

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT— SECOND SESSION

THE PUBLIC INVESTMENTS COMMITTEE

SPECIAL REPORT ON THE RESTRUCTURING OF KENYA
PETROLEUM REFINERY LIMITED

APRIL, 2014

*Clerk's Chambers
Parliament Buildings
Nairobi*



April, 2014

*Approved
29/4/14*

*Paper laid
By the champions
Solon Keyes*

ABBREVIATIONS

BP	—	British Petroleum
EEOL	—	Essar Energy Overseas Limited
GoK	—	Government of Kenya
IOC	—	International Oil Marketers
KEBS	—	Kenya Bureau of Standards
KPRL	—	Kenya Petroleum Refinery Limited
LPG	—	Liquid Petroleum Gas
NOCK	—	National Oil Corporation of Kenya
OMC	—	Oil Marketing Companies
PMS	-	Premium Motor Spirit
PS	-	Permanent Secretary

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1.0 PREFACE

Mr. Speaker Sir,

The Public Investments Committee is a Select Committee established under Standing Order No. 206 and is responsible for the examination of the working of public investments.

1.1 Mandate of the Committee

The Committee is mandated to:-

- (a) examine the reports and accounts of the public investments;
- (b) examine the reports, if any, of the Auditor General on the public investment;
- (c) examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices.

The Committee shall however not examine:-

- (a) matters of major Government policy as distinct from business or commercial functions of the public investments;
- (b) matters of day-to-day administration; and,
- (c) matters for the consideration of which machinery is established by any special statute under which a particular public investment is established.

The procedure of a Select Committee and other related matters thereto is covered under Standing Order No. 173 – 203. The Committee has power, under the

provisions of the Constitution, National Assembly (Powers and Privileges) Act (Cap. 6), the State Corporations Act (Cap. 446) and the Public Audit Act (Cap. 412), to summon witnesses, examine them on oath and receive evidence.

1.2 Committee Membership

The Committee comprises of the following Members:-

- (1) Hon. Adan Keynan, CBS, MP - Chairperson
- (2) Hon. Kimani Ichung'wah, MP – Vice Chairperson
- (3) Hon. Sammy Mwaita, MP
- (4) Hon. Cornelly Serem, MP
- (5) Hon. Bare Shill, MP
- (6) Hon. Korei Ole Lemein, MP
- (7) Hon. Adan M. Noor, MP
- (8) Hon. Mithika Linturi, MP
- (9) Hon. Beatrice Nyaga, MP
- (10) Hon. John M. Nyaga, MP
- (11) Hon. Njogu Barua, MP
- (12) Hon. Irungu Kang'ata, MP
- (13) Hon. Onesmus Njuki, MP
- (14) Hon. Eng. John Kiragu, M.P
- (15) Hon. Johana Ngeno, MP
- (16) Hon. Mwadeghu Thomas, MP
- (17) Hon. Abdullswamad Sheriff, MP
- (18) Hon. Paul Otuoma, MP
- (19) Hon. John Aluoch Olago, MP

- (20) Hon. Francis Nyenze Mwanzia, MP
- (21) Hon. Dr. Oburu Oginga, MP
- (22) Hon. Major(Rtd) John K. Waluke, MP
- (23) Hon. Ogutu John Omondi, MP
- (24) Hon. Mary Keraa Sally, MP
- (25) Hon. Wafula Wamunyinyi, MP
- (26) Hon. Bernard Munyoki Kitungi, MP
- (27) Hon. Chrisanthus Wamalwa, MP

1.3 Committee Proceedings

The Committee held a total of twelve Sittings in which it closely examined and heard evidence from witnesses. The Minutes of the Committee are hereto annexed and copies of the Hansard Report may be obtained at the National Assembly Library. In its inquiry into whether or not the affairs of the public investments were managed in accordance with sound business principles and prudent commercial practices, the Committee heard and received both oral and written evidence from the Hon. Adan Duale, MP; Managing Director Kenya Petroleum Refineries Limited; Cabinet Secretary for Energy and Petroleum; Principal Secretary, National Treasury; industry stakeholders such as National Oil Corporation of Kenya (NOCK) and Kenya Private Sector Alliance (KEPSA); Governor John Mruttu; and other relevant witnesses.

The Committee also considered the Special Audit Report of the Auditor-General and the Report of the Inspectorate of State Corporations on the restructuring of Kenya Petroleum Refineries Limited. The records of evidence adduced, documents

and notes received by the Committee form the basis of the Committee's observations and recommendations as outlined in the Report and can be obtained in the HANSARD reports of the Committee available in the National Assembly Library.

These observations and recommendations, if taken into account and implemented, will enhance accountability, effectiveness, transparency, efficiency, prudent investment and financial management and profitability in State Corporations and the public investments sector as a whole and guide in future restructuring and privatization of State Corporations.

1.4 Committee's General Observations

Below is a summary of the Committee's observations on the restructuring of Kenya Petroleum Refineries Limited (KPRL).

1.4.1 The Government entered into a share agreement with Essar Energy Overseas Limited on 31st July 2009 with the major objective of upgrading and modernizing the refinery. The Agreement was signed to ensure the modernization of the refinery to the enhanced capacity of up to 4 MMTPA, contraction of residue conversion facilities, the production of clean products, and determination of product specifications, the minimization of emissions, the stabilization of electricity supply to the refinery and basically upgrade the refinery in terms of the Agreement. This has however not been realized yet Essar Energy Overseas Limited seeks to pull out of the refinery business.

- 1.4.2 There is a need to have a strategic reserve in the country to help address the challenges in storage and enhance security of petroleum supply through the setting up of strategic petroleum reserves.
- 1.4.3 The exit clause in the share agreement between the Government of Kenya and Essar Energy Overseas Limited was skewed in favour of the company to the extent that the Government would pay the company USD 5 Million on exit from KPRL.
- 1.4.4 Essar Energy Overseas Limited assumed all the rights and responsibilities of the industry shareholders when it acquired 50% stake at the refinery including environmental clean-up and restoration of the environment to its original condition.
- 1.4.5 The poor restructuring and delay in modernization of the refinery has hugely contributed to the high pump prices of oil (petroleum, kerosene and diesel) in the Country.
- 1.4.6 The delay in the modernization of the refinery has contributed to the inefficiency at KPRL which had greatly jeopardized the regional and national economy and livelihood of Kenyans resulting to KPRL losing support from oil marketers. Some of the players in the industry closed down as the Government was forcing them to refine their crude oil at the Refinery at a loss.
- 1.4.7 The sale or privatization of key strategic institutions which has a significant bearing on national security should only be undertaken if the benefits that accrue to Kenyans outweighs the commercial interest of the private investors. There should always be public participation in line with article 10 and 118 of the constitution

- 1.4.8 The cheque allegedly issued by Essar Energy Overseas Limited to pay the Government of Kenya for waiver of its pre-emptive rights was oscillating between Treasury and KPRL for two years and was eventually returned on claims that it was drawn to the wrong payee (cheque kiting). The Cheque was deliberately drawn to the wrong payee with the intention of creating delay and defrauding the Government of Kenya.
- 1.4.9 The payment of the consideration fee of USD 2million took long to be effected and was substantially reduced from the initial USD 15 to USD 11million and finally to USD 2 Million. It took two years, from July 2009 to March 2011, for Essar Energy Overseas Limited to pay the goodwill amount yet the company was managing the Refinery two years before the payment of the goodwill amount. The money therefore paid as goodwill could have been generated by Essar Energy Overseas Limited from the refinery.
- 1.4.10 The Cabinet decision that modernization be undertaken at the refinery was not adhered to by Essar Energy Overseas Limited after the exit of the IOC.
- 1.4.11 The Government agreed to the goodwill consideration on the understanding that Essar Energy Overseas Limited would undertake the modernization of the refinery but this has never been undertaken by Essar Energy Overseas Limited thus breach of contract.
- 1.4.12 The Kenya Petroleum Refinery Limited has old technology and therefore the Government should develop a new refinery. For example the diesel from the refinery had (10,000 ppb) high levels of lead far above the recommended industry levels of 500 ppb due to the obsolete technology at the refinery
- 1.4.13 No Financial audit of the company has been done by the Audit-General Office due to the 50:50 ownership structure of the refinery. Part III of the Public Audit Act, No. 12 of 2003 and part IV of the State Corporation Act,

Cap 446, Laws of Kenya be amended to comply with Article 229 (5) of the Constitution to provide for an express provision to the Auditor General to audit all Government investments including where GoK shareholding is less than 50 %.

1.5 Committee's Recommendations

Arising from the evidence adduced and the observations, the Committee recommends that:-

- 1.5.1 The Ethics and Anti-Corruption Commission (EACC) should investigate the circumstances under which the Cabinet decision for the modernization and refurbishment of the refinery was ignored and Officers who flouted the Cabinet decision should be held accountable.
- 1.5.2 The officers who participated in the negotiations, drafting and signing of the share agreement (the then Permanent Secretary, Ministry of Energy; the Investment Secretary and the then Chief Executive Officer, KPRL and current governor for Taita Taveta County) be investigated for engineering the negotiations, drafting and signing of a skewed shareholder agreement in favor of Essar Energy Overseas Limited.
- 1.5.3 The officers who participated in the negotiations, drafting and signing of the share agreement (the then Permanent Secretary, Ministry of Energy; the Investment Secretary and the then Chief Executive Officer, KPRL) be held accountable for committing the Government to an agreement that seeks to pay Essar Energy Overseas Limited USD 5million on exit.
- 1.5.4 The EACC should investigate circumstances under which the consideration payable to Government for waiver of its pre-emptive rights was reduced from

the initial USD 15 million to USD 2 million and was not paid in time and was drawn to a wrong payee by Essar Energy Overseas Limited.

- 1.5.5 The Government should establish an import terminal and strategic petroleum reserve in the country to help address the challenges in storage and enhance security of petroleum supply through the setting up of strategic petroleum reserves.
- 1.5.6 Essar Energy Overseas Limited should undertake an environmental clean-up and restore the environment to its original state in accordance with section 108 of the Environmental Management and Coordination Act(No 8 of 1999).
- 1.5.7 The National Environment Management Authority (NEMA) should assess the environmental impact in accordance to section 58 of the Environmental Management and Coordination Act(No 8 of 1999). and ensure that the clean up of the environment at the refinery is undertaken by Essar Energy Overseas Limited. An environmental audit be carried by NEMA to ensure that the environment is restored to its original condition.
- 1.5.8 The Government of Kenya should not pay Essar Energy Overseas Limited any consideration during their exit since they have failed to honour their responsibilities in terms of upgrading and modernizing the oil refinery on the basis of which a shareholder agreement was signed.
- 1.5.9 Any future engagement between Essar Energy Overseas Limited and the Government of Kenya should be scrutinized thoroughly with proper due diligence being undertaken.
- 1.5.10 The exercise of privatization must involve all key stake holders through public participation prior to decision making in accordance to Articles 10 and 118 of the Constitution. The Privatization Act should be amended to ensure public participation.

- 1.5.11 EACC should investigate and determine the ownership of Essar Energy Overseas Limited, a company incorporated in Mauritius in 2007.
- 1.5.12 The Government should fast-track the development of a new and modern refinery to cater for the refining of crude oil for national consumption and for export.
- 1.5.13 The Privatization Act should be amended to ensure that the Government does not privatize or divest from key or strategic investments or Parastatals without undertaking due diligence.
- 1.5.14 Part III of the Public Audit Act, No. 12 of 2003 and part IV of the State Corporation Act, Cap 446, Laws of Kenya be amended to comply with Article 229 (5) of the Constitution to provide for an express provision to the Auditor General to audit all Government investments including where GoK shareholding is less than 50 %.

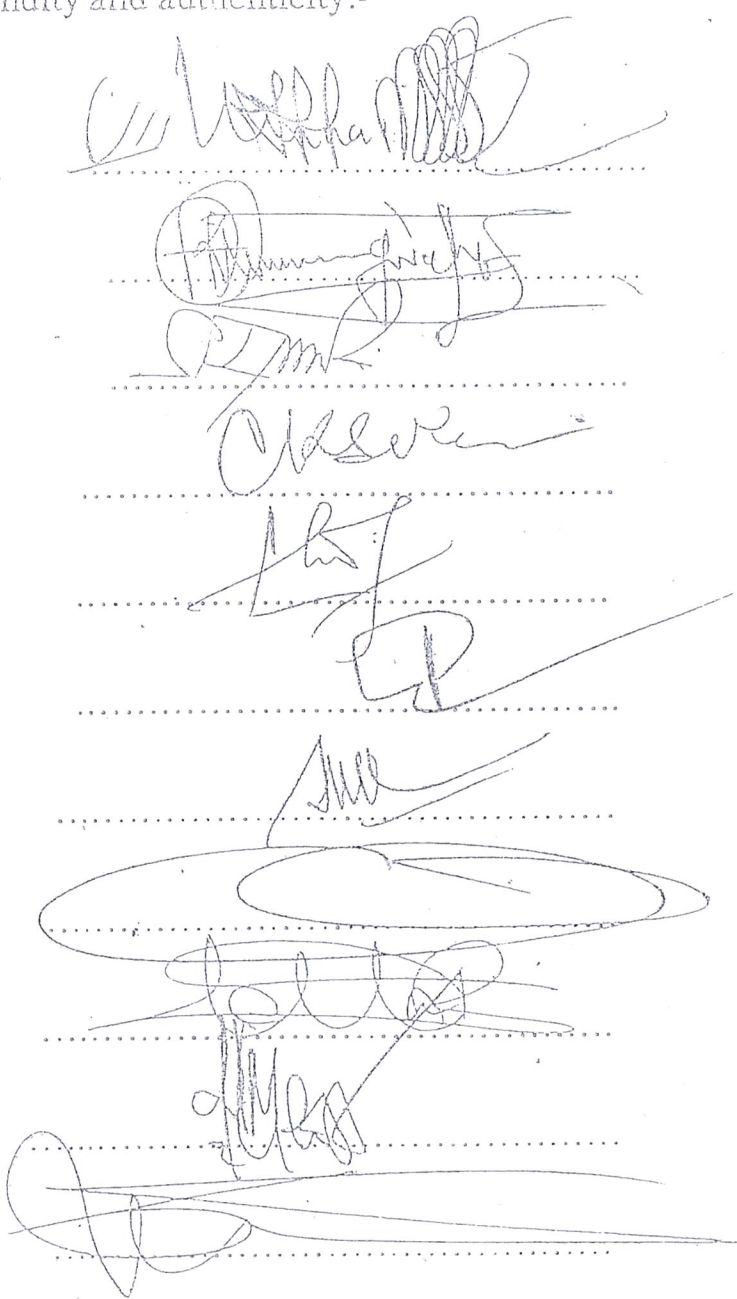
1.5 Acknowledgement

The Committee wishes to record its appreciation to the office of the speaker and clerk of the national assembly for facilitating the Committee during its inquiry. The Committee wishes to appreciate the witnesses who appeared and adduced evidence before it. Further, the Committee is indebted to the staff of the National Assembly, Kenya National Audit Office, the Inspectorate of State Corporations and the Department of Government Investments and Public Enterprises (The National Treasury) for the services they rendered to the Committee. It is their commitment and dedication to duty that made the work of the Committee and production of this Report possible.

ADOPTION OF THE SPECIAL REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON THE RESTRUCTURING OF THE KENYA REFINERIES LIMITED (KPRL)

We the Members of the Public Investments Committee have pursuant to Standing Order 199 adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity:-

1. Hon. Adan Keynan, CBS, MP
2. Hon. Kimani Ichung'wah, MP
3. Hon. Sammy Mwaita, MP
4. Hon. Cornelly Serem, MP
5. Hon. Bare Shill, MP
6. Hon. Korei Ole Lemein, MP
7. Hon. Adan M. Noor, MP
8. Hon. Mithika Linturi, MP
9. Hon. Beatrice Nyaga, MP
10. Hon. John M. Nyagã, MP
11. Hon. Njogu Barua, MP

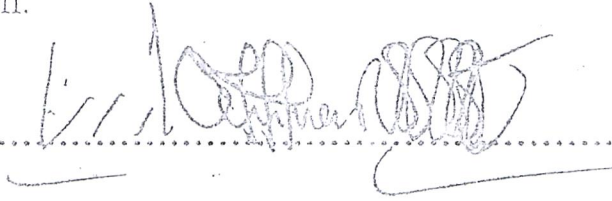


12. Hon. Irungu Kang'ata, MP
13. Hon. Onesmus Njuki, MP
14. Hon. Eng. John Kiragu, M.P
15. Hon. Johana Ngeno, MP
16. Hon. Mwadeghu Thomas, MP
17. Hon. Abdullswamad Sheriff, MP
18. Hon. Paul Otuoma, MP
19. Hon. John Aluoch Olago, MP
20. Hon. Francis Nyenze Mwanzia, MP
21. Hon. Dr. Oburu Oginga, MP
22. Hon. Major (Rtd) John K. Waluke, MP
23. Hon. Ogutu John Omondi, MP
24. Hon. Mary Keraa Sally, MP
25. Hon. Wafula Wamunyinyi, MP
26. Hon. Bernard Munyoki Kitungi, MP
27. Hon. Chrisanthus Wamalwa, MP

Mr. Speaker

On behalf of the members of the Public Investments Committee, I beg to table the special Report of the Committee on the restructuring of Kenya Petroleum Refineries Limited (KPRL) pursuant to Standing Order 199 (6) and commend it to the House for adoption.

Sign:



HON. ADAN. W. KEYNAN, CB, MP

CHAIRPERSON, PUBLIC INVESTMENTS COMMITTEE

Date:

29/3/2014

2.0 BACKGROUND

- 2.1 The Kenya Petroleum Refineries Limited (KPRL) was originally set up by Shell and the British Petroleum Company (BP) to serve the East African region in the supply of a wide variety of oil products in 1959. The Company was incorporated in 1960, under the name East African Oil Refineries Limited but later changed its name to Kenya Oil Refineries Limited in 1983. The refinery complex I which had distillation, hydrotreating, catalytic reforming and bitumen production units was commissioned in 1963 and the second refinery complex was finished and commissioned in 1974.
- 2.2 The refinery processes Crude oil mainly imported from the gulf region for marketing companies on the basis of processing agreements which set out the precise terms on which the Refinery takes custody of specific quantities and types of crude oil, and how they should be processed and delivered. The user pays a processing fee for this service which varies according to the type of crude oil processed.
- 2.3 KPRL's main products include Liquefied petroleum gas, unleaded premium gasoline, regular petrol, automotive gasoil, Industrial diesel, fuel oil and special products like bitumen and grease.
- 2.4 KPRL does not own crude oil or products and it serves all customers, called Refinery Users, within processing agreements and offers the following services:-
- (a) Crude oil refining
 - (b) Laboratory services

(c) Loading Facility

(d) Emergency Response School

2.5 KPRL is privately owned limited liability Company. The Government of Kenya owns 50% of the Company's equity and the other 50% is held by Essar Energy Overseas Limited (EEOL).

3.0 REPORT BY THE INSPECTORATE OF STATE CORPORATIONS

The Inspectorate of State Corporations presented a report to the Committee. The report highlights the following issues:-

3.1.1 The Government of Kenya in 1971 acquired 50% shareholding in East African Oil Refineries Limited and thereafter a second factory complex was completed and commissioned and in 1983 the company changed its name to Kenya Petroleum Refineries Limited.

3.1.2 In 1997 Esso sold off its share and in 2009 Essar Energy Overseas Limited acquired 50% shares from shell and BP thus making the KPRL a private company where the government only owns 50% of the company's share equity. The share structure of Kshs. 20 million nominal value is distributed as follows:

Shareholder	Nominal value
Cabinet Secretary Treasury (incorporated)	9.9 million
Essar Energy Overseas Limited	9.9 million
Total shares	19.8 million

- 3.1.3 The preemptive clause in the shareholder agreement requires that the existing shareholders be approached before disposal, hence the Government of Kenya involvement when Essar Energy Overseas Limited acquired the 50% shareholding. Similarly the Government will have to be involved in the planned exit by Essar Energy Overseas Limited.
- 3.1.4 The refinery stopped operations on 4th September, 2013. The company was running inefficiently leading to consumers of oil products being charged an extra Kshs. 3.61 per litre attributed to outdated technology.
- 3.1.5 Essar Energy Overseas Limited was incorporated in Mauritius in 2007 before acquiring 50% share capital in KPRL. The company has given a “put option” to the Kenya Government which would culminate in divesting its current interest in the KPRL as provided for in the memorandum of association.
- 3.1.6 There are outstanding issues of pollution on about 50 acres of KPRL land which the three previous shareholders who offloaded their holding rights to Essar Energy Overseas Limited that have not been resolved.
- 3.1.7 Even as Essar Energy Overseas Limited planned to exit, management had planned an upgrade program at a cost of USD 1,159.25 million (Kshs. 100.85 million) with the projected funding expected to come from the Government of Kenya before getting clearance from the financier. The award of contract for the upgrade programme was scheduled to take place in October 2013 while the expected completion date was September 2018.

Committee's observations

3.1.8 The Committee observed that:-

- (i) There are outstanding issues of pollution on about 50 acres of KPRL land.
- (ii) Essar Energy Overseas Limited was incorporated in Mauritius in 2007 before acquiring 50% share capital in KPRL.
- (iii) The Essar Energy Overseas Limited has given a "put option" to the Kenya Government which would culminate in divesting its current interest in the KPRL as provided for in the Memorandum of Association

4.0 EVIDENCE

4.1 EVIDENCE BY HON. ADEN DUALE, MP – MEMBER OF PARLIAMENT FOR GARISSA TOWN

The Hon. Aden Duale, MP, Member of Parliament for Garissa Town, appeared before the Committee on September 24, 2013 to brief the Committee on the restructuring of Kenya Petroleum Refineries Limited (KPRL). His appearance followed concerns raised by Members on the matter in the House and he informed the Committee that:-

4.1.1 Kenya imports all its Petroleum requirements and its annual consumption is approximately 4.1 million tons. Prior to deregulation of the sector in 1994, KPRL was fully protected through the 'White Oil Rule' clause where Oil Marketing Companies processed crude oil at KPRL.

- 4.1.2 On 28th November, 2003, the Ministry of Energy under gazette Legal Notice No. 197 established the Open Tender System for both crude oil and refined petroleum products but requiring that all Oil Marketing Companies to mandatorily process crude oil at KPRL.
- 4.1.3 KPRL was initially a joint venture between the Government of Kenya (50%), Shell Petroleum Company (17.1%), BP Africa (17.1%) and Chevron Global Energy Inc. (15.8%) before incorporation of Essar Energy Overseas Limited who replaced the International Oil Companies.
- 4.1.4 Recognizing the need to upgrade and make the oil refinery more competitive, the Cabinet in a meeting held on 3rd May, 2007 vide Min. 15/7 approved that the oil refinery be modernized, the Government to retain 50% shareholding and the Ministers for Finance and Energy respectively to take on Board interested investors on a competitive basis to dilute the existing shareholding of BP, Shell and Chevron.
- 4.1.5 Following the Cabinet decision, many firms such as Patrofac (UK), Oman Oil, Essar Energy Overseas Limited (India), Bharat Petroleum (India), Tamoil (Libya), Engen (South Africa), Reliance Industries (India)) expressed interest in being shareholders in KPRL.
- 4.1.6 In KPRL Board meeting held on 16th May, 2007, the industry Shareholders made it clear that they would not wish their shares diluted nor would they take part in the Refinery Upgrade programme. However, they indicated a possibility of a joint disposal proposal that would engage an independent consultant to seek offers from the open market.

- 4.1.7 In September, 2007, the Industry Shareholders decided to collectively dispose their equity through a competitive procurement process and identified Essar Energy Overseas Limited to buy their shares at USD 10 million (Kshs. 790 million).
- 4.1.8 Essar Energy Overseas Limited and BP, Shell and Chevron entered into share sale and purchase Agreement dated 20th December, 2007. However, the Agreement was conditional on Government of Kenya (GoK) renouncing its pre-emptive rights.
- 4.1.9 Through a parallel initiative the Government of Kenya had earlier identified Tamoil (Oil Libya) as potential investor partner in the project as per the MOU signed between Kenya and Libya during the President's state visit to Libya in 2007. Libya oil had expressed interest to support Government of Kenya in the Refinery upgrade, new Mombasa- Nairobi oil pipeline and LPG import and storage project in Mombasa.
- 4.1.10 To give a fair opportunity in participating in the Process, the Permanent Secretary (PS), Ministry of Energy, sent out term sheet to both Essar Energy Overseas Limited and Libya oil Holding on 21st January, 2008 setting the criteria to be used in selecting the new shareholder which included USD 15 million in exchange of goodwill and renunciation of its pre-emptive rights.
- 4.1.11 The negotiations between the Government of Kenya and the two prospective shareholders culminated in a decision by the Government to offer them two equal shares of 25% of the 50% shares of the International Oil Companies.

- 4.1.12 Subsequently, in a meeting held on 13th August, 2008 between Government of Kenya and the prospective shareholders, it was agreed that both Essar Energy Overseas Limited and Libya Oil share 50% equity equally, fast track the upgrade and both of them to provide financing. The estimated project cost had escalated to USD 450 million in 2009 due to sharp increase in the international market.
- 4.1.13 Essar Energy Overseas Limited Group is a conglomerate with investments in oil and gas, steel, construction, shipping and logistics, communication and power with investments spanning over 20 countries. Essar Energy Overseas Limited owns 50% shareholding at KPRL.
- 4.1.14 Article 22 of the Company's Articles of Association stipulated that a selling shareholder must offer shares to the remaining shareholders before offering to a third party. However, the Government was not interested in buying the International Oil Companies (IOC) shares and agreed that the industry shareholders conclude the process of sale with Essar.
- 4.1.15 On September 24, 2008 Essar Energy Overseas Limited made offers to Government that they would have equity of not less than 50%, and that they would provide assistance of USD 5 million towards equity in KPRL on behalf of Government of Kenya and further if the Government would be able to negotiate the price of acquisition of shares of BP, Shell and Chevron at less than USD 20 million, the differential amount would be paid by Essar Energy Overseas Limited towards Government of Kenya's equity for the modernization project.

4.1.16 Essar Energy Overseas Limited had offered Government of Kenya an initial amount of USD 11 million in 2008 however, Government of Kenya declined to get involved in the negotiations with IOCs on behalf of Essar Energy Overseas Limited. Essar Energy Overseas Limited had a competitive bid floated by the private shareholders and consequently changed the goodwill offer from the initial USD 11 million to USD 2 million. The reduction of goodwill offer according to Essar Energy Overseas Limited was due to delays in the negotiations for the sales of shares and finalization of shareholders agreement, global economic crisis and difficult terms of financing for the modernization project. The Government of Kenya agreed to the consideration of USD 2 million and incorporated it into Clause 5 of shareholders agreement of 31st July, 2009 providing that the amount was to be paid by Essar Energy Overseas Limited into KPRL's account to hold it in trust for the Government.

4.1.17 The payment of USD 2 million was received by Treasury on 30th July, 2009 in favour of KPRL. However, after consultation, it was agreed that the money be received in Government books. Consequently, the cheque was returned. The money payable to the Permanent Secretary (PS) Treasury was received by CBK through Real Time Gross Settlement (RTGS) on 15th March, 2011 and an equivalent of Kshs. 172 million was transferred to the exchequer. Essar Energy Overseas Limited also paid USD 3 million to the International Oil Companies (IOCs).

- 4.1.18 Before transition of KPRL from tolling to merchant mode, oil marketing companies (OMC) were required by Legal Notice No. 197 of December 3, 2003 to process oil at KPRL. On turning to merchant mode of operation, the actual cost of product from KPRL was used and referred to Refinery Gate Pass.
- 4.1.19 From December 2010 to April 2013, the price difference between the refined imported products and products refined at KPRL had an equivalent loss of Kshs. 13.69 billion which translated into a loss of Kshs. 5.48 billion per year. This resulted into additional costs at the pump of Kshs. 2.74 for PMS, 2.54 for Diesel and 3.32 for kerosene. KPRL now faces enormous challenges with the expiry of the interim product take off agreement on 31st December, 2012 and later extended through consensus with OMCs to 30th June, 2013. It is important to note that no crude oil has been procured and delivered since June 30, 2013 thereby jeopardizing operations of KPRL.
- 4.1.20 KPRL sought credit facility of USD 350 million from Standard Chartered Bank Limited on commencement of Merchant Mode to procure crude oil, process and sell the products to OMCs. However, due to high costs of the products, some products have not been lifted from KPRL and the Bank is claiming these stocks.
- 4.1.21 KPRL has over the years not been able to meet the OMCs product requirements resulting to a significant product loss. This necessitated the OMCs to commission a forensic study sanctioned by the Ministry of Energy and undertaken by Deloitte Consulting Limited in November, 2012. The

study valued the yield loss to be in excess of Kshs. 7.1 billion prompting the OMCs to seek compensation for the estimated loss.

4.1.22 The refinery sits on 300 acres of prime land worth approximately Kshs. 15 billion and its storage capacity is approximately 403,000 cubic metres valued at Kshs. 16.3 billion. KPRL wage bill is approximately Kshs. 48,570,449 per month or Kshs. 582,845,388 per annum.

Committee's Observations

4.1.23 The Committee observed that:-

- (i) The inefficiency at KPRL had greatly impacted on the economy and livelihood of Kenyans resulting to KPRL loosing support from oil marketers. Some of the players in the industry closed down as the Government was forcing them to refine their crude oil at the Refinery at a loss.
- (ii) The Cheque allegedly issued by Essar Energy Overseas Limited to pay Government of Kenya for waiver of its pre-emptive rights was oscillating between Treasury and KPRL for two years and was eventually returned on claims that it was addressed to the wrong payee (Cheque kiting). The Cheque was deliberately drawn to the wrong payee with the intention of causing delay and defrauding the Government of Kenya.
- (iii) The payment of the consideration fee of USD 2million took long to be effected and was substantially reduced from the initial USD 15 million to USD 11 Million to USD 2 Million. It took two years, from July 2009 to March 2011, for Essar Energy Overseas Limited to pay the goodwill amount yet the Company was managing the Refinery two years before the payment of the

goodwill amount. The money therefore paid as goodwill could have been generated by Essar Energy Overseas Limited from the refinery.

- (iv) The Cabinet decision that modernization be undertaken at the refinery was not adhered to by Essar Energy Overseas Limited after the exit of the IOC in contravention of the Cabinet decision.
- (v) The Government agreed to the goodwill consideration on the understanding that Essar Energy Overseas Limited would undertake the modernization of the refinery but this has never been undertaken by Essar.
- (vi) There was an urgent need to build a new refinery in light of the recent discovery of oil in the country if KPRL cannot be modernized.

4.2 EVIDENCE BY CHIEF EXECUTIVE OFFICER, KENYA PETROLEUM REFINERIES LIMITED

The Committee was informed by the Auditor General that the accounts of the Kenya Petroleum Refineries Limited have never been audited by the Auditor General. The accounts were audited by a private auditor appointed by the Board of Directors and the Auditor General was therefore not in a position to comment on the accounts of Refinery.

The Chief Executive Officer, Kenya Oil Refineries Limited, Mr. B. M. Bansal, appeared before the Committee on November 02, 2013 and he informed the Committee that:-

4.2.1 The Company had written to the Auditor General on the auditing of its accounts but no reply had been obtained from the Audit Office. KPRL is a private Company established under the Companies Act, Cap 486 and not a State Corporation and therefore cannot be audited by the Auditor General.

- 4.2.2 KPRL is a 50:50 joint venture between Essar Energy Overseas Limited and the Government of Kenya and is therefore not a state Corporation as defined by Section 2 of the State Corporations Act, Cap 446. KPRL is owned through the Permanent Secretary, Treasury which is excluded from being termed a State Corporation.
- 4.2.3 Section 89 of the Public Finance Management Act of 2012 requires the National Treasury to submit a consolidated report to the Auditor General every year and sets out the information required from Government linked Corporations. KPRL has complied with Treasury's request for the requisite information even though it does not fall in the category of such Government linked Corporations.
- 4.2.4 The accounts of the Refinery were audited by a private auditor appointed by the Board of Directors. In the audit, the Company has enjoyed unqualified audit reports. The change of auditors could have an impact on the operations and management of the Company.
- 4.2.5 The performance of the Company has been on the down trend since the industry switched to the merchant mode. The Company has been on shut down since September 4th, 2013 since no crude oil has been imported by the marketers.
- 4.2.6 Since the closure of the refinery, the country has been reliant on imports except for the month of October and November where there was minimal deliveries from KPRL of petroleum products produced from crude oil that had been imported in may 2013. During the closure period, the retail pump prices have been on the increase contrary to claims that the high pump prices are

attributed to inefficiencies at the refinery. The closure of the refinery has not translated to lower fuel prices in spite low international crude oil prices.

Committee's Observations

4.2.6 The Committee observed that:-

- (i) Article 229 (2) of the Constitution provides that the Auditor General may audit the accounts of any public entity that attracts public funding notwithstanding the mandatory entities that the Auditor General must audit.
- (ii) KPRL has been performing poorly after the protective measures by the Government were waived and this is confirmed by the fact that the Company has been on shut down since September, 2013.
- (iii) No proper audit of the Company has been done by the National Audit Office due to the 50:50 shareholding ownership of the refinery.
- (iv) The Government should not privatize or divest from key or strategic investments/Parastatals.

4.3 EVIDENCE BY THE KENYA PRIVATE SECTOR ALLIANCE (KEPSA)

The Chief Executive Officer, Mrs. Carol Kariuki, KEPSA accompanied by other officials appeared before the Committee on January 22, 2014 to brief the Committee on the restructuring of Kenya Petroleum Refineries Limited (KPRL). She informed the Committee that:-

4.3.1 KEPSA is of the view that private investment in the facility to convert it to a storage terminal is critical for the following reasons:-

- (a) Kenya does not have any strategic storage facilities - It is imperative to note that with KPRL shutdown, Kenya is on average less than 10 days away from a total stock out situation. Any impact on the supply chain e.g. port closure or vessel breakdown could see fuel shortage at airports and at the retail outlets.
- (b) KPRL has over 400,000m³ worth of storage tanks.
- (c) This facility is currently underutilized but significant investment is required to ensure direct connectivity with the port facilities and conversion of crude tanks.

4.3.2 The Refinery is an important strategic national asset, whose role in the value addition chain will grow when commercial production of the recently discovered oil in Turkana commences.

4.3.3 Price stabilization is not realizable without strategic national oil reserves. The KPRL storage supports feasibility study on building SBM (floating berth) that is currently under process with National Oil Corporation of Kenya.

4.3.4 The LAPSSSET project proposes a different location for new refinery in line with oil discoveries. KPRL's current location does not fit in the planned strategy on refinery location and thus conversion to storage facility is a more viable alternative. The Private sector (investors) is in a better position to offer necessary financing and provide more efficient management of the facility.

4.3.5 Investment will enhance the competitive position of the facility. Efficient provision of petroleum products heavily relies on the status, physical infrastructures for transportation, refining and storage. In this regard, there is need to invest in the oil refinery to enable acquisition of modern technology and infrastructure.

4.3.6 The KPRL faces a number of challenges, among them:-

- (i) Price - KPRL is unable to compete with products from modern refineries in Western India and Arab Gulf (difference up to Kshs. 10 per litre) due to poor yield patterns.
- (ii) Quality - KPRL technology could not produce fuels that met current industry standards e.g. Diesel-KEBS standard is 500ppm while KPRL produced 10,000ppm. The poor quality at the refinery and storage is blamed on infrastructure limitations and old technologies which affect distribution and supplies.
- (iii) Lack of substantive Investment - The outdated technology resulted in refinery inefficiencies including being unable to process all the by-products from crude oil.
- (iv) Historical issues- Independent auditor report shows that KPRL owes Oil Marketers over Kshs. 9 Billion worth of stocks and yields losses of Kshs. 7 Billion.

Committee's Observations

4.3.7 The Committee observed that:-

- (i) The refinery should be converted to a storage facility and that the Government invests in facilities to be used in receiving products for storage.
- (ii) There is need to have a strategic oil reserve in the country to help address the challenges in storage of oil and oil products and enhance security of petroleum supply through the setting up of strategic petroleum reserves.
- (iii) Essar Energy Overseas Limited should undertake an environmental clean-up and restore the environment to its original state.
- (iv) A new refinery be established within the LAPSSET project.

4.4 EVIDENCE BY THE NATIONAL OIL CORPORATION (NOCK)

The Chief Executive Officer, Mrs. Sumayya Athmani, appeared before the Committee on January 23, 2014 to brief the Committee on the restructuring of KPRL. She informed the Committee that:-

4.4.1 The Energy and petroleum audit undertaken by Deloitte for the period 2002-2012, has shown that the refinery owes Oil Marketing Companies (OMCs) approximately Kshs. 16 Billion in yield shifts (downgrading of products from higher yielding to lower yielding products) as well as difference between deemed and actual production. Due to the technological challenges, the refinery was also restricted to processing only one crude type; Murban which is a light form of crude from Abu Dhabi and one of the most premium priced crude oils in the world. Thus the Refinery only relied on expensive feedstock which further contributed to high domestic prices.

4.4.2 The cost of installing a hydrocracker unit to improve the efficiency of the refinery is approximately USD 1 Billion. However, this being a Brownfield project, even with improved efficiency, the Refinery would still work within the constraints of the installed (name plate) capacity of 80,000bpd (barrels per day) which would still render it uncompetitive in the face of larger refineries in India and Arabian Gulf. To increase capacity, it would require installation of additional modules which will push up further the cost of the upgrade. It is also uncertain how newer modules would integrate within a refinery that is five decades old.

4.4.3 To cater for the waxy crude types like the Turkana oil, there would be need to provide for heated handling infrastructure such as tanks and pipelines as well as provide for a wax separation unit which would further increase the cost of the upgrade. The total cost of the upgrade would therefore not differ substantially from the average of USD 4 to 6 Billion required for putting up a Greenfield project of between 120,000bpd to 180,000bpd.

4.4.4 The main reason why Essar Energy Overseas Limited opted out of the refinery upgrade is the high cost of the upgrade and given the current challenges, any new investors invited by the Government to take over from Essar Energy Overseas Limited would come in with a plethora of requirements and pre-commitments from Government that would skew the project to their favour to the detriment of the Government as a shareholder and the country.

4.4.5 Over the last decade only 7 of 90 refinery projects in Africa were completed, this included upgrades and Greenfield refineries. Investment is being

channeled to storage and infrastructure. Some of the most recent oil terminal projects planned include oil trader Gunvor which has pledged USD 500 million to build a joint fuels trading Company in Gabon while Vivo, part owned by Vitol, is investing USD 250 million over three years. Addax & Oryx Group also has plans to invest USD 400 million. Traders now view terminals as being more useful going forward to meet rising demand than additional small scale refining.

4.4.6 The Mombasa refinery has a total storage capacity 455,200m³ out of which 107,000m³ is crude storage while the balance is refined product storage. This translates to 34% of the total storage available in the country and is the single largest storage facility in the region. Converting the refinery into a storage terminal would therefore free up the crude oil storage and release the product storage for use in operational and strategic stocks effectively creating an additional 36 days of stock cover in the country. This would help address the challenges in storage and enhance security of petroleum supply through the setting up of strategic petroleum reserves.

4.4.7 In addition, converting the refinery into a storage would integrate well with the planned offshore jetty project by National Oil by linking the proposed loading /offloading terminal to the refinery thus removing the immediate need for a new storage facility to be built with the new jetty.

Committee's Observations

4.4.8 The Committee observed that: -

- (i) There is a need to have a strategic reserve in the country to help address the challenges in storage and enhance security of petroleum supply through the setting up of strategic petroleum reserves.
- (ii) The refinery be converted into a strategic storage reserve.
- (iii) The Essar Energy Overseas Limited should undertake an environmental clean-up and restore the environment to its original state.
- (iv) A new refinery be established within the LAPSSSET project.

4.5 EVIDENCE BY THE CABINET SECRETARY, MINISTRY OF ENERGY AND PETROLEUM

The Cabinet Secretary for Energy and Petroleum, Mr. Davis Chirchir, appeared before the Committee on January 24, 2014 to adduce evidence on the restructuring of the Kenya Petroleum Refineries Limited. He informed the Committee that:-

4.5.1 The Kenya Petroleum Refinery Limited was initially a joint venture between Government of Kenya (50%), Shell Petroleum Company (17.1%), BP Africa (17.1%) and Chevron Global Energy Inc (15.8%) , before incorporation of Essar Energy Overseas Limited who replaced the International Oil Companies.

4.5.2 In recognition of the need to upgrade and make the oil refinery competitive, the Cabinet vide Min 15/07 of the meeting held on 3rd May 2007 (*Annex I*) approved among other things that; the Refinery be modernized, Government of Kenya retains 50% shareholding in the Company and that the Minister for

Finance and Energy take on board interested investors, on a competitive basis who would dilute the existing shareholders (BP, Shell and Chevron). The industry shareholders did not wish to have their shares diluted nor take part in the Refinery upgrade programme. They also pointed out the possibility of a joint disposal process and that they would engage an independent consultant to seek offers from the open market.

4.5.3 From the time of the Cabinet decision, many firms expressed interest in being shareholders in KPRL which included among others; Patrofac (UK), Oman oil, Essar (India), Bharat petroleum (India), Essar Energy Overseas Limited and Libya oil Holding Company. In September 2007, the industry shareholders decided to collectively dispose their equity to a new investor, through a competitive procurement process. They therefore identified Essar Energy Overseas Limited to buy their share at US\$10 million (Kshs. 790 million).

4.5.4 Essar Energy Overseas Limited and BP, shell and Chevron entered into share sale and Purchase Agreement dated 20th December 2007. However the Agreement was conditional on Government of Kenya renouncing its pre-emptive rights. The amount payable to the three companies were as follows;

Company	No of Shares	Amount in USD
◦ Shell	684,564	3,422,820
◦ BP	684,564	3,422,820
◦ Chevron	630,872	3,154,360
Total	2,000,000	10,000,000

4.5.5 The Independent shareholders consequently requested Government of Kenya, to waive its pre-emptive rights in accordance with KPRL's Articles of

Association and shareholder agreement to facilitate the sale. The Government was not interested in buying the industry shareholders and therefore waived its pre-emptive rights to acquire the 50% shareholding at a goodwill consideration of USD 11 million but this was bargained downwards following the global economic crisis at the time to USD 2 million.

4.5.6 Through a parallel initiative the Government had earlier identified Tamoil (Oilibya) as a potential Investor Partner in the Project. This interest was reflected in an MOU signed between Kenya and Libya during His Excellency the President's State visit to Libya in 2007, where Libya oil had expressed interest to support Government of Kenya in the following projects;

- The Refinery upgrade project,
- The New Mombasa - Nairobi oil Pipeline
- LPG import and storage project in Mombasa

4.5.7 In order to give the two parties a fair opportunity in participating in the process, the Permanent Secretary, Ministry of Energy, sent out a term sheet vide letter ref ME/CONF/7/1/11. Vol XII dated 21st January 2008, (*Annex 2*) to Essar Energy Overseas Limited and Libya Oil Holding Co, setting the criteria to be used in selecting the new shareholder. Among the terms was a consideration of US\$ 15 million in exchange of goodwill and renunciation of its pre-emptive rights.

4.5.8 The negotiation between the Government of Kenya and the two prospective shareholders individually culminated to a decision by the Government to offer to them two equal shares of 25% of the 50% of the international Oil

Company's (IOC's) share. Subsequently in a meeting held on 13th August 2008, between the Government of Kenya and prospective shareholders (Oil Libya & Essar), it was agreed that both Essar Energy Overseas Limited and Libya Oil share the 50% equity equally, fast track the upgrade and both of them to provide financing.

4.5.9 Subsequently oil Libya backed out and Essar Energy Overseas Limited was left as the only interested bidder. The three industry shareholders entered into a share sale and purchase agreement and Essar Energy Overseas Limited purchased the shares at USD 5 million down from USD 10 million.

4.5.10 The Government was not interested in purchasing the 50% shareholding from the industry shareholders and therefore did not wish to exercise its preemptive right and instead chose to waive this right in exchange for a consideration of USD 11 million but due to global economic problems and the delay in the negotiations, the offer was negotiated downwards to USD 2 million.

4.5.11 The Government entered into a share agreement with Essar Energy Overseas Limited with the major objective of upgrading and modernizing the refinery. The share agreement also provided that should Essar Energy Overseas Limited opt out, then the Government will pay an amount of USD 5 million being the amount that Essar Energy Overseas Limited had paid to the three industry shareholders when it purchased the 50% shareholding.

4.5.12 Due to the high cost of processing crude oil at the refinery, the oil marketing companies pushed for a transition from tolling mode to merchant

arrangement. On commencement of the merchant mode, KPRL secured a loan from Standard Chartered Bank Limited of USD 350 million to procure crude oil, process and sell refined products but because of the high cost, some of the products have not been lifted from KPRL to date. The Oil marketing Companies are seeking Kshs. 7.1 billion from KPRL.

4.5.13 KPRL constructed a 9.2 MW (megawatts) captive power plant at a cost of USD 14 million but the cost escalated beyond what was approved and the cost of the energy was expensive compared to the National Grid.

4.5.14 Essar Energy Overseas Limited was registered in Mauritius in 2007.

4.5.15 When Essar Energy Overseas Limited purchased the 50% shareholding, Essar Energy Overseas Limited took up the responsibilities of the industry shareholders then. However there are no legal requirements for Essar Energy Overseas Limited to clean up the environment.

4.5.16 Kenya imports all its petroleum requirements and its annual consumption is approximately 4.1 million tones. Prior to deregulation in 1994, KPRL was fully protected through the “white Oil Rule” clause where Oil marketing Companies processed crude oil to meet all the white oil requirements.

Committee's Observations

4.5.17 The Committee observed that:-

- (i) There is a need to have a strategic reserve in the country to help address the challenges in storage and enhance security of petroleum supply through the setting up of strategic petroleum reserves.
- (ii) The refinery should be converted into a strategic petroleum reserves.
- (iii) Essar Energy Overseas Limited was registered in Mauritius prior to the purchase of shares in KPRL in 2007.
- (iv) Essar Energy Overseas Limited took up the responsibilities of the industry shareholders when it purchased the 50% stake at KPRL.
- (v) The Essar Energy Overseas Limited should undertake an environmental clean-up and restore the environment to its original state.
- (vi) A new refinery be established within the LAPSSET project.

4.6 EVIDENCE BY THE PRINCIPAL SECRETARY, THE NATIONAL TREASURY

The Principal Secretary for the National Treasury, Dr. Kamau Thugge appeared before the Committee on January 27, 2014 to adduce evidence on the restructuring of Kenya Petroleum Refineries Limited. He informed the Committee that:-

4.6.1 The Kenya Petroleum Refinery Limited was initially a joint venture between Government of Kenya (50%), Shell Petroleum Company (17.1%), BP Africa (17.1%) and Chevron Global Energy Inc (15.8%).

4.6.2 In recognition of the need to upgrade and make the oil refinery competitive, the Cabinet vide Min 15/07 of the meeting held on 3rd May 2007 approved

among other things that; the Refinery be modernized, Government of Kenya retains 50% shareholding in the Company and that the Ministers for Finance and Energy respectively take on board interested investors, on a competitive basis who would dilute the existing shareholders (BP, Shell and Chevron). The industry shareholders did not wish to have their shares diluted nor take part in the Refinery upgrade programme. They also pointed out the possibility of a joint disposal process and that they would engage an independent consultant to seek offers from the open market.

4.6.3 Many firms expressed interest in being shareholders in KPRL including; Petrofac (UK), Oman oil, Essar (India), Bharat Petroleum (India), Essar Energy Overseas Limited and Libya oil Holding Company. In September 2007, the industry shareholders decided to collectively dispose their equity to a new investor, through a competitive procurement process.

4.6.4 Essar Energy Overseas Limited and BP, shell and Chevron entered into share sale and Purchase Agreement dated 20th Decernber 2007. However the Agreement was conditional on Government of Kenya renouncing its pre-emptive rights. The amount payable to the three companies were as follows;

Company	No of Shares	Amount in USD
Shell	684,564	3,422,820
BP	684,564	3,422,820
Chevron	630,872	3,154,360
Total	2,000,000	10,000,000

4.6.5 The Independent shareholders consequently requested Government of Kenya, to waive its pre-emptive rights in accordance with KPRL's Articles of Association and shareholder agreement to facilitate the sale. The Government was not interested in buying the industry shareholders shares and therefore waived its pre-emptive rights to acquire the 50% shareholding at a goodwill consideration of USD 11 million but this was bargained downwards following the global economic crisis at the time to USD 2 million.

4.6.6 Through a parallel initiative the Government had earlier identified Tamoil (Oilibya) as a potential Investor Partner in the Project. This interest was reflected in an MOU signed between Kenya and Libya during His Excellency the President's State visit to Libya in 2007, where Libya oil had expressed interest to support Government of Kenya in the following projects;

- (a) The Refinery upgrade project,
- (b) The New Mombasa-Nairobi oil Pipeline,
- (c) LPG import and storage project in Mombasa.

4.6.7 In order to give the two parties a fair opportunity in participating in the process the Permanent Secretary, Ministry of Energy sent out a term sheet vide letter ref ME/CONF/7/1/11. Vol XII dated 21st January 2008, to Essar Energy Overseas Limited and Libya Oil Holding Co, setting the criteria to be used in selecting the new shareholder (*Annex 2*). Among the terms was a consideration of USD 15 million in exchange of goodwill and renunciation of its pre-emptive rights.

4.6.8 The negotiation between the Government of Kenya and the two prospective shareholders individually culminated to a decision by the Government to offer to them two equal shares of 25% of the 50% of the International Oil Company's (IOC's) share. Subsequently in a meeting held on 13th August 2008, (*Annex 4*) between the Government of Kenya and prospective shareholders (Oil Libya & Essar), it was agreed that both Essar Energy Overseas Limited and Libya Oil share the 50% equity equally, fast track the upgrade and both of them to provide financing.

4.6.9 Subsequently oil Libya backed out and Essar Energy Overseas Limited was left as the only interested bidder. The industry stakeholders therefore identified Essar Energy Overseas Limited Energy of India to buy their shares at USD 10 million (Kshs. 790 million), this later came down to USD 5 million. The three industry shareholders entered into a share sale and purchase agreement and Essar Energy Overseas Limited purchased the shares at USD 5 million.

4.6.10 The Government was not interested in purchasing the 50% shareholding from the industry shareholders and therefore did not wish to exercise its preemptive right and instead chose to waive this right in exchange for a consideration of USD 11 million but due to global economic problems and the delay in the negotiations the offer was negotiated downwards to USD 2 million.

4.6.11 The Government entered into a share agreement with Essar Energy Overseas Limited with the major objective of upgrading and modernizing the refinery. The share agreement also provided that should Essar Energy

Overseas Limited opt out, then the Government would pay an amount of USD 5 million being the amount that Essar Energy Overseas Limited had paid to the three industry shareholders when it purchased the 50% shareholding.

4.6.12 Due to the high cost of processing crude oil at the refinery the oil marketing companies pushed for a transition from tolling mode to merchant arrangement. On commencement of the merchant mode KPRL secured a loan from Standard Chartered Bank Limited of USD 350 million to procure crude oil, process and sell refined products but because of the high cost, some of the products have not been lifted from KPRL to-date. The Oil marketing Companies are seeking Kshs. 7.1 billion from KPRL.

4.6.13 KPRL constructed a 9.2 MW captive power plant at a cost of USD 14 million but the cost escalated beyond what was approved and the cost of the energy was expensive compared to the National Grid.

4.6.14 Essar Energy Overseas Limited was registered in Mauritius 2007. Treasury however, deals with Essar India.

4.6.15 There are no legal requirements for Essar Energy Overseas Limited to clean up the environment and when it purchased the 50% shareholding it took up the responsibilities of the industry shareholders then.

4.6.16 Essar Energy Overseas Limited is now desirous of exiting KPRL under the exit clause whereby the Government will be required to pay out Essar Energy

Overseas Limited USD 5 million. The Government is in negotiations with Essar and will ensure that employment rights of the workers are protected.

Committee's Observations

4.6.17 The Committee observed that:-

- (i) The Government entered into a share agreement with Essar Energy Overseas Limited with the major objective of upgrading and modernizing the refinery.
- (ii) There is a need to have a strategic reserve in the country to help address the challenges in storage and enhance security of petroleum supply through the setting up of strategic petroleum reserves.
- (iii) The Essar Energy Overseas Limited should undertake an environmental clean-up and restore the environment to its original state before it is allowed to exit KPRL.
- (iv) A new refinery to be established in LAPSSET project.

4.7 EVIDENCE BY HON. JOHN MTUTA MRUTTU

Hon. John Mrutu, former Chief Executive Officer, Kenya Petroleum Refineries Limited appeared before the Committee on 5th February, 2014 to adduce evidence on the restructuring of KPRL. He informed the Committee that:-

4.7.1 KPRL was inaugurated on 1959 as a Company owned by Shell and BP. In 1963 the first refinery was commissioned and in 1964 Esso and Caltex became shareholders with each Company holding 25%.

4.7.2 In 1971 Government of Kenya acquired 50% shareholding in the Company after buying out part of the equity held by the international oil companies.

From this point onwards the shareholding was split 50:50 between Government of Kenya and the industry.

4.7.3 Esso sold its shares to the remaining industry shareholders (Shell, BP and Caltex). During this sale and purchase, Government of Kenya chose to waive its pre-emption rights but there is no record of any payment made to Government.

4.7.4 Between 1974 and 2006 there was no significant investment in KPRL as compared to the period 1960 – 1974 when two refineries were built and commissioned. This was occasioned by the fact that the Government and industry shareholders could not agree on the investment strategy. The lack of investment made it difficult for the refinery to compete with more modern and bigger refineries in the Arabian Gulf and Western India.

4.7.5 BP and shell sought to sell their shares and settled on Essar. Government of Kenya waived its pre-emptive right. A due diligence team comprising of Ministry of Energy, Treasury, KPRL Board and management was sent to India to understand the capability of Essar. During the visit the team established that Essar Energy Overseas Limited had vast interest in oil, gas, coal, steel, shipping, horticulture and mobile telephony. The change in shareholding saw him (Mruttu) relinquish the position of CEO of KPRL.

4.7.6 The purchase agreement provided for the re-shipment of any unused additive or water. When KPRL stopped using the additives the re-shipment clause was invoked and all the waste totaling 144 tons was shipped back to the UK.

Committee's Observations

4.7.7 The Committee observed that:-

- (i) The Government entered into a share agreement with Essar Energy Overseas Limited with the major objective of upgrading and modernizing the refinery. No major investment has been made during the period when Essar Energy Overseas Limited entered KPRL.
- (ii) Some waste from KPRL comprising 144 tons was shipped to the UK.
- (iii) While the due diligence team visited India, a special purpose Company for purchase of shares in KPRL was registered in Mauritius in 2007 under the name Essar Energy Overseas Limited.

4.8 EVIDENCE BY MR. PATRICK NYOIKE, FORMER PERMANENT SECRETARY, MINISTRY OF ENERGY

Mr. Patrick Nyoike, former Permanent Secretary, Ministry of Energy through a written submission informed the Committee that:-

4.8.1 KPRL has two simple hydro- skimming (topping) refineries, the first having been commissioned in the last quarter of 1963 and the second in the third quarter of 1974. Their combined processing design capacity is four million metric tons annually of heavy and medium Middle East petroleum crude oils. Prior to the first oil crisis of 1973-74 that resulted in a substantial increase in crude oil prices, KPRL operations were viable; but after this crisis its profitability was substantially reduced.

4.8.2 The second oil crisis of 1973-79 wiped out the viability of KPRL and other global refineries of similar technologies. KPRL therefore continued to survive through quantitative protection, fiscal incentives and ring fencing of its tolling tariff by GoK. Such refineries were closed en masse worldwide, in situations where modernizations were considered un-economic. Tanzania also closed its refinery in mid 1990's, thus opting for direct fuel imports.

4.8.3 Given the high cost of petroleum fuels produced by KPRL, Uganda, Mauritius and other countries that previously depended on imports from Kenya resorted to direct importation from cheaper sources to meet their needs from 1982. Subsequent to this unfavorable development, KPRL operations had to be scaled down as Kenya was the only market for its high cost and low quality fuels. Even in Kenya, its annual through put had to be reduced to 1,600,000 metric tons annually in 1995 in order to partially mitigate the impact of its high fuel prices on the economy. The phasing out of potentially hazardous leaded petrol from the domestic market in October 2006, further worsened the financial situation of KPRL as it generated surplus tops which have since then exported at depressed prices. With KPRL becoming a merchant refinery in the second half of 2011, it absorbed the full impact of the depressed export prices and it was not allowed to transfer the loss to the oil marketing companies.

4.8.4 In an attempt to revamp the oil refineries, the shareholders of KPRL undertook several feasibility studies on possible options for upgrade of the oil refineries based on different technologies and prices of crude oils including their qualities. Most of these studies were done on insistence of GoK which had hoped that an upgraded refinery would at least substantially reduce the

import parity gap. However, virtually all the studies done did not favor committing any substantial resources on an upgrade project.

4.8.5 The last study was done in 2011-12 after Essar had come on board. The rationale for this study was to recommend a financially viable technology that would fully utilize the entire four million tons of annual capacity of KPRL in order to benefit from economies of scale. This study concluded that the recommended upgrade project would have an internal rate of return (IRR) on equity of 6-7% for an investment of US\$1.13 billion. This fell short of the 15% threshold required by Essar's shareholders to commit their funds. Worse still, this upgrade would not be able to process more than 30% of the waxy crude oils found in South Sudan, Uganda and lately in Kenya. An additional US\$ 500 million would require to be invested in a coker plant for removal of excess carbon in these waxy crudes, thus raising the total estimated investment cost to more than US\$ 1.60 billion. This level of investment would reduce the already low IRR estimate to below 6%.

4.8.6 There was no need for an approval since Cabinet had already approved sourcing of investors to help upgrade the refineries by either diluting the interests of then private shareholders or buying them out. This approval was granted in 2006. The private shareholders opted to sell their all shares to the highest bidder, i.e. Essar at US\$ 5,000,000. The import of this sale was that the value of KPRL was US\$ 10,000,000. In an open market the value of KPRL shares would virtually be zero, without state protection of its operations from threat of imports. This was the conclusion in the late 1980s and has not changed since then.

4.8.7 The National Treasury had hired a private legal firm to assist in the negotiations and drafting of the agreements. I chaired all the negotiations, since they were held at then Ministry of Energy in an open and transparent manner. The National Treasury was represented by Ms. Esther Koimett, Investment Secretary and there was also a State Counsel from the State Law Office. The KPRL management was also in attendance to answer any questions on the operations of KPRL as a going business concern.

4.8.8 After conclusion of the negotiations, the approval and signing of the shareholders agreement was the responsibility of the National Treasury as the legal owner of the assets. In my view, we did the best we could in a fluid environment, given that the private shareholders were not prepared to spend any money on routine maintenance of the refineries.

4.8.9 He was aware that Essar had paid US\$ 2 million to The National Treasury. Initially, Essar had offered US\$ 5 million but withdraw this offer allegedly because they had consumed a lot of time and resources on the negotiations; they even pulled out just to come back later. In the process, the sale price for the private shares dropped from US\$ 10 million to 5 million, a reflection of the desperate desire by Shell, BP and Chevron to divest their interests in KPRL.

4.8.10 In his view, that was the best the GoK could negotiate, since the refinery was fast moving towards closure as the private shareholders who had the management rights, and therefore hired all the employees, had totally refused to approve procurement of any major spare parts. Consequently, the efficiency

and reliability of the complex were fast declining at the expense of the economy and oil marketing companies who by law had to collectively process 1,6000,000 metric tons of crude oil annually at a loss in order to keep KPRL barely afloat financially.

4.8.11 The current demand for petroleum fuels in Kenya is just about four (4) million metric tons, which would be equivalent to the annual 'through put' of a fully upgraded refinery operating at its maximum design capacity. This therefore means that the country would have to import production shortfalls were the refinery complex to be upgraded as it is, a process that take not less than four years according to Essar. Such a scenario would not make any economic sense.

4.8.12 What needs to be done at this stage is first of all to convert the current KPRL storage equivalent to 480,000 cubic meters into an import terminal, while at the same time making arrangements for a new feasibility study for a bigger refinery, with an export capacity. Once this study is done and viability of a much bigger refinery is ascertained, then private sector could be encouraged to invest through appropriately targeted fiscal incentives. Such a refinery would cost several billion US Dollars and without substantial fiscal incentives, it will virtually be impossible to attract any investors.

Committee's Observations

4.8.13 The Committee observed that:-

- (i) The shareholders of KPRL undertook several feasibility studies on possible options for upgrade of the oil refineries based on different technologies and

prices of crude oils including their qualities but none of the studies favored committing any substantial resources on an upgrade project.

- (ii) The current refinery be converted into an import terminal and storage facility for strategic reserves.
- (iv) Essar had offered US\$ 5 million as consideration to GoK for waiver of its pre-emptive rights but withdraw this offer allegedly because they had consumed a lot of time and resources on the negotiations and eventually only paid USD 2 Million.
- (v) The Ministry of Energy, Treasury, State Law Office and KPRL management were involved in the negotiations, drafting and signing of the shareholder agreement between GoK and Essar Energy Overseas Limited.

4.9 EVIDENCE BY THE INVESTMENTS SECRETARY, NATIONAL TREASURY

Ms. Esther Koimett, the Investments Secretary, National Treasury in her submission on the Restructuring of Kenya Petroleum Refineries Limited dated 16th April, 2014 informed the Committee that:-

4.9.1 In 2009, Shell, BP and Chevron (the three private sector shareholders in KPRL) sold their joint shareholding (50%) to Essar Energy Overseas Limited (EEOL). The shareholding immediately prior to the transaction was as follows:- GoK (50%), Shell (17.1%), BP (17.1%) and Chevron (previously known as Caltex) (15.8%). As a result of the transaction to date, become as follows:-

	Shareholder	Shareholding Pre-transaction
1	Cabinet Secretary to National Treasury Incorporated	50%

2	Shell	17.1%
3	BP	17.1%
4	Chevron	15%
Shareholding Post-transaction		
1	Cabinet Secretary to National Treasury Incorporated	50%
2	Essar energy overseas Limited	50%

4.9.2 The shares on offer belonged to the private shareholders and their sale was between the private sector companies. The KPRL transaction was not a Government transaction. It was a sale and purchase of shares between private sector entities. As is the practice under Company Law, the transaction was governed by the Articles of Association of KPRL. In this respect, the process of transfer of shares was a preserve of the Board. GoK was involved in the transaction purely on account of its interest, as the other 50% shareholder in the joint venture through negotiation with the incoming shareholder (Essar) on the Shareholders' Agreement and a technical services agreement. GoK as government (mainly the Ministry of Energy) also negotiated a Government Support Agreement.

4.9.2 Several studies have been commissioned by KPRL to review its current and future operational requirements concluded that it was necessary for the refinery to be upgraded, not only to produce products that met international product and environmental standards. The matter was brought to the attention of Government both as a shareholder and also as a key stakeholders were categorical that they would not participate in the upgrade of the refinery and opted to sell their shareholding.

4.9.3 In recognition of the need to upgrade and make the oil refinery competitive, the Cabinet, vide Min 15/07 of 3rd May 2007 (Annex 1), approved, among other things, that;

- (a) The refinery is modernized.
- (b) GoK retains 50% shareholding in KPRL.
- (c) The Ministers for Finance and Energy take on board interested investors, on a competitive basis, who would dilute the existing shareholders (BP, Shell, and Chevron).

4.9.4 The KPRL's Articles of Association stipulated that a selling shareholder must offer the shares to the remaining shareholders before the shares could be offered to third parties. The Articles required the remaining shareholder to indicate their willingness to purchase the shares within thirty days or else it would be deemed that they had rejected the offer of shares (*Annex 5*).

4.9.5 As stated in clause 24, the Cabinet approved the retention of 50% shareholding by GoK in KPRL and for new investors in KPRL, on a competitive basis, who would dilute the existing shareholders. This implied that GoK would neither dilute its shareholding in KPRL nor take up any additional shareholding. For all practical purposes, the Cabinet had waived the GoK's preemptive rights to the shares on offer by the private shareholders.

4.9.6 The option of GoK exercising its preemptive rights to acquire the 50% shareholding by Shell, BP and Chevron had been extinguished by the Cabinet directive vide Min 15/07 of 3rd May, 2007 (*Annex I*). However, GoK made it clear that it would communicate a waiver only on satisfaction, following a due diligence, that the party in the share and purchase agreement would be accepted to GoK.

4.9.7 Although the Cabinet decision had anticipated that the OMCs would remain as shareholders, they made it clear, at a KPRL Board meeting held on 16th May 2007, that they would not wish to have their shares diluted nor would they wish to take part in the Refinery upgrade programme. They further indicated that they would undertake a joint disposal process and that they would engage an independent consultant to seek offers from the open market.

4.9.8 According to a letter from the Ministry of Energy, dated 7th August, 2008 the three private shareholders acquired, in September, 2007, the services of Wood Mackenzie of London, to jointly market their shares and seek offers from the

market, through a competitive procurement process independent of KPRL and the Government. According to the letter, many firms responded, including Petrofac (UK), Oman Oil, Bharat Petroleum (India), Engen (South Africa), Reliance Industries (India), Essar Energy Overseas Ltd (EEOL) and Tamoil Holding Company (Tamoil). Through this competitive process, Essar was shortlisted as their preferred buyer. GoK was informed accordingly and was requested to occur so as to allow the private sector shareholders to conclude the sale to Essar.

4.9.9 Meanwhile, through a parallel initiative by the Ministry of Energy, the GoK had identified Tamoil as a potential investor in KPRL. This was subsequent to the expression of interest by Tamoil in the refinery, among interest in other projects, following the signing of an MOU between Kenya and Libya during the state visit to Libya in 2007 by H.E. the President.

4.9.10 In order to give the two parties (i.e. Essar and Tamoil) a fair opportunity in participating in the process, the Permanent secretary, Ministry of Energy, vide letter Ref ME/CONF/7/11/II. Vol XII dated 21st January 2008, (*Annex 2*) had sent out a term sheet to Essar and Tamoil setting the criteria to be used in selecting the new shareholder.

4.9.11 Subsequently, in a meeting held on 13th August 2008, between the GoK and prospective shareholders (Tamoil & Essar) (*Annex 4*), it was tentatively agreed as follows:

- (a) Shareholding to be shared equally between ESSAR and Tamoil.
- (b) The parties should have a common vision to fast track the Refinery upgrade.
- (c) The parties should provide financing on the upgrade Project.
- (d) The parties should agree on the financing as offered by Tamoil and Essar.

4.9.12 Both Essar and Tamoil, vide letter dated 9th September 2008; however responded indicating their preference of equalization of shareholding for all shareholders, including GoK, in KPRL. This would have reduced GoK shareholding from 50% to 33.33% and gone against the Cabinet directive to retain 50% shareholding. (*Annex 6*)

4.9.13 The GoK, vide letter dated 21st November, 2008, addressed to both Essar and Tamoil, stated clearly that the issue of equalization of shareholding was not acceptable. The GoK gave both parties a deadline of 24th November, 2008 upon when it would be assumed they were no longer interested in the opportunity to purchase the 50% shares being sold by BP, Shell, and Chevron. (*Annex 7*)

4.9.14 Both parties responded, on November 24th 2008, seeking confirmation of various timelines, as well as GOK's position regarding their proposal for KPRL to receive financial incentives by way of waiver of duty/taxes as per their proposal.

4.9.15 The various issues being raised by the prospective shareholders were causing delays and the process had in fact stalled impacting negatively on the planned upgrade of the refinery. The encumbrance in the upgrade of the refinery had serious cost implications on the project. Due to the sharp price increases in the International Commodity Market, the estimated project cost had, in the meantime, escalated from US\$322 million in 2006 to US\$ 450 million in 2009 and was likely to be higher with time. At this stage, the GoK realized that the two partners had "ganged up" and were deliberately blackmailing the GoK and that dealing with Essar and Tamoil jointly, the GoK was worse off than dealing with each party separately. Consequently, it was decided to abandon the process and proceed with one of the partners. (*Annex 8*)

4.9.16 After an analysis of the two parties, the GoK settled on Essar for the following reasons:-

- (a) Essar was the preferred buyer by the Industry Shareholders having been identified through a competitive process. Waving GoK preemptive rights in favour of Essar would be a credible option in the eyes of other stakeholders and the International Oil Companies (IOCs).
- (b) Essar, unlike Tamoil, had conducted a comprehensive due diligence on KPRL, and were, therefore, more informed and prepared to proceed with the investment and the urgently required upgrade.

- (c) Essar's approach to the upgrade was purely from a commercial angle. It was also noted that they have vast private sector experience in managing refineries.
 - (d) Essar had committed themselves to supporting KPRL to obtain funding from local and international financiers at favorable terms.
 - (e) Tamoil's major disadvantage, however, was that they had not done any due diligence on KPRL. Tamoil, however, had the merit of being backed by sovereign financial might of Libya, which was likely to afford KPRL favorable funding. Tamoil had also raised issues of pre-existing potential environmental liabilities and indicated that they were not willing to take up this risk.
- 4.9.17 To assure of its capacity to partner with the Government to upgrade the refinery, GoK conducted due diligence on Essar. From the due diligence, it was noted that Essar Group, the parent company of EEOL, is a diversified conglomerate company domiciled in India with investments in oil and gas, steel, construction, shipping and logistics, communication and power, spanning over 20 countries, including India, UK, USA, UAC, China and Indonesia. GoK, therefore, gave approval to the private sector shareholders to execute the share purchase and sale Agreement with Essar.
- 4.9.18 As part of the negotiations, and in recognition of the inefficient state of the refinery, Essar required GoK assurance that the existing Government support would continue in the interim period until the upgrade. Essar required GoK commitment that GoK would continue to support KPRL's activities and operations under the Government Support Agreement.
- 4.9.19 In the meantime, KPRL set out to draft various agreements that would be required to effect the transfer of shares to the incoming shareholder in accordance with the KPRL's Article of Association. These agreements were discussed between KPRL, GoK and Essar and the final drafts approved by the Attorney General on 31st July, 2009 and was witnessed by the then Minister for Finance and the Prime Minister.
- 4.9.20 GoK was keen on having a partner with the necessary financial resources and refinery experience to help in the upgrade of the refinery. Essar had, however,

stated during negotiations that they would only invest in the refinery upgrade if the detailed feasibility studies proved that it was viable to do so and would instead opt out in the event that the studies indicated that it would be viable to upgrade the refinery.

- (a) Ordinarily this would mean that Essar would look for a buyer for its shares and would settle on whoever gave them the best price for their 50%. We did not want to be in a situation where we would be saddled with an investor that didn't have the same objectives/commitment to the refinery as the government. We therefore needed to have an option to buy the shares upon their exit.
- (b) Secondly, such an exit would require a valuation to determine the price at which we would buy the 50% shareholding from Essar upon their exit. However, knowing the value of the assets of KPRL we did not want a situation where we would pay Essar more than they had paid to acquire their 50%.

2.9.21 In order to forestall a situation where Essar would unnecessarily benefit from any growth in value of the company without having injected any capital, GoK required that Essar would only be entitled to a refund of the money paid by Essar for the 50% shareholding from the exiting shareholders, hence the USD 5 million. It was recognized that the value of the company/the company's asset was, even at the time of negotiations, substantially higher than the USD 5 million they paid for their 50% stake. This was a very wise move by the Government to peg the exit price at the entry price of USD 5 million paid by Essar. As we would now be valuing the business assets of KPRL and paying Essar 50% of the value.

Committee's Observations

2.9.22 The Committee observed that:-

- (i) The KPRL transaction was not a Government transaction. It was a sale and purchase of shares between private sector entities. The shares on offer

- belonged to the private shareholders and their sale was between the private sector companies.
- (ii) The Cabinet had approved, among other things, that the refinery be modernized; GoK retains 50% shareholding in KPRL and that the Ministers for Finance and Energy take on board interested investors, on a competitive basis, who would dilute the existing shareholders (BP, Shell, and Chevron).
 - (iii) GoK made it clear that it would communicate a waiver only on satisfaction, following a due diligence, that the party in the share and purchase agreement would be accepted to GoK .
 - (iv) The value of the company/the company's asset was, even at the time of negotiations, substantially higher than the USD 5 million that Essar Energy Overseas Limited paid for their 50% stake.
 - (vi) The Government entered into a share agreement with Essar Energy Overseas Limited with the major objective of upgrading and modernizing the refinery.

4.10 EVIDENCE BY THE FINANCIAL SECRETARY, NATIONAL TREASURY

Mr. Mutua Kilaka, the Financial Secretary, National Treasury in his submission on the Restructuring of Kenya Petroleum Refineries Limited dated 16th April, 2014 informed the Committee that:-

4.10.1 In 2009, Shell, BP and Chevron (the three private sector shareholders in KPRL) sold their joint shareholding (50%) to Essar Energy Overseas Limited (EEOL). The shareholding immediately prior to the transaction was as follows:- GoK (50%), Shell (17.1%), BP (17.1%) and Chevron (previously known as Caltex) (15.8%). As a result of the transaction to date, become as follows:-

	Shareholder	Shareholding Pre-transaction
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1	Cabinet Secretary to National Treasury Incorporated	50%
2	Shell	17.1%
3	BP	17.1%
4	Chevron	15%
Shareholding Post-transaction		
1	Cabinet Secretary to National Treasury Incorporated	50%
2	Essar energy overseas Limited	50%

4.10.2 The shares on offer belonged to the private shareholders and their sale was between the private sector companies. The KPRL transaction was not a Government transaction. It was a sale and purchase of shares between private sector entities. As is the practice under Company Law, the transaction was governed by the Articles of Association of KPRL. In this respect, the process of transfer of shares was a preserve of the Board. GoK was involved in the transaction purely on account of its interest, as the other 50% shareholder in the joint venture through negotiation with the incoming shareholder (Essar) on the Shareholders' Agreement and a technical services agreement. GoK as government (mainly the Ministry of Energy) also negotiated a Government Support Agreement.

4.10.2 Several studies have been commissioned by KPRL to review its current and future operational requirements concluded that it was necessary for the refinery to be upgraded, not only to produce products that met international product and environmental standards. The matter was brought to the attention of Government both as a shareholder and also as a key stakeholders were categorical that they would not participate in the upgrade of the refinery and opted to sell their shareholding.

4.10.3 In recognition of the need to upgrade and make the oil refinery competitive, the Cabinet, vide Min 15/07 of 3rd May 2007 approved, among other things, that;

- (a) The refinery is modernized.
- (b) GoK retains 50% shareholding in KPRL.
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4.10.4 The KPRL's Articles of Association stipulated that a selling shareholder must offer the shares to the remaining shareholders before the shares could be offered to third parties. The Articles required the remaining shareholder to indicate their willingness to purchase the shares within thirty days or else it would be deemed that they had rejected the offer of shares.

4.10.5 As stated in clause 24, the Cabinet approved the retention of 50% shareholding by GoK in KPRL and for new investors in KPRL, on a competitive basis, who would dilute the existing shareholders. This implied that GoK would neither dilute its shareholding in KPRL nor take up any additional shareholding. For all practical purposes, the Cabinet had waived the GoK's preemptive rights to the shares on offer by the private shareholders.

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4.10.8 According to a letter from the Ministry of Energy, dated 7th August, 2008 the three private shareholders acquired, in September, 2007, the services of Wood Mackenzie of London, to jointly market their shares and seek offers from the market, through a competitive procurement process independent of KPRL and the Government. According to the letter, many firms responded, including Petrofac (UK), Oman Oil, Bharat Petroleum (India), Engen (South Africa), Reliance Industries (India), Essar Energy Overseas Ltd (EEOL) and Tamoil Holding Company (Tamoil). Through this competitive process, Essar was shortlisted as their preferred buyer. GoK was informed accordingly and was requested to occur so as to allow the private sector shareholders to conclude the sale to Essar.

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- (h) Essar's approach to the upgrade was purely from a commercial angle. It was also noted that they have vast private sector experience in managing refineries.
- (i) Essar had committed themselves to supporting KPRL to obtain funding from local and international financiers at favorable terms.
- (j) Tamoil's major disadvantage, however, was that they had not done any due diligence on KPRL. Tamoil, however, had the merit of being backed by sovereign financial might of Libya, which was likely to afford KPRL favorable funding. Tamoil had also raised issues of pre-existing potential environmental liabilities and indicated that they were not willing to take up this risk.

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(c) Ordinarily this would mean that Essar would look for a buyer for its shares and would settle on whoever gave them the best price for their 50%. We did not want to be in a situation where we would be saddled with an investor that didn't have the same objectives/commitment to the refinery as the government. We therefore needed to have an option to buy the shares upon their exit.

(d) Secondly, such an exit would require a valuation to determine the price at which we would buy the 50% shareholding from Essar upon their exit. However, knowing the value of the assets of KPRL we did not want a situation where we would pay Essar more than they had paid to acquire their 50%.

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Committee's Observations

2.10.22 The Committee observed that:-

(i) The KPRL transaction was not a Government transaction. It was a sale and purchase of shares between private sector entities. The shares on offer

belonged to the private shareholders and their sale was between the private sector companies.

- (ii) The Cabinet had approved, among other things, that the refinery be modernized; GoK retains 50% shareholding in KPRL and that the Ministers for Finance and Energy take on board interested investors, on a competitive basis, who would dilute the existing shareholders (BP, Shell, and Chevron).
- (iii) GoK made it clear that it would communicate a waiver only on satisfaction, following a due diligence, that the party in the share and purchase agreement would be accepted to GoK.
- (iv) The value of the company/the company's asset was, even at the time of negotiations, substantially higher than the USD 5 million that Essar Energy Overseas Limited paid for their 50% stake.
- (vii) The Government entered into a share agreement with Essar Energy Overseas Limited with the major objective of upgrading and modernizing the refinery.

4.11 EVIDENCE BY THE ENERGY REGULATORY COMMISSION

The Energy Regulatory Commission in its submission (*Annex 9*) dated 14th April, 2014 informed the Committee that:-

- 4.11.1 In December 2010, the Ministry of Energy (as it then was) gazetted the Energy (Petroleum Pricing) Regulations, 2010. (The Regulations) provide a formula for determining Legal Notice No. 196 of 3rd December 2010. The regulations provide a formula for determining the monthly maximum retail pump prices for Super Petrol, Diesel and Kerosene. In determining these prices, the formula takes into account the weighted average of prudently incurred cost of petroleum products from the Kenya Petroleum Refineries Limited (KPRL) i.e. locally refined products and those from the Kipevu Oil Storage Facility (KOSF) i.e. imported refined products.

4.11.2 Since December 2010, when ERC began implementing the Regulations, a price difference between the unit cost of products imported through KOSF and those refined at KPRL was observed. ERC arrived at this conclusion after considering the difference in cost between the locally refined products and imported products. This difference is attributed to the costs of refining, fuel and loss from the refining process and the yields from the crude oil. Between the period December 2010 and September 2013, locally refined products, taken cumulatively, were Kshs. 15,710,553,586 more expensive.

4.1.3 It is important to note that KPRL is protected by the Petroleum Rules which compels all companies involved in importation of petroleum products to buy from KPRL such quantities of petroleum products as the Minister/Cabinet Secretary may from time to time determine.

Table 1: comparative differences in costs between refinery and imported products Dec 2010-Sep 2013

	Product Name	Volume Derived From KPRL in Litres Dec 2010 – Sep 2013	Amount Lost Compared to Imports -KES	Average difference (KES/Ltr)
1	Super Petrol	773,894,408	(2,323,359,704)	-3.00
2	Regular Petrol	146,758,790	(406,928,872)	-2.77
3	Automotive Diesel	1,686,366,498	(4,546,767,973)	-2.70
4	kerosene	1,761,492,924	(6,031,350,547)	-3.42
5	Fuel Oil	1,069,795,516	(1,766,569,816)	-1.65
6	Naphtha/Tops	266,166,613	(505,997,491)	-1.90
7	Industrial Diesel	59,824,464	(129,579,182)	-2.17
	TOTAL	5,764,299,214	(15,710,553,586)	

The price of the three (3) products from the refinery that are subject to the pricing regulations i.e. super petrol, diesel and kerosene were Kshs.3.00, Kshs.2.70 and

Kshs.3.42 more expensive than imported products between December 2010 and September 2013. ERC is of the considered opinion that had refining activities higher as computed in the tables below.

Post September 2013 computed trend

4.11.4 The refinery would still have imposed a handicap on the weighted average prices at the pump equivalent to the price difference per products shown in the tables. The total handicap in Kshs would have been dependent on the actual weight of the considered refinery product relative to the imports.

Table 2 Comparison of unit costs of products from KPRL and imports

PMS (Kshs/L)

	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14
KPRL*	70.81	70.66	71.66	67.95	69.29	68.28
Imports	66.67	63.37	63.51	65.11	65.28	67.20
Price difference	(4.14)	(7.29)	(8.15)	(2.84)	(4.01)	(1.08)

Table 3 Comparison of unit costs of products from KPRL and imports

AGO (kshs/L)

	Oct-13	Nov-13	Dec-13	Jan-14	Feb-13	Mar-14	
KPRL*		76.41	76.25	77.33	73.32	74.77	73.68
Imports	70.73	69.51	70.78	70.77	71.17	70.33	
Price difference	(5.68)	(6.74)	(6.55)	(2.55)	(3.60)	(3.35)	

Table 4 Comparison of unit costs of products from KPRL and imports

AGO (Kshs/L

Oct-13 Nov-13 Dec-13 Jan-14 Feb-14 Mar-14

KPRL: 75.75 75.59 76.67 72.69 74.12 73.05

Imports 70.52 68.88 69.65 71.63 68.70 69.56

Price difference: (5.23) (6.71) (7.02) (1.06) (5.33) (3.49)

4.11.5 The additional cost to the Kenyan economy on account of the locally refined products estimated at Kshs. 15,710,553,586 only covers the 30 month period between December 2010 and September 2013 when ERC assumed the Implementation of the Petroleum price capping.

4.11.6 The economy has borne the costs of the refinery over the years and there is no evidence to show that such a situation would have been remedied after September 2013. Accordingly, a more economic way of utilization of the refinery is necessary which dictates that its business model be re-defined.

Committee's Observations

4.11.7 The Committee observed that:-

- (i) The economy has borne the costs of the refinery over the years and there is no evidence to show that such a situation would have been remedied after September 2013.
- (ii) There is a need to have a strategic reserve in the country to help address the challenges in storage and enhance security of petroleum supply through the setting up of strategic petroleum reserves.

5.0 GENERAL OBSERVATIONS

The Committee made the following observations from the evidence adduced and documents tabled:-

- 5.1 The Government entered into a share agreement with Essar Energy Overseas Limited on 31st July 2009 with the major objective of upgrading and modernizing the refinery. The Agreement was signed to ensure the modernization of the refinery to the enhanced capacity of up to 4 MMTPA, contraction of residue conversion facilities, the production of clean products, and determination of product specifications, the minimization of emissions, the stabilization of electricity supply to the refinery and basically upgrade the refinery in terms of the Agreement. This has however not been realized yet Essar Energy Overseas Limited seeks to pull out of the refinery business.
- 5.2 There is a need to have a strategic reserve in the country to help address the challenges in storage and enhance security of petroleum supply through the setting up of strategic petroleum reserves.
- 5.3 The exit clause in the share agreement between the Government of Kenya and Essar Energy Overseas Limited was skewed in favour of the company to the extent that the Government would pay the company USD 5 Million on exit from KPRL.
- 5.4 Essar Energy Overseas Limited assumed all the rights and responsibilities of the industry shareholders when it acquired 50% stake at the refinery including environmental clean-up and restoration of the environment to its original condition.
- 5.5 The poor restructuring and delay in modernization of the refinery has hugely contributed to the high pump prices of oil (petroleum, kerosene and diesel) in the Country.

- 5.6 The delay in the modernization of the refinery has contributed to the inefficiency at KPRL which had greatly jeopardized the regional and national economy and livelihood of Kenyans resulting to KPRL losing support from oil marketers. Some of the players in the industry closed down as the Government was forcing them to refine their crude oil at the Refinery at a loss.
- 5.7 The sale or privatization of key strategic institutions which has a significant bearing on national security should only be undertaken if the benefits that accrue to Kenyans outweighs the commercial interest of the private investors. There should always be public participation in line with article 10 and 118 of the constitution
- 5.8 The cheque allegedly issued by Essar Energy Overseas Limited to pay the Government of Kenya for waiver of its pre-emptive rights was oscillating between Treasury and KPRL for two years and was eventually returned on claims that it was drawn to the wrong payee (cheque kiting). The Cheque was deliberately drawn to the wrong payee with the intention of creating delay and defrauding the Government of Kenya.
- 5.9 The payment of the consideration fee of USD 2million took long to be effected and was substantially reduced from the initial USD 15 to USD 11million and finally to USD 2 Million. It took two years, from July 2009 to March 2011, for Essar Energy Overseas Limited to pay the goodwill amount yet the company was managing the Refinery two years before the payment of the goodwill amount. The money therefore paid as goodwill could have been generated by Essar Energy Overseas Limited from the refinery.
- 5.10 The Cabinet decision that modernization be undertaken at the refinery was not adhered to by Essar Energy Overseas Limited after the exit of the IOC.

- 5.11 The Government agreed to the goodwill consideration on the understanding that Essar Energy Overseas Limited would undertake the modernization of the refinery but this has never been undertaken by Essar Energy Overseas Limited thus breach of contract.
- 5.12 The Kenya Petroleum Refinery Limited has old technology and therefore the Government should develop a new refinery. For example the diesel from the refinery had (10,000 ppd) high levels of lead far above the recommended industry levels of 500 ppd due to the obsolete technology at the refinery
- 5.13 No Financial audit of the company has been done by the Audit-General Office due to the 50:50 ownership structure of the refinery. Part III of the Public Audit Act, No. 12 of 2003 and part IV of the State Corporation Act, Cap 446, Laws of Kenya be amended to comply with Article 229 (5) of the Constitution to provide for an express provision to the Auditor General to audit all Government investments including where GoK shareholding is less than 50 %.

6.0 RECOMMENDATIONS

Arising from the evidence adduced and the observations, the Committee recommends that:-

- 6.1 The Ethics and Anti-Corruption Commission (EACC) should investigate the circumstances under which the Cabinet decision for the modernization and refurbishment of the refinery was ignored and Officers who flouted the Cabinet decision should be held accountable.
- 6.2 The officers who participated in the negotiations, drafting and signing of the share agreement (the then Permanent Secretary, Ministry of Energy; the Investment Secretary and the then Chief Executive Officer, KPRL and

current governor for Taita Taveta County) be investigated for engineering the negotiations, drafting and signing of a skewed shareholder agreement in favor of Essar Energy Overseas Limited.

- 6.3 The officers who participated in the negotiations, drafting and signing of the share agreement (the then Permanent Secretary, Ministry of Energy; the Investment Secretary and the then Chief Executive Officer, KPRL) be held accountable for committing the Government to an agreement that seeks to pay Essar Energy Overseas Limited USD 5million on exit.
- 6.4 The EACC should investigate circumstances under which the consideration payable to Government for waiver of its pre-emptive rights was reduced from the initial USD 15 million to USD 2 million and was not paid in time and was drawn to a wrong payee by Essar Energy Overseas Limited.
- 6.5 The Government should establish an import terminal and strategic petroleum reserve in the country to help address the challenges in storage and enhance security of petroleum supply through the setting up of strategic petroleum reserves.
- 6.6 Essar Energy Overseas Limited should undertake an environmental clean-up and restore the environment to its original state in accordance with section 108 of the Environmental Management and Coordination Act(No 8 of 1999).
- 6.7 The National Environment Management Authority (NEMA) should assess the environmental impact in accordance to section 58 of the Environmental Management and Coordination Act(No 8 of 1999). and ensure that the clean up of the environment at the refinery is undertaken by Essar Energy Overseas Limited. An environmental audit be carried by NEMA to ensure that the environment is restored to its original condition.

- 6.8 The Government of Kenya should not pay Essar Energy Overseas Limited any consideration during their exit since they have failed to honour their responsibilities in terms of upgrading and modernizing the oil refinery on the basis of which a shareholder agreement was signed.
- 6.9 Any future engagement between Essar Energy Overseas Limited and the Government of Kenya should be scrutinized thoroughly with proper due diligence being undertaken.
- 6.10 The exercise of privatization must involve all key stake holders through public participation prior to decision making in accordance to Articles 10 and 118 of the Constitution. The Privatization Act should be amended to ensure public participation.
- 6.11 EACC should investigate and determine the ownership of Essar Energy Overseas Limited, a company incorporated in Mauritius in 2007.
- 6.12 The Government should fast-track the development of a new and modern refinery to cater for the refining of crude oil for national consumption and for export.
- 6.13 The Privatization Act should be amended to ensure that the Government does not privatize or divest from key or strategic investments or Parastatals without undertaking due diligence.
- 6.14 Part III of the Public Audit Act, No. 12 of 2003 and part IV of the State Corporation Act, Cap 446, Laws of Kenya be amended to comply with Article 229 (5) of the Constitution to provide for an express provision to the Auditor General to audit all Government investments including where GoK shareholding is less than 50 %.

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MINUTES OF THE 66TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD AT COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS ON
TUESDAY, SEPTEMBER 24, 2013 AT 10.00 AM

PRESENT

1. Hon. Adan Keynan, MP - Chairperson
2. Hon. Kimani Ichung'wah, MP - Vice Chairperson
3. Hon. Francis Nyenze, MP
4. Hon. Sammy Mwaita, MP
5. Hon. Cornelly Serem, MP
6. Hon. Bare Shill, MP
7. Hon. Korei Ole Lemein, MP
8. Hon. Adan M. Nooru, MP
9. Hon. Beatrice Nyaga, MP
10. Hon. Njogu Barua, MP
11. Hon. Irungu Kang'ata, MP
12. Hon. Onesmus Njuki, MP
13. Hon. Mwadeghu Thomas, MP
14. Hon. Abdullswamad Sheriff, MP
15. Hon. Paul Otuoma, MP
16. Hon. Olago Aluoch, MP
17. Hon. Dr. Oburu Oginga, MP
18. Hon. Major (Rtd) John Waluke, MP
19. Hon. Ogutu John Omondi, MP
20. Hon. Wafula Wamunyinyi, MP
21. Hon. Bernard Munyoki Kitungi, MP
22. Hon. Chrisanthus Wamalwa, MP

ABSENT

1. Hon. Mithika Linturi, MP
2. Hon. John M. Nyaga, MP
3. Hon. Eng. John Kiragu, MP
4. Hon. Johana Ngeno, MP
5. Hon. Mary K. Sally, MP

IN ATTENDANCE - KENYA NATIONAL ASSEMBLY

1. Ms. Esther Nginyo - Clerk Assistant III
2. Mr. Joash Kosiba - Fiscal Analyst

3. Ms. Rahab Chepkilim - Hansard Recorder
4. Mr. Michael Njenga - Parliamentary Intern

MINUTE NO. 370 /2013 PRELIMINARIES

The Chairperson called the meeting to order at Twenty Five Minutes past Ten O'clock. He informed the Committee that the Hon. Aden Duale, MP had raised an issue in the House relating to the ownership of Kenya Petroleum Refineries Limited and had requested to share that information with the Members as a friend of the Committee.

MINUTE NO. 371/2013 EVIDENCE BY HON. ADEN DUALE, MP ON KENYA PETROLEUM REFINERIES LIMITED

The Chairperson invited the Hon. Aden Duale, MP to brief the Committee on KPRL. Hon. Aden Duale, MP informed the Committee that:-

- (i) Kenya imports all its Petroleum requirements and its annual consumption is approximately 4.1 million tons.
- (ii) Prior to deregulation of the sector in 1994, KPRL was fully protected through the 'White Oil Rule' clause where Oil Marketing Companies processed crude oil at KPRL.
- (iii) On 28th November, 2003, the Ministry of Energy under gazette Legal Notice No. 197 established the Open Tender System for both crude oil and refined petroleum products but requiring that all Oil Marketing Companies to mandatorily process crude oil at KPRL.
- (iv) KPRL was initially a joint venture between the Government of Kenya (50%), Shell Petroleum Company (17.1%), BP Africa (17.1%) and Chevron Global Energy Inc. (15.8%) before incorporation of Essar Energy who replaced the International Oil Companies.
- (v) Recognizing the need to upgrade and make the oil refinery more competitive, the Cabinet in a meeting held on 3rd May, 2007 vide Min. 15/7 approved that the oil refinery be modernized, the Government to retain 50% shareholding and the Minister for Finance and Energy to take on Board interested investors on a competitive basis to dilute the existing shareholding of BP, Shell and Chevron.
- (vi) Following the Cabinet decision, many firms such as Patrofac (UK), Oman Oil, Essar (India), Bharat Petroleum (India), Tamoil (Libya), Engen (South Africa), Reliance Industries (India)) expressed interest in being shareholders in KPRL.
- (vii) In KPRL Board meeting on 16th May, 2007, the industry Shareholders made it clear that they would not wish their shares diluted nor would they take part in the Refinery Upgrade programme. However, they indicated a possibility of a joint disposal

proposal that would engage an independent consultant to seek offers from the open market.

- (viii) In September, 2007, the Industry Shareholders decided to collectively dispose their equity through a competitive procurement process and identified Essar Energy to buy their shares at USD 10 million (Kshs. 790 million)
- (ix) Essar and BP, Shell and Chevron entered into share sale and purchase Agreement dated 20th December, 2007. However, the Agreement was conditional on GOK renouncing its pre-emptive rights.
- (x) Through a parallel initiative the GOK had earlier identified Tamoil (Oil Libya) as potential investor partner in the project as per the MOU signed between Kenya and Libya during the President's state visit to Libya in 2007. Libya oil had expressed interest to support GOK in the Refinery upgrade, new Mombasa- Nairobi oil pipeline and LPG import and storage project in Mombasa.
- (xi) To give a fair opportunity in participating in the Process, the PS Ministry of Energy sent out term sheet to both Essar and Libya oil Holding on 21st January, 2008 setting the criteria to be used in selecting the new shareholder which included USD 15 million in exchange of goodwill and renunciation of its pre-emptive rights.
- (xii) The negotiation between the GOK and the two prospective shareholders culminated in a decision by the Government to offer them two equal shares of 25% of the 50% of the International Oil Companies.
- (xiii) Subsequently, in a meeting held on 13th August, 2008 between GOK and the prospective shareholders, it was agreed that both Essar and Libya Oil share 50% equity equally, fast track the upgrade and both of them to provide financing.
- (xiv) The estimated project cost had escalated from USD 450 million in 2006 to USD 450 million in 2009 due to sharp increase in the international market.
- (xv) The GOK realized that dealing jointly with both Essar and Libya Oil was worse off than dealing with one partner and consequently abandoned the process and settled to proceed with Essar after an analysis of the two.
- (xvi) Essar Group is a conglomerate with investments in oil and gas, steel, construction, shipping and logistics, communication and power with investments spanning over 20 countries. Essar Energy Overseas Ltd owns 50% shareholding at KPRL.
- (xvii) Article 22 of the Company's Articles of Association stipulated that a selling shareholder must offer shares to the remaining shareholders before offering to a third party. However, the Government was not interested in buying the International Oil Companies (IOC) shares and agreed that the industry shareholders conclude the process of sale with Essar.
- (xviii) On September 24, 2008 Essar made offers to Government that they would have equity of not less than 50%, and that they would provide assistance of USD 5 million towards equity in KPRL on behalf of GOK and further if the GOK would be able to

negotiate the price of acquisition of shares of BP, Shell and Chevron at less than USD 20 million, the differential amount would be paid by Essar towards GOK's equity for the modernization project.

- (xix) Essar had offered GOK an initial amount of USD 11 million in 2008 based on the conditions in paragraph (xviii) above, however, GOK declined to get involved in the negotiations with IOCs on behalf of Essar. Essar had a competitive bid floated by the private shareholders and consequently changed the goodwill offer from the initial USD 11 million to USD 2 million.
- (xx) Essar gave reasons for the reduction of goodwill offer from USD 11 million to USD 2 million as delays in the negotiations for the sales of shares and finalization of shareholders agreement, global economic crisis and difficult terms of financing for the modernization project.
- (xxi) GOK agreed to the consideration of USD 2 million and incorporated it into Clause 5 of shareholders agreement of 31st July, 2009 providing that the amount was to be paid by Essar into KPRL's account to hold it in trust for the Government.
- (xxii) The payment of USD 2 million was received by Treasury on 30th July, 2009 in favour of KPRL. However, after consultation, it was agreed that the money be received in Government books. Consequently, the cheque was returned. The money payable to the PS Treasury was received by CBK through RTGS on 15th March, 2011 and an equivalent of Kshs. 172 million was transferred to the exchequer. Essar also paid USD 3 million to the IOCs.
- (xxiii) Before transition of KPRL from tolling to merchant mode, oil marketing companies (OMC) were required by Legal Notice No. 197 of December 3, 2003 to process oil at KPRL. On turning to merchant mode of operation, the actual cost of product from KPRL was used and referred to Refinery Gate Pass.
- (xxiv) From December 2010 to April 2013, the price difference between the refined imported products and products refined at KPRL had an equivalent loss of Kshs. 13.69 billion which translated into a loss of Kshs. 5.48 billion per year. This resulted into additional costs at the pump of Kshs. 2.74 for PMS, 2.54 for Diesel and 3.32 for kerosene.
- (xxv) KPRL now faces enormous challenges with the expiry of the interim product take off agreement on 31st December, 2012 and later extended through consensus with OMCs to 30th June, 2013. It is important to note that no crude oil has been procured and delivered since June 30, 2013 thereby jeopardizing operations of KPRL.
- (xxvi) KPRL sought credit facility of USD 350 million from Standard Chartered Bank Limited on commencement of Merchant Mode to procure crude oil, process and sell the products to OMCs. However, due to high costs of the products, some products have not been lifted from KPRL and the bank is claiming these stocks.

- (xxvii) KPRL wage bill is approximately Kshs. 48,570,449 per month or Kshs. 582,845,388 per annum.
- (xxviii) KPRL has over the years not been able to meet the OMCs product requirements resulting to a significant product loss. This necessitated the OMCs to commission a forensic study sanctioned by the Ministry of Energy and undertaken by Deloitte Consulting Limited in November 2012. The study valued the yield loss to be in excess of Kshs. 7.1 billion prompting the OMCs to seek compensation for the estimated loss.
- (xxix) The refinery sits on 300 acres worth approximately Kshs. 15 billion and its storage capacity is approximately 403,000 cubic metres valued at Kshs. 16.3 billion.

MINUTE NO. 372/2013 COMMITTEE OBSERVATIONS

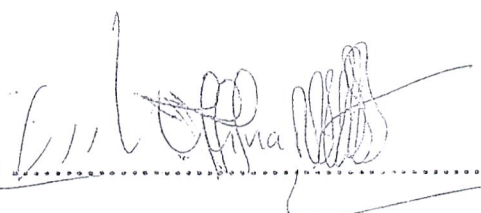
The Committee was observed that the inefficiency at KPRL had greatly impacted on the economy and livelihood of Kenyans and had even caused many players in the industry to close down as the Government was forcing them to refine their crude oil at the Refinery at a loss. The Committee agreed that there was an urgent need to build a new refinery if KPRL cannot be modernized considering the recent discovery of oil in the country.

MINUTE NO. 373/2013 DECLARATION OF INTEREST

The Members sought to know if Hon. Duale, MP had any interests on the matter. Hon. Aden Duale, MP informed the Committee that he did not have any personal interest in the industry, but had brought the information to the Committee as the matter was serious as it impacted on everyday life of all Kenyans.

MINUTE NO. 374 /2013 ADJOURNMENT

There being no other business, the meeting adjourned at Twelve O'clock.

Signed:  Date: 10/3/2014
(Chairperson)

MINUTES OF THE 83RD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON MONDAY, NOVEMBER 02, 2013 IN COMMITTEE ROOM 7, MAIN
PARLIAMENT BUILDINGS AT 2.30 PM

PRESENT:

1. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
2. Hon. John Afuoch Olago, M.P.
3. Hon. Paul Otuoma, M.P.
4. Hon. Mary Keraa Sally, M.P.
5. Hon. Onesmus Njuki, M.P.
6. Hon. Bernard Munyoki Kitungi, M.P.
7. Hon. John M. Nyaga, M.P.
8. Hon. Cornelly Serem, M.P.
9. Hon. Ogutu John Omondi, M.P.
10. Hon. Francis Nyenze Mwanzia, M.P.

ABSENT WITH APOLOGY

1. Hon. Adan Keynan, M.P. – Chairperson
2. Hon. Johana Ngeno, M.P.
3. Hon. Mithika Linturi, M.P.
4. Hon. Irungu Kang'ata, M.P.
5. Hon. Bare Shill, M.P.
6. Hon. Njogu Barua, M.P.
7. Hon. Major (Rtd) John Waluke, M.P.
8. Hon. Wafula Wamunyinyi, M.P.
9. Hon. Sammy Mwaita, M.P.
10. Hon. Adan M. Nooru, M.P.
11. Hon. Abdullswamad Sheriff, M.P.
12. Hon. Chrisanthus Wamalwa, M.P.
13. Hon. Korei Ole Lemein, M.P.
14. Hon. Beatrice Nyaga, M.P.
15. Hon. Dr. Oburu Oginga, M.P.
16. Hon. Mwadeghu Thomas, M.P.
17. Hon. Eng. John Kiragu, M.P.

IN – ATTENDANCE

NATIONAL ASSEMBLY

Mr. Nicholas Emejen – Principal Clerk Assistant I

Mr. Michael Njenga - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr. Charles Nyanyuki - Acting Director
Mr. Obed K. Chweya - Senior Manager

INSPECTORATE OF STATE CORPORATIONS

Mr. Patrick Wandaka - Assistant Inspector General

MINUTE NO. 470/2013 EVIDENCE: KENYA PETROLEUM REFINERIES
LIMITED

The Chief Executive Officer, Kenya Oil Refinerie. Limited, Mr. B. M. Bansal, accompanied by:-

1. Hon. Suleiman Shakombo - Chairman
2. Mr. Stephen Mbui - Chief Finance Officer
3. Ms. Caroline Katuya - Company Secretary, Legal Officer
4. Mr. Stephen Wafula - Senior Economist, Ministry of Energy and Petroleum

appeared before the Committee to give evidence on the auditing of accounts of the refinery by the Auditor General.

MINUTE NO. 471/2013 – EVIDENCE: UNAUDITED ACCOUNTS

The Committee was informed by the Auditor General that the accounts of the Kenya Petroleum Refineries Limited have never been audited by the Auditor General. The accounts were audited by a private auditor appointed by the Bank. The Auditor General is therefore not in a position to comment on the accounts of Refinery.

The Chief Executive Officer, KPRL informed the Committee that the Company had written to the Auditor General on the auditing of its accounts but no reply had been obtained from the Audit Office. KPRL is a private company established under the Companies Act, Cap 486 and not a State Corporation and therefore cannot be audited by the Auditor General. KPRL is a 50:50 joint venture between Essar Energy Overseas Limited and the Government of Kenya and is therefore not a state Corporation as defined by Section 2 of the State Corporations Act, Cap 446. KPRL is owned through the Permanent Secretary, Treasury which is excluded from being termed a State Corporation.

The Committee was further informed that section 89 of the Public Finance Management Act of 2012 requires the National Treasury to submit a consolidated report to the Auditor

General every year and sets out the information required from Government linked Corporations. KPRL has complied with Treasury's request for the requisite information even though it does not fall in the category of such Government linked Corporations.

The Chief Executive Officer also informed the Committee that accounts of the Refinery were audited by a private auditor appointed by the Board of Directors. In the audit, the company has enjoyed unqualified audit reports. The change of auditors could have an impact on the operations and management of the company.

The performance of the company has been on the down trend since the industry switched to the merchant mode. The company has been on shut down since September 4th 2013 since no crude oil has been imported by the marketers.

MINUTE NO. 472/2013 – EVIDENCE: COMMITTEE OBSERVATION

The Committee observed that Article 229 (2) provides that the Auditor General may audit the accounts of any public entity that attracts public funding not withstanding the mandatory entities that the Auditor General must audit.

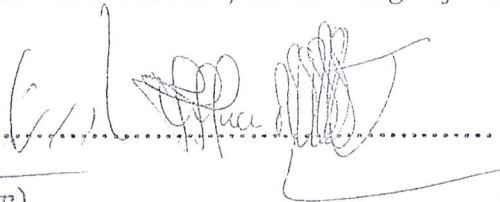
After deliberating on the matter the Committee resolved that:-

- (a) The Auditor General responds to the letter by KPRL
- (b) The Parliamentary legal department gives an opinion on the auditing of the accounts of KPRL by the Auditor General.
- (c) KPRL submits to it a comprehensive report on the performance of the company for the period 2010 to 2012.

MINUTE NO. 473/2013 ADJOURNMENT

There being no other business, the meeting adjourned at Two Minutes past Four O'clock.

Signed:



(Chairperson)

Date:

10/3/2014

MINUTES OF THE 9TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON WEDNESDAY JANUARY 22ND 2014 IN THE MAIN CONFERENCE
ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 3.00 PM

PRESENT:

1. Hon. Adan Keynan, CBS, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Francis Nyenze Mwanzia, M.P.
4. Hon. Korei Ole Lemein, M.P.
5. Hon. Johana Ngeno, M.P.
6. Hon. John Aluoch Olago, M.P.
7. Hon. Mary Keraa Sally, M.P.
8. Hon. Njogu Barua, M.P.
9. Hon. Bernard Munyoki Kitungi, M.P.
10. Hon. Chrisanthus Wamalwa, M.P.
11. Hon. Major (Rtd) John Waluke, M.P.
12. Hon. Cornelly Serem, M.P.
13. Hon. Sammy Mwaita, M.P.
14. Hon. Onesmus Njuki, M.P.
15. Hon. Mithika Linturi, M.P.
16. Hon. Beatrice Nyaga, M.P.

ABSENT WITH APOLOGY

1. Hon. Dr. Oburu Oginga, M.P.
2. Hon. John M. Nyaga, M.P.
3. Hon. Adan M. Nooru, M.P.
4. Hon. Ogutu John Omondi, M.P.
5. Hon. Bare Shill, M.P.
6. Hon. Wafula Wamunyinyi, M.P.
7. Hon. Abdullswamad Sheriff, M.P.
8. Hon. Paul Otuoma, M.P.
9. Hon. Mwadeghu Thomas, M.P.
10. Hon. Irungu Kang'ata, M.P.
11. Hon. Eng. John Kiragu, M.P.

IN – ATTENDANCE NATIONAL ASSEMBLY

Mr. Nicholas Emejen	–	Principal Clerk Assistant I
Mr. Abdullahi Aden	–	First Clerk Assistant
Mr. Joash Kosiba	–	Fiscal Analyst

KENYA PRIVATE SECTOR ALLIANCE (KEPSA)

Mrs. Carol Kariuki	Chief Executive Officer
Mr. Sylvester Makaku	Kenya Association of Manufactures
Eng. James N. Mwayi	KEPSA
Mr. Githinji Ndirangu	Legal Advisor
Mr. Jeoffery Kirui	„ „
Dr. Macharia Irungu	„ „

MINUTE NO. 24/2014 - KENYA PRIVATE SECTOR ALLIANCE (KEPSA)

The officials of KEPSA briefed the Committee as follows:-

- (i) KEPSA is of the view that private investment in the facility to convert it to a storage terminal is critical for the following reasons:-
 - Kenya does not have any strategic storage facilities - It is imperative to note that with KPRL shutdown, Kenya is on average less than 10 days away from a total stock out situation. Any impact on the supply chain e.g. port closure or vessel breakdown could see fuel shortage at airports and at the retail outlets.
 - KPRL has over 400,000m³ worth of storage tanks.
 - This facility is currently underutilized but significant investment is required to ensure direct connectivity with the port facilities and conversion of crude tanks.
- (ii) Apart from being an important strategic national asset, it is expected that with the discovery of oil in Northern Kenya the role of the refinery in the value addition chain will grow when commercial production commences.
- (iii) It is also critical to note that price stabilization is not realizable without strategic national oil reserves.
- (iv) KPRL storage supports feasibility study on building SBM (floating berth) that is currently under process with NOCK.
- (v) LAPSET project proposes a different location for new refinery in line with oil discoveries. KPRL current location does not fit in the planned strategy on refinery location and thus conversion to storage facility seems more viable alternative.
- (vi) Private sector (investors) are in a better position to offer necessary financing and provide more efficient management of the facility.
- (vii) Financing is critical to ensure quick delivery of the facility in light of the aforementioned issues.

(viii) Investment will enhance the competitive position of the facility. Efficient provision of petroleum products heavily relies on the status physical infrastructures for transportation, refining and storage. In this regard, there is need to invest in the oil refinery to enable acquisition of modern technology and infrastructure.

MINUTE NO. 25/2014 - CHALLENGES FACED BY KPRL

The Committee was informed that KPRL was faced with the following challenges:-

- (i) Price - KPRL is unable to compete with products from modern refineries in Western India and Arab Gulf (difference up to Kshs. 10 per litre) due to poor yield patterns.
- (ii) Quality - KPRL technology could not produce fuels that met current industry standards eg. Diesel-KEBS standard is 500ppm while KPRL produced 10,000ppm. The poor quality at the refinery and storage is blamed on infrastructure limitations and old technologies which affect distribution and supplies.
- (iii) Lack of substantive Investment- The outdated technology resulted in refinery inefficiencies including being unable to process all the by-products from crude oil.
- (iv) Historical issues- Independent auditor report shows that KPRL owes Oil Marketers over Kshs. 9 Billion worth of stocks and yields losses of Kshs. 7 Billion.


MINUTE NO. 26/2014 - COMMITTEE OBSERVATIONS

The Committee observed that:-

- (i) There was a need to have a strategic reserve in the country to help address the challenges in storage and enhance security of petroleum supply through the setting up of strategic petroleum reserves.
- (ii) Essar Energy Limited to pay the Government on the environmental hazards caused as a result of refining.
- (iii) A new refinery to be established in Lamu County

MINUTE NO. 27 /2013 - ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Thirty minutes past Four O'clock.

Signed: 
(Chairperson)

Date: 28/1/2014

MINUTES OF THE 10TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON WEDNESDAY JANUARY 23RD 2014 IN THE MAIN CONFERENCE
ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 11.30 AM

PRESENT:

1. Hon. Adan Keynan, CBS, M.P. -- Chairperson
2. Hon. Kimani Ichung'wah, M.P. -- Vice Chairperson
3. Hon. Johana Ngeno, M.P.
4. Hon. John Aluoch Olago, M.P.
5. Hon. Mary Keraa Sally, M.P.
6. Hon. Njogu Barua, M.P.
7. Hon. Bernard Munyoki Kitungi, M.P.
8. Hon. Chrisanthus Wamalwa, M.P.
9. Hon. Major (Rtd) John Waluke, M.P.
10. Hon. Cornelly Serem, M.P.
11. Hon. Sammy Mwaita, M.P.
12. Hon. Onesmus Njuki, M.P.
13. Hon. Mithika Linturi, M.P.
14. Hon. Adan M. Nooru, M.P.
15. Hon. Bare Shill, M.P.
16. Hon. Dr. Oburu Oginga, M.P.
17. Hon. Eng. John Kiragu, M.P.

ABSENT WITH APOLOGY

1. Hon. Francis Nyenze Mwanzia, M.P.
2. Hon. Beatrice Nyaga, M.P.
3. Hon. Korei Ole Lemein, M.P.
4. Hon. John M. Nyaga, M.P.
5. Hon. Ogutu John Omondi, M.P.
6. Hon. Wafula Wamunyinyi, M.P.
7. Hon. Abdullswamad Sheriff, M.P.
8. Hon. Paul Otuoma, M.P.
9. Hon. Mwadeghu Thomas, M.P.
10. Hon. Iruᅅgu Kang'ata, M.P.

IN - ATTENDANCE

NATIONAL ASSEMBLY

Mr. Nicholas Emejien	-	Principal Clerk Assistant I
Mr. Abdullahi Aden	-	First Clerk Assistant
Mr. Joash Kosiba	-	Fiscal Analys

THE AUDITOR GENERAL

Mr. Charles Nanyuki
Mr. Obed K. Chweya

Ag. Director
Senior Manager

NATIONAL OIL CORPORATION

Mrs. Sumayya Athmani C.E.O
Mr. Ken Mugambi S.P.O
Mr. Kamau Mugenda GM Finance

MINUTE NO. 28/2014 NATIONAL OIL CORPORATION OF KENYA

The Management of the National Oil informed the Committee that:-


- (i) Energy and petroleum and undertaken by Deloitte for the period 2002-2012, has shown that the refinery owes OMCs approximately Kshs 16B in yield shifts (downgrading of products from higher yielding to lower yielding products) as well as difference between deemed and actual production. Due to the technological challenge, the refinery also was restricted to processing only one crude type; Murban which is a light form of crude from Abu Dhabi and one of the most premium priced crude oils in the world. Thus the refinery only relied on expensive feedstock which further contributed to high domestic prices.
- (ii) From the above therefore it is evident that in its current state the refinery was a major burden to the economy and it was a matter of time before the competitive nature of the market rendered its continued operation unsustainable.

Upgrade of the Refinery

- (iii) The cost of installing a hydrocracker unit to improve the efficiency of the refinery is approximately USD 1 B. However this being a Brownfield project, even with improved efficiency the refinery would still work within the constraints of the installed (name plate) capacity of 80,000bpd which would still render it uncompetitive in the face of larger refineries in India and Arabian Gulf. To increase capacity, it would require installation of additional modules which push up further the cost of the upgrade. It is also uncertain how newer modules would integrate within a refinery that is five decades old.
- (iv) To cater for the waxy crude types like the Turkana oil, there would be need to provide for heated handling infrastructure such as tanks and pipelines as well as provide for a wax separation unit which would further increase the cost of the upgrade. The total cost of the upgrade would therefore not differ substantially from the average of USD 4-6B required for putting up a Greenfield project of between 120,000bpd to 180,000bpd.

MINUTE NO. 31 /2017 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Fifty Minutes past twelve O'clock.

Signed: 

Date: 28/1/2017

(Chairperson)

- (v) National Oil Corporation believe that this is the main reason why Essar opted out of the refinery upgrade and given the current challenges, any new investors invited by the Government to take over from Essar would come in with a plethora of requirements and pre-commitments from Government that would skew the project to their favour to the detriment of the Government as a shareholder and the country.

Conversion to Storage Terminal

- (vi) Over the last decade only 7 of 90 refinery projects in Africa were completed, this included upgrades and Greenfield refineries. Investment is being channeled to storage and infrastructure. Some of the most recent oil terminal projects planned include oil trader Gunvor which has pledged \$500 million to build a joint fuels trading company in Gabon while Vivo, part owned by Vitol, is investing \$250 million over three years. Addax & Oryx Group also has plans to invest \$400 million. Traders now view terminals as being more useful going forward to meet rising demand than additional small scale refining.
- (vii) The Mombasa refinery has a total storage capacity 455,200m³ out of which 107,000m³ is crude storage while the balance is refined product storage. This translates to 34% of the total storage available in the county and is the single largest storage facility in the region. Converting the refinery into a storage terminal would therefore free up the crude oil storage and release the product storage for use in operational and strategic stocks effectively creating an additional 36 days of stock cover in the country. This would help address the challenges in storage and enhance security of petroleum supply through the setting up of strategic petroleum reserves.
- (viii) In addition converting the refinery into a storage would integrate well with the planned offshore jetty project by National Oil by linking the proposed loading /offloading terminal to the refinery thus removing the immediate need for a new storage facility to be built with the new jetty.

MINUTE NO. 30/2014 COMMITTEE OBSERVATIONS

The Committee observed that: -

- (i) There was a need to have a strategic reserve in the country to help address the challenges in storage and enhance security of petroleum supply through the setting up of strategic petroleum reserves.
- (ii) Essar Energy Limited to pay the government on the environmental hazards caused as a result of the refinery.
- (iii) A new refinery to be established in Lamu County

MINUTES OF THE 12TH SITTING OF THE PUBLIC INVESTMENTS
COMMITTEE HELD ON MONDAY, JANUARY 27TH 2014 IN COMMITTEE
ROOM, 2ND FLOOR, PARLIAMENT BUILDINGS AT 11.00 AM

PRESENT:

1. Hon. Adan Keynan, CBS, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Francis Nyenze Mwanzia, M.P.
4. Hon. Bare Shill, M.P.
5. Hon. Korei Ole Lemein, M.P.
6. Hon. Adan M. Nooru, M.P.
7. Hon. Njogu Barua, M.P.
8. Hon. Bernard Munyoki Kitungi, M.P.
9. Hon. Chrisanthus Wamalwa, M.P.
10. Hon. Sammy Mwaita, M.P.
11. Hon. Onesmus Njuki, M.P.
12. Hon. Mithika Linturi, M.P.
13. Hon. Beatrice Nyaga, M.P.
14. Hon. Eng. John Kiragu, M.P.
15. Hon. Dr. Oburu Oginga, M.P.

ABSENT WITH APOLOGY

1. Hon. Major (Rtd) John Waluke, M.P.
2. Hon. Cornelly Serem, M.P.
3. Hon. Johana Ngeno, M.P.
4. Hon. John Aluoch Olago, M.P.
5. Hon. Mary Keraa Sally, M.P.
6. Hon. John M. Nyaga, M.P.
7. Hon. Ogutu John Omondi, M.P.
8. Hon. Wafula Wamunyinyi, M.P.
9. Hon. Abdullswamad Sheriff, M.P.
10. Hon. Paul Otuoma, M.P.
11. Hon. Mwadeghu Thomas, M.P.
12. Hon. Irungu Kang'ata, M.P.

IN – ATTENDANCE

NATIONAL ASSEMBLY

Mr. Nicholas Emejen	–	Principal Clerk Assistant I
Mr. Abdullahi Aden	–	First Clerk Assistant
Mr. Joash Kosiba	–	Fiscal Analyst

AUDITOR GENERAL

Mr. Charles Nanyuki - Ag. Director
Mr. Obed K. Chweya - Senior Auditor

MINISTRY OF ENERGY AND PETROLEUM

Mr. Davis Chirchir - Cabinet Secretary
Eng. Joseph Njoroge - Principal Secretary
Mr. Martin Heya - Commissioner of Petroleum
Mrs. Jacqueline Rono - M.O.E & P
Mr. Joseph Wafula - Senior Petroleum Economist

MINUTE NO. 35/2014 – CONFIRMATION OF MINUTES

Minutes of the following sitting were confirmed as the true deliberations of the Committee as follows:-

- (i) Minutes of the First Sitting were proposed by Hon. Korei Ole Lemein, M.P. and seconded by Hon. Adan M. Nooru, M.P.
- (ii) Minutes of the Second Sitting were proposed by Hon. Oburu Oginga, M.P. and seconded by Hon. Beatrice Nyagah, MP.
- (iii) Minutes of the Third Sitting were proposed by Hon. Thomas Mwadeghu, M.P. and seconded by Hon. Eng. John Kiragu, M.P.
- (iv) Minutes of the Fourth Sitting were proposed Hon. Francis Nyenze, M.P. and seconded by Hon. Sammy Mwaita, M.P.

MINUTE NO. 36/2014 - EVIDENCE BY THE CABINET SECRETARY, MINISTRY OF ENERGY AND PETROLEUM ON THE RESTRUCTURING OF KPRL

The Cabinet Secretary for Energy and Petroleum appeared before the Committee to adduce evidence on the restructuring of the Kenya Petroleum Refineries Limited. He informed the Committee that:-

- (i) The Kenya Petroleum Refinery Limited was initially a joint venture between GOK (50%), Shell Petroleum Company (17.1%), BP Africa (17.1%) and Chevron Global Energy Inc (15.8%), before incorporation of ESSAR energy who replaced the International Oil Companies.
- (ii) In recognition of the need to upgrade and make the oil refinery competitive, the Cabinet vide Min 15/07 of the meeting held on 3rd may 2007 approved among other things that; the Refinery be modernized, GoK retains 50% shareholding in the Company and that the Minister for Finance and Energy take on board interested investors, on a

competitive basis who would dilute the existing shareholders (BP, Shell and Chevron). The industry shareholders did not wish to have their shares diluted nor take part in the Refinery upgrade programme. They also pointed out the possibility of a joint disposal process and that they would engage an independent consultant to seek offers from the open market.

(iii) From the time of the Cabinet decision, many firms expressed interest in being shareholders in KPRL. These included among others; Petrofac (UK), Oman oil, Essar (India), Bharat petroleum (India), ESSAR Energy Overseas Ltd and Libya oil Holding Company. In September 2007, the industry shareholders decided to collectively dispose their equity to a new investor, through a competitive procurement process. They therefore identified Essar Energy of India to buy their share at US\$10 million (Kshs. 790 million).

(iv) Essar and BP, shell and Chevron entered into share sale and Purchase Agreement dated 20th December 2007. However the Agreement was conditional on GOK renouncing its pre-emptive rights. The amount payable to the three companies were as follows;

Company	No of Shares	Amount in \$
Shell	684,564	3,422,820
BP	684,564	3,422,820
Chevron	630,872	3,154,360
Total	2,000,000	10,000,000

(v) The Independent shareholders consequently requested GoK, to waive its pre-emptive rights in accordance with KPRL's Articles of Association and shareholder agreement to facilitate the sale. The Government was not interested in buying the industry shareholders and therefore waived its pre-emptive rights to acquire the 50% shareholding at a goodwill consideration of US D 11 million but this was bargained downwards following the global economic crisis at the time to USD 2 million.

(vi) Through a parallel initiative the Government had earlier identified Tamoil (Oilibya) as a potential Investor Partner in the Project. This interest was reflected in an MOU signed between Kenya and Libya during His Excellency the President's state visit to Libya in 2007, where Libya oil had expressed interest to support GOK in the following projects;

- The Refinery upgrade project,
- The New Mombasa Nairobi oil Pipeline
- LPG import and storage project in Mombasa

- (vii) In order to give the two parties a fair opportunity in participating in the process the Permanent Secretary, Ministry of Energy sent out a term sheet vide letter ref ME/CONF/7/1/11. Vol XII dated 21st January 2008, to Essar and Libya Oil Holding Co, setting the criteria to be used in selecting the new shareholder. Among the terms was a consideration of US\$ 15 million in exchange of goodwill and renunciation of its pre-emptive rights.
- (viii) The negotiation between the GOK and the two prospective shareholders individually culminated to a decision by the Government to offer to them two equal shares of 25% of the 50% of the international Oil Company's (IOC's) share. Subsequently in a meeting held on 13th August 2008, between the GoK and prospective shareholders (Oil Libya & Essar) it was agreed that both Essar and Libya Oil share the 50% equity equally, fast track the upgrade and both of them to provide financing.
- (ix) Subsequently oil Libya backed out and Essar was left as the only interested bidder. The three industry shareholders entered into a share sale and purchase agreement and Essar purchased the shares at USD 5 million down from USD 10 million.
- (x) The Government was not interested in purchasing the 50% shareholding from the industry shareholders and therefore did not wish to exercise its pre-emptive right and instead chose to waive this right in exchange for a consideration of USD 11 million but due to global economic problems and the delay in the negotiations the offer was negotiated downwards to USD 2 million.
- (xi) The Government entered into a share agreement with Essar with the major objective of upgrading and modernizing the refinery. The share agreement also provided that should Essar opt out, then the Government will pay an amount of USD 5 million being the amount that Essar had paid to the three industry shareholders when it purchased the 50% shareholding.
- (xii) Due to the high cost of processing crude oil at the refinery the oil marketing companies pushed for a transition from tolling mode to merchant arrangement. On commencement of the merchant mode KPRL secured a loan from Standard Chartered Bank Limited of USD 350 million to procure crude oil, process and sell refined products but because of the high cost some of the products have not been lifted from KPRL to date. The Oil marketing Companies are seeking Kshs. 7.1 billion from KPRL.
- (xiii) KPRL constructed a 9.2 MW captive power plant at a cost of USD 14 million but the cost escalated beyond what was approved and the cost of the energy was expensive compared to the National Grid.

(xiv) Essar Energy Overseas Limited was registered in Mauritius 2007.

(xv) There are no legal requirements for Essar to clean up the environment. When it purchased the 50% shareholding Essar took up the responsibilities of the industry shareholders then.

(xvi) Kenya imports all its petroleum requirements and its annual consumption is approximately 4.1 million tones. Prior to deregulation in 1994, the Kenya Petroleum Refineriès Limited (KPRL) was fully protected through the "white Oil Rule" clause where Oil marketing Companies (OMCs) processed crude oil to meet all the white oil requirements.

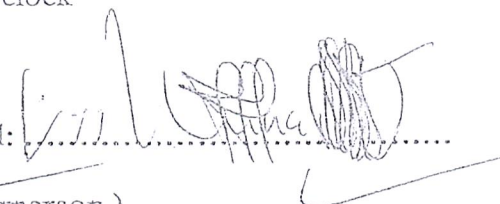
MINUTE NO. 37/2014 - COMMITTEE OBSERVATIONS

The Committee observed that:-

- (i) There was a need to have a strategic reserve in the country to help address the challenges in storage and enhance security of petroleum supply through the setting up of strategic petroleum reserves.
- (ii) Essar Energy Overseas Limited to pay the Government on the environmental hazards caused as a result of refining.
- (iii) A new refinery to be established preferable in the Coastal region in Lamu.

MINUTE NO. 38/2013 - ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at fifty minutes past one O'clock

Signed: 
(Chairperson)

Date: 15/2/2014

MINUTES OF THE 13TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON MONDAY, JANUARY 27TH 2014 IN THE MAIN CONFERENCE,
COUNTY HALL, PARLIAMENT BUILDINGS AT 3.00 PM

PRESENT:

1. Hon. Adan Keynan, CBS, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Korei Ole Lemein, M.P.
4. Hon. Adan M. Nooru, M.P.
5. Hon. Njogu Barua, M.P.
6. Hon. Bernard Munyoki Kitungi, M.P.
7. Hon. Chrisanthus Wamalwa, M.P.
8. Hon. Onesmus Njuki, M.P.
9. Hon. Mithika Linturi, M.P.
10. Hon. Beatrice Nyaga, M.P.
11. Hon. Eng. John Kiragu, M.P.
12. Hon. Dr. Oburu Oginga, M.P.
13. Hon. Mwadeghu Thomas, M.P.

ABSENT WITH APOLOGY

1. Hon. Sammy Mwaita, M.P.
2. Hon. Francis Nyenze Mwanzia, M.P.
3. Hon. Bare Shill, M.P.
4. Hon. Major (Rtd) John Waluke, M.P.
5. Hon. Cornelly Serem, M.P.
6. Hon. Johana Ngeno, M.P.
7. Hon. John Aluoch Olago, M.P.
8. Hon. Mary Keraa Sally, M.P.
9. Hon. John M. Nyaga, M.P.
10. Hon. Ogutu John Omondi, M.P.
11. Hon. Wafula Wamunyinyi, M.P.
12. Hon. Abdullswamad Sheriff, M.P.
13. Hon. Paul Otuoma, M.P.
14. Hon. Irungu Kang'ata, M.P.

IN – ATTENDANCE

NATIONAL ASSEMBLY

Mr. Nicholas Emejen	–	Principal Clerk Assistant I
Mr. Abdullahi Aden	-	First Clerk Assistant
Mr. Joash Kosiba	–	Fiscal Analyst

AUDITOR GENERAL

Mr. Charles Nanyuki - Ag. Director
Mr. Obed K. Chweya - Senior Auditor

MINUTE NO. 39/2014 - EVIDENCE BY THE PRINCIPAL SECRETARY, THE NATIONAL TREASURY ON KPRL

The Principal Secretary for the National Treasury, Dr. Kamau Thugge appeared before the Committee to adduce evidence on the restructuring of Kenya Petroleum Refineries Limited. He informed the Committee that:-

- (i) The Kenya Petroleum Refinery Limited was initially a joint venture between GoK (50%), Shell Petroleum Company (17.1%), BP Africa (17.1%) and Chevron Global Energy Inc (15.8%).
- (ii) In recognition of the need to upgrade and make the oil refinery competitive, the Cabinet vide Min 15/07 of the meeting held on 3rd may 2007 approved among other things that; the Refinery be modernized, GoK retains 50% shareholding in the Company and that the Ministers for Finance and Energy respectively take on board interested investors, on a competitive basis who would dilute the existing shareholders (BP, Shell and Chevron). The industry shareholders did not wish to have their shares diluted nor take part in the Refinery upgrade programme. They also pointed out the possibility of a joint disposal process and that they would engage an independent consultant to seek offers from the open market.
- (iii) Many firms expressed interest in being shareholders in KPRL. These included; Petrofac (UK), Oman oil, Essar (India), Bharat Petroleum (India), Essar Energy Overseas Ltd and Libya oil Holding Company. In September 2007, the industry shareholders decided to collectively dispose their equity to a new investor, through a competitive procurement process.
- (iv) Essar and BP, shell and Chevron entered into share sale and Purchase Agreement dated 20th December 2007. However the Agreement was conditional on GoK renouncing its pre-emptive rights. The amount payable to the three companies were as follows;

Company	No of Shares	Amount in \$
Shell	684,564	3,422,820
BP	684,564	3,422,820
Chevron	630,872	3,154,360
Total	2,000,000	10,000,000
- (v) The Independent shareholders consequently requested GoK, to waive its pre-empty rights in accordance with KPRL's Articles of Association and shareholder agreement to facilitate the sale. The Government was not interested in buying the industry

shareholders shares and therefore waived its pre-emptive rights to acquire the 50% shareholding at a goodwill consideration of US D 11 million but this was bargained downwards following the global economic crisis at the time to USD 2 million.

- (vi) Through a parallel initiative the Government had earlier identified Tamoil (Oilibya) as a potential Investor Partner in the Project. This interest was reflected in an MOU signed between Kenya and Libya during His Excellency the President's state visit to Libya in 2007, where Libya oil had expressed interest to support GoK in the following projects;
 - (a) The Refinery upgrade project,
 - (b) The New Mombasa Nairobi oil Pipeline
 - (c) LPG import and storage project in Mombasa

- (vii) In order to give the two parties a fair opportunity in participating in the process the Permanent Secretary, Ministry of Energy sent out a term sheet vide letter ref ME/CONF/7/1/11. Vol XII dated 21st January 2008, to Essar and Libya Oil Holding Co, setting the criteria to be used in selecting the new shareholder. Among the terms was a consideration of US\$ 15 million in exchange of goodwill and renunciation of its pre-emptive rights.

- (viii) The negotiation between the GoK and the two prospective shareholders individually culminated to a decision by the Government to offer to them two equal shares of 25% of the 50% of the international Oil Company's (IOC's) share. Subsequently in a meeting held on 13th August 2008, between the GoK and prospective shareholders (Oil Libya & Essar) it was agreed that both Essar and Libya Oil share the 50% equity equally, fast track the upgrade and both of them to provide financing.

- (ix) Subsequently oil Libya backed out and Essar was left as the only interested bidder. The industry stakeholders therefore identified Essar Energy of India to buy their shares at US\$10 million (Kshs. 790 million), this later came down to USD 5 million. The three industry shareholders entered into a share sale and purchase agreement and Essar purchased the shares at USD 5 million.

- (x) The Government was not interested in purchasing the 50% shareholding from the industry shareholders and therefore did not wish to exercise its pre-emptive right and instead chose to waive this right in exchange for a consideration of USD 11 million but due to global economic problems and the delay in the negotiations the offer was negotiated downwards to USD 2 million.

- (xi) The Government entered into a share agreement with Essar with the major objective of upgrading and modernizing the refinery. The share agreement also provided that should Essar opt out, then the Government will pay an amount of USD 5 million being the

amount that Essar had paid to the three industry shareholders when it purchased the 50% shareholding.

- (xii) Due to the high cost of processing crude oil at the refinery the oil marketing companies pushed for a transition from tolling mode to merchant arrangement. On commencement of the merchant mode KPRL secured a loan from Standard Chartered Bank Limited of USD 350 million to procure crude oil, process and sell refined products but because of the high cost some of the products have not been lifted from KPRL to date. The Oil marketing Companies are seeking Kshs. 7.1 billion from KPRL.
- (xiii) KPRL constructed a 9.2 MW captive power plant at a cost of USD 14 million but the cost escalated beyond what was approved and the cost of the energy was expensive compared to the National Grid.
- (xiv) Essar Energy Overseas Limited was registered in Mauritius 2007. Treasury however deals with Essar India.
- (xv) There are no legal requirements for Essar to clean up the environment. When it purchased the 50% shareholding Essar took up the responsibilities of the industry shareholders then.
- (xvi) Essar is now desirous of exiting KPRL under the exit clause whereby the Government will be required to pay out Essar USD 5 million. The Government is in negotiations with Essar. It will ensure that employment rights of the workers are protected.

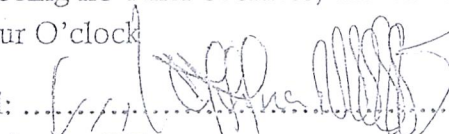
MINUTE NO. 40/2014 - COMMITTEE OBSERVATIONS

The Committee observed that:-

- (i) There was a need to have a strategic reserve in the country to help address the challenges in storage and enhance security of petroleum supply through the setting up of strategic petroleum reserves.
- (ii) Essar Energy Limited to pay the government on the environmental hazards caused as a result of refining.
- (iii) A new refinery to be established preferable in the Coastal region in Lamu rather than the proposed Isiolo refinery.
- (iv)

MINUTE NO. 41/2014 - ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at thirty five minutes past four O'clock

Signed: 

Date: 28/2/2014

(Chairperson)

MINUTES OF THE 20TH SITTING OF THE PUBLIC INVESTMENTS
COMMITTEE HELD ON WEDNESDAY FEBRUARY 5TH, 2014 IN COMMITTEE
ROOM, 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT
2.30 PM

1. Hon. Adan Keyman, CBS, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Korei Ole Lemein, M.P.
4. Hon. John Aduoch Olago, M.P.
5. Hon. Bernard Munyoki Kitungi, M.P.
6. Hon. Major (Rtd) John Waluke, M.P.
7. Hon. Bare Shill, M.P.
8. Hon. Mwachugu Thomas, M.P.
9. Hon. Cornelly Serem, M.P.
10. Hon. Adan M. Nooru, MBS, M.P.
11. Hon. Njogu Barua, M.P.
12. Hon. Dr. Paul Otuoma, M.P.
13. Hon. Chrisanthus Wamalwa, M.P.
14. Hon. Mithika Linturi, M.P.

ABSENT WITH APOLOGY

1. Hon. Eng. John Kiragu, M.P.
2. Hon. Nyagah M. Jonh, MP
3. Hon. Wafula Wamunyinyi, M.P.
4. Hon. Francis Nyenze Mwanzia, M.P.
5. Hon. Onesmus Njuki, M.P.
6. Hon. Mary Keraa Sally, M.P.
7. Hon. Ogutu John Omondi, M.P.
8. Hon. Johana Ngeno, M.P.
9. Hon. Sammy Mwaita, M.P.
10. Hon. Dr. Oburu Oginga, M.P.
11. Hon. Abdullswamad Sheriff, M.P.
12. Hon. Irungu Kang'ata, M.P.
13. Hon. Beatrice Nyaga, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

Mr. Abdullahi Aden - First Clerk Assistant
Mr. Joash Kosiba - Fiscal Analyst

AUDITOR'S GENERAL OFFICE

Mr. Charles Nyanyuki - Ag Director
Mr. Obed K. Chweya - Senior auditor

MINUTE NO. 52/2014 - EVIDENCE BY HON. GOVERNOR JOHN MRUTTU

Governor John Mruttu appeared before the Committee in his capacity as a former Chief Executive Officer of KPRL, to adduce evidence on the restructuring of Kenya Petroleum Refinery Limited. He informed the Committee that:-

- (i) The Kenya Petroleum Refineries Limited was originally set up by Shell and the British Petroleum Company BP to serve the East African region in the supply of a wide variety of oil products. The Company was incorporated in 1960, under the name East African Oil Refineries Limited. The first refinery complex which has distillation, hydrotreating, catalytic reforming and bitumen production units was commissioned in 1963. The second refinery train was commissioned in 1974 and also has distillation, hydrotreating and reforming units.
- (ii) KPRL is a privately owned limited liability company. The Government of Kenya (GOK) owns 50% of the company's equity and the other 50% is held by Essar Energy Overseas Limited.
- (iii) In 2009 shell, BP and Chevron exited and sold their 50% shareholding to Essar Energy Overseas Limited.
- (iv) Two thirds of the employees at KPRL will loose their jobs if the facility is converted to a storage terminal. There was an elaborate monitoring in the movement of oil both inside and outside the refinery to address environmental concerns. An environmental audit has been undertaken at the refinery by National Environment Management Authority (NEMA) and other external agencies from Europe.
- (v) Lack of advanced technology has contributed to the losses at Kenya Petroleum Refineries Limited hence the refinery cannot compete with other refineries in the world. All the other refineries in the world have captive power plant and thus the need to have one at KPRL.

MINUTE NO.53/2014 - COMMITTEE OBSERVATIONS

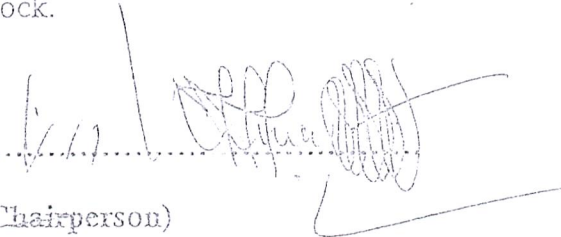
The Committee observed that:-

- (a) There was a need to have a strategic reserve in the country to help address the challenges in storage and enhance security of petroleum supply through the setting up of strategic petroleum reserves.

- (b) Essar Energy Overseas Limited should pay the Government for the environmental hazards caused as a result of the oil refining activities.
- (c) Essar Energy Overseas Limited Mauritius is a well-connected offshore company owned by influential Kenyans.
- (d) The issue of KPRL has resulted to the escalation of oil prices in the country.

MINUTE NO. 54/2013 - ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at thirty minutes past four O'clock.

Signed:  (Chairperson)

Date: 29/3/2014

MINUTES OF THE 45TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON SATURDAY MARCH 29TH 2014, IN MOMBASA CONTINENTAL
HOTEL, IN MOMBASA AT 2.30 PM

PRESENT:

1. Hon. Adan Keynani, CBS M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Francis Nyenze Mwanzia, M.P.
4. Hon. Major (Rtd) John Waluke, M.P.
5. Hon. Bare Shill, M.P
6. Hon. Adan M. Nooru, MBE, M.P.
7. Hon. Chrisanthus Wamalwa, M.P
8. Hon. Mary Keraa Sally, M.P.
9. Hon. Wafula Wamunyinyi, M.P.
10. Hon. Abdullswamad Sheriff, M.P.
11. Hon. John M. Nyaga, M.P
12. Hon. Dr. Paul Otuoma, EGH, M.P.
13. Hon. Beatrice Nyaga, M.P.
14. Hon. Cornelly Serem, M.P
15. Hon. Dr. Oburu Oginga, M.P
16. Hon. John Aluoch Olago, M.P.
17. Hon. Johana Ngeno, M.P.
18. Hon. Onesmus Njuki, M.P.
19. Hon. Mithika Linturi, M.P
20. Hon. Mwadeghu Thomas, M.P.
21. Hon. Irungu Kang'ata, M.P
22. Hon. Bernard Munyoki Kitungi, M.P
23. Hon. Eng. John Kiragu, M.P.
24. Hon. Njogu Barua, M.P.

ABSENT WITH APOLOGY

1. Hon. Sammy Mwaita, M.P.
2. Hon. Korei Ole Lemein, M.P.
3. Hon. Ogutu John Omondi, M.P.

IN – ATTENDANCE

NATIONAL ASSEMBLY

Mr. Nicholas Emejen	Principal Clerk Assistant I
Mr. Abdullahi Aden	First Clerk Assistant
Mr. Joash Kosiba	Fiscal Analyst

AUDITOR GENERAL

Mr. Ronald Bichanga – Auditor

Mr. Anthony Waiganjo – Auditor

MINUTE NO. 102/ 2014 - CONFIRMATION OF MINUTES

Minutes of the following sitting were confirmed and signed as the true deliberations of the committee:-

- (i) Minutes of the 18th Sitting held on Monday 3rd February, 2014 were proposed by Hon. Aden Noor, MBS, MP and seconded by Hon. Major (Rtd) John Waluke, MP.
- (ii) Minutes of the 19th Sitting held on Wednesday 5th February at 10.00 am were proposed by Hon. Dr. Paul Otuma, EGH, MP and seconded by Hon. Aden Noor, MBS, MP.
- (iii) Minutes of the 20th sitting held Wednesday 5th February, 2014 at 2.30 pm were proposed by Hon. Njogu Barua, MP, and seconded by Hon. Dr. Paul Otuma, EGH, MP.
- (iv) Minutes of the 21st Sitting held on Thursday 6th February, 2014 were proposed by Hon. Aden Noor, MBS, MP and seconded by Hon. Njogu Barua, M.P.
- (v) Minutes of the 22nd Sitting held on Tuesday 11th February, 2014 at 11.30 am were proposed by Hon Mary Keraa Sally, MP and seconded by Hon. Eng John Kiragu, MP.
- (vi) Minutes of the 23rd Sitting held on 12th February 2014 at 10.00 am were proposed by Hon. Dr. Paul Otuma, EGH, and MP and seconded by Hon. Mary Keraa Sally, MP.
- (vii) Minutes of the 24th sitting held on 12th February 2014 at 3.00 pm were propose by Hon. Dr. Paul Otuma, EGH, MP and seconded by Hon. Mary Keraa Sally, MP.
- (viii) Minutes of the 25th Sitting held on 13th February 2014 at 10.00 am were proposed by Hon. Mary Keraa Sally, MP and seconded by Hon. Francis Nyenze Mwanzia, M.P.
- (ix) Minutes of the 26th Sitting held on 13th February 2014 at 11.30 am were proposed by Hon. Major (Rtd) John Waluke, MP and Hon. Eng. John Kiragu, MP.
- (x) Minutes of the 27th Sitting held on 13th February at 3.00 pm were proposed by Hon. Aden Noor, MBS, MP and seconded by Hon. Eng. John Kiragu, MP.

MINUTE NO. 104/2014 - ADOPTION OF THE REPORT ON THE
RESTRUCTURING OF KENYA PETROLEUM
REFINERIES LIMITED

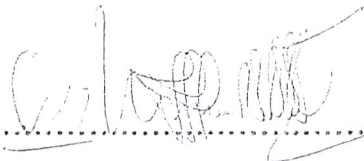
The Committee considered its Report on the restructuring of Kenya Petroleum Refineries Limited Report and unanimously adopted it after being proposed by Hon. (Rtd) Major John Waluke, MP and seconded by Hon. Beatrice Nyagah, MP

MINUTE. NO 105/2014 ANY OTHER BUSINESS

The Committee further resolved to undertake a report writing retreat on the Standard Gauge Railway Tender and the Tassia II Infrastructural Development Project at Salt Lake Hotel in Taita Taveta County from Monday April 14th to 17th 2014 .

MINUTE NO. 106 /2014 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at thirty Minutes past five O'clock.

Signed: 

Date: 29/3/2014

(Chairperson)

ANNEXES

AMBIENT

SECRET

~~SECRET~~ (8)

REPUBLIC OF KENYA

(1)

CABINET OFFICE
NAIROBI

To: PS - Energy ✓

PS - Finance

AMF - Jne
9/6/07

CABINET

The Secretary to the Cabinet has the honour to enclose the undermentioned Action
Extract from the Minutes of the meeting held on 3rd May, 2007

Minute No. 15/07

Subject The Proposed Modernization of the Kenya Petroleum
Refineries Limited

Memorandum No. CAB(07)16

Copies have also been sent to:—

SECRET

The Minister for Energy and the Minister for Finance jointly presented Cabinet Memorandum CAB(07)16, which sought to apprise the Cabinet on the competitive challenges facing the

SECRET

Kenya Petroleum refineries Limited in Mombasa and to raise the required investment funding amounting to US\$322 million.

Cabinet was informed that the Refinery is facing critical competition as well as commercial and environmental challenges. Though it has a design capacity of 4 million tonnes of crude oil per annum, it is only processing 1.6 million tonnes. This is 40% utilization. Moreover, the simple technical configuration of the facility does not produce unleaded gasoline in a cost effective manner and therefore the products become uncompetitive with import products.

It has been determined from various economic and design studies that the interests of Kenya and the region will best be served by making the refinery a competitive one instead of closing it down and importing all petroleum products. This is more so on national security considerations of oil supply.

The proposed Kenya Petroleum Refineries Ltd modernization programme has three major components which are estimated to cost US\$322 million (Kshs.22.540 billion) as follows:-

- (i) Upgrading and clean fuels investments - US\$203 million (Kshs.14.210 billion).
- (ii) Low Pressure Gas (LPG) importation, storage and, rail and road loading facilities - US\$45 million (Kshs.3.150 billion).



SECRET

- (iii) First phase of the terminal facilities – US\$ 22million (Kshs.1.540 billion).
- (iv) Financing charges and interest during construction – US\$52 million (Kshs.3.640 billion).

The Minister for Energy informed Cabinet that the Cabinet Committee on Economic Management discussed and endorsed the proposal on February 6, 2007. It is also noted that the Government is the major shareholder in the Refinery with 50% shareholding. The other shareholders are British Petroleum Company (BP) 17.1%; Shell Petroleum Company 17.1% and Chevron Global Energy Inc. 15.8 %.

The best financing option is for the current shareholders to take up some substantial new equity in which case the GOK retains its majority shares of 50% which is vital for both strategic and security reasons. New investors will provide the bulk of the finances in form of equity.

Cabinet **considered** the contents of the Memorandum and **approved** that:

- i) The three components of the KPRL modernization programme, namely: process upgrading, LPG import and storage facilities and multi-products terminal, be implemented concurrently to meet the completion deadline of December 2009.
- ii) GoK retains its 50% shareholding in KPRL.



SECRET

- iii) The Ministers for Energy and Finance were mandated to take on board interested investors, on a competitive basis, in the refinery upgrade project. The new investors will dilute the equity holding of the existing private shareholders.
- iv) The Government, through the Treasury, contributes approximately Kshs.3.64 billion as its equity portion needed for the refinery upgrade in three installments beginning this financial year 2006/2007. For the financial year 2006/2007, a token contribution of Kshs.50 million be made.

The Minister for Energy and the Minister for Finance to take necessary action.

*ACTION: The Minister for Energy.
The Minister for Finance.*



MINISTRY OF ENERGY

Telegrams: "MINPOWER", Nairobi
Telephone: Nairobi 310112
Fax: 240910
Telex: MINERGY
When replying please quote

NYAYO HOUSE
P. O. Box 30582
NAIROBI



Date: 21st January, 2008

Ref. No. ME/CONF/7/1/II Vol.XI

Mr. Raj K. Varma
Essar House,
11, Keshavrao Khadye Marg,
Mahalaxmi, MUMBAI - 400 034
India



Dr. Ali Shamekh
Chairman and CEO
Libya Oil Holdings Co.
PORT LUIS
Republic of Mauritius

Mr. Kingari

*This is good.
Let us follow up
for a new investor*

Dear *Esther*

EXERCISE/RENUNCIATION OF GOK'S PRE-EMPTION RIGHTS
IN KPRL

*to PM
& MF*

*Re
reports
2/1*

The Government has decided that the replacement of the existing industry shareholders in KPRL by a new investor committed to accelerating modernization of the refinery has to be done on a competitive basis. In various correspondences, you have expressed differing terms on which you would wish to be selected as the new shareholder in KPRL. In order to harmonise this process and make it more transparent, the Government has set out criteria to be used in selecting the new shareholder. These criteria are set out in the attached term sheet.

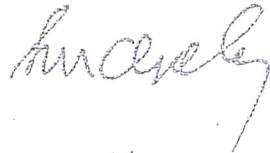
The purpose of this letter is to request each of you to comprehensively respond to the terms and conditions set out therein and revert back by 31st January, 2008.

It should be understood that whoever is selected has to meet the terms agreed between the industry shareholders and Essar Energy Overseas Limited as per their purchase and sale agreement. (copy attached)

N

In the event that it is Libya Oil Holdings Co. that is selected, it has to provide the funds upfront to enable the Government exercise its pre-emption rights in their favour. However, if it is Essar Energy Overseas Limited that is selected, then the Government will renounce its pre-emption rights in their favour.

We shall be happy to answer any questions or provide any clarification that you may require before the January 31, 2008 deadline.

Yours 

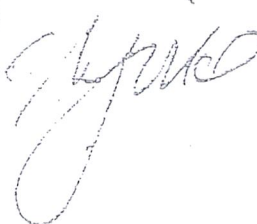
Patrick M. Nyoike, CBS
PERMANENT SECRETARY

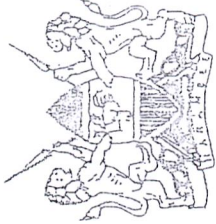
Copy to: Hon. Amos Kimunya, EGH, MP
Minister for Finance
Treasury Building
NAIROBI

Hon. Kiraitu Murungi, EGH, MP
Minister for Energy
Nyayo House
NAIROBI

Mr. Joseph Kinyua, CBS, EBS
Permanent Secretary
Ministry of Finance
NAIROBI

✓ Ms. Esther Koimett, EBS
Investment Secretary
Ministry of Finance
Treasury Building
NAIROBI





HEADING	DETAILS / REQUIREMENTS	YES	NO	RESPONSE/ COMMENTS
GOK DECISION	<ol style="list-style-type: none"> 1. Government will retain 50% shareholding in KPRL. 2. The new investor has to share the GoK's vision for KPRL which is to:- <ul style="list-style-type: none"> - enhance security of supply of Petroleum products at least cost; - transfer of skills and knowledge to Kenyans; and - generate a decent return on investment. 3. Industry shareholders have received an offer which constitutes the minimum that any other investor has to match. (see attached document for reference) 4. Any new shareholder has to participate in the modernization projects in KPRL, specifically the upgrading and the LPG project. 			
REVISION OF ARTICLES OF ASSOCIATION AND SHAREHOLDERS AGREEMENT	<ol style="list-style-type: none"> 5. ARTICLES OF ASSOCIATION have to be altered to reflect the changed number of shareholders in KPRL. 6. The Articles of Association and the shareholders agreement have to be changed to ensure that there is no deadlock in decision making that paralyses the business operations of KPRL as follows:- <ol style="list-style-type: none"> (a) Articles 4, 41, 22, 90, 105, 128 of the Articles of Association and any other existing or new articles as the parties may deem necessary. (b) Articles I, III, IV, V, IX, XI, of the Shareholders Agreement and any other existing or new articles as the parties may deem necessary. 			

HEADING	DETAILS / REQUIREMENTS	YES	NO	RESPONSE/ COMMENTS
<p>REQUIREMENTS FOR FINANCING THE MODERNIZATION OF KPRL</p>	<p>The new shareholders (s) have to:-</p> <ol style="list-style-type: none"> 7. Raise their share of proportion of project financing required of shareholders currently set at 25% for upgrade of KPRL. 8. Arrange on behalf of KPRL debt financing currently set at 75% of the capital expenditure of the project financing at a rate of LIBOR + 1.5% per annum for upgrade project construction period, including a moratorium during construction period, plus 6-12 months after project commissioning date. This is by way of project financing which is to be secured on the strength of the cash flows from the project. 9. A firm commitment to the implementation plans and scheduling of KPRL's major capital projects including the upgrade and the LPG storage facility. The schedule for the upgrading project assumes commissioning is 39 months after the receipt of the shareholders' contributions. 10. Provide proof of experience in financing projects of the magnitude that KPRL is about to embark on. 11. All contracts to be competitively and transparently procured. 12. GoK will protect the investment in the modernization projects in form of:- <ol style="list-style-type: none"> (i) Guaranteed throughput for at least the period of loans repayment, and (ii) Existing excise tax incentives vis-à-vis imported products will remain in force until the loans are repaid. 13. On their part, the new investors have to pay to GoK a consideration of at least US\$15 Million in exchange of its good will and renunciation of its preemption rights. 14. Provide proof of running Refinery (ies) more complex than the current KPRL. 			
<p>PROTECTION</p>				
<p>GOODWILL</p>				
<p>EXPERIENCE</p>				

ANNEX 3

REPUBLIC OF KENYA

MINISTRY OF FINANCE



Telegraphic Address: 22921
FINANCE-NAIROBI
FAX NO. 213524
Telephone: 252299
When replying please quote



THE TREASURY

P.O. Box 30007

NAIROBI

Ref: ZZ 12/02/B

Date: 14th March 2008

Mr. Xiaolin Yuan
BP Africa Limited
Chertsey Road
Sunbury on Thames
Middlesex, TW16 7BP
Fax: 44 1932 774242

Mr. Keith Bloomster
Chevron Global Energy Inc
6001 Bollinger
Canyon Road, San Ramon
CA 94583 - 2324
Fax: 1866 876 8891
UNITED STATES

Mr. Martin Dickson
Senior Portfolio Project Leader
The Shell Petroleum Company
Shell Centre, London SE1 7NA
Fax: 44 20 7021 3023
LONDON

Dear *Sims*

Re: Request for Waiver of Pre-emption Rights

The Government as the 'A' Shareholder of Kenya Petroleum Refineries Limited has reviewed the request contained in your letter of 20th December 2007.

Having done our due diligence, we decline to unconditionally renounce our rights of pre-emption on the terms contained in your letter. We would, however, be

1-25 2014

willing to renounce our rights provided that our due diligence satisfies us that the party in the Share Sale and Purchase Agreement is acceptable to ourselves.

We have noted the absence of an initial offer to ourselves as stipulated under Article 22 of the Articles of Association. We await your formal offer in accordance with that Article.

Thank you for your cooperation on this matter.

Yours Sincerely


E. KOMETT
For: PERMANENT SECRETARY/TREASURY

CC. Hon. Kiraitu Murungi, EGH, MP
Minister for Energy
Ministry of Energy
NAIROBI

Hon. Amos Kimunya, EGH, MP
Minister for Finance
Ministry of Finance
Treasury Building
NAIROBI

Hon. S. Amos Wako
Attorney General
State Law Office
NAIROBI

Joseph Kinyua, CBS
Permanent Secretary/Treasury
Treasury Building
NAIROBI

Mr. Patrick M. Nyoike, CBS
Permanent Secretary
Ministry of Energy
NAIROBI



(A)

THE REPUBLIC OF KENYA

MINUTES OF THE MEETING BETWEEN GOVERNMENT OF KENYA
AND PROSPECTIVE SHAREHOLDERS IN KENYA PETROLEUM
REFINERIES LIMITED (KPRL) - ESSAR ENERGY OVERSEAS
LIMITED AND LIBYA OIL HOLDINGS LIMITED ON 13TH AUGUST,
2008

PRESENT

Patrick Nyoike	PS Energy	Chairing
Esther Koimett	Investment Secretary, Treasury	
Festus Kingori	Treasury	
Protus Sigei	Treasury	
B. Khadiagala	MOE	
Kamel Jamaz	Libya Oil	
Muftah Nageh	Libya Oil	
Stephen Kiiyuru	Libya Oil	
Philip G. Nderitu	Libya Oil	
Dr. M. Irungu	Libya Oil	
Aramai Aidkhakhui	Libya Oil	
Joe Kamau	Libya Arab Investment Portfolio	
Raj K. Varma	Essar Energy Overseas Limited	
Ifiy Nasir	Essar Energy	
Sudip Rungta	Essar Energy Group	
J. G. Kageenu	KPRL, Chairman	
John Mruttu	KPRL	
Anthony Munyao	KPRL	
C. Katisya	KPRL	

CONFIDENTIAL

PS Energy welcomed those in attendance and invited the meeting to adopt the agenda. He stated that there was need to upgrade the refinery in order to make it competitive. The following agenda was adopted:

Agenda of the meeting:

	Item	Action party
1.	Introduction and opening remarks	Investment Secretary (IS)
2.	Introduction and opening remarks	New Investors
3.	Management Presentation	GM, KPRL
4.	Discussion on way forward a) Shareholding aspects b) KPRL strategic plan	ALL

1. Introductory Remarks by Investment Secretary Treasury.

The Investment Secretary, Ms E. Koimett stated that GOK intends to have the process of divestiture by the three existing private (industry) shareholders finalized by end of August, 2008. The three shareholders (BP, Chevron and Shell) were eager to have the process concluded quickly. Consistent with this position, the purpose of the meeting was twofold:

- a) To examine the process of entry of the investors and resolve any issues arising thereof
- b) To bring both Essar Energy and Libya Oil together to quickly close out the sale process and facilitate the exit of current industry shareholders.

Mrs. Koimett stated that the process by the private shareholders to sell their equity in KPRL to Essar Energy and for GOK to have Libya Oil bid for the private shareholders' equity had been going on concurrently. She stated that the

aim of the meeting was to consolidate these two processes on the following basis:

1. The 50% private equity to be shared equally between Essar and Libya Oil at 25% each.
2. To have a common vision to fast track the refinery upgrade in order to make KPRL's products competitive with imported products.
3. To provide financing for the upgrade project based on debt and equity ratio of 75%:25%, on a fast track basis.
4. To agree on financing as offered by Libya Oil and Essar Energy
5. Review the entry Deed of Agreement – which contains the key commitments required.

2. Introductory Remarks by Libya Oil

Mr. M. Nageh briefly described the business interests of Libya Oil and stated that the MOU between the Governments of Libya and GOK signed in June 2007 in Libya clearly indicated the commitment of Libya Oil in investing in the refinery upgrade.

Mr. K. Jarnaz reiterated that the initial negotiations envisaged buying fifty per cent of the KPRL shareholding. He pointed out that the financing terms offered earlier by Libya Oil will not be provided in view of the reduction of their stake to 25%. The debt finance will have to be raised commercially through a transaction advisor appointed by the three parties.

Libya Oil is agreeable to the 25%: 25% arrangement with Essar Energy. However, once the upgrade of the refinery commences, all the three partners should hold equal shares.

Libya Oil required to have the feasibility study undertaken by Foster Wheeler reviewed and the refinery infrastructure assessed. However, Libya Oil is committed to upgrading the refinery for the benefit of the country and the region. The review process will take at most four (4) months and will include a

CONFIDENTIAL

provision for either enhancing the current rated design capacity of processing 4.1 million tonnes annually or sustaining it. The option recommended by Foster Wheeler for capacity reduction to 2.8 million tonnes was not acceptable.

3. Introductory Remarks by Essar Energy

Mr. R. Varma stated that the process of buying into KPRL started over a year ago. To demonstrate Essar's competence, he briefly stated various businesses that Essar Energy has invested in. In the oil industry, Essar has made several investments in oil refining, upstream and retail which include a big refinery in India. He went on to state that Essar Energy had not been initially aware of the parallel process being undertaken by GOK. Essar Energy had signed a sale and purchase agreement with the exiting shareholders and as per the KPRL shareholders agreement the private shareholders requested for waiver of preemption rights from GOK. GOK sought several extensions and eventually declined to provide the waiver. Several engagements with GOK were undertaken and finally Essar Energy was asked to partner with Libya Oil. Essar Energy was informed of the project financing terms being offered by Libya Oil and agreed to match such terms.

On its part Essar Energy was ready to undertake the refinery upgrade immediately and had done their assessments including technical review of the Foster Wheeler report. Essar Energy's position is that it is willing to share the fifty per cent shareholding on an equal basis. The only outstanding issue was the modalities of managing and operating the refinery which needed to be agreed on as it was critical to Essar Energy.

Mr. I. Nasir added that Essar Energy was looking at the country as a strategic partner and is interested in investing in other areas as well. Essar Energy would expect the upgrade being undertaken urgently as the costs are escalating and changing the economics of the project. The refinery capacity upon its upgrade

should be at least 3.6 million tonnes of crude oil annually and not the 2.8 million tonnes recommended by Foster Wheeler.

4. KPRL Management Presentation

Mr. J. Mruttu made a presentation on KPRL and on the study done by Foster Wheeler.

5. Summary of Issues

The PS summarized the issues from the introductory remarks as follows:

Libya Oil

1. Agreed to 25 % shareholding at KPRL
2. Require that during the upgrade all shareholders have equal shareholding
3. Project debt financing to be offered on commercial terms
4. Require to review the feasibility study done by Foster Wheeler and this will take at most four months
5. Was committed to undertaking the refinery upgrade, either to increase or sustain the capacity instead of adopting the Foster Wheeler recommendation which was to reduce the throughput from 4.0 million tonnes to 2.8 million tonnes annually.

Essar Energy:

1. Agreed to the 25% shareholding at KPRL
2. Indicated that it has the capacity to upgrade and has already undertaken the technical review and is ready to start the upgrade project immediately.
3. Require clarity on the management issues which is critical to its participation.
4. Preferred to proceed with the upgrade through an on EPC basis to minimize cost escalation and delays.

CONFIDENTIAL

5. Project financing to be offered on commercial terms. This is due to the changed shareholding from the earlier negotiated position with private shareholders 50% to 25%.
6. Goodwill offered earlier was on the basis of a 50% shareholding and in view of the changed level of equity participation, this was no longer available.
7. Is ready to start upgrade and then proceed with financing later. The issue can however be left to the Board to agree on.
8. The upgraded refinery should have a minimum throughput capacity of 3.6 million tonnes annually.

6. KPRL Management:

Mr. J. Mruttu clarified that the detailed design had not been done and the investors still have an opportunity to input the design work.

7. Treasury

Mrs. E Koimett stated that in principle the GOK would be able to consider having equal shareholding between all shareholders once the upgrade was underway.

8. Discussion on Way Forward:

At 11.00 a.m. the investors requested for one and a half hours to meet and deliberate further. The full meeting reconvened at 12.30 pm.

Libya Oil and Essar Energy reported that they required two weeks to consult and clarify several issues including the ground rules for their relationship.

Mrs. E. Koimett emphasised that the GOK required that the debt financing terms offered remain the same. The current approval by GoK is to retain its 50% shareholding. However, once the new shareholders are on board, GoK would be willing to cede more shareholding. In principle, GOK would consider having equal shareholding between all shareholders once the upgrade was underway. She further clarified that the joint ownership offered to both Essar Energy and

LIBYA OIL REFERENCE

Libya Oil was on the basis that both had agreed to provide debt financing at LIBOR + 1.5%.

Mrs. E. Koimett asked the investors to review and consider the entry Deed of Agreement before the next meeting and provide feedback.

9. AOE - LPG Project

Mr. R. Varma enquired about the LPG project. J Mruttu confirmed that the project was on tender and was closing end of September 2008. He indicated that the project is a joint venture, with both Kenya Pipeline Company (KPC) and Kenya Petroleum Refineries Limited (KPRL) each holding 25% equity. The other 50% is to be taken up by Bharat, Total, Libya Oil and Triton. KPRL will manage the construction and operation for ten years. The project financing is 30:70 equity to debt ratio. The advertisement for financial advisory and arranger services would be done later in the week.

10. Next Meeting

The next meeting would be held on the week of 25th August, 2008. If the meeting is set for 27th August then the meeting will be held in Mombasa.

PS MOE closed the meeting and thanked all those who had attended.

Signed

Chairman

Date

ANNEX 3

~~13~~
30
15

THE COMPANIES ACT
(Chapter 486 of the Laws of Kenya)

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

Of

EAST AFRICAN OIL REFINERIES
LIMITED

(As adopted by Special Resolution passed on the 30 day of
April 1971)

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THE COMPANIES ACT
(Chapter 486 of the Laws of Kenya)

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

Of
EAST AFRICAN OIL REFINERIES
LIMITED

(As adopted by Special Resolution passed on the 30 day of April 1971)

PRELIMINARY

1. In these presents, if not inconsistent with the subject or context:-
- (a) "The Act" means the Companies Act (Chapter 486 of the Laws of Kenya) and every Act or Acts amending the same or substituted therefor; and in case of such amendment or substitution the reference in these presents to the provisions of the Act shall be read as a reference to such provisions as amended or to the provisions substituted therefor (as the case may be) in the new Act or Acts.
 - (b) "These presents" means these Articles of Association as originally framed or as from time altered by Special Resolution.
 - (c) "The Office" means the registered office of the Company.
 - (d) "The Seal" means the Common Seal of the Company.
 - (e) "The Board" means the Board of Directors of the Company.
 - (f) "Month" means calendar month.
 - (g) "Year" means a year from the 1st January to the 31st December inclusive.
 - (h) "Paid up" means paid up or credited as paid up.
 - (i) "The Secretary" includes a temporary or assistant Secretary and any person appointed by the Board to perform any of the duties of the Secretary of the Company.
 - (j) "Dividend" includes a bonus.
 - (k) "Affiliate" means

In relation to The Shell Petroleum Company Limited:-

- (l) N.V. Koninklijke Nederlandse Petroleum Maatschappij (hereinafter called "Royal Dutch");

- (ii) The "Shell" Transport and Trading Company, Limited (hereinafter called "Shell Transport"); and
- (iii) any company (other than The Shell Petroleum Company Limited) which is for the time being directly or indirectly controlled by Royal Dutch and Shell Transport or either of them or by The British Petroleum Company Limited jointly with Royal Dutch and Shell Transport or either of them;

In relation to The British Petroleum Company Limited, any company which is for the time being directly or indirectly controlled by The British Petroleum Company Limited either alone or jointly with Royal Dutch and Shell Transport or either of them;

In relation to Caltex Petroleum Corporation:

- (i) Standard Oil Company of California;
- (ii) Texaco Inc; and
- (iii) any company (other than Caltex Petroleum Corporation) which is for the time being directly or indirectly controlled by Standard Oil Company of California and Texaco Inc., or either of them;

In relation to Esso Africa Inc.:-

- (i) Standard Oil Company (New Jersey); and
- (ii) any company (other than Esso Africa Inc.) which is for the time being directly or indirectly controlled by Standard Oil Company (New Jersey).

For the aforesaid purposes, a company is directly controlled by another company or companies holding shares carrying the majority of votes at a general meeting (or its equivalent) of the first mentioned company and a particular company is indirectly controlled by a company or companies (hereinafter called "parent company or companies") if a series of companies can be specified, beginning with the parent company or companies and ending with the particular company so related that each company of the series except the parent company or companies is directly controlled by one or more of the companies in the series.

- (l) Words importing the singular number only shall include the plural number and vice-versa.
- (m) Words importing the masculine gender shall include the feminine gender.
- (n) Words importing persons shall include corporations and governments.
- (o) Expressions referring to writing shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form.

Save as aforesaid, words or expressions contained in these presents shall, if not inconsistent with the subject, or context, bear the same meanings as in the Act.

2. The regulations contained in Table A in the First Schedule to the Act shall not apply to the Company.

3. The Company is a private company, and accordingly:

- (a) the right to transfer shares is restricted in the manner hereinafter prescribed;
- (b) the number of members for the time being of the Company (exclusive of persons who are in the employment of the Company and of persons who, having been formerly in the employment of the Company, were while in such employment and have continued after the determination of such employment to be members of the Company) is not to exceed fifty: Provided that for the purposes of this provision where two or more persons hold one or more shares in the Company jointly they shall be treated as a single member;
- (c) the Company shall not have power to issue share warrants to bearer;
- (d) any invitation to the public to subscribe for any shares or debentures of the Company is prohibited.

SHARES

4. (a) The share capital of the Company is K.Shs. 80,000,000 divided into 4,000,000 shares of K.Shs 20 each of which 2,000,000 shares shall be called 'A' shares and 2,000,000 shares be called 'Z' shares which classes of shares shall carry the same rights and rank pari passu in all respects, except as may otherwise be provided for in these Articles.
- (b) Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in the Company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise, as the Company may from time to time by Special Resolution determine.
5. Subject to the provisions in Section 60 of the Act, any Preference Shares may, with the sanction of a Special Resolution, be issued on the terms that they are, or at the option of the Company are liable, to be redeemed on such terms and in such manner as the Company before the issue of the shares may by Special Resolution determine.
6. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a Special Resolution passed at a separate General Meeting of the holders of the shares of the class. To every such separate General Meeting the provisions of these presents relating to General Meetings shall apply, but so that the necessary quorum shall be a member or members present in person or by proxy and holding not less than 75 per cent of the issued shares of that class and that any holder of a share of the class present in person or by proxy may demand a poll.
7. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking pari passu therewith.

8. Except as required by law, no person shall be recognised by the Company as holding any share upon any trust, and the Company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share or (except only as by these presents or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

9. Every person whose name is entered as a member in the Register of Members shall be entitled, without payment, to receive within sixty days after allotment or lodgment of transfer (or within such other period as the conditions of issue shall provide) one certificate for all his shares, or several certificates each for one or more of his shares, upon payment of Shillings 2/50 for every certificate after the first or such less sum as the Board shall from time to time determine. Every certificate shall be under the Seal and shall specify the shares to which it relates and the amount paid up thereon.

Provided that in respect of a share of shares held jointly by several persons the Company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

10. If a share certificate be defaced, lost or destroyed, it may be renewed on payment of a fee of Shillings 2/50 or such less sum and on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the Company of investigating evidence as the Board thinks fit.

11. The Company shall not give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security, or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made by any person of or for any shares in the Company or in its holding company, nor shall the Company make a loan for any purpose whatsoever on the security of its shares or those of its holding company, but nothing in these presents shall prohibit transactions mentioned in the proviso to Section 56(1) of the Act.

LIEN

12. The Company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the Company shall also have a first and paramount lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the Company; but the Board may at any time declare any share to be wholly or in part exempt from the provisions of this Article. The Company's lien (if any) on a share shall extend to all dividends payable thereon.

13. The Company may sell, in such manner as the Board thinks fit, but subject to the provisions contained in Article 22 regulating the rights of members to transfer their shares, any shares on which the Company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable,

has been given to the registered holder for the time being of the shares, or the person entitled thereto by reason of his death or bankruptcy.

14. To give effect to any such sale the Board may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.
15. The proceeds of the sale shall be received by the Company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue (if any) shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

CALLS ON SHARES

16. The Board may from time to time make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times:

Provided that no call shall be payable at less than one month from the date fixed for payment of the last preceding call, and each member shall (subject to receiving at least twenty-one days' notice specifying the time or times and place of payment) pay to the Company, at the time or times and place so specified, the amount called on his shares.

A call may be revoked or postponed as the Board may determine.

17. A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed, and may be required to be paid by instalments.
18. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
19. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate not exceeding nine per centum per annum, as the Board may determine, but the Board shall be at liberty to waive payment of such interest wholly or in part.
20. Any sum which, by the terms of issue of a share, becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall, for the purposes of these presents, be deemed to be a call duly made and payable on the date on which, by the terms of issue, the same becomes payable; and, in case of non-payment, all the relevant provisions of these presents as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

21. The Board may, if it thinks fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him and upon all or any of the moneys so advanced may (until the same would, but for such advance, become payable) pay interest at such rate, not exceeding (unless the Company in General Meeting shall otherwise direct) nine per centum per annum, as may be agreed upon between the Board and the member paying such sum in advance.

TRANSFER OF SHARES

22. (a) Any share held by The British Petroleum Company Limited, The Shell Petroleum Company Limited, Caltex Petroleum Corporation, or Esso Africa Inc. may be transferred to an affiliate of such company.
- (b) In the event that an 'A' Shareholder wishes to transfer any or all of its shares, such shares shall first be offered to the other 'A' Shareholders on identical terms in the ratio of their respective shareholding percentages at the time of the offer. If any 'A' Shareholder does not wish to take up all the shares so offered to it, the shares which that 'A' Shareholder does not wish to take up shall then be similarly offered to the remaining 'A' Shareholders in the ratio of their respective shareholding percentages and at the same price and upon such other terms as were stipulated in the original offer and, if need be, further offers shall be made on the same basis until all the shares to be disposed of shall have been taken up by the other 'A' Shareholders or until it is ascertained that there is a share or shares which none of the 'A' Shareholders wishes to take up.
- (c) In the event that a 'Z' Shareholder wishes to transfer any or all of its shares otherwise than pursuant to Clause 22 (a) of this Article, such shares shall first be offered to the other 'Z' Shareholders on identical terms in the ratio of their respective shareholding percentages at the time of the offer. If any 'Z' Shareholder does not wish to take up all the shares so offered to it, the shares which that 'Z' Shareholder does not wish to take up shall then be similarly offered to the remaining 'Z' Shareholders in the ratio of their respective shareholding percentages and at the same price and upon such other terms as were stipulated in the original offer and, if need be, further offers shall be made on the same basis until all the shares to be disposed of shall have been taken up by the other 'Z' Shareholders or until it is ascertained that there is a share or shares which none of the 'Z' Shareholders wishes to take up.
- (d) Any shares offered by an 'A' Shareholder which are not taken up by an 'A' Shareholder under Clause 22(b) shall be offered to the 'Z' Shareholders and the provisions of Clause 22 (c) shall apply:

Provided that if the 'A' Shareholder in question wishes to sell such shares to a 'Z' Shareholder either:-

- (i) at a price lower than the price at which such shares were offered to the other 'A' Shareholders; or
- (ii) on other terms and conditions than the terms and conditions on which such shares were offered to the other 'A' Shareholders; or
- (iii) after the expiry of six calendar months from the date on which such shares were last offered to any other 'A' Shareholders;

then the provisions of Clause 22 (b) and this Clause 22 (d) (including this proviso) shall again apply.

- (e) Any shares offered by a 'Z' Shareholder which are not taken up by a 'Z' Shareholder under Clause 22(c) shall be offered to the 'A' Shareholders and the provisions of Clause 22(b) shall apply:

Provided that if the 'Z' Shareholder in question wishes to sell such shares to an 'A' Shareholder either:-

- (i) at a price lower than the price at which such shares were offered to the other 'Z' Shareholders; or
- (ii) on other terms and conditions than the terms and conditions on which such shares were offered to the other 'Z' Shareholders; or
- (iii) after the expiry of six calendar months from the date on which such shares were offered to the other 'Z' Shareholders;

then the provisions of Clause 22 (c) and this Clause 22 (e) (including this proviso) shall again apply.

- (f) Any shares offered by a Shareholder which are not taken up as hereinbefore provided may be sold to a purchaser other than Shareholders or their affiliates (hereinafter called "a third party purchaser"):

Provided that if the Shareholder in question wishes to sell such shares to a third party purchaser either:-

- (i) at a price lower than the price at which such shares were offered to the other Shareholders; or
- (ii) on other terms and conditions than the terms and conditions on which such shares were offered to the other Shareholders; or
- (iii) after the expiry of six calendar months from the date on which such shares were last offered to any other Shareholder;

then the provisions of Clause 22(b), (c), (d) and (e) and this Clause 22(f) (including this proviso) shall again apply.

- (g) All transfers under the foregoing stipulations of this Article 22 shall be subject to the provisions of any agreement in force from time to time regulating the rights of Shareholders (except in so far as such provisions may be in conflict with the terms of these Articles).

- (h) Any offer of shares made by any Shareholder to any other Shareholder under the foregoing provisions of this Article 22 shall be in writing and shall be deemed to have been rejected if it is not accepted in writing within thirty days from the date on which the offer was made.

23. The instrument of transfer of any share, which shall be by instrument in writing in any usual or common form, or any other form which the Board may approve, shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the Register of Members in respect thereof.

24. The Board shall only register transfers made in accordance with the provisions of Article 22 hereof.
25. The Board may decline to recognise any instrument of transfer unless it is accompanied by the certificate of the shares to which it relates, and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer.
26. The registration of transfers may be suspended at such times and for such periods (not exceeding a total thirty days in any year) as the Board may from time to time determine.
27. The Company shall be entitled to charge a fee not exceeding Shillings 2/50 on the registration of every transfer, probate, letters of administration, certificate of death or marriage, power of attorney, notice in lieu of distringas or other instrument.

TRANSMISSION OF SHARES

28. In case of the death of a member the survivor or survivors, where the deceased was a joint holder, and the legal personal representatives of the deceased, where he was a sole holder, shall be the only persons recognised by the Company as having any title to his interest in the shares; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.
29. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may from time to time properly be required by the Board, and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, but the Board shall, in either case, have the same right to decline or suspend registration as it would have had in the case of a transfer of the share by that member before his death or bankruptcy, as the case may be.
30. If the person so becoming entitled shall elect to be registered himself, he shall deliver or send to the Company a notice in writing signed by him stating that he so elects. If he shall elect to have another person registered, he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions and provisions of these presents relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.
31. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company:

Provided that the Board may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and, if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

FORFEITURE OF SHARES

32. If a member fails to pay any call or instalment or a call on the day appointed for payment thereof, the Board may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.
33. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.
34. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by notice has been made, be forfeited by a resolution of the Board to that effect.
35. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Board thinks fit, but subject to the provisions of any agreement regulating the rights of members to transfer their shares, and to Article 22.
36. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the Company all moneys which, at the date of forfeiture, were payable by him to the Company in respect of the shares, but his liability shall cease if and when the Company shall have received payment in full of all such moneys in respect of the shares.
37. A statutory declaration in writing that the declarant is a Director or the Secretary of the Company, and that a share in the Company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The Company may receive the consideration (if any) given for the share on any sale or disposition thereof, and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money (if any) nor shall his title to the share be affected by an irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.
38. The provisions of these presents as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

ALTERATION OF CAPITAL

39. The Company may from time to time by a Special Resolution increase its share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.
40. The Company may from time to time by a Special Resolution:-
- (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
 - (b) sub-divide its existing shares, or any of them, into shares of smaller amount than is fixed by the Memorandum of Association subject, nevertheless, to the provisions of Section 63 (1)(d) of the Act;
 - (c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.
41. All new shares shall consist as to 50% of 'A' shares and 50% of 'Z' shares and before issue shall be offered to such persons as at the date of the offer are members of the Company in proportion as nearly as the circumstances admit to the amount of the existing shares which they hold, new 'A' shares being offered to the holders of issued 'A' shares and new 'Z' shares to the holders of issued 'Z' shares. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined. Any further offers of declined shares shall be subject to the provisions regulating the rights of members to transfer their shares contained in Article 22.
42. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.
43. The Company may by Special Resolution reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with, and subject to, any incident authorised and consent required by law.

GENERAL MEETINGS

44. The Company shall in each year hold a General Meeting as its Annual General Meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one Annual General Meeting of the Company and that of the next. The Annual General Meeting shall be held as such time and place as the Board shall appoint.
45. All General Meetings other than Annual General Meetings shall be called Extraordinary General Meetings.
46. The Board may, whenever it thinks fit, convene an Extraordinary General Meeting, and Extraordinary General Meetings shall also be convened on such requisition or, in default may be convened by such requisitionists, as provided by Section 132 of the Act. If at any time there are not within Kenya sufficient Directors capable of acting to form a quorum, any Director or any two members of the Company may convene an Extraordinary General Meeting in the same manner as nearly as possible as that in which meetings may be convened by the Board.

NOTICE OF GENERAL MEETINGS

47. A General Meeting shall be called by twenty-one days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business, and shall be given, in manner hereinafter mentioned or in such other manner (if any) as may be prescribed by the Company in General Meeting, to such persons as are, under these presents, entitled to receive such notices from the Company:

Provided that a meeting of the Company shall, notwithstanding that it is called by shorter notice than that specified in these presents, be deemed to have been duly called if it is so agreed:

- (a) in the case of a meeting called as the Annual General Meeting, or for the passing of a Special Resolution, by all the members entitled to attend and vote thereat; and
 - (b) in the case of any other meeting by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than ninety-five per centum in nominal value of the shares giving that right.
48. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

PROCEEDINGS AT GENERAL MEETINGS

49. All business shall be deemed special that is transacted at any Extraordinary General Meeting, and also all business that is transacted at an Annual General Meeting with the exception of the consideration of the accounts and balance sheets and the reports of the Board and of the Auditors and the appointment of, and the fixing of the remuneration of, the Auditors:
50. No business shall be transacted at any General Meeting unless a quorum of members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, two members at least present in person or by proxy and holding not less than sixty per centum of the 'A' shares and sixty per centum of the 'Z' shares of the Company shall be a quorum.
51. If within fifteen minutes from the time appointed for the meeting a quorum is not present, the meeting shall be dissolved.
52. The Chairman (if any) of the Board shall preside as Chairman at every General Meeting of the Company or, if there is no such Chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the Directors present shall choose one of their number to be Chairman of the meeting.

53. If at any meeting no Director is willing to act as Chairman or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be Chairman of the meeting.
54. The Chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
55. At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:-
- (a) by the Chairman; or
 - (b) by at least three members present in person or by proxy; or
 - (c) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
 - (d) by a member or members holding shares in the Company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

Unless a poll be so demanded, a declaration by the Chairman that a resolution has on a show of hands been carried, or carried unanimously, or carried or not carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

56. Except as provided in Article 58 of these presents, if a poll is duly demanded it shall be taken in such manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
57. In the case of an equality of votes whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not have a second or casting vote and the resolution shall be declared to have been lost.
58. A poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such times as the Chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of a poll. The demand for a poll may be withdrawn at any time.

59. Subject to the provisions of the Act, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at General Meetings (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a General Meeting of the Company duly convened and held. Such resolution may be contained in one document or in several documents in like form each signed by one or more of the members or duly authorised representatives concerned.

VOTES OF MEMBERS

60. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member who is present in person or by proxy shall have one vote, and on a poll every member present in person or by proxy shall have one vote for each share of which he is the holder.
61. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the Register of Members.
62. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, receiver, curator bonis, or other person in the nature of a committee, receiver or curator bonis appointed by that court, and any such committee, receiver, curator bonis or other person may, on a poll, vote by proxy.
63. No member shall be entitled to vote at any General Meeting unless all calls or other sums presently payable by him in respect of shares in the Company have been paid.
64. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairman of the meeting, whose decision shall be final and conclusive.
65. On a poll votes may be given either personally or by proxy.

PROXIES

66. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the Company.
67. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of that power or authority shall be deposited at the Office (or at such other place as is specified for that purpose in the notice convening the meeting) before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll taken subsequently to the date of a meeting or adjourned meeting, before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

72. Any corporation (whether a company within the meaning of the Act or not) which is a Director of the Company may, by resolution of its Board of Directors or other governing body, authorize such person as it thinks fit to act as its representative at any meeting of the Board or of any committee of the Board and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation or government which he represents as that corporation or government could exercise if it were an individual Director of the Company. A corporation which is a Director of the Company will be deemed for all purposes of these presents to be present in person at any meeting as aforesaid at which its representative duly authorized under this Article is present.

DIRECTORS

73. (1) The Directors shall be eight in number.
- (2) The holders of the 'A' shares shall have the right to appoint four Directors who shall be called 'A' Directors. The holders of the 'Z' shares shall have the right to appoint four Directors who shall be called 'Z' Directors.
- (3) The holders of the 'A' shares may at any time and from time to time remove an 'A' Director and may appoint another person in his stead and may fill any vacancy in the office of 'A' Directors.
- (4) The holders of the 'Z' shares may at any time and from time to time remove a 'Z' Director and may appoint another person in his stead and may fill any vacancy in the office of 'Z' Directors.
- (5) No Director or alternate Director shall be appointed while he is in any way employed or engaged by or seconded to or from any other company, or person or body of persons whether incorporated or not, carrying on business as manufacturers or marketers of oil products, other than The British Petroleum Company Limited, The Shell Petroleum Company Limited, Caltex Petroleum Corporation, Essso Africa Inc. or their affiliates.
74. The remuneration of the Directors shall from time to time be determined by the Company in General Meeting. Such remuneration unless otherwise provided by the Company in General Meeting shall be deemed to accrue from day to day. The Directors and Alternate Directors may also be paid all traveling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Board or of any committee of the Board or General Meetings of the Company, or in connection with the business of the Company.
75. The shareholding qualification for Directors may be fixed by the Company in General Meeting, and unless and until so fixed no qualification shall be required.
76. A Director of the Company may be or become a Director or other officer of, or otherwise interested in, any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, and no such Director shall be accountable to the Company for any remuneration or other benefits received by him as a Director or officer of, or from his interest in, such other company unless the Company otherwise direct.

77. Any appointment (including the filling of a vacancy) or removal of a Director under Article 73 shall be effected by memorandum in writing, signed by the persons having the power of appointment or removal (or in the case of companies by their authorized officers), which shall be left at the Registered Office of the Company and shall be operative upon such memorandum being left thereat or upon such other date as may be specified in such memorandum.
78. Subject to any special provisions of his appointment limiting the term of his tenure of office, every Director for the time being of the Company, howsoever appointed, shall remain a Director until he vacates office pursuant to the provisions of Article 89 of these presents.

BORROWING POWERS

79. Subject to Article 90, the Board may from time to time at its discretion exercise all the powers of the Company to borrow or raise or secure the payment of any sum or sums of money for the purposes of the Company.
80. Subject to Article 90, the Board may raise, or secure the payment or repayment of, such sum or sums in such manner and upon such terms and conditions in all respects as it thinks fit and, in particular, by the issue of debentures of the Company charged upon the undertaking and all or any of the property (both present and future) and the uncalled capital of the Company for the time being.
81. The Board shall cause a proper Register of Charges to be kept in accordance with Section 105 of the Act and shall duly comply with the requirements of Sections 96, 97 and 98 of the Act in regard to the registration of charges therein specified and otherwise.

POWERS AND DUTIES OF DIRECTORS

82. The management of the business of the Company shall be vested in the Board which, in addition to the powers and authorities by these presents or otherwise expressly conferred upon it, may exercise all such powers and do all such acts and things as may be exercised or done by the Company and are not hereby or by the Act expressly directed or required to be exercised or done by the Company in General Meeting, but subject nevertheless to the provisions of the Act and of these presents and to any regulations, being not inconsistent with the aforesaid provisions, from time to time made by the Company in General Meeting:

Provided that no regulations so made shall invalidate any prior act of the Board which would have been valid if such regulation had not been made.

83. The Directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these presents) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit and may also authorize any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

84. The Company may exercise the powers conferred by Section 37 of the Act with regard to having an official seal for use abroad, and such powers shall be vested in the Board.
85. The Company may exercise the powers conferred upon the Company by Sections 121 to 124 (both inclusive) of the Act with regard to the keeping of a Branch Register, and the Board may (subject to the provisions of those sections) make and vary such regulations as it may think fit respecting the keeping of any such register.
86. (1) A Director who is in any way, whether directly, or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of his interest at a meeting of the Board in accordance with Section 200 of the Act.
- (2) A Director shall be at liberty to vote in respect of any contract or proposed contract with the Company in which he is directly or indirectly interested, and may be counted in the quorum present at any meeting at which such contract or proposed contract is considered.
- (3) A Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with his office of Director for such period and on such terms (as to remuneration and otherwise) as the Board may determine, and no Director or intending Director shall be disqualified by his office from contracting with the Company either with regard to his tenure of any such other office or place of profit or as a vendor, purchaser or otherwise, nor shall any such contract, or any contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested, be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realized by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relation thereby established.
- (4) A Director, notwithstanding his interest, may be counted in the quorum present at any meeting whereat he or any other Director is appointed to hold any such office or place of profit under the Company, or whereat the terms of any such appointment are arranged, and he may vote on any such appointment or arrangement other than his own appointment or the arrangement of the terms thereof.
- (5) Any Director may act by himself or his firm in a professional capacity for the Company, and he or his firm shall be entitled to remuneration for professional services as if he were not a Director.
- Provided that nothing herein contained shall authorize a Director or his firm to act as Auditor to the Company.
87. All cheques, promissory notes, drafts, bills of exchange and other negotiable and transferable instruments shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the Board shall from time to time by resolution determine.

88. The Board shall cause minutes to be made in books provided for the purpose:-

- (a) of all appointments of officers made by the Board;
- (b) of the names of the Directors present at each meeting of the Board and of any committee of the Board;
- (c) of all resolutions and proceedings at all meetings of the Company and of the Board and of any such committee as aforesaid;

and every Director present at any meeting of the Board or of a committee of the Board shall sign his name in a book to be kept for that purpose.

DISQUALIFICATION OF DIRECTORS

89. The office of a Director shall be vacated if the Director:-

- (a) ceases to be a Director by virtue of Section 183 and 186 of the Act; or
- (b) become bankrupt or makes any arrangement or composition with his creditors generally; or
- (c) becomes prohibited from being a Director by reason of any order made under Section 189 of the Act; or
- (d) becomes of unsound mind; or
- (e) resigns his office by notice in writing to the Company; or
- (f) is removed from office pursuant to the provisions of Article 73; or
- (g) becomes employed or engaged by or seconded to any of the companies or persons or body of persons referred to in Clause (5) of Article 73.

PROCEEDINGS OF THE BOARD

90. The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A Director may, and the Secretary upon the request of a Director shall, at any time convene a meeting of the Board and shall give reasonable notice thereof to the Directors. Questions arising at any meeting shall be decided by a majority of votes and in the case of an equality of votes the Chairman shall not have a second or casting vote, provided that no resolution shall be passed on the following matters unless not less than 6 Directors vote therefor:-

- (a) individual capital expenditure items in excess of K. Shs. 10,000,000;
- (b) disposal of assets having an original book value in excess of K. Shs. 10,000,000;
- (c) contracting of loans in excess of K. Shs. 10,000,000;
- (d) any other contract involving commitment in excess of K. Shs. 10,000,000;
- (e) the expansion or alteration of the functions of the Company to include any new activity of a nature substantially different from that of a refinery ownership and operation as hitherto carried on, including extension by investment in third party undertakings or by any other means.

91. The quorum necessary for the transaction of the business of the Board shall be the presence of 6 Directors either in person or represented by alternate Directors appointed under Article 99.
92. The continuing Directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the Company as the necessary quorum of Directors, the continuing Directors or Director may act for the purpose of summoning a General Meeting of the Company, but for no other purpose.
93. The 'A' Directors may elect a Chairman of the meetings of the Board and determine the period for which he is to hold office; but if no such Chairman is elected, or if at any meeting the Chairman is not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be Chairman of the meeting.
94. The Board may delegate any of its powers to committees consisting of such member or members of its body as it thinks fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.
95. The meetings and proceedings of any committee shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Board so far as the same are applicable and are not superseded by any regulations imposed by the Board under the last preceding Article.
96. A resolution in writing signed by all the Directors for the time being (or by their respective alternates appointed under Article 99 of these presents with authority to sign such resolution) or by all the members of a committee for the time being shall be as valid and effectual as if it had been passed at a meeting of the board, or as the case may be, of such committee duly called and constituted. Such resolution may be contained in one document or in several documents in like form each signed by one or more of the Directors or members of the committee concerned.
97. All acts done by any meeting of the board or of a committee of the Board or by any person acting as a Director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director or member of such committee or person acting as aforesaid, or that they or any of them were disqualified or had vacated office, be as valid as if every such person had been duly appointed or was not disqualified or had continued in office.
98. The Board may award special remuneration out of the funds of the Company to any Director going or residing abroad in the interests of the Company or undertaking any work additional to that usually required of Directors of a company similar to the Company.

ALTERNATE DIRECTORS

99. (1) Any 'A' Shareholder may at any time appoint one or more persons, whether Directors or not, to be alternate Directors of the Company directly in the place of any particular nominated 'A' Director and may at any time remove from office any alternate Director so appointed. An alternate Director shall not be entitled to receive any remuneration from the Company but shall be entitled to perform in the place of the relevant nominated 'A' Director such of the functions of the nominated 'A' Director as a Director of the Company as the 'A' Shareholder shall by the instrument of appointment prescribe. The same person may be appointed as an alternate Director in respect of any number of Directors appointed by the 'A' Shareholders. An alternate Director appointed for the purpose of attending and voting at meetings of the Board shall be entitled to receive notices of all such meetings and any alternate Director (but in the cases where an 'A' Shareholder has appointed more than one alternate Director for a nominated 'A' Director, only one) shall be entitled to attend and be counted in the quorum and vote at any such meeting at which his nominated 'A' Director is not present. An alternate Director shall be counted in the quorum and have a vote in respect of each nominated 'A' Director in whose place he is so entitled to attend and vote and (if himself a nominated 'A' Director) may be counted in the quorum and exercise such vote or votes in addition to being counted in the quorum in his own right and having his own vote at a meeting.

(2) Any 'Z' Director may at any time appoint one or more persons, whether Directors or not, to be alternate Directors of the Company in his place and may at any time remove from office any alternate Director so appointed by him. An alternate Director shall not be entitled as such to receive any remuneration from the Company, but he shall be entitled to perform in the place of his appointer such of the functions of his appointer as a 'Z' Director of the Company as his appointer shall by the instrument of appointment prescribe. The same person may be appointed as an alternate Director by any number of 'Z' Directors. An alternate Director appointed for the purpose of attending and voting at meetings of the Board shall be entitled to receive notices of all such meetings and any alternate Director (but, in the cases where a 'Z' Director has appointed more than one alternate Director, only one) shall be entitled to attend and be counted in the quorum and vote at any such meeting at which his appointer is not present. An alternate Director shall be counted in the quorum and have a vote in respect of each appointer in whose place he is so entitled to attend and vote and (if himself a Director) may be counted in the quorum and exercise such vote or votes in addition to being counted in the quorum in his own right and having his own vote at a meeting.

(3) Provided always that nothing in this Article shall enable the Chairman to delegate to an alternate Director any of the special powers or authorities vested in the Chairman by these presents or by the Board or shall enable more than one vote to be cast at any meeting of the Board on behalf of the same appointer.

100. All appointments and removals of alternate Directors shall be effected by instrument in writing under the hand of the Director or Shareholder as the case may be making or revoking such appointment, and shall take effect upon such instrument being left at the Office. An alternate Director shall ipso facto cease to be an alternate Director if the person to whom he is an alternate Director ceases for any reason to be a Director.

GENERAL MANAGER

101. (1) The 'Z' Directors may from time to time nominate a person for appointment by the Board to the office of General Manager.
- (2) The General Manager shall, subject to the overall policy direction of the Board, be solely responsible for managing and conducting the business and operations of the Company, and, subject to such limitations as may be laid down by the Board from time to time, shall have the right to select, appoint and dismiss staff and employees and to fix their terms and conditions of service.
- (3) The Board may in addition entrust to and confer upon the General Manager any of the further powers exercisable by it upon such terms and conditions and with such restrictions as it may think fit and either collaterally with or to the exclusion of its own powers and may, subject to any agreement entered into in any particular case from time to time, revoke, withdraw, alter or vary all or any of such powers.

SECRETARY

102. (1) The 'Z' Directors may from time to time nominate a person for appointment by the Board to the office of Secretary.
- (2) No person shall be appointed or hold office as Secretary who is-
- (a) the sole Director of the Company; or
 - (b) a corporation the sole Director of which is the sole Director of the company; or
 - (c) the sole Director of a corporation which is the sole Director of the Company.
103. A provision of the Act or these presents requiring or authorizing a thing to be done by or to a Director and the Secretary shall not be satisfied by its being done by or to the same person acting both as Director and as, or in place of, the Secretary.

SEAL

104. The Board shall provide for the safe custody of the Seal. The Seal shall be used only by the authority of the Board or committee of Directors authorized by the Board in that behalf, and every instrument to which the Seal shall be affixed shall be signed by a Director and also by the Secretary or by a second Director or by some other person appointed by the Board for the purpose.

DIVIDENDS AND RESERVES

105. The powers of declaring and paying dividends (whether final or interim) shall be exercisable by the Board, without the sanction of a General Meeting of the Company, in accordance with the following provisions:
- (a) The Board may by simple majority declare and pay dividends in respect of any one year representing in the aggregate an amount exceeding the total amount specified in sub-clause (c) of this Article.
 - (b) The Board may, provided that not less than 6 Directors vote in favour therefor, declare and pay dividends in respect of any one year representing in the aggregate an amount less than the total amount specified in sub-clause (c) of this Article.
 - (c) If no resolution is passed by the Board in accordance with sub-clauses (a) or (b) of this Article, then the Board shall declare and pay within six months of the end of the Company's financial year dividends for that year amounting in the aggregate to a figure representing 50% of the net income after tax for that year.
106. The Board may from time to time declare and pay to the members such interim dividends as appear to the Board to be justified by the profits of the Company, subject always to the provisions of Article 105.
107. No dividend shall be paid otherwise than out of profits.
108. Subject always to the provisions of Article 105, the Board may set aside out of the profits of the Company such sum as it thinks proper as a reserve or reserves which shall, at the discretion of the Board, be applicable for any purpose to which the profits of the Company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the Company or be invested in such investments (other than shares of the Company) as the Board may from time to time think fit. The Board may also, without placing the same to reserve, carry forward any profit which it may think prudent not to divide.
109. Subject to the rights of persons (if any) entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid up on the shares in respect whereof the dividend is paid, but no amount paid up on a share in advance of calls shall be treated for the purpose of this Article as paid up on the share. All dividends shall be apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which dividend is paid; but if any share be issued on terms providing that it shall rank for dividend as from a particular date, such share shall rank for dividend accordingly.
110. The Board may deduct from any dividend payable to any member all sums of money (if any) presently payable by him to the Company on account of calls or otherwise in relation to the shares of the Company.
111. The Board may in declaring a dividend pursuant to Article 105 direct payment of such dividend wholly or partly by the distribution of specific assets and, in particular, of paid up shares, debentures or debenture stock of any other company, or in any one or more such ways, and where any difficulty arises in regard to such

distribution the Board may settle the same as it thinks expedient, and, in particular, may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof, and may determine that cash payments shall be made to any members upon footing of the value so fixed in order to adjust the rights of all parties, and may invest any such specific assets in trustees as may seem expedient to the Board.

112. Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in case of joint holders, to the registered address of that one of the joint holders who is first named on the Register of Members or to such person and to such address as the holder or joint holders may in writing from time to time direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one or two or more joint holders may give effectual receipts for any dividends or other moneys payable in respect of the shares held by them as joint holders.

113. No dividend shall bear interest against the Company.

ACCOUNTS

114. The Board shall cause proper books of account to be kept with respect to-

- (a) all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure take place;
- (b) all sales and purchases of goods by the Company; and
- (c) the assets and liabilities of the Company.

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.

115. The books of account shall be kept at the Office, or, such other place or places as the Board think fit, and shall always be open to inspection by the Directors.

116. The Board shall from time to time determine whether and to what extent and at what time and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of members not being Directors, and no member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by the Act or authorised by the Board or by the Company in General Meeting.

117. The Board shall from time to time in accordance with sections 148, 150 and 157 of the Act cause to be prepared and to be laid before the Company in General Meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are referred to in those sections.

118. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the Company in General Meeting, together with a copy of the Auditors' report shall, in accordance with the provisions of Section 153 of the Act, be sent to every person to whom the Company is by that section required upon request to send the same.

CAPITALISATION OF PROFITS

119. The Company in General Meeting, may by a Special Resolution, upon the recommendation of the Board, resolve that it is desirable to capitalize any part of the amount for the time being standing to the credit of any of the Company's reserve accounts, or to the credit of the profit and loss account, or otherwise available for distribution, and, accordingly, that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend (and in the same proportions) on condition that the same be not paid in cash, but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members, respectively, or paying up in full unissued shares and debentures of the Company to be allotted and distributed credited as fully paid up to and amongst such members in the proportions aforesaid, or partly in one way and partly in the other and the Board shall give effect to such resolution:

Provided that a share premium account and a capital redemption reserve fund may, for the purposes of this Article be applied only in the paying up of unissued shares to be issued to members of the Company as fully paid bonus shares.

120. Whenever such a resolution as aforesaid shall have been passed, the Board shall make all appropriations and applications of the sum resolved to be capitalized thereby, and all allotments and issues of fully paid shares or debentures (if any) and, generally, shall do all acts and things required to give effect thereto, with full power to the Board to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions and also to authorize any person to enter on behalf of all the members entitled thereto, into an agreement with the Company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalization, or (as the case may require) for the payment up by the Company on their behalf, by the application thereto of their respective proportions of the sums resolved to be capitalized, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

AUDIT

121. Auditors shall be appointed and their duties regulated in accordance with Sections 159 to 162 of the Act.

NOTICES

122. A notice may be given by the Company to any member either personally or by sending it by post addressed to him at his registered address.
123. A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the Register of Members in respect of the share.

124. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description at the address (if any) supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.
125. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter as first class mail containing the notice, and to have been effected (unless actually received earlier) at the expiration of seventy-two hours in the case of an address within Kenya and of fourteen days in any other case after the letter containing the same is posted.
126. Every person who by operation of law, transfer or other means whatsoever shall become entitled to any share shall be bound by every notice in respect of such share which previously to his name and address being entered on the Register of Members shall be duly given to the person from whom he receives his title to such share.
127. Notice of every General Meeting shall be given in any manner hereinafter authorized to-

- (a) every member; and
- (b) the Auditors for the time being of the Company.

No other person shall be entitled to receive notices of General Meetings.

128. Any transaction involving the sale of the undertaking of the Company or the merger, consolidation or amalgamation of the company with or into any other company, corporation or other legal entity or person, may be effected subject to the transaction first being approved by a Special Resolution.

WINDING UP

129. If the Company shall be wound up, the liquidator may, with the sanction of a Special Resolution of the Company and any other sanction required by the Act, divide amongst the members in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose, set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

INDEMNITY

130. Every Director, Agent, Auditor, Secretary and other officer for the time being of the Company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, or in connection with any application under Section 402 of the Act in which relief is granted to him by the court.



ANNEX 5



Libya Oil Holdings Limited (Mauritius)

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Our Ref: LOKL/GM/026

Your Ref: ZZ 12/02/B

Tuesday, September 09, 2008

Confidential

Mrs. Esther Koimett, EBS
Investment Secretary
Ministry of Finance
NAIROBI

Handwritten signatures and stamps, including a circular stamp with the word "RECEIVED" and the number "465".

Dear Madam,

RE: SALE OF SHARES IN KENYA PETROLEUM REFINERIES LIMITED (KPRL) BY THE INDUSTRY SHAREHOLDERS

Reference is made to the above mentioned proposed sale of the shareholding of BP Africa Ltd, Chevron Global Energy Inc. and Shell Petroleum Company (the "Industry Shareholders") in KPRL and your letter of 27th August 2008 thereon.

We acknowledge with thanks receipt of your letter referenced above contents duly noted.

We confirm that we have had and continue to have fruitful discussions with Essar with a view to finalizing how we shall progress our investment in KPRL. We expect to be able to have the tripartite meeting with the Government of Kenya (GoK) on the 11th of September 2008 at 3 pm should this be convenient for GoK.

In order to have a fruitful and conclusive tripartite meeting, we would wish to advise you of certain commercial issues on which an "in principle" agreement has been reached between Essar and ourselves. We set out these issues below so that you may have an opportunity to undertake internal consultations within GoK and have a clear position at our next meeting:

1. both Libya Oil Holdings Limited (LOHL) and Essar Energy Overseas Limited (Essar) are prepared to purchase the Industry Shareholders' shares with each of LOHL and Essar acquiring an equal number of shares such that each of LOHL and Essar would hold 25% of the issued share capital of KPRL. GoK would be required in this regard to waive its pre-emption rights.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

2. both LOHL and Essar are committed to a technically and economically viable upgrade of the KPRL refinery. However, in light of the changed and reduced shareholding by each private investor, financing shall be sought from third party financiers at market terms. The upgrade shall follow a review of the feasibility study undertaken by Foster Wheeler.
3. Essar and LOHL expect that the shareholding in KPRL will be equalised so that each shareholder in KPRL (that is, GoK, LOHL and Essar) will hold 33.33% each of the issued share capital. The revised shareholding is a condition precedent to the commencement of the upgrade project.
4. GoK shall appoint the Chairman of the KPRL Board (who shall be a GoK nominated director) whilst the positions of General Manager, Finance Manager, Operations Manager and the Company Secretary of KPRL shall be appointees of LOHL and Essar in a manner agreed between them. The rest of the management team shall be appointed by the Board of KPRL.
5. An appropriate shareholders agreement will be entered into between the shareholders which inter alia would reflect the above points.

To further ensure speedy progress on this transaction, LOHL and Essar are simultaneously engaging the Industry Shareholders in KPRL with a view to finalising the legal requirements for completion of the shares sale. We desire that the necessary board meeting of KPRL take place immediately after the tripartite meeting.

Kindly confirm then the availability of the Government of Kenya for a meeting on the 11th of September 2008 at 3 pm and the government's position on the foregoing to allow us make progress on common positions and the Deed of Agreement in the lead up to the tripartite meeting.

We remain yours sincerely,

for


Dr. Ali Shamekh
LIBYA OIL HOLDINGS LIMITED

cc: Hon. Kiraitu Murungi, EGH, MP
Minister for Energy
Ministry of Energy
NAIROBI

Hon. John Michuki, EGH, M.P.
Acting Minister for Finance
Ministry of Finance
Treasury Building
NAIROBI



Mr. Joseph Kinyua, CBS
Permanent Secretary / Treasury
Ministry of Finance
NAIROBI

Mr. Patrick Nyoike, CBS
Permanent Secretary
Ministry of Energy
NAIROBI

Mr. Raj Varma,
Essar Energy Overseas Limited
Essar House, 11, K. K. Marg
Mahalaxmi, Mumbai 400 034
INDIA

Mr Sudip Rungta
Essar Group
Essar House, 11, K. K. Marg
Mahalaxmi, Mumbai 400 034
INDIA

Eng. Muftah Nageh,
Director, Refining & Supply
Libya Oil Holdings Limited
MAURITIUS

ANNEX 1

ISOBAN
JOMO KES O B

REPUBLIC OF KENYA

MINISTRY OF FINANCE

SECRET
Telegraphic Address: 22521
FINANCE NAIROBI



THE TREASURY
P. O. BOX 30007
7

FAX NO. 2213524
Telephone: 2252299 Ext 33175
When replying please quote

NAIROBI

Ref.: ZZ 12/02/B

PA

Date: November 21, 2008

Eng Jarnaz Kamel
Libya Oil Holdings Limited (Mauritius)
Mobil Plaza, Muthaiga Rd
P.O. Box 64900-00620
NAIROBI



Mr Raj Varma
Essar Energy Overseas Limited
Essar House, 11K.K. Marg
Mahalzmi, Mumbai 400 034
INDIA

IS
Noted.
Spec. to
work on
next week.
Jku 23/11

Gentlemen

RE: Sale of Shares in Kenya Petroleum Refineries Limited by the Industry shareholders

Please refer to our letter ref ZZ 12/02 dated November 13, 2008 addressed to you by the Permanent Secretary/Treasury.

Reference is also made to telephone conversations with Eng Jarnaz Kamel on Monday 17th November 2008 by which I was informed that you would not be able to attend the meeting on Tuesday 18th November 2008. During the same conversation I was also informed that the conditions communicated vide our letter under reference were unacceptable especially with respect to the equalization of shares. We agreed that you would provide your feedback in writing.

This morning I called Eng Kamel to enquire on the status of your response and was promised that you would respond by Monday 24th November 2008.

I have been instructed by the Acting Minister for Finance to inform you that we are expecting the letter to reach us by the promised date of Monday 24th November 2008. He further instructed me to inform you that should we not

receive the letter on Monday 24th November 2008, we will assume that you are no longer interested in the opportunity to purchase the 50% shares being sold by BP, Chevron and Shell.

Kindly be informed accordingly.

Yours sincerely

Esther Koimett, EBS
INVESTMENT SECRETARY

cc. Hon John N. Michuki, EGH, MP
Acting Minister for Finance
Ministry of Finance
NAIROBI

Hon Kiraitu Murungi, EGH, MP
Minister for Energy
Ministry of Energy
NAIROBI


Mr Joseph K. Kinyua, CBS
Permanent Secretary/Treasury
Ministry of Finance
NAIROBI

Mr Patrick Nyoike, CBS
Permanent Secretary
Ministry of Energy
NAIROBI

Mr Justus Kageenu
Chairman
Kenya Petroleum Refineries Limited
P. O. Box 90401-80100
MOMBASA

Mr John Mruttu
General Manager
Kenya Petroleum Refineries Limited
P. O. Box 90401 - 80100
MOMBASA

ANNALS

524

12 JAN 2005

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P O Box 10000 NAIROBI MINISTRY OF ENERGY

Telegrams: "MINPOWER"
Telephone: +254-20-330048
Fax: +254-20-240910
Telex: 23094 MINERGY
When replying please quote

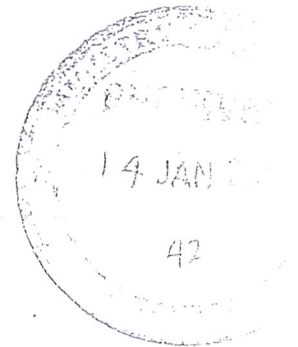
NYAYO LK
P. O. Box
NAI



12th January, 2005

Ref. No. ME/CONF/7/1/11

Ar. Mb. Francis. K. Muthaura, EGH
Permanent Secretary/
Secretary to the Cabinet and
Head of the Public Service.
Office of the President
Harambee House
NAIROBI



IS
To note
JKA 13/1

Dear Joe

RE: PURCHASE OF 50% SHARES FROM SHELL, CHEVRON AND BP IN KPRL BY ESSAR GROUP OF INDIA.

This has reference to your letter Ref OP/CAB.1/64A dated January 4, 2009, together with a copy of the letter from M/s Essar Energy Holdings Limited dated March 31, 2008, all on the above captioned subject (copy attached for ease of reference).

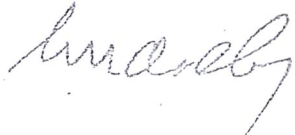
The discussions between Essar Energy and Oilibya and the Government with regard to the purchase of the 50% shares held by the industry shareholders (Shell, BP and Chevron) have been protracted and unproductive and have reached a dead end. The two investors have introduced new conditions that are not acceptable to the Government. They insist, for example, that the shareholding be equalized and that the GoK and themselves should each have 33¹/₂% shareholding in KPRL.

A decision has now been reached to abandon these discussions. The two Ministers for Finance and Energy are recommending to the Cabinet that GoK exercises its pre-emption rights and buy out the industry shareholders' 50% equity at US\$10 million. A draft Cabinet

memo has already been prepared for presentation to the Cabinet.
(copy attached for ease of reference).

The industry shareholders have been kept abreast of these
developments through meetings convened by the Ministry of Finance.

Yours



PATRICK M. NYOIKE, CBS
PERMANENT SECRETARY

Encl

Copy to: Joseph K. Kinyua, CBS
Permanent Secretary
Ministry of Finance
Treasury Building
NAIROBI



Esther Koimett, EBS
Investment Secretary
Ministry of Finance
Treasury Building
NAIROBI

ANNEX 9



Energy Regulatory Commission

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(7)

Our Ref ERC/ER/16

14th April 2014

Director Committee

Mr. Justin Bundi
Clerk of the National Assembly
National Assembly
Parliament Buildings
P.o Box 41842-00100
NAIROBI

Please deal

100

2 *Emergency*
pl deal
FA

15-4-2014

Dear Mr. Bundi

16/4

RE: SUBMISSION TO THE PUBLIC INVESTMENT COMMITTEE

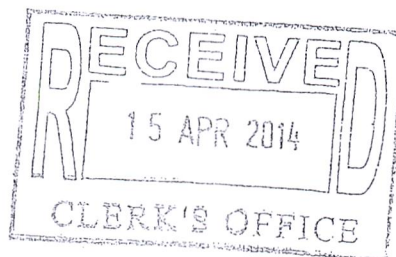
This is in response to your letter Ref. No. KNA/PIC/CORR/2014/ (57) dated 3rd April 2013 on the above subject matter.

Enclosed herewith find submissions to PIC on the impact of petroleum refining at the Kenya Refineries Limited on the price of petroleum products in the country and the effects of the refinery shut down since September 2013 on the price of petroleum products in Kenya as directed by the PIC.

Yours sincerely

Mutunga
Mueni Mutunga
For: Ag. DIRECTOR-GENERAL

Encl.



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Quality energy for growth

THE EFFECT OF REFINERY OPERATION ON PRICES OF PETROLEUM PRODUCTS IN KENYA

Introduction

The objective of this submission is to clarify the impact of petroleum refining at the Kenya Petroleum Refineries Limited on the price of petroleum products in the country for the period between December 2010 and September 2013. It also considers the price trends post September 2013.

Analysis of impact of locally refined products on pump prices

In December 2010, the Ministry of Energy (as it then was) gazetted the Energy (Petroleum Pricing) Regulations, 2010 (The Regulations) vide Legal Notice No. 196 of 3rd December 2010. The regulations provide a formula for determining the monthly maximum retail pump prices for Super Petrol, Diesel and Kerosene. In determining these prices, the formula takes into account the weighted average of prudently incurred cost of petroleum products from the Kenya Petroleum Refineries Limited (KPRL) i.e. locally refined products and those from the Kipevu Oil Storage Facility (KOSF) i.e. imported refined products.

Since December 2010, when ERC began implementing the Regulations, a price difference between the unit cost of products imported through KOSF and those refined at KPRL was observed. ERC arrived at this conclusion after considering the difference in cost between the locally refined products and imported products. This difference is attributed to the costs of refining, fuel and loss from the refining process and the yields from the crude oil. Between the period December 2010 and September 2013, locally refined products, taken cumulatively, were Kshs.15,710,553,586 more expensive.

It is important to note that KPRL is protected by the Petroleum Rules which compels all companies involved in importation of petroleum products to buy from KPRL such quantities of petroleum products as the Minister/Cabinet Secretary may from time to time determine.

Table 1 provides a breakdown of the price difference per product between locally refined and imported products, a more detailed breakdown is provided in Annex 1.

Table 1: Comparative differences in costs between refinery and imported products Dec 2010-Sept 2013

	Product Name	Volume Derived From KPRL in Litres Dec 2010 -- Sep 2013	Amount Lost Compared to imports - KES	Average difference (KES/Ltr)
1	Super Petrol	773,894,408	(2,323,359,704)	-3.00
2	Regular Petrol	146,758,790	(406,928,872)	-2.77
3	Automotive Diesel	1,686,366,498	(4,546,767,973)	-2.70
4	Kerosene	1,761,492,924	(6,031,350,547)	-3.42
5	Fuel Oil	1,069,795,516	(1,766,569,816)	-1.65
6	Naphtha/Tops	266,166,613	(505,997,491)	-1.90
7	Industrial Diesel	59,824,464	(129,579,182)	-2.17
	TOTAL	5,764,299,214	(15,710,553,586)	

The prices of the three (3) products from the refinery that are subject to the pricing regulations i.e. super petrol, diesel and kerosene were Kshs.3.00, Kshs.2.70 and Kshs.3.42 more expensive than imported products between December 2010 and September 2013. ERC is of the considered opinion that had refining activities continued at KPRL post September 2013, the prices would have remained higher as computed in the tables below.

Post September 2013 computed trend

Tables 2 to 4 and the corresponding graphs 1 to 3 illustrate the differences between import parity prices of the three regulated products compared to the expected KPRL unit gate prices of the same products for the period October 2013 to March 2014. The data shows that the refinery would still have imposed a handicap on the weighted average prices at the pump equivalent to the price difference per product shown in the tables. The total handicap in Kshs would have been dependent on the actual weight of the considered refinery product relative to the imports.

Table 2 Comparison of unit costs of products from KPRL and imports

	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14
Imports	66.67	63.37	63.51	65.11	65.28	67.20
KPRL	70.81	70.80	71.25	70.25	69.29	68.28
Difference	(4.14)	(7.43)	(7.74)	(5.14)	(4.01)	(1.08)

Graph 1: Super Petrol

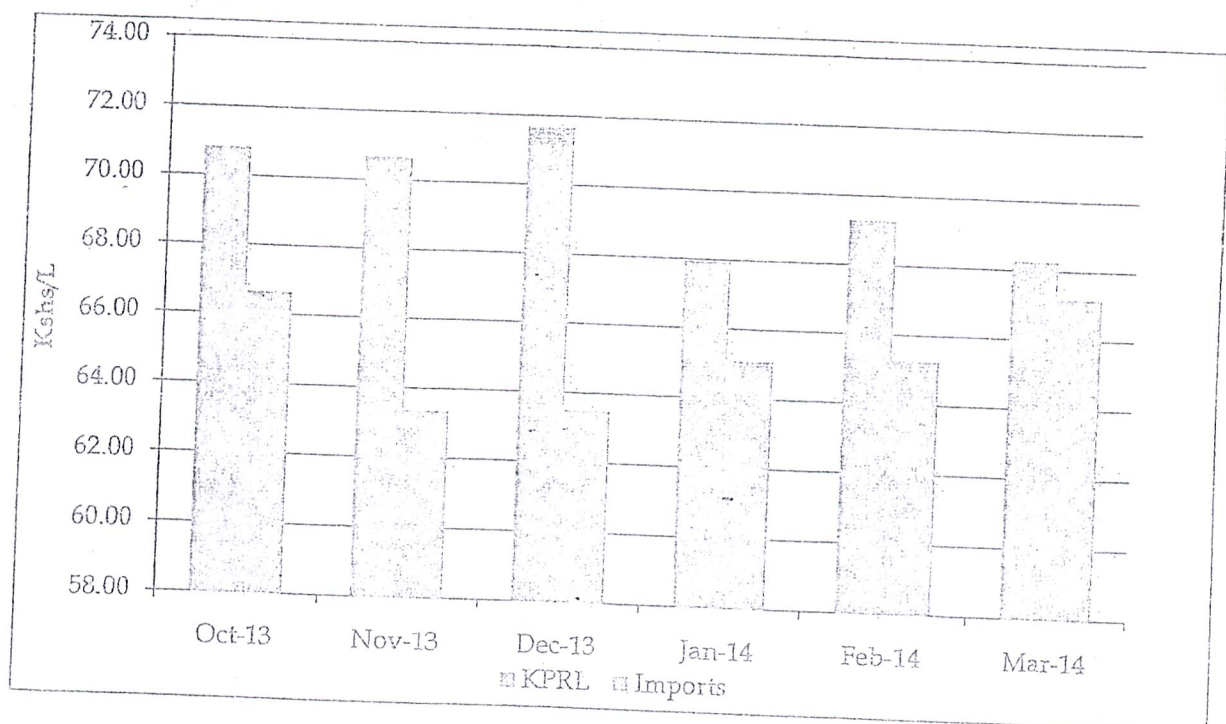


Table 3 Comparison of unit costs of products from KPRL and imports

AGC (US\$/L)	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14
KPRL	70.73	69.51	70.78	70.77	71.17	70.33
Imports						
Price difference						

Graph 2: Automotive Diesel

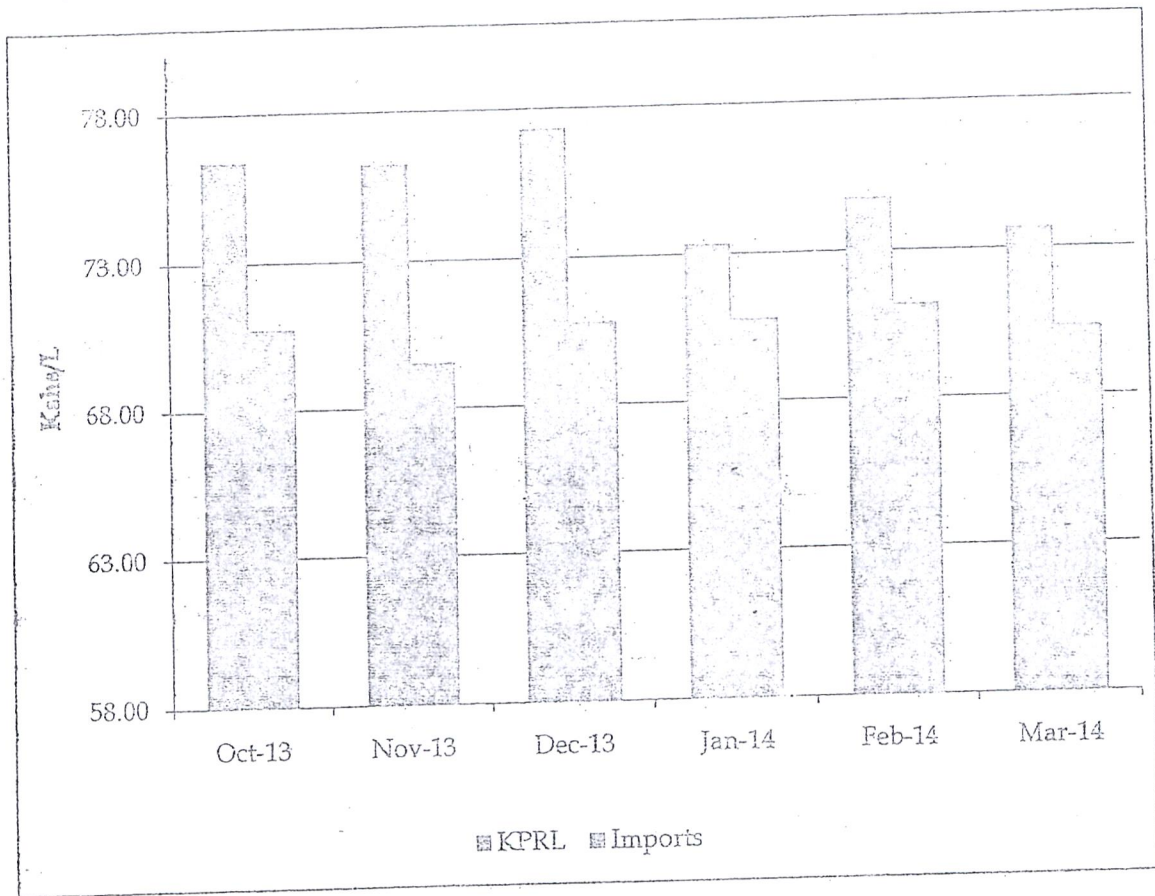
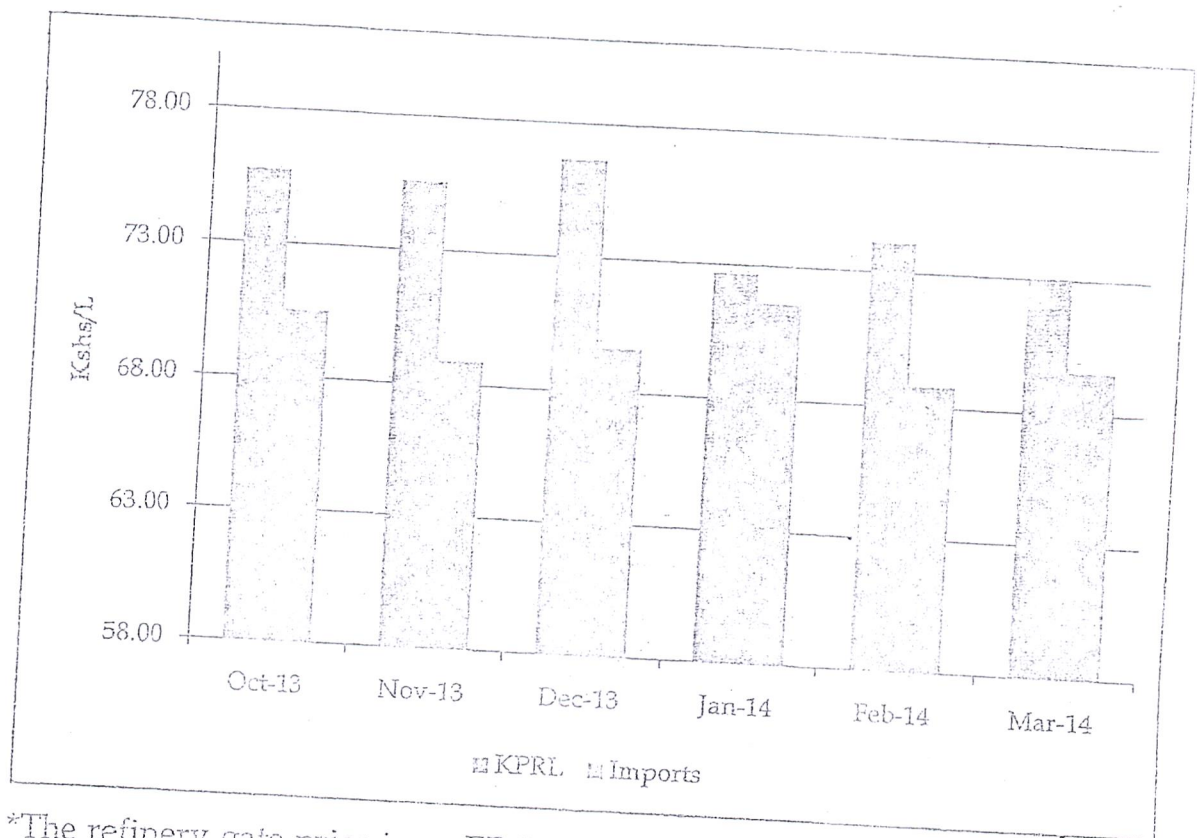


Table 4 Comparison of unit costs of products from KPRL and imports

DPK (US\$/L)	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14
KPRL	70.52	68.88	69.65	71.63	68.79	69.56
Imports						
Price difference						

Graph 3: Kerosene



*The refinery gate price is an ERC computed number based on the following assumptions:

1. Actual crude prices as quoted by ADNOC for the applicable period
2. Agreed KPRL yields per product
3. Freight and Premium was assumed to be USD (1.1236) per Metric Tonne based on the last crude cargo received. This was however a very rare case and any application of a higher number would have worsened the situation
4. Prices are not inclusive of local taxes, levies and local distribution costs
5. Exchange rates are applied at Kshs.88.00 to 1 USD. Historically, applicable refinery exchange rates were higher than those of imports

Conclusion

From the above analysis, it can be concluded that locally refined products have historically been more expensive than the imported ones. It is also worth noting that the additional cost to the Kenyan economy on account of the locally refined products estimated at Ksh.15,710,553,586 only covers the 30 month period between December 2010 and September 2013 when ERC assumed the implementation of the Petroleum price capping.

The analysis indicates that the economy has borne the costs of the refinery over the years and there is no evidence to show that such a situation would have been remedied after September 2013. Accordingly, a more economic way of utilization of the refinery is necessary which dictates that its business model be re-defined.

Summary of the difference in unit costs of petroleum products from KPRL and imports for the period Dec 2010 - September 2013

Month	Product	KPRL Unit Cost \$/Ltr [A]	Unit Import Cost/Kes/Ltr [B]	Price Delta (Kes) [C = A - B]	Rate of Commission - [D=C*100] %/Ltr [D]	Net Delta (Kes) [E=C+D]	Volume from KPRL - Ltrs [F]	Total Remission (Kes) [G=D*F]	Consumer Gain/(Loss) - Kes [H=E*F]	Gain/(Loss) to Economy - Kes [I=H-G]
Dec-10	PMS	55.06	50.52	-4.54	0.45	-4.03	32,212,000.00	14,495,400.00	(129,814,360.00)	(144,309,760.00)
Jan-11	PMS	57.13	51.74	-5.39	0.45	-4.94	32,212,000.00	14,495,400.00	(129,814,360.00)	(144,309,760.00)
Feb-11	PMS	57.99	54.70	-3.29	0.45	-2.84	38,704,889.70	17,417,110.37	(109,921,318.75)	(127,338,429.12)
Mar-11	PMS	60.34	59.71	-0.63	0.45	-0.18	31,218,777.70	14,048,449.97	(6,619,379.99)	(19,667,829.95)
Apr-11	PMS	66.68	69.52	2.84	0.45	3.29	24,345,904.20	10,955,656.69	80,098,024.83	69,123,667.84
May-11	PMS	70.87	72.58	1.71	0.45	2.16	24,861,085.31	11,187,408.39	53,699,944.26	42,512,485.87
Jun-11	PMS	73.01	74.12	1.11	0.45	1.56	24,452,917.12	11,003,612.70	36,146,550.70	27,142,728.00
Jul-11	PMS	74.08	70.48	-3.60	0.45	-3.15	24,339,176.38	10,952,429.37	(76,568,405.60)	(87,621,034.57)
Aug-11	PMS	76.45	71.71	-4.74	0.45	-4.29	26,116,207.71	11,752,293.47	(112,038,531.07)	(123,790,823.54)
Sep-11	PMS	76.23	73.47	-2.76	0.45	-2.31	34,225,253.89	15,401,363.89	(79,066,334.63)	(94,467,698.52)
Oct-11	PMS	77.12	76.17	-0.95	0.45	-0.50	36,336,815.91	16,351,567.16	(18,168,407.96)	(34,519,973.12)
Nov-11	PMS	80.99	78.85	-2.14	0.45	-1.69	33,791,699.69	15,206,264.86	(57,107,972.46)	(72,314,237.34)
Dec-11	PMS	77.63	70.72	-6.91	0.45	-6.46	36,601,764.29	16,470,793.93	(236,447,397.32)	(252,918,191.25)
Jan-12	PMS	69.82	63.97	-5.85	0.45	(5.40)	373,773,051.10	168,197,873.00	(714,654,302.40)	(882,852,175.40)
Feb-12	PMS	67.55	66.22	-1.33	0.45	(0.88)	39,951,094.42	17,977,992.49	(215,735,909.87)	(233,713,902.36)
Mar-12	PMS	70.82	64.59	-6.23	0.45	(5.78)	33,170,809.98	14,926,864.49	(29,190,312.78)	(44,117,177.27)
Apr-12	PMS	73.27	73.27	0.00	0.45	0.00	16,287,370.88	7,329,316.89	(94,141,003.66)	(101,470,320.55)
May-12	PMS	79.33	75.89	-3.44	0.45	(2.99)	18,143,216.95	8,164,672.63	(101,786,252.10)	(109,950,924.73)
Jun-12	PMS	75.21	72.16	-3.05	0.45	(2.60)	25,117,364.51	11,302,814.03	(42,248,346.02)	(53,751,160.05)
Jul-12	PMS	61.60	65.54	3.94	0.45	4.39	14,050,005.66	6,322,502.55	(36,530,014.71)	(42,852,517.25)
Aug-12	PMS	61.89	61.84	-0.05	0.45	0.40	21,054,333.00	9,474,449.85	92,428,521.86	82,954,072.01
Sep-12	PMS	64.27	63.92	-0.35	0.45	0.10	36,705,020.00	16,517,259.00	1,682,008.00	(1,835,251.00)
Oct-12	PMS	65.24	72.01	6.77	0.45	4.22	24,697,220.00	11,113,749.00	2,469,722.00	(6,644,027.00)
Nov-12	PMS	64.67	70.24	5.57	0.45	6.02	6,539,694.26	2,942,862.42	46,700,841.98	41,720,894.38
Dec-12	PMS	68.97	68.41	-0.56	0.45	(0.11)	12,384,479.54	5,572,015.79	30,268,959.44	36,426,097.02
Jan-13	PMS	75.14	66.54	-8.60	0.45	-8.15	259,167,659.42	116,625,446.74	(1,362,292.75)	(6,935,308.54)
Feb-13	PMS	74.62	68.07	-6.55	0.45	-6.10	10,191,938.86	4,586,372.49	(83,064,501.60)	(87,650,674.17)
Mar-13	PMS	71.87	71.87	0.00	0.45	0.00	13,665,690.95	6,149,560.93	(33,400,754.80)	(89,550,315.73)
Apr-13	PMS	77.59	71.95	-5.64	0.45	-5.19	11,723,727.99	5,275,677.60	(43,920,355.19)	(49,196,032.79)
May-13	PMS	78.01	77.59	-0.42	0.45	0.03	13,180,470.00	5,931,211.50	(68,406,639.50)	(74,337,850.50)
Jun-13	PMS	76.42	67.17	-9.25	0.45	-8.80	13,600,310.00	6,120,139.50	(141,307,220.90)	(147,427,360.40)
Jul-13	PMS	72.25	64.10	-8.15	0.45	-7.70	10,598,440.00	4,769,298.00	(157,280,849.60)	(162,050,147.60)
Aug-13	PMS	70.88	64.66	-6.22	0.45	-5.77	12,592,780.00	5,666,751.00	(96,964,406.00)	(102,631,157.00)
Sep-13	PMS	73.82	68.17	-5.65	0.45	-5.20	17,843,130.00	8,029,408.50	(102,954,860.10)	(110,981,268.60)
Totals 2013							5,345,210.00	2,405,344.50	(27,795,092.00)	(30,200,436.50)
Totals 2012							108,741,697.80	48,993,764.01	(805,094,479.57)	(854,088,243.58)
Grand Totals							773,094,408.32	348,252,483.74	(1,975,107,220.59)	(2,323,359,704.34)

ANNEX 1

Summary of the difference in unit costs of petroleum products from KfREL and Imports for the period Dec 2010 - September 2011

Month	Product	KfREL Unit Cost	Unit Import Cost	Price Delta	Rate of Remission - [B=C+D]	Volume from KfREL - [E]	Total Remission (Kcs)	Consumer Gain/(Loss)-Kcs	Gain/(Loss) to Economy - Kcs
		Cost Kef/Ltr [A]	Cost Kef/Ltr [B]	[C=B-A]	Ref/Ltr [D]	[C=D*E]	[E*D*F]	[E*G]	[E*H-I]
Dec-10	DPK	57.28	53.91	3.37	0.30	66,151,000.00	19,845,200.00	(236,159,070.00)	(256,004,270.00)
			Totals 2010			66,151,000.00	19,845,200.00	(236,159,070.00)	(256,004,270.00)
Jan-11	DPK	60.66	55.12	5.54	0.30	70,020,230.00	21,006,469.00	(366,947,925.20)	(387,956,394.20)
Feb-11	DPK	61.44	57.35	4.06	0.30	86,087,103.77	25,826,131.13	(323,667,510.16)	(349,513,641.29)
Mar-11	DPK	65.51	60.88	4.53	0.30	86,513,886.77	25,954,076.63	(374,603,839.35)	(400,557,915.90)
Apr-11	DPK	73.71	70.44	3.27	0.30	91,551,808.24	27,465,542.47	(271,908,270.46)	(293,374,412.53)
May-11	DPK	76.70	74.85	1.85	0.30	91,976,661.66	27,593,598.50	(142,566,725.58)	(170,160,521.00)
Jun-11	DPK	75.36	74.46	0.90	0.30	80,808,403.80	(79,927,553.42)	(351,911,794.99)	(79,927,553.42)
Jul-11	DPK	75.89	71.29	4.50	-	78,202,621.11	-	(278,037,431.61)	(278,037,431.61)
Aug-11	DPK	76.67	75.38	1.29	-	79,666,885.85	-	(167,688,994.77)	(167,688,994.77)
Sep-11	DPK	78.11	76.15	1.96	-	85,555,609.57	-	(49,856,506.57)	(49,856,506.57)
Oct-11	DPK	79.03	78.33	0.70	-	71,229,295.10	-	16,015,836.24	16,015,836.24
Nov-11	DPK	83.03	80.11	2.91	-	76,265,886.87	-	(643,140,059.35)	(643,140,059.35)
Dec-11	DPK	83.50	75.52	7.98	-	81,307,213.57	-	(3,034,261,385.22)	(3,162,199,202.52)
			Totals 2011			987,189,508.31	127,847,817.73	(790,463,248.37)	(790,463,248.37)
Jan-12	DPK	78.22	68.30	9.93	-	79,603,549.69	-	(190,048,426.89)	(190,048,426.89)
Feb-12	DPK	73.44	70.25	3.19	-	59,576,309.37	-	(124,660,578.85)	(124,660,578.85)
Mar-12	DPK	74.11	69.37	4.74	-	26,399,763.47	-	(219,636,681.17)	(219,636,681.17)
Apr-12	DPK	77.44	72.24	5.20	-	42,237,323.30	-	(147,851,168.25)	(147,851,168.25)
May-12	DPK	76.14	73.77	2.37	-	62,364,459.18	-	(152,778,320.43)	(152,778,320.43)
Jun-12	DPK	73.06	69.22	3.84	-	39,786,020.95	-	(132,269,591.68)	(132,269,591.68)
Jul-12	DPK	63.68	61.06	2.52	-	50,484,729.65	-	(34,586,450.17)	(34,586,450.17)
Aug-12	DPK	62.05	61.56	0.49	-	70,588,673.81	-	123,560,780.00	123,560,780.00
Sep-12	DPK	65.55	68.35	2.80	-	44,128,850.00	-	76,496,259.20	76,496,259.20
Oct-12	DPK	67.94	74.51	6.57	-	11,643,266.24	-	153,882,574.43	153,882,574.43
Nov-12	DPK	69.35	73.56	4.21	-	34,120,304.75	-	(35,012,047.17)	(35,012,047.17)
Dec-12	DPK	73.98	73.56	0.42	-	14,588,352.99	-	(1,473,369,599.34)	(1,473,369,599.34)
			Totals 2012			535,442,103.39	-	(11,208,242.77)	(11,208,242.77)
Jan-13	DPK	77.96	70.73	7.25	-	15,459,645.21	-	(136,811,314.15)	(136,811,314.15)
Feb-13	DPK	77.51	72.15	5.36	-	25,897,415.56	-	(28,990,946.24)	(28,990,946.24)
Mar-13	DPK	77.75	75.86	1.90	-	15,260,161.70	-	(142,861,166.80)	(142,861,166.80)
Apr-13	DPK	78.33	69.64	8.69	-	16,430,720.00	-	(154,549,657.60)	(154,549,657.60)
May-13	DPK	76.24	66.00	10.24	-	15,092,740.00	-	(354,721,336.20)	(354,721,336.20)
Jun-13	DPK	76.34	65.11	11.23	-	31,586,940.00	-	(154,578,434.40)	(154,578,434.40)
Jul-13	DPK	73.85	65.09	8.76	-	17,645,940.00	-	(9,574,639.80)	(9,574,639.80)
Aug-13	DPK	70.68	70.06	0.62	-	15,443,290.00	-	(43,757,252.00)	(43,757,252.00)
Sep-13	DPK	74.01	71.31	2.70	-	19,889,660.00	-	(1,139,867,374.97)	(1,139,867,374.97)
			Totals 2013			172,710,512.49	-	(6,031,350,547.26)	(6,031,350,547.26)
			Grand Totals			1,761,492,924.20	147,693,117.73	(5,883,657,429.59)	(6,031,350,547.26)

Summary of the difference in unit costs of petroleum products from KPRIL and imports for the period Dec 2010 - September 2013

Month	Product	KPRIL Unit Cost Kes/Ltr [A]	Unit Import Cost Kes/Ltr [B]	Price Delta (C = B-A) Kes/Ltr [D]	Rate of Remission - [E=C/D]	Net Delta [E=C+D]	Volume from KPRIL - Ltrs [F]	Total Remission (Kes) [C=D*F]	Consumer Gains(Loss) - Kes [H=E*F]	Gains(Loss) to Economy - Kes [I=H+G]
Dec-10	ACGO	57.39	52.88	-4.51	0.30	-1.21	61,470,000.00	18,241,000.00	(256,788,700.00)	(277,229,700.00)
Jan-11	ACGO	60.73	54.47	-6.26	0.30	-5.96	64,618,300.00	19,385,490.00	(258,788,700.00)	(277,229,700.00)
Feb-11	ACGO	61.13	58.02	-3.11	0.30	-2.81	77,274,211.82	23,335,296.55	(385,125,068.00)	(291,510,558.00)
Mar-11	ACGO	65.09	60.41	-4.68	0.30	-4.38	78,951,241.82	23,685,402.55	(318,573,994.33)	(291,999,216.57)
Apr-11	ACGO	73.20	75.71	2.51	0.30	2.21	82,968,494.76	24,890,548.43	233,111,470.27	308,130,921.84
May-11	ACGO	76.80	77.85	1.05	0.30	0.75	82,689,241.28	24,797,772.38	111,589,975.73	86,792,203.35
Jun-11	ACGO	76.01	73.74	-2.27	0.30	-1.97	82,769,096.27	24,830,736.88	(163,053,119.65)	(197,885,848.53)
Jul-11	ACGO	76.57	73.36	-3.21	0.30	-2.91	74,653,699.21	22,396,169.76	(217,212,116.69)	(239,630,016.45)
Aug-11	ACGO	79.57	75.44	-4.13	0.30	-3.83	89,777,094.44	26,933,125.33	(193,020,731.53)	(213,953,558.88)
Sep-11	ACGO	78.36	75.91	-2.45	0.30	-2.15	77,286,470.42	23,180,541.13	(105,173,858.58)	(128,364,407.16)
Oct-11	ACGO	79.27	80.47	1.10	0.30	0.80	76,686,537.01	23,005,611.10	(66,778,787.58)	(69,784,746.60)
Nov-11	ACGO	83.24	82.33	-0.91	0.30	-0.61	75,993,446.92	22,780,004.08	(593,040,226.42)	(615,830,251.50)
Dec-11	ACGO	84.03	75.92	-8.11	0.30	-7.81	94,214,638.62	282,654,465.69	(2,892,107,772.40)	(2,986,762,411.00)
Jan-12	ACGO	80.05	79.67	-0.38	0.30	(6.08)	72,072,689.68	21,661,806.90	(443,065,953.27)	(464,727,760.18)
Feb-12	ACGO	75.97	71.66	-4.31	0.30	(4.01)	55,734,578.24	16,720,373.47	(223,495,658.72)	(240,216,032.19)
Mar-12	ACGO	76.02	72.24	-3.78	0.30	(3.48)	25,359,646.88	7,607,894.06	(88,281,571.14)	(95,889,465.21)
Apr-12	ACGO	78.64	74.27	-4.37	0.30	(4.07)	38,566,759.25	11,570,027.77	(156,966,710.14)	(168,546,737.91)
May-12	ACGO	77.22	74.56	-2.66	0.30	(2.36)	55,992,749.63	16,799,924.69	(132,359,409.12)	(149,159,334.81)
Jun-12	ACGO	77.33	73.30	-4.03	0.30	(3.73)	37,155,335.39	11,146,600.62	(12,281,260.68)	(13,407,861.39)
Jul-12	ACGO	64.77	66.06	1.29	0.30	1.59	48,508,913.36	14,552,674.01	77,129,172.25	62,576,498.24
Aug-12	ACGO	63.43	66.04	2.61	0.30	2.91	65,580,699.47	19,674,209.81	150,039,035.45	171,165,035.61
Sep-12	ACGO	67.49	70.00	2.51	0.30	2.31	41,042,610.00	12,312,843.06	115,330,296.10	103,017,453.10
Oct-12	ACGO	69.92	74.34	4.42	0.30	4.72	19,433,612.22	5,830,143.67	91,727,593.67	85,897,450.00
Nov-12	ACGO	71.51	73.51	2.00	0.30	2.30	17,314,112.64	5,194,233.79	39,872,459.06	34,628,228.27
Dec-12	ACGO	74.19	72.84	-1.35	0.30	(1.05)	17,396,196.00	5,218,856.80	(18,266,005.80)	(23,484,864.60)
Jan-13	ACGO	78.56	78.56	-0.00	0.30	-0.22	49,595,402.75	14,878,590.82	(359,617,212.35)	(708,106,801.17)
Feb-13	ACGO	78.26	71.95	-6.31	0.30	(4.01)	27,159,014.18	8,147,704.26	(39,072,823.67)	(40,656,546.22)
Mar-13	ACGO	78.82	73.76	-5.06	0.30	(4.74)	22,388,007.36	6,716,407.21	(106,086,444.41)	(112,801,046.62)
Apr-13	ACGO	78.58	72.30	-6.28	0.30	(5.98)	20,882,550.00	6,246,765.00	(134,518,849.00)	(139,765,614.00)
May-13	ACGO	76.92	67.27	-9.65	0.30	(9.35)	22,692,120.00	6,789,636.00	(211,810,322.00)	(218,599,958.00)
Jun-13	ACGO	76.84	64.96	-11.88	0.30	(11.58)	18,186,640.00	5,455,992.00	(210,601,291.20)	(216,057,283.20)
Jul-13	ACGO	75.64	68.10	-7.54	0.30	(7.24)	31,150,710.00	9,357,213.00	(225,830,740.40)	(235,177,953.40)
Aug-13	ACGO	73.58	70.06	-3.52	0.30	(3.22)	29,100,380.00	8,730,114.00	(93,703,223.60)	(102,433,337.60)
Sep-13	ACGO	73.36	71.48	-1.88	0.30	(3.58)	16,735,140.00	3,217,542.00	(36,136,001.20)	(41,613,543.20)
Totals 2013			71.88				187,616,309.98	56,281,892.92	(1,213,036,804.77)	(1,289,323,697.76)
Totals 2011			79.67				942,314,638.62	282,654,465.69	(2,892,107,772.40)	(2,986,762,411.00)
Totals 2012			71.66				72,072,689.68	21,661,806.90	(443,065,953.27)	(464,727,760.18)
Grand Totals			71.66				55,734,578.24	16,720,373.47	(223,495,658.72)	(240,216,032.19)
			72.24				25,359,646.88	7,607,894.06	(88,281,571.14)	(95,889,465.21)
			74.27				38,566,759.25	11,570,027.77	(156,966,710.14)	(168,546,737.91)
			74.56				55,992,749.63	16,799,924.69	(132,359,409.12)	(149,159,334.81)
			73.30				37,155,335.39	11,146,600.62	(12,281,260.68)	(13,407,861.39)
			66.06				48,508,913.36	14,552,674.01	77,129,172.25	62,576,498.24
			66.04				65,580,699.47	19,674,209.81	150,039,035.45	171,165,035.61
			70.00				41,042,610.00	12,312,843.06	115,330,296.10	103,017,453.10
			74.34				19,433,612.22	5,830,143.67	91,727,593.67	85,897,450.00
			73.51				17,314,112.64	5,194,233.79	39,872,459.06	34,628,228.27
			72.84				17,396,196.00	5,218,856.80	(18,266,005.80)	(23,484,864.60)
Totals 2012			78.56				49,595,402.75	14,878,590.82	(359,617,212.35)	(708,106,801.17)
			71.95				27,159,014.18	8,147,704.26	(39,072,823.67)	(40,656,546.22)
			73.76				22,388,007.36	6,716,407.21	(106,086,444.41)	(112,801,046.62)
			72.30				20,882,550.00	6,246,765.00	(134,518,849.00)	(139,765,614.00)
			67.27				22,692,120.00	6,789,636.00	(211,810,322.00)	(218,599,958.00)
			64.96				18,186,640.00	5,455,992.00	(210,601,291.20)	(216,057,283.20)
			68.10				31,150,710.00	9,357,213.00	(225,830,740.40)	(235,177,953.40)
			70.06				29,100,380.00	8,730,114.00	(93,703,223.60)	(102,433,337.60)
Totals 2013			71.48				16,735,140.00	3,217,542.00	(36,136,001.20)	(41,613,543.20)
Grand Totals							1,686,356,490.35	505,902,940.50	(4,040,656,023.00)	(4,546,557,973.24)

APPENDIX 1
 Quarterly Review of Import and Export Costs of Petroleum Products from KPRL and Imports for the period Dec 2010 - September 2013

Month	Product	Unit	KPRL Cost Kes/Ltr [A]	Import Party Kes/Ltr [B]	Price Delta (Kes) [C = B - A]	Rate of Remission - [E=C+D] Kes/Ltr [D]	Net Delta	Volume from KPRL - Liters [F] [C=D*F]	Total Remission (Kes) [H=E*F]	Consumer Gain/Loss - Kes [I=H-C]	Gain/Loss to Economy - Kes
Dec-10	RMS		54.03	48.71	-5.32	0.45	-4.87	9,383,000.00	4,222,350.00	(15,695,210.00)	(49,917,560.00)
Jan-11	RMS		55.59	53.51	-3.08	0.45	-2.63	9,383,000.00	4,222,350.00	(15,695,210.00)	(49,917,560.00)
Feb-11	RMS		56.52	59.36	2.84	0.45	2.39	12,912,880.00	5,810,296.00	(33,960,874.40)	(39,771,670.40)
Mar-11	RMS		59.38	58.24	-1.14	0.45	-0.59	13,309,430.00	6,029,743.50	(2,919,352.80)	(9,175,103.80)
Apr-11	RMS		65.45	65.29	-0.16	0.45	0.29	11,489,920.00	5,170,464.00	(7,905,663.70)	(1,935,407.50)
May-11	RMS		66.74	71.04	4.30	0.45	3.85	8,388,470.00	3,774,811.50	3,332,076.80	(1,838,387.20)
Jun-11	RMS		71.59	69.39	-2.20	0.45	-1.75	7,460,490.00	3,357,220.50	(23,068,292.50)	19,293,481.00
Jul-11	RMS		72.92	69.51	-3.41	0.45	-2.96	8,299,340.00	3,734,703.00	(13,055,857.50)	(16,413,078.00)
Aug-11	RMS		74.32	72.54	-1.78	0.45	-1.33	4,550,660.00	2,047,887.00	(24,566,046.40)	(28,300,249.40)
Sep-11	RMS		74.30	72.88	-1.42	0.45	-0.97	3,430,165.00	1,547,875.50	(7,393,912.30)	(10,024,077.80)
Oct-11	RMS		74.34	74.81	0.47	0.45	0.02	7,207,890.00	3,243,550.50	6,631,258.80	3,367,208.30
Nov-11	RMS		80.82	78.36	-2.46	0.45	-2.01	9,216,536.00	4,147,438.50	(18,525,225.30)	(22,672,663.50)
Dec-11	RMS		78.81	68.28	-10.53	0.45	-10.08	11,358,910.00	5,111,509.50	(114,497,812.80)	(119,609,323.50)
								115,600,990.00	52,114,045.50	(194,298,468.50)	(246,412,514.80)
								2,962,310.00	1,335,039.50	(16,914,790.10)	(18,249,829.60)
Feb-12	RMS		72.41	66.25	-6.16	0.45	(5.71)	2,962,310.00	1,335,039.50	(6,665,197.50)	(7,998,237.00)
Mar-12	RMS		72.41	69.71	-2.70	0.45	(2.25)	2,962,310.00	1,335,039.50	(6,665,197.50)	(7,998,237.00)
May-12	RMS		77.87	73.89	-3.98	0.45	(3.53)	8,119,550.00	3,653,797.50	(28,662,011.50)	(32,315,809.00)
Jun-12	RMS		74.07	64.78	-9.29	0.45	(8.84)	4,455,910.00	2,005,159.50	(39,290,244.40)	(41,385,403.90)
Jul-12	RMS		62.46	58.92	-3.54	0.45	(3.02)	3,066,720.00	1,390,024.00	(9,261,494.40)	(10,641,518.40)
								21,566,000.00	9,705,660.00	(100,893,737.90)	(110,598,297.50)
								156,758,750.00	66,041,455.50	(340,897,416.10)	(466,078,871.90)
								Grand Totals			

Summary of the sales and import costs of Singapore products from KPRL and imports for the period Dec 2010 - September 2012

Month	Product	KPRL Unit Cost Key/Lit (A)	Import Parity Key/Lit (H)	Price Delta (Kes) (C = H-A)	Rate of Remission - (E-C*D) Key/Lit (D)	Net Delta (E-C+D)	Volume from KPRL - Liters (F) [C=D*F]	Total Remission (Kes) [E*F]	Consumer Gain/Loss - Kes [H*F]	Gain/Loss to Economy - Kes [H-C]
Dec-10	Naphtha	43.04	41.34	-1.70	0.45	-0.25	24,031,122.00	10,814,004.90	(6,001,082.04)	(14,815,086.94)
Jan-11	Naphtha	43.13	39.72	-3.41	0.45	-2.96	24,031,122.00	10,814,004.90	(6,001,082.04)	(14,815,086.94)
Feb-11	Naphtha	46.30	42.15	-4.15	0.45	-3.70	16,598,464.00	7,469,308.80	(9,147,550.57)	(16,616,829.37)
Mar-11	Naphtha	52.74	44.40	-8.34	0.45	-7.89	2,131,692.00	959,261.40	(7,897,660.87)	(8,856,922.27)
Apr-11	Naphtha	57.24	51.32	-5.92	0.45	-5.47	8,105,466.75	3,647,460.04	(44,331,368.78)	(47,978,828.81)
May-11	Naphtha	54.92	56.79	1.87	0.45	2.32	31,097,925.22	13,994,066.35	72,213,884.00	58,219,817.65
Jun-11	Naphtha	56.12	55.04	-1.08	0.45	-0.63	4,962,842.30	2,223,279.04	(3,109,837.10)	(5,343,116.14)
Jul-11	Naphtha	58.74	54.34	-4.40	0.45	-3.95	26,544,327.72	11,944,947.48	(104,974,919.09)	(116,919,866.57)
Aug-11	Naphtha	55.80	56.44	0.64	0.45	0.89	6,396,721.97	2,878,524.89	6,321,468.63	3,442,943.75
Sep-11	Naphtha	59.82	56.44	-3.38	0.45	-2.93	14,039,495.43	6,317,772.94	(41,130,819.37)	(47,448,622.31)
Oct-11	Naphtha	61.97	56.32	-5.65	0.45	-5.20	9,117,866.58	4,103,048.96	(28,591,972.68)	(32,695,021.64)
Nov-11	Naphtha	55.26	61.20	5.94	0.45	6.39	12,399,467.36	5,579,760.31	79,190,693.88	73,610,933.56
Dec-11	Naphtha	48.91	53.38	4.47	0.45	3.82	14,859,513.36	6,686,781.01	56,772,625.35	50,085,844.38
			Totals 2011				176,535,496.80	79,445,473.56	(203,763,840.43)	(233,208,366.87)
Jan-12	Naphtha	52.47	48.33	-4.14	0.45	(3.79)	5,651,590.63	2,543,188.78	(21,447,068.46)	(23,990,237.74)
Feb-12	Naphtha	57.26	51.83	-5.43	0.45	(4.88)	9,951,447.43	4,281,151.34	(4,740,274.65)	(5,168,425.99)
Mar-12	Naphtha	59.85	55.20	-4.65	0.45	(4.20)	9,996,326.56	4,488,346.95	(42,021,654.96)	(46,509,001.91)
Apr-12	Naphtha	56.70	57.80	1.10	0.45	(0.45)	9,482,454.42	4,267,104.49	(4,245,160.52)	(8,512,265.03)
May-12	Naphtha	53.57	56.36	2.79	0.45	5.24	7,236,489.60	3,256,420.32	37,949,248.78	34,692,828.46
Jun-12	Naphtha	46.20	52.00	5.80	0.45	6.25	4,752,662.88	2,138,698.29	29,697,717.28	27,559,018.99
Jul-12	Naphtha	46.50	47.28	0.78	0.45	(1.77)	6,004,487.16	2,702,019.22	(10,646,782.26)	(13,348,801.48)
Aug-12	Naphtha	55.31	51.12	-4.19	0.45	(3.74)	809,645.17	364,340.33	(3,029,758.67)	(3,394,099.00)
Sep-12	Naphtha	52.82	55.34	2.52	0.45	2.97				
Oct-12	Naphtha	58.10	57.19	-0.91	0.45	(0.46)				
Nov-12	Naphtha	56.03	52.78	-3.25	0.45	(2.80)				
Dec-12	Naphtha	55.72	51.50	-4.22	0.45	(3.77)	20,704,950.00	9,317,227.50	(57,973,860.00)	(67,291,067.50)
			Totals 2012				65,589,993.85	29,515,497.23	(76,457,593.47)	(105,973,090.20)
Jan-13	Naphtha	56.91	51.79	-5.12	0.45	(4.67)	6,974,905.99	3,138,707.70	(32,544,432.52)	(35,683,140.22)
Feb-13	Naphtha	49.69	51.59	1.90	0.45	2.35	7,005,088.86	3,152,289.99	16,454,399.76	13,302,109.76
Mar-13	Naphtha	51.14	51.14	0.00	0.45	0.45	11,318,885.20	5,093,498.34	5,070,873.71	(22,624.63)
May-13	Naphtha	46.56	47.73	1.17	0.45	1.62	11,318,885.20	5,093,498.34	18,378,115.71	13,284,617.37
Jun-13	Naphtha	45.16	47.37	2.21	0.45	2.66	1,150,996.30	521,548.33	3,083,446.10	2,561,897.76
			Totals 2013				16,999,542.70	10,442,402.76	(10,442,402.76)	(6,557,139.94)
	Grand Totals		266,166,612.64				119,774,975.69	(386,222,515.53)	(505,997,491.22)	

Summary of the difference in unit costs of petroleum products from KPRIL and imports for the period Dec 2010 - September 2013

Month	Product	KPRIL Unit Cost Kes/Ltr (A)	Import Fairly Kes/Ltr (B)	Price Delta (Kes) (C = (A)-B)	Rate of Remission - [(C)/A]	Net Delta Kes/Ltr (D) [(B)-C]	Volume from KPRIL - Ltrs (E)	Total Remission (Kes) [(D)*E]	Consumption (H=E*F)	Qty/Loss - Kes (I=H*G)	Gain/Loss to Economy - Kes (J=I*G)	
Dec-10	IDC	60.20	53.43	-6.77	0.30	-6.47	2,652,390.00	-795,717.00	(17,160,963.30)	(17,956,680.30)	(17,956,680.30)	
Jan-11	IDC	61.54	56.76	-4.78	0.30	-4.48	2,652,390.00	-795,717.00	(17,160,963.30)	(17,956,680.30)	(17,956,680.30)	
Feb-11	IDC	69.12	60.02	-9.10	0.30	-8.80	2,996,370.00	-898,911.00	(13,434,647.49)	(14,333,558.49)	(14,333,558.49)	
Mar-11	IDC	76.79	66.76	-10.03	0.30	-9.73	3,577,041.00	-1,073,112.20	(31,495,584.00)	(32,568,696.30)	(32,568,696.30)	
Apr-11	IDC	79.64	75.29	-4.35	0.30	-4.05	2,592,854.45	-750,859.45	(30,392,296.36)	(31,129,297.81)	(31,129,297.81)	
May-11	IDC	73.53	79.62	6.09	0.30	6.39	2,642,214.58	750,859.45	(10,144,053.59)	(10,894,907.19)	(10,894,907.19)	
Jun-11	IDC	79.21	74.20	-4.95	0.30	-4.65	1,915,170.37	-574,551.11	(16,850,469.70)	(17,425,020.81)	(17,425,020.81)	
Jul-11	IDC	80.25	77.28	-2.97	0.30	-2.67	1,029,011.92	-308,708.58	(8,900,697.52)	(9,245,406.63)	(9,245,406.63)	
Aug-11	IDC	76.74	78.07	1.33	0.30	1.63	1,963,949.72	589,184.92	(3,204,755.29)	(2,615,560.36)	(2,615,560.36)	
Sep-11	IDC	82.76	78.07	-4.69	0.30	-4.39	994,169.53	-280,250.86	(4,364,116.87)	(4,644,367.73)	(4,644,367.73)	
Oct-11	IDC	84.57	81.30	-3.27	0.30	-2.97	1,830,267.20	-549,116.16	(5,438,012.40)	(5,987,128.56)	(5,987,128.56)	
Nov-11	IDC	84.35	80.24	-4.11	0.30	-3.81	4,514,412.33	-1,354,323.70	(13,939,694.77)	(14,294,018.47)	(14,294,018.47)	
Dec-11	IDC	76.47	81.95	5.48	0.30	5.78	3,798,982.58	1,139,694.77	(9,286,275.85)	(8,146,581.08)	(8,146,581.08)	
Jan-12	IDC	76.34	74.46	-1.88	0.30	-1.58	3,088,258.616	-926,275.85	(6,403,077.41)	(6,729,353.26)	(6,729,353.26)	
Feb-12	IDC	78.20	75.97	-2.23	0.30	-1.93	800,046.58	-240,013.97	(1,543,740.12)	(1,783,754.10)	(1,783,754.10)	
Mar-12	IDC	79.62	76.28	-3.34	0.30	-3.04	3,869,360.10	-1,160,808.03	(11,765,102.01)	(12,925,914.04)	(12,925,914.04)	
Apr-12	IDC	75.34	77.62	2.28	0.30	2.58	2,035,432.63	616,629.79	(5,301,723.07)	(4,685,093.28)	(4,685,093.28)	
May-12	IDC	72.93	75.89	2.96	0.30	3.26	5,809.85	1,742.96	(18,922.30)	(17,179.35)	(17,179.35)	
Jun-12	IDC	62.18	71.47	9.29	0.30	9.59	2,783,277.05	834,083.11	(26,702,108.87)	(25,867,125.76)	(25,867,125.76)	
Jul-12	IDC	65.83	64.38	-1.45	0.30	-1.15	1,961,006.04	-580,421.81	(12,254,629.78)	(12,843,051.59)	(12,843,051.59)	
Aug-12	IDC	74.77	68.63	-6.14	0.30	-5.84	15,105.62	-4,531.68	(88,205.38)	(92,737.06)	(92,737.06)	
Sep-12	IDC	71.42	75.52	4.10	0.30	4.40	2,336,800.00	701,010.00	(490,728.00)	(1,191,768.00)	(1,191,768.00)	
Oct-12	IDC	76.70	76.19	-0.51	0.30	-0.21	701,040.00	-210,312.00	(2,348,484.00)	(2,558,796.00)	(2,558,796.00)	
Nov-12	IDC	78.28	74.63	-3.65	0.30	-3.35	817,880.00	-245,364.00	(3,436,917.20)	(3,672,281.20)	(3,672,281.20)	
Dec-12	IDC	77.10	72.61	-4.49	0.30	-4.19	16,662,038.79	-4,998,611.64	(8,025,378.17)	(8,826,996.34)	(8,826,996.34)	
Jan-13	IDC	78.75	72.47	-6.28	0.30	-5.98	1,869,440.00	-560,832.00	(11,179,251.20)	(11,740,083.20)	(11,740,083.20)	
Feb-13	IDC	77.32	74.77	-2.55	0.30	-2.25	2,453,640.00	-736,092.00	(5,520,690.00)	(6,256,782.00)	(6,256,782.00)	
Mar-13	IDC	78.97	78.52	-0.45	0.30	-0.15	1,635,760.00	-490,228.00	(245,364.00)	(736,092.00)	(736,092.00)	
Apr-13	IDC	75.08	67.94	-7.14	0.30	-6.84	1,805,076.00	-541,522.80	(12,346,719.84)	(12,888,242.64)	(12,888,242.64)	
May-13	IDC	72.19	66.95	-5.24	0.30	-4.94	1,858,533.46	-557,560.04	(9,181,155.30)	(9,738,715.34)	(9,738,715.34)	
Jun-13	IDC						9,622,449.46	-2,686,724.54	(38,473,180.34)	(41,159,904.88)	(41,159,904.88)	
Totals 2012												
Totals 2013												
Grand Totals							59,024,464.41	17,927,339.32	(111,691,842.47)	(139,579,101.00)	(139,579,101.00)	

