

DRAFT REPARATION GUIDELINES, 2026
27 April 2025

The ICJ Kenya has undertaken a comprehensive review of these Draft Guidelines and submits the following key observations and recommendations:

Page No/Guideline	Copy and paste here the specific sentence or paragraph you wish to commend about	Proposed amendment (Provide the exact wording of how your proposed amendment should read)	Explain your reason for the proposed amendment
Arrangement of clauses.	<p>3. Objects and Purpose of the Guidelines</p> <p>4. Registration Period</p> <p>6. Registration of</p>	<p>The objects and purpose of the guidelines are missing and should be included to provide context to the guidelines, e.g., what exactly these guidelines seek to achieve, what violations they seek to remedy, etc.</p> <p>The clauses are misnumbered. They do not align with the provisions in the</p>	<p>It is important that the outline of the clauses and the clauses in the document align. The missing elements in the document that are included in the outline should be encompassed in the document to ensure that crucial provisions, such as the modalities of registration, including registration of vulnerable persons, are not excluded.</p>

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	<p>Vulnerable Persons</p> <p>9. Standard of proof</p> <p>9. Confidential Information</p>	<p>document, such as in part II on the registration process/who can lodge a claim. Some of the clauses in the outline are missing in the document, e.g., registration period, registration of vulnerable persons and confidential information.</p>	
Guiding principles	<p>Implementation of these Guidelines shall be guided by the National Values and Principles of Governance under Article 10 of the Constitution and the United Nations Basic Principles and Guidelines on the Right to a Remedy, and in particular the following: -</p>	<p>The title of the UN basic principles should be written in full, i.e., <i>UN basic principles and guidelines on the right to a remedy and reparations for victims of gross violations of international human rights law and serious violations of international humanitarian law.</i></p>	<p>It is important to include the whole citation of the UN guidelines on reparations, as they are a critical element of the guidelines.</p>

Victim Centered Approach.	All processes shall prioritise the needs, dignity, and well-being of victims. Victims shall be treated with respect, their voices heard, and their particular circumstances taken into account.	Add “.... <i>Victims shall be treated with respect, their opinions, concerns, safety and circumstances taken into account.</i> ”	Rephrasing voices with opinions and concerns is stronger and more encompassing of the right to their participation in the process. Safety of victims is a critical and central to victim centered approach.
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Non-Discrimination	Victims shall not be discriminated against directly or indirectly on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.include the word “ <i>gender</i> ”	Inclusion of gender as a basis for discrimination is important to ensure that the distinction between men and women is not limited to sex but also to social construction as well.
Interpretation	“commission” means the Kenya National Commission on Human Rights established under Section 3 of the Kenya National Commission on Human Rights; Add “ <i>Established under Article 248 of the Constitution</i> ”.	It is important to include the constitutional provision that not only establishes the commission but also gives it the power to develop these guidelines.

Interpretation	“compensation” means a monetary or non-monetary award made to a victim;	Remove “non-monetary”	Non-monetary award, as stipulated in Schedule 1, can be classified as satisfaction under clause 13
Interpretation	“collective reparations” means reparations for collective harm;	Add... “collective reparations” means reparations for collective harm and includes, among others, schools, restitution of land, memorials and provision of social services.	Expound on the definition of collective reparation to provide examples of measures to be considered.
Interpretation	“victim” means any A person who suffered harm, including	Include... “children born out of rape” as	Children born out of rape that may have

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	physical or mental injury, emotional suffering, economic loss or substantial impairment of their human rights and shall include indirect victims being family or dependents of the victim, especially of cases of enforced disappearance, extrajudicial killing, or where the direct victim is incapacitated;	part of the definition.	occurred and covered under the material and temporal scope in the guidelines should be identified as direct victims. The Nairobi Declaration on the Right of Women and Girls to a Remedy and Reparation (2007), to which Kenyan civil society contributed, recognises children born of sexual violence as direct victims.

Interpretation	Missing in the main text	Add the definition of <ul style="list-style-type: none"> • Gross violations of human rights or human rights considered by these guidelines. • Violations of Economic rights • Enforced Disappearance • Extra Judicial Killings 	These definitions are important to help contextualise the violations under consideration in the guidelines.
Interpretation	“state agency” means a commission, office, agency or other body	Add “ <i>state agency</i> ” means a commission, office, agency or other	It is important to specify that the state

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	established under the Constitution or any other written law;	<i>body established under the Constitution or any other written law to undertake the reparation process.”</i>	agency referred to in these guidelines is the one given the mandate to undertake the reparation process.
Interpretation	Moral Damage forms part of the provisions in the guidelines, but it is not defined.	It should be defined	Since it appears in Part Three of the guidelines, clause 11(2)(d), its interpretation should be provided.

Temporal and Material Scope	Not provided in the draft	Indicate the temporal scope and material scope covered by the guidelines to provide clarity on what the reparation program will cover.	It will help establish the period and duration covered by these guidelines, as well as the subject matter, including the type of violations to be considered.
Public outreach	Not provided in the draft.	It should be included as a critical element to ensure that victims/survivors have information on the reparation program.	Fulfills the right to information for victims and survivors.
Treatment of Vulnerable persons.	Not included	While the guidelines mention non-discrimination as a guiding principle, they fail to define who vulnerable persons are and to incorporate provisions on necessary structures that would help vulnerable persons to engage meaningfully. Eg, use of indigenous	It is important to outline the structures to be put in place to ensure that vulnerable persons engage meaningfully with the process.

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		languages, use of Kiswahili, use of braille, protection for survivors of SGBV, minors and sexual minorities and consideration of the registration processes for vulnerable persons	

Grounds for eligibility Clause 10(f)	(f) It is established that the Claimant was an active perpetrator of human rights abuses during the same period for which reparations are sought.	Substitute with... “ a fair process of determination and a balance of probability of the individual in question”.	The provision is vague and could be used to weaponise the protestors who confronted the police.
Reparations, clause 11(2)	2) Indetermining appropriate reparations, the Implementing Agency shall take into account the socio-economic circumstances of the victim as appropriate and proportional to the gravity of the violation, including:	Rephrase <i>In determining appropriate reparations, the Implementing Agency State agency shall take into account the socio-economic circumstances of the victim as appropriate and proportional to the gravity of the violation, including:</i>	Use of uniformity. A uniform language.
Satisfaction Clause 13.	The State may..	The state shall....	Use of instructive language.
Rehabilitation Clause 14	The State may provide.....	The state shall.....	Use of instructive language

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Overall general observations.

1. The guidelines do not refer to a reparation fund. It is thus not clear where the funds for this process will originate from and how they will be sourced, managed and ring-fenced.
2. The requirements in clause 6(1)(C) state that one must have supporting documents such as medical reports, a police abstract, and an occurrence book number, which means that some victims may be required to source important documents from perpetrators, resulting in revictimization.
3. The use of “state agency” as the implementing body is vague. There is a need to be specific about which body is responsible for implementing the reparations, and whether it is also responsible for taking up all elements of the reparations process or only some.
4. It is not clear what criteria has been used to come up with the quantum figures. Clarity will help ensure long-term consistency and sustainability.
5. There is no provision for civil society oversight and continued public engagement in the process.
6. There is no provision for a judicial review process as required by the Constitution.
7. The provision on the registration process is vague. Will this be conducted by KNCHR as it currently is, or will a new registration process be conducted by the state agency implementing reparations?
8. The provision on registration process does not make provision for open and continuous registration, which is key in reparation processes, because of, among other things vulnerabilities of victims, continuous violations, etc.

Yours faithfully,



Demas Kiprono
Executive Director
ICJ Kenya