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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION – 2021

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON THE PETROLEUM PRODUCTS' (TAXES AND LEVIES) (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2021)

CLERKS CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

DECEMBER 2021

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 02 DEC 2021
DAY: Thur AM.
TABLED BY: Chair DC Finance. Hon. G. Wanga.
CLERK-AT THE-TABLE: G. Chebet

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ACRONYMS

COSSOP	-	Cost of Service Study in the Supply of Petroleum Products
EAPTA	-	East Africa Petroleum Transporters Association
EPRA	-	Energy and Petroleum Regulatory Authority
EDA	-	Excise Duty Act
ICPAK	-	Institute of Certified Public Accountants of Kenya
KAM	-	Kenya Association of Manufacturers
KENAPEDE	-	Kenya National Petroleum Dealers Association
KEPSA	-	Kenya Private Sector Allowance
KIPEDA	-	Kenya Independent Petroleum Dealers Association (KIPEDA)
KRA	-	Kenya Revenue Authority
LPG	-	Liquefied Petroleum Gas
OMCs	-	Oil Marketing Companies
PDL	-	Petroleum Development Levy
PIEA	-	Petroleum Institute of East africa
POAK	-	Petroleum Outlets Association of Kenya
VAT	-	Value Added Tax
WHVAT	-	Withholding VAT

CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Finance and National Planning on its consideration of the Petroleum Products' (Taxes and Levies) (Amendment) Bill (National Assembly Bill No. 42 of 2021) which was published on 15th October 2021.

The Bill went through the First Reading on 9th September 2021 and was thereafter committed to the Departmental Committee on Finance and National Planning pursuant to Standing Order 127.

The Bill has fourteen (14) clauses and seeks 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 Levy Fund in order to specify the purposes for which the Petroleum Development Levy may be utilised. The Bill also amends the Statutory Instruments Act, 2013 to require that all the Statutory Instruments that impose taxes and levies are positively or negatively approved by the National Assembly.

Following placement of adverts in the print media on 11th November 2021 requesting for comments on the Bill from members of the public and relevant stakeholders pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee did not receive any written memorandum on the Bill.

In order to extensively carry out public participation on the Bill, the Committee invited stakeholders vide letter REF: NA/DDC/F&NP/2021/75 dated 26th November 2021 for a stakeholder engagement meeting which was held on Tuesday, 30th November 2021 at Hilton Garden Inn Hotel where ten (10) stakeholders attended the meeting.

Most stakeholders were opposed to the reduction of the gross profit margins for Oil Marketing Companies from KSh. 12 to KSh. 9. They stated that the KSh. 12 includes operational costs for OMCs and not profits. The stakeholders also proposed that section 42 (4)(a) of the Tax Procedures Act be amended to provide that the Commissioner can exempt any supplier from paying WHVAT if such supplier has sufficiently demonstrated that due to the nature of his business and if he will be in continuous credit position for a period of not less than twenty-four hours. This is because the petroleum industry is capital intensive and has low profit margins. The stakeholders' proposed amendments to the Bill are contained in Part III of the Report. All the stakeholders' comments were put into consideration while preparing the proposed Committee's amendments and some of the proposals were adopted forming part of the proposed Committee's amendments.

In considering the Bill, the Committee observed that if enacted, the Bill will lower the price of petroleum products and LPG in the country. Establishment of the Petroleum Development Fund Advisory Board will ensure that the PDL is used for the intended purpose which is stabilization of fuel prices.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Petroleum Products' (Taxes Levies) (Amendment) Bill, 2021. The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. 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.

It is my pleasure to report that the Committee has considered the Petroleum Products' (Taxes and Levies) (Amendment) Bill (National Assembly Bill No. 42 of 2021) and have the honour to report back to the National Assembly with the recommendation that the Bill be **approved with amendments** as contained in the report.

Hon. Gladys Wanga, CBS, MP
Chairperson, Departmental Committee on Finance and National Planning

PART I

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 constituted 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, MP
MP for Kitutu Chache North Constituency
Jubilee Party

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

Hon. Shakeel Shabbir Ahmed, 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 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. Luka Mutua
Serjeant-At-Arms

Ms. Christine Maeri
Audio Officer

Ms. Laureen Wesonga
Clerk Assistant II

Mr. Chelang'a Maiyo
Research Officer II

Mr. John Njoro
Serjeant-At-Arms

Ms. Hannah Mwangi
Intern

PART II

2 OVERVIEW OF THE PETROLEUM PRODUCTS' (TAXES AND LEVIES) (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2021)

2.1 INTRODUCTION

6. The principal objective of the 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.

7. Further, the Bill proposes to restructure the Petroleum Development Levy Fund in order to specify the purposes for which the Petroleum Development Levy may be utilised. The Bill also amends the Statutory Instruments Act, 2013 to require that all the Statutory Instruments that impose taxes and levies are positively or negatively approved by the National Assembly.

2.2 ANALYSIS OF THE BILL

The Bill has fourteen (14) clauses and it proposes the following amendments:

8. **Clause 1** of the Bill sets out the short title.

9. **Clause 2** of the Bill 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.

10. **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.

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

12. 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.

13. 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.

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

15. 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.

16. Clause 11 is revocation of the Petroleum Development Levy Orders.

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

18. 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 approved by the National Assembly.

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

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

21. 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.

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

PART III

3 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

23. Following the call for memoranda from the public through the placement of adverts in the print media on 11th November 2021, the Committee received memoranda from the following stakeholders:

i. The National Treasury and Planning
ii. The Kenya revenue Authority (KRA)
iii. Energy and Petroleum Regulatory Authority (EPRA)
iv. Petroleum Institute of East Africa (PIEA)
v. Institute of Certified Public Accounts of Kenya (ICPAK)
vi. Kenya Association of Manufacturers (KAM)
vii. Kenya Private Sector Alliance (KEPSA)
viii. Westminister Consulting Limited
ix. Sanaabil Consulting Limited
x. Ashford Consultants
xi. Kenya Independent Petroleum Dealers Association (KIPEDA)
xii. Petroleum Outlets Association of Kenya (POAK)
xiii. Kenya National Petroleum Dealers Association (KENAPEDE)
xiv. The East Africa petroleum Transporters Association (EAPTA)
xv. CPA Emmanuel Murunga Khisa
xvi. Dr. Nathan wangusi
xvii. Mr. Ernest Muriu

24. The stakeholders submitted as follows:

3.1 THE NATIONAL TREASURY AND PLANNING

The Principal Secretary for National Treasury Dr. Julius Muia appeared before the Committee on Wednesday, 1st December 2021. He submitted THAT—

25. The proposals to reduce taxes and levies will affect revenues as follows: reduction of the VAT rate on petroleum products from 8% to 4% will reduce revenues by KSh. 11.22 billion; reducing the PDL from KSh. 5.40 to KSh. 2.90 will reduce revenue by KSh. 11.98 billion; and reducing the VAT rate on LPG from 16% to 8% will reduce revenue by KSh. 4.02 billion. This loss is in addition to the declaration by the High Court that the Minimum Tax is unconstitutional which resulted in revenue loss of KSh. 7.26 billion and suspension of the inflationary adjustment of excise duty on petroleum products which resulted in a revenue loss of KS. 3 billion in FY 2021/22. The total tax loss for this FY will therefore be KSh. 37.1 billion if the Bill is enacted.

26. Under clause 5, where the ad valorem tax where the rate where the rate of duty is based on the value of goods, government gets higher revenue when the price of goods increases. For specific rate of duty, unless it is adjusted, the government gets less proportionate revenue when the prices of goods increases. In this regard therefore, the specific duty rate requires to be adjusted annually in order to maintain the same proportion of revenue from the goods.

27. The amendment proposed to clause 6 of the Bill will not only be discriminative but deny the government the tax revenue from the adjustment. Principally, excise duty is imposed on the value of the product and is expected to be at a constant proportion of the total price. If the prices change

over time due to inflation, the rate of specific excise duty must be adjusted proportionately so as to maintain the proportion of the tax to the total price of the goods. Unlike when the rate of excise duty is ad valorem, the absolute amount of excise revenue automatically increases with the price change.

28. Due to the above, the National Treasury and Planning did not support the changes proposed in the Bill and its subsequent enactment.

3.2 THE KENYA REVENUE AUTHORITY (KRA)

In a meeting held on Wednesday, 1st December 2021, KRA submitted THAT—

29. The formula be reviewed as follows; "$T = t_{ed} + t_{rml}/t_{adl} + t_{pdl} + t_{prl}$ *where T is total taxes and levies for petroleum products per shilling per litre:* t_{ed} *is Excise Duty;* t_{rml} *is Road Maintenance Levy;* t_{adl} *is Anti-Adulteration Levy;* t_{pdl} *is the Petroleum Development Levy; and* t_{prl} *is the Petroleum Regulation Levy*". Anti-Adulteration Levy is applied on illuminating kerosene while Road Maintenance Levy applies on other petroleum products.

Committee observations
The proposal was adopted.

30. Total taxes should include ad valorem taxes (CIF and VAT) and other fees (CIF, IDF, RDL and MSS). The Bill only provides for volume-based taxes i.e. Excise Duty, PDL, RML/AD and PRL.

Committee observations
The proposal was adopted.

31. They were not in support of inflationary adjustment on goods with specific rates of Excise Duty to be be adjusted biennially.

Committee observation
The proposal was rejected since two years is reasonable time to make inflation adjustment.

32. They were opposed to Clause 6 as it is discriminatory of other sectors and poses a revenue risk to the government. The amendment exempts petroleum products from inflationary adjustment.

Committee observation
The proposal was rejected since petroleum affects the entire economy and any price increase affects all sectors hence the exemption of the petroleum products from inflation adjustment is necessary.

33. There is need for clarity in clauses 7 and 8 on the applicable Act since the existing Act is the Petroleum Development Fund Act, 1991.

Committee observations
The comments on the need for clarity were supported.

34. The Bill be amended in Clause 12 be amended to include AGO of Tariff No. 2710.19.31.

Committee observations
The proposal was adopted.

35. The PDL should be retained at the current rate of KSh. 5.40 because the reduction will have an adverse effect on revenue..

Committee Observation
Amendment was rejected

36. The Bill be amended in Clause 13 to align tariff codes and descriptions of items to the EAC Common External Tariff, 2017. This is to ensure consistency in application of customs laws.

Committee observation
The proposal was adopted.

37. Retain the VAT rates for petroleum products and LPG as they currently are. The reduction of VAT rate on the products will have an adverse revenue impact to the Government.

Committee Observation
Amendment was rejected. The amendment is intended to reduce the price of LPG as an essential commodity in the attainment of clean cooking goals.

3.3 ENERGY AND PETROLEUM REGULATORY AUTHORITY (EPRA)

In a meeting held on Wednesday, 1st December 2021, the Director General, Mr. Daniel Bargoria submitted THAT—

38. The revocation of Legal Notice No. 196 of 2010 and amendment of the Energy Act (No. 1 of 2019) to incorporate provisions on petroleum pump pricing may impede regular review of the variable and dynamic components of the pricing formula. Inclusion of petroleum pricing provisions in the Energy Act, 2019 or the Petroleum Act, 2019 may not be appropriate basing on the fact that petroleum-pricing components are dynamic and need frequent reviews and updates to ensure adequate compensation of all costs along the supply chain.

Committee Observation
Inclusion of the pricing formula into the main Act will improve transparency in the manner pricing is determined. The proposal by EPRA was therefore rejected.

39. The Bill did not take into account the recommendations of COSSOP. Consequently, the proposed pipeline tariffs, local distribution rates and suppliers' margin are not in sync with changes in the market since price controls on petroleum were re-introduced in December 2010. If enacted, the Bill may cause disruption in the petroleum supply chain in Kenya and the region. Specifically, the proposal to amend the pipeline tariff will increase the burden to consumers as follows: Mombasa-Nairobi by KSh. 0.1755 per litre; Mombasa-Nakuru by KSh. 0.2414 per litre; Mombasa-Eldoret by KSh. 0.3104 per litre; and Mombasa-Kisumu by KSh. 0.3100 per litre. Further, EPRA determines the local distribution rates based on changes in diesel cost, labour, average allowed loading capacity, cost of spares and the average turn-around times for road tankers. In addition, re-introduction of bridging rates will further burden consumers by KSh. 2.3655 per litre.

Committee Observation
The tariffs and rates are as set in regulations and what the Committee is to remove it from Regulations and put it in the main Act.

40. They supported of the proposal to reduce depot and pipeline losses because in as much as the losses occur in the course of transport and distribution of petroleum products due to the volatile nature of the products, some losses are as result of pilferage and inefficiency. It is therefore necessary to reduce the maximum allowable for pipeline and depot to 0.01%.

41. EPRA incorporates the gross suppliers' margin in the petroleum pump price build up. Suppliers get 15% pre-tax rate of return. The total supplier's margin as recommended by COSSOP also includes working capital financing costs and secondary storage costs. The proposal to reduce suppliers' margin to KSh. 9 per litre will hurt investors in the petroleum industry and has potential to cause divestiture.

Committee observation
The reduction in the gross margins is geared towards reducing the pump price and to ensure the adverse effects of fuel price increase is distributed to all. In times of fuel pump increase the OMCs including the dealers should also bear the burden with an aim of cushioning Kenyans and protecting the entire spectrum of the economy as the petroleum is a key driver of all sectors.

42. All petroleum matters are anchored in the Petroleum Act (No. 2 of 2019) and hence the Bill should not refer to the Energy Act (No. 1 of 2019).

Committee observation
The Comment was noted and amendment proposed to address the error.

3.4 PETROLEUM INSTITUTE OF EAST AFRICA (PIEA)

PIEA General Manager Ms. Wanjiku Manyara appeared before the Committee on 30th November, 2021. She stated THAT—

43. The proposal to reduce maximum allowed margins from KES 12 per litre to KES 9 per litre the Bill be amended. This is because there is no margin or net revenue allocated to the Oil Marketing Companies (OMCs) for KES 12 per litre as proposed in the Bill. The component perceived as the margin comprises actual consolidated supply chain costs compensation amounting to KES 10.9 and KES 1.47 per litre is the net revenue. The net revenue of KES 1.47 per litre is shared by both the OMC and the retail station operator. Therefore, the total OMC assigned net margin is KES 0.40 per litre and not as perceived to be KES 12 per litre. The proposed amendment has adverse implications to the Petroleum Industry players, including impact on the livelihoods that will arise from the disruption of the current net revenues of the Petroleum industry players.

Committee's Observation
Committee rejected the proposal. The burden price increases should be borne by all players.

44. The Bill be amended in Clause 4 by deleting the proposed new insertion of PART C of the new Sixth Schedule. The proposal in the Bill has proposed to reduce the maximum allowed operational losses in the pipeline and the depot to 0.01%. Currently, the maximum operational losses are 0.25% pipeline losses (Pipeline Lp) and 0.5% for Depots losses (Ld). This further reduction will hurt the Petroleum Industry players given that the losses are a feature of the petroleum industry arising from Kenya Pipeline Company (KPC) operational losses. KPC uses one pipeline to transport different products. During the change from one product to another, some sensitive product categories must not be contaminated with other products. To achieve this, KPC uses Automotive Gas Oil (AGO) to separate the other products. This means that the amount of AGO

pumped will always be higher than the AGO imported because it contains remnants of the products used to separate. KPC allocates losses to each OMC based on a pre-determined formula on a through-put basis.

Committee Observation
The Committee agreed to retain the maximum allowed operational losses to the rate proposed in the Bill to ensure that there is increased efficiency. Operational losses is a factor in the determination of the maximum wholesale and retail price.

45. VAT Act be amended to provide for withholding VAT exemption to the Petroleum Industry players to counter the negative cashflow constraints to be occasioned by the companies owing to being in perpetual VAT recoverable position. The Bill proposes VAT rates applicable in respect of petroleum products listed in Section B of Part I to the First Schedule of the VAT Act, 2013 from 8% to 4% and reduction of the VAT rate in respect of liquefied petroleum gas (LPG) from 16% to 8%. The proposed reduction will have an unintended consequence of excess withholding VAT remitted directly to the Kenya Revenue Authority (the KRA) leading to an increase in VAT recoverable. In line with the WH VAT provisions, a WH VAT agent is required to withhold 2% of the taxable value of the supply (except zero-rated supplies) and remit the VAT amount directly to the KRA. As a result of the amendment of the TPA through Finance Act, 2017 which introduced Section 42 (4A) of the TPA to provide for withholding VAT exemption for suppliers. The provision provided as follows: *"The Commissioner may at any time exempt any supplier from the provisions of this section if such supplier has sufficiently demonstrated that due to the nature of his business, and due to the application of this section, he is going to be in a continuous credit position for a period of not less than twenty-four months."* However, this provision was deleted by the Finance Act, 2021 with effect from 1 July 2021. The impact of the deletion is that currently withholding VAT exemption for suppliers is not provided for in the law. The Petroleum Industry operates as a low-profit margins business. Therefore, the variance between output VAT and input VAT incurred on costs associated with making the taxable supplies is minimal.

Committee's Observation
The proposal was agreed to.

3.5 INSTITUTE OF CERTIFIED PUBLIC ACCOUNTS OF KENYA (ICPAK)

In their memorandum, ICPAK submitted THAT—

46. Paragraph 9, Part A of Clause 4 of the Bill be amended by deleting the words *"as and when it may deem fit for the purposes of monitoring compliance*". This is because amendment of the formula is a major change that requires multi-sectoral approach, stakeholder consultation and parliamentary approval.

Committee's Observation
The proposal was rejected. This is in order to allow for flexibility by EPRA.

47. Amend clause 5 by deleting the words "*two years*" and substituting with the words "three *years*". This will guarantee stability and predictability for businesses and allow for enhanced compliance.

Committee's Observation
The proposal was rejected given that the current Inflation adjustment is done every year. The proposal by the Bill proposing every two years is sufficient to factor in inflation adjustment.

Adjusting it to three years will result into revenue loss given that Excise Duty is calculated at a specific rate hence any price change does not affect the amount paid in Excise Duty.

48. Amend clause 9(1) to provide for the auditing of the Petroleum Development Fund by the Auditor-General in order to ensure prudence, transparency and accountability in the utilisation of public funds and a clear reporting framework on the status of the kitty. Similarly, a definitive way of calculating the amount that can be drawn from the Fund to stabilise the local petroleum pumps should be provided. Providing a ceiling based on a working formula will safeguard against any potential abuse of such powers conferred to the CS and the Fund administrator.

Committee's Observation
Petroleum Development Fund is already being audited by the Auditor-General hence the amendment is not necessary. The advisory board will be able to approve any withdrawals. Unlike the present arrangement where the Ministry of Petroleum where it has to request the National Treasury to make provision of funds for stabilisation of fuel prices, the proposal to introduce of the Advisory Board will ensure that the process is more transparent and consultative.

49. Amend clause 10(4A) to read as follows; *"three other members, two of whom shall represent private sector energy and petroleum industry players and one representing the Institute of Certified Public Accountants of Kenya"*. This is to provide appropriate skills mix for effective advisory.

Committee's Observation
Proposal was rejected.

3.6 KENYA ASSOCIATION OF MANUFACTURERS (KAM)

50. The Bill be amended in Clause 4 (Sixth Schedule Part D) on the maximum allowable margins to set it at KES 12.36 per litre for kerosene and automotive diesel. This is because the recovery of the respective retail station operating costs from the margin is shared between OMCs, dealers and investors. In addition , the KES 12 per litre maximum allowable margins does not apply to OMCs and therefore not an actual margin or net revenue. KES 10.90 per litre is the actual supply chain cost compensation and KES 1.47 per litre is the net margin shared by both OMC and the retail station operators. Therefore, OMC only retain KES 0.40 per litre as net margin.

51. The Bill be amended in Clause 5 by including a provision on the effective date for inflation adjustment to be indicated as July 2023. The amendment is intended to provide clarity on the next effective date for inflation adjustment given that there was an inflation adjustment made in 2020. In addition, a further amendment be made to paragraph 2(1) of the First Schedule to the EDA by deleting the word *"every financial year"* and substituting therefor the words *"the respective financial year"*. The amendment is intended to align the amendment to Section 10 of the EDA on inflation with the operational provision under paragraph 2(1). In addition, amending the proposed paragraph will pause implementation challenge since paragraph 2 of the Schedule will still be providing for an annual inflation adjustment in conflict with the primary provision under Section 10 of EDA.

3.7 KENYA PRIVATE SECTOR ALLIANCE (KEPSA)

In a meeting with the Committee held on Tuesday, 30th November 2021, Mr. Genesio Mugo submitted as follows on behalf of KEPSA, THAT—

52. The Bill be amended by deleting Part C of clause 4 because the proposed amendment to reduce the maximum pipeline and depot losses to 0.01% has been made arbitrarily without a backing of

independent petroleum research to establish maximum allowable losses. Therefore, the proposed amendment will lead to loss to Kenya Pipeline, OMCs' margins and the entire petroleum supply chain.

Committee's Observation
The Committee rejected the proposal to delete the amendment so as toreduce the maximum allowable losses given that it is a factor in the price build-up.

53. The Bill be amended by deleting Part D of clause 4 because there is no KSh. 12 margin or net revenue that is allocated to OMCs.

Committee's Observation
The proposal to retain the maximum allowable margins at KSh. 12 was rejected.

54. Amend clause 15 of the Bill by inserting the following new paragraph 4A; "*The Commissioner may at any time exempt any supplier from the provisions of this section if such a supplier has sufficiently demonstrated that due to the nature of his business and due to the application of this section, he is going to be in a continuous credit position for a period of not less than twenty-four months*". Allowing KRA Commissioner to determine businesses worthy of exemptions will save the industry of imminent collapse due to perpetual credit position and subsequent credit imbalance.

Committee's Observation
Proposal was adopted.

55. The COSSOP study be fully implemented. The study proposed an annual review of pricing structures to reflect economic changes but this has not been done since 2018. The industry has therefore been denied actual revenues and has been forced to operate in a perceived reality instead of the actual situation.

3.8 WESTMINISTER CONSULTING LIMITED

In a meeting with the Committee held on Tuesday, 30th November 2021, Ms. Arwinder Kaur submitted as follows, THAT-

56. They supported the proposal to introduce a consultative and approval forum by the National Assembly for all provisions dealing with taxes, levies or fees, or has the effect of imposition or variation of a charge on a public fund within the realm of the Statutory Instruments Act is in line with Article 209 and 210 of the Constitution which require parliamentary approval for any amendments on taxation to be effective. They proposed that the amendment should be extended to any proposals made on behalf of Kenyans at the East African Community that touch on taxes, levies, exemptions and remissions in order to ensure transparency and adequate consultation by stakeholders.

57. The proposed reduction of the Oil Marketing Companies' (OMCs') margins from KSh. 12 to KSh. 9 and the restriction of allowable losses in the pipeline and depots to 0.01% will have a negative impact on the operation of OMCs. They therefore proposed that the margin and allowable losses be retained as they currently are.

Committee's Observation
The proposal was rejected given that the maximum allowable margins and losses contributes to the wholesale and retail pump price. The price increase should be borne by all including the OMCs

hence maintaining the same at the current levels will not contribute towards ensuring price reduction.

58. They proposed that representatives of OMCs and consumers should be members of the Petroleum Development Fund Advisory Board so that all decisions are made having factored interests of all stakeholders.

Committee's Observation
The proposal was rejected since the Board comprises key representatives of the Government to authorise withdrawal and utilisation of the Funds. This is a major step in the right direction compared to the prevailing situation where the National Treasury enjoys discretionary powers hence the Fund is subject to misapplication. Inclusion of the Ministry of Petroleum will increase transparency.

59. With regard to inflation adjustment, they proposed that Paragraph 2 of the First Schedule to the Excise Duty Act be amended to clarify whether the adjustment rate will cater for inflation for the two years or the inflation rate will be that for the second year. Additionally, Motor Spirit (gasoline) Regular (H.S. Code 2710.00.23) be included in the list of exempted petroleum products. Further, the inflation adjustment date be moved to 1st July instead of October in line with the PFM Act.

Committee's Observation
The proposal was supported and further amendments were proposed to include a commencement clause the inflation adjustment and to clearly stipulate when it becomes effective. Additional the inclusion of Motor Spirit (gasoline) Regular (H.S. Code 2710.00.23) in the list of exemption was supported.

60. OMCs should be exempt from paying Withholding VAT (WHVAT) because it constrains cash flow thereby affecting working capital of most OMCs. Furthermore, the KRA process of refunding these amounts takes long. They proposed that the Tax Procedures Act be amended to either exempt OMCs including business in LPG from WHVAT or lower the rate in order to allow for liquidity.

Committee's Observation
The proposal was supported and amendments proposed to effect that.

61. The amendments made in the Finance Act, 2021 to increase excise duty on several imported commodities did not achieve its objectives because the wrong H.S. Codes were captured and therefore local industries were affected too. An amendment should be made to the Excise Duty Act in order to correct this.

Committee's Observation
The anomalies were noted and will be reviewed during the consideration of the Finance Bill, 2022 as the scope of the Bill is limited to only petroleum products.

3.9 SANAABIL CONSULTING LIMITED

Through a written memorandum Ref: Ref: SCL/TAS/002 dated 19th November, 2021 , Sanaabil Consulting submitted THAT—

62. The First Schedule to the Excise Duty Act, 2015 be amended in paragraph 1 of Part I by deleting the rate of excise duty appearing in the description *"Imported sugar confectionary of tariff heading*

17.04" and substituting therefor the following rate *"Shs.35 per kg";* and by deleting the word "imported" appearing in the description "Imported white chocolate, chocolate in blocs, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00 and 1806.90.00" .

63. The Excise Duty Act, 2015 be amended by inserting the following item at the end of the second table— Description Rate of Excise Duty Articles of plastic of tariff heading 3923.30.00 10%".

64. The Excise Duty Act, 2015 be therefore amended in order to delete the proposal levy excise duty on locally manufactured sugar confectionery of tariff HS Code: 1704 and Chocolates (HS Code: 1806) and reusable articles of plastic of tariff heading 3923.30.00 with the intended objective of levying Excise Duty on imported products from countries other than EAC countries. The amendments were introduced to the Excise Duty Act, 2015 through the Finance Act, 2021. This has resulted in detrimental effects for the local manufacturers of this commodity as the operational and productions costs for supply of chocolates by local manufacturers have increased, rendering the Kenyan manufacturers uncompetitive in both the local market and exports markets which in turn also leads to over-reliance on imports

Committee's Observation

The above Amendments were noted as having been erroneously captured. However, the Committee agreed to rectify the anomalies in the review of the Finance Bill, 2022.

3.10 ASHFORD CONSULTANTS

Ashford Consultants through a written memorandum Ref: NA/191121/ACL dated 19th November 2021 submitted THAT—

65. The Finance Act, 2021 introduced an amendment to the Second Schedule of the Value Added Tax (VAT) Act, 2013 that moved export of taxable services from the zero-rate category to the exempt category. This is in contrast to the treatment of exports of taxable goods that are still treated as zero-rated for VAT purposes. This exemption has made the exportation of services more expensive. The input tax that was deductible for VAT purposes is no longer claimable, resulting in an upward adjustment in the supply cost.

66. Specifically, the business process outsourcing sector has been hardest hit by this provision and is the cause of many multinationals contemplating a migration to another affordable countries within the region considering that the same service can be provided from any investor friendly country such as Uganda and Tanzania. BPO services have low entry barriers in terms of skills, scale, technology, managerial capabilities, or domain knowledge making it an export-oriented sector. BPO has been identified as a major pillar to the attainment of vision 2030 and as such it is necessary to provide an enabling environment for the growth and proliferation of BPO's e.g. investment in fibre optical cables for faster internet, international marketing and formulation and implementation of policies.

67. Exemption of exports of taxable services tremendously affects the cost of provision of these services. This is for the mere reason that the corresponding input VAT incurred to generate these services is unclaimable for VAT purposes. All the other Partner States of the East African Community have, just like Kenya had since introduction of the VAT Act, classified exports of goods and services at a zero rate.

Committee's Observation

The Committee noted the proposal and agreed to factor it in Finance Bill , 2022.

3.11 KENYA INDEPENDENT PETROLEUM DEALERS ASSOCIATION (KIPEDA)

In a meeting held on Tuesday, 30th November 2021, KIPEDA submitted THAT—

68. The independents purchase their fuel from the Multinationals who in turn fix their wholesale price based on the prevailing OMC marketing margin as fixed by EPRA. This means that the Independents are at the mercy of the Multinationals. Therefore, any reduction of the OMC margin will have a negative impact to the independents' business operations which are fully reliant on OMC's wholesale fuel supply. They were therefore opposed to any reduction of the OMC marketing margins as the same would directly impact on the retail operating margin which is not very significant in the lowering of the pump price compared to taxes & levies

69. The fuel margins are very low since there are numerous variables which were not considered by ERC such as statutory costs (i.e. Nairobi County Certificates, National Environmental Management Authority licensing costs, capital investment costs and station running costs. They recommended the review of the retail margin by EPRA to a minimum of KSh. 10 per litre to support the local indigenous oil businesses.

    Committee's Observation
    The proposal was rejected as the burden of pump price increase should be borne by all.

70. EPRA does not factor operational losses unlike depot and pipeline losses which are included in the price build up. Likewise, the annual licensing costs by other government agencies such as NEMA, County Governments etc, imposes additional operational costs which highly impacts on the cost of doing business.

    Committee's Observation
    The operational losses should not be encouraged as the petrol station dealers are required to operate at a level of efficiency. Inclusion of other operational cost into the formula will lead to a further increase in the pump price. The dealers are expected to offset any expense incurred in the course of doing business from the revenue.

71. In order to significantly reduce the current high fuel pump prices the taxes & levies on fuel should be lowered and re-distributed to other sources of revenue. The above is in consideration to the fact that the taxes & levies are the largest component i.e. 39% to 45% of the pump price build up as opposed to only 4.8% to 7.5% of the retailers' margin.

    Committee's Observation
    Any further reduction will lead to loss of revenue needed by Government to offer services to its citizenry

3.12 PETROLEUM OUTLETS ASSOCIATION OF KENYA (POAK)

In a meeting held on Tuesday, 30th November 2021, Mr. John Njogu submitted as follows on behalf of POAK, THAT—

72. The Bill be amended by deleting Part D of clause 4 because what is termed as OMC margins is a misconstruction which connotes a profit for OMCs whereas it is a cost of service supply incurred by OMCs, dealers and investors and an allowable return on investment. The actual profit for the OMCs, dealers and investors is much lower.

Committee's Observation
Proposal was rejected since the burden of price increase should be borne by all in order to cushion Kenyans.

73. Amend clause 15 of the Bill by inserting the following new paragraph 4A; "*The Commissioner may at any time exempt any supplier from the provisions of this section if such a supplier has sufficiently demonstrated that due to the nature of his business and due to the application of this section, he is going to be in a continuous credit position for a period of not less than twenty-four months*". Allowing KRA Commissioner to determine businesses worthy of exemptions will save the industry of imminent collapse due to perpetual credit position and subsequent credit imbalance.

Committee's Observation
The proposal was agreed to so as to increase business cash flow.

74. The COSSOP study be fully implemented. The study proposed an annual review of pricing structures to reflect economic changes but this has not been done since 2018. The industry has therefore been denied actual revenues.

3.13 KENYA NATIONAL PETROLEUM DEALERS ASSOCIATION (KENAPEDE)

The Secretary-General of the Kenya National Petroleum Dealers Association Mr. Anthony Kuria appeared before the Committee on 30th November, 2021. He submitted THAT—

75. They were opposed to reducing the maximum allowable margin from KES 12 per litre to KES per litre. This reduction will result in a reduction in margins for retail operators. The retail margins be reviewed annually to factor in the costs resulting from minimum wage increases and inflation.

Committee's Observation
The reduction in the maximum allowable margins from KES. 12 to KES. 9 was intended to ensure that the increase in pump price is borne by all players including OMCs. The Committee agreed to retain the maximum allowable margins as proposed in the Bill.

3.14 THE EAST AFRICA PETROLEUM TRANSPORTERS ASSOCIATION (EAPTA)

In a meeting held on Tuesday, 30th November 2021, EAPTA submitted THAT—

76. It is important for the Government to review the pricing formula to capture prudently incurred petroleum supply chain costs in a more flexible and sustainable manner.

Committee's Observation
The inclusion of the pricing formula as a schedule in the principal Act will accord the National Assembly an opportunity to amend it based on changing circumstances in the industry.

77. The Government, through the concerned ministry and agencies to consider urgently the downstream petroleum investments for full recovery of costs and a reasonable return on investment.

78. There was need to reflect the changes that have taken place from previously vertically integrated businesses to the current multiple licensed players in order to unbundle the supply chain into clearly defined and demarcated business and investment segments so as to achieve transparency and clarity in costs identification and fairness in margins allocation.

79. They were opposed to the reduction of OMCs gross profit margin from KSh. 12 to KSh. 9. They proposed that the annual pricing structure be reviewed annually. This is because inflation has risen on average by 7% per annum for the last ten (10) years.

Committee's Observation
Inclusion of the pricing formula into the pricing formulae into the principal Act will remove the discretionary from EPRA to the National Assembly. The National Assembly will have an opportunity to unbundle the supply related costs to determine the actual margins. However, the proposal to reduce the gross margins from KSh. 12 to KSh. 9 is a short term solution to ensure that the pump price increase is borne by all.

3.15 CPA EMMANUEL KHISA

In a meeting held on Tuesday, 30th November 2021, CPA Khisa submitted THAT—

80. The Bill should clearly state whether the KSh. 9 per litre is the maximum allowed for retail or wholesale prices. He added that the gross profit margin for OMCs should be reduced further from KSh. 9 per litre because petroleum is a high-volume product.

Committee's Observation
The proposal by the Bill on the maximum allowable margins is for the entire supply chain. The Committee was opposed to any further reduction in the gross margins as this would negatively affect the industry to a point where they may be unable to continue being in operation.

81. The anti-adulteration levy should be reduced from KSh. 18 per litre to KSh. 10 per litre. This is because the levy is transferred to the poor who use kerosene for cooking and lighting.

Committee's Observation
Any reduction in the antiadulteration levy will negate the intended objective of the introduction of the levy.

82. VAT is a consumer tax and the trader is only a collector on behalf of the Commissioner. The basis for determination of VAT on petroleum is the customs value of the product, excise duty fees, levies and other charges. It is therefore vital to reduce the rate of excise duty that currently oscillates between 19.5% and 35% to a maximum of the customs value of the product.

Committee's Observation
Any reduction in the excise duty will cause a reduction in revenue and therefore is to only reduce VAT rate. The Committee therefore rejected the amendment.

83. There are no strategic fuel reserves in the country. He proposed that the Government should draw from the Petroleum Development Fund and develop the strategic oil reserves which will help in price stabilization.

Committee's Observation
The Committee agreed to the proposal.

3.16 DR. NATHAN WANGUSI

In a meeting held on Tuesday, 30th November 2021, Dr. Wangusi submitted THAT-

84. There is need to consider embracing green sources of energy to remove the overdependence on petroleum which is affected by any slight change in the international market. Most developed countries are now moving from petroleum to cleaner sources of energy which are cheaper. Kenya should move towards the same too.

85. The Petroleum Development Fund be earmarked for stabilization of fuel prices as opposed to the current scenario where the law does not clearly provide for this hence giving room for misuse of the Fund.

    Committee's Observation
    The Committee agreed to the proposal.

86. The following private sector players be included in the Petroleum Development Fund Board in order to ensure transparency in the use of the Fund: Petroleum Institute of East Africa; Oil Marketers Association; and Kenya Civil Society Platform on Oil and Gas.

    Committee's Observation
    The Committee did not agree with the proposal to include the private players in the advisory Board as the representation already provided is sufficient to make any decision on the withdrawal from the Fund.

3.17 MR. ERNEST MURIU

In a meeting held on Tuesday, 30th November 2021, Mr. Muriu submitted THAT-

87. Given that petroleum products are imported through the open tender system, all other associated costs should be removed, unless expressly provided in the formula. The open tender price should be included in the price for discharged product. Additionally, taxpayers should not pay for financing costs, the refinery should be encouraged to use equity as opposed to debt. The open tender system should be regulated by the Capital Markets Authority in order to make it open and for price comparison purposes. Additionally, public participation should be done by the Energy and Petroleum Regulatory Authority when reviewing fuel prices.

    Committee's Observation
    The Committee rejected the amendment.

88. There should be a remission system on Excise Duty so that there is further stabilization of fuel prices in the event that the Petroleum Development Levy is not sufficient to stabilize prices.

    Committee's Observation
    The Committee agreed to the amendment.

89. The Statutory Instruments Act be amended to allow parliament to amend statutory instruments and to carry out public participation on the statutory instruments.

    Committee's Observation
    The amendments require to be addressed in a comprehensive review of the Statutory Instruments Act. The amendment was not agreed to.

PART IV

4 COMMITTEE OBSERVATIONS

In considering the Bill, the Committee observed that:

90. Once enacted, the Bill will significantly reduce fuel and LPG prices in the country as result of reduction taxes and levies and other factors that contribute to the price buildup.

91. The Bill will ensure that the Petroleum Development Levy Fund is utilized to stabilize fuel prices in the country unlike the current scenario where it is not clear as to the specific use of the fund and hence subject to misapplication.

92. The Bill will put in place the Petroleum Development Fund Advisory Board who will be in charge of the management of the Petroleum Development Levy Fund. This will go along to ensure increased transparency in the manner the withdrawals are made.

93. The Bill amends the Statutory Instruments Act to provide that all statutory instruments that impose or alter taxes and levies are approved by the National Assembly. This is to ensure that the taxes and levies are not arbitrarily imposed on the citizenry.

94. Establishment of Strategic reserves is the key solution to the volatile international crude oil prices. This is because in the event of unforeseen global crisis such as COVID -19 pandemic, the effects of price changes would not be felt immediately. Further , the Petroleum Development Fund should be utilized in the development of strategic reserves so as to reduce over reliance on price stabilization.

PART V

5 COMMITTEE RECOMMENDATION

95. The Committee having considered the Petroleum Products' (Taxes and Levies) (Amendment) Bill (National Assembly Bill No. 42 of 2021) recommends that the House **approves the Bill with amendments**.

SIGNED…………………………………………….. DATE……2nd Dec 2021……

HON. GLADYS WANGA, CBS, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 02 DEC 2021 DAY: Thursday AM
TABLED BY: Chair D C Finance Hon. G. Wanga.
CLERK-AT THE-TABLE: G Chebet

REPUBLIC OF KENYA

NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING

ADOPTION SCHEDULE

ADOPTION SCHEDULE FOR THE REPORT THE CONSIDERATION OF THE PETROLEUM PRODUCTS' (TAXES AND LEVIES) (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2021)

DATE: 1st DECEMBER 2021

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	Ombaka.
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	Nyenze
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 91ST SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN PAVILLION CONFERENCE ROOM AT HILTON GARDEN INN HOTEL ON WEDNESDAY, 1ST DECEMBER 2021 AT 3:15 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. Shakeel Shabbir Ahmed, CBS, MP
5. Hon. Daniel E. Nanok, MP
6. Hon. (Dr.) Christine Ombaka, MP
7. Hon. David M. Mboni, MP
8. Hon. Francis K. Kimani, MP
9. Hon. Joseph M. Oyula, MP
10. Hon. Joshua C. Kandie, MP
11. Hon. Stanley M. Muthama, MP
12. Hon. Edith Nyenze, MP
13. Hon. Catherine Waruguru, MP
14. Hon. James Gichuhi Mwangi, MP
15. Hon. (Prof.) Mohamud Sheikh Mohamed, MP
16. Hon. Peter Lochakapong, MP
17. Hon. Qalicha Gufu Wario, MP

ABSENT WITH APOLOGY

1. Hon. Christopher Omulele, CBS, MP
2. Hon. Andrew A. Okuome, 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. Mr. Josephat Motonu - Senior Fiscal Analyst
5. Dr. Benjamin Ng'imor - Senior Fiscal Analyst
6. Mr. Luka Mutua - Serjeant-At-Arms
7. Ms. Christine Maeri - Audio Officer
8. Ms. Hannah Mwangi - Intern

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION

1. Mr. Noordin Haji - Director of Public Prosecution
2. Ms. Lilian Obuo
3. Mr. Gitonga Murang'a
4. Ms. Ruby Okoth
5. Mr. Abdi Ahmed

ETHICS AND ANTI-CORRUPTION COMMISSION (EACC)

1. Mr. Twalib Mbarak - CEO
2. Mr. Mwaniki Gachoka
3. Mr. David Kaboro
4. Ms. Regina Muriuki

OTHER STAKEHOLDERS

1. Ms. Wanjiru Gikonyo - The Institute of Social Accountability
2. Mr. Stephen Osedo - Consultant, TISA
3. Ms. Caroline Moraa - Programme Assistant, PANAC

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. **Stakeholder engagement on the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill, 2021**
5. **Clause by clause consideration and adoption of the Report on the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill, 2021**
6. **Clause by clause consideration and adoption of the Report on the Petroleum Products' (Taxes and Levies) (Amendment) Bill, 2021**
7. Any Other Business
8. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/430: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 3:22 p.m. and a prayer was said. The chairperson called for introduction of those present before inviting the stakeholders to make their submissions.

MIN.NO.NA/F&NP/2021/431: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2021/432: STAKEHOLDER ENGAGEMENT ON THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (AMENDMENT) BILL, 2021

The Committee sought the views of the Office of the Director of Public Prosecution and the Ethics and Anti-Corruption Commission on the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill, 2021.

Both stakeholders were in support of the amendments proposed in the Bill. They proposed amendments to some clauses of the Bill.

(Details of the submissions made by each stakeholder are contained in Part III of the Report on the Consideration of the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill, 2021).

MIN.NO.NA/F&NP/2021/433: CLAUSE BY CLAUSE CONSIDERATION AND ADOPTION OF THE REPORT ON THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (AMENDMENT) BILL, 2021

Clause 1: Agreed to
Clause 2: (c) delete the word "undertakings" and substitute with the word "underwriters".
(d) delete the word "*oversight*" and substitute with the word "*advisory*".
Clauses 3, 4, 5, 6 and 7: Agreed to
Clause 8: Agreed to
Clause 9: Agreed to
Clause 10: amend to include law, finance, accounting and other related social sciences.
Clause 11: delete the word "*oversight*" and substitute with the word "*advisory*".
Clause 12: Agreed to

Clause 13: delete the word *"oversight"* and substitute with the word *"advisory"*.
Clause 14: 55A: Include EACC and CBK
55D: Delete
55E: Delete the word *"oversight"* and substitute with the word *"advisory"*.
55 F: Delete the word *"oversight"* and substitute with the word *"advisory"*.
55G: delete the word *"oversight"* and substitute with the word *"advisory"*.
Clause 15: Insert new paragraph (3).
Clause 16: Agreed to

The report on the consideration of the proceeds of Crime and Anti-Money Laundering (Amendment) Bill, 2021 was adopted having been proposed by Hon. Jimmy Angwenyi, MGH, MP and seconded by Hon. (Prof.) Mohamud Mohamed, MP.

MIN.NO.NA/F&NP/2021/433: CLAUSE BY CLAUSE CONSIDERATION AND ADOPTION OF THE REPORT ON THE PETROLEUM PRODUCTS' (TAXES AND LEVIES) (AMENDMENT) BILL, 2021

Clause 2: Amend as proposed by Mr. Ernest Muriu
Clause 3: Agreed to
Clause 4: Part B: Amend the delivery rates, delete the bridging rates and amend the X factor from 80% to 100%
Part C: Agreed to
Part D: Adopt KRA's proposal
Clause 5: Include the commencement date
Clause 6: Include Motor Spirit Gasoline in the exemption
Clause 7: Agreed to
Clause 8: Agreed to
Clause 9: Agreed to
Clause 10: Agreed to
Clause 11: Agreed to
Clause 12: Agreed to
Clause 13: Adopt KRA's proposal
Clause 14: Agreed to
Clause 15: amend by reinstating section 42(4A) of the Tax Procedures Act which was deleted in the Finance Act of 2021.

The Report on the consideration of the Petroleum Products' (Taxes and Levies) (Amendment) Bill, 2021 was adopted having been proposed by Hon. (Dr.) Christine Ombaka, MP and seconded by Hon. Stanley Muthama, MP.

MIN.NO.NA/F&NP/2021/434: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 6.18 p.m. The next meeting will be held on notice.

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)

SIGNED.................................**DATE**...2nd Dec 2021...........

MINUTES OF THE 90TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN PAVILLION CONFERENCE ROOM AT HILTON GARDEN INN HOTEL ON WEDNESDAY, 1ST DECEMBER 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. Shakeel Shabbir Ahmed, CBS, MP
5. Hon. Daniel E. Nanok, MP
6. Hon. (Dr.) Christine Ombaka, MP
7. Hon. David M. Mboni, MP
8. Hon. Francis K. Kimani, MP
9. Hon. Joseph M. Oyula, MP
10. Hon. Joshua C. Kandie, MP
11. Hon. Stanley M. Muthama, MP
12. Hon. Edith Nyenze, MP
13. Hon. Catherine Waruguru, MP
14. Hon. James Gichuhi Mwangi, MP
15. Hon. (Prof.) Mohamud Sheikh Mohamed, MP
16. Hon. Peter Lochakapong, MP
17. Hon. Qalicha Gufu Wario, MP

ABSENT WITH APOLOGY

1. Hon. Christopher Omulele, CBS, MP
2. Hon. Andrew A. Okuome, 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. Mr. Josephat Motonu - Senior Fiscal Analyst
5. Dr. Benjamin Ng'imor - Senior Fiscal Analyst
6. Mr. Luka Mutua - Serjeant-At-Arms
7. Ms. Christine Maeri - Audio Officer
8. Ms. Hannah Mwangi - Intern

ENERGY & PETROLEUM REGULATORY AUTHORITY (EPRA)

1. Mr. Daniel Kiptoo Bargoria - Director General
2. Eng. Edward Kinyua - Director, Petroleum and Gas
3. Mr. Norman Mudibo - Client Services Director and Consultant

NATIONAL TREASURY

1. Dr. Julius Muia - Principal Secretary
2. Mr. Musa Kathanje
3. Ms. Josephine Mugure
4. Ms. Teresa Wanjagua
5. Mr. Brian Steve
6. Ms. Monica Mbugua

KENYA REVENUE AUTHORITY
1. Ms. Lilian Nyawanda
2. Mr. Joseph Kaguru
3. Ms. Sharon Kirai

CENTRAL BANK OF KENYA
1. Dr. Patrick Njoroge
2. Mr. Kennedy Abuga

OFFICE OF THE ATTORNEY GENERAL/ASSET RECOVERY AGENCY
Col. Alice Mate

KENYA BANKERS ASSOCIATION
Mr. Raimond Molenje

FINANCIAL REPORTING CENTRE
Mr. Saitoti Maika

INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA
1. Mr. Hillary Onami
2. Mr. Elias Wakhisi
3. Mr. Robert Kamwaja

LAW SOCIETY OF KENYA
1. Ms. Mercy Wambua
2. Ms. Herine Kabita
3. Mr. Gichohi Waweru

ASSOCIATION OF KENYA PROFESSIONAL INSURANCE AGENTS
Mr. Anthony Mwangi

AGENDA
1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. **Stakeholder engagement on the Petroleum Products' (Taxes and Levies) (Amendment) Bill, 2021**
5. **Stakeholder engagement on the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill, 2021**
6. Any Other Business
7. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/425: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9:25 a.m. and a prayer was said. The chairperson called for introduction of those present before inviting the stakeholders to make their submissions.

MIN.NO.NA/F&NP/2021/426: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2021/427: STAKEHOLDER ENGAGEMENT ON THE PETROLEUM PRODUCTS' (TAXES AND LEVIES) (AMENDMENT) BILL, 2021

The Committee sought the views of the following stakeholders on the Petroleum Products' (Taxes and Levies) (Amendment) Bill, 2021:

1. The Energy & Petroleum Regulatory Authority (EPRA)
2. The National Treasury
3. Kenya Revenue Authority

The stakeholders opposed most of the amendments proposed in the Bill including the proposal to reduce the gross profit margins for Oil Marketing Companies, the proposal to reduce VAT on petroleum products and LPG, the proposal to reduce the Petroleum Development Levy and the proposal to adjust inflation on excise duty on petroleum products biennially.

(Details of the submissions made by each stakeholder are contained in Part III of the Report on the Consideration of the Petroleum Products' (Taxes and Levies) (Amendment) Bill, 2021).

MIN.NO.NA/F&NP/2021/428: STAKEHOLDER ENGAGEMENT ON THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (AMENDMENT) BILL, 2021

The Committee received submissions on the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill, 2021 from the following stakeholders:

1. National Treasury
2. Central Bank of Kenya
3. Office of the Attorney General/Asset Recovery Agency
4. Kenya Bankers Association
5. Financial Reporting Centre
6. Institute of Certified Public Accountants of Kenya
7. Law Society of Kenya
8. Association of Kenya Professional Insurance Agents

All stakeholders except the Law Society of Kenya were in support of the amendment to designate the legal professionals as reporting persons for purposes of the Proceeds of Crime and Anti-Money Laundering Act, 2009.

(Details of the submissions made by each stakeholder are contained in Part III of the Report on the Consideration of the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill, 2021).

MIN.NO.NA/F&NP/2021/429: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 2.56 p.m. The next meeting will be held at 3.15 p.m.

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)

SIGNED......................................**DATE** 2nd Dec 2021

MINUTES OF THE 89TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN PAVILLION CONFERENCE ROOM AT HILTON GARDEN INN HOTEL ON TUESDAY, 30TH NOVEMBER 2021 AT 2:00 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. Shakeel Shabbir Ahmed, CBS, MP		
5. Hon. Daniel E. Nanok, MP		
6. Hon. (Dr.) Christine Ombaka, MP		
7. Hon. David M. Mboni, MP		
8. Hon. Francis K. Kimani, MP		
9. Hon. Joseph M. Oyula, MP		
10. Hon. Joshua C. Kandie, MP		
11. Hon. Stanley M. Muthama, MP		
12. Hon. Edith Nyenze, MP		
13. Hon. Catherine Waruguru, MP		
14. Hon. James Gichuhi Mwangi, MP		
15. Hon. (Prof.) Mohamud Sheikh Mohamed, MP		
16. Hon. Peter Lochakapong, MP		
17. Hon. Qalicha Gufu Wario, MP		

ABSENT WITH APOLOGY

1. Hon. Christopher Omulele, CBS, MP
2. Hon. Andrew A. Okuome, 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. Mr. Josephat Motonu	-	Senior Fiscal Analyst
5. Dr. Benjamin Ng'imor	-	Senior Fiscal Analyst
6. Mr. Luka Mutua	-	Serjeant-At-Arms
7. Ms. Christine Maeri	-	Audio Officer
8. Ms. Hannah Mwangi	-	Intern

STAKEHOLDERS

1. Mr. Emmanuel Khisa	-	Mark & Associates
2. Dr. Nathan Wakhungu		
3. Mr. Protus Wanjala		
4. Mr. Ernest Muriu	-	Ernest and Martin Associates

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. **Stakeholder engagement on the Petroleum Products' (Taxes and Levies) (Amendment) Bill, 2021**
5. Any Other Business

6. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/421: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 2:07 p.m. and a prayer was said. The chairperson called for introduction of those present before inviting the stakeholders to make their submissions.

MIN.NO.NA/F&NP/2021/422: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2021/423: STAKEHOLDER ENGAGEMENT ON THE PETROLEUM PRODUCTS' (TAXES AND LEVIES) (AMENDMENT) BILL, 2021

The following stakeholders presented their submissions on the Petroleum Products' (Taxes and Levies) (Amendment) Bill, 2021:

1. **Mr. Emmanuel Khisa**

   The Bill should clearly state whether the KSh. 9 per litre is the maximum allowed for retail or wholesale prices. He added that the gross profit margin for OMCs should be reduced further from KSh. 9 per litre because petroleum is a high-volume product.

   He stated that the anti-adulteration levy should be reduced from KSh. 18 per litre to KSh. 10 per litre. This is because the levy is transferred to the poor who use kerosene for cooking and lighting.

   There are no strategic fuel reserves in the country. Mr. Khisa proposed that the Government should draw from the Petroleum Development Fund and develop the strategic oil reserves which will help in price stabilization.

2. **Dr. Nathan Wangusi**

   Dr. Wangusi noted that most countries are now moving from petroleum to cleaner sources of energy which are cheaper. Kenya should move towards the same too.

   The Petroleum Development Fund should be earmarked for stabilization of fuel prices as opposed to the current scenario where the law does not clearly provide for this hence giving room for misuse of the Fund.

   The following private sector players should be included in the Petroleum Development Fund Board in order to ensure transparency in the use of the Fund: Petroleum Institute of East Africa; Oil Marketers Association; and Kenya Civil Society Platform on Oil and Gas.

3. **Mr. Ernest Muriu**

   Mr. Muriu proposed that the open tender system should be regulated by the Capital Markets Authority in order to make it open and for price comparison purposes. Additionally, public participation should be done by the Energy and Petroleum Regulatory Authority when reviewing fuel prices.

   There should be a remission system on Excise Duty so that there is further stabilization of fuel prices.

The Statutory Instruments Act should be amended to allow parliament to amend statutory instruments and to carry out public participation on the statutory instruments.

(Details of the submissions made by each stakeholder are contained in Part III of the Report on the Consideration of the Petroleum Products' (Taxes and Levies) (Amendment) Bill, 2021).

MIN.NO.NA/F&NP/2021/424: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 4.50 p.m. The next meeting will be held on Wednesday, 1st December 2021 at 9.00 a.m.

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)

SIGNED...**DATE**....2nd Dec 2021..........

MINUTES OF THE 88TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN PAVILLION CONFERENCE ROOM AT HILTON GARDEN INN HOTEL ON TUESDAY, 30TH NOVEMBER 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. Shakeel Shabbir Ahmed, CBS, MP
5. Hon. Daniel E. Nanok, MP
6. Hon. (Dr.) Christine Ombaka, MP
7. Hon. David M. Mboni, MP
8. Hon. Francis K. Kimani, MP
9. Hon. Joseph M. Oyula, MP
10. Hon. Joshua C. Kandie, MP
11. Hon. Stanley M. Muthama, MP
12. Hon. Edith Nyenze, MP
13. Hon. Catherine Waruguru, MP
14. Hon. James Gichuhi Mwangi, MP
15. Hon. (Prof.) Mohamud Sheikh Mohamed, MP
16. Hon. Peter Lochakapong, MP
17. Hon. Qalicha Gufu Wario, MP

ABSENT WITH APOLOGY

1. Hon. Christopher Omulele, CBS, MP
2. Hon. Andrew A. Okuome, 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. Mr. Josephat Motonu - Senior Fiscal Analyst
5. Dr. Benjamin Ng'imor - Senior Fiscal Analyst
6. Mr. Luka Mutua - Serjeant-At-Arms
7. Ms. Christine Maeri - Audio Officer
8. Ms. Hannah Mwangi - Intern

PETROLEUM INSTITUTE OF EAST AFRICA/ANJARWALLA & KHANNA LLP

1. Ms. Wanjiku Manyara - Chief Executive Officer PIEA
2. Ms. Ayuma Likhanga - Business Analyst PIEA
3. Mr. James Ondigo
4. Mr. Daniel Ngumi
5. Ms. Priscilla Githinji
6. Ms. Salma Khamala

KENYA ASSOCIATION OF MANUFACTURERS (KAM)

1. Mr. Job Wanjohi
2. Mr. Mucai Kinuthia
3. Ms. Miriam Bomett
4. Ms. Maureen Wanyonyi

5. Mr. Malcolm Mwangi

WESTMINISTER CONSULTING LIMITED
1. Ms. Arwinder Sandhu
2. Mr. Hadi Sheikh Abdullahi

THE EAST AFRICA PETROLEUM TRANSPORTERS ASSOCIATION (EAPTA)
1. Mr. Mukhtar Omar - Chairman
2. Mr. Jack Chebett - Vice-Chairman
3. Mr. Mohammed A. Abdulle - Secretary General
4. Mr. Ayman Bayusuf
5. Mr. Benson Mwangi
6. Ms. Virginia Wangari

PETROLEUM OUTLETS ASSOCIATION OF KENYA (POAK)
Mr. John Njogu

KENYA INDEPENDENT PETROLEUM DEALERS ASSOCIATION (KIPEDA)
1. Mr. Joseph Karanja
2. Mrs. Mercy Mbuba
3. Mr. Kenneth Kimiti

KENYA NATIONAL PETROLEUM DEALERS ASSOCIATION (KENAPEDE)
1. Mr. Tom Kiuna
2. Ms. Joan Mbuba
3. Mr. Kennedy Kuto

KENYA PRIVATE SECTOR ALLIANCE (KEPSA)
Mr. Genesio Mugo

AGENDA
1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. **Stakeholder engagement on the Petroleum Products' (Taxes and Levies) (Amendment) Bill, 2021**
5. Any Other Business
6. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/417: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9:38 a.m. and a prayer was said. The chairperson called for introduction of those present before inviting the stakeholders to make their submissions.

MIN.NO.NA/F&NP/2021/418: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2021/419: STAKEHOLDER ENGAGEMENT ON THE PETROLEUM PRODUCTS' (TAXES AND LEVIES) (AMENDMENT) BILL, 2021

The following stakeholders presented their submissions on the Petroleum Products' (Taxes and Levies) (Amendment) Bill, 2021:

1. Petroleum Institute of East Africa (PIEA)
2. Kenya Association of Manufacturers (KAM)
3. Westminister Consulting Limited
4. East Africa Petroleum Transporters Association of Kenya (EAPTA)
5. Petroleum Outlets Association of Kenya (POAK)
6. Kipeda
7. KENAPEDE
8. Kenya Private Sector Alliance (KEPSA)

In their submissions, the stakeholders informed the Committee that:

1. The oil marketing companies' margins should be retained at KSh. 12 because reducing it to KSh. 9 will have a negative impact on the OMCs and the country's economy at large since it will result in loss of jobs and collection of lower taxes from the OMCs.
2. The maximum allowed operational losses in the pipeline and the depot should be restricted to 0.01%.
3. The VAT Act was amended through the Finance Act, 2021 to remove the provision that the Commissioner can exempt the petroleum industry players from payment of Withholding VAT. This has had a negative impact on the cashflow of the companies since the oil business is capital intensive and has low profit margins.
4. They proposed that the following terms in the petroleum supply chain should be properly defined: oil marketing companies; petrol station dealers; independent petroleum players; and resellers/distributors.
5. The return on equity for the petroleum industry in Kenya is less than 6% while it is higher in neighboring countries. This will lead to flight of investors from Kenya to other countries.

(Details of the submissions made by each stakeholder are contained in Part III of the Report on the Consideration of the Petroleum Products' (Taxes and Levies) (Amendment) Bill, 2021).

MIN.NO.NA/F&NP/2021/420: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 1.09 p.m. The next meeting will be held at 2.00 p.m.

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)

SIGNED.......................................**DATE**...2nd Dec 2021...