

The business dealings of Angolan Members of Parliament

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December 24, 2009

It has become common practice for Angolan Members of Parliament to set up commercial companies with members of the government and with foreign investors for personal gain, in the same way that they have done with state contracts. This practice potentially creates situations that prevent them from conducting their duties as parliamentarians, as well as conflicts of interest and influence peddling. In short, it risks making corruption an institution inside parliament.

On 24 December 2008 the Chairperson of the National Assembly, Fernando da Piedade Dias dos Santos, promised during the end-of-year celebrations that members of parliament would play a role in monitoring the government's actions, as a contribution to good governance and transparency in the country. While the country awaits the result of such a promise, this article reveals a reality that calls for greater attention and monitoring by the Chairperson of the National Assembly and by society at large. It deals with public scrutiny of what parliamentarians are doing while serving as elected representatives of the people.

I present the first six cases of parliamentarians whose business activities and extra-parliamentary roles raise various questions in the light of current legislation. This series of investigations, exclusively based on official documents, is intended above all to inform public opinion in a way that will make people aware of how our leaders are using the name and sovereign power of the Angolan people. Whose interests are they serving? That is the question.

This investigation into the members of parliament will enable us to keep a closer watch on the moral integrity of those elected representatives who are responsible for keeping government in check. In due course, *Maka* will also pose questions about where the immense wealth of some of our parliamentarians comes from.

Public office, private business

On 1 July 2009, **Julião Mateus Paulo “Dino Matross”** and **João Lourenço** signed, as shareholders, a contract with the Angolan state with an initial value of \$103.2 million to establish the Companhia de Cervejas de Angola S.A. (Angolan beer company), whose factory is being built in Bengo province. The Council of Ministers approved the contract hours before it was signed.

While Dino Matross, who is MPLA secretary general and a Member of Parliament (MP), signed as a private investor, João Lourenço, who is vice-chairperson of the National Assembly, signed as chairperson of a private company: JALC – Consultores e Prestação de Serviços. The chairperson of the National Agency for Private Investments (ANIP), Aguinaldo Jaime, signed on behalf of the state after the Council of Ministers ratified the contract through Resolution 84/09 of 23 September. The Council argued that the contract had been drafted with a view to promoting investments “that seek to pursue economic and social objectives in the public interest, namely the improvement of people’s welfare, additions to housing infrastructure, increased employment, and the nurturing of Angolan enterprise.”

The other point to be noted about the creation of the beer company is the presence of the Minister of Defence, Kundy Paihama, as a private investor. Other shareholders are Bevstar, a company registered in Cyprus, and the Angolan companies Colimax, Lesterfield Capital, Real Business, Waygest and Novinvest. The latter has as its main shareholder the lawyer Carlos Feijó, who is legal advisor to the CEO of state oil company Sonangol, and chairperson of the Technical Committee of the Constitutional Commission.

Quite apart from Companhia de Cervejas de Angola S.A., the same investors were involved together in a glass manufacturing firm, Sociedade Vidreira de Angola S.A, which invested \$60.6 million in setting up a glass factory in Bengo province. The Council of Ministers approved this investment on 1 July 2009, and Prime Minister Paulo Kassoma sent the contract to ANIP to be formalised. It was signed, hastily, on the same day. Aguinaldo Jaime signed on behalf of the state, while parliamentarians Dino Matross and João Lourenço signed respectively as a private investor and as chairperson of JALC. Defence Minister Paihama again signed as a private investor. The Council of Ministers ratified the deal through Resolution 70/09 of 31 August.

Both investments enjoyed significant exemptions from various tax and customs obligations. The government justified this in terms of bringing investment to one of the country's most disadvantaged regions. The project nevertheless raises various legal, political and economic concerns.

From the legal point of view, the Statutory Law on Members of Parliament (*Lei Orgânica do Estatuto dos Deputados*) establishes (Article 20, c) that parliamentarians “may not participate in public tenders for the provision of goods and services nor in contracts with the state or other public entities.”

Dino Matross and João Lourenço thus broke the law governing parliamentarians' conduct when they entered into a contract with the state. At the same time, by becoming business associates of Defence Minister Paihama, they compromised the separation of powers and their duty as members of parliament to keep a check on the acts of government: in particular, the Defence Ministry. For his part, Minister Paihama, by signing a contract with the state in his private capacity, broke the Law on Crimes Committed by the Public Office Holders (*Lei dos Crimes Cometidos pelos Titulares de Cargos de Responsabilidade*): this law (Article 10, 2) prohibits officials from participating in businesses over which they might be able to exert an influence or make a decision in their official capacity. Paihama is a member of the Permanent Commission of the Council of Ministers, with the right to vote on business deals of which he is a beneficiary.

At this point we should pause to consider the political ramifications of the abuse of power and the breaking of the law by those who hold public office. Aguialdo Jaime, while serving as chairperson of ANIP, accompanied the Minister of Hotels and Tourism, Pedro Mutinde, to the opening of the Hotel Praia-Mar hotel at Ilha de Luanda on Independence Day, 11 November 2009. The \$58 million hotel belongs to Aguialdo Jaime but was introduced by the minister as a great private initiative “in the framework of the business opportunities that the country provides.” Aguialdo Jaime overlaps his public function with his position as managing director of the company Hotel Praia-Mar Ltd, which owns the hotel, contrary to the provisions of the Law on Crimes Committed by Public Office Holders (Article 10,2) that outlaw the use of public office to private benefit. So there is no institution capable of providing oversight or advice on the need for transparency and good management of government’s actions.

Bornito de Sousa, in his role as the head of the MPLA parliamentary bench, presents us with another serious case. A lawyer of note, he is also chairperson of the Constitutional Commission and a qualified shareholder of the insurance firm, Mundial Seguros. The Banco de Poupança e Crédito, a state-owned financial institution, is the main shareholder in the insurance firm. So the public bank and the parliamentarian are shareholders together in a company of which De Sousa is also chairperson of the General Assembly. According to an extensive interpretation of the law, the role of parliamentarian is incompatible with setting up a business venture with a public company, since this reveals a serious conflict of interest. A parliamentarian is meant to keep a check on government actions, including public enterprises. How can a member of parliament fulfil this function when he or she is in partnership with the state? Such a relationship also constitutes a case of influence peddling, which is defined as corruption by the African Union and the United Nations conventions on corruption, as well as the SADC Protocol on Corruption: all of which have been incorporated into Angolan law.

Moreover, De Sousa is majority shareholder in Five Towers International Building

and Investments, a company that provides legal advice and unspecified consultancy and auditing, and also does business in areas that include construction, cement sales, advertising and representation of other business ventures. Here De Sousa is the partner of Conceição Cristóvão, vice-governor of the northern Malange province and formerly advisor to the Prime Minister on regional and local affairs.

Diógenes do Espírito Santo de Oliveira is the chairperson of the Committee on Economics and Finances of the National Assembly, and is also an administrator of Banco Comercial de Angola, which is 50% owned by Barclays plc, through the South African bank ABSA. BCA's shareholders include parliamentarians Julião Mateus Paulo, Dumilde das Chagas Rangel and Fernando França Van-Dúnem, the Ministers of Fisheries and of Transport, Salomão Xirimimbi and Augusto Tomás, the governor of Huila province, Isaac dos Anjos, and other prominent government figures.

Article 19(C) of the Statutory Law for Members of Parliament clearly forbids MPs from serving on the board of a private company. Nevertheless, De Oliveira has the support and political protection of his business partners who are also fellow parliamentarians and members of government.

Afonso Domingos Pedro Van-Dúnem “Mbinda” is the chairperson of Fundação Sagrada Esperança, which was created as the business and social arm of the MPLA. The foundation has received \$25 million from the general state budget every year since 1999: a total of \$250 million. The foundation channels part of these funds into a business venture also created by the MPLA, Gestão de Fundos S.A. According to the contract between the two entities, the fund is intended to provide financial support and pensions for veterans of the struggle for independence, former prisoners of war from the independence struggle, holders of public office in the First Republic (pre-1992), former parliamentarians, officers from the wars of national liberation, and the leaders of political parties that have in any way contributed to independence and democracy in Angola.

The case of Fundação Sagrada Esperança helps to explain the confusion which the MPLA's leaders and lawmakers are causing in order to serve their own obscure private interests. But we need to put its role in context.

At the MPLA's fourth congress, in December 1998, the president criticised the high levels of corruption. He took "the opportunity to praise the outstanding initiative by the MPLA in launching the Present Investments Fund and the Future Pensions Fund." It was Dos Santos himself who oversaw the setting up of this private business initiative by the MPLA with public funds transferred to Fundação Sagrada Esperança, and he praised it as among the best of its kind in the world. Yet six years later, in 2004, the Tribunal de Contas (the Angolan state's financial oversight mechanism) reported (in Acórdão 001/2ª Câmara TC/ 2004) that Gestão de Fundos S.A., the company responsible for the funds which Dos Santos had praised as among the most advanced in the world, had no accounting procedures in place and that its management had diverted funds to private ends. The then chairperson of the board of Gestão de Fundos S.A., Isaac dos Anjos, was condemned by the Tribunal de Contas, yet the following year he was promoted by the president to become governor of Huila province.

Aside from being a bottomless pit for public funds, Fundação Sagrada Esperança is really a commercial concern. On 2 December 2009, President Dos Santos opened the Belas Conference Centre, which belongs to the foundation. The centre, financed by the Sol and Keve banks, is the biggest in the country and was built on a 10 000 square metre site next to what was at the time the presidential compound at Futungo de Belas. Hotels, office blocks and residences will be built on the same site, also as part of Fundação Sagrada Esperança's commercial activities. During the opening ceremony, the MP Afonso Van-Dúnem "Mbinda" told reporters that the Belas Conference Centre "is a modest contribution by Fundação Sagrada Esperança to the government's efforts to rebuild the country." A few days later, the MPLA held its VI Congress in the venue.

On the same basis, Fundação Sagrada Esperança is building a 26-storey luxury building on the Luanda seafront, on a budget of €75 million, the origin of which is unknown. Mbinda told the press on 7 October 2009 that the foundation would rent out at least 80 percent of the building, making it a source of income as well as a headquarters for the foundation.

Although the Statutory Law on Members of Parliament does not make specific provisions concerning the management of foundations, by extensive interpretation one may apply Article 19 (c) and (f) to Afonso Van-Dúnem Mbinda's role in the management of private companies, given the obvious conflicts of interest. Mbinda, as chairperson of the board of Fundação Sagrada Esperança, manages state funds and controls lucrative business activities. This creates three cases of conflict of interest.

First, it is the National Assembly that approves the General State Budget, including the allocation of funds to Fundação Sagrada Esperança.

Second, despite the non-profit character that is set out in the foundation's statutes, its pension payments to former soldiers and bearers of high state office are not acts of charity. All the foundation does is to act as an intermediary in the channelling of funds from the state to the pension scheme. According to President dos Santos, the funds are a private MPLA initiative. In reality, they serve to benefit party activists who are selected according to obscure criteria and who receive two pensions, one from the state and the other from the MPLA – both paid for from public funds.

Third, Fundação Sagrada Esperança carries out lucrative business activities, the intentions of which are not publicly known. According to Articles 13 (a) and (c) of the Rules on Associations and Other Institutions, the foundation has a duty, inter alia, to send annual reports and accounts to the government and to co-operate with the state administration in delivering services and in related matters. The Statutory Law for Members of Parliament (Article 20, c) prohibits parliamentarians from participating in state contracts. As a beneficiary of public funds, the foundation has

contractual obligations to the state, and as a public utility institution it is subject to the supervision of the state. Hence, Mbinda is in charge of an institution that is supervised by the state. How can he fulfil his duty as an elected representative of the people in keeping a watch on acts of government? Seen in this way, the workings of the Fundação Sagrada Esperança represent institutionalised corruption, resulting from a collegial decision by the MPLA leadership and the country's leadership, which are in fact one and the same thing.

Joana Lina Ramos Baptista, the second vice-chairperson of the National Assembly, is also chairperson of the Board of Fundo Lwini, owned by First Lady Ana Paula dos Santos. Her situation is equivalent to that of Afonso Van-Dúnem "Mbinda", and the legal arguments set out in Mbinda's case apply also to Ramos Baptista. Fundo Lwini is also a public utility institution and is the second biggest shareholder in Banco Sol, one of the two banks that have loaned Fundação Sagrada Esperança to build the conference centre.

For a better understanding of the tangled web of business deals that involve the MPLA nomenclatura, it needs to be pointed out that the main shareholder in Banco Sol, with 45% of the shares, is Sansul, one of the MPLA's many holding companies, GEFI. GEFI was founded on 21 September 1992. Its founding partners were Fundação Sagrada Esperança and the current parliamentarians Francisco Magalhães Paiva and Carlos Alberto Ferreira Pinto, the president's legal counsel at the time, António Van-Dúnem, as well as other senior government figures.

Moreover, as a parliamentarian, Joana Lina Baptista is entrusted by the voters to hold the President of the Republic and head of government to account for his actions. The fact the parliamentarian is in the employ of president Dos Santos's wife, Ana Paula dos Santos, undermines the dignity of the office she occupies as vice-chairperson of the National Assembly, and her autonomy as an elected official. This conflation of public duties and private interests reveals the practice of influence-peddling for the private benefit of the presidential family, the strengthening of the

presidential powers through the National Assembly, and for the personal benefit of the parliamentarian. The African Union Convention (Article 4, 1, f), the United Nations Convention against Corruption (Article 18, a, b) as well as the SADC Protocol against Corruption (Article 3, 1, f) similarly define influence peddling as being a corrupt act, according to Peter Gastrow. These treaties have been incorporated into Angolan law, and Article 321 of the Penal Code provides the penalty range for their application in the courts of law.

Conclusion

This short summary of the activities of six influential members of the National Assembly, who are also members of the MPLA Political Bureau, with the exception of Diógenes Oliveira who is a member of the MPLA Central Committee, reveals their arrogance and complete disrespect for the law. This kind of institutionalised behaviour destroys the parliament's ability to keep a check on the actions of government, and makes a mockery of the supposed separation of powers between the legislature, the executive and the judiciary.