



FOR CIRCULATION

Assets Declaration and Liabilities Bill

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Botswana is party to the **United Nations Convention against Corruption (UNCAC)**, which has developed income and interest declaration systems that fall into 3 category systems:

1. Systems solely aimed at managing conflict of interest.
2. Systems designed to identify an inexplicable increase of wealth of public officials.
3. Dual purpose systems that aim to achieve both of the above mentioned purposes.

Article 8 paragraph 5 of the Convention requires States Parties to endeavour, where appropriate and in accordance with the fundamental principles of their 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. The purpose of an asset and interest disclosure regime is therefore to avoid potential conflicts where appropriate. Many systems also seek to ensure that corrupt public officials will not be able to conceal the proceeds of any illegal activity (UNODC, 2018).

"Asset declarations of public officials are a powerful tool to prevent corruption, detect illicit enrichment and conflicts of interest."

Asset declarations of public officials are a powerful tool to **prevent corruption, detect illicit enrichment and conflicts of interest**. **Illicit enrichment** is criminalized under Article 20 of the United Nations Convention against Corruption (UNCAC), which defines it as the "significant increase in the assets of a public official that he or she cannot reasonably

explain in relation to his or her lawful income. Conflict of interest is a situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity.

"Corruption is a threat to national security, economy and the wellbeing of people."

African Union Convention on Preventing and Combating Corruption (AUCPCC): adopted on 11 July 2003 and entered into force on 5 August 2006, addresses several aspects of corruption, including concealment of property by public officials and illicit enrichment. **Article 7** of the Convention expressly establishes that:

"In order to combat corruption and related offences in the public service, State Parties commit themselves to:

1. 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.
2. Create an internal committee or a similar body mandated to establish a code of conduct and to monitor its implementation, and sensitize and train public officials on matters of ethics.
3. Develop **disciplinary measures and investigation procedures** in corruption and related offences with a view to keeping up with technology and increase the efficiency of those responsible in this regard."

In light of what has been exposed of corruption in the country recently, asset declaration, declaration of interests and financial disclosures couldn't be more needed. The scandals show that corruption is a threat to national security, economy and the wellbeing of people. The web of corruption, the money stolen and used by a few at the expense of the poor majority and unemployed youth, threaten the socio-economic growth of our nation. In Malaysia, in 2014, political parties were ranked the



most corrupt among six key institutions, ahead of the police and civil servants. This could be the case in Botswana, seeing how many politicians are implicated in the recent corruption scandals. This explains why asset declaration is critical for those elected into power.

According to the Transparency International Helpdesk report

"Even though Botswana has tremendous growth since independence, some researchers argue that the regime has created a state that benefits a small minority with deeply entrenched patronage networks and a blurred line between public and private interests. There is a perception that corruption in Botswana is condoned for small elite. Having access to power, the elite have opportunities to significantly influence the state's decision making processes to their own advantage. They also have the ability to stifle anyone that tries to emulate them, by using the laws in place to neutralize them. According to TI nepotism and patronage, *tenderpreneurship* and conflict of interests have crept into the Botswana society, and petty and bureaucratic corruption continues. It is posited that corruption has evolved to more serious white collar crime that involves senior private business leaders, those in government and senior public servants".

Asset declarations, declaration of interests, and financial disclosures have become fundamental tools for anti-corruption agencies and/ or governments for fighting corruption. However, the laws and rules must be clear and explicit as to how declarations are to be made, who has access (**ideally the public**), the review process and filing processes. Effective disclosure systems can be an essential element in both preventing the theft of assets as well as in detecting and prosecuting those who have stolen money, enriched themselves

illicitly, used their positions to access information on contracts and benefitted *etc.*

While eradicating corruption completely is principled, the path towards achieving anything close to such ideals begins with transparency and integrity in all aspects. It is consequently, imperative for the Masisi Administration to gazette laws to make public asset declaration a mandatory practice for all Ministers, Executive Committees, high ranking public servants, all Member of Parliaments, Board Members of State Owned Enterprises (SoEs), CEOs of SoEs among others, basically, all elected, appointed officials and senior managers in the civil service, as well as their spouses and dependent children.

The importance of asset declarations are as follows.

- Prevents conflict of interest amongst public officials;
- Allows public scrutinization, through auditing methods;
- Reduces the ability for leaders to abuse power;
- Builds trust amongst citizens and governments;
- Prevents illicit enrichment;
- Prevents false accusations of wealth;
- Holds politicians and public servants accountable to the public.

Recommendations

It is well and good to enact a law on asset declaration. However, if this law is to be effective, complementary laws such as Access to Information and Freedom of Information are a must, and it should actively promote accountability- otherwise it will come off as a mere compliance procedure. Additionally, the following must be taken into consideration:

1. The push for making public asset declaration must be a prerequisite to become a Member of Parliament, Councillor and candidate for high positions (IEC must upload this on their website as part of Voter Education on Candidates background).



2. An independent external body must be appointed to audit all declarations at the start of every Parliamentary term in order to aid the transparency of these declarations. It is postulated that this ensures that all declarations are made truthfully, and any identifications of unscrupulous financial activities can be brought forward for investigations.
3. We should strive to achieve public transparency by explicitly asking for asset declaration to be made public. In addition, it must be recognized that pushing for asset declaration would be pointless if the declaration methods are not standardized and active auditing is not practiced.
4. Asset declarations should be monitored and reported vigilantly to the Parliament of Botswana to ensure that all audits and reportings are neutral and impartial.
5. The monitoring of asset declarations can be done with the establishment of a **standing committee** that oversees asset declarations and government transparency. For example, in the United States asset declarations are monitored by the Select Committee of Ethics of the Senate.
6. E- declaration; propose **now** a digital based declaration system

It has been determined that 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 Bill must from the beginning 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.

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