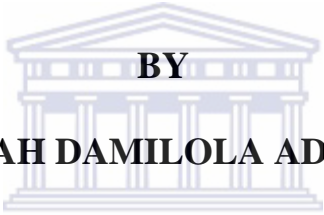


**TRANSITIONAL JUSTICE AFTER THE MILITARY REGIMES IN
NIGERIA: A FAILED ATTEMPT?**

**A RESEARCH PAPER SUBMITTED IN PARTIAL FULFILMENT OF
THE REQUIREMENTS FOR THE AWARD OF LLM DEGREE IN
TRANSNATIONAL CRIMINAL JUSTICE**

BY
DEBORAH DAMILOLA ADEYEMO

UNIVERSITY *of the*
WESTERN CAPE
STUDENT NO. 3368295

**PREPARED UNDER THE SUPERVISION OF
DR MORITZ VORMBAUM**

28 OCTOBER 2013

DEDICATION

To God Almighty,
Who is all just and righteous and,
desires truth and justice.



ACKNOWLEDGMENTS

First, I am grateful to God Almighty, who has brought me this far and made this study possible. I appreciate my parents for giving me all the encouragement and support throughout the writing process. To my supervisor, Dr Moritz, whose lectures in this field of study gave me insightful perceptions about the study, I say a big thank you for your constructive advice, comments and guidance. To my friend and dear sister, Usang Maria Assim, I couldn't have pulled through without your love, support and encouragement. I am greatly awed by your kind disposition to me, and indeed our best is yet to come. Special thanks to my dear siblings, Demilade, Dadepomola and Daniel thanks for being there always. To Edmund Foley, I say thank you very much for assisting with editing.

My heartfelt gratitude goes to DAAD, for funding this programme and making studying very easy and to South-African-German Centre for Development Research and Criminal Justice, I am grateful. I say thanks, to all the lecturers, from whose lectures I have drawn inspirations for this study. Special thanks to my colleagues, LLM class of 2013 together we have come this far. To the PhD students, Widell Nortje and others, thanks for your kind assistance all the way.

To all my friends and extended family, home and abroad I am very grateful for all your calls and words of encouragement throughout the period of this work.

KEYWORDS

Human rights

Lustrations

Military regimes

Perpetrators

Prosecutions

Rehabilitation

Reparations

Repression

Transitional Justice

Victims



ABBREVIATIONS

ATCA	Alien Tort Claims Act
AG	Action Group
CA	Court of Appeal
CAT	Committee against Torture
CDC	Constitution Drafting Committee
CDP	Committee on Devolution of Power
CSP	Chief Superintendent of Police
FHC	Federal High Court
HC	High Court
HRC	Human Rights Commission
HRVIC	Human Rights Violations Investigations Commission
ICCPR	International Covenant on Civil and Political Rights
ICTJ	International Centre for Transitional Justice
ING	Interim National Government
MEND	Movement for the Emancipation of the Niger-Delta
MORETO	Movement for the Survival of Ijaw Ethnic Nationality in the Niger-Delta
MOSIEND	Movement for Reparation of Ogbia
MOSOP	Movement for the Survival of the Ogoni People
NA	National Assembly
NARECOM	National Reconciliation Committee
NCNC	National Council of Nigeria and Cameroon
NNA	National Nigerian Alliance
NNDP	Nigerian National Democratic Party

NNPC	Nigerian National Petroleum Corporation
NPC	Nigerian Peoples' Congress
SC	Supreme Court
SIP	Special Investigative panel
SPDC	Shell Petroleum Development Company
TIC	Transition Implementation Committee
UN	United Nations
UPGA	United Progressive Grand Alliance
US	United States



TABLE OF CONTENTS

DEDICATION.....	i
ACKNOWLEDGMENTS.....	ii
KEYWORDS.....	iii
ABBREVIATIONS.....	iv
Chapter One - Introduction.....	1
1.1 Problem Statement.....	1
1.2 Significance of Problem.....	3
1.3 Research Questions.....	4
1.4 Literature Review.....	5
1.5 Argument.....	6
1.6 Structure and Overview of the Chapters.....	6
1.7 Research Methodology.....	7
Chapter Two - Historical Background to the Political Transition of Nigeria in 1999.....	8
2.1 Introduction.....	8
2.2 Military Regimes in Nigeria.....	8
2.2.1 The Political Landscape of Nigeria Before 1983.....	8
2.2.2 Military Regimes: 1983 – 1993.....	14
2.2.3 Abacha’s Military Regime: 1993 – 1998.....	16
2.2.4 Transitory Military Government of Gen. Abudulsalami Abubakar from 9 June 1998– 29 May 1999.....	19
2.3 The Transition to the Democratic Government of 1999.....	21
2.4 Conclusions.....	22
Chapter Three - The Concept of Transitional Justice in the Nigerian Context: Investigation and Prosecution of Gross Human Rights Violations.....	24

3.1 Introduction.....	24
3.2 Definitional and Structural Conception of Transitional Justice.....	24
3.3 The Human Rights Violations Investigation Commission (‘Oputa Panel’)	26
3.4 Prosecutions as a Transitional Justice Measure	29
3.4.1 The Duty to Prosecute.....	29
Constitutional Obligation to Prosecute	29
Obligation to Prosecute under International Law	30
3.4.2 Prosecutions as a Transitional Justice Mechanism in Nigeria.....	31
Trial of Al-Mustapha, Mohammed Abacha and others	31
The trial of Al-Mustatpha and Lateef Shofolahan	33
3.4.3. Evaluation of the Nigerian Prosecutions.....	34
3.5 Conclusions	38
Chapter Four - Alternatives and Adjuncts to Prosecutions.....	41
4.1 Introduction	41
4.2 Reparations	41
4.2.1. The Legal Framework.....	41
4.2.2 The Practice of Reparations in Nigeria.....	44
4.2.3. Reparative Measures for Human Rights Violation in the Niger-Delta region.....	45
Background to Human Rights Violations in the Niger-Delta.....	45
Rehabilitation of the Niger-Delta Militants	47
4. 3 Transnational Civil Litigation for Reparation.....	49
4.3.1 The Case of Shell and Ken Saro Wiwa under the US Alien Tort Act	49
4.3.2 National Civil Litigation	51
4.4. Symbolic Reparations and Public Apology	51

4.5 Lustration	52
4.6 Evaluation	54
4.7 Conclusions.....	58
Chapter Five - Conclusions and Recommendations	59
5.1 Introduction	59
5.2 Conclusions.....	59
5.3 Recommendations: Towards a more effective Transitional Justice in Nigeria	61
Bibliography	64



Chapter One - Introduction

‘A history of unaddressed massive abuses is likely to be socially divisive, to generate mistrust between groups and in the institutions of the State, and to hamper or slow down the achievement of security and development goals. It raises questions about the commitment to the rule of law and, ultimately, can lead to cyclical recurrence of violence in various forms.’

-International Centre for Transitional Justice¹

1.1 Problem Statement

This paper analyses how Nigeria has dealt with the massive violation of human rights abuses of successive military regimes in the past, with specific focus on prosecutions and reparations. During the Nigerian transition, a few prosecutions were initiated subsequent to end of the military regime but only one has been successfully sustained to the point of judgment which has been, subsequently reserved on appeal. Reparative steps were also taken with respect to victims in the Niger-Delta Region of the country. Does this portend a tinge of or rather fleeting hope for victims of state sponsored violence in Nigeria? Should, in fact, further measures be employed to redress the repression of the past military regimes?

Transition from repressive and authoritarian government to democracy became a growing phenomenon at the end of the Cold War and in this context, the concept of transitional justice gained increased prominence at the international level.² In many of the authoritarian regimes, the commission of gross violations of human rights was a common feature. Thus, at the point of transition, each state is confronted with questions on how to reckon with the human rights violations of the past and effectively achieve justice for the victims of such violations. Such challenges as to identifying the perpetrators of the massive human rights abuses of the past regimes, deciding what to do with them (prosecuting or granting amnesty), reckoning with

¹ ICTJ Why is Transitional Justice Important? Available at <http://ictj.org/about/transitional-justice> (accessed October 2013).

² Roht-Arriaza N ‘The New Landscape of Transitional Justice’ in Roht-Arriaza N & Mariezcurrena J *Transitional Justice in the Twenty-First Century* (2006) 2-3.

the evil deeds of the past and helping victims to overcome the past are pertinent among others.³

The response of a state to the legacies of its past usually depends on the aims it seeks to achieve and the context of transition. A state

‘[may decide to] punish perpetrators of violent and repressive acts, establish the truth, repair or address damages, pay respect to victims, promote national reconciliation, reduce conflict over the past and prevent further abuses in the future. It may even desire to gain the favour of the international community’.⁴

Transitional justice proposes measures to redress victims of repression and massive violation of human rights by a state in the past, as result of authoritarian regimes or internal armed conflict.

One of the hallmarks of military regimes in Nigeria and indeed military regimes in several parts of the African continent is massive violation of human rights. These military regimes were known for repression, torture and systematic killing of political opponents and other forms of massive violation of human rights, suppression of the press, corruption and money laundering, among other ills. In Nigeria, the Abacha regime, which was the last before transition to democracy, marked the height of military repression. The political transition in Nigeria to a democratic rule after fifteen years of successive military regimes sets the right circumstances for the engagement of transitional justice measures.

This research paper focuses on the subject of transitional justice against the political background of military regimes in Nigeria. Even though Nigeria has been democratically

³ These questions are not only peculiar to transitions after repressive regimes but generally applicable to post-conflict situations.

⁴ Hayner P *Unspeakable Truths – facing the challenges of truth commissions* (2002) 11.

governed since 1999, there are contentions that the repressions experienced in the country during successive military regimes have not been thoroughly addressed. As a result, the political landscape of the country remains quite unstable. This is the background that informs the research questions this study seeks to examine.

1.2 Significance of Problem

Transitional justice measures as employed in different jurisdictions range from the conviction of the Argentine junta leaders for their roles in crimes committed during the 1970's and the 1980's⁵ and the prosecution of East Germany border guards after the fall of the Berlin Wall and the unification in the early 90's,⁶ to broad amnesty in Chile⁷, lustrations in the Czech Republic and Poland⁸ and the Truth and Reconciliation Commission in South Africa.

Thus, the concept of transitional justice proposes both retributive and restorative forms of justice, while the retributive form focuses on bringing perpetrators to account for human rights violations, restorative justice is focused on 'repairing the harm' done to the victims.

This study is drawn against the background of the human rights abuses of successive military regimes in Nigeria until 1999. Successive democratic administrations made attempts to redress the repression and violations orchestrated by these military regimes. One prominent

⁵ The collapse of the Soviet Union brought about a wave of democratisation which swept around the continents of the world especially in Eastern Europe and Central America. This brought about significant phase of the subject of transitional justice in the late 1980s and early 1990s. The scope of transitional justice was broadened to include a shift from the international model of seeking justice for repressive acts of the past to domestic means of redress. This was particularly exemplified in the collapse of repressive military junta in Argentina after the Falklands /Malvinas War which transited the country to a democratic rule.

⁶ The unification of East and West Germany brought about the need to prosecute crimes committed in East Germany before the unification. Prominent among the trials is the trial of border guards responsible for killing East German citizens attempting to flee to West Germany.

⁷ In Chile, after the repressive military regime of Pinochet, blanket amnesty was granted to perpetrators of human rights abuses in the past regime.

⁸ The Czech Republic and Poland adopted lustration laws as a transitional justice measure in place of trials. In Czech Republic after a transition from communism to democratic rule, Public officers who had been involved with the Communist Secret Police were blacklisted from holding public office as a deterrent measure. In Poland, lustration was used as a policy to limit the participation of former communists and informant for the communist secret police informants in the civil service of the country as well as in government.

attempt made by the democratic government is the establishment of the Human Rights Violations Investigation Commission (HRVIC) in 1999 as a truth commission model in Nigeria. The HRVIC recorded relatively little success in its work and barely a little more than nothing was achieved with respect to national prosecutions in accounting for the atrocities of the military regimes.

It is the thrust of this paper that given the challenges and shortcomings of the measures thus far adopted, marked by the work of the HRVIC and few attempted prosecutions and reparations, there is the need to further employ transitional justice mechanisms to fully address the atrocities of the past. This is important in order to forestall the prevailing threat towards a repetition of the history of the repressive attitude of the past military regimes.

1.3 Research Questions

In the light of the repressive acts of the past military regimes, this paper examines the question: How has Nigeria dealt with the legacies of repression and massive abuse of human rights of the past successive military regimes in whole? Flowing from that question, other questions to be examined include the following:

- Which measures were taken by the new Nigerian government to address the human rights violations committed during the previous military regimes?
- How effective were the measures adopted so far taking into consideration the Nigerian context?
- Could more reparations and prosecutions address the shortcomings of these measures?

Overall, the study considers the significance of the Nigerian transitional justice model to the field of transitional justice in general.

1.4 Literature Review

Generally, there are a number of scholarly works in the field of transitional justice in general.⁹ Presently, there are, however, only a few chapters and articles which specifically discuss transitional justice in the context of the Nigerian post-military era.

Yusuf and Kukah¹⁰ focus on the challenges and the limitation of the work of the commission of the HRVIC. They conclude that the commission did not achieve as much as what was expected of it and this stemmed from the basis of its operation. The legality of the commission had not been properly settled and its mandate was too narrow to effectively cover areas of human rights abuses by the past military regimes.

This paper, while acknowledging the work of the authors with respect to the work of the HRVIC, examines transitional justice process in Nigeria in the light of the aftermath of the work of the HRVIC. In addition, the authors' focus on the work of the HRVIC leaves room for more research in other areas of transitional justice in the Nigerian context. None of the authors, for instance, considered the question of reparations or prosecutions as transitional justice measures applicable to the Nigerian context.

In the light of the above, this work attempts to contribute to the available literature on the topic of transitional justice with specific focus on the Nigerian model weighing the efficacy of the mechanisms adopted by the Nigerian post transition government.

⁹ Such literature include Teitel R *Transitional Justice* (2000) Kritz N J (ed) *Transitional Justice- How Emerging Democracies reckon With Former Regimes I* (1995) Olsen T D Payne L A & Reiter A G *Transitional Justice in Balance, Comparing processes, weighing efficacy* (2010).

¹⁰ Yusuf H *Travails of Truth: Achieving Justice for Victims of Impunity in Nigeria* (2007); Kukah M 'Peace Versus Justice? A view from Nigeria' in Sriram C L & Pillay S (eds) *Peace Versus Justice? The Dilemma of Transitional Justice in Africa* (2009).

1.5 Argument

This paper will show that Nigeria did not just emerge from several decades of repressive military regime without making an attempt to deal with the gross human rights abuses of the past. However, in the light of the historical political background, the measures adopted by Nigeria in confronting the past have not adequately dealt with the legacies of the military regimes. Prosecutions were highly selective and reparations did not focus on the victims as such.

Thus this study, after thoroughly scrutinising the measures taken so far by the Nigerian government, proposes more prosecutions in the light of the work of the HRVIC. In the same vein, a well-designed policy framework on reparations which focus on the victims is argued for as it is imperative for a successful transition.

1.6 Structure and Overview of the Chapters

Chapter one considers the problem which this paper aims to address and the specific importance of this study. It reviews the available literature on the work of the HRVIC and presents the perspective which the study takes of transitional justice in Nigeria and the methodology employed in carrying out the study.

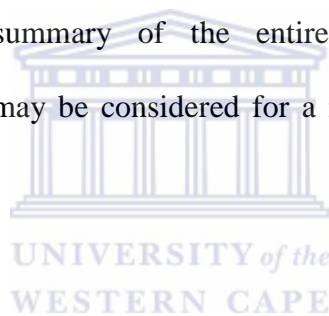
Chapter two gives a brief historical and political overview of the violent past of Nigeria. It examines the successive military regimes until 1999, bringing to the fore the various forms of repression and gross human rights violations which characterised the military regimes in Nigeria.

Chapter three examines briefly the concept of transitional justice and its mechanisms. It broadly examines the duty of Nigeria to prosecute human rights violations within its territory

and how compelling this duty is on Nigeria with respect to violations perpetrated by the past military regimes. This chapter then examines and evaluates prosecutions as a transitional justice mechanism in Nigeria.

Chapter four focuses on adjuncts to prosecutions which serve as transitional justice measures. This chapter examines the issues of reparations of victims of human rights violations of the military regimes in Nigeria. It considers in particular the rehabilitation programme of Niger-Delta militants as a form of reparative measure undertaken by the government. It also examines the case of Ken Saro Wiwa under the Alien Tort Claims Act before the US court in this context.

Chapter five gives a brief summary of the entire research and makes relevant recommendations on areas that may be considered for a more effective transitional justice process in Nigeria.



1.7 Research Methodology

This study is based on desktop research on the concept of transitional justice and available literature on the subject of the research. The study makes use of both primary and secondary sources of materials for example the 1999 Constitution of the Federal Republic of Nigeria and other sources of law, accessible reported cases, books, articles, chapters in books, electronically published articles and newspaper reports on the prosecutions carried out during the transitory period.

Chapter Two - Historical Background to the Political Transition of Nigeria in 1999

‘...historical understanding is not only a mirror on the past but also ...a guide to the future. [W]e must be prepared to confront this history, if we are to forge ahead. We need to understand it, even if it means asking unpleasant questions and offering blunt answers.’

- Justice Chukwudifu A. Oputa¹

2.1 Introduction

This chapter explores the political background to the transition from military dictatorship to democracy in Nigeria. It gives an overview of the history of Nigeria since independence, especially focusing on the Abacha regime and also examining the transitory programme of Gen. Abdusalami Abubakar in 1999. The chapter seeks to establish a basic understanding of Nigeria’s history of repression and gross human rights violations which demanded the operation of transitional justice mechanisms in the Nigerian context.

2.2 Military Regimes in Nigeria

2.2.1 The Political Landscape of Nigeria Before 1983

Nigeria, a former British colony, gained independence in 1960 and introduced a parliamentary system of government afterwards with the prime minister as the head of government and the president as the head of state.² The country operated as a federation of three major regions.³ Each region was occupied by one of the three predominant ethnic groups in the country.⁴ The political landscape of the country was structured along its

¹ Chairman’s Report on Human Right Violations Investigation Commission 59.

Available at <http://nigerianmuse.com/nigeriawatch/oputa/OputaVolumeOne.pdf>. (accessed August 2013)

² Aborisade O and Mundt R *Politics in Nigeria* (1998) 128.

³ Aborisade O and Mundt R (1998) 117. The three regions in Nigeria were Eastern, Northern and Western regions. Before independence, each region was dominated by three different and powerful political parties. The National Council of Nigeria and Cameroon (NCNC) dominated the Eastern region while the Nigerian Peoples’ Congress (NPC) dominated the Northern region and the Action Group (AG) dominated the western region of the country. *Historical Government in Nigeria*. Available at http://motherlandnigeria.com/govt_history.html. (accessed August 2013).

⁴ The Yoruba ethnic group occupied the Western region, the Eastern region was occupied by the Igbos and the Northern region the Hausas.

regional division where different regional political parties dominated.⁵ The country had both federal and regional governments with the federal government operating at the highest level of the hierarchy and strong regional governments which were semi-autonomous.⁶

At the regional level, each region had its own political structure and operated as a separate and distinct system of government from the central government, though not independent of it. Each region was headed by a premier and had separate legislative houses. The country operated under the 1960 Constitution which made provision for fundamental human rights of Nigerians which included civil and political rights⁷ and political representation at the federal level which operated on a regional basis. In the federal parliament, each region had its own representation based on its population.⁸ The Northern and the Eastern region each had representatives in the federal executive government. The prime minister was from the Northern region while the governor general was from the Eastern region. This representation was wrongly perceived by the Western region which did not only feel side-lined but also felt that the appointed prime minister would be controlled by the Northern region premier who was the leader of the NPC. This resulted in serious agitations from the western region led by Obafemi Awolowo, the regional premier.⁹ This marked the beginning of political breakdown in the Western region of the country which was heightened by the controversial trial and imprisonment of Obafemi Awolowo and subsequent appointment of a new premier Samuel Akintola who was perceived as a political ally of the Northern regional premier.¹⁰ The Western

⁵ Each political party adopted the ideologies and identity of each region. At independence, the NCNC and the NPC formed an alliance from which the prime minister and the governor general of the federation emerged.

⁶ Falola T and Ihonvbere J *'The Rise and Fall of Nigeria's Second Republic': 1979-84* (1985) 18.

⁷ Sections 24 and 37-38 of the 1960 Constitution of Nigeria.

⁸ The Northern region dominated the federal parliament and had more representation than the combination of the representation of the Western and Eastern region. The central government was thus dominated by the Northern region. Available at http://motherlandnigeria.com/govt_history.html.

¹⁰ The Northern regional premier was also a key leader of the ruling party at the federal level.

region subsequently split into two with the emergence of another political party, the Nigerian National Democratic Party.¹¹ Agitations by other ethnic groups which resented the ethnic based political structure of the regional government pervaded the country and launched it deeper into political crises.¹²

The 1963 population census result sparked off an even greater controversy at the regional level. The Northern region had an outrageously high population figure which was perceived by other regions as manipulated by the federal executive to favour its representation in the federal government.¹³ This had a serious impact on the 1964 election as people from the Eastern region as well as other parties boycotted the elections and the results were rejected by a vast majority of people from the region. In response, the president called for another election in the Eastern region only in 1965 to be supervised by the army while the prime minister had the option of forming a new government. The rescheduled election was violent while crises in the Western region persisted unabated as the newly emerged political party received limited support. Election in the Western region was marked by massive violence between parties and their supporters and this continued to threaten the Western regional government. The fact that the federal government could not suppress the various regional

¹¹ The Nigerian National Democratic Party (NNDP) is a fraction of party members of the AG who broke away in support of Akintola. The NNDP later formed alliance with the NPC to form the National Nigerian Alliance (NNA) in the 1964 elections. The agitation by the non- Yoruba ethnic group of the Western region led to the creation of the Mid-Western region and Dennis Osadebey was appointed as the premier of the region. Another party sprung up, the United Progressive Grand Alliance (UPGA) which was a coalition of the NCNC and the AG. The country's politics swayed between these two opposing alliances. Available at http://motherlandnigeria.com/govt_history.html.

¹² One of the prominent agitations which left an indelible effect on the country was the one led by the United Middle Belt Congress which composed of the Tiv ethnic group in the Northern region. A riot between the group and the supporters of NPC following the election result at independence resulted into violence which accounted for an estimated number of 30,000 people in the region. Available at http://motherlandnigeria.com/govt_history.html.

¹³ Aborisade O and Mundt R (1998) 14.

crises greatly diminished public confidence in the government and there was even a clamour for the intervention of the Nigerian army.¹⁴

In January 1966, amid the prevalent political crises in the country, military army officers who were mainly from the Eastern region of the country overthrew the government in a bloody military coup. The prime minister was murdered along with the regional governors of the Northern and Western regions and some cabinet members of the federal executive, sparing the President who was at that time outside the country.¹⁵ This was the beginning of a series of military coups in the Nigerian political history which the country witnessed in the following decades.

The 1966 military coup led to the introduction of a military regime to the Nigerian political system. Aguyi Ironsi became the first military 'president' of the country and promised to put an end to the violence in the country and return to civilian rule based on free and fair elections. He suspended the regional governments and dissolved all legislative bodies, banned political parties, and instituted a federal military government that occupied a central position in the country. Decisions were made by decrees which suspended the Constitution and ousted the jurisdiction of the Courts.¹⁶ The judiciary was deferent of these military decrees and upheld the new legal order in which repressive military decrees overrode the provisions of the Constitution.

¹⁴ This call was made with the hope that peace will be restored just as it was in the earlier attempt during the Western region crises in 1962 -1963 when the federal government had declared a state of emergency in the region and the military was deployed to the region to quell the violence in the region. Available at http://motherlandnigeria.com/govt_history.html.

¹⁵ Aborisade O and Mundt R (1998) 15.

¹⁶ The Constitution (Suspension and Modification) Decree 1 of 1966; State Security (Detention of Persons) Decree 3 of 1966 and Public Order and Security Decree 34 of 1966 were some of these decrees. These three decrees subsisted in varying forms throughout subsequent military interventions in Nigerian politics.

The regime later abolished federation as a system of government and adopted a unified system of government with a strong central political leadership. Aguyi's regime was greatly criticised, first for favouring the Igbos from the Eastern region over indigenous groups from other regions and also for refusing to prosecute those who had killed political leaders in the North.¹⁷ This set the basis for another military intervention: Aguyi's military regime in the end was short-lived and overthrown by another military coup in July 1966. Aguyi himself was assassinated along with other Igbo officials who had been part of his government.

After the military coup of July 1966 Gowon, a military officer from the Northern region became head of the federal military government even though he had not been part of the coup. He restored federalism and regional based administration of government; each region now had a regional administrator. He also released the erstwhile premier of the Western region who had been imprisoned before the collapse of the civilian government in Nigeria, made promises to restore civilian rule in the country and made a move to divide the country into states out of the previously existing regions.¹⁸

The Eastern regional governor however felt threatened by this move and thus resisted and declared the region as a separate and independent republic referred to as the Republic of Biafra. This declaration was seen as an attempt to secede from the country and was vehemently opposed by the central military government. This resulted in a civil war between the country and the proposed Biafra republic in June 1967 which lasted until the surrender of the region in January 1970. The war left the entire country greatly devastated with an

¹⁷ Aborisade O and Mundt R (1998) 18. It was generally perceived in the Northern region that the coup was to strip the Northern region of its political influence and make the Igbos from the Eastern region dominant in the country's politics. This resulted in a political rift between the dominant ethnic groups from the two regions.

¹⁸ Falola T and Ihonvbere (1985) 20; Daily Times 15 February 1966 4; Aborisade O & Mundt R (1998) 19.

estimated loss of over a million people.¹⁹ The ensuing years were spent in various attempts at re-integration and reconstruction in the Eastern region by Gowon.

When the Gowon military administration failed in its promise to secure a civilian administration for the country²⁰, in July 1975 his administration was overthrown in a non-bloody military coup and Muritala Mohammed became the military leader of the country. His administration vigorously pursued the establishment of a democratic government. In 1975, the Constitution Drafting Committee (CDC) was established to draft a constitution for the country.²¹ His administration was notable for the various policies against corruption in the civil service, the judiciary and other sectors of the country. He was, however, assassinated in an abortive coup in February 1976, after which Obasanjo became the military administrator of the country. He followed up on the programmes of the Muritala administration, however, his government was characterised by restriction of political opposition, banning of union activities among other repressive acts. In 1978, a new Constitution had been adopted and replaced that of 1963.²² The country returned to a civilian regime after the elections in 1979 in which Shehu Shagari was democratically elected as the president of the country for a term of four years based on the provisions of the 1979 Constitution.²³

The democratic system of government, however, was short-lived when the country was plunged again into military regime following the outcome of the elections in 1983.²⁴ The

¹⁹ Aborisade O and Mundt R (1998) 20-21.

²⁰ Falola T and Ihonvbere J (1985) 21. The programme designed by Gowon to hand over power to a democratically elected government was not implemented till 1974, his administration then began to receive criticisms from the media and opposition to his regime. 'Gowon became extremely repressive employing all available coercive weapons to deal with critics whom he treated as subversive agents'.

²¹ Aborisade and Mundt (1998) 22.

²² This constitution is referred to in this chapter as 'the constitution'.

²³ Falola T and Ihonvbere J (1985) 32.

²⁴ Shehu Shagari had completed his four-year term as the president in 1983 and election were held subsequently as provided by the 1979 constitution. Shehu Shagari emerged as the winner of the elections in the result of the elections against his opponent Obafemi Awolowo.

administration itself had its own shortcomings.²⁵ It was widely perceived that the election was marred with rigging. The result was contested in Court and Shehu Shagari was declared the winner of the election which stirred another series of widespread controversy in the country.²⁶ The fall out of the decision was violence in several parts of the country and this set the stage for the military intervention in December 1983.²⁷

2.2.2 Military Regimes: 1983 – 1993

The 1983 military coup upturned the second term of Shehu Shagari, and Muhammadu Buhari was appointed by the military as the new military administrator of the country. The intervention of the military at the time was largely accepted and seen as needed by many Nigerians. The new administration like others before it made a promise to return the country to a civilian regime. Buhari's regime was, however, notorious not only for its policy on discipline in the public service and economic policies but also for its involvement in serious human rights violations. The restriction of press freedom, the banning of several organisations and the suppression of political opposition were hallmarks of the regime among several other human rights abuses. Buhari's policies enjoyed more criticisms than support because of the economic hardship it created in the country thus paving way for the coup of 1985 which overthrew his government.

The 1985 coup was alleged to be in response to the human rights violations of Buhari's administration but this was far from reality as greater human rights abuses were perpetrated

Available at http://motherlandnigeria.com/govt_history.html. (accessed August 2013)

²⁵ Falola T and Ihonvbere J (1985) 159. State response to the nationwide strike of 1981 by the Nigerian Labour congress in demand was Repression and arrest of workers who had protested against the Essential Services Decree no 35 of the 1975 prescribed a death penalty or imprisonment of not less than 21 years for participating in industrial actions.

²⁶ Falola T and Ihonvbere J (1985) 230.

²⁷ It is popularly believed that there was an attempted coup by Buka Mandara of the Nigerian army in 1982 which was however unsuccessful. More so, Shehu Shagari's administration had been levelled with allegations of corruption, mismanagement of public funds and other flaw identified with his administration. Available at http://motherlandnigeria.com/govt_history.html.

by Babaginda's military administration. Babaginda became the military head of state after the coup which ended the Buhari administration in which he was the chief of army staff. Babaginda perpetrated human rights violations which even outweighed that of the previous military regimes. Several obnoxious decrees were made to crush political opposition and press. These decrees permitted the perpetration of various oppressive acts and ousted the jurisdiction of any court to question the provisions of the decrees. Several attempted coups made by different military officers to overturn Babaginda's administration were largely unsuccessful. Military officers and their collaborators responsible for the attempted coups were summarily executed by the Babaginda administration.

In 1990, a Constitution was drafted in a bid to demonstrate the will to return to civilian regime, but this remained non-operative. Public pressure mounted on the federal government forced it to conduct the elections of 1992 in order to hand over to a democratic government. The elections were conducted against widespread speculations that the government was unwilling to hand over power to a democratically elected government. These speculations turned out to be in fact true, no sooner had the election results announced that the federal government annulled the elections and proposed fresh elections.²⁸ In 1993, another election was held and the results were announced with Moshood Abiola emerging as the winner of the elections. However, Babaginda made fresh allegations of fraud and annulled again the elections.²⁹

²⁸ The federal government alleged fraud at the general elections of 1993 and thus proposed fresh election for another year. This was generally perceived as a delay tactics by the federal government and unwillingness of the Babaginda military administration to hand over government to a civilian.

²⁹ Contrary to the purported allegation of the federal military government of Babaginda, the 1993 elections till date is generally perceived as the first free and fair elections held in Nigerian political history and the results were widely supported as a true reflection of the will of Nigerian populace. Thus, it became clear that the federal military government was not only unwilling to hand over government but was also ready to frustrate any attempt at transiting the country to democracy. Available at http://motherlandnigeria.com/govt_history.html.

This sparked off one of the largest social unrests in the country. There was nationwide demonstration and protest in several states of the country by human rights activist and supporters of democracy. The federal military government, however, responded by suppressing these demonstrations, killing hundreds of protesters and shutting down several opposition newspaper companies, but this did not quell public opposition and protest. On August 27 1993, Babaginda left office amidst heightened pressure and appointed Ernest Shonekan, a civilian, as the leader of the Interim National Government (ING).³⁰ The ING only lasted three months, when Abacha, one of the cabinet ministers during Babaginda's regime, executed a military coup in November 1993 which overthrew the interim government and returned the country to full military government.

2.2.3 Abacha's Military Regime: 1993 - 1998

Abacha became the 7th military head of state in Nigeria. His rule is particularly significant because of its notoriety, especially in the international community, for gross human rights violations. At first, he suspended the Constitution and all elected institutions including the national and the states houses of assembly, then, he banned all political activities and suppressed every form of independent press activity. He promised just like past military leaders in Nigeria to return the country to a democratic regime through free and fair elections within two years of his regime. This proposition was, however, far from the reality, as Abacha's regime employed similar tactics to that of the Babaginda regime to frustrate such transition. Abacha's regime violently suppressed any perceived political opposition.³¹

³⁰ The ING was instituted by Babaginda's regime in place of proper hand over to a democratic elected government. The purpose of the interim government remained unclear while Babaginda described himself to have 'stepped aside' a phrase which has been widely interpreted to mean that he probably still had interest in regaining control of the country.

³¹ In 1994, Wole Soyinka a professor and human rights activist who was a strong opposition to the human rights abuses of the Abacha regime was to be arrested but he fled the country when he got a hint of the arrest. He was

In 1994, Abiola, the announced winner of the 1993 annulled election, was charged with treason after he had declared himself president over a particular region of the country and subsequently imprisoned by Abacha's military regime. In 1995, Abacha announced a three year programme designed for transition to democratic rule as a follow up on his promise. An abortive coup against the Abacha regime in 1995 sent Obasanjo and Shehu Musa Yar'Adua, who were alleged coup plotters, to 25 years imprisonment. While Yar'Adua died in prison Obasanjo remained in prison during the rest of Abacha's regime.³² Human rights abuses during Abacha's regime were particularly marked by unlawful arrest, trial and imprisonment of human rights activist by a special military tribunal with capital sanctions such as life imprisonment and death penalty.³³ Kudirat Abiola, who was the wife of Abiola, also became a victim of this policy. Subsequent to the imprisonment of her husband she started a campaign against the human rights violations of the military regime and military decrees banning political activities through public rallies and advocated for democracy. In June 1996, she was assassinated, and it was generally believed as political assassination sponsored by the Abacha military regime. Kudirat's assassination was, however, only one out of many political assassinations carried out by the Abacha military.³⁴

The Ogoni people, who occupy the South –South geographical region of the country and had been subject to human rights violations since the exploration of oil began in the region in 1958, had in particular been object of attacks by the regime. Babaginda's regime had been

however subsequently charged for treason in absentia. He remained in exile during Abacha's regime as treason was punishable with death.

³² Also available at http://motherlandnigeria.com/govt_history.html.

³³ Usually such trials are for offences such as treason and other offences perceived to be committed against the state. Beko Ransome Kuti, one of the prominent human rights activists was charged with treason and subsequently sentenced to life imprisonment but in 1995 it later reduced to 15 years imprisonment amidst protest by Amnesty International. Ogbondah C W Political Repression in Nigeria, 1993-1998: A Critical Examination of One Aspect of the Perils of Military Dictatorship (2000) 233.

³⁴ Available at http://motherlandnigeria.com/govt_history.html.

notorious for using armed military personnel to brutally suppress, through torture and other inhumane treatment, agitations of the communities against oil spillage and other environmental damage caused by multinational companies that explored oil.³⁵ However the high point of these human rights violations was during Abacha's regime. Agitations from the region had increased and led to the creation of the MOSOP³⁶, an organisation which was formed to advocate for the rights of the people in the region. In 1995, one of the foremost leaders of MOSOP, Ken Saro Wiwa, and eight other leaders were arrested by the Abacha forces and were charged with conspiracy to kill political opponents. This allegation was widely believed to be untrue; the 'Ogoni-Nine' as it turned out subsequently, were rather arrested for their activities against the human rights violations in their region. The Ogoni-Nine were sentenced to death after a summary trial. Despite the fact that the international community decried this decision, they were executed the same year.

This action led to suspension of the country from the Commonwealth of Nations. In addition, there were several calls for international sanctions against Nigeria especially with regard to the oil from Nigeria which was the major source of the country's foreign exchange.³⁷ This had a terrible effect on the already depressed economy and the international image of the country. Abacha's regime made attempt to redeem the image of the country through various regional peacekeeping missions in Liberia and Sierra Leone. In addition, Abacha scheduled fresh elections for transition to a democratic government and made himself candidate for

³⁵ In 1993, 300 000 Ogoni people had a peaceful protest against the human rights violations in their region especially the serious environmental damage caused by the activities of the multinational oil companies operating in that region. S Cayford *The Ogoni Uprising: Human Rights and a democratic Alternative in Nigeria* Africa Today Vol. 43 No.2 (1996) 189.

³⁶ MOSOP- Movement for the Survival of the Ogoni People- was formed as a group of human rights activists which advocated for environmental remediation and monetary compensations for past damage.

³⁷ United Nations General assembly Resolution A/RES/50/1995; In 1996 Amnesty International launched a worldwide campaign against human right violations. Nigeria Amnesty international statement- 11/08/96 Available at http://www.africa.upenn.edu/Urgent_Action/apic_11896.html (accessed September 2013)

presidential elections. Even though at first, these attempts restored hopes of many Nigerians that the country may return to a democratic regime, it did not achieve much. The human rights abuses persisted even on a higher scale. In addition, these hopes were dashed when it became clearer that Abacha maintained sole candidacy for the presidency without any opposition.³⁸

In 1997, another coup was launched against Abacha's regime but was unsuccessful and the alleged coup plotters were immediately imprisoned. Subsequently, the alleged coup leader along with four other military officers and a civilian were sentenced to death while others were sentenced to various terms of imprisonment.³⁹

Meanwhile, Abacha established three different agencies under different military decrees in pursuit of his transition agenda. He established the Transition Implementation Committee (TIC), the Committee on Devolution of Powers (CDP), and the National Reconciliation Committee (NARECOM) in this light.⁴⁰

Finally, Elections to a democratic regime were scheduled for the August 1998 and commenced in October 1998 with Abacha maintaining sole candidacy for presidency. He, however, died while in office on June 8 1998 before the scheduled elections.

2.2.4 Transitory Military Government of Gen. Abudulsalami Abubakar from 9 June 1998- 29 May 1999

Abudulsalami Abubakar became the head of state after the death of Abacha in June 1998 and set up a transition programme to a democratic government disregarding the one designed by

³⁸ This caused uprising in several parts of the country which resulted in violence and killings.

³⁹ The alleged coup was widely believed to have been a set up by the regime to implicate the alleged leader of the coup, Oladipo Diya. Available at http://motherlandnigeria.com/govt_history.html.

⁴⁰ Ogbondah C W Political Repression in Nigeria, 1993-1998: A Critical Examination of One Aspect of the Perils of Military Dictatorship (2000) 232.

Abacha. He initially intended to follow the scheduled date of return the country to democratic rule by October 1998 but when this became infeasible, May 1999 was fixed as the date of transition.

At first, Abubakar released some of the political prisoners who had been incarcerated under previous military regimes, especially under Abacha's, and also invited those who had gone on exile to return to the country to foster the transition programme.⁴¹ However, some of the prominent human rights activist and political opponents of the military regime were not immediately released even though there was a general demand from the population for their release especially of Abiola, the winner of the annulled election of June 1993, and his instalment as the president of the country since he won the last election.⁴² Abubakar, however, did not subscribe to the view of installing Abiola as the president of the country, instead he appealed that the past be forgotten and called for a new transition programme which should provide equality for all.⁴³ Abiola, however, died while he was still in prison in July 1998. His death was attributed to his bad health condition after suspicion was raised as to the cause of his death and a call for inquiry by the public.⁴⁴

⁴¹ Abubakar Abudulsalami Association of Nigerian Scholars for Dialogue, *My Transition Agenda for Development, A Text of Speech to the Nigerian Nation*, available at http://www.waado.org/nigerian_scholars/archive/docum/genabdu.html (accessed August 2013).

⁴² Available at http://motherlandnigeria.com/govt_history.html.

⁴³ In his speech on the transition programme on 20 July 1998. 'Abubakar sought reconciliation. He stated that 'The June 12 presidential election and the controversial events preceding it were unfortunate in our political history. We cannot pretend that they did not happen. Yet we must accept that elections had similarly been cancelled in earlier situations. Equally more important, fully elected governments have been toppled. A call to return to the past is not helpful as it will be neither just nor fair, nor even practicable.' Abubakar Abudulsalami's Speech

Available at http://www.waado.org/nigerian_scholars/archive/docum/genabdu.html (accessed August 2013).

⁴⁴ Available at http://motherlandnigeria.com/govt_history.html.

On the recommendation of the Human Rights Commission (HRC), Abubakar also repealed repressive military decrees⁴⁵ which were in violation of international human rights laws and which had made it possible for political opponents to be incarcerated without fair trial. The HRC had been established under Abacha's regime to deal with all human rights issues in line with international human rights provisions to which Nigeria was signatory.⁴⁶ The Commission, however, was heavily criticised for lack of accessibility.⁴⁷

2.3 The Transition to the Democratic Government of 1999

Following the new transition programme elections were held in 1998/1999 and in May 1999 an elected democratic government was installed in Nigeria. Obasanjo, a former military president, became the first civilian president after Nigeria's long history of military regimes. The Human Rights Commission which had no constitutional status under the democratic government had set out plans to improve the human rights regime in Nigeria. The commission visited the South-South region of the country and submitted its report and proposals to the government on issues of human rights in the region and judicial reforms.

The democratic dispensation expressed its dedication to respect the rule of law, investigate past human rights abuses following the South African example and make accountable perpetrators of human rights abuses. Since 1999, Nigeria has been under a democratic regime.

⁴⁵ Some of the military decrees are the State Security (Detention of Persons) Decree No. 2 of 1984 and No. 11 of 1994 which authorizes arbitrary and indefinite detention of any citizen; treason and other Offences (Special In all about 31, decrees were repealed which includes Treason and Other Offences (Special Military Tribunal) decree No.1 of 1986 which established special military tribunal that conducted unfair trials and executed over 70 armed officers and imprisoned several others as political prisoners Offensive Publications (Proscription) Decree No. 35 of 1993 which allows the state to seize any publication that offends the government, Treason and Treasonable Offenses Decree No. 29 of 1993 which provided power of military tribunals to impose life sentences on political opponents.

⁴⁶ Sec. 5 of Decree No. 22 of 1995.

⁴⁷ Reparations for Torture: A Survey of Law and Practice in 30 Selected Countries: Nigeria (2003) 5. Available at <http://www.redress.org/africa/nigeria>. (accessed September 2013).

2.4 Conclusions

When the military seized power in 1966, there was a general feeling in the country that it was motivated by altruistic intentions and objectives to save the country from descent into political chaos and instability.⁴⁸ However, this turned out to be largely untrue as the foreboding could be perceived even from the very first military regime. Massive human rights violations and repressive government policies became the signature of the successive decades of military regime which chunked a large period of the country's existence.⁴⁹

Overall, the political history of Nigeria reveals a long history of military intervention in government marred with gross human rights violations. These military regimes were marked by total breakdown of the criminal justice system, suspension of the constitution, promulgation of repressive decrees, absence of the rule of law and ousting the jurisdiction of the courts. Torture, systematic killing and incarceration of political opponents, abduction, suppression of the free press human rights organisations and unions, looting of public funds and money laundering were the hallmarks of these military regimes.

These atrocities were state sponsored and perpetrated through government agencies mainly through the police and members of the armed forces. During the Babaginda and Abacha regimes (1985-1998) the military personnel operating under the State Security Services and the directorate of Military Intelligence were used to carry out these atrocities.

⁴⁸ HVRIC Report. Available at <http://nigerianmuse.com/nigeriawatch/oputa/> (accessed August 2013).

⁴⁹ The high water mark of the struggle against military rule in Nigeria was the 'return to democratic civilian rule on 29 May 1999, symbolizes and marks the return to the project of the three Rs (Rehabilitation, Reconstruction and Reconciliation), which the military enunciated after the end of the civil war in January 1970.' – Justice Chukwudifu A. Oputa HVRIC Report. Available at <http://nigerianmuse.com/nigeriawatch/oputa/>.

Given the long history of military regime in Nigeria, the question arises how Nigeria has handled this past legacy of gross human rights abuses after the transition. This question will be analysed in the following chapters.



Chapter Three - The Concept of Transitional Justice in the Nigerian Context: Investigation and Prosecution of Gross Human Rights Violations

‘The adequate investigation of human rights violations is essential if the full truth is to emerge. Victims ... and society at large all have an interest in knowing the truth about past abuses and in the clarification of unresolved human rights crimes. Similarly, bringing the perpetrators to justice would send a clear message that such violations will not be tolerated in the future and that those who commit such acts will be held fully accountable.’

– Amnesty International¹

3.1 Introduction

Transitional justice deals with how a society reckons with the past human rights abuses committed by predecessor regimes or during a conflict.² This chapter examines briefly the concept of transitional justice and its mechanisms. It considers the work of the Human Rights Violations Investigation Commission (HRVIC) as a significant transitional justice measure in Nigeria. While this paper does not constitute an in-depth study of the work of the HRVIC, its work is pivotal to the consideration of transitional justice in Nigeria. In addition, this chapter examines prosecutions as a mechanism for redress of the human rights abuses of the past military regimes in Nigeria.

3.2 Definitional and Structural Conception of Transitional Justice

The concept of transitional justice entails how a society confronts human rights abuses of the past, thus paving the way for a society ordered on an established system of rule of law and respect for human rights.³ Transitional justice is a conception of justice that is associated, as

¹ Nigeria: Time for Justice and Accountability (2000) 16. Available at www.amnesty.org/en/library/info/AFR44/014/2000 (accessed September 2013).

² Roht Arriaza N ‘The new landscape of Transitional Justice’ in Roht-Arriaza N and Mariezurrena J (eds.) *Transitional Justice in the twenty-first Century: Beyond Truth Versus Justice*,(2006) 2; also defined as associated with periods of political change [and aimed at confronting] the wrong doings of repressive predecessor regimes.’ Teitel R *Transitional Justice* (2000) 69.

³ ‘Without a proper engagement with the past and the institutionalisation of remembrance, societies are condemned to repeat, re-enact and relive the horror. Forgetting is not good strategy for societies transiting from

the name indicates, with a period of transition. Such transition could be after a period of repressive regime, conflict or civil strife.⁴ In this sense it has been said that

‘[t]ransitional justice is not a “special” kind of justice, but an approach to achieving justice in times of transition from conflict and/or state repression. By trying to achieve accountability and redressing victims, transitional justice provides recognition of the rights of victims promotes civic trust and strengthens the democratic rule of law.’⁵

Transitional justice may, therefore, be achieved in two forms: retributive and restorative justice. While retributive justice focuses on the perpetrators and on bringing them to account for their past misdeeds, restorative justice focuses on the victims and redressing the damage suffered from the past abuses through restoration or compensation. Certain mechanisms have been recognised as means of achieving transitional justice and these include prosecutions, truth commissions, amnesty, reparations and lustrations.⁶

The mechanisms of transitional justice mainly engage violations of civil and political rights and may not necessarily involve violations of economic and social rights. Thus, it excludes criminal acts such as misappropriation of public funds, fraud, embezzlement, money laundering and corruption among other economic crimes. In this context, this paper does not constitute an examination of the economic crimes committed by the previous military regimes. Even though it is important to state that it constitutes one of the major concerns of the successive government because of its impact on the human rights during the military regimes.

a minimally decent condition’ – Bhargava R ‘Restoring Decency to Barbaric Societies’ in Rotberg R & Thompson D ed. *Truth Versus Justice: The Morality of Truth Commissions* 54.

⁴ As in note 2 above Roht-Arriaza N.

⁵ ICTJ- What is Transitional Justice? Available at <http://ictj.org/about/transitional-justice> (accessed September 2013); N Roht-Arriaza (2006) 12-13.

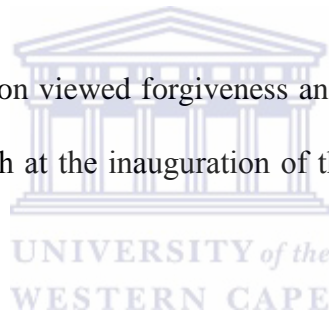
⁶ ICTJ-The Element of a Comprehensive Transitional Justice Mechanism. Available at <http://ictj.org/about/transitional-justice> (accessed September 2013).

3.3 The Human Rights Violations Investigation Commission ('Oputa Panel')

In the Nigerian context, first steps towards the employment of transitional justice mechanisms had already been initiated by the Abubakar regime when he repealed many of the repressive military decrees. Later, President Obasanjo⁷ in his inaugural speech expressed his commitment to combat impunity for perpetrators of human rights violations and to reform and strengthen the criminal justice system. For this purpose, the Human Rights Violations Investigation Commission was established by the federal government as a model of truth commission to investigate and redress past human rights abuses.⁸ Its main mandate was

‘to establish the causes, nature, and extent of human rights violations between 15 January 1966 and 28 May 1999, to identify perpetrators, determine the role of the state in the violations and to recommend means to pursue justice and prevent future abuses.’⁹

With this mandate the Commission viewed forgiveness and reconciliation as part of its goal drawing on the president’s speech at the inauguration of the commission which emphasised reconciliation.¹⁰



The chairman of the HRVIC was Justice Chukwudifu Oputa and seven other members were appointed by the president.¹¹ The Commission had a one year-mandate which was extended and eventually took twenty-eight months. It received about 11,000 petitions from victims and survivors of human rights abuses across the country out of which 150 cases considered to be very serious were selected for hearing. Hearings were conducted in public sessions held in

⁷ All references made to the president in this section refer to Obasanjo, the democratic president of Nigeria (1999-2007).

⁸ The Commission also referred to as HRVIC/Oputa Panel in this essay was established under Statutory Instrument No. 8 of 1999. The terms or reference of the panel was later amended by the Statutory Instrument No. 13 of 1999.

⁹ HRVIC Report Vol. 1 29.

¹⁰ HVRIC Report: Synoptic Overview 9. Available at

<http://www.justiceinperspective.org.za/images/nigeria/Nigeria%20Oputa%20Recommendations.pdf> (accessed September 2013). President Inaugural Address 14 June 1999 at the State House Abuja 1-2.

¹¹ The Chairman was a retired Justice of the Supreme Court of Nigeria and other members as distinguished individuals both in the Nigerian judiciary and other disciplines.

five different cities¹² to ensure ease of access across the country. The Commission had subpoena powers and petitioners could have legal representation. The Commission received evidence of human rights violations such as torture and extrajudicial executions.

The HRVIC experienced both challenges and successes. The Commission had limited resources to carry out independent investigations and received limited international support.¹³ Past military heads of states and members of the military ruling class summoned by the Commission failed to appear before it. The establishment of the Commission was even challenged as unconstitutional by some of the past military leaders, who had refused to appear before it.¹⁴ It is, however, notable that the Nigerian president Obasanjo, who was once a military head of state, appeared before the Commission to give evidence.

In the midst of the challenges, the Commission concluded its work and submitted its report to the president in May 2002 which was, however, never officially released. Initially the president inaugurated an implementation committee upon the receipt of the report in June 2002 to begin the process of implementation but this was later dismissed on the ground that the legality of the Commission had been challenged in the courts.¹⁵ The Supreme Court (SC)¹⁶ had held that the Commission was not established by the appropriate authority.¹⁷ There have been contentions as to the true effect of the decision of the SC¹⁸ but it is apposite to state that the decision of the federal government not to release or implement the report

¹² Abuja, Lagos, Enugu, Port-Harcourt and Kano.

¹³ Yusuf H O 'Travails of justice: Achieving Justice for the Victims of Impunity in Nigeria' (2007) 282.

¹⁴ Brigadier Kunle Togun (Rtd.) V. Justice Chukwudifu Oputa (Rtd.) and 3 ORS (2001) 16 NWLR pt (740) 577.

¹⁵ The Guardian Newspaper 18 September 2001 Available at <http://allafrica.com/stories/200109180027.html> (Accessed October 2013). The Implementation Committee had eight members headed by Elizabeth Pam. It concluded its work and submitted its report to the government three months after its establishment which was before the decision of the Supreme Court.

¹⁶ The SC is the apex court in the country with the final decision in any matter.

¹⁷ Fawehinmi V. Babaginda (2003) NWLR pt (808) 604. The SC relied on the provisions of Tribunals of Inquiry Act CAP 447 and 1999 Constitution.

¹⁸ Yusuf H O (2007) 284.

based on this decision is quite pretentious. The report had been submitted since 2002 and the decision of the SC was in 2003 and the decision did not restrain the government from implementing the recommendations.¹⁹

The report was, however, unofficially published by a civil society.²⁰ Therefore, its content is widely known today, despite the decision of the Court against the legality of the Commission.

Despite its challenges, the HRVIC contributed to reconciliation of warring communities, among others of the Maroko in Lagos State and the Ife and Modakeke in Osun state.²¹ The Commission established that the military was responsible for gross human rights violations as well as some state counsels in the Ministry of Justice in order to protect perpetrators in certain named cases.²² It identified direct perpetrators in certain cases and recommended further investigations and subsequent prosecution of alleged perpetrators.²³ It also recommended reparations for victims of human right violations in the country and reform of armed forces, the military intelligence and the police.²⁴ Over 35 cases were forwarded to the Inspector General of Police for further investigations and subsequent prosecution where necessary.²⁵ This figure is an indicator of the potential number of cases which ought to go to trial based on the work of the Commission. The question that remains pertinent, however, is: does Nigeria have the duty to prosecute these cases? If Nigeria has a duty to prosecute, how well has Nigeria fulfilled this duty?

¹⁹ Falana F 'The Oputa Panel report' Guardian Newspaper 8 January 2005. Available at <http://www.dawodu.com/falana2.htm> (accessed September 2013).

²⁰ Nigeria Muse available at <http://nigerianmuse.com/nigeriawatch/oputa/> (accessed October 2013).

²¹ HVRIC Report: Synoptic Overview 9.

²² HVRIC Report: Vol. 7 Summary Conclusion and Recommendations 32.

²³ HVRIC Report: Vol. 7 34-35; 53; 68.

²⁴ HVRIC Report: Vol. 6 Reparations Restitution and Compensation 47.

²⁵ HVRIC Report: (note 23).

3.4 Prosecutions as a Transitional Justice Measure

Prosecution as a transitional justice mechanism seeks to bring perpetrators of past abuses to account for their misdeeds. This is usually pursued through the criminal justice system and could be at the national or international levels. Prosecution in this sense encompasses criminal investigation, trial and sentencing of alleged perpetrators of such abuses. In this regard, questions such as whom to prosecute and the legal basis for prosecutions become paramount.

3.4.1 The Duty to Prosecute

Constitutional Obligation to Prosecute

The adoption of the new Constitution on 29 May 1999 by the newly elected democratic government served as the legal basis for measures to confront the past.²⁶ Chapter Four of the Constitution provides and guarantees fundamental human rights ranging from right to life to right to freedom of expression and provides for redress for any violation of such right which is largely in form of prosecution. The remedies available could be monetary compensation or any order the court deems fit considering the extent of injury suffered by the victim. Other remedies could be common law damages for tortuous acts such as assault and battery.²⁷ This significantly reflects a different disposition to human rights as opposed to what obtained during the military regimes. The obligation to prosecute is inferred from the duty to guarantee and protect the rights provided in the Constitution.²⁸

²⁶ This is without prejudice to criticisms as to the legality of the 1999 Constitution. It is argued that the Constitution was a hasty decision of the Provisional Military Council of Abubakar's transitory government just three months to transition. - Diala A 'The Dawn of Constitutionalism in Nigeria' in Mbondenyi M and Ojienda T (eds.) *Constitutionalism and Democratic Governance in Africa: Contemporary Perspectives from Sub-Saharan Africa* (2013) 157; 161

²⁷ Sec. 46 of the 1999 Constitution.

²⁸ Often this provision of the Constitution is interpreted in favour of civil litigation in order for victims of human rights to obtain remedies than with respect to criminal prosecution of perpetrators of human rights violations.

Obligation to Prosecute under International Law

The duty to prosecute certain human rights violations is generally provided for by various international treaties.²⁹ These treaties are limited to cases of genocide, torture and war crimes. However, the duty to prosecute human rights violations can be inferred from Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) which provides for the duty of a state to give remedy to victims of human rights violations from which duty to prosecute violations of human rights can be inferred from this duty. Generally, under the African Charter of Human and Peoples' Rights the duty to prosecute can be inferred from the provisions of Article 7. Specifically Article 26 of the Charter provide for the duty to guarantee the independence of Courts to ensure promotion and protection of human rights by state parties.

Flowing from the above provisions, Nigeria has a duty to prosecute human rights violations within its territory in fulfilment of its obligations under the treaties to which Nigeria is a party. These are the four Geneva Conventions, the ICCPR, the Torture Convention (which Nigeria ratified in 2001), the African Charter on Human and Peoples' Rights 1981(to which Nigeria has been a state party since 1982).

However, this provision can also be interpreted to imply criminal prosecution especially in the light of international obligations to prosecute.

²⁹The duty to prosecute by state is broadly provided for in articles IV-VI of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 for genocide; Articles 50 51 130 and 147 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva Convention I); Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at the Sea (Geneva Convention II); Geneva Convention Relative to the Treatment of Prisoners of War (Geneva Convention III); Geneva Convention Relative to the protection of Civilian Persons in Time of War (Geneva Convention IV) of 12 August 1949 and Article 7 of the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment of 10 December 1984. Article 2(1) of the European Convention for the Protection of Human Rights and Fundamental Freedom of 4 November 1950 also provide for the duty to protect the right to life while Article 2(1) of the International Covenant on Civil and Political Rights of 16 December 1966 provide for the duty of a state to give remedy to victims of human rights violations from which the duty to prosecute violations of human rights is derived. The duty to prosecute is also inferred from the article 26 of the African Charter on Human and Peoples' Rights of June 1981.

3.4.2 Prosecutions as a Transitional Justice Mechanism in Nigeria

The duty to prosecute human rights violations as torture, inhumane treatment and extrajudicial killings which constitute the hallmarks of past military regimes is, therefore, foreseen by both national and international provisions. The essence of prosecution is to make the perpetrators individually accountable for their atrocities as well as achieve justice for the victims of their actions. However, in Nigeria very little has been done with respect to prosecution of the perpetrators for human right abuses in the past military regimes neither has amnesty been formally granted to the perpetrators. The few trials which were initiated immediately after transition are discussed subsequently.

While the HRVIC conducted its investigations, three major trials were initiated against some of the alleged perpetrators of human rights violations in October 1999. The Special Investigative Panel (SIP) was established in 1999, under the office of the National Security Adviser. It undertook special investigations on some of the cases which eventually went to trial.³⁰ In all the three cases, prosecution was initiated at the State High Court (HC).

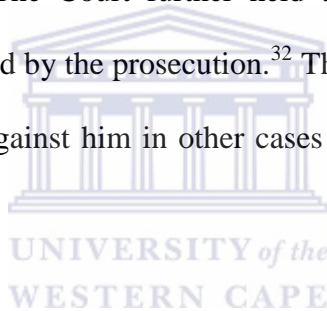
Trial of Al-Mustapha, Mohammed Abacha and others

In October 1999, Major Al-Mustapha, former Chief Security Officer during the Abacha regime, and Mohammed Abacha, son of the late military head of state, were charged with the conspiracy and attempted murder of Alex Ibru, a newspaper publisher and former Minister of Internal Affairs in the Abacha regime. Other defendants charged in this case were General Ishaya Bamaïyi, former Chief of Army Staff, Mohammed Rabo Lawal, former Chief

³⁰ Available at <http://www.refworld.org/topic,50ffbce484,50ffbce487,3ae6ad056c,0,,QUERYRESPONSE,NGA.html> Also at <http://saharareporters.com/press-release/lagos-rejoinder-advertorial-dr-fredrick-fasheun-al-mustapha%E2%80%99s-case-setting-record-stra> (accessed October 2013).

Superintendent of Police (CSP), Col. Jubrin Bala Yakubu, former military administrator of Zamfara state, and, Danbaba James, former Commissioner of Police of Lagos state.

Al-Mustapha was also the head of a killer squad referred to as the 'Strike Force', a group responsible for many of the human rights abuses of the Abacha regime. The prosecution witness, a former army sergeant, who had been part of the 'Strike Force', testified that he and a senior police officer had fired at Alex Ibru, acting on the orders of superior officers. However, this case was dismissed and all the defendants (except Bamaiyi) discharged and acquitted in 2010.³¹ The Court upheld the 'no case submission' argued by the defence and held that the prosecution failed to establish a prima-facie case against the defendants despite the testimony of the sergeant. The Court further held that the defendants could not be convicted on the evidence adduced by the prosecution.³² The acquittal of Al-Mustapha in this case did not affect the charges against him in other cases in which he was equally charged with other offences.³³



While the trial subsisted, the charge against Gen. Bamaiyi was separated and fresh charges were brought against him in a separate case in November 2007. In the separate case which was instituted against Bamaiyi there were the same charges of conspiracy and attempted murder of Alex Ibru Porbeni and Pat Utomi and also additional charges of 'unlawfully causing grievous harm'.³⁴ This move by the Prosecution was perceived by the defendants as a 'kangaroo arrangement'.³⁵ Bamaiyi was however discharged and acquitted in April 2008 in a

³¹ AllAfrica 22 December 2010 – Available at <http://allafrica.com/stories/201012220252.html> (accessed October 2013).

³² The judge held that the evidence adduced by the prosecution was thoroughly discredited under cross-examination. "I therefore hold that there is no credible evidence in support of the six-count charge preferred against the accused persons".

³³ ThisDay Newspaper of 30 January 2012.

³⁴ ThisDay Newspaper of 21 November 2007.

³⁵ As in 30 note above.

judgment by the Court that the prosecution failed to discharge the burden of proof in the case.³⁶

These trials reflect clearly the disposition of the judiciary and the government in handling the cases initiated after transition. First, these cases had suffered a lot of set-backs and delay. The trials had begun first at the Magistrate Court before it was transferred to the HC and even at the HC level, it was transferred from one Court to another. The transfer did not only delay the trials but also distorted the cause of justice. It could be inferred that the judiciary was unwilling to adjudicate the cases and lacked the independence to address these cases. Several controversies trailed these cases especially in the instance of allegation of bribery against the presiding judge at the first HC.³⁷

The trial of Al-Mustapha and Lateef Shofolahan

In another case, Mohammed Abacha, one of General Abacha's sons, was charged with Al-Mustapha, Lateef Shofolahan, a protocol officer in Abiola's campaign organisation and two others for conspiracy and murder of Kudirat Abiola. However, the charges could only be sustained against Al-Mustapha and Shofolahan while charges against the other perpetrators were dismissed.³⁸

Shofolahn had already been charged with attempted murder of Pa Abraham Adesanya in 1996³⁹ and was convicted and sentenced to 28 years for complicity in the attempted murder

³⁶ Daily Champion Newspaper 4 April 2008.

³⁷ Nigerian Premium Times Newspaper 4 August 2013.

³⁸ Daily Trust Newspaper 17 July 2013. Available at <http://dailytrust.info/index.php/columns/wednesday-columns/944-al-mustapha-now-that-the-canary-is-free> (accessed October 2013).

³⁹ ThisDay Newspaper 31 Jan. 2012. Available at <http://www.thisdaylive.com/articles/for-al-mustapha-it-s-death-by-hanging/108225/> (accessed September 2013).

in 2009.⁴⁰ This trial was a separate trial on its own and the conviction of the Shofolahan operated differently from other charges against him.

Al-Mustapha and Sofolahan had been in detention during the trial which took thirteen years before the first verdict was handed down by the HC. The defendants were convicted and sentenced to death by the Court in January 2012.⁴¹ The defendants appealed against the decision of the HC at the Court of Appeal (CA) immediately.⁴² In July 2013, the CA upturned the decision of the HC and discharged the defendants.⁴³ The State has appealed against the decision at the Supreme Court but it is uncertain what the course the case will take.⁴⁴

3.4.3. Evaluation of the Nigerian Prosecutions

Despite the fact that in the last trial mentioned the accused persons were acquitted at appeal's level just like in the other trials, it is important to consider the significance and challenges of this trial even though the last verdict has. First, it is notable that the above trial is the only trial sustained to the point of conviction out of the five trials initiated in 1999. The trial has been one of the longest trials in Nigerian history; the trial at the HC alone took thirteen years. The trial was at most times, unduly prolonged at the instance of the defence.⁴⁵ This had great impact on the success of the trials. Evidence became distorted and the interest of the public could not be sustained after several adjournments of the cases without significant progress.

⁴⁰ The Nation Newspaper 24 Aug. 2011 Available at <http://www.thenationonlineng.net/2011/index.php/mobile/columnist/wednesday/dele-agekameh/16986-shofolahan-and-kudirat%E2%80%99s-murder.html> (accessed October 2013).

⁴¹ As in note 39 above.

⁴² Punch Newspaper 31 January 2012 -Available at <http://www.punchng.com/news/al-mustapha-shofolahan-appeal-death-sentence/> (accessed October 2013).

⁴³ Vanguard Newspaper 17 July 2013-Available at <http://www.vanguardngr.com/2013/07/why-appeal-court-freed-al-mustapha-co/> (accessed October 2013).

⁴⁴ The Sun Newspaper 14 August 2013. Available at <http://sunnewsonline.com/new/cover/kudirat-abiolas-murder-lagos-drags-al-mustapha-shofolahan-to-scourt/> (accessed October 2013).

⁴⁵ Akinola R ' *Travesty of Justice* ' as quoted in Chronicle of Al-Mustapha's 14 year-Trial – Vanguard Newspaper 08 August 2013 Available at <http://www.vanguardngr.com/2013/08/chronicle-of-al-mustaphas-14-year-trial/> (accessed October 2013).

One major challenge of prosecution stemming from the length of the trial is the effect it had on procedural issues such as eliciting evidence from witnesses and issues as to selectivity. The CA in upturning the decision of the HC concluded that there was no conclusive evidence linking the accused to the alleged offence and, therefore, the accused had to be acquitted. The prosecution had to prove its case with credible evidence with the bar of the standard of prove raised as “beyond reasonable doubts”.⁴⁶ The two key prosecution witnesses Barnabas Jabilla (also called Rogers) and Abdul Muhammed (katako) had made statements on oath regarding the charge but later contradicted their statements.⁴⁷ It remains to be known whether the duo will be tried for perjury. Al-Mustapha himself was reported to have made a confessional statement to the SIP at the beginning of the case which he also retracted.

The prosecution was perceived as a tool to ‘pay back’ enemies. The president had also been a victim of political imprisonment and perhaps torture during the Abacha regime. He was reported as ‘avenging his ordeal during Abacha’s military regime’ through the prosecution.⁴⁸ Perpetrators, who were charged, alleged selectivity in the choice of prosecution. Al-Mustapha was reported to have stated that he was being made a victim of the incumbent power in the country.⁴⁹ While these claims may be true to a certain degree, it does not render the need for prosecution invalid, Al-Mustapha had been a prominent figure for repression during the Abacha regime. The prosecution became necessary first because Nigeria has a constitutional duty to protect human rights and to redress the violation of such rights. Indeed, other

⁴⁶ This Day Newspaper 21 July 2013.

⁴⁷ These two witnesses were also charged along with the other defendants. They were alleged to be the responsible ‘foot soldiers’ that carried out the actual shooting at the behest of al-Mustapha. – Available at <http://saharareporters.com/press-release/lagos-rejoinder-advortorial-dr-fredrick-fasheun-al-mustapha%E2%80%99s-case-setting-record-stra> (accessed October 2013).

⁴⁸ Pointblank News.com 14 November 2009 Available at <http://www.pointblanknews.com/os2427.html> (accessed October 2013).

⁴⁹ Vanguard Newspaper 21 July 2013-Available at <http://www.vanguardngr.com/2013/07/why-appeal-court-freed-al-mustapha-co-3/> (accessed October 2013).

potential cases were either dismissed or never initiated in total defiance of the recommendations of the HRVIC regarding prosecutions.

The thirty five cases recommended for further investigations by the Panel have been simply ignored by successive regimes. In cases where the court could not establish any case against the alleged perpetrators, Nigeria has failed to pursue further investigations in the least. These cases have rather been successfully tucked away. There has been no criminal investigation of widely alleged human rights abuses of the military regimes, prominent among which are the mass massacre during the civil war, the political assassination of Dele Giwa and the extra-judicial killing of and Ken Saro Wiwa and the Ogoni-nine.⁵⁰

Furthermore, certain alleged and identified perpetrators have neither been investigated nor prosecuted till date. Babaginda had been alleged for several human rights abuses during his regime including the murder of Dele Giwa which raised a lot of controversy during the HRVIC hearing. He has, however, never been brought to answer such charges in spite of the overwhelming allegations.

In addition, the fact that only the charge of murder was sustained against Al-Mustapha, suggests selectivity. Unlike the position in other countries, like Argentina⁵¹ where fairly considerable prosecution has taken place on the basis of the work of a truth commission, in Nigeria prosecutions had commenced simultaneously with the work of the HRVIC. More significantly, trials conducted so far have focused on single cases of murder and attempted murder and have left out gross human rights abuses such as those perpetrated in Ogoniland,

⁵⁰ See Ch. 2.

⁵¹ Acuna C and Smulovitz 'Guarding the Guardians in Argentina: Some Lessons about the Risks and benefits of Empowering the Courts' in McAdams A (ed.) *Transitional Justice and the Rule of Law in New Democracies* (1997) 105-106.

several political murders and torture. None of the cases is connected to the systematic human rights violations of extra-judicial killings, prosecutions has been limited to single cases of human rights abuses. While these cases are no less important than the others it is represent gross 'under-prosecution'.

Successive governments have repeatedly ignored the cases of human rights abuse in the Niger-Delta region.⁵² It has paid no attention to the violations and this has encouraged the persistence of human rights violations in the region even after transition to a democratic dispensation. Indeed, during the military regimes, there were military decrees which ousted the jurisdiction of the Nigerian Courts so that no case could be brought before any Nigerian Court with regards to human rights violations in the region. Since these decrees have been annulled this provision is no longer operative under the democratic government, the Court have jurisdiction to adjudicate on matters which it is constitutionally empowered to. However, no single case of violations in this region is known to have been brought before the Courts for criminal prosecution neither has the State taken any steps to prosecute any of the well-known cases.

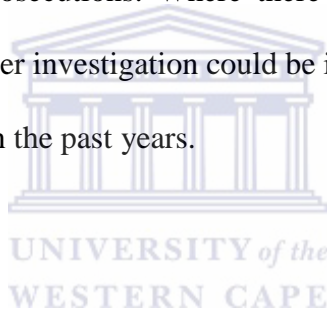
There is manifest unwillingness to pursue prosecution even the well founded. The problem of retroactivity does not appear since the applicable laws had been in existence even during the military regime⁵³ and so it could not have been hampered by the dilemma of the applicable law as the case is with most transitional states after a repressive regime. The provisions of the Criminal Code has been the applicable law in all the cases discussed above since most of the human rights violations constitute criminal acts under the Criminal Code. It is not debateable in the Nigerian case that there is no legal basis for prosecution of the gross human rights

⁵² The Niger-Delta region is also referred to as the South-South region of Nigeria. See Ch. 2.

⁵³ Criminal Law Code of Lagos State was applicable. ThisDay Newspaper of 21 November 2007.

violations of the military regimes. Such argument is unsustainable in the light of the overwhelming legal obligations of the Nigerian government which clearly prohibits any legal justification for such violations during the military regime.

In addition, criminal actions can be instituted against an accused person at any time. There is no bar with regard to the period of time within which criminal action can be instituted against a person alleged of any criminal offence. This makes it clearly possible for more prosecutions to be pursued where there is the political will to do so. Even though the prosecution authorities have expressed intention to further pursue the case of Al-Mustapha to the Supreme Court, which has the final verdict in any case, it appears unlikely that the state is interested in pursuing further prosecutions. Where there is fresh evidence to substantiate these allegations otherwise a proper investigation could be initiated into these cases and many others which have been ignored in the past years.



3.5 Conclusions

The Oputa Panel would have been largely successful in achieving truth telling by revealing shocking atrocities of the past military regimes had the report been officially published. Even though from the hearings conducted and the unpublished report it is glaring that the ‘truth was needed to reverse the silence and denial of dictatorship years, to establish the extent origin and nature of the crimes which were not well-known’.⁵⁴ Even where the truth was common knowledge there had been a huge gap between knowledge and acknowledgment and to a large extent. As important as the work of the Commission would have been, it lacked the legitimacy it needed to operate successfully.

⁵⁴ Roht-Arriaza N (2006) 3.

The Government hid under this guise to assert that it could not implement the recommendations of the HRVIC. It remains to be known what has happened to other cases which were not admitted by the HRVIC.

The weaknesses of the HRVIC may have set the course of the trials which were initiated. It is highly probable that the success of the trials depended on the success of the Commission. The moment the report of the Commission was submitted the five cases which had been initiated took a different direction thus Nigeria's progress with redressing the past was short-lived.

It became clearer that the successive government may not have had a real intent at confronting the past but only initiated steps as a facade in order to gain public support. It could also be that it had real intentions to redress the past but derailed because it found that it would itself have issues to answer and was not prepared to face the consequences of its past actions. Even though a democratically elected government, it had within its system perpetrators whose interest it had to protect. The president himself had appeared before the Commission to answer for allegation of human rights violations during his military regime⁵⁵

More significant is the recent acquittal of the defendants in the only surviving case of the five cases. Without prejudice to the pending appeal at the SC, the acquittal implies that there is need for proper investigation to identify the perpetrators otherwise, it will amount to a 'denial' of the murder and several other human rights abuses. The prosecutions conducted so far do not only demonstrate a hollow attempt at redressing the past, but also portray further lack of political will to confront the past. The victims of the past injustices are left without any remedy.

⁵⁵ AllAfrica -11 Sept. 2001 Available at <http://www.vanguardngr.com/2013/07/why-appeal-court-freed-al-mustapha-co-3/> (Accessed October 2013).

It is also important to state that courts and the legal system generally play an important role in transitional justice. The Oputa Panel demonstrates the ‘tension between truth seeking mechanism, constitutionalism and judicial process’.⁵⁶ The judiciary just emerging from a criminal justice system that disregarded human rights may need to be placed in proper perspective as to its role in achieving justice, this is particularly true for Nigeria. Where the court is still under the whims and caprices of the executive power, it cannot independently ensure justice and redress of human rights violation without a form of ‘re-engineering’.

The refusal to investigate or prosecute other alleged perpetrators cannot be regarded as ‘de facto amnesties. Indeed, part of the aim of the successive democratic government was to ensure reconciliation and this was expressed as part of the aims of the HRVIC, it clearly stated in its report that this would be attained through both retributive and restorative measures which ultimately implies that prosecution is an integral part of the reconciliation process.⁵⁷ Reconciliation is inoperative where there is no proper acknowledgement of wrongs done against the victims of human rights violations and in this sense, reconciliation as an aim of the HRVIC was also a failed venture.

There is always a dividing line between reconciliation and impunity, and the aims of justice cannot be eroded by the objective of reconciliation. Reconciliation does not rest in indulgent ignorance of past injustices or the plight of the victims. Reconciliation does not proscribe prosecution and the failure to prosecute amounts to creating an avenue to breed a culture of impunity. It is highly probable that the failure to prosecute accounts for the increased violence in Nigeria even after almost two decades of transition to a democratic regime.

⁵⁶ Yusuf H O ‘*Travails of Justice*’ (2007) 285.

⁵⁷ HRVIC Report: Vol.6 Reparations Restitution and Compensation 2.

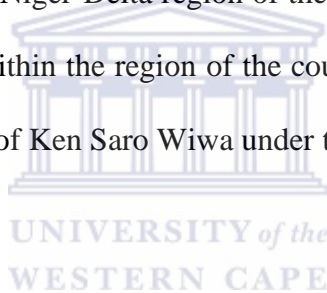
Chapter Four - Alternatives and Adjuncts to Prosecutions

‘Redress should be tailored to the particular needs of the victim and be proportionate to the gravity of violations committed against them... [T]he provision of reparation has an inherent preventive and deterrent effect in relation to future violations.’

-UN Committee against Torture¹

4.1 Introduction

Nigeria may not only be under an obligation to prosecute the perpetrators of past human rights violations but also to provide effective remedy for the victims of these crimes. ‘Effective remedy’ may not necessarily be limited to retributive measures, restorative measures may also constitute effective remedy. This chapter focuses on reparations and illustrations as transitional justice mechanisms in Nigeria. It considers how Nigeria responded to the plights of victims of in the Niger-Delta region of the country through the rehabilitation programme for youth militants within the region of the country as a measure with reparative effects. It also examines the case of Ken Saro Wiwa under the Alien Tort Claims Act before a US court.



4.2 Reparations

4.2.1. The Legal Framework

Reparations as a transitional justice mechanism entail recognising and addressing the harm caused by human rights violations. It is a form of transitional justice which is often perceived as ‘repairing the past’ and having potentially direct impact on victims of human rights violations. Reparations publicly affirm that victims of human rights abuses are rights-holders

¹General Comment No. 3 (2012) Implementation of Article 14 by States’ Parties’ 13 Dec. 2012- CAT/C/GE/3, para. 6.

entitled to redress and as such this form of redress could take different forms.² Reparations are not limited to monetary compensation as it is widely perceived they may also take other forms as has been recognised *inter alia* by the UN.³ Five different forms of reparations have been recognised which include restitution, compensation, rehabilitation, satisfaction and guarantee of non-occurrence.⁴ In this sense

‘restitution aims to re-establish to the extent that is possible the situation that existed before the violations took place; compensation relates to any economically assessable damage resulting from the violation; rehabilitation include legal medical and psychological and other care; satisfaction and guarantee of non-repetition relate to measure to acknowledge the violation and prevent the recurrence in the future’⁵

There is an extensive debate as to the existence of a general right to reparation for human rights violations. The growing consensus among authors is that victims of human rights violations are entitled to reparations based on the provisions of various international human rights conventions.⁶ These conventions provide for the right to compensation for certain human rights violations such as torture,⁷ false conviction,⁸ unlawful arrest or detention.⁹ In addition, a general right to reparation is inferred from Article 2 of the ICCPR which provides for the right of victims to effective remedy which could be determined by competent judicial administrative or legislative or any other competent state authority. The UN Human Rights

² ICTJ-Reparations Available at <http://ictj.org/our-work/transitional-justice-issues/reparations> (accessed October 2013).

³ Basic Principles and Guidelines on the right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law A/RES/60/147 adopted 21 March 2006 of the UN General Assembly.

⁴ De Greiff P ‘Justice and Reparation’ in De Greiff P (ed.) *Handbook of Reparation* (2006) 452.

⁵ Onyebula S ‘Reparation Policy in Nigeria’ in Doxtader E and Villa-Vicencio C (eds.) *To Repair the Irreparable: Reparation and Reconstruction in South Africa* (2004) 401- 402.

⁶ De Greiff (2006) 455.

⁷ Article 14 (1) Torture Convention.

⁸ Article 14 (6) ICCPR.

⁹ Article 9 (5) ICCPR.

Committee stated that without reparations to victims of human rights violations, the obligation to provide effective remedy may not be discharged.¹⁰

The idea that there is a right to reparations, suggests that there is a corresponding duty to provide reparations to victims of human rights violations where necessary. While the focus of this paper is not on the debate on a general right to reparations as such, it suffices to say that reparative measures taken by any government in respect of victims of human rights violations, especially where such is accompanied by the work of a truth commission, is important in confronting and redressing the past. The fact that it is impossible to provide reparations for all victims does not deny that victims of gross human rights violations in fact have the right to reparations neither does it abdicate the responsibility to provide reparations for victims within the realms of possibility.

Nigeria's domestic laws provide for the right of victims to reparations for gross violation of human rights. The right to reparations is based on both constitutional provisions and international obligations¹¹ which guarantees the right of a victim to redress for human rights violation. Such redress can be monetary compensation or any order the court deems fit considering the extent of injury suffered by the victim.¹² Remedies are also available for tortuous acts in form of assault and battery under civil proceedings.

¹⁰ General Comment No. 31(2004) on the Nature of the general legal obligation imposed on states parties to the ICCPR par.16 246.

¹¹ Apart from the provisions of international legal instruments referred to above, Nigeria also has an obligation to recognise the rights of a victim to reparations under Article 8 Universal Declaration of Human Rights which provides rights of victims to effective remedy for violations of fundamental human rights guaranteed by the constitution or law of a state.

¹² Chap IV of the 1999 Constitution; Onyegbula (2004) 403.

4.2.2 The Practice of Reparations in Nigeria

At the outset, the aim of the successive government was towards truth finding and reconciliation. It gave little or no thought to focusing on the victims of past abuses.¹³ The HRVIC, however, devoted a whole chapter of its report to reparations for victims of past human rights abuses in Nigeria.¹⁴ Victims who had appeared before the panel particularly expressed their need for reparations. Therefore, the report included an appendix for such demand for reparations.¹⁵ The HRVIC also proposed a policy framework for reparation of victims by the government.¹⁶ In this sense, it made specific recommendations for the establishment of a rehabilitation fund¹⁷ which should be supported to by beneficiaries of the military regimes and perpetrators of human rights violations.¹⁸

These recommendations were completely ignored by the Obasanjo administration and accordingly no significant step was taken towards the reparation of victims. The president rather emphasized reconciliation, but made no reference to reparations. As regards the payment of monetary compensation to victims, he was even clearly opposed to it. In this sense he was reported to have stated that:

‘I must however disabuse the mind of those who believe that every apology must be followed with monetary compensation for victims...’¹⁹ ‘Money is not the answer. How much can you give a man for the murder of his father?’²⁰

¹³ Onyegbula (2004) 405.

¹⁴ Petitioners had applied to the HRVIC for reparations. HRVIC Report: Reparations Restitution and Compensation 74; HRVIC Report: Summary Conclusion and Recommendations 75.

¹⁵ HRVIC Report: Vol. 6, Reparation Restitution and Compensation 53. Similar needs were unanimously expressed by victims at the Seminar on the Rights to Compensation Rehabilitation and Restitution for Victims of gross Violation of Human Rights. Onyegbula (2004) 407.

¹⁶ HRVIC Report: Vol. 6, 46.

¹⁷ HRVIC Report: Vol. 7 Summary Conclusion and Recommendations, 55.

¹⁸ HRVIC Report: Vol. 6, 51.

¹⁹ A speech by Obasanjo at the 2001 World Conference on Racism in Durban South Africa as quoted in Onyegbula (2004) 405.

It is apposite to state here that although reparations can never fully compensate for the suffering and losses of victims, it constitutes an important acknowledgement of victims whose rights have been violated and without it there may never be real healing and reconciliation.²¹

4.2.3. Reparative Measures for Human Rights Violation in the Niger-Delta region

Though the successive democratic government was clearly against monetary compensations for victims, the situation in the Niger Delta region deserves special attention since it has drawn both national and international attention over the years.

Background to Human Rights Violations in the Niger-Delta

The Niger-Delta region had been the scene of the worst human rights violations perpetrated by the military at the instance multinational oil companies such as Royal Dutch Shell operating under the name 'Shell Nigeria'.²² Agitations against human rights violations in the region heightened after the summary execution of the Ken Saro Wiwa and the Ogoni-Nine. This led to a violent eruption of militancy by youths acting under the auspices of different groups in the region.²³ As a result, the region soon became known as a restive region in the country witnessing violent attacks by the military and reprisals by the militant groups.²⁴

Different groups began to evolve with different agendas and aims of protesting against human rights violations. Such groups as the Movement for Emancipation of the Niger-Delta (MEND), the Movement for the Survival of Ijaw Ethnic Nationality in the Niger-Delta

²⁰ Vanguard Newspaper 23 May 2002 Available at <http://allafrica.com/stories/200205230656.html> (accessed October 2013).

²¹ Onyegbula (2004) 412.

²² See Ch. 2.

²³ Claude E and Welche Jnr 'The Ogoni and Self-Determination: Increasing Violence in Nigeria' (1995) The Journal of Modern African Studies Vol.33 No.4 642.

²⁴ Human Rights Watch 4 Aug. 1999. Available at <http://www.hrw.org/news/1999/08/03/current-human-rights-concerns-nigeria> (accessed October 2013).

(MOSIEND) and the Movement for the Reparation of Ogbia (MORETO) emerged drawing on the structure and operation of MOSOP.²⁵ These groups possessed sophisticated arms with which they carried out criminal activities such as kidnappings and attacks on oil companies' facilities in reprisal against incursion into the region by the military. Attempts by the military government to quell the violence proved abortive. While the militants may not be absolved of responsibility for certain crimes in the region, it has to be noted that also the military perpetrated egregious human rights violations in the region. Extrajudicial killings, torture, abduction and forced disappearances were most prevalent in the region. Victims from this region especially the Ogoni people had testified before the HRVIC on the human rights violations in the region and made demands on reparations.²⁶

Militant actions in the region continued after transition to a democratic regime in 1999. Rather than making attempts to resolve the crises in the region, the government deployed military officers to the region who perpetrated more human rights violations through repressive force and extrajudicial killings.²⁷ Obasanjo's administration acquiesced to the human rights violations perpetrated by military troops sent to the region while the crises lasted his administration. Increased militancy posed more threat to the security of Nigeria and the multinational oil companies and oil production in the region thus raising serious national concerns.

²⁵ Goldthau A (ed.) *The Handbook of Global Energy Policy* (2013) 511. On MOSOP see Ch. 2.

²⁶ HRVIC Report Vol. 4 Case-by-Case Record of Public Hearing Chap. 4.

²⁷ Human Rights Watch Dec.14 2000. Available at <http://www.hrw.org/news/2000/12/14/update-human-rights-violations-niger-delta> (accessed October 2013).

However in 2009, the Yar'adua's government offered general 'amnesty'²⁸ to the militants in the regions in return for surrendering of weapons by the militants.²⁹ The amnesty was designed in three phases, the disarmament as the first phase while rehabilitation and reintegration programmes were designed as the second and third phases for the militants who accepted amnesty.³⁰ The amnesty offer subsisted for three months during which disarmament of militants took place at an arms collection centre and the collection of their biometrics data. The main focus of this section is the rehabilitation programme which is considered in the light of transitional justice.

Rehabilitation of the Niger-Delta Militants

A presidential Amnesty Committee was inaugurated by the president to work on the receiving of arms by the militants after the president signed the amnesty provisions. It was reported that 10 billion naira (62.5 million US Dollars) was approved by the National Assembly as budget for the rehabilitation programme. By the expiration of the period for the amnesty offer, over 26, 000 militants had laid down their arms and received the amnesty and hundreds of thousands of explosives and ammunitions had been recovered. Each militant was promised the payment of 65,000 naira (just a little above 400 US Dollars) monthly, the payment of a rent and vocational training. Militants were camped in designated places in the region where they were expected to undergo the rehabilitation which involve training on non-violence and career development.

²⁸ The word 'amnesty' as used here refers to the term as used by the Nigerian government and does not necessarily represent the meaning of 'amnesty' as understood normally in international law especially in the context of transitional justice. As regards non-prosecutions of perpetrators see Ch. 3.

²⁹ The Guardian Newspaper - 6 August 2009 Available at <http://www.theguardian.com/world/2009/aug/06/niger-delta-militants-amnesty-launched> (accessed October 2013).

³⁰ UNHCR website <http://www.refworld.org/docid/50740a192.html>. Voice of America – 12 May 2010. Available at <http://www.voanews.com/content/butty-nigeria-niger-delta-rehabilitation-alaibe-13may10-93650634/154454.html> (accessed October 2013).

After the rehabilitation programme, they were integrated into the society through vocational training, formal education or skills acquisition in Nigeria or outside the country depending on the interest of the ex-militant. Such training could take a minimum of six months to five years depending on the choice of training by the ex-militant. The rehabilitation and re-integration programme is expected to end in 2015. A cursory look at the amnesty programme reveals a successful outcome of the programme thus far. It has been successful in addressing violence in the region which had erupted as a result of failure of successive governments to address the plights of victims in the region. However a deeper examination unveils challenges and shortcomings of the programme.

Overall, the rehabilitation has thus far been successful in achieving relative peace in the Niger-Delta region. It may not be clear what the aftermath of the programme will be since the programme is still subsisting. What stand out clear is that government could engage other forms or reparative measures apart from monetary compensation where there is a political will to do so.

Restitution and rehabilitation programme may be engaged especially when considered in the light of specific request by victims who appeared before the HRVIC who demanded nothing more than restitution. The release of political prisoners and bodies of Ken Saro-Wiwa and the Ogoni-nine to their families after transition did constitute restitution to the victims' families which had reparative effect. The request of the families that the trial and conviction of the Ogoni-nine be quashed in furtherance of restitution which had been repeatedly turned down could be reviewed as well as other wrongful summary trial and convictions of the military regimes.

A more comprehensive rehabilitation programme may be designed based on the recommendations of the HRVIC. The anticipated challenges with this apart from the financial implication are selection of victims and the assessment of and balancing claims of victims to reparations. These could be dealt with where a proper reparations committee is established as a follow up on the work of the HRVIC.

4. 3 Transnational Civil Litigation for Reparation

One of the ways reparative measures may also be achieved is through civil litigation. This is recognised by both international and Nigerian legal provision.³¹ Though the focus of this paper is not on the analysis of this form of reparation, it is worthy of note as one of the reparative measures which has been engaged in the Nigerian context.

4.3.1 The Case of Shell and Ken Saro Wiwa under the US Alien Tort Act

International oil companies operate in joint venture with the Nigerian National Petroleum Corporation (NNPC) in oil production activities. Shell Nigeria has four subsidiaries in Nigeria part of which is Shell Petroleum Development Company (SPDC).³² SPDC being one of the foremost international oil companies operating in the region and accounting for 30% of the oil production in the Nigeria³³ bore a great responsibility for many of the human rights violations in the country, including the popular extra-judicial killing of Ken Saro Wiwa and the Ogoni-nine.³⁴ Oil production was in defiance of the rights of many inhabitants of the region, depriving them of their means of livelihood which are mainly fishing and farming,

³¹ See notes 11 and 12 above.

³² Royal Dutch Shell as the parent company is incorporated in the UK and has its headquarters in the Netherlands.

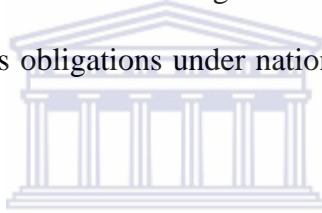
³³ SPDC website Available at <http://www.shell.com.ng/aboutshell/at-a-glance.html> (accessed October 2013).

³⁴ See Ch. 2. Lambooy T and Rancourt M 'Shell in Nigeria: From Human Rights Abuse to Corporate Social Responsibility' (2008) 229 *Human Rights and International Legal Discourse* 241.

through environmental pollution.³⁵ Shell was reported to have requested national security for protection of their operation in the region from the Abacha military government. It had cooperated with the Abacha regime financially and furnishing military equipment and arms used by the military to brutally suppress the activities of the indigenes against the violation.³⁶

Following the execution of Ken Saro Wiwa, his family fled the country and instituted legal proceedings against Royal Dutch Shell under the provisions of the US Alien Tort Claim Act 1789 for complicity in the human rights violations perpetrated by the military regimes.³⁷

Earlier in 1996, at the request of the Nigerian government the UN had conducted a fact-finding mission to examine the summary execution of Saro-Wiwa and his colleagues based on the Nigerian law and international human rights obligations. The UN concluded that Nigeria had violated human rights obligations under national and international human rights laws.



In November 1996 the suit was filed in a New York district court against Shell and additional two cases were instituted by the Wiwa family in *Wiwa V. Anderson* and *Wiwa V. Shell Nigeria* in 2001 and 2004 respectively and collectively referred to as *Wiwa V. Shell*. The US Courts had to make several decisions on preliminary issues as to the jurisdiction of the court to hear the matter before hearing the substantive suit.³⁸ After more than ten years of protracted litigation, in 2009, Shell agreed to pay 15.5 million US Dollars in compensation to the claimants in an out of court settlement.

³⁵ Human Rights Watch Aug. 4 1999. Available at <http://www.hrw.org/news/1999/08/03/current-human-rights-concerns-nigeria> (accessed October 2013).

³⁶ See note 34 above.

³⁷ Allegations against Shell include participation in crimes against humanity, torture summary execution and arbitrary detention.

³⁸ Han X 'The Wiwa Cases' (2010) 9 No. 2 Chinese Journal of International Law 440.

4.3.2 National Civil Litigation

Based on the national legal provisions, class actions have been brought on behalf of victims of human rights violations from the Niger-Delta region. These people have suffered from the activities of oil companies in the recording large number of deaths as a result of the environmental damage caused in the region. In all, there has been no successful outcome in achieving compensation to victims of such gross human rights violations on of such case is that of *Shell V. Ijaw Aborigines of Bayelsa State*³⁹.

In a public hearing in 2003, the National Assembly of Nigeria (NA) awarded 1.5 billion US dollars to the Ijaw community as damages in compensation for injuries suffered and environmental degradation of the claimant communities against Shell.⁴⁰ The Ijaw Community is one of the communities which make up the Niger-Delta region of the country. The Community approached the Federal High Court (FHC) for enforcement of the order. When Shell refused to pay, the FHC affirmed the decision of the NA against Shell in 2006. However Shell still refused to pay and appealed against the decision at the Court of Appeal (CA).⁴¹ The case is still pending before the CA and its outcome is highly unpredictable.

4.4. Symbolic Reparations and Public Apology

The HRVIC proposed in its recommendation that former military presidents publicly apologise for the human rights abuse perpetrated during the regime.⁴² The president, who had also been a former military president, on 29 May 2002, offered a public apology for the

³⁹ Unreported. Available at <http://desertherald.wordpress.com/2012/04/01/shell-ijaw-threaten-fresh-attacks-over-1-5bn-judgmentdebt/> (accessed October 2013).

⁴⁰ The compensation arose for oil spill in the community in 1994 caused by the activities of Shell Nigeria in the region which resulted in the death of about 1500 aborigines.

⁴¹ Daily Trust Newspaper 22 December 2011- Available at All Africa: <http://allafrica.com/stories/201112220748.html> (accessed October 2013).

⁴² HRVIC Report: Summary Recommendation and Conclusion 16; Reparation Restitution and Compensation 49.

misdeeds of past political administrations of the country. He re-named May 29, which had earlier been named ‘Democracy Day’, as ‘Democracy and Human Rights Day’ to annually commemorate the return to civilian regime in 1999. In his speech he laid down:

“I, as chief executive of the federation, and being at the pinnacle of leadership in the country, am prepared to accept that the proverbial buck of the blame stops at my desk,... I therefore wish to offer my full apology to all Nigerians in general, and to direct victims in particular, for all misdeeds and transgressions perpetrated in time and in the course of our evolution as a nation and a society which, by omission or commission, have caused unwarranted suffering to individual and groups alike, marred our relationships within the society, and retarded the progress and development of the nation.”⁴³

As important as this act by the president was at the time, it was rendered nugatory by subsequent actions of the government especially with regards to the refusal to publish the report of the HRVIC or even attempt to implement its recommendations.

4.5 Lustration

Right from the beginning of the transitory government of Abubakar, a purge of the military had begun. This included the retirement of Abacha’s aides, and during transition to a civilian rules several other military officers who had served during Abacha regime also resigned. In his inaugural speech as president on 29 May 1999 Obasanjo stated that

‘as a retired officer, my heart bleeds to see the degradation in the proficiency of the military. A great deal of reorientation has to be undertaken” including “retraining and re-education to ensure that the military submits to civil authority and regains its pride, professionalism and traditions.’

⁴³ Daily Champion 29 May 2002. Available at <http://allafrica.com/stories/200205290328.html> (accessed October 2013).

About a hundred of senior military officers who served as ministers or military governors since 1985 were removed from their positions.⁴⁴ It was perceived that the officers would remain threat to the country's budding democracy as such they could not be allowed to continue to retain their offices.

The government, however, stated that the retirement did not amount to allegations against the retired officers but was simply to 'guarantee the survival of democracy in Nigeria'. This explanation was in line with general perception that if the officers were allowed to retain their offices there would be no deterrence from the possibility of coup attempts in the future. Thus, the retirements were seen as an important signal that military rule may be finally over in Nigeria.

This act was clearly anticipated in the recommendations of the HRVIC which provided for reforms in the military, the police and a drastic reduction of the armed forces.⁴⁵ While many Nigerians laud this act, it was also widely criticised among the 'Northern' as a prejudicial act against the military officers from the Northern part of the country many of whom had been part of the past military regime.

This perception is highly unfounded as the criteria of selection for retirement was active participation in past military regimes which in did not relate to the region of the country where the officer belonged. The process, however, did not apply to all the military officers who were associated with the previous military regimes as some of the old military officers still played active roles in government after transition.

⁴⁴ BBC News 11 June 1999 Available at <http://news.bbc.co.uk/2/hi/africa/366259.stm> (accessed October 2013).

⁴⁵ HRVIC Report: Reparation Restitution and Compensation 51; Recommendations and Conclusion page 41, 72.

4.6 Evaluation

The Wiwa cases though regarded as a landmark in achieving redress for victims of human rights violations by multinational companies, were fraught with challenges. The cases did not proceed to full trial on its merit before the out-of-court settlement between the two parties and left some legal issues unresolved.⁴⁶ It is however apposite to state that it is considerably a successful reparative measure for the Wiwa family especially since no reparative measure was taken by the Nigerian government in that respect. However, the focus of this section is on the rehabilitation programme which is a relatively recent development and the specific focus of this chapter.

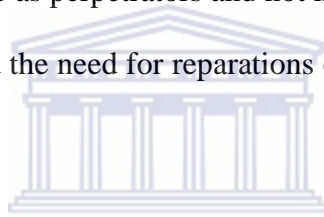
First, there has been no general reparative measure undertaken by the Nigerian government in respect of victims of human rights violations of the military regimes. The rehabilitation programme analysed in this chapter was initiated independent of earlier recommendations by the HRVIC, and might have only been successful in curbing violence in the region rather than actually providing reparations for victims of human rights violations. The rehabilitation programme was introduced to end militant activities in the region and in the process to redirect the cause of the militants to engage in productive activities. Thus, it is arguable whether the rehabilitation programme was designed to actually ‘repair the harm’ committed in the Niger-Delta region. Generally, one of the criticisms against reparations when pursued independently of other transitional justice measures is that it may be regarded as buying victims over.⁴⁷ In the case of the rehabilitation programme, this was the general perception by other victims who did not benefit from the programme which was only extended to Niger-

⁴⁶ Han X (2010) 448. Han argues that the judgement may not have been satisfactory had it been based on the full trial of the case, given the existing international environmental law framework and the human rights law position on environmental rights.

⁴⁷ De Greiff P ‘Theorising Transitional Justice’ in Williams M et al. (eds.) *Transitional Justice* (2012) 37.

Delta militants. While this position is highly plausible, the programme had an indirect reparative effect for some of the victims in the region.

Second, reparative claims have been made by victims under various national legal provisions. Victims who sought relief under national laws for reparation, have been largely unsuccessful because of the unwillingness to pay monetary compensation which is the most sought form of reparation. The rehabilitation programme for the Niger-Delta militants undertaken by the government have not addressed the actual victims of the human rights violations of the military regimes. The programme rather than been a reparative measure for victims, appears to be an attempt to permanently quell violence in the region. The ‘amnesty’ proffered for the militants makes them appear more as perpetrators and not necessarily victims of human rights violations. This has not addressed the need for reparations of the real victims of human rights violations.



In addition, judicial remedies for victims of human rights violations in form of monetary compensation have not been effective. Victims who have approached the Nigerian Courts to seek relief under the constitutional provisions have met disappointment and frustration. This clearly explains the reason the option of the US ATCA was explored by Saro-Wiwa’s family. Such claims if pursued under the national legal provision would not only have been unsuccessful, but also a sheer waste of time. Apart from the fact that such reparative measures could not be sought in Nigeria at the time the case was instituted in the US because the military regime was still operative in Nigeria, it is unlikely that the case would have been admitted by or heard in Nigerian Courts.

Generally, one of the challenges of the designing of a reparative programme is the difficulty in deciding who of the victims will be recipients of such programme. In this regard, it is often

difficult to clearly distinguish between gross human rights violations and moral general features of a repression.⁴⁸ Victims of human rights violations have been defined as persons who have individually or collectively suffered harm from serious violations of international human rights law or humanitarian law. Such harm could be physical, mental, emotional, economic or substantial impairment of the rights of the victims. Victims could also include immediate family or dependent of the direct victims or persons who have suffered harm in intervening or assisting victims in distress or prevent victimisation.⁴⁹

In the light of the above provision the militants for whom the programme was designed could be regarded as victims of human rights violations not only because many are direct victims of violations in the Niger-Delta region but also as immediate families of direct victims. This, however, does not dismiss the fact that the beneficiary militants were a 'mixed multitude' of real victims and 'opportunist' who just wanted to take advantage of the programme.

While it is admitted that beneficiaries of the rehabilitation programme are militants drawn from families of victims of human rights violations in the region, the process of selection of beneficiaries was not so well defined. This is especially true in the light of the recommendations of the HRVIC. Recommendations on reparations were borne out of proper interviews with the victims of human rights violations of the Military regimes and further recommendations were made on designing comprehensive reparation packages for victims.⁵⁰

The rehabilitation programme, however, may not have been borne out of a refined process. There were reports that some of the militants did not accept the 'amnesty' because there was

⁴⁸ Doxtader E and Villa-Vicencio C (eds.) (2004) 10.

⁴⁹ Article 8 - UN Basic Principles and Guidelines on the right to a Remedy and Reparation for Victims (see note 3 above).

⁵⁰ HRVIC Report: Vol. 6 50.

no proper dialogue between the militant groups and the Nigerian government and as a result there were threats by militants to resume activities.⁵¹ More so the programme only addresses the Niger-Delta and not victims of human rights violations in the country in general. Other victims who had been at the hearing of the HRVIC and made demands for reparations have not been addressed rather much of the focus has been on the Niger-delta. In addition, the issue of selectivity of victims itself may be a source of re-victimisation in the sense that victims perceive it as ranking their suffering as more or less important to others.

The agitations of the victims of human rights abuses in the region had always been towards abatement of the human rights abuses and effective remedy for the damages suffered in the region. Such effective remedy lies not necessarily in any retributive measures against perpetrators of human rights violations as much as in some form of compensation for the damages suffered by the victims and guarantee of non-repetition of such human rights violations. The programme may not have achieved this for victims in the region. There are reports of human rights violations in the region after the launching of the programme and as a result militants have threatened to resume activities in the region.

Overall, given the background of human rights violations in Nigeria and the wide range of victims who can rightfully claim reparations the wide gap between the practical realities of transitional societies and reparative responsibilities is once again presented. Thus, while the need for reparative measure cannot be denied, there must be a well-defined policy framework for reparations, otherwise fragmentary efforts such as that of the rehabilitation programme may just end up benefiting only a few victims while ‘re-victimising’ others.

⁵¹ IRIN- Analysis Niger-Delta Still Unstable After Amnesty.
Available at <http://www.irinnews.org/report/94306/analysis-niger-delta-still-unstable-despite-amnesty>
(accessed October 2013).

4.7 Conclusions

While it is impracticable for any government to provide direct compensation for every victim of gross human right violation, Nigeria has not undertaken any comprehensive reparations programme in respect of victims of human rights abuses of past regimes. The rehabilitation programme has not only been inadequate but highly fragmentary and sectional. Even the rehabilitation programme has not achieved much because of the persistence of violence in the region as a result of prolonged human rights violations in the region. It is clear from the Nigerian example that reparative measures undertaken without a guarantee of non-recurrence of the actions which occasioned the damages in the first place is more or less ineffective.

Nigeria has not only failed to discharge the duty to prosecute the past human rights violations, but has also done little in confronting the past in other ways, leaving victims of such violations with no remedy either.

Thus, the light of the work and recommendations of the HRVIC where victims were more disposed to reparative measures than punitive sanctions against perpetrators, and international provision on the right of victims to reparations, Nigeria has equally failed in its obligations. Given the circumstances and the degree of violations of human rights in the country, more reparative measures should be pursued and such measures should not be limited to a particular region of the country in neglect of others.

Chapter Five - Conclusions and Recommendations

‘Only by interweaving, sequencing and accommodating multiple pathways to justice could some kind of larger justice in fact emerge.’

– Roht Arriaza N¹

5.1 Introduction

The effectiveness of transitional justice measures is largely determined by the context of the society in which they are applied and the political will of the transitional society. Transitional justice efforts may be continuous as a new government replaces another and the political context changes. It is therefore essential to adopt a long term perspective of transitional justice.² The Nigerian government since democratic dispensation in 1999, though having made some attempts in this regard, has shown no real commitment to redressing past human right abuses. Given Nigeria’s long history of repression and gross human right violations, attempts at redressing the past have not been effective.

This chapter proposes a renewed attempt at confronting the past and redressing human right violations of the military regimes in Nigeria in line with obligations under international legal instruments and national domestic provisions.

5.2 Conclusions

From the foregoing chapters it is established that Nigeria has made attempts to confront the legacy of human rights violations of the past military regimes engaging both retributive and restorative forms of justice.

¹ Roht-Arriaza N & Mariezcurrena *Transitional Justice in the Twenty-First Century* (2006) 8

² Roht Arriaza N (2006)13.

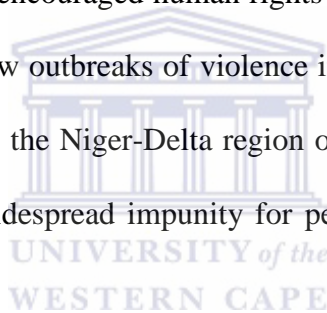
With regards to retributive justice, Nigeria has made rather specious attempts to prosecute a few alleged perpetrators of human rights violations of the military regime. It has, however, failed in this respect to effectively discharge its duty to prosecute as recognised by international legal instruments under which Nigeria owes an obligation. The major perpetrators identified by the HRVIC have neither been further investigated nor prosecuted. Prosecutions thus far have been highly selective, fraught with challenges and largely unsuccessful. Trials initiated against alleged perpetrators have been dismissed by the Courts for lack of sufficient evidence; even where a conviction was obtained it has been quashed by the Court of Appeal.

Thus, no single perpetrator has been criminally held liable for the human rights abuses of the military regimes. No proper investigations have been launched with respect to cases which were referred to the Inspector-General by the HRVIC. Most importantly, the report of the HRVIC, which had been put in place by the government itself, has not been officially acknowledged and its recommendations with respect to prosecution of named alleged perpetrators have been consistently ignored by each successive government. The perpetrators or their 'agents' permeate almost every sector of the Nigerian government thus, there is no willingness to prosecute perpetrators. As much as this cannot be an excuse for lack of prosecutions it is a real threat and challenge to achieving justice for victims of human rights violations.

In the line of restorative justice, the right of victims of human rights violations to reparation have been denied. At least after a long neglect of the recommendations of the HRVIC in respect of reparations, a rehabilitation programme was designed for the Niger-Delta region in 2009. The programme apart from focusing on the Niger-Delta region only and neglecting victims from other parts of the country did not address the real victims of human rights

violation but was rather directed at militants in the region in order to quell violence. This, in no way, constitutes a reparative measure for victims of human right violations of the past military regimes. There has been no comprehensive reparative programme for victims of human rights violations. The HRVIC recommendations on reparations have been confined to the paper and rendered insignificant. Victims identified for reparations have not even been acknowledged and their rights to reparations under international and domestic legal provisions hold no sway in Nigeria.

In sum, Nigeria's attempts at confronting the past have been inadequate, ineffective and can be best described as a farce. Nigeria has only successfully tucked away the past rather than confronting it and this may have encouraged human rights violations across the country. It is quite plausible to consider the new outbreaks of violence in the Northern part of the country and the resurgence of violence in the Niger-Delta region of the country as a consequence of the absence of prosecutions. 'Widespread impunity for perpetrators encourages abuses and institutionalises them.'³



5.3 Recommendations: Towards a more effective Transitional Justice in Nigeria

In the light of the above, Nigeria must re-examine its stance in order to successfully confront the legacies of human rights violations of the past military regimes. Transition justice requires a holistic approach which incorporates both retributive and restorative measures. Such integrated approach should engage the victims whose rights have been violated.

First, there must be an official acknowledgement and publication of the report of the HRVIC in order to set the country in the right direction towards transitional justice. The whole

³ Nigeria: Time for Justice and Accountability Amnesty International (2000)16 Available at www.amnesty.org/en/library/info/AFR44/014/2000 (accessed October 2013).

transitional justice effort revolves around the truth telling process. The whole process is defeated and worthless without an extensive implementation of the recommendation of the Commission.

Recommendations of the Commission with respect to prosecutions should be revisited. In this respect, major perpetrators of the human rights violations of the military regimes should be brought to trial. The challenges of finding evidence notwithstanding, where a proper investigation is conducted sufficient evidence can be gathered in respect of the cases against the major perpetrators. Prosecutorial discretion should not be subject to the whims and caprices of any government in power. The judiciary should be totally independent of influences from other arms of government. The essence of prosecution is not limited to individual accountability for past misdeeds, it also achieves justice for the victims of the human rights violations. While prosecution of perpetrators of human rights violations will never revoke the wrong done, it is indispensable for healing the moral wounds of the victims and their relatives.

Second, while prosecutions play an important role in ensuring criminal accountability for human rights violations, the Nigerian context requires well-defined reparations programme for victims. The reparations may leave open the option to pursue individual reparations through civil litigation since it is unlikely that such reparations programme will cater for every victim of human rights violations. Given the challenges of designing a reparations programme and the practical impossibility of granting monetary compensation to every victim, the recommendations of the HRVIC plays an important role in designing and implementing a comprehensive reparative programme.

Reparations in form of compensation and rehabilitation demands a lot of financial commitment by the government and such commitment has to be carefully planned out and such may be a one-off payment. Reparations, however, need not focus on monetary compensation alone. Reparations programme may focus on other aspects such as rehabilitations as recommended by the HRVIC

Overall, truth telling without reparations or prosecutions and making the truth told public, in the end, makes the victims' account meaningless.

Word Count: 19,495 (Excluding preliminary pages and Bibliography).

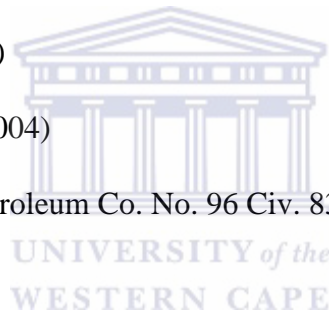


Bibliography

Primary Sources

Cases

- Al-Mustapha V. State unreported Case No. CA/L/469A/2012 (12 July 2013).
- Brigadier Kunle Togun (Rtd.) V. Justice Chukwudifu Oputa (Rtd.) and 3 ORS (2001) 16 NWLR pt (740).
- Fawehinmi V. Babaginda (2003) NWLR pt (808).
- Shell V. Ijaw Aborigines of Bayelsa State unreported
- State V. Al-Mustapha unreported charge No. ID/37C/03.
- Wiwa V. Anderson (2001)
- Wiwa V. Shell Nigeria (2004)
- Wiwa V. Royal Dutch Petroleum Co. No. 96 Civ. 8386 2002 U S Dist. LEXIS 3293



Constitution

- 1999 Constitution of the Federal Republic of Nigeria.
- 1979 Constitution of the Federal republic of Nigeria.
- 1960 Constitution of Nigeria.

Legislation

- Essential Services Decree no 35 of the 1975.
- State Security (Detention of Persons) Decree No. 2 of 1984.
- Publications (Proscription) Decree No. 35 of 1993.
- Treason and Treasonable Offenses Decree No. 29 of 1993.

- The Constitution (Suspension and Modification) Decree 1 of 1966.
- State Security (Detention of Persons) Decree 3 of 1966
- Public Order and Security Decree 34 of 1966.
- State Security (Detention of Persons) Decree No. 11 of 1994
- Treason and Other Offences (Special Military Tribunal) decree No.1 of 1986
- Offensive Publications (Proscription) Decree No. 35 of 1993
- Treason and Treasonable Offenses Decree No. 29 of 1993
- Decree No. 22 of 1995.
- Tribunals of Inquiry Act CAP 447 LFN 1990.

Delegated Legislation

- Statutory Instrument No. 8 of 1999.
- Statutory Instrument No. 13 of 1999.



Treaties and Conventions

- African Charter on Human and Peoples' Rights of 27 June 1981 OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).
- Basic Principles and Guidelines on the right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law A/RES/60/147 adopted 21 March 2006 of the UN General Assembly Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948.
- General Comment No. 3 (2012) Implementation of Article 14 by States' Parties 13 Dec. 2012- CAT/C/GE/3,

- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva Convention I) of 12 August 1949.
- Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at the Sea (Geneva Convention II) of 12 August 1949.
- Geneva Convention Relative to the Treatment of Prisoners of War (Geneva Convention III) of 12 August 1949.
- Geneva Convention Relative to the protection of Civilian Persons in Time of War (Geneva Convention IV) of 12 August 1949.
- Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment of 10 December 1984.
- European Convention for the Protection of Human Rights and Fundamental Freedom of 4 November 1950.
- International Covenant on Civil and Political Rights of 16 December 1966.
- United Nations General Assembly Resolution A/RES/50/1995.
- Universal Declaration of Human Rights of 10 December 1948.

Secondary Sources

Books

- Aborisade O & Mundt R *Politics in Nigeria* (1998) Longman New York.
- Doxtader E and Villa-Vicencio C (eds.) *To Repair the Irreparable: Reparation and Reconstruction in South Africa* (2004) David Philip Publishers, South Africa.
- Falola T & Ihonvbere J *The Rise and Fall of Nigeria's Second Republic: 1979-84* (1985) Zed Books Ltd. London UK.

- Goldthau A (ed.) *The Handbook of Global Energy Policy* (2013)
- Hayner P B *Unspeakable Truths – facing the challenges of truth commissions* 2 ed. (2002) Routledge New York.
- Kritz N J (ed) *Transitional Justice- How Emerging Democracies reckon With Former Regimes I* (1995) Washington, D. C. United States Institute of Peace.
- Mbondenyi M and Ojienda T (eds.) *Constitutionalism and Democratic Governance in Africa: Contemporary Perspectives from Sub-Saharan Africa* (2013) Pretoria University Law Press, South Africa.
- Ogbondah C W *Political Repression in Nigeria, 1993-1998: A Critical Examination of One Aspect of the Perils of Military Dictatorship* (2000).
- Olsen T D Payne L A & Reiter A G *Transitional Justice in Balance Comparing Processes, Weighing Efficacy*(2010) Washington, D. C. United States Institute of Peace Press.
- Roht-Arriaza N ‘The New Landscape of Transitional Justice’ in Roht-Arriaza N & Mariezcurrena J, *Transitional Justice in the Twenty-First Century* (2006) Cambridge University Press, Cambridge.
- Sriram C L & Pillay S (eds) *Peace Versus Justice? The Dilemma of Transitional Justice in Africa* (2009) South Africa University of KwaZulu-Natal Press.
- Teitel R *Transitional Justice* (2000) New York, Oxford University Press, Inc.
- Van Der Merwe H, Baxter V & Chapman A R (eds) *Assessing the Impact of Transitional Justice -challenges of Empirical Research* (2009) Washington, D. C. United States Institute of Peace.
- Werle G *Principles of International Law* 2 ed (2009) The Hague, The Netherlands T.M.C Asser Press.

Chapters in Books

- Acuna C and Smulovitz ‘Guarding the Guardians in Argentina: Some Lessons about the Risks and benefits of Empowering the Courts’ in McAdams A (ed.) *Transitional Justice and the Rule of Law in New Democracies* (1997) University of Notre Dame Press, USA.
- Bhargava R ‘Restoring Decency to Barbaric Societies’ in Rotberg R & Thompson D ed. *Truth Versus Justice: The Morality of Truth Commissions* (2000) N J Princeton University Press Princeton.
- De Greiff P ‘Justice and Reparation’ in De Greiff P (ed.) *Handbook of Reparation* (2006) Oxford University Press, New York.
- De Greiff P ‘Theorising Transitional Justice’ in Williams M et al. (eds.) *Transitional Justice* (2012) New York University Press, New York.
- Diala A ‘The Dawn of Constitutionalism in Nigeria’ in Mbondenyi M and Ojienda T (eds.) *Constitutionalism and Democratic Governance in Africa: Contemporary Perspectives from Sub-Saharan Africa* (2013) Pretoria University Law Press, South Africa.
- Kukah M ‘Peace Versus Justice? A view from Nigeria’ in Sriram C L & Pillay S (eds) *Peace Versus Justice? The Dilemma of Transitional Justice in Africa* (2009) South Africa University of KwaZulu-Natal Press.
- Onyebula S ‘Reparation Policy in Nigeria’ in Doxtader E and Villa-Vicencio C (eds.) *To Repair the Irreparable: Reparation and Reconstruction in South Africa* (2004) David Philip Publishers, South Africa.

Journal Articles

- Cayford S The Ogoni Uprising: Human Rights and a democratic Alternative in Nigeria Africa Today Vol. 43 No.2 (1996) Indiana University press.
- Claude E and Welche Jnr 'The Ogoni and Self-Determination: Increasing Violence in Nigeria' (1995) *The Journal of Modern African Studies* Vol. 33 No. 4 Cambridge University Press, Cambridge.
- Greiff P & Duthie R (ed) '*Transitional Justice and Development*' – *Making Connections* (2009) 3 New York Social Science research Council.
- Han X 'The Wiwa Cases' (2010) *Chinese Journal of International Law* 9 No. 2 Oxford University Press
- Lambooy T and Rancourt M 'Shell in Nigeria: From Human Rights Abuse to Corporate Social Responsibility' (2008) *Human Rights and International Legal Discourse* 229.
- Onyegbula S '*The Human Rights Situation in Nigeria since the Democratic Dispensation*' (2001) 13(3) Development Policy Management Network Bulletin.
- Yusuf H O *Calling the Judiciary to Account for the Past: Transitional Justice and Judicial Accountability in Nigeria* (2008) Law and Policy 30 (2).
- Yusuf H O *Travails of Truth: Achieving Justice for Victims of Impunity in Nigeria* (2007) 1 International Journal of Transitional Justice Oxford.

Newspapers

- Daily Champion Newspaper 29 May 2002.
- Daily Champion Newspaper 4 April 2008.
- Daily Times Newspaper 15 February 1966.

- Daily Trust Newspaper 22 December 2011.
- Daily Trust Newspaper 17 July 2013.
- Guardian Newspaper 18 September 2001.
- Guardian Newspaper 8 January 2005.
- Guardian Newspaper - 6 August 2009.
- Nigerian Premium Times Newspaper 4 August 2013.
- Punch Newspaper 31 January 2012.
- The Nation Newspaper 24 August 2011.
- The Sun Newspaper 14 August 2013.
- ThisDay Newspaper of 21 November 2007.
- ThisDay Newspaper of 30 January 2012.
- ThisDay Newspaper 31 January 2012.
- ThisDay Newspaper 21 July 2013.
- Vanguard Newspaper 23 May 2002.
- Vanguard Newspaper 17 July 2013.
- Vanguard Newspaper 21 July 2013.
- Vanguard Newspaper 08 August 2013.

Internet References

http://motherlandnigeria.com/govt_history.html. (accessed August 2013).

<http://nigerianmuse.com/nigeriawatch/oputa/OputaVolumeOne.pdf> (accessed August 2013)

http://www.africa.upenn.edu/Urgent_Action/apic_11896.html (accessed September 2013)

http://www.waado.org/nigerian_scholars/archive/docum/genabdu.html (accessed August 2013).

<http://www.redress.org/africa/nigeria> (accessed September 2013).

www.amnesty.org/en/library/info/AFR44/014/2000 (accessed September 2013).

<http://ictj.org/about/transitional-justice> (accessed September 2013).

<http://www.justiceinperspective.org.za/images/nigeria/Nigeria%20Oputa%20Recommendations.pdf> (accessed September 2013).

<http://allafrica.com/stories/200109180027.html> (accessed October 2013).

<http://www.dawodu.com/falana2.htm> (accessed September 2013).

<http://saharareporters.com/press-release/lagos-rejoinder-advertorial-dr-fredrick-fasheun-al-mustapha%E2%80%99s-case-setting-record-stra> (accessed October 2013).

<http://nigerianmuse.com/nigeriawatch/oputa/> (accessed October 2013)

<http://www.refworld.org/topic,50ffbce484,50ffbce487,3aebad056c,0,,QUERYRESPONSE,NGA.html>
<http://allafrica.com/stories/201012220252.html> (accessed October 2013).

<http://dailytrust.info/index.php/columns/wednesday-columns/944-al-mustapha-now-that-the-canary-is-free> (accessed October 2013).

<http://www.thisdaylive.com/articles/for-al-mustapha-it-s-death-by-hanging/108225/>
(accessed September 2013).

<http://www.thenationonlineng.net/2011/index.php/mobile/columnist/wednesday/dele-agekameh/16986-shofolahan-and-kudirat%E2%80%99s-murder.html>

(accessed October 2013).

<http://www.punchng.com/news/al-mustapha-shofolahan-appeal-death-sentence/>

(accessed October 2013).

<http://www.vanguardngr.com/2013/07/why-appeal-court-freed-al-mustapha-co/>

(accessed October 2013).

<http://sunnewsonline.com/new/cover/kudirat-abiolas-murder-lagos-drags-al-mustapha-shofalahan-to-court/> (accessed October 2013).

<http://www.vanguardngr.com/2013/08/chronicle-of-al-mustaphas-14-year-trial/>

(accessed October 2013).

<http://saharareporters.com/press-release/lagos-rejoinder-advertorial-dr-fredrick-fasheun-al-mustapha%E2%80%99s-case-setting-record-stra> (accessed October 2013).

<http://www.pointblanknews.com/os2427.html> (accessed October 2013).

<http://ictj.org/our-work/transitional-justice-issues/reparations> (accessed October 2013).

<http://allafrica.com/stories/200205230656.html> (accessed October 2013).

<http://www.hrw.org/news/1999/08/03/current-human-rights-concerns-nigeria>

(accessed October 2013).

<http://www.hrw.org/news/2000/12/14/update-human-rights-violations-niger-delta>

(accessed October 2013).

<http://www.theguardian.com/world/2009/aug/06/niger-delta-militants-amnesty-launched>

(accessed October 2013).

<http://www.refworld.org/docid/50740a192.html> (accessed October 2013).

<http://www.voanews.com/content/butty-nigeria-niger-delta-rehabilitation-alaibe-13may10-93650634/154454.html> (accessed October 2013).

<http://www.shell.com.ng/aboutshell/at-a-glance.html> (accessed October 2013).

<http://www.earthrights.org/sites/default/files/legal/Wiwa-district-court-opinion-Feb-2002.pdf>

(accessed October 2013).

<http://desertherald.wordpress.com/2012/04/01/shell-ijaw-threaten-fresh-attacks-over-1-5bn-judgmentdebt/> (accessed October 2013).

<http://allafrica.com/stories/201112220748.html> (accessed October 2013).

<http://news.bbc.co.uk/2/hi/africa/366259.stm> (accessed October 2013).

<http://www.irinnews.org/report/94306/analysis-niger-delta-still-unstable-despite-amnesty>

(accessed October 2013).

**Unpublished Report of the Human Rights Violations Investigations Commission
(HRVIC)**

HVRIC Report: Synoptic Overview.

HRVIC Report Vol. 1. Chairman's Introduction, Origin of the Commission etc.

HRVIC Report Vol. 4 Case-by-Case Record of Public Hearing.

HVRIC Report: Vol. 7 Summary Conclusion and Recommendations.

HVRIC Report: Vol. 6 Reparations Restitution and Compensation.

