new sub clause immediately after sub clause (1);

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

CLAUSE 27

THAT, clause 27 of the Bill is amended—

- (a) by renumbering clause 27 as 27(1);
- (b) in subclause (1)(e) by inserting the words “or embryo” immediately after the word “eggs”; and
- (c) by inserting the following new sub clause immediately after sub clause (1);

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

CLAUSE 28

THAT, clause 28 of the Bill is amended in—

- (a) paragraph (a) by deleting the words “takes place within five years of the death of the man”; and
- (b) paragraph (a) by deleting the words “takes place within five years of the death of the man”.

INSERTION OF NEW CLAUSES

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

Right to assisted
reproductive technology.

28A. (1) Every person has the right to access the highest standard and quality of attainable and cost-effective assisted technology reproductive technology services.

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

(3) An assisted reproductive technology expert shall, before providing Assisted reproductive technology service—

- (a) provide information necessary to assist in the making of an informed decision to all parties concerned, and in particular, information concerning-
 - (i) the various assisted reproductive technology methods available;

- (ii) chances of success for various assisted reproductive technology methods;
- (iii) advantages, disadvantages and risks of the various assisted reproductive technology methods; and
- (iv) the cost of treatment for different assisted reproductive technology methods.

- (b) advise the parties on the need for professional counselling and have them undergo the same on the implications of the various methods; and
- (c) ensure promotion and preservation of the health, safety and dignity of the parties seeking assisted reproductive technology services.

Right to assisted reproductive technology by inter-sex persons.

28B. The national and county governments shall put in place measures to ensure that all intersex persons have access to assisted reproductive technology services.

Consent to assisted reproductive technology service.

28C.(1) An assisted reproductive technology expert shall obtain prior informed and written consent from the parties before providing any assisted reproductive technology service under the Act or any other law.

(2) The consent referred to in subsection (1) shall make express provisions on what should be done with the gametes in case of—

- (a) the death of any of the parties seeking assisted reproductive technology services; and
- (b) incapacity of any of the parties seeking assisted reproductive technology services.

(3) The assisted reproductive technology clinics and assisted reproductive technology banks shall not cryo preserve any human embryos and or 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 or embryos in case of death or incapacity of any of the parties.

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

Duties of assisted reproductive technology expert.

28D. 1) Assisted reproductive technology expert shall ensure—

- (a) confidentiality is maintained throughout the entire process of provision of assisted reproductive technology services;
- (b) the donor has been screened for all diseases and conditions that may endanger the health of the parents, the surrogate or the child; and
- (c) all parties are aware and understand the rights of the child born through the assisted reproductive technology

process.

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

- (a) a passport size photo;
- (b) physical characteristics;
- (c) ethnic origin;
- (d) family history;
- (e) medical history;
- (f) interests and hobbies; and
- (g) professional qualifications and skills.

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

CLAUSE 30

THAT, the Bill be amended by deleting clause 30 and substituting therefor the following new clause 30—

Rights to accrue to child.

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

(2) The health and well-being of children born through the application of assisted human reproductive technologies shall be given priority in all decisions respecting their use.

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

(4) Where a sperm or ovum is donated from a man or woman of a different nationality, the child shall adopt the nationality of the intended parents.

(5) Where a surrogate who is not a Kenyan citizen gives birth to a child, the child shall adopt the nationality of the intended parents.

CLAUSE 31

THAT, clause 31 of the Bill is amended by—

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

(1) A woman of twenty-five years or more, who has given birth at least to one child and who understands the rights and obligations accruing under a surrogacy agreement,

may, at the request of a couple, consent to a process of assisted reproduction for purposes of surrogate motherhood.

- (b) deleting sub clause (2) and substituting therefor the following new sub clause—
(2) The surrogate mother under subsection (1) shall carry the child on behalf of the parties to a marriage or couple and shall relinquish all parental rights at birth over the child.

CLAUSE 32

THAT, clause 32 of the Bill is amended by—

- (a) deleting subclause (1) and substituting therefor the following new subclause—

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

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

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

- (a) the person has the capacity to enter into the agreement under this Act and any other relevant written law in Kenya; and
(b) understands the rights and obligations that may arise or accrue under this Act and the agreement.

(1B) Notwithstanding the generality of subsection (1), a surrogacy agreement is valid only if the agreement—

- (a) is in writing and signed by all the parties;
(b) is entered into within the Republic of Kenya;
(c) includes provisions for the contact, care, upbringing and general welfare of the child that is born, including the position of the child in the event of—
(i) death of the commissioning parent, or if a couple or parties to a marriage, death of one of the commissioning parents before the birth of the child; or
(ii) separation or divorce of the commissioning parents who were a couple or parties to a marriage, before the birth of the child.
(d) the commissioning parent or commissioning parents agree to meet the prenatal regiment and birth expenses of the surrogate mother;
(e) signatures to the surrogacy agreement are witnessed by a minimum two witness from each of the parties to the agreement;
(f) there are separate and independent advocates of the High Court of Kenya representing the parties to the agreement; and
(g) legal fees are paid by the commissioning parent, commissioning parents or parties to marriage.

INSERTION OF NEW CLAUSES

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

Termination of
surrogacy
agreement.

32A. (1) A surrogacy agreement may be terminated where—

- (a) automatically, following the termination of pregnancy in accordance with this Act or any other written law;
- (b) before the implantation of a fertilized embryo in the surrogate mother's womb; or
- (c) where a dispute arises between commissioning parents, and before the fertilized embryo is implanted in the surrogate mother.

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

Obligations
under
surrogacy
agreement.

32B. (1) The Commissioning parent or parents, under the surrogacy agreement shall be the legal parent or parents of the child and not discriminate against the child.

(2) In the event of multiple pregnancies arising out of a surrogacy agreement, 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.

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

- (a) the commissioning parent or commissioning parents shall be listed as the parents both in the birth notification and in the birth certificate; and
- (b) the child shall acquire the citizenship of the commissioning parent or commissioning parents under Article 14(1) of the Constitution of Kenya.

(4) Notwithstanding the provisions of section 32(5) the surrogate mother may claim from the commissioning parent or commissioning parents the following—

- (a) compensation directly relating to the process of in-vitro fertilization, pregnancy, ante-natal, birth, post-natal care and post-delivery complications;
- (b) loss of earnings by the surrogate mother as a result of the surrogacy; and
- (c) insurance to cover the surrogate mother for any acts that may lead to death or disability of the surrogate mother as a result of the surrogacy.

(5) The surrogate mother shall—

- (a) not terminate the pregnancy except under the provisions of the law;
- (b) hand over the child to the commissioning parent or commissioning parents immediately upon the birth of child;
- (c) have no rights or obligation regarding the child; and
- (d) not contact the child, whether directly or by use of proxy, unless provided for in the agreement.

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

Cap.160.

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

Prohibition of Sex Selection

32C. A person shall not do any act, at any stage of an assisted reproductive process, to determine the sex of the child to be born through the process of assisted reproductive technology.

Restriction on sale of human gametes, zygotes and embryos prohibition of commercial artificial reproductive technology.

32D. (1) A person shall not knowingly provide, prescribe or administer anything that shall ensure or increase the probability that an embryo shall be of a particular sex, or that shall identify the sex of an in vitro embryo, except to diagnose, prevent or treat a sex-linked disorder or disease.

(2) A person shall not sale, transfer or use of gametes, zygotes and embryos, or any part thereof or information related thereto, directly or indirectly to any party within and outside Kenya.

CLAUSE 33

THAT, clause 33 of the Bill is amended by deleting the word “Authority’ and substituting therefor the word “Directorate”.

CLAUSE 34

THAT, clause 34 of the Bill is amended in-

- (a) sub clause (1) by deleting the words “eighteen may by notice to the Authority require the Authority” and substitute therefor the words “twenty-one may by notice to the Directorate require the Directorate”;
- (b) sub clause (2) by deleting the word “Authority” and substituting therefor the word “Directorate”; and
- (c) sub clause (2) by deleting the word “Authority” and substituting therefor the word “Directorate”.

CLAUSE 35

THAT, clause 35 of the Bill is amended in-

- (a) sub clause (1) by deleting the words “eighteen may by notice to the Authority require the Authority” and substitute therefor the words “twenty-one may by notice to the Directorate require the Directorate”;
- (b) sub clause (2) by deleting the word “Authority” and substituting therefor the word “Directorate”; and
- (c) sub clause (2) by deleting the word “Authority” and substituting therefor the word “Directorate”.

CLAUSE 36

THAT, clause 36 of the Bill is amended in-

- (a) sub clause (1) by deleting the word “Authority” wherever it appears and substituting therefor the word “Directorate”; and
- (b) sub clause (2) by deleting the word “Authority” and substituting therefor the word “Directorate”.

CLAUSE 37

THAT, clause 37 of the Bill is amended -

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

(d) by inserting the following new sub clause immediately after sub clause (3);

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

CLAUSE 38

THAT, clause 38 of the Bill is amended by deleting the word “Authority” and substituting therefor the words “Directorate in consultation with the Medical Practitioners and Dentist Council”.

CLAUSE 39

THAT, clause 39 of the Bill is amended—

- (a) by renumbering clause 39 as 391); and
- (b) by inserting the following new sub clause immediately after sub clause (1);

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

CLAUSE 40

THAT, clause 40 of the Bill is amended —

- (e) in sub clause (1) by deleting the word “Authority” and substituting therefor the word “Directorate”; and
- (f) in sub clause (3) by deleting the word “Authority” and substituting therefor the word “Directorate”.

CLAUSE 41

THAT, clause 41 of the Bill is amended—

- (a) in sub clause (1) by deleting the word “Authority” and substituting therefor the word “Directorate”;
- (b) in sub clause (3) by deleting the words “Authority shall inspect once” and substituting therefor the word “Directorate shall inspect at least once”; and
- (c) by deleting sub clause (3).

CLAUSE 42

THAT, clause 42 of the Bill is amended—

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

(i) deleting the word “Authority” wherever it appears and substituting therefor the word “Directorate”;

(ii) inserting the following new paragraph immediately after paragraph (a)

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

(d) in sub clause (4) by deleting the word “Authority” and substituting therefor the word “Directorate”; and

(e) by inserting the following new sub clause immediately after sub clause (5);

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

CLAUSE 44

THAT, clause 44 of the Bill is amended—

(a) in sub clause (1) by deleting the words “Authority the Authority” and substituting therefor the words “Directorate, the Directorate”;

(b) in sub clause (2) by deleting the word “Authority” and substituting therefor the word “Directorate”;

(c) in sub clause (3) by deleting the word “Authority” wherever it appears and substituting therefor the word “Directorate”;

(d) in sub clause (4) by deleting the word “Authority” and substituting therefor the word “Directorate”;

(e) in sub clause (5) by deleting the word “Authority” and substituting therefor the word “Directorate”;

(f) in sub clause (6) by deleting the word “Authority” and substituting therefor the word “Directorate”; and

(g) in sub clause (7) by deleting the word “Authority” and substituting therefor the word “Directorate”.

CLAUSE 45

THAT, clause 42 of the Bill is amended in sub clause (2) by deleting the word “Authority” appearing in paragraph (b) and substituting therefor the word “Directorate”.

CLAUSE 46

THAT, clause 46 of the Bill is amended—

(a) in sub clause (1) by deleting the word “Authority” and substituting therefor the word “Directorate”;

(b) in sub clause (2) by deleting the word “Authority” wherever it appears and substituting therefor the word “Directorate”;

- (c) in sub clause (3) by deleting the word “Authority” and substituting therefor the word “Directorate”;
- (d) in sub clause (4) by deleting the word “Authority” wherever it appears and substituting therefor the word “Directorate”;
- (e) in sub clause (5) by deleting the word “Authority” and substituting therefor the word “Directorate”; and
- (f) in sub clause (6) by deleting the word “Authority” and substituting therefor the word “Directorate”.

CLAUSE 47

THAT, clause 47 of the Bill is amended—

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

- (1) Where the Directorate refuses to issue a licence or refuses to vary a licence—
 - (a) The applicant may appeal to the Cabinet secretary within 30 days of the date on which the decision was served on the applicant; and
 - (b) the Cabinet Secretary may make such determination on the appeal as they deem fit.

- (b) in sub clause (2) by deleting the word “Authority” wherever it appears and substituting therefor the word “Cabinet Secretary”; and
- (c) by deleting sub clause (3).

CLAUSE 48

THAT, clause 48 of the Bill is amended in prefatory statement by deleting the word “Authority” and substituting therefor the word “Directorate”.

CLAUSE 49

THAT, clause 49 of the Bill is amended in—

- (a) sub clause (1) by deleting the word “Authority” wherever it appears and substituting therefor the word “Directorate”; and
- (b) sub clause (2) by deleting the word “Authority” wherever it appears and substituting therefor the word “Directorate”.

CLAUSE 50

THAT, clause 50 of the Bill is deleted.

CLAUSE 51

THAT, clause 51 of the Bill is deleted.

CLAUSE 52

THAT, clause 52 of the Bill is deleted.

CLAUSE 53

THAT, clause 53 of the Bill is deleted.

CLAUSE 54

THAT, clause 54 of the Bill is deleted.

CLAUSE 55

THAT, clause 55 of the Bill is deleted.

CLAUSE 56

THAT, clause 56 of the Bill is deleted.

CLAUSE 57

THAT, clause 57 of the Bill is amended by inserting the following new sub clause immediately after sub clause (2)—

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

CLAUSE 58

THAT, clause 58 of the Bill is amended in sub clause (2) by deleting the words “one hundred thousand” and substituting therefor the words “one million”.

INSERTION OF NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 58-

Amendment of 58A. Section 11 of the Births deaths and registration Act, is —
section 11 of

Cap 149. (a) in section 2 by inserting the following new definition in the proper alphabetical sequence—

(i) “commissioning parent” shall have the assigned to it under the Assisted Reproductive Technology Act; and (ii) “commissioning parents” shall have the meaning assigned to it under the Assisted Reproductive Technology Act;

(b) by deleting section 11 and substituting therefor the following new section—
□

Duty to
notify
births
where
registration
compulsory

11. (1) Upon the birth of any child, the registration of whose birth is compulsory, notice of the birth shall be given to the registrar of the registration area in which the birth occurs within such time as may be from time to time prescribed—□

(a) by the father or mother of the child, or the commissioning parent or commissioning parents of the child;□

(b) where the father or mother or the commissioning parent or commissioning parents of the child, fail to give notice under paragraph (a), then, such notice shall be given by—

(i) the occupier of the house in which the child is born;

(ii) any other person present at the birth of the child; or

(iii) the person having charge of the child

(2) In the case of a birth in a prison, a hospital, an orphanage, a barracks or a quarantine station, the duty to give notice shall lie on the officer in charge of the establishment in which the birth has taken place.

CLAUSE 59

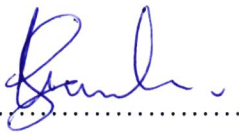
THAT, clause 59 of the Bill is amended—

- (a) in the prefatory statement by deleting the word “Authority” and substituting therefor the word “Directorate”;
- (b) by deleting paragraph (d); and
- (c) by deleting paragraph (i).

SCHEDULE

THAT, the Schedule to the Bill is deleted.

SIGNED



DATE..... 11th March 2021

HON. SABINA CHEGE,MP

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

Volume 1

**OVERVIEW OF THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL, 2019,
NATIONAL ASSEMBLY BILL NO.34**

11. The Bill is divided into nine parts .PART I provides for the short title and the commencement date of the Act. Also, it provides for interpretation of certain terms and the scope of application of the Act.
12. PART II establishes the Assisted Reproductive Technology Authority as a body corporate able to sue and being sued, purchase property, entering into contracts and borrowing and lending money (Clause 4). The Bill provides for the functions and powers of the Authority (clause 5 and 6). The Bill provides for the Board that is to manage the authority, its members and their qualifications (Clause 7). The same part provides for the Director General of the Authority. It also provides for the term of office of the Chairperson of the Board and members appointed by the Cabinet secretary (clause 8). The Act provides for the conduct of business and affairs of the Board, functions of the Board and the functions of the Director General. (Clause 9 -11).
13. The Bill further provides for the staff of the authority, experts and consultants, remuneration of the Board members and staff of the Authority, delegation of the Authority, protection from liability and the seal of the Authority (Clause 12-17).
14. PART III provides for the prohibited activities to include use of embryo except as provided in the Act and no person shall make use of any human reproductive material for the purpose of creating an embryo unless the donor of the material has given written consent (clause 18 and 19). The Bill also prohibits posthumous use without consent (clause 20). The Act on the other hand allows assisted reproductive technology for procreation purposes only (clause 21). The Bill further gives circumstances under which assisted reproductive technology is allowed and circumstances under which assisted reproductive technology is precluded (clause 22 and 23).
15. The Bill provides that only a human embryo and human gamete shall be used in a woman during assisted reproductive technology (clause 24). The Bill prohibits any person from obtaining gametes from a minor except for the future human procreation by the minor (clause 25). The Bill also provides for circumstances under which the authority shall issue license and provides for the use of gametes (clause 26 and 27).
16. PART IV provides the rights of parent’s donors and children. The Bill provides for the use of sperm after the death of a man and parties to a marriage (clause 28 and 29). The Bill also provides for the rights of a child born out of assisted reproductive technology (clause 30). Further, the Bill stipulates what surrogate motherhood is and provides for surrogacy agreements (clause 31 and 32).
17. PART V provides for the Assisted Reproductive Technology register of the Authority which contains information which can be availed to an individual who has attained 18years upon a notice to the Authority and after the Authority establishes that the information contained in the register shows that the person was, or may have been, born in consequence of assisted reproduction treatment services and the person has been given

an opportunity to receive counseling in regard to the implications of compliance with the request (clause 33 and 34).

18. The Bill also provides that a minor shall not be given information unless the information is necessary for a medical procedure relating to the minor or if the minor makes the request through a legal guardian (clause 35). It further provides that when a government agency makes a claim to the Authority seeking to verify whether a man is or is not the father of a child; the Authority shall comply with the request made by the government agency unless it appears to the Authority that there is not sufficient reason to seek for that information (clause 36). The Bill provides for the disclosure of information by employees of the Authority (clause 37).
19. PART VI (Clause 38-49) of the Bill provides for the issuance, varying, revoking and renewing of licenses in relation to activities under this Act. (Clause 38). The Bill also provides for the procedure of application of a license, the inspection of premises before license is issued and the general conditions for licenses (clause 40,41 and 42). The Bill provides for the conditions under which gametes are to be stored (clause 43). It further provides for the qualifications to be met before one is granted a license and the responsibilities of the supervisor who will supervise the activities authorized by the license (clause 44 and 45). It also provides for the revocation of a license, appeal mechanisms and temporary suspension of a license (clause 46-49).
20. PART VII (clause 50-56) contains the financial provisions relating to the Authority including the funds of the authority, the financial year of the Authority, the preparation of the annual estimates of the Authority, the keeping of accounts and auditing of the Authority, the manner in which the Authority may invest its funds, the preparation of annual reports by the Authority and the submission of special reports to the National Assembly
21. PART VIII (clause 57 and 58) contains the miscellaneous provisions relating to the offences under this Bill and the general penalties for the said offences.
22. PART IX contains the delegated provisions relating to the functioning of the Authority including making of regulations for the effective enforcement of the Act (Clause 59).

PART B: PUBLIC PARTICIPATION

23. Through an advert on Friday, 5th July, 2019, the Committee invited the public to present submissions on the Assisted Reproductive Technology Bill, 2019.
24. Further, in a letter dated 5th March 2020 the Committee invited individuals and institutions to make presentations on the Bill. The meeting was held on Thursday 12th March 2020 in the Mini Chamber, County Hall, Parliament Buildings.
25. The Committee received memorandum from-
 - (i) Ministry of Health
 - (ii) Federation of Women Kenya-Lawyers (FIDA-KENYA);

dozen specialists in Kenya. Further the Ministry of Health is also cognizant of the Government initiative to merge semi-autonomous agencies as part of the recommendations of the Presidential Taskforce on Parastatal Reforms in 2013. The role of oversighting ART can be done by a subcommittee of the Kenya Medical Practitioners and Dental Council.

- (iii) **Cross border ART services:** One of the biggest challenges is regulation cross-border ART services provision: Non-Kenyans getting a Kenyan surrogate mother; Kenyans getting ART and surrogacy services out of Kenya, rights of the carrier mother regarding payments, insurance cover, registration of baby etc. are issues that are largely in a lacuna at the current state of laws. This is closely related to the risk of abuse and commercialization of surrogacy and how to protect the most vulnerable.
- (iv) **Alignment of all related sector laws:** The bill should clearly identify and spell out the relevant laws that shall need an amendment for the law to be operationalized.

Some of the identified Acts include but not limited to:

- (a) Registration of persons - children born of ART including Registration of foreign nationals born in Kenya
- (b) Mitigating risks on Human trafficking
- (c) Children Act.

28. The Ministry finally recommended the following-

- (i) The ART Bill is best sponsored by the Government. A time extension to for a technical expert review of the Bill for in-depth submissions and inclusion of other sectors.
- (ii) The country and service demand is not at the level where it is necessary to establish a semi-autonomous agency to regulate the ART services only. As such, it is not right to include the establishment of authority in the Bill this time.
- (iii) The Country has structures that can address the current felt need. For in-stance regulation can be done by a specialized committee at the Medical Practitioners and Dentist Council, which is a regulatory body mandated to regulate health specialists and facilities. Further policy formulation, service delivery guidelines and health systems strengthening strategies can be crafted by the Ministry jointly with its stakeholders.

29. In conclusion, there is a need to provide oversight on all reproductive health programs, policy formulation, regulation, training, services, including ART. The Ministry has structures that can be strengthened to carry out the required regulation without establishing a new body. Further, the Bill contains legislative proposals that will guide ART regulation; however additional amendments will be required of other related laws.

Submissions by the Kenya Obstetricians And Gynecologists Society (KOGS)

The Kenya Obstetricians and Gynecologists Society made the following submissions-

- 30. The Kenya Obstetricians and Gynecologists Society is a Society established under the Societies Act, Cap 108 Laws of Kenya. KOGS envisions a Kenyan society and a world in which all women, young people and men have access to the highest quality, compassionate, and equitable sexual and reproductive health care.
- 31. Its mission is to protect and improve sexual, reproductive health and rights through quality services, best practices, advocacy, leadership, scholarship, professionalism, training, research and evidence-informed public health action in Kenya, regionally and globally by promoting the health and the well-being of women and standards of practice of obstetrics and gynecology.

32. KOGS identified the following areas for consideration by the National Assembly Parliamentary Committee on Health in the passing of the Bill, 2019.

- i) Allocation of responsibilities for the two levels of government in the advancement of assisted reproductive technology; and
- ii) Identification and clear definition of the services contemplated in the provision of the assisted reproductive technology.

33. The following proposals were raised in regards to the above areas-

i) Allocation of responsibilities for the two levels of government in the advancement of assisted reproductive technology

Assisted Reproductive Technology services are offered by highly specialized medical practitioners in the area of obstetrics and gynecology. With health being a devolved function, many health practitioners are based in the counties and under the county government. The National Government, on the other hand, is supposed to develop a policy for application in the health.

For the National Government, KOGS proposes that-

- a) They set standards for training of the assisted reproductive technology experts as well as the standards for the facilities where the services are offered. This can be done through the Authority established under the Bill.
- b) They put in place the necessary mechanisms and infrastructure as well as provide adequate resources necessary to ensure access to the highest attainable standard and quality of cost-effective assisted reproductive technology services by every person. This can be done by procuring the necessary equipment and subsidizing the cost of medicine required in the provision of Assisted Reproductive Technology services.
- c) They put in place the necessary regulations to ensure assisted reproduction health services are covered by every health insurance provider, including the National Health Insurance Fund. NHIF and other health insurance providers should cover Assisted Reproductive Technology services since this is not a choice but an essential health service.

For the County Governments, they proposed that-

- a) They allocate in the county budget, the funds necessary for the provision of quality, cost-effective assisted reproductive technology services in the county health systems. These finances should be used to hire adequate personnel, procure sufficient equipment, medicine and medical supplies required for assisted reproductive health care services, and carry out sensitization programmes related to assisted reproductive technology.
- b) They establish linkages and networks with local and international development partners to mobilise and source for funding to promote the delivery of quality and cost-effective assisted reproductive technology services in the county.

It is important that the two levels of government to collaborate in the provision of assisted reproductive health care services.

ii) Identification and clear definition of the services contemplated in the provision of the assisted reproductive technology

The Bill, as currently is, does not clearly set out the services offered under assisted reproductive health care. This leaves the issue open for speculation by the public on what the services are. We, therefore, propose that the services and the target group be clearly set out as follows-

- i. diagnosis and screening
- ii. endoscopic surgery
- iii. intra-uterine insemination
- iv. in-vitro fertilization

- v. intracytoplasmic sperm injection
- vi. cryo-preservation
- vii. pre-implantation genetic screening
- viii. pre-implantation genetic diagnosis
- ix. onco-fertility
- x. gamete and embryo donation
- xi. surrogacy
- xii. Treatment of infertile and sub-fertile clients

34. The clear listing and setting out of the services makes it possible to define the services and makes it clear what each service entails and its definition. Further, there should be a definition of the relevant experts involved in the provision of the services required for assisted reproductive technology. It is important to note that-

- a) The Bill tackles a very highly specialized area in medicine.
- b) The area is a fairly new area in terms of the understanding by the members of the public.

It is in light of the forgoing that they underscored the need for the relevant specialists to be able to develop standards and the industry.

Submissions by Federation Of Women Kenya-Lawyers (Fida-Kenya); Family Health Option-Kenya (FHOK); The Kenya Medical Association, The Centre For Citizens Empowerment Programme; Path, Intersex Persons Society Of Kenya

35. The Federation of Women Kenya-Lawyers (FIDA-Kenya); Family Health Option-Kenya (FHOK); the Kenya Medical Association, the Centre for Citizens Empowerment Programme; PATH, Intersex Persons Society of Kenya came together to submit a joint memorandum on the Assisted Reproductive Technology Bill- 2019.

36. The Federation of Women Kenya-Lawyers (FIDA-Kenya); Family Health Option-Kenya (FHOK); the Kenya Medical Association, the Centre for Citizens Empowerment Programme; PATH, Intersex Persons Society of Kenya submitted a joint memorandum on the Assisted Reproductive Technology Bill- 2019. In their memorandum, they proposed as follows:

- i. The prohibition of commercial surrogacy,
- ii. a compensation mechanism to ensure the service is not exploitative in nature;
- iii. As protectors of the children's rights, they proposed the prohibition of sex selection and abandonment of children born of assisted reproduction;
- iv. Further, being a contractual service, they made proposals such as conditions for assisted reproduction, the validity of agreements and obligations of parties so as to ensure that the service is adequately regulated;
- v. Stringent penalties are applied to offences associated with assisted reproduction to ensure it is effective deterrent;
- vi. Amendment of section 11 of the Births & Deaths Registration Act, to align with the ART Act, to allow for registration of children born of assisted reproduction by the commissioning parent(s).

Submissions by Christine Kipsang(Advocate)

37. The advocate had received many questions from her clients and members of the public and had done the research to assist in drafting the law. Some of the questions are as follows;

1. What is the responsibility of the IVF clinic?
 2. What is the Responsibility of hospital over maternity services?
 3. What kind of education does the members of the Public, Police, Medical staff, lawyers and children department need?
 4. Who is a commissioning parent?
 5. What is the role of the commissioning parents?
 6. What is the role of the surrogates?
 7. What are the criteria for defining who a surrogate is?
 8. What kind of compensation and protection are the surrogates offered?
 9. What are the grounds that commissioning parents use to abandon a child or children?
 10. What kind of consents is required in the surrogacy process?
 11. Do we need adoption of the child by the parent who has no genetic link to the child?
 12. Do we need insurance companies to offer insurance for the medical needs of the surrogates and the unborn child or children?
 13. Whose name is required in the birth certificate of the child?
 14. What kind of regulations do we need regarding medical practitioners in IVF centres?
 15. What kind of licenses do we need?
 16. What are the conditions for international surrogacy?
 17. What are the conditions for local surrogacy?
 18. Is surrogacy the answer to no abortions in Kenya?
 19. Upon the birth of the child do the parties to contract need DNA testing.
 20. Do the commissioning parents and surrogate need to apply for a determination of a Parental Custody order?
 21. Do we the children department to conduct any social enquiry report?
38. She distinguished between the different types of surrogacy, that is:

- a) Gestational surrogacy denotes the process by which the egg is extracted from the intended mother of the child and then inserted into the surrogate's uterus. The baby is biologically related to both intended parents, and the surrogate simply acts as a "carrier." the child in this instance is not biologically related to the surrogate mother, who is often referred to as a gestational carrier, the embryo is created via in vitro fertilization (IVF), using the eggs and sperm of the intended parents or donors, and is then transferred to the surrogate.
- b) Traditional Surrogacy entails the process of artificial insemination whereby the ovule of the surrogate mother is fertilized with sperm from the intended father or donor. The surrogate mother carries the baby during the gestational period and delivers the baby. After delivery, the surrogate mother being the baby's biological mother is required to relinquish her parental rights and in so doing her responsibilities as well. Traditional surrogacy is also called *partial surrogacy or genetic surrogacy* due to the surrogate's biological link to the baby.

39. She outlined the disadvantages of using surrogacy as follows-

- a) A traditional surrogate is the biological mother of her child, meaning she has parental rights and the power to change her mind and keep the baby. The intended parents would then need to go to court to gain custody of the child.

- b) Complicated and extensive legal requirements intended parents in most cases will need to complete a stepparent adoption to both be recognized as the child's legal parents.
 - c) Many surrogacy professionals do not offer traditional surrogacy programs, and many surrogates are more comfortable with gestational surrogacy than traditional surrogacy.
 - d) Intended mothers are never biologically related to their children in traditional surrogacy.
 - e) Ultimately this type of surrogacy is banned in many countries.
40. Commissioning Parents/Intending Parents. In surrogacy, these are the select couple or individual who contracts with surrogate mother with the hope of having a child through surrogacy. In cases of traditional surrogacy, the couple/individuals opt to have a child part of their genetic makeup. The steady raise in surrogacy arrangements across the globe have necessitated international cooperation between states when affording surrogacy opportunities and enforcing the contracts entered by the parents and the agencies. The apparent problems with surrogacy that most commissioning parents encounter include but are not restricted to:
- a) Uncertainty, the success rates of both IVF and IUI mean that parents do not have a 100% guarantee of having children through surrogacy.
 - b) Breach of contracts, parties to a contract may fail to honour their obligations as per the provisions of the contract this may lead to unnecessary litigation. This was famously brought to the fore in the Baby M case in the USA.
 - c) Undesired effects, the child may be born with complications or genetic disorders. In such cases the intending parents may be forced to incur perpetual and unforeseen costs of bringing up the child one example is the case of Gammy, a baby with Down's syndrome who was born to a Thai surrogate mother and allegedly left behind by the intended Australian parents.
41. Surrogates to the commissioning parents are heavenly sent angels to help them in times of need. For sure they are taken to be the remedy to the unforeseen, yet unintended inabilities faced by the commissioning parent. It can be gathered from the myriad of cases that there usually exists some form of distress on the part of the surrogate, mainly when the time for giving up the child arises since most surrogacy arrangements are carried out for purposes of subsistence. Surrogates do inadvertently push themselves to the limit thereof. Surrogate moms face increased pregnancy risks that come with carrying multiple embryos, which are often used to ensure success. Multiple births come with an increased risk of Caesarian sections and more extended hospital stays, according to the British Journal of Medicine, as well as gestational diabetes, fetal growth restriction, pre-eclampsia, and premature birth.
42. Commercial surrogacy is prohibited in many jurisdictions. However, cognizance ought to be taken of the fact that it does take place, nonetheless. Surrogates usually do get paid based on loss of income for the period that they on pregnancy. Since many surrogates belong to the poorest strata of the society, it has been argued that surrogacy may exploit women from a more economically disadvantaged background such that women may enter into a surrogacy arrangement because of financial hardship without being fully aware of the potential risks
43. She highlighted the procedure for setting an IVF Centre as follows-
44. An IVF centre, just like any other medical institution, needs to comply with specific measures for operationalisation. In Kenya, registration for a medical institution is done by the Kenya Medical Practitioners and Dentists Board. The board is mandated to register all medical institutions be it hospitals, nursing home, health centre, dispensary, laboratory amongst others. There are a set of requirements that needs to be complied with for an institution to be registered in Kenya, and these are;

- a) Provision of the company/business registration certificate.
 - b) Filling of forms obtained from the board. This form ought to be filled with the assistance of the medical officer or the county (provincial) medical officer.
 - c) There should be the submission of the separate inspection report with relevant details which ought to be signed by the inspection team.
 - d) The administration of the institution ought to provide all certified copies of professional qualifications of all medical personnel working there e.g. private practice licence for doctors.
 - e) Provision of architectural plans that need be signed by the relevant authorities.
 - f) There must be transparent drainage systems and accessibility to the facility.
 - g) The facility proprietor/administration/director needs to ensure that
 - i. The facility is kept clean
 - ii. Institution licence is up to date
 - iii. Health professionals working there are registered/licenced accordingly
45. She highlighted on donors as follows. A Sperm donor is a person who provides his sperm for treatment of infertility of other couples. Ordinarily, sperm donation is usually considered when the male has no spermatozoa, when the male is a carrier of a known genetic disorder or when a single woman wishes to become pregnant. Donated sperm is received from a healthy sperm donor. A sperm donor must be screened for infections and sexually transmitted diseases including HIV, hepatitis B, C and others. The sample will then be subjected to further examination to ensure it is of good quality.
46. There are specific indispensable requirements that must be met for one to become an egg donor and these are;
- a) women between the ages of 21 to 32 (age range varies from practice to practice)
 - b) height and weight within the normal range
 - c) no smoking or drug use
 - d) previous delivery preferred but not essential
 - e) filling out a detailed medical history form which covers your general health, such as surgeries, gynaecological and family history
 - f) comprehensive gynaecological exam
 - g) screening tests related to mental health, medical and genetic history, and sexually transmitted infections
47. In conclusion, she stated that surrogacy is an excellent way to enable every person with challenges in getting his own children to behave children of their own through the help of various stakeholders and thus a good law which will regulate how surrogacy will be done in Kenya and with other countries of the world.

CLAUSE BY CLAUSE SUBMISSION FROM STAKEHOLDERS

The table below contrasts the various sections of the Bill with the stakeholder's comments

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
<p>Clause 2 (Interpretation)</p>	<p>2. In this Act, except where the context otherwise requires—</p> <p>"assisted reproductive technology" means fertilization in a laboratory dish or test tube of sperm with eggs which have been obtained from an ovary, whether or not the process of fertilization is completed in the laboratory dish or test tube;"</p> <p>"Authority" means the Assisted Reproductive Technology Authority established under section 4;</p> <p>"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for health;</p> <p>"child" means any human being under the age of eighteen years;</p> <p>"couple" means a male and female who are in an association that may be recognised as a marriage under any law in Kenya;"</p> <p>"court" means the High Court of Kenya;</p> <p>"Director" means a person appointed as such under section 5;</p> <p>"donor" means a person who voluntarily gives his or her gametes for the purpose of fertilization in an assisted reproductive technology process</p>	<p>MOH</p> <p>The definition of "the couple" should be defined as-</p> <p><i>Male and female adults who are in an association that they wish to culminate to procreation</i></p> <p>"Primitive streak" should be replaced with "embryo."</p> <p>KENYA OBSTETRICAL AND GYNECOLOGICAL SOCIETY (KOGS)</p> <ul style="list-style-type: none"> Immediately after the definition of Assisted Reproductive technology add: <p>"Assisted Reproductive technology expert" The term to mean an Obstetrician/gynaecologist that has subspecialized in reproductive endocrinology and fertility medicine.</p>	<p>MOH</p> <p>This is to prevent narrowing of access to couples, not necessarily the married couples.</p> <p>The transfers are done by the end of day 5 not day 15 before the formation of the primitive streak.</p> <p>KENYA OBSTETRICAL AND GYNAECOLOGICAL SOCIETY (KOGS)</p> <ul style="list-style-type: none"> It is important to define who an expert under the Bill is. <p>It is also important to define which services are contemplated under the Bill, to meet the ends of assisted Reproductive technology.</p> <ul style="list-style-type: none"> The definition of these terms is important as they appear in the body of the Bill These are services in Assisted Reproductive technology and should be defined for clarity 	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
	<p>and the person need not be the spouse of the person she or he is donating the gametes to;</p> <p>“eggs” means live human eggs but do not include eggs in the process of fertilization;</p> <p>“embryo” means a live human egg where fertilization is either in the process or complete;</p> <p>"father" means a man who in the case of a child who is being carried by a woman as a result of the placing in the woman an embryo or sperm and eggs or the artificial insemination of the woman-</p> <p>(a) the man donated his sperms for the process of assisted reproduction, and at the time of placing in the woman the embryo or the sperm and eggs or artificial insemination of the woman-</p> <p>(i) the woman was party to a marriage with the man; or</p> <p>(ii) the woman was not a party to a marriage with the man but has subsequently contracted a marriage to the man; or</p> <p>(iii) the man and the woman have never contracted a marriage, but the man has in agreement with the mother, written a parental agreement acquiring parental rights of a father, or</p> <p>(b) the man did not donate his sperms for the process of assisted reproduction and at the time of placing in the woman the embryo or the sperm and eggs or artificial insemination of the</p>	<p>“Assisted Reproductive technology services.”</p> <p>The term to include diagnosis and screening, endoscopic surgery, intrauterine insemination, in-vitro fertilization, intracytoplasmic sperm injection, cryopreservation, pre-implantation genetic screening, pre-implantation genetic diagnosis, oncofertility, gamete and embryo donation, and surrogacy provided to infertile and subfertile clients</p> <ul style="list-style-type: none"> • Immediately after the definition of the word Couple add the following: “Commissioning parent” <p>The term to mean a man or woman seeking assistance in procreation through the help of a surrogate mother or donor</p> <p>“Commissioning</p>	<ul style="list-style-type: none"> • To avoid instances where one might get a donation from minors. • These are services and experts in Assisted Reproductive technology and should be defined for clarity <ul style="list-style-type: none"> • It is medically impossible to transfer sperm and an egg separately into a womb and expect a pregnancy; <p>The correct word for the process is Intra-uterine Insemination.</p> <ul style="list-style-type: none"> • It is not medically possible to have gametes in the process of fertilization. These are embryos. • These are services and experts in Assisted Reproductive 	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
	<p>woman-</p> <p>(i)the man was party to a marriage with the woman; and</p> <p>(ii)the man has in agreement with the woman, written a parental agreement acquiring parental rights of a father;</p> <p>“gametes” means a mature sperm or egg capable of fusing with a gamete of the opposite sex to produce the fertilized egg but does not include gametes in the process of fertilization;</p> <p>"mother" means a woman who is carrying or has carried a child as a result of placing in her an embryo or sperms and eggs or artificial insemination of the woman under a process of assisted reproduction and shall not include a woman carrying a child under a surrogate motherhood agreement;</p> <p>“parties to a marriage” means a husband and wife and include a couple;</p> <p>“primitive streak” means a primitive streak that develops in the early stages of human reproduction, that is to be taken to have appeared in any embryo not later than the end of the period of fourteen days beginning with the day when the gametes are mixed, not counting any time during which the embryo is stored and the presence of which signifies the creation of a unique human being;</p> <p>“procreation” means the</p>	<p>parents” The term to mean a man and woman whether a couple of parties to a marriage seeking assistance in procreation through the help of a surrogate mother or donor</p> <ul style="list-style-type: none"> • Immediately after the definition of the word Court add the following: “Cryo-preservation” The term to mean the assisted reproductive technology process of cooling and storing gametes, or embryos at very low temperatures to preserve their viability. Also referred to as embryo, egg or sperm freezing. • “Diagnosis” The process of testing and screening to ascertain the proper functioning of the reproductive systems and its processes at the beginning 	<p>technology and should be defined for clarity</p> <ul style="list-style-type: none"> • It is medically impossible; to transfer sperm and an egg separately into a womb and expect a pregnancy. The correct word for the process is Intrauterine Insemination A commissioning mother is also a mother • These are services and experts in Assisted Reproductive technology and should be defined for clarity • These are services and experts in Assisted Reproductive technology and should be defined for clarity 	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
	<p>process of conceiving and delivering a baby, whether through a facilitated process or through natural means.</p> <p>“sperm” means the male gametes produced in the testicles and contained in semen;</p> <p>“surrogate mother” means a woman who has agreed to carry a pregnancy to term another woman under a surrogacy agreement and lays no legal claim to the born child.</p> <p>“treatment services” for purposes of this Act, means medical, surgical or obstetric services provided to the public or a section of the public for the purpose of assisting women to carry children.</p>	<p>of the Assisted reproductive technology process.</p> <ul style="list-style-type: none"> • Immediately after the definition of the word Director add the following: “Donation” The term to mean a process in Assisted Reproductive Technology, of voluntarily giving gametes or embryos for purposes of procreation. • “Donor” Replace the words “a person” immediately after the word “means” and replace with the words “an adult” thereof • Immediately after the definition of the word “embryo” add the following: “Embryologist” A specialist who deals with gametes and assists in the process of fertilization in the laboratory. “Embryology” A branch of Biology that deals with 	<ul style="list-style-type: none"> • This word is not used anywhere in the Bill and therefore not necessary to define • For uniformity throughout the Bill • These are terms in Assisted reproductive Technology and should be defined for clarity. • Assisted reproductive Technology treatment services assist both men and women to procreate. <p>FEDERATION OF WOMEN KENYA-LAWYERS (FIDA-KENYA); FAMILY HEALTH OPTION-KENYA (FHOK); THE</p>	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>gametes and development of embryos. “Endoscopic Surgery” The term to mean 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 and passing a telescope with a video camera through the incision into the body cavity.</p> <ul style="list-style-type: none"> • “Father” Remove the words “or sperm and egg” appearing immediately after the word “embryo” throughout the definition of the word Remove the words “artificial insemination” and replace with the words “Intrauterine Insemination.” • “Gametes” Delete the phrase “but does not include gametes in the process of fertilization 	<p>KENYA MEDICAL ASSOCIATION, THE CENTRE FOR CITIZENS EMPOWERMENT PROGRAMME; PATH, INTERSEX PERSONS SOCIETY OF KENYA</p> <ul style="list-style-type: none"> • They find artificial insemination a derogatory word, mainly making sense when referring to livestock 	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<ul style="list-style-type: none"> • Immediately after the definition of the word gametes add the following: “infertile or sub-fertile client” The term to refer to a man, woman, couples or parties to marriage not able to procreate naturally. <p>“Intracytoplasmic sperm injection” The term to mean an Assisted Reproductive Technology process of whereby a single healthy sperm is injected directly into the cytoplasm of a female egg outside the body.</p> <p>“In-vitro fertilization” The term to mean an assisted reproductive technology process where an egg is fertilized by a sperm in a test-tube or elsewhere outside the body.</p> <ul style="list-style-type: none"> • “Mother” Remove the words “or sperm and egg” appearing immediately after 	<p>CRADLE</p> <ul style="list-style-type: none"> • Persons who seek to undergo assisted reproduction procedures must not be discriminated against, including on the basis of their marital status. The definition of couple precludes all persons who may not be in marriage from accessing reproductive health care. Moreover, the provision bars intersex persons who do not necessarily fit into the male or female binary from accessing assisted reproductive technology. Intersex persons also find it difficult to acquire marriage licenses as the sex stated in their identity cards often differ from their physical appearance making the obtainment of marriage licenses difficult. The provision, therefore, creates unnecessary hardship on intersex persons on accessing these crucial services. • Contrary to common belief, gestational 	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>the word "embryo." Remove the words "artificial insemination" and replace with the words "Intrauterine Insemination." Add the words "Commissioning mother" immediately after the words "assisted reproduction."</p> <ul style="list-style-type: none"> • Immediately after the definition of the word mother add the following: "Oncofertility" The word to mean a process of artificial reproductive technology where eggs or sperms of cancer patients are preserved with their consent for the possibility of future procreation. • Immediately after the definition of the words parties to a marriage add the following: "Pre- 	<p>carriers and surrogates are not the same, as a surrogate is someone who donates her egg and then subsequently carries the child. She is genetically linked to the baby. In the case of a gestational carrier, the woman carrying the pregnancy is in no way biologically related to the child she is carrying. The eggs and sperm are derived from the "intended parents" (or possibly an egg donor, or sperm donor), through the process of In Vitro Fertilization (IVF). The egg is fertilized in the lab, and then the embryo (or embryos) is placed into the uterus of the gestational carrier.</p>	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>implantation genetic diagnosis” The term to mean a process in assisted reproductive technology which involves assessment of the embryo for pre-existing hereditary diseases and eliminating the same before the transfer of the embryo to a woman’s womb.</p> <p>“Pre-implantation screening” The term to mean a process in assisted reproductive technology to determine the number of chromosomes in a developing embryo in specific cases.</p> <ul style="list-style-type: none"> • “Primitive streak” Delete the entire provision for the definition of the word. • “Procreation” Remove the words “facilitated process” and replace with the words 		

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>“assisted reproduction technology process.”</p> <ul style="list-style-type: none"> • Immediately after the definition of the word Sperm add the following: “Surrogacy” The term to mean a term in assisted reproductive technology, of a woman carrying and giving birth to a baby for a commissioning parent. <p>“Surrogate Mother” Include the words “who has been commissioned” immediately after the words, “a woman” Insert the word “for: immediately after the word “term.”</p> <ul style="list-style-type: none"> • “treatment services” Delete the words “women to carry children” appearing immediately after the word “assisting” and replace with the words “men and 		

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>women to procreate.”</p> <p>FEDERATION OF WOMEN KENYA-LAWYERS (FIDA-KENYA); FAMILY HEALTH OPTION-KENYA (FHOK); THE KENYA MEDICAL ASSOCIATION, THE CENTRE FOR CITIZENS EMPOWERMENT PROGRAMME; PATH, INTERSEX PERSONS SOCIETY OF KENYA</p> <ul style="list-style-type: none"> • Delete the definition of “insemination artificial” and use Use the word “intrauterine insemination” Intrauterine Insemination means a medical procedure that involves placing sperm inside a woman’s uterus to facilitate fertilization. • Add the following g definitions- 		

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>“assisted reproductive technology bank” means an organisation that is set up to supply sperm or semen, oocytes or oocyte donors to the assisted reproductive technology clinics or their patients</p> <p>“assisted reproductive technology clinic” means any premises equipped with requisite facilities and medical practitioners registered with the Kenya Medical Practitioners Pharmacists and Dentist Union (KMPDU) for carrying out the procedures related to the assisted reproductive technology.</p> <p>“commissioning couple” means an infertile couple who approach an assisted reproductive technology clinic or assisted reproductive technology bank for obtaining services that the assisted reproductive technology clinic</p>		

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>or the assisted reproductive technology bank is authorised to provide;</p> <p>“commissioning parent” means a woman or a man who seeks the help of a surrogate mother to bear him or her a child through intrauterine insemination;</p> <p>“commissioning parents” means a couple of opposite genders who seek the help of a surrogate mother to bear them a child through artificial insemination;</p> <p>“infertility” means the inability to conceive after one year of unprotected coitus or other proven medical condition preventing a couple from conception</p> <p>“oocyte” means naturally ovulating oocyte in the female genetic tract</p> <p>“cryo-preservation” means the freezing and storing of gametes, zygotes and embryos.</p> <p>CRADLE</p>		

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<ul style="list-style-type: none"> • 'Couple' definition delete • Insert Gestational Carrier to the definition to read: means a woman who has agreed to carry a pregnancy to term under an agreement where the embryo is not biologically related to the carrier, and the embryo is created via in vitro fertilization using the eggs and sperm of the intended parents or donors, which is then transferred to the carrier. 		
NEW CLAUSE		<p>KOGS</p> <p>The Bill does not have objects and purposes. We, therefore, propose to include immediately after Clause 2, a clause to cover them as follows-</p> <p><i>New Clause 3: Objects and reasons</i></p>	<p>KOGS</p> <p>It is important to set out the objects of the Act</p>	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p><i>The Object of this Act is to-</i></p> <p><i>a) Provide a framework for the protection and advancement of assisted reproductive technology services for every person;</i></p> <p><i>b) Create an enabling environment for the reduction of infertility and subfertility in Kenya;</i></p> <p><i>c) Ensure access to quality and comprehensively assisted reproductive technology services in line with the implementation of Article 43 of the Constitution.</i></p>		
NEW CLAU		<p>KOGS</p> <p>Bill does not provide for the obligations of the National government with regard to the assisted reproductive process. We, therefore, propose to include immediately after the Objects of the Act, the following-</p> <p><i>New Clause 4:</i></p> <p><i>Obligations of the</i></p>	<p>KOGS</p> <p>It is important to allocate obligations to the National Government in the implementation of the Act. This is because it is the role of the National government to set standards and develop policies in the health sector.</p>	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p><i>National Government, The National Government, shall-</i></p> <p><i>a) Put in place the necessary mechanisms and infrastructure as well as provide adequate resources necessary to ensure access to the highest attainable standard and quality of cost-effective assisted reproductive technology services by every person;</i></p> <p><i>b) Put in place the necessary regulations to ensure assisted reproduction health services are covered by every health insurance provider including the National Health Insurance Fund;</i></p> <p><i>c) Collaborate with the county governments in expanding and strengthening the access and delivery of assisted reproductive health services in the respective counties.</i></p>		

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
NEW CLAUSE		<p>KOGS</p> <p>The Bill does not provide for the obligations of the County government with regard to the assisted reproductive process. We, therefore, propose to include immediately after the clause on the functions of the National Government, the following-</p> <p><i>New Clause 5: Obligations of the County governments</i></p> <p><i>The County government shall-</i></p> <p><i>c) Collaborate with the National governments in expanding and strengthening the access and delivery of assisted reproductive health services in the respective counties</i></p> <p><i>d) Allocate in the county budget, the funds necessary for the provision of quality, cost-effective assisted reproductive technology services in the county health systems, including finances required to-</i></p>	<p>KOGS</p> <p>It is important to set out the obligations of the county government to uphold the spirit of devolution. Further, these clinics will be situated in counties</p> <p>Health being a devolved function also means that the counties have to take steps to ensure that these services are accessible to all.</p>	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p><i>i) Hire adequate personnel;</i></p> <p><i>ii) Procure sufficient equipment, medicine, medical supplies required to adequately cater for assisted reproductive health care services in the county;</i></p> <p><i>iii) Carry out sensitization programmes related to assisted reproductive technology.</i></p> <p><i>e) Establish linkages and networks with local and international development partners to mobilise and source for funding to promote the delivery of quality and cost-effective assisted reproductive technology services in the county.</i></p>		
<p>Clause 4 (Establishment of the Authority.)</p>	<p>4. (1) There is established an Authority known as the Assisted Reproductive Technology Authority.</p>	<p>MOH Delete Part II - Establishment, powers and functions of the Assisted Reproductive Technology</p>	<p>MOH The Authority should not be established as there are existing structures that can be realigned to take on this role; including the MOH's reproductive health unit and the</p>	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>Authority.</p> <p>This part also provides for the appointees to the board of the Authority and its secretariat</p>	<p>Medical and Practitioners Council.</p> <p>Rationalizing need for additional SAGAs under the MOH.</p>	
<p>Clause 5 (Functions of the Authority)</p>	<p>5. The functions of the Authority shall be to-</p> <p>(a) develop standards, regulations and guidelines on assisted reproductive technology;</p> <p>(b) advise the Cabinet Secretary on matters relating to the treatment and care of persons undergoing assisted reproductive technology and to advise on the relative priorities to be given to the implementation of specific measures in regard to assisted reproductive technology;</p> <p>(c) undertake research on the conduct, control and treatment of assisted reproductive technology;</p> <p>(d) develop programs for awareness creation on the methods of assisted reproductive technology treatment;</p> <p>(e) prescribe minimum requirements for the physical infrastructure for assisted reproductive technology clinics;</p> <p>(f) grant, vary, suspend and</p>	<p>KOGS</p> <ul style="list-style-type: none"> • Revise clause 5(c) by replacing the words “undertake research” with the words “promote research.” • 5 (d)Reword the provision to read as follows- “develop programs for awareness on the minimum requirements for assisted reproductive technology.” • Immediately after the proposed 5(d) add the following: e) “<i>prescribe IN CONSULTATION WITH RELEVANT... the minimum requirements educational requirements for assisted reproductive technology experts</i>” 	<p>KOGS</p> <ul style="list-style-type: none"> • The authority cannot undertake research by itself but can promote the same. • Information and awareness to be provided by the authority can only be with regard to minimum standards • There needs to be a regulator for the standards of training and qualification of experts. The Authority is best positioned to do this. • The authority should license both the experts and the facilities under the Bill • There needs to be a regulator for the standards of training and qualification of facilities. The Authority is best positioned to do this. • This is information that can be maintained by the Authority. Other professional regulatory bodies do the same to increase 	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
	<p>revoke licenses;</p> <p>(g) keep under review information about embryos and any subsequent development of embryos;</p> <p>(h) provide advice and information to persons receiving assisted reproductive technology treatment including persons providing gametes or embryos under this Act;</p> <p>(i) disseminate information to the public on reproductive health that may relate or affect assisted reproductive technology;</p> <p>(j) establish and maintain a confidential national database on persons receiving assisted reproductive technology treatment services or providing gametes or embryos for use;</p> <p>(k) perform such other functions as may be necessary for the better carrying out of the functions of the Authority under this Act.</p>	<p><i>and embryologists.</i>”</p> <p><i>f) “IN CONSULTATION WITH RELEVANT.. ENSURE STANDARDS ARE ADHERED...Inspect and accredit the facilities for the training of experts and embryologists to ensure compliance with set standards”</i></p> <ul style="list-style-type: none"> • 5(f) include, immediately after the word “licences” the words “to both the assisted reproductive technology experts and facilities” • Immediately after the current clause 5(f) add the following: <i>h) “Inspect the assisted reproductive technology facilities to ensure compliance with the set standards under 5(e) above”</i> • Immediately after the proposed 5(h) add the following: 	<p>accountability and maintain standards.</p> <ul style="list-style-type: none"> • These provisions herein pose a risk to the privacy and anonymity of the donors and the clients seeking treatment. This might have a counter-effect to the intended purposes of the Bill. • 	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p><i>i) Maintain and make available to the public a register of information on all the licenced assisted reproductive technology facilities in Kenya.</i></p> <p><i>j) Maintain and make available to the public a register of information on all the licenced assisted reproductive technology experts and embryologists</i></p> <ul style="list-style-type: none"> • Delete 5(g), (h), (i) and (j) • 		
<p>Clause 7 (Board of the Authority)</p>	<p>7. The management of the Authority shall vest in a Board of the Authority which shall comprise of-</p> <p>(a) a chairperson appointed by the President and approved by the National Assembly;</p> <p>(b) the Principal Secretary in the Ministry for the time being responsible for finance or a representative designated in writing by the Principal Secretary;</p> <p>(c) the Principal Secretary in the Ministry for the time being responsible for health or a representative designated in writing by the Principal Secretary;</p> <p>(d) seven persons appointed by the Cabinet Secretary of</p>	<p>KOGS</p> <ul style="list-style-type: none"> • 7(a) Remove the requirement for approval by the National Assembly • 7(b) Remove the Principal Secretary in the ministry at the time responsible for finance or a representative designated in writing by the Principal Secretary 	<p>KOGS</p> <ul style="list-style-type: none"> • Under the Mwongozo code, approval of the National Assembly is not required for the chairperson. • There is no clear reason why the PS for Finance is necessary in this Board • The standard in other Boards, is for a representative, rather than the PS • It is a specialized Authority and therefore there needs to be the specialized professionals in its composition. 	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
	<p>whom-</p> <p>(i) two shall be medical doctors, a woman and a man who possess proven knowledge and experience in reproductive health, nominated by the Kenya Medical Practitioners and Dentist Board;</p> <p>(ii) two shall be lawyers , a woman and a man, who have actively contributed to the promotion of the rights and welfare of women and children nominated by the Law Society of Kenya;</p> <p>(iii) one shall be a representative of the Kenya National Human Rights and Equality Commission;</p> <p>(iv) one man and one woman, who are not affiliated to the organizations appearing in sub paragraphs (i), (ii) or (iii); and</p> <p>(e) the Director of the Authority, who shall be the Secretary to the Board;</p>	<ul style="list-style-type: none"> • 7(c) remove the words “principal secretary” and replace with the words “a representative” • 7(d)(i) Replace the words “Medical doctors...nominated by the Kenya Medical Practitioners and Dentists Board” and replace thereof with the words “obstetricians/ gynaecologists, and a fertility specialist ...nominated by the Kenya Obstetrical and Gynaecological Society” • 7(d)(iii) Please clarify from which Commission the nominee is taken from • 7(d)(iv) Delete the words “who are not affiliated to the organizations appearing in paragraphs (i),(ii) and (iii)” and replacing then thereof with 	<ul style="list-style-type: none"> • The Bill refers to the Kenya National Human Rights and Equality Commission. However, the Commissions that exist are the Kenya National Human Rights Commission, and the National Gender and Equality Commission. The two exist separately. • Being a highly specialized process, embryologists are central in the process of assisted reproductive technology. Therefore, their presence in the Board, will help in setting the minimum standards for clinics, experts and training, as well as in the inspection of the same by the authority to ensure compliance. 	

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		<p>the word “embryologists ”</p> <ul style="list-style-type: none"> • 		
Clause 8 (Term of office)	8. The Chairperson and the members of the Board appointed under paragraph (d) (i) (ii) and (iii) of section 7 shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.	<p>KOGS Include the word (iv) immediately before the words “of section 7”</p>	<p>KOGS The provision doesn't provide for the timelines for a person nominated under clause 7(d)(iv)</p>	
Clause 21 (Assisted reproductive technology for procreation purposes.)	21. A person shall undertake assisted reproductive technology only for procreation purposes.	<p>MOH Delete as its captured clearly in clause 23</p> <p>KOGS Delete the provision in its entirety</p>	<p>MOH Captured well and better in Clause 23. Avoid redundancy</p> <p>KOGS As phrased, it does not fit under Part III of the Bill. Further, clause 23 caters for the same in a more holistic manner.</p>	Effectively covered in Clause 23
Clause 22 (Clinical services for undertaking assisted reproductive Technology)	22. A person qualifies to undertake assisted reproductive technology, where it is certified by a medical doctor that the person requires assisted reproductive technology on medical or health grounds.	<p>MOH The provision provides for certification of the clients who need the services by medical doctors on health grounds.</p> <p>The Ministry proposes deletion of the provision.</p> <p>KOGS Delete the words “medical doctor” and replace with the words</p>	<p>MOH Need to be expunged as it is discriminatory.</p> <p>KOGS Medical doctor is a general term and might not have the necessary expertise to determine who needs the assisted reproductive technology services. The clause as is currently is not catering for that group of people, who for</p>	

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		<p>“Obstetrician/ Gynaecologist” Reword the clause to allow people to make a choice, whether or not they are able to procreate naturally, to seek the assisted reproductive technology.</p> <p>CRADLE</p> <p>Amend Clause 22 to read ‘A person qualifies to undertake assisted reproductive technology where it is certified by a medical specialist that the person requires assisted reproductive technology on medical or health grounds.’</p>	<p>reasons other than health or medical, might choose to get assisted reproductive health services.</p> <p>CRADLE</p> <p>The involvement of specialist trained in reproductive health and fertility shall ensure a better diagnosis of infertility issues.</p>	
<p>Clause 23 (Circumstances under which assisted reproductive technology is precluded.)</p>	<p>23. A person shall not undertake assisted reproductive technology for –</p> <p>(a) any purpose other than human procreation ; (b) experimental purposes aimed at modifying the human race ; or (c) purely speculative purposes.</p>			
<p>Clause</p>	<p>25. No person shall obtain a sperm</p>	<p>KOGS</p>	<p>KOGS</p>	

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25 (Gametes obtained from minor)	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.	Insert, immediately after the words "procreation by the minor" the words "such as in cases of onco-fertility"	This will clarify the only acceptable instances when an expert can harvest gametes from a minor. It is important to note that even in cases of onco-treatment, there should be prior informed consent.	
Clause 26 (Authority not to issue)	<p>26. The Authority shall not issue a license that allows-</p> <p>the keeping or using of an embryo other than a human embryo;</p> <p>the keeping or using of an embryo after the appearance of the primitive streak AFTER 5DAYS;</p> <p>the placing of an embryo in any animal;</p> <p>The keeping or using of an embryo in circumstances prohibited under this Act or as prescribed by Regulations.</p> <p>the replacing of a nucleus of a cell of an embryo with a nucleus taken from a cell of any person, embryo or subsequent development of an embryo; or</p> <p>Any form of human cloning.</p>	<p>MOH The clause provides for instances when the Authority should not issue licenses.</p> <p>It should be deleted and substituted with the paragraph</p> <p>"A license should not be issued when"-</p> <p>KOGS</p> <ul style="list-style-type: none"> • (b) Delete 26(b) in its entirety • (e) Rephrase to read as follows- <i>"the replacing of any part of an 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 medical problems"</i> 	<p>MOH</p> <p>Provide for instances when licenses should not be issued.</p> <p>KOGS</p> <ul style="list-style-type: none"> • The primitive streak can only appear after the embryo has been transferred into the womb of a woman. Therefore, what is contemplated by this provision is a medical impossibility. • This is a situation where there is a three-parent child. It is not unethical as it provided an opportunity to solve a medical problem that exists in the embryo and can be identified during the pre-implantation genetic screening or diagnosis <p>CRADLE</p> <p>This technique allows women to produce genetically-related offspring without</p>	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>CRADLE Insert Clause 26 (g) to read: The above provisions shall not limit any person from removal of deoxyribonucleic acid (DNA) ... from a patient's egg or embryo containing unhealthy mitochondria to a donor's egg or embryo containing healthy mitochondria.</p>	<p>transferring genetic defects, involves the removal of deoxyribonucleic acid (DNA) ... from a patient's egg or embryo containing unhealthy mitochondria to a donor's egg or embryo containing healthy mitochondria.</p>	
<p>Clause 27 (Use of gametes)</p>	<p>27. A person shall not-</p> <p>(a) store or use any gametes save as provided under this Act;</p> <p>(b) in the course of providing assisted reproductive technology treatment services to a woman, use the sperm of any man without his consent;</p> <p>(c) in the course of providing assisted reproductive treatment services for a woman, use the egg of another woman without her consent;</p> <p>(d) mix human gametes with the live gametes of an animal; or</p> <p>(e) place sperms and eggs OR EMBRYO in a woman except in pursuance of a license as provided for under this Act.</p>	<p>KOGS</p> <ul style="list-style-type: none"> • Replace the word “person” in the introductory statement, with the words “assisted reproductive technology expert • 27(b) and (c) may be collapsed to read- <i>“in the course of providing assisted reproductive technology services for a commissioning parent or commissioning parents use the gametes of a donor without their consent</i> 	<p>KOGS</p> <ul style="list-style-type: none"> • This ensures that the only people who can use the gametes are the qualified experts • Rewording the provisions ensures that it covers instances whether it’s the man or woman seeking the services, and requires that there be consent regardless. • It is not medically possible to transfer a sperm and an egg separately into a womb and expect a pregnancy. 	

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		<ul style="list-style-type: none"> 27(e) Replace the word "eggs" with the word "embryo" 		
<p>Clause 28</p> <p>(Use of sperm after the death of man.)</p>	<p>28.Where the sperm of a man, or any embryo the creation of which was brought about with the sperm of the man was used after the death of the man, the man shall not be treated as the father of the child unless-</p> <p>(a)the mother was married to the man at the time of the death of the man and assisted reproductive process takes place within five years of the death of the man; and</p> <p>(b)the man had consented to parentage, and the artificial insemination takes place within five years of the death of the man.</p>	<p>MOH</p> <p>Delete "within five years of the death of the man" in clause 28(b).</p> <p>CRADLE</p> <p>Insert clause 28 immediately after clause 27 to read: No person shall preselect or perform any procedure or provide, prescribe or administer any thing that would ensure or increase the probability that an embryo will be a particular sex or that would identify the sex of an in vitro embryo, except to prevent, diagnose or treat a sex-linked disorder or disease;</p>	<p>MOH</p> <p>Depend on viability of the sperms. Leave open as long as the sperms are viable. Protect the autonomy of the spouse.</p> <p>CRADLE</p> <p>In many countries, one gender is often preferred which may ultimately lead to gender selection that creates an imbalance in the population. Such practices also often lead to sex selective abortion of practices especially against girls.</p>	
<p>New clause 28(d)</p>	<p>In Case of anonymous donors.</p>	<p>MOH</p> <p>Add 28 (d) to provide that "in the event of anonymous donated sperm to the couple the father will be taken as the man in</p>	<p>MOH</p> <p>To clarify the fatherhood status</p>	<p>The new clause should be 28(c)</p>

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		the association at the time.”		
Clause 30		<p>CRADLE</p> <ul style="list-style-type: none"> • Insert Clause 30 immediately after clause 29 to read: ‘Where a married couple obtains a divorce after the creation of an embryo, both partners reserve the right to withdraw consent of the implantation of the embryo which has been created by their sperm or ovum.’ • Insert Clause 30(1) to read: The health and well-being of children born through the application of assisted human reproductive technologies shall be given priority in all decisions respecting their use. • Insert Clause 30(1) immediately after Clause 29 to read: 	<p>CRADLE</p> <ul style="list-style-type: none"> • In the event that the donors were married in time of the extraction of either the sperm or the egg, and have since obtained a divorce, either partner should be able to withdraw their consent from the embryo being implanted into their former partner's body if they are no longer willing to have a child by that person. • In all instances, the health, dignity and well-being should not be compromised in a bid to have a surrogate child. The best interests of the child should therefore be f paramount consideration in all decisions regarding the child. • The creation of these provisions shall eliminate instances of conflict of laws between different jurisdictions, especially among those nations where surrogacy is not recognized. <p>KOGS To maintain uniformity in terms of wording throughout the Bill</p>	

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		<p>‘Where sperm or ovum is donated from a man or woman of a different nationality, the child shall adopt the nationality of the intended parents.’</p> <ul style="list-style-type: none"> • Insert clause 30(2) to read ‘Where a surrogate who is not a Kenyan citizen gives birth to a child, the child shall adopt the nationality of the intended parents.’ <p>KOGS Replace the words “sexual intercourse” with the words “natural process.”</p>		
Clause 31 (Surrogate motherhood.)	31. (1) A woman of twenty-five years or more may , at the request of a couple, consent to a process of assisted reproduction for purposes of surrogate motherhood.	MOH The ministry proposes the removal of the age restriction and proposes it to be left to the age of	MOH This is to remove age restrictions and allow any adult to be a surrogate mother.	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
	<p>(2) The surrogate mother under subsection (1) shall carry the child on behalf of the parties to a marriage and shall relinquish all parental rights at birth over the child unless a contrary intention is proved.</p>	<p>consent (18 years).</p> <p>Who should have carried successfully at least one child (put under regulation and guidelines).</p> <p>KOGS Delete clause</p> <p>FEDERATION OF WOMEN KENYA-LAWYERS (FIDA-KENYA); FAMILY HEALTH OPTION-KENYA (FHOK); THE KENYA MEDICAL ASSOCIATION, THE CENTRE FOR CITIZENS EMPOWERMENT PROGRAMME; PATH, INTERSEX PERSONS SOCIETY OF KENYA</p> <p>They propose we revise to and have an age limit of 25 years to 49 years) Add should be clinically fit.</p>	<p>KOGS They propose the introduction of a new Part IV to cover assisted reproduction. To this end, we propose that clauses 31-32 as currently are be deleted.</p> <p>FEDERATION OF WOMEN KENYA-LAWYERS (FIDA-KENYA); FAMILY HEALTH OPTION-KENYA (FHOK); THE KENYA MEDICAL ASSOCIATION, THE CENTRE FOR CITIZENS EMPOWERMENT PROGRAMME; PATH, INTERSEX PERSONS SOCIETY OF KENYA We are aligning to WHO reproductive age (15-49yrs), we encourage 25 years because by this time a woman will have completed their basic and also university/college education</p>	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
NEW PART		<p>KOGS We propose the introduction of a new Part IV to cover assisted reproduction. To this end, we propose that clauses 31-32 as currently are be deleted. The part will provide as follows-</p> <p>PROPOSED PART IV: ASSISTED REPRODUCTION</p> <p>31. (1) Every person has the right to access the highest standard and quality of attainable and cost-effective assisted technology reproductive technology services;</p> <p>(2) Assisted reproductive technology services shall be provided by qualified experts licensed by the Authority;</p> <p>(3) An assisted reproductive technology expert shall, before providing Assisted reproductive technology</p>	<p>KOGS The inclusion of these provisions, give a better understanding of the services and regulate surrogacy as well.</p>	

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		<p>services-</p> <p>a) provide information necessary to assist in the making of an informed decision to all parties concerned, and in particular, information concerning-</p> <p>i) The various method available</p> <p>ii) chances of success for various methods</p> <p>iii)advantages, disadvantages and risks of the various methods</p> <p>iv) The cost of treatment for various methods.</p> <p>b) advise the parties on the need for professional counselling and have them undergo the same on the implications of the various methods</p> <p>c) Ensure promotion and preservation of the health, safety and dignity of the parties.</p> <p>32.(1) Assisted reproductive technology provider shall obtain prior informed and written consent from the parties before providing any Assisted</p>		

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		<p>reproductive technology service under the Act or any other law.</p> <p>(2)The consent referred to in (1) above shall make express provisions on what should be done with the gametes in case of-</p> <p>a) the death of any of the parties seeking Assisted reproductive technology services</p> <p>b) incapacity of any of the parties seeking Assisted reproductive technology services</p> <p>(3) Consent obtained under this section may be withdrawn at any moment prior to the process of transferring the gametes or the embryo to the woman's womb</p> <p>33)(1) Assisted reproductive technology expert shall ensure that-</p> <p>a) confidentiality is maintained throughout the entire process of provision of Assisted reproductive technology services;</p>		

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		<p>b) the donor has been screened for all diseases and conditions that may endanger the health of the parents, the surrogate or the child;</p> <p>c) all parties are aware and understand the rights of the child born through the Assisted reproductive technology process;</p> <p>2) Assisted reproductive technology expert, shall, before receiving gamete or embryo donation, collect the following information-</p> <ul style="list-style-type: none"> a) A passport size photo; b) physical characteristics; c) ethnic origin; d) family history; e) medical history f) interests and hobbies g) professional qualifications and skills <p>3) Information obtained under (2) above shall be held by the clinic, and shall not be disclosed in any way that may</p>		

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		<p>identify the receiver and donor.</p> <p>34. 1) Any person seeking Assisted reproductive technology services shall procure the services only from a licensed Assisted reproductive technology provider and facility.</p> <p>2)A gamete provider shall not have any parental rights or responsibility over the child born out of the Assisted reproductive technology services, unless at the time of donation, they stated their intention to have such rights or responsibilities.</p> <p>3) A gamete provider shall not receive any payment for the provision of gametes.</p> <p>4)A person seeking to use the donated gametes, shall have the right to choose the donor whose gametes should be used</p> <p>Parties to a Surrogacy</p>		

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>agreement</p> <p>35.(1) A person may enter into a surrogacy agreement only if-</p> <p>a) the Commissioning parent or commissioning parents are between the ages of twenty-five and fifty-five years of age.</p> <p>b) he/she has the capacity to enter into the agreement under this Act and any other relevant law in Kenya.</p> <p>c) fully understands the rights and obligations that may arise or accrue under the Act</p> <p>2) The surrogate mother in a surrogacy agreement shall-</p> <p>a) have attained the age of twenty-five years</p> <p>b) have given birth to at least one live baby before the agreement;</p> <p>c) understand the rights and obligations accruing under the agreement.</p> <p>3) A surrogacy agreement is valid if-</p> <p>a) it is in writing and signed by all</p>		

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		<p>the parties;</p> <p>b) it is entered into within the Republic of Kenya</p> <p>c) it is in the prescribed form</p> <p>d) includes provisions for the contact, care, upbringing and general welfare of the child that is born, including the position of the child in the event of-</p> <p>i) death of the commissioning parent, or if a couple or parties to a marriage, death of one of the commissioning parents before the birth of the child;</p> <p>ii) separation or divorce of the commissioning parents who were a couple or parties to a marriage, before the birth of the child;</p> <p>e) The commissioning parent or commissioning parents agree to meet the prenatal regiment and birth expenses of the surrogate mother;</p> <p>f) Signatures to the surrogacy agreement are witnessed by</p>		

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		<p>different witnesses provide minimum of two witnesses and each to bring witness;</p> <p>g) There were separate and independent advocates of the High Court of Kenya representing the parties to the agreement. Legal fees are paid by the Commissioning parent or commissioning parents.</p> <p>4) Before entering into a surrogacy agreement, the Assisted reproductive technology expert shall provide all the relevant information under the Act.</p> <p>36.The Assisted reproductive technology expert shall not undertake Assisted reproductive technologies in the surrogate mother unless the surrogacy agreement has been duly signed.</p> <p>37. (1) Termination of the surrogacy agreement may</p>		

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		<p>happen-</p> <p>a) where the pregnancy has terminated by natural causes;</p> <p>b) where there is a dispute between the commissioning parent or commissioning parents and the surrogate mother before the transfer of the embryo or embryos into the womb of the surrogate.</p> <p>2) Where the commissioning parent or commissioning parents have a doubt with regard to the biological parentage of the child born under the agreement they may apply for the conduct of DNA testing and if it confirms that the child is not as was contemplated in the surrogacy agreement, the same shall terminate automatically, and no responsibilities shall accrue upon the commissioning parent or commissioning parents.</p> <p>3) Parties shall not terminate the agreement after</p>		

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		<p>assisted reproduction technologies of the surrogate has taken place.</p> <p>38.(1) Obligations under a surrogacy agreement-</p> <p>a) The Commissioning parent or parents shall-</p> <p style="padding-left: 40px;">i) be the legal parent or parents of the child;</p> <p style="padding-left: 40px;">ii) Not discriminate against the child; and</p> <p>b) The surrogate mother shall-</p> <p style="padding-left: 40px;">i) not terminate the pregnancy except under the provisions of the law;</p> <p style="padding-left: 40px;">ii) hand over the child to the commissioning</p>		

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		<p>parent or commissioning parents as soon as reasonably set timeline possible after the birth;</p> <p>iii) have no rights regarding the child</p> <p>iv) Not, whether directly or by use of proxy, contact the child unless provided for in the agreement;</p> <p>v)not have any obligations towards the child after birth.</p> <p>2) A child born as a result of a surrogacy agreement shall not be considered a dependant of the surrogate under the Law of Succession Act.</p> <p>39 (1). In the event of multiple pregnancies arising out of a surrogacy agreement, 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</p>		

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		<p>had borne only one child.</p> <p>40. a) Where a child is born out of a surrogacy arrangement-</p> <p>i) the commissioning parent or commissioning parents shall be listed as the parents both in the birth notification and in the birth certificate.</p> <p>ii) the child shall acquire the citizenship of the commissioning parent or commissioning parents under Article 14(1) of the Constitution of Kenya.</p> <p>41.1) Subject to subsection(2) herein, a person shall not, in connection to a surrogacy agreement, give or promise to give the surrogate mother any kind of payment, whether in cash or in kind.</p> <p>2) Notwithstanding the provisions of subsection (1) the surrogate mother may claim from the commissioning parent or parents commissioning parents responsible</p>		

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		<p>for the following-</p> <p>a) compensation directly relating to the process of in-vitro fertilization, pregnancy, antenatal, birth, post-natal care and post-delivery complications;</p> <p>b) loss of earnings by the surrogate mother as a result of the surrogacy;</p> <p>c) insurance to cover the surrogate mother for any acts that may lead to death or disability as a result of the surrogacy</p>		
New Provisions		<p>CRADLE</p> <p>Insert clause 33 immediately after clause 32 to read: In the event that the IVF procedure results in the successful implantation of more than one embryo, the contract signed by both parties shall determine the conduct of the parties.</p>	<p>CRADLE</p> <p>Because more than one embryo is often inserted into the gestational carrier or surrogate, the likelihood of more than one successful implantation of an embryo is likely leading to multiple children. Disputes may arise where the carrier or surrogate is only willing to carry one child. The prescribed form developed by the authority should therefore cover this eventuality.</p>	
Clause	(1) Parties to a marriage intending	CRADLE	CRADLE	

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32 (surrogacy agreements)	<p>to enter into a surrogacy agreement with any woman shall sign a surrogacy agreement in a prescribed form before the process is undertaken.</p> <p>(2) The form shall indicate the names of the parents of the child to be born through assisted reproductive process.</p> <p>(3) The entry in the form shall be conclusive proof of parentage of the child and shall be used for purposes of registration of birth and any other legal processes.</p> <p>(4) Where there is a dispute as to the parentage of a child born out of assisted reproductive process, the aggrieved party may apply to Court within sixty days of the birth of the child for determination of the parentage of the child.</p> <p>(5) The parties to a marriage shall not give any monetary or other benefits to the surrogate mother other than for expenses reasonably incurred in the process of surrogacy.</p>	<p>Insert Clause 32 (6) to read: No person shall accept consideration for arranging for the services of a surrogate mother or gestational carrier, to make such an arrangement for consideration or advertise the arranging of such services.</p>	<p>This is in line with the principle that surrogacy should be purely altruistic and not commercial. This would reduce instances of women being commercially exploited for their services and from persons gaining from that exploitation.</p>	
Clause 33 (Assisted reproductive technology register)	<p>33. The Authority shall keep and maintain a register containing particulars on-</p> <p>(a) the assisted reproductive treatment services provided to persons;</p> <p>(b) the keeping or use of gametes of persons or of an embryo taken from any particular woman, or</p> <p>(c) persons who undergo assisted reproduction</p>	<p>MOH The provision should be changed to read: The Authority shall ensure that the licensed facilities keep and maintain a coding system register containing particulars on:</p> <p>FEDERATION OF WOMEN</p>	<p>MOH To provide more clarity on the role of the authority.</p>	<p>Right to privacy is a right that can limited under the Constitution in accordance</p>

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	<p>process;</p> <p>(d) donors of embryos and gametes; and</p> <p>(e) persons conceived in consequence of assisted reproduction treatment services.</p>	<p>KENYA-LAWYERS (FIDA-KENYA); FAMILY HEALTH OPTION-KENYA (FHOK); THE KENYA MEDICAL ASSOCIATION, THE CENTRE FOR CITIZENS EMPOWERMENT PROGRAMME; PATH, INTERSEX PERSONS SOCIETY OF KENYA</p> <p>Add</p> <p>A health professional specialising in assisted reproduction shall maintain confidentiality and ensure that all information regarding the gamete provider, parent or commissioning parents and surrogate mother is protected. The ART register will be used for making guidelines that can help identify new research areas in assisted reproduction and</p>	<p>KOGS</p> <p>The provisions on access to information in the Bill, pose a threat to the privacy of people who seek Assisted reproductive technology services, thereby exposing them to potential stigma. Further in the definition of father and mother under the Bill, excludes the anonymous gamete donors and as such, their privacy must be respected and protected. On the question of</p>	<p>with Article 24.</p>

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>other related fields A health professional specializing in assisted shall not disclose any information (2) unless— (a) the professional has obtained the consent of the person to whom the information relates; (b) the information is required for the purpose of addressing a medical emergency; (c) the information is required by law; (d) required to disclose the information by an order of the court</p> <p>KOGS</p> <p>Delete Part v in its entirety, covering clauses 33-37</p>	<p>confidentiality and non-disclosure of information, it is better for the same to be covered by Non-disclosure agreements or regulations, rather than in the Bill.</p> <p>Put offence for breach of confidentiality and unauthorised disclosure...</p>	
<p>Clause 34 (Provision of information by the Authority.)</p>	<p>34. (1) A person who has attained the age of eighteen may by notice to the Authority require the Authority to-</p> <p>(a) avail information on whether the applicant was conceived by means of assisted reproduction; and</p> <p>(b) state whether or not the</p>	<p>MOH</p> <p>The provision should be changed to read: The Authority shall ensure that the licensed facilities keep and maintain a coding system register containing particulars on:</p>	<p>MOH</p> <p>To provide more clarity on the role of the authority.</p> <p>CRADLE</p> <p>Counselling shall enable the parties involved to prepare for all eventualities once the child is born. E.g. disconnect with a child</p>	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
	<p>information contained in the register shows that the applicant, and a person specified in the request as a person whom the applicant proposes to marry would or might be relatives.</p> <p>(2) The Authority shall comply with the request of the applicant made under section 34 if-</p> <p>(a) the information contained in the register shows that the person was, or may have been, born in consequence of assisted reproduction treatment services, and</p> <p>(b) the person has been given an opportunity to receive counseling in regard to the implications of compliance with the request.</p> <p>(3) The Authority shall not give information regarding the identity of a person whose gametes have been used or from whom an embryo has been taken if a person to whom a license applied was provided with the information at a time when the Authority was not required to give the information.</p>	<p>CRADLE Insert clause 34 immediately after the proposed 33 to read: The county governments shall proactively offer infertility counselling to all persons having challenges conceiving prior to entering surrogacy agreements or gestational carrier agreements.</p>	<p>born through surrogacy or a gestational carrier, children born with disabilities who later become unwanted etc.</p>	
<p>Clause 35 (Minor not to be given</p>	<p>35. (1) The Authority shall not avail information to a person below the age of eighteen years unless the information is necessary for a medical procedure</p>	<p>MOH The Authority should receive general statistic measures and not patient records.</p>	<p>MOH This is for ethical considerations.</p>	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
informa tion.)	<p>relating to the minor.</p> <p>(2) Where a minor seeks such information, the minor may, through a legal guardian, give notice to the Authority requesting the Authority to give the information and the Authority shall give the information, if –</p> <p>(a) the information contained in the register shows that the minor was, or may have been, born in consequence of assisted reproduction process, and</p> <p>(b) the minor has been given an opportunity to receive counseling on the implications of compliance with the request.</p> <p>The Authority shall not avail information to a person below the age of eighteen years unless the information is necessary for a medical procedure relating to the minor.</p>	<p>They may be informed they are conceived through ART without identification of the source. The source of the gametes will remain anonymous.</p> <p>CRADLE</p> <p>Insert clause 35 immediately after the proposed 34 to read: The county governments shall proactively offer infertility counselling to all persons seeking to donate their sperm or ovum or entering into surrogacy or gestational carrier agreements.</p>	<p>CRADLE</p> <p>The principle of free and informed consent must be promoted and applied as a fundamental condition of the use of human reproductive technologies. Often surrogate and gestational mothers as well as sperm and egg donors are reluctant to give up the child upon birth and are often left distressed when they are forced to relinquish all rights to the child. Counselling should therefore be provided periodically before, throughout pregnancy and after birth to ensure that such persons fully understand the magnitude of their actions and are not left in distress when giving up the child. The process of counselling will also enable the authority to access whether they is mischief e.g. commercialization of surrogacy or coercion.</p>	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
<p>Clause 36 (Information from the Authority)</p>	<p>36. (1) Where a government agency makes a claim to the Authority seeking to verify whether a man is or is not the father of a child and the Authority shall comply with the request made by the government agency unless it appears to the Authority that there is not sufficient reason to seek for that information.</p> <p>(2) Where the government agency is aggrieved by the decision of the Authority, the agency may appeal to the Court for determination of the matter.</p>	<p>CRADLE</p> <ul style="list-style-type: none"> • Insert clause 36 immediately after the proposed clause 35 to read: An intended parent shall acquire all parental duties and rights and shall be jailed for a term not exceeding xxx for negligence or abandonment of a child born using assisted reproductive technology. • Amend Clause 36(1) to read: 'Where a government agency makes a claim to the Authority seeking to verify whether a man is or not the biological father of a child and the Authority shall comply with the request made by the government agency unless it appears to the authority that there is not sufficient reason to seek that 	<p>CRADLE</p> <ul style="list-style-type: none"> • The CRADLE concerns also relate to the abandonment and abuse of children that may occur in cases where the intending parents' divorce, change their minds or decide they want a different child due to the sex or disability of the child. Such abandonment or negligence should accrue the same penalties as that which would accrue to parents who conceive through natural means. • Amend Clause 36(1) to read: 'Where a government agency makes a claim to the Authority seeking to verify whether a man is or not the biological father of a child and the Authority shall comply with the request made by the government agency unless it appears to the authority that there is not sufficient reason to seek that information.' 	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		information.'		
Clause 38 (Licensing)	38. The Authority shall, in accordance with this Act issue, vary, revoke or renew a licence in relation to activities under this Act.	<p>FEDERATION OF WOMEN KENYA-LAWYERS (FIDA-KENYA); FAMILY HEALTH OPTION-KENYA (FHOK); THE KENYA MEDICAL ASSOCIATION, THE CENTRE FOR CITIZENS EMPOWERMENT PROGRAMME; PATH, INTERSEX PERSONS SOCIETY OF KENYA</p> <p>As it is any person can apply to provide ART services. They propose to be restricted to medical</p>		

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		professionals		
<p>Clause 42 (General conditions for licenses)</p>	<p>42. (1) The Authority may, in accordance with this Act, attach conditions to a license.</p> <p>(2) The conditions specified under subsection (1) are that -</p> <p>a) the activities authorized by the license shall be carried on only on the premises to which the license relates and under the supervision of the person responsible;</p> <p>b) any member or employee of the Authority, shall upon identification be permitted, at all reasonable times to enter premises to which the license relates and inspect the premises including the inspection of any equipment, records and observing any activity;</p> <p>c) proper records shall be maintained in such form as the Authority may direct;</p> <p>d) no money or other benefit shall be given or received in respect of any supply of gametes or embryos unless authorized by the Authority delete;</p>	<p>KOGS</p> <ul style="list-style-type: none"> (3) Delete the provision and instead replace with the following- (3) Every licensee shall keep and provide information to the Authority and any other government bodies on- a) the number of licensed clients seeking Assisted reproductive technology services, segregated by type of service sought, gender and outcome; b) Kind of Assisted reproductive technology services available at the facility; c) Such other matters as the Authority 	<p>KOGS</p> <ul style="list-style-type: none"> The provisions on access to information in the Bill, pose a threat to the privacy of people who seek Assisted reproductive technology services, thereby exposing them to potential stigma. This will remove potential discrimination that might be visited upon men seeking Assisted reproductive technology services 	

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	<p>e) where gametes or embryos are supplied to a person to whom another license applies, the person shall be provided with information as may be specified by the Authority; and</p> <p>f) the Authority shall be provided with copies or extracts from the records or information, in such form and at such intervals as it may specify.</p> <p>(3) Every licensee shall keep and provide information to the Authority and any government bodies on-</p> <p>(a)the persons to whom assisted reproductive technology services are provided;</p> <p>(b)the kind of assisted reproductive technology services provided;</p> <p>(c)the persons whose gametes are kept or used for the purposes of assisted reproductive technology services</p> <p>(d)the persons whose gametes have been used in bringing about human procreation.</p> <p>(e)such other matters as the Authority may specify.</p> <p>(4) No information shall be removed from any records maintained in pursuance of a license before the expiry of a period specified by the Authority.</p> <p>(5) A woman shall not be provided with any treatment services that involve-</p> <p>(a)the use of any gametes of any</p>	<p>may, from time to time direct, excluding any unique identifiers that may be used to positively identify the clients.</p> <ul style="list-style-type: none"> • 42(5) Remove the word "woman" from the sub- clause and replace the same with "person" 		

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	<p>person, if the consent of the person is required under this Act and the consent has not been obtained;</p> <p>(b)the use of any embryo taken from another woman, if the consent of the woman from whom it was taken has not been obtained;</p> <p>(c)the procedures specified under paragraph (a) and (b) , unless the woman has been provided with relevant information and given an opportunity to receive counseling on the implications of taking the proposed steps.</p>			
<p>Clause 43 (Conditions for storage of gametes)</p>	<p>43. (1) Every license authorizing the storage of gametes or embryos shall have the condition that-</p> <p>(a) the gametes of a person or the resultant embryo taken from a woman shall be placed in storage only if received from that person or woman or acquired from a person to whom a license under this Act applies;</p> <p>(b) an embryo the creation of which has been brought about by assisted reproductive technology shall be placed in storage only if acquired from a person to whom the license applies;</p> <p>(c) gametes or embryos which are stored shall not be supplied to a person other than in the course of providing treatment services unless that person is a person to whom a license applies;</p> <p>(d)no gametes or embryos shall</p>	<p>KOGS</p> <ul style="list-style-type: none"> 1(a) reword to read as follows- “the gametes from a person or the resultant embryo shall be placed in storage only if acquired from the donor or a duly licensed <i>Assisted reproductive technology expert or clinic</i>” as phrased, is confusing and ambiguous 	<p>KOGS</p> <ul style="list-style-type: none"> As it is, the provision is a bit wordy, hence confusing From reading the provision, it seems to suggest that one can create an embryo outside the provisions of a license. 	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
	<p>be kept in storage for longer than the statutory storage period, and</p> <p>(e) information regarding persons whose consent is required under this Act, the terms of their consent and the circumstances of the storage and as to such other matters as the Authority may specify shall be included in the records maintained in pursuance of the license.</p> <p>(2) The storage period in respect of embryos shall be a period not exceeding ten years or as the license may specify.</p>			
<p>Clause 44 (grant of licence)</p>	<p>44. (1) Where an application for a license is made to the Authority the Authority shall issue the person a license if satisfied that -</p> <p>(a) the application is for a license designating the applicant as the person under whose supervision the activities to be authorized by the license are to be carried on;</p> <p>(b) either the person is the applicant or -</p> <p>(i) the application is made with the consent of the person; and</p> <p>(ii) the applicant is a suitable person to hold a license.</p> <p>(c) the character, qualifications and experience of the person making the application are such as are required for the supervision of the activities under this Act and that the person is qualified to discharge the duties under this Act;</p> <p>(d) the premises in respect of which the licence is to be granted</p>	<p>KOGS</p> <ul style="list-style-type: none"> • Proposed Clause 44(1) Licensing of individuals “The Authority shall issue licences to Assisted reproductive technology experts, renewable annually upon payment of a prescribed fee” • We propose that the current clause 44(1) becomes Clause 44(2) and is amended to govern the licensing of Assisted reproductive technology facilities. <p>In making provisions under</p>	<p>KOGS</p> <ul style="list-style-type: none"> • This will reinforce the need for personal responsibility by Assisted reproductive technology experts in running their private practices. • The specification of the Assisted reproductive technology experts will ensure that no other person will be eligible for licensing. 	

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	<p>are suitable for the activities, and</p> <p>(e) all other requirements under this Act in relation to granting of a licence are satisfied.</p> <p>(2) The Authority may grant a licence to any person by way of renewal whether on the same or different terms.</p> <p>(3) Where the Authority is of the opinion that the information provided in the application is insufficient to enable it to determine the application, the Authority shall not consider the application until the applicant has provided further information as the Authority may require.</p> <p>(4) The Authority shall not grant a license unless a copy of the conditions to be imposed by the licence have been provided to, and acknowledged in writing by the applicant and the person under whose supervision the activities are to be carried on.</p> <p>(5) The fee specified under section 40(2) means a fee of such amount as may be fixed from time to time by the Authority with the approval of the Cabinet Secretary.</p> <p>(6) In determining the amount of fee under subsection (5), the Authority may have regard to the costs of performing all its functions.</p> <p>(7) The Authority may fix different fees for different circumstances and any fees paid under this section shall not be</p>	<p>this clause we propose that the standards set under section 15 of the Medical Practitioners and Dentists Act, Cap 253 be applied in the application of the Assisted reproductive technology facility licenses.</p> <p>This means that the provisions for another person making the application on behalf of the expert, be removed. These include sub-clause (b)</p> <ul style="list-style-type: none"> • Current 44(2) We propose that the current (2) be renamed as (3). We propose that the word "person" be deleted and thereby replaced with the word "Assisted reproductive technology expert" 		

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	refundable.			
<p>Clause 45 (Responsibility of the supervisor)</p>	<p>45.(1) It shall be the responsibility of the person under whose supervision the activities authorized by a licence are carried on to ensure –</p> <p>(a) that the persons to whom the licence applies are of such character, and are qualified by training and experience, to be suitable persons to participate in the activities authorized by the licence;</p> <p>(b) that proper equipment is used;</p> <p>(c) that proper keeping of gametes and embryos and for the disposal of gamete or embryos that have been allowed to perish; and</p> <p>(d) that the conditions of the licence are complied with.</p> <p>(2) The persons to whom a licence applies under this Act are –</p> <p>(a) persons under whose supervision the activities authorized by a licence are</p>	<p>KOGS</p> <p>In making provisions under this clause we propose that the standards set under section 15 of the Medical Practitioners and Dentists Act, Cap 253 be applied in the application of the Assisted reproductive technology facility licenses</p>	<p>KOGS</p> <p>This will reinforce the need for personal responsibility by Assisted reproductive technology experts in running their private practices.</p>	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
	<p>carried on</p> <p>(b)any person designated in the licence, or in a notice given to the Authority by the person who holds the licence or the person responsible, as a person to whom the licence applies, and</p> <p>(c)any person acting under the direction of the person responsible or of any person designated</p>			
<p>Clause 46 (Revocation of license)</p>	<p>46. (1) The Authority may revoke a license if satisfied –</p> <p>(a)that the information given for the purposes of the application for the grant of the licence was false or misleading;</p> <p>(b)that the premises to which the licence relates are no longer suitable for the activities authorized by the licence;</p> <p>(c)that the person responsible has failed to discharge, or is unable because of incapacity to discharge, the duty under this Act or has failed to comply with directions given in connection with any licence;</p> <p>(d)that there has been a change of circumstances since the licence was granted;</p> <p>(e)that the character of the person responsible is not as is required for the supervision of the activities or that the nominal licensee is not a suitable person to hold a licence; or</p> <p>(f)the person responsible dies or is convicted of an offence under this Act.</p>	<p>KOGS</p> <p>(c) Amend by adding the words, “whether due to a physical or mental condition” immediately after the words “incapacity to discharge.”</p>		

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
	<p>(2) Where the Authority has power to revoke a licence under subsection (1), the Authority may vary any terms of the licence.</p> <p>(3) The Authority may, on application by the person responsible or the nominal licensee, vary or revoke the licence.</p> <p>(4) The Authority may, on an application by the nominal licensee, vary the licence so as to designate another person in place of the person under whom supervision is authorized by a licence, if the Authority is satisfied that the character, qualifications and experience of the other person are such as are required for the supervision of the activities authorized by the licence and that the person shall discharge the duties under this Act, and the application is made with the consent of the other person.</p> <p>(5) Except on an application under subsection (4), the Authority may vary a licence under this section –</p> <p>(a) if it relates to the activities authorized by the licence, the manner in which they are conducted or the conditions of the licence, or</p> <p>(b) so as to extend or restrict the premises to which the licence relates.</p> <p>(6) The Cabinet Secretary shall make Regulations for the</p>			

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	refusal, variation and revocation of licenses by the Authority under this Act.			
Clause 57 (offences)	<p>57. (1) A person commits an offence under this Act where the person knowingly or recklessly-</p> <p>(a)contravenes any of the provisions of the Act;</p> <p>(b)contravenes any of the provisions of a notice issued under this Act; or</p> <p>(c)obstructs a person in the execution of the person's duty under the Act.</p> <p>(2) A person who commits an offence under subsection (1)shall, upon conviction, be liable to a fine not exceeding five hundred thousand</p>	<p>KOGS</p> <p>(2) Increase the fine from “not exceeding five hundred thousand shillings” to “not exceeding three million shillings”</p> <p>FEDERATION OF WOMEN KENYA-LAWYERS (FIDA-KENYA); FAMILY HEALTH OPTION-KENYA (FHOK); THE KENYA MEDICAL ASSOCIATION, THE CENTRE FOR CITIZENS EMPOWERMENT PROGRAMME; PATH, INTERSEX PERSONS SOCIETY OF KENYA</p> <p>Add prohibition of commercial ART The penalties seem less stringent and less deterrent. They further propose we increase the number of years of imprisonment to five years and a penalty of Kes. 1M</p>	<p>KOGS</p> <p>The current provision has a very big disparity between the amount of the fine and the custodial sentence. Further, the offences under the Bill arise from very technical processes which, if poorly done, may lead to loss of life.</p>	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
Clause 58 (General penalty)	58. Any person convicted of an offence under this Act for which no penalty is provided shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years , or to both.	<p>KOGS We propose that the same be deleted</p> <p>FEDERATION OF WOMEN KENYA-LAWYERS (FIDA-KENYA); FAMILY HEALTH OPTION-KENYA (FHOK); THE KENYA MEDICAL ASSOCIATION, THE CENTRE FOR CITIZENS EMPOWERMENT PROGRAMME; PATH, INTERSEX PERSONS SOCIETY OF KENYA Add prohibition of commercial ART The penalties seem</p>	<p>KOGS This is because the generality of the penal provisions is covered under clause 57(2).</p>	

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		<p>less stringent and less deterrent. They further propose we increase the number of years of imprisonment to five years and a penalty of Kes. 1M</p>		
<p>Clause 59 (Regulations)</p>	<p>59. The Cabinet Secretary, in consultation with the Authority may, make regulations generally for the better carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing, may make regulations –</p> <p>(a) for the eligibility of donors;</p> <p>(b) for the storage of gametes and embryos;</p> <p>(c) (c)for the number of embryos that can be planted in a woman;</p> <p>(d) (d)for the number of times that a patient can be given assisted reproductive services;</p> <p>(e) (e)for settling disputes arising out of assisted reproduction;</p> <p>(f) (f)for the maintenance for records;</p>	<p>KOGS</p> <ul style="list-style-type: none"> • be amended by deleting the word “planted” and replacing it with the word “transferred” • Be amended by replacing the word “children” with the word “embryos” 	<p>KOGS</p> <ul style="list-style-type: none"> • It is not possible to plant an embryo in the womb of a woman. • It is medically incorrect to say that children are created by the use of gametes, especially at the early stages. 	

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	<p>(g) (g)regarding rights and duties of patients, donors surrogates and children;</p> <p>(h) (h)in respect of the giving of consent for the use of human reproductive material or an embryo from assisted reproductive process or for the removal of human reproductive material;</p> <p>(i) (i)in respect of the number of children that may be created from the gametes of one donor through the application of assisted reproduction procedures;</p> <p>(j) (j)in respect of the terms and conditions of licenses;</p> <p>(k) (k)in respect of the qualifications for licenses.</p> <p>(l) (l)in respect of the issuance, amendment, renewal, in respect of suspension, restoration and revocation of licenses;</p> <p>(m)in respect of the information to be provided in respect of applications for a license or for the renewal or amendment of a license;</p> <p>(n)in respect of the identification and labeling of human reproductive materials and embryos from assisted reproductive process used in treatment services;</p> <p>(o)in respect of the collection, use and disclosure of information regarding assisted reproduction</p>			

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
	<p>processes;</p> <p>(p)in respect of counseling services;</p> <p>(q)in respect of research relating to assisted reproductive technology treatment, services and products.</p>			
<p>NEW CL SES</p>		<p>FEDERATION OF WOMEN KENYA-LAWYERS (FIDA-KENYA); FAMILY HEALTH OPTION-KENYA (FHOK); THE KENYA MEDICAL ASSOCIATION, THE CENTRE FOR CITIZENS EMPOWERMENT PROGRAMME; PATH, INTERSEX PERSONS SOCIETY OF KENYA</p> <p>Prohibition of Sex Selection It is prohibited for anyone to do any act, at any stage, to determine the sex of the child to be born through the process of assisted reproductive</p>		

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		<p>technology; A person shall not knowingly provide, prescribe or administer anything that shall ensure or increase the probability that an embryo shall be of a particular sex, or that shall identify the sex of an in vitro embryo, except to diagnose, prevent or treat a sex-linked disorder or disease.</p> <p>Restriction on sale of human gametes, zygotes and embryos/ prohibition of commercial ART</p> <p>2. The sale, transfer or use of gametes, zygotes and embryos, or any part thereof or information related thereto, directly or indirectly to any party within and outside Kenya is prohibited</p> <p>Conditions of assisted reproduction</p> <p>3. (1) An assisted reproduction technology specialists shall ensure:</p> <p>(a) the gamete provider has submitted their consent for the collection and use of gametes; (b)</p>		

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		<p>where the gamete provider is deceased, the gamete provider had given their consent for the use of the gametes before their demise;</p> <p>(c) the gametes to be used for the procedure have been stored for a period of less than ten years from the date of being obtained from a gamete provider;</p> <p>(e) the gamete provider has been medically examined for all diseases which may endanger the health of the parents, surrogate or child; and(d) all parties to the agreement are aware of the rights of a child born through the use of assisted reproduction service</p> <p>Validity of Surrogate parenthood agreement</p> <p>4. A surrogate parenthood agreement is valid if:</p> <p>(a) it is in writing and is signed by all the parties thereto;</p>		

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		<p>(b) it is entered into in Kenya;</p> <p>(c) it is in the prescribed form;</p> <p>(d) it includes adequate provisions for the contact, care, upbringing and general welfare of the child that is to be born, including the child's position in the event of the —</p> <p>(i) death of the commissioning parent, or if married, the death of one or both of the commissioning parents before the birth of the child; or</p> <p>(ii) separation or divorce of commissioning parents who are married before the birth of the child;</p> <p>(e) the commissioning parent or commissioning parents, agree to meet the expenses of the surrogate mother with regard to the pre-natal care regimen necessary for the care of the surrogate mother and child during the course of the pregnancy;</p> <p>(f) the signatures</p>		

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>of the parties to the surrogate parenthood agreement are witnessed by different persons; and</p> <p>(g) prior to entering in to the agreement, the requirement for an explanation under section on access to information</p> <p>(2) Where a person intends to enter into a surrogate parenthood agreement, a qualified medical practitioner shall explain to the parties —</p> <p>(a) their rights and obligations under the surrogate parenthood agreement;</p> <p>(b) the implication of entering into the surrogate parenthood agreement;</p> <p>(c) the requirement to be represented by an advocate;</p> <p>(d) the requirements under this Act and any other conditions imposed by regulation under this Act.</p> <p>Obligations of parties to a parenthood</p>		

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>agreement under this Act 4. Where a person enters into a surrogate parenthood agreement under this Act-</p> <p>(a) the commissioning parent or commissioning parents or commissioning couple:</p> <p>(i) shall be the legal parent or parents of a child conceived by a surrogate mother in accordance with this Act;</p> <p>(ii) shall not reject/ abandon or discriminate against the child, even if born with disabilities including being an intersex child.</p> <p>(b) the surrogate mother —</p> <p>(i) shall not terminate the pregnancy except as provided under any other law;</p> <p>(ii) shall hand the child over to the commissioning parent or commissioning parents as soon as is reasonably possible after the birth;</p> <p>(iii) or her spouse,</p>	<p>Section 11 of the Births and Deaths Registration Act</p> <p>Duty to notify births where registration compulsory</p> <p>11. Upon the birth of any child the registration of whose birth is compulsory, it shall be the duty of the father and mother of the child, and, in default of the father and mother, of the occupier of the house in which to his knowledge the child is born, and of every person present at the birth, and of the person having charge of the child, to give notice of the birth, within such time as may be from time to time prescribed, to the</p>	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>partner or relative shall not have a right of parenthood or care of the child;</p> <p>(iv) or her spouse, partner or relative shall not have a right of contact with the child unless provided for in the surrogate parenthood agreement; and</p> <p>(v) shall not have an obligation to maintain the child born</p> <p>(c) In the event multiple pregnancies arise out of implantation pursuant to the surrogate parenthood agreement, the obligations of the surrogate mother and the commissioning parent or commissioning parents shall be as provided for under the surrogate parenthood agreement and the provisions of this Act.</p> <p>Termination of a Surrogate Parenthood Agreement</p> <p>5. (1) A surrogate parenthood agreement may be terminated —</p>	<p>registrar of the registration area in which the birth occurs:</p> <p>Provided that, in the case of births in prisons, hospitals, orphanages, barracks or quarantine stations, the duty to give such notice shall lie on the officer in charge of the establishment in which the birth took place.</p>	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>(a) automatically, following the termination of pregnancy in accordance with this Act;</p> <p>(b) before the implantation of a fertilized embryo in the surrogate mother's womb; or</p> <p>(c) where a dispute arises between commissioning parents, and before the fertilized embryo is implanted in the surrogate mother.</p> <p>(2) Where the commissioning parent or commissioning parents have reason to believe that the child born is not the child contemplated under the surrogate parenthood agreement, the commissioning parent or commissioning parents may apply for the conduct of a DNA test on the child.</p> <p>(3) Where upon the conduct a DNA test under subsection (2), it is found that the child born is not the child contemplated under the surrogate parenthood</p>		

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>agreement, the surrogate parenthood agreement shall be terminated automatically.</p> <p>(4) Where the surrogate parenthood arrangement terminates under subsection (3), the commissioning parent or commissioning parents shall not bear any parental rights over the child.</p> <p>Compensation</p> <p>6. (1) A person shall not, in connection with a surrogate parenthood agreement, give or promise to give to any person or receive from any person a reward or compensation in cash or in kind.</p> <p>(2) A promise or agreement for the payment of any compensation to a surrogate mother or any other person in connection with a surrogate parenthood agreement or the execution of such an agreement is not enforceable, except with respect to a claim for —</p>		

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>(a) compensation for expenses that relate directly to the process of in vitro insemination and pregnancy of the surrogate mother, the birth of the child, post natal care and post-delivery complications;</p> <p>(b) loss of earnings suffered by the surrogate mother as a result of the surrogacy; and</p> <p>(c) insurance to cover the surrogate mother for any acts that may lead to death or disability brought about by the pregnancy.</p> <p>Informed written consent</p> <p>7. (1)The assisted reproductive technology clinic shall not perform any treatment or procedure of assisted reproductive technology without the consent in writing of all the parties seeking assisted reproductive technology to all possible stages of such treatment or procedures</p> <p>(2) The assisted reproductive technology clinics</p>		

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>and assisted reproductive technology banks shall not cryo preserve any human embryos and or 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 or embryos in case of death or incapacity of any of the parties.</p> <p>(3) The consent of any of the parties obtained under this section may be withdrawn at any time prior to the process of implanting the embryos or the gametes in the woman's uterus.</p> <p>Amendment of section 11 of The Births and Deaths Registration Act</p> <p>8. (a) by inserting the following new definitions immediately after the definition of the word "birth"—</p> <p>(i) "commissioning parent" shall have the assigned to it under the Assisted Reproductive</p>		

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>Technology Act; and (ii) “commissioning parents” shall have the meaning assigned to it under the Assisted Reproductive Technology Act; (b) by deleting section 11 and substituting therefor the following new section— (1) Upon the birth of any child, the registration of whose birth is compulsory, notice of the birth shall be given to the registrar of the registration area in which the birth occurs within such time as may be from time to time prescribed— (a) by the father or mother of the child, or the commissioning parent or commissioning parents of the child; (b) where the father or mother or the commissioning parent or commissioning parents of the child, fail to give notice under paragraph (a), then, such notice</p>		

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>shall be given by—</p> <p>(i) the occupier of the house in which the child is born;</p> <p>(ii) any other person present at the birth of the child; or</p> <p>(iii) the person having charge of the child</p> <p>(2) In the case of a birth in a prison, a hospital, an orphanage, a barracks or a quarantine station, the duty to give notice shall lie on the officer in charge of the establishment in which the birth has taken place.</p>		
		<p>CRADLE</p> <p>Insert PART V immediately after PART IV to read:</p> <p>ASSISTED REPRODUCTIVE HEALTH-CARE FOR INTER-SEX PERSONS</p> <p>1. (1) The national and county governments shall put in place measures to ensure that all intersex persons have access to assisted reproductive</p>	<p>CRADLE</p> <p>The provisions of this Part elaborate the rights of inter-sex persons to gain access to assisted reproduction as well as to protect them from any practices which may harm their ability to conceive. An intersex person” is a person who is conceived or born with a biological sex characteristic that cannot be exclusively categorised in the common binary of female or male due to their inherent and mixed anatomical and hormonal, gonadal (ovaries and</p>	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>health-care services. (accept (1) other matters be left)</p> <p>(2) The national and county governments shall ensure that all health facilities have qualified personnel and sufficient facilities and equipment to prevent, correctly diagnose, treat and manage conditions affecting intersex fertility.</p> <p>2. (1) The national government shall promote and facilitate research in connection with the prevention, diagnosis, management and treatment of medical and reproductive conditions including infertility which affect intersex persons.</p> <p>(2) The National Government shall develop policies, standards and guidelines on the prevention, diagnosis, treatment and</p>	<p>testes) or chromosomal (X and Y) patterns; which could be apparent prior to, at birth, in childhood, puberty or adulthood;</p> <p>Policy disjunctions often arise in framing of intersex issues as matters of sexual orientation and gender identity, rather than innate sex characteristics.</p> <p>Intersex persons may experience primary or secondary infertility. Primary infertility may arise due to organ, hormonal or genetic configuration that makes it difficult or impossible to conceive.</p> <p>Secondary infertility arises where an intersex person is subjected to gonadectomy. Gonadectomy is a generic term referring to the surgical removal of either the testes in males or the ovaries in females, which results in a loss of gonadal production of sex steroids and therefore infertility. Medical interventions on often healthy bodies remain the norm, addressing perceived familial and cultural demands, despite concerns about necessity, outcomes, conduct and consent. The procedure is often carried out on intersex persons in infancy so as to</p>	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>management of infertility conditions affecting intersex persons.</p> <p>(3) In the formulation of policies and standards under this section, the national government shall be guided by the following principles—</p> <p>(a) the best interests of the child should be the primary consideration in the treatment and management of medical and infertility conditions in intersex children;</p> <p>(b) the right of all persons to affordable, accessible and quality health-care without discrimination;</p> <p>(c) all management and treatment interventions should respect the client's right to bodily autonomy;</p> <p>(d) the right to privacy and confidentiality;</p>	<p>align the child with one particular gender.</p> <p>The process of mutilating the bodies of intersex persons soon after birth in order to allow them to fit into one gender binary is called Intersex Genital Mutilation.</p> <p>The procedure often leads to immense distress in their adolescent and adult years due to an involuntary gender selection which may later be regretted especially in adult and adolescent years as one sex characteristic becomes more prominent than another. The mutilation of the sex organ that reflects their gender identity leaves them in a state of confusion and with no way to procreate.</p> <p>The practice of gonadectomy in infancy violates a person's human right to bodily autonomy and self-determination, and encourages stigmatization of intersex persons.</p> <p>Deferment of surgery until later years for intersex persons is often best practice unless the life of the person is in danger. Intersex persons ought to be able to consent to or decline treatment, especially radical surgery, themselves. Preservation</p>	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>(e) the right to dignified treatment and care in all health facilities;</p> <p>(f) the right to scientifically accurate, evidence-based reproductive health information and education;</p> <p>(h) the right to early and correct diagnosis of infertility conditions; and</p> <p>3. (1) A person shall not subject an intersex person to intersex genital mutilation which includes but is not limited to forced or coerced sterilization, forced gender assignment surgery, forced genital examinations and forced human experimentation.</p> <p>(2) A health-care provider shall ensure that an intersex person shall give informed consent to all surgical and non-surgical medical procedures related to fertility.</p>	<p>of reproductive potential and sexual function must be given a high priority.</p> <p>For these reasons, greater consideration needs to be applied to intersex persons and the circumstances of their infertility status that may be received in infancy, childhood or adolescence. The objective of the provisions is therefore to govern the issue of preserving the reproductive potential of intersex persons as well as creating rules to allow these persons to access Assisted Reproductive Technology.</p> <p>The government ought to facilitate technological advances to enable persons from the intersex community to procreate..</p>	

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>4. (1) A healthcare provider who, by any surgical or non-surgical procedure, renders an intersex client incapable of sexual reproduction without prior, express or informed consent of the client commits an offence;</p> <p>(2) A healthcare provider who, by any surgical or non-surgical procedure, renders an intersex client incapable of sexual reproduction having obtained consent through force, inducement misinformation, or intimidation commits an offence;</p> <p>(3) It is no defence to a charge under this section that parental consent was sought where an intersex client is a child or infant.</p> <p>(4) A person found guilty of an offence under this section shall, on conviction, be liable to a fine not exceeding one</p>		

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>million shillings or to a term of imprisonment not exceeding two years, or to both.</p> <p>5. (1) A health-care provider who performs cosmetic genital surgery on an intersex client without prior, express or informed consent of the client commits an offence.</p> <p>6. (1) Any person, including health-care providers, parents and guardians, who administers any hormones to an intersex person especially those which affect their fertility without prior consent commits an offence.</p> <p>(3) A person guilty of an offence under this section shall, on conviction, be liable to—</p> <p>(a) a fine not exceeding one million shillings or to a term of imprisonment not exceeding two</p>		

CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>years or to both;</p> <p>(b) in the case of health-care providers, disciplinary proceedings under Section 20 of the Medical Practitioners and Dentists Act;</p> <p>(c) The national and county governments shall ensure the publishing and publicizing of comprehensive and accurate information on medical and reproductive conditions affecting intersex persons.</p>		
<p>Memorandum of Objects and Reasons</p>		<p>KOGS We propose that in line with the proposals we have made herein, we propose that the Memorandum of objects and reasons be amended as follows-</p> <p>a) Changing the description of the content in Part IV by deleting the words “of parents and donors, and” This is informed by the fact that we have proposed that the rights of</p>		<p>Memo not subject to amendments as matter of practice and procedure.</p>

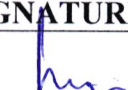
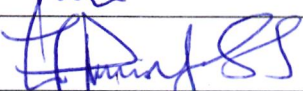




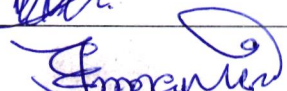
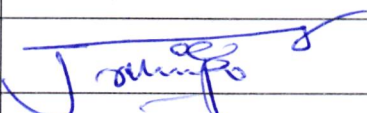
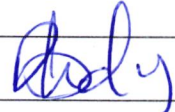
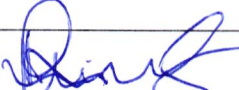
CLAUSE	SUMMARY OF CLAUSE	STAKEHOLDERS' COMMENTS	STAKEHOLDERS' JUSTIFICATION	COMMENTS
		<p>parents and donors be provided for in the subsequent part of the Bill.</p> <p>b) Deleting the description of the content in Part V and thereby replacing it with the following-</p> <p><i>“of the Bill provides for the rights and the obligations arising from surrogacy agreements and the services under the assisted reproductive technology services”.</i></p>		

Volume 2

THE NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON HEALTH
ATTENDANCE SCHEDULE

Wednesday 7th October, 2020 At 9.00 am held via Zoom

Adoption of the report on the Assisted Reproductive Technology Bill, 2019

	NAME	SIGNATURE
1.	Hon. Sabina Chege, MP – Chairperson	
2.	The Hon. Joshua Kutuny, MP – Vice-Chairperson	
3.	Hon. Dr. Eseli Simiyu, MP	
4.	Hon. Dr. James Nyikal, MP	
5.	Hon. Dr. Mohamed Dahir Duale, MP	
6.	Hon. Dr. James Kipkosgei Murgor, MP	
7.	Hon. Alfred Agoi Masadia, MP	
8.	Hon. Muriuki Njagagua, MP	
9.	The Hon. Joyce Akai Emanikor, MP	
10.	Hon. Prof. Mohamud Sheikh Mohamed, MP	
11.	Hon. Martin Peters Owino, MP	
12.	Hon. Kipsengeret Koros, MP	
13.	Hon. Tongoyo Gabriel Koshal, MP	
14.	The Hon. Sarah Paulata Korere, MP	
15.	The Hon. Dr. Gideon Ochanda, MP	
16.	The Hon. Beatrice Adagala, MP	
17.	The Hon. Said Hiribae, MP	
18.	The Hon. (Capt.) Ruweida Mohammed, MP	
19.	The Hon. James Githua Kamau Wamacukuru, MP	



TENDER NOTICE

The Kenya Red Cross Society (KRCS) was established in 1965 by an Act of Parliament (Chapter 256 Laws of Kenya) as a voluntary Aid Society, auxiliary to the national and county governments. Its vision is to be the most effective, most trusted and self-sustaining humanitarian organization in the country. KRCS was appointed by the Kenya Country Coordinating Mechanism (KCM) as the Civil Society Principal Recipient (PR) to manage resources under the Country's Global Fund HIV Grant implemented through selected Sub Recipients (SRs).

KRCS is currently seeking for qualified and eligible bidders to undertake the following consultancy:

TENDER DESCRIPTION	TENDER NUMBER	CLOSING DATE
CONSULTANCY SERVICES FOR TRAINING PARALEGALS FOCUSING ON PEOPLE LIVING WITH HIV AND KEY POPULATIONS	GFQ11561	19th July 2019

Interested and qualified consultants and bidders are invited to inspect and download the bid documents free of charge from the Kenya Red Cross Society website (<https://www.redcross.or.ke/Tenders>)

Those who download the documents and intend to submit a bid must forward their particulars to the tender's email address indicated on the website for recording and for the purpose of receiving any clarification and addenda. All queries and clarifications to be sent to tenders@redcross.or.ke by 12th July 2019 and all responses will be posted on the website by 15th July 2019.

Complete Tender Documents clearly marked tender number and tender description "TENDER NO: GFQ11561" for the "Consultancy Services for Training Paralegals focusing on PLHIVs and KPs" should be addressed to:

The Chair Tender Committee,
Kenya Red Cross Society
P.O Box 40712 - 00100 Nairobi, Kenya

And must be deposited in the Tender Box located at the Reception on the Ground Floor of the Kenya Red Cross Society - Headquarters in South C, Red Cross Road, off Popo Road, Nairobi on or before **11.00 am on Friday 19th July 2019**. Late submissions will not be accepted. Tenders will be opened at 12.00 noon at the Society's headquarters on the same day in the presence of the bidders and/or their representatives who choose to attend.

Deputy Secretary General, Corporate Services,
Supply Chain & M.D. E-Plus,
For, Secretary General

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT - THIRD SESSION

In the matters of consideration by the National Assembly:-

1. The Prevention of Terrorism (Amendment) Bill (Senate Bill No. 20 of 2018)
2. The Assisted Reproductive Technology Bill (National Assembly Bill No. 34 of 2019)

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". The National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Prevention of Terrorism (Amendment) Bill (Senate Bill No. 20 of 2018) seeks to amend the Prevention of Terrorism Act to provide for the duty of Institution administrators to counter radicalization. The Bill seeks to ensure that all institution administrators are mandated and charged with the duty of ensuring that measures are put in place in their respective institutions to prevent radicalization and violent extremism.

The Assisted Reproductive Technology Bill (National Assembly Bill No. 34 of 2019) seeks to regulate rights and obligations relating to assisted reproductive technology and with a view to regulating the use of assisted reproductive technologies to aid individuals or couples that have challenges conceiving due to factors associated with infertility. Further, the Bill seeks to regulate the qualifications of health practitioners who administer assisted reproductive technology in order to protect recipients of the services.

The above mentioned Bills have undergone First Reading pursuant to Standing Order 127(3) and stand committed to the Departmental Committee on Administration & National Security and Departmental Committee on Health respectively, for consideration and thereafter report to the House.

Pursuant to the provisions of Article 118(1)(b) of the Constitution and Standing Order 127(3), the respective Committees invite members of the Public to submit representations they may have on the said Bills. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Thursday 11th July, 2019 at 5.00 pm.

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY



LAKE VICTORIA NORTH WATER WORKS DEVELOPMENT AGENCY, COUNTY GOVERNMENTS OF TRANS-NZOIA, BUNGOMA AND NZOIA WATER SERVICES COMPANY

PUBLIC NOTICE

RE-ADVERTISEMENT INVITATION FOR APPLICATION OF BOARD OF DIRECTORS VACANT POSITIONS IN NZOIA WATER SERVICES COMPANY LIMITED

Nzoia Water Services Company (NZOWASCO) is a limited liability Company jointly owned by the County Governments of Trans-Nzoia and Bungoma and is responsible for efficient and economic provision of water and sewerage services within its area of jurisdiction. The area of supply served covers Kitale, Bungoma, Webuye, Chwele, Kimilili towns and their environs.

The Board of Directors comprises representatives of stakeholders identified by the County Governments of Trans-Nzoia and Bungoma in accordance with the Water Sector Corporate Governance Guidelines issued by the Water Services Regulatory Board. One third of the Board retires on expiry of three years contract on rotation at every Annual General Meeting (AGM).

The Board of NZOWASCO has vacancies for representatives of the following stakeholders:

One (1) Director from Bungoma County **MUST** be nominated by registered business Community, Hotel Owners Associations, Manufacturing, Jua Kali Associations, Farmers and Consumers organizations.

One (1) Director from Trans-Nzoia County **MUST** be nominated by a body of professionals representing Accountants, Engineers, Lawyers, Doctors, Human Resource among others.

ELIGIBILITY CRITERIA

- To be eligible all the persons appointed to the Board shall have a minimum of;
- a) Bachelors degree from a recognized university in any of the following professions; accounting / Finance, Engineering, Human Resource Management, Law, Medicine, ICT.
 - b) A member of a professional body in good standing
 - c) Must have a minimum of Seven years working experience in the core profession of the person.
 - d) Must meet the Leadership and Integrity requirements under Chapter Six of the Constitution, 2010. (Submit KRA, CRB, HELB, GOOD CONDUCT & EACC clearance certificates)
 - e) Have experience as change management agent.
 - a) Download and fill the WASREB Fit and Proper test form also available www.nzoiawater.or.ke.
 - b) Have attended a Corporate Governance Training in a recognized institution.
 - c) Must not be supplier or other trading associates of the company.

Application Criteria

Interested and suitably qualified persons meeting the above criteria and residents within the Company's area of coverage are requested to Post or send their application letter attaching copies of relevant certificates, testimonials, National Identity Card, letter from the nominating body, resume/ curriculum vitae highlighting relevant experience, daytime phone contacts, email address and three (3) referees both in hard and soft copy to:

Chairperson Selection Committee,
Nzoia Water Services Company Limited,
P.O. Box 1010-50205
WEBUYE.
Email Address: selectionpanel2019@gmail.com

Please indicate on the envelope "APPLICATION FOR DIRECTORSHIP IN NZOWASCO"
Your application should reach us on or before **Friday, 12th July 2019**.

Or may be deposited at Nzoia Water Services Company Limited Head Office - Webuye, opposite former Pan Paper Mills, Next to Masinde Muliro University (Webuye Branch) along Webuye - Eldoret/ Bungoma road.

APPLICANTS WHO HAD EARLIER APPLIED ARE ENCOURAGED TO RE-APPLY.
Women and Youths are also encouraged to apply

Late applications will be rejected.

REPUBLIC OF KENYA



Clerk's Chambers
National Assembly
Parliament Buildings
P O Box 41842-00100
NAIROBI, Kenya

Telegraphic Address:
"Bunge", Nairobi
Telephone: 254-020-221291
Fax: 254-020-243694
E-mail: clerk@parliament.com

NATIONAL ASSEMBLY

5th March, 2020

When replying please quote:
NA/DCS/HEALTH/CORR/2020/016

Ms. Susan Mochache, CBS
Principal Secretary
Ministry of Health
Afya House
NAIROBI

Executive Director
Federation of Women Lawyers (FIDA) Kenya
P.O Box 46324 -00100
Amboseli Suites, off Gitanga Road
NAIROBI

Dear *Mr Mochache*

RE: PUBLIC HEARINGS ON THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL, 2019

The Departmental Committee on Health is constituted under Standing Order 216 and is mandated to, inter-alia "study and review programs and all legislation referred to it."

Article 118(1)(b) of the Constitution requires parliament to facilitate public participation and involvement in the legislation and other business of Parliament and its Committees. In addition, Standing Order 127(3) of the National Assembly requires a Committee to which a Bill is committed to facilitate public participation and take into account the views and recommendations of the public when it makes its report to the House.

Pursuant to the provisions of S.O. 127, the Assisted Reproductive Technology Bill (National Assembly Bill No. 34 of 2019) has been committed to Committee for consideration and thereafter submission of a report to the House.

The Assisted Reproductive Technology Bill (National Assembly Bill No. 34 of 2019), seeks to regulate the rights and obligation related to assisted reproductive technology, regulate the use of assisted reproductive technologies to aid individuals/couples who have challenges conceiving to factors associated to infertility and regulate the qualification of the health workers who administer the assisted reproductive technology in order to protect recipients of the latter services among other objects.

Therefore, this is to inform you that the Departmental Committee on Health will hold public hearings on **Thursday 12th March, 2020 in the Mini Chamber, County Hall, Parliament Buildings at 2.30pm** to seek public views on the above mentioned Bill.

This is therefore to invite your organization to make representations, if any, on the stated bills. Our liaison officer for this purpose is Mr. Benjamin Magut, who may be reached on telephone No. 0712-974966 and email bmagut@parliament.go.ke or bemack2@gmail.com.

Yours faithfully,



JEREMIAH W. NDOMBI

For: CLERK OF THE NATIONAL ASSEMBLY

PRESENT

- | | |
|---|--------------------|
| 1. The Hon. Sabina Chege, MP | - Chairperson |
| 2. The Hon. Joshua Kutuny, MP | - Vice-Chairperson |
| 3. The Hon. Dr Eseli Simiyu, MP | |
| 4. The Hon. Dr James Nyikal, MP | |
| 5. The Hon. Dr James Kipkosgei Murgor, MP | |
| 6. The Hon. Muriuki Njagagua, MP | |
| 7. The Hon. Martin Peters Owino, MP | |
| 8. The Hon. Joyce Akai Emanikor, MP | |
| 9. The Hon. (Capt) Ruweida Mohammed, MP | |
| 10. The Hon. Beatrice Adagala, MP | |

ABSENT WITH APOLOGY

1. The Hon. Dr Mohamed Dahir Duale, MP
2. The Hon. Alfred Agoi Masadia, MP
3. The Hon. Prof Mohamud Sheikh Mohamed, MP
4. The Hon. Dr Gideon Ochanda, MP
5. The Hon. Sarah Paulata Korere, MP
6. The Hon. Tongoyo Gabriel Koshal, MP
7. The Hon. Kipsengeret Koros, MP
8. The Hon James Githua Kamau Wamacukuru, MP
9. The Hon. Said Hiribae, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

Benjamin Magut	-	Senior Clerk Assistant
Muyodi Emmanuel	-	Clerk Assistant III

MIN. NO.NA/DC.H/2020/160: PRELIMINARIES

The Chairperson, called the meeting to order at 9: 09 PM and said a prayer. After that, the meeting proceeded to business.

MIN. NO.NA/DC.H/2020/161:

The Committee considered and adopted the report on the Assisted Reproductive Technology Bill, 2019 after being proposed by the Hon. Muriuki Njagagua, MP and seconded by Hon. Martin Peters Owino, M.P. as follows:-

Committee Observations

- i. The Assisted Reproductive Technology Bill, 2019 seeks to provide for the regulation of assisted reproductive technology, to prohibit certain practices in connection with assisted reproductive technology, to establish an Assisted Reproductive Technology Authority and to make provision in relation to children born of assisted reproductive technology processes.

- ii. The principal object of the Bill is to regulate rights and obligations relating to assisted reproductive technology. The Bill aims to regulate the use of assisted reproductive technologies to aid individuals or couples that have challenges conceiving due to factors associated with infertility. Furthermore, the Bill aims to regulate the qualifications of health practitioners who administer assisted reproductive technology in order to protect recipients of the latter services.
- iii. In addition, the Bill contains provisions that define rights touching on among others issues relating to consents preceding assisted reproduction; handling of embryos resulting from assisted reproductive technology; protection of the identity, status and welfare of children borne out of assisted reproduction; and duties of persons who undergo assisted reproduction and their legal status as parents.
- iv. The Bill establishes an Assisted Reproductive Technology Authority to regulate the processes, licensing, standards, research, and infrastructure relating to assisted reproductive technology. The legislative scheme of the Bill has been modelled in a manner that addresses a balance between the need for regulation of ethics and advancement of modern science and technology.
- v. However, the Committee noted that the Health Act, 2017 enabled the Cabinet Secretary to establish Directorate under the Ministry of Health to deal with specific areas of health. In this regard and taking note for the need for the rationalization of semi-autonomous state agencies under the Ministry of Health, there were no sufficient reasons for establishment of the Authority as there were existing structures that could be realigned to take on the role of the Authority including the MOH's reproductive health unit and the Medical Practitioners and Dentist Council.
- vi. The Committee that the Bill lacked sufficient provision to deal with pertinent issues arising from Assisted Reproductive technology such as the prohibition of commercial surrogacy, provision for compensation mechanisms to ensure the service is not exploitative in nature. The need for prohibition of sex selection and abandonment of children born of assisted reproduction, validity of surrogacy agreements and obligations of parties so as to ensure that the process is adequately regulated.
- vii. The Committee notes that section 11 of the Births & Deaths Registration Act needs to be aligned with the proposed Bill to allow for registration of children born of assisted reproduction by the commissioning parent(s). As currently provided registration can only be undertaken with the surrogate mother and this has posed great challenge as the biological parents have to undertake the legal adoption process in order to be registered as parents.
- viii. The Committee finally noted that Senate was in the process of considering the Reproductive Health Bill, 2019 (Senate Bill No.23 of 2019) whose objects is to provide for the right to reproductive health care; to set the standards of reproductive health; provide for the right to make decisions regarding reproductive health; and for connected purposes. This Bill seeks to provide the legal framework for enforcement and implementation of reproductive health and assisted reproduction is one of the areas it touches. However, the National Assembly Bill specifically deals with Assisted Reproduction and does not delve into the entire realm of reproductive health rights. In this regard some memoranda received were misplaced to the extent they proposed amendments dealing with aspects of reproductive health which would have expanded the scope of the Bill if adopted by the Committee.

Committee Recommendations

Upon considering The Assisted Reproductive Technology Bill, 2019, National Assembly Bill No.34 of 2019 and the submissions from the stakeholders, the Committee proposed several amendments as captured in the report.

And there being no other business, the meeting adjourned at 12.02 PM.

Sign.....*h*.....

Date.....*7th October, 2020*.....

(Chairperson)

MINUTES OF THE SIXTEENTH SITTING (16TH) OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD IN THE MINI CHAMBER, 1ST FLOOR, PARLIAMENT BUILDINGS ON THURSDAY 12TH MARCH, 2020 AT 4.30 PM

PRESENT

1. **The Hon. Sabina Chege, MP** - Chairperson
2. **The Hon. Dr Swarup Ranjan Mishra, MP** - Vice-Chairperson
3. The Hon. Dr Eseli Simiyu, MP
4. The Hon. Dr James Nyikal, MP
5. The Hon. Dr James Kipkosgei Murgor, MP
6. The Hon. Muriuki Njagagua, MP
7. The Hon. Dr Mohamed Dahir Duale, MP
8. The Hon. Stephen Mule, MP
9. The Hon. Prof Mohamud Sheikh Mohamed, MP
10. The Hon. Martin Peters Owino, MP
11. The Hon. Gladwell Jesire Cheruiyot, MP
12. The Hon. Esther M. Passaris, MP
13. The Hon. Kipsengeret Koros, MP
14. The Hon. Mercy Wanjiku Gakuya, MP
15. The Hon. Tongoyo Gabriel Koshal, MP
16. The Hon. Zachary Kwenya Thuku, MP

ABSENT WITH APOLOGY

1. The Hon. Alfred Agoi Masadia, MP
2. The Hon. David Ochieng', MP
3. The Hon. Patrick Munene Ntwiga, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Muyodi Emmanuel - Clerk Assistant III
2. Lynette Otieno - Legal Counsel I

STAKEHOLDERS

1. Ministry of Health
2. Federation of Women Kenya-Lawyers (FIDA-KENYA);
3. Family Health Option-Kenya (FHOK);
4. The Kenya Medical Association;
5. The Centre For Citizens Empowerment Programme;
6. Path;
7. Intersex Persons Society Of Kenya;
8. Kenya Obstetricians and Gynecologists Society (KOGS); and
9. Christine Kipsang (Advocate)

MIN. NO.NA/DC.H/2020/65

PRELIMINARIES

The Chairperson called the meeting to order at 4.35 PM and said a prayer. After that, the meeting proceeded to business.

MIN. NO. NA/DC.H/2020/66:

ADOPTION OF AGENDA

The Committee adopted the agenda as hereunder after being proposed by Hon. Esther M. Passaris, MP and seconded by Hon. Stephen Mule, MP.

AGENDA

1. Prayers
2. Adoption of the Agenda
3. **Substantive Agenda**

Public hearing on the Assisted Reproductive Technology Bill, 2019

MIN. NO.NA/DC.H/2020/67:

PUBLIC HEARING ON THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL, 2019

The Committee received memoranda from the following institutions:

FEDERATION OF WOMEN KENYA-LAWYERS (FIDA-KENYA); FAMILY HEALTH OPTION-KENYA (FHOK); THE KENYA MEDICAL ASSOCIATION, THE CENTRE FOR CITIZENS EMPOWERMENT PROGRAMME; PATH, INTERSEX PERSONS SOCIETY OF KENYA

The Federation of Women Kenya-Lawyers (FIDA-Kenya); Family Health Option-Kenya (FHOK); the Kenya Medical Association, the Centre for Citizens Empowerment Programme; PATH, Intersex Persons Society of Kenya submitted a joint memorandum on the Assisted Reproductive Technology Bill- 2019.

In their memorandum, they proposed as follows:

- i. The prohibition of commercial surrogacy,
- ii. a compensation mechanism to ensure the service is not exploitative in nature;
- iii. As protectors of the children's rights, they proposed the prohibition of sex selection and abandonment of children born of assisted reproduction;
- iv. Further, being a contractual service, they made proposals such as conditions for assisted reproduction, the validity of agreements and obligations of parties so as to ensure that the service is adequately regulated;
- v. Stringent penalties are applied to offences associated with assisted reproduction to ensure it is effective deterrent;
- vi. Amendment of section 11 of the Births & Deaths Registration Act, to align with the ART Act, to allow for registration of children born of assisted reproduction by the commissioning parent(s).

CHRISTINE KIPSANG(ADVOCATE)

The advocate had received many questions from her clients and members of the public and had done the research to assist in drafting the law. Some of the questions are as follows;

1. What is the responsibility of the IVF clinic?
2. What is the Responsibility of hospital over maternity services?
3. What kind of education does the members of the Public, Police, Medical staff, lawyers and children department need?

4. Who is a commissioning parent?
 5. What is the role of the commissioning parents?
 6. What is the role of the surrogates?
 7. What are the criteria for defining who a surrogate is?
 8. What kind of compensation and protection are the surrogates offered?
 9. What are the grounds that commissioning parents use to abandon a child or children?
 10. What kind of consents are required in the surrogacy process?
 11. Do we need adoption of the child by the parent who has no genetic link to the child?
 12. Do we need insurance companies to offer insurance for the medical needs of the surrogates and the unborn child or children?
 13. Whose name is required in the birth certificate of the child?
 14. What kind of regulations do we need regarding medical practitioners in IVF centres?
 15. What kind of licenses do we need?
 16. What are the conditions for international surrogacy?
 17. What are the conditions for local surrogacy?
 18. Is surrogacy the answer to no abortions in Kenya?
 19. Upon the birth of the child do the parties to contract need DNA testing.
 20. Do the commissioning parents and surrogate need to apply for a determination of a Parental Custody order?
 21. Do we the children department to conduct any social enquiry report?
- (i) She distinguished between the different types of surrogacy, that is:
- a) Gestational surrogacy denotes the process by which the egg is extracted from the intended mother of the child and then inserted into the surrogate's uterus. The baby is biologically related to both intended parents, and the surrogate simply acts as a "carrier." the child in this instance is not biologically related to the surrogate mother, who is often referred to as a gestational carrier, the embryo is created via in vitro fertilization (IVF), using the eggs and sperm of the intended parents or donors, and is then transferred to the surrogate.
 - b) Traditional Surrogacy entails the process of artificial insemination whereby the ovule of the surrogate mother is fertilized with sperm from the intended father or donor. The surrogate mother carries the baby during the gestational period and delivers the baby. After delivery, the surrogate mother being the baby's biological mother is required to relinquish her parental rights and in so doing her responsibilities as well. Traditional surrogacy is also called *partial surrogacy or genetic surrogacy* due to the surrogate's biological link to the baby.
- (ii) She outlined the disadvantages of using surrogacy as follows-

1. A traditional surrogate is the biological mother of her child, meaning she has parental rights and the power to change her mind and keep the baby. The intended parents would then need to go to court to gain custody of the child.
2. Complicated and extensive legal requirements intended parents in most cases will need to complete a stepparent adoption to both be recognized as the child's legal parents.
3. Many surrogacy professionals do not offer traditional surrogacy programs, and many surrogates are more comfortable with gestational surrogacy than traditional surrogacy.
4. Intended mothers are never biologically related to their children in traditional surrogacy.
5. Ultimately this type of surrogacy is banned in many countries.

(iii) Commissioning Parents/Intending Parents. In surrogacy, these are the select couple or individual who contracts with surrogate mother with the hope of having a child through surrogacy. In cases of traditional surrogacy, the couple/individuals opt to have a child part of their genetic makeup. The steady raise in surrogacy arrangements across the globe have necessitated international cooperation between states when affording surrogacy opportunities and enforcing the contracts entered by the parents and the agencies. The apparent problems with surrogacy that most commissioning parents encounter include but are not restricted to:

- a) Uncertainty, the success rates of both IVF and IUI mean that parents do not have a 100% guarantee of having children through surrogacy.
- b) Breach of contracts, parties to a contract may fail to honour their obligations as per the provisions of the contract this may lead to unnecessary litigation. This was famously brought to the fore in the Baby M case in the USA.
- c) Undesired effects, the child may be born with complications or genetic disorders. In such cases the intending parents may be forced to incur perpetual and unforeseen costs of bringing up the child one example is the case of Gammy, a baby with Down's syndrome who was born to a Thai surrogate mother and allegedly left behind by the intended Australian parents.

(iv) Surrogates to the commissioning parents are heavenly sent angels to help them in times of need. For sure they are taken to be the remedy to the unforeseen, yet unintended inabilities faced by the commissioning parent. It can be gathered from the myriad of cases that there usually exists some form of distress on the part of the surrogate, mainly when the time for giving up the child arises since most surrogacy arrangements are carried out for purposes of subsistence. Surrogates do inadvertently push themselves to the limit thereof. Surrogate moms face increased pregnancy risks that come with carrying multiple embryos, which are often used to ensure success. Multiple births come with an increased risk of Caesarian sections and more extended hospital stays, according to the British Journal of Medicine, as well as gestational diabetes, fetal growth restriction, pre-eclampsia, and premature birth.

Commercial surrogacy is prohibited in many jurisdictions. However, cognizance ought to be taken of the fact that it does take place, nonetheless. Surrogates usually do get paid based on loss of income for the period that they on pregnancy. Since many surrogates belong to the poorest strata of the society, it has been argued that surrogacy

may exploit women from a more economically disadvantaged background such that women may enter into a surrogacy arrangement because of financial hardship without being fully aware of the potential risks

(v) She highlighted the procedure for setting an IVF Centre as follows-

An IVF centre, just like any other medical institution, needs to comply with specific measures for operationalisation. In Kenya, registration for a medical institution is done by the Kenya Medical Practitioners and Dentists Board. The board is mandated to register all medical institutions be it hospitals, nursing home, health centre, dispensary, laboratory amongst others.

There are a set of requirements that needs to be complied with for an institution to be registered in Kenya, and these are;

- 1.Provision of the company/business registration certificate.
- 2.Filling of forms obtained from the board. This form ought to be filled with the assistance of the medical officer or the county (provincial) medical officer.
- 3.There should be the submission of the separate inspection report with relevant details which ought to be signed by the inspection team.
- 4.The administration of the institution ought to provide all certified copies of professional qualifications of all medical personnel working there e.g. private practice licence for doctors.
- 5.Provision of architectural plans that need be signed by the relevant authorities.
- 6.There must be transparent drainage systems and accessibility to the facility.
- 7.The facility proprietor/administration/director needs to ensure that
 - i. The facility is kept clean
 - ii. Institution licence is up to date
 - iii. Health professionals working there are registered/licenced accordingly

(vi) She highlighted on donors as follows. A Sperm donor is a person who provides his sperm for treatment of infertility of other couples. Ordinarily, sperm donation is usually considered when the male has no spermatozoa, when the male is a carrier of a known genetic disorder or when a single woman wishes to become pregnant. Donated sperm is received from a healthy sperm donor. A sperm donor must be screened for infections and sexually transmitted diseases including HIV, hepatitis B, C and others. The sample will then be subjected to further examination to ensure it is of good quality.

There are specific indispensable requirements that must be met for one to become an egg donor and these are;

- a) women between the ages of 21 to 32 (age range varies from practice to practice)
- b) height and weight within the normal range
- c) no smoking or drug use
- d) previous delivery preferred but not essential

- e) filling out a detailed medical history form which covers your general health, such as surgeries, gynaecological and family history
- f) comprehensive gynaecological exam
- g) screening tests related to mental health, medical and genetic history, and sexually transmitted infections

In conclusion, she stated that surrogacy is an excellent way to enable every person with challenges in getting his own children to behave children of their own through the help of various stakeholders and thus a good law which will regulate how surrogacy will be done in Kenya and with other countries of the world.

KENYA OBSTETRICIANS AND GYNECOLOGISTS SOCIETY (KOGS)

The Kenya Obstetricians and Gynecologists Society is a Society established under the Societies Act, Cap 108 Laws of Kenya. KOGS envisions a Kenyan society and a world in which all women, young people and men have access to the highest quality, compassionate, and equitable sexual and reproductive health care.

Its mission is to protect and improve sexual, reproductive health and rights through quality services, best practices, advocacy, leadership, scholarship, professionalism, training, research and evidence-informed public health action in Kenya, regionally and globally by promoting the health and the well-being of women and standards of practice of obstetrics and gynaecology.

KOGS had identified the following areas for consideration by the National Assembly Parliamentary Committee on Health in the passing of the ART Bill, 2019.

- i) Allocation of responsibilities for the two levels of government in the advancement of assisted reproductive technology; and
- ii) Identification and clear definition of the services contemplated in the provision of the assisted reproductive technology.

The following proposals were raised in regards to the above areas-

i) Allocation of responsibilities for the two levels of government in the advancement of assisted reproductive technology

Assisted Reproductive Technology services are offered by highly specialized medical practitioners in the area of obstetrics and gynaecology. With health being a devolved function, many health practitioners are based in the counties and under the county government. The National Government, on the other hand, is supposed to develop a policy for application in the health

For the National Government, KOGS proposes that-

- a) They set standards for training of the assisted reproductive technology experts as well as the standards for the facilities where the services are offered. This can be done through the Authority established under the Bill.
- b) They put in place the necessary mechanisms and infrastructure as well as provide adequate resources necessary to ensure access to the highest attainable standard and quality of cost-effective assisted reproductive technology services by every person. This can be done

by procuring the necessary equipment and subsidizing the cost of medicine required in the provision of Assisted Reproductive Technology services.

c) They put in place the necessary regulations to ensure assisted reproduction health services are covered by every health insurance provider, including the National Health Insurance Fund. NHIF and other health insurance providers should cover Assisted Reproductive Technology services since this is not a choice but an essential health service.

For the County Governments, they proposed that-

a) They allocate in the county budget, the funds necessary for the provision of quality, cost-effective assisted reproductive technology services in the county health systems. These finances should be used to hire adequate personnel, procure sufficient equipment, medicine and medical supplies required for assisted reproductive health care services, and carry out sensitization programmes related to assisted reproductive technology.

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

It is important that the two levels of government to collaborate in the provision of assisted reproductive health care services.

ii) Identification and clear definition of the services contemplated in the provision of the assisted reproductive technology

The Bill, as currently is, does not clearly set out the services offered under assisted reproductive health care. This leaves the issue open for speculation by the public on what the services are. We, therefore, propose that the services and the target group be clearly set out as follows-

- i). diagnosis and screening
- ii). endoscopic surgery
- iii). intra-uterine insemination
- iv). in-vitro fertilization
- v). intracytoplasmic sperm injection
- vi). cryo-preservation
- vii). pre-implantation genetic screening
- viii). pre-implantation genetic diagnosis
- ix). onco-fertility
- x). gamete and embryo donation
- xi). surrogacy
- xii). Treatment of infertile and sub-fertile clients

The clear listing and setting out of the services makes it possible to define the services and makes it clear what each service entails and its definition.

Further, there should be a definition of the relevant experts involved in the provision of the services required for assisted reproductive technology.

It is important to note that-

- a) The Bill tackles a very highly specialized area in medicine.
- b) The area is a fairly new area in terms of the understanding by the members of the public.

In light of above there is a need for the relevant specialists to be able to develop standards and the industry.

Ministry of Health

Currently, about 2% of couples in Kenya suffer from infertility. Hence interested parties have been demanding for these services to be accessible (geographically and financially) to a wider group of Kenyans than it currently does citing right to access and suffering from discrimination from the general public for being unable to sire children. As such, it is important that public and private health sector should increase access to ART services. Two major recommendations are advanced, however, the Bill raises some over-arching issues that require to be addressed for it to be consistent with the existing frameworks comprehensively.

These are outlined hereinbelow:

- (i) **Expanding access to ART services:** Currently, only one public facility, Kenyatta National Hospital, offers limited access to intrauterine insemination due to constrained capacity and infrastructure. There are a couple of private providers offering the services mostly in Nairobi and Mombasa. The cost is prohibitive, and insurance does not cover the service, and the success rate is low at about 30%. Regulatory provisions that will then define the practice should be outlined bill. Judiciary rulings and various laws related to reproductive health have directed for the development of the necessary ART frameworks.
 - (a) The Kenya Constitution, 2010. Article 43 espouses provision of the highest standards of health care, including Reproductive Health Care. Assisted reproduction is such care and therefore needs to be defined no how it would be provided.
 - (b) Kenya Health Policy 2014-2030 provides for the provision of the “highest standards of health in an equitable way, people centeredness and participatory approach with an emphasis on the principle of protection of the rights and fundamental freedoms of specific groups of persons including minorities and marginalized.”
 - (c) The Draft Reproductive Health Policy 2019-2030 makes a provision for progressively expanding access by establishing regional ART centres developed to increase access and promote equity.

- (ii) **Establishment of the ART authority: (Part II, 4 (1)).**

The Bill provides for the establishment of a regulatory body for ART. Though the Ministry recognizes the need to provide this oversight role, it will not be a prudent use of government resources to regulate a sub-specialist area of reproductive health in which there are less than a dozen specialists in Kenya. Further the Ministry of Health is also cognizant of the Government initiative to merge semi-autonomous agencies as part of the recommendations of the Presidential Taskforce on Parastatal Reforms in 2013. The role of over sighting ART can be done by a subcommittee of the Kenya Medical Practitioners and Dental Council.

(iii) Cross border ART services: One of the biggest challenges is regulation cross-border ART services provision: Non-Kenyans getting a Kenyan surrogate mother; Kenyans getting ART and surrogacy services out of Kenya, rights of the carrier mother regarding payments, insurance cover, registration of baby etc. are issues that are largely in a lacuna at the current state of laws. This is closely related to the risk of abuse and commercialization of surrogacy and how to protect the most vulnerable.

(iv) Alignment of all related sector laws: The bill should clearly identify and spell out the relevant laws that shall need an amendment for the law to be operationalized. Some of the identified Acts include but not limited to:

- (a) Registration of persons - children born of ART including Registration of foreign nationals born in Kenya
- (b) Mitigating risks on Human trafficking
- (c) Children Act

The Ministry finally commended the following-

- (vii) The ART Bill is best sponsored by the Government. A time extension to for a technical expert review of the Bill for in-depth submissions and inclusion of other sectors.
- (viii) The country and service demand is not at the level where it is necessary to establish a semi-autonomous agency to regulate the ART services only. As such, it is not right to include the establishment of authority in the Bill this time.
- (ix) The Country has structures that can address the current felt need. For in-stance regulation can be done by a specialized committee at the Medical Practitioners and Dentist Council, which is a regulatory body mandated to regulate health specialists and facilities. Further policy formulation, service delivery guidelines and health systems strengthening strategies can be crafted by the Ministry jointly with its stakeholders.

In conclusion, there is a need to provide oversight on all reproductive health programs, policy formulation, regulation, training, services, including ART. The Ministry has structures that can be strengthened to carry out the required regulation without establishing a new body. Further, the Bill contains legislative proposals that will guide ART regulation; however additional amendments will be required of other related laws.

MIN. NO.NA/DC.H/2020/68:

ADJOURNMENT

There being no other business, the meeting adjourned at 6.08 PM.

Sign.....

Date..... 17th April, 2020

(Chairperson)

