

JUSTICE DELAYED

Kenya: Raila, Ruto seek US compensation for 1998 embassy bombing victims

By Julian Pecquet

Posted on Monday, 30 May 2022 10:15



A man pins a roses next to his relative's name at the memorial site for victims of the 1998 bombing of the U.S Embassy in Nairobi August 7, 2002. REUTERS/Antony Njuguna

Kenya's two leading presidential candidates want the US to compensate victims of the 1998 embassy bombings, inserting a raw issue into the bilateral relationship regardless of who wins the August election.

The renewed focus on the attack and its aftermath comes as lawyers for the victims have begun lobbying 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, according to senior partner Philip Musolino of Washington law firm Musolino & Dessel.

Former Prime Minister Raila Odinga met with Musolino on 25 April during his trip to Washington and endorsed the effort.

“Mr. [Raila] Odinga is encouraged that the US Congress will have the opportunity in the next several weeks and months to consider legislation, which will make the Kenyan victims eligible to participate in a United States Congressional fund providing compensation to the victims of terrorist attacks on the United States,” Raila’s campaign spokesman Makau Mutua said in a **19 May statement [https://efile.fara.gov/docs/7101-Informational-Materials-20220523-1.pdf] .**

“The proposed legislation underscores the friendship and mutual interests of Kenya and the United States,” Mutua said. “Mr. [Raila] Odinga strongly urges the US Congress to adopt these amendments, and looks forward to a successful legislative conclusion.”

Deputy President William Ruto also expressed his support for the effort.

“Dr. Ruto believes that every violation of a right – especially the right to life, limb and livelihood – must be remedied,” Korir Sing’oi, the legal adviser to Ruto’s office, tells *The Africa Report*. “As such, he fully supports measures towards reparation for the long-suffering victims of the terror attacks in Nairobi in 1998.”

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Long road to justice

The twin Al Qaeda bombings on 7 August 1998 killed 213 people in Nairobi and another 11 in the Tanzanian capital of Dar es Salaam, while wounding thousands more.

Soon after, USAID allocated [https://1997-2001.state.gov/regions/africa/fs_anniv_usaid.html] \$38m for the survivors and their families, including \$28m for the reconstruction of damaged business and \$10m for medical and social services. However, in a 1999 legal opinion, Kenyan attorney Lee Muthoga told Musolino & Dessel that the agreement between USAID and the government of Kenya “is not and does not purport to be intended for the benefit of the injured victims of the bomb blast”.

To ensure their right to compensation, Musolino’s firm has been representing hundreds of the Kenyan victims for almost a quarter century as their case against al Qaeda slowly makes its way through the courts. Just this week, the US District Court for Washington, DC issued a **final judgement** [/media/2022/05/Kenya_Judgment.pdf] (which can still be appealed) awarding more than \$160m each to 351 separate victims.

Despite judgments in their favour, the Kenyan victims have yet to collect the money. To remedy the situation, Musolino & Dessel **registered to lobby** [<https://efile.fara.gov/docs/7101-Exhibit-AB-20220321-1.pdf>] for congressional action in late March.

The firm is **floating a legislative change** [<https://musolinoanddessel.com/proposed-legislation>] to the eligibility requirements for the United States Victims of State Sponsored Terrorism Fund, which Congress created in 2016. The fund is regularly replenished with money from fines against sanctions violators and sales of forfeited properties.

To date, about \$3bn in payments to terrorism victims have been authorised, **according to the Congressional Research Service** [<https://crsreports.congress.gov/product/pdf/IF/IF10341>] . The fund has around \$27bn in outstanding claims as judgments outpace the fund's replenishment.

The fund is currently only for victims of state sponsors of terrorism – namely North Korea, Cuba, Syria and Iran – but Musolino wants to add Al Qaeda to the list of perpetrators. The fund only covers compensatory damages, so punitive damages claims awarded to Musolino's clients are not subject to the fund. The fund also caps recovery per claimant at \$20m per claimant.

Musolino tells *The Africa Report* that his goal is to credit \$5m for each victim, rather than the full \$160m, so as to be consistent with current caps and exclusions in the law, which is limited to compensatory damages, and to avoid short-changing US terrorism victims who are also waiting for pay-outs.

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He also points out that changes to the law would open the fund up to Kenyan victims beyond his own clients. “If we went in there and we wanted \$160m for 3,000 people, the claimants who are already in the fund would look at it and maybe find it a difficult pill to swallow,” he says.

Registered to lobby alongside Musolino are Joseph Szlavik, a partner with the lobbying firm Scribe Strategies & Advisors, and Melvin Foote, the founder and president of the Washington network Constituency for Africa, who introduced Raila to Musolino during the Kenyan politician’s US visit last month.

“We’ve been meeting on the Hill for the past few weeks with various staffers to try and move the legislation along,” Musolino tells *The Africa Report*.

Kenyan boost

Musolino says his firm has yet to nail down a congressional champion, but that Raila’s public endorsement is helping make the case with lawmakers on the foreign affairs committees in the House and Senate. He says the State Department has to date declined to opine on a pending legislative issue.

“We are very grateful for the leadership and compassion shown by the Rt. Hon. Raila Odinga in offering support for our proposed legislation,” the firm said in a 19 May message to stakeholders. “We have meetings scheduled on Capitol Hill over the next several weeks and this show of support will advance our legislative efforts.”

He added that the firm has also been reaching out to President Uhuru Kenyatta’s government.

“We have written to, I want to say, the chief of staff of the current government in Kenya fairly recently,” Musolino says. “And we would obviously welcome an expression of support from the current – even if it’s outgoing – government of Kenya, and in the meantime, we’re campaigning, if you will, to have this issue on the agenda of the presidential debates (in Kenya).”

The US lawyer adds that he's hopeful to have the legislative fix done in time for the 25th anniversary of the embassy bombings next summer, saying it would be an "enormous win" for US diplomacy particularly in the context of increased competition with China.

"Our view [...] is that our ambassador shouldn't be going to that commemoration after 25 years without being able to present to the victims and their families and supporters some positive success in terms of finally compensating them," he says.

Getting the Kenyan victims the help they need and deserve, he said, would be "an enormous benefit to our relationship with Kenya and East Africa and I think it would reverberate throughout Africa".