

## INVESTIGATING THE CHALLENGES THAT INHIBITED THE SUCCESS OF NIGERIA'S HUMAN RIGHTS VIOLATIONS INVESTIGATION COMMISSION

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### Abstract

The Oputa Panel received an extensive and dominant mandate which was to find the causes and repercussions of all the severe human rights abuses that ensued as a result of the military's interference in governance from January 15, 1966 to May 28, 1999 when the military quit the political scene for a democratically elected government. Also, the commission was authorised to write a report on its findings and make appropriate recommendations for judicial, administrative and legislative reforms that would deal with human rights violations in the country. Theoretically, this was a powerful commission with a strong mandate. However, in reality, it was not backed with adequate funding, sufficient legal power and support from the government to carry out the mandate. This paper employed qualitative method to enunciate the issues that affected the operations and results of the Oputa Panel. In light of these factors that limited the impact of the Commission, the paper drew suitable recommendations to ensure that truth commissions established in Africa are more effective in addressing past human rights violations and promote reconciliation. One of such is increased pressure and participation from both domestic and international human rights community to promote accountability.

**Keywords:** Challenges, Human rights, Nigeria, Oputa Panel, Transitional Justice, Truth Commissions.

### 1. INTRODUCTION

The end of the Cold War saw the proliferation of the concept of transitional justice. This meant states were largely governed by authoritarian regimes began to change from repression to democratic rule (Roht-Arriaza, 2006). Severe human rights infringements characterised the majority of these authoritarian regimes which raised the question of effective measures for addressing human rights violations that were previously

committed and provide victims of such abuse with adequate justice (Ibhawoh, 2018). A state may decide to pay compensation to victims of human rights abuses, criminally persecute perpetrators, establish a truth commission, and promote reparation among others depending on the objective of that state (Rivera, 2014). In cases where the past is not addressed and corrected, it will be difficult for the citizens to believe in the new government or the peacebuilding efforts which can promote resentment and potentially lead to violence in the future (Schnabel & Ehrhart, 2005).

Since independence, the Nigerian state has faced diverse challenges that have limited the nation from realising its full potentials as one of the most influential states in the world. One of such challenges is that of flagrant disregard of human dignity, contempt for its populace and sustaining democratic accountability and legitimacy (Folarin & Folarin, 2018; Oni, Ayo, Oni, & Duruji, 2015). It was because of this that the newly democratically elected President at the beginning of the fourth republic chose the option of establishing a truth commission. During his inauguration, President Obasanjo stated that the commission was being established as a demonstration of his administration's commitment to healing the wounds of the past through the establishment of truth that would lead to reconciliation (Yusuf, 2007). The Human Rights Violations Investigation Commission (HRVIC) received a mandate to investigate all human rights violations that occurred in Nigeria during the military regimes. It had the responsibility of investigating state-sponsored human rights abuses that were carried out before the restoration of democratic rule (Benyera, 2018). However, the commission did not yield results that measured up to its mandate. Therefore, this paper seeks to identify the factors that limited the success of the Human Rights Violations Investigation Commission.

## **2. CONCEPTUAL CLARIFICATIONS**

Transitional justice can simply be defined as the means through which a society confronts and tackles past human rights violations to usher in a society founded on regard for human rights and the rule of law. It can also be defined as a period affiliated with political change and directed towards atrocities committed by past authoritarian regimes (Teitel, 2000).

Seibert-Fohr (2012) describes transitional justice as a field of international law which is focused on interrogating effective ways of dealing with past human rights violations and humanitarian abuses during the phase of transition to peace and democracy. Murithi refers to transitional justice as a foundation of the rule of law that facilitates a political transition within war-torn or dictatorial societies (2009:140). For Hoogenboom and Vieille, transitional justice goes further than just facilitating political transitions, it also endeavours to analyse and deal with the sources of such violence and massive violations of human rights to promote the transition to peace both at the state and grass root level (2009). Selim & Murithi, (2011) argue that the mechanisms of transitional justice are fundamental to peacebuilding, which is referred to as procedures that endeavour to re-establish stability and encourage reconstruction after conflict. Transitional justice is an essential part of peacebuilding because it tries to address the underlying causes of conflicts towards the goal of having a fair and sustainable peace.

In a broader sense, transitional justice has been referred to as a combination of practices and mechanisms that emerge following a time of conflict or repression that are directed towards addressing and managing past infringements on human rights and humanitarian law (Roht-Arriaza, 2006). Therefore, it is clear that the subject of transitional justice emerges in two forms: either regarding post-conflict reconstruction with regards to armed conflicts; or when addressing past human rights violations perpetrated by repressive regimes. The concept of transitional justice is distinguished by a past of enormous human rights violations and a process that involves a transition to a peaceful and democratic society. The essential purpose of transitional justice is to promote accountability and promote the rule of law in a democratic setting (Binder, 2013).

Transitional justice mechanisms seek to address a wide range of issues. This includes human rights infringement, like extrajudicial killings, disappearances, slavery, and torture among others. These abuses may have been perpetrated by private citizens, civilian armies, or state security powers (Sriram, García-Godos, Herman, & Martín-Ortega, 2012). Transitional justice mechanisms consist of various approaches, they may consist of both judicial and non-judicial instruments. Various transitional justice mechanisms have been employed around the world to accomplish healing and reconciliation. Examples of transitional justice mechanisms which include; retribution where perpetrators of human rights abuse are criminally persecuted as was the case with the Nuremberg and Tokyo trials, the two United Nations ad hoc International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) Chitsike (2012). The second example is lustration which involves removing confirmed human rights violators from the public office they hold (Horne, 2014). Another example includes paying compensation to victims of such human rights violations as a form of redress (Szpak, 2017). The fourth example involves the establishment of an independent body to investigate patterns of grave human rights violations to make recommendations and to prevent future abuse

such as a Truth Commission (Skaar, 2018).

This paper is principally concerned with assessing the effectiveness of truth commissions as a mechanism of transitional justice. It seeks the challenges faced by the Nigerian truth commissions that inhibited its contribution towards upholding human rights and other democratic values in Nigeria. Ní Aoláin and Turner (2007) define a truth commission by identifying the things they are not i.e. they are not trials and rather than emphasizing the deeds of individual perpetrators they emphasize the victims that suffered the harm. Nesiah's (2006) defines a truth commission as a body that combines its findings on past occurrences with to carry out the function of making recommendations for the future. Truth commissions are considered to be alternative mechanisms for fostering reconciliation and sustainable peace in the society (Magara, 2016). They are expected to strengthen democratic practices and promote regard for human rights values by improving upon historical events through seeking truth, reconciliation and cultures of remembrance which will result in correcting historical narratives (Fischer, 2011). Overall, it is clear that there is no singular definition that completely defines a truth commission.

### **3. THE HUMAN RIGHTS VIOLATIONS INVESTIGATION COMMISSION**

During his inaugural speech, President Obasanjo stated his devotion towards tackling impunity. In light of this, the Human Rights Violations Investigation Commission also known as the Oputa Panel was established immediately after his inauguration with the mandate of investigating the severe human rights abuses that occurred from 15th January, 1966 when the military first toppled the democratically elected government until the 28th of May 1999 when power was restored to another democratically elected president (Zwanbin, 2017). The President in his speech also stated that the aim of this commission was total reconciliation (Kukah, 2011). This was a signal of hope for many towards a new democratic dispensation that would be strikingly different from the years of repression the country experienced. The establishment of this commission generated media attention for the Obasanjo administration which in turn created a positive image of the administration in the hearts Nigerians (Chiluwa, 2011).

The President appointed notable members of the society to head the panel; the chairman of the panel was retired Justice Chukwudifu Oputa was a Judge of the Supreme Court of Nigeria and six other members of the commission including Father Matthew Kukah (BLERF, 2017; Kukah, 2003). The commission received over 10,000 petitions including cases of extrajudicial killings, assault, torture, unlawful detention among others. The commission only selected 150 of these cases to be addressed during the public hearings that were broadcasted. These hearings were conducted in five selected cities across the six geopolitical zones of the nation to grant easy access to the people (Young, 2014). The commission concluded its operations by submitting its report to the president in 2002 but the reports were never officially released and the recommendations were not implemented. Instead, the government annulled the commission on the basis that it was deemed unconstitutional by the Supreme Court of Nigeria.

### **4. CHALLENGES FACED BY THE HUMAN RIGHTS VIOLATIONS INVESTIGATION COMMISSION**

As noted by Nwagwu (2006), the challenge of the commission begins with its mandate. Ideally, the mandate of the commission was a strong one but he argues that it was spurious and not attainable within the state time frame of one year. The commission had the responsibility of identifying individuals and institutions that may be responsible for severe human rights violations; to establish if such violations resulted from conscious state policies or those individuals abused their offices and to recommend judicial, administrative or institutional reforms to effectively deal with past violations and prevent future abuses.

The judicial arm of government served as another stumbling block for the commission. The judiciary was controlled by the military for almost thirty years. This was clear as former military leaders continuously sought the aid of the judiciary in defying the orders of the truth commission (Solanke, 2012). For example, military leaders such as General Muhammadu Buhari, General Ibrahim Babangida, Brigadier Halilu Akilu and Abdulsalami Abubakar blatantly ignored the subpoena of the commission without legal consequences (Yusuf, 2007). Eventually, General Ibrahim Babangida filed a lawsuit to challenge the authority of the Oputa Panel to summon him and won. This enraged the Nigerian population but equally reduced the legitimacy of the commission (Akinterinwa, 2001; Isaacs, 2001). Besides, the Supreme Court ruled that the investigative power granted to the commission was unconstitutional because the state government had the power to set up an investigatory body instead of the Federal government. Consequently, President Obasanjo stated this verdict of the Supreme Court of Nigeria as a basis for annulling the commission even after the work was completed and the report was submitted.

The commission was equally faced with budgetary challenges. Although it possessed a broad mandate, President Obasanjo's administration did not make provisions for the financial resources needed to carry out the task (Folarin, 2007). The administration gave the commission permission to seek external funding, the funding received was largely insufficient to sustain its operation. As a result, the commission's work was delayed and this led to a stalemate that made the public question the legitimacy of the commission. The challenge with funding also caused the commission to only hear 200 out of over 10,000 petitions that were submitted (Adeyemo, 2013).

The time frame was another challenge; the commission was given a deadline of three months to submit its report which was very short and inadequate especially considering the extensive mandate that was ascribed to it (Scanlon & Pillay, 2007). Due to lack of funding, the commission did not begin its operations until a year after its establishment and it became obvious that the time frame had to be extended. As a result, the commission no longer had a defined time frame. A defined time frame is significant to the work and reliability of a truth commission. This is because both the media attention and public interest declines when there is a continuous delay with the commission's work (Guaaker, 2009).

Although the commission had some successes such as it was instrumental in resolving the conflict between Modakeke and Ife community in Osun State, it also facilitated reconciliation among members of the Maroko community in Lagos State. Yet, these challenges limited the impact of the Nigerian truth commission despite its extensive mandate (Zwanbin, 2017).

## 5. CONCLUSION

Although the Oputa panel generated expectations from the Nigerian population and it received a mandate that can be perceived as powerful, it faced financial, legal and political challenges that limited its impact in the Nigerian state.

One key factor that was missing in the process of the Nigerian truth commission was pressure from both international and domestic pressure groups. This meant the Nigerian government at that time was not being checked by any strong pressure group. Perhaps, if there was both internal and external pressure the government could have sought to provide solutions to some of these challenges. This would have certainly increased the level of impact generated by the commission. Consequently, this paper recommends that when a truth commission is established in a new democracy, both internal and external pressure groups should be available to check the activities of the government. This would increase the chances of success of the truth commission.

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