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CONTRIBUTION

by

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to the debate on

“Parliamentarians and conflicts of interest”

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1. Context and definition:

The conflict of interest puts the parliamentarian in a position to manage two divergent interests, public and private. Its mandate being national.

A conflict of interest is a situation of interference between the duties and obligations of parliamentarians and a private or personal interest that may influence the exercise of their parliamentary functions.

Interest can be political or moral. It can be a parliamentarian who, for example, would participate in the vote of a subsidy for an association of which he is a member even if he does not derive any profit from it. Elsewhere, a parliamentarian can be prosecuted for the illegal taking of interests.

This interest is linked to the personal situation of the parliamentarian, to the past or current professional activity as well as to that of his parents or children and his spouse.

It is also a situation where a parliamentarian is at the center of decision-making and where his objectivity or neutrality may be called into question.

Article 185, paragraph 3 of the Rules of Procedure of the Senate provides that no one may be part of a commission of inquiry whose subject concerns his political group, his provincial group, his political party, his association, his own person, his interests or those of a relative or ally.

2. Exercise of other activities by the parliamentarian

In general, parliamentarians cannot exercise other professional activities during their mandate except for the liberal profession, in particular that of a lawyer, doctor, university professor, etc.

Article 108 of the Constitution of the Democratic Republic of Congo states the following:

“The mandate of National Deputy is incompatible with the mandate of Senator and vice versa.

The mandate of Deputy or Senator is incompatible with the following functions or mandates:

- Member of the Government ;
- Member of a democracy support institution ;
- Member of the Armed Forces, national police and security services ;
- Magistrate ;
- Career agent of the State public services ;
- Politico-administrative framework of the territory, with the exception of the Heads of community-chiefdoms and groupings ;
- Active public officer ;
- Member of the Cabinets of the President of the Republic, of the Prime Minister, of the President of the National Assembly, of the President of the Senate, of the members of the Government and generally of a political or administrative authority of the State, employed in a public company or in a semi-public company;
- Any other elective office.

The mandate of National Deputy or Senator is incompatible with the exercise of remunerated functions conferred by a foreign State or an international organization.

In the Democratic Republic of Congo, we can cite a few cases that have been the subject of conflicts of interest by parliamentarians:

- The endorsement of the members of the Office of the Independent National Electoral Commission (CENI).

It took place during a plenary marked by incidents. Opposition parties felt that the process of appointing CENI officers had not been characterized by consensus.

- The voting of the electoral law: there was a controversy over the electoral law voted in the National Assembly which, for some, the majority in Parliament was preparing an electoral fraud. The Senate this law in divergent terms from the National Assembly for not having taken into account the transparency of voting operations, the method of voting, the representativeness of women and the certification of voting results.

- The vote of the members of the Office of a Parliamentary Assembly, sometimes by order of the leaders of the political parties or the Head of the grouping of the political parties, called "MORAL AUTHORITY".

- Parliamentary inquiry: composition of certain commissions of inquiry in a given province with natives of the said province under penalty of being judge and party.

- The forfeiture of a member of the Government by motions of no confidence: sometimes, the plenary rejects them by judging them to be food, inappropriate or unfounded; he also manages to adopt them quite simply by internal division of a political family and which has nothing to do with the general interest.

3. Tools to prevent conflicts of interest

- **For parliamentarians**

- The Constitution ;

- The Rules of Procedure in the chapter on obligations, incompatibilities, the disciplinary system as well as on the Conciliation and Arbitration Committee.

In the Senate of the Democratic Republic of Congo, in its articles 76 and 77 of the Rules of Procedure provide that the Conciliation and Arbitration Committee has the mission to conciliate and, if necessary, decide between, by way of arbitration, the parties in conflict. Only disputes likely to be settled can be brought before this Committee. This Committee comprises two chambers, one sitting at the first level and the other at the appeal level. Referral to the Conciliation Committee by a third party automatically entails waiver of the jurisdiction of the Courts and Tribunals, subject to compliance with procedural deadlines.

- **For parliamentary staff**

- The status of State public service career agents ;

- The code of the public agent of the State ;

- The code of good conduct ;

- The Administrative Regulations.

4. Main recommendations on conflict of interest:

- Provide provisions in the Rules of Procedure requiring the declaration of interests by the parliamentarian at the beginning of the legislature ;

- Create a body to monitor the veracity of declarations of interests ;

- Set penalties in the event of dishonesty in the said declarations ;

- Establishment of a code of ethics in order to ensure compliance with ethical principles, in particular respect for the general interest, the principles of objectivity, neutrality and probity.