

Brief History

The Mau Mau Uprising, also known as the Kenya Emergency, took place between 1952 and 1960. The Mau Mau were a loosely organised group of Kenyan insurgents which fought for the independence of Kenya from British rule. Kenya had been declared a 'British protectorate' in 1895; it became a British colony in 1920 and was finally granted independence on 12 December 1963.

The Beginnings of a case

In October 2002 Leigh Day Senior Partner, Martyn Day, was approached in Nairobi by Mr John Nottingham, a former District Officer of the Colonial Government during the Kenya Emergency, together with a couple of former members of the Mau Mau. The group explained how a great many Kenyans still alive had experienced torture at the hands of the British during the 'Emergency'. This torture had taken place within 'concentration camps' run by the British in Kenya.

The firm liaised with eminent historians, Professor Caroline Elkins of Harvard University and Professor David Anderson of Warwick University, as to the historical background to these claims. Before these historians had published their work the full extent of the abuse and torture of those who had been detained by the colonial authorities had not been fully understood. These two historians went on to rewrite this key period of colonial history.

This approach to Leigh Day came only a couple of years after the conclusion of a lengthy and ultimately successful battle for the former British PoWs of the Japanese to be compensated for the terrible atrocities they had suffered during the Second World War.

Mr Day had represented many thousands of PoWs in that battle, and drawing a strong parallel between the treatment received by both groups of victims he was determined to put the firm's resources at the disposal of the Kenyans who had suffered similar torture and abuse in detention and to try to also obtain justice for them.

2005 - 2010

The publication in 2005 of two ground-breaking studies on the Kenyan Emergency by these two historians, *Imperial Reckoning: the Untold Story of Britain's Gulag in Kenya* by Professor Elkins and *Histories of the Hanged: Britain's Dirty War in Kenya and the End of Empire* by Professor Anderson, shone a spotlight on the use of systemic, widespread torture by the British in Kenya during British colonial rule. They showed how this barbaric treatment had been approved at the highest levels of the British Government.

Professor Elkins was awarded the Pulitzer Prize for her ground-breaking work.

During the same year, Leigh Day started to work closely with the Kenya Human Rights Commission (KHRC).

The KHRC had been working with the victims of colonial era torture since 2003, shortly after the Mau Mau movement had been un-proscribed. Prior to 2003 it had not been possible for victims to organise themselves and pursue a claim on behalf of survivors of the camps, since it had been unlawful to organize or take part in any activity of or on behalf of the Mau Mau society.

It was only once this ban was lifted that those who had suffered during the Emergency were able to form the Mau Mau War Veterans Association (MMWVA). The formation of the MMWVA saw the beginning of a slow and difficult process of identifying genuine survivors of the detention camps.

Working with the MMWVA, the KHRC began the process of contacting and interviewing victims, and in July 2006 the KHRC interviewed a number of victims who were willing to proceed with their claims against the UK Government.

This group included Wambugu wa Nyngi, Jane Mara and Susan Ngondi.

On 11 October 2006 a letter of claim was drafted and served upon the British Government by Leigh Day. The British Government responded on 2 April 2007 denying liability and flatly refusing requests that it provide the claimants with any evidence it held. Detailed work continued on the claims both in London and Nairobi, which included an increase in the level of public interest in the case.

The KHRC conducted further interviews of victims and key documents were retrieved from the National Archives at Kew and Nairobi. Professor Elkins, Professor Anderson and Mr Nottingham continued to lend their support, providing advice about the history and documentary evidence.

In May 2009 Leigh Day partner Daniel Leader travelled to Nairobi to interview the potential claimants identified by the KHRC. On the basis of these interviews and discussions with the KHRC it was decided that five claims should go forward in the first instance. It was hoped that if these claims were successful they would result in community reparations for the wider group of torture victims.

The five lead claimants flew to London to issue their claims in person at the Royal Courts of Justice in June 2009. Whilst in London the claimants presented a letter to the Prime Minister. The letter asked the Prime Minister to treat them as friends and not as enemies, and invited the British Government find a creative solution to their concerns.

In response, the British Government did not deny claims that the veterans had been tortured, but instead relied on legal technicalities to avoid liability and made an application to the Court to have the case struck out and dismissed on the grounds that Britain could not be liable in principle for colonial era atrocities and if anyone was liable it was the Kenyan Government.

In March 2010 a letter protesting at Britain's stance was sent to the British Government. The letter was signed by a wide array of notable figures and organisations including the Archbishop Desmond Tutu, Vince Cable MP, Former UN Special Rapporteur on Torture Professor Sir Nigel Rodley, Lord Judd and The Redress Trust, amongst others. The letter called upon the British Government to deal honourably with elderly victims of torture and urged them to establish a scheme to address their health and welfare needs.

The Kenyan Government also issued a statement in 2010 giving its 'full support' to the claimants' case and strongly refuting the suggestions that the Kenyan Republic was legally liable for the atrocities: "The Kenyan Government does not accept liability for the torture of Kenyans by the British colonial regime. In no way can the Kenyan Republic inherit the criminal acts and excesses of the British colony and then the British Government."

The Hanslope Archive

In January 2011, the FCO discovered thousands of formerly secret Kenyan colonial era files held at its archives at Hanslope Park, Milton Keynes. These secret files had been evacuated out of Kenya before independence, as they were deemed too sensitive to be allowed to fall into the hands of an independent Kenyan Government.

Professor David Anderson had found papers in the National Archives that mentioned the secret archive of secret documents from Kenya and referred to them in his first witness statement in the case. As a result the Government was obliged to search for the missing archive, which was discovered in 2011.

The 8,000 documents proved to be an important addition to the documentary record, which was already publicly available at the British National Archives in Kew, and the Kenyan National Archives in Nairobi.

They provided many hitherto unseen documents describing in detail the systemic torture of detainees during the Emergency, and the knowledge of those abuses by British Government officials in London and Nairobi. This included correspondence between the British Government and the Colonial Administration, and internal colonial administration correspondence and minutes of meetings at every level of government.

Expert historians, including Professor Elkins of Harvard University, Professor Anderson of Oxford University and Dr Bennett of Kings College London reviewed the documents. Further expert statements were then served in the case summarising this new evidence coming from the Hanslope disclosure.

The Hanslope Park files also included secret papers from 37 other ex-colonial territories which are slowly being released into the public domain for the first time and which has stimulated new research into British colonial rule around the world.

The First Hearing – ‘ Is Britain Liable?’

By 2011 the lead five lead claimants had become three, these were Wambugu wa Nyingi, Jane Mara and Paulo Nzili. One previous claimant had sadly died during the protracted legal battle and another had withdrawn his claim for personal reasons.

These three claimants now returned to the UK, in April 2011, to attend the first hearing at the High Court.

During the two-week hearing the British Government argued that the claimants had no claim against it and that any liabilities that had arisen had been transferred to the Kenyan Republic upon independence.

In response the claimants argued that the British Government could be held liable as it had been jointly responsible for the acts of the colonial administration and had owed them a duty to prevent them from torture they had been subjected to. In a strongly worded judgment, handed down in July 2011, the High Court held that there was clearly an arguable case against the British Government and that the claims were fit for trial.

Referring to the state of Emergency declared by the British Government in Kenya during the time of the uprising Mr Justice McCombe, now Lord Justice McCombe, held:

“There is ample evidence even in the few papers that I have seen suggesting that there may have been systematic torture of detainees during the Emergency.” (Paragraph 125).... “The materials evidencing the continuing abuses in the detention camps in subsequent years are substantial, as is the evidence of the knowledge of both governments that they were happening and of the failure to take effective action to stop them.” (Paragraph 128)

Despite the claimants’ victory the British Government continued to resist their claims for redress. The stance taken by the British Government led to growing calls for it to resolve the claims and in February 2012, Archbishop Desmond Tutu, UN Envoy Lakhdar Brahimi, and Humanitarian Campaigner Graça Machel wrote a letter to the Prime Minister urging a fair resolution of the claims. The signatories expressed their concern that “the British Government’s repeated reliance on legal technicality in response to allegations of torture of the worst kind will undermine Britain’s reputation and authority as a champion for human rights. Our concern is that this, in turn, will have a damaging effect on the fight against impunity across Africa.”

July 2012, the Second Hearing – ‘time barred?’

In July 2012 the three claimants travelled to London for a third time to attend the next stage of their case and to provide their personal testimony of the torture they had been subjected to at the hands of British officials.

At this hearing the British Government argued that the claims should be dismissed on the grounds that they were time barred and that a fair trial on the evidence was no longer possible.

The claimants sought to convince the Court to exercise its discretion to allow the claims to proceed. The parties agreed during the proceedings that the primary issue before the Court was whether or not a fair trial could still be held, despite the passage of over 50 years since the abuses had taken place.

It was during the course of this hearing, in a historic turn of events, that the British Government conceded that British colonial administration officials had tortured the claimants. This was the first time that the British Government had accepted that the colonial regime in Kenya was responsible for the torture of Kenyans during the Kenya Emergency.

The Court handed down the Judgment on 5 October 2012, finding in favour of the Claimants. The Court held that:

“I have reached the conclusion....that a fair trial on this part of the case does remain possible and that the evidence on both sides remains significantly cogent for the Court to complete its task satisfactorily. The documentation is voluminous....and the governments and military commanders seem to have been meticulous record keepers. The Hanslope material has filled the gaps in the parties’ knowledge and understanding and that process is still continuing. I am not satisfied that the defendant has adequately taken into account the number of potential witnesses, presently identified or otherwise, at levels of government and the army lower than politicians, senior civil servants and generals, who might be able to supplement its case on the documents.” (Paragraph 95)

Following the Judgment, the claimants’ case was listed to proceed to a full trial upon the issues, but despite the British Government’s admission and the strong judgment against it, it chose to continue fighting the claims and to appeal. The case was scheduled to go before the Court of Appeal in 2013.

Pressure on the Government grows

After the second High Court judgment, international condemnation of the British Government's stance grew. In October 2012 a letter was sent to David Cameron by the then Kenyan Prime Minister, Raila Odinga, urging him to resolve this issue which had become "a stain in our long and strong relationship". Britain has been a "vocal advocate of respect of human rights in Kenya", he added: "The people of Kenya would like to see a similar approach by your government towards accusations of torture against its own officials."

In March 2013, United Nations' Special Rapporteur on Torture, Juan Mendez, called on the British Government to fully investigate the claimants' allegations and to provide "full redress to the victims, including fair and adequate compensation, and as full rehabilitation as possible in accordance with international law."

Most recently, in April 2013, Liberty submitted a letter to the Prime Minister signed by the current and three former UN Special Rapporteurs for Torture, and other notable human rights figures. They wrote:

"The stance the British Government has taken to these issues is entirely inconsistent with the spirit of the United Nations Convention Against Torture, our international legal obligations and the ethical values to which Government Ministers frequently lay claim. Britain's complete unwillingness to deal honourably with victims of its own breaches of human rights in Kenya undermines Britain's moral authority in the world."

Settlement

In the summer of 2012 Leigh Day, the KHRC and the MMWVA agreed that they would work together to identify those Kenyan victims of colonial era torture who could bring similar cases.

Leigh Day worked with a team of 20 Kenyan and British lawyers over the ensuing 8 months interviewing 15,000 Kenyans in 50 different locations who claimed they had a case against the British Government. After completing this process Leigh Day had identified 5,228 Kenyans with strong evidence to show that they had suffered from acts of torture and severe abuse whilst detained by the British authorities and who the firm now represents.

Protracted negotiations with the British Government took place after the Limitation judgment. On 6th June 2013 the Government announced that they were abandoning their appeal and:

- 1) Made a statement to Parliament in London and to the victims in person in Nairobi acknowledging for the first time that Kenyans had been subjected to torture and other forms of ill-treatment at the hands of the colonial administration and expressed “sincere regret” that these abuses had taken place.
- 2) Agreed to pay compensation to Leigh Day’s 5,228 clients, as well as gross costs, to the total value of £19.9 million.
- 3) Agreed to finance the construction of a memorial in Kenya to the victims of colonial era torture.
- 4) Agreed to pay the legal costs of the case to ensure the claimants received all the agreed monies.

The proposed deal was put to all 5,228 Claimants and not one has turned it down.

They have expressed delight that the world is now aware of the injustice they endured and that, at last, the British Government has acknowledged the wrong which was done to them.