



Kenyan Emergency Group Litigation

Statement on the preliminary judgement received in TC34

The team is devastated by the Judgment and its impact on our clients, for whom we have worked for 6 years and whom we admire for their stoicism and determination. The Judgment acknowledges that abuses occurred, and none of our clients was accused of making up their account or exaggerating. This is in keeping with the contemporaneous documentation which shows that thousands of Kenyans were abused at the hands of the security forces. However, the effect of the Judgment is that the passage of time could mean the determination of the issues affecting individuals cannot now be adjudicated. In consequence, there would be no closure for the clients and their families, most of whom are elderly, and a great many of whom have died during this litigation.

The Judgment also means that the contemporaneous decisions not to permit independent investigations, in circumstances where at least one very senior member of the Kenyan administration, whose salary was paid via the Colonial Office list, urged his Minister to, "refuse to institute any enquiry into allegations of malpractices," because, "It would now appear that each and every one of us from the Governor downwards, may be in danger of removal from public service by a commission of enquiry as a result of enquiries made by the CID in respect of incidents which occurred prior to 18th January 1955," has enabled the Government to resist these claims on the basis that they cannot now be fairly investigated. Our clients would have welcomed that independent enquiry at the time. It is ironic that the refusal to investigate is one from which the Government now benefits.

If that is the ultimate outcome, and we are currently considering whether that approach is one which ought to be Appealed, then we see no cause for rejoicing that a sophisticated legal system can do nothing but throw its hands in the air and say there can be no determination of the issues in a Court. What happened will now have to be left to the historians, whose books will be accepted as accurate, but whose conclusions have no consequences for the Government and offer no help to those who suffered. As lawyers, we accept that outcome professionally. As individuals we share the distress and anguish of our clients.