



**Memorandum to Kenya National Commission on Draft Reparations Guidelines:**

Clariss Ogangah,  
Chair,  
Kenya National Commission on Human Rights (KNCHR),  
P.O Box 74359-0200,  
Nairobi-kenya.

27/4/2026.

Dear Madam,

**RE: MEMORANDA TO KNCHR WITH INPUTS AND COMMENTS ON THE DRAFT REPARATIONS GUIDELINES 2026**

Greetings from the Kenya Human Rights Commission (KHRC), Grace Agenda, National Victim and Survivors Network, and the Center for Memory and Development.

Kenya Human Rights Commission (KHRC) is a domestic-transnational civil society organization (CSO) established in 1992, with a mandate to enhance human rights-centred governance at all levels of society. Part of this has involved advocacy for applying human rights and transitional justice approaches to effectively address the legacies of gross and systemic human rights violations committed by governments, corporations, and individuals from the colonial to modern eras. This has seen partnerships with many victim/ survivors' groups and human rights networks and organizations at the national and transnational levels, including the Kenya National Commission on Human Rights (KNCHR).

Grace Agenda is a community-based organisation that was registered as a response to the personal experience of rape during the Post Election Violence of 2007/8. A child was born from this human rights violation and inspired the walk towards justice, reparation, healing, and memorialization with other survivors, including those survivors with disabilities. Grace-Agenda was founded with the intention of creating a platform for sharing, where, through group therapy and counselling, survivors would achieve emotional healing and restored self-esteem. Their mandate is Self-Agency for one's own voice to be heard for the restoration of Dignity, Reparations, and Justice for the sexual violations and the children born of the violation and Memorialization. Not a single story should be left untold.

The National Victim and Survivors Network (NVSN) is the umbrella body comprising of various victim/ survivors' groups that suffered human rights violations and historical injustices and was formed as a result of a resolution at the conclusion of a National Victim/ survivors Convention which was held in 2009 on the heels of the Kenya National Dialogue and Reconciliation (KNDR) and at the onset of the Truth, Justice and Reconciliation process. Our ambition remains to realize redress for all victim/ survivors in a manner that restores their dignity and promotes national cohesion. We have endured false promises, false starts and half-measures. We have been urged to move on by some and have been the subject of rhetoric without action from others. We, however, remain the conscience of our ailing nation-building project and a painful stain that indifference and denial have failed to wipe off.

The Centre for Memory and Development was established to help realize one of the vital recommendations contained in the final report of the Kenya Truth, Justice and Reconciliation Commission: The establishment of a monument at the site of the former torture chambers in the basement of Nyayo House Building in the Central Business District of Nairobi City. The Centre's mission is to advance peace, tolerance of diversity, and national development through constructive memory work.

We take this opportunity to thank the KNCHR for its work in the protection and promotion of human rights in the country. We further appreciate the Commission for leading the development of the Draft Reparations Guidelines 2026. This is in accordance with the judgment delivered on December 4, 2025. We wish to recommend the following inputs for your consideration.

## **GENERAL COMMENTARY**

### ***Key Concerns regarding the current Reparations Policy:***

#### **1. Lack of Accountability for key perpetrators:**

A critical policy gap persists within the current reparations framework of the Kenya National Commission on Human Rights, particularly in its limited integration of accountability mechanisms and memorialization initiatives as core components of reparative justice. While the framework acknowledges victim/ survivors' rights to redress, it does not sufficiently operationalize strategic litigation against perpetrators of human rights violations, nor does it robustly institutionalize memorialization processes that preserve collective memory and affirm victim/ survivors' dignity.

This omission weakens the realization of key transitional justice objectives, especially guarantees of non-repetition and satisfaction by allowing patterns of abuse to persist without meaningful deterrence or public acknowledgment. The recurrence of abductions and enforced disappearances in 2024 and 2025, reminiscent of violations witnessed during earlier authoritarian periods, underscores the consequences of this gap.

Without deliberate alignment between reparations, accountability, and memory, the framework risks inadvertently sustaining a culture of impunity, thereby undermining its own mandate to promote justice, human rights, and institutional reform.

Current reparations approaches, as advanced by the Kenya National Commission on Human Rights, risk over-emphasizing financial compensation and victim/ survivor/ survivor recognition while insufficiently integrating mechanisms for perpetrator accountability. This creates a justice deficit in which victim/ survivors may receive monetary redress, but those responsible for violations, whether living or deceased, are rarely subjected to meaningful legal or historical accountability. The experience of the Nyayo House torture cases illustrates this gap, where compensation was achieved without corresponding prosecutions or formal attribution of responsibility. As a result, reparations risk becoming a substitute for, rather than a complement to, comprehensive justice.

#### **2. Lack of a Specific Legal Anchor:**

The absence of a specialized law on reparations may act as an impediment to the realization of this policy. Considering this, the National Treasury may be under no obligation to release funds meant for reparations, and in the event they did, this could open up doors for potential litigious cases within the Courts of Law. Secondly, Reparations currently depend on executive "goodwill" rather than statutory entitlement.

### 3. Narrow Focus on Cash Compensation:

Much of the public and political discourse focuses on monetary payouts. This often overlooks the other four pillars of reparations: Restitution, Rehabilitation, Satisfaction (apologies/memorials), and Guarantees of Non-Repetition.

### 4. Exclusion of Historical Injustices:

While the current framework (2026) was accelerated by recent protest-related violence, many victim/ survivors from the 2007/08 Post-Election Violence (PEV) and historical land injustices remain in a "data-gap," with their cases unverified or stuck in stalled processes like the 2013 TJRC report.

### 5. Verification and Resource Constraints:

The KNCHR has openly admitted to a lack of resources to reach victim/ survivors in remote or marginalized areas. As of April 2026, they have only verified around 1,800 complaints, which is likely a fraction of the actual victim/ survivors nationwide.

### 6. Non-Compliance with Court Awards:

A major gap is the government's history of ignoring court-ordered damages (e.g., for Nyayo House torture survivors). A policy that doesn't solve the "unenforceable judgment" problem remains a paper tiger.

## ***Proposed Inclusions for a Comprehensive Policy:***

The current reparations policy should endeavor

To move beyond "handouts" and toward genuine restorative justice, the following should be integrated into the upcoming Reparations Bill and Framework:

#### a) Institutional & Financial Security

**A Dedicated Restorative Justice Fund:** Establish a permanent, ring-fenced fund managed by a multi-stakeholder board (including victim/ survivors) to ensure payouts aren't tied to the annual political mood.

**Automatic Trigger for Court Awards:** The policy should include a provision where any human rights-related court award against the State is automatically settled by the Treasury within a fixed period (e.g., 90 days).

## B. Holistic "Non-Monetary" Reparations

**Psychosocial Rehabilitation:** Mandatory funding for trauma centers and long-term mental health support for survivors of torture and SGBV, rather than one-off medical grants.

Symbolic Reparations (Satisfaction): The State should be required to issue formal public apologies and establish "Days of Remembrance" or monuments at sites of gross violations (e.g., Nyayo House or protest hotspots).

### C. Administrative Reforms

Lower Burden of Proof: Standardize the use of "presumptive evidence" for victim/ survivors in conflict zones where official records (like P3 forms or OB numbers) may have been withheld by the very authorities who committed the violations.

Decentralized Verification: Partner with grassroots NGOs and County Governments to create mobile verification clinics, ensuring that the "poor and marginalized" mentioned by the KNCHR are not excluded.

### D. Guarantees of Non-Repetition

Vetting Clauses: The policy should mandate that any official found liable for gross human rights violations is permanently barred from holding public office, serving as a deterrent for future abuses.

## 1. ON THE GUIDING PRINCIPLES

### a) Legal Reference points

The legal reference points should go beyond constitutional and normative frameworks to cases laws and other positive experiences on justice processes in the society.

### b) Approaches

Consider adding the following for they are critical in shaping the posture and outcome:

- i) *Strengthening accountability and justice approaches for serious crimes.* This aims to end impunity, provide remedies for victim/ survivors, and ensure lasting peace through both criminal and non-judicial mechanisms, including prosecutions, truth commissions, and reparations.
- ii) *Transformative justice approach.* This process shall aim to address harm, violence, and abuse through community-based, non-punitive methods, aiming to shift from solely individual accountability to addressing root systemic causes. This is critical for confronting the core governance issues and guaranteeing non-repetition.
- iii) *Transparency and accountability.* This needs to be fine-tuned to: "Any agency implementing the Guidelines shall be accountable and prudent for the use of public funds; decisions made and the fairness of outcomes."

### c) INTERPRETATION

- a) Define satisfaction and guarantee of non-repetition in line with the UN Basic Principles on the Right to Remedy, for the 3 other components of the same are equally defined.

b) **“victim/ survivor”** means any person who suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their human rights, and shall include indirect victim/ survivors, being family or dependents of the victim/ survivor, especially in cases of enforced disappearance, extrajudicial killing, or where the direct victim/ survivor is incapacitated. The current definition, while inclusive of indirect victim/ survivors, remains primarily individualistic and does not adequately recognize collective, intergenerational, and structural dimensions of harm. It lacks explicit acknowledgment of communities as rights-holders, fails to account for future generations affected by present violations, and does not sufficiently capture victim/ survivors of systemic or institutionalized harm. This creates ambiguity in distinguishing between individual and collective victim/ survivorhood, with implications for recognition, accountability, and reparative measures.

**c) Provision on Time Frame:**

Based on the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victim/ survivors of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN General Assembly Resolution 60/147), the timeframe for reparations must be expanded to ensure they are comprehensive, timely, and address both immediate and long-term impacts

Key aspects of expanding the timeframe, as provided in the principles, include:

- i. **Prompt and Immediate Action:** Reparations should be prompt and effective to avoid "justice delayed is justice denied". This includes the immediate cessation of ongoing violations and provision of urgent assistance, such as medical and psychological care.
- ii. **Long-Term and Sustained Support:** Reparation programmes must support rehabilitation over an extended period, moving beyond one-off payments to include sustainable, long-term care for victim/ survivors and their families.
- iii. **Addressing Post-Conflict/Post-Violation Timeframes:** Reparations should be available for victim/ survivors long after the violation occurs, and mechanisms must be designed to adapt to new needs, including harm discovered after the conclusion of initial agreements.
- iv. **Proactive Information and Access:** States are encouraged to set up "national funds for compensation" that are easily accessible to victim/ survivors over an extended period of time to facilitate reparations.
- v. **Forward-Looking Guarantees:** Reparation includes measures (such as training for security forces and reforms to the judiciary) designed to prevent the recurrence of violations, looking towards the future safety of society.

**d) Revisit the definition of compensation:**

According to the UN Guiding Principles on Business and Human Rights (UNGPs) and the associated Basic Principles and Guidelines on the Right to a Remedy and Reparation, compensation is a form of reparation provided to victim/ survivors of

human rights violations. It is defined as a monetary payment to make good on any economically assessable damage resulting from a business-related human rights abuse, as appropriate and proportional to the gravity of the violation and the circumstances of each case.

***Core Components of Compensation under the UNGPs:***

- i. Economically Assessable Damage: Compensation covers damages that can be quantified in monetary terms. This includes both pecuniary and non-pecuniary losses, such as physical or mental harm, loss of earnings or profits, and lost opportunities.
- ii. Forms of Harm Compensated: It covers not only direct material damage (e.g., loss of property, medical costs) but also moral damage, such as pain, suffering, humiliation, and emotional distress.
- iii. Proportionality and Adequacy: The compensation must be "fair, adequate" and proportionate" to the gravity of the violations and the harm suffered.
- iv. One Component of Remedy: Compensation is only one form of reparation. The UNGPs emphasize a "bouquet of remedies," which may include restitution, rehabilitation, satisfaction, and guarantees of non-repetition.

**General commentary on the Guiding Principles and the Interpretation Section:**

The draft Reparations Guidelines, 2026, provide a strong rights-based and victim/ survivor-centered foundation, but they require greater clarity on scope and eligibility. In particular, the categories of violations covered and the criteria for determining who qualifies as a victim/ survivor need to be more explicitly defined to avoid inconsistent or contested decisions. In addition, the absence of a detailed claims process covering how applications are made, the evidence required, timelines, and decision-making steps limits the practical realization of the right to fair administrative action.

The Guidelines would also benefit from a more robust operational framework. This includes establishing clear verification procedures to support the "reasonable basis to believe" standard, as well as defining the roles and coordination mechanisms of implementing agencies. Without institutional clarity and a sustainable funding model, there is a significant risk of inefficiency or non-implementation. Introducing prioritization criteria for vulnerable victim/ survivors and elaborating on the forms and standards of reparations would further enhance fairness and consistency in outcomes.

Accountability and inclusivity mechanisms are another critical gap. The draft does not provide for an independent appeals process, nor does it include a comprehensive monitoring and evaluation framework to track progress and ensure transparency. Moreover, while non-discrimination is emphasized, there is a need for more specific provisions addressing the unique needs of women, children, persons with disabilities, and marginalized groups. Stronger data protection safeguards and confidentiality measures are also necessary to protect sensitive victim/ survivor information.

Finally, the Guidelines should be better integrated into a broader transitional justice framework. This includes linking reparations to truth-seeking, institutional reform, and accountability processes. To ensure accessibility, a clear public awareness and outreach strategy is essential, alongside defined timelines for claims submission and program duration. Overall, strengthening these procedural, institutional, and implementation aspects would make the Guidelines more effective in delivering meaningful and timely justice to victim/ survivors.

## **PART II” Registration and Verification of Victim/ survivors**

**Sources of Claims:** The requirement for any other existing database by stakeholders to be verified by the relevant State Agency may prejudice and disadvantage many victim/ survivors.

**Accessibility:** The registration and verification processes shall be designed to be accessible to all victim/ survivors, including those in remote areas, persons with disabilities, and other vulnerable groups. Reasonable accommodation should be made where necessary. Registration and verification processes shall proactively identify and address access barriers by providing tailored accommodations, including but not limited to assistive communication services, accessible materials, transportation or mobile outreach, and support personnel. This accommodation shall be provided promptly upon identification of need, without undue burden on the applicant.

### **6(1)(b)iii and iv Protection of victim/ survivors/ witnesses who appear ... requirements for registration....details of the alleged perpetrators.**

The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation (A/RES/60/147) establish that victim/ survivors and witnesses of gross human rights violations and serious violations of international humanitarian law are entitled to protection, accessible registration processes, and information about perpetrators.

### **Protection of Victim/ survivors and Witnesses (Principles 10 & 12)**

- i. Safety and Privacy: States must ensure the safety, physical/psychological well-being, and privacy of victim/ survivors, families, and witnesses, protecting them from intimidation or retaliation.
- ii. Preventing Re-traumatization: Special care should be taken to prevent further trauma during legal processes.
- iii. Confidentiality: Procedures should protect witness identities, including the use of pseudonyms as seen in international courts.

### **Requirements for Registration/Reparation Claims (Principles 13 & 15)**

- i. Accessibility: Procedures must be easy to use, supporting prompt, fair, and open access for victim/ survivors, including group claims.
- ii. Documentation: Claimants should be able to prove identity and harm through various means, including witness testimony if official documents are unavailable.

### **6(c) Supporting documentation.... options of verifying....**

Under the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victim/ survivors of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, reparations must be accessible, prompt, and effective. The draft framework by KNCHR should emphasize a victim/ survivor-oriented approach, often requiring less exacting standards of proof compared to criminal trials, to account for the difficulty in obtaining evidence.

### **7. Standard of proof: reasonable basis to believe evidentiary standard?**

Sources of Claim:

In conducting the identification and registration of claims for reparations, a State Agency shall consider—

- (a) the database of the Kenya National Commission on Human Rights (KNCHR);
  - (b) databases and reports from relevant State agencies;
  - (c) existing databases compiled by stakeholders, including civil society organizations and international bodies, subject to verification in accordance with this section;
  - (d) claims submitted directly by victim/ survivors, or their representatives, whether individually or collectively; and
  - (e) information obtained through proactive outreach, investigations, public hearings, and community-based processes.
- 2) The State Agency shall establish accessible and continuous mechanisms for the submission of new claims, including
- (a) decentralized and mobile registration processes;
  - (b) procedures that accommodate persons with disabilities, language diversity, and low literacy levels; and
  - (c) acceptance of individual and group claims.
- 3) Verification of claims shall
- (a) be conducted in a manner that is independent, impartial, and victim/ survivor-centered; include the participation of independent experts, civil society representatives, and community leaders where appropriate;
  - (c) permit the use of multiple forms of evidence, including oral testimony, affidavits, and community validation; and
  - (d) not be limited to official State records.

4) The State Agency shall develop and maintain a standardized and interoperable database, which shall—

- (a) include uniform data fields for all claims;
- (b) ensure compatibility and data-sharing across relevant institutions; and
- (c) incorporate safeguards against duplication through the use of unique identifiers.

5) The State Agency shall ensure the protection of personal data and the safety of victim/ survivors, including:

- (a) obtaining informed consent prior to data collection and use;
- (b) ensuring confidentiality and, where necessary, anonymity; and
- (c) implementing secure data storage and restricted access protocols.

6) The State Agency shall provide mechanisms for—

- (a) the updating and correction of records;
- (b) review and reconsideration of decisions; and
- (c) an independent appeals process for disputed or rejected claims.

7) The State Agency shall designate or operate under a coordinating authority responsible for—

- (a) integration and harmonization of all relevant databases;
- (b) establishing data-sharing standards; and
- (c) ensuring consistency in the application of eligibility criteria.

8) The relevant law or regulations shall clearly define—

- (a) the temporal scope of violations covered;
- (b) the categories of violations eligible for reparations; and
- (c) guidelines for the inclusion of borderline or complex cases.

9) In implementing this section, the State Agency shall adopt a victim/ survivor-centered and trauma-informed approach, including—

- (a) meaningful participation of victim/ survivors in the process;
- (b) provision of information and feedback to claimants; and
- (c) measures to prevent re-traumatization.

### **Key Principles and Implementation**

- **State Responsibility:** Governments have the primary duty to provide reparations, especially when violations are carried out by state officials.

- **Promptness and Accessibility:** Compensation mechanisms must be prompt, fair, and accessible, ensuring victim/ survivors can navigate the process without excessive burden.
- **Independence in Investigation:** The process must be independent, impartial, and transparent.

## **PART III ON REPARATIONS**

**13: Satisfaction:** In line with the Basic Principles, the state must begin by putting in place effective measures aimed at the cessation of continuing violations. This is critical for state repression, leading to more arrests and deaths for the protesters. A case in point was the protests against high fuel prices on April 21, 2026, where at least 11 demonstrators were arrested in Nairobi.

Moreover, the proposed intervention should not be framed as optional but mandatory for the state. Public apology must be unconditional, acknowledging the harm suffered and assuring of non-repetition. There is no point in apologizing and sustaining these abominable human rights violations. A case in point is when on April 15, 2015, President Uhuru Kenyatta made a public apology in line with the proposals of the TJRC report, but continued with the same violations between 2016 and 2018, some of which are subject to this initiative.

Under memorialization, the government should draw precedence from the Mau Mau Case: *Ndiku Mutua, et al. v The Foreign and Commonwealth Office*. This case not only laid out an important precedent regarding serious human rights violations against Kenyans by the British Government. It culminated in three main components: the issuing of a public apology, payment of reparations to the tune of ksh 360,000 each for 5228 victim/ survivors and the construction of a memorial monument at Uhuru Park.<sup>1</sup> This process should also learn from the experience of Argentina, which went further to engrave the names of the person and their ages listed. This commemorates the estimated 30,000 people who disappeared or were murdered by the state during the 1969–1983 dictatorship<sup>2</sup>. This reparations policy should also recommend for the declaration of June 25<sup>th</sup> as a Public Holiday that would be used to commemorate the lives of victim/ survivors and survivors of the Finance Bill Protests in 2023, 2024 and 2025.

### **15. Guarantee of non-repetition**

The first action is for the KNCHR to undertake a deep investigation into the state violations during, before, and after the stipulated period. This is critical to establish the patterns, trends, identity, and interests of the perpetrators over a long time. This must go beyond public officers to include private individuals and corporate entities. There is deep evidence of goons and corporations who have worked to facilitate surveillance and harming of the many victim/ survivors and survivors.

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<sup>1</sup> [https://khrc.or.ke/press-release/mau-mau-memorial/;](https://khrc.or.ke/press-release/mau-mau-memorial/)

<sup>2</sup> [https://parquedelamemoria.org.ar/en/monument/;](https://parquedelamemoria.org.ar/en/monument/)

The Reparations Policy by KNCHR must commit to an end to the endless culture of impunity and state repression, which has been entrenched from the colonial to the current regimes.

**16. Compensation** should be provided for any economically assessable loss and damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law.

#### **Precedents on Compensation and Reparations:**

On 4th July 1994, Mr. David Mbewa Ndede, through a plaint, brought a civil action against the government (see David Mbewa Ndede vs the Attorney General, Civil Suit No. 284 of 1994 in the High Court of Kenya at Kisumu) seeking, amongst other claims, compensation for malicious prosecution and for the injuries incurred as a result of the torture he had endured at the hands of the police and state agents at Nyayo House. In the judgment of sitting judge Lyangah J, the plaintiff, Mr.Ndede was awarded Kshs.600, 000/= as general damages for the unlawful arrest, unlawful detention in the police cells and the subsequent malicious prosecution, and Kshs.1, 095, 210/= as special damages, which figure was obtained from aggregating the medical expenses incurred by the plaintiff as a result of injuries or ill-health suffered due to the ill-treatment he received after he was arrested on the 29th September, 1987.

Aggravated damages refer to the damages awarded by a court to reflect the exceptional harm done to a plaintiff. They take account of intangible injuries such as pain, anguish, grief, humiliation, wounded pride, damaged self-confidence or self-esteem, etc, and, by definition, will generally add to damages assessed under the general rules relating to the assessment of damages.

In a landmark ruling delivered on March 25, 2026, the High Court in Kisumu awarded over KSh 38.6 million in damages to 28 victim/ survivors and families affected by police brutality during the 2023 anti-government protests (often referred to as the "Sufuria" or Azimio Maandamano protests). The judgment, delivered by Justice Alfred Mabeya, found the National Police Service and the Inspector General of Police liable for using excessive and unlawful force, resulting in nine deaths and serious injuries to 18 others.

#### **Key Rulings and Findings**

**Liability:** The court found that police engaged in violent, unconstitutional actions, including breaking into homes in poor settlements (Nyalenda, Kondele, Obunga) to assault residents, rather than just managing demonstrations.

- i. **Victim/ survivors:** Several victim/ survivors were not even participating in protests but were shot or beaten while in their homes or going about their daily chores.
- ii. **Damages Awarded:** The court awarded total damages of KSh 38,627,050.
- iii. **Families of the nine deceased** received between KSh 910,000 and KSh 1.4 million.
- iv. **Injured survivors** were awarded up to KSh 4.87 million, depending on the severity of their injuries, which included life-altering, permanent disabilities.

- v. Structural Orders: The judge issued several orders, including: A directive for the government to conduct thorough investigations into the incidents within 90 days. The creation of regulations governing the use of force during demonstrations.
- vi. IPOA Faulted: The Independent Policing Oversight Authority (IPOA) was faulted for delaying investigations, with the court noting they had "turned a deaf ear" or taken too long to act, denying victim/ survivors timely justice

### **COVAW & Others V AG & Others<sup>3</sup>:**

Following Kenya's disputed 2007 presidential election, widespread violence erupted across the country, lasting from late December 2007 to March 2008. During this period, both men and women were subjected to severe sexual and gender-based violence (SGBV), including rape, gang rape, defilement, forced circumcision, and other forms of abuse. State security forces were among the alleged perpetrators, and victim/ survivors frequently faced barriers to reporting crimes, receiving medical care, and obtaining justice, as police often refused to document or investigate complaints.

In 2013, eight survivors alongside four Kenyan civil society organisations filed a constitutional petition against various state authorities, arguing that the government failed to prevent the violence, protect citizens, and adequately investigate or prosecute SGBV crimes. They also claimed that the state had failed to provide reparations. In 2020, the High Court of Kenya found the government partly responsible, holding that it had violated constitutional rights in cases involving police perpetrators and in cases where reported abuses were not investigated. The Court affirmed that sexual violence can constitute torture and that the state has a duty to investigate and provide remedies when crimes are reported.

However, the Court did not find the state responsible in all cases, particularly where violence was committed by private actors and not reported to authorities at the time, or where state involvement could not be established. It awarded damages to some survivors but did not order broader systemic reforms or comprehensive reparations. While the judgment marked an important recognition of state obligations regarding SGBV, it was seen as limited in addressing the full scope of accountability and long-term reparative justice for victim/ survivors of the post-election violence.

### **Conclusion:**

The Kenya Human Rights Commission (KHRC) has articulated several critical concerns regarding the draft Reparations Guidelines proposed by the Kenya National Commission on Human Rights (KNCHR). The memorandum critically assesses the Kenya National Commission on Human Rights (KNCHR) draft Reparations Policy, identifying key gaps such as the lack of accountability for perpetrators, the absence of a specific legal framework for reparations, and an overemphasis on financial compensation at the expense of other reparative measures. It highlights the exclusion of historical injustices, verification challenges due to

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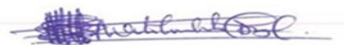
<sup>3</sup> <https://redress.org/casework/covaw-imlu-et-al-v-attorney-general-of-kenya-et-al/>

resource constraints, and a pattern of non-compliance with court-ordered reparations. To address these issues, the memorandum proposes the establishment of a dedicated Restorative Justice Fund, the integration of holistic non-monetary reparations, and the implementation of systemic reforms to ensure justice and prevent future violations.

Notably, the KHRC emphasizes the lack of accountability mechanisms for perpetrators of human rights violations, which undermines the objectives of transitional justice. The current framework is criticized for its over-reliance on financial compensation while neglecting essential elements like memorialization and legal accountability. This gap risks perpetuating a culture of impunity and fails to address the historical injustices faced by numerous victim/survivors, particularly those affected by the 2007/08 Post-Election Violence and other systemic abuses. As such, the KHRC calls for a more comprehensive approach that integrates accountability and restorative justice principles.

Moreover, the KHRC advocates for the establishment of a dedicated restorative justice fund and the implementation of holistic non-monetary reparations, including psychosocial support and public apologies. They highlight the need for clear legal frameworks to anchor the reparations policy, ensuring it is not subject to political whims. By addressing these gaps and fostering more inclusive principles, the KHRC believes the reparations process can effectively serve the victim/survivors' rights to justice and acknowledgment while helping to prevent future violations. Strengthening these procedural and institutional aspects will enhance the overall impact of the reparations policy and contribute to building a more just and equitable society in Kenya. Attached to this Memorandum are two annexes for your further consideration regarding our submissions on the draft KNCHR reparations policy.

Yours sincerely,



Davis Malombe

Executive Director

Kenya Human Rights Commission.

On behalf of the Kenya Human Rights Commission, Grace Agenda, National Victim/survivors and Survivors Network, and Centre for Memory and Development.