

## II Parliamentary Civil Employees (the case of Burkina Faso)

Communication from Mr Prosper VOKOUMA (Burkina Faso), Marrakech Session (March 2002)

Mrs Adelina SA CARVALHO, President, invited Mr Prosper VOKOUMA, Secretary General of the National Assembly of Burkina Faso to take the floor to present his communication on the parliamentary civil service.

Mr Prosper VOKOUMA presented his communication as follows:

### "INTRODUCTION

The autonomy of the Parliament and other powers such as the Executive and Judiciary have been officially recognised by the Constitution adopted by Referendum of 2<sup>nd</sup> June 1991. This autonomy stems from the principle that separates powers as written in the Constitution. It is the guideline of the organisation of the parliamentary assemblies. It is a three-level functional autonomy:

- Drafting of regulations
- Financial management
- Administration

Concerning the autonomy of regulations, each assembly establishes its own regulations. The same applies to the National Assembly for which the Constitution of Burkina Faso prescribes that *"Any new assembly pronounces on the validity of the election of its members notwithstanding the control of regularity done by the constitutional council. It establishes its regulations."*

The regulations of the National Assembly is its by-law for the functioning of its activity.

Concerning the financial management, the National Assembly enjoys financial autonomy. Its Speaker manages the credits allocated (Article 93 of the Constitution).

Concerning the administrative autonomy, it uses broad specific characteristics in the recruitment and management of its personnel.

We should mention that in Burkina Faso until very recently this administrative autonomy was not affirmed. It was even questioned under the Second Recivil (1970-1974) given that the execution of the budget of the Assembly was subject to prior financial control from the Executive.

In any case, the administrative personnel of the Assembly until 1999 has been mostly secondment personnel or personnel put at the disposal of the National Assembly by the Government upon its request. Therefore, in its legitimate concern to preserve the administrative independence, the committee of the National Assembly adopted Resolution No.99-001/AN/BAN/PRES of 12 May, 1999 of the statute of parliamentary civil service.

This statute defines the principle of parliamentary administration autonomy, develops structures for its management, organises the career of its personnel and fixes the ethics rules applicable.

### **The statute of the parliamentary civil service gives administrative autonomy to the Assembly.**

Prior to the adoption of Resolution No.99-001AN/BAN/PRES of 12 May 1999 concerning the statute of the parliamentary civil service, a large proportion of the administrative personnel came from the State civil service. The Executive had supreme control of all the personnel transferred to parliament. This personnel was either put at the disposal of the Assembly or on secondment at the Assembly.

Consequently, it continued to be managed by the statute of the State civil service, rated by the authorities of the Executive, and have its career depending entirely on the Executive. The latter, therefore, also had the power to call this personnel back at any time by putting an end to the secondment or releasing him from service.

It is obvious that in such a situation parliament did not have full control of the personnel that it employed. The effect of developing a parliamentary civil service is to ensure administrative independence of the Assembly from the Executive.

In Article 2 of the statute: *"Parliamentary civil servants are State civil servants with specific statute due to the specificity of parliament...The parliamentary personnel is under the exclusive authority of the Committee of the National Assembly. It cannot be under any other State institution or authority in accordance with the principle of separation of powers."*

Therefore, they are not allowed to collaborate permanently with any other civil administration or private service

The logical order of things in this administrative autonomy is the establishment of specific structures of management of the administrative personnel.

## **2. Specific structures for the management of the parliamentary civil service**

The statute of the parliamentary civil service divides the personnel by employments, bodies; it defines the organs and their roles. These organs may have a supervisory mission or advisory role.

### ***2-1 The organisation of employments and bodies of the parliamentary civil service***

The civil servants of the parliamentary administration are divided into four (4) bodies which are sub-divided into three (3) scales of 1,2, and 3.

A body is made up of all the civil servants who practice the same levels of activities, the same conditions of recruitment and are called to the same grades. These bodies are:

- the body of parliamentary administrators,
- the body of parliamentary assistants
- the body of secretaries of parliamentary administration,
- the body of clerks of parliamentary administration

This division is done depending on the level of recruitment and employment; the bodies are divided into scales and grades. The grades sub-divided into steps.

### **2-2 The organs of the parliamentary civil service**

The principal management organ of the parliamentary civil service is the Committee of the National Assembly. It is responsible for recruiting and incorporating parliamentary civil servants. The Committee can delegate its powers to the Speaker. The latter in his turn delegates some of his powers to the Secretary General who performs the daily management of the administrative personnel of the Assembly under the authority of the Speaker.

### **2-3 The advisory or participating organs of the parliamentary civil service**

According to the statute, there are four advisory organs:

- **The higher commission of parliamentary civil service**

It falls under the authority of the Chairmanship of the Speaker of the National Assembly and is composed of ten members representing the administration and personnel: five members by category.

According to the terms of Article 18 of the Statute, the higher commission of parliamentary civil service is "*problems of general interest about administration and parliamentary civil servants are submitted to it for its opinion or suggestions. Obligatorily, projects of statute reform are referred to it for its opinion.*"

- **The joint administrative commission of the parliamentary civil service"**

The commission is under the authority of the Secretary General who acts as Chairman. It is composed of 12 members representing, on the one hand the administration and on the other hand the personnel. It has advisory powers. According to Article 24 of the statute, the joint administrative commission " *can be consulted on all administrative issues involving a parliamentary civil servant. It gives opinions on promotions, training, and discipline and on any other issues submitted to it.*" It may be consulted on certain specific matters

- **The parliamentary health council**

Its competence concerns all parliamentary civil servants, regarding health matters. According to Article 34 of the statute, the health council of the State civil service remains competent on medical evacuation of parliamentary personnel.

- **The disciplinary council**

The composition, terms of reference, organisation, and functioning of the disciplinary council shall be enacted by the Committee of the Assembly.

### 3. Organisation of the career of the parliamentary civil servant

#### 3-1 Entry in the parliamentary civil service

Entry into the parliamentary civil service is subject to the candidate's admission to a test or competitive examination.

To this effect, the Speaker of the National Assembly appoints a board of examiners for selecting the candidates.

Access to the parliamentary civil service is also possible on according to qualifications; this is pronounced by the Speaker of the National Assembly. All candidates are required to meet six (6) conditions for access to the parliamentary civil service:

- Be of Burkinabe nationality,
- Enjoy civil rights and be of good moral standing,
- Be at least 18 years old and 35 years old at maximum,
- Performance of military service,
- Be physically and mentally fit,
- Have not been sentenced to more than 3 years in prison or 18-month deferred sentence.

The selected candidates receive a one-year renewable training period. During this period, the trainees must show that they are professionally qualified, of good moral standing and physically fit for the job intended for them. The administration of the National Assembly does the appreciation at the end of the training period. If the civil servant is positively appreciated he then officially nominated in his body of recruitment. Should it be otherwise, the training period shall be extended for another one-year term of office.

At the end of the training period, the parliamentary civil servant who aspires to an employment in the parliamentary civil service is either officially nominated or dismissed. The dismissal only takes place after two years of unsuccessful training period.

#### 3-2 Progress in career

The parliamentary civil servant can progress in his career in three (3) ways:

- Regular promotion based on evaluation
- Admission to a professional competitive exam,
- Professional training course and promotion by seniority.

All parliamentary employees are evaluated each year by the Speaker of the National Assembly upon the proposal of his immediate superior. The mark is a criterion of advancement which varies according to the post and body of the parliamentary civil servant. This mark is given annually and is a prerequisite for advancement to a higher grade. Increase in grades corresponds to an increase in salary.

### **3-3 Ending of duties**

The parliamentary civil servant loses his post pending the following events:

- Retirement: this takes place at 60 for parliamentary administrators and 55 for all the other categories of servants;
- Resignation;
- Revocation or dismissal;
- Death.

## **4. Professional Code of Ethics of the parliamentary civil servant**

It includes the obligations and duties of the parliamentary civil servant.

### **4-1 Obligations of the civil servant**

The parliamentary civil servant is bound to the obligations provided for in the Resolution of the statute of Parliamentary service of 12 May 1999.

The obligations are comparable to those applied to the agents of government civil servants. However, the conditions of exercising one's work and contacts with the parliamentary groups of the majority or opposition add a specific character to these ethics.

These obligations that he must obey are:

- obligation ensure the service,
- obligation to obey hierarchy,
- obligation to ensure the responsibility to execute one's duties,
- obligations of professional morality,
- obligation of the exclusivity of the post,
- obligation to be available.

#### *4-1-1 Obligation to ensure the service*

According to Article 78 of the statute, the parliamentary civil servant is obliged to be at his post and carry out continually all the duties assigned to her/him.

Obligation to execute a service is primarily personal, i.e. the agent is obliged to maintain these employment-related duties personally. Unless legally provided for (rules related to interim period, temporary replacement and delegation) he cannot be substituted by another agent to carry the obligation of ensuring the Service.

#### 4-1-2 *Obligation to obey hierarchy*

According to Article 76 of the statute, the civil servant is obliged in any circumstances to respect and make respect authority. Pursuant to Article 82, he owes respect and obedience to the senior in rank under the texts in use for the execution of the public service.

According to the terms of Article 85: "Any parliamentary civil servant whatever his rank in the hierarchy is responsible for the execution of tasks assigned to him".

Therefore, any agent put at the head of a service is responsible before his superiors in the realisation of objectives fixed for the service as well as the efficient management of human, financial, and material resources.

It is his duty to punish or provoke punishment due to abuses, negligence or dereliction of duties committed by agents under his responsibility.

#### 4-1-3 *Obligations of Professional ethics*

They are obligations which are less direct and are related to the general attitude of a civil servant with regard to the service and its users.

These obligations are written in the Resolution of 12 May 1999 concerning the statute of the parliamentary civil servant and in the Penal code both of which constitute some sort of code of ethics. They include:

- obligation of probity,
- obligation of professional discretion,
- obligation political neutrality,
- obligation of loyalty towards the National Assembly,
- obligation of exclusivity.

#### 4-2 *The rights of the parliamentary civil servant*

The parliamentary civil servant has three rights recorded in the statute (Articles 88-98) of the parliamentary civil servant, considering the numerous obligations imposed on him/her.

The notion of right here must be understood in a broad sense. It is the overall favourable measures designed for the benefit and in the interest of the civil servant. All these rights are comparable to the rights of government employees.

They include:

- the right to a remuneration,
- welfare benefits,
- promotion by seniority,
- promotion,
- job protection of the parliamentary civil servant,

- freedom of thought,
- right to strike.

#### 4-2-1 *The right to a remuneration*

Pursuant to Article 95 of the statute " *all parliamentary civil servants have the right to remuneration for work done...* ".

This right is part of the fundamental guarantees given to agents. Its restriction can only be done through the law.

The civil servant receives a salary as soon as he starts work in the assigned post, i.e. as of the date he comes on duty. He is paid a salary all through the duration of the career.

#### 4-2-2 *The right to welfare benefits*

They are:

- annual administrative leave,
- exceptional authorisations or permissions for absence,
- sick leave, maternity leave
- training, specialist, or refresher courses,
- annual medical check-up,
- medical evacuation

#### 4-2-3 *Job protection of the parliamentary civil servant*

The National Assembly has a general obligation to protect its agents. Therefore, it must ensure the protection of the parliamentary civil servant from all the acts detrimental to him/her due to or in the discharge of his duties. It must denounce the offences against him/her before the appropriate judicial officials. It is guarantor for the compensation for the damage fixed by the judgement.

Even if the parliamentary civil servant is sentenced for a personal error in the execution of his duties the National Assembly takes the legal liability.

#### 4-2-5 *Freedom of thought*

Apart from his service, the parliamentary civil servant is just an ordinary citizen. He enjoys reservedly all the public, individual, and collective freedoms. He can form associations or professional workers union or be a member and occupy positions in the committee.

But in using all these liberties, he must respect authority and take into account the specific nature of the institution, public order, and constraints which characterise certain posts in connection with the National Assembly.

#### 4-2-5 *The right to strike*

Parliamentary civil servant has the right to strike. He is using it to defend his interest within a framework defined by an order of the Committee of the National Assembly.

## **CONCLUSION**

As a structure and collection of legal rules designed for a smooth functioning of the administrative services of the National Assembly, with a calling to regulate the relations between the said Assembly and its staff, the statute of the parliamentary civil servant is in experimentation phase in Burkina Faso.

Practice makes perfect. The staff for whom it is designed find it already a source of professional guidance. For the decision-making bodies and authorities of the National Assembly, this statute contributes to ensure the administrative autonomy of the parliamentary institution by guaranteeing respect and separation of powers in keeping with the Constitution. \*

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**Mrs Adelina SA CARVALHO**, President, thanked Mr Prosper VOKOUMA for his communication and invited participants to ask questions. She said that the subject which he had chosen could make a very good theme for a questionnaire and a report. She wished herself to put some questions. First of all, could a parliamentary civil servant carry out the duties of an assistant to a political group? Also had there ever been strikes within the Burkinabe Parliament and if so in what framework and how had the conflict been resolved? Finally, she remarked that a disciplinary council had been set up as well as an administrative committee which gave its opinion on questions of discipline.

**Mr Ibrahim SALIM** (Nigeria) said that among the organs of the Assembly of Burkina Faso, the Bureau was responsible for the organisation of recruiting staff and that it could delegate its powers to the Speaker of the Assembly. What was the nature of the composition of the Bureau? In cases of political differences, it might be difficult to prevent a certain subjectivity on the part of the Speaker of the Assembly. What were the safeguards which existed to protect staff when they depended on a political organ within the Assembly?

**Mr Jean-Ariel JOSEPH** (Haiti) referred to the similarities between the situations in Burkina Faso and Haiti. He underlined the influence of members of parliament on recruitment of staff. This meant that at each new parliament there were new staff and a loss of skills as people left. He also asked about the budgetary autonomy of the Burkinabe Parliament and its consequences for recruitment. In addition, he wondered whether there was a staff member who was responsible for links between the executive and the legislative power.

**Mr Mwelwa Ng'ono CHIBESAKUNDA** (Zambia) asked for details on the procedure for preparing the rules of the Burkinabe Assembly. If each parliament adopted its own rules, how was that done? As far as budgetary autonomy was concerned, once the Assembly had prepared its budget, could that be reduced by the Minister of Finance? Could the Executive in any case intervene?

**Mr Pierre HONTEBEYRIE** (France) referred to the fact that in Burkina Faso the Speaker of the Assembly reported on staff members. Was that a theoretical duty of his or did he actually carry it out? What position did he hold in terms of being the direct hierarchical superior of each staff member? It was rare that there was a disagreement between people but that might not always be possible. Finally, he asked whether the report that the Speaker made was written or simply on the basis of a mark?

He also asked whether recruitment was by competition on the basis of a test? As far as the probationary stage was concerned which lasted for one year and could be renewed, if someone was dismissed, what procedures were employed and who applied them? He asked whether decisions relating to particular staff members in the course of their career could be judged by the courts?

**Mme Helene PONCEAU** (France) thanked Mr Prosper VOKOUMA for his communication. She said it was an extremely important subject relating to the independence of parliament. She asked for more details on how a career might unfold. She wondered what systems were in place to deal with staff members who changed service and moved jobs. What was the role of the Secretary General in that field? She asked how the different bodies of staff were defined in the exercise of their various duties.

**Mr Prosper VOKOUMA** said that parliamentary staff could not put themselves at the disposal of particular political groups. Political groups had to use their own secretariat. Their staff duties only applied to that political group and their members of staff working for political parties were no part of the state civil service. In Burkina Faso, individual members did not have staff. There were about ten experts who were civil servants who helped members of parliament with particular subjects.

The right to strike was recognised. Nonetheless, they had never been known in Burkina Faso. This right was governed by a rule set out by the Bureau which mentioned minimum service at least for those mainly responsible.

As far as the disciplinary council and the mixed committee were concerned, the CAP was a consultative organ, whose activities concerned the advancement and promotion of staff members. The disciplinary council met on a case by case basis. The two committees were presided over by the Secretary General who sent a report to the Speaker of the Assembly for a final decision.

The Bureau of the Assembly was the main management body. It was this body which gave directions and approved decisions. In practice, basic questions were examined by the Bureau and the responsibility for carrying them out was given to the Speaker of the Assembly.

There were no external safeguards for protecting staff. The relevant Statute governing staff employment was given to each staff member in order to ensure that he adhered to it in an explicit way by signing a document. If a staff member was sacked, he could go for appeal to the courts, but there had been no recent case of dismissal.

There was no sponsorship of staff members by members of parliament. Staff members remained in their posts whatever the majority was in parliament. It was a competent, neutral, effective administration, which could work with whoever was in the majority.

The National Assembly of Burkina Faso had its own financial autonomy. On a practical basis, the Head of State gave a framework letter and guidance on what sums were available. Members knew that they could not go too far beyond a certain point.

There were no links between staff members of the executive and the legislative. For a transitory period, certain staff members had wanted to be re-classed as parliamentary civil servants. That was the only link between the two administrations, apart from ad hoc meetings.

Each new Parliament adopted its own rules. But at the moment there was nothing more to do in that area.

As far as reports on staff members were concerned, a system had been prepared which included a report from the immediate superior, the head of the office and then the director of the office. But that report was sent to the Secretary General. The Speaker of the Assembly was the one who made the report in principle, but that was delegated to the Secretary General. There were 265 staff members in all. At the level of Secretary General, the report was in numerical terms and had a relationship with the promotion within the grade.

Recruitment without competition was going to be stopped. But starting from nothing in 1992 had meant that there had had to be a rapid recruitment of staff members. At the end of the probationary stage, the director of the service gave a written report on the new member of staff. Dismissal was possible in the case of that probationary stage not being completed satisfactorily, but there had never been such dismissal on that basis.

Difficulty for staff of moving was perhaps one of the biggest problems of the parliamentary civil service. Because of the small number of staff, sooner or later some problems came to the surface. It was necessary to move people to prevent them getting stale. Giving out particular tasks was decided by the Speaker of the Assembly at the suggestion of the Secretary General.

**Mrs Marie-Andre LAJOIE** (Canada) said that the same challenges were found everywhere. She asked who members of the CAP were and particularly hoped to know whether representatives on it of the staff were elected by the unions.

**Mr Anicet HABARUREMA** (Rwanda) was pleased to hear about a system which was based on an autonomous regime. He asked how this had been brought about. What advantages this had brought? He also asked whether the links between the executive civil service and the legislative civil service were completely broken.

**Mr Ian HARRIS**, Vice-President, (Australia) referred to a case concerning a lack of judgement relating to the code of conduct which had taken place in the last twelve months in Australia. He explained about the local authority which in its turn had complained about him to Parliament. Luckily his action against the local authority had not been regarded as having anything to do with his duties in Parliament.

**Mr Prosper VOKOUMA** said that the CAP was composed of the Secretary General, representatives of the cabinet of the president, the director of human resources who was the rapporteur, and two delegates from the staff and two delegates from the unions.

The strategy which led to this autonomy was the choice of having a democratic system.

The National Assembly was able to sign on its own staff. It provided for the budgetary posts. In Burkina Faso it remained possible to send staff members from parliament to the civil service of the executive if their jobs disappeared. That had been the first demand of staff.

Pay of staff in the Assembly was better than in the rest of the public service.

**Mrs Adelina SA CARVALHO, President,** thanked Mr Prosper VOKOUMA for his communication.