Approved for tabling in the House.
SNA
12/10/2021

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION – 2021

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

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REPORT ON INQUIRY INTO THE CAUSE OF INCREASE IN PRICES OF PETROLEUM AND PETROLEUM PRODUCTS FOLLOWING:

1. PETITION NO. 39 OF 2021 REGARDING REVIEW OF ABNORMAL INCREMENTS IN PRICES OF PETROLEUM AND PETROLEUM PRODUCTS IN THE COUNTRY

AND

2. PETITION NO. 40 OF 2021 TO AMEND THE FINANCE ACT, 2018 IN ORDER TO ADDRESS DRASTIC INCREASE IN PRICES OF PETROLEUM AND PETROLEUM PRODUCTS

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

OCTOBER 2021

TABLE OF CONTENTS

ACRONYMS

COSSOP	-	Cost of Service Study in the Supply of Petroleum Products
COVID	-	Corona Virus Disease
CPI	-	Consumer Price Index
EAC	-	East African Community
EPRA	-	Energy and Petroleum Regulatory Authority
FY	-	Financial Year/Fiscal Year
IDF	-	Import Declaration Fees
KAM	-	Kenya Association of Manufacturers
KCSPOG	-	Kenya Civil Society Platform on Oil and Gas
KEPSA	-	Kenya Private Sector Alliance
KMA	-	Kenya Maritime Authority
KOSF	-	Kipevu Oil Storage Facility
KOT	-	Kipevu Oil Terminal
KOT II	-	Kipevu Oil Terminal Two
KPC	-	Kenya Pipeline Company
KPRL	-	Kenya Petroleum Refineries Limited
KRA	-	Kenya Revenue Authority
LPG	-	Liquefied Petroleum Gas
MSL	-	Merchant Shipping Levy
MUHURI	-	Muslims for Human Rights
NOCK	-	National Oil Corporation of Kenya
OMCs	-	Oil Marketing Companies
OTS	-	Open Tender System
PDL	-	Petroleum Development Levy
PIEA	-	Petroleum Institute of East Africa
PRL	-	Petroleum Regulatory Levy
RDL	-	Railway Development Levy
RML	-	Road Maintenance Levy
SGR	-	Standard Gauge Railway
VAT	-	Value Added Tax

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Finance and National Planning on its consideration of Petition No. 39 of 2021 by consumers of petroleum and petroleum products across the country regarding review of abnormal increment in prices of petroleum and petroleum products in the country which was presented to the House by Hon. Stephen Mule, MP (Matungulu Constituency) on 21st September 2021 and Petition No. 40 of 2021 by Mr. Antony Manyara and Mr. John Wangai seeking to amend the Finance Act, 2018 in order to address drastic increase in prices of petroleum and petroleum products presented to the House by the Speaker of the National Assembly on 21st September 2021.

While presenting the Petition to the House, the Honourable Speaker directed that the two Petitions (No. 39 and 40 of 2021) be considered by the Departmental Committee on Finance and National Planning and the Committee was expected to:

1. Table its report in the House within fourteen (14) days in view of the urgency of the matter and in consideration of the effects it has on the populace, notwithstanding the sixty days' period under Standing Order 227;
2. Attach a draft Bill to the report for the Speaker's approval for publication proposing legislative interventions as sought by the petitioners; and
3. Undertake general and targeted inquiry to confirm whether there exist other reasons, beyond taxation leading to the drastic rise in the cost of petroleum products with a view to proposing administrative and legislative measures for addressing those causes.

The Petitioners prayed that the National Assembly through the Departmental Committee on Finance and National Planning inquires into the matter with a view to reviewing relevant laws so as to cause a reduction of the prices of petroleum and petroleum products including the VAT Act, the Income Tax Act, the Tax Procedures Act, the Miscellaneous Fees and Levies Act among other statutes.

Pursuant to Article 118(1) (b) of the Constitution which requires Parliament to facilitate public participation in the legislative and other business, the Committee placed an advertisement in the print media on Friday, 24th September 2021 inviting members of the public to present their views on the Petitions on Tuesday, 28th September 2021 in Mini Chamber, County Hall, Parliament Buildings. The advertisement also requested members of the public and stakeholders to submit memoranda on the Petitions. The Committee also invited stakeholders for meetings to consider the Petitions via letters Ref: NA/DDC/F&NP/2021/53 dated 23rd September 2021. The Committee received memoranda from seventeen (17) stakeholders and members of the public.

From the submissions received by the Committee, most stakeholders were of the opinion that the increase of PDL for super petrol and diesel from KSh. 0.40 to KSh. 5.40 per litre was astronomical and thus it needed to be revised downwards. They also noted that the review of PDL ought to have been done through a substantive amendment to the Petroleum Development Fund Act and not through Regulations. In addition, they submitted that the Government should continue stabilizing fuel prices using the PDL until the international crude oil prices go down. Further, stakeholders noted that the prices of fuel in Kenya were higher than those of her neighbors within the East African region mainly because of higher taxes and levies. They submitted that the high fuel prices will increase the cost of doing business in Kenya which will increase the price of commodities in the country and hence rise in inflation rate. This is because oil prices play a critical role in the national economy as prices of many products are often tied in some part to oil prices either because of oil components or reliance on petroleum to move the goods. To that extent, as oil prices increase, inflation often grows, thus harming consumer spending power and eventually causing a negative effect on the country's gross domestic product growth.

The Committee observed that the fuel price review done by the EPRA on 14th September 2021 was the highest in the country since price regulations were introduced in December 2010. The Committee also observed that landing costs account for more than 46%, taxes and levies account for about 40%, gross margins account for about 10%, storage and distribution costs account for about 3% and demurrage costs account for less than 1% of the price of fuel.

The Committee also observed that the Petroleum Development Levy Act, 1991 which put in place the PDL does not clearly elaborate on the purpose of the Fund, the formula for determination of the Levy and its utilization. The Petroleum Development Fund as contained in Section 4 of the Act is not specific as to the purpose of the fund and only targets development of common facilities for the distribution or testing of oil products and for matters relating to the development of oil industry. This provision is ambiguous and is subject to abuse.

In addition, the framework under which the Levy is apportioned to OMCs to cover the margin of fuel prices is also not clear and this may raise issues of accountability and transparency in implementing the subsidization and compensation function of the Levy. The Committee further observed that Section 3 of the Petroleum Development Levy Act, 1991 gives the Cabinet Secretary discretionary powers to vary orders relating to PDL. Given the financial impact this variation may have, there is need to remove these discretionary powers from the Cabinet Secretary. The House should be given an opportunity to debate the levies with either to approve or rejected. This should not be left to the Committee on Delegated Legislation to approve without reverting back to the House after scrutiny.

The Committee is grateful to Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank the Petitioners for coming up with the Petitions and stakeholders for the information that they provided to the Committee which forms part of this report. Finally, I wish to express my appreciation to the Honorable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

Hon. Gladys Wanga, CBS, MP
<u>Chairperson, Departmental Committee on Finance and National Planning</u>

PART ONE

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under **Standing Order 216** whose mandates pursuant to the **Standing Order 216 (5)** are 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 their implementation;
   iii. To study and review all the legislation referred to it;
   iv. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
   v. 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;
   vi. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on appointments);
   vii. To examine treaties, agreements and conventions;
   viii. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
   ix. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
   x. To examine any questions raised by Members on a matter within its mandate.

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.

3. In executing its mandate, the Committee oversees the following government Ministries and departments:

   i. National Treasury and Planning
   ii. State Department for Devolution
   iii. Commission on Revenue Allocation
   iv. Office of the Controller of Budget
   v. Salaries and Remuneration Commission

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was reconstituted by the House in July, 2020 and comprises of the following Members:

Chairperson
Hon. Gladys Wanga, CBS, MP
Homabay County
ODM Party

Vice-Chairperson
Hon. Isaac W. Ndirangu, MP
Roysambu Constituency
Jubilee Party

Members

Hon. Jimmy O. Angwenyi, MGH, MP
Kitutu Chache North Constituency
Jubilee Party

Hon. Christopher Omulele, CBS, MP
Luanda Constituency
ODM Party

Hon. Shakeel Shabbir Ahmed, CBS, MP
Kisumu East Constituency
Independent Member

Hon. Daniel Nanok, MP
Turkana West Constituency
Jubilee Party

Hon. (Dr.) Christine Ombaka, MP
Siaya County
ODM Party

Hon. Andrew Okuome, MP
Karachuonyo Constituency
ODM Party

Hon. David Mboni, MP
Kitui Rural Constituency
CCU Party

Hon. Francis K. Kimani, MP
Molo Constituency
Jubilee Party

Hon. Joseph Oyula, MP
Butula Constituency
ODM Party

Hon. Joshua Kandie, MP
Baringo Central Constituency
MCC Party

Hon. Stanley Muthama, MP
Lamu West Constituency
MCC Party

Hon. Edith Nyenze, MP
Kitui West Constituency
WDM-K

Hon. Catherine Waruguru, MP
Laikipia County
Jubilee Party

Hon. James Gichuhi Mwangi, MP
Tetu Constituency
Jubilee Party

Hon. (Prof.) Mohamud Muhamed, MP
Wajir South Constituency
Jubilee Party

Hon. Peter Lochakapong, MP
Sigor Constituency
Jubilee Party

Hon. Qalicha Gufu Wario, MP
Moyale Constituency
Jubilee Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Secretariat:

Ms. Leah W. Mwaura
Senior Clerk Assistant/Head of Secretariat

Ms. Jennifer Ndeto
Principal Legal Counsel 1

Mr. Josephat Motonu
Senior Fiscal Analyst

Mr. Chelang'a Maiyo
Research Officer II

Ms. Christine Maeri
Audio Officer

Ms. Laureen O. Wesonga
Clerk Assistant II

Dr. Benjamin Ng'imor
Senior Fiscal Analyst

Mr. Luka Mutua
Serjeant-At-Arms

Ms. Hannah Mwangi
Intern

PART TWO

2 INTRODUCTION

2.1 PETROLEUM PRICING REVIEW IN KENYA

6. Petroleum pricing in Kenya is done in accordance with the Energy (Petroleum Pricing) Regulations, 2010 (Legal Notice No. 196 of 2010).

7. The Regulations task EPRA to set maximum retail prices for Super Petrol, Diesel and Kerosene by location on the 14th day of every month. In setting the prices, EPRA uses a formula that takes into consideration the importation cost of fuel, freight, local transportation and storage costs, government taxes and profit margins for oil marketing companies. This formula has been in operation since December 2010.

8. There are 5 components considered in the EPRA fuel pricing formulae:
   (i) Landing costs which is the weighted average cost (per product) of imported Super Petrol, Diesel and Kerosene.
   (ii) Taxes and levies which includes Excise Duty, Road Maintenance Levy, Value Added Tax, Petroleum Development Levy, Import Declaration Fees, Railway Development Levy, Petroleum Regulatory Levy, Merchant Shipping Levy and Anti-Adulteration Levy.
   (iii) Gross margins which are the oil marketing companies (wholesale and marketing) operation costs and profits
   (iv) Storage and distribution costs which include cost of transportation of fuel from the Port of Mombasa to the various petrol stations.
   (v) Demurrage costs which are charges levied by a shipping line to the importer due to delays in unpacking of goods while the ship is at the port.

Table 1: Breakdown of Retail Price by Components, September 2021

Component	Super Petrol		Diesel		Kerosene	
	KSh./litre	% of total	KSh./litre	% of total	KSh./litre	% of total
Landing Costs	60.35	44.7%	53.78	46.5%	54.64	49.3%
Taxes and Levies	58.81	43.2%	45.86	39.7%	40.20	36.3%
Gross Margins	12.39	9.2%	12.36	10.7%	12.36	11.2%
Storage and Distribution Costs	3.17	2.4%	2.90	2.5%	2.88	2.6%
Demurrage Costs	0.69	0.5%	0.70	0.6%	0.74	0.6%
Retail Price (Nairobi)	**134.72**	**100.0%**	**115.60**	**100%**	**110.82**	**100%**

Source: EPRA

9. The landing costs and taxes and levies have the largest contribution to the prices across all the 3 types of fuel (super petrol, diesel and kerosene). A breakdown of the fuel prices indicates that landing costs accounts for more than 45%, taxes and levies account for more than 35%, gross margins account for about 10%, storage and distribution costs account for about 2.5% while demurrage costs account for about 0.6%.

10. The landing costs have had the most variations in the past two years and are one of the significant contributors to the recent rise in fuel prices. Its variation is largely caused by the changes in Brent crude oil prices. The COVID-19 Pandemic led to a significant drop in international crude oil prices due to reduced demand for fuel and the lowest prices were witnessed in April 2020. However, management of COVID-19 Pandemic and subsequent relaxation of restrictions in most countries also led to an increase in demand for fuel. The two effects led to a gradual increase in the international crude oil prices which had a direct impact on price increases for landing costs. At the same time, the Organization of Petroleum Countries and Russia and other oil producers (OPEC+) have not increased production to pre-COVID-19 levels to match the growing demand.

11. A breakdown of the taxes and levies indicate that excise duty, VAT, RML and anti-adulteration levy have the most significant contributions. For super petrol, its largest taxes and levies are the excise duty (38%), the RML (31%) and the VAT (17%). For diesel, its largest taxes and levies are the RML (39%), the excise duty (25%) and the VAT (17%). For Kerosene, its largest taxes and levies are the anti-adulteration levy (45%), the excise duty (28%) and the VAT (18%).

12. The monthly review was done on 14th September 2021 resulting to the highest fuel prices in Kenya in the recent past. It is expected to last for the period 15th September to 14th October 2021. With the overall year on year inflation rate as measured by the Consumer Price Index hitting 6.57 per cent, in August 2021, it is expected that the price of most commodities will be adjusted to match the fuel price change thereby worsening the situation.

2.2 OVERVIEW OF THE PETITIONS

13. Pursuant to Standing Order 227, Petitions No. 39 of 2021 and No. 40 of 2021 were committed to the Departmental Committee on Finance and National Planning on Tuesday 21st September 2021. The petitions were praying for the intervention of the National Assembly to address the high increase in fuel prices following a review done by Energy Petroleum Regulatory Authority (EPRA) on 14th September 2021. The specific details of the Petitions are as follows:

2.2.1 Petition No. 39 of 2021 Regarding Review of Abnormal Increment in Prices of Petroleum and Petroleum Products in the Country

14. Petition No. 39 of 2021 by consumers of fuel and other petroleum products across the country was presented to the House by Hon. Stephen Mule, MP (Matungulu Constituency) on 21st September 2021.

15. The Petitioners drew the attention of the House to the following, THAT—
    i. EPRA and the Ministry of Energy acted excessively and insensitively in the recent historic increase of petroleum prices by between KSh. 7 and KSh. 12 and failed to safeguard basic rights of Kenyans by ignoring the dire economic struggles that bedevil majority of low-

income earners who live below the poverty line and are still recuperating from the shocks of COVID-19;

ii. the high fuel prices have infringed on the right of every citizen to move freely by occasioning restrictive fare hike in public service vehicles such as '*matatus*', buses, '*bodaboda*', motorbikes and taxis;

iii. Kenyan citizens have further been denied rights to adequate food of acceptable quality due to prohibitive cost of transportation from the production points to markets and homes and are therefore subjected to hunger and risks of starvation which infringes on their right to life contrary to Article 26 of the Constitution in addition to facing the prevailing drought and famine in several parts of the country;

iv. costs of medical services have skyrocketed beyond the anticipated parameters of universal health care programme on account of rising energy costs, while the over burdening taxes on fuel and other petroleum products has contributed immensely to job cuts that have led investors to shift to neighboring countries having favorable trade incentives;

v. it is ironical and illogical for the Government to set fuel prices at higher rates than neighboring countries including Rwanda, Burundi, Ethiopia, Somalia, Eritrea, Tanzania and Uganda some of which are land-locked and hence import their fuel through Kenya;

vi. skyrocketing energy costs in the country are reversing the initial gains that had been realized under the Government's Economic Stimulus Programme and the Big Four Agenda, and are a direct result of wastage of taxpayers' money that occurs in every five-year cycle;

vii. efforts by citizens through various groups and institutions to have this escalating energy costs placed under control by the National Government have been futile; and

viii. the matters raised in this Petition with regard to review of the abnormal fuel price increment ranging from KSh. 7.58 for super petrol, KSh. 7.94 for diesel and KSh. 12.97 for kerosene are not pending in any court of law in Kenya.

16. The Petitioners prayed that the National Assembly through the Departmental Committee on Energy:

i. Conducts a public inquiry on reasons behind the high prices of petroleum products in Kenya including Liquefied Petroleum Gas that include the importation process, overhead refinery costs per litre/per barrel, volume of exported crude oil mined locally and amount of revenue collected from petroleum products;

ii. Urgently review relevant laws so as to cause a reduction of the retail prices of petroleum and petroleum products including the Value Added Tax Act, the Income Tax Act, the Tax Procedures Act, the Miscellaneous Fees and Levies Act among other statutes;

iii. Causes the relevant state agencies and regulatory-making authorities to review the relevant regulations relating to petroleum products with a view to reducing the retail cost of petroleum and petroleum products including LPG;

iv. Considers annulling the relevant petroleum related regulations until such a time when the regulation-making authorities comply with a view to bringing down cost of fuel in the country; and

v. Makes any other recommendation or legislative intervention aimed at reducing the retail price of fuel and LPG.

2.2.2 Petition No. 40 of 2021 to Amend the Finance Act, 2018 in Order to Address Drastic Increase in Prices of Petroleum and Petroleum Products

17. Petition No. 40 of 2021 by Mr. Antony Manyara and Mr. John Wangai seeking to amend the Finance Act, 2018 in order to address drastic increase in prices of petroleum and petroleum products was presented to the House by the Speaker of the National Assembly on 21st September 2021.

18. The Petitioners drew the attention of the House to the following, THAT—
    i. passage of section 13 of the Finance Act, 2018 which amended section 5(2) of the Value Added Tax Act, 2013 introduced a Value Added Tax of 8% on petroleum and petroleum products which had previously been tax exempt. This taxation rate was pegged on taxable value of petroleum and petroleum products exclusive of Excise Duty, fees and other charges;
    ii. all taxpayers and consumers of petroleum products have been affected directly or indirectly by the draconian policy/Act; and
    iii. the issue raised in the Petition is not pending in any court of law or any other constitutional or legal body.

19. The Petitioners prayed that the National Assembly through the Departmental Committee on Finance and National Planning repeals section 13 of the Finance Act, 2018 which placed VAT at the rate of 8% on the goods listed in Section B, Part I of the First Schedule to the Value Added Tax Act, 2013. Amongst the goods were petroleum oils and oils obtained from bituminous minerals, crude, motor fuel, spirit and kerosene-based jet fuel, illuminating kerosene, natural gas in gaseous state e.t.c.

PART THREE

3 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

20. The Committee commenced its inquiry into the Petitions by placing an advertisement in the local dailies on 24th September 2021 and sending invitation letters to specific stakeholders vide letter Ref: NA/DDC/F&NP/2021/23 dated 23rd September 2021. The advertisement sought for memoranda from the public and stakeholders. The public participation meetings were held on 28th and 29th September, 2021.

21. Following the call for memoranda and meetings, the Committee received both oral and written submissions from the following stakeholders:
    i. Energy and Petroleum Regulatory Authority
    ii. Kenya Pipeline Corporation
    iii. Ministry of Petroleum and Mining
    iv. National Treasury and Planning
    v. Kenya Revenue Authority
    vi. Kenya Association of Manufacturers
    vii. Kenya Private Sector Alliance
    viii. Petroleum Institute of East Africa
    ix. Mr. Ernest Muriu
    x. Mr. Njoroge Waweru
    xi. Eng. Lawrence Oloo
    xii. Hon. Stephen Mule, MP
    xiii. Mr. Duncan Otieno Ogwang
    xiv. Mr. Martin Kiboi
    xv. Kenya Civil Society Platform on Oil and Gas
    xvi. TripleOkLaw LLP
    xvii. Muslims for Human Rights
    xviii. Kenya Petroleum Distributors Association

    The stakeholders submitted as follows:

3.1 ENERGY AND PETROLEUM REGULATORY AUTHORITY

The Director General EPRA, Mr. Daniel Kiptoo appeared before the Committee on Tuesday, 28th September 2021. He submitted as follows on the Petitions, THAT—

22. The computation of petroleum pump prices is undertaken in accordance with the Energy (Petroleum Pricing) Regulations, 2010 (Legal Notice No. 196 of 2010). The computation takes into account the following key cost components: The landed cost which is the weighted average costs (per product) of imported Super Petrol, Diesel and Kerosene; Storage and distributions costs; Gross margins; and applicable taxes and levies.

23. During the period October 2020 to September 2021, the average landed cost of imported Super Petrol increased by 66.57% from KSh. 36.23 per litre to KSh. 60.35 per litre, that of Diesel increased by 58.98% from KSh. 33.89 per litre to KSh. 53.88 per litre while that of Kerosene increased by 77.85% from KSh. 30.61 per litre to KSh 54.44 per litre.

24. In August 2021, EPRA reviewed the storage and handling cost attributable to KPC from US$ 5.18 per cubic metre to US$ 3.59. This had the effect of reducing storage and distribution costs of the pump price of Super Petrol by 0.63%, Diesel by 2.36% and Kerosene by 1.37%.

25. The petroleum pump-pricing framework in Kenya uses a cost-plus formula. The pump price is therefore a summation of the product cost, actual supply chain costs, margin, levies and taxes. The costs factored in the pump pricing formula were validated in 2018 through an extensive Cost of Service Study in the Supply of Petroleum Products. The petroleum pump pricing process has split the supply chain costs into distinct supply nodes comprising of the product cost, primary storage costs, primary transportation costs, secondary storage costs, secondary transportation costs, wholesaling costs and retailing costs. The segregation ensures transparency and efficiency during the pricing process.

26. Super Petrol, Diesel and kerosene are subject to the following taxes and levies: Excise Duty Tax; Road Maintenance Levy; Petroleum Development Levy; Petroleum Regulatory Levy; Railway Development Levy; Anti-Adulteration Levy; Merchant Shipping Levy; Import Declaration Fee; and Value Added Tax. The mandate of collection and disbursement of petroleum taxes and levies is a preserve of the National Treasury with the exception of the Petroleum Regulatory Levy that funds operations of EPRA.

27. The price of petroleum and petroleum products is higher in Kenya compared to her East African Region neighbors mainly on account of taxes. The table below shows the comparison of pump prices in Nairobi and other cities in the region:

Table 2: Comparison of pump prices in Nairobi and other cities in the region

Month		**July 2021**	**Aug. 2021**	**Sept. 2021**
Product	**City**	**KSh./Litre**	**KSh./Litre**	**KSh./Litre**
Super Petrol	Nairobi (Stabilised/Published)	127.14	127.14	134.72
	Nairobi (Actual)	130.99	134.81	134.72
	Kampala	124.36	126.29	129.47
	Kigali (Subsidised)	118.45	118.45	118.45
	Dodoma	115.28	117.86	121.84
Diesel	Nairobi (Stabilised/Published)	107.66	107.66	115.60
	Nairobi (Actual)	115.56	118.35	115.60
	Kampala	110.18	111.89	114.76
	Kigali (Subsidised)	114.75	114.75	114.75
	Dodoma	106.39	109.52	111.37
Kerosene	Nairobi (Stabilised/Published)	97.85	97.85	110.82
	Nairobi (Actual)	104.17	110.12	110.82
	Kampala	104.06	102.57	102.78
	Kigali (Subsidised)	68.04	68.04	76.21
	Dodoma	101.99	105.91	106.81

28. The taxes on petroleum and petroleum products are higher in Kenya compared to other countries in the East African Region. The table below shows the comparison of petroleum taxes in the region in September 2021.

Table 3: Comparison of petroleum taxes in the region as at September 2021

Product	**Super Petrol**	**Diesel**	**Kerosene**
Country	**KSh./Litre**	**KSh./Litre**	**KSh./Litre**
Kenya	58.81	46.46	41.14
Uganda	45.16	35.19	9.34
Tanzania	43.21	37.26	34.71

29. The nature of the oil market is that it's cyclic, there is boom, bust cycle. The Authority in conjunction with the Ministry of Petroleum and Mining has developed the Petroleum (Petroleum Consolidated Fund) Regulations, 2021 and the Petroleum (Strategic Stocks) Regulations, 2021 that are meant to ensure maintenance of strategic stocks in the country. Petroleum strategic stocks can help cushion the country from the shocks of escalating and de-escalating prices in the international markets.

30. The Authority has also developed the Petroleum (Petroleum Development Fund) Regulations, 2021 that will provide a more robust governance framework to administer the process of pump price stabilization.

3.3 KENYA PIPELINE CORPORATION

The Managing Director KPC, Dr. Macharia Irungu appeared before the Committee on Tuesday, 28th September 2021. He submitted as follows, THAT—

31. The approved KOSF/KPRL tariff set by EPRA effective 1st August 2021 reduced the import handling and storage fees from 5.18\$/m^3 to 3.59\$/m^3 for FY 2021/22 translating to 31% reduction.

32. Besides the storage fees, Kenya Pipeline Company only contributed an additional cost of KSh. 0.01 per liter attributed to pipeline losses which translates to 0.01% of the pump price.

33. The road transport bridging component which was previously factored into the price builder to compensate transporters for trucking fuel products from Mombasa to Nairobi was removed with the commissioning of the Mombasa-Nairobi pipeline.

34. KPC has taken the following measures to reduce operational losses along the pipeline: daily depot and line stock reconciliation; continuous right of way surveillance both ground and aerial patrol; inline inspection of line 5 which is at an advanced stage, line 4 & 6 work in progress and line 2 & 3 at procurement stage; continuous calibration of measurement equipment; upgrading of SCADA, to be implemented in FY 2021/22; and implementation of leak detection system in FY 2021/22.

3.4 MINISTRY OF PETROLEUM AND MINING

The Principal Secretary for the Ministry of Petroleum and Mining, Mr. Andrew Kamau appeared before the Committee on Wednesday, 29th September 2021. He submitted that change in legislation has affected fuel prices as follows:

Excise Duty

35. Amendment to the Excise Duty Act on 1st December 2016 changed the Excise Duty on diesel from KSh. 8.244 per litre to KSh. 10.305 per litre; the Finance Bill, 2016 introduced Excise Duty on kerosene at the rate of KSh. 7.205 per litre; Legal Notice No. 239 of 2018 which was enacted on 11th December 2018 revised Excise Duty on super petrol from KSh. 19.505 per litre to KSh. 20.519, that on diesel from KSh. 10.305 to KSh. 10.841 and that on kerosene from KSh. 7.205 to KSh. 7.580; Legal Notice No. 240 of 2018 which was enacted on 3rd December 2018 revised Excise Duty on super petrol from KSh. 20.519 per litre to KSh. 19.505, that on diesel from KSh. 10.841 to KSh. 10.305 and that of kerosene from KSh. 7.580 to KSh. 7.205; amendments made to the Act on 9th July 2019 adjusted Excise Duty on super petrol, diesel and kerosene by an additional 5.15%; and amendments to the Act on 1st October 2020 adjusted the rate of Excise Duty on super petrol, diesel and kerosene by an additional 4.94%.

Road Maintenance Levy

36. Amendments to the Road Maintenance Levy Fund Act, 1993 enacted on 11th June 2015 revised the Road Maintenance Levy on super petrol and diesel from KSh. 9 per litre to KSh. 12 per litre; and the amendment enacted to the Act on 13th July 2016 revised the Road Maintenance Levy on super petrol and diesel from KSh. 12 per litre to KSh. 18 per litre.

Petroleum Development Levy

37. Amendment to the Petroleum Development Levy Order, 1992 enacted on 10th July 2020 increased the Petroleum Development Levy on super petrol and diesel from KSh. 0.40 per litre to KSh. 5.40 per litre.

Petroleum Regulatory Levy

38. Amendment to the Energy (Petroleum Regulation Levy) Order, 2008 enacted on 30th October 2014 revised the Petroleum Regulatory Levy on super petrol and kerosene from KSh. 0.05 per litre to KSh. 0.12 per litre and that on diesel from KSh. 0.04 per litre to KSh. 0.12 per litre; and a subsequent amendment on 20th June 2018 changed the Petroleum Regulatory Levy on super petrol, diesel and kerosene from KSh. 0.12 per litre to KSh. 0.25 per litre.

39. He stated that the Government has been utilizing the funds from the Petroleum Development Levy Fund to cushion consumers from high petroleum pump prices since April 2021. Price stabilization was implemented in the pricing cycle starting 15th April 2021 and the disbursements to OMCs on account of petroleum stabilization have been KSh. 8,674,683,458.62.

3.5 KENYA ASSOCIATION OF MANUFACTURERS

The Kenya Association of Manufacturers was represented by Mr. Job Wanjohi who appeared before the Committee on Tuesday, 28th September 2021. He submitted as follows, THAT—

40. Fuel prices in Kenya are mainly driven by the following factors: international crude oil price; exchange rate; government policy (taxation); and removal of stabilization mechanisms in September 2021.

41. EPRA is required by law to compute maximum wholesale and retail prices for different petroleum products that should be in force each month. In their opinion, the formula used by EPRA is working because: the Open Tender System optimizes supply sourcing in Kenya; it regulates the margins of oil marketing companies, it protects '*Wanjiku*' by ensuring transparency in pricing structure and assurance of pricing prediction; and security of supply to the whole country.

42. Business operations have been affected as follows due to increase in the price of fuel: some fuels e.g. kerosene are a direct input for manufacturers. The manufacturers are struggling to compete with imports from Egypt. It has also increased the cost transportation which has increased the cost of doing business in Kenya. The increased cost of production has been passed on to consumers and this has led to a decrease in demand for manufactured goods.

43. The increased fuel prices will increase inflation in the economy hence weaken post COVID-19 recovery of businesses and the economy. It will also increase risks of balance of payment because of continued weakening of the Kenya shilling and the rising crude oil prices in the international markets which are expected to reach pre-COVID-19 Pandemic levels in early 2022.

44. KAM proposed the following measures to address the current volatility in fuel prices:

i. Petroleum price stabilization: a regulatory framework to streamline the petroleum stabilization fund should be put in place and the Government should continue with fuel price stabilization.
ii. Review of petroleum taxation regime: remove 8% VAT on petroleum products; zero-rate VAT on LPG; and have inflation adjustment every two years to allow the market to stabilize.
iii. Kenya should harmonise its taxation regime on petroleum products to create parity or ensure fuel prices are lower in Kenya than in other EAC partner states.
iv. Coupled with stabilization fund, review of the formula to be carried out after a fortnight instead of monthly.

3.6 KENYA PRIVATE SECTOR ALLIANCE

The Kenya Private Sector Alliance was represented by Mr. Patrick Lavince who appeared before the Committee on Tuesday, 28th September 2021. He stated as follows, THAT —

45. The price of fuel is determined by the following factors: a composite of factors e.g. international oil prices, transport and storage costs, taxes, levies, distributor margins e.t.c.; increase in fuel prices in the international market; withdrawal of the stabilization fund; and the exchange rate.

46. The pricing formula is effective to the extent that it ensures there is stability and predictability of fuel prices however, it is not effective in the pricing formula because taxes account for more than 47% of the total price. There is need to embed the stabilization fund in the pricing formula so that it is clear when it can be used.
47. Increase in fuel prices increases the cost of production and the costs are passed down to the final consumer leading to an increase in the price of commodities. This makes the commodities uncompetitive in the local market, regionally and internationally thus hurting businesses and the economy.

48. The high fuel prices are likely to increase the cost of living and slowdown of economic activities and increase the cost of moving goods across the country due to increased transport costs.

49. In order to address the high fuel prices, the current pricing formula should be reviewed to remove some of the taxes including VAT and reduction of excise duty since fuel is a basic commodity; price review should be done fortnightly instead of monthly; and the stabilization fund should be reintroduced to be included in the pricing formula.

3.7 PETROLEUM INSTITUTE OF EAST AFRICA

The General Manager PIEA, Ms. Wanjiku Manyara appeared before the Committee on Tuesday, 28th September 2021. She submitted as follows, THAT—

50. The recent increases in petroleum and petroleum products have been caused by increased crude oil prices; weakening of the Kenya Shilling; taxes and levies and lifting of the fuel subsidy.

51. The current pricing formula is at least cost, transparent and competitive procurement system. However, there is misalignment of compensation of oil marketing companies' margins where return on investment and inflation are not put in consideration. Deferred margins on account of subsidization has adversely impacted cash flow and working capital for OMCs.

52. The increase in prices of fuel has led to dumping and illicit trade and loss of business from cheaper products from neighboring countries; reduced purchasing power; adverse impact on working capital and financing costs from the administration of the fuel subsidization fund; and undue pressure on OMCs cash flows, working capital and financing costs undermines viability of existing investments and dis-incentivizes future capital investments and diversification.

53. In order to address the high fuel prices, PIEA proposed that:
   i. Predictability of fuel prices should be safeguarded through completion of the draft National Tax Policy which will provide guidance on the country's fiscal policy;
   ii. Defer the inflationary adjustments on excise duty for petroleum and petroleum products; and
   iii. Reinstate the zero rate on LPG.

3.8 MR. ERNEST MURIU

Mr. Ernest Muriu appeared before the Committee held on Tuesday, 28th September 2021. He proposed several amendments including Excise Duty Act, 2015; Value Added Tax Act, 2015; and the Petroleum Development Fund Act, 1991 to address the high fuel prices crisis. He recommended as follows, THAT—

The Excise Duty Act, 2015

54. The Excise Duty Act, 2015 should be amended in Paragraph 1, Part 1 of the First Schedule as follows:

Table 4: Proposed amendments to Paragraph 1, Part 1 of the First Schedule to the Excise Duty Act, 2015

Tariff No.	Tariff Description	Rate
2710.12.10	Motor Spirit (gasoline) regular per 1000l @ 20degC	Shs. 19,505.00
2710.12.20	Motor Spirit (gasoline) premium per 1000l @ 20degC	Shs. 19,895.00
2710.19.22	Illuminating Kerosene per 1000l @ 20degC	Shs. 7,205.00
2710.19.31	Gas Oil (automotive, light, amber for high speed engines) per 1000l @ 20degC	Shs. 10,305.00
2710.19.32	Diesel oil (industrial heavy, black for low speed marine and stationery engines) per 1000l @ 20degC	Shs. 3,700.00

55. Amend the proviso after sub-paragraph 2 of Part 1 of the Excise Duty Act to read as follows; *"Provided that the inflation adjustment under this paragraph shall not apply to the rate of Excise Duty specified in the table in Paragraph 1 for Motor Spirit (gasoline) regular per 1000l @ 20degC, Motor Spirit (gasoline) premium per 1000l @ 20degC, Illuminating Kerosene per 1000l @ 20degC, Diesel Oil (industrial heavy, black for low-speed marine and stationery engines) per 1000l @ 20degC".*

The Value Added Tax Act, 2013

56. No amendment should be effected to the VAT Act in respect to petroleum and petroleum products.

Petroleum Development Fund Act, 1991

57. The Petroleum Development Fund Act, 1991 should be amended by deleting section 3 and substituting it as follows: *"(1) Petroleum Development Levy shall be charged on all petroleum fuels consumed in Kenya at the rate specified in the First Schedule in force at the time the liability arises; (2) The*

Petroleum Development Levy is to be collected by the Commissioner; (3) The Minister may make a petroleum development levy order setting provisions as to the evidence by which a person's liability to the levy or his discharge of that liability may be established, and as to the time at which any amount payable by way of levy shall become due and manner in which it shall be recovered by the Commissioner; and a person who fails to comply with any provisions of a petroleum development levy order shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding one year or both".

58. The Petroleum Development Fund Act, 1991 should be amended should be amended by inserting the following First Schedule to the Petroleum Development Fund Act, 1991 in order to regulate the levy imposed under the Act:

Table 5: Proposed amendment to the Petroleum Development Fund Act, 1991

Tariff Code	Description	Rate of Levy (KSh.)
2709.00.00	Petroleum oils obtained from bituminous minerals, crude	3000 per 1000l at 20degC
2710.12.20	Premium motor spirit	3000 per 1000l at 20degC
2710.12.30	Aviation spirit	3000 per 1000l at 20degC
2710.12.40	Spirit type jet fuel	3000 per 1000l at 20degC
2710.12.50	Special boiling point and white spirit	300 per 1000l at 20degC
2710.12.90	Other light oils and preparations	300 per 1000l at 20degC
2710.19.21	Kerosene type jet fuel	300 per 1000l at 20degC
2710.19.22	Illuminating kerosene	300 per 1000l at 20degC
2710.19.29	Other medium oils and preparations	3000 per 1000l at 20degC
2710.19.32	Diesel oil (industrial heavy, black for low speed marine and stationery engines)	3000 per 1000l at 20degC
2710.19.39	Other gas oils	300 per 1000kg at 20degC
2710.19.41	Residual fuel oils (marine, furnace and similar fuel oils) of a kinematic viscosity of 125 centistrokes	300 per 1000kg at 20degC
2710.19.42	Residual fuel oils (marine furnace and similar fuel oils) of a kinematic viscosity of 180 centistrokes	300 per 1000kg at 20degC
2710.19.43	Residual fuel oils (marine furnace and similar oils) of a kinematic viscosity of 280 centistrokes	300 per 1000kg at 20degC
2710.19.49	Other residual oils	300 per 1000kg at 20degC
2711.11.00	Liquefied natural gas	300 per 1000kg at 20degC
2711.12.00	Liquefied propane	300 per 1000kg at 20degC
2711.13.00	Liquefied butanes	300 per 1000kg at 20degC
2711.14.00	Liquefied ethylene, propylene, butelenes and butadiene	300 per 1000kg at 20degC
2711.19.00	Other liquefied petroleum gases	300 per 1000kg at 20degC
2711.21.00	Natural gas in gaseous state	300 per 1000kg at 20degC
2711.29.00	Other petroleum gases and other gases obtained from bituminous materials	300 per 1000kg at 20degC
2713.20.00	Petroleum bitumen	300 per 1000kg at 20degC
2713.90.00	Other residues of petroleum oil or oils obtained from bituminous materials	300 per 1000kg at 20degC
2714.10.00	Bituminous or shale and tar sands	300 per 1000kg at 20degC
2714.90.00	Bitumen and asphalt or asphalts and asphaltic rocks	300 per 1000kg at 20degC
2715.00.00	Bituminous mixtures	300 per 1000kg at 20degC

3.9 MR. NJOROGE WAWERU

Mr. Waweru appeared before the Committee on Tuesday, 28th September 2021. He presented as follows, THAT—

59. VAT is charged on items that value has been added and given that there is additional value has been made on fuel which therefore makes it wrong for VAT to be charged on petroleum and petroleum products.

60. RDL was put in place during construction of the Standard Gauge Railway and should therefore be removed because the payment of loan associated to SGR has been repaid and as such it is expected that any cost of operation of SGR should be generated internally.

61. VAT on fuel is charged after other taxes and levies have been applied. This is a scenario of double taxation. A cost benefit analysis should be done on the funds that have been appropriated this FY vis-à-vis the losses that the country will get from being uncompetitive in the region.

3.10 ENG. LAWRENCE OLOO

Eng. Lawrence Oloo appeared before the Committee on Wednesday, 29th September 2021. He submitted as follows, THAT—

62. There was need to reform the Open Tender System to allow for private importation of fuel as it will make it possible for Oil Marketing Companies to source for the products directly from producers hence lower prices.

63. KPC should work at eliminating its losses because they contribute to the fuel prices. Kenyans should not be made to pay for KPC's inefficiencies. Additionally, it is not clear how the amount to paid for KPC stock loss was arrived at. Further, KPC should harmonise its distribution cost to ensure that regions that are far off from the port of entry are not disadvantaged. Alternatively, a new route can be established for instance in Djibouti Ethiopia route to supply to Northern part of Kenya.

64. The OMC margin is not justifiable because profitability of a firm cannot be guaranteed by regulatory control. Further, the benefits that OMCs enjoy including stock gains and tax differential on volume sold and volume paid to KRA has never been considered as a benefit to OMCs. Stock gain benefits by OMCs should be considered when computing margins. OMCs also enjoy the tax differential on taxed volume and sales volumes. Tax is calculated on the basis of standard volume while the consumer pays the tax at observed volume.

65. The National Oil Corporation of Kenya as state enterprise can get Government to Government negotiated products supply at affordable costs but the country is yet reap the intended benefits from NOCK due to its mismanagement.

66. EPRA uses the monthly average Platts prices to determine the current price of fuel, however, the current Platts prices are for delivery of stock in the future at least three months on. The public is therefore paying for a future price instead of paying for the spot price.

3.11 HON. STEPHEN MULE, MP

67. Hon. Stephen Mule, M.P. being one of the Petitioners made his presentation to the Committee on Tuesday, 28th September 2021. He proposed that the following amendments should be made to the relevant laws in order to reduce the price of petroleum and petroleum products in Kenya:

    i. Reduce excise duty on petroleum and petroleum products to 2%;
    ii. Reduce the Railway Development Levy on petroleum and petroleum products to 1.5%;
    iii. Reduce the Import Declaration Fee to 1.5%;
    iv. Reduce VAT to 4%;
    v. Revert Petroleum Development Levy to KSh. 0.40 per liter of super petrol and diesel;
    vi. Reduce VAT on LPG to 5%;
    vii. Parliament should address the issue of demurrage charges. The inefficiencies resulting to demurrage charges should be addressed; and
    viii. The LPG market should be opened up in order to allow for competition and eventual reduction in the price of LPG.

3.12 MR. DUNCAN OTIENO OGWANG

Mr. Duncan Ogwang submitted his written memorandum on the Petitions as follows, THAT—

68. The pricing of oil products is often a complex and controversial process. Unlike most products, oil prices are not determined entirely by supply, demand (which is inelastic), and market sentiment toward the physical product. Rather, supply, demand, and sentiment toward oil future contracts, which are traded heavily by speculators, play a dominant role in price determination. Cyclical trends in the commodities market also play a role.

69. The typical commodity-pricing mechanism of spot and future markets took over as oil pricing mechanism from the OPEC system of official selling prices in the mid-1980s. As a result of development in the oil industry since 1986, oil has developed into a global, liquid commodity market with all the pricing and trading mechanisms of a global commodity. However, market liquidity is not the only factor affecting prices. While liquidity provides for transparency and also creates instruments for the hedging of risk, it does not necessarily provide for the competitive pressure to drive prices down. Market structure and the shape of the demand curve are also important to explain the level of prices.

70. In Kenya, petroleum retail prices are controlled through price capping by the Energy and Petroleum Regulatory Authority (EPRA) which is reviewed monthly. EPRA sets maximum retail/pump prices for selected products on a monthly basis and that become effective and remain in force from the 15th of the calendar month until the 14th of the following calendar month. The Legal framework for petroleum pricing is provided for under the Petroleum Act No. 2 of 2019, Legal Notice No. 196 of 2010 and Legal Notice No. 26 of 2012.

71. The importation of super petrol, diesel and kerosene is undertaken through the Open Tender System (OTS) since November 2003 as per Legal Notice No. 197 of 2003 (Revised in 2012 – Legal Notice No. 24 of 2012). The OTS is centrally coordinated by the Ministry of Petroleum & Mining and is a very competitive process – Tanzania replicated this process for their importation.

72. Importation of petroleum products through the OTS allows the oil marketing companies to access petroleum products at the same price and therefore ensure competition in the petroleum market. Since the OTS is run through monthly tenders, it entails sourcing of petroleum predominantly

from the spot market whereby petroleum is sourced from the open market without any prior contracts. The industry recognizes that OTS is an effective supply system that creates a competitive and a transparent means of availing the product to Kenyans through economies of scale. Challenges experienced by the OTS has shown that spot buying exposes the country to price volatility and unreliability as opposed to long term supply contracts which come with price stability and reliability.

73. A recent spate of new taxes and levies hikes by the National Treasury to widen the revenue net has raised concerns over ballooning cost of living. For instance, available figures for 15th April 2021 to 14th May 2021, indicate that for a litre of petrol, consumers paid KSh. 57.58 in taxes and levies alone, which is more than the actual cost of importing fuel, and among these taxes included Excise duty, Road Maintenance Levy, KSh. 5.40 as Petroleum Development Levy and KSh. 0.25 per litre as Petroleum Regulatory Levy. They are also paid Railway Development Levy, KSh. 18 per litre of kerosene as anti-adulteration levy and KSh. 0.03 per litre as Merchant Shipping Levy. Import Declaration Fee took KSh. 1.81 per litre of petrol while Value Added Tax (VAT) was KSh. 9.10 for petrol, KSh. 3.29 catered for storage and distribution costs, while KSh. 53.99 was the landed cost of petrol. Oil marketers were paid KSh. 1.43 billion as compensation for keeping fuel prices unchanged to defuse public outrage over a monthly review that would have pushed costs to a historic high.

74. In July 2020, the Petroleum Development Levy was revised upward from KSh. 0.40 to KSh. 5.40 per litre in a bid to mobilise capital towards a subsidy fund. The increase came into effect thanks to the Tax Laws (Amendment) Act of 2020. The steep increase in the Petroleum development levy explains the sudden rise in the prices of petroleum products in Kenya. The levy is expected to raise about KSh. 30 billion annually, up from KSh. 2.28 billion, with the Exchequer netting hundreds of billions from overall taxes and levies from fuel products. So far, the ministry has collected over KSh. 20 billion from the levy.

75. Price stabilization fund is meant to enable the government to moderate transmission of global oil price volatility to the domestic market with little or no budgetary cost. The move to keep the prices unchanged for the first time since the monthly price reviews started was meant to curb growing public disquiet due to the effect of the fuel price increments on the economy.

76. Petroleum price regulation regime in December 2010 began with the adoption of the Energy (Petroleum Pricing) Regulations of 2010 following years of market failure which saw a misalignment between global and domestic oil prices.

77. To reduce fuel prices, the government should do away with the petroleum development fund altogether OR for an Equalization Fund for Inland Freight to be introduced/considered and included as an important element of the pricing structure which will allow petroleum prices to remain at par all across the country. This equalization fund should replace the petroleum development levy of KSh. 5.40, revised upwards from KSh. 0.40 per litre that has always been charged since 1980s. The initial purpose of the petroleum development levy, was to develop a retail distribution infrastructure in marginalized regions where the Oil Marketing Companies were unwilling to invest in. The advent of independent oil dealers throughout the country, has invalidated the need to continue levying this tax.

78. The pricing mechanism for Petroleum prices should be reviewed and an equalization fund for inland freight introduced to replace the petroleum development levy. The collection from this new levy, will be aggregated into a freight Pool in the oil industry and managed prudently by EPRA.

All the road transportation costs incurred by the oil marketing companies will be paid back to them from the Freight Pool so as to nullify the freight element incorporated in the price build up, followed by routine audits by EPRA in order to eradicate any chances of misuse of the Freight Pool. This would ensure parity in the price of Petroleum products throughout the country.

79. Further to this, long-term agreements generally present the best terms for securing and procuring reliable supplies of petroleum products. According to statistics, 70% of worldwide petroleum is procured through long-term agreements. The contracts are either through government to government agreements or commercial with national oil companies. In Africa, for example, the nation of Ghana has such an arrangement in place. The country gained tremendously by hedging half of its crude oil requirements. Hedging was the reason why Ghanaians had not seen any price increases at the pumps since the beginning of 2011, although crude prices had increased from more than US$ 90 per barrel in December 2010 to about US$ 120.

80. Hedging policy is therefore extremely beneficial to any government if adopted. However, to achieve competitive terms through long-term agreements, the quantities must be substantive to provide economic consignments. The implementation of Legal Notice 96 of 2010, which mandated the National Oil Corporation of Kenya to import 30% of the country's petroleum requirements (25,000 MT AGO and 20,000 MT DPK) should be hastened. NOCK (currently in financial turmoil) or a newly formed national oil company, should be adequately funded and facilitated to undertake long-term agreements and furthermore, the use of government to government negotiations for the purchase of petroleum products should be encouraged to reduce the impact of high petroleum prices in Kenya.

81. Since the government has deemed price stabilization for petroleum products necessary, then the Petroleum Act, 2019 should be amended and enhanced to include a Price Stabilization Fund with supporting regulations detailing how it will be operated. The Petroleum Act 2019 does not explicitly provide for price stabilization. The legal and regulatory framework would need to be reviewed to permit the creation of such a fund with clear guidelines on the modalities for its operation. This will ensure that monies from this fund are not diverted for 'other vital government projects' or 'government emergencies'. The stabilization procedures should be anchored in an enhanced Pricing Formula, to ensure that the integrity of supply chain costs and margins are ring-fenced and not distorted by price stabilization.

82. The range for wholesale prices of each product would have an upper limit and a lower limit, and if the import-parity price was higher than the upper limit, the difference would be financed by the fund. Conversely, if the import-parity price was lower than the lower limit, the difference would be credited to the fund. The idea of a price stabilization fund is thus to enable the government to moderate transmission of global oil price volatility to the domestic market with little or no budgetary cost.

3.13 MR. MARTIN KIBOI

In a Petition submitted to the National assembly, Mr. Kiboi submitted THAT—

83. The price of LPG hit a six (6) years high on 1st July 2021 after the National Treasury reintroduced a 16% VAT on LPG. Currently, a 13 kilogramme gas cylinder is retailing at KSh. 350 more than it was before the imposition of the 16% VAT.

84. He noted that the Tax Laws (Amendment) (No. 2) Bill of 2020 should either be amended or suspended.

85. Parliament should disband the Energy and Petroleum Regulatory Authority and the mandate taken back to the Ministry of Energy after failing to protect the common '*Mwananchi*'.

86. Parliament should enact a fresh Bill to regulate pricing of basic commodities e.g. fuel, cooking gas, electricity sugar and flour.

87. Parliament in line with the Forest Conservation and Management Act, 2016 should ensure that green energy is protected, zero rate on Liquefied Petroleum Gas so as to attain the vision 2030 blue print and the world climate change efforts to curb global warming and emission of gases.

88. Parliament should enact a Bill to revive the Changamwe Oil Refinery Plant in Mombasa County to enable our own crude oil from Ngamia One in Turkana County to be refined and sold locally at a cheaper price.

3.14 KENYA CIVIL SOCIETY PLATFORM ON OIL AND GAS

The KCSPOG was represented by Ms. Teresa Bosibori who appeared before the Committee on Tuesday, 28th September 2021. She stated as follows, THAT—

89. Imposition of 16% VAT on LPG impedes access to clean energy and defeats any progress made in environmental conservation and climate change mitigation. She submitted therefore that the 16% VAT on LPG should be revoked.

90. The governance framework of the PDL. The PDL was increased by KSh. 5.00 through Legal Notice No. 174 of 2020. The PDL was put in place through enactment of the Petroleum Development Levy Act, 1991 but the Act does not clearly elaborate on the purpose of the Fund, the formula for determination of the Levy and its utilization. The framework under which the Levy is given to OMCs to cover the margin of fuel prices is not clear, this brings forth questions on transparency and accountability in implementing the subsidization and compensation function of the Levy. She recommended that implementation of the increased Levy should be suspended until a proper legal framework on its purpose, utilization and determination formula are put in place. Further, the CS for Petroleum and Mining should issue a public statement why the Levy was increased by such a huge margin, the intended purpose of the levy and an account of how previous revenue generated from the levy has been utilized.

91. 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 taxes. She therefore recommended that the National Assembly should review the taxes, levies and fees charged on petroleum.

3.15 TRIPLEOKLAW LLP

TripleOkLaw LLP submitted their memorandum REF: 1/NK/040 dated 27th September 2021. They raised the following concerns with regards to the rising fuel prices, THAT—

92. The pricing formula has failed to protect consumers from high petroleum prices. It has lowered the profitability of the oil retail business and does not seem to stabilize oil prices for consumers as was intended at its inception.

93. Owing to the hike in petroleum prices, electricity consumers are paying an extra KSh. 1.20 per unit attributed to an increase in compensation by Kenya Power to diesel plants.

94. EPRA recently validated the draft Petroleum (Pricing) Regulations, 2020 which did not take into consideration proposals for the enforcement of the diesel subsidy.

95. Whilst the Petroleum Development Levy Act, 1991 allows the Cabinet Secretary to impose a levy on petroleum fuels consumed, the funds collected from the levy are to be used *"as necessary for the development of common facilities for the distribution or testing of oil products and for matters relating to the development of oil industry as the Cabinet Secretary may direct"* and not for price stabilization as directed by Government when it increased PDL in 2020.

96. They recommended that the pricing formula should be reviewed and setting of prices should be done in consultation with the industry; the petroleum development fund should be separated from the stabilization fund; any further tax increases on petroleum be rejected; and developing policies of any policy should be in consultation with the industry.

3.16 MUSLIMS FOR HUMAN RIGHTS

MUHURI submitted a written Memorandum Ref: MUH/AJP/1/9/2021. They submitted THAT—

97. Though the rise in fuel prices has been justified by the international rise in fuel prices, the inflation will strain Kenyans as cost of essential services and commodities will effectively increase. Business operators in Kenya are set to adjust and pass the additional cost of their operations to consumers. If these changes kick off, the impact on the economy will be felt in most sectors and the ripple effect on the cost of living.

98. The rise in fuel prices exacerbates the effects of the COVID-19 Pandemic nationally and particularly the Coast region, Mombasa County is being affected disproportionally socio-economically.

99. The government should therefore cushion Kenyans on the escalated fuel prices by regulating the price. The Government should also consistently ensure exercise of the right of public participation when binding decisions that affect citizens socially, economically and politically are passed.

100. The National assembly to bring to the attention of the relevant Committees dealing with the issue to consider the plight facing the Kenyan citizens and to effect the necessary changes to cushion '*Wanjiku*' from exorbitant prices.

3.16 NATIONAL TREASURY AND PLANNING

The Principal Secretary for National Treasury Dr. Julius Muia appeared before the Committee on Wednesday, 29th September 2021. He submitted THAT—

101. Global oil prices have been rising with crude oil hitting US$70.80 per barrel by 20th September 2021 while crude Brent oil prices were at US$75.53 per barrel. This has led to increase in prices of pump prices in major economies and emerging markets. The global economic recovery and rebound in mobility (as economies reopen) significantly lifted oil demand globally in the first half of 2021.

102. The recent increase follows a review of the pump prices by EPRA which is mandate to review regularly maximum pump prices of petroleum products across the country. The new prices as of 15th September 2021 indicated that the maximum allowed pump price of super petrol, in Nairobi is KSh. 134.72 while that of diesel is KSh. 115.60 and Kerosene KSh. 110.82. This was an increase from the previous month's prices of KSh. 127.14, KSh. 107.66 and KSh. 97.85 for super petrol, diesel and Kerosene respectively.

Effects of altering or eliminating a tax rate

103. Any alteration or elimination of a rate of tax must also take into account its knock-on effects on the overall budget. If the alteration is by way of amendment of a tax law, the amendment Bill will inevitably lead to a Supplementary Appropriation Bill that lowers the National Government expenditure programme which in turn may affect the National Government's borrowing plan or debt-servicing plan based on the lower tax collection that a change in the tax rate entails. This process will inevitably occasion changes in the Division of Revenue Act. A reduction in tax collection therefore will impact on expenditures on some of the Government's priorities, including the Big Four Agenda.

Taxes and levies charged on fuel and their use

104. **Value Added Tax at the rate of 8%**: revenue collected from this tax is paid to the exchequer and used for funding the National Budget. The tax has been in place since 2018.

105. **Excise duty**: it is charged at various specific rates as indicated under the First Schedule to the Excise Duty Act, 2015. Revenue collected from this tax is paid to the exchequer and used for funding the National Budget.

106. **Railway Development Levy at the rate of 2% of the custom value**: It is paid by all importers of petroleum products at the time of importation for use in the country. The amounts collected from the levy are paid into the Railway Development Levy Fund to finance the construction and operation of the Standard Gauge Railway network in order to facilitate the transportation of goods.

107. **Anti-adulteration Levy is levied on illuminating kerosene at the rate of KSh. 18 per litre**: The levy is intended to discourage the use of illuminating kerosene in fuel adulteration. Before the introduction of the levy in 2018, the illuminating kerosene attracted a lower price than the other petroleum products hence it was being used by unscrupulous traders to adulterate other fuels. This was posing risks to motor vehicles and machinery that use oil resulting in heavy repair costs.

108. **Import Declaration Fee at the rate of 3.5%**: This levy is paid into the exchequer to fund the National Budget. Out of the total collected from import declaration fee, 10% is used to pay Kenya's contributions/subscription to the African Union and any other international organization to which Kenya has a financial obligation.

109. **Petroleum Development Levy:** paid on all petroleum fuels consumed in Kenya. The levy is paid into the Petroleum Development Fund established through the Petroleum Development Fund Act, 1991. The purpose of the Fund is for use in the development of the oil industry including to stabilize the local petroleum pump prices in instances of high landed costs above a threshold determined by the Authority. The levy ranges between KSh. 0.40 to KSh 5.40 per litre for the Petroleum Products listed in the First Schedule of the Petroleum Development Levy Fund Order, 2020.

110. **Road Maintenance Levy:** imposed on petroleum fuel, excluding illuminating kerosene, for use in the country at the rate of KSh. 18 per litre. The money collected is paid into the Road Maintenance Levy Fund. The Fund is used for repair and maintenance of public roads. Out of the levy collected three shillings per litre is paid into the Road Annuity Fund established under the Public Finance Management Act, 2012. For purposes of maintaining roads at the County level, 15% of the Fund forms part of the equitable share to the County Government.

Petroleum Development Levy that has been collected from FY 2018/19 to FY 2020/21

111. The collection of Petroleum Development Levy increased from KSh 2.2 billion in FY 2018/19 and KSh 2 billion in FY 2019/20 to KSh. 25.9 billion in FY 2020/21. The highest increase in the FY 2020/21 followed an increase in rate of some petroleum products by KSh. 5 per litre through the Petroleum Development Levy Fund Order, 2020. In the FY 2020/21, the National Treasury disbursed KSh. 23.6 billion to the State Department of Petroleum, Ministry of Energy and State Department for Infrastructure. In this regard, as at the end of FY 2020/21, the closing balance in the Petroleum Development Fund account was KSh. 3.4 billion.

3.17 KENYA REVENUE AUTHORITY

In a meeting with the Committee held on Wednesday 29th September 2021, Mr. Githii Mburu, the Commissioner General, KRA submitted that the different taxes and levies on fuel collected by KRA generated the following revenue in FY 2020/21:

112. Excise Duty on oil imports KSh. 79.34 billion; VAT KSh. 22.44 billion; Anti-Adulteration Levy KSh. 2.76 billion; Petroleum Development Levy KSh. 25. 88 billion; Road Maintenance Levy KSh. 87.32 billion; Petroleum Regulatory Levy, KSh. 1.25 billion; Import Declaration Fee KSh. 8.51 billion; and Railway Development Levy KSh. 4.94 billion. The taxes and levies on petroleum and petroleum products contributed KSh. 232.4 billion to the revenues raised by KRA.

3.18 KENYA PETROLEUM DISTRIBUTORS ASSOCIATION

The Chairperson of the Association, Mr. Joseph Karanja appeared before the Committee on 6th October 2021. He submitted THAT:

113. The local oil marketers have experienced the following problems which make it difficult for them to run the petroleum business in Kenya and are favourable to multinational companies which have financial muscle:
    i. In order to be a member of the spillage club, an oil marketer is required to pay KSh. 2.8 million with a monthly subscription;

ii. To get a license to import fuel, one needs to pay one million dollars to KPC or money equivalent to 1 million litres of the products one will be dealing in; and

iii. EPRA has very punitive demands including a certain acreage of land before being given a license to put up a petrol station.

114. They also submitted that the requirement that LPG cylinders have to be refilled by any of the LPG companies is unfair to consumers as it makes LPG expensive.

PART FOUR

4 COMMITTEE OBSERVATIONS/FINDINGS
4.1 ISSUES FOR DETERMINATION AS PER THE PRAYERS IN THE PETITION

The Committee observed as follows on the prayers that the Petitioners sought to be answered by the National Assembly:

4.1.1 Petition No. 39 of 2021 Regarding Review of Abnormal Increments in Prices of Petroleum and Petroleum Products in the Country

1. **Conducts a public inquiry on reasons behind the high prices of petroleum products in Kenya including LPG that include the importation process, overhead refinery costs per litre/per barrel, volume of exported crude oil mined locally and amount of revenue collected from petroleum products.**
   Regarding this prayer, the Committee observed that landing costs, taxes and levies have the largest contribution to the prices across all the 3 types of fuels (super petrol, diesel and kerosene). A breakdown of the fuel prices indicates that landing costs account for more than 45% while taxes and levies account for more than 35%.

   The Committee further observed that landing costs have been increasing gradually since early 2021 due to rise in the international crude oil prices which are expected to rise until July 2022 when it is projected prices will begin decelerating.

   The Committee also observed that prices of LPG increased following the implementation of 16% VAT in July 2021; a 13-kilogramme cylinder of LPG has averaged Sh2,400 while the six-kilogramme model is averaging Sh1,300.

   The Committee is therefore convinced that the increase in crude oil prices internationally and the taxation regime in Kenya are the biggest contributors to the high prices of petroleum and petroleum products and LPG in the country.

2. **Urgently review relevant laws so as to cause a reduction of the retail prices of petroleum and petroleum products including the Value Added Tax Act, the Income Tax Act, the Tax Procedures Act, the Miscellaneous Fees and Levies Act among other statutes.**
   With regards to this prayer, the Committee observed that there are 9 different fuel taxes and levies. They are: Excise Duty; Value Added Tax; Road Maintenance Levy; Anti-Adulteration Levy; Petroleum Development Levy; Petroleum Regulatory Levy; Railway Development Levy; Import Declaration Fee; and Merchant Shipping Levy is charged per tonnage for all oil imports. The table below shows the taxes charged on Super Petrol, Diesel and Kerosene:

Table 6: Taxes charged on Super Petrol, Diesel and Kerosene

Product	Excise Duty (KSh./litre)	VAT (%)	RML/ADL (KSh./litre)	PDL (KSh./litre)	PRL (KSh./Litre)	IDF (%)	RDL (%)
Petrol	22	8	(RML) 18	5.40	0.25	3.50	2
Kerosene	11.4	8	(ADL) 18	0.40	0.25	3.50	2

Diesel	11.4	8	(RML) 18	5.40	0.25	3.50	2

The Committee also observed that there seems to be double taxation with respect to the 8% value added tax on fuel since it is calculated on the final retail price which includes all the other fuel taxes and levies. There is need for harmonization of the VAT to address this issue of taxation on other taxes.

The Committee noted that in order to reduce the price of petroleum and petroleum products and LPG, some taxes and levies charged on the commodities have to be reduced. To this end, the Committee recommended review of some statutes as enumerated in Chapter Six of this report.

3. **Causes the relevant state agencies and regulatory-making authorities to review the relevant regulations relating to petroleum products with a view to reducing the retail cost of petroleum and petroleum products including LPG; and Considers annulling the relevant petroleum related regulations until such a time when the regulation-making authorities comply with a view to bringing down cost of fuel in the country**

With regards to the Petitioners' third prayer, the Committee observed that the Ministry of Petroleum and Mining gazetted the Petroleum Development Levy Order, 2020 (Legal Notice No. 124 dated 10th July 2020) in July 2020. The Order added more functions of the Petroleum Development Fund so as to address stabilization of fuel prices whenever there is an increase in landing costs unpredictably in addition to development of the petroleum industry. Effectively, the Order varied the Petroleum Development Levy from KSh. 0.40 to KSh. 5.40 per litre for super petrol and diesel but maintained that for kerosene at KSh. 0.40 per litre so as to fund the new function.

The Committee also observed that Departmental Committees review and make recommendations on Bills during the process of passage into Acts of Parliament. However, Committees do not take part in the review and approval of some of the regulations and legal notices that give effect to various provisions of the law.

The Committee was concerned that such a substantive amendment that has a direct impact on the prices of fuel was passed through Regulations without the input of all Members of Parliament who are representatives of the people. The Committee proposed the necessary review in the law in order to address this.

4. **Makes any other recommendation or legislative intervention aimed at reducing the retail price of fuel and LPG.**

On this prayer, the Committee observed that Kenya has strategic petroleum reserve that can last the country for between seven (7) to ten (days) only. This implies that a change in the international crude oil prices impacts immediately on the fuel prices in the country. This can be addressed by the draft Petroleum Consolidated Fund and Petroleum Strategic Stocks Regulations which provide for the funding and management of the strategic petroleum reserves in the country.

4.1.2 Petition No. 40 of 2021 to Amend the Finance Act, 2018 in Order to Address Drastic Increase in Prices of Petroleum and Petroleum Products

5. **Repeals section 13 of the Finance Act, 2018 which placed VAT at the rate of 8% on the goods listed in Section B, Part I of the First Schedule to the Value Added Tax Act, 2013. Amongst the goods were petroleum oils and oils obtained from bituminous minerals, crude, motor fuel, spirit and kerosene-based jet fuel, illuminating kerosene, natural gas in gaseous state e.t.c.**
   Regarding the prayer to repeal section 13 of the Finance Act, 2013, the Committee observed that repealing the section will not necessarily bring down the price of fuel because the price of fuel is affected by several factors besides VAT.

4.2 OTHER COMMITTEE OBSERVATIONS

Besides the observations made on the Petitioners' prayers, the Committee also observed THAT—

1. The total revenue collected from the Petroleum Development Levy amounted to KSh. 25.88 billion in the FY 2020/2021. The National Treasury disbursed **KSh. 1.6 billion to the State Department for Petroleum for fuel stabilization**, disbursed **KSh. 2.2 billion to the Ministry of Energy** and disbursed **KSh. 18.1 billion to the State Department for Infrastructure.** The fund had a closing balance of KSh. 3.4 billion at the end of the FY 2020/2021.

2. The disbursements to the State Department for Infrastructure and Ministry of Energy were misapplied since they were not in line with the intended purpose of the Petroleum Development Fund as per Section 4 of the Petroleum Development Levy Fund Act of 1991 and the Petroleum Development Levy Order, 2020. The National Treasury did not provide a list of projects that were done under the State Department for Infrastructure and Ministry of Energy that were in support of oil industry development.

3. The funds provided for fuel price stabilization were utilized in the months of April to June 2021. The Ministry of Petroleum was allocated additional KSh. 5 billion for fuel price stabilization in the months of July to September 2021. The total amount utilized for fuel price stabilization as of September 2021 is KSh. 6.6 billion according to the National Treasury.

4. The Principal Secretary, Ministry of Petroleum and Mining wrote to the Cabinet Secretary National Treasury via a letter Ref. No. MOPM/P/CONF/3/34/Vol.III (42) dated 17th September 2021, requesting for an additional budget of KSh. 5 billion from the Petroleum Development Levy for the stabilization of petroleum prices for the FY 2021/22. In a letter, Ref. 1194/21/01/(7) dated 6th September 2021, the CS National Treasury did not approve the Ministry's request owing to the fact that the Petroleum Development Levy collections were lagging behind the target and the funding from PDL was not sufficient to cater for the stabilization mechanism for petroleum prices.

5. The prices of fuel were relatively lower in the months when they were subsidized i.e. July and August 2021 compared to months when they were not (*refer to Table 2 above*). This therefore means that price stabilization plays a big role in reducing fuel prices in the country.

6. The fuel price formula considers 5 components. The first component is the landing costs which is the weighted average cost (per product) of imported fuel. It accounts for about 46% of the prices of fuel. The second component is the government fuel taxes and levies which account for about 40% of the prices of fuel. There are 9 different taxes and levies applicable to fuel prices. The third component is the gross margin which is the operation costs and profits for the oil marketing companies. It accounts for about 10% of the prices of fuel. The fourth component is the storage and distribution costs which are the costs of transportation of fuel from the Port of Mombasa to various petrol stations. They account for about 3% of the price of fuel. Lastly, the fifth component is the demurrage costs which are charges levied by a shipping line to the importer due to delays in unpacking of goods while the ship is at the port. They account for about 1% of the prices of fuel.

7. The Energy and Petroleum Regulatory Authority is tasked to set the prices for Super Petrol, Diesel and Kerosene on the 14th day of every month. In setting the prices, EPRA uses a formula that takes into consideration the importation cost of fuel, freight, local transportation and storage costs, government taxes and profit margins for oil marketing companies. **This formula has been in operation since December 2010.**

8. Kenya has the highest prices of fuel compared to her neighbouring East African Countries. This is as a result of the high contribution of taxes and levies on its prices. For the price of super petrol, taxes account for 46% in Kenya, 36% in Uganda and 36% in Tanzania. For the price of diesel, taxes account for 42% in Kenya, 34% in Uganda and 34% in Tanzania. For the price of kerosene, taxes account for 41% in Kenya, 9% in Uganda and 33% in Tanzania (*refer to Tables 2 and 3 above*).

9. The demurrage costs are currently included in the fuel price formula since the country has only one terminal for offloading oil (Kipevu Oil Terminal I) which can only accommodate one ship at any given time. However, this is likely to be removed by the end of this year when the construction of the new Kipevu Oil Terminal II which is set to be completed by December 2021.

10. EPRA is responsible for licensing petroleum products in the country but unlike fuel, the price of LPG in Kenya is not regulated.

11. Very few importers have been granted licenses to venture into the LPG importation despite the fact that several applications for licensing have been forwarded to EPRA. The issuance of the licenses has been hindered mainly by law which requires that the National Environment Management Authority (NEMA) has to conduct public participation where the LPG firm will be set up before issuing the National Environmental Impact Assessment License.

12. A review of the demurrage payments between January and June 2021 showed that vessels were being paid demurrage for between one (1) and twenty-two (22) days. The reason for the demurrage costs was attributable to slow vessel discharge owing to delays at the Kipevu Oil Terminal. *(Refer to Annex 14)*.

13. There is a policy directive by the Ministry of Petroleum and Mining with respect to the Shimanzi Oil Terminal where demurrage charges are capped at ten (10) days.

14. Demurrage charges are paid according to the size of the vessel with the rates ranging from a medium range vessel (44,999 MT and below) which is paid demurrage of USD 25,000 per hour pro rata; a long range 1 vessel (45,000 to 79,999 MT) is paid demurrage of USD 31,000 per hour pro rata; and a long range 2 vessel (80,000 to 159,999 MT) is paid demurrage of USD 45,000 per hour pro rata. The demurrage charges are paid out to compensate importers who in turn compensate the vessel owners as per the Charter Party Contract which is signed between the oil importers and the vessel owners. This ends up being a factor in the cost of fuel.

15. The Cabinet Secretary for Petroleum and Mining was invited vide letters Ref. No. NA/DDC/F&NP/2021/53 and Ref. No. NA/DDC/F&NP/2021/57, and summoned vide Summons Ref. No. Ref. No. NA/DDC/F&NP/2021/59 which was delivered on 7th October, 2021, to appear before the Committee to provide evidence on demurrage costs incurred on importation of petroleum for the months of January to June 2021. The Cabinet Secretary having failed to appear despite the Summons issued to him and failing to satisfy the Committee of his inability, the Committee invoked Standing Order 191 and imposed a fine of KSh. 500,000 for having failed to appear before the Committee to adduce evidence relating demurrage costs.

16. Despite there being a Vessel Scheduling Committee, to co-ordinate the arrival of vessels based on the OTS, there are significant delays which have a consequence on the demurrage costs.

PART FIVE

5 SCENARIOS ANALYSIS ON TAXES AND LEVIES VARIATION

1. Any variation in taxes and levies will have knock-on effects on the fiscal framework of the country. These fuel taxes and levies account for about 14% of the annual national government revenues and a reduction will mean that either the national government reduces its expenditures or incur more debt to bridge the financing gap.

2. Some of the taxes and levies are earmarked funds so their reduction will have direct impacts on government programmes and projects. These include the **road maintenance levy** which is used for road development in national and county governments, the **petroleum development levy** which is used for fuel price stabilization and development of the petroleum industry, the **petroleum regulatory levy** which funds the operations of EPRA, the **railway development levy** which funds the construction and operations of the standard gauge railway network and the **merchant shipping levy** which funds the operations of the Kenya Maritime Authority.

Estimated Price and Revenue Implications from a reduction in Value Added Tax and Petroleum Development Levy for fuel

3. The following are the key underlying assumptions in determining the price and revenue implications:
   (i) The average customs value for Super Petrol, Diesel and Kerosene for FY 2021/2022 will be relatively equal to the customs value for September 2021.

   (ii) The total volume of Super Petrol, Diesel and Kerosene consumed in FY 2021/2022 will be relatively equal to that for the FY 2020/2021.

4. Table 7 provides a comparison of the estimated reductions in fuel prices and revenue loss due to a reduction in VAT. If VAT is reduced from 8% to 4%, the government is likely to lose revenues amounting to KSh. 22.63 billion while the fuel prices reduce by between KSh. 4.10 per litre and KSh. 4.99 per litre. If VAT is reduced from 8% to 2%, the revenue loss increases to KSh. 33.94 billion while fuel prices reduces by between KSh. 6.16 per litre and KSh. 7.49 per litre. If VAT is reduced from 8% to 0% (zero rated), the revenue loss increases to KSh. 45.25 billion while fuel prices reduces by between KSh. 8.21 per litre and KSh. 9.98 per litre.

Table 7: Comparison of the impact of a reduction in Value Added Tax

Scenarios		Current Fuel Price	Estimated Reduction in Fuel Price	Estimated Revenue for FY 2021/22	Estimated Revenue Loss
		KSh./Litre	**KSh./Litre**	**Billions of KSh.**	**Billions of KSh.**
Reduction of VAT from 8% to 4%	Super Petrol	134.72	-4.99	20.85	-10.42
	Diesel	115.60	-4.28	23.16	-11.58
	Kerosene	110.82	-4.10	1.25	-0.62
	Total				**-22.63**
Reduction of VAT from 8% to 2%	Super Petrol	134.72	-7.49	20.85	-15.63
	Diesel	115.60	-6.42	23.16	-17.37
	Kerosene	110.82	-6.16	1.25	-0.93

	Total				**-33.94**
Reduction of VAT from 8% to 0%	Super Petrol	134.72	-9.98	20.85	-20.85
	Diesel	115.60	-8.56	23.16	-23.16
	Kerosene	110.82	-8.21	1.25	-1.25
	Total				**-45.25**

5. Table 8 provides a comparison of the estimated reductions in fuel prices and revenue loss due to a reduction in PDL. The reductions can only be effected on Super Petrol and Diesel which have a PDL of KSh. 5.40 per litre while the levy for Kerosene is KSh. 0.40 per litre. If PDL is reduced from KSh. 5.40 per litre to KSh. 2.90 per litre, the government is likely to lose revenues amounting to KSh. 11.98 billion while the prices of super petrol and diesel reduce by KSh. 2.50 per litre. If PDL is reduced from KSh. 5.40 per litre to KSh. 0.40 per litre, the revenue loss increases to KSh. 23.97 billion while prices of super petrol and diesel reduces by KSh. 5 per litre.

Table 8: Comparison of the impact of a reduction in Petroleum Development Levy

Scenarios		**Current Fuel Price**	**Estimated Reduction in Fuel Price**	**Estimated Revenue for FY 2021/22**	**Estimated Revenue Loss**
		KSh./Litre	**KSh./Litre**	**Billions of KSh.**	**Billions of KSh.**
Reduction of PDL from KSh. 5.40 to KSh. 2.90	Super Petrol	134.72	-2.50	11.28	-5.22
	Diesel	115.60	-2.50	14.61	-6.76
	Total				**-11.98**
Reduction of PDL from KSh. 5.40 to KSh. 0.40	Super Petrol	134.72	-5.00	11.28	-10.44
	Diesel	115.60	-5.00	14.61	-13.53
	Total				**-23.97**

Estimated Price and Revenue Implications from a reduction in Value Added Tax for Liquefied Petroleum Gas

6. The following are the key underlying assumptions in determining the price and revenue implications:
    i. The average vatable amount for LPG for FY 2021/2022 will be relatively equal to the vatable amount for August 2021.
    ii. The total volume of LPG consumed in FY 2021/2022 will be relatively equal to that for the FY 2020/2021.

7. Table 9 provides a comparison of the estimated reductions in LPG prices and revenue loss due to a reduction in VAT. If VAT is reduced from 16% to 8%, the government is likely to lose revenues amounting to KSh. 4.69 billion while the LPG prices reduce by KSh. 166.94 per 13kg of gas. If VAT is reduced from 16% to 4%, the revenue loss increases to KSh. 7.03 billion while LPG prices reduces by KSh. 250.41 per 13kg of gas. If VAT is reduced from 16% to 0% (zero rated), the revenue loss increases to KSh. 9.38 billion while LPG prices reduces by KSh. 333.88 per 13kg of gas.

Table 9: Comparison of the impact of a reduction in Value Added Tax (VAT)

Scenarios	**National average price**	**Estimated Reduction in price**	**Estimated Revenue for FY 2021/22**	**Estimated Revenue Loss**
	KSh./13kg gas	**KSh./13kg gas**	**Billions of KSh.**	**Billions of KSh.**
Reduction of VAT from 16% to 8%	2,420.64	-166.94	9.38	-4.69
Reduction of VAT from 16% to 4%	2,420.64	-250.41	9.38	-7.03
Reduction of VAT from 16% to 0%	2,420.64	-333.88	9.38	-9.38

PART SIX

6 COMMITTEE RECOMMENDATIONS

The Committee having considered the stakeholders' comments and from the above observations and scenarios recommends as follows, THAT—

1. The following taxes and levies charged on fuel be amended as follows:
   i. **Reduce the Petroleum Development Levy charged on Super Petrol and Diesel from KSh. 5.40 to KSh. 2.90**. Consequently:
      a. Revoke the Petroleum Development Levy Order, 2020 (Legal Notice No. 124 and 174 of 2020); and
      b. Amend the Petroleum Development Fund Act, 1991 by providing the amount that shall be charged to the PDL per liter of Super Petrol and Diesel.

   ii. **Reduce the Value Added Tax from 8% to 4%**. Consequently:
      a. Amend the Value Added Tax Act, 2015 to reflect the change in the tax rate for petroleum and petroleum products;
      b. The National Treasury should prepare Supplementary Estimates for consideration which shall reflect the reduction in revenue occasioned by the amendment.

   iii. **Reduce the Value Added Tax rate on LPG from 16% to 8%**. Consequently:
      a. Amend the Value Added Tax Act, 2015 to reflect the change in the tax rate for petroleum and petroleum products.
      b. The National Treasury should prepare Supplementary Estimates for consideration which shall reflect the reduction in revenue occasioned by the amendment.

   iv. **Reduce the gross margins of oil marketing companies by KSh. 3 from KSh. 12 per litre to KSh. 9** per litre. Consequently:
      a. Amend the Energy (Petroleum Pricing) Regulations, 2010 by deleting the Third Schedule; and
      b. Amend the Petroleum Development Act, 2019 by inserting the Third Schedule to the Energy (Petroleum Pricing) Regulations, 2010.

   v. **Waive inflation adjustment on fuel for FY2021/22.** Consequently:
      a. Amend the Excise Duty Act, 2015 to reflect the amendment; and
      b. Inflation adjustment on fuel shall be done biennially and shall be determined by the National Assembly through the Finance Bill.

(*The above amendments are contained in the Bill that is annexed to the Report*).

2. The National Assembly amends the Petroleum Development Levy Act, 1991 to provide for the following:
   i. The Fund shall be managed by a Board similar to the Roads Maintenance Levy;
   ii. Specificity that the Fund shall be used for stabilization of fuel prices and for matters relating to the development of common facilities for distribution or testing oil products; and
   iii. Establish a Formula for distribution of money from the Fund to oil marketing companies.

(*The above amendments are contained in the Bill that is annexed to the Report*).

3. The National Assembly amends the Statutory Instruments Act, 2013 to require that all regulations affecting taxes, levies and fees be approved or rejected by the whole House and not the Committee on Delegated Legislation.

(*The above amendment is contained in the Bill that is annexed to the Report*).

4. The Ministry of Petroleum and Mining and the Energy and Petroleum Regulatory Authority commences the process of reviewing current pricing formula with a view to ensuring all the parameters in the current formula can be accounted for and to determine whether the OMCs margins are justifiable.

5. The National Treasury immediately upon adoption of this Report starts the process of reverting the KSh. 18.1 billion that was misapplied back to the Petroleum Development Levy Fund for purposes of stabilization of fuel prices.

6. The National Treasury, Ministry of Petroleum and Mining and EPRA, within two months after adoption of this Report, gazettes the Petroleum Consolidated Fund and Petroleum Strategic Stocks Regulations in line with Section 107 of the Petroleum Act, 2019.

7. The Kenya Ports Authority fast tracks the completion of the Kipevu Oil Terminal II in order to reduce or eliminate the demurrage costs accruing to the cost of fuel.

8. The fuel pricing formula be amended to make demurrage a standalone factor of calculation of the price of fuel as opposed to the current scenario where it is factored in the landing costs.

9. The number of days that a ship can stay at the KOT be specified as is the case with Shimanzi Oil Terminal in order to reduce the amount of demurrage paid per ship.

SIGNED.. DATE...12/10/2021...........................

HON. GLADYS WANGA, CBS, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

THE NATIONAL ASSEMBLY

DATE: 12 OCT 2021 | DAY: Tuesday

TABLED BY: G. Wanga (Chair) DC on Finance & Planning.

CLERK-AT THE-TABLE: G. Gazembe, R. Tiampati

ANNEXURES

1. The Bill containing amendments to statutes proposed by the Committee
2. Adoption Schedule
3. Minutes of the 74th Sitting
4. Minutes of the 73rd Sitting
5. Minutes of the 72nd Sitting
6. Minutes of the 71st Sitting
7. Minutes of the 70th Sitting
8. Minutes of the 69th Sitting
9. The Petroleum Development Levy Order (Legal Notice No. 124 and 174 of 2020)
10. The Energy (Petroleum Pricing) Regulations, 2010
11. Summons Ref. No. NA/DDC/F&NP/2021/59 which was delivered on 7th October, 2021
12. Ref. No. NA/DDC/F&NP/2021/57
13. Ref. No. NA/DDC/F&NP/2021/53
14. Demurrage for the period of January to June 2021
15. The Newspaper Adverts

PETROLEUM PRODUCTS' (TAXES AND LEVIES) (AMENDMENT) BILL, 2021

A Bill
for

AN ACT of Parliament to amend various petroleum products' tax and levies related laws, and for connected purposes

ENACTED by the Parliament of Kenya, as follows-

Short title.

1. The Act may be cited as the Petroleum Products' (Taxes and Levies) (Amendment) Bill, 2021.

Amendment of section 198 of No.1 of 2019

2. The Energy Act, 2019 is amended in section 198 by inserting the following subsection immediately after subsection (2)-

(3) The Cabinet Secretary may by notice in the Gazette amend the Sixth Schedule to the Act.

(4) The notice under subsection (3) shall be laid before the National Assembly within seven days of publication.

(5) The National Assembly shall, within twenty-eight sitting days from the date of receipt of the notice under subsection (4), consider the notice and make a resolution either to approve or reject the notice.

3. The Energy Act, 2019 is amended in section 224 by inserting the following new subsection immediately after subsection (2)-

LN 196/2010

(3) The Energy (Petroleum Pricing) Regulations, 2010 are hereby revoked.

4. The Energy Act, 2019 is amended by inserting the following new schedule immediately after the Fifth Schedule-

SIXTH SCHEDULE
PETROLEUM PRICING
PART A

1. The Maximum wholesale prices and the retail pump prices of petroleum products at a wholesale depot or retail dispensing site shall be determined in accordance with the formula set out in this schedule.

2. The determined prices shall become effective on the 15th day of every calendar month and shall remain in force until the 14th day of the following calendar month.

3.The maximum wholesale and retail pump prices of petroleum products in shillings per litre shall be determined as follows-

(a) wholesale prices

For super petrol, regular, kerosene or automotive diesel, the formula shall be-

$P_w = C_U(1+L_P+L_d) + K(1+L_d) + m_w$

Where-

P_w = the maximum wholesale price for super petrol, kerosene or automotive diesel;

C_u= the weighted average cost in shillings per litre ex the Kenya Petroleum Refineries Limited (KPRL) and ex Kipevu Oil Storage Facility (KOSF);

K= the transportation cost from Mombasa to the nearest wholesale depot, which is made up of x percent of pipeline tariff (K_{pl}) and (100-x) percent of road bridging cost (K_{rd});

L_p= the allowed losses in the pipeline;

L_d= the allowed losses in the depot;

M_w= the allowed oil marketing company's gross wholesale margin

(b) Retail Pump Prices

For super petrol, regular petrol, kerosene or automotive diesel, the formula shall be-

$P_r = P_w + m_r + z$

Where,

P_r = the maximum retail pump price of super petrol, regular petrol, kerosene or automotive diesel applicable, in shillings per litre;

m_r = the allowed maximum retail gross margin

z = the delivery rate from the nearest wholesale depot to a retail dispensing site in shillings per litre;

4.The weighted average cost in shillings per litre ex the Kenya Petroleum Refineries Limited (KPRL) and ex the Kipevu Oil Storage Facility (KOSF) (C_u) shall be calculated using the following formula-

$$C_u = \frac{\sum V_{irp}(C_{irp} + T + F) + \sum V_{crp}(C_{crp} + T -}{\sum(V_{irp} + V_{crp})}$$

Where-

V_{irp} = the volume, in litres, of a cargo of a refined petroleum product imported through the open tender system and discharged at the port of Mombasa from the 10th day of the previous month to the 9th day of the pricing month;

C_{irp} = the unit cost of a cargo of a refined petroleum product imported through the open tender system and discharged at the port of Mombasa from the 10th day of the previous month to the 9th day of the pricing month, in shillings per litre;

V_{crp} = the volume, in litres of petroleum product yield per month from crude refined at Kenya Petroleum Refineries Limited for the previous one calendar month;

C_{crp} = the calculated unit cost of a petroleum product yielded from crude refilled at the Kenya Petroleum Refineries Limited per month for the previous one calendar month in Shillings per Litre;

T = the total taxes and levies for petroleum products per shilling per litre which shall be calculated as follows-

$T= t_{cd}+t_{rml}+t_{pdl}+t_{prl}$

Where-
t_{ed}= Excise Duty;
t_{rml} = Road Maintenance Levy;
t_{pdl} = Petroleum Development Levy;
t_{prl} = Petroleum Regulation Levy;
S_d = Excise Duty Remission

5. The unit cost of imported refined petroleum products (C_{crp}) shall be determined in accordance with the calculation used in the open tender system for importation of petroleum products.

6. The unit cost of petroleum products obtained from crude oil refined at the Kenya Petroleum Refineries Limited I*ccrp* - shall be the sum of landed cost of crude oil, refinery fees, inventory financing costs and insurance costs for the crude imports allocated to the refinery approved product yields, benchmarked to the cost of importation of the same refined products.

7. The average mean exchange rate of leading commercial banks selected by the Commission on the last discharge date shall be used in converting the imported refined petroleum products and crude oil costs determined under paragraphs 5 and 6 from foreign currency to Kenya Shillings.

8. The factors K, L_n, L_d, m_w, z, x shall be determined by the Authority.

9. The Authority may review the calculation of the maximum wholesale and retail pump prices of petroleum products determine under paragraph 3 as and when it may deem it fit for the purposes of monitoring compliance.

10. The Authority shall publish for general information the maximum wholesale and retail pump prices.

11. The Cabinet Secretary may by notice in the Gazette review the formula specified in this Schedule.

12. The notice under paragraph 11 shall be laid before the National Assembly within seven days of publication.

13.The National Assembly shall, within twenty-eight sitting days from the date of receipt of the notice under paragraph 11, consider the notice and make a resolution either to approve or reject the notice.

PART B

Pipeline tariff, Delivery rates and Bridging rates and X-factor

		Location	Rate- KES/Litre
1.	Pipeline Tariff *K*	Mombasa Nairobi Nakuru Eldoret Kisumu	0.000 2.250 plus VAT 3.095 plus VAT 3.980 plus VAT 3.975 plus VAT
	Delivery Rates (Z)	Within Town (40km Radius) Outside Town	0.48 plus VAT KES 10.85 per Kilometer per 1000 Litres
	Bridging Rates *K rd*	Mombasa to Nairobi, Nakuru, Kisumu and Eldoret	KES 8.14 per km per 1000 Litres plus VAT
	x Factor	Nairobi, Nakuru, Kisumu and Eldoret.	80% - Super Petrol and Automotive Diesel 100% - Regular Petrol and KerosenE

PART C

Maximum allowed operational losses

Product	Pipeline (L_p)	Depots (L_d)
Super Petrol	0.01%	0.01%
Regular Petrol	0.01%	0.01%
Kerosene	0.01%	0.01%
Automotive Diesel	0.01%	0.01%

PART D

Maximum Allowed Margins (*M,,+M,,*)

Product	Maximum Allowed Margins (*M mr) (KES/Litre.)*
Super Petrol	9.00
Regular Petrol	9.00
Kerosene	9.00
Automotive Diesel	9.00

Amendment of section 10 of No.23 of 2015.

5. Section 10 of the Excise Duty Act, 2015 is amended in subsection (1) by deleting the words "every year" and substituting therefor the words "every two years".

Justification:
The amendment is to provide for the inflation adjustment to be done once every two years.

Amendment of the First Schedule to No. 23 of 2015.

6. The Excise Duty Act, 2015 is amended in Paragraph 2(1) of the First Schedule paragraph 2 (1) by inserting the following proviso-

Provided that the provisions of this paragraph shall not apply to the petroleum products set out in paragraph 1 of Tariff descriptions 2710.12.20, 2710.19.22, 2710.19.31 and 2710.19.32.

Justification
The amendment is to exempt petroleum products from inflation adjustment.

Amendment of section 2 of No.1 of 2019

7. The Petroleum Development Fund Act, 2019 is amended in section 2 by inserting the following new definitions in the proper alphabetical sequence-

"Authority" means the Energy and Petroleum Regulatory Authority established under the Energy Act, 2019;

"Cabinet Secretary" means the Cabinet Secretary for the time being in charge of petroleum;

"Levy" means the Petroleum Development Levy established under section 3;

Amendment of section 3 of No. 4 of 1993.

8. The Petroleum Development Fund Act, 1993 is amended by deleting section 3 and substituting therefor the following new section-

Petroleum Development Levy.

3. (1) There shall be paid a levy on all petroleum fuels consumed in Kenya with a tariff code and description specified in the first and second columns, respectively, of the Schedule, at the rates specified in relation thereto in the third column of that Schedule.

(2) The levy shall be paid into the Petroleum Development Fund.

(3) An oil marketing company shall on or before the last day of the month immediately following the month in which he becomes an oil marketing company register with the collector as a remitter.

(4) A person registered as a remitter who ceases either permanently or temporarily to be a marketeer shall, within thirty days of so ceasing, notify the collector accordingly in writing specifying the reasons for his ceasing to be a remitter.

(5) The remitter shall pay the levy to the collector immediately at the time of importation of petroleum fuel or at the time of its delivery from the refinery.

(6) The collector shall maintain records of importation and submit to the Cabinet Secretary a monthly return of payment of the levy received during the month.

(7) The collector shall remit to the Petroleum Development Fund all levy paid during the month.

(8) Without prejudice to any other form of remedy, any monies payable under this section that remains unpaid for a period of thirty days after the date that the same ought to be paid shall be recoverable summarily by the collector as a civil debt due and payable to the Petroleum Development Fund.

(9) Notwithstanding the provisions section, if a remitter fails to pay an amount payable by way

of a levy within the time prescribed by this section a sum equal to five per cent of that amount shall be added to the amount for each month or part of a month thereafter that the amount due remains unpaid.

(10) Any person who fails to comply with any provision of this section shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding one year, or to both.

Justification
Anchoring the provisions on the Petroleum Development Levy in the Act, rather than leaving it to regulations.

Amendment of section 4 of No. 4 of 1993.

9. The Petroleum Development Fund Act is amended in section 4 by-

(a) deleting subsection (1) and substituting therefor the following new sub-section-

(1) There shall be established a fund to be known as the Petroleum Development Fund which shall consist of –

(a) moneys appropriated by Parliament for that purpose;

(b) all monies received in respect of the Petroleum Development Levy.

(b) deleting subsection (3);

(c) deleting subsection (4) and substituting therefor-

(4) The levy shall be used for –

(a) matters relating to the development of the oil industry;

(b) development of common petroleum facilities for distribution or testing of oil products;

(c) stabilization of local pump prices in instances of spikes occasioned by high landed costs above a threshold determined by the Authority:

Provided that the funds are not used for purposes in competition with the private sector.

(d) by inserting the following new subsection immediately after subsection (4)-

(4a) The Cabinet Secretary may by writing to the administrator, request for a draw down from the Petroleum Development Fund to stabilize local petroleum pump prices where he deems it necessary.

Insertion of new section in No. 4 of 1993.

10. The Petroleum Development Fund Act is amended by inserting the following section immediately after section 4-

Petroleum Development Fund Board.

4A. (1) There is established a Petroleum Development Fund Advisory Board.

(2) The Advisory Board shall be an unincorporated body consisting of—

(a) one person appointed by the Cabinet Secretary for the time being responsible for Finance;

(b) one person appointed by the Cabinet Secretary for the time being responsible for matters related to Energy;

(c) one person appointed by the Cabinet Secretary for the time being responsible for Petroleum; and

(d) a representative of the Authority.

(3) The functions of the Advisory Board –

(a) shall approve withdrawals out of the Fund; and

(b) may impose conditions on the use of any expenditure authorized and may impose any reasonable prohibition, restriction or any other requirement on the use of such expenditure.

Amendment of section 5 of No. 4 of 1993

11. The Petroleum Development Fund Act is amended in section 5 by deleting paragraph (b).

Insertion of new section in No. 4 of 1993

12. The Petroleum Development Fund Act is amended by inserting the following section immediately after section 6-

Revocation of *LN.124/2020* and *LN. 174/2020*

7. (1) The Petroleum Development Levy Order, 2020 is revoked.

(2) The Petroleum Development Levy Order, 2020 is revoked.

Justification:

Revocation of LN.124/174 of 2020 in view of clause 6 of this Bill.

Insertion of Schedule in No. 4 of 1993

13. The Petroleum Development Fund Act, 1993 is amended by inserting the following schedule –

FIRST SCHEDULE

Tariff Code	*Description*	*Rate of Levy Kshs.*
2709.00.10	Condensates	2900.00 per 1,000 litres at 20°C
2710.00.21	Aviation spirit (gasoline)	2900.00 per 1,000 litres at 20°C
2710.00.22	Motor spirit (gasoline), premium	2900.00 per 1,000 litres at 20°C
2710.00.23	Motor spirit (gasoline), regular	2900.00 per 1,000 litres at 20°C
2710.00.24	Jet fuel (spirit type)	2900.00 per 1,000 litres at 20°C
2710.00.25	Special boiling point spirit and white spirit	2900.00 per 1,000 litres at 20°C
2710.00.29	Other light petroleum oils and preparations	2900.00 per 1,000 litres at 20°C
2710.00.32	Kerosene	400.00 per 1,000 litres at 20°C
2710.00.39	Other medium petroleum oils and preparations	2900.00 per 1,000 litres at 20°C
2710.00.41	Diesel oil (industrial, heavy, black, for low speed marine and stationery engines)	2900.00 per 1,000 litres at 20°C
2710.00.43	Other gas oil	2900.00 per 1,000 litres at 20°C
2710.00.44	Residual fuel oils (marine furnace similar fuel oils engines) of 125 cSt	2900.00 per 1,000 litres at 20°C
2710.00.45	Residual fuel oils of 180 cSt	2900.00 per 1,000 litres at 20°C

2710.00.46	Residual fuel oils of 280 cSt	2900.00 per 1,000 litres at 20°C
2710.00.47	Other residual fuel oils	2900.00 per 1,000 litres at 20°C
2711.11.00	Liquefied natural gas	2900.00 per 1,000 litres at 20°C
2711.12.00	Liquefied propane	2900.00 per 1,000 Kg at 20°C
2711.13.00	Liquefied butanes	2900.00 per 1,000 Kg at 20°C
2711.14.00	Liquefied ethylene, propylene, butylenes and butadiene	2900.00 per 1,000 Kg at 20°C
2711.19.00	Other liquefied petroleum gases	2900.00 per 1,000 Kg at 20°C
2711.21.00	Natural gas in gaseous state	2900.00 per 1,000 Kg at 20°C
2711.29.00	Other petroleum gases	2900.00 per 1,000 Kg at 20°C
2713.20.00	Petroleum bitumen	400.00 per 1,000 Kg at 20°C
2713.90.00	Other residues of petroleum oil or oils obtained from bituminous minerals	2900.00 per 1,000 Kg at 20°C
2714.10.00	Bituminous or oil shale and tar sands	2900.00 per 1,000 Kg at 20°C
2714.00.00	Bitumen and asphalt or asphalts and asphaltic rocks	2900.00 per 1,000 Kg at 20°C
2715.00.00	Bituminous mixtures	2900.00 per 1,000 Kg at 20°C

Justification:
To set Petroleum Development Levy at 2.90sh

Amendment of No. 23 of 2013.

14. The Statutory Instruments Act, 2013 is amended in section 15 by inserting the following subsection immediately after subsection (3)-

(4) Without prejudice to the provisions of section 12 and this section, any statutory instrument which contains provisions dealing with taxes, levies or fees, or has the effect of imposition of a charge on a public fund or variation or repeal of such charge, the National Assembly shall, within twenty-eight sitting days from the date of receipt of the notice under section 11, consider the notice and make a resolution either to approve or reject the notice.

Justification: to require that all regulations affecting taxes, levies and fees be approved or rejected by the whole House and not the Committee on delegated.

Amendment of section 5 of No. 35 of 2013

15. Section 5 of the Value Added Tax Act,2013 is amended in subsection 2-

(a) by deleting the word "eight" appearing in paragraph (aa) and substituting therefor the word "four";

Justification:
Reduction on VAT on petroleum products from 8% to 4%.

(b) by inserting the following new paragraph immediately after paragraph (aa)-

(ab) in the case of the supply of liquified petroleum gas including propane, eight percent, effective on the date of assent.

Justification
Reduction of VAT on LPG from 16% to 8%.

MEMORANDUM OF OBJECTS AND REASONS

This is a miscellaneous Bill to amend several tax and levies related laws.

The object of this Bill is to review taxes and levies on petroleum products, with a view to making the products cheaper. The global prices have been on the rise in the recent months, hence to bring the price of fuel down, there is need to reduce the taxes and levies applicable to petroleum products.

Further, the Bill proposes to restructure the Petroleum Development Fund, with particular reference to specifying the purposes for which the Petroleum Development Levy may be used.

The Bill further makes amendments to the Statutory Instruments Act, to require that all statutory instruments that impose taxes and levies are positively or negatively approved by the National Assembly.

Clause 1 sets out the short title.

Clause 2 amends the Energy Act to provide that the Cabinet Secretary may amend the Sixth Schedule to the Act and that the notice should be tabled in the National Assembly.

Clause 3 of the Bill provides for revocation of the Energy (Petroleum Pricing) Regulations, 2010 in view of **clause 4** which has moved the provisions of the Regulations to the Sixth Schedule.

Clause 5 of the Bill is amendment to the Excise Duty Act, to provide that Excise Duty inflation adjustment shall be done biennially.

Clause 6 and 7 are amending the Petroleum Development Fund Act to provide for the Petroleum levy and to anchor provisions which were previously contained in the Petroleum Development Levy Order, 2019.

Clause 8 is amending provisions on the Petroleum Development Fund to harmonise the provisions with clause 7. Further, it specifies the purposes the levy shall be used for.

Clause 9 establishes the Petroleum Development Fund Board whose major function is to approve withdrawals from the Fund.

Clause 10 is deletion of a function which was previously assigned to the administrator of the Fund but has not been assigned to the Board.

Clause 11 is revocation of the Petroleum Development Levy Orders.

Clause 12 amends the Petroleum Development Act by inserting a new schedule to prescribe the Petroleum Development Levy at shs 2.90

Clause 13 is an amendment to the Statutory Instruments Act to require that all statutory instruments that have the effect of imposing or varying taxes and levies should be approve by the National Assembly.

Clause 14 amends the Value Added Tax Act by reducing the VAT applicable to petroleum products and liquified petroleum gas to 4% and 8% respectively.

Statement of delegation of legislative powers and limiting fundamental rights and freedoms

The Bill does not contain any provision limiting any fundamental rights or freedoms or delegating legislative powers.

Statement on the Bill concerning county governments

The Bill does not concern county governments in terms of Article 110(1) (a) as it does not affect the functions and power of county governments as set out in the Fourth Schedule.

Statement that the Bill is a money bill, within the meaning of Article 114 of the Constitution.

The enactment of this Bill may occasion additional expenditure of public funds.

Dated the 12th day of October, 2021.

GLADYS WANGA

Member of Parliament

Section 198 of the Energy Act, which it is proposed to amend-

198. Power of Cabinet Secretary to make regulations

(1) The Cabinet Secretary upon recommendation by the Authority may, make regulations for carrying out the provisions of this Act by notification, in the *Gazette*.

(2) In particular, and without prejudice to the generality of the foregoing, such regulations may provide for all or any of the following matters—

(a) the qualifications, criteria and conditions subject to which a person may be accredited as energy auditors and energy managers and the procedure for such accreditation;

(b) the energy consumption norms and standards for designated consumers;

(c) different norms and standards for different designated consumers;

(d) the form and manner and the time within which information with regard to energy consumed and the action taken on the recommendations of the accredited energy auditor be furnished;

(e) the manner and the intervals or time in which the energy audit shall be conducted;

(f) particulars required to be displayed on labels and the manner of their display;

(g) the manner and the intervals of time for conducting energy audit by an accredited energy auditor;

(h) the form and manner in which the status of energy consumption be submitted;

(i) form and manner for preparation of the scheme and its implementation;

(j) energy efficiency and conservation building codes;

(k) prescribing the procedure for issuing the energy savings certificate;

(l) value of per metric ton of oil equivalent of energy consumed;

(m) matters relating to inspection;

(n) manner of holding inquiry;

(o) form of and fee for filing such appeal;

(p) publication of energy statistics or information;

(q) the type, manner and form of energy data and information that must be published;

(r) minimum levels of energy efficiency in each sector of the economy;

(s) steps and procedures necessary for the application of energy efficient technologies and procedures;

(t) labelling for energy efficiency purposes of household appliances, devices and motor vehicles;

(u) prohibition of the manufacture, or importation or sale of electrical and electronic products and fuel burning appliances for reasons of poor energy efficiency;

(v) standards and specifications for energy carriers;

(w) energy efficiency standards for specific technologies, processes, appliances, devices, motor vehicles and buildings;

(x) energy conservation measures to be used during energy shortage, which may include but not limited to the amount of energy to be saved, the duration for such measures and penalties associated with non-compliance to such measures;

(y) penalties and sanctions to be imposed by the Authority; and

First Schedule of the Excise Duty Act, which it is proposed to amend

· 2.(1) The specific rates of excise duty on excisable goods specified in this Schedule shall be adjusted for inflation at the beginning of every financial year in accordance with this paragraph.

(2) Each rate of excise duty specified in the table in paragraph 1 shall be replaced by the rate of excise duty computed by reference to the following formula—

A(1+B)

where —

A is the rate of excise duty on the day immediately before the adjustment day; and

B is the adjustment factor for the adjustment day, calculated as the average rate of monthly inflation of the preceding financial year.

Section 2 of the Petroleum Development fund Act, which it is proposed to amend-

Interpretation

In this Act, unless the context otherwise requires—

"Commissioner" means—

(a) the Commissioner-General appointed under section 11(1) of the Kenya Revenue Authority Act (Cap. 469); or

(b) with respect to powers or functions that have been delegated under section 11(4) of the Kenya Revenue Authority Act (Cap. 469) to another Commissioner, that other Commissioner;

"financial year" means the period of twelve months ending on the 30th June in each year;

"Fund" means the Petroleum Development Fund established under section 4;

"officer administering the Fund" means the Permanent Secretary to the Treasury or any person appointed by him in writing for that purpose.

Section 3 of the petroleum Development Fund Act, which it is proposed to amend-

Petroleum development levy

3.(1) The Minister may make a petroleum development levy order imposing a levy on all petroleum fuels consumed in Kenya to be collected by the Commissioner and the order may provide for the amendment of a previous petroleum development levy order and may make different provisions in relation to different descriptions of fuel.

(2) A petroleum development levy order may contain provision as to the evidence by which a person's liability to the levy or his discharge of that liability may be established, and as to the time at which any amount payable by way of levy shall become due and manner in which it shall be recovered by the Commissioner.

(3) A person who fails to comply with any provision of a petroleum development levy order shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding one year, or to both.

Section 4 of the Petroleum Development Fund Act, which it is proposed to amend-

4.The Petroleum Development Fund

(1) There shall be established a fund to be known as the Petroleum Development Fund which shall consist of moneys appropriated by Parliament for that purpose.

(2) The Fund shall be administered by the Permanent Secretary to the Treasury or any person appointed by him in writing for that purpose.

(3) All moneys received in respect of the petroleum development levy shall be paid into the Fund.

(4) There shall be paid out of the Fund such monies as are necessary for the development of common facilities for the distribution or testing of oil products and for matters relating to the development of oil industry as the Minister may direct:

Provided that the funds are not used for purposes in competition with the private sector.

(5) The expenditure from the Fund shall be on the basis and limited to the annual budget which shall be submitted to the Treasury for approval before the beginning of the financial year to which the budget relates.

(6) All receipts, savings and accruals of the Fund and the balance of the Fund at the close of each financial year shall not be paid to the Consolidated Fund, but shall be retained for the purpose for which the Fund is established.

Section 5 of the Petroleum Development Fund Act, which it is proposed to amend-

5. Powers and functions of the officer administering the Fund

The officer administering the Fund shall—

(a) supervise and control the administration of the Fund;

(b) if he thinks fit, impose conditions on the use of any expenditure authorized by him or on his behalf and may impose any reasonable prohibition, restriction or any other requirement on the use of such expenditure;

(c) cause to be kept all proper books of accounts and other books and records related to the Fund; and

(d) prepare, sign and transmit to the Controller and Auditor-General an account of the fund in accordance with section 18(2) of the Exchequer and Audit Act

Section 15 of the Statutory Instruments Act, which it is proposed to amend-

15. Report to Parliament

(1) The Committee shall make a report to Parliament containing only a resolution that the statutory instruments that stands permanently referred to the Committee be revoked.

(2) Where the Committee does not make the report referred to in subsection (1) within twenty eight sitting days after the date of referral of the statutory instrument to the Committee under section 12, or such other period as the House may, by resolution approve, the statutory instrument shall be deemed to have fully met the relevant considerations referred to in section 13.

(3) Despite the provision of this Act or any other written law, where a time is prescribed for doing an act or taking a proceeding by the National Assembly relating to the handling of a statutory instrument, the National Assembly may, by resolution, extend that time by a period not exceeding twenty-one days.

Section 5 of the Value Added Tax Act, 2013, which it is proposed to amend-

5. Charge to tax

(1) A tax, to be known as value added tax, shall be charged in accordance with the provisions of this Act on—

(a) a taxable supply made by a registered person in Kenya;

(b) the importation of taxable goods; and

(c) a supply of imported taxable services.

(2) The rate of tax shall be—

(a) in the case of a zero-rated supply, zero per cent;

(aa) in the case of goods listed in section B of Part I of the First Schedule, eight percent of the taxable value, effective from the date of assent; or

(b) in any other case, fourteen per cent of the taxable value of the taxable supply, the value of imported taxable goods or the value of a supply of imported taxable services.

(3) Tax on a taxable supply shall be a liability of the registered person making the supply and, subject to the provisions of this Act relating to accounting and payment, shall become due at the time of the supply.

(4) The amount of tax payable on a taxable supply, if any, shall be recoverable by the registered person from the receiver of the supply, in addition to the consideration.

(5) Tax on the importation of taxable goods shall be charged as if it were duty of customs and shall become due and payable by the importer at the time of importation.

(6) Tax on the supply of imported taxable services shall be a liability of any person receiving the supply and, subject to the provisions of this Act relating to accounting and payment, shall become due at the time of the supply.

(7) The provisions of subsection (1) shall be applicable to supplies made over the internet or an electronic network or through a digital marketplace.

(8) The Cabinet Secretary shall make regulations to provide the mechanisms for implementing the provisions of subsection (7).

(9) For the purposes of this section, "**digital marketplace**" means an online platform which enables users to sell or provide services, goods or other property to other users.

REPUBLIC OF KENYA

NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING

ADOPTION SCHEDULE

ADOPTION SCHEDULE FOR THE REPORT ON THE INQUIRY INTO THE CAUSE OF INCREASE IN PRICES OF PETROLEUM AND PETROLEUM PRODUCTS

DATE:

NAME	SIGNATURE
1. HON. GLADYS WANGA, CBS, MP – CHAIRPERSON	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRPERSON	
3. HON. JIMMY O. ANGWENYI, MGH, MP	
4. HON. CHRISTOPHER OMULELE, CBS, MP	
5. HON. SHAKEEL SHABBIR AHMED, CBS, MP	
6. HON. DANIEL E. NANOK, MP	
7. HON. (DR.) CHRISTINE OMBAKA, MP	
8. HON. ANDREW A. OKUOME, MP	
9. HON. DAVID M. MBONI, MP	
10. HON. FRANCIS KURIA KIMANI, MP	
11. HON. JOSEPH M. OYULA, MP	
12. HON. JOSHUA KANDIE, MP	
13. HON. STANLEY M. MUTHAMA, MP	
14. HON. EDITH NYENZE, MP	
15. HON. CATHERINE WARUGURU, MP	
16. HON. JAMES GICHUHI MWANGI, MP	
17. HON. (PROF.) MOHAMUD SHEIKH MOHAMED, MP	
18. HON. PETER LOCHAKAPONG, MP	
19. HON. QALICHA GUFU WARIO, MP	

MINUTES OF THE 77TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN THE COMMITTEE ROOM ON FIFTH FLOOR, CONTINENTAL HOUSE ON TUESDAY, 12TH OCTOBER 2021 AT 10:00 A.M.

PRESENT

1. Hon. Gladys Wanga, CBS, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, CBS, MP
5. Hon. Andrew A. Okuome, MP
6. Hon. David M. Mboni, MP
7. Hon. Edith Nyenze, MP
8. Hon. Francis K. Kimani, MP
9. Hon. James Gichuhi Mwangi, MP
10. Hon. (Prof.) Mohamud Sheikh Mohamed, MP
11. Hon. Peter Lochakapong, MP
12. Hon. Qalicha Gufu Wario, MP

ABSENT WITH APOLOGY

1. Hon. Shakeel Shabbir Ahmed, CBS, MP
2. Hon. Daniel E. Nanok, MP
3. Hon. (Dr.) Christine Ombaka, MP
4. Hon. Joseph M. Oyula, MP
5. Hon. Joshua C. Kandie, MP
6. Hon. Stanley M. Muthama, MP
7. Hon. Catherine Waruguru, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Dr. Benjamin Ng'imor - Senior Fiscal Analyst
5. Mr. Luka Mutua - Serjeant-At-Arms
6. Ms. Christine Maeri - Audio Officer
7. Ms. Hannah Mwangi - Intern

ENERGY AND PETROLEUM REGULATORY AUTHORITY (EPRA)

1. Mr. Daniel Kiptoo Bargoria - Director General
2. Mr. Edward Kinyua - Director, Petroleum and Gas

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. **Meeting with the Ministry of Petroleum and Mining to discuss demurrage charges on petroleum and petroleum products**
5. Any Other Business
6. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/351: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 10:26 a.m. and a prayer was said. The Chairperson then welcomed the Director General EPRA to explain to the meeting why the CS had not honored the Committee's summons to appear for the meeting.

MIN.NO.NA/F&NP/2021/352: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2021/353: MEETING WITH THE MINISTRY OF PETROLEUM AND MINING TO DISCUSS DEMURRAGE CHARGES ON PETROLEUM AND PETROLEUM PRODUCTS

Mr. Bargoria informed the meeting that the CS was not able to appear before the Committee because he was attending to official duty in South Sudan.

Members were concerned that despite the urgency of the matter under consideration and issuance of summons to appear before the Committee, the CS had failed to attend the meeting. Consequently, the Committee resolved that the CS should pay a fine of KSh. 500,000 pursuant to section 19(1) of the Parliamentary Powers and Privileges Act and Standing Order 191A.

Owing to the limited time within which the Committee was supposed to table the report, the Committee resolved to listen to the presentation by the Director General EPRA in order to finalise on the report.

The Chairperson invited Mr. Bargoria to make their submission. Mr. Bargoria informed the Committee on the demurrage that had been charged on vessels from January to June 2021. He gave details of the vessels, date of arrival, last date of discharge, demurrage amount and the demurrage paid by Kenyans on each ship per litre of fuel.

MEMBERS' DELIBERATIONS

1. On the amount of demurrage charged per ship, the meeting was informed that the amount charged per ship is determined by the Charter Party Contract signed between oil importers and the ship owners. The charges are as follows: for a ship of 44,999 MT and below, demurrage of USD 25,000 is paid per day pro rata; for a ship of between 45,000 MT and 79,999 MT, demurrage of USD 31,000 is paid per day pro rata; and for a ship of between 80,000 and 159,999 MT, demurrage of USD 45,000 is paid per day pro rata.
2. On whether there is a policy providing for the number of days that demurrage can be paid on a ship, the meeting was informed that the Ministry had issued a policy that demurrage can only be paid to a vessel for ten days on Shimanzi Oil Terminal but there was no policy on the same at Kipevu Oil Terminal.

MIN.NO.NA/F&NP/2021/354: ADOPTION OF THE REPORT ON ON INQUIRY INTO THE CAUSE OF INCREASE IN PRICES OF PETROLEUM AND PETROLEUM PRODUCTS

The report was adopted having been proposed by Hon. Edith Nyenze, MP and seconded by Hon. James Gichuhi Mwangi, MP.

The Committee agreed on the observations and recommendations contained in the report.

MIN.NO.NA/F&NP/2021/355: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 1.03 p.m. The next meeting will be held on notice.

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)

SIGNED...**DATE**....12/10/2021...

MINUTES OF THE 75TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN THE COMMITTEE ROOM ON SECOND FLOOR, CONTINENTAL HOUSE ON WEDNESDAY, 6TH OCTOBER 2021 AT 10:00 A.M.

PRESENT

1. Hon. Gladys Wanga, CBS, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Shakeel Shabbir Ahmed, CBS, MP
5. Hon. Daniel E. Nanok, MP
6. Hon. (Dr.) Christine Ombaka, MP
7. Hon. Andrew A. Okuome, MP
8. Hon. David M. Mboni, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. Edith Nyenze, MP
11. Hon. James Gichuhi Mwangi, MP
12. Hon. (Prof.) Mohamud Sheikh Mohamed, MP
13. Hon. Peter Lochakapong, MP
14. Hon. Qalicha Gufu Wario, MP

ABSENT WITH APOLOGY

1. Hon. Christopher Omulele, CBS, MP
2. Hon. Francis K. Kimani, MP
3. Hon. Joseph M. Oyula, MP
4. Hon. Stanley M. Muthama, MP
5. Hon. Catherine Waruguru, MP

INATTENDANCE
SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Dr. Benjamin Ng'imor - Senior Fiscal Analyst
5. Mr. Chelang'a Maiyo - Research Officer II
6. Mr. Luka Mutua - Serjeant-At-Arms
7. Mr. Hillary Luteshi - Audio Officer
8. Ms. Hannah Mwangi - Intern
9. Ms. Roselyne Kerubo - Intern

KENYA PETROLEUM DISTRIBUTORS ASSOCIATION

1. Mr. Joseph Karanja- Chairman
2. Mr. Okumu Okwawema- Secretary General

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. **Meeting with the Ministry of Petroleum and Mining to discuss demurrage charges on petroleum and petroleum products**
5. Any Other Business
6. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/347: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 10:30 a.m. and a prayer was said. The Chairperson then informed the meeting that the Committee had received a letter from the Ministry of Petroleum and Mining indicating that the Principal Secretary was away from office on an urgent official engagement and is therefore not able to attend the meeting. They requested that the meeting is postponed to the week beginning 18th October 2021.

MIN.NO.NA/F&NP/2021/348: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2021/349: MEETING WITH THE MINISTRY OF PETROLEUM AND MINING TO DISCUSS DEMURRAGE CHARGES ON PETROLEUM AND PETROLEUM PRODUCTS

Having been informed about the unavailability of the CS and PS Ministry of Petroleum and Mining, the meeting deliberated extensively on the matter and resolved to issue summons for the CS to appear before the Committee on Thursday, 7th October 2021 at 10.00 a.m. pursuant to S.O. 191.

The Chairperson then invited the Kenya Petroleum Distributors Association to make their submission to the Committee as they had requested the Committee to give them a chance to make a presentation.

The Kenya Petroleum Distributors Association submitted that:

1. In order to be a member of the spillage club, an oil marketer is required to pay KSh. 2.8 million with a monthly subscription;
2. To get a license to import fuel, one needs to pay one million dollars to KPC or money equivalent to 1 million litres of the products one will be dealing in;
3. EPRA has very punitive demands including a certain acreage of land before being given a license; and
4. The requirement that LPG cylinders have to be refilled by the specific company is unfair to consumers.

They noted that the above requirements make it difficult for local oil marketers to do business in the country and are favourable to multinational companies.

MIN.NO.NA/F&NP/2021/350: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 12.06 p.m. The next meeting will be held on Tuesday, 7th October 2021 at 10.00 a.m.

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)

SIGNED..**DATE**...12/10/2021...............................

MINUTES OF THE 74TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN THE BOARD ROOM ON FIRST FLOOR, RED CROSS HOUSE ON TUESDAY, 5TH OCTOBER 2021 AT 10:00 A.M.

PRESENT

1. Hon. Gladys Wanga, CBS, MP - **Chairperson**
2. Hon. Jimmy O. Angwenyi, MGH, MP
3. Hon. Christopher Omulele, CBS, MP
4. Hon. Daniel E. Nanok, MP
5. Hon. (Dr.) Christine Ombaka, MP
6. Hon. Andrew A. Okuome, MP
7. Hon. David M. Mboni, MP
8. Hon. Joseph M. Oyula, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. Edith Nyenze, MP
11. Hon. James Gichuhi Mwangi, MP
12. Hon. Peter Lochakapong, MP

ABSENT WITH APOLOGY

1. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
2. Hon. Shakeel Shabbir Ahmed, CBS, MP
3. Hon. Francis K. Kimani, MP
4. Hon. Stanley M. Muthama, MP
5. Hon. (Prof.) Mohamud Sheikh Mohamed, MP
6. Hon. Catherine Waruguru, MP
7. Hon. Qalicha Gufu Wario, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Dr. Benjamin Ng'imor - Senior Fiscal Analyst
5. Mr. Chelang'a Maiyo - Research Officer II
6. Mr. Brian Gikunda Njeru - Fiscal Analyst III
7. Mr. Luka Mutua - Serjeant-At-Arms
8. Ms. Mercy Kerubo - Audio Officer
9. Ms. Hannah Mwangi - Intern
10. Ms. Roselyne Kerubo - Intern

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. **Adoption of the Report on Petitions regarding increase in the price of petroleum and petroleum products in Kenya**
5. Any Other Business
6. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/342: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 10:17 a.m. and a prayer was said. The Chairperson then informed the meeting that the Committee had written to the Ministry of Petroleum and Mining inviting them for a meeting on Wednesday, 6th October 2021 at 10.00 a.m. to deliberate further on the issue of demurrage charges. The Committee will then use the information gathered from the meeting to make recommendations in the report on demurrage charges. It was therefore agreed that the report will be adopted after meeting with the Ministry of Petroleum and Mining.

MIN.NO.NA/F&NP/2021/343: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2021/344: MEETING TO ADOPT THE REPORT ON PETITIONS REGARDING INCREASE IN THE PRICE OF PETROLEUM AND PETROLEUM PRODUCTS

The agenda was deferred to Wednesday, 6th October 2021.

MIN.NO.NA/F&NP/2021/345: CONSIDERATION OF THE COMMITTEE RECOMMENDATIONS ON THE REPORT ON THE INQUIRY INTO THE CAUSE OF INCREASE IN PRICES OF PETROLEUM AND PETROLEUM PRODUCTS AND THE DRAFT PETROLEUM PRODUCTS' (TAXES AND LEVIES) (AMENDMENT) BILL, 2021

The Committee Clerk, Ms. Leah Mwaura, took the Committee through the draft recommendations. Members adopted the recommendations noting that their deliberations were aptly captured in the recommendations.

The Legal Counsel, Ms. Jennifer Ndeto, took the Committee through the draft Petroleum Products' (Taxes and Levies) (Amendment) Bill, 2021. Members noted that the determination of inflation adjustment on Excise Duty biennially had not been captured in the draft Bill.

MIN.NO.NA/F&NP/2021/346: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 11.05 a.m. The next meeting will be held on Wednesday, 6th October 2021 at 10.00 a.m.

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)

SIGNED..**DATE**....12/10/2021..............................

MINUTES OF THE 73RD SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN MINI CHAMBER, FIRST FLOOR, COUNTY HALL ON MONDAY, 4TH OCTOBER 2021 AT 10:00 A.M.

PRESENT

1. Hon. Gladys Wanga, CBS, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, CBS, MP
5. Hon. Daniel E. Nanok, MP
6. Hon. David M. Mboni, MP
7. Hon. Francis K. Kimani, MP
8. Hon. Joseph M. Oyula, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. Edith Nyenze, MP
11. Hon. James Gichuhi Mwangi, MP
12. Hon. Qalicha Gufu Wario, MP

ABSENT WITH APOLOGY

1. Hon. Shakeel Shabbir Ahmed, CBS, MP
2. Hon. (Dr.) Christine Ombaka, MP
3. Hon. Andrew A. Okuome, MP
4. Hon. Stanley M. Muthama, MP
5. Hon. Catherine Waruguru, MP
6. Hon. (Prof.) Mohamud Sheikh Mohamed, MP
7. Hon. Peter Lochakapong, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Dr. Benjamin Ng'imor - Senior Fiscal Analyst
5. Mr. Chelang'a Maiyo - Research Officer II
6. Mr. Brian Gikunda Njeru - Fiscal Analyst III
7. Mr. John Njoro - Serjeant-At-Arms
8. Ms. Mercy Kerubo - Audio Officer
9. Ms. Hannah Mwangi - Intern
10. Roselyne Kerubo - Intern

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. **Consideration of the Report on Petitions regarding increase in the price of petroleum and petroleum products in Kenya**
5. Any Other Business
6. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/338: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 10:29 a.m. and a prayer was said. The agenda was then adopted having been proposed by Hon. Daniel Nanok, MP and seconded by Hon. Francis Kimani, MP.

MIN.NO.NA/F&NP/2021/339: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2021/340: MEETING TO CONSIDER THE REPORT ON PETITIONS REGARDING INCREASE IN THE PRICE OF PETROLEUM AND PETROLEUM PRODUCTS

The Committee deliberated and agreed that the following taxes and levies should be altered in order to bring down the cost of fuel and LPG in the country:

1. Reduce the Petroleum Development Levy on Super Petrol and Diesel from KSh. 5.40 to KSh. 2.90;
2. Reduce VAT rate on fuel from 8% to 4%;
3. Reduce VAT rate on LPG from 16% to 8%;
4. Reduce the gross profit margin for oil marketing companies by KSh. 3 from KSh. 12 to KSh. 9;
5. Waive the inflation adjustment on Excise Duty that was supposed to be charged on petroleum and petroleum products this year; and
6. The inflation on Excise Duty shall be adjusted biennually and Members of Parliament shall have an input in it through the Finance Bill.

The Committee Secretariat was directed to:

1. make amendments to the relevant statutes capturing the above recommendations; and
2. insert a new chapter in the report capturing three scenarios on how alteration of the rates/amounts of taxes and levies will affect the revenues and prices of petroleum in the country.

(*Details of the proposed amendments are contained in Part Five of the report on the consideration of the Petitions*)

With regards to the issue of LPG in the country, the Committee deliberated and agreed that more investigations ought to be done on it and a comprehensive report on the same tabled in the House. Further, the Committee needs to investigate why the jettys on the Kipevu Oil Terminal II were altered from the original plan of four to the three that have been constructed. The issue of demurrage charges also needs to be investigated further so that the Committee can ensure that Kenyans are not paying for a cost that can be avoided.

MIN.NO.NA/F&NP/2021/341: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 2.03 p.m. The next meeting will be held on Tuesday, 5th October 2021 at 10.00 a.m.

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)

SIGNED.. **DATE** 12/10/2021..........................

MINUTES OF THE 72ND SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN MINI CHAMBER, FIRST FLOOR, COUNTY HALL ON WEDNESDAY, 29TH SEPTEMBER 2021 AT 2:30 P.M.

PRESENT

1. Hon. Gladys Wanga, CBS, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, CBS, MP
5. Hon. (Dr.) Christine Ombaka, MP
6. Hon. Andrew A. Okuome, MP
7. Hon. David M. Mboni, MP
8. Hon. Joshua C. Kandie, MP
9. Hon. Edith Nyenze, MP
10. Hon. James Gichuhi Mwangi, MP
11. Hon. Peter Lochakapong, MP
12. Hon. Qalicha Gufu Wario, MP

ABSENT WITH APOLOGY

1. Hon. Shakeel Shabbir Ahmed, CBS, MP
2. Hon. Daniel E. Nanok, MP
3. Hon. Francis K. Kimani, MP
4. Hon. Joseph M. Oyula, MP
5. Hon. Stanley M. Muthama, MP
6. Hon. Catherine Waruguru, MP
7. Hon. (Prof.) Mohamud Sheikh Mohamed, MP

INATTENDANCE
SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Dr. Benjamin Ng'imor - Senior Fiscal Analyst
5. Mr. Chelang'a Maiyo - Research Officer II
6. Mr. Luka Mutua - Serjeant-At-Arms
7. Mr. Brian Gikunda Njeru - Fiscal Analyst III
8. Mr. Eugene Luteshi - Audio Officer
9. Ms. Hannah Mwangi - Intern

PETITIONER

Hon. Stephen Mule, MP

NATIONAL TREASURY

1. Dr. Julius Muia - Principal Secretary
2. Mr. Musa Kathanje
3. Mr. Joseph Ngugi
4. Mr. Nemwel Motanya
5. Mr. John Njera
6. Ms. Isabella Kogei
7. Mr. Cromwel Pkomo

KRA

1. Mr. Githii Mburu, CBS - Commissioner General
2. Ms. Lilian Nyawanda
3. Mr. Maurice Oray
4. Ms. Grace Wandera
5. Mr. Joseph Gakuru
6. Mr. Benard Kirui
7. Ms. Sheila Aduvaga
8. Ms. Barbra Mududa

MEMBERS OF THE PUBLIC

1. Ms. Wanjiku Mwai
2. Eng. Lawrence Oloo

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. **Meeting with the National Treasury and KRA to consider Petitions regarding increase in the price of petroleum and petroleum products in Kenya**
5. Any Other Business
6. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/334: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 2:50 p.m. and a prayer was said. The agenda was then adopted having been proposed by Hon. (Dr.) Christine Ombaka, MP and seconded by Hon. Jimmy Angwenyi, MP. The Chairperson then called for introduction of those present before inviting Dr. Julius Muia to make submissions on behalf of the National Treasury.

MIN.NO.NA/F&NP/2021/335: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2021/336: MEETING WITH THE NATIONAL TREASURY AND KRA TO CONSIDER PETITIONS REGARDING INCREASE IN THE PRICE OF PETROLEUM AND PETROLEUM PRODUCTS

Dr. Julius Muia, Principal Secretary, National Treasury presented a comprehensive report on the two Petions. He insisted that none of the taxes or levies should be removed or reduced as it will impact negatively on the country's revenues.

(Details of the submission by the National Treasury are in the report on the consideration of the Petitions).

SUBMISSION BY KRA

Mr. Githii Mburu, the Commissioner General, KRA submitted that the Road Maintenance Levy contributes the highest amount of revenues from petroleum products followed by Excise Duty and VAT. The taxes and levies on petroleum and petroleum products contributed KSh. 232.4 billion to the revenues raised by KRA.

MEMBERS' DELIBERATIONS

1. Regarding the scrapping of the RDL, the PS informed the meeting that the Government is still servicing the costs of operation of the SGR and RDL is used to defray the costs.
2. On what solutions the National Treasury has to the rising fuel cost, Dr. Muia stated that consultations were ongoing and a solution may be found in a month's time.
3. Regarding the high taxes in Kenya compared to other East African countries, the PS stated that Kenya's economy is not similar to that of other EA countries and the taxation regime can therefore not be the same.
4. Regarding the use of absolute numbers as opposed to percentages in taxation, the meeting was informed that this is not feasible because absolute numbers don't grow and the revenues will therefore reduce.
5. On why the PDL cannot be scrapped, the PS stated that in order to achieve price stability, a stabilization fund has to be in place hence the PDL cannot be scrapped.
6. On why the tax rates should not be reduced, the meeting was informed that this is because the rates of different taxes and levies are backed by various reasons and stakeholder consultation is carried out before the rates are set.
7. On the disbursement of the PDL, the meeting was informed the KSh. 23.6 billion was disbursed in FY 2020/21 broken down as follows: KSh. 1.6 billion for stabilization; KSh. 2.2 billion to the Ministry of Energy; and KSh. 18.1 billion to the State Department of Infrastructure. In FY 2021/22, KSh. 5 billion was disbursed to the Ministry of Petroleum and Mining for stabilization.

   A request of KSh. 5 billion was made in September for stabilization but it was not granted because the fund only had KSh. 3.6 billion
8. On why the PDL was increased from KSh. 0.40 to KSh. 5.40 for super petrol and diesel, the PS stated that this was done when the international oil prices had gone down.
9. The PS undertook to provide a report on what was funded by funds from the PDL kitty other than stabilization of fuel prices and the request by KPC to operate an LPG plant.

SUBMISSION FROM ENG. LAWRENCE OLOO

Eng. Oloo submitted that:

There was need to reform the OTS to allow for private importation of fuel as it will make it possible for OMCs to source for the products directly from producers hence lower prices.

KPC should work at eliminating its losses because they contribute to the fuel prices. Kenyans should not be made to pay for KPC's inefficiencies. Additionally, it is not clear how the amount to paid for KPC stock loss was arrived at. Further, KPC should harmonise its distribution cost to ensure that regions that are far off from the port of entry are not disadvantaged. Alternatively, a new route can be established e.g. Djibouti Ethiopia route to supply to Northern part of Kenya.

The OMC margin is not justifiable because profitability of a firm cannot be guaranteed by regulatory control. Further, the benefits that OMCs enjoy including stock gains and tax differential on volume sold and volume paid to KRA has never been considered as a benefit to OMCs. Stock gain benefits by OMCs should be considered when discussing margins. OMCs are also enjoying the tax differential on taxed volume and sales volumes. Tax is calculated on the basis of standard volume while the consumer pays the tax at observed volume.

The National Oil Corporation of Kenya can get government to government negotiated products supply at affordable costs but the country hasn't gotten value from NOCK due to mismanagement.

EPRA uses the monthly average Platts prices to determine the current price of fuel, however, the current Platts prices are for delivery of stock in the future at least three months on. the public is therefore paying for a future price instead of paying for the spot price.

MIN.NO.NA/F&NP/2021/337: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 6.36 p.m. The next meeting will be held on Monday 4th October 2021 at 9.00 a.m.

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)

SIGNED..**DATE**.....12/10/2021..

MINUTES OF THE 71ST SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN FOURTH FLOOR, CONTINENTAL HOUSE ON WEDNESDAY, 29TH SEPTEMBER 2021 AT 10:00 A.M.

PRESENT

1. Hon. Gladys Wanga, CBS, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, CBS, MP
5. Hon. (Dr.) Christine Ombaka, MP
6. Hon. Andrew A. Okuome, MP
7. Hon. David M. Mboni, MP
8. Hon. Joshua C. Kandie, MP
9. Hon. Edith Nyenze, MP
10. Hon. James Gichuhi Mwangi, MP
11. Hon. Peter Lochakapong, MP
12. Hon. Qalicha Gufu Wario, MP

ABSENT WITH APOLOGY

1. Hon. Shakeel Shabbir Ahmed, CBS, MP
2. Hon. Daniel E. Nanok, MP
3. Hon. Francis K. Kimani, MP
4. Hon. Joseph M. Oyula, MP
5. Hon. Stanley M. Muthama, MP
6. Hon. Catherine Waruguru, MP
7. Hon. (Prof.) Mohamud Sheikh Mohamed, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Dr. Benjamin Ng'imor - Senior Fiscal Analyst
5. Mr. Chelang'a Maiyo - Research Officer II
6. Mr. Luka Mutua - Serjeant-At-Arms
7. Mr. Brian Gikunda Njeru - Fiscal Analyst III
8. Mr. Eugene Luteshi - Audio Officer
9. Ms. Hannah Mwangi - Intern

PETITIONER

Hon. Stephen Mule, MP

MINISTRY OF PETROLEUM AND MINING

Mr. Andrew Kamau - Principal Secretary

OXYGENE

Ms. Wanjiku Mwai

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising

4. **Meeting with the Ministry of Petroleum and Mining to consider Petitions regarding increase in the price of petroleum and petroleum products in Kenya**
5. Any Other Business
6. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/330: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 2:50 p.m. and a prayer was said. The agenda was then adopted having been proposed by Hon. Edith Nyenze, MP and seconded by Hon. Christopher Omulele, CBS, MP. The Chairperson then called for introduction of those present before inviting Dr. Julius Muia to make submissions on behalf of the National Treasury.

MIN.NO.NA/F&NP/2021/331: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2021/332: MEETING WITH THE MINISTRY OF PETROLEUM AND MINING TO CONSIDER PETITIONS REGARDING INCREASE IN THE PRICE OF PETROLEUM AND PETROLEUM PRODUCTS

Dr. Julius Muia, Principal Secretary, National Treasury presented a comprehensive report on the two Petions. Notably, he indicated how amendments to legislations reviewing various taxes and levies has affected the price of fuel in the country over the years.

(*Details of the submission by the Ministry of Petroleum and Mining are in the report on the consideration of the Petitions*).

MEMBERS' DELIBERATIONS

1. Regarding the issuance of licenses to operate an LPG business, the meeting was informed that several companies had applied for the license but the issuance had been hampered by legislation which requires that NEMA carries out public participation before issuing approval. So far only one more company, ESSO has been successful in getting the license.
2. On why price controls have not been put on LPG, the PS stated that the Ministry wants more people to invest in the business before price controls are imposed.
3. On how KOT II will reduce demurrage charges, the PS stated that currently the jetty discharges between 600,000 to 1 million litres per hor. The new jetty will discharge up to 5 million litres per hour and this will significantly reduce the discharge time.
4. On why KPA does not offload on a 24-hour shift, the PS informed the Committee that night time birthing is not allowed due to safety reasons. Birthing will however be possible at night in KOT II.
5. Regading the role of the Ministry in the OTS, the meeting was informed that the Ministry is the custodian of the OTS, ensures that the system works and deliveries are made in time so that there are no shortages in the country.
6. On why the PDL should be retained at the same level, the PS stated that this will allow for growth of the fund and accountability.
7. Regarding the stalling of exportation of crude oil from Turkana, Mr. Kamau stated that the law required public participation on gazettement of land and this was not possible because of COVID-19 pandemic. The public participation was however done and the process will resume soon.

8. On what can be done in order to reduce over-taxation of some sectors of the economy, the PS stated that this can be done by widening the tax base through growth of the manufacturing and mining sectors.
9. The Committee requested the PS to avail the following reports to them before the end of the day:
    i. Letter to National Treasury requesting for funds to stabilize fuel prices in the month of September 2021 and the response from National Treasury;
    ii. Formula used to distribute the money for stabilization of fuel prices to OMCs;
    iii. Breakdown of how the KSh. 8.6 billion for stabilization was paid to the OMCs;
    iv. Companies that applied for the LPG licenses and the status; and
    v. List of OMCs that have won the tender to supply fuel through the OTS for the last one year.

MIN.NO.NA/F&NP/2021/333: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 1.41 p.m. The next meeting will be held at 2.30 p.m.

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)

SIGNED..**DATE**....12/10/2021........................

MINUTES OF THE 70TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN MINI CHAMBERS, FIRST FLOOR, COUNTY HALL ON TUESDAY, 28TH SEPTEMBER 2021 AT 2:30 P.M.

PRESENT

1. Hon. Gladys Wanga, CBS, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, CBS, MP
5. Hon. (Dr.) Christine Ombaka, MP
6. Hon. Andrew A. Okuome, MP
7. Hon. David M. Mboni, MP
8. Hon. Joseph M. Oyula, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. James Gichuhi Mwangi, MP
11. Hon. Peter Lochakapong, MP
12. Hon. Qalicha Gufu Wario, MP

ABSENT WITH APOLOGY

1. Hon. Shakeel Shabbir Ahmed, CBS, MP
2. Hon. Daniel E. Nanok, MP
3. Hon. Francis K. Kimani, MP
4. Hon. Edith Nyenze, MP
5. Hon. Stanley M. Muthama, MP
6. Hon. Catherine Waruguru, MP
7. Hon. (Prof.) Mohamud Sheikh Mohamed, MP

INATTENDANCE
SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Dr. Benjamin Ng'imor - Senior Fiscal Analyst
5. Mr. Chelang'a Maiyo - Research Officer II
6. Mr. Luka Mutua - Serjeant-At-Arms
7. Ms. Christine Maeri - Audio Officer
8. Ms. Hannah Mwangi - Intern

PETITIONER

Hon. Stephen Mule, MP

KENYA ASSOCIATION OF MANUFACTURERS (KAM)

1. Mr. Job Wanjohi - Head of Policy
2. Mr. John Njogu
3. Ms. Ruth Lemlem
4. Mr. Malcolm Mwangi

KENYA PRIVATE SECTOR ALLIANCE (KEPSA)

1. Mr. Patrick Lavince
2. Mr. Peter Thairu
3. Ms. Wanjiku Mwai

PETROLEUM INSTITUTE OF EAST AFRICA (PIEA)

1. Ms. Wanjiku Manyara - General Manager
2. Ms. Ayuma Likhanga

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. **Meetings to consider Petitions regarding increase in the price of petroleum and petroleum products in Kenya as follows:**
    i. **Kenya Association of Manufacturers (KAM)**
    ii. **Kenya Private Sector Alliance (KEPSA)**
    iii. **Petroleum Institute of East Africa (PIEA)**
5. Any Other Business
6. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/326: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 2:52 p.m. and a prayer was said. The agenda was then adopted having been proposed by Hon. Qalicha Gufu Wario, MP and seconded by Hon. James Mwangi, MP. The Chairperson then called for introduction of those present before inviting stakeholders to make their submissions

MIN.NO.NA/F&NP/2021/327: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2021/328: MEETING WITH KAM, KEPSA AND PIEA TO CONSIDER PETITIONS REGARDING INCREASE IN THE PRICE OF PETROLEUM AND PETROLEUM PRODUCTS

1. **Kenya Association of Manufacturers (KAM)**

    Mr. Job Wanjohi submitted as follows on the Petitions:

    Fuel prices in Kenya are mainly driven by the following factors: international crude oil price; exchange rate; government policy (taxation); and removal of stabilization mechanisms in September 2021.

    EPRA is required by law to compute maximum wholesale and retail prices for different petroleum products that should be in force each month. In their opinion, the formula used by EPRA is working because: the Open Tender System (OTS) optimizes supply sourcing in Kenya; it regulates the margins of oil marketing companies (OMC's), it protects '*Wanjiku*' by ensuring transparency in pricing structure and assurance of pricing prediction; and security of supply to the whole country.

    Business operations have been affected as follows due to increase in the price of fuel: some fuels e.g. kerosene are a direct input for manufacturers. The manufacturers are struggling to compete with imports from Egypt. It has also increased the cost transportation which has increased the cost of doing business in Kenya. The increased cost of production has been passed on to consumers and this has led to a decrease in demand for manufactured goods.

    The increased fuel prices will increase inflation in the economy hence weaken post COVID-19 recovery of businesses and the economy. It will also increase risks of balance of payment because of continued weakening of the Kenya shilling and the rising crude oil prices in the international markets which are expected to reach pre-COVID-19 Pandemic levels in early 2022.

KAM proposed the following measures to address the current volatility in fuel prices:

i. Petroleum price stabilization: a regulatory framework to streamline the petroleum stabilization fund should be put in place and the Government should continue with fuel price stabilization.
ii. Review of petroleum taxation regime: remove 8% VAT on petroleum products; zero-rate VAT on LPG; and have inflation adjustment every two years to allow the market to stabilize.
iii. Kenya should harmonise its taxation regime on petroleum products to creat parity or ensure fuel prices are lower in Kenya than in other EAC partner states.
iv. Coupled with stabilization fund, review of the formula to be carried out after a fortnight instead of monthly.

2. **Kenya Private Sector Alliance (KEPSA)**

Mr. Patrick Lavince stated as follows on the Petitions:
That the price of fuel is determined by the following factors: a composite of factors e.g. international oil prices, transport and storage costs, taxes, levies, distributor margins e.t.c.; increase in fuel prices in the international market; withdrawal of the stabilization fund; and the exchange rate.

The pricing formula is effective to the extent that it ensures there is stability and predictability of fuel prices however, it is not effective in the pricing formula because taxes account for more than 47% of the total price. There is need to embed the stabilization fund in the pricing formula so that it is clear when it can be used.

Increase in fuel prices increases the cost of production and the costs are passed down to the final consumer leading to an increase in the price of commodities. This makes the commodities uncompetitive in the local market, regionally and internationally thus hurting businesses and the economy.

The high fuel prices are likely to increase the cost of living and slow down of economic activities and increase the cost of moving goods across the country due to increased transport costs.

KEPSA proposed that in order to address the high fuel prices, the current pricing formula should be reviewed to remove some of the taxes including VAT and reduction of excise duty since fuel is a basic commodity; price review should be done fortnightly instead of monthly; and the stabilization fund should be reintroduced to be included in the pricing formula.

3. **Petroleum Institute of East Africa (PIEA)**

Ms. Wanjiku Manyara submitted as follows on behalf of the Institute:
The recent increases in petroleum and petroleum products are caused by increased crude oil prices; weakening of the Kenya Shilling; taxes and levies and lifting of the fuel subsidy.

The current pricing formula is a least cost, transparent and competitive procurement system. However, there is misalignment of compensation of oil marketing companies margins where return on investment and inflation are not put in consideration.

Deferred margins on account of subsidization has adversely impacted cash flow and working capital for OMCs.

The increase in prices of fuel has led to dumping and illicit trade and loss of business from cheaper products from neighboring countries; reduced purchasing power; adverse impact on working capital and financing costs from the administration of the fuel subsidization fund; and undue pressure on OMCs cash flows, working capital and financing costs undermines viability of existing investments and disincentivises future capital investments and diversification.

In order to address the high fuel prices, PIEA proposed that:

i. Predictability of fuel prices should be safeguarded through completion of the draft National Tax Policy which will provide guidance on the country's fiscal policy;
ii. Defer the inflationary adjustments on excise duty for petroleum and petroleum products; and
iii. Reinstate the zero rate on LPG.

4. **Hon. Stephen Mule, MP**

Hon. Mule proposed the following amendments to reduce the price of petroleum and petroleum products in Kenya:

i. Reduce excise duty on petroleum and petroleum products to 2%;
ii. Reduce the Railway Development Levy on petroleum and petroleum products to 1.5%;
iii. Reduce the Import Declaration Fee to 1.5%;
iv. Reduce VAT to 4%;
v. Revert Petroleum Development Levy to KSh. 040 per liter of super petrol and diesel;
vi. Reduce VAT on LPG to 5%;
vii. Parliament should address the issue of demurrage charges. The inefficiencies resulting to demurrage charges should be addressed; and
viii. The LPG market should be opened up in order to allow for competition and eventual reduction in the price of LPG.

MEMBERS' DELIBERATIONS

1. On how price variation can be managed, the meeting was informed that this can be done through the price stabilization mechanism. The stabilization fund will be used by the Government to regulate fuel prices when they go up. The monies used can be recovered when the prices go down. This will make fuel prices stable and predictable.
2. On the best way to reduce fuel prices, the meeting was informed that the best way is either to scrap excise duty on fuel or reduce the rate. Additionally, production of oil in Turkana can be maximized so that the revenue received from exportation of crude oil is used to cushion Kenyans from high fuel prices.

MIN.NO.NA/F&NP/2021/329: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 4.45 p.m. The next meeting will be held on Wednesday, 29th September 2021 at 10.00 a.m.

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)

SIGNED...**DATE**...12/10/2021...........................

MINUTES OF THE 69TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN MINI CHAMBERS, FIRST FLOOR, COUNTY HALL ON TUESDAY, 28TH SEPTEMBER 2021 AT 9:00 A.M.

PRESENT

1. Hon. Gladys Wanga, CBS, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, CBS, MP
5. Hon. (Dr.) Christine Ombaka, MP
6. Hon. Andrew A. Okuome, MP
7. Hon. David M. Mboni, MP
8. Hon. Joshua C. Kandie, MP
9. Hon. Edith Nyenze, MP
10. Hon. James Gichuhi Mwangi, MP
11. Hon. Peter Lochakapong, MP
12. Hon. (Prof.) Mohamud Sheikh Mohamed, MP

ABSENT WITH APOLOGY

1. Hon. Shakeel Shabbir Ahmed, CBS, MP
2. Hon. Daniel E. Nanok, MP
3. Hon. Francis K. Kimani, MP
4. Hon. Joseph M. Oyula, MP
5. Hon. Stanley M. Muthama, MP
6. Hon. Catherine Waruguru, MP
7. Hon. Qalicha Gufu Wario, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Dr. Benjamin Ng'imor - Senior Fiscal Analyst
5. Mr. Chelang'a Maiyo - Research Officer II
6. Mr. Luka Mutua - Serjeant-At-Arms
7. Ms. Christine Maeri - Audio Officer
8. Ms. Hannah Mwangi - Intern
9. Ms. Roselyne Kerubo - Intern
10. Ms. Georgina Okoth - Intern

ENERGY AND PETROLEUM REGULATORY AUTHORITY (EPRA)

1. Mr. Daniel Kiptoo Bargoria - Director General
2. Eng. Edward Kinyua

KENYA PIPELINE COMPANY

1. Dr. Macharia Irungu - Managing Director
2. Mr. Paul Njuguna
3. Ms. Grace Njoroge
4. Ms. Jacinta Sekoh

MEMBERS OF THE PUBLIC

1. Mr. Joseph Owuondo
2. Mr. Njoroge Waweru
3. Ms. Emmaculate Kemunto
4. Ms. Teresa Bosibori
5. Mr. Ernest Muguku
6. Ms. Consolata Mose

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. **Meetings to consider Petitions regarding increase in the price of petroleum and petroleum products in Kenya as follows:**
    i. **Briefing on the Petitions by the Committee Secretariat**
    ii. **Meeting with the Energy and Petroleum Regulatory Authority**
    iii. **Meeting with Kenya Pipeline Corporation**
5. Any Other Business
6. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/319: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9:28 a.m. and a prayer was said. The agenda was then adopted having been proposed by Hon. Andrew Okuome, MP and seconded by Hon. David Mboni, MP. The Chairperson then invited Dr. Benjamin Ng'imor to brief the Committee on the Petitions.

MIN.NO.NA/F&NP/2021/320: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2021/321: BRIEFING ON THE PETITIONS REGARDING INCREASE IN THE PRICE OF PETROLEUM AND PETROLEUM PRODUCTS

Dr. Benjamin Ng'imor briefed the Committee on the legislation on which pricing of petroleum and petroleum products is anchored. He also informed the Committee on the components considered in the pricing formula which are: landing costs; taxes and levies; gross margins; storage and distribution costs; and demurrage costs. He noted that landing costs and taxes and levies have the largest contribution to the prices of super petrol, diesel and kerosene. Taxes and levies account for 43.2% of the price of super petrol, 39.7% of the price of diesel and 36.7% of the price of kerosene.

Taxes charged on petroleum and petroleum products in Kenya are: Road Maintenance Levy (RML) which is charged on super petrol and diesel at a fixed rate of KSh. 18 per litre; Excise Duty which is charged at a fixed rate of KSh. 22 per liter of super and KSh. 11.40 per liter of diesel and kerosene; Value Added Tax (VAT) charged at the rate of 8%; Anti-adulteration Levy which is charged at KSh. 18 per liter of kerosene; Petroleum Development Levy (PDL) which is charged at a fixed rate of KSh. 5.40 per liter of super petrol and diesel and KSh. 0.40 for kerosene; Petroleum Regulatory Levy (PRL) which is charged at a fixed rate of KSh. 0.25 per liter; Merchant Shipping Levy (MSL); Import Declaration Fee (IDF) which is charged at 3.5% of the customs value of imports; and Railway Development Levy (RDL) charged at 2% of the customs value of imports.

Further, he briefed the Committee on the trend of fuel prices in Kenya noting that fuel prices have been erratic in the recent past mainly because of variations in the landing costs.

He noted the following as issues of concern: inefficiencies of the fuel subsidy where despite the significant collection from enhanced PDL, the fuel subsidy program has proved to very expensive and the PDL cannot be able to cater for it in the long run; impact of the changes in taxes and levies, a reduction in the taxes and levies will significantly reduce the price of fuel but it will increase fiscal pressure for the Government since they form part of the national government revenues; and comparison of fuel prices in EAC countries shows that Kenya has the highest fuel prices among her neighbors contributed mainly by taxes and levies.

He stated that the price of LPG had increased in July 2021 after reinstatement of 16% VAT on LPG.

MEMBERS' DELIBERATIONS

1. Members noted that it is important to balance between collection of taxes and levies and economic growth for posterity.
2. Mr. Ng'imor undertook to provide:
    i. a detailed paper on the nexus between collection of taxes and levies and economic growth and whether the Energy and Petroleum Regulatory Authority (EPRA) has helped the country in stabilizing fuel prices;
    ii. data on LPG in the country.

MIN.NO.NA/F&NP/2021/322: MEETING WITH EPRA TO CONSIDER PETITIONS REGARDING INCREASE IN THE PRICE OF PETROLEUM AND PETROLEUM PRODUCTS

The Chairperson invited Mr. Daniel Bargoria, Director General EPRA to present the Authority's submission on the two Petitions. Mr. Bargoria made a detailed submission on the same. He stated that the Authority in conjunction with the Ministry of Petroleum and Mining has developed the Petroleum (Petroleum Consolidated Fund) Regulations, 2021 and the Petroleum (Strategic Stocks) Regulations, 2021 that are meant to ensure maintenance of strategic stocks in the country. Petroleum strategic stocks can help cushion the country from the shocks of escalating and deescalating prices in the international markets. The Authority has also developed the Petroleum (Petroleum Development Fund) Regulations, 2021 that will provide a more robust governance framework to administer the process of pump price stabilization.

(*Details of EPRA's submission are contained in the report on the consideration of the Petitions*).

MEMBERS' DELIBERATIONS

1. On why the price of fuel in Kenya is higher than the prices of other EAC countries yet some import their fuel through Kenya, the meeting was informed that this was because of a higher tax regime in Kenya and not the landing cost.
2. On whether it is cheaper for crude oil to be refined in Kenya or import petroleum that has been refined, the meeting was informed that the Government made a decision to close the Kenya Petroleum Refineries Limited (KPRL) because the costs of refining fuel were too high and Kenyans were forced to pay a refinery margin of KSh. 1.98 per liter in order to sustain operations of KPRL.

3. On the importance of the Anti-Adulteration Levy, Mr. Bargoria stated that the levy had resulted to a big decrease in adulteration of fuel in the country resulting to more sales in diesel and petrol.
4. On how demurrage charges can be reduced, the meeting was informed that Kipevu Oil Terminal II (KOT II) whose expected completion date is December 2021 will significantly reduce the offloading time of petroleum hence reduce or completely eliminate demurrage charges as it will enhance efficiency.
5. On whether the pricing formula has been reviewed, the meeting was informed that EPRA and the Ministry of Petroleum and Mining had drafted regulations to review the formula which were going through public participation before being submitted to the Attorney General for Gazettement and submission to Parliament for consideration.
6. On how much had been used by EPRA to subsidize the price of fuel so far, the meeting was informed that the Authority had used KSh. 8.6 billion by August 2021.
7. On why EPRA had not applied price control on LPG, Mr. Bargoria stated that this is because the Authority was seeking to promote penetration and investment in LPG before introducing price control. Further, in order to control prices of LPG, the same needs to be imported through the Open Tender System (OTS) and this implies that there needs to be a common user facility which is not there at the moment.
8. On what can be done to reduce the price of petroleum in Kenya, Mr. Bargoria stated that taxes should be reduced.

MIN.NO.NA/F&NP/2021/323: MEETING WITH KPC TO CONSIDER PETITIONS REGARDING INCREASE IN THE PRICE OF PETROLEUM AND PETROLEUM PRODUCTS

The Chairperson invited Dr. Macharia Irungu, Managing Director to present KPC's submission. Mr. Irungu submitted that:
The approved KOSF/KPRL tariff set by EPRA effective 1st August 2021 reduced the import handling and storage fees from 5.18$/m^3 to 3.59$/m^3 for FY 2021/22 translating to 31% reduction.

He stated that besides the storage fees, Kenya Pipeline Company only contributed an additional cost of KSh. 0.01 per liter attributed to pipeline losses which translates to 0.01% of the pump price.

The road transport bridging component which was previously factored into the price builder to compensate transporters for trucking fuel products from Mombasa to Nairobi was removed with the commissioning of the Mombasa-Nairobi pipeline.

KPC has taken the following measures to reduce operational losses along the pipeline: daily depot and line stock reconciliation; continuous right of way surveillance both ground and aerial patrol; inline inspection of line 5 which is at an advanced stage, line 4 & 6 work in progress and line 2 & 3 at procurement stage; continuous calibration of measurement equipment; upgrading of SCADA, to be implemented in FY 201§/22; and implementation of leak detection system in FY 2021/22.

MEMBERS' DELIBERATIONS

1. With regards to setting up an LPG facility at the Port of Mombasa, KPC stated that they had presented a request for the same to National Treasury and National Treasury had given then approval on condition that they undertake the same under a PPP arrangement.

2. With regards to strategic stocks of fuel in the country, the meeting was informed that Kenya has strategic stocks that can last for 7 to 10 days. KPC is in the process of putting up more storage space at KPRL and this will increase storage by 1 million cubic meters and this will increase strategic by 1 year.

MIN.NO.NA/F&NP/2021/324: MEETING WITH MEMBERS OF THE PUBLIC TO CONSIDER PETITIONS REGARDING INCREASE IN THE PRICE OF PETROLEUM AND PETROLEUM PRODUCTS

1. **Mr. Njoroge Waweru**

   Mr. Waweru stated that VAT is charged on items that value has been added and no value has been added on fuel which therefore makes it wrong for VAT to be charged on petroleum and petroleum products.

   RDL was put in place during construction of the Standard Gauge Railway and should therefore be removed because the SGR is no longer being constructed.

   He further stated that tax on tax is wrong because it exposes Kenyans to double taxation. A cost benefit analysis should be done on the funds that have been appropriated this FY vis-à-vis the losses that the country will get from being uncompetitive in the region.

2. **Ms. Teresa Bosibori- Kenya Civil Society Platform on Oil and Gas**

   Ms. Bosibori stated that imposition of 16% VAT on LPG impedes access to clean energy and defeats any progress made in environmental conservation and climate change mitigation. She submitted therefore that the 16% VAT on LPG should be revoked.

   She also raised concern on the governance framework of the PDL. The PDL was increased by KSh. 5.00 through Legal Notice No. 174 of 2020. The PDL was put in place through enactment of the Petroleum Development Levy Act, 1991 but the Act does not clearly elaborate on the purpose of the Fund, the formula for determination of the Levy and its utilization. The framework under which the Levy is given to OMCs to cover the margin of fuel prices is not clear, this brings forth questions on transparency and accountability in implementing the subsidization and compensation function of the Levy. She recommended that implementation of the increased Levy should be suspended until a proper legal framework on its purpose, utilization and determination formula are put in place. Further, the CS for Petroleum and Mining should issue a public statement why the Levy was increased by such a huge margin, the intended purpose of the levy and an account of how previous revenue generated from the levy has been utilized.

   She stated 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 taxes. She therefore recommended that the National Assembly should review the taxes, levies and fees charged on petroleum.

3. **Mr. Ernest Muguku**

   In his submission, Mr. Muguku proposed amendments to the Excise Duty Act, 2015; and the Petroleum Development Fund Act, 1991with a view of lowering the cost of petroleum and petroleum products.

(Details of his proposed amendments are contained in the report on the consideration of the Petitions).

MIN.NO.NA/F&NP/2021/325: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 2.04 p.m. The next meeting will be held at 2.30 p.m.

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)

SIGNED..**DATE**......12/10/2021......

LEGAL NOTICE No. 124

THE PETROLEUM DEVELOPMENT FUND ACT, 1991

IN EXERCISE of the powers conferred by section 3(1) of the Petroleum Development Fund Act, 1991, the Cabinet Secretary for Petroleum and Mining makes the following Order—

THE PETROLEUM DEVELOPMENT LEVY ORDER, 2020

This Order may be cited as the Petroleum Development Levy Order, 2020 and shall come into operation on 15th July, 2020.

1. In this Order, unless the context otherwise requires—

"Authority" means the Energy and Petroleum Regulatory Authority established under the Energy Act, 2019.

"collector" means the Commissioner of Customs and Excise;

"levy" means the Petroleum Development Levy imposed by paragraph 2;

"cabinet secretary" means for the time being the Cabinet Secretary in charge of petroleum

"oil marketing company" means a person licensed under the Petroleum Act, 2019 to import petroleum products into Kenya;

"petroleum fuels" means petroleum products listed in the First Schedule;

"petroleum development fund" means a fund created under section 4 of the Petroleum Development Fund Act, 1991;

"remitter" means an oil marketing company registered by the collector.

2. There shall be paid a levy on all petroleum fuels consumed in Kenya with a tariff code and description specified in the first and second columns, respectively, of the First Schedule, at the rates specified in relation thereto in the third column of that Schedule.

3. The levy shall be paid to the Petroleum Development Fund.

4. The levy shall also be used for matters relating to the development of the oil industry including to stabilize local petroleum pump prices in instances of spikes occasioned by high landed costs above a threshold determined by the Authority. The Cabinet Secretary may by writing to the administrator, request for a draw down from the Petroleum Development Fund to stabilize local petroleum pump prices where he deems it necessary.

5. An oil marketing company shall on or before the last day of the month immediately following the month in which he becomes an oil marketing company register with the collector as a remitter.

6. A person registered as a remitter who ceases either permanently or temporarily to be an oil marketing company shall, within thirty days of so ceasing, notify the collector accordingly in writing specifying the reasons for his ceasing to be a remitter.

7. (a) The remitter shall pay the levy to the collector immediately at the time of importation of petroleum fuel.

(b) The collector shall maintain records of importation of petroleum fuels and submit to the Cabinet Secretary a monthly return of payment of the levy received during the month.

(c) The collector shall remit to the Petroleum Development Fund all the levy paid during the month.

8. Without prejudice to any other form of remedy, any monies payable under this Order that remains unpaid for a period of thirty (30) days after the date that the same ought to be paid shall be recoverable summarily by the collector as a civil debt due and payable to the Petroleum Development Fund.

9. Notwithstanding the provisions of paragraphs 6 and 7, if a remitter fails to pay an amount payable by way of a levy within the time prescribed by this Order a sum equal to five per cent of that amount shall be added to the amount for each month or part of a month thereafter that the amount due remains unpaid.

10. The Petroleum Development Order, 1992 is revoked.

JOHN K. MUNYES,
Cabinet Secretary for Petroleum and Mining.

FIRST SCHEDULE

Tariff Code	*Description*	*Rate of Levy (KSh.)*
2709.00.10	Condensates	5,400.00 per 1,000 litres at 20°C
2710.00.21	Aviation spirit (gasoline)	5,400.00 per 1,000 litres at 20°C
2710.00.22	Motor spirit (gasoline), premium	5,400.00 per 1,000 litres at 20°C
2710.00.24	Jet fuel (spirit type)	5,400.00 per 1,000 litres at 20°C
2710.00.25	Special boiling point spirit and white spirit	400.00 per 1,000 litres at 20°C
2710.00.29	Other light petroleum oils and preparations	400.00 per 1,000 litres at 20°C
2710.00.32	Kerosene	400.00 per 1,000 litres at 20°C
2710.00.39	Other medium petroleum oils and preparations	5,400.00 per 1,000 litres at 20°C
2710.00.41	Diesel oil (industrial, heavy, black, for low speed marine and stationery engines)	5,400.00 per 1,000 litres at 20°C
2710.00.43	Other gas oil	5,400.00 per 1,000 litres at 20°C
2710.00.44	Residual fuel oils (marine furnace similar fuel oils engines) of 125 cSt	400.00 per 1,000 litres at 20°C
2710.00.45	Residual fuel oils of 180 cSt	400.00 per 1,000 litres at 20°C
2710.00.46	Residual fuel oils of 280 cSt	400.00 per 1,000 litres at 20°C
2710.00.47	Other residual fuel oils	400.00 per 1,000 litres at 20°C
2711.11.00	Liquefied natural gas	400.00 per 1,000 litres at 20°C
2711.12.00	Liquefied propane	400.00 per 1,000 Kg at 20°C
2711.13.00	Liquefied butanes	400.00 per 1,000 Kg at 20°C
2711.14.00	Liquefied ethylene, propylene, butylenes and butadiene	400.00 per 1,000 Kg at 20°C
2711.19.00	Other liquefied petroleum gases	400.00 per 1,000 Kg at 20°C
2711.21.00	Natural gas in gaseous state	400.00 per 1,000 Kg at 20°C
2711.29.00	Other petroleum gases	400.00 per 1,000 Kg at 20°C
2713.20.00	Petroleum bitumen	400.00 per 1,000 Kg at 20°C
2713.90.00	Other residues of petroleum oil or oils obtained from bituminous minerals	400.00 per 1,000 Kg at 20°C
2714.10.00	Bituminous or oil shale and tar sands	400.00 per 1,000 Kg at 20°C
2714.00.00	Bitumen and asphalt or asphalts and asphaltic rocks	400.00 per 1,000 Kg at 20°C
2715.00.00	Bituminous mixtures	400.00 per 1,000 Kg at 20°C

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

LEGAL NOTICE NO. 174

THE PETROLEUM DEVELOPMENT FUND ACT

(Cap. 426C)

IN EXERCISE of the powers conferred by section 3 (1) of the Petroleum Development Levy Fund Act, the Cabinet Secretary for Petroleum and Mining makes the following Order—

THE PETROLEUM DEVELOPMENT LEVY (AMENDMENT) ORDER, 2020

1. This Order may be cited as the Petroleum Development Levy (Amendment) Order, 2020. Citation.

2. The Petroleum Development Levy Order, 2020, is amended by repealing the First Schedule and replacing it with the following new Schedule— L.N. 124/2020.

SCHEDULE

Tariff code	*Description*	*Rate of levy (KSh.)*
2709.00.00	Petroleum oils obtained from bituminous minerals, crude	5,400 per 1,000 litres at 20°C
2710.12.30	Aviation spirit	5,400 per 1,000 litres at 20°C
2710.12.20	Premium motor spirit	5,400 per 1,000 litres at 20°C
2710.12.40	Spirit type jet fuel	5,400 per 1,000 litres at 20°C

2710.12.50	Special boiling point and white spirit	400 per 1,000 litres at 20°C
2710.12.90	Other light oils and preparations	400 per 1,000 litres at 20°C
2710.19.21	Kerosene type jet fuel	400 per 1,000 litres at 20°C
2710.19.22	Illuminating kerosene (IK)	400 per 1,000 litres at 20°C
2710.19.29	Other medium oils and preparations	5,400 per 1,000 litres at 20°C
2710.19.32	Diesel oil (industrial heavy, black for low speed marine and stationary engines)	5,400 per 1,000 litres at 20°C
2710.19.39	Other gas oils	5,400 per 1,000 litres at 20°C
2710.19.41	Residual fuel oils (marine, furnace and similar fuel oils) of a kinematic viscosity of 125 centistrokes	400 per 1,000 litres at 20°C
2710.19.42	Residual fuel oils (marine, furnace and similar fuel oils) of a kinematic viscosity of 180 centistrokes	400 per 1,000 litres at 20°C
2710.19.43	Residual fuel oils (marine, furnace and similar fuel oils) of a kinematic viscosity of 280 centistrokes	400 per 1,000 litres at 20°C
2710.19.49	Other residual oils	400 per 1,000 litres at 20°C
2711.11.00	Liquefied natural gas	400 per 1,000 litres at 20°C
2711.12.00	Liquefied propane	400 per 1,000 kg at 20°C
2711.13.00	Liquefied butanes	400 per 1,000 kg at 20°C
2711.14.00	Liquefied ethylene, propylene, butylenes and butadiene	400 per 1,000 kg at 20°C
2711.19.00	Other liquefied petroleum gases	400 per 1,000 kg at 20°C
2711.21.00	Natural gas in gaseous state	400 per 1,000 kg at 20°C
2711.29.00	Other petroleum gases and other gases obtained from bituminous minerals	400 per 1,000 kg at 20°C
2713.20.00	Petroleum bitumen	400 per 1,000 kg at 20°C
2713.90.00	Other residues of petroleum oil or oils obtained from bituminous minerals	400 per 1,000 kg at 20°C
2714.10.00	Bituminous or oil shale and tar sands	400 per 1,000 kg at 20°C

2714.90.00	Bitumen and asphalt or asphalts and asphaltic rocks	400 per 1,000 kg at 20°C
2715.00.00	Bituminous mixtures	400 per 1,000 kg at 20°C

Dated the 19th August, 2020.

JOHN K. MUNYES,
Cabinet Secretary for Petroleum and Mining.

LEGAL NOTICE NO. 196

THE ENERGY ACT, 2006

(*No.* 12 *of* 2006)

IN EXERCISE of the powers conferred by section 102 (w) of the Energy Act, the Minister for Energy makes the following Regulations:—

THE ENERGY (PETROLEUM PRICING) REGULATIONS, 2010

1. These Regulations may be cited as the Energy (Petroleum Pricing) Regulations, 2010.

2. In these Regulations, unless the context otherwise requires—

"maximum retail pump price" means the maximum prices of petroleum products at a retail dispensing site;

"maximum wholesale price" means the maximum prices of petroleum products at a wholesale depot;

"petroleum" includes petroleum crude, natural gas and any liquid or gas made from petroleum crude, natural gas, coal, schist, shale, peat or any other bituminous substance or from any product of petroleum crude, natural gas, and condensate;

"petroleum business" means a concern carrying on the importation, refining, storage, transportation or sale of petroleum;

"petroleum products" means super petrol, regular petrol, kerosene and automotive diesel;

"retail dispensing site" means premises where petroleum is stored in bulk in one or more tanks and dispensed to consumers for their own use, and includes filling and service stations;

"wholesale depot" means the petroleum receipt, storage and truck loading facilities owned by companies carrying on petroleum business in Mombasa and Nairobi and by the Kenya Pipeline Company(KPC) in Nakuru, Eldoret and Kisumu;

3. (1) The maximum wholesale prices and the retail pump prices of petroleum products at a wholesale depot or retail dispensing site shall be determined in accordance with the formula set out in regulation 4.

(2) The prices determined using the formula set out in Regulation 4 of these Regulations shall be the maximum wholesale and retail pump prices of petroleum products which a person carrying on petroleum business shall sell at a wholesale depot or a retail dispensing site.

(3) The maximum determined prices shall become effective on the 15th day of every calendar month and shall remain in force until the 14th day of the following calendar month

4. The maximum wholesale and retail pump prices of petroleum products in shillings per litre shall be determined as follows—

(*a*) Wholesale Prices

For super petrol, regular petrol, kerosene or automotive diesel, the formula shall be—

$$P_w = C_u(1 + L_p + L_d) + K(1 + L_d) + m_w$$

Where—

P_w = the maximum wholesale price for super petrol, regular petrol, kerosene or automotive diesel;

C_u = the weighted average cost in shillings per litre *ex* the Kenya Petroleum Refineries Limited (KPRL) and *ex* Kipevu Oil Storage Facility (KOSF);

K = the transportation cost from Mombasa to the nearest wholesale depot, which is made up of x percent of pipeline tariff (K_{pt}) and (100 - x) percent of road bridging cost (K_{rd}) as set out in the First Schedule.

L_p = the allowed losses in the pipeline as set out in the Second Schedule

L_d = the allowed losses in the depot as set out in the Second Schedule;

m_w = the allowed oil marketing company's gross wholesale margin as set out in the Third Schedule.

(*b*) Retail Pump Prices

For super petrol, regular petrol, kerosene or automotive diesel, the formula shall be—

$$P_r = P_w + m_r + z$$

Where,

P_r = the maximum retail pump price of super petrol, regular petrol, kerosene or automotive diesel applicable, in shillings per litre;

m_r = the allowed maximum retail gross margin as set out in the Third Schedule;

z = the delivery rate from the nearest wholesale depot to a retail dispensing site in shillings per litre as set out in the First Schedule.

5. The weighted average cost in shillings per litre *ex* the Kenya Petroleum Refineries Limited (KPRL) and ex the Kipevu Oil Storage Facility (KOSF) (C_u) shall be calculated using the following formula—

$$C_u = \frac{\sum V_{irp}\left(C_{irp} + T + F\right) + \sum V_{crp}\left(C_{crp} + T - S_d\right)}{\sum\left(V_{irp} + V_{crp}\right)}$$

Where—

V_{irp} = the volume, in litres, of a cargo of a refined petroleum product imported through the open tender system for the previous three months;

C_{irp} = the unit cost of a cargo of a refined petroleum product imported through the open tender system for the previous three calendar months in shillings per litre;

V_{crp} = the volume, in litres of a petroleum product yield per month from crude refined at the Kenya Petroleum Refineries Limited for the previous three calendar months;

C_{crp} = the calculated unit cost of a petroleum product yielded from crude refined at the Kenya Petroleum Refineries Limited per month for the previous three calendar months in shillings per litre;

T = the total taxes and levies for petroleum products in shillings per litre which shall be calculated as follows -

$$T = (t_{ed} + t_{rml} + t_{pdl} + t_{prl})$$

Where—

t_{ed} =Excise Duty;

t_{rml} =Road Maintenance Levy;

t_{pdl} =Petroleum Development Levy;

t_{prl} =Petroleum Regulation Levy;

F = Kipevu Oil Storage Facility charges

S_d =Excise Duty Remission,

6. The unit cost of imported refined petroleum products $[C_{irp}]$ shall be determined in accordance with the calculation used in the open tender system for importation of petroleum products.

7. The unit cost of petroleum products obtained from crude oil refined at the Kenya Petroleum Refineries Limited $[C_{crp}]$ shall be the actual landed cost of crude plus refinery fees for the month's crude imports allocated to the refinery product yields, benchmarked to the cost of importation of the same refined products.

8. The importer's commercial bank mean rate on bill of lading date shall be used for converting the imported refined petroleum products and crude oil costs determined under Regulations 6 and 7 of these Regulations from foreign currency to Kenya shillings.

9. The factors, $K, L_p, L_d, m_w, m_r, z, x$ referred to in Regulations 4 and 5 of these Regulations shall be determined by the Commission.

10. (1) The Commission may review the calculation of the maximum wholesale and retail pump prices of petroleum products determined under Regulation 4 as and when it may deem fit for purposes of monitoring compliance.

(2) The Commission may publish for general information the maximum wholesale and retail pump prices calculated in accordance with these regulations.

11. The Minister may from time to time review the formula specified under regulation 4.

FIRST SCHEDULE

(r. 4 (a), (b))

Pipeline tariff, Delivery rates and Bridging rates.

		Location	Rate KES/litre
1.	Pipeline tariff K_{pl}	Mombasa	0.000
		Nairobi	2.250 plus VAT
		Nakuru	3.095 plus VAT
		Eldoret	3.980 plus VAT
		Kisumu	3.975 plus VAT
2.	Delivery rates (z)	Within Town (40km radius)	0.44 plus VAT
		Outside Town	KES 10.00 per kilometre per 1000 Litres plus VAT
3.	Bridging rates K_{rd}	Mombasa to Nairobi, Nakuru, Kisumu and Eldoret	KES 7.50 per km per 1000 litres plus VAT.
4.	x Factor	Nairobi, Nakuru, Kisumu and Eldoret	80%

SECOND SCHEDULE (r. 4 (a))

Maximum allowed Operational losses.

Product	*Pipeline* (L_p)	*Depots* (L_d)
Super Petrol	0.25%	0.50%
Regular Petrol	0.25%	0.50%
Kerosene	0.25%	0.30%
Automotive Diesel	0.25%	0.30%

THIRD SCHEDULE (r. 4 (a), (b))

Maximum allowed Margins.

Product	*Wholesale* (m_w) *KES/litre)*	*Retail* (m_r) *KES/litre)*
Super Petrol	6.00	3.00
Regular Petrol	6.00	3.00
Kerosene	6.00	3.00
Automotive Diesel	6.00	3.00

Dated the 2nd December, 2010.

KIRAITU MURUNGI,
Minister for Energy.

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VERY URGENT

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NAIROBI, Kenya

HARAMBEE

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

REF: NA/DDC/F&NP/2021/59

7th October, 2021

SUMMONS TO WITNESS

D/DC
The Ctte to note.
ONA
12/10/21

To Hon. John Munyes, E.G.H
Cabinet Secretary Ministry of Petroleum and Mining

Whereas your attendance is required before the **National Assembly Departmental Committee on Finance and National Planning** in relation to demurrage costs on importation of petroleum at the Open Tender System (OTS) in January to June 2021, you are hereby required (personally) to appear before the National Assembly Departmental Committee on Finance and National Planning on **Tuesday**, the **12th day of October 2021**, at **10.00 o'clock** in the forenoon and to bring with you information relating to demurrage costs on importation of petroleum at the Open Tender System (OTS) in January to June 2021, specifically:

i. **The date of arrival and discharge of each vessel;**
ii. **Number of days that demurrage accrued;**
iii. **Amounts paid as demurrage for each vessel; and,**
iv. **Documentary evidence of payment.**

and give evidence as necessary.

Your reasonable travelling and subsistence allowance for one day will be reimbursed upon production of sufficient proof of expenditure. If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in Standing Order 191.

Given under my hand this 7th day of October 2021.

Clerk of the National Assembly

NOTICE: If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be delivered to the Clerk on or before the day and hour aforesaid.

Telegraphic Address
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Fax: +254-020-2243694
E-mail: clerk@parliament.go.ke
When replying please quote

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P.O. Box 41842 -00100
NAIROBI, Kenya

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

REF: NA/DDC/F&NP/2021/57

4th October, 2021

Mr. Andrew Kamau, CBS
Principal Secretary
Ministry of Petroleum and Mining
Nyayo house, Kenyatta Avenue
NAIROBI

Dear *Sir*,

RE: REQUEST FOR INFORMATION RELATING TO THE DEMURRAGES COSTS ON IMPORTATION OF PETROLEUM AT THE OPEN MARKET SYSTYEM (OTS) IN JANUARY TO JUNE 2021

Reference is made to the meeting between the Departmental Committee on Finance and National Planning and the National Treasury held on **Tuesday 28th September, 2021.**

You will recall that during the said meeting, you gave a breakdown of the demurrage charges relating to petroleum and petroleum products for the last two years. Further to this, the Committee would like to have a follow up meeting to discuss the demurrages cost at the OTS in January to June 2021. The Committee would like you to provide the following information relating to each of the vessel *as per the attached schedule*:

(i) The date of arrival and discharge for each vessel ;
(ii) Number of days that demurrage accrued;
(iii) Amounts paid as demurrage for each vessel; and
(iv) Documentary evidence of payment.

The purpose of this letter therefore is to request you to provide details as listed above and to invite you and the Cabinet Secretary for a meeting on **Wednesday 6th October, 2021** in the **Mini Chamber, County Hall at 10:00 a.m.**

The Liaison Officers for this matter are **Ms. Leah W. Mwaura, Committee Clerk**, who may be contacted on **Tel. No. 0724-232-353** or **email address:** leahwanjiru4@gmail.com **and Ms. Laureen Wesonga, 0710820442 or** laureenwesonga21@gmail.com

Yours *Sincerely*,

PETER K. CHEMWENO
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to —

Hon. John Munyes, EGH,
Cabinet Secretary,
Ministry of Petroleum and Mining
Nyayo house, Kenyatta Avenue
NAIROBI

ANNEX 1: **SUMMARY DEMURRAGE FOR OTS PARCELS (LOCAL) 2021**

JANUARY 2021						
S/NO.	VESSEL	DATE OF ARRIVAL	DATE OF DISCHARGE	AMOUNT	NUMBER OF DAYS DEMURRAGE ACCRUED	DEMURRAGE AMOUNT PAID
1.	MT CAPTAIN JOHN					
2.	MT STI QUEEN					
3.	MT STI QUEEN					
4.	MT CLEAROCEAN APOLLON					
5.	MT LR2 POLARIS					
6.	MTLIAN GUI HU					
7.	MT NAVIG8 PROVIDENCE					
8.	MT CHASELKA					
9.	MT MAERSK PIPER					
10.	MT STI LAUREN					
11.	MT SUNNY ISLE					
						Subtotal
FEBRUARY 2021						
12.	MT BW THALASSA					
13.	MT DONG-A THETIS					
14.	MT MARIANN					
15.	MT STI BROADWAY					
16.	MT STI ROSE					
17.	MT SILVER EMILY					
18.	MT SILVER EMILY					
19.	MT KAPTEN CAROQ					
20.	MT SERIANA					
						Subtotal
MARCH 2021						
21.	MT STI OXFORD					
22.	MT MAGIC VICTORIA					
23.	MT BW GALATEA					
24.	MT UACC AL MEDINA					
25.	MT UACC AL MEDINA					
26.	MT YUAN HE WAN					
27.	MT PACIFIC NAFSIKA					
28.	MT BW LARISSA					
29.	MT LR2 POLARIS (ADDITIONAL CLAIM)					
30.	MT CAPTAIN JOHN					
31.	MT CLEAROCEAN APOLLON					
32.	MT LIAN GUI HU					
33.	MT MAERSK SANDRA					
34.	MT STI WINNIE					
35.	MT PACIFIC ANNA					
36.	MT CLEAROCEAN AJAX					
						Subtotal

APRIL 2021						
37.	MT ASHLEY LADY					
38.	MT POLAR ACE					
39.	MT BW YANGTZSE					
40.	MT TAO LIN WAN					
41.	MT SILVER EMILY					
42.	MT SILVER EMILY					
43.	MT SILVER EMILY					
44.	MT BW DESPINA					
45.	MT NAN LIN WAN					
46.	MT MEI LIN WAN					
						Subtotal
MAY 2021						
47.	MT SOLIDARITY					
48.	MT MARE ORIENS					
49.	MT STI SPIGA					
50.	MT ALPINE MIA					
51.	MT ENCELIA					
52.	MT ATLANTIC BLUE					
						Subtotal
JUNE 2021						
53.	MT ATHINEA					
54.	MT SEAENVOY					
55.	MT STI LAVENDER					
56.	MT BW LARISSA					
57.	MT TORGOVY BRIDGE					
58.	MT SLTI SLOANE					
59.	MT ORANGE STARS					
60.	MT JAG PANKHI					
						Subtotal
Total Demurrage January to June, 2021						

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NAIROBI. Kenya

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

REF: NA/DDC/F&NP/2021/58

23rd September, 2021

Dr. Julius Muia, CBS
Principal Secretary
The National Treasury
Treasury Building, Harambee Avenue
NAIROBI

Eng. Andrew N. Kamau
Principal Secretary,
State Department for Petroleum
Ministry of Petroleum and Mining
Nyayo house, Kenyatta Avenue
NAIROBI

Dr. Eng. Joseph Njoroge, MBS
Principal Secretary
State Department of Energy
Nyayo House, Kenyatta Avenue
NAIROBI

Mr. James Mburu
Commissioner General
Kenya Revenue Authority
30th Floor, Times Towers, Haile Selassie Avenue
NAIROBI

Dear

RE: INVITATION FOR A MEETING WITH THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING TO INQUIRE INTO THE CAUSE OF THE DRASTIC INCREASE IN PRICE OF PETROLEUM AND PETROLEUM PRODUCTS

The Departmental Committee on Finance and National Planning is established by Standing Order 216 of the National Assembly and mandated, to amongst others, '***investigate, inquire into, and report on all matters relating to the mandate, management activities, administration, operations and estimates of the assigned Ministries and Departments***'.

Pursuant to its mandate, the Committee is in receipt of a Petition seeking to investigate the cause of the drastic review of the maximum retail and wholesale petroleum and petroleum products price for the period 15th September to 14th October, 2021 across the country leading to huge outcry from the public and stakeholders in the transportation and manufacturing sectors. In addition, the astronomical price increase in petroleum and petroleum products price has increased the cost of living for most Kenyans amid concerns that most Kenyans are still suffering from the effects of COVID -19 pandemic.

In this regard, the Committee has resolved to invite you and Cabinet Secretary for a meeting to discuss the cause of the drastic increase in prices of petroleum and petroleum products. The Committee would therefore like you to prepare a report on the following:

1. What are the causes of the recent increases in fuel prices?
2. How effective is the current fuel pricing formula?
3. What taxes and levies are collected from fuel prices and how are they utilized?
4. How much has been collected under the petroleum development levy for the last three years and how much is the reserve?
5. Provide a detailed report on all receipts into the Petroleum Development Levy Fund for the last two years.
6. Details on utilisation of funds collected into Petroleum Development Levy Fund including any development programmes undertaken financed through the Petroleum development levy Fund?
7. What is the status of operationalization of the Petroleum Stabilization Fund; how was the Petroleum Consolidated Fund to be funded and how much has much has been put into the fund; how was it supposed to be managed?
8. How has the government been funding the fuel subsidy since March 2021 and how much has been spent to date on fuel subsidies?
9. Why was the fuel subsidy removed in fuel price for September 2021?
10. What are the possible causes of the demurrage charges leading to high cost of fuel?
11. What is the cumulative amount collected on demurrage charges relating to petroleum and petroleum products for the last two (2) years including monthly averages?
12. How does the government intend to address the current high fuel prices in the view of its impact on the cost of living for Kenyans?
13. Are there plans to cushion manufacturers from losses incurred due to high fuel prices?
14. What are the long term plans measures to counter effects of fuel price fluctuations including of sufficient strategic fuel reserves?
15. What legislative intervention can be put in place to address fuel price stability.

This is therefore to inform you that the meeting has been scheduled for **Wednesday, 29th September, 2021 in Mini Chamber, First Floor, County Hall** as per the attached programme.

The Liaison Officers for this matter are **Ms. Leah W. Mwaura, Committee Clerk**, who may be contacted on **Tel. No. 0724-232-353** or **email address: leahwanjiru4@gmail.com or Ms. Laureen Wesonga, 0710820442 or laureenwesonga21@gmail.com**

Yours Sincerely

PETER CHEMWENO
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to —

Hon. (Amb.) Ukur Yatani Kanacho, EGH
Cabinet Secretary
National Treasury and Planning
Treasury Building, Harambee Avenue
NAIROBI

Hon. John Munyes, EGH
Cabinet Secretary
Ministry Of Petroleum and Mining

Works Building, Ngong Road
<u>**NAIROBI**</u>

Hon Charles Keter, EGH
Cabinet Secretary
Ministry of Energy
Nyayo House, Kenyatta Avenue
<u>**NAIROBI**</u>

WEDNESDAY 29TH SEPTEMBER, 2021		
S/NO.	MINISTRY	TIME
1.	Ministry of Energy	9:00 a.m
2.	Ministry of Petroleum and Mining	11:30 a.m
3.	National Treasury and Planning and Kenya Revenue Authority	2.30 p.m

Energy & Petroleum Regulatory Authority

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Our Ref.: EPRA/PG/16/EK/ja

6th October 2021

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

Dear Mr. Sialai,

RE: REQUEST FOR INFORMATION RELATING TO DEMURRAGE COSTS ON IMPORTATION OF PETROLEUM THROUGH THE OPEN TENDER SYSTEM (OTS) FOR THE PERIOD JANUARY TO JUNE 2021

Reference is made to your letter Ref: NA/DDC/F&NP/2021/57 dated 4th October 2021 and addressed to the Principal Secretary Ministry of Petroleum and Mining on the above captioned matter.

Attached herewith, please find the tabulation of demurrage costs per vessel for the period January to June 2021. The demurrage rate is based on vessel size and is well stipulated in the Open Tender System (OTS) Agreement signed by Oil Marketing Companies (OMCs) in accordance with Legal Notice No. 24 of 2012. Further, OMCs are required to provide copies of Charter Parties (CP) with vessel operators for purposes of verification of the actual demurrage rates applicable for each vessel.

Yours Sincerely

Daniel Kiptoo Bargoria
DIRECTOR GENERAL

Encls.

Copy to: **Hon. John Munyes, EGH**
Cabinet Secretary
Ministry of Petroleum & Mining
NAIROBI

Mr. Andrew Kamau, CBS
Principal Secretary
Ministry of Petroleum & Mining
NAIROBI

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Annex I: Demurrage for the period January to June 2021

S/ No	Vessel	Date of Arrival	Last date of Discharge	Demurrage Amount (US$)	Number of Days Demurrage Accrued	Demurrage Amount Paid	Demurrage(Kshs/Ltr)
				Jan-21			
1	MT CAPTAIN JOHN	28/11/2020	11/12/2020	259,994.75	10.38	As per CP	0.47
2	MT STI QUEEN - AGO	08/12/2020	12/12/2020	51,509.36	2.88	As per CP	0.21
3	MT STI QUEEN - PMS	08/12/2020	13/12/2020	17,073.59		As per CP	0.20
4	MT CLEAROCEAN APOLLON	29/11/2020	16/12/2020	290,497.72	13.2	As per CP	0.53
5	MT LR2 POLARIS	17/12/2020	22/12/2020	40,019.39	2.54	As per CP	0.08
6	MT LIAN GUI HU	01/12/2020	25/12/2020	492,681.19	22.08	As per CP	0.92
7	MT NAVIG8 PROVIDENCE	10/12/2020	29/12/2020	370,297.22	16.75	As per CP	0.68
8	MT CHASELKA	16/12/2020	02/01/2021	194,950.32	14.69	As per CP	0.33
9	MT MAERSK PIPER	25/12/2020	07/01/2021	243,239.27	10.31	As per CP	0.45
10	MT STI LAUREN	27/08/2020	14/09/2020	383,907.78	15.98	As per CP	0.69
11	MT SUNNY ISLE	19/11/2019	29/11/2019	21,727.11	4.58	As per CP	0.30
	Sub Total			**2,365,897.69**			0.50
				Feb-21			
12	MT BW THALASSA	24/12/2020	09/01/2021	194,563.38	14.8	As per CP	0.33
13	MT DONG A THETIS	31/12/2021	14/01/2021	171,307.05	11.21	As per CP	0.26
14	MT MARIANN	13/01/2021	19/01/2021	73,397.55	3.1	As per CP	0.13
15	MT STI BROADWAY	13/01/2021	23/01/2021	169,287.66	7.45	As per CP	0.33
16	MT STI ROSE	21/01/2021	27/01/2021	84,389.30	3.42	As per CP	0.15
17	MT SILVER EMILY-AGO	25/01/2021	29/01/2021	63,912.62	5.15	As per CP	0.32

S/ No	Vessel	Date of Arrival	Last date of Discharge	Demurrage Amount (US$)	Number of Days Demurrage Accrued	Demurrage Amount Paid	Demurrage(Kshs/Ltr)
18	MT SILVER EMILY-PMS	25/01/2021	02/02/2021	46,391.39		As per CP	0.29
19	MT KAPTEN CAROQ	20/01/2021	02/02/2021	233,841.60	10.02	As per CP	0.44
20	MT SERIANA	25/01/2021	06/02/2021	257,584.30	10.29	As per CP	0.47
	Sub Total			**1,294,674.85**			0.30
Mar-21							
21	MT STI OXFORD	25/01/2021	11/02/2021	282,089.71	12.4	As per CP	0.55
22	MT MAGIC VICTORIA	03/02/2021	17/02/2021	210,862.92	11.01	As per CP	0.49
23	MT BW GALATEA	13/02/2021	20/02/2021	71,204.70	2.83	As per CP	0.14
24	MT UACC AL MEDINA - AGO	15/02/2021	25/02/2021	46,587.12	7.79	As per CP	0.49
25	MT UACC AL MEDINA - PMS	15/02/2021	25/02/2021	131,517.24	7.79	As per CP	0.45
26	MT YUAN HE WAN	17/02/2021	26/02/2021	116,865.87	5.05	As per CP	0.21
27	MT PACIFIC NAFSIKA	26/02/2021	02/03/2021	44,703.00	1.93	As per CP	0.09
28	MT BW LARISSA	21/02/2021	09/03/2021	161,815.12	7.03	As per CP	0.29
29	MT LR2 POLARIS (ADDITIONAL CLAIM)	17/12/2020	22/12/2020	58,069.25	2.7	As per CP	0.11
30	MT CAPTAIN JOHN	28/11/2020	11/12/2020	80,887.26	10.38	As per CP	0.15
31	MT CLEAROCEAN APOLLON	29/11/2020	16/12/2020	87,149.31	13.2	As per CP	0.16
32	MT LIAN GUI HU	01/12/2020	25/12/2020	174,822.36	22.08	As per CP	0.33
33	MT MAERSK SANDRA	25/12/2020	07/01/2021	30,089.90	10.31	As per CP	0.05
34	MT STI WINNIE	20/11/2020	02/12/2020	65,232.17	9.17	As per CP	0.12
35	MT PACIFIC ANNA	09/11/2020	27/11/2020	102,866.92	15.87	As per CP	0.20

S/ No	Vessel	Date of Arrival	Last date of Discharge	Demurrage Amount (US$)	Number of Days Demurrage Accrued	Demurrage Amount Paid	Demurrage(Kshs/Ltr)
36	MT CLEAROCEAN AJAX	24/11/2020	07/12/2020	61,341.25	10.64	As per CP	0.11
	Sub Total			1,726,104.08			0.22
				Apr-21			
37	MT ASHLEY LADY	07/03/2021	14/03/2021	75,517.06	3.18	As per CP	0.12
38	MT POLAR ACE	03/03/2021	18/03/2021	281,461.53	12.37	As per CP	0.56
39	MT BW YANGTZE	06/03/2021	21/03/2021	211,456.36	11.8	As per CP	0.51
40	MT TAO LIN WAN	17/03/2021	25/03/2021	115,674.45	5.95	As per CP	0.22
41	MT SILVER EMILY (AGO)	15/03/2021	16/03/2021	63,912.62	4.61	As per CP	0.27
42	MT SILVER EMILY (PMS)	15/03/2021	16/03/2021	46,391.39	4.61	As per CP	0.39
43	MT SILVER EMILY	N/A	N/A	N/A	N/A	As per CP	
44	MT BW DESPINA	19/03/2021	29/03/2021	156,763.90	6.45	As per CP	0.29
45	MT NAN LIN WAN	23/03/2021	03/04/2021	162,510.64	7.58	As per CP	0.31
46	MT MEI LIN WAN	28/03/2021	08/04/2021	176,861.92	7.78	As per CP	0.36
	Sub Total			1,290,549.88			0.33
				May-21			
47	MT SOLIDARITY	06/04/2021	12/04/2021	106,332.42	3.51	As per CP	0.16
48	MT MARE ORIEN5	31/03/2021	18/04/2021	329,884.31	14.27	As per CP	0.60
49	MT STI SPIGA	09/04/2021	23/04/2021	284,078.55	11.51	As per CP	0.51
50	MT ALPINE MIA (AGO)	15/04/2021	26/04/2021	81,387.33	9	As per CP	0.47
51	MT ALPINE MIA (PMS)	16/04/2021	27/04/2021	75,963.93	9.05	As per CP	0.44
52	MT ENCELIA	24/04/2021	02/05/2021	116,381.05	5.17	As per CP	0.19

S/ No	Vessel	Date of Arrival	Last date of Discharge	Demurrage Amount (US$)	Number of Days Demurrage Accrued	Demurrage Amount Paid	Demurrage(Kshs/Ltr)
53	MT ATLANTIC BLUE	23/04/2021	06/05/2021	202,709.29	7.98	As per CP	0.35
	Sub Total			**1,196,736.88**			0.36
				Jun-21			
54	MT ATHINEA	16/04/2021	07/05/2021	550,732.63	17.58	As per CP	0.82
55	MT SEAENVOY	02/05/2021	15/05/2021	276,107.38	10.53	As per CP	0.41
56	MT STI LAVENDER	13/05/2021	20/05/2021	81,963.88	3.73	As per CP	0.14
57	MT BW LARISSA	05/05/2021	24/05/2021	396,174.36	16.07	As per CP	0.72
58	MT TORGOVY BRIDGE (AGO)	14/05/2021	21/05/2021	45,640.20	4.55	As per CP	0.21
59	MT TORGOVY BRIDGE (PMS)	14/05/2021	21/05/2021	27,004.10	4.55	As per CP	0.19
60	MT STI SLOANE	18/05/2021	29/05/2021	183,804.97	8.04	As per CP	0.32
61	MT ORANGE STARS	21/05/2021	02/06/2021	232,584.57	9.4	As per CP	0.41
62	MT JAG PANKHI	02/06/2021	06/06/2021	24,553.22	1.22	As per CP	0.07
	Sub Total			**1,818,565.31**			0.42

Hon. Speaker for my approval. 20.9.21

Approved 21/9/2021

REPUBLIC OF KENYA
TWELFTH PARLIAMENT (FIFTH SESSION)

THE NATIONAL ASSEMBLY

PUBLIC PETITION

(No. 039 of 2021)

REGARDING REVIEW OF ABNORMAL INCREMENTS IN PRICES OF PETROLEUM AND PETROLEUM PRODUCTS IN THE COUNTRY

I, the **UNDERSIGNED**, on behalf of consumes of fuel and other petroleum products across the country;

DRAW the attention of the House to the following: -

1) **THAT,** the Energy and Petroleum Regulatory Authority (EPRA) and the Ministry of Energy acted excessively and insensitively in the recent historic increase of petroleum prices by between Kshs 7 to 12 and failed to safeguard basic rights of Kenyans by ignoring the dire economic struggles that bedevil the majority of low-income earners who live below the poverty line and are still recuperating from the shocks of Covid-19;
2) **THAT,** the high fuel prices have infringed on the right of every citizen to move freely by occasioning restrictive fare hike in public service vehicles such as *matatus*, buses, *boda boda* motorbikes and taxis;
3) **THAT,** Kenyan citizens have further been denied rights to adequate food of acceptable quality due to prohibitive cost of transportation from the production points to markets and homes, and are therefore subjected to hunger and risks of starvation which infringes on their rights to life contrary to Article 26 of the Constitution in addition to facing the prevailing droughts and famine in several parts of the country;
4) **THAT,** costs of medical services have skyrocketed beyond the anticipated parameters of universal health care programme on account of rising energy costs, while the over burdening taxes on fuel and other petroleum products has contributed immensely to job cuts that have led investors to shift to neighbouring countries having favourable trade incentives;
5) **THAT,** it is ironical and illogical for the Government to set fuel prices at higher rates than neighbouring countries including Rwanda, Burundi, Ethiopia, Somalia, Eritrea, Tanzania and Uganda some of which are land-locked and hence import their fuels through Kenyan ports;
6) **THAT,** skyrocketing energy costs in the country are reversing the initial gains that had been realized under the Government's Economic Stimulus Programme and the Big Four Agenda, and are a direct result of wastage of taxpayer's money that occurs in every five-year cycle;
7) **THAT,** efforts by citizens through various groups and institutions to have this escalating energy costs placed under control by the National Government have been futile;

8) **AND THAT,** the matters raised in this Petition with regard to review of the abnormal fuel price increment ranging from Kshs 7.58 for Super Petrol, Kshs 7.94 for Diesel and Kshs 12.97 for Kerosene are not pending in any court of law in Kenya to the best of our knowledge.

PUBLIC PETITION

REGARDING REVIEW OF ABNORMAL INCREMENT IN PRICES OF PETROLEUM AND PETROLEUM PRODUCTS IN THE COUNTRY

NOW THEREFORE, your humble petitioners pray that the National Assembly through the Departmental Committee on Energy:

(i) conducts a public inquiry on reasons behind the high prices of petroleum products in Kenya including Liquefied Petroleum Gas (LPG) that includes the importation process, overhead refinery costs per litre/ per barrel, volume of exported crude oil mined locally, and amount of revenue collected from petroleum products;

(ii) urgently reviews relevant laws so as to cause a reduction of the retail prices of petroleum and petroleum products including the Value Added Tax (VAT) law, the Income Tax law, the Tax Procedures Act, the Miscellaneous Fees and Levies Act, among other statute;

(iii) causes the relevant state agencies amd regulatory-making authorities to review the relevant regulations relating to petroleum products with a view to reducing the retail cost of petroleum and petroleum products including LPG;

(iv) considers annulling the relevant petroleum-related regulations until such time when the reglation-making authorities comply with a view to bringing down the cost of fuel in the country, and

(v) makes any other recommendation or legislative intervention aimed at reducing the retail price of fuel and LPG.

And your **PETITIONERS** will ever pray.

PRESENTED BY

HON. STEPHEN MULE, MP
MEMBER FOR MATUNGULU CONSTITUENCY

Date: 20th Sept 2021

REPUBLIC OF KENYA

TWELFTH PARLIAMENT - (FIFTH SESSION)

THE NATIONAL ASSEMBLY

CONVEYANCE OF PUBLIC PETITION

(No. 040 of 2021)

PETITION TO AMEND THE FINANCE ACT, 2018 IN ORDER TO ADDRESS DRASTIC INCREASE IN PRICES OF PETROLEUM AND PETROLEUM PRODUCTS

Honourable Members, Standing Order 225(2)(b) requires the Speaker to report to the House any Petition, other than those presented by a Member. Further, Article 119 of the Constitution provides for the right of any person to petition Parliament to consider any matter within its authority, including petitioning the House to enact, amend or repeal any legislation.

In this regard, **Honourable Members,** I wish to report to the House that my office has received a Petition from Mr. Antony Manyara and Mr. John Wangai of P. O. Box 17586 Nairobi, calling for ***"urgent repeal of Section 13 of the Finance Act, 2018 in order to address drastic increase in prices of petroleum and petroleum products through abolition of the currently prescribed 8% Value Added Tax."***

In their petition, **Honourable Members,** the petitioners decry passage of section 13 of the Finance Act, 2018 which amended section 5(2) of the Value Added Tax, 2013 that introduced a Value Added Tax of 8% on petroleum and petroleum products which had previously been tax exempt. This taxation rate was pegged at the taxable value of petroleum and petroleum products exclusive of excise duty, fees and other charges.

The Petitioners aver that all taxpayers and consumers of petroleum and petroleum products have been adversely impacted by the law which they term as draconian.

Honourable Members, The Petitioners seek the intervention of this House to consider repealing Section 13 of the Finance Act, 2018 in order to address the sharp increase in prices of petroleum and petroleum products through abolition of the currently prescribed 8% Value Added Tax. This is in view of its overarching and substantial impact on taxpayers and consumers of the said products, which they have listed as petroleum oils, oils from bituminous minerals, motor vehicle fuel, spirits, kerosene-based jet fuel, illuminating kerosene, and natural gas in gaseous state.

Honourable Members, this is a matter that squarely and exclusively falls within the authority and mandate of the National Assembly as espoused in at least five provisions of the Constitution, the first of which is Article 95(2) provides that, and I quote:-

> *"The National Assembly deliberates on and resolves issues of concern to the people."*

Secondly, Article 119(1) which states, and I quote:-

> *"Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation."*

Further, Article 114(3)(a) mandates the National Assembly to enact laws pertaining to taxation, while Article 210(1) provides that, and I quote:-

> *"No tax or licensing fee may be imposed, waived or varied except as provided by legislation."*

Finally, as indeed observed by the Petitioners both in their submissions as well as in their Prayer, the legislative authority of the Republic, which is derived from the people, is exercised at the national level by Parliament in line with Article 94(1) of the Constitution.

Honourable Members, you will agree with me that this is a current matter which is of great concern to the people. Indeed, in addition to this Petition as well as a similar Petition by the Member for Matungulu, the Hon. Stephen Mule Mutinda, MP, I have received requests for Adjournment Motions from the Member for Dagoretti North, Hon. Simba Arati, MP and Nominated Member, the Hon. Wilson Sossion, MP seeking adjournment of the House so as to deliberate on this very issue. I have determined that the best avenue for resolving the issue at hand is not a Motion under Standing Order 33, but rather legislation, and it is on the same basis that I declined to approve Statements and Questions from several other Members on the matter.

Honourable Members, pursuant to the provisions of Standing Order 227(1), this Petition stands committed to the Departmental Committee on Finance and National Planning for consideration.

In addressing the concerns and prayers of the Petitioners, the Committee shall be expected to:-

1) table its report within Fourteen (14) days in view of the urgency of the matter and in consideration of the effects it has on the populace, notwithstanding the sixty days period under Standing Order 227;

2) attach a draft Bill to the Report, for my approval for publication, proposing legislative interventions as sought by the Petitioners, and;

3) undertake general and targeted inquiry to confirm whether there exists other reasons, beyond taxation leading to the drastic rise in the cost of petroleum and petroleum products with a view to proposing administrative and legislative measures for addressing those causes.

Honourable Members, although the Hon. Stephen Mule requests that his Petition be referred to the Departmental Committee on Energy, you will all agree that the solution to the matter at hand lies in addressing taxation and related measures, and therefore it is only prudent that we consolidate the efforts therein in one organ of this House. Subsequently, the Petition by Hon. Stephen Mule, MP will also be considered by the Departmental Committee on Finance and National Planning.

Finally, pursuant to the provisions of Standing Order 195(1), Members of the Departmental Committee on Energy and indeed any other Member of this House are at liberty to attend the sittings of the Departmental Committee on Finance and National Planning and make their submissions on the matter.

I thank you!

THE HON. JUSTIN B.N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY
Tuesday, September 21, 2021

PETITION TO THE NATIONAL ASSEMBLY TO REPEAL S.13 OF THE FINANCE ACT 2018 ; PURSUANT TO ARTICLES 2, 3, 10, 43, 46, 47, 119, 201, 209, 210 & 232 OF THE CONSTITUTION OF KENYA 2010, THE VALUE ADDED TAX ACT, THE PARLIAMENTARY POWERS & PRIVILEGES ACT, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND PART XXIII OF THE NATIONAL ASSEMBLY STANDING ORDERS.

VERY URGENT

THE CLERK,

NATIONAL ASSEMBLY,

PARLIAMENT BUILDINGS,

P.O BOX 41842 - 00100,

NAIROBI.

(1) DLSP
To process for today's presentation in the House. 21/9/21

NATIONAL ASSEMBLY
RECEIVED
21 SEP 2021
CLERK'S OFFICE

We, the undersigned petitioners being patriotic citizens of the republic of Kenya, pursuant to articles 2, 3, 10, 43, 46, 47, 119, 201, 209, 210 and 232 of the Constitution, the value added tax act, the parliamentary powers and privileges act, the petition to parliament (procedure) act and part xxiii of the national assembly standing orders: -

DRAW the attention of the House of the following;

1. THAT article 2(4) of the Kenyan constitution stipulates that any law, including customary law that is inconsistent with this constitution is void to the extent of the inconsistency, and any act or omission in contravention of the constitution is invalid.
2. THAT article 3(1) of the constitution provides that every person has an obligation to respect, uphold and defend this constitution.
3. THAT article 10 provides the national values which includes human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised.
4. THAT article 43 provides that every person has the right to social security.
5. THAT article 46 provides that Consumers have the right—

   (a) to goods and services of reasonable quality;

(2) DD-LSP
To urgently process, acknowledge receipt 21/9/21

(b) to the information necessary for them to gain full benefit from goods and services; and

(c) to the protection of their health, safety, and economic interests.

6. THAT article 47 provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
7. THAT article 119 stipulates every person has a right to petition Parliament to consider any matter within its authority.
8. THAT article 201 provides that the following principles shall guide all aspects of public finance in the Republic—

   (a) there shall be openness and accountability, including public participation in financial matters; and

   (b) the public finance system shall promote an equitable society, and in particular the burden of taxation shall be shared fairly.
9. THAT article 209 provides that only the national government may impose—

   (a) income tax;

   (b) value-added tax;

   (c) customs duties and other duties on import and export goods; and

   (d) excise tax.
10. THAT article 210 stipulates that no tax or licensing fee may be imposed, waived or varied except as provided by legislation.
11. THAT article 232 provides that the values and principles of public service include—

    (a) high standards of professional ethics;

    (b) efficient, effective and economic use of resources;

    (c) responsive, prompt, effective, impartial and equitable provision of services;

    (d) involvement of the people in the process of policy making;

    (e) accountability for administrative acts; and

(f) transparency and provision to the public of timely, accurate information.

12. **THAT** section 18 of the parliamentary powers and privileges act provides that Parliament or its committees may invite or summon any person to appear before it for the purpose of giving evidence or providing any information, paper, book, record or document in the possession or under the control of that person.

THE FACTS constituting the same include;

13. THAT The Finance bill 2018 was passed by the National Assembly on the 30th August 2018, and was presented to the president for assent on the 13th September 2018, which he refused to assent and made some recommendations through the presidential memorandum.
14. **THAT** all the recommendations were passed by parliament on 20th September 2018 as below;

a) Petroleum products shall attract tax at a rate of 8% of the taxable value effective from the date of assent. Down from the previous proposal of 16 %
b) Telephone and internet data services shall be charged excise duty at a rate of 15% of their excisable value. Up from 10 %
c) Fees charged for money transfer services by banks, money transfer agencies and other service providers shall attract Excise duty at a rate of 20% of their excisable value. Up from 12%
d) Excise duty on other fees (i.e., ATM withdrawal charges) charged by financial institutions shall be 20% of their excisable value.
e) An employer shall pay to the National Housing Development Fund in respect to each employee employer's contribution at 5% of the employee's monthly basic salary and employee's contribution at 1.5% of the employee's monthly basic salary. Provided that the sum of the employer and employee contribution does not exceed Ksh5,000 up from 0.5 % as was proposed.

f) Anti-adulteration levy of Ksh 18 per litre of kerosene Sugar confectionery, including white chocolate, chocolate blocks, slabs or bars excise duty to be charged at a rate of Ksh 20 per kg.
g) Motor vehicles to attract excise duty at a rate of 20% or 30 %
h) Reduction of lotteries, betting and gaming taxes from 35% to 15

15. **THAT** Following the public reading of the Budget Statement for the fiscal year 2018/2019, and subsequent release of the Finance Bill 2018, matters taxation in Kenya attracted a lot of public interest, with two Court cases challenging various provisions of the Bill and injunctions obtained effectively stopping the operation of the Finance Bill 2018. This follows the Cabinet Secretary for the National Treasury, Henry Rotich, placing reliance on an Act of Parliament known as the Provisional Collection of Taxes and Duties Act, to effectively make the Finance Bill 2018 operational, prior to the President's assent. The ruling will affect the implementation of the Finance Act in respect of legality of effective dates, some of which take effect on 1 July 2018.
16. **THAT** the Parliamentary deliberations culminated in the removal of certain tax measures contained in the Finance Bill 2018. However the proposed amendments were rejected by the President of Kenya and sent back to the National assembly for reconsideration.
17. **THAT** noting the increased taxation burden required to finance Kenya's Kshs 2.5 Trillion budget, the National Treasury opted to downsize the budget for the fiscal period 2018/2019. This, however, coincided with increased revenue raising measures contained in the President's Memorandum to Parliament, which sought to increase, inter alia, excise duty on money transfer services, data and airtime, as well as introduce Value Added Tax (VAT) on petroleum products at a reduced rate of 8%.

18. **THAT** with the Finance Act 2018 now operational it offers a bigger challenge across most economic classes and sectors.
19. **THAT** Section 5 (2) of the VAT Act, 2013 was amended to introduce VAT at 8% on petroleum products which had previously been exempt, under transition, since the enactment of the VAT law in September 2013.
20. **THAT** specifically, the introduced paragraph states that in the case of goods listed in Section B of Part I of the First Schedule of VAT Act 2013, eight percent 8% of the taxable value, effective from the date of assent Provided that -

    i. The taxable value in respect of these goods shall exclude excise duty, fees and other charges; and

    ii. Despite Section I of the Finance Act, 2018, this paragraph comes into effect upon enactment of the Supplementary Appropriation (No. 2) Act, 2018.
21. **THAT** all taxpayers and consumers of petroleum products have been affected directly or indirectly by the draconian policy / act.
22. **THAT** while the political branches were considering the Bill, a Constitutional Petition challenging its propriety on multiple grounds including whether or not it had been presented to Parliament in time, as well as the constitutionality of bringing some of its provisions into force before its enactment, was being litigated before the Courts. A day before the Finance Act, 2018 (the Finance Act) was passed, the High Court delivered its decision upholding two of the grounds the redoubtable Mr. Omtatah had pressed. One was the headline-grabbing invalidation of the Provisional Collection of Taxes Act which allowed the Cabinet Secretary (CS) Finance, to enforce provisions of the Finance Act before it was enacted. Lady Justice Okwany held that under Article 94 of the Constitution, only Parliament could pass legislation, and it had to be done within the stipulated process which included such fundamental issues such as effective public participation in law-making. By allowing prior enforcement of provisions of a bill by way of orders issued by a Minister, however temporarily,

not only does the Executive unlawfully usurp the exclusive non-delegable powers of Parliament but also undermined the salutary inclusive law-making process. As the Provisional Collection of Taxes Act was invalidated, the CS's orders which had sought to implement various provisions of the Bill before it was enacted were also invalidated. The inevitable fall-out of such nullification is yet to be fully worked out.

23. **THAT** less remarked upon, but surely potentially more consequential or, at any rate, should be more consequential, is the High Court's finding that the Bill was presented late as that should have been done by 30th April, 2018 as required by Section 37 of the Public Finance Management Act, 2018. That section does not set out what happens in the event its provisions are not met. Lady Justice Okwany did not state what followed from her finding of contravention. There has always been controversy as to the consequence of breaches of mandatory statutory timelines. With notable exceptions, the traditional approach of most Kenyan Courts has been that such violation should lead to annulment of challenged action.

24. **THAT** the issues raised herein are substantive and efforts to have the matter addressed by the relevant body have proved futile.

25. **THAT** the issue in respect of which this petition is made is not pending before any court of law or other constitutional or legal body.

THEREFORE, your humble petitioners pray;

26. **THAT** pursuant to article 94(1) of the constitution which provides that the legislative authority of the republic is derived from the people and, at the national level, is vested in and exercised by parliament, the honourable house considers this petition.

27. THAT in accordance with article 119 which encapsulates that every person has the right to petition parliament to consider any matter within its authority, the Honourable house to repeal Section 13 of the Finance Act 2018 which placed VAT at the rate of 8% on the goods listed in Section B Part I of the First Schedule of the Value Added Tax Act 2013. Amongst the goods that were affected include petroleum oils and oils obtained from bituminous minerals, crude; motor vehicle fuel; spirit and kerosene-based jet fuel; illuminating kerosene; natural gas in gaseous state etc.

Name of the 1st petitioner: HON ANTONY MANYARA

Signature: AM

Address: PO BOX 17586 - 00200, NAIROBI - KENYA.

ID Number: 30244250

Date: 20th/09/2021

Name of the 2nd petitioner: John Wagai

Signature:

ID Number: 33549010

Date: 20th/09/2021

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - FIFTH SESSION

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNIN

PUBLIC PETITION ON THE PROPOSAL TO AMEND THE FINANC ACT,2018 IN ORDER TO ADDRESS THE DRASTIC INCREASE IN PRICES OF PETROLEUM AND PETROLEUM PRODUCTS

Mandate of the Committee
The Departmental Committee on Finance and National Planning is established by Standing Order 216 of the National Assem Standing Orders and mandated, to amongst others, *'investigate, inquire into, and report on all matters relating to the manda management activities, administration, operations and estimates of the assigned Ministries and Departments'.*

Problem statement
Petroleum pricing in Kenya is the mandate of the Energy and Petroleum Regulatory Authority (EPRA) which was establish by section 9 of the Energy Act, 2019. Section 10 of the Act provides that functions of the Authority shall be to regul importation; refining; exportation; transportation; storage; and sale of petroleum and petroleum products with t exception of crude oil.

On 14th September, 2021 EPRA issued a Press Statement on the intended review of the maximum retail and wholes petroleum price for the period 15th September to 14 October, 2021 across the country. The new prices have led to hu outcry from the public and stakeholders in the transportation and manufacturing sectors. There are concerns that sudd increase in the pump prices has increased the cost of living for most Kenyans amid concerns that most Kenyans are s suffering from effects of the COVID-19 Pandemic.

The Departmental Committee on Finance and National Planning has received a Public Petition seeking to amend the Finar Act, 2018 by repealing the imposition of 8% VAT on petroleum and petroleum products and make necessary administrati interventions in order to address these concerns. The Committee is expected to table its report within fourteen days due the urgency on the matter and its effect on the welfare of Kenyans.

In this regard, the Committee, pursuant to power conferred under the provisions of Standing Order 227 has resolved conduct an inquiry into **the drastic increase in prices of petroleum and petroleum products** with the following terms reference—

1. To establish the cause of the drastic increase in the price of petroleum and petroleum products and ascert whether there are other causes of price increase apart from taxes and levies;
2. To inquire into the amount of revenue raised from each of the taxes and levies paid on petroleum and petrole products per month;
3. To investigate the purpose for which the levies raised through petroleum and petroleum products are used;
4. To inquire on how demurrage charges affect the pricing of petroleum, how much they are per month and in whi component of the fuel pricing they are contained;
5. To determine whether pricing of petroleum should be done monthly or whether the period should be increased;
6. To inquire into the implementation of fuel stabilization fund;
7. To seek alternative ways of raising revenue in lieu of imposition of taxes on petroleum products;
8. To understand the impact of increased fuel prices to the economy and the general welfare of Kenyans;
9. To establish why the Kenya Petroleum Refineries Limited is still a factor in petroleum pricing yet it no longer refin crude oil; and
10. To propose a Legislation to address the concerns by the Petitioners.

Invitation to Public Participation (Submission of Memoranda)
The Committee, therefore, in compliance with the provisions of Article 118(1) (b) of the Constitution which requir **Parliament to facilitate public participation and involvement in the legislative and other business of parliament and Committees** invites members of public and any interested stakeholders to submit any views and comments they may ha on the matters under inquiry.

Further, the Committee will hold sittings on **Tuesday, 28th September 2021** in the **Mini Chamber County Hall, Parliame Buildings** to receive oral submissions from the public and stakeholders. The meetings will take place between 9. 00 a.m. 12.30 p.m. and 2.30 p.m. to 4.30 p.m.

Written memoranda may be addressed to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi;** han delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi;** or emailed to **clerk@parliament.go.ke**; to received **on or before Monday 27th September, 2021 at 5.00 p.m.**

MICHAEL R. SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY

23rd September 2021

HARAMBEE

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - FIFTH SESSION

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

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4. To inquire on how demurrage charges affect the pricing of petroleum, how much they are per month and in which component of the fuel pricing they are contained;
5. To determine whether pricing of petroleum should be done monthly or whether the period should be increased;
6. To inquire into the implementation of fuel stabilization fund;
7. To seek alternative ways of raising revenue in lieu of imposition of taxes on petroleum products;
8. To understand the impact of increased fuel prices to the economy and the general welfare of Kenyans;
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MICHAEL R. SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY

23rd September 2021