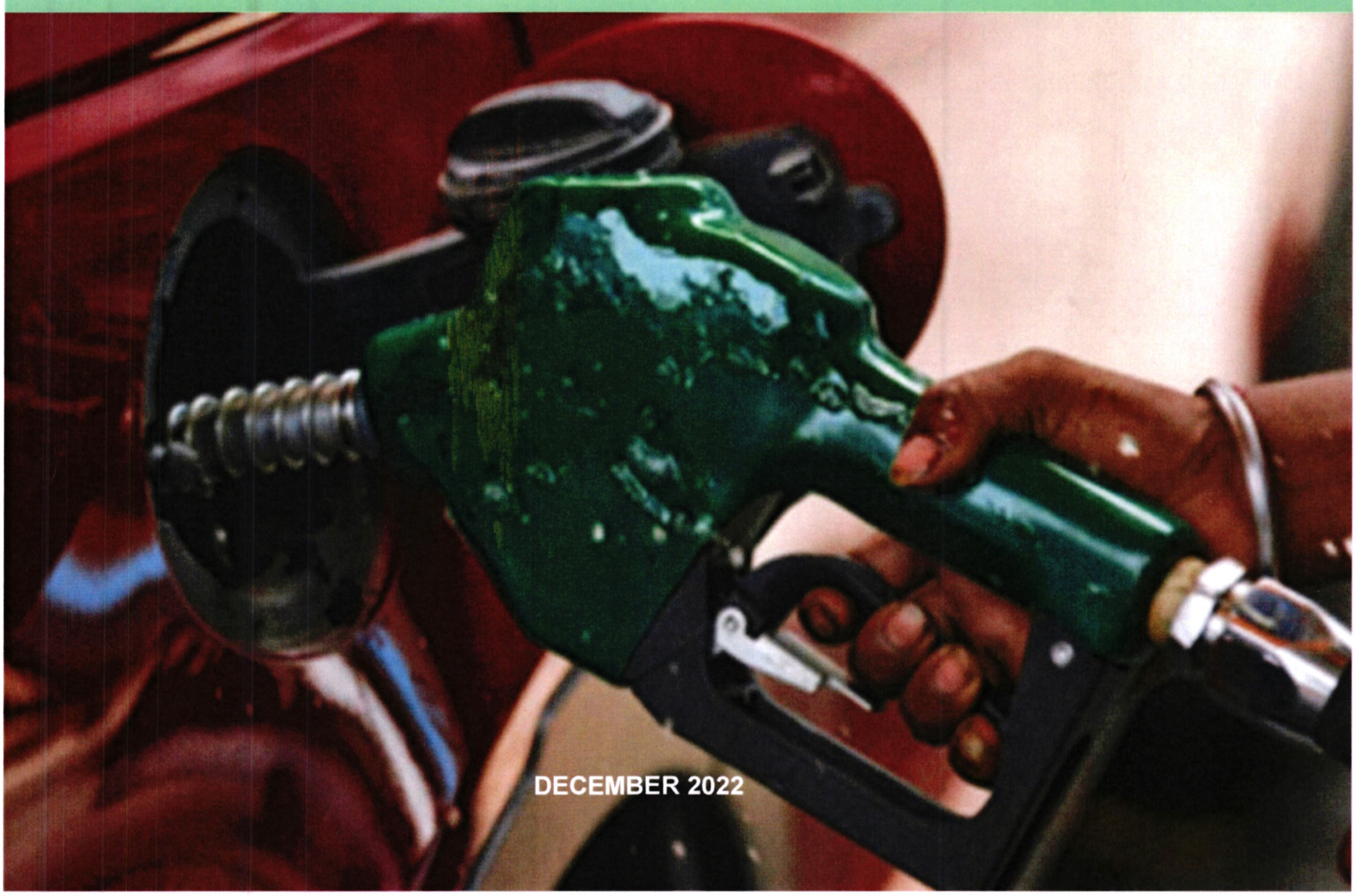
OFFICE OF THE AUDITOR-GENERAL
Enhancing Accountability

SPECIAL AUDIT REPORT
OF THE AUDITOR-GENERAL
ON
STABILIZATION OF REFINED PETROLEUM PUMP PRICES
FOR
THE PERIOD BETWEEN
1 APRIL, 2021 TO 30 JUNE, 2022



DECEMBER 2022

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List of Abbreviations

The following abbreviations are used in this work plan

Abbreviation	Full Description
A/c.	Account
CS	Cabinet Secretary
DG	Director-General
EPRA	Energy and Petroleum Regulatory Authority
GOK	Government of Kenya
PDL	Petroleum Development Levy
KeNHA	Kenya National Highways Authority
KeRRA	Kenya Rural Roads Authority
KURA	Kenya Urban Roads Authority
KPA	Kenya Ports Authority
KPC	Kenya Pipeline Company
KRA	Kenya Revenue Authority
No.	Number
OAG	Office of the Auditor General
OMC	Oil Marketing Company
PS	Principal Secretary
OTS	Open Tender System
Qnty	Quantity
SupplyCor	Supply Coordinator
TSA	Transport and Storage Agreement

1. EXECUTIVE SUMMARY

1.1 Introduction

1.1.1 Section 9 (1) (a) of the Public Audit Act, 2015, empowers the Auditor-General to conduct investigations on his or her own initiative, or on the basis of a complaint made by a third party. Further, Section 34 of the Act, allows the Auditor-General to conduct periodic audits upon request or at his or her own initiative which shall be proactive, preventive, and deterrent to fraud and corrupt practices, systemic and shall be determined with a view to evaluating the effectiveness of risk management, control and governance processes in State Organs and public entities.

1.1.2 In this regard, the Auditor-General carried out an audit on the management and utilization of the Petroleum Development Levy Fund focusing on governance framework and compensation mechanisms employed in stabilization of petroleum prices from 1 April, 2021 to 30 June, 2022 with a view to establish the legality efficiency, effectiveness and transparency with which the fuel prices stabilization initiative was operated.

1.2 Objectives

1.2.1 The objectives of the audit was; to ascertain the legal framework for establishment, management and utilization of the Petroleum Development Levy Fund; mechanisms for setting the stabilized fuel petroleum prices; and the role played and compensation mechanism for the Oil Marketing Companies under the stabilization of petroleum pump prices programme.

1.3 Scope of work

1.3.1 The scope of work was limited to total Petroleum Development Levy Funds collected during the period 1 July 2020 to 12 October 2021 and payments made to Oil Marketing Companies under the Stabilization of Petroleum Pump prices for the period 1 April 2021 to 30 June, 2022.

1.4 Structure of the Report

1.4.1 This report is divided into three sections name, the Executive Summary, the Detailed Approach, and Detailed Findings. The report should be read in its entirety in order to fully understand the approach, findings and recommendations.

1.5 Key Findings

Legal Framework of Petroleum Development Levy (PDL) Fund and Stabilization and Compensation Mechanism

1.5.1 Section 4(1) of The Petroleum Development Fund Act, 1991 (Revised 2006) established the Petroleum Development Fund. Section 4(3) provides that all moneys received in respect of the petroleum development levy shall be paid into the Fund.

1.5.2 On 14 July, 2020, the Cabinet Secretary for Petroleum and Mining issued the Petroleum Development Levy Order 2020, which revised the rate of levy as detailed in the table below.

Rate of Levy in Kenya Shillings

Tariff Code	Description	Rate of Levy in Kshs.
2710.00.22	Motor Spirit (Gasoline), Premium	5,400 per 1000 litres at 20°C
2710.00.24	Jet Fuel (Spirit type)	5,400 per 1000 litres at 20°C
2710.00.32	Kerosene	400 per 1000 litres at 20°C
2710.00.41	Diesel Oil	5,400 per 1000 litres at 20°C

Stabilization of Petroleum Prices and Mechanisms for Compensation to the Oil Marketing Companies

Absence of a documented compensation mechanism

1.5.3 The audit established that no documented compensation mechanism existed for outlining the specific petroleum products that should be stabilized and the respective amounts or margins to be compensated to the Oil Marketing Companies.

1.5.4 The compensation mechanism was based on deliberations in a meeting chaired by the Principal Secretary, Ministry of Petroleum and Mining, between officials of the Ministry of Energy and Petroleum Regulatory Authority, SupplyCor and representatives of the various Oil Marketing Companies that worked out the supplier margins for pump prices for the period between 15 April, 2021 and 14 May, 2021 which was the period within which the compensation would be undertaken.

1.5.5 The meeting agreed to use the cargo volumes factored by Energy and Petroleum Regulatory Authority (EPRA) in determining the April – May 2021 pump prices. This had not been adjusted as at the time of audit.

1.5.6 The meeting also discussed the verification and administration process and resolved that the refund rate would be equivalent to the margin reduction per litre, per product for pump prices published for Nairobi for the period 15 April to14 May 2021.

The team that deliberated on the compensation rates and mechanisms was not formally or legally established by any known statutory instrument.

Management of the Petroleum Development Levy Fund

Unjustified Operation of a Development Levy Fund Account by the Ministry of Energy

1.5.7 The Executive Order No. 1/2018 on Organization of Government created the Ministry of Energy and State Department for Petroleum under the Ministry of Petroleum and Mining, each with its distinct functions.

1.5.8 The Ministry of Energy, though having no direct function relating to development of oil industry, continued to operate a Petroleum Development Fund Bank Account (A/c. Number 0021007000785 held at Credit Bank Plc) and continued receiving disbursements for undefined activities from the Petroleum Development Fund CBK A/c. No.1000205024 operated by The National Treasury.

Irregular Utilization of Petroleum Development Levy Funds Debts

1.5.9 Section 4(4) of the Petroleum Development Fund Act, 1991 states that 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 the oil industry as the Minister may direct.

1.5.10 Further, Section 4 of the Petroleum Development Levy Order, No. 24, which came into effect on 15 July, 2020 provides that the levy shall also be used for matters relating to development of the oil industry including to stabilize the local petroleum pump prices in instances of spikes occasioned by high landed costs above a threshold determined by the Energy and Petroleum Regulatory Authority.

1.5.11 Section 24 (7) of the Public Finance Management Act, 2012 states that the Administrator of a national public fund shall ensure that money held in the fund, including any earnings or accruals, is spent only for the purposes for which the fund is established.

1.5.12 The audit observed that out of Kshs.49,679,406,330 disbursed by The National Treasury from the Petroleum Development Levy Fund between July 2020 and June 2022, a total of Kshs.18,141,000,000 was transferred to the State Department for Infrastructure under the Ministry of Transport, Infrastructure Housing, Urban Development and Public Works to fund various road projects under Kenya National Highways Authority (KeNHA), Kenya Rural Roads Authority (KeRRA), and Kenya Urban Roads Authority (KURA) and operations at the State Department's Headquarters as summarized below.

Disbursements to State Department for Infrastructure

Agency	Amount in Kshs.
Kenya National Highways Authority (KeNHA)	531,779,734
Kenya Rural Roads Authority (KeRRA)	17,161,220,266
Kenya Urban Roads Authority (KURA)	373,000,000
Ministry Headquarters	75,000,000
Total	**18,141,000,000**

1.5.13 In addition, a total of Kshs.4,540,000,000 was transferred out of the Petroleum Development Levy Fund to the Ministry of Energy to finance various projects not related to petroleum.

1.5.14 Utilization of Petroleum Development funds to fund road construction projects and other projects, and transfers to the Ministry of Energy was in violation of Section 4 (4) of the Petroleum Development Fund Act, 1991, Section 4 of the Petroleum Development Levy Order, 2020 and Section 24 (7) of the Public Finance Management Act, 2012 respectively as above.

Lack of Framework or Guidelines on Utilization of Proceeds from the Fund

1.5.15 Section 4 (4) of the Petroleum Development Fund Act, 1991, states that 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.

1.5.16 The audit observed that no framework or guidelines exists outlining the activities, common facilities for distribution or testing of oil products and matters relating to development of oil industry.

1.5.17 In addition, the Administrator of the Fund is the Principal Secretary, The National Treasury and not the Principal Secretary, Ministry of Petroleum and Mining. As a result, the Ministry of Petroleum and Mining has no direct control over collection custody and utilization of the Petroleum Development Levy Fund.

Open Tender System (OTS) Mechanism

Absence of a Set Landed Costs Threshold debts

1.5.18 The audit ascertained that Energy and Petroleum Regulatory Authority does not have a documented threshold for landed costs contrary to Section 4 of the Petroleum Levy Fund Order, 2020 which provides that the levy shall also be used for matters relating to the development of the oil industry, including stabilization of local petroleum pump prices in instances of spikes occasioned by high landed costs above a threshold determined by the Authority. The Authority did not at anytime determine and document a fuel landed cost threshold.

1.5.19 The monthly prices of petroleum products, Energy and Petroleum Regulatory Authority considers the weighted average landed costs of petroleum products imported under OTS and discharged at the port of Mombasa between the 10th of the previous month to the 9th of the pricing month.

Utilization of the Fuel Stabilization Fund

Approved Budgetary Allocation for Stabilization of Petroleum Prices

1.5.20 The Principal Secretary, Ministry of Petroleum and Mining wrote to the Cabinet Secretary, The National Treasury requesting for additional budget of an amount of Kshs.139.5 billion from the Petroleum Development Levy Fund for stabilization of petroleum prices for the financial years 2020/2021 and 2021/2022.

1.5.21 The Cabinet Secretary, The National Treasury approved a total of Kshs.82.6 billion for stabilization of petroleum prices. Analysis of bank statements and receipt vouchers provided indicated that the Ministry of Petroleum and Mining received Kshs.79.8 billion for the period April 2021 to 30 June, 2022 from The National Treasury for purpose of stabilization of petroleum pump prices.

Irregular Revision of Gross Margins above the Maximum Allowed Limits

1.5.22 Regulation 6, Third Schedule of the Energy Petroleum Pricing (Amendment) Regulations, 2012 specifies the maximum allowed Oil Marketing Company (OMCs) margins for each refined petroleum product.

1.5.23 In 2016, the Ministry of Energy and Petroleum under the World Bank funding through the Kenya Petroleum Technical Assistance Project (KEPTAP) contracted M/s. Kurrent Technologies Limited to undertake a study on the Cost of Services in the Supply of Petroleum Products (COSSOP) in Kenya. The Study was undertaken on behalf of the Energy Regulatory Commission (ERC).

1.5.24 Objectives of the Study included among others to establish a price build-up structure that starts from import parity landed cost with added storage, transportation, other costs, and margins that would be sustainable and flexible enough to suit a regulated pricing regime in Kenya.

1.5.25 On 29 October, 2019, the Board of Energy and Petroleum Regulatory Authority approved the inclusion into the petroleum pricing formula of the following components;

(i) Secondary storage and handling cost of US$6.64/m3

(ii) Retail investment margin of Kshs.4.05/litre and

(iii) Retail operating margin of Kshs.4.14/litre;

(iv) Minimum operational stock financing costs at a rate of Kshs.0.49/litre for Premium Motor Spirit, Kshs.0.46/litre for AGO and 0.46/litre for Dual Purpose Kerosene; and

(v) Revision of the wholesale price from Kshs. 7/litre to Kshs.3.05/litre.

1.5.26 The inclusion of the above components increased the total gross margin of petroleum products to Kshs.12.39/litre from Kshs.10/litre arrived at by summing up the following components.

Components making up Gross Margins

Gross Margin Component	PMS	AGO	Illuminating Kerosene
Secondary storage costs	0.66	0.66	0.66
Wholesale Margin	3.05	3.05	3.05
Retail Investment Margin	4.05	4.05	4.05
Retail Operating Margin	4.14	4.14	4.14
Inventory Financing Costs	0.49	0.46	0.46
Gross Margin Kshs/litre	**12.39**	**12.36**	**12.36**

Gross Margin as per Energy (Petroleum Pricing) (Amendment) Regulations, 2012	10	10	10
Variance in Kshs./Litre	**2.39**	**2.36**	**2.36**

1.5.27 The effective date of the revision of wholesale and retail margins was 15 November, 2019.

1.5.28 The audit revealed that changes in the wholesale and retail margins have never been effected in the Petroleum pricing regulations which specifies the maximum allowed gross margin for each petroleum product.

Compensation Payments to Oil Marketing Companies under stabilization of Petroleum Pump Prices Programme

1.5.29 The audit established that in determining volumes of petroleum products and the applicable amounts to be compensated under stabilization in a given month, EPRA applied volumes of cargo imported into the country during the previous pricing cycle as opposed to applying actual volumes of petroleum products imported and consumed during the current pricing cycle.

1.5.30 The Ministry of Petroleum and Mining utilized Kshs.79,746,377,260.70 out of a total of Kshs. 79,752,318,645 received from The National Treasury out of the Petroleum Development Levy Fund and the Exchequer to compensate the Oil Marketing Companies that were awarded Open Tender System (OTS) to import petroleum products during the pricing cycles of 15 April, 2021 to 14 July, 2022.

Overstatement of Volumes Used for Stabilization against Actual Volumes Imported

1.5.31 A comparative analysis of imported volumes of petroleum for local consumption that were discharged through Kipevu Oil Terminal (KOT), Shimamzi Oil terminal (SOT) and VTTI between April 2021 and June 2022 revealed that Oil Marketing Companies were compensated a sum of Kshs. 79,746,377,260.70 (Inclusive of VAT) for purposes of stabilization of pump prices for April 2021- July 2022 in respect of imported 5,820,790.41 cubic metres petroleum volumes. However, outturn reports containing verified volumes by independent surveyors indicated a total of 5,797,643.35 was imported for the local market in the period resulting in unexplained variance of 23,147.06 cubic metres of petroleum products.

1.5.32 The impact of the above variance which was noted in eleven (11) vessels is a corresponding compensation of Kshs.554,724,919.30 to OMCs over and above their entitlements.

Irregular Advance Sales Price Stabilization Compensation and Double Compensation

1.5.33 During the month of April, May, and June, 2022, Kshs. 5,324,796,939.50 was paid as stabilization for advance sales of local volumes. There existed no legal framework for advance payment and there is no evidence of recovery of this advance. Management explained the advance sales were compensated at the price differential between effective pump prices for the period and that of the preceding period for volumes sold between the 10th day of previous pricing cycle and the 10th day of the next pricing cycle. The move was to cushion the marketers who had already sold the volumes since the increase in prices in the next cycle, running from 15th day of the current month to the 14th day of the preceding month, since they would have no mechanism of recovering the difference.

1.5.34 However, review of the advance sales compensation revealed that the entire local volumes imported between April and June were already compensated in full, and any change in the prices would not have justified additional compensation.

Irregular Inclusion of Administrative Costs for Stabilization in Pump Prices

1.5.35 During the meeting held on 15 April, 2021 between the Ministry of Petroleum and Mining, EPRA and OMCs, it was resolved that cargo importers would charge administrative fee of Kshs.0.50/litre to cater for disbursement, documentation and processing of stabilization funds received from the Ministry. The amount was to be factored in the petroleum pump prices from July, 2021.

1.5.36 The audit established that a total of Kshs. 2,205,915,489.39 was paid as administration costs from the April-May-August, 2021 and June 2021-July, 2022 pricing. However, the rationale of including the stabilization administration costs in the pump price build up was not justified, considering the actual charges commercial banks charge for funds transfer. Further, the OMCs have current accounts for settling amounts owing to each other when it is their turn to import.

Demurrage Charges

1.5.37 The Transport and Storage Agreement (TSA) provides for compensation to importers of petroleum products for demurrage charges paid to the ship owners for delays in vessel berthing exceeding three (3) days. The delays were mainly attributed to vessels being unable to berth on arrival as they had to wait for other vessels to complete discharge of petroleum products.

1.5.38 There was established a Demurrage Committee comprising of representatives from the Ministry of Energy, OMC's, Supplycor and Kenya Pipeline Company Limited (KPC) to deliberate, approve and recommend amounts to be charged as either Local or Transit demurrage costs. Approved demurrage charges were to be passed to the consumer through pump price adjustment. The audit established through the Committee minutes that the main causes of demurrage charges included scheduling inefficiencies, ullage constraints at KPC receiving facilities and change of vessel arrival dates by importers.

1.5.39 Analysis of vessels that docked at the Kipevu Oil Terminal (KOT) between April 2021 and June 2022 indicated that 130 vessels waited for more than the 3 days provided for in the TSA. On average, the vessels waited for 7 days before docking with one vessel recording a waiting time of 185 days. All vessels docking in during the sixteen-month period attracted demurrage charges amounting to

Kshs.3,182,427,410, some of it not justified which were passed on to the customers through high pump prices.

Irregular Demurrage Passthrough to Pump Prices

1.5.40 During the period between 15 April 2021 – 14 July, 2022, a total of Kshs.3,182,427,410 in demurrage charges was passed to consumers through high pump prices. Further, out of the Kshs. 3,182,427,410 demurrage costs passed to consumers, Kshs. 37,320,000 did not meet the criteria set out in the Transport and Storage Agreement (TSA) for recovery through the pump as the vessels offloaded within the provided 3 days.

1.6 Managerial Responsibility

1.6.1 The audit identified the following irregularities and attaches managerial responsibility as detailed below:

Irregularity	Law Violated/ Risk	Amount at Risk (Kshs.)	Responsibility
Irregular utilization of Petroleum Development Levy Funds	Section 4(4) of the Petroleum Development Fund Act, 1991; Section 4 of the Petroleum Development Levy Order No. 24 dated 10 July 2020;	22,681,000,000.00	CS, The National Treasury
Overpayment of Compensation to OMCs	Section 68 (1), (2) of the Public Finance Management Act, 2012	399,096,799.79	1. PS, Ministry of Petroleum and Mining 2. DG, Energy and Petroleum Regulatory Authority (EPRA)
Irregular Advance Sales Price Stabilization Compensation	Section 68 (1), (2) of the Public Finance Management Act, 2012	5,324,796,939.50	1. PS, Ministry of Petroleum and Mining 2. DG, Energy and Petroleum Regulatory Authority (EPRA)

Irregular Inclusion of Administrative Costs for Stabilization in Pump Prices	Regulation 4 of the Energy (Petroleum Pricing) Regulations, 2010	2,205,915,489.39	1. PS, Ministry of Petroleum and Mining 2. DG, Energy and Petroleum Regulatory Authority (EPRA)
Irregular Demurrage Passthrough to Pump Prices	Regulation 4 of the Energy (Petroleum Pricing) regulations, 2010	3,182,427,410.00	3. DG, Energy and Petroleum Regulatory Authority (EPRA)

1.7 Conclusions and Recommendations

1.7.1 Stabilization of petroleum pump prices through the Petroleum Development Fund was implemented from April 2021 to cushion consumers against spikes in petroleum prices mainly attributed to rising global prices and currency exchange fluctuations. For the period which the stabilization initiative has been implemented, it has faced challenges emanating from lack of a framework to guide stabilization mechanisms. This led to use of preceding period data to compensate/stabilize the current period prices, overpayments to legal Oil Marketing Companies and funding delays caused by use of the collected levies for the purpose of non-related activities.

1.7.2 The amendments introduced to the petroleum pump pricing formula in November, 2019 which revised the gross margins to Kshs.12.39/litre was done without amending the Energy (Petroleum Pricing) (Amendment) Regulations, 2012 which set the maximum gross margins at Kshs.10/litre.

1.7.3 Global Crude oil prices fluctuate quickly in response to news cycles, policy changes, and fluctuations in the world markets. The local oil prices respond to market factors which cause spikes in petroleum pump prices necessitating continuation of stabilization measures. There is need, therefore, for the Government to put in place mechanisms that ensures sustainability of the initiative. Some of the measures that may be considered include; establishment of a framework for stabilization; establishment of a separate Fund for purpose of stabilization and implementation of a flexible tax adjustment mechanism which allows a tax reduction in the context of escalating oil prices.

1.7.4 Changes to the set pump pricing formula exceeding limits allowed by the regulations should be done through procedural amendments to the regulations. Additionally, there is need to review the regulations to provide more clarity on what constitutes landed costs.

The OMCs were allowed to determine the compensation framework that was used and they could vary the conditions without legal standing or fuel pump prices. The stabilization was not anchored on any law, directive or circular and the committee formed to develop the stabilization mechanism was never gazetted, formalized or legalized.

CPA Nancy Gathungu, CBS
<u>AUDITOR- GENERAL</u>

09 December, 2022

2 INTRODUCTION

2.1 Background Information

2.1.1 Section 9 (1)(a) of the Public Audit Act, 2015 gives the Auditor-General powers to conduct investigations on his or her own initiative, or on the basis of a complaint made by a third party. Further, Section 34 of this Act, allows the Auditor-General to conduct periodic audits upon request or at his or her own initiative which shall be proactive, preventive, and deterrent to fraud and corrupt practices, systemic and shall be determined with a view to evaluating the effectiveness of risk management, control and governance processes in State Organs and public entities.

2.1.2 In this regard, the Auditor-General approved a periodic audit on the governance framework and compensation mechanisms employed in stabilization of petroleum prices to establish the legality efficiency, effectiveness, and transparency with which the fuel price stabilization initiative was operated between 1 April, 2021 and 30 June, 2022.

2.1.3 The Petroleum Development Levy (PDL) Fund is established under section 4(1) of the Petroleum Development Fund Act, 1991. The Objective of the Fund is to provide for funds for development of common facilities for the distribution or testing of oil products and matters relating to the development of the Oil Industry.

2.1.4 The Cabinet Secretary (CS) for the Ministry of Petroleum and Mining issued Development Levy Order, Legal Notice No. 124 of 10 July 2020. The Order came into operation on 15 July 2020.

2.1.5 The objective of this Order is to provide funds for the development of petroleum sector, stabilization of petroleum pump prices in instances of spikes occasioned by landed costs that are above a threshold determined by the Energy and Petroleum Regulatory Authority (EPRA), where the CS deems it necessary.

2.1.6 Further, the Order revised the rates of levy of refined petroleum products (Diesel, Premium and Jet Fuel) from Kshs. 400/- per 1000 litres to Kshs. 5,400/- per 1000 litres. This order subsequently revoked the Petroleum Levy Order, 1992.

2.1.7 Petroleum prices are regulated by the EPRA based on a formula set out in the Energy (Petroleum Pricing) Regulations, 2010. The formula considers the landed costs (cost of imported product at the landing port – Mombasa), transportation and storage costs (as gazette on Kenya Pipeline Company tariffs), Oil Marketing Companies approved margins and applicable taxes in line with the law.

2.1.8 On 13 April, 2021 the Cabinet Secretary to the National Treasury and Planning granted approval to the Principal Secretary, Ministry of Petroleum and Mining to utilize Kshs.1.6 Billion from the Petroleum Development Levy Fund for purposes of stabilizing petroleum prices. This was followed by several other approvals totalling Kshs.78.8 billion to stabilize prices in the subsequent periods to June, 2022.

2.1.9 The move followed inevitable increase in fuel pump prices following surge in global oil prices and depreciation of the Kenya shilling against the US dollar.

2.2 Objectives of the Special Audit

2.2.1 The special audit aimed at ascertaining the Legal Framework, Management and utilization of the Petroleum Development Levy Fund; Mechanism for setting and stabilization of petroleum of prices, engagement and compensation of the Oil Marketing Companies under the stabilization of petroleum pump prices programme.

2.3 Scope and Terms of Reference

2.3.1 The special audit involved reviews and analysis at the Ministry of Petroleum and Mining, Energy and Petroleum Regulatory Authority, Kenya Ports Authority and Kenya Revenue Authority.

2.3.2 The scope of work was limited to total Petroleum Development Levy Funds collected during the period 1 July 2020 to 30 June, 2022 and payments made to Oil Marketing Companies under the Stabilization of Petroleum Pump prices for the period 1 April 2021 to 30 June, 2022 and was guided by the following Terms of Reference (TORs).

2.3.2.1 **Review Compliance with Framework for Creation Petroleum Development Levy (PDL) Fund and Review the Legality of Stabilization & Compensation Mechanism**

- Ascertain the compliance with legal framework for establishment and management of the Petroleum Development Levy Fund.
- Confirm the legal framework for setting and stabilization of petroleum prices and mechanisms for compensation to the oil marketing companies.
- Ascertain entities involved in management of the Petroleum Development Levy Fund adhere to and their respective roles.

2.3.2.2 **Confirm Lawful and Effective Management of the Petroleum Development Levy Fund**

- Confirm the actual amount of funds that were collected and deposited into the Petroleum Development Levy Fund account for the period July, 2020 to June, 2021.
- Confirm the beneficiaries of the amounts drawn out of Petroleum Development Fund.
- Confirm actual amount disbursed by The National Treasury out of Petroleum Development Fuel Levy Fund during the period April, 2021 to June, 2022.
- Confirm the amounts disbursed to the Ministry of Petroleum and Mining for purpose of petroleum price stabilization
- Review the efficiency, effectiveness, sustainability and suitability of stabilization measures with which the stabilization Fund is operated

2.3.2.3 **Review the Management Open Tender System (OTS) for Fuel Importation**

Ascertain that imports are based on the fuel statistics/projection from KPC and determine the monthly amount of fuel ordered every month by the oil marketers are based on approved projects.

- Obtain the invitation to tenders through OTS and determine the amount of fuel imported by the oil marketer who was awarded the tender.
- Review and document the process used to identify and procure the Oil Marketing Companies to import fuel during the period April, 2021 to June, 2022 and ascertain the procurement process above was in compliance with the existing OTS Terms and Conditions,
- Confirm the actual volumes and prices of petroleum products that were imported into the country by the Oil Marketing Companies during the period 1 April, 2021 to June, 2022.
- Ascertain the various taxes levied by Kenya Revenue Authority (KRA) on petroleum products that were imported into the country during the period April 2021 to June 2022.
- Confirm the actual volumes of petroleum products that were imported by OMCs and received by Kenya Pipeline Company Ltd and quantities that were distributed for local consumption during the period April 2021 to June 2022.
- Confirm the landed cost and existence of threshold cost set by EPRA and how it was arrived at.
- Obtain landed cost data for the period under review and confirm whether it falls below or above the threshold set by EPPRA
- Obtain bill of lading from Kenya Ports Authority (KPA) to determine when the fuel ship docked at the Mombasa Port, quantity of fuel discharged, type of fuel and destination
- Ascertain the KPA data/information on quantity of fuel … received agreed with that declared by KPC and other fuel holding depots.
- Confirm the quantity of fuel by customer agreed with the quantity of fuel that was declared by the oil marketers for local market with duties paid and fuel for exports.

2.3.2.4 Confirm Utilization of the Fuel Stabilization Fund and Actual Amount Paid to the Oil Marketing Companies during the Period Under Review

- Establish the existence of approved budgetary allocation for stabilization of petroleum prices for the period April 2021 to June 2022.
- Confirm the amount received by Ministry of Petroleum and Mining for pump fuel prices stabilization and compare with the data held at The National Treasury.
- Confirm whether the fuel levy is utilized for matters relating to development of oil industry as provided for in the Petroleum Development Levy Order, 2020 and Petroleum Development Fund Act, 1991.
- Establish the method used for determination and payment of compensation to the Oil Marketing Companies and check for compliance with the Petroleum Development Levy Order 2020 and other existing legal framework. Ensure the method promotes transparency and accountability.
- Obtain and analyze all payments made to the oil marketers for accuracy and completeness of records.
- Determine the actual amount paid to the Oil Marketing Companies out of the Petroleum Development Levy (PDL) Fund under the stabilization of petroleum prices programme during the period under review.

2.4 Source of Information and Audit procedures

2.4.1 We obtained information based on the following audit procedures:-

a) **Document Review**: Reviewed documents including: Cabinet secretary approvals, Cabinet memos, bank statements, funds transfer notices, Petroleum Development Levy Order (Legal notice of 124 of 2020) budget estimates, Open Tender System (OTS) Contract agreement, ship manifest, outturn reports and payment records.

b) **Analytical Review**: Recomputations collaboration, comparisons recompiled against actual of information against existing trends to obtain required evidence.

c) **Evaluation of Internal Controls**: Tests of controls were undertaken to identify any control weaknesses.

d) **Inquiries**: Enquiries from key staff under the Ministry of Petroleum and Mining, Kenya Pipeline Company (KPC), Energy and Petroleum Regulatory Authority (EPRA), Kenya Revenue Authority (KRA) and Kenya Ports Authority (KPA), among others, to gather audit evidence.

e) **Collaboration**: Collaboration of information held at the Ministry of Petroleum, Kenya Pipeline Company, Energy and Petroleum Regulatory Authority, Kenya Revenue Authority and Kenya Ports Authority.

3. DETAILED FINDINGS

3.1. Legal Framework for Petroleum Development Levy (PDL) Fund and Stabilization & Compensation Mechanism

The Petroleum Development Levy Fund

3.1.1 Section 4(1) of The Petroleum Development Fund Act, 1991 (Revised Edition 2006) established the Petroleum Development Fund. Section 4(3) provides that all moneys received in respect of the petroleum development levy shall be paid into the Fund.

3.1.2 Section 5 of the Petroleum Development Fund Act, 1991 outlines powers and functions of the officer administering the Fund as - (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 Auditor-General an account of the fund.

3.1.3 On 14 July, 2020, the Cabinet Secretary for Petroleum and Mining issued the Petroleum Development Levy Order 2020, which revised the rate of levy as detailed in the table below.

Table 1: Rate of Levy in Kenya Shillings

Tariff Code	Description	Rate of Levy in Kshs.
2710.00.22	Motor Spirit (Gasoline), Premium	5,400 per 1000 litres at 20°C
2710.00.24	Jet Fuel (Spirit type)	5,400 per 1000 litres at 20°C
2710.00.32	Kerosene	400 per 1000 litres at 20°C
2710.00.41	Diesel Oil	5,400 per 1000 litres at 20°C

3.1.4 Section 4 (1) and (2) of the Act, provides for establishment of a Petroleum Development Fund administered by the Principal Secretary to the National Treasury or any person appointed by him. However, there are three funds and Fund bank accounts operated by different Ministries as shown below.

- Petroleum Development Fund – National Treasury. The fund acts as a holding account which receives levies collected by KRA and makes transfers to other operational funds
- Petroleum Development Fund – Ministry of Petroleum and Mining. Receives funds from the holding fund at National Treasury for operations as per the budget.
- Petroleum Development Fund – Ministry of Energy. Receives funds from the holding fund at National treasury for operations of the Ministry and Disbursement to corporations under the Ministry of Energy.

The three funds do not have a common operation framework that enable well coordinated operation in utilization of the funds collected.

Stabilization of Petroleum Prices and Mechanisms for Compensation to the Oil Marketing Companies

3.1.5 Section 3(1) of the Petroleum Development Fund, Act, 1991 provides that 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.

3.1.6 On 10 July 2020, the Cabinet Secretary for Petroleum and Mining, issued a Petroleum Development Levy Order, No. 24, which came into operation on 15 July 2020 and which states under section 4 that the Levy shall also be used for matters relating to development of the oil industry including to stabilize the local petroleum pump prices in instances of spikes occasioned by high landed costs above a threshold determined by the Energy and Petroleum Regulatory Authority.

3.1.7 The special audit established that there is no documented compensation mechanism in place to ascertain the specific components of petroleum products that should be stabilized and the respective amounts to be paid to the Oil Marketing Companies.

There were no petroleum pump prices stabilization guidance in existence before the stabilization in commissioned or effected.

3.1.8 On 15 April 2021, a meeting chaired by PS, Ministry of Petroleum and Mining, was held between officials of the Ministry of Petroleum and Mining, EPRA, SupplyCor and representatives of the various Oil Marketing Companies to discuss compensation mechanism for the deltas in Supplier Margins for pump prices for the period 15 April -14 May 2021 and the period within which the compensation would be undertaken.

3.1.9 Under Min 3/2021, the meeting deliberated the mechanisms for determining the amounts to be compensated and noted that determination of the value by use of cargo volumes factored in the April – May 2021 pump prices computation was straightforward and auditable and hence the better choice.

3.1.10 The meeting also discussed the verification and administration process and resolved under Min 4/2021 – 1 (d) that the refund rate would be equivalent to the margin reduction per litre per product for pump prices published for Nairobi for the period 15 April,14 May 2021.

The multisectoral meeting that came up with stabilisation mechanism to be used was not anchored on any legislative or regulatory framework and therefore deliberations may not legally form a basis of committing public funds. The deliberation for the meeting covered only one month but there were no similar meetings in subsequent months or a rider that the conditions set for the first month shall apply until further review

Entities involved in management of the Petroleum Development Levy Fund and their Respective Roles

3.1.11 The entities involved in management of the Petroleum Development Levy Fund and their respective roles are summarized in the table below.

Table 2: Entities and their roles

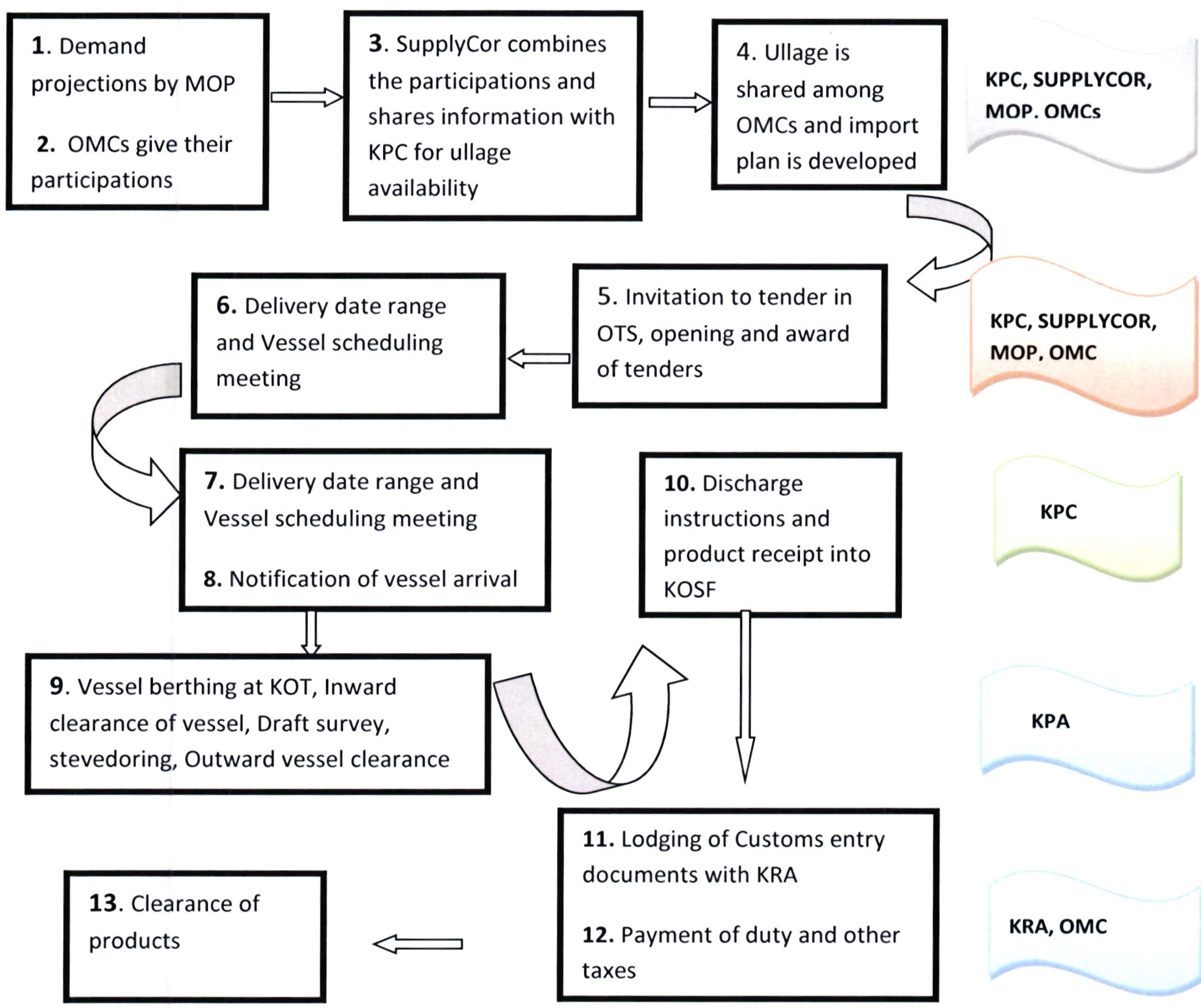
No.	Entity	Enabling Legislation	Role played
1	Principle Secretary to The National Treasury any person appointed by him in writing for that purpose.	Section 4(2) of the Petroleum Development Fund Act, 1991	Administrator
2	Cabinet Secretary for Petroleum and Mining	Section 4 of the Petroleum Development Levy Order, No. 2 issued on 10 July 2020	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.
		Section 101 (y) Petroleum Act No. 2 of 2019	On the recommendation of the EPRA, make Regulations determining the maximum wholesale and retail prices of petroleum and petroleum products
3	Energy & Petroleum Regulatory Authority	Section 10 a (ii) of the Energy Act, 2019	Regulate importation, refining, exportation, transportation, storage and sale of petroleum and petroleum products with the exception of crude oil
			Registration and granting licenses to Oil Marketing Companies
4	The Commissioner-General (Kenya Revenue Authority	Section 5 (1) Kenya Revenue Authority Act, 1995 (Revised Edition 2020)	An Agency of the Government for the collection and receipt of all revenue (Taxes and levies)
		Section 3A of Petroleum Development Fund Act, 1991	Collection of Petroleum Development Levies

5	Kenya Pipeline Company Limited	State Corporations Act (Cap 446), 2015	Receiving, storage and transportation of refined petroleum products through the pipeline from Mombasa to hinterland.
6	Kenya Ports Authority	State Corporations Act (Cap 446) 2015	Berthing and un-berthing of the Tankers (Ships carrying the petroleum product)

Importation process for refined petroleum products

3.1.12 The process of importing refined petroleum products into the country is summarized in the following flow chart.

PRODUCT IMPORTATION PROCESS RESPONSIBILITY



3.2 Management of the Petroleum Development Levy Fund Petroleum Development Levy Funds Collected by the Kenya Revenue Authority

3.2.1 The special audit established that Kenya Revenue Authority collected Petroleum Development Levy funds totaling Kshs. 52,729,342,784 during the period 01 July 2020 to 30 June 2022 as detailed in **Appendices I to IV**. The amount comprises of Kshs. 25,879,926,923 collected during the period 01 July 2020 to 30 June 2021 and Kshs. 26,849,415,861 relating to the period 01 July 2021 to 30 June 2022.

3.2.2 The KRA charged a total of Kshs. 1,207,467,428 being 2% commission plus 16% VAT on the amount collected. After deducting the commission and making adjustments for prior year errors, mis-postings and amounts transferred to Excise Duty being refunds to OMCs, the net Petroleum Development Levy collected was Kshs.51,050,219,521 as detailed in **Appendices V and VI respectively.**

Deposits by KRA into the Petroleum Development Levy Fund

3.2.3 The special audit established that during the period 01 July 2021 to 30 June 2022, KRA deposited a total of Kshs. 51,480,769,248 to the National Treasury through CBK Account Number 1000205024; Account Name: Petroleum Development Levy Fund broken down as follows: Levies collected during the period 01 July 2020 to 30 June 2021- Kshs. 25,201,496,746; Levies collected from 01 July 2021 to 30 June 2022- Kshs. 26,279,272,502 as analyzed **in Appendix VII.**

3.2.4 A comparison of the reconciled levies collected by KRA totaling Kshs. 51,050,219,521 against the total amount deposited into the CBK Account Number 1000205024 of Kshs. 51,480,769,248 yielded an unexplained and unreconciled variance of Kshs. 430,549,727. It was not possible to determine whether it was the remittance that was inaccurate or the data capture.

3.2.5 Further, a total of Kshs. 874,682,471 was deposited into the account being unutilized Levy funds by the Ministry of Energy- Kshs. 249,480,453 and Ministry of Petroleum and Mining Kshs. 625,202,017 respectively.

Disbursements out of Petroleum Development Fuel Levy Fund

3.2.6 During the period 1st July 2020 to June 2022, the National Treasury disbursed a total of Kshs. 49,679,406,330.25 out of the PDL Fund CBK A/c. No.1000205024 to the Ministry of Petroleum and Mining, Ministry of Energy and State Department for Infrastructure under the Ministry of Transport, Infrastructure Housing, Urban Development and Public Works as summarized in the table below and detailed in **Appendix. VIII.**

Table 3: Disbursements out of the PDL Fund

Entity	Amount in Kshs.	Recipient Account Number
Ministry of Energy	4,540,000,000.00	Petroleum Development Levy Fund , A/c. No. 0021007000785 held at Credit Bank Plc
Ministry of Petroleum and Mining	26,998,406,330.25	Petroleum Development Levy Account No. 1000390808/ 1000513497
State Department for Infrastructure	18,141,000,000.00	CBK A/C. No. 10000209844
Total	**49,679,406,330.25**	

Operation of a Development Levy Fund Account by the Ministry of Energy

3.2.7 The Executive Order No. 1/2018 on Organization of Government created the Ministry of Energy and also the State Department for Petroleum under the Ministry of Petroleum and Mining with the following distinct functions.

Table 4: Functions as per Executive Order No. 1/2018

Ministry/ State Department	Function
Ministry of Energy	National Energy Policy Development and Management
	Thermal Power Development
	Rural Electrification Programme
	Energy Regulation, Security and Conservation
	Hydropower Development
	Geothermal Exploration and Development

	Promotion of Renewable Energy
State Department for Petroleum, Ministry of Petroleum and Mining	Petroleum Policy
	Strategic Petroleum Stock Management
	Management of Upstream Petroleum Products Marketing
	Oil and Gas Exploration Policy Development
	Oil/ Gas Sector Capacity Development
	Petroleum Products Import/ Export/ Marketing Policy Development
	Licensing of Petroleum Marketing and Handling
	Quality Control of Petroleum Products

3.2.8 The Special audit noted that the Ministry of Energy and State Department of Infrastructure has no direct function relating to development of oil industry and therefore, there is no justification as to why the Ministry continues to operate a Petroleum Development Fund Account No. 0021007000785 held at Credit Bank Plc and receive disbursements from the Petroleum Development Fund CBK A/c. No.1000205024 held at the National Treasury.

Irregular utilization of Petroleum Development Levy Funds

3.2.9 Section 4(4) of the Petroleum Development Fund Act, 1991 states that 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.

3.2.10 In addition, Section 4 (5) of the Petroleum Fund Act, 1991 stipulates that expenditure on development programmes to be financed 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.

3.2.11 The Petroleum Development Levy Order, No. 24, which came into operation on 15 July 2020 provides under section 4 that the levy shall also be used for matters relating to development of the oil industry including to stabilize the local petroleum pump prices in instances of spikes occasioned by high landed costs above a threshold determined by the Energy and Petroleum Regulatory Authority.

3.2.12 Section 24 (7) of the Public Finance Management Act, 2012 states that the Administrator of a national public fund shall ensure that money held in the fund, including any earnings or accruals is spent only for the purposes for which the fund is established.

3.2.13 The special audit established that out of Kshs. 49,679,406,330.25 disbursed by the National Treasury out of Petroleum Development Levy Fund, Kshs. 26,998,406,330.25 disbursed to the Ministry of Petroleum and Mining was utilized as follows: stabilization of petroleum pump prices- Kshs. 23,712,877,759.25 and funding of development budget of the Ministry for the financial year 2020/2021 and the financial year 2021/2022- Kshs. 3,285,528,571.

3.2.14 Further, a total of Kshs.18,141,000,000 was transferred out of the Petroleum Development Levy Fund to the State Department for Infrastructure under the Ministry of Transport, Infrastructure Housing, Urban Development and Public Works to fund various roads projects under Kenya National Highways Authority (KeNHA), Kenya Rural Roads Authority (KeRRA), and Kenya Urban Roads Authority (KURA) and State department's headquarters as summarized below and detailed in Appendix III

Table 5: Disbursements to State Department for Infrastructure

Agency	Amount in Kshs.
Kenya National Highways Authority (KeNHA)	531,779,734.00
Kenya Rural Roads Authority (KeRRA)	17,161,220,266.00
Kenya Urban Roads Authority (KURA)	373,000,000.00
Ministry Headquarters	75,000,000.00
Total	**18,141,000,000.00**

3.2.15 Utilization of Petroleum Development funds to fund road construction projects was in violation of Section 4 (4) of the Petroleum Development Fund Act, 1991, Section 4 of the Petroleum Development Levy Order, 2020 and Section 24 (7) of the Public Finance Management Act, 2012 respectively.

3.2.16 The special audit established that during the period under review, an amount of Kshs.4,540,000,000 was transferred out of the Petroleum Development Levy Fund to the Ministry of Energy to finance various projects as detailed in **Appendix IX.** The expenditure neither relates to development of common facilities for the distribution or testing of oil products or even for matters relating to development of oil industry as provided for under Section 4 (4) of the Petroleum Development Fund Act, 1991 nor matters relating to development of the oil industry including to stabilize the local petroleum pump prices as per section 4 of the Petroleum Development Levy Order, 2020.

Efficiency, Effectiveness, Sustainability and Suitability of Stabilization Measures of Operating the Fuel Development Levy Stabilization Programme

Absence of framework or guidelines on utilization of proceeds from the Fund

3.2.17 Section 4 (2) of the Petroleum Development Fund Act, 1991, states that the Fund shall be administered by the Permanent Secretary to the Treasury or any person appointed by him in writing for that purpose.

3.2.18 Further, subsection 4 states that 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.

3.2.19 The Special audit revealed that there is no framework or guidelines outlining the specific common facilities for distribution or testing of oil products and matters for which the proceeds from the Fund should finance.

3.2.20 In addition, the Administrator of the Fund is the PS, National Treasury and not the PS, Ministry of Petroleum and Mining. As a result, the Ministry of Petroleum and Mining has no direct control over utilization of the Petroleum Development Levy Fund.

3.3 Open Tender System (OTS) Mechanism

Procurement of the Oil Marketing Companies

3.3.1 Legal Notice No. 197 dated 2 December, 2003 states that no person, shall import or cause to be imported such quantities as the Minister may prescribe of refined petroleum products other than liquefied petroleum gas, bitumen and low Sulphur fuel oil, or petroleum crude oil for refining and use in Kenya, other than through an open tender system centrally coordinated by the Ministry.

3.3.2 On 1 September, 2017, a total of one hundred and seventeen (117) Oil Marketing Companies (OMCs) detailed **in Appendix X** signed Open Tender System (OTS) Terms and Conditions of refined petroleum product Industry Imports for the local Kenyan market as well as the neighboring transit markets. This Agreement remains in force until reviewed or terminated.

3.3.3 Participants to this Agreement are the OMCs, which are registered and licensed by the Energy and Petroleum Regulatory Authority (EPRA) and are participants in the OTS and have signed both the Transport & Storage Agreement with Kenya Pipeline Company Ltd. A sample of Import plans for petroleum products through the Kipevu Oil Terminal (KOT) are as detailed in **Appendix XI.**

3.3.4 To supplement the petroleum products imported through the KOT, additional quantities are procured as and when the need arises, and these are imported through the Shimanzi Oil Terminal (SOT) and the VTTI Terminals respectively.

3.3.5 Section 3 of the OTS Terms and Conditions stipulates that invitation to tender of final participants shall be issued by PipeCor on behalf of MOE& P at least seven (7) full working days before Tender Opening date unless the tender in question is for an emergency cargo, in which case the tender call lead time shall be waived.

3.3.6 Section 3.2 of the OTS Terms and Conditions, further states that Supplycor shall notify parties to this Agreement of the total cargo to be tendered accompanied with the breakdown of the individual Buyer's participation, clearly indicating the allocation split between local and transit volumes.

3.3.7 The SupplyCor issues invitations between 16th and 28th of the Month to the Oil Marketing Companies that are participating in the OTS to tender for importation of refined petroleum products (Jet Fuel, Automotive Gasoil (AGO) and Premium Motor Spirit (PMS).

3.3.8 The bids submitted by the Oil Marketing Companies arre opened, adjudicated and subsequently awarded tenders for supply of the products as demonstrated in in **Appendix XII.**

3.3.9 The special audit noted that procurement of refined petroleum products was done in accordance with the existing terms and conditions of the OTS.

3.3.10 Analysis of data obtained from KPA for the initial pricing cycle revealed that during, a total of 3,108,943 MT of fuel was imported into the country as analyzed in the table below and detailed in **Appendix XIII.**

3.3.11 The Oil marketing companies were awarded quantities of fuel to be imported with an allowance of +- 5%.

Landed Cost Data for the Period Compared with the Threshold set by EPPRA

Absence of a set Landed costs threshold

3.3.12 Section 4 of the Petroleum Levy Fund Order, 2020 provides that 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.

3.3.13 The special audit noted that EPRA does not have a documented threshold for landed costs contrary to section 4 of the Petroleum Levy Fund Order, 2020.

3.3.14 However, in determining the applicable monthly prices of petroleum products, EPRA considers the weighted average landed costs of petroleum products imported under OTS and discharged at the port of Mombasa between the 10th of the previous month to the 9th of the pricing month.

3.3.15 Review of records obtained from EPRA revealed that landed costs in Kenya Shillings per litre during the initial five pricing cycles were as follows:

Table 6: Weighted Average Landed costs in Kshs/Litre

Petroleum Product	15 April- 14 May 2021	15 May-14 June 2021	15 June-14 July 2021	15 July-14 Aug. 2021	15 Aug- 14 Sept. 2021
PMS	53.99	52.92	53.59	59.187	62.619
AGO	48.95	47.39	50.64	55.813	58.334
IK	46.23	46.20	48.48		55.799

3.4 Utilization of the Petroleum Development Fund for Stabilization of Petroleum Pump Prices

Approved Budgetary allocation for stabilization of petroleum prices

3.4.1 Article 223 (1) (a) of the Constitution of Kenya, 2010, states that the national government may spend money that has not been appropriated if the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act.

3.4.2 Pursuant to this, the PS, Ministry of Petroleum and Mining wrote to the CS, National Treasury requesting for additional budget of an amount of Kshs.139,536,473,852 from the Petroleum Development Levy Fund for stabilization of petroleum prices for the financial year 2020/2021 and 2021/2022 as follows..

Table 7: Supplementary funding for Stabilization of Petroleum prices

Date of Request by PS, MOPM	Letter Ref.	Amount Requested in Kshs.	Date of Approval by CS, National Treasury	Amount Approved in Kshs.
13-Apr-21	MOPM/CONF/P/3/34/Vol.III (5)	1,600,000,000	13-Apr-21	1,600,000,000
02-Jul-21	MOPM/CONF/3/34/Vol. I (19)	5,000,000,000	15-Jul-21	5,000,000,000
17-Aug-21	MOPM/P/CONF/3/34/Vol. III (42)	5,000,000,000	06-Sep-21	-
14-Sep-21	MOPM/P/CONF/3/34/Vol. III (51)	5,000,000,000	17-Sep-21	2,000,000,000
25-Oct-21	MOMP/P/CONF/3/35/Vol.III(6)	9,000,000,000	09-Nov-21	2,682,215,559.87
29-Nov-21	MOMP/P/CONF/3/34/Vol.IV(6)	6,900,000,000	09-Dec-21	6,884,835,702
23-Dec-21	MOMP/CONF/3/34/Vol.IV(78)	8,418,524,449.29	12-Jan-22	8,418,524,449.29
14-Feb-22	MOMP/P/CONF/3/34/Vol.IV(90)	15,000,000,000	14-Feb-22	6,730,000,000
04-Mar-22	MOMP/CONF/3/34/Vol.IV(100)	8,270,000,000	16-Mar-22	8,270,000,000
06-Apr-22	MOMP/CONF/3/34/Vol.IV(145)	7,539,440,886.15	12-Apr-22	7,539,440,886.15
28-Apr-22	MOMP/P/CONF/3/34/Vol.IV(51)	36,404,254,258.09	17-May-22	22,000,000,000
28-Apr-22	MOMP/P/CONF/3/34/Vol.IV(51)	36,404,254,258.09	25-May-22	11,500,000,000
Total		**139,536,473,852.00**		**82,625,016,597.31**

3.4.3 The CS, National Treasury approved a total of Kshs.82,625,016,597.31 billion for stabilization of petroleum prices.

Amount received from the National Treasury for stabilization of Petroleum Pump Prices

3.4.4 Analysis of bank statements and receipt vouchers availed revealed that the State Department for Petroleum received a total of Kshs.79,752,318,645.40 from The National Treasury which comprises of Kshs.23,712,877,759.25 and Kshs.56,039,440,886.15 from Petroleum Development Levy Fund Account and Exchequer Account respectively for purpose of stabilization of petroleum pump as shown in the table below:

Table 8: Funds received for stabilization of petroleum pump prices

Date	PV No.	Ref. No.	Description	Amount in Kshs.	Recipient Account
5/5/2021	3219	FT2112251YPWW	Receipts of funds from National Treasury (PDL Fund) in respect of petroleum price stabilization	1,448,818,516.20	Petroleum Development Levy CBK A/c. No.1000390808
10/6/2021	3728	FT21161QM8RV	Receipts of funds from National Treasury (PDL Fund) in respect of petroleum	151,181,483.80	Petroleum Development

Date	PV No.	Ref. No.	Description	Amount in Kshs.	Recipient Account
			price stabilization for the period 15 May to 14 June 2021		Levy CBK A/c. No.1000390808
12/8/2021	0107	FT21224V43WW	Receipts of funds from National Treasury (PDL Fund) in respect of petroleum price stabilization	5,000,000,000.00	Petroleum Development Levy CBK A/c. No.1000390808
12/10/2021	1002	FT212856BLVP	Receipts of funds from National Treasury (PDL Fund) in respect of petroleum price stabilization	2,000,000,000.00	Petroleum Development Levy CBK A/c. No.1000513497
19/11/2021	1810	FT21323PX50F	Receipts of funds from National Treasury (PDL Fund) in respect of petroleum price stabilization	2,682,215,559.90	Petroleum Development Levy CBK A/c. No.1000513497
23/12/2021	2680	TF2135741TH8	Receipts of funds from National Treasury (PDL Fund) in respect of petroleum price stabilization	1,753,542,783.35	Petroleum Development Levy CBK A/c. No.1000513497
12/01/2022	2934	FT22012NCBN3	Receipts of funds from National Treasury (PDL Fund) in respect of petroleum price stabilization	2,200,000,000.00	Petroleum Development Levy CBK A/c. No.1000513497
28/01/2022	3091	FT22028QGCQL	Receipts of funds from National Treasury (PDL Fund) in respect of petroleum price stabilization	1,100,000,000.00	Petroleum Development Levy CBK A/c. No.1000513497
17/02/2022	4116	FT22048SPTTG	Receipts of funds from National Treasury (PDL Fund) in respect of petroleum price stabilization	1,277,119,416.00	Petroleum Development Levy CBK A/c. No.1000513497
21/03/2022	4347	FT22080LY9X7	Receipts of funds from National Treasury (PDL Fund) in respect of petroleum price stabilization	2,300,000,000.00	Petroleum Development Levy CBK A/c. No.1000513497
05/04/2022	4630	FT22095BBPYM	Receipts of funds from National Treasury (PDL Fund) in respect of petroleum price stabilization	1,300,000,000.00	Petroleum Development Levy CBK A/c. No.1000513497
13/04/2022	4629	FT221031LXCP	Receipts of funds from National Treasury (PDL Fund) in respect of petroleum price stabilization	500,000,000.00	Petroleum Development Levy CBK A/c. No.1000513497
19/05/2022	6643	FT22139QZGZD	Receipts of funds from National Treasury (PDL Fund) in respect of petroleum price stabilization	2,000,000,000.00	Petroleum Development Levy CBK A/c. No.1000513497
Total Funds Received from PDL Account (A)				**23,712,877,759.25**	

Date	PV No.	Ref. No.	Description	Amount in Kshs.	Recipient Account
15/02/2022	4115	FT22047JRXG5	Receipts of funds from the National Treasury to cater for Petroleum Pump Price Stabilization	6,730,000,000.00	Ministry of Petroleum & Mining Recurrent CBK A/c. No.1000513462
04/04/2022	4621	FT22094S85RZ	Receipts of funds from the National Treasury to cater for Petroleum Pump Price Stabilization	8,270,000,000.00	Ministry of Petroleum & Mining Recurrent CBK A/c. No.1000513462
14/04/2022	4650	FT221049SWX2	Receipts of funds from the National Treasury to cater for Petroleum Pump Price Stabilization	7,539,440,886.15	Ministry of Petroleum & Mining Recurrent CBK A/c. No.1000513462
14/06/2022	7152	FT2216555ZQ5	Receipts of funds from the National Treasury to cater for Petroleum Pump Price Stabilization	20,847,936,534.20	Ministry of Petroleum & Mining Recurrent CBK A/c. No.1000513462
30/06/2022	7919	FT22181PMLF0	Receipts of funds from the National Treasury to cater for Petroleum Pump Price Stabilization	12,652,063,465.80	Ministry of Petroleum & Mining Recurrent CBK A/c. No.1000513462
Total Funds Received from Exchequer Account (B)				**56,039,440,886.15**	
Total Funds Received from National Treasury (A+B)				**79,752,318,645.40**	

Method used for Determination and Payment of Compensation to the Oil Marketing Companies

Pricing of Petroleum Products above the maximum allowed margins

3.4.5 Pricing mechanism of refined petroleum products is outlined both in the OTS terms and conditions and the Energy (Petroleum Pricing) Regulations, 2010 and Amendment 2012.

3.4.6 Section 10 of the OTS terms and conditions states that the price of the petroleum product in Mombasa shall be the aggregate of the following:

Table 9: Composition of the Price of Petroleum Product

No	Component	Remarks
1	Free on Board (FOB)	This is the tender price called and confirmed by MOE& P award letter
2	Freight and Premium	A fixed amount in United States Dollar per Metric ton (USD/MT) as awarded
3	Local Currency component for local parcels only	Formed of a variable Kenya shillings component. Statutory charges shall apply as gazetted from time to time.
4	Transit discharge costs	Formed of a variable costs component in USD to cover discharge costs.

3.4.7 The OTS terms and conditions provides a build up for unit price/ MT in both USD and Kenya Shillings for both local and transit petroleum products when they arrive at the port of Mombasa.

3.4.8 Regulation 4 of the Energy (Petroleum Pricing) Regulations, 2010 and Amendment 2012 sets out the following formulas for determining the maximum and minimum wholesale and retail prices of petroleum products (super petrol, regular petrol, kerosene, automotive diesel) in shillings per litre.

Whole sale price

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

Where -

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

Cu = 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 ( ) and (100-X) percent of road bridging cost (Krd).

L = the allowed losses in the pipeline;

L_d = the allowed losses in the depot; and

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

Retail price

The maximum retail pump price formula is

$$P_r = P_w + m_r + z$$

Where:

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

m = the allowed maximum retail gross margin; and

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

3.4.9 According to Regulation 9 of the Energy (, pricing) Regulations 2010, amendment 2012 the factors, **K** (transportation costs from Mombasa to nearest depot), **L** (the allowed losses in the pipeline), **Ld** (the allowed losses in the depot), m (the allowed OMC's gross wholesale margin, **mr** (the allowed maximum retail gross margin, **z** (delivery rate from nearest wholesale depot to retail dispensing site and **x** shall be determined by the commission (now the Authority)

Irregular Revision of Gross Margins

3.4.10 Regulation 6, Third Schedule of the Energy (Petroleum Pricing) (Amendment) Regulations, specifies the following maximum allowed OMCs margins for each refined petroleum product.

Table 10: Maximum allowed margins in Kshs./litre

Petroleum product	Maximum allowed margins (Kshs./ per litre)
Super Petrol	10
Regular petrol	10
Kerosene	10
Automotive Diesel	10

3.4.11 The Ministry of Energy and Petroleum on behalf of the Energy and Petroleum Regulatory Authority, engaged M/s. Kurrent Technologies Limited to undertake a study on the cost of Services in the Supply of Petroleum Products (COSSOP) in Kenya.

3.4.12 In 2016, the Ministry of Energy and Petroleum under the World Bank funding through the Kenya Petroleum Technical Assistance Project (KEPTAP) contracted M/s. Kurrent Technologies Limited to undertake a study on the cost of services in the supply of petroleum products (COSSOP) in Kenya. The study was undertaken on behalf of the Energy Regulatory Commission (ERC).

3.4.13 Objectives of the Study included among others to establish a price build-up structure that starts from import parity landed cost with added storage, transportation, other costs and margins that would be sustainable and flexible enough to suit a regulated pricing regime in Kenya.

3.4.14 The COSSOP report dated 22 June, 2018 recommended the following in relation to pricing of the petroleum products.

Table 11: Recommendations from the COSSOP Study Report

Pricing Formula component	Section of Report	Recommendation
Wholesale Margin	4.16	A wholesale price margin of Kshs. 3.05 per litre is computed and included in the pricing formula
Retail Investment Margin Build Up	4.29	A Retail Investment margin of KShs.4.08 per litre has been computed for inclusion in the price formula.
Retail Operations Margin Build Up	4.30	A Retail Operations (RO) margin of KShs.4.53 per litre has been computed for inclusion in the price formula.

Inventory Financing Costs	1.6	Inventory financing cost be incorporated in the price formula and should be calculated based on previous quarter weighted average actual days' inventory, up to a maximum of 21 days' statutory requirement for working stocks.
Secondary Storage costs	1.6	A uniform tariff of Kshs 0.72 per litre is to be included in the price formula and a loss allowance of 0.2% on all products for all secondary storage/loading depots.

3.4.15 On 29 October 2019, the Board of EPRA deliberated and approved under MIN/EPRA/2181/100/2019 the recommendations of the Cost-of-Service Study.

3.4.16 The recommendations of the Board meeting included Inclusion into the petroleum pricing formula of:-

(i) Secondary Storage and handling cost of US$6.64/m3

(ii) Retail Investment Margin of Kshs. 4.05/litre

(iii) Retail Operating Margin of Kshs. 4.14/litre;

(iv) Minimum Operational Stock Financing Costs at a rate of Kshs.0.49/litre for PMS, Kshs.0.46/litre for AGO and 0.46/litre for DPK; and

(v) revision of the wholesale price from Kshs. 7/litre to Kshs.3.05/litre.

3.4.17 As a result of the board approval, the total gross margin of petroleum was revised upwards to Kshs.12.39/litre from Kshs.10/litre and is arrived at by summing up the components shown in **table 14**.

3.4.18 Products is arrived at by summing up the following components.

Table 12: Computation of Gross Margin in Kshs./litre

Gross Margin Component	PMS	AGO	Illuminating Kerosene
Secondary storage costs	0.66	0.66	0.66
Wholesale Margin	3.05	3.05	3.05
Retail Investment Margin	4.05	4.05	4.05
Retail Operating Margin	4.14	4.14	4.14
Inventory Financing Costs	0.49	0.46	0.46

Gross Margin Kshs/litre	**12.39**	**12.36**	**12.36**
Gross Margin as per Energy (Petroleum Pricing) (Amendment) Regulations, 2012	10	10	10
Variance in Kshs./Litre	**2.39**	**2.36**	**2.36**

3.4.19 The effective date of the revision of wholesale and retail margin was 15 November 2019.

3.4.20 The revised gross margins exceeded the maximum allowed limits specified in Regulation 6, Third Schedule of the Energy (Petroleum Pricing) (Amendment) Regulations, 2012 as detailed in the table below.

Table 13: Revised Maximum Allowed Margins

Petroleum product	Maximum allowed margins (Kes/ litre)	EPRA Revised Margins in Kshs. / litre	Variance in Kshs/litre
Super Petrol	10	12.39	2.39
Regular petrol	10	12.39	2.39
Kerosene	10	12.36	2.36
Automotive Diesel	10	12.36	2.36

3.4.21 The special audit noted that changes in the wholesale and retail margins have not been effected in the Petroleum Rules, which stipulates the maximum allowed gross margin for each petroleum product.

3.4.22 The following Statutory charges/ taxes detailed in **Appendix XIV** and levied on all imported petroleum products are Excise duty, Road Maintenance Levy, Railway Development Levy, Anti- Adulteration Levy, Merchant Shipping Levy, Import Declaration Fee, Value Added Tax (VAT) and Petroleum Regulatory Levy.

3.4.23 The petroleum pump prices remain effective from 15th day of every calendar month and remain in force until 14th day of the following calendar month.

3.4.24 The special audit noted that taxes and levies on super petrol averaged between 44% to 47% of the retail price; for diesel taxes and levies averaged between 40%

to 43% of the retail price and for kerosene, taxes and levies averaged between 39% to 41% of the retail price.

3.4.25 According to section 4 of the Petroleum Development Levy Order, the levy shall also be used for matters relating to development of the oil industry including to stabilize the local petroleum pump prices in instances of spikes occasioned by high landed costs above a threshold determined by the Energy and Petroleum Regulatory Authority.

3.4.26 It was noted that the Authority does not have a documented threshold for the landed costs. However, on 5 April 2021, a meeting chaired by the PS, Ministry of Petroleum and Mining was held between officials of the Ministry of Petroleum and Mining, EPRA, SupplyCor and representatives of the various Oil Marketing Companies to discuss compensation mechanism for the Deltas in Supplier Margins for pump prices for the period 15 April -14 May 2021; and the period within which the compensation would be undertaken.

3.4.27 The meeting resolved as follows: Under Min 3/2021- to determine the value by use of cargo volumes factored in the April – May 2021 pump prices and under Min 4/2021- 1 (d) that the refund rate will be equivalent to the margin reduction per litre per product for pump prices published for Nairobi for the period 15 April-14 May 2021.

3.4.28 During the period under review, the PS, Ministry of Petroleum and Mining, wrote the following letters to the CEO, EPRA indicating that the Ministry had noted that the landed costs of petroleum products were on an upward trend and in order to put the petroleum levy funds to use, the Authority was to advice on the projected petroleum prices, price changes, projected sales volumes based on historical sales, and the proposed stabilization amounts.

Payments made to the Oil Marketing Companies out of the PDL Fund under the Stabilization of Petroleum of Prices Programme

Use of previous months' pricing cycles fuel prices to determine stabilization amount

3.4.29 Section 4 (4) of the Petroleum Fund Act, 1991 states that 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.

3.4.30 As earlier noted, a meeting held on 5 April 2021 between officials of the Ministry of Petroleum and Mining led by the Principal Secretary and representatives from EPRA, SupplyCor and various Oil Marketing Companies discussed the compensation mechanism in Supplier Margins and resolved to determine the value by use of cargo volumes factored in the April – May 2021 pump prices and that the refund rate would be equivalent to the margin reduction per litre per product for pump prices published for Nairobi for the period 15 April-14 May 2021.

3.4.31 The special audit noted that in determining volumes of petroleum products and the applicable amounts to be stabilized in a given month, EPRA applies volumes of cargo imported into the country during the previous pricing cycle as opposed to applying actual volumes of petroleum products imported and consumed during a given pricing cycle as detailed in **Appendix XV.**

3.4.32 The Ministry of Petroleum and Mining utilized the Kshs.79,746,377,260.70 received from the National Treasury out of the Petroleum Development Levy Fund received to compensate the Oil Marketing Companies that imported a total of 5,820,790.41 cubic meters of petroleum products for local use during the pricing cycles of 15th April 2021 to 14th July 2022 as summarized below and detailed in **Appendix XVI.**

Table 14: Payments made to OMCs by Ministry of Petroleum and Mining

OMC	Total in Kshs.
Gulf Energy Kenya Ltd.	6,888,471,684
E3 Energy Kenya Ltd.	15,011,664,539.60
Galana Oil Kenya Ltd.	10,383,665,062.25
Texas Energy Ltd.	3,218,283,467.85
Oryx Energies Ltd.	25,333,033,663.90
Rubis Energy Ltd.	116,200,109
Asharami Synergy	15,886,365,126.90
Kencor Petroleum Ltd	2,908,693,607.70
Total	**79,746,377,260.70**

Comparative Analysis of fuel discharged, and Volumes used in compensation

Difference in volumes used for stabilization and volumes imported

3.4.33 A comparative analysis of imported volumes of petroleum for local consumption that were discharged through Kipevu Oil Terminal (KOT), Shimamzi Oil terminal (SOT) and VTTI for the period between April 2021 and April 2022 the outturn reports revealed discrepancies in quantities used for purposes of compensation to Oil Marketing Companies and quantities distributed for the local market. According to the data used in stabilization of pump prices, OMCs were compensated a total sum of Kshs.79,746,377,261 (inclusive of VAT) for 5,820,790.41 cubic metres of petroleum products imported for local use during the period under review.

3.4.34 Outturn reports for petroleum products imported for local use in the period under review as generated by independent surveyors reflect a total of 5,797,643.35 cubic metres implying that OMCs were compensated Kshs.554,724,919.30 for 24,840.60 cubic metres over and above their entitlements as shown in the table below:

Table 15: Overpayment Made to Oil Marketing Companies

Type	Importer	Vessel	Qnty Used to Pay (M3)	Qnty as Outtern Report (M3)	Difference (M3)	Rate (Kshs. /Litre)	Overpayment in Kshs.
PMS	Gulf Energy Limited	Mt Front Cheetah	72,772.50	67,447.167	5,325.333	3.85	20,502,532.05
PMS	Galana Oil Kenya Ltd	Mt Mare Oriens	55,869.46	55,191.035	678.425	3.85	2,611,936.25
PMS	Texas Energy Ltd	Mt Bw Galatea	66,699.45	63,376.456	3,322.994	7.67	25,487,363.98
PMS	Texas	Mt Timberwolf	69,076.96	69,057.00	19.96	18.32	365,703.84
AGO	Texas	Mt Front Vega	47,373.97	47,271.13	102.84	27.56	2,834,270.40
PMS	Asharami Synergy Ltd	Mt Sloane Square	66,373.75	64,102.86	2,270.89	29.08	66,037,452.12
AGO	E3 Energy	Mt Chemtrans Oceanic - Vtti	13,637.16	12,610.78	1,026.39	40.24	41,301,772.64
AGO	Mt Al Bateen - Vtti	E3 Energy Kenya Limited	26,728.43	25,891.49	836.93	43.94	36,774,923.90
AGO	Mt Al Bateen - Kosf	E3 Energy Kenya Limited	45,563.09	45,263.35	299.74	43.94	13,170,663.48
AGO	Mt Avanti	Oryx Energies Kenya Ltd	30,058.50	29,876.61	181.89	43.94	7,992,246.60
PMS	Mt Rong Lin Wan	Asharami Synergy Ltd	69,041.35	62,133.65	6,907.70	26.35	182,017,934.53
AGO	Kencor	Mt Tarif - Kosf	41,491.94	37,624.44	3,867.498	40.24	155,628,119.52
			604,686.56	**579,845.97**	**24,840.60**	**328.98**	**554,724,919.30**

Irregular Advance Sales Compensation

3.4.35 During the month of April, May, and June 2022, Kshs. 5,324,796,939.50 was paid as stabilization for advance sales of local volumes. According to EPRA Management, the advance sales were compensated at the price differential between effective pump prices for the period and that of the preceding period for volumes sold between the 10th day of previous pricing cycle and the 10th day of the next pricing cycle. The move was said to cushion the marketers who had already sold the volumes since the increase in prices in the next cycle, running from 15th

day of the month to 14th day of the preceding month, since they would have no mechanism of recovering the difference.

3.4.36 However, review of the advance sales compensation revealed that the entire local volumes imported between April and June were already compensated in full, and any change in the prices would not justify additional compensation.

Table 16: Advance Sales Compensation

	Type	Importer	Vessel	Qnty Used to Pay (M3)	Rate (Kshs./Litre)	Payment in Kshs.
April-22 Advance	AGO	E3 ENERGY	MT TAVISTOCK SQUARE	39,303.102	**9.9**	389,100,709.80
		E3 ENERGY	MT CHEMTRANS OCEANIC	40,895.925	**9.9**	404,869,657.50
		GALANA	MT JAP POOJA	4,180.448	**9.9**	41,386,435.20
		GALANA	MT JAP PRABHA	4,646.959	**9.9**	46,004,894.10
		KENCOR	MT TARIF	25,475.109	**9.9**	252,203,579.10
		ORYX	MT FRONT CHEETAH	1,606.810	**9.9**	15,907,419.00
	PMS	ASHARAMI SYNERGY	MT CAMPO SQUARE	48,819.189	**9.9**	483,309,971.10
		ASHARAMI SYNERGY	MT SLOANE SQUARE	13,821.285	**9.9**	136,830,721.50
		GALANA	MT JAG POOJA	19,805.794	**9.9**	196,077,360.60
		GALANA	MT JAG PRABHA	1,171.504	**9.9**	11,597,889.60
	DPK	ORYX ENERGIES	MT APOSTOLOS II	470.490	**9.90**	4,657,851.00
May-22 Advance	AGO	MT AVANTI	ORYXENERGIES	23,246.764	**5.5**	127,857,202.00
		MT RICH BREEZE	ORYXENERGIES	18,380.003	**5.5**	101,090,016.50
		MT AL BATEEN	E3 ENERGY	35,630.229	**5.5**	195,966,259.50
		MT IPANEMA STREET	E3 ENERGY	12,970.685	**5.5**	71,338,767.50
	PMS	MT CAMPO SQUARE	GALANA	20,614.981	**5.5**	113,382,395.50
		MT IPANEMA STREET	E3 ENERGY	12,719.420	**5.5**	69,956,810.00
		MT RONG LIN WAN	ASHARAMI	54,745.177	**5.5**	301,098,473.50
	DPK	ORYX ENERGIES	MT SWARNA JAYANTI	352.361	**5.5**	1,937,985.50

June-22 Advance	AGO	MT ELKA ATHINA	ORYXENERGIES	90,692.672	**9.00**	816,234,048.00
		MT NAMRATA	VIVO ENERGY	15,678.234	**9.00**	141,104,106.00
		MT IPANEMA STREET	ORYXENERGIES	24,983.584	**9.00**	224,852,256.00
		MT SLOANE SQUARE	E3 ENERGY	18,939.777	**9.00**	170,457,993.00
		MT HIGH TRUST	E3 ENERGY	23,506.052	**9.00**	211,554,468.00
						-
	PMS	E3 ENERGY	MT SLOANE SQUARE	51,516.875	**9.00**	463,651,875.00
		GALANA	MT LR2 ETERNITY	33,643.924	**9.00**	302,795,316.00
		GALANA	MT SEAWAY SHENANDOAH	211.838	**9.00**	1,906,542.00
	DPK	ORYX ENERGIES	MT STI GUIDE	3,073.99	**9.00**	27,665,937.00
						5,324,796,939.50

Irregular Inclusion of Administrative Costs for Stabilization in Pump Prices

3.4.37 In a meeting held on 15 April, 2021 between the Ministry of Petroleum and Mining, EPRA and OMCs, it was resolved to have the cargo importer net off Kshs.0.50/litre administrative fee disbursement documentation and processing activity of funds disbursed in respect of funds paid for compensation of margins to the marketers under the price stabilization mechanism. The amount was to be factored in the petroleum pump prices. The fee was factored in the pump prices from July, 2021.

3.4.38 The special audit established a total of Kshs. 2,205,915,489.39 in administration costs was realized from the July-August, 2021 and June-July, 2022 pricing as shown in the table below. However, the rationale of including the amount in the pump price build up was not justified considering the actual charges commercial banks charge for funds transfer. Further, the OMCs have accounts with the importer for settling amounts owing to each other.

Table 17:Administrative Costs for Stabilization in Pump Prices

Pricing Cycle	Product	Administration costs Paid Kshs.
July-August, 2021	PMS	152,503,167.59
	AGO	365,528,728.24
	JET 1 A	0
August-September, 2021	PMS	70,386,422.06
	AGO	116,369,010.14
	JET 1 A	22,918,241.88
November-December 2021	PMS	72,098,141.55
	AGO	100,725,170.83
	DPK	3,620,650.00
December - January 2022	PMS	100,235,860.19
	AGO	109,961,506.48
	DPK	4,270,096.30
January - February 2022	PMS	69,383,098.15
	AGO	115,509,719.44
	DPK	4,158,899.54
February - March 2022	PMS	88,320,340.28
	AGO	68,752,742.05
	DPK	4,262,907.41
March - April 2022	PMS	102,620,395.83
	AGO	99,277,356.02
	DPK	6,102,222.22
April - May 2022	PMS	62,959,615.74
	AGO	92,140,418.52
	DPK	4,681,549.54
May - June 2022	PMS	77,355,981.94
	AGO	119,440,209.26
	JET 1 A	6,033,240.74
June - July 2022	PMS	94,960,582.64
	AGO	66,864,149.07
	DPK	4,475,065.74
Total		**2,205,915,489.39**

3.5 Demurrage Charges

3.5.1 Demurrage charge is a charge payable to the owner of a chartered ship by a chatterer for failure to load or discharge the ship within the time agreed. The TSA provides for compensation to importers of petroleum products for demurrage charges paid to the ship owners for delays in vessel berthing exceeding three (3) days. The delays were mainly attributed to vessels being unable to berth on arrival as the ship had to wait for another vessel to complete discharge of petroleum products.

3.5.2 The special audit established that a Demurrage Committee comprising of representatives from the Ministry of Energy, OMC's, Supplycor and KPC deliberate, approve and recommend amounts to be charged as either Local or Transit demurrage costs. Approved demurrage charges are passed on to the consumer through pump price adjustment. Analysis of the committee minutes revealed the main causes of demurrage charges included scheduling inefficiencies, ullage constraints in KPC receiving facilities and change of vessel arrival dates by importers.

3.5.3 Analysis of vessels that docked at the Kipevu Oil Terminal (KOT) between April 2021 and June 2022 revealed that all 165 vessels except 35 waited for more than the 3 days provided for in the TSA. On average, the vessels waited for 7 days before docking with a vessel recording a waiting time of 185 days as detailed in Appendix XVIII. The trend means nearly all vessels docking in during the sixteen-month period attracted demurrage charges which were passed on to the customers through pump prices.

Irregular Demurrage Passthrough to Pump Prices

3.5.4 During the period between 15th April 2021 - 15th July 2022, a total of Kshs.3,182,427,410 in demurrages was passed to consumers through pump prices as shown in **Appendix XIX**. Further, out of the Kshs. 3,182,427,410 demurrage costs passed to consumers, Kshs. 37,320,000 did not meet the criteria set out for in the Transport and Storage Agreement (TSA) for recovery trough the pump as the vessels waiting time was within the provided 3 days

Table 18:Demurrage Passthrough to Pump Prices

No.	Vehicle	Demurrage factored in Price	Arrival Date	Date of First Berth	Departure date	VENDOR	Mat. Name
1	MT Hannover Square	19,562,000	25/7/2021	28/7/2021	04/8/2021	Galana Oil (K) Ltd	MSP
2	MT Encelia	12,549,000	24/14/2021	27/4/2021	02/5/2021	Gulf Energy	MSP
3	MT Jal Upasana	5,209,000	19/6/2021	21/6/2021	25/6/2021	E3 Energy Kenya Limited	MSP
		37,320,000					

3.6 Sustainability of Stabilization Mechanism for Petroleum Pump Prices

3.6.1 Global Crude oil prices change rapidly in response to news cycles, policy changes, and fluctuations in the world's markets. Since 2014, oil prices experienced a steady downward fall from highs of around $115 per barrel. In February and March of 2020, crude prices accelerated their decline in reaction to the coronavirus pandemic and an expected sharp drop in demand for oil.

3.6.2 By mid-March 2020, the price had fallen to just around $19 per barrel. This trend however, started reversing from April, 2020 as global economy treaded on nascent recovery from the coronavirus pandemic, economic boost programs, power demands and Organization of Petroleum Exporting Countries (OPEC+) measures to control prices through supply.

3.6.3 While economic recovery is being experienced, oil prices continue to be affected by global uncertainties. The oil prices are bound to respond to market factors which will cause spikes in petroleum pump prices necessitating continuation of stabilization measures in unforeseeable future.

3.6.4 There is need therefore, for the Government to put in place mechanisms that will ensure sustainability of the initiative. Some of the measures that may be considered include:

3.6.4.1. *Establishment of a Framework for Stabilization*

For the period the initiative has been implemented, there has been no established framework to guide its implementation. Instead, the Ministry players rely on goodwill of industry players and self-regulation mechanisms existing under the Open Tender System (OTS) for implementation. This may pose a risk to the initiative should disputes arise.

3.6.4.2. Establishment of a Separate Fund for Purpose of Stabilization

Section 4(4) of the Petroleum Development Fund Act, 1991 which establishes the Fund provides that utilization of monies from the fund is for the development of common facilities for the distribution or testing of oil products and for matters relating to the development of oil industry. Stabilization of local petroleum pump prices in instances of spikes was introduced in the Petroleum Development Levy Order, No. 24, which came into effect on 15 July 2020

Because of the broad nature of allowed utilization of moneys from the fund, there will be challenges of pooling sufficient funds to stabilize pump prices in cases of persistent spikes as has been the case since April, 2021. This, therefore, calls for a dedicated fund for stabilization or a portion of the development fund being dedicated for stabilization of pump prices.

3.6.4.3. Implementation of a Flexible Tax Adjustment Mechanism

The Government may consider designing and implementing a flexible tax adjustment mechanism which allows a tax reduction in the context of escalating oil price to keep (gross) prices at a long-run equilibrium level. Under such a regime, flexibility in the excise taxes smoothens the transmission of changes of international prices to domestic prices. Accordingly, the petroleum taxes are reduced in the context of high oil prices but raised again when the oil prices go down.

The tax adjustment for petroleum products has been used successfully in countries such as Brazil, Philippines, China, Chile to achieve fuel price stabilization in the long term. Nevertheless, such a stabilization policy should be carefully evaluated since it may raise the need for the government to find alternative sources of tax revenues.

4. APPENDICES

- Appendix I: Gross Petroleum Development Levy Funds Collected by KRA
- Appendix II: PDL Collections through Common Cash Receipting (CCR) System
- Appendix III: ICMS Petroleum Development Fund PDF) 2021-2022
- Appendix IV: Petroleum Development Levy Funds Collected through PG
- Appendix V: PDL Fund A/c. Reconcilition for period July 2020-June 2021
- Appendix VI: BANK RECONCILIATION STATEMENT
- Appendix VII: Deposits by KRA into PDL Fund
- Appendix VIII: Transfers out of Petroleum Development Levy Fund A/c. No. 1000205024 to State Agencies
- Appendix IX: PDL Funds Disbursements to Ministry of Energy Projects
- Appendix X: List of Oil Marketing Companies that Signed Open Tender System (OTS)
- Appendix: XI- Procurement Process for Refined Petroleum Products
- Appendix XII: Consolidated Procurement of Petroleum Products
- Appendix XIII: Petroleum Products Imported into the Country
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- Appendix XV: Stabilized Petroleum Products
- Appendix XVI: Compensations to Oil Marketing Companies
- Appendix XVII: Outturn Report Local Volumes
- Appendix XVIII - Vessel Waiting Time
- Appendix XIX: Demurrage Costs Charged and Passed to Consumers