



PRESS STATEMENT

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Survivors of Election-Related Sexual Violence Demand End to 13-Year Exclusion at Supreme Court

NAIROBI, KENYA – 29th July 2026 — For nearly thirteen years, survivors of post-election sexual and gender-based violence (SGBV) have waited for the justice promised by Kenya's Constitution but persistently delayed. During this prolonged delay, children born as a result of the 2007–2008 post-election sexual violence have grown into adulthood and turned 18, while their mothers have continued pursuing justice through Kenya's court system.

Their return to Kenya's highest court in **Supreme Court Petition No. E041 of 2025** (*formerly Constitutional Petition No. 122 of 2013 before the High Court and Civil Appeal No. E645 of 2021 before the Court of Appeal*) represents a critical effort to end a pattern that has shaped Kenya's response to political violence for nearly two decades. Whenever Kenya has recognized, compensated, and restored victims of political violence, survivors of sexual and gender-based violence have repeatedly been left behind. Before the Supreme Court, they highlighted the disparity in the State continuing to recognize some victims of political violence while excluding survivors of sexual and gender-based violence from justice, reparations, and constitutional protection.

The appeal, brought by eight individual survivors alongside the Coalition on Violence Against Women (COVAW), the Independent Medico-Legal Unit (IMLU), the Kenyan Section of the International Commission of Jurists (ICJ Kenya), Physicians for Human Rights (PHR), and other interested partners, including Utu Wetu Trust and the Kenya Human Rights Commission (KHRC), challenges the State's failure to prevent, protect against, investigate, prosecute, and provide effective remedies for widespread sexual violence committed during the 2007–2008 post-election violence.

A Pattern of Selective Justice & Differential Treatment

More fundamentally, this appeal asks the Supreme Court to determine whether survivors of conflict-related sexual and gender-based violence are entitled to the same constitutional protection, recognition, and reparations already extended to other victims of political violence. Although Kenya has compensated victims through different reparative processes, including those established after the 2007–2008 violence and the 2024–2025 protests, survivors of sexual and gender-based violence have consistently remained outside those frameworks despite suffering some of the gravest violations. The petitioners argue this is unfair and unconstitutional; it denies these survivors the equality, dignity, and access to justice that the Constitution promises every Kenyan.

Crucially, while the Court of Appeal previously affirmed State responsibility and upheld the High Court's award of compensation to four survivor-petitioners (the 5th, 6th, 8th, and 9th Appellants) who suffered sexual violence perpetrated by State security officers or who had reported the incidents, it drew an arbitrary and discriminatory line against four other survivors (SMM, SKO, DOJ, and FOO).

The Court of Appeal subjected these four survivors to differential treatment, denying them compensation solely because they were attacked by civilian militias/non-State actors or failed to formally report the incidents to police at the time. The petitioners submit that creating a hierarchy of victimhood based on who the perpetrator was or whether a traumatized victim could navigate a reporting system during a national crisis is fundamentally unconstitutional.

Key Constitutional & Legal Issues Before the Apex Court

At the center of this landmark appeal are fundamental constitutional and international law questions:

- **Rejection of a "Hierarchy of Victims" & Differential Treatment:** The appeal challenges the arbitrary distinction made between survivors attacked by State agents and those targeted by private/civilian actors. The Court of Appeal erred by affirming liability and damages for state-actor violations while denying remedies to victims of civilian attacks under the pretext of non-reporting or a strict tort negligence test. Every survivor is entitled to equal protection and effective remedies.
- **Human Rights Due Diligence vs. Civil Tort Standard:** The petitioners submit that the Court of Appeal erred by applying a narrow civil tort negligence test (requiring proof of individual police duty of care, breach, and causation) rather than international **Human Rights Due Diligence** standards.
- **Shifting the Burden of Proof:** Having established that the State had prior intelligence and constructive notice of impending and widespread SGBV, the burden of proof must shift to the State to demonstrate the proactive steps it took to protect citizens.
- **Failure-to-Report Barrier:** Survivors cannot be denied constitutional remedies simply because they could not formally report crimes to police at the height of widespread violence, trauma, insecurity, and police complicity.
- **Oversight and Accountability of IPOA:** Crucially, the petitioners challenge the Court of Appeal's failure to hold the Independent Policing Oversight Authority (IPOA) accountable. They submit that IPOA possesses a continuing statutory mandate to investigate ongoing, unaddressed historical police misconduct from 2007–2008, and its failure to act leaves scores of survivors without accountability.

In Counsel Willis Otieno's words:

"The lack of effective remedies still continues to date. No investigations have ever commenced 13 years later. Constitutional accountability cannot be conditional on expecting traumatized survivors to perform impossible tasks while state security organs stood by."

The remedies sought are survivor-specific and include compensation, rehabilitation, public acknowledgment, apology, and structural accountability measures.

Broader Impact on Access to Justice & Policy Reforms

Beyond the courtroom, this appeal speaks to broader questions about access to justice in Kenya. It comes at a time when lawyers across the country have withdrawn from court proceedings to protest delays, growing case backlogs, and barriers to justice. Few cases illustrate that crisis more clearly than this petition. More than thirteen years after survivors first sought constitutional protection, the matter is only now before the Supreme Court. Every year of delay has meant another year without accountability, reparations, or closure for survivors, demonstrating the human cost of delayed justice.

The issues before the Court also have implications beyond this appeal. Kenya is currently developing a national compensation framework through the Presidential Working Group on the Establishment of a Framework for the Management of Claims and Compensation chaired by Professor Makau Mutua. That process offers an opportunity to correct decades of exclusion by ensuring survivors of conflict-related sexual and gender-based violence are fully recognized within future reparations programs. A compensation framework that continues to overlook these survivors would only perpetuate the discrimination this appeal seeks to end.

One survivor reflected on the long journey to justice:

"I have carried this pain for many years. I pray that this case will finally bring justice, not only for me, but for all survivors who have been waiting to be seen and heard."

Another survivor said:

"All I have ever wanted is for someone to acknowledge what happened to us and to believe me. The lower courts may have doubted my experience, but I hope this Court will finally give us the justice we have waited so long for."

We call upon the Government of Kenya to:

- End the exclusion of survivors of conflict-related sexual and gender-based violence from national reparations programs.
- Implement survivor-centered reparations that include compensation, rehabilitation, psychosocial support, public acknowledgment, and guarantees of non-repetition.
- Strengthen institutional accountability for conflict-related sexual and gender-based violence, including oversight enforcement against statutory agencies like IPOA.

We call upon the Presidential Working Group on the Establishment of a Framework for the Management of Claims and Compensation to:

- Ensure the national compensation framework expressly recognizes survivors of conflict-related sexual and gender-based violence.

- Guarantee equal access to reparations for survivors alongside all other victims of political violence.
- Meaningfully involve survivors and survivor-led organizations in the design and implementation of the framework.

We call upon the Judiciary to:

- Prioritize the timely hearing and determination of constitutional human rights cases involving survivors of sexual and gender-based violence.
- Address systemic delays that continue to deny survivors timely access to justice.

ENDS

Background on the case:

1. [Survivors of Post-Election Sexual Violence Appeal to Supreme Court After Partial Victory at Court of Appeal - PHR](#)
2. [Court Delivers Justice for Several Survivors of Post-Election Sexual Violence in Kenya - PHR](#)
3. [Justice for Survivors of Post-Election Sexual Violence in Kenya - PHR](#)

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