



SONA 2022 ... In one of his rare annual appearances in parliament, President Hage Geingob was in the National Assembly on 6 April 2022 to deliver his annual State of the Nation address.

Non-compliance and lax enforcement – State of MPs' assets register remains concerning

• FREDERICO LINKS and BRADLEY TJONGARERO

On or by 30 April every year all Members of the National Assembly must have submitted a declaration of their assets and interests to the Secretary of the National Assembly. However, non-compliance with and lax enforcement of this deadline has become a culture in the assembly. As in the case of complying with and enforcing political party funding rules, the National Assembly has not been proactive in upholding the rule of law.

A recent investigation of the register and MPs' declarations indicates that long-standing issues are no nearer to being resolved.

When the *Democracy Report* team requested to see the 2021/22 declarations of assets and interests of members of the National Assembly (NA) in late January 2022, it emerged that most of the MPs whose declarations were requested had not filed such declarations by then.

With the government's financial year drawing to a close at the end of March every year, the fact that 10 months through the 2021/22 financial year, many MPs had still not filed declarations suggested that the handling of the 'Register of Members' Interests' by the National Assembly secretariat remained a point for concern.

TO PAGE 2



On 31 January 2022, the *Democracy Report* team sent a list of questions to NA Secretary Lydia Kandetu about the state and management of the register. However, a response was only received on 22 April 2022, nearly three months later and despite a number of follow-ups. This brought into question the commitment to transparency and responsiveness to the public of the NA, as so often touted in speeches by the Speaker, Hon. Peter Katjavivi.

Questions sent to the National Assembly Secretariat

On 31 January 2022, the *Democracy Report* team emailed the following questions to the Secretary of the National Assembly, Lydia Kandetu:

1. Have all MPs disclosed their assets and interests [for the 2021/22 financial year]?
2. If not, why have some MPs not disclosed their assets and business interests?
3. When was the register of MPs' assets and business interests last updated?
4. What is the National Assembly (NA) doing to ensure compliance – in getting all MPs to disclose their assets and business interests?
5. How does the NA ensure that the register is an accurate reflection of MPs' actual assets and business interests?

Registering controversy

The disclosure of assets and interests by Namibian MPs has been a contentious issue for a very long time – almost since the Namibian Constitution was adopted and the very first parliament was sworn in, in 1990.

The Namibian Constitution, in Article 59(2)¹ states: “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.”

The Powers, Privileges and Immunities of Parliament Act (Act 17 of 1996) in section 22² deals with the disclosure of the interests of MPs in situations where a conflict of interest might arise during deliberations on matters being discussed in the assembly. However, the law does not adequately speak to the maintenance and management of a register of MPs' assets and interests.

Similarly, while section 128³ of the ‘Standing Rules and Orders and In-

ternal Arrangements' of the NA states that the Secretary of the National Assembly must maintain a “register of disclosure of interest”, it does not clearly articulate what this should look like.

In an attempt to clarify this, and to bring practice in line with the constitution, in November 2002 the National Assembly adopted a ‘Code of Conduct and Disclosure of Interests for Members of the National Assembly’.

The Code of Conduct makes detailed provision for a “Register of Members' Interests”, with a “Registrar” responsible for managing and maintaining this register. The “Registrar” is the Secretary to the National Assembly⁴.

The Code of Conduct states clearly in section 9(1): “All Members of Parliament upon being sworn in as members, must disclose their interest as contained in this code by signing the prescribed declaration and are obliged to adopt the principles of the code.”

Image 2

DISCLOSURE OF REGISTRABLE INTERESTS

9. (1) All Members of Parliament upon being sworn in as members, must disclose their interest as contained in this code by signing the prescribed declaration and are obliged to adopt the principles of the code.
- (2) A member must disclose to the Registrar, on the form prescribed for this purpose by the Committee, the details of all registrable interests as stipulated in clause 6.
- (3) Subject to sub-clause 1, the first disclosure must be made within 30 days of the opening of a new Parliament.
- (4) After the first disclosure, members must annually disclose particulars of their registrable interests on or before 30 April each year, unless the Committee decides otherwise.
- (5) Members must, during the reporting period, disclose any change in their registrable interests within 60 days thereof.
- (6) If a member has no registrable interests a “nil return” must be furnished.

In other words, MPs did not have a choice to comply or not, but had to, and the National Assembly secretariat had to enforce such compliance.

However, over the next decade or so and for most of the last 20 years, non-compliance and disregard has characterised the approach of many or most MPs to the Code and the declaration of assets and interests dispensation, while dysfunctional management and non-enforcement has marked the approach of the National Assembly secretariat.

In 2015 an attempt was apparently made to resuscitate the Code and compliance with interest disclosure measures.

In the very first issue of *Perspectives on Parliament*, published in October 2015⁵, it was reported that on 7 October that year “a new draft” of the ‘Code of Conduct and Disclosure of Interests for Members of the National Assembly’ was tabled for discussion in the assembly and was reportedly ‘adopted’ a week later in mid-October 2015.

It is unclear what became of this “new draft” Code, but from what was reported at the time it sounded like it was basically just an updating of the 2002 Code, with the same or almost similar disclosure measures and mechanisms.

To be clear, according to reports, the deadlines and interests to declare, as well as the penalties, sounded exactly the same as those in the 2002 Code, and the declaration form still in use in 2021/22 reflects the disclosure prescriptions provided in the 2002 Code.

Tellingly, it was reported that the ‘adopted’ “new code” was never made public during and after it had been discussed in the National Assembly.

Image 1

22. (1) A member shall not in Parliament take part in any proceedings in which such member has any interest, whether direct or indirect, which precludes him or her from performing his or her functions as a member in a fair, unbiased and proper manner.
- (2) If at any stage during the proceedings in Parliament it appears that a member has or may have an interest which may cause a conflict of interests to arise on his or her part, that member shall forthwith fully disclose the nature of his or her interest.
- (3) A disclosure contemplated in subsection (2) shall be recorded in the journals of the House or the minutes of the committee concerned, as the case may be.
- (4) Subsection (1) shall not apply to any deliberations or vote on any matter concerning the remuneration or allowances or other benefits to be received by members in their capacity as members.
- (5) In the event that a member fails to comply with subsection (2), the House may, after investigation and recommendation by the Committee of Privileges in terms of section 12, take such disciplinary action against such member as it may deem appropriate in accordance with its Standing Rules and Orders.

¹ The Namibian Constitution can be accessed here: <https://www.lac.org.na/laws/annoSTAT/Namibian%20Constitution.pdf>

² The law can be accessed here: <https://www.lac.org.na/laws/annoSTAT/Powers%20Privileges%20and%20Immunities%20of%20Parliament%20Act%2017%20of%201996.pdf>

³ The Standing Rules and Orders and Internal Arrangements can be viewed here: <https://www.parliament.na/wp-content/uploads/2021/08/SROs-booklet.pdf>

⁴ The Code can be viewed here: https://publicofficialsfinancialdisclosure.worldbank.org/sites/default/files/assets/law-library-files/Namibia_MP%20Code%20of%20Conduct%20and%20Interest%20Disclosure%20Law_2002_en.pdf

⁵ The very first *Perspectives on Parliament* can be accessed here: <https://ippr.org.na/wp-content/uploads/2015/11/Parliamentary%20Perspective%20-%20Asset%20Declarations.pdf>

FROM PAGE 2

Almost seven years since the 'adoption' of the "new draft" Code and nearly 20 years since the adoption of the original 'Code of Conduct and Disclosure of Interests for Members of the National Assembly' the situation remains as murky as ever.

When in early April 2022 a pointed request was made to a National Assembly communications official for the latest 'Code of Conduct and Disclosure of Interests for Members of the National Assembly', all that was returned was a copy of the 'Standing Rules and Orders and Internal Arrangements'.

However, in her response received on 22 April 2022, NA Secretary Kandetu clearly referenced the Code in laying out MPs' interest declaration obligations.

While over the last two decades much has been said and reported about the state of compliance with MPs' interests declarations and the dysfunctional enforcement of such measures, it has never been appropriately and coherently explained why it has been so difficult for MPs to comply or for the National Assembly secretariat to enforce compliance.

What they must declare

The publicly available register of National Assembly MPs' assets and interests should contain the following information:

1. Shares and Other Financial Interests
2. Remunerated Employment Outside Parliament
3. Directorships and Partnerships
4. Consultancies / Retainerships
5. Sponsorships
6. Gifts and Hospitality
7. Benefits
8. Travel
9. Land and Property
10. Pensions
11. Trusts

Culture of non-compliance

On 27 January 2022, the *Democracy Report* team requested to view the 'Register of Members' Interests' for the 2021/22 financial year and on 31 January 2022 the team was provided access to the register.

The team had identified 14 senior MPs (see 'MPs under the spotlight') and party leaders whose declarations would be inspected.

On that day, out of the 14 MPs chosen for inspection, the team only found the declarations of six MPs. The submissions of the six available declarations were all dated in November 2021, more than six months after the deadline of 30 April 2021.

The declarations that were available for inspection were those of the following MPs: Hon. Bernadus Swartbooi (LPM); Hon. Jan Mukwilingo (NEFF); Hon. Tangeni Iijambo (SWANU); Hon. Gothard Kandume (CDVP); Hon. Frans Kapofi (SWAPO); Hon. Doreen Sioka (SWAPO).

Notably, the 2021/22 declarations of Namibian Prime Minister, Hon. Saara Kuugongelwa-Amadhila (SWAPO), and leader of the official opposition, Hon. McHenry Venaani (PDM), could not be found and viewed on that day. The same was true for finance minister, Hon. Iipumbu Shiimi, and agriculture minister, Hon. Calle Schlettwein.

According to a *New Era* newspaper report⁶ on 17 February 2022, Venaani's declaration was viewable by then. When the *Democracy Report* team did a follow up viewing of the register in mid-April 2022, it emerged that both Kuugongelwa-Amadhila and Venaani had only submitted declarations in early February 2022.

The *New Era* report also stated that a number of MPs had failed to declare anything for the 2021/22 financial year up to that point. In fact,

the *Democracy Report* team could only find the declarations of 66 MPs, out of 104, for the past financial year.

So, 38 MPs had simply not bothered to file interest declarations.

The *New Era* report also mentioned the vocal refusal of Hon. Utoni Nujoma (SWAPO), the Namibian Minister of Labour, Industrial Relations and Employment Creation, to comply with assets and interest declaration rules.

The undermining of rules governing transparency and accountability in parliament by parliamentarians, political parties and parliamentary officials is akin to players and match officials making up and disregarding rules of a game as and while they play it – the continued deference to politicians and political parties to passively self-regulate their own conduct is clearly not bearing fruit and not conducive to setting the tone at the highest levels on integrity.

The non-compliance, lax enforcement and mishandling of the parliamentary Code of Conduct and the assets and interests declaration dispensation are another clear example of how systems, processes and institutions are failing Namibians on transparency and accountability.

Why this matters

On 30 April 2022, all National Assembly MPs must have submitted accurate and complete interest declaration forms. The 2022/23 'Register of Members' Interests' should then be publicly available for anyone to inspect on normal working days, during office hours, within 60 days after 30 April 2022. So, the interest declarations in the public register of all National Assembly MPs should be viewable as from 1 July 2022.

However, many or most MPs do not adhere to these deadlines and non-compliance with constitutional and lawful prescripts has become the culture in a body that exists to make and uphold the laws of Namibia.

MPs under the spotlight

On 31 January 2022, the *Democracy Report* team viewed the financial year 2021/22 assets and interests declarations of the following 14 MPs at the National Assembly secretariat:

1. Erastus Shuumbwa, All People's Party (APP);
2. Bernardus Swartbooi, Landless People's Movement (LPM);
3. Jan Mukwilingo, Namibia Economic Freedom Fighters (NEFF);
4. Ester Muinjangu, National Unity Democratic Organisation of Namibia (NUDO);
5. McHenry Venaani, Popular Democratic Movement (PDM);
6. Mike Kavetora, Rally for Democracy and Progress (RDP);
7. Mathias Mbundu, Republican Party of Namibia (RP);
8. Tangeni Iijambo, SWANU;
9. Gothard Kandume, Christian Democratic Voice Party (CDVP);
10. Saara Kuugongelwa-Amadhila, SWAPO of Namibia;
11. Frans Kapofi, SWAPO of Namibia;
12. Doreen Sioka, SWAPO of Namibia;
13. Calle Schlettwein, SWAPO of Namibia;
14. Iipumbu Shiimi, SWAPO of Namibia.

Recommendation

Using the 'Code of Conduct and Disclosure of Interests for Members of the National Assembly' as a basis, a process of multi-stakeholder and country-wide consultations should be undertaken to get Namibians' views on what sort of ethics system should be installed to optimally monitor the assets, interests and incomes of elected representatives at all levels of state.

⁶ See the report here: <https://neweralive.na/posts/farms-flats-and-wine>



EMPTY BENCHES ... The absence of MPs and lack of a quorum has reared its head again in the National Assembly (NA). On 23 March 2022 the NA Chamber was nearly empty, as MPs failed to show up for the day's sitting and some disappeared after the mid-afternoon break. The 23 March no-show of many MPs followed a similar situation on 17 March 2022, when the lack of a quorum prevented the NA from voting on matters that had been scheduled for a vote that day.

Getting to know ... The Enhancing Participatory Democracy in Namibia (EPDN) project

• ESTHER SHAKELA

Since July 2020 the Enhancing Participatory Democracy in Namibia (EPDN) project has been running at parliament.

The EPDN project, which runs until June 2025, is a partnership between the Namibian government and the European Union and seeks to ensure that civil society organisations (CSOs) and parliament have increased capacity to collaborate and coordinate in the oversight of public policies and programs, as well as in their implementation.

On 24 and 25 January 2022, a workshop was held under the EPDN project to discuss collaboration between CSOs and parliament. The meeting was attended by various CSOs and parliamentary staff.

The workshop consisted of sessions on public participation in parliamentary work and access to standing committees; giving CSOs an overview of the parliamentary oversight framework; requirements for effective parliamentary oversight and understanding the role of the CSOs in parliamentary oversight and how to develop and foster a partnership with parliament.

Parliamentary oversight is the review, monitoring and supervision of government and public agencies, including the implementation of policies and legislation. It is notable that a condition of effective policy delivery is to improve the transparency of government operations and to enhance public trust. On the first day of the two-day meeting, the Secretary of the National Council remarked that parliament could not do it alone and emphasised the importance of CSOs in providing oversight from outside.

The information sharing sessions were aimed at enriching the understanding of the representatives of CSOs, whose questions were centred on the composition of the standing committees and their effectiveness in carrying out their duties. It became clear that most CSOs lacked understanding of how parliament practically worked and this found expression in the kind of questions asked of parliamentary staff.

On the second day of the meeting, one of the salient issues that emerged was the need for or establishment of an umbrella body for CSOs – in the wake of the collapse of the Namibian NGO Forum (NAN-GOF) over the last decade – which was discussed in depth, among other topics, on day two of the workshop that was only attended by the CSO representatives.

Discussing the issue against the backdrop of a draft concept note compiled by the Office of the Ombudsman, there was general agreement that it would be prudent for such a body to be established, but also that CSOs needed to take charge of establishing such a body in order to ensure that such a body ultimately served the interests of CSOs.

The EPDN project organisers have indicated that they are set to conduct field work and public meetings to determine the feasibility of an umbrella body for CSOs countrywide and to consult on the Government of the Republic of Namibia – Civic Organisations Partnership Policy (GRN-COPP).

Representatives of the various CSOs also received a guided tour of the National Assembly and National Council during the two-day event.

The *Democracy Report* team will monitor and provide updates on the activities of the EPDN project.