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History and the Oputa panel

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Unless there is a sudden and major rupture in the balance of forces and the present structure of power in the country, the report of Human Rights Violations Investigations Commission, otherwise known as the Oputa panel, will not be officially published during the tenure of General Olusegun Obasanjo as President of the Federal Republic of Nigeria. But, then, the refusal of the Federal Government to publish the report of the panel is the reaction of just one "stakeholder" to the report. The other "stakeholders", including the organisations of the civil society, political parties, public and private institutions, the professional bodies, the "international community", etc., have not been blocked from making use of the panel report.

An institution of the civil society demonstrated that, as a stakeholder, it had the responsibility to obtain the report and publish it. In the same way other stakeholders can decide to write their views and recommendations (that is, private "white papers") on the report, use them in whatever way they deem appropriate and implement aspects they have the means to implement, and leave the rest to history. The point I am making is this: The Oputa panel was inaugurated under popular pressure; the panel actually started its work; it was not still -born; it concluded its work and wrote a

report; the report was submitted to the Federal Government in a televised ceremony; finally the report was obtained and published by an institution of the civil society. History has therefore given us sufficient material to work with: physical, political and moral.

The **Sunday Tribune** of November 4, 1979, carried a piece by Tai Solarin titled "The sloten presidency". That was five weeks after the inauguration of Shehu Shagari as President of the Federal Republic of Nigeria. In the article, the activist made a statement which I have quoted several times. I am quoting it again: "If this government lasts four-years, the four year old NPN will have been firmly planted as Government Party everywhere and the UPN, the GNPP, the NPP and the PRP will have been drained to annihilation, both in membership - it is already happening - and in morale. The 1983 election would, therefore be between the NPN and the Revolutionary Party, which, having studied how the NPN came to power, knows exactly what do to do to supplant the NPN for the presidency."

Tai Solarin's "prediction" can be divided into two parts. The part concerning the all - conquering mission of the NPN" was "coming to pass" as Solarin was writing. By the general elections of 1983, the opposition parties, as they emerged in 1978/1979, were already being "drained to annihilation" as predicted. But what emerged - coalitions and working agreements - though not a "revolutionary party" as such, were powerful enough to give a credible challenge to the party. However, as shown by the course of events, the challenge was not powerful enough to "supplant" the NPN. And the army came in to solve the NPN problem as it saw it, in its own interest, and in its own way.

The above is only of historical importance. What is of current importance, especially for the present piece, is the phrase in Solarin's prediction. "Having studied how NPN came to power" to which I may now add: "having studied how NPN sustained its power". The whole point of recalling Solarin's 1979 prediction is to strengthen my central proposition, namely, that the Oputa Panel gave the nation enough material to understand how the successive regimes in Nigeria - before and after Shehu Shagari - came to power, how they sustained this power, and what exactly patriotic and popular democratic forces must do to supplant this power. In this regard the Oputa Panel has fulfilled its mission in history.

In a recent comment on the report of the Commission, Ademola Adegbamigbe of **The News** magazine said that the document is a "political and economic document

that a leader can use as a manifesto on good governance". This is because, as observed by Adegbamigbe, the panel made powerful and definitive pronouncements, based on evidence, not only on the military juntas, but also on "the judiciary, the police, the intelligence units, and how to revive and stabilise the economy". My position is an endorsement of this perspective.

Earlier, in his preface to the magazine's cover story on the report. (**The News**, December 6, 2004), Adegbamigbe said that "it would take a government that has a suicidal streak to publish a document that could lead to its own inquisition. In other words, it smacks of signing one's own death warrant". Here, I offer a comment. The basic character of the Nigerian state has remained the same since independence, or at least since the end of the Civil War, and the same broad interests have dictated the policies and methods of the ruling classes and blocs. A fundamental verdict on any particular regime during this period is therefore a verdict on all of them, including the present one. In other words, the Oputa panel was also talking about the present regime.

Two factors, among others, helped to make the Oputa Commission of Inquiry a historic event, and its report a significant historical document. These were the selection of the panel and the terms of reference it was given. A lot is known and has been said about the intellect, integrity and antecedents of the panel's chairperson and his team. We would not have been talking about the attempted suppression of the report if a typically Nigerian panel had been inaugurated. Indeed, President Obasanjo would have had no reason to suppress an equivalent such as one that says "**on the one hand ... and on the other hand**". The terms of reference could also not have been better formulated. They gave the commission the correct questions to pursue. And the commission did exactly that. As I frequently remind my young friends, the formulation of questions is very critical in the solution of a problem. Questions go about looking for answers, and not the other way round.

President Obasanjo, according to the record provided by Adegbamigbe, told Justice Chukwudifu Oputa and his team to "establish or ascertain the causes, nature and extent of human rights violations or abuses, and in particular, known or suspected cases of mysterious deaths and assassinations, or attempted assassinations, committed in Nigeria, since the last democratic dispensation". Further, the commission was to

"identify the person or persons, authorities, institutions, organisations which may be held accountable for such deaths, assassinations or attempted assassinations *or* other violations or abuses of human rights and to determine the motive for the violation or abuses, the victims and circumstances thereof". This was a very clear mandate - the honesty or-otherwise of the government notwithstanding - given to a team to whom integrity and honour are no strangers.

Yet, another heuristic mandate in the presidential terms of reference: "The commission was given the task to also determine whether such abuses or violations were the product of deliberate state policy or the policy of any of its organs or institutions or individuals or whether they arose from the abuse by state officials *or* their office or whether they were the acts of any political organisation, liberation movement or other group or individuals" Although this formulation had been influenced by the proclamation setting up the Truth and Reconciliations Commission of South Africa, it asked exactly the questions that the people of Nigeria wanted answered.

It is in the sphere of recommendations for action that some human rights advocates, including Adegbamigbe, have expressed mild misgivings. After criticizing all the military rulers during the period covered by the inquiry and accusing some of them of responsibility for, or complicity in, specific crimes, the Oputa Panel recommended that "all former heads of state be considered to have surrendered their right to govern Nigeria and Nigerians at any other time in the future". In other words, any person who, having illegally seized power, behaved the way the former military rulers behaved while in office, should no longer be admitted to public office once power had been recovered from him or her by Nigerians. That is philosophical justice. It is also a revolutionary one.

There is, however, the argument that banning people from holding political office might be against the "spirit of the constitution". I think I agree. But, then, we should not forget that a constitution is not a "Holy Writ". It is not a Bible, it is not a Koran, with an aura of infallibility and inviolability. The "best" of constitutions is a reflection of the balance of power in a polity: ba'alance between the various factions and fractions of the ruling classes and power blocs and balance between all these on the one hand and the popular masses on the other. It is also a reflection of the character of the political and ideological hegemony in the country.

This point can be put differently: While endorsing the sentiment that banning past leaders from future political contest is against the spirit of the constitution, I am inviting

compatriots to see that this same constitution is a statement of the power of the ruling classes and blocs in whose membership the personages being recommended for banning occupy pre-eminent positions. To play radical and class politics is to absorb contradictions of this type and see one's way out of them.