

# MAKING HUMAN RIGHTS EFFECTIVE IN AFRICA-WHAT TO DO AND HOW TO DO IT.

**A Case Study of Panels of Inquiry Constituted by National  
Human Rights Commission, Nigeria.**

**Being a presentation by**

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# INTRODUCTION

- The National Human rights Commission ( the Commission) of Nigeria was established by the National Human Rights Commission Act, 1995 (as amended), in compliance with Resolution 48/134 of 1993, by the United Nation General Assembly which enjoined all members states to establish independent national human rights institutions for the promotion and protection of human rights. So all countries in Africa have been enjoined to establish National Human Rights Institution's (NHRI's). The Commission serves as a quasi-judicial mechanism for the enhancement of the respect for, and enjoyment of human rights. It also provides avenues for public enlightenment, research, collaboration, dialogue, sensitization and awareness on human rights issues.

- The Commission's Act was amended in 2010. The amendment granted the Commission more powers and independence in its operations and finances, strengthened it, in terms of the scope of its mandate in full compliance with the Paris Principle being the guiding principles upon which National Human Rights Institutions (NHRIs) are established.
- The Commission is obliged to operationalize National, Regional and International human rights instruments in the effective discharge of her mandate and in compliance with Nigeria's international obligations

# Protective Mandate of the Commission

- As earlier stated, the primary mandate of the Commission is to promote, protect and enforce the human rights of Nigerians and the rights of persons living in Nigeria.
- **Sections 5 and 6 of the NHRC** provides for the functions and powers of the Commission respectively. Particularly, sub- Sections 5 (a), (b) and (c) of the Act, which specify the scope of the Commission's protective functions provide that:
  - *“The Commission shall,*
  - *(a) deal with all matters relating to the promotion and protection of human rights guaranteed by the Constitution of the Federal Republic of Nigeria, the United Nations Charter and the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International*

# Protective Mandate of the Commission Cont'd.

*Covenant on the Elimination of all forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all forms of Discrimination Against Women, the Convention on the Rights of the Child, the African Charter on Human and Peoples' Rights and other international and regional instruments on human rights to which Nigeria is a party;*

- *(b) monitor and investigate all alleged cases of human rights violation in Nigeria and make appropriate recommendations to the President for prosecution and such other actions as it may deem expedient in each circumstance;*
- *(c) assist victims of human rights violations and seek appropriate redress and remedies on their behalf”*

# Protective Mandate of the Commission Cont'd.

On the other hand, Section 6(a) and (e) of the amended Act, relates to the powers of the Commission, with regards to its protective powers provides that:

*“The Commission shall have power to*

- *(a) conduct its investigations and inquiries in such manner as it considers appropriate;*
- *(e) make determination as to the damages or compensation payable in relation to any violation of human rights where it deems necessary in the circumstances of the case;*
- *(g) do such other things as are incidental, necessary, conducive or expedient for the performance of its functions under this Act”.*
- The Act therefore clothes the Commission with all the powers it requires to effectively carry out its protective mandate.

# HOW DOES THE COMMISSION PROTECT HUMAN RIGHTS

- In order to accomplish this, the Commission investigates all complaints of allegations of human rights violations brought before it and takes steps to ensure that victims are compensated and where necessary perpetrators are brought to justice.
- In the treatment of complaints brought before it, the Commission decides, upon examination of a complaint, on what route it will take to resolve the complaint to ensure that justice is done.
- According to the Standing Orders and Rules of Procedure of the Commission (STORP), the Commission may decide to settle a complaint brought before it through any of the following methods: conciliation, an inquiry or public hearing, simple investigation procedure, reference to a working group or a committee of members of its staff. Thereafter, upon completion and adoption by Council, findings and recommendations from any of these methods of complaint treatment mechanism will become the decision of the Commission.

# USING THE PUBLIC INQUIRY TO PROTECT RIGHTS BY NATIONAL HUMAN RIGHTS INSTITUTIONS

- Public inquiries are major investigations convened by a Public Institution-that has been given special powers to compel testimony and other forms of evidence.
- Public inquiry is also a mechanism of ensuring that an amicable settlement is arrived at, as resolution is achieved without recourse to prosecution and it is an avenue through which the Commission hears all parties and proffers solutions to their grievances.
- Main functions of public inquiries are to find out, namely:
  - What happened?
  - Why did it happen and who is to blame?
  - What can be done to remedy and prevent this happening again?
- The purposes of human rights related public inquiries are to establish the facts of a case by carrying out proper fact-finding investigation on the allegations of human rights violations to establish what happened, who committed the act, why it happened, where it occurred, when and how it occurred, from both the victim(s) and alleged perpetrator(s), and others by availing them a fair hearing and then the remedy.



# LEGAL FRAMEWORK FOR PUBLIC INQUIRIES BY NHRIS- NHRC NIGERIA

RECALL THAT Section 6(a) and (e) of the amended Act, relates to the powers of the Commission, with regards to its protective powers provides that:

- *“The Commission shall have power to*
- *(a) conduct its investigations and inquiries in such manner as it considers appropriate;*
- *(e) make determination as to the damages or compensation payable in relation to any violation of human rights where it deems necessary in the circumstances of the case;*
- *(g) do such other things as are incidental, necessary, conducive or expedient for the performance of its functions under this Act”*
- *UNDER s. 23 of 2010 NHRC Amdt Act,*
- *“The Commission may make such regulations as it deems necessary or expedient to give effect to the provisions of this Act”*

# LEGAL FRAMEWORK FOR USE OF PUBLIC INQUIRIES BY NHRIS- NHRC NIGERIA

- **Rule 79 of the STORP** provides,
- *“Upon receipt of a complaint or of its own motion, Council*
- *may decide to authorize or conduct an inquiry on such terms*
- *as it may determine.*

## **CIRCUMSTANCES FOR HOLDING A PUBLIC INQUIRY**

- *Council may cause an inquiry to be held:*
- *Where it appears that particular events have caused or are capable of causing gross, massive or systematic violations of human rights or crimes of a human rights nature;*
- *Where several complaints relate to or indicate a pattern of violations arising from the same situation or facts and affect a class of victims;*
- *Where, in the opinion of Council, a complaint or set of complaints raise matters of broad public interest or issues of significant public policy;*
- *Upon the application of a party or parties to a complaint;*
- *At the request of the Attorney-General of the Federation or Attorney-General of a State in respect of issues within the legislative competence of the Federation or of the State as the case may be; or*
- *Upon the order of a Court of competent jurisdiction directing it to undertake an inquiry.*

# POWERS TO SUMMON WITNESSES ETC

- This is specified in **Section 2 (b), (c), (d) and (e) of the NHRC Act**, which provides:
- *“(2) Whenever it appears to the Commission upon information and after such inquiry as it shall think necessary, that there is reasonable cause to suspect that in any place there is an evidence of violation or abuse of human rights under this Act, it may by written order direct an officer of the Commission to –*
- *(b) summon and interrogate any person, body or authority to appear before it for the purpose of public inquiry aimed at the resolution of a complaint of human rights violation;*
- *(c) issue a warrant to compel the attendance of any person who after having been summoned to attend, fails, refuses or neglects to do so and does not excuse such failure, refusal or neglect to the satisfaction of the Commission;*
- *(d) compel any person, body or authority who, in its opinion, has any information relating to any matter under its investigation to furnish it with any information or produce any document or other evidence which is in his/her possession.*
- *(e) compel the attendance of witnesses to produce evidence before it.*

# KEY RECENT PUBLIC INQUIRIES HELD BY THE COMMISSION TO PROTECT HUMAN RIGHTS.

- The Commission in recent times conducted a number of public inquiries among which are:
  - The Apo Killings.
  - The Military/Shittes Clash.
  - Special Anti-Robbery Squad Panel (SARS Panel).
  - Sexual and Gender Based Violence Panel (SGBV).
  - #ENDSARS Protest Panel.

# PANEL ON APO KILLINGS

In this case, some motor cycle riders (Okada riders) who converted an uncompleted building in Apo District of Abuja into their shelter were termed terrorists and attacked and killed one evening by operatives of the Department of State Security Services (DSS);

The commission held a public Inquiry, summoning witnesses and found that these were innocent poor citizens and not terrorists and therefore held that their right to life etc had been violated. Several of them died and many injured during the operations. The DSS was directed to pay compensation of N135M to the victims and families of the dead. This has been complied with by the Government in 2018.

# PANEL ON MILITARY/SHITTES CLASH

- The shittes moslem sect was conducting their annual ritual and the convoy of the Chief of Army staff ran into their procession. When they refused to give way for peaceful passage and turned riotous, the convoy shot its way through leaving scores dead. After that, the military turned back after 24 hours and attacked the camp and home of their leader El-Zakzakky, killing many worshippers and shooting, hurting and arresting El-Zakzakky;
- The commission held a public inquiry and found that the right to life of most of the victims had been violated and directed that their El-Zakzakky should not be detained indefinitely but should be arraigned in court and be afforded medical facilities and fair hearing to defend himself. El-Zakzakky was subsequently arraigned in court and given medical attention to undergo his trial. The case has now been concluded and most of those arrested treated or released.

# PANEL ON SPECIAL ANTI ROBBERY SQUAD (SARS).

The special anti-robbery squad was a special unit of the Nigerian Police force for fighting violent crimes. Sooner than later, it went outside its original mandate and intervened in any police duties and became synonymous with brutality, Extra judicial killings, Torture, Inhuman and degrading treatment and punishment, extortion, illegal arrests and detention etc etc. In 2018, following avalanche of complaints received against SARS at the Commission and public outcry about SAR activities, the Government requested the Commission to conduct a public inquiry into the allegations of human rights violations by SARS. The Commission found that most of the allegations were true and recommended that affected police officers, as the case may be, should be prosecuted, disciplined, pay compensation for human rights violations and that the Unit should be disbanded with far reaching reforms of the police organization. Most of the recommendations were not carried out until a full blown protest broke out in Oct 2020 tagged as “END SARS PROTESTS”.

# PANEL ON SEXUAL AND GENDER BASED VIOLENCE

- On 26 April, 2019, some complainant alleged that earlier that month, armed security personnel led by the Abuja Environmental Protection Board (AEPB), under the auspices of the FCT Joint Task Force raided nightclubs and the streets of Abuja. About 71 women were arrested and held in different police stations within Abuja metropolis. Curiously, none or very few men were arrested during the raids. Victims of the raids made series of allegations of extortion, rape, sexual harassment, cruel, inhuman and degrading treatment while in the custody of the Police. This was one of many raids purportedly carried out by the AEPB and the FCT Joint Task Force, regularly in the FCT, Abuja. Other notable cases in the country were allegations of SGBV in tertiary institutions, which led to the well-publicized BBC documentary titled “Sex for Grades” that implicated lecturers in the University of Lagos and their counterparts in Ghana. The public outcry emerging from these incidences and the fact that they targeted women, led to the Government (Vice President Prof Yemi Osinbajo SAN), requesting the Commission to take urgent steps to investigate the scourge of SGBV in the country and make appropriate recommendations to Government.



# PANEL ON SGBV CONT'D

- In all, about 275 SGBV complaints were received by the Commission across the country, the Panel went round and sat in all the 6 geo-political zones across the nation and the Federal Capital Territory.
- The Panel has concluded its sittings and submitted its recommendations to appropriate authority. Complaints received bordered on domestic violence; threat to life and abandonment; forced marriage; inheritance issues and discrimination on account of gender; sexual abuse and rape; female genital mutilation, harmful widowhood practices etc. Cases relating to children were also handled such as neglect of parental responsibilities, harm, inhuman and degrading treatment and punishment etc. Prosecution of perpetrators who violated criminal related abuses have been recommended for prosecution to the Attorney General of the Federation or State as the case may be. Compensation and empowerment has been provided in appropriate cases to victims and survivors. Also psychosocial services have been provided when needed.

# PANEL ON END SARS PROTEST 2020.

- Following the non implementation of the report of panel on SARS violations of 2018-2019, there broke out massive nation wide protests in Oct 2020 tagged “END SARS PROTEST” The National Economic Council (NEC) Chaired by the Vice President, with membership of the 36 state Governors, directed setting up of END SARS panels in all the states where there were complaints or EndSARS protests. About 29 states set up independent investigative panels with the Commission playing active roles as members in each state.

# PANEL ON END SARS PROTEST 2020, CONT'D.

- The Panel's terms of reference among others are to:
- investigate allegations of human rights violations and abuse of power made against defunct SARS and other units of the Nigerian Police Force in line with Section 6(a) of the NHRC Act, 2010;
- make determination as to the damages or compensation payable in relation to any violation of human rights where it deems necessary in the circumstances of the case Section 6(e) of the NHRC Act, 2010;
- refer any matter of human rights violation requiring prosecution to the Attorney General of the Federation or of a State, as the case may be in accordance with the NHRC Act, 1995;
- make recommendations to government on:
  - Measures to be taken in respect of operatives of defunct SARS or officers of the Nigerian Police Force, if any, found in violation of human rights of citizens;
  - Propose remedial steps that may enhance the professional conduct of defunct SARS operatives, any succeeding unit and other members of the Nigerian Police Force and
  - Any other recommendations that may be considered appropriate.

# PANEL ON END SARS PROTEST 2020 CONT'D.

- The Panel by the NHRC at Abuja hqtrs received a total of 297 number of complaints, out of which:
  - (a) 25 cases were struck out (b) 12 cases were voluntarily withdrawn by petitioners (c) 1 case was dismissed
  - (d) 75 cases were decided. (e) 184 cases ongoing/concluded
- **Out of the 75 decided cases, 27 victims were paid compensation totaling the sum of N146M (One Hundred and Forty-Six Million Naira) Only.**
- **Another set of complainants will soon be paid compensation totaling about N300M as the panel concludes its reports soon.**
- The Abuja Panel constituted by the Commission is yet to conclude its final report but has recorded numerous landmark achievements with respect to payment of compensation to some victims of human rights violations. Several victims who lost their love ones were compensated while others whose fundamental human rights were violated were also compensated. This was a restoration of hope to victims of human rights violation, an assurance that violations will be redressed.
- All the 29 state panels have concluded their sittings and made reports and the NHRC will soon collate all the reports to make one comprehensive report to the Government for implementation. Of all the state panels, only Lagos state has been able to pay compensation to the victims. The recommendations will be in the following categories:
  - (a) indicted officers recommended for prosecution by state or federal Attorneys General
  - (b) officers who violated human rights recommended for various disciplinary actions by the police service commission or police force.
  - (c) officers who violated human rights recommended to pay compensation to victims or survivors or their families
  - (d) cases recommended for public apology by the police force or the police officer concerned

# EFFECTIVENESS AND IMPLEMENTATION OF DECISIONS AND RECOMMENDATION.

- The major challenge of the recommendations and decisions of the public inquiry mechanism of the National Human Rights institutions in Africa is the implementation.
- With the high level of disobedience of court orders and judgements at both the national and supranational levels, it is debatable whether a continent known for weak implementation of International treaties, court orders and judgements will obey or implement the recommendations and decisions of NHRI's.
- What the NHRC Nigeria has done is to get its establishment law amended to provide as follows,

Section 22(1)" An award or recommendation, made by the Commission shall be recognized as binding and subject to this section and this Act shall, upon application in writing to the court, be enforced by the Court.

(2). In this section, "court" means the Federal High Court or the High Court Of the Federal Capital Territory, Abuja or High Court of a State".

# COMMON METHODOLOGY OF PANELS OF INQUIRY BY THE COMMISSION

- **Panel Procedure**

- The procedure before the panel is likened to that of the Court but the strict rule of evidence as obtainable at the court is not adhered to as the panel is mainly a fact-finding panel. The following inquiry processes are thereafter adopted in accordance with the standard procedure of all panels of inquiry:
- Fair hearing to the parties ( including lawyer of own choice or legal support)
- Evidence gathering and notification/service/summon of parties/witnesses.
- Conferring with the complainant/respondent,
- Report writing/ chambers conferences and a host of other processes.
- These processes were adequately observed during the sitting of the Panels.

# CONCLUSION

- Considering the importance of respect for human rights in achieving accountability and good governance in Africa, there is need for awareness creation amongst lawyers of Africa, communities, witnesses and other interested individuals about NHRI's mechanism of public inquiry to make human rights effective in Africa. This would enable lawyer, persons of interest, victims or witnesses and other interested individuals, make use of this mechanism. The same goes to stakeholders like the law enforcement agencies, who are important parties to the inquiries. Considering the level of poverty and illiteracy in the continent, the public inquiry mechanism of the NHRI's in the continent remains a viable tool to making human rights effective in Africa. It is quick, less expensive, non technical and responsive to the masses of African Population.

# CONCLUSION CONT'D

THANK

YOU.

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