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FIGHTING CORRUPTION IN THE
PUBLIC SECTOR OF GHANA:

THE ROLE OF ASSETS DECLARATION REGIME

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FIGHTING CORRUPTION IN THE PUBLIC SECTOR OF GHANA: THE ROLE OF ASSETS DECLARATION

By

Prof. Edward Dua Agyeman

Former Auditor-General of Ghana

Senior Research Fellow at the Governance Unit of the Institute of Economic Affairs

Abstract

Corruption is endemic in the public sector as indicated by both anecdotal and evidence based research. Many people posit that where assets are declared, upon assumption of public office, officials could better yield to public scrutiny. The assets of public officials, particularly in developing countries, are often found to be excessive in relation to their income while in public office, which in turn raises speculations as to how they got their assets. One important tool for identifying the legality of the assets of public officials is assets declaration. This paper provides an analysis of the existing practice in the area of assets declaration in some countries in Europe, North America and Africa. It examines the key elements of assets declaration regimes such as the legal frameworks, institutional arrangements and policy objectives. In addition, the paper evaluates as a case study, the effectiveness of Ghana's current assets declaration regime as a tool for combating corruption. It further argues that Ghana's assets declaration regime, as it currently exists, has been ineffective and incapable of combating corruption. The paper concludes that a lot of work needs to go into the present system to make it more potent in combating corruption in the public sector.

Key words:

Corruption, public office, assets declaration, verifiability, accessibility, coverage, cultural barriers

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Further information may be obtained from;

The Institute of Economic Affairs

P. O. Box OS 1936, Osu, Accra, Ghana

Tel: + 233-302-244716

+ 233-30-7010714

Website: www.ieagh.org

Email: iea@ieagh.org

Facebook: www.facebook.com/ieagh

Twitter: www.twitter.com/IEAGhana

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1.0 INTRODUCTION

Corruption involves the public sector¹ and private people alike. In Ghana corruption has been with us since the pre-colonial days and has even become endemic throughout the various governments since independence². Corruption has been cited by some scholars as the main reason for the overthrow of democratically elected governments in Ghana.³ Several strategies have been implemented to curb the scourge of corruption in Ghana. However, the country has not been successful in the fight against corruption. The Auditor-General's reports on the audit of the ministries, departments and agencies (MDAs) and the metropolitan, municipal and district assemblies (MMDAs) over the years, the revelations of the public sittings of the Public Accounts Committee and the findings of the various investigations, committees and commissions have confirmed that corruption in Ghana is real and not just a perception.⁴

The declaration of assets, liabilities and other interests owned or controlled by public officials, their families and close associates has become a key tool in combating corruption around the world including Ghana. Assets declaration serves to prevent, detect, investigate and prosecute people in the event of corruption. For this reason, Ghana since the 1970s has adopted a declaration of assets and liabilities by public office holders as the more potent tool among other strategies, in fighting corruption in the public sector. Two main laws have regulated assets declaration – Article 286(1) of the 1992 Constitution and Public Office Holders (Declaration

- 1 The public sector is the part of the economy concerned with providing various governmental services. It consists of state-owned institutions, including nationalised industries and services provided by local authorities. The composition of the public sector varies by country. In Ghana the public sector includes the Public Services of Ghana as provided in Article 190 (1) and (2) of the 1992 Constitution.
- 2 Le Vine, V.T (1975) *Political Corruption: The Ghana Case*, Hoover Institution Press, Stanford, California, p. 20
- 3 Among the explanation the National Liberation Council offered to justify its seizure of power in February 1966 was that the Nkrumah regime was so hopelessly corrupt that it must be displaced before the system as a whole could be cleansed (Le Vine p. 35. See also Adu Boahen (1992), *The Ghanaian Sphinx, Reflections on the Contemporary History of Ghana, 1972-1987*. The J.B. Danquah Memorial Lecture, 1988, Sankofa Educational Publishers, Accra. The principal reason advanced by the Provisional National Defence Council (PNDC) for the overthrow of Dr. Hilla Limann's People's National Party (PNP) was mismanagement and corruption and even inability to use the loans and grants that were given to them.
- 4 For example, see the Consolidated Report of the Auditor-General on Special Audit into the Operations of District Assemblies for the Period 2001-2004 and the Report of the Auditor-General on the Forensic Audit of the National Vocational Training Institute (NVTI) for the Period January 1979 to December 2002. The Ghana Anti-Corruption Coalition (GACC) 2004 Report: Beyond the PAC Report: What Next? Recommendations to the Metropolitan, Municipal and District Assemblies in Ghana; The AnasAremeyawAnas's Judicial Corruption Expose; The Chief Justice's recommendations to the President leading to the sacking of the former Commissioner of CHRAJ, Madam Loretta Lamptey; The report on Justice Yaw Apau's Sole Judgement Debts Commission.

of Assets and Disqualification) Act, 1998 (Act 550). Act 550 provides the framework and guidelines for assets declaration in Ghana as a tool to combat corruption among public office holders. The assets declaration process in Ghana involves the public official declaring his or her assets, income and liabilities on assumption of office. The process is repeated after every four years and also, on ending the term of office.

Against this backdrop, this paper examines the implementation of assets declaration in Ghana and makes some recommendations to strengthen the process of assets declaration. Specifically, it analyses the key elements of the Ghana assets declaration regime, the historical background and objectives that led the government to design it and the challenges facing the assets declaration regime. The paper also examines the Public Office Holder (Declaration of Assets and Disqualification) Act, 1998 (Act 550). Attention is paid to the procedures for processing and verifying declared information and sanctions for violations of the enabling laws and how to make assets declaration in Ghana more effective based on international best practices.

2.0 CONSTITUTIONAL, LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

In Ghana anti-corruption laws are not found in one piece of legislation; rather a number of strategies have been adopted to fight corruption. These include constitutional provisions, legislation, institutional frameworks and administrative reforms. Each one is briefly mentioned in the paragraphs below.

2.1 Constitutional Provisions

- **The 1992 Constitution**

The 1992 Constitution affirmed as part of Code of Conduct for Public Officers, the assets declaration provisions. A person who holds public office as mentioned in clause (5) of Article 286 shall submit to the Auditor-General a written declaration of all property or assets owned by, or liabilities owed whether directly or indirectly.

The 1969 and 1979 Constitutions made similar anti-corruption provisions.

2.2 Legislation (Acts of Parliament)

- **Criminal Offences Act, 1960 (Act 29)**

The Act restricts the definition of corruption to bribery, which is what the Act uses to prosecute bribe takers.

- **Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550)**

The Act requires public officials to actively take part in attempts to combat corruption. It aims at ensuring transparency and accountability as enshrined in Chapter 24 of the 1992 Constitution and repealed PNDC Law 280 of 1992.

- **Financial Administration Act, 2003 (Act 654)**

The Act seeks to regulate the financial management of the public sector and prescribes the responsibilities of persons entrusted with financial management in the government. It is to ensure the effective and efficient management of state revenue, expenditure, assets, liabilities, resources of the government, the Consolidated Fund and other funds.

- **Internal Audit Agency Act, 2003 (Act 658)**

The Act established the Internal Audit Agency as a central agency to co-ordinate, facilitate, monitor and supervise internal audit activities within the ministries, departments and agencies (MDAs), and metropolitan, municipal and district assemblies (MMDAs). This is meant to secure quality assurance of internal audit within these institutions of state.

- **Public Procurement Act, 2003 (Act 663)**

The Act establishes the Public Procurement Authority. It provides for public procurement regulations and deals with procurement structures, procurement rules, methods of procurement and tendering procedures.

- **Whistleblower Act, 2006 (Act 720)**

The Act provides for the manner in which individuals may, in the public interest, disclose information that relates to unlawful or other illegal conduct or corrupt practices of others; to provide for the protection against victimization of persons who make these disclosures.

- **Anti-Money Laundering Act, 2008 (Act 749)**

The Act establishes the Financial Intelligence Centre to assist in the identification of process of unlawful activity and to combat money-laundering activities as well as make information available to the investigating and intelligence authorities.

- **Economic and Organised Crime Office Act, 2010 (Act 804)**

The Act sets up the Economic and Organised Crime Office (EOCO) as a specialised agency to monitor and investigate economic and organised crimes and on the authority of the Attorney-General prosecute these offences and facilitate the confiscation of proceeds of the crimes. The Act repealed the Serious Fraud Office Act, 1993 (Act 466).

- **Public Financial Management Act, 2016 (Act 921)**

The Act replaces both the Financial Administration Act, 2003 (Act 654) and its Amendments and the Loans Act of 1970. It makes provision for new policy measures regarding borrowing and debt management and addresses the persistent weakness in fiscal formulation.

2.3 Institutional Framework

2.3.1 The Creation of the Constitution

The institutions that were created out of the 1992 Constitution include:

- **The Commission on Human Rights and Administrative Justice (CHRAJ)**

The CHRAJ was established under the 1992 Constitution of Ghana by the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456). The Commission has three broad mandates, namely, human rights, administrative justice, and anti-corruption.

- **The Auditor-General**

The Auditor-General's position is a creation of Article 187(1) of the 1992 Constitution which states that there shall be an Auditor-General of Ghana whose office shall be a public office. The Auditor-General is the administering authority of the public office holders assets declaration regime.

- **The Judiciary**

The Judiciary was created by article 125 of the 1992 Constitution. The direct role the Judiciary plays in respect of the public office holders' declaration of asset is stated in section 8 of Act 550 of 1998.

2.3.2 Civil Society

Civil society also plays a part in support of the constitutional provisions, the legislation and administrative frameworks. They include:

- The Institute of Economic Affairs, (IEA-Ghana)
- The Ghana Centre for Democratic Development (CDD-Ghana)
- The Ghana Integrity Initiative (GII)

2.3.3 Administrative Reforms

Some of the administrative reforms include the development of the following:

- The National Anti-Corruption Action Plan (NACAP) 2012-2021 – developed in 2012 but passed by Parliament in 2014.

- Code of Ethics for Ministers and Political Appointees in Ghana developed by the office of the President in 2013.

2.4 Achievements of Constitutional, Legislative and Other Initiatives in Fighting Corruption

2.4.1 Constitutional and Legislative Provisions

The 1992 Constitution affirmed, as part of the Code of Conduct for Public Officers, the Assets Declaration provisions and created the environment for the enactment of the various Acts of Parliament such as Act 550 which sets out the main assets declaration provisions for public office holders, and also; Acts 654, Act 658, Act 663 and Act 921 which all seek to regulate the financial management of the public sector and ensure discipline in the public procurement procedures. All these Acts of Parliament seek to address and ensure the fighting of corruption. Under Act 804 of 2010 for instance, the Economic and Organised Crime Office has succeeded in investigating and prosecuting public officers of the Savannah Accelerated Development Authority (SADA) who were accused of corruption.

2.4.2 Institutional Framework and Administrative Reforms

Each year CHRAJ investigates several corruption related cases involving public officials. The Commission also develops and disseminates anti-corruption materials to promote awareness of the need to fight corruption. The Commission continues to collaborate in various forms with its stakeholders such as the Ghana Integrity Initiative (GII), Ghana Anti-Corruption Coalition (GACC) and the National Commission for Civic Education (NCCE) in the fight against corruption. In line with Ghana's constitution, the Auditor-General, each year, submits reports on the audits of the public accounts of Ghana to Parliament. Parliament, through the Public Accounts Committee, follows up the recommendations in the Auditor-General's reports, examines them and sanctions public official for financial mismanagement.

The Institute of Economic Affairs, Ghana (IEA-Ghana) has assisted in several key reforms that have helped to fight corruption. In 2006, an IEA-led initiative resulted in the passing of the Whistle Blower Act, 2006 (Act 720). The IEA also put forward proposals to assist the Constitutional Review Commission of Inquiry. The Ghana Centre for Democratic Development (CDD-Ghana) has organized workshops and round table discussions, including an analysis of the National Anti- Corruption Action Plan (2012-2021) aimed at fighting corruption in Ghana. Also the Ghana Integrity Initiative in 2009 produced a report on Assets Declaration Regime in Ghana.

3.0 ASSETS DECLARATION REGIME

An assets declaration regime is one of the most effective compliance mechanisms adopted by nations to prevent or cure the incidence of conflict of interest among public office holders. Assets declaration has been generally utilised since the 1970s. It has acquired a renewed international focus since the passage of the UN Convention Against Corruption (UNCAC), which was adopted by the UN General Assembly in 2003. The Convention's articles specifically require countries to adopt legislation for public officials to declare their assets. The main aims of assets declarations according to the Transparency International⁵ include the following:

- *to increase transparency and the trust of citizens in public administration*, by disclosing information about assets of politicians and civil servants that shows they have nothing to hide;
- *to help heads of public institutions prevent conflicts of interest among their employees and to resolve such situations when they arise*, in order to promote integrity within their institutions;
- and
- *to monitor wealth variations of individual politicians and civil servants*, in order to dissuade them from misconduct and protect them from false accusations, and to help clarify the full scope of illicit enrichment or other illegal activity by providing additional evidence.

Gyimah-Boadi⁶ argues that a credible and effective assets declaration regime is an essential component of the ensemble of rules and structures necessary for democratic governance. It helps:

- Prevent abuse of power by holders of public office.
- Protect public assets and the public interest.
- Deter public corruption.
- Promote the integrity of public officials.
- Foster public accountability and trust as well as governmental legitimacy.

He argues further that a credible assets declaration regime is also good for public officials. It helps to:

⁵ Transparency International Working Paper 1/2014: Assets Declarations, An effective tool to fight corruption, TI Publishing, Berlin

⁶ Ghana Centre for Democratic Development (2005), Enhancing the credibility of the public office holders declaration regime: Briefing Paper Vol.7 No.3, CDD-Ghana Publishing, Accra

- Protect the private assets of public officials from wrongful and extra-legal confiscation.
- Protect public officials from undue suspicion, baseless allegations of wrongdoing, and all manner of calumny.

When advocating for the introduction or further strengthening of public officials' assets declaration regime, the Organisation for Economic Co-operation and Development (OECD) and the World Bank advise that each assets declaration regime must be tailored to the specific country that it serves and must engage local and international stakeholders to support the reforms. Accordingly, international actors should avoid promoting one-size fits-all, technical blueprint solutions, but rather engage domestic players to promote policy goals and to build national demand for reforms, to identify possible solutions in the local context, and to support sustainability of reforms⁷.

3.1 Review of Assets Declaration in Some Selected Countries

Many countries have adopted laws and regulations which require public officials to declare their assets and liabilities either upon entry into the public service or promotion into a position with potential for illicit enrichment or upon termination. In this paper, a desk research approach, which depended largely on the review of available literature, comparative studies and assessments of national systems by international organisations, principally the Organisation for Economic Co-operation and Development (OECD), the Council of Europe's Group of States against Corruption (GRECO) and the World Bank, were used to ascertain the assets declaration regime in some countries. Nearly every country in Europe has some form of financial disclosure requirement for public officials. GRECO in 2001 adopted a Model Code of Conduct for Public Officials that included a requirement for declaration of private interests (Articles 13 and 14) and a broad definition of conflict of interest, including apparent and potential conflict of interest (Article 13). The benefits reaped as a result of such efforts include increased foreign direct investment, stability and, for some, European Union accession.

Some fifteen (15) countries were chosen based on their economic, political, social and cultural background. Also included is a World Bank survey in 2006 covering five (5) African countries to provide the African experience of assets declaration.⁸

7 OECD (2011), *Asset Declaration for Public Officials: A Tool to Prevent Corruption*, OECD Publishing, Paris; World Bank (2012), *Public Office Private Interests; Accountability through income and Asset Declaration*, World Bank Publishing, Washington, D.C.

8 Open Society Justice Initiative (2012), *Right2info.org, Asset Declaration Overview*, World Bank Publishing, Washington, DC.

The survey shows that the scope, coverage and level of enforcement of asset declaration laws and regulations vary from country to country. The World Bank and OECD documentation maintain that no best practice can be identified for such laws, as they are tailored according to the country's specific circumstances and depend on social, historical and political factors, as well as resources for enforcing the laws. However, a few principles emerge and credible asset disclosure regimes share common dimensions. Typically, they establish who should declare what to whom, the filing frequency and methods, the declaration processing, applicable sanctions for intentional failure to declare as well as public access to these declarations.⁹

This survey groups the international practice under the following classification:

- Verifiability by the administering authority
- Public disclosure/accessibility
- Coverage
- Content of the declaration
- Sanction for non-compliance

3.1.1 Verifiability

A credible asset disclosure regime should have a verification process for the administering authority to examine the declaration forms. Having an independent institution or body for handling assets declaration is crucial for the successful and effective implementation of an assets declaration system. Different states use different institutions to oversee assets declaration by public officials. The institutions that have been used include election management bodies, tax authorities, anti-corruption agencies, and parliamentary bodies¹⁰. In countries where assets declaration systems are relatively new, an empowered autonomous body and a specialised body are advantageous compared to another system that employs self-monitoring.¹¹ Self monitoring is used in countries which have well-established assets declaration systems and a long history of democratic practices. On the other hand, developing countries that choose to use autonomous and specialised bodies should have the necessary financial and human resources, as well as facilities to do so.¹²

9 OECD (2011), *Asset Declaration for Public Officials: A Tool to Prevent Corruption*, OECD Publishing, Paris

10 Burdescu, R and Reid G, and Gillman S. and Trapnell, S (2009), *Income and Asset Declarations: Tools and Trade- Offs*. Stolen Asset Recovery Initiative and World Bank Publishing, Washington, .D.C.

11 OECD (2011), *Asset Declaration for Public Officials: A Tool to Prevent Corruption*, OECD Publishing, Paris

12 Transparency International (2013), *Holding Politicians to Account: Asset Declaration Regime*, TI Publishing, Berlin

Regardless of the institutional set-up that is chosen, it is important that the institutional responsibilities are clearly stated in the legislation.¹³

The administering authority should have the power to request for explanation, clarification and correction of inconsistent information, omission or discrepancy. Some countries included in this study grant this verifiability process for the administering authority to go through the forms submitted and make sure that the declaration is satisfactory. However, one notable exception is Ghana where the declaration is sealed in an envelope provided and submitted to the administering authority, the Auditor-General, who shall disclose the contents of the sealed envelope and verify the contents of the declaration in accordance with the provisions of Article 286 (3) of the 1992 Constitution.

3.1.2 Public disclosure/accessibility

Public disclosure or accessibility refers to the provision which allows for the public to access information on compliance. Public disclosure may be full or limited disclosure. Full public disclosure means that all information provided in the declaration is made available for open public scrutiny. Limited disclosure is where certain categories of data are exempt from disclosure (OECD, 2011, *Asset Declaration for Public Officials: A Tool to Prevent Corruption*, OECD, Paris, p.86).

3.1.3 Frequency of Filing, Method and Declaration Processing

Filing frequency is an important element of a well-designed assets declaration system. Generally, declarations should be collected as often as reasonably needed to keep the data up to date and available for oversight purposes¹⁴. A review of some of the literature showed that several countries made provision for filing before assumption of office, at yearly intervals and after the end of term. Uganda and The Gambians cases in point have a two-year filing requirement.¹⁵ In Ghana article 286(1) of the 1992 Constitution provides for disclosure in writing before taking office, at the end of every four years, and at the end of term of office.

Any successful enforcement requires an effective assets declaration monitoring body with a clear mandate, powers, capacity and resources. The regulatory framework needs to mandate a relevant authority to receive and process public officials' assets declaration; as well as assess

13 Ibid

14 OECD (2011), *Asset Declaration for Public Officials: A Tool to Prevent Corruption*, OECD Publishing, Paris

15 Chene, M. (2008), *African Experience of Asset Declaration*, U4 Anti-Corruption Resource Centre, Transparency International Publishing, Berlin

their authenticity, completeness, inaccuracies and inconsistencies. Ideally, this body must be empowered to remind public officials of their obligations and ask them to rectify and redress discrepancies or irregularities.¹⁶ Sufficient resources need to be allocated to ensure adequate record management, investigation and enforcement through a disciplinary body. In view of this frequency consideration must take into account resources (financial, human and material) so as to be able to administer the declaration effectively and efficiently.¹⁷

3.1.4 Coverage

The enabling law determines who is required to declare assets and liabilities. In Ghana article 286(1) provides that a person who holds public office is required to declare his or her assets and liabilities. Clause (5) of article 286 further mentions the public offices to which the provisions of this article apply. It begins with the President of the Republic and runs down to such offices in the public service and any other public institution as Parliament may prescribe.

It is usually neither necessary nor practicable to subject all public office holders to assets declaration regime. Countries like Cameroon require all public officials to disclose their assets but such provisions are poorly implemented due to lack of capacity (financial, human and material) or political will.¹⁸ It is more practicable and prudent to include public office holders reaching a certain level of seniority or being promoted into positions that offer potential for illicit enrichment. In Uganda, the law covers all top and middle ranking public officials. In addition, such countries as Kenya, Tanzania, Uganda, South Africa, United States of America and Nigeria also require that public office holders declare the assets of their spouse and children to prevent dishonest officials from hiding their assets in their spouse or relatives' names.¹⁹

3.1.5 Content of Declarations

Any credible disclosure regulation needs to spell out clearly what assets, liabilities public officials must declare. In addition to personal and business assets disclosure, it is considered a good practice for public officials to disclose sources of income, positions held in profit or non-profit organisations, debts, gifts, payments for travel, advances, reimbursement as well as assets and income of spouse and dependent children.²⁰ In South Africa, for example, members

16 *ibid*

17 OECD (2011), *Asset Declaration for Public Officials: A Tool to Prevent Corruption*, OECD Publishing, Paris

18 Chene, M. (2008), *African Experience of Asset Declaration*, U4 Anti-Corruption Resource Centre, Transparency International Publishing, Berlin

19 Chene, M. (2008), *African Experience of Asset Declaration*, U4 Anti-Corruption Resource Centre, Transparency International Publishing, Berlin

20 *Ibid*

of parliament are required to disclose all gifts valued at over R350.²¹ The Kenya Public Office Ethic Acts 2003, has, on the other hand, been criticised for failing to establish with clarity what assets, liabilities and interests public officials are to disclose.²²

In Ghana, the properties subject to declaration are listed in section 4 of Act 550. They are also itemised on the 5-page Declaration of Assets and Liability Form although the form does not come with any guidelines on how to complete it. However, the Ghanaian requirement seems to be satisfactory since it is explicit and the listed items are made handy as part of the form. It has been found that irrespective of the elaborate guidelines that may be provided, the person making the declaration could deliberately refuse to give an honest disclosure.

3.1.6 Sanctions for Breach

Sanctions are an important mechanism to prompt compliance with the assets declaration requirements. Sanctions can be administrative, disciplinary, reputational or criminal, depending on the public official's position and misdeed.²³ Assets declaration laws and regulations have become ineffective due to the lack of application of sanctions on officials who intentionally fail to disclose or knowingly make a false declaration. Some countries impose some form of sanctions on public office holders who fail to comply with the applicable laws or regulations. For example, Romania tends to dwell much on fines. A fine of RON100 to RON500 is imposed for non-submission or late submission of the statements. A similar range of fine is imposed for failure to provide information when so requested by the inspector.²⁴ In Ukraine, incorrect, false or incomplete information contained in the submitted form results in administrative liability in the form of a fine, and can be a basis for refusal of promotion or limitation of the right to be elected for positions within state bodies.

In Kenya and Tanzania breach of the asset declaration laws ends up in a fine or imprisonment or both.²⁵ The case of Ghana is rather unwieldy and complex. Section 7 of Act 550 provides that an officer is required to declare his assets and liabilities under the Act who (a) without reasonable excuse fails to declare; or (b) knowingly makes a false declaration contravenes the law and shall be dealt with in accordance with section 8 of this Act. Section 8 states that an

21 Ibid

22 Ibid

23 OECD (2011), *Asset Declaration for Public Officials: A Tool to Prevent Corruption*, OECD Publishing, Paris

24 Chene, M. (2008), *African Experience of Asset Declaration*, U4 Anti-Corruption Resource Centre, Transparency International Publishing, Berlin.

25 Ibid

allegation that a public officer has contravened or has not complied with a provision of Act 550 shall be made to the Commissioner for CHRAJ, and in the case where the allegation is made against the Commissioner for CHRAJ, to the Chief Justice who will, unless the person concerned makes a written admission of the contravention or non-compliance, cause the matter to be investigated. The Commissioner for CHRAJ or the Chief Justice may take such action as he considers appropriate in respect of the results of the investigation or the admission. The application of sanctions in Ghana for breach of the asset declaration law creates uncertainty, granting of discretion and possible favoritism that may give rise to perception of corruption. The sanction is not precise to make it effective and to have the desired impact.

Asset declaration laws are likely to be rendered a failure due to lack of effective sanctions on officials who intentionally refuse to disclose, and the ambiguity over which entity is precisely responsible for exacting the sanctions or for prosecuting such failures. Sanctions for failing to disclose or for making false or misleading declarations need to be severe enough to have a deterring impact. In principle, the same sanctions should apply to non-disclosure and false declaration; otherwise corrupt officials may refuse disclosure since the penalty for non-disclosure is less deterrent.

3.1.7 Summary of the Review

The review demonstrates the following essential benchmarks for an effective assets declaration regime.

- i. Most countries have adopted written laws (constitution and legislation) requiring public office holders to declare their assets and liabilities.
- ii. The assets declaration covers elected and appointed public officials and other civil and public servants.
- iii. Many countries require the declaration to cover spouses and dependent children.
- iv. There are variations with regard to verifiability, accessibility, coverage, content and sanctions for non-compliance.
- v. Declaration is made at regular intervals. The preference in many countries is yearly-declaration and additional requirement to declare before taking office and at the end of the official's term of office.

- vi. In most countries the law requires the administering authority to process the declaration, direct officials to rectify any anomaly on the forms and make any necessary amendments, with an additional mandate to periodically remind an official to submit their declaration form.
- vii. Sanctions for breach of the assets declaration laws are not applied as a general principle. Some refer offending officials to other authority or body to apply specific sanctions. Sanctions are generally fines. However, in some limited instances they are fines or imprisonment or both.
- viii. Application of sanctions seems to be strong in the Latin Americas, Asia and Europe, where they include fines and imprisonment, but fairly weak in Africa with the notable exception of Uganda where sanctions are reasonably firm. For example, in Uganda, a senior official was dismissed for intentionally refusing to declare his wealth, although he was finally reinstated by the Ugandan Constitutional Court.

4.0 STRENGTHS AND WEAKNESSES OF THE ASSETS DECLARATION REGIME

Transparency International has identified certain strengths and weaknesses of the assets declaration and these are provided below:²⁶

4.1 Strengths of the Assets Declaration Regime

1. A well-defined assets declaration regime serves to prevent, detect, investigate and prosecute corruption and abuse of power and its transformation into unexplained wealth. It can therefore be a tool for uncovering bribery and other forms of corruption such as nepotism, conflicts of interest and undue advantage.
2. Published information on a person's asset allows civil society to hold leaders to account.
3. If leaders are seen to live beyond their means, an assets declaration can be a starting point for investigations.
4. Assets declaration creates a genuine basis for countries to take action on identifying, tracking and recovering illicit assets of public officials.
5. Assets declaration targets public sector officials with power and who have been vested with the authority to decide contracts, allocate budgets and oversee a variety of decisions that involve taxpayer money.
6. Assets declaration is intended to provide a clear format for public officials to report assets and interests to ensure probity.
7. By requiring that those holding public office divulge their assets and interests before, during and upon leaving their tenure, any enrichment during that period can be monitored.
8. By scrutinising the accumulation of assets during and after terms in office, investigators are provided with a motive for asking public officials to explain these changes in one's wealth.
9. Assets declaration mandates the public official to directly participate in the process thereby taking interest in the system.
10. Public access to assets declaration both deters officials from intentionally filing false declarations and encourages corrections for unintentional mistakes. Moreover, it strengthens and facilitates citizens' involvement in reviewing the declaration.
11. Well-designed assets declaration system by the law makers identifies:

²⁶ Transparency International Working Paper 1/2014: Asset Declaration: An effective tool to fight corruption, TI Publishing, Berlin

- Which institution should be responsible for the system?
 - Who is obliged to declare assets?
 - What information should be declared?
 - How asset declaration will be collected.
 - How asset declaration will be verified.
12. Countries with a longer tradition of assets declaration by public officials have significantly lower perceived levels of corruption than countries with newer laws.
 13. Perceived levels of corruption are lower in countries whose declaration laws permit prosecution of the offending officials.
 14. Countries that verify officials' statements and give public access to officials' assets declaration have significantly lower perceived levels of corruption than countries that do not verify declaration content.

4.2 Weaknesses of the Assets Declaration Regime

1. Even though an assets declaration regime has great potential for fighting the abuse of power and corruption by public office holders, its impact can be limited by shortcomings of the regulatory framework.
2. Major flaws in legislation are likely to threaten the effectiveness of assets declaration as a mechanism for fighting corruption. They include:
 - The lack of clarity about what assets, liabilities and interest public office holders are required to disclose.
 - The absence of a legal requirement for the verification of assets declarations.
 - The lack of effective sanctions and clarity over the prosecution of offences.
 - The lack of public access to officials' assets declarations.
 - The poor design of the assets declaration form.
 - The lack of political will in supporting the assets declaration regime.
 - The lack of technical, financial and human resources required to implement the scheme.
3. It can be that implementing bodies do not have adequate powers to carry out their tasks in relation to collecting and verifying declaration.
4. The absence of appropriate autonomy of implementing bodies. This can make them

vulnerable to illegitimate pressure, particularly where verification of declaration can potentially hurt high level public officials.

5. Underdeveloped institutional context. In some countries anti-corruption agencies tend to turn into lone fighters with no support, and can even encounter widespread animosity on the part of other agencies. Where such an institution is in charge of assets declaration, the situation may result in insufficient co-operation between state bodies and hence limited effectiveness of the system.
6. Lack of support and/or awareness among officials. In the early stages of implementing declaration systems, a major difficulty is making public officials aware of new requirements and achieving due respect for the need to accept them properly.
7. Lack of interest and/or support by the broader public. If the broader public has little interest in the disclosed information about public officials' income, asset and interests, the potential of declaration to enhance the public interest of accountability of officials remains under exploited.
8. Ineffective taxation system. In countries where the tax system is ineffective, and private individuals can easily hide incomes from taxation, it is hard to ensure wealth monitoring of public officials. Assets are often hidden behind the names of private individuals and their sources cannot be verified.

5.0 HISTORY OF ASSETS DECLARATION IN GHANA

The first time that assets declaration was included in a Ghanaian Constitution as an anti-corruption provision was in 1969. Article 67 of the 1969 Constitution of Ghana provided that:

“The Prime Minister, a Minister of State or a Ministerial Secretary shall on assuming office make a declaration in writing of his assets and liabilities to the President”.

However, Gyimah-Boadi recalls that the Progress Party government failed to comply with the declaration requirements of the Constitution²⁷. In any case the provisions contained in Article 67 of the 1969 Constitution fell far short of the scope of information to be declared.

The Armed Forces Revolutionary Council (AFRC) led by Flt. Lt. Jerry John Rawlings came to power on June 4, 1979. To make the 1969 Constitution more effective, the AFRC enacted the 1979 Constitution of Ghana which included in Chapter Twenty-Four a “Code of Conduct for Public Officers”. Article 205(1) of the 1979 Constitution enjoined a person who held a public office to submit to the Auditor-General, a written declaration of all property or assets owned by, or liabilities owed by, him and his spouse whether directly or indirectly. The AFRC believed that corruption was the reason that sent Ghana into such a bad state of affairs, from the economic and political point of view. It started what it called a “house cleaning” exercise resulting in the execution of three former military heads of state, five senior military officers and one senior public officer as well as long prison sentences for some public officials and businessmen who were accused of corruption. The AFRC’s objective to get rid of corruption with its house cleaning exercise was never achieved because the corrupt practices continued until the Rawlings-led Provisional National Defense Council (PNDC) came to power on 31st December 1981 and abrogated the 1979 Constitution which was introduced after the short reign of the AFRC.

For 11 years the PNDC government went to great lengths to combat corruption by creating institutions to fight it; nevertheless, corruption was still pervasive. Recognising that brute force, long prison terms and even executions during the AFRC regime could not eliminate or even abate corruption, the PNDC government in 1992 promulgated the Public and Political Party Office Holders (Declaration of Assets and Eligibility) Law, 1992 (PNDC Law 280) as a further means to fight corruption. Under PNDC Law 280 declaration of one’s assets and liabilities appeared to be stringent and transparent as Public Officials and their families were required to declare their assets and liabilities.

²⁷ Ghana Centre for Democratic Development (2005), Enhancing the credibility of the public office holders declaration regime: Briefing Paper Vol.7 No.3, CDD-Ghana Publishing, Accra

The Auditor-General was required to publish the assets and liabilities declared by public officers within 14 days of receiving the form. The PNDC Law 280 appeared to be rigorous but its implementation was flawed because the declaration was not verified. In January 1993, the 1992 Constitution came into force to end the reign of the PNDC. Chapter 24 of the 1992 Constitution contains the Code of Conduct for Public Officers with Article 284 of the Constitution addressing conflict of interest. It provides that “a public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office”. Similarly, Article 286 provides that a person who holds a public office shall submit to the Auditor-General a written declaration of all property or assets owned by, or liabilities owed by him whether directly or indirectly.

Arising out of Article 286 the Public Office Holder (Declaration of Assets and Disqualification) Act, 1998 (Act 550) was passed to further strengthen the attempts to combat corruption. The Act aims at ensuring transparency and accountability as enshrined in Chapter 24 of the 1992 Constitution. The Act also provides for the disqualification of public officers from holding specified public offices if they are found to be in breach of the Act.

When Act 550 was under consideration in Parliament in 1998, the House strongly objected to proposals that would have provided for public access to disclosure and the Auditor-General’s scrutiny. Felix Owusu-Adjapong sought to add a new clause to read as follows: “Any person may:

- a) inspect a declaration made under this law and deposited with the Auditor-General upon payment of a prescribed fee; and
- b) require a copy of the declaration lodged with the Auditor-General on payment of such fees as may be prescribed.”

He argued that “the clarion call these days is probity and accountability; and it is the cornerstone of the President’s address to this august House this year. You can only get probity and accountability if you introduce a third factor which is transparency. In a country where we do not have a law specifically relating to right to information, one has got to be very careful if you say that people should declare their assets, but you do not make provision for it to be viewed by interested parties. You are declaring the assets to whom? We are told the current practice is that you fill the form, you seal it, you give it to the Auditor-General and then they are locked to gather dust. If that is all the nation wants to do, then I am afraid we do not need to spend our hard earned resources for such an exercise.”²⁸

²⁸ Parliamentary Debates: Official Report, Fourth Series, Vol.18 No.40, Col.3413, 18th March, 1998

There was a strong opposition to the introduction of provisions that allowed for transparency. The regime of National Democratic Congress (NDC) headed by President J.J. Rawlings supported Parliament to reject such provisions. Dr. Obed Asamoah, the then Minister of Justice and Attorney-General, supported by a great number of Members of Parliament argued that making the system transparent would be an invasion of privacy. The then Majority Leader in Parliament, J.H. Owusu-Acheampong, vehemently opposed the amendment by Owusu-Adjapong and said that he was doing so for only one small point. It was possible, he said, “if this amendment is allowed, for somebody to go to the Auditor-General’s Department, pay this small fee of money that he is talking about, collect the assets declared by somebody, then he can even go and organise thieves, gangs, to go after the assets of this particular person if he thinks that the person is worth more than he really has.”²⁹

The irony is that members of the Rawlings-led PNDC government, some of who became part of his NDC government in 1992 promulgated the Public and Political Party Office Holders (Declaration of Assets and Eligibility) Law, 1992 (PNDC Law 280). Under PNDC Law 280 declaration of one’s assets and liabilities appeared to be more stringent and transparent. Public officials were required to declare the assets and liabilities of their families in addition to their own. The Auditor-General was required to publish the assets declared by public officers within 14 days of receiving the forms.

When Act 550 of 1998 came into force it was observed that there were deficiencies in the completion and submission of the assets declaration form by public officials. A couple of major drawbacks of Act 550 are that it does not provide for scrutiny and verification by the Auditor-General and the public has no access to the contents of the declaration. When the declaration forms are submitted to the Auditor-General they remain sealed and stored away. They are made available and the contents disclosed upon demand only by the court, a commission of inquiry or the Commission on Human Rights and Administrative Justice (CHRAJ).

In the view of Gyimah-Boadi³⁰ “indeed, it is very tempting to believe that some of the weaknesses in the present assets declaration legislation, the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550) were intentionally designed to provide public officials of the Fourth Republic with maximum latitude against the background of previous hassles with compliance and the rise of an ethos of accountability in the same Republic. That would seem to be the only plausible explanation for a parliament controlled

²⁹ Parliamentary Debates: Official Report, Fourth Series, Vol.18 No.40, Cols.3417 and 3418, 18th March, 1998

³⁰ Ghana Centre for Democratic Development (2005), Enhancing the credibility of the public office holders declaration regime: Briefing Paper Vol.7 No.3, CDD-Ghana Publishing, Accra

by the NDC to have passed a piece of legislation that doggedly refused to go beyond the minimum required under Chapter 24 of the 1992 Constitution, and one that also represented a significantly watered down version of the more enabling PNDC Law 280”.He further pointed out that during the early 1990s when Ghana returned to democratic rule and the media had recovered its “voice”, the nation was shocked by media reports of ridiculous assets declarations by leading figures in the PNDC regime. He said that the assets declarations made by some long-serving public officials featured items such as “broken down” gramophone players and 1971 Ford Capri cars.

5.1 Review of Existing Assets Declaration Regime in Ghana

Assets declaration in Ghana is governed by Article 286(1) of the 1992 Constitution and the provisions of the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550). It takes the following processes:

5.1.1 Collection of a Declaration of Assets and Liability Form

- The public office holder collects a Declaration of Assets and Liability Form from the office of the Auditor-General (see Appendix).
- The form may be collected at the Audit Service head office or any of the Audit Service’s regional offices.
- The official may collect the form personally, send another person, or make a request by phone or by letter.
- The office of the Auditor-General hands over the form in the manner requested by the official.
- There is no time schedule for the return of the form to the office of the Auditor-General.
- The official may choose not to return the form at all without any sanction or even a reminder from the office of the Auditor-General.

5.1.2 Submission of the Completed Form

- The official may submit the form to the office of the Auditor-General at the head office or to any of the regional offices either;

- (a) personally,
- (b) by another person on behalf of the official,
- (c) by post or courier service.

5.1.3 Receipt of Form

- The office of the Auditor-General receives the form which is already put in the envelope provided and sealed by the official making the declaration.
- The office of the Auditor-General issues a written receipt, to the person who submitted the form, in the name of the official making the declaration.

5.1.4 Storage/Archiving of Form

- The office of the Auditor-General keeps the form in storage under lock and key.
- A register is kept at the office of the Auditor-General in which the records of number of forms received are maintained. This is the only available record to show the number of officials who have filed their asset declaration form indicating their names.
- There is no specific period for the office of the Auditor-General to keep the form under lock and key. There is no time limit for the storage of the form, even when the official has retired from the public service or died.

Article 286(3) of the 1992 Constitution and section 6 of Act 550 provide that the assets declaration made shall, on demand, be produced in evidence:

- (a) before a court of competent jurisdiction; or
- (b) before a commission of inquiry appointed under article 278 of the 1992 Constitution;
or
- (c) before an investigator appointed by the Commissioner for Human Rights and Administrative Justice.

6.0 THE NATIONAL ANTI-CORRUPTION ACTION PLAN (NACAP) AND THE CONSTITUTION REVIEW COMMISSION OF INQUIRY

6.1 The National Anti-corruption Action Plan (NACAP) – 2012-2021 and Assets Declaration Regime

In 2012, the National Anti-Corruption Action Plan (NACAP) was developed through broad consultations and emphasised a three-pronged approach to fighting corruption. These were namely: prevention, education and enforcement. The Action Plan was adopted by the Parliament of Ghana in 2014. The four strategic objectives of NACAP³¹ are to:

- build capacity to condemn and fight corruption and make its practice a high-risk, low gain activity;
- institutionalise efficiency, accountability and transparency in the public, private and non-profit sectors;
- engage individuals, media and civil society organisations in the report and combat of corruption; and
- conduct effective investigations and prosecution of corrupt conduct.

In developing NACAP, account was taken of the limitations and shortcomings that characterise anti-corruption strategies being utilised. One of the strategies is the assets declaration by public officials. Under the NACAP implementation programme, the assets declaration regime will be reviewed. This will mean amending Chapter 24 of the 1992 Constitution and extensive amendments to the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550), and supported with Legislative Regulation. Such a review will create a more effective assets declaration regime by public officials to redress the weaknesses in the current assets declaration regime. Since Parliament adopted NACAP in 2014, there seems to be lack of sufficient public information on it and 2 years down the line the implementation programme outlined in the Plan seems to be proceeding at a very slow pace.

31 Republic of Ghana (2011), National Anti-Corruption Action Plan 2012-2021, Accra, p. 36.

6.2 The Constitution Review Commission of Inquiry's Views on Assets Declaration

In 2012 the Government appointed a Constitution Review Commission of Inquiry to review and report on the 1992 Constitution. The Commission reviewed Chapter 24 of the Constitution and deliberated on the assets declaration regime in Ghana. The Commission came out with the following recommendations on the administration of assets declaration in Ghana:

- i. Chapter 24 of the Constitution should be amended to create a more effective regime on assets declaration by public officers and the verification and monitoring of such assets by the Auditor-General.
- ii. Extensive amendments should be made to the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550) to be supported with clear Regulations on:
 - (a) how assets declared can be verified;
 - (b) how the public may access the declaration; and
 - (c) the punishment for failure to declare and false declaration.

The Government issued a White Paper³² and accepted the above recommendations on assets declaration. The White Paper stated that in the opinion of the Government it would be feasible for such verification and monitoring of the declared assets to be done within a year of the declaration and within 3 months after the officials' exiting of office.

The Government, however, did not accept the Commission's recommendation that CHRAJ should be mandated to verify and monitor declared assets without cause or complaint of wrongdoing.

³² Republic of Ghana (2012), White Paper on the Report of the Constitution Review Commission of Inquiry, Accra

7.0 COMMENTS ON THE STRENGTHS AND WEAKNESSES OF THE GHANA ASSETS DECLARATION REGIME

7.1 Strengths of the Ghana Assets Declaration Regime

- i. The introduction of the legal framework for the assets declaration regime is an indication that the country is making an effort to fight corruption. Article 286 (1) of the 1992 Constitution and the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550) provides the public a positive perception of the efforts of the Government in fighting corruption as is being done in other countries.
- ii. As advocated by Gyimah-Boadi, a credible and effective assets declaration regime is an essential component of the ensemble of rules and structures necessary for democratic governance.
- iii. The process protects public officials from undue suspicion, baseless allegation of wrongdoing as was witnessed during the periods of the Provisional National Defense Council (PNDC) which saw the creation of the Citizens Vetting Committees (CVCs), Peoples Defense Committees (PDCs) and Workers Defense Committees (WDCs) to adjudicate allegations of corruption against public officials.

7.2 Weaknesses of the Ghana Assets Declaration Regime

In the paragraphs below the paper discusses the weaknesses of Ghana Assets Declaration process against what is done in other countries based on:

7.2.1 Verification

The Auditor-General, being the administering authority, has not got the mandate to verify the information the official has provided on the form. He, therefore, cannot draw the attention of the official to any discrepancies and inconsistencies on the form. This is contrary to what is being done in, for example, Uganda and Spain that have been identified by the Transparency International to be among countries with the best practices. Uganda is one of the countries whose assets declaration regimes provide for verification of public officials' submission. The Inspector General of Government (IGG) is responsible for verifying assets declarations and has the discretionary power to question public office holders. In such cases, public officials have 30 days to answer such requests.

In Spain, the Conflict of Interest Office carries out verification. The Conflict of Interest Office has access to a copy of the latest income tax returns submitted by the public official. The Real

Estate Registry is public and therefore available to the Conflict of Interest Office. The law provides for a mandatory referral to the judicial authorities (State Prosecutor's Office) when there is reasonable evidence or the likelihood that a criminal offence has been committed.

7.2.2 Public Disclosure/Accessibility

The public has no access to the declaration form, therefore, it cannot comment or report on any omissions or discrepancies on the information provided by the official. This is contrary to best practices. Experience around the world suggests that allowing public access to officials' declarations greatly enhances the impact and value of assets declaration regimes. African countries that require public declaration for some or all their top officials include South Africa and Liberia. Disclosure through Internet database has been implemented successfully in Liberia after the elections in October 2004. Political parties and candidates declared their assets for the first time, making them available for public scrutiny via the National Election Commission website and providing the opportunity to hold the winning candidate accountable in future.

7.2.3 Frequency of Filing, Method and Declaration Processing

Provision is made by the official to file the assets declaration before taking office, at the end of every four years and at the end of tenure of office. In some countries, filing is done on annual basis although it is said that there is no perfect time for frequency of filing. Frequency consideration may take into account finance, human and material resources. The practice in Ghana, however, seems to be unsatisfactory and will need some amendment. The opinion generally expressed is that the frequency of filing, while the official is in office, should be every two years - in view of the limited resources allocated for the assets declaration regime.

7.2.4 Coverage

The provisions in the enabling Act 550 of 1998 are found to be insufficient. Even though, they draw in all public officers to declare their assets and liabilities they leave out spouses and dependent children. It is debatable whether or not the declaration should include spouses and dependent children. The advocates for the declaration to cover spouses and dependent children hold the view that any person who is not willing to disclose his property should not join the public service or he is at liberty to leave the service. On the other hand, those who hold the contrary view say that the spouses and the children are not parties to the employment contract of the public official and, therefore, the official's assets declaration should not extend to them. The argument that the declaration of assets by public officials should include spouses

and dependent children seems to be strong.

7.2.5 Content of Declaration

The assets and liabilities to be disclosed are clearly listed in Act 550. The scope of information to be declared depends on the purpose of the declarations. Conflict of interest control requires information about interests that have the potential to influence the discharge of official duties, rather than a necessarily all-encompassing picture of all income, assets, outside business and other activities. The practice in Ghana is thus found to be unsatisfactory since the list of all the assets and liabilities required to assess the wealth of the official is short of what is generally done elsewhere.

7.2.6 Sanctions for Breach

Sanctions for breaching the provisions of the assets declaration laws are not explicit and precise enough. There is no indication in the laws as to exact amount of the fine or the length of custodial sentence that may be imposed on the offending official. This falls short of what occurs in, for example Spain, where the law provides for a mandatory referral to the State Prosecutor's Office when there is reasonable evidence or likelihood that a criminal offence has been committed.

7.2.7 Lack of Political Will and Commitment by the Government and Parliament

The government and parliament have not had the political will and the commitment to promote the assets declaration regime and give it the prominence and the resources such as the required funds, the right type of personnel and equipment for processing. This is evidenced by the fact that when Act 550 of 1998 was under consideration in Parliament the House strongly objected to proposals that would have provided for public access to disclosure and the Auditor-General's scrutiny. The Government supported Parliament to reject such provisions. Parliament and the Executive refused to give the Auditor-General a separate budget for the administration of the assets declaration regime. The Government's contention was that there was not much to be done, administratively, under the current assets declaration regime to demand a separate budget for it. The only notable expenditure in the Auditor-General's annual accounts in respect of the administration of the assets declaration process is the cost of printing the Assets Declaration Form and its Envelope, and that cost is included in the Audit Service Stationery and Printing Expenses Vote.

Since 1998 the Auditor-General has not issued any annual report on the Assets Declaration and Parliament has not deemed it necessary to sanction or at least demand that the Auditor-General issues such reports providing details of the number of officials who have submitted

their declarations and any relevant matters. Information made available from the office of the Auditor-General indicates that some previous Members of Parliament did not comply with the provisions of Act 550 of 1998, neither have some of the current ones. It therefore, stands to reason that, since 1998 Parliament has not demanded that the Auditor-General issues report on the assets declaration system. The Audit Service Board, whose secretariat is currently administering the assets declaration regime under the direct execution of the legal officer, has also never reported on it in its annual reports.

Overall, as Kpundeh³³ argues, political will remains the single most critical starting point for sustainable effective anti-corruption strategies and programmes. Without it government statements to strengthen transparency and accountability remain mere rhetoric.

33 Kpundeh, S.J. (1998) Political will in fighting corruption, Centre for Institutional Reform and the Informal Sector, University of Maryland

8.0 HISTORICAL AND CULTURAL BARRIERS TO ASSETS DECLARATION

8.1 Historical Barriers to Assets Declaration

Historical and cultural barriers to assets declaration have become a standalone issue because of their negative effect on the assets declaration regime and consequently the fight against corruption. This view is supported by the Government in the White Paper on the Report of the Constitution Review Commission of Inquiry (2012) which states:

Government accepts the proposal for new legislation on ethics and anti-corruption on “gifts” and what constitutes “conflict of interest” to assist the Commission on Human Rights and Administrative Justice in the determination of complaints made against public officers for breaches of the Code of Conduct for Public Officers.”³⁴

There are historical and cultural barriers to surmount in the assets declaration regime. The era of unconstitutional rule in Ghana, in particular, under the Armed Forces Revolutionary Council (AFRC) and the Provisional National Defense Council (PNDC) fostered a culture of secrecy among public office holders to some extent. The establishment of extra judicial bodies like the Citizen Vetting Committees (CVCs), Peoples Defense Committees (PDCs) and Workers Defense Committees (WDCs) to adjudicate allegations of corruption leveled against the rich and well placed in society and the managerial and executive class in the work place, created discomfort with ownership of property, and the holding of executive and managerial positions. Ghanaians in general are reluctant to publicly disclose what they own or owe as well as their age. This may be due to the fact that wealthy people in society, including public office holders, tend to have many economic dependents and responsibilities as a result of the extended family system and cultural values. Therefore, a declaration that reveals a person’s capacity to take care of several of his family members is not particularly welcome.³⁵

In the view of Scott, “we live in a society in which people who exhibit material affluence are over-respected without bothering about the source of their wealth. The notion of respect for material affluence seems to be a recent phenomenon in the Ghanaian society. As recent as in the 1960s and before, school teachers, civil servants and even some politicians who did not own cars and houses were sufficiently respected by the society.

³⁴ Republic of Ghana (2012), White Paper on the Report of the Constitution Review Commission of Inquiry, Accra p. 25

³⁵ Ghana Centre for Democratic Development (2005), Enhancing the credibility of the public office holders declaration regime: Briefing Paper Vol.7 No.3, CDD-Ghana Publishing, Accra

Cultural practices which cherish material possessions and frown on the poor, could influence those who have authority over some public funds to enrich themselves in order to build their personal image.”³⁶

8.2 Cultural, Religious Beliefs and Gift as Barriers to Assets Declaration

Other cultural beliefs that are embedded in religion are difficult to surmount and need to be addressed. For example, gift giving which is arguably a form of corruption is one. This is debatable as the practice of gift giving has been misapplied by some people to suit their own interest. In addition, the quantum of the gift and the motive behind it are very important.

In Akan societies, gift giving is part of their culture. To Agyekum (2010:81) thanking is an institutional act performed in accordance with the societal, organisational and institutional demands of the Akans. To refuse gifts without any tangible reason is a clear manifestation of enmity between the participants. Gifts and services followed by thanks are signs of a deep and an affectionate relationship, especially when they are between peers.³⁷

A similar view is shared by Sarpong (1974:76) that: “Every gift or service calls for a favourable reciprocal action from the recipient because accompanying it is the giver’s personality. In many instances, to refuse a gift amounts to a declaration of open enmity, and to neglect to show gratitude is no less offensive.”³⁸

Also gift giving is mandatory in Islam. In the Holy Quran chapter 8 verse 1, the English translation states that “Gift giving is one of the good manners that maintains and strengthens relationships between the giver and the recipient. It is one of the acts that the Prophet Muhammed recommended to Muslims to do”. Christians are also encouraged to give gifts. In Proverbs chapter 18 verse 16 in the King James Bible it states that “A man’s gift maketh room for him, and brings him before great men”. Therefore, both Christians and Muslims can hardly accept the notion that gift-giving is a form of corruption irrespective of the kind and the size of the gift.

36 Scott, G.K. (2003), *Management and Control of Public Funds*, Napasvil Ventures Publishers, Accra, p.137

37 Agyekum, K. (2010), The Sociolinguistic of Thanking in Akan, *Nordic Journal of African Studies* (19)(2): 77-97

38 Sarpong, P. (1974), *Ghana in Retrospect, Some aspects of Ghanaian Culture*, Ghana Publishing Corporation, Tema

Gift-giving and gift-receiving have also received judicial affirmation. In the case of *Boateng vrs The Republic (1968)*, *Ghana Law Report*, the court held that mere acceptance of a gift by a public officer after doing an act was not an offence.³⁹

The annual traditional practice of exchanging or giving Christmas gifts has been seriously criticised as another way of corrupting public officials to the extent that the significance of traditional gift-giving has diminished. There is no law precluding the offering of gifts to public officials and people in responsible positions. In 2006, the CHRAJ developed Guidelines on Conflict of Interest and a generic Code of Conduct for Public Officers including offering and receiving of gifts, gratuities and other benefits. The Code gives the general rules that a public official shall not:

- i. solicit gifts, tangible or intangible, directly or indirectly from persons with whom he or she come into contact in relation to official duties;
- ii. accept gifts, tangible or intangible, that may appear or have the potential to influence the exercise of his or her official functions, proper discharge of his or duties or his or her judgment, indirectly from a person with whom he or she comes into contact in relation to official duties; and
- iii. accept cash offers of any amount.

Unfortunately these codes of conduct and guidelines do not have any legal backing that will enable the public officials to comply, failure of which they could be sanctioned.

8.3 Office of the President's Code of Ethics for Ministers and Political Appointees

In 2013 the Office of the President issued *Code of Ethics for Ministers and Political Appointees*. The Code gives the following guidelines on gifts:

- i. The exchange of gifts during official government visits is an accepted practice and a refusal to accept may cause offence. Such gifts are, however, more in the nature of gifts to the office than to the incumbent.
- ii. The Minister must relinquish any gift to the Secretary to the Cabinet to arrange for appropriate display of the item.
- iii. The Minister, who wishes to retain gifts received in Ghana or overseas, may do so provided the estimated value is not more than GHs200. If the estimated value is GHs200 or more the gift may be retained while in office but must be declared in the interest of the individual.

³⁹ Scott, G.K. (2003), *Management and Control of Public Funds*, Napasvil Ventures Publishing, Accra, p.137

- iv. Gifts with an estimated value of over GHs500 must be relinquished on leaving office, unless the express permission of the President to retain them is obtained.
- v. To avoid the creation or appearance of an obligation, gifts in cash or kind are not to be solicited or accepted from a commercial enterprise or any other organisation. An exception to this would be the acceptance of a presentation made during a visit to an institution.

The Code of Ethics issued by the office of the President seems to be in conflict with the CHRAJ Guidelines on Conflict of Interest and a generic Code of Conduct advising against offering and receiving cash gift by public officials.

When decision makers take gifts, they have the semblance of a bribe, which undermines public confidence in the government. There is a fine dividing line between gift and bribe and if one does not know where the line is drawn, one may not be able to make the best decision. Some people talk of the motive behind the gift, but we have to remember the old saying that, *“There is no such thing as a free lunch.”* In this regard, it is argued that public officials should avoid taking cash gifts - irrespective of the giver.

The essence of assets declaration is to enable the public official to be transparent in the performance of his duties. The use of any extra-judicial bodies like the then CVCs, PDCs and WDCs to adjudicate and monitor the work of the public officials is a hindrance in the way the public officials open up in the performance of their duties and the disclosure of their assets. One way of concealing ill-gotten wealth or assets by public officials is to pass them on to their families as gifts.

Our cultural and religious beliefs make it difficult to prevent the offering and receiving of gifts. The practice has become part of our life. Our historical antecedent, how past events affected our lives and the likelihood that they could happen again, cultural and religious beliefs are all relevant to the effective utilisation of assets declaration as a potent means in fighting corruption. Therefore, the proposal for any new legislation on assets declaration should take cognisance of the Ghanaian culture and religious beliefs with respect to gift giving.

9.0 FINDINGS AND CONCLUSION

9.1 Findings

The paper has examined the legal and institutional framework on asset declaration in Ghana. Further, the analysis has also reviewed best practices from other countries. The findings are as follows:

1. Assets declaration regime as it currently exists in Ghana is unsatisfactory and not potent enough as a tool to combat corruption. The current laws do not allow the Auditor-General, who is the administering authority, to open the sealed envelope containing the official's assets declaration for verification and scrutiny. The law does not ask for explanation, clarification and correction. Additionally, the current system does not allow public access to obtain information on compliance.
2. The filing frequency gap, which allows officials to resubmit the assets declaration form every four years, is found to be too wide and does not give current data on the official's assets to the administering authority.
3. There is no application of sanctions for non-submission, late submission and false declaration. This is because the administering authority does not have the mechanism to know the public officials who have defaulted or have made false declarations.
4. The government and parliament have not shown sufficient political will and commitment to promote the assets declaration regime and to give it the exposure, prominence and the resources such as adequate funds, the required and right type of personnel and machines for processing the data on the declaration.
5. There are historical and cultural challenges to overcome such as the belief in the offering and receiving of gifts in Ghana with their religious implications.
6. The public officials who are required to activate the assets declaration regime seem to be particularly passive and not fully informed about their obligations under the laws and un-involved fully in its implementation.
7. Assets declaration can be made to work effectively in reducing corruption significantly in Ghana. This is because it is the only tool to fight corruption that makes the official actively take part in the process of the application of its provisions and its administration. In this regard:

- The public office holder has a duty to submit a declaration.
- The public office holder has a duty to provide true and accurate information in the declaration.
- The public office holder has a duty to complete the assets declaration himself and sign the certificate at the end of the form.

Thus, assets declaration makes the official own and become part of the system.

8. The various Acts of Parliament, the regulations and institutional arrangements have not been effective because they seem to be applied on individual stand-alone basis. For example, there seems to be no co-ordination in the application of the provisions of the Public Procurement Act, 2003 (Act 663), the Financial Administration Act, 2003 (Act 654), the Internal Audit Agency Act, 2003 (Act 658) and Act 550 of 1998, although they all claim their source from the 1992 Constitution.
9. The assets declaration regime which is claimed to be more potent than the other laws and regulations in its present state under Act 550 of 1998 is not entirely satisfactory. There are no proper controls on the collection, receipt and storage of the declaration forms. The process faces challenges in the verification, public disclosure and sanctions for breach that must be addressed.
10. Poor record keeping in the public service is a serious drawback to the efficient administration of assets declaration. The government does not give sufficient attention to archival management in the public and civil services and this includes the office of the Auditor-General. Valuable time is spent in going through records that are not properly stored. To avert the danger of fire, loss of and damage to documents, attention to proper management of records should be factored in the budgetary allocation and proper training provided. The Auditor-General has raised concerns that the Assets Declaration Forms are kept in ordinary steel cabinets that are not resistant to fire and burglary, and that the government should make funds available for fireproof vaults or safes to secure the forms. These concerns have not been addressed.

9.2 Conclusion

The assets declaration regime in Ghana, as contained in the provisions of Article 286 of the 1992 Constitution and the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550), is not effective enough as an anti-corruption tool for combating corruption in Ghana. The existing assets declaration regime is an anti-corruption policy failure. The general consensus as shown in this paper, and supported by the recommendations of both the National Anti-Corruption Action Plan (NACAP) 2012 and the Constitution Review Commission of Inquiry 2012, is that the 1992 Constitution and Act 550 of 1990 need to be reviewed and amended to make the assets declaration regime in Ghana more potent to combat corruption in the public sector.

10.0 THE WAY FORWARD/POLICY RECOMMENDATIONS

The following policy recommendations are therefore made as the way forward:

1. The assets declaration regime needs public exposure. The government should, therefore, set up a high-powered commission to review and promote the enabling Act and get the commission members to be sworn-in by the President with wide publicity. This will create public awareness and make the public officials acknowledge the need to adhere to the provisions of the law and be cautioned that non-compliance will attract sanctions, and that the government will enforce those sanctions.
2. The government and parliament should demonstrate political will and commitment and amend Chapter 24 of the 1992 Constitution and the Public Office Holder (Declaration of Assets and Disqualification) Act, 1998 (Act 550) to take into account all the recommendations contained in this paper.
3. Coverage of the assets declaration regime should extend to all public officials who exercise discretion over public funds and or take legislative decisions. Coverage should include all individuals closely connected with the public officials such as spouses and dependent children.
4. Article 286 (6) mandates the Auditor-General to make a written declaration of his assets and liabilities to the President. This provision under Clause (6) should be amended to cover the Deputy Auditor-General. The other officials in the Audit Service shall make their assets declaration in the same manner as any other public office holder.
5. Assets declaration must be made a condition for accepting a position in the public service, and that the obligation to declare and the declaration period should be as follows:

OBLIGATION TO DECLARE UPON	DECLARATION PERIOD
New Appointment	Within 60 days of the new appointment
Termination of Appointment	Within 60 days of the termination
Re-appointment, re-election, renewal of the public position	Within 60 days of the re-appointment, re-election or renewal

<p>When any of the following cases occurs in respect of the public office holder:</p> <p>Change of department or public entity;</p> <p>Change of status and position</p> <p>Where both (a) and (b) carry discretionary powers in decision-making.</p>	<p>Within a period of 60 days from the change</p>
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6. Sanctions must apply to those who fail to comply with the assets declaration laws. Sanctions should be explicit and severe and include criminal prosecution for falsifying extremely bad and deliberate errors or omissions.
7. The law should give the Auditor-General the mandate to verify the accuracy of information in the declaration and gazette the contents of the declaration within 30 days. The public should be given guidelines on how to access the declaration and any false declaration detected reported to the Auditor-General.
8. As a transitional provision in any amendment to the existing law, training workshops should be organised for public officials to give them the understanding of their assets declaration obligations and the need to comply with the laws.
9. Civil society and non-governmental organisations and the media should be encouraged and even assisted, to sustain their anti-corruption programmes and strategies, and develop strong interest in assets declaration.
10. The government and parliament should endeavour to adequately resource the public anti-corruption institutions, particularly those whose budgets are a charge on the Consolidated Fund such as the office of the Auditor-General and the Commission on Human Rights and Administrative Justice. This is to ensure that they function effectively and efficiently in the discharge of their assets declaration mandate.
11. The assets declaration form should be redesigned to ensure that the income section could be verified against the income declared to other government agencies such as the Ghana Revenue Authority income tax returns, should it becomes necessary. The assets declaration form should be made available on-line for downloading and eventually upgraded to on-line submission by the official to the Auditor-General.

12. Finally, the government should endeavour to redress the cultural beliefs about gift giving and gift taking by educating the people to accept that, in Ghana, offering gift is perceived as a contributing factor in our inability to fight corruption. Public education should be backed by enforcing the anti-corruption laws, rules and regulations, although there is the feeling that the cultural basis of gift giving and gift taking has been overly exaggerated and misapplied to suit the interest of people who are corrupt.

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APPENDIX



REPUBLIC OF GHANA

No.

**Declaration of Assets and Liabilities
under Article 286
of the Constitution of 1992**

**DECLARATION OF ASSETS AND LIABILITIES UNDER ARTICLE 286
OF THE CONSTITUTION OF 1992**

(Foolscap sheets can be used if the space provided for the answers is not sufficient. The number of the question must be clearly shown and a line drawn to separate it from the beginning of another question. All answers must cover items in and outside Ghana.)

1. *Personal Particulars*

- (a) Surname.....
- (b) Other Names.....
- (c) Date of Birth..... (d) Place of Birth.....
- (e) Present Appointment.....
- (f) Date of Appointment.....

2. *Properties as at date of making Declaration*

(a) Houses

Houses and other Buildings (including Fixtures)	Where situated	Freehold or Leasehold	Date acquired	Cost at time of acquisition	Rents per annum (if any)

(b) Land

Land (undeveloped)	Where situated	Freehold or Leasehold	Date acquired	Cost at time of acquisition	Rents per annum (if any)

(c) Farms

Nature of Farm (e.g. coconut citrus, cattle, poultry, etc.)	Where situated	Freehold or Leasehold	Date acquired	Cost at time of acquisition	Annual Yield (if any)

(d) Concessions

Nature of Concession (e.g. minerals, timber, rubber, etc.)	Where situated	Terms of Holding	Date acquired	Cost at time of acquisition	Annual Income

(e) Trust or Family Property in your possession

Nature of Property, land, buildings, farms, jewellery	Where situated	Estimated Value	Rent or other income per annum (if any)

(f) Jewellery/objects of art

Nature of Concession (e.g. of jewellery, objects of art, etc.)	Date Purchased	Cost at time of acquisition

3

(g) Vehicles, plant and machinery, including Fishing Boats and Trawlers, Generating Plants, etc.

Nature (e.g. cars, fishing boats, generating plants, etc.)	Registration No.	Date of Purchase	Cost at time of acquisition

3. Employment or Business interest as at date of making Declaration

Nature (e.g. profession, sole proprietor, partnership, shares in companies, poultry farming, transport, fishing, shops, taxi)	Place of employment or address of business	Average income per annum from employment or business

4. Securities and bank balances, etc., as at date of making Declaration

(a) Current and deposit accounts, etc.

Bank or other institution (e.g. Ghana Commercial Bank, Social Security Bank Limited, First Ghana Building Society, etc.) (at home and abroad)	Cash balances or value of deposits of gold, silver or securities

4.

(b) Government bonds, treasury bills, National Development Bonds, shares, copyrights, royalties (at home and abroad)

Nature	Number of shares and the value of the shares at the time of the purchase

(c) Details of gold bullion owned and cash in hand or in safes, and details of debts owed by other persons to you.

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(d) Details of life or other insurance policies (at home and abroad)

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5. Details of any other names or aliases in which any properties or business interests are held on your behalf

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6. Liabilities:

(a) Particulars of creditors:

(i) Trade.....

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(ii) Others.....

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(b) Details of loans and bank overdrafts

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(c) Details of mortgage of property to others (e.g. to banks, insurance companies, building societies)

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(d) Details of unpaid bills

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(e) Other liabilities not shown above

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7. Voluntary Information

Give any other information relating to your assets and liabilities not included in the above

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CERTIFICATE

I hereby declare that all the foregoing information and particulars given by me are true and correct to the best of my knowledge and belief.

.....
(Date)

.....
(Signature of Person making Declaration)

.....
(Witness to Signature)

.....
(Date)

SECRET

TO THE AUDITOR-GENERAL

DECLARATION OF ASSETS AND LIABILITIES

I hereby certify that a Declaration by me

.....
(Name State whether Mr., Mrs. etc.)

Present Appointment

Address

has been properly completed and witnessed by.....

(Name and Address of witness)

FOR OFFICIAL USE

Received by Date

Serial No.



**The Institute of Economic Affairs
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P. O. Box OS 1936, Osu, Accra, Tel: +233-302-244716/+233-0307-010714, Fax: +233-302-222313
Email: iea@ieagh.org | www.ieagh.org