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Rt. Hon. Speaker

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THE SENATE

THIRTEENTH PARLIAMENT | THIRD SESSION

SPECIAL COMMITTEE

PROGRESS REPORT 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

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ABBREVIATIONS AND ACRONYMS

ADRK - Adventist Development Relief Agency Kenya

AHK - Amref Health Africa

CEO - Chief Executive Officer

CS - Cabinet Secretary

DLM - Dr. Linda Musumba Advocates

KCS - Kituo Cha Sheria

KRS - Kenya Red Cross Society

KSB - Kenya Society for the Blind

NCPWD - National Council of People Living with Disabilities

PRELIMINARIES

a. Establishment and Mandate of the Committee

The Senate Ad Hoc Committee on the Compensation of the Kenyan Victims of the 1998 Bombing of the United States Embassy in Nairobi was established through a resolution of the Senate at its sitting held on Thursday, 29th June 2023 with the mandate to-

i) Engage with the Ministry of Foreign and Diaspora Affairs to advance friendship and Co-operation between the United States of America and Kenya by supporting the eligibility of Kenyan and American Victims and their personal representatives, surviving spouses and the 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 subsidised medical treatment for the surviving victims of the bomb blast.

b. Membership of the Committee

The Committee constitutes of the following members –

1.	Sen. Agnes Kavindu Muthama, MP;	**-Chairperson**
2.	Sen. Jackson Mandago, MP;	**-Vice-Chairperson**
3.	Sen. Johnes Mwaruma, MP	-Member
4.	Sen. Daniel Maanzo, MP;	-Member
5.	Sen. William Cheptumo, MP;	-Member
6.	Sen. Alexander Mundigi, MP;	-Member
7.	Sen. Mohamed Said Chute, MP;	-Member
8.	Sen. Peris Tobiko, MP; and	-Member
9.	Sen. Beatrice Ogolla, MP	-Member

CHAIRPERSON'S FOREWORD

Mr. Speaker Sir,

The Senate Ad Hoc Committee on the Compensation of the Kenyan Victims of the 1998 Bombing of the United States Embassy in Nairobi, was established on 29th June, 2023 but held its first sitting on 18th July, 2023.

The Committee was able to meet the victims, their lawyers, the next of kins of the deceased victims and groups representing various victims attended the meeting, where it received both Oral and written submissions from the victims.

The Committee also attended both the Victims Prayer on 5th August, 2023 and the 25th Commemoration of the bomb Blast on 7th August, 2023, at the August 7th Memorial Park.

Honourable Speaker Sir, the Committee met with cabinet secretaries of the Ministry of Health, Ministry of Labour and Social Protection, the Ministry of Foreign and Diaspora Affairs and the Ministry of Interior and National Administration. The Committee was also able to meet with the National Council for Persons with Disabilities.

Mr. Speaker Sir, from the interactions with the above, the Committee gave the following directions to the Ministries -

i. that the Ministry of Health conducts medical assessment of the surviving victims of the 1998 USA bombing of the US Embassy in Nairobi, and submit the report of the assessments to the Committee in order to assist the Committee build its case on compensation of the said victims;
ii. that the Ministry of Labour and Social Protection and the National Council for Persons with Disabilities undertake registration for survivors with disabilities;
iii. that the Cabinet Secretary in charge of Foreign affairs push the matter of compensation at Cabinet level; and
iv. that the Cabinet Secretary, Ministry of Interior and National Administration develops regulations to operationalize the Compensation of the Victims of Terrorism Fund.

Mr Speaker Sir, though the Committee was unable to secure appointments with the US Ambassador to Kenya and with the US Congress, Sen. Daniel Maanzo and I were able to attend the National Prayer breakfast at Washington DC where we were able to meet various Senators and Congressmen and put forward our case on the compensation of Kenyan Victims of the 1998 Bombing of the US Embassy in Kenya. Chairperson of the Committee.

Specifically, we were able to meet Sen. Christopher Coons, the Chairperson of the US Senate Foreign Relations Subcommittee on African Affairs and he agreed to the meeting of the two committees to discuss compensation of the Kenyan victims.

Honourable Speaker Sir, Sen. Coons as the Chairperson of this very important Committee of the US Senate is very instrumental in the proposal of the Ad Hoc Committee in amending the Justice for United States Victims of State Sponsored Terrorism Act (34 U.S.C.11 20144), which provides for the establishment and administration of the US Victims of State Sponsored Terrorism Fund (the USVSST Fund) to provide compensation to certain U.S. persons who were injured in acts of international state-sponsored terrorism, to include Kenyan Victims of the 1998 Bombing of USA Embassy in Nairobi.

Mr. Speaker Sir, within the 100 days that the Senate has given us, the Committee intends to follow up with the following institutions in order to assist the Kenyan victims of the 1998 bombing of the USA Embassy in Nairobi who have not been compensated to date –

i. The Ministry of Health on the provision of subsidised medical care for survivors injured during the 1998 Bombing of the US Embassy in Nairobi;
ii. The Ministry of Labour and Social Protection on the assessment and registration of survivors with disabilities of the 1998 bomb blast with the National Council of Persons with Disabilities; and
iii. The Ministry of Interior and National Administration on the formulation of regulations to implement section 49 of the Prevention of Terrorism Act, 2012 which operationalises the Compensation of Victims of Terrorism Fund.

Appropriate recommendations shall be made by the Committee on this matter in its final report.

Mr. Speaker Sir, the Committee now recommends that the Cabinet Secretary in charge of Foreign and Diaspora Affairs secures appointments for the Committee to meet the Members of the United States of America Senate Foreign Relations Sub Committee on African Affairs to discuss the Committee's proposal of amending the Justice for United States Victims of State Sponsored Terrorism Act which provides for the establishment and administration of the United States Victims of State Sponsored Terrorism Fund (USVSST Fund) to include Kenyan Victims of the 1998 Bombing of the United States Embassy in Nairobi. The Cabinet Secretary is to provide bimonthly updates on the progress made in securing the appointments.

The Committee extends its appreciation to parties who volunteered submissions and contributions to the resolution of this matter. I also wish to express my appreciation to my fellow Senators for their contributions on this matter.

The Committee thanks the Office of the Speaker of the Senate and the Clerk of the Senate for the support extended to the committee in the execution of its mandate.

It is now my pleasant duty pursuant to Standing Order 223 (6) to table this progress report of the Ad Hoc Committee on the Compensation of the Kenyan Victims of the 1998 Bombing of the United States Embassy in Nairobi.

Signature..... **Date**24/04/24.....

CHAIRPERSON: SEN. AGNES KAVINDU MUTHAMA, MP.

THE AD HOC COMMITTEE ON THE COMPENSATION OF THE KENYAN VICTIMS OF THE 1998 BOMBING OF THE UNITED STATES EMBASSY IN NAIROBI

CHAPTER 1: INTRODUCTION – 1998 BOMBING OF THE USA EMBASSY IN NAIROBI

1.1 Background

1. On 7th August, 1998, the American Embassies in Nairobi, Kenya, and Dar-es-Salaam, Tanzania, were bombed simultaneously by suspected Al-Qaeda operatives, resulting in the death of more than 224 people, and injuries to more than 5000 persons. These included people working in the embassy, people in the adjacent buildings, and people going about their daily business in the vicinity. The attack at the Nairobi embassy, which was located in a busy downtown area, caused great devastation and loss of life. A truck loaded with 2,000 pounds of explosives forced its way to the back entrance of the embassy and was detonated, shattering the embassy, demolishing the nearby Ufundi Cooperative House, and gutting the 17-story Cooperative Bank.[1]

2. In Nairobi, the number of fatalities were 213 people, including 12 Americans, and 5,000 people were wounded. The attack against the U.S. embassy in Dar es Salaam killed 11 and injured 85 people. The American embassy suffered 50% casualties. The attack was attributed to members of the al-Qaeda terrorist network.

3. According to the US Department of State, the US Government established the Office of Casualty Assistance in 1999 to provide focused and co-ordinated assistance to the victims of the bombing. Consequently, all of the families of the American victims of the bombings in Nairobi and Dar-es-Salaam (as well as all of those injured) received the benefits for which they were eligible under existing law. The Department of Justice's Office for Victims of Crime provided for many out-of-pocket expenses. A scholarship fund for tertiary education was established for those with children.[2]

4. Additionally, all of the Locally Employed Staff victims received all of the benefits to which they were entitled under the law. In addition, many out-of-pocket expenses were covered by other sources, such as the Department's Foreign Service National Fund, allocations from the Department of Justice's Office for Victims of Crime, and an allotment from the U.S. Agency for International Development that was used to offset the cost of mental health counselling.

5. Further, the US Department of State indicated the families of the 173 Kenyan citizens killed or injured who were not affiliated with the US Government received

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[1] https://www.ojp.gov/about

[2] https://www.state.gov/about/

a five-year package of assistance provided by the United States through USAID from 1998-2003, totaling approximately $42.3 million. The projects disbursing these funds were allegedly worked through contractors, NGOs, and the Kenyan Government to ensure that critical needs of Kenyans were met in six areas: Search and Rescue Operations; Medical Follow-up; Socio-economic support for victims; Rehabilitation and Reconstruction; Assistance to Businesses and Disaster Preparedness.[3]

6. As a result of the US government efforts above, all the embassy staff, both American and Kenyan and other American victims were compensated, whereas Kenyan victims have to date, not been compensated.

7. The victims' efforts to obtain compensation have been greatly curtailed by the legal and policy environment both in Kenya and in the United States of America. Issues of sovereign immunity have affected the victims' ability to claim for compensation particularly within Kenya, whereas in the US, some victims have successfully obtained favourable judgements, but are unable to execute the same. [4]

8. The Kenyan Government, through Parliament, and specifically the Senate, has made a concerted effort to intervene on this matter through the establishment of a Committee to work directly with the United States Congress and other key stakeholders in the push for justice for the affected victims.

1.2 Establishment and Mandate of the Ad Hoc Committee on Compensation to the Kenyan Victims:

9. The Senate Ad Hoc Committee to investigate the compensation to the Kenyan Victims of the 1998 Bombing of the U.S Embassy in Nairobi was established on 29th June, 2023. The primary mandate of the Committee was to engage with key stakeholders including the Ministry of Foreign and Diaspora Affairs, the U.S. Government, the legal team representing the victims in the U.S. and the victims' representatives. 5

10. The Committee was also mandated to advance friendship and co-operation between the United States of America and Kenya by supporting the eligibility of

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[3] US Department of State Archives, <https://2001-2009.state.gov/r/pa/prs/ps/2008/aug/107989.htm> accessed 13th October 2023.

[4] https://clinton.presidentiallibraries.us/embassy-bombings

[5] Hansard 29th June 2023

Kenyan and American victims, surviving spouses and next of kin in the Victim Compensation Fund, pursuant to the Justice for United States Victims of State Sponsored Terrorism Act;

11. The Committee was further mandated to coordinate with the Ministry of Health, Ministry of Interior and Ministry of Labour and Social Welfare to explore subsidised medical treatment, psychosocial support and government welfare schemes for the surviving victims of the bomb blast.

12. A copy of the Hansard extract containing the Motion establishing the Committee is attached as Appendix 1 of this report.

CHAPTER 2: LEGAL FRAMEWORK

13. This chapter discusses the legal and policy environment in Kenya and the United States at the time of the bombing and presently, particularly as relates to the right to commence action, as well as compensation of victims in both jurisdictions. In doing so, the chapter discusses the concepts of diplomatic immunity and sovereign immunity vis-a-vis application of the same in Kenya and in the United States, and additionally, the developments in the law on compensation of victims of terrorism in both states.

2.1 Compensation of victims of terror in Kenya

14. Until 2012, Kenya did not have a legal framework for compensation of victims. The Prevention of Terrorism Act, No. 30 of 2012 was enacted to not only aid the fight against terrorism by implementing United Nations Security Council resolutions on terrorism, but it also sought to create a fund out of which victims would be compensated.

15. Section 49(1) of the Act provides as follows–

(1) *There is established a fund to be known as the Compensation of Victims of Terrorism Fund.*

(2) There shall be paid into the Fund—

(a) such moneys as may be realised from any property forfeited to the State under this Act;
(b) grants, gifts, donations or bequests received by the Fund with the approval of the Cabinet Secretary; and
(c) such other moneys as may be payable to, or vested in, the Fund by virtue of any other written law.

16. However, to date, the Cabinet Secretary in charge of the Ministry of Interior has not enacted regulations to operationalise this fund, which is disadvantageous to victims who would have otherwise sought to benefit from the fund.

17. Additionally, as the Act was enacted in 2012, the 1998 Bomblast victims are not eligible to claim from the fund as the Act does not provide for retrospective application.

2.2 Right to commence action

18. Where compensation is not automatically provided in law, victims of terrorism attacks often have to seek recourse in court so as to obtain compensations for

injuries suffered as well as for the death of loved ones, or property lost due to the terrorism attack. In this particular instance, the right of victims to obtain legal recourse, particularly where they feel that a certain state is responsible for the injuries may be constrained by the principles of diplomatic immunity as well as sovereign immunity, as discussed below.

2.2.1 Diplomatic Immunity

19. The Vienna Convention on Diplomatic Relations, adopted on 18th April 1961, prescribes the law as regards the privileges and immunities enjoyed by foreign missions and foreign diplomats within a state. Article 31 of this Convention provides that foreign diplomats (and missions by extension) are immune from the civil and administrative jurisdiction of a state. The receiving state is expected to protect the sending state's property, and it cannot be subjected to execution proceedings or attachment by an order of court.

2.2.1.2 Kenyan and US positions on diplomatic immunity

20. Kenya enacted the Privileges and Immunities Act, Cap 179 of the Laws of Kenya, to domesticate the provisions of this convention.

21. Both Kenya and the US are party to this Vienna Convention and as such, the state practice, even where diplomatic relations are not normalised, is to accord diplomatic immunity to such assets of a foreign country which are part of the diplomatic mission. This has particularly affected instances where victims of terror got judgements in US courts against certain states but cannot execute them due to the only available assets being diplomatic assets.

2.2.2 Sovereign Immunity

22. Under customary international law, a state is immune from the jurisdiction of the courts of another state. This immunity not only bars filing of suits against the state, but also protects the property of that state from attachment by a successful litigant. This immunity is referred to as the sovereign immunity of a state, and it arises out of the principle that all states are equal.

23. It is however noteworthy, that there is no international convention or treaty on this immunity of states that is currently in force. The extent of the immunity is therefore dependent on state practice, and it is widely accepted that immunity is not absolute, as it extends to only the states' exercise of governmental authority,

and not to commercial matters. This is referred to as the restrictive theory of sovereign immunity.

24. Other exceptions cover cases of waiver (express and implied), expropriation in violation of international law, estate and succession matters, and disputes over rights in real property and estates located in the particular state.

25. There have been efforts to codify the international law position on the sovereign immunity afforded to a state and its property in foreign courts –

    (a) in 1991 the International Law Commission formulated the Draft Articles on Jurisdictional Immunities of States and their Property, and these were widely held to reflect the position of customary international law on the matter; and
    (b) the above culminated in the adoption of the United States Convention on the Jurisdictional Immunities of States and their Property, which was adopted in 2004. The Convention is however not yet in force, as only 23 states have ratified it, against the required threshold of ratification by 30 states as provided for in article 30 of the Convention.

2.2.2.1 Kenya's position on Sovereign Immunity

26. Kenya has not enacted any statute on sovereign immunity. However, Kenyan Courts have been consistent in upholding this principle and demarcating its limits in various judgments on cases filed before the courts.

27. In Ministry of Defence of the Government of the United Kingdom v Joel Ndegwa (1983) eKLR, the court held as follows—

"The principle that a foreign government or sovereign cannot be impleaded, that is to say sued or prosecuted in the courts of another country, was clearly stated in 1938 by Lord Atkin in ***Compania Naviera Vasiongada v Cristina, The Christina [1938] 1 All ER 719*** *at 721 as follows:*

"The first is that the courts of a country will not implead a foreign sovereign. That is, they will not by their process make him against his will a party to legal proceedings, whether the proceedings involve process against his person or seek to recover from him specific property or damages. The second is that they will not seize or detain property which is his, or of which he is in possession or control.....

28. Additionally, this court upheld the theory of restrictive sovereign immunity when it held that—

"...We, too, agree that the doctrine of absolute immunity would be anachronistic, and has been for some time now. What immunity there is must be restricted or qualified so that private or commercial activities cannot be immunized."

29. The implication of this is that Kenyan courts often dismiss suits filed against foreign states unless the claimant proves that the suit concerns the commercial activities of the state.

2.2.2.2 United States' position on Sovereign Immunity

30. In 1976, the US Congress enacted the Foreign Sovereign Immunities Act (FSIA), to restate the US position on sovereign immunity. The Act provided for immunity of foreign states against suits filed in US Courts, with a few exceptions made, such as the exception for suits concerning commercial activities of the state. The law has been amended severally to allow for victims of terrorist acts to have a course for action and to obtain compensation.

2.2.2.2.1 1996 Amendments to the FSIA

31. This was the position of law until 1996, when Congress enacted the Antiterrorism and Effective Death Penalty Act. This Act amended the Foreign Sovereign Immunities Act, thus removing sovereign immunity in actions in which *"money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking or the provision of material support or resources is engaged in by an official, employee or agent of such foreign state while acting within the scope of his or her office, employment or agency". (section 1605(a)(7).*

32. The amendment applies to countries of the State Department's list of state sponsors of terrorism, which as at 1996, included Cuba, Iran, Iraq, Libya, North Korea, Syria and Sudan. The amendment was also only applied to claimants or victims who were US nationals.

33. Additionally, the amendment removed immunity in respect of commercial property belonging to such a state for claims filed under section 1605(a)(7), regardless of whether the property was involved with the act upon which the claim was based. Diplomatic property however, remained immune from attachment or

execution due to the US obligations under the Vienna Convention on Diplomatic Relations.

2.2.2.2.2 2000 Amendments

34. In the year 2000, Congress enacted the Justice for Victims of Terrorism Act, 2000. This was to allow use of assets blocked by the US government under various economic sanctions imposed upon the foreign state. This act made blocked assets of Cuba available to pay certain outstanding judgments against that country. It also provided that certain plaintiffs with judgments against Iran could be paid out of funds from the U.S. Treasury, which were supplemented by a small portion of blocked Iranian funds.

35. As a result of the above amendments, although many victims of terrorist attacks were able to sue states such as Sudan, Iran and Cuba for their complicity in the attacks, they were not able to execute the judgements and obtain compensation because -

    a) in most cases, in fact, the defendant states have not even appeared in the suits, nor do these states typically have very many assets in the United States against which a judgement may be executed. Some only had diplomatic assets in the US, which assets were protected under the Vienna Convention on Diplomatic Relations;
    b) where the foreign state had other assets in the US, they were frequently blocked and often subject to competing claims of ownership and subject of other suits eg. between the US and Iran; and
    c) most importantly, the executive hoped to use the funds or assets available as foreign policy tools or leverage, for instance as was done in 1981 in the negotiations for the release of American hostages held by Iran.

36. Moreover, while Congress sought to create a judicial forum for the compensation of victims and the punishment of terrorist states through various amendments, it proceeded with caution, in part due to the concern that other nations would respond by subjecting the American government to suits in foreign nations.

37. The US Treasury also had to come up with the compensation amounts themselves instead of liquidating the state's assets, like in instances involving Iranian assets, hence burdening American taxpayers. As such, the US Government had to come up with innovative solutions towards compensating the victims of terror.

2.2.2.2.3 Additional US legislation on compensation of victims of terror

(a) US Sudan Claims Agreement and the Sudan Claims Resolution Act

38. The Claims Settlement Agreement between the US Government and the Government of Sudan was signed on 30th October 2020, and it entered into force on 9th February 2021. The Transitional Government of Sudan had sought for restoration of normal relations with the US and for delisting Sudan from the State Department's list of state sponsors of terrorism where it had been listed since 1993.

39. The agreement dealt with restoration of Sudan's sovereign and diplomatic immunities, and it also sought to bar any suits against Sudan that had not yet been concluded, as well as bar the filing of any new suits under the state sponsor of terrorism exception to the Foreign Services Immunity Act.

40. In consideration for the above, the Government of Sudan was to pay US$ 335,000,000, which would be deposited in an interest bearing account at the US Treasury. The amount would be used to compensate victims of terror who held final judgements in certain cases identified in the annex to the Agreement. Some of the cases related to compensation of the victims of the 1998 bombing, including, among others -
    a) Wamai v. Republic of Sudan – DDC 08-CV-1349 (JDB);
    b) Amduso v. Republic of Sudan – DDC 08-CV-1361 (JDB);
    c) Onsongo v. Republic of Sudan – DDC 08-CV-1380 (JDB); and
    d) Opati v. Republic of Sudan – DDC 08-CV-1224 (JDB).

41. The eligible parties included not only persons who were US nationals at the time of the attack, but also persons who were contractors or employees of the United States and who got citizenship after the attack and were still citizens at the time the Agreement came into force. A commission would be formed by Sudan, with the concurrence of the US, to deal with compensation of foreign nationals, who are defined in the Agreement as *"persons who were not US citizens at the time their claims arose but became citizens afterwards."*

42. In order to implement this agreement, the US Congress enacted the Sudan Claims Resolution Act on 27th December, 2020. The enactment was necessary so as to enable access to the funds paid by Sudan under the Claims Agreement, and it also, in section 5, extended the life of the US Victims of State Sponsored Terrorism Fund from the year 2030 to 2039.

43. The Act however, only facilitated compensation for persons who were US nationals at the time of the attack, and where the family filed a claim, the family

members were still US nationals at the time the Act came into force. Foreign nationals would only receive any amount under the Act if they reached a private settlement on compensation with the Government of Sudan, otherwise the amount payable to them would be redistributed to the claimants who were US nationals. It is not clear if they reached any settlement with the Government of Sudan.

44. According to the US Government Accountability Office, 78 persons were found to be eligible, and as at December 2022, they had all been compensated.6

(b) The Justice for United States Victims of State Sponsored Terrorism Act (USVSST) (34 U.S.C.11 20144)

45. The Justice for United States Victims of State Sponsored Terrorism Act, as amended, provides for the establishment and administration of the US Victims of State Sponsored Terrorism Fund (the USVSST Fund) to provide compensation to certain U.S. persons who were injured in acts of international state-sponsored terrorism.

46. The USVSST Fund, established in 2015, is meant for compensation of eligible United States persons who –

a) hold a final judgement issued by a United States district court awarding the applicant compensatory damages arising from acts of international terrorism for which a foreign state sponsor of terrorism was found not immune from the jurisdiction of the courts of the United States under the Foreign Sovereign Immunities Act;
b) were taken and held hostage from the United States Embassy in Tehran, Iran, during the period beginning November 4, 1979, and ending January 20, 1981, and certain of their spouses and children; or
c) are the personal representative of a deceased individual in those categories.

47. The Act defines a United States person as a natural person who has suffered an injury arising from the actions of a foreign state for which the foreign state was found not immune from the jurisdiction of the courts of the United States under the Foreign Sovereign Immunities Act as regards state sponsors of terrorism.

48. The Fund draws its monies from proceeds obtained from civil and criminal violations under the International Emergency Economic Powers Act and Trading

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6 United States Government Accountability Office, "Report to Congressional Committees: Sudan Claims Resolution Act - State Verified Eligibility, Determined Compensation, and Distributed Payments" (2022) <https://www.gao.gov/assets/gao-23-105782.pdf> accessed 11th October 2023.

with the Enemy Act, as well as certain assigned assets of Iran. It does not draw any funds from the US Treasury.

49. The Fund was expected to be operational until the year 2030, and the Sudan Claims Resolution Act extended its life to the year 2039. The deadline for submitting applications was 90 days from the date when the Special Master publishes the regulations, thus appearing to lock out persons who did not submit their claims within the timeline.

CHAPTER 3: CONDUCT AND PROCEEDINGS OF THE COMMITTEE

50. This Chapter gives summaries of the undertakings of the Committee with the victims and different stakeholders. An exhaustive record of the minutes of the deliberations are attached as Appendix 2 of this report. The Committee also conducted research on past records and media records on the matter, and further wrote to institutions and individuals that were involved during and after the tragedy.

3.1 Committee research from records

51. This section outlines the documentation and records that the Committee interacted with on the matter. The Committee interacted with various materials including:
    (i) Newspaper articles published in The East African Standard and The Daily Nation.
    (ii) Publication by the former US Ambassador to Kenya , Ms. Prudence Bushnell, titled "Terrorism, Betrayal and Resilience: My Story of the 1998 US Embassy Bombings"
    (iii) Online research: www.justice.government/criminals-about/division, etc.

52. From the above analysis, the Committee found it evident that security concerns had been expressed about the safety of the US Embassy in Kenya. Several concerted efforts were made by the then US Ambassador, Prudence Bushnell to the State Department, and later, directly to the Secretary of State. Intelligence reports that had been shared to the U.S. further show that terrorist plans to explode the embassies had been in formulation from one year earlier.

53. While the US may not have been responsible for the attacks, failure to action intelligence reports may directly be attributed to the huge loss of lives that was witnessed. The above brief demonstrates a collective failure by several administrations and Congress over decades to invest adequate efforts and resources to reduce vulnerability of US missions around the world to terrorist attacks.

54. Amb. Prudence Bushnell's book shows that the revised US security standards that were set following the embassy bombing in Beirut were not applied to the Nairobi and Dar es Salaam embassies despite recommendations to do so. Once more, implementation of these recommendations may have moderated the effects of the bomb blasts.

55. The publications examined also indicate that the decision by the US not to treat Embassies in Africa as a priority in the embassies security upgrade strategy at the time was also a contributing factor to the options by Al Qaida in narrowing down on the embassies in East Africa as soft targets. The failure by the US Government to take necessary steps to prevent such tragedies through unwillingness to give sustained priority and funding to security improvements is evident.

3.3 Committee Sittings

56. Upon establishment, the Committee held sittings with the victims, their representatives, their lawyers and various institutions that were of strategic importance to the accomplishment of the mandate of the Committee.

3.3.1 Meeting with the Victims

57. The Committee met the victims and their representatives on Friday, 28th July, 2023. The delegation of the victims included Mr. John Mwariri, an advocate with Kituo Cha Sheria who was representing the victims at the High Court of Kenya through a case on compensation filed in June, 2021. Others included Mr. Douglas Sidialo who lost his sight due to the attack, Mr. George Ngige, Ms. Caroline Muthoka, Ms. Leonora Atieno and Ms. Redempta Kadenge, former Teachers Service Commission employees, Ms. Grace Njoroge representing orphans, Ms. Jane Njeri Njunira representing victims in the diaspora and Mr. Ali Mwadama.

58. The Committee asked Kituo Cha Sheria to urgently prepare and submit a detailed and authenticated documentation of the victims who are due for compensation.

3.3.2 Attending the Victims Prayer Day and the Commemoration of the August 7th bombing of the US Embassy in Nairobi

59. The Victims prayer day took place on Saturday, 5th August, 2023 while the August 7th commemoration took place on Monday, 7th August, 2023. Both events took place at the August 7th Memorial Park and a majority of the members of the Committee attended.

60. The two occasions presented the Committee with an opportunity to listen to a greater number of victims and their representatives. The Committee also got to hear of other issues that were affecting their victims in their day-to-day lives.

61. The Committee committed to ensure that all the victims were granted justice and also resolved to look into the cases of those victims whose employment was terminated by their employers on medical grounds because of the injuries that they suffered.

3.3.3 Meeting with the lawyers and representatives of the victims

62. The Committee met with Mr. Philip Musolino and his team on Friday, 11th August, 2023. Mr. Musolino is a lawyer a lawyer by profession and a partner with the Musolino & Dessel PLLC, an international law firm based in the USA which has been involved in the litigation of the 1998 USA embassy bombing at the request of a client with commercial interests East Africa in the year 1999, and has since been representing hundreds of victims of the bomb blast.

63. He reported that the firm has jointly been closely working with other professional organisations mainly Scribe strategies & Advisors, Ms. Caroline Muthoka of both Baraka Care and the Consortium of the August 7th Victims, and Ms. Ramona Tascoe an accomplished physician, ordained minister and a dedicated humanitarian with long standing commitment of assisting victims.

64. He briefed the Committee that the law firm secured in May 2023 judgements in the aggregate amount of $56.6 billion against Al Qaeda on behalf of 351 Kenyan plaintiffs, but these amounts have not been paid out due to lack of a law that includes Kenyans.

65. There is a Victim Compensation Fund set up by the US Congress which has so far distributed $3 billion to certain victims of terrorist attacks against the USA but because of how the statute is worded, the Kenyan victims are not eligible to participate in the Fund. He added that they are currently lobbying the US Congress to pass budget-neutral legislation which, among other provisions, changes the wording of the eligibility so that the Kenyan victims are included in future distribution.

66. To this end, the law firm, Musolino & Dessel, PLLC has drafted the language of the proposed US legislation so that it includes a pathway to compensation for all victims and not the firm's judgement holders.

67. Mr Musolino was accompanied by Dr. Ramona Tascoe, a US based Physician and humanitarian activist for victims, Ms. Caroline Muthoka Ms. Caroline Muthoka, Mr. Douglas Sidialo and Mr. Daniel Ngure, all bomb blast victims.

68. The other Committee members expressed their appreciation to the advocates and all the stakeholders who have been involved in the litigation of the matter and informed them that the Committee will robustly engage with all of them to ensure the necessary amendment to the Victim of State Sponsored Act is amended to have the Kenyan Victims eligible for compensation from the Victims Compensation Fund.

3.3.4 Meeting with the Cabinet Secretary in charge of Health

69. The Committee met the Cabinet Secretary for Health on Friday, 25th August, 2023, to deliberate on subsidisation of medical treatment to the victims of the 1998 Bomb blast. The Ministry of Health is key in the formulation of policies, programmes and laws aimed at improving provision of healthcare services in the Country.

70. The meeting agreed that was needed to assess vulnerability status of the survivors by the State Department of Social Protection. This will identify the vulnerable groups with limited ability to pay for their health care, who can be included into the NHIF subsidised health insurance under the National Scheme through counties.

71. The Committee resolved that the Ministry of Health conducts medical assessment of the surviving victims of the 1998 USA bombing of the US Embassy in Nairobi, and submits the report of the assessments to the Committee in order to assist the Committee build its case on compensation of the said victims.

3.3.5 Meeting with the Cabinet Secretary, Ministry of Foreign and Diaspora Affairs

72. The Committee met with the Cabinet Secretary, Ministry of Foreign and Diaspora Affairs on Wednesday, 30th August, 2023, to deliberate on Kenya's Foreign Policy and ways of advancing friendship and cooperation with the United State of America in securing compensation for the Kenyan Victims of the 1998 Bombing of the US Embassy in Nairobi.

73. The Committee requested the CS to accord the Committee support in as far as engagement with the government of the US was concerned and to bring the matter of the Compensation of the victims to the attention of the President and the work of the Committee.

74. The victims requested the Cabinet Secretary to inform them of the steps the Kenyan Government has made to have them compensated in the last 25 years after the Bomb blast.

75. The Cabinet Secretary for the Ministry Foreign and Diaspora Affairs informed the Committee that the United States of America is a great friend and ally of Kenya with close partnership in many sectors and as such, all engagements with the US government should take cognizance of the shared friendship and cooperation between the two countries.

76. He also committed that his office will immediately set up a special team at the Ministry specifically assigned to develop an advisory detailing the roadmap that the Kenyan Government shall use in engaging the US Government on the compensation of the Kenyan victims, and present a brief to the Cabinet on the Compensation of the victims of the Bomb blast.

3.3.6 Meeting with the National Council for Persons with Disabilities

77. The Committee met the National Council for Persons with Disabilities (NCPWD) team led by the Chief Executive Officer on Friday, 7th September, 2023 to enable the Committee understand the role of the Council in registering Persons with Disabilities and any of their services accorded to the Kenyan Victims of the 1998 Bombing of the US Embassy in Nairobi.

78. The Committee noted that the NCPWD is the state agency mandated to champion and protect the rights of persons with disabilities in Kenya, with a presence in all the forty-seven counties.

79. The Committee noted that the Council was established in 2014 while the attack took place in 1998.

80. The Chief Executive Officer of the Council committed to have a meeting with the representatives of the victims so as to assess and determine what type of support and assistance the victims need and put them in the programs of the Council. and also pledged other forms of assistance to the victims.

3.3.7 Public Hearing

81. The public hearing held in Machakos Social Hall in Machakos County on 8th September, 2023, accorded the public in Machakos and its environs an opportunity

to meet the Committee and air their views on the tragedy. The Committee got to listen to members of the public who could not travel to Nairobi, including children of deceased victims.

3.3.8 Meeting with the Cabinet Secretary, Ministry of Interior and National Administration

82. The Committee met with the Cabinet Secretary, Ministry of Interior and National Administration on Thursday, 12th October, 2023 and committed to the operationalization of section 49 of the Prevention of Terrorism Act, 2012 which provides for the establishment of the Compensation Fund for Victims of terrorism to support the victims.

3.3.9 Meeting with the USA Ambassador to Kenya

83. The Committee was not able to secure an appointment with the US Ambassador to Kenya.

3.3.10 Meeting with the Attorney General

84. The Committee was unable to meet with the Attorney General of Kenya. However, he sent an advisory (attached as Appendix 3 (f) of this report) to the Committee on the matter.

3.4 Call for Written Submissions

85. In its quest for information and documentation on the 1998 bombing of the US Embassy in Kenya, the Committee wrote to the following individuals and Institutions who were involved in the emergency and recovery efforts; and also those that provided humanitarian assistance to the victims. The Committee wrote to Kituo Cha Sheria, the Kenya Red Cross Society, Amref Health Africa, Adventist Development Relief Agency Kenya, Kenya Society for the Blind, Ernst and Young and Dr. Linda Musumba of DLM Advocates.

    a) Dr. Linda Musumba wrote back to the Committee submitting a list of the victims;
    b) Kituo Cha Sheria also submitted a list to the Committee;
    c) Amref, Ernst & Young and Kenya Red Cross Society informed the Committee that they no longer have the records of the victims; and
    d) The August 7th Memorial Park submitted a list of the persons who died during the attack.

CHAPTER 4: COMMITTEE'S ENGAGEMENTS WITH THE US CONGRESS AND HOUSE OF REPRESENTATIVES

4.0 Introduction

86. Though the Committee was unable to secure appointments for it to meet the members of Congress of the United States of America (USA), the Chairperson and Sen. Maanzo were able to travel to the USA as part of the Kenyan delegation to the US National Prayer breakfast meeting from 31st January to 1st February, 2024.
87. The Prayer breakfast provided an opportunity for the Members of the Ad Hoc Committee on compensation to meet US Senators and Congressmen and Women and put forward Kenya's case for compensation.
88. This meeting was preceded by the African Gathering from 27th to 30th January, 2024, which also presented the members with a chance to brief other African countries on the compensation case for the Kenyan victims.

4.1 Pre-briefing Meeting of the Kenyan Delegation

89. This meeting took place on Saturday, 27th January, 2024 in Winchester, Virginia and among those present were Hon. Ambassador Lazarus Amayo, Sen. Agnes Kavindu, MP, Sen. Daniel Maanzo, MP, Sen. Veronica Maina, MP, Hon. John Kaguchia, MP, Hon. Beatrice Elachi, MP, Hon John Chege Kiragu, Ms. Serah Kioko the Senior Deputy Clerk of the National Assembly, Hon. Sen. Samuel Poghisio, Hon. Alfred Edakasi from Uganda and other Kenyans.

90. The Ambassador welcomed all to the United States and then invited Sen. Kavindu who briefed the National Prayer Breakfast delegation on the Senate Ad Hoc Committee on the Compensation of the Kenyan Victims of the 1998 Bombing of the US Embassy in Kenya whose main mandate was to seek compensation for the Kenyan Victims through an amendment of the American Law, the Justice for United States Victims of State Sponsored Terrorism Act (34 U.S.C.11 20144), which provides for the establishment and administration of the US Victims of State Sponsored Terrorism Fund (the USVSST Fund) to provide compensation to certain U.S. persons who were injured in acts of international state-sponsored terrorism, to include Kenyan Victims of the 1998 Bombing of USA Embassy in Nairobi.

91. She apprised the meeting on what the Committee has done in Kenya and concluded by stating that the purpose of her visit was to lobby for the compensation of the Kenyan Victims of the 1998 Bombing of the US Embassy in Nairobi, adding that

there were some victims who had already secured a judgement for an award, in the American Courts but there was no legal framework to implement the Rulings.

92. The Ambassador thanked the delegation for honouring the invite and informed the meeting that he was part of the now defunct Njonjo Commission that was tasked to distribute relief and contributions made by Kenyans to the victims of the Attack. He added that the Commission provided about Kshs. 30,000 to aide in burials among other relief items.

93. He advised the Members that the Prayer breakfast will provide a good platform for the Members to lobby for the inclusion of Kenya to the schedule that would enable Kenyan Victims to get compensation.

94. He further advised that Members also use the opportunity to get Sen. Coons agree to sponsor the amendment and also to host Sen. Cory Booker, the Senator for New Jersey and also the Chair on the African Sub-committee on African Relations, who will be visiting Kenya in the near future.

95. After intensive deliberations, it was agreed that the secretariat prepares a two-page case summary for the delegation to enable the delegation to acquaint themselves with the details of the matter for the purposes of lobbying.

4.2 African Prayer Gathering Meetings

96. These meetings were held on Sunday 28th and Monday 29th January, 2024, In Winchester Virginia, with the guest speaker being Dr. Sheena from the British Isles whose main theme was reconciliation. Ms. Caroline Muthoka, a victim of the Bomb Blast was present during the meetings and briefed the meeting on what took place on that day.

4.3 Meeting with Mr. Sam Owen, the Head Coordinator of the Kenyan Chapter of the National Prayer Breakfast.

97. This meeting took place on Monday, 29th January, 2024 at 6.30 pm in Winchester, and was attended by the whole Kenyan delegation as outlined above. Mr. Owen was briefed on the issue of compensation for the Kenyan victims and further requested to arrange for the Senators to meet their counterparts to discuss the matter.

98. The meeting discussed the approach to take on the matter and resolved to diplomatically pursue the issue of compensation to the Kenyan victims.

4.4 Meeting with Hon. Musalia Mudavadi, the Prime Cabinet Secretary and Minister in charge of Foreign and Diaspora Affairs

99. This meeting took place on Tuesday, 30th January, 2024 at 4.00 pm in the Kenyan Embassy in Washington DC. Present in the meeting was the Prime Cabinet Secretary (PCS) and his team, the Ambassador and his team, the Kenyan delegation as indicated earlier and the lawyers of the victims who included Mr. Phillip Musolino and Mr. Joe Burris.

100. The Ambassador welcomed everyone to the Embassy and briefed the PCS about the Embassy outlining the strategic areas that Kenya has bilateral relationships with the United States. These areas include regional cooperation, health cooperation, defense cooperation, climate change and environment cooperation.

101. He further briefed the PCS on the Ad Hoc Committee on the 1998 bomb blast, their mandate and the objective of their visit.

102. The Chairperson and Sen. Maanzo when introducing themselves also apprised the PCS on the undertakings of the Committee and outlined the objective of their visit. They requested the PCS to advance the cause of compensation of the Kenyan victims in his meetings with the US Executive and the Senators. Ms. Caroline Muthoka, who was present in the meeting also shared her testimony and pleaded with the PCS to seek compensation for Kenyans.

103. The Prime Cabinet Secretary thanked everyone for honouring his invitation, noting that Kenya had very strong partnerships with the United States of America tha Kenya would want to continue. He mentioned that the African Growth and Opportunity Act (AGOA), which Kenya is benefiting from, is coming to an end in 2025 and that Kenya was pursuing its renewal.

104. He requested for the Legislators' support in the country's engagements and noted that prayers play an important role in countering the volatile situation across the globe. He added that Kenya, though stable, is likely to be affected by instability anywhere else across the globe.

105. He concluded by cautioning the meeting that the wise win before the fight, while the ignorant fight to win.

4.5 Meeting between Members of the Kenyan Parliament and US Representatives

106. This meeting took place on Tuesday, 30th January, 2024 at the C Street where the Chairperson, Sen. Daniel Maanzo and the Prime Cabinet Secretary were able to meet Congressman John Moolenaar and Senator for Kansas, Jerry Moran and brief them about the Ad hoc Committee. They also presented the two with a legislative brief on the proposed amendments.

4.6 International Women's Coffee Meeting

107. This meeting took place on Wednesday, 31st January, 2024 at the Washington Hilton Hotel, and was being hosted by the wives of the congressmen led by Ms. Susan Walberg, wife of Congressman Tim Walberg from Michigan and Ms. Audrey Mann, wife of Senator Tracy Mann.

108. The meeting was an interactive session where the Chairperson got an opportunity to meet with the spouses of several representatives and brief them on the operations of the Ad Hoc Committee on compensation of the 1998 Bombing of the USA Embassy, informing them of the objective of her visit to the United States and requesting them for their support in pursuing the compensation for Kenyan victims.

4.7 Meeting with Mr. Phil Musolino and Mr. John Burris, US-based Lawyers representing some of the victims

109. This meeting took place in Mr. Phil Musolino's office on Wednesday, 31st January, 2024 in Washington DC from 1.00 pm. Sen. Agnes Kavindu, Sen. Dan Maanzo and Sen. Veronica Maina were present during the meeting. Ms. Caroline Muthoka was also present.

110. Mr. Musolino briefed the Senators on what his firm had done so far and noted the following – That,

i) the proposed legislation was budget neutral;

ii) Kenyan victims had not received any compensation and that the 40 Billion that Congress transferred did not go to the victims but to the insurance companies that lost buildings; and

iii) compensating Kenya would be a huge victory to the United States in promoting and enhancing its image as a country that stands with its allies.

111. He added that there is already a way of making sure that only legitimate claims get processed in terms of personal injury and loss of life.

112. He concluded by advising the Ad hoc Committee that the National Defence Authorisation Authority (NDAA) that authorises military expenditure annually is able to address special defense legislation through the House Arms Services Committee and the Senate Arms Services Committee.

4.8 Meeting with Congressman Robert Aderholt, Alabama and Congressman John Moolenaar, Michigan

113. This meeting took place in Congressman Robert Aderholt's office in Cannon House, Capitol Hill on Thursday, 1st February, 2024 at 11.00 am. Deputy Ambassador Gicheru was the leader of the delegation. He thanked them for the invitation and briefed the meeting on the matter of compensation for the Kenyan victims of the 1998 Bombing of the US Embassy in Nairobi.

114. The Chairperson also added on what the Ad Hoc Committee had done so further and requested for the Congressmen support in amending the legislation that would enable the Kenyan victims get compensation, and presented a written submission on the matter.

4.9 Meeting with Senator Christopher Coons and Senator Mike Rounds

115. The Kenyan delegation met with two US Senators on Thursday, 1st February, 2024 at 4.00 pm in the African Suite Room at the Washington Hilton.

116. The meeting provided an opportunity for Kenyans to discuss issues that were affecting them. These included challenges that Kenyans face when getting the US Visa and access to business opportunities including support in the growth of online and digital platforms that enhance service delivery.

117. The participants also discussed the matter of markets for the Kenyan tea and coffee in the USA, and African Growth and Opportunity Act (AGOA) of the US and noted that it is expiring in the year 2025, which will leave the Kenyan Export Processing Zones (EPZs) and would amount to huge job losses to the Kenyan youthful population which has been engaged in textile and apparel industries, that have been the flagship of AGOA, amidst other trading opportunities. The team was informed that negotiations were underway for the drafting of the necessary framework to bring in new and better terms of trade agreement under AGOA.

118. The meeting also provided an opportunity for the Ad Hoc Committee to present their case and seek for appointments to present their case to propose for an amendment that would enable Kenyan victims of the 1998 bombing access compensation.

119. Sen. Chris Coons is the chair of the US Senate Ethics Committee. His other committee assignments include Appropriations, Foreign Relations, Judiciary, and Small Business and Entrepreneurship. He is also the Chair of the US Senate Foreign Relations Subcommittee on African Affairs, and therefore very instrumental on the Ad Hoc Committee's quest for compensation of the Kenyan Victims of the 1998 Bomb Blast at the US Embassy in Nairobi.

120. It was agreed that the Senate Ad Hoc Committee on Compensation of the of the Kenyan Victims of the 1998 Bombing of the United States Embassy in Nairobi, seek an appointment with the Senate Foreign Relations Subcommittee on African Affairs (or sub-committees thereof), to discuss the Justice for United States Victims of State Sponsored Terrorism Act (34 U.S.C.11 20144), which provides for the establishment and administration of the US Victims of State Sponsored Terrorism Fund (the USVSST Fund) to provide compensation to certain U.S. persons who were injured in acts of international state-sponsored terrorism, to include Kenyan Victims of the 1998 Bombing of USA Embassy in Nairobi.

CHAPTER 5: EMERGING THEMES FROM THE SUBMISSIONS

121. This chapter synthesizes the submissions relating to the matter. While the Committee focuses on the issue of compensation of the 1998 victims of US Embassy bombing in Nairobi, the issues encompass other related themes as described in this section.

5.1 Availability and Accessibility of records on the attack

122. Since the attack occurred over twenty-five years ago, the Committee has had challenges in obtaining information from Institutions that were involved in rescue and recovery of Victims. Red Cross, Ernst and Young and other organisations all cited the seven-year period that the law allows for records and documents to be kept.

123. It was also not possible to obtain information e.g. treatment received and termination of employment from the former employers of the victims since the attack took place more than 25 years ago.

124. Section 317 of the Companies Act, no. 17 of 2015, requires companies to keep the records for at least ten years from the date of the relevant resolution, meeting or decision, whereas section 630 of the Act requires that a company should preserve its accounting records for not less than seven years from the date of the transaction. As regards employment information, section 10(6) of the Employment Act, no. 11 of 2007, requires employers to preserve employment records for a period of five years after the termination of employment.

125. Additionally, the law does not prescribe how long health related information is to be kept, and organisations are generally guided by their own internal records retention policies on how long to preserve health related information. They are also guided by section 4 of the Limitations of Actions Act, cap 22, which provides timelines within which a party can commence action against another party, i.e. three years for tort matters, and six years for contract and other matters. For the above reason, most entities keep records for an average of six to ten years before disposal.

5.2 US Embassy failure to demonstrate duty of care

126. By 1997, American intelligence officers are reported to have known that bin Laden operatives were active in East Africa but were unable to break up the terrorist cell

before the embassies were attacked. They had even heard of a possible plot to bomb the U.S. embassy in Nairobi but failed to recommend an increase in security before the attack.

127. Prudence Bushnell, the then U.S. ambassador to Kenya, in her book claims to have independently asked the State Department to move the Nairobi embassy because of its exposed location, but the request was not granted. She had previously described her misgivings about the embassy's security posture, and the warnings she communicated about threats and poor building setback. Unfortunately, her alarm was unable to overcome bureaucratic obstacles to produce measures that would have prevented the attack.

5.3 Report of the Accountability Review Board

128. The Accountability Review Board formed to investigate the twin bombings concluded that in the review of systems and procedures required by the law, the Board found that systemic and institutional failures in Washington were responsible for –

i. a flawed process for assessing threat levels worldwide which underestimated the threat of terrorism in Nairobi, notwithstanding the Ambassador's repeated pleas;
ii. a chronic major lack of funds for building new, safer embassies, to replace buildings like the Nairobi chancery, which, even had there been no terrorist threat, was in a dangerous location and extremely vulnerable to crime and mob violence; and
iii. failing to prepare for vehicle bombs by providing guidance in Emergency Action Plans to deal with such attacks, and the warning alarm signals and systems to alert personnel to imminent bomb attacks.

5.4 Compensation Process Outline and Status:

129. The victims and their families had pursued compensation through multiple channels, including lawsuits against foreign governments and financial institutions that were suspected of providing support to the terrorists involved. Additionally, there have been efforts to secure compensation from frozen assets linked to terrorists and their sponsors.

130. Furthermore, the US government had established funds and programs to provide financial assistance, medical care, and other support to the victims and their families.

131. There has been lobbying for US lawmakers to amend a congressionally established terrorism compensation fund to make Kenyan victims eligible. If the proposed changes go through, somewhere between 1,000 and 3,000 Kenyan victims could be eligible for $5m each, a total payout of $5bn to $15bn.

5.5 Court Ruling and Related Legal Judgements:

132. In November 2011 the courts entered a final judgement on liability in favour of plaintiffs and against defendants. The Court found that the government of Iran aided, abetted and conspired with Hezbollah, Osama Bin Laden and al Qaeda to launch large-scale bombing attacks against the United States. Iranian defendants, through Hezbollah, provided explosives training to Bin Laden and al Qaeda and rendered direct assistance to al Qaeda operatives.

133. Sudan also provided critical financial, military, and intelligence services that facilitated and enabled al Qaeda to strengthen its terrorist network and infiltrate nearby countries. With the support of Sudan and Iran, al Qaeda killed and attempted to kill thousands of individuals on site in the 1998 U.S. embassy attacks in Nairobi, Kenya and Dar es Salaam.

134. Lawyers for the victims have been lobbying US lawmakers to amend a congressionally established terrorism compensation fund to make Kenyan victims eligible for the Victim Compensation Fund pursuant to the Justice for United States Victims of State Sponsored Terrorism Act. If these amendments are approved, it will allow the Kenyan victims to be eligible to participate in a United States Congressional Fund providing compensation to the victims of terrorist attached to the United States. A legislative change is being floated to the eligibility requirement for the United States Victims of State Sponsored Terrorism Fund, which Congress created in 2016.

CHAPTER 6: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

6.1 Committee Intended Outcomes

135. The intended outcomes of the Senate Ad Hoc Committee on the Compensation of the Kenyan Victims of the 1998 Bombing of the United States Embassy are derived from its mandate which is to-

i. Engage with the Ministry of Foreign and Diaspora Affairs to advance friendship and Co-operation between the United States of America and Kenya by supporting the eligibility of Kenyan and American Victims and their personal representatives, surviving spouses and the 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 subsidised medical treatment for the surviving victims of the bomb blast.

136. From the above, the Committee was able to follow up on the outcomes as explained below.

6.1.1 Compensation for the victims

137. The key intended outcome of the Committee is to secure compensation for the victims by facilitating the eligibility of Kenyan victims, surviving spouses and next of kin in the Victim Compensation Fund, pursuant to the Justice for United States Victims of State Sponsored Terrorism Act.

6.1.2 Medical Assistance for the survivors

138. The Committee's other intended outcome is the provision of subsidised medical care for survivors injured during the attack. This is to be done through the Ministry of Health.

6.1.3 Inclusion of the victims in social assistance programs

139. The survivors who got disabilities as a result of the bomb blast are to be assessed and registered with the National Council of Persons with Disabilities. This is to ensure that these victims receive Government support on Social Welfare.

6.1.4 Compensation due to loss of livelihoods

140. There are survivors whose jobs and livelihoods were negatively affected due to injuries sustained.

6.2 Committee Observations and Findings

141. From the foregoing, the Committee observed the following –

i) that although section 49 of the Prevention of Terrorism Act establishes the Compensation of Victims of Terrorism Fund, the fund has not been operationalised to date as the Cabinet Secretary has not enacted the necessary regulations, and additionally, since the Act was enacted in 2012, the victims of the 1998 US Embassy bombing would not be eligible for compensation for the Act. The Committee further noted that amending the Act to have retrospective application would not necessarily guarantee compensation to these victims, as it would make it possible for victims of any terror attacks that have taken place since 1998 eligible for compensation, which would put an additional budgetary and administrative strain in the compensation process;

ii) that through various amendments to the US law, victims of terror have been able to file cases against various state sponsors of terrorism as well as the terrorist organisations and obtain favourable judgements;

iii) that there have been various barriers that have prevented victims of the 1998 American embassy bombing who have obtained favourable judgements in US courts from obtaining compensation;

iv) that Kenyans who were injured or who lost their family members were not able to access the funds paid by the Sudan for compensation of the victims of the 1998 embassy bombing on account of their nationality, and they were expected to enter into separate private agreements with the Sudan in order to access the funds;

v) that the two compensation schemes discussed above not only appear to benefit persons of US nationality, but they also recognise, for eligibility purposes, persons who hold judgements against state sponsors of terrorism. As such, even if the two schemes did not restrict persons who

are not US nationals from receiving compensation for death or injuries suffered in the 1998 US embassy bombing, a good number of such persons hold judgements against al-qaeda as opposed to judgements against state sponsors of terrorism, hence they would still remain excluded from receiving compensation;

vi) that to benefit from the current fund (USSVT Fund) amendments to the Justice for United States Victims of State Sponsored Terrorism Act would need to be enacted so as to not only open a new application window for victims of the bombing, but also to remove any nationality requirements, express or implied that may hamper their access to the fund, as well as any requirements to hold a final judgement against a state sponsor of terrorism;

vii) that any amendments to US legislation are sovereign matters fully within the legislative mandate of the US Congress and enacting any amendments is subject to the goodwill of the US Congress, and that the Committee can only leverage on the good bilateral relations between the two nations to have the changes in the US law enacted;

viii) That although the Committee is cognizant of the fact that some of the victims of the bombing may have lost their jobs due to their inability to continue working as a result of injuries sustained during the attack, due to the long passage of time, the Committee is not able to ascertain if due process was followed to terminate the employment of such persons as there are no available records on the same. Additionally, persons who may have been unfairly dismissed ought to have reported the dismissal within 28 days as was required under the Trade Disputes Act (Cap 234) (now repealed), and thereafter pursued a claim at the Industrial Court as it then was;

ix) That the ascertained lists of victims available to the Committee obtained from various sources should be used for reference and compensation. However, it is worth noting that these lists may not be exhaustive.

6.3 Committee's ongoing activities

142. The Committee, in a bid to assist the Kenyan victims of the 1998 bombing of the USA Embassy in Nairobi, intends to continue engaging with the following ministries in order to for the Cabinet Secretaries to actualise the commitments made to the Committee during the various engagements held, including –

i. the Ministry of Health on the provision of subsidised medical care for survivors injured during the 1998 Bombing of the US Embassy in Nairobi;

ii. the Ministry of Labour and Social Protection on the assessment and registration of survivors with disabilities of the 1998 bomb blast with the National Council of Persons with Disabilities; and
iii. the Ministry of Interior and National Administration on the formulation of regulations to implement section 49 of the Prevention of Terrorism Act, 2012 which operationalises the Compensation of Victims of Terrorism Fund.

143. The Committee shall make the appropriate recommendations on this in its final report.

6.3 Committee Recommendation

144. The Committee recommends that in order to assist the Kenyan victims of the 1998 bombing of the USA Embassy in Nairobi-

a) the Cabinet Secretary in charge of Foreign and Diaspora Affairs secures appointments for the Committee to meet with the Members of the United States of America Senate Foreign Relations Sub Committee on African Affairs to consider the Committee's proposal requesting the USA Congress to amend the Justice for United States Victims of State Sponsored Terrorism Act, which provides for the establishment and administration of the United States Victims of State Sponsored Terrorism Fund (USVSST Fund), to include Kenyan Victims of the 1998 Bombing of the United States Embassy in Nairobi; and
b) The Cabinet Secretary in charge of Foreign and Diaspora Affairs provides bimonthly updates to the Committee on the progress made in securing the said appointments.