

REPUBLIC OF KENYA



**TWELFTH PARLIAMENT (FIFTH SESSION)**

**THE SENATE**

-----

**STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND  
HUMAN RIGHTS**

.....

**REPORT ON CONSIDERATION OF A PETITION REGARDING  
ALLEGED LACK OF SUPPORT TO FAMILY MEMBERS OF VICTIMS  
OF THE ETHIOPIAN AIRLINES FLIGHT 302 AIR CRASH**

.....

*Approved*  
*[Signature]*  
*14/10/2021*

*Rt. Hon. Speaker*  
*You may approve for*  
*tabling. [Signature]*  
*14/10/21*

Clerk's Chamber,  
First Floor,  
Parliament Buildings,  
**NAIROBI.**

*DC-EG*  
*Forwarded & recommended*  
*for tabling*  
*[Signature]*  
*14/10/2021*

**October, 2021**



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## FOREWORD BY THE CHAIRPERSON

1. On 10<sup>th</sup> March, 2019, Ethiopian Airlines flight 302, a Boeing 737-8 registration ET-AVJ, crashed in Bishoftu town killing all 157 passengers and crew on board, shortly after take-off from Addis Ababa Bole International Airport in Ethiopia. The flight was a scheduled international passenger flight from Addis Ababa to Nairobi carrying passengers from 35 different nationalities, including 36 Kenyans.
2. Following the air crash, some family members of victims of the air crash presented a Petition to the Senate, in which it was alleged that the government had failed to provide support to them in accessing death certificates of the deceased, as well as providing counselling services to help them deal with and manage the trauma.
3. While the petition was initially committed to the Standing Committee on National Security, Defence and Foreign Relations for consideration, it was later re-directed to the Standing Committee on Justice, Legal Affairs and Human Rights, which proceeded to consider the petition as provided for in the Petition to Parliament (Procedure) Act, 2012, and the Senate Standing Orders.
4. In considering the petition, the Committee held engagements with the petitioners, the aircraft manufacturer (Boeing), the Office of the Attorney General and Department of Justice, as well as the Ministry of Foreign Affairs which had the primary responsibility of coordinating support to the bereaved families in this case.
5. The Committee observed that –
  - a) The Ethiopian Airlines Flight 302 air crash was a tragic event in which thirty-six (36) Kenyans lost their lives. Of these, thirty-two (32) held Kenyan passports while four were travelling on the passports of other countries and held dual or other nationalities.
  - b) The trauma to families of the victims was compounded by the circumstances of the air crash, which meant that there were no bodies available for them to bury and thus commence the process of closure and healing. It took over six months, following DNA testing, for the remains of the victims to be released over to their families for burial.
  - c) The national government, through the Ministry of Foreign Affairs, facilitated issuance of death certificates for the Kenyan victims of the air crash, which was done in April, 2019, one month after the air crash. The death certificates have since been transmitted to the families, save for instances where verification of the next of kin is yet to be completed, or where there are disputes as to the rightful beneficiaries.

- d) In the circumstances, the national government, through the line Ministries, Departments and Agencies provided reasonable logistical and psychosocial support to families of the victims.
- e) The process of compensation for families of the victims is ongoing. This is a private contractual matter between the bereaved families, the airline, and the aircraft manufacturer.
6. Arising from these observations, the Committee does not make any recommendations on the matter. Instead, the Committee will continue to engage with the Ministry of Foreign Affairs to ensure that the process of verification of the next of kin for the death certificates yet to be released by the Ministry is concluded judiciously. This will enable the said families to pursue appropriate compensation and to obtain closure on the matter.
7. The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it during consideration of this Petition. The Committee further wishes to thank the petitioners and stakeholders who appeared before or submitted written memoranda to the Committee.
8. It is now my pleasant duty, pursuant to Standing Order 232(2), to present the Report of the Standing Committee on Justice, Legal Affairs and Human Rights on its consideration of the petition regarding alleged lack of support to family members of victims of the Ethiopian Airlines Flight 302 air crash.

Signed.....

Date.....5<sup>th</sup> October, 2021.....

**SEN. ERICK OKONG'O MOGENI, SC, MP**  
**CHAIRPERSON**  
**STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN**  
**RIGHTS**

## PREFACE

The Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to the Senate Standing Order 212 and mandated to: -

*'consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.'*

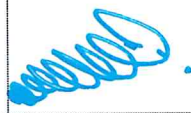

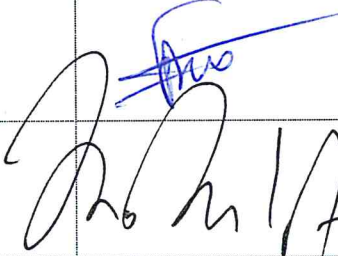
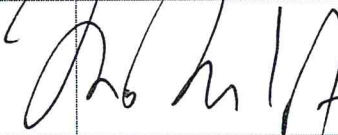
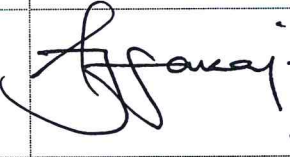
The Committee is comprised of –

- 1) Sen. Erick Okong'o Mogeni, SC, MP - Chairperson
- 2) Sen. (Canon) Naomi Jillo Waqo, MP - Vice Chairperson
- 3) Sen. Amos Wako, EGH, SC, FCI Arb, MP
- 4) Sen. James Orengo, EGH, SC, MP
- 5) Sen. Fatuma Dullo, CBS, MP
- 6) Sen. Mutula Kilonzo Junior, CBS, MP
- 7) Sen. Irungu Kang'ata, CBS, MP
- 8) Sen. Johnson Sakaja, CBS, MP

The Minutes of the Sittings of the Committee in considering the Petition on alleged lack of support to the families of the victims of the Ethiopian Air Crash are attached to this Report collectively as *Annex 1*.

**ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS ON ITS CONSIDERATION OF A PETITION REGARDING ALLEGED LACK OF SUPPORT TO FAMILY MEMBERS OF VICTIMS OF THE ETHIOPIAN AIRLINES FLIGHT 302 AIR CRASH**

**We, the undersigned Members of the Standing Committee on Justice, Legal Affairs and Human Rights, do hereby append our signatures to adopt this Report-**

Sen. Erick Okong'o Mogeni, SC, MP	-Chairperson	
Sen. (Canon) Naomi Jillo Waqo, MP	-Vice-Chairperson	
Sen. Amos Wako, EGH, SC, FCI Arb, MP	-Member	
Sen. James Orengo, EGH, SC, MP	-Member	
Sen. Fatuma Dullo, CBS, MP	-Member	
Sen. Mutula Kilonzo Junior, <sup>CBS</sup> MP	-Member	
Sen. Irungu Kang'ata, MP	-Member	
Sen. Johnson Sakaja, CBS, MP	-Member	

## CHAPTER ONE: INTRODUCTION

### 1.1 The Ethiopian Air Crash

1. On 10<sup>th</sup> March, 2019, Ethiopian Airlines flight 302, a Boeing 737-8 registration ET-AVJ, crashed in Bishoftu town killing all 157 passengers and crew on board, shortly after take-off from Addis Ababa Bole International Airport in Ethiopia. The flight was a scheduled international passenger flight from Addis Ababa to Nairobi carrying passengers from 35 different nationalities, including 36 Kenyans.
2. A preliminary report indicated that the Ethiopian Airlines pilots wrestled with controls to stay aloft but plunged on the ground after restoring a computer system that was ordering the nose down because of faulty sensor data. The crash happened less than five months after a Lion Air plane of the same Boeing model plunged into Indonesia's Java Sea after take-off. Preliminary investigative findings for the crashes pointed to a common cause. Following the crash, countries around the world grounded the 737 MAX 8 aircraft model.
3. According to Ethiopian Airlines records, the captain of the ill-fated aircraft had a total of 8122 hours flight experience and had no flight time in the previous 72 hours. The pilot in command was 29 years old and his most recent simulator training experience was on 30<sup>th</sup> September, 2018, with his most recent simulator proficiency check on 1<sup>st</sup> October, 2018. The captain completed the Ethiopian Academy on 23<sup>rd</sup> July, 2010. The pilot's ECAA license allowed him to act as pilot-in-command in commercial air transport operations in a Boeing 737-7/800 and Boeing 737 MAX.
4. The First Officer had a total of 361 hours flight experience and in the previous 72 hours he had flown for 5 hours and 25 minutes. The First Officer was 25 years old whose most recent simulator event was listed as a proficiency check undertaken on 3<sup>rd</sup> December, 2018. His line training/check (conducted on the B737 aircraft) was completed on 31<sup>st</sup> January, 2019. The First Officer's ECAA license allowed him to act as First Officer in commercial air transport operation in Boeing 737-7/800 and Boeing 737 MAX.
5. Ethiopian Airline ET-AVJ was a 737-8 MAX single aisle transport aircraft configured in a 160 passenger multi-class arrangement manufactured by the Boeing Company and delivered to Ethiopian Airlines on 15<sup>th</sup> November, 2018. The Aircraft had 1330.3 hours with a total of 382 cycles at the time of the accident.



6. The Aircraft Accident Investigation Preliminary Report<sup>1</sup> published by the Ethiopian Ministry of Transport in March, 2020 arrived at the initial findings that on March 10, 2019, at 05:38 UTC, Ethiopian Airlines flight 302, Boeing 737-8(MAX), ET-AVJ, took off from Addis Ababa Bole International Airport bound to Nairobi, Kenya Jomo Kenyatta International Airport. Shortly after takeoff, the Angle of Attack sensor recorded value became erroneous and the left stick shaker activated and remained active until near the end of the flight. In addition, the airspeed and altitude values from the left air data system began deviating from the corresponding right side values. Due to flight control problems, the Captain was unable to maintain the flight path and requested to return to the departure airport. The crew lost control of the aircraft which crashed at 5:44 UTC 28 NM South-East of Addis Ababa near Ejere village.
7. Immediately following the accident, civil aviation authorities across the world began grounding the Boeing 737 MAX planes. On 11<sup>th</sup> March, 2019, the US Federal Aviation Authority (FAA) issued a Continuous Airworthiness Notification to the International Community (CANIC) for 737 MAX operators, describing the FAA's activities following the *Lion Air* accident in support of continued operational safety of the 737 MAX fleet. Two days later, the FAA ordered a temporary grounding of the fleet operated by U.S. airlines or in U.S. territory.

## **1.2 Kenyan victims of the Air Crash**

8. A total of 36 Kenyans lost their lives in the ill-fated flight, including 32 passengers travelling on Kenyan passports and 4 travelling on the passports of other nationalities.
9. Following the crash, the Ethiopian Authorities offered bereaved families bags of soil from the crash site and undertook to provide a letter from the Ethiopian Airlines attesting the same for custom's clearance at the airport. In the meanwhile, families were told that it could take up to six months to identify the remains.
10. The Ethiopian government further indicated that human tissue had been gathered by a team led by Interpol and Blake Emergency Services to identify victims through testing the material for DNA. As such, the government said it would provide temporary death certificates, which could help with insurance and probate matters.
11. Following DNA testing, remains of the Kenyans victims of the air crash were repatriated to Nairobi on 14<sup>th</sup> October, 2019 and released to the families for burial.

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<sup>1</sup> Federal Democratic Republic of Ethiopia, Ministry of Transport (2020); *Aircraft Accident Investigation Preliminary Report*, Report No. AI-01/19

### 1.3 Presentation of the Petition

12. On 2<sup>nd</sup> July, 2019, the Deputy Speaker of the Senate, pursuant to provisions of the Standing Orders No. 226 (1) (a) and 230 (2) (b), reported that a Petition has been submitted, by residents of Murang'a County and families of victims of the Ethiopian Air Crash.
13. The petitioners informed the Senate that-
  - a) Following the crash of Ethiopian Airlines Flight 302 from Addis Ababa to Nairobi, the Government through the Ministry of Foreign Affairs committed to support the families of the 32 Kenyans who lost their lives, by providing counselling services and acting as the link Government agency in the attendant bureaucratic procedures.
  - b) The Government had not fulfilled this promise as no counselling support had been provided despite the post-traumatic stress the families were experiencing. This had forced the families to seek private counselling at expensive rates from their own meagre resources despite the tragic losses.
  - c) The families had agonised to get death certificates to no avail yet this role fell under the purview of the Ministry of Foreign Affairs owing to the fact that the air crash occurred in a foreign country.
14. The Petitioners therefore prayed that the Senate investigates the matter and makes appropriate recommendations thereon.
15. Pursuant to Standing Order 232(1), the Petition was committed to the Standing Committee on National Security, Defence and Foreign Relations for consideration. Subsequently, vide a Communication from the Chair issued on 16<sup>th</sup> July, 2019, the Petition was redirected to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.
16. A copy of the Petition is attached to this Report as *Annex 2*, and an extract of the Hansard for the sitting of the Senate held on Tuesday, 2<sup>nd</sup> July, 2019 as *Annex 3*. The Communication from the Chair dated 16<sup>th</sup> July, 2019 redirecting the Petition to the Standing Committee on Justice, Legal Affairs and Human Rights, is attached as *Annex 4*.

## CHAPTER TWO: CONSIDERATION OF THE PETITION

17. Pursuant to the Standing Orders, the Committee proceeded to consider the Petition and held meetings with key stakeholders as set out below.

### **2.1 Pre-Trial Conference in preparation for the commencement of legal proceedings against Boeing in relation to the ET 302 Plane Crash**

18. In August, 2019, the Committee held consultations with the Petitioners, following which a visit was organized to Seattle, Washington State, USA, to coordinate legal representation for Kenyan victims of the Ethiopian Air Crash.

19. During the said visit, the Committee facilitated meetings with two law firms identified to represent families of victims, as well as with Boeing, the manufacturer of the ill-fated airline.

### **2.2 Submissions by the Attorney General**

20. Following an invitation by the Committee, the Attorney General appeared before the Committee on Thursday, 28<sup>th</sup> November, 2019 and submitted as follows in respect of the subject Petition –

a) The role of the Office of the Attorney General and Department of Justice was limited to giving advice on legal issues around the process of issuance of death certificates and repatriation of the remains of those affected.

b) The Office, in consultation with other government agencies, had advised on the legal requirements for releasing the death certificates to the next of kin. The Ministry of Foreign Affairs then had the mandate of verifying the legal information provided by the families and releasing the death certificates as the accident occurred in a foreign country.

c) Out of the thirty-two death certificates which were issued –

i) Twenty-five (25) had been released to the next of kin of the deceased persons, while seven (7) had not been released;

ii) Three out of the seven certificates were awaiting collection while the remaining four certificates had not been released due to family disputes.

### **2.3 Submissions by the Cabinet Secretary, Ministry of Foreign Affairs**

21. Following an invitation by the Committee, the Cabinet Secretary for Foreign Affairs wrote to the Committee on 28<sup>th</sup> August, 2020, in which it was stated as follows -
- a) From the outset of the tragic plane crash, the Ministry of Foreign Affairs set up a special desk to better assist the families, as guided by its mandate and competence.
  - b) The Kenya Mission in Addis Ababa received and transmitted to the Ministry Headquarters thirty-two (32) death certificates of the victims in April, 2019. The remainder of the death certificates were for Kenyans holding dual or other nationalities.
  - c) The Ministry carried out due diligence to ensure the next-of-kin received the death certificates. As of that date, twenty-three (23) death certificates had been collected by the families and nine (9) remained in the custody of the Ministry. The Ministry further stated that, since the repatriation of the remains of the victims of the crash at the JKIA on 14<sup>th</sup> October, 2019, no family member had approached the Ministry to collect the remaining death certificates.
  - d) The Ministry further approached other Kenya government departments including the Registrar of Births and Deaths, the Registrar of the High Court, and the Attorney General's Office to speedily assist families requiring various documents.
22. In response to the allegation that the Ministry had failed to provide counselling services to families of the victims, the Cabinet Secretary stated that –
- a) The Principal Secretary, Ministry of Foreign Affairs had hosted the families on 20<sup>th</sup> March, 2019 at the KICC, during which counselling services were provided on site to families who wished to avail themselves of the service.
  - b) The Ministry thereafter provided the families with a contact number/focal point at the Ministry of Health through which government counselling services could be obtained.
  - c) During a ceremony held at the JKIA on 14<sup>th</sup> October, 2019 to mark the repatriation of the remains of the victims, the Ministry coordinated the provision of counselling services to the families.

23. In concluding, the Ministry noted that Ethiopian Airlines had processed partial claims to the bereaved families for their immediate financial needs. However, since the engagement between the airline and the next of kin was a private contractual matter, the Ministry had no information on the progress thereof.
24. A copy of the response from the Ministry of Foreign Affairs is attached to this Report as *Annex 5*.
25. Thereafter, the Committee continued to engage the Ministry of Foreign Affairs on the resolution of the family disputes and identification of the next of kin to whom the pending death certificates should be released.

## **CHAPTER THREE: COMMITTEE FINDINGS AND RECOMMENDATIONS**

### **3.1 Committee Findings**

26. Having considered the Petition and engaged with stakeholders on the matter, the Committee finds that –
- a) The Ethiopian Airlines Flight 302 air crash was a tragic event in which thirty-six (36) Kenyans lost their lives. Of these, thirty-two (32) held Kenyan passports while four were travelling on the passports of other countries and held dual or other nationalities.
  - b) The trauma to families of the victims was compounded by the circumstances of the air crash, which meant that there were no bodies available for them to bury and thus commence the process of closure and healing. It took over six months, following DNA testing, for the remains of the victims to be released over to their families for burial.
  - c) The national government, through the Ministry of Foreign Affairs, facilitated issuance of death certificates for the Kenyan victims of the air crash, which was done in April, 2019, one month after the air crash. The death certificates have since been transmitted to the families, save for instances where verification of the next of kin is yet to be completed, or where there are disputes as to the rightful beneficiaries.
  - d) In the circumstances, the national government, through the line Ministries, Departments and Agencies provided reasonable logistical and psychosocial support to families of the victims.
  - e) The process of compensation for families of the victims is ongoing. This is a private contractual matter between the bereaved families, the airline, and the aircraft manufacturer.

### **3.2 Committee Recommendations**

27. Arising from its findings on the matter, the Committee does not make any recommendations on the matter.
28. The Committee will continue to engage with the Ministry of Foreign Affairs to ensure that the process of verification of the next of kin for the death certificates yet to be released by the Ministry is concluded judiciously. This will enable the said families to pursue appropriate compensation and thus obtain closure on the matter.

## LIST OF ANNEXES

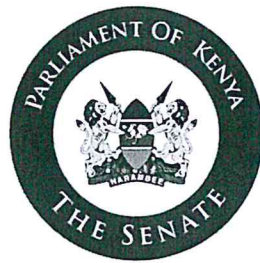
- Annex 1:* Minutes of Sitzings of the Committee
- Annex 2:* Copy of the Petition
- Annex 3:* Extract of the Hansard for the sitting of the Senate held on Tuesday, 2<sup>nd</sup> July, 2019.
- Annex 4:* Communication from the Chair dated 16th July, 2019 redirecting the Petition to the Standing Committee on Justice, Legal Affairs and Human Rights
- Annex 5:* Copy of letter Ref. No. MFA.ADM.1/102A Vol. XXIII (93) dated 28<sup>th</sup> August, 2021 from the Cabinet Secretary, Ministry of Foreign Affairs.





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**TWELFTH PARLIAMENT | FIFTH SESSION**

**MINUTES OF THE FORTY-SECOND SITTING OF THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THE ZOOM ONLINE MEETING PLATFORM, ON THURSDAY, 8<sup>TH</sup> JULY, 2021 AT 11.00 A.M.**

**PRESENT**

- |   |                                   |
|---|-----------------------------------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP    | - Chairperson ( <b>Chairing</b> ) |
| 2. Sen. Amos Wako, EGH, SC, FCI Arb, MP | - Member                          |
| 3. Sen. James Orengo, EGH, SC, MP       | - Member                          |
| 4. Sen. Fatuma Dullo, CBS, MP           | - Member                          |
| 5. Sen. Mutula Kilonzo Junior, CBS, MP  | - Member                          |

**ABSENT WITH APOLOGY**

- |                                      |                    |
|--------------------------------------|--------------------|
| 1. Sen. (Canon) Naomi Jillo Waqo, MP | - Vice Chairperson |
| 2. Sen. Irungu Kang'ata, CBS, MP     | - Member           |
| 3. Sen. Johnson Sakaja, CBS, MP      | - Member           |

**SECRETARIAT**

- |                         |                                     |
|-------------------------|-------------------------------------|
| 1. Mr. Charles Munyua   | - Clerk Assistant                   |
| 2. Ms. Sylvia Nasambu   | - Clerk Assistant                   |
| 3. Mr. Said Osman       | - Researcher                        |
| 4. Mr. Moses Kenyanchui | - Legal Counsel                     |
| 5. Ms. Purity Orutwa    | - Hansard Officer                   |
| 6. Mr. James Ngusya     | - Sergeant-At-Arms                  |
| 7. Mr. James Kimiti     | - Hansard Officer                   |
| 8. Ms. Tiffany Kiarie   | - Attaché ( <i>Taking Minutes</i> ) |

**MIN. NO. 216/2021**

**PRAYER**

The sitting commenced with a word of prayer by Sen. Mutula Kilonzo Junior, CBS, MP.

**MIN. NO. 217/2021**

**ADOPTION OF THE AGENDA**

The Committee adopted the agenda of the Sitting, having been proposed by Sen. Amos Wako, EGH, SC, FCI Arb, MP and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.

**MIN. NO. 218/2021**

**PETITION ON THE ALLEGED LACK OF SUPPORT TO  
FAMILY MEMBERS OF VICTIMS OF THE ETHIOPIAN  
AIRLINE FLIGHT 302 AIR CRASH**

The committee considered and adopted the Report on a Petition regarding alleged lack of support to family members of victims of the Ethiopian Airline Flight 302 Air crash, having been proposed by Sen. James Orengo, EGH, SC, MP, and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.

The Committee observed the need for Kenya to have a framework in place that would enable it to provide the necessary support to its nationals that lose their lives in such circumstances.

**MIN. NO. 219/2021**

**REQUEST FOR STATEMENT ON THE DELAY IN  
APPOINTMENT OF FOURTY-ONE (41) JUDGES OF THE  
HIGH COURT AND THE COURT OF APPEAL**

The Committee considered the draft Report on the Request for Statement regarding the delay in appointment of forty-one (now forty) Judges of the High Court and the Court of Appeal, and made the following observations and recommendations for inclusion in the Report -

- a) Delete the section that state, "*That the law be amended,*" and add that Article 259 sub-article 8, states that where the constitution does not provide a specific time, the office that is tasked with making a decision must do so within reasonable time. The delay in this case had been been unreasonable and went contrary to that clear provision of the constitution.
- b) The Committee expressed discomfort in the lack of firmness in the Office of the Attorney General, and in the conflict that arises from the Attorney General both sitting as a Member of the Judicial Service Commission and as an appellant in Court against the recommendation of the JSC.
- c) The Committee noted that it was improper to have reports leaked on alleged impropriety of Judges while they were serving in office, without subjecting the same to a process of interrogation where the impugned Judges would be given the opportunity to respond. This further undermined the dispensation of justice.
- d) The Committee reminds that the administration of justice has suffered and is unable to effectively function due to the failure by the President to appoint the Judges.
- e) Article 27 of the Constitution granted to every person equality before the law and the right to equal protection and equal benefit of the law. The article further protected all persons against discrimination. In the present case, by appointing 34 Judges and leaving out the six nominees, the six had been unduly discriminated against.

- f) Some of the Court stations that previously had a resident Court of Appeal no longer did, due to the shortage of Judges in that Court. This was also reflected in the recent judicial postings by the Chief Justice.
- g) The act of not appointing the said Judges undermined their authority even in the offices where they continued to serve.
- h) The Court Order issued by the High Court remained in place and no stay had been issued against implementation of the decision. The Executive was therefore in breach of the said Order.
- i) The issue of the appointment of Judges not proceeding due to the pending suit at the Court of Appeal could no longer hold, as the 34 Judges had been appointed while the appeal was still in place.
- j) Articles 2 and 10 of the Constitution ought to be cited in the Report, as they are foundational values which every state organ was obligated to uphold.

The Committee further observed that there was a lacuna in law on what ought to be done where a positive order was directed at the appointing authority and the said authority declined, refused, or otherwise failed to comply with such an order.

Thereupon, the Committee adopted the Report subject to the said amendments, having been proposed by Sen. James Orengo, EGH, SC, MP, and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.

**MIN. NO. 220/2021**      **REVIEW OF THE LEGAL, POLICY AND ADMINISTRATIVE FRAMEWORK ON THE FIGHT AGAINST CORRUPTION**

The Committee was taken through the draft Report on the inquiry into the legal, policy and administrative framework in the fight against corruption in Kenya, and made the following observations –

- a) That, the Multi-Agency Taskforce (MAT) continued to experience challenges due to conflicting and overlapping mandates as well as superiority fights among its members.
- b) That some of the entities were misplaced within the structure of the MAT or in their establishing statutes. For instance, the Witness Protection Agency should ideally be under the Office of the Director of Public Prosecutions to effectively carry out its work. However, it was currently under the Office of the Attorney General. Also, the Asset Recovery Agency should ideally be an independent entity, but currently it operated within the Office of the Attorney General.
- c) The fact that over 30 cases related to corruption had been withdrawn by the Director of Public Prosecutions, according to the Report shared with the Committee by the Ethics and Anti-Corruption Commission, demonstrated that there was no proper coordination among the members of the MAT during the investigative stage and on the decision whether to present the cases to Court.

Thereupon, having considered that the Committee had meetings scheduled with members of the MAT over the subsequent weeks, and further proposed to hold a retreat

with all members of the MAT in August, the Committee resolved to defer adoption of the Report until after the said meetings.

**MIN. NO. 221/2021**                      **ANY OTHER BUSINESS**

The Committee noted that its meeting with the National Council for the Administration of Justice, on the Petition regarding access to justice during the COVID-19 pandemic did not proceed. Instead, the Chief Registrar/ Secretary, NCAJ had written indicating that there was a scheduling conflict where she was required to attend 3 meetings in Parliament on the same date. The Committee further noted that its letter to the NCAJ was sent on 18<sup>th</sup> June, while the other two letters were both dated 1<sup>st</sup> July. In that case, the Committee was of the view that the Chief Registrar should have honoured the invitation by the Committee and requested that the other two meetings be deferred.

Thereupon, the Committee resolved that a letter be sent to the Chief Registrar in this regard.

**MIN. NO. 222/2021**                      **ADJOURNMENT**

There being no other business, the meeting was adjourned at 12.30 pm. The next meeting will be on Tuesday, 13<sup>th</sup> July, 2021 at 8.00 am.



**SIGNED:** .....  
**(CHAIRPERSON)**

**DATE:** ..... 29<sup>th</sup> July, 2021 .....







The Clerk of the Senate  
Parliament Buildings  
P.O. Box 41842 – 00100

NAIROBI

19<sup>th</sup> June 2019



RE: PETITION TO THE SENATE CONCERNING LACK OF SUPPORT FOR  
ISSUANCE OF DEATH CERTIFICATES AND FACILITATION OF COUNSELLING  
BY THE MINISTRY OF FOREIGN AFFAIRS TO FAMILIES OF THE VICTIMS OF  
THE ETHIOPIAN AIR CRASH

---

We the undersigned,

Citizens of the Republic of Kenya, and residents of Murang'a County;

P O Box 381 -10200

Murang'a

DRAW the attention of the Senate to the following:


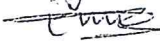



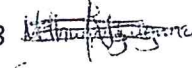


1. That, on 10 th March 2019 we lost our family members in the ill-fated Ethiopian Airline crash.
2. That, upon the breaking of the airline crash news, the government through the Ministry of Foreign Affairs committed to support all the families of the 32 Kenyans who lost lives in the air crash via counseling and acting as the link government agency in the attendant bureaucratic procedures.
3. That, despite the promises made, we have agonized without basic support for counseling and the requisite post-crash trauma support notwithstanding the fact we were not even able to retrieve our loved ones remains for burial.
4. That, we have been forced to seek out private counseling practitioners for counseling at expensive rates from our own meager resources despite the tragic losses.
5. That, we have agonized to get death certificates to no avail despite the role falling under the purview of the Ministry of Foreign Affairs owing to the fact that the air crash occurred in a foreign country.



6. That, we have made the best efforts to have the matters addressed by the relevant authorities all of which have failed to give a satisfactory response; and
7. That, none of these issues raised in this Petition is pending in any court of Law, Constitutional or any other legal body.

WHEREFORE, your humble petitioners pray that the senate investigates this matter and makes appropriate recommendations thereon-

Dated this 13 th day of June 2019.

Sammy Kahura Muriuki	13773485	0724 390 591 
Eliud Maina Wanja	27828322	0724 400 003 
Davis Mburu Karanja	24154010	0726 905 852 
Noah Gachucha Gachanja	27898575	0726 940 871 
Andrew Thairu Ngone	28448917	0713 180 421 
Peter Njuguna Muthubi	22514412	0720 353 438 
Abdallah Juma	21876049	0721 884 560 
Ednah Njoki	29165438	0702 702 964 







The dumpsite in Wajir County is 26 years old. Certainly the population has grown and there is much development. There must be an alternative and the County Government needs to move with speed to relocate the dumpsite.

With those few remarks, I beg to support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I am sorry, Senators we have to leave it at that because we have a number of petitions today. That means that petitioners have faith in what we are doing here.

Hon. Senators, pursuant to Standing Order No.232(1), the Petition is committed to the relevant Standing Committee for consideration. In this case, I direct the Petition to the Standing the Committee on Lands, Environment and Natural. The Committee may invite the expertise of any other committee or Members of this House.

In terms of Standing Order No.232(2), the Committee is required, in not more than 60 calendar days, from the time of reading the prayer which is today, to respond to the petitioner by way of a report addressed to the petitioner and laid on the Table of the Senate.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I have another Petition to read.

#### LACK OF SUPPORT TO FAMILIES OF VICTIMS OF THE ETHIOPIAN AIR CRASH

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Pursuant to Standing Orders No. 226(1)(a), and 230(2)(b), I hereby report to the Senate that a Petition has been submitted, through the Clerk, by residents of Murang'a County and families of victims of the Ethiopian Air Crash.

As you are aware, Article 119(1) of the Constitution states that-

'Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation.'

The salient issues raised in the said Petition are as follows-

Following the ill-fated Ethiopian Airline flight from Addis Ababa to Nairobi that crashed on 10<sup>th</sup> March, 2019, killing 157 lives among them 32 Kenyans-

THAT, the Government, through the Ministry of Foreign Affairs committed to support all the families of the 32 Kenyans who lost their lives by providing counseling services and acting as the link Government agency in the attendant bureaucratic procedures;

THAT, the Government has not fulfilled this promise as no support counseling has been provided in spite of the post-traumatic stress the families are experiencing considering the fact that they were not even able to retrieve their loved ones' remains for burial;

THAT, this has forced the families to seek private counseling at expensive rates from their own meager resources despite the tragic losses; and

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THAT, the families have agonized to get death certificates to no avail yet this role falls under the purview of the Ministry of Foreign Affairs owing to the fact that the air crash occurred in a foreign country.

Consequently, the Petitioner prays that the Senate-

(i) Hears and considers the petition;

(ii) Investigates the matter and makes appropriate recommendations thereon.

Honourable Senators, pursuant to standing order No. 231, I shall now allow comments, observations or clarifications in relation to the Petition for not more than thirty minutes. I am not asking you to debate the Petition. You are to give comments, observations or seek clarifications about the Petition and not the subject matter.

Let me give the chance to those who did not have the opportunity to speak on the other Petition. We will hear from Sen. Poghismo, who was once a Minister for Transport.

**Sen. Poghismo:** Thank you, Mr. Deputy Speaker, Sir. I also served as the Chairman of the Kenya Civil Aviation Authority. This matter needs to be taken seriously. I support the Petition by the affected families. A lot of Kenyans were affected when this crash happened and they would have supported this Petition at that moment. However, we tend to forget too fast. This crash did not happen long ago yet we had to wait for these families to appeal to us for them to get assistance. As Kenyans, we must continue caring for each. These families are dealing with trauma. The Government must fulfill promises that it makes to families such as these.

I support this Petition and I hope that the House will push for the prayers of the Petitioners to be answered. That will help these families put this matter to rest.

**The Deputy Speaker (Sen. (Prof.) Kindiki):** Well done, Sen. Poghismo. You were brief and straight to the point.

**Sen. Shiyonga:** Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to support the Petition by the affected families.

It is sad that we have to stand here to discuss a Petition where families of 32 Kenyans who lost their lives are crying for justice. I request the Government, through the Ministry of Foreign Affairs, to avail what is needed by those families because the death of their loved ones affected them. These families need to be assisted. They do not need to send petitions. I urge the Government to look into the issues raised by these families because they need to continue with their lives.

**The Deputy Speaker (Sen. (Prof.) Kindiki):** Well done for the short comments and observations.

**Sen. (Dr.) Milgo:** Thank you, Mr. Deputy Speaker, Sir, for allowing me to support this Petition. We are sorry for what happened. Actually, that was a sad day in Kenya because we lost 32 people.

The Government of Kenya committed through the Ministry of Foreign Affairs to assist the affected families. It is unfortunate that nobody has considered them up to date, having in mind that they did not get a body to bury, hence their trauma is at a higher level. We have been told that no counselling services have been offered yet these families need counselling services.

Families lost breadwinners and we are being told that they cannot obtain a death certificate. Without a death certificate, they cannot make claims to the institutions where

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their relatives were working. As a Senate, we urge the Directorate of Immigration and Registration of Persons to take this as a matter of urgency. They should provide the death certificates to the remaining members of the families for them to claim for their dues from the various institutions where their relatives were working.

Death is a serious challenge and it is sad to learn that this thing has not been considered several months later. The Committee that is going to handle this Petition should treat it as a matter of urgency to ensure that these families receive their rightful dues.

I also wish to take this opportunity to say that I am very proud because one of us, Sen. Halake, was able to trounce---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Dr.) Milgo. You cannot sneak on anything, at any time in any manner.

Proceed Sen. Ochillo-Ayacko.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to join my colleagues who have expressed sympathy and support for this Petition.

As a nation, we must have a conscience and a soul. We are quick as a nation to express our condolences and sympathies for the affected families but we have been slow to act. This Petition is a stark reminder that when the Government speaks for us, it should also act for us.

The families are traumatised and are asking for what they need to have. For instance, most of them need to bring closure to this very sad moment by being assisted in having documents relating to their families. As families, they also need to initiate legal action to get what is rightfully theirs.

Mr. Deputy Speaker, Sir, in conclusion, I beg to support this extremely touching Petition. Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done.

**Sen. Were:** On a point of order, Mr. Deputy Speaker, Sir. I am wondering whether it is out of order to stop Sen. (Dr.) Milgo from congratulating Sen. Halake for being the first woman to be elected as Chairperson of the Centre for Multiparty and Democracy (CMD) Kenya. You should not have interrupted Sen. (Dr.) Milgo.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order. What did you just say in your last statement, Sen. Were?

**Sen. Were:** Mr. Deputy Speaker, Sir, I asked if it was in order---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): To who was that question directed?

**Sen. Were:** To Sen. (Dr.) Milgo. Is it in order for her to—

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! You are treading on dangerous ground.

*(Laughter)*

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**The Senate Majority Leader** (Sen. Murkomen): On point of order Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is out of order, Leader of Majority? Be careful Sen. Were.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, is Sen. Were in order to try to challenge the Chair in the name of raising a point of order against the Chair?

Mr. Deputy Speaker, Sir, you must not allow this to fly because if you do, it will create a very bad precedent. What the House wants to know from Sen. Were's statement is who was out of order.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Leader of Majority, actually, I have been here for seven years and have never seen anything like this. I know there are Members who have been in this House longer.

*(Laughter)*

**Sen. Khaniri**: On a point of order, Mr. Deputy Speaker, Sir. I want to draw your attention to Standing Order No. 117(2). I have been in this House for very many years. This is the first time I am experiencing this, where a Member is challenging a ruling or a directive of the Chair. This falls under Standing Order No. 117 which is gross disorderly conduct.

I call upon you to take appropriate action against this Member who happens to be a Member of my Political Party. I am totally embarrassed.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators. Sen. Khaniri, you are one of the most experienced Members of this House. You are absolutely right. Let me not say more than Sen. Khaniri and Sen. Murkomen have said.

*(Laughter)*

I just want to imagine, Sen. Khaniri, that perhaps Sen. Were did not defy because Standing Order No. 117 talks about defiance. However, the consequence is the same whether it is defiance, challenge or whatever you call it. Sen. Were, be advised accordingly.

*(Sen. Wetangula interjected)*

Order, Sen. Wetangula what you are engaged in is called touting. I am sure Sen. Orenge understands that language. It is prohibited to tout.

*(Laughter)*

*(Interruption of debate on Petition)*

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**COMMUNICATION FROM THE CHAIR****VISITING DELEGATION FROM NAKURU BOYS  
HIGH SCHOOL, NAKURU COUNTY**

Hon. Senators, I would like to acknowledge, the presence, in the Public Gallery this afternoon, of visiting students and teachers from Nakuru Boys High School, Nakuru County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

Thank you.

*(Applause)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): We need to conclude on this Petition. But before we do that, as per our tradition, Senator for Nakuru County would you wish to say something on behalf of everyone?

**Sen. Kihika:** Thank you, Mr. Deputy Speaker, Sir. I also join you in welcoming the students and teachers from Nakuru Boys' High School. It is one of the schools that have very good performance in my county and nationally. I am glad to have them here today. I am hopeful that in being with us today, we shall be able to participate so that they can see what we do when we come to Parliament. In the future, you never know; there might be some of the students there who would want to be in these seats when the time comes.

I remember coming to Parliament as a young student when my father was a Member of Parliament. I remember very distinctly watching the then President Mwai Kibaki engaging in debate. I remember being so impressed that I hoped one day in time, to be one of the people sitting in here. That dream is not so farfetched for the students.

It is also a time in this county when we are working hard so that anybody can be anything they so desire. I am sure that you are such bright students, you are doing so well that you can be anything that you want to be in this country and this world.

Thank you, very much teachers and students for joining us here today.

*(Resumption of debate on Petition)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Kihika. Just before we proceed, I know I am past the issue of the purported point of order by Sen. Were. Sen. Khaniri had raised an issue around Standing Order No. 117. Just for clarity, Standing Order No. 117 deals with defiance and extreme cases of rebellion.

This is not to try and excuse Sen. Were or Sen. (Dr.) Milgo but Hon. Senators may also want to look at Standing Order No. 116 which talks about a similar conduct of a lesser impact such as creating disorder or even raising a false point of order. I would categorise what Sen. Were was trying to do as engaging in or trying to bring a false point of order because there was no point of order there. You cannot bring a point of order

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against the Chair. We will look at that area because there are consequences across the continuum from lighter misconduct to overly gross misconduct.

**Sen. (Dr.) Zani:** On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it Sen. Zani?

**Sen. (Dr.) Zani:** Thank you, Mr. Deputy Speaker, Sir. Would it be in order to take a moment to congratulate Sen. Halake for this great achievement she has done?

Mr. Deputy Speaker, Sir, I would like to congratulate Sen. Halake for her great achievement. We, the nominated Senators, are proud of her and would like the House to recognize that women have made a step so they should acknowledge and praise us.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. (Dr.) Zani, you are on a point of order, but that is noted. You can bring a Motion to that regard if you think it is worth it.

What is it Sen. Wambua?

**Sen. Wambua:** On a point of order, Mr. Deputy Speaker, Sir. This is a House of record and Sen. Khaniri went on record to be embarrassed on behalf of a Member of his party. Since you have withdrawn the embarrassment by the Member, is Sen. Khaniri's embarrassment also going to be withdrawn?

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Wambua. You are offending the same Standing Order that I have just highlighted.

What is it Sen. Orengo?

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, I am speaking to the Petition. This is a unique petition that if we subject it to red tape and bureaucracy, the result will be the same kind of crying without solutions. If this matter is committed to the relevant committee, they should summon the Ministry of Interior and Coordination of National Government, the Ministry of Foreign Affairs and International Trade and the Office of the Attorney-General; because the registrar of births and deaths is located in the Office of the Attorney-General.

You cannot control the work of a Committee but I hope that you direct the Committee to sit immediately. It will be a big shame for this country when lawyers out there in the United States of America (USA) are already running amok with this matter, trying to deal with the consequences of that crush while we are still talking about certificates of death. Immediate action should be taken. The only thing that we can do to show that we are condoling with the families, the Government should give the death certificates within a period of two weeks. That will require the Committee to be seized of this matter as quickly as possible.

Mr. Deputy Speaker, Sir, I hope that when you will be giving your directions, it should not be a matter that will be subjected to red tape as a way and means of summoning those affected and go on for another 60 days. I offer my condolences once more to the families of those who are bereaved and those that were injured but survived the terrible plane crush.

**An Hon. Senator:** Did anyone survive?

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**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, I stand corrected.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sadly, there were no survivors. Kindly proceed, the Senate Majority Leader.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I support the petition and urge the Committee to act expeditiously. In the interim, instead of waiting for the report to be brought to the House, I request the Office of the Speaker to be in close touch with the relevant committee so that certain administrative actions can be taken in the interim where it is possible without the need to wait for a report to be tabled in this House for implementation.

Counselling should be provided for the family members of the victims. Death certificates should also be issued because they are useful in pursuing benefits of the families including those who were dependents to the deceased. The death certificates, among others things, are very important for them to continue with their life in terms of benefitting from what their loved ones left behind for them.

Mr. Deputy Speaker, Sir, I offer my condolences and believe that this House has demonstrated that there are many Kenyans who have faith in what we do. Although, I will get an opportunity to speak tomorrow, I would like to use this opportunity to remind the country that there has been an erroneous image being portrayed in the other House that we are supposed to only discuss a certain calibre of issues. I encourage the Senators not to be dragged into such side shows. We must focus. We did very well with the Kenya Airways inquiry. The report that the Senate committee came up with contributed to the change in the transport sector particularly, the Kenya Airways. We made an inquiry into the Solai Dam issue. Some people said that we have no jurisdiction but we did a very good job.

We must do a good job on this issue that concerns the victims of the Ethiopian Air Crash so that our critics can only interact with us in terms of work and deliverables and not debates that have no legal and constitutional basis. I offer my condolences and believe that we shall provide the solutions that the people of Kenya need in this sector. I know a number of people who lost loved ones.

Mr. Deputy Speaker, Sir, my classmate, Dr. Tom Kabau and the Principal Secretary, National Treasury, lost their brothers. Personally, I knew a Chinese guy who was doing a good job in the Technical Training Institutes (TTIs) of AVIC International. I interacted with him when he made a presentation at a forum on the TTIs in the National Youth Service (NYS). There are so many people that we knew personally and people who were relatives of our friends. We should do something to make sure that such a situation does not recur in the future.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I can see the interest on this petition is still very high. We are not doing very well on time management. Sen. Wetangula, assisted by Sen. Mutula Kilonzo Jnr. are the lead touts but I am afraid you may not comment on this petition. We should find a way to substantially deal with this issue. I am persuaded that even if I allowed everybody to speak, we will still not do justice to this matter. Therefore, with your indulgence, I would rather we proceed because we have

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some statements, then I will give directions that can help us canvass this matter a little more substantively.

I am persuaded that this House is doing a good job and one way of ensuring that we maintain that good job is to ensure that we become innovative in some of these issues. As both the Senate Majority and Minority Leaders have suggested, when a petition is brought before this House, it should not just be taken as a routine petition and it dies. That said, I would like to invoke Standing Order 51(1)(b) which takes about Chairpersons of Committees making reports once every three month. However, it has a second part which states-

“(1) A Committee Chairperson-

(b) shall, at least once in every three months, on such day as shall be assigned by the Senate Business Committee, and at any other time if so required by the Speaker, make a Statement relating to the activities of the Committee; and”

The statement by the committee chairperson is to be done once every three months at least. That means that it can be done more times.

Secondly the statement by the chairperson shall be done *Suo moto*; by his own motion or if the speaker so requires. The Speaker requires the chairperson to get seized of this matter independent of the petition. The petition has to run its course in terms of the standing orders which says that you should respond to the petitioner within 60 days. Other than that, we can innovatively use Standing Order No.51(1b) and in two weeks, the Chairperson of the Committee, having done what was suggested by those who spoke, should report to this House what actions the House recommends or has been able to secure from the Government as we wait for the disposal of the petition.

Order, Senators. You know the Chairperson of the Committee because I am now committing the petition to---

*(Laughter)*

Hon. Senators, pursuant to Standing Order 232(1), the Petition stands committed to the Standing Committee on National Security, Defence and Foreign Relations.

*(The Petition was committed to the Standing Committee on  
National Security, Defence and Foreign Relations)*

In terms of Standing Order 232(2), the Committee is required in not more than 60 calendar days, from the time of reading the prayer, to respond to the petitioner by a way of a report addressed to the petitioner and laid on the Table of the Senate.

Thank you.

Next Order.

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**The Deputy Speaker** (Sen. (Prof.) Kindiki): Quickly and briefly.

**Sen. Kinyua:** Thank you very much. He was precise and it was good. I have heard so many questions concerning human-wildlife conflict in Laikipia, Taita-Taveta and Kajiado. I did not hear him say anything about that and the way forward.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Kibiru, what do you say about human-wildlife conflict?

**Sen. Kibiru:** Mr. Deputy Speaker, Sir, as you notice, there is a very thin line between who gets that kind of a Statement between us and the Committee on Land, Environment and Natural Resources. The other day, we had a debate whether the Statement by a Senator was referred to us correctly. Probably, those Statements have been referred to the Committee on Land, Environment and Natural Resources

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is the position, Sen. Kinyua.

*(Several Senators stood in their places)*

Order, Sen. Mutula Kilonzo Jnr., Sen. (Eng.) Mahamud. Sen. Cheruiyot and the Senator for Murang'a.

*(Interruption of Debate on Statements)*

Hon. Senators, I have a communication to make.

### COMMUNICATION FROM THE CHAIR

#### PROCESSING OF A PETITION BY FAMILIES OF THE VICTIMS OF THE ETHIOPIAN AIR CRASH

Hon. Senators, as you may recall, on Tuesday, 2<sup>nd</sup> July, 2019, I presented a Petition by eight Kenyans on behalf of families of the 32 victims of the Ethiopian air crash, Flight ET 302 on 10<sup>th</sup> March, 2019, which crashed just outside Addis Ababa in Ethiopia.

The Petitioners sought the intervention of the Senate on the following two prayers:

- (1) Lack of death certificates for the victims of the crash bearing in mind that the airline indicated that there were no survivors on board that flight; and,
- (2) Lack of counselling and requisite post-crash trauma support to families of the victims of the crash.

After the presentation of the Petition, I allowed comments by several Senators on the matter and referred the Petition to the Standing Committee on National Security, Defence and Foreign Relations. I also directed the Chairperson of the Committee to bring a report on the Petition to the Senate within two weeks. Ordinarily, it should have been 60 days, but

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I directed that the Report be brought within two weeks, pursuant to standing order 51(1) (b).

I have since reflected further, especially after a subsequent point of order which was raised by the Senator for Makueni County, Sen. Mutula Kilonzo Jnr., especially with regard to the need to expedite the matter of counselling and issuance of death certificates to the families of the victims, to enable them carry on with their affairs, especially those to do with succession and compensation. By succession I mean legal succession. I believe the issue of compensation is also important because without death certificates, the issue of compensation becomes difficult.

Hon. Senators, I listened to the points which were raised by Sen. Mutula Kilonzo Jnr. and I have personally reflected on this matter. I have come to the conclusion that this matter - especially on the first prayer which is lack of death certificates for the victims of the crash - does not fall under the mandate of the Committee on National Security, Defence and Foreign Relations. The reason is that in a situation where a person dies and the body cannot be found so that a medical doctor is able to give a death certificate, the procedure in law is that administrators of the estate of the deceased must file in court for a declaration of presumption of death before a death certificate can be issued.

I also want to clarify that ordinarily, presumption of death in our law and also in the common law is given after seven years of disappearance of a person. However, in extreme cases, especially where death is associated with air crashes, drowning in sea or other unfortunate calamities where it is impossible to get the remains of the deceased, a court of law can hasten the presumption of death in less than seven years. However, that has to be through an application in a court of law.

I am now, therefore, reviewing the earlier directives and direct on that first prayer relating to death certificates that this matter be seized of the Committee on Justice, Legal Affairs and Human Rights. The Committee is directed to engage the Attorney-General of the Republic with a view to ensuring that the legal procedure of the presumption of death is followed to allow, later on upon court orders, the presumption of death orders and also to allow the issuance of death certificates which will open up the door for compensation and also other legal consequences, including succession.

So ordered.

**Sen. Wetangula:** On a point of order, Mr. Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Before I entertain a point of order from Sen. Wetangula, I further direct that this Communication, therefore, supersedes the directives issued on 2<sup>nd</sup> July, 2019 on the Floor of this House.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, congratulations for shifting your position on this matter from the earlier position taken.

I also want to encourage you that in a matter of distress of this nature and given the pain that the families are going through, that you, in fact, need not go through a committee of this House. The Speaker should direct the Attorney-General on behalf of the families of the victims, to go to court in a collective suit. He can get the manifest from the origin of the flight in Addis Ababa. He can get all the names and details and all he needs to have are



supporting affidavits from at least one member of each family of the victims; take a suit to court; get a collective decision involving all the victims and then allow death certificates to be issued.

When we say that the families can go to court, families suffer from various difficulties. Some do not have finances, some cannot afford lawyers and some have all manner of problems. I want to urge you - and it is within your power - that you do not have to send this matter to the Committee; that you direct that the Attorney-General through his Assistant, the Solicitor General goes to court forthwith and seeks court orders to obtain death certificates for each of the presumed dead victim on this flight. You can then expedite the rest of the process.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Wetangula for those useful comments. Before I give further directions, I would want to hear from Sen. Kang'ata.

**Sen. Kang'ata**: Thank you, Mr. Deputy Speaker, Sir. Allow me to inform the House that I am one of the lawyers who are handling that matter. Secondly, indeed, the petitioners behind this Petition are personally known to me. It is also true that death certificates are being processed currently by the Ministry of Foreign Affairs. There was even a desk handling the matter.

Mr. Deputy Speaker, Sir, I am the one who advised the petitioners to come up with this petition. I did not want to participate in person, because of potential conflict of interest issues, since I am handling some other matters related to this petition. There are several instances where some officials in that Ministry are delaying and are even refusing. I, therefore, thought that it is an administrative issue which this Senate, through its relevant Committee as correctly interpreted by your message, can intervene and cause the hastening of that process.

I support this Petition.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Kang'ata. I have noted that your contribution today is quite organized. I think you are speaking as a lawyer today. Maybe during the other times, you usually speak as the Senator.

Proceed, Sen. Faki.

**Sen. Faki**: Mr. Deputy Speaker, Sir, I would agree with Sen. Wetangula, that it will be more cost effective if the Attorney-General could take up a class action suit, rather than each of the families making a separate application, which may be cumbersome and time consuming. Therefore, it would be better for him to take over the matter and apply jointly for the death certificates of all the victims.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kindiki): Very well. Where is the Chairperson of the Committee on Justice, Legal Affairs and Human Rights? How about the Vice Chairman?

*(Sen. (Dr.) Ali spoke off record)*



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When replying please quote Ref. No. and date



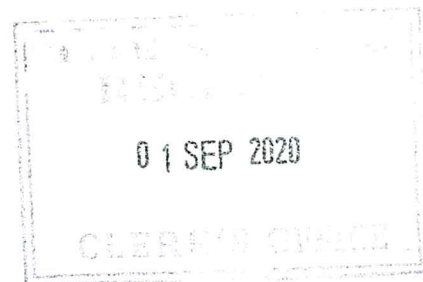
HARAMBEE AVENUE  
P.O.Box 30551-00100  
NAIROBI, KENYA

MINISTRY OF FOREIGN AFFAIRS

Ref. No. **MFA.ADM.1/102A VOL. XXIII (93)**

28<sup>th</sup> August 2020

**Mr. Jeremiah Nyegenye, CBS**  
Clerk of the Senate  
Parliament Buildings  
**NAIROBI**



Dear *Clerk,*

**RE: STATEMENT ON PETITION ON SUPPORT TO FAMILIES OF THE VICTIMS OF THE ETHIOPIAN AIRLINES (ET 302) AIR CRASH**

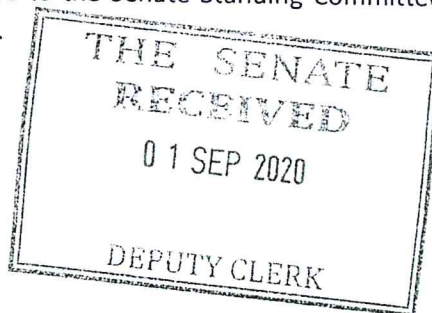
In reference to the letter Ref: SEN./12/4/JLAHRC/2020(33) dated 30<sup>th</sup> March 2020 on the above subject matter.

Kindly find enclosed herewith a statement in response to the Senate Standing Committee on Justice, Legal Affairs and Human Rights on the matters.

Yours

*faithfully*

*Gathoga W. Chege*  
Amb. Gathoga W. Chege, HSC  
DIRECTOR, LIAISON (PARLIAMENTARY AND COUNTY AFFAIRS)  
FOR: PRINCIPAL SECRETARY



Encl.

①

DCOM  
Please deal  
Deputy Clerk, Senate  
Date 01/09/2020

② *Nunyua*  
*Plse deal.*  
*JH*  
*01/09/20*

01 SEP 2020





**STATEMENT BY CABINET SECRETARY, MINISTRY OF FOREIGN AFFAIRS  
TO THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS  
AND HUMAN RIGHTS REGARDING PETITION ON SUPPORT TO FAMILIES  
OF THE VICTIMS OF THE ETHIOPIAN AIRLINES (ET 302) AIR CRASH**

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**Mr. Chairman,**

I make reference to a petition on support to families of the victims of the Ethiopian Airlines (ET 302) air crash and wish to respond as follows:

**Mr. Chairman,**

- 1. In response to the Petition that the Ministry has failed to provide support in the processing of death certificates to families of the victims of the air crash;**
  - 1.1 From the outset of the tragic plane crash, the Ministry set up a special desk to better assist the families, as guided by its mandate and competence.
  - 1.2 The Kenya Mission in Addis Ababa received and transmitted to Ministry Headquarters, thirty-one (31) death certificates of the victims in April 2019. The remainder of the death certificates were for Kenyans with dual/other nationalities. The Ministry carried out due diligence to ensure next-of-kin received the death certificates. To date, 23 death certificates have been collected by the families and nine (9) remain in the custody of the Ministry. It should be noted that since the repatriation of the remains of the victims of the crash at the JKIA on 14<sup>th</sup> October 2019, no family member has approached the Ministry to collect the remaining death certificates.
  - 1.3 Further, the Ministry approached other Kenya Government departments including the Registrar of Births and Deaths, the Registrar of the High Court and the Attorney General's office to speedily assist families requiring various documents.





**Mr. Chairman,**

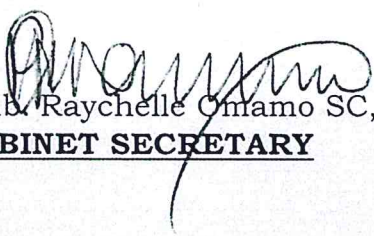
**2. In response to the Petition that the Ministry has failed to provide counselling services to families of the victims;**

- 2.1 The Principal Secretary, Ministry of Foreign Affairs hosted the families on 20<sup>th</sup> March 2019 at the KICC. During this meeting, counselling services were provided on site to families who wished to avail themselves to the service.
- 2.2 The Ministry thereafter provided the families with a contact number/focal point at the Ministry of Health through which government counselling services could be obtained.
- 2.3 During a ceremony held at the JKIA on 14<sup>th</sup> October 2019 to mark the repatriation of the remains of the victims, which was attended by the families as well as the Cabinet Secretary, Ministry of Foreign Affairs and her counterpart in the Ministry of Transport, and in light of the trauma experienced by the families, the Ministry coordinated the provision of counselling services to the families.

**Mr. Chairman,**

3. Additionally, it should be noted that Ethiopia Airlines also processed partial claims to the families for their immediate financial needs. However, since the engagement between the airline and next of kin is a private contractual matter, we have no information on the progress thereof.

I thank you, Mr. Chairman.

  
Amb. Raychelle Omamo SC, EGH  
**CABINET SECRETARY**

