

LEGISLATIVE ALERT

A publication of The Institute of Economic Affairs

Vol. 24 No.1 Jan/Feb 2017

AMEND CURRENT ASSETS DECLARATION ACT TO FIGHT CORRUPTION EFFECTIVELY

By

Prof. Edward Dua Agyeman*

Assets Declaration Regime has been generally utilised since the 1970s as one of the most effective compliance mechanisms adopted by nations to prevent or cure the incidence of conflict of interest and corruption. It acquired 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.

In Ghana, two main laws have regulated assets declaration – Article 286 (1) of the 1992 Constitution and the Public Office Holders (Declaration 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 introduction of the legal framework for assets declaration is an indication that the country is making efforts to fight corruption.

Perceived levels of corruption are lower in countries with the following:

1. A longer established tradition of assets declaration by public officials.
2. Declaration laws that permit prosecution of offending officials.
3. Verification of officials' statements and clear public access to declarations.



Legislative Alert is a bi-monthly publication of The Institute of Economic Affairs, an independent public policy institute. This edition is sponsored by The International Development Research Centre / Think Tank Initiative (IDRC / TTI). Subscriptions to the Legislative Alert are made available to those who make contributions to the IEA. Address all correspondence to:

The Editor, Dr. Charles Mensa, Institute of Economic Affairs, P.O.Box OS 1936, Accra.

Tel. + 233-302 244716 Email: iea@ieagh.org. Website: www.ieagh.org

Facebook: www.facebook.com/ieagh. Twitter: www.twitter.com/IEAGhana

DEFICIENCIES IN GHANA'S ASSETS DECLARATION REGIME

The ability of an Assets Declaration Regime to fight abuse of power and corruption by public office holders can be limited by flaws in the legislation. This paper discusses the weaknesses of Ghana's Assets Declaration Regime by benchmarking against norms in other countries as follows:

- (a) **Verification:** The Auditor-General, being the administering authority, does not have the mandate to verify the information public officials provide on their forms. He, therefore, cannot draw the attention of the official to any discrepancies and inconsistencies on the form. This is contrary to best practices.
- (b) **Public disclosure / accessibility:** The public has no access to the declaration form. As such, it cannot comment or report on any omissions or discrepancies in the information provided by the public official. This is contrary to best practices and reduces the impact and value of the Assets Declaration Regime.
- (c) **Frequency of filing, method and declaration processing:** The regime makes provision for the official to file the assets declaration before taking office, at the end of a four year period and at the end of the official's tenure of office. In some countries, filing is done on an annual basis. The opinion generally expressed is that the frequency of filing during tenure of office should be every two years. This is in view of the limited resources (financial and human) allocated for the Assets Declaration Regime.
- (d) **Coverage:** The provisions in the enabling Act 550 of 1998 are found to be insufficient. Even though the Act requires almost all senior public officer to declare his or her assets and liabilities, the Act is silent on spouses and children. It is debatable whether or not the declaration should include spouses and children. The advocates for the declaration to extend to spouses and dependent children hold the view that an individual who is not willing to disclose his or her property should either not join the public service or should be at liberty to leave the service. The argument of including spouses and dependent children seems to be a popular view among the public. On the other hand, those who hold the contrary view affirm that the spouses and dependent children are not parties to the employment contract of the public official, and therefore the official's assets declaration should not extend to them.
- (e) **Content of declaration:** The assets and liabilities to be disclosed are clearly listed in the enabling Act 550. The scope of information to be declared depends on the purpose of the declarations. Conflict of interest control only requires information about interests that have the potential to influence the discharge of official duties, rather than a comprehensive picture of all income, assets, outside business and other activities of the official. It's important to note that, in Ghana, the list of all the assets and liabilities required to assess the wealth of the official, falls short of what is done elsewhere.
- (f) **Sanctions for breach:** Sanctions for breaching the provisions of the assets declaration laws are not explicit and precise enough. In the Ghanaian law, there is no indication in the laws as to the exact amount of the fine or the length of

custodial sentence that may be imposed on the offending official. This falls short of what prevails in other countries where the law provides for potential prosecution when there is reasonable evidence that a breach of the provisions has occurred.

- (g) **Lack of political will and commitment by Government and Parliament:** The Government and Parliament do not have the political will and the commitment to promote the Assets Declaration Regime to give it teeth. Both arms of state have not provided resources such as the required funds, the appropriate personnel and equipment for processing declarations and related information. 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 the information and enabled the Auditor-General to scrutinize the declarations made.

Since 1998, the Auditor-General has not issued annual reports on the implementation of the Assets Declaration Regime. Furthermore, Parliament has not deemed it necessary to sanction or at least demand that the Auditor-General presents such reports providing details of the number of officials who have submitted their declarations and other relevant documentation. The annual reports of the Audit Service Board, whose secretariat is currently administering the Assets Declaration Regime, make no mention of relevant declaration issues.

CONCLUSION AND RECOMMENDATIONS

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 an effective anti-corruption tool for combating corruption in Ghana. The existing Assets Declaration Regime is corruption prone and it is friendly to officials who have very deep interest in kleptocracy. The general consensus 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 public sector corruption. This view is also supported by both the National Anti-Corruption Action Plan (NACAP) 2012 and the Report of the Constitution Review Commission (2012).

The paper makes the following policy recommendations as the way forward:

1. The Government and Parliament should demonstrate political will and commitment and amend Chapter 24 of the 1992 Constitution and the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550), within the first 100 days of the Seventh Parliament of the Fourth Republic to take into account all the recommendations contained in this paper.
2. Coverage of the Assets Declaration Regime should extend to all public officials who exercise discretion over public funds and or take legislative decisions, and must be made a condition for accepting a position in the public service. Coverage should include all individuals closely connected with the public officials such as spouses and dependent children.
3. The current vacuum which allows corruption to thrive among public officials can be plucked if sanctions are applied to those who fail to comply with the assets declaration laws. The sanctions should be explicit and severe and include criminal

-
-
- prosecution for falsification, flagrant and deliberate errors or omissions.
4. 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 the procedure for reporting false declarations to the Auditor-General.
 5. 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.
 6. The assets declaration form should be redesigned to ensure that the income section can be verified against the income declared to other Government agencies such as the Ghana Revenue Authority's income tax returns. The assets declaration form should be made available on-line for downloading and eventually up-graded to facilitate on-line submission by the official to the Auditor-General.

.....

*Prof. Edward Dua Agyeman was the Auditor-General of the Republic of Ghana from April 2001 to May 2010. He has written several books on taxation and accounting and made presentations to international seminars and workshops including the United Nations Department of Economic and Social Affairs (DESA) and the International Organisation of Supreme Audit Institutions (INTOSAI) in Vienna, Austria. Prof. Agyeman was the founding Vice Chairperson of the African Organisation of English-speaking Supreme Audit Institutions (AFROSAI-E) with the head office in South Africa, and served as a Chairperson of the Audit Committee of AFROSAI-E. Prof. Agyeman is currently a Visiting Senior Fellow at the Institute of Economic Affairs (IEA).