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Assessment of Reparation Methods Employed to Promote Peacebuilding in Uasin Gishu County, Kenya

Joyce Karungari Muchemi

Ph.D. Candidate, Department of Peace and Conflict Studies,
Masinde Muliro University of Science and Technology, Kenya

Crispinous Iteyo

Professor, Department of Peace and Conflict Studies,
Masinde Muliro University of Science and Technology, Kenya

Kennedy Onkwere

Professor, Department of Emergency Management Studies,
Masinde Muliro University of Science and Technology, Kenya

Abstract:

The study investigated reparations' methods adopted by the Kenyan government as a restorative transitional justice measure in promoting peacebuilding in Uasin Gishu County following serious human rights violations resulting from perennial clashes that culminated in the 2007 post election violence in Uasin Gishu County, Kenya. The study assumed the Social Justice Theory as the underpinning theory. Descriptive correlational research design was employed; a sample size of 590 respondents was drawn from the 6 sub-counties. Data was collected using questionnaires, interview guides and focus group discussion guides. Quantitative data was analysed using the descriptive and inferential statistical tools while content and interpretive techniques were used to analyse qualitative data. The study findings revealed that victims of the violations were compensated in material and non- material methods. Cash, land and housing were the main forms of material compensation while non-material compensation comprised of apologies, commemorations and renaming of public places.

It also emerged that compensation played a significant role in promoting forgiveness and reconciliation and there was a significant relationship between compensation and peacebuilding among communities of the study. The study recommended that the government should establish clear and participatory restitution policies for existing historical human rights violations. The research findings are useful to stakeholders and as policy formulators on restorative transitional justice as a peacebuilding mechanism in post conflict environments.

Keywords: *reparations, restorative transitional justice, peacebuilding*

1. Background of the Study

After the disputed 2007 presidential elections, Kenya saw a wave of unprecedented violence that fuelled the already existing conflicts over inclusivity in the national government, inequalities in resource distribution, negative ethnicity and the historical land issues among other structural injustices that resulted to the loss of over 1,000 lives in addition to 300,000 internally displaced persons (Bekoe, 2008). The Kofi Annan led team of African Union Panel of eminent persons mediated a peace agreement - National Accord and Reconciliation Agreement, 2008 (NARA) that saw the two principles; Mwai Kibaki, who were leading the Party of National Unity (PNU) and Raila Odinga, leader of the rival Orange Democratic Movement (ODM) forge a power sharing deal through the formation of a coalition government. Subsequently, the implementation of the agreement began with the restitution of victims of the abuses among other reforms.

2. Research Objective

The objective of the study was to find out the various reparation methods that were adopted to promote peacebuilding Uasin Gishu County, Kenya.

3. Literature Review

The concept of reparations dates back to historical times in most communities even though they may have used different terminologies in reference to it. In many African communities for example, reparations were evident in the form of fines for individual or communal wrong doings committed by an individual or one clan against another. These forms of compensation were mainly in the form of livestock, harvests and any other agreed upon method. As Firchow and Mac Ginty

(2013, p.234) recounts, "...reparations are as old as conflict" and are effected in different forms such as monetary, other in-kind compensations, symbolic measures as well as apologies as a beginning to the restoration and reconciliation process. In the early 1900s, reparation involved interstate exchanges used as punitive mechanisms determined by a treaty and paid by the conceding side of conflict, such as the World War I reparations paid by Germany and its allies (Occhino, Oosterlinck & White, 2008).

In modern transitional justice, reparations are understood not just as war damages but as compensation and other measures provided to victims of human rights violations by the parties responsible (de Greiff, 2006). Material reparations may assume the form of compensation such as payments in cash, negotiable items or service packages which may include provisions for education, health, and housing. In addition to monetary and material reparations, states can adopt symbolic reparations which may include: official public apologies, rehabilitation, the change of names of public places, establishment of commemorative days to remember victims of the atrocities, the creation of museums and parks dedicated to the memory of victims and instituting truth commissions. (de Greiff, 2006; Villa-Vicencio & Doxradar, 2004).

A study by Martin, Bailey and Guillerot's (2011) on the Peruvian reparations plan demonstrates that the main aim of symbolic reparations is to restore social relationships between the state and its people as well as between the victims and the perpetrators. Studies have also shown that reparations are meant to recognize victims' suffering, express solidarity and assist them move on with their lives by way of compensation them for the violations suffered. In addition, reparations act as a deterrent measure in future to would be offenders when they are made to compensate their victims for the harm they caused them. As such reparations contribute in restoration of relationships by ensuring that those who committed the atrocities do not benefit from the proceeds of the violations. (de Greiff, 2006; Sassoli, 2010; ICTJ, 2007). The right of a victim to receive reparations and the duty of the person or entity responsible to pay them is embedded in the international law. This is clearly stipulated in the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Human Rights Law Violations* (UNGA, 2006). This is equally anchored in the constitution of Kenya - Articles 2(5) and (6) of the 2010 National Constitution (RoK, 2010) which stipulate that the general rules of international law and any treaty or convention ratified by Kenya shall form part of the laws of Kenya.

Reparations have a transformative goal of improving the economic conditions of the victims particularly in cases where they were rendered poor by the aftermath of the atrocities (Roht-Arraza & Orlovsky, 2009). In this regard, reparations can be seen as tools of economic emancipation and development and therefore bridging the poverty gap. According to the Human Rights Review on Reparations and Peacebuilding (n.d), reparations have a direct impact on victims and when integrated with other transitional justice approaches, they can yield durable results and work towards building broken relationships and consolidating peace. This is despite the fact that in many situations, emphasis is laid on constitutional, judicial, security and governance reforms giving reparations little or no consideration as part of the larger peacebuilding process. (Firchow & Mac Ginty, 2013). According to de Greiff (2006), reparations have a direct impact on the lives of the victims particularly when made to the individuals directly as opposed to communal or symbolic reparations which don't impact on the lives of the victims directly. This is because they explicitly address their immediate needs and ease their suffering to a given extent. If well designed, reparations are therefore meant to acknowledge the victims' suffering, offer measures of redress, as well as some form of compensation for the violations suffered (de Greiff, 2006; ICTJ, 2007). The ICTJ (2011) study on the reparative demands of victims of the post 2007 election violence human rights violations puts forward two propositions. One; reparations have a backward-looking element that obliges the government to restore the victims to their previous positions through commensurate compensation programmes. Two; reparations are forward-looking emphasizing on the cessation of the recurring conflicts, access to livelihoods and the assurance of non-repetition of the violations.

4. Theoretical Framework

4.1. Social Justice Theory

The Social Justice Theory has its background in the writings of John Rawls (2001). It underscores the importance of equality and the respect of human rights and dignity as paramount to a peaceful society (Moellendorf, 2002). According to Rawls (2003), injustices, social and economic inequalities if not addressed can result in perennial conflicts and negate unity and reconciliation efforts within a state.

In this regard, the need to re-build and restore relationships among individual citizens, different communities and between the citizens and the state is critical in long term peacebuilding efforts. This theory puts forward the notion that social justice is a critical element of a cohesive society noting that violations of fundamental rights of the citizenry can result in social conflicts. In such an environment, social cohesion, reconciliation and restoration of previously wounded relationships is likely to be achieved through acknowledging the wrongs committed and compensating those who suffered the human rights abuses.

4.2. Research Design

This study adopted a descriptive correlational survey design based on the quantitative and qualitative approaches. Descriptive design was used to obtain information on the experiences and perceptions of the respondents with regards to the methods that were used to compensate the victims of the abuses. The correlational component on the other hand was used to

cross tabulate the findings of the two variables (compensation and peacebuilding) with the aim of establishing a relationship. Correlations can show how changes in one variable affect changes in a related variable (Creswell, 2008).

4.3. Sample Size and Sampling Procedure

The study sample comprised of 590 respondents drawn from 384 household heads, 120 chiefs and their assistants, 47 council of elders and 50 religious leaders. For purposes of selecting the study sample, purposive sampling and stratified random sampling methods were employed. Purposive sampling was used to enable the researcher identify individuals or groups who have the distinct potential to provide the required information from the chiefs, their assistants and the council of elders. Stratified random sampling was used to identify a representative sample from the various religious affiliations.

4.4. Data Collection and Administration of Instruments

The study used primary sources of data which was collected using the following instruments: questionnaires, interview schedules and focus group discussion guides.

Structured questionnaires were used to collect primary data from household heads, chiefs and their assistants. The items were formulated on a five-point likert scale response options for purposes of generating quantitative data. In addition, interview guides were used to collect quantitative data from the councils of elders. Interviews were held with the council of elders who were regarded as key stakeholders in this study due to the reconciliatory and peacebuilding roles they play in their respective communities. As such, the information gathered during this exercise was used to validate the questionnaire findings.

4.5. Data Analysis and Presentation

Quantitative data was analysed using the Statistical Package for Social Science (SPSS) to generate descriptive and inferential statistics. The descriptive data included percentages, frequencies, mean, mode and standard deviation; this data was presented using tables and graphs while inferential statistics was analysed using Pearson's Product Moment Correlation Coefficient.

5. Results and Discussion

5.1. Material and Non- Material Compensation

The findings in this section capture material and non-material compensation adopted to repair the harm endured by victims of past human abuse in the county of study. Adoption of material compensation, according to questionnaire respondents was analysed as follows.

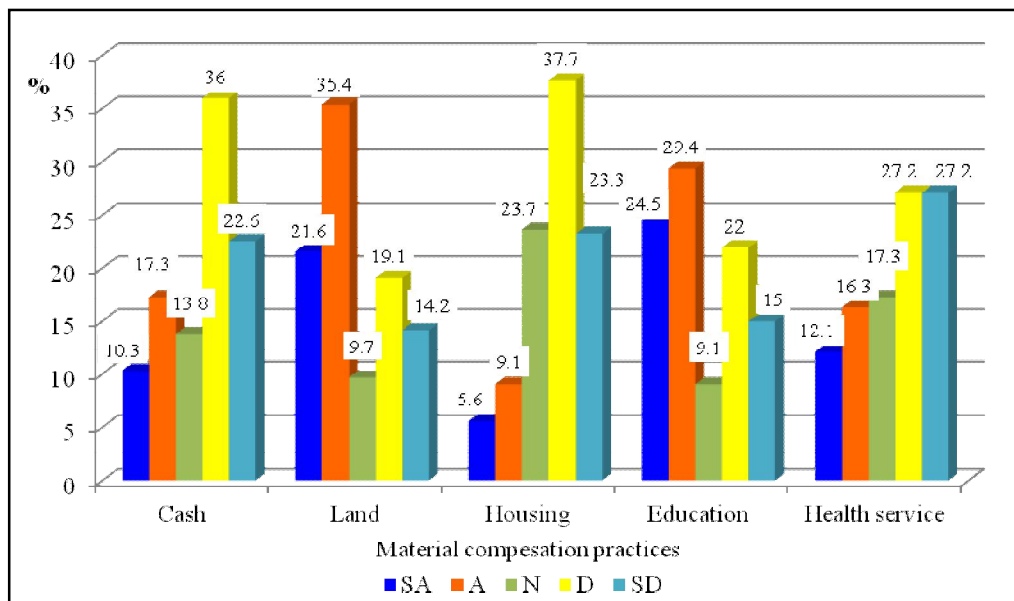


Figure 1: Perceptions on material compensation

Source: Field survey (2016)

The bar graph above illustrates that monetary, land, housing, education and health services were used to compensate victims of human rights abuses in the county. Among the 486 respondents, the most singled out material items believed to have been used for that purpose was land (57.0 %) and education (53.9 %) in that order. Housing (14.7 %), cash (27.6 %) and health service (28.4 %) were also highlighted as part of the compensation items. Other than land and education, majority of

the respondents were of the view that the other strategies (housing, cash and health services) were only employed in a limited scale. This could be attributed to resource challenges on the side of the government; consequently, resettlement of the displaced victims as a basic human need could therefore have been given priority.

For a precise description of the levels of adoption of the material compensation above, the mean and modal values were computed as indicated in table 1.0.

		Victims compensated with cash	Victims compensated with land	Victims compensated with housing	Victims compensated with education	Victims compensated with health service
N	Valid	486	486	486	486	486
Mean (\bar{x})		2.57	3.42	2.38	3.27	2.62
Mode (Mo)		2	4	2	4	2

Table 1: Mean and modal values on perceptions on material compensation of victims
Source: Field survey (2016)

The moderate mean results in Table 2 suggest that cash compensation ($\bar{x} = 2.57$) was only fairly distributed, reparative health services ($\bar{x} = 2.62$) were also fairly accessible, housing ($\bar{x} = 2.38$) was relatively low implying that housing was rarely used to compensate the victims of the abuses. Only land and education with higher mean scores of ($\bar{x} = 3.42$ & $\bar{x} = 3.27$) respectively were to a larger extent used to compensate the victims compared to the rest. This concurs with the modal values indicated in the table, which connote that land (Mo= 4) and education (Mo= 4) were the most dominant tools used to compensate the victims.

From the above data, the grand mean of all five items has a moderate average index of $\bar{x} = 2.85$, this suggests that material compensation was fairly used to compensate the victims of the abuses. Therefore, none of these material items under review were used adequately to compensate the victims. The statistical results above are consistent with interview and focus group discussion findings below.

Most of the interview informants identified land as one of the services used to compensate victims of the violations. Though the informants noted that cash was used to compensate the victims, they were concerned over the little amounts given to adequately enable the victims pick up their lost lives fully. A few also cited the provision of health services mainly from the NGOs. Besides the listed compensation methods, informants also reported that some victims in their area were given basic items such as food, clothing and other basic amenities by individuals, groups and the private sector. Evidently, the interview showed that land and donations in kind were widely used as material compensation in the county. Similar compensation resources were identified by the religious leaders in the focus group discussions; they were unanimous that there were various material contributions made by various entities throughout the county. Majority cited land, cash and medical services to the afflicted victims as the most widely used form of compensation. A catholic priest observed:

Immediately after the post election violence, free health services were provided to the victims in the internally displaced camps by some NGOs, Red Cross and individual volunteer groups, however; since their resettlement especially to other counties, it is not clear if such services are still available.

The discussants also pointed out that other non-state actors also played a significant role in aiding the victims pick up their pieces and move on with their lives, they pointed out the role of churches and NGOs noting that the church reached out to many desperate victims who had been rendered homeless by providing temporary shelter in church compounds, food and clothing. Similarly, some NGOs took up orphaned children in their children's homes and have continued to provide their educational as well as other day to day needs.

The findings above indicate that material compensation was fairly adopted as a reparatory measure in Uasin Gishu County. The analysis also reveals that land compensation was the most widely used in addition to health services, housing, monetary among others. The findings on non-material compensation generated from the questionnaire survey were summarised in the following comparative bar graph (Figure 1).

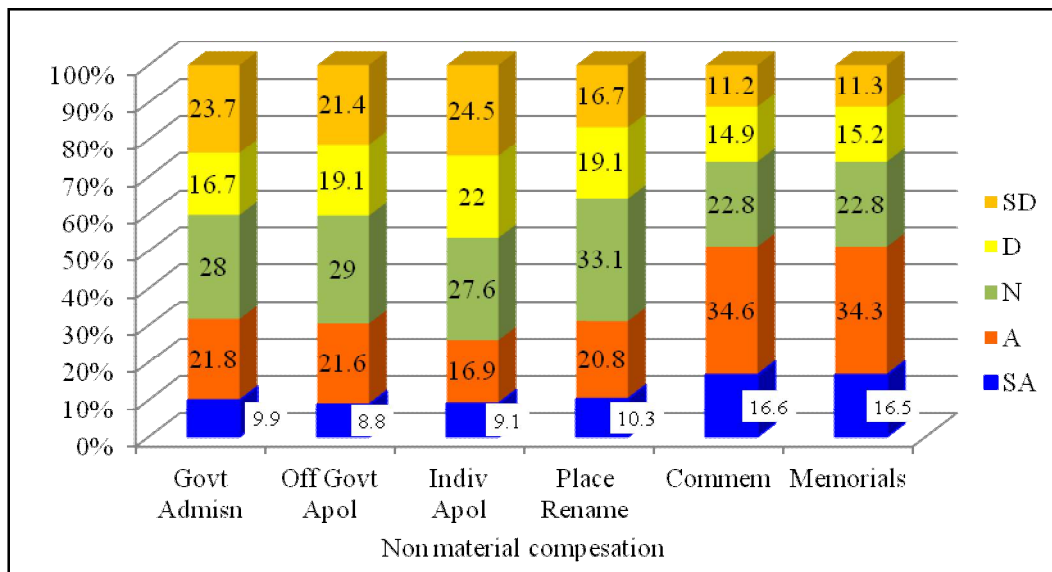


Figure 1: Perceptions on non-material compensation
Source: Field survey (2016)

The statistics in Figure 1 show that of 486 respondents 9.9% strongly agreed, 21.8% agreed, 28% were neutral while 16.7% disagreed and 23.7% strongly disagreed that the government admitted that the violations were committed. On official government apology, 8.8% of the respondents strongly agreed, 21.6% agreed, 29% remained neutral, 19.1% disagreed while 21.4% strongly disagreed. As far as individual apologies from perpetrators to victims were concerned, 9.1% of the respondents strongly agreed, 16.9% agreed, 27.6% were neutral while 22% disagreed and 24.5% strongly disagreed. Regarding the renaming of public places 10.3% and 20.8% of the respondents strongly agreed and agreed respectively, 33.1% remained neutral while 19.1% disagreed and 16.7% strongly disagreed. With regards to commemorative events, 16.6% of the respondents strongly agreed, 34.6% agreed, 22.8% were neutral while 14.9% disagreed and 11.2% strongly disagreed. Almost similar observations were made on the creation of memorials for victims of various human rights violations with 16.5% of the respondents strongly agreed, 34.3% agreed, 22.8% were neutral while 15.2% disagreed and 11.3% strongly disagreed. Generally, the survey revealed the fact that all the non-material compensation methods identified were familiar to a reasonable number of respondents. However, though most of these non-material methods were familiar; it is quite clear that there was a significant number of respondents who chose to remain neutral while others were simply not in agreement. The findings demonstrate that commemorations and memorials were quite popular as compared to both individual and government apologies and admission of past human rights violations. This was attributed to fear of retribution on the part of the individual offenders while some respondents may doubt the sincerity of the government's admission and apologies for past wrongs committed. Out of these findings, the mean and modal were computed to give an indication of the impact of these non-material compensation methods on peace building in the county as shown in Table 2.

		Govt. admission of abuses	Official government apology	Individual apologies	Renaming public places	Commemorative celebrations	Creation memorial centres
	Valid	486	486	486	486	486	486
	Mean	2.78	2.78	2.66	2.90	3.30	3.20
	Mode	3	3	3	3	4	3

Table 2: Mean and modal values of non-material compensation methods to victims
Source: Field survey (2016)

Based on the statistics all the mean scores verify the adoption of each of the non-material methods under review. However, according to the mean statistics commemoration was largely adopted ($\bar{x} = 3.30$), while the rest were fairly employed. This was demonstrated by a high mean score on commemoration unlike the other methods which scored moderate mean values as follows: government admission of abuses ($\bar{x} = 2.78$), official government apology ($\bar{x} = 2.78$), individual offender apology ($\bar{x} = 2.66$), renaming of places of human rights abuses ($\bar{x} = 2.90$) and victim memorial centres ($\bar{x} = 3.20$). In addition, the modal values support that commemoration (Mo= 4) was the most dominant form of non-material compensation.

Despite differences in the levels of adoption, it is evident that each of the compensation methods was used. In summary, the non-materials methods employed consisted of government admission of wrongs committed, official government

and individual apologies, renaming of public places, holding commemoration celebrations and the creation of memorial centres. The grand mean score average index was generated to determine the adequacy of non-material compensation as a whole. Accordingly, the average index computed was moderate $\bar{x} = 2.94$ signifying that non-material compensation in general was only relatively adopted. However, non-material compensation was employed slightly more than material compensation (with average index of $\bar{x} = 2.85$).

5.2. Correlations of Compensation Strategies and Peace Building

The results in this section explain the levels of significance of the associations between the independent variables (compensation, reconciliation, governance reforms, public service reforms, land reforms and peace education) and the dependent variable (levels of peace building) in the area of study in Uasin Gishu County. Table 3 presents correlations of compensation, reconciliation and levels of peace building.

		Healing prospect	Positive Peace Prospect
Compensation Efficacy	Pearson Correlation	.823**	.583**
	Sig. (2-tailed)	.000	.000
	N	486	485

Table 3: Correlations of compensation strategies and levels of peace building

** Correlation is significant at the 0.01 level (2-tailed).

Source: Field Survey (2016)

The statistics in Table 3 indicate that compensation was positively and very highly related to healing at $r = 0.823^{**}$, and moderately associated with for positive peace prospects at $r = .583^{**}$. The r notation stands for correlation coefficient. At both two levels (healing, and positive peace prospect), peace building was very significantly associated with compensation at $p < 0.001$. Notation p stands for probability value. The r statistics imply that compensation contributed most to healing than prospects for positive among the victims of research. Nonetheless, the more efficacious compensation was the more peace building would improve in Uasin Gishu County and vice versa.

These findings were substantiated by both the interview and focus group discussions'. Some of the interview informants however pointed out that these non-material restorative approaches do not seem to have any meaning on the lives of those who have suffered various atrocities in the country's history unless they are backed by material compensation. The focus group discussions also concurred on the adoption of non-material compensation. Nonetheless, most participants in the discussions observed that the government adopted blanket non-material compensation mainly public apologies and commemorative events. Like the council of elders, the religious leaders were also concerned that commemoration of the past human rights abuses in the county had become a tradition given the volatility of social relations among different ethnic groups.

The discussants were well aware of the official government apologies and commended government on this reconciliatory gesture though they noted that the government needs to take more proactive measures to address lingering historical injustices that have continued to divide the nation along tribal lines. The findings revealed that non-material compensation was widely adopted in comparison to material compensation. The discussants attributed this to the fact that material compensation was more resource demanding than symbolic compensation. In addition, symbolic compensation is a sign of acceptance that something went wrong and those responsible are willing to take responsibility.

A study carried out in Peru by Martin, Bailey and Guillerot (2011) identifies similar material and non-material (symbolic) reparations adopted by the Peruvian government through its Comprehensive Reparations Plan (CRP) after decades of violent conflicts. Specifically, it adopted a Truth and Reconciliation Commission; individual and government apology to its people; investment projects; health and education programmes. However, unlike the Kenyan government that went for individual compensation, the Peruvian government opted for collective reparations. This can be attributed to contextual differences between the two countries. Whiles the Peruvian conflict was rooted on the urban wealthy versus the indigenous peasants, thus calling for group reparations; the Kenyan conflict has largely remained ethnic based with certain counties experiencing repeated violence on certain ethnic groups and therefore the need for individual compensation of victims.

6. Conclusion

Restitution to the victims of the human rights violations with both material and non-material (symbolic) compensation was adopted by the government. Material reparations were in the form of monetary payments, land restitutions, education and health services. These reparatory measures were on average only fairly adopted. Equally, private entities, I/NGOs, churches and individuals also assisted the victims in both cash and kind for restorative purposes in the County. According to the findings, the most widely adopted reparation method was land followed by education, health services, housing and monetary awards among others.

Non-material (symbolic) compensation were also assumed mainly by the government in the form of an official apology by the head of state, renaming of public places, dedicatory celebrations and creation of memorial centers as part of the country's commemorative history. Generally, the statistics and qualitative reports indicated that symbolic methods were moderately implemented. It also emerged that though individual offenders were encouraged to seek forgiveness and

compensate their victims, this was not largely achieved. Compared to government led material and symbolic compensation perpetrator-victim compensation was rare and not adhered to as a reparatory measure. Whereas material and non-material reparations (by the government) were evident in varying degrees, psycho-social support was rare and mainly offered by churches and Non-governmental organizations.

Restitution of victims for human rights abuses entailed a combination of government led material and symbolic compensation, in addition; NGOs, churches and private entities equally played a significant role in the peacebuilding process. However, symbolic compensation methods were only meaningful when complemented with material compensation; this was attributed to the fact that most victims had been left in desperate and wanting situations that called for urgent provisions of the basic survival needs. For this reason, any symbolic compensation devoid of material compensation was deemed meaningless. Equally worth noting is that majority of the perpetrator were neither remorseful nor willing to return what they had stolen from the victims. As a result, this form of reconciliation registered minimal impact in as far as repentance, healing and reconciliation was concerned.

7. Recommendations

Based on the findings, the study recommends that the national government with the help of the county government need to identify pending genuine victims of various human rights violations who are yet to be repaired and facilitate their compensation. This should be done with the full involvement of the victims and also taking into cognizant the harm they endured. Additionally, the government should actualise the proposed reparations fund recommended by the president and create budgetary provisions for reparations of victims. Additionally, there should be clear procedures on the reparation process to ensure that only genuine victims are compensated. The government must also sternly deal with corrupt officers who divert funds and other material resources meant for compensating the victims to ensure prudent use of available resources and promote a culture of transparency and accountability. The government should also enhance symbolic compensation practices as a form of promoting complete healing at both the local and national level. However, symbolic compensation should not take up the role of material compensation but should only complement it.

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