

X PERSPECTIVES ON PARLIAMENT

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WHY ASSET DECLARATIONS MATTER¹

- Periodic disclosures can reveal unusual increases in assets or extravagant expenditures warranting an explanation from the public official and possibly further investigation by an appropriate body.
- Disclosures can act as a deterrent for those public officials who might consider accepting bribes, receiving public contracts in an irregular manner, or indulging in other types of corruption. They also protect them from false accusations, as they can point to the public record to convince the public of their innocence.
- Disclosures help institutions prevent conflicts of interest among their employees, and provide a framework for dealing with conflicts when they do arise.
- They boost confidence in government by reassuring citizens that potential conflicts of interests are being monitored and public officials' finances scrutinised.
- Finally, disclosure systems build a climate of integrity in public service, where officials know their wealth will be public and pursue public service for its own good, not for self-enrichment

ASSET DECLARATIONS IN PARLIAMENT: TOO LITTLE, TOO LATE?



The declaration of Assets and Income by Members of Parliament has been a long-running issue in Namibian politics. Disclosures of MPs' financial interests are seen as a key anti-corruption measure: on the one hand, disclosure systems help prevent corruption, because the public can monitor unusual activities, and disclosure creates a culture of openness and public service. At the same time, they can be used to enforce anti-corruption measures, because knowl-

edge of Members' financial matters can be used as evidence in proceedings. The National Assembly has procrastinated on the issue for well over a decade, but the election of Hage Geingob to the presidency brought renewed pro-transparency rhetoric, and the issue is up for discussion again, with Parliament recently adopting a code of conduct that mandates annual asset and income disclosures. In light of this renewed momentum, this brief outlines some

¹ Adapted from Messnick, Richard, "Income and assets declaration: Issues to consider in developing a disclosure regime", U4 Anti-Corruption Resource Centre, <http://www.u4.no/publications/income-and-assets-declarations-issues-to-consider-in-developing-a-disclosure-regime/downloadasset/137>

World Bank, "Public Office, Private Interests": Accountability through Income and Asset Disclosure. Stolen Asset Recovery Initiative Series. <https://star.worldbank.org/star/publication/public-office-private-interests>, and OECD, "Asset Declarations for Public Officials: A Tool to Prevent Corruption". doi: 10.1787/9789264095281-en

concerns that should be considered when drawing up a financial disclosure system, provides a synopsis of current Namibian laws and compliance regarding disclosure, and finally discusses the code of conduct that was recently before Parliament.

International Best Practices

Reports by the OECD and the World Bank indicate that no single best-practice law exists; rather countries should determine a system that works best in the context of their legal system. Nevertheless, some key concerns must be addressed, relating to:

- Coverage (i.e. who must declare and how much);
- Verification (will the information submitted be checked for its veracity, and if yes, by whom);
- Whether information should be made public
- What kind of sanctions should be taken in the case of noncompliance

All of the above will be affected by whether the system is primarily designed to prevent conflicts of interests, prevent illicit enrichment, or both.

What to declare?

It would make more sense to have a comprehensive law that also provides for enforceability and systematic overview. Under such a law, MPs should at the very least declare income from all sources, their positions in other organisations – be they for-profit or non-profit – assets and liabilities, gifts received, and any other reimbursements they have received from non-official sources. Declarations should not just be solicited from public officials themselves, but also from close family members. Otherwise, it would be easy to hide income or assets by keeping them in a family member's name.

Importantly, the information provided in these declarations must be monitored and verified.

The law should stipulate an organisa-

tion or body that can check whether the information provided is accurate, request further information if submissions are incomplete, report those who do not give truthful declarations, and raise alerts when it detects potential conflicts of interest.

Which body should take up this function is unclear. There are doubts that a code of conduct is enough to monitor MPs' asset declarations. As an OECD report on asset declarations notes, "the capacity of MPs to provide effective self-control is often questioned ... in countries where public officials' declarations and conflict of interest policies are relatively new, specialised bodies have an advantage".²

The yet-to be established parliamentary service commission might be too close to Members of Parliament to retain an appropriate distance from these matters. Potentially, the Anti-Corruption Commission could be included to actively work with policymakers and stakeholders, including the Speaker's Office, to ensure there is a workable and effective asset declaration system in place in parliament. A parliamentary ethics commissioner or ombudsman could be appointed to monitor the declaration processes for all public officials, perhaps assisted by the Office of the Auditor General.

A fair deal of the information should be available to the public. After all, a main purpose of this sort of legislation is to build trust in public institutions. In addition, civil society can also independently verify the information provided by civil servants – though scrutiny from the public is no substitute for a body specialising in this task. The legitimate public interest in assets must be balanced against the privacy of those disclosing, but it is important to establish a political culture where laying open one's financial situation is part of the ethos of public service. As the World Bank states, "The real value of public access might in fact lie less in its potential to contribute to the verification functions of the system than in reinforcing the message that a public official's duty to accountability is

EXAMPLES AROUND THE WORLD

A 2006 Survey conducted by the World Bank found that, out of 148 countries surveyed worldwide, 28 African countries required disclosure of income and assets by public officials. Twenty did not require declarations. The extent of declarations varies: Cameroon requires all public officials to disclose, Uganda all top and middle-ranking officials, and South Africa all elected officials, senior public servants, MPs and Cabinet members.

Most countries mandate that public office holders declare assets of immediate family such as spouses and children. In South Africa, this even includes "permanent companions". This measure prevents officials from hiding assets in others' names.

The South African Parliament is mandated through its Code of Conduct to disclose its Assets. In fact, the proposed Namibian National Assembly's Code of Conduct seems to borrow significantly from our neighbour's version. The full South African code may be viewed at http://www.parliament.gov.za/live/content.php?Category_ID=83

The USA has what is regarded as one of the more transparent and effective disclosure systems – though the influence of money on politics through campaign donations remains a controversial issue in US politics. Details on the extensive provisions are explained at detail on the website of the Office of Government Ethics, www.oge.gov. Meanwhile, civil society provides easily accessible data on money in politics at www.opensecrets.org

² OECD, "Asset Declarations for Public Officials: A Tool to Prevent Corruption". doi: 10.1787/9789264095281-en

in the public's interest. This benefit is lost in countries where public access is not granted or income and asset declarations are treated as confidential".³

Thus, while there can be a legitimate debate over keeping some information out of the public eye (although records would still be considered when investigating conflicts of interest), any system should err on the side of transparency, making declarations available to the public in a manner and format that presents as few hurdles to the public's access as possible.

Finally, the law should include sanctions for members who do not comply, or who act dishonestly in disclosing their assets and income. Further, they should be punished if they have not recused themselves from situations where they face a conflict of interest. Without an effective punishment regime, officials will not take disclosure seriously and the system will falter.

Is there sufficient political will in Namibia?

The current administration has consistently named transparency as one of its key concerns. President Geingob published accounts of his financial affairs in a public statement of intent. As the president noted, "The declaration of assets is an indicator of transparency and accountability, and if you do things legitimately then what do you have to hide? Accountability and transparency help to develop trust".⁴ In June 2015, The Namibian newspaper quoted Prime Minister Kuu-gongelwa-Amadhila as saying that asset declarations would be mandatory, stating that "We believe that an effective declaration regime can help prevent abuse of power, reduce corruption and increase public accountability, public trust in institutions and government legitimacy".⁵

The key question is whether these noble words will be followed up with significant actions. Voluntary asset disclosure is commendable, but systems must be in place so that disclosure becomes man-

dated. Whether asset disclosure will be enshrined in the law for high-ranking members of the executive remains a question. And while the administration has vowed to finally got MPs in the National Assembly to declare their assets, this has clearly been met with resistance, as MPs have delayed the adoption of a code of conduct time and time again (see below). It remains to be seen whether the Geingob administration's focus on transparency will result in laws that have teeth, or mere gestures at accountability that fail to create effective monitoring systems and a strong culture of integrity.

Asset Declaration in Namibia

Namibia ratified the UN Convention Against Corruption in 2004, which states that

Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. (Article 8)

Even the Namibian Constitution suggests

The National Assembly shall in its rules of procedure make provision for such disclosure as may be considered to be appropriate in regard to the financial or business affairs of its members. (Article 59)

Despite both of these declarations of intent, we have little in the way of actual, enforceable legislation to encourage transparent disclosures. The Powers, Privileges and Immunities of Parliament Act empowers the Committee of Privileges to determine the details of the disclosure process. However, as the Code of Conduct was only recently adopted, MPs

were up until now technically not breaking any laws with their non-compliance. The National Assembly has only disclosed its assets twice, in 2003 and in 2009. Even then, the compliance was imperfect - in 2009, several MPs were not included on the asset register, apparently because they did not hand in their forms in time.

The National Council has a far better track record. The NC adopted their code of conduct in 2005, and has released an asset register every year since 2006. When some members failed to comply with requirement in 2006, they were reprimanded – something that has never happened with the NA. In 2015, once more, Members handed in their asset declarations, details of which were reported in the press.

Whatever the rules, they have so far had little impact. Neither of the houses have an oversight body to check the submissions. Therefore, for example, many members of the NC can get away with claiming they have "nothing to disclose", and there is no way of knowing about the accuracy of other members' submissions. Perhaps because of this, both the NA and NC reported they had not had an instance where a member recused themselves from a discussion because they faced a conflict of interest.

As the above section shows, we have very little in the way of laws requiring disclosure. This scarcity inhibits the growth of public trust in government and makes it difficult to identify and battle corruption. This much was expressed by the Director of the Anti-Corruption Commission, Paulus Noa, when he said that the absence of an asset register for MPs made it difficult to investigate claims of corruption.⁶

³ World Bank, "Public Office, Private Interests": Accountability through Income and Asset Disclosure. Stolen Asset Recovery Initiative Series. <https://star.worldbank.org/star/publication/public-office-private-interests>

⁴ *New Era*. "Geingob urges lawmakers to disclose assets". <https://www.newera.com.na/2015/03/13/geingob-urges-lawmakers-declare-assets/>

⁵ Beukes, Jemima. "Mandatory assets disclosure for civil servants". *Namibian Sun*. <http://www.namibiansun.com/local-news/mandatory-assets-disclosure-for-civil-servants.80136>

ASSET DECLARATIONS IN OTHER BRANCHES

President Geingob made history in early 2015 when he voluntarily declared his audited assets, becoming the first Namibian president to do so, and his decision to make the declaration public elevated him above most of his contemporaries on the continent. This declaration, commendable as it was, relied entirely upon Geingob's personal preference, however. There is currently no requirement that the president declare or publish his assets. Cabinet Ministers are supposed to declare their assets to the presidency, but these declarations are never published, and many Ministers have previously used this rule to argue they should not have to declare to Parliament, of which they are members, claiming it is unfair that they have to declare twice. Refusing to declare to Parliament has the effect that their declarations would not be published like those of their colleagues in the NA.

Judges are not required to disclose their assets and income, either. A good argument can be made that they should also be included in disclosure requirements. After all, they often decide on matters involving business transactions, and it is very easy to conceive of potential conflicts of interests. South African law has required disclosures from judges since 2008; perhaps Namibia will follow suit.

The new Code of Conduct for MPs

On October 7, the National Assembly began discussing a new draft of their code of conduct. The next draft was passed the following week, and had not



been made public at the time of writing. Therefore, the following section draws from the draft tabled on October 7, with the caveat that some provisions may have changed – though it is unlikely that drastic changes have occurred.

This draft indeed asks them to disclose assets and income within 30 days of being sworn in as a Member of Parliament, and thereafter disclose on or before 30 April of each year. MPs must provide: shares, outside employment, directorships, consultancies, sponsorships, gifts, travel discounts, land and property ownership, pensions, trusts, and other material benefits. Members must also provide the financial interests of their spouse, dependent children and other dependents to the extent it benefits the member.

The register of MPs' financial interests has a public and a confidential part. Information about the immediate family is kept in the confidential part. The confidential part also includes:

- a) The value of financial interests in an entity other than a private or public company or a close corporation;
- b) The amount of any remuneration for any directorship, partnership or any other board membership;
- c) The amount of any remuneration for any employment outside Parliament;
- d) The value of the interest in immov-

- able property and the location and value of residential properties;
- e) The details of foreign travel only when the nature of the travel or visit requires those details to be confidential;
- f) The amount of any remuneration for a consultancy;
- g) The value of a pension; and
- h) The details of all financial interests of a Member's Spouse or Dependent, to the extent that the member is aware of those financial interests.

The code of conduct also includes sanctions for members who breach the code of conduct or intentionally provide incorrect or misleading information. Complaints may be lodged by any citizen, and the committee will investigate. Members may face a reprimand, a fine up to a month's salary "or twice the value of the unethically-derived benefit, whichever is greater", a reduction in salary for up to 15 days, or suspension of privileges or right to a seat in the House for up to 15 days.

Concerns

Access to Information

The current draft significantly limits the public's access to Members' financial interests. For one, an inordinate amount of information is stored in the confidential register. That remuneration for outside employment or consultation should remain confidential is particularly egregious. Taxpayers fund MPs' (gener-

⁶ *New Era*. "Geingob urges lawmakers to disclose assets". <https://www.newera.com.na/2015/03/13/geingob-urges-lawmakers-declare-assets/>

ous) salaries for what is ostensibly a full-time job in serving the nation. It is of utmost importance that the public can know whether Members of Parliament receive income from any particular industries, so that it can retain its trust in the impartiality of its elected representatives. Even if MPs do nothing untoward, keeping outside employment secret leaves them open to accusations that they are in the pocket of an interest group.

Whatever information remains in the public register, once the plethora of exceptions have been accounted for, will be difficult to access. Members of the public may only see a copy of the register in the Registrar’s office, “but may not copy or reproduce the Register”. Immediately, this restriction to one location disqualifies the vast majority of the Namibian population from inspecting the records. These draconian measures run counter to trends in international governance, where more and more countries are putting disclosures online in an easily accessible format. The extent of the confidential register and the unnecessarily restrictive access to the public register cast doubt on the intentions of the drafters of this document. As public access is a vital part of an asset disclosure regime, these provisions could render disclosures virtually meaningless.

Enforcement

As stated above, there are doubts that enforcement mechanisms are sufficient. For one, there is no automatic effort to audit or verify the information given. The committee will only investigate Members once it has received a complaint -- and the public’s ability to complain will be stifled by restrictive access to information (see above). Further, as the committee itself consists of MPs, it will likely struggle to do its job in an impartial manner. Thus, Members will likely be able to get away with furnishing incomplete accounts in the first place, and if they are caught, are unlikely to suffer severe consequences.

Further Amendments

The draft code of conduct was supposed to be passed on the day it was tabled, October 7, 2015. However, MPs raised so many concerns about the code that the Speaker withdrew the document and promised to make further amendments. Worryingly, the sentiment of several MPs was against the very prin-

ciple of asset declarations, with one Member stating that declarations had in the past been used to “abuse” and “slander” officials for “political purposes and tribal motives,” and railing against a journalist of *The Namibian* in particular. A concern is that provisions might have been watered down even further to appease MPs who are uncomfortable with disclosing their financial matters.

News from Parliament

Laws in Parliament since March

As of October 30, 2015

Name	Passed
Appropriation Bill	✓
Namibian Citizenship (Second)	
Special Conferment Bill	✓
Veterans Amendment Bill	✓
Public Enterprises Governance	
Amendment Bill	✓
Civil Aviation Bill	✓
Marine Resources Amendment Bill	✓
University of Science and Technology Bill	✓
Value-Added Tax Amendment Bill	✓
Income Tax Amendment Bill	✓
Public Procurement Bill	✓
Regional Councils Amendment Bill	✓
Local Authorities Amendment Bill	
Judiciary Bill	✓
Deeds Registry Bill	

Debates in Parliament

Gender-Based Violence was a recurring topic of debate this session, partly because of several high-profile news stories. Shortly after reconvening in September, a debate on health care at universities turned to the topic of baby-dumping. In mid-October a school teacher’s murder of two women prompted a spontaneous discussion where issues ranging from stricter bail conditions to better youth education on GBV were proposed.

NOTABLE QUOTES

“I don’t speak English”.
 – Hon. Dienda (DTA), pointing out that a clause in the Local Authorities Amendment Bill, which requires councillors to be well-versed in the national language, should apply to parliamentarians too.

“Land is the only heritage of the Namibian people”.
 – Hon. Ekandjo (Swapo), during the debate on the Local Authorities Amendment Bill

“We have our rights, we are being abused. So to be a member of parliament does not mean that any journalist can just target you and abuse you”
 – Hon. Nujoma (Swapo), claiming prior asset declarations had led to him being abused by journalists.

FURTHER READING

Tjirera, Ellison (2012), "Asset Disclosure in Namibia: The Need for Reform and Enforcement". Institute for Public Policy Research. http://www.ippr.org.na/sites/default/files/AntiCorr_Paper12%20AssetsInterests.pdf

Messnick, Richard (2009), "Income and assets declaration: Issues to consider in developing a disclosure regime". U4 Anti-Corruption Resource Centre. <http://www.u4.no/publications/income-and-assets-declarations-issues-to-consider-in-developing-a-disclosure-regime/downloadasset/137>

Chêne, Marie (2008), "African Experience of asset declarations". U4 Anti-Corruption Resource Centre. <http://www.u4.no/publications/african-experience-of-asset-declarations/downloadasset/366>

World Bank (2012), "Public Office, Private Interests: Accountability through Income and Asset Disclosure". Stolen Asset Recovery Initiative Series. <https://star.worldbank.org/star/publication/public-office-private-interests>

OECD (2011), "Asset Declarations for Public Officials: A Tool to Prevent Corruption". OECD Publishing. doi: 10.1787/9789264095281-en

Another key debate surrounded the declaration of members' financial interests. A proposed Code of Conduct to regulate disclosure was tabled in early July (though earlier drafts had been circulating for years), but adoption was delayed several times. After a closed-doors session to provide for final Amendments, the National Assembly finally passed the Code on 14 October 2015, and members received instructions to declare their assets by the end of November.

KNOW YOUR PARLIAMENT: STANDING COMMITTEES

All members of Parliament, save for Ministers and their Deputies, serve on committees. Standing committees are permanent, and each committee does detailed work on a specific area of expertise. Committees oversee the activities of offices, Ministries, Agencies and State-Owned Enterprises – this is why Ministers are exempt, as committees hold them accountable. Committees can organise public hearings on an issue to get inputs from various stakeholders, or to investigate a specific matter. They may also provide in-depth comment on a bill concerning their subject area before the whole house passes the document.

The current standing committees, as well as their chairs, are as follows:

Committee on Constitutional and Legal Affairs

Hon. Sebastiaan Karupu

Committee on Economics and Public Administration

Hon. Veikko Nekundi

Committee on Management of Natural Resources

Hon. Sophia Swartz

Committee on Foreign Affairs, Defence and Security

Hon. Levi Katoma

Committee on Gender Equality, Social Development and Family Affairs

Hon. Ida Hoffmann

Committee on Human Resources and Community Development

Hon. Bernadette Jagger

Committee on Information, Communication Technology and Innovation

Hon. Faustina Caley

Committee on Public Accounts

Hon. Mike Kavekatora

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ABOUT DEMOCRACY REPORT

Democracy Report is a project of the IPPR which analyses and disseminates information relating to the legislative agenda of Namibia's Parliament. The project aims to promote public participation in debates concerning the work of Parliament by publishing regular analyses of legislation and other issues before the National Assembly and the National Council. Democracy Report is funded by the Embassy of Finland.

ABOUT THE IPPR

The Institute for Public Policy Research (IPPR) is a not-for-profit organisation with a mission to deliver independent, analytical, critical yet constructive research on social, political and economic issues that affect development in Namibia. The IPPR was established in the belief that development is best promoted through free and critical debate informed by quality research.



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