

# African Experience of Asset Declarations

## Query:

*"Please can you describe the experience of wealth declaration processes (for senior public figures) in Africa, providing details of:*

- The challenges of implementing such schemes;*
- The means by which opposition to such schemes has been overcome; and*
- The known impacts of any such schemes.*

*Description of country level experience would be valued."*

## Purpose:

"This information is to inform a case study on the experience of asset declaration (which will focus primarily on Uganda). The case study series as a whole is intended to provide our country office advisers with practical experience and guidance that can inform their work."

## Content:

- Part 1: The Role of Asset Disclosure in Fighting Corruption
- Part 2: African Experience of Asset Declarations
- Part 3: From Theory to Practice : Challenges and Lessons learnt
- Part 4: Further Reading

## Summary:

An effective income and asset declaration regime can help prevent abuse of power, reduce corruption and increase public accountability, public trust in institutions and government legitimacy. Research findings indicate that countries where wealth disclosure is combined with content verification and public access to declarations are significantly associated with lower perceived levels of corruption. In Africa, the scope, coverage and level of enforcement of asset declaration laws vary from country to country, according to the local context, political situation and capacity to manage such schemes. However, any credible asset disclosure programme must clearly establish who should declare what to whom and how, provide for content verification and sanctions of intentional failure to declare as well as ensure public access to declarations. Adequate resources and capacity should be allocated to the asset declaration management process.

## Part 1: The Role of Asset Declaration in Fighting Corruption

### *The Potential Benefits of Asset and Wealth Disclosure*

Many countries have adopted laws and rules requiring public officials to declare their wealth and assets either upon entry into the public service or promotion into a position with potential for illicit enrichment. Such measures have a preventive function, as they can help anticipate potential conflicts of interest before misconduct occurs. They also have an investigative function, as they provide valuable information that may help uncover misconduct and illicit enrichment after it takes place.

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Asset declaration schemes generate baseline information against which later disclosure can be compared to identify which wealth is not attributable to income, gifts and loans, and warn against illicit enrichment from sources such as bribery, fraud and corruption. In doing so, compulsory periodic disclosure of assets and liabilities by public officials is considered an effective measure to prevent corruption. It also demonstrates the leadership's commitment to fight corruption and helps the public to hold the government accountable.

As corruption is a difficult crime to prove, investigation techniques proving bribery can easily be abused and threaten civil liberties. In comparison, the filing of false and misleading declarations is easier to monitor, detect and punish. This can even be made easier by providing incentives for potential accomplices such as bankers or accountants helping to hide assets or to report misdeeds (e.g. a percentage of the amount they are being asked to hide). In principle, to have a deterrent impact, sanctions for not complying with declaration requirements should be made as severe as for indulging in corrupt practices themselves.

(Please see:

<http://www.ethicsworld.org/publicsectorgovernance/bestpracticesbygovernments.php#incomeandassetdisclosure>).

Although asset declaration laws may help detect illicit enrichment and prevent corruption, their primary purpose is not only punitive. They can restore public confidence in the government by demonstrating that most public officials live within their means. Public officials' reputation can also be protected from undue suspicion and allegations of malfeasance.

### ***Caveats about the Usefulness of Asset Declaration Laws***

While asset declaration schemes have great potential for stemming abuses of power and looting of public resources, their impact can be hampered by shortcomings of the regulatory framework. Major flaws in legislation that are likely to threaten the effectiveness of asset disclosure as a tool against corruption include:

- The lack of clarity about what assets, liabilities and interests public officials are to disclose;
- The absence of a legal requirement for the verification of asset declarations;
- The lack of effective sanctions and clarity over the prosecution of offences;
- The lack of public access to officials' asset declarations.

The effectiveness of the asset disclosure regime may be further affected by lack of resources (manpower, technical and financial) allocated to implement the scheme, especially with regard to the verification of submitted declarations.

### ***The Impact of Officials' Asset Declaration Laws***

The Transparency International Global Corruption Report 2006 presents the findings of a comparative analysis of asset disclosure laws in 16 countries, seeking to establish how effective officials' asset declaration laws are in reducing corruption. A series of statistical tests were performed to measure the association between the existence and scope of such laws in these countries and their perceived levels of corruption. The findings established that:

- Countries with a longer tradition of asset declaration by public officials had significantly lower perceived levels of corruption than countries with newer laws.
- There was no significant correlation between the perceived levels of corruption and which level of officials must declare their assets. Levels of corruption in countries requiring asset declaration for all public officials were not perceived significantly lower than in other countries, where only higher ranking officials must declare their assets.

- Perceived levels of corruption were lower in countries whose declaration laws permitted prosecution of the offending officials.
- Countries that verified officials' statements had significantly lower perceived levels of corruption than countries that do not verify declaration content.
- Countries that gave public access to officials' asset declaration had significantly lower perceived levels of corruption than other countries.

The analysis further demonstrated that the combination of content verification and public access to declarations demonstrated an even greater association of reduced corruption. These preliminary findings, corroborated by the findings of an expanded dataset of 42 countries, suggest that asset declaration laws have important potential in the fight against corruption, provided they are designed in an effective and credible manner.

## **Part 2: African Experience of Asset Declarations**

### ***Spread of Asset Disclosure Programmes***

A survey of 148 countries eligible to receive World Bank support conducted in 2006 found that, in Africa, 28 countries require disclosure of income and assets by public officials. Of these 28 countries, 23 require officials to declare assets to an anti-corruption body or other government entity, while only 5 (Cape Verde, Republic of Central Africa, Liberia, Sao Tome and Principe and South Africa) request publication of the declarations. 20 of the African World Bank client countries do not require income and asset disclosure by public officials.

(Please see:

<http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/IncomeAssetDisclosureinWBClientsasofJune62006.pdf>).

The scope, coverage and level of enforcement of asset declaration laws and regulations vary from country to country. In addition to the above-mentioned survey, the World Bank has compiled asset disclosure laws from 18 countries that illustrate the different aspects of various disclosure regimes, including in Ghana, Kenya, Nigeria, Tanzania and Uganda. (Please see: <http://www1.worldbank.org/publicsector/civilservice/assets.htm>). This documentation argues that no best practice can be identified for such laws, as they are tailored according to the country's specific circumstances, depending on social, historical and political factors, as well as resources for enforcing the law. However, a few principles emerge and credible asset disclosure regimes share common dimensions. Typically they establish who should declare what to whom, the filing frequency and methods, the declaration processing, applicable sanctions for intentional failure to declare as well as public access to these declarations.

### ***Coverage***

It is the law that determines to which categories of civil servants, appointed and elected officials, these regulations apply. Countries like Cameroon require all public officials to disclose their assets but these provisions are poorly implemented, due to lack of capacity or political will. It is usually neither necessary nor practicable to subject all public servants to asset declaration provisions.

More typically, such measures target public servants reaching a certain level of seniority or being promoted into positions that offer potential for illicit enrichment. These may include public officials who are responsible for public expenditures, contract allocations, audit or watchdog functions, have access to valuable confidential information or who enjoy important discretionary powers. In South Africa, for example, disclosure of personal assets and financial interest is required from elected officials, senior public servants, Members of Parliament and Cabinet. In Uganda, the law covers all top and middle ranking public officials.

In addition, most countries such as Kenya, Tanzania, Uganda, and Nigeria also require that public office holders declare the assets of their spouse and children in a separate declaration, to prevent dishonest officials from hiding their assets in their spouse or relatives' names. Only separated spouses and married/independent children are usually excluded from such regimes. South Africa even introduces and extends asset disclosure to the concept of "permanent companion". (Please see: <http://www.cddghana.org/documents/Asseting%20Declation%20Briefing.pdf>).

### ***Content of the Declarations***

Any credible disclosure regulation needs to spell out clearly what assets, liabilities and public interest public officials must declare. In addition to personal and business assets disclosure, it is considered good practice for public officials to disclose sources of income, positions held in profit or non profit firms, debts, gifts, payments for travel, advances, reimbursement as well as assets and income of spouse and dependant children. In South Africa, for example, MPs are required to disclose all gifts valued at over R350. The Kenya Public Office Ethics Acts 2003, has, on the other hand, been criticised for failing to establish with clarity what assets, liabilities and interests public officials are to disclose. (Please see: <http://www.tkenya.org/documents/assetdeclaration.pdf>).

### ***Filing Frequency and Declaration Processing***

Most countries make provisions for a yearly filing interval in addition to the initial declaration upon entry into office and after the end of the term. Uganda and the Gambia appear to be exceptions with a two year filing requirement while Ghana requires office holders to make a declaration at the end of every four years. Filing methods can be electronic or in a written via a prescribed form such as in Tanzania or Ghana.

Successful enforcement requires an effective asset declaration monitoring body, with clear mandate, powers, capacity and resources. The regulatory framework needs to mandate a relevant authority to receive and process public officials' asset declarations, as well as assess their authenticity, completeness, inaccuracies and inconsistencies. Ideally, this body must be empowered to remind public officials of their obligations and ask them to rectify and redress discrepancies or irregularities. Sufficient resources need to be allocated to ensure adequate record management, investigation and enforcement through a disciplinary body.

The absence of a legal requirement for the verification of asset declarations renders the process a formal exercise that does not serve its anti-corruption purpose. In Ghana, for example, specified public office holders are required to submit a written asset declaration to the Auditor General, who places them in secure custody until it may be required in situations foreseen by law. However, according to a 2005 report, the Auditor General is neither granted access to the content of the declarations nor does he have the legal authority to verify, disclose or grant access to the forms of public officials assuming or leaving office.

(Please see: <http://www.cddghana.org/documents/Asseting%20Declation%20Briefing.pdf>).

In Cameroon, although asset declaration is mandatory for all public officials, reports are not verified effectively and misdeclarations are not penalised, leading to unsatisfactory enforcement of asset disclosure regulations.

(Please see:

<http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/IncomeAssetDisclosureinWBClientsasofJune62006.pdf>).

In Tanzania, declarations must be made to the Ethics Commissioner, who is given the formal responsibility for checking their accuracy and maintaining the record. However, the law does not give him powers to take steps for violations or impose penalties for breach of the code. The Helpdesk did not find evidence of cases where he had ever questioned the veracity of declarations. (<http://www.aman-palestine.org/english%5Cdocuments%5COfficial/Tanzania.pdf>).

Uganda is one of the countries whose asset declaration regimes provides for verification of public officials' submissions. The Inspector General of Government (IGG) is responsible for verifying asset declarations and has the discretionary power to question public office holders. In such cases, public officials have 30 days to answer such requests. In March 2005, for example, the IGG was reported to have asked all public officers to have filed their declaration by the 31<sup>st</sup> of March or be dismissed. In the Gambia, declarations of assets are submitted to the Office of the Ombudsman, who is required to submit them to the Finance and Public Account Committees of the National Assembly.

### ***Sanctions for Breach***

Income and asset declaration laws have failed in some instances due to lack of effective sanctions on officials' intentional failure to disclose and ambiguity over which entity is responsible for prosecuting such failures. Sanctions for failing to disclose or for making false or misleading declarations need to be severe enough to have a deterrent impact. In principle, the same sanctions should apply to disclosure as to the corrupt behaviour it targets; otherwise corrupt officials may refuse disclosure as the lesser penalty.

In countries such as Kenya or Tanzania, an official who is convicted of submitting a false or misleading declaration is liable for fine and/or imprisonment. In Tanzania, although not filing is considered a breach of the Code, no punishment is stated in the law for public officials failing to declare their assets. In Nigeria, any property or asset acquired by a public officer which is not fairly attributable to income, gift, or loan approved by the Code is considered to have been acquired in breach of this Code unless the contrary is proved. In Uganda, false, misleading or insufficient declarations can lead to dismissal/removal of office. However, in 2003/2004, the IGG experienced a serious setback, illustrating the challenges involved when applying sanctions for non compliance. Even when a senior official was dismissed for intentionally refusing to declare his wealth, he was finally reinstated by the Ugandan Constitutional Court.

(Please see: <http://www.apnacafrica.org/docs/Anti-Corruption%20Legislative%20and%20Policy%20Measures%20in%20Compliance%20with%20the%20AU%20Convention.pdf>).

### ***Public Access to Income and Assets Declarations***

Experience around the world suggests that allowing public access to officials' declarations greatly enhances the impact and value of asset declaration schemes. Usually, enforcement agencies have access to the data, but the credibility of the process may be undermined if it is not made accessible to the general public. Making disclosure public also allows investigative journalists, media, scholars and civil society groups to play an important role in monitoring the accuracy of publicly available declarations and documented assets (farms, villas, apartments, cars...) through photos, public registers and interviews with neighbours and tenants. (Please see: <http://www1.worldbank.org/publicsector/anticorrupt/BIRwealth.pdf>). African countries that require public declaration for some or all their top officials include South Africa, Liberia, Cape Verde, Sao Tome and Principe and the Central African Republic.

Declarations can be made available to the public in a variety of ways, through the media, official gazettes or registers open to public scrutiny. Disclosure through Internet databases is also an option and has been implemented successfully in Liberia during the elections that took place in October 2004. Within the framework of the IFES supported Money and Politics project, political parties and candidates declared their assets for the first time, making them available for public scrutiny via the National Election Commission website and providing the opportunity to hold the winning candidate accountable in future.

(Please see: [http://www.moneyandpolitics.net/news/pdf/NEC%20manual%20Liberia%20\\_2\\_.pdf](http://www.moneyandpolitics.net/news/pdf/NEC%20manual%20Liberia%20_2_.pdf)). Although it does not explicitly collect information resulting from asset and wealth disclosures, the Tanzania Notice Board (TGN) is another example of how an IT platform can potentially be used to

strengthen accountability and transparency, by making key statistics and governance indicators accessible to the public. (Please see: <http://www.repoa.or.tz/content/blogcategory/10/34/>).

Other countries have adopted hybrid schemes to balance public disclosure with the need to protect public officials from privacy invasions. In South Africa, for example, declarations are kept in a register that has a confidential and a public part. Confidential information includes liabilities and interests of spouse, permanent companion and children. Similarly, in Niger, the Executive Ethics Code of 2000 states that the register must have a confidential and public part. Any person may access the public part of the register during office hours. In Uganda, income and asset declarations by public officials are treated as public information and the IGG had some declarations published in the newspapers in the past. However, the declarations can be made public only on application to the IGG office, which has the discretion to decide what information can be released and for what purpose.

Countries such as Kenya, Nigeria, Zimbabwe, Gabon and Senegal do not provide for public disclosure of income and asset declarations.

## **Part 3: From Theory to Practice: Challenges and Lessons learnt**

### ***Challenges Involved in Establishing an Asset Disclosure Programme***

#### **Privacy**

Disclosure requirement faces the challenge of striking a balance between controlling illicit enrichment and protecting the privacy of those required to declare their wealth, especially with respect to the relatives of public officials. Since they are not parties to an employment contract, they cannot be contractually obliged to disclose their wealth. As a result, there needs to be a legislative requirement with strong political or constitutional justification to impose disclosure. As already mentioned, to address privacy concerns, many countries have adopted hybrid schemes that demand public disclosure in situations where the public interest outweighs privacy concerns or combine public and confidential disclosure, such as in Niger or South Africa.

#### **Political will**

The introduction and enforcement of effective asset declaration schemes is likely to meet strong resistance within the public service, especially when it comes to public disclosure of wealth. Obtaining political support for the initiative may prove challenging. Political will and consensus for reform can be achieved through an enabling event that triggers demand for change or can be developed over time.

Some governments have been quite successful in promoting voluntary compliance schemes as a first step, making it politically easier to introduce mandatory measures and enforcement mechanisms at a later stage. This approach has been successful in South Korea, for example, where in 1993, President Kim Young Sam publicly disclosed his wealth and called on ministers and other high level officials to do the same. More than 300 officials complied, and later the same year, the country adopted mandatory disclosure requirements for public officials.

Some authors also mention the possibility of granting some kind of amnesty in some countries in order to overcome resistance to change and build cross-party consensus for such reform. Granting amnesties for acts of past corruption has been exceptional and mainly envisaged for political and pragmatic reasons in the context of political transition, with new governments willing to start fresh and make a clean break from the past. Such an approach entails a series of risks and challenges that should be taken into account when assessing the relevance and potential of using amnesties.

(Please see:

<http://www.ethicsworld.org/publicsectorgovernance/bestpracticesbygovernments.php#incomeandassetdisclosure>).

The potential benefits of disclosing assets for honest public officials may also be built upon to overcome resistance to change when introducing such schemes. Not all public servants are corrupt and asset disclosure may protect public officials from suspicions, allegations and reputational damages. As such, full disclosure can help restore citizens' confidence in public institutions and public servants. With this in mind, the agency managing asset disclosure should aim at providing the necessary support to office holders required to declare their wealth through training, hotlines, and advisory services.

### **Resources and Capacity to Monitor Asset Declarations**

In addition to the necessary legal mandate and authority, the asset declaration monitoring body should be granted adequate resources and capacity to properly administer the declaration scheme, and to verify and confirm the authenticity of assets and liabilities declared by public officials.

In Kenya, the Public Officer Ethics Act of 2003 covered all public officials and government employees, from top ministers to low ranking officers, which proved to pose major implementation problems, created monumental administrative tasks and challenged the government's capacity to effectively process declarations. Two years after the passing of the law, a report by the Efficiency Monitoring Unit established that the responsible commissions had neither the resources nor the capacity to compile, process and store the declarations and determine how many officers had complied with the act. Most commissions didn't appear to know what they were expected to do with the declaration forms they received. In addition, the report found that the capacity and ability to analyse review and verify the information submitted to detect falsification or incompleteness was lacking in all responsible commissions. There was no adequate provision of funds in the annual budget to cover the costs involved in managing asset declarations.

(Please see:

[http://www.marsgroupkenya.org/Reports/Government/feb\\_07/THE\\_STATUS\\_OF\\_WEALTH\\_DECLARATIONS\\_BY\\_PUBLIC\\_OFFICERS\\_IN\\_KENYA.pdf](http://www.marsgroupkenya.org/Reports/Government/feb_07/THE_STATUS_OF_WEALTH_DECLARATIONS_BY_PUBLIC_OFFICERS_IN_KENYA.pdf)).

To address these various issues, this report outlines a series of recommendations, including:

- Reducing the number of persons subject to wealth declaration to a more manageable level, starting with a pilot project for reviewing and verifying declarations by the most senior officials;
- Expanding and clarifying declaration requirements and organising training of public officials to improve the quality of wealth declarations;
- Developing a uniform computer system to store and analyse the details of wealth declarations across all responsible commissions;
- Creating a single body to handle the review, inspection and verification of wealth declarations;
- Giving the press and the public access to asset declaration data.

### ***Lessons Learnt in Implementing Disclosure Programmes***

Some of the lessons learnt with disclosure programmes for political finance can be applied to wealth declaration schemes. The Money and Politics Guide to Applying Lessons Learnt published by IFES in 2006 highlight some practical recommendations for establishing and maintaining an effective disclosure programme.

(Please see:

[http://www.moneyandpolitics.net/researchpubs/pdf/MAP\\_Guide\\_to\\_Applying\\_Lessons\\_Learned.pdf](http://www.moneyandpolitics.net/researchpubs/pdf/MAP_Guide_to_Applying_Lessons_Learned.pdf))

- Start slowly and build up capacity. As illustrated by the Kenyan case, the government risks losing its credibility if it fails to implement asset declaration in a credible manner, due to lack of capacity or over ambitious plans. Failure may also be interpreted as a lack of commitment to the new reforms. It may be more realistic to start with a pilot, requiring a handful of high

ranking public officials to declare their wealth and progressively extend to other public office holders.

- Targeted public officials must have the capacity to comply with new and existing regulations. This can be achieved through the development of appropriate internal controls, training workshops or materials.
- Establish clear and reasonable reporting guidelines and forms, preferably by working closely with the targeted community when appropriate.
- Simplify the reporting process as much as possible. Simple procedures are more likely to be understood and followed. It may be necessary to introduce standardised reporting forms and formalise reporting procedures. In countries where it is possible, the reporting burden may be reduced by providing the option of filling out and transmitting forms electronically.
- Engage and build the capacity of civil society organisations, media, journalists, etc, to promote effective monitoring and oversight of the declaration scheme.

## Part 4: Further reading

### Income and Asset Disclosure Requirements for Heads of State and Governments (2006)

This document is a survey of 148 countries eligible to receive World Bank support. In 104 countries, senior officials must disclose their income and assets. Of these 104, 71 countries require officials to declare their wealth to an anti-corruption body. 33 require, in addition, that declarations be published. <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/IncomeAssetDisclosureinWBClientsasofJune62006.pdf>.

### Asset Disclosure by Public Officials

In this compilation of asset declaration laws from 18 countries, each law is mapped along common dimensions including coverage, declaration content, filing frequency and method, declaration processing, punishment for breach and public access to declarations.

<http://www1.worldbank.org/publicsector/civilservice/assetsbycountry.asp?index=16>

### Regulating Conflict of Interest: International Experience with Asset Declaration and Disclosure (2006)

This paper provides practical advice for developing and maintaining successful disclosure programmes that have been compiled by Rick Messick, a Senior Public Sector Specialist at the World Bank.

[http://www.acrc.org.ua/articles\\_doc/ua/Regulating\\_Conflict\\_of\\_Interest\\_International\\_Experience\\_2007.pdf](http://www.acrc.org.ua/articles_doc/ua/Regulating_Conflict_of_Interest_International_Experience_2007.pdf)

### Enhancing the Credibility of the Public Office Holders Asset Declaration Regime (2005)

This briefing paper captures discussions held for improving the asset declaration regime in Ghana, providing examples and key principles of credible asset declaration regulatory frameworks drawn from international practices.

<http://www.cddghana.org/documents/Asseting%20Declation%20Briefing.pdf>

### The Status of Wealth Declaration in Kenya (2005)

This paper presented in the workshop for responsible commissions held in September 2005 discusses the current status of the wealth declaration process, assessing the challenges facing the process and exploring possible solutions.

[http://www.marsgroupkenya.org/Reports/Government/feb\\_07/THE\\_STATUS\\_OF\\_WEALTH\\_DECLARATIONS\\_BY\\_PUBLIC\\_OFFICERS\\_IN\\_KENYA.pdf](http://www.marsgroupkenya.org/Reports/Government/feb_07/THE_STATUS_OF_WEALTH_DECLARATIONS_BY_PUBLIC_OFFICERS_IN_KENYA.pdf)

### Between Spin and Reality: Examining Disclosure Practices in Three African Countries (2007)

This article, available for purchase, reviews practices in Ghana, Tanzania and Uganda by addressing questions of who must declare, what must be declared, where to declare and how often to declare. It argues that like all the other mechanisms for controlling corruption, its efficacy depends on

## U4 Expert Answer

enforcement and compliance. The three cases reviewed suggest that there is a significant gap between the rhetoric of declaration and the reality of effective monitoring and compliance to make the system work to ensure transparency and public trust. <http://www3.interscience.wiley.com/cgi-bin/abstract/114282710/ABSTRACT?CRETRY=1&SRETRY=0>

### U4 Expert Answer on International Experience of Asset Declarations (2006)

Disclosure of assets and registration of interests contribute to more transparency in decision-making processes and support effective enforcement of anti-corruption provisions. Although the scope of disclosure requirements for public officials can vary, they should provide for fair and transparent enforcement as well as public access and oversight. A number of countries worldwide have implemented such mechanism through different tools such as governance notice boards, registers of interests, personal financial disclosure database, etc.

<http://www.u4.no/pdf/?file=/helpdesk/helpdesk/queries/query114.pdf>