



**KENYA NATIONAL ASSEMBLY
TENTH PARLIAMENT- SECOND SESSION**

REPORT

OF THE

**DEPARTMENTAL COMMITTEE
ON FINANCE, PLANNING &
TRADE ON THE**

GRAND REGENCY HOTEL



Kenya National Assembly
Parliament Buildings
NAIROBI

August, 2008

1.0 PREFACE

Hon. Speaker Sir,

On behalf of the Departmental Committee "F" on Finance, Planning & Trade and pursuant to the provisions of Standing Order No. 162, it is my pleasure and duty to present to the House, the Committee's Report on the Grand Regency Hotel.

The Committee membership comprise of the following:-

The Hon. Chrysanthus Okemo, MP **(Chairman)**
The Hon. (Prof.) Philip Kaloki MP **(Vice Chairman)**
The Hon. Jakoyo Midiwo, MP
The Hon. Musikari Kombo, MP
The Hon. Lucas Chepkitony, MP
The Hon. Ali Bahari, MP
The Hon. Lenny Kivuti, MP
The Hon. Nelson Gaichuhie, MP
The Hon. Ntoitha M'Mithiaru, MP
The Hon. Shakeel Ahmed Shabbir, MP
The Hon. Nkoidila Ole Lankas, MP

The Finance, Planning & Trade Committee is one of the Departmental Committees established under Standing Order No. 151 (4) whose functions *are inter alia*:-

- (i) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;**
- (ii) to study the programme and policy objectives of the ministries and departments and the effectiveness for the implementation.**
- (iii) to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary and as may be referred to them by the House.**
- (iv) to make reports and recommendations to the House as often as possible including recommendations of proposed legislation.**

The subjects falling within the purview of the Committee are:- public finance; banking and insurance; national planning and population development; trade, commerce and industry; tourism promotion and management.

2.0 GRAND REGENCY HOTEL - BACKGROUND

MINISTERIAL STATEMENT

On 23rd April 2008, Hon. Gitobu Imanyara, MP, sought a Ministerial Statement from the Minister for Finance regarding the Grand Regency Hotel. The Minister for Finance issued the Ministerial Statement sought on 29th April 2008. In his statement, the Minister stated the following:-

- (i) The Central Bank of Kenya (CBK) had created a legal charge in 1993 for Kshs. 2.5 Billion over Grand Regency Hotel in an attempt to secure funds that had been illegally siphoned through Exchange Bank during the infamous Goldenberg saga.
- (ii) The registered owner of the Hotel and chargee was Uhuru Highway Development Ltd. (UHDL) and the validity of the charge and ownership of the Hotel has been the subject of protracted litigation for the past 15 years both in the High Court and Court of Appeal. One of the cases is High Court Civil Case Suit No. 1111 of 2003 - The Kenya Anti-Corruption Commission (KACC) -versus - Kamlesh Pattni & 16 others.
- (iii) Following extensive consultations, the Advocates for KACC and UHDL recorded a Consent Order in Court on 9th April, 2008 for the removal of the Joint Receiver Managers over the Grand Regency Hotel and the handing over of the Hotel to the CBK.
- (iv) After taking possession of the Hotel, the CBK appointed the firm of Ernst & Young as Receiver Managers for the Hotel since the mandate of the CBK does not extend to the running of any commercial venture.

- (v) Since the receivership is a very costly exercise it was therefore necessary for the Hotel to be sold. The Minister argued that the CBK had a duly registered charge over the Hotel and the CBK would therefore be selling the Hotel under its statutory power of sale. The Minister broadly stated that “modalities of sale in such circumstances are provided for under the relevant law”.
- (vi) He further stated that he would consult and guide the CBK in the sale process in order to ensure that the sale is conducted in the most expeditious and cost effective manner.

THE COMMITTEE’S INTERVENTION

The Committee, whilst taking cognizance of the contents of the Ministerial Statement, sought further clarification on the matter and resolved to invite the following to appear before it to shed more light on the matter during the month of May and June 2008.

1. Ministry of Finance
Hon. Amos Kimunya, MP - Minister for Finance
Mr. Joseph Kinyua - Permanent Secretary, Treasury
Prof. Njuguna Ndung’u - Governor, Central Bank of Kenya
2. Hon. Amos Wako, MP - The Attorney General
3. Rtd. Justice Aaron Ringera - Director, Kenya Anti- Corruption Commission (KACC)
4. Mr. H. W. Gichohi and Mr. Peter Ndaa - Former Joint Receiver Managers for KACC and Uhuru Highway Development Ltd (UHDL) respectively.
5. Mr. Kamlesh Pattni - Proprietor of Grand Regency Hotel through UHDL

Following the revelation both in the electronic and print media on the sale and subsequent transfer of the Grand Regency Hotel, the matter resurfaced in Parliament with the Rt. Hon Prime Minister issuing a ministerial statement on the same and the Honourable Speaker ruling on Tuesday 8th July, 2008 that the Finance Committee concludes its investigation on the matter and submits its Report to the House within two weeks.

Consequently, the Committee resolved to invite the following to give further evidence on the matter.

6. Minister for Lands - Hon. James Orengo, MP
7. Major General Michael Gichangi – Director General, National Security Intelligence Service
8. Ernst and Young (Last Receiver Managers)
9. M/s Wetangula, Adan, Makokha & Co. Advocates – Law firm representing the Libyan company (Hotel purchaser)
Mr. Ahmed Adan
Mr. Michael Mubea
10. Minister for Foreign Affairs - Hon. Moses Wetangula, MP
11. Central Bank of Kenya
Prof. Njuguna Ndung'u - Governor, CBK
Mrs Jacinta Mwatela - Deputy Governor
12. Hon. Amos Kimunya, MP – former Minister for Finance
13. Attorney General's Office
Ms. Jane Joram – Registrar of Companies
Mr. James Mungai Warui – Senior State Counsel

14. Mr. Robert Hunja, Ag. Director General, Public Procurement Oversight Authority

3.0 EVIDENCE ON THE GRAND REGENCY HOTEL

3.1 THE MINISTER FOR FINANCE AND THE GOVERNOR OF CENTRAL BANK OF KENYA

The Minister for Finance, Hon. Amos Kimunya, MP accompanied by Mr. Joseph Kinyua, Permanent Secretary, Treasury and (Prof.) Njuguna Ndung'u, the Governor of Central Bank of Kenya appeared before the Committee on Wednesday 21st May, 2008 and gave evidence on the Status of Grand Regency Hotel as follows:-

- (i) The Minister informed the Committee that due to the sensitivity of the issues surrounding the Hotel, the information given to the Committee would be limited.
- (ii) The Minister clarified that CBK was not solving the Goldenberg scam but was trying to solve the civil case on the basis of the 3 cheques, which were issued to CBK but bounced, and the Hotel was attached as security.
- (iii) The Minister further clarified that there was no connection between the repossession and disposal of the Grand Regency Hotel and the issue of granting amnesty to Mr. Kamlesh Pattni since the criminal cases were between KACC and the Attorney General.
- (iv) The Minister stated that he was not aware of any Libyan company by the name Meridian Arab African Investment Company (MAAIC) that was purported to have bought the Grand Regency Hotel.
- (v) The Minister informed the Committee that the hotel did not make any profit from 1999 to date. He further informed the

Committee that CBK did not receive any money from the Hotel between 1999 to 2004 since Uhuru Highway Development Ltd. was in charge and therefore there was no trace of the money received during the said period.

- (vi) The Minister assured the Committee that the Hotel had not been sold and the Treasury/CBK was in consultations with the Procurement Authority and that the disposal would be done in accordance with the law. He stated that all the valuations carried out on the hotel were lower than Kshs. 2.5 Billion. Notwithstanding the reserve price of Kshs 2.5 billion, the Minister stated that they would try to sell it for at least Kshs 3 billion.

3.2 JOINT RECEIVER MANAGERS

The following Joint Receiver Managers appeared before the Committee on Wednesday 28th May 2008 and informed the Committee as follows:

Mr. Peter Ndaa

- (i) He was appointed receiver manager of the Grand Regency Hotel on 31st May 2004 purely on professional basis after being proposed by UHDL but denied being a friend to Mr. Kamlesh Pattni. At the time of his appointment, the Hotel was facing liquidity problems but within six months he had managed to turn it around and paid all outstanding debts.
- (ii) He further informed the Committee that Dr. Gibson Kamau Kuria, the lawyer for KACC attempted to remove him and replace him with Mr. Matthew Mungai but they did not succeed. Thereafter, his co-receiver manager Mr. H. W. Gichohi resorted to sabotaging the operations at the hotel by actions like, refusal to sign cheques, L.P.O.s, alteration of issued and signed cheques, and refusal to fill the position of Financial Controller.

- (iii) His services as receiver manager were terminated on 9th April 2008 following High Court Consent Order. On that day he was called by the General Manager to the hotel for a ceremony, which he could not however attend due to the short notice. He later saw in the media that the hotel had been handed over to CBK.
- (iv) He termed the allegations by CBK and Treasury that the hotel had never made any profit as a misrepresentation of facts because the hotel's performance had greatly improved since 2004 and was making profits. He informed the committee that CBK had access to the financial statements.

Mr. H. W. Gichohi

- (i) He was appointed co-receiver manager in 2003 when KACC mandated him to evaluate the extent of liability the Hotel had incurred. During his tenure he had several differences with his co-receiver Manager Mr. Peter Ndaa that adversely affected the operations of the Hotel. They were both signatories to Grand Regency Hotel's Bank Accounts up to 9th April 2008 when the Consent Court Order vested powers over the Bank Accounts on the Central Bank of Kenya.
- (ii) He stated that a valuation of the Hotel carried out in 1997 placed its value at Kshs. 2.1 billion. M/s Lloyd Masika did another valuation for the Central Bank of Kenya in February 2008 but CBK did not disclose the contents of this valuation to the Receiver Managers.
- (iii) He informed the Committee that the Receiver Managers had deposited Kshs. 50 million into a joint account in the names of Uhuru Highway Development Ltd. and Central Bank of Kenya. By 9th April 2008 when the Receiver Managers were removed, there was Kshs. 342 million in the hotel's accounts with Kenya.

Commercial Bank (Kipande Branch) and Cooperative Bank of Kenya (Kimathi Branch). He stated that the Hotel had Kshs. 112,000,000 in good debts; Kshs. 14 million owed to current creditors and Kshs 12 million outstanding salaries.

- (iv) He further informed the Committee that Mr. Kamlesh Pattni had the entire 13th floor as complimentary rooms where he would accommodate his guests for free except for meals and as a result the Hotel had a debt of Kshs. 7 million arising from the unpaid debts by these guests.
- (v) He also informed the Committee that the charge of Kshs. 2.5 billion signed between UHDL and CBK was never shown to the Receiver Managers.

3.3 HON. (RTD) JUSTICE AARON RINGERA, DIRECTOR OF KENYA ANTI-CORRUPTION COMMISSION (KACC)

Hon. (Rtd.) Justice Ringera, Director, KACC accompanied by Mrs. Fatuma Sichale, Deputy Director appeared before the Committee on Wednesday 4th June, 2008 and informed the Committee as follows: -

- (i) The Director stated that during the Judicial Commission of inquiry into the Goldenberg scandal, it was alleged that Grand Regency Hotel was built using public funds. Since KACC is empowered to recover illegally acquired property, it filed HCCC No. 1111 of 2003 seeking to recover the Hotel on behalf of the Kenyan public. CBK already had several cases with the UHDL to realize its charge of Kshs. 2.5 billion owed to it by the Company while Mr. Kamlesh Pattni and the Company also filed a suit to challenge the validity of the charge.
- (ii) The Director further stated that Mr. Kamlesh Pattni had never disputed the charge and he had even sent three cheques to CBK, two of which had bounced. He stated that KACC's lawyer;

Mrs. Fatuma Sichale, CBK lawyer (Mr. Kennedy Abuga) and the UHDL lawyer (Mr. Ahmed Adan) negotiated the out of court settlement that resulted in the Consent Court Order of 9th April 2008. However, during the negotiations there was no mention of any intention to sell the Grand Regency Hotel.

- (iii) The Director also stated that Mr. Kamlesh Pattni agreed according to the Consent Court Order, to transfer the Hotel to the CBK including all immoveable and moveable assets failure to which the Registrar of the High Court would exercise powers to execute the transfer.
- (iv) He informed the Committee that, the Consent Court Order discharged the Receiver Managers and the Hotel management reverted to the CBK and the money in the Hotel bank accounts was to be transferred to CBK. The Hotel's Bank Accounts were frozen by KACC to prevent any withdrawal of the funds by the outgoing Receiver Managers.
- (v) The Director stated that KACC discontinued the said Court Case, HCCC No. 1111 of 2003 in relation to Mr. Kamlesh Pattni and his companies. However, Mr. Kamlesh Pattni was not granted amnesty and still has several pending cases instituted by the Attorney General.
- (vi) The Director further stated that KACC did not consult the Attorney General on the Grand Regency matter, as this was a civil suit and not a criminal case, because it is only in criminal cases that KACC informs the Attorney General.
- (vii) The Director also stated that KACC would prefer the Hotel being sold through a public process by inviting both local and international bidders. However, he found no requirement in law for the hotel to be sold pursuant to the provisions of the Public Procurement and Disposal Act.

- (viii) The Director confirmed that there was no separate agreement or deal between KACC and Mr. Kamlesh Pattni before, during or after the signing of the Consent Order. According to him, Mr. Pattni could not go back to Court after handing over the hotel. To his knowledge the hotel had not been sold and that this could not happen until ownership of the hotel moves from UHDL to CBK.
- (ix) The Director further confirmed that the Hotel Bank Accounts had over Kshs 341 million at the time of the hand-over and KACC had not received any complaints from CBK regarding access to the Bank Accounts and KACC has therefore not followed up on the issue of the Bank Accounts.

3.4 MR. KAMLESH PATTNI

Mr. Pattni appeared before the Committee twice and gave evidence as follows: -

Tuesday 10th June, 2008

- (i) He took the Committee through a brief background of how he and his companies came to own the Grand Regency Hotel. He alleged that he was forced to sign the charge on the Grand Regency Hotel in 1993 and that is why he filed various suits challenging the validity of the charge.
- (ii) He informed the committee that he has all along sought to settle the suits and claims arising out of the Goldenberg scandal and has written various letters, including one to the Minister for Justice and Constitutional Affairs dated 5th June 2006 seeking a global settlement between him (Pattni) and his associated companies on the one hand, and the Government of Kenya on the other hand. He then entered into negotiations with the government on the matter, which culminated in the Consent Court Order of 9th April 2008.

- (iii) He was categorical that all along the CBK, KACC and the office of the Attorney General was involved in the negotiations and stated that during the hand-over ceremony, there were representatives from these three offices, with the office of the Attorney General being represented by Ms. Muthoni Kimani.
- (iv) He categorically stated that he handed over the Grand Regency Hotel to the Central Bank of Kenya on condition that all criminal and civil cases against him and his associated companies are withdrawn. The hand-over of the Hotel was meant to give him amnesty in respect of all civil and criminal cases against him and associated companies in respect of the Goldenberg saga. The Consent Order was just part of a global settlement in which all cases against him and associated companies would be dropped.
- (v) He stated that he should not execute any transfer documents until all cases against him are dropped and if the global settlement conditions were not met, then he would return to court to litigate on the matter. To his knowledge the hotel had not been sold but he had however requested for payment of some money from the Hotel's account to cater for expenses he had incurred but he never received any payment from KACC and CBK.

Tuesday 22nd July 2008

Mr. Kamlesh Pattni appeared before the committee and gave further evidence as follows: -

- (i) He surrendered the Grand Regency Hotel voluntarily not to settle the High Court Civil Case No. 1111 of 2003, but to get total amnesty from all criminal and civil cases instituted against him by the government. He alleged that all civil and criminal

cases were dropped as part of the global settlement agreement between him and the Government of Kenya.

- (ii) He tabled a copy of the declaration he purportedly gave CBK, KACC and the government clearly stating his willingness to relinquish Grand Regency Hotel to CBK and the Government of Kenya. M/s Wetangula, Adan, and Makokha & Co Advocates drafted the declaration document. In the declaration he petitioned the Government of Kenya to consider withdrawing all civil and criminal cases against him, members of his family and his companies so that he could start a fresh chapter in his life. He stated that he had battled in court for more than 15 years and therefore, could not just surrender his hotel for only a civil case.
- (iii) He produced a letter titled Global Settlement dated 13/12/2007 to Attorney General, which was replied to on 11/01/2008 by Mr. James Mungai Warui (Senior State Counsel) who requested for a list of documents on the cases. Mr. Pattni supplied the files through the lawyer and the Attorney General's office confirmed receipt of the files. Mr. Pattni alleged that the Attorney General's office promised to settle the agreement after CBK and KACC have cleared him of the civil suit.
- (iv) He alleged that on the day of hand over of the hotel, he signed a document titled Registration of Settlement agreement with KACC and did not have a signed copy because KACC promised to give a copy to his lawyers, since the Governor and KACC Director were liaising with his lawyers because of the publicity of the whole issue.
- (vi) He informed the committee that he handed over the hotel to have peace and never wanted to go to court, but if they

Government betrayed him or breached the agreement, and other parties involved fail to honour their promise, then the would go back to court to seek redress.

- (vi) He stated that he was not and will not be satisfied until the agreement is reached and the promises given to him by the government fulfilled. He further stated that he had his options open and he was ready to go ahead and file several constitutional suits against the government.
- (vii) He considered price of the Hotel at Kshs 2.9 billion (US\$ 45 million) as good value given that no renovations had been done on the hotel including no replacement of the carpets since 1993, and the leaking boiler all of which, have reduced the standards of the five star hotel. He further informed the committee that he knows the Grand Regency Hotel had Kshs. 342 million but he was not given the money even when he asked for it to pay his lawyers.
- (viii) He informed the committee that there were two consent orders HCCC 1111 of 2003 and HCCC 589 of 1999. The first one was to enable him surrender the hotel to CBK. While the second one was signed to enable CBK to discharge the injunction and to sell the Hotel under the charge. He further informed the committee that he does personally know the buyers (Libyans) of the Hotel who are at the hotel currently using the 13th floor.

3.5 THE HONOURABLE ATTORNEY GENERAL

The Honourable Attorney General appeared before the Committee twice and gave evidence as follows: -

Tuesday 17th June 2008

- (i) He informed the Committee that he was not involved in any of the negotiations leading up to the Consent Order on 9th April 2008 and that Ministry of Finance, the CBK and KACC did not

consult him over the Grand Regency matter. He only learnt in the media that the Hotel had been surrendered to CBK but he was however assured thereafter by the Director of KACC, Justice Ringera that the negotiations leading up to the Consent Order, did not compromise the prosecutorial powers of the Honorable Attorney General.

- (ii) According to the Attorney General, there was no amnesty being given to Mr. Pattni and the criminal cases against Mr. Pattni are on-going since the claims referred to in the consent order are only limited to the consent order and never touched on criminal cases involving Mr. Pattni. The cases had been delayed by constitutional references filed by Mr. Pattni to the High Court.

Friday 18th July 2008

The Attorney General gave further evidence on the sale and transfer of Grand Regency Hotel as follows: -

- (i) He was neither involved in the matter as at the time of handing over of the Grand Regency Hotel by Mr. Kamlesh Pattni to the CBK nor involved in the sale and transfer of the Hotel to **Libyan Arab African Investment Company Kenya Ltd.** He only got involved much later when he was appointed to a Cabinet sub-committee to investigate the matter and that is when he began to get more information on what transpired before and after the sale of the Grand Regency Hotel. The Cabinet sub-committee was a technical committee, which reported its findings to the Cabinet. During its investigation, the Cabinet sub-committee heard from the CBK Governor and Director General of NSIS. He informed the Committee that he is bound by Cabinet procedures of confidentiality such that he could not reveal their findings to the Committee although the report is close to what was leaked to the media.

- (ii) CBK has never sought his legal advice prior to or after the sale of the hotel and by extension the Treasury had also not contacted him on the matter even after the issue came to the public domain. He also clarified that he has never been involved in negotiations with Mr. Kamlesh Pattni on the issue of amnesty.
- (iii) He is not represented in CBK Board and notwithstanding the Board's recommendation that the Attorney General be involved in the sale of the Grand Regency Hotel, the CBK management decided to by-pass him. He also clarified that his office was not represented during the hand over of the hotel to CBK and that, the Muthoni being alleged by Mr. Pattni is a lawyer for CBK and not Ms Muthoni Kimani of Attorney General's Chambers who was in Europe for official duties during the hand over ceremony.
- (iv) The directors of Libyan Arab Africa Investment Company Kenya Ltd (LAAIC) are three; two of them initially described themselves as Kenyans on 10th August 2007 in the particulars of directors and secretaries' form and as Libyans on returns filed on 23rd May 2008. The Nominal share capital of LAAIC Kenya Ltd is only Kshs. 100,000 and the shareholders changed their nationality from Kenyan to Libyan when restructuring of shareholding was being done as follows:-
- a. Ahmed Mohamed Amaer - 1 share
 - b. Mohamed Shtewi Maawal - 1 share
 - c. Libyan Arab African Investment Company - 998 shares
- (v) LAAIC Kenya Ltd was registered in 2007 with two shareholders; each with one share and the third shareholder was allotted 998 shares on 23rd May 2008. He stated that there is no legal requirement that a company must have Kenyan shareholders to be registered, as the only important fact is that it must comply with the laws of our land whether it is a government corporation

or an individual. He further stated that he has only seen the file relating to the registration of Libya Arab Africa Investment Company Kenya Ltd. He has not seen any other files relating to companies by the name Libya Arab African Company or Meridian Arab African Company.

- (vi) He gave his position on the Grand Regency Hotel that the ownership of the Hotel reverted to CBK according to the Consent Order and as such, CBK could not exercise its statutory power of sale, which is a misrepresentation of facts. Reason being that, the statutory power of sale had been discharged when CBK became the owner of the Hotel. Therefore, CBK being a public entity, was under obligation to sell the Hotel under the privatization law since the Hotel was a public asset belonging to CBK before going to other hands and the Public Procurement & Disposal Act should have been followed. He however qualified his opinion by stating that he was yet to see all the relevant documentation on the matter.
- (vii) He confirmed that the government had already registered a caveat on the property and that he had instructed the Commissioner of Police to investigate all the criminal activities in the transaction. He clarified that under Section 63 of the Registration of Titles Act on rectification of titles, the Registrar of Titles can recall the documents for correction. The transaction could be invalidated as there were apparent irregularities, and this could be a good basis to challenge the transfer.
- (viii) He reaffirmed that he has never been involved in any negotiation aimed at granting Mr. Kamlesh Pattni amnesty. He clarified that in Clause 5 of the Consent Order, the word claims refers only to civil cases but does not include criminal cases. He stated that according to the Consent Order, Mr. Pattni was

supposed to execute the transfer failure to which the High Court Registrar could execute it.

- (ix) He informed the Committee that the Foreign Affairs Minister, Hon. Moses Wetangula, MP called him early this year to introduce Mr. Ahmed Adan, the LAAIC lawyer in anticipation of his involvement in the sale process as Hon. Wetangula indicated to him that the law firm (M/s Wetangula, Adan, Makokha Co. Advocates) was still negotiating with CBK on the issue. The Attorney General agreed and met Mr. Adan in the presence of Hon Wetangula and his position was that he would only act when instructed by CBK.

3.6 MINISTRY OF LANDS

The Ministry of Lands appeared before the Committee on Thursday 10th July 2008 and gave the following evidence.

Hon. James Orengo, MP – Minister for Lands

The Minister informed the Committee as follows: -

- ◆ Documents received at the Ministry of Lands registry are dealt with as legal documents without looking at the background or matter surrounding the case lodged. The officers examine whether there is stamp duty to be paid and all the other technical aspects of the documents.
- ◆ The office of the Commissioner of Lands has been operating in a fairly autonomous manner and mostly the Minister is not involved in its day-to-day operations.
- ◆ There have been delays in the processing of the documents presented to the Ministry of Lands, which sometimes take months or years, and the Minister has been receiving complaints about delays.

Ms Dorothy Angote – Permanent Secretary

The Permanent Secretary informed the Committee that, the Director General of National Security and Intelligence Service visited her office on 11th June, 2008 on an issue that was not related to Grand Regency Hotel. She further informed the Committee that, while abroad on official duty, she received several calls from the Governor of Central Bank of Kenya but did not answer them nor did she call him back because she considered the calls normal especially after sending the Governor a text message that she was out of the country.

Mrs. Teresia Mburu - Chief Lands Registrar:

The Chief Lands Registrar informed the Committee as follows:-

- ◆ The transfer of the Grand Regency Hotel was normal and as long as applicants have all the documents, the transfer can take as short as an hour. An ordinary citizen can take a maximum of two weeks to get transfers effected. The change on the amount paid from Kshs 2,500,000,000 to Kshs 1,850,000,000 made on the Tittle Deed without endorsement was an oversight but there is nothing wrong with such an error unless disputed by the parties involved.
- ◆ The registration and transfer could not be reversed unless proved illegal or fraudulent and according to her, there was nothing illegal about it and the interested parties have not disputed the same. Therefore, there is nothing irregular in the transfer of Grand Regency Hotel L.R No.209/9514.
- ◆ The CBK lawyers are not indicated in the transfer instrument but the CBK governor and one of the directors of CBK witnessed the signing of the documents.

Mr. Anthony Itui – Chief Government Valuation officer

He informed the Committee that he visited the site to value the land using transport provided by the Director of CBK Mr. Kennedy Abuga and not the official transport from the Ministry. He valued the land at

Kshs 1,300,000,000 and the buildings at Kshs 700,000,000/- making a total of Kshs 2,000,000,000/-

Mr. Zablon Mabea – Commissioner of Lands

- ◆ He informed the Committee that the subject plot measuring 0.821 ha is a leasehold property initially leased to Uhuru Highway Development (UHDL) for a term of 99 years w.e.f. from 1st October 1978 at a ground rent of Kshs 749,200/= per annum. The plot is commercial and user as embodied in the title is for shops, offices and parking purposes. Its registered owners UHDL charged the property to the CBK on 31st December 1993 for Kshs 2.5 billion.
- ◆ He further informed the Committee that, the CBK in exercise of its statutory power of sale conferred on it as a chargee by virtue of sub-section 69 of the Transfer of Property Act, presented documents transferring the property to Libya Arab African Investment company Kenya Ltd for Kshs 1,850,000,000/=. When the documents were presented, the Government Valuers inspected the property for purposes of stamp duty and returned a figure of Kshs 2, 000,000,000/=. Subsequently stamp duty amounting to Kshs 80,000,000/= was paid and the document stamped accordingly. Outstanding land rent of Kshs 16,381,753.35/= was also cleared and Land Rent Clearance Certificate issued to CBK.

Processing of transfer of Grand Regency Hotel - L.R. No. 209/9514

He informed the Committee as follows:-

- (i) By letter dated 4th June 2008, M/S Wetangula, Adan and Makokha & Co. Advocates applied for Land Rent Clearance Certificate. Attached to the application was a payment slip for Land Rent inclusive of arrears amounting to Kshs 16,381,735.35/= The Land Rent Certificate No. 11621 was issued on 5th June 2008.

- (ii) In the application letter dated 18th June, 2008, the CBK applied for consent to transfer and charge, and the consent was brought to the Commissioners of Lands office by Mr. Kennedy Abuga, a Director of CBK in the company of Mr. Ahmed Adan, the lawyer for LAAIC Kenya Ltd. He was not in the office when the letter was brought but the Governor of CBK called his office and left a message that he should return the Governor's call.
- (iii) He returned the Governor's call on Friday 20th June 2008, who informed him that the Bank had sold the property and requested that his department expedite the registration, as it was extremely urgent. The Governor further informed him that all those in government who need to know were in the picture and requested that, as this was a government-to-government transaction, it was in the interest of the state to expedite the process. He stated further; ***"I also asked about the issue of about all those in the Government who knew and they revealed to me that this was a Government to Government transaction. So, I asked: "Which is this Government?" They told me that: "The Government of Kenya has agreed that the property be sold to the Government of Libya".(pg 5) "Mr. Mabea: Mr. Chairman, Sir, let me correct myself this way. I took the word from the Governor that this was a Government-to-Government transaction, and I believed that word. Maybe, they can explain!" (hansard Pg 22).***
- (iv) Subsequently he had a meeting with Mr. Kennedy Abuga and Mr. Ahmed Adan, the lawyer acting for the purchaser and informed them that they had to comply with all the requirements including payment of stamp duty. The Collector of Stamp Duty raised a requisition to the Government Chief Valuer who returned his findings on 24th June, 2008 and the Stamp Duty of Kshs 80 million was paid on the same day and documents stamped.

- (v) The documents were booked for registration on 24th June 2008, registered on 25th June 2008 and collected by Mr. Ahmed Adan, the lawyer for the purchaser. All through the process, Mr. Kennedy Abuga of CBK and Mr. Ahmed Adan, were following up the case at Ardhi House. The Governor of CBK also telephoned him on Monday 23rd and Tuesday 24th June, 2008 to check on the progress.

Registration of the Transfer

The lands officials found the document to be fit for registration since it complied with all the legal requirements and also all the registration procedures were followed.

3.7 MAJOR GENERAL MICHAEL GICHANGI - DIRECTOR GENERAL, NATIONAL SECURITY INTELLIGENCE SERVICE (NSIS)

The Director General accompanied by Mrs. Agnes Shikuku, Legal Officer appeared before the Committee on Friday 11th July 2008 and gave evidence as follows.

- (i) He was aware of the agreement signed between the Government of Kenya and Government of Libya covering government of Libya's interest to invest in among other things; oil, trade, hotel industry etc. There were consultations at the various levels by government departments but the office of the Director General NSIS was not involved in the agreement. Libya Arab Africa Investment Company is a subsidiary of Libya Africa Investment portfolio.
- (ii) National Security Intelligence Service picked up the Grand Regency Hotel issue during its routine security system audit and found out that there were irregularities in the way the hotel was being disposed off. The department made reports and submitted to the relevant government officers on 25th April 2008 for necessary action. On 30th April 2008, the department

submitted another report to the relevant government officials. He said ***“there were concerns that had been raised across the board surrounding the surrender of the Grand Regency Hotel to the Central Bank of Kenya by Mr. Kamlesh Pattni. There are fears being expressed that procurement and privatisation procedures have been flouted, possibly to cover up irregularities. Consequently, there are individuals and politicians who are contemplating to take some court or legal redress. Based on that, I gave my advice, because my role is advisory, that is from what I was seeing, the emerging controversies, which I could see arising, have the potential of portraying the Government as not being committed to conducting business transparently, besides raising questions of integrity of public institutions. That is what I wrote on 25th April” (hansard pg 16)***

(iii) The report on 25th April, 2008 was given to the following among others:-

- Vice President
- Prime Minister
- Minister of State for Provincial Administration and Internal Security
- Minister for Finance
- Minister for Justice National Cohesion and Constitutional Affairs
- Attorney General
- Head of the Public Service and Secretary to the Cabinet
- Minister for Foreign Affairs

The report on 30th April, 2008 was given to the following among others:-

- Minister of state for Provincial Administration and Internal Security
- Head of the Public Service and Secretary to the Cabinet

- Permanent Secretary Ministry of Foreign Affairs
 - Permanent Secretary, Treasury
 - Police Commissioner
- (iv) Mr. Pattni had sometime in June, 2007 approached the NSIS Director and he told Mr. Pattni that he would only assist him if he returned to Kenyans what belonged to them. Thereafter, the Director General referred Mr. Kamlesh Pattni to the Central Bank Governor for further discussions.
- (v) The Director General stated that, ***“I never at any one time introduced the Libyans or referred the Libyans to the Governor of the CBK. As I had explained earlier, I had no dealings of business with the Libyans”***(hansard pg 15) He further clarified that he had nothing to do with the sale of the hotel and that neither him nor any of the officers of NSIS met any official(s) from the Ministry of Lands over the issue. His presence in Ardhi House on 11th June 2008 was purely on another issue to do with public land that had been grabbed in South ‘C’ estate.
- (vii) He again wrote another report on 30th June 2008 after the sale of the Hotel in which he indicated that the secret sale of the hotel had provoked public outcry and caused discontent among members of public. The report was given to the following among others: -
- Minister for internal security
 - Head of civil service and secretary to the cabinet
 - Minister of foreign affairs
 - Commissioner of Police
 - Permanent secretary treasury

3.8 ERNST & YOUNG (LAST RECEIVER MANAGERS)

Mr. Collins Otolo, Chief Executive Officer, Ernst & Young accompanied by Mr. Felix Kariuki, Senior Manager, Mr. Patrick Kamau, Receiver and Mr. Solomon Adede, General Manager, Grand Regency Hotel appeared before the Committee on Monday 14th July, 2008 and gave the following evidence: -

- (i) Ernst & Young was appointed Receiver Manager on 9th April 2008 as a result of Court Consent Order between CBK and Mr. Kamlesh Pattni of Uhuru Highway Development Ltd. to which Pattni surrendered the Hotel to CBK.
- (ii) Their firm was appointed to preserve the assets of the hotel and according to their assessment, the Hotel was financially stable and had potential for improvement. The team of senior managers was good and the hotel only lacked the Sales and Marketing Manager at the senior level.
- (iii) The outgoing Joint Receiver Managers (Mr. H. W. Gichohi and Mr. P. Ndaa) handed over all the assets and liabilities, and the firm has the hand-over receipts showing the Bank balances, Assets and Liabilities. Ernst & Young has also collected and created debtors and creditors since they took over.
- (iv) Ernst & Young discontinued the complimentary services of 13th floor of the Hotel formerly enjoyed by Mr. Kamlesh Pattni and the use/services are now being charged.
- (v) Ernst & Young clarified that their firm does not know the criteria used by CBK to select Mr. Patrick Kamau as Receiver Manager for he was just asked in writing whether he was willing to take up a receivership job and he obliged.
- (vi) The Land Rent had not been paid since 2001 and Ernst & Young was instructed by CBK to pay Kshs 16 million to Ministry of Lands for Land Rent arrears to-date at the time CBK applied

for Land Rent Clearance Certificate to facilitate the transfer process.

- (vii) The accounts of Grand Regency Hotel had not been audited for 2003, 2004, 2005 and 2006 and the books of account have not been signed since 2003 because one of the Receiver Managers refused to sign due to dispute on the accounts.
- (viii) There was no payment contract signed between CBK and Ernst & Young for managing the Hotel but payment will be time based according to cadre of employees from Ernst & Young. Ernst & Young has been paid to-date Kshs 2.15 million since they were appointed in April 2008.
- (ix) Ernst & Young is at an advanced stage of handing over to new owners Libya Arab African Investment Company Kenya Ltd although CBK has not formally informed the firm that the Hotel has been sold.

3.9 MINISTRY OF FOREIGN AFFAIRS

Hon. Moses Wetangula, MP, Minister for Foreign Affairs accompanied by Mr. Thuita Mwangi, Permanent Secretary and Mr. Patrick Wamoto, Director, African Division appeared before the Committee on Tuesday 15th July 2008. The Minister informed the Committee as follows: -

- (i) There has been memorandum between Kenya and Libya and such Memoranda exist between Kenya and other countries. The memorandum was signed in 2007 when the president visited Libya. Item 6 of the memorandum indicated that Libya Africa Investment Portfolio (LAP) expressed interest in investing in hotel industry specifically Grand Regency Hotel.
- (ii) The Libyans have other interests in Kenya apart from Grand Regency which include:-

- Oil, liquefied petroleum gas and storage facility.
- Upgrade of oil refineries (KPRL)
- Construction of new Mombasa – Nairobi oil pipeline
- ICT projects: Telkom Kenya, ‘The east Africa marines system

There were other specific ones such as double taxation, Cultural & Media Co-operation and Airline freedom.

- (iii) The Minister said that he sits in the National Security Intelligence Service Council and by virtue of this, he receives briefs from NSIS Director but has never received a letter from anybody including the NSIS Director General on Grand Regency. He received the weekly security brief on 28th April 2008 which contained only a paragraph on Grand Regency Hotel
- (iii) The minister informed the committee that the Libyan Ambassador paid him a courtesy call and informed him that there are no private companies in Libya and all companies are state owned, therefore LAAIC Kenya Ltd. acts as state investment agency and its directors act as state agents. The Ambassador also raised concerns about the negative publicity given to the purchase of the Grand Regency Hotel. The Minister assured him that the public outcry is not directed at the Libyan investors.
- (v) The Minister informed the Committee that he does not have any personal beneficial interest in M/s Wetangula, Adan, Makokha & Co. Advocates.

3.10 M/S WETANGULA, ADAN, MAKOKHA & CO. ADVOCATES

Mr. Ahmed Adan and Mr. Michael Mubea representing M/s Wetangula, Adan, Makokha & Co. Advocates appeared before the Committee twice and gave evidence as follows: -

Monday 14th July 2008

- (i) Mr. Kamlesh Pattni has been their client since 1989 and Mr. Pattni filed suit HCCC No. 589 in 1999 and obtained an injunction to replace Mr. Kitony as the receiver Manager of Grand Regency Hotel. CBK wanted to sell the Hotel in 1999 but Uhuru Highway Development Ltd. obtained a Court Order to stop the sale. Mr. Pattni was being harassed and asked for bribes by various government officials and wanted to start new life by having a global settlement between him and the government. He mandated Mr. Adan and company to lead a team of lawyers to deal with the global settlement with the government and informed his lawyers that he was willing to surrender everything to the Kenya government including the Grand Regency Hotel to Central Bank of Kenya.
- (ii) Following extensive consultations between Central Bank of Kenya, Kenya Anti-Corruption Commission, and M/s Wetangula, Adan, Makokha & Co Advocates, an agreement was reached which culminated in the Consent Court Order. The parties agreed that KACC draft the order, which resulted in Mr. Kamlesh Pattni's hand-over the hotel to CBK on 9th April 2008.
- (iii) The sale agreement for the hotel was drawn by Central Bank of Kenya Lawyers while Libya Arab Africa Investment Company Kenya Ltd (LAAIC) lawyers (M/s Wetangula, Adan, Makokha & Co Advocates) drew the transfer agreement. The lawyers informed the committee that due to advocate-client confidentiality they would be limited in the amount and kind of information they would give because they needed consent of their client to divulge information about LAAIC Kenya Ltd.
- (iv) Mr. Adan confirmed to the Committee that he did not at any time try to bribe the Minister for Lands, Hon. James Orengo as

alleged by former Minister for Finance, Hon. Amos Kimunya, MP.

Friday 18th July, 2008

Mr. Adan Ahmed and Mr. Michael Mubea, of M/s Wetangula, Adan, Makokha & Co Advocates appeared before the Committee representing their client, M/s Libya Arab African Investment Company Kenya Ltd. (LAAIC) and gave evidence as follows: -

- (i) Their client was out of the country but they had the authority to represent their client in the sitting. Their client showed interest in Grand Regency Hotel but the Kenya government made the offer and dictated the price of the hotel. The directors and shareholders of the LAAIC are:
 - (a) Ahmed Mohammed Amaer (Libyan) -1 share
 - (b) Mohamed Shtewi Mawaal (Libyan) -1 share
 - (c) Libya African Investment Company -998 shares
- (ii) It is their firm that incorporated the company and there was no change of shareholders of the company except an increase in shareholding. The parent company, which has 998 shares, is a state agency of the Republic of Libya and therefore it enjoys complete diplomatic immunity. Mr. Adan was the lead person in the negotiations and meetings with some Government of Kenya officials.
- (iii) Their firm has never acted for CBK in the transaction and it is Ms Muthoni Gichohi & Co Advocates that drew the sale agreement on behalf of CBK while their firm drew the transfer document as conveyance law dictates.
- (iv) Their client paid the deposit of US \$ 4.5 million for the Hotel through their firm pursuant to instructions from CBK and the money was wired to CBK bank account in the USA, which is

maintained at the Federal Reserve Bank of New York. The balance of \$40.5 million was paid on 20th June 2008.

- (v) Their firm acted for Mr. Pattni and assisted in drafting a declaration document aimed at getting a global settlement between Mr. Kamlesh Pattni and the Government on all criminal and civil cases.
- (vi) The lawyers informed the Committee that HCCC 1111 of 2003 was contemptuous because Court of Appeal had expressly prohibited any new suit in respect of Grand Regency Hotel without the express leave of the Chief Justice and such express leave was not obtained by KACC.

3.11 REGISTRAR OF COMPANIES, ATTORNEY GENERAL'S CHAMBERS
- MS JANE JORAM

The Registrar of Companies appeared before Committee on Thursday 24th July, 2008 and gave evidence regarding the registration of Libya Arab African Investment Company Kenya Ltd. as follows:-

- (i) M/s Libya Arab African Investment Company Kenya Limited (LAAIC) was registered in Kenya on 10/08/2007. The incorporation of this company was drawn and presented to the Registrar of Companies by M/s Wetangula, Adan & Makokha Co. Advocates. As at registration, the directors were two namely, Mr. Ahmed Mohamed Amaer and Mr. Mohamed Shtewi Mawaal.
- (ii) The directors indicated they do not have former or Christian names and gave their nationality as Kenyans and also described themselves as businessmen. They also declared that they are not directors of any other company and that the registered physical office of the company is situated at LR No 209/1846 Kimathi Street P. O. Box 10902-00400, Kimathi Street Nairobi.

- (iii) The two directors at incorporation held one share each making two shares of the total company shares. The objectives of the company were given as follows: -
- (a) To carry out business of multipurpose investment in Africa particularly Kenya, including but not limited to Hotel Industry, real estate, valuers, designers, surveyors, contractors etc.
 - (b) To accept membership and shareholding of any person who purchases their houses.
- (iv) The nominal share capital of the company is Kshs. 100,000 divided into 100 shares of Kshs. 100 each. At inception, the company secretary was Mr. Njoroge Kimani, a certified Public Secretary of P. O. Box 20122-00200 Nairobi.
- (v) On 27/05/08, the company (LAAIC) filed the notification of the change of directors and secretaries, which indicated that Libya Arab Africa Investment Company of P. O. Box 91370 (81370) Tripoli, Libya had been appointed as a new director of LAAIC Kenya Ltd. This made the shareholders and directors to increase to three. The new company secretary was indicated to be Mr. Elias Mathondu of P.O. Box 72064-00100 Nairobi.
- (vi) On 27/05/08, the company filed returns on the allotment of shares, which indicated that Libya Arab Africa Investment Company had been allotted 998 shares. M/s Wetangula, Adan, and Makokha Advocates presented the two forms on change of shareholding and share allotment to the Registrar of Companies. The returns filed indicated the shareholding as follows: -
- (a) Ahmed Mohamed Amaer - 1 share
 - (b) Mohamed Shtewi Maawal - 1 share
 - (c) Libya Arab Africa Investment Company -998 shares

- (vii) In the returns filed, the 1st and 2nd shareholders/directors described themselves as Libyans while the nationality of the third director was not indicated. The first two directors also described themselves as businessmen and not directors of any other company. She confirmed that they had earlier (10/8/2007) described themselves as Kenyans and in May, 2008 they described themselves as Libyans. She promised to institute investigations into the matter of the nationalities. She stated that ***“It has come to our attention, and more so even to the attention of the hon. Attorney-General. I am undertaking that I will pass over that matter very officially to the Attorney-General so that we can have that matter investigated.”(hansard pg 19)***
- (viii) When incorporating a company, there is a declaration of compliance that is normally sworn by an advocate incorporating the company. In this instance, Mr. Adan swore that all the requirements have been adhered to.
- (ix) The Registrar informed the Committee that the procedure for registration is simple and can take a maximum of 4 days and registration requires the following: -
- ◆ Application for a search of the company name.
 - ◆ Engaging law firm to incorporate the company.
 - ◆ Payment of stamp duty to Kenya Revenue Authority
 - ◆ Supply particulars of directors and the company secretary.
 - ◆ Provide physical address of office of the company.
 - ◆ The advocate drawing the Article of Association to sign declaration of compliance form.
 - ◆ Payment of registration fee.
- (x) She told the committee that according to the Registrar of companies, LAIC Kenya Ltd. complied with law and was

properly registered in Kenya. She further clarified that Libya Arab Africa Investment Company is not registered in Kenya Company Registry Index.

- (xi) She informed the Committee that in Kenya, the Company Act does not require people to produce their identification documents for them to register companies. They only need to submit the names and the law firms draft the forms for Articles of Association. She further informed the Committee that they only check for compliance but do not verify the authenticity of the details submitted.

3.12 GOVERNOR OF CENTRAL BANK OF KENYA

The Central Bank of Kenya Governor Prof. Njuguna Ndung'u accompanied by CBK lawyers George Oraro, Gatonye Waweru, Philip Murgor and Mercy Kithenya appeared before the Committee on Monday 28th July, 2008 and the Governor gave evidence as follows: -

- (i) CBK lost about Kshs 8 billion as unsecured money to the Goldenberg scam but only Kshs 2.5 billion was secured.
- (ii) He prepared a brief on the Grand Regency Hotel for the former Finance Minister to submit to the Committee during the meeting held on 21st May 2008 and the Minister for Finance was the team leader while the Permanent Secretary and himself only flanked the Minister. He further informed the Committee that he briefed all the authorities including the CBK Board on the Hotel matter. He stated that ***"On that particular day, I wrote notes on what document I would summarise. That is what we went away with. At the end of the day, you said that we need time to treat this matter carefully. You then asked: "Can the CBK prepare its documentary evidence of what has transpired from the history? That is what I carried from***

this meeting. I prepared the dossier and passed it on to the Minister.” (hansard Pg 11)

- (iii) He confirmed having received a copy of the letter from the Committee requesting both the Treasury and CBK to put on hold all transactions on the Hotel. However, he never received any further instructions from the Minister for Finance, the lead Ministry on the matter, and only learnt during the meeting on 28th July, 2008 of the Minister’s response to the Committee vide letter Ref. No. Conf. 69/01 dated 29th May, 2008 which was not copied to him, he stated that **“Mr. Chairman, Sir, I just wanted to make one point here on the second point that you have just referred to. You know, being in the CBK, we work as a team with the Treasury, and the Minister is the team leader. That is where I was. Secondly, I saw the content of that letter because it was copied to me. I never received any instructions. In fact, now that you are reading the response, I have never seen the response! So, you can see how I am feeling uncomfortable in my position that I did not even see-- I saw the letter, I asked: "Are there instructions?" I was not given instructions and now you are reading the response, which I have never seen. So, you can see that I was succumbing to-- The Minister is the team leader, so, in fact, I was very happy that I have heard that, because I have never even seen a response to that letter.”**(hansard Pg 12)

- (iv) After consultations with KACC and Public Procurement Oversight Authority, CBK realized that it was not under obligation to sell the hotel under Public Procurement and Disposal Act because the Consent order HCCC No. 589 of 1999 enabled the CBK to regain its statutory powers of sale. In the sale by private treaty, the CBK only determines the price and then offers it to whoever has shown interest and willing to pay.

- (v) The valuation on the Hotel was done in February 2008 by M/s Lloyd Masika and M/s Value Zone when CBK was negotiating for the hand-over of the Hotel. The valuers were not restricted to base their valuation on depreciated value. Both CBK and KACC had several meetings to brainstorm on how best to dispose of the Hotel. The Hotel net sale price was US \$45million because the liabilities were to be sorted by the money held in the Hotel bank accounts. The price was negotiated in and paid for in dollars in CBK Federal Reserve Bank Account in the United States of America.
- (vi) He informed the committee that CBK was given the Memorandum of Understanding by Libyan High Commission and that is how CBK started engaging the Libyan investors. The Governor stated that he never received any instruction from anybody about the disposal of the Hotel.
- (vii) At the time of take over, the CBK was aware of Kshs 342 million in the Hotel's bank accounts but had not ascertained the extent of liabilities. Outstanding Land Rent was paid from the Kshs 342 million held in the Hotel accounts. Currently, the CBK is not aware of any liabilities being disputed by LAAIC Kenya Ltd.
- (viii) He stated further that CBK had attempted severally to recover Kshs 2.5 billion to realize its charge on the security and there have been several litigations on the Hotel between CBK and UHDL. CBK did not go for competitive bidding due to the several litigations and what was at stake for CBK. CBK deemed it appropriate to dispose of the Hotel through private treaty as the best way to maximize its charge however, CBK did not have any buyer in mind when it fixed the price.
- (ix) In response to Committee's concern, the CBK Governor stated that he was not aware of US \$1.7 million paid to M/s Kalove

and Co Advocates and also that the Hotel was negotiated on excluding the 13th floor. However, he was aware that M/s Ernst & Young directed Mr. Pattni to vacate the 13th floor after taking over as Receiver Managers but did not pay him to do so.

- (x) The CBK Governor admitted to the committee that he informed the Commissioner of Lands that the sale of Grand Regency Hotel was government to government. He stated that ***“When I called the Commissioner of Lands, I told him that I had just confirmed that the CBK is in a sale between the Libyans, and it was a Government to Government-- He wanted me just to confirm that. That is what I confirmed; that it was a Government to Government and we had entered into this sale and they were in the process of paying”. (hansard Pg 44). “Let me confirm one thing. I was told to call the Commissioner of Lands to try and confirm whether this was a Government-to-Government sale. That is what I did”. (hansard Pg 58)***
- (xi) The CBK Governor informed the committee was introduced to Mr. Adan Ahmed by a letter dated 13/09/07 from Mr. Pattni introducing him as his lawyer. He informed the committee that he didn't meet Mr. Kamlesh till the hand-over day and has not met him since then. He further informed the Committee that NSIS Director only called him to inform him that Mr. Pattni was ready to settle the Grand Regency matter with the CBK. He stated that ***“I have told even other people that I did not meet Kamlesh Pattni until the day the hotel was handed over and I have never met him since then.”(hansard Pg 51)***
- (xii) The CBK Board was aware of the dealings and approved the same as the Governor had even been informed that the deal to sale the hotel had backfired in 1992. He confirmed that Mr.

Kennedy Abuga, a Director used CBK vehicle to transport the Valuers to Grand Regency hotel to do the valuation.

DEPUTY GOVERNOR OF CENTRAL BANK OF KENYA - MS JACINTA MWATELA

The Deputy Governor accompanied by CBK lawyers Gatonye Waweru, Philip Murgor and Mercy Kithenya appeared before the Committee on Thursday 31st July, 2008 and gave evidence as follows: -

- (i) She is the chairperson of the Central Bank Tender Board Committee and vice-chairperson of CBK Board. She does not know anything about the Grand Regency Hotel because she was not involved in the whole process. She said, ***"I do know now that the hotel has since been sold. However, the events that surround the sale, I do not know because I was not involved". (hansard Pg 2)*** The Tender Board Committee, which deals with procurement and disposal of CBK assets and services, was not involved or contacted on the sale process of the Grand Regency Hotel. The selection of the firms, which valued the Hotel, was also not brought to the attention of the Tender Board Committee. she stated that, ***"Mr. Chairman, Sir, at no point was the Tender Committee required to consider the issue of the sale of the Grand Regency". (hansard Pg 2)***
- (ii) She confirmed that the selection of firms for provision of services to the Bank is part of the procurement roles of the Tender Board Committee and the Tender Committee and in this instance the Tender board Committee was not tasked to procure for valuation services. She stated that, ***"The selection of the valuers was not a matter that was brought to the Tender Committee. Remember, I have said that this matter did not come to the Tender Committee and, therefore, the issue of valuation or any matter related to the valuation or even the***

sale would not therefore be at the control or knowledge of the Tender Committee”(hansard pg 3}}

(iii) She further confirmed that the Governor who is also the chairman of CBK Board, had been briefing the Board that the negotiations on the sale of the Grand Regency Hotel was progressing well but the process was very secretive and the information being given was limited. The Governor last briefed the Board on the matter during the meeting held on 7th April, 2008. She stated that, **“Mr. Chairman, Sir, the Board was on several cases briefed about the process that was ongoing. This process was relatively secretive. I do not think a lot of information was, really, being disclosed to the Board as such. But the Chair of the Board did disclose that they were doing some negotiations to dispose of the hotel”** (hansard pg 5)

(iv) She informed the Committee that the Board Members expressed their views regarding the sale of the Grand Regency during the meeting on 7th April 2008. She stated her position on that matter in the said meeting that she did not support the position that the Bank lawyers M/s Murgor & Murgor Advocates was not involved and had not had a chance to review the transaction. She also informed the Board that it was important to have a legal counsel who had the institutional history of the Bank and who could comprehend the intricate issues or background of the matter. She stated that, **“Mr. Chairman, Sir, after the meeting of 7th April, it was clear that the lawyers had not come on board. That is the reason as to why I was still insisting on the recommendation that our lawyers should have a review of all the documentation. The reason as to why I was particular about the lawyer being on board is that the cases relating to Grand Regency Hotel and Goldenberg per se were very intricate and inter-twined in so**

many ways. It was important to have somebody who had institutional knowledge and view about the issue before we proceed. I did not know those other lawyers. In any case, I did not think they would be representing the interests of the bank. Therefore, the more reason I was convinced the lawyers of the bank, who are M/s Murgor & Company Advocates, should come on board”(hansard pg. 6)

- (v) She further informed the Committee that, M/s Murgor & Murgor Advocates were not involved in the sale process and were only brought on board on 17/07/2008 when several bodies and the public raised eyebrows on the sale of the hotel. *(Mr. Murgor who was in attendance confirmed that position to the Committee).*
- (vi) She stated that she was completely left in the dark as negotiations on the Hotel progressed and has therefore not seen the documents on the sale of the hotel by CBK. Equally the 434th minutes of the Board meeting held on 7th April, 2008, to which she had voiced her concern about the exclusion of the Bank lawyers, were confirmed when she was not present without taking into consideration her reservations. The confirmed Board minutes gave authority to the Bank to proceed with the negotiations on sale of the hotel. She was never told who the buyer was because the negotiations were about the ongoing discussion with the buyer and not on how to source for buyers.
- (vii) She confirmed that the down payment of \$4.5 million was received on 08/05/2008 at the CBK Federal Reserve bank account in New York and the balance was received on 09/07/08 in the same account. She stated that, ***“Mr. Chairman, Sir, yes, I confirmed that on 8th May, 2008, US\$4.5 million was received to the Central Bank account at the Federal Reserve***

Bank in New York. The second one was also US\$40.5 million to the same account, Federal Reserve, New York”(hansard pg 13).}

3.12 HON. AMOS KIMUNYA, MP

Hon. Amos Kimunya, MP for Kipipiri and former Minister for Finance, accompanied by Prof. Githu Muigai, Advocate and Mr. George Kanyi Kimondo, Advocate appeared before the Committee on Monday 28th July 2008. Hon. Amos Kimunya, MP gave evidence as follows: -

- (i) As the Finance Minister then, his role was to be the link between parliament and the public in terms of transmitting the information conveyed to him by CBK regarding the Grand Regency Hotel. Even when the ministerial statement was sought in Parliament on 23rd April, 2008 he sought information from CBK and responded on 29th April, 2008. He stated that, ***“thank you, Mr. Chairman, Sir, for that confirmation. My role as the Minister for Finance in this matter was fairly simple: To be the messenger to Parliament and to the public on the information as given to me by the Central Bank of Kenya (CBK), which is one of the bodies under my charge and which is independent in terms of contracting and discharging all matters under their mandate as captured within the law”(hansard pg 2)}***.
- (ii) In one of the meetings, he requested the then Ag. Governor of CBK, Ms Jacinta Mwatela to update him on the status of the Grand Regency Hotel and he received a brief on the same. On 7th March 2007, the Permanent Secretary, Treasury wrote to KACC requesting for the fast tracking of the Hotel receivership issue.
- (iii) He clarified that he informed the House while issuing a ministerial statement, that the Hotel had not been sold to Meridian Arab African Investment Company (MAAIC) and not

that the Hotel had not been sold. **He said, "Mr. Chairman, Sir, lets go back to what is the role of the Minister for Finance. Like I said, my role was to give you the information as provided to me. The Central Bank of Kenya (CBK) was dealing with this matter independently as CBK with the power of charge and authority to transact on this transaction. We appeared before this Committee with the Governor and the Permanent Secretary and they both gave information, as they knew it. My role was specifically to clarify on the issues as I said in the House. I believe that, that is the question that the Committee wanted to know. I told the House that the hotel had not been sold to the Meridian Company and even up to now I do not know where that company came from. I said that I was aware negotiations were going on and I did not even want to give the information because of the sensitivity of the matter"**(*hansard pg 7*)). He further clarified that he did not mislead the Committee when he appeared before it on 21st May, 2008 by stating that the Hotel had not been sold. Reason being that, the negotiations were ongoing by then and a sale could not have been deemed to take place when the actual transfer had not been registered.

- (iv) He confirmed that he was uncomfortable with the letter from the Committee, which instructed him, and the CBK to put on hold all transactions on the sale of the Hotel because the letter portrayed him as having told untruth to the Committee unlike the joint receiver managers he said, **"Mr. Chairman, Sir, I think the first thing I want to explain is why I was uncomfortable with the position taken by the Committee and in the course of our discussion here on 21st, there was insinuation to the fact that there was corruption in the matter and subsequently, there were statements made to**

that effect and the wording of the letter seemed to cast doubts as to what I had said to the Committee” (hansard pg 10)

- (v) Neither the Treasury nor the Minister for Finance was involved in the sale of the Hotel either as the seller or the negotiator because the CBK is autonomous and therefore he could not instruct CBK on what to do. This explains why he did not discuss the Committee’s letter of 29th May 2008 with the CBK because he had no obligation to instruct the CBK Governor on what to do.
- (vi) He was not in the picture during the negotiations with KACC up to the hand over at Grand Regency Hotel and he has never met Mr. Pattni personally. Had Hon. Gitobu Imanyara not sought a ministerial statement, he could have not known anything about the Hotel because the institutions under Treasury are independent and only seek policy advice from the Minister when necessary he said, ***“Mr. Chairman, Sir, like I said, I was neither the seller nor part of the negotiations on the sale or recovery of the hotel. That is the Central Bank of Kenya (CBK) acting in its total independence. I think it is important that we de-link the two. As Minister for Finance, in terms of all the various institutions that are doing their day-to-day things, they are many. Unless they want any policy direction from me, I do not have to get involved”***(hansard pg 14}).
- (vii) He confirmed the existence of a Memorandum of Understanding between the Government of Kenya and Government of Libya to which he was not a signatory and in which, part of the Libyan interest was indicated to be in the Grand Regency Hotel.

- (viii) The negotiations between UHDL and KACC never involved the Treasury because the CBK has its own lawyers. He alleged that that he received information that the Attorney General had met Mr. Ahmed Adan at least seven times and that M/s Kalove and Co Advocates had also been in communication with the Attorney General he said, ***“In terms of the AG, what I said is that he consistently denied that he had knowledge of this transaction but I received information that he had met with the lawyer, Adan of Wetangula, Adan and Company, at least, seven times. This was a note that was given to me in terms of that the AG had been fully briefed. I am also aware, like I told you, that Kalove and Company have been in communication with the AG. So, I was surprised to hear the AG saying he had no idea what was happening. (hansard Pg 25)}}***.
- (viii) He stated that the Prime Minister, who is the coordinator of all Ministers, had been informed on matter and he expected the Prime Minister to have consulted the other state agents on the same he said, ***“I was aware that the Prime Minister had been briefed and he is the co-ordinator of the Ministers. It is not I to co-ordinate Ministries. The Prime Minister was briefed on 23rd April 2008. If there is any co-ordination between the AG and other people, that is his job. It is not my job! I raised that issue with the Prime Minister that it is not me to call the AG or the Minister for Lands: "You are the co-ordinator, that is your constitutional job, can you sort out all this matter and give one opinion to the public?"(hansard Pg 28)}}***. Both KACC Director and Prime Minister never consulted him on the issue and he believes that CBK did what ought to be done to realize its charge.

**3.13 MR. JAMES MUNGAI WARUI - SENIOR STATE COUNSEL,
ATTORNEY GENERAL'S OFFICE**

Mr. James Mungai appeared before the Committee on Tuesday 29th July, 2008 and gave evidence as follows:-

- (i) The Attorney General's office instituted criminal case No. 518 and No. 519 of 2006. The Attorney General's office received a report of an offer by Mr. Pattni from the Minister for Constitutional Affairs. He was asked to study the files and brief the Attorney General on the matter. However, before concluding the study to brief the Attorney General, he received another a proposal from Mr. Pattni on the Global Settlement where Mr. Pattni had listed a number of criminal and civil cases.
- (ii) All the documents regarding the listed cases could not be traced and he wrote to M/s Kalove & Company to submit the relevant documents in February 2008. Mr. Pattni had offered in his proposal to pay the government kshs 700,000,000/= so that the government could drop the entire criminal and civil cases against him and also to return back the Hotel Title Deed to him.
- (iii) When Mr. Kamlesh Pattni handed over the Hotel to CBK, the Attorney General requested for the file on Mr. Pattni and according to the files received, KACC was involved in HCCC 1111 of 2003 and later on 9th April 2008 they saw KACC present during the hand-over ceremony on television.
- (v) The office of Director Public Prosecution (DPP) has never received any communication from the CBK on the Grand Regency Hotel and Mr. Pattni issues. The State Counsels deals with the Attorney General through the DPP. According to him there could not be any meaningful settlement without involving the Office of the Attorney General because cases surrounding Mr. Pattni are not confined to HCCC 1111 of 2003 but quite a number of the both civil and criminal cases.

- (v) He stated that Mr. Pattni owed CBK Kshs.13.5 billion and Kshs.5.8 billion respectively. On 29/09/94 CBK agreed to take charge of Kshs 2.5 billion on Grand Regency Hotel. Mr. Pattni as security also credited the assets acquired from Aslam family to CBK. There was also the Pre-shipment finance and overnight lending scheme, Treasury debts scheme, the export compensation scheme and there was also an issue of cheques kiting scheme.
- (vi) The involvement of the Attorney General was necessary so as to ascertain that entire matter and all the cases had been settled before the cases are withdrawn because Mr. Pattni had also proposed that the charge be discharged and the Hotel revert to him after paying CBK.

3.14 MR. ROBERT HUNJA - AG. DIRECTOR GENERAL OF PUBLIC PROCUREMENT OVERSIGHT AUTHORITY

Mr. Robert Hunja appeared before the Committee on Tuesday 29th July 2008 and gave evidence as follows: -

- (i) The mandate of Public Procurement Oversight Authority includes:
- (a) To ensure compliance of Public Procurement Act by the various public players.
 - (b) To ensure government institutions have the capacity to adhere to Public Procurement and Disposal Act.
- (iii) He informed the committee that CBK being a public entity fall under the Public Procurement and Disposal Act.
- (iv) The Governor of CBK telephoned on 26/04/2008 to inform him that CBK had acquired the Grand Regency Hotel through a Consent Court Order and that CBK had no interest to register

the Hotel title in its name since negotiations were underway to dispose of it under the statutory power of sale.

- (v) He informed the CBK Governor that the disposal of the Hotel could not be subjected to the Public Procurement & Disposal Act if CBK will not own the title because it is not registered as a property of the CBK and could therefore be sold by the private owner (UHDL). He advised the Governor in writing that even if the Hotel was to be sold under private treaty, then CBK should ensure that the sale would realize the maximum value because the Hotel is a public property.
- (vi) The Director informed the Committee that CBK had two options of disposing off the Hotel and they opted for sale by private treaty. The correspondence received from CBK indicated that the Bank only had a charge to the property but the Bank did not mention anything about the title when CBK released a press statement in the media.
- (vii) The Public Procurement Oversight Authority understood that the Consent Order was meant to facilitate the transfer of the property but CBK indicated in its letter to the Authority that due to compelling factors, CBK was not going to implement the provisions of the Consent Court Order to discharge its security and acquire the title in its name prior to any sale.

4.0 COMMITTEE'S OBSERVATIONS

4.1 HON. AMOS KIMUNYA, MP

- (i) The Committee observed with concern that the former Minister for Finance deliberately withheld material facts and gave false information when he appeared before the Committee on Wednesday 21 May, 2008 to the effect that the Grand Regency

Hotel had not been sold by then, whereas evidence adduced before the Committee later indicated that:-

- (a) A deposit of US \$4.5 million had been paid by the purchaser's lawyer (Wetangula, Adan, Makokha & Co. Advocates) on 8th May 2008 and the money received in the CBK Federal Reserve Bank account in New York and this was before he appeared before the committee.
- (b) There was a sale agreement, which had been signed in regard to the hotel before he appeared before the Committee. Giving false information before any Committee of Parliament is in contravention *section 21 of the National Assembly (Powers and Privileges) Act Chapter 6 of the Laws of Kenya* which states:-

“21. False evidence

Any person who before the Assembly or any committee intentionally gives a false answer to any question material to the subject of inquiry which may be put to him during the course of any examination shall be guilty of an offence under section 108 of the Penal Code and liable to the penalty prescribed by the appropriate section for that offence.”

- (ii) Had the Honourable Kimunya been more open and transparent when he appeared before the Committee, the entire controversy surrounding the surrender and transfer of the Grand Regency Hotel may have been avoided. Honourable Kimunya did not act in the best interests of the Kenyan public when he withheld pertinent information from this Committee of Parliament.
- (iii) The Committee further observed with concern that it wrote to the former Minister for Finance through the Clerk of National Assembly vide letter Ref. KNA/DCF/2008 (11) dated 29th May,

2008 instructing both the Minister and the Governor of CBK to put on hold all transactions related to the sale of the Hotel until the Committee concludes its investigation into the matter. The former Finance Minister responded vide his letter Ref Conf.69/01 dated 29th May 2008 that he was not comfortable with the Committee's position and requested for an urgent meeting with the Committee but failed to show up for the meeting he had scheduled on Friday 6th June 2008.

- (iv) The committee also observed that although the minister admitted having received a letter from the Committee through the Clerk of National Assembly asking him to put on hold all sale transactions regarding Grand Regency Hotel he took no action. Honourable Kimunya acted in bad faith and with impunity when he failed to comply with the Committee's instructions to stop all further transactions in connection with the sale of the Grand Regency Hotel.
- (v) The Committee observed that the former Finance Minister deliberately withheld the written confidential brief on Grand Regency Hotel, which was submitted through him by the Governor of CBK to the Finance Committee.
- (vi) The committee observed that the minister portrayed himself as being a mere messenger and not in the center of the sale process yet he gave an undertaking in Parliament in his ministerial statement in which stated, ***"Mr. speaker sir, as a government, we will take very keen interest in the sale. Therefore, I will consult and guide the CBK in the sale process in order to ensure that the sale is conducted in an expeditious and cost-effective manner"(pg722 parliamentary debates April 29,2008)***

4.2 GOVERNOR OF CENTRAL BANK OF KENYA

The committee observed that: -

- (i) The CBK Governor, being aware that the sale process was underway and CBK had received a deposit from Libya Arab Africa Investment Company Kenya Ltd, he failed to disclose to the Committee when he appeared before it with the then Finance Minister Hon. Amos Kimunya because he was flanking the Minister.
- (ii) In his brief on the Grand Regency matter to the Committee through the Minister for Finance prepared for the 21st May 2008 meeting, the Governor omitted the information on the 10% deposit (US \$4.5 million) paid by the purchaser and the existence of a signed sale agreement on the Hotel. However, it is evident that the Governor had revealed the same information to the Rt. Hon. Prime Minister on 23rd April 2008 as per the Prime Ministerial Statement of 8th July 2008.
- (iii) The CBK Board recommended that the CBK Governor should liaise with the office of the Attorney General, KACC and Treasury. The CBK Governor consulted KACC because KACC was the most relevant institution in his opinion on this matter. However, despite his assertion that he consulted the Attorney General and even copied correspondence regarding the matter, there was no evidence to support this position.
- (iv) The CBK Board recommended to the Governor to source for buyers for the Hotel. However it appears from the evidence that the Governor engaged only one buyer namely Libyan Arab African Investment Company Kenya Ltd.
- (v) The Central Bank of Kenya had two options for disposing of the Hotel. One, by transferring the Hotel to itself as contained in the High Court consent order of 9th April 2008 and thereafter selling the Hotel pursuant to the provisions of the Public Procurement

and Disposal Act. Two, through exercise of its statutory power of sale. The Central Bank abandoned option one thereby rendering the Public Procurement & Disposal Act irrelevant. Although CBK opted to exercise its statutory power of sale by way of private treaty, the Committee observed that even this option should have been subjected to competitive bidding.

- (vi) The Committee noted that whereas the charge in favour of the CBK over the Grand Regency Hotel property provided for interest to be charged, the element of interest does not appear to have been considered when CBK was exercising its statutory power of sale.
- (vii) The Committee noted that in the High Court consent order of 9th April 2008, the Court ordered that all monies in the Grand Regency Hotel accounts should be transferred to the CBK. This money is however still under the control of the CBK's Receiver Managers and is yet to be transferred to the CBK.

4.3 MAJOR GENERAL GICHANGI – DIRECTOR GENERAL, NATIONAL SECURITY INTELLIGENCE SERVICE

From the evidence gathered by the Committee the Director General played the following roles:

- (i) The Director General did not introduce the Libya Arab African Company Limited to the Governor of the Central Bank. He did however in June 2007 introduced Mr. Kamlesh Pattni to the Governor of the Central bank of Kenya and informed the Governor that Mr. Pattni wanted to pursue global settlement negotiations in respect of the claims and charges Central Bank had against him. The Director General played no further role in the matter thereafter.
- (ii) The Director General provided security briefings to the following among others: -

25th April 2008

- Vice President
- Prime Minister
- Minister of State for Provincial Administration and Internal Security
- Minister of Finance
- Minister of Justice National Cohesion and Constitutional Affairs
- Attorney General
- Head of the Public Service and Secretary to the Cabinet
- Minister for Foreign Affairs

30th April 2008

- Minister of state for Provincial Administration and Internal Security
- Head of the Public Service and Secretary to the Cabinet
- Permanent Secretary Ministry of Foreign Affairs
- Permanent Secretary, Treasury
- Police Commissioner

In these briefings, the Director raised concerns over the manner in which the Hotel was surrendered and subsequently sold. The issues he raised also had to do with integrity and fears that the Public Procurement & Disposal Act was being flouted possibly to cover up some irregularities and indicated that this had the consequence of portraying the Government as not committed to fighting corruption.

- (iii) The Director General did on 11th June 2008 visit the Permanent Secretary in the Ministry of Lands, Mrs. Dorothy Angote, at her office in Ardhi House. This visit concerned the recovery of some public property in South C estate that had been grabbed and had nothing to do with the Grand Regency Hotel matter. The Committee found no evidence that either the Director General or

any of his officers communicated with or influenced any Lands Ministry official over the transfer of the Hotel.

- (iv) The Committee therefore found no impropriety by the Director General in connection with this matter as he merely performed his duties competently as set out in the law.

4.4 THE ATTORNEY GENERAL'S OFFICE

(i) **THE ATTORNEY GENERAL - HON. AMOS WAKO, MP**

- ◆ The Committee observed that the Attorney General should have been involved in the entire process of negotiating for the handover of the Grand Regency Hotel. The Committee's view is that the involvement of the Attorney General was necessary taking into account the fact that the issues, both civil and criminal, are intertwined and all emanate from the Goldenberg saga.
- ◆ The Committee however noted that the Attorney General appears to have been informally briefed on the intended sale of the Hotel through briefings by the NSIS Director General on 25th and 30th April, 2008 and by Hon. Moses Wetangula, MP when introducing Mr. Adan of M/s Wetangula, Adan & Makokha Co. Advocates who was acting on behalf of LAAIC Kenya Ltd.

(ii) **MS JANE JORAM - REGISTRAR OF COMPANIES**

The Committee noted that, at the time the Registrar of Companies registered the Libyan Arab African Company Kenya Ltd. in August 2007, the directors of the companies described themselves as Kenyans. However, in the returns filed by the Company in June 2008 on the restructuring of the shareholding, the directors described themselves as Libyans,

which raises concerns as to the true identity or nationality of the directors.

(iii) **MR. JAMES MUNGAI WARUI –SENIOR STATE COUNSEL**

- ◆ The Committee observed that the involvement of the Attorney Generals' was necessary as stated by the Senior State Counsel so as to ascertain that the entire matter and all the cases had been settled before the cases are withdrawn because Mr. Pattni had also proposed that the charge be discharged and the Hotel revert to him after Paying CBK.
- ◆ The Committee further observed there could not be any meaningful global settlement without involving the Office of the Attorney General because cases surrounding Mr. Pattni are not confined to HCCC 1111 of 2003 only but quite a number of the both civil and criminal cases.

4.5 MINISTRY OF LANDS

(i) **MINISTER FOR LANDS – HON. JAMES ORENGO, MP**

The Committee found no evidence of impropriety on the part of the Minister for Lands and commends the Minister for attempting to halt the sale process.

(ii) **COMMISSIONER OF LANDS – MR. ZABLON MABEA**

- ◆ The Committee observed that the Commissioner of Lands effected the transfer of Grand Regency Hotel contrary to the instructions by the Minister for Lands not to effect the transfer.
- ◆ The Committee further observed that the Commissioner of Lands appeared to have acted under pressure while effecting the transfer and therefore considers his action legal but imprudent

♦ The Committee also observed that the Commissioner for Lands issued a Land Rent Certificate in respect of the Grand Regency Hotel property certifying that all the outstanding land rent due had been settled. However the documents subsequently supplied by the Commissioner did not account for the land rent payment between 1993 and 1997.

(iii) **CHIEF LAND REGISTRAR – MS TERESIA MBURU**

The Committee noted that the Chief Registrar of Lands stated that one of her Registrar's effected the actual transfer of Grand Regency Hotel based on the documents presented by the Advocates for Libyan Arab African Company Kenya Ltd. (LAAIC Kenya Ltd.) which were duly executed by the directors of both LAAIC Kenya Ltd. and CBK. Therefore, the Registrar properly effected the transfer of the Hotel.

4.6. HON. (RTD) JUSTICE AARON RINGERA, DIRECTOR OF KENYA ANTI-CORRUPTION COMMISSION (KACC)

- (i) The Committee noted that KACC instituted HCCC No. 1111 of 2003 on behalf of the Central Bank of Kenya in a bid to recover monies owed to it by Mr. Kamlesh Pattni and his associated companies in accordance with the Anti-Corruption and Economic Crimes Act. Thereafter KACC entered into the Consent Order of 9th April 2008.
- (ii) The Committee observed that the Director of KACC did not consult the Attorney General prior to filing the consent order of 9th April 2008 in court on the basis that this was a civil claim and KACC was not obliged to consult the Attorney General on civil matters. The Committee noted that the civil claim herein was related to various criminal cases instituted by the Attorney General against Mr. Pattni and the matters are all intertwined. It was therefore vital for KACC to consult the Attorney General

on the civil claim even though the Attorney General was not directly involved in the same.

- (iii) The Committee further observed that KACC through its Deputy Director, Ms Fatuma Sichale entered into the Consent of 9th April 2008 but did not ensure that the orders contained therein were effected, in particular that the Grand Regency Hotel was transferred to CBK. The Committee is therefore concerned about the purpose for which KACC entered into the Consent of 9th April, 2008 in HCCC No. 1111 of 2003 if it was not going to follow up on the execution of the orders contained therein.

4.7 MR. KAMLESH PATTNI

The Committee noted that Mr. Kamlesh Pattni attempted to convince it that he had been granted amnesty through the surrender of the Grand Regency Hotel as part of the global settlement between the Government and himself with regard to both the criminal and civil cases. However, he produced no clear evidence to support this position.

4.8 MINISTER FOR FOREIGN AFFAIRS – HON. MOSES WETANGULA,

- (i) The Committee noted that the Minister for Foreign Affairs is listed as a Consultant in the Law firm of M/S Wetangula, Adan & Makokha Co. Advocates. The firm has been acting on behalf of both Mr. Kamlesh Pattni and the LAAIC Kenya Ltd, the company that purchased the Grand Regency Hotel. The Committee further noted that Hon. Moses Wetangula, MP introduced Mr. Ahmed Adan, a partner in the said law firm to the Attorney General early this year for purposes of having Mr. Adan deal with the Attorney General over the intended sale of the Grand Regency Hotel.
- (ii) The Committee was informed that Hon. Moses Wetangula is no longer a partner in the said Law firm. However, the Committee is concerned that Hon. Moses Wetangula appears to have played

some peripheral role in the transaction involving the Grand Regency Hotel but the Committee found no evidence of actual impropriety on the part of the Minister for Foreign Affairs.

5.0 LEGAL ISSUES

The Committee extracted the following legal issues from the transaction arising from the surrender and subsequent sale of Grand Regency:-

5.1 ISSUE NO. 1

Should the CBK have proceeded to sell the Hotel by way of exercise of its statutory power of sale or first transfer the Hotel to itself and thereafter dispose of the Hotel in accordance with the provisions of the Public Procurement and Disposal Act?

The Committee observed that it was legal for the CBK to elect to proceed either

- (a) by way of transferring the Hotel to itself first and thereafter disposing of the sale under the provisions of the Public Procurement and Disposal Act. If it had so elected the CBK would have been under an obligation to sell the property by way of public auction, or;
- (b) by way of exercise of its statutory power of sale and thereafter transfer as chargee. This being a property registered under the Registration of Titles Act, Cap 281, the CBK had the option of either selling the property by way of private treaty or public auction. If it had been a property registered under the Registered Land Act, Cap 300, the CBK would have been obligated to proceed by way of public auction as the Registered Land Act does not provide for exercise of a chargee's statutory power of sale by way of private treaty. The CBK's election to proceed by way of private treaty was therefore legal.

5.2 ISSUE NO. 2

Having decided to sell the Hotel by way of exercise of its statutory power of sale should the Hotel have been sold by way of private treaty or through a sale by public auction with competitive bidding?

Having elected to proceed by way of sale by private treaty the Governor should still have proceeded with the sale through a process of competitive bidding or sourcing of various buyers as instructed by the Central Bank of Kenya's Board of Directors.

5.3 ISSUE NO. 3

Whether any persons committed any criminal offences or any other wrongdoing?

HON. AMOS KIMUNYA

The Committee observed that Hon. Amos Kimunya gave false information when he appeared before it. This is in contravention of section 21 of the National Assembly (Powers and Privileges) Act Chapter 6 of the Laws of Kenya. Section 21 states as follows:

"21. False evidence

Any person who before the Assembly or any committee intentionally gives a false answer to any question material to the subject of inquiry which may be put to him during the course of any examination shall be guilty of an offence under section 108 of the Penal Code and liable to the penalty prescribed by the appropriate section for that offence."

This is in addition to the wrongdoings noted above of:

- a) acting in bad faith and with impunity when he failed to comply with the Committee's instructions to stop all further transactions in connection with the sale of the Grand Regency Hotel,

b) failing to be more open and transparent when he appeared before the House, the Committee and in his public utterances to the Kenyan public at large. If he had been more open and transparent the entire controversy surrounding the surrender and transfer of the Grand Regency Hotel may have been avoided.

GOVERNOR OF THE CENTRAL BANK OF KENYA

The Committee observed that the Governor's actions of failing to proceed with the sale by way of competitive bidding were not illegal but were nevertheless wrongful and imprudent.

CERTIFIED PUBLIC SECRETARY

The Committee observed that the Mr. Njoroge O. Kimani of P. O. Box 20122 00200 Nairobi, Certified Public Secretary, completed form 203 of the Companies Act in which he described the two directors of the Libyan Arab African Investments Company Kenya Limited Mr. Ahmed Mohamed Amaer and Mr. Mohamed Shtewi Maawal as Kenyans. The two were later described as Libyans. The Committee noted that it is an offence under **section 393 of the Companies Act** to make a false statement to the Registrar of Companies. The Committee observed that it would be necessary for further investigations to be undertaken with a view to taking appropriate action against the person or persons found to be responsible for giving the false information.

5.4 ISSUE NO. 4

Is it in the best interests of the country to reverse the sale transaction?

The Committee has received conflicting legal opinion on whether the sale of the Grand Regency Hotel is reversible or not. In view of the complex nature of the transaction, issues arising, and in the public

interest the Committee recommends that the Attorney General should investigate the transaction and take the necessary action.

5.5 ISSUE NO. 5

Was Mr. Kamlesh Pattni granted amnesty from all criminal prosecution in connection with the Goldenberg scandal?

The Committee observed that there was no clear evidence that Mr. Pattni had been given amnesty from criminal prosecution in connection with the Goldenberg scandal.

5.6 ISSUE NO. 6

Related legal issues to do with existing legislation.

a) Public Procurement and Disposal Act

The Committee observed that there is lack of harmony between the definitions sections of the Act and the main body of the Act. It is therefore necessary to harmonize the two to make it clear that immovable public assets are subject to the provisions of the Act. The provisions of the Act dealing with disposal should also be expanded to deal with disposal of immovable assets.

b) The Companies Act

The Committee observed that the Companies Act does not require that subscribers to a company being incorporated do provide proof of identification. This glaring loophole has been used to conceal identities of shareholders and for other dishonest purposes. The Act requires amendment to make it compulsory for prospective shareholders and directors to provide proof of their identity on incorporation and any subsequent change of shareholding or directorship.

c) Powers of the Commissioner for Lands.

The Committee observed that the Commissioner for Lands had been requested by the Minister for Lands to put on hold the registration of

the transfer of the Grand Regency Hotel until he received further communication from the Minister. However the Commissioner for Lands went ahead to effect the transfer.

The Committee observed that the Commissioner for Lands has absolute powers in relation to registration of titles. The Committee further notes that the Ministry of Lands is currently undertaking a comprehensive review of the property laws. The Committee recommends that the Commissioner's powers be re-considered within the overall review.

6.0 COMMITTEE'S RECOMMENDATIONS

6.1 HON. AMOS KIMUNYA, MP

- (i) The Committee recommends that Hon Amos Kimunya be severely reprimanded and the question of his breach of section 21 of the National Assembly [Powers and Privilege] Act be referred to the House Powers and Privileges Committee for action.
- (ii) The Committee recommends to the appointing authority that be advised that the conduct of Hon Amos Kimunya is not compatible with that of Minister.

6.2 GOVERNOR OF THE CENTRAL BANK OF KENYA

- (i) The Committee recommends that the Governor of Central Bank Kenya, Prof Njuguna Ndun'gu be reprimanded.
- (ii) The Committee further recommends that the CBK moves swiftly to take control of all the money that was in the Grand Regency Hotel accounts at the time of sale as well as all the good debts and liabilities accruing as at the same date as stipulated in the High Court Consent Order of 9th April, 2008.

6.3 ATTORNEY GENERAL

- (i) The Committee recommends that in matters of this nature the Attorney General should be involved. All Government agencies, particularly the CBK, KACC, and the Attorney General should work closely.
- (ii) The Committee recommends that the Attorney General's office should in future pro-actively get involved when legal matters of public interest are brought to his attention formally or informally.
- (iii) The Committee recommends that the Attorney General should investigate the transaction and take the necessary action.

6.4 GOLDENBERG RELATED CASES

The Committee recommends that the Attorney General speedily reviews and concludes all Goldenberg related cases.

6.5 VARIOUS STATUTES

a) Public Procurement and Disposal Act

The Committee recommends that the necessary amendments to this Act be made so as to harmonize the definitions sections of the Act with the main body of the Act to make it clear that immoveable public assets are subject to the provisions of the Act.

b) The Companies Act

The Committee recommends that this Act be amended to make it compulsory for prospective shareholders and directors to provide proof of their identity on incorporation and any subsequent change of shareholding or directorship.

c) Powers of the Commissioner for Lands.

The Committee recommends that the Commissioner's powers be re-considered within the comprehensive review of the property laws.

6.6 FOREIGN INVESTORS

The Committee noted that it was in the best interest of the country to encourage foreign investment as a way of stimulating economic growth and creating employment for Kenyans. In this regard the Committee noted that the Libyans have shown interest in investing in various sectors of the economy. This is commendable and should be encouraged. The Committee however observes that all transactions, whether by foreign or local investors, should be done in accordance with the law. This holds true for all investors whether private or Government-to-Government investors.

The Committee recommends that the Government continue encouraging foreign investment but to do so in such a manner that is transparent and within the law to avoid a situation such as the Grand Regency Hotel saga in which foreign investors may be discouraged.

6.7 GOVERNMENT ORGANS

The Committee noted that there was inadequate co-ordination and communication between various Government organs regarding the transactions involving the Grand Regency Hotel. The Committee recommends that in future, all Government bodies should communicate and coordinate with each other to ensure proper functioning of the Government.

7.0 CONCLUSION

The Committee recommends that the House adopt its Report on the Grand Regency Hotel. Mr. Speaker Sir, May I take this opportunity to thank all Members of the Committee for their input and valuable contributions during the deliberations.

Chrysanthus Okemo

.....
Hon. Chrysanthus Okemo, MP

Chairman

Departmental Committee on Finance, Planning & Trade

Date *7th August, 2008*

**MINUTES OF THE TWENTY FIFTH SITTING OF THE
DEPARTMENTAL COMMITTEE (F) ON FINANCE, PLANNING AND
TRADE HELD ON THURSDAY 31ST JULY 2008 IN CONFERENCE
ROOM COUNTY HALL BUILDING AT 10.30 A.M.**

PRESENT:

The Hon. Chris Okemo, M.P. - **Chairman**
The Hon. (Prof.) Philip Kaloki, M.P. - **Vice Chairman**
The Hon. Musikari Kombo, M.P.
The Hon. Ntoitha M'mithiaru, M.P.
The Hon. Lucas Chepkitony, M.P.
The Hon. Nelson Gaichuhie, MP
The Hon. Shakeel Shabbir, M.P.
The Hon. Jakoyo Midiwo, M.P.
The Hon. Lenny Kivuti, M.P

ABSENT

The Hon. Ali Bahari, M.P.
The Hon. Nkoidila Ole Lankas, M.P.

IN ATTENDANCE:

Jacinta Mwatela - Deputy CBK Governor
Jonathan Bett - Vice chair Tender Board
Philip Murgor - Advocate
Waweru Gatonye - Advocate
Mercy Kithenya - Advocate

KENYA NATIONAL ASSEMBLY

Florence Abonyo - First clerk assistant
Anthony Njoroge - Legal officer
Atandi J. Mosomi - Parliamentary intern

MIN. NO. 92/2008
HOTEL

EVIDENCE ON THE GRAND REGENCY

The Deputy Governor accompanied by CBK lawyers appeared before the Committee and gave evidence as follows: -

- (i) She is the chairperson of the Central Bank Tender Board Committee and vice-chairperson of CBK Board. She does not know anything about the Grand Regency Hotel because she was not involved in the whole process. The Tender Board Committee, which deals with procurement and disposal of CBK assets and services, was not involved or contacted on the sale process of the Grand Regency Hotel. The selection of the firms, which valued the Hotel, was also not brought to the attention of the Tender Board Committee
- (ii) She confirmed that the selection of firms for provision of services to the Bank is part of the procurement roles of the Tender Board Committee and the Tender Committee and in this instance the Tender board Committee was not tasked to procure for valuation services.
- (iii) She further confirmed that the Governor who is also the chairman of CBK Board, had been briefing the Board that the negotiations on the sale of the Grand Regency Hotel was progressing well but the process was very secretive and the information being given was limited. The Governor last briefed the Board on the matter during the meeting held on 7th April, 2008.
- (iv) She informed the Committee that the Board Members expressed their views regarding the sale of the Grand Regency during the meeting on 7th April 2008. She stated her position on that matter in the said meeting that she did not support the position that the Bank lawyers M/s Murgor & Murgor Advocates was not involved and had not had a chance to review the transaction. She also informed the Board that it was important to have a legal counsel who had the institutional history of the Bank and who could comprehend the intricate issues or background of the matter.
- (v) She further informed the Committee that, M/s Murgor & Murgor Advocates were not involved in the sale process and were only

brought on board on 17/07/2008 when several bodies and the public raised eyebrows on the sale of the hotel. (*Mr. Murgor who was in attendance confirmed that position to the Committee*).

- (vi) She stated that she was completely left in the dark as negotiations on the Hotel progressed and has therefore not seen the documents on the sale of the hotel by CBK. Equally the 434th minutes of the Board meeting held on 7th April, 2008, to which she had voiced her concern about the exclusion of the Bank lawyers, were confirmed when she was not present without taking into consideration her reservations. The confirmed Board minutes gave authority to the Bank to proceed with the negotiations on sale of the hotel. She was never told who the buyer was because the negotiations were about the ongoing discussion with the buyer and not on how to source for buyers.
- (vii) She confirmed that the down payment of \$4.5 million was received on 08/05/2008 at the CBK Federal Reserve bank account in New York and the balance was received on 09/07/08 in the same account.

MIN. NO. 93/2008

ADJOURNMENT

The Chairman adjourned the meeting at One O'clock

Signed
(Chairman)

Date
21st Oct 2008

MINUTES OF THE TWENTY FOURTH SITTING OF THE DEPARTMENTAL COMMITTEE (F) ON FINANCE, PLANNING AND TRADE HELD ON TUESDAY 29TH JULY 2008 IN CONFERENCE ROOM COUNTY HALL BUILDING AT 11.00 A.M.

PRESENT:

The Hon. Chris Okemo, M.P. - **Chairman**
The Hon. Philip Kaloki, M.P.
The Hon. Musikari Kombo, M.P.
The Hon. Ntoitha M'mithiaru, M.P.
The Hon. Lucas Chepkitony, M.P.
The Hon. Nelson Gaichuhie, MP
The Hon. Shakeel Shabbir, M.P.
The Hon. Jakoyo Midiwo, M.P.
The Hon. Ali Bahari, M.P.

ABSENT

The Hon. Nkoidila Ole Lankas, M.P.
The Hon. Lenny Kivuti, M.P.

IN ATTENDANCE:

**PUBLIC PROCUREMENT AND OVERSIGHT
AUTHORITY (PPOA)**

Mr. Robert Hunja - Ag. Director General PPOA

KENYA NATIONAL ASSEMBLY

Florence Abonyo - First clerk assistant
Anthony Njoroge - Legal officer
Atandi J. Mosomi - Parliamentary intern

MIN. NO. 90/2008

EVIDENCE ON THE GRAND REGENCY HOTEL

Mr. Robert Hunja appeared before the Committee and gave evidence as follows: -

- (i) The mandate of Public Procurement Oversight Authority includes:
 - (a) To ensure compliance of Public Procurement Act by the various public players.
 - (b) To ensure government institutions have the capacity to adhere to Public Procurement and Disposal Act.
- (ii) He informed the committee that Central Bank of Kenya being a public entity fall under the Public Procurement and Disposal Act.

- (iii) The Governor of Central Bank of Kenya telephoned on 26/04/2008 to inform him that CBK had acquired the Grand Regency Hotel through a Consent Court Order and that CBK had no interest to register the Hotel title in its name since negotiations were underway to dispose of it under the statutory power of sale.
- (iv) He informed the CBK Governor that the disposal of the Hotel could not be subjected to the Public Procurement & Disposal Act if CBK will not own the title because it is not registered as a property of the CBK and could therefore be sold by the private owner (UHDL). He advised the Governor in writing that even if the Hotel was to be sold under private treaty, then CBK should ensure that the sale would realize the maximum value because the Hotel is a public property.
- (v) The Director informed the Committee that CBK had two options of disposing off the Hotel and they opted for sale by private treaty. The correspondence received from CBK indicated that the Bank only had a charge to the property but the Bank did not mention anything about the title when CBK released a press statement in the media.
- (vi) The Public Procurement Oversight Authority understood that the Consent Order was meant to facilitate the transfer of the property but CBK indicated in its letter to the Authority that due to compelling factors, CBK was not going to implement the provisions of the Consent Court Order to discharge its security and acquire the title in its name prior to any sale.

MIN. NO. 91/2008

ADJOURNMENT

The Chairman adjournment the meeting at 12.50 p.m.

Signed 
Chairman

Date... 21st Oct 2008

MINUTES OF THE TWENTY THIRD SITTING OF THE DEPARTMENTAL COMMITTEE (F) ON FINANCE, PLANNING AND TRADE HELD ON TUESDAY 29TH JULY 2008 IN CONFERENCE ROOM COUNTY HALL BUILDING AT 10.00 A.M.

PRESENT:

The Hon. Chris Okemo, M.P. - **Chairman**
The Hon. (Prof.) Philip Kaloki, M.P. - **Vice Chairman**
The Hon. Musikari Kombo, M.P.
The Hon. Ntoitha M'mithiaru, MP
The Hon. Lucas Chepkitony, M.P.
The Hon. Nelson Gaichuhie, MP
The Hon. Shakeel Shabbir, M.P.
The Hon. Jakoyo Midiwo, M.P.
The Hon. Ali Bahari, M.P.

ABSENT

The Hon. Nkoidila Ole Lankas, M.P.
The Hon. Lenny Kivuti, M.P.

INATTENDANCE:

ATTORNEY GENERAL'S OFFICE

James Mungai Warui Senior State Counsel

KENYA NATIONAL ASSEMBLY

Florence Abonyo - First clerk assistant
Anthony Njoroge - Legal officer
Atandi J. Mosomi - Parliamentary intern

MIN. NO. 88/2008

EVIDENCE ON THE GRAND REGENCY HOTEL

Mr. James Mungai Warui appeared before the Committee and gave evidence as follows:-

- (i) The Attorney General's office instituted criminal case No. 518 and No. 519 of 2006. The Attorney General's office received a report of an offer by Mr. Pattni from the Minister for Constitutional Affairs. He was asked to study the files and brief the Attorney General on the matter. However, before concluding the study to brief the Attorney General, he received another a proposal from Mr. Pattni on the Global Settlement where Mr. Pattni had listed a number of criminal and civil cases.
- (ii) All the documents regarding the listed cases could not be traced and he wrote to M/s Kalove & Company to submit the relevant documents in

February 2008. Mr. Pattni had offered in his proposal to pay the government Kshs 700,000,000/= so that the government could drop the entire criminal and civil cases against him and also to return back the Hotel Title Deed to him.

- (iii) When Mr. Kamlesh Pattni handed over the Hotel to CBK, the Attorney General requested for the file on Mr. Pattni and according to the files received, KACC was involved in HCCC 1111 of 2003 and they saw KACC presence during the hand-over ceremony was therefore surprising.
- (iv) The office of Director Public Prosecution (DPP) has never received any communication from the CBK on the Grand Regency Hotel and Mr. Pattni issues. The State Counsels deals with the Attorney General through the DPP. According to him there could not be any meaningful settlement without involving the Office of the Attorney General because cases surrounding Mr. Pattni are not confined to HCCC 1111 of 2003 but quite a number of the both civil and criminal cases.
- (v) He stated that Mr. Pattni owed CBK Kshs.13.5 billion and Kshs.5.8 billion respectively. On 29/09/94 CBK agreed to take charge of Kshs 2.5 billion on Grand Regency Hotel. Mr. Pattni as security also credited the assets acquired from Aslam family to CBK. There was also the Pre-shipment scheme, the export compensation scheme and there was also another issue of cheques kiting scheme.
- (vi) The involvement of the Attorney General was necessary so as to ascertain that entire matter and all the cases had been settled before the cases are withdrawn because Mr. Pattni had also proposed that the charge be discharged and the Hotel revert to him after paying CBK.

MIN. NO. 89/2008

ADJOURNMENT

The Chairman adjourned the meeting was adjourned at thirty minutes past eleven O'clock.

Signed
(Chairman)

Date 21st Oct, 2008

**MINUTES OF THE TWENTY SECOND SITTING OF THE
DEPARTMENTAL COMMITTEE (F) ON FINANCE, PLANNING AND
TRADE HELD ON MONDAY 28TH JULY 2008 IN CONFERENCE
ROOM COUNTY HALL BUILDING AT 3.30 P.M.**

PRESENT:

The Hon. Chris Okemo, M.P - **Chairman**
The Hon. Philip Kaloki, M.P.
The Hon. Musikari Kombo, M.P.
The Hon. Ntoitha M'mithiaru, M.P
The Hon. Lucas Chepkitony, M.P.
The Hon. Nelson Gaichuhie, MP
The Hon. Shakeel Shabbir, M.P.
The Hon. Jakoyo Midiwo, M.P.
The Hon. Lenny Kivuti, M.P.

ABSENT WITH APOLOGY

The Hon. Nkoidila Ole Lankas, MP

ABSENT

Hon. Ali Bahari, M.P

IN ATTENDANCE:

Hon. Amos Kimunya, M. P. - Kipipiri Constituency
Prof. Githu Muigai - Advocate
Mr. George Kanyi Kimondo - Advocate

KENYA NATIONAL ASSEMBLY

Florence Abonyo - First clerk assistant
Anthony Njoroge - Legal officer
Atandi J. Mosomi - Parliamentary intern

MIN. NO. 85/2008

EVIDENCE ON THE GRAND REGENCY HOTEL

Hon. Amos Kimunya, MP for Kipipiri and former Minister for Finance, accompanied by his lawyers appeared before the Committee and gave evidence as follows: -

- (i) As the Finance Minister then, his role was to be the link between Parliament and the public in terms of transmitting the information conveyed to him by CBK regarding the Grand Regency Hotel. Even when

the ministerial statement was sought in Parliament on 23rd April, 2008 he sought information from CBK and responded on 29th April, 2008.

- (ii) In one of the meetings, he requested the then Ag. Governor of CBK, Ms Jacinta Mwatela to update him on the status of the Grand Regency Hotel and he received a brief on the same. On 7th March 2007, the Permanent Secretary, Treasury wrote to KACC requesting for the fast tracking of the Hotel receivership issue.
- (iii) He clarified that he informed the House while issuing a ministerial statement, that the Hotel had not been sold to Meridian Arab African Investment Company (MAAIC) and not that the Hotel had not been sold.
- (iv) He further clarified that he did not mislead the Committee when he appeared before it on 21st May, 2008 by stating that the Hotel had not been sold. Reason being that, the negotiations were ongoing by then and a sale could not have been deemed to take place when the actual transfer had not been registered.
- (v) He confirmed that he was uncomfortable with the letter from the Committee, which instructed him, and the CBK to put on hold all transactions on the sale of the Hotel because the letter portrayed him as having told untruth to the Committee unlike the joint receiver managers.
- (vi) Neither the Treasury nor the Minister for Finance was involved in the sale of the Hotel either as the seller or the negotiator because the CBK is autonomous and therefore he could not instruct CBK on what to do. This explains why he did not discuss the Committee's letter of 29th May 2008 with the CBK because he had no obligation to instruct the CBK Governor on what to do.
- (vii) He was not in the picture during the negotiations with KACC up to the hand over at Grand Regency Hotel and he has never met Mr. Pattni personally. Had Hon. Gitobu Imanyara not sought a ministerial statement, he could have not known anything about the Hotel because the institutions under Treasury are independent and only seek policy advice from the Minister when necessary.

- (viii) He confirmed the existence of a Memorandum of Understanding between the Government of Kenya and Government of Libya to which he was not a signatory and in which, part of the Libyan interest was indicated to be in the Grand Regency Hotel.
- (ix) The negotiations between UHDL and KACC never involved the Treasury because the CBK has its own lawyers. He alleged that that he received information that the Attorney General had met Mr. Ahmed Adan at least seven times and that M/s Kalove and Co Advocates had also been in communication with the Attorney General.
- (x) He stated that the Prime Minister, who is the co-ordinator of all Ministers, had been informed on matter and he expected the Prime Minister to have consulted the other state agents on the same. Both KACC Director and Prime Minister never consulted him on the issue and he believes that CBK did what ought to be done to realize its charge.

MIN. NO. 86/2008

COMMITTEE'S OBSERVATIONS

- (i) The Committee observed with concern that the former Minister for Finance deliberately withheld material facts and gave false information when he appeared before the Committee on Wednesday 21 May, 2008 to the effect that the Grand Regency Hotel had not been sold by then, whereas evidence adduced before the Committee later indicated that:-
- (ii) A deposit of US \$4.5 million had been paid by the purchaser's lawyer (Wetangula, Adan, Makokha & Co. Advocates) on 8th May 2008 and the money received in the CBK Federal Reserve Bank account in New York and this was before he appeared before the committee.
- (iii) There was a sale agreement, which had been signed in regard to the hotel before he appeared before the Committee. Giving false information before any Committee of Parliament is in contravention *section 21 of the National Assembly (Powers and Privileges) Act Chapter 6 of the Laws of Kenya.*
- (iv) Had the Honourable Kimunya been more open and transparent when he appeared before the Committee, the entire controversy surrounding the surrender and transfer of the Grand Regency Hotel may have been avoided.

Honourable Kimunya did not act in the best interests of the Kenyan public when he withheld pertinent information from this Committee of Parliament.

- (v) The Committee further observed with concern that it wrote to the former Minister for Finance through the Clerk of National Assembly vide letter Ref. KNA/DCF/2008 (11) dated 29th May, 2008 instructing both the Minister and the Governor of CBK to put on hold all transactions related to the sale of the Hotel until the Committee concludes its investigation into the matter. The former Finance Minister responded vide his letter Ref Conf.69/01 dated 29th May 2008 that he was not comfortable with the Committee's position and requested for an urgent meeting with the Committee but failed to show up for the meeting he had scheduled on Friday 6th June 2008.
- (vi) The committee also observed that although the minister admitted having received a letter from the Committee through the Clerk of National Assembly asking him to put on hold all sale transactions regarding Grand Regency Hotel he took no action. Honourable Kimunya acted in bad faith and with impunity when he failed to comply with the Committee's instructions to stop all further transactions in connection with the sale of the Grand Regency Hotel.
- (vii) The Committee observed that the former Finance Minister deliberately withheld the written confidential brief on Grand Regency Hotel, which was submitted through him by the Governor of CBK to the Finance Committee.
- (viii) The committee observed that the minister portrayed himself as being a mere messenger and not in the center of the sale process yet he gave an undertaking in Parliament in his ministerial statement.

MIN NO. 87/2008

ADJOURNMENT

The Chairman adjourned the meeting was adjourned at 6.48 p.m.

Signed


(Chairman)

Date

21st July, 2008

MINUTES OF THE TWENTY FIRST SITTING OF THE DEPARTMENTAL COMMITTEE (F) ON FINANCE, PLANNING AND TRADE HELD ON MONDAY 28TH JULY 2008 IN CONFERENCE ROOM COUNTY HALL BUILDING AT 10:30 A.M.

PRESENT:

The Hon. Chris Okemo, M.P. - **Chairman**
The Hon. (Prof.) Philip Kaloki, M.P. - **Vice Chairman**
The Hon. Musikari Kombo, M.P.
The Hon. Ntoitha M'mithiaru, M.P.
The Hon. Lucas Chepkitony, M.P.
The Hon. Nelson Gaichuhie, MP
The Hon. Shakeel Shabbir, M.P.
The Hon. Jakoyo Midiwo, M.P.
The Hon. Lenny Kivuti, M.P.

ABSENT WITH APOLOGY

The Hon. Nkoidila Ole Lankas, M.P.

ABSENT

Hon. Ali Bahari, M.P.

IN ATTENDANCE **CENTRAL BANK OF KENYA**

Prof. Njuguna Ndung'u	-	CBK Governor
Gatonye Waweru	-	Advocate
George Oraro	-	Advocate
Philip Murgor	-	Advocate
Ms. M. Kithenya	-	Advocate

KENYA NATIONAL ASSEMBLY

P.C.O. Omolo	-	Senior Deputy Clerk
Florence Abonyo	-	First clerk assistant
Anthony Njoroge	-	Legal officer
Atandi J. Mosomi	-	Parliamentary intern

MIN. NO. 81/2008

EVIDENCE ON THE GRAND REGENCY HOTEL

The Governor of Central Bank of Kenya and his team appeared before the Committee and gave further evidence as follows:-

- (i) CBK lost about Kshs 8 billion as unsecured money to the Goldenberg scam but only Kshs 2.5 billion was secured.
- (ii) He prepared a brief on the Grand Regency Hotel for the former Finance Minister to submit to the Committee during the meeting held on 21st May

2008 and the Minister for Finance was the team leader while the Permanent Secretary and himself only flanked the Minister. He further informed the Committee that he briefed all the authorities including the CBK Board on the Hotel matter.

- (iii) He confirmed having received a copy of the letter from the Committee requesting both the Treasury and CBK to put on hold all transactions on the Hotel. However, he never received any further instructions from the Minister for Finance, the lead Ministry on the matter, and only learnt during the meeting on 28th July, 2008 of the Minister's response to the Committee vide letter Ref. No. Conf. 69/01 dated 29th May, 2008 which was not copied to him.
- (iv) After consultations with KACC and Public Procurement Oversight Authority, CBK realized that it was not under obligation to sell the hotel under Public Procurement and Disposal Act because the Consent order HCCC No. 589 of 1999 enabled the CBK to regain its statutory powers of sale. In the sale by private treaty, the CBK only determines the price and then offers it to whoever has shown interest and willing to pay.
- (v) The valuation on the Hotel was done in February 2008 by M/s Lloyd Masika and M/s Value Zone when CBK was negotiating for the hand-over of the Hotel. The valuers were not restricted to base their valuation on depreciated value. Both CBK and KACC had several meetings to brainstorm on how best to dispose of the Hotel. The Hotel net sale price was US \$45million because the liabilities were to be sorted by the money held in the Hotel bank accounts. The price was negotiated in and paid for in dollars in CBK Federal Reserve Bank Account in the United States of America.
- (vi) He informed the committee that CBK was given the Memorandum of Understanding by Libyan High Commission and that is how CBK started engaging the Libyan investors. The Governor stated that he never received any instruction from anybody about the disposal of the Hotel.
- (vii) At the time of take over, the CBK was aware of Kshs 342 million in the Hotel's bank accounts but had not ascertained the extent of liabilities.

Outstanding Land Rent was paid from the Kshs 342 million held in the Hotel accounts. Currently, the CBK is not aware of any liabilities being disputed by LAAIC Kenya Ltd.

- (viii) He stated further that CBK had attempted severally to recover Kshs 2.5 billion to realize its charge on the security and there have been several litigations on the Hotel between CBK and UHDL. CBK did not go for competitive bidding due to the several litigations and what was at stake for CBK. CBK deemed it appropriate to dispose of the Hotel through private treaty as the best way to maximize its charge however, CBK did not have any buyer in mind when it fixed the price.
- (ix) In response to Committee's concern, the CBK Governor stated that he was not aware of US \$1.7 million paid to M/s Kalove and Co Advocates and also that the Hotel was negotiated on excluding the 13th floor. However, he was aware that M/s Ernst & Young directed Mr. Pattni to vacate the 13th floor after taking over as Receiver Managers but did not pay him to do so.
- (x) The CBK Governor admitted to the committee that he informed the Commissioner of Lands that the sale of Grand Regency Hotel was government to government.
- (xi) The CBK Governor informed the committee was introduced to Mr. Adan Ahmed by a letter dated 13/09/07 from Mr. Pattni introducing him as his lawyer. He informed the committee that he didn't meet Mr. Kamlesh till the hand-over day and has not met him since then. He further informed the Committee that NSIS Director only called him to inform him that Mr. Pattni was ready to settle the Grand Regency matter with the CBK.
- (xii) The CBK Board was aware of the dealings and approved the same as the Governor had even been informed that the deal to ~~sale~~^{sell} the hotel had backfired in 1992. He confirmed that Mr. Kennedy Abuga, a Director used CBK vehicle to transport the Valuers to Grand Regency hotel to do the valuation.

The committee directed the Governor to submit to the committee the following documents

- ◆ Copy of financial statements on all expenses incurred by CBK on Grand Regency
- ◆ Copy of legal charge of 2.5 billion over Grand Regency
- ◆ Certified copies of copies of receipts of deposit and balance paid to CBK by LAAIC
- ◆ Copy of instructions by CBK to Valuers indicating basis of Valuation
- ◆ Copies of the three valuation reports by the valuers
- ◆ Copies of all correspondence between CBK and KACC
- ◆ Copy of letter from KACC to CBK indicating agreement on mode of disposal of the hotel
- ◆ Copy of contract between CBK and m/s Murgor & Murgor Company
- ◆ Copy of Contract between CCBK and Ernst and Young Ltd

MIN. NO. 83/2008**COMMITTEE'S OBSERVATIONS**

- (i) The CBK Governor, being aware that the sale process was underway and CBK had received a deposit from Libya Arab Africa Investment Company Kenya Ltd, he failed to disclose to the Committee when he appeared before it with the then Finance Minister Hon. Amos Kimunya because he was flanking the Minister.
- (ii) In his brief on the Grand Regency matter to the Committee through the Minister for Finance prepared for the 21st May 2008 meeting, the Governor omitted the information on the 10% deposit (US \$4.5 million) paid by the purchaser and the existence of a signed sale agreement on the Hotel. However, it is evident that the Governor had revealed the same information to the Rt. Hon. Prime Minister on 23rd April 2008 as per the Prime Ministerial Statement of 8th July 2008.
- (iii) The CBK Board recommended that the CBK Governor should liaise with the office of the Attorney General, KACC and Treasury. The CBK Governor consulted KACC because KACC was the most relevant institution in his opinion on this matter. However, despite his assertion that he consulted

the Attorney General and even copied correspondence regarding the matter, there was no evidence to support this position.

- (iv) The CBK Board recommended to the Governor to source for buyers for the Hotel. However it appears from the evidence that the Governor engaged only one buyer namely Libyan Arab African Investment Company Kenya Ltd.
- (v) The Central Bank of Kenya had two options for disposing of the Hotel. One, by transferring the Hotel to itself as contained in the High Court consent order of 9th April 2008 and thereafter selling the Hotel pursuant to the provisions of the Public Procurement and Disposal Act. Two, through exercise of its statutory power of sale. The Central Bank abandoned option one thereby rendering the Public Procurement & Disposal Act irrelevant. Although CBK opted to exercise its statutory power of sale by way of private treaty, the Committee observed that even this option should have been subjected to competitive bidding.
- (vi) The Committee noted that whereas the charge in favour of the CBK over the Grand Regency Hotel property provided for interest to be charged, the element of interest does not appear to have been considered when CBK was exercising its statutory power of sale.
- (vii) The Committee noted that in the High Court consent order of 9th April 2008, the Court ordered that all monies in the Grand Regency Hotel accounts should be transferred to the CBK. This money is however still under the control of the CBK's Receiver Managers and is yet to be transferred to the CBK.

MIN. NO. 84/2008

ADJOURNMENT

The meeting was adjourned at thirty minutes past three O'clock.

Signed 

(Chairman)

Date 

MINUTES OF THE TWENTIETH SITTING OF THE DEPARTMENTAL COMMITTEE (F) ON FINANCE, PLANNING AND TRADE HELD ON THURSDAY 24TH JULY 2008 IN CONFERENCE ROOM COUNTY HALL BUILDING AT 10:30 A.M.

PRESENT:

The Hon. Chris Okemo, M.P. - **Chairman**
The Hon. (Prof.) Philip Kaloki, M.P. - **Vice Chairman**
The Hon. Musikari Kombo, M.P.
The Hon. Ntoitha M'mithiaru, M.P.
The Hon. Lucas Chepkitony, M.P.
The Hon. Nelson Gaichuhie, M.P.
The Hon. Shakeel Shabbir, M.P.
The Hon. Jakoyo Midiwo, M.P.
The Hon. Lenny Kivuti, M.P.

ABSENT WITH APOLOGY

The Hon. Nkoidila Ole Lankas, M.P.

ABSENT

Hon. Ali Bahari, M.P.

IN ATTENDANCE:

ATTORNEY GENERAL OFFICE

Ms Jane Joram - Registrar of Companies

KENYA NATIONAL ASSEMBLY

Florence Abonyo - First clerk assistant
Anthony Njoroge - Legal officer
Atandi J. Mosomi - Parliamentary intern

MIN. NO 79/2008

EVIDENCE ON THE GRAND REGENCY HOTEL

The Registrar of Companies appeared before Committee and gave evidence regarding the registration of Libya Arab African Investment Company Kenya Ltd. as follows:-

- (i) M/s Libya Arab African Investment Company Kenya Limited (LAAIC) was registered in Kenya on 10/08/2007. The incorporation of this company was drawn and presented to the Registrar of Companies by M/s Wetangula, Adan & Makokha Co. Advocates. As at registration, the directors were two namely, Mr. Ahmed Mohamed Amaer and Mr. Mohamed Shtewi Mawaal.

- (ii) The directors indicated they do not have former or Christian names and gave their nationality as Kenyans and also described themselves as businessmen. They also declared that they are not directors of any other company and that the registered physical office of the company is situated at LR No 209/1846 Kimathi Street P. O. Box 10902-00400, Kimathi Street Nairobi.
- (iii) The two directors at incorporation held one share each making two shares of the total company shares. The objectives of the company were given as follows: -
- (a) To carry out business of multipurpose investment in Africa particularly Kenya, including but not limited to Hotel Industry, real estate, valuers, designers, surveyors, contractors etc.
- (b) To accept membership and shareholding of any person who purchases their houses.
- (iv) The nominal share capital of the company is Kshs. 100,000 divided into 100 shares of Kshs. 100 each. At inception, the company secretary was Mr. Njoroge Kimani, a certified Public Secretary of P. O. Box 20122-00200 Nairobi.
- (v) On 27/05/08, the company (LAAIC) filed the notification of the change of directors and secretaries, which indicated that Libya Arab Africa Investment Company of P. O. Box 91370 (81370) Tripoli, Libya had been appointed as a new director of LAAIC Kenya Ltd. This made the shareholders and directors to increase to three. The new company secretary was indicated to be Mr. Elias Mathondu of P.O. Box 72064-00100 Nairobi.
- (vi) On 27/05/08, the company filed returns on the allotment of shares, which indicated that Libya Arab Africa Investment Company had been allotted 998 shares. M/s Wetangula, Adan, and Makokha Advocates presented the two forms on change of shareholding and share allotment to the Registrar of Companies. The returns filed indicated the shareholding as follows: -
- (a) Ahmed Mohamed Amaer - 1 share

- (b) Mohamed Shtewi Maawal - 1 share
(c) Libya Arab Africa Investment Company - 998 shares

- (vii) In the returns filed, the 1st and 2nd shareholders/directors described themselves as Libyans while the nationality of the third director was not indicated. The first two directors also described themselves as businessmen and not directors of any other company. She confirmed that they had earlier (10/8/2007) described themselves as Kenyans and in May, 2008 they described themselves as Libyans. She promised to institute investigations into the matter of the nationalities.
- (viii) When incorporating a company, there is a declaration of compliance that is normally sworn by an advocate incorporating the company. In this instance, Mr. Adan swore that all the requirements have been adhered to.
- (ix) The Registrar informed the Committee that the procedure for registration is simple and can take a maximum of 4 days and registration requires the following: -
- ◆ Application for a search of the company name.
 - ◆ Engaging law firm to incorporate the company.
 - ◆ Payment of stamp duty to Kenya Revenue Authority
 - ◆ Supply particulars of directors and the company secretary.
 - ◆ Provide physical address of office of the company.
 - ◆ The advocate drawing the Article of Association to sign declaration of compliance form.
 - ◆ Submit the above forms and Articles of Association.
 - ◆ Payment of registration fee.
- (x) She told the committee that according to the Registrar of companies, LAAIC Kenya Ltd. complied with law and was properly registered in Kenya. She further clarified that Libya Arab Africa Investment Company is not registered in Kenya Company Registry Index.
- (xi) She informed the Committee that in Kenya, the Company Act does not require people to produce their identification documents for them to register companies. They only need to submit the names and the law firms

draft the forms for Articles of Association. She further informed the Committee that they only check for compliance but do not verify the authenticity of the details submitted.

MIN. NO. 80/2008

ADJOURNMENT

The Chairman adjourned the meeting at thirty minutes past Twelve O'clock.

Signed 
(Chairman)

Date 21st Oct, 2008

MINUTES OF THE NINETEENTH SITTING OF THE DEPARTMENTAL COMMITTEE (F) ON FINANCE, PLANNING AND TRADE HELD ON TUESDAY 22ND JULY 2008 IN CONFERENCE ROOM COUNTY HALL BUILDING AT 10:30 A.M.

PRESENT:

The Hon. Chris Okemo, M.P. - **Chairman**
The Hon. (Prof.) Philip Kaloki, M.P. . **Vice Chairman**
The Hon. Musikari Kombo, M.P.
The Hon. Ntoitha M'Mithiaru, M.P.
The Hon. Lucas Chepkitony, M.P.
The Hon. Nelson Gaichuhie, MP
The Hon. Shakeel Shabbir, M.P.
The Hon. Jakoyo Midiwo, M.P.

ABSENT WITH APOLOGY

The Hon. Nkoidila Ole Lankas, M.P.
The Hon. Lenny Kivuti, M.P.

ABSENT

Hon. Ali Bahari, M.P

IN ATTENDANCE:

UHURU HIGHWAY DEVELOPMENT LTD

Mr. Kamlesh Pattni - Proprietor of Grand Regency Hotel
through UHDL

KENYA NATIONAL ASSEMBLY

Florence Abonyo - First clerk assistant
Anthony Njoroge - Legal officer
Atandi J. Mosomi - Parliamentary intern

MIN. NO.77/ 2008 EVIDENCE ON THE GRAND REGENCY HOTEL

Mr. Kamlesh Pattni appeared before the committee and gave further evidence as follows: -

- (i) He surrendered the Grand Regency Hotel voluntarily not to settle the High Court Civil Case No. 1111 of 2003, but to get

total amnesty from all criminal and civil cases instituted against him by the government. He alleged that all civil and criminal cases were dropped as part of the global settlement agreement between him and the Government of Kenya.

- (ii) He tabled a copy of the declaration he purportedly gave CBK, KACC and the government clearly stating his willingness to relinquish Grand Regency Hotel to CBK and the Government of Kenya. M/s Wetangula, Adan, and Makokha & Co Advocates drafted the declaration document. In the declaration he petitioned the Government of Kenya to consider withdrawing all civil and criminal cases against him, members of his family and his companies so that he could start a fresh chapter in his life. He stated that he had battled in court for more than 15 years and therefore, could not just surrender his hotel for only a civil case.
- (iii) He produced a letter titled Global Settlement dated 13/12/2007 to Attorney General, which was replied to on 11/01/2008 by Mr. James Mungai Warui (Senior State Counsel) who requested for a list of documents on the cases. Mr. Pattni supplied the files through the lawyer and the Attorney General's office confirmed receipt of the files. Mr. Pattni alleged that the Attorney General's office after receiving the documents promised to settle the agreement after CBK and KACC have cleared him of the civil suit.
- (iv) He alleged that on the day of hand over of the hotel, he signed a document titled Registration of Settlement agreement with KACC and did not have a signed copy because KACC promised to give a copy to his lawyers, since the Governor and KACC

Director were liaising with his lawyers because of the publicity of the whole issue.

- (v) He informed the committee that he handed over the hotel to have peace and never wanted to go to court, but if they Government betrayed him or breached the agreement, and other parties involved fail to honour their promise, then the would go back to court to seek redress.
- (vi) He stated that he was not and will not be satisfied until the agreement is reached and the promises given to him by the government fulfilled. He further stated that he had his options open and he was ready to go ahead and file several constitutional suits against the government.
- (vii) He considered price of the Hotel at Kshs 2.9 billion (US\$ 45 million) as good value given that no renovations had been done on the hotel including no replacement of the carpets since 1993, and the leaking boiler all of which, have reduced the standards of the five star hotel. He further informed the committee that he knows the Grand Regency Hotel had Kshs. 342 million but he was not given the money even when he asked for it to pay his lawyers.
- (viii) He informed the committee that there were two consent orders HCCC 1111 of 2003 and HCCC 589 of 1999. The first one was to enable him surrender the hotel to CBK. While the second one was signed to enable CBK to discharge the injunction and to sell the Hotel under the charge. He further informed the committee that he does not personally know the buyers (Libyans) of the Hotel who are at the hotel currently using the 13th floor.

The chairman adjourned the meeting at 1.25 p.m.

Signed *[Signature]*

(Chairman)

Date *21st Oct, 2008*

**MINUTES OF THE EIGHTEENTH SITTING OF THE
DEPARTMENTAL COMMITTEE (F) ON FINANCE, PLANNING AND
TRADE HELD ON MONDAY 21ST JULY 2008 IN CONFERENCE
ROOM COUNTY, HALL BUILDING AT 10:30 A.M.**

PRESENT:

The Hon. Chris Okemo, MP - **Chairman**
The Hon. (Prof.) Philip Kaloki, M.P. - **Vice Chairman**
The Hon. Musikari Kombo, M.P.
The Hon. Ntoitha M'mithiaru, MP
The Hon. Lucas Chepkitony, M.P.
The Hon. Nelson Gaichuhie, MP
The Hon. Shakeel Shabbir, M.P.
The Hon. Jakoyo Midiwo, M.P.

ABSENT WITH APOLOGY

The Hon. Nkoidila Ole Lankas, MP
The Hon. Lenny Kivuti, M.P.

ABSENT

Hon. Ali Bahari, M.P

IN ATTENDANCE: CENTRAL BANK OF KENYA (CBK)

Prof. Njuguna Ndung'u - Governor, CBK
Mr. Gatonye Waweru - Advocate
Mr. George Oraro - Advocate
Mr. Philip Murgor - Advocate

KENYA NATIONAL ASSEMBLY

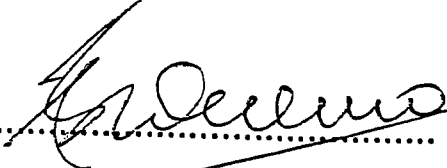
Florence Abonyo - First clerk assistant
Anthony Njoroge - Legal officer
Atandi J. Mosomi - Parliamentary intern

MIN. NO. 75/2008 EVIDENCE ON THE GRAND REGENCY HOTEL

The Chairman welcomed the Governor Central Bank of Kenya and his team. He thanked them for honouring the invitation and then informed them that because of the unfolding events and new information received from witnesses, the Committee adjourns and meets the Governor and his team on Thursday 24th July 2008 at 10.30 a.m.

ADJOURNMENT

The Chairman adjourned the meeting at 3.30 p.m. until
22nd July 2008 at 10:00 a.m.

Signed..... .....
(Chairman)

Date..... 23/9/2008.....

MINUTES OF THE SEVENTEENTH SITTING OF THE DEPARTMENTAL COMMITTEE (F) ON FINANCE, PLANNING AND TRADE HELD ON FRIDAY 18TH JULY 2008 IN CONFERENCE ROOM, COUNTY HALL BUILDING AT 2:30 P.M.

PRESENT:

The Hon. Chris Okemo, MP - **Chairman**
The Hon. (Prof.) Philip Kaloki, M.P. - **Vice Chairman**
The Hon. Musikari Kombo, M.P.
The Hon. Nthoitha M'mithiaru, MP
The Hon. Lucas Chepkitony, M.P.
The Hon. Nelson Gaichuhie, MP
The Hon. Shakeel Shabbir, M.P.
The Hon. Jakoyo Midiwo, M.P.
The Hon. Lenny Kivuti, M.P.

ABSENT WITH APOLOGY

The Hon. Nkoidila Ole Lankas, MP
The Hon. Ali Bahari, MP

IN ATTENDANCE: WETANGULA, ADAN, MAKOKHA & CO ADVOCATES

Mr. Adan Ahmed - Advocate
Mr. Michael Mubea - Advocate

KENYA NATIONAL ASSEMBLY

Florence Abonyo - First clerk assistant
Anthony Njoroge - Legal officer
Atandi J. Mosomi - Parliamentary intern

MIN. NO.73/2008 EVIDENCE ON THE GRAND REGENCY HOTEL

Mr. Adau Ahmed and Mr. Michael Mubea, of M/s Wetangula, Adan, Makokha & Co Advocates appeared before the Committee representing their client, M/s Libya Arab African Investment Company Kenya Ltd. (LAAIC) and gave evidence as follows: -

- (i) Their client was out of the country but they had the authority to represent their client in the sitting. Their client showed interest in Grand Regency Hotel but the Kenya government made the offer and dictated the price of the hotel. The directors and shareholders of the LAAIC are:

- (a) Mohamed Mohammed Arnaer (Libyan) -1 share
 - (b) Mohamed Shtewi Mawaal (Libyan) -1 share
 - (c) Libya African Investment Company -998 shares
-
- (ii) It is their firm that incorporated the company and there was no change of shareholders of the company except an increase in shareholding. The parent company, which has 998 shares, is a state agency of the Republic of Libya and therefore it enjoys complete diplomatic immunity. Mr. Adan was the lead person in the negotiations and meetings with some Government of Kenya officials.
 - (iii) Their firm has never acted for CBK in the transaction and it is Ms Muthoni Gichohi & Co Advocates that drew the sale agreement on behalf of CBK while their firm drew the transfer document as conveyance law dictates.
 - (iv) Their client paid the deposit of US \$ 4.5 million for the Hotel through their firm pursuant to instructions from CBK and the money was wired to CBK bank account in the USA, which is maintained at the Federal Reserve Bank of New York. The balance of \$40.5 million was paid on 20th June 2008
 - (v) Their firm acted for Mr. Pattni and assisted in drafting a declaration document aimed at getting a global settlement between Mr. Kamlesh Pattni and the Government on all criminal and civil cases.
 - (vi) The lawyers informed the Committee that HCCC 1111 of 2003 was contemptuous because Court of Appeal had expressly prohibited any new suit in

respect of Grand Regency Hotel without the express leave of the Chief Justice and such express leave was not obtained by KACC.

MIN. NO.74/2008

ADJOURNMENT

The Chairman adjourned the meeting at 4.45 p.m.

Signed.....
(Chairman)

Date.....23/9/2008

MINUTES OF THE SIXTEENTH SITTING OF THE DEPARTMENTAL COMMITTEE (F) ON FINANCE, PLANNING AND TRADE HELD ON FRIDAY 18TH JULY 2008 IN CONFERENCE ROOM, COUNTY HALL BUILDING AT 10:30 A.M.

PRESENT:

The Hon. Chris Okemo, MP - **Chairman**
The Hon. (Prof.) Philip Kaloki, M.P. - **Vice Chairman**
The Hon. Musikari Kombo, M.P.
The Hon. Nthoitha M'mithiaru, MP
The Hon. Lucas Chepkitony, M.P.
The Hon. Nelson Gaichuhie, MP
The Hon. Shakeel Shabbir, M.P.
The Hon. Jakoyo Midiwo, M.P.
The Hon. Lenny Kivuti, M.P.

ABSENT WITH APOLOGY

The Hon. Nkoidila Ole Lankas, MP
The Hon. Ali Bahari, MP

IN ATTENDANCE: ATTORNEY GENERAL'S OFFICE

Hon. Amos S. Wako - Attorney general

KENYA NATIONAL ASSEMBLY

Florence Abonyo - First clerk assistant
Anthony Njoroge - Legal officer
Atandi J. Mosomi - Parliamentary intern

MIN. NO. 67/ 2008 EVIDENCE ON THE GRAND REGENCY HOTEL

The Attorney General gave further evidence on the sale and transfer of Grand Regency Hotel as follows: -

- (i) He was neither involved in the matter as at the time of handing over of the Grand Regency Hotel by Mr. Kamlesh Pattni to the CBK nor involved in the sale and transfer of the Hotel to Libyan Arab African Investment Company Kenya Ltd. He only got involved much later when he was appointed to a Cabinet sub-committee to investigate the matter and that is when he begun to get more information on what transpired before and after the sale of the Grand Regency Hotel. The Cabinet sub-committee was a technical committee, which reported its findings to the Cabinet. During its

investigation, the Cabinet sub-committee heard from the CBK Governor and Director General of NSIS. He informed the Committee that he is bound by Cabinet procedures of confidentiality such that he could not reveal their findings to the Committee although the report is close to what was leaked to the media.

- (ii) CBK has never sought his legal advice prior to or after the sale of the hotel and by extension the Treasury had also not contacted him on the matter even after the issue came to the public domain. He also clarified that he has never been involved in negotiations with Mr. Kamlesh Pattni on the issue of amnesty.
- (iii) He is not represented in CBK Board and notwithstanding the Board's recommendation that the Attorney General be involved in the sale of the Grand Regency Hotel, the CBK management decided to by-pass him. He also clarified that his office was not represented during the hand over of the hotel to CBK and that, the Muthoni being alleged by Mr. Pattni is a lawyer for CBK and not Ms Muthoni Kimani of Attorney General's Chambers who was in Europe for official duties during the hand over ceremony.
- (iv) The directors of Libyan Arab Africa Investment Company Kenya Ltd (LAAIC) are three; two of them initially described themselves as Kenyans on 10th August 2007 in the particulars of directors and secretaries' form and as Libyans on returns filed on 23rd May 2008. The Nominal share capital of LAAIC Kenya Ltd is only Kshs. 100,000 and the shareholders changed their nationality from Kenyan to Libyan when restructuring of shareholding was being done as follows:-
 - a. Ahmed Mohamed Amaer - 1 share
 - b. Mohamed Shtewi Maawal - 1 share
 - c. Libyan Arab African Investment Company - 998 shares
- (v) LAAIC Kenya Ltd was registered in 2007 with two shareholders; each with one share and the third shareholder was allotted 998 shares on 23rd May 2008. He stated that there is no legal requirement that a company must have Kenyan shareholders to be registered, as the only important fact is

that it must comply with the laws of our land whether it is a government corporation or an individual. He further stated that he has only seen the file relating to the registration of Libya Arab Africa Investment Company Kenya Ltd. He has not seen any other files relating to companies by the name Libya Arab African Company or Meridian Arab African Company.

- (vi) He gave his position on the Grand Regency Hotel that the ownership of the Hotel reverted to CBK according to the Consent Order and as such, CBK could not exercise its statutory power of sale, which is a misrepresentation of facts. Reason being that, the statutory power of sale had been discharged when CBK became the owner of the Hotel. Therefore, CBK being a public entity, was under obligation to sell the Hotel under the privatization law since the Hotel was a public asset belonging to CBK before going to other hands and the Public Procurement & Disposal Act should have been followed. He however qualified his opinion by stating that he was yet to see all the relevant documentation on the matter.
- (vii) He confirmed that the government had already registered a caveat on the property and that he had instructed the Commissioner of Police to investigate all the criminal activities in the transaction. He clarified that under Section 63 of the Registration of Titles Act on rectification of titles, the Registrar of Titles can recall the documents for correction. The transaction could be invalidated as there were apparent irregularities, and this could be a good basis to challenge the transfer.
- (viii) He reaffirmed that he has never been involved in any negotiation aimed at granting Mr. Kamlesh Pattni amnesty. He clarified that in Clause 5 of the Consent Order, the word claims refers only to civil cases but does not include criminal cases. He stated that according to the Consent Order, Mr. Pattni was supposed to execute the transfer failure to which the High Court Registrar could execute it.
- (ix) He informed the Committee that the Foreign Affairs Minister, Hon. Moses Wetangula, MP called him early this year to introduce Mr. Ahmed Adan, the LAAIC lawyer in anticipation of his involvement in the sale process as Hon. Wetangula indicated to him that the law firm (M/s Wetangula, Adan,

Marshalla Co. Advocates) was sunnegotiating with CBK on the issue. The Attorney General agreed and met Mr. Adan in the presence of Hon Wetangula and his position was that he would only act when instructed by CBK.

MIN. NO. 68/2008 **COMMITTEE'S OBSERVATIONS**

- (i) The Committee observed that the Attorney General should have been involved in the entire process of negotiating for the handover of the Grand Regency Hotel. The Committee's view is that the involvement of the Attorney General was necessary taking into account the fact that the issues, both civil and criminal, are intertwined and all emanate from the Goldenberg saga.
- (ii) The Committee however noted that the Attorney General appears to have been informally briefed on the intended sale of the Hotel through briefings by the NSIS Director General on 25th and 30th April, 2008 and by Hon. Moses Wetangula, MP when introducing Mr. Adan of M/s Wetangula, Adan & Makokha Co. Advocates who was acting on behalf of LAAIC Kenya Ltd.

MIN. NO. 69/2008 **COMMITTEE'S RECOMENDATIONS**

- (i) The Committee recommends that in matters of this nature the Attorney General should be involved. All Government agencies, particularly the CBK, KACC, and the Attorney General should work closely.
- (ii) The Committee recommends that the Attorney General's office should in future pro-actively get involved when legal matters of public interest are brought to his attention formally or informally.
- (iii) The Committee recommends that the Attorney General should investigate the transaction and take the necessary action.

MIN. NO. 70/2008 **UPCOMING WORKSHOPS**

1. **WORKSHOP ON WTO BY ACTION-AID : ENTEBBE, UGANDA**

Members were informed that Action-aid has invited two Members of the Committee to attend the above workshop. The Committee nominated the following Members to represent it in the Workshop: -

- (i) Hon. Ntoitha M'mithiaru, MP

(ii) Hon. Nelson Gaichuhie, MP

2. WORKSHOP ON WTO BY MINISTRY OF TRADE

Members were informed that the Ministry of Trade has invited the Committee to a workshop being organized on WTO and Economic Partnership Agreements (EPAs). The Committee suggested that the proposed workshop be held during the last week of August.

MIN. NO.71/ 2008 ADJOURNMENT

The chairman adjourned the meeting at 12:45 a.m.

Signed.....

(Chairman)

Date23/9/2008

MINUTES OF THE FIFTEENTH SITTING OF THE DEPARTMENTAL COMMITTEE (F) ON FINANCE, PLANNING AND TRADE HELD ON TUESDAY 15TH JULY 2008 IN CONFERENCE ROOM COUNTY, HALL BUILDING AT 12:30 P.M.

PRESENT:

The Hon. Chris Okemo, MP - **Chairman**
The Hon. (Prof.) Philip Kaloki, M.P. - Vice chairman
The Hon. Musikari Kombo, M.P.
The Hon. Njoro M'ithiaru, MP
The Hon. Lucas Chepkitony, M.P.
The Hon. Nelson Gaichuhie, MP
The Hon. Shakeel Shabbir, M.P.
The Hon. Jakoyo Midiwo, M.P.
The Hon. Lenny Kivuti, M.P.

ABSENT

The Hon. Nkoidila Ole Lankas, MP
The Hon. Ali Bahari, MP

IN ATTENDANCE:

FOREIGN AFFAIRS MINISTRY

Hon. Moses M. Wetangula - Minister
Mr. Thuita Mwangi - Permanent Secretary
Mr. Patrick Wamoto - Director, Africa Division

KENYA NATIONAL ASSEMBLY

Florence Abonyo - First clerk assistant
Atandi J. Mosomi - Parliamentary intern

MIN. NO. 65/2008

EVIDENCE ON THE GRAND REGENCY HOTEL

Hon. Moses Wetangula, MP, Minister for Foreign Affairs accompanied by Mr. Thuita Mwangi, Permanent Secretary and Mr. Patrick Wamoto, Director, African Division appeared before the Committee and the Minister gave evidence as follows: -

(i) There has been memorandum between Kenya and Libya and such Memoranda exist between Kenya and other countries. The memorandum was signed in 2007 when the president visited Libya. Item 6 of the memorandum indicated that Libya Africa Investment Portfolio (LAP) expressed interest in

investing in hotel industry specifically Grand Regency Hotel.

(ii) The Libyans have other interests in Kenya apart from Grand Regency which include:

- Oil
- Liquefied petroleum gas and storage facility in Mombasa
- Upgrade of oil refineries (KPRL)
- Construction of new Mombasa - Nairobi oil pipeline
- ICT projects: Telkom Kenya, The east Africa marines system

There were other specific ones such as double taxation, Cultural & Media Co-operation and Airline freedom.

(iii) The Minister said that he sits in the National Security Intelligence Service Council and by virtue of this, he receives briefs from NSIS Director but has never received a letter from anybody including the NSIS Director General on Grand Regency. He received the weekly security brief on 28th April 2008, which contained only a paragraph on Grand Regency Hotel

(iv) The minister informed the committee that the Libyan Ambassador paid him a courtesy call and informed him that there are no private companies in Libya and all companies are state owned, therefore LAAIC Kenya Ltd. acts as state investment agency and its directors act as state agents. The Ambassador also raised concerns about the negative publicity given to the purchase of the Grand Regency Hotel. The Minister assured him that the public outcry is not directed at the

Libyan investors.

- (v) The Minister informed the Committee that he does not have any personal beneficial interest in M/s Wetangula, Adan, Makokha & Co. Advocates.

MIN. NO. 65/2008

COMMITTEE'S OBSERVATIONS

- (i) The Committee noted that the Minister for Foreign Affairs is listed as a Consultant in the Law firm of M/S Wetangula, Adan & Makokha Co. Advocates. The firm has been acting on behalf of both Mr. Kamlesh Pattni and the LAAIC Kenya Ltd, the company that purchased the Grand Regency Hotel. The Committee further noted that Hon. Moses Wetangula, MP introduced Mr. Ahmed Adan, a partner in the said law firm to the Attorney General early this year for purposes of having Mr. Adan deal with the Attorney General over the intended sale of the Grand Regency Hotel.
- (ii) The Committee was informed that Hon. Moses Wetangula is no longer a partner in the said Law firm. However, the Committee is concerned that Hon. Moses Wetangula appears to have played some peripheral role in the transaction involving the Grand Regency Hotel but the Committee found no evidence of actual impropriety on the part of the Minister for Foreign Affairs.

MIN. NO. 66/2008

ADJOURNMENT

The chairman adjourned the meeting at 1:00 p.m.

Signed.....

(Chairman)

Dated.....23/9/2008.....

**MINUTES OF THE FOURTEENTH SITTING OF THE
DEPARTMENTAL COMMITTEE (F) ON FINANCE, PLANNING AND
TRADE HELD ON MONDAY 14TH JULY 2008 IN CONFERENCE
ROOM, COUNTY HALL BUILDING AT 2:30 P.M.**

PRESENT:

The Hon. Chris Okemo, MP - **Chairman**
The Hon. (Prof.) Philip Kaloki, M.P. - **Vice Chairman**
The Hon. Jakoyo Midiwo, M.P.
The Hon. Musikari Kombo, M.P.
The Hon. Nthoitha M'mithiaru, MP
The Hon. Lucas Chepkitony, M.P.
The Hon. Nelson Gaichuhie, MP
The Hon. Shakeel Shabbir, M.P.

ABSENT

The Hon. Ali Bahari, MP
The Hon. Lenny Kivuti, M.P

IN ATTENDANCE: WETANGULA, ADAN, MAKOKHA & COMPANY

Mr. Adan Ahmed - Advocate
Mr. Michael Mubea - Advocate

KENYA NATIONAL ASSEMBLY

Mrs. C.W. Munga - Assistant deputy clerk
Mrs. Florence Abonyo - First clerk Assistant
Mr. Anthony Njoroge - Legal Officer
Mr. Atandi J. Mosomi - Parliamentary Intern

MIN. NO. 61/2008 EVIDENCE ON THE GRAND REGENCY HOTEL

Mr. Ahmed Adan and Mr. Michael Mubea representing M/s Wetangula, Adan, Makokha & Co. Advocates appeared before the Committee and gave evidence as follows: -

- (i) That Mr. Kamlesh Pattni has been their client since 1989 and Mr. Pattni filed suit HCCC No. 589 in 1999 and obtained an injunction to replace Mr. Kitony as the receiver Manager of Grand Regency Hotel. CBK wanted to sell the Hotel in 1999 but Uhuru Highway Development Ltd. obtained a Court Order to stop the sale. Mr. Pattni was being

harassed and asked for bribes by various government officials and wanted to start new life by having a global settlement between him and the government. He mandated Mr. Adan and company to lead a team of lawyers to deal with the global settlement with the government and informed his lawyers that he was willing to surrender everything to the Kenya government including the Grand Regency Hotel to Central Bank of Kenya.

- (ii) Following extensive consultations between Central Bank of Kenya, Kenya Anti-Corruption Commission, and M/s Wetangula, Adan, Makokha & Co Advocates, an agreement was reached which culminated in the Consent Court Order. The parties agreed that KACC draft the order, which resulted in Mr. Kamlesh Pattni's hand-over the hotel to CBK on 9th April 2008.
- (iii) The sale agreement for the hotel was drawn by Central Bank of Kenya Lawyers while Libya Arab Africa Investment Company Kenya Ltd (LAAIC) lawyers (M/s Wetangula, Adan, Makokha & Co Advocates) drew the transfer agreement. The lawyers informed the committee that due to advocate-client confidentiality they would be limited in the amount and kind of information they would give because they needed consent of their client to divulge information about LAAIC Kenya Ltd.
- (iv) Mr. Adan confirmed to the Committee that he did not at any time try to bribe the Minister for Lands,

Hon. James Orengo as alleged by former Minister for Finance, Hon. Amos Kimunya, MP.

MIN. NO. 62/2008

ADDITIONAL EVIDENCE

The committee resolved that the lawyers representing M/s Wetangula, Adan & Makokha together with their client (Libya Arab Africa Investment Company Kenya Ltd) appear before the committee on Friday 18th July 2008 at 2.30 p.m.

MIN. NO. 63 /2008

ADJOURNMENT

The Chairman adjourned the meeting at 4.00 p.m.

Signed


(Chairman)

Date 23/9/2008

MINUTES OF THE THIRTEENTH SITTING OF THE DEPARTMENTAL COMMITTEE (F) ON FINANCE, PLANNING AND TRADE HELD ON MONDAY 14TH JULY 2008 IN CONFERENCE ROOM, COUNTY HALL BUILDING AT 10.30 A.M.

PRESENT:

The Hon. Chris Okemo, MP - **Chairman**
The Hon. Kyalo Kaloki, M.P. - Vice Chairman
The Hon. Jakoyo Midiwo, M.P.
The Hon. Musikari Kombo, M.P.
The Hon. Nthoitha M'mithiaru, MP
The Hon. Lucas Chepkitony, M.P.
The Hon. Ahmed Shabbir Shakeel, M.P.
The Hon. Nkoidila Ole Lankas, MP
The Hon. Nelson Gaichuhie

ABSENT

The Hon. Ali Bahari, MP
The Hon. Lenny Kivuti, M.P.

IN ATTENDANCE: ERNST AND YOUNG

Mr. Collins Otolo - Chief Executive, Ernst & Young
Mr. Felix Kariuki - Senior Manager, Ernst & Young
Mr. Patrick M. Kamau - Receiver Manager
Mr. Solomon Adede - General Manager, Grand Regency Hotel

KENYA NATIONAL ASSEMBLY

Mrs. C.W. Munga - Assistant deputy clerk
Mrs. Florence Abonyo - First clerk Assistant
Mr. Anthony Njoroge - Legal Officer
Mr. Atandi J. Mosomi - Parliamentary Intern

MIN. NO. 59/2008 EVIDENCE ON THE GRAND REGENCY HOTEL

Mr. Collins Otolo, Chief Executive Officer, Ernst & Young accompanied by Mr. Felix Kariuki, Senior Manager, Mr. Patrick Kamau, Receiver and Mr. Solomon Adede, General Manager, Grand Regency Hotel appeared before the Committee on Monday 14th July, 2008 and gave the following evidence: -

- (i) Ernst & Young was appointed Receiver Manager on 9th April 2008 as a result of Court Consent Order between CBK and Mr. Kamlesh Pattni of Uhuru Highway Development Ltd. to which Pattni surrendered the Hotel to CBK.

- (i) [redacted] was appointed to preserve the assets of the hotel and according to their assessment, the Hotel was financially stable and had potential for improvement. The team of senior managers was good and the hotel only lacked the Sales and Marketing Manager at the senior level.
- (ii) The outgoing Joint Receiver Managers (Mr. H. W. Gichohi and Mr. P. Ndaa) handed over all the assets and liabilities, and the firm has the hand-over receipts showing the Bank balances, Assets and Liabilities. Ernst & Young has also collected and created debtors and creditors since they took over.
- (iii) Ernst & Young discontinued the complimentary services of 13th floor of the Hotel formerly enjoyed by Mr. Kamlesh Pattni and the use/services are now being charged.
- (iv) Ernst & Young clarified that their firm does not know the criteria used by CBK to select Mr. Patrick Kamau as Receiver Manager for he was just asked in writing whether he was willing to take up a receivership job and he obliged.
- (v) The Land Rent had not been paid since 2001 and Ernst & Young was instructed by CBK to pay Kshs 16 million to Ministry of Lands for Land Rent arrears to-date at the time CBK applied for Land Rent Clearance Certificate to facilitate the transfer process.
- (vi) The accounts of Grand Regency Hotel had not been audited for 2003, 2004, 2005 and 2006 and the books of account have not been signed since 2003 because one of the Receiver Managers refused to sign due to dispute on the accounts.

- (viii) There was no payment contract signed between CBK and Ernst & Young for managing the Hotel but payment will be time based according to cadre of employees from Ernst & Young. Ernst & Young has been paid to-date Kshs 2.15 million since they were appointed in April 2008.
- (ix) Ernst & Young is at an advanced stage of handing over to new owners Libya Arab African Investment Company Kenya Ltd although CBK has not formally informed the firm that the Hotel has been sold.

MIN. NO. 59/2008

ADDITIONAL INFORMATION

The Committee directed the firm to submit the following additional information:-

- (i) List of Creditors and Debtors of Grand Regency Hotel.
- (ii) Statement showing calculations of land rent amounting 16 million.
- (iii) Copy of the contract between CBK and Ernst & Young.
- (iv) Statement showing calculations of Kshs 2.15 million paid to Ernst & Young for service rendered since taking over in April 2008.
- (v) A detailed analysis of debts owed by Pattni to the Hotel

MIN. NO. 60/2008

ADJOURNMENT

The chairman adjourned the meeting at 12.39 p.m.

Signed
Chairman)

Date 23/9/2008

MINUTES OF THE TWELFTH SITTING OF THE DEPARTMENTAL COMMITTEE F – ON FINANCE, PLANNING AND TRADE HELD ON FRIDAY 11TH JULY 2008 IN MAIN CONFERENCE ROOM COUNTY HALL BUILDNG AT 10.00 A.M.

PRESENT:

Hon. Chrysanthus Okemo, M.P. - **Chairman**
Hon. Jakoyo Midiwo, M.P.
Hon. Nelson Gaichuhie, M.P.
Hon. Nthoitha M'mithiaru, M.P.
Hon. Lenny Kivuti, M.P.
Hon. Musikari Kombo, M.P.
Hon. Nkoidila Ole Lankas, M.P.
Hon. Ali Bahari

ABSENT WITH APOLOGY

Hon. (Prof.) Philip Kaloki, M.P. - **Vice Chairman**
Hon. Lucas Chepkitony, M.P.
Hon. Ahmed Shakeel Shabbir, M.P.

IN ATTENDANCE

NATIONAL SECURITY & INTELLIGENCE SERVICE

Major General Michael Gichangi - Director General
Mrs. Agnes Shikuku - Legal officer

KENYA NATIONAL ASSEMBLY

Mrs. C.W. Munga - Assistant Deputy Clerk
Mrs. Florence Abonyo - First clerk Assistant
Mr. Anthony Njoroge - Legal Officer
Mr. Atandi J. Mosomi - Parliamentary Intern

MIN. No.55/2008

EVIDENCE ON THE GRAND REGENCY HOTEL

The Director General accompanied by Mrs. Agnes Shikuku, Legal Officer appeared before the Committee on Friday 11th July 2008 and the Director General gave evidence as follows:-

- (i) He was aware of the agreement signed between the Government of Kenya and Government of Libya covering government of Libya's interest to invest in among other things oil, trade, hotel industry etc. There were consultations at the various levels by government departments but the office of the Director General NSIS was not involved in the agreement. Libya Arab Africa Investment Company is a subsidiary of Libya Africa Investment portfolio.

(ii) National Security Intelligence Service picked up the Grand Regency Hotel issue during its routine security system audit and found out that there were irregularities in the way the hotel was being disposed off. The department made reports and submitted to the relevant government officers on 25th April 2008 for necessary action. On 30th April 2008, the department submitted another report to the relevant government officials. He indicated in the reports that fears were being expressed that procurement and privatisation procedures have been flouted, possibly to cover up irregularities which has the potential of portraying the Government as not being committed to conducting business transparently besides raising questions of integrity of public institutions.

(iii) The report on 25th April, 2008 was given to the following among others:-

- Vice President
- Prime Minister
- Minister of State for Provincial Administration and Internal Security
- Minister for Finance
- Minister of Justice National Cohesion and Constitutional Affairs
- Attorney General
- Head of the Public Service and Secretary to the Cabinet
- Minister for Foreign Affairs

The report on 30th April, 2008 was given to the following among others:-

- Minister of state for Provincial Administration and Internal Security
- Head of the Public Service and Secretary to the Cabinet
- Permanent Secretary Ministry of Foreign Affairs
- Permanent Secretary, Treasury
- Police Commissioner

(iv) Mr. Pattni had sometime in June, 2007 approached the NSIS Director and he told Mr. Pattni that he would only assist him over his dead body unless Mr. Pattni returned to Kenyans what he had stolen from Kenyans. Thereafter, the Director General referred Mr. Kamlesh Pattni to the Central Bank Governor for further discussions.

- (v) The Director General stated that he neither introduced the Libyans nor referred them to the CBK Governor. He clarified that he had nothing to do with the sale of the hotel and that neither him nor any of the officers of NSIS met any official(s) from the Ministry of Lands over the issue. His presence in Ardhi House on 11th June 2008 was purely on another issue to do with public land that had been grabbed in South 'C' estate.
- (vi) He again wrote another report on 30th June 2008 after the sale of the Hotel in which he indicated that the secret sale of the hotel had provoked public outcry and caused discontent among members of public. The report was given to the following among others: -
- Minister for internal security
 - Head of civil service and secretary to the cabinet
 - Minister of foreign affairs
 - Commissioner of Police
 - Permanent secretary treasury

MIN. NO. 55/2008 COMMITTEE'S OBSERVATIONS

The Committee observed that the Director General played the following roles:-

- (i) The Director General did not introduce the Libya Arab African Company Limited to the Governor of the Central Bank. He did however in June 2007 refer Mr. Kamlesh Pattni to the Governor of the Central bank of Kenya and informed the Governor that Mr. Pattni wanted to pursue settlement negotiations in respect of the claims Central Bank had against him. The Director General played no further role in the matter thereafter.
- (ii) The Director General provided security briefings to the relevant government officers in his reports of 25th April and 30th April 2008. In these briefings, the Director raised concerns over the manner in which the Hotel was surrendered and subsequently sold. The issues he raised also had to do with integrity and fears that the Public Procurement & Disposal Act was being flouted possibly to cover up some irregularities and indicated that this had the consequence of portraying the Government as not committed to fighting corruption.

(iii) The Director General did on 11th June 2008 visit the Permanent Secretary in the Ministry of Lands, Mrs. Dorothy Angote, at her office in Ardhi House. This visit concerned the recovery of some public property in South C estate that had been grabbed and had nothing to do with the Grand Regency Hotel matter. The Committee found no evidence that either the Director General or any of his officers communicated with or influenced any Lands Ministry official over the transfer of the Hotel.

(iv) The Committee therefore found no impropriety by the Director General in connection with this matter as he merely performed his duties competently as set out in the law.

MIN. NO. 56/2008


ANY OTHER BUSINESS

The committee resolved to get services of a senior legal counsel to assist in giving it legal advice on the Grand Regency issue. They also underscored the need to get the services of a reputable and independent firm to properly value the hotel

MIN. NO. 57/2008

ADJOURNMENT

The Chairman adjourned the meeting at 2.45p.m. until Monday 14th July, 2008 at 10:00 a.m.

Signed.....
.....
(Chairman)

Date.....23/9/2008.....

MINUTES OF THE ELEVENTH SITTING OF THE DEPARTMENTAL COMMITTEE F – ON FINANCE, PLANNING AND TRADE HELD ON THURSDAY 10TH JULY 2008 IN MAIN CONFERENCE ROOM COUNTY HALL BUILDING AT 11.00 A.M.

PRESENT:

Hon. Chrysanthus Okemo, M.P. - **Chairman**
Hon. (Prof.) Philip Kaloki, M.P. - **Vice Chairman**
Hon. Jakoyo Midiwo, M.P.
Hon. Nelson Gaichuhie, M.P.
Hon. Lucas Chepkitony, M.P.
Hon. Ahmed Shakeel Shabbir, M.P.
Hon. Musikari Kombo, M.P.
Hon. Nkoidila Ole Lankas, M.P.

ABSENT WITH APOLOGY

Hon. Nthoitha M'mithiaru, M.P.
Hon. Ali Bahari, M.P.
Hon. Lenny Kivuti, M.P.

IN ATTENDANCE

MINISTRY OF LANDS

Hon. James Orengo - Minister for Lands
Hon. Bifwoli Wakoli - Assistant Minister for Lands
Ms. Dorothy N. Angote - Permanent Secretary
Mr. Zablon A. Mabea - Commissioner of Lands
Mrs Teresia Mburu - Chief Lands Registrar
Mr. Anthony M. Itui - Chief Government Valuer

KENYA NATIONAL ASSEMBLY

Mr. P.C.O Omolo - Senior deputy clerk
Mrs. C.W Munga - Assistant deputy clerk
Mrs. Florence Abonyo - First clerk Assistant
Mr. Anthony Njoroge - Legal Officer
Mr. Atandi J. Mosomi - Parliamentary Intern

MIN. NO. 50/2008

EVIDENCE ON THE GRAND REGENCY HOTEL

Hon. James Orengo, the Minister for Lands accompanied by Hon. Bifwoli Wakoli Assistant Minister for Lands; Ms. Dorothy Angote, Permanent Secretary; Mr. Zablon Mabea, Commissioner of lands; Mrs Teresia Mburu, Chief Lands Registrar; and Mr. Anthony Itui Chief Government Valuer, appeared before the Committee and gave evidence on transfer of the Grand Regency Hotel as follows:-

HON. JAMES ORENGO, MP - MINISTER FOR LANDS

The Minister informed the Committee as follows: -

- (i) Documents received at the Ministry of Lands registry are dealt with as legal documents without looking at the background or matter surrounding the case lodged. The officers examine whether there is stamp duty to be paid and all the other technical aspects of the documents.
- (ii) The office of the Commissioner of Lands has been operating in a fairly autonomous manner and mostly the Minister is not involved in its day-to-day operations.
- (iii) There have been delays in the processing of the documents presented to the Ministry of Lands, which sometimes take months or years, and the Minister has been receiving complaints about delays.

MS DOROTHY ANGOTE - PERMANENT SECRETARY

The Permanent Secretary informed the Committee that, the Director General of National Security and Intelligence Service visited her office on 11th June, 2008 on an issue that was not related to Grand Regency Hotel. She further informed the Committee that, while abroad on official duty, she received several calls from the Governor of Central Bank of Kenya but did not answer them nor did she call him back because she considered the calls normal especially after sending the Governor a text message that she was out of the country.

MRS. TERESIA MBURU - CHIEF LANDS REGISTRAR:

The Chief Lands Registrar informed the Committee as follows:-

- (i) The transfer of the Grand Regency Hotel was normal and as long as applicants have all the documents, the transfer can take as short as an hour. An ordinary citizen can take a maximum of two weeks to get transfers effected. The change on the amount paid from Kshs 2,500,000,000 to Kshs 1,850,000,000 made on the Title Deed without endorsement was an oversight but there is nothing wrong with such an error unless disputed by the parties involved.
- (ii) The registration and transfer could not be reversed unless proved illegal or fraudulent and according to her, there was nothing illegal about it and

the interested parties have not disputed the same. Therefore, there is nothing irregular in the transfer of Grand Regency Hotel L.R No.209/9514.

- (iii) The CBK lawyers are not indicated in the transfer instrument but the CBK governor and one of the directors of CBK witnessed the signing of the documents.

MR. ANTHONY ITUI - CHIEF GOVERNMENT VALUATION OFFICER

He informed the Committee that he visited the site to value the land using transport provided by the Director of CBK Mr. Kennedy Abuga and not the official transport from the Ministry. He valued the land at Kshs 1,300,000,000 and the buildings at Kshs 700,000,000/- making a total of Kshs 2,000,000,000/-

MR. ZABLON MABEA - COMMISSIONER OF LANDS

- (i) He informed the Committee that the subject plot measuring 0.821 ha is a leasehold property initially leased to Uhuru Highway Development (UHDL) for a term of 99 years w.e.f. from 1st October 1978 at a ground rent of Kshs 749,200/= per annum. The plot is commercial and user as embodied in the title is for shops, offices and parking purposes. Its registered owners UHDL charged the property to the CBK on 31st December 1993 for Kshs 2.5 billion.
- (ii) He further informed the Committee that, the CBK in exercise of its statutory power of sale conferred on it as a chargee by virtue of sub-section 69 of the Transfer of Property Act, presented documents transferring the property to Libya Arab African Investment company Kenya Ltd for Kshs 1,850,000,000/=. When the documents were presented, the Government Valuers inspected the property for purposes of stamp duty and returned a figure of Kshs 2, 000,000,000/=. Subsequently stamp duty amounting to Kshs 80,000,000/= was paid and the document stamped accordingly. Outstanding land rent of Kshs 16,381,753.35/= was also cleared and Land Rent Clearance Certificate issued to CBK.

Processing of transfer of Grand Regency Hotel - L.R. No. 209/9514

He informed the Committee as follows:-

- (i) By letter dated 4th June 2008, M/S Wetangula, Adan and Makokha & Co. Advocates applied for Land Rent Clearance Certificate.

Attached to the application was a payment slip for Land Rent inclusive of arrears amounting to Kshs 16,381,735.35/= The Land Rent Certificate No. 11621 was issued on 5th June 2008.

- (ii) In the application letter dated 18th June, 2008, the CBK applied for consent to transfer and charge, and the consent was brought to the Commissioners of Lands office by Mr. Kennedy Abuga, a Director of CBK in the company of Mr. Ahmed Adan, the lawyer for LAAIC Kenya Ltd. He was not in the office when the letter was brought but the Governor of CBK called his office and left a message that he should return the Governor's call.
- (iii) He returned the Governor's call on Friday 20th June 2008, who informed him that the Bank had sold the property and requested that his department expedite the registration, as it was extremely urgent. The Governor further informed him that all those in government who need to know were in the picture and requested that, as this was a government-to-government transaction, it was in the interest of the state to expedite the process.
- (iv) Subsequently he had a meeting with Mr. Kennedy Abuga and Mr. Ahmed Adan, the lawyer acting for the purchaser and informed them that they had to comply with all the requirements including payment of stamp duty. The Collector of Stamp Duty raised a requisition to the Government Chief Valuer who returned his findings on 24th June, 2008 and the Stamp Duty of Kshs 80 million was paid on the same day and documents stamped.
- (v) The documents were booked for registration on 24th June 2008, registered on 25th June 2008 and collected by Mr. Ahmed Adan, the lawyer for the purchaser. All through the process, Mr. Kennedy Abuga of CBK and Mr. Ahmed Adan, were following up the case at Ardhi House. The Governor of CBK also telephoned him on Monday 23rd and Tuesday 24th June, 2008 to check on the progress.

- (vi) The lands officials found the document to be fit for registration since it complied with all the legal requirements and also all the registration procedures were followed.

MIN. NO. 51/2008

ADDITIONAL INFORMATION

The Committee directed the Commissioner for Lands to submit the following:-

- ◆ Copies of the title(s) of other properties that the Libyan Company was looking for as lost and the relevant correspondence from the Libyan Company,
- ◆ Copy of the valuation report for Kshs 2 billion by the Chief Government Valuer
- ◆ Copy of the charge in favour of Central Bank of Kenya

MIN. NO. 52/2008

COMMITTEE OBSERVATIONS

- (i) The Committee found no evidence of impropriety on the part of the Minister for Lands and commends the Minister for attempting to halt the sale process.
- (ii) The Committee observed that the Commissioner of Lands effected the transfer of Grand Regency Hotel contrary to the instructions by the Minister for Lands not to effect the transfer.
- (iii) The Committee further observed that the Commissioner of Lands appeared to have acted under pressure while effecting the transfer and therefore considers his action legal but imprudent. There was undue pressure from the CBK through telephone calls and by sending the CBK Director (Mr. Abuga) and LAAIC lawyer (Mr. Adan) to follow and push through the registration process, which culminated in the process being completed in one day.
- (iv) The Committee also observed that the Commissioner for Lands issued a Land Rent Certificate in respect of the Grand Regency Hotel property certifying that all the outstanding land rent due had been settled. However the documents subsequently supplied by the Commissioner did not account for the land rent payment between 1993 and 1997.

(v) The Committee noted that the Chief Registrar of Lands stated that one of her Registrar's effected the actual transfer of Grand Regency Hotel based on the documents presented by the Advocates for Libyan Arab African Company Kenya Ltd. (LAAIC Kenya Ltd.) which were duly executed by the directors of both LAAIC Kenya Ltd. and CBK. Therefore, the Registrar properly effected the transfer of the Hotel.

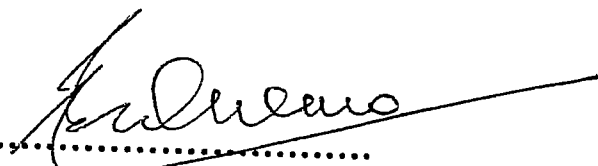
(vi) The alteration of the amount from Kshs 2,500,000,000 to Kshs 1,850,000,000 was done without endorsement or counter-signing.

(vii) The chief valuation officer used the transport provided by a Director of CBK, Mr. Kennedy Abuga to the valuation site in the company of Mr. Adan Ahmed (all interested parties) instead of using the official transport from the Ministry.

MIN. NO. 53/2008

ADJOURNMENT

The Chairman adjourned the meeting at 2.45 p.m. until Friday 11th July 2008 at 10:00 a.m.

Signed.....
(Chairman)

Date.....23/9/2008.....

MINUTES OF THE TENTH SITTING OF THE DEPARTMENTAL COMMITTEE F - ON FINANCE, PLANNING AND TRADE HELD ON TUESDAY 8TH JULY, 2008 IN COMMITTEE ROOM NO.7, MAIN PARLIAMENT BUILDINGS AT 5.00 P.M.

PRESENT:

Hon. Chrysanthus Okemo, M.P. - **Chairman**
Hon. (Prof.) Philip Kaloki, M.P. - **Vice Chairman**
Hon. Lenny Kivuti, M.P.
Hon. Nelson Gaichuhie, M.P.
Hon. Lucas Chepkitony, M.P.
Hon. Nthoitha M'mithiaru, M.P.
Hon. Ahmed Shakeel Shabbir, M.P.

ABSENT WITH APOLOGY

Hon. Jakoyo Midiwo, M.P.
Hon. Musikari Kombo, M.P.
Hon. Nkoidila Ole Lankas, M.P.
Hon. Ali Bahari, M.P.

KENYA NATIONAL ASSEMBLY

Mrs. Florence Abonyo - First clerk Assistant
Mr. Anthony Njoroge - Legal Officer
Mr. Atandi J. Mosomi - Parliamentary Intern

MIN. NO. 48/2008

SALE OF THE GRAND REGENCY HOTEL

In regard to the secretive sale of the Grand Regency Hotel the committee felt the urgent need to step up its investigations. In connection with this the committee resolved to invite the following people to appear before it to shed more light on the sale and subsequent transfer of the hotel from the Central Bank of Kenya to Libyan Arab African Investment Company (LAAIC). The people to be invited include:

- (i) Immediate former Finance Minister; Hon Amos Kimunya
- (ii) Lands Minister accompanied by commissioner of Lands and Chief Lands Registrar
- (iii) Director General, National Security & Intelligence Service

- (iv) Directors of Libya Arab Africa Investment Company (LAAIC)
- (v) Attorney General
- (vi) Current receiver managers (Ernst & Young)
- (vii) Governor, Central Bank of Kenya
- (viii) Deputy Governor, Central Bank of Kenya
- (ix) Transaction lawyers (M/s Wetangula, Adan, Makokha & Co. Advocates)
- (x) Foreign Affairs Minister
- (xi) Senior state Counsel, Attorney General's Office
- (xii) Registrar of Companies, Attorney General's Office
- (xiii) Mr. Kamlesh Pattni

MIN. NO. 49/2008 ADJOURNMENT

The Chairman adjourned the meeting at forty minutes past Five O'clock until Thursday 10th July 2008 at 10.00 a.m.

Signed.....
(Chairman)

Date.....23/9/2008

MINUTES OF THE NINTH SITTING OF THE DEPARTMENTAL COMMITTEE F - ON FINANCE, PLANNING AND TRADE HELD ON TUESDAY 17TH JUNE 2008 IN COMMITTEE ROOM NO.7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT:

Hon. Chrysanthus Okemo, M.P. - **Chairman**
Hon. Musikari Kombo, M.P.
Hon. Nelson Gaichuhie, M.P.
Hon. Lucas Chepkitony, M.P.
Hon. Nthoitha M'mithiaru, M.P.
Hon. (Prof.) Kaloki Kyalo, M.P.

ABSENT WITH APOLOGY

1. Hon. Jakoyo Midiwo, M.P.
2. Hon. Lenny Kivuti, M.P.
3. Hon. Ahmed Shakeel Shabbir, M.P.
4. Hon. Nkoidila Ole Lankas, M.P.

ABSENT

1. Hon. Ali Bahari, M.P

IN ATTENDANCE ATTORNEY GENERALS OFFICE

1. Hon. Amos Wako - Attorney General

KENYA NATIONAL ASSEMBLY

Mrs. Florence Abonyo - First clerk Assistant
Mr. Anthony Njoroge - Legal Officer
Mr. Atandi J. Mosomi - Parliamentary Intern

MIN. NO. 44/2008

EVIDENCE ON THE GRAND REGENCY HOTEL

Hon. Amos Wako, the attorney General appeared before the Committee and gave evidence on the Grand Regency Hotel as follows:-

- (i) He informed the Committee that he was not involved in any of the negotiations leading up to the Consent Order on 9th April 2008 and that Ministry of Finance, the CBK and KACC did not consult him over the Grand Regency matter.

- (i) He only learnt in the media that the Hotel had been surrendered to CBK but he was however assured thereafter by the Director of KACC, Justice Ringera that the negotiations leading up to the Consent Order, did not compromise the prosecutorial powers of the Honorable Attorney General.
- (ii) According to the Attorney General, there was no amnesty being given to Mr. Pattni and the criminal cases against Mr. Pattni are on-going since the claims referred to in the consent order are only limited to the consent order and never touched on criminal cases involving Mr. Pattni. The cases had been delayed by constitutional references filed by Mr. Pattni to the High Court.
- (iii) Under the Anti-corruption and Economic Crimes Act, the Attorney General prosecute while KACC does the recovery functions and therefore the Attorney General comes in after KACC has concluded its investigations.
- (iv) The Attorney General is only involved in civil cases which involve government departments but not independent bodies or statutory ones. He was assured that that all criminal cases were not part of the hand over deal.
- (v) He assured the Committee that he would give the Committee and the public his opinion as regards the Hotel after getting all the facts and going through all the documents the committee has on the Grand Regency Hotel and also advice whether the hotel could be disposed of under the Public Procurement and Disposal Act.

MIN.NO. 45/2008

SUMMARY TO ATTORNEY GENERAL

The Committee resolved to forward to the Attorney General a summary of the information the Committee has gathered on the Hotel together with the documents received to enable him give the Committee a legal advice on the matter.

MIN. NO. 46/2008

ANY OTHER BUSINESS

1. The chairman informed the committee of a forum to be held in New York on 30th June and 1st July 2008. The Committee nominated the following Members to attend. The clerk of the committee will accompany them

- (i) Hon. Chris Okemo, M.P.
- (ii) Hon. Philip Kaloki Philip, M.P.
- (iii) Hon. Musikari Kombo, M.P.
- (iv) Hon. Ntoitha M'mithiaru

2. The chairman informed the Members that the annual session of the Parliamentary Conference on WTO is scheduled for 10th to 12th of September 2008 in Geneva. The Committee nominated the following to represent it:-

- (i) Hon Chris Olemo, M.P. - Chairman
- (ii) Hon. (Prof.) Philip Kaloki , M.P.
- (iii) Hon. Musikari Kombo, M.P.

MIN. NO. 47/2008

ADJOURNMENT

The Chairman adjourned the meeting at 12.15 p.m..

Signed.....
(Chairman)

Date.....23/9/2008

MINUTES OF THE EIGHTH SITTING OF THE DEPARTMENTAL COMMITTEE F - ON FINANCE, PLANNING AND TRADE HELD ON TUESDAY 10TH JUNE, 2008 IN COMMITTEE ROOM NO. 9, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT:

Hon. Chrysanthus Okemo, M.P - **Chairman**
Hon. Musikari Kombo, M.P
Hon. Lucas Chepkitony, M.P
Hon. Ntoitha M'mithiaru, M.P
Hon. Nkoidila Ole Lankas, M.P
Hon. Ali Bahari, M.P
Hon. Ahmed Shakeel Shabbir, M.P

ABSENT WITH APOLOGY

Hon. (Prof.) Kaloki Kyalo, M.P - Vice Chairman

ABSENT

Hon. Nelson Gaichuhie, M.P
Hon. Jakoyo Midiwo, M.P
Hon. Lenny Kivuti, M.P

IN ATTENDANCE UHURU HIGHWAY DEVELOPMENT LIMITD

Mr. Kamlesh Pattni - Proprietor of Grand Regency Hotel through UHDL

KENYA NATIONAL ASSEMBLY

Mrs. C.W. Munga - Assistant Deputy Clerk
Mr. Anthony Njoroge - Legal Officer
Mr. Atandi Mosomi - Parliamentary Intern

MIN. NO. 41/2008 EVIDENCE ON THE GRAND REGENCY HOTEL

Mr. Kamlesh Pattni gave evidence as follows;-

- (i) He took the Committee through a brief background of how he and his companies came to own the Grand Regency Hotel. He alleged that he was forced to sign the charge on the Grand Regency Hotel in 1993 and that is why he filed various suits challenging the validity of the charge.
- (ii) He informed the committee that he has all along sought to settle the suits and claims arising out of

the Goldenberg scandal and has written various letters, including one to the Minister for Justice and Constitutional Affairs dated 5th June 2006 seeking a global settlement between him (Pattni) and his associated companies on the one hand, and the Government of Kenya on the other hand. He then entered into negotiations with the government on the matter, which culminated in the Consent Court Order of 9th April 2008.

- (iii) He was categorical that all along the CBK, KACC and the office of the Attorney General was involved in the negotiations and stated that during the hand-over ceremony, there were representatives from these three offices with the office of the Attorney General being represented by Ms. Muthoni Kimani.
- (iv) He categorically stated that he handed over the Grand Regency Hotel to the Central Bank of Kenya on condition that all criminal and civil cases against him and his associated companies are withdrawn. The hand-over of the Hotel was meant to give him amnesty in respect of all civil and criminal cases against him and associated companies in respect of the Goldenberg saga. The Consent Order was just part of a global settlement in which all cases against him and associated companies would be dropped.
- (v) He stated that he should not execute any transfer documents until all cases against him are dropped and if the global settlement conditions were not met, then he would return to court to litigate on the matter. To his knowledge the hotel had not been sold but he had however requested for

payment of some money from the Hotel's account to cater for expenses he had incurred but he never received any payment from KACC and CBK.

MIN. No. 42/2008


ADDITIONAL EVIDENCE

The committee resolved to adjourn the meeting and invite Mr. Pattni and his lawyers to appear before it at a late date after the members have gone through the documents submitted by Mr. Pattni.

MIN.NO.43/2008

ADJOURNMENT

The Chairman adjourned the meeting at 12.25 p.m. till 17th June 2008 at 10.00 a.m.

Signed..... 
(chairman)
Date..... 23/9/2008

MINUTES OF THE SEVENTH SITTING OF THE DEPARTMENTAL COMMITTEE F - ON FINANCE, PLANNING AND TRADE HELD ON THURSDAY 5TH JUNE 2008 IN SMALL DINING, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT:

Hon. Jakoyo Midiwo, M.P. (Ag Chairman)
Hon. Musikari Kombo, M.P.
Hon. Lucas Chepkitony, M.P.

ABSENT WITH APOLOGY

Hon. Chrysanthus Okemo, M.P. - **Chairman**
Hon. (Prof.) Philip Kaloki, M.P. - **Vice Chairman**
Hon. Ahmed Shakeel Shabbir, M.P.
Hon. Ntoitha M'mithiaru, M.P.
Hon. Lenny Kivuti, M.P.
Hon. Nkoidila Ole Lankas, M.P.
Hon. Ali Bahari, M.P.
Hon. Nelson Gaichuhie, M.P.

IN ATTENDANCE

OFFICE OF MR. KAMLESH PATTNI

Mr. Adan Ahmed - Mr. Pattni's Lawyer

KENYA NATIONAL ASSEMBLY

Mrs. C.W. Munga - Assistant Deputy Clerk
Mr. Atandi Mosomi - Parliamentary Intern

MIN. NO. 39/2008 EVIDENCE ON GRAND REGENCY HOTEL

Mr. Adan Ahmed, Mr. Pattni's lawyer appeared before the Committee on behalf of his client in connection with the Grand Regency Hotel.

The Committee thanked him for coming but informed him that his client Mr. Kamlesh Pattni

should appear in person before the Committee on Tuesday, 10th June 2008 at 10.30 a.m.

MIN. NO. 40/2008 ADJOURNMENT

The Ag. Chairman Hon. Jakoyo Midiwo adjourned the meeting at 11.25 a.m. till 6th June 2008 at 10.30 a.m.

Signed


(Chairman)

Date 23/9/2008

MINUTES OF THE SIXTH SITTING OF THE DEPARTMENTAL COMMITTEE F - ON FINANCE, PLANNING AND TRADE HELD ON WEDNESDAY 4TH JUNE, 2008 IN COMMITTEE ROOM NO.7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT:

Hon. Chrysanthus Okemo, M.P. - Chairman
Hon. Jakoyo Midiwo, M.P.
Hon. Musikari Kombo, M.P.
Hon. Lenny Kivuti, M.P.
Hon. Lucas Chepkitony, M.P.
Hon. Ntoitha M'mithiaru, M.P.
Hon. Ali Bahari, M.P.

ABSENT WITH APOLOGY

Hon. (Prof.) Philip Kaloki, M.P. (Vice Chairman)
Hon. Ahmed Shakeel Shabbir, M.P.

ABSENT

Hon. Nkoidila Ole Lankas, M.P.
Hon. Nelson Gaichuhie, M.P.

IN ATTENDANCE

KENYA ANTI CORRUPTION AUTHORITY

Mr. Aaron Ringera - Director KACC
Mrs. Fatuma Sichale - Deputy Director KACC

KENYA NATIONAL ASSEMBLY

Mrs. C.W. Munga - Assistant Deputy Clerk
Mr. J. Nyengenyne - Principal Legal Officer
Mr. Atandi Mosomi - Parliamentary Intern

MIN. NO. 33/2008

EVIDENCE ON GRAND REGENCY HOTEL

Hon. (Rtd.) Justice Ringera, Director, KACC accompanied by Mrs. Fatuma Sichale, Deputy Director appeared before the Committee on Wednesday 4th June, 2008 and informed the Committee as follows: -

- (i) The Director stated that during the Judicial Commission of inquiry into the Goldenberg scandal, it was alleged that Grand Regency Hotel was built using public funds. Since KACC is empowered to recover illegally acquired property, it filed HCCC No. 1111 of 2003 seeking to recover the Hotel on behalf of the Kenyan public. CBK already had several cases with the UHDL to realize its charge of Kshs. 2.5 billion owed to it by the company while

validity of the charge.

- (ii) The Director further stated that Mr. Kamlesh Pattni had never disputed the charge and he had even sent three cheques to CBK, two of which had bounced. He stated that KACC's lawyer; Mrs. Fatuma Sichale, CBK lawyer (Mr. Kennedy Abuga) and the UHDL lawyer (Mr. Ahmed Adan) negotiated the out of court settlement that resulted in the Consent Court Order of 9th April 2008. However, during the negotiations there was no mention of any intention to sell the Grand Regency Hotel.
- (iii) The Director also stated that Mr. Kamlesh Pattni agreed according to the Consent Court Order, to transfer the Hotel to the CBK including all immovable and moveable assets failure to which the Registrar of the High Court would exercise powers to execute the transfer.
- (iv) He informed the Committee that, the Consent Court Order discharged the Receiver Managers and the Hotel management reverted to the CBK and the money in the Hotel bank accounts was to be transferred to CBK. The Hotel's Bank Accounts were frozen by KACC to prevent any withdrawal of the funds by the outgoing Receiver Managers.
- (v) The Director stated that KACC discontinued the said Court Case, HCCC No. 1111 of 2003 in relation to Mr. Kamlesh Pattni and his companies. However, Mr. Kamlesh Pattni was not granted amnesty and still has several pending cases instituted by the Attorney General.
- (vi) The Director further stated that KACC did not consult the Attorney General on the Grand Regency matter, as this was a civil suit and not a criminal case, because it is only in criminal cases that KACC informs the Attorney General.
- (vii) The Director also stated that KACC would prefer the Hotel being sold through a public process by inviting both local and international bidders. However, he found no requirement in law for the hotel to be sold pursuant to the provisions of the Public Procurement and Disposal Act.

- (viii) The Director confirmed that there was no separate agreement or deal between KACC and Mr. Kamlesh Pattni before, during or after the signing of the Consent Order. According to him, Mr. Pattni could not go back to Court after handing over the hotel. To his knowledge the hotel had not been sold and that this could not happen until ownership of the hotel moves from UHDL to CBK.
- (ix) The Director further confirmed that the Hotel Bank Accounts had over Kshs 341 million at the time of the hand-over and KACC had not received any complaints from CBK regarding access to the Bank Accounts and KACC has therefore not followed up on the issue of the Bank Accounts.

MIN. NO. 34/2008 OBSERVATION BY THE COMMITTEE

The Committee noted the following with concern.

- (i) Finance Minister informed the Committee that KACC negotiated for the land and building only while the KACC Director stated that the Consent Order includes the Hotel, land, building and all movable and immovable assets.
- (ii) Mr. H.W. Gichohi was appointed by KACC as receiver manager of the hotel and other properties acquired by the defendants illegally. Since the signing of the Court Consent Order, it is not clear as to what is happening to the other properties amounting to Kshs. 1.4 billion and also the where the funds generated by the Hotel are banked because the accounts were frozen.
- (iii) KACC dropped cases against 1, 2, 3, 4 and 12 defendants in civil suit No. 1111 and KACC has not taken the other defendants to court.
- (iv) No reason was given as to why Pattni has not signed the necessary handing over legal instruments and why the Deputy Registrar of the High Court has not executed the transfer if Mr. Pattni has refused yet the Court Consent Order bestows powers on the Deputy Registrar to do s.
- (v) The Director stated that the law does not confine the sale of the Hotel to Procurement and Disposal Act therefore the CBK could secretly sell the

observed that the way the minister was reluctant to divulge more information on the Hotel could be an indicator that they may use this provision in law to dispose off the hotel secretly

MIN. NO. 35/2008 **QUESTIONS RAISED BY THE COMMITTEE**

- (a) Did the Consent Order leave any recourse for Kamlesh Pattni to go to court to get injunction?
- (b) When the receiver Managers were discharged did they hand over any money?
- (c) Who is controlling Grand Regency Hotel since 9th April 2008?
- (d) Where is the money the hotel is making currently going to since the accounts were frozen?
- (e) Why did Pattni voluntarily hand over the hotel to Central Bank when the amount he owed CBK was less than the value of the hotel and especially after fighting in court for more than 15 years?

MIN. NO. 36/2008 **ADDITIONAL INFORMATION**


The Committee resolved that:-

- (i) KACC to submit a detailed list of the other claims mentioned under No. 5 of Court Consent Order and a list of all the cases concerning Pattni and Somaia to which it has been enjoined.
- (ii) Central Bank of Kenya to provide the name of the current manager of the hotel.
- (iii) A reminder letter to be written to the Minister for Finance regarding to submit the documents required by the Committee.

MIN. NO. 37/2008 **ANY OTHER BUSINESS**
Bills before the Committee

The Chairman informed the members that he would be out of the country on official duty till 7th July. The Members agreed to meet during his absence to discuss the two Bills before the Committee. Each member will submit his/her write up and comments on the bills. It was noted that Hon. Shakeel Shabbir had submitted his comments on the accountants' Bill.

The Chairman adjourned the meeting at 12.25 p.m. until 5th Thursday June 2008 at 10.00 a.m.

Signed 
(Chairman)

Date 

MINUTES OF THE FIFTH SITTING OF THE DEPARTMENTAL COMMITTEE F – ON: FINANCE, PLANNING AND TRADE HELD ON THURSDAY 29TH MAY, 2008 IN COMMITTEE ROOM NO. 7, MAIN PARLIAMENT BUILDINGS, AT 10.00 A.M.

PRESENT:

The Hon. Chris Okemo, M.P. - **Chairman**
The Hon. Philip Kaloki, M.P. - **Vice Chairman**
The Hon. Jakoyo Midiwo, M.P.
The Hon. Ahmed Shabbir Shakeel, M.P.
The Hon. Musikari Kombo, M.P.
The Hon. Ntoitha M'mithiaru, M.P.
The Hon. Lucas Chepkitony, M.P.
The Hon. Nkoidila Ole Lankas, M.P.
The Hon. Lenny Kivuti, M.P.

ABSENT WITH APOLOGY:

The Hon. Ali Bahari, M.P.

ABSENT:

The Hon. Nelson Gaichuhie, M.P.

IN ATTENDANCE:

Mr. H.W Gichohi

Mr. Peter Ndaa

GRAND REGENCY HOTEL RECEIVER MANAGERS

- Representing Kenya Anti Corruption Commission

- Representing Uhuru Highway Development Ltd.

NATIONAL ASSEMBLY

Mrs. Florence Abonyo - First Clerk Assistant
Mr. Atandi J. Mosomi - Parliamentary Intern.

MIN. NO. 28/2008

EVIDENCE: JOINT RECEIVER MANAGERS

The following Joint Receiver Managers appeared before the Committee and gave evidence on the Grand Regency Hotel as follows: -

Mr. Peter Ndaa

- (i) Mr. Peter Ndaa was appointed receiver manager of the Grand Regency Hotel on 31st May 2004 through lawyers' purely on professional basis having been proposed by UHDL but he is not a friend of Mr. Kamlesh Pattni.. At the time of his appointment, the Hotel was facing liquidity problems but within six months he had managed to turn it around and pay all outstanding debts.

- (ii) He further informed the Committee that Mr. Gibson Kamau^{Kuma}, the lawyer for KACC attempted to remove him and replace him with Mr. Matthew Mungai but they did not succeed. After they failed to remove him his co receiver HW Gichohi resorted to sabotaging the operations at the hotel by actions like; refusal to sign cheques, refusal to sign L.P.O.s, alteration of issued and signed cheques, refusal to fill the position of financial controller
- (iii) His services as receiver manager were terminated on 9th April 2008. On that day he was called by the General Manager to the hotel for a ceremony which he could not however attend due to the short notice. He later saw in the media that the hotel had been handed over.
- (iv) When he and H.W Gichohi left the hotel on 9th April 2008 the hotel was making profits and it had about 300 million in its current accounts in Co-operative Bank (Kimathi Branch) and the Kenya Commercial Bank (Kipande Branch). He termed the allegations by CBK and Treasury that the hotel has never made any profit as a misrepresentation of facts because since 2004 the hotel's performance had greatly improved was making profits. He informed the committee that CBK had access to the financial statements.
- (v) The whistleblowers broke furniture and were charged in court but later on the Ministry of Labour wrote to the management to terminate their employment.

Mr. H.W Gichohi

- (i) He was appointed co-receiver manager in 2003 when KACC mandated him to evaluate the extent of liability the Hotel had incurred. During his tenure he had several differences with his co-receiver Manager Mr. Peter Ndaa that adversely affected the operations of the Hotel. They were both signatories to Grand Regency Hotel's Bank Accounts up to 9th April 2008 when the Consent Court Order vested powers over the Bank Accounts on the Central Bank of Kenya.
- (ii) He stated that a valuation of the Hotel carried out in 1997 placed its value at Kshs. 2.1 billion. M/s Lloyd Masika did another valuation for the Central Bank of Kenya in February 2008 but CBK did not disclose the contents of this valuation to the Receiver Managers.
- (iii) He informed the Committee that the Receiver Managers had deposited Kshs. 50 million into a joint account in the names of Uhuru Highway Development Ltd. and Central Bank of Kenya. By 9th April 2008 when the Receiver Managers were removed, there was kshs. 342million in the hotel's accounts with Kenya Commercial Bank (Kipande Branch) and Cooperative Bank of Kenya (Kimathi Branch). He stated that the Hotel had Kshs. 112,000,000 in good debts; Kshs. 14 million owed to current creditors and Kshs 12 million outstanding salaries.
- (iv) He further informed the Committee that Mr. Kamlesh Pattni had the entire 13th floor as complimentary rooms where he would accommodate his guests for free except for meals

and as a result the Hotel had a debt of Kshs. 7 million arising from the unpaid debts by these guests.

- (v) He also informed the Committee that the charge of Kshs. 2.5 billion signed between UHDL and CBK was never shown to the Receiver Managers.

MIN. NO. 29/2008

COMMITTEE'S OBSERVATIONS

- (i) **Under MIN NO 14/2008 (V)**, the Finance Minister had informed the Committee that the Hotel did not make any profit from 1999 to date and that CBK did not receive any money from the Hotel between 1999 to 2004 since Uhuru Highway Development Ltd. was in charge and therefore there was no trace of the money received during the said period.

This contradicts the receiver managers' report that the hotel has been making profits and by 9th April 2008 when the Receiver Managers were removed, there was Kshs. 342million in the hotel's accounts with KCB and Cooperative Bank. The Committee was concerned as to who was maintaining the hotel bank accounts and the bank signatories after the receiver managers were removed.

- (ii) The Committee could not understand why the Receiver Managers were consulting CBK on the daily operations of the Hotel yet CBK claimed that they had been thrown out of Grand Regency by the High Court in 1999.
- (iii) The Committee observed that complimentary rooms and services on the 13TH floor had been reserved for Mr. Kamlesh Pattni's guests for free

(iv) The committee noted that the Court Consent Order implies that the plaintiff discontinues the entire civil suit No 1111 of 2003 and all pending applications therein meaning loss of 1.4 billion by the other defendants in the civil suit 1111 of 2003 for it does not say anything about this Kshs1.4 billion

MIN. NO. 30/2008

ADDITIONAL INFORMATION

The Committee directed Mr. Peter Ndaa to submit a written report on the Grand Regency Hotel during his tenure and to submit a copy to his counterpart, Mr. Gichohi.

MIN. NO. 31/2008

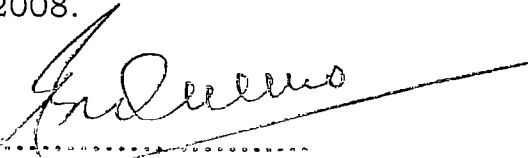
LETTER TO FINANCE MINISTER

The Committee resolved to write a letter to both the Finance Minister and the Governor of CBK, instructing them to put on hold any transactions about the hotel including selling it until the Committee concludes its investigations.

MIN. NO. 32/2008

ADJOURNMENT

The meeting adjourned at 12.45 p.m. until 10.00 a.m.
4th Wednesday 2008.

Signed.....

(Chairman)

Date.....23/9/2008.....

MINUTES OF THE FOURTH SITTING OF THE DEPARTMENTAL COMMITTEE (F) ON FINANCE, PLANNING AND TRADE HELD ON WEDNESDAY 28TH MAY, 2008 IN COMMITTEE ROOM NO. 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT:

The Hon. Chris Okemo, M.P. - Chairman
The Hon. Philip Kaloki, M.P. - (Vice Chairman)
The Hon. Jakoyo Midiwo, M.P.
The Hon. Musikari Kombo, M.P.
The Hon. Ntoitha M'mithiaru, M.P.
The Hon. Lucas Chepkitony, M.P.
The Hon. Ahmed Shabbir Shakeel, M.P.
The Hon. Nkoidila Ole Lankas, M.P.

ABSENT WITH APOLOGY:

The Hon. Ali Bahari, M.P.
The Hon. Lenny Kivuti, M.P.

ABSENT:

The Hon. Nelson Gaichuhie, M.P.

IN ATTENDANCE:

KENYA ANTI-CORRUPTION COMMISSION (KACC)

Mrs Fatuma Sichale - Deputy Director
Mr. Jairus Ngaa - Advocate

KENYA NATIONAL ASSEMBLY

Mrs C. W. Munga - Assistant Deputy Director
Mrs. Phyllis Makau - Principal Budget Officer
Mrs. Florence Abonyo - First Clerk Assistant
Mr. Mosomi J. Atandi - Parliamentary Intern.

MIN. NO. 21/2008

CONFIRMATION OF THE MINUTES

- (i) Minutes of the Second Sitting of the Committee held on Wednesday 14th May, 2008 were confirmed after being proposed by Hon. Jakoyo Midiwo, MP and seconded by Hon. Lucas Chepkitony, MP.
- (ii) Minutes of the Third Sitting of the Committee held on Wednesday 21st May, 2008 were confirmed after being proposed by Hon. (Pro.) Philip Kaloki, MP and seconded by Hon. Jakoyo Midiwo, MP.

MATTERS ARISING

Under MIN No. 10/2008, the Chairman thanked the Members who attended the pre-budge workshop in Naivasha, which was very useful to the Committee.

Under MIN No. 11/2008, the Committee resolved to invite both the Ministers for Trade and Industrialisation for a meeting to deliberate on issues relating to the escalating prices of consumer goods and construction materials.

The committee took particular issue with the disparities in the pricing of cement and iron sheets countrywide and resolved to invite the Chief Executive Officers of the following:-

- ◆ Portland Cement Ltd
- ◆ Bamburi Cement Factory
- ◆ Athi River Mining Companies.
- ◆ Mabati Rolling Mills.

The Committee further resolved to have a joint meeting with the Departmental Committee on Energy and to invite both the Ministers for Energy and Finance together with the National Oil Corporation managing Director to deliberate on the ever increasing fuel prices and its effects on escalating prices of goods.

Under MIN No.11/2008, the Committee resolved to summon the Managing Trustee NSSF in regard to the status of the land adjacent to the Grand Regency Hotel.

Under MIN NO. 17/2008, the Deputy Director of KACC submitted the Consent Court Order signed between UHDL and KACC. The Committee instructed that the Minister for Finance should provide the extracted Court Order on the same.

Under MIN NO. 18/2008 the Committee resolved to summon Mr. Paul Kamlesh Pattni to appear before it to shade more light on the Grand Regency Hotel issue.

MIN NO 23/2008

MEETING WITH THE ATTORNEY GENERAL

The chairman informed the Committee that the Attorney General was in Geneva on official duty and has requested that the meeting be rescheduled to 17th June 2008. The Committee acceded to the request.

MIN. NO. 24/2008

MEETING WITH THE DIRECTOR OF KACC

The Deputy Director appeared before the Committee to represent the Director. The Committee thanked her for honouring the invitation but resolved that the Director should personally attend the meeting as earlier directed due to the weighty issues involved. Therefore, the Committee resolved to reschedule the meeting to a later date.

MIN. NO. 25/2008

BILLS BEFORE THE COMMITTEE

The Chairman informed the Members that there is need to deliberate on the bills before the committee and it was resolved that Members be divided into two groups to discuss the following bills:-

Group A (Accountants Bill, 2008)

- (i) Hon. Shakeel Shabbir
- (ii) Hon. Jakoyo Midiwo
- (iii) Hon. Nkoidila Ole Lankas
- (iv) Hon. Nthoitha M'mithiaru

Group B (Proceeds from Crime & Anti-Money Laundering Bill, 2008)

- (i) Hon. Chris Okemo (Chairman)
- (ii) Hon. Philip Kaloki (Vice Chairman)
- (iii) Hon. Lucas Chepkitony
- (iv) Hon. Musikari Kombo

- (i) Members were informed that the Consumer Information Network (CIN) has written to request for a meeting with the Committee to deliberate on the draft Consumer Protection Bill. The committee directed that CIN should forward its submission on the matter to KARA since the Bill has not been procedurally introduced in the House to be referred to the Committee for deliberation.

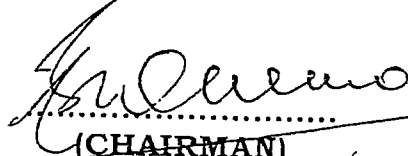
- (ii) Members were informed that the Ministry of Tourism and Wildlife has requested the committee to nominate two members to attend the forthcoming Sixth International Tourism Conference in Philippines in October to which the following were nominated: -
 - ◆ Hon. Nkoidila Ole Lankas, MP
 - ◆ Hon. Lucas Chepkitony, MP

- (iii) The Committee resolved to invite both the Ministry of Tourism and Kenya Tourism Board for a meeting to deliberate on the following: -
 - ◆ Tourism promotion policies and how they affect the economy.
 - ◆ Specific activities planned to enable Parliament and the Committee to participate actively.

ADJOURNMENT

The Chairman adjourned the meeting at Twelve O' Clock until Thursday 29th May 2008 at 10.00 O'clock.

Signed:


.....
(CHAIRMAN)

Date:

23/9/2008

MINUTES OF THE THIRD SITTING OF THE DEPARTMENTAL COMMITTEE (F) ON FINANCE, PLANNING AND TRADE HELD ON WEDNESDAY 21ST MAY, 2008 IN COMMITTEE ROOM NO. 7, MAIN PARLIAMENT BUILDINGS AT 10:00 A.M.

PRESENT:

The Hon. Chris Okemo, MP - **Chairman**
The Hon. Kyalo Kaloki, M.P. - **Vice Chairman**
The Hon. Jakoyo Midiwo, M.P.
The Hon. Lenny Kivuti, M.P.
The Hon. Musikari Kombo, M.P.
The Hon. Nthoitha M'mitharu, MP
The Hon. Lucas Chepkitony, M.P.

ABSENT WITH APOLOGY:

The Hon. Ali Bahari, MP

ABSENT:

The Hon. Nkoidila Ole Lankas, MP
The Hon. Ahmed Shabbir Shakeel, M.P
The Hon. Nelson Gaichuhie, MP

IN ATTENDANCE:

MINISTRY OF FINANCE

Hon. Amos Kimunya, MP - Minister for Finance
Mr. Joseph Kinyua - Permanent Secretary
Prof. Njuguna Ndung'u - Governor, Central Bank of Kenya (CBK)

KENYA NATIONAL ASSEMBLY

Mrs. Phyllis Makau - Principal Budget Officer
Mr. Jeremiah Nyegenye - Principal Legal Counsel
Mrs. Florence Abonyo - First Clerk Assistant
Mr. Mosomi J. Atandi - Parliamentary Intern.

MIN. NO. 13/2008

BRIEF ON GRAND REGENCY

The Principal Budget Officer Kenya National Assembly, briefed the members on the available information pertaining to the Grand Regency Hotel. She pointed out to the Members that the mode of disposal should adhere to the Public Procurement and Disposal Act.

MIN. NO. 14/2008

EVIDENCE BY THE MINISTER FOR FINANCE

The Minister for Finance gave evidence on the Status of Grand Regency Hotel as follows:

- (i) The Minister informed the Committee that due to the sensitivity of the issues surrounding the Hotel, the information given to the Committee would be limited.
- (ii) The Minister informed clarified that CBK is not solving the goldenberg scam but is trying to solve the civil case/matter on the basis of the 3 cheques paid to CBK but bounced and the Hotel was attached as security.
- (iii) The Minister clarified that there is no connection between repossession and disposal of the Hotel and the issue of granting amnesty to Mr. P. Kamlesh Pattni since the criminal cases is between KACC and the Attorney General.
- (iv) The Minister said that he was not aware of any Libyan company by the name Meridian Arab African Investment Company (MAAIC) which is purported to have bought Grand Regency Hotel.
- (v) The Minister revealed that from 1999 to 2004 the CBK did not receive any money from the Hotel Since UHDL was in charge and there is no trace of the money received during the said period.
- (vi) The Minister said that all the valuations carried out on the hotel are lower than Kshs. 2.5 billion
- (vii) The Minister assured the Committee that the Hotel has not been sold and the Treasury/CBK is in consultations with the procurement authority and the disposal will e done according to the law.

- (viii) when the Government will dispose it off; If it happens to be the case the Government will follow the Law (Public Procurement and Disposal Act)

MIN. NO. 15/2008

COMMITTEE'S OBSERVATIONS

- (i) The charge on the Hotel should have been all inclusive and not limited to land and building only as the implication now is that Mr. Pattni has released the Hotel without the business.
- (ii) Lack of provision for interest on the charge was a serious omission because this was actual public money that should have been invested with maximum returns.
- (iii) The appointment of two pre-qualified valuation firms by CBK was contrary to the procurement law and the outcome of the valuations by the two firms should be made public as a matter of public interest.
- (iv) The conditions for sale of the Hotel are not clearly spelt out or documented hence lack of transparency. The timing for the sale of the Hotel also appears wrong since the property market is currently depressed following the recent political events.

MIN. NO. 16/2008

COMMITTEE'S RECOMMENDATIONS

- (i) The Minister should assure the public that due process will be followed including inviting the public to express interest.
- (ii) CBK should explore the possibility of attaching/charging other Pattni's assets with a view to recovering what cannot be realised from the sale of the Hotel.

- (iii) The government should assure the public that there is no connection between the transaction on the Hotel and the amnesty being granted to Pattni and the information on the process should be availed to the public so as to pass the transparency test.

MIN. NO. 17/2008

DOCUMENTS TO BE SUBMITTED

The Committee resolved that the following documents be submitted by the Minister before the follow up meeting.

- (i) Financial Statements of all the expenses incurred by Central Bank of Kenya with regard to Grand Regency Hotel.
- (ii) A copy of the legal charge for Ksh.2.5 billion over Grand Regency Hotel signed between CBK and Uhuru Highway Development Limited in 1993.
- (iii) A copy of the Consent Order signed in Court between KACC and UHDL for the removal of joint receiver managers over the Hotel that resulted in Pattni's handing over of Grand Regency to CBK.

MIN. NO. 18/2008

ADDITIONAL EVIDENCE

The Committee resolved to sermon the following to appear before it to give evidence on the matter regarding the Grand Regency Hotel:-

- (i) Director, Kenya Anti-Corruption Commission
- (ii) The previous joint Receiver Managers
- (iii) The Attorney General
- iv)

The Committee further resolved to have a follow up meeting on the outstanding issues with the Minister for Finance on Wednesday 3rd June, 2008.

(i) **Workshop on Trade**

The Committee was informed that the East African Inter-parliamentary Liaison Committee on Trade is organising a workshop on trade in Mombasa from 29th to 31st May, 2008.

The Committee nominated the following to represent it in the said workshop:-

Hon. (Prof) Kaloki Kyalo, MP – Vice Chairman

Hon. Jakoyo Midiwo, MP

Hon. Noitha M'Mithiaru, MP

Hon. Musikari Kombo, MP

(ii) **One day Seminar on EAC Protocol**

The Committee was informed that the EAC Secretariat is planning to organise the above seminar for partner states national legislative Assemblies. The Committee suggested that the proposed seminar be held on Wednesday 4th June, 2008.

ADJOURNMENT

The Chairman adjourned the meeting at One O' Clock until Wednesday 28th May, 2008 at 10.00 O'clock.

Signed:


(CHAIRMAN)

Date:

28/05/08

MINUTES OF THE SECOND SITTING OF THE DEPARTMENTAL COMMITTEE (F) ON FINANCE, PLANNING AND TRADE HELD , ON WEDNESDAY 14TH MAY, 2008 IN COMMITTEE ROOM NO. 7, MAIN PARLIAMENT BUILDINGS AT 11.10 A.M.

PRESENT:

The Hon. Chris Okemo, MP - **Chairman**
The Hon. Kaloki Kyalo, M.P. - **Vice Chairman**
The Hon. Jakoyo Midiwo, M.P.
The Hon. Kivuti Lenny, M.P.
The Hon. Gaichuhie Nelson, MP
The Hon. Musikari Kombo, M.P.
The Hon. Nthoitha M'mitharu, MP
The Hon. Lucas Chepkitony, M.P.
The Hon. Ahmed Shabbir Shakeel, M.P

ABSENT WITH APOLOGY:

The Hon. Ali Bahari, MP
The Hon. Nkoidila Ole Lankas, MP

IN ATTENDANCE:

KENYA NATIONAL ASSEMBLY

Mrs. Phyllis Makau - Principal Budget Officer
Mr. Samuel Njoroge - Third Clerk Assistant.
Mr. Mosomi J. Atandi - Parliamentary Intern.

MIN. NO. 07/2008

CONFIRMATION OF MINUTES

Save for corrections recorded in these Minutes under MIN. NO. 08/2008-2012 (ii) the Minutes of the First Sitting held on May 7, 2008, were confirmed as a true record of the proceedings of the Committee, proposed by the Hon. Musikari Kombo, MP, seconded by the Hon. Lenny Kivuti, M.P and signed by the Chairman.

MIN. NO. 08/2008

MATTERS ARISING

Under MIN.No.04/2008, the Committee revisited the matter of the number of the proposed Sub-Committees. After a brief deliberation, it was resolved that the two Sub-Committees be retained as agreed during the meeting of May 7, 2008. It was also noted that the composition of the two Sub-Committees as recorded in the minutes was incorrect. In this regard, it was reiterated that the Sub-Committees comprise of: -

Sub-Committee I: Finance, Banking and Insurance

- (i) The Hon. Chris Okemo, MP -
- (ii) The Hon. Jakoyo Midiwo, M.P.
- (iii) The Hon. Gaichuhie Nelson, MP
- (iv) The Hon. Nthoitha M'mitharu, MP
- (v) The Hon. Ahmed Shabbir Shakeel, M.P

Sub-Committee II: Trade, Industry and Tourism

- (i) The Hon. Kivuti Lenny, M.P.
- (ii) The Hon. Ali Bahari, MP
- (iii) The Hon. Lucas Chepkitony, M.P.
- (iv) The Hon. Kaloki Kyalo, M.P.
- (v) The Hon. Nkoidila Ole Lankas, MP
- (vi) The Hon. Musikari Kombo, M.P.

Under MIN.No.05/2008, the Chairman informed the Meeting that, the Permanent Secretary, Ministry of Finance had written conveying that the Minister would not be able to appear before the Committee as requested as he was out of the country. Further, that the Minister had requested for postponement of his appearance to May 21, 2007 at 11.00 am. Acceding to the request, the Committee resolved to meet **at least 30 minutes** prior to the meeting with the Minister to deliberate on the issues to discuss with him on the subject (Matter of Ceding of the Grand Regency Hotel). The Secretariat was asked to provide copies of the Ministerial Statement made by the Minister on the floor of the House on the said matter and any other relevant material(s) to aid the Committee in taking evidence.

MIN. NO. 09/2008

CONSIDERATION OF THE PROGRAMME OF BUSINESS FOR THE YEAR

The Secretariat briefed the meeting of the proposed Committee's Programme of Business for the year 2008. It was agreed: -

- (i) That, Programme be adopted as a working document to guide the Committee in its work;
- (ii) That, the Committee invites the Ministers under its subject mandate at the earliest opportune to

apprise it on the governments' legislative agenda for the period and any other matters as may be determined by the Committee; and,

- (iii) That, the Programme be flexible to accommodate unforeseen business like bills and international visits.

MIN. NO. 10/2008

BRIEFING ON PRE-BUDGET WORKSHOP

The Principal Budget Officer briefed the Committee on programme of business for the Pre-Budget Workshop scheduled to take place on May 19 and 20, 2008 at Lake Naivasha Simba Lodge. The Chairman urged all members to attend the said Workshop.

MIN. NO. 11/2008

ANY OTHER BUSINESS

Hon. Jakoyo Midiwo, MP expressed concern on the escalating prices of cement and asked the Committee to consider inviting the Minister for Trade and other persons to address the issue. The Committee resolved to revisit the matter at its next meeting.

MIN. NO. 12/2008

ADJOURNMENT

The Chairman adjourned the Sitting at 12:30 p.m. until Wednesday 21st May, 2008 at 10.00am.

Signed:


(CHAIRMAN)

Date:

28/5/08

MINUTES OF THE FIRST SITTING OF THE DEPARTMENTAL COMMITTEE (F) ON FINANCE, PLANNING AND TRADE HELD ON WEDNESDAY 7TH MAY, 2008 IN COMMITTEE ROOM NO. 7, PARLIAMENT BUILDINGS AT 11.05 A.M.

PRESENT:

The Hon. Chris Okemo, MP
The Hon. Kaloki Kyalo, M.P.
The Hon. Jakoyo Midiwo, M.P.
The Hon. Kivuti Lenny, M.P.
The Hon. Gaichuhie Nelson, MP
The Hon. Musikari Kombo, M.P.
The Hon. Nthoitha M'mitharu, MP
The Hon. Nkoidila Ole Lankas, MP
The Hon. Lucas Chepkitony, M.P.
The Hon. Ahmed Shabbir Shakeel, M.P

ABSENT WITH APOLOGY:

The Hon. Ali Bahari, MP

IN ATTENDANCE:

KENYA NATIONAL ASSEMBLY

Mr. P.G. Gichohi	-	Ag. Clerk of the National Assembly
Mrs. C.W. Munga	-	Assistant Deputy Clerk
Mr. S. J. Njoroge	-	Third Clerk Assistant.
Mr. Mosomi J. Atandi	-	Parliamentary Intern.

MIN. NO. 01/2008

INTRODUCTORY REMARKS BY THE AG. CLERK

The Clerk welcomed the Members present and congratulated them for being nominated into the Committee. He briefed them on the mandate, functions and the powers of the Committee citing Standing Order No. 151.

MIN. NO. 02/2008

ELECTION OF THE CHAIRMAN

The Ag. Clerk of the National Assembly congratulated the Members for being nominated to serve in the Committee. Upon advising them on the parliamentary procedures and practice that govern the Committee and the rules of election of Chairperson, the Clerk conducted the proceedings for the election. On calling for nominees, the Hon. Chris Okemo, MP was proposed by Hon. Ahmed Shakeel Shabbir M.P and seconded Hon. Kaloki Kyalo,

Mr. Further the Hon Ntoitha M'mithiaru M.P was proposed by Hon Kivuti Lenny M.P and seconded by Gaichuhie Nelson M.P. An election was conducted by secret ballot and Hon. Chris Okemo, MP was elected Chairman after garnering 7 votes against Hon. Nthoitha's 3 votes. All the Members present voted.

MIN. NO. 03/2008

REMARKS BY THE CHAIRMAN

Hon. Chris Okemo, MP assumed the Chair and thanked the Members for expressing their faith and confidence in him by electing him the Chairman. He pledged to serve the Committee with dedication, impartiality and diligence. He called upon Members to serve the Committee with devotion and zeal so as to tackle the exigent task ahead of them. He suggested that the Committee would form sub-committees preferably two or three to address the wide mandate of the Committee. He reiterated that the Committee will work as a team and he urged the Members to be non-partisan in their work.

Noting that in the 9th Parliament, the Committee's work was sometimes hampered by lack of quorum, the Chairman urged Members to not only be prompt in attending Sittings, but also make immense contributions. He added that it is such parameters that would determine composition of delegations to international visits, whenever opportunities arise.

MIN. NO. 04/2008

SUB-COMMITTEES

In view of the fact that the Committee's mandate is wide, it was proposed that, two sub-committees be formed as follows:-

- (i) Sub-Committee I-Finance, Banking and Insurance (Membership)
The Hon. Chris Okemo, MP
The Hon. Kaloki Kyalo, M.P.
The Hon. Jakoyo Midiwo, M.P
The Hon. Musikari Kombo, M.P.

The Hon. Lucas Chepkitony, M.P.
The Hon. Ahmed Shabbir Shakeel, M.P

- (ii) Sub-Committee II- Trade, Industry and Tourism
(Membership)
The Hon. Ali Bahari, MP
The Hon. Kivuti Lenny, M.P.
The Hon. Gaichuhie Nelson, MP
The Hon. Nthoitha M'mitharu, MP
The Hon. Nkoidila Ole Lankas, MP

It was resolved that the Committee would revisit this matter during its next meeting (when considering its Programme of Business for the year).

MIN. NO. 05/2008:

ANY OTHER BUSINESS

- (i) Notwithstanding, the fact that the Standing Orders do not provide for the position of vice-chair in committees, and in keeping with the practise obtaining in the 8th and 9th Parliaments, the Committee resolved that, the Hon. Kaloki Kyalo, MP assumes the role of the Committee's Vice-chairman;
- (ii) The Committee deliberated briefly on the matter of ceding of the Grand Regency Hotel. It as resolved that the Minister for Finance and the Governor, Central Bank of Kenya be asked to appear before the Committee on Wednesday, May 14, 2008 at 11.00 am to apprise it on matters related to the ceding of the said Hotel and alleged imminent sale;
- (iii) The Committee noted that there is need to liaise with the Fiscal Analysis and Appropriations (Budget) Committee with a view to addressing issues of perceived overlap of mandate and to co-ordinate their work, where need be, and:

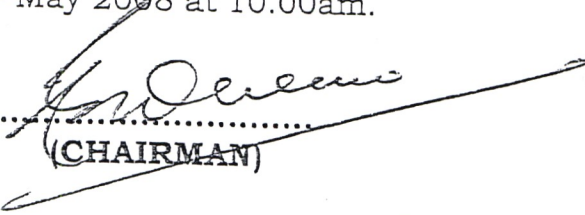
(iv) Hon. Muskari Kombo, MP requested that, as practicably possible, the Secretariat serves the Members with the notices the Committee sittings early enough.

MIN. NO. 06/2008

ADJOURNMENT

The Chairman adjourned the Sitting at 12:30 p.m. until Tuesday 13th May 2008 at 10.00am.

Signed:


(CHAIRMAN)

Date:

14-05-2008