

ASSET DECLARATIONS IN TUNISIA 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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TABLE OF CONTENTS

INTRODUCTION	1
EXECUTIVE SUMMARY	1
TRANSPARENCY INTERNATIONAL'S ROLE	1
ASSET DISCLOSURE SYSTEMS IN ANTI-CORRUPTION	2
10 PRINCIPLES FOR AN EFFECTIVE ASSET DISCLOSURE SYSTEM	3
ASSET DISCLOSURE IN TUNISIA	5
LEGAL BASIS AND PURPOSE	5
DECLARATION CONTENT	5
COVERAGE OF OFFICIALS	7
SUBMISSION OF DECLARATIONS	8
VERIFICATION	9
OVERSIGHT BODY	11
CO-OPERATION	11
PUBLIC ACCESS	11
SANCTIONS	12
CIVIL SOCIETY	12
RECOMMENDATIONS	14
ANNEX I: METHODOLOGY	16
ANNEX II: DECLARATION FORM	17
ANNEX III: LAW 17 OF 1987	20

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 <http://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

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.

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

⁸ 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 TUNISIA

LEGAL BASIS AND PURPOSE

Tunisia introduced asset declarations in 1987 through **Law No. 17 of 1987** “On the Sworn Declaration of Property by Members of the Government and Certain Categories of Public Officials”.⁹ Order No 552 of 1987 dated 10 April 1987 “On the Provision of an Example and Content of a Sworn Declaration of Property by Members of the Government and Certain Categories of State Officials” introduced the asset declaration **form** (see below Annex II).¹⁰ For cabinet members, a specific Decree No. 99-466 of 27 February 1999 fixed the model and content of the declaration.¹¹

On a constitutional level, for the first time,¹² the new **Constitution** of 26 January 2014 introduces asset declarations in its Article 11:¹³

“Persons who occupy the posts of President of the Republic or Prime Minister, membership of the Government, membership of the Chamber of the People’s Deputies, membership of any independent constitutional body or any official higher function shall declare their earnings according to the regulations established by law.”

There is no clear stated **purpose** of the declaration system in Tunisia; however, the declaration content clearly focuses on detecting **illicit enrichment**, than conflicts of interest, and there is no requirement to declare “interests” at all.

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, Tunisia’s asset disclosure system under Law No. 17 of 1987 requires disclosure of the following financial items:

⁹ Of 10 April 1987. Retrieved from www.right2info.org/resources/publications/laws-1/laws_tunisia_asset-declarations-law (French).

¹⁰ Official Gazette No. 27 of 14 April 1987, p.508. Retrieved from www.iort.gov.tn (French).

¹¹ Official Journal, No. 19, of 5 March 1999, p.348. Retrieved from www.legislation.tn/sites/default/files/journal-officiel/1999/1999F/Jo01999.pdf.

¹² See previous Constitution of 1 June 1959, as amended in 2008. Retrieved from <http://corpus.learningpartnership.org/wp-content/uploads/2012/12/Tunisia-Constitution-2008-English.pdf>.

¹³ Retrieved from www.jasmine-foundation.org/doc/unofficial_english_translation_of_tunisian_constitution_final_ed.pdf.

“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	Movables	Yes
Loans received	No	Securities	Yes
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

It should be noted that movables does not include valuable movables, but only the following categories:

- cars
- shares, stocks, bonds and other securities
- the founders' shares
- other titles
- businesses
- livestock
 - Sheep
 - Cows
 - Camels
 - Horses
- Money
 - Deposits
 - Cash

However, there is a catch-up position called “Other important assets”, which provides no guidance though, what constitutes importance: Value, and if so which? Origin? Personal interest related to the property?

It is obvious, that the current system is **unsuited** to detect illicit enrichment. How could anybody build a case that the **income** is insufficient for the concrete lifestyle, if all information on incoming financial flows is missing? Even if one 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 an inheritance, a gift, or a lottery win to explain his/her lifestyle.

By contrast to Law No. 17 of 1987, the **Constitution** of 2014 speaks of declaration of “earnings” in its English translation. Whether this will mean assets, income, or even both will only be clear once this provision is implemented through the necessary additional legislation.

As for **conflicts of interest**, income, 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 an oversight body would actually be in a position to verify conflicts of interest of public officials in any meaningful way.

COVERAGE OF OFFICIALS

The following public officials are obliged to declare under Law No. 17 of 1987:

- Members of the Government
- Judges
- Ambassadors
- Governors
- Heads of parent and subsidiary institutions as defined in Law No 72 of 1985 dated 20 July 1985
- Members of the ministerial offices
- Secretaries-general of the ministries;
- Directors-general and managers of central administration;
- Consuls-general; consuls; first delegates; delegates;
- Secretaries-general in the governorates and municipalities;
- Directors-general, deputy directors-general and managers of parent and subsidiary institutions;
- Officers of the Department of Trade;
- Officers of the Department of Taxation;
- Every officer of the State, the public local authorities or the administrative public institutions who undertakes the duties of disbursement officer or public accountant.
- All persons authorised with above functions.
- Other categories as defined by Government Order.

Several decrees and laws define further categories of public officials:

- Legislative Decree No. 2011-116 “On the Freedom of Audiovisual Communication and Establishing an Independent High Authority for Audiovisual Communication (HAICA)” obliges in Article 11 the members of HAICA to submit “declarations to the First President of the Court of Accounts on their income and assets”.¹⁴
- Legislative Decree No. 2011-120 “On the Fight against Corruption” obliges in Article 27 the members of the anti-corruption commission to submit a “declaration in line with the legislation in force”.¹⁵
- Law No. 23 of 2012 “On the Supreme Independent Commission of Elections” requires its members in Article 12 to declare their assets according to Law No. 17 of 1987.¹⁶

The **Constitution** of 2014 adds the following to this list (however, with implementing legislation lacking so far, the obligation is not yet in force):

- President of the Republic
- Members of the Chamber of the People’s Deputies
- Members of any independent constitutional body

¹⁴ Of 2 November 2011. Retrieved from www.inric.tn/fr/decret.pdf (French).

¹⁵ Of 14 November 2011, Official Journal No. 88 of 18 November 2011. Retrieved from www.legislation-securite.tn/fr/node/30469?secondlanguage=ar&op=OK&form_build_id=form-32dedc6f28b03b30df862a8b164ec4ec&form_id=dcaf_multilanguage_form_render (Arabic).

¹⁶ Of 2 December 2012. Retrieved from www.marsad.tn/uploads/documents/Loi_ISIE_amend2_FR.pdf (French).

The above coverage of public officials is rather comprehensive. However, some categories of public officials from corruption prone sectors are missing. This would concern in particular **police** officers, **doctors** and **teachers/professors**. In 2010, a total of 8,626 public officials declared their assets.

In any case, the current scope should not be narrowed for the following reason: 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.”¹⁷ 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, even if the oversight body will have only the capacity to verify a rather small sample of all declarations, the other, “dormant” declarations can be put to use once the respective public official becomes subject to a corruption investigation.

The category in Law 17 of 1987 “all persons authorised with above functions” is quite problematic. The definition is not by position, but by descriptive function. This leads to **uncertainties** on who actually fulfils these criteria and on who is deciding on this, let alone in a uniform way.

The system does cover members of the **judiciary**. This is fortunate, 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.¹⁸

The Law No. 17 of 1987 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. However, Article 11 of the **Constitution** of 2014 does not.

SUBMISSION OF DECLARATIONS

Declarations are due upon **assuming** office, every **five years** during office, and upon **leaving** office (Section 2 of Law No. 17 of 1987). As a positive feature simplifying things, there is one central entity receiving the declarations: the “First President of the **Court of Auditors**” (Section 4 of Law No. 17 of 1987). Declarations are done in two copies. Both copies are signed by the First President of the Court of Auditors, with one copy serving as receipt for the declarer. In case of members of the Government, the First President of the Court of Auditors forwards an additional third copy to the President of the Republic (for being stored in his/her office).

The rate of submission **compliance** is rather low. In absence of official statistics, local estimates assess the rate as not exceeding 10 %. Until today, a total of about 25,000 declarations has been submitted to the Court of Auditors.

¹⁷ 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 . .

¹⁸ Tilman Hoppe, May 2014.

VERIFICATION

Verification of declarations should usually consist of the following four steps:

1. Submission compliance
2. Formal check
3. Plausibility of the declaration (intrinsically)
4. Financial audit

Depending on the resources, each step could be done on a different sample of declarations, with submission compliance done on all declarations, and financial audits done only on a sample of declarations which is partly selected on a random basis, and partly by risk criteria.

Step 1: 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.¹⁹ 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.²⁰ This could be done for example by monitoring and updating the names of officials whose election or appointment and dismissal are officially published.

In Tunisia, apparently no such mechanism is in place. Under Law no. 17 of 1987, the First President of the Court of Auditors should convey "a nominal list of the officers [...] who have deposited a declaration" to each respective minister. It seems, as if this provision is not enforced.

Step 2: The next step of verification would be a **formal check** of the declarations (are all necessary fields filled out with relevant and conclusive information?). Apparently, no such checks take place so far, and there is no provision in the Law No. 17 of 1987 requiring such checks.

Step 3: The calculation algorithm for monitoring the **plausibility** of the declaration is as follows:²¹

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		

¹⁹ 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

²⁰ Tilman Hoppe, January 2014.

²¹ Tilman Hoppe, January 2014.

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. Usually, on the incoming side a declaration (should) include all financial flows. On the outgoing side, it cannot. There are a number of daily expenses (food, clothing, transportation, etc.) which the declaration does not catch. Therefore, the oversight body needs calculate also a lump sum for daily expenses.

In Tunisia, there is no methodology in place for establishing the plausibility of declarations (which in other countries outside the region is sometimes contained in the law itself, a decree, or an internal decision of the oversight body). No such checks take place in practice, and there is no provision in the Law No. 17 of 1987 requiring such checks. At the same time, there is no provision on which sample of declarations should be selected and how. Furthermore, as easy as plausibility checks might sound in theory, as difficult is their practice. The checks would need trained staff with financial expertise. The Court of Auditors certainly does have financial expertise in general, but neither dedicated staff, nor special training on the specifics of asset declarations.

Step 4: As for the **financial audit** 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, on-site visits, informal testimony, and data on banking transactions complements above sources. This way, the oversight body can 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.

The financial audit 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.

In **Tunisia**, there is no methodology in place for financial audits. No such checks take place in practice, and there is no provision in the Law No. 17 of 1987 requiring such financial audits. On the contrary, Law No. 17 of 1987 seems to even discourage such financial audits in Section 6:

“Such declarations cannot be dealt with before the courts unless a member of the Government or one of the officials mentioned in Section One of this Law is subject to a criminal prosecution on the basis of acts perpetrated within the scope of his performance of his function, or during his exercise thereof, and the court competent in this prosecution deems it necessary to examine these declarations.”

OVERSIGHT BODY

The Court of Auditor would be a suitable oversight body. It would also make sense to concentrate all verification work in one body for all declarations existing. However, the Court does not yet have any competencies or powers to perform financial audits. This would include access to banking information or information from state databases such as the tax administration etc. (see above).

CO-OPERATION

Apart from co-operating with the prosecutor, co-operation of the verification bodies with **other state bodies** would be 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 the Anti-corruption Commission.
- Financial intelligence units: hiding wealth is regularly a money-laundering offence. The Anti-corruption Commission 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 Anti-corruption Commission therefore needs 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. So far, no such cooperation is necessary under the law, let alone being sufficiently established.

PUBLIC ACCESS

All individuals dealing with asset declarations are bound by strict **secrecy**. Section 5 of Law No. 17 of 1987 states:

“It is forbidden to inform third parties of the information contained in a declaration; this is with the exception of Ministers with respect to the officers under their authority, pursuant to a request issued by the Minister concerned and sent to the First President of the Court of Auditors, whenever the situation so requires.

All in contravention shall be punishable under the provisions of Section 109 of the Criminal Code.”

One minister has **voluntarily published** his declaration.²² The French and Arabic version of the section “asset declarations” of the government portal shows only this one declaration.²³

²² Retrieved from www.tunisie.gov.tn/PDjuin201200012.pdf (Arabic).

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).²⁴ 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\$ 4,900 per year.²⁵

SANCTIONS

Law No. 17 of 1987 foresees only one sanction:

- Dismissal for non-submission after an extended warning period of 15 days (Section 7)

For **non-submission** of declarations after leaving office, the only sanction is to “monitor the conduct” of the public official during his/her time in office. This might mean a financial audit, but it is not clear; in any case, the law does not give any powers to the Court of Auditors to perform a financial audit in practice.

There is neither a sanction for (intentionally) submitting **false information**, nor for **illicit enrichment**. However, Parliament is currently reviewing a **draft law** of 2012 on introducing this crime.²⁶

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

²³ Retrieved from www.tunisie.gov.tn/index.php?option=com_content&task=view&id=1839&Itemid=540&lang=french (French).

²⁴ 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>.

²⁵ Retrieved from www.indexmundi.com/g/g.aspx?v=67&c=gg&l=en.

²⁶ Business News, 15 May 2014, "Tunisie – ANC : L'enrichissement illicite au cœur d'une proposition de loi examinée en commission", Retrieved from www.businessnews.com.tn/details_article.php?a=46415&t=520&lang=fr&temp=3 (French).

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.²⁷

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.”

²⁷ ReSPA/Tilman Hoppe (lead author), *Comparative Study: Income and Asset Declarations in Practice* (Danilovgrad: ReSPA, 2013), pp.86, 145. Retrieved from www.respaweb.eu/11/library#respa-publications-and-research-18.

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, Tunisia 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 Tunisia:

Legislative reforms

Introduce a legal basis for conflicts of interest: The law would need to state monitoring of conflicts of interest as a purpose in addition to detecting illicit enrichment. Furthermore, the declaration requirements in the new Constitution of 2014 need implementing legislation.

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 and family members: The total number of public officials required to declare is currently quite comprehensive. It should be amended by public officials from corruption prone sectors such as police, health, and education. Furthermore, family members need to be included for all positions of the declaration form.

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: The law needs to introduce a sanction for intentionally providing false data. Retired public officials who refuse to submit a declaration should also (temporarily) lose pension benefits in addition to a financial audit being conducted. 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 current 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.

It should be noted that recent recommendations by the **Council of Europe**²⁸ and the **OECD**²⁹ on the Tunisian asset declaration system – even though being less detailed – are fully in line with above recommendations. Furthermore, a recent “Policy Paper – Workshop on ‘Assets Declaration’”³⁰ by the NGO “I Watch” comes to the same main conclusions.

²⁸ Council of Europe SNAC Project, *Rapport d'évaluation des risques dans la gestion des domaines de l'Etat et les affaires foncières de la Tunisie* (Council of Europe 2014), p.23. Retrieved from www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/snac/SNAC_TP_default_fr.asp (French).

²⁹ OECD, *Evaluation du cadre d'intégrité dans le secteur public Tunisie* (OECD 2013), p.37, www.ministeres.tn/rapport_final%20.pdf (French).

³⁰ Retrieved from <http://bit.ly/AssetDeclaration>.

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

[unofficial translation by TI]

Order No 552 of 1987 dated 10 April 1987 regarding the Provision of an Example and Content of a Sworn Declaration of Property by Members of the Government and Certain Categories of State Officials³¹

I, Habib Bourguiba, President of the Republic of Tunisia;

Having examined Law No. 17 of 1987 dated 10 April 1987 regarding the Sworn Declaration of Property by Members of the Government and Certain Categories of Public Officials, and in particular Section Three thereof;

And the opinion of the Prime Minister;

And the opinion of the Administrative Court;

Have issued the following Order:

Section 1: An example and content of a sworn declaration of property, updated under the abovementioned Law No 17 of 1987 dated 10 April 1987, has been provided as shown in the example appended to this Order.

Section 2: The Prime Minister, the Ministers and the Secretaries of State, each according to his competence, are commissioned with implementing this Order, which shall be published in the Official Gazette of the Republic of Tunisia.

Promulgated at Carthage Palace on 10 April,
1987

President of the Republic of Tunisia

Habib Bourguiba

³¹ Official Gazette No. 27 of 14 April 1987, p. 508, available at: www.iort.gov.tn (French).



DECLARATION SUR L'HONNEUR DES BIENS

Je soussigné :

Nom et prénom :
Date de naissance :
Lieu de naissance :
Carte d'identité nationale n° : délivrée le à
Fonctions justifiant la déclaration :
Nom de jeune fille et prénom de l'épouse : ou nom et prénom de l'époux :
Nationalité :
Carte d'identité nationale n° : délivrée le à
Profession :

[unofficial translation by TI of the main sections of the model declaration as published on pages 510 f. of the Official Journal]

Immovable property

Movable property

- cars
- shares, stocks, bonds and other securities
- the founders' shares
- other titles
- businesses
- livestock
 - o Sheep
 - o Cows
 - o Camels
 - o Horses
- Money
 - o Deposits
 - o Cash
- Other important assets

[For immovable property, a separate sheet for spouses is foreseen, but not for the other categories. Each category requires details such as identifying numbers and names.]

The full version of the declaration form is available in the Official Gazette No. 27 of 14 April 1987, p. 508, which can be downloaded at: <http://www.iort.gov.tn> (French)

ANNEX III: LAW 17 OF 1987

[unofficial translation by TI]

Law No. 17 of 1987 dated 10 April 1987 regarding the Sworn Declaration of Property by Members of the Government and Certain Categories of Public Officials. ⁽¹⁾

In the name of the people.

I, Habib Bourguiba, President of the Republic of Tunisia;
Following the approval of the Chamber of Deputies;

Have issued the Law the text of which follows:

Section 1: Members of the Government, judges, ambassadors, governors and the heads of parent and subsidiary institutions as defined in Law No 72 of 1985 dated 20 July 1985, must make a sworn declaration of their property, and the property of their spouses and minor children, within a deadline not exceeding a month from the date of their appointment to their positions.

The following shall also be subject to such declaration of property: members of the ministerial offices; secretaries-general of the ministries; directors-general and managers of central administration; consuls-general; consuls; first delegates; delegates; secretaries-general in the governorates and municipalities; directors-general, deputy directors-general and managers of parent and subsidiary institutions; officers of the Department of Trade; officers of the Department of Taxation; and also every officer of the State, the public local authorities or the administrative public institutions who undertakes the duties of disbursement officer or public accountant.

All persons authorised with functions deemed to be a function mentioned in paragraphs one and two of this Section shall also be subject to such declaration of property.

Other categories of public officers may be subjected to the abovementioned declaration of property in view of the nature of their functions. A list of such officers shall be made by means of an Order, pursuant to the proposal of the Prime Minister.

Section 2: The persons mentioned in Section One of this Law must renew the declaration of property every five years if they remain in their positions. They must also undertake a new declaration on the conclusion of their duties.

In both of these cases, such persons must make the declaration by a deadline of a month commencing from the expiration of the five year period, or from the date of conclusion of the duties. They must state in the aforementioned declaration the source of property they have obtained themselves, or that has been obtained by their spouses or their minor children, during the entire period of their undertaking of the functions that have necessitated the declaration.

Section 3: Such declarations of the property of the person concerned, and of the property of his spouse and minor children, shall be made out in three copies signed by the declarant – with respect to members of the Government – and in two copies signed by the declarant with respect to other persons from whom a declaration is required.

An example of the declaration and the contents thereof shall be made by means of an Order.

Section 4: The declaration of property shall be deposited with the First President of the Court of Auditors.

The First President of the Court of Auditors shall sign the three copies of the declarations of members of the Government; a copy thereof shall be conveyed to the President of the Republic, a copy shall be delivered to the declarant to serve as a receipt and the third copy shall be retained.

As regards other persons from whom a declaration is required, the First President of the Court of Auditors shall sign both copies of the declaration; a copy shall be delivered to the declarant to serve as a receipt and the second copy shall be retained. Similarly, the Minister concerned with the matter shall be conveyed a nominal list of the officers under his authority who have deposited a declaration.

Section 5: It is forbidden to inform third parties of the information contained in a declaration; this is with the exception of Ministers with respect to the officers under their authority, pursuant to a request issued by the Minister concerned and sent to the First President of the Court of Auditors, whenever the situation so requires.

All in contravention shall be punishable under the provisions of Section 109 of the Criminal Code.

Section 6: Such declarations cannot be dealt with before the courts unless a member of the Government or one of the officials mentioned in Section One of this Law is subject to a criminal prosecution on the basis of acts perpetrated³² within the scope of his performance of his function, or during his exercise thereof, and the court competent in this prosecution deems it necessary to examine these declarations.

Section 7: If the person required to make a declaration of property does not fulfil this obligation after his appointment, or does not renew it by the deadlines set out in this Law, a further deadline of a period of fifteen days shall be granted for the rectification of his situation. He shall otherwise be dismissed from the functions that have necessitated the declaration of property, provided that this shall be performed in accordance with the laws and regulations in force.

If the person required to make a declaration does not fulfil this obligation after the conclusion of his functions and within the deadline set out in Section Two of this Law, his conduct over the period of his performance of the functions that have necessitated the declaration of property shall compulsorily be monitored.

Section 8: The provisions of this Law shall apply to members of the Government and the other persons mentioned in Section One hereof who are performing their duties at the time of promulgation hereof. They must fulfil the obligation of making a declaration of property within a deadline of three months commencing from the date of promulgation of this Law.

This Law shall be published in the Official Gazette of the Republic of Tunisia and enforced as one of the laws of the State.

Promulgated at Carthage Palace on 10 April, 1987

President of the Republic of Tunisia

Habib Bourguiba

⁽¹⁾ Preliminary business:

Deliberation and discussion of the Chamber of Deputies at its session convened on 7 April 1987.

³² [Translator's note: The source document appears to contain a spelling error at this point. I believe this is the intended meaning.]

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