Dear Sir,

RE: KCSPOG MEMORANDUM TO THE NATIONAL ASSEMBLY ON THE INCREASE IN PETROLEUM PRODUCTS PRICES

1) We are writing in reference to the above matter and pursuant to a call for public submissions and memoranda by the National Assembly’s Departmental Committee on Finance and National Planning (“the Committee”) dated 23rd September 2021.

2) The Kenya Civil Society Platform on Oil and Gas (KCSPOG) is a not-for-profit organisation based in Kenya, whose mandate includes advocating for a sustainable oil and gas sector in Kenya, cutting across the upstream, midstream, and downstream segments of the sector.

3) Concerned about the ever-rising cost of petroleum products which have a direct negative impact on the many Kenyans’ cost of living whose condition was exacerbated by the COVID-19 Pandemic, KCSPOG, on 13th May 2021, submitted a petition to the National Assembly pursuant to Article 119 of the Constitution of Kenya.

4) The Petition raised concerns on the governance framework for the Petroleum Development Levy governed by the Petroleum Development Fund Act, 1991 and increased through Legal Notice No. 124 of 10th July 2020; increments to the vatable base imposed under the Tax (Amendment) Act, 2020; the then intended increment of Value Added Tax for petroleum products from 8 Per Cent to 16 Per Cent; and the then intended increment of Liquified Petroleum Gas prices starting 1st July 2021.

5) While considering public comments for the Finance Act, 2021, the Committee dismissed our argument against the imposition of VAT on Liquified Petroleum Gas (LPG). The ripple
effect is the impending of universal access to clean cooking energy and defeating any progress that had been made in environmental conservation and climate change mitigation. This is because the segment of Kenyans who could no longer afford LPG because of the increment would have to resort back to the more affordable wood fuel/charcoal. The Committee noted that failure to impose VAT on LPG would negatively affect revenue generation for the country. Regrettably, LPG is now subject to 16% VAT, and the resultant drastic price increase is within the public domain. We are therefore calling for the revocation of the imposition of 16% VAT on Liquified Petroleum Gas.

6) Another major concern is the governance framework for the Petroleum Development Levy (“the Levy”). The Levy was increased by Ksh 5.00 through Legal Notice No. 174 of 2020. The increment was claimed to carry with it a petroleum price stabilization objective. 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, neither the Petroleum Act, 2019 nor the Energy Act, 2019 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. Over the past two months, when petroleum prices did not increase, it was said that the Government was using the monies collected from the levy to cushion Kenyans from the international increase in oil prices. Further, the Levy was to be used to compensate oil marketing companies for the lower margins for pump prices from the April-May cycle. It remains unclear under what framework this was being done. This also brings forth questions on transparency and accountability in implementing the alleged subsidization and compensation function of the Levy. For this reason, it is our submission that implementing the increased Levy be suspended until an adequate legal framework on its purpose, utilization (including its alleged subsidization function), and determination formula are put in place. We also call for public disclosure from the Cabinet Secretary for Petroleum on reasons for the sharp increase in the Levy, the intended purpose of the Levy (including the alleged subsidization function), and an account of how previous revenue generated from the Levy has been utilized.

7) We further submit that it is unconscionable that as part of the pump price Kenyans are paying approximately 50% in taxes, levies, and fees, from money that has already been subjected to numerous other various taxes. This is in addition to the fact that Mwananchi
is barely recovering from the economic shocks of the COVID-19 Pandemic. We therefore call for a review by the National Assembly of petroleum taxes, levies, and fees, to alleviate this excessive burden on the already exhausted *Mwananchi*.

Yours Faithfully

Emmaqulate Kemunto (Campaigner)

*Kenya Civil Society Platform on Oil and Gas*

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