

UNITED DISABLED PERSONS OF KENYA



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Our Ref: M/NA/03/19

7th August, 2019

Michael R. Sialai, EBS,
The Clerk to The National Assembly,
P.O. Box 41842 – 00100
Nairobi.

Dear Sir,

RE: REPRESENTATION ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2019

Further to the invitation of the public to submit representation on the CONSTITUTION OF KENYA (AMENDMENT) BILL, 2019 in accordance to the provisions of Article 118(1) (b) of the Constitution and Standing Order 127(3), the Caucus on Disability Rights Advocacy (CDRA) and the United Disabled Persons of Kenya (UDPK), hereby submit the herein attached memorandum.

We would be grateful if we are offered an opportunity to make oral presentation.

Thanking you in advance will remain.

Yours sincerely,

Dr. Samuel Kabue

**FOR AND ON BEHALF ON UNITED DISABLED PERSONS OF KENYA (UDPK)
AND CAUCUS ON DISABILITY RIGHTS ADVOCACY (CDRA)**



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UNITED DISABLED PERSONS OF KENYA (UDPK)

&

CAUCUS ON DISABILITY RIGHTS ADVOCACY (CDRA)

MEMORANDUM ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2019

August 2019

MEMORANDUM ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2019

1. This Memorandum has been prepared by the Caucus on Disability Rights Advocacy (CDRA) which is a coalition of stakeholders in disability advocacy and the United Disabled Persons of Kenya (UDPK) which is the national umbrella for organizations of persons with disabilities in response to the call for public consultation by the National Assembly.
2. CDRA and UDPK welcomes the proposals in the Constitution of Kenya (Amendment) Bill, 2019 (Bill), seeking to ensure that the membership of Parliament reflects Article 54 (2) of the Constitution which requires that at least five per cent of the members of elective or appointive bodies should be persons with disabilities.
3. CDRA and UDPK welcomes Clause 4 of the Bill which proposes to replace Article 97 (1) (c) of the Constitution, to specify that the membership of the National Assembly shall include twenty-two persons with disabilities nominated by parliamentary political parties according to their proportion of members of the National Assembly in accordance with Article 90. We also agree, as proposed in the Bill, that the slate of nominees with disabilities shall take account of the two-thirds gender rule established in Article 27 (8) of the Constitution.
4. CDRA and UDPK also Welcomes the provision in Clause 5 of the Bill which specifies that the Senate shall include four senators with disabilities nominated by political parties according to their proportion of members of the Senate elected under clause (1) (a) in accordance with Article 90 of the Constitution.
5. We also note that Clause 6 of the Bill does not make any material changes on the election of persons with disabilities to County Assemblies in terms of Article 177 of the Constitution.
6. Regarding the foregoing, CDRA and UDPK wishes to stress the imperative of ensuring that persons with disabilities participate in identifying persons who political parties would subsequently nominate to the National Assembly, Senate and County Assemblies in terms of the Constitution and the Bill.
7. The principle of public participation is a cardinal tenet of democracy and it is indeed one of the values established in Article 10 of the Constitution.

8. More specifically, Article 29 of the Convention on the Rights of Persons with Disabilities (CRPD) requires Kenya to ensure that persons with disabilities have the right and opportunity to vote and be elected in political and public institutions. Furthermore, Article 4, 3 of the CRPD requires Kenya to closely consult with and actively involve persons with disabilities, through their representative organizations, in the development and implementation of legislation and policies and in other decision-making processes concerning issues relating to persons with disabilities.

9. CDRA and UDPK recognises that legislators with disabilities must be accountable to their nominating political parties. Yet, the representational responsibilities of such legislators must also be anchored on being accountable to the constituency of persons with disabilities.

10. Towards the above ends, CDRA and UDPK proposes the insertion of three provisions in Articles 97, 98 and 177 of the Constitution, to apply to legislators with disabilities nominated, respectively, to the National Assembly, the Senate and County Assemblies.

11. In Clause 4 of the Bill, the following new clause should be inserted in Article 97 of the Constitution:

‘Prior to preparing its list of persons with disabilities for nomination to the National Assembly, each political party shall consult nationally representative organisations of persons with disabilities to determine candidates suitable for nomination, subject to regulations which the Independent Electoral and Boundaries Commission shall prepare.’

12. In Clause 5 of the Bill, the following new clause should be inserted in Article 98 of the Constitution:

‘Prior to preparing its list of persons with disabilities for nomination to the Senate, each political party shall consult nationally representative organisations of persons with disabilities to determine candidates suitable for nomination, subject to regulations which the Independent Electoral and Boundaries Commission shall prepare.’

13. In Clause 6 of the Bill, the following new clause should be inserted in Article 177 of the Constitution:

'Prior to preparing its list of persons with disabilities for nomination to a County Assembly, each political party shall consult organisations of persons with disabilities representative in the particular county to determine candidates suitable for nomination, subject to regulations which the Independent Electoral and Boundaries Commission shall prepare.'

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