

REPUBLIC OF KENYATHIRTEENTH PARLIAMENT – (THIRD SESSION)THE NATIONAL ASSEMBLYORDERS OF THE DAYTHURSDAY, DECEMBER 5, 2024 AT 2.30 P.M.ORDER OF BUSINESSPRAYERS

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

8*. PROCEDURAL MOTION – EXTENSION OF PERIOD FOR CONSIDERATION OF A SPECIAL MOTION ON APPROVAL OF NOMINEES FOR APPOINTMENT TO THE SALARIES AND REMUNERATION COMMISSION

(The Leader of the Majority Party)

THAT, pursuant to the provisions of section 13 of the Public Appointments (Parliamentary Approval) Act, 2011 relating to *extension of period of consideration of nominees for appointment to a public office*, this House **resolves** to extend the period for consideration of a Special Motion relating to the approval of nominees submitted by His Excellency the President for appointment as **the Chairperson and Members of the Salaries and Remuneration Commission** by a period of **fourteen (14) days from 11th December 2024**.

9*. MOTION- CONSIDERATION OF MEDIATED VERSION OF THE CONFLICT OF INTEREST BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2023)

(The Chairperson, Mediation Committee on the Conflict of Interest Bill, 2023)

THAT, pursuant to the provisions of the Article 113(2) of the Constitution and Standing Order 150(3), this House **adopts** the Report of the Mediation Committee on the Conflict of Interest Bill (National Assembly Bill No. 12 of 2023), *laid on the Table of the House on Wednesday, 4th December 2024*, and **approves** the Mediated version of the Conflict of Interest Bill (National Assembly Bill No. 12 of 2023).

(The Mediated version of the Bill is published in the Notices)

(If not concluded on Thursday, December 5, 2024 – Morning Sitting)

10*. COMMITTEE OF THE WHOLE HOUSE

- (i) Consideration of the **President's Reservations** to the County Allocation of Revenue Bill (Senate Bill No. 25 of 2024)
(The Leader of the Majority Party)

[Pursuant to Articles 115(2)(a) & 3 and 122 of the Constitution, passing the Bill in light of the President's reservation requires simple majority]

(If not concluded on Thursday, December 5, 2024 - Morning Sitting)

- (ii) The Persons with Disabilities Bill (Senate Bill No. 7 of 2023)
(The Leader of the Majority Party – *Co-Sponsor*)

(If not concluded on Thursday, December 5, 2024 - Morning Sitting)

- (iii) The Startup Bill (Senate Bill No. 14 of 2022)
(The Hon. Irene Mayaka, M.P. – *Co-Sponsor*)

(If not concluded on Thursday, December 5, 2024 - Morning Sitting)

- (iv) The Assisted Reproductive Technology Bill (National Assembly Bill No. 61 of 2022)
(The Hon. Millie Odhiambo Mabona, M.P.)

(If not concluded on Thursday, December 5, 2024 - Morning Sitting)

11*. THE EQUALISATION FUND (ADMINISTRATION) BILL (SENATE BILL NO. 14 OF 2023)

(The Chairperson, Departmental Committee on Finance and National Planning)

Second Reading

(If not concluded on Thursday, December 5, 2024 - Morning Sitting)

12*. MOTION – THIRD REPORT ON CONSIDERATION OF THE AUDITED ACCOUNTS OF SPECIFIED STATE CORPORATIONS

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

THAT, this House **adopts** the Third Report of the Public Investments Committee on Social Services, Administration and Agriculture on its consideration of the Report of the Auditor-General on the Financial Statements of the following State Corporations, *laid on the Table of the House on Tuesday, 30th July 2024*—

- (i) Kenyatta National Hospital, FY 2018/2019 and 2019/2020;
- (ii) Kenya Medical Supplies Authority, FY 2017/2018 and 2018/2019;
- (iii) Kenya Veterinary Board, FY 2018/2019, 2019/2022 and 2020/2021;
- (iv) National Authority for the Campaign against Alcohol and Drug Abuse, FY 2017/2018, 2018/2019, 2019/2020 and 2020/2021; and

...../12*(Cont'd)

- (v) Kenya Broadcasting Corporation, FY 2000/2001, 2001/2002, 2002/2003, 2003/2004, 2004/2005, 2005/2006, 2006/2007, 2007/2008, 2008/2009, 2009/2010, 2010/2011, 2011/2012 and 2012/2013.

(If not concluded on Thursday, December 5, 2024 – Morning Sitting)

13*. THE POLITICAL PARTIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 35 OF 2022)

(The Vice Chairperson, Procedure and House Rules Committee)

Second Reading

(If not concluded on Thursday, December 5, 2024 – Morning Sitting)

14*. THE INSURANCE PROFESSIONALS BILL (NATIONAL ASSEMBLY BILL NO. 13 OF 2024)

(The Chairperson, Departmental Committee on Finance and National Planning)

Second Reading

15*. THE INSTITUTE OF SOCIAL WORK PROFESSIONALS BILL (NATIONAL ASSEMBLY BILL NO. 17 OF 2023)

(The Hon. Joshua Kimilu)

Second Reading

16*. THE UNIVERSITIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2023)

(The Chairperson, Public Investments Committee on Governance and Education)

Second Reading

(If not concluded on Thursday, December 5, 2024 – Morning Sitting)

17*. MOTION – REPORT OF THE EXTRAORDINARY SESSION OF THE SIXTH PAN-AFRICAN PARLIAMENT (PAP)

(Member of the Pan-African Parliament)

THAT, this House **notes** the Report of the Kenya Delegation to the Extraordinary Session of the Sixth Parliament of the Pan-African Parliament, held in Midrand, South Africa, from 20th to 27th March 2024, *laid on the Table of the House on Thursday, 2nd May 2024.*

(If not concluded on Thursday, December 5, 2024 – Morning Sitting)

18*. MOTION – REPORT ON THE PERFORMANCE AUDIT REPORT ON THE PROVISION OF SERVICES TO PERSONS WITH DISABILITIES BY THE NATIONAL COUNCIL FOR PERSONS WITH DISABILITIES

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

THAT, this House **adopts** the Report of the Public Investments Committee on Social Services, Administration and Agriculture on its consideration of the Performance Audit Report by the Auditor-General on the Provision of Services to Persons with Disabilities by the National Council for Persons with Disabilities, *laid on the Table of the House on Tuesday, 30th July 2024.*

Denotes Orders of the Day

NOTICES

I. STATEMENTS ON THE LEGISLATIVE PROPOSALS TO AMEND THE CONSTITUTION UNDER STANDING ORDER 114 (7A)

(The Hon. Samuel Chepkonga, M.P. and the Hon. (Dr.) Otiende Amollo, M.P.)

PURSUANT to the provisions of Standing Order 114(7A), it is notified that, today, Thursday, 5th December 2024, the Speaker will accord an opportunity to Members to make General Comments on the Legislative Proposal to amend the Constitution by the Co-Chairpersons of the National Assembly Legislative Caucus (Hon. Samuel Chepkonga and Hon. (Dr.) Otiende Amollo) to intending to amend the Constitution to entrench the following Funds in the Constitution—

- a) The **entrenchment of the National Government Constituencies Decentralized Fund** in the Constitution will ensure that the critical role the Fund currently plays in promoting the participation of the people in the identification and implementation of priority national government programmes is safeguarded, as well as ensuring reasonable access to such services in all parts of the Republic of Kenya, as envisaged in Article 6(3) of the Constitution.
- b) The **establishment of the Senate Oversight Fund** in the Constitution will ensure that the Senate is adequately empowered and resourced to perform its oversight functions as stipulated in Article 96 of the Constitution.
- c) The **establishment of the National Government Affirmative Action Fund** seeks to ensure that affirmative action groups including women, youth, persons with disabilities, vulnerable children and elderly persons have access to minimum financial facilities required for the promotion of enterprise development and provision of social development services at the constituency and county levels.

NOTE: The above Legislative Proposal is informed by—

- 1) *Resolution of the House of 16th August 2023 on National Dialogue Committee (NADCO);*
- 2) *Legislative Proposal by the Hon. Robert Gichimu, M.P. and Hon. Stephen Mule, M.P. to amend the Constitution to entrench the National Government Constituencies Development Fund, the National Government Affirmative Action Fund, the Senate Oversight Fund, and the Economic Stimulus and Empowerment Fund in the Constitution; and*
- 3) *President's Memorandum to Parliament on entrenchment of Decentralized Funds submitted in December 2022.*

LEGISLATIVE PROPOSAL TO AMEND THE CONSTITUTION

(The Hon. Samuel Chepkonga and the Hon. (Dr.) Otiende Amollo)

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2024

A Bill for

AN ACT of Parliament to amend the Constitution of Kenya

ENACTED by the Parliament of Kenya as follows—

Short title.

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2024.

Insertion of new Articles in the Constitution.

2. The Constitution is amended by inserting the following new Articles immediately after Article 204—

National Government Constituencies Decentralized Fund

204A. (1) There is established the National Government Constituencies Decentralized Fund which shall be a national government fund consisting of monies appropriated from the national government’s share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218 of the Constitution.

(2) All monies allocated under this Article shall be considered as funds allocated to constituencies to be administered in accordance with the provisions of an Act of Parliament.

(3) Parliament shall enact legislation to make further provision for the operation of this Article.

Senate Oversight Fund

204B. (1) There is established the Senate Oversight Fund which shall be a national government fund consisting of monies appropriated from the national government’s share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218 of the Constitution.

(2) All monies allocated under this Article shall be considered as funds allocated to the Senate to be administered in accordance with the provisions of an Act of Parliament.

(3) Parliament shall enact legislation to make further provision for the operation of this Article.

National Government Affirmative Action Fund

204C. (1) There is established the National Government Affirmative Action Fund whose object and purpose shall be to complement the national government's programmes on affirmative action.

(2) The Fund shall be a national government Fund consisting of monies appropriated from the national government's share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218 of the Constitution.

(3) Parliament shall enact legislation to make further provision for the operation of this Article.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The principal object of this Bill is to amend the Constitution to entrench the following Funds in the Constitution—

- (a) the National Government Constituencies Decentralized Fund;
- (b) the Senate Oversight Fund; and
- (c) the National Government Affirmative Action Fund;

The entrenchment of the National Government Constituencies Decentralized Fund in the Constitution will ensure that the critical role the Fund currently plays in promoting the participation of the people in the identification and implementation of priority national government programmes is safeguarded, as well as ensuring reasonable access to such services in all parts of the Republic of Kenya, as envisaged in Article 6(3) of the Constitution.

The establishment of the Senate Oversight Fund in the Constitution will ensure that the Senate is adequately empowered and resourced to perform its oversight functions as stipulated in Article 96 of the Constitution.

The establishment of the National Government Affirmative Action Fund seeks to ensure that affirmative action groups including women, youth, persons with disabilities, vulnerable children and elderly persons have access to minimum financial facilities required for the promotion of enterprise development and provision of social development services at the constituency and county levels.

Clause 1 of the Bill provides for the short title of the Bill.

Clause 2 of the Bill proposes to amend the Constitution by introducing-

- (a) a new Article 204A which proposes the establishment of the National Government Constituencies Decentralized Fund;
- (b) a new Article 204B which proposes the establishment of the Senate Oversight Fund;
- (c) a new Article 204C which proposes the establishment of the National Government Affirmative Action Fund;

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate legislative powers nor does it limit any fundamental rights and freedoms.

Statement of how the Bill concerns county governments

A Bill to amend the Constitution shall be considered by both Houses of Parliament as provided for under Articles 255, 256 and 257 of the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may occasion additional expenditure of public funds.

II. THE PRESIDENT'S RESERVATIONS TO THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILL NO. 25 OF 2024)

- 1) That the Bill be amended by deleting the First Schedule and replacing it with the following new Schedule: -

FIRST SCHEDULE

((s. 4(1))

Revised Allocation for Each County Governments' Equitable Share of Revenue Raised Nationally in the Financial Year 2024/2025

S / No.	County	2023/2024				Total equitable share	2024/2025				Total equitable share****
		0.5 (Allocation ratio)		(Equitable share-0.5 Allocation ratio *(Formula)			0.5 (Allocation ratio*)		(Equitable share** -0.5 Allocation ratio) *(Formula***)		
		Allocation ratio	Equitable share	Allocation ratio	Equitable share		Allocation ratio	Equitable share	Allocation ratio	Equitable share	
		Column A	Column B	Column C	Column D		Column E = B + D	Column F	Column G	Column H	
1.	Baringo	1.61	2,547,825,000	1.804755	4,099,945,283	6,647,770,283	1.61	2,547,825,000	1.805755	4,002,044,213	6,549,869,213
2.	Bomet	1.74	2,753,550,000	1.859527	4,224,373,365	6,977,923,365	1.74	2,753,550,000	1.859527	4,123,501,123	6,877,051,123
3.	Bungoma	2.81	4,446,825,000	2.933936	6,665,157,910	11,111,982,910	2.81	4,446,825,000	2.933936	6,506,003,080	10,952,828,080
4.	Busia	1.9	3,006,750,000	1.967137	4,468,835,972	7,475,585,972	1.9	3,006,750,000	1.967137	4,362,126,298	7,368,876,298
5.	Elgeyo/ Marakwet	1.22	1,930,650,000	1.263699	2,870,803,380	4,801,453,380	1.22	1,930,650,000	1.263699	2,802,252,533	4,732,902,533
6.	Embu	1.36	2,152,200,000	1.404035	3,189,611,152	5,341,811,152	1.36	2,152,200,000	1.404035	3,113,447,613	5,265,647,613
7.	Garissa	2.22	3,513,150,000	2.084563	4,735,598,039	8,248,748,039	2.22	3,513,150,000	2.084563	4,622,518,453	8,135,668,453
8.	Homa Bay	2.13	3,370,725,000	2.094275	4,757,661,238	8,128,386,238	2.13	3,370,725,000	2.094275	4,644,054,813	8,014,779,813
9.	Isiolo	1.34	2,120,550,000	1.223064	2,778,490,974	4,899,040,974	1.34	2,120,550,000	1.223064	2,712,144,420	4,832,694,420
10.	Kajiado	2.03	3,212,475,000	2.239572	5,087,739,143	8,300,214,143	2.03	3,212,475,000	2.239572	4,966,250,910	8,178,725,910
11.	Kakamega	3.29	5,206,425,000	3.392202	7,706,221,946	12,912,646,946	3.29	5,206,425,000	3.392202	7,522,207,935	12,728,632,935
12.	Kericho	1.7	2,690,250,000	1.76643	4,012,880,610	6,703,130,610	1.7	2,690,250,000	1.76643	3,917,058,525	6,607,308,525
13.	Kiambu	2.98	4,715,850,000	3.306576	7,511,701,407	12,227,551,407	2.98	4,715,850,000	3.306576	7,332,332,280	12,048,182,280
14.	Kilifi	3.3	5,222,250,000	3.031567	6,886,950,761	12,109,200,761	3.3	5,222,250,000	3.031567	6,722,499,823	11,944,749,823
15.	Kirinyaga	1.34	2,120,550,000	1.452481	3,299,668,168	5,420,218,168	1.34	2,120,550,000	1.452481	3,220,876,618	5,341,426,618
16.	Kisii	2.46	3,892,950,000	2.361901	5,365,639,582	9,258,589,582	2.46	3,892,950,000	2.361901	5,237,515,468	9,130,465,468
17.	Kisumu	2.16	3,418,200,000	2.176122	4,943,596,848	8,361,796,848	2.16	3,418,200,000	2.176122	4,825,550,535	8,243,750,535
18.	Kitui	2.79	4,415,175,000	2.823516	6,414,311,696	10,829,486,696	2.79	4,415,175,000	2.823516	6,261,146,730	10,676,321,730

S / No.	County	2023/2024				Total equitable share	2024/2025				
		0.5 (Allocation ratio)		(Equitable share-0.5 Allocation ratio *(Formula))			0.5 (Allocation ratio*)		(Equitable share** -0.5 Allocation ratio) *(Formula***)		Total equitable share****
		Allocat ion ratio	Equitable share	Allocati on ratio	Equitable share		Allocat ion ratio	Equitable share	Allocation ratio	Equitable share	
		Column A	Column B	Column C	Column D		Column E = B + D	Column F	Column G	Column H	Column I
19.	Kwale	2.46	3,892,950,000	2.064999	4,691,153,597	8,584,103,597	2.46	3,892,950,000	2.064999	4,759,135,283	8,742,085,283
20.	Laikipia	1.32	2,088,900,000	1.439134	3,269,347,172	5,358,247,172	1.32	2,088,900,000	1.439134	3,191,279,645	5,280,179,645
21.	Lamu	0.82	1,297,650,000	0.853837	1,939,700,946	3,237,350,946	0.82	1,297,650,000	0.853837	1,893,548	3,191,033,548
22.	Machakos	2.45	3,877,125,000	2.495952	5,670,169,429	9,547,294,429	2.45	3,877,125,000	2.495952	5,534,773,560	9,411,898,560
23.	Makueni	2.34	3,703,050,000	2.091964	4,752,411,232	8,455,461,232	2.34	3,703,050,000	2.091964	4,638,930,170	8,341,980,170
24.	Mandera	3.23	5,111,475,000	2.870795	6,521,717,584	11,633,192,584	3.23	5,111,475,000	2.870795	6,365,987,913	11,477,462,913
25.	Marsabit	2.14	3,386,550,000	1.837286	4,173,847,458	7,560,397,458	2.14	3,386,550,000	1.837286	4,074,181,705	7,460,731,705
26.	Meru	2.54	4,019,550,000	2.585269	5,873,074,983	9,892,624,983	2.54	4,019,550,000	2.585269	5,732,834,008	9,752,384,008
27.	Migori	2.14	3,386,550,000	2.181096	4,954,896,513	8,341,446,513	2.14	3,386,550,000	2.181096	4,836,580,380	8,223,130,380
28.	Mombasa	2.23	3,528,975,000	1.907145	4,332,549,375	7,861,524,375	2.23	3,528,975,000	1.907145	4,229,094,038	7,758,069,038
29.	Murang'a	1.99	3,149,175,000	1.903651	4,324,611,893	7,473,786,893	1.99	3,149,175,000	1.903651	4,221,346,093	7,370,521,093
30.	Nairobi	5.03	7,959,975,000	5.331619	12,112,085,113	20,072,060,113	5.03	7,959,975,000	5.331619	11,822,865,133	19,782,840,133
31.	Nakuru	3.31	5,238,075,000	3.677942	8,355,350,700	13,593,425,700	3.31	5,238,075,000	3.677942	8,155,836,385	13,393,911,385
32.	Nandi	1.69	2,764,425,000	2.038462	4,630,868,268	7,305,293,268	1.69	2,764,425,000	2.038462	4,520,289,485	7,194,714,485
33.	Narok	2.54	4,019,550,000	2.278744	5,176,727,984	9,196,277,984	2.54	4,019,550,000	2.278744	5,053,114,820	9,072,664,820
34.	Nyamira	1.52	2,405,400,000	1.289228	2,928,798,788	5,334,198,788	1.52	2,405,400,000	1.289228	2,858,863,090	5,264,263,090
35.	Nyandarua	1.54	2,437,050,000	1.526987	3,468,926,889	5,905,976,889	1.54	2,437,050,000	1.526987	3,386,093,673	5,823,143,673
36.	Nyeri	1.71	2,706,075,000	1.663591	3,779,256,505	6,485,331,505	1.71	2,706,075,000	1.663591	3,689,03,043	6,395,088,043
37.	Samburu	1.46	2,310,450,000	1.445524	3,283,863,630	5,594,313,630	1.46	2,310,450,000	1.445524	3,205,449,470	5,515,899,470
38.	Siaya	1.83	2,895,975,000	1.922329	4,367,043,569	7,263,018,569	1.83	2,895,975,000	1.922329	4,262,764,558	7,158,739,558
39.	Taita/Taveta	1.34	2,120,550,000	1.285301	2,919,877,641	5,040,427,641	1.34	2,120,550,000	1.285301	2,850,154,968	4,970,704,968
40.	Tana River	1.85	2,927,625,000	1.700488	3,863,077,124	6,790,702,124	1.85	2,927,625,000	1.700488	3,770,832,140	6,698,457,140
41.	Tharaka-Nithi	1.24	1,962,300,000	1.06347	2,415,933,913	4,378,233,913	1.24	1,962,300,000	1.06347	2,358,244,725	4,320,544,725
42.	Trans Nzoia	1.82	2,880,150,000	2.033534	4,619,673,103	7,499,823,103	1.82	2,880,150,000	2.033534	4,509,361,645	7,389,511,645
43.	Turkana	3.33	5,269,725,000	3.466154	7,874,222,120	13,143,947,120	3.33	5,269,725,000	3.466154	7,686,196,495	12,955,921,495
44.	Uasin Gishu	2	3,165,000,000	2.315872	5,261,073,377	8,426,073,377	2	3,165,000,000	2.315872	5,135,446,160	8,300,446,160
45.	Vihiga	1.47	2,326,275,000	1.29449	2,940,752,717	5,267,027,717	1.47	2,326,275,000	1.29449	2,870,531,570	5,196,806,575
46.	Wajir	2.7	4,272,750,000	2.456659	5,580,905,707	9,5853,655,707	2.7	4,272,750,000	2.456659	5,447,641,333	9,720,391,333
47.	West Pokot	1.58	2,500,350,000	1.793121	4,073,515,788	6,573,865,788	1.58	2,500,350,000	1.793121	3,976,245,818	6,476,595,818
	Total	100	158,250,000,000	100	227,174,618,319	385,424,618,319	100	158,250,000,000	100.000001	221,750,000,000	380,000,000,000

S / No.	County	2023/2024				2024/2025					
		0.5 (Allocation ratio)		(Equitable share-0.5 Allocation ratio *(Formula))		Total equitable share	0.5 (Allocation ratio*)		(Equitable share** -0.5 Allocation ratio) *(Formula***)		Total equitable share****
		Allocation ratio	Equitable share	Allocation ratio	Equitable share		Allocation ratio	Equitable share	Allocation ratio	Equitable share	
		Column A	Column B	Column C	Column D	Column E = B + D	Column F	Column G	Column H	Column I	Column J = G + I
					227,174,620,590	385,424,620,590				221,750,002,218	380,000,002,218

2) Notice is given that the Leader of the Majority Party intends to move the following amendments to His Excellency the President's recommendations on the County Allocation of Revenue Bill (Senate Bill No. 25 of 2024) at the Committee of the Whole House-

FIRST SCHEDULE

(s.4(1))

Allocation of Each County Government's Equitable Share of Revenue Raised Nationally in the FY 2024/25.

S N	County	FY 2023/24	FY 2024/25				
		Total Equitable Share	0.5 (Allocation Ratio*)		(Equitable Share** -0.5 Allocation Ratio) *(Formula***)		Total Equitable Share****
			Allocation Ratio	Equitable Share	Allocation Ratio	Equitable Share	
		385,424,616,062					
		Column A	Column B	Column C	Column D	Column E	Column F=C+E
1	Baringo	6,647,771,186	1.61	2,547,825,000	1.80	4,136,048,223	6,683,873,223
2	Bomet	6,977,924,070	1.74	2,753,550,000	1.86	4,261,571,755	7,015,121,755
3	Bungoma	11,111,983,608	2.81	4,446,825,000	2.93	6,723,848,599	11,170,673,599
4	Busia	7,475,585,295	1.90	3,006,750,000	1.97	4,508,185,582	7,514,935,582
5	Elgeyo/Marakwet	4,801,453,188	1.22	1,930,650,000	1.26	2,896,082,019	4,826,732,019
6	Embu	5,341,810,744	1.36	2,152,200,000	1.40	3,217,696,832	5,369,896,832
7	Garissa	8,248,748,101	2.22	3,513,150,000	2.08	4,777,297,365	8,290,447,365
8	Homa-Bay	8,128,387,250	2.13	3,370,725,000	2.09	4,799,555,800	8,170,280,800
9	Isiolo	4,899,041,209	1.34	2,120,550,000	1.22	2,802,957,187	4,923,507,187
10	Kajiado	8,300,213,576	2.03	3,212,475,000	2.24	5,132,538,610	8,345,013,610
11	Kakamega	12,912,646,262	3.29	5,206,425,000	3.39	7,774,078,320	12,980,503,320
12	Kericho	6,703,129,925	1.70	2,690,250,000	1.77	4,048,215,302	6,738,465,302

S N	County	FY 2023/24	FY 2024/25				
		Total Equitable Share	0.5 (Allocation Ratio*)		(Equitable Share** - 0.5 Allocation Ratio) * (Formula***)	Total Equitable Share****	
					Allocati on Ratio	Equitable Share	
		385,424,616,062	Allocation Ratio	158,250,000,000		229,175,000,000	387,425,000,000
		Column A	Column B	Column C	Column D	Column E	Column F=C+E
13	Kiambu	12,227,552,449	2.98	4,715,850,000	3.31	7,577,846,674	12,293,696,674
14	Kilifi	12,109,200,498	3.30	5,222,250,000	3.03	6,947,593,476	12,169,843,476
15	Kirinyaga	5,420,217,528	1.34	2,120,550,000	1.45	3,328,722,719	5,449,272,719
16	Kisii	9,258,588,608	2.46	3,892,950,000	2.36	5,412,885,688	9,305,835,688
17	Kisumu	8,361,797,770	2.16	3,418,200,000	2.18	4,987,128,573	8,405,328,573
18	Kitui	10,829,486,936	2.79	4,415,175,000	2.82	6,470,793,099	10,885,968,099
19	Kwale	8,584,103,693	2.46	3,892,950,000	2.06	4,732,461,603	8,625,411,603
20	Laikipia	5,358,246,532	1.32	2,088,900,000	1.44	3,298,134,732	5,387,034,732
21	Lamu	3,237,350,707	0.82	1,297,650,000	0.85	1,956,780,723	3,254,430,723
22	Machakos	9,547,295,309	2.45	3,877,125,000	2.50	5,720,098,940	9,597,223,940
23	Makueni	8,455,460,962	2.34	3,703,050,000	2.09	4,794,258,272	8,497,308,272
24	Mandera	11,633,191,646	3.23	5,111,475,000	2.87	6,579,143,560	11,690,618,560
25	Marsabit	7,560,398,412	2.14	3,386,550,000	1.84	4,210,601,194	7,597,151,194
26	Meru	9,892,625,172	2.54	4,019,550,000	2.59	5,924,790,480	9,944,340,480
27	Migori	8,341,446,108	2.14	3,386,550,000	2.18	4,998,526,399	8,385,076,399
28	Mombasa	7,861,523,820	2.23	3,528,975,000	1.91	4,370,699,038	7,899,674,038
29	Murang'a	7,473,786,703	1.99	3,149,175,000	1.90	4,362,692,031	7,511,867,031
30	Nairobi City	20,072,059,115	5.03	7,959,975,000	5.33	12,218,736,957	20,178,711,957
31	Nakuru	13,593,424,693	3.31	5,238,075,000	3.68	8,428,922,646	13,666,997,646
32	Nandi	7,305,294,033	1.69	2,674,425,000	2.04	4,671,646,107	7,346,071,107
33	Narok	9,196,276,899	2.54	4,019,550,000	2.28	5,222,310,519	9,241,860,519
34	Nyamira	5,334,198,486	1.52	2,405,400,000	1.29	2,954,587,994	5,359,987,994
35	Nyandarua	5,905,976,056	1.54	2,437,050,000	1.53	3,499,471,652	5,936,521,652
36	Nyeri	6,485,331,051	1.71	2,706,075,000	1.66	3,812,534,255	6,518,609,255
37	Samburu	5,594,312,489	1.46	2,310,450,000	1.45	3,312,778,509	5,623,228,509
38	Siaya	7,263,019,462	1.83	2,895,975,000	1.92	4,405,498,431	7,301,473,431
39	Taita-Taveta	5,040,427,430	1.34	2,120,550,000	1.29	2,945,588,383	5,066,138,383

S N	County	FY 2023/24	FY 2024/25				
		Total Equitable Share	0.5 (Allocation Ratio*)		(Equitable Share** - 0.5 Allocation Ratio) * (Formula***)	Total Equitable Share****	
			Allocation Ratio	158,250,000,000	Allocati on Ratio	Equitable Share	387,425,000,000
		385,424,616,062					
Column A	Column B	Column C	Column D	Column E	Column F=C+E		
40	Tana-River	6,790,702,542	1.85	2,927,625,000	1.70	3,897,093,834	6,824,718,834
41	Tharaka-Nithi	4,378,234,821	1.24	1,962,300,000	1.06	2,437,208,312	4,399,508,312
42	Trans-Nzoia	7,499,822,440	1.82	2,880,150,000	2.03	4,660,350,922	7,540,500,922
43	Turkana	13,143,946,933	3.33	5,269,725,000	3.47	7,943,558,320	13,213,283,320
44	Uasin-Gishu	8,426,072,635	2.00	3,165,000,000	2.32	5,307,398,961	8,472,398,961
45	Vihiga	5,267,026,885	1.47	2,326,275,000	1.29	2,966,646,648	5,292,921,648
46	Wajir	9,853,656,422	2.70	4,272,750,000	2.46	5,630,049,041	9,902,799,041
47	West Pokot	6,573,866,403	1.58	2,500,350,000	1.79	4,109,385,714	6,609,735,714
	Total	385,424,616,062	100.00	158,250,000,000	100.00	229,175,000,000	387,425,000,000

*This refers to the Sharable Revenue allocated to counties in the financial year 2019/ 20 of Kshs. 316.5 billion. Thus, the allocation to county governments under this component is one-half of the equitable share allocated to county governments in FY 2019/20 amounting to Kshs. 158. 25 billion.

** This is the equitable share of revenues raised nationally allocated to county governments in FY 2024/25 amounting to Kshs. 387.425 billion. Once you net out one half of the amounts of Allocation Ratio or Ksh.158.25 billion from the Equitable share of Kshs. 387.425 billion, the resulting balance of Kshs. 229.175 billion shall be allocated among county governments using the Formula.

*** Formula= 0.18*Population Indexi+ 0.17*Health Indexi+0.10* Agriculture Indexi+0.05*Urban Indexi+0.14* Poverty Indexi+0.08*Land Area Indexi+0.08*Roads Index i +0.20* Basic Share Index

**** Sum total of equitable share to each county government, which is one-half of the equitable share allocated to county governments in FY 2019/20 plus resulting balance of Kshs.229.175 billion shared among county governments based on the Third Basis Formula.

- a) That consequential to the proposed amendments to the First Schedule, the Bill be amended by deleting the Second Schedule and replace thereof the following –

SECOND SCHEDULE

County Government Budget Ceilings on Recurrent Expenditure in Financial Year 2024/25 (Figures in Kenya Shillings)					
SN	County	County Assembly Ceilings		County Executive Ceilings	
		FY 2023/24	FY 2024/25	FY 2023/24	FY 2024/25
1	Baringo	828,250,102	757,858,506	628,507,168	811,330,131
2	Bomet	826,903,256	677,847,307	525,981,274	675,271,762
3	Bungoma	1,030,966,304	1,019,575,196	593,145,551	794,269,934
4	Busia	890,557,352	804,254,206	565,353,297	740,954,156
5	Elgeyo-Marakwet	688,567,522	642,494,863	540,143,817	682,571,452
6	Embu	655,164,072	612,356,235	470,665,205	599,617,223
7	Garissa	928,822,377	805,632,232	517,163,240	693,214,915
8	Homa-Bay	951,617,005	865,455,765	612,652,603	807,946,650
9	Isiolo	539,314,722	455,851,471	384,717,582	483,811,987
10	Kajiado	836,365,718	739,100,667	543,625,285	705,785,753
11	Kakamega	1,400,821,103	1,277,560,747	702,976,417	954,360,037
12	Kericho	828,466,755	753,482,865	574,171,331	742,119,652
13	Kiambu	1,352,347,776	1,122,733,276	689,615,145	937,949,817
14	Kilifi	942,241,093	811,428,332	552,882,777	732,390,410
15	Kirinyaga	673,319,674	626,637,101	463,453,685	591,357,406
16	Kisii	1,112,890,743	994,072,293	635,010,868	842,938,395
17	Kisumu	827,121,358	862,083,652	548,429,020	720,990,566
18	Kitui	1,042,409,957	946,077,555	787,239,883	1,034,274,047
19	Kwale	667,712,409	625,406,505	436,816,651	561,039,626
20	Laikipia	545,809,049	477,594,112	429,430,142	543,968,003
21	Lamu	493,148,394	466,864,730	349,978,277	439,219,777
22	Machakos	1,021,331,660	924,156,126	618,887,863	817,384,477
23	Makueni	882,052,960	780,912,038	597,330,868	772,648,310
24	Mandera	983,911,204	825,043,653	537,192,934	709,410,958
25	Marsabit	714,092,325	666,740,178	477,791,217	620,635,223
26	Meru	1,105,946,626	991,451,371	802,472,137	1,046,885,894
27	Migori	1,003,508,709	907,920,737	609,089,597	803,308,177
28	Mombasa	837,169,783	700,845,894	414,726,825	550,949,872
29	Murang'a	830,709,033	755,814,834	633,050,405	822,212,796
30	Nairobi City	1,924,120,608	1,596,625,912	640,180,465	924,648,890
31	Nakuru	1,160,413,432	1,034,293,969	703,777,688	949,692,125
32	Nandi	796,999,461	727,658,319	647,212,948	829,614,196
33	Narok	911,202,495	834,927,075	545,667,285	715,936,269
34	Nyamira	746,578,493	650,614,404	458,194,685	584,106,355
35	Nyandarua	770,438,804	706,936,676	533,107,285	683,959,845
36	Nyeri	776,126,610	710,551,514	605,347,631	779,895,747
37	Samburu	593,254,286	557,171,977	482,789,720	611,274,116
38	Siaya	775,678,151	710,085,117	540,322,777	701,924,604
39	Taita-Taveta	681,840,554	635,498,816	439,488,905	567,140,475
40	Tana-River	677,653,973	605,987,033	436,641,663	558,967,389
41	Tharaka-Nithi	517,563,626	485,355,131	445,463,668	561,403,884
42	Trans-Nzoia	685,259,476	636,754,015	427,107,865	557,198,937
43	Turkana	966,834,859	770,739,999	526,961,505	704,903,707
44	Uasin-Gishu	796,524,510	727,164,370	474,407,171	623,694,943
45	Vihiga	714,071,318	659,816,891	487,678,963	628,658,777
46	Wajir	992,922,326	784,444,072	599,569,960	791,932,190
47	West Pokot	683,634,469	637,364,488	589,135,145	743,044,332
	Total	40,612,656,492	36,369,242,228	25,825,556,393	33,756,814,187

III. MEDIATED VERSION OF THE CONFLICT OF INTEREST BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2023)

THE CONFLICT OF INTEREST BILL, 2023

A Bill for

AN ACT of Parliament to provide for the management and regulation of conflict of interest and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Conflict of Interest Act, 2023.

Short title.

2. In this Act, unless the context otherwise requires—

Interpretation.

“accounting officer” has the meaning assigned to it under section 2 of the Public Finance Management Act;

“Commission” means the Ethics and Anti-Corruption Commission established under section 3 of the Ethics and Anti-Corruption Commission Act;

Cap. 412A.

“complimentary treatment” means a treat offered free of charge as a favour or out of courtesy by a person who has significant official dealings with a public entity and includes offers for travel, holiday, hospitality, training, scholarship or medical treatment;

Cap. 7H.

“conflict of interest” means a conflict between the public duty and private interests of a public official, in which the public official has private capacity interests that could improperly influence the performance of his official duties and responsibilities;

“gainful employment” means work that a person pursues and performs for money or other form of compensation or remuneration;

“official duty” means any task that a public officer is mandated to perform within the specific scope of his or her employment as defined by a contract of employment, an Act of Parliament or the Constitution;

“private interest” means a personal benefit, privilege, exemption or advantage that a public officer or a person affiliated to a public officer may gain from the office that the public officer holds and which may influence the judgement of the public officer in the exercise of a public duty, but does not include interest in a decision or matter that—

- (a) is of general application;
- (b) affects a public officer as a member of a broad class of persons; or
- (c) concerns the remuneration or benefits received by virtue of being a public officer;

“public officer” has the meaning assigned to it by Article 260 of the Constitution;

“registrable interests” means the interests set out in the Second Schedule;

“reporting authority” in relation to a public officer, means an office or body that is responsible for the public officer for the purposes of this Act and includes an accounting officer, a person who exercises executive control over the resources of the entity or any office or entity exercising a function delegated by the Commission;

“reporting entity” means—

- (a) a state organ;
- (b) the national government or any organ or department of the national government;
- (c) a county government or any organ or department of a county government;
- (d) a state corporation within the meaning of State Corporations Act;

- (e) a public school within the meaning of the Basic Education Act;
- (f) a public university within the meaning of the Universities Act;
- (g) a company owned by the National Government or a county government;
- (h) a body that uses public assets in any form of contractual undertakings including public private partnerships;
- (i) a company in which the national or county government has controlling shares in accordance with section 125 of the Companies Act;
- (j) a college or other educational institution maintained or assisted out of public funds;
- (k) an entity which renders a service involving the collection or administration of a levy, fee or funds authorized by legislation; Cap. 446.
- (l) any entity that uses public money in the delivery of government programmes or services, whether for profit or not; Cap. 211.

“responsible Commission” in relation to a public officer, means the entity determined under section 32 to be the responsible Commission in relation to a public officer; Cap. 210.

“significant official dealing” means an engagement with an entity by a public officer at a level which, in ordinary circumstances, and taking into account the totality of the circumstances, would be construed as capable of influencing the decision of the public officer in relation to the entity, including—

- (a) engagement as an employee or agent of an entity;
- (b) undertaking a consultancy for or on behalf of an entity; Cap. 486.
- (c) rendering of advice to an entity, whether directly or indirectly, and whether formally requested or not;
- (d) any dealing with an entity in a contractual relationship for supply of goods, services or works; or
- (e) any engagement where the public officer exercises regulatory or oversight functions over the affairs of the entity, in whatever form;

“unexplained asset” means an asset of a person whose value is disproportionate to his or her known sources of income at or around that time and for which there is no satisfactory explanation; and

“windfall gain” includes unexpected income which may result from inheritance, lottery prizes, gambling winnings, payroll bonuses, proceeds from insurance claims, settlement from lawsuits, discoveries from treasure hunting or bounty rewards.

3. (1) The object of this Act is to provide for the management of conflict of interest in the discharge of official duties. Objects of the Act.

(2) Without prejudice to the generality of subsection (1), the objects of this Act are to—

- (a) promote objectivity and impartiality in official decision making;
- (b) ensure that the integrity of decision makers is not compromised by private interests;
- (c) enhance integrity of public office and public confidence in the delivery of public services;

- (d) provide a framework for the regulation and management of real, apparent or potential conflict between public interest and private interest;
 - (e) provide an institutional framework for the management of conflict of interest.
 - (f) enhance accountability to the public for decisions and actions by public officers in execution of their duties; and
 - (g) promote selfless service by public officers based solely on the public interest.
4. This Act shall apply to all reporting entities and public officers.

Application of the Act.

PART II—ADMINISTRATION

5. This Act shall be administered by a reporting authority and the Ethics and Anti-Corruption Commission.

Administration of the Act.

6. The functions of the Commission under this Act shall be to—
- (a) oversee the management of conflict of interest for all public officers;
 - (b) develop an effective system for reporting violation of this Act;
 - (c) promote best practices and develop standards and guidelines for the management of conflict of interest;
 - (d) receive and process requests related to the management of conflict of interest;
 - (e) conduct inquiries on matters of conflict of interest and make recommendations to the relevant bodies;
 - (f) provide advisory opinions on conflict of interest on its own volition or on request by any person;
 - (g) conduct public awareness on the management of conflict of interest;
 - (h) analyse, seek for clarification and verify conflict of interest disclosures; and
 - (i) develop policies, standards, guidelines and promote best practices for the management of conflict of interest.

Functions of the Commission.

7. The Commission shall, in the performance of its functions under this Act, have the power to—

Powers of the Commission.

- (a) conduct investigations on its own initiative or on a complaint made by a member of the public;
- (b) request for and obtain professional assistance or advice from any person or organization as it considers appropriate;
- (c) delegate to a reporting authority, any other person or body, by notice in the *Gazette*, any of its powers or functions under this Act in respect to classes of public officers specified by the Commission and that person or body shall be deemed to be responsible for the administration and management of conflict of interest; and
- (d) cooperate and collaborate with other public entities or agencies, any foreign governments and international or regional organizations in the management of conflict of interest and enforcement of this Act.

PART III—CONFLICT OF INTEREST

8. A public officer is in conflict of interest if the public officer—
- (a) exercises an official power, duty or function to further his or her private interests or the private interests of another person; or

Conflict of interest.

- (b) fails to declare and register a private interest that is in conflict with the public interest.

9. A public officer shall—

Obligation to avoid conflict of interest.

- (a) take reasonable steps to avoid any real, apparent or potential conflict of interest in connection with the official duties of the public officer; and
- (b) disclose details of any private interest of the public officer that affects the official duties of the public officer.

10. (1) A public officer shall not make a decision or participate in making a decision relating to the exercise of an official power or the performance of a duty or function if the public officer knows that, in the making of the decision, the officer would be in conflict of interest.

Conflict of interest in decision making.

(2) A person who contravenes subsection (1) commits an offence.

11. (1) Subject to the Constitution or any other relevant written law, a member of Parliament or a member of a county assembly shall declare any direct pecuniary interest or benefit of whatever nature in any—

Participation in proceedings before Parliament or county assembly.

- (a) debate or proceeding in the relevant House of Parliament or county assembly, as the case may be;
- (b) debate or proceeding in any committee of the relevant House of Parliament or county assembly, as the case may be; or
- (c) transaction or communication which the member may have with another person or other members of the relevant House of Parliament or county assembly, as the case may be.

(2) A member of Parliament or a member of a county assembly who makes a declaration under subsection (1) shall not use any information obtained by the member in the discharge of the member's constitutional role to advance the member's private interests.

(3) The Speaker or a Chairperson of a committee of the relevant House of Parliament or county assembly may allow a member of Parliament or a member of a county assembly to speak to a matter under deliberation after considering the nature, extent, and effect of the interest declared under subsection (1).

(4) A person who contravenes subsection (1) or (2) commits an offence.

12. (1) A public officer shall not, in the exercise of an official power or in the performance of a duty or function, grant a person, whether directly or indirectly, any special consideration, treatment or advantage beyond what is allowed by law or written policy.

Preferential treatment.

(2) A person who contravenes subsection (1) commits an offence.

(3) Despite subsection (1), no proceedings shall lie against a public officer who grants special consideration, treatment or advantage in good faith.

13. (1) A public officer shall not, directly or indirectly, use or allow any person under the officer's authority to use any information that is obtained in the course of performing official duties and is not available to the public to improperly further or seek to further the private interest of the officer or the interests of another person.

Misuse of official information.

(2) A person who contravenes subsection (1) commits an offence.

14. (1) A public officer shall not use his or her position to influence the decision of another person or another public officer so as to further his or her private interests or the private interests of another person.

Undue influence.

(2) A person who contravenes subsection (1) commits an offence.

15. (1) A public officer shall—

Offers of outside employment.

- (a) not allow himself or herself to be influenced in the exercise of an official power or performance of a duty or function by plans for or any offer of outside employment; and
- (b) disclose in writing to the reporting authority any offer of outside employment that could place the officer in a situation of conflict of interest, within seven days of receiving the offer.

(2) A public officer who accepts an offer of outside employment shall, within seven days of acceptance, disclose his or her acceptance of the offer in writing to the reporting authority.

(3) For purposes of this section “offer of outside employment” means a formal proposal made to a public officer to work for or privately do business with an entity which has official dealings with the reporting entity in which the public officer is serving.

- (4) A person who contravenes subsection (1) or (2) commits an offence.

16. (1) A public officer shall not accept or request a gift or favour from a person who—

Gifts and other benefits.

- (a) has an interest that may be affected by the carrying out, or not carrying out, of the public officer’s duties;
- (b) carries on regulated activities with respect to which the public officer’s organisation has a role; or
- (c) has a contractual or similar relationship with the public officer’s organisation.

(2) Notwithstanding subsection (1), a public officer may receive a gift given in an official capacity, provided that the gift—

- (a) is received as a normal expression of courtesy or protocol;
- (b) is within the customary standards that normally accompany the public officer’s position;
- (c) is not monetary; or
- (d) does not exceed such value as may be prescribed.

(3) Subject to subsection (2), if a public officer accepts any gift or benefit, the public officer shall, within forty-eight hours of acceptance of such gift or benefit, or, if not on duty, within forty-eight hours of resumption of duty, make a declaration of such acceptance, giving sufficient details of the nature of the gift or other benefit accepted, the donor and the circumstances under which it was accepted.

- (4) A person who contravenes subsection (1) or (3) commits an offence.

17. Every reporting authority shall maintain a register of—

Register of gifts.

- (a) gifts received by public officers serving in the reporting entity;
- (b) gifts given by the reporting entity to public officers; and
- (c) donations received by the reporting entity for a specific cause.

18. (1) A public officer shall not accept any complimentary treatment for any purpose unless the complimentary treatment offered is required in his or her official capacity or in exceptional circumstances.

Complimentary treatment.

(2) Where a public officer accepts a complimentary treatment in the exceptional circumstances referred to in subsection (1), the public officer shall, within forty-eight hours of acceptance of the complimentary treatment, or, if not on duty, within forty-eight hours of resumption of duty, make a declaration of such acceptance, giving sufficient detail on—

- (a) the nature of the complimentary treatment accepted;

- (b) the donor; and
- (c) the circumstances under which the complimentary treatment was accepted.
- (3) A public officer who contravenes sub section (1) or (2) commits an offence.

19. (1) A public officer shall not be a party to or beneficiary of a contract for the supply of goods, works or services with his or her reporting entity.

Contracts with public entities prohibited.

(2) A public officer shall not be a party to or beneficiary of a contract for the disposal of goods with his or her reporting entity.

(3) A public officer shall not, in the exercise of official power, duty or function, award or influence the award of a contract in which the officer has a private interest.

(4) A person who contravenes any provision of this section commits an offence.

20. (1) A public officer shall not acquire an interest in a partnership, private company or any other legal entity that is a party to a contract with the reporting entity in which the public officer serves, under which the partnership, private company or legal entity receives a benefit.

Acquisition of interest in partnerships and private companies.

(2) Subsection (1) shall not apply to interests acquired through trading in the regulated financial markets provided that the public officer shall not acquire controlling shares in the entity.

(3) A person who contravenes subsection (1) commits an offence.

21. (1) A public officer shall not—

Conflict in recruitment.

- (a) participate in or influence a recruitment and selection process in which the public officer has a private interest; or
- (b) canvass for a candidate in a recruitment and selection process in which the public officer has a private interest.

(2) Subsection (1) shall not apply to appointment of personal staff permitted to the public officer as may be prescribed.

(3) A person who contravenes subsection (1) commits an offence.

22. (1) A public officer shall not enter into an arrangement with a public officer of another reporting entity in furtherance of an action which would amount to concealing conflict of interest.

Collusion by public officers to conceal conflict of interest.

(2) A person who contravenes subsection (1) commits an offence.

23. (1) A public officer shall, while serving in a reporting entity, not engage in any other gainful employment which—

Restricted gainful employment.

- (a) is inherently incompatible with the official duties of the public officer;
- (b) results in the impairment of judgment of the public officer in the execution of official duties;
- (c) results in conflict of interest; or
- (d) the public officer is mandated to regulate or exercise oversight.

(2) Where a public officer engages in gainful employment which is not prohibited under this Act, the officer shall, within thirty days of taking up the employment, make a declaration of the employment in the prescribed form and register the declaration with the reporting authority and the Commission.

(3) A public officer shall not engage in any other gainful employment without permission from the reporting authority.

(4) A person who contravenes any provision of this section commits an offence.

24. (1) The reporting authority of a reporting entity shall maintain a register of conflict of interest in the prescribed manner.

Register of conflict of interest.

- (2) The register referred to in subsection (1) shall—
- (a) contain the particulars of the registrable interests of a public officer set out in the Second Schedule;
 - (b) state the nature and extent of a conflict; and
 - (c) be open to the public, subject to the provisions of the Access to Information Act, for inspection.

Cap. 7M.

25. (1) An appointed public officer, other than a Cabinet Secretary or a member of a County Executive Committee, shall not, in the performance of his duties—

Political neutrality.

- (a) act as an agent for, or further the political interests of a political party or political candidate;
- (b) manifest support for or opposition to any political interests of a political party or political candidate; or
- (c) engage in political activity that may compromise or be seen to compromise the political neutrality of his or her office.

(2) A person who contravenes subsection (1) commits an offence.

26. (1) An appointed public officer shall not—

Public collections.

- (a) solicit for contributions from the public unless the President has, by notice in the *Gazette*, declared a national disaster and allowed a public collection for the purpose of the national disaster;
- (b) participate in collection of funds from the public, either as a collector or promoter in a way that reflects adversely on the integrity and impartiality of the public officer or interferes with the performance of the duties of the public officer; or
- (c) use official social media platforms or his or her place of work as a venue for soliciting or collecting funds.

(2) A public officer shall not use his or her official position to solicit funds or coerce any person to contribute towards a private fund collection.

(3) A person who contravenes subsection (1) or (2) commits an offence.

27. (1) A former public officer shall not—

Prohibitions after leaving office.

- (a) act for or on behalf of any person in connection with any specific proceeding, transaction, negotiation or case in which the State is a party and with respect to which the former public officer had acted for, or provided advice to the State;
- (b) be engaged by or act for or against his or her former employer for at least two years after ceasing to be a public officer;
- (c) use information obtained in his or her official capacity and which is not available to the public to further the interests of another person or entity; or
- (d) accept any appointment to a board of directors of, or employment with, a private entity with which the public officer had significant official dealings during the period of two years immediately preceding the termination of his or her service.

(2) The official dealings referred to in sub section (1) (d), may be either directly on the part of the public officer or through private affiliations.

(3) A person who contravenes subsection (1) commits an offence.

28. A former public officer shall not, during the period of two years immediately after the termination of service represent or defend any person, whether for

Prohibition against representing people before reporting entities.

remuneration or not, before any reporting entity with which the former public officer had direct and significant official dealings.

29. (1) A former public officer may, upon making an application in writing, be exempted by the Commission from the provisions of section 27 and 28, on the grounds that—

Exemption of former public officers.

- (a) the former public officer was not directly involved in decision making in the reporting entity;
- (b) the former public officer had no access to important policy information in the reporting entity; or
- (c) the former public officer possesses expertise that is rare in the public service.

(2) The Commission shall, within thirty days from the date of the application, in writing, communicate the decision made to the former public officer who applied for the exemption.

PART IV—COMPLIANCE MEASURES

30. (1) A public officer shall recuse himself or herself from any discussion, decision, debate or vote on any matter in respect of which the public officer would be in conflict of interest.

Duty to recuse.

(2) Subsection (1) shall not apply to a member of Parliament or a county assembly.

(3) Where a public officer recuses himself or herself under subsection (1)—

- (a) the recusal shall be recorded in the minutes of the transaction in question; and
- (b) a reporting entity shall, within sixty days after a day on which a recusal took place, transmit a declaration of the recusal to the Commission in the prescribed form.

31. (1) Every public officer shall submit to their responsible Commission a declaration of his or her income, assets and liabilities and the income, assets and liabilities of his or her spouse and dependent children under the age of eighteen years.

Declaration of income, assets and liabilities by public officers.

(2) The declaration referred to under sub section (1), shall be in Form set out in the First Schedule.

(3) Notwithstanding the generality of subsection (1), a public officer shall in a periodical or final declaration provide information on any material change in, or changes affecting any of the categories of income, assets or liabilities in the schedule of mandatory declarations that have occurred within the two year period prior to the declaration.

32. (1) This section determines what body is the responsible Commission for a public officer for the purposes of this Act.

Determination of responsible Commission.

(2) The committee of the National Assembly responsible for the ethics of members is the responsible Commission for—

- (a) the Cabinet;
- (b) Members of the National Assembly;
- (c) the Director of Public Prosecutions;
- (d) the Secretary to the Cabinet;
- (e) members of the Judicial Service Commission;
- (f) members of commissions and independent offices specified under Chapter Fifteen of the Constitution; and
- (g) members of the Ethics and Anti-Corruption Commission and staff of the Commission holding the rank of Deputy Director and above.

(3) The committee of the Senate responsible for the ethics of members is the responsible Commission for Senators.

(4) The committee of a county assembly responsible for the ethics of members is the responsible Commission for—

- (a) its respective county executive committee;
- (b) members of the county assembly; and
- (c) members and the secretary of its respective County Public Service Board.

(5) The Public Service Commission is the responsible Commission for—

- (a) principal secretaries;
- (b) high commissioners, ambassadors and diplomatic and consular representatives;
- (c) public officers in respect of which it exercises appointive and disciplinary control, including advisors and personal staff; and
- (d) public officers who are officers, employees or members of state corporations that are public bodies.

(6) A County Public Service Board is the responsible Commission for—

- (a) public officers in respect of which it exercises appointive and disciplinary control, including advisors and personal staff; and
- (b) public officers who are officers, employees or members of county corporations and entities that are public bodies.

(7) The Judicial Service Commission is the responsible Commission for judges, magistrates and the public officers in respect of which it exercises disciplinary control.

(8) The Parliamentary Service Commission is the responsible Commission for the public officers in respect of which it exercises disciplinary control.

(9) A County Assembly Service Board is the responsible Commission for the public officers in respect of which it exercises disciplinary control.

(10) The Teachers Service Commission established under the Teachers Service Commission Act is the responsible Commission for teachers registered under that Act.

Cap. 212.

(11) The Defence Council established under Article 241(5) of the Constitution is the responsible Commission for members of the Kenya Defence Forces.

(12) The National Intelligence Service Council established under the National Intelligence Service Act is the responsible Commission for members of the National Intelligence Service established under that Act.

Cap. 206.

(13) The National Police Service Commission is the responsible Commission for members of the National Police Service.

(14) The Witness Protection Advisory Board established under the Witness Protection Act shall be the responsible commission for the members of the Witness Protection Agency established under that Act.

Cap. 79.

(15) The responsible Commission for a public officer for which no responsible Commission is otherwise specified under this section is the commission, committee or other body prescribed by regulations.

(15) A body that is the responsible Commission for a public officer by virtue of exercising disciplinary control over that public officer remains the responsible Commission notwithstanding the delegation of any disciplinary powers with respect to that public officer.

33. (1) Subject to subsection (2), the Public Service Commission may, by notice in the Gazette delegate to another person or body any of its powers and functions in relation to declarations of income, assets and liabilities and enforcement of the code of conduct and with respect to specified classes of public officers over which it is the responsible Commission.

Certain delegations by
Public Service
Commission.

(2) The Public Service Commission may delegate powers and functions only with respect to public officers in a job group below job group “M” or its equivalent.

34. (1) A public officer shall, within thirty days of appointment as a public officer, submit an initial declaration relating to his or her financial affairs for the period of one year prior to appointment.

Timelines for
declaration.

(2) Every public officer shall, once every two years within the period of service, submit a declaration relating to the financial affairs of the public officer as at first day of November of the declaration year, and such declaration shall be made within the month of December next following.

(3) A public officer shall, within thirty days after ceasing to be a public officer, submit a final declaration relating to his financial affairs as at the date he ceases to be a public officer.

35. (1) Upon receipt of the declaration made under section 31, a responsible Commission shall analyse the declaration to ascertain—

Clarification.

- (a) whether the declaration raises possible issues of conflict of interest; and
- (b) whether on the face of it, the declaration contains any discrepancy or inconsistency.

(2) The responsible Commission may, within six months of receipt of a declaration, request, in writing, for clarification from the public officer who submitted the declaration under section 31.

(3) A public officer from whom clarification is sought under sub section (2) shall, within thirty days of receipt of the request, provide the clarification to the Commission.

(4) A request for clarification may include a requirement that—

- (a) the omitted information be provided; or
- (b) any discrepancy or inconsistency, including a discrepancy or inconsistency arising out of the omission, be explained or corrected.

(5) The responsible Commission may verify any information provided in the declaration.

36. (1) Subject to subsection (2), the contents of a declaration or clarification under this Act shall be accessible to any person upon application to the responsible Commission in the prescribed manner if the applicant shows to the satisfaction of the responsible Commission that he or she has a legitimate interest and good cause in furtherance of the objectives of this Act, in such declaration or clarification.

Access to
declarations.

(2) Notwithstanding subsection (1), a law enforcement agency shall, after due process, have access to the disclosures and compliance reports made by a public officer under this Act.

(3) The responsible Commission shall, before making an affirmative decision under this section, grant the affected party an opportunity to make representations on the matter.

(4) Any person who—

- (a) publishes or in any way makes public any information obtained under this section without prior permission of the responsible Commission;
- (b) knowingly republishes or otherwise disseminates or discloses to another person information to which this section relates where—
 - (i) such information was disclosed to himself or herself or to some other person; or
 - (ii) such information was obtained in contravention of this Act,

commits an offence and shall on conviction be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or both.

37. The responsible Commission shall keep information collected under this Act concerning a person for at least five years after the person ceases to be a public officer.

Retention of information.

38. A public officer who fails to submit any information required under this Act, within the prescribed period, commits an offence.

Failure to submit information.

39. A public officer who submits information that the public officer knows, or ought to know, is false or misleading, commits an offence.

False information.

40. The Commission shall, within twelve months after the commencement of this Act, develop and publish in the Gazette, administrative mechanisms for the implementation of the requirements of this Part.

Publication of administrative mechanisms.

PART V— COMPLAINTS AND CONDUCT OF INVESTIGATIONS

41. (1) A person who alleges that a public officer has contravened any provision of this Act may lodge a complaint with the reporting authority or the Commission and the report shall be recorded in a register of complaints.

Lodging of complaints and investigations.

(2) The reporting authority or the Commission may investigate the complaint and determine whether the public officer has contravened this Act.

(3) A reporting authority and the Commission shall not conduct concurrent investigations over the same complaint:

Provided that an investigation commenced against a public officer shall be concluded within ninety days.

(4) A reporting authority or the Commission may initiate an investigation on its own volition.

(5) A public officer who is under investigation under this section shall be informed of the allegations made and shall be given a reasonable opportunity to make a representation relating to the issue before the investigation is concluded.

(6) A person who lodges a complaint against a public officer shall be informed of any action taken or to be taken in respect of the complaint.

(7) Where an investigation under this section is initiated while the public officer is in office, the investigations may be continued even after the public officer has ceased to be in office.

(8) The reporting entity or a reporting authority may take disciplinary action against a public officer serving in a reporting entity.

(9) Where a reporting entity is unable to conduct or conclude an investigation against a public officer, the reporting authority may refer the matter to the Commission.

42. (1) Despite section 41, the Commission or a reporting authority shall not commence investigations if—

Discretion in investigations.

(a) the subject matter of the request does not disclose an issue of conflict of interest under this Act;

(b) the subject matter of the request has been adequately dealt with, or could more appropriately be dealt with according to a procedure provided for under another Act of Parliament; or

(c) the substance of the request is frivolous, vexatious or made in bad faith.

(2) If the Commission or a reporting authority declines to commence investigations, the Commission or reporting authority shall inform the person who lodged the complaint and give reasons for the decision.

43. (1) Subject to the Constitution and any written law, a public officer may be suspended from office with full pay pending the investigation and determination of allegations made against that officer where such suspension is considered necessary.

Suspension from office.

(2) Despite subsection (1), the period of suspension of a State officer or public officer shall not exceed ninety days.

(3) If the Commission or a reporting authority fails to conclude the investigations within ninety days, the investigations shall be deemed to have been concluded at the expiry of the ninety days and the officer shall resume his or her duties.

(4) Despite subsection (3), a court of competent jurisdiction may make an order extending the period for conducting investigations.

44. (1) The Commission may, pursuant to an investigation conducted by the Commission under this Act—

Recommendations of the Commission.

- (a) recommend to a reporting authority to take disciplinary or other administrative action against a State or public officer alleged to have contravened the provisions of this Act;
- (b) recommend to a public entity, appointing authority or the public officer, to take such measures as may be appropriate to ensure compliance with, or cessation of further violation of, the provisions of this Act;
- (c) recommend to any other relevant public body to take appropriate action against a state or public officer, an associate to a state or public officer or a company in which a state or public officer has a controlling interest in; or
- (d) recommend to the Director of Public Prosecutions the prosecution of a person who contravenes this Act.

(2) Where a public entity, appointing authority or public officer fails to implement the recommendations under subsection (1) (a), (b) or (c), the Commission may make an application before the High Court for appropriate orders requiring the public entity, authorized officer or public officer to comply.

PART VI—MISCELLANEOUS PROVISIONS

45. (1) A person who contravenes any provision of this Act for which no penalty is provided shall, upon conviction, be liable to—

General Penalty.

- (a) if the person is a natural person, a fine not exceeding four million shillings or to a term of imprisonment not exceeding ten years, or to both; or
- (b) if the person is a body corporate, a fine not exceeding ten million shillings; and

(2) In addition to the penalty under subsection (1), the person shall be liable to a further mandatory fine if as a result of the conduct that constituted the offence the person received a quantifiable benefit or any other person suffered a quantifiable loss.

(3) The mandatory fine referred to in subsection (2) shall be determined as follows—

- (a) the mandatory fine shall be equal to two times the amount of the benefit or loss described in subsection (2); or
- (b) if the conduct that constituted the offence resulted in both a benefit and loss described in subsection (2), the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss.

46. A responsible Commission, the Commission or any person acting on their behalf shall not, unless required by law, disclose any information that comes to their knowledge in the performance of their duties under this Act, unless the disclosure is in the opinion of a responsible Commission or the Commission—

Confidentiality.

- (a) essential for the purposes of carrying out of their functions and exercising the powers conferred on them under this Act; or
- (b) is required by any law enforcement agency, after due process.

47. (1) A person shall not be penalized in relation to any employment, profession, voluntary work, contract, membership of an organization, the holding of an office or in any other way, as a result of having made or proposed to make a disclosure of information which the person obtained in confidence in the course of that activity, if the disclosure is made in the public interest.

Protection of person making disclosure.

(2) For purposes of subsection (1), a disclosure which is made to a law enforcement agency or to an appropriate public entity shall be deemed to be made in the public interest.

(3) A person shall make a disclosure under subsection (1) or (2) where such person has reasonable belief in the veracity of the information.

(4) Any person who provides false information maliciously intended to injure another person commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

(5) Disclosure of information under subsection (1) and (2) shall be information on conflict of interest.

(6) For the purpose of this section, a person is penalized if the person is dismissed, discriminated against, made the subject of reprisal or other form of adverse treatment or is denied any appointment, promotion or advantage that otherwise would have been provided or any other personnel action provided under the law relating to whistle blower, and the imposition of any such penalty in contravention of this section shall be actionable as a tort.

48. No criminal or civil proceedings shall lie against the Commission or any person acting on behalf of the Commission, for anything done, reported or said in good faith in the exercise of any power, or the performance of any function of the Commission under this Act.

Protection from liability.

49. Every reporting entity shall, within six months after the end of the financial year, file compliance reports with the Commission in the prescribed form.

Reports by reporting entities.

50. (1) The Attorney-General may make regulations for the better carrying out the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of sub-section (1), the Attorney-General may make regulations prescribing—

- (a) exceptional circumstances under which complimentary treatment may be accepted under this Act;
- (b) the mechanism and procedure for the opening, maintaining and publicizing of registers of conflict of interest; and
- (c) anything required to be prescribed under this Act.

(3) For the purposes of Article 94(6) of the Constitution—

- (a) the purpose and objective of delegation under this section is to enable the Attorney-General to make regulations to provide for the better carrying into effect of this Act and to enable the Commission and the reporting authorities to discharge its functions more effectively;
- (b) the authority of the Attorney-General to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and for the fulfilment of the objectives of this Act; and

- (c) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act.

Cap. 2.

Cap. 2A.

PART VII—REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS

51. The Public Officer Ethics Act is repealed.

Repeal of Cap. 185B.

52. (1) Any statutory instrument made under the repealed Act shall remain in force, so far as it is not inconsistent with this Act, until it is revoked or repealed by a statutory instrument made under this Act, and shall be deemed for all purposes to have been made under this Act.

Saving and transitional provisions.

(2) Any criminal proceedings commenced under the provisions in the Third Schedule proposed for repeal before the commencement of this Act shall be continued.

53. The Ethics and Anti-corruption Commission Act, the Anti-Corruption and Economic Crimes Act and the Leadership and Integrity Act are amended in the manner specified in the Third Schedule.

Consequential amendments. Cap. 7H. Cap. 65. Cap. 185C.

FIRST SCHEDULE

[s. 31(2)]

FORM

DECLARATION OF INCOME ASSETS AND LIABILITIES

The attention of all public officers is drawn to their obligation to declare their Income, Assets and Liabilities under the Conflict of Interest Act (No.....). Public officials are advised to familiarize themselves with the provisions of the Act and the applicable Code of Conduct and Ethics for their respective reporting entity.

GUIDELINES ON THE COMPLETION OF THE DECLARATION OF INCOME, ASSETS AND LIABILITIES.

A public officer should read these guidelines carefully and follow the instructions in the form before completing it. When completing the form, a public officer shall write legibly, type or print the required information.

1. Where the responsible Commission has a web application for filing the declaration, a public officer may fill and submit the declaration online. In such a case, a physical signature or delivery acknowledgment slip will not be necessary.
2. The declaration is for the income, assets and liabilities of a public official, his spouse or spouses and his dependent children under the age of 18 years.
3. All public officers are required to complete and submit their declarations to their responsible Commission, unless their responsible Commission has delegated its functions to another body.
4. The obligation to make declarations applies to all state and public officers including those on leave, under disciplinary action, secondment and overseas assignments, unless the Attorney General has granted a dispensation exempting an officer or a certain category of public official from filing their declarations, for reasons to be published in the *Gazette*.
5. The responsibility of ensuring that a declaration has been received by the appropriate reporting authority or its agent lies on the public officer. Provided that where the officer sends the form under confidential cover directly to the responsible Commission, the officer should label the envelope with the words “Declaration of Incomes, Assets and Liabilities”. The organization and job group of the officer should also be indicated on the envelope.
6. A public officer is required to complete an *initial* declaration within thirty days of appointment and the statement date of the declaration will be the date the officer became a public officer.

7. A public officer is required to make a *biennial* declaration on or before the 31st day of December every other year or as may be provided for under the Act. The statement date for the biennial declaration will be 1st of November of the year in which the declaration is required.
8. A public officer is required to make a *final* declaration within thirty days of ceasing to be a public officer. The statement date of the *final* declaration shall be the date the public official ceased to be a public official.
9. A person submitting a declaration or providing a clarification shall ensure that the declaration or clarification is correct to the best of their knowledge.
10. If space on the form is not adequate, additional information may be included on separate sheets, while clearly indicating the number and paragraph being continued.
11. For each form submitted, there will be an acknowledgment slip issued by the responsible Commission or its agent.
12. Where a declaration is submitted electronically in accordance with the regulations made under this Act or administrative procedures adopted by the responsible Commission or any other competent authority, the declaration shall be valid notwithstanding the absence of a signature or acknowledgement stamp or receipt or slip.
13. Income, assets and liabilities that a public officer may have outside Kenya, should be declared. Joint assets, properties, personal and business accounts within and outside Kenya should also be declared.
14. Where a public officer has contravened the provisions of the Code of Conduct and Ethics relating to the declaration of Income, Assets and Liabilities, appropriate disciplinary action will be taken by the responsible Commission, or other appropriate authority, in accordance with the applicable disciplinary procedures.

1. Name of public officer		
(Surname)	(First name)	(Other names)
2. Birth information		
(a) Date of birth		
(b) Place of birth		
3. Marital status:		
4. Address		
(a) Postal address:		
(b) Physical address:		
5. Employment information:		
(a) Designation		
(b) Name of employer		
(c) Nature of employment (permanent, temporary, contract, etc.)		
6. Names of spouse or spouses		
(Surname)	(First name)	(Other names)

7. Names of dependent children under the age of 18 years:		
(Surname)	(First name)	(Other names)
8. Financial statement for _____		
(A separate statement is required for the officer and each spouse and dependent child under the age of 18 years. Additional sheets should be added as required.)		
(a) Statement date:		
(b) Income, including emoluments, for periods from _____ to _____		
(Including, but not limited to, salary and emoluments and income from investments. The period is from the previous statement date to the current statement date. For an initial declaration, the period is the year ending on the statement date.)		
Description	Approximate amount	
(c) Assets (as of the statement date)		
(Including, but not limited to, land, buildings, vehicles, investments and financial obligations owed to the person for whom the statement is made.)		
Description (include location of asset where applicable)	Approximate value	
(c) Liabilities (as of the statement date)		
Description	Approximate amount	
9. Other information that may be useful or relevant:		

I solemnly declare that the information I have given in this declaration is, to the best of my knowledge, true and complete.

Signature of officer: _____

Date: _____

WITNESS: Signature: _____

Name: _____

Address: _____

SECOND SCHEDULE [s. 2, s. 24(2)(a)]

REGISTRABLE INTERESTS

For purposes of section 24(2) the following are categories of income, assets and liabilities which a public official must declare—

1. Directorships in public or private companies, whether or not remunerated directly or indirectly.
2. Remunerated employment (including office, trade, profession or vocation which is remunerated or which the State officer has any pecuniary interest).
3. Securities (shares, bonds, debentures or any other similar holding) in a company or enterprise or undertaking the aggregate nominal or market value of which exceeds a prescribed value while the state officer was in office.
4. Contracts for supply of goods and services.
5. Plans or expectations for or offers of future employment.
6. Public affairs advice and services to clients.
7. Shareholdings (amounting or not amounting to a controlling interest).
8. Land and property.
9. Sponsorship (from companies, trade unions, professional bodies, charities, universities or other organizations or individuals).
10. Travel facilities and overseas visits (made by a State officer or the State officer’s spouse or child substantially catered for by the office of the State officer).
11. Gifts, benefits and hospitality (to a State officer or the State officer’s spouse or partner or child or any other material benefit of a prescribed value, from a company, organization or person within Kenya or overseas, which relates substantially to the membership of a state office to a state office or Parliament or County Assembly).
12. Miscellaneous financial interests (not falling within the above categories but which a reasonable member of the public would think might influence the conduct of a State Officer in his or her office).
13. Non-financial interests (which may reasonably be thought to affect the way a member discharges the duties in a State Office (such as unremunerated directorships; membership of public bodies such as hospital trusts, governing bodies of universities, colleges or schools, and other spheres of government; trusteeships, etc.).
14. Pending civil and criminal cases touching on the State officer or business associate or firm.
15. Possession of dual citizenship or pending applications for dual citizenship and the status of such application.

**THIRD SCHEDULE
CONSEQUENTIAL AMENDMENTS**

[s.53].

Written Law	Provision	Amendment
The Ethics and Anti-Corruption Commission Act (Cap. 7H)	Section 11	Amended in subsection (1) by inserting the following new paragraph immediately after paragraph (j)— (k) perform any other functions and exercise any other powers conferred by an Act of Parliament.
The Anti-Corruption and Economic Crimes Act (Cap. 65)	Section 42	Delete.
The Leadership and Integrity Act (Cap. 185C)	Section 6 (3)	Delete.
	Section 6 (4)	Delete.
	Section 13(1)(a)	Delete and substitute therefor the following new paragraph— 13. (1)(a) demonstrate honesty in the conduct of public affairs;
	Section 14	Delete.
	Section 16	Delete.
	Section 17	Delete.
	Section 18	Delete.
	Section 23	Delete.
	Section 26	Delete.
	Section 27	Delete.
	Section 28	Delete.
	Section 52	Delete and substitute therefor the following new section— 52. Pursuant to Article 80(c) of the Constitution, the provisions of Chapter Six of the Constitution and this Act shall apply to all public officers as if they were State officers.

IV. THE PERSONS WITH DISABILITIES BILL **(SENATE BILL NO. 7 OF 2023)**

- 1) Notice is given that the Chairperson of the Departmental Committee on Social Protection intends to move the following amendments to the Persons with Disabilities Bill, 2023 at the Committee Stage—

CLAUSE 4

THAT, clause 4 of the Bill be amended—

- (a) in paragraph (a), by deleting the word “welfare” and substituting therefor the word “rights”;
- (b) in paragraph (e), by inserting the words “inclusion and ” and immediately after the words “promote the”;
- (c) in paragraph (i), by inserting the words “and compulsory” immediately after the word “free”;
- (d) by inserting the following new paragraph immediately after paragraph (p)—
“(q)ensure inclusion of persons with disabilities in all mainstream programs and interventions”.

CLAUSE 5

THAT, clause 5 of the Bill be amended—

- (a) in sub-clause (1)—
 - (i) in paragraph (a), by deleting the word “welfare” and substituting therefor the word “rights”;
 - (ii) in paragraph (c), by inserting the words “and compulsory” immediately after the word “free”;
 - (iii) by inserting the following new paragraph immediately after paragraph (f)—
“(g)ensure inclusion of persons with disabilities in all mainstream programs and interventions”.
- (b) in sub-clause (2), by inserting the words “responsible for matters relating to persons with disabilities” immediately after the words “committee member” appearing in the opening statement; and
- (c) in sub-clause (4), by deleting paragraph (a) and substituting therefor the following new paragraph—
 - (a) a person with disabilities, who reside within the respective county;

CLAUSE 6

THAT, clause 6(1) of the Bill be amended by deleting the words “protection, benefit” appearing in paragraph (a) and substitute therefor the words “equal protection, equal benefit”.

CLAUSE 8

THAT, clause 8 of the Bill be amended —

- (a) in sub-clause (1), by deleting the words “on free consent” and substituting therefor the words “on free and full consent”; and
- (b) in sub-clause (2), by deleting the word “sexuality” and substituting therefor the word “sexual”.

CLAUSE 11

THAT, clause 11(1)(f) of the Bill be amended by inserting the word “and inclusive” immediately after the word “quality”.

CLAUSE 20

THAT, clause 20(8) of the Bill be amended by deleting the word “adoptive” appearing in paragraph (b) and substituting therefor the word “adaptive”.

CLAUSE 21

THAT, clause 21 of the Bill be amended—

- (a) in sub-clause (2), by inserting the words “where an employer has at least twenty employees,” immediately before the word “reserve” in paragraph (a); and
- (b) in sub-clause (5)(e), by deleting the word “solely”.

CLAUSE 25

THAT, clause 25(e) of the Bill be amended by inserting the words “putting in place mechanisms for” immediately before the words “prompt attendance”.

CLAUSE 26

THAT, clause 26 of the Bill be amended –

- (a) by deleting sub-clause (1) and substituting therefor the following new sub-clause —
 - (1) Every person with disability has the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas, and the right to access information, on an equal basis with others, in a timely manner and without additional cost”;
- (b) in sub-clause (2), by inserting the words “forms of” immediately after the words “and other”;
- (c) in sub-clause (7), by deleting the words “Media Council of Kenya” and substituting therefor the words “Communication Authority of Kenya in consultation with the Council”;
- (d) in sub-clause (8), by deleting the words “sub-titles” and substituting therefor the words “closed captioning”; and
- (e) in sub-clause (10), by inserting the words “and private” immediately after the word “public”.

CLAUSE 28

THAT, clause 28(2) of the Bill be amended by deleting the word “Kenya” appearing in paragraph (b) and substituting therefor the word “Kenyan”.

CLAUSE 29

THAT, clause 29(4) of the Bill be amended by deleting the word “Kenya” and substituting therefor the word “Kenyan”.

NEW CLAUSE 36A

THAT, the Bill be amended by inserting the following new clause immediately after clause 36—

Headquarters and other
offices of the Council. **36A.**(1) The headquarters of the Council shall be in Nairobi.

(2) The Council shall establish other offices and decentralize its services to such other parts of the country as it considers necessary in accordance with Article 6(3) of the Constitution.

CLAUSE 45

THAT, clause 45(4) of the Bill be amended by deleting the word “five” and substituting therefor the word “three”.

CLAUSE 50

THAT, clause 50 of the Bill be amended—

- (a) in sub-clause (1), by inserting the words “upon request by a member of the public or” immediately before the words “where it considers” appearing in paragraph (a);
- (b) in sub-clause (3), by inserting the words “or a member of the public” immediately after the words “regulatory body”.

CLAUSE 56

THAT, clause 56 of the Bill be amended—

- (a) in sub-clause (1), by deleting the expression “Kshs. 150,000/=” and substituting therefor the words “of such amount as may be prescribed by the Cabinet Secretary”; and
- (b) in sub-clause (2), by deleting the expression “Kshs. 10,000/=” and substituting therefor the words “such amount as may be prescribed by the Cabinet Secretary”.

CLAUSE 62

THAT, clause 62 of the Bill be amended by deleting the words “one million” and substituting therefor the words “two million”.

CLAUSE 63

THAT, clause 63 of the Bill be amended—

- (a) by renumbering the existing clause as sub-clause (1);
- (b) by inserting the following new sub-clause immediately after sub-clause (1)—
 - “ (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both”.

CLAUSE 65

THAT, clause 65 of the Bill be amended by deleting the words “two hundred thousand shillings” and substituting therefore the words “two million shillings”.

CLAUSE 66

THAT, clause 66 of the Bill be amended by deleting the words “two hundred thousand shillings” and substituting therefore the words “one million shillings”.

NEW CLAUSE 66A

THAT, the Bill be amended by inserting the following new clause immediately after clause 66—

Begging and
receiving alms. **66A.** A person who causes, procures, encourages or solicits a child or an adult with disabilities to engage in begging or receiving alms commits an offence and shall be liable on conviction to a fine not exceeding two million shillings or imprisonment for a term not exceeding two years, or to both.

CLAUSE 72

THAT, clause 72 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b)—

“(c) ensuring that bus-stops are barrier-free”.

NEW CLAUSE 73A

THAT the Bill be amended by inserting the following new clause immediately after clause 73—

Housing. **73A.** Every Government agency putting up residential and commercial buildings shall reserve at least five percent of the said residential and commercial buildings for acquisition by persons with disabilities and the terms and conditions of such acquisition to persons with disabilities shall include interest free and longer periods of repayment.

CLAUSE 74

THAT clause 74 of the Bill be amended—

- (a) in sub-clause (1) by deleting the word “alone” appearing in the opening statement; and
- (b) in sub-clause (2) by deleting the word “alone”.

- 2) Notice is given that the Member for Mathare (Hon. Anthony Oluoch) intends to move the following amendments to the Persons with Disabilities Bill, 2023 at the Committee Stage—

CLAUSE 2

THAT, clause 2 of the Bill be amended in the definition of the term “disability” by inserting the words “temporary or” immediately after the words “substantial or”.

CLAUSE 11

THAT clause 11 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2)—

“(3) The Cabinet Secretary shall, in consultation with the Council, make regulations to prescribe disabilities in children including any disorder, condition or impairment that affects the intellectual abilities, the behavioral development or the physical development of a child”.

CLAUSE 20

THAT, clause 20(8) of the Bill be amended in paragraph (c), by inserting the following new sub-paragraph immediately after sub-paragraph (i)—

“(ia) the continuous training of special education teachers to ensure appropriate assessment of children with disabilities and the use of techniques that support their learning needs.”

V. THE STARTUP BILL (SENATE BILL NO. 14 OF 2022)

- 1) Notice is given that the Chairperson of the Departmental Committee on Trade, Industry and Cooperatives intends to move the following amendments to the Startup Bill, 2022 at the Committee Stage—

LONG TITLE

THAT the Bill be amended by deleting the long title and substituting therefor the following new long title—

“AN ACT of Parliament to provide a framework to support growth and sustainable technological development and transfer, innovative entrepreneurial culture; to create an environment for innovation; to attract talent and capital from Kenya; to recognise and to support startups, incubators, accelerators; and for connected purposes”

CLAUSE 2

THAT Clause 2 of the Bill be amended by —

- (a) inserting the following definitions in proper alphabetical sequence—

“accelerator” means a company, partnership, an establishment within an institution of higher learning or a formal or informal sector business association whose principal object is to offer short, time bound, and cohort-based programmes, to support the development of startups, innovation, and other activities related to the transfer of skills, research, development, and innovation processes and has been labelled as such under this Act;

“commercialization phase” means the startup process which includes production, marketing, financing and scaling up;

“conception phase” means idea generation, evaluation, requirement analysis, project planning, prototyping, testing, piloting and proof of concept;

Cap. 486. “Estate” means the Kenya Industrial Estates established under the Companies Act;

“incubation programme” means the provision of systematic support to applicants such as access to training, mentorship, and other support services such as the establishment and transformation of enterprises that may be developed by either public or private institutions and executed by an accelerator or incubator;

“investor” means any individual or entity that contributes its resources or technical know-how to the development of Startups for a reasonable return;

“label” means under this Act is a certificate issued by the Agency to a startup, incubator, or accelerator upon the fulfilment of the labelling requirements under this Act;

“labelling” means the assigning of a tiered designation to Startups, and the classification of incubators and accelerators in accordance with this Act;

“startup” means a registered enterprise legally recognized under the laws of Kenya, which has been in existence for a period of not more than ten years with a strong growth potential, incremental innovation or disruptive business model;

“startup ecosystem players” means any entity that plays a role in —

(a) the conceptual phase that includes generation and evaluation of ideas, the process of analysing requirements, planning of projects, prototyping, testing, piloting a proof of concept; and

(b) the commercialization phase that includes production, marketing, financing and scaling up of ideas and proofs of concept;

“startup maturity framework” means a model developed by the Agency to assess the technology readiness levels of startups, and to assign them tiers for purposes of labelling, financing and graduation”

(b) deleting definition of “Cabinet Secretary” and substituting therefor the following new definition

“Cabinet Secretary” means the Cabinet secretary for the time being responsible for matters relating to micro, small and medium enterprises development; business innovation and incubation; and startups

(c) deleting the definition of “County Executive Committee Member”

(d) deleting the definition of “incubator” and substituting therefor the following definition —

“incubator” means a company, partnership, non-governmental organization, an establishment within an institution of higher learning or a formal or informal sector business association whose principal object is to support the birthing and development of Startups, innovation, and other activities related to the transfer of skills, research, development, and innovation processes, through the offer of dedicated physical or virtual spaces and advisory services and has been labelled as such under this Act;

(e) deleting the definition of “startup incubator”

CLAUSE 3

THAT Clause 3 of the Bill be amended —

- (a) in paragraph (c) by inserting the words “incubators, accelerators and investors” immediately after the word “startups”;
- (b) in paragraph (e), by deleting the word “and”
- (c) by inserting the following new paragraphs immediately after paragraph (f)—
 - “(fa) for recognition of startups;
 - (fb) for establishment, development, financial support and growth of startups;
 - (fc) for catalysing the growth of the startup ecosystem through infrastructural enhancement, innovation and talent development, entrepreneurial culture growth and ecosystem coordination;
 - (fd) enhancement of private sector investments in startups and Kenya’s positioning in the global innovation and startup economy; and ”

CLAUSE 4

THAT the Bill be amended by deleting Clause 4 and inserting the following new Clauses—

Role of the
Agency and the
Estate in
implementation
of the Act.

4. (1) The Agency and the Estate, shall develop a framework for collaboration among the startup ecosystem players including the county governments.

(2) The Agency shall—

- (a) formulate a national policy framework for the development of the business incubation and acceleration sector and startup system;
- (b) promote innovation;
- (c) facilitate the transfer of technology innovation;
- (d) create and develop a sustainable, globally competitive technology innovation sector that contributes towards the accelerated growth of the economy;
- (e) promote the linkages between universities and research institutions and the business community.
- (f) enter into partnerships with local and international business incubators and accelerators in order to promote the establishment and growth of startups in Kenya;
- (g) establish programmes for the certification and admission of incubators and accelerators into the incubation programmes;
- (h) setup mechanisms that promote the development of business incubation programmes and create an enabling environment for the promotion of business incubators including fiscal and non-fiscal incentives to incubators and startups;

- (i) establish online and other platforms for access to information including the establishment and development of startups, existing incubation programmes, access to fiscal and non-fiscal support and for this purpose, keep and maintain a directory of startups and incubator;
 - (j) support any research and development activities undertaken by startups;
 - (k) establish mechanisms for pre-incubation of entities and for this purpose, provide training and capacity building programmes to startups registered under this Act;
 - (l) establish mechanisms to enable access to entities from marginalized groups through the use of quotas or mechanisms that match them to unused capacity in existing programmes; and
 - (m) establish structures that ensure the protection of the innovations of startups at the national and international level.
- (3) The Estate shall —
- (a) develop a framework setting out modalities on funding for commercialization of startups;
 - (b) support startups through partnerships/collaboration with relevant startup ecosystem players for commercialization of startups;
 - (c) enter into partnerships to promote the startup ecosystem based on the Startup Maturity Framework;
 - (d) create an enabling environment for micro, small and medium enterprises to be innovative;
 - (e) design and implement training and capacity building programs for startups, incubators, and accelerators in accordance with this Act;
 - (f) ensure all persons irrespective of their sex, disability or ethnicity is afforded an equal opportunity to establish and benefit from their innovation;
 - (g) promote the creation of employment and wealth creation;
 - (h) establish a database of all commercialized startups; and
 - (i) undertake any other function, which is incidental to the performance of any of the foregoing functions.

Establishment
and
composition of
the start up
committee.

4A. (1) The Cabinet Secretary shall establish a multi-agency startup committee that shall comprise of technical persons from the following institutions—

- (a) Kenya National Innovations Agency;
- (b) Kenya Industrial Research and Development Institute;
- (c) Micro Small Enterprises Authority, Kenya Industrial Estates
- (d) Kenya Bureau of Standards;
- (e) Kenya Industrial Property Institute;
- (f) Institutions of Higher Learning, Technical, Vocation and Education Training Institutions; and
- (g) any other institution or person the Cabinet Secretary may deem necessary for the implementation of this Act.

(2) The committee under subsection (1) shall—

- (a) develop standards and guidelines to regulate the relationship between an incubator and a startup under this Act;
- (b) prescribe a criteria for the evaluation of entities, programmes and structures set up for the purposes of implementing this Act.
- (c) receive, assess, and issue labels to startups;
- (d) receive, assess, and certify incubators and accelerators;
- (e) create guidelines for incubation programmes run by public agencies;
- (f) issue a framework for the establishment, revamping and operation of accelerators and incubation hubs in every county;
- (g) accredit startups; and
- (h) advise the Cabinet Secretary on offering of fiscal and non-fiscal incentives.

CLAUSE 5

THAT Clause 5 of the Bill be amended by deleting Clause 5.

PART III

THAT the title to **PART III** of the Bill be amended by deleting the words “REGISTRAR OF STARTUPS AND ADMISSION INTO INCUBATION PROGRAMME” and substituting therefor the words “ADMISSION INTO INCUBATION PROGRAMME”.

CLAUSE 6

THAT the Bill be amended by deleting Clause (6) and substituting therefor the following new Clause—

Eligibility criteria.

6. (1) An entity is eligible for labelling as a startup if the entity—

- (a) is registered in Kenya as a —
 - (i) private limited company under the Companies Act;
 - (ii) co-operative society registered under Co-operative Societies Act;
 - (iii) sole-proprietorship; or
 - (iv) partnership firm.
- (b) is newly registered or has been in existence for a period of not more than ten years from the date of its incorporation or registration;
- (c) has as its objects the innovation, development, production or improvement and commercialization of innovative products, processes or services or if it is a scalable business model;
- (d) has human resources, total assets, and annual turnover number that does not exceed an amount prescribed by the Cabinet Secretary;
- (e) has its headquarters in Kenya;
- (f) does not distribute profits;
- (g) is fully owned by a citizen of Kenya or majority ownership by citizen or citizens of Kenya;
- (h) falls within the tiered structures as prescribed by the Startup Maturity Framework; and

(No. 120) **THURSDAY, DECEMBER 5, 2024 (3627)**

- (i) has at least fifteen percent of the expenses of the entity spent on activities that relate to research and development.
- (2) This Act shall not apply to an entity that is —
 - (a) established or formed as a result of the split, reconstruction, merger or reconstitution of an existing business;
 - (b) a holding company or subsidiary of an existing entity which is not labelled as a startup;
- (3) A startup labelled under this Act shall be granted access to the incentives provided under this Act.

CLAUSE 7

THAT the Bill be amended by deleting Clause 7 and substituting therefor the following new clause—

Registration of labelled startup.

7. (1) A person may apply to the committee to register a labelled startup under this Act in the prescribed form.

(2) A person who applies under subsection (1) shall submit a statement setting out—

- (a) the name of the entity;
- (b) the general nature of the proposed business of the entity;
- (c) a declaration form stating whether an entity has complied with data protection laws; and
- (d) the proposed registered office of the entity;

(3) The committee shall put in place mechanisms to ensure that the admission process is simple, efficient, accurate and transparent.

(4) The committee shall establish an online platform for the submission of the documents and information specified under subsection (2).

(5) The committee shall register and issues a label to a person who complies with the requirements specified in the regulations made under this Act.

CLAUSE 8

THAT Clause 8 of the Bill be deleted and be substituting therefor with the following new clause—

Obligations of
labelled startups.

- 8. (1) A startup labelled under this Act, shall—
 - (a) provide information to the committee annually on its annual turnover;
 - (b) maintain proper books of accounts;
 - (c) provide an annual report on monies received to support their activities;
 - (d) comply with any other obligations set out by the Committee after issuance of the label; and
 - (e) provide any other information that may be required during the period.

CLAUSE 9

THAT the Bill be amended by deleting Clause 9.

CLAUSE 10

THAT the Bill be amended by deleting Clause 10

.

CLAUSE 11

THAT the Bill be amended by deleting Clause 11.

CLAUSE 12

THAT the Bill be amended by deleting Clause 12.

CLAUSE 13

THAT the Bill be amended by deleting Clause 13.

CLAUSE 14

THAT the Bill be amended by deleting Clause 14 and substituting therefor the following new clause—

Grounds for
cancellation.

14. The Startup Committee may cancel a startup registered under this Act where —

- (a) there is reasonable cause to believe that the startup has among its objects the pursuit of an unlawful cause or purpose prejudicial to public interest;
- (b) the startup fails to comply with any directive issued by the Startup Committee to ensure compliance with the provisions of this Act;
- (c) the members of the startup fail to comply with the provisions of their constitution or rules or the provisions of this Act;
- (d) the startup fails to submit any information required under this Act or requested by the Startup Committee in order to ensure compliance with this Act; or
- (e) the startup submitted false information or statements at the time of labelling of the startup.

CLAUSE 15

THAT the Bill be amended by deleting Clause 15 and substituting therefor the following new clause—

Notice of non-compliance.

15. (1) The Startup Committee shall, before cancelling a startup under section 14 issue to the entity a compliance notice in the prescribed form.

(2) A compliance notice issued under subsection (1) shall—

- (a) be in writing;
- (b) notify the startup of the noncompliance and the steps it is required to take in order to ensure compliance; and
- (c) inform the entity of the period within which it is required to comply with the notice.

(3) The Startup Committee may, upon request by the startup and where there are sufficient grounds shown by the startup, extend the period of compliance for such period as the Startup Committee may consider necessary to ensure compliance.

CLAUSE 16

THAT the Bill be amended by deleting Clause 16 and substituting therefor the following new clause—

Cancellation.

16. (1) Where a startup which receives a notice under section 15 fails to comply with such notice, the Startup Committee shall cancel that startup by—

(a) cancelling its certificate of labelling;

(b) notifying the startup in writing of—

(i) the cancellation and the reasons for it; and

(ii) the date on which the certificate of labelling was cancelled; and

(c) amend the register accordingly.

(2) Where a startup is cancelled under subsection (1), all the rights and benefits that accrue to it by virtue of being registered shall cease to accrue to the startup.

(3) For purposes of this Act, cancellation of a startup under this section takes effect on the date on which the certificate of registration is cancelled by the Startup Committee.

CLAUSE 17

THAT the Bill be amended by deleting Clause 17 and substituting therefor the following new clause—

Application from an order of refusal or de-registration.

17. (1) A person who is aggrieved by the decision of the Startup Committee under this Part may, within thirty days of being notified of the decision, apply to the Cabinet Secretary for a review of the decision.

(2) An application for review shall be in such form as the Cabinet Secretary shall prescribe.

(3) The Cabinet Secretary shall determine an application under subsection (1) within sixty days of receipt of the application under subsection (1) and may confirm, vary or reverse the decision under review.

CLAUSE 18

THAT the Bill be amended by deleting Clause 18 and substituting therefor the following new clause—

Register of startups.

18. (1) The Startup Committee shall keep and maintain a register of —

- (a) all startups registered under this Act specifying —
 - (i) the name of the startup;
 - (ii) the members of the startup;
 - (iii) the address of the startup; and
 - (iv) such other particulars as the Startup Committee may from time to time determine;
- (b) all cancelled startups; and
- (c) all startups which have voluntarily cancelled under this Act.

(2) Any person may inspect the register and obtain a copy of, or an extract from the Startup Committee upon payment of such fee as the Startup Committee shall determine.

CLAUSE 19

THAT the Bill be amended by deleting Clause 19 and substituting therefor the following new clause—

Alteration of register.

19. (1) The Startup Committee, as the case may be, may, from time to time, make changes or corrections in the register relating to any entry.

(2) Any change or correction in relation to an entry made pursuant to a notice issued by a startup shall be made to the Startup Committee as soon as it is practicable after receipt of an authenticated notification thereof.

CLAUSE 21

THAT the Bill be amended by deleting Clause 21 and substituting therefor the following new clause—

Change of particulars.

21.(1) A startup that makes a change to any of its particulars shall, within thirty days of such change submit to the Startup Committee information regarding the change.

(2) Upon receipt of the information under subsection (1) and where the Startup Committee is satisfied that the change does not affect its status of registration as a startup, enter the changes in the register kept by the Startup Committee under this Act.

PART IV

THAT the title to **PART IV** of the Bill be amended by inserting the words “AND ACCELERATORS” immediately after the word “INCUBATORS”.

CLAUSE 24

THAT Clause 24 of the Bill be amended —

(a) in subclause (1):

- (a) by deleting the word “registrar” appearing in paragraph (a) and substituting therefor the word “startup ecosystem players” and
- (b) by deleting paragraph (b).

CLAUSE 25

THAT Clause 25 of the Bill be amended—

- (a) in subclause (1) by deleting the words “, in consultation with the county executive committee members, ”
- (b) in subclause (2) by deleting the words “ or a county executive committee member may, ”

PART V

THAT the title to **PART V** of the Bill be amended by inserting the words “, INCUBATORS AND ACCELARATORS” immediately after the word “STARTUPS”

CLAUSE 27

THAT, Clause 27 of the Bill be amended—

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

“(1) The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for finance, put in place measures for the granting of fiscal and non-fiscal incentives including tax incentives as shall be considered necessary for the development of startups.”

(b) by deleting subclause (2).

NEW CLAUSE 27A

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

Incentives for
labelled incubators
and accelerators.

27A. (1) The Agency shall put in place measures to support incubators and accelerators and shall, for this purpose—

- (a) negotiate for tax concessions on the machinery or any other unique equipment to be used by incubators or accelerators; and
- (b) offer grants and aid for research, development, training, and expansion of projects taking place in the incubators or accelerators.

Incentives for investors.

27B. (1) The Cabinet Secretary, in consultation with the Cabinet secretary responsible for finance, may put in place measures to provide incentives to investors, including—

- (a) providing for tax relief on investment and from capital gains tax;
- (b) providing tax relief in the event of loss of investment;
- (c) providing tax relief for organizations or companies who have made equity investments in startups;
- (d) providing tax relief for investors who invest in startups that have three-quarters of their staff as local employees; or
- (e) providing creation of a special visa for foreign direct investment.

General requirements on exemptions and deductions.

27C. (1) A person is eligible for an exemption or a deduction provide for under this Act, if the exemption or deduction —

- (a) the exemption or deduction has been recommended by Agency and approved by the appropriate government authority;
- (b) complies with conditions prescribed under subsection (2); and
- (c) public resources have been allocated to accommodate the exemption or deduction.

CLAUSE 30

THAT Clause 30 of the Bill be amended by deleting subclause (2).

NEW CLAUSE 30A

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

**Intellectual
Property.**

30A. (1) The Agency shall collaborate with Kenya Industrial Property Institute to—

- (a) maintain an online platform to facilitate intellectual property registrations, which shall contain relevant information on process, categories of registrable IP and registration requirements;
- (b) provide training in intellectual property requirements to labelled startups;
- (c) simplify registration processes and facilitate assistance for the registration of patents and trademarks at both national and international levels;
- (d) make reasonable efforts to expedite intellectual property registration procedures, particularly for patents and trademarks which require several components;
- (e) design a financial support mechanism for labelled startups to support registration of intellectual property at the national and international level,;
- (f) develop model contracts for startups to use in their contractual relations with employees and contractors that detail IP rights and ownership, including for code and application development, and provide access to expert consultations with experienced examiners to ensure compliance with administrative requirements and assist with instituting legal actions for IP infringements and ensure speedy resolution of all IP disputes;
- (g) review and bring in accordance domestic copyright laws to clarify that copyright protects source code and algorithms; and
- (h) cooperate with other relevant authorities to integrate prohibitions of forced technology transfer in bilateral investment and trade agreements with third parties.

CLAUSE 31

THAT the Bill be amended by deleting Clause 31.

NEW PART

THAT the Bill be amended by inserting the following new PART immediately after PART V—

PART VA- ESTABLISHMENT OF THE STARTUP FUND

Establishment of the Startup Fund

32A. (1) There is established a fund known as the Cooperative Development Fund, in accordance with the Regulations prescribed by the Cabinet Secretary.

(2) The Cabinet Secretary shall enact regulations to operationalize this section.

Sources of the Funds.

32B. The source of the Fund shall consist of—

- (a) such monies as may be appropriated by the National Assembly for the purposes of the Fund;
- (b) such monies as may accrue to the Authority in the performance of its functions under this Act determined in regulations from the National Research Fund;
- (c) any grants, gifts, donations or other endowments given to Kenya National Innovation Agency, Kenya Industrial Estates and other startup ecosystem players including County Governments; and
- (d) such funds as may vest in or accrue to Kenya National Innovation Agency and Kenya Industrial Estates and other startup ecosystem players including County Governments in the performance of its functions under this Act; and
- (e) any funds donated or lent to, or gift made to Kenya National Innovation Agency and Kenya Industrial Estates shall be disclosed to the National Assembly and made public before use.

CLAUSE 34

Clause 34 of the Bill be amended by deleting Clause 34 and substituting therefor the following new subclause—

Data

protection

34.The personal data concerning a startup, incubator or accelerator, shall be processed only in accordance with the provisions of the Data Protection Act.

NEW CLAUSE 34A

THAT the Bill be amended by inserting the following new clause immediately after Clause 34—

**General
penalty.**

34A. (1) A person who commits an offence under this Act for which no specific penalty is provided or who otherwise contravenes this Act shall, on conviction, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years, or to both.

(2) In addition to any penalty referred to in subsection (1), the Court may order or prohibit the doing of any act to stop a continuing contravention.

- 2) **Notice is given that the Member for Dagoretti South (Hon. John Kiarie) intends to move the following amendments to the Startup Bill, 2022 at the Committee Stage—**

PART III

THAT, the Bill be amended by deleting the words “Registrar of Startups and” appearing in the title to Part III of the Bill.

CLAUSE 2

THAT, the Bill be amended by deleting the definition of the “Registrar” appearing in Clause 2.

CLAUSE 4

THAT, Clause 4 of the Bill be amended in subclause (2) by inserting the following new paragraph immediately after paragraph (e)

(ea) build a digital system where applications, evaluation and tracking is done in a transparent manner.

CLAUSE 5

THAT, Clause 5 of the Bill be amended in subclause (2) by inserting the following new paragraph immediately after paragraph (a)

(aa) establish a funding program for startups including funding instruments to support various categories of innovators.

CLAUSE 6

THAT, Clause 6 of the Bill be amended by deleting Clause 6.

CLAUSE 7

THAT Clause 7 of the Bill be amended by deleting Clause 7.

CLAUSE 27

THAT Clause 27 of the Bill be amended in subclause (1) by inserting the following new paragraphs immediately after paragraph (f)—

- “ (g) tax breaks in key industries as may be determined by the Cabinet;
- (h) employees of Startups may be entitled to Personal Income Tax relief;
- (i) competitive interest rates on Startup loan products from Government;
- (j) zero-rated Pay As You Earn up to an amount as may be determined by the Cabinet;
- (k) ease work permit requirements for foreign talent with the requisite skills;
- (l) Value Added Tax exemption for a period as shall be determined by the Cabinet;
- (m) access to matching funds by Government; and
- (n) grants to support research and market validation and development.”

NEW CLAUSE 27A

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

Funding
Program.

27A. The Agency shall—

- (a) mobilise funds from the National Treasury and other sources to finance the innovation and startup ecosystem by developing appropriate instruments such as matching funding, seed funding, interest free loans and commercialization grants each with corresponding internal guidelines; fund startups, incubators, accelerators, technology transfer offices, science and technology parks from the mobilized funds leveraging the innovation ecosystem maturity framework; and
- (a) develop a framework for internal approvals depending on the funds sought by the startups, incubators, accelerators, technology transfer offices or science and technology parks.

NEW CLAUSE 29A

THAT the Bill be amended by inserting the following new clause immediately after Clause 29 —

Establishment
of Technology
Transfer
Offices.
Cap. 210.

29A. (1) An institution that is established under the Universities Act or under the Technical and Vocational

Cap. 210A. Education and Training Act may establish a technology transfer office.

(2) A technology transfer office shall—

- (a) act as a link between academia and the industry to facilitate commercialization of intellectual property and innovations;
- (b) receive disclosures and analyse the disclosures for any commercial potential and the likely success of such commercialization;
- (c) aid researchers and innovators on the statutory protection of intellectual property;
- (d) facilitate commercialization of intellectual property through, licensing, assignment, and creation of startups, joint ventures, and spinoffs; and
- (e) conduct awareness programmes on commercialization of intellectual property.

(3) The Agency shall develop standards and guidelines for establishing and operationalising a technology transfer office under this section.

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

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

CLAUSE 2

THAT, Clause 2 of the Bill be amended —

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

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

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

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

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

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

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

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

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

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

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

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

- (h) in the definition of the term “embryologist” by inserting the words “the creation, development, storage and transfer of embryos, and” immediately after the words “deals with”;
- (i) in the definition of the term “embryology” by deleting the words “gametes and development of embryos” and substituting therefor the words “creation, development, storage and transfer of gametes or embryos”;
- (j) in the definition of the term “endoscopic surgery” by deleting the words, “and passing a telescope with a video camera through the incision into the body cavity”;
- (k) in the definition of the term “father” by —
 - (i) deleting the words “placing in the woman an embryo or sperm and eggs or the artificial insemination” appearing in the opening sentence of that definition and substituting therefor the words “transferring into a uterus an embryo or sperm and eggs or the intrauterine insemination”;
 - (ii) deleting the words “placing in the woman the embryo or the sperm and eggs or artificial insemination” appearing in paragraph (a) and substituting therefor the words “transferring into a uterus the embryo or the sperm and eggs or intrauterine insemination”; and
 - (iii) deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) the man did not donate his sperms for the process of assisted reproduction, and at the time of transferring into a uterus, the embryo or the sperm and eggs or intrauterine insemination of the woman—

 - (i) the man was party to a marriage with the woman; or
 - (ii) man has in agreement with the woman, written a parental agreement acquiring parental rights of a father;
 - (iii) the man is a commissioning or intending parent at the time of assisted reproductive technology”;
- (l) in the definition of the term “in-vitro fertilization” by deleting the words “in a test-tube or elsewhere”;

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

“mother” means a woman who—

- (i) is carrying or has carried a child as a result of placing in her an embryo or sperms;
- (ii) was party to a marriage with the man whose sperm was utilized to create an embryo;
- (iii) has in agreement with the man, written a parental agreement acquiring parental rights of a mother; or
- (iv) is a commissioning or intending parent at the time of assisted reproductive technology;

(n) in the definition of the term “oocyte” by deleting the word “oocyte” and substituting therefor the word “egg”;

(o) by deleting the definition of the term “parties to a marriage”;

(p) in the definition of the term “pre-implantation genetic diagnosis” by deleting the words “and eliminating the same”;

(p) in the definition of the term “pre-implantation screening” by deleting the words “to determine the number of chromosomes” and substituting therefor the words “to determine the viability or euploidy of an embryo before transferring to the woman’s womb”;

(q) by deleting the definition of the term “primitive streak”;

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

“sperm” means the mature male human gamete;

(s) in the definition of the term “surrogacy” by deleting the words “a commissioning parent or couple” and substituting therefor the words “an intended parent”;

(t) in the definition of the term “surrogate mother” by deleting the words “another woman” and substituting therefor the words “another person or a couple”

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

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

Cap. 141. “best interest of the child” has the meaning assigned to it under section 2 of the Children Act;

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

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

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

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

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

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

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

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

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

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

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

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

CLAUSE 3

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

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

CLAUSE 4

THAT, Clause 4 of the Bill be amended by—

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

NEW CLAUSE 4A

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

Guiding
principles.

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

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

CLAUSE 7

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

CLAUSE 8

THAT, Clause 8 of the Bill be amended—

- (a) inserting the word “training,” immediately after the words “National Government in” appearing in paragraph (a);
- (b) deleting the word “adequate” appearing in paragraph (b); and
- (c) deleting the words “sufficient” and “adequately” appearing in paragraph (c).

CLAUSE 9

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

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

- (a) holds a bachelor’s degree in medicine from a university recognized in Kenya;

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

CLAUSE 12

THAT, Clause 12 of the Bill be amended in sub-clause (1) by deleting the words "written consent, in accordance with the prescribed Regulations, to its use for that purpose" and substituting therefor the words "written informed consent".

CLAUSE 13

THAT, Clause 13 of the Bill be amended in—

- (a) the marginal note by inserting the word "informed" immediately before the word "consent"; and
- (b) sub-clause (1) by deleting the words "written consent, in a manner prescribed by Regulations, to its removal for that purpose" and substituting therefor the words "written informed consent".

CLAUSE 14

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

CLAUSE 16

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

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

CLAUSE 17

THAT, Clause 17 of the Bill be amended by—

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

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

CLAUSE 18

THAT, Clause 18 of the Bill be amended by—

- (a) deleting the marginal note and substituting the following new marginal note—
“Restrictions on the use of embryos”.
- (b) deleting sub-clause (1) and substituting therefor the following new sub-clause (1)—
“(1) A person shall not—
 - (a) keep or use an embryo other than a human embryo;
 - (b) place a human embryo in any animal;
 - (c) transfer an embryo in a woman other than a human embryo;
 - (d) keep or use a human embryo in circumstances prohibited under this Act or as prescribed by regulations;
 - (e) replace any part of a human embryo with another part from a cell of any person or embryo or any subsequent development of an embryo except where such replacement is for purposes of solving a medical problem; or
 - (f) undertake any form of human cloning.”

CLAUSE 19

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

- (a) inserting the word “informed” immediately after the words “without his” appearing in paragraph (b)”;
- (b) inserting the word “informed” immediately after the words “without her” appearing in paragraph (c);
- (c) deleting the words “place sperm and eggs or embryo in a woman” appearing in paragraph (e) and substituting therefor the words “transfer sperms or embryo into a womb”; and
- (d) inserting the following new paragraph immediately after paragraph (e)—
“(f) in the course of providing assisted reproductive treatment services for any woman, use the sperm of any man without the woman’s informed consent”.

NEW CLAUSES 19A, 19B AND 19C

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

- | | |
|--|--|
| Number of
times one can
donate gametes
or embryos or
be a surrogate. | <p>19A. (1) A person shall not donate their gametes or embryos more than ten times.</p> <p>(2) A person shall not perform a treatment procedure using gametes or an embryo produced by a donor if such procedure may result in more than ten children who are genetic siblings.</p> |
|--|--|

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

Donation of gametes or embryos.

19B. (1) A cryo bank shall obtain—

- (a) male gametes from males between twenty-one years of age and thirty-five years of age; or
- (b) oocytes from females between twenty-three years of age and thirty-five years of age.

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

Disposal of gametes.

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

- (a) disposal of gametes after ten years of preservation;
- (b) donation of gametes to other couples pursuing assistive reproductive technology; or
- (c) the conduct of research on stem cells and zygotes that are not more than fourteen days old on a written application and where;
 - (i) the applicant undertakes to document the research for record purposes; and
 - (ii) prior consent is obtained from the donor of the stem cells or zygotes.

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

CLAUSE 20

THAT, Clause 20 of the Bill be amended by—

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

“Posthumous reproduction”

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

(c) deleting paragraph (b) of the renumbered sub- clause (1) and substituting therefor the following new paragraph (b) —

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

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

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

(a) father was married to the woman at the time of the death of the woman; and

(b) woman had given informed consent in writing”.

NEW CLAUSE 22A.

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

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

CLAUSE 23

THAT, Clause 23 of the Bill be amended—

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

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

(a) the ownership of the gametes or embryos;

(b) the number of embryos to be implanted; and

(c) what should be done with the gametes or embryos in case of—

(i) the death of any of the parties seeking assisted reproductive technology services;

(ii) incapacity of any of the parties seeking assisted reproductive technology services;

(iii) abandonment of the gametes or embryos;

(iv) dispute;

(v) divorce; or

(vi) separation.”

- (b) in sub-clause (3) by deleting the words “death or incapacity of any of the parties” and substituting therefor the words “the circumstances set out in subsection 2(c)”;
- and
- (c) in sub-clause (4) by deleting the word “implanting” and substituting therefor the words “transfer of”.

CLAUSE 24

THAT, Clause 24 of the Bill be amended in—

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

NEW CLAUSE 24A

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

Pre-implantation
diagnosis or
testing.

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

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

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

CLAUSE 25

THAT, the Bill be amended by deleting Clause 25.

CLAUSE 26

THAT, Clause 26 of the Bill be amended by—

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

(c) deleting sub-clause (5) and substituting therefor the following new sub-clause (5)—

“(5) A child born out of surrogacy or any procedure under this Act shall acquire the citizenship of the intended parent.”

CLAUSE 27

THAT, Clause 27 of the Bill be amended—

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

“(1) A woman who—

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

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

(b) in sub-clause (2) by—

- (i) deleting the word “child “appearing immediately after the words “carry the” and substituting therefor the word “foetus”; and
- (ii) deleting the words “parties to a marriage or couple” and substituting therefor the words “intended parents”.

NEW CLAUSES 27A AND 27B

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

Intended
parents.

27A. An intended parent may use assisted reproduction where the person—

- (a) is a Kenyan; and
- (b) has attained the age of twenty-five years; and
- (c) is below the age of fifty-five years.”

Leave related to
surrogacy.

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

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

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

CLAUSE 28

THAT, Clause 28 of the Bill be amended—

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

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

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

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

(c) by deleting sub-clause (5) and substituting therefor the following new sub-clause—

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

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

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

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

(d) by inserting the following new sub-clause immediately after the new sub-clause (5)—

“(6) A person may apply to the High Court for any necessary orders on matters relating to—

(a) the validity of a surrogacy agreement;

(b) a dispute relating to parentage of a child born as a result of an assisted reproduction procedure; or

(c) the citizenship of a child born as a result of an assisted reproduction procedure.”

(e) in sub-clause (7) , by deleting the words “in the process” and substituting therefor the words “as a consequence”; and

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

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

(a) partaking alcohol;

(b) smoking;

(c) using unprescribed drugs; or

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

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

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

NEW CLAUSES 28A AND 28B

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

Surrogacy
agreements by third
parties.

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

(a) initiating or taking part in any negotiations with the intention of the making of a surrogacy arrangement;

(b) offering or agreeing to negotiate the making of a surrogacy arrangement; or

(c) compiling any information with the intent of using such information in making or negotiating the making of surrogacy arrangements.

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

(a) any payment is at any time received by himself or another in respect of that act; or

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

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

Commercialization
of surrogacy.

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

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

(2) A person who contravenes subsection (1) commits an offence and shall on conviction be liable to pay a fine not exceeding ten million shillings or to imprisonment for a term not exceeding ten years, or to both.

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

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

CLAUSE 29

THAT, Clause 29 of the Bill be amended—

(a) in sub-clause (1) by—

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

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

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

CLAUSE 30

THAT, Clause 30 of the Bill be amended—

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

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

(b) in sub-clause (4) by—

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

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

(c) in sub-clause (5) by—

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

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

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

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

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

NEW CLAUSE 30A

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

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

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

(2) The surrogate may claim permitted costs incurred for any duration of time as agreed with the intended parent or parents.

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

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

- (5) Parties to a surrogate agreement shall not vary the discretionary payment during the protected period unless with the mutual consent of all parties and after proof of consultation with an advocate.
- (6) Nothing in this Act shall prohibit a party from providing greater protections to a surrogate.
- (7) The Cabinet Secretary shall make regulations on the discretionary and permitted payments to be made under a surrogacy agreement.
- (8) The Cabinet Secretary shall, in making regulations under subsection (7) determine the maximum sum of discretionary costs based on the principles of affordability, non-exploitation of the surrogate and non-exploitation of the intended parents.
- (9) In this section—
- “discretionary payment” means a payment prescribed in regulations made by the Cabinet Secretary and includes the compensatory consideration paid in addition to the permitted payment;
- “permitted costs” includes—
- (a) the costs of travel and subsistence including accommodation incurred in connection with the surrogate—
 - (i) meeting with the intended parent or parents; or
 - (ii) attending medical appointments in connection with surrogacy matters;
 - (b) the costs of medical care and legal costs incurred in connection with surrogacy matters;
 - (c) the costs incurred in ensuring the surrogate’s physical, mental and emotional well-being in connection with surrogacy matters including the costs of counselling, physiotherapy, antenatal classes and fitness classes;
 - (d) the costs of pregnancy-related items for use by the surrogate including maternity clothes;
 - (e) any increase in food costs attributable to the surrogate pregnancy or to the surrogate entering the surrogacy agreement;
 - (f) any costs incurred in securing assistance with the performance of any day-to-day household task that would normally be performed by the surrogate and which she is unable to perform as a result of carrying or giving birth to a child conceived as a result of surrogacy; and
 - (g) the costs of compensating for loss of earnings suffered as a result of the surrogate entering into the surrogacy agreement;

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

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

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

CLAUSE 31

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

Prohibition of sex selection.

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

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

CLAUSE 32

THAT, Clause 32 of the Bill be amended by—

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

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

NEW CLAUSES 32A AND 32B

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

Offences relating to matching services.

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

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

(3) In this section—

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

Prohibition on certain publications.

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

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

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

CLAUSE 33

THAT, Clause 33 of the Bill be amended by—

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

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

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

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

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

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

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

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

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

CLAUSE 34

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

CLAUSE 42

THAT, Clause 42 of the Bill be amended in sub-clause (1) by—

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

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

CLAUSE 43

THAT, Clause 43 of the Bill be amended—

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

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

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

(i) there is a register linking the unique identifier to the identity of the donors, date of storage and any other relevant information;

(j) there is maintenance of a movement register of storage and retrieval of stored gametes or embryos; and

(k) the cryo bank has adequate facilities to ensure privacy and confidentiality of the owner of the stored gamete or embryo and the identity of the donor.”

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

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

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

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

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

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

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

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

CLAUSE 46

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

- (a) deleting paragraph (d);
- (b) deleting paragraph (e) and substituting therefor the following new paragraph —
 “(e) that the person responsible has committed a professional malpractice or has been removed from office for contravening the provisions of the Constitution or any other written law”; and
- (c) inserting the words “or any other law and sentenced to imprisonment for a term exceeding six months” immediately after the word “Act” appearing in paragraph (f).

CLAUSE 50

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

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

NEW CLAUSE 51A

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

Transitional provisions.

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

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

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

CLAUSE 52

THAT, Clause 52 of the Bill be amended —

- (a) in paragraph (c) by deleting the words “planted in” and substituting therefor the words “transferred into”;
- (b) in paragraph (g) by inserting the word “informed” immediately after the words “giving of”;
- (c) in paragraph (h) by deleting the word “children” and substituting therefor the word “embryos”; and
- (d) by renumbering the existing clause as sub-clause (1) and inserting the following new sub-clause immediately after the renumbered sub-clause (1)—
 - “(2) The power to make regulations shall be exercised only after a draft of the proposed regulations has been approved by Parliament.”

NEW PART X - CONSEQUENTIAL AMENDMENTS

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

PART X- CONSEQUENTIAL AMENDMENTS**NEW CLAUSES 52A, 52B AND 52C**

Amendment of section 2 of Cap. 149.

52A. The Births and Deaths Registration Act is amended in section 2 by inserting the following new definitions in the proper alphabetical sequence—

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

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

Amendment of section 12 of Cap. 149.

52B. The Births and Deaths Registration Act is amended in section 12 by inserting the words “or by presenting a surrogacy agreement indicating the particulars of the intended father” immediately after the words “some recognized custom”.

Insertion of a
new section into
Cap. 149.

52C. The Births and Deaths Registration Act is amended by inserting the following new section immediately after section 12—

Register of
persons born
through assisted
reproductive
technology.

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

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

LONG TITLE

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

CLAUSE 2

THAT, Clause 2 of the Bill be amended —

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

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

(b) in the definition of the term “assisted reproductive technology services” by deleting the words “infertile and sub- fertile man or woman” and substituting therefor the words “infertile couple”;

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

“child” means any individual born through the use of assisted reproductive technology;

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

“couple” means a Kenyan male and female who are in a marriage contracted under the Laws of Kenya;

(e) by deleting the definition of the term “directorate”;

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

- “donation” means a process in assisted reproductive technology of voluntarily giving gametes for purposes of procreation;
- (g) in the definition of the term “donor” by deleting the words “and the person need not be the spouse of the person she or he is donating the gametes to”;
- (h) by deleting the definition of the term “embryo” and substituting therefor the following new definition—
“embryo” means a developing or developed organism after fertilization till the end of fifty-six days from the day of fertilization;
- (i) by deleting the definition of the term “father” and substituting therefor the following new definition—
“father” means a male parent;
- (j) by deleting the definition of the term “gamete” and substituting therefor the following new definition—
“gamete” means a sperm and oocyte or a mature sperm from a man and a mature egg from a woman;
- (k) in the definition of the term “infertility” by deleting the words “one year” and substituting therefor the words “five years”;
- (l) in the definition of the term “in-vitro fertilization” by deleting the words “an egg is fertilized by a sperm in a test-tube or elsewhere outside the body” and substituting therefor the words “fertilization takes place outside the body”;
- (m) by deleting the definition of the term “mother” and substituting therefor the following new definition—
“mother” means a female parent or woman whose egg is fertilized to produce a child;
- (n) by deleting the definition of the term “sperm” and substituting therefor the following new definition—
“sperm” means the mature male gamete;
- (o) by deleting the definition of the term “surrogacy” and substituting therefor the following new definition—
“surrogacy” means a practice whereby one woman bears and gives birth to a child for an intending couple with the intention of handing over such a child to the intending couple after the birth;
- (p) by deleting the definition of the term “surrogate mother” and substituting therefor the following new definition—
“surrogate mother” means a woman who agrees to bear a child, who is genetically related to the intending couple, through surrogacy from the implantation of an embryo in her womb; and
- (q) by inserting the following new definitions in their proper alphabetical sequence—
“abandoned child” means a child born out of a surrogacy procedure who has been deserted by his or her intending parents and the surrogate and declared as such by the court after due process;

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

“assisted reproductive technology bank” means an organization that is responsible for the collection and storage of gametes and embryos and the supply of gametes to the assisted reproductive technology clinics or their patients;

“assisted reproductive technology clinic” means a premise equipped with the requisite facilities and medical practitioners registered with the Council for purposes of carrying out the procedures related to assisted reproductive technology;

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

Cap.
253.

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

“fertilization” means the penetration of the ovum by the spermatozoa and fusion of genetic materials resulting in the development of a zygote;

“foetus” means a human organism during the period of its development beginning on the fifty-seventh day following fertilization or conception until birth;

“gamete donor” means a person who provides a sperm or oocyte with the objective of enabling an infertile couple or woman to have a child;

“gestational surrogacy” means a practice whereby a woman carries a child for the intending couple through implantation of an embryo in her womb and the child is not genetically related to the surrogate mother and when it is only for altruistic surrogacy purposes, it is not for commercial purposes or for producing children for sale, prostitution or any other form of exploitation;

“implantation” means the attachment and subsequent penetration by the zona-free blastocyst, which starts five to seven days following fertilization;

“intending couple” means a couple who have a medical indication necessitating gestational surrogacy and who intend to become parents through surrogacy;

“intending woman” means a Kenyan woman who is a widow or divorcee between the age of thirty five to forty five years and who intends to avail the surrogacy;

“intending parents” means an infertile married couple who approach an assisted reproductive technology clinic or assisted reproductive technology bank to obtain the services authorized in respect of that clinic or bank;

“patients” means an individual or a couple who goes to a registered assisted reproductive technology clinic for the management of infertility;

“surrogacy clinic” means a surrogacy clinic, centre or laboratory conducting assisted reproductive technology services, in-vitro fertilization services, genetic counselling centre, genetic laboratory and assisted reproductive technology banks conducting a surrogacy procedure or any clinical establishment conducting surrogacy procedures in any form;

“surrogacy procedures” means all gynecological, obstetrical or medical procedures, techniques, tests, practices or services involving the handling of human gametes and human embryo in surrogacy;

“woman” means any woman above the age of twenty-one years who approaches an assisted reproductive technology clinic or an assisted reproductive bank for purposes of obtaining the authorized services of that clinic or bank;

“prescribed” means prescribed by rules made under this Act;

“zygote” means the fertilized oocyte prior to the first cell division.

CLAUSE 3

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

- Application. 3. This Act applies to—
- (a) all processes of facilitated human fertilization undertaken outside the human body, whether or not the process is completed outside the human body; and
 - (b) heterosexual Kenyan couples, divorced, widowed or single parent Kenyans who have been certified by an assisted reproductive technology expert as infertile or as having other proven medical conditions preventing natural conception.

CLAUSE 4

THAT, Clause 4 of the Bill be amended by deleting paragraphs (a), (b) and (c) and substituting therefor the following new paragraphs—

- (a) permit altruistic surrogacy;
- (b) prohibit commercial surrogacy; and
- (c) make consequential provisions thereto.

CLAUSE 5

THAT, the Bill be amended by deleting Clause 5.

CLAUSE 6

THAT, Clause 6 of the Bill be amended by —

- (a) deleting the opening sentence and substituting therefor the following new opening sentence—

“The functions of the Council, in respect of the regulation of the use assisted reproductive technology, shall be to—”

- (b) deleting the words “in consultation with the Medical Practitioners and Dentist Council,” appearing in paragraph (i).

CLAUSE 7

THAT, the Bill be amended by deleting Clause 7.

CLAUSE 8

THAT, the Bill be amended by deleting Clause 8.

CLAUSE 9

THAT, the Bill be amended by deleting Clause 9.

CLAUSE 10

THAT, the Bill be amended by deleting Clause 10.

CLAUSE 12

THAT, Clause 12 of the Bill be amended in sub-clause (1) by deleting the words “in accordance with the prescribed Regulations, to its use for that purpose”.

CLAUSE 13

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

CLAUSE 14

THAT, Clause 14 of the Bill be amended by inserting the words “is infertile, cannot conceive or carry a pregnancy to term,” immediately after the words “medical doctor that the person”.

CLAUSE 15

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

CLAUSE 17

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

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

CLAUSE 18

THAT, Clause 18 of the Bill be amended by deleting the word “Directorate” and substituting therefor the word “Council”.

CLAUSE 20

THAT, the Bill be amended by deleting Clause 20.

CLAUSE 21

THAT, Clause 21 of the Bill be amended—

(a) by deleting the word “Directorate” appearing in sub-clause (2) and substituting therefor the word “Council”; and

(a) in sub-clause (3) by inserting the following new sub paragraph immediately after sub paragraph (iv) —

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

CLAUSE 22

THAT, the Bill be amended by deleting Clause 22.

CLAUSE 23

THAT, Clause 23 of the Bill be amended by—

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

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

(b) deleting the existing sub-clause (3) and substituting therefor the following new sub-clause—

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

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

CLAUSE 24

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

CLAUSE 25

THAT, the Bill be amended by deleting Clause 25.

CLAUSE 26

THAT, Clause 26 of the Bill be amended —

- (a) in sub-clause (1) by deleting the words “sexual intercourse” and substituting therefor the words “natural conception”;
- (b) by deleting sub-clauses (2), (3), (4) and (5).

CLAUSE 27

THAT, Clause 27 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause (2)—

“(2) The surrogate mother under subsection (1) shall carry the child on behalf of the couple and where the surrogate mother has no genetic connection with the child shall subject to a court order relinquish all parental rights and responsibilities at birth over the child to the intended parents”.

CLAUSE 28

THAT, Clause 28 of the Bill be amended in—

- (a) sub-clause (1) by deleting the words “Parties to a marriage or commissioning parents” and substituting therefor the words “A couple or intended parents”;
- (b) sub-clause (3)(c) by—
 - (i) deleting sub-paragraph (i) and substituting therefor the following new subparagraph —
 - (i) death of the intended parent, or if a couple, death of one of the intended parents before the birth of the child;
 - (ii) deleting sub-paragraph (ii) and substituting therefor the following new subparagraph —
 - (ii) separation or divorce of the intended parents who were a couple, before the birth of the child;
- (c) sub-clause (3)(d) by deleting the words “commissioning parent or commissioning parents” and substituting therefor the words “intended parent or intended parents”;

- (d) sub-clause (3)(g) by deleting the words “commissioning parent, commissioning parents or parties to marriage” and substituting therefor the words, “intended parent, intended parents or couple”; and
- (e) sub-clause (7) by deleting the words “Parties to a marriage” and substituting therefor the word “couple”

CLAUSE 30

THAT, Clause 30 of the Bill be amended —

- (a) in sub-clause (1) by—
 - (i) deleting the word “commissioning” and substituting therefor the word “intended”; and
 - (ii) inserting the words “where the child is connected to them or subject to a court order” immediately after the word “shall”;
- (b) in sub-clause (2) by deleting the word “commissioning” and substituting therefor the word “intended” wherever it appears;
- (c) by deleting subclause (3) and substituting therefor the following new subclause—
 - “(3) Where a child is born out of a surrogacy arrangement—
 - (a) where the creation of an embryo was brought about with a sperm and an egg of a couple, or where the couple or intended parent is genetically connected to the child, the couple or intended parent shall be the parents of the child and shall be listed as the parents in the birth notification and in the birth certificate; or
 - (b) where the creation of an embryo was brought about with the gametes other than the gamete of a couple or the intended parent or where the couple or intended parent is not genetically connected to the child, the couple or intended parent shall only be the parents of the child and shall be listed as the parents in the birth notification and in the birth certificate following a court order;
- (d) by deleting sub-clauses (4), (5), and (6).

CLAUSE 33

THAT, Clause 33 of the Bill be amended by deleting the word “Directorate” and substituting therefor the word “Council”.

CLAUSE 34

THAT, Clause 34 of the Bill be amended—

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

(b) in subclause (1) by deleting the word “twenty-one” and substituting therefor the word “twenty-five”.

CLAUSE 35

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

CLAUSE 36

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

CLAUSE 37

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

CLAUSE 38

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

CLAUSE 40

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

CLAUSE 41

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

CLAUSE 42

THAT, Clause 42 of the Bill be amended by deleting the word “Directorate” wherever it appears and substituting therefor the word “Council”.

CLAUSE 43

THAT, Clause 43 of the Bill be amended —

(a) in sub-clause (1) by—

(i) deleting the words, “or embryos” appearing in the opening sentence;

(ii) deleting paragraph (a),(b), (c) and (d);

(iii) deleting the words, “or embryos” appearing in paragraph (e); and

(iv) deleting paragraph (f) and substituting therefor the following new paragraph

—

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

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

—

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

CLAUSE 44

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

CLAUSE 45

THAT, Clause 45 of the Bill be amended in sub-clause (2) by deleting the word “Directorate” appearing in paragraph (b) and substituting therefor the word “Council”.

CLAUSE 46

THAT, Clause 46 of the Bill be amended by deleting the word “Directorate” wherever it appears and substituting therefor the word “Council”.

CLAUSE 47

THAT, Clause 47 of the Bill be amended by deleting the word “Directorate” appearing in sub-clause (1) and substituting therefor the word “Council”.

CLAUSE 49

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

CLAUSE 50

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

CLAUSE 52

THAT, Clause 52 of the Bill be amended by—

(a) deleting the opening sentence and substituting therefor the following new opening sentence—

“The Cabinet Secretary, in consultation with the Council, may, with the prior approval of Parliament, 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 —

(b) deleting paragraph (a),(b), (c), (d),(f) (g), (h) and (p).



LIMITATION OF DEBATE

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

Limitation of Debate on Motions

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

Limitation of Debate on Individual Members' Bills

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

Limitation of Debate on Bills sponsored by Parties or Committees

- IX.** THAT, each speech in a debate on **Bills sponsored by a Committee, the Leader of the Majority Party or the Leader of the Minority Party** be limited as follows: A maximum of forty five (45) minutes for the Mover, in moving and fifteen minutes (15) in replying, a maximum of thirty (30) minutes for the Chairperson of the relevant Committee (if the Bill is not sponsored by the relevant Committee), and a maximum of ten (10) minutes for any other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen minutes (15) each (if the Bill is not sponsored by either of them); and that priority in speaking shall be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in that order.

Limitation of Debate on Other Committee Reports

- X.** THAT, each speech in a debate on **Other Committee Reports**, including a Report of a Joint Committee of the Houses of Parliament or any other Report submitted to the House for which limitation of time has not been specified, be limited as follows: -

A maximum of two and a half hours, with not more than twenty (20) minutes for the Mover in moving and five (5) minutes for any other Member speaking, including the Leader of the Majority Party and the Leader of the Minority Party and the Chairperson of the relevant Committee (if the Committee Report is not moved by the Chairperson of the relevant Committee), and that ten (10) minutes before the expiry of the time, the Mover be called upon to reply; and further that priority in speaking shall be accorded to the Leader of the Majority Party and the Leader of the Minority Party, in that order.

Limitation of Debate on Audit Committee Reports

- XI.** **THAT**, each speech in debate on **Reports of Audit Committees** be limited as follows: A maximum of sixty (60) minutes for the Mover in moving and thirty (30) minutes in replying, and a maximum of ten (10) minutes for any other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen (15) minutes each; and that priority be accorded to the Leader of the Majority Party and the Leader of the Minority Party, in that order.

ADJOURNMENT

XII. **NOTIFICATION OF RECESS (6th December 2024 – 10th February 2025)**

Pursuant to the provisions of Standing Order 28(3) relating to the Calendar of the Assembly, and the resolutions of the House of Wednesday, 14th February 2024, Tuesday, 17th September 2024, and Tuesday, 15th October 2024, the Speaker notifies that, upon the rise of the House at the appointed time today, regular sittings will resume on **Tuesday, 11th February 2025 at 2.30 p.m.**

(Thereafter, the House to adjourn without question put)

APPENDIX

NOTICE OF PETITIONS, QUESTIONS & STATEMENTS

ORDER NO. 7 - STATEMENTS

It is **notified** that, pursuant to the provisions of Standing Order 44(2)(c), the following Statements will be:-

(i) requested—

No.	Subject	Member	Relevant Committee
1.	Capitation to schools, textbook-to-pupil ratio and the state of Early Childhood Development and Education (ECDE) Programmes	<i>Hon. Peter Masara, MP (Suna West)</i>	Education
2.	Management of pension funds by the National Social Security Fund (NSSF)	<i>Hon. Amina Udgoon, MP (Garissa County)</i>	Finance and National Planning
3.	Recruitment of officers to the State Department for Diaspora Affairs	<i>Hon. Joshua Kandie, MP (Baringo Central)</i>	Labour

(ii) responded to—

No.	Subject	Member	Relevant Committee
1.	Fight against drug trafficking in the country	<i>Hon. Tindi Mwale, MP (Butere)</i>	Administration and Internal Security
2.	Status of <i>Sijoi-Muruny</i> Dam Project in West Pokot County	<i>Hon. Rael Kasiwai, MP (West Pokot County)</i>	Blue Economy, Water and Irrigation
