

Kenyan Rape Victims Seek Compensation

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Group of women who suffered sexual attacks during mass violence five years ago to sue officials.

Eight Kenyan women who were victims of rape and sexual violence during months of unrest in 2007-08 are to bring a civil case against some of the country's highest-ranking officials, accusing them of failing to investigate their cases.

The women say they have lost faith in seeing the perpetrators face prosecution, and argue that police, in particular, have been largely immune from prosecution for rape and other crimes.

An independent inquiry into the post-election violence carried out by the Waki Commission indicated that police were responsible for 405 shootings and hundreds of injuries and rapes during the violence.

Many of the women who were attacked, however, say they were turned away by police when they tried to report assaults by a member of the force.

"A number of victims have [attempted to lodge] criminal cases against the police who either shot or raped them but the latter has failed to document these cases," Christine Kungu, a lawyer at the NGO Federation for Female Lawyers, FIDA, which is representing the women.

Kenya descended into chaos when violence broke out along political and ethnic lines following the disputed outcome of the December 2007 general election. More than 1,100 people were killed and 3,500 injured before calm was restored in February 2008 by an internationally-brokered agreement between the rival Orange Democratic Movement and the Party of National Unity.

The International Criminal Court, ICC, in The Hague is to try three high-level perpetrators - including Kenya's new president, Uhuru Kenyatta, and deputy president William Ruto - for orchestrating atrocities. A journalist, Joshua Arap Sang, will also go on trial.

Ruto and Sang's case is scheduled to start on September 10, while a second, separate case against Kenyatta will begin on November 12. All three face charges of crimes against humanity for allegedly planning and financing the attacks.

The ICC confirmed charges against the three men in January 2012. Kenyatta and Ruto were elected in March this year.

Since 2008, the Kenyan authorities have been consistently criticised for failing to properly investigate and prosecute thousands of others implicated in atrocities.

According to Kungu, the new government has shown few signs that it will address the problem, either.

"Some of these rapists are known, but the loopholes in our prosecution units ensure that they go scot-free," she said, referring to the failure of police to investigate their own members.

"This should have been a priority issue once this administration assumed office, but I don't think it is on their agenda," she added.

The petition lodged by eight of the victims of sexual violence is due to be heard on August 24 at the High Court in Nairobi.

The victims are suing a number of government officials and offices, including the attorney general, the director of public prosecutions, the inspector-general of police, two former ministers responsible for public health and medical services, and the Independent Policing Oversight Authority.

They claim that these institutions and individuals failed to take action to investigate incidents of rape, particularly those of which police officers are accused.

The victims come from some of the areas worst hit by the 2007-08 violence - the Nairobi slum of Kibera, the Rift Valley, and Kisumu and Nakuru in western Kenya.

Those facing trial at the ICC are charged with crimes in Nakuru and the wider Rift Valley, but in March 2011, judges dropped charges relating to police shootings in Kisumu and the killing and rape of civilians in Kibera. They ruled that while there were reasonable grounds to conclude that the crimes occurred, the offences could not be linked to the suspects in the two cases before the court.

The eight women are seeking financial compensation from the Kenyan state, as well as other support such as counselling and medical care, including treatment for trauma, HIV and other sexually-transmitted diseases.

Judging by past experience, attempting to sue Kenyan officials is likely to prove difficult.

In previous civil cases where judges have ruled in favour of victims, the claimants have struggled to get their hands on the compensation owed to them by the Kenyan government. (See **Kenyan Police Violence Victims Fight for Justice**)

Nevertheless, Kungu remains hopeful that the August 24 hearing will lead to the justice that victims have been seeking for nearly six years.

“This is a new government, so let’s see how it goes, but I am optimistic that the outcome will be positive,” she told IWPR.

The director of public prosecutions, Keriako Tobiko, one of those named in the lawsuit, has defended his record of bringing to justice those who committed crimes during the bloodshed. He said his office remained committed to pursuing perpetrators of sexual violence.

Tobiko set up a taskforce in February 2012 to assess around 5,000 criminal cases stemming from the electoral violence to determine what action should be taken on them. (See **New Kenyan Justice Effort Meets Scepticism**)

The taskforce includes representatives from Tobiko’s office, the police, justice ministry, attorney general’s office and the witness protection agency.

In August 2012, an interim report released by the taskforce stated that 150 sexual violence cases did not have enough supporting evidence and consequently could not be prosecuted.

Nevertheless, Tobiko told IWPR this month that 122 further cases of sexual violence had now been processed by the Kenyan courts. Of that number, 54 suspects had been convicted, 18 acquitted and 50 cases withdrawn.

Tobiko could not say how many of the cases that ended up in court or still under review by the taskforce involved allegations against the police. But he denied that police officers suspected of committing crimes received favourable treatment.

“This taskforce and my office will not hesitate to prosecute the police if the courts find them guilty of the said crimes,” Tobiko said.

One problem he cited was that in several instances, complainants failed to identify the perpetrators as they were unknown to them and the attacks were mainly at night.

“You cannot prosecute where there is no evidence,” Tobiko said. “If a victim failed to show up and testify against her or his perpetrator, then there is no case.”

Beyond the limited number of crimes that have come before the courts, rights groups are calling on Tobiko to re-investigate all the cases that have not been sent for prosecution for lack of evidence.

The Kenyan judiciary has spoken of plans to launch an international crimes division of the High Court which may have the capacity to investigate crimes stemming from the 2007-08 violence. However, it remains unclear how the law governing the new institution will be applied, and whether it will have sufficient independence to conduct credible investigations. (See **Kenya: Can Special Court Tackle Election Violence?**)

Elizabeth Evenson, senior counsel at Human Rights Watch, argues that Kenya cannot simply ignore cases of rape and other crimes that currently lack sufficient evidence to bring prosecutions.

“The question for [the director of public prosecutions’ office] should be what it is doing to go back over those cases, to determine whether it could now collect evidence, and which cases to prioritise,” she said.

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