No. 17-___

IN THE

Supreme Court of the United States

REPUBLIC OF SUDAN, MINISTRY OF EXTERNAL AFFAIRS AND MINISTRY OF THE INTERIOR OF THE REPUBLIC OF SUDAN,
Cross-Petitioners,

v.

MONICAH OKOBA OPATI, IN HER OWN RIGHT, AS EXECUTRIX OF THE ESTATE OF CAROLINE SETLA OPATI, DECEASED, ET AL.,
Cross-Respondents.

On Conditional Cross-Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI

CHRISTOPHER M. CURRAN
Counsel of Record
NICOLE ERB
CLAIRE A. DELELLE
CELIA A. MCLAUGHLIN
NICOLLE KOWNACKI
WHITE & CASE LLP
701 Thirteenth Street, NW
Washington, DC 20005
(202) 626-3600
ccurran@whitecase.com

Counsel for Cross-Petitioners the Republic of the Sudan, the Ministry of External Affairs of the Republic of the Sudan, and the Ministry of the Interior of the Republic of the Sudan

April 9, 2018

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

QUESTIONS PRESENTED

This Conditional Cross-Petition presents recurring issues of critical importance under the Foreign Sovereign Immunities Act ("FSIA") and for the relations of the United States with other nations:

1. Whether the term "extrajudicial killing" means a summary execution by state actors, as is consistent with international law and the statutory text, context, and purpose of 28 U.S.C. § 1605A(a).

2. Whether foreign sovereign immunity may be withdrawn for emotional distress claims brought by family members of victims under § 1605A(a)(2)(A)(ii).

3. Whether § 1605A(c) provides the exclusive remedy for actions brought under § 1605A(a), and forecloses state substantive causes of action previously asserted through the "pass-through" provision of 28 U.S.C. § 1606.

4. Whether the statute of limitations contained in § 1605A(b) is jurisdictional in nature and, if it is not, whether the D.C. Circuit should nonetheless have heard Sudan's limitations defense asserted through its timely, direct appeal.

5. Whether the undisputed fact of civil war, internal strife, and partitioning of Sudan into two countries constitutes excusable neglect or extraordinary circumstances for vacatur under Rule 60(b) of the Federal Rules of Civil Procedure.

PARTIES TO THE PROCEEDING

Cross-Petitioners here are the Republic of the Sudan, the Ministry of External Affairs of the Republic of the Sudan, and the Ministry of the Interior of the Republic of the Sudan (collectively, "Sudan") and were the defendants-appellants below. Sudan is a sovereign nation and qualifies as a "foreign state" under the U.S. Foreign Sovereign Immunities Act, Pub. L. No. 94-583, 90 Stat. 2891 (codified as amended at 28 U.S.C. §§ 1330, 1391(f), 1441(d), 1602-1611).

The Islamic Republic of Iran and the Iranian Ministry of Information and Security were also defendants in the district court proceedings. Pursuant to Rule 12.6 of this Court, Cross-Petitioners state that they do not believe that those defendants have an interest in the outcome of this Conditional Cross-Petition.

A number of cases were consolidated in the district court and circuit court proceedings.

In *Owens v. Republic of Sudan*, No. 01-cv-2244-JDB, the following individuals, Cross-Respondents here, were the plaintiffs-appellees below: James Owens; Victoria J. Spears; Gary Robert Owens; Barbara Goff; Frank B. Presley Jr.; Yasemin B. Pressley; David A. Pressley; Thomas C. Presley; Michael F. Pressley; Berk F. Pressley; Jon B. Pressley; Marc Y. Pressley; Sundus Buyuk; Montine Bowen; Frank Pressley, Sr.; Bahar Buyuk; Serpil Buyuk; Tulay Buyuk; Ahmet Buyuk; Dorothy Willard; Ellen Marie Bomer; Donald Bomer; Michael

James Cormier; Andrew John William Cormier; Alexandra Rain Cormier; Patricia Feore; Clyde M. Hirn; Alice M. Hirn; Patricia K. Fast; Inez P. Hirn; Joyce Reed; Worley Lee Reed; Cheryl L. Blood; Bret W. Reed; Ruth Ann Whiteside; Lorie Gulick; Pam Williams; Flossie Varney; Lydia Sparks; Howard Sparks; Tabitha Carter; Michael Ray Sparks; Gary O. Spiers; Victoria Q. Spiers; Julita A. Qualicio. The following individuals, respondents on review, were the Intervenor plaintiffs-appellees below: Linda Jane Whiteside Leslie; Jesse Nathanael Aliganga; Julian Leotis Bartley, Sr.; Jean Rose Dalizu; Molly Huckaby Hardy; Kenneth Ray Hobson, II; Arlene Bradley Kirk; Mary Louise Martin; Ann Michelle O'Connor; Sherry Lynn Olds; Prabhi Guptara Kavaler; Howard Charles Kavaler; Tara Lia Kavaler; Maya Pia Kavaler; Pearl Daniels Kavaler; Leon Kavaler; Richard Martin Kavaler; Clara Leah Aliganga; Leah Ann Colston; Gladis Baldwin Barley; Egambi Fred Kibuhiru Dalizu; Temina Engesia Dalizu; Lawrence Anthony Hicks; Mangiaru Vidija Dalizu; Lori Elaine Dalizu; Rose Banks Freeman; June Beverly Freeman; James Herbert Freeman; Sheila Elaine Freeman; Gwendolyn Tauwana Garrett; Jewell Patricia Neal; Joyce Mccray; Jeannette Ella Marie Goines; Brandi Plants; Jane Huckaby; Deborah Hobson-Bird; Meghan Elizabeth Hobson; Bonnie Sue Hobson; Kenneth Ray Hobson, II; Robert Kirk, Jr.; Robert Michael Kirk; Maisha Kirk Humphrey; Neal Alan Bradley; Katherine Bradley Wright; Kenneth R. Bradley; Dennis Arthur Bradley; Patricia Anne Bradley Williams; James Robert Klaucke; Karen Marie Klaucke; Joseph Denegre Martin, Jr.; Martha

Martin Ourso; Kathleen Martin Boellert; Gwendolyn Frederic Deney; Joseph Denegre Martin, III; Stephen Harding Martin; James Paul O'Connor; Micaela Ann O'Connor; Tara Colleen O'Connor; Delbert Raymond Olds; Jennifer Erin Perez; Marsey Gayle Cornett; Christa Gary Fox; May Evelyn Freeman Olds; Kimberly Ann Zimmerman; Michael Hawkins Martin; Mary Linda Sue Bartley; Edith Lynn Bartley; Mary Katherine Bradley; Douglas Norman Klaucke; William Russel Klaucke; Susan Elizabeth Martin Bryson.

In *Amduso v. Republic of Sudan*, No. 08-cv-1361-JDB, the following individuals, Petitioners and Cross-Respondents here, were the plaintiffs-appellees below: Milly Mikali Amduso; Joyce Auma Ombese Abur; James Andayi Mukabi; Hamsa Safula Asdi; Gerald W. Bochart; Jomo Matiko Boke; Monicah Kebayi Matiko; Velma Akosa Bonyo; Benson Okuku Bwaku; Beatrice Mugemi Bwaku; Belinda Chaka; Murabu Chaka; Boniface G. Chege; Lucy Wairimu; Catherine Lucy Nyambura Mwangi; Anastasia Gianopulos; Grace Njeri Gicho; Lucy Muthoni Gitau; Catherine W. Gitumbu; Japeth Munjal Godia; Merab A. Godia; Jotham Odiango Godia; Grace Akanya; Jonatham Odiango Godia; Omari Idi; Caroline Nguhi Kamau; Kimani Kamau; Hannah Ngenda Kamau; Jane Kamau; Josinda Katumba Kamau; Jane Kavindu Kathuka; Ikonye Michael Kiarie; Jane Mweru Kiarie; Ikonye Michael Kiarie; Humphrey Kibiru; Jennifer Wambui; Elizabeth Muli Kibue; Michael Kibue Kamau; David K. Kiburu; Judy Walthera; Faith Wambui Kihato; Harrison Kariuki Kimani; Grace Wanjiku Kimani; Grace Njeri Kimata;

Alice Muzhomi Kiongo; Lucy Kamau Kiongo; Lucy Kamau Kiongo; Elizabeth Victoria Kitao; Raphael N. Kivindyo; Margaret Mwikali Nzomo; Luka Mwalie Litwaj; Mary Vutagwa Mwalie.

In *Wamai v. Republic of Sudan*, No. 08-cv-1349-JDB, the following individuals, Petitioners and Cross-Respondents here, were the plaintiffs-appellees below: Winfred Wairimu Wamai; Diana Williams; Angela Wamai; Lloyd Wamai; John Muriuki Girandi; Sarah Anyiso Tikolo; Negeel Andika; Grace Njeri Kimata; Lucy Muthoni Gitau; Gitau Catherine Waithira; Ernest Gichiri Gitau; Felister Wanjiru Gitau; Grace Njeri Gicho; Diana Njoki Macharia; Lucy Kamau; Kiongo Wairimu; Teresia Wairimu; Jane Kamau; Alice Muthoni Kamau; Newton Kama; Pauline Kamau; Peter Kamau; Marcy Kamau Wairimu; Ann Wambui Kamau; Daniel Kiomho Kamau; Nyangoro Wilfred Mayaka; Doreen Mayaka; Dick Obworo; Diana Nyangara; Deborah Kerubo; Jacob Awala; Warren Awala; Vincent Owour; Mordechai Thomas Onono; Priscilla Okatch; Dennis Okatch; Rosemary Anyango Okatch; Samson Okatch; Jenipher Okatch; Josinda Katumba Kamau; Caroline Nguhi Kamau; Faith Wanza Kamau; Elizabeth Vutage Malob; Kenneth Maloba; Margaret Maloba; Adhiambo Sharon; Okile Marlon; Lewis Mafwavo; Marlong Okile; Mary Mutheu Ndambuki.

In *Onsongo v. Republic of Sudan*, No. 08-cv-1380-JDB, the following individuals, Petitioners and Cross-Respondents here, were the plaintiffs-appellees below: Mary Onsongo; Enoch Onsongo; Peris Onsongo; Vanice Onsongo; Onsongo Mweberi; Salome

Mweberi; Bernard Onsongo; Edwin Nyangau Onsongo; George Onsongo; Eunice Onsongo; Peninah Onsongo; Gladys Onsongo; Osborn Olwch Awalla; Warren Awala; Vincent Owuor; Martha Achieng Onyango; Juliana Atieno Onyango; Irena Kung'u.

In *Mwila v. Islamic Republic of Iran*, No. 08-cv-1377-JDB, the following individuals, Cross-Respondents here, were the plaintiffs-appellees below: Judith Abasi Mwila; Donte Akili Mwaipape; Donti Kili Mwaipape; Victoria Donti Mwaipape; Elisha Donti Mwaipape; Joseph Donti Mwaipape; Debora Donti Mwaipape; Nko Donti Mwaipape; Monica Akili; Akili Musupape; Venant Valentine Mathew Katunda; Abella Valentine Katunda; Desidery Valentine Mathew Katunda; Veidiana Valentine Katunda; Diana Valentine Katunda; Edwine Valentine Mathew Katunda; Angelina Mathew Felix; Edward Mathew Rutaheshelwa; Elizabeth Mathew Rutaheshelwa; Angelina Mathew Rutaheshelwa; Happiness Mathew Rutaheshelwa; Eric Mathew Rutaheshelwa; Enoc Mathew Rutaeshelwa; Angelia Mathew-Ferix; Mathew Ferix; Samuel Thomas Marcus; Cecilia Samuel Marcus; Coronella Samuel Marcus; Hanuni Rmadhani Ndange; Alli Kindamba Ng'ombe; Paulina Mbwanilwa Ng'ombe; Mohamed Alli Ng'ombe; Kindamba Alli Ng'ombe; Shabani Saidi Mtulya; Adabeth Said Nang'oko; Kulwa Ramadhani.

In *Khaliq v. Republic of Sudan*, No. 10-cv-0356-JDB, the following individuals, Cross-Respondents here, were the plaintiffs-appellees below: Rizwan Khaliq; Jenny Christiana Lovblom; Imran Khaliq;

Tehsin Khaliq; Kamran Khaliq; Imtiaz Bedum; Irfan Khaliq; Yasir Aziz; Naurin Khaliq.

In *Opati v. Republic of Sudan*, No. 12-cv-1224-JDB the following individuals, Petitioners and Cross-Respondents here, were the plaintiffs-appellees below: Monicah Okoba Opati; Selifah Ongecha Opati; Rael Angara Opati; Johnstone Mukabi; Salome Ratemo; Kevin Ratemo; Fredrick Ratemo; Louis Ratemo; Stacy Waithera; Michael Daniel Were; Judith Nandi Busera; Roselyne Karsorani; George Mwangi; Bernard Machari; Gad Gideon Achola; Mary Njoki Muiruri; Jonathan Karania Nduti; Gitionga Mwaniki; Rose Nyette; Elizabeth Nzaku; Patrick Nyette; Cornel Kebungo; Phoebe Kebungo; Joan Adundo; Benard Adundo; Nancy Njoki Macharia; Sally Omondi; Jael Nyosieko Oyoo; Edwin Oyoo; Miriam Muthoni; Priscah Owino; Greg Owino; Michael Kamau Mwangi; Joshua O. Mayunzu; Zackaria Musalia Ating'a; Julius M. Nyamweno; Polychep Odhiambo; David Jairus Aura; Charles Oloka Opondo; Ann Kanyaha Salamba; Erastus Mijuka Ndeda; Techonia Oloo Owiti; Joseph Ingosi; William W. Maina; Peter Ngigi Mugo; Simon Mwanhi Nhure; Joseph K. Gathungu; Dixon Olubinzo Indiya; Peter Njenga Kungu; Charles Gt. Kabui; John Kiswilli.

RULE 29.6 STATEMENT

None of the Cross-Petitioners here is a non-governmental corporation. None of the Cross-Petitioners here has a parent corporation or shares held by a publicly traded company.

TABLE OF CONTENTS

Additional citations to the district court record are indicated by citation to the parties' Joint Appendix before the D.C. Circuit ("C.A. App.____").

TABLE OF AUTHORITIES

Page(s)

CASES

FEDERAL STATUTES

FEDERAL RULES AND REGULATIONS

LEGISLATIVE MATERIALS

BRIEFS OF THE UNITED STATES

INTERNATIONAL TREATIES

Sudan respectfully submits this Conditional Cross-Petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case. The Court should deny the Petition for a Writ of Certiorari filed by Petitioners (No. 17-1268) for the reasons set forth in Sudan's brief in opposition. If this Court grants that Petition, however, this Court also should grant this Conditional Cross-Petition.

OPINIONS BELOW

The D.C. Circuit's opinion, Pet. App. 1a-146a, is reported at 864 F.3d 751 (D.C. Cir. 2017). The D.C. Circuit's denial of rehearing en banc is reproduced at Pet. App. 342a-343a.

JURISDICTION

On July 28, 2017, the D.C. Circuit entered judgment. On October 3, 2017, Sudan's timely petition for rehearing en banc was denied. On December 22, 2017, Petitioners requested an extension of time until March 2, 2018 to file their petition for a writ of certiorari. On December 27, 2017, the Chief Justice granted that extension. The Petition was placed on the docket on March 9, 2018, making the deadline for this Conditional Cross-Petition April 9, 2018 pursuant to Rule 12.5 of the Rules of the Supreme Court of the United States.

28 U.S.C. § 1254(1) provides this Court with jurisdiction to review the D.C. Circuit's judgment.

PROVISIONS INVOLVED

The relevant provisions of the United States Code are set forth in Petitioners' Appendices H and I and Cross-Petitioners' Appendix G.

INTRODUCTION

The Foreign Sovereign Immunities Act ("FSIA") withdraws immunity for actions against foreign states designated by the United States as state sponsors of terrorism

> 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, provision of material support or resources for such an act if such act or 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.

28 U.S.C. § 1605A(a)(1).

Here, Petitioners, and other plaintiffs in the consolidated cases before the D.C. Circuit, filed complaints against Sudan arising from the terrorist bombings of the U.S. embassies in Dar es Salaam, Tanzania, and Nairobi, Kenya. Al Qaeda and its leader Osama Bin Laden claimed credit for the bombings. Petitioners alleged that Sudan provided "material support" to al Qaeda and Bin Laden in the early- and mid-1990s, thereby proximately "causing"

the bombings, and that the bombings constituted "extrajudicial killings" within the meaning of § 1605A.

Sudan — an impoverished nation riven by civil war and besieged by natural disasters — defaulted in the district court, and the court entered over $10.2 billion in default judgments against Sudan in the consolidated cases. (Over $8.6 billion in damages in Petitioners' cases alone.) When Sudan appeared in 2014 and 2015 to timely appeal and move to vacate the default judgments on jurisdictional and nonjurisdictional grounds, the district court and, later, the D.C. Circuit, penalized Sudan heavily for Sudan's earlier failure to defend.

The D.C. Circuit affirmed subject-matter jurisdiction and liability against Sudan under 28 U.S.C. § 1605A on a number of flawed bases, vacated the district court's imposition of retroactive punitive damages, and certified a question to the District of Columbia Court of Appeals on the claims of foreign family members for intentional infliction of emotional distress under District of Columbia law.

Sudan petitioned this Court for a writ of certiorari on issues pertaining to the D.C. Circuit's finding of jurisdictional causation based on an exceedingly "lenient standard" applied to a record devoid of admissible and sufficient evidence. Petition for a Writ of Certiorari at i, 16-17, No. 17-1236, *Republic of Sudan v. Owens* (Mar. 2, 2018). The *Opati*, *Amduso*, *Wamai*, and *Onsongo* plaintiffs simultaneously petitioned this Court for a writ of certiorari on the question of retroactive punitive damages. Pet. i, 14.

Sudan now conditionally cross-petitions this Court for a writ of certiorari to address important jurisdictional and non-jurisdictional questions relating to the D.C. Circuit's unfounded expansion of jurisdiction and liability against defaulting foreign states far beyond the intended reach of § 1605A. This expanded reach of the FSIA in terrorism cases presents serious concerns for U.S. foreign relations and raises the prospect of reciprocal treatment of the United States in foreign courts abroad.

In the event this Court grants the Petition on retroactive punitive damages, this Court also should grant Sudan's Conditional Cross-Petition.

First, the D.C. Circuit exceeded its subject-matter jurisdiction by failing to give the term "extrajudicial killing" its narrow international-law definition, namely a summary execution or targeted assassination by state actors, as supported by the text, context, and history of the FSIA.

Second, the D.C. Circuit exceeded its subject-matter jurisdiction by affirming indirect claims of family members of victims, including foreign-national family members. Section 1605A, properly read, allows claims only for victims and, in the case of deceased or incapacitated victims, their legal representatives.

Third, and relatedly, the D.C. Circuit improperly expanded the liability of foreign states under § 1605A by affirming the continued availability of state law to afford a remedy for foreign-national family members — the majority of the Petitioners here — who are

unable to recover under the exclusive right of action under § 1605A(c).

Fourth, the D.C. Circuit improperly expanded the liability of foreign states under § 1605A by permitting multi-billion dollar default judgments to stand i time-barred claims. Under this Court's precedent, the D.C. Circuit should have construed the limitations bar as a jurisdictional provision, and, even if it were non-jurisdictional, the D.C. Circuit diverged from numerous sister circuits holding that issues addressing the sufficiency of a complaint, such as a limitations defense, are reviewable on appeal of a default judgment.

Finally, the D.C. Circuit failed to uphold the liberal policy favoring vacatur followed by its sister circuits and urged repeatedly by the United States in respect of foreign sovereigns. Sudan's showing of excusable neglect or extraordinary circumstances should have caused the D.C. Circuit to vacate the judgments and to permit Sudan to defend itself against the serious charges of supporting heinous terrorist acts — charges that Sudan has denied vehemently, including through a declaration submitted by its Ambassador to the United States.

STATEMENT

I. The District Court Proceedings

A. *Owens* Action

In late 2001, plaintiff James Owens filed his initial complaint seeking to hold Sudan liable for the 1998 bombings of the U.S. embassies in Kenya and

Tanzania. In September 2002, an amended complaint added additional plaintiffs. None of these *Owens* plaintiffs is a Petitioner here.

As Petitioners state (Pet. 4), Sudan was served with the amended *Owens* complaint on February 4, 2003, but did not immediately respond or appear. Nevertheless, in early 2004, Sudan retained U.S. counsel to defend itself in the *Owens* case. Sudan's counsel contested the entry of default and moved to dismiss the case. C.A. App. 62-63.

Petitioners incorrectly assert that Sudan "selectively entered" the *Owens* litigation "only to exit again when it received adverse rulings from the district court and D.C. Circuit." Pet. 4. In fact, on January 5, 2005, while Sudan's motion to dismiss was still pending, Sudan's initial counsel moved to withdraw from the case citing an "absence of the ability [to] obtain the necessary guidance" and a "lack of effective communication from the client," making it impossible for counsel "to render effective legal representation." C.A. App. 128-29. Sudan's counsel explained that Sudan had not responded to "ample warning" of their intent to withdraw, having been sent multiple letters beginning on September 13, 2004. C.A. App. 131.

Counsel's difficulties coincided with the significant and well-known civil unrest, political turmoil, and natural disasters in Sudan. In the time leading up to counsel's first motion to withdraw, Sudan was deeply engaged in negotiating and concluding the Comprehensive Peace Agreement, which set forth a ceasefire and rigorous implementation procedures

aimed at achieving peace in the country. *See* The Comprehensive Peace Agreement Between The Government of The Republic of The Sudan and The Sudan People's Liberation Movement/Sudan People's Liberation Army, Jan. 9, 2005, https://peaceaccords.nd.edu/sites/default/files/accords/SudanCPA.pdf.

The district court denied the motion to withdraw, but it did not deny Sudan's motion to dismiss until March 29, 2005 (C.A. App. 67, 139) — several months after Sudan's counsel had lost contact with its client, and, at that point, Sudan was in the midst of "the enormity of the tasks" involved in implementing the rigorous procedures set forth in the Comprehensive Peace Agreement. *See* Comprehensive Peace Agreement, Chapeau at xiii.

Prohibited from withdrawing from the case, Sudan's counsel then (unsuccessfully) appealed the *Owens* district court decision denying Sudan's motion to dismiss. Sudan's counsel was finally permitted to withdraw from *Owens* on January 26, 2009. C.A. App. 72.

B. Petitioners' Cases

While *Owens* was pending in the D.C. Circuit, Congress amended the FSIA in 2008, replacing the prior "terrorism exception" to immunity, 28 U.S.C. § 1605(a)(7), with § 1605A, which not only set forth an exception to immunity but also, for the first time, created a private right of action against a foreign state for certain categories of plaintiffs. National Defense Authorization Act for Fiscal Year 2008 ("2008 NDAA"), Pub. L. No. 110-181, § 1083, 122

Stat. 3, 338-41. The new private right of action, § 1605A(c), was made available to individuals who had the requisite U.S. nationality or employment. 28 U.S.C. § 1605A(c).

While *Owens* was still pending in the D.C. Circuit, the *Owens* plaintiffs amended their complaint to assert claims under § 1605A(c). Section 1605A(b) contains a ten-year statute of limitations, and shortly before the tenth anniversary of the 1998 Embassy bombings several new groups of plaintiffs, most of them Petitioners here, filed actions in the district court against Sudan under § 1605A(c), Kenyan common law, and U.S. state common or statutory law. *See* C.A. App. 191 (granting motion to amend *Owens* Compl.); C.A. App. 915 (*Amduso* Compl.); C.A. App. 1216 (*Wamai* Compl.); C.A. App. 1829 (*Onsongo* Compl.).

Sudan was served in the new actions in 2009, but, facing continued national turmoil, Sudan did not appear. *See* Decl. of Ambassador of Sudan Maowia Khalid (C.A. App. 648) ("The cession of south Sudan and the attendant and protracted diplomatic moves and negotiations completely pre-occupied the Government of Sudan and necessitated the diversion of all meager legal and diplomatic personnel to that process."). In 2010 and 2012, yet more plaintiffs, including the Petitioners, filed and served new complaints against Sudan (C.A. App. 2303 (*Khaliq* Compl.); C.A. App. 2514 (*Opati* Compl.); C.A. App. 440 (*Aliganga* Compl.)). These complaints were filed twelve and fourteen years after the Embassy bombings and two and four years after the

limitations period had expired. Sudan, still faced with political turmoil and natural disasters did not appear. Contrary to Petitioners' repeated suggestions (Pet. 11, 14, 35), Sudan did not "double-default" or "strategically" enter and exit in Petitioners' cases; Sudan, mired in domestic crises, simply did not appear.

Each of Petitioners' complaints invoked subject-matter jurisdiction under § 1605A(a)(1). In particular, the complaints alleged that Sudan provided "material support" to al Qaeda and Osama Bin Laden in the early and mid-1990s and thereby caused the 1998 Embassy bombings, which Plaintiffs alleged constituted "extrajudicial killings."

Some of Petitioners could assert claims under § 1605A(c), but the majority of Petitioners are the foreign-national family members of U.S. government employees or contractors killed or injured in the Embassy bombings, and, thus, did not meet § 1605A(c)'s express requirements. These foreign-national family-member plaintiffs resorted to state or foreign law. *See* App. 54a.

In 2014, the district court entered default judgments against Sudan in each of Petitioners' actions, as well as in the other consolidated actions. *See* Pet. App. 294a (*Amduso*); Pet. App. 315a (*Wamai*); Pet. App. 249a (*Onsongo*); Pet. App. 267a (*Opati*). The district court awarded Petitioners over $8.6 billion in damages, including punitive damages, and over $10.2 billion in damages in the consolidated cases.

C. Sudan's Appearance and Motions to Vacate

Sudan, emerging from years of unrelenting turmoil, engaged U.S. counsel in 2014 and timely appealed the entry of the default judgments in the actions below. Sudan retained the undersigned counsel in April 2015, and shortly thereafter filed motions to vacate the default judgments in each of Petitioners' cases (*see* C.A. App. 1053 (*Amduso*); C.A. App. 1700 (*Wamai*); C.A. App. 1925 (*Onsongo*); C.A. App. 2611 (*Opati*)), as well as in virtually all pending U.S. litigation against Sudan, including many cases unrelated to the *Owens* action. The D.C. Circuit stayed Sudan's direct appeals pending the outcome of the motions to vacate.

In its motions to vacate, Sudan argued that the district court lacked jurisdiction to enter the default judgments, and the default judgments were, therefore, void under Rule 60(b)(4) of the Federal Rules of Civil Procedure. Sudan also argued that the default judgments should be vacated due to Sudan's excusable neglect under Rule 60(b)(1), and that extraordinary circumstances warranted vacatur under Rule 60(b)(6). In support of its vacatur arguments, Sudan submitted a declaration from its Ambassador to the United States describing the domestic strife that prevented Sudan from appearing earlier. C.A. App. 647-49. Ambassador Khalid also condemned the heinous attacks on the Nairobi and Dar es Salaam Embassies and, as Sudan's representative, "vehemently denie[d] any involvement in them." C.A. App. 647. Finally,

Ambassador Khalid asserted that Sudan "is now fully committed to defending these actions, vigorously challenging the evidence presented by plaintiffs, and presenting its own evidence." C.A. App. 648.

The district court rejected Sudan's arguments, and the Ambassador's Declaration, and denied Sudan's motions to vacate. Pet. App. 151a-152a. Sudan appealed the district court's denial of the motions to vacate, and that appeal was consolidated with its direct appeal of the default judgments.

II. The D.C. Circuit Opinion

In its decision on Sudan's consolidated appeal, the D.C. Circuit affirmed the district court's decision in all respects, except that it vacated the punitive damages award and certified a question of state law to the District of Columbia Court of Appeals as to whether the foreign-national family-member plaintiffs may recover on District of Columbia intentional infliction of emotional distress claims. Pet. App. 145a-146a.

The D.C. Circuit affirmed the district court's jurisdictional finding that indiscriminate bombings by non-state actors constituted "extrajudicial killings" under § 1605A(a)(1). Pet. App. 38a. The D.C. Circuit essentially equated an "extrajudicial killing" with a garden-variety murder, begging the question as to why Congress would employ this elaborate legal term of art from international law. In reaching this conclusion, the D.C. Circuit improperly considered the statutory terms "in isolation," and failed to properly interpret the term "extrajudicial killing" in

light of "the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform that analysis." *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486 (2006). Properly construed, Congress intended to adopt in the Torture Victim Protection Act of 1991 ("TVPA"), and in § 1605A, the international-law definition of the term "extrajudicial killing" of a summary execution or targeted assassination by state actors and not indiscriminate bombings by non-state actors.

The D.C. Circuit also rejected Sudan's argument that the district court exceeded its subject-matter jurisdiction under § 1605A by allowing claims of victims' family members, and even foreign-national family members. The D.C. Circuit incorrectly found that the term "claimant" in the phrase "claimant or victim" in § 1605A(a)(2)(A)(ii), identifying the categories of plaintiffs for which immunity may be withdrawn, "simply [refers to] someone who brings a claim for relief." Pet. App. 101a. Section 1605A, read in light of its proper context and purpose, however, allows claims only for victims and, in the case of deceased or incapacitated victims, their legal representatives.

The D.C. Circuit also exercised its discretion to review "some, but not all," of Sudan's non-jurisdictional arguments on direct appeal. Pet. App. 17a. Specifically, in addition to the issue of punitive damages, the D.C. Circuit agreed to consider Sudan's challenge to Petitioners' ability to maintain state-law claims where a private right of action now existed in

§ 1605A(c) and § 1606 was not amended to extend to § 1605A. Pet. App. 107a. The D.C. Circuit found that the issue was "purely one of law important in the administration of federal justice" and that "resolution of the issue does not depend on any additional facts not considered by the district court." Pet. App. 107a-108a (quoting *Acree v. Republic of Iraq*, 370 F.3d 41, 58 (D.C. Cir. 2004)). The D.C. Circuit also found its review "particularly appropriate here because the foreign family member plaintiffs have secured billions in damages against a foreign sovereign." Pet. App. 108a. The D.C. Circuit, however, ultimately rejected Sudan's argument, holding that foreign-national family-member plaintiffs may bring state-law claims against a designated state sponsor of terrorism even though they are barred from bringing the federal claim in § 1605A(c), and § 1606, which provides a "pass through" to state law causes of action, by its terms does not apply to § 1605A. Pet. App. 109a-110a.

On the other hand, upon finding the statute-of-limitations in § 1605A(b) non-jurisdictional, the D.C. Circuit declined to address Sudan's substantive argument that the Petitioners' claims (and the claims of the *Khaliq* and *Aliganga* Cross-Respondents) were time-barred. Pet. App. 98a. Although Sudan's limitations defense poses similar policy considerations as Sudan's state-law claims and punitive damages arguments, the D.C. Circuit refused to consider Sudan's substantive argument. *Id.* The court merely found that Sudan had forfeited the statute-of-limitations argument "by failing to raise it in the district court." *Id.* Notably, Sudan did

raise statute-of-limitations defenses in its motions to vacate the *Khaliq*, *Opati*, and *Aliganga* default judgments, Pet. App. 193a, and also in its timely filed, direct appeal of the entry of the default judgments. And, contrary to the D.C. Circuit's finding, the statute of limitations is jurisdictional in nature.

Finally, in rejecting Sudan's remaining Rule 60(b)(1) and (6) arguments, the D.C. Circuit failed to give due consideration to the policy interests favoring vacatur, especially in cases involving foreign sovereigns. In particular, the D.C. Circuit summarily rejected the reasons for Sudan's delay set forth in its Ambassador's Declaration, failing to give any deference to the sworn word of Sudan's highest diplomatic official in the United States. Pet. App. 132a. The D.C Circuit, instead, drew a negative inference against Sudan based on the U.S. Government's failure to appear *sua sponte* on Sudan's behalf. Pet. App. 134a.

REASONS FOR GRANTING THE CONDITIONAL CROSS-PETITION

This Conditional Cross-Petition presents important and recurring questions concerning the treatment of defaulting foreign sovereigns in U.S. courts, and in particular, defaulting foreign sovereigns alleged to have been complicit in an act of terrorism. Under § 1605A, such suits can only be brought against foreign states designated by the U.S. Department of State as state sponsors of terrorism (i.e., currently Iran, North Korea, Sudan and Syria), so the potential for mistrust and friction is high and

the need for fair and evenhanded administration of justice is paramount. *See Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 493 (1983) ("Actions against foreign sovereigns in our courts raise sensitive issues concerning the foreign relations of the United States, and the primacy of federal concerns is evident.").

In addition, the questions presented are inextricably intertwined with the questions asserted in the Petition. As such, should the Court grant the Petition, it should also grant the Conditional Cross-Petition.

I. This Court Should Grant this Conditional Cross-Petition to Address Important and Recurring Questions of Statutory Interpretation Under § 1605A

A. This Court Should Correct the D.C. Circuit's Overly Broad Interpretation of the Term "Extrajudicial Killing" to Give the Term its Intended International-Law Meaning

This Conditional Cross-Petition presents this Court with a unique (and possibly the only) opportunity to provide much-needed guidance on the proper interpretation of the term "extrajudicial killing" as that term is used in § 1605A (and § 1605(a)(7)). The 1998 Embassy bombings were unquestionably horrific attacks resulting in the loss of human life, but they did not constitute "extrajudicial killing[s]" within the meaning of § 1605A.

For decades, in numerous cases leading to billions of dollars in default judgments against foreign states, district courts have fashioned a meaning of the term "extrajudicial killing" — without the benefit of adversarial advocacy or appellate review — that is inconsistent with the FSIA's statutory text, context, purpose, and history, as well as precedent interpreting the term in similar contexts. Because state sponsors of terrorism rarely appear in these politically charged terrorism cases, the D.C. Circuit is the only — and likely will remain the only — appellate court to address this issue in the context of § 1605A. Thus, if this Court were to grant the Petition, it also should seize this singular opportunity to clarify the meaning of the term "extrajudicial killing" upon which jurisdiction in these actions was based.

Contrary to the D.C. Circuit's holding, the term "extrajudicial killing" does not encompass indiscriminate bombings by non-state actors, or garden-variety murder. Rather, the term has a distinct meaning under international law, which Congress intended to adopt, that encompasses a summary execution or targeted assassination by state actors. *See Dolan v. United States Postal Serv.*, 546 U.S. 481, 486 (2006) (stating that statutory interpretation requires consideration of the "whole statutory text," purpose, and context of the statute.); *see also Yates v. United States*, 135 S. Ct. 1074, 1081-82 (2015) ("[T]he plainness or ambiguity of statutory language is determined not only by reference to the language itself, but as well by the specific context in which that language is used, and the broader context

of the statute as a whole.") (alterations and internal quotation marks omitted).

Section 1605A(h)(7) of the FSIA provides that "the terms 'torture' and 'extrajudicial killing' have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991 (28 U.S.C. § 1350 note)." The TVPA created a federal claim against foreign government officials (but not foreign states themselves) for subjecting an "individual" to "torture" or "extrajudicial killing." *See* Pub. L. No. 102-256, § 2(a), 106 Stat. 73, 73-74 (1992) (codified at 28 U.S.C. § 1350 note). Section 3(a) of the TVPA provides:

> For purposes of this Act, the term "extrajudicial killing" means a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.

Thus, § 1605A, which incorporates the TVPA's definition of "extrajudicial killing," by its terms, structure and legislative history, is intended to limit claims to those based on acts that are widely condemned under international law. Here, the D.C. Circuit's overly rigid approach undermines the plain language of § 1605A (and the TVPA), as well as Congressional intent, by interpreting the key terms of

the definition of extrajudicial killing in isolation and opens the doors to suits against foreign states wherever any deliberated killing occurs.

Indeed, this Court recently reiterated the need for a contextual approach to interpreting the FSIA in *Rubin v. Islamic Republic of Iran*, 138 S. Ct. 816 (2018), where it interpreted 28 U.S.C. § 1610(g) "consistent with the history and structure of the FSIA." *Id.* at 825.

Congress's intent to limit the term "extrajudicial killing" to the narrow international-law definition of a summary execution by a state actor is evident from the express incorporation of the TVPA definition of the term. In the TVPA's title, Congress expressly stated its intent to incorporate international-law principles in the TVPA: "An act to carry out obligations of the United States under the United Nations Charter and other international agreements pertaining to the protection of human rights . . . ." 106 Stat. at 73. That intent is also immediately apparent in the statutory text, which adopts verbatim language from Common Article 3 of the Geneva Conventions of 1949, which proscribes "the passing of sentences and the carrying out of executions *without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples*." *See, e.g.*, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 3(1)(d), Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 85 (emphasis added). That intent is also confirmed in

the legislative history of the TVPA. *See, e.g.*, S. Rep. No. 102-249, at 6 (1991) ("The TVPA *incorporates into U.S. law the definition of extrajudicial killing found in customary international law*.") (emphasis added).

Contrary to the statutory interpretation principles articulated in *Dolan*, the D.C. Circuit made the extraordinary finding that the TVPA's express intent to "carry out obligations of the United States under the United Nations Charter and other international agreements" is somehow "reflected in the TVPA as a whole, *not* in each individual provision viewed in isolation." Pet. App. 33a (emphasis added). But Congress's intent to incorporate the international obligations of the United States in the TVPA as a whole cannot be so easily divorced from definitional provisions contained in that statute.

Unlike the D.C. Circuit, the Fourth and Second Circuits have confirmed that the international-law meaning of "extrajudicial killing" was incorporated in the TVPA. *See Yousuf v. Samantar*, 699 F.3d 763, 775-77 (4th Cir. 2012) (holding TVPA created a remedy for "torture and extrajudicial killing that constitute violations of *jus cogens* norms," the highest order of international law); *Kadić v. Karadžić*, 70 F.3d 232, 243-44 (2d Cir. 1995) ("[S]ummary executions — when not perpetrated in the course of genocide or war crimes — are proscribed by international law only when committed by state officials or under color of law."); *see also Hamdan v. Rumsfeld*, 548 U.S. 557, 627-28 (2006) (holding that where a statute incorporates principles of

international law, courts should look to international law when interpreting the statute). And this Court has opined in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), that claims for "torture" and "extrajudicial killing" under the TVPA are not broad mandates for judicial creativity but rather are "confined to specific subject matter." *Id.* at 728.

The legislative history of § 1605A, and its predecessor § 1605(a)(7), also confirms that Congress intended to adopt in the FSIA the narrow international-law meaning of "extrajudicial killing" set forth in the TVPA. Specifically, § 1605(a)(7)'s legislative history reveals that Congress struck a compromise to remove immunity for designated states only for predicate acts of terrorism that were universally recognized as violations of international law. *See, e.g.*, The Foreign Sovereign Immunities Act: Hearing on S. 825 Before the Subcomm. on Courts and Admin. Practice of the S. Comm. On the Judiciary, 103d Cong. 2, 28 (1994), at 14 (detailing the State Department's opposition to a version of the bill that authorized civil actions against foreign states based on "an act of international terrorism" generally that would exceed international law and complicate international relations); *id.* at 31, 83 (statement of Abraham Sofaer) ("In view of the absence of consensus in this area, international law provides no support for asserting the jurisdiction of U.S. courts against a foreign state in cases involving allegations of an offense so vague and politically charged as 'international terrorism.'").

Former State Department Legal Adviser Abraham Sofaer noted that the predicate acts set forth in a parallel House bill, i.e., "torture, extra-judicial killing, and genocide," were more appropriate than "international terrorism" generally, because they were "clearly defined and condemned in several international instruments that have nearly universal support among states." *Id.* at 83 ("No state claims a right to torture or summarily execute the citizens of another state."). *See also id.* at 4 (statement of Rep. Mazzoli) ("H.R. 934 would add a new exception to the FSIA which would allow U.S. citizens who are subjected to torture, extrajudicial killing, *summary execution as it is called*, or genocide abroad by a foreign sovereign to bring suit against the foreign sovereign . . . .") (emphasis added).

This Court in *Bolivarian Republic of Venezuela v. Helmerich & Payne International Drilling Co.*, 137 S. Ct. 1312 (2017), recently underscored the importance of the FSIA's legislative history and, in particular, respect for the views of the State Department, which helped draft the FSIA. *Id.* at 1320. The Court recognized that the State Department conformed the FSIA to international law to "diminish the likelihood that other nations would each go their own way, thereby 'subject[ing]' the United States 'abroad' to more claims 'than we permit in this country . . . .'" 137 S. Ct. at 1320. Despite *Helmerich*, the D.C. Circuit largely ignored the legislative history, deeming it "inconclusive." Pet. App. 36a. But that was not the case.

By including only four narrowly defined acts of terrorism as predicate acts in § 1605A's predecessor, § 1605(a)(7), Congress intended that foreign sovereign immunity only be withdrawn for internationally recognized wrongs. The D.C. Circuit misapprehended Sudan's argument on this basic point, stating that "§ 1605A, Sudan contends, should be read to exclude acts of terrorism," even though certain of § 1605A's predicate acts — specifically aircraft sabotage and hostage taking — are prototypical acts of terrorism. Pet. App. 34a. But Sudan has never contended that § 1605A "exclude[s] acts of terrorism"; Sudan's consistent position has been that § 1605A includes only the acts of terrorism encompassed in the four predicate acts, and excludes all other acts of terrorism; this is the choice that Congress made in enacting § 1605(a)(7) and its successor, § 1605A.

B. This Court Should Correct the D.C. Circuit's Overly Broad Interpretation that § 1605A(a)(2)(A)(ii) Withdraws Foreign Sovereign Immunity on Family-Member Claims

The D.C. Circuit similarly contorted the meaning of § 1605A(a)(2)(A)(ii) in holding that it removes foreign sovereign immunity for claims brought by indirect victims, i.e., plaintiffs claiming emotional distress damages for the loss or injury of family members. Pet. App. 105a. The D.C. Circuit again viewed statutory terms in isolation, ignoring this Court's instruction in *Dolan* — further illustrated in *Rubin* — to read statutes as a whole and within their

proper context. Reading § 1605A(a)(2)(A)(ii) in a manner contrary to its plain text, context, and purpose, has allowed the number of categories of plaintiffs invoking § 1605A to increase exponentially, virtually unchecked. Because the majority of Petitioners here brought indirect claims, if this Court grants their Petition it should also review the jurisdictional basis for their claims.

Section 1605A withdraws a foreign state's immunity for certain claims if "the claimant or the victim" satisfies specified criteria (i.e., U.S. citizenship or employment by the U.S. Government). 28 U.S.C. § 1605A(a)(1), (a)(2)(A)(ii). The natural meaning of § 1605A is that immunity is withdrawn for claims of either (i) a "victim" who was injured and has the requisite U.S. nationality or employment, or (ii) a "claimant" acting as the legal representative of a person who was killed or incapacitated (a "victim") if either the claimant has or the victim had the requisite U.S. nationality or employment. The use of the term "claimant" is necessary in the statute because in the case of a killing or incapacitation the "victim" will not be the one asserting the claim.

The legislative history supports this interpretation. An early version of § 1605(a)(7) first used the term "claimant," and the House Report explained: "[W]here the victim is not alive to bring suit, the victim's legal representative or another person who is a proper claimant in an action for wrongful death may bring suit." H.R. Rep. No. 103-702, at 5 (1994); *see also Comprehensive Antiterrorism Act of 1995: Report of the Committee*

on the Judiciary, H.R. Rep. No. 104-383, at 62 (1996) ("It is expected that a lawsuit proceeding under [§ 1605(a)(7)] will be brought either by the victim, or on behalf of the victim's estate in the case of death or mental incapacity.").

The D.C. Circuit, in contrast, read the term "claimant" to mean "simply someone who brings a claim for relief." Pet. App. 101a. The D.C. Circuit's interpretation not only allows for the withdrawal of sovereign immunity for indirect claims asserted by the U.S.-national family members of victims of terrorist attacks, but also withdraws sovereign immunity for indirect claims by foreign-national family-member plaintiffs who have no nexus to the United States and no standing to assert the federal cause of action in § 1605A(c).

Sudan's interpretation, on the other hand, allows § 1605A(a) to be read in harmony with § 1605A(c). That is, a foreign state's immunity would only be withdrawn on claims that may be brought under the exclusive federal cause of action in § 1605A(c). While the D.C. Circuit recognized the inconsistency between its interpretation of § 1605A(a)(2)(A)(ii) and § 1605A(c), Pet. App. 102a, it saw "no reason to distort the plain meaning of either provision in order to make them coextensive." Pet. App. 103a. No distortion is necessary when § 1605A is interpreted in the context of the FSIA, and consistent with the FSIA's legislative history.

C. This Court Should Correct the D.C. Circuit's Holding that § 1605A(c) Does Not Provide the Exclusive Remedy for Terrorism-Related Claims Against Designated Foreign Sovereigns

If the Court hears Petitioners' argument that under the FSIA, as articulated in § 1606, a foreign state is subject to "the same standards of procedure and review as ordinary civil litigants" (Pet. 19-21), then the Court also should hear Sudan's argument that the federal cause of action under § 1605A(c) forecloses the "pass-through" approach to state and foreign-law causes of action previously invoked under § 1606 and provides the exclusive remedy in § 1605A cases.

U.S. courts have effectively become the world's clearinghouse for private litigants' terrorism claims. The D.C. Circuit's decision, that state-law claims are still available in § 1605A cases only solidifies and expands that role and subjects the United States to reciprocal treatment in the courts of other nations.

Petitioners include hundreds of foreign-national family members asserting emotional distress claims under state and foreign law for the injury or death of a family member. In enacting § 1605A(c)'s federal cause of action, Congress did not afford these foreign-national plaintiffs a remedy against foreign states in U.S. courts. In fact, Congress also closed the door to claims by such foreign plaintiffs under any other substantive source of law, as indicated by the manner

in which Congress enacted § 1605A and amended other provisions to incorporate this new provision.

Before § 1605A's enactment, courts applying § 1605(a)(7)'s terrorism exception to immunity could invoke substantive law through § 1606 of the FSIA. Section 1606, entitled "Extent of Liability," provides:

> As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances . . . .

28 U.S.C. § 1606. Courts have applied § 1606 as a gateway to substantive sources of law upon which claims against a foreign state may be based where the foreign state does not have immunity under § 1605 or § 1607. *See, e.g., Bettis v. Islamic Republic of Iran*, 315 F.3d 325, 338 (D.C. Cir. 2003) ("[W]e have no free-wheeling commission to construct common law as we see fit. . . . [W]e are bound to look to state law in an effort to fathom the 'like circumstances' to which 28 U.S.C. § 1606 refers.").

As the D.C. Circuit recognized, however, the "pass-through approach" led to difficulties in application resulting from "differences in substantive law among the states [that] caused recoveries to vary among otherwise similarly situated claimants, denying some any recovery whatsoever." Pet. App. 8a (citing *Peterson v. Islamic Republic of Iran*, 515 F. Supp. 2d 25, 44-45 (D.D.C. 2007) (denying recovery for

intentional infliction of emotional distress to plaintiffs domiciled in Pennsylvania and Louisiana while permitting recovery for plaintiffs from other states)). Accordingly, in 2008, Congress created a private right of action in § 1605A(c) and, as the D.C. Circuit acknowledged, "provided a uniform source of federal law through which plaintiffs could seek recovery against a foreign sovereign." Pet. App. 9a.

Congress's stated intent in enacting § 1605A(c) was to create an express cause of action for plaintiffs with claims arising under § 1605A, and to eliminate the "pass-through approach [that] created a patch-work of inconsistent recovery for victims of terrorism and their families." *Leibovitch v. Islamic Republic of Iran*, 697 F.3d 561, 567-68 (7th Cir. 2012) (quoting floor statements). Indeed, the D.C. Circuit readily acknowledged this intent. Pet. App. 128a ("[I]n creating a federal cause of action, the Congress sought to end the inconsistencies in the 'patchwork' pass-through approach . . . ."). Consistent with this intent, Congress did not make conforming edits to § 1606 that would have it apply to § 1605A claims. *See* 28 U.S.C. § 1606 ("As to any claim for relief with respect to which a foreign state is not entitled to immunity under *section 1605 or 1607* of this chapter . . . .") (emphasis added). But it did make extensive conforming amendments to other FSIA provisions to account for § 1605A. *See, e.g.*, NDAA, § 1083(b) (conforming amendments to §§ 1607, 1610).

The D.C. Circuit agreed with Sudan that § 1606 "references only § 1605 and § 1607 [and] does not apply to the current FSIA terrorism exception." Pet.

App. 106a-107a; *see also id.* 128a ("[Section] 1606, by its terms, applies only to claims brought under § 1605 and § 1607 of the FSIA."). But the D.C. Circuit and Petitioners, however, disagree with Sudan on the significance of the limited reach of § 1606.

Notwithstanding § 1605A(c), the plain terms of § 1606, and Congress's intent to create a uniform system of recovery in terrorism cases under the FSIA, the D.C. Circuit inexplicably concluded that foreign family members still may look to the patchwork of state law as a source of liability in § 1605A cases. But the only natural and reasonable conclusion to draw from Congress's decision not to bring § 1605A within § 1606 is that guidance as to the "Extent of Liability" in § 1605A actions was not needed because Congress had expressly delineated the extent of that liability in § 1605A(c).

The D.C. Circuit's convoluted conclusion illogically reinstates the very problem that Congress sought to eliminate in enacting § 1605A(c), leaving the courts by silent implication to impose liability and grant recovery under a "patchwork" of inconsistent laws across different states or even foreign laws. The D.C. Circuit's decision therefore leaves open the doors of U.S. courts to a much broader group of plaintiffs than that contemplated by § 1605A.

D. This Court Should Correct the D.C. Circuit's Holding that the Terrorism Exception's Limitations Period Is Not Jurisdictional in Nature to Prevent Divergent Treatment of Foreign States in Like Circumstances

Should the Court decide to hear the issue of whether, as Petitioners claim, punitive damages are "without temporal limitation" under § 1605A, Pet. 30, or whether the Court should have heard a "non-jurisdictional" argument on Sudan's direct appeal, the Court should also address the failure of numerous plaintiffs, including the Petitioners, to comply with the temporal limitations period in § 1605A(b).

The D.C. Circuit held that the ten-year limitations provision was non-jurisdictional, but inexplicably declined to assess the timeliness of the complaints despite Sudan's timely direct appeal of this issue. This decision allowed awards (exclusive of punitive damages) of almost $1.6 billion, $623 million, and $50 million to stand in the *Opati*, *Aliganga*, and *Khaliq* actions, respectively, where those actions were filed in 2012 and 2010 — years after the expiration of the limitations period on August 7, 2008.

The D.C. Circuit's decision conflicts sharply with the decisions of the Second, Eighth, Seventh, Ninth, and Fifth Circuits, all of which hold that entry of a default judgment does not preclude a party from challenging the sufficiency of the complaint on direct appeal. *See City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 137 & n.23 (2d Cir. 2011);

Marshall v. Baggett, 616 F.3d 849, 852 (8th Cir. 2010); *Black v. Lane*, 22 F.3d 1395, 1399 (7th Cir. 1994); *Alan Neuman Prods., Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988); *Nishimatsu Constr. Co., Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975). If the limitations provision were truly non-jurisdictional, the D.C. Circuit should have assessed the sufficiency of plaintiffs' claim to relief in view of the ten-year time bar, readily apparent on the face of the complaints.

The Petitioners' strained interpretation of § 1605A's statute of limitations, adopted by the district court but not addressed by the D.C. Circuit, permits new plaintiffs, who had plenty of time and opportunity to bring their own action directly under § 1605A, to piggyback on the *Owens* action originally filed under § 1605(a)(7), and avoid the 10-year limitations period. Combined with the Petitioners' contention that punitive damages can be applied retroactively, the Petitioners seek to expand the liability of foreign sovereigns under § 1605A far beyond reach of the statutory text.

The D.C. Circuit, in any event, held incorrectly that § 1605A's statute of limitations is non-jurisdictional. As this Court has established, in order to determine if a provision is jurisdictional, courts must "examine the 'text, context, and relevant historical treatment' of the provision at issue." *Musacchio v. United States*, 136 S. Ct. 709, 717 (2016) (quoting *Reed Elsevier, Inc.* v. *Muchnick*, 559 U.S. 154, 166 (2010)). Each of these factors

demonstrates that § 1605A(b) is jurisdictional in nature.

Section 1605A(b)'s language is jurisdictional: it bars any "action" — not merely claims — brought "under this section," i.e., 1605A, unless filed within ten years of the date on which the cause of action arose. Section 1605A(b)'s placement in the FSIA's structure — immediately below the jurisdictional provisions of § 1605A(a) but above § 1605A(c)'s right-of-action provision — also confirms that § 1605A(b) is a jurisdictional bar for actions and not merely a claims bar. Section 1605A(b)'s history further confirms its jurisdictional nature. Section 1605A's repealed predecessor, § 1605(a)(7), was limited by the same ten-year time bar, then set forth in repealed § 1605(f). Until § 1605A(c)'s enactment, the FSIA, which included § 1605(f), was essentially a jurisdictional statute.

This Court's recent decision in *Rubin v. Islamic Republic of Iran*, issued after the D.C. Circuit's decision in this case, provides further support for the conclusion that § 1605A's statute of limitations is jurisdictional. 138 S. Ct. 816, 823 (2018). Specifically, the Court determined in *Rubin* that § 1610(g) was not "an independent avenue for abrogation of [sovereign] immunity" where other provisions of the same section "unambiguously revoke the immunity of property of a foreign state," and § 1610(g) did not. *Id.* at 824 ("Section 1610(g) conspicuously lacks the textual markers, 'shall not be immune' or 'notwithstanding any other provision of law,' that would have shown that it

serves as an independent avenue for abrogation of immunity.").

The title of § 1605A, like that of § 1610, emphasizes that immunity from jurisdiction of the courts is the default mandated by the FSIA. *Compare* 28 U.S.C. § 1605A (titled the "Terrorism exception to the jurisdictional immunity of a foreign state"), *with* 28 U.S.C. § 1610 (titled "Exceptions to the immunity from attachment or execution"). The text of § 1605A goes on to establish "[l]imitations" on the "[t]errorism exception to the jurisdictional immunity of a foreign state," in the form of a statute of limitations. 28 U.S.C. § 1605A(b). The Court Appeals' conclusion that this "[l]imitation" on § 1605A's waiver of jurisdictional immunity is non-jurisdictional, and could therefore waive sovereign immunity beyond the period of time explicitly stated in the provision's text, conflicts with this Court's application of traditional tools of statutory interpretation in *Rubin* that required an "express immunity-abrogating provision[]" to waive FSIA's immunity from execution against a foreign sovereign. 138 S. Ct. at 824.

In reaching its erroneous conclusion, the D.C. Circuit misapplied the principles enunciated by this Court in *United States v. Wong*, 135 S. Ct. 1625 (2015). Pet. App. 91a-92a. *Wong* addressed quintessential claims-processing periods under the Federal Tort Claims Act, 28 U.S.C. § 2401(b). As distinct from the text, context, and history of § 1605A(b), § 2401(b) did not speak to a court's authority to hear an action and its filing deadlines

were separated from the jurisdictional grant, indicating that the time bar was non-jurisdictional. 135 S. Ct. at 1638.

The D.C. Circuit's decision concerning the non-jurisdictional limitations period leaves the question of whether an action will proceed against one foreign state, but not another in the same circumstances, completely to the discretion of the district courts. Such arbitrary and inequitable treatment of foreign states creates obvious potential for undesired repercussions in U.S. foreign relations. Although the District Court for the District of Columbia is the default venue for these types of claims against all foreign states, plaintiffs will undoubtedly forego any other venue and bring stale terrorism-related claims in the District of Columbia in anticipation that the judges there can, if they wish, turn a blind eye to the untimeliness of their claims.

For example, in 2014, the court in *Worley v. Islamic Republic of Iran*, declined to exercise its discretion and consider the timeliness of claims filed against Iran in December 2012 arising from a terrorist attack that occurred almost twenty years prior, in October 1983. 75 F. Supp. 3d 311, 318, 331 (D.D.C. 2014); *see also* Complaint at ¶ 1, *Doe v. Democratic People's Republic of Korea*, No. 18-cv-0252-DLF (D.D.C. Feb. 1, 2018), ECF No. 4 (alleging claims arising from hijacking of U.S.S. *Pueblo* on January 23, 1968). Although recognizing that "considerations of international comity are compelling," the court nevertheless held that the sovereign defendants "have chosen not to appear in

this litigation and they must take the consequences that attend that decision, including waiver of potentially legitimate defenses." 75 F. Supp. 3d at 318, 331.

In contrast, more recently, the court in *Sheikh v. Republic of the Sudan*, determined that, notwithstanding Iran's failure to appear, it "is appropriate for a district court to address clear violations of the FSIA statute of limitations." No. 14-2090, 2018 U.S. Dist. LEXIS 54896, at *20 (D.D.C. Mar. 30, 2018) (dismissing *sua sponte* late-filed claims arising out of the 1998 Embassy bombings). In addressing the defense, the *Sheikh* court reasoned that courts had a "duty to independently weigh FSIA claims" in view of international comity concerns that could have "serious import for American relations abroad." *Id.* at *19-25. The court expressed concern that, unless the court *sua sponte* dismissed late-filed actions, "plaintiffs can continue piggybacking off of older decisions for decades to extract multimillion dollar judgments from absent sovereigns." *Id.* at *22-23.

Yet, the D.C. Circuit's decision makes clear that there was "no need" for the *Sheikh* court to consider the expiration of the limitations period in Iran's absence, for the D.C. Circuit had declined to do so where Sudan had not appeared. Such inconsistent decision-making in respect of foreign states, left to the predilections of the trial judge, exposes the United States to reciprocal treatment abroad and, worse, undermines its ability to claim the moral high

ground with nations with whom U.S. relations are fraught.

Accordingly, should this Court entertain Petitioners' questions presented, the Court should in fairness grant the Conditional Cross-Petition and clarify the jurisdictional nature of § 1605A's limitation bar and the untimeliness of the *Opati* complaint, as well as the *Aliganga* and *Khaliq* complaints.

II. This Court Should Correct the D.C. Circuit's Failure To Afford Due Regard to the Policies Favoring Vacatur and to the Undisputed Fact of Sudan's Dire Domestic Strife

Petitioners urge this Court to take up the question of whether the D.C. Circuit properly heard the non-jurisdictional punitive damages question where the D.C. Circuit also found that Sudan made a bad-faith strategic choice not to appear in the actions below. Pet. 16. The D.C. Circuit, however, was wrong to conclude that Sudan willfully defaulted in each of the seven separate actions in view of the undisputed fact that Sudan was embroiled in severe domestic strife, including civil war, natural disasters, and the partitioning of its sovereign territory in two. The D.C. Circuit's rejection of the declaration of Sudan's Ambassador to the United States was counterfactual and an affront to the due respect afforded to foreign sovereigns by U.S. courts. If the Court grants the Petition, it should also grant review of the intertwined issue of the propriety of the court's denial of vacatur under Rules 60(b)(1) and (6) of the Federal Rules of Civil Procedure.

In affirming denial of vacatur, the D.C. Circuit failed to afford due regard to the strong policy, followed by its sister circuits, favoring adjudication on the merits in cases against foreign sovereigns. *See Magness v. Russian Federation*, 247 F.3d 609, 619 (5th Cir. 2001) ("[T]he diplomatic implications of this case encourage a consideration of the claim on the merits."); *Amernational Industries, Inc. v. Action-Tungsram, Inc.*, 925 F.2d 970, 976 (4th Cir. 1991) ("[W]e will not ignore the strong policy stated in the statute, as part of the Foreign Sovereign Immunities Act, of encouraging foreign states and their instrumentalities to appear before U.S. courts and allowing the merits of cases involving foreign sovereigns to be considered completely and carefully."); *First Fidelity Bank, N.A. v. Gov't of Antigua & Barbuda-Permanent Mission*, 877 F.2d 189, 196 (2d Cir. 1989) ("[D]efault judgments are disfavored, especially against foreign sovereigns."); *Gregorian v. Izvestia*, 871 F.2d 1515 (9th Cir. 1989); *Jackson v. People's Republic of China*, 794 F.2d 1490, 1494-97 (11th Cir. 1986). The United States has urged repeatedly that U.S. courts adhere to this policy, and for good reason: the United States has a strong interest in encouraging foreign states to appear in U.S. litigation and urging U.S. courts to afford such states the opportunity to defend on the merits when they do appear. *See, e.g.*, Brief for the United States as Amicus Curiae Supporting Appellants at 2-3, *Magness*, 247 F.3d 609 (5th Cir. 2000) ("Having controversies involving foreign governments resolved on their merits rather than through default judgments is clearly in the public

interest."); Brief for the United States as Amicus Curiae Supporting Appellant at 8-9, *FG Hemisphere v. Democratic Republic of Congo*, 447 F.3d 835 (D.C. Cir. 2005) ("The United States encourages foreign states to participate in litigation in U.S. courts affecting their interest."); Brief for the United States as Amicus Curiae at 13-15, *Practical Concepts, Inc. v. Republic of Bolivia*, 811 F.2d 1543 (D.C. Cir. 1987).

The liberal policy favoring vacatur is arguably even stronger where the defendant is a designated state sponsor of terrorism and the relationship between the United States and the foreign sovereign is more volatile and complex. The complexity of these relationships can be observed clearly in the case of the United States and Sudan through the recent warming of relations marked by last year's termination of the comprehensive country-wide sanctions against Sudan after twenty years.

But rather than afford due regard to this policy, the D.C. Circuit drew a negative inference from the failure of the United States to *sua sponte* intervene on Sudan's behalf. Pet App. 134a. But the D.C. Circuit did not request the views of the United States and appeared to believe, incorrectly, that the United States rarely supports the litigation position of a state sponsor of terrorism. *Id.* The United States has appeared on behalf of designated sovereigns on numerous occasions, most recently before this Court in *Rubin v. Iran*, No. 16-534.

The D.C. Circuit instead concluded that Sudan should not benefit from the strong policy favoring judgments on the merits because it erroneously considered Sudan to be a "double-defaulter" and determined that Sudan's litigation conduct between 2004 and 2005 in *Owens* must also explain Sudan's failure to appear in the other actions that were filed many years later. *See, e.g.*, Pet. App. 137a ("The rationale for leniency is necessarily weaker when a defendant seeks to excuse its second default."). But Sudan's brief appearance in *Owens* between 2004 and 2005 should have had absolutely no bearing on how the D.C. Circuit interpreted Sudan's absence from the separate actions filed many years later in 2008 by the plaintiffs in *Wamai*, *Amduso*, *Onsongo*, *Mwila*, in 2010 in *Khaliq*, and in 2012 in *Opati* and *Aliganga* (actions that were filed well beyond the applicable ten-year statute of limitations that expired on August 7, 2008). The only evidence regarding Sudan's absence from the 2008, 2010, and 2012 actions was the unrefuted declaration provided by Sudan's Ambassador to the United States.

The Ambassador explained that Sudan's meager resources were devoted to dealing with years of terrible civil war, natural disasters, and the partitioning of its country that occurred during the pendency of the actions now before this Court. It is surely beyond reproach that Sudan's domestic strife and its division into two countries constituted excusable neglect or extraordinary circumstances. Yet, the D.C. Circuit agreed with the district court that, had Sudan simply found the time amidst its domestic turmoil to ask the district court to "pause

any of these cases in light of its troubles," then perhaps Sudan would have attained forgiveness. Pet. App. 169a. This cynical disregard for the gravity of Sudan's domestic situation, a least developed nation a world away, exemplified abuse of discretion and sends the wrong message to all who would doubt the fairness and equity of the U.S. legal system. Had there been doubts about the factual underpinnings for excusable neglect or extraordinary circumstances, the D.C. Circuit should have remanded for further fact finding by the district court.

This Court's review is warranted to address the grave errors in denying Sudan an opportunity to defend on the merits, an opportunity that the United States has advocated should be liberally granted.

CONCLUSION

For the foregoing reasons, should this Court grant the Petition, this Conditional Cross-Petition should also be granted.

Respectfully submitted,

CHRISTOPHER M. CURRAN
Counsel of Record
NICOLE ERB
CLAIRE A. DELELLE
CELIA A. MCLAUGHLIN
NICOLLE KOWNACKI
WHITE & CASE LLP
701 Thirteenth Street, NW
Washington, DC 20005
(202) 626-3600
ccurran@whitecase.com

Counsel for Cross-Petitioners the Republic of the Sudan, the Ministry of External Affairs of the Republic of the Sudan, and the Ministry of the Interior of the Republic of the Sudan

April 9, 2018

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Filed: 07/28/2017]

September Term 2016

Docket No: 14-5105

JAMES OWENS, et al.,

Appellees,

v.

REPUBLIC OF SUDAN, MINISTRY OF EXTERNAL AFFAIRS AND MINISTRY OF THE INTERIOR OF THE REPUBLIC OF THE SUDAN,

Appellants,

ISLAMIC REPUBLIC OF IRAN, MINISTRY OF FOREIGN AFFAIR, et al.,

Appellees.

Consolidated with 14-5106, 14-5107, 14-7124, 14-7125, 14-7127, 14-7128, 14-7207, 16-7044, 16-7045, 16-7046, 16-7048,16-7049, 16-7050, 16-7052

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
(No. 1:01-cv-02244)
(1:08-CV-01377)
(1:10-CV-00356)
(1:12-CV-01224)
(1:08-CV-01349)
(1:08-CV-01361)
(1:08-CV-01380)

Before:

HENDERSON and ROGERS, *Circuit Judges,*
and GINSBURG, *Senior Circuit Judge.*

JUDGMENT

These causes came on to be heard on the record on appeal from the United States District Court for the District of Columbia and were argued by counsel. On consideration thereof, it is

ORDERED and **ADJUDGED** that (1) the District Court's findings of jurisdiction with respect to all plaintiffs and all claims be affirmed; (2) that the District Court's denial of vacatur be affirmed; (3) all awards of punitive damages be vacated; and (4) the question of state law - whether a plaintiff must be present at the scene of a terrorist bombing in order to recover IIED - be certified to the District of Columbia Court of Appeals, in accordance with the opinion of the court and the order filed herein this date.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:

/s/

Ken R. Meadows
Deputy Clerk

Date: July 28, 2017

Opinion for the court filed by Senior Circuit Judge Ginsburg.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed: 11/28/2011]

Civil Action No. 01-2244 (JDB)

JAMES OWENS, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN, et al.,

Defendants.

Civil Action No. 08-1349 (JDB)

WINFRED WAIRIMU WAMAI, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN, et al.,

Defendants.

Civil Action No. 08-1361 (JDB)

MILLY MIKALI AMDUSO, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN, et al.,

Defendants.

Civil Action No. 08-1377 (JDB)

JUDITH ABASI MWILA, et al.,

Plaintiffs,

v.

THE ISLAMIC REPUBLIC OF IRAN, et al.,

Defendants.

Civil Action No. 08-1380 (JDB)

MARY ONSONGO, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN, et al.,

Defendants.

Civil Action No. 10-0356 (JDB)

RIZWAN KHALIQ, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN, et al.,

Defendants.

MEMORANDUM OPINION

Over thirteen years ago, on August 7, 1998, the United States embassies in Nairobi, Kenya and Dar es Salaam, Tanzania were devastated by simultaneous suicide bombings that killed hundreds of people and injured over a thousand. Now, in this civil action under the Foreign Sovereign Immunities Act ("FSIA"), plaintiffs — victims of the bombings and their families — seek to assign liability for their injuries to the Republic of Sudan ("Sudan"), the Ministry of the Interior of the Republic of Sudan, the Islamic Republic of Iran ("Iran"), the Iranian Revolutionary Guards Corps ("IRGC") and the

Iranian Ministry of Information and Security ("MOIS") (collectively "defendants").

The Court will proceed in two steps. First, it will present findings as to the causes of the bombings — specifically, findings that defendants were indeed responsible for supporting, funding, and otherwise carrying out this unconscionable attack. Second, the Court will set forth legal and remedial conclusions to bring this litigation to a close.[1] Most recently, and relevant here, the National Defense Authorization Act for Fiscal Year 2008 ("2008 NDAA" or "Act") amended the FSIA to permit foreign national employees of the United States government killed or injured while acting within the scope of their employment and their family members to sue a state sponsor of terrorism for injuries and damages resulting from an act of terrorism. Here, the majority of plaintiffs are foreign national employees of the U.S. Government and their immediate family members who, as the Court will explain below, lack a claim under the 2008 NDAA amendments to FSIA but may proceed under applicable state law.

Background

Plaintiffs bring this case pursuant to section 1083 of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 1083, 122 Stat. 341 (2008) (codified at 28 U.S.C. §1605A (2009)). Several

[1] The Court enters the findings and conclusions below pursuant to 28 U.S.C. § 1608(e). That provision requires plaintiffs under the FSIA to "establish [their] claim or right to relief by evidence satisfactory to the court" even where, as here, defendants have failed to appear after proper service.

cases were consolidated for purposes of the Court's October 25-28, 2010 evidentiary hearing on liability. In each case, as described below, defendants were properly served according to the FSIA. Defendants failed to respond, and the Clerk of Court entered defaults against defendants in each case. In Owens v. Republic of Sudan, No. 1:01-cv-02244 (JDB), service of process was completed upon each defendant: the Republic of Sudan on February 25, 2003 [Docket Entry 9]; the Ministry of the Interior of the Republic of Sudan on February 25, 2003 [Docket Entry 9]; the Islamic Republic of Iran on March 5, 2003 [Docket Entry 10]; and the Iranian Ministry of Information and Security on October 14, 2002 [Docket Entry 6]. Defaults were entered against the Iranian defendants on May 8, 2003, [Docket Entry 11], and defaults were entered against the Republic of Sudan and the Ministry of the Interior of the Republic of Sudan on March 25, 2010 [Docket Entry 173].

In Wamai v. Republic of Sudan, No. 1:08-cv-01349 (JDB), service of process was completed on each of the named defendants: the Ministry of the Interior of the Republic of Sudan was served with process on February 12, 2009, pursuant to 28 U.S.C. 1608(a)(3) [Docket Entry 15]; the Republic of Sudan was served with process on April 22, 2009 through the U.S. Department of State pursuant to 28 U.S.C. 1608(a)(4) [Docket Entry 23], which was delivered under diplomatic note on November 12, 2009 [Docket Entry 28]; the Iranian Ministry of Information and Security was served with process on February 14, 2009 pursuant to 28 U.S.C. 1608(a)(3) [Docket Entry 15]; and the Islamic Republic of Iran and the Iranian

Revolutionary Guards were served with process on April 22, 2009 through the U.S. Department of State pursuant to 28 U.S.C. 1608(a)(4) [Docket Entry 23], which was delivered under diplomatic notes on November 18, 2009 [Docket Entry 29]. An entry of default was filed against each of these defendants on June 4, 2010 [Docket Entries 34, 35].

In Amduso v. Republic of Sudan, No. 1:08-cv-01361 (JDB), the Sudanese defendants were served with process on February 1, 2009 under 28 U.S.C. § 1608(a)(3) [Docket Entry 27], and the Iranian defendants were served on June 26, 2009 under 28 U.S.C. § 1608(a)(4) [Docket Entry 33]. Defaults were entered against the Republic of Sudan and the Ministry of the Interior of the Republic of Sudan on April 22, 2010 [Docket Entry 29] and against the Islamic Republic of Iran and the Iranian Ministry of Information and Security on October 6, 2009 [Docket Entry 40].

In Mwila v. Islamic Republic of Iran, No. 1:08-cv-01377 (JDB), service of process was completed on each of the named defendants: the Ministry of the Interior of the Republic of Sudan was served with process on March 17, 2009 pursuant to 28 U.S.C. 1608(a)(3) [Docket Entry 3]; the Islamic Republic of Iran and the Iranian Ministry of Information and Security were served with process on September 8, 2009 through the U.S. Department of State pursuant to 28 U.S.C.1608(a)(4) [Docket Entry 16]; and the Republic of Sudan was served with process on November 12, 2009 through the U.S. Department of State pursuant to 28 U.S.C.1608(a)(4) [Docket Entry 19]. Defaults were entered against the Islamic

Republic of Iran, the Republic of Sudan, and the Ministry of the Interior of the Republic of Sudan on February 18, 2010 [Docket Entries 20, 21 and 22] and against the Iranian Ministry of Information and Security on April 21, 2010 [Docket Entry 23].

In Khaliq v. Republic of Sudan, No. 1:10-cv-00356 (JDB), the Sudanese defendants were served with process on October 13, 2010 pursuant to 28 U.S.C. 1608(a)(4) [Docket Entry 16]. The Islamic Republic of Iran was served with process on October 11, 2010 pursuant to 28 U.S.C. 1608(a)(4) [Docket Entry 20]. Defaults were entered against the Republic of Sudan on December 15, 2010 [Docket Entry 18] and against the Islamic Republic of Iran on December 22, 2010 [Docket Entry 21].

Finally, in Onsongo v. Republic of Sudan, No. 1:08-cv-01380 (JDB), the Sudanese defendants were served with process on December 17, 2009 pursuant to 28 U.S.C. 1608(a)(4) [Docket Entry 16]. The Iranian Ministry of Information and Security was served with process on February 14, 2009 pursuant to 28 U.S.C. 1608(a)(3) [Docket Entry 8], and the Islamic Republic of Iran and the Iranian Revolutionary Guards were served with process on November 18, 2009 pursuant to 28 U.S.C. 1608(a)(4) [Docket Entry 17]. Defaults were entered against each of the named defendants on June 2, 2010 [Docket Entries 21, 22, and 23].

Before plaintiffs can be awarded any relief, this Court must determine whether they have established their claims "by evidence satisfactory to the court." 28 U.S.C. § 1608(e); see also Roeder v. Islamic Republic

of Iran, 333 F.3d 228, 232 (D.C. Cir. 2003). This "satisfactory to the court" standard is identical to the standard for entry of default judgments against the United States in Federal Rule of Civil Procedure 55(e). Hill v. Republic of Iraq, 328 F.3d 680, 684 (D.C. Cir. 2003). In evaluating the plaintiffs' proof, the court may "accept as true the plaintiffs' uncontroverted evidence." Elahi v. Islamic Republic of Iran, 124 F. Supp. 2d 97, 100 (D.D.C. 2000); Campuzano v. Islamic Republic of Iran, 281 F. Supp. 2d 258, 268 (D.D.C. 2003). In FSIA default judgment proceedings, the plaintiffs may establish proof by affidavit. Weinstein v. Islamic Republic of Iran, 184 F. Supp. 2d 13, 19 (D.D.C. 2002). A three-day hearing on liability and damages was held beginning on October 25, 2010. At this hearing, the Court received evidence in the form of live testimony, videotaped testimony, affidavit, and original documentary and videographic evidence. The Court applied the Federal Rules of Evidence. Based on the record established herein, the Court makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

A. Islamic Republic of Iran's Support for Bin Laden and Al Qaeda

The government of the Islamic Republic of Iran ("Iran") has a long history of providing material aid and support to terrorist organizations including al Qaeda, which have claimed responsibility for the August 7, 1998 embassy bombings. See, e.g., Tr. Vol.

II at 124-25.[2] Iran had been the preeminent state sponsor of terrorism against United States interests for decades. See id. at 123. Throughout the 1990s — at least — Iran regarded al Qaeda as a useful tool to destabilize U.S. interests. As discussed in detail below, 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 by utilizing the sophisticated delivery mechanism of powerful suicide truck bombs. Hezbollah, a terrorist organization based principally in Lebanon, had utilized this type of bomb in the devastating 1983 attacks on the U.S. embassy and Marine barracks in Beirut, Lebanon. Prior to their meetings with Iranian officials and agents, Bin Laden and al Qaeda did not possess the technical expertise required to carry out the embassy bombings in Nairobi and Dar es Salaam. The Iranian defendants, through Hezbollah, provided explosives training to Bin Laden and al Qaeda and rendered direct assistance to al Qaeda operatives. Hence, for the reasons discussed below, the Iranian defendants provided material aid and support to al Qaeda for the 1998 embassy bombings and are liable for damages suffered by the plaintiffs.

1. The Iranian Government's Relationship with Hezbollah

---

[2] "Tr. Vol." refers to the transcript for each day of the bench trial in this case, beginning on October 25, 2010. Accordingly "Tr. Vol. I" refers to the transcript for the first day of testimony on October 25, 2010, "Tr. Vol. II" refers to the transcript of day two of the bench trial, and so on. "Ex." Refers to those exhibits admitted into evidence during the trial.

Iranian support of Hezbollah began in the 1980s. Id. at 123. Iran "actively encouraged, if not directed, the formation of Hezbollah," and the relationship was "quite close" during the 1990s. Id. Iran was formally declared a "state sponsor of terrorism" on January 19, 1984, by U.S. Secretary of State George P. Schultz in accordance with section 6(j) of the Export Administration Act of 1979, 50 App. U.S.C. § 2405(j), see 49 Fed. Reg. 2836-02 (statement of Secretary of State George P. Schultz, Jan. 23, 1984), and remains designated as a state sponsor of terrorism today. The Iranian government and the Iranian intelligence service "provided substantial financial support and lots of other services" to Hezbollah. Tr. Vol. II at 122.

At all times relevant to this case, Iran was a state sponsor of terrorism that supported terrorist groups that U.S. intelligence agencies believed were capable of attacking U.S. interests. The declassified 1991 National Intelligence Estimate produced by the CIA stated that: "Iranian support for terrorism will remain a significant issue dividing Tehran and Washington. Tehran is unlikely to conduct terrorism directly against U.S. or Western interests during the next two years, but it is supporting radical groups that might do so." Ex. DD at 20.

Hezbollah possessed "extraordinary knowledge of explosives" in the mid-to-late 1990s. Tr. Vol. II at 126. Iran trained Hezbollah "in counterintelligence and in explosive capability" such that Hezbollah "is often described as the A-team of terrorists." Id. at 169. Hezbollah operatives were trained in Iran, and Iranian Revolutionary Guard Corp ("IRGC") trainers were present in Lebanese Hezbollah training camps.

Id. Indeed, as terrorism expert Evan Kohlmann testified, "Hezbollah is a proxy force of Iran. Its primary foreign sponsor is Iran, both financially and otherwise. Almost all of Hezbollah's activities are well known to the Iranian government. In some cases they're planned by the Iranian government." Tr. Vol. III at 240.

2. Iranian Support for Al Qaeda

In the 1990s, Iranian support for terrorist groups extended beyond Hezbollah to al Qaeda. Dr. Matthew Levitt, an expert witness on the state sponsorship of terrorism, and specifically Iran, Hezbollah and al Qaeda, explained how al Qaeda came into contact with the Iranian government: "Hassan al-Turabi, the head of the National Islamic Front, which ruled Sudan at the time, was keen not only on instituting Islamic sharia law in Sudan at home, but in making the Sudan a place from which worldwide Islamic revolution could flow." Tr. Vol. II at 165. To that end, "Hassan al-Turabi hosted numerous meetings, some large summits with radical extremist groups, including one, for example, in April 1991. Groups like HAMAS and Palestinian Islamic Jihad, Egyptian Islamic Jihad, al Qaeda, Sudanese radicals, Iranians, Lebanese Hezbollah were all invited and attended." Id. at 165-66. Such a conglomeration of different terrorist groups and governments such as Iran had been very unusual prior to al-Turabi's conferences. Id. at 166. And "it was at these meetings where Iranian officials, Hezbollah officials, al Qaeda officials and others first began to have some serious meetings." Id. Several meetings took place between representatives of Hezbollah, al Qaeda and the

governments of Sudan and Iran. Tr. Vol. III at 240. The purpose of these meetings, "in the words of a ranking al Qaeda shura council member Abu Hajer al-Iraqi, . . . was to focus on a common enemy, that being the West, the United States." Id.

Al-Turabi's policies therefore resulted in the exchange of ideas and sharing of resources by groups that would not necessarily have communicated otherwise, including Hezbollah and al Qaeda. Ex. W-2 at 3, 6. Bin Laden and al Qaeda relocated to Sudan in 1991. Tr. Vol. II at 165. The Iranian government played a "very active" role in Sudan during the time that Bin Laden operated from Khartoum. Id. at 124. This included playing a "prominent role" in a conference of those resisting the Israeli-Arab peace process, which had been organized by the Sudanese government. Id. Hezbollah also had a base of operations in Khartoum, Sudan. Tr. Vol. III at 233.

Iran's role in Sudan grew at the same time that the Sudanese government invited Bin Ladento Khartoum. Al-Turabi invited the President of Iran, Hojatoleslam Rafsanjani, to visit Sudan in 1991 to support Al-Turabi's goal of mending the Shia and Sunni divide in Islam in order to present a united front against the West. Ex. V at 5. Iran also maintained a delegation office in Khartoum that was run by Sheik Nomani to facilitate relations between the governments and convert Sunni Arab Muslims to the Shia sectarian view. Tr. Vol. III at 234. The two governments shared information and intelligence between their militaries and intelligence services. Id.

In addition, the IRGC, an Iranian state organization that funneled assistance to terrorist organizations abroad — such as Hezbollah in Khartoum — also maintained connections with the Sudanese intelligence service. Id. at 234-35. The IRGC was founded shortly after the 1979 Iranian revolution and, along with MOIS, is one of the two major organizations through which Iran carries out its support of terrorism. Tr. Vol. II at 130-31. Indeed, "Hezbollah's presence in Khartoum was made possible by the relationship between the government of Sudan and the government of Iran." Tr. Vol. III at 240. The Sudanese intelligence service also facilitated the linkage between al Qaeda and Hezbollah and representatives of Iran, which was strengthened by al Qaeda's move to Sudan. Id. at 270. The State Department's annual report on "Patterns of Global Terrorism" for 1993 states:

> Sudan's ties to Iran, the leading state sponsor of terrorism, continued to cause concern during the past year. Sudan served as a convenient transit point, meeting site and safe haven for Iranian-backed extremist groups. Iranian ambassador in Khartoum Majid Kamal was involved in the 1979 takeover of the U.S. embassy in Tehran and guided Iranian efforts in developing the Lebanese Hizballah group while he served as Iran's top diplomat in Lebanon during the early 1980s. His presence illustrated the importance Iran places on Sudan.

Ex. GG; Tr. Vol. III at 258-59.

Iran provided substantial training and assistance to al Qaeda leading up to the embassy attacks in 1998. For example, Ali Mohammed provided security for one prominent meeting between Hezbollah's chief external operations officer, Imad Mughniyah, and Bin Laden in Sudan. Tr. Vol. II at 170; Ex. A at 28. At Ali Mohammed's plea hearing in the United States District Court for the Southern District of New York on October 20, 2000, he was asked to describe, in his own words, why he believed that he was guilty of the crimes charged arising out of the embassy attack. Ali Mohammed responded:

> I was aware of certain contacts between al Qaeda and al Jihad organization, on one side, and Iran and Hezbollah on the other side. I arranged security for a meeting in the Sudan between Mughaniya, Hezbollah's chief, and Bin Laden. Hezbollah provided explosives training for al Qaeda and al Jihad. Iran supplied Egyptian Jihad with weapons. Iran also used Hezbollah to supply explosives that were disguised to look like rocks.

Ex. A at 28; Tr. Vol. II at 115-19.

Iran was "helping train al Qaeda operatives and al Qaeda personnel" in Sudan in the early 1990s. Tr. Vol. II at 124-25. Dr. Matthew Levitt explained that known al Qaeda operatives had significant relationships with Iran. For example, "Mustafa Hamid, throughout the period we're talking about here, throughout the 1990s, was one of al Qaeda's primary points of contact specifically to Iran's Islamic

Revolutionary Guard Corps." Id. at 170. In 2009, the Department of Treasury designated Hamid as a specially designated global terrorist, "noting specifically that he was one of al Qaeda's senior leadership living in Iran and working closely with the IRGC, the Islamic Revolutionary Guards Corps." Id.; Ex. CC. "In the mid-1990s, Mustafa Hamid reportedly negotiated a secret relationship between Usama Bin Laden and Iran, allowing many al Qaida members safe transit through Iran to Afghanistan." Ex. CC.

Following the meetings that took place between representatives of Hezbollah and al Qaeda in Sudan in the early to mid-1990s, Hezbollah and Iran agreed to provide advanced training to a number of al Qaeda members, including shura council members, at Hezbollah training camps in South Lebanon. Tr. Vol. III at 241. Saif al-Adel, the head of al Qaeda security, trained in Hezbollah camps. Id. During this time period, several other senior al Qaeda operatives trained in Iran and in Hezbollah training camps in Lebanon. Tr. Vol. II at 169. After one of the training sessions at a Lebanese Hezbollah camp, al Qaeda operatives connected to the Nairobi bombing, including a financier and a bomb-maker, returned to Sudan with videotapes and manuals "specifically about how to blow up large buildings." Id.

Al Qaeda desired to replicate Hezbollah's 1983 Beirut Marine barracks suicide bombing, and Bin Laden sought Iranian expertise to teach al Qaeda operatives about how to blow up buildings. Id. at 176. Prior to al Qaeda members' training in Iran and Lebanon, al Qaeda had not carried out any successful

large scale bombings. Id. at 177. However, in a short time, al Qaeda acquired the capabilities to carry out the 1998 Embassy bombings, which killed hundreds and injured thousands by detonation of very large and sophisticated bombs. See id. Dr. Levitt concluded that "it would not have been possible for al Qaeda to a reasonable degree of certainty to have executed this type of a bombing attack, which it had never previously executed, without this type of training it received from Iran and Hezbollah." Id. at 181.

Hezbollah engages in international terrorist operations in close tactical and strategic cooperation with the Iranian government. Id. at 179. The Supreme Leader of Iran, Ayatollah Khameni, controls oversight of the media, the military, the Ministry of Intelligence, the IRGC, the Basji militia, and the IRGC's Qods force; all the entities that oversee the training and support of and cooperation with terrorist groups and that grant approval of terrorist attacks conducted with other groups answer to Khameni. Id. Hezbollah's assistance to al Qaeda would not have been possible without the authorization of the Iranian government. Id.; Ex. W-2 at 3.

Dr. Levitt testified that Iranian government authorization of Hezbollah's assistance would be required for several reasons:

> The first is again the getting in bed with al Qaeda. After al Qaeda had issued not one but two fatwas, religious edicts, in '92 and '96, announcing its intent to target the West, it was a dangerous proposition. As I mentioned earlier, Iranian leaders have

> their own version of rationality, but they are rational actors. And that is something that I believe had to be approved, again, so there would be reasonable or plausible deniability. Overcoming this deep mistrust between the most radical Salafi jihadi Sunnis, who, as we saw in the context of the aftermath of the war in Iraq, are sometimes all too eager to kill Shia in particular, and for the Shia on the other side to overcome their historical animosity towards these radical Sunnis, is no small feat. And I think it is only because of their shared interest at that point, in the 1990s and the immediate — to target U.S. interests, that they were able to decide to overcome this animosity and mistrust. And I think it's quite clear, because it was for the express purpose of targeting the United States, it shouldn't surprise then that the type of training they received was specifically of the type used in the East Africa embassy bombings. They expressed interest in, we know they received at least videos and manuals about, blowing up large buildings.

Tr. Vol. II. at 179-80; Ex. L-2 at 14-19. The declassified 1990 National Intelligence Estimate produced by the CIA stated the following regarding President Rasfanjani's role in the government's sponsorship of terrorism:

> The terrorist attacks carried out by Iran during the past year were probably

> approved in advance by President Rafsanjani and other senior leaders. The planning and implementation of these operations are, however, probably managed by other senior officials, most of whom are Rafsanjani's appointees or allies. Nonetheless, we believe Rafsanjani and Khomeini would closely monitor and approve the planning for an attack against U.S. or Western interests.

Ex. EE at 7; Tr. Vol. III at 238-40.

Support from Iran and Hezbollah was critical to al Qaeda's execution of the 1998 embassy bombings. See Tr. Vol. II at 181. Prior to its meetings with Iranian officials and agents, al Qaeda did not possess the technical expertise required to carry out the embassy bombings. In the 1990s, al Qaeda received training in Iran and Lebanon on how to destroy large buildings with sophisticated and powerful explosives. Id. at 188; Tr. Vol. III at 314-15. The government of Iran was aware of and authorized this training and assistance. Hence, for the reasons described above, the Court finds that the Iranian defendants provided material aid and support to al Qaeda for the 1990 embassy bombings and are liable for plaintiffs' damages.

B. The Republic of Sudan's Support for Bin Laden and al Qaeda

Sudanese government support for Bin Laden and al Qaeda was also important to the execution of the two 1998 embassy bombings. Critically, Sudan provided safe haven in a country near the two U.S.

embassies. The Sudanese defendants ("Sudan") gave material aid and support to Bin Laden and al Qaeda in several ways. Sudan harbored and provided sanctuary to terrorists and their operational and logistical supply network. Bin Laden and al Qaeda received the support and protection of the Sudanese intelligence and military from foreign intelligence services and rival militants. Sudan provided Bin Laden and al Qaeda hundreds of Sudanese passports. The Sudanese intelligence service allowed al Qaeda to travel over the Sudan-Kenya border without restriction, permitting the passage of weapons and money to supply the Nairobi terrorist cell. Finally, Sudan's support of al Qaeda was official Sudanese government policy.

1. Safe Harbor

Osama Bin Laden and a small group of supporters founded al Qaeda in Afghanistan in September 1988. Tr. Vol. III at 225. Al Qaeda is Arabic for "the solid foundation" or "base." Id. at 224. Bin Laden was "the primary financier" and the "primary creative genius behind al Qaeda," a group that sought to "create a worldwide network of individuals who would defend the Muslim community by waging . . . a low-intensity war against any of its enemies, including . . . the United States and other Western countries." Id. at 225. When al Qaeda was formed, it was a very small, compartmentalized group with centralized leadership composed of a shura council, and each member was head of a subcommittee. Id. at 226. Around 1990, as the war in Afghanistan neared its end, al Qaeda faced dangers arising from the eruption of a civil war among the Afghan mujahedeen that had previously

fought and defeated the Soviet Union. Id. at 228-29. The multi-dimensional civil war involved several factions and was extremely violent, with shifting front lines, which made it a difficult place for al Qaeda to maintain a secure base. Id. at 332-33. The Pakistani government also began to pressure the foreign mujahedeen fighters to leave Pakistan. Id. at 229. Hence, al Qaeda needed to find a new base of operations, and Sudan was an eager host.

In 1989, the Sudanese government was overthrown by a military coup led by General Omar al-Bashir and Hassan al Turabi, the head of the National Islamic Front ("NIF"). See Ex.W-2 at 1. Al-Turabi, as the head of the NIF, and al-Bashir, as the head of the military who became the President, joined forces to rule Sudan. Ex. W-2 at 2. Under their leadership, the Sudanese government courted Bin Laden and al Qaeda to convince them to relocate to Sudan. Tr. Vol. III at 242-43. Al-Bashir even sent a letter of invitation to Bin Laden. Id. at 243, 333-34; Ex. V at 7.

Al-Turabi and the NIF sought to implement Sharia law throughout Sudan, and then in Muslim majority countries. Id. at 334-35. The NIF felt the Muslim world was endangered, primarily by Western encroachment, which had to be resisted. Id. at 335. This resulted in the Sudanese government's welcoming of a number of terrorist organizations into Sudan. Id. at 335; Ex. V at 5. The NIF also believed in ending the split between the Sunni and Shi'ite branches of Islam. Tr. Vol. III at 335; Ex. V at 5.

Al Qaeda accepted Sudan's invitation and in late 1991 began to move to Sudan. Tr. Vol. III at 242-44. Al Qaeda respected and supported the ideological program of the new government of Sudan. Tr. Vol. III at 333; Ex. V at 5-6. The leadership of Sudan guaranteed al Qaeda a base from which it could operate with impunity, with a minimum risk of foreign interference. In turn, al Qaeda agreed to support the war in south Sudan against the Christians and animists, and to invest in the Sudanese economy. Tr. Vol. III at 333; Ex. V at 5-15.

One of the members of al Qaeda who played an important role in the move was Jamal al-Fadl, who later worked directly with the Sudanese intelligence service under the approval of Bin Laden. Tr. Vol. III at 244. Al-Fadl was Sudanese, and he served as an intermediary between al Qaeda and the Sudanese intelligence service. Id. at 244-45. Al-Fadl later defected to the United States and became an official source for the Federal Bureau of Investigation and the U.S. Justice Department. Id. at 244.

Al-Fadl provided testimony for the United States government during the criminal trial of Bin Laden. He recalled that when al Qaeda considered moving from Afghanistan to Sudan initially, questions were raised among the al Qaeda leadership over whether Hassan al-Turabi's ruling National Islamic Front party in Sudan would make a suitable and appropriate ally. According to al-Fadl: "The people, they say we have to be careful with that and we have to know more about Islamic Front . . . I remember Abu Abdallah [Usama Bin Laden]…he decide to send some people to Sudan at that time, to discover, to see

what going on over there, and they bring good answer or clean answer." United States v. Usama Bin Laden, No. 98-1023, Tr. Trans. at 216-17 (S.D.N.Y. Feb. 6, 2001). Al-Fadl indicated that Bin Laden had dispatched several senior al Qaeda members on this mission, including "Abu Hammam al Saudi, Abu Hajer al Iraqi, and Abu Hassan Al Sudani. And Abu Rida al Suri." Id. at 217. Afterwards, "we got lecture by Abu Hajer al Iraqi, and he ask about what in the Sudan and what this relationship . . . He said he went over there and I met some of the Islamic National Front in Sudan and they are very good people and they very happy to make this relationship with al Qaeda, and they very happy to have al Qaeda if al Qaeda come over there." Id. at 217-18.

Al-Fadl personally interviewed and vetted those who sought to travel with al Qaeda to Sudan. Tr. Vol. III at 244. During testimony on February 6, 2001, al-Fadl described his role in facilitating al Qaeda's subsequent move to Sudan at the end of 1990: "I went with some members and we start rent houses and farms over there . . . . In Khartoum, because they going to bring the members in Sudan, so I went with other members to rent guesthouses and we established to rent houses for the single people and some houses for the people married that got family. And also we bought farms for the training and refresh training." Usama Bin Laden, Tr. Trans. at 219-20. Al-Fadl further testified that he spent approximately $250,000 of al Qaeda's own finances on acquiring various properties in the Sudan. On the direct orders of Bin Laden and other al Qaeda commanders, al-Fadl purchased large farms in

Damazine, Port Sudan, and Soba. Id. at 221. Later, al-Fadl testified that he personally witnessed senior al Qaeda commanders — including Salem al-Masri, Saif al-Islam al-Masri, Saif al-Adel, and Abu Talha al-Sudani — supervising training courses in explosives being offered at the farm in Damazine. Id. at 243-45.

Terrorism expert Evan Kohlmann explained that the government of Sudan had encouraged al Qaeda to move for several reasons. The government envisioned that Sudan "would become the new haven for Islamic revolutionary thought and would serve as a base not just for al Qaeda but for Islamic revolutionaries of every stripe and size." Tr. Vol. III at 231. Also, al Qaeda's presence allowed Sudan to gain leverage against its antagonistic neighbor Egypt through the use of these groups that were opposed to the Egyptian government and to gain resources from its partnership with the groups, especially Bin Laden who was rumored to be very wealthy. Id. Sudan invited "Palestinian HAMAS movement, the Palestinian Islamic Jihad, Hezbollah from south Lebanon, which is an Iranian sponsored Shi'ite movement, al Qaeda, the Egyptian Islamic Jihad, the Libyan Islamic Fighting Group, dissident groups from Algeria, Morocco, the Eritrean Islamic Jihad movement, literally every single jihadist style group, regardless of what sectarian perspective they had, was invited to take a base in Khartoum" to further the goal of organizing and launching a worldwide Islamic revolution. Id. at 232.

Sudan's open door policy for militant Islamic revolutionary groups and goal of fostering worldwide

Islamic revolution resulted in an unprecedented meeting held in Khartoum known as the Popular Arab and Islamic Congress ("PAIC"). Ex. V at 5. As Dr. Lorenzo Vidino testified, "[t]he creation of the PAIC was 'the culmination of a quarter-century of study, political activity, and international travel by Turabi,' and was described by Turabi himself in grandiose terms as 'the most significant event since the collapse of the Caliphate.'" Id. (quoting J. Millard Burr and Robert O. Collins, Revolutionary Sudan: Hasan al-Turabi and the Islamist State, 1989-2000, at 56-7 (2003)). Indeed, "[t]he list of participants to the PAIC's first assembly, which was held in Khartoum in April of 1991, reads like a who's who of modern terrorism' . . . encompass[ing] groups such as the Philippines' Abu Sayaf, the Algerian FIS, the Egyptian Islamic Jihad, and the Palestinian Hamas [who] voted a resolution pledging to work together to 'challenge and defy the tyrannical West.'" Id.

Al Qaeda thrived "[f]rom 1991 to 1996 [when] bin Laden operated without any limitation inside Sudan, while under the protection of the Sudanese security forces. This freedom of action gave bin Laden and the members of his organization a useful extra-legal status in the Sudan." Ex. W-2 at 2. Al Qaeda has released official audio and video recordings and books through its media wing, As-Sahab, which explain the organization's tactical decision to move to Sudan. See Tr. Vol. III at 246-47. In one official As-Sahab video, an al Qaeda member explains that "[t]he migration to the Sudan isn't just to build that impoverished country, but also for the Sudan to be a launching ground for the management of the Jihad against the

forces of tyranny in a number of corners of the world, especially after the House of Saud colludes with the Americans in their entrance to the land of the Two Sanctuaries, in a blatant contradiction of the command of the Prophet (peace be upon him)." Ex. FF. The al Qaeda narrator continues, "[t]he Shaykh was keen to build the Sudan, which is a sound objective, but [also], the Sudan was a factory and production cell for a generation of Mujahideen who would spread to other countries." Id. (second alteration in original); see also Tr. Vol. III at 249-51.

Bin Laden's presence in Sudan and partnership with Sudan was openly touted by the Sudanese government, including television broadcasts of Bin Laden in the company of both al-Turabi and President al-Bashir. Tr. Vol. III at 255. The United States monitored this alliance throughout the 1990s. The State Department's 1991 Patterns of Global Terrorism report detailed Sudan's growing connection with terrorist organizations:

> In the past year Sudan has enhanced its relations with international terrorist groups, including the Abu Nidal Organization, ANO. Sudan has maintained ties with state sponsors of terrorism such as Libya and Iraq and has improved its relations with Iran. The National Islamic Front (NIF), under the leadership of Hassan al-Turabi, has intensified its domination of the government of Sudanese president General Bashir and has been the main

> advocate of closer relations with radical groups and their sponsors.

Ex. KK-1; Tr. Vol. III at 307-08. The 1993 Report explained that Sudan had been placed on the list of state sponsors of terrorism. Ex. GG. The report continued:

> Despite several warnings to cease supporting radical extremists, the Sudanese government continued to harbor international terrorist groups in Sudan. Through the National Islamic Front (NIF), which dominates the Sudanese government, Sudan maintained a disturbing relationship with a wide range of Islamic extremists. The list includes the ANO, the Palestinian HAMAS, the [Palestinian Islamic Jihad], Lebanese Hizballah, and Egypt's al-Gama'at al-Islamiyya.

Id.; see also Tr. Vol. III at 257-59.

Even after Sudan expelled Bin laden in 1996, al Qaeda operatives remained in Sudan. Ex. AA; see also Tr. Vol. II at 173-75; Tr. Vol. III at 305. A declassified CIA report dated May 12, 1997 indicated that Sudan's support for terrorist groups such as al Qaeda continued, despite the considerable international pressure prompting the expulsion of Bin Laden: "[d]espite some positive steps over the past year, Khartoum has sent mixed signals about cutting its terrorist ties and has taken only tactical steps." Ex. BB; see also Tr. Vol. II 175-76.

The State Department's 1997 Patterns of Global Terrorism report detailed Sudan's continued support for terrorist organizations: "Sudan in 1997 continued to serve as a haven, meeting place, and training hub for a number of international terrorist organizations, primarily of Middle East origin. The Sudanese Government also condoned many of the objectionable activities of Iran, such as funneling assistance to terrorists and radical Islamic groups operating in and transiting through Sudan." Ex. KK-2; see also Ex. KK-3 (stating that Sudan continued to serve as a haven of international terrorist organizations in 1998 and noting "[in] particular[] Usama Bin Ladin's al-Qaida organization"); Tr. Vol. III at 308-09. Hence, the evidence strongly supports the conclusion that Sudan harbored and provided sanctuary to terrorists and their operational and logistical supply network leading up to the 1998 terrorist attacks on U.S. embassies in East Africa.

2. Financial, Military and Intelligence Services

As explained in more detail below, Sudan also provided critical financial, military, and intelligence services that facilitated and enabled al Qaeda to strengthen its terrorist network and infiltrate nearby countries. Al Qaeda set up a number of businesses and charities in Khartoum, Sudan to finance its terrorist activities and provide employment and cover for its operatives. The government of Sudan also provided passports and Sudanese citizenship for al Qaeda operatives. Additionally, the Sudanese military and intelligence service coordinated with al Qaeda operatives frequently, providing protection for

al Qaeda and sharing resources and information to coordinate attacks on their mutual enemies.

i. Financial Support

Al Qaeda set up several businesses and charities in Sudan as its financial and operative base for terrorist activities. Tr. Vol. III at 253-55. Once al Qaeda settled in Khartoum, it opened business offices and bought a guesthouse designed to house al Qaeda operatives in transit. Id. at 252. Al Qaeda's businesses included companies that imported and exported containers, farm products, and construction materials. See Ex. HH; Tr. Vol. III at 278-80; Ex. V at 8-9. Al Qaeda's farms provided income and offered space for terrorist training camps. Tr. Vol. III at 252-53. The expansive space allowed for testing explosives, producing mock-ups and planning attacks and assassinations. Id.; Ex. V at 15-16.

These businesses produced some commercial profit but, more critically, provided employment for al Qaeda operatives and cover for terrorist activities. Tr. Vol. III at 253-55. The commercial operations also provided an avenue for exchanging currency and purchasing imported goods without raising international suspicion. Usama bin Laden, Tr. Trans. at 239-46 (testimony of al-Fadl). As Mr. Kohlmann explained:

> Al Qaeda was looking for a way of self-sustaining, providing a means of income for its membership, its leadership, and also to provide an excuse for why al Qaeda operatives would be traveling to different countries. It makes a good excuse if you

> show up at a foreign country at an immigration desk and someone asks you, why are you here, I'm here to help sell peanuts. I'm here to provide humanitarian relief. It sounded a lot better than saying I'm here to foment Islamic revolution.

Tr. Vol. III at 255.

Al Qaeda also opened and operated a number of purported charities to provide income for jihad, launder such funds and otherwise operate as a front for terrorist operations. Ex. II; Tr. Vol. III at 285-86. Most of the charities had offices in Khartoum and were active across West and Central Africa, including in Somalia and Kenya. Tr. Vol. III at 286. As fronts for al Qaeda activity, these charities served as depots for al Qaeda communications and records and as safe meeting houses for operatives. Id. For example, al Qaeda used the office of Mercy International in Nairobi, Kenya to hide documents, plan operations, and house members of al Qaeda. Id. at 287. Al Qaeda members used Mercy International ID cards to pose as relief workers. Id. Another charity in Nairobi, Help Africa People, did not engage in any relief work and was utilized similarly as a cover organization for al Qaeda members. Id. at 288-89.

Bin Laden and al Qaeda also invested in Sudanese banks. Id. at 337. This access to the formal banking system was useful for "laundering money and facilitating other financial transactions that stabilized and ultimately enlarged bin Laden's presence in the Sudan." Id. For example, Bin Laden invested $50 million in the Sudan's Al Shamal

Islamic Bank, and these funds were used to finance al Qaeda operations. Ex. V at 11-14. Al Shamal Islamic Bank was known for financing terrorist operations, and bin Laden remained a leading investor of the bank long after he was expelled from the Sudan. Id.

The commercial enterprises served al Qaeda's ultimate goal of organizing jihad against the United States and the West. As Dr. Vidino testified:

> During its time in Sudan, al Qaeda grew into a sophisticated organization. Several key figures in the organization portrayed al Qaeda at the time as a multinational corporation complete with a finance committee, investments, worldwide operations, and well-organized, concealed accounts. These activities were clearly facilitated by the Sudanese government. Complacent banks, customs exemptions, tax privileges, and, more generally, full support by the Sudanese government, allowed Bin Laden's commercial activities to flourish. But money has never been Bin Laden's highest aspiration. He used his newfound advantageous position to solidify his nascent organization, al Qaeda. . . . . Al Qaeda's commercial activities were to be used simply as a tool for the more important goal of building a stronger al Qaeda, not to generate profits. If profits were made, they were reinvested in the organization.

Ex. V at 15.

ii. Governmental/Military Support

The Sudanese government, through al-Turabi and al-Bashir, invited al Qaeda members to leave Afghanistan and come to Sudan in the early 1990s. Tr. Vol. III at 242-43. President al-Bashir followed up on this general invitation with a letter specifically inviting several al Qaeda members to come to Sudan. Id. at 243. Al Qaeda members used the letter to "avoid having to go through normal immigration and customs controls" and resolve any "problems with the local police or authorities." Id. This letter served as a "free pass" throughout the Sudan: "Upon viewing this letter, whether it was customs or immigration or Sudanese police officers, they backed off. They understood that these individuals were here in an official quote-unquote diplomatic role." Id.

During the 2001 trial of Bin Laden, Jamal al-Fadl, the former high-ranking al Qaeda member from Sudan, testified that the letter served to publicly verify al Qaeda's extra-judicial status in the Sudan: "Like when we go to Port of Sudan and we bring some stuff that comes — when we have some guys from outside Sudan to go inside Sudan, that letter, we don't have to pay tax or custom, or sometime the Customs, you don't have to open our containers." Usama Bin Laden, Tr. Trans. at 238. The letter and governmental support provided al Qaeda unchecked access throughout Sudan. Tr. Vol. III at 243. Al-Fadl also testified that the Sudanese government provided al Qaeda members — including those who were not Sudanese — with "a couple hundred . . . real passports . . . and Sudanese citizenships" to facilitate

travel outside of the Sudan. Usama bin Laden, Tr. Trans. at 441-42.

Al Qaeda and the Sudanese government jointly attempted to acquire nuclear materials and develop chemical weapons. Tr. Vol. III at 284-85. The Sudanese military "was directly engaged in trying to develop regular conventional weapons into nonconventional chemical weapons with al Qaeda's assistance." Id. at 285. Al Qaeda also had the support of Sudanese soldiers to facilitate the transport of weapons. Essam al-Ridi, an al Qaeda member and pilot, testified as to his knowledge of the use of Sudanese soldiers to protect Bin Laden and al Qaeda members. Ex. H at 25; see also Usama bin Laden, Tr. Trans. at 569-70. Al-Ridi explained that members of the Sudanese military acted as personal guards for Bin Laden at his guest house in Khartoum. Ex. H at 25-27.

Although Sudan eventually expelled Bin Laden in 1996, the government strongly resisted foreign pressure to turn him over to the United States or grant access to the al Qaeda training camps. Ex. W-2 at 4-5. Steven Simon, an expert on the state sponsorship of terrorism, concluded that the Sudanese government's negotiation with the United States regarding Bin Laden as a terrorist threat "was a charade," with Sudan not providing "useful information on bin Laden's finances or the terrorist training camps." Id. at 5. Furthermore, "[t]he Sudanese government never offered intelligence regarding al Qaeda cells that might have helped the U.S. unravel the plots to attack the two East African U.S. embassies." Id.

iii. Support from Sudan's Intelligence Services

The Sudanese intelligence service had a delegation office that provided services to Bin Laden and al Qaeda. Tr. Vol. III at 271; Ex. V at 19. As described by Mr. Simon:

> The Sudanese intelligence service coordinated with al Qaeda operatives to vet the large numbers of Islamic militants entering the country to ensure that they were not seeking to infiltrate bin Laden's organization on behalf of a foreign intelligence service.

Ex. W-2 at 4. Bin Laden himself was closely involved with the Sudanese intelligence service and aware of its operations. Tr. Vol. III at 271. When al Qaeda members or operatives arrived at the Khartoum airport, Sudanese intelligence would greet them and escort them around customs and immigration to prevent their bags from being searched and their passports from being stamped. Id. Al Qaeda operatives tried to avoid passport stamps from Sudanese customs, because of Khartoum's reputation for terrorist activity and the concern that a member with a stamped passport could come under suspicion of being involved in international terrorism. Id. at 271-73.

The Sudanese intelligence service facilitated the transport of al Qaeda operatives and funds from Sudan to the Nairobi cell. Id. at 294. For example, in violation of Kenyan customs regulations, the Sudanese intelligence service enabled al Qaeda operative L'Houssaine Kherchtou to smuggle $10,000

from Sudan to Kenya. Id. The intelligence service also provided security for al Qaeda, which included protecting Bin Laden from an assassination attempt in Khartoum in 1994. Id. at 274. Additionally, the Sudanese intelligence service provided al Qaeda with weapons and explosives. Id. at 270.

The relationship between al Qaeda and the Sudanese intelligence was close and mutually beneficial. See id. at 268-270. Indeed, "[t]he Sudanese intelligence service viewed al Qaeda as a proxy, much the way that Iran views Hezbollah as a proxy." Id. at 268-69. As a means of increasing their influence, the Sudanese intelligence service considered that "by sharing resources, information, [and] by assisting al Qaeda, the Sudanese could use al Qaeda to attack their mutual enemies." Id. at 269.

3. Sudan's Support Essential to 1998 Embassy Bombings

Sudanese government support was critical to the success of the 1998 embassy bombings: "The presence, the safe haven that Al Qaeda had in the Sudan was absolutely integral for its capability of launching operations not just in Kenya, but in Somalia, in Eritrea, in Libya. Without this base of operations, none of this would have happened." Id. at 317. The support of Sudanese intelligence, the safe haven provided by the Sudanese government to house al Qaeda's leadership and train its operatives, and the provision of passports allowing al Qaeda to open businesses and charities enabled al Qaeda to build its terrorist cells in Kenya, Somalia and Tanzania. Id. at 316-19. Indeed, Mr. Simon asserted:

> The Republic of Sudan supplied al Qaeda with important resources and support during the 1990s knowing that al Qaeda intended to attack the citizens, or interests of the United States. This support encompassed the safe haven of the entire country for bin Laden and the top al Qaeda leadership. This enabled bin Laden and his followers to plot against the U.S. and build their organization free from U.S. interference. Sudanese shelter enabled Bin Laden to create training camps, invest in – and use – banking facilities, create business firms to provide cover for operatives, generate funds for an array of terrorist groups, provide official documents to facilitate clandestine travel, and enjoy the protection of Sudan's security service against infiltration, surveillance and sabotage.

Ex. W-2 at 5-6. Sudan's support thus facilitated and enabled the 1998 terrorist bombings on the two U.S. embassies in East Africa.

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, Tanzania. The evidence overwhelmingly supports the conclusion that al Qaeda carried out the two bombing attacks, and Bin Laden himself claimed responsibility for them during an al Qaeda documentary history released by the al Qaeda media wing. See Exs. LL, MM, NN, OO; Tr. Vol. III at 313-16.

II. CONCLUSIONS OF LAW

The "terrorism exception" to the FSIA was first enacted as part of the Mandatory Victim's Restitution Act of 1996, which was itself part of the larger Antiterrorism and Effective Death Penalty Act of 1996. See Pub. L. No. 104-132, § 221(a)(1)(C), 110 Stat. 1241, 1241 (formerly codified at 28 U.S.C. §1605(a)(7)). The exception permitted claims against foreign state sponsors of terrorism that resulted in personal injury or death, where either the claimant or the victim was a United States citizen at the time of the terrorist act. See 28 U.S.C. § 1605(a)(7) (2007). Shortly thereafter, Congress passed the so-called "Flatow Amendment" in the Omnibus Consolidated Appropriations Act of 1996. See Pub. L. No. 104-208, § 589, 110 Stat. 3009-1, 3009-172 (codified at 28 U.S.C. § 1605 note). Initially, some courts construed § 1605(a)(7) and the Flatow Amendment, read in tandem, as creating a federal cause of action against the foreign state sponsor of terrorism. See, e.g., Flatow v. Islamic Republic of Iran, 999 F. Supp. 1, 27 (D.D.C. 1998).

In Cicippio-Puleo v. Islamic Republic of Iran, the D.C. Circuit concluded that neither § 1605(a)(7) nor the Flatow Amendment itself created a cause of action against the foreign state. 353 F.3d 1024, 1027 (D.C. Cir 2004). Instead of a federal cause of action, the D.C. Circuit directed plaintiffs to assert causes of action using "some other source of law, including state law." Id. at 1036; see, e.g., Dammarell v. Islamic Republic of Iran, 2005 WL 756090, at *33 (D.D.C. Mar. 25, 2005) (requiring plaintiffs post-Cicippio-Puleo to amend their complaint to state causes of

action under the law of the state in which they were domiciled at the time of their injuries). Hence, following Cicippio-Puleo, the FSIA "terrorism exception" began to serve as "a 'pass-through' to substantive causes of action against private individuals that may exist in federal, state or international law." Bodoff v. Islamic Republic of Iran, 424 F. Supp. 2d 74, 83 (D.D.C. 2006).

In some cases, applying relevant state law created practical problems for litigants and the courts. Under applicable choice of law principles, district courts applied the state tort law of each individual plaintiff's domicile, which in many cases involved several different states for the same terrorism incident. See, e.g., Dammarell v. Islamic Republic of Iran, 404 F. Supp. 2d 261, 275-324 (D.D.C. 2005) (applying the law of six states and the District of Columbia). This analysis resulted in different awards for similarly-situated plaintiffs, based on the substantive tort law distinctions among states for intentional infliction of emotional distress claims. See, e.g., Peterson v. Islamic Republic of Iran, 515 F. Supp. 2d 25, 44-45 (D.D.C. 2007) (dismissing intentional infliction of emotional distress claims of those family members domiciled in Pennsylvania and Louisiana, whose laws required the claimant to be present at the site of the event causing emotional distress).

To address these issues, Congress enacted section 1083 of the 2008 NDAA, which amended the "terrorism exception" and other related FSIA provisions. The Act repealed § 1605(a)(7) of Title 28 and replaced it with a separate section, § 1605A, which, among other things: (1) broadened the

jurisdiction of federal courts to include claims by members of the U.S. armed forces and employees or contractors of the U.S. government injured while performing their duties on behalf of the U.S. Government; and (2) created a federal statutory cause of action for those victims and their legal representatives against state sponsors of terrorism for terrorist acts committed by the State, its agents, or employees, thereby abrogating Cicippio-Puleo. See Simon v. Republic of Iraq, 529 F.3d 1187, 1190 (D.C. Cir. 2008), rev'd on other grounds, 129 S. Ct. 2183 (2009).

This case is the second to apply §1605A to non-U.S. national plaintiffs who worked for the U.S. government (and their non-U.S. national family members), who are now entitled to compensation for personal injury and wrongful death suffered as a result of the terrorist attacks on the U.S. Embassies in Nairobi, Kenya and Dar es Salaam, Tanzania. The first was this Court's recent decision in Estate of Doe v. Islamic Republic of Iran, 2011 WL 3585963 (D.D.C. Aug. 16, 2011), dealing with claims arising out of the 1983 and 1984 bombings of the U.S. embassy in Lebanon.

A. Jurisdiction Under The FSIA

The Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602-1611, is the sole basis for obtaining jurisdiction over a foreign state in the United States. Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 434 (1989); Brewer v. Islamic Republic of Iran, 664 F. Supp. 2d 43, 50 (D.D.C. 2009). Although the FSIA provides that foreign states are

generally immune from jurisdiction in U.S. courts, see 28 U.S.C. § 1604, a federal district court can obtain personal and subject matter jurisdiction over a foreign entity in certain circumstances. A court can obtain personal jurisdiction over a defendant if the plaintiff properly serves the defendant in accordance with 28 U.S.C. § 1608. See 28 U.S.C. § 1330(b). Moreover, subject matter jurisdiction exists if the defendant's conduct falls within one of the specific statutory exceptions to immunity. See 28 U.S.C. §§ 1330(a) & 1604. Here, this Court has jurisdiction because service was proper and defendants' conduct falls within the "state sponsor of terrorism" exception set forth in 28 U.S.C. § 1605A.

1. Service of Process

Courts may exercise personal jurisdiction over a foreign state where the defendant is properly served in accordance with 28 U.S.C. § 1608. See 28 U.S.C. § 1330(b); TMR Energy Ltd. v. State Prop. Fund of Ukr., 411 F.3d 196, 199 (D.C. Cir. 2005). "A foreign state or its political subdivision, agency or instrumentality must be served in accordance with 28 U.S.C. § 1608." Fed. R. Civ. P. 4(j)(1). "The FSIA prescribes four methods of service, in descending order of preference. Plaintiffs must attempt service by the first method (or determine that it is unavailable) before proceeding to the second method, and so on." Ben-Rafael v. Islamic Republic of Iran, 540 F. Supp. 2d 39, 52 (D.D.C. 2008); see also 28 U.S.C. § 1608. As described above, plaintiffs in each case here properly effected service on all defendants. See supra at 2-4. And in each case, defendants did not respond or make an appearance within 60 days,

and thus, pursuant to § 1608(d), the Clerk entered default against defendants. Hence, as defendants were properly served in accordance with § 1608, this Court has personal jurisdiction over them.

2. Subject Matter Jurisdiction

The provisions relating to the waiver of immunity for claims alleging state-sponsored terrorism, as amended, are set forth at 28 U.S.C. § 1605A(a). Section 1605A(a)(1) provides that a foreign state shall not be immune from the jurisdiction of U.S. courts in a case where

> money damages are sought against [it] 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 for such an act if such act or 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.

§ 1605A(a)(1). For a claim to be heard in such a case, the foreign state defendant must have been designated by the U.S. Department of State as a "state sponsor of terrorism" at the time the act complained of occurred. Id. Finally, subsection (a)(2)(A)(ii) requires that the "claimant or the victim was, at the time the act . . . occurred

(I) a national of the United States;

(II) a member of the armed forces; or

> (III) otherwise an employee of the Government of the United States . . . acting within the scope of the employee's employment . . . .

28 U.S.C. § 1605A(a)(2)(A)(ii)(I-III)(emphasis added).

As explained in more detail below, plaintiffs satisfy each of the requirements for subject matter jurisdiction. First, Iran and Sudan were designated as state sponsors of terrorism at the time all of the related actions in this case were filed. Second, plaintiffs' injuries were caused by the defendants' acts of "extrajudicial killing" and provision of "material support" for such acts to their agents. Third, plaintiffs presented evidence that they were either themselves nationals of the United States or U.S. Government employees at the time of the attacks, or their claims are derived from claims where the victims were either U.S. nationals or U.S. Government employees at the time of the attacks, as required by section 1605A(a)(2)(A)(ii). As the case progresses to the damages phase, individual plaintiffs will be required to produce evidence of their employment or familial relationship to establish their standing under the statute.

i. Iran and Sudan Designated As State Sponsors of Terrorism

A foreign state defendant must have been designated as a state sponsor of terrorism at the time the act complained of occurred. 28 U.S.C. § 1605A(a)(2)(A)(I). The statute defines "state sponsor of terrorism" as "a country the government of which the Secretary of State has determined, for purposes of

section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism . . . ." 28 U.S.C. § 1605A(h)(6).

Iran and Sudan were designated by the U.S. Department of State as state sponsors of terrorism on January 19, 1984 and August 12, 1993, respectively. Iran was formally declared a state sponsor of terrorism by Secretary of State Schultz, see 49 Fed. Reg. 2836 (Jan. 23, 1984), and today remains designated as a state sponsor of terrorism. Sudan was originally designated a state sponsor of terrorism in 1993. See 58 Fed. Reg. 52,523 (Oct. 8, 1993). Once a country has been designated as a state sponsor of terrorism, the designation cannot be rescinded unless the President submits to Congress a proper report, as described in the Export Administration Act. See 50 U.S.C. app. § 2405(j)(4). Iran and Sudan have never been removed from this list of state sponsors of terrorism. Hence, the requirements set forth in section 1605A(a)(2)(A)(i) are satisfied.

ii. Extrajudicial Killing and Provision of Material Support

The FSIA, as amended, strips immunity "in any case . . . in which money damages are sought against a foreign state for personal injury or death that was caused by an act of . . . extrajudicial killing . . . or the provision of material support or resources for such an act if such an act or provision of material support or

resources is engaged in by an official, employee, or agent or such foreign state while acting within the scope of his or her office, employment, or agency." 28 U.S.C. § 1605A(a)(1). The FSIA refers to the Torture Victim Protection Act of 1991 ("TVPA") for the definition of "extrajudicial killing." See 28 U.S.C. § 1605A(h)(7). The TVPA provides that

> the term "extrajudicial killing" means a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all of the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.

28 U.S.C. § 1350 note; see also Valore v. Islamic Republic of Iran, 700 F. Supp. 2d 52, 74 (D.D.C. 2010) (adopting the TVPA definition of "extrajudicial killing" in bombing of U.S. Marine barracks in Beirut, Lebanon).

Plaintiffs have satisfied their burden under 28 U.S.C. § 1608(e) to show that the governments of Sudan and Iran provided material support and resources to Bin Laden and al Qaeda for acts of terrorism, including extrajudicial killings. Targeted, large-scale bombings of U.S. embassies or official U.S. government buildings constitute acts of extrajudicial killings. Estate of Doe, 2011 WL 3585963, at *10 ("[T]he 1983 and 1984 Embassy bombings both qualify as an 'extrajudicial killing.'"); Dammarell v.

Islamic Republic of Iran, 281 F. Supp. 2d 105, 192 (D.D.C. 2003)("[T]he evidence is conclusive that [the victims of the 1983 embassy bombing in Lebanon] were deliberately targeted for death and injury without authorization by a previous court judgment . . . and [the 1983 bombing] constitutes an act of 'extrajudicial killing.'"); Wagner v. Islamic Republic of Iran, 172 F. Supp. 2d 128, 134 (D.D.C. 2001) (finding the September 1984 bombing of the U.S. embassy annex in Lebanon was a "deliberate and premeditated act" that killed 14 people and "[t]here is no evidence that it was judicially sanctioned by any lawfully constituted tribunal"); Brewer, 664 F. Supp. 2d at 52-53 (same); Welch v. Islamic Republic of Iran, 2007 U.S. Dist. LEXIS 99191, at *26 (D.D.C. Sept. 20, 2007) (finding that an embassy attack "clearly qualifies as an extrajudicial killing").

With the support of Sudan and Iran, al Qaeda killed hundreds of individuals — and attempted to kill thousands more—on site in the 1998 U.S. embassy attacks in Nairobi and Dar es Salaam. No one questions that al Qaeda carried out the two bombing attacks, and Bin Laden himself claimed responsibility for them during an al Qaeda documentary history released by the al Qaeda media wing. See Exs. LL, MM, NN, OO; Tr. Vol. III at 313-16. Such acts of terrorism are contrary to the guarantees "recognized as indispensable by civilized persons." Hence, the 1998 embassy attacks in Kenya and Tanzania, and the resulting deaths and injuries, qualify as an "extrajudicial killing."

The statute defines "material support or resources" to include "any property, tangible or

intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, [and] personnel." 18 U.S.C. § 2339A(b). As described in detail above, defendants provided several kinds of material support to al Qaeda without which it could not have carried out the 1998 bombings. Sudan provided — at least — safe haven for Bin Laden and al Qaeda, and functioned as its training, organizational and logistical hub, from 1991 to 1996. When a foreign sovereign allows a terrorist organization to operate from its territory, this meets the statutory definition of "safehouse" under 18 U.S.C. § 2339A(b):

> Insofar as the government of the Republic of Sudan affirmatively allowed and/or encouraged al Qaeda and Hizbollah to operate their terrorist enterprises within its borders, and thus provided a base of operations for the planning and execution of terrorist attacks — as the complaint unambiguously alleges — Sudan provided a "safehouse" within the meaning of 18 U.S.C. § 2339A, as incorporated in 28 U.S.C. § 1605(a)(7).

Owens v. Republic of Sudan, 412 F. Supp. 2d 99, 108 (D.D.C. 2006). The Sudanese government also provided inauthentic passports, which qualify as "false documentation or identification" under 18 U.S.C. § 2339A(b). Plaintiffs also established that the Iranian government both trained al Qaeda members

and authorized the provision of training by Hezbollah in explosives, and specifically in how to destroy large buildings. This support qualifies as "training, expert advice or assistance" under 18 U.S.C. § 2339A(b). See id. § 2339A(b)(2) and (3) (defining "training" as "instruction or teaching designed to impart a specific skill, as opposed to general knowledge" and "expert advice or assistance" as "advice or assistance derived from scientific, technical or other specialized knowledge").

The statute also requires that the extrajudicial killings be "caused by" the provision of material support. The causation requirement under the FSIA is satisfied by a showing of proximate cause. See 28 U.S.C. § 1605A(a)(1); Estate of Doe, 2011 WL 3585963, at *11; Valore, 700 F. Supp. at 66; Kilburn v. Socialist People's Libyan Arab Jamahiriya, 376 F.3d 1123, 1128 (D.C. Cir. 2004) (weighing the import of the phrase "caused by" from 28 U.S.C. § 1605(a)(7), the predecessor statute to 28 U.S.C. § 1605A). Proximate causation may be established by a showing of a "reasonable connection" between the material support provided and the ultimate act of terrorism. Valore, 700 F. Supp. 2d at 66. "Proximate cause exists so long as there is 'some reasonable connection between the act or omission of the defendant and the damages which the plaintiff has suffered.'" Id. (quoting Brewer, 664 F. Supp. 2d at 54 (construing causation element in 28 U.S.C. § 1605A by reference to cases decided under 28 U.S.C. § 1605(a)(7)). Plaintiffs have demonstrated several reasonable connections between the material support provided by defendants and the two embassy bombings. Sudan

provided the safe harbor necessary to allow al Qaeda to train and organize its members for acts of large-scale terrorism from 1992 to 1996. Sudan facilitated its safe harbor through constant vigilance by its security services and the provision of documentation required to shelter al Qaeda from foreign intelligence services and competing terrorist groups. Iran's training and technical support was specifically required for the successful execution of al Qaeda's plot to bomb the two embassies. Hence, plaintiffs have established that the 1998 embassy bombings were caused by Iran and Sudan's provision of material support.

B. Federal Cause of Action

Once jurisdiction has been established over plaintiffs' claims against all defendants, liability on those claims in a default judgment case is established by the same evidence if "satisfactory to the Court." 28 U.S.C. § 1608(e). Plaintiffs' claims are brought under section 1605A(c), the newly created federal cause of action, or, in the alternative, under applicable state or foreign law. Section 1605A(c) authorizes claims against state sponsors of terrorism to recover compensatory and punitive damages for personal injury or death caused by acts described as follows.

> (c) Private right of action.—A foreign state that is or was a state sponsor of terrorism as described in subsection (a)(2)(A)(i), and any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, shall be liable to—

> (1) a national of the United States,
>
> (2) a member of the armed forces,
>
> (3) an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment, or
>
> (4) the legal representative of a person described in paragraph (1), (2), or (3), for personal injury or death caused by acts described in subsection (a) (1) of that foreign state, or of an official, employee, or agent of that foreign state, for which the courts of the United States may maintain jurisdiction under this section for money damages. In any such action, damages may include economic damages, solatium, pain and suffering, and punitive damages. In any such action, a foreign state shall be vicariously liable for the acts of its officials, employees, or agents.

The plain meaning approach to statutory construction governs the Court's interpretation of § 1605A(c). See Estate of Doe, 2011 WL 3585963, at *13-*14. A straightforward reading of § 1605A(c) is that it creates a federal cause of action for four categories of individuals: a national of the United States, a member of the U.S. armed forces, a U.S. Government employee or contractor, or a legal representative of such a person. Absent from these four categories are non-U.S. national family members

of the victims of terrorist attacks. The statutory language that follows the listing of the four categories of individuals in § 1605A(c) does not expand the private right of action beyond those four categories. The cause of action is further described as "for personal injury or death caused by acts described in subsection (a)(1) of that foreign state, or of an official employee or agent of that foreign state, for which the courts of the United States may maintain jurisdiction under this section for money damages." Id.

Plaintiffs argue that the statutory language creates a cause of action for any individual victim or claimant "for which the courts of the United States may maintain jurisdiction." But the plain language of the statute does not support this construction. Indeed, the text refers back to the waiver of sovereign immunity as to a foreign state for terrorist acts as provided in section (a)(1). Nonetheless, the family member plaintiffs contend that, even if they do not fit expressly within the four categories listed in § 1605A(c)(1)-(4), once the immunity of the defendants has been waived as to their claims, the intent of Congress indicates that the immediate family members of U.S. government employees, despite their status as foreign nationals, are entitled to bring claims through a federal statutory cause of action and seek damages for their losses, including for solatium and pain and suffering.

Plaintiffs explain that the legislative history reveals that a purpose of the 2008 amendments to the FSIA was to "fix[] the inequality" of rights between U.S. citizens and non-U.S. citizens to seek relief from the perpetrators of terrorist acts. See 154 Cong. Rec.

S54 (daily ed. Jan. 22, 2008) (statement by Sen. Lautenberg). And, plaintiffs continue, Congress was prompted to create a federal statutory cause of action that would resolve the disparity among the various state laws regarding the recovery of emotional distress by immediate family members that existed prior to the statutory amendments. See 154 Cong. Rec. S54 (daily ed. Jan. 22, 2008) (statement by Sen. Lautenberg) (noting that the amendments would fix the problem of "judges hav[ing] been prevented from applying a uniform damages standard to all victims in a single case because a victim's right to pursue an action against a foreign government depends upon State law"). Indeed, if foreign national immediate family members of victims do not have a cause of action under § 1605A(c), then Senator Lautenberg did not completely "fix" the problem of disparate damages standards for this particular category of claimants. But it is not the court's role to fix a problem that Congress failed to address. See Estate of Doe, 2011 WL 3585963, at *14. As Cicippio-Puleo instructed, "the Supreme Court has declined to construe statutes to imply a cause of action where Congress has not expressly provided one." 353 F.3d at 1033.

Some courts have found jurisdiction and a cause of action under §1605A and, in so doing, have noted that because § 1605A(c) incorporates the elements required to waive the foreign state's immunity and vest the court with subject matter jurisdiction under section 1605A, "liability under section 1605A(c) will exist whenever the jurisdictional requirements of section 1605A are met." Calderon-Cardona v. Democratic People's Republic of Korea, 723 F. Supp.

2d 441, 460 (D.P.R. 2010); see also Kilburn v. Islamic Republic of Iran, 699 F. Supp. 2d 136, 155 (D.D.C. 2010) (explaining that the elements of immunity and liability are "essentially the same [under the new amendments] in that § 1605A(a)(1) must be fulfilled to demonstrate that a plaintiff has a cause of action" under § 1605A(c)); Murphy v. Islamic Republic of Iran, 740 F. Supp. 2d 51, 72 (D.D.C. 2010) (analyzing liability and jurisdiction together); Brewer, 664 F. Supp. 2d at 52 ("[I]f immunity is waived, the Act provides for economic damages, solatium, pain and suffering, and punitive damages."); Gates v. Syrian Arab Republic, 580 F. Supp. 2d 53, 64-69 (D.D.C. 2008) (analyzing liability under the same elements required for jurisdiction and finding liability where extrajudicial killing and material support elements satisfied). But that is not true here. In each of those cases, the claimants fit within the four categories of individuals who are explicitly provided a cause of action under § 1605A(c) of the statute. The elements for a waiver of immunity and for liability, then, may indeed be the same. But not for individuals who do not fit within the four categories listed in § 1605A(c). See Estate of Doe, 2011 WL 3585963, at *15.

Hence, those plaintiffs who are foreign national family members of victims of the terrorist attacks in Nairobi and Dar es Salaam lack a federal cause of action. Nonetheless, they may continue to pursue claims under applicable state and/or foreign law. Although § 1605A created a new federal cause of action, it did not displace a claimant's ability to pursue claims under applicable state or foreign law upon the waiver of sovereign immunity. See Estate of

Doe, 2011 WL 3585963, at *15 (citing Simon, 529 F.3d at 1192). Indeed, plaintiffs injured or killed as a result of state-sponsored terrorist attacks have pursued claims under both the federal cause of action and applicable state law, and are precluded only from seeking a double recovery. See id.

C. Choice of Law

In circumstances where the federal cause of action is not available, courts must determine whether a cause of action is available under state or foreign law and engage in a choice of law analysis. Federal courts addressing FSIA claims in the District of Columbia apply the choice of law rules of the forum state. Oveissi v. Islamic Republic of Iran, 573 F.3d 835, 840 (D.C. Cir. 2009); Dammarell, 2005 WL 756090, at *18. This Court will therefore look to the choice of law rules of the District of Columbia in this case.

Under District of Columbia choice of law rules, the court must first determine whether a conflict exists between the law of the forum and the law of the alternative jurisdiction. If there is no true conflict, the court should apply the law of the forum. See USA Waste of Md, Inc. v. Love, 954 A.2d 1027, 1032 (D.C. 2008) ("A conflict of laws does not exist when the laws of the different jurisdictions are identical or would produce the identical result on the facts presented."). If a conflict is present, the District of Columbia employs a "constructive blending' of the 'government interests' analysis and the 'most significant relationship' test" to determine which law to apply. Oveissi, 573 F.3d at 842; Dammarell, 2005 WL 756090, at *18 (citation omitted).

In Dammarell, an FSIA case that involved the 1983 bombing of the U.S. embassy in Beirut, Lebanon, this Court explained that "under the governmental interests analysis as so refined, we must evaluate the governmental policies underlying the applicable laws and determine which jurisdiction's policy would be most advanced by having its law applied to the facts of the case under review." 2005 WL 756090, at *18. For the "most significant relationship' component of the analysis, the D.C. Court of Appeals directs courts to section 145 of the Restatement of the Conflict of Laws, which identifies four relevant factors: (i) 'the place where the injury occurred'; (ii) 'the place where the conduct causing the injury occurred'; (iii) 'the domicile, residence, nationality, place of incorporation and place of business of the parties'; and (iv) 'the place where the relationship, if any, between the parties is centered.'" Id. (citing Restatement (Second) of Conflict of Laws § 145 (1971)). The Restatement also references the "needs of the interstate and the international systems, the relevant policies of the forum, the relevant policies of other interested states, certainty, predictability and uniformity of result, and ease in the determination and application of the law to be applied." Id.; see also Oveissi, 573 F.3d at 842; Estate of Heiser v. Islamic Republic of Iran, 466 F. Supp. 2d 229, 266 (D.D.C. 2006). As a general rule, the law of the forum governs, "unless the foreign state has a greater interest in the controversy." Kaiser-Georgetown Cmty. Health Plan v. Stutsman, 491 A.2d 502, 509 (D.C. 1985).

Three conceivable choices of law are presented in this case: the law of the forum state (the District of Columbia), the laws of the place of the tort (Kenya and Tanzania), or the law of the domicile state or country of each plaintiff (including domestic and foreign locations). See Dammarell, 2005 WL 756090, at *18. In previous FSIA terrorism cases involving U.S. citizen plaintiffs, this Court ruled that the law of the domicile state of each plaintiff should provide the rule of decision, noting each state's interest in the welfare and compensation of the surviving family members of individuals killed in the terrorist attacks. See id. at *21 (citing cases). Here, as in Estate of Doe, the choice of law analysis pertains only to non-U.S. national family members of victims of the terrorist attacks (who lack a federal cause of action), and the balance of interests suggests a different outcome from the FSIA cases involving U.S. citizen plaintiffs.

Consistent with Dammarell and other FSIA cases, United States domestic law remains more appropriate in state-sponsored terrorism cases than foreign law. Furthermore, in light of the 2008 amendments to FSIA that seek to promote uniformity and extend access to U.S. federal courts to foreign national immediate family members of victims of terrorism, the law of the forum state, the District of Columbia, should provide the rule of decision.

1. Domestic Law

As in Dammarell, the choice of law analysis here points away from the place of the injury, and toward applying the laws of a United States forum. First, no clear conflict of law is present between the laws of the

forum (District of Columbia) and the laws of Kenya and Tanzania. Like District of Columbia law, Kenyan law allows immediate family members to recover for their emotional distress. See Pl.'s Att. B, Kenyan Legal Opinion. Tanzanian law also permits immediate family members to recover for some emotional injuries. Tanzanian Probate and Administration of Estates Act, ¶ 33 (Lexis 2010). When "the laws of the different jurisdictions . . . would produce the identical result on the facts presented," USA Waste, 954 A.2d at 1032, it tilts the balance of this Court's choice of law analysis towards domestic law.

Second, to the extent that United States law and the law of Kenya and Tanzania (or another foreign jurisdiction) conflict, the District of Columbia's "governmental interests" choice of law test in state-sponsored terrorism cases strongly favors the application of United States law over foreign law. Although "[t]he law of a foreign country has provided the cause of action in some cases arising out of mass disasters that occurred on foreign soil," Dammarell, 2005 WL 756090, at *19 (citing Harris v. Polskie Linie Lotnicze, 820 F.2d 1000, 1004 (9th Cir. 1987) (applying Polish law to airplane crash occurring in Poland), and Barkanic v. Gen. Admin. of Civil Aviation of the People's Republic of China, 923 F.2d 957, 962-64 (2d Cir. 1991) (applying Chinese law to airplane crash occurring in China)), such a result is less appropriate in state-sponsored terrorism-related cases. In terrorism cases, "[t]he United States has a unique interest in having its domestic law — rather than the law of a foreign nation — used in the

determination of damages in a suit involving such an attack." Holland v. Islamic Republic of Iran, 496 F. Supp. 2d 1, 22 (D.D.C. 2005) (citing Restatement (Third) of Foreign Relations Law § 402(3) (1987)).

Here, just as in Dammarell, "the particular characteristics of this case heighten the interests of a domestic forum and diminish the interest of the foreign state. The injuries in this case are the result of a state-sponsored terrorist attack on a United States embassy and diplomatic personnel. The United States has a unique interest in its domestic law, rather than the law of a foreign nation, determining damages in a suit involving such an attack." Dammarell, 2005 WL 756090, at *20; see also Restatement (Third) of Foreign Relations Law § 402(3) (1987) (recognizing that the United States has an interest in projecting its laws overseas for "certain conduct outside its territory by persons not its nationals that is directed against the security of the state or against a limited class of other state interests"). These considerations "elevate the interests of the United States to nearly its highest point." Dammarell, 2005 WL 756090, at *20; see also Kaiser-Georgetown Cmty. Health Plan, 491 A.2d at 509 n.10 (suggesting that unless a foreign state has a greater interest in the application of its law than the forum state, the interests of efficiency only serve to further "tilt the balance in favor of applying the law of the forum state"). Hence, the "governmental interest" prong of the District of Columbia choice of law analysis counsels against applying the law of Kenya and Tanzania, or other foreign laws, and

suggests that domestic law should control. Cf. Estate of Doe, 2011 WL 3585963, at *17.

2. District of Columbia Law

In addition to the strong governmental interest in applying United States law in this case, the interests of uniformity of decision among the foreign national family members points to the application of the law of the forum. Most of these plaintiffs are domiciled in Kenya and Tanzania, although some are domiciled in other countries. In previous FSIA decisions, this Court has applied the laws of the several domiciliary states. See, e.g., Dammarell, 2005 WL 756090, at *21. Here, however, the interests of uniformity provided by the law of the forum state, which also has a significant interest in the underlying events, provides the most appropriate choice of law for all foreign national family members who lack a federal cause of action. See Kaiser-Georgetown Cmty. Health Plan, 491 A.2d at 509 n.10 ("'The forum State's interest in the fair and efficient administration of justice' together with the 'substantial savings [that] can accrue to the State's judicial system' when its judges are 'able to apply law with which [t]he[y are] thoroughly familiar or can easily discover,' tilt the balance in favor of applying the law of the forum." (quoting Allstate Ins. Co. v. Hague, 449 U.S. 302, 326 & n.14 (1981)).

In the recent amendments to the FSIA, Congress has sought to strengthen enforcement of United States terrorism laws and to extend their protections to foreign nationals who are employees of United States embassies targeted by terrorists and their

immediate family members, as well as to correct the problem of disparity among the various state laws regarding recovery of emotional distress by family members. See Estate of Doe, 2011 WL 3585963, at *18. As discussed above, Congressional desire to promote uniformity does not, by itself, create a federal cause of action for non-United States national family members where the statutory text fails to do so. But efficiency and uniformity are appropriate and meaningful factors in a choice of law analysis. Without doubt, applying District of Columbia law will provide greater uniformity of result, as individual plaintiffs domiciled in different states and foreign nations will all be subject to the same substantive law. Although "the D.C. Court of Appeals has emphasized that concerns of uniformity and familiarity cannot prevail when another location otherwise has 'a significantly greater interest than does the District' in the cause of action," Dammarell, 2005 WL 756090, at *20 (citing Mims v. Mims, 635 A.2d 320, 324-25 (D.C. 1993)), the recent amendments — and the stated goal of those amendments to promote uniformity — serve to increase the interest in applying District of Columbia substantive law to this case.

The District of Columbia's connection to the terrorist attacks in this case further supports this choice of law conclusion. To be sure, the 1998 embassy bombings took place in Kenya and Tanzania, the nationalities and domiciles of the various victims and plaintiffs are disparate and varied, and the defendants have no connection to the United States. But a unifying factor in this case is

that all of plaintiffs' claims derive from employment with a federal agency headquartered in the District of Columbia, the seat of the federal government. The application of District of Columbia substantive law best promotes the United States' interest in applying domestic law rather than the law of a foreign nation, Congress's intent to promote uniformity of result, and the District of Columbia's real connection to the attacks in this case. See Estate of Doe, 2011 WL 3585963, at *19. Hence, this Court will apply the law of the District of Columbia to plaintiffs' claims that do not arise under the federal cause of action at § 1605A(c).

III. CONCLUSION

For the foregoing reasons, final judgment on liability will be entered in favor of plaintiffs and against defendants. Plaintiff's claims, under federal[3]

---

[3] For plaintiffs' federal claims under § 1605A(c), "[t]he Court is presented with the difficulty of evaluating these claims under the FSIA-created cause of action, which does not spell out the elements of these claims that the Court should apply." Valore, 700 F. Supp. 2d at 75. Hence, the Court "is forced . . . to apply general principles of tort law — an approach that in effect looks no different from one that explicitly applies federal common law"; but "because these actions arise solely from statutory rights, they are not in theory matters of federal common law." Heiser, 659 F. Supp. 2d at 24; see also Bettis v. Islamic Republic of Iran, 315 F.3d 325, 333 (D.C. Cir. 2003) (discussing that the term "federal common law" under the FSIA "seems to us to be a misnomer" because "these actions are based on statutory rights"). District courts thus look to Restatements, legal treatises, and state decisional law "to find and apply what are generally considered to be the well-established standards of state common law, a method of evaluation which mirrors—but is

or state law, will be referred to a special master, who will receive evidence and prepare proposed findings and recommendations for the disposition of each individual claim in a manner consistent with this opinion. A separate order will be issued on this date.

/s/

JOHN D. BATES
United States District Judge

Dated: November 28, 2011.

---

distinct from — the 'federal common law' approach." Heiser, 659 F. Supp. 2d at 24.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed: 11/28/2011]

Civil Action No. 01-2244 (JDB)

JAMES OWENS, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN, et al.,

Defendants.

Civil Action No. 08-1349 (JDB)

WINFRED WAIRIMU WAMAI, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN, et al.,

Defendants.

Civil Action No. 08-1361 (JDB)

MILLY MIKALI AMDUSO, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN, et al.,

Defendants.

Civil Action No. 08-1377 (JDB)

JUDITH ABASI MWILA, et al.,

Plaintiffs,

v.

THE ISLAMIC REPUBLIC OF IRAN, et al.,

Defendants.

Civil Action No. 08-1380 (JDB)

MARY ONSONGO, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN, et al.,

Defendants.

Civil Action No. 10-0356 (JDB)

RIZWAN KHALIQ, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN, et al.,

Defendants.

ORDER

Upon consideration of the October 25-28, 2010 trial on liability, and the entire record in these cases, and for the reasons set out in the accompanying Memorandum Opinion issued on this date, it is hereby

ORDERED that final judgment on liability is entered in favor of plaintiffs and against defendants; it is further

ORDERED that the parties shall appear for a status conference to discuss the appointment of a special master and any other remaining issues on December 19, 2011 at 9:15 a.m. in Courtroom 14; and it is further

ORDERED that the Clerk of Court shall arrange for this Order and the accompanying Memorandum Opinion to be translated into Farsi and cause a copy of the translated Order and Memorandum Opinion to be transmitted to the United States Department of State for service.

SO ORDERED.

/s/

JOHN D. BATES
United States District Judge

Dated: November 28, 2011

APPENDIX C

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

[Filed: 07/25/2014]

Civil Action No. 08-1361 (JDB)

MILLY MIKALI AMDUSO, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN, et al.,

Defendants.

ORDER

Upon consideration of the [73-253] the special masters' reports, and the entire record herein,

ORDERED that [73-253] the special master reports are adopted in part and modified in part as described in the accompanying Memorandum Opinion issued on this date; it is further

ORDERED that judgment is entered in favor of plaintiffs and against defendants in the total amount of $1,755,878,431.22; and it is further

ORDERED that each plaintiff is entitled to damages in the amounts listed in the accompanying chart.

SO ORDERED.

/s/

JOHN D. BATES
United States District Judge

Dated: July 25, 2014

	Name of Victim	Injured/ Deceased	Family Members	Relation	Economic Damages	Pain & Suffering Damages	Solatium Damages	Punitive Damages	Subtotal	Total Award (with applicable prejudgment interest)	Total Award (subtotal with prejudgment interest, plus punitive damages)
1	Boniface Chege		Lucy Chege	Wife			$2,000,000	$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
2	Lawrence Ambrose Gitau		Margaret Gitau	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
3			Susan Gitau	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
4	Joel Gitumbu Kamau		Peris Gitumbu	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
5			Stacy Waithere	Granddaughter			$0	$0.00	$0	$0.00	$0.00
6	Joseph Kamau Kiongo		Monicah Kamau	Daughter of Jane			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
7			Joan Kamau	Daughter of Jane			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
8	Raphael Kivindyo		Margaret Nzomo	Wife			$1,500,000	$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
9	Barbara Muli	Injured	Barbara Muli			$2,000,000		$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
10			Stephen Muli	Husband			$2,000,000	$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
11	Aaron Makau Ndivo		Lydia Ndivo Makau	Wife			$4,000,000	$9,047,400.00	$4,000,000	$9,047,400.00	$18,094,800.00
12	Francis Mbogo Njung'e	Deceased	Francis Mbogo Njung'e		$628,131	$0		$628,131.03	$628,131	$628,131.03	$1,256,262.05
13			Sarah Mbogo	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
14			Misheck Mbogo	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
15			Isaac Kariuki Mbogo	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
16			Reuben Nyaga Mbogo	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
17			Nancy Mbogo	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
18			Ephantus Njagi Mbogo	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
19			Stephen Njuki Mbogo	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
20			Ann Mbogo	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
21			Nephat Kimathi Mbogo	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
22	Daniel Owiti Oloo	Injured	Daniel Owiti Oloo			$1,500,000		$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
23			Magdaline Owiti	Wife			$1,500,000	$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
24	Benson Bwaku	Injured	Benson Bwaku			$5,000,000		$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
25			Beatrice Bwaku	Wife			$4,000,000	$9,047,400.00	$4,000,000	$9,047,400.00	$18,094,800.00
26	Jotham Godia	Injured	Jotham Godia			$2,500,000		$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
27			Grace Godia	Wife			$1,250,000	$2,827,312.50	$1,250,000	$2,827,312.50	$5,654,625.00
28	Vincent Kamau Nyoike		Hannah Ngenda Kamau	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
29			Duncan Nyoike Kamau	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
30			Christine Mikali Kamau	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
31			Ruth Nduta Kamau	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
32			Mercy Wanjiru	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
33			Stanley Nyoike	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
34			Jennifer Njeri	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
35			Anthony Njoroge	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
36			Simon Ngugi	Son			$0	$0.00	$0	$0.00	$0.00
37	Michael Ikonye Kiarie	Injured	Michael Ikonye Kiarie			$5,000,000		$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
38			Jane Ikonye Kiarie	Wife			$4,000,000	$9,047,400.00	$4,000,000	$9,047,400.00	$18,094,800.00
39			Sammy Ndungu Kiarie	Son			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
40	Elizabeth Kiato	Injured	Elizabeth Kiato			$2,000,000		$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
41			Charity Kiato	Daughter			$0	$0.00	$0	$0.00	$0.00
42	David Kiarie Kiburu		Judy Kiarie	Wife			$4,000,000	$9,047,400.00	$4,000,000	$9,047,400.00	$18,094,800.00
43	George Magak Mimba		Nancy Mimba Magak	Wife			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
44	Raphael Peter Munguti	Injured	Raphael Peter Munguti			$1,500,000		$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
45			Mary Munguti	Wife			$1,500,000	$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
46	Nicholas Mutiso		Angela Mwongeli Mutiso	Wife			$3,000,000	$6,785,550.00	$3,000,000	$6,785,550.00	$13,571,100.00
47	Benson Ndegwa	Injured	Benson Ndegwa			$2,500,000		$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
48			Phoeba Ndegwa	Wife			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
49	Charles Mwangi Ndibui		Margaret Mwangi Ndibui	Wife			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
50	Caroline Ngugi Kamau	Injured	Caroline Ngugi Kamau			$5,000,000		$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00

51	Francis Olewe Ochilo		Charles Olewe	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
52	Patrick Okech		Phelister Okech	Wife			$2,000,000	$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
53	Phaedra Vrontamitis	Deceased	Phaedra Vrontamitis		$952,451	$0		$952,450.61	$952,451	$952,450.61	$1,904,901.23
54			Leonidas Vrontamitis	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
55			Alexander Vrontamitis	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
56			Paul Vrontamitis	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
57			Anastasia Gianpoulos	Sister			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
58	Mary Ofisi		John Ofisi	Husband			$4,000,000	$9,047,400.00	$4,000,000	$9,047,400.00	$18,094,800.00
59	Charles Mwaka Mulwa		Katherine Mwaka				$4,000,000	$9,047,400.00	$4,000,000	$9,047,400.00	$18,094,800.00
60	Julius Ogoro		Eucabeth Gwaro	Wife			$4,000,000	$9,047,400.00	$4,000,000	$9,047,400.00	$18,094,800.00
61	Trusha Patel	Injured	Trusha Patel			$1,500,000		$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
62			Pankaj Patel	Husband			$1,500,000	$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
63	Wellington Oluoma		Mary Mudeche	Wife			$4,000,000	$9,047,400.00	$4,000,000	$9,047,400.00	$18,094,800.00
64			Michael Ware	Son			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
65	Sammy Mwangi	Injured	Sammy Mwangi			$2,000,000		$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
66			Lucy Mwangi	Wife			$2,000,000	$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
67	Jacinta Wahome		Joseph Wahome	Husband			$4,000,000	$9,047,400.00	$4,000,000	$9,047,400.00	$18,094,800.00
68	Stella Mbugua		Solomon Mbugua	Husband			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
69	Japeth Godia	Injured	Japeth Godia			$2,500,000		$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
70			Merab Godia	Wife			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
71	Francis Maina Ndibui		Winfred Maina	Wife			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
72	Jomo Matiko Boke	Injured	Jomo Matiko Boke			$5,000,000		$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
73			Selina Boke	Wife			$4,000,000	$9,047,400.00	$4,000,000	$9,047,400.00	$18,094,800.00
74	Humphrey Kiburu	Injured	Humphrey Kiburu			$1,500,000		$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
75			Jennifer Wambui	Wife			$1,500,000	$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
76	Harrison Kimani	Injured	Harrison Kimani			$2,500,000		$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
77			Grace Kimani	Wife			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
78	Elizabeth Muli-Kibue	Injured	Elizabeth Muli-Kibue			$2,500,000		$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
79	Emily Minayo		Hudson Chore	Husband			$2,000,000	$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
80	Joash Okindo		Lydia Nyaboka Otao Okindo	Wife			$4,000,000	$9,047,400.00	$4,000,000	$9,047,400.00	$18,094,800.00
81	Stanley Kinyua Macharia	Injured	Stanley Kinyua Macharia			$2,500,000		$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
82			Nancy Macharia				$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
83	Samuel Odhiambo Oriaro		Betty Oriaro	Wife			$0	$0.00	$0	$0.00	$0.00
84	Tobias Oyanda Otieno		Rachel Oyanda Otieno	Wife			$4,000,000	$9,047,400.00	$4,000,000	$9,047,400.00	$18,094,800.00
85	Hilario Ambrose Fernandes	Injured	Hilario Ambrose Fernandes			$1,500,000		$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
86			Catherine Mwangi	Wife			$1,500,000	$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
87	Doreen Oport	Injured	Doreen Oport			$3,000,000		$6,785,550.00	$3,000,000	$6,785,550.00	$13,571,100.00
88			Philemon Oport	Husband			$3,000,000	$6,785,550.00	$3,000,000	$6,785,550.00	$13,571,100.00
89	Gerald Bochart	Injured	Gerald Bochart			$2,000,000		$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
90			Yvonne Bochart	Wife			$0	$0.00	$0	$0.00	$0.00
91			Leilani Bower	Daughter			$2,000,000	$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
92	Belinda Chaka		Muraba Chaka	Husband			$4,000,000	$9,047,400.00	$4,000,000	$9,047,400.00	$18,094,800.00
93	James Ndeda		Roselyne Ndeda	Wife			$4,000,000	$9,047,400.00	$4,000,000	$9,047,400.00	$18,094,800.00
94	Milly Mikali Amduso		James Mukabi	Husband			$2,000,000	$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
95	Edwin Omori	Deceased	Edwin Omori		$1,313,043	$0		$1,313,043.24	$1,313,043	$1,313,043.24	$2,626,086.48
96			Florence Omori	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
97			Bryan Omori	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
98			Jerry Omori	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
99	Caroline Okech		Janathan Okech	Husband			$1,500,000	$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
100	Francis Ndungu Mbugua	Deceased	Francis Ndungu Mbugua		$275,103	$0		$275,103.23	$275,103	$275,103.23	$550,206.46
101			Mary Muthoni Ndungu	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
102			Samuel Mbugua Ndungu	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
103			Jamleck Gitau Ndungu	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
104			John Muiru Ndungu	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00

105			Edith Njeri	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
106			Annastaciah Lucy Boulden	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
107			Agnes Wanjiku Ndungu	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
108	Frederick Maloba		Faith Maloba	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
109			Derrick Maloba	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
110			Steven Maloba	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
111			Belinda Maloba	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
112	Charles Ochola	Injured	Charles Ochola			$3,000,000		$6,785,550.00	$3,000,000	$6,785,550.00	$13,571,100.00
113			Rael Ochola	Wife			$3,000,000	$6,785,550.00	$3,000,000	$6,785,550.00	$13,571,100.00
TOTALS						$56,500,000.00	$ 330,250,000.00	$877,939,215.61	$389,918,728.11	$877,939,215.61	$1,755,878,431.22

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed: 07/25/2014]

Civil Action No. 08-1349 (JDB)

WINFRED WAIRIMU WAMAI, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN, et al.,

Defendants.

ORDER

Upon consideration of [63-244] the special masters' reports, and the entire record herein, it is hereby

ORDERED that [63-244] the special masters reports are adopted in part and modified in part as described in the accompanying Memorandum Opinion issued on this date; it is further

ORDERED that judgment is entered in favor of plaintiffs and against defendants in the total amount of $3,566,104,489.58; and it is further

ORDERED that each plaintiff is entitled to damages in the amounts listed in the accompanying chart.

SO ORDERED.

/s/

JOHN D. BATES
United States District Judge

Dated: July 25, 2014

	Name of Victim	Injured/ Deceased	Family Members	Relation	Economic Damages	Pain & Suffering Damages	Solatium Damages	Punitive Damages	Total compensatory damages	Subtotal (with applicable prejudgment interest)	Total Award (subtotal with prejudgment interest, plus punitive damages)
1	Wycliffe Ochieng Bonyo	Deceased	Wycliffe Ochieng Bonyo		$1,999,472	$500,000		$3,130,396.80	$2,499,472	$3,130,396.80	$6,260,793.61
2			Velma Bonyo	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
3			Dorine Bonyo	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
4			Elijah Bonyo Ochieng	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
5			Angela Bonyo	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
6			Winnie Bonyo	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
7	Boniface Chege	Injured	Boniface Chege			$2,000,000		$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
8	Caroline Wanjiru Gichuru	Injured	Caroline Wanjiru Gichuru			$5,000,000		$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
9	Lawrence Ambrose Gitau	Deceased	Lawrence Ambrose Gitau		$1,115,304	$0		$1,115,303.54	$1,115,304	$1,115,303.54	$2,230,607.08
10			Lucy Gitau	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
11			Catherine Gitau	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
12			Felister Gitau	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
13			Ernest Gitau	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
14	Joel Gitumbu Kamau	Deceased	Joel Gitumbu Kamau		$433,608	$0		$433,607.72	$433,608	$433,607.72	$867,215.43
15			Catherine Gitumbu Kamau	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
16			David Kamau	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
17			Peter Kamau	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
18			Phillip Kamau	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
19	Henry Bathazar Kessy	Injured	Henry Bathazar Kessy			$5,000,000		$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
20	Frederick Kibodya	Injured	Frederick Kibodya			$2,500,000		$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
21			Flavia Kiyanga	Wife			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
22	Joseph Kamau Kiongo	Deceased	Joseph Kamau Kiongo		$883,594	$0		$883,593.97	$883,594	$883,593.97	$1,767,187.93
23			Lucy Kiongo	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
24			Alice Kiongo	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
25			Jane Kamau	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
26			Newton Kamau	Son of Lucy			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
27			Peter Kamau Kiongo	Son of Lucy			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
28		Deceased	Teresia Wairimu Kamau	Daughter of Lucy			$0	$0.00	$0	$0.00	$0.00
29			Pauline Kamau	Daughter of Lucy			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
30			Hannah Wambui	Daughter of Alice			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
31			Pauline Kamau Kiongo	Daughter of Alice			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
32			Mercy Wairumu Kamau	Daughter of Alice			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
33			Daniel Kiongo Kamau	Daughter of Alice			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
34	Raphael Kivindyo	Injured	Raphael Kivindyo			$1,500,000		$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
35	Milka Wangari Macharia	Injured	Milka Wangari Macharia			$1,500,000		$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
36	Rachael Mungasia Pussy	Deceased	Rachael Mungasia Pussy		$629,776	$0		$629,776.17	$629,776	$629,776.17	$1,259,552.35
37			Samuel Pussy	Husband			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
38			Doreen Pussy	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
39			Elsie Pussy	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
40			Andrew Pussy	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
41	Michael Ngigi Mworia	Injured	Michael Ngigi Mworia			$5,000,000		$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
42	John Nduati	Injured	John Nduati			$2,500,000		$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
43	Aaron Makau Ndivo	Injured	Aaron Makau Ndivo			$5,000,000		$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
44			Joyce Mutheu	Daughter			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
45	Maurice Okatch Ogolla	Deceased	Maurice Okatch Ogolla		$322,501	$0		$322,500.56	$322,501	$322,500.56	$645,001.12
46			Priscila Okatch	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
47			Jackline Achieng	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
48			Rosemary Anyango Okatch	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
49			Samson Ogolla Okatch	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
50			Dennis Okatch	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
51	Pauline Abdallah	Injured	Pauline Abdallah			$5,000,000		$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
52	Belinda Akinyi Adika	Injured	Belinda Akinyi Adika			$2,000,000		$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00

53	Tony Kihato Irungu	Deceased	Tony Kihato Irungu		$808,828	$0		$808,828.48	$808,828	$808,828.48	$1,617,656.96
54			Faith Kihato	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
55			Jacqueline Kihato	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
56			Steve Kihato	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
57			Annah Wangechi	Mother			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
58	Betty Kagai	Injured	Elsie Kagimbi	Daughter		$1,500,000		$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
59	Vincent Kamau Nyoike	Deceased	Vincent Kamau Nyoike		$352,453	$0		$352,453.39	$352,453	$352,453.39	$704,906.77
60			Josinda Katumba Kamau	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
61			Caroline Wanjuri Kamau	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
62			Faith Wanza Kamau	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
63	David Kiarie Kiburu	Injured	David Kiarie Kiburu			$5,000,000		$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
64	Francis Watoro Maina	Deceased	Francis Watoro Maina		$585,108	$0		$585,108.00	$585,108	$585,108.00	$1,170,216.00
65			Grace Kimata	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
66			Victor Watoro	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
67			Rachel Wambui Watoro	Daughter			$0	$0.00	$0	$0.00	$0.00
68	Lydia Muriki Mayaka	Deceased	Lydia Muriki Mayaka		$730,892	$0		$730,892.23	$730,892	$730,892.23	$1,461,784.47
69			Nyangoro Mayaka	Husband			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
70			Doreen Mayaka	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
71			Dick Obworo Mayaka	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
72			Diana Nyangara	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
73			Debra Mayaka	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
74	George Magak Mimba	Injured	George Magak Mimba		$681,093	$2,500,000		$6,335,717.72	$3,181,093	$6,335,717.72	$12,671,435.45
75	Tibruss Minja	Injured	Tibruss Minja			$1,500,000		$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
76	Edward Mwae Muthama	Injured	Edward Mwae Muthama			$1,500,000		$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
77	Nicholas Mutiso	Injured	Nicholas Mutiso			$3,000,000		$6,785,550.00	$3,000,000	$6,785,550.00	$13,571,100.00
78	Geoffrey Moses Namai	Deceased	Geoffrey Moses Namai		$726,094	$0		$726,093.53	$726,094	$726,093.53	$1,452,187.06
79			Sarah Tikolo	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
80			Nigeel Namai	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
81	Charles Mwangi Ndibui	Injured	Charles Mwangi Ndibui			$2,500,000		$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
82	Julius Nzivo	Injured	Julius Nzivo			$1,500,000		$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
83	Francis Olewe Ochilo	Deceased	Francis Olewe Ochilo		$1,640,995	$0		$1,640,994.90	$1,640,995	$1,640,994.90	$3,281,989.79
84			Rosemary Olewe	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
85			Juliet Olewe	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
86			Wendy Olewe	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
87	Patrick Okech	Injured	Patrick Okech			$2,000,000		$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
88	Lucy Grace Onono	Deceased	Lucy Grace Onono		$1,006,717	$0		$1,006,717.22	$1,006,717	$1,006,717.22	$2,013,434.44
89			Mordechai Thomas Onono	Husband			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
90	Adam Titus Wamai	Deceased	Adam Titus Wamai		$489,829	$0		$489,828.93	$489,829	$489,828.93	$979,657.86
91			Winfred Wamai	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
92			Titus Wamai	Son			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
93			Diana Williams	Daughter			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
94			Lloyd Wamai	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
95			Angela Wamai	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
96			John Muriuki	Brother			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
97	Evitta Francis Kwimbere	Injured	Evitta Francis Kwimbere			$5,000,000		$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
98	Mary Ofisi	Injured	Mary Ofisi			$5,000,000		$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
99	Eric Abur Onyango	Deceased	Eric Abur Onyango		$825,100	$500,000		$1,956,024.56	$1,325,100	$1,956,024.56	$3,912,049.13
100			Joyce Onyango	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
101			Tilda Abur	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
102			Barnabas Onyango	Father			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
103			Kelesendhia Apondi Onyango	Mother			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
104			Paul Onyango	Brother			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
105	Kaka Abubakar Iddi	Injured	Kaka Abubakar Iddi			$1,500,000		$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
106	Charles Mwaka Mulwa	Injured	Charles Mwaka Mulwa			$7,500,000		$16,963,875.00	$7,500,000	$16,963,875.00	$33,927,750.00
107	Victor Mpoto	Injured	Victor Mpoto			$3,000,000		$6,785,550.00	$3,000,000	$6,785,550.00	$13,571,100.00

108	Julius Ogoro	Injured	Julius Ogoro			$5,000,000		$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
109	Kimeu Nzioka Nganga	Deceased	Kimeu Nzioka Nganga		$843,396	$1,000,000		$3,105,246.13	$1,843,396	$3,105,246.13	$6,210,492.27
110			Mary Ndambuki	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
111	Wellington Oluoma	Injured	Wellington Oluoma			$5,000,000		$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
112	Jacinta Wahome	Injured	Jacinta Wahome			$5,000,000		$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
113	Stella Mbugua	Injured	Stella Mbugua			$2,500,000		$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
114	Sajjad Gulamali	Injured	Sajjad Gulamaji			$2,000,000		$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
115	Mary Gitonga	Injured	Mary Gitonga			$2,000,000		$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
116	Francis Maina Ndibui	Injured	Francis Maina Ndibui			$2,500,000		$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
117	Kirumba W'mburu Mukuria	Injured	Kirumba W'mburu Mukuria			$2,000,000		$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
118	Christant Hiza	Injured	Christant Hiza			$2,000,000		$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
119	Marini Karima	Injured	Marini Karima			$1,500,000		$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
120	Zephania Mboge	Injured	Zephania Mboge			$3,000,000		$6,785,550.00	$3,000,000	$6,785,550.00	$13,571,100.00
121	Emily Minayo	Injured	Emily Minayo			$2,000,000		$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
122	Joash Okindo	Injured	Joash Okindo			$7,500,000		$16,963,875.00	$7,500,000	$16,963,875.00	$33,927,750.00
123	Rukia Wanjiru Ali	Injured	Rukia Wanjiru Ali			$5,000,000		$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
124	Bernard Mutunga Kaswii	Injured	Bernard Mutunga Kaswii			$1,500,000		$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
125	Hosiana Mbaga	Injured	Hosiana Mbaga			$2,000,000		$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
126	Margaret Waithira Ndungu	Injured	Margaret Waithira Ndungu			$5,000,000		$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
127	Samuel Odhiambo Oriaro	Injured	Samuel Odhiambo Oriaro			$2,000,000		$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
128	Gaudens Thomas Kunambi	Injured	Gaudens Thomas Kunambi			$2,000,000		$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
129	Livingstone Busera Madahana	Injured	Livingstone Busera Madahana		$634,561	$7,500,000		$17,598,436.39	$8,134,561	$17,598,436.39	$35,196,872.77
130	Menelik Kwamia Makonnen	Injured	Menelik Kwamia Makonnen			$1,500,000		$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
131	Tobias Oyanda Otieno	Injured	Tobias Oyanda Otieno		$445,851	$7,500,000		$17,409,726.46	$7,945,851	$17,409,726.46	$34,819,452.92
132	Charles Mwirigi Nkanatha	Injured	Charles Mwirigi Nkanatha			$2,000,000		$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
133	Justina Mdobilu	Injured	Justina Mdobilu			$2,000,000		$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
134	Gideon Maritim	Injured	Gideon Maritim			$7,500,000		$16,963,875.00	$7,500,000	$16,963,875.00	$33,927,750.00
135	Belinda Chaka	Injured	Belinda Chaka			$5,000,000		$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
136	Clifford Tarimo	Injured	Clifford Tarimo			$3,000,000		$6,785,550.00	$3,000,000	$6,785,550.00	$13,571,100.00
137	James Ndeda	Injured	James Ndeda		$413,635	$5,000,000		$11,722,885.10	$5,413,635	$11,722,885.10	$23,445,770.20
138	Milly Mikali Amduso	Injured	Milly Mikali Amduso			$2,000,000		$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
139	Moses Kinyua	Injured	Moses Kinyua			$7,500,000		$16,963,875.00	$7,500,000	$16,963,875.00	$33,927,750.00
140	Valerie Nair	Injured	Valerie Nair			$2,000,000		$4,523,700.00	$2,000,000	$4,523,700.00	$9,047,400.00
141	Bakari Nyumbu	Deceased	Bakari Nyumbu			$1,000,000		$2,261,850.00	$1,000,000	$2,261,850.00	$4,523,700.00
142			Aisha Kambenga	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
143	Geoffrey Kalio	Deceased	Geoffrey Kalio		$808,047	$0		$808,047.00	$808,047	$808,047.00	$1,616,094.00
144			Jane Kathuka	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
145			Bernice Ndeti	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
146			Dawn Mulu	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
147			Tabitha Kalio	Mother			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
148			Aquilas Kalio	Brother			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
149			Catherine Kalio	Sister			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
150			Lilian Kalio	Sister			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
151	Ramadhani Mahundi	Deceased	Ramadhani Mahundi		$99,401	$0		$99,401.45	$99,401	$99,401.45	$198,802.90
152			Hussein Ramadhani	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
153	Charles Mungoma Olambo	Injured	Charles Mungoma Olambo			$1,500,000		$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
154	Caroline Okech	Injured	Caroline Okech			$1,500,000		$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
155	Enos Nzalwa	Injured	Enos Nzalwa			$1,500,000		$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
156	Hindu Omari Idi	Deceased	Hindu Omari Idi		$1,281,629	$0		$1,281,629.50	$1,281,629	$1,281,629.50	$2,563,259.00
157			Ali Hussein Ali	Husband			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
158			Omar Idi	Father			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
159			Hamida Idi	Mother			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
160			Mahamud Omari Idi	Brother			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
161			Rashid Omar Idi	Brother			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
162			Fatuma Omar	Sister			$0	$0.00	$0	$0.00	$0.00

163	Dominic Musyoka Kithuva	Deceased	Dominic Musyoka Kithuva		$246,060	$0		$246,059.76	$246,060	$246,059.76	$492,119.51
164			Kamali Musyoka Kithuva	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
165			Beatrice Martha Kithuva	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
166			Titus Kyalo Musyoka	Son		$1,500,000	$5,000,000	$14,702,025.00	$6,500,000	$14,702,025.00	$29,404,050.00
167			Benson Malusi Musyoka	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
168			Caroline Kasungo Mgali	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
169	Monica Wangari Munyori	Injured	Monica Wangari Munyori			$1,500,000		$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
170	Mohamed Abdallah Mnyolya	Deceased	Mohamed Abdallah Mnyolya		$439,157	$0		$439,157.20	$439,157	$439,157.20	$878,314.40
171			Nuri Hamisi Sultani	Mother			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
172	Nafisa Malik	Injured	Nafisa Malik			$2,500,000		$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
173	Eliya Elisha Paul	Deceased	Eliya Elisha Paul			$0		$0.00	$0	$0.00	$0.00
174			Grace Makasi Paul	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
175	Blasio Kubai	Injured	Blasio Kubai			$1,500,000		$3,392,775.00	$1,500,000	$3,392,775.00	$6,785,550.00
176	Frederick Maloba	Deceased	Frederick Maloba		$1,447,295	$0		$1,447,295.48	$1,447,295	$1,447,295.48	$2,894,590.95
177			Elizabeth Maloba	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
178			Margaret Maloba	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
179			Lewis Maloba	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
180			Marlon Maloba	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
181			Sharon Maloba	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
182			Kenneth Maloba	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
183	Josiah Owuor	Deceased	Josiah Owuor		$731,436	$0		$731,436.14	$731,436	$731,436.14	$1,462,872.28
184			Edwina Owuor	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
185			Vincent Owuor	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
186			Warren Owuor	Son			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
187	Peter Macharia	Deceased	Peter Macharia		$1,580,186	$0		$1,580,186.48	$1,580,186	$1,580,186.48	$3,160,372.95
188			Grace Gicho	Wife			$8,000,000	$18,094,800.00	$8,000,000	$18,094,800.00	$36,189,600.00
189			Diana Macharia	Daughter			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
190			Ngugi Macharia	Father			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
191			Margaret Njoki Ngugi	Mother			$5,000,000	$11,309,250.00	$5,000,000	$11,309,250.00	$22,618,500.00
192			John Ngugi	Brother			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
193			Ann Ruguru	Sister			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
194			David Ngugi	Brother			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
195			Paul Ngugi	Brother			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
196			Stanley Ngugi	Brother			$2,500,000	$5,654,625.00	$2,500,000	$5,654,625.00	$11,309,250.00
TOTALS						$206,500,000.00	$ 572,000,000.00	$1,783,052,244.79	$800,702,019.79	$1,783,052,244.79	$3,566,104,489.58

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed: 07/25/2014]

Civil Action No. 08-1380 (JDB)

MARY ONSONGO, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN, et al.,

Defendants.

ORDER

Upon consideration of [50-230] the special masters' reports, and the entire record herein, it is hereby

ORDERED that [50-230] the special master reports are adopted in part and modified in part as described in the accompanying Memorandum Opinion issued on this date; it is further

ORDERED that judgment is entered in favor of plaintiffs and against defendants in the total amount of $199,106,578.19; and it is further

ORDERED that each plaintiff is entitled to damages in the amounts listed in the accompanying chart.

SO ORDERED.

/s/

JOHN D. BATES
United States District Judge

Dated: July 25, 2014

	Name of Victim	Injured/ Deceased	Family Members	Relation	Economic Damages	Pain & Suffering Damages	Solatium Damages	Punitive Damages	Subtotal	Total Award (with applicable prejudgment interest)	Total Award (subtotal with prejudgment interest, plus punitive damages)
1	Eric Abur Onyango		Juliana Onyango	Sister			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
2			Marita Onyango	Sister			$2,500,000	$6,817,439	$2,500,000	$6,817,439.10	$13,634,878.19
3	Evans Onsongo	Deceased	Evans Onsongo		$1,162,814	$0		$0	$1,162,814	$0.00	$0.00
4			Mary Onsongo	Wife			$8,000,000	$18,094,800	$8,000,000	$18,094,800.00	$36,189,600.00
5			Enoch Onsongo	Son			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
6			Peris Onsongo	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
7			Venice Onsongo	Daughter			$0	$0	$0	$0.00	$0.00
8			Salome Onsongo	Mother			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
9			Bernard Onsongo	Brother			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
10			George Onsongo	Brother			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
11			Edwin Onsongo	Brother			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
12			Gladys Onsongo	Sister			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
13			Pinina Onsongo	Sister			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
14	Irene Kung'u	Injured	Irene Kung'u			$3,000,000		$6,785,550	$3,000,000	$6,785,550.00	$13,571,100.00
TOTALS						$3,000,000.00	$ 40,500,000.00	$99,553,289.10	$44,662,814.10	$99,553,289.10	$199,106,578.19

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed: 07/25/2014]

Civil Action No. 12-1224 (JDB)

MONICAH OKOBA OPATI, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN, et al.,

Defendants.

ORDER

Upon consideration of the special masters' reports in the related case before this Court, Wamai v. Republic of Sudan, No. 08-1349 [ECF Nos. 63-244], and the entire record herein, it is hereby

ORDERED that [63-244] the special master reports are adopted in part and modified in part as described in the accompanying Memorandum Opinion issued on this date; it is further

ORDERED that judgment is entered in favor of plaintiffs and against defendants in the total amount of $3,163,433,873.00; and it is further

ORDERED that each plaintiff is entitled to damages in the amounts listed in the accompanying chart.

SO ORDERED.

/s/

JOHN D. BATES
United States District Judge

Dated: July 25, 2014

	Name of Victim	Injured/ Deceased	Family Members	Relation	Economic Damages	Pain & Suffering Damages	Solatium Damages	Punitive Damages	Total compensatory damages	Subtotal (with applicable prejudgment interest)	Total Award (subtotal with prejudgment interest, plus punitive damages)
1	Joseph Ingosi	Injured	Joseph Ingosi			$1,500,000		$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
2	Frederick Kibodya		Diana Kibodya	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
3	Charles Kabui	Injured	Charles Kabui			$1,500,000		$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
4	Milka Wangari Macharia		Barbara Olao	Daughter			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
5			Allan Olao	Son			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
6	Rachael Mungasia Pussy		Audrey Pussy	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
7	John Nduati		Margaret Murigi	Wife			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
8			Belonce Murigi	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
9			Faith Murigi	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
10			Mischeck Murigi	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
11	Aaron Makau Ndivo		Faith Mutindi	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
12	Charles Opondo	Injured	Charles Opondo			$1,500,000		$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
13	Pauline Abdallah		Rispah Abdallah	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
14			Majdoline Abdallah	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
15			Joseph Abdallah	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
16	Benson Bwaku		Christine Nabwire Bwaku	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
17			Ephraim Onyango Bwaku	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
18	Betty Kagai	Injured	Betty Kagai			$1,500,000		$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
19			Norman Kagai	Husband			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
20			Wendy Kagai	Daughter			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
21			Charles Kagai	Son			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
22			Tabitha Kagai	Daughter			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
23	Vincent Kamau Nyoike		Wallace Njorege Nyoike	Brother			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
24	Lucy Nyawida Karigi	Deceased	Lucy Nyawida Karigi		$625,752	$0		$625,752	$625,752	$625,752.00	$1,251,504.00
25			Steven Karigi	Son			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
26			Martin Karigi	Son			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
27			Caroline Karigi	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
28	Michael Ikonye Kiarie		Daniel Kiarie	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
29			Ann Wairimu Kiarie	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
30			Maryann Njoki Kiarie	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
31	David Kiarie Kiburu		Anthony Kiarie	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
32			Barbara Kiarie	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
33			Edmund Kiarie Kiburu	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
34	Bernard Macharia	Injured	Bernard Macharia			$1,500,000		$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
35	Joshua Mayunzu	Injured	Joshua Mayunzu			$1,500,000		$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
36	Tibruss Minja		Levina Minja	Wife			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
37			Violet Minja	Daughter			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
38			Emmanuel Minja	Son			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
39			Nickson Minja	Son			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
40	Raphael Peter Munguti		Petronila Munguti	Daughter			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
41			Alex Munguti	Son			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
42			Felix Munguti	Son			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
43	Charles Mwangi Ndibui		John Ndibui	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
44			George Mwangi	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
45	Simon Ngure	Injured	Simon Ngure			$2,000,000		$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
46			Lucy Kambo	Wife			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
47			John Ngure	Son			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
48			Joseph Kambo	Son			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
49			Catherine Njeri Mwangi	Daughter			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
50			Jackson Ndungu	Son			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00

51			Jackline Wambui	Daughter			$0	$0	$0	$0.00	$0.00
52	Julius Nyamweno	Injured	Julius Nyamweno			$1,500,000		$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
53	Lucy Grace Onono		Elizabeth Okelo	Sister			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
54			Hellen Okelo	Sister			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
55			Kennedy Okelo	Sister			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
56			Ronald Okelo	Brother			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
57			Leslie Onono	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
58			Laura Onono	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
59			Stephen Onono	Son			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
60			Andrew Onono	Son			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
61			Rispah Auma	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
62	Jael Oyoo	Injured	Jael Oyoo			$7,500,000		$16,963,875	$7,500,000	$16,963,875.00	$33,927,750.00
63			Edwin Oyoo	Husband			$4,000,000	$9,047,400	$4,000,000	$9,047,400.00	$18,094,800.00
64	Katimba Mohamed Selemani	Injured	Katimba Mohamed Selemani			$2,000,000		$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
65			Asha Abdullah	Wife			$0	$0	$0	$0.00	$0.00
66			Rashid Katimba	Son			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
67			Said Katimba	Son			$0	$0	$0	$0.00	$0.00
68	Evitta Francis Kwimbere		Francis Kwimbere	Husband			$4,000,000	$9,047,400	$4,000,000	$9,047,400.00	$18,094,800.00
69			Irene Kwimbere	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
70			Frederick Kwimbere	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
71			Sani Kwimbere	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
72	Mary Ofisi		Francis Ofisi	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
73			Andrew Ofisi	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
74			Gideon Ofisi	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
75	Eric Abur Onyango		Conceptor Orende	Sister			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
76	John Kiswili	Injured	John Kiswili			$5,000,000		$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
77			Francisco Kyalo	Wife			$4,000,000	$9,047,400	$4,000,000	$9,047,400.00	$18,094,800.00
78	Polychep Odihambo	Injured	Polychep Odihambo			$1,500,000		$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
79	Rose Nyette	Injured	Rose Nyette			$1,500,000		$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
80			Patrick Nyette	Husband			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
81	Charles Mwaka Mulwa		Eric Mwaka				$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
82			Peter Mwaka				$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
83			Felix Mwaka				$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
84			Civilier Mwaka				$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
85	Victor Mpoto		Anipha Mpoto	Wife			$3,000,000	$6,785,550	$3,000,000	$6,785,550.00	$13,571,100.00
86			Inosensia Mpoto	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
87			Denis Mpoto	Son			$0	$0	$0	$0.00	$0.00
88	Julius Ogoro		Lydia Gwaro	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
89			Debora Gwaro	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
90			Emmanuel Gwaro	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
91			James Gwaro	Son			$0	$0	$0	$0.00	$0.00
92	Kimeu Nzioka Nganga		Michael Kimeu	Son			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
93			Winnie Kimeu	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
94			Lukas Kimeu	Son			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
95	Evans Onsongo		Grace (Eunice) Onsongo	Sister			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
96	Joseph Gathunga	Injured	Joseph Gathunga			$1,500,000		$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
97	Michael Mwangi	Injured	Michael Mwangi			$1,500,000		$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
98	Mary Muiriri	Injured	Mary Muiriri			$1,500,000		$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
99			Jonathan Nduti	Husband			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
100	Sammy Mwangi		Anne Nganga Mwangi	Daughter			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
101			Ester Nganga Mwangi	Daughter			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
102	Henry Aliviza Shitiavai	Injured	Henry Aliviza Shitiavai			$2,000,000		$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
103			Judy Aliviza	Wife			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
104			Jacqueline Aliviza	Daughter			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00

105			Collins Aliviza	Son			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
106			Humphrey Aliviza	Son			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
107	Stella Mbugua		Jeffrey Mbugua	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
108			Alex Mbugua	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
109	Irene Kung'u		Wambui Kung'u	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
110			Lorna Kung'u	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
111			Edward Kung'u	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
112	Mary Gitonga		Gitonga Mwanike	Husband			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
113	Techonia Owiti	Injured	Techonia Owiti			$1,500,000		$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
114	Gad Gideon Achola	Injured				$500,000		$1,130,925	$500,000	$1,130,925.00	$2,261,850.00
115	Christant Hiza		Valentina Hiza	Wife			$0	$0	$0	$0.00	$0.00
116			Christopher Hiza	Son			$0	$0	$0	$0.00	$0.00
117			Christianson Hiza	Son			$0	$0	$0	$0.00	$0.00
118			Christemary Hiza	Daughter			$0	$0	$0	$0.00	$0.00
119	Zephania Mbogo		Salima Ismail Rajabu	Wife			$3,000,000	$6,785,550	$3,000,000	$6,785,550.00	$13,571,100.00
120			John Zephania Mbogo	Son			$0	$0	$0	$0.00	$0.00
121	Emily Minayo		Harriet Chore	Daughter			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
122			Leslie Sambuli	Daughter			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
123	Peter Kunigo	Injured	Peter Kunigo			$2,000,000		$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
124	Rukia Wanjiru Ali		Badawy Itati Ali	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
125	Jairus David Aura	Injured	Jairus David Aura			$2,000,000		$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
126	Hosiana Mbaga		Mary Esther Kiusa	Daughter			$0	$0	$0	$0.00	$0.00
127	Peter Ngigi Mugo	Injured	Peter Ngigi Mugo			$1,500,000		$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
128	Margaret Waithira Ndungu		Leonard Rajab Waithira	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
129			Grace Wanjiru Waithira	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
130			Joseph Ndungu Waithira	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
131	Samuel Odhiambo Orlaro		Jeff Rabar	Son			$0	$0	$0	$0.00	$0.00
132	Beatrice Atinga	Injured	Beatrice Atinga			$2,000,000		$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
133			Sammy Okere	Husband			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
134			Victor Adeka	Son			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
135			Purity Mahonja	Daughter			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
136	Gaudens Thomas Kunambi		Joyce Thadei Lokoa	Wife			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
137			Selina Gaudens	Daughter			$0	$0	$0	$0.00	$0.00
138			Donnie Gaudens	Son			$0	$0	$0	$0.00	$0.00
139	Livingstone Busera Madahana		Judith Nandi Busera	Wife			$4,000,000	$9,047,400	$4,000,000	$9,047,400.00	$18,094,800.00
140			Lewis Madahana Busera	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
141			Christine Kavai Busera	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
142			Emmanuel Musambayi Busera	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
143	August Maffry	Injured	August Maffry			$2,000,000		$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
144			Alison Maffry	Daughter			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
145			Caroline Maffry	Daughter			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
146			Alice Mary Talbot	Sister			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
147	Geoffrey Tupper	Injured	Geoffrey Tupper			$2,000,000		$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
148			Frida Yohan Mbitu	Wife			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
149			Shadrack Tupper	Son			$0	$0	$0	$0.00	$0.00
150			Agnes Senga Geoffrey Tupper	Daughter			$0	$0	$0	$0.00	$0.00
151	Joan Adundo	Injured	Joan Adundo			$2,000,000		$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
152			Bernard Adundo	Husband			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
153			Pauline Adundo	Daughter			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
154			Samuel Adundo	Son			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
155			Theresa Adundo	Daughter			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
156			Isidore Adundo	Son			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
157			Anne Adundo	Daughter			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
158			Thomas Adundo	Son			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00

159	Wycliffe Okello Khabuchi	Injured				$2,000,000		$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
160			Jane Khabuchi	Wife			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
161			Michael Tsuma	Son			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
162			Irene Khabuchi	Daughter			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
163			Beryl Shiumbe	Daughter			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
164	Zackaria Musalia Atinga	Injured	Zackaria Musalia Atinga			$1,500,000		$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
165			Florence Musalia	Wife			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
166			Elly Musalia	Son			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
167			Vallen Andeyo	Daughter			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
168			Juruha Musalia	Daughter			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
169	Tobias Oyanda Otieno		Lynette Oyanda	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
170			Linda Oyanda	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
171			Vera Jean Oyanda	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
172	Charles Mwirigi Nkanatha		Fridah Makena	Wife			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
173			Ruth Gatwiri Mwirigi	Daughter			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
174			Joan Kendi Nkanatha	Daughter			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
175	Doreen Oport		Joanne Oport	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
176			Sally Oport	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
177			Yvonne Oport	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
178	Justine Mdobilu		Onsel Mdobilu	Husband			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
179			Peter Mdobilu	Son			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
180			John Mdobilu	Son			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
181			Katherine Mdobilu	Daughter			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
182			Immanuel Mdobilu	Son			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
183			Onsel David Mdobilu	Son			$0	$0	$0	$0.00	$0.00
184			Joshua Daniel Mdobilu	Son			$0	$0	$0	$0.00	$0.00
185	Gideon Maritim		Hellen Maritim	Wife			$4,000,000	$9,047,400	$4,000,000	$9,047,400.00	$18,094,800.00
186			Alice Maritim	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
187			Ruth Maritim	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
188			Annah Maritim	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
189			Sharone Maritim	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
190			Edgar Maritim	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
191			Sheila Maritim	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
192			Rammy Rotich	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
193	Priscah Owino	Injured	Prisca Owino			$2,500,000		$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
194			Greg Owino	Husband			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
195			Clara Owino	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
196			Leah Owino	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
197			Gerald Owino	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
198			Kenneth Owino	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
199	Sally Cecilia Mamboleo	Deceased	Sally Cecilia Mamboleo		$1,204,380	$0		$1,204,380	$1,204,380	$1,204,380.00	$2,408,760.00
200			Salome Ratemo	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
201			Luis Ratemo	Son			$0	$0	$0	$0.00	$0.00
202			Frederick Ratemo	Son			$0	$0	$0	$0.00	$0.00
203			Kevin Ratemo	Son			$0	$0	$0	$0.00	$0.00
204	Dixon Indiya	Injured	Dixon Indiya			$1,500,000		$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
205	Belinda Chaka		James Chaka	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
206			Stanley Chaka	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
207			Stacy Chaka	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
208	Clifford Tarimo		Elizabeth Tarimo	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
209			Margaret Tarimo	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
210	Cornelius Kebungo	Injured	Cornelius Kebungo			$1,500,000		$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
211			Phoebe Kebungo	Daughter			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
212	Erastus Ndeda	Injured	Erastus Ndeda			$1,500,000		$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00

213			Ann Salamba	Wife			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
214			Beverlyne Ndeda	Daughter			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
215			Cecilia Ndeda	Daughter			$0	$0	$0	$0.00	$0.00
216	Hesbon Lihanda	Injured	Hesbon Lihanda			$1,500,000		$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
217			Gladis Lihanda	Wife			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
218			Dickson Lihanda	Son			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
219			Ruth Lihanda	Daughter			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
220	James Ndeda		Valentine Ndeda	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
221			Maureen Ndeda	Daughter			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
222	Milly Mikali Amduso		Beatrice Amduso	Daughter			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
223			Ireen Semo	Daughter			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
224			Joab Amduso	Son			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
225			Justin Amduso	Son			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
226	Moses Kinyua		Mercy Ndiritu	Wife			$4,000,000	$9,047,400	$4,000,000	$9,047,400.00	$18,094,800.00
227			Christopher Ndiritu	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
228			Dennis Kinyua	Son			$0	$0	$0	$0.00	$0.00
229			Edwin Magothe	Son			$0	$0	$0	$0.00	$0.00
230	Valerie Nair		Sedrick Nair	Husband			$2,000,000	$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
231			Tanya Nair	Daughter			$0	$0	$0	$0.00	$0.00
232	Bakari Nyumbu		Enna Omolo	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
233	Ramadhani Mshundi		Asha Kiluwa	Wife			$8,000,000	$18,094,800	$8,000,000	$18,094,800.00	$36,189,600.00
234			Ally Mshundi	Son			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
235			Amiri Mshundi	Son			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
236			Asha Mshundi	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
237			Emma Mshundi	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
238			Juma Mshundi	Son			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
239			Mwajabu Mshundi	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
240			Mwajumba Mshundi	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
241			Said Mshundi	Son			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
242			Shaban Mshundi	Son			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
243			Yusuph Mshundi	Son			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
244	Caroline Opati	Deceased	Caroline Opati			$0		$0	$0	$0.00	$0.00
245			Monicah Opati	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
246			Rael Opati	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
247			Selifah Opati	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
248	Dominic Musyoka Kithuva		Keelly Musyoka	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
249			Manzi Musyoka	Son			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
250			Syuindo Musyoka	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
251			Gladys Munani Musyoka	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
252			Jackson Kithuva Musyoka	Son			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
253			Jane Mutua	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
254			Mary Nzisiva Samuel	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
255	Mohamed Abdallah Mnyolya		Omar Zubari Omar	Brother			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
256	Nafisa Malik		Rehana Malik	Sister			$1,250,000	$2,827,313	$1,250,000	$2,827,312.50	$5,654,625.00
257	Eliya Elisha Paul		Mary Meresiana Paul	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
258	Sally Omondi							$0	$0	$0.00	$0.00
259	Miriam Muthoni							$0	$0	$0.00	$0.00
260	Jomo Matiko Boke		Jacob Gati	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
261			Zakayo Matiko	Son			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
262	Loise Kuya	Deceased	Loise Kuya		$896,225	$0		$896,225	$896,225	$896,225.00	$1,792,450.00
263			Peter Kuya	Husband			$8,000,000	$18,094,800	$8,000,000	$18,094,800.00	$36,189,600.00
264			Peninah Mucii	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
265			Daniel Kuya	Son			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
266	Blasio Kubai		Agnes Kubai	Wife			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00

267			Celestine Kubai	Daughter			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
268			Brian Kubai	Son			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
269			Collin Kubai	Son			$1,500,000	$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
270			Saline Kubai	Daughter			$0	$0	$0	$0.00	$0.00
271	William Maina	Injured	William Maina			$7,500,000		$16,963,875	$7,500,000	$16,963,875.00	$33,927,750.00
272	Leonard Shinenga	Injured				$1,500,000		$3,392,775	$1,500,000	$3,392,775.00	$6,785,550.00
273	Elizabeth Nzaku	Injured	Elizabeth Nzaku			$2,000,000		$4,523,700	$2,000,000	$4,523,700.00	$9,047,400.00
274	Peter Macharia		Peter Ngugi	Brother			$2,500,000	$5,654,625	$2,500,000	$5,654,625.00	$11,309,250.00
275	Hesbon Bulimu	Deceased	Hesbon Bulimu		$784,742	$5,000,000		$12,093,992	$5,784,742	$12,093,992.00	$24,187,984.00
276			Mary Bulimu	Wife			$8,000,000	$18,094,800	$8,000,000	$18,094,800.00	$36,189,600.00
277			Jackson Bulimu	Son			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
278			Godfrey Bulimu	Son			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
279			Millicent Bulimu	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
280			Lydia Bulimu	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
281			Rodgers Bulimu	Son			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
282			Frida Bulimu	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
283			Emmily Bulimu	Daughter			$5,000,000	$11,309,250	$5,000,000	$11,309,250.00	$22,618,500.00
284			Mercy Bulimu	Daughter			$0	$0	$0	$0.00	$0.00
TOTALS					3511099	$80,000,000	$617,750,000	$1,581,716,937	$701,261,099.00	$1,581,716,936.50	$3,163,433,873.00

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed: 10/24/2014]

Civil Action No. 01-2244 (JDB)

JAMES OWENS, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN, et al.,

Defendants.

AMENDED MEMORANDUM OPINION

Over sixteen years ago, simultaneous suicide bombings in Nairobi, Kenya, and Dar es Salaam, Tanzania, devastated two United States embassies, killed hundreds of people, and injured over a thousand more. This Court has entered final judgment on liability under the Foreign Sovereign Immunities Act ("FSIA") and District of Columbia law in this and other civil actions—brought by victims of the bombings and their families—against the Republic of Sudan, the Ministry of the Interior of the Republic of Sudan, the Islamic Republic of Iran, and the Iranian Ministry of Information and Security

for their roles in these unconscionable acts. And with the help of special masters, the Court has assessed and awarded damages to most of the individual plaintiffs in these cases. See, e.g., Mar. 28, 2014 Mem. Op. [ECF No. 300] at 3. But a few plaintiffs remain. Currently before the Court are a special master's award recommendations for these remaining plaintiffs.

Plaintiffs—the so-called "Aliganga plaintiffs," who take their name from Jesse Nathanael Aliganga, a United States Marine Corps sergeant who died in the 1998 attack—are twelve United States citizens injured or killed in the Nairobi bombing and their immediate family members. See Am. Compl. in Intervention [ECF No. 262] ("Am. Compl.") at 9; Apr. 11, 2014 Mem. Op. at 1. Although these plaintiffs did not participate in the opening stages of the original Owens lawsuit, this Court allowed them to intervene in this case. July 23, 2012 Order [ECF No. 233] at 1. By that time, other plaintiffs had already served process on each defendant, defendants had failed to respond, and the Court had entered a default against defendants. Moreover, this Court had already held that it has jurisdiction over defendants and that the United States national plaintiffs have a federal cause of action under 28 U.S.C. § 1605A(c), while the foreign-national family members of the bombing victims may pursue their claims under the laws of the District of Columbia.[1] See Owens v. Rep. of Sudan, 826 F. Supp. 2d 128, 148–51, 153–57 (D.D.C.

[1] Amongst the Aliganga plaintiffs, only one—Egambi Fred Kibuhiru Dalizu—is not a United States national. See Am. Compl. at 44; see also infra at 5.

2011). Finally (and perhaps most importantly), this Court had already found that defendants were responsible for supporting, funding, or otherwise carrying out the Nairobi bombing, and it therefore entered final judgment on liability against them pursuant to the FSIA. See id. at 135–47, 157.

The Court then referred the Aliganga plaintiffs' claims to a special master, Paul G. Griffin, to prepare proposed findings of fact and damages recommendations for each plaintiff. Sept. 18, 2012 Order [ECF No. 253] at 1. The special master has now filed his reports, which rely on sworn testimony, expert reports, medical records, and other evidence. See Reports of Special Master [ECF Nos. 332–39, 341–42]; see also Filing of Special Master [ECF No. 344] ("Wolf Expert Report"). The reports describe the facts relevant to each plaintiff and carefully analyze each plaintiff's claim for damages under the framework established in other mass-tort-terrorism cases from this District. The Court thanks Special Master Griffin for his work.

The Court hereby adopts all facts found by the special master relating to plaintiffs in this case. Where the special master has received evidence sufficient to find that a plaintiff is a United States national and is thus entitled to maintain a federal cause of action, the Court adopts that finding. In addition, the Court adopts the special master's finding that each plaintiff has established the familial relationship necessary to support standing under the FSIA. See 28 U.S.C. § 1605A(a)(2)(A)(ii); see also Owens, 826 F. Supp. 2d at 149. The Court also adopts all damages recommendations in the

reports—with the exception of the few adjustments described below. See Valore v. Islamic Rep. of Iran, 700 F. Supp. 2d 52, 82–83 (D.D.C. 2010) ("Where recommendations deviate from the Court's damages framework, those amounts shall be altered so as to conform with . . . the framework." (internal quotation marks omitted)). As a result, the Court will award the Aliganga plaintiffs a total judgment of over $622 million.

This opinion and judgment brings to a close this Court's role in assessing the responsibility for, and the damages recoverable as a result of, the 1998 embassy bombings. But the story is hardly over for the victims of these attacks, who not only must continue the effort to actually recover their awarded damages, but, more importantly, must also continue to live with the devastating consequences of these callous acts. That, after all, is the design of such terrorist activity—to inflict present and future fear and pain on individuals and governments. The Court commends the dedicated, creative, and courageous resolve of all plaintiffs—and their conscientious attorneys—in the cases brought against the terrorists responsible for the embassy bombings and their supporters. They have helped to ensure that terrorism, and its support by defendants, will not ultimately succeed in achieving its long-term goals.

CONCLUSIONS OF LAW

Defendants' liability in this case under both the FSIA and District of Columbia law was decided long

ago.[2] See Owens, 826 F. Supp. 2d at 157. But two questions remain. First, what kinds of damages may plaintiffs recover from the (now liable) defendants? And second, what damages awards are appropriate for each plaintiff?

I. PLAINTIFFS MAY RECOVER DAMAGES UNDER EITHER 28 U.S.C. § 1605A OR DISTRICT OF COLUMBIA LAW

Both the FSIA and District of Columbia law provide a basis for damages awards here. Start with the FSIA. That statute allows United States national

---

[2] It bears repeating from previous opinions in this case that "for plaintiffs' federal claims under § 1605A(c), the Court [was] presented with the difficulty of evaluating the[] claims under the FSIA . . . which does not spell out the [applicable] elements of these claims . . . . Hence, the Court [was] forced to apply general principles of tort law." Owens, 826 F. Supp. 2d at 157 n.3 (internal quotation marks, citations, and alterations omitted); see also Mar. 28, 2014 Mem. Op. at 4–5 (concluding that plaintiffs are entitled to damages under the FSIA). Plaintiffs, here, proffered various theories of recovery under the FSIA that typically sound in tort, including wrongful death and intentional infliction of emotional distress. See, e.g., Am. Compl. at 29–31. In this Court's judgment, plaintiffs met their burden regarding these claims. As other terrorism cases explain, "there is no but-for causation requirement under the FSIA; proximate cause is sufficient." Valore, 700 F. Supp. 2d at 75. And there is no doubt—based on this Court's earlier factual findings—that defendants proximately caused the wrongful, "premature death" of several plaintiffs. Id. at 78 (internal quotation marks omitted); see also Owens, 826 F. Supp. 2d at 135–47. The family members of the injured or killed plaintiffs also satisfied the traditional intentional-infliction-of-emotional-distress test, because acts of terrorism "by their very definition" amount to extreme and outrageous conduct. Valore, 700 F. Supp. 2d at 77 (internal quotation marks omitted).

plaintiffs to recover various types of damages, including "economic damages, solatium, pain and suffering, and punitive damages." 28 U.S.C. § 1605A(c). But "[t]o obtain damages in an FSIA action, the plaintiff must prove that the consequences of the defendants' conduct were reasonably certain (i.e., more likely than not) to occur, and must prove the amount of the damages by a reasonable estimate consistent with this Circuit's application of the American rule on damages." Valore, 700 F. Supp. 2d at 83 (internal quotation marks and alterations omitted).

The Aliganga plaintiffs satisfy these requirements. As discussed in this Court's previous opinions, plaintiffs have proven that the consequences of defendants' conduct were reasonably certain to—and indeed intended to—cause plaintiffs' injuries. See Owens, 826 F. Supp. 2d at 135–47. According to the FSIA's remedial scheme, then: "[T]hose who survived the attack may recover damages for their pain and suffering, as well as any other economic losses caused by their injuries; estates of those who did not survive can recover economic losses stemming from wrongful death of the decedent; [and] family members [so long as they are United States nationals] can recover solatium for their emotional injury." Oveissi v. Islamic Rep. of Iran, 879 F. Supp. 2d 44, 55 (D.D.C. 2012); see also Amduso v. Rep. of Sudan, --- F. Supp. 2d ---, 2014 WL 3687126, at *2 (D.D.C. July 25, 2014) (limiting solatium-damages awards under the FSIA to United States national family members). The Court will therefore

award plaintiffs "reasonable" economic, pain-and-suffering, and solatium damages, as appropriate.

This conclusion covers all but one of the Aliganga plaintiffs. And District of Columbia law suffices to cover the damages claim of the sole remaining plaintiff: Egambi Fred Kibuhiru Dalizu, who is a national of the Republic of Kenya, and who was the husband of Jean Rose Dalizu, a United States citizen and embassy employee killed in the Nairobi attack. Am. Compl. at 44. Dalizu hopes to recover solatium damages under District of Columbia law, because, he alleges, defendants' actions amounted to intentional infliction of emotional distress. As this Court has previously held, District of Columbia law applies to Dalizu's claim. Owens, 826 F. Supp. 2d at 153–57. A prima facie claim for intentional infliction of emotional distress under that jurisdiction's law requires Dalizu to show: (1) extreme and outrageous conduct on the part of defendants which, (2) either intentionally or recklessly, (3) causes him severe emotional distress. Larijani v. Georgetown Univ., 791 A.2d 41, 44 (D.C. 2002).

Dalizu meets every element of this tort. Here, just as in the FSIA context, acts of terrorism "by their very definition" amount to extreme and outrageous conduct, Valore, 700 F. Supp. 2d at 77 (internal quotation marks omitted), and the facts in this case prove that defendants acted intentionally and recklessly, causing Dalizu severe and lasting emotional trauma, see Report of Special Master [ECF No. 339] ("Dalizu Report") at 3–6, 25; see also Owens, 826 F. Supp. 2d at 135–46; Murphy v. Islamic Rep. of Iran, 740 F. Supp. 2d 51, 74–75 (D.D.C. 2010)

(describing an immediate family member's intentional-infliction-of-emotional-distress claim in the state-sponsored-terrorism context). Because Dalizu presented evidence sufficient to prove his intentional-infliction-of-emotional-distress claim under District of Columbia law, and because that law allows spouses to recover solatium damages, see D.C. Code § 16-2701, the Court concludes that he is entitled to recover such damages here.

II. DAMAGES

Having established that plaintiffs are entitled to damages, the Court will now assess the type and amount of damages to award each plaintiff. This issue requires the Court to consider the recommendations of the special master and to weigh the severity and extent of plaintiffs' injuries against those alleged by other plaintiffs in other terrorism cases. See, e.g., Mwila v. Islamic Rep. of Iran, --- F. Supp. 2d ---, 2014 WL 1284978, at *3–7 (D.D.C. Mar. 28, 2014). The Court will accept most (but will reject or adjust some) of the special master's recommended awards. A complete list of the damages awarded each plaintiff can be found in the table attached to the Order separately issued on this date.

a. Compensatory Damages

1. Economic damages

Under the FSIA, injured victims and the estates of deceased victims may recover economic damages, which typically include lost wages, benefits and retirement pay, and other out-of-pocket expenses. See 28 U.S.C. § 1605A(c). The special master

recommended that the Court award economic damages to the estates of eleven deceased plaintiffs.[3] See Wolf Expert Report at 6. To determine the economic losses resulting from each plaintiff's death, the special master relied on a report submitted by Steven A. Wolf, an accounting and financial forensics expert. See, e.g., Dalizu Report at 3, 22; Wolf Expert Report at 18. Wolf's report, in turn, relied on such factors as each plaintiff's annual income, expected future income, and work-life expectancy. Wolf Expert Report at 6–11 (explaining methodology used to calculate the economic losses for each plaintiff). The Court will adopt the findings and recommendations of the special master and award economic damages to the estates of these eleven victims in the amounts calculated and recommended.

2. Pain and suffering awards

Courts determine pain-and-suffering awards for injured and killed victims based on factors including "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." O'Brien v. Islamic Rep. of Iran, 853 F. Supp. 2d 44, 46 (D.D.C. 2012) (internal quotation marks omitted); see also Haim v. Islamic Rep. of Iran, 425 F. Supp. 2d 56, 71 (D.D.C. 2006). But when calculating damages awards, "the Court must take pains to ensure that individuals with

[3] They are: Jesse Nathanael Aliganga, Julian Leotis Bartley, Sr., Julian Leotis Bartley, Jr., Jean Rose Dalizu, Molly Huckaby Hardy, Kenneth Ray Hobson II, Prabhi Guptara Kavaler, Arlene Bradley Kirk, Mary Louise Martin, Ann Michelle O'Connor, and Sherry Lynn Olds. See Am. Compl. at 9.

similar injuries receive similar awards." Peterson v. Islamic Rep. of Iran, 515 F. Supp. 2d 25, 54 (D.D.C. 2007), abrogation on other grounds recognized in Mohammadi v. Islamic Rep. of Iran, 947 F. Supp. 2d 48, 65 (D.D.C. 2013). Courts in this District have therefore developed a general framework for assessing pain-and-suffering awards for victims of terrorist attacks. Plaintiffs who suffer serious physical injuries tend to receive a $5 million award; plaintiffs who suffer relatively more serious or numerous injuries may receive $7 million (or more); and plaintiffs whose injuries are relatively less serious or who only suffer emotional injuries may receive something closer to $1.5 million. See Valore, 700 F. Supp. 2d at 84–85; O'Brien, 853 F. Supp. 2d at 47.

The special master has recommended that the Court award pain-and-suffering damages to three Aliganga plaintiffs. One recommended award—advising the Court to award $1.5 million to Howard Charles Kavaler, who worked in the Nairobi embassy at the time of the attack, and who continues to suffer severe post-traumatic stress syndrome as a result of the bombing, see Report of Special Master [ECF No. 338] ("Kavaler Report") at 3–4, 11—complies with this District's general damages framework. The Court will therefore adopt the special master's recommendation regarding Kavaler.

Two recommended awards, however, depart from this District's framework and require significant adjustment. The first relates to Jesse Nathanael Aliganga, the Marine killed in the Nairobi attack. The special master recommended that the Court

award Aliganga $12 million in pain-and-suffering damages, because he "suffered severe physical injuries prior to his death." Report of Special Master [ECF No. 333] ("Aliganga Report") at 10. But while there is no doubt that Aliganga's injuries were severe, this recommendation ignores that the touchstone of any pain-and-suffering award is whether the victim suffered "conscious pain" for some period of time. Peterson, 515 F. Supp. 2d at 53; see also Oldham v. Korean Air Lines Co., 127 F.3d 43, 56 (D.C. Cir. 1997) ("[T]he key factual dispute [in pre-death pain-and-suffering cases] turns on whether the [victim was] immediately rendered unconscious." (internal quotation marks omitted)). In other words, if the victim was conscious after suffering injury, then a pain-and-suffering award might be appropriate; if not, then not. Here, all the available evidence suggests that Aliganga's injuries put him on the inappropriate side of the divide. As the special master recognized, Aliganga's "head was crushed in the bombing and his brain avulsed [i.e., separated] from his skull." Aliganga Report at 3. And though the Marines initially told Aliganga's family that he was "alive but injured," no one testified that Aliganga was conscious at any point before dying from his wounds. See id. at 4–5. The Court therefore cannot award Aliganga's estate any pain-and-suffering damages.

The second problematic award presents a similar issue. The special master recommended that the Court award $12 million to the estate of Julian Leotis Bartley, Jr., because he "endured bodily pain and suffering after the attack and prior to his death." Report of Special Master [ECF No. 342] at 11–12.

There is some basis for awarding pain-and-suffering damages in Bartley's case. After all, he "suffered horrific injuries and terrible pain when both his legs were . . . amputated in the explosive blast." Id. at 12. But the special master admitted that "it is unclear how long [Bartley] suffered before succumbing to his injuries," and he could only conclude that Bartley did not die "immediately," but instead died some time later "due to a severe loss of blood." Id. Though Bartley's injuries were undeniably terrible, in cases like this—"[w]hen the victim endured extreme pain and suffering for a period of several hours or less"—the courts will "rather uniformly award[] $1 million" in damages. Haim, 425 F. Supp. 2d at 71 (emphasis added). Indeed, courts will sometimes settle on smaller awards, if the evidence suggests that the victim suffered for only a very brief period. See, e.g., Peterson, 515 F. Supp. 2d at 53. Here, Bartley almost certainly survived for less than several hours. The Court will therefore adopt the usual award for such cases: $1 million.

3. Solatium

"In determining the appropriate amount of compensatory damages, the Court may look to prior decisions awarding damages for . . . solatium." Acosta v. Islamic Rep. of Iran, 574 F. Supp. 2d 15, 29 (D.D.C. 2008). Only immediate family members—parents, siblings, spouses, and children—are entitled to solatium awards. See Valore 700 F. Supp. 2d at 79; see also D.C. Code § 16-2701 (allowing recovery by "the spouse or domestic partner and the next of kin of the deceased person"). The commonly accepted framework for solatium damages in this District's

FSIA terrorism cases is that used in Peterson, where spouses of deceased victims receive $8 million, parents of deceased victims receive $5 million, and siblings of deceased victims receive $2.5 million. 515 F. Supp. 2d at 52. And where the victim does not die, but instead only suffers injury, the solatium awards are halved: Spouses receive $4 million, parents receive $2.5 million, and siblings receive $1.25 million. Id. Moreover, this Court has previously held that children of deceased and injured victims should receive awards akin to those given to parents (i.e., $5 million where the victim died, and $2.5 million where the victim suffered injury). See, e.g., Mwila, 2014 WL 1284978, at *5 ("[C]hildren who lose parents are likely to suffer as much as parents who lose children."). Although these amounts are guidelines, not rules, see Valore, 700 F. Supp. 2d at 85–86, the Court finds the distinctions made in Peterson and other cases to be reasonable, and thus will adopt this framework for determining solatium damages here.

For most plaintiffs, the special master properly applied the preceding framework in making his damages calculations, and the Court will therefore accept the bulk of his recommendations. But there are a few exceptions. One is straightforward. The special master recommended a $5 million solatium award to the estate of Frederick Arthur Bradley, the father of a deceased victim of the Nairobi attack. See Report of Special Master [ECF No. 334] at 20. But there is a significant problem with this award: Frederick Arthur Bradley is no longer a plaintiff in this case, as he voluntarily dismissed his claim in 2012. See Notice of Vol. Dismissal [ECF No. 258] at 1.

The Court therefore declines to award Bradley any damages.

Four other solatium awards also require adjustment. Other courts in this District have held that it is inappropriate for the solatium award of a family member to exceed the pain-and-suffering award of the surviving victim. See, e.g., Davis v Islamic Rep. of Iran, 882 F. Supp. 2d 7, 15–16 (D.D.C. 2012). This Court has followed that approach in previous embassy-bombing cases, see, e.g., Mwila, 2014 WL 1284978, at *6, and it will do the same here. Therefore, the solatium awards for several family members of Howard Charles Kavaler—who suffered severe emotional injury after the bombing, and who the Court has awarded $1.5 million in pain-and-suffering damages—must be modified. The special master recommended awarding $2.5 million each to Tara and Maya Kavaler (Howard's daughters) and to the estates of Pearl and Leon Kavaler (Howard's parents). See Kavaler Report at 13–14. But $2.5 million is obviously greater than $1.5 million, and so the Court will reduce these family members' awards to match Howard's pain-and-suffering compensation.[4]

[4] The special master actually recommended that each of Howard's daughters receive $7.5 million in solatium damages, because their mother (Prabhi Guptara Kavaler) died in the bombing, which entitles them to an additional $5 million under this District's solatium-damages framework. This $5 million award is entirely appropriate, and the Court's reduction of their award only applies to the solatium damages stemming from their father's injury. The Court therefore awards each daughter $6.5 million in solatium damages: $5 million based on their mother's death and $1.5 million based on their father's injury.

b. Pre-Judgment Interest

Plaintiffs are not only entitled to damages in this case. They are also owed pre-judgment interest at the prime rate on most of those damages. See Oldham, 127 F.3d at 54; Forman v. Korean Air Lines Co., 84 F.3d 446, 450–51 (D.C. Cir. 1996). The special master already adjusted the recommended economic loss figures for each plaintiff to reflect the present discounted value of those awards, see, e.g., Aliganga Report at 9; see also District of Columbia v. Barriteau, 399 A.2d 563 (D.C. 1979), but he did not adjust the recommended awards for pain and suffering and solatium. These awards therefore do not account for the time that has elapsed since the 1998 attacks, meaning plaintiffs have lost the use of this money which should have been theirs immediately after the bombings. Moreover, denying pre-judgment interest on these damages would allow defendants to profit from their use of these funds over the intervening sixteen years. The Court will therefore award pre-judgment interest on plaintiffs' pain-and-suffering and solatium awards—which should suffice to place plaintiffs in the same position they would have been in had they received (and invested) their damages awards in 1998. See, e.g., Doe v. Islamic Rep. of Iran, 943 F. Supp. 2d 180, 184–85 (D.D.C. 2013); Reed v. Islamic Rep. of Iran, 845 F. Supp. 2d 204, 214–15 (D.D.C. 2012). But see Oveissi,

---

See, e.g., Valore, 700 F. Supp. 2d at 86 (awarding solatium damages for each lost relationship).

768 F. Supp. 2d at 30 n.12 (declining to award pre-judgment interest on solatium damages).[5]

The Court will calculate the applicable interest using the prime rate for each year. The D.C. Circuit has explained that the prime rate—the rate banks charge for short-term, unsecured loans to creditworthy customers—is the most appropriate measure of pre-judgment interest. See Forman, 84 F.3d at 450–51. Although the prime rate, applied over a period of several years, can be measured in different ways, this Circuit has approved an award of pre-judgment interest "at the prime rate for each year between the accident and the entry of judgment." Id. at 450. Using the prime rate for each year is more precise than, for example, using the average rate over the entire period. See Doe, 943 F. Supp. 2d at 185 (noting that this method is a "substantially more accurate market-based estimate" of the time value of money (internal quotation marks omitted)). Moreover, calculating interest based on the

[5] In Oveissi, the court awarded damages in amounts above and beyond the usual solatium framework (i.e., the framework called for a $5 million award for plaintiff, but the court awarded $7.5 million). 768 F. Supp. 2d at 30. And the court in that case denied plaintiff's request for pre-judgment interest, because its "upward adjustments" from the usual framework sufficed "to fully compensate [plaintiff] for the enormous loss he sustained." Id. at n.12 (internal quotation marks omitted). Unlike Oveissi, this Court has not made any "upward adjustments" from the usual framework, and the Court therefore finds that pre-judgment interest on plaintiffs' solatium awards is required if plaintiffs are to be "fully compensate[d]."

prime rate for each year is a simple matter.[6] Using the prime rate for each year results in a multiplier of 2.26185 for damages incurred in 1998,[7] and the Court will use this multiplier to calculate the total award for each plaintiff in this case.[8]

CONCLUSION

The August 7, 1998, embassy bombings shattered the lives of thousands—including the seventy-one plaintiffs in this case. Reading plaintiffs' personal stories reveals that, even after some sixteen years, they each still feel the horrific effects of that awful day. Damages awards cannot fully compensate these innocent people, who have suffered so much. But they

---

[6] To calculate the multiplier, the Court multiplied $1.00 by the prime rate in 1999 (8%) and added that amount to $1.00, yielding $1.08. Then, the Court took that amount and multiplied it by the prime rate in 2000 (9.23%) and added that amount to $1.08, yielding $1.17968. Continuing this iterative process through 2014 yields a multiplier of 2.26185.

[7] The Court calculated the multiplier using the Federal Reserve's data for the average annual prime rate in each year between 1998 and 2014. See Bd. of Governors of the Fed.Reserve Sys. Historical Data, available at http://www.federalreserve.gov/releases/h15/data.htm (last visited October 14, 2014). As of the date of this opinion, the Federal Reserve has not posted the annual prime rate for 2014, so the Court will conservatively estimate that rate to be 3.25%, the rate for the previous five years.

[8] The product of the multiplier and the base damages amount includes both the pre-judgment interest and the base damages amount. In other words, applying the multiplier calculates not the pre-judgment interest but the base damages amount plus the pre-judgment interest—or the total damages award.

can offer a helping hand. That is the very least that plaintiffs are owed—and that is what this Court seeks to accomplish.

A separate Order consistent with this Memorandum Opinion has issued on this date.

/s/

JOHN D. BATES
United States District Judge

Dated: October 24, 2014

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

[Filed: 10/24/2014]

Civil Action No. 01-2244 (JDB)

JAMES OWENS, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN, et al.,

Defendants.

AMENDED ORDER

Upon consideration of [332–39, 341–42] Special Master Paul Griffin's Reports, and the entire record herein, it is hereby

ORDERED that [332–39, 341–42] the Special Master Reports are adopted in part and modified in part as described in the accompanying Memorandum Opinion issued on this date; it is further

ORDERED that judgment is entered in favor of the remaining plaintiffs ("Aliganga Plaintiffs") and against defendants in the total amount of $622,301,129.50; and it is further

ORDERED that each plaintiff is entitled to damages in the amounts listed in the accompanying chart.

SO ORDERED.

/s/

JOHN D. BATES
United States District Judge

Dated: October 24, 2014

"Aliganga Plaintiffs"									
	Name of Victim	Injured/ Deceased	Family Members	Relation	Economic Damages	Pain & Suffering Damages	Solatium Damages	Subtotal	Total Award (with applicable pre-judgment interest)
1	Jesse Nathanael Aliganga	Deceased			$914,061	$0		$914,061	$914,061.00
2			Clara Leah Aliganga	Mother			$5,000,000	$5,000,000	$11,309,250.00
3			Leah Ann Colston	Sister			$2,500,000	$2,500,000	$5,654,625.00
4	Julian Leotis Bartley, Sr.	Deceased			$1,686,985	$0		$1,686,985	$1,686,985.00
5	Julian Leotis Bartley, Jr.	Deceased			$2,521,526	$1,000,000		$3,521,526	$4,783,376.00
6			Mary Linda Sue Bartley	Wife of Bartley, Sr.; Mother of Bartley, Jr.			$13,000,000	$13,000,000	$29,404,050.00
7			Edith Lynn Bartley	Daughter of Bartley, Sr.; Sister of Bartley, Jr.			$7,500,000	$7,500,000	$16,963,875.00
8			Gladys Baldwin Bartley	Mother of Bartley, Sr.			$5,000,000	$5,000,000	$11,309,250.00
9	Jean Rose Dalizu	Deceased			$227,086	$0		$227,086	$227,086.00
10			Egambi Fred Kibuhiru Dalizu	Husband			$8,000,000	$8,000,000	$18,094,800.00
11			Temina Engesia Dalizu	Daughter			$5,000,000	$5,000,000	$11,309,250.00
12			Lori Elaine Dalizu	Daughter			$5,000,000	$5,000,000	$11,309,250.00
13			Lawrence Anthony Hicks	Son			$5,000,000	$5,000,000	$11,309,250.00
14			Mangairu Vidija Dalizu	Son			$5,000,000	$5,000,000	$11,309,250.00
15			Rose Banks Freeman	Mother			$5,000,000	$5,000,000	$11,309,250.00
16			Gwendolyn Tauwana Garrett	Sister			$2,500,000	$2,500,000	$5,654,625.00
17			Joyce McCray	Sister			$2,500,000	$2,500,000	$5,654,625.00
18			Jeanette Ella Marie Goines	Sister			$2,500,000	$2,500,000	$5,654,625.00
19			June Beverly Freeman	Sister			$2,500,000	$2,500,000	$5,654,625.00
20			Sheila Elaine Freeman	Sister			$2,500,000	$2,500,000	$5,654,625.00
21			Jewell Patricia Neal	Sister			$2,500,000	$2,500,000	$5,654,625.00
22			James Herbert Freeman	Brother			$2,500,000	$2,500,000	$5,654,625.00
23	Molly Huckaby Hardy	Deceased			$1,234,785	$0		$1,234,785	$1,234,785.00
24			Brandi Plants	Daughter			$5,000,000	$5,000,000	$11,309,250.00
25			Jane Huckaby	Mother			$5,000,000	$5,000,000	$11,309,250.00
26	Kenneth Ray Hobson II	Deceased			$965,530	$0		$965,530	$965,530.00
27			Deborah Hobson-Bird	Wife			$8,000,000	$8,000,000	$18,094,800.00
28			Kenneth Ray Hobson	Father			$5,000,000	$5,000,000	$11,309,250.00
29			Bonnie Sue Hobson	Mother			$5,000,000	$5,000,000	$11,309,250.00
30			Meghan Elizabeth Hobson	Daughter			$5,000,000	$5,000,000	$11,309,250.00
31	Prabhi Guptara Kavaler	Deceased			$1,775,096	$0		$1,775,096	$1,775,096.00
32	Howard Charles Kavaler	Injured		Husband		$1,500,000	$8,000,000	$9,500,000	$21,487,575.00
33			Tara Lia Kavaler	Daughter (of both)			$6,500,000	$6,500,000	$14,702,025.00
34			Maya Pia Kavaler	Daughter (of both)			$6,500,000	$6,500,000	$14,702,025.00
35			Leon Kavaler	Father of Howard Kavaler			$1,500,000	$1,500,000	$3,392,775.00
36			Pearl Daniels Kavaler	Mother of Howard Kavaler			$1,500,000	$1,500,000	$3,392,775.00
37			Richard Martin Kavaler	Brother of Howard Kavaler			$1,250,000	$1,250,000	$2,827,312.50
38	Arlene Bradley Kirk	Deceased			$543,426	$0		$543,426	$543,426.00
39			Robert Kirk, Jr.	Husband			$8,000,000	$8,000,000	$18,094,800.00
40			Maisha Kirk Humphrey	Daughter			$5,000,000	$5,000,000	$11,309,250.00
41			Robert Michael Kirk	Son			$5,000,000	$5,000,000	$11,309,250.00

	Name of Victim	Injured/ Deceased	Family Members	Relation	Economic Damages	Pain & Suffering Damages	Solatium Damages	Subtotal	Total Award (with applicable pre-judgment interest)
42			Mary Katherine Bradley	Mother			$5,000,000	$5,000,000	$11,309,250.00
43			Dennis Arthur Bradley	Brother			$2,500,000	$2,500,000	$5,654,625.00
44			Neil Alan Bradley	Brother			$2,500,000	$2,500,000	$5,654,625.00
45			Katherine Bradley Wright	Sister			$2,500,000	$2,500,000	$5,654,625.00
46			Patricia Anne Bradley Williams	Sister			$2,500,000	$2,500,000	$5,654,625.00
47			Kenneth Alva Bradley	Brother			$2,500,000	$2,500,000	$5,654,625.00
48	Mary Louise Martin	Deceased			$2,339,174	$0		$2,339,174	$2,339,174.00
49			Douglas Norman Klaucke	Husband			$8,000,000	$8,000,000	$18,094,800.00
50			Karen Marie Klaucke	Daughter			$5,000,000	$5,000,000	$11,309,250.00
51			William Russell Klaucke	Son			$5,000,000	$5,000,000	$11,309,250.00
52			James Robert Klaucke	Son			$5,000,000	$5,000,000	$11,309,250.00
53			Joseph Denegre Martin, Jr.	Father			$5,000,000	$5,000,000	$11,309,250.00
54			Kathleen Martin Boellert	Sister			$2,500,000	$2,500,000	$5,654,625.00
55			Martha Martin Ourso	Sister			$2,500,000	$2,500,000	$5,654,625.00
56			Joseph Denegre Martin III	Brother			$2,500,000	$2,500,000	$5,654,625.00
57			Michael Hawkins Martin	Brother			$2,500,000	$2,500,000	$5,654,625.00
58			Susan Elizabeth Martin Bryson	Sister			$2,500,000	$2,500,000	$5,654,625.00
59			Stephen Harding Martin	Brother			$2,500,000	$2,500,000	$5,654,625.00
60	Ann Michelle O'Connor	Deceased			$2,195,655	$0		$2,195,655	$2,195,655.00
61			James Paul O'Connor	Husband			$8,000,000	$8,000,000	$18,094,800.00
62			Jennifer Erin Perez	Daughter			$5,000,000	$5,000,000	$11,309,250.00
63			Tara Colleen O'Connor	Daughter			$5,000,000	$5,000,000	$11,309,250.00
64			Micaela Ann O'Connor	Daughter			$5,000,000	$5,000,000	$11,309,250.00
65			Gwendolyn Frederic Deney	Mother			$5,000,000	$5,000,000	$11,309,250.00
66	Sherry Lynn Olds	Deceased			$1,156,543	$0		$1,156,543	$1,156,543.00
67			Delbert Raymond Olds	Father			$5,000,000	$5,000,000	$11,309,250.00
68			Mary Evelyn Freeman Olds	Mother			$5,000,000	$5,000,000	$11,309,250.00
69			Kimberly Ann Zimmerman	Sister			$2,500,000	$2,500,000	$5,654,625.00
70			Marsey Gayle Cornett	Sister			$2,500,000	$2,500,000	$5,654,625.00
71			Christa Gay Fox	Sister			$2,500,000	$2,500,000	$5,654,625.00
			TOTALS		$15,559,867	$2,500,000	$265,750,000	$283,809,867	$622,301,129.50

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed: 03/23/2016]

Civil Action No: 08-1349 (JDB)

WINFRED WAIRIMU WAMAI, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN, et al.,

Defendants.

ORDER

Upon consideration of [264] the motion of defendants the Republic of Sudan and the Ministry of the Interior of the Republic of Sudan to vacate the judgment in this case, [266] plaintiffs' opposition, [267] Sudan's reply, [269] plaintiffs' motion for leave to file a surreply, [270] Sudan's opposition to plaintiffs' motion for leave to file a surreply, [272] plaintiffs' reply in support of leave to file a surreply, and the entire record herein, for the reasons given in [279] the accompanying Memorandum Opinion, it is hereby

ORDERED that [264] the motion to vacate is **DENIED**; and it is further

ORDERED that [269] plaintiffs' motion for leave to file a surreply is **GRANTED IN PART** and **DENIED IN PART**.

SO ORDERED.

/s/

JOHN D. BATES
United States District Judge

Dated: March 23, 2016

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed: 03/23/2016]

Civil Action No: 08-1361 (JDB)

MILLY MIKALI AMDUSO, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN, et al.,

Defendants.

ORDER

Upon consideration of [285] the motion of defendants the Republic of Sudan and the Ministry of the Interior of the Republic of Sudan to vacate the judgment in this case, [288] plaintiffs' opposition, [291] Sudan's reply, [294] plaintiffs' motion for leave to file a surreply, [295] Sudan's opposition to plaintiffs' motion for leave to file a surreply, [297] plaintiffs' reply in support of leave to file a surreply, and the entire record herein, for the reasons given in [305] the accompanying Memorandum Opinion, it is hereby

ORDERED that [285] the motion to vacate is **DENIED**; and it is further

ORDERED that [294] plaintiffs' motion for leave to file a surreply is **GRANTED IN PART** and **DENIED IN PART**.

SO ORDERED.

/s/
JOHN D. BATES
United States District Judge

Dated: March 23, 2016

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed: 03/23/2016]

Civil Action No: 08-1380 (JDB)

MARY ONSONGO, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN, et al.,

Defendants.

ORDER

Upon consideration of [252] the motion of defendants the Republic of Sudan and the Ministry of the Interior of the Republic of Sudan to vacate the judgment in this case, [254] plaintiffs' opposition, [255] Sudan's reply, [257] plaintiffs' motion for leave to file a surreply, [258] Sudan's opposition to plaintiffs' motion for leave to file a surreply, [260] plaintiffs' reply in support of leave to file a surreply, and the entire record herein, for the reasons given in [267] the accompanying Memorandum Opinion, it is hereby

ORDERED that [252] the motion to vacate is **DENIED**; and it is further

ORDERED that [257] plaintiffs' motion for leave to file a surreply is **GRANTED IN PART** and **DENIED IN PART**.

SO ORDERED.

/s/

JOHN D. BATES
United States District Judge

Dated: March 23, 2016

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed: 03/23/2016]

Civil Action No: 12-1224 (JDB)

MONICAH OKABA OPATI, et al.,

Plaintiffs,

v.

REPUBLIC OF SUDAN, et al.,

Defendants.

ORDER

Upon consideration of [65] the motion of defendants the Republic of Sudan and the Ministry of the Interior of the Republic of Sudan to vacate the judgment in this case, [67] plaintiffs' opposition, [68] Sudan's reply, [69] plaintiffs' motion for leave to file a surreply, [70] Sudan's opposition to plaintiffs' motion for leave to file a surreply, [72] plaintiffs' reply in support of leave to file a surreply, and the entire record herein, for the reasons given in [79] the accompanying Memorandum Opinion, it is hereby

ORDERED that [65] the motion to vacate is **DENIED**; and it is further

ORDERED that [69] plaintiffs' motion for leave to file a surreply is **GRANTED IN PART** and **DENIED IN PART**.

SO ORDERED.

/s/

JOHN D. BATES
United States District Judge

Dated: March 23, 2016

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Filed: 10/03/2017]

September Term 2017

Docket No: 14-5105

JAMES OWENS, et al.,

Appellees,

v.

REPUBLIC OF SUDAN, MINISTRY OF EXTERNAL AFFAIRS AND MINISTRY OF THE INTERIOR OF THE REPUBLIC OF THE SUDAN,

Appellants,

ISLAMIC REPUBLIC OF IRAN, MINISTRY OF FOREIGN AFFAIR, et al.,

Appellees.

Consolidated with 14-5106, 14-5107, 14-7124, 14-7125, 14-7127, 14-7128, 14-7207, 16-7044, 16-7045, 16-7046, 16-7048,16-7049, 16-7050, 16-7052

Before:

HENDERSON and ROGERS, *Circuit Judges,*
and GINSBURG, *Senior Circuit Judge.*

ORDER

Upon consideration of the petition of plaintiffs-appellees Owens, et al., for panel rehearing filed on August 28, 2017, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:
/s/
Ken R. Meadows
Deputy Clerk

APPENDIX G

28 U.S.C. § 1350 note. Torture Victim Protection Act of 1991

Section 1. Short title

This Act may be cited as the 'Torture Victim Protection Act of 1991."

Sec. 2. Establishment of civil action

(a) Liability. An individual who, under actual or apparent authority, or color of law, of any foreign nation—

(1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or

(2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death.

(b) Exhaustion of remedies. A court shall decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred.

(c) Statute of limitations. No action shall be maintained under this section unless it is commenced within 10 years after the cause of action arose.

Sec. 3. Definitions

(a) Extrajudicial killing. For the purposes of this Act, the term 'extrajudicial killing' means a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.

(b) Torture. For the purposes of this Act—

(1) the term 'torture' means any act, directed against an individual in the offender's custody or physical control, by which severe pain or suffering (other than pain or suffering arising only from or inherent in, or incidental to, lawful sanctions), whether physical or mental, is intentionally inflicted on that individual for such purposes as obtaining from that individual or a third person information or a confession, punishing that individual for an act that individual or a third person has committed or is suspected of having committed, intimidating or coercing that individual or a third person, or for any reason based on discrimination of any kind; and

(2) mental pain or suffering refers to prolonged mental harm caused by or resulting from—

(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

(B) the administration or application, or threatened administration or application, of mind altering substances or other procedures

calculated to disrupt profoundly the senses or the personality;

(C) the threat of imminent death; or

(D) the threat that another individual will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

28 U.S.C. § 1605 (2006). General exceptions to the jurisdictional immunity of a foreign state

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case--

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue;

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to--

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

(6) in which the action is brought, either to enforce an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United

States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607 [*28 USCS § 1607*], or (D) paragraph (1) of this subsection is otherwise applicable; or

(7) not otherwise covered by paragraph (2), 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 (as defined in section 2339A of title 18) for such an act if such act or provision of material support 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, except that the court shall decline to hear a claim under this paragraph--

(A) if the foreign state was not designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 *(50 U.S.C. App. 2405*(j)) or section 620A of the Foreign Assistance Act of 1961 (*22 U.S.C. 2371*) at the time the act occurred,

unless later so designated as a result of such act or the act is related to Case Number 1:00CV03110(EGS) in the United States District Court for the District of Columbia; and

(B) even if the foreign state is or was so designated, if--

(i) the act occurred in the foreign state against which the claim has been brought and the claimant has not afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with accepted international rules of arbitration; or

(ii) neither the claimant nor the victim was a national of the United States (as that term is defined in section 101(a)(22) of the Immigration and Nationality Act [*8 USCS § 1101(a)(22)*] when the act upon which the claim is based occurred.

(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: *Provided,* That--

(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien

is asserted; and if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to constitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved; and

(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this *title [28 USCS § 1608*] is initiated within ten days either of the delivery of notice as provided in paragraph (1) of this subsection or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state's interest.

(c) Whenever notice is delivered under subsection (b)(1), the suit to enforce a maritime lien shall thereafter proceed and shall be heard and determined according to the principles of law and rules of practice of suits in rem whenever it appears that, had the vessel been privately owned and possessed, a suit in rem might have been maintained. A decree against the foreign state may include costs of the suit and, if the decree is for a money judgment, interest as ordered by the court, except that the court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose. Such value shall

be determined as of the time notice is served under subsection (b)(1). Decrees shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction. Nothing shall preclude the plaintiff in any proper case from seeking relief in personam in the same action brought to enforce a maritime lien as provided in this section.

(d) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any action brought to foreclose a preferred mortgage, as defined in section 31301 of title 46. Such action shall be brought, heard, and determined in accordance with the provisions of chapter 313 of title 46 [*46 USCS §§ 31301* et seq.] and in accordance with the principles of law and rules of practice of suits in rem, whenever it appears that had the vessel been privately owned and possessed a suit in rem might have been maintained.

(e) For purposes of paragraph (7) of subsection (a)--

(1) the terms "torture" and "extrajudicial killing" have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991 [*28 USCS § 1350* note];

(2) the term "hostage taking" has the meaning given that term in Article 1 of the International Convention Against the Taking of Hostages; and

(3) the term "aircraft sabotage" has the meaning given that term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.

(f) No action shall be maintained under subsection (a)(7) unless the action is commenced not later than 10 years after the date on which the cause of action arose. All principles of equitable tolling, including the period during which the foreign state was immune from suit, shall apply in calculating this limitation period.

(g) Limitation on discovery.

(1) In general.

(A) Subject to paragraph (2), if an action is filed that would otherwise be barred by section 1604 [*28 USCS § 1604*], but for subsection (a)(7), the court, upon request of the Attorney General, shall stay any request, demand, or order for discovery on the United States that the Attorney General certifies would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action, until such time as the Attorney General advises the court that such request, demand, or order will no longer so interfere.

(B) A stay under this paragraph shall be in effect during the 12-month period beginning on the date on which the court issues the order to stay discovery. The court shall renew the order to stay discovery for additional 12-month periods upon motion by the United States if the Attorney General certifies that discovery would

significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action.

(2) Sunset.

(A) Subject to subparagraph (B), no stay shall be granted or continued in effect under paragraph (1) after the date that is 10 years after the date on which the incident that gave rise to the cause of action occurred.

(B) After the period referred to in subparagraph (A), the court, upon request of the Attorney General, may stay any request, demand, or order for discovery on the United States that the court finds a substantial likelihood would--

(i) create a serious threat of death or serious bodily injury to any person;

(ii) adversely affect the ability of the United States to work in cooperation with foreign and international law enforcement agencies in investigating violations of United States law; or

(iii) obstruct the criminal case related to the incident that gave rise to the cause of action or undermine the potential for a conviction in such case.

(3) Evaluation of evidence. The court's evaluation of any request for a stay under this subsection

filed by the Attorney General shall be conducted ex parte and in camera.

(4) Bar on motions to dismiss. A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under *rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure.*

(5) Construction. Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States.

PUBLIC LAW 102-256
102d Congress

An Act

Mar. 12, 1992

[H.R. 2092]

To carry out obligations of the United States under the United Nations Charter and other international agreements pertaining to the protection of human rights by establishing a civil action for recovery of damages from an individual who engages in torture or extrajudicial killing.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

Torture Victim Protection Act of 1991.

28 USC 1350 note.

This Act may be cited as the "Torture Victim Protection Act of 1991."

SEC. 2. ESTABLISHMENT OF CIVIL ACTION.

28 USC 1350 note.

(a) LIABILITY.–An individual who, under actual or apparent authority, or color of law, of any foreign nation–

(1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or

(2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death.

(b) EXHAUSTION OF REMEDIES.–A court shall decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred.

(c) STATUTE OF LIMITATIONS.–No action shall be maintained under this section unless it is commenced within 10 years after the cause of action arose.

SEC. 3. DEFINITIONS.

28 USC 1350 note.

(a) EXTRAJUDICIAL KILLING.–For the purposes of this Act, the term "extrajudicial killing" means a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.

(b) TORTURE–For the purposes of this Act–

(1) the term "torture" means any act, directed against an individual in the offender's custody or physical control, by which severe pain or suffering (other than pain or suffering arising only from or inherent in, or incidental to, lawful sanctions), whether physical or mental, is intentionally

inflicted on that individual for such purposes as obtaining from that individual or a third person information or a confession, punishing that individual for an act that individual or a third person has committed or is suspected of having committed, intimidating or coercing that individual or a third person, or for any reason based on discrimination of any kind; and

(2) mental pain or suffering refers to prolonged mental harm caused by or resulting from–[1]

(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

(B) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(C) the threat of imminent death; or

(D) the threat that another individual will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

Approved March 12, 1992.[12]

LEGISLATIVE HISTORY—H.R. 2092 (S. 313):

HOUSE REPORTS: No. 102-367, Pt. 1 (Comm. on the Judiciary).

SENATE REPORTS: No. 102-249 accompanying S. 313 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 137 (1991): Nov. 25, considered and passed House.
Vol. 138 (1992): Mar. 3, considered and passed Senate.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 28 (1992):
Mar. 12, Presidential statement.

APPENDIX H
I

GENEVA CONVENTION FOR THE AMELIOARTION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMED FORCES IN THE FIELD OF 12 AUGUST 1949

CHAPTER I

General Provisions

ART. 1. — The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

ART. 2. — In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

ART. 3. — In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

   To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

   a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture:

   b) taking of hostages;

   c) outrages upon personal dignity, in particular humiliating and degrading treatment;

   d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

ART. 4. — Neutral Powers shall apply by analogy the provisions of the present Convention to the wounded and sick, and to members of the medical personnel and to chaplains of the armed forces of the Parties to the conflict, received or interned in their territory, as well as to dead persons found.

ART. 5. — For the protected persons who have fallen into the hands of the enemy, the present Convention shall apply until their final repatriation.

ART. 6. — In addition to the agreements expressly provided for in Articles 10, 15, 23, 28, 31, 36, 37 and 52, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of the wounded and sick, of members of the medical personnel or of chaplains, as defined by the present Convention, nor restrict the rights which it confers upon them.

Wounded and sick, as well as medical personnel and chaplains, shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

ART. 7. — Wounded and sick, as well as members of the medical personnel and chaplains, may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

ART. 8. — The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate, to the greatest extent possible, the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities

of security of the State wherein they carry out their duties. Their activities shall only be restricted, as an exceptional and temporary measure, when this is rendered necessary by imperative military necessities.

ART. 9. — The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of wounded and sick, medical personnel and chaplains, and for their relief.

ART. 10. — The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When wounded and sick, or medical personnel and chaplains do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to

assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power, or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention also applies to substitute organizations in the sense of the present Article.

ART. 11. — In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its

own initiative, propose to the Parties to the conflict a meeting of their representatives, in particular of the authorities responsible for the wounded and sick, members of medical personnel and chaplains, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict a person belonging to a neutral Power or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting.

CHAPTER II

Wounded and Sick

ART. 12.— Members of the armed forces and other persons mentioned in the following Article, who are wounded or sick, shall be respected and protected in all circumstances.

They shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not willfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.

Only urgent medical reasons will authorize priority in the order of treatment to be administered.

Women shall be treated with all consideration due to their sex. The Party to the conflict which is compelled to abandon wounded or sick to the enemy shall, as far as military considerations permit, leave with them a part of its medical personnel and material to assist in their care.

ART. 13.— The Present Convention shall apply to the wounded and sick belonging to the following categories: Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.

1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces
2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:
    a) that of being commanded by a person responsible for his subordinates;
    b) that of having a fixed distinctive sign recognizable at a distance;
    c) that of carrying arms openly;

d) that of conducting their operations in accordance with the laws and customs of war.

3) Members of regular armed forces who profess allegiance to a Government or an authority not recognized by the Detaining Power.

4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany.

5) Members of crews including masters, pilots and apprentices of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions in international law.

6) Inhabitants of a non-occupied territory who, on the approach of the enemy, spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

ART. 14.— Subject to the provisions of Article 12, the wounded and sick of a belligerent who fall into enemy hands shall be prisoners of war, and the

provisions of international law concerning prisoners of war shall apply to them.

ART. 15.— At all times, and particularly after an engagement, Parties to the conflict shall, without delay, take all possible measures to search for and collect the wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled.

Whenever circumstances permit, an armistice or a suspension of fire shall be arranged, or local arrangements made, to permit the removal, exchange and transport of the wounded left on the battlefield.

Likewise, local arrangements may be concluded between Parties to the conflict for the removal or exchange of wounded and sick from a besieged or encircled area, and for the passage of medical and religious personnel and equipment on their way to that area.

ART. 16.—Parties to the conflict shall record as soon as possible, in respect of each wounded, sick or dead person of the adverse Party falling into their hands, any particulars which may assist in his identification.

These records should if possible include:

a) designation of the Power on which he depends;

b) army, regimental, personal or serial number;

c) surname;

d) first name or names;

e) date of birth;

f) any other particulars shown on his identity card or disc;

g) date and place of capture or death;

h) particulars concerning wounds or illness, or cause of death.

As soon as possible the above mentioned information shall be forwarded to the Information Bureau described in Article 122 of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, which shall transmit this information to the Power on which these persons depend through the intermediary of the Protecting Power and of the Central Prisoners of War Agency.

Parties to the conflict shall prepare and forward to each other through the same bureau, certificates of death or duly authenticated lists of the dead. They shall likewise collect and forward through the same bureau one half of a double identity disc, last wills or other documents of importance to the next of kin, money and in general all articles of an intrinsic or sentimental value, which are found on the dead. These articles, together with unidentified articles, shall be sent in sealed packets, accompanied by statements giving all particulars necessary for the identification of the deceased owners, as well as by a complete list of the contents of the parcel.

ART. 17.—Parties to the conflict shall ensure that burial or cremation of the dead, carried out individually as far as circumstances permit, is preceded by a careful examination, if possible by a medical examination, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made. One half of the double identity disc, or the identity disc itself if it is a single disc, should remain on the body.

Bodies shall not be cremated except for imperative reasons of hygiene or for motives based on the religion of the deceased. In case of cremation, the circumstances and reasons for cremation shall be stated in detail in the death certificate or on the authenticated list of the dead.

They shall further ensure that the dead are honourably interred, if possible according to the rites of the religion to which they belonged, that their graves are respected, grouped if possible according to the nationality of the deceased, properly maintained and marked so that they may always be found. For this purpose, they shall organize at the commencement of hostilities an Official Graves Registration Service, to allow subsequent exhumations and to ensure the identification of bodies, whatever the site of the graves, and the possible transportation to the home country. These provisions shall likewise apply to the ashes, which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

As soon as circumstances permit, and at latest at the end of hostilities, these Services shall exchange, through the Information Bureau mentioned in the second paragraph of Article 16, lists showing the exact location and markings of the graves together with particulars of the dead interred therein.

ART. 18.—The military authorities may appeal to the charity of the inhabitants voluntarily to collect and care for, under their direction, the wounded and sick, granting persons who have responded to this appeal the necessary protection and facilities. Should the adverse Party take or retake control of the area, it shall likewise grant these persons the same protection and the same facilities.

The military authorities shall permit the inhabitants and relief societies, even in invaded or occupied areas, spontaneously to collect and care for wounded or sick of whatever nationality. The civilian population shall respect these wounded and sick, and in particular abstain from offering them violence.

No one may ever be molested or convicted for having nursed the wounded or sick.

The provisions of the present Article do not relieve the occupying Power of its obligation to give both physical and moral care to the wounded and sick.

CHAPTER III

Medical Units and Establishments

ART. 19. — Fixed establishments and mobile medical units of the Medical Service may in no circumstances be attacked, but shall at all times be respected and protected by the Parties to the conflict.

Should they fall into the hands of the adverse Party, their personnel shall be free to pursue their duties, as long as the capturing Power has not itself ensured the necessary care of the wounded and sick found in such establishments and units.

The responsible authorities shall ensure that the said medical establishments and units are, as far as possible, situated in such a manner that attacks against military objectives cannot imperil their safety.

ART. 20. — Hospital ships entitled to the protection of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, shall not be attacked from the land.

ART. 21. — The protection to which fixed establishments and mobile medical units of the Medical Service are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after a due warning has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded.

ART. 22. — The following conditions shall not be considered as depriving a medical unit or establishment of the protection guaranteed by Article 19:

1. That the personnel of the unit or establishment are armed, and that they use

the arms in their own defense, or in that of the wounded and sick in their charge.

2. That in the absence of armed orderlies, the unit or establishment is protected by a picket or by sentries or by an escort.

3. That small arms and ammunition taken from the wounded and sick and not yet handed to the proper service, are found in the unit or establishment.

4. That personnel and material of the veterinary service are found in the unit or establishment, without forming an integral part thereof.

5. That the humanitarian activities of medical units and establishments or of their personnel extend to the care of civilian wounded or sick.

ART. 23. — In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties to the conflict, may establish in their own territory and, if the need arises, in occupied areas, hospital zones and localities so organized as to protect the wounded and sick from the effects of war, as well as the personnel entrusted with the organization and administration of these zones and localities and with the care of the persons therein assembled.

Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the hospital zones and localities they have created. They may for this purpose implement the provisions of the Draft

Agreement annexed to the present Convention, with such amendments as they may consider necessary.

The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital zones and localities.

CHAPTER IV

Personnel

ART. 24. — Medical personnel exclusively engaged in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease, staff exclusively engaged in the administration of medical units and establishments, as well as chaplains attached to the armed forces, shall be respected and protected in all circumstances.

ART. 25. — Members of the armed forces specially trained for employment, should the need arise, as hospital orderlies, nurses or auxiliary stretcher-bearers, in the search for or the collection, transport or treatment of the wounded and sick shall likewise be respected and protected if they are carrying out these duties at the time when they come into contact with the enemy or fall into his hands.

ART. 26. — The staff of National Red Cross Societies and that of other Voluntary Aid Societies, duly recognized and authorized by their Governments, who may be employed on the same duties as the personnel named in Article 24, are placed on the same footing as the personnel named

in the said Article, provided that the staff of such societies are subject to military laws and regulations.

Each High Contracting Party shall notify to the other, either in time of peace or at the commencement of or during hostilities, but in any case before actually employing them, the names of the societies which it has authorized, under its responsibility, to render assistance to the regular medical service of its armed forces.

ART. 27. — A recognized Society of a neutral country can only lend the assistance of its medical personnel and units to a Party to the conflict with the previous consent of its own Government and the authorization of the Party to the conflict concerned. That personnel and those units shall be placed under the control of that Party to the conflict.

The neutral Government shall notify this consent to the adversary of the State which accepts such assistance. The Party to the conflict who accepts such assistance is bound to notify the adverse Party thereof before making any use of it.

In no circumstances shall this assistance be considered as interference in the conflict.

The members of the personnel named in the first paragraph shall be duly furnished with the identity cards provided for in Article 40 before leaving the neutral country to which they belong.

ART. 28. — Personnel designated in Articles 24 and 26 who fall into the hands of the adverse Party, shall be retained only in so far as the state of health,

the spiritual needs and the number of prisoners of war require.

Personnel thus retained shall not be deemed prisoners of war. Nevertheless they shall at least benefit by all the provisions of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949. Within the framework of the military laws and regulations of the Detaining Power, and under the authority of its competent service, they shall continue to carry out, in accordance with their professional ethics, their medical and spiritual duties on behalf of prisoners of war, preferably those of the armed forces to which they themselves belong. They shall further enjoy the following facilities for carrying out their medical or spiritual duties:

a) They shall be authorized to visit periodically the prisoners of war in labour units or hospitals outside the camp. The Detaining Power shall put at their disposal the means of transport required.

b) In each camp the senior medical officer of the highest rank shall be responsible to the military authorities of the camp for the professional activity of the retained medical personnel. For this purpose, from the outbreak of hostilities, the Parties to the conflict shall agree regarding the corresponding seniority of the ranks of their medical personnel, including those of the societies designated in Article 26. In all questions arising out of their duties, this medical officer, and the chaplains, shall have

direct access to the military and medical authorities of the camp who shall grant them the facilities they may require for correspondence relating to these questions.

c) Although retained personnel in a camp shall be subject to its internal discipline, they shall not, however, be required to perform any work outside their medical or religious duties.

During hostilities the Parties to the conflict shall make arrangements for relieving where possible retained personnel, and shall settle the procedure of such relief.

None of the preceding provisions shall relieve the Detaining Power of the obligations imposed upon it with regard to the medical and spiritual welfare of the prisoners of war.

ART. 29. — Members of the personnel designated in Article 25 who have fallen into the hands of the enemy, shall be prisoners of war, but shall be employed on their medical duties in so far as the need arises.

ART. 30. — Personnel whose retention is not indispensable by virtue of the provisions of Article 28 shall be returned to the Party to the conflict to whom they belong, as soon as a road is open for their return and military requirements permit.

Pending their return, they shall not be deemed prisoners of war. Nevertheless they shall at least benefit by all the provisions of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949. They shall continue to fulfil

their duties under the orders of the adverse Party and shall preferably be engaged in the care of the wounded and sick of the Party to the conflict to which they themselves belong.

On their departure, they shall take with them the effects, personal belongings, valuables and instruments belonging to them.

ART. 31. — The selection of personnel for return under Article 30 shall be made irrespective of any consideration of race, religion or political opinion, but preferably according to the chronological order of their capture and their state of health.

As from the outbreak of hostilities, Parties to the conflict may determine by special agreement the percentage of personnel to be retained, in proportion to the number of prisoners and the distribution of the said personnel in the camps.

ART. 32. — Persons designated in Article 27 who have fallen into the hands of the adverse Party may not be detained.

Unless otherwise agreed, they shall have permission to return to their country, or if this is not possible, to the territory of the Party to the conflict in whose service they were, as soon as a route for their return is open and military considerations permit.

Pending their release, they shall continue their work under the direction of the adverse Party; they shall preferably be engaged in the care of the wounded and sick of the Party to the conflict in whose service they were.

On their departure, they shall take with them their effects, personal articles and valuables and the instruments, arms and if possible the means of transport belonging to them.

The Parties to the conflict shall secure to this personnel, while in their power, the same food, lodging, allowances and pay as are granted to the corresponding personnel of their armed forces. The food shall in any case be sufficient as regards quantity, quality and variety to keep the said personnel in a normal state of health.

CHAPTER V

Buildings and Material

ART. 33. — The material of mobile medical units of the armed forces which fall into the hands of the enemy, shall be reserved for the care of wounded and sick.

The buildings, material and stores of fixed medical establishments of the armed forces shall remain subject to the laws of war, but may not be diverted from that purpose as long as they are required for the care of wounded and sick. Nevertheless, the commanders of forces in the field may make use of them, in case of urgent military necessity, provided that they make previous arrangements for the welfare of the wounded and sick who are nursed in them.

The material and stores defined in the present Article shall not be intentionally destroyed.

ART. 34. — The real and personal property of aid societies which are admitted to the privileges of the Convention shall be regarded as private property.

The right of requisition recognized for belligerents by the laws and customs of war shall not be exercised except in case of urgent necessity, and only after the welfare of the wounded and sick has been ensured.

CHAPTER VI

Medical Transports

ART. 35. — Transports of wounded and sick or of medical equipment shall be respected and protected in the same way as mobile medical units.

Should such transports or vehicles fall into the hands of the adverse Party, they shall be subject to the laws of war, on condition that the Party to the conflict who captures them shall in all cases ensure the care of the wounded and sick they contain.

The civilian personnel and all means of transport obtained by requisition shall be subject to the general rules of international law.

ART. 36. — Medical aircraft, that is to say, aircraft exclusively employed for the removal of wounded and sick and for the transport of medical personnel and equipment, shall not be attacked, but shall be respected by the belligerents, while flying at heights, times and on routes specifically agreed upon between the belligerents concerned.

They shall bear, clearly marked, the distinctive emblem prescribed in Article 38, together with their

national colours, on their lower, upper and lateral surfaces. They shall be provided with any other markings or means of identification that may be agreed upon between the belligerents upon the outbreak or during the course of hostilities.

Unless agreed otherwise, flights over enemy or enemy-occupied territory are prohibited.

Medical aircraft shall obey every summons to land. In the event of a landing thus imposed, the aircraft with its occupants may continue its flight after examination, if any.

In the event of an involuntary landing in enemy or enemy-occupied territory, the wounded and sick, as well as the crew of the aircraft shall be prisoners of war. The medical personnel shall be treated according to Article 24 and the Articles following.

ART. 37. — Subject to the provisions of the second paragraph, medical aircraft of Parties to the conflict may fly over the territory of neutral Powers, land on it in case of necessity, or use it as a port of call. They shall give the neutral Powers previous notice of their passage over the said territory and obey all summons to alight, on land or water. They will be immune from attack only when flying on routes, at heights and at times specifically agreed upon between the Parties to the conflict and the neutral Power concerned.

The neutral Powers may, however, place conditions or restrictions on the passage or landing of medical aircraft on their territory. Such possible

conditions or restrictions shall be applied equally to all Parties to the conflict.

Unless agreed otherwise between the neutral Power and the Parties to the conflict, the wounded and sick who are disembarked, with the consent of the local authorities, on neutral territory by medical aircraft, shall be detained by the neutral Power, where so required by international law, in such a manner that they cannot again take part in operations of war. The cost of their accommodation and internment shall be borne by the Power on which they depend.

CHAPTER VII

The Distinctive Emblem

ART. 38. — As a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the Federal colours, is retained as the emblem and distinctive sign of the Medical Service of armed forces.

Nevertheless, in the case of countries which already use as emblem, in place of the red cross, the red crescent or the red lion and sun[1] on a white ground, those emblems are also recognized by the terms of the present Convention.

---

[1] The Government of Iran, the only country using the red lion and sun emblem on a white ground, advised Switzerland, depositary State of the Geneva Conventions, on 4 September 1980, of the adoption of the red crescent in lieu and place of its former emblem. This was duly communicated by the depositary on 20 October 1980 to the States party to the Geneva Conventions.

ART. 39. — Under the direction of the competent military authority, the emblem shall be displayed on the flags, armlets and on all equipment employed in the Medical Service.

ART. 40. — The personnel designated in Article 24 and in Articles 26 and 27 shall wear, affixed to the left arm, a water- resistant armlet bearing the distinctive emblem, issued and stamped by the military authority.

Such personnel, in addition to wearing the identity disc mentioned in Article 16, shall also carry a special identity card bearing the distinctive emblem. This card shall be water-resistant and of such size that it can be carried in the pocket. It shall be worded in the national language, shall mention at least the surname and first names, the date of birth, the rank and the service number of the bearer, and shall state in what capacity he is entitled to the protection of the present Convention. The card shall bear the photograph of the owner and also either his signature or his finger-prints or both. It shall be embossed with the stamp of the military authority.

The identity card shall be uniform throughout the same armed forces and, as far as possible, of a similar type in the armed forces of the High Contracting Parties. The Parties to the conflict may be guided by the model which is annexed, by way of example, to the present Convention. They shall inform each other, at the outbreak of hostilities, of the model they are using. Identity cards should be made out, if possible, at least in duplicate, one copy being kept by the home country.

In no circumstances may the said personnel be deprived of their insignia or identity cards nor of the right to wear the armlet. In case of loss, they shall be entitled to receive duplicates of the cards and to have the insignia replaced.

ART. 41. — The personnel designated in Article 25 shall wear, but only while carrying out medical duties, a white armlet bearing in its centre the distinctive sign in miniature; the armlet shall be issued and stamped by the military authority.

Military identity documents to be carried by this type of personnel shall specify what special training they have received, the temporary character of the duties they are engaged upon, and their authority for wearing the armlet.

ART. 42. — The distinctive flag of the Convention shall be hoisted only over such medical units and establishments as are entitled to be respected under the Convention, and only with the consent of the military authorities.

In mobile units, as in fixed establishments, it may be accompanied by the national flag of the Party to the conflict to which the unit or establishment belongs.

Nevertheless, medical units which have fallen into the hands of the enemy shall not fly any flag other than that of the Convention.

Parties to the conflict shall take the necessary steps, in so far as military considerations permit, to make the distinctive emblems indicating medical units and establishments clearly visible to the enemy

land, air or naval forces, in order to obviate the possibility of any hostile action.

ART. 43. — The medical units belonging to neutral countries, which may have been authorized to lend their services to a belligerent under the conditions laid down in Article 27, shall fly, along with the flag of the Convention, the national flag of that belligerent, wherever the latter makes use of the faculty conferred on him by Article 42.

Subject to orders to the contrary by the responsible military authorities, they may, on all occasions, fly their national flag, even if they fall into the hands of the adverse Party.

ART. 44. — With the exception of the cases mentioned in the following paragraphs of the present Article, the emblem of the red cross on a white ground and the words "Red Cross", or "Geneva Cross" may not be employed, either in time of peace or in time of war, except to indicate or to protect the medical units and establishments, the personnel and material protected by the present Convention and other Conventions dealing with similar matters. The same shall apply to the emblems mentioned in Article 38, second paragraph, in respect of the countries which use them. The National Red Cross Societies and other Societies designated in Article 26 shall have the right to use the distinctive emblem conferring the protection of the Convention only within the framework of the present paragraph.

Furthermore, National Red Cross (Red Crescent, Red Lion and Sun) Societies may, in time of peace, in accordance with their national legislation, make use

of the name and emblem of the Red Cross for their other activities which are in conformity with the principles laid down by the International Red Cross Conferences. When those activities are carried out in time of war, the conditions for the use of the emblem shall be such that it cannot be considered as conferring the protection of the Convention; the emblem shall be comparatively small in size and may not be placed on armlets or on the roofs of buildings.

The international Red Cross organizations and their duly authorized personnel shall be permitted to make use, at all times, of the emblem of the red cross on a white ground.

As an exceptional measure, in conformity with national legislation and with the express permission of one of the National Red Cross (Red Crescent, Red Lion and Sun) Societies, the emblem of the Convention may be employed in time of peace to identify vehicles used as ambulances and to mark the position of aid stations exclusively assigned to the purpose of giving free treatment to the wounded or sick.

CHAPTER VIII

Execution of the Convention

ART. 45. — Each Party to the conflict, acting through its commanders-in-chief, shall ensure the detailed execution of the preceding Articles, and provide for unforeseen cases, in conformity with the general principles of the present Convention.

ART. 46. — Reprisals against the wounded, sick, personnel, buildings or equipment protected by the Convention are prohibited.

ART. 47. — The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains.

ART. 48. — The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

CHAPTER IX

Repression of Abuses and Infractions

ART. 49. — The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such

grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

ART. 50. — Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

ART. 51. — No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

ART. 52. — At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

ART. 53. — The use by individuals, societies, firms or companies either public or private, other than those entitled thereto under the present Convention, of the emblem or the designation "Red Cross" or "Geneva Cross", or any sign or designation constituting an imitation thereof, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times.

By reason of the tribute paid to Switzerland by the adoption of the reversed Federal colours, and of the confusion which may arise between the arms of Switzerland and the distinctive emblem of the Convention, the use by private individuals, societies or firms, of the arms of the Swiss Confederation, or of marks constituting an imitation thereof, whether as trademarks or commercial marks, or as parts of such marks, or for a purpose contrary to commercial honesty, or in circumstances capable of wounding Swiss national sentiment, shall be prohibited at all times.

Nevertheless, such High Contracting Parties as were not party to the Geneva Convention of July 27, 1929, may grant to prior users of the emblems, designations, signs or marks designated in the first paragraph, a time limit not to exceed three years from the coming into force of the present Convention to discontinue such use, provided that the said use shall not be such as would appear, in time of war, to confer the protection of the Convention.

The prohibition laid down in the first paragraph of the present Article shall also apply, without effect on any rights acquired through prior use, to the emblems and marks mentioned in the second paragraph of Article 38.

ART. 54. —The High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 53.

Final Provisions

ART. 55. — The present Convention is established in English and in French. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official translations of the Convention to be made in the Russian and Spanish languages.

ART. 56. — The present Convention, which bears the date of this day, is open to signature until February 12, 1950, in the name of the Powers represented at the Conference which opened at Geneva on April 21, 1949; furthermore, by Powers

not represented at that Conference but which are parties to the Geneva Conventions of 1864, 1906 or 1929 for the Relief of the Wounded and Sick in Armies in the Field.

ART. 57. — The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

ART. 58. — The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting

Party six months after the deposit of the instrument of ratification.

ART. 59. — The present Convention replaces the Conventions of August 22, 1864, July 6, 1906 and July 27, 1929, in relations between the High Contracting Parties.

ART. 60. — From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention.

ART. 61. — Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect six months after the date on which they are received.

The Swiss Federal Council shall communicate the accessions to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

ART. 62. — The situations provided for in Articles 2 and 3 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

ART. 63. — Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with the release and repatriation of the persons protected by the present Convention have been terminated.

ART. 64. — The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to the present Convention.

IN WITNESS WHEREOF the undersigned, having deposited their respective full powers, have signed the present Convention.

DONE at Geneva this twelfth day of August 1949, in the English and French languages. The original shall be deposited in the Archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.

ANNEX I

DRAFT AGREEMENT RELATING TO HOSPITAL ZONES AND LOCALITIES

ART. 1. — Hospital zones shall be strictly reserved for the persons named in Article 23 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field of August 12, 1949, and for the personnel entrusted with the organization and administration of these zones and localities, and with the care of the persons therein assembled.

Nevertheless, persons whose permanent residence is within such zones shall have the right to stay there.

ART. 2. — No persons residing, in whatever capacity, in a hospital zone shall perform any work, either within or without the zone, directly connected with military operations or the production of war material.

ART. 3. — The Power establishing a hospital zone shall take all necessary measures to prohibit access to all persons who have no right of residence or entry therein.

ART. 4. — Hospital zones shall fulfil the following conditions:

a) They shall comprise only a small part of the territory governed by the Power which has established them.

b) They shall be thinly populated in relation to the possibilities of accommodation.

c) They shall be far removed and free from all military objectives, or large industrial or administrative establishments.

d) They shall not be situated in areas which, according to every probability, may become important for the conduct of the war.

ART. 5. — Hospital zones shall be subject to the following obligations:

a) The lines of communication and means of transport which they possess shall not be used for the transport of military personnel or material, even in transit.

b) They shall in no case be defended by military means.

ART. 6. — Hospital zones shall be marked by means of red crosses (red crescents, red lions and suns) on a white background placed on the outer precincts and on the buildings. They may be similarly marked at night by means of appropriate illumination.

ART. 7. — The Powers shall communicate to all the High Contracting Parties in peacetime or on the outbreak of hostilities, a list of the hospital zones in the territories governed by them. They shall also give notice of any new zones set up during hostilities.

As soon as the adverse Party has received the above-mentioned notification, the zone shall be regularly constituted.

If, however, the adverse Party considers that the conditions of the present agreement have not been fulfilled, it may refuse to recognize the zone by giving immediate notice thereof to the Party responsible for the said zone, or may make its recognition of such zone dependent upon the institution of the control provided for in Article 8.

ART. 8. — Any Power having recognized one or several hospital zones instituted by the adverse Party shall be entitled to demand control by one or more Special Commissions, for the purpose of ascertaining if the zones fulfil the conditions and obligations stipulated in the present agreement.

For this purpose, the members of the Special Commissions shall at all times have free access to the various zones and may even reside there

permanently. They shall be given all facilities for their duties of inspection.

ART. 9. — Should the Special Commissions note any facts which they consider contrary to the stipulations of the present agreement, they shall at once draw the attention of the Power governing the said zone to these facts, and shall fix a time limit of five days within which the matter should be rectified. They shall duly notify the Power who has recognized the zone.

If, when the time limit has expired, the Power governing the zone has not complied with the warning, the adverse Party may declare that it is no longer bound by the present agreement in respect of the said zone.

ART. 10. — Any Power setting up one or more hospital zones and localities, and the adverse Parties to whom their existence has been notified, shall nominate or have nominated by neutral Powers, the persons who shall be members of the Special Commissions mentioned in Articles 8 and 9.

ART. 11. — In no circumstances may hospital zones be the object of attack. They shall be protected and respected at all times by the Parties to the conflict.

ART. 12. — In the case of occupation of a territory, the hospital zones therein shall continue to be respected and utilized as such.

Their purpose may, however, be modified by the Occupying Power, on condition that all measures are

taken to ensure the safety of the persons accommodated.

ART. 13. — The present agreement shall also apply to localities which the Powers may utilize for the same purposes as hospital zones.