

# ANGLO LEASING:

## “STOP THE THEATRICALS: WHERE IS THE EVIDENCE?”

### Statement by Civil Society Organizations on Government Accountability for Anglo Leasing

The Government of Kenya issued **IRREVOCABLE PROMISSORY NOTES** valued at more than **56.33 BILLION** shillings to **GHOSTS**. As Kenya's Controller & Auditor General told Parliament in April 2006, these Promissory Notes were given to various parties - including Anglo Leasing and Finance Limited, for goods and services that did not exist, or if they did, were grossly over-priced. The nature of these illegal contracts and the **MYSTERIOUS** identity of the contractors mean that Kenyans will most likely **never** receive these goods and services nor be refunded the huge loss. No serious attempt has ever been made by the Government to redress this actual and potential 56 Billion shilling rip-off. In fact, even as at now Kenyans are **LEGALLY BOUND TO PAY** this sum despite the obvious illegality of these transactions and in some respects despite non-performance by the contracting parties.

Amos Kimunya, the Minister for Finance, has recently publicly claimed that these Irrevocable Promissory Notes have been voluntarily returned. We do not believe him. For instance, Mr. Kimunya has not reported on who has voluntarily returned the Irrevocable Promissory Notes. On the same day that he displayed the "Promissory notes" before the press, the Minister failed to table them in Parliament where he had the opportunity and the duty to do so. Mr. Kimunya did not even issue a written statement to explain what the documents he is holding were. Perhaps it is because he knew that Anglo Leasing was not the object of the press conference he was addressing, therefore raising curious questions as to his choice of forum to display the papers. We believe he was avoiding proper scrutiny of the documents.

The government has appointed PWC to authenticate the contracts and assess their value for money. This is diversionary and a waste of public resources. The Controller and Auditor General has already made his reports which should be published. Having rejected John Githongo's evidence on flimsy grounds, the Government is now seeking to define the terms on which its own conduct will be assessed. This is unacceptable.

The Minister's and Government's conduct is very suspicious. Parliament should still require the Minister to table answers and evidence to questions raised including the formal discharge of our obligations from whoever returned the Irrevocable Promissory Notes. Only then shall there be public confidence that our Country is **irrevocably and unconditionally discharged of all legal and financial obligations to the alleged lenders or their successors**. Only then will Kenyans be assured that they will never be called upon to pay these debts.

Irrevocable Promissory Notes are legitimate debt settlement commitments that allow payments to be made in future or in instalments on fixed dates. Issued by a government, they represent **SOVEREIGN PAPER** or are as good as **CASH** and cannot be cancelled, unless there is verifiable evidence of **FRAUD** in the contracts for which they are used as settlement. Irrevocable Promissory Notes like other forms of Commercial Paper can be sold to 3<sup>rd</sup> parties - typically financial institutions or other open market investors, buying at a discount. This has happened to Zambia and the Democratic Republic of the Congo. A British court recently adjudged Zambia to pay the sum of about 20million dollars to a "vulture fund" creditor who had obtained the debt for about 3million dollars. A similar type of claim is pending against the DRC in a US court.

*"The modus was clear. The Government of Kenya would enter into a contract with a number of financing entities that did not exist which meant that the Government had no legal recourse. It also implied an effort on the part of financiers to avoid revealing their true identities which flew against common practice by reputable international financiers. Secondly, in most of the contracts the GOK started debt repayments before substantive implementation of the projects had begun. The implication of this was that the bogus financing companies used the Government's money to implement the projects and then proceeded to charge interest on what are in truth fictitious loans by the Government to itself." John Githongo, November 22, 2005.*

Put simply, the government issued documents of promise to pay for loans it never received. This promise was guaranteed by the Attorney General, who confirmed that these payments **MUST** be fulfilled. The only way we can avoid payment is if:

1. there is a judicial process which can convict those public officials who fraudulently and negligently entered into contracts
2. OR by the formal written consent of the other contracting party discharging Kenya of any obligation to pay
3. OR by Kenya successfully instituting judicial arbitration in an international court to discharge Kenya of its obligation. For the record, we feel that the obligation is unfair and illegal BUT it is an obligation nevertheless. The government has committed us to pay for goods and services which were illegal, not received or grossly exaggerated in price.

The Controller & Auditor General as of April 2006 said that the following credit providers to whom the Irrevocable Promissory Notes had been given do not exist and are not bona fide registered business firms

- Anglo Leasing & Finance Limited – Liverpool England
- Sound Day Corporation – Daventry England
- Infotalent Limited – Geneva Switzerland
- Midland Finance & Securities Limited – Geneva Switzerland
- Apex Finance Corporation – Geneva Switzerland
- First Mercantile Securities – Geneva Switzerland

By attempting to withhold payment on certain Irrevocable Promissory Notes linked to Anglo-Leasing type contracts, Kenya has already been sued locally and overseas. One of our Embassy premises in Europe has already been attached over some of these contracts and we can expect many other international lawsuits if we don't do more than just pretend to cancel the notes unprocedurally. It is indeed difficult to believe that any creditor would simply release a government of massive financial obligations without further ado. Unless there is something fishy; if, for instance, **THERE WAS REALLY NEVER ANY CREDITOR AND THE**

#### GOVERNMENT IS AWARE OF THIS!

The Government of Kenya has misled Kenyans many times that these contracts were cancelled. Kenyans will remember such statements as "This is the scandal that never was", or "No money was lost", or "The money has been repaid"...

We believe that these contracts have not been legally cancelled. There is no evidence of proper and legal cancellation. Mr. Kimunya appears determined to make Kenyans falsely believe there was such cancellation. At his press conference and later, in Parliament, the Minister had the opportunity and duty to table any proof before Kenyans but failed to do so. This was deliberate on his part as he probably knew what he displayed were not "the" Irrevocable Promissory Notes. Further, the Government has contractually bound its citizens to pay this illegitimate debt. Amos Wako has given the Ghost Companies a legal opinion that binds Kenya to honour the Irrevocable Promissory Notes and assures them that we shall pay on demand. Mr. Kimunya needs to publicly answer the following questions:-

1. Who gave him the promissory notes?
2. How did he get them?
3. When did he get them and why did he not immediately inform the public and Parliament given persistent public demands for clarification?
4. Where is the formal discharge of the contracts which form the foundation of the promissory notes? Are we to believe that creditors have simply released the government of massive obligation without any formal proceedings or benefit?
5. Has the government been lying all along when it said that it did not know who Anglo Leasing or the other contracting parties were?

Almost half of Kenya lives on less than **Kshs 68/=**. (1 US\$) per day. Every **MAN, WOMAN OR CHILD** living under this poverty line would have received almost **Kshs 4,000 per person** - if this money had been simply handed to them. Instead more than 17 Million Kenyans are saddled with a debt of **Kshs 4,000 per person**, for goods and services that none of us will ever receive. **56.33 BILLION** shillings can pay for the proposed **HEALTH BILL** and give **EVERY KENYAN** access to **FREE MEDICAL CARE** for a year. **56.33 BILLION** shillings would have paid for **8 YEARS OF NATIONAL CDF ALLOCATIONS**. **56.33 BILLION** shillings is **28 TIMES THE YOUTH FUND ALLOCATION**. **56.33 BILLION** would pay for about **FOURTEEN YEARS** of **TUITION** for **SECONDARY EDUCATION** (Kshs 4.3. billion. a year)

**GOVERNMENT and PARLIAMENT must ACCOUNT** to the Kenyan people. On Wednesday 9<sup>th</sup> May 2007, during the afternoon session, Parliament is scheduled to debate this issue of national importance. The Ministry of Finance is itself under questioning for its behaviour on Anglo-Leasing. Therefore we do expect that, for the Minister to be taken seriously, he must provide corroborative evidence for his claims from the following offices: - 1) the Controller and Auditor General, Ms. Komora 2) the Governor of the Central Bank Prof. Ndung'u and the Attorney General Amos Wako (never mind his complicity!). This should include tabling before the House the Special Audits by the Auditor General on each of the eighteen questionable contracts. If this is done, the generalized statements government has been making will no longer be tenable and Parliament will be able to hold the Minister to a higher standard of accountability. Kenyans too will have a chance to see the truth for themselves instead of relying on information from culpable government officials.

In view of the government's resistance to transparency on these and other issues we **DEMAND** the following:

1. A comprehensive publication of the External Public Debt Register
2. A publication of the actual documentation of the individual eighteen "Anglo Leasing and Anglo Leasing type" contracts
3. The publication of the Auditor General's detailed special audits on each of the eighteen questionable contracts
4. Independent authentication of the papers displayed by the Minister Kimunya alleged to be cancelled promissory notes
5. The prosecution of all Ministers and Senior Officers linked to the transactions related to the eighteen fraudulent contracts known as "Anglo Leasing type contracts" as a necessary step to being able to legally disclaim the promissory notes.
6. We expect parliament to do its duty and represent the interest of 34 million Kenyans. Demand and scrutinise the contracts and promissory notes. Demand the sacking and prosecution of Ministers and Senior Public Officials responsible for this massive theft. **ACT NOW! DO THE RIGHT THING!!**

**In the national interest, Civil Society offers to constitute a panel of experts to scrutinize and authenticate the documents that the Minister was displaying.**

Signed by the following organizations:

1. Name and Shame Corruption Networks Campaign NASCON)
2. Centre for Law and Research International (Clarion)
3. Haki Focus
4. Africa Centre for Open Governance (AfriCOG)
5. Mars Group Kenya
6. National Convention Executive Council (NCEC)
7. Shelter Forum
8. East African Human Rights Institute (EAHRI)
9. Kenya Human Rights Commission (KHRC)
10. Youth Agenda
11. CRADLE Children's Foundation
12. Muslim Human Rights Forum (MHRF)
13. Release Political Prisoners (RPP)
14. Coalition for a Common Sense Constitution (CCC)
15. Citizen's Coalition for Constitutional Change (4 Cs)
16. Citizens Living Above Waste Silence Trust (CLAWS)
17. Kenya Land Alliance (KLA)
18. Legal Resources Foundation (LRF)
19. Haki Jamii Trust
20. Constitution and Reform Education Consortium (CRECO)
21. Consortium for the Empowerment and Development of Marginalised Communities (CEDMAC)
22. Centre for Minority Rights Development (CEMIRIDE)
23. Womankind
24. Northern Aid
25. National Muslim Leaders Forum
26. Umande Trust
27. Movement for Political Accountability (MOPA)