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ASSET DECLARATIONS IN NAMIBIA



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INTRODUCTION

The movement for asset declarations in Namibia is gathering steam. After decades of little progress, several recent developments indicate that government is increasing its willingness to establish declaration systems. After President Geingob declared his assets to start off his Presidency, the National Assembly finally passed a new code of conduct regulating declarations by Parliamentarians. Meanwhile, the government's new *Harambee* plan hints that existing asset declarations will be expanded in their scope.

At the same time, many problems remain. Most existing systems provide for internal declarations without publication. Those declarations that are supposed to be public – namely those of Parliamentarians – are either not completed, late, or mostly empty. While President Geingob led by example by declaring his assets publicly, only one of his Ministers has followed suit.

This paper evaluates current asset declarations across all three branches of the government in Namibia. It makes the following recommendations:

- Asset declaration systems should form part of a comprehensive system of preventing conflict of interest, centred around a national law with clear and specific definitions
- The scope of asset declarations should be expanded to include all senior managers in civil service, senior judges, and senior employees of State-Owned Enterprises
- An independent body should be tasked with monitoring compliance with these systems
- Effective sanctions should be introduced to deter false filings
- Asset Declarations should be published to the greatest extent possible

ASSET DECLARATIONS: AN OVERVIEW

Asset declarations by public officials are increasingly seen as an important tool in effective anti-corruption campaigns, as well as being considered indispensable to an open and transparent society. In the last few decades, asset declarations have gone from being a rarity associated with a small number of countries, to an increasingly common policy tool that has been endorsed by a plethora of international bodies and is required by several international treaties and conventions (see below). Asset declarations in their modern form began to appear after the Second World War. After recurring corruption scandals, President Truman told the US Congress that officials should declare their income.¹ However, the United States only introduced landmark legislation in the aftermath of the Watergate scandal in the late 1970s.² The UK House of Commons introduced the Register of interests in 1974, while other European countries followed suit with laws of their own in the early 1980s.³ The global number of asset disclosure laws spiked dramatically in the 1990s, as the cold war ended and a large number of countries in the former Soviet

¹ Organisation for Economic Co-operation and Development, ed., *Asset Declarations for Public Officials: A Tool to Prevent Corruption, Fighting Corruption in Eastern Europe and Central Asia* (Paris: OECD, 2011), 22.

² Ruxandra Burdescu et al., *Stolen Asset Recovery: Income and Asset Declarations: Tools and Trade-Offs*, n.d., 28.

³ Organisation for Economic Co-operation and Development, *Asset Declarations for Public Officials*, 22.

⁴ Burdescu et al., *Stolen Asset Recovery: Income and Asset Declarations: Tools and Trade-Offs*, 28.



bloc adopted new constitutions along with the newly-independent nation-states of Africa.⁴

Benefits of Asset Declarations

The most important role played by asset declarations is in building the public's trust in government officials. The truth is that the vast majority of government employees are not engaged in criminal activities; at the same time, all of government is tarnished in the public eye by the actions of those few officials who act corruptly. A comprehensive system of asset declarations shows that officials have nothing to hide.⁵ As President Geingob put it in the early days of his presidency, "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."⁶

Asset declarations are crucial in preventing conflicts of interest. It is fairly simple to ban obvious instances of this behaviour, such as a permanent secretary awarding a tender to a company she owns herself. Asset declarations can show more subtle forms in which a public official may benefit from the decisions they make in their roles as representatives of government.⁷

Declaration systems reduce the potential for corrupt behaviour at every step of the way. An effective disclosure system deters public officials from engaging in corruption in the first place, because they know illicit behaviour is likely to be caught out. It makes it easier for institutions to ensure their operations are being run in an efficient manner, as they can easily spot maladministration.⁸ If the system includes sanctions, officials will have to face consequences for their actions, which further deters others.

In short, an effective system of asset disclosure makes it easier for institutions to operate effectively, deters potential wrongdoers from engaging in illicit activities, and, above all, contribute towards a culture of open government where citizens can trust public officials because their decisions are made in the interests of citizens and not for the private gain of government employees.⁹

These arguments are borne out by research which indicates a link between perceptions of corruption in a country and asset disclosure. Djankov et al, show that internationally, when asset disclosures are public, and when they identify sources of income and conflicts of interest, they correlate with lower perceived corruption.¹⁰ Meanwhile, countries that have had laws for a long period of time (where the system has become well-established) and that require verification of declarations also have lower levels of corruption as measured by the Transparency International Corruption Perception Index.¹¹

These studies do not prove that asset declarations by themselves lower corruption. However, they underscore the message that asset declarations form an indispensable part of a society where the rule of law dominates. Where asset declarations exist, they often form "part of a broader system of accountability that includes media reporting, law enforcement, party discipline, and voting itself."¹² As such, they contribute to lower levels of corruption.

"Those declarations that are supposed to be public – namely those of Parliamentarians – are either not completed, late, or mostly empty. While President Geingob led by example by declaring his assets publicly, only one of his Ministers has followed suit."

⁵ Organisation for Economic Co-operation and Development, *Asset Declarations for Public Officials*, 12.

⁶ Staff Reporter, "Geingob Urges Lawmakers to Declare Assets," *New Era*, March 13, 2015, <https://www.newera.com.na/2015/03/13/geingob-urges-lawmakers-declare-assets/>.

⁷ Richard E. Messick, "Regulating Conflict of Interest: International Experience with Asset Declaration and Disclosure," World Bank, Washington, DC. http://www.Acr.org.ua/articles_doc/ua/Regulating_Conflict_of_Interest_International_Experience_2007.Pdf, 2007, <http://right2info.org/resources/publications/publications/messickreconflictinterest.pdf>.

⁸ Organisation for Economic Co-operation and Development, *Asset Declarations for Public Officials*, 12.

⁹ Burdescu et al., *Stolen Asset Recovery: Income and Asset Declarations: Tools and Trade-Offs*, 12.

¹⁰ Rafael La Porta, Florencio López-de-Silanes, and Andrei Shleifer, "DISCLOSURE BY POLITICIANS," 2009, https://www.researchgate.net/profile/Florencio_Lopez-de-Silanes/publication/24016724_Disclosure_by_Politicians/links/02bfe5114b52babb91000000.pdf.

¹¹ Omer Gokcekus and Ranjana Mukherjee, "Officials' Asset Declaration Laws: Do They Prevent Corruption?," 2006, https://works.bepress.com/omer_gokcekus/36/download/.

¹² La Porta, López-de-Silanes, and Shleifer, "DISCLOSURE BY POLITICIANS," 5.

“Asset declarations by public officials are increasingly seen as an important tool in effective anti-corruption campaigns, as well as being considered indispensable to an open and transparent society.”

ASSET DECLARATIONS IN NAMIBIA

The Namibian government is party to a variety of international treaties that call for signatories to enact Asset Declaration legislation.

The UN Convention Against Corruption, which Namibia ratified in 2004, 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.¹³

In a section related to asset recovery, the Convention continues:

Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds

of offences established in accordance with this Convention

At the regional level, Namibia also ratified the AU Convention on Preventing and Combating Corruption, in which states commit themselves to “Require all or designated public officials to declare their assets at the time of assumption of office during and after their term of office in the public service.” Namibia also signed and ratified the Charter for the Public Service in Africa, which states that “public service employees appointed to certain positions of responsibility specified by law shall, upon taking and leaving office, declare their assets as well as those of members of their family.”¹⁴

In other words, international treaties signed by Namibia call for us to implement asset disclosure systems that require declaration and sanction noncompliance. To be fair, these are “soft standards”¹⁵ in that they do not *require* that we implement laws but merely that we “endeavour, where appropriate...” to do so. Still Namibia has ratified – and therefore officially declared its support of – documents saying that we should try and create a system where officials declare a wide range of financial interests, at the beginning, during, and after their term of office, that investigating authorities should have access to these declarations, and that there should be sanctions for non-compliance.

The following sections assess the extent to which Namibia has implemented asset declarations in the three branches of government, as well as other key public figures.

Executive

There is no requirement in Namibian law that the President should declare his or her assets. Nevertheless, President Geingob voluntarily declared his assets when he assumed power in 2015, stating that this was a sign of his commitment to transparency. He explained his reason for doing so in his State of the Nation address, saying

¹³ United Nations, UN Convention Against Corruption, 2004.

¹⁴ African Union, African Charter on Values and Principles of Public Service and Administration, 2011, <http://www.au.int/en/treaties/african-charter-values-and-principles-public-service-and-administration>.

¹⁵ Organisation for Economic Co-operation and Development, Asset Declarations for Public Officials, 24.



a key requirement in preventing undue benefits accruing to public officials is preventing conflicts of interest and the disclosure of assets... managing conflict of interest is a matter which requires political will. Therefore, I feel obliged to publicly declare my personal assets.¹⁶

However, this initial sign of goodwill has not been followed by further action regarding the executive. The president has not submitted another asset disclosure for public scrutiny, and has not indicated whether he will submit one at the end of term. This is a crucial matter: asset disclosures can only show whether someone has enriched themselves in office if the public knows what was gained during the period in question. The President has refused to disclose his salary, at one point even joking that he did not know how much he earned.¹⁷ Recently, he has stated more broadly that he does not think salaries of public officials should be part of financial disclosures, saying he believes salaries to be 'personal' information.¹⁸

Cabinet ministers declare their financial interests to the President, but are not required to make their declarations public. The president said he would not require his Ministers to follow his lead and publish their declarations. However, finance Minister Schlettwein did so on July 14, 2016. Schlettwein argued that "as the custodian of public finances, your Minister of Finance, it is important that I share with you what I own and how I accumulated my personal assets."¹⁹ Notably, the Minister committed himself to repeating the declaration every year going forward. However, he did confirm that there was no official decision that would compel other cabinet members to publish their declarations, and stressed that he was doing so out of personal conviction.

The *Harambee Prosperity Plan*, the document outlining the President's key initiatives, includes two goals aimed at improving Namibia's ranking regarding accountability and transparency. As part of the effort to achieve this, it states that there should be an "annual declaration of assets and income by Public Office Bearers and Civil Servants" within three months of every financial year.²⁰ What this means in reality is a mostly a continuation of old practices: the officials covered here are Members of Parliament and Cabinet Ministers. However, the plan does mention that Accounting Officers will be required to declare their interests, and – if their conflicts of interest are unmanageable – be asked to choose between their government jobs and business roles.²¹ The plan does not specify that any of these disclosures should be made public. In the case of accounting officers, it does not specify to whom they should declare their interests and who would make rulings on whether their interests constitute a conflict of interest.

Judiciary

There are no requirements for judges to declare their financial interests at the moment. To be fair, requiring judges to declare assets is a tricky proposition: it is generally held that the judiciary should enjoy special protection, as unlike the executive and legislature, it has little power to defend its independence. Some judges might fear that publication of their financial interests puts them at risk of being pressurised. However, judges make very important decisions, often about matters regarding a financial dispute directly. At the very least, high-ranking judges should be subject to the same scrutiny that other senior public office bearers face.

The Judiciary Act of 2015 may in retrospect be considered a missed opportu-

¹⁶ Hage Geingob, "State of the Nation Address 2015" (Windhoek, April 21, 2016), <http://www.gov.na/documents/10181/22710/STATE+OF+THE+NATION+ADDRESS+2015+BY+HIS+EXCELLENCY+DR.+HAGE+G.+G+EINGOB+PRESIDENT+OF+THE+REPUBLIC+OF+NAMIBIA/5d50418d-7b14-434c-9257-02db06945f58>.

¹⁷ Shinovene Immanuel, "President Says Clueless about His Salary," *The Namibian*, December 15, 2015, <http://www.namibian.com.na/index.php?page=archive-read&id=145392>.

¹⁸ Shinovene Immanuel, "Geingob Wants Salaries to Be Secret," *The Namibian*, June 16, 2016, <http://www.namibian.com.na/Geingob-wants-salaries-to-be-secret/41803/read>.

¹⁹ Calle Schlettwein, Asset Declaration: Minister of Finance, July 14, 2016.

²⁰ The Government of Namibia, "Harambee Prosperity Plan," n.d., 65–66.

²¹ *Ibid.*, 17.

nity in this regard. The law establishes an office of the judiciary to administer the workings of the third branch.²² This office could have been instructed to deal with asset declarations, but no such provision was made. For now, the judiciary remains without any transparency provisions in this regard.

Others

Other important positions are covered by asset disclosure regulations. The Electoral Act of 2014 requires that Members of the Electoral Commission

must in writing disclose to the Speaker of the National Assembly any direct or indirect financial interest which the member himself or herself, his or her spouse, partner or family member has or acquires in any business carried on in Namibia or elsewhere or in any body corporate carrying on any business in Namibia or elsewhere.²³

If an issue comes up where a conflict of interest arises, Commissioners have to explain their conflict and withdraw from the discussion.

Political parties themselves are subject to a sort of asset declaration. According to the 2014 Electoral Act, parties have to submit a statement of their assets and liabilities to the Electoral Commission within 21 days of Parliament opening each year. Within 30 days, the Commission should publish a notice stating that the declaration is available for inspection.²⁴ However, two Parliamentary sessions have opened since then and no such declaration has occurred. This is because the Electoral Commission has not finalized regulations and procedures, so this part of the act is not implemented. The major roadblock in the finalisation of regulations seem to be the parties themselves, who were consulted in early 2016 but have not given their feedback months later. Until they respond, the Electoral Commission will not proceed, and declarations will not occur.

Other public entities are not covered. The Ombudsman is not required by law to declare his or her assets. The new Procurement law requires to disclose members of the Central Procurement Body to disclose their interest if a conflict comes up, but does not require a general disclosure.²⁵ As the onus is on members, there is a possibility that conflicts of interest are not flagged – a problem as the Procurement Body decides on large government expenditures.

Meanwhile, a notable gap exists when it comes to State-Owned Enterprises. The Namibian government owns more than 90 businesses. Some are small and have a limited scope of operations. Others are massive operations that span the country and are some of the nation's largest employers. As such, these enterprises make decisions about the expenditure of very large sums of money – money that often comes from the taxpayers in the form of government subsidies and transfers.

Legislature

In addition to the United Nations Convention Against Corruption and the African Union Convention on Preventing and Combating Corruption, which generally exhort signatories to install asset disclosure systems, Namibia has special obligations regarding our Parliament. The Commonwealth Parliamentary Association, an organisation of which Namibia is a member, formally adopted a *Declaration on Parliamentary Openness* in 2013 which has also been endorsed by Parliamentary assemblies covering Europe and the America. Articles 24 and 25 of this declaration

²² The Government of Namibia, Judiciary Act, 2015.

²³ The Government of Namibia, Electoral Act, 2014, sec. 8.

²⁴ *Ibid.*, sec. 139.

²⁵ The Government of Namibia, Judiciary Act 2015; and The Government of Namibia, Electoral Act 2014, sec. 8



state that:

Parliament shall make available sufficient information to allow citizens to make informed judgments regarding the integrity and probity of individual members, including information on members' asset disclosures, their parliamentary expenses, and their non-parliamentary income, including interest, dividends, lease payments or other in-kind benefits ... Parliament shall enact clearly defined rules to ensure disclosure of information necessary to protect against actual or perceived conflicts of interest and ethical violations.²⁶

More crucially, however, a requirement for Parliamentarians to declare their financial interests is included in the nation's fundamental law, the Constitution. Articles 59 and 74, for the National Assembly and National Council respectively, state that each houses should in its rules "make provision for such disclosure as may be considered to be appropriate in regard to the financial or business affairs of its members."²⁷

Both Houses' Standing Rules and Orders indeed contain language requiring the declaration of assets and liabilities, and refer members to the respective codes of conduct, where the rules laid out in detail. However, the actual track record in terms of actually carrying out these declarations is mixed. The National Assembly is notoriously noncompliant with this requirement, declaring in 2003, again in 2009, and then never again. Even in 2009, thirteen members simply did not declare their assets, without any consequence.²⁸ Upon entering office, President Geingob promised the public that Parliament would finally declare their assets again. The process seems to be moving along, though the National Assembly has missed every deadline along the way. Parliament finally discussed a draft code of conduct in early October 2015, and MPs were supposed to disclose by November 30.²⁹ This never occurred, and by the next year, the deadline moved to May or June.³⁰ The declarations had still not been published by the end of July 2016.

The National Council, on the other hand, has a much better reputation for completing its disclosures. After adopting their code of conduct in 2005, the body has published its register of interests every year. Some members were even reprimanded for failing to comply in the first year the system was implemented.³¹ However, the analysis below shows that while the National Council might regularly publish financial information, the system remains seriously flawed.

EVALUATING EXISTING DECLARATION SYSTEMS

In a way, it is difficult to evaluate the performance of existing systems, as there is very little information available. For example, there are no publicly-known examples of the President using the declarations by Cabinet members to detect a conflict of interest and instructing them to deal with it in one way or another. Similarly, there is no evidence that the relevant Parliamentary bodies have taken actions against members of Parliament for any of the transgressions possible under the regime. This could mean that the system is toothless, or it could mean that public officials are perfectly compliant. What follows is an analysis of the rules of the existing systems, highlighting strengths and potential loopholes. In the absence of effective controls over peoples' behaviour, it is essential to have excellent rules that allow for as little divergence from the system as possible.

²⁶ OpeningParliament.org, declaration on Parliamentary Openness, accessed November 7, 2016, <http://opening-parliament.org/declaration>

²⁷ The Constitution of the Republic of Namibia

²⁸ Ellison Tjirera and Frederico Links, "Nothing to Disclose: Critiquing Namibia's Passive Approach to Conflict of Interest," 5.

²⁹ Shinovene Immanuel, "95% of Lawmakers Declare Interests," The Namibian, October 6, 2016, <http://www.namibian.com.na/index.php?page=archive-read&id=151771>.

³⁰ Elvis Muraranganda, "MPs to Declare Assets by June," Namibian Sun, January 19, 2016, <http://www.namibian-sun.com/government/mps-declare-assets-by-june.90647>.

³¹ Ellison Tjirera, "Asset Disclosure in Namibia: The Need for Reform and Enforcement," IPPR, 4.

"Countries that require verification of declarations have lower levels of corruption as measured by the Transparency International Corruption Perception Index."

“The National Assembly’s Code states that the public may have access, but that no-one may copy or reproduce the register. This makes thorough study very difficult.”

Overview of NA and NC rules

The new rules on asset disclosure the National Assembly adopted in late 2015 are almost identical to those of the National Council, and both bear a striking resemblance to the rules governing South African MPs – in fact, the Namibian rules seem to have been copied verbatim to a great extent. This is not necessarily a bad thing. *Right to Info*, an advocacy group for open government, praises South Africa’s conflict of interest regime in general as “comprehensive,” and notes that while there are exceptions, “the presumption in South Africa favours disclosure of assets.”³² It bears mentioning, however, that the South African system has itself been critiqued. For example, *Daily Maverick* pointed out in 2014 that rules were structured in such a way that 33 MPs got away with declaring absolutely nothing, and noted that the sanctions for breaking the rules were “fairly light”.³³ South Africa has also had to extend deadlines for the submission of declarations, but not to the farcical degree seen in Namibia.³⁴

A detailed list of both codes’ requirements would be too expansive for this section, though what members must declare (and what is kept private) is shown at a glance in the table below. Both houses require that parliamentarians declare shares, outside employment, positions, and remuneration, consultancies, sponsorships, gifts, travel, properties, interests of spouses and dependents, as well as other material benefits. The NC also requires its members to list accounts containing more than N\$20 000 and any liabilities greater than N\$20 000, while the NA requires its members to declare their trusts.

However, both houses stipulate that a great deal of information should be kept in the private register. This includes the amount of any outside remuneration for employment, consultancy, board memberships and so on, as well as the value of financial interests in some types of business. Residential property values are kept private in the NA, and all property values in the NC. Further, the NC just requires lists of accounts and liabilities, no amounts. Notably, both the NC and the NA explicitly exclude government pensions from any part of their declarations, public or private. Finally, all details regarding the interests of dependents and spouses are kept in the private register.

The large amount of privacy exemptions already means that very little is available to the public eye, but the situation is worsened by the system by which the public register is made available. The National Assembly’s Code states that the public may have access, but that no-one may copy or reproduce the register. This makes thorough study very difficult. The National Council’s standards are comparatively lax in that the register is easily available at the Library in Parliament, and no explicit prohibitions on reproduction are made in the code. Both effectively limit access to a great extent, however, as only physical copies are available, and only during working hours. Only a very small number of people can even theoretically get access. Those who live outside of Windhoek, or cannot get time off during working hours are effectively barred from seeing this information. The codes do not make mention of how the register is kept, and so do not require that the register be kept in a digital format or even published online.

³³ Rebecca Davis, “MPs’ Financial Interests Revealed: Some Cats Are Fatter than Other,” *Daily Maverick*, September 19, 2014, <http://www.dailymaverick.co.za/article/2014-09-19-mps-financial-interests-revealed-some-cats-are-fatter-than-others/>.

³⁴ Parliament of South Africa, “MPs given More Time to Disclose Financial Interests,” *Press Release*, October 7, 2014, <http://www.gov.za/mps-given-more-time-disclose-financial-interests>.



Type of Interest	NA	NC	NA Private	NC Private
Shares and other financial interests	X	X	Value of interests except private/public/CC	The value of financial interests in any business
Remunerated employment outside of Parliament	X	X	Amount of remuneration	Amount of remuneration
Directorships, Partnerships and board memberships	X	X	Amount of remuneration	Amount of remuneration
Sole Ownerships		X		Equity value
Liabilities exceeding N\$ 20 000		X		Type, amount, interest, term
Accounts with financial institutions exceeding N\$ 20 000		X		Amount
Consultancies and Retainerships	X	X	Amount of remuneration	Amount of remuneration
Sponsorships	X	X		
Gifts and hospitality	X	X		
Sponsorships	X	X		
Travel and travel discounts	X	X	Detail if the nature of travel requires confidentiality	Detail if the nature of travel requires confidentiality
Pensions	X	X	Value of pension; gov. pension	Value of pension; gov. pension
Ownership in land and property	X	X	Value and location of residential properties	Value of property, location of residential
Trusts	X			
Benefit of material nature	X	X		
Interests of spouse and dependents	X	X	All details	All details

Requirements for Declarations in NC and NA

How much is actually declared?

The latest round of declarations by the National Council are characterised above all by the statement “nothing to disclose”. Seven Members said they had nothing to declare on all thirteen categories included on the form. Many others had nothing to declare on the majority of the questions, also. Given that there were 42 Councillors with filled out forms, and thirteen questions each, the maximum number of declarations is 546. Overall, 418 out of these 546 fields were marked as “nothing to disclose” – 77 percent. The graph below shows at a glance just how little was declared. The image is made up of 546 squares – 42 across, one for each Councillor, and 13 down, one for each question Members were asked to answer. The blue squares are questions where councillors said they had something to declare, and grey where they claimed they had nothing to declare. (the two black squares concern questions where the Members did not even state they had nothing to declare, but just left the field blank). The image is overwhelmingly grey, showing at a glance

that very little is actually declared publically by members of the National Council. When compliance finally occurs in the National Assembly, there is little to stop its members from doing the same, simply claiming not to have any interests as there is little monitoring (see below).



Matrix showing the extent to which NC members declared their assets. Grey = "nothing to declare"; blue = at least one item declared; black = no answer at all.

This is not to suggest that National Councillors were lying on most of these questions; no one is required to hold shares or own property. But a more detailed look at the figures raises the suspicion that not enough is being declared. The most common field for Councillors to fill out concerns a list of their accounts containing more than N\$20,000. Nine Councillors claimed they did not have such an account – not impossible, but surprising.

Monitoring, Enforcement and Sanctions

Both the National Council and National Assembly do not stipulate that there should be proactive monitoring of declarations. The registrar is merely mandated to record the assets provided by the members, and therefore essentially acts as a scribe. Breaches of the code are investigated by the Privileges Committee. The codes of conduct state that anyone may file a complaint with the Committee, and that the Committee may also investigate without prompting by a complaint. However, it is not clear if any such investigations have occurred.

Responses by the NC to IPPR questions about these matters show that the enforcement record is mixed. The National Council reported that no MPs had recused themselves because they had a conflict of interest, and none were asked by the Committee on Privileges to recuse themselves. However, the National Council did state that six MPs who submitted their declarations late in January 2016 received a reprimand. The National Assembly did not respond to questions. When a separate IPPR report did receive an answer in 2012, the responses indicated that very little had been done in terms of enforcing regulations: despite several questionable cases, the National Assembly answered that no MP had ever faced sanctions for non-compliance. Meanwhile, both NA and NC stated that no Members had recused themselves from proceedings because they had a conflict of interest, and the Committee on Privileges had never asked a Member to recuse themselves.³⁵ A separate IPPR paper names some clear examples of perceived conflicts of interest, such as when an MP who owned several shebeens proposed an amendment to liquor laws that would make it easier to obtain a licence.³⁶ When several instances of conflict of interest are reported by the media, but none are investigated by the relevant committee – whether proactively or in response to media coverage – it indicates that the body is not performing its function effectively.

³⁶ Tjirera and Links, "Nothing to Disclose: Critiquing Namibia's Passive Approach to Conflict of Interest," 6.



THE BROADER IMAGE

Conflict of Interest

The issue of asset declarations falls within a broader discussion on how to prevent conflicts of interest in government. A 2011 IPPR research paper on conflict of interest legislation in Namibia noted that “Namibia appears to be falling short in understanding the nature and scope of conflict of interest ... and this is reflected in the country’s lack of a comprehensive approach to dealing with the issue.”³⁷ Virtually none of the shortcomings addressed by that paper have been addressed in the five years since its publication.

Most gravely, the paper notes that there is no overarching national definition of conflict of interest to deal with all public servants – an absence exemplified by the fact that the Anti-Corruption Act makes no reference to conflicts of interest.³⁸ Other legislation may touch on conflict of interest, but often only implicitly. Section 17 of the Public Service Act prohibits public servants from engaging in outside work, unless they have received permission,³⁹ while the constitution prohibits outside employment by Members of the Cabinet without exceptions. Meanwhile, the Powers, Privileges and Immunities of Parliament Act of 1996 stipulates that “a member shall not in Parliament take part in any proceedings in which such member has any interest”, if the interest would prevent them from being fair and unbalanced.⁴⁰ The codes of conduct of the National Assembly and National Council contain language prohibiting conflicts of interest, as does the code of ethics for regional councillors.⁴¹

However, the problem with all the above rules is that they are almost never enforced. The IPPR paper wrote that interpreting compliance was “largely left to the discretion of the MPs and members of the executive,”⁴² while the code of conduct lets Regional Councillors decide whether or not to comply, and includes very weak sanctions.⁴³

In the absence of comprehensive and effective laws concerning conflicts of interest, there have been a large number of accusations of improper behaviour. These range from the alleged misallocation of government money to politicians proposing bills that could conceivably directly benefit their finances. As the IPPR concluded, “having a clear and comprehensive ... regulatory environment” would be a first step in dealing with these conflicts.⁴⁴

Access to Information

Asset declarations are also linked to the issue of access to information (ATI), a growing concern in many African nations. There is a growing recognition that effective governance requires a system where citizens have guaranteed access to information that is relevant to the government’s work. An increasing number of African nations have introduced laws guaranteeing access to information, while initiatives such as the *Open Government Partnership*, whose members commit themselves to more transparency, are growing in membership. The Namibian government has recognised the importance of Access to Information by committing itself to drafting an Access to Information law.

The reason advocates of ATI stress its importance is because it impacts every facet of governance. When citizens are guaranteed the right to access information about government’s workings, they are empowered to become participants in the processes of government. Access to Information thus ensures better government performance through increased transparency, and encourages a culture of open government and public service.

In Namibia, some laws contain favourable provisions in regards to access to infor-

“The latest round of declarations by the National Council are characterised above all by the statement “nothing to disclose”. Seven Members said they had nothing to declare on all thirteen categories included on the form.”

³⁷ Ibid., 1.

³⁸ Ibid., 3.

³⁹ The Government of Namibia, Public Service Act, 2015, sec. 17.

⁴⁰ The Government of Namibia, Powers, Privileges and Immunities of Parliament Act, 1996, sec. 22.

⁴¹ Tjirera and Links, “Nothing to Disclose: Critiquing Namibia’s Passive Approach to Conflict of Interest,” 7.

⁴² Ibid., 4.

⁴³ Ibid., 8.

⁴⁴ Ibid., 12.

“Namibia’s current system suffers from shortcomings at every step of the way. Too few officials are covered; most of the executive and all of the judiciary are exempt from declarations, as are heads of SOEs. Those who do declare can easily get away with not complying.”

mation, but there are many laws – including hold-overs from the Apartheid era – that militate against citizens receiving government information. Asset declarations would be one piece of a comprehensive access to information regime, but even more is needed. The government’s proposed legislation could be a major step forward in this regard.

RECOMMENDATIONS

Namibia’s current system suffers from shortcomings at every step of the way. Too few officials are covered; most of the executive and all of the judiciary are exempt from declarations, as are heads of SOEs. Those who do declare can easily get away with not complying. Even those who do declare their assets do not have to declare very much, as requirements are very lax and it is easy to legally hide assets from the public register. Completed asset declarations are not verified or audited, and there seems to have been no resulting action taken against public officials, even where a conflict of interest was likely.

Therefore, a number of steps should be taken to improve on the current system.

1. Asset Declarations should form part of a comprehensive conflict of interest prevention system anchored in the law.

It is important not to expect too much from Asset Declarations. Declarations by themselves will not end corruption and usher in a new era of transparent governance – especially in young democracies such as Namibia, where the skills needed to enforce the system are in short supply and systems of accountability in their infancy.⁴⁵ They should be one tool within a comprehensive anti-corruption system, which does not just monitor officials but creates incentives for virtuous behaviour in the first place while promoting a culture of public service.

Namibia needs a law that clarifies what a conflict of interest is, and makes explicit provisions on how to avoid it. The IPPR paper referenced above recommends that Namibia should introduce a law, similar to *South Africa’s Executive Members’ Ethics Act*, to clearly and comprehensively define conflict of interest, specifically state who is covered under the framework, and explain in detail how conflicts of interest should be dealt with in various situations.⁴⁶ That recommendation remains relevant today.

2. The Scope of Asset Declarations should be expanded

The current system, where only Parliamentarians declare their assets, is unsatisfactory. The President and Vice-President should also be covered. In addition, senior civil servants should also be covered by some sort of declaratory regime – as should at least the most senior of judges. Ultimately, coverage should be determined based on which individuals have a significant control over public finance – the public interest decides who should declare. Not all declarations have to be public. In South Africa, all senior managers in the civil service have to declare their assets for an internal review⁴⁷ – this could be a satisfactory solution for judges and civil servants, if the body providing oversight is independent.

3. Asset Declarations should be processed and monitored by an independent body

A 2011 OECD report writes that “in countries where public officials’ declarations and conflict of interest policies are relatively new, *specialised bodies* have an advantage.”⁴⁸ In Namibia, where skilled forensic auditors, investigators, and account-

⁴⁵ Organisation for Economic Co-operation and Development, *Asset Declarations for Public Officials*, 12.

⁴⁶ Tjirera and Links, “Nothing to Disclose: Critiquing Namibia’s Passive Approach to Conflict of Interest,” 12.

⁴⁷ Malatswa Molepo, “Non-Compliance with Financial Disclosure Framework a Cause for Concern,” *Business of Parliament*, September 10, 2014, http://www.parliament.gov.za/live/content.php?Item_ID=6702.

⁴⁸ Organisation for Economic Co-operation and Development, *Asset Declarations for Public Officials*, 14.



ants are a scarce commodity, it makes sense to have one specialised body focused on developing these skills rather than scattered offices across the public service trying the same.

The exact form of this body could differ. The Anti-Corruption Commission could be empowered to do the job. Alternatively, government could create a separate body to handle government ethics, dealing with conflicts of interest, asset declaration, and more – like the US Office of Government Ethics, for example. Importantly, this body has to be independent both on paper and in practice.⁴⁹ This means that it should have wide-ranging powers enshrined in the law, but also sufficient funding to actually carry out its tasks. The people heading this institution should not be political appointees but selected in a transparent process that involves the public.

It should be assumed that most public servants are honest and want to follow procedures; they should be helped and not punished for honest mistakes. It would therefore be useful to ensure that there is an institution tasked with helping lawmakers disclose. This body could do work including “seminars for filers, a help line, and a procedure for requesting advisory opinions where the law is unclear.”⁵⁰ It might be problematic asking the same institution to both help lawmakers disclose and monitor them, as these two functions can work against one another. As a World Bank paper on asset disclosure puts it, “cops and social workers don’t mix.”⁵¹ The task of assisting with declarations could be assigned to one institution, while another one focuses on monitoring and enforcement.

While the verification of every disclosure is likely logistically impossible, especially in the beginning, a random sample should always be checked in detail. The scope of what is checked can expand with time.

4. Declarations should not be secret

Asset declarations should be published to the greatest extent possible. Of course, privacy concerns have to be considered. Thus, especially for lower-ranking civil servants, respecting the privacy of individual should be a concern in drawing up rules. For very senior politicians, such as Members of Parliament and the President, as well as people exerting control over significant sums of government money, like members of a procurement body, more stringent requirements should be in place. While privacy should exist for some matters, the public interest should be able to override such interests to a significant extent. It is worth noting that family members’ assets can be private to a certain extent – provided they are actually theirs, and not just a way to circumvent declaration systems. The rule is simple: “The law needs to be clear that however the asset is formally titled, if the official is the one who enjoys its use and benefit... the official must disclose it.”⁵²

When publication occurs, it should be in a format that ensures the greatest possible access. The current system for Parliamentary declarations shows how access can be effectively denied to most Namibians even if the documents are technically public. In addition to physical copies, there should be an online system to ensure maximum reach, with the data presented in a searchable format for ease of access.

Apart from publication, financial disclosure should also be shared between government institutions.⁵³ Any law should make provisions so that relevant authorities – Auditor-General, police, Anti-Corruption Commission – have a way to access the data they might need to conduct their investigations.

5. There should be effective sanctions

A separate, independent organisation can monitor compliance with the asset dec-

⁴⁹ Ibid.

⁵⁰ Messick, “Regulating Conflict of Interest,” 2.

⁵¹ Ibid., 5.

⁵² Ibid., 6.

⁵³ Organisation for Economic Co-operation and Development, *Asset Declarations for Public Officials*, 16.

laration regime – but it will be unable to effectively enforce the system unless there are meaningful sanctions for noncompliance and misleading disclosures. Especially with the highest-ranked officials, instituting criminal sanctions can be very difficult – for example, parliamentarians in Namibia enjoy a special status where they are immune from certain forms of prosecution. However, the example of the NA's current code of conduct shows that Parliament may institute fines on its members; these fine amounts should be increased substantially so as to act as an effective deterrent. In other branches, a variety of disciplinary and administrative punishments may be sufficient, depending on the severity of the offence.

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