



CONCEPT NOTE ON THE PROPOSED PUBLIC NATIONAL INQUIRY ON SECURITY AND HUMAN RIGHTS IN KENYA

1.0 INTRODUCTION

Conflict and human rights are inextricably linked. This connection was established at the 1993 World Conference on Human Rights which observed the interrelation between international peace, security and human rights, the rule of law and justice in the broader context of democratization and development. This connection, which is elaborated further, forced a shift in conflict management approaches at the national, regional and international level.

Numerous situations around the world show that violent conflict impedes development and leads to serious human rights violations¹ - this was the case in Kenya in 2007/8. However, violent conflict can result from failure to protect human rights² as was seen during apartheid in South Africa³. While human rights violations as symptoms of conflict are usually easy to recognize (for instance extra judicial killings, forced disappearances, mutilation of limbs, forced displacement of communities, among others,) structural rights violations that result in conflict are not easy to discern. Sometimes these structural issues are embedded in laws and policies that sanction discrimination and exclusion of segments of the population.

A good example in Kenya is Sessional Paper No. 10 of 1965 on African Socialism which emphasized concentration of development efforts on high productive areas in the country and resulted in neglect and systematic marginalization of low productive areas. Consequently marginalized areas associated with the former Northern Frontier Districts were not prioritized for development projects and have experienced recurrent conflict over scarce natural resources.

This concept notes makes a case for KNCHR's comprehensive and systematic intervention in the ongoing conflict in Baringo and the broader North Rift, Northern part of Kenya and parts of the coastal region. It is intended that the process takes a phased approach in which the Baringo inquiry makes for phase 1 in 2015.

2.0 CONTEXT

Insecurity continues to rise in the country at an alarming rate with violence replicating itself in a variety of ways. However, the State's attention has been arrested by the severe consequences that are directly linked to violent extremism and radicalization that leads to violence. With the State's

¹ GIZ, Civil Peace Service (ZFD) & German Institute for Human Rights (DIMF). 2011. Connecting human rights and Conflict transformation: A Guidance for Development Practitioners. Pp 14. Accessed from www.gtz.de/Entwicklungsdienst/downloads/giz2011_en_hr-and-conflict-transformation.pdf on 9 December 2012

² Ibid

³ Parvliet, M. 2002. Bridging the Divide – Exploring the Relationship between Human Rights and Conflict Management. Pp 82 – 86. In Hens & Steffiszyn (eds). 2006. Human Rights, Peace and Justice in Africa, a Reader. Pretoria University Law Press: South Africa.

attention directed at curbing the effects of terror, not much focus has gone to violent acts occurring in “marginal” parts of the country. One such area that has been affected by recurrent violence is Baringo North and South and contiguous counties of Laikipia, West Pokot, Turkana and Samburu. This year alone, it is reported that more than people have been killed as a consequence of violence that pitted two ethnic groups against each other. The conflict in Baringo can be traced back to 2005 when it is alleged that a prominent member of the Ilchamus community was attacked and killed by members of the Pokot community. Subsequently there have been repeated reprisal attacks that have resulted in a high number of casualties and fatalities. Research reports attribute most of the violent attacks to members of the Pokot community. However the reports also acknowledge the role of the other communities in revenge attacks.

Cattle rustling is rife in the area and the same is complicated by commercialization of the practice with reports indicating that rustled cattle are sold in markets in Nairobi and neighbouring countries. Additional factors that complicate the conflict include easy access to small arms and light weapons as well as political polarization⁴. A 2012 research commissioned by PRAGYA⁵ also found that feelings of historical exclusion of the Pokots under President Daniel Moi’s Tugen led regime fuel ethnic tension in the region. Emerging trends in the conflict relate to the targeted attack of women and children⁶. Previously, violent attacks targeted direct participants in the violence. Recent trends however show that attackers are increasingly and deliberately targeting vulnerable groups – perhaps a pointer to changing rules of “war”.

In September 2014 and May 2015, KNCHR commissioned a fact finding mission to Baringo discerned the impact of the violence. KNCHR found that children were unable to access schools while the community was unable to access health centers. KNCHR also noted challenges of access to farmlands which had the potential to impact food security in the region. This has a direct impact on the realization of economic, social and cultural rights by the people residing in that area. The fact finding teams were unable to reach out all actors in the conflict due to challenges relating to the terrain. As a consequence they recommended that the Commission undertakes systematic investigations into the matter in order to gain better understanding of diverse human rights issues emerging from the conflict.

The foregoing context is what informs KNCHR’s proposal to conduct a public national inquiry into the human rights impact of insecurity in parts of Kenya.

3.0 JUSTIFICATION FOR PUBLIC NATIONAL INQUIRY

A national inquiry is an investigation into a systemic human rights problem in which the general public is invited to participate through providing evidence and written submissions, which has investigative and educational objectives and which results in a report with findings and recommendations. A national inquiry is a good means to address complex human rights situations

⁴ 2012, Conflict Assessment, pp 12 -13, PRAGYA accessed at https://www.pragya.org/doc/Conflict_Assessment_Report.pdf on 21 May 2015

⁵ Pragma is a non-governmental development organization established in 1995. Initiated in the global South, our current operations span India, Nepal, Sub-Saharan Africa, UK, and USA. See <http://www.pragya.org/introduction.php>

⁶ Ibid

that are historical and systemic in nature and that require comprehensive examination and report⁷. The conflict in the North rift region is complex in the sense that it has national and regional characteristics (involvement of communities from neighbouring countries of South Sudan, Uganda and Ethiopia, use of sophisticated weapons); dynamic in terms of actors and causes; systemic in the sense that there has been no accountability thus perpetuating a culture of impunity in which the perpetrators continue to thrive. It is therefore a useful subject for an inquiry such as the one proposed.

Public inquiries are preferred in cases of violation of economic, social and cultural rights. In the context of North Rift Kenya, whereas there are numerous research reports into the causes of the conflict, the actors and the triggers, there is inadequate information on the impact of the conflict on human rights and particularly the realization of socio-cultural and economic rights set out at Article 43 of the Constitution. An inquiry by the Commission will provide an opportunity for examination of these issues in a more systematic and detailed manner.

The conflict in the region has been cyclic. Casualties are not comprehensively known. It has been asserted that the profiled victims do not represent an accurate picture of all affected individuals. It is claimed that the profile appears to raise the status of particular victims and minimize others. The inquiry presents a unique opportunity to profile and acknowledge all the victims of the conflict, a critical first step in providing redress for them. Additionally, a public inquiry will enable the Commission obtain information that will help government ensure non-repetition. This being phase 1 of the national inquiry into the insecurity situation in the country the findings will serve to (i) draw national the attention on the human rights situation of the victims of the conflict (ii) highlight the intersection between the north rift conflict and the threat to terror in other parts of the country and the role this plays in deepening the insecurity countrywide.

Due to ethnic and political polarization, it is important that interventions be undertaken by agencies/ actors such as a National Human Rights institution (NHRI) that meets the test of credibility and impartiality. Because of the broad mandate of NHRIs as stipulated in Paris Principles⁸, KNCHR plays an important role in ensuring protection and promotion of human rights, through receiving complaints and conducting investigations into human rights violations and transmit them to competent authorities.. This has been confirmed in certain ways including through the recent re-accreditation of the Commission as an A-Status NHRI. Additionally, KNCHR has engaged in a number of conflicts thus cementing its credibility as an independent inquirer into sensitive issues. The most recent of these interventions relates to the investigative work carried out in Tana River where KNCHR's findings were wholly adopted by the Judicial Inquiry into the conflict in that region. It is thus just and appropriate for KNCHR to undertake this work.

3.1 Legal Basis of the Inquiry

The Constitution of Kenya underscores the importance of recognizing and protecting human rights and fundamental freedoms and goes further to provide frameworks for ensuring the protection and promotion of all human rights consistent with the national values that underpin the democratic

⁷ http://rwi.lu.se/app/uploads/2012/09/Conducting_National_Inquiries_Manual.pdf accessed on 22 May 2015

⁸ A set of core minimum recommendations adopted by the United Nations General Assembly relating to the status and functioning of national institutions for the protection and promotion of human rights.

governance of the country.⁹ Article 29 states that every person has the right to freedom and security of the person which includes the right not to be subjected to any form of violence from either public or private sources.

The Constitution further establishes a number of institutions to protect the sovereignty of the people, secure observance by all state organs of democratic values and principles and promote constitutionalism. One such institution is Kenya National Commission on Human Rights mandated to promote the observance and promotion of Human Rights in the country.

In furtherance of this mandate, KNCHR has investigated the violence in the region on several occasions as indicated earlier and made findings including the need to conduct a more comprehensive inquiry into the conflict and violence. The previous investigations can thus be treated as preliminary investigations. The inquiry which seeks to respond to the systemic nature of the violations can be deemed further investigations and is thus hinged on section 8 (d) of the KNCHR Act which mandates the Commission to investigate complaints of alleged violation of human rights and take steps to secure appropriate redress.

4.0 OBJECTIVES OF THE INQUIRY

The overall objective of the inquiry is to secure accountability for the human rights violations in the conflict.

Specific objectives include:

1. To determine the nature of rights violations
2. To ensure accountability for the rights violations
3. To raise public awareness and promote the debate on the obligations of the state as to the right to security of the person and property.

5.0 SCOPE, METHODOLOGY, CONSIDERATIONS & IMPLEMENTATION STRATEGIES

5.1 Scope

The Public National Inquiry will look into the impact of insecurity in the country sampling incidents in North Rift, Northern Kenya and Coastal. The Inquiry will be undertaken in a phased approach with the first phase scheduled for September 2015 to July 2016 in North Rift (Baringo and adjacent areas).

The conflict and violence in Baringo traditionally involved the Turkanas and the Pokot but has defied efforts by various stakeholders to restore harmonious coexistence and has now spread across all the remaining pastoralist communities to include the IlChamus, Tugen, Endorois and Arros. During this phase, the Commission expect to visit sampled areas in the following regions;

⁹ Article 10 (2) (a) and (b)

- I. Baringo North Sub County- Rondinin, Chepkewel, Kaborion, Tuluk, Kapturo, Chepkesin, Kamwetio, Boruiyo, Chemoe, Barkitiew, Kagir, Kosile, Yatia, Loruk, Ngaratuko, Bartabwa and Kalabat.
- II. Marigat Sub County – Mukutani Division, Laromoru, Losokoni, Rugus, Ngelecha, and Katilomwo. Arabal, Sirata, Nyimbei, Kapindasum
- III. East Pokot Sub County - Kapedo Churo, Chemolingot, Nginyang, Kositei, and Silale

5.2 Methodology

The inquiry will be undertaken through a consultative process guided by the three objectives outlined above. The inquiry will employ a mix of approaches in gathering the necessary information. These are as follows:

- a) Consultancy – the KNCHR will engage a security expert who would provide technical and ideal advice on the planning and implementation of the actual inquiry. The consultant will be involved in the entirety of the inquiry from its planning to report dissemination.
- b) Media campaign will be mounted via both print and electronic media (making particular use of local language stations as well as social media platforms) throughout the inquiry. The Commission’s media campaign will be guided by a communication plan and will outline appropriate methods of engaging the public during the inquiry.
- c) Desktop research – a comprehensive ongoing desk research involving the review of available literature and documentary evidence on conflict and violence in Kenya will be undertaken. This will help to determine information/ knowledge gaps. Additionally, a review of existing data and recommendations from human rights mechanisms will be undertaken to inform the normative framework. Data from the desk research will be analyzed along broad themes derived from the main objectives of the inquiry. This research will further enable mapping of areas that should be visited by the inquiry team.
- d) Preparatory stakeholder forums – the Commission will hold preparatory meetings with representatives of key stakeholders in matters related to conflict and human rights drawn from relevant government organs and civil society organizations. This will also involve breakfast meetings with opinion shapers of Baringo County e.g. Governor, Senator, members of parliament etc. The Commission will use these forums to review the objectives and scope of the inquiry. The meetings will also act as a reference groups for the inquiry and will be the link between the Commission and the wider society.
- e) Field interviews will be undertaken with a view to corroborate the findings of the desk research and identify gaps to be addressed during the public hearings. The Commission will interview key informants from sampled areas. Focus Group Discussions will also be held in the regions. Interviews and FGDs will be guided by appropriate tools developed for that purpose.

- f) Pre-hearing discussion forums will be held a day before the public hearings and will be used to sample witnesses and prepare them for the actual hearings based on the nature of violations.
- g) Public hearings will be spearheaded by a panel composed of five experts comprising of three KNCHR commissioners and two external experts. The panelists will listen to evidence from individual and group victims and/ or witnesses of conflict and violence in the different regions.
- h) Report writing will be the final stage of the inquiry and will involve compilation of the findings into a report, its validation, publication and dissemination. The consultant engaged by the commission will draft the report. The report will be subjected to peer review and stakeholder validation for quality control.
- i) National Experts Forum will be held at the conclusion of the regional hearings. It will be a three day forum involving selected experts on critical matters of conflict and violence arising from the pre-hearings and actual hearings. The draft report will also be scrutinized and will also serve as an opportune time for recommendations.
- j) Submission of memoranda to the inquiry team will be a critical method of collecting information from the public. The Commission will make a public invitation to individuals and institutions to submit written memoranda on a wide range of issues on insecurity, conflict and violence.
- k) Feedback forums will be held to disseminate the report to all the stakeholders including the people of Baringo County where the entry point of the inquiry will be and the rest of the public.

5.3 Considerations

The following considerations will underlie the inquiry:

1. Conflict sensitivity will be integrated in the entire framework of the inquiry. Conflict sensitivity means the ability of an organization to: 1) understand the context it operates in 2) understand the interaction between its intervention and that context and 3) act upon this understanding in order to minimize negative impacts and maximize positive impacts on conflict.¹⁰ KNCHR will therefore put in place adequate measures to ensure its intervention contributes to sustainable peace.
2. Gender and diversity mainstreaming will be enhanced throughout the life cycle of the inquiry. This means that women's and men's experiences will be taken into consideration in the design, planning and implementation of the inquiry. KNCHR will enrich the inquiry by documenting the experiences of men and women in the conflict and will interrogate the role they have played in the conflict (as participants and peace makers). KNCHR will

¹⁰– found at http://www.conflictsensitivity.org/sites/default/files/1/6602_HowToGuide_CSF_WEB_3.pdf accessed on 21 May 2015

ensure that the experiences of other marginalized groups are accurately documented in the inquiry.

3. Witness and victim protection will be an integral part of the design of the inquiry. KNCHR will put in place a mechanism to protect witnesses and victims from violence and/ or threats of violence or other acts.

5.4 Implementation Strategies

- i. **Capacity building** – the Commission will develop and deploy a capacity building plan with a view to equipping the various teams with skills and knowledge in selected areas including conflict sensitivity training, personal safety and security. The proposed training on conflict sensitivity is particularly critical to ensuring that the intervention does not aggravate the insecurity situation. In addition to this training, a capacity building plan for communities will be developed to be deployed after the inquiry as a way of ensuring that the outcomes of the process are sustainable. Communities will also be engaged on advocacy and lobbying to enhance sustainability of the action
- ii. **Media advocacy and communication plan** – given the emotive and sensitive nature of discourse around security, the Commission will develop a communications plan to ensure strategic engagement of the media. A schedule will be developed detailing the moments in which communication and information on the inquiry will be released to the public.
- iii. **Community organizing and peace building** – KNCHR will focus on building community dialogues around insecurity and mobilizing public support to demand accountability for the rights violations. Using the peace committees, KNCHR will focus on reviving peace dialogues and highlighting the need to coexist as communities.
- iv. **Psychosocial support and community integration** – KNCHR will integrate psychosocial support and counselling in the inquiry and avail these services to members of the community as and when they shall need the same. KNCHR will also reach out to other actors to lead the process of community reintegration and cohesion

6.0 OUTPUT

- i. The expected output is an inquiry report with actionable recommendations.
- ii. In addition to this, it is expected that media briefings highlighting information on the rights violations will result from this process.
- iii. Additionally, a human rights profile of the areas of focus will be developed and disseminated as an advocacy tool.

7.0 TIME FRAME

It is anticipated that this inquiry will run for 8 months starting September 2015 to May 2016. Annex 1 presents the activity plan scheduling the different activities.

8.0 BUDGET AND RESOURCE NEEDS

The estimated budget for phase 1 of the inquiry is Kshs. 10M (Annex 2 – Itemized Budget)

ANNEX 1: PROPOSED TERMS OF REFERENCE OF THE PANELISTS

A public inquiry requires the constitution of a panel of inquiry with multidisciplinary expertise. The panel will adopt the terms of reference at its first convening and set up an information management system as well as develop a work plan incorporating the approach to be used to accomplish the task with clear description of the role of each panelist.

The panel will specifically be tasked to;

- i. Lead public hearings and witness' statement taking
- ii. Develop a schedule of public hearings, interview and focus group discussions guide
- iii.
- iv. Conduct interviews with Key informants and relevant actors
- v. Document and analyse the findings of the hearings
- vi. Review task-relevant documents including relevant reports from key agencies such as NCIC
- vii. Conduct a desk review of existing data and recommendations from human rights mechanisms to serve as basis for the inquiry and the subsequent report

Required panel skills and competencies,

The Commission will engage two experts to support the inquiry team. These experts will be engaged with expertise that complements those of the Commission in order to enrich the panel.

ANNEX 2: TECHNICAL SUPPORT AND OPERATIONAL MODALITIES

A technical support team will be set up and established under the office of the convener and answerable to KNCHR chairperson. This team will be drawn from the secretariat and will be responsible for coordination of activities and logistical support.

The technical team will be based in the headquarters and working out of the Kitale regional office. As advised by the chair of the inquiry, the technical team will prepare periodic briefings for media and at the end of the inquiry organize a 'call back' session with the community in which the team and the community will agree the way forward.