

3.0 A QUALITATIVE ANALYSIS OF THE OPUTA PANEL AND THE FACTORS WHICH EXPLAIN THE FAILURE OF THE COMMISSION

3.1 Introduction to the Nigerian Truth Commission; the Oputa Panel

The Nigerian Human Rights Violence Investigations Commission, which has come to be known as the Oputa Panel, was set up immediately after Obasanjo's inauguration as the first president of the 4th Nigerian republic in 1999.¹ It was heralded as a symbol of a new democratic era in stark contrast to the last thirty years when a string of repressive military regimes ruled the country. The establishment of the Commission generated intense media attention and it was very well received by the general public. This was partly due to the prominent and well-respected members of the Panel: The chairperson was retired justice Chukwudifu Oputa and the six-member commission also included Father Matthew Kukah, a former Secretary-General of the Catholic Secretariat of Nigeria. The Commission was authorised to investigate gross human rights violations between 15th of January 1966, when the civilian government was overthrown until the election of a civilian president the 28th of May in 1999. Great expectations arose as to what the Commission could achieve. This is not surprising, when bearing in mind that Obasanjo declared the Commission's goal to be "complete reconciliation" (cited in Yusuf 2007: 272). The level of ambition was thus extremely high, considering that Nigeria is a country internally divided by numerous ethnic, cultural and religious cleavages and where communal violence is prevailing.

More than 10.000 petitions were received by the Commission which included cases of "i) physical and mental torture, ii) unlawful arrest and detention iii) murder/assassination iv) assault/battery v) intimidation/harassment iv) communal violence vii) disappearances" (Pilay and Scanlon 2007: 20-21). 200 cases were heard at publically broadcasted hearings held across the six geographical zones in the country (ibid: 20). Although some commentators criticised the Commission for presenting a narrow and superficial account of the crimes committed during the military regimes, it enjoyed extensive legitimacy among the general public. The work of the Commission resulted in an eight volume report amounting to 15 000 pages on the human rights abuses committed during the military era and was handed over to the Government in June 2002.² After a six months waiting period for the release of the report, the government surprisingly annulled the Commission on grounds that it was unconstitutional in January 2003. The government cited a

¹ Between the first Republic (1960-1966) and the 1999 Obasanjo administration, Nigeria experienced to brief periods of civilian rule; The second Republic lasted from 1979 to 1983, and the third Republic, lasted only for a three months before General Sani Abacha assumed power in November 1993.

² The report contained the following volumes: Summary, Vol. 1: Introduction, Vol. 2: International Context, Vol. 3: Research Report on Human Rights Violations in Military Era, Vol. 4: Cases Heard at Public hearings, Vol. 5: Petitions, Vol. 6: Reparation Restitutions, Compensation, Vol. 7: Summary, Conclusions, Recommendations, Vol. 8: List of legal council and witnesses at the public hearings.

Supreme Court decision as a foundation for its decision. This decision withdrew the investigative powers of the Commission and ruled that in the 1999 Constitution the power to establish 'tribunals of inquiry' belonged to the states, not the federal authority (Falana 2005). Consequently the government refused to publish the report and none of the recommendations of the Panel were put into effect. The dissemination of the report was consequently limited although a number of civil society organisations published the report on the internet.³

In its report the Commission made several recommendations for further redress of the human rights violations committed by the military: It proposed compensations and reparations to the victims. It also recommended Security Sector reforms involving a restructuring of the Armed Forces and the police (HRVIC 2002). However few of these recommendations were accepted by the government. The Commission was also authorised to name names and establish individual accountability for criminal actions and included in its report recommendations of criminal prosecutions in several cases of human rights abuses. Since the annulment, none of the cases have led to further criminal investigations (Pilay and Scanlon 2007: 21).

Reconciliation, as we mentioned, became one of the main foci of the Commission which emphasised an integrated approach, including both retributive and non-retributive measures as roads to reconciliation. Consequently the Panel proposed investigations of 150 high-profile cases where the evidence against the alleged perpetrator was undisputed. At the same time the Panel recognised the need to address the prevailing communal violence and some of the public hearings were set up with the explicit intention of reconciling conflicting communities. The Commission was also successful in brokering peace agreements in some of the cases. The truth report itself was intended to carry a reconciliatory note. However some commentators viewed the report as partial and biased, accusing the Oputa Panel of leading a witch hunt against the North and Northern military leaders (Haruna 2002). At the same time the dissemination of the report was very limited, due to the government's refusal to release the report, thus what could have become a budding initiative for change, died early.

From these initial observations of the Nigerian Truth Commission we conclude that the Commission failed on several accounts. Although the Commission produced an extensive report which constituted a strong testimony of the sufferings of Nigerians during the authoritarian era, the government refused to acknowledge its findings and implement the recommendations made in the report. The Commission's work thus had a limited effect on the Nigerian society and the development of policies on human rights. Furthermore, its contribution towards justice was, for similar reasons, very limited. The Commission made recommendations of government reforms,

³ Centre for Development and Democracy (CDD) and the umbrella organisation Civil Society Forum (CSF) published the report on the internet (Oderemmi, 2005; Olokojobi, 2004)

reparations and criminal investigations of several murder cases, however no measures were taken to implement these propositions. Lastly, the Commission did emphasise reconciliation in their work, and although some of their initiatives were suitable for advancing reconciliation, other efforts arguably did not contribute towards this goal.

In this analysis we will utilise the theoretical framework deduced in the last chapter to examine which factors may explain the failure of the Commission. Section 3.3 is concerned with our first success criterion; **Fulfilment of the Objectives Stated in the Mandate - Investigations and Writing of a Truth Report**. Did the Oputa Panel deliver according to these objectives? Here we examine more closely the performance of the Oputa Panel and the extent to which it failed to meet the standards we set in our theoretical framework. Furthermore we examine how the factors deduced in the theoretical framework may explain the Commission's performance. Here we will investigate the time, resources, and legal powers vested in the Commission and to what extent these factors influenced its work. In section 3.4 we evaluate in greater detail the **Implementation of Recommendations** or more accurately the lack of implementation of the Commission's recommendations before we attempt to explain what factors contributed to this outcome. Based on the theoretical variables developed in the last chapter we will analyse the political context of the Commission with particular emphasis on the power balance between the old and the new regime. The strength of the old regime versus the new government is considered decisive for whether the government chooses to implement the recommendations made by the Commission. We also consider the human rights community to be an influential factor which can pressure the government to implement proactive human rights policies. Lastly we examine the role of the judiciary. The judiciary plays a particularly important role when criminal investigations and prosecutions are included in a commission's recommendations.

In the last section 3.5 we evaluate the truth commission's **Pursuit of Reconciliation**. This analysis will only focus on specific reconciliatory measures made by the Commission. Reconciliation is the end-product of a complex process which to date is not fully understood. We will thus not examine whether or not the Oputa Panel produced reconciliation, instead we will, based on the discussion in our theoretical framework, critically review the activities of the Commission and make some tentative conclusions as to whether these can or cannot be deemed reconciliatory.

As we established in the theoretical framework the strength of truth commissions and their mandates vary considerably. Thus in order to reach a more comprehensive understanding of why the Oputa Panel failed this analysis will begin with an evaluation of the **Establishment of the Commission and its mandate**. This part of the analysis can reveal whether the Commission was initially flawed: Was the Commission granted sufficient powers, resources and time to conduct a

genuine truth-seeking process or was its mandate weak to begin with? Here we will focus on the actors which are considered to have the most to gain or lose from an investigation into past human rights violations, namely the authoritarian regime, which is typically the main focus of a truth commission's work, the new government which must prove its commitment to the democratic project, and the human rights community which interest is the development of a proactive policy on human rights. These actors are analysed in the following section.

3.2 Establishment of the Oputa Panel and Its Mandate

One of the first initiatives made by president Obasanjo was the establishment of the Nigerian Human Rights Violations Investigation Commission (HRVIC). It was set up in the context of a number of successfully completed national conferences paving the way for democratic regimes on the African continent. Among these were the South African Truth and Reconciliation Commission which was a major inspirational source of the Commission (Pilay and Scanlon 2007: 20). The Nigerian Commission received an extensive mandate which asked the Commission to investigate and report on the nature and causes of *all* gross human rights violations committed between 15th of January 1966 and the 28th of May 1999 (Yusuf 2007: 271). Initially the Commission was bestowed with extensive search and seizure as well as summoning powers. These powers however were pronounced unconstitutional after the Commission had completed its report. The Commission was also authorised to name names of alleged perpetrators, and to make recommendations of judicial, administrative, legislative or institutional redress of past human rights violations.

In theory a mandate of this nature is in Nwagwu's words “frightening” (2006: 239) particularly because it opens up the plausibility for retributive justice. The Commission was however never empowered with the necessary means to become an instrument of justice: No budgetary provisions were made for the financing of the Commission (even though the mandate granted the Commission permission to seek financial support from external sources) (ibid).⁴ The Commission was also given a period of only three months⁵ to write its report although this deadline was later extended. Compared to the magnitude of the cases which the Commission was asked to investigate, the mandate was decidedly weak. Thus in the following section we will analyse the political context of the Oputa Panel in order to establish what factors influenced the establishment of the Commission and how they might explain this weakness of the mandate. In section 3.2.1 we will examine the power balance between the new government and the authoritarian regime and in section 3.2.2 we analyse the human rights community and its role in the establishment of the Oputa

⁴ The Commission was mandated to “receive any legitimate financial or other assistance from whatever source which may aid and facilitate the realisation of its objectives” (Yusuf 2007: 271)

⁵ Pilay and Scanlon, 2007: 20

Panel.

3.2.1 The power balance between the new government and the authoritarian regime

In transitional justice theory, the power balance between the old and the new regime is considered to be the most central factor in explaining why a commission is set up (Zalaquett 1989; Pion-Berlin 1994; Barahona de Brito, Aguilar, Gonzalez Enriquez 2001). It suffices to say that the political faction controlling the transition, whether it is the authoritarian regime or the pro-democratic faction, will define and delimit the range of possible human rights policies. For instance in transitions where the authoritarian regime remain strong, truth commissions, if established, are weak and may even be set up as an attempt to polish the regime's façade. If on the other hand the authoritarian regime is weak, the new government would theoretically have more leeway in empowering a truth commission. In this section we will therefore analyse the strength of the Obasanjo administration vis-à-vis the Abubakar regime in order to determine how the weakness of the mandate can be attributed to the nature of the transition.

The transition which led to the election of Olusegun Obasanjo as Nigerian's first civilian elected president in more 20 years was initiated in 1998 by General Abubakar. Abubakar was the last Military Head of State in a long line of Generals who had assumed power in Nigeria through the means of violence. The first coup d'état in 1966 led by Major Nzeogowu led to the overthrow of the democratic but highly corrupt and sectarian Balewa administration. The military regime was initially meant to be a temporary corrective to the corrupt civilian administration. Instead it paved the way for 30 years of military governance, effectively institutionalising coups as the way of transferring power. Eight military regimes held the country under siege for almost 30 years before it returned to democracy in 1999. Some of the regimes such as that of Buhari (1983-1985) and Abacha (1993-1998) were notoriously famous for their numerous decrees and repressive measures to stifle criticism against their administrations. During the 1980's the military regimes "became more dictatorial and more sectional (...). It was discredited and forces seeking to restore democracy grew in number and became bolder" (IDEA 2000: 4). As a result the then head of state General Babangida started a controlled liberalisation process⁶ where the pro-democratic movement gained momentum. The movement was made up of human rights and minority rights organisations, media, women's rights movements and labour unions as well as oppositionists and scholars working from abroad and although the opposition never constituted a serious threat to the military rule, they

⁶ General Babangida's hesitance to relinquish power became glaringly obvious with his annulment of the 1993 elections which have become known as the freest and fairest elections in Nigeria's history. His prolonged transition programme gave rise to the condition known by scholars as 'permanent transition' (Mbaku and Ihonvbere, 2007: 349) This 'permanent transition' "(...) was the inevitable consequence of the instrumentalisation of transition by successive military governments as a tool of legitimisation and regime prolongation" (Osaghae, 2003: 349).

contributed to de-legitimise the military regime. The pressure from the pro-democratic movement was “enough to keep the military administrations of Babangida, Abacha, and Abubakar on their toes and to make the country ungovernable” (Osaghae 2003: 349-350). The opposition was however too weak and unable to press for legal actions against the former military regimes and subsequently the Abubakar’s administration could dictate the terms and conditions of withdrawal from power. The rising unpopularity and loss of legitimacy combined with iron-clad securities for indemnities made the withdrawal from power the best option for the military administration.

The Nigerian transition exhibits the distinctive features of what Huysse refers to as a reform transition where the liberalisers within the regime, in this case General Abubakar, initiated the liberalisation process and was able to define the pace and direction of the transition. The outgoing regime obtained guarantees of amnesties or impunity (O’Donnell and Schmitter 1995: 58). As a result of the military administration controlling the means of coercion, the threat of a regression to authoritarianism kept the pro-democratic movement at bay preventing radical demands for prosecutions and trials against former members of the regime. As Osaghae 2003 observes; “(...) there were no open negotiations or bargaining among stakeholders (...)” (2007: 350). This was simply a consequence of the fact that no political parties existed to bargain with (ibid). Instead the negotiations occurred within the military elite itself and were generally concerned with how they could leave office as painless as possible.

Although the conditions for the transition are not known, Adekanye describes in his book ‘The Retired Military as Emergent Power Factor in Nigeria’ (2001) a meeting that took place on the 3rd of October 1998 initiated by General Abubakar. The event did not receive significant media attention however it is believed that the conditions for the transition were meted out here. In addition to the current military administration, military leaders holding significant political offices, ex-generals, ex-police chiefs and all ex-military Heads of State, except Olusegun General Obasanjo and General Buhari attended the meeting (ibid: 193). Adekanye observes:

“Key considerations discussed at the meeting were the bruised image of the military and the pro-democratic agenda and its implications for the federal structure and hence the corporate existence of the military. Another concern was the rising demands for restitutions from groups and individuals within civil society. Lastly the issues of guarantees of indemnity for the military and how to constrain the military to the barracks were discussed” (ibid: 195).

Although the explicit details of the meeting are unknown, Adekanye states the likelihood that “General Abubakar (...) used the opportunity (...) to articulate those fears and concerns of the departing military and seek advice about allaying them” (2001: 195). What *is* known is that retired

general Olusegun Obasanjo who contested the presidential election for the People's Democratic Party (PNP) enjoyed the backing of most of the military elite⁷ and unsurprisingly won the 1999 presidential election. The elections were controlled by the Abubakar administration in the sense that the only parties allowed to participate were those sanctioned by the military government. Secondly both the presidential candidates were practically hand-picked by Abubakar's administration (Adekanye 2001). As Williams Wodi observes the election was “(...) tainted by reports of widespread vote-rigging (...)” however it quickly gained legitimacy among European political leaders (2001). Wodi observes that even though the supporters of the transition impressed Western governments, none of them “(...) can claim to be a democrat” (ibid). He also notes that most of the members of the new government were the products of Abacha and Babangida's military regime (ibid). The result of this military-driven transition was that the Abubakar regime could dictate all terms of the transition in the face of a relatively weak and powerless opposition.

In a transition manoeuvred by the military, human rights violations are either denied or attempted justified by the regime. According to theory, in a scenario where the authoritarian regime controls and dictates the pace of the transition, we would thus expect the policy on human rights to be one of inaction (Skaar 1999: 1112) However somewhat unexpectedly the new president set up a truth commission almost immediately after his inauguration. Considering the relative strength of the old regime vis-à-vis the opposition, it is unlikely that the Abubakar administration would have endorsed a truth commission as a part of an exit agreement. However it seems like the issue of the legitimacy of the military was an important factor here: By setting up a truth commission it could quell the demand for retributive justice, but at the same time it would not constitute a serious threat to the former military leaders. In his six-folded typology on political constraints in transitions and the consequences for human rights policies⁸ Zalaquett's third type, military-led transitions, accurately depicts the Nigerian scenario where the pro-democratic forces experience great difficulties in enforcing accountability for human rights violations (1995: 19):

“Military rulers allow for a civilian government to come to power, following a negotiation or under their own terms. In this type of situation (...) the forces that were part of or supported the former government have neither lost control of armed power, nor do they suffer from a lack of cohesiveness. They are thus a formidable factor to reckon with.

⁷ The People's Democratic Party (PDP) on whose platform he (Obasanjo) contested the civilian presidency has come to be viewed by most informed Nigerians as 'the party of retired generals' just to convey the tremendous power and influence which the men-in-mufti have come to command in Nigerian society» (Adekanye 2001: 183). PDP considered an offshoot of the NPN – Nigerian People's Party on the coming of the second republic (ibid: 75).

⁸ The six-folded typology of political constraints to the implementation of human rights policies is presented in Zalaquett's chapter “Confronting Human Rights Violations Committed By Former Governments: Principles Applicable And Political Constraints” (Zalaquett1995: 3-31).

Experience shows that the outgoing ruling forces have stated or assumed that they will not respond for the human rights violations committed.”

As a result of a military-led transition criminal sanctions and prosecutions are typically not an option. The military retains the power to block other forms of accountability as well and human rights policies which might be considered threatening to the regime. Under these circumstances truth commissions are typically weak and do not enjoy the powers and resources to conduct a genuine truth-seeking. As expected speculations also grew that the establishment of the Oputa Panel was a not an attempt to achieve some form of justice for the crimes committed by the military regimes, instead it was tactical manoeuvre to increase the legitimacy of the new regime at that time (Scanlon and Pilay, 2007: 21). The fear that an investigatory body could “energise societal calls for justice” (Pion-Berlin 1995: 95) was reflected in Obasanjo's inauguration speech of the Commission, where Obasanjo declared the objectives of the Commission to be reconciliation and not retribution, whereby he also greatly diminished the prospects of future prosecutions.

In Yusuf words, the Commission's weak mandate, particularly the issue of funding which remained unresolved, was a reflection of the insincerity on the Obasanjo administration's part to effectively deal with the human rights violations committed in the past (2007: 272). This is in part owed to the political constraints facing a new government when the transition is controlled in its entirety by the former authoritarian regime. During these circumstances a truth commission will not be established if it is considered a threat to the former regime. In Nigeria however, the military not only steered the transition, the new government also retained strong ties to the military, to the extent that scholars begin to view the Nigerian transition not as transition to democracy but a self-succession of the military in disguise as a civilian government. In these transitions enforcing accountability for human rights violations is implausible. The authoritarian regime does not face a strong vibrant new government; instead the new government can be viewed as an extended arm of the old regime. Efforts to investigate human rights violations will be half-hearted and instead serve as a part of a strategy to polish the new government's facade in an attempt to enhance the regime's legitimacy.

3.2.2 The human rights community

Pressure from domestic and international human rights actors have sometimes played a pivotal role in establishing a strong truth commission. A transitional government is typically concerned with increasing its legitimacy both on the national and international arena and is therefore susceptible to pressure from domestic and international human rights actors. Coordinated efforts from domestic and international actors can create “opportunity structures” where justice for human rights

violations can be addressed (Sikkink and Both Walling., 2007: 302). In this section we thus attempt to establish the degree to which domestic and international human rights organisations (here referred to as the human rights community) influenced the establishment of the Oputa Panel.

The Nigerian transition to democracy received considerable attention from the Western world and the relatively smooth transition and election of Olusegun Obasanjo was largely due to the strong acceptance of the president in the international community (Osaghae 2003: 346). However after the presidential election in 1999, the international community became palpably distant, even when the president announced the setting up a human rights violations investigation commission. States in transition are often susceptible to international influence, particularly donor agencies which nowadays more often couple aid with conditions for good governance and respect for human rights. Increased attention to human rights issues is also one way for new governments to enhance their legitimacy. Although Nigeria was literally ‘flooded’ with foreign investors and international donor aid (Osaghae 2003: 346) this aid was not coupled with conditions for human rights protection. Neither the UK nor the United States which are close partners to Nigeria have put Nigeria’s disastrous human rights record on the agenda (Manby 2004: 193). Given Nigeria's dark history of human rights, there was a pressing need for a proactive policy in this area. However apart from a few noticeable exceptions, such as Human Rights Watch which expressed concerns that the mandate, powers and budget had not been clarified (Manby 1999), international human rights organisations did not pay significant attention to the budding efforts to address human rights violations in Nigeria. Unlike its South American counterparts where the international community sometimes has been leading the process of establishing truth commissions, neither UN nor bilateral donors were involved in the establishment of the Oputa Panel. It follows that the modest international attention in the prior stages of the truth commission “(...) did not translate into positive advantage for the Commission's work (...)” (Yusuf 2007: 282).

In many transitional states the human rights community has been a necessary lever to enforce a strong policy on human rights. Nigeria bolsters a vibrant civil society and is home to prominent human rights scholars like Reverend Mathew Hasasan Kukah who was also appointed to the Commission. This however did not translate into the active involvement of human rights organisations in the initial phases of the Commission. Instead the establishment of the Commission was left to the whims and caprices of a transitional government with strong ties to the former regime. Unlike its sister commission in South Africa where a broad consultative process took place among political parties and civil society actors in order to determine the terms of the mandate, domestic human rights activists were not consulted before the Nigerian Commission was inaugurated. Also, international pressure could have created a space where the domestic human rights actors could push for a genuine truth-seeking process. However the lack of international

attention and involvement rendered the Nigerian human rights community relatively powerless facing a new government still struggling with the legacy of military rule.

3.3 Fulfilment of the Objectives Stated in the Oputa Panel's Mandate.

Theorists like Chapman and Ball argue that truth commissions can be deemed successful insofar they accomplish the objectives stated in their mandates (2001). The mandate of a truth commission outlines the scope and boundaries of the commission's investigations. The mandate further gives the guidelines of the report of the Commission; whether it is authorised to attach individual accountability and name names in its report, what kind of recommendations it can make and whether these recommendations are mandatory. In this section will thus examine the Oputa Panel's mandate before we move on to analysing the factors considered central for the fulfilment of the objectives stated in the mandate. The factors influencing the Commission's work are typically related to the mandate itself: In this analysis we will in section 3.3.1 firstly examine the legal powers with which the Commission was endowed. We will particularly focus on the withdrawal of the legal powers after the Supreme Court's decision in January 2003 and the Obasanjo administration consequent annulment of the Oputa Panel. Secondly we will in section 3.3.2 investigate the funding and how the lack of monetary resources brought the Commission's work into stalemate. Lastly we will in section 3.3.3 examine the limited time frame which was later extended indefinitely and the effect this had on the work of the Commission.

The mandate of the Oputa Panel charged the Commission with the overwhelming task of “(...) ascertain or establish the causes, nature and extent of all gross violations of human rights committed in Nigeria between the 15th day of January 1966 and the 28th day of May 1999” (Yusuf 2007: 271).⁹ It asked the Commission to:

- i. “Identify the persons, authorities, institutions or organisations which may be held accountable for such gross violations human rights and determine the motives for the violations or abuses, the victims and society generally;
- ii. Determine whether such abuses or violations were the product of deliberate state policy or the policy of any of its organs or institutions or whether they arose from abuses of their office by state officials or whether they were the acts of any political organisation, liberation

⁹ The Commission was initially asked to investigate human rights abuses between 1983 and 1998. The human rights community and the general public however strongly criticised this limited time frame particularly because it excluded the period of the Nigerian civil war and consecutive military regimes including the regime of then-president Obasanjo. As a result the time period was extended and the final mandate covered the period from 15th of January 1966 to 28th of May 1999 (Yusuf 2007: 271).

movement or other groups or individuals;

- iii. Recommend measures which may be taken whether judicial, administrative, legislative or institutions to redress past injustices and to prevent or forestall future violations or abuses of human rights” (Nwagwu 2006: 239).

Gross human rights violations in this context included “mysterious disappearances, extrajudicial executions, torture, assassinations and other abuses (...)” (Campbell, 2001). The Commission was expected not only to identify and investigate human right violations over a period of more than three decades; it also asked the Panel to establish responsibility both individual and collective for these abuses. Thirdly the Commission was expected to make recommendations of government actions to address the abuses which also included criminal investigations and prosecutions. The mandate was in other words incredibly ambitious and in theory also very powerful, considering it opened up the plausibility of criminal prosecutions.

3.3.1 Legal powers

Under the Tribunals of Inquiry Act 1966 (TIA) which the Nigerian Truth Commission was set up, the Oputa Panel was bestowed with a range of search and seizure powers and reporting powers (Yusuf 2007: 271). The TIA endowed the Commission with “(...) coercive powers to subpoena witnesses and documents as well as the power to arrest individuals judged to be in contempt of the Commission” (ibid: 273). The Oputa Panel enjoyed a range of reporting powers. It was empowered to establish responsibility of state-sponsored violence and murder and could name individuals when the weight of evidence against alleged violators was overwhelming. The Commission was also expected to recommend further judicial, administrative, legislative or institutional redress of violations which included recommendations of further criminal investigations (ibid: 271).

Compared to its predecessors, the Nigerian Truth Commission enjoyed a wide range of investigative and reporting powers. Its mandate did not foreclose the possibilities of its findings being used in future prosecutions and therefore, unlike its sister commission in South Africa the Oputa Panel had no powers to grant amnesties to perpetrators in exchange for truthful testimony, nor could it offer community service contracts instead of possible jail time (as in Timor Leste). The Commission's investigative powers were however rendered ineffectual after the Supreme Court ruled that the power to set up investigative tribunals was, in the 1999 Constitution, a power belonging to individual states, not the federal authorities. (Falana 2005). The backdrop of this ruling was the Oputa Panel's summoning of former military leader, General Babangida, his two security

chiefs,¹⁰ and the former Heads of State; Muhammadu Buhari and Abdusalami Abubakar. The three former Heads of State successfully challenged the constitutionality of the Commission's 'coercive' powers. The courts agreed with the appellants and "(...) held that those powers infringed the fundamental right to liberty¹¹ guaranteed by Section 36 of the Constitution" (Yusuf 2007: 279).¹² The Supreme Court further conceded that the Panel could not enforce summoning powers outside the Federal Capital Territory (Falana 2004). As a result, the legal powers of the Commission were rendered inapplicable outside Abuja, the capital city of Nigeria. Although the legal counsel to the Oputa Panel argued that a commission of this investigative nature was legal in reference to the International Human Rights treaties under which Nigeria was obligated, the Supreme Court maintained that specific legislation was needed for the establishment of the HRVIC as well as "power to carry out inquiry of this nature" (Yusuf 2007: 278).

The Supreme Court decision which abolished the truth commission's search and seizure powers came in January 2003, after the Commission had completed its work. Nevertheless the decision was a serious blow to the Panel's legitimacy. The decision also became the grounds for the government's annulment of the Commission. Attorney General and Minister of Justice Olujinmi frequently cited the Supreme Court decision claiming the Oputa Panel to be 'unconstitutional' (Falana 2005). The Supreme Court however never annulled the Commission (ibid). In fact the Supreme and the Appeal Courts enforced the legality of the Panel under the African Charter of Human Rights and International Human Rights treaties ratified by Nigeria (Falana 2004). The Supreme Court upheld that the Commission was "(...) set up by ordinary ministerial act to seek and receive information from anyone willing to offer it" (ibid), which was exactly what the Commission did: The Commission, although it was initially authorised to, never invoked the powers to arrest witnesses (Falana 2004). Yusuf argues that the decision not to invoke its coercive powers could be a result of the emphasis the Commission came to put on reconciliation (2007: 273), however it is not unlikely that this was a conscious decision to avoid upsetting the military elite. The Commission's failure to invoke its search and seizure powers prompted accusations of the Commission being a mere extension of Obasanjo government. The Commissioners did not acknowledge this criticism,

¹⁰ The two security chiefs were Brigadier-General A.K.Togun and Brigadier-General Halilu Akilu (Guardian Editorial, December 19th 2004)

¹¹ The context was a petition submitted to the Commission by Gani Fawehinmi in an attempt to have the case of the murder of Dele Giwa, editor of Newsweek Magazine, reopened something which led the three officers to "(...) rush to the High Court with an ex parte application to restrain the Commission from summoning them" (Yusuf 2007: 277). The officers pursued contested the legality of the Commission in the court which resulted in the Supreme Court decision stating that the "power to make a general law for the establishment and regulation of tribunals of inquiry in the form of the Tribunals Inquiry Act 1966 is now a residual power under 1999 Constitution belonging to the states" (Falana, 2005).

¹² Yusuf points out that under the 1999 Nigerian Constitution the right to liberty "(...) in line with international human rights law and practice, can be derogated from certain defined circumstances. One such circumstance is reasonable suspicion of the commission of an offence, which in fact was the issue before the Oputa Panel" (Yusuf 2007: 279). The legal argument seems flawed considering that the summons were based on namely 'suspicion of an offence'.

but wrote in their report that “(...) we leave a blank space on our records against each and everyone of the three former Heads of State as evidence that we are leaving them and their side of the story in the court of human history” (HRVIC 2002: 87).

At the public hearings the Oputa Panel faced military officers “who stonewalled proceedings (...) and steadfastly denied allegations, even in the face of the sheer weight of corroborating testimony from a number of otherwise unconnected victims” (Yusuf 2007: 275). The Commissioners note these frustrations in their report stating that “the witnesses cannot all be lying and the alleged perpetrators cannot all be witnesses of the truth” (HRVIC 2002: 7). Some theorists argue that a mandate which endows a commission with amnesty powers or non-retributive sanctions in exchange for testimony could arguably be more successful in compelling perpetrators to come forward. However even for truth commissions which have offered amnesties or non-retributive sanctions in exchange for truthful testimonies the results have been modest: The truth commission in Timor Leste had by 2004 taken several thousand testimonies, but perpetrators were glaringly absent on this list (Call 2004: 104). The truth commission in South Africa experienced similar problems when only low-level perpetrators applied for amnesty and the big fish got away.

This scenario however represents a classic dilemma for truth commissions; by rewarding 'good behaviour' commissions can arguably produce a more complete accounting of the past which can contribute to a greater understanding of the mechanisms behind the abuses. The profits reaped from this strategy however may not outweigh the sacrifice since it effectively forecloses the possibility of criminal justice; an alternative which many regard as morally questionable. On the other hand in some societies criminal justice is not in any case a realistic option. However as Yusuf notes unwillingness to cooperate by alleged perpetrators should be anticipated, thus legislation which strengthens “the hand of the Commission in dealing with high level perpetrators” must be developed” (Yusuf 2007: 285). This argument rings true whether a commission chooses to emphasise truth or justice in its work. In Nigeria however the Commission was ill-equipped to reach neither truth nor justice because it lacked the tailor-made legislation to invoke the legal powers it was initially bestowed with. During these circumstances the result will typically be a narrow accounting of the past where the military can neither be summoned nor compelled in other ways to come forward and testify.

3.3.2 Monetary resources

In addition to facing legal challenges, the Oputa Panel struggled to accrue the necessary resources to commence its work. Despite charging the Commission with the insurmountable task of identifying all human rights violations between 1966 and 1999, the Obasanjo administration failed to come up with the funds for the Commission something which paralysed the Panel in its initial

stages. In this section we will examine how this underfunding influenced its work. Based on our theoretical framework we argue that sufficient funding is relative to the breadth of the mandate, however without the necessary resources to hire qualified staff, conduct in-depth investigations and hold public hearings (if this is a part of the mandate), a truth commission will not be able to fulfil the duties assigned to it.

The Nigerian Commission experienced financial difficulties throughout the duration of its assignment. The Commission writes in its final report that their work was frustrated by the fact that the “(...) Federal Government had not made the necessary budgetary provisions for the work of the Commission” (HRVIC 2002: 27), instead the Commission was authorised to seek external funding (Yusuf 2007: 271). Since the Oputa Panel did not receive sufficient funding from the government it became heavily dependent on non-governmental funding. The Ford Foundation was the only organisation which offered financial assistance to the Commission. Facing a long delay and the imminent danger of possible shut down, the foundation came to the rescue and provided the Panel with “(...) financial support throughout the duration of the Commission's assignment” (HRVIC 2002: 16). As we established in the theory, international funding is not necessarily a bad thing, especially when the public exhibits a general distrust in the government. The funding was however not enough to keep the Commission going. Its financial difficulties continued throughout its operational time and at one point, the Commission was forced to suspend its work all together (Yusuf 2007: 272). The lack of resources manifested itself in the work of the Commission: At the public hearings the Panel was only able to hear 200 out of the 10 000 cases which it received (ibid: 274).¹³ The lack of resources also forced the Commission to address only a few high-profile cases out of the large number of petitions which it received, thus pettier or less profiled violations did not receive the same amount of attention from the Commissioners. Lack of funding was also suspected to be the main reason for the delayed submission of the report (ibid: 282).

A consequence of these delays was a serious blow to the legitimacy of the Oputa Panel which was initially received with great expectations from the general population. The failure of the government to come up with the necessary financial funding brought the Commission into stalemate for several months and damaged the reputation of the Commission as an independent and politically neutral undertaking. This was also noted by the Commission in its report:

“(...) the commission is of the considered view that a work of this nature clearly needs to be insulated from the vagaries and red tape of the bureaucracy. Given that the Government has always been perceived as the accused in human rights violations, it is important that the

¹³ The cases which the Panel was not able to deal with in the public hearings, were handled by experts who were commissioned to write research reports to give a sense of the scale and magnitude of the violations (Yusuf 2007: 274-275).

Commission is seen to be insulated from or independent of government. This is more so in a society where suspicion of governments and their agencies run high.” (HRVIC 2002: 27).

Considering the magnitude of the Oputa Panel's assignment, the government effectively clipped the wings of the Commission by refusing to come up with the necessary funding. Notwithstanding severe monetary problems, the Commission prevailed and managed not only to hold several public hearings across the country as well as produce an extensive report, on the human rights abuses committed by the military, although the report was significantly delayed. A less anticipated consequence of the underfunding was the weakening of the legitimacy because the Commission was no longer viewed as an independent and genuine truth-seeking exercise and instead portrayed as mere window-dressing of the new government. This also had implications for the public perception of the Commission's findings which were viewed by some critics as biased and partisan.

3.3.3 Time frame

Truth commissions work towards predefined deadlines, which may vary according to their mandates. Truth commissions which hold public hearings typically operate for two years or more, whereas those that do not, have a life-span of one year or less (Freeman 2006: 32). With respect to the breadth of the Oputa Panel's mandate, the three months deadline, which the Commission received, was a very short and insufficient time frame. Also, the deadline was impossible to meet considering the fact that the Commission did not commence operating before one year after it was established due to lack of funding. The Commission did not formally apply to extend the deadline, although it soon became clear that the Commission was unable to meet the original deadline. As a consequence the Commission ended up lacking a clearly defined time frame. Although civil society organisations managed to turn media's and public attention to the long delays of the report, it was not handed over to the government until May 2002. This is partly attributable to the heavy workload of the Commission as well as the insufficient funding stalemating the Commission's work. Arguably, the lack of a clearly defined deadline also made it easier for the government to withhold funding and further impair the Commission's work. Just like the Oputa Panel, the Ugandan 1986 Truth Commission suffered greatly from lack of funding. Here people lost faith in the report ever being published. Thus when it was finally completed in 1995, nine years after the Commission's inauguration, it had lost its significance as a pressure point for change and was largely ignored by the public (Hayner 2001: 56, 249). This example illustrates the importance of timing in a Commission's work: When a report on human rights violations is due in the immediate future, the media typically monitors the process with regular updates on its progress, creating the anticipation and public pressure which can prove to be central in achieving a strong governmental policy on

human rights. This pressure typically deteriorates if the commission's work is greatly delayed. This was the case in Nigeria where the hopes for a genuine national policy on human rights faded when the underfunded truth commission hardly managed to complete its report, a report which was subsequently rejected by the Nigerian government.

3.4 Implementation of the Oputa Panel's Recommendations

Although a truth commission may successfully complete its work and hand over its findings to the government, the impact of the Commission is typically diminished if the government deprecates the findings of the Commission and refuses to implement its recommendations. In the Nigerian case the Commission was authorised to propose a wide range of responses to the human rights violations identified in its report. The report left no doubt that Nigeria is today a militarised society as a consequence of the Armed Forces ruling the country and it strongly implicated the military in human rights violations: “The data and evidence, which the Commission gathered, very indisputably show that the military is primarily responsible for the persistence of human rights violations in the country” (HRVIC 2002: 48). The Commission thus recommended several political and Security Sector reforms as well as criminal investigations into 150 cases (Pilay and Scanlon 2007: 20).¹⁴ These cases involved the deaths of several prominent human rights activists, politicians and opponents of the military regimes (HRVIC 2002). Among the high-profile cases was the murder case of Newsweek editor Dele Giwa, the death of Chief MKO Abiola, a prominent business mogul who won the 1993 presidential elections and died during mysteriously circumstances in 1998 after four years in incarceration, as well as the assassination of his wife Kudirat Abiola (Oderemi 2005). The Commission indicted Abubakar's government in the death of Chief MKO Abiola and forwarded the case together with the case of Kudirat Abiola's death and several others to the Attorney General of Federation for further investigations (Kayode 2003). The Commissioners implicated a number of high-ranking officers in these cases. Had the recommendations of the Commission been implemented, they would have had severe consequences for the members and supporters of Nigeria's many military administrations and also contributed towards ending the era of impunity for the military.

Soon after handing over its report in May 2002, the government started preparing to implement the Oputa Panel's findings; a Committee was established to prepare a White Paper outlining the implementation of the recommendations. The White Paper was however put off in October 2002 by the government “(...) on the advice of the Attorney General of the Federation, Mr.

¹⁴ The need for judicial reform was for some reason excluded in the Commission's recommendations. As Yusuf notes; “Given that the judiciary itself could be considered a victim of military authoritarian rule, it is something of a paradox that the Oputa Panel did not focus attention on this sector” (Yusuf 2007: 280).

Kanu Agabit (SAN) who claimed that there were a number of cases pending at the Supreme Court on the subject matter of the Report” (Falana 2005). Consequently the publication of the report was also delayed. After several rounds in court, the Supreme Court in January 2003 ruled the Commission’s legal power to be void outside the Federal Capital Territory. Consequently the government chose to annul the Oputa Panel consistently citing the Supreme Court ruling as the base for its decision. As a consequence of the government's decision, the Commission's report was therefore never released and none of the recommendations were implemented.

The basis for the Nigerian government’s decision is puzzling when considering that the Supreme Court never ruled the Oputa Panel unconstitutional. The government however claimed that it had no other option than to annul the Commission and that the establishment of the Panel was illegal (Oderemi 2005). This claim has however been refuted and by prominent judicial scholars who argue that the annulment of the Commission is based on false premises (Falana 2005). Initial observations thus suggest that this decision was not grounded in some legal criterion and instead a result of the political context of the Commission. In section 3.4.1 we will therefore investigate the strength of the authoritarian regime in relation to the new government in order to determine the degree to which the government's decision was a result of old regime’s influence on Nigerian politics. Since we don't what went on behind the curtain when the Nigerian government decided to annul the Oputa Panel, this part of the analysis is will be of a tentative character. Furthermore, we will in section 3.4.2 examine the role of the human rights community and its efforts to pressure the Obasanjo administration to enforce the Commission's recommendations. Strong and persistent pressure from human rights group can have the potential to compel a government to comply with a truth commission's findings. Lastly in section 3.4.3 we will analyse the role of the judiciary in a post-authoritarian Nigeria. Although prosecutions were never pursued in the Nigerian case, we believe a general comprehension of the Nigerian judiciary is necessary in order to understand the limitations of the Nigerian truth commission as an instrument of transitional justice. As we outlined in the theoretical framework, we consider a truth commission which promotes retributive and non-retributive strategies to be more successful than one which only promotes the latter. We therefore regard an examination of the opportunities for criminal justice as a complementary approach to truth commissions to be appropriate.

3.4.1 The power balance between the authoritarian regime and the new government

After almost three decades of military rule, the return to democracy was much awaited throughout Nigeria. The HRVIC thus became not only an administrative exercise, but also a test of the Obasanjo administration’s commitment to democracy (Yusuf 2007: 282-283) and whether the new government was able to restrain the military's influence. In this analysis we examine the power

balance between the new government and the authoritarian regime, here represented by the military. The purpose is to understand the role and function of the military in Nigerian politics and the degree to which they influenced the government with particular emphasis on the annulment of the Oputa Panel. We depart from the theoretical argument that if the military remain a strong and potentially destabilising military institution in a transitional society, it will try to avoid accountability for human rights abuses through political means or directly through threats or even force. Thus the implementation of recommendations which may threaten the position of the military will not happen. Conversely, when the military is weak, the new government enjoys greater leeway in protecting and enforcing human rights. Because the political motivation for annulling the Commission is not known, the analysis is focused on the military and its *potential* to influence the government's political decisions. The conclusions we make here will therefore be tentative in their nature.

When President Obasanjo came to power in 1999 he inherited a military where officers had been trained as politicians¹⁵ and consequently aimed to depoliticise the institution by retiring strategic military officers, replacing them with military officers seemingly uninterested in capturing political power (Agbese and Udogu 2005: 33). Among those relieved of command were prominent generals, such as Victor Malu, a former ally of Sani Abacha who led one of the most repressive military regimes in Nigeria's history (Nwagwu 2006: 72). The new officers came from ethnic minority groups, something which was a conscious decision on Obasanjo's part to prevent the largest ethnic groups from dominating the military forces and thus combat the ethnicisation of the Army (ibid).¹⁶ Obasanjo also initiated re-education programmes of the military in order to “(...) instil the ideas of civilian supremacy over the Armed Forces” (Agbese and Udogu 2005: 35). Whereas the depoliticisation of the Armed Forces was relatively successful, another political factor had risen on the political scene, namely retired military officers. Top retired military officers in Nigeria had acquired a significant amount of political and monetary power particularly during the 1980s and 1990s (ibid: 34) and they have been more successful than their counterparts in Latin America in sustaining their political and institutional prerogatives. There is no doubt that the internal factionalism along ethnic, religious and geographical cleavages makes it very difficult to coax the military out of politics, however Obasanjo's attempts to curb its influence have generally been regarded as insincere and futile. According to Dike the Obasanjo administration exhibited an

¹⁵ The most striking example here is the National Institute of Policy and Strategic Studies (NIPSS). This institution provided political education for military officers. Nigerian military schools such as the Nigerian Defence Academy and the National War Academy were all initially established to improve the professional competence of the Army, “but they progressively became avenues for the politicisation of military officers” (Ajayi: 105-106).

¹⁶ Historically, the Nigerian military has been dominated by Northern Hausa-Fulanis. This ethnicisation of the military-political elite has resulted in a perverse scenario where political elites pit ethnic groups against each other fuelling the spiralling ethnic and communal violence in the country (Agbu 2004: 38).

ostrich¹⁷ type of politics symptomatic of his half-hearted dedication to the democratic project (2003: 45-47)

The presence of retired military officers in Nigerian politics has been on the increase ever since the Politics and Elections (Prohibition) Decree No. 25 of 1987, preventing the re-entrance of former officers into politics, was lifted in 1991. Since then Nigeria has experienced an influx of retired military officers in domestic politics. Agbese and Udogu observe the continuation of this trend even after the end of the military regime: “(...) immediately following the rebirth of democracy in Nigeria, virtually every retired military officer in the country started to reinvent himself as a 'true' democrat” (2005: 38). During the military era, the “quantum and rate of circulation of ranks within the officer corps contributed to the growing military retiree population” (Adekanye 2001: 186). They constitute a substantial faction in Nigerian politics who individually and collectively display their loyalties to 'their' military faction (which may be regional, ethnic or religiously based) and not to the rules of democratic institutions (Agbese and Udogu 2005: 28). Agbese and Udogu argue that “(...) the continued significance of the military can be measured by the fact that the Department of Defence received the lion's share of national budget in the first two years of Obasanjo administration”(ibid: 32). This is also true for other major superpowers, except in Nigeria the military is prone to coups (ibid).

In Nigeria Adekanye notes, political power is not necessarily equated with formal positions and is often determined by informal structures of patronage (2001: 171). As Agbese and Udogu observe, wealthy military retirees have always been willing to “(...) flex their political muscles with their social position by anointing civilians and 'born-again' military democrats' who seek political offices” (2005:31).¹⁸ Military retirees have “(...) promoted their candidacy and that of their close associates in the major existing political parties” (ibid: 21). The major financiers of the largest political parties in Nigeria today, the PDP (People's Democratic Party), which is also referred to as 'the Party of Generals', the ANPP (All Nigeria's People Party); and the APGA (All Progressives Grand Alliance) are all retired military officers (ibid: 38). Adekanye also notes that the 1999 elections in particular attracted substantial participation from retired military officers who consequently found their way to the National Assembly (2001: 183). Through the combination of “power, positions, new-found wealth, ex-military connections, 'old-boy' networks, skills, prestige and experiences (...)” the retired military class is displaying and enjoying considerable political power (ibid: 185) Military retirees have entered all branches of government, including the judicial branch on all levels (ibid: 111). According to Adekanye the influence of military retirees in Nigeria

¹⁷ “The Ostrich is a swift-footed large bird that when pursued, hides its head in the sand and believes that it will be unseen” (Dike 2003: 47).

¹⁸ Former Military Head of State, Sani Abacha “(...) is an example of how military leaders reappear on the political scene as recycled civilian representatives, suddenly in favour of the democratic game” (Agbese and Udogu 2005: 24).

constitutes a structural penetration of the political elites (2001: 65) and is so extensive that official organs “(...) ostensibly responsible for the decision-making process (...)” have been reduced to mere puppets in the hands of powerful military retirees (ibid: 117). Military retirees not only control politics, they also keep a stronghold on officers in active duty:

“Such is the structure of military organisation and its attendant socialisation that, long after leaving the force, typical retired top officers continue to wield an amazingly power hold over their colleagues, meaning most invariably erstwhile juniors, still in active service. The reason for this is simple: once a senior, always a senior, who all must obey or defer to. Much of the patronage that the retired military have come to enjoy in contemporary Nigeria (...) can be explained by this” (Adekanye 2001: 175).

This helps to explain why some Nigerian scholars claim that a coup d'état is a distinct possibility in Nigeria: “Though, currently in the barracks, they (the military officers) see themselves as an alternative government waiting in the wings and watching over the civilian regime and how it conducts the affairs of the state” (Nwagwu 2006: 74).

The retired military's influence in Nigeria extends well beyond the government and the Armed Forces: Since 1975 the number of retired officers' appointments to “(...) the boards of directors of key governmental agencies, statutory corporations, public enterprises, and parastatals vital to the Nigerian economy (...)” has grown rapidly (Adekanye 2001: 168). Adekanye further notes that pieces of evidence suggest that these appointments are a part of a “deliberate and coordinated policy” (ibid) and not a part of a “haphazard development” (ibid). He also observes that the Ministry of Defence has organised 'employment campaigns', 'welfare' schemes, as well as 'contracts' (ibid: 169)¹⁹ where key corporations run by military retirees are involved (ibid). These are only two of numerous examples of how the web of retired generals extends throughout elites in Nigeria today.

In Nigeria the power balance is such that although the Armed Forces are formally under civilian control, the political elite is still dominated by retired military officers who still wield a great deal of influence over officers. Many Nigerians viewed the 1999 presidential election, where an ex-military general won with the support of the military constituency, not as the birth of a democratic era, but rather as the extension of military rule (Fayemi 2003: 66-67). The transitional government not only retained strong ties to the old regime, military retirees also held significant political offices. Political power, as we have established, does however not necessarily depend on

¹⁹ Adekanye observes “(...) following the end of the Civil War in 1970, the government either established or began to support organisation and schemes like the Armed Forces Welfare Scheme, Directorate of Military Pension, Nigerian Legion, National Army Museum, Armed Forces Resettlement and Rehabilitation (...)” (2001: 168-169).

formal position. In Nigeria political influence can be bought or enforced otherwise. Military officers swiftly mobilise support, use briberies, manipulations, threats, and even violence as means to trump political decision-making and “(...) makes plain the abject weakness of democratic norms”. (Lewis 2003: 143). The military influence could also be felt by the new government's leadership style which was militaristic and apolitical (Agbese and Udogu 2005: 28). The federal administration's handling of the Niger Delta Crisis and the violent ruptures in Odi, Choba, and Zaki-Biam which ended in bloodshed, Agbese and Udogu, argue are illustrative of how the military socialisation pervaded the leadership of the Obasanjo administration (2005: 28).

In the above section we have outlined the relative strength of the military in the post-authoritarian regime vis-à-vis the new government and how it is manifested through the massive influence wielded by military retirees, many of which held prominent positions during the authoritarian regime. According to theory, in a state where the authoritarian regime still constitutes a powerful force, the opportunities for accountability for human rights breaches are minuscule and we typically do not observe trials and prosecutions. In the Nigerian case however there is evidence suggesting that the military influence extends well beyond being a potent political factor. Military retirees control legislative processes on federal, state and local levels both formally and informally and at the same time enjoys to loyalty of military officers in active duty. The result is that even though the Armed Forces are subjected to civilian control, they still answer to military officer reborn as civilians on the political scene (Campell 2001).

As we have mentioned above, the government's motivations for annulling the Oputa Panel are not known. However considering the fact that the new federal government was practically run by members and supporters of former military regimes, the dangers of self-incrimination make a likely argument for why the government annulled the Oputa Panel. The Commission which despite its weaknesses managed to write an extensive report and boldly recommended criminal prosecutions in more 150 cases, constituted a clear threat to their positions. Arguably, implementing the recommendations could mean a greater blow to the new government's legitimacy than a strategy of inaction in the human rights area considering the significant share of military retirees in all branches of government. Moreover when the President established the Commission by decree, he explicitly stated that the approach to dealing with former human rights violations should be of a reconciliatory nature. However the Commissioners' strategy on reconciliation differed from that of the Obasanjo administration. The Panel's report was a strongly-worded document which proposed criminal sanctions with potentially severe implications for several military officers who enjoyed prominent positions within the political and commercial sector as well as the military establishment. However as we have established, Nigeria's class of military retirees wields through their 'old-boys networks' “(...) considerably influence in decisions-making process regarding major issues of high

politics” (Adekanye 2001: xiii). Military officers have, by virtue of their social position, access to “the highest law-making bodies, the upper levels of the executive and the bureaucracy, the top judiciary, and the top military establishment” as well as the top decision-making organs in the government (ibid). Based on the enormous power and influence enjoyed by the military retirees we consider it likely that their access to the political decision-making machinery has been utilised to circumvent the implementation of the recommendations in the Commission's report.

3.4.2 The human rights community

The human rights community has generally been an influential factor in truth-seeking processes in transitional societies. A strong human rights community, consisting of both domestic and international actors has often been vital in generating the media attention and public pressure which in turn may compel the government to implement the recommendations of the truth commission. In Nigeria civil society organisations turned the media attention to the significant delays in the Commission's work and the submission of its report. The human rights community was also one of the fiercest critics of the government's decision to delay and eventually preclude the dissemination of the report (Abbah 2005). Human rights organisations had been involved through the duration of the Oputa Panels work and attended many of the public hearings, They also submitted several memoranda to the Commission and thereby raised “important questions concerning many of the human rights violations (...)” (Okafor 2006: 183-184). However when the Supreme Court decision came in 2003, most domestic human rights organisations swallowed the government's argument of the unconstitutionality of the Commission and tacitly accepted that the recommendations of the Commission could not be enforced (ibid).

The Civil Society Forum (CSF), a network of several non-governmental organisations, stated that the government had legitimate reasons for not enforcing the recommendations of the Commission, however they disagreed with the non-release of the report: CSF states that “(...) the ruling did not foreclose the publication of the findings (...)” (Oderemi 2005) nor did the Supreme Court prevent the publication of the report by non-governmental bodies. This is why Civil Society Forum as well as several other non-governmental organisations presented the report on the internet (ibid). Furthermore the efforts made by domestic human rights actors were made relatively powerless in the absence of international pressure. International attention to the non-implementation could arguably have pressured the Obasanjo administration to put the report on the agenda. But as Yusuf observes: “(...) the non-implementation of the final report and recommendations, including reparations for the victims hardly attracted any international censure” (2007: 282). Unlike other transitional societies in which the UN and other human rights organisations have been heavily involved throughout the truth-seeking process, Nigeria's transitional justice process did not attract

particular international attention. Yusuf predicts that persistent international pressure and monitoring of the truth-seeking process could possibly have “(...) changed the course of its result (...)” (ibid). However as a result of the weak international and domestic pressure from civil society the government had few incentives to enforce the Commission and its legality. If the international legitimacy of the state rested on the implementation of a bold human rights policy, the executive would arguably been more proactive in enforcing the Commission and its recommendations. By ensuring the truth commission's success, the regime would have passed the litmus test for its commitment to democracy and rule of law (ibid: 283). However considering the enormous influence wielded by the military, it is very unlikely that the pressure from the human rights community alone could have changed the course of action. The engagement of former military officers in all branches of government would make a regression back to authoritarianism more likely than the risk of self-incrimination, loss of positions, criminal sanctions and loss of liberty.

3.4.3 The judiciary

Some truth commissions are established in societies where opportunities for criminal justice are foreclosed due to an incapacitated judiciary or when amnesties to violators have been granted. In these societies truth commissions to a large extent 'replace' the judiciary. In our theoretical framework however contribution to truth and accountability is a premise for an instrument of transitional justice. We thus argued that more successful truth commissions are followed by and contribute to future prosecutions for grave human rights violations. In Nigeria the theoretical opportunities for non-retributive and retributive redress of human rights violations were not foreclosed. No formal amnesties had been granted to the members of the military regime and the Commission was authorised to make recommendations of criminal sanctions against perpetrators. Although the government never initiated prosecutions in Nigeria,²⁰ we will in this section investigate the role and function of the judiciary in order to understand how the Commission's function as a transitional justice instrument was influenced by the judiciary.

One of the high-profile cases received by the Commission was the petition from Gani Fawehinmi, the lawyer of the late Dele Giwa who was a prominent news editor for Newswatch, a leading magazine in Lagos (Yusuf 2007: 276). Dele Giwa was murdered allegedly on the instruction of then-head of state General Babangida. Although the Commission recommended further criminal investigations of the case in its report these were never pursued. Fawehinmi has since then attempted several times (last time in 2007), albeit unsuccessfully, to have the case

²⁰ In Nigeria where common law is practiced the Attorney General initiates criminal investigations. This office is under the authority of the Executive ((<http://www.britannica.com/EBchecked/topic/142953/crime/261349/Anglo-American-countries#ref=ref99091>). In democratic states this chain of authority is theoretical and the Prosecutor's office operates independently, however in less democratic states the relationship is often abused to in order to influence legal matters.

reopened.²¹ The Dele Giwa case is symptomatic of the inability of the judiciary to uphold and protect the law in Nigeria today. The judiciary is one of the most discredited institutions in Nigeria and there is a general view among legal scholars and the public that the military rule has left a corrupt and compromised court system (ibid: 280). The judiciary has been subjugated to military administrations' influence for almost three decades and has never been able to uphold and adjudicate impartial justice. Instead it has blatantly condoned the systematic violations of consecutively repressive regimes. As Yusuf observes "(...) the judiciary has historically deferred from the rule of force, acquiescing - with only a few notable exceptions - to the suspension, abridgement or outright abrogation of human rights by successive military regimes (...)" (ibid: 276). The military engaged in vivid manipulation and turned judges into "pliable instruments of state power" (Oko 2005: 18) resulting in a compromised judiciary unable to exercise dispassionate resolution of disputes. As a consequence the country was forced to deal with a judicial administration plagued with administrative and institutional challenges. Poorly trained staff and insufficient funding has left the judiciary unable to fulfil basic logistic and administrative tasks (Yusuf 2007: 276). The poor salaries have also contributed to pervasive corruption from "(...) the under-paid local police officers and other law-enforcement officials to lawyers and judges" (Nwagwu 2006: 3). As Agbese and Udogu observe "(...) access to justice is virtually openly purchased through bribery" (2005: 37).

Although constitutional democracy has been established in Nigeria, the citizens of Nigeria are yet to see the justice being served: Judges "(...) align themselves with the rich and the powerful in society" (Oko 2005: 9) with the result that justice is only available to those citizens who wield political and monetary power. At the same time evidence indicates that "(...) powerful Nigerians today are instinctively resistant to attempts to mediate conflicts and disputes through the judicial process" (ibid: 33). They prefer a strategy of intimidation and manipulation in order to achieve a preferable outcome in judicial disputes (ibid). Judges typically succumb to the pressure from the members of the business and political elite for the simple reason that the benefits reaped from impartial and law-abiding adjudication do not outweigh the gains from yielding to bribes and threats (ibid: 73).

Many elected officials in Nigeria suffer from a distorted view of the judiciary as the extended arm of the executive branch (ibid: 17-18). Thus the judiciary staff continues to "(...) confront government functionaries who are inveterately uneasy about the notion of an independent judiciary" (ibid: 70-71). The judicial independence is further corrupted by the fact that the funding of the judiciary is controlled by the executive (ibid: 76). The few judges who have the courage to resist the influence of government officials risk the loss of position, withdrawal of funds as well as outright

²¹ http://www.ganifawehinmi.com/press_19102007.php

harassment and threats (ibid: 9). Oko further notes that most judges “prefer to demonstrate their loyalty to the executive, sacrificing the dictates of justice in an attempt to appease the executive, and thus, maintain the viability of the system” (ibid: 74). Judges who fear for their safety in the face of hubristic politicians inclined to manipulate the judiciary cannot expect to engage in impartial and dispassionate adjudication (ibid: 73). Realities are such that most politicians in Nigeria are “(...) neither committed to the establishment of a strong, virile and independent judiciary, nor do they believe that the judiciary should have the power to review legislative and executive decisions” (ibid: 17).

The miserable state of the Nigerian judiciary is a testimony of the relative unlikelihood of successful criminal prosecutions when suspects are powerful citizens which successfully influence political and judicial decision-making organs. It suggests that criminal sanctions would not in any case have been a realistic outcome of the Oputa Panel's work. The opportunities for accountability are significantly impaired because of the unwillingness to dispense justice in a fair and unbiased manner. Thus since the judiciary is both unwilling and unable to engage in impartial adjudication, the outlook for sanctions beyond non-retributive justice would have been grim even if the government had endorsed criminal sanctions.

3.5. Pursuing Reconciliation in a Divided Society

Numerous ethnic, religious and communal cleavages have been the source of conflicts throughout the history of Nigeria, However when the country returned to democracy in 1999 a spate of dormant political forces was unleashed further aggravating the ethnic and communal tensions in the country (Agbu 2004: 1). The transitional government was therefore faced with a pressing need to address the persistent violent conflicts in the country and actively engage in reconciliation and peace-building initiatives. Conflicts of this nature have been prevalent throughout the military rule when the military elites adopted a divide and conquer strategy further exacerbating societal divisions. The Army was largely controlled by the Hausa-Fulanis and the military administrations were often directly involved in the conflicts and well known for their discriminatory application of the law, favouring of one group over the other (Manby 2004: 181). Arguably the most pressing conflicts have been in the Delta area where the drilling for oil that began in the 1950s has increased the tension between the locals and the oil companies, between different ethnic groups in the area, and between the local population and the federal authorities. The latter has arbitrarily intervened and struck down on organised vigilante violence but also targeted civilians, tyrannising, torturing, even killing innocent bystanders. Local police forces also have met vigilante violence with aggressive crackdowns. Arbitrary detention and frequent use of torture has led to general disdain for the police

and federal government. At the same time, the surge of ethnic, religious and regional violence in the wake of the transition has been excessive to the point that the federal government engaged the Armed Forces in order to reinstall law and order (Agbese and Udogu 2005: 32).

In Nigeria there was a pressing need to address the numerous conflicts plaguing the country. In this section we will therefore examine the HRVIC's reconciliatory efforts with respect to the Commission's construction of a truth record and its public hearings. As we recall some theorists argue that truth commissions can pursue reconciliation by constructing a truth record where the perspectives and narratives of individual victims, former political enemies and perpetrators are expressed. Arguably this form of collective memory can make it easier for people to leave the past behind and construct policies for a common future. Often commissions also include recommendations for further peace-building initiatives in their reports. Furthermore truth commissions can arrange hearings where victims and witnesses of human rights atrocities can tell their stories to the general public. These hearings can provide an opportunity for perpetrators to ask victims for forgiveness and where the parties can come to an agreement on some form of compensation. This process is often referred to as restorative justice and is by some theorists considered a central element of reconciliation.

3.5.1 Reconciliatory activities

In Nigeria reconciliation was, ironically, never one of the objectives of the truth commission. However it became one of its main goals, in line with President Obasanjo's emphasis on reconciliation in the inauguration speech of the Panel. He stated that the Commission "was established to demonstrate his administration's 'determination to heal the wounds of the past (...) for complete reconciliation based on truth knowledge of the truth in our land'" (cited in Yusuf 2007: 272). The Oputa Panel thus chose to view "its key objectives as securing forgiveness and reconciliation" (Yusuf 2007: 273). The rhetoric of reconciliation permeates the written work of the truth commission and more interestingly; the Commissioners chose an integrative approach to reconciliation which included both retributive and non-retributive initiatives.

The Oputa Panel constructed an extensive truth report based on the 10.000 petitions which it received. Some argue that the Commission's report was reconciliatory. Pilay and Scanlon note although the report was never officially released it did allow the Nigerians to "arrive at some element of truth (...)" (2007: 22). Although the report was extensive, its content was never disseminated to the vast majority of Nigerians. Considering that the report was only made available on the internet and that few Nigerians have access to electronic information, its reconciliatory potential was effectively constrained. At the same time Hausa-Fulanis viewed the report as an attempt to absolve the Southerners and Yorubas of the human rights violations committed during

the military era and baptised the report a witch hunt (Haruna 2002). Haruna claims that “instead of a cleansing of the national soul, many of the country's citizens believe the commission's goal is a whitewashing of Nigeria's past for the sake of its emergence as the latest West African democratic success story” (ibid). Haruna further argues that the establishment of the Oputa Panel was motivated on Obasanjo's part by vengeance against the Buhari administration and against Northern officers because they are Muslims, not by a quest for justice and reconciliation.²² He bases his claim on the Commission's failure to criticise and propose investigations of Obasanjo's own administration for the human rights violations which took place during his 1975-1979 regime (ibid). This scenario illustrates truth commissions' challenge of juggling to goals at the same time; on one hand they are obligated to investigate and report on human rights violations, and at the same time, their reports must be carefully phrased if intended to be reconciliatory and to avoid contributing to further aggravation and discord.

A part from writing a truth report, the Commission held several public hearings across the country which were popularly broadcasted on television (Pilay and Scanlon 2007:20-21). Due to the enormity of cases received by the Commission, it was only able to hear 200 cases at the public hearings.²³ The Commission emphasised that the hearings should provide a ‘voice for the weak’ (HRVIC; 2002: 30):

“(…) given the prejudices and partisanship of both government-owned and privately owned mass media, what happens when the rights of citizens who do not have access to sympathetic media, are infringed? This was the point or justification of the Commission's Public Hearings; to provide such an access to aggrieved citizens and communities who otherwise would have had no opportunity to have their cases heard” (HRVIC 2002: 29-30).

The Oputa Panel claims that the public hearings had been successful in the sense that they were therapeutic to the victims (HRVIC; 2002: 30). Witnesses testifying had however a different opinion on the matter. George Nafor stated:

“I named people who killed this man (Senate minority leader Bi Wali). His murder was very unjustified and needed to be talked about, so on that level (...) I suppose it was beneficial to have it out in the air. But on an institutional level where it matters the most, it did not achieve anything because the panel is not empowered to summon people and put them

²² Abacha jailed Obasanjo in 1995 for treason. He was originally serving a 25-year sentence when he was released in 1998 after Abaca's sudden death.

²³ Of particular notice is the that more than 8000 of the petitions came from the Ogonis, one of the major ethnic groups living in the Niger Delta considered to have suffered from the exploitation of natural resources of gas and oil in the area (International Crisis Group, 2008: 4)

through all the rigors of a society government by laws” (2001).

Critics of the Commission further note that the potentially reconciliatory element of the public hearings was undermined by alleged perpetrators who continued to deny responsibility for crimes, even when they faced overwhelming evidence (Yusuf 2007: 275). The Commissioners channelled this frustration in their report where they note that the “(...) witnesses cannot all be lying and the alleged perpetrators cannot all be witnesses of the truth” (HRVIC 2002: 7). However as Wodi observes, this outcome of the public hearings is not surprising, considering the fact that there existed no incentives for the violators to admit their guilt and plead for reconciliation (2001). Campell further notes that most Nigerians “(...) assume that military leaders who voluntarily take the stand are lying to avoid implicating themselves (2001). As George Nafor expressed: “The public hearings were a waste of time and resources (...). Maybe if reconciliation happens it would be worth it, or if people confess and become better from confessing. But nobody confesses. They all deny” (cited in Campell 2001).

In addition to ordinary public hearings, the commission held public hearings with the explicit intention of reconciling fighting communities:

“During our sessions in Lagos, Lagos State we reconciled the quarrelling communities of Maroko Village. We also recorded our first major break-through when the warring Ife and Modakeke communities in Osun State signed a Memorandum of Understanding and an Joint Declaration to the report pledging to live in peace and harmony and to adopt only peaceful means in pursuing their respective rights and entitlements” (HRVIC 2002: 9)

The most tangible efforts of reconciliation was the resolution of the conflict between the Ogonis in the Niger Delta area which was a part of a tripartite conflict between two factions of the Ogonis a Shell successor company in the Niger Delta (Crisis Group Africa 2008: 1). The conflicts are rooted in the environmental, social and socio-economic sufferings of the local population attributed to the unwillingness of the government to redistribute revenues to the region and the oil companies’ failure to take responsibility for the severe environmental damages caused by the extraction of natural resources. Here human rights violations have “(...) accompanied the agitation of resource control and self-determination for resource control and self-determination in this oil-rich region of the country” (Yusuf 2007: 284). George Campell observes:

“While six international oil companies extract a combined 2 million barrels crude oil per day from the Delta - and provide royalties to the government that amount to 80 percent of decadal revenue - the approximately 7 million people in the oil regions live in such poverty

that the term abject seems quaint. (...) Living in an impoverished region polluted by endemic oil spills, ablaze with the light of gas flares that burn around the clock and denied the financial benefit of the oil wealth that lies literally beneath their feet, atonement can only find a foothold if their decades-old pleas for justice and fair treatment are heard in the presidential palace and acted upon” (2001).

The commission writes in its report that it managed successful to broker a peace accord among fighting groups and factions in Ogoniland: “In particular, we managed to unite and amalgamate the Ogoni Four and the Ogoni Nine into the Ogoni Thirteen” (HRVIC 2002: 9). The peace accord in Ogoni land was widely recognised as a “landmark achievement” of the HRVIC (HRVIC 2002: 9). However Shell and Ogoni leaders have continued to disagree on Shell’s responsibility for the environmental degradation as a result of the oil production and lack of efforts to clean up oil spills and prevent future environmental damages. The conflict with the federal government over revenue allocation to the Delta communities also remains unresolved (Crisis Group Africa 2008). Later reconciliatory initiatives led by respected clergyman Reverend Kukah and later the UN have encountered several obstacles and have not produced a final agreement on sustainable development in the Niger Delta area (ibid)

Even though the Oputa Panel made several recommendations for addressing the prevailing high conflict level in the country the federal state government has been largely unresponsive to these concerns: The Commission suggested the convening of a National Dialogue as well as federal intervention to resolve the conflict between the oil companies and the local communities (Falana 2005). It also recommended reparations to victims of the human rights violations and the establishment of a Human Rights Violations Rehabilitation Fund which it considered a “(...) foundational building block for national reconciliation” (ibid: 71). Furthermore the Commission observed the dire need to resolve communal clashes, but recognised the limitations of its own impact and instead appealed to local authorities to resolve prevailing communal clashes (HRVIC 2002: 72-84). The Commission emphasised the communal unrest as the central threat to democratic consolidation in Nigeria. None of these recommendations were mandatory, and very few of the recommendations were implemented.

Although the Commission argued that its mission was to promote reconciliation and engaged in what we could call reconciliatory activities, the degree to which these activities were truly reconciliatory can be questioned. The public hearings were arguably the greatest disappointment as far as reconciliation is concerned. Considering that few of the alleged perpetrators admitted to their responsibilities for violations, the hearings did not become a place for forgiveness and personal healing as the Commissioners intended them to be. Few of the victims

claimed they felt they had their dignity restored or experienced the process as healing. Thus the Commission's attempt to integrate restorative justice in their work was largely unsuccessful. The peace agreement between the Ogoni Four and the Ogoni Nine was also short-lived. Arguably the Panel could have started a dialogue for peace through the construction of a truth record; however this strategy backfired when the government failed to release the report. The non-release of the report was met with outrage by a majority of the media, but the government largely ignored these concerns. Furthermore, the Commission's recommendations for future reconciliatory measures were never implemented and the grievances voiced by the victims were therefore never addressed by the government. The government's annulment of the Commission sent a message to the general public that their sufferings were not worthy of concern and this reaction arguably fuelled further anger towards the federal government as well as undermined the motivation for resolving conflicts on a communal level.

Nigerians' verdict on the Oputa Panel was that it never provided the opportunities for healing and release that the Nigerians hoped for and as a consequence "the new Nigeria resembles the old" (Campbell 2001): The country has experienced an increase in crime rates and communal violence since its return to democracy and suffers from what Adebawwi refers to as "conditionally acceptable violence" (2004: 331).²⁴ At the same time has "(...) state-sponsored violence remained unchecked, if not increased in the country" (Centre for Law Enforcement Education and the World Organisation against Torture 2002). The experience of the Nigerian truth commission is a testimony of the need to moderate the expectations of truth commissions' contribution to reconciliation particularly in political contexts where conflicts are deep-seated in the minds and behaviours of individuals, groups and political factions. The Nigerian case also underscores the argument that reconciliation is not event-based, instead reconciliation is process-led and often requires a significant amount of time before it is achieved.

²⁴ Adebawwi describes two scenarios where violence can be perceived as justified; i) When minorities are deprived of basic rights and liberties by the government and ii) when a minority is attacked by another minority and does not receive "adequate protection from the state and the agencies of law and order" (Adebawwi 2004: 331). These conditions are operational in many parts of the Nigerian society and can explain the high levels of communal violence in the country.

4.0 CONCLUSION

In this thesis we have examined the Nigerian Human Rights Violations Investigations Commission, the Oputa Panel, which was set up in 1999 after Nigeria had returned to democracy after almost three decades of military rule. The Commission was warmly welcomed by the general public and initially endorsed by the executive. Despite the broad support the Commission experienced great difficulties during its operational time and was eventually annulled by the Nigerian government. This thesis set out to understand why the Oputa Panel failed and which factors contributed to its failure. In order to conduct a productive analysis we developed a conceptual framework which could subsequently be applied in our analysis of the Nigerian case. Below we give a short summary of the premises for our analysis:

Our starting point was Cohen's understanding of an instrument of transitional justice (2001): He argues that a tool of transitional justice, must include two components; truth and accountability. Truth commissions are first and foremost are truth-seeking bodies. They investigate human rights violations and produce a truth report which concludes their work. Truth commissions are not adjudicative bodies and in order to contribute to some form of accountability, they rely on the cooperation of the government. We thus considered truth commissions insufficient as transitional justice mechanisms in their own rights and only complementary to other transitional justice mechanisms, such as criminal trials. Although some claim that criminal prosecutions are not appropriate in every political context, we nevertheless chose to argue that more successful truth commissions contribute towards a stronger form of accountability and retributive justice for human rights violations. It follows that our understanding of a successful truth commission is one which integrates the element of truth by investigating past human rights abuses and producing a balanced and accurate record of the causes and consequences of these abuses. Secondly, a truth commission can be considered successful when the government complies with a commission's recommendations and takes the appropriate action to hold violators accountable and compensate the victims for their sufferings.

Furthermore we divided the analysis into four parts organised in a chronological manner where the first stage examined was the establishment phase of the commission: Truth commissions are inherently reflections of their respective political contexts. The strength of their mandates depends on whether the political will and opportunities exist for a genuine truth-seeking process to take place. The mandate in turn will influence the degree to which the Commission is able to fulfil the duties assigned to it. The second part of the analysis examined the objectives stated in the commission's mandate and whether the commission was able to fulfil these. Mandates vary across cases, but investigations and the writing of a truth report is typically the main activities of a truth

commission. Thus extensive investigations and the production of an integrative truth report are indicators of a successful truth commission.

As mentioned above, a truth commission depends on the government's cooperation in order to contribute toward accountability for human rights breaches. In the next part we therefore examined the actors which are considered to have influenced the implementation process. In the last part we examined the truth commission's reconciliatory work. Reconciliation is often considered a superior goal of transitional justice and is particularly important in societies where individuals, communities and political factions are estranged due to prevailing conflicts, civil war and institutional repression. How reconciliation is achieved and to what extent reconciliation can be attributed to the work of truth commissions is not yet clear. Instead we argued that a truth commission can be judged successful insofar as it pursues reconciliation and we further critically reviewed the activities of the Commission and how it pursued this goal.

In the following section we present and summarise the findings made in this analysis. We restate the factors considered to influence a truth commission in the four parts of the analysis respectively and conclude regarding the degree to which they had an effect on the outcome of the Nigerian truth commission.

4.2 Establishment of the truth commission

Truth commissions are established on the premises of the factions which controls political power in a transitional society. Truth commissions are thus not always given a reasonable mandate or a mandate which includes the necessary measures for a genuine truth-seeking process. In fact truth commissions are often established in contexts where the outlook for criminal justice, at least in the immediate future, is grim. Thus the willingness to vest strong legal power and resources in a truth commission is unsurprisingly absent in many cases. This was the case with the Nigerian commission which received an incredibly ambitious mandate asking the commission to identify *all* gross human rights violations that took place during the authoritarian era. It was also mandated to make recommendations of judicial, legal, legislative and administrative nature for the appropriate redress of these human rights violations. The Commission received extensive search, seizure and subpoena powers, but was given very limited time; a deadline of only three months to finish its investigations and hand over its report. Considering the breadth of the mandate, this was clearly insufficient. Moreover, the mandate did not include specifications of funding. Consequently the Commission had to seek external sources to finance its operations. Our theoretical predictions stated that a truth commission, if established, typically receives a stronger mandate when the new government wield more power vis-à-vis the authoritarian regime. We thus investigated the relative power balance between the authoritarian regime, represented by the military and the Obasanjo

regime. Additionally we analysed the human rights community and the degree to which it put pressure on the new government to enforce a strong truth commission. We found that our theoretical predictions to a large extent were correct. In the Nigerian case, the military administrations controlled the transition and the first elections to the extent that some considered the Obasanjo administration to be an extension of the military regime. It was therefore surprising to some that a truth commission was established at all. Further examinations however reveal that the government was not genuine in its intent to establish a strong commission. The truth commission did not receive the monetary resources necessary for a genuine truth-seeking process. In terms of time, the limited time frame of three months was extended during the course of the Commission's operations, however the legal powers initially endowed with the Commission were retracted and rendered unconstitutional after the Commission had completed its report.

It is interesting to note that the Commission never invoked its summoning powers during its investigations, something which could be symptomatic of the threatening political context during which the commission operated. We conclude that the government never intended to establish a strong investigative body, and see this as rooted in a fear that a strong commission could energise demands for stronger accountability for human rights violations. This can be attributed to the fact that the authoritarian military regime held the upper hand in the transition, determining both pace and direction of the process. The new government was largely controlled by the military regime and thus had little leeway for a strong policy on human rights. Furthermore we evaluated the pressure induced from the human rights community to be too weak and inconsistent to generate the necessary pressure for the establishment of a strong mandate. Consequently the government remained unresponsive to calls for a strong truth commission. Particularly, the international actors were glaringly absent and consequently did not energise the domestic pressures for accountability for human rights.

4.3 The fulfilment of the objectives stated in the mandate.

The degree to which the Oputa Panel was able to fulfil the main objectives stated in the mandate was our first measure of a successful truth commission. Although mandates show great variations they typically asks the commission to investigate, within some given parameters, a range of human rights violations; construct a record of these investigations and recommend appropriate measures of redress of the violations. We departed from a theoretical argument that the achievement of these objectives is largely a product of i) the legal powers, ii) the resources and iii) the time vested in the Commission; few legal powers are associated with superficial and narrow investigations which may lead to an unbalanced and one-sided truth record. Lack of resources can prevent the Commission from conducting basic logistical tasks and may impair the quality as well as the quantity of

investigations and a severely constrained time limit may prevent the Commission from conducting proper investigations and consequently writing a thorough and exhaustive truth report.

In the Nigerian case the mandate asked the Commission to investigate all gross human rights violations between 1966 and 1999 and write a truth report on its findings where it included recommendations of the appropriate redress. The Commission invited the Nigerians to participate through written testimonies, and received more than 10 000 petitions altogether. Due to time and resource constraints it was only able to hear 200 of these cases but commissioned research reports to cover cases which it was unable to hear. Due to insufficient funding the investigations were however significantly delayed in the initial stages of the Commission's work and for a period the Panel ceased working entirely something which also contributed to delays in the submission of the report. Nevertheless the Commission managed to hold several public hearings across the country as well as write an extensive report with recommendations for further government actions.

The report which was handed over to the government the summer of 2002 was a lucid and extensive account of human rights violations committed during the military era, but was regarded by some critics as one-sided and partisan. The Commission was empowered to attribute individual responsibility for crimes, something which it did take advantage of in its report: In cases where the evidence against perpetrators was overwhelming the Commission named names of alleged perpetrators and also recommended criminal sanctions against these individuals. Northerners felt targeted in the Commission's report and some considered it to be Obasanjo's personal vendetta against the Northern officers responsible for incarcerating him during the Abacha regime.

The report could arguably have been more balanced if the Commission's legal powers had not been retracted, *and* the Commission used them effectively. The Commission initially enjoyed a range of search, seizure and summoning powers as well as reporting powers. However it did not utilise its coercive powers to compel military officers to take stand. If these powers had been coupled with amnesties for truthful testimonies or non-criminal sanctions, alleged perpetrators could arguably have felt more compelled to come forward and testify. In turn this could have contributed to a more balanced report and a greater understanding for the mechanisms and motivations behind the violations. This scenario highlights the dilemma which many commissions face; In order to achieve more truth, commissions can trade truthful testimonies for amnesties. However this would necessarily violate the premise for transitional justice mechanisms; that they must contribute towards both truth and accountability. Amnesties effectively foreclose the opportunities for criminal justice, and are therefore very controversial. Still in some societies the use of amnesties may be considered appropriate, especially when the prospects of criminal justice are grim.

In terms of time, the Commission initially received a period of only three months to conduct its investigations and finish its report, a time limit which was clearly insufficient in terms of the

crimes to be covered. The deadline was therefore pushed back because the Commission was unable to finish its work on time. A new cut-off date was never formally agreed on and although the extension was necessary, the lack of a clearly defined time frame arguably made it harder for the Commission to finish its report. A clearly defined deadline maintains the momentum of the pressure against the government and at the same time raises the public's expectations of its release. The government is thus more compelled to enforce the Commission financially as well as politically. Instead an extension without a definite final date, arguably backfired and became an excuse for the Nigerian government not to enforce the Commission and secure the completion of its work.

We found our hypotheses to be largely confirmed: The lack of sufficient resources, operative legal powers and a clearly defined time limit were impediments to the work of the Nigerian truth commission. Still it is important to notice that despite these insufficiencies the Commission managed to investigate, hold public hearings and finish an eight volume report. The Nigerian commission is a testification that a huge budget is not necessary for a commission to fulfil its mandate. Even without a large budget the Commission also managed to investigate and analyse a number of cases and to relatively accurately identify causes and consequences of gross human rights violations.

4.4 Implementation of the recommendations

The implementation of a commission's findings is a measure of the effectiveness of the Commission's work. In the Nigerian case however the dissemination of the report was limited due to the government's annulment of the Commission and consequently none of the recommendations were implemented. As a consequence prosecutions were never pursued in the 150 cases which the Commissions recommended further criminal investigations. Our hypothesis stated that the relative power balance between the new government and the authoritarian regime, here referred to as the military will define and delimit the opportunities for a human rights policy. We assumed that if the military was not subjected to democratic control and remained a strong political force, the new government would have little room for implementing strong accountability measures for human rights violations. Furthermore we assumed that strong pressure from the human rights community would be conducive to the implementation of the recommendations of the Commission, particularly if the government was concerned with increasing its international and domestic legitimacy. Lastly we assumed that an independent and incorrupt judiciary is conducive to the enforcement of criminal justice and thus necessary for the pursuit of criminal investigations if this is included in the Commission's recommendations. In the following section we outline how these factors respectively contributed to the non-implementation of the Commission's recommendations.

The Nigerian military is an incredibly powerful force on the political scene. At the same

time it was targeted by the Nigerian truth commission as the executor of a majority of the human rights violations during 1966 and 1999. The Commission attributed individual responsibility in a number of cases and further recommended criminal prosecutions in several of these cases. Although the motivations behind the government's decision to annul the Oputa Panel are not known, we have established that the Nigerian military, although it is internally factionalised, still remain a considerable political force and a potential threat to the nascent Nigerian democracy. Military officers in Nigerian politics who have officially retired still wield authority and enjoy the obedience of junior officers and the Armed Forces. At the same time military officers enjoy access to the highest levels of decision-making within the federal government by virtue of their positions within the social, political and business elite. Our hypothesis stated that few if any accountability measures will be implemented if the authoritarian regime remains a strong political force vis-à-vis the new government was confirmed. At the same time we also found it very likely that the military has utilised its political powers to influence the government's decision to annul the Commission and consequently prevent the implantation of its recommendations.

Although the annulment of the Commission created an outrage among many human rights organisations, they were unable to muster the necessary support and attention to pressure the government into disseminate the report and implement the recommendations. The international community was conspicuously silent on the matter and the Nigerian government never faced sanctions for its blatant disregard for human rights issues. We predicted that a government facing pressure from a strong human rights community will be more likely to implement human rights policies as a way to increase its domestic and international legitimacy. However, when this pressure is weak or absent as it was in the Nigerian case, the government is less likely to adopt a proactive stance on human rights. Whether stronger pressure would have made a difference in the Nigerian case, is difficult to say in the light of the stronghold that the military has on the government, which makes it difficult to enforce accountability for human rights violations. In terms of criminal prosecutions, the Attorney General, as a consequence of the government's annulment, never pursued criminal prosecutions in the 150 cases which the Commission handed over. The likelihood of impartial and fair adjudication of justice is in any case unrealistic in Nigeria. The judicial branch suffers from severe problems of corruption as well as huge administrative and institutional deficiencies. It is a widespread perception that justice is only available to powerful citizens who influence the judicial processes through a dual strategy of bribes and threats. We thus conclude that the likelihood of prosecutions in the cases identified by the Oputa Panel would be highly unlikely even if the Commission had been enforced by the Government.

4.5. Pursuit of reconciliation

Truth commissions are heralded as the transitional justice tool which can consolidate the seemingly contradictory objectives of justice and reconciliation. However a general theory on how and the degree to which truth commission's can in fact contribute to reconciliation is not yet developed. This called for a further investigation of the relationship, but in order to deduce a workable conceptual framework we argued that a truth commission should be regarded as successful insofar as it pursues reconciliation through reconciliatory initiatives. On this basis we investigated the work of the Commission and the degree to which it could be regarded as reconciliatory. Interestingly the Oputa Panel was never formally mandated to pursue reconciliation as one of its objectives, nevertheless, reconciliation became one of the Commission's major goals in line with president Obasanjo's emphasis of reconciliation in his speech inaugurating the Commission. The Commission also maintained that its report was written in a reconciliatory light, and that it interpreted criminal prosecutions and non-retributive initiatives as complementary strategies to achieve reconciliation.

The Commission engaged in several activities which according to theory can be considered reconciliatory: The intention of the truth report was to acknowledge the sufferings of the victims, quench the thirst for revenge and bring about a form of collective's memory from which institutions and policies for conflict resolution could develop. The Commission also made several recommendations in its report for further reconciliatory initiatives. Recognising the limits of its own capacity, it limited itself to inviting community leaders, local and state and federal authorities to resolve communal conflicts that were considered to be the greatest obstacle to long lasting peace in the country. Furthermore the Commission also recommended reparations to victims as well as criminal prosecutions of big fish responsible for grave human rights violations. Unfortunately as we know by now, none of these recommendations were implemented. The report was only published on the internet and was by Northerners considered to be a witch hunt against the Hausa-Fulani. A report which is perceived as unbalanced and partisan can hardly be a basis for reconciliation and peace-building. The Nigerian case is a testimony of the great difficulties which truth commissions are faced with when attempting reconcile the goal of creating a comprehensive truth account with that of contributing to reconciliation. Truth reports can be close to factually correct, but may still be viewed as biased by a minority or even a majority in the society.

The public hearings where victims testified of their sufferings were considered by the Oputa Panel as successful arenas of healing and release. They were broadcasted on national television and gathered a large numbers of viewers across the country. Critics however pointed out that the public hearings took the form of trial hearings and subsequently did not allow for mutual interaction and engagement among the participants. Furthermore, few military officers took the

opportunity to take stand to testify or defend themselves against accusations of human rights violations. Those who did typically denied all accusations and some blatantly lied even in the face of overwhelming evidence. None of the alleged perpetrators asked for forgiveness, nor did they receive forgiveness from the victims (in contrast to for instance Timor Leste's Community Reconciliation Processes where mutual healing, forgiveness, restorative justice and reintegration of perpetrators into society were the main objectives of the hearings).

Through some of their hearings the Commissioners managed to reconcile conflicting communities. Particularly was the public hearing in the Delta State where the Commission managed to reconcile two fighting factions of the Ogonis heralded as a great achievement. But unfortunately these efforts did not translate into long-lasting peace. The communal and religious violence in Nigeria prevails, and so does the tripartite conflict between oil companies, local communities in the Delta State and the federal authorities. We thus conclude that although the objectives of the Commission's activities were reconciliation, most of the Commission's activities did not manifest themselves as such.

The Nigerian case raises some important questions regarding truth commissions as instruments of transitional justice. Truth commissions are not adjudicative bodies. Beyond writing a truth report, a commission can only achieve real impact with the support of a government committed to demanding accountability for human rights. Thus unless they are established as a complementary strategy to criminal trials and prosecutions, their contribution towards justice will be limited. Truth commissions are also sometimes established as a government's 'human rights alibi' serving only the purpose of policing the government's façade. In these scenarios a truth commission becomes a mere window-dressing exercise. For this reason we preach caution in relying solely on truth commissions as an approach to transitional justice. Truth commissions alone may be justified in societies where the judiciary is rendered inoperable or the nature of the abuses calls for different approaches to that of court trials. In cases where victims and perpetrators are not easily identified or civil society partook in systematic abuses, truth commissions may serve a useful purpose. It is however unrealistic to think that truth commissions can produce a version of the truth which both violators and victims can relate to and produce instant peace and reconciliation between former enemies. The rethorics of peace and reconciliation frequently used to legitimise the establishment of truth commissions are morally questionable considering the current lack of evidence that truth commissions in fact produce such results. We thus support the continuous revision of the role of truth commissions as transitional justice mechanisms, but call lowering of expectations in terms of what a truth commission alone can actually achieve.

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