

2015: The Year of Change

As the year 2015 draws to a close, we Nigerians cannot but marvel at the extraordinary 12 months it has been, in all ramifications. One thing though we are all truly thankful for is that the country did not disintegrate and our unity was indeed defended. 2015 being an election year was froth with anxiety and the politics of the day did end up 'heating up the polity' as we Nigerians like to say but mercifully, manageably so. On January 13th 2014, an Abuja High Court delivered its final judgment which affirmed the financial autonomy of the judiciary in the country. The judgment mandated the Federal Government to pay sums due to the Judiciary directly to the Heads of Court in every state of the Federation. After repeated threats to embark on strike action with the Federal Government having still not implemented the mandatory requirements the Judiciary Staff Union of Nigeria (JUSUN) went on what would become an unprecedented 3 weeks strike action which saw nearly all courts in Nigeria shut down.

The efficacy of the strike action at the time was cause for much speculation, the question was naturally whether the strike action and the interruption of the administration of justice it occasioned across the country was justifiable. On one side was the significance of the standstill caused, with litigants who suffered losses because of the closed courts and lawyers, the guardians and protectors of their clients forced to endure the ignominy of helplessness themselves. On the other side was the unjustified refusal by the Federal Government to implement an order of a High Court, blatantly paying no mind to the Rule of Law and actions designed to cause the Government to act. The negotiations continued week after week as more and more prominent members of society got involved attempting to broker a solution but all to no avail. Unhappy judiciary staff finally had their day in the sun, literally, when the learned profession, the government and indeed the entire country was forced to wait to see when the barricaded court complexes would once more be open. The issue of judicial autonomy is still on the front burner and whether it will ever be settled once - and for all only time and the requisite political will - will tell.

Another stunning occurrence in the year 2015 was the state-wide shutdown of the Judiciary in Rivers State stemming from an impasse between the former State Governor Rotimi Amacehi and the Judiciary in Rivers State over the nomination and appointment of the new Chief Judge of the state, following the retirement of Justice Iche Ndu. When the situation came to a head it is reported that the former governor prevented courts from sitting effectively shutting down the Judiciary in the state for 15 months until the question of who would swear in the new Governor, Nyesom Wike (whose election as governor has only recently been declared a nullity by an Election Tribunal sitting in Abuja whose own authority to do so had just been affirmed by the Supreme Court). Nyesom Wike was eventually sworn in by Justice Kate Abiri, the Chief Judge of Bayelsa State.

2015 was indeed a year of political intrigues and oscillating loyalties. A review of the year will not be complete without reference to the wave of impeachment attempts that took hold of the country (and, in hindsight, to little avail in the end) towards the end of Governorial and Legislative terms of office. Reference is made to Niger State where the House of Assembly was physically barred from sitting, under the alleged orders of the state Governor, Babangida Aliyu whom the House was seeking to impeach.

In Enugu State Governor Sullivan Chime was under threat of impeachment for gross misconduct. And like the members of the Niger House of Assembly, they too found it difficult to gain entrance to their chamber for deliberations, but they instructed the clerk of the assembly Christopher Chukwurah to serve the governor with the impeachment notice.

Ekiti's case is perhaps the most brazen and symptomatic examples of this wave of impeachments. 19 APC members of the House of Assembly who since late 2014 had been in hiding resurfaced and with precision executed a well-planned 10 minute Assembly session leading to a stand-off between them, the Speaker Mr. Adewale Omirin, the police and the army and the purportedly installed factional Speaker Mr. Dele Olugbemi (installed after the 7 PDP legislators purported to remove Mr. Adewale Omirin as Speaker of the House in November 2014).

Just before the 7th National Assembly concluded, they proposed an amendment of the Constitution and presented it for Presidential Assent. President Jonathan on 15th April addressed the Senate and gave reasons why he would be refusing to give the requested assent to the 4th Constitutional Alteration Bill and that began the constitutional debate amidst much political posturing on what the legitimate course of action by the Legislature and the Presidency should be.

Among other issues that came to the fore in this drawn out narrative were the impropriety of the Legislative process that attempted to amend the Constitution without proving that it had complied with the Constitutional provisions on amendment (section 9(3) of the Constitution), the President's right to refuse assent, the constitutionality of the Legislature passing an amendment without Presidential Assent and the removal of various mechanism for checks and balances between the three arms of government.

May 15 saw the passage of a seminal Act that could in fact be the most significant upturn of Nigerian rights in the nearly two decades since the 1999 Constitution - the Administration of Criminal Justice Act (ACJA). Although the Act applies mainly to the Federal High Court and Courts in the Federal Capital Territory, it will also have general applicability in provisions that implicitly or expressly warrant such (Part 8 provisions).

Among the ground breaking changes are that the ACJA attempts to remedy the remand of inmates awaiting trial by ensuring that the 'Inspector-General of Police and the head of every agency authorised by law to make arrests shall remit quarterly to the Attorney-General of the Federation a record of all arrests made...' The Act further creates a central criminal registry and prescribes the nature of information to be stored by this registry, stipulating that there can no longer be an arrest for breach of contract or purely civil matters, nor can a person be arrested in-lieu of another as was previously possible.

However as forward thinking as the ACJA attempts to be, some provisions of the law have come under great scrutiny even before they have been given a chance to be tested in court. A good example is section 296(1), (2) and (5) that severely impinges upon every Nigerian's constitutional right to freedom by cumulatively allowing an arrested person to be held for up to 42 days (at renewed holding application periods of 14 days) on mere suspicion. This kind of arbitrary power shows why as ground breaking as the Act attempts to be, we should expect to see resistance to some of its more draconian provisions in the near future.

Of course no review of the year would

be complete without reference being made to the General Elections at Federal and State level. For the first time since the beginning of the Fourth Republic in 1999 an incumbent President was unseated as President Muhammadu Buhari won the Presidential election by 2.7million votes and was duly sworn in with his Vice-Presidential running mate Professor Yemi Osinbajo SAN. History was made in more ways than can be imagined. A completely new political order was installed and by our country's abysmal political standards that was indeed something to celebrate, that yes we can make the seemingly impossible possible. That one act demonstrated the need to make our leaders accountable. Overnight the campaign slogan of 'Change' became the national mantra against which everything in the incumbent administration became measured.

Plainly seen by all, the 8th National Assembly did not get off to a good start as it was disheartening to witness that no sooner had they found their seats in the legislative chambers than the leadership squabbles started, all predicated on dividing the spoils of office. What is more this feud still lingers and it thus leaves a bad taste in the mouth as it shows that legislation is far from their main focus. Battle lines have been drawn and they have spilled over and Senate President Bukola Saraki's Code of Conduct Tribunal trial, dragging the judiciary along with it into its war which despite the current stay of proceedings, still continues. A small wonder that it was recently remarked that whenever it is an election year the judiciary suffers a lot of attacks.

A few weeks ago I read an article titled 'Flags for House of Reps' and I quote, Senate Deputy Minority Leader, Senator Emmanuel Bwacha (Taraba South), has sponsored a motion to get the Senate to support the federal government's anti-corruption efforts. This motion in turn fired the fertile imagination of the Senate Leader, Ali Ndume, to present a proposal to get all senators to carry and wave the Nigerian flag as a sign of that support. Senator Ndume says he will produce and distribute the flags. Honestly, if the above is true it beggars believe that at this stage when the country is wallowing in a state of economic depression and the Presidency is fighting corruption with all its might some of our legislators still have not got their act together. This is a case of fiddling even as concerted efforts are being made across the board to tackle corruption, from the judiciary, to the anti-corruption agencies, to the police and the Nigerian Bar Association (NBA), with all seeking ingenious ways to combat corruption and support President Muhammadu Buhari's fight. The Judiciary is providing a more transparent and inclusive process for the appointment of Judicial Officers. The NBA on its part is joining the effort to tackle corruption not just from an ethical standpoint but by practical implementations and taking an informed position on corruption whilst collaborating with appropriate agencies. The presence of President Muhammadu Buhari and Vice President Prof Yemi Osinbajo SAN at the Nigerian Bar Association's 55th Annual General Conference held in Abuja was a defining moment and did bring to light the role of lawyers in national development.

A need for the amendment of the Constitution should be top of the list for our legislatures in this 8th National Assembly and the process should be started nice and early because before you know what their 4 year tenure would draw to a close. This is as constitutional issues have continued to raise their head



MAY AGBAMUCHE-MBU

LEGAL
EAGLE

may.mbu@thisdaylive.com

time and time again as seen in the Kogi and Bayelsa gubernatorial elections and the Constitutional debacles emanating therefrom.

Unfortunately 2015 also brought with it the sadness of more terrorist attacks worldwide and insurgency here in our very own country. We cannot though and we will not ever forget our Chibok Girls, 624 days and counting since they were taken but whom we remember and live in hope of their release someday. The numbers lost and the devastation we have come to know by itself deserves to be recognised as thousands have fallen in the wake of the Boko Haram menace. We remember them, we are in solidarity with Paris, London, San Bernardino and, regrettably, so many other places where these inhuman attacks have been perpetrated. We stand against them and we are resolute in that stance on behalf of peace, justice and the rule of law.

I read a brilliant book called 'Nigeria The Magical A Photographic Journey' and the chapter on 'Our Brothers' Keepers' it noted that 'one of the cardinal points of Nigeria's foreign policy is the maintenance of peace and security in Africa and that is one achievement she can thumb her chest on. Today, Nigeria occupies the exalted position as the largest troop contributing country on the continent. Our peacekeepers have participated in operations in Congo, Angola, Cambodia, Mozambique, Somalia, Rwanda, Yugoslavia, Bosnia-Herzegovina, Croatia, East Timor, Kosovo, Sudan, South Sudan and Guinea Bissau'. It went further to add that 'as far back as 1960, the Nigeria police deployed the first ever contingent of Independent Police Officers to the UN mission in the Congo led by ACP Louis Edet, after whom today the Nigerian Police Headquarters is named. There has been no looking back since then. Each time there is a crisis even outside the continent, Nigeria has always stepped in, giving both money and her national blood to ensure peace returns and is kept in troubled lands.' Where then may I ask are all the countries we helped bring peace to? My prayer and wish is that peace and security will return to the North East of our country sooner rather than later with or without outside support.

2015 also brought numerous contributors, distinguished members of the Bar and Bench, that ensured the qualitative value of the work we aspire to become reality. Respected personalities who have been of invaluable help and support, members of the public that contributed to the productive discussions by sending in outstanding articles or responses to our discourse as Rights of Reply and just general words of encouragement and views, distinguished interviewees, legal personalities and our faithful readers from right across the country and abroad, to you all I offer my heartfelt gratitude and thanks. I hope to continue our discussions in 2016 taking our contribution to national discourse to yet new and higher levels.