



AMNESTY INTERNATIONAL KENYA

SUBMISSION ON THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS DRAFT REPARATIONS GUIDELINES 2026

Submitted 27 April 2026

Amnesty International Kenya welcomes the opportunity to submit our views on the Kenya National Commission on Human Rights Reparations Draft Guidelines (2026). This memorandum provides recommendations in line with Amnesty International's positions, policy guidance, and advocacy experience over the last decade, both globally and within Kenya. Amnesty International has consistently affirmed that reparations are not discretionary acts of charity but binding human rights obligations flowing from violations of international and domestic law.

It is our view that the reparations guidelines must be victim-centred, accessible, transformative, and offer guarantees of accountability and non-repetition, rather than being treated primarily as administrative compensation mechanisms. These guidelines represent a significant and welcome step in operationalising Article 23 of the Constitution, the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, and lessons from past Kenya's transitional justice efforts. However, several refinements are necessary to ensure that the framework fully realises justice, dignity, and accountability for victims, particularly of gross human rights violations.

Insights from other jurisdictions suggest that without credible accountability pathways, reparations produce only short-term gains at best. Post Nigeria #EndSARS reparations lost public trust when prosecutions stalled. Egypt's post 2013 programme suspension entrenched public perceptions of tokenism. Zimbabwe's programme was punctured by award delays and repeated state violence against protesters.

Apart from the loss of Executive political will, the under-valuation of harm is the greatest risk to a successful Reparations Framework. South Africa's TRC reparations were widely regarded as morally significant but materially inadequate over time, and Zimbabwe's payments collapsed in real value due to inflation.

We welcome the following five features of the Draft Guidelines.

- Explicit recognition of a victim-centred approach, non-discrimination, accessibility, and a "do no harm" principle;
- Adoption of a low evidentiary threshold ("reasonable basis to believe"), which aligns with international best practice in contexts of systematic violations;
- Recognition of indirect victims, including families of those subjected to enforced disappearance, extrajudicial killings, and severe injury;
- Inclusion of non-monetary reparations such as rehabilitation, satisfaction, restitution, and guarantees of non-repetition;
- A transparent schedule of indicative compensation benchmarks.

They create a robust foundation for managing reparations, accelerating justice, and shrinking the space for recurrence going forward.

1. REPARATIONS AS AN INDEPENDENT RIGHT

Page No / Guideline	Sentence / Paragraph Commended	Proposed Amendment (Exact Wording)	Reason for Proposed Amendment
Part I – Guiding Principles Page 3		Add a new paragraph after the first: “Reparations under these Guidelines constitute an independent constitutional and international human rights obligation of the State and shall not be conditional upon the initiation, progress, or conclusion of criminal, disciplinary, or civil proceedings against alleged perpetrators.”	The Guidelines should explicitly state that reparations are not contingent on the completion of criminal or disciplinary proceedings. To affirm that reparations are not discretionary or subsidiary to prosecutions. This reflects Amnesty International standards that rehabilitation of the dignity of victims must be treated with the same seriousness as accountability for perpetrators.

2. VICTIM-CENTRED APPROACH THAT ENABLES MEANINGFUL PARTICIPATION

Page No / Guideline	Sentence / Paragraph Commended	Proposed Amendment (Exact Wording)	Reason for Proposed Amendment
Part I – Guiding Principles (Victim Centered Approach) Page 3	“Victims shall be treated with respect, their voices heard...”	Replace with: “Victims shall be treated with respect as rights holders and shall meaningfully participate, on a voluntary and informed basis, in decisions affecting reparations design, verification processes, collective reparations, memorialisation, and satisfaction measures.”	The guidelines must not treat victims as claimants navigating a verification process. They are rights-holders, and their agency must shape reparations. Comparative practice (South Africa, Tunisia, Chile) shows victim participation improves legitimacy and satisfaction. This operationalises victim-centredness beyond procedural courtesy.
Page 3	Non-Discrimination paragraph	Add “All processes will apply a gender sensitive, intersectional and trauma-informed approach in testimonial evidence taking and all other processes”	While non-discriminatory in its approach, the paragraph could introduce an obligation to actively tailor interaction based towards individuals from disadvantaged and marginalized groups. With patriarchy, mothers of victims may face additional challenges such as in the case of late Albert Ojwang’.
Page 3	Do no Harm paragraph	“Interviewers will take a non-blame approach and limit repeated interviews unless strictly necessary. Victims shall have the right to be accompanied by a support person or legal representative during verification.”	Verification processes can replicate harm when they are overly adversarial, repetitive, or insensitive. They must avoid re-traumatisation.

3. REGISTRATION AND IDENTIFICATION AS A PROACTIVE STATE DUTY

Page No / Guideline	Sentence / Paragraph Commended	Proposed Amendment (Exact Wording)	Reason for Proposed Amendment
Page 5	““victim” means any person who suffered harm”	Add “a person or persons who have gone missing or were last seen at the scene of a state-policed assembly operation”	The obligation to facilitate the right to assembly is simultaneously to bear the responsibility to protect. Without this definition, the State could label victims of state-linked abductions as merely missing to avoid liability. Where a person disappears during a state-policed assembly or conflict, it should be presumed an enforced disappearance unless the State proves otherwise.
Part II – Sources of Claims Page 5	“In conducting identification and registration of claims...”	Replace the subclause: “State Agencies shall proactively identify victims of human rights violations, including through post incident outreach, deployment of mobile registration teams, and collaboration with civil society, health facilities, and KNCHR databases and establish a secure centralized victim tracking system.”	Aligns with Amnesty International standards on the state having an obligation to proactively identify and reach out to unreported victims. Victim identification must not rely solely on self-reporting, particularly after protest violence.

4. REASONABLENESS AS A STANDARD OF PROOF

Page No / Guideline	Sentence / Paragraph Commended	Proposed Amendment (Exact Wording)	Reason for Proposed Amendment
Part II – Standard of Proof (Clause 7) Page 7	“reasonable basis to believe” standard	Add clarification: “A claim shall not be rejected solely due to lack of formal documentation where the violation is consistent with verified patterns of abuse documented by KNCHR, oversight bodies, courts, media, or credible civil society organisations.”	Prevents bureaucratic exclusion of victims where the State itself controls records. This reflects comparative reparations models and trauma-informed practice.
Grounds for ineligibility	Clause 10(f) states that a claim is ineligible if “it is established that the Claimant was an active perpetrator of human rights abuses during the same period for which reparations are sought”.	Add “Arrest for participation in a public assembly, or unproven, pending, or dropped public-order charges shall not constitute evidence of being an active perpetrator for purposes of ineligibility.”	During assembly policing, the State frequently criminalizes protesters as rioters or perpetrators of violence. This clause could be easily exploited by the Implementing Agency to deny reparations to anyone arrested or falsely accused during a protest.

5. MAKE MEMORIALISATION A REQUIREMENT NOT OPTIONAL

Page No / Guideline	Sentence / Paragraph Commended	Proposed Amendment (Exact Wording)	Reason for Proposed Amendment
Part III – Satisfaction (Clause 13) Page 9	13. “The State <i>may</i> make official declarations...”	Replace “may” with: “The State <i>shall</i> , in cases of deaths, enforced disappearances, or life-altering injuries, undertake memorialisation and public acknowledgment in consultation with victims and their families.”	Memorialisation is an official acknowledgement and reminder of state failure. It safeguards against historical erasure and acts as a deterrent to future violations. It is essential to dignity, truth, and non-recurrence. This reflects best practices from South Africa and Tunisia.

6. MAKE REFERRAL TO JUSTICE AGENCIES MANDATORY WITH VICTIMS CONSENT

Page No / Guideline	Sentence / Paragraph Commended	Proposed Amendment (Exact Wording)	Reason for Proposed Amendment
Part III – Reparations Page 9	Accountability measures listed	Add a new clause: “With prior and informed consent of victims, implementing Agencies shall transmit verified claims and findings to IPOA, the Director of Public Prosecutions, and relevant disciplinary bodies, and require them to publicly report quarterly on actions taken, status of case investigations and prosecution.”	Reparations without accountability risk normalising impunity. Comparative evidence shows trust erodes where referrals do not follow reparations.

7. GIVE DIRECTION FOR JUDICIAL FAST-TRACKING

Page No / Guideline	Sentence / Paragraph Commended	Proposed Amendment (Exact Wording)	Reason for Proposed Amendment
Part IV – Review and Appeal	Review procedure described	Add a clause: “The Commission shall engage the Judiciary on issuance of practice directions to fast-track cases concerning victims of police excesses and protest-related violations.”	Addresses systemic delays that undermine victims’ right to timely remedy.
Review Procedure	Clause 17(3) explicitly dictates that a request for reconsideration will <i>not</i> be granted unless a State Agency is satisfied there are “new facts or supporting materials that could not reasonably have been provided earlier.”	Enhance Clause 17(3): “A request for reconsideration shall be granted on the grounds of manifest error in the initial determination, procedural unfairness, or undervaluation of the quantum of damages, independent of the presentation of new facts.”	The current proposal sets an exclusionary barrier. A victim might not have new facts, but rather the State Agency might have simply miscalculated the severity of their harm or undervalued their claim. Victims must be allowed to appeal based on an error in judgment by the State, not just on the discovery of new evidence.

8. INTRODUCE LEGISLATIVE REFORM AND OTHER MEASURES TO STRENGTHEN NON-REPETITION

Page No / Guideline	Sentence / Paragraph Commended	Proposed Amendment (Exact Wording)	Reason for Proposed Amendment
Part III – Guarantees of Non-Repetition	Legal and policy reforms mentioned	Add specificity: “Guarantees of non-repetition shall include review and reform of laws, policies, and operational procedures governing public order management and the policing of assemblies.”	Anchors reparations to systemic reform, consistent with Amnesty International standards.
Part III Guarantees of Non-Repetition	Accountability measures listed under Clause 15	Add a new clause: “The Guidelines should mandate the establishment of a dedicated, time-bound Case Tracking and Accountability Mechanism for all human rights violations arising from assemblies, demonstrations, or protests. This mechanism should operate through a specialised KNCHR desk responsible for systematically tracking investigations, prosecutions, and trials connected to protest-related violations.”	While the Draft Guidelines acknowledge accountability, they lack a clear mechanism to track investigations and prosecutions of protest-related abuses. Experience shows that reparations can replace criminal justice, weakening deterrence and entrenching impunity. A dedicated Case Tracking Mechanism, supported by fast-track or specialised courts, would ensure timely follow-up, protect victims’ right to effective remedies, and prevent repetition.
Page 9	b) Make a comprehensive reconciliatory public apology...	Add “Require all apologies to name the violation, acknowledge the specific state failure and declare a commitment to non-repetition.”	Several recent State “half apologies” have lost power in the public eye. Apologies must be official, unequivocal, specific, be backed by institutional responsibility and be accompanied by reform commitments.
Page 9	15. (1) To guarantee non-repetition....	Add new text “Require that guarantees of non-repetition include time-bound institutional reform commitments, indicators for measuring compliance and KNCHR-led monitoring with public reporting.”	While the Draft Guidelines list important non-repetition measures, they remain programmatic rather than operational.

9. MONITORING AND REPORTING – TRANSPARENCY AND TRUST

Page No / Guideline	Paragraph Commended	Proposed Amendment (Exact Wording)	Reason for Proposed Amendment
Part V – Progress Reports Page 11	Reporting obligations	Add disaggregation requirement: “Reports shall be disaggregated by type of violation, gender, region, vulnerability, protest-related context, reparations awarded, and accountability outcomes.”	Transparency is central to public confidence and enables oversight of whether reparations achieve dignity, restoration, and non-recurrence.
Page 11		Introduce text “The KNCHR is required to issue advisory opinions on conformity of public order laws with Articles 37 and 24 of the Constitution, track legislative and policy changes arising from reparations findings and publicly report on compliance or resistance by state institutions.”	As the primary human rights state agency, the KNCHR must retain a focus on monitoring civic freedoms.
Page 11		Introduce text “Feedback to complainants must be in writing and victim-accessible reasoning language explaining how severity, duration, and long-term impact were assessed. This will be held in complete confidence in line with the Data Protection Act”	Complainants have a right to information and to know how the criteria has been used to make an award in their favour. It will be critical for their right of review (Pg10)

10. COMPENSATION AWARDS AS A MINIMUM FLOORS, NOT CEILINGS THAT OBSCURE IDENTITY SPECIFIC IMPACT

Page No / Guideline	Sentence / Paragraph Commended	Proposed Amendment (Exact Wording)	Reason for Proposed Amendment
Schedule 1 – Quantum of Damages Page 12	Compensation benchmarks listed	Add an interpretive clause 4: “The monetary amounts provided under this Schedule constitute minimum baseline awards. Implementing Agencies shall upscale compensation based on severity, duration of harm, long-term impact, compounded vulnerabilities, and democratic harm arising from violations during peaceful assemblies.”	Global experience teaches that undervaluation erodes trust. This ensures that the awards retain real value and reflect the seriousness of the unlawful use of state power to suppress constitutionally guaranteed freedom.
Schedule 1 – Assessment Criteria & Part III – Guarantees of non-repetition Page 12	Schedule 1, Part I: “Broader implications, including the necessity to deter future violations, uphold the rule of law, and ensure constitutional compliance by public and private entities.”	Add a new sub-clause to Clause 15 (Guarantees of non-repetition): Add “To prevent future abuse, the State shall hold individual citizens and private companies involved in abductions or any other human rights violations responsible and liable for these crimes. Consequences should include paying toward reparations, criminal prosecution and suspension or cancellation of state contracts and licenses.	While Schedule 1 briefly acknowledges the role of non-state actors, by focusing strictly on public officers, the operational guidelines fail to establish any mechanisms to hold the State liable for their active and selective facilitation to commit human rights violations. Implementing strict financial and operational liabilities for private entities such as private security firms, surveillance companies, and vehicle owners, ensures that taxpayers do not solely shoulder the burden of reparations, while establishing a powerful economic deterrent against corporate complicity in state violence.

Page 12	“In determining the appropriate quantum of damages, the Implementing Agency shall....”	Introduce new text that “Apply an intersectional assessment when calculating reparations that is sensitive to the multiple identities of the victim.” Further, “Victims shall not be excluded where they do not have formal employment histories, land titles, or personal registration documents.” Further “Compensation shall encourage combination monetary, non-monetary, rehabilitation and other satisfaction awards.”	Amnesty International’s work demonstrates that women, children, persons with disabilities, informal workers, and residents of informal settlements experience disproportionate harm and face higher barriers to recovery.
Page 12		Introduce new text “Compensation criteria shall be subjected to periodic indexation and review of compensation benchmarks to preserve real value.”	

Ends.