



To the Chairperson

The Kenya National Commission on Human Rights

Nairobi, Kenya

27th April, 2026

**SUBMISSIONS BY ARTICLE 19 EA ON THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS REPARATIONS
GUIDELINES, 2026**

Introduction

ARTICLE 19 Eastern Africa (ARTICLE 19 EA) is the leading non-governmental organization promoting and protecting freedom of expression and access to information in Eastern Africa, both offline and online. ARTICLE 19 EA works across the region. ARTICLE 19 EA fulfils its mandate in partnership with other national and regional organizations and mechanisms and creates solidarity networks aimed at safeguarding freedom of expression and access to information. We envision a region where all people can speak freely, actively participate in public life, and enjoy media and civic freedoms without fear, censorship, or persecution. In the current human rights era, ARTICLE 19's mission is to be an international think-do organization that propels the freedom of expression, movement locally and globally to ensure all people realize the power of their voices.

Background

Under the Constitution of Kenya, KNCHR is established as an independent constitutional commission with the mandate to: Promote and protect human rights; Monitor, investigate, and report on violations; and Recommend appropriate remedies for victims. This includes advocating for redress, compensation, and reparations for victims of violations. KNCHR's mandate to create reparations and compensation guidelines comes from its constitutional role, legal authority, and responsibility to implement international human rights standards, especially in addressing past and ongoing violations.

Following the civil unrest in 2025 in Kenya, William Ruto issued a formal presidential directive in March 2026 mandating the Kenya National Commission on Human Rights (KNCHR) to develop a national framework for reparations and compensation. Through a Gazette Notice, the President required KNCHR to design and submit, within 60 days, a comprehensive framework to guide compensation for victims of human rights



violations arising from protests and demonstrations—including cases of deaths, injuries, and other abuses—while ensuring alignment with the Constitution and human rights standards.

General Comments

The KNCHR Reparations Guidelines 2026 are well drafted as they cater for due procedure and processes, however, the following aspects arise or are left unaddressed:

a. Mandate of Implementation and Independent Oversight:

The guidelines mention a “implementing agency” means any state agency responsible for managing, executing or supervising reparations:

This approach recognizes the need to designate an entity separate from KNCHR to undertake the implementation of the reparations process. It is important to distinguish between execution and oversight functions, ensuring that implementation is not solely embedded within government systems, while providing space for sustained independent oversight. In this framework, KNCHR would retain a supervisory mandate over the process, alongside structured reporting to Parliament.

The KNCHR has an opportunity to set the structure or composition of the Implementing Agency to ensure balance of public interest and citizen representation. The agency will need key actors in the management seconded from institutions such as the judiciary, witness protection, data protection office, among others.

b. Definition of Violation and Case Eligibility

The Guidelines provide that “victim” 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 victims being family or dependents of the victim especially of cases of enforced disappearance, extrajudicial killing, or where the direct victim is incapacitated;

The Guidelines fail to define key human rights violations and what would qualify to be addressed by the Reparations system. Kenya has a robust criminal law and Penal Code; therefore, some cases would be addressed within the usual court process. So, the question becomes, why would a Kenyan undertake the judicial system as opposed to the Reparations system in their cases?



Eligibility for recognition as a human rights violation is grounded in clearly defined offences and parameters to ensure consistency, fairness, and legal certainty. By relying on established definitions and criteria, the process avoids arbitrariness, enables objective assessment of claims, and ensures that only violations meeting recognized legal and evidentiary thresholds qualify for redress. This approach also supports transparency, accountability, and alignment with national and international human rights standards.

c. Review and Repeal Process

The Kenya legal framework establishes distinct grounds for review and appeal to ensure procedural fairness and accountability. A review may be undertaken on limited administrative grounds, including the discovery of new and material evidence, errors apparent on the face of the record, or procedural irregularities affecting the decision. In contrast, an appeal provides a broader mechanism to challenge the substance and merits of the decision, allowing for reconsideration of both factual findings and legal interpretation by a higher or independent body. This distinction safeguards due process while promoting finality and integrity in decision-making.

The KNCHR Guidelines provide a narrow process where there is an internal review of the decision by the Implementing Actor; but the standard set to qualify for review are ‘new facts not earlier accessible’ is usually a legal standard in appeals processes.

There is need to develop the internal review mechanisms that direct that cases be referred to the management board. Further appeals can be made to an external entity such as the KNCHR or court of law of a senior level such as High Court of Kenya.

d. Advisory Schedule on Misapplied Laws and Systemic Violations

In the context of reparations and guarantees of non-recurrence, it is proposed that a detailed schedule be developed and annexed to identify specific laws and legal provisions that have been misapplied or abused, thereby contributing to the very violations the Guidelines seek to address. This schedule would serve as an advisory tool, providing critical insight into the structural and legal foundations of such abuses, and informing necessary reforms to prevent their recurrence.

Specific Comments

| NO. | PROVISION | CURRENT PROVISION | PROPOSED AMENDMENT | REASON FOR PROPOSAL |
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