PETITION TO THE SENATE ON THE GOVERNANCE FRAMEWORK FOR THE PETROLEUM DEVELOPMENT LEVY GOVERNED BY THE PETROLEUM DEVELOPMENT FUND ACT, 1991 & INCREASED THROUGH LEGAL NOTICE NO. 124 DATED 10TH JULY 2020, INCREMENTS TO THE VATABLE BASE IMPOSED ON PETROLEUM PRODUCTS AT THE PUMP, AND THE IMPOSED 16 PERCENT VALUE ADDED TAX ON LIQUIFIED PETROLEUM GAS.

Date: 3rd August 2021

TO:

The Clerk of the Senate
Parliament Buildings
P.O. Box 41842 – 00100
NAIROBI
Email: senate.petitions@parliament.go.ke


I, the undersigned Petitioner, who is a Citizen of the Republic of Kenya;

DRAW the attention of the Senate to the following:

1. That in 2010, through the Energy (Petroleum Pricing) Regulations 2010, being Legal Notice No. 196 of 2010, the Government of Kenya, introduced petroleum price control at the pump for imported petroleum products to be implemented by the Energy Regulatory Commission (now the Energy & Petroleum Regulatory Authority (EPRA)) with an aim to reduce exploitation of consumers by oil marketing companies.

2. That however, punitive taxation on the products appears to be impeding its effectiveness. That the taxation policy has evolved over the last 2 years bringing the proportionate contribution of taxes and levies to the retail pump price of petroleum fuels to almost 50 per cent. In 2018, Value Added Tax was increased to 16 per cent and later cut to stand at 8 per cent in accordance with the Value Added Tax Act, 2013 whose implementation was deferred. The Tax (Amendment) Act, 2020 further increased the contribution of Value Added Tax to the retail price by increasing the VATable base to include excise duties and other fees. Further, the petroleum development levy was increased by Kshs. 5.00 through Legal Notice No. 174 of 2020. The increment was claimed to carry with it a petroleum price stabilization objective. All these jointly resulted in the increase in prices to a nine-year high in February 2021.
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3. That while the Government enacted the Petroleum Development Levy Fund Act, 1991 to provide for the establishment of a Petroleum Development Fund and the imposition of a petroleum development levy and for connected purposes, the Act does not clearly elaborate on the purpose of the Fund, the formula for determination of the levy, and its utilization. Further, the Petroleum Act, 2019 does not contain any provision for a petroleum stabilization fund, or any fund in that case, with an objective of petroleum products price stabilization. A development fund cannot be claimed to also serve as a stabilization fund, without clear legislation or regulations on the same.

4. That in June 2021, the President assented into law the Finance Act, 2021 which among others, revised the Value Added Tax on the supply of liquified petroleum gas from zero rate to standard rate, effective 1st July 2021. This has seen the 13-kg of cooking gas retail price increase from the previous approximate Kshs. 2,250 to Kshs. 2,610. Both internationally and nationally, the Government has committed to reducing carbon and other greenhouse gas emissions. In order to meet these obligations and cushion Kenyans against these extremely difficult economic times, it is crucial that the Government’s fiscal measures and policies do not impede, but promote, access to cleaner and affordable sources of energy to all Kenyans. Currently, approximately 80 per cent rural households and urban poor use dirty and carbon intensive energy sources for cooking and heating. The recent uptake of the use of Liquified Petroleum Gas by Kenyans shall be impeded by the increase.

5. That the Government has made various policy commitments towards universal access to cleaner energy by all Kenyans. In the interest of promoting cleaner energy, reducing household pollution which has an impact on Kenyans’ health, reducing deforestation brought about by increased demand for wood fuel both in urban and rural areas, reducing greenhouse gas emission to curb climate change, it is crucial that the Government’s fiscal measures, such as the 16 per cent Value Added Tax on Liquified Petroleum Gas do not impede the commitment to universal access to cleaner energy by all Kenyans.

6. That on or about March 2020, the Country was hit by the Coronavirus Pandemic, which crippled the lives of many Kenyans and the economy at large. On account of increased taxation on fuel, Kenyans were not able to benefit from the global downturn of oil prices until recently.

7. That with international crude oil prices hitting pre-pandemic levels over above 60 US Dollars in February, Kenyans are now feeling the delayed impact of last year's increase of
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taxation on the price of fuel which is an essential commodity. Though taxes may have been levied on petroleum products the impact is felt on the prices of a much larger number of goods and services because of the flow of inputs and outputs. For instance, the average cost of transportation has increased by 18 per cent since March 2019 this has had a ripple effect on the cost of food as well as other essential household commodities. Electricity consumers also paid an extra Kshs 1.2 more per unit in the Month of March on account of an increase in compensation by Kenya Power and Lighting Company to diesel plants.

8. That with international oil prices on an upward trend, it is expected that if left unchecked, prices will continue to go up, further worsening the existing poor socio-economic status of Kenyans.

9. That it is unconscionable, that Kenyans pay taxes almost the equivalent of landing costs of petroleum products at the pump, in taxes. This amounts to over taxation of Kenyans who are already struggling to make ends meet with Covid-19 pandemic and the subsequent lockdowns.

10. That Kenya currently has the highest pump price for petroleum products in East Africa, even for some of its neighbours that are landlocked countries. This carries a potential risk of fuel trafficking across Kenya’s borders.

11. That despite raising this concern with EPRA during public participation on petroleum pricing regulations, the same was not addressed.

REASONS WHEREFORE your humble Petitioner Prays that the Senate:

a) Reviews the tax laws to reduce the amount of taxes and levies charged on petroleum products to alleviate the burden on the consumer.

b) Reviews and makes recommendations on the imposed Value Added Tax on Liquified Petroleum Gas to be revised back to zero rate.

c) Directs the Cabinet Secretary to explain the reasons for the sharp increase in the petroleum development levy, explain the intended purpose of the levy, provide an account of how previous revenue generated from the levy has been utilized, and provide relevant enabling legislation relied upon.

d) Revokes the petroleum development levy increase until the action in (c) above has been executed.
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e) Directs the Cabinet Secretary to formulate regulations on the purpose, objectives, and operationalization of the petroleum development levy fund, together with a transparency and accountability framework under the Petroleum Act, 2019.

f) Directs the Cabinet Secretary to clarify and make regulations on the intended subsidy function/objective of the petroleum development levy, including how this will be implemented.

g) Makes any other order it may deem fit in the protection of public interest.

And your PETITIONER will ever Pray.

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<th>Names of the Petitioner</th>
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