



ASIA PACIFIC FORUM
ADVANCING HUMAN RIGHTS IN OUR REGION

Conducting a National Inquiry into Systemic Patterns of Human Rights Violation



A Manual for National Human Rights Institutions

Note

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Conducting a National Inquiry into Systemic Patterns of Human Rights Violation: A Manual for National Human Rights Institutions

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Foreword

The Asia Pacific Forum of National Human Rights Institutions (APF) and the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) collaborated for many years in building the capacity of national human rights institutions (NHRIs) in the Asia Pacific region through manuals and training programmes. These activities were very practical in their orientation. They equipped Commission members and staff to undertake the range of functions of their institutions more effectively, with better strategies and more professional methodologies. The conduct of national human rights inquiries has been one of the major subjects in these training programmes.

In 2012 the APF and the RWI published a manual on conducting national inquiries into systemic patterns of human rights violations. The manual explained what a national inquiry is, how it relates to the work of an NHRI as a whole and how it is undertaken. It provided a “how to” guide to NHRIs considering or conducting a national human rights inquiry.

The manual supplemented two other resources jointly produced by the APF and the RWI:

- a compilation of modules of a five-day training workshop on the conduct of national human rights inquiries, from the earliest planning stage through to evaluation
- a collection of materials on national inquiries, including materials on national inquiries conducted by NHRIs in the Asia Pacific region over the past 25 years.

These resources continue to be available on request.

As part of its 2020 strategy to integrate gender mainstreaming across all its existing thematic, functional and operational training programmes, the APF has reviewed its training manuals to ensure that they have sufficiently integrated and highlighted gender issues. As part of this strategy, in 2019 the APF revised the national inquiries manual. This revised manual still provides information on how to conduct a national inquiry. It also highlights more recent national inquiries conducted by a number of APF member NHRIs, while continuing to refer to older national inquiries of continuing relevance. The APF's Online Learning platform contains further information on both older and more recent national inquiries.

The APF expresses its great appreciation and gratitude to RWI Visiting Professor Brian Burdekin AO who contributed greatly to the joint APF-RWI work on national inquiries, including the earlier edition of this manual, the supplementary materials and the national inquiries training programmes. Professor Burdekin pioneered the innovative national inquiry process while Australian Human Rights Commissioner from 1987 to 1994, undertaking inquiries into homeless children and into human rights and mental illness. The development, spread and success of this process are due to his vision and commitment more than anything else

In producing this revised manual, the APF again encourages Asia Pacific NHRIs that have not yet undertaken a national inquiry to consider doing so. It seeks to make information about the Asia Pacific experience in pioneering national inquiries available to NHRIs outside this region. And it reflects on the lessons that have been learnt by institutions that have already undertaken national inquiries so that future national inquiries will be as effective and as successful as possible.



Kieren Fitzpatrick

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The original project coordination was done by Suraina Pasha. Research assistance was provided by Erin Crawford and Clare Sidoti. The gender review and update of the project was coordinated by Aishath Fasoha.

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List of abbreviations

APF	Asia Pacific Forum of National Human Rights Institutions
NGO(s)	non-governmental organisation(s)
NHRI(s)	national human rights institution(s)
OHCHR	Office of the High Commissioner for Human Rights
Paris Principles	Principles Relating to the Status of National Institutions
RWI	Raoul Wallenberg Institute of Human Rights and Humanitarian Law
UN	United Nations

Introduction for users

Over the past 30 years national human rights institutions (NHRIs) in the Asia Pacific region have pioneered an innovative approach to their work, the creative methodology known as national inquiries.

A national inquiry is an inquiry into a systemic human rights problem in which the general public is invited to participate. National inquiries are conducted in a transparent, public manner. They involve public evidence from witnesses and experts, directed towards the investigation of systemic patterns of human rights violation, and the identification of findings and recommendations. National inquiries require a wide range of expertise within the institution, including researchers, educators, investigators and people with experience in policy development.

National inquiries implement a variety of functions of NHRIs, including investigation, analysis, reporting, advice and recommendations, public awareness raising and human rights education. One reason why the methodology is so creative is that it involves the implementation of all these functions, in a comprehensive, integrated manner, through the single process of a national inquiry.

This manual explains what a national inquiry is, how it relates to the work of an NHRI as a whole and how it is undertaken. The manual begins with a short introduction to NHRIs, focusing in particular on the Paris Principles. It then discusses the concept of the national inquiry – what it is, when it is appropriate to undertake one, when it is not and what it can achieve.

Most of the manual is directed towards a step-by-step description of how to undertake a national inquiry. Chapter 2 identifies the 14 steps in conducting a national inquiry. The steps are not consecutive steps. That is, they are not undertaken one after the other, with a new step starting only when the previous step has been completed. Rather, some steps are undertaken simultaneously or there may be movement back and forth among several steps. Each step, however, represents a different activity that is part of the national inquiry process. Each step is the subject of a separate chapter of the manual. In this way the manual shows what needs to be done in conducting a national inquiry and how it is to be done.

The manual is intended to give NHRIs the basic information they require to consider whether to commence a national inquiry and then to conduct it.



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Chapter 1:

National human rights institutions and national inquiries

KEY QUESTIONS

- What is a national human rights institution?
- What are the Paris Principles?
- How do national inquiries relate to the core functions of an NHRI?



1.1 WHAT IS A NATIONAL HUMAN RIGHTS INSTITUTION?

National human rights institutions (NHRIs) are official, independent State institutions established by law to promote and protect human rights. Some NHRIs are established under the constitution of their country. Others are established by an act of the legislature (the parliament). They have broad mandates for the promotion and protection of human rights. The establishing laws give the institutions certain functions and should provide them with the powers necessary to perform those functions. In all cases NHRIs have functions of researching, advising and educating on human rights issues. In most cases they also have responsibility to investigate violations of human rights and to seek to resolve complaints of violation.

Very early in its history, the United Nations (UN) recognised the need for States to establish their own domestic institutions for the promotion and protection of human rights. In 1946, the UN Economic and Social Council passed a resolution inviting UN Member States to consider establishing local institutions. Then in 1978, more than thirty years later, the UN convened a seminar for States on national institutions. However, very few institutions were established before the 1990s.

The Second World Conference on Human Rights, held in Vienna, Austria, in 1993, provided a strong boost to the establishment of NHRIs. The Vienna Declaration and Programme of Action, adopted unanimously by the Conference, declared

The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights.

The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the 'Principles relating to the status of national institutions' and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.¹

Each year following the Vienna World Conference, until its replacement by the UN Human Rights Council in 2006, the UN Commission on Human Rights passed a resolution reaffirming international support for NHRIs and encouraging all States to establish them.² The Human Rights Council adopted a resolution on NHRIs at its session in June 2011 in which it reaffirmed "the importance of the establishment and strengthening of effective, independent and pluralistic national institutions for the promotion and

protection of human rights, in accordance with the Paris Principles”.³ It has passed a resolution every year since.⁴ There have been similar resolutions in the General Assembly every second year.⁵ From 1995, the High Commissioner for Human Rights has responded to the Vienna Declaration and Programme of Action and to UN resolutions by supporting the establishment and strengthening of these institutions. From 1995 to 2003, a Special Adviser on National Institutions worked with the High Commissioner.

1.2. THE PARIS PRINCIPLES

NHRIs should be established in conformity with the Principles Relating to the Status of National Institutions (the Paris Principles).⁶ The Vienna Declaration and Programme of Action encouraged “the establishment and strengthening of national institutions, having regard to the ‘Principles relating to the status of national institutions’...”.⁷

In 1991, the UN Centre for Human Rights convened a workshop of NHRIs for the first time. There were fewer than 20 NHRIs then and almost all attended. They met in Paris from 7 to 9 October 1991, along with representatives of Governments, UN agencies, non-governmental organisations (NGOs) and regional human rights mechanisms. They drafted and adopted Principles that were subsequently endorsed by the UN Commission on Human Rights and the General Assembly.⁸ The adoption of the Paris Principles was unusual in that the UN system usually does not endorse standards that are not drafted through its own processes. The fact that they were drafted by NHRIs themselves, however, makes them relevant to and credible among the institutions.

The Paris Principles have provided a benchmark, a set of minimum requirements, for NHRIs. They continue to be the standard by which the structure, form and legal basis of an institution are assessed in determining whether the institution is to receive international recognition. They do not ensure the effectiveness of an NHRI, only that it conforms in law, structure, mandate and scope of operations with what is the minimum acceptable internationally. They are an instrument for structural evaluation, not for performance-based or impact-based evaluation.⁹

The Paris Principles require that NHRIs have guarantees of independence.

- The independence of NHRIs must be **legal**, that is, provided by the law under which the institution is established. The law must provide that the Government cannot instruct the NHRI to adopt a certain policy or undertake a certain course of action.
- Independence must be **operational**. The NHRI must be free to decide what projects or activities it will undertake or not undertake.
- The NHRI must be independent in **policy**, able to determine itself what its views are on particular human rights issues and what recommendations to make to improve the country’s human rights performance.
- The NHRI must have **financial** independence to be able to determine its own priorities for funding, including the allocation of the budget provided to it by the State, among its various programmes and activities.

3 Human Rights Council Resolution 17/9; operative para. 1.

4 The most recent is Human Rights Council resolution 39/17, adopted on 28 September 2018. See UN document A/HRC/39/L.19/Rev.1 at <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G18/288/47/PDF/G1828847.pdf?OpenElement>.

5 The most recent is General Assembly Resolution 72/181, adopted on 19 December 2017. See UN document number A/RES/72/181 at www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/72/181.

6 “National Inquiries” in *National Human Rights Institutions in the Asia Pacific Region*; Brian Burdekin, with Jason Naum; 2007.

7 Vienna Declaration and Programme of Action; part 1, para. 36.

8 Commission on Human Rights Resolution 1992/54 in 1992 and General Assembly Resolution 48/134 in 1993.

9 *Performance and legitimacy: national human rights institutions*; Richard Carver, International Council for Human Rights Policy; 2004 (2nd edition).

- Most importantly, the NHRI must have independent **members**. To ensure this, the law must establish clear and appropriate criteria and procedures for the appointment of members; an extraordinary procedure where dismissal is necessary because of misconduct or incapacity; and a fixed term of office of sufficient length to encourage independence in thought and action.

1.3. THE FUNCTIONS AND POWERS OF NHRIs

The Paris Principles also describe the kinds of functions that NHRIs have and the kinds of powers they require to perform those functions.

The broad functions include dealing with individual complaints, initiating their own investigations, addressing systemic problems, making recommendations to the Government, intervening in court proceedings and undertaking awareness raising and community education. Not all NHRIs will have all these functions. For example, some institutions are not authorised to act quasi-judicially in handling individual complaints. However, most NHRIs have these functions. In the Asia Pacific region, almost all NHRIs have quasi-judicial powers to enable them to receive, investigate and seek to resolve complaints of human rights violation.

The kinds of powers that are considered necessary to perform these functions include compelling the production of documents, entering and inspecting premises, compelling the attendance of a witness and examining a witness on oath. Some NHRIs have powers to initiate prosecutions, including in relation to criminal offences that have human rights dimensions.

Some have power to issue determinations when handling complaints. Most act in an advisory or recommendatory role only, appropriate to their status as institutions distinct from the Government, the legislature and the courts.

1.4. THE PARIS PRINCIPLES AND NATIONAL INQUIRIES

The Paris Principles do not make specific reference to national inquiries. Nonetheless the functions and powers enumerated in the Paris Principles are the functions and powers an NHRI requires to undertake a national inquiry. In fact, an NHRI performs many of its functions when undertaking a national inquiry and it is called on to exercise many of its powers. A national inquiry enables the institution to conduct investigations into a serious human rights issue; to expose human rights violations; to develop findings and recommendations in relation to the issue considered; to raise public awareness and provide human rights education generally and on the specific issues considered; and to identify future action that should be taken by the institution itself or by others to provide remedies to victims and to ensure better enjoyment of human rights in future.

KEY POINTS: CHAPTER 1

- NHRIs are official, independent State institutions established by law to promote and protect human rights.
- The Paris Principles set out minimum requirements for an effective independent NHRI, the standard by which the structure, form and legal basis of an institution are assessed in determining whether the institution is to receive international recognition.
- The Paris Principles require that NHRIs have guarantees of independence.
- A national inquiry is a mechanism by which NHRIs are able to pursue many of their core functions of investigating, educating, raising awareness, monitoring and advising on human rights issues.



Chapter 2:

The concept of a national inquiry

KEY QUESTIONS

- What is a national human rights inquiry?
- Why conduct a national inquiry?
- What factors should be considered in deciding whether to conduct a national inquiry?
- What are the steps in conducting a national inquiry?



2.1. THE NATURE OF A NATIONAL INQUIRY

A national inquiry is an investigation into a systemic human rights problem in which the general public is invited to participate. Many NHRIs undertake national inquiries as part of their activities to fulfil their mandates. National inquiries are conducted in a transparent, public manner. They involve public evidence from witnesses and experts, directed towards the investigation of systemic patterns of human rights violation and the identification of findings and recommendations. National inquiries require a wide range of expertise within the institution, including researchers, educators, investigators and people with experience in policy development.

A national inquiry results in the production of one or more reports that set out the evidence the inquiry has received, its analysis of the situation, its findings of fact and its recommendations. The recommendations can be quite wide ranging, addressed to many within a country with responsibilities in the particular area of human rights examined. They can be addressed to the Government, private sector corporations, NGOs, religious institutions, academic institutions, the media and other civil society bodies. They can also be addressed to individuals who have significant parts to play within the community, including in relation to the particular issue.

Because of their nature, national inquiries are unlike other functions undertaken by an NHRI, even if they include many of those functions. They involve investigation – but much of the investigation is conducted in a public forum and evidence is provided directly, usually in public, by victims, experts and possibly perpetrators. They have an educational component which is unlike other forms of investigation undertaken by the NHRI. A national inquiry requires research but much of the research has already been undertaken and the function of the inquiry is to collate and analyse it.

The national inquiry process has been developed by NHRIs within the Asia Pacific region. It has been found to be especially useful in enabling a broad examination of a complex, systemic pattern of human rights violation. It deals with large situations rather than individual complaints. It can still result in recommendations that provide remedies for individuals but its principal focus is the systemic pattern of violation. For that reason it has high educational value. It introduces, exposes and explains a complex situation to the broad community, offering an analysis based in human rights law and providing recommendations for systemic responses.

The conduct of a national inquiry is supported by the powers given to the NHRI in law. NHRIs rarely exercise these powers, including in the course of a national inquiry, but the very existence of the powers provides a strong legal underpinning that encourages cooperation with the inquiry process and with the institution. The power to require the attendance of a witness, for example, may not need to be used. Its mere existence can be sufficient to ensure that the witness attends.

The power to require production of a document may not need to be used because again its mere existence is sufficient to ensure that the document is produced. Strong powers are essential for the effective conduct of a national inquiry, even if those powers are never used. Because NHRIs, unlike NGOs and academic bodies, possess these powers, they are well placed to conduct a national inquiry into a systemic pattern of human rights violation.

2.2. WHY HOLD A NATIONAL INQUIRY?

Professor Brian Burdekin, who pioneered the national inquiry process when he was Human Rights Commissioner in Australia, lists nine reasons to conduct a national inquiry.

1. First, through a national inquiry, a large number of individual complaints can be dealt with in a proactive and cost-effective way – including cases of individuals who for various reasons, including disability, isolation or ignorance of the Human Rights Commission’s mandate or even its existence, would not have been able to approach the institution for assistance.
2. Second, the process of preparing terms of reference for the inquiry should be conducted in consultation with NGOs and others representing, or advocating on behalf of, affected individuals. This process has a dual benefit – in enhancing NGOs’ understanding of the NHRI’s role and in enabling the institution to better inform itself by consultations with those in the community directly involved in the relevant issues.
3. Third, conducting public hearings open to the media is an extremely cost-effective way of educating both the general public about the institution and its responsibilities and also informing particular groups within the community who have specific responsibilities for the issues being investigated and their human rights implications. These “groups” include politicians responsible for framing legislation and programmes and bureaucrats responsible for policy advice.
4. Fourth, a national inquiry can most effectively address systemic violations of human rights – based on the evidence from individual cases, but also embracing an examination of the laws, policies and programmes (or lack of them) which have given rise to the violations in question. It is important to understand that many of the most vulnerable and disadvantaged groups, who most need the assistance of NHRIs, have been victims of widespread, systematic and sometimes systemic discrimination.
5. Fifth, as the national inquiries concerning homeless young people, indigenous peoples and those affected by mental illness clearly demonstrate, information assembled on a national basis, through hearings, submissions and research, enables the institution to effectively discharge its advisory functions in respect of legislation and government policies and programmes.
6. Sixth, since such inquiries afford opportunities to politicians, bureaucrats and other independent agencies, to present their views in submissions or at hearings, this strategy enables the NHRI to strengthen its cooperation with other important “institutions”.
7. Seventh, based on experience, the scope of the national inquiry illustrates and educates, better than any other strategy, the indivisibility and interdependence of civil and political rights and economic, social and cultural rights. This is important for achieving practical results – particularly in jurisdictions where civil and political rights are regarded as being justiciable – but economic, social and cultural rights are not.
8. Eighth, as the national inquiries on homeless children and the human rights of those affected by mental illness demonstrate, these inquiries are premised on the principles prescribed in relevant international human rights treaties and other instruments. This is an extremely effective way of actually “implementing” these standards – by using them as benchmarks against which national laws, policies and programmes can be assessed.
9. Finally, the community awareness and political pressure generated by a well-publicised national inquiry maximises the likelihood that the NHRI’s recommendations to the parliament and/or Government will produce practical results. In the world of human rights institutions, integrity and good intentions are important – but credibility in the community comes only with the capacity to demonstrate that the institution is effective – and produces significant results.¹⁰

10 “National Inquiries” in *National Human Rights Institutions in the Asia Pacific Region*; Brian Burdekin, with Jason Naum; 2007.

2.3. SITUATIONS THAT LEND THEMSELVES TO A NATIONAL INQUIRY PROCESS

A national inquiry is a good means to address the most complex human rights situations that NHRIs confront. Whereas NHRIs may conduct public hearings into individual complaints, that process is quite narrow and confined to the specific facts of the particular complaints. A national inquiry, by contrast, addresses patterns of violation revealed by large numbers of complaints, or other information addressed to the NHRI, that require a comprehensive approach.

National inquiries address situations of human rights violations that affect the entire country or a significant part of it. This is a space dimension. There is also a time dimension. A national inquiry is a good means to handle an historic pattern of human rights violations, such as practices that have become embedded over many years or decades in the history and culture of the country and that are difficult to investigate on the basis of isolated individual actions.

The complexity of the situation being investigated requires that any response be undertaken by a significant number of different actors, not only the Government. The national inquiry process enables the identification of all those who have some past, present or future role in relation to the situation or some responsibility for its causes or consequences. It therefore permits findings and recommendations to be made in relation to all those who share responsibility.

The educational dimension of the national inquiry process makes it especially useful to address human rights issues that have a low level of public and political recognition or acceptance. Often even situations that are well known may not be recognised for their human rights dimensions. A national inquiry will reveal the full dimensions of the situation in terms of human rights law and provide a human rights analysis and human rights recommendations. The public process of the inquiry ensures that the issue itself becomes better known and that its dimensions are better understood. National inquiries attract significant media attention and so they can raise the profile of little known and little understood issues. That in turn encourages greater political attention to the issue and promotes pressure for an adequate response and for changes in public policy and practice.

The national inquiry process is also well suited to the examination of situations of violation of economic, social and cultural rights. These situations are typically far more complex than situations of violation of civil and political rights. There are often many more actors involved and sometimes social and economic forces play significant parts in causing the violations and in making remedial action difficult to identify and implement. Seeking to identify and hold accountable a single individual or organisation for a violation of an economic, social or cultural right will usually confuse a situation and contribute little to its resolution. The complex nature of the enjoyment of these rights requires detailed analysis to identify all of the actors that need to make a contribution to the resolution of violations.

Some of the national inquiries described in this manual are inquiries into violations of economic, social and cultural rights. They include the right to health; the right of indigenous peoples to lands and culture; access to services for transgender and gender diverse people; and the removal of indigenous children from their families.

2.4. OTHER FACTORS IN DECIDING WHETHER TO CONDUCT A NATIONAL INQUIRY

A national inquiry is a large undertaking and should not be commenced without serious consideration of all the issues and a clear decision to proceed. There are many factors to be considered.

2.4.1. The nature of the human rights issue

The first factor is the nature of the human rights issue. A national inquiry is a good way to examine a situation that is recognised as serious, whether or not it is recognised as a human rights problem. Where there is broad consensus about an issue that needs to be addressed, but a lack of understanding of the issue itself or political hostility towards resolving it, the national inquiry process assists in developing broad consensus on the nature of the problem, its human rights dimensions, the urgency in addressing it and the best ways to do so. It is a process that promotes a political response because it builds community consensus, and therefore political pressure, for a solution. The capacity of the inquiry to attract media and public attention is therefore a critical issue in deciding whether to undertake one. Without media and public attention it will not be possible to build the necessary community support for addressing the issue and, as a result, the necessary political will to do so. But, if it is to attract media attention, it must be able to be conducted in public. Many human rights issues are sensitive and evidence has to be collected confidentially. An issue that primarily requires confidential evidence is not well suited to being addressed through a national inquiry process.

2.4.2. The capacity of the NHRI

The second factor is the capacity of the institution to undertake a national inquiry. A national inquiry is a complex exercise that can be expensive and staff intensive. The NHRI must be able to access the necessary resources, both financial and personnel, to be able to undertake the inquiry effectively. Any decision to conduct a national inquiry must be preceded by a realistic assessment of the resources necessary to do so effectively and identification of those resources to ensure that they are available. Realistic budgeting and identification of resources prevent mistakes being made in embarking on an inquiry without having the capacity to do so effectively and successfully – right to its conclusion and beyond. Ensuring that staff with the necessary expertise and experience are available prevents a crisis developing during the conduct of the inquiry when some necessary skill is missing or when the number of expert staff required is not available.

2.4.3. The likelihood of effectiveness

The NHRI must also look, in a realistic way, at the prospects of a national inquiry leading to recommendations that can be implemented and will be implemented. Those most affected by human rights violations – the victims and their families and communities – are entitled to remedies for past violations and action to prevent future violations. They should not have their hopes and expectations raised when there is no prospect of either remedy or prevention. If a situation is inherently incapable of resolution, then a national inquiry has nothing to contribute. In making this assessment, however, it is necessary to look long-term, not short-term. There may be no national resources or no political will to address a human rights situation immediately but it may be possible to find resources or build will over time. It is also necessary to look broadly at solutions, not narrowly. It is usually impossible to undo a violation that has been committed and so, if undoing the violation is the only criterion for deciding whether to undertake a national inquiry, then there is no point in doing so. However, there are other results that are equally valid: acknowledging victims, finding ways to give them redress and identifying preventive measures for the future. The assessment of possible results has to be long-term and broad.

2.4.4. The appropriateness of the NHRI

Finally, the NHRI needs to consider whether it is the appropriate organisation to conduct an inquiry on this issue and whether conducting an inquiry would position it well within its society. Because of the high profile that national inquiries attract, they increase the profile of the NHRI itself. They can place the institution in a different light and so change people's perceptions of its role. Because a national inquiry is well suited to the consideration of economic, social and cultural rights, an NHRI conducting one will be seen as having an interest in those kinds of rights, with broad public appeal, rather than being concerned solely with the civil and political rights of a small group. An NHRI must have a concern for the rights of prisoners – for example, including their humane treatment and freedom from torture – but these issues do not touch directly the great majority of the population. The right to health and the right to education do. Undertaking a national inquiry on an issue in these areas, therefore, can lead to the NHRI being seen as concerned about, and important to, a much greater proportion of the population. Not only does it change popular conceptions of the nature of human rights, it also changes perceptions of the nature of the NHRI. An NHRI that may have been seen as a “prisoners’ rights institution” is transformed in the minds of the public into a broad “human rights institution” in which they have a stake.

A national inquiry should not be undertaken when these factors cannot be satisfactorily addressed: if the NHRI is not the organisation best placed to examine the issue; if there are no realistic prospects of making a useful contribution for victims and their families; if the issue is not one that lends itself to public inquiry; or if the available resources are inadequate.

Criteria for deciding whether to conduct a national human rights inquiry¹¹

Developed by the Australian Human Rights and Equal Opportunity Commission and the Uganda Human Rights Commission in 2000 and expanded at a workshop in Kampala, Uganda, in 2003.

Criteria related to the Commission as an institution

- Whether the Commission has the necessary public credibility (including independence)
- Whether the Commission is the appropriate body or the only body responsible for the subject matter
- Whether the Commission is able to manage public expectations
- Whether the Commission can accommodate a variety of interests and views on a topic

Criteria related to the significance of the topic

- Whether there are strong community stakeholders for the topic
- Whether requests have been received for the inquiry from the relevant sector
- Whether the topic is ground-breaking or has already been well-covered
- Whether the public agrees generally that the topic is a relevant one
- Whether the subject can sustain public interest
- Whether the topic would attract widespread public empathy or, alternatively, would be controversial

¹¹ *Public Inquiry Planning Model Guidelines for Commonwealth Human Rights Commissions*; Workshop for Commonwealth Human Rights Commissions, sponsored by the British Council; Kampala, Uganda; 25–27 February 2003.

Criteria related to the Commission's resources

- Whether any previous inquiries were successful or, if unsuccessful, whether the problems can be overcome
- Whether Commission resources are adequate (includes financial and human resources)
- Whether the Commission has the expertise or can obtain it
- Whether resources can be committed to evaluation and follow-up
- Whether the Commission could work in partnership with another body

Criteria relating to the potential effectiveness of an inquiry on this topic

- Whether other strategies would be as effective
- Whether the Commission will be able to come up with implementable recommendations – the report should not be a mere academic treatise
- Whether it is likely that the inquiry's recommendations will be implemented

Criteria related to the suitability of the topic for an inquiry

- Whether the core evidence can be given in public
- Whether witnesses can be identified and will be available
- Whether the basic data are available.
- Whether the Commission can protect and support vulnerable witnesses and their families
- Whether the topic may open the Commission to a risk of retaliation

2.5. STEPS IN THE NATIONAL INQUIRY PROCESS

There are fourteen steps in the national inquiry process:

1. Choose the issue
2. Prepare a background or scoping paper
3. Identify, consult and engage stakeholders
4. Draft objectives and terms of reference
5. Appoint Inquiry Commissioners and staff
6. Gather other resources
7. Finalise an inquiry plan, including monitoring and evaluation
8. Obtain information: research and evidence
9. Conduct public hearings
10. Develop recommendations
11. Prepare the report
12. Release the report
13. Follow up
14. Evaluate

This manual examines each of these steps in turn.

KEY POINTS: CHAPTER 2

- A national inquiry is an investigation into a systemic human rights problem in which the public in general is invited to participate through providing public 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 that are historical and systemic in nature and that require comprehensive examination and report.
- A national inquiry is a very effective mechanism but a demanding one and so should be undertaken only after careful consideration of all the relevant factors as to the appropriateness of the issue for the national inquiry approach and the capacity of the NHRI to undertake the inquiry successfully.



Chapter 3:

Choose the issue

KEY QUESTIONS

- Why is it important to choose the right human rights issue for a national inquiry?
- What issues lend themselves to the national inquiry approach?
- What criteria can be applied in choosing the issue?



3.1. THE IMPORTANCE OF CHOOSING THE MOST SUITABLE ISSUE

The national inquiry process is especially suited to the investigation of complex situations of human rights violation.

National inquiries are a good means to address the most complex human rights situations that NHRIs confront. They are not suitable to address individual or isolated complaints of human rights violation but rather patterns of violation that apply to the entire country or a significant part of it. This is a space dimension. There is also a time dimension. A national inquiry is a good means to handle historic patterns of human rights violation, such as practices that have become embedded over many years or decades in the history and culture of the country and that are difficult to investigate on the basis of isolated individual actions. The complexity of the situation being investigated requires that any response be undertaken by a significant number of different actors, not only the Government. The national inquiry process enables the identification of all those who have some past, present or future role in relation to the situation or some responsibility for its causes or consequences. It therefore permits findings and recommendations to be made in relation to all those who share responsibility.

In choosing the issue to be the subject of a national inquiry, these factors should be taken into account. Not all issues lend themselves to the national inquiry methodology. The issue to be investigated should be selected on the basis that a national inquiry is particularly suitable as a mechanism to deal with systemic or historic patterns of human rights violation.

Three broader considerations should be borne in mind.

- The issue must have a strong, clear human rights dimension. It may involve violation of a particular right or group of rights but the individual right or rights should be clearly identified at the very beginning so that the NHRI and the broader community know that the inquiry concerns human rights and what exactly those rights are.
- The inquiry process is especially suited to investigating and addressing violations of economic, social and cultural rights. Careful consideration should be given to whether there are any situations of violation of these rights into which the NHRI should and could inquire.
- The issue should be selected with a view to the possibilities for human rights education through the public nature of the national inquiry methodology.

3.2. CRITERIA FOR SELECTING THE ISSUE

In considering whether to undertake a national inquiry, an NHRI will usually have many possible issues that could be investigated. It will also find that it encounters pressure, certainly internally and possibly externally, to adopt one issue or another, as different individuals and groups express their priorities and preferences. It will be important to have clear, explicit criteria by which the various possible issues will be evaluated for their suitability and by which the final selection will be made. Clear, explicit criteria ensure that all the possible issues are considered in an orderly manner, that all relevant factors have been taken into account, that there is a good framework by which the final decision is taken and that the final choice can be justified transparently, if necessary. The NHRI should begin the selection process by adopting the criteria by which the decision will be made.

There is no definitive list of criteria. These are criteria that could be included.

3.2.1. How objectively significant the issue is in the country

All human rights are important and every violation is significant. However, the extent of the significance of a violation will vary from country to country. It will be affected by factors such as:

- the number of persons affected by violations, directly and indirectly
- the spread of violations through the country
- the length of time over which violations have been occurring
- the changes in the patterns of violation over time
- the degree of severity of the consequences of the violations, including the impact on those most vulnerable to human rights violations.

These factors interrelate in different ways. Sometimes the strength of one factor may outweigh the weakness of another. For example, a situation of human rights violation may be significant because of the very large number of persons affected, even though the impact on each person is not extreme. A failure to provide basic primary education to the majority of children will be a very significant human rights issue, even if the country is poor and illiteracy is high and most children live in subsistence families. On the other hand, a situation may be significant because of the severity of the impact, even though the numbers are relatively small. Extrajudicial killing is perhaps the most serious form of human rights violation. A pattern of killings on a persistent basis across a country may be considered highly significant even if a relatively small number of people, say 20 or 30, are killed each year. The same could be said about other particularly egregious practices, such as torture. The various factors must be considered separately and together to determine the significance of the pattern of violations on a nationwide basis.

3.2.2. How strong the public perception is of the significance of the issue

Determining the significance of the issue is subjective and requires balancing. If the public is already convinced that the issue is of enormous significance, then a national inquiry may not be necessary. All that may be required is a project to identify what needs to be done to provide redress, including prevention of future violations. On the other hand, if there is broad agreement that the issue is of no significance whatsoever, the task of public awareness raising may well be beyond the capacity of any national inquiry. Some other approach may be needed first, for example, merely to convince the community that there is an issue.

A national inquiry is best conducted when there is some public awareness of the issue, some appreciation that it is serious and some support for addressing it but a broad lack of knowledge and understanding of the nature of the issue, the extent of the violations, the seriousness of the harm suffered and the kinds of things that must be done to provide redress and ensure prevention.

A national inquiry can be especially effective in transforming awareness of an issue that is known but not understood in human rights terms. It can take an issue or a situation, such as family violence, particularly against women and girls; the separation of children from their families; the alienation of indigenous peoples from their lands; murders and rape of women in the name of family pride; the impact of climate change; and multiple levels of discrimination experienced by transgender and gender diverse people. Through raising awareness of human rights obligations and exposing the experiences of those suffering violations, it can then transform public understanding of the issue or situation and the legal position of the victims.

3.2.3. Whether the issue has been the subject of previous intensive investigation

A national inquiry should be able to add significantly to the knowledge and understanding of an issue. It need not be restricted only to issues that have never been studied previously but it has to be able to shed new light on the subject and add significantly, if it is to be justified. It has to be a “ground breaker”, not simply another process that goes over old ground. If there has already been intensive investigation and study of the issue, the NHRI may be able to add little to existing knowledge through a national inquiry and so it would be better to focus on another issue.

3.2.4. How much external commitment there is to the issue

To be effective, a national inquiry needs an active, engaged civil society that will collaborate in the work of the inquiry, contribute to its hearings and other processes, and support and advocate for its recommendations. Public advocacy is important for the implementation of an inquiry’s recommendations but the NHRI cannot build a popular movement around an issue where there is nothing at all to begin with. It can build on an incipient movement but it cannot build on nothing. Assessing the existing strength of civil society commitment to the issue, and the potential to build momentum for implementation, is an important part of evaluating the potential of the issues that could be investigated.

External pressure on the NHRI about the issue is one indicator of external commitment to the issue. External pressure should not be the sole or even the principal criterion but it is a useful indicator of public perception of an issue and commitment to a possible national inquiry.

Another related indicator is the political and popular strength of the NGOs already engaged on the issue. If the NGOs advocating for the inquiry are influential and well based in the community, then the NHRI will know that there will be powerful advocates for the inquiry while it is underway and for its recommendations when it has concluded. On the other hand, if the issue involves serious and systemic human rights violations, such as ignoring the rights of women who are murdered or raped in the name of family pride, the NHRI may decide to proceed even if there are no NGOs pursuing the issue.

3.2.5. What the potential is to build broader, long term public interest in the issue

To be effective, the national inquiry will need to build and maintain momentum. It will need to build and maintain public interest and support. This is different from the public perception of the significance of the issue. Many human rights issues are seen as significant but there is little public interest and no public pressure to resolve them. For a national inquiry to be effective, it must be able to build that interest and that pressure and then sustain them over the long term. This support must be built and maintained among a wider constituency than the expert groups and key interest groups that are especially attached to the issue. A key factor in deciding what issue to choose is the potential to build and maintain this kind of broader support. This has both external and internal dimensions.

Externally, the question goes to popular attitudes and prejudices in relation to the issue. A national inquiry can challenge and change popular prejudices where there is a degree of openness in the community and the national inquiry process itself is effective. As later chapters discuss, the inquiry process focuses on victims first and foremost and on enabling them to tell their stories and experiences to the broader community. This can transform public attitudes towards the victims themselves and towards the issue being investigated.

However, there is also always a danger that the inquiry process can reinforce and entrench prejudices and hostility. In deciding the issue, the NHRI needs to assess and weigh the strength of public attitudes and the potential to build and maintain public and political support for change.

Internally, this is a question not of the worthiness of the issue but of the strategic capacity of the NHRI and the national inquiry. It relates to the expertise and skills of the NHRI to be able to deal with the particular issue in a way that builds broad public support. A particular issue may be important and may be able to attract public support but factors within the NHRI – usually personal, ideological or political factors – may make it impossible for that NHRI to mobilise that support. If the NHRI is uncomfortable with an issue, or unable to deal properly with it because of internal divisions or other factors, then it would be better conducting a national inquiry on another issue.

3.3. CHOOSING THE ISSUE

Choosing the issue is one of the most important decisions to be made in relation to a national inquiry. Once an issue is chosen and publicly announced, the NHRI is committed. It is too late to back out. So the NHRI must allocate the necessary time, attention and care to the task. The final selection should be a decision of the highest decision-making body within the NHRI, usually a plenary meeting of the NHRI Commissioners. It should be made on the basis of a comprehensive briefing paper from staff, canvassing all options. It should be thoroughly discussed within the NHRI as a whole before any decision is taken. It is a decision of such significance, in terms of the programme of the NHRI and the commitment of resources of personnel and funds, that it requires the wholehearted endorsement of the highest decision-making body. Once the decision is made, the national inquiry is underway.

KEY POINTS: CHAPTER 3

- The issue to be investigated by a national inquiry should be selected on the basis that a national inquiry is particularly suitable as a mechanism to deal with systemic or historic patterns of human rights violation.
- The issue must have a strong, clear human rights dimension.
- The inquiry process is especially suited to investigating and addressing violations of economic, social and cultural rights, but not only these.
- The issue should be selected with a view to the possibilities for human rights education through the public nature of the national inquiry methodology.
- Choosing the issue is one of the most important decisions to be made in relation to a national inquiry.



Chapter 4:

Prepare a background (scoping) paper

KEY QUESTIONS

- Why prepare a background paper?
- What should a background paper contain?



4.1. PURPOSE OF THE BACKGROUND PAPER

Having selected the issue for the national inquiry, the NHRI's first task is to undertake a scoping process. The background or scoping paper forms the basis for the NHRI's decision-making on whether to proceed with the proposed inquiry. The institution needs to have a firm grasp of what is proposed, including how it will be done and what it will cost, before it decides to approve the project. National inquiries are resource intensive. They are projects that affect every part of the NHRI's work. Unless the institution makes an explicit, well-informed decision to commit to the project, the inquiry will be difficult to implement. It is also likely to cause internal frictions within the NHRI as it makes more and more demands on the institution as a whole.

The background paper identifies the breadth of matters that arise under the particular issue and the nature of the inquiry processes. It is important that, at the very beginning, the NHRI clearly understands the broad scope of the issue, even if many details are unknown at that stage. While it is never possible to anticipate every element or situation that will arise during the course of a national inquiry, every effort should be made to ensure that the inquiry is not taken by surprise when it is underway. A major issue that arises unexpectedly may undermine the whole strategy of the inquiry or divert it into an entirely different direction.

The background or scoping paper should establish that a national inquiry is appropriate to address the issue. It should identify the questions to be covered and chart the process of the inquiry.

4.2. CONTENTS OF THE BACKGROUND PAPER

The background paper should be a major document that provides a full explanation of what the NHRI is undertaking through the national inquiry process and why it is doing it.

To achieve this, the background paper should:

- provide an overview of the situation to be addressed
- outline the international human rights law that is relevant to the situation
- outline the domestic or local law that is relevant to the situation
- list the particular matters requiring investigation during the course of the inquiry
- indicate some options for the results of the inquiry
- describe how the inquiry will meet its human rights education objectives
- set out the timetable for the conduct of the inquiry
- state the resource requirements
- summarise the views of NGOs and other relevant stakeholders concerning the inquiry.

4.3. THE OVERVIEW OF THE SITUATION

The overview should provide a broad introduction to the issue or situation to be addressed. It should describe the key factors of the situation, including how widespread the situation is in the country, how severe it is, who is affected and how deeply entrenched it is. The overview should provide statistics to support the description wherever they are available.

In listing the groups especially affected, the overview should pay particular attention to differences in experience associated with gender, ethnicity, socio-economic status, disability and other similar status.

In describing how entrenched the situation is, the overview should look at the history, the measures taken to rectify the situation and how successful those measures have been.

The overview should also draw on the NHRI's own work in relation to this particular issue or situation. Its complaint handling may provide data and statistics about the nature of the situation and the incidence of human rights violations. There may be relevant information available from other inquiries conducted by the institution and from its other activities. For example, it may have undertaken previous research projects or education activities that informed its understanding of the situation or issue. It could also draw on its wide-ranging contacts with NGOs, governmental authorities, academic institutions and other civil society organisations. In many respects the overview will explain why the NHRI has decided to undertake a national inquiry on this subject.

4.4. INTERNATIONAL HUMAN RIGHTS LAW

In presenting relevant international human rights law, the overview will identify the relevant treaties that the country has ratified and other relevant international obligations and commitments. In examining treaties, it should draw attention to the specific provisions of ratified treaties that arise or may arise in relation to the issue or situation. It should also indicate the particular aspects of each right that may be at risk of violation or that may have been violated in the situation.

Because the inquiry is a human rights inquiry, it will place particular emphasis on international human rights treaties. A State is clearly required to meet its binding obligations under treaties that it has ratified. It also has broader responsibilities in relation to many "soft law" instruments that are associated with provisions in ratified treaties.¹² For example, the obligation to provide humane conditions of detention under the International Covenant on Civil and Political Rights (ICCPR) is given substance in the provisions of the Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.¹³ The Mandela Rules and the Body of Principles themselves do not impose direct obligations on States. But the ICCPR does and, through its provisions, the Mandela Rules and the Body of Principles take on the nature of obligations. The consideration of international human rights law, therefore, cannot be restricted to the consideration of treaties. It must also include "soft law" provisions and the requirements of customary international law.¹⁴

12 In international law, treaties are considered to be "hard law" in that they impose direct binding obligations on States that ratify them. In addition to these binding norms of international law, there are non-binding norms, known as "soft law". They can be found in other international instruments, such as declarations, principles, standard minimum rules, resolutions and other instruments that have persuasive value but are not directly binding on States.

13 International Covenant on Civil and Political Rights; article 9. The website of the UN High Commissioner for Human Rights contains the texts of all international human rights instruments; see: www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx.

14 Customary international law is binding international law that has not been codified in a treaty. It is identified from the practice of States. It is the conduct of States that over time develops into a set of legal norms that States accept as binding on them. It is a universal set of norms, binding all States. It is now well-accepted that at least some provisions of the Universal Declaration of Human Rights (UDHR) have become incorporated into customary international law. Some scholars argue that the whole UDHR is now part of customary international law.

4.5. MATTERS TO BE INVESTIGATED

In providing an overview of the situation, the background paper should seek to identify those matters that will be the focus of the inquiry's investigation. It will indicate where there are gaps in data or information, including in relation to the incidence of human rights violation, the spread of violations, the level of impact, differential impacts and so on. These gaps will need to be investigated so that the necessary data or information is available for analysis. The background paper will provide an initial structural analysis of who within the political system has responsibility for the situation, what they have done about it and with what degree of success.

The background paper will also include the exploration of options, examining both domestic and international experience in addressing violations of human rights and in developing effective measures for the better enjoyment of human rights. It will identify all relevant stakeholders and the possible roles they can play, within their areas of responsibility, in addressing the human rights violation. In part, these two areas can be addressed by way of a "gap analysis", asking what more needs to be done and who in addition needs to do something.

The objectives and terms of reference for a national inquiry are discussed further in Chapter 6 of this manual.

4.6. POSSIBLE RESULTS

The background paper may also address possible findings and recommendations that can be considered in preparing the final report of the national inquiry. The most challenging part of any national inquiry is making accurate findings and developing realistic recommendations.

Clearly, an inquiry will only make its findings and form its recommendations when it has heard, considered and analysed all the evidence it receives. However, the broad directions and framework of findings and recommendations should be considered from the outset and throughout the inquiry process.

Findings will often place responsibility for a situation on specific institutions or individuals. Fairness requires that the findings be firmly based on careful research and the evidence collected by the inquiry. In international human rights investigations, the standard applied for findings is 'reasonable grounds', not proof beyond reasonable doubt, which is the criminal standard. Fairness also requires that those who share responsibility for the situation be given an opportunity to provide evidence and explain their position. The role of a national inquiry is not primarily to attribute blame but rather to identify victims and make recommendations to provide redress and to ensure prevention in the future.

In exploring possible results, the background paper should consider the advantages and disadvantages of possible alternative approaches. Every inquiry encounters a range of possible responses. These cannot all be accepted at face value. On the contrary, some will be beneficial and some could be detrimental to the achievement of the inquiry's objectives. The background paper cannot make findings and recommendations – that is done in the inquiry report – but it can identify options and commence the process of assessing their potential effectiveness. It can also start to identify those who can contribute to addressing the situation so that recommendations to them can be developed.

4.7. HUMAN RIGHTS EDUCATION

Because the principal objectives of a national inquiry include human rights education and raising awareness of the issues involved, the background paper should outline how this is to be done. It should include an initial strategy for this work. The effectiveness of the educational component requires strategies for gaining and maintaining public attention for the inquiry. The media cycle is short and the public attention span is limited. Unless the background paper and then the media strategy address this challenge, the inquiry will fail to achieve its objective as a vehicle for raising awareness and educating the community.

The background paper should also indicate those to whom its educational efforts should be directed. These target groups include those affected by the issue; those with an existing or potential interest in it; those with some responsibility, direct or indirect, to address the issue; and those who can be supporters of or advocates for the inquiry's findings and recommendations. The awareness raising and educational components of the inquiry contribute to building public and political pressure for implementation of the inquiry's final report.

4.8. TIMETABLE

The timetable for a national inquiry should be carefully developed. It should be long enough to enable the inquiry to be conducted properly and for it to be done well but not so long that the public loses interest and the political momentum is lost. It is difficult to imagine a national inquiry being done properly in less than 12 months but it should not be extended beyond two years. The best approach is to plan for the inquiry to take a period not less than 12 and not more than 18 months.

Good planning is required to map out a very detailed timetable on a month-by-month basis. That is not necessary for the background paper but it is essential for the full inquiry plan that needs to be developed subsequently.

Timetabling a national inquiry is discussed further in Chapter 9 of this manual.

4.9. RESOURCE REQUIREMENTS

The two key resources that every national inquiry requires are personnel and finances. The background paper should set out what the inquiry needs in each area.

Determining necessary personnel resources requires a listing of necessary skills and expertise. National inquiries are big projects with a broad approach to human rights protection and promotion. They are effective because they are comprehensive. That means that they require a wide range of skills and expertise among their staff. Typically a national inquiry will need staff with skills in human rights law, research, policy development, investigation, community education, media liaison, administration and management. Ideally the inquiry team includes those with expertise and experience in the subject matter of the inquiry. The background paper should indicate the range and levels of skills required and the number of staff with those skills or that expertise. It should also indicate the periods during which particular areas of skills and expertise will be required – it will not be necessary to have all the identified staff for the full length of the inquiry and some experienced staff may well fill several roles.

The budget should set out all the financial requirements of the inquiry. This must be done carefully, right at the beginning, and the necessary funds should be assured before the inquiry begins. If it is not, there will be a risk that the inquiry will run out of money while only partially completed. There can be few greater betrayals of victims and their families than to have their expectations of justice raised and then shattered because an NHRI has begun a national inquiry that has stalled for lack of money.

Resource requirements are discussed further in Chapter 8 of this manual.

4.10. STAKEHOLDER VIEWS

Finally, the background paper may briefly summarise the views of stakeholders from various sectors in relation both to the proposal to conduct a national inquiry and to the substance and process of the inquiry. A national inquiry is a public process and so the participation of key stakeholders is essential to its success. The views of stakeholders are needed at the beginning to inform the NHRI's decision-making in considering the proposal to conduct the inquiry. They need not all be consulted during the preparation of the background paper but there should be at least a sampling of views from various sectors so that the NHRI, in considering the background paper, has a good understanding of the range of views among key stakeholders.

The identification and engagement of stakeholders is discussed further in Chapter 5 of this manual.

KEY POINTS: CHAPTER 4

- The background or scoping paper forms the basis for the NHRI's decision-making on whether to proceed with the proposed inquiry, identifying what is proposed to be done in the national inquiry, including how it will be done and what it will cost, before the NHRI decides to approve the project.
- The background paper should:
 - provide an overview of the situation to be addressed
 - outline the international human rights law that is relevant to the situation
 - outline the domestic or local law that is relevant to the situation
 - list the particular matters requiring investigation during the course of the inquiry
 - indicate some options for the results of the inquiry
 - describe how the inquiry will meet its human rights education objectives
 - set out the timetable for the conduct of the inquiry
 - state the resource requirements
 - summarise briefly the views of NGOs and other relevant stakeholders concerning the inquiry.





Photo by Sharon McCutcheon on Unsplash

Chapter 5:

Identify, consult and engage stakeholders

KEY QUESTIONS

- Who are the important stakeholders who can assist the national inquiry?
- Who are those that the national inquiry will need to engage if it is to be effective?
- What roles can stakeholders play in the national inquiry?



5.1. IDENTIFYING STAKEHOLDERS

Those who will have an interest in a national inquiry and whose contribution to the inquiry will be valuable come from many sectors. An early task for the inquiry team will be to:

- identify those sectors or areas of society with particular interests in relation to the issue
- identify those individuals who have already been outspoken on the issue or have established a public profile in relation to it.

Stakeholders will want to contribute to the inquiry because of their own interest in the subject and their wish to see the inquiry both endorse their perspectives or analysis and advance their views. For some of them, the inquiry will be seen as an opportunity to win a credible, high-status organisation to their position.

Of course, some will also feel threatened by the inquiry. They may be anxious that the inquiry will be persuaded by those with whom they disagree and so give weight to views opposed to theirs. Some may fear that the inquiry will lay blame on them personally or their organisations for contributing to the situation of human rights violation being investigated.

Stakeholders are important to the inquiry because they have the expertise in the issue that the NHRI may lack and is seeking through the inquiry process. Their expertise and experience are essential for the inquiry's success. Stakeholder participation, therefore, involves a mutually beneficial, two-way relationship.

5.2. WHO ARE THE KEY STAKEHOLDERS?

Victims of the human rights violation under investigation and their families and communities are the first and most important stakeholders. They look to the inquiry to provide justice and to ensure that the violations are not repeated. They bring unique expertise to the inquiry because of their experience. They have experienced the violations personally or their family members or friends have experienced the violations. They can tell the inquiry what happened, their views on why it happened and what the consequences of the violation are. They can also tell the inquiry what is required to remedy the violations. A national inquiry cannot succeed without engagement with, and the expert contribution of, those who are victims of the human rights violation under inquiry.

Other stakeholders will come from **government**, both the political and bureaucratic arms. Government ministers are responsible for public policy and so are best placed to explain and justify the policy. Public or civil servants are implementers of government policy and so their detailed knowledge of the policy and implementation in practice will be among the most useful information an inquiry obtains. Local governments may also be an important stakeholder on some issues.

Non-governmental organisations (NGOs) can be stakeholders in many different senses and can have very different interests in the inquiry, including concerns about the implications of the inquiry for themselves. Some will be specialists in the particular issue being investigated. They can assist the inquiry with their specialist knowledge but may not know or understand the broader context. Other NGOs are generalist organisations that can assist with the context but have limited knowledge of the specific issue.

NGOs traditionally are closer to victims of human rights violations and to their communities than government agencies are. These organisations have information and analysis that will be of value to the inquiry precisely because of their close associations. While victims will usually speak of their own personal experiences, NGOs may be able to provide data on the extent of violations and patterns of violation. They may also be able to provide analysis of the causes of the violations and their consequences.

Some NGOs may be implementers of government programmes and so can assist the inquiry from that perspective. They may not necessarily be enthusiastic about the inquiry because they may fear criticism of their role or even that the inquiry will result in unwelcome changes to their work. For example, NGOs that deliver services on behalf of government agencies may lose their contracts if the inquiry shows them to be poor services providers.

Academics and professionals have expertise that will be of assistance to the inquiry's analysis. The inquiry requires access to the best academic research and academics can assist them to obtain that. Often there will be significant gaps in research that the inquiry itself will need to fill but the prior step is finding and assessing the research that is already in existence.

Religious groups and foundations, including philanthropic foundations, often provide assistance to vulnerable and marginalised groups, such as children separated from their families and women and children victims of family violence, and so may also be important stakeholders. Many human rights issues involve questions of social justice that may be the concerns of these organisations.

Perpetrators of human rights violations or, more broadly, those whose actions have contributed directly or indirectly to the situation being investigated, will clearly have an interest in the inquiry greater than anyone but the victims of the violations. The inquiry will need to be careful to respect and protect the rights of alleged perpetrators. At the same time, it will want to encourage them to assist the inquiry. They can explain their actions and their motivation and so assist the inquiry to understand the dynamics of the violations and to find ways to address both the consequences and the causes.

In a sense, the **media** are stakeholders too. They are interested in newsworthy issues and events and so could have an interest in the national inquiry. They will look to the inquiry for "good stories": personal experiences, new insights into issues of public or political concern, revelations of governmental failure or scandal, whatever may interest readers of newspapers, listeners of radio programmes and viewers of television and so attract them to the media. The inquiry needs the media to tell its story but it may also be a victim of the media if its work is misreported or distorted or if it is subjected to media attacks. The media are key stakeholders but they require careful handling.

5.3. STAKEHOLDER ROLES

Stakeholders will look for different levels and types of engagement in the inquiry process. There are many different roles, all of which can support the inquiry's work if encouraged to do so.

The consultants	assist in shaping the inquiry and its processes.
The providers	give information to assist the inquiry.
The advocates	persuade the inquiry of particular views or policies.
The reporters	monitor and report to others on what the inquiry is doing.
The targets	are the focus of the inquiry's findings and recommendations.
The consumers	learn what the inquiry finds.

Individual stakeholders can play one or more roles at any time and they can move from role to role during the course of the inquiry. Roles are not inflexible and they are not fixed.

The inquiry should identify the different interests among stakeholders and the different roles they will want to play. It will benefit from these roles if it recognises what stakeholders want from the inquiry and develops good strategies of its own in response.

5.4. RESPONDING TO DIFFERENT STAKEHOLDER ATTITUDES

Because stakeholders have such a wide variety of interests in the issue under inquiry, they will have very different attitudes towards the inquiry. The inquiry will need to understand the range of attitudes, identify the attitude of each stakeholder or group of stakeholders, understand the consequences to the inquiry of particular attitudes and develop strategies to address problems that some attitudes will create.

Some stakeholders will be **supportive** of the inquiry. How does the inquiry capitalise on that support? How does it ensure that this support translates into actual assistance to the inquiry's work and into public advocacy for the inquiry's findings and recommendations?

Some stakeholders will be **neutral** towards the inquiry. How does the inquiry educate, convince and activate the support of those not yet committed to the issue or the inquiry's process?

Some stakeholders will be **hostile** to the inquiry, perhaps to the point of attempting to undermine or even end the inquiry. How does the inquiry identify and neutralise potential opposition? How does it anticipate and prevent attempts to discredit the inquiry's work?

5.5. ENGAGING STAKEHOLDERS

The task for the inquiry is to win the confidence of all stakeholders that it will proceed transparently and fairly and in accordance with human rights standards. The inquiry must make sure that its own processes are well publicised in advance so that everyone knows how it will proceed. It must provide stakeholders from all sectors, or at least representatives of stakeholders, with opportunities to express their views, provide their evidence and, if necessary, defend their policies and actions.

Some national inquiries have used advisory or reference groups made up of those with ‘insider’ experience and expertise in the subject of the inquiry. The National Inquiry into the Separation of Aboriginal and Torres Strait Island Children from their Families formed an *Indigenous Advisory Council* constituted by indigenous members from all the major regions of Australia. The Council provided advice on the hearing process, supported the Inquiry in seeking evidence and submissions, contributed to the analysis of the material presented, considered the Inquiry’s draft report and provided detailed comments on proposed recommendations.

In engaging **victims**, an inquiry needs to be especially sensitive to their vulnerability. For victims, the inquiry may be their first and only opportunity to tell their stories, to receive recognition as victims of human rights violation and to seek a remedy. They will need reassurance that they will be respected and their evidence treated seriously. The inquiry should also consider whether it needs to provide counselling or other support to victims. Some victims will have limited education and not be familiar with formal proceedings of inquiries. They will need assistance to participate, both through oral and written evidence and submissions. For many victims, giving evidence will be very distressing and may cause or add to their trauma. The inquiry cannot escape responsibility for the consequences of its proceedings. It must anticipate need and establish mechanisms to respond. Victims will be encouraged to become engaged with the inquiry if they are assured that they will be treated well and supported in their participation. The first and most important operating principle of an NHRI’s national inquiry is to do no harm.

Government ministers and other leaders may resent the inquiry’s intrusion into their work. They are accountable primarily to the parliament and the electorate and so they may be reluctant to deal in person with a national inquiry. However, the inquiry should encourage them to engage directly with it in ways appropriate to the NHRI’s independent status. This is in the interests of the political leadership itself but also assists the inquiry to understand fully the basis for government policy and action. It also promotes implementation of inquiry recommendations after the inquiry is completed. Ministers who have felt part of the inquiry process will be more inclined to take the inquiry’s recommendations seriously.

Civil servants will need other encouragement. They work to the Government’s ministers and may have difficulty in assisting the work of an independent national inquiry. The inquiry may need to obtain ministerial directions for the engagement of civil servants. Civil servants may also need legal protection if they provide information to the inquiry. Most NHRIs have powers to compel the production of evidence and the appearance of witnesses and to provide protection to those who give evidence or produce documents. These powers should be used when necessary to enable the inquiry to proceed as effectively as possible. They may need to be used, for example, to secure the full cooperation of civil servants.

Relevant powers of NHRIs

- to compel the production of documents
- to enter and inspect premises
- to compel the attendance of a witness
- to examine a witness under oath
- to initiate prosecutions
- to refer evidence to a prosecutor
- to provide protection to witnesses to prevent harassment, intimidation or victimisation
- to prevent the NHRI and its staff being obstructed in their duties.

Legal powers may also be needed to secure the engagement of alleged **perpetrators**. They may fear criminal prosecution on the basis of the evidence they give. Those less responsible may be reluctant to give evidence against their superiors, for fear of retribution. Use of the inquiry’s powers can compel evidence and protect witnesses.

In addition, the inquiry itself must be scrupulous in protecting the human rights of those assisting it in its work. Those alleged to be perpetrators are entitled to the presumption of innocence and, if appropriate, a fair trial in a court of law. They are entitled to due process before the inquiry itself. They should be made aware of allegations against them and assured of the opportunity to respond to those allegations and to evidence provided to the inquiry. The inquiry should be aware of procedures prescribed in international law for the treatment of accused persons and seek to model its own procedures on those requirements.¹⁵ Most importantly, however, it must also observe the relevant laws of its own country and the rules of natural justice. It could develop and adopt a procedural statement that sets out how it will deal with alleged perpetrators, and indeed with other groups, to ensure fairness, justice and respect for human rights in its work.

KEY POINTS: CHAPTER 5

- The expertise and experience of stakeholders are essential for the inquiry's success.
- Important stakeholders may include victims of the human rights situation under investigation and members of their families, Government officials, NGOs, academics and professionals, religious groups and foundations and other organisations, as well as alleged and potential perpetrators.
- Stakeholders could have many views about the national inquiry, ranging from very supportive to very hostile.
- The national inquiry will need to use a variety of strategies to engage the stakeholders it needs to engage.



15 These procedures include those prescribed in the International Covenant on Civil and Political Rights.

Chapter 6:

Draft objectives and the terms of reference

KEY QUESTIONS

- What are objectives?
- What are terms of reference?
- What are some examples of terms of reference used by national inquiries?



6.1. THE IMPORTANCE OF OBJECTIVES AND TERMS OF REFERENCE

A national inquiry requires clear objectives and good terms of reference. The development of these is a key part of the planning process. Objectives relate to what the NHRI aims to accomplish through the national inquiry. They will be the basis on which the strategies for the inquiry are developed and implemented. Terms of reference set out what the inquiry will actually examine and report on. Together, the objectives and terms of reference form the basis of what the inquiry is to do.

6.2. WHAT ARE OBJECTIVES?

Objectives are clear statements of what the inquiry is to achieve. They are usually broad or general statements. An inquiry can have more than one objective but there should not be too many of them. Most importantly, the objectives should not be inconsistent with each other. A few carefully selected and well-defined objectives will guide the NHRI and its inquiry in determining the most appropriate process for the inquiry. Once objectives are defined, the NHRI can determine how the inquiry will meet those objectives.

To be effective, an objective must be well drafted. One model to use is SMART, ensuring that objectives are:

- specific
- measurable
- achievable
- relevant
- timely.

Objectives are also important to enable the inquiry to be monitored and evaluated. They form the basis for monitoring and evaluation. Monitoring happens during the inquiry. It asks how the inquiry is progressing against its objectives and whether adjustments need to be made to the inquiry process, or to the objectives. Evaluation tends to occur at the end of the inquiry and asks to what extent the inquiry achieved its objectives.

Possible objectives for a national inquiry

Investigation	To find out what is going on, the nature and extent of a pattern of human rights violation and make accurate findings.
Analysis	To determine the underlying causes of a pattern of human rights violation.
Information	To ensure that both the public and key stakeholders are better informed about and more aware of the particular issue.
Education	Through examination of the issue, to increase understanding of human rights generally and commitment to better human rights observance.
Finding	To make accurate findings and conclusions based on research and evidence.
Recommendation	To develop proposals for action to remedy the pattern of violation and prevent future violations.
Empowerment	To support victims of human rights violation.

6.3. WHAT ARE TERMS OF REFERENCE?

Terms of reference are a clear statement of what specifically the national inquiry will consider and do. They have internal and external functions. Internally, they help to keep the inquiry focused by listing the matters that the inquiry will address. Externally, they help others to contribute to the inquiry by highlighting the issues under investigation.

Terms of reference are generally a short list of points that the inquiry is instructed to examine. They may also include products of the inquiry, such as a report of the inquiry's findings and a set of recommendations on how to provide remedies to victims and to prevent further violations. They may set a timetable for the inquiry. They may describe in general terms the inquiry's process, for example, undertaking research, seeking written and oral submissions, forming conclusions of fact and making recommendations.

Terms of reference should not lock the inquiry into a small box, so tight that the inquiry cannot deal with all significant relevant issues that might arise in the course of the investigation. However, they should not be excessively open or broad or the inquiry may try, or be forced to try, to do too much and so lose its way. Excessively broad terms of reference can cause the inquiry's timetable to be lost or abandoned, its costs to blow out and the reporting task to become impossibly large.

Possible content of terms of reference

- Issues to be addressed.
- Information or evidence to be collected.
- Who will conduct the inquiry?
- Organisations and persons, or categories of each, to be consulted.
- Tasks to be performed.
- Powers able to be used.
- Areas for recommendation, including the types of recommendation to be made and the persons and organisations to whom the recommendations may be directed.
- Timetable, especially a reporting deadline.

6.3.1. Examples of terms of reference

Example 1:

Terms of reference of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families conducted by the Australian Human Rights and Equal Opportunity Commission 1997

To:

- (a) trace the past laws, practices and policies which resulted in the separation of Aboriginal and Torres Strait Islander children from their families by compulsion, duress or undue influence, and the effects of those laws, practices and policies;
- (b) examine the adequacy of and the need for any changes in current laws, practices and policies relating to services and procedures currently available to those Aboriginal and Torres Strait Islander peoples who were affected by the separation under compulsion, duress or undue influence of Aboriginal and Torres Strait Islander children from their families, including but not limited to current laws, practices and policies relating to access to individual and family records and to other forms of assistance towards locating and reunifying families;
- (c) examine the principles relevant to determining the justification for compensation for persons or communities affected by such separations;
- (d) examine current laws, practices and policies with respect to the placement and care of Aboriginal and Torres Strait Islander children and advise on any changes required taking into account the principle of self-determination by Aboriginal and Torres Strait Islander peoples.

In performing its functions in relation to the reference, the Commission is to consult widely among the Australian community, in particular with Aboriginal and Torres Strait Islander communities, with relevant non-government organisations and with relevant Federal, State and Territory authorities and if appropriate may consider and report on the relevant laws, practices and policies of any other country.

The Commission is required to report no later than December 1996.

Example 2:

Terms of reference of the National Inquiry into Discrimination experienced by Transgender People conducted by the New Zealand Human Rights Commission 2008

1. The Commission will inquire into:
 - (a) the nature and extent of discrimination experienced by transgender people
 - (b) the accessibility of public health services to transgender people (incorporating the minimum core obligations of both the primary and secondary health services, including, but not limited to, gender reassignment services)
 - (c) the barriers faced by transgender people when attempting to gain full legal recognition of their gender status.
2. To consider, as a result of these inquiry processes, whether to make recommendations on:
 - (a) changes to legislation, regulations, policies and practices
 - (b) other steps required to reduce the level of marginalisation experienced by transgender people.

Example 3:**Terms of reference of the National Inquiry into the Land Rights of Indigenous People conducted by the SUHAKAM, Human Rights Commission of Malaysia 2013**

To:

1. determine the constitutional, legal, administrative and political recognition of the indigenous peoples' right to land and their effectiveness in protecting and promoting the Indigenous peoples' right to land.
2. inquire into the land rights situation of the indigenous peoples and the impact of the recognition or non-recognition of the indigenous peoples' right to land on their social, economic, cultural and political rights, taking into consideration relevant international and domestic laws.
3. identify the constraints which impede the full enjoyment of the indigenous peoples' rights to land in accordance with their needs and requirements.
4. create and promote more awareness, knowledge and understanding of the indigenous peoples' right to land and their way of life.
5. on the basis of the facts and determinations arising from the National Inquiry, to develop recommendations to the Federal and State Governments relating but not limited to the following:
 - (a) the review of domestic land laws and other related laws and policies, with a view to incorporating a human rights focus therein, addressing, in particular, the problems faced by indigenous peoples in their land claims; and
 - (b) the formulation of strategies and a plan of action with the aim of protecting and promoting the indigenous peoples' right to land as an indivisible and integral part of the protection and promotion of their other human rights.

Example 4:**National Inquiry on Factors and Causes of Rape and Honour Killings in Afghanistan conducted by the Afghanistan Independent Human Rights Commission 2013**

To:

1. handle and investigate the cases of honour killings and rape occurred against women,
2. assess the situation of victims and those at risk,
3. collect and analyse relevant information,
4. raise public awareness and sensitivity against these phenomena and holding the government accountable for the implementation of adequate programs,
5. bring changes in the laws and policies and prioritise the fight against such issues and provide specific recommendations to improve the situation through reporting of these cases.

Example 5:

National Public Inquiry into Family Violence in Samoa conducted by the Samoa Office of the Ombudsman/National Human Rights Institution of Samoa 2018

To:

1. inquire into and identify those most vulnerable to family violence and the nature of the violence experienced;
2. inquire into and determine the causes and factors contributing to the occurrence of family violence;
3. inquire into and identify the impact of family violence;
4. inquire into and scrutinise the relevance, effectiveness and scope of existing programs and services involved in addressing the problems faced by survivors of family violence;
5. inquire into existing structures and institutions (e.g church and Fono a Alii ma Faipule) with potential to contribute to identifying to solutions and effective actions to curb family violence; and
6. report on its findings and make appropriate recommendations.

Example 6:

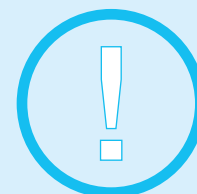
National Inquiry on the Impact of Climate Change on the Rights of the Filipino People and the Responsibility therefor, if any, of the 'Carbon Majors' conducted by the Commission on Human Rights of the Philippines 2018

Outcomes:

1. Inform the Commission on the science behind climate change and other related phenomena, such as ocean acidification.
2. Determine if climate change has an effect on Filipinos' fundamental human rights.
3. Assess the Philippine government's compliance with International Treaty obligations, especially those relating to environmental protection and climate change.
4. Make policy recommendations to policy makers and administrators, as may be warranted by its findings.

KEY POINTS: CHAPTER 6

- A national inquiry requires clear objectives and good terms of reference.
- Objectives relate to what the NHRI aims to accomplish through the national inquiry.
- Terms of reference set out what the inquiry will actually examine and report on.



Chapter 7:

Appoint Inquiry Commissioners and staff

KEY QUESTIONS

- Who makes up the inquiry team?
- What qualifications, expertise, experience and skills are required in the team?
- What are the various roles and functions to be undertaken by team members?



7.1. THE NATIONAL INQUIRY TEAM

There are two distinct groups within the national inquiry team. Inquiry members – usually formally called Inquiry Commissioners – are responsible collectively for the inquiry. They decide its direction, conduct the formal hearings, determine the findings and conclusions, and make the recommendations. They have public and political responsibility for the inquiry. The inquiry staff members are the implementers who make the inquiry happen. They need to do the organising and administration, undertake research, manage the public hearings, draft the report and propose recommendations for the inquiry members to consider. They also implement the inquiry's strategies.

Every national inquiry needs the right team, with the right mix of skills and experience to make the inquiry successful. A national inquiry is a big project with a broad, comprehensive approach to human rights protection and promotion. That means that it requires a wide range of skills and expertise in the inquiry team. Typically, a national inquiry will need members and staff with skills in human rights law, research, policy development, investigation, community education, media liaison, administration and management. Ideally the inquiry team includes those with expertise and experience in the subject matter of the inquiry. The background or scoping paper should indicate the range and levels of skills required and the number of team members with those skills or that expertise. It should also indicate the periods during which particular areas of skills and expertise will be required – it may not be necessary to have all the identified staff for the full length of the inquiry.

7.1.1. Inquiry Commissioners (or members)

The Inquiry Commissioners are the internal drivers and the external face of the inquiry. They are ultimately responsible, on behalf of the NHRI, for the conduct of the inquiry and for its report and recommendations. They collectively lead the whole inquiry team, with the chairperson of the inquiry individually leading the inquiry members. The NHRI itself needs to determine and formally appoint those who are to undertake the inquiry on its behalf.

In determining who will constitute the inquiry, the NHRI must ensure that each Inquiry Commissioner is a person with the required qualities:

- recognised integrity
- political independence
- existing expertise and experience in at least one area to be covered by the inquiry
- commitment to the inquiry process

- the ability to allocate the necessary time and energy to the conduct of the inquiry and its completion on time and within budget
- the ability to work collaboratively in a team.

Integrity and political independence go to the credibility of the inquiry and so to its political impact and acceptance, in other words, its effectiveness. Expertise and experience are the particular contributions each Inquiry Commissioner will make to the inquiry itself and to its report and recommendations. Commitment and availability ensure that the inquiry is a priority for the Inquiry Commissioners so that each one personally is willing and able to do all that is necessary to contribute to its effectiveness. Teamwork is essential as the key decisions must be made collegially, including approving the final report with its findings and recommendations.

The Inquiry Commissioners can be members of the NHRI or external persons selected solely for the purpose of the inquiry. A member of the NHRI is usually appointed to the inquiry as the inquiry chairperson and there may be other members of the NHRI appointed as well. Where only some NHRI members are to be involved, they will usually be those with greater knowledge of and expertise in the particular issue being investigated. Some inquiries will be considered so significant that the NHRI decides that all its members should participate in it.

The NHRI may also decide to appoint one or more external persons as Inquiry Commissioners because of their special expertise and experience. External persons are usually appointed in addition to NHRI members to supplement the expertise and experience of those members. In most NHRIs the members are generalists rather than experts in a particular area of human rights and so they may look outside the NHRI for specific expertise when they undertake a major project, such as a national inquiry, on a particular human rights situation or area. They may look for expertise in a specific issue or a specific part of the country or a particular discipline, such as law or economics or social policy.

SAMOA OMBUDSMAN/NATIONAL HUMAN RIGHTS INSTITUTION: NATIONAL INQUIRY INTO FAMILY VIOLENCE 2017–18

The Samoa Ombudsman, Maiava Iulai Toma, established the national inquiry into family violence. He decided that he himself should chair the inquiry and that he should be assisted by a number of Inquiry Commissioners with relevant expertise. In appointing the Commissioners consideration was given to the relevant skills, knowledge of family violence and personal integrity of potential candidates while ensuring equal gender representation.

The Inquiry Commissioners who sat with the Ombudsman were:

- the Hon. Tolofuaivalelei Falemoe Leiatua, former Parliamentarian (Vice Chairman);
- Tagaloatele Professor Peggy Dunlop, Professor of Pacific Studies, Auckland University of Technology;
- Leasiolagi Professor Malama Meleisea, former Director for Samoa Studies, National University of Samoa; and
- Falenaoti Mulitalo June Kolotita Ailuai Oloiali'i, Active Community Member and Women's Village Representative of Vavau, Samoa.¹⁶



¹⁶ Samoa Ombudsman/National Human Rights Institution, *National Public Inquiry into Family Violence in Samoa 2018*, p 43-44. Available at https://ombudsman.gov.ws/wp-content/uploads/2019/01/2018_-SHRR-2018-National-Public-Inquiry-into-Family-Violence_-English.pdf.

If the subject chosen for the national inquiry requires particular technical or specialist expertise that goes beyond the experience and skills of the Inquiry Commissioners, it may be necessary to ensure the accuracy, credibility and persuasiveness of the inquiry's recommendations to appoint a highly qualified and highly respected expert as a "special adviser" to the inquiry.

7.1.2. Inquiry staff

The inquiry will require staff with four areas of expertise:

- administration and management
- research and writing
- community liaison and relations
- media liaison and communications.

The inquiry secretariat will need to be headed by an inquiry director. The director will need to have skills in all the areas of the inquiry's work to be able to manage the secretariat effectively. Above all, however, the director will need to be a good manager and a good team leader. Leading the staff for a national inquiry is a complex task with many different responsibilities and functions. It is similar to being executive director of an NHRI itself, though on a smaller scale. It is the key position in the inquiry secretariat.

The inquiry will need at least one highly experienced writer. The inquiry's report is its principal product. It must be well written and persuasive. On the one hand, its style needs to be straightforward and clear, able to be understood by a wide readership. On the other hand it has to be academically rigorous, well grounded in the evidence obtained by the inquiry and strongly and persuasively argued. The chief writer must also be both a good communicator and a strong researcher. It is the most difficult position to fill.

Those inquiry staff members who will be responsible for community liaison must be able to relate well and respectfully to people, especially to victims of human rights violation, and to assist the Inquiry Commissioners to promote the inquiry's recommendations. Because of the trauma that victims may experience in giving public evidence, the liaison team may need to include staff with counselling qualifications and experience.

The media liaison staff have to be media smart. The inquiry is dependent on the public mass media to get its message across to the general community. The media will play a critical part in building support for the inquiry and pressure for the implementation of its recommendations. The inquiry will need expert media advice to be able to deal successfully with the media. It will need staff who are known to the media and trusted by the media, who can place positive stories, divert negative stories, correct errors in reporting, respond to criticism and, most importantly of all, secure good, wide and continuing coverage for the inquiry and its activities. The media can make or destroy a national inquiry and so an experienced media specialist is essential on the inquiry team.

In assembling the inquiry team, the NHRI should consider the stages at which different skills and expertise are required. For example, any external Inquiry Commissioners will not be required on a full-time basis. The media specialist will be essential when the inquiry is launched, when the public hearings take place and when the report is released but may not be required full-time at other points in the process. The writers should begin as early as possible but this work is done once the report is written and printed. The inquiry can contain costs by carefully timetabling the engagement of staff through the various stages of the process and by looking at periods of part-time and full-time engagement, rather than engaging all the staff, all the time.

In selecting and appointing staff to the inquiry, the NHRI must consider the impact of appointments on other areas of its work. No national inquiry will be the only thing an NHRI does. While the inquiry is underway, the NHRI will still have to receive and handle complaints, provide advice to the parliament and the Government, undertake awareness raising and educational activities, respond to media and public enquiries, and so on. It will need staff to perform these duties. A national inquiry is a large and very significant project. It will tend to attract the best staff in the institution as they will want to be involved in the institution's major project. There is also a danger that it could starve other areas of the NHRI of necessary resources as staff are diverted from their usual activities into the work of the inquiry. Decisions about staff allocation will need to weigh up the various responsibilities and priorities of the NHRI and seek the appropriate balance of staffing, in quantity and quality.

Again, carefully timetabling the engagement of staff can prevent other areas being deprived of expertise for lengthy periods. Rotating staff through some inquiry positions, where this is possible, could also assist. Engaging persons outside the NHRI, where appropriate, can lessen the demands on the permanent staff, although it should be noted that permanent staff may be demoralised if outsiders alone have the opportunity of participating in the challenging work of the national inquiry. One way to address this is to assign some permanent staff to the national inquiry and engage external persons on a short-term basis to fill their positions during the period of their assignment.

KEY POINTS: CHAPTER 7

- Every national inquiry needs the right team, with the right mix of skills and experience to make the inquiry successful. The team will include Inquiry Commissioners and staff.
- The Inquiry Commissioners are the internal drivers and the external face of the inquiry. They collectively lead the whole inquiry team, with the chairperson of the inquiry individually leading the inquiry members.
- In some cases it may be necessary to appoint a highly qualified and widely respected “special adviser”.
- The inquiry staff need expertise in administration and management, research and writing, community liaison and relations, and media liaison and communications.



Chapter 8:

Gather other resources

KEY QUESTIONS

- What other resources does an inquiry require?
- What does the budget need to cover?
- What non-financial resources are needed?



8.1. OTHER NECESSARY RESOURCES

In addition to personnel – Inquiry Commissioners and staff – the inquiry has other resource needs, in particular money, premises and equipment. Securing these resources is one of the earliest tasks in establishing a national inquiry. An inquiry should not be launched unless and until the NHRI either has the resources it will need or is assured that it can obtain them at the necessary times.

8.2. BUDGET

The inquiry needs an adequate budget to enable it to do what is required to meet the objectives and carry out the terms of reference. The budget should set out all the financial requirements of the inquiry, from the beginning. It should be realistic, reflecting the actual costs that will be incurred. The funds to meet the budget, either existing funds or realistically accessible funds, should be identified and then assured before the inquiry is launched.

The principal budget items will be:

- **salaries:** Inquiry Commissioners and staff
- **travel:** transport, accommodation and travelling allowance
- **public hearings:** hiring venues (where necessary), publicity, refreshments, recording evidence
- offices for the inquiry team
- **information resources:** online resources and books, other publications and DVDs that the NHRI library does not have
- **equipment:** computers, mobile telephones, printers, photocopiers, perhaps recording equipment
- **electronic communications:** internet access, website, telephone calls
- **publications:** briefing papers, background and research papers, the final report in its various formats
- **events:** briefings for victims and NGOs, the launch of the inquiry, the release of the final report, seminars
- **advocacy.**

The budget should also include a provision for contingencies. Even a well-planned national inquiry will encounter unexpected demands. Sometimes the cost of particular items in the budget will exceed expectations. Sometimes an issue will arise that requires more investigation than had been planned. The contingency provision ensures that the funds are there to meet these unexpected demands. It is generally acceptable to include a provision for contingencies equal to ten per cent of the total budget.

The NHRI might decide that it can meet the costs of the inquiry from within its ordinary budget. If so, it will need to identify the funds clearly and transparently so that there is no later internal conflict. This is predominantly a priority-setting task that has to involve the NHRI at the highest level.

If the NHRI decides to seek additional funding for the national inquiry, it could:

- request an additional allocation from the State, either the Government or the parliament, by way of supplementation of its annual budget for the specific purpose of conducting the inquiry
- seek a grant from another government fund elsewhere in the State sector, for example, a research or project fund relating to the area or subject of the inquiry
- apply for project funding from a domestic donor
- apply for project funding from an international donor.

8.3. PREMISES

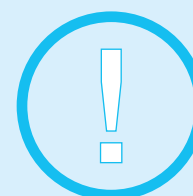
The inquiry team will need premises, such as offices, meeting rooms, administrative and services areas and so on. Usually it will work from the NHRI's own offices and this is clearly preferable to maintain a close attachment between the inquiry and other activities of the NHRI. The inquiry is an activity of the institution and that ownership needs to be apparent internally and externally. Even if the inquiry team is located within the NHRI's offices, additional space may still need to be found to accommodate all the inquiry staff and to hold various activities, such as meetings.

8.4. EQUIPMENT, SERVICES AND PUBLICATIONS

The inquiry's needs for equipment, services and publications will usually be met, at least in part, by the NHRI. For example, the inquiry should be able to access the NHRI's telephones, photocopier, fax, scanner, internet facilities, mail services, library and so on. Nonetheless, the inquiry may have needs in addition to what the NHRI already has available, such as mobile telephones for staff doing fieldwork, additional computers for additional staff, perhaps additional printers and specialist books and publications on the subject of the inquiry that may not ordinarily be in the NHRI's library. The inquiry should seek to identify and obtain as early as possible the additional equipment, resources and services it needs so that the inquiry's work will not be delayed.

KEY POINTS: CHAPTER 8

- An inquiry should not be launched unless and until the NHRI either has the resources it will need or is assured that it can obtain them at the necessary times.
- The inquiry needs an adequate budget, properly prepared and secured in advance, to enable it to do what is required to meet its objectives and carry out the terms of reference.
- The inquiry also needs premises, equipment, services and publications to enable it to do its work.



Chapter 9:

Finalise an inquiry plan

KEY QUESTIONS

- Why is planning important?
- What should an inquiry plan include?
- Should the inquiry begin with a clear timetable?



9.1. THE NEED FOR THOROUGH PLANNING

Thorough planning is necessary before the public work of the inquiry begins, that is, before the inquiry is even launched. Planning should address all the relevant matters relating to the conduct of the inquiry. It should ensure that the methodology is clear, the timetable is achievable and the products are known. The inquiry plan is not merely a planning document but a strategic document that sets out how the inquiry will achieve its objectives.

The scoping paper preceded the decision to proceed with a national inquiry. It raised issues and set out options. It enabled the NHRI to take the biggest decision, the decision to undertake an inquiry. It also enabled the NHRI to make many subsequent decisions about what the inquiry will address and how. As a result, it has been possible to define the objectives, draft the terms of reference, appoint the Inquiry Commissioners and key staff, prepare a budget and secure the necessary resources. Having reached that point, the inquiry team takes over and prepares a detailed plan for the conduct of the inquiry.

The plan is the blueprint or the roadmap for the whole inquiry – for the Inquiry Commissioners and staff and for people outside the NHRI who will want or need to be involved with it. It should provide everything that everyone will need to know about how the inquiry will proceed so that they are able to prepare and play their parts in it.

Internally, the plan will keep the inquiry on track, on time and within budget. A national inquiry will build expectations and develop significant momentum. The plan will keep the inquiry team firmly focused on what has to be done. It is finalised:

- **after** the terms of reference are adopted, so that it can be directed towards fulfilling them
- **after** Inquiry Commissioners have been appointed, because they are responsible for the conduct of the inquiry and for the implementation of the plan and so should approve and own the plan
- **concurrently** with the preparation of the budget, because the budget has to reflect the plan and the plan has to reflect the budget.

Externally, the plan will tell those outside the NHRI what the inquiry will do and how it will be done. It will assist them to understand what they can contribute, how they can contribute and when they can contribute so that they can prepare themselves and be ready for their participation at the appropriate time. The plan also promotes transparency and accountability in the inquiry's work.

9.2. CONTENTS OF THE PLAN

The plan should set out all the key information about the inquiry so that that information is available in a single place. It should include information about decisions already taken: the objectives, the terms of reference, the Inquiry Commissioners, the key inquiry staff and the budget. Its three additional principal components should be the inquiry's methodology, its timetable and its products.

9.3. METHODOLOGY

The plan should describe the whole methodology for the inquiry on an item-by-item basis. It should include briefing sessions, background information, research papers, the receipt of written submissions, the public hearings, consultations and reporting. It should also describe, in brief, the follow-up that the NHRI will undertake when the inquiry is complete and the report has been released. Follow-up should be the subject of a later specific strategy but it should be foreshadowed in the plan.

9.4. TIMETABLE

The timetable for a national inquiry should be carefully developed. The plan should provide a very detailed timetable on a month-by-month basis. A good starting point would be to plan for a national inquiry taking not less than 12 months but not more than 18 months. The plan should then map out how the inquiry would be conducted, from the completion of the background paper to the release of its final report, within that period. It should specify which activities will be undertaken at what times to ensure that the inquiry's momentum and public interest in it are maintained throughout that period.

The timetable should be realistic for the methodology of the inquiry and for the inquiry to be able to complete the activities in the plan. It is better to reduce the number of activities or extend the timetable a little than to plan a schedule that the inquiry cannot implement.

9.5. REPORTS AND RESULTS

The plan should also indicate what the results of the inquiry will be. At the very least, a national inquiry will produce a report of its findings and recommendations. It may report, however, in a number of documents, not only one, and in a number of formats, not only a printed text. These options are discussed in Chapter 13. The plan should indicate what the inquiry will produce – whether there will be one report or several, whether alternative reporting formats will be used in addition to the publication. This assists the inquiry staff to start preparing for the reporting process. It also enables those outside the inquiry to know what to expect from the inquiry and to consider their own means of following up on the inquiry's findings and recommendations.

9.6. MONITORING AND EVALUATION PLAN

The initial planning process should consider how the progress and results of the inquiry will be monitored and evaluated. The national inquiry plan should include monitoring and evaluation or monitoring and evaluation should be the subject of a separate plan.

The plan will include identifying the milestones throughout the inquiry when the team *monitors* how the inquiry is going. At these times the team will:

- review progress against the objectives
- identify any changes that may be required to the design, implementation and practice of the inquiry
- review whether the original inquiry objectives are the correct ones or whether they need adjusting.

The plan will also include how the inquiry will be evaluated once it has been completed and the report released.

The plan could also identify significant milestones following the report's release to review the implementation of the recommendations. The New Zealand Human Rights Commission undertook an analysis of the progress of implementation of the recommendations of the National Inquiry into Discrimination experienced by Transgender People in 2018 at its 10th anniversary.

KEY POINTS: CHAPTER 9

- Thorough planning is necessary before the public work of the inquiry begins.
- Planning should address all the relevant matters relating to the conduct of the inquiry, including the methodology, the timetable, the products, and monitoring and evaluation.
- The plan should be a strategic document that sets out how the inquiry will achieve its objectives.
- The inquiry should have a clear timetable to guide and direct its work.





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Chapter 10:

Obtain information:

Research and evidence

KEY QUESTIONS

- What information does the inquiry require?
- How will that information be obtained?
- What research should be commissioned?
- What evidence will be required?



10.1. THE NEED FOR INFORMATION

A large part of the work of a national inquiry is obtaining sufficient reliable information to enable the NHRI to analyse and understand the situation being investigated and develop recommendations to remedy violations, to prevent further violations and to enable the fulfilment of human rights. No national inquiry can gather every fact on any situation. Its concern should be to obtain sufficient information to enable it to achieve its objectives and address the terms of reference. The information obtained must be reliable. Inaccurate information leads to wrong conclusions and ineffective recommendations. It also undermines the credibility of the national inquiry and, as a result, the significance of its report.

A national inquiry has two principal sources of information: research that it undertakes itself or commissions for the purposes of the inquiry and evidence obtained from witnesses. The first task is to identify what information the inquiry needs.

10.2. WHAT INFORMATION IS NEEDED?

The first task is to undertake a literature review to find what data is already available and what research has already been done. That information is evaluated for its relevance to the inquiry and irrelevant information is put aside. The remaining information is then analysed to identify gaps that will need to be filled by the inquiry. These gaps will usually fall within four areas:

- hard data, that is, statistics that reveal the nature of the problem being investigated, the people affected by it, and the nature of the effects on these people
- review and analysis of relevant legislation
- review and analysis of relevant government policies and programmes
- analysis of applicable human rights law.

The data must allow for disaggregation, for example by gender or ethnicity or disability status, to help uncover patterns of disadvantage and inequality that might otherwise remain hidden.

An important part of the information needed will be the experiences of those affected by the human rights situation. The inquiry is not a merely academic study. It is a public process through which the voices of victims are brought to public notice and their experiences are acknowledged and recognised. These voices and experiences are primarily gathered through the public hearings but many will come to the inquiry through written submissions and as a result of research.

10.3. RESEARCH

The inquiry then needs to determine what research needs to be done and who will do it. The research to be done can include updating existing research with more recent data and undertaking research into new questions or issues. Usually there is a good deal of existing information available about the issue but much of the data can be out of date. The inquiry needs current data, able to be disaggregated, so that its recommendations are based on firm foundations. If key data are more than one or two years old, the inquiry may need to supplement them with its own research.

In addition, the inquiry may require information that is simply not available. There may be critical questions that need to be researched. These questions should be identified as early as possible in the inquiry's timetable to ensure that the research can be undertaken and completed well before the inquiry comes to write its report and develop its recommendations. The inquiry could be seriously delayed if it does not address research gaps until it is well advanced. The whole process could stall while the research is undertaken, with the consequent loss of momentum jeopardising the success of the inquiry.

The inquiry will need to consider whether the research is better conducted internally, by staff of the NHRI, or externally, by commissioned academics or other researchers. There are clear advantages in having research undertaken by staff of the NHRI, if they have the necessary expertise:

- the research will be conducted under the immediate supervision of the senior staff of the inquiry
- the inquiry will find it easier to ensure that it receives the information it needs in the form most suited to its use
- the inquiry can better ensure the timely completion of the research
- the NHRI will derive long-term benefit from its researchers' increased experience and their increased expertise as a result of undertaking the research.

However, NHRI staff may not have the necessary expertise and time to undertake the research. In this case, the inquiry will have to contract out the work to an academic institution or individual researchers. It will need to ensure that the contracted researchers have the expertise and experience necessary for the task and a demonstrated record of undertaking and completing research in a timely and competent manner and within a fixed budget. Most national inquiries are conducted with tight schedules and limited budgets and so cannot afford to risk not meeting research deadlines and costs.

10.4. EVIDENCE

Other information will come in the form of evidence to the inquiry. It is not information commissioned by the inquiry but information brought forward by those with access to it. Evidence is provided by those with particular experience or areas of expertise in relation to the human rights situation being investigated. They can provide the evidence orally or in written or documentary form, before or during the public hearings. It is highly desirable to receive a substantial number of written submissions before the public hearings begin. Part of the preparatory work in conducting the inquiry is to identify those who can provide evidence and then invite and encourage them to do so. They are among the stakeholders. Governments should be strongly encouraged to make early written submissions.

Those able to provide evidence to the inquiry can come from many sectors of society. As well as the victims of the human rights violations under investigation, they can be:

- Government representatives (national, provincial, local)
 - ministers
 - politicians
 - civil servants

- NGO representatives
 - specialists in the particular issue
 - human rights generalists
- academics
- religious and community leaders
- opinion leaders.

They can have quite divergent views about the inquiry and display different attitudes towards assisting its work through providing evidence. Some will be supportive and the inquiry will need to capitalise on their support and ensure it is expressed through evidence. Others may be hostile to the inquiry but it will need to reflect accurately any evidence they give. Others may be neutral towards the inquiry and will need to be educated, convinced and activated to contribute to the inquiry. A number of strategies can be used to engage those who can assist the inquiry with evidence:

- briefings, for example
 - meetings, both with individuals and with groups
 - written information about the inquiry
 - updates on developments and progress with the inquiry
- requests, for example
 - to provide information
 - to make a formal submission
 - to appear before a public hearing
- consultation to solicit their views on the inquiry, including on evidence available and how to obtain it
- participation in the inquiry.

10.5. INFORMATION STORAGE AND RETRIEVAL

The inquiry will collect a great deal of information from its research, from public submissions and from the public hearings. It will need an excellent information management system to ensure that this information is categorised, catalogued and kept securely and accessibly.

Categorising the information appropriately enables decisions to be made about the level of security required for individual documents or other pieces of information and then the provision of appropriate security for those needing to be kept securely. Most of the inquiry's information can and should be made public. That is a part of the public nature of the inquiry itself. However, some information will be sensitive. It might contain personal information about victims and their families. It might describe serious human rights violations and name alleged perpetrators, who are entitled to the presumption of innocence. It might expose the sources of the information to the risk of reprisal.

The inquiry should adopt information management procedures that establish a presumption that all information will be released except information that falls within predetermined categories. It should then carefully classify information for the purposes of these procedures and ensure the secure, safe storage of information determined to fall within a category requiring security. Secure information should be accessed only by persons needing and entitled to have access to it.

The volume of information will inevitably be so great that a good cataloguing system is essential if the information is to be easily and usefully retrievable. The inquiry should establish the cataloguing system before the volume becomes too great to handle and then ensure that all information is catalogued and stored appropriately. Storage should enable individual pieces of information to be identified and accessed easily so that they can be used for the purposes of the inquiry.

KEY POINTS: CHAPTER 10

- Some information required by the inquiry will already exist. It should be identified and obtained.
- Other information will need to be sought through research.
- Information will also be provided by those with particular areas of expertise in relation to the human rights situation being investigated, orally or in written or documentary form, during the public hearings.
- Part of the preparatory work in conducting the inquiry is to identify those who can provide evidence and then invite and encourage them to do so.
- The inquiry should establish early in its life an information management system that enables it to categorise, catalogue, store, secure and retrieve information easily and appropriately.



Chapter 11:

Conduct public hearings

KEY QUESTIONS

- Why are public hearings important to the national inquiry process?
- How are public hearings conducted?
- Who should appear at a public hearing?
- What particular issues arise in taking evidence from different categories of witness?
- What other arrangements need to be made for public hearings?



11.1. THE ESSENTIAL NATURE OF PUBLIC HEARINGS

A public hearing is an opportunity for persons with expert knowledge of the human rights situation under investigation to come forward in a public setting to provide their views, experiences and knowledge to the inquiry. The conduct of public hearings is an essential part of the national inquiry methodology. The central purpose of public hearings is to enable a wide range of perspectives to be placed before the inquiry and before the general community.

The use of public hearings distinguishes the national inquiry process from other NHRI methodologies. NHRIs conduct many forms of investigation and research. For example, they are often required by their establishing laws to handle complaints in confidence and so to investigate and seek to resolve them without any publicity. They may also conduct confidential investigations for practical reasons, to increase the chance of successfully identifying violations and perpetrators or to ensure the safety of victims and witnesses. They can undertake research projects that are of a more academic nature and so do not seek to engage the public, at least not until the research report is published. National inquiries, by contrast, are very public in nature and public hearings are the essential means of proceeding.

Public hearings are key to achieving the national inquiry's objectives.

Investigation	The evidence given by victims and witnesses assists the inquiry to find out what is going on, the nature and extent of a pattern of human rights violation.
Analysis	The evidence given by experts, including victims, academics, professional practitioners, NGOs, officials and others, assists the inquiry to determine the underlying causes and extent of a pattern of human rights violation.
Information	The public nature of the evidence ensures that both the public and key stakeholders are better informed about and more aware of the particular issue.
Education	The public nature of the evidence also increases understanding of human rights generally and commitment to better human rights observance.
Recommendation	Witnesses can propose ways to address the situation and so assist the inquiry to develop proposals for action to remedy the pattern of violation and prevent future violations.
Empowerment	Public hearings provide a forum in which victims of violation are acknowledged, affirmed and supported to act to seek redress for the harm done to them.

Public hearings provide opportunities for the inquiry to ask critical questions, in public and before the media, to those with responsibilities relating to the issue being investigated. They also enable the inquiry to identify areas of inconsistency and conflict in the evidence provided in written submissions or given by different witnesses and to put these contradictions to the witnesses in public for their response. For example, the inquiry can put to Government officials the evidence provided by victims and witnesses and seek the officials' responses to this evidence. The public examination places everything on the record.

Public hearings are also critical to the inquiry's strategy for follow-up. They build the momentum of the inquiry and public support for the recommendations the inquiry will make when it reports. In this way, the inquiry's report is released into a community that has been prepared for it, is looking with anticipation for its findings and recommendations and is expecting positive responses from those to whom recommendations are addressed.

Finally, public hearings ensure transparency in the conduct of the inquiry. The inquiry is not proceeding in secret and gathering evidence in secret, but in the full glare of publicity. The picture of the particular human rights situation is gradually put together, piece-by-piece, with the nature of the evidence and its sources openly available and well known. Every submission is made public, unless there is a good reason related to an individual submission to keep it confidential. Public hearings are conducted in public. If video or audio recordings of the hearings are made, they can be made public too, perhaps being placed on the inquiry's website, unless on a case-by-case basis the safety or privacy of a witness requires the evidence to be kept confidential. Transparency protects the inquiry from charges that it is biased or lacking objectivity or uninformed. The basis of its conclusions and recommendations is known and so those conclusions and recommendations are far more easily defended.

One challenge for the inquiry in taking evidence is assessing its reliability and the credibility of the witness. This is something that courts have to do all the time and so is not new to legal processes. Nonetheless, it is a difficult task. The best way to test the reliability of evidence is to identify inconsistencies and put them to witnesses. Public hearings assist the inquiry in its tasks of fact-finding and truth-seeking by making this possible. They provide the Inquiry Commissioners with opportunities to put allegations and inconsistencies to witnesses to seek their response, to assess the credibility of witnesses by seeing them present their evidence in person and respond to questions, to gather as much information as possible and to seek corroboration. Although public hearings are not judicial proceedings, they have many of the characteristics of judicial proceedings, the same challenges and opportunities, and the same strengths and weaknesses.

11.2. CONFIDENTIAL EVIDENCE

National inquiry hearings are always conducted in public unless the inquiry considers it necessary for some particular part of the hearings or a particular witness to be given the opportunity of a confidential hearing in a closed session. This can occur where the identity of the witness has to be protected or where the information the witness provides is especially sensitive. For example, victims may wish to testify confidentially because of the very personal nature of the experience or because they may be in danger if perpetrators know of the evidence. Or whistleblowers may wish to testify confidentially so that their superiors are not aware of the evidence. In both cases, the information provided to the inquiry may be important to the inquiry's task of discovering all relevant material, understanding the underlying causes of the problem and developing solutions. Most national inquiries have power to take the evidence in confidence where they consider it necessary for the performance of their functions.

Because public hearings are essential to the national inquiry methodology, all alternatives should be explored before evidence is taken in a closed session. It may be sufficient, for example, simply to suppress the name of the witness rather than close the hearing entirely. Or it may be sufficient to hide the identity of the witness by permitting the person to address the inquiry without being seen by the media, members of the public and others attending the hearing – heard but not seen.

Any reduction in the fully public nature of the process should be as limited as is necessary in the particular circumstances. Alternatives should always be considered before a decision is made to conduct a hearing in confidence in a closed session.

11.3. PREPARING THE PUBLIC HEARINGS

Because the public hearings are so important to the national inquiry process, they need to be carefully strategised and thoroughly prepared. There are a number of critical questions to be addressed in preparing the hearings.

- What evidence is required for the inquiry?
- Who is best informed to give that evidence?
- Who does the inquiry want to have on the public record?
- Who else needs or is entitled to be heard?
- Where should the public hearings take place?
- What record of the evidence should be kept?
- How can the media be engaged?

These issues should be raised, and at least partially addressed, in the background or scoping paper and the inquiry plan. They require detailed attention in a strategy paper, directed specifically to the hearings, that should be developed well before the hearings begin. They form the basis on which the hearings are organised and conducted.

The hearings do not usually have their own rules of procedure. Usually they operate informally, with a minimum of legal technicality, to permit witnesses to appear and give evidence in a relatively relaxed way. Nonetheless, a certain amount of formality is required by virtue of the status of the hearings as an official means of gathering evidence. The inquiry should make clear to those contemplating attending a hearing precisely what is involved, what will happen and what is expected of potential witnesses.

11.4. WHO SHOULD APPEAR BEFORE A PUBLIC HEARING?

No national inquiry is able to hear from everyone who has something to offer. This is simply beyond its resources. If the human rights issue or situation being investigated is systemic and widespread, then there will be large numbers of victims and many who consider they have relevant expertise or experience. That is almost always the case because that is the basis on which the original decision is taken to undertake a national inquiry.

The inquiry team needs to plan the public hearings carefully to ensure that:

- the persons with critical knowledge give evidence
- opportunities are provided for the widest range of views to be presented
- the views presented include those of marginalised people affected by the issues, particularly women and members of minority groups
- the number of witnesses is manageable, within the time and resources available to the inquiry.

Victims, of course, must have priority. The families of victims are also affected by the human rights violation and they will want to speak about what they have suffered. They are entitled to do so. However, it will not be possible to hear every victim or family member who wants to give evidence. Still, their experiences are among the most important that the inquiry will hear and their stories need to be brought to public attention. The inquiry team will need to select carefully from among victims and family members to ensure that the full range of their experiences is reflected in the evidence in the public hearings and that those selected to appear in person include women and come from all social, ethnic and religious groups affected by the violations. The inquiry should ensure that those it is unable to include in a public hearing are able to provide their evidence in another way, for example, through a written or audio or video submission or in an interview with inquiry staff.

Witnesses to violations will also have important evidence to present. They are independent of both victims and violators and so are able to present their evidence of what they have seen and heard. Again, it will be necessary to be selective in deciding which witnesses should be invited to give evidence so that the numbers do not exceed the inquiry's capacity.

Alleged perpetrators constitute the third category of first-hand witness. Anyone who has been personally named as a perpetrator by a victim or a witness is entitled to have an opportunity to respond to the allegation. Because a national inquiry can rarely reach detailed findings about individual violations, most national inquiries try to prevent individuals being named as alleged perpetrators in public hearings. Any who are, however, are entitled to an opportunity to respond publicly if they so desire. More generally, the inquiry will want to provide opportunities for key persons from groups alleged to be perpetrators – for example, police officers, military personnel or prison guards – to appear and give evidence and answer questions in public. The difficulty is that often these people are unwilling to appear.

The inquiry will also want to hear from academic experts – those who have studied the issue or situation intensively – who can provide an analysis of the underlying factors that have produced the situation and can offer proposals for recommendations that will provide redress to victims and ensure better human rights compliance in the future.

In addition, the inquiry will want to hear from government officials who have responsibility for the particular issue or situation. They need to explain existing policies and practices. They can be given the opportunity to propose new ways of addressing the issue or situation more effectively. Where necessary, they are entitled to defend their past actions if they personally, or their department or agency, have been criticised on the basis of human rights violations.

There may be many other individuals and organisations with expertise or experience to bring to the inquiry – NGOs, women, indigenous people and ethnic and cultural minorities, religious groups, perhaps private sector companies and businesses, and perhaps trade unions. In planning the public hearings, the inquiry should look broadly at the particular sectors of society that have an interest in the issue and can assist the inquiry through their expertise and experience.

It is also particularly important in a national inquiry to ensure that witnesses come from as many relevant geographical areas or regions as possible. This is necessary for many reasons, including that different States or districts may have different laws and regulations. The inquiry will also need to assess whether the experiences of the human rights situation vary from region to region.

11.5. HEARING VICTIMS

Victims and members of their families who appear at a public hearing are in unique situations, different from all others who appear. Their appearance can have particular significance for them and they have particular needs that must be anticipated by the inquiry and met.

Appearing publicly before the inquiry can validate and affirm victims and their experiences. Telling the story of what they have experienced can be healing for them. Often the hearings will be the first occasion on which the victims have been able to state, before an official body what has happened to them, what the consequences have been for them and what they need to recover, as best as possible, from those consequences. Many victims may have tried previously to tell their stories and obtain redress but have been abused and rejected when doing so. They will want the inquiry to listen to their experiences objectively and compassionately, to recognise the injustice done to them and the harm they have suffered, and to acknowledge their status as victim and their entitlement to redress.

Appearing in public before an official inquiry can be a frightening experience for some. It can be especially traumatic for victims who, through the process of telling what happened, will have to re-live the experience of violation. The inquiry team needs to prepare victims properly and sensitively for the hearings. It should provide advice on who will conduct the hearing, how it will be conducted, who else will be present, what might happen at the hearing and what the effect on them might be. It should ensure that nothing that occurs at the hearing comes as a shock to the victims. Simply appearing is difficult enough for a victim, without being surprised during the hearing by the nature of the proceedings or the way they are conducted or the presence of some individual or group.

The team should discuss with each victim ways in which some measure of protection can be provided. Most inquiries can take evidence in confidence if it is necessary for the safety of the witness or to protect the privacy of a witness. In other cases, the inquiry can suppress the name of the witness and all information that does or could lead to identification of the witness. The inquiry team should ascertain in advance whether a witness does not want to give public evidence or wants to give public evidence but with the witness's identity kept confidential. Victims and other witnesses should be able to express any fear or concern they have and then seek an appropriate assurance from the inquiry that enables them to give their evidence with the least risk to themselves and their safety.

Some victims may also need a support person at the hearing and even afterwards. Some victims may have support persons whom they will want to bring to the public hearing with them. Others will ask the inquiry to provide them with support. The inquiry should be flexible in attempting to meet their needs. For example, it can permit victims to have the support person sitting with them while they give evidence. It should also plan to respond to victims' needs as a result of giving evidence, for example, if the experience causes further trauma. Some victims may require psychological counselling.

The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, conducted by the **Australian Human Rights and Equal Opportunity Commission**, anticipated this need when it was preparing public hearings in which separated children and family members were to give evidence. It arranged with counselling services for trained counsellors to be available at the hearings and afterwards for witnesses who needed and wanted their assistance. It also had a trained counsellor on the inquiry team to work with traumatised witnesses and also other team members who understandably found the inquiry experience harrowing.



In planning public hearings at which victims and members of their families are to give evidence, the inquiry should ensure that the venue for the hearings is both accessible and “user friendly”. An inquiry into torture in prisons, for example, should avoid conducting a public hearing in a prison when victims are to give evidence. Victims might feel intimidated by the very possibility of giving evidence within the confines of the prison where their torturers work and where violations were likely to have occurred. Prisons as places of confinement are by nature oppressive, coercive and restrictive of liberty. Witnesses to an inquiry should be encouraged to speak freely and that is very difficult, perhaps impossible, within a prison. Prisoners and detainees should be taken to a neutral place to give their evidence. It may be necessary to have police or guards present, or at least close by, but any police or guards should be sufficiently distant from the witnesses that the witnesses can express themselves freely, without the risk of being overheard by the police or guards.

11.6. HEARING GOVERNMENT OFFICIALS

States have human rights obligations under international human rights treaties and so any national inquiry will need to examine the role of the State in relation to the human rights situation being investigated. In placing the State and State agents under scrutiny, the inquiry demonstrates its independence and integrity. State officials should generally be accorded the same treatment as others who can assist the inquiry and not be given special privileges or dispensations.

The appearance of government officials at public hearings will be necessary for the inquiry to obtain the governmental information it needs. This will include information about government policies and programmes and the basis (data and analysis) for government policies and programmes. They should be pressed by the inquiry to defend the present policies and programmes or propose new approaches that ensure better compliance with human rights obligations.

Government witnesses should give formal, public evidence on the record so that their evidence can be assessed and tested against other evidence and so the inquiry’s findings can be compared with their evidence. Government officials may attempt to avoid appearing and being questioned in public by offering to provide “intensive briefings” to the inquiry or written answers to the inquiry’s questions. While the inquiry may agree to receive briefings and written information, it should not do so on the basis that government officials will not participate in the public hearings. Their presence for examination and questioning is important to the inquiry’s independence. Further, any information received through oral or written briefings should be made publicly available to ensure that it is known and can be challenged by others. Written submissions from government agencies received in advance of the public hearings provide the Inquiry Commissioners with valuable material in preparing questions to ask officials at the hearings.

11.7. WITNESS PROTECTION

Some witnesses will be vulnerable because of their evidence to the inquiry. Victims might be put at risk because they give evidence about their experiences of human rights violations. What they say may identify perpetrators, directly or indirectly. Government officials who cooperate with the inquiry might be exposed to victimisation or reprisal because they give evidence about the practices of their agencies or the actions of their colleagues. In planning and conducting the hearings, the inquiry should take care to ensure that it provides as much protection as it can to witnesses, especially victims, who require it. This protection can take various forms.

Most laws establishing NHRIs provide penalties for threatening, harassing, intimidating or harming any witness in proceedings conducted by the NHRI. The inquiry might need to remind all interested parties of those penalties and express the willingness of the NHRI to take appropriate action if it becomes aware of any threats or improper action directed towards witnesses.

The inquiry should also remind the Government that the penalty provisions of the legislation protect civil servants, including senior officials, who cooperate with the NHRI's procedures by assisting the inquiry.

The inquiry should identify potential risks in relation to individual witnesses before the hearings begin and take such action as it can to address the concerns before they eventuate. Part of this will involve identifying which witnesses will need to have their identities suppressed or will need to give their evidence in confidence to the inquiry alone. In extreme circumstances, the inquiry may need to seek assistance from police, if appropriate, or other agencies to provide protection for any witness who is in immediate danger. It may be necessary to have safe houses ready to accommodate those who need protection from physical violence.

The nature of risks will vary from place to place and from time to time. In some countries, there may be a risk of retribution of some kind but little or no possibility of violence. In others, there may be an extreme risk of violence. The inquiry should undertake a risk assessment before conducting a public hearing and prepare responses to identified possible threats before they arise. The risk assessment should determine whether security measures are required to protect the proceedings and the persons in attendance generally, not only particular witnesses. Public hearings can be emotionally charged and there may be a risk of violence, even in relatively peaceful countries. The inquiry has a duty of care towards those who attend public hearings – witnesses certainly but also inquiry staff and members of public who sit in the audience.

11.8. STRUCTURING THE HEARINGS AND THE WITNESSES

Most national inquiries will conduct a significant number of public hearings in different parts of the country. A key part of preparing the hearings is determining how they will be arranged or structured, that is, which witnesses and issues should be considered at which particular hearings during the course of the inquiry. In part this is a practical issue – who is available at which location? However, far more than that, it is a strategic question – what is the best way to arrange the public hearings so that they are most effective in obtaining the information the inquiry needs (the internal dimension) and so that they have the most impact in the general community (the external dimension)?

The programme of public hearings should be decided well in advance of their commencement. This is necessary to ensure that all essential witnesses are given sufficient notice to be able to attend. It is also necessary to ensure that the inquiry has a good spread of public hearings, in key cities and locations throughout the country, in places where the key witnesses are located and in places that are accessible to the media. In a country where the media are highly decentralised, public hearings conducted away from the capital city or main cities will be important if the inquiry is to obtain the media attention it needs to communicate its message to the community as a whole. It is important also that inquiry goes to the victims in the places where they live and work, rather than always expecting the victims to come to it. The inquiry needs to be sensitive to the needs and views of victims, giving them priority at all times, provided that doing so is consistent with inquiry's objectives and capacities.

In structuring what topics will be covered in the hearings, a number of different approaches can be taken. The inquiry may decide that each public hearing will canvass the issue or situation generally, so that each hearing basically covers the same material. This can be appropriate where the media are highly decentralised and will report only what has been said in their own locality. This approach can be repetitious for the inquiry but in national inquiries, where a great deal of evidence may be anecdotal, it is important to have the evidence of witnesses corroborated or tested in a number of different localities. This was the case in the inquiries conducted by the Samoa Ombudsman/National Human Rights Institution on Family Violence, the inquiry by the New Zealand National Human Rights Commission on transgender people, and the Afghanistan Independent Human Rights Commission inquiry on rape and honour killings of women.

An alternative approach is to divide issues or sectors across the public hearings so that, for example, academics appear in one venue and government officials in another and NGOs in a third. If this approach is taken, the inquiry should be careful to ensure that, on each occasion, victims who live locally have opportunities to speak, even if there is some repetition in what they have to say.

Another approach is to look at different aspects of the issue or situation at different public hearings. Take an inquiry into rural education as an example. The inquiry might examine aspects affecting children with disability in one public hearing and aspects affecting indigenous children at another. The particular aspect to be examined and the particular location for the hearing can be chosen to ensure an appropriate match between the aspect and the location. So indigenous education could be examined in a hearing conducted in an indigenous community and education for children with disability might be examined in a hearing conducted in a school that caters especially for them. Choosing appropriate locations is as important as choosing the most relevant people to give evidence.

11.9. RECORDING THE EVIDENCE

Before the hearings begin, the inquiry will need to decide how the evidence to be provided should be recorded. Arrangements will need to be made for the recording, in whatever form the inquiry requires.

Recording is important because the evidence given at the public hearings is important. The inquiry will want to ground its findings and recommendations as firmly as possible in the evidence it receives. That is what gives the findings and recommendations legitimacy and strength. In doing this, the inquiry's report should refer to and quote extensively from the evidence given at the hearings, including the actual words of victims, witnesses and other experts. Direct quotation enables the victims, witnesses and other experts to speak directly, in their own words, to readers of the inquiry report. It gives the report a personal dimension and an immediacy that more academic or legal writing cannot give.

The easiest and least expensive means of recording hearings is audio recording. Audio recording requires little equipment – only a microphone near the speaker and a recording device – and little expertise. Inquiry staff themselves could do the recording. For a higher-quality recording, the inquiry could arrange broadcast-quality recording by professional technicians with professional equipment. This would enable the recordings to be edited and used in audio and video programmes about the inquiry. Video recording is also possible and these days it can be as easy to do as audio recording. However, it can also be considerably more expensive if it is to be recorded at high quality for telecast purposes. Some high quality video footage of the public hearings should be taken, nonetheless, for use in news programmes and documentaries about the inquiry but it is probably not financially feasible to do high quality video recording of the whole hearings.

Whether the hearings are recorded by audio alone or by video, the inquiry will require at least some transcripts of the evidence so that it can be referred to and quoted in the report. Full transcription is desirable but it is very expensive. It may be sufficient to ensure that the evidence of all witnesses before the hearings is well indexed to enable material to be accessed easily from the audio or video tapes and transcribed only to the extent required.

11.10. INQUIRY POWERS AND PUBLIC HEARINGS

One question to be considered in preparing for the public hearings is whether and when the inquiry's powers of enforcing cooperation should be exercised. NHRIs have significant powers to enforce cooperation with their processes, including power to require the attendance of witnesses, to compel evidence, to take evidence under oath, to obtain documents and to enter premises. Usually the NHRI's statutory powers can be exercised during the course of a national inquiry, either through the inquiry directly or by delegation or by the NHRI itself on behalf of the inquiry. The question for the inquiry is whether it is appropriate to exercise these powers and, if so, under what circumstances.

Generally speaking, witnesses are more helpful to an inquiry when they appear and provide evidence voluntarily, that is, without compulsion on the part of the inquiry. A willing witness is generally a helpful witness but an unwilling witness may be hostile and obstructive. The inquiry is better served, therefore, by persuading witnesses to give evidence rather than compelling them to do so. Nonetheless, there will be circumstances in which compulsion is necessary. It may be necessary to ensure the appearance of an unwilling person who has information critical to the inquiry that cannot be obtained from other sources. It may be necessary to enable the inquiry to put incriminating evidence to the witness so that the witness has an opportunity to respond. It may also be necessary where the witness is willing but fearful of reprisals after giving evidence. For example, a witness who wants to give evidence may fear retribution from a superior or an employer and so asks the inquiry to compel attendance so that the witness can claim to have spoken out only because of the statutory compulsion. Compulsion can offer a measure of protection to witnesses.

Similar issues arise in relation to the exercise of powers to obtain documents. However, they are less complex. It is better to proceed cooperatively and obtain documents by consent. Where there is cooperation, the inquiry may be able to obtain far more material than a technical legal order might cover. In this way, cooperation can yield more. However, the use of compulsion to obtain documents is less problematic than compelling a witness to give evidence. Documents are not capable of being alienated and becoming obstructive or hostile as a person is. There is less risk and less cost in using statutory powers to obtain documents than in using them to require someone to appear before the inquiry and give evidence.

The power to take evidence on oath also raises issues. Criminal justice systems provide penalties for giving false information on oath and so requiring a witness to take an oath or affirmation can provide greater assurance that the evidence given is true in all respects. However, a witness can still lie under oath. It is not an absolute guarantee of truth. Most laws establishing NHRIs impose penalties for providing false information to the NHRI, whether or not it is given under oath, and so requiring an oath is not essential to impose a penalty for the provision of false information. However, where an inquiry decides that evidence should be given under oath or affirmation, it should impose that requirement on all witnesses to avoid giving the impression that it considers some witnesses trustworthy and some not. Evidence given under oath or affirmation is generally regarded by the Government, the media and the public as more reliable and credible.

11.11. WHO SHOULD ATTEND THE PUBLIC HEARINGS?

Public hearings are open to anyone who wants to attend. The inquiry should announce when and where the public hearings are to be held and invite any interested persons to come along. The inquiry itself needs to have the information that witnesses provide but the information must also be made available to the broader community. This is a critical part of achieving the inquiry's objectives of awareness raising about the particular issue and of human rights education more generally. Members of the public should be encouraged to attend the hearings and hear first-hand the evidence of victims, experts, government officials and others. The inquiry should do this by making the list of hearing places and dates available well in advance through the inquiry's website, by publishing notices in newspapers in the region where a hearing is to be held at least one month before the hearing date, by writing or emailing key community groups and leaders well in advance of a hearing being held and by giving media interviews in advance of the hearing. Social media can also be useful in advising interested people of a coming public hearing.

Particular efforts must be made to ensure the attendance of the media at the hearings. They will provide information and analysis about the inquiry to the broad community. Anticipating and meeting their needs and interests should be a principal component of planning the hearings. Before each hearing, the inquiry's media officer should ensure that the media are well briefed so that they can understand and interpret accurately what is happening and what is being said and so place the evidence given at the hearing in the proper context. They should be advised who will give evidence and when, have access to the Inquiry Commissioners for interviews and be provided with opportunities to conduct direct interviews with witnesses who are willing to speak to the media.

They should be permitted to obtain an official statement from the inquiry, usually through the chairperson, before and after the hearing. The inquiry's media officer should be on hand at the hearing at all times to assist the media with information and interpretation and to arrange interviews with key personnel and key witnesses.

The inquiry should also encourage NGOs to be represented at public hearings. NGO representatives can play several roles, in addition to giving evidence themselves. Their presence is a useful reminder to witnesses that there are people in the audience who will hear and respond to what they say. This encourages witnesses, especially government officials, to be frank and honest in their evidence, as they know they could be contradicted if they provide inaccurate information or withhold information. NGO representation helps to "keep them honest". It also impresses on government officials and the media that key NGOs see the importance and seriousness of the inquiry. Their presence adds to the inquiry's stature. It also enables them to respond on the spot to what the inquiry is told. The inquiry itself may wish to reserve comment on some issues but the media will want someone to make immediate comment. NGOs can assist the inquiry by making immediate responses, reducing the pressure on the inquiry itself to do so. And their immediate comment can further raise the profile of the inquiry in the media, contributing to building the inquiry's momentum.

Finally, government officials should be not only permitted but generally encouraged to attend and observe the hearings. The hearings are opportunities for officials to listen and learn. Often they have few of these opportunities: to hear first hand the experiences of those affected by government policies and programmes; to learn what experts say by way of analysis of present policies and programmes and proposing alternatives; and to obtain early notice of the developing views of the inquiry itself. However, these advantages need to be balanced with the recognition that the presence of government officials may intimidate some witnesses or deter them from speaking frankly.

KEY POINTS: CHAPTER 11

- Public hearings distinguish national inquiries from all other methodologies used by NHRIs. They are the key to achieving the national inquiry's objectives.
- The inquiry team needs to plan the public hearings carefully to ensure that the inquiry is able to hear from all those it needs to hear from, if necessary through careful selection of witnesses at each public hearing.
- The hearings need to be accessible and conducted in as many places as possible to ensure that the inquiry presents an accurate "national picture" in its report. This is particularly important in countries with both national and state or provincial governments.
- The individual situation of each witness needs to be taken into account in the preparation so that the hearings proceed as smoothly as possible, respectful of the witnesses who appear.
- A key part of preparing the hearings is determining how they will be arranged or structured, that is, which witnesses and issues should be considered at which particular hearings during the course of the inquiry.
- Evidence given in the public hearings needs to be recorded in some form so that it can be easily accessible for use in the inquiry's report.
- The inquiry should determine whether and when it would be appropriate to use the NHRI's powers to support its investigation.
- The hearings should generally be as public as possible and open especially to the media, NGOs and interested members of the public.



Chapter 12:

Develop recommendations

KEY QUESTIONS

- Why do national inquiries make recommendations?
- What should recommendations do?
- What is their basis?
- To whom should they be directed?
- What are good recommendations?



12.1. THE PLACE OF RECOMMENDATIONS IN THE INQUIRY PROCESS

The national inquiry is directed towards the completion and release of a report that contains its findings and recommendations. This is not the only objective of the inquiry but it is an important one. The inquiry seeks to ensure full performance of human rights obligations that are relevant to the inquiry's terms of reference. That includes the provision of redress for victims of the human rights situation under investigation and adequate prevention mechanisms for the future. Its recommendations are directed towards these two issues, redress and prevention. And these two issues are the key parts of full compliance. To accomplish this, the recommendations must be realistic, comprehensive but as concise as possible, achievable, well targeted and directed towards the principal issues identified in the inquiry.

The actual task of developing recommendations goes hand-in-hand with the public hearing component of the inquiry, as does the task of writing the report, discussed in the next chapter. Developing recommendations and writing the report are major tasks, perhaps occupying between 30 and 40 per cent of the time and energies of the inquiry team over the course of the inquiry.

Options for recommendations should be developed from the very beginning of the inquiry, from the initial planning stage. Additional options can be included as the inquiry hears from experts and learns more about the actual experiences of victims. The list should be reviewed and refined, tested and debated, amended and developed continuously as the inquiry proceeds. Finally, when all the evidence has been gathered and analysed and all the advice obtained and considered, the inquiry adopts the recommendations in their final form.

12.2. WHAT SHOULD RECOMMENDATIONS DO?

Recommendations should be developed to answer several key questions,

- What needs to be done to provide remedies to victims?
- What other aspects of human rights violations revealed by the inquiry should be addressed and how?
- How can further similar violations be prevented, including where necessary changes to laws, policies and programmes?
- What further should be done to educate the community about this human rights issue?

12.3. THE BASIS FOR RECOMMENDATIONS

Recommendations should have a firm basis in law and fact. They should be based on the evidence and information gathered by the inquiry. They should address the inquiry's terms of reference and respond to the facts of the situation as revealed by the inquiry, measured against the requirements of international human rights law.

The inquiry's terms of reference provide an initial checklist of matters to be addressed in the recommendations. The inquiry should be sensitive to ensuring that it has done what it was asked to do, addressing each of the terms of reference adequately and, in doing so, providing such recommendations as may be necessary to ensure the performance of relevant human rights obligations. In developing recommendations, the inquiry should go back to the terms of reference regularly to check that it is addressing each of them.

Second, because recommendations must be based on fact, they should flow from the evidence provided to the inquiry and from the inquiry's own analysis and findings. On the one hand, where recommendations have no connection to what the inquiry has been told and what it has found, they will have little credibility and the integrity of the inquiry will be undermined. Recommendations should not be what the inquiry would like but what the inquiry considers is required to respond to the facts as found. On the other hand, where the inquiry receives significant evidence of actual or potential violations of human rights but does not make the recommendations necessary to respond to that evidence, then it will be justly criticised for ignoring what it has been told and what it has found. In developing recommendations, the inquiry will have regard to the evidence provided and consider whether all the key findings in relation to violations have been the subject of recommendations to address deficiencies in performance. If, in developing recommendations, the inquiry finds that some areas of evidence are incomplete, it should find ways to fill the evidentiary gap. That is one important reason for recommendations to be developed and refined progressively over the period of the inquiry, so that evidentiary gaps can be identified and filled as soon as possible.

Third, the recommendations must be based on international human rights law. An NHRI has human rights expertise and is empowered to act on the basis of that expertise. The national inquiry performs that function in relation to the issue or situation it is investigating. It is a human rights inquiry, not a social welfare inquiry or an economics inquiry. Its recommendations have to address what needs to be done to comply with these human rights obligations. It must examine the obligations under those international human rights treaties that the State has ratified and, depending on its founding law, it may also be able to look at human rights obligations under other treaties, under customary international law and under human rights standards generally accepted in the UN Charter-based system, including declarations and resolutions of the UN General Assembly and the Human Rights Council.

12.4. TO WHOM SHOULD RECOMMENDATIONS BE DIRECTED?

A national inquiry can direct recommendations to all relevant actors, not only to the Government. It can direct them to any body, organisation or even individual with a role in addressing the violations or improving human rights compliance. These can include:

- governments at national, provincial and local levels
- government departments, agencies and officials
- parliaments
- courts
- business organisations
- trade unions
- religious organisations
- academic institutions
- NGOs
- victims themselves.

Because of the breadth of a national inquiry, it has the capacity to look comprehensively through its recommendations at how a situation of human rights violation can be addressed most effectively.

12.5. DRAFTING RECOMMENDATIONS

To be good and effective, a recommendation must be well drafted. Different management writers have proposed various lists of characteristics for well-drafted recommendations but most lists have common characteristics.

A good, effective recommendation should be:

- specific
- measurable
- achievable
- relevant
- timely.¹⁷

In addition to these characteristics, each recommendation should be well targeted, indicating clearly who is to do what, when and, if possible, how. That is, each recommendation should specify:

- the organisation, agency or individual to which it is directed for implementation
- the action recommended to be taken
- the time in which it is reasonable to expect that action to be taken
- the means by which the action should be taken.

The recommendation should be specific enough that it is possible to determine whether it has been implemented and, if so, to what extent and with what success.

12.6. THE NUMBER OF AND PRIORITY AMONG RECOMMENDATIONS

One question that arises in a national inquiry is how many recommendations it should make. At one level the answer is simple: as many as are needed, no more and no less. That is correct but developing recommendations is more complex than that.

In general, having fewer recommendations is better than having more. Certainly an important recommendation should not be ignored and deleted. There should be as many recommendations as required. However, it is always possible to develop more recommendations, to add to the list. Refining them is more important than adding to them. The issue is pragmatic. A smaller list of key recommendations is more likely to be accepted and implemented than a long list of recommendations of varying degrees of significance.

That introduces a second issue: priority. Not all recommendations are of the same order of importance and so they are not of equal priority. Some are of more importance and of higher priority than others. The report itself should distinguish between levels of priority. If it does not, the Government and others to whom recommendations are directed will be under less pressure to act on them.

Take, as an example, an inquiry that makes 80 recommendations, of which 60 are addressed to the Government, and does not indicate any priority among them. The Government may respond by going through the list of recommendations and identifying those that can be implemented quickly and inexpensively, without regard for their significance in addressing the basic issue or situation. It might be able to identify 50 of the 60 recommendations addressed to it that could be implemented quickly and inexpensively. It selects from the recommendations those that it likes and that cause it the least pain.

17 This is commonly called the “SMART” typology.

It then claims that it has accepted and implemented more than 80 per cent of the recommendations. This takes no account whatsoever of the fact that the most fundamental recommendations are among the ten not accepted and implemented. The Government will claim to be doing well but the inquiry will have failed to the extent that its most important recommendations were ignored.

An inquiry that makes a relatively limited number of clearly prioritised recommendations is more likely to achieve a positive result than one that produces a long shopping list of unprioritised actions. An effective strategy is sometimes to indicate which recommendations should be implemented immediately and which may be implemented in the medium-term or longer-term.

KEY POINTS: CHAPTER 12

- The inquiry makes recommendations to promote full compliance with human rights obligations, through providing redress for past violations and prevention of new ones.
- Recommendations must be realistic, comprehensive but as concise as possible, well targeted and directed towards the principal issues identified in the inquiry.
- Recommendations should address the inquiry's terms of reference and respond to the facts of the situation as revealed by the inquiry, measured against the requirements of international human rights law.
- Recommendations should be directed to any body, organisation or even individual with a role in addressing the violations or improving human rights compliance.
- Recommendations should indicate which have the higher priority and which may be implemented in the medium-term or longer-term.





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Chapter 13:

Prepare the report

KEY QUESTIONS

- Why should a national inquiry prepare a report?
- What should the inquiry's report contain?
- To whom should a report be directed?
- What formats can a report take?



13.1. THE IMPORTANCE OF THE REPORT

The national inquiry's report is its most tangible product. Producing an accurate and well-written report is not the only objective of a national inquiry. Nonetheless, it is a very important one. A good report will ensure much better community understanding of the nature of the human rights issue or situation that has been examined and a much better possibility that the inquiry's recommendations are accepted and implemented.

Because the report is a piece of “persuasive communication”, the inquiry will want and need to select, order and use the evidence, personal stories, arguments, examples, other information, language, tone, illustrations, layout and design, cover and title effectively to achieve the inquiry's purpose and communicate effectively and persuasively to the target audiences.

From the beginning, therefore, the inquiry must consider what the final report will find and recommend.

Early consideration of the report also assists the writing task. The inquiry will collect an enormous quantity of information – statistical data, descriptive materials, research findings, analyses and so on. It will hear the views and arguments of large numbers of experts and other stakeholders. It will receive the stories and experiences of large numbers of victims and their families. Organising and analysing this material will be difficult. Writing the report is a demanding, complex and time-consuming task. Developing clear ideas about the nature of the report early in the inquiry helps to ensure that all necessary information is identified, sought, obtained and organised in ways that will facilitate the report writing.

Of course, the report cannot be written in advance but it can be planned in advance, from the very beginning. The scoping paper should discuss what form the report might take and what it might contain. It should certainly indicate who will be responsible for writing the report and for developing the recommendations.

Having an early draft of a table of contents of the final report is a good way to ensure that the conduct of a national inquiry is well focused on the preparation of the report. The table of contents indicates the issues that will be covered in the report and enables the national inquiry to focus on obtaining the necessary information and undertaking the necessary analysis to report on all those issues. Identifying the issues also helps in the development of recommendations.

The actual writing task goes hand-in-hand with the public hearing component of the inquiry. Typically, a report will go through many drafts. Writing the report will be a challenging undertaking because of the complex connections among issues involving systemic human rights violations. The report cannot be completed until all the evidence has been gathered and analysed. However, the writing must begin well before that if the national inquiry is to complete its work in a timely manner.

It is very important for the national inquiry to capitalise on public interest by releasing a report as soon as possible after the conclusion of public activities. If the report comes after a lengthy gap – say six or 12 months – then public interest will have waned and the inquiry will find it very difficult to revive it. The inquiry builds up its own momentum as it is undertaken and the report should ride the wave of that momentum rather than miss it. Planning and commencing preparation of the report from the beginning of the inquiry will help to ensure it is completed within a reasonable time and that, at its release, there will be a well-grounded base of support for what it finds and recommends.

13.2. REPORTING AGAINST OBJECTIVES

The inquiry's report plays a significant part in the inquiry meeting its objectives.

Investigation	It presents the evidence collected and the findings.
Analysis	It provides the underlying context and causes.
Information	It gives basic data to inform the community.
Education	It increases knowledge of human rights.
Recommendation	It makes the case for the recommendations.
Empowerment	It offers victims and their supporters a basis for advocacy and action.

Because of the inquiry's multiple objectives, the report has to serve many different functions. If the report is to meet the many different objectives of the inquiry, the inquiry must be clear, before the writing task begins, about:

- to whom it is reporting
- the kind of report it is writing
- the contents of the report
- the structure of the report
- the style of the report
- alternative and supplementary reporting formats.

Preparation of the report should begin as early as possible, with critical decisions made about these issues.

13.3. TO WHOM TO REPORT

A national inquiry has legal, moral and political obligations in reporting.

The inquiry has a legal obligation to report to the parliament, usually through the Government or a specific Government minister. Most laws establishing NHRIs provide that the NHRI should report on its activities generally and on specific investigations to the parliament. Some institutions are able to report directly to parliament by providing copies of their reports to the President or Speaker of the parliament. Others are required to report through a designated minister, usually the Minister for Justice or the Attorney General. Sometimes the parliament has rules governing the reporting process, including quite prescriptive provisions about the nature of the report, for example, the size of the paper, the kind of binding, the use of photographs and illustrations. It is important for the inquiry to meet all parliamentary reporting requirements. The inquiry should ensure early in its work that it understands those requirements and tailors the preparation of the report towards complying with them.

The NHRI may also have a separate legal obligation to report to the Government.

The inquiry has a moral obligation to report to victims. They are at the centre of the inquiry's concerns. The inquiry could not have proceeded without their support and participation. The inquiry therefore must give priority to victims in preparing its report. It must ensure that it communicates its findings and recommendations to them in a language and form that they can understand. This is part of the inquiry's role in affirming the experiences of victims and empowering them to act to obtain redress.

The inquiry must also report to all other stakeholders who played a role in the inquiry. This has moral and political dimensions. The inquiry should provide those who gave evidence or otherwise assisted it with feedback on their own contributions and information about the inquiry's findings and recommendations. In addition, it should seek through its report to strengthen stakeholders' ownership of the report and the recommendations. This is the political dimension, reporting as a means of building political pressure for the acceptance and implementation of the report's recommendations.

Those to whom recommendations are made are specific targets of the reporting process, both to inform them of the recommendations directed to them and, through the report's evidence and analysis, to persuade them to implement the recommendations.

Finally, the report is directed to the broad community. This is part of the inquiry's information and education objectives, to increase knowledge and understanding of the particular issue and of human rights generally. It also has a political dimension, contributing further to building political pressure for the implementation of the recommendations.

These "target" groups for the report are very diverse. They have great differences in:

- political status
- socio-economic status
- educational levels
- literacy
- knowledge of governmental processes.

A challenge for the inquiry is to write a report that will communicate clearly and effectively to such widely different target audiences. Communication with one group should not be at the cost of good communication with another. For example, the need to produce a strong, convincing report to parliament that meets all the parliamentary reporting requirements may make it difficult for the inquiry to report in a clear, intelligible way to victims. However, reporting to victims is a moral obligation for the inquiry. If the inquiry cannot report adequately to all target groups through one report, it may need to consider alternative or supplementary reporting formats.

13.4. THE FORMAL REPORT OR REPORTS

The inquiry's formal report has to meet parliamentary reporting requirements but those requirements will not dictate how many reports are to be produced or the content of the report or reports.

Most inquiries will produce a single, formal report for tabling in parliament. That report will contain all the inquiry's findings and recommendations and describe its terms of reference and its methodologies or procedures. The inquiry may decide, however, to issue a number of reports that together cover what a single report would cover. The contents of these reports could be chosen in a number of ways.

- There could be one report for findings and another for recommendations.
- There could be separate reports for different issues or groups of issues, each having findings and recommendations in relation to the issue or issues covered.
- There could be separate reports for different "target" groups or sectors, for example, for the Government, for the private sector and for NGOs.

If there is to be more than one report, then they could be released simultaneously or progressively over a period. The production of several reports that are released at different times can build and maintain momentum for implementation over a longer period than simply focusing on a single release. On the other hand, this may dissipate public attention and so reduce the impact of the report. There is a strategic choice to be made about what is likely to be most effective in promoting implementation.

13.5. THE CONTENTS OF THE REPORT

Whether the inquiry decides to issue one report or several, the contents as a whole will need to include certain common elements:

- the voices of victims
- an accurate and fair summary of the evidence received
- an explanation of the relevant provisions of human rights law
- the inquiry's own findings or conclusions, based on the evidence and the law
- a strong analytical context for the findings, so that readers understand not only what happened but why it happened
- a response to each of the terms of reference
- recommendations.

Ensuring that the voices of victims are heard clearly and explicitly throughout the report is a particular priority. The report should not be merely an intellectual or academic document, though it must be comparable in analytical rigour. It should also be a vehicle through which victims become real persons to the readers and their stories and experiences are told in their own words. The inquiry will have collected a great deal of information from victims, in their own words, during the course of the public hearings and through their written submissions. This information should not only be analysed but passed on to others. The power of the inquiry approach lies in bringing the experiences of victims to life. This needs to be accomplished through the report as much as through any other part of the inquiry.

One of the reasons that the national inquiries on transgender people, on family violence and on Aboriginal and Torres Strait Island children were so effective was that they highlighted key points in the evidence by including compelling direct quotations and photos from victims and other witnesses.¹⁸

13.6. THE STRUCTURE OF REPORT

A draft table of contents for the report or reports should be developed as early as possible to provide an early understanding of the structure of the report or reports. Early development of the structure enables evidence to be collected and organised in ways that assist report writing. It enables the inquiry's work to be organised to collect the data that is required for the report. It also permits allocation of writing tasks among members of the inquiry team with writing responsibilities and the early drafting of background chapters.

There is no single suitable structure. Some things are found in all reports. Reports typically begin with an introduction and discussion of the background to the inquiry, its methodology, its work programme and its members. They typically end with a conclusion that seeks to draw together the main themes, followed by a summary of the findings and recommendations. Their substantive chapters deal with the evidence and the law and present findings (or conclusions) and recommendations. These chapters can be organised in any number of ways, for example, according to issue or geographic region or population group or political and social sector.

¹⁸ See www.hrc.co.nz/files/5714/2378/7661/15-Jan-2008_14-56-48_HRC_Transgender_FINAL.pdf, https://ombudsman.gov.wa/wp-content/uploads/2019/01/2018_SHRR-2018-National-Public-Inquiry-into-Family-Violence-English.pdf and www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf respectively.

13.7. THE STYLE OF REPORT

The inquiry's writing team will need clear guidelines on the style of the report. Style goes to communications: how the report is written affects its readability, its persuasiveness and its impact. Style is related to the issue of target groups. It must be a style acceptable to the various target groups. But the breadth of those groups makes that difficult. The writing team is challenged to produce a report that, for example, will withstand critical bureaucratic and academic examination and yet be able to be read and understood by a general readership.

Some basic principles can guide the writing to ensure an appropriate style.

- The report should be as short as possible, consistent with the need to include the necessary material. Even for an academic audience, shorter is always better than longer, and for a political audience a long report simply will not be read.
- The report should be written as simply as possible, in clear, concise language. It should be accessible to as wide a readership as possible, while recognising that no single document will be appropriate and accessible for every reader.
- Its language should be measured, never exaggerated, relying on fact rather than rhetoric – writing is most persuasive when it allows the facts to speak for themselves.
- Wherever possible the report should quote directly from the evidence, especially the evidence of victims. The report's legitimacy will rest on the quality of the evidence and the credibility of the witnesses and so it should let them speak in their own words.
- The contents of the report should be properly referenced or footnoted to material provided to or collected by the inquiry. Good referencing enhances credibility but, to be able to reference well, the inquiry will need to have established good cataloguing, filing and retrieval systems for the information it obtains.
- The report should clearly distinguish between the evidence and views of others and the findings and conclusions of the inquiry itself and between its analysis and its recommendations. In particular, recommendations should be clearly identified and numbered individually to make them easy to refer to and monitor.

13.8. SOME OTHER MATTERS

There are many other matters relating to the report that will need to be discussed and decided. They are technical matters but not merely technical. They all go to the impact the report will have. The inquiry will want the report to be as influential as possible and will need to take care in deciding these matters. It should draw on the advice of professionals with expertise in communications.

The **title** of the report is important as it is the first contact a reader will have with the report. It has the potential to influence the reader before a word of the report is read. The title should be simple. Sometimes it will only say what the report is, *The Report of the National Inquiry into...* . That kind of title has the benefit of being clear and simple and formal. It gives the report an official stamp. Where the inquiry wants to emphasise the official nature of the report, that will be enough. The title communicates in an official way what the report is about.

However, the title can also communicate a stronger message about the subject matter of the inquiry itself. It can make a point. It can attempt to express in a few words a critical message of the inquiry itself. The National Inquiry into the separation of Aboriginal and Torres Strait Island children from their families called its report *Bringing Them Home*. The phrase came from the words of many of the witnesses, especially victims: parents who said they wanted their children 'to come home', children who said they wanted 'to go home'. It emphasised that this was an issue of family and home, not a complex social or economic problem that was too difficult to resolve.

It made the experiences of these families personal and familiar to all Australians. What parent and what child could not understand the significance of being brought home after decades of separation?

The **cover** of the report is important because it too communicates a message. As with the title, the cover can be used to present the report as an official document – in which case it will be conservative and look like other official reports – or it can be used to express an inquiry view. A photograph, drawing or some kind of illustration will generally be used if the inquiry wants to say something through the cover. However, it is essential that the photograph or illustration be carefully chosen and tested to ensure that it communicates the right message. Different people see different things in images. The inquiry will want to be sure that its cover communicates the message it wants to convey.

The **design and layout** of the report should be considered. These go to:

- *readability*: design and layout affect how easy it is to read and understand a document
- *content*: design and layout can assist in highlighting the principal messages of the document or particular parts of the document.

Design and layout include typeface, print size, colours, highlights, text boxes, the arrangement of text on pages, chapter breaks and so on. A national inquiry may have constraints in choosing design and layout because of parliamentary requirements in relation to documents to be tabled in parliament. In some jurisdictions, for example, parliamentary requirements are very prescriptive, even fixing the typeface and print size that has to be used. In others, there is wide flexibility. The national inquiry will want to exploit whatever flexibility it has in relation to design and layout to promote readability and communicate its message well.

Graphics – photographs, drawings, tables and graphs – can also be considered. These too go to readability and good communications. If the inquiry wants to include photographs, it will need to decide that early on and be clear about the kind of photographs it wants so there is adequate time for the staff to search for or obtain the photographs wanted. If the inquiry wants tables and graphs, it must allow adequate time for them to be prepared.

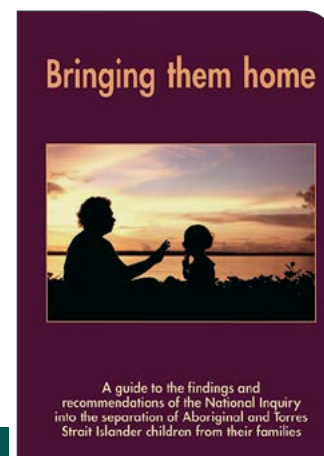
13.9. OTHER WAYS OF REPORTING

This chapter has discussed the inquiry's official or formal report, the report that has to be presented to the parliament in accordance with the NHRI's establishing law. That report need not be the only report the inquiry produces and the nature of that report need not be the only kind the inquiry uses to communicate its findings and recommendations. The inquiry can consider various other reporting formats, in addition to the official report, that enable it to report more effectively to the wide range of target audiences it has. This is especially important where the victims of the human rights situation being investigated would find it difficult to read and understand the inquiry's official report. The inquiry has a moral obligation to report to victims and must do that in a way they can access and understand. The consideration of other ways of reporting requires first the identification of target audiences and the priority attached to each of them.

Other forms of report can be in print. They can include:

- publications in minority languages, including Braille
- short or simpler summaries of the report, with its main findings and recommendations explained in easier language
- special community editions that use more visual content
- school editions directed separately towards primary and secondary school age children.

Community guide to the *Bringing them home* report



The inquiry can also consider forms of report in non-print media, such as:

- a film or video documentary for commercial television
- video
- radio programmes
- audio files, especially for those with visual impairment and those with low levels of literacy
- web-based materials and guides.

If producing a video, the inquiry should consider the desirability of ensuring that it is of broadcast quality. Many television stations would be willing to broadcast the video, at no cost to the inquiry, if it is well made, interesting and of broadcast standard. This kind of free coverage is invaluable in promoting the inquiry's conclusions and recommendations and their implementation.

Reporting through social media is an important way to bring the inquiry's work to wider attention, especially among younger people. It should be planned and implemented strategically. Care must be taken, as always with social media, to ensure that the communication is well prepared and does not encourage or permit abuse or intimidation of victims and witnesses.

Finally, the inquiry may also have to consider some forms of personal reporting. Representatives of the inquiry could return to communities where public hearings have been held to meet again with those who gave evidence, in particular victims and members of their families, to report back to them on what the inquiry had concluded and recommended. This may be the only way to report effectively to some disadvantaged or isolated communities and to people who do not access mainstream media regularly or successfully.

KEY POINTS: CHAPTER 13

- A good report will ensure much better community understanding of the nature of the human rights issue or situation that has been examined and a much better possibility that the inquiry's recommendations are accepted and implemented.
- The inquiry should direct its report to the parliament and the Government, to victims, to those to whom recommendations are addressed and to the broader community.
- The report is a means of promoting the inquiry's recommendations and therefore needs to be persuasive, well written, appropriately structured and highlight the voices and experiences of victims.
- The nature and style of the report should meet any statutory or other requirements for official reports to the parliament but they should also promote understanding by a wide audience.
- The inquiry can choose to issue several reports, rather than only one, and to report in various formats, including video and audio form and through social media, not just through a written text, to ensure that the report is suitable for a variety of audiences.



Chapter 14:

Release the report

KEY QUESTIONS

- What is the inquiry's purpose in releasing the report?
- How should the release be staged for best effect?
- What activities should be undertaken before and after the release?



14.1. THE RELEASE PROMOTES IMPLEMENTATION

Releasing the report of the inquiry is a turning point in the inquiry's life. It does not represent the end of the inquiry, even if it does represent the culmination of the work of gathering evidence and other information, hearing expert witnesses, analysing the situation, preparing the report and developing recommendations. It is certainly a culmination. But it is also the beginning of a new phase in the inquiry's life. The purpose of the inquiry is not merely the production of the report. It is effecting fundamental changes to improve the human rights enjoyment of those whose rights are violated or at risk of violation.

Releasing the report is directed towards:

- public acknowledgement of and reporting back to victims
- informing the community and key stakeholders of the inquiry's findings and recommendations
- promoting implementation of the recommendations.

Of these, implementation is the most important. The release is directed not primarily to reflecting on the work the inquiry has done and the findings it has made. It is primarily directed to what should happen next, the implementation of recommendations. The findings or conclusions of the inquiry are important in raising awareness in the community about the issue examined. However, they are also the basis for moving forward, for righting the wrongs that victims have experienced and for preventing future violations. The release can promote implementation of the recommendations by:

- drawing the attention of key members of the Government, the parliament and the public to the report and its recommendations
- providing an opportunity for the inquiry itself to highlight and explain the main conclusions and recommendations
- strengthening ownership and support from key stakeholders
- obtaining coverage in the media and building media support
- increasing public understanding and acceptance.

Plans for the release should address these five aspects.

14.2. BEFORE THE RELEASE

The inquiry should plan the release carefully, well in advance, with its focus firmly on promoting implementation of the recommendations. It may have limited control over the report's actual release date.

In countries where the report has to be tabled in the parliament, the inquiry may be prevented by law from releasing the report prior to the tabling and it may have no control over the tabling date. That is usually a matter for the parliament's President or Speaker or for the Government minister responsible for tabling reports. The inquiry can and should liaise closely with the person or agency responsible for tabling so that it has advance notice of the tabling and as much time as possible to make definite plans for an event to mark the report's release. However, ultimately the inquiry must have its plans made and ready to go and be able to conduct an event for the release on relatively short notice.

There are important steps that can be taken in advance to prepare for the release. The inquiry can:

- brief key witnesses and victims, so that they are prepared for the release, have a general understanding of what the report will cover (even if they cannot be provided with specific information) and are aware of the arrangements for events and activities related to the release
- brief key Government and political leaders, so that they have a context in which to understand the findings and recommendations when they receive the report
- identify and give appropriate advice to those who will make public statements at the time of the release
 - inquiry members
 - key witnesses and victims
 - advocates for the report
- prepare the media
 - brief key journalists
 - write opinion pieces for publication when the report is released
 - provide advance interviews with key people, embargoed until the report is released.

Preparing the media is very important. The media are the principal means by which the inquiry's findings and recommendations are communicated to the wider community. Arrangements for the release, therefore, need to ensure prior briefing of key journalists and opportunities for the media to interview Inquiry Commissioners, victims and experts. The interviews can be conducted in advance of the release, provided they are subject to a strict and clearly understood embargo and not used until the release occurs. A great deal of media material can be prepared in advance of the release so that it is ready to go as soon as the report is tabled or otherwise made public.

14.3. THE MAIN RELEASE EVENT

The release should occur in some kind of public event or activity, whether or not there has to be parliamentary tabling. Where there has to be parliamentary tabling, this event or activity should be held at the same time or as soon as possible thereafter. The event could be a media conference held at the premises of the NHRI or in some other appropriate venue, for example, a place where victims of the violation are located. Alternatively, it could be at a conference organised either by the NHRI itself or by relevant NGOs or academic institutions. Either way, the event is a public event to which the media are invited.

Whether the event is a media conference or a conference, the NHRI should ensure that the chairperson of the inquiry speaks to summarise the principal findings and recommendations in the report. There should also be a small number of other speakers, including victims and experts, who can add personal stories and experiences and solid analysis to the discussion. The media representatives should have an opportunity to ask questions of the speakers and to interview them. If possible and appropriate, the event could also include some video footage of the human rights situation that was examined and of the inquiry conducting a public hearing. The media will be interested in the inquiry but it will need good, newsworthy material that it can report. The speakers at the launch and the video material provide this.

To assist the media further, the NHRI must provide a briefing kit to media representatives at the release event. The media kit should include brief, easy-to-understand summaries of the inquiry's main findings and recommendations and background material, especially statistics and statements of personal experience.

The briefing kit helps the inquiry to shape the media coverage of the report by giving the media clear indications of the inquiry's own views of what is most important and most urgent in the report and of what should have priority in implementation.

14.4. AFTER THE MAIN RELEASE EVENT

The inquiry's main event for the report's release should not be the only activity undertaken at that time. Indeed the main event need not be the only event organised by the NHRI for the release. There can be other similar events, for example, in other parts of the country, such as other major cities or regions where groups of victims are located or where the violations occurred. These events can occur simultaneously with the main event or soon afterwards to supplement it. They will be especially important where:

- victims who have participated in the inquiry want to be involved in some release activity but cannot easily attend the main event
- media are decentralised and will only report what occurs locally and so local events are necessary to ensure wide media coverage throughout the country
- local events will increase the pressure on local parliamentarians to support implementation of the inquiry's recommendations.

A programme of release events, even small ones, may be desirable to build support for implementation.

The NHRI should also ensure speedy distribution of the report so that those most interested in it, especially those who have participated in the inquiry, will be able to know and support the inquiry's recommendations. The NHRI should ensure that, in addition to all Government ministers and members of parliament, the report is distributed to:

- all those who made submissions to the inquiry or appeared as witnesses
- relevant political leaders and government officials
- relevant stakeholders and NGOs
- libraries, community centres and other outlets.

The full report should also be available on the NHRI's website as soon as it is released.

The NHRI should also release and promote any supplementary materials, such as editions or summaries of the report in minority languages, community editions and summaries, and videos. It should ensure, in particular, that the report is accessible to people with disabilities and persons in prison and detention.

The NHRI should look for relevant conferences and meetings sponsored by other organisations at which inquiry members could speak to inform and promote implementation of the recommendations. The NHRI should have a broad strategy to follow up the report, as the next chapter discusses.

14.5. INTERNATIONAL RELEASE

The NHRI should also release the report to the international community. International human rights mechanisms, both individuals and groups, take great interest in the work of NHRIs. They rightly see NHRIs as official, State bodies but independent of their Governments. They therefore accord added weight to the views, findings and recommendations of NHRIs. They look to NHRIs to provide them with the credible, reliable, objective information and advice they require to fulfil their responsibilities. They will be very interested in the inquiry's report.

For the NHRI, international release of the inquiry's report is a good means to generate international scrutiny of the State and to promote international monitoring of implementation of the report. It can assist in encouraging the implementation of the recommendations, especially if the State is likely to be called on to answer questions from UN treaty monitoring bodies and the Human Rights Council about the findings of the report and the implementation of its recommendations.

The inquiry report should be sent to all relevant international human rights mechanisms, such as treaty monitoring bodies, special procedure mandate holders, expert and intergovernmental working groups, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and so on. A report may be relevant because of the particular issue covered or the inclusion of material about a particular populations group or sector. Most inquiry reports are likely to be relevant to all the treaty monitoring bodies and to a large number of the special procedures.

Inquiry reports will certainly be relevant in the Universal Periodic Review (UPR) procedure of the Human Rights Council. The UPR looks widely at the human rights situation in the State under review. It is not limited to a particular issue or particular population group. No matter what human rights issues a report raises, it will be relevant to the UPR. The report can and should be provided through the formal channel of the OHCHR. However, the OHCHR is able to include only a short summary of any report in the official documents for the UPR. Therefore, in addition, the report should be forwarded to all member States of the Human Rights Council and as many observer States and NGOs as possible. The NHRI can encourage discussion of the report's findings and recommendations in the Council. If it has A status accreditation as being fully compliant with the Paris Principles, it can address the Council directly to raise the report's findings and recommendations and urge implementation.

KEY POINTS: CHAPTER 14

- **Releasing the report is the culmination of the inquiry's work of investigation but it inaugurates a new stage of activity in promoting the report's findings and recommendations and its implementation.**
- **The inquiry should plan the release carefully, well in advance, with its focus firmly on promoting implementation of the recommendations.**
- **The release should occur in some kind of public event or activity and should be accompanied by a series of other activities to raise awareness of the report's contents and to promote its implementation.**



Chapter 15:

Follow up

KEY QUESTIONS

- What responsibility does the NHRI have for following up the inquiry's report and its findings and recommendations?
- What are the priorities for the NHRI's follow-up advocacy?
- What role does the NHRI have in monitoring and reporting on implementation?



15.1. THE FOLLOW-UP STRATEGY

The release of the inquiry's report is a focal point, a time when the inquiry will find it easy to attract significant media coverage and public interest. However, maintaining that coverage and interest is a far more difficult task. Because an NHRI is a standing or permanent body, it has continuing responsibilities to follow up work it has done, to advocate for, monitor and report on the implementation.

Follow-up needs a strategy. The inquiry's original background or scoping paper should include some initial consideration of follow-up. For example, it should include a plan for the release of the inquiry's report, with provision for media relations, public promotion and political advocacy. While a more detailed strategy will be required before the report is actually released, initial planning will ensure that the work of the inquiry is directed towards the completion and release of the report and then its advocacy.

The follow-up strategy itself should be developed later in the inquiry's life. It will need a number of different elements, with key dates and key sectors addressed. For example, it should include:

- NHRI advocacy for the report with political leaders and government officials
- public advocacy for the report by NGOs, academic experts and victims
- conferences and other opportunities to speak about the report and promote its implementation
- events that the NHRI itself could organise as promotional opportunities.

It should involve a number of key events over a period of at least a year following the release of the report. These events should be directed towards building and maintaining commitment among relevant academic institutions and NGOs and towards placing sustained pressure on the Government and others to whom recommendations are directed.

15.2. ADVOCATING WITH THE GOVERNMENT AND PARLIAMENT

The NHRI should be the main advocate for the report's recommendations. It should take them to senior leaders of the Government and opposition parties and to Government officials. It should be active in persuading parliamentary committees and individual parliamentarians. It should ensure, first, that the report is on the political agenda and, second, that its recommendations are given serious consideration. It can do this, for example, by encouraging a parliamentary debate on the report or examination of the report by a parliamentary committee. It can arrange for questions to be asked in parliament about the Government's response to the report. It can provide briefings to parliamentarians and parliamentary staff. These kinds of initiatives need to be part of the strategy for follow-up.

15.3. COMMUNITY ADVOCACY

Community pressure for implementation of the recommendations is important. No NHRI can succeed by going alone. It needs to be part of a broad-based coalition advocating for changes to improve human rights performance. The national inquiry process itself identifies likely allies among those with an interest in the issue being examined and, through its report, provides a focus for their advocacy.

The NHRI should encourage NGOs, especially the organisations that represent victims of the violations investigated, to join it in a joint advocacy campaign in support of the inquiry's recommendations. Joint strategising and joint advocacy will be stronger and more influential.

Presenting the inquiry's conclusions and recommendations in community forums – conferences, workshops, annual meetings, online discussions and other social media, and so on – is a continuing task. Groups need to be reminded of the inquiry's recommendations and they need to be informed of the progress of implementation.

15.4. MEDIA ADVOCACY

The media will continue to be important to a broadly-based advocacy campaign in support of the inquiry's recommendations. The follow-up strategy should ensure that the report continues to receive media attention through interviews with and material in the public media. As a result of the inquiry, the inquiry's members will be identified by the media and in the media as experts on the issue investigated, with opportunities for promoting the recommendations in the media both by soliciting opportunities for interviews, statements and articles and by responding to media requests for interviews and statements. They should ensure that they maintain their knowledge of the issue, including developments after the conclusion of the inquiry, so that they remain credible, influential, expert spokespersons who are taken seriously by the media and the community.

15.5. MONITORING AND REPORTING ON IMPLEMENTATION

The NHRI also has a continuing role in monitoring and reporting publicly on implementation of the inquiry's recommendations. It can encourage the Government and others to whom the recommendations are directed to respond publicly to the recommendations to indicate which ones it will implement and when. It can then request periodic statements of progress in implementation and make its own assessments and public comments on progress or lack of progress.

A good means of monitoring implementation is the preparation and publication of a follow-up report on an annual basis, at least for the first few years after an inquiry has reported. These later reports would principally focus on implementation – a kind of report card on the response to the inquiry's report by the Government and others to whom recommendations were made. The NHRI should announce, at or about the time of the release of the inquiry's report, that it will be monitoring implementation and reporting on it after the first year and subsequently. In that way, the Government and others know that the NHRI will not be walking away from the inquiry's report but will be promoting public accountability for its implementation. This is an effective way to continue to promote implementation.

As part of its medium- and longer-term strategy, the NHRI should also work with key Government and community stakeholders to ensure that they too take on a role in monitoring the implementation of the inquiry's recommendations. The placement of this role in agencies external to the NHRI recognises that other actors have a responsibility for the protection and promotion of human rights. It also recognises the fact that the NHRI will have an increasingly limited capacity to take full responsibility for the outcomes of the inquiry, given competing issues and demands.

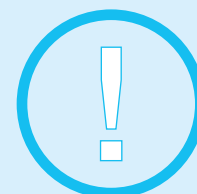
The **New Zealand Human Rights Commission** embedded the recommendations of the **National Inquiry into Discrimination Experienced by Transgender People** into its research, policy development, education, advocacy, monitoring and reporting activities. The recommendations informed reports to various international monitoring committees. As a result, the concluding observations of the Committee on the Rights of the Child to the New Zealand Government in 2016 included four recommendations relating to the treatment of intersex children and the 2019 Universal Periodic Review included two broader SOGISC recommendations.

Ten years after the release of its report a review of progress against the recommendations was made. It identified what had happened and the gaps that still needed addressing.



KEY POINTS: CHAPTER 15

- The NHRI, as a permanent organisation, has a responsibility to follow-up the inquiry to promote implementation of its recommendations.
- Later in the inquiry's life, the NHRI should develop a follow-up strategy to direct its work after the release of the report.
- The follow-up strategy should be directed towards building and maintaining commitment among relevant academic institutions and NGOs and towards placing sustained pressure on the Government and others to whom recommendations are directed.
- The NHRI also has a continuing role in monitoring and reporting publicly on implementation of the inquiry's recommendations. It should prepare and release an annual report on implementation, at least for the first few years after the inquiry has reported.



Chapter 16:

Monitor and evaluate

KEY QUESTIONS

- Why should every national inquiry be subjected to monitoring and evaluation?
- What form should monitoring and evaluation take?



16.1. WHY MONITOR AND EVALUATE?

Monitoring and evaluation is an essential part of the national inquiry process. It enables the NHRI to review progress against objectives, identify any changes that may be required to the process of the inquiry, learn from the experience of this particular inquiry and, in that way, increase the effectiveness of future inquiries. It contributes to an assessment more broadly of the effectiveness of a national inquiry strategy. It also enhances the accountability of the work of the NHRI as a whole. Monitoring and evaluation should be incorporated into the inquiry's strategy during the planning process (Chapter 9) and it should be resourced adequately to enable it to be reliable and informative.

16.2. WHEN TO MONITOR AND EVALUATE?

There is no single point at which monitoring and evaluation is appropriate, to the exclusion of all other points.

Monitoring will occur as a continuing process throughout the inquiry's life. There can be different forms of monitoring at different times, developed and adapted to the particular circumstances and the stage of the project. The inquiry team needs to be assessing regularly how the inquiry as a whole is going against the objectives it is seeking to achieve and how individual activities have gone. For example, a good internal review of a public hearing can enable the inquiry to learn useful lessons about what worked and what did not so that future hearings can be adapted to take account of the review.

The inquiry should have a procedure by which each major activity is reviewed as it is completed and changes made to future activities on the basis of the review. The monitoring process could also reflect on whether, given the information gathered, the original inquiry objectives are the correct ones, or whether they need adjusting.

The evaluation is a more significant review undertaken at the completion of the inquiry itself, that is, soon after the inquiry report is released. This is still too early for a thorough, overall evaluation of the inquiry but it enables the NHRI to capture the views of those most closely involved in the inquiry, both inside and outside the institution, before they move on to other assignments. The evaluation at this point is directed towards obtaining their reflections while the inquiry experience is still fresh in their minds.

The inquiry plan should incorporate a major evaluation about a year after the report's release. This is the earliest point at which it is possible to look at the inquiry's effectiveness in terms of the impact of the inquiry as a whole, including its report, and to do so with some degree of objectivity and distance. This evaluation might be undertaken in conjunction with, or immediately following, a one-year review of implementation of the inquiry's recommendations. The two reviews are quite different exercises. The evaluation would look at the effectiveness of the inquiry as a whole, while the review of implementation would have a narrower focus on how those to whom recommendations were directed have responded to those recommendations. Nonetheless, the extent of implementation of recommendations is a major aspect of evaluating effectiveness.

16.3. WHO MONITORS AND EVALUATES?

Monitoring and evaluation can be undertaken internally or externally. Different types of reviewers could be appropriate at different times. Monitoring progress during the course of the inquiry is usually undertaken internally. It is a series of discrete tasks and it needs to be done quickly, easily and regularly. The NHRI will need to have staff who have or can be trained in the appropriate skills. However, the evaluation a year after the report is released would be appropriate for an external evaluator. It is the major evaluation of the whole project. It lends itself to being undertaken by an external evaluation specialist who has the necessary expertise and distance and can look with “fresh eyes” at the process. External evaluation can be more reliable because it is more independent and, for that reason, a positive external evaluation can enhance the stature of the NHRI.

16.4. HOW TO MONITOR AND EVALUATE?

Monitoring and evaluation need not be long, complex or expensive. Certainly, a major external evaluation, such as that of the full inquiry a year after it has reported, will be a significant undertaking. However, the process of continuing evaluation can be simple, straightforward and quick.

Monitoring and evaluation can take many forms and it is good practice to determine what they may be according to the topic, context and nature of the inquiry.

An effective monitoring process can be framed around key questions such as

- How are we doing so far against the inquiry’s objectives?
- What feedback do we have available?
- Are we getting the information we need?
- Are we hearing all appropriate stakeholders’ views? Are there others we are missing?
- What is working well?
- What are the gaps?
- What do we need to do better?

An effective evaluation can be framed around key questions such as

- What did we do well?
- What could we have done better?
- What do the stakeholders think of the inquiry’s process and results?
- What lessons have we learned for future inquiries?
- What results have we achieved?

It is critical to monitor and evaluate against the inquiry’s objectives. Looking at the objectives of a national inquiry, this approach would ask a key question about each one.

Investigation	• Monitoring: Is the inquiry getting all the facts needed? • Evaluation: Did the inquiry get all the facts needed?
Analysis	• Monitoring: Is the inquiry obtaining a good understanding of the situation? • Evaluation: Did it obtain and present a good understanding of the situation?
Information	• Evaluation: Did it present facts and analysis clearly and convincingly?
Education	• Monitoring: Is the process of the inquiry increasing public knowledge of this issue and/or human rights generally? • Evaluation: Did it increase public knowledge of this issue and/or human rights generally?

Recommendations and results	• Evaluation: Were the recommendations relevant, appropriate and able to be implemented? • Evaluation: Were they implemented, fully or partially?
Empowerment	• Monitoring: Is the process of the inquiry enabling victims and their supporters to advocate and act more successfully? • Evaluation: Did it enable victims and their supporters to advocate and act more successfully?

Monitoring and evaluation processes have to make sure they ask the right questions that relate to the issue, context and results of the inquiry.

When evaluating a national inquiry, asking whether all the recommendations were implemented quickly is the wrong question. Recommendations are important to an inquiry and so looking at the record of implementation of recommendations is important but it is not the only issue. Not all recommendations will be implemented and not all will be implemented immediately or quickly. Sometimes, implementation may take some years.

The right question is whether the inquiry has benefited the victims of human rights violations. If all or some recommendations were implemented, did they help the victims? If few or no recommendations at all were implemented, did victims benefit in some other ways? Did the inquiry help prevent future violations? In one sense, implementation of recommendations is ultimately in the hands of the Government and others to whom the recommendations are directed. It is beyond the control of the NHRI. If evaluation is done on the basis of implementation alone, then, if the Government and others are not persuaded or compelled to act on the inquiry's recommendations, the inquiry was not successful. However, victims may have benefited greatly from the inquiry even if there has been no implementation of the recommendations. In assessing the benefit to victims, a broad perspective is required. Implementation is not the only measure of benefit to victims and not the only measure of the inquiry's effectiveness.

Evaluation should also look towards the inquiry's impact on the longer-term position of the NHRI itself. A national inquiry, through raising the profile of the NHRI and establishing it as an effective advocate for human rights, can add to the stature of the NHRI. The evaluation should look broadly at whether the inquiry has added to the authority, stature and credibility of the NHRI. This is not necessarily an objective of the inquiry but it is obviously important.

KEY POINTS: CHAPTER 16

- Monitoring and evaluation is an essential part of the national inquiry process that should be incorporated into the inquiry's strategy from the start.
- Monitoring is a continuing process, taking different forms at different times, developed and adapted to the particular circumstances and the stage of the project. It should be undertaken while the inquiry is underway.
- Evaluation occurs at conclusion of the inquiry. There should be a major evaluation sometime after the inquiry's completion.
- Evaluation can be internal or external.
- Monitoring and evaluation questions should relate to how effectively the inquiry is meeting, or has met, its objectives.



Summary

Chapter 1: National human rights institutions and national inquiries

- NHRIs are official, independent State institutions established by law to promote and protect human rights.
- The Paris Principles set out minimum requirements for an effective independent NHRI, the standard by which the structure, form and legal basis of an institution are assessed in determining whether the institution is to receive international recognition.
- The Paris Principles require that NHRIs have guarantees of independence.
- A national inquiry is a mechanism by which NHRIs are able to pursue many of their core functions of investigating, educating, raising awareness, monitoring and advising on human rights issues.

Chapter 2: The concept of a national inquiry

- A national inquiry is an investigation into a systemic human rights problem in which the public in general is invited to participate through providing public 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 that are historical and systemic in nature and that require comprehensive examination and report.
- A national inquiry is a very effective mechanism but a demanding one and so should be undertaken only after careful consideration of all the relevant factors as to the appropriateness of the issue for the national inquiry approach and the capacity of the NHRI to undertake the inquiry successfully.

Chapter 3: Choose the issue

- The issue to be investigated by a national inquiry should be selected on the basis that a national inquiry is particularly suitable as a mechanism to deal with systemic or historic patterns of human rights violation.
- The issue must have a strong, clear human rights dimension.
- The inquiry process is especially suited to investigating and addressing violations of economic, social and cultural rights, but not only these.
- The issue should be selected with a view to the possibilities for human rights education through the public nature of the national inquiry methodology.
- Choosing the issue is one of the most important decisions to be made in relation to a national inquiry.

Chapter 4: Prepare a background (scoping) paper

- The background or scoping paper forms the basis for the NHRI's decision-making on whether to proceed with the proposed inquiry, identifying what is proposed to be done in the national inquiry, including how it will be done and what it will cost, before the NHRI decides to approve the project.

- The background paper should:
 - provide an overview of the situation to be addressed
 - outline the international human rights law that is relevant to the situation
 - outline the domestic or local law that is relevant to the situation
 - list the particular matters requiring investigation during the course of the inquiry
 - indicate some options for the results of the inquiry
 - describe how the inquiry will meet its human rights education objectives
 - set out the timetable for the conduct of the inquiry
 - state the resource requirements
 - summarise briefly the views of NGOs and other relevant stakeholders concerning the inquiry.

Chapter 5: Identify, consult and engage stakeholders

- The expertise and experience of stakeholders are essential for the inquiry's success.
- Important stakeholders may include victims of the human rights situation under investigation and members of their families, Government officials, NGOs, academics and professionals, religious groups and foundations and other organisations, as well as alleged and potential perpetrators.
- Stakeholders could have many views about the national inquiry, ranging from very supportive to very hostile.
- The national inquiry will need to use a variety of strategies to engage the stakeholders it needs to engage.

Chapter 6: Draft objectives and the terms of reference

- A national inquiry requires clear objectives and good terms of reference.
- Objectives relate to what the NHRI aims to accomplish through the national inquiry.
- Terms of reference set out what the inquiry will actually examine and report on.

Chapter 7: Appoint Inquiry Commissioners and staff

- Every national inquiry needs the right team, with the right mix of skills and experience to make the inquiry successful. The team will include Inquiry Commissioners and staff.
- The Inquiry Commissioners are the internal drivers and the external face of the inquiry. They collectively lead the whole inquiry team, with the chairperson of the inquiry individually leading the inquiry members.
- In some cases it may be necessary to appoint a highly qualified and widely respected "special adviser".
- The inquiry staff need expertise in administration and management, research and writing, community liaison and relations, and media liaison and communications.

Chapter 8: Gather other resources

- An inquiry should not be launched unless and until the NHRI either has the resources it will need or is assured that it can obtain them at the necessary times.
- The inquiry needs an adequate budget, properly prepared and secured in advance, to enable it to do what is required to meet its objectives and carry out the terms of reference.
- The inquiry also needs premises, equipment, services and publications to enable it to do its work.

Chapter 9: Finalise an inquiry plan

- Thorough planning is necessary before the public work of the inquiry begins.
- Planning should address all the relevant matters relating to the conduct of the inquiry, including the methodology, the timetable, the products, and monitoring and evaluation.
- The plan should be a strategic document that sets out how the inquiry will achieve its objectives.
- The inquiry should have a clear timetable to guide and direct its work.

Chapter 10: Obtain information: Research and evidence

- Some information required by the inquiry will already exist. It should be identified and obtained.
- Other information will need to be sought through research.
- Information will also be provided by those with particular areas of expertise in relation to the human rights situation being investigated, orally or in written or documentary form, during the public hearings.
- Part of the preparatory work in conducting the inquiry is to identify those who can provide evidence and then invite and encourage them to do so.
- The inquiry should establish early in its life an information management system that enables it to categorise, catalogue, store, secure and retrieve information easily and appropriately.

Chapter 11: Conduct public hearings

- Public hearings distinguish national inquiries from all other methodologies used by NHRIs. They are the key to achieving the national inquiry's objectives.
- The inquiry team needs to plan the public hearings carefully to ensure that the inquiry is able to hear from all those it needs to hear from, if necessary through careful selection of witnesses at each public hearing.
- The hearings need to be accessible and conducted in as many places as possible to ensure that the inquiry presents an accurate "national picture" in its report. This is particularly important in countries with both national and state or provincial governments.
- The individual situation of each witness needs to be taken into account in the preparation so that the hearings proceed as smoothly as possible, respectful of the witnesses who appear.
- A key part of preparing the hearings is determining how they will be arranged or structured, that is, which witnesses and issues should be considered at which particular hearings during the course of the inquiry.
- Evidence given in the public hearings needs to be recorded in some form so that it can be easily accessible for use in the inquiry's report.

- The inquiry should determine whether and when it would be appropriate to use the NHRI's powers to support its investigation.
- The hearings should generally be as public as possible and open especially to the media, NGOs and interested members of the public.

Chapter 12: Develop recommendations

- The inquiry makes recommendations to promote full compliance with human rights obligations, through providing redress for past violations and prevention of new ones.
- Recommendations must be realistic, comprehensive but as concise as possible, well targeted and directed towards the principal issues identified in the inquiry.
- Recommendations should address the inquiry's terms of reference and respond to the facts of the situation as revealed by the inquiry, measured against the requirements of international human rights law.
- Recommendations should be directed to any body, organisation or even individual with a role in addressing the violations or improving human rights compliance.
- Recommendations should indicate which have the higher priority and which may be implemented in the medium-term or longer-term.

Chapter 13: Prepare the report

- A good report will ensure much better community understanding of the nature of the human rights issue or situation that has been examined and a much better possibility that the inquiry's recommendations are accepted and implemented.
- The inquiry should direct its report to the parliament and the Government, to victims, to those to whom recommendations are addressed and to the broader community.
- The report is a means of promoting the inquiry's recommendations and therefore needs to be persuasive, well written, appropriately structured and highlight the voices and experiences of victims.
- The nature and style of the report should meet any statutory or other requirements for official reports to the parliament but they should also promote understanding by a wide audience.
- The inquiry can choose to issue several reports, rather than only one, and to report in various formats, including video and audio form and through social media, not just through a written text, to ensure that the report is suitable for a variety of audiences.

Chapter 14: Release the report

- Releasing the report is the culmination of the inquiry's work of investigation but it inaugurates a new stage of activity in promoting the report's findings and recommendations and its implementation.
- The inquiry should plan the release carefully, well in advance, with its focus firmly on promoting implementation of the recommendations.
- The release should occur in some kind of public event or activity and should be accompanied by a series of other activities to raise awareness of the report's contents and to promote its implementation.

Chapter 15: Follow up

- The NHRI, as a permanent organisation, has a responsibility to follow-up the inquiry to promote implementation of its recommendations.
- Later in the inquiry's life, the NHRI should develop a follow-up strategy to direct its work after the release of the report.
- The follow-up strategy should be directed towards building and maintaining commitment among relevant academic institutions and NGOs and towards placing sustained pressure on the Government and others to whom recommendations are directed.
- The NHRI also has a continuing role in monitoring and reporting publicly on implementation of the inquiry's recommendations. It should prepare and release an annual report on implementation, at least for the first few years after the inquiry has reported.

Chapter 16: Monitor and evaluate

- Monitoring and evaluation is an essential part of the national inquiry process that should be incorporated into the inquiry's strategy from the start.
- Monitoring is a continuing process, taking different forms at different times, developed and adapted to the particular circumstances and the stage of the project. It should be undertaken while the inquiry is underway.
- Evaluation occurs at conclusion of the inquiry. There should be a major evaluation sometime after the inquiry's completion.
- Evaluation can be internal or external.
- Monitoring and evaluation questions should relate to how effectively the inquiry is meeting, or has met, its objectives.

Materials on national inquiries

APF and RWI materials

National Inquiries into Systemic Patterns of Human Rights Violation: A Training Manual; Asia Pacific Forum of National Human Rights Institutions; 2009, revised 2019

National Human Rights Institutions and National Inquiries: Training Resource Materials; Asia Pacific Forum of National Human Rights Institutions and the Raoul Wallenberg Institute of Human Rights and Humanitarian Law; 2011

Going Public: Strategies for an Effective National Inquiry (video); Asia Pacific Forum of National Human Rights Institutions; 2012 (revised)

Key materials on national human rights institutions

General Assembly Resolution 48/134 (Paris Principles)
www.asiapacificforum.net/support/what-are-nhris/paris-principles/

A Manual on National Human Rights Institutions; Asia Pacific Forum of National Human Rights Institutions; 2015, revised 2018
www.asiapacificforum.net/resources/manual-on-nhris/

National Human Rights Institutions in the Asia Pacific Region; Brian Burdekin, with Jason Naum; 2007

Assessing the Effectiveness of National Human Rights Institutions; International Council on Human Rights Policy and the Office of the United Nations High Commissioner for Human Rights; 2005
www.ichrp.org/files/reports/18/125_report.pdf

National Human Rights Institutions: History, Principles, Roles and Responsibilities; Professional Training Series No. 4 (Rev 1); Office of the United Nations High Commissioner for Human Rights 2010
www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf

Guidelines for Accreditation & Re-Accreditation of National Human Rights Institutions to the International Coordinating Committee of National Human Rights Institutions; Office of the United Nations High Commissioner for Human Rights; June 2009 (Version 4)
<http://nhri.ohchr.org/EN/Themes/Portuguese/DocumentsPage/Guidelines%20for%20accreditation%20application%20June%202009%20ENGLISH.pdf>

The Evolution of National Human Rights Institutions: The Role of the United Nations; Anna-Elina Pohjolainen, Danish Institute for Human Rights; 2006

Examples of national inquiries conducted by national human rights institutions in the Asia Pacific region

Afghanistan Independent Human Rights Commission

National Inquiry into the Factors and Causes of Rape and Honour Killing; 2013
www.aihrc.org.af/media/files/PDF/Natioan%20Inquiry%20final%20-%20for%20meru.pdf

National Inquiry into the Causes and Negative Consequences of Bacha Bazi; 2015
www.aihrc.org.af/home/research_report/3324

National Inquiry on Women, Peace and Security; 2019
www.aihrc.org.af/media/files/ENGLISH.pdf

Australian Human Rights and Equal Opportunity Commission (now the Australian Human Rights Commission)

National Inquiry into Homeless Children; 1989

www.humanrights.gov.au/our-work/childrens-rights/publications/our-homeless-children

National Inquiry into Racist Violence; 1991

www.humanrights.gov.au/sites/default/files/document/publication/NIRV.pdf

National Inquiry into Human Rights and Mental Illness; 1993

www.humanrights.gov.au/our-work/rights-and-freedoms/publications/human-rights-and-mental-illness

National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families; 1997

www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/bringing-them-home

National Inquiry into Rural and Remote Education; 2000

www.humanrights.gov.au/our-work/rights-and-freedoms/projects/rural-and-remote-education-inquiry

National Inquiry into Children in Immigration Detention; 2004

www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/projects/last-resort-report-national-inquiry-children

National Inquiry into Employment and Disability; 2006

www.humanrights.gov.au/sites/default/files/Workability%20II%20-%20Solutions%202005_1.pdf

National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits; 2007

www.humanrights.gov.au/our-work/sexual-orientation-sex-gender-identity/publications/same-sex-same-entitlements

National Inquiry into Children in Immigration Detention; 2014

www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/national-inquiry-children-immigration-detention-2014

National Inquiry into Pregnancy and Work; 2014

www.humanrights.gov.au/sites/default/files/document/publication/NIRV.pdf

Willing to Work: Employment Discrimination against Older Australians and Australians with Disability; 2015

www.asiapacificforum.net/news/australia-commission-launches-new-national-inquiry/

National Inquiry into Sexual Harassment in Australian Workplaces; 2018

www.humanrights.gov.au/our-work/sex-discrimination/projects/national-inquiry-sexual-harassment-australian-workplaces

National Human Rights Commission of India

National Inquiry on the Right to Food; 2004

National Inquiry on the Right to Health Care; 2004

Indonesian National Commission on Human Rights

National Inquiry into Land Rights of Indigenous Peoples; 2015

https://rightsandresources.org/en/publication/komnas-ham-national-inquiry-on-the-rights-of-customary-law-abiding-communities-over-their-land-in-forest-areas/#.XaIY_G5ul2y

Human Rights Commission of Malaysia

National Inquiry into the Land Rights of Indigenous Peoples in Malaysia; 2013
<https://drive.google.com/file/d/0B6FQ7SONa3PRbUlnUGcxdzdEWU0/preview>

National Human Rights Commission of Mongolia

National Inquiry on Freedom from Torture; 2006
<http://en.nhrmc.gov.mn/news/status-report-human-rights-and-freedoms/>

New Zealand Human Rights Commission

National Inquiry into Accessible Public Land Transport; 2005
www.hrc.co.nz/your-rights/people-disabilities/our-work/accessible-journey/

Inquiry into Discrimination and Human Rights Issues for Transgender People; 2008
www.hrc.co.nz/files/5714/2378/7661/15-Jan-2008_14-56-48_HRC_Transgender_FINAL.pdf

Caring Counts, Inquiry into Equal Employment Opportunities in the Aged Care Sector; 2011-2012
www.hrc.co.nz/files/1214/2360/8576/Caring_Counts_Report.pdf
www.hrc.co.nz/our-work/women/past-projects/caring-counts/

Independent Commission on Human Rights in Palestine

National Inquiry into Employment of Persons with Disabilities; 2011-2013
[https://ichr.ps/en/1/10/42/Islam-Al-Tamimi-The-Right-of-persons-with-Disability-to-Decent-Work-In-Palestine-\(Field-Study\)-2013.htm](https://ichr.ps/en/1/10/42/Islam-Al-Tamimi-The-Right-of-persons-with-Disability-to-Decent-Work-In-Palestine-(Field-Study)-2013.htm)

Commission on Human Rights of the Philippines

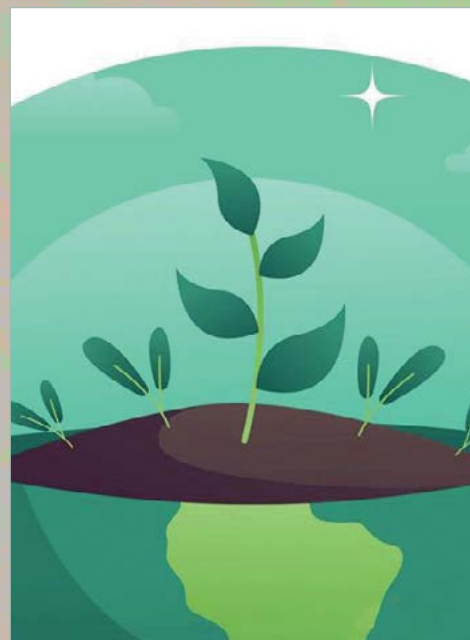
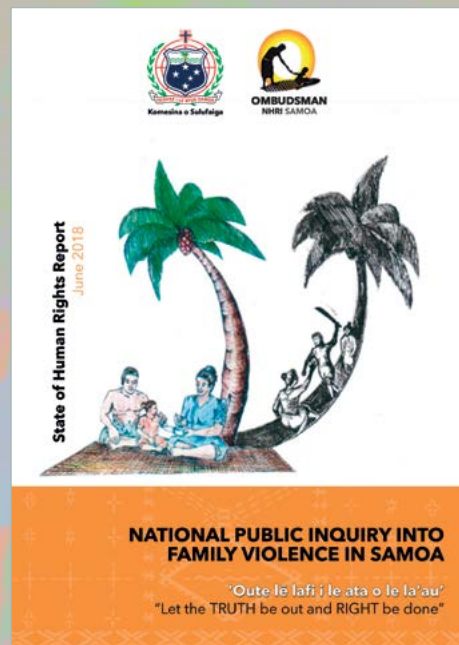
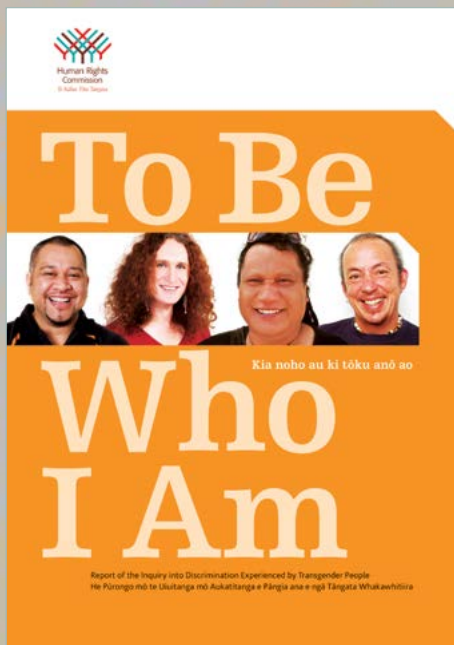
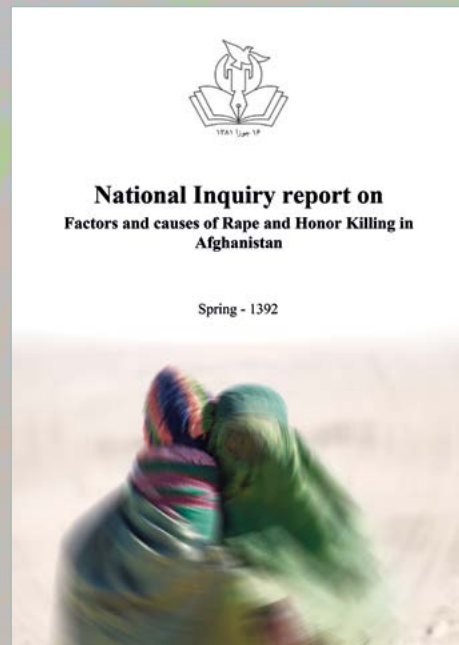
National Inquiry on the Impact of Climate Change on the Rights of the Filipino People and the Responsibility therefore, if any, of the 'Carbon Majors'; 2017-2018
<http://chr.gov.ph/chr-concluded-landmark-inquiry-on-the-effects-of-climate-change-to-human-rights-expects-to-set-the-precedent-in-seeking-climate-justice/>

Public Hearings on the Position of Indigenous Peoples; 2017
www.asiapacificforum.net/news/chr-holds-public-hearings-situation-indigenous-peoples/

National Inquiry on Reproductive Health; 2016
www.asiapacificforum.net/news/chr-launches-national-inquiry-reproductive-health/

Samoa Office of the Ombudsman/National Human Rights Institution

National Inquiry into Family Violence; 2017-2018
https://ombudsman.gov.ws/wp-content/uploads/2019/01/2018_-SHRR-2018-National-Public-Inquiry-into-Family-Violence_-English.pdf



Case study:

National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families



1995–97

AUSTRALIAN HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

Background and context of the inquiry



The 1997 report, *Bringing them home*, documented an historic two-year national inquiry into one of the most serious practices of systematic human rights violations experienced in Australia, affecting Australian Aborigines and Torres Strait Islanders.¹⁹ These practices were authorised by law and carried out in all Australian states and territories, under a nationally agreed policy of assimilation – a policy whereby Aboriginal and Torres Strait Islander peoples would be absorbed into the mainstream Australian community, losing their ancient cultures and their distinctive identities. Over a period of 200 years, from the start of European occupation through to approximately 1970, tens of thousands of Indigenous children were forcibly removed from their families and communities in Australia. These children were known as the “Stolen Generations”.

Indigenous Australians had long seen these policies and practices of removal as one of the most fundamental wrongs done to them and as the foundation of much of the disadvantage they suffered. They were beginning to tell their stories to the broader community and to seek truth and justice. They also sought access to government records, information and assistance to try to reunite the members of separated families. In 1994, at the *Going Home* conference in Darwin, over 600 participants shared stories and discussed a reconciliation process for those affected by the practices. In 1995, the Australian Attorney-General requested the Human Rights and Equal Opportunity Commission (HREOC) (now the Australian Human Rights Commission) to conduct an inquiry into the policies, legislation and government practices that had led to the Stolen Generations. It would be a cornerstone of the national commitment made in 1991 to a ten-year programme of national reconciliation between Indigenous and other Australians.²⁰

The National Inquiry examined the multiple intergenerational effects of dispossession on Indigenous families. It was a means of recognition, bearing witness to the experiences of those who suffered, and initiating a process of reconciliation, healing and, ultimately, reparation with and for them. Its terms of reference included making recommendations on policy and law reform, compensation and processes to assist family reunions. It also examined contemporary government practices relating to the removal and care of Indigenous children.

19 For the report and other resources from and about the National Inquiry, see: www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/bringing-them-home-stolen.

20 See Reconciliation Australia's website at: www.reconciliation.org.au.

Process of the inquiry and participants

All HREOC Commissioners participated in the National Inquiry, the only HREOC national inquiry conducted by the Commission as a whole. In addition, 11 Indigenous Australians were appointed as part-time Inquiry Commissioners to assist with their expertise. They joined the HREOC Commissioners in conducting the public hearings and in preparing the final report. Finally, an Indigenous Advisory Council was established to provide expert advice to the Inquiry from those most intimately connected to the issues under investigation.

From December 1995, the Inquiry conducted hearings in the national capital, every state and territory capital city and in various regional centres. It took evidence in 49 cities and towns over 99 days of hearings. It received oral and written evidence from 535 Indigenous individuals affected by the separation policies. In total, 777 submissions were received from individuals, Governments and organisations.²¹ Where necessary, private hearings and confidentiality in recorded testimonies protected individual victims' privacy. An Indigenous social worker provided support to those giving evidence, in recognition of the difficulty of revisiting traumatic experiences. The Inquiry also took evidence from former mission and Government employees, church and other NGO representatives and Government representatives.

The Inquiry also commissioned research into key aspects of its terms of reference, including examining the implications in international law of the removal policies and analysing present practices of removal of Indigenous children through juvenile justice and child welfare proceedings.



The report made a number of historic findings. It estimated that between one in ten and one in three Indigenous children were forcibly removed between 1910 and 1970, the majority principally on the basis of being Indigenous, rather than for their welfare. Placed in church missions and institutions or with non-Indigenous foster parents, children were often moved several times. The Inquiry found that forcible removal and multiple displacements directly contributed to breakdowns in victims' emotional health and that many suffered verbal, physical and sexual abuse at the hands of public officials or as a result of the actions of public authorities. Authorities and individuals appointed to guardianship roles were found to have failed in their duty of care to Indigenous wards.

Significantly, the removal of Indigenous children from about 1946 was found to be an act of genocide under international law. The HREOC was very conscious of the seriousness of this finding and came to this conclusion only after intensive study of the facts as it had found them and the application of international law to those facts. It concluded that the law, policies and practices that enabled the removal of the children constituted genocide at least from the time that

genocide was defined after World War II. The definition in the Genocide Convention includes forcibly transferring children of a national, ethnic, racial or religious group to another group with intent to destroy that group, in whole or in part.²²

The inquiry recognised that many of those removed under the earlier separation policies have subsequently been separated from their own children under contemporary government schemes. It concluded that Indigenous children continue to be over-represented among children removed from families for welfare purposes and in the juvenile justice system.

21 'Background Note: "Sorry: the unfinished business of the Bringing Them Home report": Coral Dow, Social Policy Section, Parliamentary Library of Australia; 4 February 2008; available at: www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/0708/BringingThemHomeReport.

22 Convention on the Prevention and Punishment of the Crime of Genocide 1948; article II.

Recommendations

The National Inquiry made 54 recommendations. Many were based on international principles for reparation in respect of gross violations of human rights, which provided for reparation in five areas: acknowledgement and apology; restitution; compensation where restitution is not possible; rehabilitation; and guarantees against repetition.²³ Others were based on international human rights law in relation to children, particularly the Convention on the Rights of the Child.

Among other recommendations, the Inquiry urged Australian parliaments and governments and other governmental institutions and authorities involved in implementing removals to apologise and acknowledge responsibility for harm caused to Indigenous Australians affected by the past laws, policies and practices. It proposed the establishment of a national compensation scheme, whereby individual victims could make claims on grounds such as racial discrimination, deprivation of liberty, pain and suffering, economic loss and other abuses of human rights. It also made recommendations relating to contemporary removals, to address the continuing large numbers of Indigenous children and young people removed for juvenile justice or welfare reasons.

Follow-up

There have been numerous responses to the National Inquiry by governments and other authorities, with politically controversial outcomes. When the report was tabled, the then federal Coalition Government refused to apologise for the human rights violations inflicted on the Stolen Generations. Nevertheless, the Government directed resources to several major initiatives. In particular, it was willing to support programmes to assist Indigenous family reunification through locating separated family members, opening access to government records and providing counselling.

The Aboriginal and Torres Strait Islander Commission was funded to undertake national coordination of Link-Ups, an existing network of state-based services that facilitated family reunifications for those affected by forcible removal. It established the Bringing Them Home Taskforce in 1998 to monitor the National Link-Up Network's implementation. Further funding established an oral history project to document victims' stories of removal and its effects, as well as an archiving project to assist access to and preservation of Indigenous files on record with the state, partly for the purpose of tracing family members.

In 2000, a Senate Committee recommended, among other things, a National Apology and the establishment of a reparations tribunal to deal with compensation claims, including monetary compensation. The second recommendation remains to be acted upon; Tasmania alone has established a compensation scheme for one-off payments to Tasmanian Aboriginal members of the Stolen Generations. However, the Senate's reinforcement of the Inquiry's original recommendations demonstrated the enduring potential of a national inquiry to hold government accountable for the contemporary consequences of past institutional failures and abuses of power.

Bringing them home highlighted the significance of an apology as the foundation for healing. In the years immediately after the Inquiry's report was released, all Australian state and territory parliaments and governments made formal apologies to the members of the Stolen Generations and their families.²⁴ The then federal Coalition Government refused, however. This generated an enormous public response, with campaigns for the apology in every State and Territory. During 2000, hundreds of thousands of Australians in cities and towns marched across bridges to show their commitment to the apology recommended by the National Inquiry. On 28 May 2000, more than a quarter of a million people crossed

²³ The inquiry's approach to reparations was based on the Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law 24 May 1996 (E/CN.4/Sub.2/1996/17). These have now been replaced by and reflected in Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by the UN General Assembly on 16 December 2005 (A/RES/60/147). Acknowledgement and satisfaction are dealt with as "satisfaction".

²⁴ See: www.humanrights.gov.au/publications/bringing-them-home-apologies-state-and-territory-parliaments-2008.

the Sydney Harbour Bridge alone.²⁵ A skywriter wrote the word 'Sorry' in the sky above the bridge and the marchers. Later in the year over 300,000 marched in Melbourne. The National Inquiry had not only raised the awareness of Australians but it had changed their mindset and understanding.

In 2008, more than a decade after the National Inquiry's report, the new federal Labor Government made a formal National Apology to the Stolen Generations as the first item of business in the new parliament after the elections of November 2007.²⁶ Tom Calma, then the HREOC Aboriginal and Torres Strait Islander Social Justice Commissioner, said that the apology "tapped into the desire within the Australian community to make amends for the past".²⁷ Speaking of his facilitation of consultations between the federal Government and Stolen Generations groups since the Apology, he stated that the "overwhelming message from those meetings was that (the Apology) should be seen as the first step in a partnership".²⁸

Despite government selectivity in implementing the inquiry's recommendations, there have been tangible commitments to reconciliation since the Apology, most notably as a national partnership plan for achieving equality in social and economic status, including health, education and employment, between Aboriginal and Torres Strait Islanders and non-Indigenous Australians (the "Closing the Gap" programme).

The Australian experience of national inquiries establishes that the effectiveness of national inquiries must be measured from a long-term perspective. Reports and recommendations can remain alive for years, even decades, before they are implemented. In that context, follow-up is extremely important, ensuring that the issues continue to receive public attention. The role of the HREOC and of other organisations, such as NGOs and academic institutions, is critical for this.²⁹



25 See: www.youtube.com/watch?v=Jy5cZ-IO0Eg and www.youtube.com/watch?v=c7bs_zdthsc.

26 For the text of the National Apology given by the Prime Minister Kevin Rudd on 13 February 2008, see: <http://australia.gov.au/about-australia/our-country/our-people/apology-to-australias-indigenous-peoples>.

27 'Hearing each other? The National Apology to the Stolen Generations one year on'; speech by Tom Calma to the Pre-Parliament Event "Melbourne: making a difference" in preparation for the Parliament of World Religions Conference; Melbourne, 8 February 2009; available at: www.humanrights.gov.au/news/speeches/speech-hearing-each-other-national-apology-stolen-generations-one-year-2009.

28 'Let the healing begin: Response to government to the national apology to the Stolen Generations'; speech by Tom Calma at Parliament House, Canberra; 13 February 2008; available at: www.humanrights.gov.au/news/speeches/response-government-national-apology-stolen-generations.

29 For example, the conference on the 10th anniversary of Bringing them home traced what had been done and what remained to be done a decade after the release of the report. See: *Australian Indigenous Law Review*, Vol. 12, Special Edition; available at: www.ilc.unsw.edu.au/publications/ailr/volume-12-special-edition.

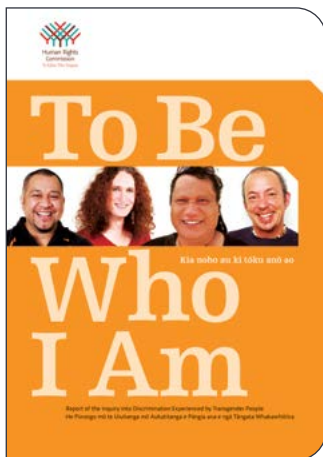
Case study:

Inquiry into Discrimination Experienced by Transgender People



2006–08
NEW ZEALAND HUMAN RIGHTS COMMISSION

Background and context of the inquiry



The 2008 report, *To be Who I Am. Kia noho au ki tōku anō ao*, documented a significant national inquiry into discrimination experienced by transgender people in Aotearoa New Zealand.³⁰ The focus was on three areas: experiences of discrimination, access to health services and barriers to legal recognition of gender status.

Historically, societies in all part of the world have included people who, today, would be described as transgender. In Aotearoa New Zealand, there is evidence that traditional Māori communities were inclusive of *whakawāhine* and *takatāpui*, while other Pacific countries recognised gender diversity, including *fa'afafine* in Samoa and Tokelau, *fakaleiti* or *leiti* in Tonga, *fakafifine* in Niue and *akava'ine* in the Cook Islands.

In 2004, the Commission's New Zealand Action Plan for Human Rights identified many human rights issues faced by transgender people and prioritised an inquiry into the discrimination that transgender people faced.³¹ That Inquiry was approved by Commissioners in 2005 and was undertaken over 2006 and 2007, with a report published in January 2008. The Commission then committed three years' attention to supporting duty bearers to work with rights holders on implementing the Inquiry's findings.

The Inquiry found that in Aotearoa New Zealand:

- Transgender children and young people faced major barriers at school, at work, playing sport, accessing health services and actively participating in their community.
- Transgender people faced discrimination that undermined their ability to have a secure family life, to find accommodation, to obtain a job or be treated fairly at work, to access general health care or to participate in community life. They faced daily challenges to find acceptance and, at worst, experienced constant harassment and vicious assault.
- There had been no consultation with transgender people in critical policy areas that affected them.
- There were significant gaps and inconsistencies in the availability, accessibility, acceptability and quality of gender-affirming health services required by many transgender people. The services available were ad hoc and provided by a few dedicated health professionals. Most transgender people could not access gender-affirming services.

30 *To Be Who I am. Kia noho au ki tōku anō ao*, Report of the Inquiry into Discrimination Experienced by Transgender people, 2008; available at: www.hrc.co.nz/files/5714/2378/7661/15-Jan-2008_14-56-48_HRC_Transgender_FINAL.pdf.

31 See: www.ohchr.org/Documents/Issues/NHRA/New_Zealand.pdf.

- As it related to citizenship (official documents issued by the State, the situation of citizens born overseas and privacy-related rights), the Inquiry found that most transgender people could not obtain official documents that contained consistent and accurate information about their gender identity and that many experienced difficulty having their right to privacy respected by agencies holding personal information.
- While the Inquiry's terms of reference were limited to transgender people, intersex people also made submissions relating to such issues as medical procedures performed on children, young people with intersex variations and the lack of access to full medical records.

Process of the Inquiry and participants

In developing the Inquiry process and procedures, emphasis was placed on participation of and accountability to the widest possible range of transgender people.

The understandable anxiety that many transgender people have about disclosure, and their dislike of sensationalist, voyeuristic media coverage, meant that the Inquiry had to offer people a range of ways to contribute to the proceedings. Confidentiality had to be guaranteed when it was requested. At the same time, the Inquiry team was conscious that the voices and experiences of transgender people are crucial to both public and official understanding and support for change.

To build awareness of and confidence in the Inquiry, initial briefings about the Inquiry were held in four main cities during August and September 2006. Public and private hearings were held throughout the country over the following three months. An online submission form was available and 128 written submissions were received.

Over 200 people were interviewed, including transgender people, their partners, family members and colleagues. They ranged in age from people in their early teens to those in their seventies. They came from a wide range of ethnicities and nationalities. Submissions also came from health professionals, academics and government agencies.

Research undertaken for the Inquiry examined legislation, policy, experience and best practices in the United Kingdom and Western Europe, North America, South Asia, South Africa and Australia.

A *Summary of Submissions* was published in April 2007 and tested in a series of meetings and exchanges with submitters and others:

- to enable transgender people and others to check what the Inquiry had heard and whether it had accurately and fully understood, and fairly reflected, the significance of what it had been told
- to provide a basis for more in-depth engagement with transgender people, government agencies and health professionals about the changes necessary to secure for transgender people the same rights as others, and about possible recommendations that the Inquiry might make.





Where significant gaps were identified, focus groups and targeted forums were convened. The Inquiry report was drafted and distributed for comment. All contributions were considered for the final report. Some of the Inquiry material was translated into te reo Māori and Samoan for consultation purposes.

Recommendations

The Inquiry made five overall recommendations, with a series of actions related to each recommendation, making 21 in total. The Inquiry report also identified the lead actor/s for each action and who should participate in achieving them.

These recommendations included:

1. Enable effective participation of transgender people in decisions that affect them
2. Reduce discrimination and marginalisation experienced by transgender people by:
 - a. clarifying that protections from sex discrimination in the Human Rights Act also included discrimination based on gender identity
 - b. recognising that this required policies and practices to be inclusive of transgender people, whatever their sex or gender identity
 - c. the Commission, together with transgender people, developing a human rights education programme to address human rights and discrimination issues for transgender people.
3. Improve transgender people's access to public health services and developing treatment pathways and standards of care for gender-affirming services
4. Simplify the requirements for changing sex details on a birth certificate, a passport and other documents to ensure consistency with the Human Rights Act
5. Consider the specific human rights issues facing intersex people.

Follow-up

From 2008 until June 2011, the Commission prioritised supporting implementation of the Inquiry's recommendations. Initiatives led by the Commission were very successful, including its public education programme and human rights training for transgender community members. Two government agencies simplified the processes for amending details on passports and driver licences, based on a person's self-defined gender, and including a third, non-binary option. Where action required changes to laws or government funding, however, less progress was seen.

Five workshops addressing human rights and discrimination for transgender people were facilitated in 2008 and 2009. In addition, three workshops were held in five centres, linked to a touring art exhibition, 'Assume Nothing',³² raising the visibility of transgender people and reaching over 200,000 people. The Commission facilitated human rights education programmes in schools and across the public and private sectors.

In 2008, the Commission held a health sector roundtable to facilitate discussions between transgender people, health professionals and the Ministry of Health. Participants proposed that the Ministry of Health support a Working Group to develop guidance for the provision of appropriate health services for transgender people. After initial support from the Ministry of Health, subsequent government decisions resulted in limited funding for an initial good practice guide for health professionals, published in 2011.³³

In 2012, the Department of Internal Affairs worked collaboratively with transgender people to develop a world-leading passport policy based on self-declaration and requiring no medical evidence. Statistics NZ consulted transgender people on the development of a statistical standard for gender identity which was published in 2015. However, until recently, no progress had been made on the collection of gender identity data in official statistics to measure the experiences of transgender people. The first data collection was announced in June 2019 in Statistics NZ's Household Economic Survey, with results due in 2020, and the aim of collecting data in NZ's 2023 Census.³⁴

The Inquiry report and subsequent activity contributed to a robust submission to the country's first Universal Periodic Review (UPR) in 2009 and to subsequent reviews. While silent in the previous two reviews, the 2019 UPR recommended that the New Zealand Government amend the Human Rights Act 1993 to explicitly prohibit discrimination on the basis of gender identity, gender expression and sex characteristics.³⁵

The Inquiry report also contributed to further international reports of New Zealand's human rights performance. In 2012, the Committee on the Elimination of Discrimination against Women recommended that New Zealand "improve access and quality of health services for lesbian women and transgendered persons". Four recommendations relating to intersex children were made to the New Zealand Government by the UN Committee on the Rights of the Child in 2016. After a series of Roundtables co-hosted by the Commission and the Intersex Trust Aotearoa New Zealand, an Intersex Expert Advisory Group was established for a fixed period of two years. This group is funded by the Ministry of Health through the NZ Paediatric Society.

In 2018, ten years after the Inquiry was completed, the New Zealand Human Rights Commission reviewed what progress had been made against the report's recommendations and what still needed to take place to advance them. The ten-year review found that, while much had been achieved, there were still significant gaps that need to be addressed in order to achieve full realisation of human rights for transgender and gender diverse people in Aotearoa New Zealand.

Among the achievements, the General Social Survey and Statistics NZ has implemented the international good practice 'two-step' question method to ask first about sex recorded at birth, and then gender, in the Household Economic Survey.³⁶

32 *Assume Nothing Workshops*. Information available at: www.rebeccaswan.com/assumenothing.htm.

33 See: [www.moh.govt.nz/notebook/nbbooks.nsf/0/255ADB3E32BC40EACC2578F5000AF05B/\\$file/gender-reassignment-health-services-for-trans-people-nz.pdf](http://www.moh.govt.nz/notebook/nbbooks.nsf/0/255ADB3E32BC40EACC2578F5000AF05B/$file/gender-reassignment-health-services-for-trans-people-nz.pdf).

34 See: www.stats.govt.nz/reports/sex-gender-and-sexual-orientation.

35 This recommendation was received from Iceland. Although no less important, the recommendation from Australia had slightly different wording which did not include 'gender expression' and used 'intersex status' rather than 'sex characteristics'. Neither were accepted by the government.

36 Statistics New Zealand; June 2019; available at: www.stats.govt.nz/news/gender-inclusive-questions-introduced-to-better-reflect-new-zealanders.

Some of these gaps include, but are not limited to:

- the explicit inclusion of “gender identity, gender expression, and sex characteristics” as specifically prohibited grounds of discrimination in section 21 of the Human Rights Act
- greater support among sporting bodies for building understanding of transgender people’s participation in sports
- greater sharing of best practice across schools for issues that affect transgender children, such as uniform policies, bathrooms and bullying
- continuing issues for transgender persons in prisons, including consistent access to health services, hormones, rehabilitation and counselling
- large gaps in the availability, affordability and acceptability of health services, with limited ability and preparedness to work with transgender and gender diverse people
- no response from the New Zealand Government to the recommendation to simplify the process for changing sex details on a birth certificate, based on a self-declaratory process.

The Commission continues to educate, raise awareness, and advocate for intersex human rights. The Chief Commissioner has delegated the human rights of LGBTI people to a specific Commissioner and the Commission has a full-time Advisor on Sexual Orientation, Gender Identity and Sex Characteristics.

Case study: National Inquiry into the Land Rights of Indigenous Peoples



2013
HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM)

Background and context of the inquiry



Between December 2010 and June 2012, the Human Rights Commission of Malaysia (SUHAKAM) conducted a National Inquiry into the Land Rights of Indigenous Peoples. SUHAKAM published the report of the National Inquiry in 2013.³⁷

Since its establishment in 1999, SUHAKAM had been dealing with allegations of violations to indigenous customary rights to land, many of which it was unable to resolve. These complaints from indigenous peoples related to allegations of encroachment and/or dispossession of land, land included into forest or park reserves, overlapping claims and slow processing of requests for the issuing of native titles or community reserves. SUHAKAM therefore decided in 2010 to conduct a National Inquiry to tackle the root causes of land issues comprehensively. In deciding to conduct the National Inquiry – the first-ever undertaken by SUHAKAM – the members of the Commission considered that this long-standing and systemic issue affecting the indigenous peoples of the country could best be dealt with in a comprehensive and in-depth fashion, with a view to having a better understanding of the issue, or issues, their underlying causes, the effects on the indigenous communities, and how best to resolve the issue in the interest of promoting

and protecting the human rights of an important segment of the population of the nation. The National Inquiry would begin by recognising the experiences of indigenous peoples all over Malaysia, examined through a human rights lens.

In identifying who are the indigenous peoples of Malaysia, the National Inquiry referred to the Federal Constitution, relevant State laws and the working definition used by the United Nations. While it recognised that the Malays of Peninsula Malaysia are indigenous to Malaysia, it decided, in adhering to the United Nations' definition of the term, to focus on the aborigines, or Orang Asli, of Peninsular Malaysia and those native to Sabah and Sarawak. This group constituted 13.8 per cent of Malaysia's population. Their story is that of rural communities adjusting to life in a country that is fast becoming a developed and modernised nation, yet wishing to preserve, as much as possible, their own way of life, with their customs, traditions and beliefs, even if over time these would also be affected by the changes around them. While some of them are adjusting to the mainstream life of the nation and living in or near urban centres, due to economic factors, others choose to reside in their traditional habitats, while a smaller group prefers to lead the wandering life of their ancestors in the interior of the country. Their story is also one of coping with the effects of rapid modernisation of the country that has increasingly impinged on their own communal way of life and which they feel powerless to resist. They consider that they must resist it to preserve their own sense of identity and dignity as a people, while they recognise that they are inescapably an integral part of a modern, dynamic nation.

37 *Report of the National Inquiry into the Land Rights of Indigenous Peoples*; available at: <https://nhri.ohchr.org/EN/Themes/BusinessHR/Business%20Womens%20and%20Childrens%20Rights/SUHAKAM%20BI%20FINAL.CD.pdf>.

The indigenous peoples of Malaysia have clear systems of land tenure – whether individual or collective – based on the adat (customary systems). The understanding and maintenance of these traditional systems is handed from one generation to the next. Statutory laws related to land in Sabah, Sarawak and Peninsular Malaysia are deficient in many ways in giving recognition to traditional land tenure systems, due to lack of understanding of the systems and because the laws were conceptualised during the British colonial period to achieve economic growth through the exploitation of natural resources. International law, however, has explicitly and implicitly recognised the importance of indigenous peoples' lands, territories and resources, and their significance in the enjoyment of other human rights. The National Inquiry examined the scope, interpretation and application of state, national and international law in relation to indigenous land rights. Since land is central to the life of the indigenous peoples, an examination into the land problem gave SUHAKAM important insights into other social and cultural aspects of their lives.

Process of the inquiry and participants

SUHAKAM's Chairperson, Tan Sri Hasmy Agam, chaired the National Inquiry and all Commission members participated in it. The Commissioners were assigned to panels with responsibility for Peninsular Malaysia, Sabah or Sarawak. The Chairperson chaired all three panels. The key role played by the Chairperson added authority and heightened the profile of the National Inquiry. In addition, the National Inquiry was assisted by five independent consultants, appointed by the Commission for their wide knowledge, experience and expertise in the field of indigenous peoples' rights. Each consultant was appointed in relation to one of the three geographical areas.

The National Inquiry took a cooperative and responsive approach to developing solutions to the land problems of indigenous peoples. It involved a range of stakeholders – including government agencies, non-government organisations, indigenous communities, private companies and other interested groups and individuals – to identify and develop practical solutions.

The National Inquiry started with introductory sessions followed by public consultations with stakeholders. It also called for written public submissions. Subsequently, public hearings were conducted to hear selected cases from the consultations and submissions. In addition, studies were commissioned into the land rights of the indigenous peoples in Peninsular Malaysia, Sabah and Sarawak.

To ensure that all stakeholders understood SUHAKAM's true intention in undertaking the National Inquiry, appreciated the Terms of Reference and participated actively in the process, the Commission held a series of introductory sessions in the Peninsula, Sabah and Sarawak. At those sessions, the participants were informed of the objectives of the Inquiry and what was to be expected of it. The Commissioners invited stakeholders to continue to participate in other Inquiry processes.

To support the process of the National Inquiry, the Commission appointed researchers to undertake in-depth studies into the land rights of the indigenous peoples. Researchers, based in the University of Malaya, University Malaysia Sabah and University Malaysia Sarawak, were appointed to conduct field studies and GIS mapping into indigenous land conflicts in selected cases in Peninsular Malaysia, Sabah and Sarawak respectively. Alongside these studies, research into the conceptual and legal framework of indigenous peoples' land ownership in Malaysia was also carried out. This research reviewed applicable laws and procedures involving indigenous peoples' land, based on international standards.

To ensure that all stakeholders were given an equal opportunity to participate in the National Inquiry, the Commission opened a submission process. Key government departments and agencies, indigenous peoples' organisations and NGOs were invited to make written submissions. The Inquiry received 57 submissions.

SUHAKAM, through a public consultation process, also gathered information on areas of conflict pertaining to indigenous land and related evidence, as well as applicable laws, procedures and policies. Invitations to participate in the consultations were sent to all stakeholders, including, but not limited to, key government departments and agencies, indigenous communities, the private sector, NGOs and

the media. The public consultations were conducted at several venues in 23 districts around Malaysia, totalling 34 days, between June and September 2011.

The consultation process involved a briefing on the National Inquiry, followed by a short dialogue session with the indigenous people present. The Commission's officers then recorded statements from those who wished to provide one, either individually or in groups. At the same time, the Commissioners consulted representatives of the Government in a more informal manner to get feedback on cases raised during the dialogue and its perspectives and experience pertaining to land issues and recognition of the land rights of indigenous peoples, and to ascertain measures that had been taken. Meetings were also held with some NGOs, the private sector and key individuals. More than 6,500 indigenous people participated in the consultation sessions. A total of 892 statements were recorded: 407 in Sabah, 198 in Sarawak and 287 in the Peninsula.

The National Inquiry selected a number of representative cases from those recorded at the public consultations and in submissions to be further examined by the Panel at the public hearings. The cases selected were based on the availability of valid supporting documents and evidence. A total of 132 cases were selected, covering a wide range of issues, including administration, plantation, logging and forest reserves, inclusion of land into protected areas, indigenous land development schemes and commercial development projects.

The public hearings were a continuation of the consultations where specific witnesses appeared at more formal meetings before a panel to give further information or to verify certain facts. They were conducted in several areas around the Peninsula, Sabah and Sarawak between April and June 2012.

The National Inquiry sought to promote more public awareness of the indigenous peoples' rights to land and their way of life. Towards this end, media involvement was vital to promote transparency for the process, to play an educative role and to provide some form of pressure on the relevant authorities. The media, particularly the local media, played an active role throughout the process. However, media self-censorship resulted in considerably lower coverage than expected.

The National Inquiry proved to be a major empowering platform for indigenous communities to mobilise themselves towards protecting their customary land. Communities came together to trace historical evidence to substantiate their stories and claims to land, to be presented before the Inquiry. For some, it also meant that a number of villages had to select one representative to speak on their behalf. Women were vocal participants, although some had never stood previously in public to speak.

Photo by the Human Rights Commission of Malaysia (SUHAKAM)



Recommendations

Although the Malaysian Federal Constitution and domestic and international laws have provisions that recognise customary land rights, systemic issues have denied indigenous peoples the full enjoyment of their legal and human rights. These systemic issues evolved mainly from the successive amendments of land laws that do not recognise indigenous peoples' perspectives of land ownership and management. They also affected administrative decisions with respect to land claims. The issues also evolved from the adoption of policies that give priority to approving lands for large-scale development projects over indigenous subsistence economy.

Indigenous communities expressed to the National Inquiry their high degree of frustration and anger as a result of the inadequate response and continuing violation of their rights. Injustices in access and control of land are often central to the genesis of conflicts that could be costly for the country as a whole, if not addressed effectively. The Inquiry saw it as critical that these injustices are dealt with in an expeditious and holistic manner.

On the basis of the findings of the National Inquiry, SUHAKAM's report made 18 key recommendations under six main themes:

1. Recognise indigenous customary rights to land
 - Address security of tenure
 - Clarity of concepts on customary tenure
 - Restitution for non-recognition of customary lands
2. Remedy land loss
 - Redress mechanisms
 - Address past policies and programmes
 - Review compensation
3. Address land development issues/imbances
 - Adopt human rights-based approach to development and free, prior and informed consent law
 - Ensure land development does not adversely impact indigenous peoples
 - Promote successful development models
 - Policy towards people-centred inclusive-sustainable development
4. Prevent future loss of native customary right land
 - Settlement exercise on indigenous customary lands
 - Recognition of indigenous lands in protected areas
 - Encourage active involvement of indigenous peoples in forest management
5. Address land administration issues
 - Conduct comprehensive review of the Department of Orang Asli (JAKOA)
 - Capacity enhancement of land departments
 - Review responses to land issues
 - Immediate implementation of corrective measures
6. Recognise land as central to indigenous peoples' identity
 - Establish an independent national commission on indigenous peoples.

The National Inquiry recommended that all activities involving reviews and studies be conducted with the full and effective participation of indigenous peoples.

Follow-up

SUHAKAM completed the National Inquiry report in April 2013 and released it publicly on 5 August 2013.³⁸ Since then, the Commission has reported annually on progress in implementation of the recommendations. It has continued its advocacy for full implementation of the report's recommendations. It has also continued its work to investigate complaints of violations of indigenous land rights.

When the report was released, the Government decided quickly to set up a National Task Force to study the findings, recommendations and proposals. SUHAKAM welcomed the Government's immediate response but was concerned that the report was not discussed in Parliament.³⁹ The Commission stressed the importance of early and effective implementation of the recommendations. In its view, it was imperative that the issues be resolved expeditiously, given the longstanding nature of the problems and resulting disenchantment among indigenous peoples.⁴⁰ The Task Force delivered its report to the Minister on 10 September 2014 but its report had not been released by the end of that year.⁴¹ The Government indicated, however, that it had accepted 17 of the Inquiry's 18 recommendations.

SUHAKAM welcomed the Government's decision in June 2015 to establish a Cabinet Committee on Native Land Rights, headed by the Deputy Prime Minister, to address, monitor and implement the findings of the Task Force. It noted that one of the key roles of the Cabinet Committee was to act as an 'independent' National Commission on Native Land Rights. The establishment of an independent national commission was one of the 18 recommendations in the National Inquiry Report, although not in the form decided by the Government.⁴² SUHAKAM said that the inclusion of the Orang Asli and Orang Asal communities in the process should be ensured or, at the very least, information on the Task Force's discussions and decisions should be made known to them so as to allow them to provide feedback. Many Orang Asli and Orang Asal representatives expressed to SUHAKAM their concern and disappointment over the lack of transparency in way the Task Force functioned.⁴³

In 2016, SUHAKAM reported that, although the Government had accepted 17 of the Inquiry's 18 recommendations, none had been implemented. It said that, arguably due to the slow pace of the implementation of the recommendations, violations of native customary land rights had worsened that year. The State's failure in protecting the land rights of indigenous peoples had also led to incidents of criminal intimidation of indigenous communities. SUHAKAM argued that Parliament should have a central role in the protection of the basic rights of indigenous peoples, based on their traditional values, visions, needs and priorities, but that this role had not been fully realised.⁴⁴

SUHAKAM gave major attention to the situation of indigenous peoples in its 2018 Annual Report. It allocated first place, and 13 pages, to them in its chapter on vulnerable communities. It called for the National inquiry's recommendations to be implemented in full without further delay. It made 11 new recommendations.

- i. Implement the recommendations made in the NI without any delay. The Minister in Prime Minister's Department responsible for National Unity and Social Wellbeing who has been entrusted with the responsibility of overseeing the rights of Orang Asli must work with all state governments to monitor the implementation. The Minister should also engage his counterparts in Sabah and Sarawak in a similar manner.

38 SUHAKAM *Annual Report 2013*, p. 15; available at: <https://drive.google.com/file/d/0B6FQ7SONa3PRNDNNWmo5cGVQakU/edit>.

39 SUHAKAM *Annual Report 2013*; p. 15; available at: <https://drive.google.com/file/d/0B6FQ7SONa3PRNDNNWmo5cGVQakU/edit>.

40 Ibid; p. 2.

41 SUHAKAM *Annual Report 2014*; p. 8; available at: <https://docs.google.com/file/d/0B6FQ7SONa3PRUG1nc25yRGV3TIU/preview>.

42 SUHAKAM *Annual Report 2015*; p. 4; available at: https://drive.google.com/file/d/0B_iu0JnQlcIBQW5OZTRhTF9XTC/view?pref=2&pli=1.

43 Ibid; pp. 22-23.

44 SUHAKAM *Annual Report 2016*; p. 2; available at: <https://drive.google.com/file/d/0B6FQ7SONa3PRLVFYOHoyODc0eDg/view>.

- ii. All state governments must recognise the indigenous peoples right to native customary land and gazette lands for the community. Engage the indigenous community for alternative forest-based revenue generating activities like eco-tourism.
- iii. Apply the principle of free, prior and informed consent before making any development programmes for the indigenous community.
- iv. Adopt the interim measures proposed by the Forestry Department in Kelantan in recognising the indigenous peoples land rights.
- v. The Sabah Land Ordinance (CAP 68) should be reviewed and amended to eliminate ambiguity and confusion. A workshop could be organised to bring together experts, representatives of complainants, and other interested parties to identify the changes needed.
- vi. Enhance school facilities and training for teachers in Orang Asli schools.
- vii. The capability and capacity of officers and staff involved in land and forest administration and management should be upgraded on a regular and continuous basis to make them more human rights compliant.
- viii. Land and forest administration and management processes should be made more transparent. Close consultations with the affected community should be carried out as and when a project is planned and implemented such as the construction of dams, gazetting of forest reserves, water catchments, wildlife conservations, Sabah Parks, settlement schemes, commercial and agricultural project and other projects. The state government must ensure that in any gazetting exercise, no human habitation exists in the area to be gazetted. In other words, it should be pro-active and not reactive.
- ix. Where possible, mediation could be adopted between parties to avoid costly legal processes and settlements in relation to land disputes.
- x. The government has a responsibility to ensure indigenous peoples have access to adequate resources to research and negotiate their claims so that the settlement is equitable, just and enduring.
- xi. Member states within the UNPFII must commit to engaging in a meaningful dialogue with their indigenous peoples and NHRIs, where they exist, to design and develop national strategies to give full effect to the UNDRIP, which includes monitoring, evaluation and annual reporting of the progress of implementation.⁴⁵

SUHAKAM hoped that the change of Government in May 2018 would lead to better implementation of the National Inquiry's recommendations. It continued to advocate for that. However, in 2019, it reported its concern and disappointment over the slow progress and the new Government's lack of action and seriousness in implementing the recommendations. Although Orang Asli affairs were placed under the Minister in the Prime Minister's Department responsible for National Unity and Social Wellbeing, it remained unclear whether the Department was responsible for ensuring the implementation of recommendations. The slow action further marginalised the Orang Asli communities and made them vulnerable to further human rights abuses, especially in relation to their land rights.

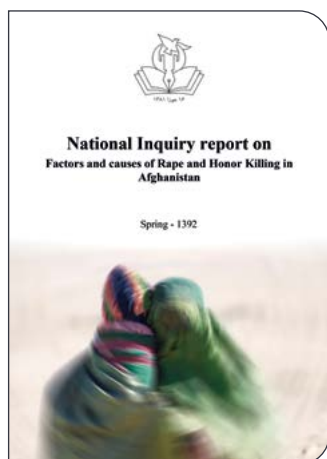
45 SUHAKAM *Annual Report 2018*; pp. 98-99; available at: <https://drive.google.com/file/d/1fwvmlSqXJ2ysTdhRrYnSws6Bwz6FQiaG/view>.

Case study: National Inquiry on Factors and Causes of Rape and Honour Killings



2013 AFGHANISTAN INDEPENDENT HUMAN RIGHTS COMMISSION

Background and context of the inquiry



Each year since its establishment in 2002, the Afghanistan Independent Human Rights Commission has received significant numbers of complaints of killings of women and girls in the name of family honour and of rape against women and girls. It considered that these were the most serious violations of human rights. They occurred in all parts of the country. So, in August 2012 (Afghanistan year 1391), the Commission launched a National Inquiry into factors and causes of these violations, covering cases brought to the Commission in 2011 and 2012 (Afghanistan years 1390 and 1391). It delivered its report in 2013 (Afghanistan year 1392).⁴⁶

The Commission's database showed that 12,000 cases of various forms of violence against women were recorded in the years before the National Inquiry. Between March 2011 and 2013, 243 cases of killing based on family honour and 163 cases of rape were registered. The Commission selected 127 cases for documenting in the National Inquiry. Clearly these figures do not cover all the cases of rape and honour killings in Afghanistan. Cultural and social sensitivity in a traditional society keeps many of these cases hidden. Victims and their families face many traditional, cultural, social, economic and security restrictions and corruption of the judicial organs that limit the opportunities for the victims and their families to obtain justice.

The Commission considered the national inquiry process as well suited to examine the human rights issues involved in killings based on family honour and rape:

National Inquiry is a tool and a very effective way to address the important issues of human rights. This program has many various aspects and issues, including analysing information, collecting the facts and presenting of recommendations. Likewise, education and awareness raising is the most important aspect of it. To sensitise public opinion on the issues of human rights constitutes the basic objectives of this report. This program is widely implemented at the national level to address the larger problems of human rights, rather than handling individual routine cases.⁴⁷

Killings in the name of family honour occur in situations connected with sexual issues and relationships outside marriage. These situations are generally of greatest sensitive to the victim's husband and her family than to anyone else. The traditional relationship between husband and wife in Afghanistan is unequal, with the husband considered the possessor of the wife. The inferior position of women in the family makes women vulnerable to their husbands and their families. The victims of these killings are

46 *Report of the National Inquiry on Factors and Causes of Rape and Honour Killings in Afghanistan*; available at: www.aihrc.org.af/media/files/PDF/Natioan%20Inquiry%20final%20-%20for%20meru.pdf.

47 *Ibid*; p. 3.

usually married women and, in most incidences, the perpetrators are their husbands or their family members. The killers of unmarried girls are usually their fathers or members of their father's family.

Process of the inquiry and participants

The Commission approved the National Inquiry and its plan, together with its aims, objectives, method of inquiry and members, on 4 August 2012. It then organised eight training sessions for its staff in regional and provincial offices in the national inquiry methodology and to introduce them to the human rights issues concerning killings in the name of family honour and rape.

The National Inquiry then went public and began the collection of evidence and awareness raising. The Commission conducted:

- introductory consultative meetings with stakeholders in every regional and provincial office
- 63 provincial focus group discussions, with representatives of civil society institutions, representatives of state offices, associations and unions, members of provincial councils and local elders, with a total of 1,078 participants
- 15 public hearings in 15 cities with almost 1,000 participants, including relevant state organs, including justice and judicial organs, representatives of civil society organisations, media representatives, members of parliament, members of provincial councils, representatives of forensic medicine, police, those in charge of safe shelters, representatives of associations and defence lawyers
- 136 formal interviews with victims, their family members, witnesses and perpetrators, using standard questionnaires.

The National Inquiry's work was reported in audio, video and print media and most of the media prepared and broadcast news and reports about these sessions. The Commission recorded all information and views presented by the participants. It also prepared a report and a film regarding the public hearings.



Photo by the Afghanistan Independent Human Rights Commission

Recommendations

The National Inquiry identified factors causing or contributing to killings in the name of family honour and rapes in the legal-political, socio-cultural, economic and psychological fields. The legal-political factors were:

- lack of decisive dealing with the perpetrators and perpetuation of the culture of impunity
- problems in the law, including lack of a clear definition of honour killing in the law and legal gaps in criminalisation of honour killing
- corruption and abuse of position and authority
- the involvement of influential people in the investigation and resolution of cases of violence against women by unofficial sources
- concealment of crimes and non-referral of victims to judicial organs because of fear and mistrust
- lack of accurate detection and investigation of crime due to lack of professional employees in the judicial organs and lack of modern equipment, including forensic medicine in the provinces
- lack of necessary and appropriate coordination between the judicial organs (especially the police, attorney's office and courts)
- restricted women's access to justice (for example, courts, relevant attorney's office and women's detention centres)
- presence of illegal weapons with irresponsible armed groups
- lack of security and poor governance in district and provinces
- lack of necessary support to victims and non-observance of their rights
- lack of public trial of offenders.

The National Inquiry pointed to a number of socio-cultural factors contributing to these violations, including:

- negative, gender-based attitudes towards women
- the nature of the relationship between men and women
- the pattern of behaviour towards women and use of violence
- traditional Afghan social values towards women, especially in relation to issues such as reputation, honour, dignity and chastity
- concealment of rape and killing due to traditional sensitivities
- illiteracy and the low level of public awareness
- traditional patterns of marriage in Afghan society.

Economic factors that contributed to these violations were:

- victims' poverty
- economic insecurity
- heavy dowries and expensive weddings
- drug addiction
- women's unequal inheritance rights.

Finally, the Commission identified psychological factors arising from women's social isolation and exclusion, often giving rise to depression, and men's suspicions and delusions about women's relationships.

The National Inquiry made 22 recommendations in its report, covering the principal areas identified as contributing to killing based on family honour and rape. Among these recommendations were:

- law reform and fair, equal and accurate implementation of laws, with appropriate punishment of perpetrators
- specialist courts to deal with violence against women and family matters
- public awareness programs on killing based on family honour and rape, with a focus on the innocence of women victims and preserving respect and dignity of women
- programs for education and employment of women
- eliminating undesirable customs and traditions subordinating women and the culture of violence against women.

Follow-up

The National Inquiry released its report in 2013 (Afghanistan year 1392). Since then the Commission has continued to pursue its findings and recommendations through its functions of advocacy, advising and awareness raising. The Commission promotes law reform and law review, advocating for change with ministries and the legislature. It raises awareness and pursues advocacy through the public media, conferences and workshops, and other awareness raising activities.

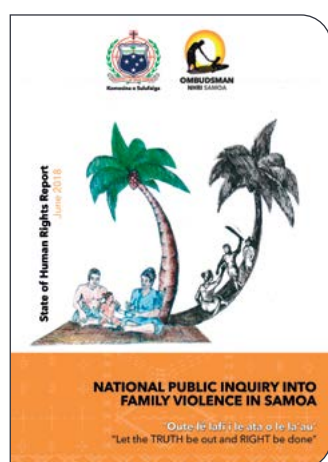
One particularly important recommendation has been implemented, concerning Article 398 of the Penal Code. Article 398 provided that a man, “defending his honour”, who sees “his spouse or another of his close relations” in a compromising position with another person and kills or injures one or both of them will not be prosecuted for violent assault or murder. Instead, he may be liable to a term of imprisonment of no longer than two years. A new Penal Code was adopted on 15 May 2017. In accordance with the National Inquiry’s recommendation, the provision for special treatment of killings on the basis of honour has not been included in the new Code.

Case study: National Inquiry into Family Violence



**2018
SAMOA OMBUDSMAN**

Background and context of the inquiry



Following a review of systemic human rights issues in Samoa in 2014, the Office of the Ombudsman – the national human rights institution of Samoa – decided to undertake a national inquiry into family violence. The Prime Minister of Samoa launched the National Inquiry on Human Rights Day, 10 December, in 2016. The Ombudsman submitted the report to Parliament in June 2018 and launched it at a public event on 12 September 2018.⁴⁸

The Ombudsman's review in 2014 identified violence as the most urgent and widespread human rights issue in Samoa. He considered that a national public inquiry was the most effective approach to address such a complex systemic issue.

The National Inquiry identified four main types of violence:

- physical violence
- sexual violence
- emotional or psychological violence
- financial violence.

In addition, it saw violence as any controlling or abusive behaviour where such conduct harms or may cause imminent harm to the safety, health or wellbeing of a person.

The National Inquiry found that certain groups were particularly vulnerable to family violence in Samoa:

- children and teenagers (adopted and biological)
- married and unmarried women
- men
- *fa'afafine* (third gender persons)
- persons with disabilities
- elderly persons
- persons of diverse sexual orientation and gender identity and expression.

Process of the inquiry and participants

The Ombudsman, Maiava Iulai Toma, chaired the National Inquiry. He also appointed Inquiry Commissioners with relevant skills, knowledge of family violence and personal integrity, while ensuring equal gender representation:

⁴⁸ *Report of the National Inquiry into Family Violence in Samoa, 2018*; available at: <https://ombudsman.gov.ws/ombudsman-launches-report/>.

- Hon. Tolofuaivalelei Falemoe Leiataua, former Parliamentarian (Vice Chairperson)
- Tagaloatele Professor Peggy Dunlop, Professor of Pacific Studies, Auckland University of Technology
- Leasiolagi Professor Malama Meleisea, former Director for Samoa Studies, National University of Samoa
- Falenaoti Mulitalo June Kolotita Ailuai Oloiali'i, active community member and Women's Village Representative of Vavau.

The National Inquiry process had four methods of gathering evidence:

- research
- consultations, in three phases:
 - relevant NGOs, government ministries, development partners and the media
 - community bodies
 - villages
- public and private hearings and forums
- written submissions from survivors, perpetrators, academics, lawyers, international agencies and other interested parties.

A total of 1818 persons participated in the National Inquiry:

- 1,500 persons took part in village consultations (45% men and 54% women), including 40 pastors and their wives, 20 *fa'afafine* and 50 young people
- 83 individuals gave evidence in public hearings
- 8 individuals gave evidence in private hearings
- 27 individuals and 11 organisations provided written submissions.

The public and private hearings of the National Inquiry were at the very heart of ensuring the process is an inclusive national conversation where everybody could participate and listen to what they have to say. The central purpose of the public hearings was to enable a wide range of perspectives to be placed before the National Inquiry and before society in general. The Inquiry Commissioners were given the opportunity to ask questions of the witnesses to explore their experiences and knowledge. In some cases, it was not possible to hear vulnerable witnesses in public without risking further harm so private hearings were also held to ensure the safety of those giving evidence.

Engaging survivors of family violence, especially those still in a violent relationship, to share their stories as part of the National Inquiry was a sensitive matter, given the potential for further harm to result. The hearings required extensive careful consideration to ensure the Inquiry abided by one of its guiding principles: the 'do no harm' principle. This principle requires the total avoidance of the risk of any further harm being caused to the survivor. The National Inquiry consulted with family violence experts, survivors and perpetrators in developing an approach to the public and closed hearings to ensure no further harm to survivors was caused.

The report of the National Inquiry is an innovative document. It begins with six 'fact sheets' that summarise the findings and recommendations. It includes individual case studies told to the Inquiry, direct quotes from those who gave evidence and information points of key elements of family violence. It sets out false beliefs and ideas about family violence and provides the facts in response. It also has a table of findings and recommendations, with action outcomes, implementation agencies and timeframe for each recommendation individually.

Recommendations

The National Inquiry's approach to addressing family violence is based on a framework of three pillars: *Fa'asamoa* (the Samoan way), Christian faith and human rights. The Report stated that these three pillars "contain standards, values, norms and approaches which, when well applied, can prevent and protect against all forms of family violence". The three pillars are "inextricably linked", with common core principles of respect, love, protection, security, dignity, equality and fairness.

The National Inquiry found:

Family violence is a complex social problem where causes, triggers and consequences are interconnected. It requires a nationally coordinated approach to prevention and protection. Within the Samoa context, such a national approach should be driven by the *Fa'asamoa*, Faith and human rights framework.

The Inquiry made 49 findings and 39 recommendations. The recommendations were principally addressed to three institutions, the Government, church leaders and village *Fono* (councils). They deal with both protection and prevention. The first recommendation proposes a national framework, established in legislation, for a coordinated inter-agency response to family violence, with a Family Violence Prevention Office, a National Family Violence Prevention Strategy and Communications Strategy, and a Family Violence Prevention Council and Taskforce. Other recommendations deal with cultural change to promote gender equality and women's participation in all areas of national life, as well as public awareness campaigns.

Samoa is a traditional, village-based society. Some of the National Inquiry's most important recommendations deal with the role of village *Fono* (councils). It proposes that *Fono* take a leading, proactive role in the prevention of family violence and recommends the establishment of family violence prevention committees (Family Safety Committees) in each village. This village initiative aims to address the primary drivers (causes and triggers) of violence through village-led initiatives that challenge deeply rooted behaviours that excuse, justify or even promote violence against women and girls. The National Inquiry also urges legislative amendment to include family violence as an area of concern for the *Fono*. It recommends that the *Fono* have responsibilities in:

- bringing perpetrators to the formal justice system
- protecting individuals who experience family violence through providing shelters and remedies at the village level.



Follow-up

The report of the National Inquiry was launched at a public event on 12 September 2018. The Prime Minister of Samoa, Tuilaepa Sailele Malielegaoi, delivered the keynote address and the Deputy Prime Minister was also in attendance. The Ombudsman then embarked on a two-year project to raise awareness of the main findings and key recommendations of the report among its stakeholders and the community and to build momentum for action. The project provides an opportunity for advocacy for implementation of all the report's recommendations.

The project commenced with two weeks of consultations in 22 local communities on both main islands of Samoa, involving over 1,000 people. Then, on 21 November 2018, the Ombudsman convened a roundtable of church representatives to discuss the report, since more than 10 of the 39 recommendations are addressed to faith-based organisations.

Between 11 February and 1 March 2019, the Ombudsman's Office met individually with key relevant stakeholders, including the Ministry of Women, the Police, Ministry of Justice, the Ministry of Education and the Samoa Victims Support Group, to discuss the report's findings and recommendations particular to each organisation, as well as a way forward and opportunities for partnership. The Office continues to follow up these discussions and work collaboratively with its partners to implement the recommendations. On 17 May 2019, the Office participated in roundtable discussions on the development of a gender-based violence and family violence toolkit for the Samoa Family Violence Court.

On 29 June 2019, the Ombudsman reported internationally on the National Inquiry. He addressed the 41st session of the United Nations Human Rights Council in Geneva on family violence and the rights of women and girls.

From 11-14 November 2019, the Office, together with the Ministry of Women, successfully conducted pre-meetings with six selected village councils to pilot the establishment of Village Family Safety Committees. The pilot programme, set for one year (2020), will seek to build the capacity of the committees to understand and articulate the causes and triggers of family violence, build skills to develop own community initiatives to empower them further to engage confidently with their communities and establish village-led initiatives and awareness.

The National Inquiry Report is already having an impact. Already, 40 per cent of village councils have made decisions on family violence following the recommendations.

The Office, in collaboration with the Ministry of Women, Ministry of Justice, Public Service Commission and NGO Samoa Family Health Association, is conducting awareness workshops for young people in the public sector workforce on healthy relationships and promoting safe environments for families and wellbeing for everyone.

Case study: National Inquiry on Human Rights and Climate Change



2018
COMMISSION ON HUMAN RIGHTS OF THE PHILIPPINES



Background and context of the inquiry

In December 2015, the Commission on Human Rights of the Philippines decided to conduct a national inquiry into how climate change is related to the increasing frequency and severity of natural disasters and how the human rights of Filipinos are affected by them. The inquiry was completed in December 2018.⁴⁹ Its report has not been released at the time of writing.

The decision was a response to a September 2015 petition to the Commission from 14 civil society organisations and 18 individuals requesting an investigation of the “responsibility of the Carbon Majors for human rights violations or threats of violations resulting from the impacts of climate change”. The petition named 47 respondents; investor-owned oil, natural gas and coal producers and cement manufacturers, referred to as the Carbon Majors. These companies are part of a group of 90 investor-owned, state-owned or government-run entities found to be the largest producers of greenhouse gas-emitting products since the industrial revolution. The petitioners requested that the Commission give priority to the investor-owned, fossil fuel producers, including Chevron, ExxonMobil, BP, Shell and ConocoPhillips, in any investigation.

The petition came after Super Typhoon Haiyan (called Yolanda in the Philippines), one of the greatest storms in history, hit the Visayas in the central Philippines in November 2013. Haiyan affected 11 million people. Over 6,000 people were confirmed dead and more than 1,000 were listed as missing. The emergence of significant numbers of extremely serious storms in recent years has been attributed, at least in part, to climate change. The petitioners argued that the Commission should investigate the contribution of the Carbon Majors to climate change and the effects of climate change on the human rights of people in the Philippines affected by extreme storms.

The petitioners argued that the adverse effects of climate change threaten the enjoyment of a range of internationally-protected human rights, most critically the rights to life, to the highest attainable standard of physical and mental health, to food, to water, to sanitation, to adequate housing and to self-determination. They claimed that the Carbon Majors have a responsibility for adverse human rights impacts resulting from their contribution to global climate change and their failure to reduce greenhouse gas emissions from their activities and their products, despite the capacity to do so and their knowledge of the harms posed by climate change.

The petitioners seemed to want the Commission to conduct quasi-judicial proceedings (litigation). The Commission, however, was not convinced that it was the appropriate body for such litigation or that litigation was the most appropriate form of investigation. It considered the various options open to it and decided, because of the significance of the issues raised in the petition, to conduct a national inquiry as the methodology most likely to be effective in addressing the issues identified in the petition.

49 See: <http://chr.gov.ph/nicc-2/>.

Process of the inquiry and participants

The National Inquiry was undertaken by the Commission as a whole. The Chairperson, Jose Luis Martin Gascon, and other Commissioners participated in the first public hearings in Manila in March 2018. Commissioner Roberto Cadiz, however, was the Commissioner given overall responsibility for the National Inquiry and was the National Inquiry Panel Chairperson. Other Commissioners sat with him on the Panel for public hearings.

From the beginning, Chairperson Gascon and Commissioner Cadiz emphasised that the process of the National Inquiry was dialogical, not adversarial. All the respondent Carbon Majors were continually invited to join the dialogue, even though in general they stood aloof from it. The process was inclusive, transparent and open to all who had something to say on the issue of climate change. The National Inquiry recognised that it had no power to make enforceable orders or to award damages. It would seek to persuade rather than compel.

The National Inquiry began with the collection of evidence, gathering research reports on climate change. It issued procedural rules to govern its hearings. It decided to use its formal powers under the Commission's statute to issue summonses to the Carbon Majors, seeking information from them and requiring their attendance before the Inquiry. Some responded to the summonses; some ignored them.

Some of the Carbon Majors challenged the Commission's jurisdiction to conduct the National Inquiry. They said that the Commission had no power in relation to entities not present in the Philippines. The Commission, however, held that it was mandated by the Philippine Constitution with the duty to investigate and inquire into allegations of human rights violations suffered by the people of the Philippines. The Commission decides on how it must perform its constitutional duty and the performance of this duty is neither constrained by, nor anchored on, the principle of territoriality. The Commission permitted the petitioners to present their case, their evidence and their arguments. It noted that it was not a judicial body and it had no enforcement powers in relation to most of the named respondents. It was required, however, to investigate allegations of human rights violation in the Philippines and determine the human rights issues. It could proceed with any inquiry it deems appropriate in relation to its mandate, regardless of who the implicated parties might be or where they might be domiciled.

Some of the Carbon Majors also argued that the Commission did not have jurisdiction in respect of economic, social and cultural rights. The Commission responded that the dichotomy between civil and political rights and economic, social and cultural rights was no longer valid, that all human rights were indivisible and interrelated.

The Commission accepted amici briefs, research studies and position papers on the various dimensions of the case from scientific and legal experts, professional organisations, academics, advocates, stakeholders and duty-bearers, civil society organisations and associations of national human rights institutions from around the globe. It conducted field trips, interviews, roundtable discussions, expert consultations and community dialogues.

Preparatory to the public hearings, the Commission invited the parties to a pre-hearing conference on 11 December 2017, during international human rights week. It then conducted the first public hearing in March 2018 and the last in December 2018. In all, the Commission held 12 public hearings: eight in Manila were held in London, at the London School of Economics. It heard 65 witnesses and received and marked at least 239 documents, both scientific and legal, some consisting of several hundreds of pages. These numbers do not include the resource persons invited by the Commission and the documentary evidence they submitted.

In the conduct of the public hearings, the Commission sought to maintain its focus on the substantive aspects of the case, not technical rules, while adhering to internationally-recognised norms of due process. Respondents to the original petition were strongly encouraged to participate in the hearings. Testimonies and documentary evidence were received in a very organised manner and were subject to challenge by interested parties. Witnesses and resource persons were put under oath and, after giving their direct testimonies, were subjected to cross-examination by the inquiry panel members, in the absence of respondents who had every opportunity to exercise this right. Documentary exhibits were properly identified and marked. All the hearings were transparent and public, even broadcast live over the internet. Teleconferencing facilities were set up to enable all parties and witnesses, even from other parts of the world, to participate in the inquiry.

The public hearings conducted in North America (the United States) and Europe (the United Kingdom) not only emphasised the global nature of climate change and the global character of the dialogue the Commission sought to pursue. They were also a matter of due process. If the Carbon Majors domiciled in other parts of the globe were not willing to come to the Philippines to give evidence, then the Commission was willing to go to their regions, to encourage them to participate in the process.

The Commission offered to engage the respondents in special meetings too, if that was necessary for it to hear their position on the issues. For example, in a visit to the Netherlands to participate in a forum organised by a top business universities, the Commission took the opportunity to especially invite one respondent to a dialogue – in private, if necessary.

Beyond the public hearings, the Commission accepted invitations to participate in forums and itself organised consultations in other parts of the globe, including Oslo, Geneva, Bangkok, Sydney, Bonn and Berlin in Germany, New York and New Jersey in the United States, Breukelen in the Netherlands, and London, Glasgow, and Stirling in the United Kingdom.

The Commission also engaged international human rights bodies and organisations, such as the South East Asia NHRI Forum (SEANF), the Asia Pacific Forum of National Human Rights Institutions (APF), the Global Alliance of National Human Rights Institutions (GANHRI), the UN Working Group on Business and Human Rights, the UN Special Rapporteur on the Environment, the United Nations Office of the High Commissioner for Human Rights (UNOHCHR) and other institutional agencies.



Photo by the Commission on Human Rights of the Philippines

Recommendations

The National Inquiry has not yet reported and its recommendations remain to be released. Statements by the Inquiry Chairperson, Commissioner Cadiz, indicate the directions in which the Inquiry is moving.

Commissioner Cadiz has pointed out:

Proceeding from the UN Framework Convention on Climate Change, climate change is a human rights issue. Climate change is a global issue. Climate change is an existential issue. And the anthropogenic contribution to climate change is significant.

He has listed the principal findings the Commission will make:

- Climate change is a human rights issue. Its negative impacts on the rights to life, food, water, health, and other civil, political, economic, social, and cultural rights are now writ all over the globe.
- Climate change is a justice issue, especially underscored by the fact that its negative impacts are significantly greater on those whose contribution to it is significantly less.
- Climate change is a business issue that calls to private enterprises to respect human rights, which involves addressing the adverse impact of their operations on human rights, not only of the present generation but of future generations as well.
- Climate change is an existential issue, not in the mere philosophical sense of the meaning of life (for leisurely discussion in coffee shops), but in the concrete sense of threatened human existence, which calls for vigilance and urgent action.⁵⁰

Commissioner Cadiz has also said that in the report the National inquiry will seek to:

- help establish clear mechanisms and processes for redressing human rights victims as a result of climate change
- help establish standards for corporate reporting of activities involving greenhouse gas emissions
- clarify and vindicate rights connected with climate change justice under international and regional human rights mechanisms
- outline a minimum core of rights and duties relevant to climate justice
- develop a model statute on legal remedies for climate change victims.

Commissioner Cadiz said that, unlike courts which are largely governed by precedents, the challenge to national human rights institutions is to test boundaries and create new paths; to be bold and creative, instead of timid and docile; to be more idealistic, and less pragmatic; to promote soft laws into becoming hard laws; to be able to see beyond legal technicalities and establish guiding principles that can later become binding treaties – in sum, to set the bar of human rights protection to higher standards.

⁵⁰ Commissioner Roberto Cadiz 'New Approaches to Climate Justice: Climate Change as a Human Rights Issue in a Global Dialogue' a Global; <https://essc.org.ph/content/archives/10479/>.

Notes



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