

THE GOVERNMENT AND THE PEOPLE OF THE UNITED KINGDOM

ATTN:

Mr. Neil Wigan
UK High Commissioner to Kenya
British High Commission Nairobi
Upper Hill Road
P.O Box 30465-00100
Nairobi

Dear Sir,

RE: ACCEPT WITHOUT EQUIVOCATION RESPONSIBILITY OVER THE ATROCIOUS COLONIAL RULE; BRITISH INVESTMENTS AND PROGRAMMES IN KENYA TO DATE

A press statement and an open letter on the official visit of King Charles Philip Arthur George Windsor of the United Kingdom to Kenya

If you are neutral in situations of injustice, you have chosen the side of the oppressor. If an elephant has its foot on the tail of a mouse, and you say that you are neutral, the mouse will not appreciate your neutrality.

— Archbishop Desmond Tutu.

1. INTRODUCTION

Kenya Human Rights Commission (KHRC) is a premier Non-Governmental Organization (NGO) established in 1992 with a mandate for enhancing human rights-centred governance at all levels. This entails applying the international, regional and national governance frameworks, including the Constitution of Kenya to foster States obligations to respect, protect and promote human rights, rule of law and accountability.

We advance policy, legal and civic actions in pursuit of redress for such. To this effect, we fearlessly expose, combat and confront diverse and gross human rights and governance abuses committed by both state and non-state actors including corporations and organizations-- ranging from the colonial and to the post-independence regimes in Kenya.

Some of these touch on the victims and survivors of mass and systemic atrocities, historic land injustices and corporate-related violations for which either the British government or corporation, among other powerful actors have been involved in one way or another.

Envisioning human rights states and societies

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A case in point is the, Mau Mau reparations suit initiated in London by Leigh Day, KHRC and Mau Mau War Veterans Association (MMWVA) against the transgressions committed by British government during the emergency period between 1952 to 1960.

The campaign we started in 2002 ended up with an out of court settlement in June 2013 accompanied by a statement of regret, as opposed to an apology, from then British Prime Minister. And some modest reparations for the 5,228 claimants and fund that saw the construction of a monument at the Freedom Corner in Nairobi¹.

We understand Charles III, King of the United Kingdom (UK), is set to arrive in Kenya on October 31, 2023, for a four-day state visit that ends on November 3. According to UK's government, the King's visit is to "celebrate the warm relationship between the two countries and the strong and dynamic partnership they continue to forge".

While the UK's government indicates that the King will "acknowledge the more painful aspects of the UK and Kenya's shared history, including the Emergency (1952-1960)", there is no indication that the King plans to meet with all the diverse groups of victims of gross human rights violations perpetrated by the brutal colonial regime and British multinationals in Kenya or offer full and unconditional apology and commit to effective reparations to victims and their families.

Speaking on Kenya's Spice FM on Tuesday October 24, 2023, ahead of King Charles III's visit, UK High Commissioner to Kenya Neil Wigan confessed that they haven't issued an apology in any context as "it is really difficult thing to do". He further admitted:

"An apology starts to take you to a difficult legal territory, and the settlement we made was out of court, so it showed our sincerity and openness in recognizing the abuses that were committed. That is the route we chose and accepted to the Mau Mau War Veterans Association."

This confirms why the British government initially tried to oppose the Mau Mau case on the unjustifiable basis of lack of liability and lapse of time. On the first issue, they had moved to court to have the case struck out by invoking the defense of State Succession, transferring responsibility to the Kenya Government. On the issues of the state of limitation, they argued that the case is time barred, with over 50 years having elapsed since the alleged atrocities took place².

This position and approach falls short of the international principles on redress and transitional justice as established in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of the International Human Rights Law and Serious Violations of the International Humanitarian Law³.

Finally, the UK government indicates that "His Majesty will take time during the visit to deepen his understanding of the wrongs suffered in this period by the people of Kenya". We welcome the King's willingness to understand and we, as key actors, remain available to offer the requisite information and recommendations which we hope will confer effective remedies as espoused in the aforementioned international frameworks.

¹ <https://www.gov.uk/government/news/statement-to-parliament-on-settlement-of-mau-mau-claims>;

² <https://www.khrc.or.ke/2015-03-04-10-37-01/press-releases/454-mau-mau-case-dealing-with-past-colonial-injustices.html>

³ [https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation#:~:text=\(a\)%20Equal%20and%20effective%20access,concerning%20violations%20and%20reparation%20mechanisms](https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation#:~:text=(a)%20Equal%20and%20effective%20access,concerning%20violations%20and%20reparation%20mechanisms;);

Based on this, we wish to bring to the attention of the British government some of the critical and interrelated human rights and governance abuses for action.

2. CRITICAL HUMAN RIGHTS AND GOVERNANCE ABUSES FOR IMMEDIATE ACTION

Below are the key injustices committed during and post colonial rule whose social, economic and political implications continue to be felt to date.

a) Political repression during the Colonial Rule (1895 to 1963)

It is on record that British occupation was characterized from inception by an extremely brutal and excessive force with punitive and violent expeditions that saw unprecedented crackdown of all individuals, communities and associations that resisted its political ventures in different parts of the country. Many fearless women leaders such as Mekatilili Wa Menza, Muthoni Nyanjiru, Prophetess Syokimau, Moraa Ngiti,⁴ among others, were not spared either.

The atrocities committed by the British regime were so gross that the Truth, Justice and Reconciliation Commission (TJRC)⁵ when exercising its special mandate on the colonial antecedents summarized it in its primary findings:

“The Commission finds that between 1895 and 1963, the British Colonial administration in Kenya was responsible for unspeakable and horrific gross violations of human rights. In order to establish its authority in Kenya, the colonial government employed violence on the local population on an unprecedented scale. Such violence included massacres, torture and ill-treatment and various forms of sexual violence.

The Commission also finds that the British Colonial administration adopted a divide and rule approach to the local population that created a negative dynamic of ethnicity, the consequences of which are still being felt today. At the same time the Colonial administration stole large amounts of highly productive land from the local population, and removed communities from their ancestral lands⁶.”

From 1920 onwards when Kenya attained the colonial status and political authority, the British rule introduced very repressive laws and policies that had adverse effects on both the civil, political, economic, social and cultural rights of the locals. These anti-people and punitive governance systems and practices have been sustained to date. The deeply repressive policing culture is a case in point for it was established and sustained as a tool for suppressing civic uprising.

Owing to this and tired of operating in constrained political spaces, living in infertile and overcrowded native reserves and working for low pay on white owned settler farms, Kenyans began to organize into many resistance movements across the country. To quell the protests, the colonial government responded with extreme levels of brutality and barbarity.

The worst was during the emergency period between 1952 and 1960 when British colonial authorities carried out a brutal campaign against Kenya’s freedom fighters. Over 100,000 Kenyans were killed, tortured and maimed.

b) Land Alienation

⁴ <https://nation.africa/kenya/kenya-60/from-spies-to-field-marshals-celebrating-brave-women-of-kenya-s-independence-struggle-4268548>

⁵ REPORT OF THE TRUTH, JUSTICE AND RECONCILIATION COMMISSION IN KENYA, *Volume I*-Nairobi, 2012; page vii);

⁶https://www.google.com/search?q=TJRC+REPORTS+IN+KENYA&rlz=1C1GCEU_enKE1022KE1023&oq=TJRC+REPORTS+IN+KENYA&gs_lcrp=EgZiaHJvbWUyBggAEEUyOTIICAFAQBgWGB4yCggCEAAyhgMYigUyCggDEAAyhgMYigUyCggEAAyhgMYigXSAQg1MTc2ajBqN6gCALACAA&sourceid=chrome&ie=UTF-8;

The deeply oppressive and alien land policies during the colonial era are widely documented in the official reports, civic investigations and academic journals. Through the Land Acquisition Act (1894), the Crown Lands Ordinance (1902), the Crown Lands Ordinance (1915) and the Kenya Native Areas Ordinance (1926), British colonial authorities forcefully and brutally evicted Kenyan communities from their ancestral lands and handed the high potential land to white settlers and multinational corporations with up to 999 years leases. Kenyan land became 'Crown' land owned by the Queen of England.

As a result, Africans were confined to unproductive and overcrowded native reserves. In some cases, the British signed so-called "agreements" with illiterate community leaders leading to dispossession of their land. For instance, the Maasai community signed the Anglo-Maasai agreements that saw massive loss of their grazing land to white settlers. Unfortunately, some of the parcels of lands are still owned by British investors as Lord Delamare, David Craig and corporations such as Kakuzi, Unilever Tea Kenya, James Finlay Kenya, George Williamson.

The adverse effects of these colonial laws are felt to date. It is on this basis that the National Land Policy (NLP) in Kenya points to the fact that:

"It was expected that the transfer of power from colonial authorities to indigenous elites would lead to fundamental restructuring of the legacy on land. This did not materialise and the result was a general re-entrenchment and continuity of colonial land policies, laws and administrative infrastructure. This was because the decolonisation process of the country represented an adaptive, co-optive and pre-emptive process which gave the new power elites access to the European economy⁷."

The long-term effect of this is the *historical land injustices*. These according to NLP are:

" land grievances which stretch back to colonial land policies and laws that resulted in mass disinheritance of communities of their land, and which grievances have not been sufficiently resolved to date. Sources of these grievances include land adjudication and registration laws and processes, treaties and agreements between local communities and the British".

c) Gross Human Rights Violations Committed by the British Corporates

There is a direct link between the above-mentioned colonial and post-independence state governance frameworks and the entrenched power and interests of private sector elite in the land, conservation, and other business ventures in our society where corporate-related human rights violations are committed with minimal, if not zero redress⁸.

This is because, colonialism was a political system to advance the imperial interests of the British citizens and corporates. Thus the above-mentioned questions on land alienation and political repression were partly to create an enabling environment for the corporates to advance the land-based agricultural economy with cheap labour and minimal resistance.

This has over time entrenched the culture of corporate capture and led to many human rights violations committed by the British citizens and multinationals in Kenya. We outline a few cases below to show how powerful British multinational enterprises continue to retain

⁷ See "The Origins of the Land Question: Political Question" under Section 25 of the Sessional Paper No. 3 of 2009 on National Land Policy.

⁸ Under international human rights law, victims of gross violation of international human rights and humanitarian law (whether by states, corporates or individuals have a right to remedy). See the UN Basic Principles on the Right to Remedy....; UN Guiding Principles on Business and Human Rights among others.

effective control over political and economic spheres in Kenya. Kakuzi Kenya Limited which is a subsidiary of UK based Camillia Park in the UK is a case in point.

On 11th February 2021, and following the intervention of Leigh Day, KHRC and Ndula Resource Centre; Kakuzi Limited, agreed to 1 billion Kenya shillings settlement for atrocities ranging from killings, assault, rape, and other forms of sexual and gender-based violence committed by its guards. As if to confirm that colonialism never really ended, to date, Kakuzi has failed and/or refused to resolve historical land injustices relating to the dispossession of land for more than 13 neighboring communities comprising of at least 3000 members.

Many corporations in Kenya with links to the United Kingdom, either through ownership or trade, have continued to wield huge economic and political power, oftentimes disenfranchising whole sections of communities.

In February this year, the British Broadcasting Corporation released an expose revealing that more than 70 women had been sexually abused by their farm managers in tea plantations operated by two British companies, Unilever and James Finlay. These women told the BBC they had been sexually abused by their supervisors. Secret filming showed local bosses, on plantations owned by Unilever and James Finlay & Co, pressuring an undercover reporter for sex⁹.

This gross and systemic violation of human rights left some of the victims infected with HIV while in other cases, marriages were shattered. None of the women has been compensated for these egregious human rights violations, which are reminiscent to what happens in many other corporations, including floriculture farms exporting flowers to European countries, among them the UK.

In April this year, a man was killed, and another seriously injured in Ibis Farm, operated by British Flamingo Group. Flamingo is the world's largest rose grower and top supplier of premium roses to supermarkets in the United Kingdom, including Tesco, Sainsbury's, Morrisons, M & S, Waitrose and the Coop.

It is the failure by this very company to institute safety measures for transportation of workers that saw dozens of workers injured when a lorry they were being ferried in, fell over in December 2022. In total disregard to safety, workers are ferried around in buses and lorries that have no seats. An estimated 136 workers were involved in the lorry accident that left one dead. Justice has been elusive for the family of the worker who died and those that were injured.

This culture of corporate impunity is common among the many British and other foreign investments in Kenya. We are currently documenting violations by other British, national and multinational actors.

d) Conservation, the Face of New Colonialism

Related to the above issues, interests and actors, is the question of conservation being supported by many international governments and agencies. This goes back to the colonial and post-colonial private interests in land and land-based resources.

⁹ See "True cost of our tea: Sexual abuse on Kenyan tea farms revealed" in <https://www.bbc.com/news/uk-64662056>;

Current proposals by extremist conservationists to have a third of the Earth designated as protected areas for wildlife conservation which the Royal Family supports is having serious impacts on the lives and livelihoods of communities in Kenya. Communities are being disposed of their land by 'conservationists'.

In what is reminiscent of the land alienation during the colonial period, illiterate community leaders are duped to sign agreements to relinquish community land traditionally used for grazing to establish military style conservancies and lodges for white tourists. Communities are fast losing vital grazing land in which they have harmoniously co-existed with wildlife for centuries before the arrival of the "*white savior conservationist*".

These conservancies also engage in carbon trading without any real benefits trickling down to the communities. International media including the *Financial Times* and *The Guardian* as well as reputable environmental groups have exposed the fallacies of carbon credits and offsets. The loss of land and livelihoods and the negative impacts of climate change are causing serious challenges including conflict and migration.

KHRC, Human Rights Watch and Kenya Land Alliance are undertaking a study which would provide deeper findings and recommendations into these issues before December 2023.

e) The British Army Training Unit in Kenya (BATUK)

Kenya hosts British troops who utilize Kenya's unique geographical features for training. However, instead of reciprocating the warm reception that The British Army training Unit in Kenya (BATUK) receives from Kenyans, the British troops continue to unleash terror on Kenyans.

In March 2012, a British soldier murdered Agnes Wanjiru, a 21-year-old mother and dumped her body into a septic tank at Lions Court Inn hotel in Nanyuki. By the time Wanjiru's body was found, all the BATUK soldiers who had been at the hotel had returned to the UK. To date, the culprit has never been prosecuted.

In another incident in March 2021, BATUK soldiers deliberately caused a devastating fire at Lolldaiga wildlife conservancy from the use of white phosphorus. More than 10,000 acres of wildlife reserve were destroyed in the fire that caused massive pollution.

Due to the colonial and oppressive nature of the agreement signed between Britain and Kenya, British soldiers cannot be prosecuted for criminal acts in Kenya without agreement from Britain which is totally unacceptable.

3. RECOMMENDATIONS

In light of this, KHRC calls on the King and the British government to take substantial measures to redress these historical and current injustices and to ensure a more transparent, fair and just relationship between the People of Kenya and those of the United Kingdom. We urge the following actions:

a) Unconditional Public Apology and Official Acknowledgement of Wrongs

We concur with the guidance advanced by the International Centre for Transitional Justice (ICTJ) that:

When solemnly and unequivocally given, apologies convey a clear acknowledgement of the responsibility of the state and individuals not only for the harm done, but for the causes of the conflict or repression that led to those harms. In this way, they play an important role in giving meaning to reparations and promoting efforts to reform institutions and guarantee non-repetition.

It is on this basis we call upon the King on behalf of the British government to issue an unconditional and unequivocal public apology (as opposed to the very cautious, self-preserving and protective statements of regrets) for the brutal and inhuman treatment inflicted on Kenyan citizens during the entire colonial period-(from 1895 to 1963) and thereafter, to date. Such an apology is a critical step in acknowledging the pain and suffering of Kenyans.

The Kenya's TJRC report had recommended that the British Government, the Kenyan President and Chief Justice offer public and unconditional apologies to the people of Kenya over the colonial and post-independence injustices¹⁰. As a result, Chief Justice Dr Willy Mutunga and President Uhuru Kenyatta complied with this in March 2015 where they issued requisite apologies¹¹.

Kenyatta made his apology during his annual State of the Nation speech on March 26 before a joint sitting of the National Assembly and Senate. Mutunga made a general apology on March 7 during an event to commemorate the first political assassination in Kenya, the killing of socialist politician Pio Gama Pinto that remains unsolved.

To date, the British government is yet to meet this critical obligation save for the statements of regrets. The maiden visit by the King provides an opportunity for this.

b) Documentation; Repatriation and Repository of Materials related to British Atrocities

We demand that the British government supports the civil society, victims and academic groups working on this to undertake a comprehensive mapping of all the existing information, adversely impacted groups and the harm suffered. A lot of research and documentation has taken effect.

¹⁰ The British government was to apologize for all the injustices and gross human rights violations committed by the colonial administration between 1895 to 1963. In the context of our petition, this should be for all the violations committed from 1895 to date. The Presidents apologies were for all the violations committed during the TJRC's mandate (December 12, 1963 to February 28, 2008). The CJ's was for the judiciary to apologize to the people of Kenya for failing to address impunity effectively and perform its role of deterrence against human rights violations committed over the same period between December 1963 to February 2008. For details; see Truth, *Justice and Reconciliation Commission Report*; Kenya, 2012; p. 9

¹¹ <https://www.ijmonitor.org/2015/04/kenyan-president-and-chief-justice-apologize-for-past-injustices/>;
<https://www.ictj.org/news/kenyatta-apology-actions-needed>

Repositories (both physical and virtual) should be established and supported to ensure that different information into this subject matter is secured and easily accessible. The Mau Mau website and Foundation by the war veterans and being supported by KHRC and scheduled for launch on November 8, 2023 would be one of the crucial spaces.

We also demand that the British government repatriates all the declassified information touching on its rule in Kenya. It is a pity KHRC and MMWVA had to buy lots of literature from London in the pursuit of the aforementioned case. Moreover, all the historical artifacts held in Britain should be brought back for safe custody at the new galleries at the Uhuru Gardens, the National Museums of Kenya among other sites.

In addition to this, it is time Britain brought back the skull of Koitalel Arap Samoei (just as Belgians have done with the tooth of Patrice Lumumba in DRC) and assisted in the tracing of Dedan Kimathi's burial site for decent sendoffs.

With respect to the historical land injustices, we request the British government to support the National Land Commission to carry out further investigations and analysis of all the legitimate claims. The Commission has said many times that it received many cases which require massive resources for the verification and actions to be accomplished from their side.

Finally, the British government should implore its investors holding massive and fallow lands in Kenya in the midst of many landless and impoverished communities to surrender the same to the people and government of Kenya for settlement and development.

c) Adequate Reparations for all Victims

We further demand effective reparations for all the atrocities committed to the different groups in the country. This should be in line with the aforementioned UN Principles and Guidelines which provide supporting among others; adequate compensation, rehabilitation, satisfaction and guarantee of non-repetition.

We also demand adequate financial and technical support in the construction and maintenance of the requisite memorials. These are critical for communal and symbolic reparations as well as preservation of memories. The Mau Mau memorial at the Freedom Corner needs constant financial support from the British Embassy in Nairobi for maintenance and improvement¹².

To this extent, there should be a memorandum of understanding between KHRC (which has been using its limited resources to service the monument); British High Commission in Nairobi and the Government of Kenya (through the National Museums and County government) on this. There is also a need to have all these monuments gazetted by the government of Kenya.

Finally, the British government should consider a reparative development programme which provides special materials support for the people and regions that continue to suffer the long

¹² It is important to indicate the funds allocated within the out of court settlement in London case were not adequate and KHRC had to put in more resources. Based on this, the actual costs incurred in this situation plus inflation can provide better basis for the future.

term and emerging effects of colonial policies and current investments by British corporates and citizens. As put in the TJRC report, such has led to systemic economic marginalization.

d) Human Rights Commitment and Compliance

We expect the King to express the British government's commitment to human rights and the rule of law in its foreign policy and operations. This should ensure that its programmes and investments in Kenya and other regions will continue to be undertaken in full compliance with global human rights standards and principles.

In this regard, the British security operations and multinational corporations operating in Kenya must be held accountable for their actions and find amicable ways of co-existing with local communities. It is essential that corporations respect human rights, act responsibly, and contribute positively to the communities in which they operate. Compliance with the Constitution of Kenya and the National Act Plan on Business and Human Rights is central.

Moreover, the Royal Family must come clean on its involvement in conservation activities in Kenya. Conservation efforts in Kenya, while important, should not harm local communities and dispossess them from their land and livelihoods. The British Monarchy's involvement in conservation initiatives should ensure the protection of community rights and land ownership and not perpetuate further new models and forms of colonisation.

The British government must do more to combat climate and its catastrophic impacts. The British government must fulfill its obligations to combating climate change by cutting its emissions, providing resources for adaptation and loss and damage for frontline countries such as Kenya and ensuring fairness and justice in the carbon credit markets.

Finally, as many countries shift to economic priorities, there is a dire need to continue supporting good governance and human rights interventions (both within the civil society and government, especially the Constitutional Commissions and Independent Offices) while openly holding the State to account for its human rights transgressions.

e) Involvement of all the Victims Groups and other key actors

Due to the very diverse and complex nature of issues, survivors and actors involved, the British High Commission must work with the necessary civil society and academic groups to ensure that all the conversations and resolutions before, during and after the King's visit are inclusive and conclusive. Having worked with many impacted groups and concerned partners, we are yet to receive information on how these engagements are happening.

Finally, we recommend King Charles to visit some of the affected communities for firsthand engagements and experiences. For the colonial, the Ngelani Community under the

Mbingu Foundation in Machakos county and Mau Mau groups in Kiambu or Nyeri counties would be illustrative.

For the post colonial and corporate related injustices; the Kakuzi communities in Murang'a county and women workers within tea farms in Kericho county would offer great insights. Within good time, the counties within Northern Kenya and part of the Coastal region would have provided depressing encounters of the endless effects of colonial marginalization and securitization.

IN CONCLUSION:

The KHRC is committed to fostering dialogue and civic engagement around these critical transitional justice and current issues. In the spirit of truth, reconciliation, and justice, we will continue undertaking advocacy initiatives on the British atrocities committed in Kenya and beyond.

We therefore call on the British government to effectively act on the above issues and recommendations, acknowledge its historical responsibilities and collaborate with Kenya to address these pressing concerns.

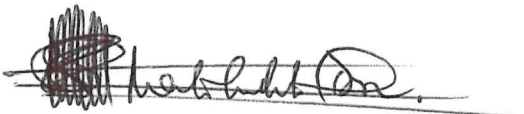
The government of Kenya must also meet its obligations to protect human rights for all people. Notably, the implementation for the TJRC report and the Constitution of Kenya are critical. This may explain why the TJRC report recommended that the Kenyan government considers entering into negotiations with the British government with a view to seeking compensation for victims of atrocities and injustices committed during the colonial period by the agents of the colonial administration¹³.

We hope President Ruto will prioritize this in his meetings with the visiting King. We shall never relent until justice for all victims and families is fully served.

May Justice be our Shield and Defender. **ALUTA CONTINUA.**

SIGNED

Davis Malombe, Executive Director, KHRC.



Davinder Lamba, Chairperson of the Board, KHRC.



Dated: October 29, 2023

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¹³ Truth, Justice and Reconciliation Commission Report; Kenya, 2012; p. 9