

PARLIAMENT OF KENYA

THE SENATE

SENATE BILLS DIGEST

THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL, 2022

(NATIONAL ASSEMBLY BILLS NO. 61 OF 2022)

Sponsor:	Hon. Millie Odhiambo Mabona, M.P, co-sponsored by Sen. Catherine Muyeka Mumma, MP.
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Committee referred to:	Standing Committee on Health
Type of Bill:	Ordinary Bill

1. PURPOSE OF THE BILL

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

2. BACKGROUND OF THE BILL

What is Assisted Reproductive Technology?

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

What problem does the Bill address?

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

What does the law currently provide?

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

Why the Bill?

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

3. OVERVIEW OF THE BILL

What does the Bill regulate?

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

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

The Assisted Reproductive Technology Committee

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

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

Responsibilities of the National Government

Clause 7 mandates the Cabinet Secretary to –

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

Responsibilities of County Governments

Clause 8 mandates each County Government to –

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

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

Prohibited Activities

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

Clauses 9-20 prohibit –

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

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

Rights of Parents, Surrogate Mothers, Donors and Children

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

- (a) **Right to Access ART Services:** Every person has the right to access the highest standard and quality of attainable and cost-effective assisted reproductive technology services provided by qualified experts licensed by the Council.
- (b) **Informed Consent:** ART experts must obtain prior informed and written consent from all parties before providing any ART service. The consent must include provisions on ownership of gametes, number of gametes to be implanted, and what should be done with gametes in case of death, incapacity, abandonment, dispute, divorce or separation.
- (c) **Rights of Children:** A child born out of assisted reproductive technology shall have the same legal rights under the Constitution and any other written law as a child born through natural conception. The Bill ensures children born through ART are not discriminated against and have full legal parentage rights.
- (d) **Surrogacy Arrangements:** The Bill permits only altruistic surrogacy (where no charges, fees or monetary incentive except medical expenses are given to the surrogate mother). A woman may consent to surrogate motherhood if she has attained the age of 25 years, is below 45 years, has given birth to at least one child, understands the rights and obligations under a surrogacy agreement, and has undergone comprehensive mental and physical health assessments.
- (e) **Surrogacy Agreements:** Must be in writing, signed by all parties, entered into within Kenya, and include provisions for the contact, care, upbringing and general welfare of the child. The agreement must be witnessed by at least two witnesses from each party and represented by separate independent advocates. The Council must carry out pre-approval checks including medical assessments, counseling, and verification that appropriate insurance is in place.
- (f) **Leave Provisions:** The Bill provides for three months leave for surrogate mothers, three months maternity leave for intended mothers, and two weeks paternity leave for intended fathers.
- (g) **Prohibition on Sex Selection:** The Bill prohibits any act to determine the sex of a child to be born through assisted reproductive technology.

Licensing Framework

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

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

Access to Information

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

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

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

Regulations

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

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

4. CONSEQUENCES OF THE BILL

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

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

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

5. WAY FORWARD

What next?

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

What is expected of members of the public

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

Note:

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