

# **ASSET DECLARATIONS IN LEBANON ILLICIT ENRICHMENT AND CONFLICTS OF INTEREST OF PUBLIC OFFICIALS**

Transparency International is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

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ISBN: 978-3-96076-012-2

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# INTRODUCTION

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## EXECUTIVE SUMMARY

Four years after unprecedented change rocked the Middle East and North Africa, many Arab governments and their citizens are finishing the chapter on revolution and writing a new one on reconstruction. Among the most important topics fuelling the call for change has been the salience of corruption among public officials, which diverts money from public programmes, has a significantly negative impact on development and has entrenched non-democratic leaders securely in power. The revelation that more than an estimated US\$160 billion<sup>1</sup> in public money was stolen by regime officials in Egypt, Libya, Tunisia and Yemen sounds the alarm for action to end impunity. As the region takes the first steps in building institutions for good governance, asset declaration laws are a key to promoting honest leadership, government accountability and social trust.

Asset declaration laws require public officials to declare all sources of income, as well as assets such as savings accounts and investments. Legally increasing government transparency can reveal graft and conflicts of interest, and they serve as a powerful deterrent to prevent corruption before it starts. Practical experience has shown that implementing a comprehensive asset declaration system helps deny the corrupt the fruits of their actions and, if properly enforced, can be an effective tool in strengthening integrity and accountability.

So far, countries in the Middle East and North Africa (MENA) have not met most of the standards put forth by the United Nations Conference against Corruption (UNCAC). Declaration requirements have fallen significantly short and there remains a large gap between law and practice. The MENA region continues to have the highest trend rate of growth of illicit financial flows in the world, with an average increase of 31.5 per cent every year throughout the decade ending in 2011.<sup>2</sup>

In order to facilitate greater integrity in the MENA region, Transparency International has commissioned this report as a peer-reviewed Scoping Paper examining current best practices in asset disclosure systems. Original research provides an evidence base for a comparative view of country-level systems via National Reports in Egypt, Lebanon, Libya, Morocco, Palestine, Tunisia and Yemen, as well as a Regional Report covering all the countries listed.

## TRANSPARENCY INTERNATIONAL'S ROLE

Transparency International's focus on MENA is part of a global drive to end corruption and promote integrity in government. The global campaign focuses on increasing transparency via declarations of interest and assets to end impunity and make transferring the illicit gains of corrupt officials more difficult. The importance of tracking illicit enrichment and conflicts of interest is only the start of the process of establishing a standard, universal model of declaration of interests and assets. In MENA,

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<sup>1</sup> Transparency International takes "billion" to refer to one thousand million (1,000,000,000).

<sup>2</sup> D. Kar and B. LeBlanc, *Illicit Financial Flows from Developing Countries: 2002-2011*

(Washington: Global Financial Integrity, 2013), p.10. Retrieved from

[http://iff.gfintegrity.org/iff2013/Illicit\\_Financial\\_Flows\\_from\\_Developing\\_Countries\\_2002-2011-LowRes.pdf](http://iff.gfintegrity.org/iff2013/Illicit_Financial_Flows_from_Developing_Countries_2002-2011-LowRes.pdf).

we focus first on advocating for the adoption and enforcement of national asset disclosure systems that are robust and legally based.

## ASSET DISCLOSURE SYSTEMS IN ANTI-CORRUPTION

The disclosure of assets is increasingly being seen around the globe as a key tool in combating corruption. Although asset declarations have been utilised as an anti-corruption tool on a larger scale since the 1970s, the topic acquired renewed international focus with the passage of UNCAC, adopted by the UN General Assembly in 2003. UNCAC created an international legal basis for states to require public officials to declare their assets.

Articles 8(5) and 52(5) of UNCAC call on countries to adopt legislation that requires public officials to declare their assets. Together with the convention's provisions on international cooperation, the focus on assets created a genuine basis for governments to identify and track assets, and recover them if they are determined to have been stolen. UNCAC provided an impetus for the international donor community's global anti-corruption efforts in instituting or refining national legislation on asset declarations for politically exposed persons. Furthermore, the African Union, Arab, and inter-American conventions against corruption contain similar provisions on financial declarations by public officials (Article 7, Article 28, and Article III, respectively). The Council of Europe's Group of States against Corruption (GRECO) has been issuing recommendations on asset disclosure systems since 1999, and the Organisation for Economic Co-operation and Development (OECD) and World Bank have contributed to the ongoing process of standard setting by publishing handbooks in 2011 and 2012 (*Asset Declarations for Public Officials: A Tool to Prevent Corruption*<sup>3</sup> and *Public Office, Private Interests: Accountability through Income and Asset Disclosure*<sup>4</sup>). In 2013, the Organization of American States published the *Model law on the declaration of interests, income, assets and liabilities of persons performing public functions*.<sup>5</sup> The Group of 20 leading economies (G20) adopted High Level Principles on Asset Disclosure by Public Officials in Los Cabos in 2012.<sup>6</sup> Finally, in October 2014, the Western Balkan countries adopted the first international standard on asset declarations.<sup>7</sup>

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<sup>3</sup> OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (OECD Publishing, 2011). Retrieved from [www.oecd.org/corruption/anti-bribery/47489446.pdf](http://www.oecd.org/corruption/anti-bribery/47489446.pdf)

<sup>4</sup> The World Bank, *Public Office, Private Interests: Accountability through Income and Asset Disclosure* (Washington D.C.: World Bank, 2012), p.10. Retrieved from [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/03/23/000333037\\_20120323003424/Rendered/PDF/676270PUB0EPI0067882B09780821394526.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/03/23/000333037_20120323003424/Rendered/PDF/676270PUB0EPI0067882B09780821394526.pdf)

<sup>5</sup> [www.oas.org/juridico/PDFs/model\\_law\\_declaration.pdf](http://www.oas.org/juridico/PDFs/model_law_declaration.pdf).

<sup>6</sup> [https://star.worldbank.org/star/sites/star/files/los\\_cabos\\_2012\\_high\\_level\\_principles\\_on\\_asset\\_disclosure.pdf](https://star.worldbank.org/star/sites/star/files/los_cabos_2012_high_level_principles_on_asset_disclosure.pdf)

<sup>13</sup> Regional School of Public Administration, *Western Balkan Recommendation on Disclosure of Finances and Interests by Public Officials*, 2014 (Danilovgrad: ReSPA, 2014). Retrieved from <http://respaweb.eu/11/library#respa-publications-and-research-18>.

# 10 PRINCIPLES FOR AN EFFECTIVE ASSET DISCLOSURE SYSTEM

Consistent with international standards (see previous chapter) and the Preventive Measures for governments outlined in Chapter III of the UNCAC, Transparency International identified 10 principles for an effective, legally based asset disclosure system based on its previous publications in this area:<sup>8</sup>

## I. LEGAL BASIS AND PURPOSE

Asset declarations are an effective tool in preventing corruption as well as an instrument in facilitating the detection, investigation and possible prosecution of corruption and accumulation of illicit wealth of public officials. For this, a sound legal basis is required, and the law should make a clear statement that asset declarations serve dual purposes: to detect both illicit enrichment and conflicts of interest.

## II. DECLARATION CONTENT

The information required for detecting illicit enrichment should capture all essential financial flows, including on the incoming side all sources of income, received loans and gifts; on the side of outgoing financial flows this includes immovable assets such as houses, moveable objects such as vehicles, jewellery and fine art, and financial assets such as cash, domestic and foreign bank accounts, stocks or bonds. Most of the information relevant for illicit enrichment will also reveal possible conflicts of interest: information on an outside employment will indicate generated income but also point to potential conflicts of interest; the case of financial assets, such as shares in a company, is similar. However, there are also non-financial interests such as (unremunerated) corporate board memberships, which are only relevant in the context of conflicts of interest.

## III. COVERAGE OF OFFICIALS

An effective asset declaration system should cover all public officials at risk for corruption. This includes senior executive office holders (ministers, deputy ministers, commissioners, agency heads); legislators; judges at all court levels; prosecutors; and any civil servants with some decision-making power. This should include not only national-level officials but also those at the sub-national level, where local authorities are entrusted with decision-making. Additionally, the asset declaration should also cover at least members of the immediate family and/or household members, as otherwise public officials can hide illicit income and assets behind them.

## IV. SUBMISSION OF DECLARATIONS

Asset declarations should be required when a person first assumes public office, to establish a baseline for any future accumulation of assets during their tenure. Regular, periodic updates should be made. The obligation to report should extend beyond the individual's tenure in post to capture deferred enrichment. As much as possible, submission of declarations should be done online. The online availability of data greatly facilitates automated analysis as well as later publication of the information.

## V. VERIFICATION

An effective verification system concerns the verification of submission of declarations, as well as their formal accuracy. As for detecting illicit enrichment, it includes a financial audit. This requires

<sup>8</sup> Transparency International, *Local Governance Integrity: Principles and Standards* (Berlin: Transparency International, 2015), pp.10-16.

access to state databases as well as to privately held information such as company or banking data. It will also entail on-site inspections of assets in single cases and the possibility to make enquiries of witnesses, if only for voluntary information. All declarations should be subject to submission and formal verification. Declarations subject to a financial audit should be chosen by a random sample as well as by risk criteria.

#### VI. OVERSIGHT BODY

An oversight body needs to be in place with sufficient resources to control declarations. This includes staff with competency on conflicts of interest as well as financial expertise in detecting hidden cash flows. The oversight body should also have access to publicly available data, or data that private individuals provide on a voluntary basis, and should have the option of (outside) inspections of assets in individual cases. The oversight body also needs up-to-date information technology to support online submission, processing and publishing of the data.

#### VII. COOPERATION

The oversight body cooperates with tax police and other police units, the prosecution services and financial intelligence units, so that these units can further trace down hidden cash flows, possibly with compulsory measures. Oversight bodies should also be obliged to notify other state bodies on any suspicion of a criminal, administrative or disciplinary offence. For undeclared income, the two most frequent offences are tax evasion and money laundering.

#### VIII. PUBLIC ACCESS

Experience shows that most successful investigations are triggered by complaints of citizens, NGOs or journalists with knowledge about the true situation of an unfaithful public official. Therefore, asset declarations should be publicly available online. Paper-based access only is too much an obstacle for research. Personal contact details, such as addresses and plate numbers of cars, can be redacted. The oversight body should also publish a regular overview of its activities and information on investigated cases.

#### IX. SANCTIONS

Failure to produce timely, complete and accurate declarations should at a minimum subject the filer to effective, proportionate and dissuasive sanctions. Criminal sanctions should apply to the most egregious offences – in particular, intentional errors or omissions. Should it turn out that public official was hiding a substantial amount of wealth, the sanction must include forfeiture of the hidden assets.

#### X. CIVIL SOCIETY

The oversight body should reach out to NGOs and the public at large, and publish regular reports containing inter alia case statistics and an analysis of trends. The internal procedures of the oversight body should be as transparent as possible to the public. Representatives of the public should have the opportunity to participate in, consult on and monitor the work of the oversight body.



# ASSET DISCLOSURE IN LEBANON

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## LEGAL BASIS AND PURPOSE

Lebanon's asset declaration system goes back to **1953**: Legislative Decree No. 38 of 18 February 1953 (Law "On Illicit Enrichment") as amended by Law of 14 April 1954 required certain state employees and public service providers to declare their assets. The Law, which came to be known as the Law "From where did you get this [wealth]?", was never implemented, despite persistent appeals by some members of parliament, the mass media and intellectuals.<sup>9</sup> Repeated calls for reforms resulted in the current Law No. 154 of 27 November **1999** "On Illicit Enrichment" (Annex II). Its Chapter 2 regulates asset declarations. The Constitution itself does not contain provisions on asset declarations.<sup>10</sup>

The disclosure system of the Law is clearly focused on **one purpose** only, detecting **illicit enrichment**, leaving conflicts of interest aside. While the Constitution and other laws foresee some basic conflicts of interest provisions, they do not require any disclosure.<sup>11</sup>

## DECLARATION CONTENT

For detecting illicit enrichment, one assesses the lifestyle of a public official by adding up all assets he/she owns. Then, in a second step, one adds up all legal income a public official has. If the income does not match the lifestyle, there is at least a suspicion that this public official has hidden sources of income. Regularly, these would result from corrupt sources. Compared to a full picture of incoming and outgoing financial flows of a public official, Lebanon's asset disclosure system requires disclosure only of the following financial items:

"Movable and immovable funds [...] along with the number of each real estate and the real estate zone; movable property; all and any financial receivables and contracts"

Broadly understood, this could mean a lot: a "financial contract" could be any contract involving the flow of money, such as employment contract, rent, leasing, purchasing, gifts, investments, loans, etc., but not an inheritance or a trove. However, serious question marks remain: a current draft law aimed at reforming the asset declaration system reportedly introduces declaration of incoming financial flows (see below "Addendum"). There would be no need for such a reform if incoming financial flows were already included. "Movable funds" might include cash and bank deposits (with some question marks). With such an understanding, the following picture would emerge:

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<sup>9</sup> M. Kisirwani, *Accountability of Lebanese Civil Servants: An Overview of Disciplinary Mechanisms*, in: Lebanon Beyond 2000, edited by A. Saikal and G. Jukes (Canberra: CMECAS/Australian National University, 1997). Retrieved from <http://almashriq.hiof.no/ddc/projects/pspa/lb2000.html#back-notes-18>.

<sup>10</sup> Of 23 May 1926, [www.servat.unibe.ch/icl/le000000.html](http://www.servat.unibe.ch/icl/le000000.html).

<sup>11</sup> At indicator 29. Retrieved from: [www.globalintegrity.org/global/the-global-integrity-report-2009/lebanon/](http://www.globalintegrity.org/global/the-global-integrity-report-2009/lebanon/).

“Income”		“Expenditures/Lifestyle”	
Item	Declared?	Item	Declared?
Salary	No (?)	Cash	Yes (?)
Rental income	No (?)	Bank deposits	Yes (?)
Fees for services	No (?)	Real estate	Yes
Interest, royalties	No (?)	Valuable movables	Yes
Loans received	No (?)	Securities	Yes
Debts repaid to the official	No (?)	Loans given	Yes
“Income for free” (Gifts, inheritances, assets sold, etc.)	No (?)	Loans paid back by official	No
		Non-asset expenses (travel etc.)	No

Under the condition that above positions reflect general practice, the Lebanese declaration form provides an insufficient picture on financial flows of a public official. Based on such a declaration, the oversight body could not build a case of illicit enrichment, should the (supposed) income be insufficient for the concrete lifestyle.

However, the current Minister of Justice (Achrif Rifi) has published his asset declaration in a push to support his call for reforms of the system.<sup>12</sup> His declaration includes:

- Real estate
- Cars
- Jewellery
- Bank accounts

One might well assume that declarations by other public officials would be much shorter as they might understand “immovable and movable funds and financial contracts” in a much narrower sense. As the asset declaration does not provide any detailed guidance on what “financial contracts” or “movable funds” are, it would be very easy for any public official to argue their way out of liability:

- Would a contract on purchasing one newspaper in the morning not be a financial contract, as it involves the cash-flow of the purchasing price?
- Are bank accounts really movable assets, as one can actually not move them from one person to another and they are not a tradable asset on markets?
- Would a light-bulb not be a movable asset and where to draw the line in terms of financial thresholds?
- Whereas the law only speaks of immovable and movable assets, the declaration form adds “financial receivables and contracts” – does anything follow from this difference?

To avoid such discussions, laws and guidelines on asset declarations in countries with developed systems always contain detailed instructions on what needs to be declared and what not. In any case, if the declaration would only contain data on **outgoing financial flows** (“lifestyle”), such as immovable and movable assets, it would not allow determining illicit enrichment. According to Article 12 of Law 154 of 1999,

<sup>12</sup> Lebanon24, 22 March 2014. Retrieved from [www.lebanon24.com/sports/details/732573](http://www.lebanon24.com/sports/details/732573) (Arabic).

“the following shall be considered evidence of illicit enrichment:

A – Possession by the person complained of by themselves or by the persons listed in Item 1 of Article 1 of this law of funds that their regular resources do not allow them to possess.

B – Manifestations of wealth that are not proportionate with those resources.”

If the declaration form does not show all significant **ingoing financial flows** (“resources”), there is only a slim chance if any of ever establishing a case of illicit enrichment.

At the same time, such detailed instructions give the reader of a declaration certainty what the declaration actually states. In the above case of the Justice Minister, one might still wonder whether the Minister did not have any cash at the time of declaration, or any loans received or given, or any rental income; and whether he really did not own any other movable assets other than the cars and jewellery. Any theoretically possible omission to declare such items would in his case certainly not be the result of bad faith, but could easily be the result of an individual interpretation of “movable funds and financial contracts”.

Not requiring the declaration of **cash** would give public officials an easy way out: they could always claim that they had vast amounts of cash stored outside a bank account (stemming from before taking office); this “cash” they can always use as a “joker” to explain for the purchase of any luxury asset. The problem of large cash amounts is all the more virulent in the entire MENA region, as the share of the shadow economy (including the concomitant cash culture) is high.<sup>13</sup>

As for **conflicts of interest**, shares, financial contracts – and to some extent bank deposits, real estate and valuable movables – can be a cause. For example, a judge would be in conflicts of interest if he/she had stocks from a company that was a party to one of his/her trials. However, financial interests typically causing conflicts of interest, such as gifts, and non-financial interests are missing in the declaration form. It is thus questionable, whether an oversight body is actually in a position to verify conflicts of interest of public officials in any meaningful way based on the Lebanese declaration form.

## COVERAGE OF OFFICIALS

Article 4 of Law No. 154 of 1999 covers “all judges and all employees of the third category or equivalent and higher as well as all officers [officials]”. This includes in the judiciary judges of all levels, in the executive sector heads of departments (third category), head of directorates (second category, and heads of general directorates (first category). Furthermore, this includes government level officials such as ministers or the president. Additionally, “comptrollers and auditors at the Ministry of Finance and employees of the customs” are included as well as all “public service providers” (entities entrusted with public functions, public companies, or public/private companies). In the legislative branch, all members of parliament are included. Article 5 of Law No. 154 of 1999 provides additional illustrations on who is obliged to declare.

As a useful feature, the Law does include **family members**, i.e. spouses and minor children. This is important as public officials often use close family members to hide illicit income and assets behind them.

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<sup>13</sup> M. R. Farzanegan/A. M. Badreldin, *Shadow Economy and Political Stability: A Blessing or a Curse?* Study Paper, p.5 (Marburg: November 2013).

It is interesting to note that “**teaching staff** at the Lebanese University and at public schools” is exempted from disclosure requirements. This might be problematic, given the fact that the educational sector is perceived to have serious corruption challenges.<sup>14</sup>

The question remains, whether certain public officials of **expert level** should also be included. Illicit enrichment is often found with policemen of ordinary level, doctors, or civil servants responsible for procurement. In view of reportedly widespread corruption in Lebanon, it seems important to include a wider range of public officials into the declaration scheme. This might generate more declaration forms than the oversight body might be able to handle in terms of verification. However, there is an additional benefit of asset declarations that is often overlooked: they “may provide key evidence in **criminal investigations** triggered by evidence from other sources. For example, allegations of bribery, including anonymous charges or press reports, may lead to an investigation that is inconclusive without additional evidence. Such supplementary evidence may be found in an asset declaration on file and accessible to prosecutors. When discrepancies exist, they may provide grounds for search warrants or other investigative measures, or simply offer useful leads for further investigation.”<sup>15</sup> In countries, where there is no central database of bank accounts, the information in asset declarations may for example help prosecutors identify bank accounts of suspects. Therefore, the scope of public officials obliged to declare should be broadened in Lebanon.

There are no numbers available, as to how many public officials in total have to submit declarations. However, a total of 70,000 declarations is stored with the Central Bank (see next section).

## SUBMISSION OF DECLARATIONS

Public officials have to submit their declaration upon **assuming** office and upon **termination** of office (Article 4 Law 154 of 1999). This obligation includes **family members**. There are no declarations during the time in office. This lack of intermittent declarations is problematic. Should a public official enrich him/herself during tenure through corruption, there is no way of identifying this through annual declarations. The large time of possible 40 years between assuming and leaving office makes it very easy for a public official to make up a lie. He/she can easily invent a story, claiming that he/she received a large gift many years ago, or won at poker, or received cash-gifts at a wedding etc. In order to prevent such lies going back a long time, the rhythm of control needs to be much tighter. Usually, the declaration during office is annually.<sup>16</sup> Alternatively, public officials should be required to declare if their income or assets change above a certain threshold (e.g. change more than US\$ 1,000 compared to the first/previous declaration).

Declarations follow a template which is annexed to Law No. 154 of 1999 according to its Article 4 par. 6 (see below Annex II). Article 5 of Law No. 154 of 1999 defines 11 entities which collect the declarations in a first step. A rather odd feature is the subsequent deposition of the declarations at the Central Bank of Lebanon:

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<sup>14</sup> UNDP, *Lebanon - Anti-corruption sectoral studies on education, water and health* (Beirut: UNDP Publishing 2013), Retrieved from [www.lb.undp.org/content/lebanon/en/home/library/democratic\\_governance/anti--corruption-study/](http://www.lb.undp.org/content/lebanon/en/home/library/democratic_governance/anti--corruption-study/) (Arabic).

<sup>15</sup> Tilman Hoppe, *The case for asset declarations in the judiciary*, U4 Brief, May 2014. Retrieved from [www.u4.no/publications/the-case-for-asset-declarations-in-the-judiciary-identifying-illicit-enrichment-and-conflicts-of-interests/downloadasset/3474](http://www.u4.no/publications/the-case-for-asset-declarations-in-the-judiciary-identifying-illicit-enrichment-and-conflicts-of-interests/downloadasset/3474).

<sup>16</sup> ReSPA/Tilman Hoppe (lead author), *Comparative Study: Income and Asset Declarations in Practice* (Danilovgrad: ReSPA, 2013), chapter 1. Retrieved from [www.respaweb.eu/11/library#respa-publications-and-research-18](http://www.respaweb.eu/11/library#respa-publications-and-research-18).

“The above mentioned competent authorities shall retain the declarations at Banque du Liban (which shall function as a central depository) by the end of the specified time limit in each case.” (Article 5)

Due to the submission in **paper form**, and due to the overall weak administrative capacities to handle more than thousands forms annually (in theory), there are no statistics available on submission compliance. However, according to local experts, **compliance** with the obligation to submit is rather high in Lebanon. Estimates go up to a 100% of submission compliance. This high ratio has mainly three reasons:

- First: Public officials do only declare once during their tenure, which is upon assuming office.
- Second: Public officials need to submit a set of documents for assuming office. A certificate confirming submission of the declaration is among such documents. In special cases, such as with members of Parliament, there is no such mechanism, but the Secretary of Parliament regularly reminds the members on their disclosure obligation. However, some uncertainties remain, for example, whether members of Parliament need to submit a declaration upon re-election (after having been temporarily out of Parliament for a while due to an intermittent lost election).
- Third: Sanctions for non-submission are strong. Anybody who did not submit a declaration within 3 months' time upon assuming office is considered resigned from the service. However, in practice, this provision does not seem as strong as it sounds (see below 0).

As a rather odd feature, public officials declaring their wealth are also obliged to keep their declarations confidential. According to Article 4 par. 5 of Law No. 154 of 1999, “the declaration shall be submitted inside a confidential envelope, closed and signed”. As one local expert noted, this provision would allow a public official to submit an envelope with a blank paper, hoping it would never be opened. However, it should also be noted that this provision did not hinder the current Minister of Justice to publicly declare his assets, including those of his family.<sup>17</sup>

## VERIFICATION

In order to verify the **submission** of declarations, the oversight body needs to establish, maintain and monitor a roster within the database of all the officials who are obliged to declare their finances.<sup>18</sup> To that extent, the oversight body needs to maintain a list of all categories of public officials that are obliged to declare their finances. To this end, all state bodies employing public officials obliged under the Law to declare would have to send lists to the oversight body with names of concrete individuals. It would be necessary for the oversight body to check the completeness of these lists for two reasons: An official could escape his duty of declaration by managing to avoid insertion in the list or be taken off the list; furthermore, public perception could be negative if the lists were incorrect and there was no mechanism at all at the oversight body's disposal for verifying a sample of the lists.<sup>19</sup> There is no central oversight in Lebanon, but each head of department must ensure in his/her own responsibility that declarations are submitted within the department. However, for entering the public service, public officials need to submit a declaration (see previous chapter). This mechanism would not necessarily work, though, for leaving office.

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<sup>17</sup> Lebanon24, 22 March 2014, [www.lebanon24.com/sports/details/732573](http://www.lebanon24.com/sports/details/732573) (Arabic).

<sup>18</sup> Council of Europe/T. Hoppe/V. Kalnins, *Practitioner manual on processing and analysing income and asset declarations of public officials*, January 2014, [www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/EaP-CoE%20Facility/EaP\\_TP\\_default\\_en.asp](http://www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/EaP-CoE%20Facility/EaP_TP_default_en.asp).

<sup>19</sup> Ibid.

The next step of verification would be a formal check of the declarations (are all necessary fields filled out with relevant and conclusive information?). According to local experts, declarations are filed without any **formal check** (which is not even possible as the declarations are kept in sealed envelopes).

As for the **financial verification** of the declaration, the oversight body needs to establish in a first step a true picture of all incoming and outgoing financial flows of a public official. To this end, the oversight body needs to compare the declared data with data available by the following sources:

- Tax authority.
- Motor vehicles registry.
- Land registry.
- Civil registry.
- Business registry.
- Register of bank accounts.
- Patents and licenses registry.
- Financial Intelligence Unit.
- Party finance databases.
- Foreign public databases.

Information from internet research, publicly available files, commercial databases, and data on banking transactions complements above sources.

However, the verification should not limit itself to comparing data of the declaration with other databases, but should aim at actively detecting undeclared cash-flows and their possible illicit origin. Therefore, once a true picture of the financial data is established, the oversight body needs to balance the incoming and outgoing financial flows, calculating also a lump sum for daily expenses because not all expenditures are and can be included in a declaration.

The calculation algorithm for monitoring the plausibility of the declaration is as follows:<sup>20</sup>

Financial flows		
Period	Incoming side	Outgoing side
Beginning	Existing assets	
During	All coming in	All going out
End		Existing assets
Total incoming must = total outgoing		

If the outgoing side (= the “lifestyle”) goes beyond the means of the official (incoming financial flows), there is at least a suspicion of illicit enrichment. For above algorithm, it is necessary to look at the declaration from the following three angles:

1. Verifying the amount of incoming financial flow.
2. Verifying the amount of outgoing financial flow.
3. Verifying the relation of the incoming and outgoing financial flow.

In **Lebanon**, there is yet no such methodology in place (which in other countries outside the region is sometimes contained in the law itself, a decree, or an internal decision of the oversight body). The

<sup>20</sup> T. Hoppe/V. Kalnins, 2014.

Central Bank is described by local experts as a passive “deposit box” for declarations. The Law does not foresee any verification function of any of the stakeholders.

The lack of any verification mechanism leaves a **serious gap** in the system mainly for two reasons:

- When assuming office, a public official could easily submit a false declaration with declared amounts of cash way beyond his/her actual means. He/she might then use the office for generating illegal gains. Should he/she become subject of an investigation during his/her tenure, he could claim that any large amounts of money found on him/her – which would be in fact from the illegal gains during office – were already declared at taking office. In this sense, he/she would formally not have gained anything contradicting the declaration. In other words, the public official could use an overstated (and unchecked) declaration upon entering office as a **carte blanche**, which he/she could fill up with illegal money during his/her tenure.
- Experience from other countries shows that an efficient system of verification of declarations can lead to the **detection** of illicit enrichment or even more serious crimes.<sup>21</sup>

Right now, the declaration system does not allow for the supervision of **conflicts of interest**. Once the declaration contained relevant information, its supervision should be the obligation of a supervisor of the public official: conflicts of interest are relative to the job duties and a central oversight body cannot monitor conflicts arising in the course of daily work.<sup>22</sup> The supervisor needs to have access to declarations in order to know about possible conflicts of interest. Any central body in charge with verifying income and asset declarations can complement the disciplinary supervisor by identifying incompatibilities which are not depending on the job duties but are visible from the declarations themselves. However, in Lebanon, the content of the declarations does not allow for any checks of conflicts of interest, even if any oversight body would want to take on this task.

## OVERSIGHT BODY

The only oversight taking place is oversight on submissions. This is done by the 11 entities to which public officials submit their declarations. For an efficient verification mechanism, an oversight body needs to be in place with sufficient resources to control declarations. This includes staff with competency on conflicts of interest as well as financial expertise on detecting hidden cash-flows. The oversight body also needs up to date information technology to support online submission, processing, and publishing of the data. For verifying the accuracy of submitted information, the oversight body needs to have access to data from a wide range of state databases. Furthermore, the oversight body needs access to publicly or voluntarily available private data, and should have the option of (outside) inspections of assets in individual cases. Banking secrecy should not be an obstacle for the verification body to using banking data for verification purposes. Currently, Article 7 of the Law of 3 September 1956 “On Banking Secrecy” precludes banks from invoking “professional secrecy [...] upon receiving requests from judicial authorities in relation to illicit enrichment lawsuits”. This provision would need to apply to simple verifications as well.

For reasons of efficiency, existing financial expertise such as in the **tax administration** can be used for financial audits. For a similar reason, the financial audits should not be subject of different fragmented entities, such as various human resource departments: this would require a multiple set-up of financial expertise in different bodies. Furthermore, the sectorised approach regularly entails the risk of the oversight body being too close to peers and thus lacking independent oversight. In this

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<sup>21</sup> ReSPA 2013, chapter 2.

<sup>22</sup> ReSPA 2014.

context there is also no need to subject judges and parliamentarians to specific oversight by self-administrative bodies: They are all subject to oversight by one tax administration, so similar is possible for financial oversight on asset declarations.<sup>23</sup>

## CO-OPERATION

Co-operation of a future verification body with **other state bodies** is necessary with regards to the following other state bodies:

- Tax administration: hiding income and wealth regularly entails violations of tax offences (and other way round). The tax administration therefore needs to have a regular exchange with both Commissions.
- Financial intelligence units: hiding wealth is regularly a money-laundering offence. The Commissions should therefore be in regular exchange with the FIU on relevant cases and information. At the same time, the FIU would need to use asset declarations in order to examine suspicious financial movements related to public officials.
- Disciplinary bodies: non-submission of declarations or submission of false declarations regularly constitutes a disciplinary offence. The Commissions therefore need to notify such bodies in cases of violations.

For all above co-operations, the oversight body should have standards on reporting and information exchange, possibly supported by memoranda of understanding with the respective institutions, or a joint set of guidelines. Co-operation would also profit from joint workshops and trainings on verifying asset declarations and investigating illicit enrichment with representatives of these state bodies.

## PUBLIC ACCESS

So far, asset declarations are neither published, nor accessible upon request by ordinary citizens. This practice is based on the following provisions:

“The declarations are of a confidential nature; any employee in charge of receiving or keeping them shall maintain this confidentiality. Violators shall be punished by the penalty stipulated in Article 579 of the Penal Code. The competent judicial authority is entitled to view the declarations if prosecution occurs.” (Article 7 of Law 154 of 1999)

“Any person who, by virtue of his position, job, profession or craft, is aware of a secret and discloses it without legitimate cause or uses it for his private benefit or for the benefit of another person, shall be punishable by detention of one year at most and by a fine not exceeding four hundred thousand pounds, if the act would by its nature cause harm, even if such harm is moral.” (Article 579 Criminal Code)<sup>24</sup>

Experience shows that most successful investigations are triggered by complaints of citizens, NGOs, or journalists with knowledge about the true situation of an unfaithful public official. In addition, public availability of declarations would be a strong incentive for public officials to actually comply with submission requirements, because anybody will be able to see whether they are

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<sup>23</sup> ReSPA 2014.

<sup>24</sup> As amended by Legislative Decree 112 of 16/9/1983 and Law 239 of 27/5/1993.



compliant or not. Therefore, asset declarations should be information publicly available online (see Principle 8). Confidentiality of asset declarations rather occurs in totalitarian systems and is not in line with the standard of open, participatory democracies. It is of utmost importance that declarations are not public only as an image scan of the paper-version of the declaration, but as a text-file in machine readable format. Otherwise it is impossible to search for the declaration on the internet or to electronically analyse it. Even if Lebanon is not a country where every citizen has access to internet (despite most people now having mobile internet), it would still allow key players from the media, civil society organisations, or academia to look into the declarations.

A **good example** – out of many more others – is **Georgia**. Following a previous paper based system, declarations became online in February 2010. The Civil Service Bureau scanned and published more than 50,000 declarations from 1998-2010. Since 2010, all senior Georgian officials submit their asset declarations annually at <http://declaration.gov.ge/eng/> (English version of the website).<sup>25</sup> Submitted declarations appear instantly on the same website. Currently, the website hosts more than 60,000 declaration documents. In 2013, it won the “United Nations Public Service Award” in the category of “Preventing and combating corruption in public service”. It should be noted that such an online system is not a privilege of highly industrialised nations. When introducing its award-winning online system in 2010, Georgia had a GDP per capita of only US\$ 5,837 per year.<sup>26</sup> By comparison, **Lebanon** in 2013 had already double that value (US\$11,124).<sup>27</sup>

## SANCTIONS

Law No. 154 of 1999 “On Illicit Enrichment” has a two-pronged approach for sanctions:

- Criminal offences
- Statutory dismissal

Illicit enrichment is defined in Law No. 154 of 1999 (Articles 1 to 3), but it is not a criminal offence per se. Asset forfeiture is subject to general rules; Law No. 154 of 1999 contains only a provision on temporary seizure.

The following offences are available for public officials **submitting** declarations:

- Submitting false data in asset declarations (Article 6 par. 4 of Law 154 of 1999, referring to Article 462 Criminal Code: “The same penalty [detention of from one month to one year and by a fine of one hundred thousand pounds at least] shall be imposed on any person who knowingly presents a document that is forged, altered or arranged in a manner contrary to the truth and that is intended either to be a basis for the calculation of taxes, duties or other such revenues due to the State or a public department, or alternatively for the purpose of legal oversight of the criminal’s actions in connection with his function.”)
- Failure to submit (Article 6 par. 2 and 3 Law No. 154 of 1999) – dismissal

The following offence is available for public officials responsible for the **handling** of declarations:

- Breaching confidentiality of the declaration (Article 7 of Law 154 of 1999; Art. 579 Criminal Code – see above 0)

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<sup>25</sup> See also: World Bank, *Fighting Corruption in Public Services: Chronicling Georgia's Reforms* (Washington D.C.: World Bank, 2012, 108 pages). Retrieved from <http://elibrary.worldbank.org/doi/pdf/10.1596/978-0-8213-9475-5>.

<sup>26</sup> World Bank, *GDP per capita*. Retrieved from <http://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD>.

<sup>27</sup> World Bank, *GDP per capita*. Retrieved from <http://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD>.

The following offence applies to **citizens falsely reporting** violations:

- False accusation of illegal gain (Article 15 Law No. 154 of 1999)

Compared internationally,<sup>28</sup> the system of sanction has important features. However, a sanction for **illicit enrichment** itself is missing, as are well-formulated elements of crime for this offence. Article 1 of Law 154 of 1999 simply defines “enrichment” as “enrichment”, which is only an *idem per idem* definition. More useful could be the definition in Article 12:

“the following shall be considered evidence of illicit enrichment:

A – Possession by the person complained of by themselves or by the persons listed in Item 1 of Article 1 of this law of funds that their regular resources do not allow them to possess.

B – Manifestations of wealth that are not proportionate with those resources.”

Again, one should keep in mind, that it is not only the “possessions” which define the lifestyle of a public officials, but also non-asset expenditures. For example, a public official has daily expenses for food, clothes, gasoline, etc., which also need to be taken into account. There is also the possibility of travel expenses, fees for private schools for the children, or maintenance costs for big assets, such as cars, a house, or a yacht. In other words, if a public official had incoming cash-flows of US\$10,000 in one year, and acquired assets worth US\$10,000 in this year, there would still be a suspicion of illicit enrichment: How did the public official pay for rent, food, clothing, transportation, or maintenance of his car?<sup>29</sup>

Another problematic provision is Article 10 of Law No. 154 of 1999. It allows “any aggrieved person” to submit a **complaint** (par. 1), or the public prosecutor (par. 3). However, in case of illicit enrichment, regularly the public budget is the aggrieved party, not any private person; par. 1 would have no practical role therefore. Furthermore, par. 2 of Article 10 requires the complainant to “submit a bank guarantee in the amount of twenty-five million Lebanese pounds [≈US\$16,000]”. It is a clear violation of international standards to require citizens to submit a guarantee, let alone of such high amount, for notifying the public prosecutor of a crime. For example, Article 11 “Civil society participation” of the Arab Anti-Corruption Convention calls on member States to support civil society participation by measures such as

“providing them [people] with means to contact those [anti-corruption] agencies so as to inform them of any incidents which may be seen as constituting an act criminalized by the present Convention.”

Similarly, the Council of Europe’s Recommendation on the protection of whistleblowers states:

“The national framework should foster an environment that encourages reporting or disclosure in an open manner. Individuals should feel safe to freely raise public interest concerns.”<sup>30</sup>

Even worse, the complainant is liable to a fine or imprisonment under Article 15 of Law No. 154 of 1999 if the complaint is not successful and the complainant is found to be “in bad faith (*male fide*)” – without defining what this is. Until today, no citizen has filed any complaint.

<sup>28</sup> ReSPA/Tilman Hoppe 2013.

<sup>29</sup> For further details, see T. Hoppe, January 2014, p.16.

<sup>30</sup> Recommendation CM/Rec(2014)7 of the Committee of Ministers to member States on the protection of whistleblowers, at No. 12. Retrieved from <https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec%282014%297&Language=lanEnglish&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

Regarding the statutory **dismissal** for failure to submit a declaration (Article 6 par. 2 and 3 Law No. 154 of 1999), its implementation seems to be problematic. In practice, Article 6 is interpreted in a way that the dismissal is not automatic or self-enforcing, but requires a second implementing step. Therefore, past cases of a judge or a Member of Parliament not having submitted declarations did not lead to their automatic dismissal. In this context, it is important to mention that as an additional measure, anybody convicted of illicit enrichment should be **banned** from **public service** for a substantial time, if not for life (see Article 30 par. 7 United Nations Convention against Corruption – UNCAC: “disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from: (a) Holding public office”).<sup>31</sup>

## CIVIL SOCIETY

So far, civil society has only a minimum role – if any – in the asset declaration process: citizen can report any suspicion they have on the illegal gain or any other violation of a public official, but only if they are “aggrieved” and submit the necessary banking guarantee (see above 0). However, citizens have no possibility at all to look at asset declarations; at the same time, they face the legal risk of being criminally liable for false accusations (see above chapter 0). Furthermore, citizens can only submit complaints in writing, and there is no option of an anonymous complaint (Article 10 Law No. 154 of 1999). However, it is often (substantiated) anonymous complaints which trigger successful investigations into asset declarations. Potential reporting persons often face a risk of reprisal by the public official, either privately or in their official position. Banning anonymous complaints thus cuts off a substantial source of promising leads. In this context, one should keep Article 13 par. 2 UNCAC in mind: “

“Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including **anonymously**, of any incidents that may be considered to constitute an offence established in accordance with this Convention.”

There is **no transparency** of the asset declaration process towards the public at large, such as statistics, overview on cases and trends, and on the work of the responsible institutions. State institutions do not reach out to citizens, the media, or civil society organisations to participate in the process. Shutting civil society off the asset declaration system in such a way seriously hampers the effectiveness of the system. Other regional research has shown that successful investigations of asset declarations are most often triggered by citizens or the media.<sup>32</sup>

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<sup>31</sup> [www.unodc.org/unodc/en/treaties/CAC/](http://www.unodc.org/unodc/en/treaties/CAC/).

<sup>32</sup> ReSPA/Tilman Hoppe, 2013: 218.

# RECOMMENDATIONS

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The international community and regional bodies have developed comprehensive principles and procedures to build effective asset disclosure systems, and many countries have even adopted these as law. The policies help reduce corruption by exposing illegal activity, opening the door to investigation and creating enforcement and monitoring mechanisms. As the data illustrates, Lebanon has fallen behind international standards on asset declaration. The following recommendations are based on the research conducted for this report and seek to provide a set of priorities for improving the effectiveness of asset disclosure in Lebanon:

## **Legislative reforms**

*Introduce a legal basis for conflicts of interest:* A legal basis for conflicts of interest disclosure and oversight is necessary, amending the information needed to be declared by relevant information, including non-financial one.

*Broaden the scope of information:* Declarations need to show the fullest picture possible of incoming and outgoing financial flows during public officials' time in office, in particular salaries and fees, royalties, gifts, loans, and other incoming cash flows such as inheritances. Without information on the income of officials, no meaningful verification of the declaration is possible. Declarations also need to include information relevant for detecting conflicts of interest, such as second jobs, business relationships and memberships in relevant interest groups.

*Broaden the coverage of officials:* Coverage of public officials should include senior executive office holders (ministers, deputy ministers, commissioners, agency heads); legislators; judges at all court levels; prosecutors; and any civil servants with some decision-making power.

*Increase the frequency of declaration:* Declarations need to be filed annually for illicit enrichment purposes, at least in the case of senior public officials.

*Implement a verification procedure:* Countries urgently need to establish meaningful verification mechanisms. Failing this, declarations have no deterrent effect, making illicit enrichment less unattractive and severely weakening the asset declaration framework. A methodology for submission verification, formal verification, and financial audits of declarations needs to be in place based on a legal act. The oversight body should be obliged by law to verify a sample of declarations by public officials. The samples should be chosen randomly, as well as be based on specific risk criteria. Finally, a legitimate verification procedure must follow up on any substantiated anonymous complaints. Until appropriate monitoring mechanisms are in place, existing aspects of a country's asset declaration system are vulnerable to exploitation and loopholes.

*Provide access to the public:* Asset declaration laws mean nothing if they are not applied, which often requires the watchful oversight of engaged citizens and active civil society organisations. The public is the most important watchdog; therefore, information should be made available through an open web portal that is centralised at each level of government. If a web portal is not available or is underutilised, the information should be widely disseminated through alternative media. Digital information should be published in widely used formats that are non-proprietary, searchable, sortable, platform-independent and machine-readable. On any of these platforms, there should be clear guidelines and explanation for the limited exemptions for non-publication or exclusions.

Although the legal framework on access to information is still weak in many countries of the MENA region, there are at least policies in place that should be used to support a wider dissemination of asset declarations, limiting the waiting time between receiving and answering a query on assets.

*Fully criminalise violations:* Complaints by citizens should not depend on the deposit of a bank guarantee. Substantiated anonymous complaints should be grounds for investigations. Most importantly, the law needs a provision criminalizing illicit enrichment and allowing forfeiture of any inexplicable wealth, including from third persons to whom such wealth has been transmitted. The offence of illicit enrichment needs to be formulated with specific guidance: Any substantial difference between the declared and real finances of a public official should constitute a criminal offence and provide the basis for asset forfeiture. A respective definition in the offence could read for example:

“Any increase in wealth that happens after assuming the service or the actualization of the status of the person subject to this law or his spouse or minor children when it is not proportional with their resources as stated in his/her asset declaration. If the expenditures exceed the income of the person by more than 10% or alternatively by 10,000 € this is considered a disproportionate increase in wealth.”

*Engage civil society:* The oversight body should be obliged to publish regular reports containing inter alia case statistics and an analysis of trends. The internal procedures of the oversight body should be as transparent as possible to the public. Representatives of the public should have the opportunity to participate in, consult on, and monitor the work of the oversight body.

### **Organisational Reforms**

*Alleviate submission of declarations:* In order to allow for automated processing and verification, and thus reducing the administrative burden, declarations should gradually be submitted online in machine readable form. Declarations shall be submitted in printed form only when the technological means are not available in the workplace or at home of the public official concerned. At least senior public officials should gradually submit their declarations online. Ideally, online declarations are already prefilled with existing data from state databases such as salaries, vehicles, real estate, and other information, in order to facilitate the filling out of declarations.

*Facilitate the work and cooperation of oversight bodies:* The oversight body needs sufficient staff with training on verification procedures including financial analysis and conflicts of interest. Other state bodies, which usually benefit from asset declarations, such as tax administration or the unit on anti-money laundering, need to be trained as well and there should be standards on reporting and information exchange, possibly supported by memoranda of understanding with the respective institutions, or a joint set of guidelines.

*Account for implementation:* Law enforcement bodies need to show a track record of investigated cases and should regularly report on case statistics to the public.

## ADDENDUM: CURRENT DRAFT LAW

Current law reforms (among other a draft law by the Minister of Justice) aim to overhaul the asset declaration system.<sup>33</sup> The Parliamentary Committee on Administration and Justice is currently reviewing the draft.<sup>34</sup> The different draft laws address the following points to a varying degree:

- Declaration **content**: require declaration of ingoing financial flows, including loans received, in particular if below market conditions (indefinite timeframe; zero interest); furthermore, the declaration will comprise conflicts of interest aspects. The reform includes a revised form for declarations.
- **Coverage** of officials: the declaration system will maintain the same scope of public officials, excluding teaching staff, as well as public officials in high risk areas such as law enforcement of fourth grade or lower.
- Declaration **frequency**: during office every four to five years. The oversight body will also remind public officials of their submission duty.
- **Verification** will include the following aspects: submission, formal verification, illicit enrichment, conflicts of interest.
- Establishing an **oversight body** for receiving complaints, verifying asset declarations, investigating illicit enrichment and conflicts of interest, and for assisting public officials in complying with the requirement;
- **Confidentiality**: Declarations are not bound by strict confidentiality anymore but can be subject to verification by state bodies; according to one of the draft laws, even the public should have access to declarations.
- **Sanctions**: Dismissal and loss of salary and benefits in case of non-submission (for high public officials enjoying immunity from prosecution); redefining the crime of illicit enrichment in line with the UNCAC. Any complaint will not require anymore the need for showing individual harm. The bank deposit of 25 million Lebanese Liras (≈US\$16,000) will be decreased, in case the complainant sues him/herself. Complaints to the oversight body will not require such a deposit.

Apart from the less frequent declaration rhythm of four to five years, and the more narrow coverage of public officials, the draft law would address all essential recommendations (if it was to introduce full publicity of declarations). In terms of public access, the draft law should include the gradual introduction of online publicity of declarations; it should also make clear that access to declarations is for free.

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<sup>33</sup> <https://now.mmedia.me/lb/ar/novnewsar/550202-%D8%B1%D9%8A%D9%81%D9%8A-%D9%8A%D9%82%D8%AA%D8%B1%D8%AD-%D8%B1%D9%81%D8%B9-%D8%A7%D9%84%D8%B3%D8%B1%D9%8A%D8%A9-%D8%B9%D9%86-%D8%AA%D8%B5%D8%B1%D9%8A%D8%AD-%D8%A7%D9%84%D8%A5%D8%AB%D8%B1%D8%A7%D8%A1-%D8%BA%D9%8A%D8%B1-%D8%A7%D9%84%D9%85%D8%B4%D8%B1%D9%88%D8%B9> (Arabic).

<sup>34</sup> Ibid.

# ANNEX I: METHODOLOGY

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The main focus of the country reviews is to compare:

- a) the existing legislative framework against the emerging **international standard**
- b) the existing legislative framework of asset disclosure with its **actual implementation**

The main sources were:

- **desk review** of the legislative and regulatory framework on the respective asset disclosure system.
- **semi-structured interviews** with up to six experts per country drawn from the public sector as well as the private sector, including civil society or academia

Experts for the semi-structured interviews were selected from the following two categories:

- **Key experts**, i.e. practitioners or ex-practitioners in the area of asset disclosure (these included officials in the agency or agencies tasked with managing asset declarations, law enforcement officials, lawyers and accountants, human resources/ministerial staff, experts from tax authorities, and any others with practical experience).
- **Informed experts**, i.e. individuals who are not experts on asset declarations but have an informed opinion on the workings of the public administration and understand how asset declarations could increase transparency and accountability (these included journalists, civil society activists and informed citizens). Interviews with this group were optional depending on the level of information obtained through official interviews.

# ANNEX II: DECLARATION FORM

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[unofficial translation by TI; the declaration form is an annex of Law No. 154/1999 according to its Article 4 par. 6]

A Declaration of the Immovable Funds and Movable Property

Owned by the Employee, their Spouse, or their Minor Children

Name and surname of declaration submitter:

Date and place of birth and register number:

Names of their spouse and minor children:

The position they occupy or were appointed for:

Date of their commencement of work:

Their full address along with phone number:

Movable and immovable funds owned by them, their spouse, and their minor children along with the number of each real estate and the real estate zone:

The movable property they own:

All and any financial receivables and contracts:

Date of declaration:

Signature



# ANNEX III: LAW NO. 154/1999

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[unofficial translation by TI]

## **Illicit Enrichment Law No. 154 – Issued on 27/11/1999**

This law has been approved by the Parliament, and shall be published by the President of the Republic.

It stipulates the following:

### **Chapter 1 – Definition**

Article 1- The following shall be considered illicit enrichment:

- 1) Enrichment obtained by employees, public service providers, and judges; any enrichment accomplice thereof; or those to whom they lend the names thereof, through bribery, influence peddling, or the exploitation of their job, or the work assigned thereto (Articles from 351 to 366 of the Penal Code), or through any other illicit method even if it does not constitute a penal offense.
- 2) Enrichment obtained by employees, public service providers, judges, and other natural or artificial persons whether by means of expropriation or by means of gaining export and import licenses or any other benefit of whatever kind, if a violation of law occurs.
- 3) Gain or poor implementation of the contracting works, privileges, and licenses granted by a public law person for bringing benefit, if a violation of law occurs.

Article 2- In order to apply the provisions of this law:

The word "employee" means any permanent or temporary employee, contractor, dealer, servant, or worker, in any cadre or corps, at any rank or level, at ministries or public administrations; at the institutions of the Ministry of National Defense; at public institutions, including chairmen of boards of directors; at independent departments; or at municipalities or the Union of Municipalities, as well as any officer or individual at military and security institutions and the Customs.

Deemed as public service provider is whoever has been assigned, by election or by appointment, the Presidency of the Republic, the Presidency of the Parliament, or the Presidency of the Council of Ministers; the Ministry or the Prosecution, the presidency or membership of municipal councils or municipal unions, the position of Mayor, or the position of Notary Public; or administrative committees if the functions thereof entail financial consequences. This is in addition to the representatives of the State at mixed economy companies and those responsible for the administration of public facilities, or companies of public interest.

Deemed as judges are the members of the Constitutional Council; the judicial, administrative, and financial judges; and the members of any judicial body that is considered a part of the organizations of the State.

Article 3- Illicit enrichment is not necessarily achieved directly or immediately, but rather it can arise from taking advantage of the projects intended to be implemented.

The following is particularly included in the provisions of this article:

- 1) The use of the funds of the Treasury and the means of the State contrary to the law for the purpose of improving the value of real estate owned by the persons mentioned in Article 1 of this law.
- 2) The acquisition of movable or immovable funds by an employee, a public service provider, or a judge; or an affiliate thereof in accordance with the provisions of Article 1 of this law with them knowing that the value thereof is going to rise because of regulations or laws intended to be issued or projects intended to be carried out, if this happens based upon prior-to-purchase information that reaches these persons by virtue of office and is not available to the public.

## **Chapter 2 – Declaration of Wealth**

### Article 4-

1) All judges and all employees of the third category or equivalent and higher as well as all officers shall submit upon their commencement of work, and as a condition of this commencement, a declaration signed by them stating the movable and immovable funds owned by them, their spouses, and their minor children.

- Comptrollers and auditors at the Ministry of Finance and employees of the Customs are also subject to the provisions of the declaration.

- All public service providers too shall submit such a declaration in a time limit of a month from the date of their commencement of work.

- The provisions of this article do not cover teaching staff at the Lebanese University and public schools.

2) The persons covered by the provisions of Item (1) of this article who came into service prior to the enforcement of this law, and are still in service, shall within a time limit of three months from the date of the enforcement thereof submit a signed declaration in which they shall state the movable and immovable funds owned by them, their spouses, and their minor children in Lebanon and abroad.

3) The persons covered by the provisions of Item (1) of this article shall submit, within a time limit of three months from the date of the end of their service, for whatever reason, a second declaration in which they shall state what they, their spouses, and their minor children have become owners of. They shall further identify the aspects and causes of the difference between the first declaration and the second one.

4) The persons covered by the provisions of Item (1) of this article who left service before the enforcement of this law shall not submit the declaration unless required by the competent judicial authority if they are subject to prosecution in accordance with the provisions of this law. In this case, the declaration shall be submitted with the date on which they left service to the competent judicial authority.

5) The declaration shall be submitted inside a confidential envelope, closed and signed, containing all the financial disclosure documents thereof including the movable and immovable funds owned by the person making the declaration, their spouse, or their minor children.

6) A template for the form and content of the declaration has been attached to this law.

Article 5- The declarations stipulated in Items 1, 2, and 3 of Article 4 of this law shall be consigned to the following authorities:

- Presidency of the Constitutional Council: Head of the State; President of the Parliament; President of the Council of Ministers; ministers and members of the Parliament.

The President of the Council of Ministers, ministers, and members of the Parliament shall submit a declaration within three months after their being appointed or elected and another declaration after three months from the expiration of their ministerial tenure or the expiration of the term they are elected for.

- Minister of Justice: President of the Constitutional Council and the members thereof; President of the State Consultative Council; First President of the Court of Cassation; Government Commissioner to the State Consultative Council; Cassation Public Prosecutor; Head of the Judicial Inspection Authority; Chairman of the Audit Bureau; General Prosecutor at the Court of Audit; judges of sectarian courts and notaries public.

- Presidency of the Council of Ministers: Governor of Banque du Liban; judges of Sharia courts; employees of public administrations and institutions and the boards, bodies, and funds affiliated with the Presidency of the Council of Ministers.

- Presidency of the Parliament: employees of the Parliament.

- First President of the Court of Cassation: judicial judges and the employees.

- President of the State Consultative Council: administrative judges and the employees.

- Chairman of the Audit Bureau: financial judges and the employees.

- President of Sharia and sectarian courts: employees at these courts.

- The Civil Service Board: employees of the ministries and public administrations subject to the control of this board.

- Bureau of the ministry they belong to: all employees, civil and military, at all ministries, from administrations that are not subject to the control of the Civil Service Board.

- Bureau of the Ministry of Municipal and Rural Affairs: President and members of municipal councils and the Union of Municipalities, the servants thereat, and mayors. \*See Law No. 247 issued on 7/8/2000 on the cancellation of the Ministry of Municipal and Rural Affairs.

- Bureau of the Ministry of Guardianship: members of the boards of directors of public institutions and independent departments, the servants thereat, and the administrative committees affiliated therewith.

- Governorship of Banque du Liban: vice-governors; Chairman and members of the Banking Control Commission; employees of Banque du Liban.

- The above mentioned competent authorities shall retain the declarations at Banque du Liban (which shall function as a central depository) by the end of the specified time limit in each case.

## Article 6-

1) The head of any public administration or institution covered by the provisions of this law shall issue a circular upon the enforcement thereof for abiding by the content of Paragraphs (2), (3), and (4) of this article.

2) Deemed as resigned is any judge, employee, servant, or member of a board of directors if they do not submit, within three months from the date of them being notified by the head of the administration thereof, the declaration stipulated in Paragraphs (1) and (2) of Article 4 of this law.

3) The declaration stipulated in Paragraphs (1) and (2) of Article 4 of this law is considered one of the conditions for undertaking public service. This is for the President of the Republic, the President of the Parliament, members of the Parliament, the President of the Council of Ministers, and ministers. Failure of the person undertaking public service, on the date this law was issued, to submit the declaration within the specified time limit shall be deemed as the resignation of the failing person from actual service.

4) Whoever submits a false declaration shall be punished by the penalty stipulated in Article /462/ of the Penal Code.

Article 7- The declarations are of a confidential nature; any employee in charge of receiving or keeping them shall maintain this confidentiality.

- Violators shall be punished by the penalty stipulated in Article 579 of the Penal Code.
- The competent judicial authority is entitled to view the declarations if prosecution occurs.

## **Chapter 3 – Principles of Prosecution and Investigation**

### **Item 1 – General Rules**

Article 8- In claims of illicit enrichment, and contrary to every stipulation, penal prosecution shall not be precluded by the previous permissions or authorizations observed in laws taking into account the provisions of the Constitution.

Article 9- Provisions of the Code of Criminal Procedure shall be applied to the investigation of cases of illicit enrichment, and provisions of the Penal Code shall be applied in cases where illicit enrichment is achieved as a result of a penal offense.

### **Item 2 – Principles of Prosecution**

Article 10- Any aggrieved person is entitled to submit a written complaint signed by them to the Public Prosecution or directly to the First Investigative Judge in Beirut.

- The complainant shall submit a bank guarantee in the amount of twenty-five million Lebanese pounds.
- The Public Prosecutor is entitled to prosecution directly before the investigative judge in Beirut provided that they attach to their claim the documents upon which the conviction thereof was grounded.

Article 11- Prosecution for offenses of illicit enrichment shall not be abated in the following cases:

1- Resignation, dismissal from service, placing on the retired list, or expiration of public service tenure.

2- Death; in this case prosecution may be commenced or continued civilly against the heirs or legatees within the limits of what has devolved to them from the estate.

### **Item 3 – Principles of Investigation and Referral**

Article 12- If the investigative judge finds that the complaint is serious, it shall be reported, together with the documents attached thereto by the person complained of for defending themselves.

The following shall be considered evidence of illicit enrichment:

A- Possession by the person complained of by themselves or by the persons listed in Item 1 of Article 1 of this law of funds that their regular resources do not allow them to possess.

B- Manifestations of wealth that are not proportionate with those resources.

Article 13-

1- Both the investigative judge and the competent court, despite of every contrary stipulation, are entitled to immediately order a precautionary seizure of the movable and immovable funds of the person complained of. This seizure shall persist and produce the legal effects thereof until a decision to terminate it or convert it into an executive seizure is issued.

2- The investigative judge or the competent court shall apply the provisions of Article 7 of the Bank Secrecy Law issued on September 3, 1956.

3- The investigative judge or the court is entitled to decide to ban the person complained of from travelling.

Article 14- Any person, authority, or administration requested by the investigative judge or the court to investigate information or view documents shall carry out the request; otherwise they shall be punished by imprisonment for a maximum of six months and by a fine of up to ten million Lebanese pounds, or by one of these two penalties.

The investigative judge or the court shall decide to perform the two penalties or one of them after notifying the violator, listening to them, and enabling them to defend themselves.

Article 15- If it is decided to refrain from trying the person complained of or to nullify the pursuit thereof, the competent authority shall be entitled to decide to fine the complainant who acted in bad faith an amount of not less than two hundred million Lebanese pounds and by imprisonment for a minimum of three months and up to a year by a decision that is effective as originally laid out. The competent authority is further entitled to obligate the complainant, at the request of the person complained of, to pay a compensation for the damages they suffered as a result of the submission of the complaint.

The competent authority shall decide on the compensation even after the decision to refrain from trying the person complained of or to nullify the pursuit thereof is issued.

Article 16- With the exception of the decision of referral, the complaint as well as the investigation documents and procedures throughout the stages thereof are characterized by absolute confidentiality.

- Those who violate the principle of confidentiality shall be punished by imprisonment for a period of at least a year and by a fine ranging from ten million to fifty million Lebanese pounds; both shall be decided by the competent judicial authority after duly notifying the violator and listening to them.

- The punishment and the fine shall be doubled in case of repetition.

#### **Chapter 4 – Principles of Trial and Judgment**

Article 17- Taking into account the provisions of the Constitution, criminal courts of appeal in Beirut shall primarily consider cases of illicit enrichment; the judgments thereof shall be subject to reconsideration before the Court of Cassation as an appellate authority.

Article 18- The provisions of the passage of time stipulated in the Penal Code shall be applied to the penalties decided on in cases of illicit enrichment.

Article 19- The term of the passage of time, in cases of illicit enrichment in relation to the restoration of public funds, starts from the date on which the offense is discovered.

Article 20- Taking into account the provisions of the Constitution, Legislative Decree No. /38/ dated 18/2/1953 (Illicit Enrichment Law), the law issued on 14/4/1954 (the declarations required to be submitted by employees and public service providers concerning the wealth thereof), and any other stipulation that contradicts or is inconsistent with the provisions of this law shall be cancelled.

Article 21- This law shall be effective immediately upon the publication thereof in the official newspaper.

Baabda, December 27, 1999

Signature: Emile Lahoud

Promulgated by the President of the Republic

President of the Council of Ministers

Signature: Salim Al-Hoss

President of the Council of Ministers

Signature: Salim Al-Hoss

[Annex: declaration from – see above Annex I]

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