



ETHICS AND INTEGRITY DIRECTORATE

Introduction

The *Declaration of Assets and Liabilities Act, No 12 of 2019* as amended by Act No.1 of 2020 is enacted to make provision for the declaration of interests, income, assets and liabilities of certain categories of persons; to monitor the interests, income, assets and liabilities of those persons for the purposes of preventing and detecting corruption, money laundering and the acquisition of property from proceeds of any other offence, and for matters connected therewith or incidental thereto. The Act established the Ethics and Integrity Directorate as the regulatory body under section 4.

The Act provides a list of people it applies to, including high governmental positions such as the president, national assembly, judges, all senior civil servants at deputy director level and above, state-owned enterprise executives, judges, *heads* of private enterprises and others as may be prescribed are affected by the law. The act provides for declaration of the interest, income, assets and liabilities of his or her spouse and children under the age of 18 years.

The law provides that all the declarations remain with the Director General of the Directorate, disclosure of which, by journalists, for instance, is punishable by a P500 000.00 fine or imprisonment of up to nine years. Section 17(1) provides that a person subject to this act who has not filed their declaration by the end of the period specified under section 16, commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding ten years, or to both. A declaration shall be made every 24 months after the first declaration.

THE IMPORTANCE OF ASSET DECLARATIONS

The declaration of interests, income, assets and liabilities of certain categories of persons is essential for the purposes of preventing and detecting corruption, money laundering and the acquisition of property from proceeds of any other offence, and for matters connected therewith or incidental thereto. The declaration of assets and liabilities is a fundamental tool to enhance transparency and accountability to prevent corruption, prevent false accusations of wealth, detect illicit enrichment and conflicts of interests. It prevents conflict of interest amongst public officials. Reduces the ability for leaders to abuse power and holds politicians and public servants accountable to the public; it fosters trust and responsibility amongst citizens and their democratic governments.

Ethics and Integrity Directorate

Section 4 of the Act stipulates that there shall be a Director General who shall be a public officer and accordingly, the provisions of the Public Service Act shall with such modifications as may be necessary, apply to the Director-General and to officers of the Directorate. It further purports to provide independence of the Directorate by stipulating that the Directorate shall not, in the performance of its functions, be subject to the direction or control of any other person or authority.

As is the case in many of the democratic institutions in Botswana, the Director-General shall be appointed by the President. The provision however makes an addition that such



appointment be on such terms and conditions as the President may, on the recommendation of the Minister, determine¹. Many scholars have highlighted the appointment of all significant democratic institutions being placed on the President raises concerns on the independence of said institutions. The tenure of office is set by the Act at a five year renewable term or until he or she attains the age of 60 years, whichever is earlier. The Act further provides for removal from office of the Director General for reason of (a) inability to perform the functions of his or her office arising from infirmity of body, mind or any other cause; (b) gross misconduct; or (c) incompetence. The provisions of section 113(3), (4) and (5) of the Constitution shall apply with necessary modifications to the removal of a person holding office of Director-General². The aforesaid provision speaks on removal for inability to perform the functions of his or her office or for misbehaviour or for incompetence and shall not be so removed, it further provides that if the President considers that the question of removing a person holding the office of Director of Public Prosecutions from office ought to be investigated then the president shall appoint a Tribunal to determine removal. The provision provides that the President shall remove the person from office, wording indicating that the President is obligated to act on the advice.

Functions of the Directorate & Director General

The Director-General shall be responsible for the direction and administration of the Directorate. Section 10 (1) provides for the functions of the Directorate as follows

- a) promoting and reinforcing integrity and accountability in public office;
- b) receiving and analysing declarations and verifying any information contained in such declarations;
- c) issuing of notices to any person to whom this act applies;
- d) the safe custody of declarations made in accordance with this act;
- e) monitoring the assets and liabilities of any declarant for the purposes of detecting corruption, money laundering or the acquisition of property from proceeds of any other offence;
- f) identifying persons who fail to submit a declaration;
- g) detecting false or incomplete declarations; and
- h) imposing any administrative penalties under section 16.

Section 10(3) further goes into detail on the functions of the Directorate as follows:

- a) identify areas of public duty in which significant conflict of interest issues are likely to occur;
- b) develop guidelines on conflict of interest;
- c) develop a code of ethics and oversee the enforcement of the code of ethics;
- d) investigate complaints on any breach or likely breach of this Act or code of ethics;
- e) work with other entities in the development and promotion of standards and best practices to promote ethical conduct;
- f) cooperate and collaborate with other entities in the prevention of unethical conduct;
- g) raise public awareness and educate the public on unethical conduct and any other matter within its functions;

¹ Section 5 of DECLARATION OF ASSETS AND LIABILITIES Act 2019 as amended in 2020

² Ibid



- h) establish and maintain a register of declarations of interests, income, assets and liabilities in such form as may be prescribed;
- i) establish a public registry of declarations of interest, income, assets and liabilities which shall allow unrestricted access to the following information —
 - i) list of persons subject to the Act who submitted declaration on time,
 - ii) list of persons who have received a notice under section 10 (1) (c) and have not complied with the notice, and
 - iii) list of persons subject to this Act who have been subjected to penalties under sections 16 and 17;
- j) remove from the register, the name of any person who has made a declaration under this Act upon the Act ceasing to apply to the person;
- k) advise, on its own initiative any person on any matter within its functions; and
- l) enforce compliance with this Act.

Powers of the Director General

The powers of the Director General are stipulated under Section 11 of the act and include conducting an inquiry on its own initiative in relation to any unethical conduct including false or incomplete declarations; institute an inquiry into alleged or suspected non-compliance with the Act; require any person in writing to produce within a specified time, any information, document or answer any questions which the Director-General considers necessary relating to any declaration made by any person; require any person who has made a declaration to amend, within 30 days, any declaration that is procedurally or substantively defective; and perform such other acts as are reasonably necessary or required. Section 20 indemnifies the Director General or an officer from any matter of thing done or omitted to be done by the Director General or an officer if it is bona fide in the course of their work. The power to make regulations prescribing anything under the Act is not conferred on the Director General instead is conferred on the Minister.

Non-compliance with requests to provide any information or answering questions or wilfully providing false information is punishable to a fine not exceeding P30 000 or to imprisonment for a term not exceeding five years, or to both. Notably Section 17 provides that a person who has not filed their declaration commits an offence shall be subject to a fine of P500,000.00 of imprisonment for a term not exceeding 10 years.

Challenges and limitations

A key essential for asset declarations is ensuring that the declarations are available for public scrutiny, as public access to the declarations enhances the anti-corruption interventions. Section 15 of the act prohibits unauthorised disclosure of information to any person to whom decoration is made, such confidentiality shall subsist even after the termination of his or her term of office. Notably disclosure of the declaration is punishable by law carrying a P500 000.00 fine or imprisonment of up to nine years. What is more alarming is that Section 19 stipulates that a third party who discloses the information shall be liable to a fine not exceeding P1000,000.00 or to imprisonment for a term not exceeding five years, or both. It is crucial to ensure that the fourth estate (the media), civil society and indeed the public have unfettered access to information when they require it, to track suspicious assets. The lack thereof is widely criticised as it promotes secrecy that undermines the need to enhance transparency and accountability in a country's financial sector. It is argued that



public accessibility to the declarations strengthens an ecosystem of interconnected checks and balances by ensuring access of information. This ecosystem could further be aligned to and strengthened by data privacy laws to prevent emboldened breaches of personal customer information. However, it is notable that Botswana does not follow this approach of public access, instead sanctions are placed for dissemination of declarations made.

Notably, the declaration of assets and liability is often argued to conflict with the right to privacy and data protection of the disclosing parties, therefore a balance of the two has to be established. Recognizing that corruption, money laundering and terrorism financing are a threat to national security therefore the rights argued for should be and can be restricted or interfered with, on the legitimate basis of public interest.

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. Since its establishment the EID is yet to get its gears rolling as expected to, which one could probably attribute to lack of the aforesaid required resources.

Recommendations

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: 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).

The EID should be provided with the independence it requires to execute its mandate, as well as to align with democratic expectation to have such institutions have all manner of independence. Furthermore, it should be capacitated financially, technically and human resource wise, to deal with its work. From the actions of the EID thus far, there seems to be a lack of proper public relations as evidenced by among others, their conduct in the 2023 round of asset declaration. November 2023 was scheduled for the declaration of assets, of which the EID neither publicised nor responded to enquiries about³. While the Act is (wrongfully) clear on the need to keep declarations confidential, there is no provision that accounts for the hostility and defence of the EID, around and about the entire process and time of asset declaration. 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.

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 standardised and active auditing is not practised. Asset declarations should be monitored and reported vigilantly to the parliament of

³ <https://www.thegazette.news/news/president-mps-to-declare-their-assets-next-month/>



Botswana to ensure that all audits and reporting are neutral and impartial. The monitoring of asset declarations can be done with the establishment of a standing committee that oversees asset declarations and government transparency.

Conclusion

Botswana's ethics and integrity directorate, like Botswana's other oversight institutions, is a good mark in terms of the *establishment* of democratic institutions. Like the other oversight institutions again however, its efficiency is limited by provisions around its creation and capacitation. The most crippling of these provisions, section 15, calls for the confidentiality of declarations, barring their being made available to the public "without authorization." At the core of the creation of asset declaration mechanisms is the need for the public to be aware of the interests, liabilities and assets of high ranking officials, so that they are better placed to spot instances of corruption and/or abuses of power. As it stands, Botswana's law is hindered at its very foundation. This, added to the confused and hostile attitude of the office to public enquiry and scrutiny essentially makes Botswana akin to countries that do not have asset declaration laws.