

Illegally Binding: we will not pay for Anglo Leasing!

In Parliament on May 9, 2007, the Member for Ntonyiri, the Honourable Maoka Maore tabled copies of what are (or appear to be) Irrevocable Promissory Notes, issued by the Treasury on behalf of the Government of Kenya. These IPNs were issued in respect of a contract signed on May 29, 2003—about 5 months after the current government came to power.

The initial contract agreement was between the GoK and American-registered GloboTel Inc for the provision of a multi-channel secure telecommunication network for the Kenya Administration Police for a consideration of Euro49.65 million, (KSh4.4 billion). To finance this contract, the GoK turned to a company called Midlands Finance and Securities Ltd, ostensibly to fund the completion of this contract.

The terms of this funding agreement were that GoK was to issue a commitment fee of Euro4 million and quarterly instalments of Euros2,536,000 commencing May 9, 2003 with a final payment of Euro2,538,000 on June 29, 2009. At that date, a total of Euro67,402,000 (KSh 6.1 Billion) at an interest rate of five per cent would have been paid to Midlands Finance and Securities Ltd.

There were a number of problems with this contract and the financing arrangements:

1. Midlands Finance and Securities Ltd does not and never did exist. The Controller and Auditor General have established as much. Its registered office in Geneva, Switzerland is fictitious and there are no records confirming that it ever operated in that country.
2. Even though 36 promissory notes Numbers GOK/OP/APTCN/01 to GOK/OP/APTCN/036 were issued, and Euros4 million paid under the terms of the financing agreement in favour of Midland Finance and Securities to be credited to its account in HSBC Republic Bank (Suisse), the telecommunication network that was the subject of the contract was never supplied. Minister of Finance Amos Kimunya confirmed as much in Parliament on May 2, 2007.
3. In a legal opinion dated June 17, 2003, Kenya's Attorney General Amos Wako stated, "The BUYER, (GOK) has the power to enter into this AGREEMENT and has taken all necessary actions which are required for the execution, delivery and performance of the AGREEMENT"...The Attorney General further confirms that "The Agreement was signed for and on behalf of the Buyer by MR JOSEPH MBUI MAGARI, PERMANENT SECRETARY, MINISTRY OF FINANCE as authorised by HON DAVID MWIRARIA the Minister in charge of Finance in the Government of the Buyer." The AG's opinion is silent on the identities of those that signed on behalf of the financier or indeed the supplier.

4. According to the Controller and Auditor General, Midland Finance Security Ltd (which did not exist) also did not provide any credit to the GoK in favour of Globotel Inc under the terms of the issuance of the IPN in its favour. Yet, in the AG's Legal Opinion, he still states, "In my opinion the Credit has been fully authorized and delivered on behalf of the buyer and is legally binding upon the buyer in accordance with its terms."

Kimunya has stated in and outside Parliament, that, "no promissory notes were issued against this project. There is no refund against the said project because no payments were made."

This is simply untrue. According to the Controller and Auditor General the total amount paid in respect of this contract as of June 30, 2005 is KSh687,725,491.50 - made of payments against the principal sum and interest. According to the Controller and Auditor General, in total, the GoK had paid KSh687,725,491.50 by the end of June 2005. In the external public debt register, the amount repaid on the so-called loan as of June 30, 2005 was KSh 613,500,530. In John Githongo's dossier on Anglo Leasing, discussions Githongo had with then Permanent Secretary in the Office of the President, Dave Mwangi in 2004, corroborate the existence of this contract and payments already made to the ghost financier.

In short, the GoK paid a fictitious company for a loan it never received. And, according to the AG's legal opinion, Kenyans are still bound to pay the remainder of the bogus loan.

As members of the civil society, we wish to ask all Kenyans to join us in asking the following questions:

1. We would like the AG to identify the principals acting on behalf of Midland Finance that he engaged with before rendering his legal opinion. We would also like Wako to produce the evidence that he used in rendering his opinion that credit had been delivered by Midland Finance on behalf of the GoK.
2. We would like former Finance Minister Mwiraria and PSs Mwangi and Joseph Magari to be compelled to reveal the identities of the parties that they engaged with in contracting Midland Finance.
3. We would like Minister of Finance Kimunya to table in Parliament the Irrevocable Promissory Notes listed above that he claims to have in his possession. If indeed some of these promissory notes were returned, by persons yet to be identified, we would like Kimunya to table documents of indemnification against any future debt arising from the GoK undertaking to make payments under the contract.

4. We would like the HSBC Republic Bank (Suisse), the Swiss bank holding the promissory notes, to recognise that in the eyes of the Kenyan people, it is complicit in an attempt by a few criminally minded Kenyans and foreign businessmen to defraud the Kenyan public. It must deny these criminals the forum to continue to receive anonymity and receive payments for the supply of little more than hot air. HSBC's Corporate Social Responsibility pact looks "to address the expectations of our customers, shareholders, employees and other stakeholders. Being one of the world's biggest banks means the decisions we make can have a big impact. We aim to lend and invest responsibly, avoiding projects where the potential for social and environmental damage outweighs the economic benefits."

Today HSBC is one of the largest banking and financial services organisations in the world. By the end of 2006, the bank had pre-tax profits of USD22 billion—slightly more than Kenya's current Gross Domestic Product—and had global Assets of USD1,861 billion—a little more than three times the Gross National Incomes of all the Sub-Saharan African nations.

Today Kenya is one of the poorest countries in the world. Where is the justice in condemning millions of Kenyans who live below the poverty line to a repayment agreement under which we Kenyans never received a cent? Today civil society puts HSBC Republic Bank Suisse and all other commercial entities who may hold such unconscionable debt instruments as those associated with Anglo Leasing on notice—we will do our utmost to highlight the injustice of the debt they seek to enforce and their complicity in allowing corrupt government officials to fleece their countries such as has been the case in Kenya (past and present).

The 18 Anglo Leasing type contracts were worth KSh56.33 billion. If this money had not been stolen it would have: given to each Constituency Development Fund kitty about 267 million for the year; 56.33 billion would have paid for free primary education for about 12.5 million children at a rate of 4,500 per child per year; 56.33 billion would have paid for anti-retrovirals (at 1,500 per month) for the 2.2 million people living with HIV& AIDS for 28 months. That is what 56.33 billion represents.

Kenyans will not pay these Anglo Leasing debts. Not now, not ever. This statement should serve as an international caveat emptor to HSBC. The World Bank and the International Monetary Fund, which have dismissed Kenyans' concerns about graft in our country, as well as their respective Country Directors and Resident Representatives are also put on notice that there are Kenyans who see through their desire to lend at all costs, damn the consequences. We will be directing representations on this matter to their respective headquarters today.

To conclude, our concern is that Kenya not be forced to pay any of this debt. We want all of those who enabled this scam to occur and are continuing to try to sweep it under the carpet to face legal and political accountability wherever they may be. Finally, we want assurances that preventive measures have been put in place to ensure this never happens again.

END