

Kenyan Police Violence Victims Fight for Justice

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Government dragging its feet on court-ordered compensation for those shot by police during 2007-8 unrest.

Kenyans shot by police during months of post-election violence in 2007-08 are struggling to claim the compensation due to them.

Even though courts have directed the government to make the payouts, the officials responsible are dragging their feet, saying they have yet to receive authorisation to act.

Kenya descended into chaos in late 2007 and early 2008 following the last presidential election, as violent clashes took place between supporters of the Orange Democratic Movement and the Party of National Unity. The two parties are now coalition partners in government.

Approximately 1,300 people were killed and 3,500 injured as fighting erupted along ethnic lines. Dozens of civilians were shot by police in the capital Nairobi and in the eastern town of Kisumu, and some have been awarded compensation by the courts. (See [Kenyan Police Criticised Over Election Violence Cases](#) on the slowness with which allegations have been investigated.)

Peter Omari Ogenche was returning to his home in Nairobi's Kibera slum area when police from the Kilimani district opened fire, leaving a bullet lodged in his spine.

Ogenche was left paralysed, and successfully sued the government for damages. In October 2009, a court ruled that the government should pay him 5.4 million Kenyan shillings, 60,000 US dollars – but he has yet to see any of it.

"My life changed for the worse after the shooting," Ogenche told IWPR. "Because of being in a wheelchair, I could not work and consequently my wife left me. Now I have to take care of my four children all by myself. I feel bitter that the government has not paid me nearly five years down the line, but I can only hope they will honour the court ruling."

Ogenche's lawyer, Joseph Musomba, says he has handled 19 election-related cases in which the government has failed to pay court-ordered compensation of over five million Kenyan shillings per person.

According to the New York-Based advocacy group Human Rights Watch, the government is yet to pay court-ordered compensation in at least 21 instances where victims of shootings during the post-election violence have won civil lawsuits against the Kenyan police.

Human Rights Watch says the government's reluctance to pay up is indicative of Kenya's failure to deliver justice in the wake of the violence.

The government has failed to set up a court to try those involved in and behind the bloodshed.

Four alleged key perpetrators of the violence are due to stand trial at the International Criminal Court in The Hague next spring.

"Under international law, Kenya has an obligation to prosecute serious international crimes, and all victims of such crimes have the right to justice," Daniel Bekele, Africa director at Human Rights Watch, said.

"Providing redress for post-election violence victims is a requirement, not an option. Four years after the violence, victims have been waiting for justice for far too long."

MINISTRIES PLEAD LACK OF AUTHORITY AND CASH

The Ministry for Special Programmes, which is responsible for dealing with the aftermath of the violence, says it has not been instructed to set aside the compensation money, nor has it been directed by Kenya's attorney general, Githu Muigai, to pay the victims the compensation they are owed.

"We are not aware of these cases, and even then, my ministry has not received any monies for these purposes," minister Esther Murugi, told IWPR.

The position taken by Murugi's ministry is mirrored by that of the interior ministry, which controls Kenya's police force.

Assistant interior minister Orwa Ojode spoke to IWPR shortly before his death in a helicopter crash last

month.

“As of now, I have no money in my account from the treasury to pay out to the victims. This unfortunately means there is probably no money for them,” he said.

Ojode cited a legal procedure which means government ministries must await direction from the attorney general before making any payments on court orders of this kind. That go-ahead has not been given.

The victims’ claims to the money are being obstructed by a legal provision. Section 21 of the Government Proceedings Act, a court cannot force the government to execute a damages payment.

SUING GOVERNMENT TO MAKE IT PAY

Lawyer Musomba says he is currently exploring ways of forcing the government to pay up, including petitioning the chief justice to repeal sections of the Government Proceedings Act, so that courts would be empowered to require the government to pay claimants.

“We are pursuing different avenues to see that justice is finally done for the victims of these heinous acts,” he said.

As part of the same joint action, victims are pushing for the removal of the current acting permanent secretary at the interior ministry, Mutea Iringo, on the grounds that he has failed to comply with court orders of damages.

The case is due to be heard in November this year, but Musomba is not optimistic.

“This petition will be a breakthrough if it succeeds,” Musomba said. “But experience shows the government always has impunity when it comes to compensation. When enforcing a judgment against the government, most of the time you run into walls.”

The Nairobi-based human rights lawyer, Paul Muite, agrees that suing the permanent secretary is a path worth pursuing, although he warns it will be a long and difficult process.

“There are no two ways about it. The permanent secretary, as the accounting officer, in the [interior] ministry ought to take responsibility for this long delay. He should have respected the court’s decision,” says Muite.

IWPR contacted Iringo, but he declined to comment on these issues by phone, and did not respond to emails on the subject.

Kenya’s chief justice, Willy Mutunga, has warned that permanent secretaries and other government accounting officers who fail to comply with court orders could face prosecution..

“The courts can jail the permanent secretary until the money is paid, but this is a long route. A much easier option would be to talk directly to the attorney general, and inform him of the specific court decrees that have not been complied with and he will deal with them and also shame the people who are defying court orders,” said Mutunga.

Mutunga defended the attorney general from claims that he has been reluctant to order government departments to pay up.

“I know Githu Muigai is doing all he can to make sure the government pays claims that are legitimate, because we know there are others that are not legitimate, so he is challenging them in court,” he said.

Musomba said he was unaware that the attorney general was contesting any of the compensation cases he was handling.

He said he had tried to contact the attorney general’s office on numerous occasions, without success.

“It would be nice to get an audience with the attorney general or the chief justice, but that is like trying to reach the president of this country. It is not that simple, and time is moving fast,” Musomba said.

IWPR was, however, able to speak to the attorney general, and asked him about progress on the compensation awards.

Muigai would not be drawn on specific cases, but told IWPR that all victims would receive justice.

“The government of Kenya remains committed that there should be justice for the victims of the crimes that were committed in this country,” he said.

Another avenue open to the claimants could be to send the cases to the National Council for the Administration of Justice, a body that oversees judicial processes in Kenya. The council is chaired by Chief

Justice Mutunga and includes the attorney general and the justice minister.

Mutunga said he was willing to facilitate the process.

“If I get the names of all the victims in a formal petition, I can take these cases to the National Council for the Administration of Justice and ask the attorney general, the director of public prosecutions and the justice minister to help in fast-tracking the payments,” Chief Justice Mutunga said.

Former legislator and now human rights activist Njeru Kathangu says that the damage awards are symptomatic of the of bureaucratic obstructions that deter Kenyans from taking legal action against their government.

He pointed to Kenya’s poor track record in this area, including cases where victims of abuses committed when former president Daniel Arap Moi was in power in the 1980s and 1990s have yet to receive damages awarded in court rulings.

“It is no mean task suing the state. You need patience, resilience and a lot of money. Some victims have died waiting to be paid,” he said.

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