National Human Rights Institution and Public Inquiries: The Kenya National Commission on Human Rights

Introduction
National human rights institutions (NHRI’s) are tasked with a broad mandate of ensuring the promotion and protection of all human rights issues and adhere to the principles of universality, interdependence, interrelatedness and indivisibility of human rights and fundamental freedoms. NHRI’s are empowered under the Paris Principles which governs the establishment of NHRI’s and their role of promoting and ensuring harmonization of national legislation, regulations and practices to inculcate a culture of respect for human rights by all.

National Human Rights Institutions and Public Inquiries.
NHRI’s exist to serve the public, and accordingly, their mandate they have should cover all their functions, including the resolution of complaints, the prevention of human rights abuses as well as the promotional and educational aspects of their work. This can best be conducted through carrying out public inquiries.

One of the greatest challenges confronting NHRI’s is implementing their broad mandate with very limited resources. As such NHRI’s have sought to identify strategies which enable them to perform several of their functions simultaneously in cost effectively. One of these strategies is the use of national public inquires which have proven to promote and protect a wide range of human rights concerns.

Public inquiries play an important role in the delivery of justice by providing a ‘true’ and factual account of injustices committed by state and non-state actors and provide recommendations and advise to the relevant agencies on action to be undertaken and strategies to employ to right the injustices.
Public inquiries thus ensure that:

1. A large number of individual complaints can be dealt with in a proactive method whom otherwise would not have approached the relevant state agency.

2. The process of preparing terms of reference for the inquiry are conducted in consultation with other state and non-state actors thus ensuring that the process is participatory and consultative. This has a dual benefit effect of enhancing understanding of the role of NHRI's by other actors and enabling the NHRI to be better informed on the relevant issues and their dynamics as well to have a clarity of the various actors involved.

3. As already stated conducting public inquiries is a cost effective way. This is furthered by holding the public hearings through the media which educates the general public on the NHRI and its responsibilities. In addition it informs the general public on the responsibilities of various actors involved with regards to the issues that are being investigated and their human rights implications. This includes politicians responsible for framing legislation and programs and the bureaucrats responsible for policy advice.

4. Public inquiries address systemic violations of human rights based on evidence from individual cases. Moreover it also creates an opportunity for the state to examine laws, policies and programs (or lack of them) which have given rise to the violations in question in candor. It is important to appreciate that many of the most vulnerable and disadvantaged groups have been victims of widespread, systematic violations and discrimination.

5. Public inquiries clearly demonstrate the core underlying issues through the hearings, submissions and research and this enriches the NHRI's advisory to the relevant and respective agencies particularly Parliament, judiciary and the executive arms of government.

6. Since public inquires affords an opportunity to politicians, bureaucrats and other agencies to present their views and submissions, it builds the NHRI's already existing collaborative partnership with these actors and agencies.

7. Public inquires illustrate and educates the indivisibility and interdependency of civil and political rights, group rights and economic, social cultural rights. This is very important for achieving practical results particularly in jurisdictions where civil and political rights are regarded as being justiciable but group and ECOSOC rights are not
8. The community awareness and political pressure generated by a well-publicized public inquiry maximizes the likelihood that the NHRI's recommendations to the parliament and other government agencies to be implemented and produce practical results.

**NHRI's and Public Inquiries: Kenya's Experience:**

**Kenya National Commission on Human Rights**

The Kenya National Commission on Human Rights (KNCHR) is the NHRI in Kenya. It is established as a constitutional commission and enabled by an Act of Parliament which clearly sets out its mandate and functions. KNCHR plays a key role in promoting the respect and observance of human rights and fundamental freedoms in the country. It is a nationally and globally respected public institution providing leadership in human rights and fundamental freedoms.

KNCHR mission is to enhance the protection and promotion of human rights in Kenya through strategic programming and partnership. The National Commission bases its core values on the internationally recognized human rights principles of universality, indivisibility, interdependence and interrelatedness of human rights and seeks to foster and uphold values of independence, integrity, inclusiveness, tolerance and accessibility.

The Commission has a two-fold mandate; to act as a watch-dog over the government in the area of human rights and to provide a leadership role in moving the country towards becoming a human rights state. This mandate is achieved through the discharge of the Commission's core functions and powers as set out under Sections 16 and 19 of the KNCHR Act. The functions include:

- conducting investigations (on its own initiative or upon complaints received),
- assessing conditions under which inmates are held in prisons and other places of detention,
- informing and educating the public on human rights,
- recommending to Parliament effective measures to promote human rights,
- inculcating citizens' awareness of their civic responsibilities and obligations,
• and ensuring governments' compliance with international obligations under human rights treaties.

KNCHR has conducted or participated as a key stakeholder in public inquiries in Kenya. This have been with an aim to investigate and properly assess the extent of human rights violations.

Examples Include:

The Kenya National Commission of Human Rights undertook a public inquiry in July 2005 into allegations of human rights violations arising from the activities of salt manufacturing companies in Magarini Division of Malindi District. The findings of this inquiry were among others that there were serious violations of labor rights and the UN business and human rights guiding principles were seriously flaunted.

The inquiry was carried out within the commissions' function in Section 16(a) of the Kenya National Commission on Human Rights Act 2002 which establishes one of the Commissions functions as "to investigate, on its own initiative or upon complaint made by any person or group of persons, the violations of any human rights".

2. Wagalla massacre under the TJRC Report.
The Commission was engaged the fact finding process of the Truth Justice and Reconciliation Commission (TJRC) in Kenya. TJRC found that the security operation conducted in Wagalla, Wajir, on February 1984 resulted in the massacre of hundreds of civilians. The Wagalla Massacre, including the detention, torture and killing of the male members of the Degodia tribe at the airstrip, and the rapes, killing of livestock and burning of homes in the villages, was a systematic attack against a civilian population and thus qualifies as a crime against humanity.

The Commission was unable to determine the precise number of persons murdered in this massacre but accepts that a large number died, possibly close to a thousand. The official figure of 57 given by the state therefore grossly underestimates the number of people who were killed at Wagalla and is an example of the generally thoughtless manner in which the state has traditionally treated massacres committed by its own agents.
Kenya National Commission on Human Rights (KNCHR) in conjunction with local and international partners has supported the construction of a commemoration monument in Wajir Town. The monument, has the names of 482 victims engraved on marble and pasted on a wall. These names were taken from the Truth Justice and Reconciliation Commission report and subjected to a thorough validation exercise for purposes of ensuring that they were indeed names of the people who lost their lives as a result of the massacre. While acknowledging that this list, or any other list, can never be said to be conclusive.