

Justice for Survivors of Post-Election Sexual Violence in Kenya



Overview

Violence ripped through Kenya in the wake of the 2007 presidential elections, claiming more than 1,100 lives. Thousands more women, men, and children were raped or suffered other horrific forms of sexual violence and brutality. Despite these abuses, there has been no accountability for these crimes, and, today, countless Kenyan survivors continue to live with severe physical and psychological consequences of the violence they endured.

An ongoing court case, however, aims to finally secure justice for the survivors. This high-profile litigation – officially known as **Constitutional Petition No. 122 of 2013** – seeks to hold the Kenyan government accountable for sexual violence in the post-election period. Since that time, however, the Kenyan government has continually refused to move the case forward. After more than 10 years of impunity, these disruptions to due process clearly indicate that the government is choosing to ignore the survivors of these crimes.

What is Constitutional Petition No. 122?

Constitutional Petition No. 122 of 2013 seeks to hold the Kenyan government accountable for failure to: prevent the violence and resulting sexual and gender-based violence which occurred in the wake of the 2007 elections; protect the general population, including survivors, from sexual assault; investigate and prosecute perpetrators of sexual violence; and provide prompt, adequate, appropriate, and effective reparations to survivors.

In it, the Petitioners claim that the government failed to properly train the police to protect them from violence, and sexual violence, in particular. Further, the petitioners claim that, following the post-election violence (PEV), police failed to properly investigate their claims. Also, failure to effectively document the crimes and gather evidence prevented effective prosecutions, thus leading to a miscarriage of justice for survivors of sexual violence. The petition also asserts that the government failed to provide reparations, including access to medical and psychosocial services.

“The justice system must now take concrete and decisive action to ensure that its administrative processes will no longer be a barrier to timely completion of this case. Action and accountability are far past due.”

Suzanne Kidenda, Program Officer, PHR Kenya

Who are the Petitioners in the Case?

The case was initiated on February 20, 2013, when six female and two male survivors who were sexually assaulted during the timeframe of the PEV filed Constitutional Petition No. 122 in the High Court in Nairobi. Four non-governmental organizations – the Coalition on Violence against Women, Physicians for Human Rights, the International Commission of Jurists-Kenya, and the Independent Medico-Legal Unit – joined the suit as co-petitioners in the interest of the general public and many other survivors of election-related sexual violence who are not represented in the case.

The six women and two men are representative of more than 900 other victims who survived widespread and brutal acts of sexual violence perpetrated during the PEV, including individual and gang rape, defilement (sexual assault of a minor), forced circumcision, and other forms of sexual brutality.

What are Kenya’s Legal Obligations?

The Government of Kenya is obligated to promptly and impartially investigate, prosecute, and punish alleged perpetrators of sexual violence, and provide adequate compensation to survivors of these crimes. Moreover, whenever such violence occurs, the government must ensure that survivors have adequate access to medical services and psychological care.

What Reparative Measures are Needed?

- **Monetary compensation for physical and mental pain, suffering, loss of earning, and socio-economic opportunities** experienced by the eight survivor-petitioners, and to address their future medical and psychological care.
- **Establishment of a special mechanism within the Office of the Director of Public Prosecutions** with sufficient technical capacity and independence to initiate credible investigations and prosecutions against perpetrators of PEV-related sexual violence, including state security officers, and for both domestic and international crimes.
- **Exemplary compensation** to acknowledge the involvement of state security officers as perpetrators of post-election sexual violence against some of the survivor-petitioners, and aggravated consequences resulting from the state’s failure to institute investigations and prosecutions.
- **Operationalization of an effective framework to identify, implement, and monitor provision of comprehensive, holistic, and appropriate reparation** to all victims and survivors of PEV-related sexual violence and their families, including public apologies; medical, psychosocial, and legal assistance; monetary compensation; and structural reforms.

Justice Delayed is Justice Denied.

Physicians for Human Rights (PHR) and its partners call on the Kenyan government to **immediately and fully address the ongoing litigation and its obligations to survivors of sexual and gender-based violence** and their families.



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