

TRADE UNIONS, CONSTITUTIONALISM AND DEMOCRACY:-
RULE OF LAW AND INTERNAL DEMOCRACY IN OUR UNIONS

BEING AN INTERACTIVE DIALOGUE WITH SOME CADRES IN MAIDUGRI IN 2017

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KEY CONCEPTS:-

TRADE UNIONS:- Defined by the Trade Union Act.

CONSTITUTIONALISM:-

Veritable principle of power relationship in a rule ordered society in which case the governed and the government alike derive their right, powers and, privileges from an established covenant.

RULE OF LAW:-

Cognate constitutionalism is a principle of governance which states that “law rather the arbitrary will or the momentary and changing returns and caprices of the rulers, should govern the affairs, actions and rights of the individual”.

DEMOCRACY:-

A form of government where the people, and their aspirations are promoted, and defended by the people themselves through a process of establishing the government through their sovereign action. It is a government of the people by the people for the people “because the people elect their representatives and, the representatives are expected to be transparent and accountable to the people they represent”.

It is a relationship between a representative and the represented anchored on the surrender of mandate, consultations and, trust, etc.

INTRODUCTION

This discussion which is about trade unions, constitutionalism and democracy is going to look at rule of law and internal democracy in our unions given that the mood now in the movement is focused on commemorating the 40th Year of the inauguration of the Nigeria Labour Congress (N.L.C). Also, as a democratic organization and active catalyst in the democratization process, the discussion will permit us to look at the journey so far for a recognized institution with a legal instrument and its Constitution.

Invariably, this discussion is just to create a basis for self-assessment in order to appreciate what we should be doing in the project of democracy, human rights promotion, defence and protection; as well as. the advancement of social and economic justice.

You may wish to realize that, the Hausa Person says - “IDAN MUTUM YACHE ZAI BAKA RIGE, DUBA TA WUYANSA” that is when a person says he is going to give you a garment, look at the one he is wearing.

In this context, as movements, are our Unions really democratic? Are they well situated in the democracy project to be active catalysts of democratization? What factors and problems are we to address in positioning our movement in the project of democracy that

will make our role go beyond mere “campaign crowd” and “voters” the apparent translation given to participation in our democracy.

2.0 WHAT IS A TRADE UNION CONSTITUTION?

As the paper is concerned with constitutionalism, which is a veritable power relation in an ordered society, it is important for us to understand what a constitution is, and, in this regard a trade union constitution.

A Trade Union is statutorily defined as “Any combination of workers or employers whether temporary or permanent, the purpose of which is to regulate the terms and condition of workers. The combination in question would or would not, apart from this Act, be an unlawful combination by reason of any of its purposes being in restraint of trade, and whether, or not its purposes do not include the provisions of benefits for its members”

So now, what is a constitution?

According to OLAKANIS “there are several definitions of a constitution some see a constitution as:

(a) The mode in which a state, or society is organized especially the manner in which sovereign power is distributed in the state; or

(b) The written instrument embodying the fundamental rules and constituting the organic law of the land; or

(c) The system or body of fundamental rule and principles of a nation, state or body politic that determine the powers and duties of the government and guarantee certain rights to the people. or

(d) The body of rules, laws, conventions or practices. which defines the powers and functions of the state vis-a-vis other social institutions, prescribes the institutions and structures by which the power and functions of the state are exercised, and established relationships between and among the institutions and structures of state power”.

Proceeding from the foregoing,

Olanikas opined that “a constitution can be said to be

i) A body of rules, laws, customs and practices by which a country is transformed into a state, that is, a sovereign political community”,

In this regard therefore, we can accept the view that suggesting as follows:

- (i) A constitutions is a collection of rules which regulates or govern the government; and
- (ii) A constitution is used to describe the whole system of government of a country.

In essence, it is a selection of legal rules which govern the government of a country and which have been embodied in a document”.

In “a democratic system of government the constitution is supreme, all laws flow from the constitution and any law inconsistent in any part with the constitution is void to the extent of such inconsistency”.

It is therefore, in this context it becomes desirable to exhort your attention to a provision in most constitutions of the affiliates of the NLC, which is saying:

“the constitution shall be deemed to be the basis of contract among the members to establish and operate the union”.

Also worthy of note is the fact that various trade union constitutions are registered in the office of the Registrar of Trade Unions, and they would only register such a constitution if it satisfied the stipulated criteria and guidelines enshrined in the Trade union Act.

Invariably, our Trade Unions are statutorily regulated and, their operations must abide by the statute that confers recognition to them and; simultaneously, their constitutions from where legitimacy is derived.

SHARING OF SOVEREIGN POWER IN THE TRADE UNION CONSTITUTION

The Nigeria Labour Congress Constitution provides for the following sovereign powers; namely:

- (i) The congress-in-session — (Article 4)
- (ii) The National Executive Council - (Article 7)
- (iii) The Central Working Committee — (Article 8)
- (iv) The National Administrative Council — (Article 9)

The foregoing power structure is for the National body.

- (i) The state conference-in-session — (Article 10)
- (ii) State Executive Council of the Congress — (Article 11)
- (iii) The State Administrative Council — (Article 12)

There is expected to be in existence the “Local Biennial General meeting” of accredited “delegates of affiliate unions within the Local Government Area” — (see Article 13)

The Constitution, further established:

- (i) National Secretariat of the Congress — (Article 15)
- (ii) The State Secretariat of the Congress — (Article 17)
- (iii) Local Secretariat of the Congress - (Article 18)

What is worth noting at this juncture is the manner sovereign power is shared by the Congress as well as the composition and functions of the various units involved in the sharing. It is important to appreciate, the Congress is composed of the following organs:-

- (i) The Congress-in-session is composed of:-
- (ii) The Executive Organ (Article 5 (i);
- (iii) Administrative Organ — (Article 5) (ii); and
- (iv) Commissions and Committees — (Article 5 (iii)).

However, according to Article 6(2) (i), (ii), (iii), (iv) and (v) the Congress in Session shall be composed of the following:-

- (i) Accredited delegates of affiliate unions who shall be computed based on monthly aggregated payment.
- (ii) Members of the National Executive Council (NEC) who shall have the right to vote.
- (iii) Members of the National Administrative Council (NAC) who shall have the right to vote.
- (iv) All Head of Department of the Congress whose participation shall be limited to giving advice and information. They have no power to vote or be voted for (Article 6(2) (i — v)).

A look at the composition of the “Sovereign power” sharing units, one will appreciate that members of the National Administrative Council (NAC) are members of the Central Working Committee (CWC) as well as the National Executive Council (NEC). In these bodies, the National Administrative Council (NAC) is the political leadership of the Congress and, they come into existence through:

- (i) An election; and,
- (ii) Have a definite tenure of office.

Similarly, the State Administrative Council as a replica of the NAC enjoys legitimacy in the like manner of NAC.

In essence, a democratic trade union is one where “sovereign power” derives from how legitimacy is conferred and this can only come about however, through the observance of:

- (i) Rule of law;
- (ii) Constitutionalism;
- (iii) Internal democracy;
- (iv) Transparency and accountability;
- (v) Subordinating ourselves to the objectives and aims of the movement above our personal desires; etc.

The challenge of arresting violation of democracy in the Trade Union movement consequent upon recent trends has now become the immediate task before the movement if, we are to overcome splits and as well as build a strong workers organization that will adequately respond to the challenges of reform inspired by the catalyst of Neo-liberalism.

In this context, it is imperative to question, the extent to which the procedures of sharing sovereign power as stipulated by the N.L.C. Constitution is being observed. The 2015 “Reconvened conference” deserves scrupulous scrutiny if, we are genuinely interested in promoting trade union democracy, respect for constitutionalism and, evolving a virile and responsive trade union movement.

In this regard, let us attempt to look at:

- (i) The Congress-in-Session is expected to meet once “in every FOUR YEARS in the Month of February” — Article 7(3) (i).
- (ii) The Congress-in-Session shall be convened by the National Executive Council (NEC) — Article 7(3) (x);
- (ii) The National Executive Council (NEC) “shall convene Special Congress-in-Session in the event of an emergency on obtaining 75% of all the Council members votes” - Article 7(3) (x) (i) etc;

In view of “the emergency” that was orchestrated at the 2015 Conference, it is important to appreciate:

- i) The scuttled conference, before its commencement did not dissolve the NAC; but, the life-span of the NAC has expired especially that an election of new NAC members was in progress; (February as stipulated by the constitution);
- (ii) The NEC of the Congress was deformed as the NAC’s life span had expired, so how could a NEC convene a “special congress” (Article 7(3) (xiii) etc.
- (iii) It is important to appreciate that, where a situation arises where the president and the deputies or vice-president are at a meeting, are the subject of discussion, the meeting shall

elect from its members a chairperson to preside at that particular meeting provided that a quorum is formed see article 7(3).

(iv) From the way and manner the management of the NLC was carried out from the scuttling of the Conference to the convening of a “Reconvened Conference”, suggests that constitutionalism was in jeopardy

That, the stipulated procedures was jettisoned; a NAC whose tenure expired, and, apparently the National Administrative Council (NAC) came to the conference as a divided house, it is apparent the conference was convened to fail.

Above all, the Conference was more interested in getting an election carried out rather than formulating and charting a path for the movement and addressing contentious issues. Consequent upon that the crises were imported into the movement by a splitted NAC; and; the quest to escape accounting, albeit transparently to the delegates, the NLC is now plunged into both a constitutional and legitimacy crisis. All attempts, to gloss over these issues will not resolve the crises and are not intended to pave way or devise a mechanism through which to peacefully resolve the engendered crises.

It is only by subordinating our actions to the Trade Union Act and the NLC Constitution that an appropriate path can be charted to resolve the crises. Let us all in unison also resist the split and simultaneously demand for accountability, as well as constituting a leadership that will have a place in the Constitution.

Recent trends in the movement at both the centre and the state must attract discussing the acquisition and retention of sovereign power in the movement especially now that the movement is celebrating its fortieth anniversary, as well, as vindicating those leaders who at ‘Apen Cemetery’ drove the processes of unifying the various centres that culminated in the emergence of a united centre.

Union leaders should take the challenge in context, as well as the desirability if enhancing the image, integrity and relevance of our movement if, workers stake in the democracy project of the country is to be accorded an appropriate place.

Let us sincerely, scrupulously and, with genuine concern for the movement correct the derogations unfolding in the movement as well as appreciate the current state of the Nigerian workers’ demand for the existence of a strong united movement.

The imperative of addressing the current crises is not just driven by the concern for a united, responsive, accountable and democratic trade unionism but, an appreciation of the fact that 2011 Delegates Conference, like the 2015 resulted in withdrawals by some unions; though they are now reintegrated, but the need to resolve the present split will greatly discourage further split especially if the 2019 conference does not go well with some union leaders.

We must avoid any action and activity that will render the unity achieved 40 years age irrelevant!

Our strength lies in our unity, solidarity and consciousness of the historical essence of trade unions.