A MEMORANDUM ON THE SESSIONAL PAPER NO. 2 OF 2025 PRIVATIZATION OF KENYA PIPELINE CO. LTD (KPC)

NAME OF ENTITY/PERSON: TRANSPARENCY INTERNATIONAL KENYA

DATE: 13th AUGUST 2025

INTRODUCTION

Transparency International Kenya is a not-for-profit organization with the aim of developing a transparent and corruption-free society through good governance and social justice initiatives. TI-Kenya is one of the autonomous chapters of the global Transparency International movement that is bound by a common vision of a corruption-free world.

TI-Kenya works towards a transparent and corruption-free society. The organization has over 20 years' experience in governance work at the national and county levels. TI-Kenya pursues advocacy, partnerships development, strategic litigation, research, capacity building, and civic engagement as its core approaches. TI-Kenya contributes to development of effective legal, policy, and legislative frameworks as well as the promotion of national values that support transparency and accountability. It is on this background that TI-Kenya submits this memorandum.

GENERAL COMMENTS

1. Privatization through an IPO does not in itself demonstrably serve the public interest. While the IPO allows for public ownership, the actual benefits to the wider public are not guaranteed particularly in the absence of critical disclosures and legal safeguards. For instance, there is no public disclosure on the valuation report as per Section 31 of the Privatization Act,2005 (*hereinafter the 'Act'*), which is a mandatory requirement. Without the valuation report, neither the Parliament nor the public can evaluate whether the proposed sale offers value for money or protects public assets from being undervalued, misallocated or misused.

2. Pursuant to section 29 of the Act, in the absence of specific regulatory guidelines, restrictions or quotas prioritizing Kenyan citizens, it means there is no guarantee that the IPO will result in genuine local ownership or economic inclusion.

   Additionally, the IPO seems to be on a rushed implementation timeline as per page 18 of the sessional paper, with the implementation of the proposal set for September 2025. This accelerated timeframe, coupled with the lack of accountability measures in place, risks both the integrity of the process and public confidence in the outcomes.

3. The public participation window provided for this sessional paper is a constitutional breach as the period granted cannot warrant a meaningful and effective public participation, noting the subject matter. Public participation must be real, adequate, inclusive, informed and timely. According to the advertisement for submission, the same is dated 6th August 2025 with expected deadline being 13th August 2025, approximately one week (7 days) period. This is a constitutional concern that can deem the whole process unconstitutional and dismissed for lack of public participation in the event of a constitutional petition.
   Moreso, the whole process is rushed yet this touches on a State-owned and national strategic asset. It is on the same ground that the Privatization Act , 2023 was declared unconstitutional for lack of public participation, when the Government wanted to privatize KICC[1].

   The one-week period is inadequate for a meaningful participation because;

   - KPC is a state-owned asset, making it a complex, technical and strategic asset;
   - Most Kenyans have inadequate information, access and understanding of privatization frameworks and its implications;
   - The government has not widely disseminated documentation for informed engagement, such as the valuation report, the IPO structure among others;
   - There was no civic education that was rolled out to prepare the public about the privatization process.

[1] https://katibainstitute.org/wp-content/uploads/2024/09/privatisation-Judgment-1.pdf

4. At the same time, there are concerns on how long the KPC will be privatized given that this move is aimed at helping the Kenyan government raise funds to finance the 2025/26 budget hence reducing over reliance on debt and help address fiscal pressures currently being faced. Secondly, since this move is aimed at raising funds for one fiscal year to the tune of Kshs. 100 billion from the transaction, it raises a loophole for future regimes, such as what will happen to the coming fiscal years? Where will the government get funding from going forward? Is it better for the Kenyan government to retain ownership or privatize KPC? Has the risk of making losses been considered and a mitigation strategy considered?

5. Lastly, parliament needs to mandate the National Treasury to indicate specific budget lines that funds received from this initiative are to finance in the 2025/2026 budget to curb the risk of secrecy/ opaqueness/ vagueness that hinders transparency and accountability.

CLAUSE	**COMMENTS**	**PROPOSAL**
1. Objectives	The proposal does not incorporate the objectives under the approved Privatization Programme[2]. The proposal does not align the objectives with the Constitution.	Propose to include details of the objectives under the Approved Privitization Programme including: i. Mobilization of resources for additional investments; ii. Enhancement of transparency and corporate governance; iii. Broadening of shareholding in the economy; iv. Development of the Capital Markets; and

[2] https://www.pc.go.ke/sites/default/files/2019-06/APPROVED%20PRIVATIZATION%20PROGRAMME.pdf

		v. Raising of resources to support the Government budget. Propose to align the proposal to the Constitution of Kenya (2010) including how it aligns with Article 10 on National Values and Principles of Governance, and Chapter 12 on Public Finance noting that the enabling law, the Privatization Act, 2005 ("Act") is yet to be repealed in full-alignment to the Constitution.
3. The Purpose for the Establishment for Kenya Pipeline Company Limited	The proposal does not illustrate how the privatization shall benefit the public interest as required by Section 29 of the Act.	The proposal should include a section on how the planned privatization serves the public interest as required by law and a public engagement report outlining stakeholder feedback on the planned privatization.
7. Challenges	The challenges outlined, in line with the Clause 5 which demonstrates profitability of KPC at Kshs.6.8 Billion, does not justify the proposed privatization.	Parliament should request for a special audit to be carried out by the Office of the Auditor General on institutional preparedness for the privatization process which includes financial, legal, systems and risk analysis.

<u>RECOMMENDATIONS</u>

1. Despite TI-Kenya's objection to the proposed privatization of KPC, in the event that the Parliament proceeds to approve the proposal, we recommend that the Parliament fast tracks the full implementation of Companies Act, 2015 and Companies Regulations, 2020 specifically on Beneficial Ownership Transparency to ensure the Beneficial Ownership register is made public prior to the implementation of the proposed Privatization.
2. Parliament should ensure robust public participation processes in the privatization of state-owned assets including fast tracking the enactment of Public Participation Bill, 2024.
3. Parliament should authorize a valuation of KPC with the valuation report being made public, reviewed and public participation conducted before proceeding with the privatization process.

CONTACT INFORMATION:

Sheila Masinde
Executive Director
Transparency International Kenya
Bishop Magua Building, Ground Floor,
Wing B UG 7, George Padmore Lane, Off Ngong Rd,
P.O. Box 198-00200, Nairobi
Tel: +254 (0) 202 727 763/5 Mobile: +254 (0) 722 296 589

Or Email transparency@tikenya.org