**CONSUMERS FEDERATION OF KENYA (COFEK)**
*Kenya's Apex Consumer Body*

# SUBMISSIONS ON THE LEGAL METROLOGY BILL, 2026

*(Kenya Gazette Supplement No. 165, National Assembly Bills No. 43 of 2026)*

**To:** The Chairperson and Members, Departmental Committee on Trade, Industry and Cooperatives, National Assembly

**From:** Consumers Federation of Kenya (COFEK)

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## 1. Introduction

The Consumers Federation of Kenya (COFEK) is Kenya's apex consumer protection body. COFEK welcomes the opportunity to make these submissions on the Legal Metrology Bill, 2026 ("the Bill"), sponsored by the Hon. Kimani Ichung'wah, Leader of the Majority Party, and published on 1st July 2026 as National Assembly Bill No. 43.

The Bill seeks to repeal the Weights and Measures Act (Cap. 513) and to establish a modern legal and administrative framework for the manufacture, sale and use of weighing or measuring equipment in trade, health, safety, law enforcement, environmental protection and the sale of goods. COFEK supports, in principle, the modernisation of Kenya's legal metrology system in line with the recommendations of the International Organisation of Legal Metrology (OIML). However, COFEK submits that the Bill, as currently drafted, falls short of the constitutional threshold set by Article 46 of the Constitution, creates an unexplained institutional overlap with the Kenya Bureau of Standards (KEBS) under the Standards Act (Cap. 496), and fails to entrench meaningful, majority consumer participation in the governance of the new regulatory architecture it proposes to create.

These submissions are organised as follows: (i) the constitutional framework governing the Bill; (ii) the missing link between the Bill and the Standards Act; (iii) the case for a consumer-majority Legal Metrology Regulatory Board; (iv) consumer redress and remedies; (v) clause-specific observations; and (vi) COFEK's recommendations.

## 2. Executive Summary of Key Concerns

- Constitutional deficit: the Bill does not operationalise Article 46(1)(d) of the Constitution – the consumer's right to compensation for loss or injury – despite creating an extensive offence, fine and forfeiture regime whose proceeds accrue to the State rather than the aggrieved consumer.

- Missing harmonisation with the Standards Act, Cap. 496: no clause in the Bill reconciles the overlapping “metrology”, “testing”, “measuring instrument”, “calibration” and “verification” functions already vested in the Kenya Bureau of Standards.
- Governance and regulatory-capture risk: the Bill creates no oversight board. Authority is concentrated in a Cabinet Secretary and a Director appointed by the Public Service Commission, with the regulated industry (through the Institute of Trade Standards Administration) effectively supervising itself. No seat is reserved anywhere in the Bill for organised consumer interests.
- Excessive delegation of legislative power: clause 38 vests twenty-four distinct heads of subsidiary law-making power in the Cabinet Secretary alone, and clauses 41 and 44 further permit the Cabinet Secretary to grant blanket exemptions from core consumer-protection requirements “by order in writing”, without a requirement for affirmative parliamentary approval.
- Devolution ambiguity: the Bill does not clearly reconcile the powers of the national Director and County Directors/County Executive Committee Members with the Fourth Schedule to the Constitution and the Intergovernmental Relations Act, 2012.
- Weak due-process and appeal architecture: extensive seizure, forfeiture and licence-revocation powers (clauses 34(5), 67, 70 and 77) are not matched by a clear, affordable, independent appeal mechanism for affected traders or consumers.
- No documented record of public participation in the drafting of the Bill, contrary to the standard now expected by parliamentary committees following British American Tobacco Kenya, PLC v Cabinet Secretary for the Ministry of Health & 2 Others [2019] eKLR and Kiambu County Government & 3 others v Robert N. Gakuru & Others [2017] eKLR.

## 3. Constitutional Framework

### 3.1 Article 46 – Consumer Rights: the primary constitutional touchstone

Article 46(1) of the Constitution provides that consumers have the right (a) to goods and services of reasonable quality; (b) to the information necessary for them to gain full benefit from goods and services; (c) to the protection of their health, safety and economic interests; and (d) to compensation for loss or injury arising from defects in goods or services. Article 46(2) obliges Parliament to enact legislation to give effect to these rights, and Article 46(3) confirms that the Article applies to goods and services offered by both public entities and private persons. The Court of Appeal's decision in Nairobi Bottlers Limited v Ndung'u & another [2023] KECA 839 (KLR) confirms that the omission of information necessary for a consumer to gain full benefit from a product is, without more, a violation of Article 46(1)(b).

Measured against this standard, the Bill performs reasonably well on limb (a) – goods and services of reasonable quality – through its verification and stamping regime (Part IV), and partially on limb (b) through the transaction-in-goods disclosure requirements in Part V. It is, however, materially weaker on limb (c), and is almost entirely silent on limb (d). Every fine recovered under clause 68, and every item forfeited under clauses 21(4), 22, 23, 24, 26(3), 27(4), 34(4), 34(6), 35(2) and 67, accrues to the State. A consumer who has been short-weighed, sold adulterated goods, or charged for a quantity greater than that delivered receives no compensation, restitution or refund mechanism under the Bill – notwithstanding that this is precisely the harm Article 46(1)(d) was designed to remedy.

### 3.2 Article 10 – National Values and Principles of Governance

Article 10(2) entrenches participation of the people, transparency, accountability and good governance as binding national values applicable to all State organs whenever they enact, apply or interpret any law. A Bill that concentrates unchecked discretion in a single office (the Cabinet Secretary) and creates no channel for consumer or public participation in its ongoing administration sits uneasily with this constitutional command.

### 3.3 Article 118 – Public Participation in the Legislative Process

Article 118(1)(b) obliges Parliament to facilitate public participation and involvement in its legislative business. The Supreme Court in British American Tobacco Kenya, PLC v Cabinet Secretary for the Ministry of Health & 2 Others [2019] eKLR held that public participation must be real and not illusory, and must not be treated as a mere formality to “fulfil” a constitutional requirement. The Court of Appeal in Kiambu County Government & 3 others v Robert N. Gakuru & Others [2017] eKLR similarly emphasised that affected persons must be given a reasonable and genuine opportunity to be heard, and that the threshold of participation required is a function of the nature of the legislation in question.

The Memorandum of Objects and Reasons accompanying the Bill does not disclose any record of public or consumer participation preceding the drafting of the Bill, notwithstanding that the Bill directly affects millions of Kenyan consumers who transact daily by weight, volume or measure (fuel, foodstuffs, water, electricity, gas, and market produce). COFEK urges the Committee to require the sponsor to table a public participation log, including specific evidence of consultation with organised consumer groups, before the Bill proceeds to Second Reading, failing which the Bill will remain vulnerable to constitutional challenge on the authority of Gakuru and British American Tobacco.

### 3.4 Article 94(5) and (6) – Limits on Delegated Legislation

Article 94(5) provides that no person or body other than Parliament may make provision having the force of law in Kenya except under authority conferred by the Constitution or legislation, and Article 94(6) requires that any such delegated legislative power be exercised within constitutional limits. Clause 38(1) of the Bill delegates an unusually broad and open-ended array of regulation-making powers – twenty-four separate heads, from (a) to (x) – to the Cabinet Secretary, covering matters as consequential as the maximum permissible error allowed on verification (clause 38(1)(k)) and the fees chargeable for pattern approval and verification (clause 38(1)(l)). Clauses 41 and 44 go further still, empowering the Cabinet Secretary to grant blanket exemptions, “by order in writing”, from the core consumer-protection requirements in clauses 39, 40 and 43, without the safeguard of Gazette publication or public participation that attends ordinary subsidiary legislation under the Statutory Instruments Act, 2013. This is, in substance, a Henry VIII-type clause. COFEK recommends that clauses 38, 41 and 44 be amended to require Gazette publication, public participation and an affirmative resolution of the relevant Departmental Committee before any such regulation or exemption order takes effect.

### 3.5 Article 191 and the Fourth Schedule – Devolution

Trade development and regulation, and consumer protection, are functions shared between the national and county governments under the Fourth Schedule to the Constitution. The Bill provides for County Directors of Legal Metrology Services (clause 60(2)), appointed by County Public Service Boards, who are nonetheless drawn exclusively from persons certified under a nationally administered qualification (clause 59(1)) and who remain subject to the supervision of a national Director (clause 60(4)(c)). County Executive Committee Members may make county-specific regulations only “in consultation with the Cabinet Secretary” (clause 38(3)), and are further constrained from making regulations that conflict with any national regulation (clause 38(4)). COFEK submits that this arrangement requires closer alignment with the consultative framework established by the Intergovernmental Relations Act, 2012, including a defined role for the Council of County Governors, to avoid future intergovernmental disputes of the kind litigated in other devolved sectors.

## 4. The Missing Link Between the Bill and the Standards Act (Cap. 496)

The Kenya Bureau of Standards (KEBS) was established under the Standards Act, Cap. 496, and has, since 1974, operated a Testing and Metrology Services Division mandated to promote standardisation of measurements, to test commodities and measuring instruments, and to certify compliance with Kenya Standards through the National Standards Council. Section 9 of the Standards Act already empowers the National Standards Council to declare and gazette specifications – including measurement specifications – with which no person may lawfully manufacture or sell a non-compliant commodity, method or procedure.

The Bill, however, does not mention the Standards Act, KEBS, or the National Standards Council anywhere in its eighty-three clauses. This silence is difficult to reconcile with the substantial overlap in subject matter:

- The Bill's definitions of “testing equipment”, “calibration”, “verification” and “measuring instrument” (clause 2) substantially mirror functions KEBS's Testing and Metrology Services Division already performs under the Standards Act.
- Clause 13(2) of the Bill requires Kenya Legal Metrology Standards to be calibrated by “the National Metrology Institute in Kenya” – a body the Bill nowhere defines, establishes, or identifies, even though Kenya's national metrology function has, to date, resided within KEBS.
- The Bill establishes the Kenya School of Legal Metrology (clause 61) and designates the existing Institute of Trade Standards Administration as the professional body for legal metrology practitioners (clause 62), without stating how either institution relates to KEBS's own National Standards Council, standards-development divisions, or existing certification and quality-mark regime under section 10 of the Standards Act.

Left unresolved, this gap creates three concrete risks to consumers and to the ease of doing business: first, the possibility of duplicate licensing, testing and verification fees on the same trader or manufacturer under two separate statutory regimes; second, the risk of conflicting technical tolerances where a Kenya Standard (KS) specification issued under the Standards Act prescribes a different measurement tolerance from the "maximum permissible error" the Cabinet Secretary may separately prescribe under clause 38(1)(k) of the Bill; and third, forum confusion for consumers and small traders as to which inspectorate – KEBS or the new Legal Metrology Directorate – has jurisdiction over a given complaint.

COFEK recommends that Part X of the Bill (Repeal, Savings and Transition Provisions) be amended to expressly harmonise the Bill with the Standards Act, either by (a) transferring the staff, assets and residual metrology functions of KEBS's Testing and Metrology Services Division to the new Legal Metrology Directorate through a consequential amendment schedule to the Standards Act, or (b) providing for a statutory memorandum of understanding and joint Gazette notice between the Cabinet Secretary and KEBS, formally designating which body exercises jurisdiction over which class of measuring instrument, and formally identifying the "National Metrology Institute" referred to in clause 13(6).

## 5. The Case for a Consumer-Majority Legal Metrology Regulatory Board

Under the Bill, ultimate authority over legal metrology in Kenya is concentrated in a single Cabinet Secretary and a Director appointed by the Public Service Commission (clause 60(1)), assisted by an "Institute of Trade Standards Administration" that the Bill merely designates – rather than reconstitutes – as the professional body for legal metrology practitioners (clause 62). No board, council or multi-stakeholder oversight organ is created anywhere in the Bill.

This is a significant departure from the settled pattern of Kenya's regulatory statutes. The Standards Act itself establishes the National Standards Council as a supervisory board over KEBS. The Competition Act, 2010 establishes a Board for the Competition Authority of Kenya. The Energy Act, 2019 establishes a Board for the Energy and Petroleum Regulatory Authority. The Consumer Protection Act, 2012 establishes a National Consumer Protection Advisory Committee with an express statutory duty to protect and advance the interests of consumers across all sectors of the economy. In each of these examples, Parliament has entrenched multi-stakeholder governance as a structural safeguard against regulatory capture. The Bill, by contrast, leaves the regulated industry – through the Institute of Trade Standards Administration and through manufacturers and importers of weighing and measuring equipment who are simultaneously the principal applicants for type-approval under clause 34 – effectively self-supervising.

Legal metrology is, by its nature, an intensely consumer-facing regulatory function: it governs the accuracy of the fuel dispenser, the retail scale, the water meter, the electricity meter and the market weighing scale that determine the price a consumer pays for goods and services every day. The International Organisation of Legal Metrology (OIML) itself identifies the protection of consumer confidence as a foundational rationale for legal metrology systems. A regulator with no institutionalised consumer voice at board level is structurally exposed to capture by the equipment manufacturers, importers and traders whose products and conduct it exists to regulate.

COFEK accordingly recommends:

1. The insertion of a new Part in the Bill establishing a Legal Metrology Regulatory Board, to which the Director shall be answerable, replacing the current unilateral Cabinet Secretary–Director model of governance.
2. That the Board's membership comprise no fewer than sixty percent (60%) persons nominated by, or representing, organised consumer interests recognised under the Consumer Protection Act, 2012 (including COFEK and other consumer bodies), county governments, and independent technical or academic experts, with representation of manufacturers, importers and dealers in weighing or measuring equipment capped as a minority to prevent capture.
3. That the Board be vested with express functions of policy oversight, approval of fees prescribed under clause 38(1)(l), and receipt and adjudication of consumer complaints against inspectors, authorised persons or defective equipment, distinct from and independent of the Director's day-to-day operational role.

## 6. Weak Consumer Redress and Remedies

Part VIII of the Bill establishes an extensive offence, fine and forfeiture regime. Clause 68 prescribes a general penalty of a fine of not less than ten thousand shillings and not exceeding five million shillings, or imprisonment for a term not exceeding five years, or both. Clause 67 provides for the forfeiture of seized goods, equipment and money. In every instance, the proceeds of these fines and forfeitures accrue to the State. Nothing in the Bill provides for restitution, a compensation order, or any other direct remedy to the individual consumer who was short-weighed, sold adulterated goods, or charged for a false measure – notwithstanding that this is the precise harm Article 46(1)(d) of the Constitution requires the law to remedy, and notwithstanding that the Consumer Protection Act, 2012 already recognises a consumer's right to bring an action, individually or as a class, for redress arising from such conduct.

COFEK recommends the insertion of a clause requiring a court, upon conviction of an offence under the Bill, to consider making a compensation order in favour of any identifiable consumer who suffered loss as a result of the offence, and further recommends the establishment of a dedicated Legal Metrology Consumer Redress Fund, financed from a defined percentage of fines and forfeiture proceeds recovered under the Bill, and administered by the recommended Legal Metrology Regulatory Board for the benefit of consumers who cannot be individually identified or compensated.

## 7. Clause-Specific Observations

4. Clause 34 and Clause 37 (Type Approval and Authorisation of Qualified Persons): COFEK is concerned that clause 37 permits the Cabinet Secretary to authorise qualified persons – potentially including private commercial entities – to undertake specified verification-related activities under a Public Procurement and Asset Disposal Act agreement. While clause 37(3) reserves core verification, stamping, sealing, certification, entry, inspection, arrest and seizure powers to inspectors alone, COFEK recommends an express additional bar preventing any

authorised person from verifying or servicing equipment that the same person, or an associated undertaking, has manufactured, sold, repaired or overhauled, to eliminate any conflict of interest.

5. Clauses 41 and 44 (Exemption Powers): as noted in section 3.4 above, these clauses permit exemption "by order in writing" rather than by gazetted statutory instrument, which is inconsistent with the Gazette-notice standard applied elsewhere in the Bill (for example, clauses 34(5), 37(1) and 59(3)) and should be aligned to require Gazette publication and public participation.
6. Clauses 59 and 60 (Appointment of Inspectors, Director and County Directors): the Bill contains no security-of-tenure, fixed-term or removal-for-cause safeguard for the Director or inspectors, despite the fact that legal metrology inspectors must remain technically independent of, and insulated from, the powerful commercial interests whose equipment and conduct they are required to police. COFEK recommends the introduction of a defined term of office and a removal-for-cause procedure modelled on comparable regulatory statutes.
7. Clause 67 (Disposal of Seized Goods): the three-month retention period is reasonable in principle, but the Bill does not provide an affected trader or consumer with a defined right of appeal, within a specified time, against a seizure that is later shown to be unjustified, nor a right to compensation for loss occasioned by an unlawful or mistaken seizure. This should be aligned with the fair administrative action standard in Article 47 and the protection of the right to property in Article 40 of the Constitution.
8. Clause 69 (Misconduct of an Inspector): the Bill vests investigation of inspector misconduct exclusively in the Director, with no role for an independent oversight body (such as the recommended Board) and no defined channel through which an aggrieved trader or consumer may lodge or participate in a complaint against an inspector.
9. Fourth Schedule (Seizure Notice): the prescribed seizure notice does not itself specify any timeline within which the person from whom goods were seized may object to, or seek release of, the goods, other than the general three-month period under clause 67. COFEK recommends that the notice expressly inform the affected person of a right to lodge representations within fourteen (14) days of seizure.
10. Clause 21(2) (Use of the Carat): COFEK has no objection to this provision but notes it as an example of the granular, technical regulation-making the Bill otherwise properly leaves to gazetted regulations – underscoring, by contrast, why clauses 41 and 44 should not be allowed to bypass that same gazetted, participatory process.

## 8. Summary of Recommendations

COFEK respectfully recommends that the Departmental Committee on Trade, Industry and Cooperatives require the following amendments before the Bill proceeds to Second Reading:

11. Insert an express clause harmonising the Bill with the Standards Act, Cap. 496, in consultation with the Kenya Bureau of Standards and the Office of the Attorney-General, and formally identify the "National Metrology Institute" referred to in clause 13(6).

12. Establish a Legal Metrology Regulatory Board, with no fewer than sixty percent (60%) of its membership drawn from organised consumer interests, county governments and independent technical experts, to which the Director shall be answerable.
13. Insert express Article 46(1)(d)-compliant consumer compensation and redress provisions, including a Legal Metrology Consumer Redress Fund financed from a percentage of fines and forfeiture proceeds.
14. Amend clauses 38, 41 and 44 to require Gazette publication, public participation and an affirmative parliamentary resolution before any regulation or exemption order takes effect.
15. Clarify the demarcation of powers between the national Director and County Directors/County Executive Committee Members in line with the Fourth Schedule to the Constitution and the Intergovernmental Relations Act, 2012.
16. Introduce security-of-tenure and removal-for-cause safeguards for the Director and inspectors, and an independent complaints channel for inspector misconduct.
17. Introduce a defined right of appeal against seizure, detention and forfeiture decisions, consistent with Articles 40 and 47 of the Constitution.
18. Require the Bill's sponsor to table a documented public participation record, including specific evidence of consultation with organised consumer bodies, consistent with British American Tobacco Kenya, PLC v Cabinet Secretary for the Ministry of Health & 2 Others [2019] eKLR and Kiambu County Government & 3 others v Robert N. Gakuru & Others [2017] eKLR.

## 9. Conclusion

COFEK reiterates its support for a modern, OIML-aligned legal metrology framework for Kenya, and commends the sponsor for undertaking this long-overdue reform of the Weights and Measures Act, Cap. 513. COFEK submits, however, that the Bill in its current form does not adequately operationalise the consumer rights guaranteed under Article 46 of the Constitution, leaves an unexplained institutional and technical overlap with the Standards Act, and concentrates regulatory authority without the multi-stakeholder, consumer-inclusive governance structure that Kenya's other economic regulatory statutes have consistently adopted. COFEK urges the Committee to require the amendments set out above before recommending the Bill for Second Reading, and stands ready to appear before the Committee, and to provide further technical input, at the Committee's convenience.

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Dated this 31st day of August, 2026.

**Stephen Mutoro,** Secretary-General, Consumers Federation of Kenya (COFEK)