

REFLECTIONS ON THE APPLICABILITY OF TRANSITIONAL JUSTICE IN THE SIT-AT-HOME  
IMBROGLIO IN THE SOUTH-EAST, NIGERIA\*

**Abstract**

Nigeria has had a checkered history since her political independence from Britain in 1960. Evidence of this includes endless agitations over imbalances in political structure, coups and counter coups, three year Nigerian/Biafran civil war and the increasing demands for resource control. Much of these events and agitations were enmeshed in violence leading to massive abuse and violations of human rights. For instance, the state responses to what the agitators regard as legitimate demands for equity in the post-civil war Nigeria gave rise to feelings of persecution of the Biafran 'freedom fighters' more than decades after the war ended in 1970. It appears the three Rs (reconciliation, rehabilitation and reconstruction) peace building framework has failed and the 'no victor no vanquished' slogan remains notional. It is obvious that the normal system of justice will be ineffective in remedying the perceived injustice associated with the civil war (1967-1970); hence the need to invoke transitional justice. Transitional justice refers to ways countries or nations arising from conflicts and or systematic human rights violations address these massive violations which ostensibly overwhelm the normal justice system. The struggle for self-determination of Southeastern Nigeria or the people of Igbo extraction has continually evolved through different dimensions and has now crystalized around Mazi Nnamdi Kanu (MNK) -the self-acclaimed leader of the Indigenous People of Biafra (IPOB). The arrest of MNK opened up a new dimension to the self-determination quest leading to sit-at-home (SAH) order in Eastern Nigeria by certain persons or group of persons allegedly loyal to MNK and his organisation. The SAH has virtually affected every sphere of human activity in the region and beyond. The rule of law and social justice are now endangered species in the region. In this imbroglio, can transitional justice bridge the gap and be the anchor needed for legal and socio-economic justice, peace, reconciliation, and political balance in Southeastern Nigeria? The researchers reviewed existing literature in the field and found that transitional justice has been of value to some other African countries embroiled in this type of quagmire. It is recommended that Transitional justice be adopted with the sole aim of restoring societal equilibrium particularly in the Southeastern part of Nigeria.

**Keywords:** Transitional justice, Sit-at-home, South-East, Nigeria

**1. Introduction**

Human existence and community development have been contemporaneous with struggles. Sometimes the struggles are enmeshed in violence leading to human rights abuse and violations. The victims or community of persons whose rights are violated may never get redress in the normal course of justice administration. The *sit-at-home* (SAH) order restricted to Southeastern Nigeria has led to diverse human and economic rights abuses on a larger scale. The violations are from both sides of the divides. This work centers on transitional justice application in Southeastern in the face of the *sit-at-home* order that has persisted since August 9, 2021.<sup>1</sup> The order is one of the series of incidents in the aftermath of the second extra ordinary rendition and subsequent and detention of Mazi Nnamdi Kanu (MNK). The initial SAH order was to be operational every Monday. It later became obvious that sit-at-home can possibly be anytime, any day, without sufficient notice to the persons who are expected to comply with it. The continued SAH appears to be having more impact than expected albeit negatively. The economy of some States<sup>2</sup> in Southeastern Nigeria is constantly held by the throat with gradual strangulation. Government has deployed forces<sup>3</sup> to counter the order. This approach now appears futile. The use of force has not produced the desired result in the region.

Before getting to these cross roads, there have been lingering diverse forms and shapes of violence and abuse of human rights amid agitation for self-determination and national questions in Nigeria. Much of these rights abuses have not been addressed especially since the civil war (1967-1970) era to date. These include the ethno-religious crisis in Northern Nigeria, coups and counter coups of 1966, Nigeria/Biafra civil war, and the annulment of June

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<sup>1</sup> <https://guardian.ng/new/Ipob-frowns-at-continued-sit-at-home-in-the-Southeastern-region-on-Mondays-24/1/22>

<sup>2</sup> The core Eastern states are Abia, Ebonyi, Anambra, Enugu, Imo. Of all these States the SAH is most active in Anambra

<sup>3</sup> Operation Golden Dawn, Peace and Still Water was set up and operational in Southeastern Nigeria. Several other Military and Police operations were deployed in the face of SAH order thereto several other military, police and different security operations under different names in several parts of Nigeria.

12 general elections of 1993 leading to exodus of people of Igbo extractions from all over Nigeria in anticipation of another spate of violence targeted at them. The Niger Delta is not left out in these crises. They have had a handful of it leading to the famous Ogoni 9<sup>4</sup> and eventual creation of militia<sup>5</sup> of different calibers and approaches. The middle belt region, especially Plateau and Benue, are crisis-ridden flowing from tribal wars to herdsmen-induced violence. These and other flashpoints constitute the massive kegs of gun powder that Nigeria appears to be perching on.

Of all these crises and violence none was as profound in terms of right abuses and criminality as the Nigeria/Biafra civil war. The issues that led to the war, whether right or wrong, appears not to have been dealt with 52 years after the war<sup>6</sup>. These issues now at the front burner have not only resurfaced but also have been reinvigorated, reinforced, and reorganized. Amid these reinforcement and reinvigoration of the self-determination agitations came the *SAH* order. At the core of the official response has been the application of force by the central federal government of Nigeria. This, by and large, is a wrong approach to the issues of violence and human rights abuses. The literature suggests that the use of force, political mathematics and economics, and conventional justice administration, all seem to have failed or not to have been properly harnessed in Nigeria<sup>7</sup>. Transitional justice has been employed in diverse places that witnessed unprecedented violence and abuse of human rights towards achieving healing, justice and peace.<sup>8</sup> This paper argues that application of transitional justice to the southeastern Nigeria will possibly deal with the *SAH* imbroglia and provide the anchor for the much needed peace and reconciliation in the political landscape of Nigeria.

## **2. The Concept of Transitional Justice**

Transitional justice is a term for approaches to deal with the past in the aftermath of violent conflict.<sup>9</sup> The meaning of transitional justice has crystallized and does not change from culture to locations. The approach and application of transitional justice may differ, but certain of its features are constant.<sup>10</sup> The constant features are the recognition of the dignity of individuals, the redress and acknowledgment of violations, and to prevent future reoccurrence.<sup>11</sup> Transitional justice consists of both judicial and non-judicial processes and mechanisms, including prosecution initiatives, truth-seeking, reparation programmes, institutional reform, or an appropriate combination thereof. Whatever combination is chosen must be in conformity with international legal standards and obligations. Transitional justice should further seek to take account of the root causes of conflicts and the related violations of all rights, including civil, political, economic, social, and cultural rights. By striving to address the spectrum of violations in an integrated and interdependent manner, transitional justice can contribute to achieving the broader objectives of prevention of further conflict, peacebuilding and reconciliation<sup>12</sup>. The whole essence is that violated rights and abuses can no longer be ignored but redressed and future occurrences prevented. Transitional justice seeks the transformation of antagonistic relationships between the parties to the conflict.<sup>13</sup> Whether the steps the Nigerian central government has taken will achieve this hallowed expectation will be seen in the course of this work. The essential premise of transitional justice is that for a society to move from where rights are massively violated to one where rights are generally respected, the crimes of the past and their consequences must be addressed.<sup>14</sup> Attaining peace and development in countries that have experienced systematic human rights violations is likely to be more sustainable if societies pursue justice for those whose rights were violated.<sup>15</sup>

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<sup>4</sup><https://www.channelstv.com/2021/10/25/ogoni-9-we-demand-exoneration-not-pardon-for-saro-wiwa-others-kswf/amp/> Accessed 2/14/2022

<sup>5</sup><https://civilliansinconflict.org/nigerian-community/militias-towards-a-solution>, [https://www.cfr.org/sites/default/files/2009/09/cfr\\_WorkingPaper\\_2\\_NigerDelta](https://www.cfr.org/sites/default/files/2009/09/cfr_WorkingPaper_2_NigerDelta). Both are accessed 2/14/2022

<sup>6</sup>See Samuel Fury Childs Daly, "A history of the Republic of Biafra: Law, Crime and the Nigerian civil war", Cambridge University Press, United Kingdom, 2020.

<sup>7</sup>Abada, Ifeanyichukwu Michael, Omeh, Paul Hezekiah and Okoye, Ikechukwu Remigius, Separatist Agitation by the Indigenous People of Biafra (IPOB), and National Question in Nigeria, *Journal of Political Science, Public and International Affairs*, Vol. 2(1), pp. 009-017, January, 2020.

<sup>8</sup>Transitional justice has been applied in the following countries at different times; Republic of Congo, Kenya, Sierra Leone, Uganda, Tunisia, Columbia, Bosnia and Herzegovina. The Truth and Reconciliation Commission in South Africa also had great impact in the aftermath of the apartheid.

<sup>9</sup> S.B-Zistel et al, *transitional Justice theories: An Introduction 2015*, p. 1 BY Routledge

<sup>10</sup> International Centre for Transitional Justice <https://www.ictj.org/about/transitional-justice> 20/1/22

<sup>11</sup> *Ibid*

<sup>12</sup>United Nations Approach to Transitional Justice (2010) available online at [https://www.un.org/ruleoflaw/files/TJ\\_Guidance\\_Note\\_March\\_2010FINAL.pdf](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf)

<sup>13</sup> S B-Zistel et al P.5

<sup>14</sup> <https://impaker.com/role-transitional-justice-countries-emerging-conflict> Accessed 13/2/2022

<sup>15</sup> *Ibid*

### 3. Persistent Violent Clashes and Rights Abuses in Nigeria.

Every part of Nigeria has witnessed one form of violence or another. In some communities the violence has reoccurred many times over without any seemingly possible approach to prevent future occurrence.<sup>16</sup> In the Southeast where there has been constant agitation for self-determination there have been violent clashes between the agitators and government security forces. The response of the central federal government has been described as 'ruthless excessive force' by Amnesty international.<sup>17</sup> The presence of security forces in communities has always resulted in the abuse of rights of ordinary citizens which in turn results in antagonism leading to more violence, violation and abuse of human rights. It has become a vicious cycle in Nigeria without any possible road map for solution. It is unfortunate that the security forces in Nigeria engage in pure revenge as against their assigned roles. What is even more painful is that in most cases, during the revenge effort, the culprits are usually absent and innocent citizens bear the brunt of the highhandedness of the security forces. It is not out of place to hear of security forces in Nigeria setting houses ablaze seemingly because, a soldier was killed. In street language, it has become a 'do me I do you' situation.

The crisis in Benue State left trails of destruction and annihilation in its path. The constant attacks on farmers and sometimes whole communities left several communities devastated and disoriented. There has been tension across the State<sup>18</sup> arising from Benue Anti-open Grazing law of 2017.<sup>19</sup> Beyond the southeastern States, Benue and Plateau States, the 'ENDSARS' protest cuts across Nigeria. It was a wild fire that swept through almost all the States in Nigeria. It culminated in the Lekki toll gate Lagos incident where horror was unleashed on the protesters leaving many dead with several wounded even while the protesters were alleged to be singing the National Anthem. It is pertinent to state that the state actors denied the Lekki massacre, but the Lagos Report of Judicial Panel of Inquiry on Lekki incident investigation of 20<sup>th</sup> October 2020 affirmed the reality of that nightmare<sup>20</sup>. It was that particular event that awakened the conscience of Nigerian leaders and eventually led to the setting up of the now abandoned End SARS panels in most states of Southern Nigeria. Whether the crisis came through self-determination questions or herder/farmer conflicts or police or other force brutality, it rests within the ambits of government to protect her citizens. It has been said that the federal security and law enforcement agencies have established neither early-warning nor rapid response mechanisms; they have not arrested and prosecuted perpetrators of violence or offered redress to victims...<sup>21</sup> Though the report was specific on herders/farmers generated crisis the report is seemingly applicable to other incidents of violent clashes in Nigeria. It is not that there are no laws in Nigeria to deal with these seemingly intractable situations. No, there is a plethora of laws, both civil and criminal, that can handle these issues. It is rather the political will to deal with it that is lacking in Nigeria due to the ethnic and religious cleavages that have constantly been dealing scattering and tumultuous blows to the country's very foundation. The courts have also held the same view. In *Dosomah V COP, Edo State and Ors.*,<sup>22</sup> the court stated that fundamental rights are rights which stand above the ordinary laws of the land. They are in fact antecedents to the political society itself. In *IGP v Ikpila & Anor*,<sup>23</sup> it was stated that fundamental rights procedure was specifically promulgated to protect the Nigerian's fundamental rights from abuse and violation by authorities and persons.

The abuse and violations have been persistent to date. These laws have not prevented cases nor have the people been able to access substantial justice from such laws. Accessing justice in the face of abuse of human rights and such massive violations of rights arising from conflicts can only be addressed and redressed through transitional justice. If common abuses have not been redressed through these ordinary laws and fundamental rights laws, it is not expected that such laws as well as our justice administration will make any impact in the face of massive human rights violations. Following all violent clashes in Nigeria is the settings up of Panels of Inquiry or Investigation or Commission to ascertain the causes of the crises and make recommendations to the government. Finding the immediate causes of any crisis is a step in the right direction. This approach notwithstanding, 'the character of the Nigeria State is itself a recipe for violent interactions in the country.' This factor ... is accounted for by the forced amalgamation of peoples of disparate entities, cultures and languages and geographical locations

<sup>16</sup><https://reliefweb.int/report/Nigeria-a-deadly-cycle-Ethno-Religious-conflict-in-Jos,Plateau-State-Nigeria-Geneva-Declaration-31/1/2022>

<sup>17</sup> <https://www.amnesty.org/en/latest/news/2021/08> Accessed 31/1/2022

<sup>18</sup><https://www.premiumng.com/news/headlines-special-report-how-killings-in-benue-take-toll-on-nigerias-food-security> Accessed 30/1/2022

<sup>19</sup><https://www.google.com/amp/s/theconversation.com/amp/what-triggered-new-conflict-between-farmers-and-herders-in-nigeria>

<sup>20</sup>The Report is available online at <https://lagosstatemoj.org/wp-content/uploads/2021/12/Report-of-Judicial-Panel-of-Inquiry-on-Lekki-incident-investigation-of-20th-October-2020.pdf>.

<sup>21</sup>International Crisis Group 'Herders Against Farmers: Nigeria, Expanding Deadly Conflict' Report No.252 Africa (2017). <https://www.crisisgroup.org/Africa/Nigeria/252-herder-against-farmers-nigeria-expanding-deadly-conflict>. Accessed 31/1/2022

<sup>22</sup> (2014) LPELR 24497 (CA), *Ransome -Kuti V AG Federation* (1985)2 NWLR PT6 P211 @ 230

<sup>23</sup>(2015) LPELR 40630

within the political space called Nigeria without any deliberate efforts made to encourage interactions between them with a view to amalgamating their minds and sensibilities.<sup>24</sup> This clearly proves to some extent that the root cause of the violence is fundamental and deep-rooted.

Most panels of inquiries or investigation or commission set up at the instance of Nigeria's numerous crises include the payment of compensation among their many recommendations. However, receipt of money and other material things as compensation cannot address fundamental problems that are deep-rooted. It has not and cannot heal the wounds and fill the vacuum created by the crisis. Transitional justice application in matters of this nature could be very helpful.

#### **4. Recommendations to and Government Approach to Crisis**

Genuine recommendations to government following violent clashes resulting in human rights abuses abound. The case of invasion of Zaki Biam in Benue State by Nigeria Army in 2001 and Odi in Bayelsa State in 1991 are very incisive. In both cases, after years of protracted legal battle, the court awarded N37.6 billion to Odi and N40.8 billion to Zaki Biam. The Zaki Biam community later agreed on out of court settlement of N8 billion. Has the payment of monetary compensation healed the wounds occasioned to the community by the invasion of the Nigerian Army? We think not. It is our considered view that compensation is only a palliative measure. Wound of such magnitude are deep-rooted and it is only a deep-rooted approach in the nature of transitional justice that can heal them. Compensations as palliatives merely scratch the surface of the issues. They do not and cannot heal the wound occasioned by the damage. Respect for the rule of law is one of the primary goals of transitional justice and the action of the Nigerian Army is entirely devoid of it. The government has always been quick in setting up panels and accepting their various recommendations but has a very strong inertia towards implementation. For instance, in the 'ENDSARS' protests various states where the protests took place set up panel of inquiries/investigations. Some of the reports in some states were made public while others are not. Recommendations<sup>25</sup> Nos.10 and 29 of the Lagos State 'ENDSARS' Panel Report state as follows: Recommendation No.10, 'improve grievance address mechanism', Recommendation No.29, 'prompt disbursement of compensation to victims of the Lekki tollgate incident'. The question remains, who has been paid compensation amid denial by the authorities more than a year after the incident? What improvements have been made in the security apparatuses of the country after that incident? Has the data been collated of the persons that were injured, murdered, properties lost, officers that carried out the operations, and the motive behind the direct shooting of unarmed civilians? These and many more questions need to be addressed. It is obvious that payment of compensation will not stop the crisis from re-erupting. So long as compensation will continue to be paid as a palliative, crisis will continue to erupt in diverse places and in various ways. The improvement of the grievance address mechanism is one of the ways transitional justice has become impactful in communities or places it has been applied. Report of any panel of inquiry or investigation will be applauded but we are not aware of any report the government has given full implementation.

Similarly, the federal government's response to any violence that erupted in opposition to government policies or with respect to self-determination in reference to *IPOB* and other militias has been *ruthless excessive force*. With the Army deployed in all 36 States, Nigeria's problems are at the root is all about crisis of governance.<sup>26</sup> The action-response - sequence of the government has always been slow leading to distrust by the people. During the several attacks by herdsmen in several communities in Nigeria, there were allegations that there were reports of impending attacks on such communities that were not taken seriously by the government. The security forces took no step until after the herdsmen had attacked. The response of the force has always been to prevent a reprisal attacks. 'To begin with, on a number of occasions, those attacked have prior knowledge of the invasion, but when alarms are raised and reports given to security forces, nothing much is done to prevent the onslaught'.<sup>27</sup> It was also reported that where security forces get to scenes of attacks, they put up mild resistance to insurgency, suggesting that they (insurgents) are shielded for violent confrontation and repulsion. Having not prosecuted anyone the government has tacitly supported the violence and abuse of rights of others by some group of persons. One can therefore say that the government could be said to be the major harbinger of abuse of human rights and the initiation of violence against her citizens by her inaction in dealing with such matters squarely

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<sup>24</sup>Owoeye & Akiyode Afolabi; Communities & Cultures in Nigeria Violence as an Emerging Option in Interactions and the Role of Law, Institutional Paper Presented by Faculty of Law University of Lagos at the 51<sup>st</sup> Conference of Nigeria Association of Law Teacher held on July 1-6, 2018 at Nigeria Law school Abuja P. 11

<sup>25</sup> <https://www.vanguardng.com/2021/12/listed-ensars-panels-32>. Accessed 31/1/2022

<sup>26</sup> <https://www.thenewhumanitarian.org/analysis/2021/9/14/wh-support-for-succession-is-growing-in-the-southeast-nigeria>. Accessed 31/1/2022

<sup>27</sup> Akupoly; the guardian 8/may/2018, <https://guardian.ng/opinion/security-forces-and-herdsmen-attacks>. Accessed 31/1/2022

### 5. The Self Determination Question cum SAH Order in the Southeast

The self - determination question is one of the underlying (key) factors in the Nigerian /Biafran Civil War. About 29 years after Nigeria/Biafra war MASSOB was formed in 1999. When it appears that MASSOB was no longer pursuing her aim and objectives, IPOB was then found in 2012. Both bodies seek to actualize self - determination for indigenous people of Biafra. The formation of these bodies has had impact in the Nigerian polity in diverse ways. The impact of IPOB and her radio network led to the arrest of Nnamdi Kanu. The continued detention of Kanu has also led to the SAH order by some group of persons believed to be IPOB loyalists. The initial order was to be complied with every Monday but it now seems to be laden with uncertainties. Sit-at-home order is another strategy to the IPOB's self - determination agitation. Public response to the SAH has been that of mixed feelings. While the people in the lowest cadre of the society fully support it, the middle class and leading politicians seem not to approve of it albeit secretly. The middle class are divided. However, it cannot be denied that the SAH order usually halts all economic activities in the southeast every Monday or on any other day it is imposed, especially in Anambra State. To this, majority of opinion posits that shutting down the Southeastern economy is counterproductive while others argue that it is a signal that the people are tired of the contract with Nigeria.<sup>28</sup> Closely associated with this economic shut down is the relocation of certain businesses by wealthy merchants to neighbouring states like Delta and Rivers. The relocated businesses may not be returned soon. The result will be continued economic hardship for the people of the region. The loss of lives and destruction of properties during SAH enforcement conflicts cannot be over-emphasized. People are attacked and killed; properties destroyed especially those who are seen to have flouted the SAH orders.<sup>29</sup> The SAH order, it appears, has been counterproductive and has not in any way caught the fancy of the federal government. The initial order for SAH may have made some impact and signals duly received by the central federal government. It is our considered view that continued SAH implementation will be akin to shutting down of the borders against the Biafrans during the civil war which led to unprecedented malnutrition and hardship. Issues of such magnitude of using hunger on a population to wipe them out are matters that are conveniently within the ambits of transitional justice and can best be handled in that arena of truth.

### 6. The Transitional Justice Compromise

There had been two major attempts to apply transitional justice in Nigeria. These were the creation of 'The Human Rights Violations Investigation Commission of Nigeria' in 1999 and the earlier attempt in the post - civil war Reconstruction, Rehabilitation and Reconciliation (3Rs) of General Yakubu Gowon. The two attempts were expected to benefit the Igbo people of Southeastern Nigeria, among others. However, subsequent developments proved that the relative peace sought from the Igbos has remained elusive. The Gowon's government decision to pay what many regarded as a meagre 20 pounds to compensate each adult Biafran, the seizure of Igbo properties in some parts of the country, and the indigenization policy, it appears the political rhetoric of the 3Rs found no place among the Igbos. It ought to be recalled that Brigadier Adeyinka Adebayo who chaired the post war Equity Commission that probed the activities of ex-Biafran soldiers and a member of the Supreme Military Council had this to say in the process leading to the 3Rs policy: - 'having lost the war, the Igbo would not be permitted to win the peace.'<sup>30</sup> With such statement from a member of the Supreme Military Council and one who was directly involved in the Equity Commission, the programme or policy sought to be implemented was dead on arrival. Writing on the 3Rs, Odigwe has this to say, 'It succeeded in scratching the surface. The fissures occasioned by wartime injuries have remained long after the war and have caused major issues with which the Anioma continue to grapple.'<sup>31</sup> Similarly, he submitted that, 'the mismanagement of the General Yakubu Gowon's reconciliation, reconstruction and rehabilitation policy... to erase the scars of the war was the major reason for the resurgence of Biafra uprisings'<sup>32</sup> The author goes further to say that, 'to keep Nigeria one is a task that must be done. The military defeat of secession only achieved that goal in half. The other war of re-integration... can only happen in the battlefields of policy making and implementation where the most effective weapons are the tools of reason, justice and fairness.'<sup>33</sup> He concluded that the country cannot win this war by behaving like ostriches... thinking that the system is fair to everyone and that all those protesting injustice such as IPOB and others are just noise makers... The system must listened to the wise among its elites'<sup>34</sup> These are part of the constant features transitional justice seeks to establish.

<sup>28</sup> <https://www.vanguard.com/2021/08/how-Monday-sit-at-home-is-affecting-south-east-economy/amp/>

<sup>29</sup> <https://www.google.com/amp/puch.ng.com/southeast-pain-spreads-to-lagos-ipob-sit-at-home-becomes-Monday-of-horror-transporters-traders-court-loses-blood-flows-in-igboland>

<sup>30</sup> The Jerome Udoji Memoirs, the Guardian Nov. 12, 1995: B4

<sup>31</sup> O A Nwaokocha, Post War Reintegration, Reconstruction and Reconciliation Among the Anioma People of Nigeria: Ufahamu: A Journal of African Studies 42(1) 2020 p.1-29 @ pp 19-20. Though the reference was specifically made about Anioma people, it did not change the fact of the situation in the entire Igbo land or Biafra.

<sup>32</sup> Failure of Gowon's three Rs, Cause of Separatists Groups by Gordi, Udeaja 8/6/2017 <https://guardian.ng/politics/failure-of-Gowon-three-rs-cause-of-separtists-groups>.

<sup>33</sup> *Ibid*

<sup>34</sup> *Ibid*

It is not gainsaying that the 3Rs policy was a total failure from the outset. It was in fact more of a myth than reality considering what could have been achieved through it. The policy was a welcome idea in the first instance but failure or inertia and or lack of political will to implement it caused greater harm than the civil war itself. That failure of implementation has caused and loaded Nigeria with more issues to grapple with from all regions other than the Biafra.

On the other hand, 'The Human Rights Violations Investigation Commission of Nigeria' (Oputa Panel) may have enjoyed wide publicity due to awareness and level of degradation caused by the military era. It was indeed another great opportunity to accepting the truth, achieving great peace and reconciliation, and healing deep wounds and scars thereof on Nigeria's recent past. The Panel submitted her Report in 2002 but was only made public upon publication by the Nigerian Democratic Movement and Nigerian based Civil Society Forum.<sup>35</sup> The Oputa Commission was not a failure, rather, the Obasanjo administration which established same failed to issue a legal mandate which worked against the release and implementation of the report.<sup>36</sup>

Though President Obasanjo set up the Oputa Commission, but his actions thereafter were clearly contra-indication of a President that desired truth, healing, peace and reconciliation. His administration could also be described to be a government that has disdain for the rule of law. The invasion of Odi and Zaki Biam communities under his leadership by military personnel attests to these facts. For instance, the military invaded Zaki Biam between 20<sup>th</sup> and 24<sup>th</sup> of October, 2001 on the order of the President and left devastation of monumental proportion in their trail. Well over 200 civilians were massacred besides properties that were massively destroyed.<sup>37</sup> The earlier invasion was the Odi Massacre by same military on 20<sup>th</sup> November, 1999. Several hundreds of lives were also lost. The neighbouring Choba where, like in Odi, the people were canvassing for greater share in oil resources produced in their community was also not spared. The Obasanjo administration's troops came in the guise of peace maker but ended up killing and raping innocent Nigerians in the two communities with no one to hold accountable.

On these actions of the administration, the Human Rights International has this to say, 'These operations indicate a disturbing willingness by the new civilian government in Nigeria to use the same method as the military governments of the past.'<sup>38</sup> The actions of the administration in the setting up of Oputa Commission and ordering of soldiers for invasion of some communities on allegation of killing of soldiers are two strangest irreconcilable differences for a government with a seeming interest in transitional justice. While we conclude that the Oputa commission was not in fact a failure, we affirm that the government just like the political policy rhetoric of Gowon in the 3Rs could not find place for truth, peace, reconciliation and healing in the actions that followed.<sup>39</sup> It appears that the commission was set-up by the government desperately in search of legitimacy but its actions soon after the Commission was set up betrayed the government.<sup>40</sup>

Having earlier said that it was the mismanagement of the 3Rs of Yakubu Gowon that partly brought about the resurgence of Biafra agitation<sup>41</sup> the application of transitional justice to Southeastern Nigeria in the face of the security face - off with civilians at the height of self- determination question will be apt now. Unless the truth be told and accepted, the wounds cannot be healed and agitators and those who have lost dear ones and valuable properties may not down tool in their cause for justice either rightly or wrongly soon. The military and security forces have subjugated and oppressed the people over a long period without cause. What Nigeria and especially southeast hereof is witnessing is a bottled discontent over years of subjugation without cause. Our Constitution is in fact an instruction of subjugation in the face of federal character provision.<sup>42</sup>

If transitional justice aims at the transformation of the antagonistic relationships between parties to the conflict particularly in divided societies<sup>43</sup> then the application of transitional justice to Nigeria and particularly to eastern Nigeria will be of the essence if reconciliation and peace will be achieved in the near possible future. In this course, there must be promises and actions that point to, willingness to redress the past wrongs and abuses. This

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<sup>35</sup> O Bakiner, Truth Commissions: Memory, Power and Legitimacy, 2016; <https://books.google.com.ng> Accessed 9/2/2022

<sup>36</sup> S C Onyegbula; The Efficacy of the Nigerian Human Rights Violation Investigation: <https://uir.unisca.ac.za> Accessed 9/2/2022.

<sup>37</sup> <https://www.org/news/Nigerian-Soldier-Massacre-Civilians-Revenge-Attack-Benue-state>. Accessed 9/2/2022.

<sup>38</sup> <https://www.hrw.org/legacy/press/1999/dec/soldiers>. The destruction of Odi and rape of Choba December, 22,1999

<sup>39</sup> It should be recalled that General Olusegun Obasanjo was fully involved in the civil war with the Nigerian Army upon whose shoulders it rose to become president of Nigeria soon thereafter after a failed coup.

<sup>40</sup> The Amnesty program of General Musa Y'ar Adua has no promise or place for discussion. The program set off on a wrong premise of amnesty. Except there be conviction and sentencing there cannot be any form of amnesty. It can well be given another option or name entirely instead of Amnesty

<sup>41</sup> Gordi Udejaja, *Op cit*.

<sup>42</sup> Section 14(3) CFRN 1999

<sup>43</sup> S B – Zistel et al op cit P. 5

is not an option for payment of compensation, but by admitting of the wrongs of the past with promise not to take such step under any circumstance whatsoever. It must be a process for revealing the truth, accepting guilt, and further asking for forgiveness and a hand of fellowship.

In the same vein transitional justice is not in any way limited to peace and reconciliation but further extends to entrenchment of democratic norms, to wit: - social and economic equality. The injustice meted to the Southeastern part of Nigeria right after civil war is not limited to physical abuse and violation of rights, but life-enhancing economic opportunities were denied and deprived them. Several micro and macro-economic policies have been implemented to suppress the 'easterners'. Social equality does not exist at all. Marginalization is visible in every sphere of the Nigerian society. For instance, the experience of the Igbos in the post-war Nigeria reveals 'how the first had become the last in the confirmation and equation of ethnic nationalities in the countries. The general amnesty offered to Biafran soldiers and policemen in 1970 today has no meaning as no single Igbo man or woman has risen with any rapidity in all the arms of the armed forces.<sup>44</sup>

It is obvious in the Southeastern part of Nigeria that the scars of the civil war are still visibly seen in every community. The central Federal government is not pretending about the scars of war. They have no plan whatsoever to make a change of any sort. The only possible way of achieving integration in this fragmented united Nigeria is resort to transitional justice in the real sense of it and not transitional justice as another political rhetoric that may open the old wounds and heighten the tension in an already tensed and tent-pitched Nigeria. It is recommended that the 1999 Nigerian Constitution, with reference to Section 14(3), should be amended. Steps should be taken to implement the Oputa Commission Report being the first measured attempt at transitional justice in Nigeria. In the wake of this, another truth and reconciliation commission ought to be set up to deal with the current situation in south eastern Nigeria. Save these steps are taken, the rising tensions and divisive tendencies not only in southeastern Nigeria will engulf the country and the rest may be history.

## **7. Conclusion**

In seeking a lasting solution to the issues raised here, it has become imperative to adopt the transitional justice model. Indeed, the ENDSARS Panel was designed as a transitional justice model. However, failure to comply with the outcomes of such panels often point to insincerity on the part of governments that set up such panels. It is important that a government desirous of peace should adopt a peace model geared towards not just remedy, but reconciliation of aggrieved parties as festering grievances can result in unwanted violence. It is believed that where transitional justice principles are fully entrenched, a viable solution would be handy for handling pockets of violence and clashes among the citizenry.

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<sup>44</sup>I J Ejemheare, A study of Gown's Post Nigeria civil war reconciliation on Eastern People of Midwestern Nigeria 1SJASSR vol 3 issue 4 Sept 2021