



Approved
ROSS D/SNA
26/08/2026

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – FIFTH SESSION – 2026

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 26 AUG 2026	DAY: MON
TABLED BY:	HON. G. FICHA MURUGARA CHAIRPERSON, JAC
CLERK-AT-TABLE:	Mary Chumo

REPORT ON:

**CONSIDERATION OF THE LAW OF CONTRACT
(AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 49 OF 2025)**



CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

August 2026

TABLE OF CONTENTS

Table of Contents	i
List of Abbreviations and Acronyms.....	ii
List of Annexures	iii
Chairperson's Foreword	iv
 CHAPTER ONE	 I
1 Preface	I
1.1 Establishment of the Committee.....	I
1.2 Mandate of the Committee	I
1.3 Committee Membership	3
1.4 Committee Secretariat	4
 CHAPTER TWO.....	 5
2 OVERVIEW OF THE LAW OF CONTRACT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 49 OF 2025).....	5
2.1 Background.....	5
2.2 Summary of Legal Provisions of the Bill	5
 CHAPTER THREE.....	 6
3 Public Participation and Stakeholder Engagement on the Bill	6
3.1 Legal Framework on Public Participation	6
3.2 Memoranda Received on the Bill.....	6
3.2.1 Submissions not in support of the Bill	6
3.2.2 Submissions on Proposed Amendments	7
 CHAPTER FOUR.....	 13
4 Committee Observations.....	13
 CHAPTER FIVE.....	 14
5 Committee Recommendations	14
 CHAPTER SIX	 15
6 Schedule of Amendments.....	15

LIST OF ABBREVIATIONS AND ACRONYMS

OAG	-	Office of the Attorney General
CBS	-	Chief of the Order of the Burning Spear
EBS	-	Elder of the Order of the Burning Spear
EGH	-	Elder of the Order of the Golden Heart
FORD	-	Forum for the Restoration of Democracy
MCCP	-	Maendeleo Chap Chap Party
MP	-	Member of Parliament
ODM	-	Orange Democratic Movement
OGW	-	Order of the Grand Warrior
UDA	-	United Democratic Alliance
UDM	-	United Democratic Movement
WDM	-	Wiper Democratic Movement
KLRC	-	Kenya Law Reform Commission
LSK	-	Law Society of Kenya
IRA	-	Insurance Regulatory Authority
CMA	-	Capital Markets Authority
TAA	-	The Architects Alliance
CAK	-	Competition Authority of Kenya
UCTA	-	Unfair Contract Terms Act

LIST OF ANNEXURES

- Annexure 1: Adoption Schedule
- Annexure 2: Minutes
- Annexure 3: The Law of Contract (Amendment) Bill (*National Assembly Bill No. 49 of 2025*)
- Annexure 4: Advertisement inviting the public to submit Memoranda on the Bill
- Annexure 5: Letter from the Clerk of the National Assembly inviting key stakeholders to a meeting to submit views on the Bill
- Annexure 6: Memoranda by Stakeholders

CHAIRPERSON'S FOREWORD

This Report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025). The Bill was published in the Gazette on 5th November, 2025, and was read a First Time in the House on Wednesday, 4th March 2026. Pursuant to Standing Order 127, the Bill was committed to the Departmental Committee on Justice and Legal Affairs for consideration and reporting to the House.

The principal object of this Bill is to amend the Law of Contract Act to protect parties to a contract against unfair and unconscionable terms by limiting the reliance on exclusion of liability terms in a contract which have been considered to be unfair and unconscionable.

In line with Article 118(b) of the Constitution and Standing Order 127(3), the Committee placed an advertisement in the print media on Friday, 6th March 2026, inviting the public to submit memoranda in the form of written statements on the Bill. The memoranda were to be received on or before Friday, 20th March 2026, at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received three (3) memoranda from G4S Kenya Limited, DHL Worldwide Express (Kenya) Ltd and the Architects Alliance (TAA).

In addition, the Committee, vide a letter referenced NA/DDC/JLAC/2026/046, dated 2nd June 2026, invited key stakeholders to submit views on the Bill and to attend public participation forums on Tuesday, 9th and Tuesday, 16th June 2026. The stakeholders submitted their views on the Bill, which the Committee considered in the preparation of this Report.

While considering the Bill, the Committee observed that a contract may contain clauses with provisions which purport to exclude or limit the liability of one of the parties in certain circumstances. These exclusion clauses are sometimes considered as unfair terms and in common law, the use of such terms is restricted. To rely upon such terms, the courts will consider if the term had been incorporated in the contract document and if the document had been intended as a contractual document. The court also considers if the exclusion clause covers the loss in question.

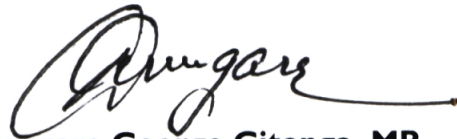
Further the Committee observed that there exists statutory protection from unfair terms such as the **Unfair Contract Terms Act, 1997** of Singapore which applies to liability arising in the course of a business.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee further wishes to thank all stakeholders who submitted their views on the Bill.

Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who sat for long hours and made useful contributions towards the preparation and production of this Report.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025).

It is my pleasure to report that the Committee has considered the Law of Contract (Amendment) Bill (*National Assembly Bill No. 49 of 2025*) and has the honour to report back to the National Assembly with the recommendation that the **House approves the Bill with amendments.**



Hon. Murugara George Gitonga, MP
Chairman, Departmental Committee on Justice and Legal Affairs

CHAPTER ONE

I PREFACE

I.1 Establishment of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:

- i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
- iii. *To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
- iv. **To study and review all legislation referred to it;**
- v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
- viii. *To examine treaties, agreements and conventions;*
- ix. *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
- x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- xi. *To examine any questions raised by Members on a matter within its mandate.*

I.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider:

- a) The Judiciary;
- b) Tribunals;
- c) Access to Justice;
- d) Public prosecutions;
- e) Ethics, Integrity and Anti-corruption;
- f) Correctional services;
- g) Community service orders and witness protection;
- h) Constitutional Affairs;
- i) Sovereign immunity;
- j) Elections including referenda;
- k) Human rights;
- l) Political parties; and
- m) The State Law Office including insolvency, law reform, public trusteeship, marriages and legal education.

3. In executing its mandate, the Committee oversights the following Ministries, Departments and Agencies:
- a) The Judiciary;
 - b) Judicial Service Commission;
 - c) State Department for Correctional Services;
 - d) State Law Office and Department of Justice;
 - e) State Department for Justice, Human Rights and Constitutional Affairs;
 - f) Office of the Director of Public Prosecutions;
 - g) Ethics and Anti-Corruption Commission;
 - h) Independent Electoral and Boundaries Commission;
 - i) Commission on Administrative Justice;
 - j) Office of the Registrar of Political Parties;
 - k) Witness Protection Agency;
 - l) Kenya National Commission on Human Rights;
 - m) Kenya Law Reform Commission; and
 - n) Council of Legal Education.

1.3 Committee Membership

4. The Committee comprises the following Members:

Chairperson

Hon. Murugara George Gitonga, CBS, MP
Tharaka Constituency
UDA Party

Vice-Chairperson

Hon. Mutuse Eckomas Mwengi, OGW, MP
Kibwezi West Constituency
MCCP Party

Hon. Gladys Boss, MGH, MP
Uasin Gishu Constituency
UDA Party

Hon. Maalim Farah, EGH, MP
Dadaab Constituency
WDM-Kenya

Hon. Onyiego Silvanus Osoro, CBS, MP
South Mugirango Constituency
UDA Party

Hon. Francis Kajwang' Tom Joseph, CBS, MP
Ruaraka Constituency
ODM Party

Hon. Wetang'ula Timothy Wanyoyi, CBS, MP
Westlands Constituency
ODM Party

Hon. (Dr.) Otiende Amollo, SC, EBS, MP
Rarieda Constituency
ODM Party

Hon. Muchira Michael Mwangi, MP
OI Jorok Constituency
UDA Party

Hon. Harold Kimuge Kipchumba, MP
Nominated
ODM Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency
FORD-Kenya

Hon. Mogaka Stephen M., MP
West Mugirango Constituency
Jubilee Party

Hon. Aden Daud, EBS, MP
Wajir East Constituency
Jubilee Party

Hon. Timothy Kipchumba Toroitich, MP
Marakwet West Constituency
Independent

Hon. CPA Suleka Hulbale Harun, MP
Nominated Member
UDM Party

1.4 Committee Secretariat

5. The Committee is facilitated by the following staff:

Mr. Ahmed Salim Abdalla
Clerk Assistant I / Head of Secretariat

Mr. Ronald Walala
Principal Legal Counsel II

Mr. Abdikafar Abdi
Clerk Assistant III

Mr. Samuel Wanjiru
Clerk Assistant III

Mr. Omar Abdirahim
Fiscal Analyst I

Mr. Isaac Nabiswa
Legal Counsel I

Ms. Vivienne Ogega
Research Officer III

Mr. John Nduaci
Serjeant-At-Arms

Ms. Rahab Chepkilin
Audio Officer III

Ms. Esther Mbatha
Public Communications Assistant

Mr. Wilson Murimi
Media Relations Officer III

Ms. Rhoda Muchiri
Hansard Officer

CHAPTER TWO

2 OVERVIEW OF THE LAW OF CONTRACT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 49 OF 2025)

2.1 Background

6. The Law of Contract (Amendment) Bill, (National Assembly Bill No. 49 of 2025) (Annexure 3), sponsored by Hon. Aden Daud, EBS, MP, was read a First Time on 4th March, 2026 and referred to the Departmental Committee on Justice and Legal Affairs to facilitate public participation and report to the House, pursuant to Standing Order 127.

2.2 Summary of Legal Provisions of the Bill

7. The principal object of the Bill is to amend the Law of Contract Act (Cap. 23) to protect parties to a contract against unfair and unconscionable terms. A term is considered unfair or unconscionable if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations.
8. The Bill seeks to insert new provisions prohibiting the exclusion of liability for cases such as death, loss, or damage resulting from negligence; loss or damage resulting from breach of contract; loss or damage resulting from the sale of defective goods, among others.
9. In particular,
 - a) **Clause 1** of the Bill provides for the short title.
 - b) **Clause 2** provides for the insertion of a new section 2A in Cap. 23 to provide for the interpretation of terms, including "negligence" and "requirement of reasonableness".
 - c) **Clause 3** provides for the insertion of new sections in Cap. 23 as follows;
 - i. Section 3A to provide for the prohibition against exclusion of liability arising out of negligence;
 - ii. Section 3B to provide for the prohibition against exclusion of liability arising out of breach of contract;
 - iii. Section 3C to provide for the prohibition against exclusion of liability arising out of sale of defective goods;
 - iv. Section 3E to provide for the prohibition against exclusion of liability in sale of goods or hire purchase agreements; and
 - v. Section 3F to provide for the prohibition against exclusion of liability in other agreements.

CHAPTER THREE

3 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 Legal Framework on Public Participation

10. Article 118 (1)(b) of the Constitution provides that:

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

11. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

“(3) The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism including-

- (a) inviting submission of memoranda;*
- (b) holding public hearings;*
- (c) consulting relevant stakeholders in a sector; and*
- (d) consulting experts on technical subjects.*

(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.”

3.2 Memoranda Received on the Bill

12. Pursuant to the aforementioned provisions of the law, the Committee placed an advertisement in the print media on Friday, 6th March 2026 (*Annexure 4*), inviting the public to submit memoranda by way of written statements on the Bill. Further, the Committee vide a letter referenced NA/DDC/JLAC/2026/046 dated 2nd June, 2026 (*Annexure 5*) invited key stakeholders to submit views on the Bill and attend public participation forums on Tuesday, 9th and Tuesday, 16th June 2026.

13. To this end, the Committee received memoranda from the G4S Kenya Limited, DHL Worldwide Express (Kenya) Ltd, The Architects Alliance (TAA), Law Society of Kenya (LSK), Competition Authority of Kenya (CAK), Kenya Law Reform Commission (KLRC), Office of the Attorney General (OAG), Insurance Regulatory Authority (IRA) and the Capital Markets Authority (CMA). The memoranda are annexed to this Report as *Annexure 6*.

14. The Stakeholders submitted as follows:

3.2.1 Submissions not in support of the Bill

15. While supporting the underlying policy objective of the Bill, of protecting consumers from unfair contractual terms, **IRA** submitted that the proposed reforms would be more appropriately framed within the Consumer Protection Act, Cap 501, rather than the Law of Contract Act.

16. IRA's rationale is that the Consumer Protection Act already contains the basic infrastructure necessary to effectively address consumer-facing unfair terms. Housing the reforms there would strengthen consumer protection measures while preserving the Law of Contract Act's role as a statute of general application — the legal framework through

which common law and equitable principles of contract apply in Kenya, subject to written law.

17. **CAK** submitted that Part VI of the Competition Act empowers the Authority to protect consumers from false and misleading representations (section 55) as well as unconscionable conduct (section 56).
18. In addition to this, the Competition (Amendment) Bill, 2026, currently before the House, seeks to enhance these provisions further by providing for protection of consumers from false representations.
19. The Authority submitted that the Contract Act is a private law instrument regulating commercial contractual terms between parties while the Competition Act provisions on consumer welfare are public interest provisions that allow for resolution of not just individual complaints received but sector regulation.
20. In addition, the proposed provisions in the Bill restate in contractual language what the Competition Act prohibits.
21. There is therefore, the need to consider having the distinction maintained by residing the consumer welfare protection provisions in the Competition Act.

Committee Observation

22. The Committee observed that the Law of Contract Act is the most appropriate statute for regulating contracts in general. It provides for the general legal framework on matters such as formation and validity of contracts, contractual terms and execution of contracts. Therefore, the general amendments to contract law may be contained in the Law of Contract while specific amendments may be moved to specific Act of Parliament such as Consumer Protection Act, Sale of Goods Act and Hire-Purchase Act.

3.2.2 Submissions on proposed amendments

New Clause 2A on interpretation

23. **G4S** proposed the need to explicitly include "industry-standard risk allocation" and "availability of insurance" as factors relevant to determining reasonableness. The rationale is that in the courier and logistics sector, risk is normally allocated based on declared value and standard carriage rates. If suppliers are barred from limiting liability to a reasonable multiple of the service fee, courier services would become prohibitively expensive for ordinary consumers.
24. **DHL** proposed an amendment to the definition of the term "requirement of reasonableness" by inserting provisions for guiding factors, allocation of the burden of proof and recognition that terms derived from or expressly permitted by international conventions ratified by Kenya are presumptively reasonable.
25. **TAA** proposed an amendment to limit the reasonableness test to consumer or unequal bargaining contexts, while preserving contractual freedom in commercial transactions.

The rationale is that the Bill introduces "reasonableness" as a universal test without distinguishing between consumer and commercial contracts.

26. **KLRC** recommended an amendment to clause 2A to include a non-exhaustive list of factors to be considered when assessing the requirement of reasonableness, drawing on the approach in the UK's Unfair Contract Terms Act. The rationale is that a set of guidelines would ensure consistency and provide clear guidance on how to apply the reasonableness test.
27. **DHL** proposed the narrowing of the definition of the term "negligence" by confining the obligation to matters "within the purview of the parties to a contract." The rationale is that the current broad definition risks being extended to indirect parties in multi-party supply chains, potentially creating unlimited vicarious liability for acts a party cannot directly supervise.
28. **LSK** proposed an amendment to the definition of the term "negligence" to include both breach of a contractual obligation of reasonable care or skill, and any duty of care arising under common law. The justification is that since the Bill addresses liability exclusion clauses and negligence can arise from contractual performance, failing to capture common law duties of care would allow parties to sidestep the Bill's protections simply by characterizing their claims as tort-based.
29. **CMA** proposed the deletion of the proposed amendments to Section 2 of the Act. The justification is that negligence and the requirement of reasonableness are Law of Tort concepts, provided for in situations where one party owes another a duty of care, and breach of that duty resulting in loss or damage.

Committee Observation

30. The Committee observed that although negligence is traditionally a tort, it can also arise in a contractual relationship. Negligence in contract law is the failure by a party to exercise the level of skill and care that the circumstances of the contract require resulting in loss to the other party.
31. On the definition of requirement of reasonableness, the Committee observed that contract law is based on the principle *pact sunt servanda* which means agreements must be kept. Once parties voluntarily enter into a valid contract, they are generally expected to honour their contractual obligations. However, the principle is not absolute and a contract may be affected by legal rules relating to illegality, fraud, duress, mistake, incapacity or unfair and unconscionable terms. Therefore, a statutory requirement of reasonableness may be used as a safeguard against unfair or unconscionable terms.

New clause 3A on prohibition against exclusion of liability arising out of negligence

32. **G4S and DHL** proposed amendments to provide for limitation of liability provisions contained in international conventions or treaties Kenya has ratified relating to the carriage of goods. The rationale is that an absolute prohibition on restricting liability for negligence or breach would directly conflict with the Montreal Convention (governing air carriage) and the Convention on the Contract for the International Carriage of Goods by Road (CMR), both of which establish specific, globally recognized liability caps.

33. In addition, **DHL** proposed an amendment to clause 3A (3), on voluntary acceptance of risk, to provide that genuinely negotiated, informed risk assumptions between parties with equal bargaining power can still be relied upon. The rationale is to preserve freely negotiated bespoke terms in high-value, ad hoc air cargo arrangements, consistent with the equivalent qualification in UCTA section 2(3).
34. **TAA** proposed an amendment to clause 3A (1) to align the provision with insurance-based risk frameworks and clarify its interaction with professional indemnity insurance.
35. **TAA** proposed an amendment to clause 3A (2) to provide for recognition of commercial contracts between professionals as distinct from consumer contracts. The justification is that the current provision may invalidate standard limitation clauses in construction clauses.
36. Further, **TAA** proposed an amendment to clause 3A (3) to preserve contractual allocation of risk in construction contracts.
37. **LSK** proposed amendment to the clause to prohibit exclusion or restriction of liability for death or serious bodily harm resulting from negligence. The justification is that omitting bodily harm is inconsistent with the provision's underlying purpose of protecting individuals from the consequences of negligent conduct causing physical harm.
38. **CMA** proposed the deletion of the proposed amendment. The justification is that applying a general reasonableness test to these clauses would not align with global market practice; negligence resulting in death is also a matter covered by the doctrines of English Common Law and should not be included in the Law of Contract.

New clause 3B on prohibition against exclusion of liability arising out of breach of contract

39. **DHL** proposed the need to define the term “consumers”, noting that the Bill applies special protections to them. The rationale is that, left undefined, “consumer” status could be extended by courts to corporate shippers or third parties, thereby disrupting risk allocation, standard trading terms and undermining Convention uniformity.
40. **TAA** acknowledge that clauses 3B and 3C are properly consumer-focused but may inadvertently extend to construction materials and supply chains. TAA recommended the need to clarify the distinction between consumer goods and commercial construction materials. The proposed wording inserts a clarification that the sections apply primarily to consumer transactions and shall not prejudice commercial construction supply chain arrangements where parties act in the course of business.
41. **CMA** proposed the deletion of the proposed amendment. The justification is that a contract is an agreement between two parties who are expected to have the capacity to enter into the contract and to have understood its terms and obligations; if a contract restricts the liability of one party to the detriment of the other, that other party has a right to request amendment of those terms, and if the parties do not agree, the innocent party has the opportunity not to enter into a disadvantageous contract.

Committee Observation

42. The Committee observed that the proposed section applies to consumer transactions which are acts of conducting business or other dealings with a consumer. The Consumer Protection Act is the principle statute that protects consumers against unfair practices in consumer transactions. Therefore, the prohibition against use or reliance on exclusion of liability clauses in a consumer agreement may be better placed in the Consumer Protection Act.

New clause 3C on prohibition against exclusion of liability arising out of sale of defective goods

43. **DHL** proposed an amendment to exempt carriers and logistics providers acting under convention-governed contracts, and preserving statutory defences (e.g., inherent defect, defective packing, act of war) available under Article 18(2) of the Montreal Convention. The justification is that, although the provision is mainly aimed at manufacturers, it may be read to capture carriers as parties "concerned in distribution".
44. **LSK** proposed an amendment to clause 3C (1) (b) to provide that liability arises where loss or damage results from a defect in the goods, whether or not attributable to negligence of a person concerned in manufacture or distribution. The justification is that requiring consumers to prove negligence undermines protection, since consumers generally cannot identify faults that manufacturers control, hindering their ability to establish fault even where defects cause harm.
45. **CMA** proposed that the amendment be moved to the Sale of Goods Act. The justification is that provisions on defective goods are already covered in conditions and warranties under the Sale of Goods Act, and this amendment therefore falls within the scope of that Act.

Committee Observation

46. The Committee observed that the proposed section applies to consumer transactions which are acts of conducting business or other dealings with a consumer. The Consumer Protection Act is the principle statute that protects consumers against unfair practices in consumer transactions. Therefore, the prohibition against use or reliance on exclusion of liability clauses in a consumer agreement may be better placed in the Consumer Protection Act.

New clause 3E on prohibition against exclusion of liability in sale of goods or hire purchase agreements

47. **G4S** recommended that the "Requirement of Reasonableness" remain the primary test applied specifically to business-to-business (B2B) transactions. The rationale is that strict prohibitions designed to protect consumers should not inadvertently disrupt complex commercial logistics contracts, where sophisticated parties have already negotiated their own indemnity and insurance arrangements.
48. **DHL** proposed a new subsection to give precedence to the Carriage by Air Act and applicable conventions over any inconsistent implied terms under the Sale of Goods Act or Hire-Purchase Act. The rationale is to avoid a parallel liability regime inconsistent with the Montreal Convention's exclusive liability code under Article 29.

49. **OAG** proposed the insertion of the word "not" immediately after the expression "subsection (2) may," so as to indicate that liability may only be excluded under subsection (2) if the requirement of reasonableness is satisfied.

50. **CMA** and **TAA** proposed that the amendment be moved to the Hire Purchase Act and the Sale of Goods Act. The justification is that matters relating to hire purchase are already governed by the Hire Purchase Act and Sale of Goods Act, and these amendments would be better placed within those respective Acts rather than the Law of Contract.

Committee Observation

51. The Committee observed that the proposed section applies to contracts for sale under the Sale of Goods Act and hire-purchase agreements. Therefore, the prohibition against use or reliance on exclusion of liability clauses in a contract for sale and hire-purchase agreement may be better placed in the Sale of Goods Act and Hire-Purchase Act respectively.

New clause 3F on prohibition against exclusion of liability in other agreements

52. **DHL** proposed an amendment to exempt the air carriage leg of any multimodal contract from this section (leaving it governed exclusively by the applicable convention) while allowing the Bill's controls to apply to non-air legs. The proposed amendment ensures that the air leg of any multimodal contract remains exclusively governed by the relevant Convention, while permitting the Bill's controls to apply to ground legs not covered by the Convention, thereby achieving a coherent and legally consistent allocation of liability across multimodal operations.

53. **TAA**, proposed a new subsection (5) stating the section shall not operate to invalidate limitation or exclusion clauses in professional services contracts, including architectural and engineering services, where such clauses are reasonable, industry-standard, and supported by professional indemnity frameworks. The justification for the amendment is that the broad restriction on exclusion clauses may affect consultancy agreements, professional services contracts, and construction contracts generally.

54. **LSK** proposed an amendment to clause 3F (1) to apply wherever "possession of, use of, or property in" goods passes under a contract not governed by the law of sale of goods or hire purchase, broadening it beyond mere ownership transfer. The justification is that this ensures consumer protection extends to all persons who use or possess goods in the course of a consumer transaction, regardless of whether ownership is transferred, thereby promoting the underlying objective of the Bill.

55. **CMA** proposed the deletion of the amendment noting that Bill does not address contracts for the supply of services generally, leaving a gap for pure service agreements. Further, no guidance is provided on what constitutes a contract "not governed by sale of goods" where classification is disputed.

Committee Observation

56. The Committee observed that the proposed section applies to consumer transactions which are acts of conducting business or other dealings with a consumer. The Consumer Protection Act is the principle statute that protects consumers against unfair practices in

consumer transactions. Therefore, the prohibition against use or reliance on exclusion of liability clauses in a consumer agreement may be better placed in the Consumer Protection Act.

General Submissions

57. **The Judiciary** did not submit any substantive clause-by-clause comments, proposed amendments, or recommendations on the Bill but acknowledged noting the contents of the Bill.
58. **OAG** and **KLRC** noted that the proposed new sections are numbered 3A, 3B, 3C, 3E and 3F, skipping section 3D. The agencies recommended that the sections be renumbered so that they occur in proper sequence: 3A, 3B, 3C, 3D and 3E.

Proposed New amendments

59. **DHL** proposed a new section 3K to exempt international supply contracts from Sections 3A, 3B, 3C, 3E and 3F. The rationale is that this omission would disadvantage Kenyan-based carriers relative to competitors in jurisdictions like the UK, where UCTA section 26 has provided a similar exemption since 1977.
60. **DHL** further proposed the insertion of a new section 3J to provide for express savings clause for International Conventions. The proposed amendments are to ensure compliance with Article 2 (5) and Article 2 (6) of the Constitution.
61. **CMA** proposed the inclusion of a purpose clause stating that the Act shall be construed and applied in a manner consistent with the Constitution of Kenya 2010, in particular Articles 26, 27, 40, 46, and 47.
62. In addition, **CMA** proposed the need for transitional provisions, to guide whether the Bill applies to contracts already in existence at commencement, contracts entered into but not yet performed or ongoing performance obligations.

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

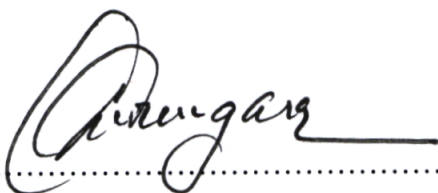
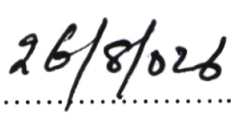
63. Upon reviewing the Bill and the submissions received, the Committee made the following observations—

- (a) the Law of Contract Act (Cap. 23) is an Act of Parliament that provides that English common law on contracts shall apply in Kenya. Section 2 of the Law of Contract Act provides that the common law of England relating to contracts as modified by the doctrines of equity and certain Acts of Parliament of the United Kingdom shall extend and apply to Kenya. Common law is a body of law developed in England which is derived from judicial decisions.
- (b) an exclusion of liability clause is a contractual term by which one party seeks to exclude or limit liability for loss, damage, breach of contract, negligence or another legal responsibility. In English common law, such clauses are generally permitted because of the principle of freedom of contract and *pacta sunt servanda*. However, modern consumer protection statutes have restricted the use or reliance on exclusion clauses that are unfair or unconscionable such as the Unfair Contract Terms Act 1977 of the United Kingdom.

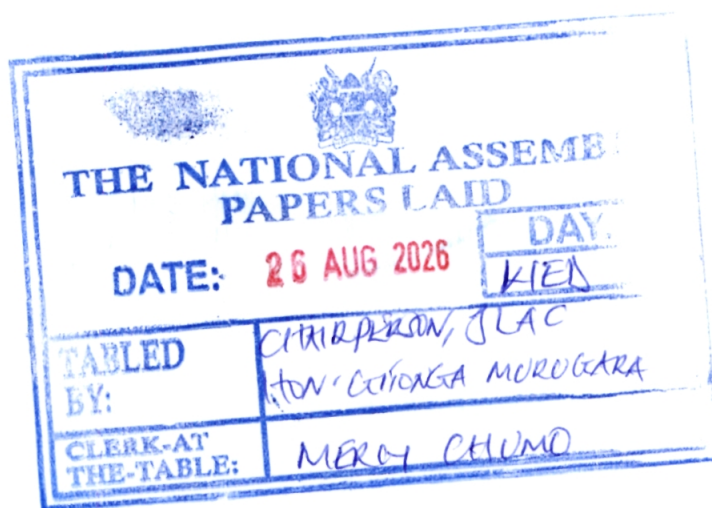
CHAPTER FIVE

5 COMMITTEE RECOMMENDATIONS

64. The Committee, having considered the Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025 and the submissions from stakeholders, recommends that the House **approves the Bill** with the amendments contained in the Schedule of Amendments forming Chapter Six of this Report.

SIGNED.......... DATE..........

HON. GEORGE GITONGA MURUGARA, CBS, MP
CHAIRMAN
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS



CHAPTER SIX

6 SCHEDULE OF AMENDMENTS

65. In view of the observations made, the Committee proposed the following amendment to the Bill:

CLAUSE 3

THAT Clause 3 of the Bill be amended by—

- (a) deleting the proposed new section 3B;
- (b) deleting the proposed new section 3C;
- (c) deleting the proposed new section 3E; and
- (d) deleting the proposed new section 3F.

Justification: To make the provisions consequential amendments to the respective Acts of Parliament i.e. the Consumer Protection Act, the Sale of Goods Act and the Hire Purchase Act since the Law of Contract Act governs contracts in general.

NEW CLAUSES

THAT the Bill be amended by inserting the following new Clauses after Clause 3—

Insertion of new section 16A in Cap. 501.	4. The Consumer Protection Act is amended by inserting the following new sections immediately after section 16—	
	Prohibition against exclusion of liability arising out of breach of consumer agreement.	16A. (1) A supplier shall not, by reference to a term, exclude or restrict liability for loss or damage of when the supplier is in breach of a consumer agreement.
		(2) Despite subsection (1), a term that satisfies the requirements of reasonableness may be relied upon by the supplier.
		(3) For purposes of this subsection (2), the “requirement of reasonableness” includes a term that is fair and reasonable to be included in a consumer agreement having regard to the circumstances which were or ought to have been known when the agreement was made.
	Prohibition against exclusion of liability arising out of sale of defective goods.	16B. Liability for loss or damage shall not be excluded by reference to a term contained in or operating by reference to a guarantee of goods where the loss or damage—
		(a) arises from the goods proving defective while in consumer use; and
		(b) results from the negligence of a person concerned in the manufacture or distribution of the goods.
Insertion of new section 55A in Cap. 31.	5. The Sale of Goods Act is amended by inserting the following new section immediately after section 55—	

	Prohibition against exclusion of liability in a contract for sale.	55A. (1) A person shall not exclude or limit their liability for loss or damage by reference to a term where the liability arises from breach of a condition or warranty provided under section 14, 15, 16 and 17 of the Act.
		(2) The liability specified under subsection (1) may be excluded or restricted by reference to a term if the term satisfies the requirement or reasonableness.
		(3) For purposes of this subsection (2), the “requirement of reasonableness” includes a term that is fair and reasonable to be included in a contract for sale having regard to the circumstances which were or ought to have been known when the agreement was made.
Amendment of section 7 of Cap. 507.	6. Section 7 of the Hire-Purchase Act is amended by—	
	(a) renumbering the existing provision as subsection (1); and	
	(b) inserting the following new subsections immediately after subsection (1)—	
	(2) A person shall not exclude or limit their liability for loss or damage by reference to a term where the liability arises from breach of a condition or warranty provided under section 8(1) and (2) of the Act.	
	(3) The liability specified under subsection (2) may be excluded or restricted by reference to a term if the term satisfies the requirement or reasonableness.	
	(4) For purposes of this subsection (3), the “requirement of reasonableness” includes a term that is fair and reasonable to be included in a hire-purchase agreement having regard to the circumstances which were or ought to have been known when the agreement was made.	

Annexure **1**

Adoption Schedule



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

ADOPTION OF THE COMMITTEE REPORT ON ITS CONSIDERATION OF THE LAW OF CONTRACT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 49 OF 2025) BY HON. ADEN DAUD MOHAMED, EBS, MP

We, the Members of the Departmental Committee on Justice and Legal Affairs have, pursuant to Standing Order 199, adopted this Report of the Committee on its Consideration of the Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025) sponsored by Hon. Aden Daud Mohamed, EBS, MP and affixed our signatures to affirm our approval and confirm its accuracy, validity and authenticity:

1. Hon. Murugara George Gitonga, CBS, MP - Chairperson

2. Hon. Mutuse Eckomas Mwengi, OGW, MP - Vice Chair

3. Hon. Gladys Boss, MGH, MP

4. Hon. Farah Maalim, EGH, MP

.....

5. Hon. Silvanus Osoro Onyiego, CBS, MP

.....

6. Hon. Tom Joseph Francis Kajwang', CBS, MP

.....

7. Hon. Timothy Wanyonyi Wetangula, CBS, MP

.....

8. Hon. (Dr.) Otiende Amollo, SC, EBS, MP

.....

9. Hon. Michael Mwangi Muchira, MP

10. Hon. Aden Daud, EBS, MP

11. Hon. John Okwisia Makali, MP

12. Hon. Stephen M. Mogaka, MP

13. Hon. Timothy Kipchumba Toroitich, MP

14. Hon. Harold Kimuge Kipchumba, MP

15. Hon. CPA Suleka Hulbale Harun, MP

Annexure **2**

Minutes



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FIFTH SESSION-2026
DIRECTORATE OF DEPARTMENTAL COMMITTEES

**MINUTES OF THE 50TH SITTING OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS, HELD AT THE COMMITTEE ROOM 20,
FIFTH FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS ON TUESDAY,
25TH AUGUST 2026 AT 10:00 A.M.**

PRESENT

1. Hon. Murugara George Gitonga, CBS, MP - Chairperson
2. Hon. Gladys Boss, MGH, MP
3. Hon. Mutuse Eckomas Mwengi, OGW, MP - Vice Chairperson - *virtually*
4. Hon. Aden Daud, EBS, MP
5. Hon. Muchira Michael Mwangi, MP
6. Hon. Makali John Okwisia, MP
7. Hon. Mogaka Stephen M. MP
8. Hon. Toroitich Timothy Kipchumba, MP
9. Hon. Harold Kimuge, MP - *virtually*
10. Hon. CPA Sulekha Hulbale Harun, MP - *virtually*

ABSENT WITH APOLOGIES

1. Hon. Maalim Farah, EGH, MP
2. Hon. Onyiego Silvanus Osoro, CBS, MP
3. Hon. Francis Kajwang' Tom Joseph, CBS, MP
4. Hon. Timothy Wanyonyi Wetangula, MP
5. Hon. (Dr.) Otiende Amollo, SC, EBS, CBS, MP

SECRETARIAT

- | | |
|-----------------------|--|
| 1. Mr. Ahmed Salim | - Clerk Assistant I/ Head of the Secretariat |
| 2. Mr. Samuel Wanjiru | - Clerk Assistant III |
| 3. Mr. Abdikafar Abdi | - Clerk Assistant III |
| 4. Mr. Isaac Nabiswa | - Legal Counsel I |
| 5. Mr. Abdirahim Omar | - Fiscal Analyst I |
| 6. Ms. Esther Mbatha | - Public Communication Assistant |
| 7. Mr. John Nduaci | - Assistant Serjeant at Arms |

IN ATTENDANCE

Office of the Attorney General and Department of Justice

- | | |
|-----------------------|--|
| 1. Mr. Louis Mutuku | - State Counsel, OAG |
| 2. Ms. Maureen Odendo | - Deputy Chief Parliamentary Counsel |
| 3. Ms. Wachira Ngiyo | - Deputy Chief State Counsel, State Law Office |

Business Registration Service

- | | |
|------------------------|---|
| 1. Mr. Kenneth Gathuma | - Director-General |
| 2. Mr. Zacharia Mwangi | - Senior Assistant Registrar of Companies |
| 3. Mr. Benard Otiogo | - Assistant Registrar |

Kenya Law Reform Commission (KLRC)

- | | |
|--------------------|-------------------------------|
| 1. Mr. James Nombi | - Ag. Chief Executive Officer |
| 2. Ms. Rose Osendo | - Head, Legal Affairs |

The Central Bank of Kenya

- | | |
|------------------------|-------------------|
| 1. Mr. Waweru Mathenge | - General Counsel |
|------------------------|-------------------|

Kenya Revenue Authority (KRA)

- | | |
|-------------------------|---|
| 1. Mr. Maurice Oray | - Deputy Commissioner - Policy & Tax Advisory |
| 2. CPA Josephine Mugure | - Chief Manager, Policy and Tax Advisory |
| 3. Ms. Ing'ahizu Doris | - Assistant Manager, Policy & Tax Advisory |
| 4. Ms. May Muthama | - Stakeholder Engagements Officer |

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of previous sittings
4. Meeting with stakeholders to consider the Trust Administration Bill (National Assembly Bill No. 29 of 2026) by the Leader of the Majority Party
5. Consideration and adoption of the draft report on the Trust Administration Bill (National Assembly Bill No. 29 of 2026) by the Leader of the Majority Party
6. Consideration and adoption of the draft report on the Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025) by Hon. Aden Daud Mohamed, EBS, MP
7. Any Other Business
8. Adjournment / Date of the Next Meeting

MIN. NO. DDC/JLAC/228/2026:

PRELIMINARIES

The Meeting was called to order at thirty minutes to eleven o'clock with a Prayer by the Chairperson. The agenda of the Sitting was adopted, having been proposed by Hon. Makali John Okwisia, MP and seconded by Hon. Toroitich Timothy Kipchumba, MP.

MIN. NO. DDC/JLAC/229/2026:

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

The agenda was deferred to the next Sitting.

MIN. NO. DDC/JLAC/230/2026:

MEETING WITH STAKEHOLDERS TO CONSIDER THE TRUST ADMINISTRATION BILL (NATIONAL ASSEMBLY BILL NO. 29 OF 2026) BY THE LEADER OF THE MAJORITY PARTY

The representative from the State Law Office, in his opening remarks, informed the Committee that, following the Committee's resolution during its meeting on 18th August 2026, the Office had finalised consultations with the Kenya Law Reform Commission, the National Council of Churches of Kenya (NCCK), the Central Bank of Kenya (CBK) and the Kenya Revenue Authority (KRA) on the proposed amendments.

The aforementioned agencies confirmed consensus on the proposed amendments. The Committee proceeded to consider and agreed on the proposed amendments, including on:

- i. The long title and clause 2 on definitions by deleting "and reform" from the long title. and redefining the term "beneficial owner" to provide for the natural persons who ultimately owns or controls a legal person or arrangement, or on whose behalf a transaction is conducted. The definition is in line with the global standard set by the Financial Action Task Force (FATF).

Further, the agencies proposed a new definition for "reporting institution," tied to the Proceeds of Crime and Anti-Money Laundering Act.

- ii. Clause 3 on Application of the Act to clarify that the Act applies to trusts registered/incorporated under it, created by court order, or created under other written law, while preserving customary law, equity, will-based, and court-supervised trusts.
- iii. Clause 4 on creation of a trust to spell out the elements needed to create a trust including identifiable property, defined beneficiaries and purpose and an appointed trustee.
- iv. Clause 5 on recognition/enforceability to require written trusts to be registered or incorporated to be enforceable, with a court-recognition route for unregistered or unincorporated written trusts.
- v. Clause 8 on charitable trusts by deleting subclause (3) that barred charitable trusts from trading.
- vi. Clauses 25 & 31 by inserting the words "formed for an unlawful purpose" as the ground for refusal and dropping two existing grounds (paragraphs (b) and (d)), and providing the applicant with the opportunity to be heard or to regularise an application to meet the requirements for registration.
- vii. Clause 32 to clarify that incorporating a trust doesn't extinguish the underlying trust or convert beneficial interests into shares, and trustees remain bound by fiduciary. Further, the agencies submitted that changes in the status of a trustee on an incorporated trust should not affect the continued legal identity of the trust. The Committee, however noted that incorporation means that an organization gains a legal life of its own.
- viii. Clause 51 to make provisions for investments by trustees by providing that they may invest trust assets, conduct due diligence, seek professional advice, and invest in line with the trust's purpose, beneficiaries' interests, liquidity needs, risk profile, and conflict-of-interest rules. Further, the provisions set out protections for trustees on mortgage lending and property valuation matters, and confirms the section applies retroactively to existing investments.
- ix. Clause 61 to provide for administrative penalties for breach of trust of up to Ksh 1 million for individuals and Ksh 5 million for corporate trustees.
- x. Clauses 75 to enhance the administrative penalty for failing to file annual returns from five hundred shillings to three thousand shillings.
- xi. Clause 97 9(2)(b) to extends application to "existing trusts and trustees" in relation to compliance with the Act, upon enactment.
- xii. New Clause 96A to amend the Business Registration Service Act to explicitly include "trusts" alongside "firms"

The Committee further considered the Memorandum from the State Department for Justice, Human rights and Legal Affairs and agreed on some of the proposed amendments, including to:

- i. Clause 82(1) to provide that on application by the trustee or other person authorised under the trust deed, the Registrar may, subject to this Act, dissolve a trust. The current provision limits initiation of dissolution to the trustee. There may be circumstances where the trust deed authorises the settlor, protector or another person to initiate dissolution; and
- ii. Clause 84 (2) by amending paragraph (a) to provide for dissolution where the purpose of the trust has been fulfilled or has otherwise ceased to exist in accordance with the trust deed or this Act. A trust may cease to have a viable purpose even where the purpose has not technically been fulfilled. The amendment accommodates trusts whose objects have become spent or ceased to exist.

**ASSEMBLY BILL NO. 29 OF 2026) BY
THE LEADER OF THE MAJORITY
PARTY**

The Committee, having considered the Trust Administration Bill (National Assembly Bill No. 29 of 2026) by the Leader of the Majority Party and the submissions from members of the public and stakeholders, recommended that the House approves the Bill with the amendments contained in the Schedule of Amendments forming Chapter Six of the Report on the Bill.

Adoption of the Report

The Committee resolved to sit on Wednesday, 26th August 2026 to consider and adopt its Report on its Consideration the Trust Administration Bill (National Assembly Bill No. 29 of 2026) sponsored by the Leader of the Majority Party.

MIN. NO. DDC/JLAC/232/2026:

**CONSIDERATION AND ADOPTION OF
THE DRAFT REPORT ON THE LAW OF
CONTRACT (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 49 OF
2025) BY HON. ADEN DAUD
MOHAMED, EBS, MP**

The Committee, having been guided through the report on the Bill by the Legal Counsel, observed that:

- i. the Law of Contract Act (Cap. 23) is an Act of Parliament that provides that English common law on contracts shall apply in Kenya. Section 2 of the Law of Contract Act provides that the common law of England relating to contracts as modified by the doctrines of equity and certain Acts of Parliament of the United Kingdom shall extend and apply to Kenya. Common law is a body of law developed in England which is derived from judicial decisions.
- ii. an exclusion of liability clause is a contractual term by which one party seeks to exclude or limit liability for loss, damage, breach of contract, negligence or another legal responsibility. In English common law, such clauses are generally permitted because of the principle of freedom of contract and *pacta sunt servanda*. However, modern consumer protection statutes have restricted the use or reliance on exclusion clauses that are unfair or unconscionable such as the Unfair Contract Terms Act 1977 of the United Kingdom.

The Committee, having considered the Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025) and the submissions from stakeholders, recommended that the House approves the Bill with the amendments contained in the Schedule of Amendments forming Chapter Six of this Report.

Adoption of the Report

The Report on the Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025) by Hon. Aden Daud Mohamed, EBS, MP was adopted, having been proposed by Hon. Makali John Okwisia, MP and seconded by Hon. Toroitich Timothy Kipchumba, MP.

MIN. NO. DDC/JLAC/233/2026:

ADJOURNMENT

The meeting was adjourned at thirteen minutes to one o'clock. Next meeting to be held on notice.

SIGNED:DATE:
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, CBS, MP)



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FIFTH SESSION-2026
DIRECTORATE OF DEPARTMENTAL COMMITTEES

**MINUTES OF THE 39TH SITTING OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS, HELD AT THE MINI CHAMBER,
PARLIAMENT BUILDINGS ON TUESDAY, 16TH JUNE 2026 AT 10:00 A.M.**

PRESENT

1. Hon. Murugara George Gitonga, CBS, MP – *Chairperson*
2. Hon. Mutuse Eckomas Mwengi, OGW, MP - *Vice Chairperson*
3. Hon. Maalim Farah, EGH, MP
4. Hon. (Dr.) Otiende Amollo, SC, EBS, CBS, MP
5. Hon. Timothy Wanyonyi Wetangula, MP
6. Hon. Muchira Michael Mwangi, MP – *Virtually*
7. Hon. Aden Daud, EBS, MP
8. Hon. Makali John Okwisia, MP
9. Hon. Harold Kimuge, MP

ABSENT WITH APOLOGIES

1. Hon. Gladys Boss, MGH, MP
2. Hon. Onyiego Silvanus Osoro, CBS, MP
3. Hon. Francis Kajwang' Tom Joseph, CBS, MP
4. Hon. Toroitich Timothy Kipchumba, MP
5. Hon. Mogaka Stephen M. MP
6. Hon. CPA Sulekha Hulbale Harun, MP

SECRETARIAT

- | | | |
|------------------------|---|---------------------------------|
| 1. Mr. Abdikafar Abdi | - | Clerk Assistant III |
| 2. Mr. Samuel Wanjiru | - | Clerk Assistant III |
| 3. Mr. Isaac Nabiswa | - | Legal Counsel II |
| 4. Mr. Omar Abdirahim | - | Fiscal Analyst I |
| 5. Ms. Rahab Chepkilim | - | Audio Officer |
| 6. Ms. Esther Mbatha | - | Public Communications Assistant |
| 7. Mr. John Nduaci | - | Serjeant-at-Arms |

IN ATTENDANCE

Competition Authority of Kenya (CAK)

1. Mr. Naylor Mukofu - Manager, Legal Services
2. Ms. Brenda Terry - Legal Officer

Insurance Regulatory Authority (IRA)

1. Mr. Godfrey Kiptum, MBS - Commissioner of Insurance and IRA Chief Executive Officer
2. Ms. Diana Sawe Tanui, FCI Arb - Director Legal and Governance Services
3. Mr. Kalai Musee - Director, Supervision

AGENDA

1. Prayers and Preliminaries
2. Confirmation of Minutes of previous sittings
3. Meeting with stakeholders to consider the Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025)
4. Consideration of the draft report on the Power of Mercy Bill (National Assembly Bill No. 56 of 2025)
5. Any Other Business
6. Adjournment / Date of the Next Meeting

MIN. NO. DDC/JLAC/177/2026:

PRELIMINARIES

The Meeting was called to order at twenty minutes past ten o'clock. The prayer was said by the Chairperson, followed by introductions. The agenda was adopted, having been proposed by Hon. Makali John Okwisia, MP., and seconded by Hon. Harold Kimuge, MP.

MIN. NO. DDC/JLAC/178/2026:

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

The agenda was deferred.

MIN. NO. DDC/JLAC/179/2026:

MEETING WITH STAKEHOLDERS TO CONSIDER THE LAW OF CONTRACT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 49 OF 2025)

The following agencies appeared before the Committee and submitted as follows:

I. Competition Authority of Kenya (CAK)

The Manager, Legal Services, accompanied by an officer from the Authority, appeared before the Committee and submitted that;

- a. The Bill seeks to protect consumers from unfair and unconscionable contract terms that are covered by the Competition Act and its ongoing amendments.
- b. Additionally, the Competition (Amendment) Bill, 2025 (a Bill under consideration by the Committee on Finance), introduces prohibitions against abuse of a superior bargaining position. This prohibits conduct amounting to abuse of a superior bargaining position, including imposing trading conditions that are more unfavourable than would be expected in light of normal business practices. It covers the mischief sought to be addressed by the proposed amendments to the law of Contract.

The Authority proposed amendments to the Bill by deletion of proposed amendments, including:

- a. Clause 3B, given that the mischief sought to be addressed by the amendment is criminalized under section 55(a)(i) &(ii) of the Competition Act on false representation regarding the standard, quality, value, grade of a good or service: and
- b. Clause 3C, which is catered for under section 55(b)(v) of the Competition Act, prohibits a supplier of both goods and services from making false or misleading representations. concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.

The Authority further submitted that the Law of Contract Act is a private law instrument regulating commercial contractual terms between parties, while the Competition Act provisions on consumer welfare are public interest provisions

The provisions allow for the resolution of not just individual complaints received, but sector regulation when the case requires it, and thus the need to consider having the distinction maintained by residing the consumer welfare protection provisions in the Competition Act.

2. Insurance Regulatory Authority (IRA)

The Commissioner of Insurance and the IRA Chief Executive Officer, accompanied by other officers, appeared before the Committee and stated that the Authority supports the policy objective of protecting consumers from unfair contractual terms.

However, the Authority deemed it appropriate that the proposed reforms be framed within the Consumer Protection Act, Cap. 501. The Consumer Protection Act already contains the basic infrastructure necessary for effectively addressing consumer-facing unfair terms.

This approach ~~would~~ strengthen consumer protection measures while preserving the Law of Contract Act as a statute of general application, providing the legal framework through which common law and equitable principles of contract apply in Kenya, subject to written law.

The Authority supported the proposed amendments and recommended that the Committee effect the same under the Consumer Protection Act, and not the Law of Contract Act.

Committee Observation

The Law of Contract Act and the Consumer Protection Act provide the legal frameworks to govern business agreements and consumer rights. The Statutes regulate the formulation of commercial contracts and ensure buyers are protected against unconscionable business practices.

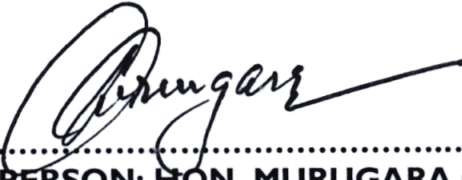
Noting the above, the Committee resolved to determine, during the next meeting on the Bill, whether the proposed amendments would be more appropriate under the Consumer Protection Act or sector-specific legislation, rather than the Law of Contract Act.

MIN. NO. DDC/JLAC/180/2026: ANY OTHER BUSINESS

Noting the vast provisions under the Power of Mercy Bill (National Assembly Bill No. 56 of 2025, the Committee resolved to schedule a meeting to consider the Bill clause by clause, together with the stakeholders' submissions. Thereafter, the Committee will consider the draft report on the Bill.

MIN. NO. DDC/JLAC/181/2026: ADJOURNMENT

There being no other business, the meeting was adjourned at nine minutes past eleven o'clock. Next meeting to be held on Thursday, 18th June 2026 at ten o'clock.

SIGNED:  DATE: 30/06/2026
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, CBS, MP)



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FIFTH SESSION -2026
DIRECTORATE OF DEPARTMENTAL COMMITTEES

**MINUTES OF THE 38TH SITTING OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS HELD AT THE MINI CHAMBER,
COUNTY HALL, PARLIAMENT BUILDINGS, ON TUESDAY, 9TH JUNE 2026
AT 10:00 AM**

PRESENT

1. Hon. Murugara George Gitonga, CBS, MP - *Chairperson*
2. Hon. Mutuse Eckomas Mwengi, OGW, MP - *Vice Chairperson – virtually*
3. Hon. Francis Kajwang' Tom Joseph, CBS, MP
4. Hon. (Dr.) Otiende Amollo, SC, EBS, CBS, MP
5. Hon. Muchira Michael Mwangi, MP
6. Hon. Aden Daud, EBS, MP
7. Hon. Mogaka Stephen M. MP – *virtually*
8. Hon. CPA. Suleka Hulbale Harun, MP – *virtually*

ABSENT WITH APOLOGIES

1. Hon. Gladys Boss, MGH, MP
2. Hon. Onyiego Silvanus Osoro, CBS, MP
3. Hon. Maalim Farah, EGH, MP
4. Hon. Timothy Wanyonyi Wetangula, MP
5. Hon. Toroitich Timothy Kipchumba, MP
6. Hon. Makali John Okwisia, MP
7. Hon. Harold Kimuge, MP

SECRETARIAT

- | | |
|-------------------------|----------------------------------|
| 1. Mr. Ahmed Salim | - Clerk Assistant I / Lead Clerk |
| 2. Mr. Abdikafar Abdi | - Clerk Assistant III |
| 3. Mr. Omar Abdirahim | - Fiscal Analyst II |
| 4. Mr. Isaac Nabiswa | - Legal Counsel II |
| 5. Mr. John Nduaci | - Assistant Serjeant at Arms |
| 6. Mr. Rehema Koech | - Audio Recording Officer |
| 7. Ms. Valentine C. Too | - Attache, JLAC |

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of previous sittings
4. Meeting stakeholders to receive their views on the Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025) sponsored by Hon. Aden Daud, EBS, MP
5. Adjournment / Date of the Next Meeting

MIN. NO. DDC/JLAC/173/2026:**PRELIMINARIES**

The Chairperson called the meeting to order at ten o'clock and said the Prayer. This was followed by introductions from Members. The agenda of the Sitting was adopted, having been proposed by Hon. Francis Kajwang' Tom Joseph, CBS, MP and seconded by Hon. Aden Daud, EBS, MP.

MIN. NO. DDC/JLAC/174/2026:**CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING**

- a) Minutes of the 27th Sitting held on 21st April 2026 were adopted as a true reflection of the proceedings, having being proposed by Hon. Francis Kajwang', MP and seconded by Hon. Suleka Hulbale, MP.
- b) Minutes of the 28th Sitting held on 4th May 2026 were adopted as a true reflection of the proceedings, having being proposed by Hon. Aden Daud, MP and seconded by Hon. Otiende Amollo, MP.
- c) Minutes of the 29th Sitting held on 5th May 2026 were adopted as a true reflection of the proceedings, having being proposed by Hon. Michael Muchira, MP and seconded by Hon. Otiende Amollo, MP.
- d) Minutes of the 30th Sitting held on 6th May 2026 were adopted as a true reflection of the proceedings, having being proposed by Hon. Aden Daud, MP and seconded by Hon. Michael Muchira, MP.
- e) Minutes of the 31th Sitting held on 7th May 2026 were adopted as a true reflection of the proceedings, having being proposed by Hon. Tom Joseph Kajwang', MP and seconded by Hon. Otiende Amollo, MP.
- f) Minutes of the 32nd Sitting held on 8th May 2026 were adopted as a true reflection of the proceedings, having being proposed by Hon. Aden Daud, MP and seconded by Hon. Tom Joseph Kajwang', MP.
- g) Minutes of the 33rd Sitting held on 12th May 2026 were adopted as a true reflection of the proceedings, having being proposed by Hon. Tom Joseph Kajwang', MP and seconded by Hon. Otiende Amollo, MP.
- h) Minutes of the 34th Sitting held on 12th May 2026 were adopted as a true reflection of the proceedings, having being proposed by Hon. Aden Daud, MP and seconded by Michael Muchira, MP.
- i) Minutes of the 35th Sitting held on 13th May 2026 were adopted as a true reflection of the proceedings, having being proposed by Hon. Michael Muchira, MP and seconded by Hon. Otiende Amollo, MP.
- j) Minutes of the 36th Sitting held on 19th May 2026 were adopted as a true reflection of the proceedings, having being proposed by Hon. Aden Daud, MP and seconded by Hon. Otiende Amollo, MP.
- k) Minutes of the 37th Sitting held on 26th May 2026 were adopted as a true reflection of the proceedings, having being proposed by Hon. Michael Muchira, MP and seconded by Hon. Aden Daud, MP.

MIN. NO. DDC/JLAC/175/2026:**MEETING STAKEHOLDERS ON THE LAW OF CONTRACT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 49 OF 2025)**

The following agencies appeared before the Committee and made their submissions on the Law of Contract (Amendment) Bill, 2025 (National Assembly Bill No. 49 of 2025), sponsored by Hon. Aden Daud, EBS, MP as follows:

(a) Law Society of Kenya

- (i) The President of the Law Society of Kenya welcomed the Bill but urged balancing exclusion clauses with business needs.

- (ii) Suggested addressing unconscionable contract terms, including unfair arbitration clauses and excessive interest.
- (iii) Submitted the LSK's written memorandum, but committed to submitting a further detailed memorandum in the next meeting of the Committee with further proposals as received from members of the Society.

(b) Competition Authority of Kenya

- (i) Competition Authority of Kenya representatives noted that similar provisions exist in the Competition Act, addressing unfair terms.
- (ii) They emphasized that Competition Act focuses on market conduct and consumer products, while Contract Act is broader.
- (iii) Legal harmonization was discussed by exploring how to resolve conflicts between laws through precedence, rules or sector-specific exemptions.
- (iv) They submitted a written memorandum on the Bill for Committee's consideration.

(c) Kenya Law Reform Commission

- (i) The Kenya Law Reform Commission agreed with the Bill subject to minor drafting amendments.
- (ii) Requested to submit a detailed written memorandum on the Bill and engage in further discussions with the Committee, in the next sitting of the Committee on 16th June 2026.

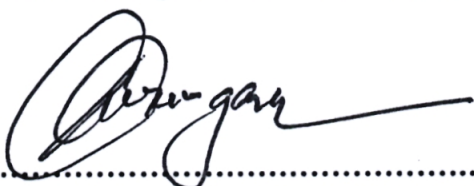
(d) Insurance Regulatory Authority

The Insurance Regulatory Authority requested to provide a formal written submission on the Bill in five days. The Committee acceded to the request and proposed to appear in the next meeting to be held on Tuesday, 16th June 2026.

MIN. NO. DDC/JLAC/176/2026:

ADJOURNMENT

There being no other business, the meeting was adjourned at twenty minutes to twelve o'clock. The next meeting to be held on Tuesday, 16th June 2026.

SIGNED:  DATE: 30/06/2026
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, CBS, MP)



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FIFTH SESSION - 2026
DIRECTORATE OF DEPARTMENTAL COMMITTEES

**MINUTES OF THE 37TH SITTING OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS HELD AT COMMITTEE ROOM 22, 5th
FLOOR, BUNGE TOWER, WITHIN PARLIAMENT BUILDINGS, ON
TUESDAY, 26TH MAY 2026 AT 10:00 AM**

PRESENT

1. Hon. Murugara George Gitonga, CBS, MP – *Chairperson – Virtually*
2. Hon. Mutuse Eckomas Mwengi, OGW, MP – *Vice Chairperson – (Session Chairman)*
3. Hon. Francis Kajwang' Tom Joseph, CBS, MP
4. Hon. Toroitich Timothy Kipchumba, MP – *virtually*
5. Hon. Muchira Michael Mwangi, MP – *virtually*
6. Hon. Aden Daud, EBS, MP
7. Hon. Mogaka Stephen M. MP
8. Hon. Harold Kimuge, MP – *virtually*

ABSENT WITH APOLOGIES

1. Hon. Gladys Boss, MGH, MP
2. Hon. Onyiego Silvanus Osoro, CBS, MP
3. Hon. Maalim Farah, EGH, MP
4. Hon. Timothy Wanyonyi Wetangula, MP
5. Hon. (Dr.) Otiende Amollo, SC, EBS, CBS, MP
6. Hon. Makali John Okwisia, MP
7. Hon. CPA. Suleka Hulbale Harun, MP

SECRETARIAT

- | | |
|-------------------------|----------------------------------|
| 1. Mr. Ahmed Salim | - Clerk Assistant I / Lead Clerk |
| 2. Mr. Abdikafar Abdi | - Clerk Assistant III |
| 3. Mr. Samuel Wanjiru | - Clerk Assistant III |
| 4. Mr. Omar Abdirahim | - Fiscal Analyst II |
| 5. Mr. Isaac Nabiswa | - Legal Counsel II |
| 6. Mr. John Nduaci | - Assistant Serjeant at Arms |
| 7. Mr. Kelvin Lengasi | - Audio Recording Officer |
| 8. Ms. Valentine C. Too | - Attache, JLAC |

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of previous sittings
4. Brief by the Legal Counsel on the Law of Contract (Amendment) Bill, (National Assembly Bill No. 49 of 2025)
5. Adjournment / Date of the Next Meeting

MIN. NO. DDC/JLAC/169/2026:

PRELIMINARIES

The Chairperson called the meeting to order at ten o'clock and said the Prayer. This was followed by introductions from Members. The agenda of the Sitting was adopted, having been

proposed by Hon. Francis Kajwang' Tom Joseph, CBS, MP and seconded by Hon. Mogaka Stephen M. MP.

MIN. NO. DDC/JLAC/170/2026:

**CONFIRMATION OF MINUTES OF THE
PREVIOUS SITTING**

The agenda was deferred.

MIN. NO. DDC/JLAC/171/2026:

**BRIEF ON THE LAW OF CONTRACT
(AMENDMENT) BILL, (NATIONAL
ASSEMBLY BILL NO. 49 OF 2025)**

The Committee was taken through the legal brief on the Law of Contract (Amendment) Bill, (National Assembly Bill No. 49 of 2025) and informed as follows:

- (i) The principal object of the Bill is to amend the Law of Contract Act (Cap. 23) to protect parties to a contract against unfair and unconscionable terms.
- (ii) The Bill sought to insert new provisions prohibiting exclusion of liability that would arise in cases such as death, loss or damage resulting from negligence; loss or damage resulting from breach of contract; loss or damage resulting from sale of defective goods, among others.
- (iii) Vide a notice to the public requesting for submission of written memoranda on the Bill, the Committee, through the Office of the Clerk of the National Assembly, is in receipt of written memoranda on the Bill from G4S, DHL and the Architects Alliance.
- (iv) Section 2 of the Law of Contract Act provides that the common law is a legal system primarily developed through judicial decisions rather than through written laws.
- (v) A term is considered unfair or unconscionable if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations.
- (vi) In common law, the use of exclusion of liability terms is restricted. To rely upon such term, the courts will consider if the term had been incorporated in the contract document and if the document had been intended as a contractual document. The court also considers if the exclusion clause covers the loss in question.

Committee Resolution

The Committee resolved to invite the following stakeholders, to submit their views on the Bill, on Tuesday, 9th June 2026:

- (a) The Judiciary;
- (b) Kenya Law Reform Commission (KLRC);
- (c) Law Society of Kenya (LSK);
- (d) University of Nairobi (UON);
- (e) Insurance Regulatory Authority (IRA);
- (f) Capital Markets Authority (CMA);
- (g) Kenya Bankers Association (KBA);
- (h) Consumers Federation of Kenya (COFEK);
- (i) Competition Authority of Kenya (CAK);
- (j) Kenya Association of Manufacturers (KAM); and
- (k) Kenya Private Sector Alliance (KEPSA).

MIN. NO. DDC/JLAC/172/2026:

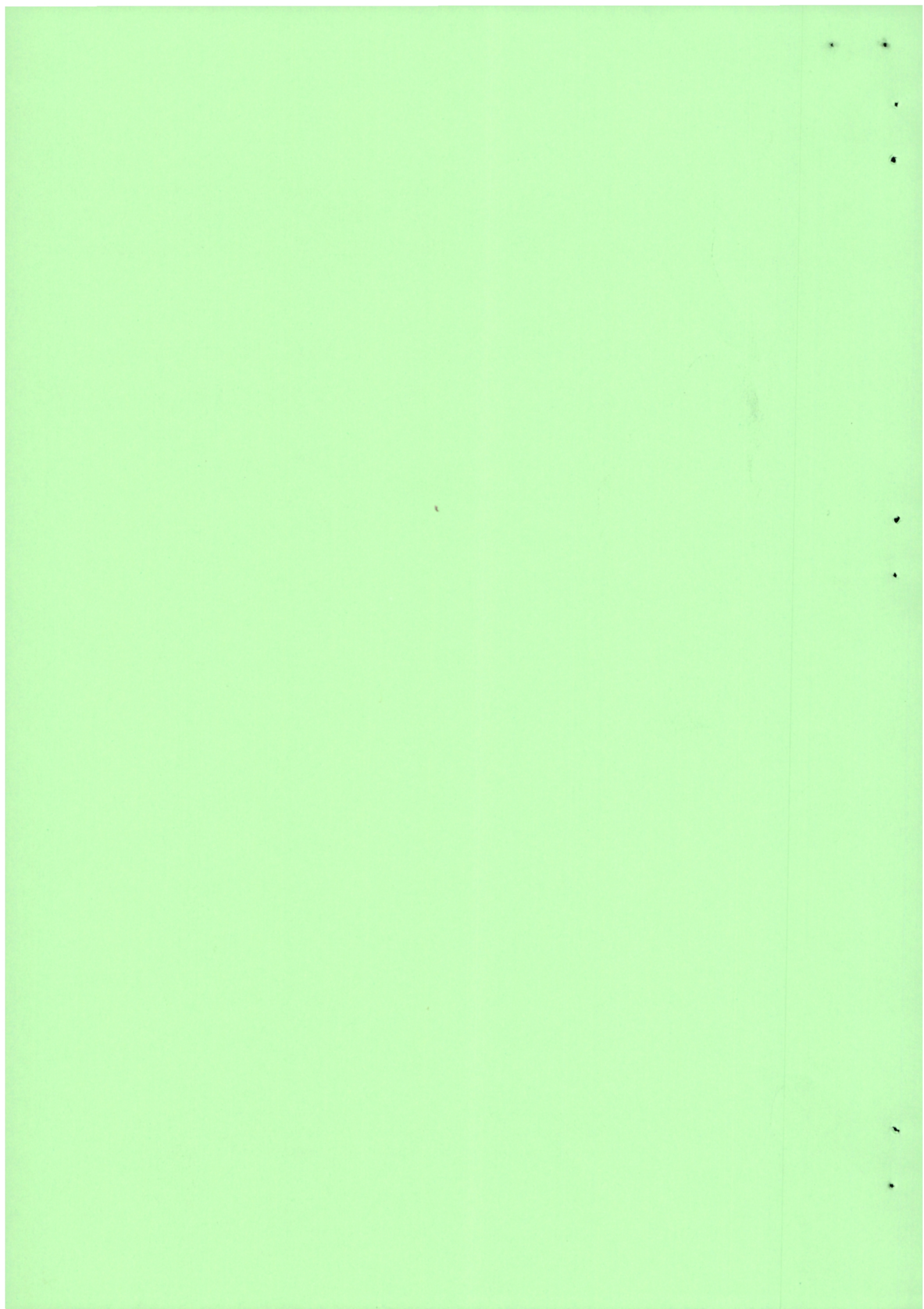
ADJOURNMENT

There being no other business, the meeting was adjourned at twenty minutes to eleven o'clock. The next meeting to be held on notice.

SIGNED:.....DATE:09/06/2026.....
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, CBS, MP)

Annexure **3**

**The Law of Contract (Amendment) Bill
(National Assembly Bill No. 49 of 2025)**



SPECIAL ISSUE

Kenya Gazette Supplement No. 185 (National Assembly Bills No. 49)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2025

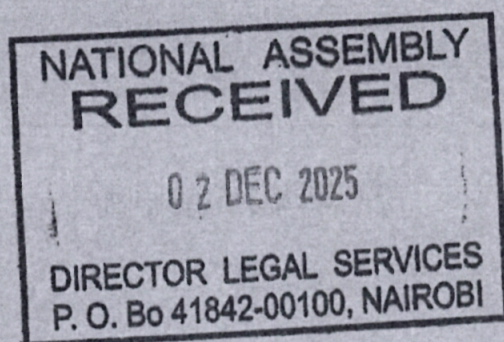
NAIROBI, 5th November, 2025

CONTENT

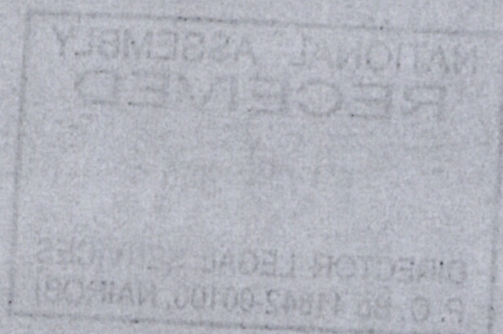
Bill for Introduction into the National Assembly —

PAGE

The Law of Contract (Amendment) Bill, 2025 1207



PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI



**THE LAW OF CONTRACT (AMENDMENT) BILL,
2025**

A Bill for

**AN ACT of Parliament to amend the Law of Contract
Act**

ENACTED by the Parliament of Kenya as follows—

1. This Act may be cited as the Law of Contract (Amendment) Act, 2025.

Short title.

2. The Law of Contract Act (hereby referred to as the “principal Act”) is amended by inserting the following new section after section 2—

Insertion of new
section 2A in
Cap. 23.

Interpretation.

2A. (1) In this Act, unless the context otherwise requires—

“negligence” means the breach of an obligation arising from an express or implied term of a contract to take reasonable care or exercise reasonable skill in the performance of a contract;

“requirement of reasonableness” means a term that is fair and reasonable to be included in a contract having regard to the circumstances which were or ought to have been known when the contract was made.

3. The principal Act is amended by inserting the following new sections after section 3—

Insertion of new
sections in Cap.
23.

Prohibition against
exclusion of liability
arising out of
negligence.

3A. (1) A person shall not, by reference to a contract term, exclude or restrict liability for death resulting from negligence.

(2) A person shall not, by reference to a contract term, exclude or restrict liability for loss or damage resulting from negligence, unless the term satisfies the requirement of reasonableness.

(3) Where a contract term excludes or restricts liability for loss or damage resulting from negligence, an agreement to the term by a person shall not indicate the person’s voluntary acceptance of risk.

Prohibition against
exclusion of liability
arising out of breach
of contract.

3B. (1) This section applies between contracting parties where one party is a consumer.

(2) As against a party dealing as a consumer, the other party shall not, by reference to a contract term—

(a) exclude or restrict liability for loss or damage when the supplier is in breach of the contract; or

(b) claim to be entitled—

(i) to render a contractual performance substantially different from that which was reasonably expected of the supplier; or

(ii) in respect of the whole or any part of the contractual obligation, render no performance at all.

(2) Despite subsection (1), a term that satisfies the requirements of reasonableness may be relied upon by the supplier.

Prohibition against
exclusion of liability
arising out of sale of
defective goods.

3C. (1) In the case of goods supplied for consumer use, liability for loss or damage shall not be excluded or restricted by reference to a contract term contained in or operating by reference to a guarantee of the goods where the loss or damage—

(a) arises from the goods proving defective while in consumer use; and

(b) results from the negligence of a person concerned in the manufacture or distribution of the goods.

(2) For the purposes of this section—

(a) goods are regarded as in consumer use when a person is using them or

has them in possession for use other than exclusively for the purpose of a business; and

- (b) anything in writing is a guarantee if it contains or purports to contain a promise or assurance that defects will be made good by complete or partial replacement or by repair, monetary compensation or otherwise.

Prohibition against exclusion of liability in sale of goods or hire purchase agreements.

3E. (1) A person shall not exclude or limit their liability for loss or damage by reference to a contract term where the liability arises from breach of—

- (a) a condition or warranty provided under section 14 of the Sale of Goods Act; or

Cap. 31.

- (b) a condition or warranty provided under section 8(1) of the Hire-Purchase Act.

Cap. 507.

(2) As against a person dealing as a consumer, liability shall not be excluded or restricted by reference to a contract term where the liability arises from breach of—

- (a) a condition or warranty provided under section 15, 16 or 17 of the Sale of Goods Act; or

Cap. 31.

- (b) the condition provided under section 8(2) of the Hire Purchase Act.

Cap. 507.

(3) As against a person dealing otherwise than a consumer, the liability specified under subsection (2) may be excluded or restricted by reference to a contract term unless the term satisfies the requirement of reasonableness.

Prohibition against exclusion of liability in other agreements.

3F. (1) Where the property in goods passes under or in pursuance of a contract not governed by the law of sale of goods or

hire purchase, subsections (2), (3) and (4) apply as regards the effect to be given to contract terms excluding or restricting liability for breach of obligation arising by implication of law from the nature of the contract.

(2) As against a person dealing as a consumer, liability, in respect of goods corresponding with the description or sample or the quality or fitness for a particular purpose of goods, shall not be excluded or restricted by reference to such term.

(3) As against a person dealing otherwise than as a consumer, liability in respect of goods corresponding with the description or sample or the quality or fitness for a particular purpose of goods may be excluded or restricted by reference to such a term in so far as the term satisfies the requirement of reasonableness.

(4) A person shall not exclude or limit their liability by reference to a contract term unless the term satisfies the requirement of reasonableness where the liability is in respect of—

- (a) the right to transfer ownership of the goods or give possession; or
- (b) the assurance of quiet possession to a person acquiring the goods in pursuance of the contract.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the objects and reasons for the Bill

The principal object of this Bill is to amend the Law of Contract Act to protect parties to a contract against unfair and unconscionable terms. The Law of Contract Act provides for the application of English common law principles in contract law which has resulted in the use of unfair and unconscionable terms. Therefore, the Bill seeks to prevent parties from relying on such unfair and unconscionable terms.

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

The Bill neither delegates legislative power nor limits rights and fundamental freedoms.

Statement on whether the Bill concerns county government

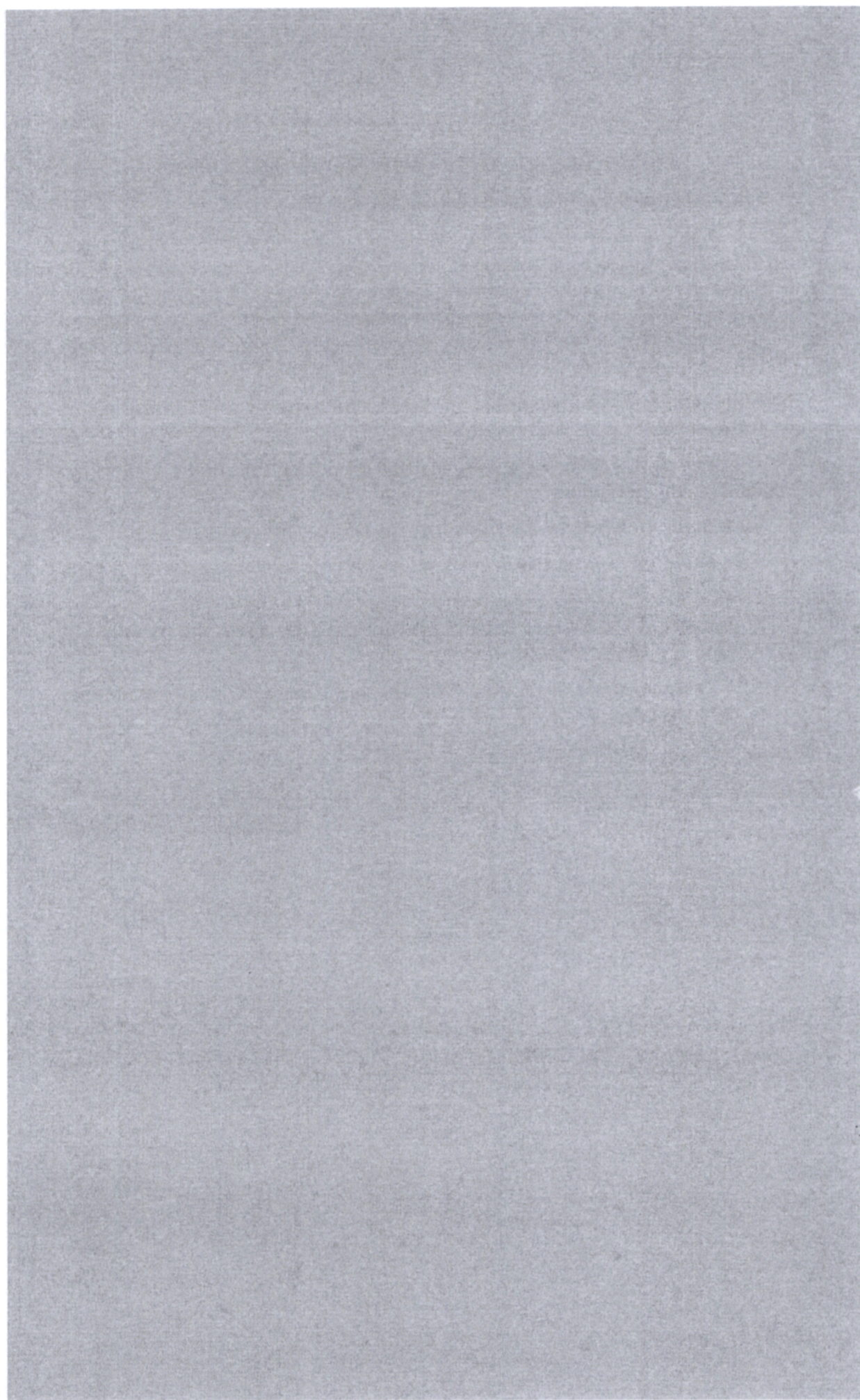
The Bill does not concern county governments in terms of Article 110 of the Constitution.

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

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 10th April, 2025.

ADEN DAUD MOHAMED,
Member of Parliament.



Annexure **4**

Advertisement inviting the Public to Submit memoranda on the Bill

Opposition: NIF linked to Ruto's campaigns

Leaders criticise proposed fund amid existing inefficiency, corruption and fiscal opacity.

They say over 60 public funds already operate outside Consolidated Fund oversight.

NDUNG'U GACHANE, NAIROBI

The Opposition has linked the proposed National Infrastructure Fund (NIF) with President William Ruto's re-election plans, claiming he intends to use the money covertly for campaigns to retain power in 2027.

Leaders of the United Alternative Government (UAG), as they now call themselves, also demanded an explanation after National Treasury Cabinet Secretary John Mbadi's admitted he had misled the National Assembly regarding the legal status of the proposed fund.

The Opposition members, led by Kalonzo Musyoka (Wiper) Rigathi Gachagua (Democracy for Citizens Party), Eugene Wamalwa (Democratic Alliance Party (DAP-K) and Justin Muri (Democratic Party), claimed The National Infrastructure Fund Bill, 2026 is Ruto's secret plan to estab-

lish a fund outside the regulations of the Public Finance Management Act (PFMA), enabling potential misuse of resources for personal gain.

They argued that the country's infrastructure deficit is not due to institutional scarcity but to execution failures, procurement corruption and fiscal opacity, warning that adding a new fund would increase dysfunction and reduce oversight.

"What we know is that they are creating a fund that will bypass Parliamentary approval and oversight and instead be used to finance their election campaign. They want Sh5 trillion that is neither approved by Parliament nor audited by the Auditor General," Gachagua claimed.

The Opposition noted that by 2024, the country had over 60 public funds operating outside the Consolidated Fund, with many overlapping mandates and weak oversight. They maintained that creating another fund would only serve illegal purposes.

"Article 206 of the Constitution is unambiguous: all public revenue must flow through the Consolidated Fund and be subject to parliamentary appropriation. The proposed Fund risks creating a semi-autonomous financial reservoir where Cabinet-level officials can deploy significant public resources without annual parliamen-



United Opposition leaders Justin Muri, Rigathi Gachagua, Kalonzo Musyoka and Eugene Wamalwa address the press in Nairobi, yesterday. [Kanyiri Wahito, Standard]

mentary approval, the very arrangement Article 206 was designed to prevent," said Kalonzo.

The Opposition also took issue with Mbadi, who swore an affidavit stating he had misled Parliament about the status of the fund, claiming it had been registered under Article 206 as a limited liability company.

"A CS who assures Parliament of a Sh5 trillion vehicle's constitutional status, then swears under oath to its private, unincorporated nature, has not made a technical error, he has misled the legislature on a matter of

the highest fiscal and constitutional consequence under Article 153(4) of the Constitution," the leaders said.

They demanded that Mbadi be summoned back to the National Assembly to reconcile his parliamentary statements with his court testimony and urged MPs to reject the bill, saying, "Parliament cannot pass legislation premised on information the responsible Cabinet Secretary has admitted, under oath, was misleading."

Offering an alternative to the proposed fund, the Opposition suggested the government deepen its infrastructure bond market and reform the Public-Private Partnership (PPP) framework.

The government should also enforce fiscal discipline by rationalising the recurrent budget, which has grown 63 per cent from Sh3.1 trillion to Sh4.9 trillion despite low single-digit GDP growth, and strengthen procurement oversight at project inception, where the greatest losses occur, as seen in the SHA, SGR, ADANI, CBC and Rironi-Mau Summit Road scandals.

The Opposition warned that if the National Assembly passes the bill, they would seek court redress, accusing the Executive of capturing Parliament.

Jgachane@standardmedia.co.ke



REPUBLIC OF KENYA THIRTEENTH PARLIAMENT- FIFTH SESSION (2026) THE NATIONAL ASSEMBLY

IN THE MATTER OF ARTICLE 118(1) (b) OF THE CONSTITUTION
AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

- (1) THE LAW OF CONTRACT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL No. 49 OF 2025); AND
(2) THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL No. 55 OF 2025)

WHEREAS, Article 118(1) (b) of the Constitution of Kenya requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees, and National Assembly Standing Order 127(3) requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025) and the Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 55 of 2025) were read a First Time on 4th March 2026 and referred to the Departmental Committee on Justice and Legal Affairs for consideration and reporting to the House;

IT IS NOTIFIED that:-

- (1) The Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025) is a Bill sponsored by Hon. Aden Daud Mohamed, MP which seeks to amend the Law of Contract Act, Cap. 23 to protect parties to a contract against unfair and unconscionable terms. The Bill seeks to prevent parties from relying on unfair and unconscionable terms imposed by the application of English common law principles in contract law.
- (2) The Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 55 of 2025) is a Bill sponsored by Hon. Babu Owino Paul Ongili, MP which seeks to amend the Criminal Procedure Code, Cap. 75 to provide a framework for expungement of criminal records. The amendment seeks, in the interests of justice, to ensure that persons who violate the law and repay their debt to society are not punished indefinitely for their infractions. This will promote rehabilitation and assist the rehabilitated offenders to be reintegrated into the society.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025) and the Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 55 of 2025) to the Departmental Committee on Justice and Legal Affairs.

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings and on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to cpa@parliament.go.ke to be received on or before Friday, 20th March 2026 at 5.00 p.m.

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY

6th March 2026

POLITICS

Orengo labels Ruto a 'dictator,' warns ODM revolution hijacked

Siaya Governor James Orengo has warned that the Orange Democratic Movement (ODM) has lost its soul, likening President William Ruto to a dictator as a power struggle threatens to tear the party apart.

Speaking on Spice FM on Wednesday, March 5, Orengo trained his guns on both the government and his ODM's direction, saying Kenya's Constitution remains the last line of defence against authoritarian rule.

"President William Ruto is cut from the same cloth as most dictators. Kenya is fortunate to have a strong constitution to safeguard democratic principles," said Orengo.

The governor said the founding document remains the only check on Executive overreach. "There is the return of the imperial presidency, with many running to State House for favours. It makes it even more critical that resources are shared fairly and equitably across the country," observed Orengo.

His remarks come two days after an ODM parliamentary group meeting formally



Siaya Governor James Orengo. [File, Standard]

endorsed working arrangements between the Party and the United Democratic Alliance (UDA), backing negotiations aimed at forming a coalition ahead of the 2027 General Election.

Orengo flatly rejected any such deal. "If ODM were to form an alliance with UDA and the president, it could trigger a mass exodus of members, as many supporters may not accept such a partnership that conflicts with the party's founding ideals," he said.

The discussion laid bare the depth of ODM's internal crisis. Orengo did not mince words about what he believes has gone wrong since Raila's death.

"Our revolution has been hijacked and it is clear that ODM today is not the same party that Raila Odinga stood for over 20 years."

Odinga led ODM from its inception in 2005 until his death in October 2025, with his brother Oburu Oginga appointed acting party leader.

Oburu was formally sworn in as party leader on November 13, 2025 after his appointment was approved by the National Governing Council. That transition has since unraveled into a factional fight with ODM splitting along ideological lines into two camps.

The Linda Mwananchi faction, which supports the "one term" narrative, comprises Orengo, Nairobi Senator Edwin Sifuna, Embakasi East Member of Parliament Babu Owino, Vihiga Senator Godfrey Otsi, Kisii Senator Richard Onyoka and Saboti MP Caleb Amisi, among others.

The opposing Linda Ground faction, aligned with Oburu, backs a broad-based arrangement and is pushing for a coalition with UDA.

[David Njaaga]

National News

Hard ball The decision to limit the agenda was made on Wednesday by ODM's National Executive Committee

Oburu camp rules out elections at NDC

A rival wing led by Senator Sifuna has threatened not to participate in the convention

BY MOSES NYAMORI

A fresh political storm has erupted in the Orange Democratic Movement (ODM) after it emerged that no competitive election of national officials will take place during the planned March 27 Special National Delegates Convention (NDC).

Instead, the convention, led by party leader Oburu Oginga, is set to focus solely on the confirmation of interim officials by the delegates. Sources say the party plans another NDC, tentatively in December or early 2027, to consider other agenda items, including a possible endorsement of a pre-election coalition with President William Ruto's United Democratic Alliance (UDA).

The decision to limit the agenda was made on Wednesday by ODM's National Executive Committee (NEC), seen as part of Dr

Oginga's strategy to consolidate power and avoid an acrimonious fallout.

However, a rival camp led by Secretary-General Edwin Sifuna, co-deputy party leader Godfrey Otsi, Siaya Governor James Orengo and Embakasi East MP Babu Owino has threatened not to participate unless all national positions are opened for competitive elections. The group also wants the list of delegates published before the convention and has questioned the legality of the NDC, citing incomplete grassroots elections, particularly in Nairobi and Kisumu counties.

"As they publish the notice of the meeting, let them publish the list of delegates expected to attend the NDC," Mr Otsi told *Nation*. Citing Article 47 of the party constitution, he noted that the maximum number of delegates at any NDC is 3,000 and that the NDC's mandate includes electing national officials.

"The current dispute in ODM can only be resolved through a competitive election. All interim officials and any eligible member should be allowed to compete," said the Vihiha senator. He further questioned who would represent



ODM leader Oburu Oginga (right) and National Chairperson Gladys Wanga after a meeting in Nairobi on Wednesday to discuss preparations for the National Delegates Convention scheduled for March 27. POOL

resent counties yet to conclude grassroots elections, stressing that there can never be a formal NDC without a complete list of delegates.

Under the planned March 27 NDC, interim officials – including Dr Oginga, his deputies Otsi, Abdulswamad Nassir and Simba Arati, and National Chairperson Gladys Wanga – approved by

the National Governing Council (NGC) in Mombasa last year, will be presented individually for confirmation or rejection.

"This is not an open-ended NDC. NEC has only approved two agenda items, including confirmation of the officials ratified by the NGC," a NEC member, speaking off the record, said. ODM Nairobi branch chairman and Makadara

Date this month when the ODM Special National Delegates Convention is scheduled to take place

MP George Aladwa said competitive elections will have to wait until the next NDC ahead of the 2027 General Election. "There is nothing like election during the NDC. People have to align with decisions taken by party organs," he said, citing the need to complete pending grassroots polls before any national elections.

Dr Oginga has invited critics questioning his legitimacy to attend the convention. "Those who have been saying Oburu is an illegitimate ODM leader because he was not confirmed by NDC, we have called the meeting on March 27, and we are inviting them to come and speak," he said.

National Assembly Minority Leader Junet Mohammed said preparations are in place for the NDC, which he described as a moment of reckoning for camps loyal to Dr Oginga and Mr Sifuna. The outcome is likely to influence the

party's internal balance of power.

Whereas the NEC resolved to remove Mr Sifuna from office and appoint his deputy Catherine Omamo in an acting capacity, the Political Parties Disputes Tribunal has temporarily barred the party from executing his ouster, leaving the matter pending.

ODM's NDC will comprise NEC members, MPs, governors, branch chairpersons, county coordinating committees, and leaders from the ODM Youth, Women, and Disability Leagues. The party constitution limits delegates at any convention to 3,000, though NEC may invite others without voting rights.

Article 49 states that a Special NDC shall be summoned by the chairperson upon NEC decision or requisition by at least one-third of delegates. Notices must be issued at least 21 days before the meeting and published via party website, a daily newspaper, or a Swahili radio broadcast. Only NEC-prepared or requisitioned agenda items may be discussed, and quorum requires 30 percent of eligible members present and voting.

mnyamori@ke.nationmedia.com



TAKE NOTICE FOR AIR CARGO SERVICES FOR MSF – SOMALIA MISSION (SOM/01/2026)

Médecins Sans Frontières (MSF) / Doctors Without Borders is an international independent medical humanitarian organization that provides assistance to people affected by conflicts, epidemics, and natural or human-made disasters and excluded from healthcare. We provide this assistance without discrimination, irrespective of race, religion, creed or political affiliation.

For over four decades, MSF has provided medical and humanitarian care to Somali communities across the Horn of Africa. In Somalia, MSF responds to urgent needs linked to conflict, displacement, and extreme weather, while supporting Ministry of Health facilities. Our work strengthens care through training and capacity building, quality improvement, hospital rehabilitation, WASH services, and infection prevention and control. MSF currently runs medical activities in Baldaa (Bay Region) and in Galkayo North (Puntland) and Galkayo South (Galmudug).

MSF Somalia Mission is seeking interested and eligible service providers for the following tender:

SL. NO.	LOT NO.	DESCRIPTION	TENDER PUBLICATION DATE	TENDER CLOSING DATE	TENDER CLOSING TIME
01	Air cargo SOM/01/2026	Airlifting of assorted cargo to various destinations in Somalia	6 th Mar 2026	27 th Mar 2026	5:00 P.M

Interested eligible service providers are requested to send below required documents in order to receive the bidding documents to:

DOCUMENTS REQUIRED (TO RECEIVE BIDDING DOCUMENTS)

- Tax Compliance Certificate (TCC)
- Certificate of Registration (COR)
- Air Operators Certificate (AOC)
- Foreign Operators Certificate (FOC)

CLARIFICATION OF TENDER DOCUMENTS

Should the tenderer be in any doubt as to the precise meaning of any item and/or requirement, they should contact:

DELIVERY OF TENDERS

Tender submissions and all documents in connection therewith shall be submitted as per the instructions shared in the bidding documents issued by the Supply Department – MSF Somalia Mission to:



REPUBLIC OF KENYA THIRTEENTH PARLIAMENT – FIFTH SESSION (2026) THE NATIONAL ASSEMBLY

IN THE MATTER OF ARTICLE 118(1) (B) OF THE CONSTITUTION AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

- (1) THE LAW OF CONTRACT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 49 OF 2025); AND
- (2) THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 55 OF 2025)

WHEREAS, Article 118(1) (b) of the Constitution of Kenya requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees, and National Assembly Standing Order 127(3) requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025) and the Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 55 of 2025) were read a First Time on 4th March 2026 and referred to the Departmental Committee on Justice and Legal Affairs for consideration and reporting to the House;

IT IS NOTIFIED that—

(1) The Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025) is a Bill sponsored by Hon. Aden Daud Mohamed, MP which seeks to amend the Law of Contract Act, Cap. 23 to protect parties to a contract against unfair and unconscionable terms. The Bill seeks to prevent parties from relying on unfair and unconscionable terms imposed by the application of English common law principles in contract law.

(2) The Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 55 of 2025) is a Bill sponsored by Hon. Babu Owino Paul Ongili, MP which seeks to amend the Criminal Procedure Code, Cap. 75 to provide a framework for expungement of criminal records. The amendment seeks, in the interests of justice, to ensure that persons who violate the law and repay their debt to society are not punished indefinitely for their infractions. This will promote rehabilitation and assist the rehabilitated offenders to be reintegrated into the society.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025) and the Criminal Procedure Code (Amendment) Bill (National Assembly Bill No. 55 of 2025) to the Departmental Committee on Justice and Legal Affairs.

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings and on www.parliament.go.ke/nas/committees/justice-house-business/bills.

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41642-00100, Nairobi, hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to na@parliament.go.ke to be received on or before Friday, 20th March 2026 at 5:00 p.m.

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
6th March 2026

**Letter from the Clerk of the National
Assembly inviting key stakeholders to a
meeting to submit views on the Bill**



**THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK**

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote:

Ref: NA/DDC/JLAC/2026/046

2nd June, 2026

Hon. Shadrack John Mose, CBS

Solicitor General

Office of the Attorney-General and Department of Justice

Sheria House, Harambee Avenue

NAIROBI

Dr. Chris K. Kiptoo, CBS

Principal Secretary

The National Treasury

National Treasury and Economic Planning

Treasury Building, Harambee Avenue

NAIROBI

Hon. Winfridah Boyani Mokaya, CBS

Chief Registrar of the Judiciary / Secretary

Judicial Service Commission (JSC)

Supreme Court Building

NAIROBI

Mr. James O. Nombi

Ag. Commission Secretary / CEO

Kenya Law Reform Commission

Reinsurance Plaza, 3rd Floor, Taifa Road

NAIROBI

Ms. Florence W. Muturi

Chief Executive Officer

Law Society of Kenya (LSK)

Lavington, Opposite Valley Arcade, Gitanga Road

NAIROBI

Prof. Winifred Kamau, PhD

Dean, Faculty of Law

University of Nairobi (UON)

P.O. Box: 30197 - 00100

NAIROBI

Mr. Godfrey Kiptum, MBS

Chief Executive Officer

Insurance Regulatory Authority (IRA)

Zep-Re Place, Longonot Road - Upper Hill

NAIROBI

FCPA Wycliffe M. Shamiah, MBS

Chief Executive Officer
Capital Markets Authority (CMA)
Embankment Plaza, 3rd Floor, Longonot Road
NAIROBI

Mr. Raimond Molenje

Chief Executive Officer
Kenya Bankers Association (KBA)
13th Floor, International House, Mama Ngina Street
NAIROBI

Mr. Stephen S. Mutoro

Secretary General
Consumers Federation of Kenya (COFEK)
Rehema Place, Block F-45
NAIROBI

Mr. David Kibet Kemei

Director General
Competition Authority of Kenya (CAK)
CBK Pension Towers, 15th Floor
NAIROBI

Mr. Tobias Alando

Chief Executive Officer
Kenya Association of Manufacturers (KAM)
15 Mwanzi Road, Westlands
NAIROBI

Ms. Carole Kariuki

Chief Executive Officer
Kenya Private Sector Alliance (KEPSA)
7th Floor, South Tower, Two Rivers
NAIROBI

Dear *FCPA Shamiah*

**RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE
AND LEGAL AFFAIRS TO SUBMIT VIEWS ON THE LAW OF
CONTRACT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 49
OF 2025**

The Departmental Committee on Justice and Legal Affairs is established pursuant to Standing Order 216 of the National Assembly Standing Orders, and is mandated to *inter alia*, 'study and review all legislation referred to it.'

As you are aware, the Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025), sponsored by Hon. Aden Daud Mohamed, EBS, MP, is before the Committee for consideration and reporting to the House. The Bill seeks to amend the Law of Contract Act to protect parties to a contract against unfair and unconscionable terms. The Law of Contract Act provides for the application of English common law principles in contract law, which has resulted in the use of unfair and unconscionable terms.

Article 118(1)(b) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative business of Parliament and its Committees. Due to the great public interest in the Bill, the Committee resolved to meet with key stakeholders to make submissions on the Bill.

In this regard, the Committee invites you, or your representatives, for a meeting on **Tuesday, 9th June 2026, at 10:00 am** at the **Mini Chamber, County Hall**, within Parliament Buildings. The agenda of the meeting is to receive your views on the Bill.

You are requested to prepare your written submissions in a matrix format that indicates the specific clause, proposed amendment and justification. Twenty (20) hard copies of the submissions are to be availed during the meeting, soft copies of which may be sent to the Committee through the Office of the Clerk of the National Assembly via email: cna@parliament.go.ke.

Hard copies of the Bill are available at the National Assembly Table Office, Main Parliament Building, while an electronic copy may be accessed on the Parliament website: www.parliament.go.ke/the-national-assembly/house-bills for reference.

Our liaison officers on this subject are **Mr. Abenayo Wasike, H.O.D.**, who may be contacted on tel. no. 0721352053 or email abenayo.makokha@parliament.go.ke or Mr. Ahmed Salim Abdalla, Lead Clerk, tel. no. 0710204056 or email: ahmed.salim@parliament.go.ke.

Yours



JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: - **Hon. Dorcas Agik Oduor, SC, OGW, EBS**
The Attorney General
The State Law Office and the Department of Justice
Sheria House, Harambee Avenue
NAIROBI

Dr. Aurelia Chepkirui Rono, PhD, CPA (K), CBS
Principal Secretary
The State Department for Parliamentary Affairs
Office of the Prime Cabinet Secretary
Kenya Railways, Block A, Haile Selassie Avenue
NAIROBI

Memoranda by Stakeholders



G4S Kenya Limited
Witu Road, off Lusaka Road.
P.O. Box 30242-00100, Nairobi



Tel: +254-20- 6982000 / 2999
Fax: +254-20-532380, 531719, 6982202
Mobile: 0732172000, 0711042000
Email: info@ke.g4s.com www.g4s.co.ke

**TO: THE CLERK OF THE NATIONAL ASSEMBLY
P.O. BOX 41842-00100,
NAIROBI, KENYA**

EMAIL: cna@parliament.go.ke

19 MARCH 2026

**RE: SUBMISSION OF MEMORANDA ON THE LAW OF CONTRACT (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 49 OF 2025)**

1. Background:

G4S Kenya Limited is a leading global integrated security and logistics provider, specializing in courier services, secure logistics, and international transport. As a major stakeholder in Kenya's transport and logistics sector, G4S facilitates the movement of goods both domestically and across borders.

We acknowledge the invitation by the National Assembly, pursuant to **Article 118(1)(b) of the Constitution**, to submit our views on the **Law of Contract (Amendment) Bill, 2025**. While we support the Bill's objective to protect parties from unconscionable terms, we wish to highlight critical areas where the proposed reforms—specifically regarding the restriction of liability for negligence and breach of contract—conflict with international carriage-of-goods treaties to which Kenya is a signatory.

2. G4S' comments and proposed amendments:

Guided by the need for commercial predictability and international legal harmony, we submit the following comments:

Board of Directors

N. Ng'ang'a (Chairman)
C.M.Ngini (Director)
A.L. Okelo (Managing Director)
Z.W Ndungu (Finance Director)
H.A.Kimanani (Human Resource Director)

G4S Kenya Limited

Registered Office:

Witu Road, off Lusaka R
Nairobi, Kenya
Registered in Kenya No. C. 5652

Section of the Bill	Comment / Proposed Amendment	Rationale
Section 3A & 3B: Prohibition against exclusion of liability	Proposed Amendment: Insert a proviso: <i>"Provided that nothing in this section shall override the limitation of liability provisions set out in international conventions or treaties ratified by Kenya relating to the carriage of goods."</i>	The absolute prohibition on restricting liability for negligence or breach contradicts the Montreal Convention (for air carriage) and the CMR Convention (for road transport), which establish specific, globally recognized liability caps.
Section 2A: Requirement of Reasonableness	Proposed Amendment: Explicitly include "industry-standard risk allocation" and "availability of insurance" as factors in determining the <i>requirement of reasonableness</i> .	In the courier and logistics industry, risk is allocated based on declared value and standard carriage rates. If suppliers cannot limit liability to a reasonable multiple of the service fee, the cost of courier services will become prohibitively expensive for the average consumer.
Section 3E: Sale of Goods & Hire Purchase	Proposed Amendment: Ensure that the "Requirement of Reasonableness" remains the primary test for business-to-business (B2B) transactions.	Strict prohibitions designed for consumers should not inadvertently disrupt complex commercial logistics contracts where sophisticated parties have negotiated specific indemnity and insurance structures.

3. Key concerns for the logistic and courier industry:

i. Harmonization with International Obligations

Kenya is a signatory to international treaties that govern the liability of carriers. For example, the **Montreal Convention** limits a carrier's liability to a specific amount per kilogram unless a higher value is declared. The proposed Bill, in its current form, might render these internationally mandated caps "unreasonable" or "void" under Kenyan domestic law, leading to a conflict of laws and legal uncertainty for international trade.

ii. Operational and Financial Risks

The inability to limit liability for "loss or damage resulting from negligence" creates an unquantifiable financial exposure for courier companies. Without the ability to set liability caps:



An ALLIED UNIVERSAL Company

Insurance Premiums: Underwriters will significantly increase premiums or refuse cover for high-volume, low-margin courier services.

- **Cost to Consumers:** These increased operational costs will inevitably be passed on to the Kenyan consumer, undermining the Bill's intent of "protection."

iii. Preservation of Risk-Allocation Structures

Modern logistics relies on the principle that the sender is best placed to know the value of the goods and should insure them accordingly. The Bill risks shifting the entire burden of insurance to the supplier, which is inconsistent with global logistics standards and may deter foreign investment in Kenya's transport sector.

4. Position and Way Forward

G4S Kenya Limited requests the Committee to:

- a) Introduce a "Carve-out" Clause: Explicitly exempt contracts governed by international carriage-of-goods conventions from the strict liability restrictions in Sections 3A and 3B.
- b) Define Reasonableness: Clarify that a limitation of liability is prima facie reasonable if it aligns with standard industry practices and provides the consumer with an option to declare a higher value for an additional fee.
- c) Presumption of Fairness: If a contract is vetted and approved by these professional bodies, it should be legally considered prima facie fair and reasonable.
- d) Industry Vetting Mechanism: Companies using standard form contracts should have the option to have their Terms & Conditions vetted by recognized industry bodies, such as the Kenya International Freight and Warehousing Association (KIFWA) or the Shippers Council of Eastern Africa.

We remain available to provide further oral evidence before the Committee to elaborate on these technical concerns.

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'L Okelo', written over a horizontal line.

Laurence Okelo

Managing Director (G4S Kenya Limited)



Your Ref TBA
Date 20 March 2026

Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842-00100
Nairobi

By email: cna@parliament.go.ke

Dear Sirs,

Call for Public Comments on the Law of Contract (Amendment) Bill, 2025.

We refer to the above matter, pursuant to the call to stakeholders and the general public to submit comments on the draft Law of Contract (Amendment) Bill, National Assembly Bills No. 49 of 2025 (the **Bill**).

DHL Worldwide Express (Kenya) Ltd (the **Company**), a globally recognised and licensed logistics and express delivery entity operating across international supply chains, freight forwarding and contract logistics has a policy to contribute to the development of legislation and to encourage the strengthening of the rule of law. As a company whose operations in Kenya involve the carriage of goods, the conclusion of contracts for the supply of logistics services and the use of standard terms and conditions with consumers and commercial counterparties alike, the Company has a direct and material interest in the Bill.

In particular, the Bill's provisions on the exclusion and limitation of liability for negligence, breach of contract, and defective goods have significant ramifications for the Company's ability to manage risk, price its services appropriately, and maintain the certainty of its contractual arrangements with customers across the logistics sector. It is on this basis that the Company has undertaken an internal review of the Bill.

Following the review, we respectfully submit that certain provisions of the Bill would benefit from clarification to ensure that:

1. pursuant to Articles 2 (5) and 2 (6) of the Constitution of Kenya, Kenya's domestic legislation remains consistent with its international treaty obligations;
2. internationally standardised liability regimes governing carriage by air and other modes of transport stipulated under the Convention for the Unification of Certain Rules for International Carriage by Air, 1999 (Montreal Convention) and in other international conventions and treaties are preserved;
3. commercial certainty and insurability within the logistics and transport sectors are maintained; and
4. consumer protection objectives are achieved without unintended disruption to internationally regulated industries.

Summarily, we propose targeted amendments to:

- 1) clarify that statutory prohibitions on exclusion or limitation of liability do not override liability regimes established under applicable international conventions or written law;
- 2) introduce objective criteria to guide on the practical application of the “*requirement of reasonableness*” provision that is proposed to be included in contracts; and
- 3) provide a clear definition of “*consumer*” and “*supplier*” in a manner that confines the Bill’s application to direct contractual relationships.

We trust that the comments and proposals below will be helpful. Please contact us should you require any clarification.

Yours sincerely,



Paul Makolosi
Managing Director
DHL Worldwide Express (Kenya) Ltd

DHL COMMENTS ON THE LAW OF CONTRACT (AMENDMENT) BILL, 2025

No.	Clause of the Bill	Current provision of the Bill	Proposed Amendment	Rationale and Justification
1.	Clause 2 – Section 2A(1) – Definition of “Negligence”	“negligence” means the breach of an obligation arising from an express or implied term of a contract to take reasonable care or exercise reasonable skill in the performance of a contract.	We propose that the definition of “negligence” in section 2A(1) be amended to read as follows: “‘negligence’ means the breach of any obligation, arising from the express or implied terms of a contract, to take reasonable care or exercise reasonable skill in the performance of a contract <u>within the purview of the parties to a contract.</u> ”	The current definition of “negligence” is broad, which, in the case of a contractual arrangement that involves multiple parties, creates a risk of the application of the clause to be expanded to apply to indirect parties. This in turn would unfairly create an unlimited vicarious liability to a party involved in a contract for acts they cannot directly supervise. The proposed addition enhances clarity in its application, especially in multi-party supply chains, whereby independent sub-contractors are limited to reasonable supervision obligations.
2.	Clause 2 – Section 2A(1) – Definition of “Requirement of Reasonableness”	“requirement of reasonableness” means a term that is fair and reasonable to be included in a contract having regard to the circumstances which were or ought to have been known when the contract was made.	We propose that section 2A be amended by inserting the following new subsections after the existing definitions: “(2) In determining whether a term satisfies the requirement of reasonableness, a party to a contract or a court of law in the event of dispute, shall have regard (without limitation) to— (a) the strength of the bargaining positions of the parties relative to each other; (b) whether the party relying on the term agreed to it, or had an opportunity of entering into a similar contract without such a term; (c) whether the party bound knew or ought	The Bill’s definition of the requirement of reasonableness contains no guiding factors, no allocation of the burden of proof, and no recognition that terms derived from or expressly permitted by international conventions ratified by Kenya are presumptively reasonable. This creates three distinct problems. First, without guiding factors, Kenyan courts will be required to apply an unarticulated standard to DHL’s standard air waybill terms, including the 17 Special Drawing Rights per kilogramme (SDR/kg) cargo liability cap under Article 22 (3) the Montreal Convention, with no legislative guidance as to the relevant considerations. This is likely to produce unpredictable outcomes that diverge from internationally settled practice. Second, the absence of a burden of proof provision means that it is unclear which party must demonstrate reasonableness, creating procedural uncertainty.

No.	Clause of the Bill	Current provision of the Bill	Proposed Amendment	Rationale and Justification
			reasonably to have known of the existence and extent of the term; (d) the resources available to the party relying on the term to meet the liability should it arise, and how far it was open to that party to cover itself by insurance; and (e) best practices and international standards applied in similar contracts or commercial arrangements. (3) A term shall be presumed to satisfy the requirement of reasonableness if it gives effect to or is expressly permitted by the terms of an international convention to which Kenya is a Party. (4) It is for the party claiming that a term satisfies the requirement of reasonableness to show that it does, except where subsection (3) applies.”	Third, the absence of a Convention-derived presumption of reasonableness means that terms mandated by or expressly permitted under the Montreal Convention are exposed to domestic challenge on the same footing as purely contractual terms. The proposed amendments replicate the approach of the United Kingdom Unfair Contract Terms Act, 1977 (UCTA) Schedule 2 and section 11(5), which have been applied by UK courts for nearly five decades without generating undue uncertainty, and are consistent with the principle established in <u>Sidhu v British Airways Plc [1997] AC 430</u> at page 207 that Convention-compliant terms should be treated as the exclusive and uniform international code governing carrier liability. Crucially, this principle has been applied in Kenya in the case of <u>KLM Royal Dutch Airlines v Domitilla Icha Simiyu [2016] KEHC 8242 (KLR)</u>¹ at 12-17 where the court applied the limited liability thresholds provided for under the Warsaw Convention. The proposed amendments would therefore be in keeping with Kenya’s treaty obligations.
3.	Clause 3 – Section 3A(1) – Absolute Prohibition on Exclusion of	“(1) A person shall not, by reference to a contract term, exclude or restrict liability for death resulting from	We propose that section 3A(1) be amended to read as follows: “(1) A person shall not, by reference to a contract term, exclude or restrict liability for death or personal injury resulting from	The absence of a carve-out for Convention-governed air carriage creates a conflict with the Montreal Convention’s own non-derogation regime. Article 49 of the Montreal Convention renders null and void any clause purporting to infringe the Convention’s rules, and Article 17 governs passenger death and bodily injury exclusively. A domestic absolute prohibition that applies without qualification to Convention-governed

¹ Please note that the matter is currently on appeal at the Court of Appeal as at the date of this memorandum.

No.	Clause of the Bill	Current provision of the Bill	Proposed Amendment	Rationale and Justification
	Liability for Death	negligence.”	negligence, save that this subsection shall not apply to— (a) a contract term or notice that gives effect to or is expressly permitted by the terms of an international convention to which Kenya is a Party, including but not limited to the Montreal Convention (1999) as given effect by the Carriage by Air Act (Cap. 394A); or (b) a term required by any other written law of Kenya or any regulation or order made thereunder.”	carriage contracts would create an irreconcilable conflict between the Bill and Kenya’s treaty obligations under Article 2(6) of the <u>Constitution of Kenya 2010</u> (the “ Constitution ”). The proposed amendment extends the prohibition to personal injury (consistent with international standards) while preserving the primacy of Convention-mandated terms, thereby ensuring constitutional consistency.
4.	Clause 3 – Section 3A (2) – Reasonableness Test for Loss or Damage Resulting from Negligence	“(2) A person shall not, by reference to a contract term, exclude or restrict liability for loss or damage resulting from negligence, unless the term satisfies the requirement of reasonableness.”	We propose that section 3A be amended by inserting the following new subsections after section 3A(3): “(4) Nothing in this section applies to— (a) a contract term or notice that gives effect to or is expressly permitted by an international convention ratified by Kenya, including but not limited to the Montreal Convention (1999) as given effect by the Carriage by Air Act (Cap. 394A); or (b) a term required by any other written law of Kenya or any regulation or order made thereunder.”	Section 3A(2) is the provision of greatest direct concern to DHL’s cargo operations. As currently drafted, it subjects all contractual exclusion and limitation clauses for “loss or damage resulting from negligence” to a domestic reasonableness test without any savings provision for Kenya’s international treaty obligations under the Montreal Convention. DHL’s air waybill and standard terms incorporate the Montreal Convention’s 17 SDR/kg cargo liability cap. A Kenyan court applying the Bill’s reasonableness test could determine that this cap, regardless of its Convention pedigree, is “unreasonable” under Kenyan domestic law, thereby exposing DHL to unlimited or uncapped liability in domestic proceedings. This outcome would be constitutionally problematic: Article 2(6) of the Constitution makes treaties ratified by Kenya part of the laws of Kenya, and Article 29 of the Montreal Convention provides that any action for damages in the carriage of cargo “can only be

No.	Clause of the Bill	Current provision of the Bill	Proposed Amendment	Rationale and Justification
			(5) For the purposes of subsection (4)(a), a term ‘gives effect to’ an international convention if it— (i) limits liability to the amount specified in or calculated in accordance with the relevant convention; (ii) imposes a notice requirement or limitation period specified in the relevant convention; or (iii) excludes or restricts claims that the relevant convention itself excludes or restricts.”	brought subject to the conditions and such limits of liability as are set out in this Convention.” The Bill, as drafted, purports to subject Convention-compliant liability caps to a domestic reasonableness standard, which is directly inconsistent with Article 49 of the Montreal Convention and Article 29’s channelling provision. The proposed amendment reinstates treaty supremacy, consistent with <i>Sidhu v British Airways Plc</i> [1997] AC 430 at page 207 and <i>Re M (orse Morris v KLM Royal Dutch Airlines)</i>; <i>Kinq v Bristow Helicopters Ltd</i> [2002] UKHL 7 that Convention-governed claims are exclusively channelled through the Convention’s own liability framework.
5.	Clause 3 – Section 3A – Absence of International Supply Contract Exclusion	The Bill contains no provision which exempts international supply contracts. From the current provision under the Draft Bill, all contracts, including cross-border business-to-business contracts for the international carriage of goods, are subject to the Bill’s controls without	We propose the insertion of a new section 3K as follows: “3K. International supply contracts. (1) Sections 3A, 3B, 3C, 3E and 3F of this Act do not apply to a contract for the supply of goods or services if— (a) the parties to the contract have their places of business (or, if they have none, their habitual residences) in the territories of different states; and (b) the goods or services are to be delivered or provided in the territory of a state other	The absence of an international supply contract exclusion is the most significant omission from the Bill for DHL’s purposes. DHL’s international air cargo contracts are concluded between parties with places of business in different states, involve the cross-border carriage of goods and are governed by international treaties and conventions such as the Montreal Convention. These contracts are, by their nature, commercial arrangements between sophisticated parties who have negotiated or accepted terms on an informed basis. The Bill’s controls, if applied without qualification to such contracts, would place Kenyan-domiciled carriers and freight operators at a competitive disadvantage relative to their counterparts in jurisdictions that exempt international supply contracts from domestic reasonableness controls. Considering comparable jurisdictions whose legislation bears

No.	Clause of the Bill	Current provision of the Bill	Proposed Amendment	Rationale and Justification
		distinction.	than that in which either or both parties have their places of business, or the goods are in the course of carriage from one state to another at the time the contract is concluded. (2) For the purposes of this section, 'state' means any country, and includes any territory or region having a separate legal system. (3) A contract is not an international supply contract within the meaning of this section by reason only that it provides for goods or services to be invoiced or paid for in a foreign currency. (4) Where a contract that is not an international supply contract includes an international element (such as carriage from or to Kenya), the court shall have regard to that international element in determining whether the relevant term satisfies the requirement of reasonableness."	resemblance to the Bill, the United Kingdom's UCTA section 26 has provided this exemption since 1977, and the Court of Appeal confirmed in <i>Amiri Flight Authority v BAE Systems plc</i> [2004] 1 All ER (Comm) 385 that the exemption applies to international supply contracts within the meaning of that section. The proposed amendment replicates the UCTA section 26 model and is consistent with the principle that international commercial contracts between parties in different states should be governed by the internationally agreed framework rather than by domestic reasonableness controls that were designed primarily to protect consumers and weaker domestic parties.

No.	Clause of the Bill	Current provision of the Bill	Proposed Amendment	Rationale and Justification
6.	Clause 3 – Section 3A(3) – Voluntary Acceptance of Risk	“(3) Where a contract term excludes or restricts liability for loss or damage resulting from negligence, an agreement to the term by a person shall not indicate the person’s voluntary acceptance of risk.”	We propose that section 3A(3) be amended to read as follows: “(3) Where a contract term excludes or restricts liability for loss or damage resulting from negligence, an agreement to the term by a person shall not of itself indicate the person’s voluntary acceptance of risk, save that nothing in this subsection shall prevent a party from relying on a genuine, freely negotiated and informed assumption of risk in circumstances where the parties have had an equal opportunity to negotiate the relevant term and where the term does not give effect to or conflict with the provisions of any international convention to which Kenya is a Party.”	The current provision is broadly consistent with the international law regime; for instance, the Montreal Convention treats a consignor’s signature of the air waybill as a voluntary assumption of risk beyond the convention’s own framework. However, the absence of any qualification for cases of genuinely negotiated, informed assumption of risk creates ambiguity in the context of high-value, <i>ad hoc</i> air cargo arrangements where consignors negotiate bespoke liability terms. In such cases, the blanket rule that agreement to a term does not indicate voluntary acceptance of risk may operate to undermine freely negotiated commercial arrangements between sophisticated parties. The proposed amendment preserves the protective purpose of the provision while recognising that, in genuinely negotiated commercial contexts, the <i>volenti</i> principle should not be entirely displaced. This is consistent with the approach taken in UCTA section 2(3), which similarly provides that agreement to, or awareness of a term does not of itself indicate voluntary acceptance of risk, without entirely abolishing the <i>volenti</i> defence in appropriate circumstances.
7.	Clause 3 – Section 3B – Prohibition Against Exclusion of Liability in Consumer Contracts	“3B. (1) This section applies between contracting parties where one party is a consumer. (2) As against a party dealing as a consumer, the other party shall not, by reference to a	We propose that section 3B be amended by inserting the following new subsections: “(3) For the purposes of this section, a ‘consumer’ means an individual who directly acquires goods or services wholly or mainly for personal, domestic, or household use or consumption, and not for purposes of resale, business, trade,	Section 3B raises three distinct concerns for DHL. First, the term “consumer” is not defined in the Bill. DHL’s customers range from large corporate shippers (under a business-to-business model) to individual consumers shipping personal parcels through courier services. Absent clear statutory limitation, courts may extend “consumer” status to: third-party consignees; beneficial owners of goods; parties not in direct contractual privity with the carrier; or individuals receiving goods under corporate shipment arrangements. This would consequently result in an expanded liability beyond the negotiated contractual framework; undermine risk allocation mechanisms; disrupt international carriage

No.	Clause of the Bill	Current provision of the Bill	Proposed Amendment	Rationale and Justification
		contract term: (a) exclude or restrict liability for loss or damage when the supplier is in breach of the contract; or (b) claim to be entitled (i) to render a contractual performance substantially different from that which was reasonably expected of the supplier; or (ii) in respect of the whole or any part of the contractual obligation, render no performance at all. (2) Despite subsection (1), a term that satisfies the requirements of reasonableness may be relied upon by the supplier."	profession or commercial activity. For avoidance of doubt, a consumer does not include – (a) A body corporate, partnership, trust or other juridical person; (b) A recipient of goods or services, but who is not party to a contract with the provider; or (c) A consignee, recipient, beneficial owner or third party who has not directly entered into a contract for supply. and a 'supplier' means a person who, including a body corporate, in the course of business, enters into a contract directly with a consumer for the supply of goods and services. (4) The burden of proving that a person is not a consumer rests on the supplier. (5) This section does not apply to— (a) a contract for the international carriage of cargo governed by an international convention to which Kenya is a Party; or (b) a contract term expressly required by or permitted under such a convention.	conventions and standard trading conditions; or create indeterminate exposure in multi-party logistics chains. If an individual consignor is characterised as a "consumer" for the purposes of section 3B, then DHL's standard terms—including its Convention-derived liability caps—could be challenged as excluding or restricting liability for breach of contract, with no reasonableness escape route. Under the Montreal Convention, Article 4 makes no distinction between consumer and non-consumer consignors; the liability cap applies equally. A domestic law that imposes a stricter regime on DHL when transacting with consumers would create a two-tier liability regime inconsistent with the Convention's uniformity objective. Second, DHL's capacity clause (which provides that DHL shall not be obliged to provide services in the event of supply shortage) and its force majeure provisions would be directly caught by section 3B(b)'s prohibition on terms permitting "no performance at all," requiring DHL to demonstrate that they satisfy the reasonableness test in any consumer-facing transaction. This is operationally unworkable in the context of international air cargo, where DHL's ability to perform is frequently beyond its control. Third, DHL's standard terms state that regular transit times are non-binding standard lead times—a term that would be directly caught by section 3B(b) as a "performance substantially different from that reasonably expected" disclaimer. The proposed amendments address all three concerns by defining "consumer," carving out Convention-governed international cargo carriage, and preserving force majeure

No.	Clause of the Bill	Current provision of the Bill	Proposed Amendment	Rationale and Justification
			(6) For the purposes of this section, a term permitting non-performance or substantially different performance shall not be treated as unreasonable by reason only that it replicates or is consistent with an exclusion or limitation of liability under an applicable international convention."	and capacity clauses that replicate Convention defences.
8.	Clause 3 – Section 3C – Prohibition Against Exclusion of Liability for Defective Goods in Consumer Use	"3C. (1) In the case of goods supplied for consumer use, liability for loss or damage shall not be excluded or restricted by reference to a contract term contained in or operating by reference to a guarantee of the goods where the loss or damage: (a) arises from the goods proving defective while in consumer use; and (b) results from the negligence of a person concerned in the manufacture	We propose that section 3C be amended by inserting the following new subsection: "(4) This section does not apply to— (a) a person acting in the capacity of an air carrier, freight forwarder, or logistics service provider in the performance of a contract of carriage governed by an international convention to which Kenya is a Party; or (b) any damage or loss for which the carrier is not liable under such a convention by reason of a statutory defence, including but not limited to loss arising from the inherent defect or vice of cargo, defective packing, act of war, or act of public authority."	Section 3C is primarily targeted at product manufacturers and distributors whose guarantees accompany consumer goods. However, its application to DHL is not negligible. Where DHL carries consumer goods and those goods are damaged due to DHL's negligence in the distribution process, a claimant could argue that DHL is a "person concerned in the distribution of goods" and that DHL's air waybill terms cannot be relied upon to limit DHL's liability for defects occurring during transit in consumer-goods shipments. Additionally, DHL's air waybills contain assurances as to the performance of the carriage service. If a Kenyan court characterises these assurances as a "guarantee" under section 3C (2), then section 3C (1)'s prohibition on excluding liability for damage resulting from negligence in the "distribution" of goods could apply to DHL's cargo liability limitation clauses in consumer shipments. Furthermore, section 3C does not replicate the Montreal Convention's statutory defences available to DHL under Article 18(2), including the defences of inherent defect or vice of cargo, defective packing by a person other than the carrier, act of war, and act of public authority. The proposed amendment expressly exempts air carriers, freight

No.	Clause of the Bill	Current provision of the Bill	Proposed Amendment	Rationale and Justification
		or distribution of the goods. (2) For purposes of this section: (a) goods are regarded as in consumer use when a person is using them or has them in possession for use other than exclusively for the purpose of a business; and (b) anything in writing is a guarantee if it contains or purports to contain a promise or assurance that defects will be made good by complete or partial replacement or by repair, monetary compensation or otherwise."		forwarders, and logistics service providers acting under Convention-governed contracts, and preserves the Convention's statutory defences, thereby ensuring that the Bill does not inadvertently override Kenya's treaty obligations.
9.	Clause 3 – Section 3E – Prohibition	Section 3E prohibits the exclusion or limitation of liability for loss or	We propose that section 3E be amended by inserting the following new subsection:	Section 3E has limited direct application to DHL's air carriage operations. However, DHL's contracts of carriage frequently include terms that could be characterised as implied undertakings as to the fitness of DHL's

No.	Clause of the Bill	Current provision of the Bill	Proposed Amendment	Rationale and Justification
	Against Exclusion of Liability in Sale of Goods and Hire-Purchase Agreements	damage arising from breach of conditions or warranties under section 14 of the Sale of Goods Act (Cap. 31) or section 8(1) of the Hire-Purchase Act (Cap. 507). As against a consumer, liability for breach of conditions or warranties under sections 15, 16 or 17 of the Sale of Goods Act or section 8(2) of the Hire-Purchase Act cannot be excluded or restricted. As against a non-consumer, such liability may be excluded or restricted if the term satisfies the requirement of reasonableness.	“(6) This section does not apply to a contract for the carriage of goods by air that is governed by the Carriage by Air Act (Cap. 394A) or any international convention given effect by that Act; and the liability regime under any such convention takes precedence over any implied term that would otherwise arise under the Sale of Goods Act (Cap. 31) or the Hire-Purchase Act (Cap. 507) to the extent of any inconsistency.”	service for the purpose of delivering goods. If a Kenyan court implies into an air carriage contract a term as to fitness for purpose under section 16 of the Sale of Goods Act (<u>Cap. 31</u>) by analogy, and DHL’s terms purport to exclude this implied term, section 3E(2)(a) (as against a consumer) would prevent such exclusion. This would create a parallel liability regime inconsistent with the Montreal Convention’s comprehensive and exclusive code for carrier liability under Article 29. The proposed amendment ensures that the Convention’s liability regime takes precedence over any implied terms that would otherwise arise under the Sale of Goods Act, consistent with the principle in <i>Sidhu v British Airways Plc</i> [1997] AC 430 as noted above.
10.	Clause 3 – Section 3F – Prohibition Against	Where the property in goods passes under or in pursuance of a contract not governed	We propose that section 3F be amended by inserting the following new subsections immediately after subsection (4): “(5) This section does not apply to a	Section 3F is particularly relevant to DHL’s multimodal and intermodal logistics contracts, where DHL acts not as a pure air carrier but as a combined-mode logistics provider under which some element of property interest passes, for example, a bailee’s possessory interest in

No.	Clause of the Bill	Current provision of the Bill	Proposed Amendment	Rationale and Justification
	Exclusion of Liability in Other Agreements Under Which Property in Goods Passes	by the law of sale of goods or hire-purchase, the Bill's controls apply as regards the effect to be given to contract terms excluding or restricting liability for breach of obligation arising by implication of law from the nature of the contract. As against a consumer, liability in respect of the description, sample, quality or fitness of goods shall not be excluded or restricted. As against a non-consumer, such liability may be excluded or restricted if the term satisfies the requirement of reasonableness. A person shall not exclude or limit their liability by reference to	contract, or part of a contract, for the carriage of goods by air or multimodal carriage including an air leg, to the extent that the contract or relevant part of the contract is governed by the Carriage by Air Act (Cap. 394A) or any international convention given effect by that Act. (6) Where a multimodal contract includes carriage by air governed by subsection (5) and carriage by other modes not so governed, this section applies only to the latter, and the liability regime for the carriage by air leg shall remain exclusively governed by the relevant convention."	cargo. Where DHL issues a house air waybill as consolidator, the legal relationship involves an element of proprietary responsibility for the cargo. The Montreal Convention provides that the period of carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport; however, if such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed to have been the result of an event which took place during the carriage by air. For truck-air multimodal movements, section 3F could be invoked in relation to the ground transportation legs, applying the Bill's reasonableness test to DHL's terms governing those legs, which may already be governed by the <u>Convention on the Contract for the International Carriage of Goods by Road (the "CMR Convention")</u> for cross-border road transport. The proposed amendment ensures that the air leg of any multimodal contract remains exclusively governed by the relevant Convention, while permitting the Bill's controls to apply to ground legs not covered by the Convention, thereby achieving a coherent and legally consistent allocation of liability across multimodal operations.

No.	Clause of the Bill	Current provision of the Bill	Proposed Amendment	Rationale and Justification
		a contract term unless the term satisfies the requirement of reasonableness where the liability is in respect of the right to transfer ownership of the goods or give possession, or the assurance of quiet possession.		
11.	Clause 3 – All Sections – Absence of Express Savings Clause for International Conventions	The Bill contains no express savings clause preserving the application of the Montreal Convention, or the Carriage by Air Act (Cap. 394A). Sections 3A, 3B, 3C, 3E and 3F apply without qualification to all contracts, including contracts for the international carriage of goods by air governed by those Conventions.	We propose the insertion of a new section 3J as follows: “3J. Savings for international conventions and applicable law. (1) Nothing in sections 3A, 3B, 3C, 3E or 3F of this Act applies to— (a) a contract for the international carriage of goods, passengers or baggage by air that is governed by the provisions of the Carriage by Air Act (Cap. 394A) or by any international convention to which Kenya is a Party, including but not limited to the Convention for the Unification of Certain Rules for International Carriage by Air,	The proposed amendments are to ensure compliance with Article 2 (5) and Article 2 (6) of the Constitution

No.	Clause of the Bill	Current provision of the Bill	Proposed Amendment	Rationale and Justification
			signed at Montreal on 28 May 1999 (the Montreal Convention); and (b) a contract term or notice that gives effect to, or is expressly permitted by, the terms of any such convention, including any term that— (i) limits the liability of a carrier to the amount prescribed by or calculated in accordance with such convention; (ii) imposes a notice period or limitation of actions period prescribed by such convention; or (iii) excludes or restricts claims that such convention itself excludes or restricts. (2) For the purposes of subsection (1), where a contract includes both a leg governed by an applicable convention and legs not so governed (a 'multimodal contract'), the exemption in subsection (1) applies to the convention-governed leg and sections 3A, 3B, 3C, 3E and 3F apply to any other leg as appropriate. (3) A term that gives effect to or is expressly permitted by an applicable international convention shall be presumed to satisfy the	

No.	Clause of the Bill	Current provision of the Bill	Proposed Amendment	Rationale and Justification
			requirement of reasonableness for the purposes of this Act. (4) Nothing in this Act shall be construed so as to require a carrier to assume a greater level of liability than that imposed by an applicable international convention. (5) Nothing in this section affects the operation of any other written law that provides consumers or shippers with remedies additional to and not inconsistent with those available under an applicable convention, provided that such additional remedies do not have the effect of increasing the carrier's liability beyond the limits prescribed by the convention. (6) In this section, 'carrier' has the meaning given to it in the Carriage by Air Act (Cap. 394A) and the relevant international convention."	



The Architects Alliance (TAA)
MEMORANDUM TO PARLIAMENT ON THE LAW OF CONTRACT (AMENDMENT) BILL, 2025
Our Ref: TAA/TTC/LC/2026/02
Your Ref: TBA
Date: 19th March 2026

To:
Clerk of the National Assembly
P.O. Box 41842-00100
Nairobi
Email: cna@parliament.go.ke

MEMORANDUM ON THE LAW OF CONTRACT (AMENDMENT) BILL, 2025

The Architects Alliance (TAA)

The Architects Alliance (TAA) is a professional body representing architects committed to advancing excellence in design, construction, and contract administration.

Architects are **primary users, administrators, and interpreters of contracts**, particularly in:

- Construction contracts (FIDIC, JBC, NEC)
- Consultancy agreements
- Design-build and EPC arrangements

As such, any reform to the law of contract directly affects:

- Risk allocation
- Professional liability
- Project delivery frameworks
- Dispute resolution outcomes

1. Introduction

The Architects Alliance welcomes the opportunity to comment on the Law of Contract (Amendment) Bill, 2025 ("the Bill").

006
24/03

2. Ahmed Salim
pls facilitate
Chusker
24/03/2026



63



The Bill introduces significant reforms including:

- Definition of **negligence and reasonableness** (new Section 2A)
- Restrictions on **exclusion of liability clauses** (Sections 3A–3F)
- Enhanced **consumer protection mechanisms**

These reforms largely mirror principles from:

- The **UK Unfair Contract Terms Act (UCTA)**
- Common law doctrines on reasonableness and fairness

TAA **supports the intent** of the Bill, particularly in promoting fairness and preventing abuse of contractual power.

However, a detailed review reveals **three critical concerns**:

1. **Over-extension of consumer protection principles into commercial contracts**
2. **Insufficient distinction between consumer and professional/commercial transactions**
3. **Potential disruption to risk allocation frameworks in construction contracts**

2. Core Observations from the Bill

From the text (notably pages 3–6):

- Section **2A** introduces “**reasonableness**” as a contractual standard
- Section **3A** prohibits exclusion of liability for death from negligence
- Sections **3B–3F** significantly limit exclusion clauses across transactions

Architectural and Construction Context

In construction:

- Risk allocation is **deliberately structured**
- Liability caps, exclusions, and indemnities are **essential tools**
- Contracts are negotiated between **sophisticated parties**

The Bill, if unrefined, risks:

- Undermining **standard forms of contract** (JBC, FIDIC)
- Increasing **professional liability exposure**
- Creating **uncertainty in dispute resolution**

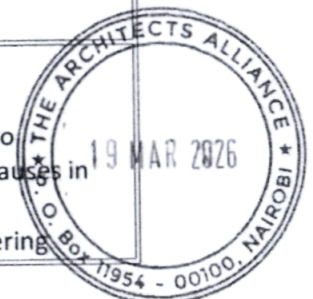
3. Clause-by-Clause Analysis and Proposed Amendments



Clause	Issue Identified	TAA Recommendation	Proposed Legislative Wording (Insert/Amendment)
Clause 2 – New Section 2A (Definition of negligence & reasonableness)	Introduction of “reasonableness” as a universal test without distinction between consumer and commercial contracts.	Limit application of reasonableness test to consumer or unequal bargaining contexts; preserve contractual freedom in commercial transactions.	<i>Amend Section 2A by inserting:</i> “Provided that the requirement of reasonableness shall be applied with due regard to the nature of the transaction, including whether the parties are acting in the course of business and possess equal bargaining power.”
Clause 3A(1) (Prohibition of exclusion of liability for death from negligence)	Appropriate but silent on professional indemnity frameworks in construction and consultancy.	Align with insurance-based risk frameworks; clarify interaction with professional indemnity insurance.	<i>Insert proviso:</i> “Provided that this section shall be interpreted in a manner consistent with statutory and professional indemnity insurance frameworks applicable to regulated professions.”
Clause 3A(2) (Restriction of liability for negligence subject to reasonableness)	May invalidate standard limitation clauses in construction contracts (caps on liability, net contribution clauses).	Recognize commercial contracts between professionals as distinct from consumer contracts.	<i>Insert new subsection:</i> “(4) This section shall not invalidate limitation or exclusion clauses contained in contracts entered into between parties acting in the course of business, where such clauses are standard practice in the relevant industry and are freely negotiated.”



Clause	Issue Identified	TAA Recommendation	Proposed Legislative Wording (Insert/Amendment)
Clause 3A(3) (Acceptance of risk not implied)	Undermines established doctrines of risk allocation and assumption of risk in construction contracts.	Preserve express contractual allocation of risk.	<i>Amend by adding:</i> "Nothing in this subsection shall prevent parties from expressly allocating risk through clear and unambiguous contractual terms."
Clause 3B & 3C (Defective goods and consumer protection)	Properly consumer-focused but may inadvertently extend to construction materials and supply chains .	Clarify distinction between consumer goods and commercial construction materials .	<i>Insert clarification:</i> "This section shall apply primarily to consumer transactions and shall not prejudice contractual arrangements in commercial construction supply chains where parties act in the course of business."
Clause 3E (Sale of goods and hire purchase)	Overlaps with Sale of Goods Act and may create duplication and conflict .	Ensure harmonisation with existing statutes.	<i>Insert proviso:</i> "This section shall be applied in a manner consistent with the Sale of Goods Act and the Hire Purchase Act, and shall not create conflicting obligations."
Clause 3F (Other agreements)	Broad restriction on exclusion clauses may affect consultancy agreements, professional services contracts, and construction contracts .	Protect freedom of contract in professional services .	<i>Insert new subsection:</i> "(5) This section shall not operate to invalidate limitation or exclusion clauses in contracts for professional services, including architectural and engineering



Clause	Issue Identified	TAA Recommendation	Proposed Legislative Wording (Insert/Amendment)
			services, where such clauses are reasonable, industry-standard, and supported by professional indemnity frameworks."

4. Strategic Opportunities for Architects

If refined, the Bill can strengthen the profession:

1. Standardisation of Fair Contracting

- Promote balanced risk allocation
- Improve trust in construction contracts

2. Strengthening Professional Standards

- Reinforce duty of care
- Elevate quality assurance

3. Improved Dispute Resolution

- Clearer interpretation of reasonableness
- Reduced abusive contract clauses

4. Opportunity for TAA Leadership

- Development of **model contract clauses compliant with the Act**
- Issuance of **industry guidelines on reasonableness**

5. Key Governance Recommendation

Introduce Sector Sensitivity in Contract Law

Unlike consumer transactions, construction contracts involve:

- Sophisticated parties
- Negotiated risk allocation
- Insurance-backed liabilities

The law must therefore adopt a **dual approach**:



Category	Approach
Consumer contracts	Strong protection
Commercial/professional contracts	Freedom of contract with safeguards

6. Institutional Recommendation

While the Bill does not create a board, TAA recommends:

Establishment of a Technical Advisory Mechanism on Contractual Fairness

Including:

- Built environment professionals (TAA nominee)
- Legal practitioners
- Commercial sector representatives

This ensures:

- Sector-informed application of “reasonableness”
 - Avoidance of unintended consequences
-

7. Summary of TAA Recommendations

1. Introduce **distinction between consumer and commercial contracts**
 2. Protect **standard risk allocation mechanisms in construction contracts**
 3. Recognise **professional indemnity frameworks**
 4. Preserve **freedom of contract in professional services**
 5. Ensure **harmonisation with existing laws (Sale of Goods Act, Hire Purchase Act)**
 6. Introduce **sector-sensitive application of reasonableness**
-

8. Conclusion

The Law of Contract (Amendment) Bill, 2025 is a **progressive reform** aimed at enhancing fairness and accountability in contractual relationships.

However, without refinement, it risks:

- Disrupting established commercial practices
- Increasing uncertainty in construction and professional contracts





-
- Undermining carefully structured risk allocation frameworks

The Architects Alliance therefore urges Parliament to adopt the proposed amendments to ensure that the law achieves a **balanced outcome**:

- Protecting vulnerable parties
- Preserving commercial certainty
- Supporting professional practice

With these refinements, Kenya can establish a **modern, fair, and globally aligned contract law regime**.

Signed,

Arch. Sylvia Kasanga

For and on behalf of the Architects Alliance

Contact: president@thearchitectsalliance.org

Phone number : 0115 925327





DDC
9/06/26

LAW SOCIETY OF KENYA
South C, off Red Cross Road
P.O. Box 72219-00200 Nairobi, Kenya
Tel: +254 799 595 800
Website: www.lsk.or.ke

Email: lsk@lsk.or.ke

Abenayo Wasike, HOD
to facilitate
9/06/26

MEMORANDUM
TO
THE NATIONAL ASSEMBLY
ON
THE LAW OF CONTRACT (AMENDMENT) BILL, 2025

MARCH, 2026

Charles Kanjama, SC, President Law Society of Kenya
South C, off Red Cross Road
P.O Box 72219 - 00200 Nairobi | Kenya
Tel: +254 111 045 300
Email: president@lsk.or.ke
Website: www.lsk.or.ke



I. INTRODUCTION

The Law Society of Kenya is a professional statutory body established under the Law Society of Kenya Act, No. 21 of 2014 with a mandatory membership of all Advocates in Kenya.

The organs of the Society are the General Membership, the Council, the Branches and the Secretariat. The Council is the governing body of the Law Society of Kenya. It comprises a President, a Vice- President and eleven other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society of Kenya Act.

Currently, the Council is comprised of The President, The Vice-president and 11 Council members namely:

- President, Charles Kanjama, SC
- Vice President, Teresia Wavinya
- General Membership Representatives, Tom K'opere, Vivienne Eyase, Wanjohi Wambugu
- Nairobi Representatives, Effie Sheila Achieng, Muthoni Gachara, Wycklife Oyoo
- Up-country Representatives, Hiram Kiriimi, Faith Jappann, Hezekiah Aseso, Sharon Oyoko
- Coast Representative, Titus Mukanzi
- Secretary/CEO, Florence W. Muturi

One of the Law Society of Kenya statutory objects as provided in section 4(a) of the Act is to assist the Government and the courts in all matters affecting legislation and the administration of justice and practice of law in Kenya. Pursuant to this statutory mandate, the Law Society of Kenya makes a presentation on **the Law of Contract (Amendment) bill, 2025**.

I. GENERAL COMMENTS

The Law Society of Kenya supports the proposed amendments to the Law of Contract Act, as they introduce a more protective and equitable framework for parties to a contract. The Bill seeks to address the continued application of English common law principles which have, in practice, permitted the use of unfair and unconscionable terms in contractual arrangements. By limiting the enforceability of such terms, the Bill advances fairness in contractual relations and strengthens safeguards against exploitation, particularly for parties in weaker bargaining positions. The proposed framework is therefore a positive step towards enhancing fairness, equity, and accountability in contractual relations, which are central to a modern commercial legal system. It further aligns with constitutional values, including human dignity, equality, social justice, and the right to fair administrative action, by safeguarding parties against the imposition and enforcement of unfair or unconscionable terms.

However, the proposed framework must be implemented in a manner that balances the objective of protecting parties from unfair contractual terms with the need to preserve certainty and commercial flexibility in contractual relations. In particular, the current formulation presents potential gaps, including the narrow definition of negligence and the allocation of the burden of proof, which may limit the effectiveness of the protections envisaged. Clear drafting, appropriate safeguards, and well-defined standards will therefore be necessary to ensure that the framework effectively addresses unfair and unconscionable terms without creating ambiguity or unintended consequences in its application.

The Law Society therefore supports the Bill in principle, subject to the proposed amendments and recommendations set out below:

SPECIFIC COMMENTS

NO	PROVISION	ISSUE	PROPOSAL	JUSTIFICATION
1.	Clause 2A (1) – provides for the meaning of Negligence	This clause defines negligence as the breach of an obligation arising from an express or implied term of a contract to take reasonable care or exercise reasonable skill in the performance of a contract. This proposed definition creates a loophole that allows parties to evade statutory restrictions on exclusion clauses by framing liability as arising in tort rather than contract.	Amend this clause to read: <i>"In this Act, unless the context otherwise requires—</i> <i>"negligence" means the breach of:</i> <i>(a) any obligation arising from an express or implied term of a contract to take reasonable care or exercise reasonable skill; or</i> <i>(b) any duty of care arising under the common law."</i>	This Bill addresses the liability exclusion clauses in contracts. It highlights that negligence can arise from contractual performance (contractual negligence). The potential for a loophole exists, allowing parties to evade statutory restrictions on exclusion clauses by arguing their claims are tort-based and not contract-based.
2.	Clause 3A (1) – provides for the prohibition against exclusion of liability for death arising out of negligence	The clause only prohibits against exclusion of liability for death arising out of negligence. While this provision is sound, it has omitted reference to serious bodily harm. This would allow a party to exclude liability for severe injury, including permanent disability, so long as the victim does not die.	Amend this clause to read: <i>"A person shall not, by reference to a contract term, exclude or restrict liability for death or serious bodily harm resulting from negligence."</i>	The resulting effect will be inconsistent with the underlying rationale of the provision, which is to protect individuals from the consequences of negligent conduct that causes physical harm.

3.	Clause 3C(1)(b) – provides for prohibition against exclusion of liability arising sale of defective goods	The wording in this clause can be construed to unintentionally place the burden of proof of defective goods on the consumer who lacks technical expertise and adequate information to prove negligence in the manufacturing, design and distribution of a defective good. As drafted, the provision may undermine consumer protection by allowing liability to be avoided where harm results from a defective product but negligence cannot be readily demonstrated.	Amend clause 3C (1)(b) to read: <i>“(b) results from a defect in the goods, whether or not attributable to the negligence of a person concerned in the manufacture or distribution of the goods.”</i>	Requiring consumers to prove negligence undermines protection, as it depends on their ability to identify faults, which manufacturers typically control. This hinders consumers' ability to establish fault even when defects cause harm.
4.	Clause 3F (1) – provides for prohibition against exclusion of liability in other agreements	The clause unduly restricts the scope of consumer protection by tying consumer status to the transfer of ownership. Consequently, consumers who acquire possession or use of goods without obtaining ownership may be excluded from statutory protections and remedies where goods fail to meet prescribed standards relating to description, sample, quality, or fitness for purpose.	Amend clause 3F (1) to read: <i>“Where possession of, use of, or property in goods passes under or in pursuance of a contract not governed by the law of sale of goods or hire purchase, subsections (2), (3) and (4) apply as regards the effect to be given to contract terms excluding or restricting liability for breach of obligation arising by implication of law from the nature of the contract.”</i>	This ensures consumer protection extends to all persons who use or possess goods in the course of a consumer transaction regardless of whether ownership is transferred. This promotes the underlying objective of the proposed amendment Bill.

CONCLUSION

The Law Society of Kenya supports the Bill in principle for amending the Law of Contract act to prevent parties from unfair and unconscionable terms. However, the Bill should be amended to include transactions that do not involve transfer of ownership, allowing exclusion clauses to stand without the consumers having to prove negligence and including prohibition for liability due to bodily harm. The Society therefore proposes that the Bill be passed subject to the proposed amendments.

We humbly submit that our comments be considered before enacting the Bill.

Yours faithfully,



CHARLES KANJAMA SC,
PRESIDENT LAW SOCIETY OF KENYA



Telephone: 254-20-2628233
Direct Line: 254-20-2779000
Website: www.cak.go.ke

Competition Authority of Kenya
CBK Pension Towers, 15th Floor
Email: info@cak.go.ke
P. O. Box 36265-00200
Haile Selassie Avenue

**THE COMPETITION AUTHORITY OF KENYA'S SUBMISSIONS ON THE LAW OF CONTRACT (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 49 OF 2025)**

A. INTRODUCTION

1. The Competition Authority of Kenya ("the Authority") is established under the Competition Act Cap 504 of the Laws of Kenya ("the Competition Act"). The Authority's mandate is to promote and safeguard competition in the national economy through regulation of market conduct and structure to protect consumers from unfair and misleading market conduct. Pursuant to section 9 (m) of the Act, the Authority is mandated to liaise with regulatory bodies, policy makers and other public bodies at both national and county government levels on matters relating to competition and consumer welfare.
2. Under Part VI of the Competition Act, the Authority is empowered to protect consumers from false and misleading representations (section 55) as well as unconscionable conduct (section 56). In addition to this, the Competition (Amendment) Bill, 2026 seeks to enhance these provisions further by providing for protection of consumers from false representations that goods and services are in such a manner than the manner specified, false or misleading representations concerning any relevant information in connection with the supply or promotion of goods or services and lastly making it an offence to withhold information on the quality and use of a product.
3. The Contract (Amendment) Bill, 2025 seeks to protect consumers from unfair and unconscionable contract terms that are covered under the Competition Act and ongoing amendments to the Competition Act. There would therefore, be need for statutory coherence. There are provisions of the proposed Bill that restate in contractual language what the Competition Act prohibits as conduct thus need for certain deletions to avoid repetition and/or contradiction.

4. Additionally, the Competition (Amendment) Bill, 2025 introduces prohibitions against abuse of superior bargaining position. This prohibits conduct amounting to abuse of superior bargaining position including imposing trading conditions that are more unfavourable than would be expected in light of normal business practices. It covers the mischief sought to be addressed by the proposed amendments.

B. SUBMISSIONS ON THE BILL

NO.	SPECIFIC CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
1.	Clause 3B (entire clause)		Clause 3B (2)(a) provides that liability cannot be excluded or restricted when dealing with a consumer and the supplier is in breach of contract and Clause 3B(2)(b)(i) &(ii) on rendering contractual performance that is substantially different from what was reasonable expected and rendering no performance. The mischief sought to be addressed by the above conduct is criminalized under section 55(a)(i) &(ii) of the Competition Act on false representation regarding the standard, quality, value, grade of a good or service. Such conduct is also prohibited under Section 56 of the Act on unconscionable conduct. Lastly, sections 63 and 64 of the Competition Act provide for liability with respect to unsuitable goods and defective goods, respectively.
2.	Clause 3C (entire section)		Clause 3C seeks to ensure that liability for defective goods is not excluded by contract terms or guarantee: The above is catered for under section 55(b)(v) of the Competition Act that prohibits a supplier of both goods and services from making false or misleading representations

		concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy. Such conduct can also be netted under section 56 of the Act on unconscionable conduct. Further to the above, section 64 of the Competition Act provides for liability for defective goods stating that a manufacture will be liable for loss suffered due to defective goods and that the manufacturer shall also be liable to compensate the consumer for loss or injury which can be recovered through court action. Section 65 further provides for instances where there is an unidentified manufacturer, the supplier shall be liable if they do not disclose who the manufacturer is.
3.	Clause 3E(2)	Reference is made to the above justification on deletion of clause 3C above that the Competition Act, under section 55(b)(v), prohibits a supplier from making false or misleading representations, among others, concerning conditions and section 56 of the Act on unconscionable conduct. Section 64 of the Act on the other hand provides for liability on the same.
4.	Clause 3F(2)	Clause 3F(2) is on prohibition against exclusion of liability in agreements not governed by the law of sale of goods or hire purchase in respect of goods by referencing to terms on corresponding with the description or sample or quality or fitness for a particular purpose. While reference is made to the above justification on clause 3B & 3C above additionally, this is also criminalized under section 55(a) of the Competition Act that makes it an offence for a supplier to falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have a particular history or particular previous use.



			Section 63 also places liability for goods that do not fit a particular purpose for which the consumer purchased them, whether the particular purpose was expressly or by implication made known, on the supplier and makes the supplier liable to compensate the consumer for loss or damage occasioned by this unfitness.
--	--	--	---

C. CONCLUSION

5. The Contract Act is a private law instrument regulating commercial contractual terms between parties while the Competition Act provisions on consumer welfare are public interest provisions that allow for resolution of not just individual complaints received but sector regulation when the case requires it, and thus the need to consider having the distinction maintained by residing the consumer welfare protection provisions in the Competition Act.

David K. Kemei
DIRECTOR-GENERAL

8th June 2026



KLRC/8/64 (31)

8th June 2026

Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842-00100
Nairobi, Kenya
cna@parliament.go.ke

RE: COMMENTS ON THE PROPOSED LAW OF CONTRACT (AMENDMENT) BILL,
2025 BY HON. ADEN DAUD MOHAMED

Introduction

The Kenya Law Reform Commission (KLRC) is a state agency established under the Kenya Law Reform Commission Act, Cap. 3 Laws of Kenya. It is mandated to keep under review all the laws of Kenya to ensure their systematic development, conformity with the Constitution and the social, economic and political needs of the people of Kenya.

KLRC acknowledges receipt of the Law of Contract (Amendment) Bill, 2025, forwarded by the Departmental Committee on Justice and Legal Affairs through a letter dated 2nd June 2026, for public participation review in line with Parliament's legislative processes.

KLRC has reviewed the Bill in accordance with section 6 (1) of the Kenya Law Reform Commission Act. This section requires KLRC to review all laws and recommend reform to ensure that the law conforms with the Constitution and complies with Kenya's international treaty obligations. KLRC is also required, under the same provision, to ensure that the law is consistent, harmonized, just, simple, accessible, modern and cost-effective in application.

The Commission's comments are presented in two parts:

1. Clause-by-clause legal analysis of the Bill; and
2. An audit of the Bill as against with section 6 (1) of Cap. 3.

Part I: Clause-By-Clause Legal Analysis

This section provides a legal and technical analysis of the Bill on a clause-by-clause basis to identify drafting issues, legal gaps, inconsistencies, ambiguities, implementation concerns and areas requiring clarification, amendment, harmonization, or reform.

Clause	KLRC Proposal	Justification/ Rationale	KLRC Proposed Solution
Clause 2A	The requirement of reasonableness is not clearly defined. The terms "fair" and "reasonable" in the definition provide limited guidance on how the test should be applied, which may result in uncertainty and inconsistent decision-making.	A set of guidelines would ensure consistency and provide clear guidance on how to apply the reasonableness test.	Consider amending clause 2A to include a non-exhaustive list of factors to be considered when assessing the requirement of reasonableness, drawing on the approach in the UK Unfair Contract Terms Act. A set of guidelines could include, among other relevant factors: the bargaining power of the parties; whether the parties knew or ought reasonably to have known of the term; and whether compliance with any condition was practicable.
Clause 3B	There is a drafting error, two subsections numbered (2). The second one should be (3).	Sequential numbering.	The second one should be (3).
Clause 3E	There is a drafting error the bill jumps from section 3C to section 3E, leaving out 3D.	Sequential numbering.	This should be corrected by renumbering 3E to 3D.

Part II: Audit of the Bill against Section 6 (1) of the Kenya Law Reform Commission Act, Cap. 3

(a) Conformity with the Letter and Spirit of the Constitution

The Commission assessed whether the Bill conforms with the Constitution. In this regard, the Bill limits the use of exclusion clauses in contracts, protecting parties, especially

consumers, from unfair terms. This gives effect to Article 46, which guarantees consumers the right to quality goods, information, safety and compensation for loss or injury. While the Bill restricts the common law principle of freedom of contract, Article 24 permits limitation of rights if reasonable and justifiable. The Bill's limitations, prohibiting exclusion of liability for death caused by negligence and requiring a reasonableness test for other exclusions, serve the legitimate purpose of protecting vulnerable parties and are proportionate to that purpose.

(b) Systematic Development of the Law

The Commission assessed whether the Bill develops the law in a coherent and structured manner. In this regard, the Bill introduces a statutory framework for controlling exclusion of liability clauses, an area governed by common law.

(c) Consistent

The Commission assessed whether the Bill is consistent with existing laws, policies and regulatory frameworks.

In this regard, the Commission reviewed the Bill and observed that it interacts with the Sale of Goods Act (Cap. 31), the Hire-Purchase Act (Cap. 507) and the Consumer Protection Act (Cap. 501). The Bill introduces additional controls on exclusion clauses, which operate alongside the existing frameworks.

(d) Harmonized

The Commission assessed whether the Bill is harmonized with related legal, institutional and administrative frameworks.

In this regard, the Bill does not create new institutions or duplicate existing mandates. It operates within the existing legal framework for contracts.

(e) Just

The Commission assessed whether the Bill promotes fairness, proportionality, accountability, due process and protection of rights and legitimate expectations.

In this regard, the Commission observed that the Bill prohibits exclusion of liability for death caused by negligence and requires other exclusions to meet a reasonableness test. While the common law principle of freedom of contract allows parties to agree on terms, these provisions limit that freedom to protect vulnerable parties from unfair clauses.

(f) Simple

The Commission assessed whether the Bill is clear, understandable and easy to interpret and implement.

In this regard, the Commission reviewed clause 2A, which defines the term "requirement of reasonableness" as a term that is "fair and reasonable", without providing any further guidance. The Commission has recommended adding a non-exhaustive list of factors to guide the assessment of reasonableness, which would make the test easier to apply.

(g) Accessible

The Commission assessed whether the Bill is accessible to the public and relevant stakeholders in its application and implementation. In this regard, the Bill does not create barriers to access for any particular group.

(h) Modern

The Commission assessed whether the Bill reflects contemporary legal, technological, economic and governance realities. In this regard, the Commission observed that the Bill introduces statutory controls on exclusion of liability clauses, departing from the common law approach that governs this area.

(i) Cost-Effectiveness in Application

The Commission assessed whether the Bill is practical, sustainable and cost-effective in implementation and administration.

In this regard, the Commission observed that the Bill does not establish any new institutions, offices or administrative structures. Implementation of the Bill requires no additional public expenditure.

(j) International and Regional Obligations

The Commission assessed whether the Bill respects and gives effect to Kenya's obligations under international and regional instruments forming part of the law of Kenya pursuant to Article 2(5) and (6) of the Constitution. In this regard, the Bill does not raise any compliance issues.

Conclusion

The Kenya Law Reform Commission remains committed to supporting Parliament in the development of constitutionally compliant, coherent, effective, modern and implementable legislative proposals and Bills.

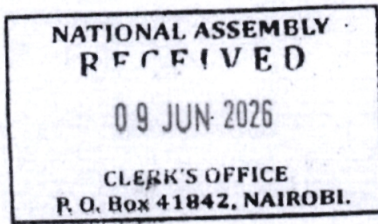
The Commission trusts that the comments and recommendations contained in this review will assist in strengthening the Law of Contract (Amendment) Bill, 2025.

Please accept the assurances of our highest consideration.



James Nombi
Ag. Secretary / CEO

7



OFFICE OF THE ATTORNEY-GENERAL

08/8/26
8/6/26

Our Ref. AG/LDD/685/1/19
Your Ref. NA/DDC/JLAC/2026/046

9th June, 2026

Mr. Samuel Njoroge CBS
Clerk of the National Assembly
Clerk's Chambers
Parliament Buildings
P.O. Box 41842-00100
NAIROBI

Adenayo wasike, HED

*pls facilitate
w r g 10/6/26*

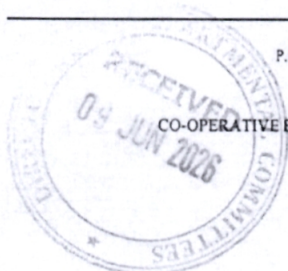
RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO SUBMIT VIEWS ON THE LAW OF CONTRACT (AMENDMENT) BILL, 2025, (NATIONAL ASSEMBLY BILL NO. 45 OF 2025)

This has reference to your letter dated the 4th June, 2026, under Ref. NA/DDC/JLAC/2026/046, and the to a meeting scheduled for the 9th June, 2026, to submit vies on the Law of Contract (Amendment) Bill, 2025, sponsored by the Hon. Aden Daud Mohamed MP, which is before the Justice and legal Affairs Committee.

The principal object of the Bill is to amend the Law of Contract (Cap. 23) to protect parties to contracts against unfair and unconscionable terms. The proposed amendments are intended to protect parties from unfair and unconscionable terms that rely on common law principles in contract law.

We have perused the Bill and have identified the several issues that require resolution and recommend their resolution as follows:

S/No.	Provision of the Bill	Issue	Recommendations
1.	Numbering of the new sections.	The new sections are numbered 3A, 3B, 3C, 3E and 3F, and skip 3D.	Renumber the new sections such that they occur in the sequence 3A, 3B, 3C, 3D and 3E.



SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
E-MAIL: info.statelawoffice@kenya.go.ke WEBSITE: www.attorney-general.go.ke

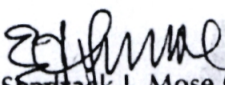
STATE DEPARTMENT OF JUSTICE, HUMAN RIGHTS AND CONSTITUTIONAL AFFAIRS
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

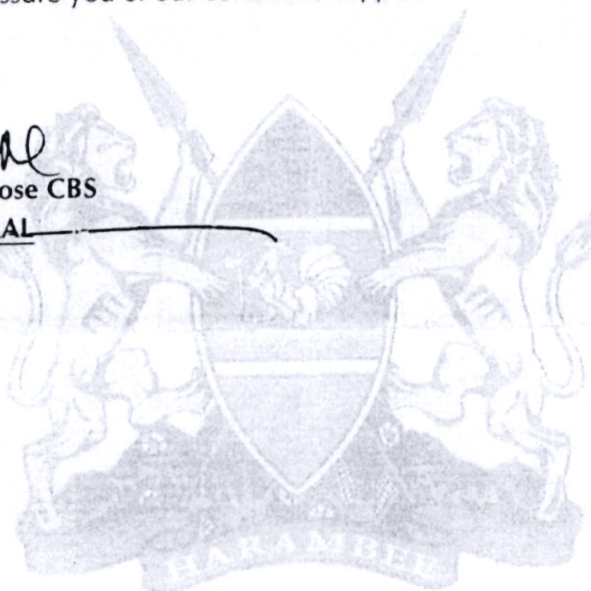
ISO 9001:2008 Certified



2.	The proposed new section 3E(3) states: (3) As against a person dealing otherwise than a consumer, the liability specified under subsection (2) may be excluded or restricted by reference to a contract term unless the term satisfies the requirement of reasonableness.	The provision is logically inconsistent as the latter part of the provision appears to be an exemption to the proposal contained in the provision.	Insert the word "not" immediately after the expression "subsection (2) may". This will indicate that liability may only be excluded under subsection (2) if the requirement of reasonableness is satisfied.
----	--	--	--

We thank you and assure you of our continued support.


Hon. Shadrack J. Mose CBS
SOLICITOR GENERAL



IRA/ADM/19

9th June 2026

The Clerk of the National Assembly

The National Assembly
Main Parliament Buildings
P.O. Box 41842-00100

NAIROBI

Dear Sir,

Abenayo Wasike, HOD

*He facilitate
10/6/26*

*DDC
8
8/6/26*

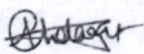
**RE: REQUEST FOR EXTENSION OF TIME TO SUBMIT COMMENTS ON THE
LAW OF CONTRACT (AMENDMENT) BILL, 2025**

Reference is made to your letter Ref: NA/DDC/JLAC/2026/046 inviting the Insurance Regulatory Authority to submit views on the Law of Contract (Amendment) Bill, 2025 and to appear before the Departmental Committee on Justice and Legal Affairs today, 9th June 2026.

The Authority received the invitation on Thursday, 4th June 2026 and requires additional time to provide a considered response. Given the cross-cutting nature of the Bill and its implications for insurance contracts, policyholder protection, market conduct and the regulatory framework under the Insurance Act, the Authority requests an extension of time not exceeding five (5) days to submit a comprehensive response.

The Authority regrets any inconvenience caused and remains available to appear before the Committee on a rescheduled date and time as may be advised.

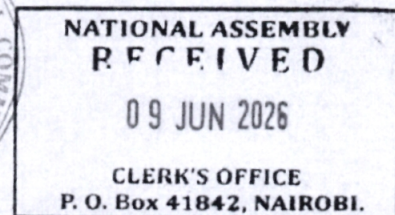
Yours faithfully,



ANNE CHELAGAT

FOR: COMMISSIONER OF INSURANCE & CHIEF EXECUTIVE OFFICER

Encls.





THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK



P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cha@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote:
Ref: **NA/DDC/JLAC/2026/046**

2nd June, 2026

Hon. Shadrack John Mose, CBS
Solicitor General
Office of the Attorney-General and Department of Justice
Sheria House, Harambee Avenue
NAIROBI

Dr. Chris K. Kiptoo, CBS
Principal Secretary
The National Treasury
National Treasury and Economic Planning
Treasury Building, Harambee Avenue
NAIROBI

Hon. Winfridah Boyani Mokaya, CBS
Chief Registrar of the Judiciary / Secretary
Judicial Service Commission (JSC)
Supreme Court Building
NAIROBI

Mr. James O. Nombi
Ag. Commission Secretary / CEO
Kenya Law Reform Commission
Reinsurance Plaza, 3rd Floor, Taifa Road
NAIROBI

Ms. Florence W. Muturi
Chief Executive Officer
Law Society of Kenya (LSK)
Lavington, Opposite Valley Arcade, Gitanga Road
NAIROBI

Prof. Winifred Kamau, PhD
Dean, Faculty of Law
University of Nairobi (UON)
P.O. Box: 30197 - 00100
NAIROBI

Mr. Godfrey Kiptum, MBS
Chief Executive Officer
Insurance Regulatory Authority (IRA)
Zep-Re Place, Longonot Road - Upper Hill
NAIROBI

FCPA Wycliffe M. Shamiah, MBS
Chief Executive Officer
Capital Markets Authority (CMA)
Embankment Plaza, 3rd Floor, Longonot Road
NAIROBI

Mr. Raimond Molenje
Chief Executive Officer
Kenya Bankers Association (KBA)
13th Floor, International House, Mama Ngina Street
NAIROBI

Mr. Stephen S. Mutoro
Secretary General
Consumers Federation of Kenya (COFEK)
Rehema Place, Block F-45
NAIROBI

Mr. David Kibet Kemei
Director General
Competition Authority of Kenya (CAK)
CBK Pension Towers, 15th Floor
NAIROBI

Mr. Tobias Alando
Chief Executive Officer
Kenya Association of Manufacturers (KAM)
15 Mwanzi Road, Westlands
NAIROBI

Ms. Carole Kariuki
Chief Executive Officer
Kenya Private Sector Alliance (KEPSA)
7th Floor, South Tower, Two Rivers
NAIROBI

Dear *Mr. K. O. Omondi*

**RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE
AND LEGAL AFFAIRS TO SUBMIT VIEWS ON THE LAW OF
CONTRACT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 49
OF 2025**

The Departmental Committee on Justice and Legal Affairs is established pursuant to Standing Order 216 of the National Assembly Standing Orders, and is mandated to *inter alia*, 'study and review all legislation referred to it.'

As you are aware, the Law of Contract (Amendment) Bill (National Assembly Bill No. 49 of 2025), sponsored by Hon. Aden Daud Mohamed, EBS, MP, is before the Committee for consideration and reporting to the House. The Bill seeks to amend the Law of Contract Act to protect parties to a contract against unfair and unconscionable terms. The Law of Contract Act provides for the application of English common law principles in contract law, which has resulted in the use of unfair and unconscionable terms.

Article 118(1)(b) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative business of Parliament and its Committees. Due to the great public interest in the Bill, the Committee resolved to meet with key stakeholders to make submissions on the Bill.

In this regard, the Committee invites you, or your representatives, for a meeting on **Tuesday, 9th June 2026, at 10:00 am** at the **Mini Chamber, County Hall**, within Parliament Buildings. The agenda of the meeting is to receive your views on the Bill.

You are requested to prepare your written submissions in a matrix format that indicates the specific clause, proposed amendment and justification. Twenty (20) hard copies of the submissions are to be availed during the meeting, soft copies of which may be sent to the Committee through the Office of the Clerk of the National Assembly via email: cna@parliament.go.ke.

Hard copies of the Bill are available at the National Assembly Table Office, Main Parliament Building, while an electronic copy may be accessed on the Parliament website: www.parliament.go.ke/the-national-assembly/house-bills for reference.

Our liaison officers on this subject are **Mr. Abenayo Wasike, H.O.D.**, who may be contacted on tel. no. 0721352053 or email abenayo.makokha@parliament.go.ke or **Mr. Ahmed Salim Abdalla, Lead Clerk**, tel. no. 0710204056 or email: ahmed.salim@parliament.go.ke.

Yours



JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: - **Hon. Dorcas Agik Oduor, SC, OGW, EBS**
The Attorney General
The State Law Office and the Department of Justice
Sheria House, Harambee Avenue
NAIROBI

Dr. Aurelia Chepkirui Rono, PhD, CPA (K), CBS
Principal Secretary
The State Department for Parliamentary Affairs
Office of the Prime Cabinet Secretary
Kenya Railways, Block A, Haile Selassie Avenue
NAIROBI



THE JUDICIARY

OFFICE OF THE CHIEF REGISTRAR OF THE JUDICIARY



Our Ref: JUD/CRJ/23.2/2026

Date: 8th June 2026

Your Ref: NA/DDC/JLAC/2026/046

Samuel Njoroge, CBS
Clerk of the National Assembly
Clerk's Chambers
Parliament Buildings
P. O. Box 41842- 00100

NAIROBI

Abenayo Wasike, HOD

*DDC
8/6/26*

*pls facilitate
10/6/26*

INVITATION BY JLAC TO SUBMIT VIEWS ON THE LAW OF CONTRACT (AMENDMENT) BILL (NA BILL NO. 49 OF 2025)

We acknowledge, with gratitude, your letter Ref: NA/DDC/JLAC/2026/046 dated 2nd June 2026 inviting the Judiciary and other stakeholders to submit comments on the above referenced Bill.

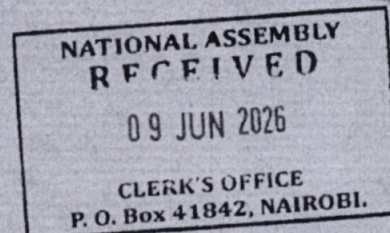
The Judiciary appreciates the collaborative spirit in which the National Assembly has sought the views of key stakeholders in the justice sector during the consideration of the Bill.

We have noted the contents of the Bill and wish the Justice & Legal Affairs Committee fruitful deliberations with other stakeholders.

Yours sincerely,

HON WINFRIDAH B. MOKAYA, CBS
CHIEF REGISTRAR OF THE JUDICIARY

wmb/ko



Social Transformation
through Access to Justice

Supreme Court Building | Ground Floor, Chamber 6 | P.O. Box 30041-00100 | Nairobi
Tel. +254 0730 181600/700/800 | chiefregistrar@court.go.ke | www.judiciary.go.ke

Justice Be Our Shield and Defender

Embankment Plaza, 3rd Floor
Longonot Road, Upper Hill
P.O. Box 74800 - 00200, Nairobi, Kenya
Tel: +254 (0)20 2264900
Email: ceoffice@cma.or.ke
Web: www.cma.or.ke

DDC
8
17/6/26



Chief Executive's Office

June 08, 2026

Our ref: CMA/CMD/001

Your Ref: NA/DDC/F&NP/2026/083

Mr. Samuel Njoroge CBS,
Clerk of the National Assembly
Parliament Building
NAIROBI.

Dear Mr. Njoroge,

Abenayo Wasike, HOD

to facilitate
17/6/26

Ahmed Sabiri

pls deal -
ANASIKO 17/6/26

RE: STAKEHOLDER ENGAGEMENT ON THE LAW OF CONTRACT (AMENDMENT) BILL NO. 49 OF 2025 BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS.

The Capital Markets Authority appreciates the opportunity to participate in the stakeholder engagement on the Law of Contract (Amendment) Bill No. 49 of 2025.

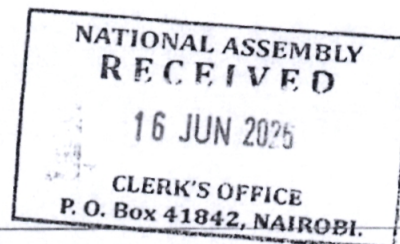
Pursuant to the discussions held and following a review of the draft Bill, the Authority has prepared comments and recommendations for your consideration. These comments are aimed at enhancing the legal and regulatory framework on aspects Bill touching on Capital Markets and promoting accountability and efficiency in their operations.

Please find attached the Authority's consolidated comments on the Bill for your review and further action.

The Authority remains available to provide any clarification or further input that may be required as the legislative process progresses.

Yours sincerely,

FCPA Wyckliffe Shamiah, MBS
CHIEF EXECUTIVE OFFICER



CAPITAL MARKETS AUTHORITY

COMMENTS ON THE LAW OF CONTRACT (AMENDMENT) BILL NO 49 OF 2025.

NO.	SECTION	THE LOC BILL 2025	CMA PROPOSED CLAUSE	JUSTIFICATION FOR THE PROPOSED CHANGE
1	Section 2 (Short Title)	Insertion of new Section 2A introducing definitions for two key terms: a) 'negligence' – breach of express or implied contractual obligation to exercise reasonable care or skill; b) 'requirement of reasonableness' – a term that is fair and reasonable having regard to circumstances known at the time of contracting.	Consideration to delete the proposed amendment	Negligence and the requirement of reasonableness is a Law of Tort concept that is provided for in situations where a party owes another a duty of care, breach of that duty and loss or damage suffered as a result of the breach. The requirement of negligence and reasonableness although good concepts in tort are covered in the Law of Contract in terms of breach of contract. Reasonableness is also subjective and varies in different situations and cannot be legislated on.

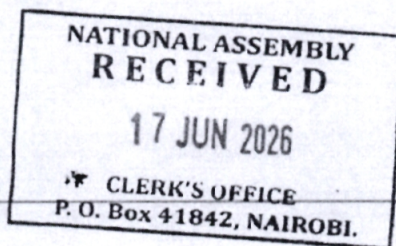
NO.	SECTION	THE LOC BILL 2025	CMA PROPOSED CLAUSE	JUSTIFICATION FOR THE PROPOSED CHANGE
2	Section 3A (Prohibition – Negligence Liability)	New Section 3A introduces two prohibitions: a) Absolute ban: No person may, by contract term, exclude or restrict liability for death resulting from negligence. b) Qualified ban: Liability for loss or damage from negligence may only be excluded if the exclusion term satisfies the 'requirement of reasonableness'. c) An anti-volenti clause: Agreement to an exclusion term does not, by itself, constitute voluntary assumption of risk.	Proposal to consider deleting the proposed amendment.	Applying a general reasonableness test to these clauses would not align with global market practice. Negligence resulting in death is also a law of tort issue that is covered by the doctrines in English Common Law and should not be included in the Law of contract law. In addition, subsection (2A) provides a strong safeguard by explicitly excluding investors and consumers from the carve-out, ensuring full consumer protection is maintained.
3	Section 3B (Prohibition Breach of Contract, Consumer)	Section 3B applies where one contracting party is a consumer. The supplier is prohibited from: a) Excluding/restricting liability for loss or damage arising from the supplier's breach; OR b) Claiming entitlement to: (i) render performance substantially different from	Proposal to consider deletion of the proposed amendment.	A contract being an agreement between two parties who are expected to have the capacity to enter into the contract and have understood the terms therein and their obligations in the contract. If a contract restricts the liability of one party to the detriment of the other, the other party has a right to request for an

NO.	SECTION	THE LOC BILL 2025	CMA PROPOSED CLAUSE	JUSTIFICATION FOR THE PROPOSED CHANGE
		what was reasonably expected; or (ii) render no performance at all in respect of any part of their obligation. Subsection (2) provides a saving: a term satisfying the reasonableness requirement may still be relied upon.		amendment of those terms and if the parties do not agree, the innocent party has an opportunity not to enter into a disadvantageous contract.
4	Section 3C (Defective Goods – Consumer Use)	Section 3C prohibits the exclusion or restriction of liability for loss or damage where: (a) Goods proved defective during consumer use; AND (b) The loss/damage results from negligence of a person in the manufacture or distribution of the goods. Subsection (2) defines:	Proposal to move the amendment to the Sale of Goods Act.	As the provisions of defective goods are covered in conditions and warranties provided in the Sale of Goods Act, this amendment falls within the scope of Sale of Goods.

NO.	SECTION	THE LOC BILL 2025	CMA PROPOSED CLAUSE	JUSTIFICATION FOR THE PROPOSED CHANGE
		(a) 'Consumer use' – using or possessing goods for purposes other than exclusively business; (b) 'Guarantee' – written promise/assurance that defects will be remedied by repair, replacement, or monetary compensation.		
5	Section 3E (Sale of Goods & Hire-Purchase)	Section 3E creates a two-tier protection: (1) General: A person may not exclude/limit liability arising from breach of Sale of Goods Act s.14 or Hire-Purchase Act s.8(1) implied conditions/warranties (this applies regardless of who the buyer/hirer is). (2) Consumer-specific (absolute): Liability under Sale of Goods Act ss.15, 16, 17 and Hire-Purchase Act s.8(2) cannot be excluded against a consumer. (3) Business-to-business: These liabilities may be excluded as against non-consumers only where the term	Proposal for consideration to move this provision to the Hire Purchase Act and the Sale of Goods Act.	Matters on hire purchase are governed by the Hire Purchase Act and Sale of Goods governed by the Sale of Goods Act. The amendments would be better placed in the respective Acts and not the Law of Contract Law.

NO.	SECTION	THE LOC BILL 2025	CMA PROPOSED CLAUSE	JUSTIFICATION FOR THE PROPOSED CHANGE
		satisfies the reasonableness requirement.		
6	Section 3F (Other Contracts – in Property Goods)	Section 3F extends Sections 3E(2)–(4) (i.e., the consumer protection and reasonableness framework) to contracts for the transfer of property in goods not governed by the law of sale of goods or hire purchase. This covers: (a) Description/sample/quality/fitness (consumer: absolute; B2B: reasonableness test); (b) Title/quiet possession (all parties: reasonableness test).	Proposal to consider deletion of the proposed amendment.	1. 'Property in goods passes' is the trigger for Section 3F - this may not cover service contracts where incidental goods are supplied (e.g., a plumber supplying a pipe fitting). The distinction between 'work and materials' and 'service with goods' needs clarification. 2. The Bill does not address contracts for the supply of services generally, leaving a gap for pure service agreements. 3. No guidance is provided on what constitutes a contract 'not governed by sale of goods' where classification is disputed.
9	General: Constitutional Compliance	The Bill does not include a constitutional compliance clause or savings provision.	Insert a purpose clause stating that the Act shall be construed and applied in a manner consistent with the Constitution of Kenya 2010, in particular Articles 26, 27, 40, 46, and 47.	The absence of a constitutional alignment clause may result in certain provisions being challenged for inconsistency with constitutional rights, particularly the right to freedom of contract (Art. 40, right to property) versus consumer protection objectives.

NO.	SECTION	THE LOC BILL 2025	CMA PROPOSED CLAUSE	JUSTIFICATION FOR THE PROPOSED CHANGE
10	General: Transitional Provisions	The Bill contains no transitional provisions.		Without transitional provisions, it is unclear whether the Bill applies to: 1) Contracts already in existence at commencement. 2) Contracts entered into but not yet performed. 3) Ongoing performance obligations under long-term contracts.



9

IRA/ADM/19
15th June, 2026

The Clerk of the National Assembly
The National Assembly
Main Parliament Buildings
P.O. Box 41842-00100
NAIROBI

Atenayo Warike, HOD

to facilitate

18/6/26

*DDC
8
17/6/26*

Muhammed Salim

*his deal:
Advance
18/6/26*

Dear *for,*

**RE: SUBMISSION OF COMMENTS ON THE LAW OF CONTRACT
(AMENDMENT) BILL, 2025**

Reference is made to the letter referenced NA/DDC/JLAC/2026/046 dated 2nd June 2026 inviting the Authority to submit views on the Law of Contract (Amendment) Bill, 2025, and attendance by the Authority's representatives of the Meeting of the Departmental Committee on Justice and Legal Affairs on Tuesday 9th June, 2026 when the Authority was allowed to submit its comments by 16th June, 2026.

The Authority has reviewed the Bill and supports the policy objective of protecting consumers from unfair contractual terms and considers it appropriate that the proposed reforms are framed within the Consumer Protection Act, Cap 501, Laws of Kenya.

The Consumer Protection Act already contains the basic infrastructure necessary for effectively addressing consumer facing unfair terms. This approach would strengthen consumer protection measures while preserving the Law of Contract Act as a statute of general application providing the legal framework through which common law and equitable principles of contract apply in Kenya, subject to written law.

The Authority therefore supports the proposed amendments and recommends that the Committee effects the same under the Consumer Protection Act, and not the Law of Contract Act.

Yours

Signature of Godfrey K. Kiptum

**GODFREY K. KIPTUM
COMMISSIONER OF INSURANCE & CHIEF EXECUTIVE OFFICER**

End

