

Human Rights Violations Investigation Commission, Nigeria (The ‘Oputa Panel’)

The Human Rights Violations Investigation Commission, the ‘Oputa Panel’ was established in June 1999 on the transition to civil democratic rule in Nigeria. Established by Statutory Instrument No.8 of 1999 under the hand of President Obasanjo pursuant to Tribunals of Inquiry Act (TIA), Chapter 447, Laws of the Federation of Nigeria, 1990, its mandate was to ascertain all incidents of gross violations of human rights committed in Nigeria between the 15 January 1966 and 28 May 1999. The Oputa Panel was to identify persons and institutions accountable the violations and the effects on victims and the society generally. It was also mandated to recommend appropriate measures to redress past injustices and prevent future violations of human rights in the country.

Political Background

On 29 May 1999, a civil democratic government came in to power following the successful completion of the political transition program initiated by the regime of General Abdusalam Abubakar. The period of military rule had witnessed serious criticism of the incidence of gross violations of human rights carried out by the military. Organised labour, human rights activists and organisations, both local and international, campaigners for civil democratic governance, the media as well as the general public had risen variously and in unison to organise protests and against the continued imposition of military rule in the country.

A groundswell of discontent had developed against military regimes in the country particularly in the 1990s. At various times, Nigeria came under international censure for its appalling human rights record and in the last few years of military rule, it had acquired pariah status in the international comity. With the advent of civil governance, it was only natural that some measures would be required to redress the serious feelings of social discontent in the country. Olusegun Obasanjo, a retired general and former head of state emerged president. Along with other contenders for the presidency, he had in fact promised to address the issues around transitional justice in the country during his election campaign.

Mission, Organization, and Activity

The seven member body appointed by President Olusegun Obasanjo was chaired by Chukwudifu Oputa, a respected retired justice of the Supreme Court of Nigeria after whose name it came to be popularly known. Its mandate clearly envisaged it would

focus on discovering the truth of the country's repressive past. The express terms of the mandate declared it was expected to suggest measures for deterrence of future violations and foster restoration of the rule of law which had been violently displaced during the years of military dictatorship. The Oputa Panel was also to recommend further investigations of alleged violations, as well as outright prosecution of alleged perpetrators of criminal violations of human rights. But the broad terms of its mandate as amended did not also rule out reconciliation measures too. Indeed, President Obasanjo emphasised reconciliation in his speech at the inauguration.

Public expectations were high that the Oputa Panel would contribute extensively to social reconstruction in the country. Its recommendations went beyond investigations of alleged violations of human rights to setting an agenda for transformation of Nigerian society.

The Commission at Work

The Oputa Panel conducted its work as a 'general purpose' commission without the benefit of specialised committees. It was not institutionally designed to play a critical role in the rehabilitation of victims nor was it granted the power of amnesty. But it publicly named alleged perpetrators of gross violations of human rights. It received over 10,000 petitions within a few months of its establishment. Alleged violations centred principally on the right to life, the right to personal liberty and the right to human dignity. The enabling legislation did not define 'gross violations' of human rights. The Oputa Panel had recourse among others, to the definition of the term in section 1 of the South Africa TRC Act, international human rights instruments and the Nigerian constitution which guaranteed the rights it identified to be in issue.

The Oputa Panel approached its mandate from a perspective that emphasised a broad and flexible conception of its terms of reference. It proceeded on the premise that the truth-seeking process provided an opportunity to lay the foundations for social reconstruction and reconciliation. But this aspiration was hardly met. With the notable exception of its lack of engagement with the issue of accountability of the judiciary for past (mis) conduct, the most decisive factor for this failure was a lack of sincerity on the part of the initiating regime in setting up the Oputa Panel.

Constrained by factors like limited personnel, time and financial resources, the Oputa Panel decided to hear only 200 petitions at its public hearings. According to it, the criteria for hearing the chosen petitions were consideration of the nature of the rights involved and the extent or degree of the infringement(s) alleged. There was thus

a great disparity between the petitions submitted to the Oputa Panel and those actually heard in public. While the number of cases selected for the public hearings was limited, the Oputa Panel heard testimony from some 2,000 witnesses and received 1,750 exhibits related to these selected cases.

One of the ways the Oputa Panel sought to deal with the large number of violations that occurred during the period of authoritarian rule, was to commission research reports by experts. The rationale for the research reports was the limitations of public hearings as a forum to ventilate the scale of the gross violations of human rights that had taken place in the country in a period covering over three decades. The research work by experts was also expected to provide a valuable background of human rights violations in the country and thus assist the Oputa Panel to contextualise its work. The research reports played an important part in the work of the Oputa Panel.

In the discharge of its mandate, the Oputa Panel organised general and institutional public hearings. The sessions of the Oputa Panel were held in public between 24 October 2000 and 9 November 2001. Its work however lasted three years, three weeks and 6 days. The general hearings centred on individual complaints. The institutional hearings were organised for civil society, human rights groups and specialised professional organisations. The latter took testimonies and submissions from the National Human Rights Commission, the Armed Forces, the Police, State Security Service, the Nigeria Prisons, about ten civil society and human rights organisations and a few individuals.

The choice of state institutions, with the notable exception of the National Human Rights Commission, may have been informed by the popular view that they constitute notorious sources of human rights violations. The National Human Rights Commission for its part was set up precisely to monitor human rights implementation in various aspects of national life, ironically by the Abacha junta noted for its record of gross human rights violations. There was considerable national coverage of the public hearings of the Oputa Panel by the media. The most popular public and private television stations in the country provided daily coverage of the public hearings shortly after they began. The press coverage was very important to the truth-seeking process.

Findings of the Oputa Panel

Then President Obasanjo appeared twice before the Oputa Panel. His first appearance was as a victim. The second was on the summons of the Oputa Panel. He

was required to respond to allegations of human rights violations during his tenure as military Head of State. His obvious discomfiture on the latter occasion notwithstanding, it gave impetus to the proceedings of the Oputa Panel. Victims of rights violations included the first executive president of the country, Alhaji Shehu Shagari. He ruled the country between October 1979 and December 1983. The visibility of the Oputa Panel grew with petitions and testimonies of leading lawyers, former political officer holders (who fell into the bad books of the military), and civil society leaders. Others who came before the Oputa Panel included human rights advocates, leaders of workers unions and students, all of whom were active in the movement against military rule. Many had one experience of gross human rights violations to share.

The violations were allegedly perpetrated by the army, the security agencies and the police. There were some instances of corporate or individual violations of rights too. In some cases, unpopular economic policies precipitated the deprivation of the right to life. This was manifested in the shooting and killing of demonstrators at public protests, a common incidence in the 1990s, when military rule was at its most atrocious in the country.

In the course of the public hearings, the Oputa Panel found the Police were in the habit of killing people unlawfully and in the bid to cover up, they usually alleged such victims were armed robbers. Hundreds of Nigerians were killed yearly extra-judicially. The Nigeria Police Force engaged in violations violation of citizens' rights ranging from illegal arrests, detention without trial various forms of torture in the course of investigations to elicit 'confessions.' Extra-judicial killings of suspects in custody, hapless motorists, passengers and pedestrians on the roads, were also common. Prisons were severely congested. Majority of detainees were awaiting trial sometimes for a decade. Prison authorities lacked even basic medical facilities and were required to seek leave of the military authorities before obtaining medical attention for inmates. On many occasions, inmates died before such clearances were obtained. Female detainees were sometimes sexually abused.

Recommendations for Truth, Justice, Reparations and Social Reconstruction

Analysis of the findings and recommendations of the Oputa Panel suggests it was caught between the desire to foster reconciliation - between persecutors and the persecuted - and the desire to achieve justice for victims of impunity, through recommendations of compensation and in some cases, criminal trials. It however noted that the demands by almost all the victims at the public hearings made it

imperative that the government allocate some resources to the three 'Rs,' Reparation, Restitution and Reconciliation.

The general tenor of the Oputa Panel's recommendation was for institutional transformation. This was with particular reference to the Prisons, Police, Security agencies and Armed Forces. Law enforcement and state security services should be given a re-orientation to recognise and accord citizens their human rights as a matter of course. It called for the introduction of human rights awareness training for the Police and other security agencies. As part of the initiative towards institutional transformation, it called on the National Assembly to repeal all obnoxious legislation in the country and facilitate law reform.

It also proposed the establishment or designation of separate detention facilities for persons waiting trial and a powerful autonomous monitoring agency to oversight all custodial centres. The Panel called for a viable prison decongestion programme and provision of adequate medical facilities in the prisons. It suggested lustration, disbarment from public office and prosecution of those found culpable of gross violations of human rights. For victims, it recommended financial and material reparations. It also recommended that government carries out symbolic reparations for victims. These could take the form of public holidays and establishment of monuments in recognition of the violations they suffered.

The Dele Giwa Petition: Of Truth, Generals and Robes

Of all the petitions heard by the Oputa Panel, the Dele Giwa murder-petition stands out as perhaps the most controversial. Giwa, a prominent, fearless, investigative journalist, editor and publisher of *Newswatch*, a leading newsmagazine in Lagos was a thorn in the flesh of the military regime. He was allegedly murdered by military intelligence through a letter-bomb on the orders of General Ibrahim Babangida (then Head of State), on 19 October, 1986.

Efforts by his solicitor, Gani Fawehinmi, to investigate and prosecute those responsible were frustrated by the military. His petition to the Oputa Panel alleged that General Babangida and his two security chiefs were in a position to shed light on the circumstances around the death of the slain journalist. The Oputa Panel issued summons for the appearance of the ex-military officers mentioned in the petition. But the trio went to the High Court with an *ex parte* application to restrain the Oputa Panel from summoning them.

This culminated in the case, *Gani Fawehinmi, Justice Chukwudifu Oputa (Rtd.) and Human Rights Violations Investigation Commission v General Ibrahim Babangida, Brigadier Halilu Akilu and Brigadier Kunle Togun* (the *Oputa Panel Case*). Among other things, the generals sought a declaration that the President lacked the powers to act under the existing law to establish a body like the Oputa Panel for the whole country. They also asked the court to stop it from exercising the power to summon them. They claimed the summons contravened their right to liberty. Meanwhile, a legal team applied to represent the generals at the Oputa Panel's public hearing. The Oputa panel rejected this move, insisting that proceedings before a truth-seeking process required personal testimony of summoned witnesses and not their proxies.

The Supreme Court held that the President lacked the powers to set up a body like the Oputa Panel with a remit that extended to the whole country to enquire into human rights violations. Further, it held that the powers of the Oputa Panel to summon the Plaintiffs were a violation of their right to liberty. The decision was to the detriment and disregard for the wider rights of victims of gross human rights violations to truth and acknowledgement of their suffering under the country's laws and its treaty obligations under international law. This decision, delivered well after the submission of the Oputa Panel's Report, forms the bedrock of government's decision not to implement its recommendations (See the entry on Nigeria).

CONCLUSION

Clearly, the popular acclaim the Oputa Panel received testifies to its relevance and acceptability as an apposite transitional justice measure in post-authoritarian Nigeria. But a series of dynamics, prominent among which are the lack of political will, poor planning and deficit of sincerity on the part of the government that established it culminated to frustrate transitional justice efforts through the truth-telling process in the country. The search for truth and reconciliation in Nigeria through the Oputa Panel suffered a fundamental set back in its lack of tailor-made legislation. Significantly, the Nigerian society has continued to pay a heavy price for the failure of transitional justice in the country, a decade after the military left power. The imperative to address the past has simply refused to go away.

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Further Readings:

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