

ICJ Kenya Submissions to KNCHR on the Draft Reparations Guidelines, 2026

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Background and Context

Following the Presidential Proclamation of 8 August 2025, the gazettelement of the Compensation Panel of Experts on 25 August 2025, and the subsequent judgment of the High Court delivered on 4 December 2025 in HCCHPET E010 of 2024 (consolidated with HCCHPET E011 and E014 of 2024) at Kerugoya, which declared the above executive actions unconstitutional and formally vested the mandate in the Kenya National Commission on Human Rights (KNCHR), the KNCHR developed Draft Reparations Guidelines to strengthen its redress function. The ICJ Kenya has undertaken a comprehensive review of these Draft Guidelines and submits the following key observations and recommendations.

Key Proposed Amendments

Definitions and Scope: ICJ Kenya recommends expanding the interpretation section to include critical definitions for "**gross violations of human rights**," "enforced disappearance," "**extrajudicial killings**," and "**moral damage**." Notably, the definition of "**victim**" should explicitly include *children born out of rape* as direct victims, consistent with the Nairobi Declaration on the Right of Women and Girls to a Remedy and Reparation (2007).

Guiding Principles: The UN Basic Principles citation should be provided in full. The Victim-Centred Approach principle should be strengthened to explicitly reference victim **safety** alongside opinions and concerns, while the Non-Discrimination clause should include "gender" as a distinct protected ground.

Substantive Provisions: The Guidelines should replace permissive language ("**The State may**") with mandatory language ("**The State shall**") in provisions concerning Satisfaction and Rehabilitation. Clause 10(f) regarding perpetrator exclusion requires amendment to ensure fair determination processes rather than vague exclusionary criteria.

General Observations

- Reparations Fund:** The Guidelines make no provision for a dedicated reparations fund, leaving unclear the source, management, and ring-fencing of financial resources.
- Evidence Requirements:** Clause 6(1)(c) requiring medical reports, police abstracts, or OB numbers risks re-victimization by forcing victims to source documents from potential perpetrators.
- Implementing Agency:** Reference to "state agency" is vague; specificity is required regarding which body bears implementation responsibility.
- Quantum Criteria:** No clarity is provided on the methodology used to determine compensation figures, essential for consistency and sustainability.
- Oversight Mechanisms:** No provisions exist for civil society oversight or continued public engagement throughout the process.
- Judicial Review:** The Guidelines omit provisions for judicial review processes as required by the Constitution.

7. **Registration Process:** Unclear whether KNCHR or a new state agency will conduct registration, with no provision for open and continuous registration despite its critical importance for vulnerable victims and ongoing violations.
8. **Vulnerable Persons:** Beyond non-discrimination language, the Guidelines fail to define vulnerable persons or establish necessary structures (indigenous languages, Kiswahili, braille, protections for SGBV survivors, minors, and sexual minorities) to ensure meaningful engagement.

Conclusion

ICJ Kenya urges KNCHR to address these substantive and procedural gaps to ensure the Draft Reparations Guidelines fulfill their objective of providing accessible, effective, and timely remedies for victims of human rights violations, consistent with Kenya's constitutional framework and international standards on reparations.