

BIDPA Working Paper 81

December 2021

***Ex Gratia* Payments for Loss of Human Life Due to Wild Animals' Attack in Botswana - Implications for practice and policies**

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BOTSWANA INSTITUTE FOR DEVELOPMENT POLICY ANALYSIS



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- Implications for Practice and Policies**

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Botswana Institute for Development Policy Analysis

BIDPA

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BIDPA is part-funded by the Government of Botswana.

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ISBN:

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ABSTRACT

Ex gratia payment is paid only to families of human-wildlife conflict (HWC) victims who get killed by wildlife, and not to victims who are injured by wild animals regardless of the severity of the injury, even if it results in permanent disability. This study was carried out to assess the relevance and effectiveness of the *ex gratia* payment to victims of wild animals' attack. Participants included traditional leadership (chiefs), government officials, wildlife NGOs, victims and their caretakers. Local people exposed to life-threatening wildlife attacks express fear and animosity towards wild animals, and also feel left out and disappointed by a fragmented government service delivery system. Delays in processing *ex gratia* payment militates against the effectiveness of the *ex gratia* scheme. Payment of *ex gratia* process needs to be re-engineered to improve its effectiveness to serve its novel objectives. This study recommends establishment of an *Ex Gratia* Scheme or *Ex Gratia* Tribunal where all HWC injuries or death incidents can be effectively dealt with. Most importantly, compensation should consider healthcare and rehabilitation, loss of reasonable income and associated disability care as a result of being attacked by the wild animals.

Keywords: Botswana, *ex gratia*, elephants, human-wildlife conflict, injuries, deaths.

1. INTRODUCTION

Generally, interactions between humans and wildlife should provide a much-needed positive experience as it refreshes people's minds. However, competition for common resources often leads to adverse human-wildlife interactions and conflict (Sillero-Zubiri et al. 2007). Wildlife attacks on humans and human retaliations leading to injuries and loss of life have existed as long as human beings and wildlife have shared space (Pillai and Pillay 2017). Wildlife often attack other animals and humans to mark their territory, in self-defence and for prey (Conover, 2002). During the last decade, human-wildlife conflict (HWC) has become a major issue globally (Books et al 2010; Mir et al 2015; Hitchcock et al 2020) including in Botswana (Chase et al 2016; Gontse et al 2018; Blackie and Sowa 2019; DWNP 2019).

“Human-wildlife conflict occurs when the needs and behaviour of wildlife impact negatively on the goals of humans, or when the goals of humans negatively impact the needs of wildlife” (IUCN World Parks Congress 2005).

Effective from July 2015, the Government of Botswana introduced *ex gratia* payment to the legal heir of the deceased or guardian of heir if they are minor following increases in the number of HWC, especially those resulting in human injuries and deaths (DWNP 2015). But what is *ex gratia* and how has it been applied in the context of people injured and/ or killed by the wildlife in Botswana over the last five years?

What is *ex gratia*?

“...the Government had decided to make an *ex gratia* payment to Mr. Dougherty¹ in consideration of the hardship he had suffered as a result of being imprisoned for an offence he did not commit. ... the State should make some payment as a symbol of its desire to acknowledge the error and to do what is possible to square the account between society and the individual. The payment is not an acknowledgement of liability in law. It is made *ex gratia*² and does not imply that there has been any fault or neglect on the part of the authorities “ (Scot 1974, 586 - 87).

In the case of criminal justice, Scot (1974, 586 - 87) notes several factors considered in deciding what *ex gratia* payment is to be made. These include:

- The length of deprivation or imprisonment undergone during conviction in question,
- The character of the persons wrongly convicted,
- Their dented reputation,
- Victim's contribution either through giving untruthful evidence or otherwise to their own conviction,

1 Mr Dougherty was imprisoned for shoplifting in England and later released by the Court of Appeal (criminal Division) after nine months. His case had also attracted much publicity.

2 A Latin word that refers to favour.

- Their probable earning capacity in honest employment.

As could be seen from the above statement (Scot, 1974), *ex gratia* payment in this case is an acknowledgement of error by the state. However, the state is not liable or legally compelled to compensate the victim to mend relations between the state and the individual. *Ex gratia* is also defined in the Osborn's Concise Law Dictionary (1976, 138) as 'of favour', while the Australian's Oxford Dictionary (1997, 460) defines *ex gratia* as 'a favour rather than a legal obligation'. It could thus be argued that *ex gratia* payment is a discretionary and moral obligation on the part of the state to compensate victims who have unjustifiably suffered deprivation, detention and/ or imprisonment in instances where victim's reputation and loss of reasonable earning may have been affected. The state or any agency make a voluntary payment as an act of kindness to victims without any liability or legal obligation to do so, mainly because the giver would not have been directly responsible for causing the injury or related events.

1.1 *Ex-Gratia* Payment to Wildlife Victims in Botswana

Starting 1st July 2015, Government of Botswana introduced *ex-gratia* payment for loss of life to family members of victims of dangerous wildlife attacks resulting in loss of life. Family members are compensated with BWP70 000.00 [P20 000.00 being initial payment to cover funeral expenses and a once-off payment of P50 000.00 to deceased's dependents]. This study notes that *ex-gratia* only caters for loss of life due to 'dangerous' wildlife attack. Currently, *ex-gratia* does not cover other fatal incidents involving vehicle collision with wildlife and very dangerous wildlife species such as snakes³ which do not appear on schedule 9 of the Wildlife Conservation and National Parks Act of 1992 (Buffalo, Hippo, Elephant, Crocodile, Leopard, Lion and Rhinoceros). Documentary review shows that neither has the Wildlife Conservation and National Parks Act (WNPA) of 1992 been amended or repealed to give legal standing of the coming of *ex gratia* payment into force. The WNPA of 1992 (section 87) still reads as,

“No liability shall attach to the State or to the Minister or the Director or any Wildlife officer or gate attendant for any loss of life or property or any damage or injury sustained by any person anywhere in Botswana by reason of the presence, action or depredation of any non-captive animal, whether or not such animal is within a national park, game reserve or sanctuary”.

3 Even though snakes were the leading causes of HWC resulting in loss of human life in South Central District of Botswana (Blackie, 2020) between 2009 – 2019.

It seems though, that Botswana's adoption of *ex gratia* payment is in keeping with the principle of Botho which even though without strict legal backing, is locally accepted as conveying the spirit of compassion. Botho is one of the five principles (Botho, Self-reliance, Development, Democracy and Unity) that have guided the country since its independence (Ngcongco, 1989). According to Mehring (2013:1), botho means "having a deep sense of another person's humanity—how to demonstrate being a human being to another human being." It could therefore be argued that the Government of Botswana adopted the *ex gratia* payment to victims of wild animals' attack on the same basis as that of England i.e. an act of kindness and favour aimed at mending relations between the state and local communities. Nonetheless, the situation is not helped by growing scepticism that government seems to prioritize wildlife needs over the welfare of local people. Recently, the President of the Republic of Botswana, Mokgweetsi E.K. Masisi, noted that the human-wildlife conflict situation was a cause for concern mainly because of the high incidents of injuries and lives lost as well as the associated challenges to livelihoods of Botswana (State-Of- Nation Address, 2020).

Even though the HWC has become a major issue globally during the last decade, not much attention has been placed on the adequacy (inadequacy) of compensation for HWC incidents resulting in injury and/ or loss of human life. In Botswana, payment of *ex gratia* for HWC was introduced in 2015⁴ but there has not been any review of the payment process. This article explores the relevance and effectiveness of the *ex gratia* payment process for loss of human life due to wild animals' attack. Specifically, the study sought to establish what is working well, and what is not, and how implementation of the *ex gratia* payment process can be improved. Below is a framework that guides this study.

1.2. Stakeholder Theory

Freeman (1984) proposed that an occurrence is described by its relationships with several groups and individuals who are affected by its activities. Likewise, countries faced with the growing HWC need to identify and involve local communities living with wildlife in creating sustainable solutions for a thriving biodiversity conservation (Masika, 1995; CBNRM, 2007; Mbaiwa, 2017; Blackie, 2019). This is because HWC occurs in communities where a number of stakeholders are usually present. The construct *community* is defined as 'a localized group or otherwise as small groups of people, usually living in relative isolation, which are characterised by face-to-face relationships' (Kingsbury, 2004:221). Agrawal & Gibson (1999:6) viewed community as a 'small, unified, organic whole' with integrated communities using locally evolved-norms and rules to manage resources sustainably and equitably. These localized groups constitute community stakeholders who are shareholders as well as all other people who are interested in the community's success. This stakeholder 'ecosystem' as posited by Edward Freeman (1984), refers to all the people who have invested and are involved in, and are affected

4 See annexure 1 (1 page document).

by the community's operations. These stakeholders or localised groups include victims of HWC and their families/caretakers, other locals and community leadership, public officers as well as conservationists from non-governmental conservation organisations.

According to Easterling (2004), all stakeholders have a legal right to participate in the organisation's activities, including taking legal intervention where activities of other stakeholders affect them so that they lessen the impacts. However, Easterling (2004) cautioned that stakeholders ought to have resources and capacity to challenge and even reverse what they may perceive as negative impacts within their locality. Freeman (1984) argued that an organisation's success depends on satisfying all stakeholders, not just one side of stakeholders. However, we postulate in this study that organisations' success will mostly depend on reconciling the interests of the diverse stakeholders and not just merely consultation since the latter does not always mean an agreement is possible. Failure to engage effectively with local communities in devising strategies to deal with the escalating HWC could militate against governmental programmes and policies as well as other interventions meant to address such challenges. Such failures could result in undesired consequences such as crop raiding, livestock depredation, human injuries and deaths and wildlife poaching (Bryson et al 2002). Machoka (2017) argued that successful HWC interventions should take on board all stakeholders' welfare rather than promoting the interest of one group of stakeholders, such as government, over locals. Many governments have been blamed for prioritising the welfare of wildlife over that of local communities and hence escalation in HWC resulting in injuries and loss of human lives (Karidozo 2016; Cherry et al., 2018; Kudrenko et al., 2019).

2. METHODS

This study is based on a national survey covering 40 villages⁵. Most villages visited are located in the northern part of the country, where several human-wildlife conflict incidents that have resulted in injuries and loss of human life have been recorded (DWNP 2019). The study adopted a mixed-methods approach that involved focused group discussions (FGDs), heads of household questionnaire, documentary analysis, and in-depth interviews with key stakeholders. Snowball sampling technique was also used so that villagers took active participation in identifying victims and their families since very often they remembered where, in their localities, tragic events such as injury and death caused by wildlife, would have occurred. Locally based wildlife officers from each area were enlisted to boost case finding reliability. As shown in Table 1, respondents in this study were grouped into three categories. The first category was

5 Beetsha, Boatlaname, Bobonong, Eretsha, Etsha 4, Gaborone, Gudigwa, Gumare, Habu, Kachikau, Kasane, Kavimba, Kutamogore, Letsholathebe, Mabele, Manxotai, Matobo, Maun, Mochudi, Mogotho, Molepolole, Moralane, Moshupa, Ngarange, Northern Tuli Game Reserve, Nxamasere, Pandamatenga, Parakarungu, Qwerii C/Post, Samotshoka, Sekondoboro, Selibe Phikwe, Semolale, Sepako, Seronga, Serowe, Shakawe, Toteng, Tubu, Xhaoga.

Government consisting of wildlife officers, District Commissioners, officers from the social welfare, police and health offices. The second category was classified as Traditional leadership and consisting of Chiefs/Dikgosi, community members, households' heads including victims of HWC and their caretakers. Conservationists formed the third category and consisted of representatives of conservation NGOs as well as wildlife and environmental researchers. Since this study adopted triangulation research design, both qualitative (FGD, in-depth interviews with key stakeholders and documentary analysis) and quantitative (survey questionnaire with surviving victims and their caretakers as well as relatives of deceased victims of HWC) methods were utilised. ATLAS.ti and Statistical Package for Social Sciences (SPSS) analytical packages were used to establish emerging HWC themes while descriptive statistics were used to provide a summary for generalization of findings respectively.

3. FINDINGS

Table 1 shows respondents' level of awareness about *ex gratia* according to type of stakeholder. The stakeholders sampled were dominated by traditional leadership (73.4 %), followed by government employees (18.3 %), and the least represented were the conservation NGOs (8.3 %).

Table 1: Awareness of *Ex Gratia* Compensation

Type of stakeholder	<i>Ex Gratia</i> Awareness Level			
	Total (%)	Yes (%)	No (%)	Not sure (%)
Government	20 (18.3)	7 (35.0)	7 (35.0)	6 (30.0)
Heads of Households & Traditional leadership	80 (73.4)	29 (35.7)	46 (57.1)	5 (6.3)
Conservation NGOs	9 (8.3)	3 (33.3)	6 (66.7)	0 (0)
Total	109 (100)	39 (35.8)	59 (54.1)	11 (10.1)

Overall, the results show that the majority of respondents (54.1 %) were not aware of the *ex gratia* payment provided by the government to the families of those who were killed by the wildlife, followed by those who said they knew about *ex gratia* (35.8 %). There were those (10.1%) who indicated that they were not sure if they knew the scheme existed or not.

Stakeholders perceived *ex gratia* as follows;

“Ke phimolo dikeledi, motho ga a na tlhwatlhwa. Mme goromente o tshwanetse a imolola morwalo mo go ba ba tlhokafaletsweng. It’s a compensation since we cannot set a price value for human life, but government should make it bearable for those who lost a family member,” (FGD in Seronga, February 2020.)

Kerapeletswe and Lovett (2002) also found that local communities lacked awareness on environmental products and services, including those that benefit them. This has led to suggestions that government should improve its public engagement and extension services to improve participation by local communities (Ngwira et al 2013). In particular, conservation NGOs would be expected to be aware of most conservation programmes aimed at assisting local communities. This is because they often work with communities to assist and empower them to be self-sufficient in running their community-based institutions (Child and Lyman 2005), and hence expected to be familiar with similar existing initiatives.

From 2015 to 2019, the *ex gratia* payments for victims of HWC in Botswana amounted to BWP2, 800 000.00 (USD 243 689. 32) (Table 2).

Table 2: Amount of *Ex Gratia* Paid by the Botswana Government Nationally: 2009 - 2019

Year	Total Number of People Injured and/or Killed by Wildlife	Number of Persons Injured by Wildlife	Number of Persons Killed and Compensated	Total Amount of <i>Ex Gratia</i> Payments (BWP)
2009	3	3	0	0.00
2010	1	1	0	0.00
2011	4	2	2	0.00
2012	4	3	1	0.00
2013	5	4	1	0.00
2014	14	9	5	0.00
2015	11	9	2	140,000
2016	19	9	10	700,000
2017	15	10	5	350,000
2018	27	12	15	1,050,000
2019	34	26	8	560,000
Totals	137	97	40	2,800,000

A total of 32 persons killed by the wildlife were compensated out of 40 HWC victims that resulted in death between 2009 to December 2019. Currently, *ex gratia* is paid only to families of HWC victims who get killed by the wildlife and not to victims injured by the wild animals regardless of the severity of the injury even if the injury results in permanent disability. This state of affairs in the *ex gratia* payment guidelines has resulted in unrelenting conflict between locals and government with the latter seen as only caring about the welfare of the wild animals over people. Local people exposed to these life-threatening wildlife attacks express fear and animosity towards the wildlife (Mbaiwa 2018; Blackie 2019). They also feel left out and disappointed by a fragmented government service delivery system⁶. Boyne (1992) refers to the term *fragmentation* as the number of distinct units in a local government that serves almost similar function.

Table 3 shows stakeholders perception on the implementation of *ex gratia* payments using five attributes.

6 Existence of large governmental units such that it is not clear which government unit or office (s) is responsible for execution of a particular service (i.e., assistance to HWC victims). Also check Goodman (2015; 2019) for broader discussions on government fragmentation system.

Table 3: Stakeholders Perception on the Implementation of *Ex Gratia* Payment

<i>Ex gratia</i> Attributes		Type of Stakeholder			
		HHH & Traditional leadership	Conservation NGOs	Government	
It is easy to access the funds	Agree	17 (16.5)	8 (10.0)	2 (22.2)	7 (41.2)
	Neutral	20 (19.4)	16 (20.0)	2 (22.2)	2 (14.3)
	Disagree	66 (64.1)	56 (70.0)	5 (55.6)	5 (35.7)
Payment is administered timely	Agree	17 (16.5)	12 (15.0)	.0	5 (35.7)
	Neutral	18 (17.5)	12 (15.0)	4 (44.4)	2 (14.3)
	Disagree	68 (66.0)	56 (70.0)	5 (55.6)	7 (50.0)
Current payment is effective in off-setting pain caused by the wildlife	Agree	27 (26.2)	24 (30.0)	1 (11.1)	2 (14.3)
	Neutral	25 (24.3)	20 (25.0)	1 (11.1)	4 (28.6)
	Disagree	51 (49.1)	36 (45.0)	7 (77.8)	8 (57.1)
Amount paid is sufficient	Agree	12 (12.9)	12 (15.0)	1 (11.1)	4 (28.6)
	Neutral	13 (14.0)	8 (10.0)	2 (22.2)	3 (21.4)
	Disagree	68 (73.1)	60 (75.0)	1 (66.7)	7 (50.0)
Payment promotes coexistence between people and wildlife	Agree	78 (72.2)	64 (80.0)	5 (55.6)	9 (64.3)
	Neutral	13 (12.0)	8 (10.0)	2 (22.2)	3 (21.4)
	Disagree	17 (15.7)	8 (10.0)	2 (22.2)	7 (14.3)

*Heads of Household (HHH)

Table 3 shows most (72.2%) respondents agreed to the statement that payment of *ex gratia* promotes coexistence between people and wildlife. Of the respondents who agreed that it is easy to access the funds, most (41.2%) were government stakeholders compared to the traditional leadership (10.0%) and conservation NGOs (22.2%). Thus,

government should continue public education to locals, so they also appreciate how the *ex gratia* payment is implemented since they are the expected beneficiaries. Respondents disagree that it is easy to access the funds (64.1%), payment is administered timely (66%), payment is effective in off-setting pain caused by the wildlife (49.1), and that amount paid is sufficient (73.1%). None (0.0%) of the conservation NGOs agreed that *ex gratia* payment was administered timely compared to 15.0% and 35.7% of traditional leadership and government respondents respectively, who agreed that the payment was being administered timely. The current study findings that payment of *ex gratia* promotes coexistence (albeit payment viewed as not being enough) between people and wildlife is supported by other study findings (Twyman 2000; Blaikie 2006; Homewood et al. 2009; Mbaiwa 2010) which also found that local communities are likely to sustainably utilize the natural resources if they derive benefit from its use. As argued by social conflict theorists, the struggle for scarce resources has kept society in a continual conflict, human beings and the wild animals are also continuously in conflict over the scarce resources (Marx 1964; Georgiadis et al. 2003; AWF 2005; Blackie 2020). In line with social conflict theory, *ex gratia* payment ought to be implemented in an efficient and timely manner in order to capture communities' trust, prevent community members from engaging in unorthodox means as vengeance over injuries and loss of human life (Simmel 1904, 1908; De Kock 2010).

Table 4 shows loss of reasonable income for HWC victims. Responses (in table 4) are derived from 36 victims and other 8 respondents who are deceased' victim's spouses.

Table 4: Loss of Reasonable Income for HWC Victims (i.e., both Injured & Deceased)

Income per month	Before the incident		After the incident	
	Frequency	Percent	Frequency	Percent
No income	1	2.3	39	88.6
P1,499 or less	30	68.2	4	9.1
P1,500 - P3499	6	14.0	0	.0
P4,000 - P9,999	5	11.4	0	.0
P10,000 - P14,999	1	2.2	1	2.3
P16,000 - P19,999	0	.0	0	.0
P 20, 000 and above	1	2.3	0	.0
Total Households	43		43	

Source: Author computed from field data.

Human-wildlife conflict is not just a concern to farmers who experience loss in the form of crop damages and destruction to property, but other people also experience loss of income when they are injured or killed by the wildlife. Table 4 shows that wildlife attack on human beings has resulted in most victims (86.3%) losing their capacity/ability to earn income between 2009 and 2019 (i.e., either they are badly injured or killed by the wildlife). Loss of income arises as a result of many direct and compounding factors such as, breadwinners being killed, the one injured may have lost their job and/or is incapable of performing some duties that generated income for them and their families. Majority (68.2%) of these victims earned monthly income of up to a maximum of P1, 499.00 from varied sources of low paying jobs and other means which include safari employment, herding, night watchman, subsistence agriculture and drought relief programme (*Ipelegeng*). Loss of income in rural areas because of wildlife attacks on human beings has also been recorded in other higher income earning categories, albeit in small frequencies. For example, Table 4 shows that 14.0 percent of those earning income of P1, 500 – P3, 499, 11.5% of those earning income of P4, 000 – P9, 999 as well as 2.3% of those earning monthly income of P20, 000 and above lost their ability to earn monthly income after being attacked by the wildlife. Majority of HWC victims who indicated having an income of P1000 and below can easily be categorised under the newly revised minimum wage in Botswana, that of P1000.00 (Ministry of Employment, Labour Productivity and Skills Development, 2019).

Even though it has been widely documented that HWC arises in situations where the needs of wildlife encroach on those of the humans and/or vice versa (Conover, 2002; Thouless et al., 2016; Schlossberg, *et al.*, 2018) it also appears that there is very little that

victims could do as they share the conflicted habitats. Field interviews have revealed that victims often encounter wildlife when performing essential functions at ploughing fields, cattle posts and schools. A focused group discussion⁷ among local chiefs in Seronga village also revealed that victims of HWC are usually people trying to fend for their families. Their loss destabilises the family, especially when the deceased victim was the bread winner as the remaining family members often fail to cope with life. They contended that locals are legally allocated residential plots in Wildlife Management Areas (WMAs⁸) hence complicating the lives of such people as they cannot meaningfully carry out their farming activities to improve their livelihoods. It could therefore be inferred that the low paying jobs which usually attract most working class in rural communities also exacerbate the propensity of conflict, which tends to occur during early and late hours when victims would either be going to or coming from work; something that tends to be in conflict with wildlife movement timings. Wildlife and people are in the same space, making the question about whether land was erroneously allocated in the WMAs superfluous. It is at these inevitable timings and interfaces that conflicts emerge, resulting in human injuries or deaths (Newmark et al 1994; Kinyua et al 2000).

3.1 Human-wildlife conflict, Grief Over Loss and *Ex-Gratia*

Field interviews with HWC victims and family members indicate that there have been instances where some HWC victims have died after some time of battling injuries sustained from wildlife attack but only to have their cause of death classified as unknown although circumstances leading to their demise are linked to wildlife induced injuries. Such victims and their families have therefore not benefitted from available *ex-gratia* relief fund and associated social safety programs, such as the drought relief programme, thereby creating animosity between government and local communities. This is a typical unresolved human – human conflict which can fuel differences between local communities and central government and thus ignite HWC as victims resort to other measures of retaliation such as poisoning the wildlife for revenge in a bid to get satisfaction and closure. Government needs to create a comprehensive victim management protocol in the form of monitoring and evaluation for victims of HWC to prevent vacillating and seesaw situations attracting negative perception from victims as seen below;

“Re kgarakgatshiwa ke batho, ga gona yo o batlang go tsaya boikarabelo jwa dikotsi tse di bakwang ke diphologolo. Ba sepatela ba re re ye ko go mmaboipelego mme mma-boipelego ene a re re ye ko wildlife ka ke sa tsholwa ke le segole. We are sent from pillar to post since no one wants to take full responsibility for accidents occasioned by the wildlife. Medical doctors send us to social workers who in turn also refer us to Wildlife Department since their argument is that they only assist people who

7 FGD held in February 2020 in Seronga village with 5 local Chiefs including the Paramount Chief, also a member of the House of Chiefs.

8 WMAS refers to conservation areas set aside or designated for purposes of conserving wildlife or recreational activities that involve wildlife.

are born disabled⁹. Unfortunately, the Wildlife Department does not have social packages to assist us”, buffalo HWC victim in Kasane.

Currently the government, seen through the Department of Wildlife and National Parks (DWNP), is perceived to be only concerned with wildlife conservation and less with people’s social welfare issues, though they are intricately enjoined. This perceived inhumanity on the part of government stems from a deep feeling that government does not care about their welfare and always prioritises animal welfare over people as seen in the following extract from slain son’ father:

“Ka gore tlou e bolaille ngwana wa mohumanegi ga gona yo o kgathalang, re tlhola re bona Badirela-puso ba tabogile, le Tautona maloba re mmone mo sekapa-ditshwantshong a ile go tshidisa malwapa mangwe ko Kasane le ko Bobirwa mme fano ga go ise go ko go tle ope le fa ele mopalamente tota. Mme kana ngwanake o bolailwe bosetlhogo ke tlou a disitse dikago tse go neng go robetse bajaranala ba ba tlisang madi mo lefatsheng la rona. Just because an elephant killed a poor man’s son, no one seemed to care about visiting and/ or attending my son’s funeral, yet we always see Public Servants attending to such. Recently, we saw the President visiting to console bereaved families of elephant attacks in Kasane and Bobirwa districts, yet no one ever visited us, not even the area legislator during and/ or after the burial of my son who was brutally killed by an elephant while guarding premises where tourists (who bring revenue to our country) were lodged”, father to deceased night guard (Kasane) but buried in Letsholathebe home village.

However, it appears that even a small gesture such as a timely phone call or visit by relevant government officials to victims and their next of keen during trying times would go a long way in comforting and perhaps restoring trust between local people and government over human losses. Some sentiments expressed by those who were visited by government officials during time of their loss are quite positive.

“E re le fa ntswa re ne ra utlwisiwa botlhoko ke go tlhokafala ga monnaarona yo o bolailweng ke tlou mme e bile re ne re le mo mathateng a lesa la mogolowe, re ne ra nametsega ke go bona puso e re dule mokgosi. Ba direla puso ba wildlife le ba ofise ya ga Tautona le Masole ba ne ba tla go re tshidisa mme ra iphitlhela e ka re seru se se neng se re wetse se kaologile go se kahenyana. Le ene Tautona e ne ya re morago a se na go tswa America, a tla go kopana le rona, mme ya nna sengwe se se neng sa re gomotsa thata, mathata ke phimolo dikeledi e nyenyane thata. Even though we were saddened by the killing of our brother by an elephant at a sad and trying time when we were preparing for burial of his (elephant victim) brother, we were comforted by the

9 Although it may be true that some HWC victims and their caretakers may have been denied assistance on account that they were not born disabled, such purported notion of assisting naturally disabled persons only does not form a part of formal government policy.

presence of the entire government (Wildlife Department, Botswana Defence Force, Office of the President) coming to console us. Even the President himself came to console us upon his arrival from America and we felt much comforted, except that ex-gratia compensation payment is too little!”, brother to a victim killed by an elephant, Bobirwa.

The above two sentiments from families of victims who were killed by elephants sharply contrast with each other and also shows gaps in service delivery. Currently, wildlife management policies do not cater for officers to attend to bereaved families beyond payment of ex-gratia, which has also attracted bad publicity due to its late payment i.e. mostly paid after the funeral due to its inherent bureaucratic processes. These gaps in legislation have meant that the wildlife officers in charge of DWNP offices use their discretion to deal with bereaved families and this has since created yet another rift between wildlife officials and local people as some members of the society get inexplicably more assistance than others from the same government. For example, government officials from the DWNP, District Commissioners as well as the BDF have been involved in gathering firewood, fetching water and provision of tents to local communities during trying times, albeit in varying terms. There have been instances such as those in Etsha 13 where children of the deceased together with their mother were even chased away from their matrimonial home by siblings of their deceased father over fights for *ex gratia* funds.

3.2 Implementation of *Ex Gratia* Payment in Botswana

Field interviews have revealed that the internal processes to facilitate payment of funeral expenses are generally cumbersome and need to be re-engineered to allow for release of funds within 3 to 4 days of the incident happening. This will prevent a situation where family members desperately go into debts to pay for funeral expenses while a government *ex gratia* payment exists. Respondents argued that death caused by wild animals is often accidental, and therefore assistance is needed since most victims are either unemployed or work at the cattle post as herd boys and thus earn very little to cover funeral expenses. A senior government official also quizzed ...

“Ex-gratia should not be a PR exercise! Was it started as a public relations stunt to quell-off bad publicity that government values wildlife than its citizens?”, key stakeholder respondent in Gumare¹⁰.

10 Interview held in February 2020.

The preceding quotation from a senior government official shows the extent to which government is perceived to be valuing wildlife over human life, even by those entrusted to spearhead policy dissemination to the public. Currently, most beneficiaries of *ex-gratia* reported having received the payment after funeral proceedings and burial had taken place. Beneficiaries as well as key stakeholders (*as also seen in the latter quotation*) that included traditional leadership argued that the P50 000.00 given to the beneficiary is too little and does not afford sustainable upkeep for victims' dependents. As shown in this study under the section *Gendered Impact of HWC*, where majority of HWC victims are males, most households lose their breadwinners and therefore dependents are often subjected to a life of poverty. Respondents (beneficiaries, key stakeholders such as Dikgosi or traditional leadership, and government officials) all synonymously expressed that even though they could not precisely name a price for loss of life, they however felt that the P50 000.00¹¹ was too little as compensation. Instead, there should be a capped maximum and P50 000.00 being a minimum. Now that the wildlife hunting ban has been lifted in 2019, a process re-engineering of the *ex-gratia* program could ensure that the program adequately covers appropriate wildlife species, both compensation for death and incapacitation resulting from wildlife attacks. Respondents indicated that compensation for damage to crops and other properties should still continue to be paid, though only after a thorough assessment by competent authorities. Development of positive perceptions and attitudes towards wildlife are key factors in wildlife conservation regardless of the associated costs (Fisbein and Antzen, 1975; Child, 2000; Látková and Vogt, 2012). Both *ex-gratia* payment and HWC compensation¹² for wildlife damages though not perceived to be comprehensive enough, currently remains crucial in partial closing the inevitable conflict that usually result in retaliatory killings of the wildlife as well as negative perception of government as shown below;

“Diphologolo di beetswe go bolaya fela fa di fosa di molato! Eseng jalo le batho ba ba gobaditsweng ke di phologolo jaaka nna jaana re ka bo re frwa sengwenyana go ithusa mo botsbelong. The wildlife are meant to kill without missing their target, otherwise they will be charged for failing to kill their target! If not, victims of HWC that suffer injuries like myself would be assisted with something to improve our lives,” permanently incapacitated male victim of elephant attack in Xhwee cattle-post, Ngamiland district.

As could be seen from the foregoing quotation from the permanently incapacitated

- 11 P50 000.00 being amount given to deceased's family after initial pay out of P20 000.00 towards burial expenses.
- 12 Blackie and Sowa (2019) noted that the government of Botswana introduced monetary compensation for damages to property (including agricultural fields) caused by wildlife through the amendment of Section 46 of the Wildlife Conservation and National Parks Act of 1992 through Presidential Directive CAB 35/93 in December 2003.

victim of HWC, the disparity in compensation between those killed and those injured is a key issue for review of the *ex gratia*. The increase in wildlife population especially during period (2014–2019) when wildlife hunting was prohibited, has resulted in wildlife migrating into the now human settled areas. Some respondents¹³ indicated that perhaps the *ex-gratia* payment should have provision for voluntary relocation of local communities and individuals settled in established Wildlife Management Areas and corridors; as has been revealed during the dispersal period (2014) when wildlife moved back in their old migratory routes.

3.3 Main Causes of HWC Leading to Injury and/ or Loss of Human Life

Field interviews among community members including key stakeholders such as village chiefs and wildlife officers point to several reasons which have led to increases in the number of reported incidents in which people are either injured or killed. Increase in wildlife populations and climate change have meant that the wildlife is now dispersed even outside WMAs in search of pasture and water and sometimes in human settled areas. It is at these interfaces that human-wildlife conflict incidents often occur and resulting in injuries and death as a result of surprise encounters between wild animals and human beings. Lack of knowledge on animal behaviour response as well as illegal wildlife hunting and humans retaliatory action are the cited reasons for increasing HWC incidents that lead to people being injured and killed.

“E rile a atamela namane e e neng e lela, e bo e mo kgobogela e tsaya gore e tseelwa nama. Thinking it was going to lose its prey, the leopard sprang on him as he was approaching a bleating calf which sounded distressed,” leopard victim.

Bogologolo di ne di tso miwa mme di sieele kgakala, ditiragalo tsa batho ba gobatswa ke diphologolo re ne re di utlwa ka batsumi. In the past animals were being hunted and therefore stayed away from human settled areas and we only heard of people being injured by the wildlife from hunters, key stakeholder - traditional chief.

Field interviews with wildlife officers have revealed that most wildlife officers are either incompetent in weapon handling and/ or lack operational experience. This tends to exacerbate the HWC response situation due to unnecessary delays in attending to reported incidents of injury and death as officers feel their lives are also put under threat as corroborated by the following field quotation.

Nako le nako fa go begwa incident ya motho yoo golagaditsweng ke phologolo bogolo jang nare, nkwe, kana tlou go tsena letshogo ka gore bontsi jwa rona ga rena botsipa jwa go iphemela mo ntleng ga gore ba APU ba bo ba le teng mme kana bone ba a tlaela mme e bile ba nna ba le busy. We (wildlife officers) are usually afraid to

13 Interviews held in February 2020 with respondents in Mogotlho village, Gunotsoga and Eretsha.

attend to incidents of people who get injured or killed by the wildlife especially those involving buffalo, leopard or elephant. This is because we lack competency to protect and prevent ourselves and victims, serve for instances when those from Anti-Poaching Units (APU) are available, but they are few in the department and are usually engaged in other assignments, (Wildlife Officer, February 2020).

To substantiate the above observation by the wildlife officer, government of Botswana has engaged all law enforcement agencies being Botswana Defence Force (BDF), Directorate of Intelligence Services (DIS), Botswana Police Service (BPS) to augment the DWNP efforts in wildlife management (Fletcher 2018; Hitchcock 2019). This approach has seen the country being labelled as having adopted a coercive conservation approach or what is increasingly known as ‘green militarization’, which according to Hitchcock (2020, 226) “involves coercive techniques such as forced resettlement, anti-poaching and ‘shoot-to-kill’”.

Figure 1 shows that the majority of respondents (86%) indicate that government should continue to provide the *ex gratia* payments whereas only one respondent (2.3 percent) indicated that the government should stop providing *ex gratia* payment.

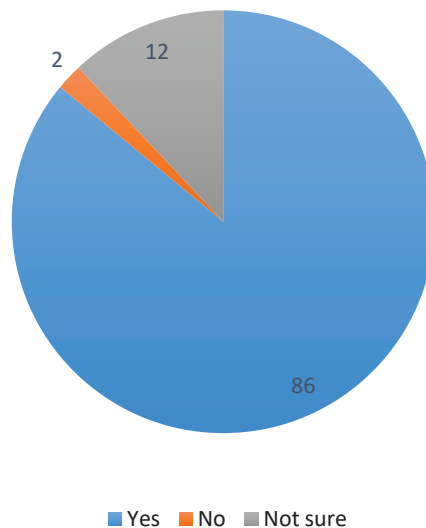


Figure 1: Need to Continue Implementation of *Ex Gratia* Payment

About 12 percent of the respondents indicated that they are not sure as to whether the government should continue providing *ex gratia* payment assistance. Most respondents would want to see *ex gratia* being continued since they are of the view that government is liable to compensate victims of HWC since people are being injured in areas where they have been legally allocated residential plots and ploughing fields to improve their livelihoods. The following extract from field interviews expound on this argument.

“Sebe sa phiri ke gore ma-landboard ke bone ba re abetseng ditsha tsa bonno le ma-simo mo mafelong one a go setseng go tletse dipholo, re ipotsa gore gatwe molato wa rona ke eng? Goromente o tshwanetse a oketsa phimolo dikeledi fa motho a gobaditswe kana a bolailwe ke phologolo ya naga. We wonder what crime we have committed since the landboards are the ones who allocated us both residential plots and ploughing fields which are now infested with wild animals. Government should increase compensation for human injuries and death occasioned by the wild animals, victim of HWC in Etsha 4.

As noted in the above quotation, land use conflicts are perceived as caused by the government, which is used to justify continued payment of *ex gratia* to victims of HWC. This land use conflict could be traced to the creation of the wildlife management areas (WMAs) and controlled hunting areas (CHAs) in the late 1980s as areas of land set aside for wildlife management and related activities that include wildlife hunting (Darkoh and Mbaiwa 2005).

4. DISCUSSION

The study has established that there is possibility of dual benefit and/or unintended double dipping among HWC victims especially between the Department of Wildlife and National Parks and the Department of Social Welfare. While DWNP provides *ex gratia* payment to HWC victims the latter sometimes provides general assistance to orphan and vulnerable children as well as destitute programme for very poor people who are in need and may include victims of HWC. Amongst these services provided by the Department of Social Protection is payment for destitute funeral costs, an expense that is included in the HWC *ex gratia* payment regardless of whether the victim is a destitute or not. Double dipping has been noted in other parts of the world to be an unfair practice since it weakens government efforts of comprehensively taking care of its deserving citizens (Burtless and Hausman 1982). Government should consider extending the *ex-gratia* payment to include monetary compensation in line with the national minimum wage to serious and incapacitating injuries sustained due to wildlife attacks. After all, this study established that the average income of HWC victims before being injured or killed by the wildlife was found to be equal or lower than the national minimum wage (Ministry of Employment, Labour Productivity and Skills Development 2019).

In most cases, there seems to be a policy contradiction and incongruence. For example, the medical experts upon attending to HWC victims would make recommendations that they should not do heavy work for a specified period, for example up to five years, often the victims are scornfully disqualified by social workers under the Department of Social Protection. The HWC effects can include trauma similar to one experienced from combat, assault (sexual and physical), terrorist attacks, torture, natural disasters, automobile accidents, and life-threatening illnesses, as well as witnessing death or serious injury to another (APA, 2000). Therefore, HWC constitutes a disaster to the family, which can only be managed through relief of some kind to facilitate victims' recovery. Based on this study findings, HWC is exacerbated by unresolved human – human conflicts such as differences between local communities and central government. A relief should also ensure local peoples' support in conservation of the wildlife and as a way of mitigating retaliatory killings of the wildlife. Citizens assume that because wildlife is legally protected, they in turn should be entitled to good compensation when they are, or their property is, damaged by wildlife.

Worse still, HWC victims are also turned down by the inefficient public medical facilities. Sometimes what was supposed to be a day's visit to a medical facility ends up being 2 to 3 days, something that tends to exacerbate the costs of medical care which most HWC victims from rural and disadvantaged communities cannot afford. These kinds of impediments leave people far from medical facilities disadvantaged and these are the very people who are at high risk of being injured by the wildlife.

The communities' respondents argued that the P70 000 *ex gratia* payment is not sufficient to fill the gap left by bread winners. Ogra and Badola (2008) also found that inadequate disbursement of *ex-gratia* are the major complications faced today.

Respondents argued that government should use tourism royalties and other sources of revenues to cover all costs associated with being injured by the wild animals such as transportation and food while seeking medical attention. This is because once injured it will be difficult to maintain the job from which the individual earned a salary to finance trips for medical check-ups and hence often skip appointment and/ or even quit medical check-ups before they are fully recovered. A caretaker of HWC in Kazungula who cares for his disabled son opined that;

“Wildlife induced death is usually accidental and therefore there is need for rapid assessment so that slain victim's relatives could be assisted quickly before they incur debts for burial costs, lest they develop negative attitudes towards the wildlife. You would know that not many people resent vehicles, even those injured still drive vehicles because they have accepted reality, thanks to timely assistance from Motor Vehicle Accident Fund (MVA).”

A contrast is made here with MVA, where motor vehicle accidents victims are provided with part-time to full-time caretakers depending on the severity of injuries. Such caretakers under MVA Fund are engaged at a monthly fee to provide assistance for a person who cannot perform the daily activities of life such as bathing, grooming, dressing, feeding as a result of motor vehicle accidents. Even though victims of HWC are often left with horrible, devastating and traumatic experience following these wild animals' attacks (Blackie, 2020), their caretakers provide this service based on family ties which could mean quitting their jobs to care for their loved ones thereby further worsening their plight.

Department of Wildlife and National Parks is mentioned by most respondents as the entity that should take the lead in preventing the occurrence of HWC since it is mandated to do that. Nonetheless, village Chiefs, as key respondents in this study, also reiterated that community members should take cognisance that wildlife are not kraaled like cattle and therefore ought to be vigilant and take due diligence for their safety and report any damage to their property as well as suspected illegal hunting of wildlife. They reasoned that government should set-up animal control squads to deter them away, because wildlife officers are inadequate. Further, government should partner with communities through the use of indigenous knowledge to utilise such herbs as *shamanya*, *mukwengo* or *mosama* which could be burnt to deter animals away!

4.1 Botswana's Experience with Payment of *Ex Gratia*

For about three (3) decades¹⁴, the Parliament of Botswana has been debating the contentious and exponentially increasing (Blackie 2019) issue of human-wildlife conflict as well as the resultant calls for compensation to damage by the wild animals. Debates have often centred on crop raiding, livestock predation, retaliatory killings of the wildlife and poaching. In the past (before 1994), people were allowed to keep trophies of wild animals they would have killed in defence of their property as compensation for the damage. However, an amendment to Section 46 of the Wildlife Conservation and National Parks Act of 1992 through Presidential Directive CAB 35/93 in December 2003 introduced monetary compensation for damage caused by the wild animals. Recently, there has been growing concerns over loss of human life due to wild animals' attack. In 2017, Mr Mephato Reatile (then specially elected) Member of Parliament asked Hon. Tshekedi S. Khama, the Minister of Environment, Natural Resources Conservation and Tourism (MENT), to state

... what his Ministry's policy on human-animal conflict is and if it favours the protection of people, their assets and farming produce as opposed to wildlife.

14 In February 1995, Member of Parliament, Mr. Oliphant T. Mfa asked the then Minister of Commerce and Industry if they were aware that people killed or injured by animals are not compensated, and if the Minister would consider paying compensation for such death and injuries? Subsequently, Kgosi O. R. N. Kalaben and Kgosi R. Banika also asked related questions in 1997 and 2000 respectively.

The above parliamentary question changed the popular narrative of wildlife leading to destruction of people's property and agricultural produce to also include humanistic perspective of protecting human property. Following a plethora of answers given by the Minister of MENT, a number of questions were also raised by other members of parliament, with Hon. Winter Mmolotsi (Member of Parliament) also asking the minister the following;

Mr. Mmolotsi: Minister ga a araba sentle, ke ne ke re a e digele jaana Madam Speaker. Minister; kana kgang ya me ke gore fa phologolo e sentse, tshenyo e a bo e diragetse, it does not matter what kind of animal it is. So, a o bona go le fair gore e bo e le gore fa motho a senyeditse, go a twe ka gore ga se phologolo ele ke e, therefore we are not compensating you mme tshenyo yone e diragetse? [The Minister didn't answer properly, I suggest he should have concluded this way, Minister, if the animal has caused the damage, the damage would have already happened and it does not matter what animal it is. Do you think it's fair for us to say we are not going to compensate for the damage simply because the damage was caused by a non-compensatory species?]

Madam Speaker: Gape ba tsenye le ditshwene mo teng. They should also include baboons in the list.

Hon. T.S. Khama: Madam Speaker, the short answer is that of course those people who have had that damage would find it not fair that they are not compensated, and we would be of the similar opinion as well. So, I do concur with those concerns that we are unable to reach everybody but we would like to do so.

The above excerpts from Botswana Parliamentary debates of 2017, and those preceding¹⁵, shows the nature and difficulties in resolving the HWC in Botswana especially with the country's growing elephant population (Blackie and Sowa 2019; DWNP 2019). Findings from this study show that even though the implementation of ex-gratia scheme in its novelty was a good thinking, it has been hastily implemented¹⁶ (even some wildlife officers still don't understand how the scheme works) as a way of dealing with the glaring adverse impacts of the then wildlife hunting prohibition/ban of 2014.

15 *see 3*

16 Focused group discussions with wildlife officers revealed that the scheme is centralised to DWNP HQ and that they also don't have comprehensive knowledge of the ex-gratia yet they are required to administer it (FGD with wildlife officers held in Head office and regional offices from January to February 2020).

5. CONCLUSIONS AND RECOMMENDATIONS

This analysis sought to explore the relevance and effectiveness of paying *ex gratia* to victims of wildlife fatalities' beneficiaries in the human-wildlife conflict space. The study finds that *ex gratia* payment as it currently stands, is, but a denial of liability under the pretext that it is difficult to place a value to human life. It appears, in the case of HWC, that government alongside the popular narrative that human life cannot be priced, aptly, opted for *ex gratia* payment as a humanitarian gesture built alongside the nation' spirit of *botho*. Therefore, it is argued in this article that *ex gratia* payment has been thoughtfully implemented in order to unwittingly dissuade the potential of HWC victims as stakeholders from pursuing (further) litigation against the state even though Section 87 of WNPA of 1992 is yet to be amended or repealed for alignment. As long as Section 87 of the WNPA is there, *ex gratia* is seemingly the only option we have. Potential litigation from victims and/ or their representatives could arise against the state since the latter is the overall custodian of all wildlife in the country, whether in private or public areas (WNP Act,1992:82; CBNRM Policy, 2007).

Currently, the *ex gratia* scheme is perceived to be only covering exceptional cases in which victims would have been killed by the wildlife, with those injured referred to government medical facility. Injured HWC victims don't understand why and how they are being referred to government medical facility, which in their view is their first call of point, *you can't give us what we already have!* It is therefore argued in this paper that victims of wildlife injuries should also be comprehensively compensated according to the severity of injuries sustained. Although a visitation and/ or phone call from relevant officials does not facilitate recovery to victims and their families, it is a useful gesture of empathy by the state. Unlike the current blanket cover of BWP70 000 per death victim, there is a need to expand *ex gratia* implementation by introducing procedures for calculating the relevant amount of *ex gratia* payment to be paid depending on the severity of injuries. Chiefly, compensation should consider healthcare and rehabilitation, loss of reasonable income and associated disability care as a result of being attacked by the wild animals. The proposed benefits could be covered by income from monies paid under the tourism levy, hunting royalties, contribution by community based conservation trusts, social corporate responsibilities from private sector as well as from other government revenues sources.

There is a need to establish an *Ex Gratia* Scheme or an *Ex Gratia* Tribunal where all HWC injuries or death cases can be effectively handled. In the case of a Tribunal, injury victims could be allowed to make own representation and/ or have social welfare officers make a social impact assessment recommendation to the tribunal. An inclusion and exclusion criteria for compensation will need to be established as per the applicable laws of the country and/ or international best practice. In the meantime, government ought to develop a standard HWC victims' handling procedure to avoid being perceived as favouring certain high profile members of the society over others. These recommendations are aimed at giving victims of HWC a peace of mind during the challenging times of their agony, as well as infusion of humanistic approach to wildlife management in Botswana.

6. ACKNOWLEDGEMENTS

Fieldwork for this study was supported by the Botswana Institute for Development Policy Analysis (BIDPA) where the researcher is currently employed as a Research Sociologist. The researcher would like to thank Dr. E Mudongo, Dr. D. Mmopelwa and Mr. K Nkape for their earlier review of the manuscript. Thanks also goes to the anonymous reviewer (s) who provided valuable reviews that shaped this manuscript. No potential conflict of interest has been reported by author.

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Annexure 1:

EX-GRATIA PAYMENT FOR LOSS OF HUMAN LIFE DUE TO ATTACK BY DANGEROUS WILD ANIMALS

The following are guidelines for payment for loss of human life due to attack by dangerous wild animals:

- a) Payment of ex-gratia benefits for loss of human life due to attacks by wildlife effects on 1 July 2015.
- b) Once-off payment of fifty thousand (P50 000) to be disbursed to the dependents of the deceased.
- c) Twenty thousand (P20 000) per victim to be disbursed to cover funeral expenses.
- d) Loss of life and injuries should be reported to the Police Station, Wildlife Office or Kgotla within two (2) days or shortest time possible after the occurrence of the incident.
- e) A death or medical certificate from a Government medical officer stating the cause of injuries or loss of life to be submitted.
- f) In the event of loss of life, the ex-gratia will only be paid to the legal heir of the deceased or guardian of the heir if they are minor. In the case of injuries, medical expenses at a Government medical facility will be covered.
- g) No ex-gratia payment would be processed in the case of loss of life due to negligence/recklessness in national parks, game reserves, private game reserves, sanctuaries, private game farms, captive carnivore facilities and concessions.
- h) Dangerous wild animals for this purpose are those that appear on the schedule nine of the Wildlife Conservation National Parks Act of 1992. (Buffalo, Hippo, Elephant, Crocodile, Lion, Leopard and Rhinoceros.
- i) Ex-gratia payment covers victims who have personal life cover policies but excludes victims who die in the line of duty and are eligible to receive workman's compensation.
- j) Ex-gratia payment does not cover loss of life due to vehicle accidents that involve wildlife.
- k) Ex-gratia payment does not cover death that occasion in a wild animal hunting expedition.



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