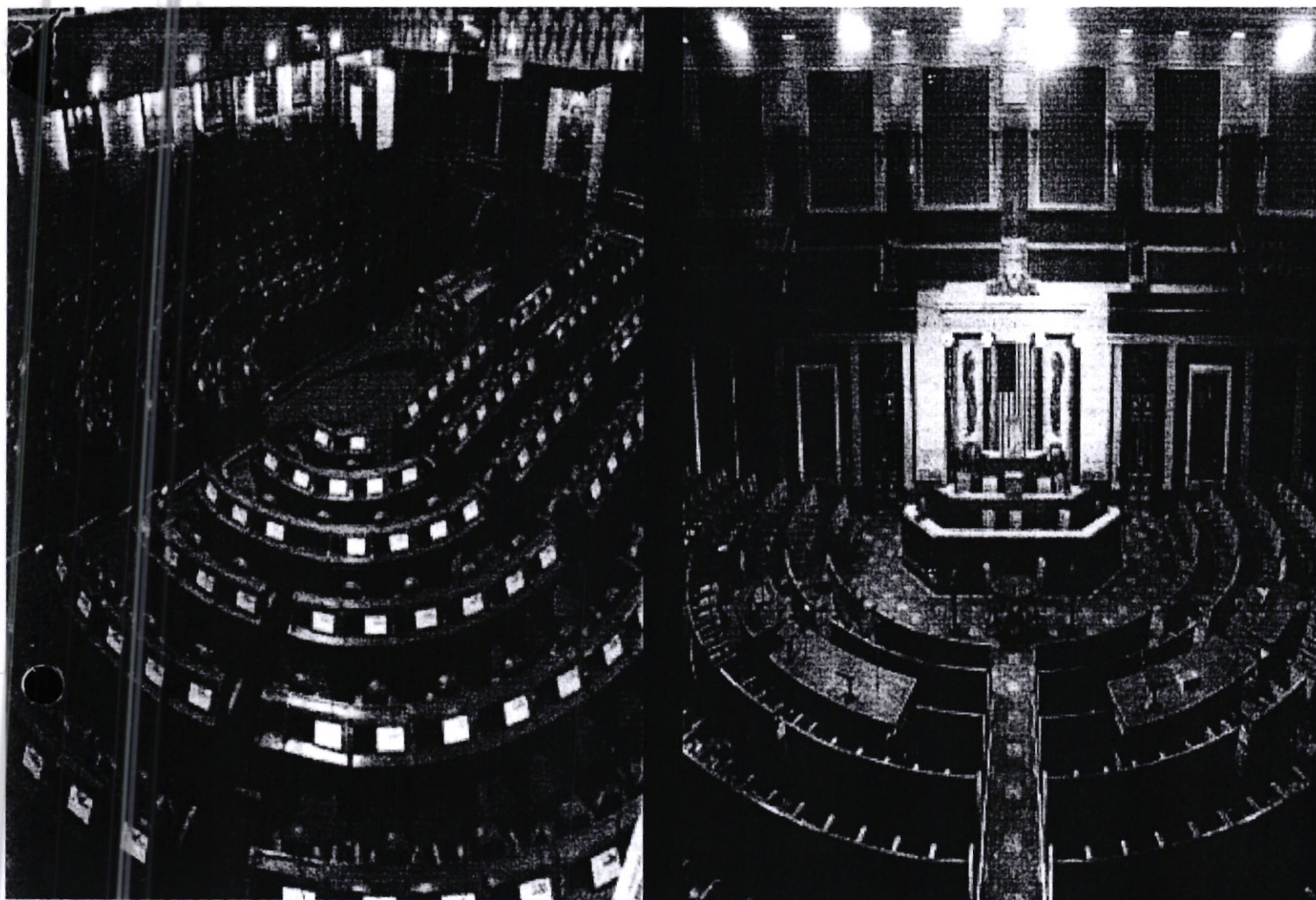




Appendix 3a:

Submissions by Advocate Phil Musolino;



OPENING REPORT
FOR THE
KENYAN SENATE *AD HOC* COMMITTEE ON
THE COMPENSATION TO THE KENYAN
VICTIMS OF THE 1998 BOMBING OF THE
UNITED STATES OF AMERICA EMBASSY IN
NAIROBI

Presented by Philip M. Musolino and Musolino & Dessel, PLLC

MUSOLINO & DESSEL, PLLC REPORT ON AUGUST 7, 1998, U.S. EMBASSY BOMBING IN NAIROBI KENYA
1615 L Street, N.W., Suite 440, Washington, D.C. 20036

STATEMENT AND DISCLOSURE REGARDING REPORT:

This Opening Report for the Kenyan Senate *Ad Hoc* Committee on the Compensation to the Kenyan Victims of the 1998 Bombing of the United States of America Embassy in Nairobi (the "Report") was prepared at the request of Senator Agnes Kavindu by the Washington, D.C. law firm of Musolino & Dessel, P.L.L.C. The Report is linked to a database (the "Database"). Both the Report and the Database are for the use of and accessible by the members of the *Ad Hoc* Committee on the Compensation to the Kenyan Victims of the 1998 Bombing of the United States of America Embassy in Nairobi (the "Committee") and their staff. Musolino & Dessel, PLLC is solely responsible for the content of the Report and the content of the Database.

This material is distributed by Philip M. Musolino and Musolino & Dessel, PLLC on behalf of the Designated Victims of the 1998 Embassy Bombings. Additional information is available at the U.S. Department of Justice (FARA).

TABLE OF CONTENTS

EXECUTIVES AND TEAM MEMBERS	2
SUMMARY	7
PART TWO: THE 1998 ATTACK AND ITS IMPACT ON KENYANS.....	9
PART FOUR: THE FEDERAL LITIGATION IN WASHINGTON.....	13
PART FIVE: THE PROPOSED U.S. LEGISLATION	16
APPENDIX TO OPENING REPORT FOR THE KENYAN SENATE <i>AD HOC</i> COMMITTEE ON THE COMPENSATION TO THE KENYAN VICTIMS OF THE 1998 BOMBING OF THE UNITED STATES OF AMERICA EMBASSY IN NAIROBI	18
DATABASE – LITIGATION (Appendix A):.....	19
DATABASE – LEGISLATION (Appendix B):.....	20

PART ONE: REPRESENTATIVES AND TEAM

A. Musolino and Dessel, PLLC:

Musolino & Dessel, PLLC (the "Firm"), the leader of the international team of U.S. legislative compensation for the victims of the terrorist attack on the U.S. Embassy in Nairobi, 1998, and the author of this Report, is a Washington, D.C. law firm formed in 1993.

In the international arena, the Firm has represented clients on matters in or involving the following nations:

- Kenya
- Uganda
- Tanzania
- South Africa
- Namibia
- Cameroon
- Sudan
- Iraq
- Egypt
- UAE
- Saudi Arabia
- Great Britain
- France
- Switzerland
- Bulgaria
- Serbia
- Spain
- Greece
- Germany
- Haiti
- Netherlands

The Firm has represented clients in a wide variety of human rights and commercial transactions and has also represented clients in international arbitrations in Switzerland, Paris, and New York, and has litigated and arbitrated claims under various commercial statutes and standards, as well as, among others, the following statutes:

- The Alien Tort Statute

- The American Arbitration Act
- The Federal Tort Claims Act
- The Foreign Sovereign Immunities Act
- The International Convention on Civil and Political Rights
- The International Organizations Immunities Act

The Firm first became involved in the 1998 embassy bombing at the request of a client with numerous commercial interests in East Africa. The Firm's founding member, **Philip M. Musolino**, has been responsible for all matters relating to the bombing since 1998. Mr. Musolino practices extensively in three areas: complex civil litigation in the United States, principally in the District of Columbia; international law, with a focus on Africa, Eastern Europe, and Western Europe; and domestic and international transactional work.

The Firm represents hundreds of victims of the embassy bombing, that representation has involved extensive work in two areas: Litigation in U.S. Federal Courts; and (2) Legislation in both the United States and Kenya. In May 2022, the Firm secured judgments totaling \$56.6 billion against Al Qaeda for 351 Kenyan victims, and secured landmark rulings which may be used by other victims. Since securing those judgments, the Firm has had hundreds of contacts with U.S. government officials and media in support of proposed U.S. legislation drafted by the Firm in support of the Kenyan victims. Many of the details of that work can be found in the Database at **Appendix A** ("Litigation") and at **Appendix B** ("Legislation").

The Firm has been working with the following professionals and/or organizations: **Joseph Szlavik** of Scribe Strategies & Advisors, Inc.; **Caroline Muthoka** of both the **Baraka Care Foundation, LLC**, and the **Consortium of 7th August 1998 Victims** (the "Consortium"); **Ramona Tascoe, MD, MHSA, MDiv**; **Melvin Foote** of the **Constituency for Africa**; and **Daniel Ngure**.

B. The Team Working With Musolino & Dessel PLLC:

Joseph Szlavik has a diverse background in policy analysis and government affairs. He worked at the White House during the first Bush Administration, fulfilling roles as a policy analyst in the Office of Policy Development and as a liaison with the Office of Cabinet Affairs and the Office of Legislative Affairs. In 1992, he established Scribe Strategies & Advisors, Inc., a consultancy dedicated to helping both domestic and international clients achieve their legislative, regulatory, communications, business development, and technology goals. With expertise in navigating political landscapes and economic conditions, Mr. Szlavik and his team excel at lobbying, forging alliances with business groups, and devising comprehensive media and communications strategies that incorporate cutting-edge internet technology.

Caroline Muthoka is a world-renowned and award-winning gospel singer, activist, and survivor of the 1998 embassy bombing. Ms. Muthoka's song, Poleni, was written in memoriam of the August 7, 1998, attack. She has dedicated her life to promoting peace, love, and unity. Ms. Muthoka's organization – Baraka Care Foundation, LLC – works to provide "...services and training for disaster emergency preparedness...and address the suffering of the silent victims of such calamities."

Ms. Muthoka has been a leader for decades in the efforts in the United States and Kenya to achieve compensation and aid for the victims of the bombing and for their families. She is the force behind the Consortium.

Dr. Ramona Tascoe is an accomplished African American physician, ordained minister, and dedicated humanitarian with a longstanding commitment to assisting victims. Since 1998, she has been actively involved in various initiatives. In 1979, she earned a medical degree and Master of Public Administration from UC San Francisco, along with a Master of Divinity from Berkeley's

Graduate Theological Union. She was subsequently ordained under the American Baptist and Progressive National Baptist Ministry. With a focus on internal medicine, Dr. Tascoe has served as a specialist in Oakland for many years. She has also led numerous medical missions to countries including Kenya, Tanzania, the Democratic Republic of Congo, Angola, India, and Sri Lanka and has worked for the victims since 1998, individually and with Chester House Bomb Blast Recovery and the California law firm of Burris Nisenbaum Curry & Lacy.

Melvin Foote is a pioneering expert in African Affairs, with over 35 years of experience and work in over 30 African countries. Mr. Foote served as a U.S. Peace Corps Volunteer, teacher, and held significant positions with Africare. He founded the Constituency for Africa ("CFA") in 1990, establishing a global network committed to advancing Africa's progress and empowerment. His extensive involvement in high-level missions to Africa, numerous awards, and recognition testify to his outstanding commitment and achievements in addressing African concerns.

Daniel Ngure is the lead consultant at Ngure Consulting, an international business, cultural competency, and event management company based in Atlanta, GA. He studied Economics and Marketing and has worked as a consultant both in the U.S.A. and abroad. He assists organizations and individuals in developing cultural competency and creating inclusive environments suitable both for the organization and clients globally. Mr. Ngure has contributed critical guidance and advice on matters related to Kenyan government, politics, history, and culture.

The victims of the bombing are informally represented by Ms. Muthoka and the following six women:

Catherine Bwire, on behalf of the Blinded Victims Group, is a mother of one, Jean Bahati. She was pregnant with her when the bomb blast occurred in 1998. She permanently lost her vision as a result of that terrorism. She has been struggling to bring up her daughter as a single mother. Life has never been the same again for her and her child. Her husband abandoned her after the bombing and left her for dead. She struggles to go to work, needing someone to guide her as she walks through the Nairobi City streets going to work. "I still cannot see my future, except I am seeing it will be difficult, but it will be possible."

Lilian Mutua, on behalf of the Pregnant Victims is a survivor of the 1998 bomb blast. Lilian was 8 months pregnant and working at the Teachers Service Commission on the 12th floor when the blast occurred, causing both internal and external injuries. Since then, Lilian has undergone numerous surgeries and faced many challenges, including the premature birth of her children and the loss of her job.

Grace Nyawira Njoroge, on behalf of the Orphans Victims Group, is a survivor of the 1998 terrorist bomb attack. The loss of her father in the attack, who was the sole breadwinner of the family, and the subsequent death of her stepmother from illness and COVID-19, drastically altered her family's life trajectory and forced her to put aside her education to work and support her family.

Safula Abdi Mwilu, on behalf of the Widows Victims Group, is a retired professional Community Worker and a widow of the 1998 Nairobi bombing, where she lost her husband and was left to care for their three children. Despite her own struggles, she remains committed to giving back to her community by volunteering in various community works and distributing food and clothing to those in need.

Leonore Atieno, on behalf of the Teachers Victims Group, is a survivor of the 1998 bomb blast, where she sustained multiple injuries to her face, shoulder, right hand, and legs. She lives with chronic pain and requires expensive medication.

Lilian Ngeno, on behalf of the Tana and Arthi Rivers Development Authority Survivor's Coordinator was working on the 19th floor of the adjoining building when the US Embassy was attacked. This traumatic event not only affected her physically, but also emotionally, psychologically, and financially, leaving lasting scars on her life and relationships. She has learned to focus on the present and to strive for a positive future. Her hope is that her "story can inspire others to persevere in the face of adversity and to appreciate the precious gift of life."

PART TWO: SUMMARY

1. On August 7, 1998, hundreds of Kenyans died, and thousands suffered physical and psychological injuries when the United States Embassy in Nairobi was attacked by Al Qaeda. As the U.S. acknowledged that day, with this Embassy "we gambled and lost."
2. The lawyers at the Washington, D.C. law firm of Musolino & Dessel, PLLC secured in May 2022 judgments in the aggregate amount of \$56.6 billion against Al Qaeda on behalf of 351 Kenyan Plaintiffs. That judgment was finalized in May 2022.
3. During decades of litigation up to the US Supreme Court, the Firm secured landmark rulings including the following: (a) the attack was directed at the United States and its Embassy and citizens, not at Kenya or its citizens; (b) Form 95's, which were filed with the U.S. State Department by thousands of Kenyan victims within one year of the bombing, could be used as evidence by U.S. Federal Courts of injuries sustained by the victims; (c) the emotional and psychological damages, including fear and PTSD, were sustained by all victims; (d) a bellwether hearing in which representative victims and experts testified would be applicable to non-testifying plaintiffs; and (e) compensatory damages for each such victim could fairly be calculated at five million dollars (\$5,000,000.00), in addition to punitive damages of one hundred fifty million dollars (\$150,000,000.00).
4. Other Kenyans have similar claims filed over 20 years ago with, but unaddressed by, the U.S. Department of State. Now, only one month before our Ambassador to Kenya will attend the 25th Commemoration of the attack, America's Kenyan friends, and allies – those who hold judgments and those who don't – and their families remain uncompensated for their losses.
5. There is a Victim Compensation Fund (the "Fund") set up by U.S. Congress which has so far distributed \$3 billion to certain victims of terrorist attacks against the U.S. But, because of the way the statute is worded, the Kenyan victims are not eligible to participate in the Fund.
6. Musolino & Dessel, PLLC as FARA Registrant for the Designated Victims of the 1998 Embassy Bombings, with Joseph Szlavik of Scribe Strategies & Advisors, Inc.; Melvin Foote of the Constituency for Africa; and Daniel Ngure, and FARA Registrant Dr. Ramona Tascoe, are lobbying Congress to pass budget-neutral legislation which, among other provisions, changes the wording of the eligibility requirements so that the victims would be included in future distributions. The U.S. team members, including survivor Caroline Muthoka, have engaged in hundreds of contacts with various officials and media in the U.S. in support of the legislation.
7. Musolino & Dessel, PLLC drafted the language of the proposed U.S. legislation, so that it includes a pathway to compensation for all victims, not just the Firm's judgment holders.
8. President Ruto generally announced his support for the effort during the lead-up to the 2022 Kenyan Presidential Election.

9. By the time of the 25th Commemoration, the U.S. commitment to the victims should be regarded as unfinished business in support of what the U.S. characterizes as its new Africa Policy.
10. From the U.S. foreign policy position, approving the legislation will serve as a concrete example of U.S. support for its friends and allies in Kenya and in East Africa. We strongly believe that this measure will enhance throughout East Africa the U.S. reputation for fairness and trustworthiness. At a time when other nations vigorously challenge our relationships with our friends and allies in Africa, Congress should take this opportunity to affirm our commitment to that critical region and its people.
11. The Kenyan media has been very supportive of the legislation. The Kenyan Diaspora in the U.S. is expected to play an important role in support of the proposed legislation.
12. On February 23, 2023, the Law Firm wrote to the U.S. Office of the First Lady and, noting news reports of the First Lady's upcoming visit to Kenya, asked that the First Lady visit the Peace Memorial in Nairobi. On February 25, 2023, First Lady Dr. Jill Biden paid a solemn visit to the Peace Memorial.
13. On March 30, 2023, Vice President Harris visited the Memorial in Dar Es Salaam, Tanzania.
14. On April 24, 2023, U.S. Secretary of State Blinken issued a statement outlining the importance of Kenya to U.S. foreign policy in Africa.
15. On June 29, 2023, the Kenyan Senate passed by unanimous vote a bill proposing the creation of an ad hoc committee of nine Senators to
 - (i) engage the Ministry of Foreign and Diaspora Affairs to advance friendship and cooperation between the United States of America and Kenya by supporting the eligibility of Kenyan and American victims and their personal representatives, surviving spouses and next of kin in the Victim Compensation Fund pursuant to the Justice for United States Victims of State Sponsored Terrorism Act;
 - (ii) coordinate with the Ministry of Foreign and Diaspora Affairs in the engagement of victims, their personal representatives, the United States of America government, and other stakeholders at home and abroad to pursue and accomplish the compensation of victims and families of the victims of Kenyan nationals; and,
 - (iii) coordinate with the Ministry of Health to explore subsidized medical treatment for the surviving victims of the bomb blast.

PART THREE: THE 1998 ATTACK AND ITS HORRENDOUS IMPACT ON KENYANS

According to the State Department's 1999 Report of the bombing, the Embassy bombing took place as follows:

At approximately 10:30 AM on Friday, August 7, 1998, two vehicle bombs detonated nearly simultaneously at United States embassies in Dar Es Salaam, Tanzania and Nairobi, Kenya.



All photos in this section courtesy of Partners New York Times

The United States Embassy in Nairobi, Kenya was located on a half-acre site in downtown Nairobi at the busy intersection of two main thoroughfares, Moi, and Haille Selassie Avenues. Behind the embassy was the four-story Ufundi Cooperative House, with numerous offices and a secretarial school, and the 23-story high-rise Cooperative Bank building...

At the rear of the embassy was a parking lot shared with the adjacent Cooperative Bank...



[After entering the parking area], one of the terrorists began shooting at the chancery and the other tossed a flash grenade at the guard.... Approximately 10 seconds after the grenade exploded, the bomb in the vehicle detonated.... The explosion killed 213 people,

including 44 embassy employees.... Many of these fatalities were due to occupants going to the windows after the grenade exploded to see what was happening outside.

Other casualties were pedestrians and motorists in the crowded streets next to the embassy. Vehicles caught fire.... 20 persons were blinded, and 50 have severely limited sight from

lacerations incurred from flying shards of glass; the actual count of eye injuries is in the hundreds, but the severity of many will not become apparent for some time. The shock of the explosion broke glass in buildings and vehicles within at least a quarter-mile radius. The collapse of the Ufundi building confirms the extreme hazard posed by building collapse. The majority of the fatalities were persons trapped and crushed under the weight of the building after falling several stories....



Given the types of injuries most prevalent in these incidents, non-penetrating fragment impact is probably the most appropriate injury model for severe injuries. A radius of 200 feet indicates that all people within a one-half block radius (not protected by buffering walls) were vulnerable to injury from flying debris.... For glass injuries, the radius is 1000 feet. Reports indicate that injuries due to glass fragments extended somewhat further out than this model predicts.

That report, as further investigation revealed over the years, overlooked many of the facts and factors which led to the attack, and understated in great degree the loss, suffering and injury sustained by Kenyans and Americans.

On the day of the attack, the U.S. State Department acknowledged its "failure," and grappled with the recognition that, with the Nairobi Embassy, the U.S. had "gambled and lost." Again and again since the attack, U.S. and Kenyan officials express surprise that the tragic plight of the victims and their families has not been addressed. But, with very few exceptions, it has not.

In his findings, Magistrate Judge Facciola described the bombing as "...one of the most grotesque and depraved acts imaginable." The Court accepted Plaintiffs' expert testimony that "...each victim of the Embassy bombing suffered long-term or permanent psychological injury from the scenes



that they observed during the bombing and in its aftermath [and] the victims of the bombing suffered the effects of post-traumatic stress disorder [and] each victim of the Embassy bombing sustained material, significant emotional, psychological and financial injury, whether he suffered a physical injury or not."

Of the horrors inflicted on the families who lost spouses, parents and children, there is little



to choose between the gruesome searches of the wreckage, and then the overwhelmed hospitals, and finally the gruesome morgues, and the familial, emotional, and financial destruction of families who had been enjoying lives free from of international terror.

The largest group of victims were members of Kenya's Teachers Service Commission. Over 300 teachers and school administrators were attending a conference on the upper floors of the building adjoining the embassy and lost their lives or suffered serious injuries from the terrorist attack. In addition to the educators, over one hundred Kenyans were orphaned, many Kenyan

women were widowed, suffered miscarriages or other birth complications, and hundreds more Kenyans were blinded or suffered serious vision loss.

One young widow explained to the U.S. Court how the loss of her husband led to the loss of her home, her children's schooling, her career, and her ability to provide for them. She told the Court that "[i]n the morning of the Embassy bombing, their lives were "very happy. Nothing



seemed like would go wrong...." She was pregnant with their second child on the day that her husband died. A young widower told the Court that this wife could only be recognized in the morgue by a fabric from the new dress he had just bought her. He testified:

We arrived there and entered the cold rooms where the bodies are kept. And it was a scene you would not want to ever see again. It was a scene, it's something that even today makes one shiver with fear. Those bodies were aligned in rows. Others were heaped. And even in (em)bracing with your next of kin, it was (a) very, very, very hard task. So I went from one side to the other looking for her. And on the way, there were hundreds and hundreds of bodies badly mutilated. Badly, badly, badly mutilated. Some had no limbs, some had no heads, some had their stomachs opened. Some had, some were crushed to something very tiny.... And at the end, I saw where she was....

Burdened by his inexplicable ordeal, he lost his work, and eventually, his family. Thousands of Kenyans have for decades endured similar fates, worsened by the sense that they were forgotten among the great international issues that come and go.

American courts provided some awareness in 2022. Now, one month before the 25th Commemoration of the attack, the Kenyan Senate offers hope to the victims and their families that their decades-long burden will finally be lifted.

PART FOUR: THE FEDERAL LITIGATION IN WASHINGTON

Commencing in 1998, the Firm – having sought and received the approval of the Law Society of Kenya – and other American law firms assisted Kenyan victims with the filing at the U.S. Department of State (“DOS”) of administrative claims with the United States. Those written claims were made through the use of a U.S. government “Form 95.” Thousands of such forms were timely filed and have never been disposed of by DOS or by the United States Government. The administrative claims – and thus the Form 95’s – are procedural requirements for the bringing of claims against the United States under the Federal Tort Claims Act.

In 1999, the Firm filed on behalf of hundreds of individually-named Kenyans, in the United States District Court for the District of Columbia (the “District Court”), the first of several lawsuits against the United States, Osama bin Laden, Al Qaeda, Afghanistan, and Sudan. The Firm was given access by DOS to thousands of pages of its internal documents, but over years of litigation, the only claims that survived defenses of sovereign immunity were the claims against Al Qaeda and bin Laden. Those claims were initially dismissed because the district court concluded that it lacked jurisdiction over either foreign defendant.

On appeal, however, in 2005, the United States Court of Appeals for the District of Columbia Circuit reversed that ruling, finding, and concluding that, because the attack was directed at the United States, the district court had jurisdiction over the two remaining defendants. As the Court of Appeals wrote:

Those defendants engaged in unabashedly malignant actions directed at and felt in this country. Bin Laden and al Qaeda should therefore reasonably anticipate being haled into court here by those injured as a result of those actions, regardless of the plaintiffs’ nationality. (internal citations, quotation marks, and brackets omitted)

The case was thus remanded to the district court so that proceedings against Al Qaeda and Osama bin Laden could continue.

Over the succeeding years, the District Court addressed complex issues related to choice of law, service of process, personal jurisdiction, default, jury demands, and proof of damages. The District Court granted the Firm's request for a bellwether hearing – that is, a hearing with representative samples of groups of victims, accompanied by expert testimony.

In 2011, the District Court presided over an evidentiary hearing in which eight victims, and expert witnesses, testified. In 2014, Magistrate Judge Facciola issued his Findings of Fact and Conclusions of Law, and entered judgments in favor of many, but not all, of the hundreds of plaintiffs named in the lawsuit.

As noted on the preceding section, the District Court determined that each eligible personal injury plaintiff suffered long-term and likely permanent, emotional, and psychological injuries, and the Court calculated the approximate monetary value of those injuries individually at five million dollars (\$5,000,000.00). The Court also awarded punitive damages of one hundred fifty million dollars (\$150,000,000.00) per victim.

Thus, during decades of litigation up to the U.S. Supreme Court, the Firm secured landmark rulings including the following: (a) the attack was directed at the United States and its Embassy and citizens, not at Kenya or its citizens; (b) Form 95's, which were filed with the DOS by thousands of Kenyan victims within one year of the bombing, could be used as evidence by U.S. Federal Courts of injuries sustained by the victims; (c) the emotional and psychological damages, including fear and PTSD, were sustained by all victims; (d) a bellwether hearing in which representative victims and experts testified would be applicable to non-testifying plaintiffs; and (e) compensatory damages for each such victim could fairly be calculated at five million dollars (\$5,000,000.00), in addition to punitive damages of one hundred fifty million dollars (\$150,000,000.00).

In 2022, a new Magistrate Judge, after a scrupulous review of the long record, the Form 95's and accompanying evidence, and prior rulings, approved final judgments for 351 Kenyans against Al Qaeda in the total amount of fifty-six billion, six hundred thirty-seven million, seven hundred twenty-nine thousand, seven hundred dollars (\$56,637,729,700.00).

Though the ability to directly collect funds from those judgments, is extremely limited, the judgments and the rulings which led to the judgments are the fountainhead for legislative efforts in the United States brought for all victims. As the following section sets out, those judgments and the U.S. legislative efforts are the reason for and the noble goal of the creation of the *Ad Hoc* Committee.

PART FIVE: THE PROPOSED U.S. LEGISLATION

Following receipt of the final judgments, the Firm registered with the Office of the United States Department of Justice under the Foreign Agents Registration Act ("FARA") as lobbyists for Kenyan victims of the 1998 bombing. The Firm disclosed that it would be working with Mr. Szlavik of Scribe Strategies & Advisors, Inc., and Mr. Foote of CFA. The Firm later added Mr. Ngure. Dr. Tascoe registered separately.

We are proposing to Congress simple budget-neutral amendments through the Victims of Terrorism Rights Act. Its principal purpose is to make the Kenyan victims of the 1998 attack eligible to participate in the U.S. Victims of Terrorism Compensation Fund (the "Compensation Fund" and/or the "Fund"). The proposed legislation is narrowly tailored, easily administered, and is well-suited for inclusion under the NDAA, the Department of State Authorization Act, or as part of a budget bill.

The Compensation Fund was created in 2014 as part of omnibus budget legislation. Because it derives its funding from fines and penalties secured by the Department of Justice, the Fund is structurally budget neutral. The Fund is not and has not been limited to American victims; instead, it applies to judgment-holding victims of state-sponsored terrorist attacks directed against the United States. Though the Department of Justice declines to disclose the identifying details of any distributions, the Fund appears to have received and distributed three billion dollars (\$3,000,000.00) from the Department of Justice to date.

The Firm's proposed U.S. legislation provides several benefits to judgment holders and others, but its main provisions (1) provide a pathway for all victims to become eligible in the Fund; and (2) formalize requirements for continuing contributions to the Fund by the Department of Justice.

Section 4202 of the proposed U.S. legislation describes its purpose as: "... to strengthen the cooperation between the United States and Kenya and between the United States in the fight against terrorism by establishing the eligibility of the Kenyan victims and their personal representatives, surviving spouses, and next of kin in the Victim Compensation Fund pursuant to the Justice for United States Victims of State Sponsored Terrorism Act...."

Section 4303(a)(7) of the proposed legislation makes eligible for the Fund every "... citizen or resident of Kenya or the United States who was injured or who sustained a loss as a result of the 1998 Embassy Bombings and the personal representative or surviving spouse or next of kin of a citizen or resident of Kenya or the United States who was injured or who sustained a loss as a result of the 1998 Embassy Bombings..." and provides for a conclusive presumption that eligible claimants sustained injury and damages in the amount of the Damages Award in the Litigation.

The Firm emphasizes that the Damages Award that the Firm secured for many of its clients after decades of litigation should not be viewed by any victim as an indicator of the range of possible distributions. It is not. Just as the 9/11 victims have received only fractions of their damages so far, the proposed U.S. legislation makes possible similar fractional distributions to Kenyan victims. But the proposed legislation and the Fund finally provide a vehicle for continuing, long-overdue compensation for innocent victims who are no longer forgotten.

July 6, 2023

Philip M. Musolino

**APPENDIX TO OPENING REPORT
FOR THE
KENYAN SENATE *AD HOC* COMMITTEE ON
THE COMPENSATION TO THE KENYAN
VICTIMS OF THE 1998 BOMBING OF THE
UNITED STATES OF AMERICA EMBASSY IN
NAIROBI**

Presented by Philip M. Musolino and Musolino & Dessel, PLLC

**DATABASE – LITIGATION:
Appendix A**

1. U.S. District Court for District of Columbia – Odillia Mutaka Mwani, et al. v. Al Qaeda, et al. (No. 99-CV-00125):
 - i. *Odillia Mutaka Mwani, et al. v. Al Qaeda, et al.* (99-CV-125) Docket M&D_00001 - M&D_00043
 - ii. 99-04-30 First Amended Complaint M&D_00044 - M&D_00193
 - iii. 99-04-30 Form 95, et al. M&D_00194 - M&D_01122
 - iv. 10-01-07 Opinion and Order Regarding Choice of Law M&D_01123 - M&D_01131
 - v. 10-01-25 Plaintiffs' Brief Pursuant to Order of January 7, 2010 M&D_01132 - M&D_01216
 - vi. 13-05-29 Memorandum Opinion and Order M&D_01217 - M&D_01225
 - vii. 14-08-22 Memorandum Opinion and Order M&D_01226 - M&D_01230
 - viii. 14-09-25 Findings of Fact and Conclusions of Law M&D_01231 - M&D_01261
 - ix. 14-09-25 Judgment M&D_01262
 - x. 14-11-18 Second Findings of Fact and Conclusions of Law M&D_01263 - M&D_01275
 - xi. 14-11-18 Second Judgment M&D_01276 - M&D_01285
 - xii. 21-08-31 Plaintiffs' Motion for Relief With Respect to the Sudan Claims Resolution Act and With Respect to Assets Held by OFAC M&D_01286 - M&D_01331
 - xiii. 22-05-23 Final Judgments M&D_01332 - M&D_01342
2. U.S. Court of Appeals for District of Columbia Circuit – Merania Muringu Macharia, et al. v. United States (No. 03-562):
 - i. 03-10-09 Petition for Writ of Certiorari M&D_01343 - M&D_01483
 - ii. 04-01-20 Denial of Petition for Writ of Certiorari M&D_01484
3. U.S. Court of Appeals for District of Columbia Circuit – Odilla Mutaka Mwani, et al. v. Osama Bin Laden and Afghanistan (No. 04-5266):
 - i. 04-11-22 Appellants' Brief M&D_01485 - M&D_01529
 - ii. 05-01-05 Appellants' Reply Brief M&D_01530 - M&D_01546
 - iii. 05-08-05 Judgment M&D_01547
 - iv. 05-08-05 Opinion M&D_01548 - M&D_01575

**DATABASE – LEGISLATION:
Appendix B**

1. Draft U.S. Legislation:

- | | |
|---|-----------------------|
| i. 23-01-03 United States Victims of State Sponsored Terrorism Fund Special Master's Report Regarding the Fourth Distribution | M&D_01576 - M&D_01589 |
| ii. 23-06-30 1998 Embassy Bombing Litigation and Legislation Package | M&D_01590 - M&D_01661 |
| iii. 23-07-03 Proposed U.S. Legislation | M&D_01662 - M&D_01667 |

2. Foreign Agents Registration Act (FARA):

- | | |
|---|-----------------------|
| i. 22-03-21 FARA Registration, et al. | M&D_01668 - M&D_01698 |
| ii. 22-10-03 FARA Supplemental, et al. | M&D_01669 - M&D_01941 |
| iii. 23-04-28 FARA Supplemental, et al. | M&D_01942 - M&D_02006 |

3. Kenyan Legislation:

- | | |
|--|-----------|
| i. 23-06-23 Notice of Ad Hoc Committee | M&D_02007 |
| ii. 23-06-29 Kenyan Senate Proceeding | |

4. A. Press Release:

- | | |
|---------------------------------|-----------------------|
| i. 23-02-07 M&D Press Release | M&D_02008 - M&D_02009 |
| ii. 23-02-16 M&D Press Release | M&D_02010 |
| iii. 23-02-23 M&D Press Release | M&D_02011 - M&D_02012 |

B. Statements of Support:

- | | |
|--|-----------------------|
| i. 22-01-25 Hope for 1998 Blast Victims as US Law Firm Asks Them to Reach Out - The Star | M&D_02013 - M&D_02014 |
| ii. 22-03-25 Victims of Nairobi Embassy Attack Register to Lobby - Politico | M&D_02015 - M&D_02017 |
| iii. 22-05-30 Kenya - Raila, Ruto Seek US Compensation for 1998 Embassy Bombing Victims - The Africa Report | M&D_02018 - M&D_02023 |
| iv. 22-08-04 Law Firm Representing Hundreds of Kenyan Victims of the 1998 Terrorist Bombing By Al Qaeda Writes White House Spokesman John Kirby Over Heated Exchange With Journalist Simon Ateba - Today News Africa | M&D_02024 - M&D_02029 |
| v. 22-08-07 Its 24 Years Today Since Al Qaeda Bombed Two US Embassies in Kenya and Tanzania Killing 224 Americans and Africans on August 7, 1998 - Today News Africa | M&D_02030 - M&D_02036 |
| vi. 22-08-07 US Firm Wants Kenyan Victims of 1998 Attack Compensated - The Nation | M&D_02037 - M&D_02038 |

vii. 23-02-26 US First Lady's Visit Renews Hope for Embassy Bomb Victims

M&D_02039 - M&D_02041

viii. 23-02-26 Joyce Omondi Statement

M&D_02042

5. Correspondence:

i. 22-04-21 PMM Ltr. to Senator Coons

M&D_02043 - M&D_02044

ii. 22-04-21 PMM Ltr. to Congressman Meeks

M&D_02045 - M&D_02046

iii. 22-04-21 PMM Ltr. to Chief of Staff Waita

M&D_02047 - M&D_02048

iv. 22-04-21 PMM Ltr. to Charge d'Affaires Kneedler

M&D_02049 - M&D_02050

v. 22-05-04 PMM Ltr. to Senator Warnock

M&D_02050 - M&D_02070

vi. 22-05-04 PMM Ltr. to Congresswoman McBath

M&D_02071 - M&D_02090

vii. 22-05-04 PMM Ltr. to Congresswoman Bourdeaux

M&D_02091 - M&D_02110

viii. 2-05-04 PMM Ltr. to Congressman Meeks

M&D_02111 - M&D_02130

ix. 22-05-04 PMM Ltr. to Charge d'Affaires Kneedler

M&D_02131 - M&D_02150

x. 22-08-04 PMM Ltr. to Kirby

M&D_02151 - M&D_02169

xi. 23-02-07 PMM Ltr. to Sen. Dir. Devermont

M&D_02170 - M&D_02179

xii. 23-02-07 PMM Ltr. to Sec. Blinken

M&D_02180 - M&D_02181

xiii. 23-02-07 PMM Ltr. to First Lady Biden

M&D_02182 - M&D_02194

xiv. 23-02-23 PMM Email to Office of First Lady Jill Biden

M&D_02195 - M&D_02196

xv. 23-03-21 PMM Ltr. to First Lady Jill Biden

M&D_02197 - M&D_02199



FIFTEEN IMPORTANT POINTS ON U.S. LITIGATION AND PROPOSED U.S. LEGISLATION ON BEHALF OF THE 1998 EMBASSY BOMBING VICTIMS

1. The lawyers at the Washington, DC law firm of Musolino & Dessel, PLLC have secured judgments in the aggregate amount of \$56.6 billion against Al Qaeda on behalf of 351 Kenyan Plaintiffs. That judgment was finalized in May 2022. Details of the litigation are set out in Section A of **Attachment 1**, the Findings of Fact and Conclusions of Law are appended as **Attachment 2**, the Final Judgment is appended as **Attachment 3**.
2. Other Kenyans and Tanzanians have similar claims filed over 20 years ago with, but unaddressed by, the U.S. Department of State. Now, only six months before our Ambassador to Kenya will attend the 25th commemoration of the attack, our Kenyan and Tanzanian friends, and allies – those who hold judgments and those who don't – and their families remain uncompensated for their losses.
3. There is a Victim Compensation Fund (the "Fund") set up by U.S. Congress which has so far distributed \$3 billion to certain victims of terrorist attacks against the U.S. But, because of the way the statute is worded, the Kenyan victims are not eligible to participate in the fund.
4. Musolino & Dessel, PLLC with Joseph Szlavik of Scribe Strategies & Advisors, Inc.; Melvin Foote of the Constituency for Africa; Dr. Ramona Tascoe; and Daniel Ngure are lobbying Congress to pass budget-neutral legislation which changes the wording of the eligibility requirements so that the victims would be included in future distributions. Highlights of the proposed legislation are set out in Section B of Attachment 1, and the text of the proposed U.S. legislation is set out in **Attachment 4**.
5. Musolino & Dessel, PLLC drafted the language of the proposed legislation, so that it includes a pathway to compensation for all victims, not just the firm's judgment holders.
6. President Ruto generally announced his support for the effort during the lead-up to the 2022 Kenyan Presidential Election.
7. By the time of the 25th Commemoration, the U.S. commitment to the victims should be regarded as unfinished business in support of what the U.S. characterizes as its new Africa Policy.
8. From the U.S. foreign policy position, approving the legislation will serve as a concrete example of U.S. support for its friends and allies in Kenya and in East Africa. We strongly believe that this measure will enhance throughout East Africa the US reputation for fairness and trustworthiness. At a time when other nations vigorously challenge our relationships with our friends and allies in Africa, Congress should take this opportunity to affirm our commitment to that critical region and its people.
9. The Kenyan media has been very supportive of the legislation. Outreach has begun within the U.S. media and the Kenyan Diaspora in the U.S. is expected to play an important role in support of the proposed legislation.
10. On February 23, 2023, Kenyan Senator Agnes Kavindu Muthama introduced today an oral motion urging the Kenyan government to support U.S. legislation designed to make Kenyan victims of the

1998 bombing of the United States embassy in Nairobi eligible to participate in a U.S. Victims Compensation Fund. **See Attachment 5.**

11. On February 25, 2023, First Lady Dr. Jill Biden visited the Peace Memorial in Nairobi. **See Attachment 6.**
12. On March 30, 2023, Vice President Harris visited the Memorial in Dar Es Salaam.
13. On March 21, 2023, seven women who represent classes of Nairobi bombing victims wrote to First Lady Dr. Jill Biden requesting a meeting in Washington. **See Attachment 7.**
14. On April 24, 2023, US Secretary of State Blinken issued a statement outlining the importance of Kenya to U.S. foreign policy in Africa. **See Attachment 8.**
15. Mr. Musolino is currently scheduled to meet with Kenyan Government Officials from May 16, 2023, through May 20, 2023, in Nairobi.

KENYAN AND TANZANIAN ELIGIBILITY IN THE U.S. VICTIM COMPENSATION FUND FOR THE 1998 EMBASSY BOMBINGS IN EAST AFRICA

A. The U.S. Litigation:

In 1999, Musolino & Dessel filed suit on behalf of hundreds of Kenyans against Al Qaeda and others for the reprehensible attack in 1998 on the U.S. Embassy in Nairobi Kenya. In 2006, Judge Kollar-Kotelly granted our motion for entry of default against Al Qaeda. In 2011 Magistrate Judge Facciola held a bellwether evidentiary hearing. In 2014, Magistrate Judge Facciola accepted Plaintiffs' arguments and the testimony of Plaintiffs' fact and expert witnesses and concluded that the psychological and emotional injuries from the attack were applicable to all Plaintiffs including those Plaintiffs who did not provide testimony. Non-final judgments were issued at that time.

In his findings, Magistrate Judge Facciola described the bombing as "...one of the most grotesque and depraved acts imaginable." The Court accepted Plaintiffs' expert testimony that "...each victim of the Embassy bombing suffered long-term or permanent psychological injury from the scenes that they observed during the bombing and in its aftermath [and] the victims of the bombing suffered the effects of post-traumatic stress disorder [and] each victim of the Embassy bombing sustained material, significant emotional, psychological and financial injury, whether he suffered a physical injury or not."

On May 20, 2022, after 23-years of litigation in trial and appellate courts in the U.S., Musolino & Dessel obtained final judgments in U.S. District Court for the District of Columbia in favor of 351 of our Kenyan clients against Al Qaeda. Each judgment was in the amount of \$5 million in damages, plus prejudgment interest and \$150 million in punitive damages, for a total of \$56.6 billion.

B. The Proposed U.S. Legislation:

We are proposing to Congress simple **budget-neutral** amendments through the Victims of Terrorism Rights Act. Its principal purpose is to make the Kenyan and Tanzanian victims of the 1998 attack eligible to participate in the U.S. Victims of Terrorism Compensation Fund. The proposed legislation is narrowly tailored, easily administered, and is well-suited to inclusion in the NDAA, the Department of State Authorization Act, or as part of a budget bill.

Section 4202 of the proposed legislation describes its purpose as: "...to strengthen the cooperation between the United States and Kenya and between the United States and Tanzania in the fight against terrorism by establishing the eligibility of the Kenyan, Tanzanian and American victims and their personal representatives, surviving spouses and next of kin in the Victim Compensation Fund pursuant to the Justice for United States Victims of State Sponsored Terrorism Act...."

Section 4303(a)(7) of the proposed legislation makes eligible for the Fund every "...citizen or resident of Kenya, Tanzania or the United States who was injured or who sustained a loss as a result of the 1998 Embassy Bombings and the personal representative or surviving spouse or next of kin of a citizen or resident of Kenya, Tanzania or the United States who was injured or who sustained a loss as a result of the 1998 Embassy Bombings..." and provides for a conclusive presumption that eligible claimants sustained injury and damages in the amount of the Damages Award in the Litigation.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ODILLA MUTAKA MWANI, *et al.*,

Plaintiffs,

v.

Civil Action No. 99-125 (JMF)

AL QAEDA,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

From January 31 through February 2, 2011, the Court conducted a “bellwether” trial¹ on damages.² Although the total number of plaintiffs in this case is 523,³ only the claims of the following eight plaintiffs went to trial: 1) Abel Mutego Nijru; 2) Felistus Njeri Thuo; 3) Castro Otiende; 4) Protus Manyasa Buluma; 5) Dipak L. Shah; 6) Wilfred Nderitu; 7) Charles Makori Mogi; and 8) Kioko Muema. Testimony was taken via videoconference from Nairobi, Kenya, and the Court admitted the following exhibits into evidence: 1) Photographs (Plaintiffs’ Exhibit (“PX”) 1); 2) Video of Bombing Site August 7, 1998 (PX 2); 3) April 9, 1999 Report from the Department of State, captioned “The Bombings of the United States Embassies in Dar Es Salaam, Tanzania and Nairobi, Kenya” (PX 3); 4) January 8, 1999 Accountability Review

¹ “In a bellwether trial procedure, a random sample of cases large enough to yield reliable results is tried to a jury. A judge, jury, or participating lawyers use the resulting verdicts as a basis for resolving the remaining cases.” Alexandra D. Lahav, *Bellwether Trials*, 76 Geo. Wash. L. Rev. 576, 577 (2008). A bellwether trial may be binding or not binding on the other plaintiffs. If it is binding, the results of the bellwether trial are extrapolated to the other plaintiffs who have similar factual circumstances and/or injuries. *Id.* at 581. This method has been used in other multi-plaintiff cases stemming from terrorist-related events. See *Dammarell v. Islamic Republic of Iran*, 404 F. Supp. 2d 261, 271 n.1 (D.D.C. 2005).

² There are three transcripts of the proceedings: 1) *Transcript of Proceedings on January 31, 2011* [#119]; 2) *Transcript of Proceedings on February 1, 2011* [#118]; and 3) *Transcript of Proceedings on February 2, 2011* [#103].

³ Plaintiffs’ Proposed Findings of Fact and Conclusions of Law [#105] at 29.

Board Report (PX 4); 5) Kiema-Ngunnzi Report: "An Assessment of Recovery Strategies of the 1998 Nairobi Bomb Disaster Victims: A Case Study of Teachers Service Commission" (PX 5); 6) World Psychiatry Study: "Psychological Effects of the Nairobi U.S. Embassy Bomb Blast on Pregnant Women and their Children" (PX 6); and 7) a drawing of the site (PX 7).

On the basis of that evidence, the court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

I. Background

1. On August 7, 1998, Usama Bin Laden and Al Qaeda exploded a massive truck bomb at the United States Embassy in Nairobi, Kenya. Mwani v. bin Laden, 417 F.3d 1, 4 (D.C. Cir. 2005).

2. According to the State Department's 1999 Report of the bombing, the incident took place as follows:

At approximately 10:30AM on Friday, August 7, 1998, two vehicle bombs detonated nearly simultaneously at United States embassies in Dar Es Salaam, Tanzania and Nairobi, Kenya. The United States Embassy in Nairobi, Kenya was located on a half-acre site in downtown Nairobi at the busy intersection of two main thoroughfares, Moi and Haille Selassie Avenues. Behind the embassy was the four-story Ufundi Cooperative House, with numerous offices and a secretarial school, and the 23- story high-rise Cooperative Bank building . . .

At the rear of the embassy was a parking lot shared with the adjacent Cooperative Bank . . . (After entering the parking area), one of the terrorists began shooting at the chancery and the other tossed a flash grenade at the guard . . . Approximately 10 seconds after the grenade exploded, the bomb in the vehicle detonated . . . The explosion killed 213 people, including 44 embassy employees . . . Many of these fatalities were due to occupants going to the windows after the grenade exploded to see what was happening

outside.

Other casualties were pedestrians and motorists in the crowded streets next to the embassy. Vehicles caught fire; at least eight bus passengers died. In total, 20 persons were blinded, and 50 have severely limited sight from lacerations incurred from flying shards of glass; the actual count of eye injuries is in the hundreds, but the severity of many will not become apparent for some time. The shock of the explosion broke glass in buildings and vehicles within at least a quarter-mile radius. The collapse of the Ufundi building confirms the extreme hazard posed by building collapse. The majority of the fatalities were persons trapped and crushed under the weight of the building after falling several stories . . .

Given the types of injuries most prevalent in these incidents, non-penetrating fragment impact is probably the most appropriate injury model for severe injuries. A radius of 200 feet indicates that all people within a one-half block radius (not protected by buffering walls) were vulnerable to injury from flying debris . . . For glass injuries, the radius is 1000 feet. Reports indicate that injuries due to glass fragments extended somewhat further out than this model predicts.

PX 3 at 9265, 9273, 9275, 9277-80.

II. Plaintiffs

A. Abel Mutegi Njiru and Felistus Njeri Thuo

1. Njiru was killed in the Embassy bombing. [#119] at 5.
2. Thuo was also killed in the Embassy bombing. [#118] at 46.
3. Both Njiru and Thuo were named as plaintiffs in this action, but must be

dismissed since they, as deceased individuals, lack the capacity to sue. See Adelsberger v. U.S., 58 Fed. Cl. 616, 618 (Fed. Cl. 2003) (“[A] party must have a legal existence as a prerequisite to having the capacity to sue or be sued.”) (citations omitted).

B. Castro Otiende

1. Otiende is 44 years old, married, and has four daughters. [#103] at 48.

2. Otiende received a degree in land economics from the University of Nairobi in 1991. Id. at 50-51. He started work in 1993 in a land appraisal office near the American Embassy. Id. at 52-53.

3. On August 7, 1998, Otiende heard some gunshots and then a small blast. Id. at 57. He believes he lost consciousness and then found himself in the stairwell with others trying to leave the building. Id. at 58. He was bleeding profusely from flying glass that cut his neck and chest. Id. at 57, 59. He then walked to his family doctor, received stitches and took public transportation home. Id. at 60.

4. Despite receiving plastic surgery after the bombing, Otiende suffered permanent scarring from the glass cuts. Id. at 62. He also feels a sharp pain in his ears when he hears a slight noise and is jumpy. Id.

5. Otiende believes that people are afraid of him because of the scarring. Id. at 63. He also believes that some people in Kenya regard him as being unlucky or being bad luck because he was a victim of the Embassy bombing. Id. at 63-64.

C. Protus Manyasa Buluma

1. Buluma is 51 years old, married, and has five children. [#119] at 55, 65.
2. Buluma was raised in western Kenya until he was 15. Id. at 56.
3. Buluma has two brothers and three sisters. Id. at 56-57.
4. Buluma attended grammar school and completed his "A" level studies in seminary. Id. at 58. He then went to the Thomas Aquinas Seminary in Nairobi, and then to Nairobi University, where he received a certificate in religious studies. Id. He subsequently completed certificate courses in management and strategic planning, and community

participation. Id. at 59.

5. In 1985, Buluma took a position as a project coordinator with a non-governmental organization that focused on improving life in the Nairobi slums. Id. at 62.

6. From 1990-1996, Buluma worked as an insurance salesman. Id. at 63.

7. In 1996, Buluma began working for a real estate valuation and property management company. Id. at 64. His office was directly across the street from the American Embassy. Id.

8. Buluma took pride in and enjoyed his work. Id. at 67. He was paid on salary and commissions, so his monthly income fluctuated between 120,000 and 150,000 Kenyan schillings ("KSH"). Id. at 66. He was the sole provider for his immediate family, and consistent with the African custom of the "extended family," also provided financial support to many other family members. Id. at 67-69.

9. Prior to the attack on the Embassy, Buluma was happy and healthy. Id. at 87.

10. At approximately 10:00 a.m. on August 7, 1998, Buluma heard a small blast. Id. at 69. Along with his co-workers, Buluma went to look out the window of their third floor office. Id. at 70. When the second blast came, Buluma was knocked down. Id. Buluma was bleeding from his chest, could not breathe properly, and his eyes "were not working." Id. at 71-72. There was dust, smoke, and blood everywhere. Id. at 72. Everything in the office had fallen down and he and others were crawling on the floor to escape. Id. at 71-72.

11. Approximately 15 to 20 minutes after the second blast, Buluma was pulled out by other people who had been in the building. Id. at 73. He was in pain and tried unsuccessfully to remove pieces of glass from his body. Id.

12. As Buluma was getting on the ambulance, he saw other victims of the blast. Id. at 74-75. About the other victims, he said: "Some of them were in very bad shape, very bad. Some people had their whole face burned, and you could see meat, nothing else." Id. at 75. At the hospital, he saw dead people who had been placed in piles. Id. at 76. He was traumatized by what he saw at the hospital. Id.

13. At the hospital, Buluma was given painkillers and was told to rest. Id. at 78-79.

14. As a result of the bombing, Buluma suffers from headaches and worsening vision. Id. at 81. He has very little vision in his left eye and 20% vision in his right eye, as a result of the glass that was blown into his eyes by the bomb. Id. at 81-82, 95.

15. Buluma saw a psychiatrist for six months after the bombing. Id. at 84. He testified: "Psychological effects is [sic] that actually I feel completely debilitated. I used to work very hard. Now I can't work. I cannot even – nobody can employ me, and I have children I should be supporting." Id. at 85. He suffers from sleeplessness. Id. at 83-84.

16. According to Buluma, a social stigma attaches to an individual who has been involved in an incident like the bombing. Id. at 85-86. He feels he is viewed as being disabled. Id. at 85.

17. After the bombing, Buluma lost his job and can no longer support his family. Id. at 87.

18. Buluma sometimes views himself as a "beggar," because he has to ask for assistance. Id. at 88, 93.

D. Dipak L. Shah

1. Shah was born and raised in Nairobi, and has one brother and one sister. [#119] at 97-98. He is married and has two children. Id. at 98.

2. Shah went to the United Kingdom to pursue a degree in “chemicals and business studies.” Id. at 97. Because his father was ill, Shah returned to Nairobi in 1976, before completing his studies. Id. at 97-98.

3. Upon his return to Nairobi, Shah opened a menswear shop with his brother. Id. at 99. Each brother had a 50% share in the business, called “Cloud Nine.” Id. at 100. It was located around the corner from the American Embassy. Id. at 100.

4. In 1997, the business net annual profits of 500,000 KSH. Id. at 104. In 1998, the business had three employees. Id. at 105. The business had many regular customers, including prominent officials and their families. Id. at 107. Neither Shah nor his brother intended to expand, because they were “quite happy” with the business as it was in 1998. Id.

5. On August 7, 1998, Shah was in the back of the shop. Id. at 108-09. He heard two blasts, and felt a tremor in the floor, like an “earthquake.” Id. at 109-10. The shop windows shattered, and power immediately went out. Id. Shah feared that the building was going to collapse. Id. at 110.

6. After the bombing, Shah was “in a daze.” Id. at 111. When he went outside, Shah saw many other victims of the bombing: “Most of the injuries were [sic] the faces. A lot of glass fell from above, like it was a big shower. Some of the glass was embedded in people’s heads, you know. And a lot of blood.” Id. at 118. He also saw intestines, brains, and eyeballs, and dead bodies. Id. at 118-19.

7. Since the bombing, Shah has had a problem sleeping. Id. at 120. In addition, his psoriasis and diabetes have gotten worse, and he has lost 20 kilos over the past 12 years. Id. He also cannot manage tasks he was able to do before the bombing, such as using a keyboard and texting. Id. Shah also lost interest in social interactions with friends after the bombing. Id. at 121-22.

8. Shah lost his business as a result of the bombing. Id. at 122. He will not go to the movies or other public events because of the fear caused by the bombing. Id. He thinks of the bombing every day. Id. at 119.

E. Wilfred Nderitu

1. Nderitu is a Kenyan attorney who is a survivor of the attack on the American Embassy. [#118] at 2-3. He was born in Nyeri, Kenya. Id. at 3. He is married and has three children. Id. at 5-6.

2. At age 7, he and his family moved to Nairobi. Id. at 3. In 1985, he began attending the University of Nairobi. Id. at 4. In 1998, he received an honors degree in law. Id. He completed one year of post-graduate education in 1989. Id.

3. Nderitu was admitted to the Law Society of Kenya in 1989. Id. at 5. That year, he accepted a position at the Nairobi law firm of Vohra & Gitao. Id. at 6. In 1991, he moved to the firm of AGN Kamao and Kimani. Id. Both firms were general practice law firms that specialized in insurance law. Id. at 7. In 1993, he accepted a position with the UN High Commissioner for Refugees, and he remained there for two years. Id. He then accepted a position as a senior associate with the law firm of Maina Murage & Company Advocates, where he focused on corporate law and property transactions. Id. at 7-8. In 2005, he

commenced post-graduate studies in international human rights law. Id. at 4.

4. Up to that point in his legal career, Nderitu believes he was regarded as hard-working, honest and well-respected. Id. at 8. He had no problems with memory or concentration. Id. at 8-9.

5. Nderitu opened his own practice in 1996. Id. at 9. Initially, he started with a secretary and a shared clerk. Id. at 10. Within two years, his practice had grown to four full-time employees. Id. Nderitu was both the manager and a practitioner. Id. He was, by his own estimate, very focused and very good at organization. Id. at 10-11. In addition to his work with his firm, he has been assigned as defense counsel at the UN International Criminal Tribunal for Rwanda, based in Arusha, Tanzania. Id. at 12.

6. In 1997, Nderitu moved his firm's offices to the seventh floor of the NHC House, overlooking the American Embassy and the Ufundi Cooperative, not more than 30 meters from the Embassy. Id. at 11-12.

7. On August 7, 1998, Nderitu was in his office, on the phone with a client, when he heard a loud explosion. Id. at 14. Immediately after he heard a second blast, he "saw something glittering in the sky." Id. at 15. At that moment, he felt like somebody had cut through the right side of his head: "So, it all happened very, very, very fast. But I felt like, actually, it's like somebody had cut through me with [an] ax or somebody had just grabbed my head and banged it against a stone." Id. The windows, window frames and partitions in his office were destroyed and the power had gone off. Id. at 15-17. After the explosions, he experienced great pain in his ear and also in his back, where pieces of glass had either cut him or were embedded. Id. at 17-18. He was filled with fear. Id. at 19.

8. Nderitu eventually made it downstairs and out of the building. Id. at 18. At that point, he saw other bleeding victims. Id. at 19. A good Samaritan drove him to a hospital, but the hospital could not cope with the flood of patients from the Embassy bombing. Id. at 20-23.

9. Nderitu was placed on a stretcher, but after some time passed, he concluded that he had been forgotten. Id. at 23-24. He was losing blood, and was in great pain, so he got off the stretcher and told a nearby doctor that without any assistance he was going to die. Id. at 24. He was then taken to the operating room, where he received stitches to his head and to his ear, without anesthetic. Id. at 27. The stitching did not stop all of his bleeding. Id. at 28-29.

10. After Nderitu's operation, he was returned to a ward. Id. at 29. However, he was unable to rest because of the overpowering smell of blood and because people searching for missing loved ones kept disturbing him. Id.

11. By the time Nderitu left the hospital, there were six patients in his ward. Id. at 30. Because he wasn't being treated, he snuck out of the hospital and returned home. Id. at 30-31. Blood was seeping through his bandages while he was being driven home. Id. at 31-32. When his one year old daughter saw him, she began crying. Id. at 34.

12. After the bombing, Nderitu was in constant pain and was anxious about his medical condition. Id. at 34-35. He received additional stitches from a private doctor and was unable to work for over a month. Id. at 35-36. He could not rebuild his practice, which was netting about \$2,000 USD per month in profits. Id. at 36-37.

13. As a result of the bombing, Nderitu suffered loss of memory, loss of the ability to retain information, and loss of the ability to concentrate. Id. at 37-39. His administrative abilities are also weaker; he is less efficient, and he must work much harder to perform tasks he

performed easily before the bombing. Id. at 39.

14. Nderitu also finds that he is more irritable and more aggressive since the bombing. Id. at 42.

F. Charles Makori Mogi

1. Mogi is a Kenyan citizen. [#118] at 90. He was born and raised in Kisii, Kenya, which is a small town located approximately 350 kilometers from Nairobi. Id. at 91. When he was 22, he went to India to pursue degrees in economics and labor welfare. Id. at 92. In 1984, he returned to Kenya. Id. First, he worked odd jobs and then he started a successful stationery supply business. Id. at 93.

2. By 1997, Mogi had two full-time employees, had built a house and purchased two cars with the profits from his new business. Id. at 94-95. His office was across the street from the American Embassy. Id. at 95. He was very proud of his business, and planned to expand the business by importing computer parts. Id. In 1998, he lived with his wife and two children in a four bedroom home in Nairobi. Id. at 96.

3. On August 7, 1998, Mogi was in the lobby of his office building when a loud explosion knocked him down. Id. at 99. He saw people bloodied from the explosion running from the Embassy. Id. at 98-99. As a result of the explosion, he was bleeding profusely from his face and was in great pain. Id. at 100.

4. Mogi was carried to a car with others and taken to a hospital, where he was eventually treated and released. Id. at 99-101. As a result of the bombing, he has scarring on his head and chin. Id. at 102.

5. Mogi's business was destroyed by the bombing. Id. at 103. His monthly income

has dropped from \$5,000 to \$1,000. Id. at 105. His health deteriorated and his marriage to his first wife ended. Id. at 105. He must expend 4,000 KSH per month for medication for his high blood pressure and cannot get health insurance. Id. at 103-05.

G. Kioko Muema

1. Muema is a 37-year-old native of Nairobi. [#103] at 3. He and his brother and four sisters were raised by their parents. Id. at 4. In 1998, Muema was in his fourth year at the University of Nairobi. Id. at 5.

2. On the morning of August 7, 1998, Muema was on a public minibus stopped at a traffic light at an intersection by the American Embassy. Id. at 6-7. While waiting for the light to turn green, he heard a small blast, and turned to look in that direction. Id. at 8. After a few moments, he saw blasts of fire. Id. He then felt sharp pain, and felt that something was “very wrong.” Id. at 9. The bus engine switched off, and there was momentary silence. Id. at 9. He began to lose his eyesight and ultimately was the only passenger to leave the minivan. Id.

3. Muema began running on the street, away from the Embassy. Id. at 12. He was afraid that he would be hit by a vehicle. Id. A good Samaritan took him by car to a hospital, where he waited quite a while to be treated. Id. at 13, 15. Horns were blaring and it was “pandemonium.” Id. at 14.

4. By the time Muema arrived at the hospital, he still had not regained his eyesight. Id. at 15. He was worried about the extent of his injuries because he could not personally assess them and other people kept saying, “I’m sorry,” as they passed by. Id.

5. The hospital notified Muema’s parents and when they arrived, they took him to another hospital. Id. at 16. He was admitted immediately upon his arrival but not seen by a

doctor until the following day. Id. at 17-18. Although he could still not see, he could hear his sister crying nearby. Id. at 118. After he was discharged from the second hospital, the doctors recommended that he see an American eye specialist who was working at a different hospital. Id. at 20-21.

6. After being discharged from the second hospital, Muema was examined by the American eye specialist at a third hospital. Id. at 24. The following day, he underwent exploratory eye surgery. Id. at 25. He recalls that it was “the most excruciating pain” he had ever felt. Id. at 26. While under a local anesthetic, he thought: “[T]hree days ago I was perfectly well and right now people are opening up my eye.” Id. at 27.

7. The following day, Muema was informed by his father that his left eye could not be saved, because pieces of glass had entered that eye. Id. at 27-28, 29. He began to think that he would have been better off if he had been killed, because he did not know how he could survive as a blind man. Id. at 29.

8. On August 24, 1998, Muema’s left eye was removed. Id. at 34. While at the hospital, he developed asthma as a result of the trauma. Id. at 36-37. After several months, he regained vision in his right eye. Id. at 38. Ultimately, he was fitted for a prosthetic, but it is not a permanent solution. Id. at 38, 41.

9. Currently, Muema lacks depth perception and now cannot read without glasses. Id. at 40. He considers himself to be disfigured and feels that his future is less promising as a result of the bombing. Id. at 45-46.

III. Expert Witness

1. Joan Mwendi Kiema-Ngunnzi was accepted by the Court as an expert in the

field of sociology, with a particular emphasis on the impact on social groups or individuals of disasters. [#103] at 91.

2. Kiema-Ngunnzi received her bachelor degree in literature and English at Moi University. Id. at 75. She then attended the University of Nairobi, where she studied sociology with an emphasis in disaster management. Id. As part of her master's academic work, she focused her research on the effect of the Embassy attack on employees of the Teachers Service Commission, whose offices were nearby and were destroyed in the bombing. Id. at 76-77.

3. Kiema-Ngunnzi prepared a comprehensive report captioned "An Assessment of Recovery Strategies for the 1998 Nairobi Bomb Disaster Victims: A Case Study of the Teachers Service Commission Employees." Id. at 85; PX 5. She concluded that survivors of the bombing suffered post-traumatic stress disorder, a finding that was consistent with the conclusions of another report on the psychological effects of the bombing on pregnant women. Id. at 89; PX 6.

4. According to Kiema-Ngunnzi, a social stigma attached to the victims of the bombing and that stigma remains today. Id. at 95. She further concluded that even victims who did not suffer physical injuries also felt devalued. Id. at 96. Furthermore, victims of the bombing are referred to, in a demeaning sense, as "bomb people." Id. at 96.

5. Kiema-Ngunnzi testified that victims of the Embassy bombing are regarded as bad omens, who bring bad fortune to those in contact with them, and that the notion of a bad omen is consistent with certain aspects of Kenyan culture and belief. Id. at 97-98. In other words, victims of the Embassy bombing are viewed by other Kenyans in a negative light simply because of their status as victims. Id. at 98, 101.

6. Kiema-Ngunnzi testified that the bombing adversely affected the victims' "economic and psychological situation." Id. at 106. She also opined that the children of victims of the Embassy bombing are also viewed in a negative light by other Kenyans. Id. at 106-07.

7. Kiema-Ngunnzi testified that each victim of the Embassy bombing suffered long-term or permanent psychological injury from the scenes that they observed during the bombing and in its aftermath. Id. at 122-23. She testified that the victims of the bombing suffered the effects of post-traumatic stress disorder. Id. at 129-33. Specifically, she testified that each victim of the Embassy bombing "has sustained material, significant emotional, psychological and financial injury," whether he suffered a physical injury or not. Id. at 134.

CONCLUSIONS OF LAW

I. Jurisdiction

A. Subject Matter Jurisdiction

Plaintiffs' claims are brought pursuant to the Alien Tort Claims Act ("ATCA" or "ATS"), which provides that district courts "shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350. To establish jurisdiction under the ATS, a plaintiff must allege facts "sufficient to establish that: (1) they are aliens; (2) they are suing for a tort; and (3) the tort in question has been committed in violation of the law of nations or a treaty of the United States." Mwani v. Bin Laden, No. 99-CIV-125, 2006 WL 3422208, at *2 (D.D.C. Sept. 28, 2006) (citing Kadic v. Karadzic, 70 F.3d 232, 238 (2d Cir. 1996); Doe I. v. Exxon Mobil Corp., 393 F. Supp. 2d 20, 24, 28 (D.D.C. 2005); and Burnette v. Al Baraka Inv. & Dev. Corp., 274 F. Supp. 2d 86, 99-100 (D.D.C. 2003)).

On September 28, 2006, Judge Kollar-Kotelly concluded that subject matter jurisdiction existed for the plaintiffs' claims because "the attack on the United States Embassy in Nairobi, Kenya alleged in Plaintiffs' Complaint impinged the diplomatic mission of the United States and directly infringed on the rights of ambassadors, which was and has been a clear violation of the law of nations since the inception of the ATCA." Mwani, 2006 WL 3422208, at *4. Therefore, the three jurisdictional elements of the ATS have been met.

On April 17, 2013, the Supreme Court issued its opinion in Kiobel v. Royal Dutch Petroleum Co., 133 S.Ct. 1659 (2013). After reviewing the Kiobel decision, this Court noted that "the majority of Justices agreed that, except where the claims 'touch and concern the territory of the United States' with 'sufficient force,' the ATS *could not* be used to establish jurisdiction in a United States Court for a dispute between foreign nationals for conduct that occurred on foreign ground." Memorandum Opinion [#110] at 3-4 (citations omitted) (emphasis added). Based on its interpretation of the Kiobel decision, this Court then concluded that "a terrorist attack that 1) was plotted in part within the United States, and 2) was directed at a United States Embassy and its employees" was sufficient to "displace the presumption against extraterritorial application of the ATS" because it "'touched and concerned' the United States with 'sufficient force.'" Id. at 6-7.

B. Personal Jurisdiction and Service of Process

On August 5, 2005, the Court of Appeals concluded, in the instant case, that this Court's exercise of personal jurisdiction over Bin Laden and Al Qaeda was justified under the Due Process Clause of the Fifth Amendment because of the sufficiency of their contacts with the United States:

In this case, there is no doubt that the defendants “engaged in unabashedly malignant actions directed at [and] felt in this forum.” Id. The plaintiffs’ allegations and evidence were that Bin Laden and Al Qaeda orchestrated the bombing of the American embassy in Nairobi, not only to kill both American and Kenyan employees inside the building, but to cause pain and sow terror in the embassy’s home country, the United States. Nor were the plaintiffs’ allegations and evidence of contacts with the United States limited to the Nairobi bombing. The plaintiffs described an ongoing conspiracy to attack the United States, with overt acts occurring within this country’s borders. Putting to one side the acts that took place after the embassy bombing (including the attacks on the World Trade Center and the Pentagon on September 11, 2001), the plaintiffs pointed to the 1993 World Trade Center bombing, as well as to the plot to bomb the United Nations, Federal Plaza, and the Lincoln and Holland Tunnels in New York.

The plaintiffs thus amply made a prima facie showing that Bin Laden and Al Qaeda “‘purposefully directed’ [their] activities at residents” of the United States, Burger King, 471 U.S. at 472, 105 S.Ct. 2174 (quoting Keeton, 465 U.S. at 774, 104 S.Ct. 1473), and that this litigation results from injuries to the plaintiffs “that ‘arise out of or relate to’ those activities,” id. (quoting Helicopteros Nacionales, 466 U.S. at 414, 104 S.Ct. 1868). Bin Laden and Al Qaeda therefore had “fair warning” that their activities would “subject [them] to the jurisdiction” of the United States. Id. (quoting Shaffer, 433 U.S. at 218, 97 S.Ct. 2569).

Mwani, 417 F.3d at 13.

In concluding that the district court could exercise personal jurisdiction over the defendants, the court of appeals also confirmed that service of process, made in this case through publication pursuant to Rule 4(f) of the Federal Rules of Civil Procedure, was authorized. Id. at 11, 14.

II. Analysis of Plaintiffs’ Tort Claims

In Kiobel, the Supreme Court also held that the appropriate substantive tort law to apply to plaintiffs’ ATS claims was the federal common law: “The [Alien Tort Statute] provides

district courts with jurisdiction to hear certain claims, but does not expressly provide any causes of action. . . . The grant of jurisdiction is instead ‘best read as having been enacted on the understanding that the common law would provide a cause of action’ . . . federal courts may ‘recognize private claims [for such violations] under federal common law.’”) Kiobel, 133 S. Ct. at 1663 (citing Sosa v. Alvarez-Machain, 542 U.S. 692, 724, 732 (2004)). Thus, plaintiffs’ tort claims against Al Qaeda for 1) wrongful death; 2) assault; and 3) battery, will be analyzed under the federal common law. See First Amended Complaint [#13] ¶¶ 113-119.

A. Wrongful Death

As noted above, although Njiru and Thuo were named as plaintiffs in this action, they lack the capacity to sue because they are deceased. In any event, even if suit had been brought by their estates, the federal common law does not recognize a wrongful death cause of action. As stated by the Third Circuit, “[t]he right to recover damages for wrongful death is purely statutory since no such right was given by the common law.” Williams v. Dowling, 318 F.2d 642, 643 (1963). Accord Der Weer v. Hess Oil Virgin Islands Corp., No. SX-2005-CIV-274, 2014 WL 1387371, at *5 (V.I. Super. Mar. 21, 2014) (“Like survival actions, wrongful death actions did not exist at common law.”); Ceja v. Rudolph & Sletten, Inc., 302 P.3d 211, 214 (Cal. 2013) (“In California, wrongful death actions are statutory in origin and exist only so far and in favor of such person as the legislative power may declare.” (internal quotation marks and citation omitted)); Ecker v. Town of W. Hartford, 530 A.2d 1056, 1060 (Conn. 1987) (“With only a few exceptions, courts in America have almost universally accepted, and continue to accept, the rule that a civil action for wrongful death was not recognized at common law, and that no such cause of action may be maintained except under the terms and

authority of a statute.” (internal quotation marks and citation omitted)); Capone v. Philip Morris USA, Inc., 116 So.3d 363, 374 (Fla. 2013) (“Under Florida common law, a cause of action did not exist for wrongful death. An action for wrongful death is solely a creation of the Legislature.”); Sanders v. Ahmed, 364 S.W.3d 195, 203 (Mo. 2012) (en banc) (“Missouri does not recognize a common-law claim for wrongful death. This Court has reaffirmed time and time again that a claim for damages for wrongful death is statutory; it has no common-law antecedent.”) (internal quotations and citations omitted)). Plaintiffs, therefore, have no right to recover under this theory.

B. Assault and Battery

In Count VI of the First Amended Complaint, the remaining plaintiffs (Otiende, Buluma, Shah, Nderitu, Mogi, and Muema) asserted claims of common law assault and battery. [¶¶ 113-119. Al Qaeda is liable for assault in this case if, when it bombed the American Embassy in Nairobi, Kenya, it 1) acted “intending to cause a harmful or offensive contact with . . . or an imminent apprehension of such a contact” by those attacked; and 2) those attacked were thereby “put in such imminent apprehension.” See Restatement (Second) of Torts § 21. Al Qaeda is liable for battery in this case if it 1) acted “intending to cause a harmful or offensive contact . . . or an imminent apprehension of such a contact” with those attacked; and 2) “an offensive contact with [those attacked] directly or indirectly results.” See Restatement (Second) of Torts § 18. Harmful contact is that which results in “any physical impairment of the condition of another’s body, or physical pain or illness.” Id. § 15.

In this case, it is clear that Al Qaeda intended to cause harmful contact and the immediate apprehension thereof because “acts of terrorism are, by their very nature, intended to harm and to

terrify by instilling fear of further harm.” Fain v. Islamic Republic of Iran, 856 F. Supp. 2d 109, 122 (D.D.C. 2012) (citing Valore v. Islamic Republic of Iran, 700 F. Supp. 2d 52, 76 (D.D.C. 2010)). Accepting, as the Court has above, plaintiffs’ uncontroverted testimony that the attack 1) caused them injury; or 2) made them apprehensive and fearful of such harm; or 3) both, the Court concludes that defendants are liable. The following chart illustrates Al Qaeda’s liability as to each of the remaining plaintiffs.

	Plaintiff	Injury	Tort ⁴
1.	Otiende	Permanent scarring from the glass cuts to his neck and chest; psychological damage	Battery
2.	Buluma	Little vision in his left eye and 20% vision in his right eye; psychological damage	Battery
3.	Shah	Fear of being in public and reluctance to interact with other people; psychological damage	Assault
4.	Nderitu	Permanent scarring from the glass cuts to his head, ear, and back; psychological damage	Battery
5.	Mogi	Permanent scarring on his head and chin; psychological damage	Battery
6.	Muema	Loss of his left eye; psychological damage	Battery

III. Damages

A. Compensatory Damages

1. Economic Damages

Under the Restatement (Second) of Torts (“the Restatement”), “[c]ompensatory damages for harm involving pecuniary loss include compensation for (a) harm to property, (b) harm to earning capacity, and (c) the creation of liabilities.” Restatement (Second) of Torts § 906. The comment to this section of the Restatement suggests the following approach to calculating such

⁴ Although some plaintiffs may have suffered both assault and battery, because plaintiffs cannot recover twice, the Court need only find liability upon one tort theory, rather than multiple theories. See Haim, 784 F. Supp. 2d at 13 (The prohibition against double recovery “prevents a plaintiff from receiving damages that exceed actual losses by

damages:

In determining the measure of recovery, aside from harm to body, emotions or reputation, a balance sheet is in effect set up by the court in which are stated the items of assets and liabilities which have been affected by the tort, (a) before the tort, and (b) as they appear at the time of trial. In this are put on one side such assets of the injured person as have been affected by the tort, including his capacity to make profitable use of his time, and on the other side, the same assets at the time of the trial and any existing or prospective liabilities imposed upon him as a result of the tort. The difference, to the extent that it results from the tort, constitutes the theoretical measure of recovery. In this comparison damages are allowed for harm which has matured before trial and that which probably will result after the trial.

Id. at § 906 cmt. a.

Furthermore, in cases involving acts of terrorism, such as the instant action, courts have consistently relied upon the testimony of experts to aid in their calculation of economic damages. See Baker v. Socialist People's Libyan Arab Jamahiriya, 775 F. Supp. 2d 48, 78 (D.D.C. 2011) (basing calculation of economic damages in Foreign Sovereign Immunities Act case upon the testimony of economic expert); Burton v. U.S., 668 F. Supp. 2d 86, 110-13 (D.D.C. 2009) (basing calculation of economic damages in Federal Tort Claims Act case upon the testimony of economic expert); Wachsman ex rel. Wachsman v. Islamic Republic of Iran, 603 F. Supp. 2d 148, 161-62 (D.D.C. 2009) (basing calculation of economic damages under Israeli law upon the testimony of economic expert). For example, in Baker, plaintiffs' expert made detailed calculations with respect to a victim who had been injured in the hijacking of EgyptAir Flight 648 in 1985. Baker, 775 F. Supp. 2d at 79-80. First, the expert calculated the victim's life expectancy prior to the hijacking, based on his age at the time of the hijacking. Id. at 79. Second,

either bringing several actions or articulating multiple theories of recovery concerning the same event.”).

the expert calculated the victim's "statistically expected worklife, based on his age and education," and his age of retirement, considering U.S. social security regulations. Id. Third, the expert produced tables showing average earnings for people with the victim's current and projected levels of education and compared those figures with the victim's current earnings. Id. at 80. Finally, the expert calculated the victim's post-retirement pension. Id.

In Burton, a Federal Tort Claims Act ("FTCA") case, plaintiffs' expert calculated the economic damages due the spouse of an individual who had died as a result of medical malpractice on the part of his treating physician. Burton, 668 F. Supp. 2d at 110-13. First, the expert calculated the pre-tax present value of the decedent's lifetime pension payments and his lifetime Social Security benefits. Id. at 111. Second, the expert deducted any federal and state income taxes that would have been due. Id. Third, the expert deducted an amount that the decedent would have spent on personal maintenance (personal food, clothing, entertainment, and transportation). Id. at 111-12. At this point, the Court deducted prejudgment interest, based on the expert's calculations, in light of the FTCA's prohibition on awards of prejudgment interest. Id. at 112. Fourth, the expert calculated the value of household services the decedent would have provided had he lived—based on those tasks he performed before he died. Id. at 112-13. Finally, the court awarded funeral expenses as part of the decedent's spouse's economic damages. Id. at 113.

The following chart summarizes the evidence regarding plaintiffs' economic damages in this case.

	Plaintiff	Economic Damages
1.	Otiende	No figures provided.
2.	Buluma	His monthly income at the time of the bombing fluctuated

		between 120,000 and 150,000 KSH but he has not been able to work since.
3.	Shah	In 1997, his menswear business net annual profits of 500,000 KSH but he lost his business as a result of the bombing.
4.	Nderitu	Prior to the bombing, his law practice was netting about \$2,000 USD per month in net profits. He could not rebuild the business after the bombing.
5.	Mogi	His monthly income from his stationery supply business dropped from \$5,000 to \$1,000. He now has to expend 4,000 KSH per month for medication for his high blood pressure and cannot get health insurance.
6.	Muema	No figures provided.

As is clear from the above chart, however, the evidence before this Court is insufficient to support an award of economic damages for any of the plaintiffs. In other words, plaintiffs have both failed to “reasonably prove” the extent of their past economic losses or prove “by a preponderance of the evidence” the extent of their future economic losses.

2. Pain and Suffering

Under the Restatement, “[o]ne whose interests of personality have been tortiously invaded is entitled to recover damages for past or prospective (a) bodily harm and emotional distress; (b) loss or impairment of earning capacity; (c) reasonable medical and other expenses; and (d) harm to property or business caused by the invasion.” Restatement (Second) of Torts § 924. “Thus the rule is applied in actions for assault, battery, false imprisonment, malicious prosecution when the plaintiff is put under restraint, insulting conduct amounting to a tort, and all other acts constituting a tort because intended or likely to cause bodily harm or emotional distress, whether the harm is negligently, recklessly or intentionally caused or results from an abnormally dangerous activity.” Id. at § 924 cmt. a.

In support of their claim for pain and suffering, plaintiffs state the following:

Plaintiffs also seek damages for injuries associated with serious bodily injury for 44 plaintiffs. Those injuries are comprised of loss of vision or hearing, internal injuries and one miscarriage. Plaintiffs also seek emotional distress damages on behalf of all plaintiffs, and, in particular, plaintiffs seek damages resulting from the social stigma which attaches in Kenya to each plaintiff's status as a victim of the bombing.

[#105] at 30.

As noted above, the Court accepted the testimony of Kiema-Ngunnzi as an expert in the field of sociology with a particular emphasis on the impact on social groups or individuals of disasters. Based on her studies and testimony, the Court further accepts Kiema-Ngunnzi's conclusion that the survivors of the bombing suffered post-traumatic stress disorder and that a unique social stigma attached to these Kenyan victims, a stigma that remains today.

In similar cases brought by victims of terrorist acts, the courts have considered various factors in determining an appropriate amount of compensation for pain and suffering. As noted by this Court in Baker, such factors include "the severity of the pain immediately following the injury, the length of hospitalization, and the extent of the impairment that will remain with the victim for the rest of his or her life." Baker, 775 F. Supp. 2d at 82 (internal citations omitted).

The Court further noted the following:

In Peterson,⁵ the Court granted a baseline award of \$5 million to individuals suffering injuries such as compound fractures, broken jaws, severe flesh wounds, continuing back and shoulder injuries, and continuing psychological and substance abuse problems stemming from the attack. Peterson, 515 F. Supp. 2d at 54–56. The court departed upward from the baseline in several cases, including to \$7.5 million for an individual who lost sight in one eye and ruptured an eardrum, in addition to experiencing lasting psychological problems; to \$8 million for an individual who was mistaken for dead, placed in a body bag, and left in a morgue for

⁵ Peterson v. Islamic Republic of Iran, 515 F. Supp. 2d 25 (D.D.C. 2007).

four days; and as high as \$12 million for an individual who suffered a broken neck, resulting in permanent quadriplegia. Id. The court departed downward from the baseline in cases where injuries were minor, including injuries from being hit by shrapnel from the explosion. Id.

Id.

In this case, the Court concludes that the following awards are appropriate:

	Plaintiff	Injury	Award
1.	Otiende	Permanent scarring; PTSD	\$6M
2.	Buluma	Little vision in his left eye and 20% vision in his right eye; PTSD	\$7.5M
3.	Shah	PTSD	\$5M
4.	Nderitu	Permanent scarring; PTSD	\$6M
5.	Mogi	Permanent scarring; PTSD	\$6M
6.	Muema	Loss of his left eye; PTSD	\$7.5M

B. Punitive Damages

The Restatement describes punitive damages as follows:

(1) Punitive damages are damages, other than compensatory or nominal damages, awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future.

(2) Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant.

Restatement (Second) of Torts § 908.

In Gates, an action brought under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*, the court awarded \$150,000,000 to the estates of two individuals who were first tortured and then murdered by Al Qaeda in Iraq, which acted with the support of Syria. Gates,

580 F. Supp. 2d at 74. The court explained its award as follows:

Here, Syria's conduct was most reprehensible. While punitive damages are awarded in an amount far in excess of compensatory damages for economic loss, pain and suffering, and solatium, the size of the award here is commensurate with that awarded in other FSIA⁶ cases filed by the families of those tortured and killed by terrorists. See, e.g., Weinstein, 184 F. Supp. 2d at 25 (family members and estate awarded \$150,000,000 in punitive damages); Elahi, 124 F. Supp. 2d at 114 (family members and estate awarded \$300,000,000 in punitive damages).

Id. at 74 n.19.

In Valore, an FSIA case brought against Iran by survivors of the bombing of the United States Marine barracks in Beirut, Lebanon, the court awarded plaintiffs a total of \$1 billion in punitive damages, to be apportioned among the plaintiffs in proportion to their compensatory damages awards. Valore, 700 F. Supp. 2d at 90. In making such an award, the court found the following: 1) "[t]he nature of the defendants' acts and the nature and extent of the harm defendants intentionally caused are among the most heinous the Court can fathom;" 2) "[t]he defendants' demonstrated policy of encouraging, supporting and directing a campaign of deadly terrorism is evidence of the monstrous character of the bombing that inflicted maximum pain and suffering on innocent people;" and 3) "the amount of Iran's annual expenditures on terrorist activities" multiplied by five would yield an amount with "the desired deterrent effect." Id. at 87-89.

The instant action, the bombing of the United States Embassy in Nairobi, Kenya, like the bombing of the Marine barracks, is one of the most grotesque and depraved acts imaginable. While it caused injury, death, and irreparable emotional harm to hundreds of Kenyan citizens, Al

⁶ Foreign Sovereign Immunities Act.

Qaeda's wealth is unknown. Furthermore, it is unclear to this Court whether any award of punitive damages is likely to have any deterrent effect whatsoever. Thus, although this incident is similar to the bombing in Valore, the Court will follow the per-victim standard utilized in Gates and award each of the six plaintiffs identified above \$150 million in punitive damages. The Court simply cannot, in keeping with requirements of due process, make any greater award without additional expert testimony as to Al Qaeda's wealth and the multiplier necessary to affect Al Qaeda's future conduct.

C. Prejudgment Interest

It is within the Court's discretion to award prejudgment interest from the date of the attack on August 7, 1998, until the date of final judgment. See Pugh v. Socialist People's Libyan Arab Jamahiriya, 530 F. Supp. 2d 216, 263 (D.D.C. 2008). The decision to award prejudgment interest, as well as how to compute that interest, rests within the discretion of the Court, subject to equitable considerations. Id. (citations omitted). "Courts in this Circuit have awarded prejudgment interest in cases where plaintiffs were delayed in recovering compensation for their injuries—including, specifically, where such injuries were the result of targeted attacks perpetrated by foreign defendants." Id. Although it is unclear whether plaintiffs will ever recover their damages in this case, prejudgment interest is nevertheless appropriate in this case, and necessary to fully compensate the victims for the injuries they sustained as a result of Al Qaeda's terrorist act. In an exercise of its discretion, therefore, the Court will award prejudgment interest as an element of plaintiffs' compensatory, but not punitive damages. See Pugh, 530 F. Supp. 2d at 264) ("In contrast to punitive damages, which can not be imposed against foreign sovereign defendants in FSIA cases, '[p]rejudgment interest is an element of

complete compensation.’”) (quoting West Virginia v. United States, 479 U.S. 305, 310, 107 S.Ct. 702, 93 L.Ed.2d 639 (1987)).

The next issue is to determine how best to measure and calculate prejudgment interest. In Doe v. Islamic Republic of Iran, 943 F. Supp. 2d 180 (D.D.C. 2013), a case involving the calculation of damages under the FSIA, the court first noted that the appropriate measure of prejudgment interest is the prime rate, *i.e.*, the rate banks charge for short-term unsecured loans to credit-worthy customers. Id. at 184 (citing Forman v. Korean Air Lines Co., Ltd., 84 F.3d 446, 450 (D.C. Cir.), cert. denied, 519 U.S. 1028 (1996)). The court then explained why using the average prime rate for each year was a more precise method of calculating damages than simply using the average prime rate over the entire period at issue:

[Using the prime rate for each year] measures how much the award would have grown between 1983 and 1984 using the 1984 interest rate, then measures how much that total would have grown between 1984 and 1985 using the 1985 interest rate, and so on. The difference is substantial where, as here, prime rates were vastly higher longer ago. Because prime rates in the 1980s and 1990s were several times higher than they are today, using the average rate for the whole 185 period does not reflect the rapid initial growth of an amount received in 1983 or 1984, growth that itself would have been compounded. Just as the prime rate is a more accurate measure of the true cost to plaintiffs than is the more conservative Treasury Bill rate, employing the prime rate for each year is more accurate than using the average prime rate for the whole period.

Doe, 943 F. Supp. 2d at 184.

In this case, assuming annual compounding and starting with \$1 for the first year, the multiplier is therefore calculated as follows:

Year	Average Annual Prime Rate	Total
1998	n/a	\$1.0000
1999	8	\$1.0800
		(= Total from 1998 + Total from 1998 x 1999 Average Annual Prime Rate ÷ 100)
2000	9.23	\$1.1797
2001	6.91	\$1.2612
2002	4.67	\$1.3201
2003	4.12	\$1.3745
2004	4.34	\$1.4341
2005	6.19	\$1.5229
2006	7.96	\$1.6441
2007	8.05	\$1.7765
2008	5.09	\$1.8669
2009	3.25	\$1.9276
2010	3.25	\$1.9902
2011	3.25	\$2.0549
2012	3.25	\$2.1217
2013	3.25	\$2.1907
2014	3.25	\$2.2619

Thus, for damages incurred in 1998 and awarded in 2014, a multiplier of 2.2619 will be applied.

D. The Effect of the Bellwether Trial on The Remaining Plaintiffs

A bellwether trial having been held, the only issue remaining before the Court is the extent to which the Court's analysis and damage award as to the above six plaintiffs can be applied to the remaining plaintiffs. In its March 12, 2010 status report, plaintiffs noted that each plaintiff in this case had completed a Department of State Form 95, a claim form under the FTCA, which "sets out the civil and criminal penalties for presenting fraudulent claims and for making false statements." Plaintiffs' Status Report Pursuant to Order of January 7, 2010 [#94] at 9. Plaintiffs then proposed that these form be submitted to the Court after the bellwether trial

had concluded in order to enable the Court to determine an appropriate damages matrix for the remaining plaintiffs. The Court agrees and hereby orders the following:

1. Plaintiffs shall provide the Court with an electronic copy (submitted via e-mail) and a hard copy of each plaintiff's Form 95. Each form shall be numbered for ease of reference.⁷
2. Plaintiffs shall create and provide the Court with an electronic copy (submitted via e-mail) and a hard copy of an Excel spreadsheet, which contains the following information in the format shown below:

Number	Name of plaintiff as it appears in the <u>First Amended Complaint</u> [#13]	Page number where plaintiff's name appears in <u>First Amended Complaint</u>	Number associated with plaintiff's Form 95	Nature of plaintiff's injury	Nature of plaintiff's tort claim	Nature of damages sought
1.	John Doe	Page 4	Form No. 5	Scarring; PTSD	Battery	Compensatory – Pain and Suffering; Punitive

3. A status conference in this matter will be held on October 3, 2014, at 3:00 p.m., at which time the Court will hear further from plaintiffs on the creation of a damages matrix.

IV. Conclusion

For the foregoing reasons, final judgment against Al Qaeda will be entered for the above six plaintiffs by way of a separate Judgment Order in the amounts set forth in the summary chart below.

Plaintiffs	Compensatory Damages			D. Punitive Damages	Total Award (A + C + D)
	A. Economic	B. Pain & Suffering	C. Prejudgment Interest		

⁷ Although plaintiffs previously submitted copies of their Form 95, the copies were not numbered and therefore difficult for the Court to correspond with individual plaintiffs. See Reply to Defendant's [sic] Opposition to Plaintiff's Motion for Recertification at Appendix Volumes 1-7.

			(B x 2.2619)		
1.	Otiende	n/a	\$6M	\$13,571,400	\$150M
2.	Buluma	n/a	\$7.5M	\$16,964,250	\$150M
3.	Shah	n/a	\$5M	\$11,309,500	\$150M
4.	Nderitu	n/a	\$6M	\$13,571,400	\$150M
5.	Mogi	n/a	\$6M	\$13,571,400	\$150M
6.	Muema	n/a	\$7.5M	\$16,964,250	\$150M

JOHN M. FACCIOLA
U.S. MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Odillia Mutaka Mwani, *et al.*

Plaintiffs,

v.

Al Qaeda,

Defendant.

:

:

:

:

:

:

:

:

:

:

No. 99-CV-00125 (GMH)

FINAL JUDGMENT

Final and appealable judgment on all claims in this case is hereby entered as follows:

Judgment against al Qaeda for compensatory damages of seven million five hundred thousand dollars, (\$7,500,000) increased by prejudgment interest to equal sixteen million nine hundred sixty four thousand two hundred fifty dollars (\$16,964,250) plus punitive damages of one hundred fifty million dollars (\$150,000,000), be and is hereby entered in favor of the following plaintiffs in the following total amounts:

No.	Plaintiff	Total Judgment Amount
1	Protus Buluma	\$166,964,250
2	Kioko Muema	\$166,964,250

Judgment against al Qaeda for compensatory damages of six million dollars (\$6,000,000), increased by prejudgment interest to equal thirteen million five hundred seventy one thousand four hundred dollars (\$13,571,400) plus punitive damages of one hundred fifty million dollars (\$150,000,000), be and is hereby entered in favor of the following plaintiffs in the following total amounts:

No.	Plaintiff	Total Judgment Amount
3	Charles Mogi	\$163,571,400
4	Wilfred Nderitu	\$163,571,400
5	Castro Otiende	\$163,571,400

Judgment against al Qaeda for compensatory damages of five million dollars plus prejudgment interest in the amount eleven million three hundred nine thousand five hundred dollars (\$11,309,500), of plus punitive damages of one hundred fifty million dollars, be and is hereby entered in favor of the following plaintiff in the following total amount:

No.	Plaintiff	Total Judgment Amount
6	Dipak L. Shah	\$161,309,500

Judgment against al Qaeda for compensatory damages of five million dollars (\$5,000,000), plus prejudgment interest of eleven million three hundred nine thousand five hundred dollars (\$11,309,500), plus punitive damages of one hundred fifty million dollars (\$150,000,000), be and is hereby entered in favor of the following plaintiffs in the following total amounts:

No.	Plaintiff	Total Judgment Award
7	John Imbahale	\$161,309,500
8	Hudson Anyangu	\$161,309,500
9	Rosemary Njeri	\$161,309,500
10	Stephen Kibiku	\$161,309,500
11	Francis Njenga	\$161,309,500
12	Margaret Wagabi	\$161,309,500
13	Lucy Kimiti	\$161,309,500
14	Lucy Gachagwi	\$161,309,500
15	Hannah Kingara	\$161,309,500
16	Bernard Maiwa	\$161,309,500
17	Charles Banga	\$161,309,500
18	Philip Mwai	\$161,309,500
19	Hedwig Kibukosya	\$161,309,500
20	Fidelis Ndambuki	\$161,309,500
21	Mukul Patel	\$161,309,500
22	Catherie Abuko	\$161,309,500
23	Mariam Adan	\$161,309,500
24	Fredda Afande	\$161,309,500
25	Kalwala Aggrey	\$161,309,500
26	Millicent Adhiambo	\$161,309,500
27	Thomas Akama	\$161,309,500

28	Margaret Akello	\$161,309,500
29	Halima Ali	\$161,309,500
30	Caren Aloo	\$161,309,500
31	Jackline Ambia	\$161,309,500
32	Racheal Amollo	\$161,309,500
33	Isanya Amwayi	\$161,309,500
34	Nancy Aswani	\$161,309,500
35	Christine Athieno	\$161,309,500
36	Timothy Thuo	\$161,309,500
37	Johnson Atieno	\$161,309,500
38	Readon Atingo	\$161,309,500
39	Duncan Barasa	\$161,309,500
40	Patrick Barasa	\$161,309,500
41	Duncan Chege	\$161,309,500
42	Thomas Keya	\$161,309,500
43	John Chege	\$161,309,500
44	Benjamin Kitchwen-Choge	\$161,309,500
45	Anne Gachaara	\$161,309,500
46	Mary Gaita	\$161,309,500
47	Ejidiah Gathoni	\$161,309,500
48	George Gichuki	\$161,309,500
49	Jane Gichuki	\$161,309,500
50	Philip Gitahi	\$161,309,500
51	Beth Gitau	\$161,309,500
52	Agnes Githinji	\$161,309,500
53	Cosmas Githinji	\$161,309,500
54	Luliet Githinji	\$161,309,500
55	Margaret Iraya	\$161,309,500
56	Marangu Julius	\$161,309,500
57	Joseph Kabii	\$161,309,500
58	Moses Kamipangiu	\$161,309,500
59	Kinywa Kamathi	\$161,309,500
60	Elvis Kamua	\$161,309,500
61	Evanson Kamau	\$161,309,500
62	Jane Kamau	\$161,309,500
63	Judy Kamau	\$161,309,500
64	Joyce Kandie	\$161,309,500
65	Samuel Kamau	\$161,309,500
66	James Karuiru	\$161,309,500
67	Purity Kibuchi	\$161,309,500

68	Geoffrey Kimani	\$161,309,500
69	Julius Kimani	\$161,309,500
70	Mwende Kitenne	\$161,309,500
71	Julius Kithikii	\$161,309,500
72	Danish Kiboye	\$161,309,500
73	John Kibunja	\$161,309,500
74	James Kiarie	\$161,309,500
75	Jane Kiarie	\$161,309,500
76	Patrick Kilaya	\$161,309,500
77	Simon Kimata	\$161,309,500
78	Susan Kimemia	\$161,309,500
79	Mary Kingore	\$161,309,500
80	Christine Kingori	\$161,309,500
81	Joyce Kirigo	\$161,309,500
82	Joseph Kiruthi	\$161,309,500
83	Daudi Kisivo	\$161,309,500
84	Jan Kisule	\$161,309,500
85	Stephene Wahome Kingua	\$161,309,500
86	Julius Karunda	\$161,309,500
87	Josphat Kivau	\$161,309,500
88	Sarah Kiwanuka	\$161,309,500
89	Stephen Maina	\$161,309,500
90	Anderson Komu	\$161,309,500
91	James Komu	\$161,309,500
92	Richard Koskei	\$161,309,500
93	Njoroge Kungu	\$161,309,500
94	Jeniffer Lugaye	\$161,309,500
95	Lucy Maingi	\$161,309,500
96	Lucy Mambo	\$161,309,500
97	Dennis Mankin	\$161,309,500
98	Stephen Makani	\$161,309,500
99	Boniface Makau	\$161,309,500
100	John Malili	\$161,309,500
101	Roby Mauka	\$161,309,500
102	Edward Mbogori	\$161,309,500
103	Mary Mburu	\$161,309,500
104	Susan Mdambuli	\$161,309,500
105	Michael Miringu	\$161,309,500
106	Justus Mitili	\$161,309,500
107	Zalwango Kawagga	\$161,309,500

108	Thomas Mongare	\$161,309,500
109	Joyce Muasyakituku	\$161,309,500
110	Gerald Mucanga	\$161,309,500
111	Jackson Munala	\$161,309,500
112	Dr. George Mugambi	\$161,309,500
113	Lucy Maguma	\$161,309,500
114	William Muia	\$161,309,500
115	Francis Muiruzi	\$161,309,500
116	Jennifer Mulili	\$161,309,500
117	Beatrice Mungara	\$161,309,500
118	Adrian Munyeriah	\$161,309,500
119	Grace Muraya	\$161,309,500
120	Anne Mureithi	\$161,309,500
121	Alex Muriithi	\$161,309,500
122	Charles Muriithi	\$161,309,500
123	Douglas Muriithi	\$161,309,500
124	Marion Muriithi	\$161,309,500
125	Christina Murumet	\$161,309,500
126	John Murumet	\$161,309,500
127	Elijah Mutie	\$161,309,500
128	Victoria Mutuku	\$161,309,500
129	Fedlan Mwaburi	\$161,309,500
130	Honorina Mwadime	\$161,309,500
131	Jacinta Mwagogo	\$161,309,500
132	Irene Mwamburi	\$161,309,500
133	David Mwangi	\$161,309,500
134	Josphat Mwangi	\$161,309,500
135	Lillian Mwangi	\$161,309,500
136	Mohamed Wangi	\$161,309,500
137	Stephen Mwangi	\$161,309,500
138	Rosemary Mwango	\$161,309,500
139	Sheila Mwende	\$161,309,500
140	Ezekeil Mwiricha	\$161,309,500
141	Elijah Myaboro	\$161,309,500
142	Muniu Natera	\$161,309,500
143	Isaac Ndambiri	\$161,309,500
144	Peter Nganpu	\$161,309,500
145	Francis Ngathia	\$161,309,500
146	Ernest Ng'ang'a	\$161,309,500
147	Thomas Ng'ewo	\$161,309,500

148	Anne Ngeche	\$161,309,500
149	Paulo Ngiri	\$161,309,500
150	Julius Nguku	\$161,309,500
151	Joseph Ngunjiri	\$161,309,500
152	Michael Ngusi	\$161,309,500
153	Lois Njiriri	\$161,309,500
154	Goerge Njoroge	\$161,309,500
155	Elizabth Njuguna	\$161,309,500
156	Henry Njuguna	\$161,309,500
157	Juliet Njuguna	\$161,309,500
158	Sylvia Njuguna	\$161,309,500
159	Cosmas Nkonge	\$161,309,500
160	Filista Ochieng	\$161,309,500
161	Frida Odaya	\$161,309,500
162	Victor Oduma	\$161,309,500
163	Francis Oduour	\$161,309,500
164	Julie Ogoye	\$161,309,500
165	Jacob Ogwang	\$161,309,500
166	Johnson Oilil	\$161,309,500
167	John Okango	\$161,309,500
168	Beatrice Okech	\$161,309,500
169	Ratemo Okomo	\$161,309,500
170	Theresa Ombasa	\$161,309,500
171	Beatrice Omiti	\$161,309,500
172	Alex Ondewe	\$161,309,500
173	Helen Ongola	\$161,309,500
174	Lawrence Osemo	\$161,309,500
175	Benjamin Oyugi	\$161,309,500
176	Simeon Oyugi	\$161,309,500
177	Ben Pepe	\$161,309,500
178	Catherine Peter	\$161,309,500
179	Claris Oyola	\$161,309,500
180	Catherine Rimberia	\$161,309,500
181	Ambrose Ruto	\$161,309,500
182	Stephen Stanley	\$161,309,500
183	Harakhchand Sumaria	\$161,309,500
184	Gabriel Thamaine	\$161,309,500
185	Silas Wachira	\$161,309,500
186	John Wahome	\$161,309,500
187	Irene Wainaina	\$161,309,500

188	David Waithangi	\$161,309,500
189	Lucy Wairumu	\$161,309,500
190	George Wakibi	\$161,309,500
191	Lucia Wambua	\$161,309,500
192	John Wamenjuu	\$161,309,500
193	Rose Wanjiru	\$161,309,500
194	Elizabeth Wanjoike	\$161,309,500
195	Joseph Wanyeki	\$161,309,500
196	Ehpraim Wanyoike	\$161,309,500
197	Peter Waruhiu	\$161,309,500
198	Gastone Yongo	\$161,309,500
199	Lwitiko Yoram	\$161,309,500
200	Agatha Njoki	\$161,309,500
201	Agnes Kambo	\$161,309,500
202	Alfred Omole	\$161,309,500
203	Alfred Kavogoyi	\$161,309,500
204	Alice Macharia	\$161,309,500
205	Alice Makau	\$161,309,500
206	Alice Mbugua	\$161,309,500
207	Ambrose Maina	\$161,309,500
208	Ambrose Ogutu	\$161,309,500
209	Andrew Papai	\$161,309,500
210	Anne Karinga	\$161,309,500
211	Anne Kinyanjui	\$161,309,500
212	Augustine Musicha	\$161,309,500
213	Azaria Ogonda	\$161,309,500
214	Beatrice Wamaitha	\$161,309,500
215	Benjamin Wanyonyi	\$161,309,500
216	Betty Ngososei	\$161,309,500
217	Boaz Shadiva	\$161,309,500
218	Boniface K. Ndimia	\$161,309,500
219	Caroline Ombewa	\$161,309,500
220	Charity Gaitho	\$161,309,500
221	Charles Ogwori	\$161,309,500
222	Charles Waro	\$161,309,500
223	Christine Koli	\$161,309,500
224	Christine Masha	\$161,309,500
225	Cyrus Wahome	\$161,309,500
226	Dan Mole	\$161,309,500
227	Daupin Kisaka	\$161,309,500

228	David Muturi	\$161,309,500
229	Dr. Phaniel Odhiambo	\$161,309,500
230	Duncan Nelson	\$161,309,500
231	Elijah Kivuli	\$161,309,500
232	Elisaphan Wamenju	\$161,309,500
233	Elphas Wangoka	\$161,309,500
234	Ephantus Mburu	\$161,309,500
235	Eunice Chepkemioi	\$161,309,500
236	Francis Mugo	\$161,309,500
237	Francis Ndungu	\$161,309,500
238	Frida Odera	\$161,309,500
239	Frida Muthuri	\$161,309,500
240	Gabriel Ndugu	\$161,309,500
241	Gathigi Njoroge	\$161,309,500
242	Geoff Orai-Obura	\$161,309,500
243	George Miniui	\$161,309,500
244	George Ngesa	\$161,309,500
245	George Omollo	\$161,309,500
246	Grace Luti	\$161,309,500
247	Tom Matundura	\$161,309,500
248	Haron Muriuki	\$161,309,500
249	Harrison Eyinda	\$161,309,500
250	Helen Ooko	\$161,309,500
251	Hudson Agade	\$161,309,500
252	Jacinta Buluma	\$161,309,500
253	Jacinta Ngure	\$161,309,500
254	Jackson Kimundu	\$161,309,500
255	Jackson Kariuki	\$161,309,500
256	Jacob Odhiambo	\$161,309,500
257	James Musamali	\$161,309,500
258	Jane Okwama	\$161,309,500
259	Jane Kamau	\$161,309,500
260	Jane Mookoosio	\$161,309,500
261	Janes Oluoch	\$161,309,500
262	Joan Baraza	\$161,309,500
263	John Nzioki	\$161,309,500
264	Johnson Mwangi	\$161,309,500
265	Joseph Kabii	\$161,309,500
266	Joseph Karuri	\$161,309,500
267	Joseph Okoth	\$161,309,500

268	Joseph Oyungu	\$161,309,500
269	Joseph Kariuki	\$161,309,500
270	Josephine Atieno	\$161,309,500
271	Joshua Omolo	\$161,309,500
272	Joshua Obulo	\$161,309,500
273	Josphat Ruiru	\$161,309,500
274	Josphat Githua	\$161,309,500
275	Josephine Kathona	\$161,309,500
276	Judith Mbeta	\$161,309,500
277	Julius Kabaiku	\$161,309,500
278	Julius Kisilu	\$161,309,500
279	Julius Mwangi	\$161,309,500
280	Kennedy Kiringa	\$161,309,500
281	Kennedy Musa	\$161,309,500
282	Leonard Njunguna	\$161,309,500
283	Lillian Kibet	\$161,309,500
284	Livingstone Kinothe	\$161,309,500
285	Loise Kimani	\$161,309,500
286	Margaret Mwangi	\$161,309,500
287	Mary Muthike	\$161,309,500
288	Mary Waiyaki	\$161,309,500
289	Mary Kabiriri	\$161,309,500
290	Meresa Atieno	\$161,309,500
291	Meshack Lumbembe	\$161,309,500
292	Michael Kaharu	\$161,309,500
293	Mike Guoro	\$161,309,500
294	Monicah Lanho	\$161,309,500
295	Moses Njugi	\$161,309,500
296	Muange Musembi	\$161,309,500
297	Mustaq Kapacezee	\$161,309,500
298	Nancy Matern	\$161,309,500
299	Nicholas Matat	\$161,309,500
300	Nicodemus Nyaboga	\$161,309,500
301	Obadiah Ndegwa	\$161,309,500
302	Oloo Omolo	\$161,309,500
303	Pamela Odhek	\$161,309,500
304	Paul Lima	\$161,309,500
305	Penima Ogutu	\$161,309,500
306	Peter Kahuthu	\$161,309,500
307	Peter Kamau	\$161,309,500

308	Peter Ngure	\$161,309,500
309	Peter Mwanzia	\$161,309,500
310	Philip Mwaura	\$161,309,500
311	Phoebe Nyadera	\$161,309,500
312	Rashad Ally	\$161,309,500
313	Richard Maina	\$161,309,500
314	Robert Achieng	\$161,309,500
315	Robin Njeri	\$161,309,500
316	Rose Gitau	\$161,309,500
317	Rosalynne Atieno	\$161,309,500
318	Rosemary Mwavizo	\$161,309,500
319	Rufus Chiera	\$161,309,500
320	Salim Sewe	\$161,309,500
321	Salim Yacob	\$161,309,500
322	Samuel Munene	\$161,309,500
323	Samuel Muriuki	\$161,309,500
324	Samuel Kabala	\$161,309,500
325	Simon Mwami	\$161,309,500
326	Stanley Gitau	\$161,309,500

No.	Plaintiff	Total Judgment Award
327	Evans Muita	161,309,500
328	Lilian Guantai	161,309,500
329	Joseph Akumu	161,309,500
330	Philip Mauyu	161,309,500
331	Monica Mbori	161,309,500
332	Lydia Mudanya	161,309,500
333	Rose Muema	161,309,500
334	Joyce Mutinda	161,309,500
335	Florence Raboke	161,309,500
336	Anne Kingara	161,309,500
337	Catherine Chabi	161,309,500
338	Daniel Muita	161,309,500
339	Edward Nuthu	161,309,500
340	James Kamau	161,309,500
341	Jane Miringu	161,309,500
342	Joseph Nganga	161,309,500
343	Joyce Miringu	161,309,500
344	Lucy Mwangi	161,309,500

345	Margaret Miringu	161,309,500
346	Rachel Kingara	161,309,500
347	Sarah Etenyi	161,309,500
348	Stanley Gatu	161,309,500
349	Judith Kyalo	161,309,500
350	Edward Kimani	161,309,500
351	Rose Chepkoy	161,309,500

And it is FURTHER ORDERED, ADJUDGED, AND DECREED, THAT all other claims, in this case, are dismissed with prejudice, each party to bear its own fees and costs, and this judgment is a final and appealable judgment.

SO ORDERED.

5/20/22
Date:

G. Michael Harvey
United States Magistrate Judge

DIVISION D: OTHER MATTERS

TITLE III — VICTIMS OF TERRORIST ATTACKS ON U.S. RIGHTS ACT

SEC. 4301. SHORT TITLE.

This title may be cited as the “Victims of Terrorist 1998 Embassy Bombings on U.S. Rights Act.”

SEC. 4302. FINDINGS; PURPOSE.

(a) Findings. — Congress finds the following:

- (1) On August 7, 1998, Al Qaeda terrorists attacked the United States Embassy in Nairobi, Kenya, and the United States Embassy in Dar es Salaam, Tanzania (hereafter referred to as the “1998 Embassy Bombings”).
- (2) The 1998 Embassy Bombings on the United States caused loss of life and great injury and damage to thousands of Americans, Kenyans, and Tanzanians.
- (3) Al Qaeda and its affiliates and co-conspirators received financial and other support which facilitated the 1998 Embassy Bombings and continue to receive financial and other support, which endangers the United States and its allies.
- (4) In *Mwani et.al. v. Al Qaeda et.al.* Case No. 99-125, in the United States District Court for the District of Columbia (the “Federal Litigation”) the District Court correctly described the 1998 Embassy Bombings as “one of the most grotesque and depraved acts imaginable.” The District Court also properly awarded individual damages against Al Qaeda in favor of 351 Kenyan plaintiffs of five million dollars in compensatory damages for non-economic injuries per plaintiff, plus prejudgment interest, plus \$150 million per eligible plaintiff as punitive damages (the “Damages Award”), and properly found that those damages, established during a bellwether evidentiary hearing, applied to all eligible Kenyan victims of the 1998 Embassy Bombings.

(b) Purpose. — The purpose of this Act, and the amendments made by this Act, is to strengthen the cooperation between the United States and Kenya and between the United States and Tanzania in the fight against terrorism by establishing the eligibility of the Kenyan, Tanzanian and American victims and their personal representatives, surviving spouses and next of kin in the Victim Compensation Fund pursuant to the Justice for United States Victims of State Sponsored Terrorism Act, codified at 42 U.S.C. § 10609 (2015), and by directing the distribution to Kenyans holding judgments against Al Qaeda as a result of the 1998 Embassy Bombings of funds of Al Qaeda held or frozen by OFAC, and to provide a recovery to the surviving spouses of Kenyans, Tanzanians and Americans killed in the 1998 Embassy Bombings, and to provide

and define a right of action to certain Kenyans, Tanzanian and Americans and the surviving spouses and next of kin of certain Kenyans, Tanzanians and Americans killed in the 1998 Embassy Bombings against terrorist organizations financial institutions which provided support to Al Qaeda.

SEC. 4303. AMENDMENT OF THE U.S. VICTIMS OF STATE SPONSORED TERRORISM ACT.

(a)

- (1) Section 34 U.S.C. § 20144(b) (1)(A)(iii) of the victims of the August 7, 1998, bombings of the United States Embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania, is amended by adding the "1998 Embassy Bombings" after "victims of" state sponsor of terrorism.
- (2) Section 34 U.S.C. § 20144(c)(2)(A)(i) is amended to add "and arising out of the 1998 Embassy Bombings" after "state sponsor of terrorism."
- (3) Section 34 U.S.C. § 20144(c)(2) is amended by deleting "or" at the end of 34 U.S.C. § 20144(c)(2)(A)(ii).
- (4) Section 34 U.S.C. § 20144(c)(2) is amended by replacing the period at the end of 34 U.S.C. § 20144(c)(2)(C)(ii) with "or."
- (5) Section 34 U.S.C. § 20144(c)(2) is amended by adding: "(D) a holder of a judgment, or the surviving spouse or next of kin of a holder of a judgment against Al Qaeda in the Federal Litigation.
- (6) Section 34 U.S.C. § 20144(c)(2) is amended by adding: "(E)(i) a named plaintiff, or the surviving spouse or next of kin of a named plaintiff in the Federal Litigation, or (ii) a client of plaintiffs' counsel of record in the Federal Litigation, pursuant to a written engagement or acknowledgment of engagement executed on or before December 31, 2011, and provided further that a person eligible under (c)(E)(ii), through counsel of record in the Federal Litigation, provides with the claim probative evidence in the form of declarations filed as Exhibit C1 in ECF 150 (the Litigation Declaration)" establishing that such person suffered material non-economic injuries as a result of the 1998 Embassy Bombings.
- (7) Section 34 U.S.C. § 20144(c)(2) is amended by adding: "(F) a citizen or resident of Kenya, Tanzania or the United States who was injured or who sustained a loss as a result of the 1998 Embassy Bombings and the personal representative or surviving spouse or next of kin of a citizen or resident of Kenya, Tanzania or the United States who was injured or who sustained a loss as a result of the 1998 Embassy Bombings, provided that

(a) the citizen, resident, personal representative or surviving spouse or next of kin timely filed a claim on Form 95 with the United States Department of State; or, (b) a citizen and employee of the United States, or his or her personal representative or surviving spouse or next of kin either (i) filed, caused to be filed, or had filed on behalf of the US citizen and employee, on or before August 7, 2008, individually or otherwise, a statement, report, claim or notice, including medical or psychological statements, reports, claims or notices, which disclosed, asserted or claimed a loss or injury as a result of the 1998 Embassy Bombings or as a result of the terrorism-related events and conditions at the Embassy in 1998, or (ii) the citizen and employee of the United States was listed among the personnel records of the United States as an employee providing services, or scheduled or employed to provide services at or on behalf of the Embassy in 1998, or (iii) a citizen and employee of the United States was at, in or near the Embassy during or immediately following the Embassy Bombing.

- (8) Section 34 U.S.C. § 20144(c) is amended by adding: “(G) a citizen or resident of Kenya, Tanzania or the United States who sustained material non-economic injuries as a result of the 1998 Embassy Bombings and the personal representative or surviving spouse or next of kin of a citizen or resident of Kenya, Tanzania or the United States who sustained material non-economic injuries as a result of the 1998 Embassy Bombings, provided that the citizen, resident, personal representative or surviving spouse establishes by probative evidence material non-economic injuries caused by the 1998 Embassy Bombings, such evidence to include a declaration similar in form to the Litigation Declaration or reliable corroborative evidence.”

(b) Section 34 U.S.C. § 20144 (j)(4) is amended by adding the following: All judgments entered on May 20, 2022, ECF 164, in the Federal Litigation shall be considered final judgments for purposes of this Act.

Section 34 U.S.C. § 20144 (j)(8) is amended by adding:

“Notwithstanding the preceding provisions, for the purposes of this Act, all persons who meet the requirements of 42 U.S.C. § 10609(c)(2)(D), (E), (F), or (G) are U.S. Persons.”

(c) adding Section 42 U.S.C. § 20144(k) of the U.S. Victims of State Sponsored Terrorism Act as follows:

- (1) All persons who meet the requirements of 42 U.S.C. § 10609(c)(2)(D), (E), or (F)(b) and their estates, personal representatives, surviving spouses and next of kin have a right of action for damages against any foreign terrorist organization or financial institution which provided material financial support to Al Qaeda prior to the 1998 Embassy Bombings.

(2) Any right of action in paragraph (1) shall be brought in the United States District Court for the District of Columbia, and shall be filed no earlier than January 1, 2023, and no later than August 7, 2025.

(d) adding Section 34 U.S.C. § 20144(l) of the U.S. Victims of State Sponsored Terrorism Act as follows:

(i) A claimant eligible under (c)(2)(D), (E) or F(b) shall be conclusively presumed and deemed to have sustained injury and damage as a result of the 1998 Embassy Bombings in the amount of the Damages Award; (ii) a claimant eligible under (c)(2)(E)(a) or (c)(2)(F) shall be conclusively presumed to have sustained injury and damage as a result of the 1998 Embassy Bombings in the amount of the Damages Award provided that a claimant eligible under (c)(2)(E) or (c)(2)(F) provides probative evidence of material non-economic injury from the 1998 Embassy Bombings in the form of a Litigation Declaration; (iii) a claimant eligible under (c)(G) shall be presumed to have sustained material non-economic injury and damage as a result of the 1998 Embassy Bombings in the amount of the Damages Award provided that a claimant eligible under (c)(G) provides probative evidence of material non-economic injury in the form of a Litigation Declaration or corroboration; and (iv) subject to (i), (ii) and (iii), an eligible claimant who does not meet the requirements of (i), (ii) or (iii), or who elects not to proceed exclusively under (i), (ii) or (iii), is entitled to compensation if the Administrator of the Fund or Special Master determines that the eligible claimant suffered material non-economic injury or damage as a result of the 1998 Embassy Bombings, or suffered economic injury or damage as a result of the 1998 Embassy Bombings and if the Administrator of the Fund or Special Master is further able to make a calculation of damages pursuant to regulations or guidelines similar to the Gulf Coast Claims Facility Protocol for Interim and Final Claims, dated November 22, 2010.

“Any award or distribution from the Fund arising out of a claim based on the 1998 Embassy Bombings shall (i) be deemed a recovery pursuant to any contingency fee agreement between the claimant and claimant’s counsel, and (ii) the lesser of the contingency fee percentage in the contingency fee agreement or 25% of the award or distribution shall be deemed payable to counsel pursuant to the contingency fee agreement or, in the event that claimant had not entered into a written fee agreement for the claim, recovery, award or distribution prior to December 31, 2011, 25% of the award or distribution from the Fund to such claimant shall be due to and payable in equal pro rata amounts to claimants eligible under (c)(4) or (c)(5).

(ii)) 0.5 percent of each distribution under this statute, up to a cumulative total of two million dollars, shall be withheld by the Fund and contributed to the maintenance and operation of the Peace Memorial in Nairobi, Kenya.

(e) DEFINITIONS. — Section 34 U.S.C. § 20144 is amended by adding:

“(m) Foreign terrorist organization” means foreign organizations that are designated as such by the Secretary of State in accordance with section 219 of the Immigration and Nationality Act (INA), as amended.

“Financial institution” means any domestic or foreign public or private bank or its subsidiary or parent.

SECTION 4304. AMENDMENT OF 22 U.S. Code § 8772

(a) add to the Title “and Al Qaeda”

SECTION 4304. AMENDMENT OF 22 U.S. Code § 8772

(a) add to the Title “and Al Qaeda”

(b) add to Section 8772(a)(1):

“(D) a blocked asset of Al Qaeda (whether or not subsequently unblocked), or an asset that would be blocked if the asset were located in the United States.”

(c) add to Section 8772(a)(2):

All blocked assets of Al Qaeda shall be turned over, released, and paid to the counsel of record for the named plaintiffs in the Federal Litigation for distribution to and as part of the recovery of eligible claimants under (c)(2)(D) and (c)(2)(E), to the extent that unsatisfied judgments against Al Qaeda entered, in that case, exceed the amount of the blocked assets to be turned over, released, and paid. Prior to an award turning over, releasing, or paying blocked assets of Al Qaeda, the district judge or magistrate judge assigned to the Federal Litigation shall determine the extent that which unsatisfied judgments against Al Qaeda entered, in that case, exceed the amount of the blocked assets to be turned over, released and paid, and such turnover, release, and payment shall not exceed the amount by which the unsatisfied judgments against Al Qaeda exceed the amount of the blocked assets to be turned over, released and paid.

SEC. 4305 NOTICE TO EMPLOYEES AND CITIZENS

- (a) The rights and remedies in this statute shall be included in any training programs on terrorism provided or conducted by the State Department, Department of Justice, or Department of Defense.
- (b) In the event of a terrorist attack directed at an American embassy or other facility or property overseas, the State Department shall, within ninety (90) days of the attack, provide in writing notice of the rights and remedies in this statute to all employees of

the embassy, facility or property which was the subject of the attack and to all American citizens who had registered in writing with the applicable embassy their presence in the foreign state in which the embassy, facility or property was situated.

LAWS. — The laws described in this subparagraph are:

- (i) The US Victims of State Sponsored Terrorism Act, 34 U.S.C. § 20144 *et. seq.*
- (ii) 22 U.S. Code § 8772

TECHNICAL AND CONFORMING AMENDMENTS:



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – (SECOND SESSION)

THE SENATE

ORDER PAPER

THURSDAY, FEBRUARY 23, 2023 AT 2.30 PM

COMPENSATION TO THE KENYAN VICTIMS OF THE 1998 BOMBING OF THE UNITED STATES EMBASSY IN NAIROBI

(Sen. Agnes Kavindu, MP)

THAT, AWARE THAT, disaster is defined as an overwhelming event and circumstance that tests the adaptation of responses of a community or individuals beyond their capability and leads momentarily to massive disruption of function for a community or individual that often exceeds their capacity to cope using existing resources;

FURTHER AWARE THAT, such was the case with the 1998 US Embassy Bomb disaster in Nairobi in which many of the Kenyan casualties resulted from the collapse of adjacent buildings located within a two to three block radius, and with reverberations being felt in most parts of Nairobi that resulted in 213 Kenyans and 12 Americans killed and over 5000 citizens of both countries being seriously injured;

NOTING THAT, US Allies, including Kenya, have endured the great burden of death, and long-term and in many instances permanent, physical and psychological injury;

FURTHER NOTING THAT, the United States Government has since compensated some of the victims and families of US citizens, leaving the families of Kenyan citizens and certain other victims uncompensated;

NOW, THEREFORE, the Senate resolves that the Ministry of Foreign Affairs:

- (i) Advances friendship and co-operation between the United States and Kenya by supporting the eligibility of Kenyan and American victims and their personal representatives, surviving spouses and next of kin in the Victim Compensation Fund pursuant to the Justice for United States Victims of State Sponsored Terrorism Act; and
- (ii) Partners with the Ministry of Health to explore subsidized medical treatment for the surviving victims of the bomb blast.



MUSOLINO | DESSEL

FOR IMMEDIATE RELEASE

Contact: Leopold Harris
lharris@musolinoanddessel.com

WITH 25TH COMMEMORATION LOOMING, BOMBING VICTIMS INVITE BIDENS, PRESS US AND KENYA TO SUPPORT COMPENSATION LEGISLATION

Washington, DC. (February 8, 2023) – Victims of the 1998 embassy bombing invited President Joe Biden, First Lady Jill Biden, and Secretary of State Anthony J. Blinken to the 25th Commemoration in Nairobi, Kenya.

On June 9, 2010, then – US Vice President Joe Biden and Dr. Jill Biden visited the Nairobi Peace Memorial honoring the victims of the August 7, 1998, bombing of the US Embassy in Nairobi. The President and the First Lady should return on the 25th Commemoration this August.



SIMON MAINA/AFP via Getty Images (June 9, 2010)

Nearly 25 years ago, US State Department employees and hundreds of Kenyans were killed and thousands more badly injured, many blinded, when Al Qaeda attacked the US Embassy in Nairobi.

Last year a US federal court entered \$60 billion in judgments for hundreds of Kenyans for what the court described as "...among the most heinous [acts] the Court can fathom". See September 25, 2014, Findings of Fact and Conclusions of Law (ECF 121), at 26. For many foreign victims of terrorist attacks on the US, those judgments would open the door to eligibility in a US compensation fund which has already distributed billions of dollars. But, the way that the law was drafted, the Kenyan victims are currently ineligible. The victims' American lawyers have been working with the US Congress since the judgments were entered to make simple changes to the fund which would treat all Kenyan victims the same way as other eligible victims.

Six months from now, on August 7, 2023, thousands of Kenyans will gather at the Peace Memorial in Nairobi to remember and honor the departed and the suffering. This week, the victims invited President Biden, First Lady Dr. Jill Biden, and US Secretary of State Anthony Blinken to join them.

"A return to the sacred memorial site by the President and the First Lady at the ceremony six months from today will demonstrate at a critical time in U.S. Africa relations that the United States is, and continues to be, a steadfast and reliable friend and partner."

Washington attorney Philip Musolino writes in his invitations that the ceremony provides an opportunity for the US at a critical time in US-Africa relations to underscore to the Kenyan and East African people the steadfastness of the United States and its long-term commitment to its friends in Africa. Mr. Musolino adds that the new Kenyan Administration and the Kenyan Parliament can be expected to add their voices to this long overdue act of justice and fairness.

If you would like more information about this topic, please contact Leopold Harris at (202) 466-3883 or email at lharris@musolinoanddessel.com.

This message/transmission (including any attachment) contains information that may be confidential and privileged. Unless you are the intended addressee (or authorized to receive for the intended addressee), you may not use, copy, or disclose to anyone the message or any information contained in the message. If you have received this transmission in error, please immediately notify the sender by return email or contact us by telephone at Musolino and Dessel, PLLC, and permanently delete all copies of the message. This material is distributed by Phil Musolino, Joseph Szlavik, and Melvin Foote on behalf of the Designated Victims of the 1998 Embassy Bombings. Additional information is available at the U.S. Department of Justice, Washington, D.C. Thank you.

Almost 25 years ago, on August 7, 1998, hundreds of Kenyans were killed, and thousands more were grievously injured in a terrorist attack on the American embassy in Nairobi. My beloved father, Godfrey, who was among the innocent injured, passed away in 2021 from major head injury complications sustained in the attack. I am grateful that the victims and their families have not been forgotten. I urge you to support the efforts of our American friends to secure legislation in the US Congress to include the victims and their families in the US Victims Compensation Fund. I hope we can accomplish this extraordinary goal by the 25th Commemoration on August 7, 2023, at the Memorial Park.





MUSOLINO | DESSEL

March 21, 2023

Via Electronic and Standard Mail:

First Lady Jill Biden, Ed.D.
Office of the First Lady
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Re: Victims of 1998 Nairobi Embassy Bombing

Dear Dr. Biden:

As you may know from our February 7, 2023, letter, I represent hundreds of Kenyan victims of the 1998 embassy bombing in Nairobi. My clients and many others in Kenya were grateful for, and inspired by, your solemn visit to the Peace Memorial in Nairobi on Saturday, February 25, 2023. Your support during this visit to Africa, as well as on your previous visits, for the African people, and in particular for African women, has been a source of joy and comfort for so many.

Of course, our request that you attend the 25th Commemoration of the bombing remains open. Our clients and many in East Africa would be delighted by your return. We appreciate, however, that your many responsibilities may make a second visit this year impracticable. My clients, therefore, request an opportunity to meet with you in Washington prior to the commemoration on August 7, 2023.

You may be unaware that the largest group of victims were members of Kenya's Teachers Service Commission. Over 300 teachers and school administrators were attending a conference on the upper floors of the building adjoining the embassy, and lost their lives or suffered serious injuries from the terrorist attack. Your obvious love of teaching and education undoubtedly gives you a unique understanding of this enormous loss to Kenya.

In addition to the educators, over one hundred Kenyans were orphaned, many Kenyan women were widowed, suffered miscarriages or other birth complications, and hundreds more Kenyans were blinded or suffered serious vision loss. The seven extraordinary women who have signed below represent these groups and join in our request.

Each of these groups is encouraged by your sincere commitment to teachers, women, and those who endure everyday burdens inflicted on them by evil and injustice. They and I look

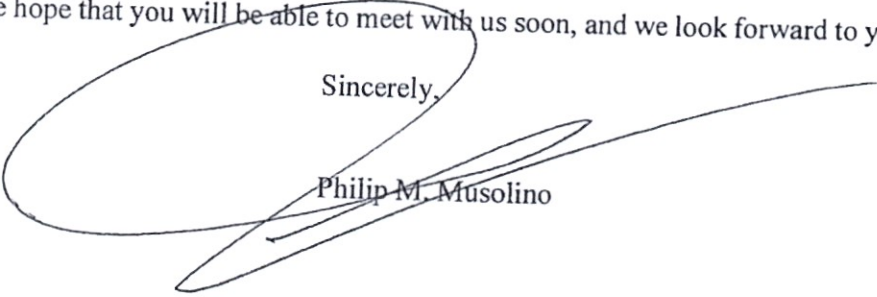
This material is distributed by Philip M. Musolino and Musolino & Dessel, PLLC on behalf of the Designated Victims of the 1998 Embassy Bombings. Additional information is available at the U.S. Department of Justice (FARA).

4015 L St. NW, Suite 440, Washington, DC 20037 | (202) 466-2893 | musolinoanddessel.com

forward to the opportunity to thank you in person in Washington and to work with you to finally address the losses sustained by our Kenyan friends.

We hope that you will be able to meet with us soon, and we look forward to your response.

Sincerely,



Philip M. Musolino



Catherine Bwire, for the Blinded Victims Group



Lilian Mutua, for the Pregnant Victims Group



Grace Nyawira Njoroge, for the Orphans Victims Group



Safula Abdi Mwilu, for the Widows Victims Group



Leonora Atieno, for the Teachers Victims Group



Lilian Ngeno, National Convenor



Caroline Muthoka Wavai, International Convenor

cc: Ramona Tascoe, MD, MHSA, MDiv

Catherine Bwire, on behalf of the Blinded Victims Group, is a mother of one, Jean Bahati. She was pregnant with her when the bomb blast occurred in 1998. She permanently lost her vision as a result of that terrorism. She has been struggling to bring up her daughter as a single mother. Life has never been the same again for her and her child. Her husband abandoned her after the bombing and left her for dead. She struggles to go to work, needing someone to guide her as she walks through the Nairobi City streets going to work. "I still cannot see my future, except I am seeing it will be difficult, but it will be possible."



Lilian Mutua, on behalf of the Pregnant Victims is a survivor of the 1998 bomb blast. Lilian was 8 months pregnant and working at the Teachers Service Commission on the 12th floor when the blast occurred, causing both internal and external injuries. Since then, Lilian has undergone numerous surgeries and faced many challenges, including the premature birth of her children and the loss of her job.



Grace Nyawira Njoroge, on behalf of the Orphans Victims Group, is a survivor of the 1998 terrorist bomb attack. The loss of her father in the attack, who was the sole breadwinner of the family, and the subsequent death of her stepmother from illness and COVID-19, drastically altered her family's life trajectory and forced her to put aside her education to work and support her family.



Safula Abdi Mwilu, on behalf of the Widows Victims Group, is a retired professional Community Worker and a widow of the 1998 Nairobi bombing, where she lost her husband and was left to care for their three children. Despite her own struggles, she remains committed to giving back to her community by volunteering in various community works and distributing food and clothing to those in need.



Leonore Atieno, on behalf of the Teachers Victims Group, is a survivor of the 1998 bomb blast, where she sustained multiple injuries to her face, shoulder, right hand, and legs. She lives with chronic pain and requires expensive medication.



Lilian Ngeno, National Convenor and Tana and Arthi Rivers Development Authority Survivor's Coordinator, was working on the 19th floor of the adjoining building when the US Embassy was attacked. This traumatic event not only affected her physically, but also emotionally, psychologically, and financially, leaving lasting scars on her life and relationships. She has learned to focus on the present and to strive for a positive future. Her hope is that her "story can inspire others to persevere in the face of adversity and to appreciate the precious gift of life."



Caroline Muthoka Wavai, International Convenor, is a world-renowned and award-winning gospel singer, activist, and survivor of the 1998 embassy bombing. Caroline's song, Poleni, was written in memoriam of the August 7, 1998, attack. Caroline's organization Barak Care International works to provide services and training for disaster emergency preparedness and address the suffering of the silent victims of such calamities.



Home > ... > Secretary Antony J. Blinken And Kenyan Cabinet S.

Secretary Antony J. Blinken And Kenyan Cabinet Secretary for Foreign and Diaspora Affairs Dr. Alfred Mutua At a Joint Press Availability

REMARKS

ANTONY J. BLINKEN, SECRETARY OF STATE
DEAN ACHESON AUDITORIUM
WASHINGTON, DC

APRIL 24, 2023



SECRETARY BLINKEN: Good morning everyone, and a very warm welcome to my friend the Cabinet Secretary Mutua. Alfred, very good to have you here, and I really appreciate the good, productive conversation that we had a short while ago.

However, before I turn to that and to the U.S.-Kenya Strategic Dialogue, which is underway today, let me just share a brief update on Sudan.

On Saturday, I directed the temporary suspension of operations at Embassy Khartoum, and we conducted a successful operation to safely evacuate all U.S. embassy personnel and their dependents.

I want to reiterate my appreciation for the leadership of Ambassador John Godfrey and the entire embassy team who managed the consolidation of our people and the necessary preparations for the evacuation under a very fluid security situation, even as they were tirelessly working to broker an Eid ceasefire. I could not be prouder of our team, most of whom are now en route back to the United States.

I especially want to express my gratitude to Secretary of Defense Austin, Chairman of the Joint Chiefs Milley, and the men and women of the U.S. military who executed the evacuation operation with their usual extraordinary precision and skill. They once again demonstrated that they are the finest in the world.

A decision to suspend operations at the embassy, remove our personnel from their assigned post, is among the most difficult that any Secretary has to make. But my first priority is the safety of our people, and I determined that the deteriorating security conditions in Khartoum posed an unacceptable risk to keeping our team there at this time.

I want to be clear that even as we have temporarily suspended operations on the ground in Khartoum, our diplomatic and consular work in Sudan continues. Indeed, in just the last 36 hours since the embassy evacuation operation was completed, we've continued to be in close communication with U.S. citizens and individuals affiliated with the U.S. Government to provide assistance and facilitate available departure routes for those seeking to move to safety via land, air, and sea.

This includes Americans who are traveling overland in the UN convoy from Khartoum to Port Sudan. We also continue to coordinate with allies and partners who are conducting their own operations, and to leverage those efforts to include Americans. We're taking further steps to support Americans and are exploring options to return the diplomatic and consular presence to Sudan as soon as possible.

We also continue to engage directly with General Burhan and General Hemedti to press them to extend and expand the Eid ceasefire to a sustainable cessation of hostilities that prevents further violence and

upholds humanitarian obligations. The Sudanese people are not giving up on their aspirations for a secure, free, and democratic future; neither will we.

The United States will work with all parties, in coordination with regional and international partners, to bring an end to the fighting and a return to the transition to a civilian government.

Kenya, under President Ruto, has been a strong partner in this effort. And indeed, Kenya is a security leader throughout the region. That's evident not only in its commitment to resolving the current crisis in Sudan, but also in its support for United Nations and African Union peacekeeping efforts and the counterterrorism mission in Somalia, in its partnership to reach the November 2nd Cessation of Hostilities Agreement in Ethiopia, and in its stewardship of the Nairobi process to advance peace and stability in the Democratic Republic of Congo.

And over the last two years, its tenure on the UN Security Council, Kenya has consistently stood up for the UN Charter and focused members on addressing the humanitarian and human rights crises across the continent and beyond.

Beyond peace and security, Kenya and the United States are partnering on a wide range of issues. And that's reflected in the breadth of topics that we're tackling in the Strategic Dialogue. One of the major focuses we had today is public health, an area in which Kenya is demonstrating its potential to be a regional and indeed a global leader. The United States is supporting Kenyan-led vaccine production, including through Moderna's \$500 million investment in a new manufacturing facility near Nairobi, which will produce mRNA vaccines to tackle viruses from COVID-19 to Ebola, from RSV to HIV.

Kenya remains at the forefront of the global HIV response. Today that's nearly reached – and has nearly reached – excuse me – its 95-95-95 targets: diagnose 95 percent of all HIV-positive individuals, provide anti-retroviral therapy for 95 percent of those diagnosed, and achieve viral suppression for 95 percent of those treated. That is a tremendous milestone that is saving countless lives, and we're proud to have supported this effort over two decades with PEPFAR as it's been operating in Kenya. Now, we're building on that success by moving to a Kenya-owned, Kenya-driven, and Kenya-funded framework that will position the country to achieve sustained HIV epidemic control by 2025.

Health security and food security are closely intertwined. We've heard loudly and clearly from African leaders that emergency aid cannot be the only solution. So we're investing in sustainable, long-term African food production. That includes our work, with the AU and the UN, to invest in nutritious, climate-resilient crops and develop climate-smart agriculture. And it includes mobilizing the private sector in that effort.

President Ruto recently announced 14 investments valued at over \$150 million by private firms in Kenya's agro-industrial productivity. In total, these new partnerships will create over 20,000 Kenyan jobs, boost incomes by – for more than 1 million smallholder farmers, and increase sales and exports by over \$130 million – while, of course, dramatically increasing local crop production and reducing malnutrition.

U.S. companies are eager to invest in Kenya's success. We're committed to supporting U.S. investment in Kenya – particularly in key sectors like information and communications technologies, agriculture, renewable energy – which will help Kenya achieve its goal of reaching upper-middle income status by 2030, while creating jobs and opportunity for people in both our countries.

Finally, we're discussing through the Strategic Dialogue how the United States can continue to support Kenya's democratic progress. Its recent and fair elections and orderly and peaceful transition of power are a model for the region – demonstrating the commitment of its people, civil society, and leaders to transparent governance that is accountable to its citizens.

So we have made a lot of progress, and we're proud of it, and we have a lot on the agenda today. And as with all of our Strategic Dialogues, particularly with Kenya, the work of today is also the work of the 364 days that follow. This is an effort that takes place day-in, day-out between our governments, between our officials, between our experts, but also between our private sectors, our civil societies, our citizens, building, strengthening a partnership between our countries.

I want to thank the cabinet secretary for his commitment to advancing this agenda, and Alfred, the floor is yours.

CABINET SECRETARY MUTUA: Thank you very much, Secretary Blinken. I'm very happy to be here with my team. And I want to thank you for the warm welcome that you have given to us and the hospitality, and Strategic Dialogue that is very important for both our countries, and not just both our countries, but also the African continent.

Let me start the way you finished, and that is the issue of democracy. Kenya prides itself to be a democratic country that believes in the rights of the people to be able to go to the ballot box and choose their leaders and to live in a stable country where there's economic growth. And we want to thank the United States for the support you've given us over the years in ensuring that we have a democratic country. And we will continue expounding the views and the principles and philosophies of true democracy as it is and stability in the region.

Kenya is open for business, as we usually say. We are moving into an era where we are saying we want more trade, not aid. Kenya is well placed in the African continent to be a hub for American investors. In the

African continent, we now have the African Continental Free Trade Area, with a population of 1.3 billion people. When you come and invest in Kenya, it means you're investing in the continent of Africa. You're able to supply your goods, you're coming from a hub that can able to help you. We have worked very closely with American companies, and we had a very good Chamber of Commerce meeting in Nairobi, where a raft of new initiatives were announced to enable people to be able to – American farms to be able to come and invest in Kenya. So welcome, Americans, to come and invest in Kenya as you continue.

In the area of our cooperation and Strategic Dialogue, you mentioned Moderna as a company that is about to break ground in Kenya. We welcome more companies to come to Kenya, because we've always been very good partners, and we'll continue working well together.

In this Strategic Dialogue, I think we're also talking about issues of climate change. The reality is that it is not a matter of when but if the world has transitioned from fossil fuels to renewable energy. Kenya, we're at a good place and only 2 percent of our energy is renewable energy, using hydro, geothermal, solar, and wind. And we want to grow that to 100 percent by 2030. And we want to work with American farms and American Government towards supporting the production of green hydrogen, which is what the future will need.

So we have looked at the past. We have fossil fuels. We've decided not to tap into them because the environment is very important. We have to protect now for future, otherwise the world will not be in a very very good place. So we want to be able to work together in those many ways.

We'll be discussing many issues, ranging from security, peace in the region – as you know, Kenya has been quite involved in the mediation in Ethiopia, and also looking at what you can do for Democratic Republic of Congo. COVID has taught us that what happens in one part of the world will happen – will have an influence or an impact on what happens in the rest of the world. So we want to acknowledge the support we have been receiving, and the comradeship between us and the United States in terms of bringing peace to the region. And we are committed to be the peacemakers of the continent of Africa, if not the world, looking at silencing the guns, people sitting down and being able to work together.

It is in the same spirit we are talking about the Russia and Ukraine conflict where Kenya recognizes Ukraine's sovereignty and territorial integrity within internationally recognized borders, and we've been calling for cessation of hostilities, and the steps that have been taken so far to tell others that you cannot roll back history. We're at a place we are by now; we have to move forward. You can't start claiming countries, or claiming countries that are part of you. Nostalgia is not the order of the day now. We need people to be respected, they need peace and security, and we have to have a system where we don't let things get out of hand. Because today it's Ukraine; what about tomorrow? What will it be?

We also are very happy about many things that are happening. But as they happen also, we are quite sad of what's happening in the Sudan. And we've been working closely with the Government of Sudan, trying to get to a place whereby we can have peace and stability. It is quite tragic that we have more bullets coming into Sudan or being used in Sudan than food. And it's a tragedy, because we see from where we sit a lot of international interference, a lot of other players trying to use Sudan as a playing field for whatever reason, for the gold in Sudan, for territorial strength and control of the region.

And we're trying to ask – we are asking external forces to leave Sudan alone. As an African continent and the AU and intergovernmental organization called IGAD, we are trying to find solutions for Sudan. I know you've pulled your teams out. Kenya is not pulling its diplomatic offices. We're not shutting them down because we want to have a presence as we negotiate.

President Ruto is looking forward to going to Sudan as soon as it stabilizes and there is enough security to try and see how we can engage the leaders. We are trying to engage the two warring parties, we're trying to bring them to the table so that we can have a good end, to a cessation of the violence. And what we want is civilian rule eventually over there.

President Ruto has offered Kenya to mediate the conflict and to restore civility and peace. And we are quite persuaded that a peacefully negotiated solution to the conflict in Sudan is within reach. And as always, we stand ready to make our contribution, and we'll be playing hand-in-hand with that. So we'll be able to work together and see what we can do.

I want to thank you. There are many topics we can talk about. We look forward to welcoming you back to Kenya sometime soon, and we look forward to President Biden also visiting Kenya, and President Ruto coming back, and thus holding these meeting at presidential level as we continue to work.

What I can assure you is that Kenya will remain a good partner, will remain a friend of the United States, and we'll be able to work in sync as we try to improve the world that we live in. When it comes to issues of trade, when it comes to the issue of health, when it comes to the issue of peace and stability, when it comes to issues of humanity, we are all the same people and we want to have a good life while we're here. And if we can work together as friends, it will be very good.

And at that note, I want to welcome Americans to visit Kenya. We don't get as many Americans coming to Kenya as they should. I think our elephants and lions are complaining that they don't see a lot of Americans in our national parks. So Kenya is a safe and happy place, and we welcome Americans to come down for safari where you actually get to interact with the animals as long as they don't – you don't get too close. But they'll be happy to see you.

• Thank you.

• **MR PATEL:** Thank you. We'll take three questions. First, we'll go to Cindy Spang from Voice of America.

QUESTION: Yes, thank you. Good morning. I have one question for you, Secretary Blinken, and several questions for both of you, please. Secretary Blinken, do you have numbers of how many Americans remain in Sudan? And could you share any updates on their safety and well-being? And what options are there for those who want to leave?

And for both of you: Cabinet Secretary Mutua, you mentioned foreign involvement in Sudan. Could you elaborate on that, please? And have either of you seen direct or indirect involvement from Egypt or the United Arab Emirates? And if so, have you spoken to their leaders about that? And have you seen involvement by the Wagner Group, and you are – how concerned are you that Russia may fan the violence? Thank you.

SECRETARY BLINKEN: Thanks. Happy to start. First, in terms of American citizens in Sudan, as you know in any country around the world, whether it's Sudan or anywhere else, we never know with any precision how many Americans may be there at any given time because Americans are not required to register with the embassy, with the government, either when they go, when they reside, or when they leave. So we don't have a good fix on the number of Americans who are there at any given time, including now.

We do know, of course, the number of Americans who have registered with us and with whom we're in active touch, communication. And of those, I would say some dozens have expressed an interest in leaving and as I mentioned just a few moments ago, even with the withdrawal of our embassy personnel from Sudan, our efforts to provide services to American citizens who are there – consular services, other services, advice – continues, and we're in regular communication with American citizens. We are looking to see how we can help them ensure their own safety. We have been working with allies and with partners to do as much as we can to enable them to find their way out if that's what they choose to do.

Now, keep in mind as well that the overwhelming majority of American citizens in Sudan are dual nationals who have made their lives there, been living there for years, for decades, for generations, and many will continue to do that. But for those who are seeking to leave, we'll continue to engage directly with them to see what we can do to help them, and as I said, with allies and partners as well to help facilitate their departure. And this is going to be an ongoing process.

In addition, we're looking at what options we have to perhaps resume a diplomatic presence in Sudan, including in Port Sudan; that's something that we're looking at. But conditions are very challenging and we're tracking that very carefully.

Just to pick up on the second part of the question, look, on one level, a whole variety of countries are involved in Sudan, have been engaged there, and engaged in – to some extent in trying to help Sudan move forward with its transition to a civilian-led government. And we have been in touch repeatedly throughout this crisis with a variety of them. I've spoken directly to counterparts in Saudi Arabia, in the United Arab Emirates; other members of our team have spoken to Egypt and other countries, the United Kingdom – all to the same end, which is trying to get a ceasefire, trying to get a more sustainable cessation of hostilities, and then trying to get the country back on track to the transition to a civilian-led government that it was on before the violence that erupted derailed that effort. And it remains vitally important that countries use whatever positive influence they have to try to move Sudan in that direction.

We do have deep concern about the engagement of the Prigozhin group, the Wagner Group, in Sudan. It's in so many different countries in Africa – an element that, when it's engaged, simply brings more death and destruction with it. And it's very important that we not see its further engagement in Sudan. And I know a number of countries are very concerned with that prospect.

CABINET SECRETARY MUTUA: Thank you. Thank you very much. I agree with you there with the last statement about all these groups coming in and destabilizing. Currently in Sudan, we are trying also to evacuate Kenyans who have been working and living in Sudan. We've (inaudible) to a lot of requests by the international organizations, the UN particularly, and other countries to help evacuate some of their people and bring them to Kenya or get them out of Sudan because of current need to accompany, and so we'll be proceeding.

But it would be good if we can find a way of establishing a ceasefire, even for a few hours or even a half a day or a day, to enable people to be able to move, to enable food and supplies to be brought in to the – especially in the capital, Khartoum, and other places.

In terms of involvement and indirect and direct involvement of various groups, we've been quite concerned by some of our friends in the Middle East as (inaudible) Russia and others who for a long time have been friendly to either one or the other side. And we are just saying that at this particular time, it is not a time to take sides in a war. It's time to be able to come together and bring them together because at the end of the day, peace has to prevail. And so it doesn't matter who you support; at the end of the day, we need to have the people of Sudan have stability.

So all these other interests, if they can just keep off and let us bring peace to Sudan, we do believe it is possible. And that is where we are working towards as Kenya, together with our partners. And we don't want to be talking to people who are being supported and armed more and given strength by outsiders who don't live in Sudan. We care about Sudan. As part of the African Union, we want to silence the guns in Sudan, want to find an African solution to African problems with the support of our friends. But we can't

effectively do that if we are talking to groups that are being strengthened every day by the parties who believe that all they need to do is to fight to the end. There is no fighting to the end. At the end of the day, it's the local and the normal people who lose, not just their leaders.

MR PATEL: We'll next go to Julian Pecquet from *The Africa Report*.

QUESTION: Thank you very much. Julian Pecquet of *The Africa Report*, *Jeune Afrique*. You mentioned, Secretary Mutua, about President Ruto's involvement with IGAD and the talks with the Sudanese, so I have a few questions. One of them is what are you hearing from the parties to the conflict? What are you telling them? What kind of progress are we seeing, are we making since the past week? Any progress on when the president might host the parties in Nairobi if he can't go to Sudan because of the security situation? And how are you working with the African Union, which has its own effort going on? Secretary Blinken perhaps can talk to what the U.S. can do to help with the African-led negotiations.

Eastern Congo is another conflict where foreign actors are working at cross-purposes. I wanted to ask if Kenya can be a meaningful force in the DRC. Are you willing to take on the fight to the M23, which is what the Congolese seem to want? And can you tell us what the latest is with negotiations to renew the mandate of the East Africa Community regional force? And here as well, what role can the U.S. play?

And then finally, on trade, perhaps we can talk about agriculture specifically, which is a very big deal to the Kenyans, obviously. What kind of progress are we making in the bilateral talks on agriculture, and particularly U.S. GMO exports to your country? Thank you so much.

CABINET SECRETARY MUTUA: Thank you very much. As members of IGAD, we have decided to be at the forefront in finding a solution to all these problems. We do believe that we are at a good place because the two warring leaders are talking to us, so that's a good sign. They are not – they – when you talk – when they are being talked to, they're talking back, and we're able to open the channels of communication. The fighting is still going on in Sudan, but we just feel that at least we have an entryway. They have not locked themselves up and shut their ears to the world. They are listening to the world, and they know the pressure that is being felt around them.

Our president is ready. We have said that Kenya is ready at any moment's notice. Even if our president may not be able to go there immediately, we are ready to start discussions, and that's a message we are communicating to them, is that send us part of your teams. Let's start talking about what needs to be achieved because there's a reason they are fighting. They are fighting because they can't agree about something and we need to be able to sort out what they can't agree about, find a common, agreeable ground and then be able to move forward. And this is also under the auspices of the African Union. The

African Union had a ministerial meeting where they called cessation of fighting, where they called for dialogue, and so this is part of the process.

What we are doing as Kenya is that we are not just going to wait. We are saying – we've put – stuck our necks out and said, we can provide a solution. We've been in this game for some time. We've – kind of have a bit of experience in how these things are done, and we love the people of Sudan so much that we say that we are ready to commit ourselves to hosting a negotiation between the two of you, the two warring groups, and trying to find solution so that the innocent people of Sudan – great people of Sudan – who are suffering can have this burden lifted from them.

In terms of eastern Congo, yes, our troops are on the ground, and it's not about us fighting the M23. We are not there to fight M23 or to fight anybody. We are there to provide a corridor that allows the groups that are fighting the Congolese Government and the ones that are being fought by the Congolese Government to have a sense of security through there. That they can start – we can – they can start putting down their guns and getting to the table and be able to negotiate.

It is important to note that M23 has been in operation for over 30 years. It is not just a simple problem that just started yesterday. So we are working together, and the Nairobi processes are still – is still going on, process still going on. We have Nairobi 4 coming up, and so we are fully engaged. And they have different meetings being called this coming month to try and sort out the issue.

In terms of the regional force and extending, that's in the process, and we are confident that will be – Kenya is not planning to withdraw its troops until we find an amicable solution. And we want to thank our partners, the United States and others, for the promised support that we can be able to work together to ensure that that region is stable.

Maybe you can take agriculture fast, then I can —

SECRETARY BLINKEN: Thank you, Alfred. Let me just add that in terms of our engagement in Sudan, first, we've been deeply engaged directly with the parties. I have spoken to Generals Burhan and Hemedti on multiple occasions. We strongly support African-led efforts to help both mediate this crisis, to end the hostilities, and, as I said, get back on the – on track to transition to a civilian-led government. We participated in, I think, an important meeting by video conference that was convened by the chairperson of the African Union, Mr. Faki, just at the end of last week that included the secretary-general of the United Nations, that included virtually all of the stakeholders in Africa and beyond who have an interest in trying to help Sudan get back on track, and we continue to support those efforts.

We all have the same goal. We're all driving to the same place. That is a ceasefire that's genuinely durable, that turns into a full cessation of hostilities between the competing forces, and that resumes the very important negotiations that were underway to create a transition to a civilian-led government – negotiations that had produced very significant progress, including the agreed framework. So that is everyone's goal, and we'll use both our direct engagement as helpful and as appropriate, but also strongly in support of AU-led efforts to put this back on track.

With regard to the United States and Kenya and trade, I think first it's worth pointing out that it's up 20 percent over the last year. That in and of itself speaks volumes. And when it comes to agriculture, that's exactly one of the things that we focused on today in a variety of ways, and I think that's going to be also the product of the Strategic Dialogue that we're having today and that you'll hear more about when we conclude our conversations.

One of the things that we talked about – and this has been part of an ongoing conversation – is of course Kenya is on the receiving end of an acute food insecurity challenge, like many other countries in Africa and beyond. And we've seen an almost perfect storm that's emerged – the combination of climate change, of COVID, and of conflict, including the Russian aggression against Ukraine – all of which have contributed dramatically to rising food insecurity in Africa and beyond.

We have been deeply and intensely engaged in meeting this challenge. If you go back to February of last year when Russia invaded Ukraine again, we've provided since then about \$13.5 billion toward building greater food security, including direct assistance to Kenya and to many other countries. The United States has provided about 75 percent of the United Nations appeal for Kenya when it comes to food security.

But for all of the efforts that we and other countries are making in partnership with Kenya and other friends to address the immediate crisis, we're equally focused on helping countries build sustainable, long-term, productive capacity themselves. That is fundamentally the answer to the challenge. And I think there's tremendous opportunity there, including in the work that we're doing with Kenya.

One aspect of that is making sure that, using remarkable technology that we've developed over recent years, that two things are addressed: the health and strength of soil, and the resilience of seeds. We have the capacity to basically map soil anywhere to determine whether it's strong or not and needs help. We also have remarkable technology when it comes to seeds to make sure that they are much more resilient to climate change, to droughts, to extreme conditions. And this is one of the things that we're working on with Kenya, as well as building out the entire production infrastructure that's also vital to making sure that there's genuine food security.

So this is very much part of our dialogue. It's part of our ongoing conversation. And I expect you'll see more on that in – both today and in the months to come.

CABINET SECRETARY MUTUA: Thank you very much. Just to add on to issues of agriculture, and this is where with the impact of climate change I think it's a lesson to all of us that we can't keep on relying on rainfed agriculture. So we have a massive program in Kenya of building dams so that we can be able to conduct irrigation – hold irrigation programs so that now when it rains – it doesn't rain at least over there, but we still have to combat climate change. That's why we are planting 15 billion trees over the next few years to try and roll back what is happening.

Agriculture in our region will only thrive if our farmers feel that they need to use it for economic reasons. Agriculture is not only for food, because when a farmer grows crops, that farmer uses – sells those crops, eats some and sells the crops and gets money for school fees, for building, for their car, et cetera, et cetera. So to us when it came to agriculture is also an economic issue, and that's why we are talking about value addition in the conversation we're talking about, getting our products here.

I can say with no fear of contradiction that Kenya has the best tea and coffee in the world, and so we would like to be able to get more of that in the United States. And even our products – as we add value to our products, which means that with opening up of the markets means that our farmers get more money in their pocket as a motivation, they engage more into growing crops, and then it becomes a cycle that is able to continue. So it's about sustainability.

MR. PATEL: Final question. Kylie Atwood, CNN.

QUESTION: Good morning. Thanks, you guys. I'm going to start with Secretary Mutua, please. I just wonder if you could be a little bit more explicit for us in terms of how exactly Kenya has seen the Wagner Group's involvement in the ongoing conflict in Sudan. And you said that you believe that a peaceful resolution is in reach in Sudan. Why exactly do you feel that that is in reach?

And Secretary Blinken, just questions on Sudan and then also on Russia and Ukraine. First, on Sudan, have the convoys that have attempted to leave Sudan, that have American citizens who have joined them, run into any problems, any violence along the routes on the way out, as far as the U.S. knows at this point? And you mentioned potentially resuming a U.S. diplomatic presence at Port Sudan. Could that happen as soon as this week?

And then just one question about a report this morning in *The Washington Post* on the – on Ukrainians planning to attack Moscow earlier this year, on the one-year anniversary of the war. Based on that article, which comes from leaked classified U.S. Intelligence documents, it says that the country's military

intelligence directorate agreed to postpone the strikes at Washington's request. Have Ukrainian officials ever discussed with you such potential plans for an attack on Moscow? And what's your message to any Ukrainian Government officials who may be privately advocating for such an approach? Thank you.

CABINET SECRETARY MUTUA: Thank you. I think the position that Kenya holds is that we don't want interference by any group, may be Warner Group or individual countries that may be involved directly or indirectly. At this particular time, we'd just like us to be left with Sudan without foreign and other groups interfering with the peace process.

We are quite encouraged about peace being found in Sudan very soon. This is because we've had negotiations and mediation and a process in Sudan that has gone on for some time. And a few weeks ago there was a very successful forum held in Khartoum, where there was an agreement basically in terms of returning the country to civilian rule, in terms of when the next elections will be held, in terms of the balance of how things will run. And it was only one item that there was a bit of disagreement, and it's not even a major item. It was all about the militia – the RSF joining the national military and how the timeline and the groups – which was a very, very small issue, and we are confident that that is an issue that you can tackle. Basically, it's a 2 percent that remains; 98 percent has already been done and agreed and signed. That is why we are very confident that, once there's cessation, and with a bit of mediation, we believe that by the end of this year we'll be talking a different story about Sudan.

SECRETARY BLINKEN: Kylie, in terms of the convoys, it's – look, it's a moving picture, and we've seen to date different things. Some of the convoys that have tried to move people out, including all the way to Port Sudan but also to places closer into Khartoum, some of them have encountered problems, including robbery, looting, that kind of thing. Others not. But it's something that we're tracking very, very carefully.

To the extent that we've been able to facilitate Americans being folded into some of those convoys, we'll continue to do that. But we're also trying to provide the best possible advice we can to anyone asking for our assistance about conditions, about safety, about security, so that they can make their own decisions with the most information possible. But it's something that we're tracking as carefully as we can, and of course we're in very close contact with a number of countries that are engaged in removing their personnel from Sudan to make sure that we know from them what they're experiencing, what they're encountering. All of that factors into the advice that we can provide and the decisions that we make.

When it comes to resuming our own diplomatic presence in Sudan, look, that's going to be entirely dependent on the conditions in Sudan. Again, something that we'll look at day-in/day-out, but I can't put a timeframe on it at all. It's really conditions dependent.

And finally, the last part of your question: I'm not going to comment on any purported intelligence documents that are being reported on in the press. Thanks.

MR PATEL: Thank you, Your Excellencies.

SECRETARY BLINKEN: Thank you.

MR PATEL: Thank you.

SECRETARY BLINKEN: Thanks, everyone.

QUESTION:(Off-mike.)

MR PATEL: Thanks, everybody.

SECRETARY BLINKEN: When it comes to what Ukraine does to defend itself against the Russian aggression, these are decisions for the Ukrainians to make.

Thank you.

Announcement of Nationwide Ceasefire in Sudan