

REFLECTIONS ON PUBLIC INQUIRIES  
AS INSTRUMENTS OF GOVERNANCE  
IN NIGERIA

MICHAEL OLU ADURAN

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## Introduction

Recently, a Professor reminded us of the various forms an inaugural lecture can take. According to him:

"Some of the several forms it can take are as follows:-

- \* an exposition of the past and or ongoing scholastic efforts of the Professor
- \* an exposition of what one would like to be, a future direction of research and development in one's area of work internationally or within one's nation,
- \* an exposition of past, present works and or future projections in areas related to, or that could be beneficial to one's specialty,
- \* an exposition of special or specific problems facing one's specialty with a view to ameliorating them and thus leading to maximum benefits being derived from efforts in one's field, and
- \* a general historical and philosophical overview of one's specialty for the sole purpose of enlightening the public and perhaps helping to make meaningful future projections in one's field" (Amusa 99.1).

In his view the form/s taken by an individual depends on his experience on the chair in terms of whether he can be regarded as an 'old' or an "eaglet" Professor. Having been elevated to the enviable position of Professor of Law in 1998 although made effective from 1995, I doubt if I qualify to be called an 'old' Professor, but I instantly reject the epithet of an "eaglet". A Professor is by known standards made after an assessment of his/her cumulative research efforts and their results over the years. It is therefore the totality of his academic

efforts as opposed to isolated academic experience that constitute the foundation of that assessment. That being the case, a Professor cannot be dismissed as an "eaglet" unless one is referring to his calendar age, which mayor may not reflect his general 'juvenile' behaviour as opposed to his academic outlook. Consequently, having put in an experience of over two decades, out of about three and a half I am likely to be entitled to *ceteris paribus*, I will rather be content with being referred to as a "young" Professor.

The form this lecture will take will not be restricted to any of those mentioned above. Emphasis will be made on the past and the present contribution to knowledge in my area of study while a look into the future will be taken. It is of utmost importance to intimate this audience with some basic incontrovertible facts about law researchers.

1. Unlike in some other fields in the sciences or social sciences, it is abnormal to restrict a law researcher to a microscopic area since law is an entity and its division into parts is just for teaching convenience. Experience all over the world has shown that law academics are not so restricted to one single subject/area of law. Their versatility is shown through contributions in different facets of law as an instrument of social change in the society. I should not be understood to mean that even where law academics are gurus in many aspects, concentration on specific areas are not noticeable. What I am saying is that it is erroneous to hold that because an academic lawyer has researched into different areas of law, he is devoid of focus; of course his focus is law and it should be accepted as such.
2. Unlike in Science-oriented researches, the outcome of which is evidenced by breakthroughs in either methodology or results or invention of certain tangible or intangible things, contribution of an academic lawyer is subtle.

It is realized in future either by changing judicial interpretational attitude or influencing legislation.

As a developing country, law as an instrument of developmental change is still in its infancy in Nigeria. There is therefore a lot of opportunity for improvement in several aspects. For an academic lawyer, the ground is still fertile for research provided a conducive atmosphere and encouragement are available. The training is geared towards exposing students to the multifarious areas and avenues for improvement commensurate with the level of development of the society. Today, the world is a global village, which means that the study and research in law can no longer be restricted within one's country. The tendency therefore is how to explore avenues where the law is generally made available to aid any resident of the country, coming from any part of the globe.

Consequently, the municipal legislation should now be internationally acceptable and convenient to even international visitors.

As a "struggling" academic, I have wandered in the wilderness of knowledge before I found the path leading to the topic of my inaugural lecture of today. My academic wandering has not been a fruitless one but indeed rewarding and I crave the indulgence of this august body to briefly draw upon my experience in this regard.

1. The 1979 Constitution of Nigeria was heralded by the case of *Awolowo -v- Shagari and Ors.*<sup>1</sup> which dealt with the election of the President under Section 34A(1) of the Electoral (Amendment) Decree No. 32, 1978. The Supreme Court was called upon to determine what constituted two-thirds of all the States in the Federation. The court held that there being nineteen States, two-thirds

<sup>1</sup> 1979 Suit No. 62/1979 now (1979) ANLR 120.

was twelve two-thirds. That decision was regarded as a compromise between law and political expediency (Adediran 1982). It was argued that:

"The words "in each of" are very important in the phrase "in each of at least two-thirds of all the states" and much cognisance and weight were not given to them in the majority judgment. The words qualify "states" as distinct entities and to fractionalize them would not, therefore be in the contemplation of the decree" (Adediran, 1982:50)

The same argument was canvassed earlier in 1981 (Owoade and Adediran). It was then suggested that the 1979 Constitution should be amended to provide for "a clear cut number of our states that make up 2/3". It was contended that a number need not be taken but that the Constitution should contain a provision that when the number of states, after being divided by 3 does not give a whole number, the next whole number shall be regarded as 2/3 of the states. This suggestion was reflected in the subsequent 1989 Constitution of Nigeria<sup>2</sup> which provided under its Section 133 that

"where the computation of two-thirds of all the States of the Federation or one-third of the votes cast in a State, as the case may be, results in a fraction, the figure obtained shall be rounded up to the next higher whole number"

Unfortunately, the present 1999 Constitution of Nigeria that was hurriedly put together does not contain this "computation" provision. In fact it has added more confusion by providing that the President must have "not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja" thus making the Federal Territory 'sound' like a State of the Federation.

<sup>2</sup>. The 1989 Constitution was not fully operated since the 1993 Presidential elections were annulled and an Interim National Government was established instead of a full blown civilian regime.

2. During the first and second Republics, the records showed that the active participation in Parliamentary debates and business was limited to few members. Many members were only involved when it was time to vote on an issue. This was partly because they were stark illiterates who neither understood the official language of the Houses nor were able to write in it. Thus, only few members controlled the Parliament. This unfortunate situation could be tolerated in the 1950s and 1960s but not in 1980s; hence it was strongly canvassed that political office holders, especially in the legislature, should possess minimum educational qualification to be able to perform well (Adediran 1981, Owoade and Adediran, 1981). Since 1989, it has been provided under the Constitution that a person shall only be qualified for a political office if amongst others "he has been educated up to at least school certificate level or its equivalent"<sup>3</sup>

3. The role of official government advisers in the running of government cannot be over emphasized. It is not uncommon in developing countries for unsuccessful executives - President or Governor or Minister to say publicly that they were misadvised while in office. Hence the procedure for appointing advisers must be such that only the best material available should be so appointed. They must not only be highly intelligent, they must also be of high integrity and be patriotic. Opportunity must not be given to executives to surround themselves with their playmates or people who do not know when to give what advice (Owoade and Adediran 1981:26). The 1979 Constitution merely prescribed the number and not qualification of persons to be appointed advisers. This was thought to be undesirable since it gave an executive the opportunity to appoint as adviser one who has been rejected as Minister by the Legislature. Hence it was suggested that nominees should also be screened by the Legislature.

<sup>3</sup>. Ss. 65(2)(a), 106(c), 131(d), and 177(d), 1999 Constitution of Nigeria.

The 1989 Constitution merely went half-way by providing that advisers shall also be qualified to be members of the National Assembly. The 1999 Constitution left out this important issue and in fact no specific number is stated.<sup>4</sup> The executive therefore has discretion unless the legislature prescribes otherwise by law or by resolution<sup>5</sup>. When one remembers the havoc done to the old Kingdom of Israel during the reign of Rehoboam, Son of Solomon<sup>6</sup>, one would agree that the Constitution should go further than just provide that "any person" can be appointed as adviser.

4. One of the vestiges of legal colonialism in Nigeria was the Petition of Right Law.<sup>7</sup> Under this law whenever any person had a contract sum of money with the Government, he was legally not allowed to take a writ of summons for enforcement. Rather, he had to write a petition to the Attorney General or the Governor as the case may be, to be allowed to sue for his money. Where his petition was rejected, he had no remedy since the matter ended there. He could neither go to court nor use any other means to force the Government to pay its debt. Upon the coming into operation of the 1979 Constitution, it was strenuously argued that, reading together various sections of that Constitution, the Petition of Right Law was inconsistent, null, void and inoperative (Adediran, 1980). In 1985, the Court of Appeal had the opportunity to rule on the constitutionality of this Law in the case of *Government of Imo State & anor -v- Greeco Construction and Engineering Associates Ltd.*<sup>8</sup> In that case, Greeco Construction and Engineering Associates Ltd. filed an action to recover a debt balance of ₦100,000.00. The Attorney General raised an objection that the action ought to have been commenced under the Petition of Right Law. The

<sup>4</sup>. Sections 151(1) and 196(1)

<sup>5</sup>. Sections 151(2) and 196(2).

<sup>6</sup>. *Holy Bible* 1st Kings Chapter 12.

<sup>7</sup>. See Cap 149, Laws of the Federation of Nigeria 1958.

<sup>8</sup>. [1985] 3 NWLR 71

trial Judge overruled this objection. The Government of Imo State appealed. The Court of Appeal in dismissing the appeal said

"...the suit under the Petition of Right Law cannot proceed unless the Governor gives his assent. It is clear from the provision of section 5 of the said Law that the Governor has the right under that law to refuse assent. Where the hearing of a suit between two parties depends on the assent of one of the parties before the suit can be heard the other side who is refused assent is denied access to the Court and consequently cannot be heard... In other words, a citizen who comes by way of the Petition of Rights Law and is refused the fiat of the Governor is without remedy. The refusal is "final and conclusive, consequently he is denied access to the Court. This will be contrary to section 6(6)(b) of the 1979 Constitution"

This lead judgment was written and delivered by Justice Olatawura, who later retired as a Supreme Court Justice. Coincidentally he was the Chairman at the Seminar in 1980 where I put up the same argument and was one of the few judges that supported my argument. Today, the Petition of Right Law has been removed from our Statute books.<sup>9</sup>

5. Under the law of this University, the Council has power to discipline members of Staff. Where an academic member is involved, there will be an investigation by the Joint Committee of Council and Senate which will later report to Senate and then the Council which if the need arises shall discipline the member of Staff. For the administrative staff, he was to face the Council and defend himself against any allegation. There was no opportunity to

that could be made if there was an investigating body like that of the academic staff. This was peculiar to Obafemi Awolowo University Law. This

<sup>9</sup>. The Law Reform Commission that compiled the 1990 Laws stated that the Petition of Right Law has been overtaken by the 1979 Constitution.

position of the law, it was argued needed to be changed. In this regard, on 26 May 1982 at the Faculty of Law Seminar, later published (Adejiran, 1984).

I said:

"...the present procedure for the removal or discipline of administrative staff requires reform. This could be done by setting up a Committee which would serve as the first arbiter before a final decision by Council. The present situation does not give any opportunity for an internal review of any decision that might be taken by the Council"

It took the Council and Senate of this University Sixteen years to consider the wisdom of my recommendation. On the 29th of June 1998, this University amended Statute 21 Paragraph 7(b) to read as follows:

"The appointment of a member of the administrative and technical staff who holds an appointment until retiring age shall not be determined by the Council unless the person has been notified in writing of the grounds of which consideration is being given to the determination of his appointment and there has been an investigation relating to his case by a 3-man Investigating Committee appointed by the Council from among its members, 2 of whom shall be external members of Council and the person concerned has, if he so requests, been permitted to appear to defend himself in person or through his chosen representative before the Investigating Committee, and the report of the Investigating Committee has been considered by the Council; the decision of the Council on his case shall be final"

Mr. Vice-chancellor. I beg for your protection and pardon for the brief digression I have made from the main theme of today's lecture. I have insistibly done this to show that it is simply unnatural and abnormal for a well grounded academic lawyer to be glued to just an area of law, to the total neglect of those aspects of the law that may yearn for his well-informed and analytical attention

from time to time.

### Background to the topic of lecture

In 1980, when Mojeed Adekunle Owoade (who later became a Professor and Foundation Dean of Law at University of Abuja and now a Judge of the High Court of Oyo State) and I decided to register for our Doctorate degree in law, my area of research became problematic; since I was interested in an area where no local research had been carried out. Though my interest in Constitutional Law and Administrative Law had been fired and kindled by my Late Lecturers Professors Iluyomade and Aihe, right from my undergraduate days, I had to torment my brain searching for a virgin area in those two subjects. The Second Republic had just commenced with few public inquiries coming up to play a major role in governance. It was just by chance that my colleague, Owoade, suggested that my focus should be on public inquiries. "Inquiries" as a subject matter surfaces in administrative law as quasi-judicial bodies, the activities of which assist the government in administration and whose activities affect the rights and obligations of the citizens. I then took the decision to do my research on the legal aspects of tribunals of inquiries in Nigeria. In 1987, my research was crowned with the award of a doctorate degree after the submission of my thesis. I thus became the first person to have done an in-depth research in that area in Nigeria, and also the first person to have all his degrees in law in this University, which qualifies me to be the first "indigenous" lecturer in the Faculty of Law. My thesis served as the basis for further research on public inquiries since.

Over the years, the setting up and conduct of public inquiries have raised a lot of questions which compel one to reflect on the subject as instruments of governance in Nigeria. For public inquiries to serve as effective instruments of governance, they must fulfil their aims and objectives through adherence to a

number of legal rules laid down by the Constitution and the Tribunals of Inquiry Act. Where legal rules and procedures are ignored as a result of political expediency, public inquiries will definitely come under judicial searchlight or political condemnation.

Having studied the operation of public inquiries for about two decades, some issues arise which must be addressed (1) Is it necessary to constitute them at all, in spite of all available governing apparatuses? (2) Have the composition of and procedures adopted by these inquiries guaranteed public acceptability and confidence? (3) Should they be controlled by the courts? (4) Have the public any reservation on the way their findings and recommendations are been treated by government? (5) Should the system of public inquiries continue to have any role to play in governance? (6) If so, are there areas for improvement? These, amongst others, are questions we intend to reflect upon in this lecture.

### What are (Public) inquiries?

There is no better way to describe public inquiries than perhaps to regard them as:

"Well publicized inquisitions on the grand scale which may not be concerned with government policy and administration only, but for the most part, with the investigation of suspected impropriety or negligence in public life" (Wraith and Lamb 1971, 212).

Implicit in this description is the fact that inquiries can be used in the evolution of governmental policies within the administration and they can for most part be used to investigate suspected or alleged impropriety or negligence of public functionaries.

### Historical Background

Historically, in England the authority of Justices of *oyer and terminer* was by Commission, *inquirendum, audiendum, terminandum, secundum legem consuetudinem regni nostri Angliae* (Fatayi-Williams, 1982). These bodies were part of the English legal system, regulated by their laws and customs, to conduct inquiries. Later, power of investigation was given to Parliament which could set up Select Parliamentary Committees to investigate alleged wrongdoings in high places. This system soon became unsatisfactory since such inquiries were highly politicised. The Marconi Scandal of 1912 exposed the danger inherent in this mode of investigation. In 1912, the Postmaster General in the Liberal Government accepted a tender by the English Marconi Company for the construction of state-owned wireless telegraph stations throughout the British Empire. There followed widespread rumours that the government had corruptly favoured the Marconi Company and that certain prominent members of the government had improperly profited by the transaction. The Select Parliamentary Committee constituted to investigate the matter consisted of members of the Liberal and Conservative Parties in Parliament. When the Report was compiled, the majority Liberal Party members exonerated the government officials, while the minority Conservative Party members found them guilty. When the Reports came for debate in the House of Commons, the House was divided on party lines and the majority Liberal Party members exonerated the government officials of any wrongdoing. When the dust settled the House of Commons realized the dangers inherent in the system of asking any Committee of the House to carry out investigations into politically charged issues.

Thus by 1921, Parliament passed the Tribunals of Inquiry (Evidence) Act whereby both Houses could resolve to set up a Tribunal of inquiry to investigate any rumour, allegation of misdeeds by Ministers of the crown, civil

servants, local authorities, the police and on disasters that generate public concern. Matters covered by this law are of high political colouration involving the credibility of the government and which it would be politically undesirable to leave to any other public functionary but the Parliament itself.

Lord M.L. Heywood, giving evidence before the Royal Commission on the working of Tribunals of Inquiry in 1966, said that the rationale behind the system was (and this is still true today)

“to satisfy the public that a proper investigation has been made into a matter about which there is a great deal of public disquiet”<sup>10</sup>

In Britain, public inquiries are used as a last resort to allay public disquiet particularly on allegations of official impropriety or national disasters. Between 1921 and 1978 there were only twenty of such inquiries (Wade 1978 . 829). They focussed on Police brutality<sup>11</sup> (1928), disclosure of budget secrets<sup>12</sup> (1936), bank rate disclosure<sup>13</sup> (1957), disorders in Northern Ireland<sup>14</sup>(1972), Aberfan disaster<sup>15</sup> (1967), involvement in insurance business by Ministers and civil servants<sup>16</sup>(1972) to mention just a few.

The public inquiry system was brought into Nigeria by the British Colonial masters with the enactment of the Commission of Inquiry Ordinance 1948<sup>17</sup> which was made effective from 22 February, 1940. Section 2 thereof empowered the Governor of Nigeria whenever he deemed it desirable, to constitute a Commission of Inquiry into the conduct of any officer in the public service of

<sup>10</sup>. See Royal Commission on the Working of Tribunals of Inquiry Report 1966 (Cmd 3121) p.154.

<sup>11</sup>. *Savage Inquiry* (Cmd 3147) (1928).

<sup>12</sup>. *Budget Disclosure Inquiry* (Cmd 5184)(1936).

<sup>13</sup>. *Bank Rate Leak Tribunal* (Cmd 350)(1957)

<sup>14</sup>. Cmd 566 (N.1) 1972.

<sup>15</sup>. H.C. 533 (1967).

<sup>16</sup>. H.C., 133 (February 1972).

<sup>17</sup>. Cap 37 Laws of Nigeria 1948.

Nigeria, or of any chief, or the management of any department of the public service, or of any local institution, or into any matter in respect of which, in his opinion, an inquiry would be for the public welfare. It was under this Ordinance that the Commission of Inquiry into the Disorders in the Eastern Provinces of Nigeria 1949 (popularly known as Enugu Coal Miners Massacre) was instituted.

The Commission of Inquiry Ordinance was amended on several occasions in line with the political changes in Nigeria<sup>18</sup> until 1961 when the independent Federal Parliament passed the Tribunals of Inquiry Act.<sup>19</sup> As a Federation and the subject being under the concurrent Legislative list, under the 1960 Constitution of Nigeria, the Regions also enacted their own inquiry Laws.<sup>20</sup> With the Military take over of government in 1966, the 1961 Act was repealed by the Tribunals of Inquiry Decree No. 41. Under this Decree, the Head of the National Military Government, whenever he deemed it desirable could by instrument constitute one or more persons a tribunal to inquire into any matter or thing or into the conduct or affairs of any person in respect of which in his opinion an inquiry would be for the public welfare.

While the 1961 Act gave the Federal Government power to investigate any matter affecting the general welfare in the Federal territory or into any matter or thing within the Federal competence anywhere in the Federation,<sup>21</sup> the 1966 Decree gave the Head of the Federal Government powers to investigate any such matter or person throughout the Federation.

Constitutionally by virtue of Section 3(1) of the Constitution (Suspension and Modification) Decree No. 1 of 1966 all State laws on inquiries were supposed to abate. To empower the State Military Governors, in this regard the Tribunals

<sup>18</sup>. See Nigerian (Tribunals of Inquiry) Order-in-Council 1956.

<sup>19</sup>. No. 26 of 1961.

<sup>20</sup>. Commission of Inquiry Law Cap 23, Laws of Western Nigeria 1955; Commission of Inquiry Law Cap 25, Laws of Northern Nigeria 1963. etc.

<sup>21</sup>. See *Doherty-v- Balewa* (1961) All N.L.R. 604.

of Inquiry (Amendment) Decree No.2, 1977 was promulgated. It gave them powers to set up inquiries to investigate matters falling within the State's Legislative competence. To legalize those inquiries that were illegally constituted in the States, the Federal Government promulgated the Tribunals and (Validation etc.) Decree No.18 of 1977.<sup>22</sup>

Under the 1979 Constitution, 'inquiries' as a subject matter was not included in any legislative list, hence it was regarded as an existing law under Section 274 of that Constitution. In 1990 all the enactments on inquiries were consolidated and enacted as Tribunals of Inquiry Act Cap. 447, Laws of the of Nigeria, 1990. This law is now an existing law under the 1999 Constitution of Nigeria.

### **Nature of Public Inquiries in Nigeria**

Perhaps the best way to describe public inquiries as we have them in Nigeria today is to borrow the conclusion, I reached after examining characterization and classification of tribunals and inquiries recently. I said:

*"Writing on characterization and classification of tribunals and inquiries in Nigeria is like embarking on a hazardous journey, in which the path is full of mines; one only hopes that one would arrive at one's destination, in spite of the risk of injuries. This statement appears discouraging but it candidly represents the truth about tribunals and inquiries in Nigeria. Instead of getting a clear, well defined system as in Britain, from where Nigeria copies the system, what is found is a proliferation of unclear, untidy and sometimes muddled-up bodies called "tribunals" or "inquiries" or "panels" or "commissions" or "Committees" with the words used interchangeably even when what the body is intended to do is completely the opposite" (Adediran 1995 . 420).*

Now Cap 448 1990, Laws of the Federation of Nigeria.

One major reason I found to be responsible for the untidy situation

*"is not the paucity of ideas of administrators but the unsteady political atmosphere in the country which accounts for unsteady policies and the resultant confusion. It is a common feature for new government to dismantle bodies set up by the previous regimes on the ground of improvement, but to end by setting up other untidy bodies, that may later be dismantled by a succeeding government" (Adediran, 1995 . 420)*

is therefore not a surprise that few Nigerian writers that have not done an indepth study of the system are misled and confused by the categorization both bodies (Oluyede 1988 , Oyewo 1997 ). An exhaustive treatment of the differences between "tribunals" and "inquiries" has been done elsewhere (Adediran 1995) but to put our subject of discussion into proper focus, it is necessary to note that we are concerned with public inquiries that can easily be identified with titles like: "Inquiry into ABC", "Judicial Panel of Inquiry XYZ", "Commission of Inquiry into JAC" "Panel of Inquiry into MIC" etc. The title may be couched in different ways but the word "inquiry" is always included.

### **Constitutional Dimension**

Today, in Nigeria, the power to constitute an inquiry is provided under Section 1(1) of the Tribunals of Inquiry Act<sup>23</sup> which provides:

*"The President (hereinafter in this Act referred to as "the proper authority") may, whenever he deems it desirable, by instrument under his hand (hereafter in this Act referred to as "the instrument) constitute one or more persons (hereafter in this Act referred to as "member" or "members") a tribunal*

<sup>23</sup>. Cap. 447, 1990 Laws of the Federation of Nigeria.

to inquire into any matter or thing or into the conduct or affairs of any person in respect of which in his opinion an inquiry would be for the public welfare; and the proper authority may by the same instrument or by an order appoint a Secretary to the tribunal who shall perform such duties as the members shall prescribe"

Section 21 thereof also empowers the Governors to do same. It provides:

"Nothing in this Act shall be construed as precluding the Governor of a State from Constituting a Tribunal of Inquiry to inquire into any matter in respect of which the Governor of that state has power to make law"

This is the one and only enactment that gives the President and the powers to set up inquiries. Under a military dispensation, when Nigeria virtually runs a unitary system this may be understood, but under a civilian regime, when the Constitution is in place it may create problems. The question to ask is: Can this enactment be regarded as a Federal or State Law under the 1999 Constitution?

Under the 1999 Constitution, there is no where "inquiries" is mentioned as an item under the legislative lists. However, where a body has power to legislate on specific matters, it concomitantly has powers to deal with all issues incidental to such matters, unless the law prescribes otherwise. Under the exclusive legislative list, the National Assembly has power to legislate on any matter incidental or supplementary to any matter mentioned elsewhere in the legislative list. Institution of public inquiries in connection with the 66 items under the exclusive legislative list could therefore be said to be an incidental or supplementary power. Thus the National Assembly could be held to have power over public inquiries. This raises another question. Is this power exclusive or concurrent? Under the concurrent legislative list no power is expressly given to

the House of Assembly to exercise any power "incidental or supplementary" to those items under the concurrent legislative list. It can therefore be asserted *stricto sensu* that the House of Assembly possesses no power to make law for the institution of public inquiries.

Consequently the Tribunals of Inquiry Act is an existing Federal Law under Section 315 of the 1999 Constitution. Even if it is argued that a State House of Assembly has residual power to make law on inquiry, by virtue of Section such law cannot stand if it is inconsistent with the Federal Law and it will also be redundant, and an exercise in futility on the principle of "covering the field."<sup>24</sup>

The next question one is compelled to ask is whether the President can now set up inquiries into "any matter or thing or into the conduct or affairs of any person" all over Nigeria. In other words, is the power of the President unlimited? We have argued that the Tribunals of Inquiry Act is an existing Federal Legislation. Based on the principle of federalism in Section 2, of the 1999 Constitution and in so far as the executive powers of the President, its Section 5(1)(b) "shall extend to the execution and maintenance of the Constitution, all laws made by the National Assembly and to all matters with to which the National Assembly has, for the time being, power to make laws" it is submitted that the power of the President is limited to only matters on which the National Assembly has power to make laws. As for the State Governors, their powers are already limited by Section 21 of the Act to those matters on which the Houses of Assembly have power to make law.

#### Classification of Inquiries

In an earlier work (Adediran 1995) attempt was made to enumerate the

<sup>24</sup> See *A.G. of Ontario v. A.G. of Dominion of Canada* (1894) A.C. 139, *Grand Trunk Railway of Canada v. A.G. of Canada* (1907) A.C. 35, *A.G. of Gun State & Ors v. A.G. Federation & Ors* (1982) 1-2 S.C. 31.

various types of public inquiries that exist in Nigeria. The typology was done on the basis of their nature. Even in that attempt it was confessed that the categorization was not sacrosanct but based on convenience, since some may overlap. Briefly inquiries can be categorized as follows:

### 1. Administrative Policy Inquiries

As a developing country, Nigeria has problems of taking some policy decisions that are political in nature. To be saved from accusation of promoting ethnic interest those in government have on many occasions made use of public inquiries to accomplish their objectives. When they are set up, members of the public have the opportunity to make their input. Experience has shown that subsequent policies are free from public criticisms. Examples of major policy decisions preceded by inquiries were the location of the new Federal Capital Abuja,<sup>25</sup> creation of new States in 1976,<sup>26</sup> creation of new local governments in Oyo State,<sup>27</sup> increment in salaries and wages,<sup>28</sup> revenue allocation<sup>29</sup> and so on. The participation of the public in these inquiries gave them the satisfaction that the policies that emerged therefrom had their input.

### 2. Land Matters Inquiries

Nigeria, being an agrarian country where about 90% of her population depends on agriculture, has land as her greatest asset. Apart from this, land is needed for residential and the growing industrial purposes. The greatest calamity that can befall a community is to have its land taken over by another Community. In spite of the Land Use Act<sup>30</sup> which now vests land on the State Governors to

<sup>25</sup>. Panel on the Location of the Federal Capital (1975).

<sup>26</sup>. Panel on the creation of new States (1975).

<sup>27</sup>. Commission of Inquiry into the creation of a more local government Council in Oyo State (1980).

<sup>28</sup>. Public Service Review Commission (1973) Salaries and Wages Commission (1970).

<sup>29</sup>. Revenue Allocation Commission 1980.

<sup>30</sup>. Cap 202, Laws of the Federation of Nigeria 1990.

hold in trust for the public, rural dwellers still guard jealously their right to the land.

Lives and properties have been lost as a result of community clashes over land: Judicial settlement is regarded as time consuming, money wasting and unsatisfactory. The use of self-help is therefore always resorted to. One of the methods used by the government to defuse tension and ascertain ownership is by setting up inquiries where communities will have the opportunity to present their case without any hinderance and with little or no cost.<sup>31</sup>

### 3. Chieftaincy Inquiries

Like land, chieftaincy is another keenly contested traditional matter in Nigeria, especially in the Southern part. It is not unusual for bloody clashes to occur between contesting parties, who incidentally may be of the same blood. Probably, parties would have preferred judicial settlement, but until 1979 Constitution came into being, the courts had no jurisdiction on chieftaincy matters.<sup>32</sup> The Government had on several occasions resolved impending crisis by setting up public inquiries. Few examples were the Inquiry into Adun Clan Headship Dispute 1972; Inquiry into Obong of Calabar Dispute 1971, Inquiry into Oniong Headship Dispute 1972, Internal Inquiry into the selection of an Alafin of Oyo 1968, Judicial Commission of Inquiry into the Elemure of Emure Ekiti Chieftaincy Declaration 1975, and Deji of Akure Commission of Inquiry 1975.

<sup>31</sup>. Commission of Inquiry into Sapele Urban District (Okpe Communal Lands) Trust 1960; Commission of Inquiry into the Warri Divisional (Itsekiri Communal Lands) Trust 1963; Commission of Inquiry into Aladja and Diebiri Communal Clashes 1996.

<sup>32</sup>. See S.80, Constitution of Eastern Nigeria 1963 and similar provisions in other Regional Constitutions.

#### 4. Disaster and Civil Disturbances Inquiries

These are inquiries set up to investigate the causes of disasters and civil disturbances. The government is always quick to do this because disasters normally involve loss of lives and properties, while civil disturbances lead to chaos, anarchy and breakdown of law and order with the resultant loss of human lives and properties in the society. Examples of such inquiries are the Commission of Inquiry into the Building Disaster at Oremoji, Ibadan 1971, the Langalaga Train Accident Tribunal of Inquiry 1971, the Tribunal of Inquiry into the Republic Building Fire Incident 1982, the University of Ife Hostel Project Tribunal of Inquiry 1976, the Enugu Air Plane Disaster Tribunal, 1984; the Judicial Panel of Inquiry into Cocoa House Fire Outbreak, 1985 etc.

Examples of civil disturbances inquiries are the Commission of Inquiry into the Disorders in the Eastern Provinces of Nigeria 1949, the Commission of Inquiry into the Civil Disturbances in some parts of Western State of Nigeria 1968, the Kano Disturbances Tribunal of Inquiry 1981, the Tribunal of Inquiry into Universities crisis 1978, the University of Ibadan Commission of Inquiry 1971; the Tribunal of Inquiry on the University of Ife Students Incident 1981; the Inquiry into the Communal Disturbances in Oranmiyan Central Local Government Area, 1981 etc.

Normally, where the report of an inquiry on civil disturbances indicts any person of having committed any offence, such a person should face prosecution in the normal court. The Babangida administration introduced a new dimension to this procedure when in 1987, the Civil Disturbances (Special Tribunal) Decree.<sup>33</sup> Under this Decree persons involved in civil disturbances were arraigned before a special tribunal which tried them for any offences committed. It was under this law that the Zango-Kataf Civil Disturbances Tribunal, the

<sup>33</sup> Now Cap 53, Laws of the Federation of Nigeria 1990

Tafawa Balewa Communal Disturbances Tribunal and the Ogoni Disturbances Tribunal were constituted.<sup>34</sup>

#### 5. Financial Impropriety Inquiries

These are inquiries set up to investigate allegations of fraud or financial mismanagement in any government department or corporation or government financed projects. Examples are the Tribunal of Inquiry into Crude Oil Sales 1980, the Commission of Inquiry into the African Continental Bank 1956, the Panel of Inquiry into the purchase of British Leyland Buses by the Secretariat of FESTAC 1978, the Tribunal of Inquiry into the Administration and Financial Management of Ajeromi, Ikeja, Mushin and Agege Councils 1960, the Apapa Road Project Tribunal of Inquiry 1970, the Commission of Inquiry into some Corporations in the Western Nigeria 1962 etc.

#### Composition

As we can see from the above discussion, inquiries generally border on sensitive political issues, which if not well handled could bring down the government. This is realized by the administration itself; hence those people whose findings will be respected are always empanelled to conduct these inquiries. Though the Act does not stipulate a specific number or qualification of members of the panel, it is highly essential that those to be involved must not only be people of proven integrity, they must also be knowledgeable in the matter under investigation. Institution of public inquiries should not be seen as an opportunity to provide job, albeit briefly, for political supporters, it is a serious matter where only serious minded, intelligent, politically neutral and incorruptible persons should be involved.

Practice has shown that, probably because of their ability to appreciate

<sup>34</sup> A thick cloud of doubt now surrounds the Constitutionality of this Tribunal under the present 1999 Constitution.

legal procedures, weigh and sift evidence, legally trained persons particularly judges, are always empanelled as either Chairmen or Sole Commissioners. Where the matter under investigation is of highly technical nature, professionals in such areas are also empanelled. During the Second Republic (1979-83) when Nigeria witnessed an unprecedented avalanche of inquiries, the desirability of calling on serving judges to serve on inquiries became an issue. In fact, at the All Nigerian Judges Conference 1982, Judges virtually told the government that they were no more interested in taking other duties apart from their judicial function as provided by the Constitution.

To reach this decision, several judges recounted their experiences as members of inquiries set up to investigate sensitive political matters. For example, Justice Uthman Mohammed who headed the Commission of inquiry into the 1978 Students Crisis in Nigerian Universities related his experience thus:

"My Commission covered all the Universities in the country and took evidence from lecturers, students and other interested members of the public. My unforgettable experience of this inquiry was the impolite behaviour of University Students, particularly at Calabar, towards the Commission. At the beginning of the probe there was a threatened boycott of the Commission; therefore we tried to accommodate those of them who turned up to give evidence. At Calabar there was a large turnout of students but only few volunteered to give evidence. Those who could not get chairs stood up throughout the duration of our sessions. The Police had difficulty in controlling the students and I did not want a repeat performance of what gave rise to our Commission. At one stage Mrs. Ighodalo appealed as a mother to the students to behave themselves.

Despite the annoying hissing from the students, I calmly continued taking evidence. It was at this juncture that Mrs.

Ighodalo whispered to me and said: "From now on I shall never envy whatever is paid to a Judge."<sup>35</sup>

The same judge (Uthman Mohammed) had earlier presided over the Commission of Inquiry into the activities of all North-Western Ministries and Parastatals in 1975. The repercussion of his role in inquiries to his person was related thus:

"What worried me most after every probe was the behaviour of people towards me particularly those who were penalized for their involvement. Suddenly I found myself in Sokoto or among University lecturers being shunned and avoided. Although a judge is not supposed to socialize, nevertheless, one finds oneself more isolated after a probe. You become aware of this situation more when you find yourself in the company of those against whom you recommended an action to be taken and the government declined to accept your recommendation."<sup>36</sup>

Justice Obi-Okoye who headed an Inquiry into the Housing Corporation of the East Central State also related his experience thus:

"Three or four people in particular, against whom the Commission made some findings of fact, to the present day do not want to set eyes on me, irrespective of the correctness of the findings. And I know another person, not a judge who is not on speaking terms with some other fellow on account of the findings of the Commission concerning the latter. I am sure my experience is not unique, many of those who have headed inquiries suffer the same fate. The point however seems to be that this is the unfortunate attitude of the majority of the Community in which we live. The head of a Commission must incur the wrath of some people come what may. He will be very fortunate if he is not branded an

<sup>35</sup>. See Commentary of Hon. Justice Uthman Mohammed on Hon. Justice Fatayi-Williams paper In *Proceedings of All Nigerian Judges Conference 1982* p.21.

<sup>36</sup>. *ibid.* at p.22.

agent of the authority that constituted the inquiry and, if there are political overtones in the matter, he is classified outright as a member or, if he is lucky, merely a sympathizer of the political group which seems not likely favoured by the findings of the Commission"<sup>37</sup>

At the end of that Conference participants resolved that judges, especially serving ones, should sparingly be called upon to preside over the inquiries, and such must be on matters of great national importance which are not politically loaded.

On a reflection, having examined various inquiries, I share the sentiments of the judges. However, for a proper investigation devoid of political interest, they should continue to serve in inquiries, especially those where investigational procedures are akin to those of the courts and on which they have to bring to bear on issues their judicial mind. Apart from this, the provisions of the Inquiry Act are couched in such a way that only legally trained members of the inquiries will be able to apply them together with other laws cross referenced *mutatis mutandis*. In this regard, only retired judges should be made use of (Adediran, 1937. 316). As for other inquiries set up to evolve some administrative policies and which are less contentious, experienced public officers are better placed to accomplish the assignment.

#### Procedure

The success of an inquiry does not depend only on whether the government has accepted its recommendations but on whether the public is satisfied that a thorough investigation has been made. The procedure adopted by the inquiry is a determining factor in this regard. The public must be satisfied that such ensures thoroughness, fairness and impartiality.

<sup>37</sup>. *ibid.* p.29.

The Act does not lay down a *very* particular procedure knowing fully well that it would be difficult to do so as procedures will depend on the nature, and duration of the inquiry. A fair degree of variation is therefore permissible. In actual fact, the Act prescribes that except otherwise stated in the constituting instrument, inquiries have discretion to regulate their proceedings<sup>38</sup> and powers for the realization of this are given.<sup>39</sup> It is in the exercise of this discretion that inquiries make or mar their image.

The interlocutory ruling given by Justice Irikefe, the Chairman of the Tribunal of Inquiry into Crude Oil Sales 1980, not only dented his personal image, but led to the total rejection of the report of that inquiry. During the proceedings, summons was issued to bring General Olusegun Obasanjo, who had then ceased to be the Head of State to testify as to the terms of reference of the inquiry. General Olusegun Obasanjo was to appear on the 5th of June 1980 but on the 3rd of June 1980, Chief Rotimi Williams, SAN appeared on his behalf and submitted before the inquiry that his client

"was the immediate past Head of State of Nigeria who had handed over power peacefully, as opposed to forcibly to the present civilian administration... Client should be revered as an institution, as indeed all past holders of that office ought to be"<sup>40</sup>

Reading the majority ruling, Justice Irikefe said *inter alia*:

"We have given this matter most anxious consideration and have come to the conclusion that it would be wrong even if the General were so minded to give testimony before us for the reason stated above and that a case for the impossibility of getting the desired evidence from the NNPC and other witnesses has not been made. There seems to us no difficulty in the people of this country amending the Constitution as

<sup>38</sup>. Section 4(1).

<sup>39</sup>. Section 5.

<sup>40</sup>. *Nigerian Tribune* June 31, 1980 p.8.

provided within it, in order to compel our heads of government past, present and future to face public probe during or after their tenure of office. We refuse to set the precedent here. The witness summons issued herein is hereby set aside"<sup>41</sup>

The minority members disagreed with this opinion and submitted *inter alia*:

"His (General Olusegun Obasanjo's) name has been mentioned by several witnesses in connection with the exercise of his powers as Head of State, Commissioner for Petroleum, particularly in awarding contract, fixing prices, giving premiums/discounts and some appointments by NNPC without involving the Corporation Board as provided for in the Decree setting up the Corporation and I feel it is very much in his interest to clear the allegation made against him".

Thus, by the majority ruling a vital witness was excluded from the proceedings. Not surprisingly when the report was released indicating that:

"In sum..this matter of and the greatest HOAX of all time",<sup>42</sup>

it was roundly rejected by the public. The Nigerian Students, who had earlier marched to the venue of the inquiry in Lagos to protest against the ruling, described the report as "totally hollow, blank and devoid of any useful substance".<sup>43</sup> Another commentator regarded the inquiry as "arrant nonsense intended like its fore-bears to put wool on the face of Nigerians".<sup>44</sup>

The Constitutional provision that was held to protect General Olusegun Obasanjo could be found in Section 267(1) of the 1979 Constitution which provided:

"Notwithstanding anything to the contrary in this Constitution, but subject to subsection (2) of this Section

<sup>41</sup>. Page 75 of the Report.

<sup>42</sup>. Para. 81 of the Report.

<sup>43</sup>. *Daily Sketch* August 28, 1980 p.16.

<sup>44</sup>. *Nigerian Tribune* August 14, 1980 p.4.

(a) no civil or criminal proceedings ... be instituted or continued against a person to whom this section applies during his period in office;

(b) a person to whom this section applies shall not be arrested or imprisoned during that period either pursuant of the process of any court or otherwise;

and

(c) no process of any court requiring or compelling the appearance of such a person shall be applied for or issued:

Provided that in ascertaining whether any period of limitation has expired for the purposes of any proceedings against a person to whom this section applies no account shall be taken of his period of office."

(3) This Section applies to a person holding office of President or Vice-President, Governor or Deputy Governor, and the reference in this section to "period of office" is a reference to the period during which the person holding such office is required to perform the "functions of the office"

By the time the inquiry was instituted, General Obasanjo was no more the Head of State and so any immunity he could have had under any law or Constitution would not have availed him as a private citizen. The Constitution merely protects the affected person while in office. The "most anxious consideration" given to the "matter" by the Chairman in his ruling could not have been on legal grounds but may be "political". If that was so, the inquiry ought to have been bold enough to say so. After all, evidence could be heard in private and this would have attracted lesser objection. To use legal reasoning as a basis for the non-compellability of a witness in such circumstance was nothing short of a judicial blunder. The majority ruling had no basis in law. It can neither be supported by the Constitutional provisions, nor could it have any sanctuary under any statute. Even on the ground of principle of statutory

interpretation, it was legally baseless (Adediran, 1991. 70).

Consequent upon this ruling, the public felt that the whole proceeding, dressed up with legal trappings, was not actually intended to find the truth. They only hoped that one day the truth on the

On the 23rd of March 1988, the *Nigerian Tribune*, writing under the caption "How 2.8 billion was saved" reported:

"The Nigerian National Petroleum Corporations to have been missing between 1976 and 1980 was transferred from the Corporation's account for safe keeping. This explanation was offered by Mr. Allison Ayida, a former Secretary to the Federal Military Government while speaking as the Chairman at a lecture on debt equity conversion at the Nigerian Institute of International Affairs, Lagos. Mr. Ayida said the decision to transfer the money from NNPC's accounts in London was to secure it in the wake of Nigeria's nationalisation of British interests in British Petroleum (B.P.). It was feared that the British Government might seize the money in retaliation for the nationalisation of B.P. assets"

These were facts known to the government. The decision to transfer the money was a political one taken in good faith, in order to save the money from possible confiscation by the British Government. The Nigerian Government could have come out boldly to defend that political decision rather than involve itself in wasteful exercise of setting up an inquiry (Adediran 1991).

Another occasion when the conduct of the inquiry nearly ruined its credibility was during the proceedings of the Commission of Inquiry into the activities of Federal Electoral Commission (FEDECO) from 1979-1983. While sitting at Ibadan, the Chairman, Hon. Justice Babalakin was reported to have said:

"Oyo State already has an unsavoury record of turbulence and that while the people of Oyo State are still at another's

throat over the result of the last elections, politicians in the Northern part of the country have already settled down to mending fences"

This statement did not go unchallenged by writers and the press. One Ojekunle Ferreira in his published letter to the Editor of *Nigerian Tribune* wrote:

"The right is not that of Justice Babalakin nor anybody presiding or participating in any probe to make pronouncements that are capable of showing in advance, his bias in the issue at hand, because final decision will certainly be related to his utterances while the proceedings were on."<sup>45</sup>

Writing under the caption "Gag Threat" the Editor of *Nigerian Tribune* condemned Justice Babalakin's statement and advised thus:

"We therefore urge Justice Babalakin not to attempt to gag the Press through threat of contempt charge. That would be out of tune with the spirit of this administration and the mood of the nation."<sup>46</sup>

*The Guardian* was more pungent in his attack of the inquiry. In its editorial of 16 December 1985 under the caption "It is fair game" it said:

"Judges are permitted free rein of extra-judicial pronouncements. But a Judge who wanders into a political mine field ought to expect political blasts.

Mr. Justice Babalakin remarked that Oyo State already has an unsavoury record of turbulence.... These are political statements. And we say, with due respect, his Lordship went beyond his brief.. Newspapers have not commented on proceeding at the Commission, testimonies and all, but on the Judge's inelegant utterances... When it has to do with Court proceedings and contempt of court, the *Nigerian Press* is meticulous, obeying the shibboleth. Its comment in these matters was exceptional because Mr. Justice Babalakin's

<sup>45</sup>. *Nigerian Tribune* December 10, 1985 p. 2.

<sup>46</sup>. *Nigerian Tribune* December 11, 1985 p.2.

statement itself was exceptional. It is, therefore, a fair game. And Babalakin has flexed his muscles unnecessarily.<sup>47</sup>

Upon reading all these comments, Justice Babalakin summoned all the writers to appear before the inquiry. Displaying a rare patience and maturity, he lectured the writers and the press on contempt of tribunals and court, then allowed them to go unpunished.

The Deputy Editor-in-Chief of the *Newswatch Magazine* was not so lucky when he was asked to report before the Tribunal Reviewing Cases of those detained or conditionally Released under the Recovery of Public Property Decree, Chaired by Mr. Justice F.S. Uwaifo. The tribunal had ruled that on the basis of evidence before it, the former President, Alhaji Shehu Shagari and his Vice, Dr. Alex Ekwueme could not be tried under any law hence, they should be released from detention. This ruling provoked a lot of reactions from the public. The *Newswatch Magazine* writing its editorial under the caption "A Hollow Ritual" said:

"It was clear to most people, after a few days of the clowning that was going on in the Justice Samson Uwaifo Tribunal, that was hearing the case of the former President Shehu Shagari and the Ex-Vice President Alex Ekwueme, that the whole thing was a farce inelegantly contrived much in the manner of kangaroo court rendered even more kangarooic, permit the coinage, by the abject naivety of the presiding judge. But everything was dressed up in the robes of a court-prosecution, witnesses, defence *et al* - and it is all too amazing that any judge worth the chair on which he sits could not see that what was going on in the name of a trial was a non-trial an insult to his intellect, his integrity and his profession"<sup>48</sup>

Ray Ekpu (Deputy Editor-in-chief) was detained for two hours and fined

<sup>47</sup>. at p. 12.

<sup>48</sup>. *The Guardian* February 5, 1986, p. 13.

the sum of twenty-naira for contempt.<sup>49</sup>

Under the Act, any person who commits an act of contempt whether the act is or is not committed in the presence of the members sitting in an inquiry is liable on conviction by a court to a fine of Two hundred Naira or to imprisonment for a term of three months. He may however be sentenced by the tribunal itself, to a fine of twenty naira.<sup>50</sup>

Section 12(1) defines contempt as:

- "(a) any act of disrespect and any insult or threat offered to a tribunal or any member thereof while sitting in a tribunal;
- (b) any act of disrespect and any insult or threat to a member at any other time and place on account of his proceedings in his capacity as a member;
- (c) any publication calculated to prejudice an inquiry or any proceedings therein"

There is no doubt that the writing of Ray Ekpu though may not qualify to be "calculated to prejudice the inquiry" definitely was an "act of disrespect" and an "insult" on the tribunal as provided under Section 12 of the Act. But considering the total facts and circumstances surrounding the inquiry, would it have been politically advisable to convict for contempt of the inquiry?

Mr. Justice Uwaifo ought to realize that he was handling a highly volatile political matter which would invariably invite interest, reactions and comments from the public. He ought to be prepared to absorb with maturity any adverse comments even where such were unjustified.<sup>51</sup> His failure to do this by convicting the journalist for contempt, caused the acrimony generated thereafter.<sup>52</sup>

The Conviction was subsequently challenged at the High Court.

<sup>50</sup>. Section 11, Tribunals of Inquiry Act Cap 447, Laws of Federation of Nigeria, 1990.

<sup>51</sup>. See Lord Denning in *Rv Commission of Police of the Metropolis Ex parte Blackburn* (1968) 2 QB 150 at p. 155.

<sup>52</sup>. The President of the Nigerian Union of Journalists, Mr. George Izobo, after the Conviction, Called his members to boycott the coverage of Military Tribunals for the rest of the week - See *Daily Sketch* February 5, 1986 p.2.

A judge who invokes the power of contempt in a sensational inquiry may end up jailing all public commentators or stifling public opinion. If that does not happen however, there is the possibility that his findings may not impress the public at all (Adediran 1989. 16). The discretion as to procedure, afforded by the Act must be exercised in such a way to ensure that the truth is exposed to the satisfaction of the public.

Be that as it may, the public should realize that a judge or tribunal or inquiry gives verdict or ruling on the evidence before him/it and not on the general feelings or sentiments of the public. Hence whenever an inquiry is set up, the public should be ready and willing to participate fully by affording the inquiry access to necessary documents and information.

#### Judicial Control

in other jurisdictions, especially England, the institution of public inquiries either on policies or on alleged impropriety, is a political matter. The courts have no role to play except on occasions when matters of prosecution may be referred to them. In Nigeria, the contrary is the case. The Constitution has given the courts the power to examine all forms of powers exercised in or by government. Even under military regimes, when such Constitution is subject to the dictates of Decrees, since the courts are never abolished, judicial powers are still exercised over public inquiries.

Before the 1979 Constitution, judicial powers over inquiries were not specially provided for but were exercised by virtue of inherent jurisdictional powers of the superior courts. The 1979 Constitution and the subsequent ones including the present 1999, put no one in doubt as to the express powers of the courts.

Section 3(6)(a)&(b) of the 1999 Constitution provides as follows:

"The judicial powers vested in accordance with the foregoing provisions of this Section -

(a) Shall extend, notwithstanding anything to the contrary in this Constitution, to all inherent powers and sanctions of a court of law;

(b) Shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person"

For the enforcement of fundamental rights Section 46 also provides:

"(1) Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that State for redress.

(2) Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this Section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that state of any right to which the person who makes the application may be entitled under this chapter"<sup>53</sup>

It follows from the above that the court's power extends to all matters between persons or between government or authority and any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any questions as to the civil rights and obligations of that person. The courts also have all inherent powers and sanctions of a court of law. Where fundamental rights are involved, the courts can make any order, issue such writs and give such directions as they may consider appropriate for the purpose of enforcing

<sup>53</sup>. See also Sections 6 and 42 of the 1979 Constitution of Nigeria.

or securing the enforcement of that person's rights.

This is a wide judicial power vested in the courts and which has been exercised on many matters brought before them; except the Constitution provides otherwise.

To fortify this power Section 272(1) provides:

"Subject to the provisions of section 251 and other provisions of this Constitution, the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person"<sup>54</sup>

I have gone this length to show that, apart from the general principle of law that a body of inquiry no matter its sophistication is an inferior body, public inquiries in Nigeria have no hiding place from judicial searchlight. In an earlier work (Adeiran, 1990), I have identified four stages at which the courts intervene in the work of public inquiries.

#### 1. Antecedent or Pre-hearing Control

This is a control exercised by the courts before the commencement of the sitting of the inquiry. At this stage where a person feels that his interest is affected by an inquiry and he has cause to believe that that interest will not be protected, he can apply to court to stop the sitting of the inquiry.<sup>55</sup>

#### 2. Interlocutory Control.

This control is exercised by the courts to stop further proceedings of an inquiry where an interlocutory matter determined by the inquiry is challenged by an interested party. In the exercise of this power, the court gives an interlocutory injunction against further sitting until the matter in issue is resolved. This order does not stop the inquiry perpetually but only for the short period that the issue is judicially resolved.<sup>56</sup> The courts regard disobedience to an interlocutory injunction as contempt.<sup>57</sup>

#### 3. Subsequent or Post hearing Control

This is a control the court is invited to take by persons who are affected by the decisions or conclusions of inquiries. The action may still be brought by those aggrieved by the steps taken by the Government acting on the recommendations of the inquiry.<sup>58</sup>

#### 4. Collateral Control

This is a control exercised by court on the invitation of a person whose conduct is not under investigation but feels that he should be given chance to participate in the inquiry in the interest of the public. Where he can prove to the court that his interest has been affected by the refusal of the inquiry, the court will compel the inquiry to allow him participation. Where he is unable, the court will not force the inquiry.<sup>59</sup>

The courts, living up to their expectation as the last hope of the common man, have exercised their powers to control and direct inquiries where they err

<sup>54</sup> That Section deals with the powers of the Federal High Court.

<sup>55</sup> *Adebayo Doherty -v- Sir Tafewa Balewa & ors* (1961) All NLR 604, *Abdul Rahaman Shugaba -v- Federal Minister of Internal Affairs and ors* (1981) 1 N.C.L.R.1, *His Highness Oba Sikiru Adetona -v- A.G. Ogun State & ors* Suit No. AB/112/81 of 15th September 1981, *Oba Jimoh Oyewunmi Ajagunbade III -v- The Governor of Oyo State & ors* Suit No. HOG/24/82 of 8th September 1982.

<sup>56</sup> *Alhaji Sulu Gambari -v- The A.G. (Kwara State) & Ors* Suit No. KWS/56/78.

<sup>57</sup> *Alhaji Sulu Gambari -v- The A.G. (Kwara State) & ors* Suit No. KWS/56/78.

<sup>58</sup> *Oba S.K. Adetona -v- The Military Governor of Ogun State* Suit No. AB/113/83 of 4th May 1984, *Oba Lamidi Adeyemi & ors -v- The Attorney-General of Oyo State & ors* (1984). 1 SCNLR 525.

<sup>59</sup> *Bode Oyewole & Ors. v. The Nigerian Television Authority* Suit No. M/19/80 of 3rd June 1980, *Dele Giwa v. Inspector-General of Police* Suit M/14/83 of 30th July, 1984.

in the performance of their assigned duties. Though section 15 of the Act attempts to limit the jurisdiction of the courts, it is submitted that such is unconstitutional by virtue of section 4(8) of the 1999 Constitution (Adediran, 1989).

### Government's Treatment of Findings and Recommendations

One of the reasons why inquiries are set up is to enable the government find the truth or solution to a pressing problem or matter. It is therefore of utmost importance that all those saddled with the duty of sifting the findings, conclusions and recommendations be well equipped to be able to do so. Not only this, it is important that in its evaluation, government should not only think of its survival as a political body, the overall interest of the public must be taken into consideration as well. On its acceptance of findings and recommendations immediate efforts should be made to provide solution thereto. Failure to do this may account for the high rate of re-occurrence of inquiries on the same issue.

An examination of the reports of inquiries shows that panels always arrive at conclusions and recommendations after detailed consideration of evidence, oral or documentary, presented to them by the public, including experts on the subject matter. Unfortunately, in its bid to win public accolade and confidence, the government on many occasions over react without even evaluating the future consequences of their actions. The public, where favoured, acquiesce in this government's attitude. The government's exuberant handling of the report of the Public Service Review Commission (Udoji Commission) by doubling and paying six months arrears of worker's salaries, despite warning, started the super inflationary trends in this country. If such exuberance had been shown in the reorganization and restructuring of certain public corporations like Nigeria Airways, Nigerian Railway Corporation, National Electric Power

Authority etc.<sup>60</sup> in respect of which there had been public inquiries at one time or the other, the performance of those parastatals would have been improved upon. Unfortunately it would appear that the civil servants that would implement such recommendations are unwilling to, since they are mostly affected.

Instances abound where in spite of the blame worthiness of top government officials by the Report, such officers escape punishment while their sins were visited on the lower rank officers.<sup>61</sup> There are also instances of lack of seriousness shown by government in actually addressing the real issue under investigation. Where a government agent was held responsible for some faults, government was quick to exonerate or even shift the blame to someone else.<sup>62</sup> Research has revealed one basic fact and that is, that the public on many occasions are never impressed by Government reactions to reports of inquiries.

Following the release of the government views on the Crude Oil Sales Inquiry, the resultant condemnation witnessed was unprecedented. Various comments showed the cynical attitude and lack of confidence of the public in the inquiry. The Unity Party of Nigeria had this to say on the Report:

"It is clear to all decent minds and all progressive forces all over the world that the final word has definitely not been said about this unfortunate national scandal. The international publicity generated by this matter is of extreme importance

<sup>60</sup>. See generally *Electricity Corporation of Nigeria Tribunal of Inquiry 1967; Inquiry into the Affairs of the West African Examinations Council 1965; Nigerian Airways Tribunal of Inquiry 1966; Nigerian Ports Authority Tribunal of Inquiry 1967; Nigerian Railway Corporation Tribunal of Inquiry 1968.*

*Government Views on the Report of the Tribunal of Inquiry into the Importation of Cement 1976.* Federal Ministry of Information (Printing Division) Lagos; *Government Views on the Report of Inquiry into the Purchase of Leyland Buses for FESTAC from British Leyland 1977;* Federal Ministry of Information, Printing Division, Lagos.

<sup>62</sup>. See *Comments of the Federal Military Government on the Reports of the Commission of Inquiry into the Disturbances on the Campus of the University of Ibadan 1971;* Federal Ministry of Information, Printing Division Lagos; *Views of the Government of the Federation on the Report of the Kano Disturbances Tribunal of Inquiry 1981;* National Assembly Press, Lagos; *Kano State Government White Paper on Maitatsine Disturbances, Daily Sketch December 1, 1981.*

to Nigerians that no reasonable patriot will ever accept the cavalier manner in which the Shagari National Party of Nigeria government had dismissed the affair."<sup>63</sup>

Earlier, the same scepticism had been expressed over the setting up of any inquiry on the alleged missing fund. It was said:

"The history of probes in this country has been very frustrating and it has involved unnecessary waste of money. The total years of the Military in the political life of Nigeria was characterized by probe, probe, probe. The results have been negative.

We had Scania Inquiry, then came others like Leyland, Cement, FESTAC, Adamu-Orisa, National Supply Company etc. Despite myriads of probes, looters have always found other dubious ways and means of impoverishing our nation. I am yet to be told the value we have got in the results of such probes in the history of Nigeria.

Honestly, I am particularly convinced that there is a conspiracy by some unscrupulous Nigerians to wreck this country.... It looks to me that we have merely been chasing the shadow."<sup>64</sup>

Another commentator had this to say on the same Inquiry:

"The whole exercise of the Tribunal therefore could be seen as arrant nonsense intended like its forebears to put wool on the face of Nigerians. What did Justice Boonyamin Kazeem Inquiry into the Adekunle Adepeju Cold blooded murder achieve? What did Anya farcical probe into the dastardly Kalakuta inferno achieve?

What of course, did anybody expect of Irikefe theatricalized inquiry into the greatest roguery of our time? One thing is certain - the last word on the missing oil money is yet to come. Sure."<sup>65</sup>

<sup>63</sup> *Nigerian Tribune*, August 11, 1980, released by its Director of Organisation.

<sup>64</sup> *Sunday Tribune* April 27, 1980.

<sup>65</sup> *Nigerian Tribune*, August 14, 1980.

Not only the Crude Oil Sales Inquiry suffered this public negative attitude. In 1980, some suspects were to be taken to court in Lagos. They were packed into a Black Maria. When the driver got to the court's premises he opened the door for the suspects to alight from the vehicle. Fifty-seven of them had died of suffocation. There was public outcry. The government set up the Police Prison Vehicle (Death of Suspects) Tribunal of Inquiry to investigate the matter. The Report was submitted and while the white paper was being awaited, a public commentator had this to say:

"Fifty-seven poor Nigerians were roasted to death sometime ago. Alhaji Shehu Shagari in a bid to quell the anger of the people established a probe to find out not why and how the poor people died but how to silence the people's wrath and reaction. The probe report is now in a cooler in Shagari's office at Ribadu Road.

After all, Sergeant Doe's Liberia is much more important to the Ribadu men than the fate of the poor Nigerians that died on that fateful day. If you are waiting for the reports of the probe; you are merely wasting your time. When it is eventually released, we all know the outcome. The unknown Policeman like Fela's unknown soldier would have been responsible. Unknown people are always responsible for events that affect the poor in Nigeria."<sup>66</sup>

Blames are sometimes put on the civil servants who examine the Reports and advise the government but in the end, government should be ready to take this blame. On few occasions, members of the panel were even embarrassed by government's reactions to their report. Infuriated by this attitude, Justice Uthman Mohammed had this to say:

"One aspect of a Commission of Inquiry which on some occasions distorts the conclusions of a commission is the Government's White Paper on the findings of the

<sup>66</sup> *Daily Sketch*, August 28, 1980.

Commission. In most cases the distortion is due to a misconception of the facts as given in the report. Those civil servants who were appointed to go over the report and draw up the White Paper would not bother to study the findings very well. You find a very serious recommendation or a finding which you have made after very serious research being ignored or in some cases distorted.<sup>67</sup>

It is of utmost importance that Reports are well studied, facts and views well ascertained and considered, and government views consistent and fair in all circumstances. Where a part of the Report is not clear, the Chairman of the inquiry should be consulted before the White Paper is released. This is the only way that public confidence in Government can be restored and sustained.

### Benefits Derived from the Inquiry System

Having reflected on the various burning issues, it is pertinent at this juncture to consider whether the inquiry system has benefitted the government or the people in one form or the other. As indicated earlier in our description, inquiries are set up to investigate issues bordering on government policies and cases of alleged impropriety or negligence in public life. An examination of this therefore brings one of the benefits derived from the system.

#### 1. Assistance in the Evolvement of Administrative Policies

From our discussion, so far, it will not be difficult to conclude that inquiries assist in the formulation of policies in some politically charged subject areas where government feels that unilateral declaration of a particular policy may be resisted or politically unwise, because of its political colouration: the institution of public inquiries has thus helped to douse people's agitation. The inclusion of fundamental rights in the independent Constitution of 1960 was a result of an

<sup>67</sup>. See *Proceedings of All Nigerian Judges Conference. ibid p. 22.*

inquiry<sup>68</sup> into the fears of the minority groups in Nigeria. It was an alternative to the agitation for the creation of more states shortly before independence. In recent times decisions on the location of the Federal Capital<sup>69</sup>, creation of States<sup>70</sup> and Local Government Councils,<sup>71</sup> Revenue Allocation,<sup>72</sup> review of salaries and wages<sup>73</sup> re-organization of the public service<sup>74</sup> and many other administrative policies were all preceded by public inquiries. With the participation of the public in such inquiries, their satisfaction of government position is guaranteed, since such is regarded as their decision.

We should not forget that despite the numerous inquiries on Federal Government parastatals, they seem to have defied all reorganisational policies geared towards their efficiency. I think their problem is more human than administrative.

#### 2. Investigation by the Public

The institution of public inquiries into civil disturbances, disasters, impropriety in high places either due to fraud, ineptitude or negligence of duty, affords the public the opportunity to participate in the investigation. In few of these cases the law enforcement agencies, being government agencies, may find it impossible or too tough to confront top and powerful government officials involved. The institution of inquiries, apart from showing the public that the government has nothing to hide or nobody to protect, is an indication that it intends to get to the root of the matter.

<sup>68</sup>. *Inquiry into the fears of minorities and the means of Allaying Them, 1958* (Henry Willink Commission).

<sup>69</sup>. *Report of the Committee on the Location of the Federal Capital of Nigeria, 1975*, Federal Ministry of Information Lagos.

<sup>70</sup>. *Panel on the Creation of New States, 1975.*

<sup>71</sup>. *Commission of Inquiry into the Creation of Local Governments in Oyo State, 1980.*

<sup>72</sup>. *Revenue Allocation Commission, 1980.*

<sup>73</sup>. *Salary and Wages Commission, 1970.*

<sup>74</sup>. *Public Service Review Commission, 1973.*

It was the participation of the Public that unearthed the truth in the death of the suspects in the Black Maria incident earlier referred to. The government could not protect the affected Police officers and in accepting evidence of their criminal negligence said:

"There was no gain-saying the fact that Inspector Ikem and his team were guilty of negligence in loading 68 suspects into a Police vehicle designed to accommodate about 28 passengers despite the warning given to Police escort by the Lagos State Police Command against the overloading of the Black Maria. Beside, there was no reason why the Black Maria should have remained in the Court premises between 12noon and 1.30p.m. in spite of the groans of the suspects whose dying condition was clearly known to some of the Policemen."<sup>75</sup>

Consequent upon this, the affected Police officers were charged with manslaughter. If the investigation had been conducted by the Police, one could guess the outcome.

### 3. Antidote to Tension

Research has shown that the timely institution of inquiries could prevent the escalation of brewing crises or stop the spread of civil disturbances. Some disturbances assume dimensions that the security forces could hardly cope with. Thus a quick use of public inquiries would defuse tension and make the combatants feel that the government is willing to settle the issues of the crisis. The civil disturbances in Ife/Modakeke 1981; Students/Police face off in Ife 1981; Maitatsine riots 1981 etc. would have assumed bigger proportions but for the timely institution of public inquiries.

If high powered inquiries had been set up immediately the crisis in Ife/Modakeke 1997; Ijaw/Itsekiri crisis etc. started the damage to lives and

<sup>75</sup>. *Daily Sketch*, August 1, 1980 p.16.

properties would probably have been minimal.

### 4. Utilization of Experts

The system ensures the use of experts at less cost. When administrative policies are to be embarked upon or reorganizations are to be made to a wide range of public institutions, the inclusion of experts in the panels of inquiries guarantees the use of their expertise. The cost is minimal, unlike when these experts are to be engaged as consultants. Apart from this, since inquiries have power to summon witnesses to give evidence, such opportunity has been used to summon experts from wherever they may be to assist the inquiries in their task.

### Current Public Inquiries

Having reflected on the past inquiries, this august body may be disappointed if mention is not made, albeit briefly, on the current public inquiries. In his inauguration speech as President of Nigeria on the 29th May 1999, Chief Olusegun Obasanjo promised to fight corruption which has become Nigeria's No.1 enemy; through prolonged dictatorial military rule. In line with this promise, four prominent panels of inquiry have been set up. They are: (1) Panel to review contracts, awards, oil licences and appointments undertaken during the General Abdusalam Abubakar Regime headed by Dr. Christopher Kolade; (2) Panel to inquire into all human rights abuses since the return of the Military in 1983 headed by Justice Oputa; (3) Panel to investigate all uncompleted projects and services undertaken since 1976 headed by Alhaji Inuwa, and (4) Panel to investigate all transactions relating to Federal Government's landed properties since 1976 headed by Brigadier General Oluwole Rotimi (rtd.).<sup>76</sup>

In this University, the President has also set up the Commission of Inquiry

<sup>76</sup>. See *The Punch* June 30, 1999 p. 6

into the violence that occurred recently on the Campus. That Commission is headed by the most respected retired Justice of the Supreme Court Hon. Justice Kayode Eso.<sup>77</sup>

The State Governors have also set up panels to inquire into some matters that border on financial impropriety and abuse of office by past administrations.<sup>78</sup> Despite the illusion, confusion and improper understanding of the law exhibited by Alhaji Wada Nas, who has sued the President<sup>79</sup> over these Panels of inquiry, it is submitted that those inquiries are properly instituted under the appropriate law. The big question is: Will these inquiries not suffer the fate of their predecessors? The only way this government can convince the public that it is fighting corruption is to implement to the letters the recommendations of those panels. Where properties are recommended to be forfeited after due consideration they should immediately be so forfeited. Where crimes are committed, those involved should be prosecuted without any delay. The President should remember that he has promised to step on toes, no matter how big they are, if the need arises, in order to rid our country of corruption. The public also have the responsibility to come out and participate fully by submitting evidence - oral or documentary to the inquiries.

### Conclusion

In this lecture various aspects of public inquiries as instruments of governance have been examined. Our discussion on the system can therefore be rounded up by these conclusions.

1. Public inquiries have become ready made tools used by the government in evolving some administrative policies which could have been impossible through other tools of government. Not only this, they could be used to

<sup>77</sup>. *The Guardian* August 9, 1999 p.72.

<sup>78</sup>. See *The Punch* June 30, 1999 p.7.

<sup>79</sup> See *The Guardian* June 23, 1999 p. 5.

restore the public confidence in government, when such is waning due to some misdeeds in high places.

2. On few occasions, the procedure adopted by some inquiries, particularly on volatile political issues tend to dent the credibility of such inquiries. The overzealousness of some panels to strictly apply their powers of punishment tend to put off the public and make citizens feel that their participation is not genuinely required.
3. The control exercised by the judiciary, deriving their powers from the Constitution, has saved citizens from injuries to their rights and obligations. But for judicial intervention, Alhaji Shugaba would have been permanently deported from his country Nigeria. The judiciary also came to the rescue of the Awujale of Ijebu-land when he was deposed by the Governor following what observers saw as an inquiry set up to settle personal scores.<sup>80</sup>
4. In few instances the attitude of the government in the treatment of recommendations of inquiries is disappointing. The Government, in such instances, shows lack of seriousness and genuineness of purpose in the lackadaisical way findings and recommendations are examined and implemented.

### Recommendations

Nigeria, as a developing country will for some time make use of public inquiries in its administration. This is simply because other state apparatuses are still not strong enough to cope with the expanding governmental activities of the coming 21st century. To be able to cope adequately the following recommendations should be examined by governments and the public.

<sup>80</sup> The Commission of Inquiry that looked into the activities of Oba Sikiru Adetona as Awujale of Ijebu Land under Justice Sogbetun submitted its reports on 18 May 1983, the Government issued the White Paper on it on the 19 May 1983 and on the same day, followed it with the Awujale of Ijebu-land (Deposition) Order to depose Oba Sikiru Adetona.

1. Whenever there is cause for public inquiries, the composition of panels must jettison federal character syndrome but be done in such a way to tap the knowledge of intelligent, mature, experienced and incorruptible members of the public. There is no hard and fast rule on who should be members; the most important factor is that the best set of people are empanelled. For inquiries bordering on investigation of fraud, negligence or other forms of impropriety in high places, retired Judges should be made use of. I need not overflog this issue but I borrow the words of Lord Salmon:

"The members of the Tribunal should be of highest standing, whose general reputation will command public confidence in their ability, experience and complete impartiality. The Chairman must be a person holding high judicial office. Apart from assurance that having a judge as Chairman gives to the public that the inquiry is being conducted impartially and efficiently, it ensures that the powers of the Tribunals will be exercised judicially. No special qualifications should be laid down for the other members. They may or may not be lawyers, their vocations depending upon the particular circumstances of the case into which they are to inquire. None of them, however, should have any close connection with any political overtones."<sup>1</sup>

The enabling statute - Tribunals of Inquiry Act - needs to be reviewed in order to bring it in consonance with the provisions of the 1999 Constitution of Nigeria. It will be remembered that the present enactment is a combination of the Tribunals of Inquiry Decree 1966 and Tribunals' of Inquiry (Amendment) Decree 1977. Areas to be amended have been highlighted elsewhere (Adediran, 1989).

Inquiries, though useful in administration, may be too expensive for a growing economy, especially if they become a general rule as opposed to

exception. Efforts should be made to reduce them. This can only be done if the government has a firm grip of the administration. If financial regulations are obeyed there would be less fraud in government offices. If building regulations, town and country planning laws are strictly followed there would be less fire or flood disasters. If the security agencies are adequately equipped to nip crises in the bud, there would be less civil disturbances. Inquiries on those matters would invariably be drastically reduced.

4. The government must ensure that recommendations of inquiries are well examined and implemented with despatch and fairness. It is by doing this that the confidence of the people in the system will be guaranteed and sustained.
5. The public which in most cases must have started the calls for inquiries, must be willing and ready to sacrifice their time to present the facts before these inquiries. It is not enough to start rumours, exaggerate the rumours, call for inquiries and abstain from participation. Citizens should be part of the system set up to find the truth on the matter that has generated such public disquiet.

Research in this important aspect of public administration is still at its infancy in Nigeria. Today, nobody knows how many and what types of public inquiries have been instituted in Nigeria, either at the Federal level or State level. Government officials are unwilling to release reports which incidentally are not distributed to Libraries as expected. These are areas that call for future attention. We need to know the past so that we can understand the present and prepare for the future.

Mr. Vice-chancellor, Ladies and Gentlemen I sincerely thank you for your attendance and attention.

<sup>1</sup> *Tribunals of Inquiry* Oxford University Press (1967) Pp.15-16.

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