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**Colonialism and the Dilemmas of Transitional Justice in Nigeria**

Hakeem O. Yusuf*

**ABSTRACT∞**

Adoption of the colonial template of governance by successive postcolonial governments in Nigeria has limited the ambit of transitional justice, rendering it incapable of addressing the root causes of systematic abuses and conflict in the country. Pathologies of colonial injustice and violence were transmitted into governance in the postcolony and this structural continuity has locked down the prospect of justice and reforms as an integral part of the governance complex. Critical analysis of the Nigerian experience calls attention to the need for transitional justice theory and praxis to engage with the colonial legacy in nonsettler, postcolonial societies. Understanding and engaging with the colonial legacy is critical to the prospects of successful transitional justice in postcolonial polities.

**KEYWORDS**: Nigeria, colonial legacy, postauthoritarianism, impunity, nonsettler colonial territories

## [A]INTRODUCTION

Transitional justice has had limited impact in securing justice for victims of gross violations of human rights in Nigeria due to the adoption of the colonial template of governance (colonial-style governance) in the postcolonial period. During the period of colonial rule, governance, law and justice were articulated and implemented in the nonsettler colony without the consent of the colonized and for the benefit of the colonizer. This predatory paradigm of governance was conveniently adopted at the transition to postcolony – the postindependence period – by the local political, economic, civil and military elite. The 'local elite' are those who have taken over political power and control of the economy in the postcolony. Transitional justice discourse and

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measures have been captured by the structural injustice that has been the fabric of governance in the country. Attempts at state building during and after the period of colonization have been instrumental in furthering the interests of the colonizer and the local elite, respectively. In this dynamic, efforts to institute redress in the postcolony have been largely captured and neutralized by the agency of colonial-style governance.

In practice, implementation of transitional justice measures integrates it into the governance complex, while its framing as a 'global project' has brought problems of depoliticization. As Rosemary Nagy observes,

> Transitional justice is a discourse and practice imbued with power. Yet, it can be strikingly depoliticized in its application. Artificial time frames and zones of impunity produce restricted accounts of violence and remedy.[1]

One of the manifestations of this depoliticization is the considerable lack of engagement by transitional justice with the structural injustices instituted for colonial governance in postcolonial polities. This presents a challenge to the implementation of transitional justice, as the Nigerian experience demonstrates.

In the Nigerian experience of colonization, the colonialists adopted a 'law and order' template to governance which was suffused with violence and sustained by it.[2] At the end of the colonial period, neither the colonizers nor the new government in Nigeria acknowledged the problems created by colonial structures. There was also no articulated commitment to new values or structures to address the suffering of victims of gross violations of human rights which occurred under colonial rule. Thus, the palpable disconnect between the interests of the rulers and the ruled which characterized colonial rule was transmitted into postcolonial governance, perpetuating structural injustices and simultaneously capturing attempts at reforms. Due to this approach to governance, victims of gross violations of human rights arising from the civil war

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[1] Rosemary Nagy, 'Transitional Justice as Global Project: Critical Reflections,' *Third World Quarterly* 29(2) (2008): 287.
[2] Toyin Falola, *Colonialism and Violence in Nigeria* (Bloomington, IN: Indiana University Press, 2009).

(1967–1970) and authoritarian military rule (1967–1999) still await justice. In the meantime, impunity has continued and institutional reform in the country has been limited and disappointing despite the opportunity for political transition in 1999.

Every part of the country has witnessed some measure of low-level violence in the last 25 years. Fragile state institutions, a shaky rule of law, and truncated measures of accountability for gross violations of human rights and abuses of power committed during three decades of military rule hallmarked the postauthoritarian period (1999–2017). The 18 years of postauthoritarian military rule were marked by a ferment of violence by state and nonstate actors.[3] The country has experienced violence in the oil-rich Niger Delta region for over two decades. In 2014, the Boko Haram insurgency generated international concern with the kidnapping of more than 270 schoolgirls in Chibok, Borno State, in the largely impoverished northeastern region of the country, thereby highlighting the embedded structural violence in the country's history. This article analyzes the impact of the structural continuities of colonization in governance and how these have limited the operation of transitional justice in the country.

A brief explanation of the methodology adopted in this article is relevant at this point. I draw on my experience of participating[4] in and research on transitional justice initiatives in Nigeria over the last 15 years. This experience is supported by a reading of the historical literature to analyze the types of changes that are necessary to realize transformation in nonsettler states if redress, truth and justice for past and ongoing violations are to be achieved. What emerges from this methodological approach is a reframed lens for assessing transitional justice. The analysis that follows offers alternative perspectives for analyzing the historical developments focused on in this article.

[3] Amnesty International, *Nigeria: Trapped in the Cycle of Violence* (2012); International Crisis Group, 'Curbing Violence in Nigeria (I): The Jos Crisis,' Crisis Group Africa Report No. 196 (2012).

[4] This includes acting as legal counsel in a tribunal of inquiry in Lagos State; serving as a member of the team in the trial and appeals of some of the most important criminal and civil cases in the country's postauthoritarian period (2000–2006); and serving as a commissioner on a truth commission in Osun State, southwest Nigeria.

In the rest of the article, I first set out the conceptual framework on the current state of transitional justice and colonialism before discussing some important sites of gross human rights violations cross-cutting the colonial and postcolonial periods, highlighting continuities that disincentivize a redress agenda. I then focus on limitations of the transitional justice processes implemented during the political transition and how they were framed through a narrow reform agenda. Here the analysis unpacks the impact of the transitional context highlighted earlier. I then address the role of gate keeping and nepotism, features that also play a significant role in fostering impunity and limiting the ambit of transitional justice in the country. The article concludes that Nigeria's experience calls attention to the need for transitional justice theory and praxis to engage with the colonial legacy in postcolonial societies.

## [A]TRANSITIONAL JUSTICE AND COLONIALISM

Colonization has played a significant role in shaping the socioeconomic and political framework of some western and nonwestern countries. Yet, transitional justice research and praxis proceeded for decades without reference to the harms and injustices of colonialism and its persisting effects.[5] This is due at least partly to the fact that transitional justice has developed as part of the humanitarian law, human rights and democratization agenda instituted in the international system,[6] led and promoted by western liberal democratic countries that were colonizers. It is also due in part to the general approach to the structural injustice of colonialism within the international system. As Catherine Lu observes, 'The relative lack of accounting for injustices committed in contexts of colonial rule is striking.'[7] However, in recent times, the salience of colonization in the field of transitional justice has begun to receive some attention. There has been some focus on justice for indigenous peoples who were victims of mass human rights violations in settler colonial countries like Australia, Canada, New Zealand and the US.

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[5] Jennifer Balint, Julie Evans and Nesam McMillan, 'Rethinking Transitional Justice, Redressing Indigenous Harm: A New Conceptual Approach,' *International Journal of Transitional Justice* 8(2) (2014): 194–216.
[6] Hakeem O. Yusuf, 'Transitional Justice in the Middle East and North Africa: Taking Account of Islam,' *Muslim World Journal of Human Rights* 14(1) (2017): 145–170.
[7] Catherine Lu, 'Colonialism as Structural Injustice: Historical Responsibility and Contemporary Redress,' *Journal of Political Philosophy* 19(3) (2011): 264.

The main thrust of the scholarly research on colonization and transitional justice is the need to extend the purview of transitional justice to indigenous peoples' experiences of colonial violence, historical injustices and structural harm in liberal, stable, democratic, western countries.[8] In this regard, Paulette Regan has examined the need to 'confront the history of colonization, violence, racism, and injustice that has shaped and remains a part of Canadian society.'[9] Analyzing the Australian state's treatment of aboriginal people, Jennifer Balint, Julie Evans and Nesam McMillan argue that transitional justice needs to break away from a specific 'point of rupture' and 'new dawn' approach which elides 'enduring structural arrangements that may have resulted in past as well as present injustice and the ongoing effects of past inequities on present and future generations.'[10]

A core argument here is that in nonsettler colonial states, it is possible to miss how local elites, who mobilized for and secured power through the doctrine of self-determination, ended up adopting the template of colonial rule for governance in the postcolony. While the physical occupation of a territory by a foreign power or the 'conquer and rule' paradigm are the most visible forms of colonization, they are by no means the only ones.[11] As some postcolonial theorists argue, the common form of colonization typically diverts attention from 'other forms

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[8] Augustine S.J. Park, 'Settler Colonialism and the Politics of Grief: Theorising a Decolonising Transitional Justice for Indian Residential Schools,' *Human Rights Review* 16(3) (2015): 273–293; Michelle Bonner and Matt James, 'The Three R's of Seeking Transitional Justice: Reparation, Responsibility, and Reframing in Canada and Argentina,' *International Indigenous Policy Journal* 2(3) (2011): 1–29, DOI: 10.18584/iipj.2011.2.3.3; Damien Short, *Reconciliation and Colonial Power: Indigenous Rights in Australia* (Aldershot: Ashgate, 2008); A. Dirk Moses, 'Official Apologies, Reconciliation, and Settler Colonialism: Australian Indigenous Alterity and Political Agency,' *Citizenship Studies* 15(2) (2011): 145–159; Courtney Jung, 'Canada and the Legacy of the Indian Residential Schools: Transitional Justice for Indigenous Peoples in a Nontransitional Society,' in *Identities in Transition: Challenges for Transitional Justice*, ed. Paige Arthur (Cambridge: Cambridge University Press, 2011); J. Scott and A. Fletcher, 'In Conversation: Indigenous Cultural Revitalization and Ongoing Journeys of Reconciliation,' *Canadian Journal of Native Studies* 34(2) (2014): 223–237. But compare Jennifer Matsunaga, 'Two Faces of Transitional Justice: Theorizing the Incommensurability of Transitional Justice and Decolonization in Canada,' *Decolonization: Indigeneity, Education and Society* 5(1) (2016): 24–44.

[9] Paulette Regan, *Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada* (Vancouver: UBC Press, 2010), 11.

[10] Balint et al., supra n 5 at 200–201.

[11] Oliver Turner, 'Finishing the Job: The UN Special Committee on Decolonization and the Politics of Self-Governance,' *Third World Quarterly* 34(7) (2013): 1193–1208.

of domination, exploitation and oppression that are subtle, even elusive and pernicious.'[12] Similarly, while analyzing the complicity of the international system in facilitating colonial injustices, Lu argues that colonial injustices rely 'on social structural processes that enable and even encourage individual or state wrongdoing, and produce and reproduce unjust outcomes.'[13] I argue that this paradigm plays out in the Nigerian postcolony with significant implications for a transformative project like transitional justice.

Conceptually, transitional justice demands a break from a past marked by injustice, harm and suffering.[14] It also anticipates the abatement of impunity through various mechanisms as well as reformation of state institutions.[15] Transitional justice envisages a form of revolutionary shift in the sociopolitical order. Such a shift recognizes the agency of disenfranchised or disempowered victims and ensures the authority and power of the state is reconfigured with their consent and rendered accountable to them. However, this is problematic in the context where governance is founded on the perpetuation of colonial patterns of hegemony.

In her analysis of the structural injustices carried over in settler colonial states, Penelope Edmonds observes that the lives of indigenous peoples and their communities 'have not been transformed by the dramatic rupture of decolonization and the move to a postcolonial state.'[16] The focus here is not on indigenous peoples. Nonetheless, Edmonds' observation is also relevant to nonsettler colonial contexts as it signals continuities of structural injustice despite the fact of decolonization. Peter Ekeh's seminal analysis of the impact of colonialism on Africa's sociopolitical environment has also drawn attention to the salience of the colonial past and its

[12] Roy Grinker, Stephen C. Lubkemann and Christopher Steiner, eds., *Perspectives on Africa: A Reader in Culture, History, and Representation*, 2nd ed (Malden, MA: Wiley-Blackwell, 2010), 427.
[13] Lu, supra n 7 at 268.
[14] Juan E. Méndez, 'Accountability for Past Abuses,' *Human Rights Quarterly* 19(2) (1997): 255–282; M. Cherif Bassiouni, 'Justice and Peace: The Importance of Choosing Accountability over Realpolitik,' *Case Western Reserve Journal of International Law* 35(2) (2003): 191–204.
[15] Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: W.W Norton, 2011).
[16] Penelope Edmonds, *Settler Colonialism and (Re)Conciliation: Frontier Violence, Affective Performances, and Imaginative Refoundings* (Hampshire: Palgrave Macmillan, 2016), 1.

impact on state building on the continent.[17] Ekeh concludes that, 'Our post-colonial present has been fashioned by our colonial past.'[18] His views, expressed more than four decades ago, remain relevant to governance in Nigeria's postcolony.

Colonial rule was structured to either completely obviate or at least reduce direct contact between the majority of the ruled and the rulers. Colonial rule had certain key interlocking features, including the absence of consent of the ruled (that is, the absence of a social contract); governance for the benefit of the colonizer; the centrality of violence to maintaining its authority (a 'law and order' approach to governance); and the use of direct and indirect rule as convenient, thereby coopting existing local rulers or creating a crop of new local officials.

An important strategy for making short shrift of the need for accountability to the ruled in the colonial structure was obscuring the mechanisms for extracting natural resources. The less access to and information the colonized had about the real value of their resources, the better for the colonizer. As will be shown, the structure of the nonsettler colonial state has been preserved and maintained by the local elites to facilitate their political, economic and social dominance.

The foregoing dynamic produces a dilemma for transitional justice when it is subsumed as a project in the governance complex. On the one hand, the injustices perpetrated during the colonial period have largely been subjected to an imposed amnesia by the colonizers.[19] On the other, the 'colonial past has become a "past that does not pass away".'[20] Transitional justice's tenuous engagement with the injustices of the colonial past leaves victims of those injustices unacknowledged and sustains continuing structural injustice.

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[17] Peter Ekeh, 'Colonialism and the Two Publics in Africa: A Theoretical Statement,' *Comparative Studies in Society and History* 17(1) (1975): 91–112.

[18] Ibid., 111.

[19] Stiina Löytömäki, 'The Law and Collective Memory of Colonialism: France and the Case of "Belated" Transitional Justice,' *International Journal of Transitional Justice* 7(2) (2013): 205–223.

[20] Ibid., 222. See also, Luc Huyse, *All Things Pass, Except the Past*, trans. Julian Ross (Brussels: AWEPA, 2009).

## [A]TRANSITIONAL JUSTICE AND COLONIAL-STYLE GOVERNANCE IN NIGERIA

The argument that structural continuities of colonial-style governance function as a disabler or limitation to transitional justice in the postcolony is well illustrated through examining certain sites of gross violations of human rights in Nigeria. While victims of these violations have sought redress through transitional justice for harm and abuse done by the state, this has largely been to no avail.

### [B]Subjugation of Indigenous Institutions

The British introduced a system of 'direct rule' – the use of British institutions implementing British ideas of government – in some areas in Nigeria. However, colonization was imposed mainly through a system of 'indirect rule' which largely involved governing the local population through indigenous political institutions. Broadly stated, under indirect rule, the authority of traditional rulers was officially recognized by the British.[21] In return for such recognition, the traditional rulers were subjected to the authority and control of a colonial administrator.[22] However, notwithstanding the military might of the colonial authorities, there were several instances of resistance to the subjugation of the traditional rulers in the process of indirect rule.[23] Such resistance was mostly put down with military force and considerable violence, leading to the deposition and expulsion of these rulers from their domains.[24]

The aftermath of the confrontation between the colonizers and the indigenous political institutions remains significant for governance and transitional justice in Nigeria, for a number of reasons. First, in instances where resistance led to gross violations of the human rights of the

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[21] Adiele Eberechukwu Afigbo, *The Warrant Chiefs: Indirect Rule in Southeastern Nigeria, 1891–1929* (London: Longman, 1972).

[22] Toyin Falola and Matthew M. Heaton, *A History of Nigeria* (Cambridge: Cambridge University Press, 2008).

[23] Ibid.; Roger Blench, Selbut Longtau, Umar Hassan and Martin Walsh, 'The Role of Traditional Rulers in Conflict Prevention and Mediation in Nigeria,' http://www.rogerblench.info/Development/Nigeria/Conflict%20resolution/Final%20Report%20TRs%20September%2006.pdf (accessed 26 February 2018).

[24] A prominent example is that of Oba Eshugbayi Eleko, who resisted the authority of the colonial governor of Lagos and was deposed, arrested and removed from the colony. See, *Eshugbayi Eleko v The Officer Administrating the Government of Nigeria and Another* [1931] UKPC 37.

various traditional rulers and members of their families and sometimes communities, the victims did not receive any form of justice for their suffering. The late 19th-century British invasion of Benin Kingdom with the attendant carnage is a notable example. Not only was the ruler, King Ovonramwen, banished, some of his chiefs were executed, thousands of Benin artefacts were looted by foreign trophy hunters, and the capital was virtually destroyed to assert the superiority of the colonizers.[25] Second, colonial repression resulted in a loss of sovereignty for the traditional rulers in the various communities and rendered them subservient to colonial government structures, which have remained fixtures of governance in the country. Third, the indigenous rulers' continuing relevance hinged on doing the bidding of the colonial government, signalling that even where indigenous rulers still commanded varying levels of obeisance in their communities, they would be wary of defending their peoples' rights or taking up the cause of justice for victims of state violence in the postcolony.

Furthermore, the subjugation and subordination of indigenous institutions and structures of governance to colonial ones meant that the various peoples and communities were not able to seek justice for violations of human rights through those familiar and proximal institutions. Indigenous formations of justice are sometimes the preferred (or only) institutions a considerable number of people turn to for justice, even in situations of gross violations of human rights.[26] Thus, the subjugation of indigenous formations of justice is a particularly significant dimension to the current transitional justice conundrum in the country.

**[B]Culture and Identity Politics**

Another important legacy of colonial rule in Nigeria was the organization of government along ethnic lines in three regions: northern (Hausa-Fulani), eastern (Ibo or Igbo) and western (Yoruba).[27] This is despite the fact that the country is a multireligious and ethnically diverse

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[25] Falola, supra n 2.
[26] Abdullahi A. An-Na'im, 'From the Neocolonial "Transitional" to Indigenous Formations of Justice,' *International Journal of Transitional Justice* 7(2) (2013): 197–204.
[27] Four with the creation of the midwestern region in 1963.

polity, with recent studies indicating it has over 350 ethnicities.[28] During the colonial period, the British did not attempt to bridge the ethnic divides. Rather, the colonial government's system of 'divide and rule' promoted and exacerbated existing differences.[29]

In the postcolony, the elite simply stepped into governance, ostensibly armed with a legitimacy that the colonialists lacked, but proceeded to exploit the inherited fissures in the polity. The 'ruling class' that took over from the colonialists was 'content to run the [post]colonial state and society without any modifications whatsoever.'[30] Consequently,

> Although native to Africa, the African bourgeois class depends on colonialism for its legitimacy. It accepts the principles implicit in colonialism but it rejects the foreign personnel that ruled Africa. It claims to be competent enough to rule, but it has no traditional legitimacy.[31]

Lacking legitimacy, the political elite has continued to seek it with a 'primordial public,' composed along ethnic and religious loyalties, as opposed to a 'civic public' that serves the general interest.[32] To preserve its predation, the divided elite continues to mobilize ordinary people against each other to gain economic and political advantage, or simply to maintain existing privileges,[33] deliberately or inadvertently perpetuating the conflict set in motion by the colonialists.[34] In the immediate postindependent period, attempts by a few political leaders to operate beyond the ethnic and regional boundaries institutionalized during the colonial era

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[28] 'National Conference 2014: Final Draft of Conference Report,' August 2014, https://www.premiumtimesng.com/national-conference/wp-content/uploads/National-Conference-2014-Report-August-2014-Table-of-Contents-Chapters-1-7.pdf (accessed 26 February 2018), 52 [hereinafter 'National Conference 2014'].

[29] Samson C. Ukpabi, 'Nigeria: The Issues of War and Peace,' in *Nigeria Since Independence: The First 25 Years – Vol. 6: The Civil War Years,* ed. Tekena N. Tamuno and Samson C. Ukpabi (Ibadan: Heinemann Educational Books, 1989).

[30] B.O. Adebisi, 'The Challenges of Independence: Major Issues Before and After,' in *Nigeria Since Independence: The First 25 Years – Vol. 4: Government and Public Policy*, ed. Tekena N. Tamuno and J.A. Atanda (Ibadan: Heinemann Educational Books, 1989), 18.

[31] Ekeh, supra n 17 at 96.

[32] Ibid.

[33] For a detailed exposition on this issue, see, Abdul Raufu Mustapha, 'Ethnic Structure, Inequality and Governance of the Public Sector in Nigeria,' Democracy, Governance and Human Rights Programme Paper No. 24, UN Research Institute for Social Development (2006).

[34] Ibid.

were resisted and overshadowed by mutual suspicion. The political struggle that emanated from such attempts led to authoritarian rule and civil war, which have shaped postindependent Nigeria.[35]

## [B]Law and Justice Framework

The 'peace, order and good government' (POGG) power was an important feature of British imperial rule all over the world. In the famous colonial law case *Ibralebbe v The Queen*,[36] Viscount Radcliffe stated that 'The words "peace, order and good government" connote, in British institutional language, the widest law-making powers appropriate to a Sovereign.'[37] Whoever was conferred with the POGG power, whether a colonial governor or a legislative body, could not be questioned.[38] POGG was used to further the cause of British imperialism (to facilitate direct or indirect control and governance over its overseas possessions), and to grant powers of self-rule (and later independence) to various parts of the British Empire.

POGG served as a legislative anchor for legalizing British colonial rule in Nigeria too. It was introduced in Nigerian law through an Order in Council, made in 1872 to grant power to the British Consul over British subjects in the Niger Delta territories.[39] It was subsequently introduced in other parts of the country.[40] Indeed, each of the country's colonial constitutions from 1914 to the independence constitution of 1960 provided for 'peace, order and good government' of the country. Similar provisions for 'peace, order and good government' are contained in the postcolonial constitutions from 1960 to the current 1999 constitution. However, the independence constitution and the 1963 republican constitution further linked the 'peace, order and good government' clause to the declaration of a state of emergency by the federal (central) government.

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[35] Falola and Heaton, supra n 22.
[36] [1964] A.C. 900 P.C.
[37] Ibid., 923.
[38] Hakeem O. Yusuf, *Colonial and Post-Colonial Constitutionalism in the Commonwealth: Peace, Order and Good Government* (Abingdon: Routledge, 2014).
[39] Benjamin Obi Nwabueze, *A Constitutional History of Nigeria* (London: C. Hurst and Co., 1982).
[40] For instance, Section 6 of the Northern Nigeria Order in Council 1899.

The POGG power soon became the cornerstone of the legal framework of military authoritarian arrangements in the postcolony. Successive military regimes followed the path of colonial legislation to impose their rule in a manner similar to the colonial period through *enabling constitutional legislation* in which the POGG clause featured prominently.[41] Following colonial tradition, the first piece of legislation handed down by the military government that came into power in 1966 not only proscribed the parliament,[42] it also contained the provision that the federal military government 'shall have power to make laws for the peace, order and good government of Nigeria or any part on any matter whatsoever.'[43] All such laws were directed at making military legislation superior to the constitution, including prohibiting courts from questioning the legality of military actions or limiting their ability to do so.

**[B]Imperial Rule of Law, Authoritarianism and Civil War**

The civil war period and the period of authoritarian rule in Nigeria are not neat categories in the timeline of Nigerian history. The civil war began six months after the advent of authoritarian rule in the country. While the war lasted from July 1967 to January 1970, military authoritarian rule began in 1966 and ended in May 2009. The civil war thus started and ended during the period of military rule.

At the end of the civil war, the federal government of Nigeria declared a 'general amnesty for those who misled [others] into rebellion,' 'healing the nation's wound' as well as a policy of 'reconciliation in full equality.'[44] The government announced a policy of 'rehabilitation, reconstruction and reconciliation' (3Rs)[45] conceived as a programme for postwar

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[41] Isawa Elaigwu, 'Nigerian Federalism under Civilian and Military Regimes,' *Publius: The Journal of Federalism* 18(1) (1988): 173–188.
[42] Decree No. 1 of 1966. The military named federal and state legislation 'decree' and 'edict,' respectively.
[43] Section 3 of the decree. Similar provisions are contained in Section 2(1) of the constitution (Suspension and Modification), Decree No. 1 of 1983.
[44] Major-General Yakubu Gowon, 'The Dawn of National Reconciliation,' Federal Ministry of Information Press Release No. 47 'Broadcast to the Nation by the Head of the Federal Military Government and Commander-in-Chief of the Armed Forces, Major-General Yakubu Gowon,' Thursday 15 January 1970, in *Nigeria Since Independence: The First 25 Years – Vol. 6: The Civil War Years,* ed. Tekena N. Tamuno and Samson C. Ukpabi (Ibadan: Heinemann Educational Books, 1989), 76–79, 77.
[45] Olukunle Ojeleye, *The Politics of Post-War Demobilisation and Reintegration in Nigeria* (Farnham: Ashgate, 2010).

reconstruction and development. This was, however, embedded in the Second National Development Plan (2nd NDP, 1971–1974).[46] Targeted at wider 'social change,'[47] NDPs dated back to the colonial era. Thus, embedding the reconstruction and rehabilitation of the war-affected areas (mostly in the southeastern parts of the country) in them was predictably problematic. It remains unclear why the government adopted this approach, which meant infrastructural losses and damage resulting from the war had to compete with a larger project of national infrastructural and socioeconomic development.[48] In practice, execution of the plan was weak and the 3Rs had very limited implementation.

In the course of military rule, successive regimes perfected plunder, compromised all institutions of state and generally directed them towards flagrant violations of citizens' human rights.[49] The population suffered repression, state-sponsored murder, restrictions on civil liberties and other forms of human rights violations. There was widespread use of lethal force by security agents and the police against the civilian populace. Between 1966 and 1993, over 200 military officers and civilians brought before military tribunals on charges related to at least seven instances of actual or alleged coup plots were convicted and sentenced to death. Due to power play, and sometimes for daring to challenge the continuation of military rule, some military officers were also accused of planning phantom coups. They were dismissed from service, detained, tortured, tried and jailed. Those who managed to secure a reprieve were left uncompensated for their suffering. This was particularly rife during the Ibrahim Babangida (1985–1993) and Sani Abacha (1993–1998) military regimes.[50] The latter regime was the most

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[46] Ibid.

[47] R.O. Ekundare, 'Nigeria's Second National Development Plan as a Weapon of Social Change,' *African Affairs* 70(279) (1971): 146–158.

[48] Ibid.

[49] 'Synoptic Overview of HRVIC Report: Conclusions and Recommendations (Including Chairman's Foreword,' 2002, http://asabamemorial.org/data/oputa-report.pdf (accessed 27 February 2018).

[50] See, e.g., Bayo Akinloye, 'Some Generals Wanted to Blow up Plane Carrying Obasanjo, Others – Col. Oloruntoba,' *Punch*, 16 April 2017; 'Bamaiyi Jailed Me for Delivering Books to Fadile's In-Law – Cmdr Fabiyi,' *Punch*, 16 April 2017.

notorious in alleging phantom coups against serving and retired military officers as well as some civilian members of society it perceived as opposition elements.[51]

Given the expected role of the military and police in society, the germane question is: How did these institutions of the state become notorious for their predation on citizens in the postcolony? There are important clues in the colonial past. The military and police forces in the country emerged from armed forces established by the British to enforce colonial rule. In addition to 'assisting the British imperialists to smash the resistance of local communities to political domination,' they also maintained 'law and order' by suppressing riots, 'strikes and revolts.'[52] The two bodies were set up to subdue and subjugate the local communities in a manner that suited the interests of the colonialists. They lacked any connection to the people but owed full loyalty to the British rulers. The inherited roots of policing in institutionalized repression and violence result in an organization with questionable legitimacy in Nigerian society.[53] The recruitment strategy effectively secured the loyalty of the police as an occupational force, rather than as one for social service. This pattern of policing has been retained in the postcolony and impacts negatively on the work of the police in the country.[54] The police authorities have on numerous occasions declared an intention to change this approach to policing and substitute it with a service-friendly, community-based strategy,[55] but nothing substantive has been done to change the status quo. Rather, impunity of the police has arguably increased during the period.

**[B]Political Economy: Extractive Industry Violations**

[51] See, e.g., Peter M. Lewis, 'Endgame in Nigeria? The Politics of a Failed Democratic Transition,' *African Affairs* 93(372) (1994): 323–340.

[52] Domkat Y. Bali, 'The Defence of the Nation,' in *Nigeria Since Independence: The First 25 Years – Vol. 6: The Civil War Years,* ed. Tekena N. Tamuno and Samson C. Ukpabi (Ibadan: Heinemann Educational Books, 1989), 162.

[53] Daniel Egiegba Agbiboa, 'Protectors or Predators? The Embedded Problem of Police Corruption and Deviance in Nigeria,' *Administration and Society* 47(3) (2015): 244–281.

[54] Open Society Institute and the Network on Police Reform in Nigeria, *Criminal Force: Torture, Abuse, and Extrajudicial Killings by the Nigeria Police Force* (2010).

[55] See, 'Nigeria Police to Deploy Officers to Communities of Origin,' *Premium Times*, 16 May 2017.

Continuity in the structural arrangements instituted in the colonial period for the exploration of mineral resources has generated conflict in the country. The extraction of mineral resources, like oil exploration (which provides the lion's share of the country's national income), has been a major site for the gross violation of human rights. From the colonial period to date, the government's participation in and regulation of the activities in the oil industry remain largely opaque and ill-defined. The government's partners are foreign oil companies whose involvement in the oil industry dates back to the colonial period.

Oil exploration was made possible through colonial legislation which awarded a monopoly over Nigeria's mineral resources to British citizens and companies through the Mineral Oils Ordinance No. 17 of 1914. It is thus not remarkable that the leading oil company in the Nigerian industry is a subsidiary of Royal Dutch-Shell (Shell).[56] There was considerable opposition from the communities at the sites of these mineral resources. However, despite the political mobilization against Shell (the preeminent oil corporation in the country) at the time, the exploration activities continued with financial, legal and security support from the colonial government. For instance, the Mineral Oils Ordinance was amended not only to appropriate all land to government, but also to provide for the prosecution of those who hampered oil exploration in any way. The foreign oil corporations (then represented by Shell) were not mandated to engage with the host communities as relevant stakeholders in their exploration activities.[57] Nor were they held accountable for gross violations of the human rights of host communities. The legislative and political arrangements around mineral resources exploration have persisted in the country.

In the historical record and contemporary experience, Shell's violations of human rights arise directly from complicity for abuses committed through the agency of state officials.

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[56] Hakeem O. Yusuf and Kamil Omoteso, 'Combating Environmental Irresponsibility of TNCs in Africa: An Empirical Analysis,' *Local Environment: The International Journal of Justice and Sustainability* 21(11) (2016): 1372–1386.

[57] Phia Steyn, 'Oil Exploration in Colonial Nigeria, c. 1903–58,' *Journal of Imperial and Commonwealth History* 37(2) (2009): 249–274.

However, it has been difficult to realize justice for victims of gross violations like the Ogoni people,[58] notwithstanding the recommendations of the Human Rights Violations Investigation Commission (Oputa Panel)[59] and despite the political transition to civil rule raising hopes for transitional justice to facilitate redress for gross violations of human rights.

## [A]POLITICAL TRANSITION AND THE DILEMMAS OF TRANSITIONAL JUSTICE

Nevertheless, there was recognition across the polity of the need to implement transitional justice measures after the country transitioned to civil rule on 29 May 1999. The political transition was largely brought about by the sudden death on 8 June 1998 of the country's military leader, General Abacha, who was succeeded by General Abdulsalami Abubakar. The latter was unequivocal in his resolve to deliver a prompt transition to civil democratic governance in the country.

### [B]Legal 'Reforms,' Trials and Lustration

Abubakar initiated the first move towards transitional justice by repealing a number of military decrees which curtailed various civil and political rights.[60] The Abubakar regime also promulgated a 'new' constitution for the country, but the democratic legitimacy of that constitution remains a major issue.[61] It was essentially a product of a closed process undertaken by a few individuals appointed by Abubakar. The panel worked without any significant attempt at public consultation.[62] It left unaddressed many issues of concern to various groups and interests in the country, thereby continuing a colonial tradition of law making.

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[58] Hakeem Yusuf, 'Oil on Troubled Waters: Multi-national Corporations and Realising Human Rights in the Developing World, with Specific Reference to Nigeria,' *African Human Rights Law Journal* 8(1) (2008): 79–107.

[59] By Statutory Instrument No. 8 of 1999 (as amended by Statutory Instrument No. 13 of 1999) pursuant to Tribunals of Inquiry Act No. 447, Laws of the Federation of Nigeria, 1990.

[60] See, Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals) Decree No. 63 of 1999, Laws of the Federation of Nigeria.

[61] Tunde I. Ogowewo, 'Why the Judicial Annulment of the Constitution of 1999 Is Imperative for the Survival of Nigeria's Democracy,' *Journal of African Law* 44(2) (2000): 135–166.

[62] Human Rights Watch, 'Nigeria: Human Rights Developments,' https://www.hrw.org/legacy/wr2k/Africa-07.htm (accessed 27 February 2018).

As the report of the 2014 National Conference noted, the legitimacy of Nigerian constitutions remains a major issue of contention. The country has been saddled with 'false constitutions' by colonial administrators and the military during both the colonial and postcolonial periods. The prevalent view in the country is that

> a truly acceptable constitution has not emerged to mediate the social contract between the constituent nationalities of the country and the Nigerian state…successive constitutions have…been vitiated by the absence of that critical organic connection which they are supposed to have had with the spirit of the people in order to give meaning to their cry of 'We the People.'[63]

In the post-Nuremberg period, trials of alleged perpetrators of gross violations of human rights are arguably the most definitive feature of transitional justice.[64] According to Luc Huyse, prosecution is 'by far the most radical interpretation of acknowledgment and accountability.'[65] Prosecutions in the transitional justice context have been at the national, but most prominently at the international, level. Ostensibly following the 'justice cascade,'[66] the Abubakar regime also commenced the prosecution of a handful of notorious military and security operatives of the penultimate military regime. At least 15 members of the Abacha regime, alleged to have played prominent roles in state-sponsored killings and violence, were arraigned for various offences ranging from murder and kidnapping, embezzlement of public funds, to arson. While some of the trials are moribund due to the absence of political will, others have not been concluded.

The delay in the trial process of cases forming part of transitional justice measures is due mainly to the exploitation of a very weak criminal justice system, which remains largely unreformed since the colonial era. The colonial government made 'received English law' a source of law in the Nigerian legal system. In England (and the UK more broadly), various law

[63] National Conference 2014, p.51.
[64] Ray Nickson and John Braithwaite, 'Deeper, Broader, Longer Transitional Justice,' *European Journal of Criminology* 11(4) (2014): 445–463.
[65] Luc Huyse, 'Justice after Transition: On the Choices Successor Elites Make in Dealing with the Past,' *Law and Social Inquiry* 20(1) (1995): 51, 52.
[66] Sikkink, supra n 15.

reforms have kept the criminal justice system in step with contemporary reality. As a result, many of the laws which Nigeria inherited through incorporation have since been repealed or amended as appropriate, but those statutes have remained unchanged in Nigeria.

Defence counsels, especially experienced senior lawyers, often exploit the law to frustrate the speedy resolution of criminal proceedings in the name of a fair hearing. The practice of raising objections to the trial, and, where that fails, alleging bias against the trial judge, has developed in the country. Delay strategies also include appealing virtually every interlocutory issue or objection all the way to the Supreme Court and insisting on a 'stay of proceedings' (suspending the trial) while awaiting the appeal decision. Once the issue on appeal is decided, new applications are made and the vicious cycle of longstanding trials is maintained. In one instance, after frustrating the continuation of his trial for more than seven years through such a process, the accused brought an application to challenge the delay he had orchestrated as an injustice. Meanwhile, the accused persons, in their bid to secure a reprieve at all costs, alleged persecution and appealed to ethnic and religious sentiments in the media.[67]

Significantly, the transitional justice-related trials, more than any other criminal trials in the country's history, highlighted the need to reform the criminal justice system. In 2015, then Chief Justice Mahmud Mohammed lamented that laws regulating the criminal justice system were obsolete, noting that

> We face prolonged delays in the trial of criminal cases leading to an increase in detainees awaiting trial and the congestion of the prisons…The situation is made more precarious due to the archaic and obsolete nature of the laws regulating the criminal justice system.[68]

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[67] The author was a member of the prosecution team in these cases between 2000 and 2006. A general and former chief of the army who was tried in one of the transitional justice-related cases has admitted these delay strategies in his autobiography. See, Ishaya Bamaiyi, *Vindication of a General* (Ibadan: Daybis, 2014).

[68] Ikechukwu Inochiri, 'Laws Regulating Criminal Trials in Nigeria Archaic – CJN,' *Vanguard Newspaper*, 23 March 2015.

Recent attempts to reform the criminal justice system are yet to make a significant impact.[69] The state of affairs in the judiciary calls further attention to the institutional heritage of the judiciary from its colonial founding. To the average citizen, the judiciary (to a large extent) constitutes one of the most prominent symbols of a colonial heritage. It is usually considered to be at a remove from the regular day-to-day activities of ordinary people. Even in the postauthoritarian period in Nigeria, the courts continue to suffer from a serious 'social legitimacy' deficit, enjoying recognition only within a much-circumscribed segment of society.[70] Public trust in the judiciary as an institution for securing rights and abating impunity is understandably low in the circumstances.

Whatever the weaknesses of the criminal justice system, the initial move by the Abubakar 'transitional regime' to prosecute a few individuals for violations of human rights was half-hearted at best. The initiative appears to have been constrained by the reality of the precarious balance of power in the short life of the regime.[71] Abubakar was acutely aware of the high-level opposition, domestic and international, to continued military rule in the country. From a pragmatic point of view, the fact was also not lost on him that the minions of his predecessor remained in the corridors of power and could attempt to oust him through a coup if the opportunity presented itself.

Further, an important feature of the Abubakar regime was the symbolic lustration of about 200 'political' military officers from active service. These officers had held political appointments as governors or administrators of the various states, Cabinet ministers and chairmen of important state agencies, public corporations and similar government institutions. Many had been corrupt and accumulated enormous wealth well beyond their legitimate earnings. The lustration of those considered politically exposed military officers was also carried out by Chief Olusegun Obasanjo soon after he came to power in 1999. He purged 93 top

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[69] With the passage of the Administration of Criminal Justice Act 2015.

[70] H. Kwasi Prempeh, 'Marbury in Africa: Judicial Review and the Challenge of Constitutionalism in Contemporary Africa,' *Tulane Law Review* 80(4) (2006): 1239–1324.

[71] The Abubakar regime spent less than a year in office, from 9 June 1998 to 29 May 1999.

military officers from the armed forces.[72] Those affected were generally in the same category as those earlier disengaged by Abubakar. It was felt that such military officers were a threat to the country's 'budding democracy.'[73] According to Obasanjo, disengaging such officers was a critical step to securing the professionalism of the country's military and correcting the aberration of their having held political office in the first place.[74] The experience had made holding political office, rather than military service, a very attractive prospect. Thus, the feeling was that the disengagement of affected military officers was imperative as they constituted a potential threat to the transition to civil rule, based on their assumed possible political ambitions to grab power through a *coup d'état*.

Lustrations are used as part of transitional justice measures to facilitate personnel and institutional reforms and to address institutional integrity issues like embedded practices of gross violations of human rights among personnel of state agencies.[75] Lustration is also used by new regimes to engender trust and confidence in institutions in times of political transition and is a particularly important tool for censoring impunity and signalling social change.[76] Lustration has a 'revelatory' element to it which 'functions as a means of providing accountability and acknowledgment' of abuses committed by previous regimes and sometimes also exposes private citizens' complicity in such abuses.[77] However, in the Nigerian experience, lustration was not adopted with victims of abuse in mind. The prospect of using lustration as a revelatory mechanism by both the Abubakar military regime and the civil administration of Obasanjo would not have been contemplated. While the Abubakar regime was itself a military

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[72] Olugbenga Adanikin and Ibrahim Azeez, 'Why I Sacked 93 Top Military Officers in 1999 – Obasanjo,' *Nation*, 16 July 2017.
[73] Idris Ibrahim, 'I Have No Regret Retiring Politically Exposed Military Officers – Obasanjo,' *Premium Times*, 5 July 2017.
[74] Ibid.
[75] Cynthia M. Horne, 'Transitional Justice: Vetting and Lustration,' in *Research Handbook on Transitional Justice*, ed. Cheryl Lawther, Luke Moffett and Dov Jacobs (Cheltenham: Edward Elgar, 2017).
[76] Roman David, 'Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989–2001),' *Law and Social Inquiry* 28(2) (2003): 387–439; Lavinia Stan, ed., *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past* (Abingdon: Routledge, 2009).
[77] Cynthia M. Horne, 'The Impact of Lustration on Democratization in Postcommunist Countries,' *International Journal of Transitional Justice* 8(3) (2014): 500–501.

government, even the civilian administration of Obasanjo had been installed by his retired military colleagues. These colleagues had either led or were part of some of the most repressive military regimes in the country. Indeed, Obasanjo's Cabinet at the time (1999–2003) was composed of some of those ex-military rulers who would have been implicated in such a revelatory venture.[78] The administrative application of lustration was directed at protecting the new civilian regime rather than ensuring institutional reform and ridding the military of violators of human rights. These appointees' sensitive Cabinet positions sent the signal that the administration had a securitized disposition as opposed to a human rights-sensitive approach to governance.

Equally relevant is the preference for an administrative application of the lustration policy devoid of any direct or specific legislation. The implementation of the lustration policy by both regimes reinforced a longstanding tradition of authoritarian governance lacking in democratic consultation or legislative input by parliament on critical issues affecting general well-being. This is rooted in the colonial-style governance that has been dominant in the country's contemporary history, and has been the standard approach to transitional justice in the postcolony as a governance project.

The circumstances of the judiciary, trials and limited application of lustration raise wider issues of institutional legacies from the colonial experience at the point of independence in government institutions from the civil service and security agencies to the military and intelligence services, the police and so on. At the time, there was generally no recourse to what would today be regarded as transitional justice measures or processes. There were no trials for human rights violations, just as there was no record of the use of lustration.

There are a number of plausible explanations for the absence of transitional justice measures at independence. First, despite the Nuremberg precedent, at that moment in world

[78] They held very sensitive Cabinet positions like defence, police, state security and national security adviser.

history transitional justice had not assumed the prominence it now has. Second, the international system constituted the major catalyst in the adoption and implementation of transitional justice processes globally. The international system was very much under the control and direction of countries that were also colonial powers at the time. There was understandably no appetite among the relevant players to subject their governments and institutions to accountability for the colonial enterprise. Rather, the opposite arguably seems the case. Lu points out how the international system not only facilitated but also legalized and legitimated colonial rule along with the structural injustices perpetrated through it. The international system regarded colonial measures as acts falling within the realm of accepted norms rather than as violations of international law.[79]

Another explanation could be that the absence of an armed struggle for independence in Nigeria made the imperative of transitional justice measures less pressing, even if arguably relevant. As noted, there was no experience of gross and widespread violations of human rights of individuals and groups involved in the independence movement. Moreover, Nigeria remained a part of the British realm, with Queen Elizabeth II as head of state for another three years after independence. In the circumstances, most institutions of government, including the police, the armed forces, the judiciary and the civil service, were either still headed by British officials or had British officials in very senior positions until at least 1963 when Nigeria became a republic.

In addition, the British had also made clear that they intended to continue to do business with Nigeria, apparently to the mutual benefit of both countries. However, as one commentator observed, Britain (and France) ensured independence for its territories, like Nigeria, but protected its own interests foremost. The independence arrangements were organized to put in place 'constitutional transfers of power to ideologically friendly, moderate political parties which would broadly align themselves with the interests of the former colonial power.'[80] This

[79] Lu, supra n 7.
[80] Richard Reid, 'Horror, Hubris and Humanity: The International Engagement with Africa, 1914–2014,' *International Affairs* 90(1) (2014): 143.

approach meant that the local elite who took over from the departing colonial power were allowed into such succession only after it was fairly certain they would not be interested in instituting justice for past abuses.

In any event, even left to their own devices, the local elite were and remain keen to take over the privileges enjoyed by the departing British colonialists. That objective severely relegated the significance of conducting an inquiry into securing justice for the victims of gross violations of human rights resulting from colonial rule or reforming state institutions for postcolonial governance. Put differently, the interests of the political elite made the prospect of transitional justice plainly unattractive. The postcolonial precedent established a culture of condoning the impunity of those who held power. Arguably, that legacy created an atmosphere of low-level sensitivity for a sustained engagement with transitional justice even after the period of military rule, despite the record of gross violations of human rights.

**[B]The Truth-Telling Process**

The truth-telling process has been the most important transitional justice mechanism adopted in the postauthoritarian military era in Nigeria. Barely three weeks after his inauguration in 1999, Obasanjo ostensibly took a cue from the various truth processes in Latin America and South Africa by establishing the Oputa Panel. However, the Panel's remit did not include consideration of the colonial period. In fact, it was initially empowered to examine only violations of human rights committed from 1 October 1979, when the incumbent president handed over to a democratic government, to 1999, when he reemerged as an elected president. The Panel was later granted an extended remit that covered the whole of the period of military rule. Furthermore, the Panel had rather shaky legal foundations as the Tribunals of Inquiry Act, under which it was established, was a legacy of colonialism principally designed for specialized

inquiries. It fell well short of the more extensive remit of a truth commission in a postmilitary transitional society like Nigeria at the end of the 20th century.[81]

The Oputa Panel submitted its report in June 2003 but it remains officially unpublished and unimplemented as a formal project. The government that set up the Panel refused to publish the report, premising its position on a Supreme Court decision delivered when the government was to release the 'white paper' on it. The Supreme Court held that the federal government lacked powers to establish a truth commission for the whole country due to the need to respect the federal principle in the country's constitution.[82] In dumping the Oputa Panel's report, with its wide-ranging and far-reaching recommendations for accountability and institutional reforms, the Nigerian state set the stage for real and potential conflicts and gross violations of human rights in the country by both public and private actors. Since 1999, the country has witnessed several ethnic and intercommunal conflicts resulting in the loss of hundreds of lives and millions of dollars in property. This has led to the view in certain quarters that not only has the transition to democracy failed to deliver on justice and restoration of the rule of law, but also that impunity and violence have at best remained unchecked and at worst increased in the country.

## [A]GATE KEEPING AND NEPOTISM: AN ADDITIONAL LEVEL OF CHALLENGE

A separate and significant feature of governance (arguably only remotely connected to colonial rule) that has contributed to the limited ambit of transitional justice in Nigeria is gate keeping and nepotism. Through fostering the pool of patronage created and promoted during the nearly three decades of military rule, retired senior military officers who held power at various times during the period maintained considerable influence and control over the country after the political transition. In this regard, Nigeria has had four presidents in the period of transition to civil democratic governance. Two were former military heads of state – Obasanjo (1999–2007)

[81] Hakeem O. Yusuf, 'Travails of Truth: Achieving Justice for Victims of Impunity in Nigeria,' *International Journal of Transitional Justice* 1(2) (2007): 268–286.
[82] Ibid.

and Muhammadu Buhari (2015–). Obasanjo openly imposed the other two former presidents, the late Musa Yar'Adua (2007–2009) and Goodluck Jonathan (2009–2015), on the ruling party at the time. Thus, in the period of the political transition from military rule to date, the country has had either an erstwhile military ruler or his designated candidate as the elected executive president of Nigeria. It is worth noting that Nigeria's federal system is somewhat modelled on the USA's presidential system. In a country where the president has wider constitutional powers than the American president, this is a critical issue for any attempt at social transformation.

Former military rulers have been conscious gate keepers of their legacy of political misrule, grand corruption, gross violations of human rights and impunity. They remain keen to ensure that only one of their number, or designated candidates who can be trusted, hold the reins of political power where it matters most to preempt those responsible for impunity in the past from being brought to account. That aim has been generally achieved, particularly but not only at the federal level. Especially in the first elections after military rule, erstwhile military rulers (governors, ministers and heads of strategic public institutions) contested and won elections as state governors and members of the federal parliament. Rich, retired senior military officers who had held political office played active and usually leading roles in supporting and sponsoring candidates for elections. A former military governor and minister was senate president for eight years and is still a member of the senate.

At other levels, including traditional rulership which remains relevant in governance and power configurations with varying levels of importance in the country, the military has also kept an eye out to secure its power interests. Thus, for instance, several military officers, including former generals who held key service positions, governorship and ministerial positions during military rule, retired to take up important traditional rulership in the northern part of the country. This is particularly significant for two reasons. First, former military officers have emerged as traditional rulers in some of the most important traditional rulership

positions, including the two highest positions in the historically significant Sokoto Caliphate (sultan of Sokoto and emir of Gwandu). In other situations where nonmilitary officers have emerged, powerful military officers have been 'powers behind the throne,' playing decisive roles in the choice of who is appointed as a traditional ruler. Second, in the northern part of the country especially, the traditional political institution remains both an integral part of formal state structures of governance and, as in other parts of the country, also exerts an informal but equally influential power over the people in the respective domains. Thus, holding office at that level provides a significant source of power that can be, and indeed is, used to maintain a status quo of impunity.

Nepotism has also contributed, both directly and subtly, to maintaining the status quo of unaccountability for gross violations of human rights and limiting the ambit for reforms through transitional justice. For example, a former chief of naval staff became a state governor. In 2015, one of his sons was elected into the senate, the country's upper house of legislature. Some military apologists, contractors, business acolytes or relatives of erstwhile military officers who held public office contested and won elections. This was an important feature of the first decade of the postauthoritarian political transition. The son-in-law of a former military head of state is currently governor of their state in the northern part of the country. Another ex-head of state's son-in-law was governor in a state in the north for eight years. Even the judiciary is not immune to the influence of the military. Apart from the fact that many judges appointed by the military across the hierarchy of the state and federal judiciary (including its highest levels) remain on the bench, some are family members and close relations of the erstwhile military rulers. For example, the wife of a former head of state only recently retired as a chief judge of a state and the wife of the former chief of naval staff mentioned earlier is a judge of the federal High Court.

In sum, Nigerian society continues to pay a heavy price for the limited ambit, and in some cases outright failure, of transitional justice in the country. More than a decade and half

after the military left power, myriad conflicts have ensued to challenge institutional reform, good government and development in the country. The colonial legacy and authoritarian military rule are major and connected factors in limiting the prospects of transitional justice in Nigeria. Both are marked by violence and exploitation. Even the symbolic trials that commenced soon after the political transition have been largely moribund due to political and technical factors. Elsewhere, lustration has been used as a mechanism to exclude abusers from the political process, even if only temporarily,[83] but this has not been the case in Nigeria. The lustration measure that was implemented produced a crop of very powerful ex-military officers. The group emerged as key political players in the transition to civil governance, with largely ill-gotten wealth secured from years of authoritarian rule. The lustration process was only directed at disengaging these officers from active military service and nothing else. Since they were not barred from seeking elective office, they have emerged as a strong force on the political front. Benefiting from their deep pockets, former military rulers have assumed key elective positions or sponsored candidates for elections to protect their interests.

**[A]CONCLUSION**

The transitional justice approach in Nigeria has been to preserve the existing structures of colonial-style governance which sustain the status quo of dominance for the local elite that took over political and economic control of the postcolony. Truth telling, trials, acknowledgement or any other measures that deliver justice for victims or institutional reforms are conceived as threats to the power of the local elite. As a result, their engagement with transitional justice measures has been in protecting their privileges and powers, and substantively little else.

There is a gap in our understanding of how contemporary governance and opportunities for transitional justice have been shaped, limited or expanded by the colonial encounter. The dynamics of the colonial legacy have had a significant impact on the rule of law, nation building and any project that aims at securing justice for victims of gross human rights violations. The

[83] Horne, supra n 75; David, supra n 76; Horne, supra n 77.

Nigerian experience provides ample evidence of the need to engage with the implications of colonization in nonsettler colonial contexts. The legacies of colonialism, including the impunity of the period, have the potential to shape and condition transitional justice processes.

To the extent that the transitional justice enterprise is essentially a governance project for accountability and social change, it has been framed and bounded in the Nigerian context by the institutional legacy of colonial-style governance adopted (and in some cases adapted) by the local elite. It is no wonder that transitional justice continues to be held captive by the overarching construct of domination which resists structural changes that can facilitate redress and institutional reforms for gross violations of human rights dating back to the colonial period. Transitional justice has a significant contribution to make to state building in nonsettler postcolonial states through directing attention to the reality that the state has remained essentially predatory in its relationship with citizens. It will remain nearly impossible to establish sustainable peace and development in nonsettler postcolonial states (particularly in Africa) until there is a major shift away from the current colonial-style sociopolitical and economic arrangements.

The paradigm shift intrinsic to the operation of transitional justice is precisely what the postcolonial elite is not attuned to or willing to provide, as the Nigerian postcolonial experience demonstrates. Such a shift requires recognition of the legacy of colonization and the injustice and violence that is the fabric of the current sociopolitical order. Such acknowledgement also makes it imperative to remedy the status quo and what it means for existing elite privileges.[84] It would be no mean achievement in the current state of transitional justice in Africa for its theory and praxis to engender discussion of the dynamics of continuities of structural injustice perpetuated by the dominant governance structures in place in many postcolonial polities.

[84] Desmond M. Tutu, 'Reflections on Moral Accountability,' *International Journal of Transitional Justice* 1(1) (2007): 6–7; Huyse, supra n 65; Trudy Govier, *Taking Wrongs Seriously: Acknowledgment, Reconciliation, and the Politics of Sustainable Peace* (New York: Humanity Books, 2006).