

ASSET DECLARATIONS IN LIBYA ILLICIT ENRICHMENT AND CONFLICTS OF INTEREST OF PUBLIC OFFICIALS

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INTRODUCTION

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 billion¹ 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 2011.²

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,

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

² 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.

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*³ and *Public Office, Private Interests: Accountability through Income and Asset Disclosure*⁴). 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*.⁵ The Group of 20 leading economies (G20) adopted High Level Principles on Asset Disclosure by Public Officials in Los Cabos in 2012.⁶ Finally, in October 2014, the Western Balkan countries adopted the first international standard on asset declarations.⁷

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

⁴ The World Bank, *Public Office, Private Interests: Accountability through Income and Asset Disclosure* (Washington D.C.: World Bank, 2012), p.10. Retrieved from [/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)

⁵ www.oas.org/juridico/PDFs/model_law_declaration.pdf.

⁶ https://star.worldbank.org/star/sites/star/files/los_cabos_2012_high_level_principles_on_asset_disclosure.pdf

¹³ Regional School of Public Administration, *Western Balkan Recommendation on Disclosure of Finances and Interests by Public Officials*, 08-09 July, 2014. Sixth Meeting of the Ethics and Integrity Network (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:⁸

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 servant 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.

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

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 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 LIBYA

LEGAL BASIS AND PURPOSE

Since 1970, Libya had – by law – an asset declaration system. Law No. 3 of 1970 “On Illegal Gain” was the first law to regulate obligations to submit asset declarations, their verification, and the criminalisation of illegal gain. It also established committees in charge of managing asset declarations. In 1986, the legislator added prosecution powers to these commissions (Law No. 3 of 31 March 1986). In a next step, Law No. 10 of 29 January 1994 replaced Law No. 3 of 1970. By its coming into force, the new Law required asset declarations from anybody employed by the state; candidates for employment also needed to submit a declaration. Integrity Committees were in charge of handling the asset declarations. In 2007, Law No. 2 set up the “Inspection and Monitoring Agency”; according to Art. 38 of this Law, the Agency took over the function of handling asset declarations from the Integrity Committees.

Following the revolution in **2011**, the Transitional National Council issued Decree No. 19 of 13 August 2011. The Decree abolished Law No. 2 of 2007 and established an Audit Bureau, which replaced the “Inspection and Monitoring Agency”. However, it remained unclear as to what extent the Bureau would be in charge of asset declaration.

Only by Law No. 26 of 4 April **2012** it became clear which body was in charge of asset declarations: the Law established the “Supreme Commission for the Implementation of Integrity and Patriotism”. Article 10 stated that the Commission was in charge of receiving asset declarations from 18 categories of senior public officials as listed in Article 9.

However, Article 19 of Law No. 13 of 8 May **2013** “On Political and Administrative Dismissal” abolished Law No. 26 of 2012. The main purpose of Law No. 13 of 2013 is to cleanse state bodies from senior public officials who are assumed having supported the old regime. Law No. 13 of 2013 establishes the “Commission of Implementing the Standards of Assuming Public Positions”. According to its Article 11, the Commission is in charge of receiving asset declarations from senior public officials as defined in Article 2. However, the Law is currently being challenged at the Constitutional Department of the Supreme Court for being unconstitutional. Furthermore, the law lacks the necessary by-laws, which the legislator put on hold due to the ongoing review of its constitutionality.

In addition to Law 13 of 2013, Law No. 63 of 5 July **2012** “On Establishing an Anti-corruption Commission” also mentions asset declarations. It establishes the “Anti-corruption Commission”. According to Article 6, par. 5, one of the Commission’s functions is to receive, store and verify asset declarations. So far, the Commission did not assume work as a piece of implementing legislation is awaiting approval in the National Council. The implementing legislation concerns decisive features of the asset declaration system; this includes the concrete data to be declared and the concrete verification powers of the Commission. In addition, Law No. 63 of 2012 has been partly abrogated in the meantime by Law No. 11 of **2014** transferring power from the “Anti-corruption Commission” under Law No. 63 of 2012 to a new “National Anti-corruption Commission” (Article 31).⁹ However,

⁹ [www.security-legislation.ly/sites/default/files/613-Law%20No.\(11\)%20of%202014.docx](http://www.security-legislation.ly/sites/default/files/613-Law%20No.(11)%20of%202014.docx) (Arabic).

the new Law of 2014 does not clarify the competences of the new Commission required for verifying declarations.

In view of this, it is fair to say that Libya currently has **no effective legal basis** for asset declarations and that the legislative process is very much in flux. The following is therefore partly an appraisal of the declaration system under the contested Law No. 13 of 2013, as well as an outline of what the declaration system would need in order to be effective.

At least in the past, the purpose of the asset declaration system seems to have been focused on detecting **illicit enrichment** only, whereas conflicts of interest were not part of it.

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, Libya’s asset disclosure system requires disclosure of the following financial items (based on an outdated asset declaration form, see annex):

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

The declaration form foresees one more item: “Business projects” and their “value”. In its current form, this item does neither provide information on income nor on whether any money was spent on it (expenditure): the value might have nothing to do with the purchasing price of the business in case it was bought long ago, and in case the business was inherited or started from scratch there might not have been any purchasing expenditure at all. The only potential value this information might have is for purposes of conflicts of interest, in case the business is somehow intermixed with the work of the public official. However, this aspect of conflicts of interest appears to be rather a by-product of a badly designed declaration form for illicit enrichment purposes.

The above table clearly shows that the past system was unsuited to detect illicit enrichment. How could any oversight body build a case that the income is insufficient for the concrete lifestyle, if most information on incoming financial flows is missing? Even if the oversight body would know the salary of a public official – in case it is standardised or known from the tax administration – a public official

could always claim business income, a loan received, an inheritance, a gift, or a lottery win to explain his/her lifestyle. There are many cases in other countries where public officials successfully used such explanations in court. Even worse, **cash** is not covered by the Libyan declaration. This gives 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.¹⁰

As for **conflicts of interest**, securities – 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 the Committee on Prevention of Corruption is actually in a position to verify conflicts of interest of public officials in any meaningful way.

COVERAGE OF OFFICIALS

Law No. 13 of 2013¹¹ covers in its Article 1 a list of senior officials:

“First group: All those who have held the following posts in the old regime:

1. Members of the so-called Revolutionary Command Council in the 1969 coup d'état, the so-called Free Unionist Officers and all the former members of the so-called leader companions' league.
2. Coordinators of the Social People's Leaderships at the level of communes or state level.
3. Former General People's Congress [parliament] secretaries, their deputies and members of the GPC Secretariat, as well as all former secretaries of the Basic People's Congress [BPC].
4. Former chairmen and secretaries of services, commissions or institutions of the so called General People's Congress or the General People's Committee [government] or the Council of Ministers or the Revolutionary Command Council.
5. Former prime ministers, secretaries of the General People's Committee, their deputies, ministers, secretaries of a General People's Committee for a particular sector, their deputies, secretary of the General People's Committee of a municipality or commune, secretary of the General People's Committee of a particular sector in a commune.
6. Former ambassadors, People's Bureaus [embassies] secretaries, Libya's permanent delegates at international or regional bodies, whatever their prerogatives, former charge d'affaires and former general consuls.

¹⁰ M. R. Farzanegan/A. M. Badreldin, *Shadow Economy and Political Stability: A Blessing or a Curse?*, Study Paper, p.5 (Marburg: November 2013).

¹¹ <http://muftah.org/full-text-libyas-political-isolation-law/> (unofficial translation).

7. Former people's committee secretaries, university deans, deputy rectors or university secretaries.

8. Former heads of internal or external security services, the military intelligence and security brigades, administrative directors of any of these services, heads of security districts, heads of political bureaus of security or military services.

9. Former heads of student unions at home or abroad who were affiliated to the General Union of Libyan Students.

10. All former holders of leadership posts at institutions linked to the family of Mu'ammarr al-Qadhafi, or partners in any of their business activities.

11. Former members and employees of the communications bureaus of the Revolutionary Committees, coordinators of revolutionary seminars, members of revolutionary action teams, revolutionary caravans or exceptional courts, as well as female members of the so-called revolutionary nuns, heads and members of the revolutionary guards, heads and members of the cleansing committees, commanders of the people's guard in higher administration and administration branches, and all those who had taken part in the administration of revolutionary seminars.

12. All former directors or general directors in the Green Book research and studies centres, lecturers in the Green amphitheatre, and leading figures in media institutions.

13. Former armed forces chiefs of staff, commanders of defence regions and heads or commanders of a military service or institution.

14. All those who belonged to international organizations that threaten the integrity of the Libyan territory or use violence as their sole modus operandi. [...]"

The Law does not cover members of the **judiciary**. This is unfortunate, as members of the judiciary are at high risk of illicit enrichment in corruption prone countries, and it is thus important and standard to monitor their wealth.¹²

Furthermore, the Law does not include **family members**, such as spouses and children. This is problematic as public officials often use close family members to hide illicit income and assets behind them.

There are no numbers available as to how many officials have to submit declarations.

SUBMISSION OF DECLARATIONS

Under Law No. 13 of 2013, submission of a declaration is required only **upon assumption** of office. Should a public official enrich him/herself during tenure through corruption, there is no way of identifying this through annual declarations and/or a declaration upon leaving office.

¹² 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.

Due to the submission in **paper form**, and due to the overall weak administrative capacities to handle more than many thousand forms annually (in theory), there are no statistics available on submission compliance.

According to local experts, **compliance** with the obligation to submit is rather low in Libya. Estimates vary between 10-75% depending on which expert one asks. In any case, in public perception the low submission rate is one of the main problems of asset declarations in Libya.

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.¹³ 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.¹⁴ There is no indication that in Libya such a mechanism exists for ensuring that the oversight body knows about all public officials obliged to submit declarations. :

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**.

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

¹³ T. Hoppe/V. Kalnins, *Practitioner manual on processing and analysing income and asset declarations of public officials* (Council of Europe, January 2014). Retrieved from

www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/EaP-CoE%20Facility/EaP_TP_default_en.asp.

¹⁴ Ibid.

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:¹⁵

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 **Libya**, there seems to be 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). This is also due to the fact that the content required to declare covers only the outgoing financial flow, but not the side of income (see above at “Declaration Content”). Overall, the verification mechanism in place is rudimentary at best and falls well beyond international standards.

There are no **statistics** available on the number and percentage of verifications conducted, and on the outcome.

The supervision of **conflicts of interest** 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.¹⁶ 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 Libya the content of the declarations does not allow for any checks of conflicts of interest, even if the Anti-Corruption Commission – once being operational – would want to take on this task.

OVERSIGHT BODY

The “**Commission of Implementing the Standards of Assuming Public Positions**” is in charge of verifying declarations under Law No. 13 of 2013. However, according to local experts, the newly

¹⁵ T. Hoppe/V. Kalnins, 2014.

¹⁶ 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>.

established Commission lacks experience and staff for performing this task, let alone experts with the necessary financial expertise. There are no clear definitions in the Law to provide the Commission with sufficient access to publicly or voluntarily available private data, and to furnish it with the option of (outside) inspections of assets in individual cases.

Law No. 63 of 5 July 2012 additionally establishes the “**Anti-corruption Commission**”. According to Article 6, par. 5, one of the Commission’s functions is to receive, store and verify asset declarations. So far, the Commission is not operational as a piece of implementing legislation is awaiting approval in the National Council. In addition, Law No. 63 of 2012 has been reportedly abrogated in the meantime.

It is yet unclear what the **relation** between the “Commission of Implementing the Standards of Assuming Public Positions” and the “Anti-corruption Commission” was. It seems as if the Anti-corruption Commission was eventually to take over the function of verifying asset declarations from the “Standards Commission”, which is only a temporary body designed for cleaning the public service from supporters of the old regime. Similar is true for the newly established “National Commission Anti-corruption Commission” under Law No. 11 of 2014. The new Law of 2014 does not elaborate on the competences of the Commission required for verifying declarations.

CO-OPERATION

Co-operation of the verification bodies 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 bodies 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.

At the same time, there is also a need for **internal cooperation**: the “**Commission of Implementing the Standards of Assuming Public Positions**” would need to notify the “**Anti-corruption Commission**” (as of 2014 a new body: National Anti-corruption Commission) in case it detects wrong data in a declaration, or a conflicts of interest, and vice versa in the case of illicit enrichment.

PUBLIC ACCESS

So far, asset declarations are neither published, nor accessible upon request by ordinary citizens. This practice is based on the following provision of Law No. 13 of 2013:

“The chairman, members and employees of the Commission must not divulge for any reason any secret information or details they or the authority receive while discharging their duties. Their decisions and justifications must be made in public. Anyone who contravenes this instruction will be dismissed.” (Article 14)

So far, Libya has not enacted a freedom of information law, which might be a tool for obtaining declarations.

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 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.

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).¹⁷ 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 online system in 2010, Georgia had a GDP per capita of only US\$ 5,837 per year.¹⁸ By comparison, **Libya** in 2013 had almost four times that value (US\$21,397).¹⁹

SANCTIONS

The Law No. 13 of 2013 foresees the following sanctions:

Without prejudice to any harsher sentence envisaged by the law, anyone who refuses, neglects or disregards information, or gives **incorrect information** in the form drafted by the Commission and which is concerned by the provisions of this law, shall be punished with a sentence of no less than one year in prison. Moreover, the same sentence will be passed on any civil servant or any other person who **refuses to supply** the Commission or to enable it to familiarize itself with any evidence and documents in his possession or at his disposal, or who refuses to help

¹⁷ 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>.

¹⁸ World Bank, GDP per capita. Retrieved from <http://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD>.

¹⁹ World Bank, GDP per capita. Retrieved from <http://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD>.

in this matter, or destroys or hides evidence and documents. The same sentence will be handed down against anyone who continues to work in his post or office despite the implementation of the aforementioned standards provided by the law against him. (Article 17)

There is no offence for non-submission or late filing. Most importantly, there are no provisions defining a criminal offence of illicit enrichment and allowing forfeiture of any inexplicable wealth, including from third persons to whom such wealth has been transmitted.

CIVIL SOCIETY

So far, civil society has only a minimum role in the asset declaration process: citizen can report any suspicion they have on the illegal gain or any other violation of a public official. However, citizens have no possibility at all to look at asset declarations. 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.²⁰

It should be underlined that 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.”

²⁰ ReSPA/Tilman Hoppe 2013.

RECOMMENDATIONS

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, Libya 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 Libya:

Legislative reforms

Introduce a legal basis for conflicts of interest: There needs to be a sufficient legal basis enacted which includes all aspects of implementation. Furthermore, the relation between asset declarations under Law No. 13 of 2013 and Law No. 63 of 2012 needs to be clarified (insofar Law No. 63 is still in force).

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 servant with some decision-making power. It should also include family members of public officials at senior levels (spouses and children).

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. Once the Anti-corruption Commission is operational, it will be necessary to decide which of the two Commissions will do the verification work. A duplication of such efforts in both Commissions would not be effective. 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: The law needs to foresee an offence for non-submission and late filing. Most importantly, it needs a provision criminalizing illicit enrichment and allowing forfeiture of any inexplicable wealth, including from third persons to whom such wealth has been transmitted. 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.

ANNEX I: METHODOLOGY

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

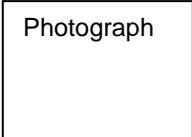
Experts for the semi-structured interviews were selected from the following two categories:

- **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

[The following is the asset declaration form under Law No. 13 of 2013; unofficial translation by TI]

Brief Curriculum Vitae



(* It is required to annex a photograph and an administrative certificate of the respondent to the inventory

Primary information:

Triple name and title (Full name): _____ Date and place of birth: _____ Tribe: _____

Identification Card

Mother's triple name _____ Spouse (wife or husband) _____

Number of family members: _____

Spouse job: _____ Place of work: _____

Current position of inventory respondent: _____ Place of work: _____

Residential address: _____ electronic mail: _____ phones: _____

Position progression starting with the most recent to the earliest

Position	Place of work	Time period	Appointed/delegated
1-			
2-			
3-			
4-			
5-			

Education progression starting with the most recent to the earliest

Degree	Major/ specialty	Place and date of getting it	Subject of study or research
1-			
2-			
3-			

Brief asset declaration

Private bank account in city of: _____ in Bank: _____ its number: _____

Balance: _____

Private bank account in city of: _____ in Bank: _____ its number: _____

Balance: _____

Possession of private real estate in city of: _____ in district of: _____ its usage: _____ its value: _____

Possession of private piece of land in city of: _____ in district of: _____ its usage: _____ its value: _____

Commercial project in city of: _____ in district: _____ its nature: _____ its value: _____

ANNEX III: LAW 13 OF 2013 (EXCERPT)

[unofficial translation by TI]

Law number (13) of 2013

On Political and Administrative Dismissal

Article 1

The standards for assuming public positions in the context of implementing this law mean the controls and conditions that have to be available and be adhered to in assuming included ranks and public positions. [...]

First group: All those who have held the following posts in the old regime:

1. Members of the so-called Revolutionary Command Council in the 1969 coup d'état, the so-called Free Unionist Officers and all the former members of the so-called leader companions' league.
2. Coordinators of the Social People's Leaderships at the level of communes or state level.
3. Former General People's Congress [parliament] secretaries, their deputies and members of the GPC Secretariat, as well as all former secretaries of the Basic People's Congress [BPC].
4. Former chairmen and secretaries of services, commissions or institutions of the so called General People's Congress or the General People's Committee [government] or the Council of Ministers or the Revolutionary Command Council.
5. Former prime ministers, secretaries of the General People's Committee, their deputies, ministers, secretaries of a General People's Committee for a particular sector, their deputies, secretary of the General People's Committee of a municipality or commune, secretary of the General People's Committee of a particular sector in a commune.
6. Former ambassadors, People's Bureaus [embassies] secretaries, Libya's permanent delegates at international or regional bodies, whatever their prerogatives, former charge d'affaires and former general consuls.
7. Former people's committee secretaries, university deans, deputy rectors or university secretaries.
8. Former heads of internal or external security services, the military intelligence and security brigades, administrative directors of any of these services, heads of security districts, heads of political bureaus of security or military services.
9. Former heads of student unions at home or abroad who were affiliated to the General Union of Libyan Students.
10. All former holders of leadership posts at institutions linked to the family of Mu'ammar al-Qadhafi, or partners in any of their business activities.
11. Former members and employees of the communications bureaus of the Revolutionary Committees, coordinators of revolutionary seminars, members of revolutionary action teams, revolutionary caravans or exceptional courts, as well as female members of the so-called revolutionary nuns, heads and members of the revolutionary guards, heads and members of the cleansing committees, commanders of the people's guard in higher administration and administration branches, and all those who had taken part in the administration of revolutionary seminars.
12. All former directors or general directors in the Green Book research and studies centres, lecturers in the Green amphitheatre, and leading figures in media institutions.
13. Former armed forces chiefs of staff, commanders of defence regions and heads or commanders of a military service or institution.
14. All those who belonged to international organizations that threaten the integrity of the Libyan territory or use violence as their sole modus operandi. [...]

Article 11

The commission indicated in the third article is in charge of applying the standards stated in the first article on those assuming positions and ranks as well as those who are nominated to them in accordance of the provisions of this law and the commission should issue a reasoned decision and the decisions of the commission are taken by half of the number of its members plus one on whether these standards are fulfilled or not fulfilled in a period of a maximum of twenty one days as of the reception of the asset declaration form and the curriculum vitae by the commission with the availability of data and documents stated in them.

Article 14

The chairman, members and employees of the Commission must not divulge for any reason any secret information or details they or the authority receive while discharging their duties. Their decisions and justifications must be made in public. Anyone who contravenes this instruction will be dismissed.

Article 17

Without breaching any other severer penalty stated in the law, anyone from among those who are subject to the provisions of this law who refrained from, failed to, or ignored to give information or gave incorrect information in the inventory that is prepared by commission is to be punished with imprisonment for a period of one year minimally, also any person or employee who refrain from providing the commission or enabling it to view any evidences or documents or bills in his possession or under his control or refused to help in that or destroyed them or concealed them is to be punished by the same penalty, and anyone who continued in his job or rank although the standards stated in this law are not fulfilled on him is also punished with the same penalty.

Annex III: Law No. 63 of 2012 (excerpt)

[unofficial translation by TI]

Law No. 63 of 2012 “On Establishing an Anti-Corruption Commission”
Establishing the commission²¹

Article (1)

In accordance with this law a public commission is to be established named (anti-corruption commission) that has an independent legal personality and a financial liability and enjoys administrative and financial independence and to have its own budget in the general budget of the state.

Article (2)

The headquarters of the commission is to be in Tripoli, and it will have chapters inside Libya upon a decision of the commission administrative council.

Article (3)

The commission is to have bylaws that organize its work which are issued by the commission administrative council.

The commission objectives

Article (4)

The commission aims at the following:

- 1- Uncovering habitats of corruption in all its forms and types including financial and administrative corruption
- 2- Establishing effective policies to prevent corruption and combating it in coordination with relevant bodies inside and abroad.
- 3- Taking necessary measures to prevent corruption and recovering funds and returns produced by it.
- 4- Contributing to adding names to the lists of seizure in accordance of the provisions of law number 36/2013 and amendment of law 47/2012 in regard to the management of funds and properties of some persons.

Receiving **asset declarations** and keeping them and requesting any data or explanations in relation to them.

²¹ Reportedly, this law has been already abrogated after drafting this report.

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