

UNCAC Conference Edition

# Stolen Asset Recovery

## INCOME AND ASSET DECLARATIONS: TOOLS AND TRADE-OFFS

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# **Income and Asset Declarations:**

Tools and Trade-offs



Stolen Asset Recovery (StAR) Initiative

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Tools and Trade-offs

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# Foreword

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The United Nations Convention against Corruption (UNCAC) has focused attention on corruption's corrosive effects and provided a framework for action for countries to tackle this scourge. One of the most important elements of this framework is the process of building integrity and preventing corruption.

Developing effective disclosure systems and integrating them into wider anti-corruption programs are critical elements in that process. Income and Asset Declarations (IAD) systems in particular serve an important role. When such systems are linked to training and enforced codes of conduct, they can be a powerful tool to prevent corruption and detect the theft of public assets.

Although the concept of Income and Asset Declaration itself is not novel, countries are continuously finding new ways to improve their systems: creating and using useful software to verify information declared; applying new training techniques to reach civil servants; conducting forceful communications campaigns to foster transparency. This document seeks to capture this innovation and rich experience. The document provides practitioners with easy access to the key principles to follow, the trade-offs to consider and tools used in the design and implementation of effective Income and Asset Declaration systems. It is based on an extensive analysis the legislative framework and a series cases studies examining in depth how these systems are put into practice.

We should never forget the reason we create these systems. As part of an overall anti-corruption strategy, they help ensure that scarce resources are spent honestly and wisely. In this way, we help citizens get the health care, the education, the roads and the quality of life they have paid for and deserve. And, in the best sense, this attention to good governance acts as a reinforcing foundation for prosperity and stability. In the words of World Bank Group President, Robert Zoellick, there is “an irrevocable commitment to mainstreaming governance and anti-corruption into our development work ... this commitment must reach beyond any country, any organization, or indeed, any individual”.

The present version of this document will be presented at the Third UNCAC Conference of States Parties. We look forward to working with the Governments represented here in Doha, our partner organizations, and all stakeholders to explore these issues further.

*Otaviano Canuto*  
Vice-President, Poverty Reduction and Economic Management  
World Bank Group



# Executive Summary

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Asset declaration systems, also referred to as financial disclosure, or declaration of interest systems, are an important element of building successful anti-corruption programs and a culture of integrity in public service. While the primary focus of this guide is the creation of effective and efficient disclosure systems for public officials, the guide also acknowledges that the role these systems play in detecting and preventing asset theft, can also assist efforts to secure the return of stolen assets or proceeds of corruption.

When contemplating the creation of an asset disclosure system, the first order of business is to agree on the objective or objectives of the system. Although there may be different purposes for an asset declaration (AD) system, the chief determinant of how an AD system is designed is whether it focuses on combating illicit enrichment, the identification and prevention of conflicts of interest (COI), or both. Granting public access to asset declaration information is another important dimension of AD regimes that can enhance both their effectiveness and their credibility. Many countries are struggling with whether and how to make asset declaration information accessible to the public; the central issue at stake being whether or not public access to this information violates the privacy of public officials, or poses a threat to their security.

Credible disclosure systems, whether the information is made public or kept confidential, can help build the trust of citizens in their government. To meet that objective, AD implementing agencies must be administered professionally, have sufficient independence to fulfill their mandates, and be subject to sufficient oversight to ensure they don't abuse their authority. Civil society organizations and the media can play an important role in ensuring that the disclosure system meets these standards.

While this publication does not propose ideal parameters for the design and implementation of an AD system—which depends partly on the resources available, on levels of perceived risk in different areas of public administration, and the overall objectives of the AD system, experience in different countries has shown the need for governments to weigh certain trade-offs so as to craft an optimal approach to meeting AD objectives within the particular institutional and cultural context in which the system operates. Facing trade-offs can result, for example, in an approach that limits the scope of coverage of the system, to target higher-risk positions, and not overstretch the capacity of the implementing agency. Other risk-return factors to consider in such trade-offs include, for example, the comprehensiveness of the asset declaration requirement (i.e.

what information should be included and in how much detail), the frequency of filing, and the criteria for verifying the content of declarations.

Building and strengthening the administration of an AD system may take considerable time. There are also considerable costs, including those associated with ensuring that the AD system is run by qualified and trained personnel, who have the independence to carry out the politically sensitive task of reviewing AD forms. While recognizing that one size does not fit all, there are a limited number of core functional requirements that any good AD system will address. This guide provides advice on those core functional requirements, options for addressing each, ways in which particular options may either complement others or present trade-offs, as well as empirical evidence on how particular countries have addressed these requirements and with what success.

In addition to the management and organizational structure of an AD system, its facilities, technology and storage capacity are crucial to consider. Technological improvements have benefited disclosure systems in a number of ways. For example, providing the filing form both in electronic form and hard copy can facilitate submission and enhance compliance. While electronic filing is found in some countries, however, it can be difficult and costly to add to a system, and consideration must be given to officials' access to the necessary information technology.

It is also important that countries apply and enforce appropriate and proportionate sanctions. To meet this standard, sanctions and their effects need to be considered across multiple axes: what failures should face sanctions? What types of sanctions should be available? Fines, administrative sanctions, and/or criminal sanctions? How severe should each of these sanctions be? How do these sanctions reinforce the specific objectives of the AD system as a whole? Are the chosen sanctions enforceable? And, finally, how will appropriate sanctions reinforce the credibility of the system? The use of sanctions in various country contexts, and experiences in enforcing them, are explored in this guide.

Lastly, credibility in government efforts to establish and enforce AD systems is critical, as it goes a long way toward establishing a "culture of integrity" that instills behavioral norms of ethics within government. The process of developing AD systems is often highly politicized, and setting and managing expectations during what can be a lengthy process of debate and implementation can be vital to its successful adoption.

The chapters in this guide provide detailed analyses of all aspects of disclosure regimes, from the role and objectives of AD systems, the legal framework for their implementation, to institutional arrangements and implementation practices, including for instance the types of disclosures that are required, how they can be verified and stored, and how compliance can be enforced.

Chapter 1 highlights key considerations for policy makers and practitioners to take into account in building an effective AD system, and in establishing the credibility of

the system with stakeholders. It considers some of the trade-offs that countries face in developing and implementing an AD system in a given context. This chapter also highlights the role of AD systems in contributing to international asset recovery efforts, and the need for AD system designers and practitioners to recognize and enhance that contribution.

Chapter 2 analyses the results of a detailed “in-law” study of asset declaration systems. Drawn from an assessment of legislation, decrees, and codes of conduct regulating financial disclosures of heads of state, ministers, MPs, and civil servants in over 74 countries, consultations with experts and practitioners on good (and bad) practices, and a review of the AD literature, this chapter includes recommendations where good practices have been identified and suggestions regarding the different alternatives available to legislators and policy-makers in developing the legal framework for an AD system. The indicators developed for the “in-law” study are provided in Annex 3. The list of countries is provided in Annex 5.

Chapter 3 focuses on the “in-practice” elements of asset and income disclosure systems. Drawn from case studies in eight countries, consultations and discussions with experts and practitioners, and a review of the AD literature, this chapter provides suggestions on good practices and on the different alternatives available to policy-makers and practitioners. Some of the results and experiences of AD systems are also described, such as rates of filing compliance, the use of public access to asset disclosure information, and experiences in enforcing sanctions. Summaries of selected case studies are included to highlight design features and implementation approaches adopted in different countries. The indicators developed for the case studies are provided in Annex 4. A summary of the review of AD literature, with further analysis of the trade-offs that countries face in developing and implementing a disclosure system, is provided in Annex 1.





# About this Publication

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This publication is a joint project developed in partnership by the Stolen Asset Recovery (StAR) and Public Accountability Mechanism (PAM) initiatives in the Public Sector and Governance Department of the World Bank, and has been specifically designed in response to a request of the Working Group on Asset Recovery under the Secretariat of the UN Convention against Corruption. In developing this guide, the WB-UNODC team has benefited from collaboration and information from colleagues from partner organizations such as OECD, IADB, DfID, and USDOJ.

In an effort to answer the question as to how best to design and implement an income and asset disclosure system, this publication recognizes that countries must ultimately design a system that best complements the environment in which it will function. As such, this study analyzes some of the trade-offs faced by policy-makers and practitioners alike, in designing and implementing an optimal AD system in a particular context. Given that there is no single best practice (no “one-size-fits-all”), this publication is not intended as a step-by-step manual, but rather as a general guiding framework.

This publication seeks to highlight some of the design features and implementation practices that can contribute to building effective asset declaration (AD) systems. This is not the only global study of asset declarations systems, but its distinctive contributions are that it:

- a. examines AD regimes governing more than a single set of public officials;
- b. examines both the ‘in law’ and ‘in practice’ features of AD systems in more detail than any previous study;
- c. (distills lessons of experience from different countries in creating and implementing an income and asset disclosure system.

This guide is intended to be useful to agencies responsible for implementing AD systems. It will also be useful to legislators and policy makers in designing the legal frameworks and procedures that govern asset disclosure by public officials.

This publication also meets the requirements of the development community in a field where detailed technical analysis and recommendations are greatly needed. This guide will be useful to international and bilateral development agencies in the provision of analytical and technical assistance in the development of disclosure regimes.

Finally, for civil society organizations and the media, this guide presents insights into the use and monitoring of a tool that can aid in holding government accountable to citizens.

## **Methodology**

The analysis provided in this publication is the product of a combination of sources including in-depth case studies of AD systems in eight countries or economies (Mongolia, Kyrgyzstan, Croatia, USA, Argentina, Guatemala, Honk Kong, Macau); analysis of AD reforms in two fragile states (Haiti and Afghanistan), and a review of the AD legislative frameworks in 74 countries (the list of countries is provided in Annex 5).

Country case studies consisted of comprehensive field missions, on-site visits, interviews with AD specialists and practitioners from relevant institutions, and other stakeholders (including members of the donor community, academia, NGOs, media, parliamentarians, prosecutors, members of the Judiciary, of FIUs, etc.). A set of “in-practice,” and “in-law” indicators were developed to guide this research (see Annexes 3 and 4). Countries were selected for the detailed case studies to reflect a range of AD models and experiences; levels of GDP, legal system (civil law or common law jurisdictions); geographical distribution (case studies in Africa region and Middle East are proposed in the second stage of research), etc. The findings in this study are also informed by a review of the literature on asset declaration systems, and by consultations with practitioners. Colleagues and experts in the field from the World Bank, UNODC and other partner organizations have been invited to provide comments and suggestions.

## **Consultation and Follow-Up**

This document is to be presented at the III Conference of State parties for the UN Convention Against Corruption in Doha, in November 2009. It is still a work in progress and will benefit from additional consultations with stakeholders and the completion of other case studies that will be undertaken over the next year. Although this constitutes a preliminary analysis, readers should find the insights and guidance provided useful for their own work in designing, implementing or monitoring the work of agencies responsible for asset declaration systems.

Additional case studies in the MENA and Africa Region will serve to widen the scope of the study. The product will be revised to include analysis of additional case studies and will elaborate on any new findings. Additional work will provide further analysis on the issues specific to fragile states or low capacity countries. This document will be followed by a second publication being prepared for 2010, which will also include the detailed findings of the individual case studies.

The final product will serve as an illustration of how trade-offs have and can be addressed both at policy level and in practice. It will respond to the basic question: “what is feasible in terms of AD” given the context and conditions of a particular country (including capacity, resources, culture, traditions, institutional settings, etc.).

As mentioned above, this publication will be presented at the UNCAC State Parties Conference in Doha for consultations with participants, November 4–14, 2009. It will also be shared with AD practitioners from 23 countries from Europe and Central Asia during the OECD-OSCE-Sigma Expert Seminar “Asset declarations for public officials as a tool against corruption” in Belgrade, Serbia, October 15–16, 2009. Follow up activities being explored are dissemination events in several regions, the development of training modules, and the establishment of a network of AD practitioners to facilitate South-South collaboration and exchange of information on lessons of experience.



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*<https://www.agidata.org/pam>*





# Acronyms and Abbreviations

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ADU	Asset Declaration Unit (Argentina): <i>Unidad de Control y Seguimiento de las Declaraciones Juradas</i>
AO	Anti-Corruption Office (Argentina): <i>Oficina Anti-Corrupción</i>
BEPA	Bureau of European Policy Advisers
BNB	Bulgarian National Bank
CCAC	Investigations Department (Macau)
CGC	Comptroller General's Office (Guatemala): <i>Contraloría General de Cuentas</i>
COI	Conflict of Interest
CPI	Corruption Perception Index
CSB	Civil Service Bureau (Hong Kong)
DAEOs	Designated Agency Ethics Officials (USA)
DAVIP	Departamento de Análisis Verificación e Investigación (Guatemala)
DDJP	Departamento de Declaración Jurada Parimonial (Guatemala)
DfID	Department for International Development (U.K.)
ECA	Europe and Central Asia region
EU	European Union
FATF	Financial Action Task Force
FIA	Financial Intelligence Agency
GNI	Gross National Income
HOO	High Office of Oversight (Afghanistan)
HPO	Holders of Public Office
HRM	Human Resources Management
IAAC	Independent Authority Against Corruption (Mongolia)
IADB	Inter-American Development Bank
ICAC	Independent Commission Against Corruption
ID	Investigations Department (Argentina)
LAC	Latin American and Caribbean region
MENA	Middle East and North Africa region
MOU	Memorandum of Understanding
MP	Member of Parliament
NGO	Non-governmental Organization
OAS	Organization of American States
OECD	Organization for Economic Co-operation and Development

## Income and Asset Declarations: Tools and Trade-offs

OGE	U.S. Office of Government Ethics
OSCE	Organization for Security and Co-operation in Europe
PAM	Public Accountability Mechanisms Initiative (World Bank)
PEP	Politically Exposed Person
PPP	Public-Private Partnerships
PREM	Poverty Reduction and Economic Management Network (World Bank)
SAD	Single Administrative Document
SIDEC	Information System for Sworn Statements (Colombia)
StAR	Stolen Asset Recovery Initiative
SUIP	Uniform Personnel Information System (Colombia)
TI	Transparency International
UAIF	Information and Financial Analysis Unit (Colombia)
UNCAC	United Nations Convention Against Corruption
UNICRI	United Nations Interregional Crime and Justice Research Institute
UNODC	United Nations Office on Drugs and Crime
USDOJ	United States Department of Justice
USKOK	Office for the Prevention of Corruption and Organized Crime (Croatia)
WBG	World Bank Group
WBI	World Bank Institute

# Chapter 1. Asset and Income Disclosure Systems: Overview and Main Recommendations

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## 1.1. Introduction

Asset declaration systems can contribute to combating corruption by either reducing the incidence of conflicts of interest, or by helping to identify and prosecute cases of illicit enrichment by public officials. Asset declaration systems, also referred to as financial disclosure, or declaration of interest systems, are an important element of building successful anti-corruption programs and a culture of integrity in public service. A culture of integrity is set out in the United Nations Convention Against Corruption as the underlying principle that should govern asset disclosure and conflict of interest regimes:

As a general principle, public bodies [...] need to create a climate where the public service provision is transparent and impartial, where it is known that the offering and acceptance of gifts and hospitality is not encouraged and where personal or other interests should not appear to influence official actions and decisions.<sup>1</sup>

An asset declaration requirement can also provide an effective reminder to public officials of the duty to accountability that comes with public office. U.S. Justice Stephen G. Breyer once commented that “as much as I hate filling out disclosure forms they are a regular reminder of my ethical responsibilities and my accountability to the public.”<sup>2</sup>

A successful asset declaration system does not exist in a vacuum—requiring completion of an asset disclosure form for no other purpose than its storage in the archives of the implementing agency. Rather, the objectives of an asset disclosure system—improving public integrity and maintaining the confidence of citizens in government institutions—are best achieved when the disclosure is “anchored” in a set of norms obligating public officials to behave in a certain manner. Such norms are commonly set out in criminal laws and/or in an ethics code.

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1. Technical Guide to the UN Convention against Corruption, UNODC and UNICRI, Vienna, Austria, 2009, p. 25.[http://www.unodc.org/documents/corruption/Technical\\_Guide\\_UNCAC.pdf](http://www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf)

2. Statement at the Global Forum against Corruption, I, Washington, DC, November 1999.

The utility of an asset disclosure system is to a large extent dependent on elements of the broader institutional, cultural and political environment in which it operates. Effective cooperation between law enforcement and independent oversight bodies, for example, and the effectiveness of the judicial system, will influence the extent to which a disclosure system will achieve its particular objectives, both in terms of prevention and enforcement. The vibrancy of civil society organizations and the media, as well as the public awareness of, and attitudes towards, issues of corruption, will also have an effect. These elements will—to varying degrees in different contexts—have an influence on the effectiveness of an AD system and need to be taken into account in its design and implementation.

This chapter highlights key considerations for policy makers and practitioners to take into account in designing and implementing an effective AD system and in establishing the credibility of the system with stakeholders. This chapter also highlights the role of AD systems in contributing to international asset recovery efforts, and the importance for AD systems to recognize and enhance that contribution.

## **1.2. Asset Declarations and Stolen Asset Recovery**

Experts suggest that perhaps the single most important preventive tool for combating money laundering and corruption is the registering of officials' assets and income.<sup>3</sup> An effective AD system can contribute to the prevention, identification and recovery of stolen assets, both domestically and internationally; an important dimension of AD systems that is frequently overlooked. This is not to suggest that the AD systems need be designed primarily for law enforcement purposes, but rather, that with foresight even the most passive asset declaration system can support the prevention of asset theft or assist law enforcement in asset recovery.

A well-conceived and effectively implemented AD system can provide investigators and prosecutors with an invaluable tool for investigating corruption and for detecting the flow of proceeds of corruption out of the country. If an official's proceeds have been hidden abroad, the existence of a financial disclosure that provides incriminating evidence can support a request for mutual legal assistance or justify the freezing or seizing of assets. Asset declarations can also be used as *prima facie* evidence in countries where lying on an asset declaration constitutes a criminal offense: proving the lie in such cases can often be easier than proving the underlying act of corruption that was concealed by the lie. Discrepancies between an asset declaration form and other evidence an investigator has uncovered regarding a public official's assets, income and liabilities can provide the basis for a subsequent criminal prosecution, and can improve the odds of conviction in corruption trials.

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3. Chaikin, David & Sharman, J.C., *Corruption and Money Laundering: A Symbiotic Relationship*, New York: Palgrave Macmillan, 2009.

AD systems have a clear role within broader anti-corruption regimes. In many countries this role is already being leveraged. The role of AD systems in international anti-corruption and asset recovery efforts requires collaboration, both domestically and internationally, between policy makers and practitioners to recognize and enhance the mechanisms will support these efforts. An effective domestic AD system provides the necessary foundation for these efforts.

### **AD Systems and Politically Exposed Persons (PEPs)**

Perhaps the most vulnerable population to charges of asset theft are senior officials in government, an important group in the politically exposed persons (PEPs) category. They are vulnerable in two senses: first the media and civil society expose them to the most scrutiny and can harm their reputation. Second, they are most likely to have the access and capacity to transfer large sums of money to financial institutions outside of the country. For that reason the UN Convention against Corruption focuses an entire article to this issue. Specifically, Article 52 requires State Parties “to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public function and their family members and close associates.”<sup>4</sup> Further, ratifying parties are required to issue advisories on persons who would require “advanced scrutiny”; in other words, those individuals included under the PEPs umbrella.

One of the mechanisms the Convention urges to prevent asset plundering is an “effective financial disclosure system[s] for appropriate public officials and . . . provide for appropriate sanctions for non-compliance.”<sup>5</sup> Because this same paragraph recommends sharing this information with other authorities, the Convention makes clear the link between the value of disclosures and scrutiny of PEPs. Therefore, it would not be unreasonable for a country to use the names of financial disclosure filers as a first building block in identifying and addressing PEP related issues.

The StAR initiative is currently preparing a policy paper on Politically Exposed Persons (PEPs) and will be tabling specific recommendations on the use of asset and income declarations in the context of monitoring business relationships with PEPs. In general, the study confirms that the information from the asset and income declarations can be a helpful tool for financial institutions in developing the customer profile, including information on source of wealth or source of funds, or used as a basis for comparison in reviewing account activity. Policy recommendations arising from this study will include the recommendation that government officials be asked to provide a copy of the asset and income disclosure form that they have filed with their government, as well as subsequent updates. The requirement will apply whether the

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4. UNCAC, Article 52, paragraph 1.

5. UNCAC, Article 52, paragraph 5.

declaration is publicly available or not, as the onus is on the customer to provide the information.

### **1.3. Building an Effective AD System: Summary of Findings**

#### **1.3.1. Clearly defined goals are important**

When contemplating the creation of an asset disclosure system, the first step is to agree on the purpose or purposes of the system. Establishing a hierarchy of goals might result in a system that seeks to reduce corruption and enhance accountability as its high-level outcome; and (i) reduce the incidence of conflicts of interest (COI), and (ii) reduce the incidence of illicit enrichment as its specific objectives.<sup>6</sup> Enhancing the effectiveness of AD systems as a tool for the prosecution of corruption, or for the detection and return of stolen assets is a corollary of these objectives. Although these objectives are not mutually exclusive, it is vital that policy makers and practitioners have a clear understanding of their priorities. As will be seen in the ensuing discussion, this determination of priorities will impact the specific design features of the asset disclosure system that should be adopted and the methods practitioners should use to implement those policies.

Regardless of some of the drivers of change, be they domestic political concerns, international conventions, or other factors, identifying the targeted behavior will facilitate the creation of the proper mechanisms for achieving desired outcomes of the AD system. The following chapters will present the options available both to the policy makers and to the practitioners responsible for implementing AD systems. This section provides guidance on some of the trade-offs that need to be considered, and the potential ramifications of choosing one objective, or one set of tools, over another.

#### **1.3.2. Addressing conflict of interest vs. illicit enrichment**

Although the purpose of AD systems may differ, the chief determinant of how an AD system is designed is whether it focuses on combating illicit enrichment, on the identification and prevention of conflicts of interest, or on both.

Although an AD system, by itself, is unlikely to directly and comprehensively combat illicit enrichment, it can be a powerful tool for helping to prosecute cases of illicit enrichment, for building a culture of integrity, and for providing an opportunity to prosecute cases where the underlying corruption may be particularly difficult to prove.

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6. According to the United Nations Convention Against Corruption (UNCAC), illicit enrichment involves the significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

There are different approaches to implementing an AD system oriented to combating illicit enrichment. An element that is vital for countries that adopt such a system is to introduce measures for verifying whether individual declarations are accurate and honest. Implementing agencies need to have investigative capacities to detect potential signs of illicit enrichment, or irregularities and false statements in the declarations themselves.

A conflict of interest (COI) model will use a somewhat different approach. Conflict of interest can refer to a situation in which an individual is in a position to exploit an official capacity for personal benefit, but *has not necessarily done so*. In short, the presence of a conflict of interest is not an indicator of improper conduct, but rather a warning of its possibility.<sup>7</sup> In such a system, it is essential that notions of what constitute a conflict of interest be clearly articulated in the law or regulations, and communicated to the filers through comprehensive awareness raising and training.

COI models are often designed to promote collaboration between the implementing agency and the individual filer and are often found both within the government and the private sector, particularly in finance and banking fields where the potential conflicts of interest may be prevalent. The operating principle of a COI model, then, is not to assume illegal behavior on the part of the public official, but rather to assist him or her in avoiding situations where a conflict of interest can arise and ensuring that the official is not open to accusations or suspicions of bias or corruption. Although many of the design features of such a system will be similar to those of an illicit enrichment system, the emphasis and implementation approach may be somewhat different in an effort to make enforcement less adversarial.

Despite this clear delineation between the objectives and approaches of illicit enrichment and COI models, systems have been created that combine elements of both models. These systems, which enable the AD system to cover a broader range of anti-corruption issues, require more comprehensive regulatory frameworks and are more complex to implement. Generally speaking, older members of the European Union (EU) use fewer regulations to establish AD systems and emphasize the prevention of conflicts of interest in their disclosure systems, while newer members of the EU are generally more regulated and design their AD systems to reflect some of the elements of both AD models. Hybrid systems hold the promise of being quite effective, but pose particular challenges as they are more complex to implement.

As described above, the nature of the two approaches is somewhat different as a result of the different types of behavior being targeted. Particular care must be used in

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7. For example, the primary purpose of the AD system in the United States is the detection and prevention of potential conflicts of interest. The system is not directly designed to combat illicit enrichment. Financial declarations are intended to ensure transparency and the independence of public officials in their decisions, and to increase public trust and confidence in the integrity of the entire government.

the development of the enforcement regime and the use of sanctions. The complexity of a dual-objective approach also means that high capacity of the AD unit is important. Creating separate units for monitoring compliance and providing COI guidance on the one hand, and for conducting investigations, on the other, can mitigate potential tensions between the agency's advisory and enforcement roles.

### **1.3.3. AD systems are far from standardized: Context matters**

There is no single best-practice design that will achieve every AD outcome simply because AD outcomes depend on factors that vary in scope and intensity across countries. In fact, AD systems are far from standardized and may differ within a country from federal to municipal levels. The reason for this lack of uniformity centers on three underlying considerations that shape the design of any AD framework. Taking these considerations into account when planning an AD system helps to create a strong foundation for both the appropriate matching of goals and means and the adoption of successful methods and procedures.

- A. The purpose of the AD system: *What behaviors or issues should the system address?*
- B. Resource requirements: *What resource requirements will the implementing agency have?*
- C. Country context—*What complementary mechanisms are needed to support the system?*

#### **A. The Purpose of an Asset Declaration system**

Understanding the purpose(s) of an AD regime is the first step toward establishing an AD system with the potential for maximum effectiveness. As mentioned above, there are two general models that are linked to two distinct purposes: the prevention of conflict of interest and the prevention illicit enrichment. However, countries focused exclusively on one model or the other are in the minority. Most countries use a combination of conflict of interest and illicit enrichment models to achieve country AD goals. The analysis below makes a distinction between these models as a key starting point for the design of specific AD systems. During the earliest stages, countries often neglect to take into consideration questions such as the concrete resources (HR and financial) that are required and available to manage the AD system both immediately and in the long term. Maintaining a distinction between the two models is helpful for design purposes as they have distinct requirements in terms of resources and complementary mechanisms.

- *Illicit enrichment.* A primary or exclusive focus on illicit enrichment might be considered preferable in contexts where perceptions of corruption and impunity are high. An AD system can assist in combating the underlying issues and



behaviors that contribute to these perceptions. In such cases, governments may prefer to adopt a model that focuses on monitoring officials' wealth, with the ultimate aim of detecting the concealment or theft of assets, and sanctioning violators through administrative or criminal sanctions, including heavy fines.

- *Conflict of Interest.* Rather than focusing on the detection of wrongdoing, conflict of interest models concentrate on avoiding situations that may lead to unethical behavior. Contexts that may benefit from a conflict of interest model often have effective systems in place for the criminalization and/or prosecution of corruption, as well as low levels of perceived corruption, though this is not always the case. Conflict of interest models can provide an ethics framework to guide officials in avoiding situations of conflict of interest that may lead to corrupt behavior. Communicating these objectives, and training officials even before they assume their positions is deemed very important.

### **B. Asset Declaration Agency Resource Requirements**

Although many different kinds of resources are required to sustain an AD system, most of them are not exclusive to any one AD model. Both models require effective management and accountability arrangements in terms of human resources, budget, technology, and facilities. Likewise, enforcement capacities are necessary in either model. These resources are discussed in detail in Chapter 3, which focuses on the in-practice elements of the implementation of AD systems. What differs between the two AD models, specifically with respect to methods and goals, is how human resources are employed to enforce the AD framework in place.

- *Illicit enrichment.* Systems that focus on detecting and prosecuting illicit enrichment require a cadre of public servants with the skills and tools to scrutinize declarations, detect irregularities, and identify signs that could indicate improper conduct. One method associated with illicit enrichment models is the flagging of significant or unjustified increases in officials' wealth by comparing declarations from different filing periods. Another method involves cross checking the content of declarations through collaboration with other agencies, such as property or vehicle registries, banks, or investment firms, even with the tax authorities. Still another method involves careful scrutiny of the asset declaration to detect inconsistencies or "red flags" that indicate potential wrongdoing. In any of these cases, public servants dealing with declarations should be both (i) well-versed in the legal definitions of improper conduct, its potential manifestations, and the procedures for dealing with suspected cases of illicit enrichment, so that cases will be forwarded to the proper investigatory entity, as well as (ii) skilled in asset declaration verification and investigation techniques.
- *Conflict of Interest.* Systems that address potential conflicts of interest require a cadre of public servants with the skills required to review declarations to

determine if conflicts of interest exist, and suggest solutions to eliminate those conflicts of interest. Similar to the illicit enrichment model, these public servants should be well-versed in the legal definitions of conflict of interest, its potential manifestations, and the procedures for recusal, divestiture, or other means of eliminating the conflict. Public servants tasked with review of declarations must also be aware of prohibitions on conduct and illicit enrichment stipulated in the criminal code or code of ethics, so that cases of wrongdoing detected in the course of their work can be forwarded to the appropriate officials for investigation and prosecution if necessary.

### ***C. Country Context: Complementary Mechanisms***

In addition to its internal institutional arrangements and capacity, an AD system also depends on complementary mechanisms that exist outside the AD framework, but are necessary in order for the AD system to function effectively. The presence and relative effectiveness of these mechanisms need to be taken into account in designing an optimal approach to asset disclosures. These mechanisms derive from the effectiveness of the judicial system, law enforcement, and other independent oversight bodies, and the coordination between them, and the existence and accessibility of complementary sources of asset and income data. Prevailing attitudes towards issues of corruption—as part of the foundation for a culture of integrity—are also relevant, as is the vibrancy of civil society organizations and the media. These mechanisms may exist to varying degrees and a consideration of their relative capacity to support AD functions will assist in determining the optimal design of an AD system. It must be noted, however, that AD systems cannot substitute for the presence of these mechanisms, nor should their absence deter the creation of disclosure requirements and procedures. Rather, it is a question of designing and implementing an AD system that builds on and leverages existing mechanisms, and can contribute to further strengthening others.

- *Illicit enrichment.* Systems that focus on the detection of improper conduct must have the capacity to sanction individuals who violate the law. Where criminal sanctions are to be applied, the effectiveness of an independent judicial system and public prosecutor's office are essential to the enforcement of an illicit enrichment model. The presence of vibrant civil society organizations and a free press can also be counted on to enhance—though not substitute—the detection and verification functions, which this model also requires. Although media interest in asset declarations is criticized in some countries for tending towards sensationalist coverage, responsible and interested media and civil society organizations can be very useful in performing lifestyle checks that provide an additional layer of verification, depending on public access to declarations. The media can also be influential in bringing political pressure to bear to strengthen AD mechanisms and to raise awareness about the contribution of an AD system to anti-corruption efforts.

- *Conflict of Interest.* The conflict of interest model places less emphasis on the detection of illegal conduct than on the prevention of situations that might cause a conflict of interest to arise. To that end, these systems pay close attention to an official's sources of income and to his or her association or affiliation with businesses and other interests. Given public access to declarations, the media and civil society might also be counted on to contribute to the detection of potential conflicts of interest. Rule of law and oversight bodies have a more limited role in terms of investigating corrupt behaviors, but are important in ensuring that filing violations are appropriately addressed. More integral to the effectiveness of a conflict of interest system is a collaborative approach that ensures all stakeholders actively participate in the creation of "a culture of integrity" fostered by the absence of conflicts of interest in the exercise of public office.

#### **1.3.4. Public availability of information vs. confidentiality: An on-going debate**

Even in countries where the asset disclosure mechanism is acknowledged as a powerful tool to prevent conflicts of interest and to combat corruption, the tension between granting public access to asset disclosure information and an official's right to, or concerns about privacy, often emerges as a controversial issue. Although citizen privacy is accepted in some countries as a fundamental individual right, privacy rights may hinder the effectiveness of certain aspects of disclosure systems, particularly those that lack rigorous verification procedures and, therefore, depend all the more on public scrutiny for effective enforcement. As a result, a successful disclosure framework faces the challenge of striking a sensible balance between enabling public scrutiny to assist in the fight against corruption and protecting the privacy of those required to declare their wealth. In many contexts, concerns about invasion of privacy are coupled with officials' concerns about personal security.

A growing number of countries are enacting AD legislation that requires that public officials declare not only their assets and income, but also those of their spouses and minor children. The purpose of these requirements is to combat the circumvention of AD laws by making it more difficult for public officials to conceal irregularities in their assets by transferring them to immediate family members. In some countries, appeals concerning the constitutionality of this requirement have been lodged (this is discussed in more detail in Annex 1). While many systems successfully prescribe procedures according to which declarations are to be submitted, many countries continue to struggle with whether and how to make the content of declarations accessible to the public.

Some authors have argued that the very effectiveness of an AD system is related to the public's ability to access disclosed information. Putting disclosed information in the public domain is useful because it allows for citizens to be better informed, especially in preparation for elections. Public disclosure of AD information enables

an AD system to enlist civil society in supporting the verification of declarations, potentially enhancing enforcement, and thereby increasing the credibility of the system as well. Some AD models rely on the willingness and ability of NGOs and/or the media to conduct lifestyle checks that lie beyond the resources and capacity of what the implementing agency can realistically achieve. Public disclosure can thus work as an added deterrent to the abuse of office, given the additional scrutiny it can afford.

Public access cannot, however, entirely substitute for effective monitoring and verification by the responsible agency. In the absence of a thorough monitoring system of the content of declarations, there is the possibility that public access may not have a beneficial impact on the credibility of the system, but in exposing its deficiencies diminish public confidence in government accountability.<sup>8</sup> Rather than weighing against the benefits of public access, this finding suggests that credibility needs to be built on several fronts simultaneously.

Despite the general endorsement of public access by AD specialists, the use of public access in practice is limited or lacking. A recent study of AD practices in 175 sample countries revealed that less than a third make all disclosures available to the public.<sup>9</sup>

In an attempt to resolve the debate between public availability and privacy, some experts suggest that a distinction be made between different categories of information contained in a financial disclosure, thus allowing access only to a subset of that information.<sup>10</sup> This is the approach used in Argentina, for example, and it appears that some version of this model could satisfy most of the concerns on both sides of the debate. The agency's capacity to implement a dual approach would be key to its success, allowing potentially sensitive personal information to be protected from public access, while still allowing the public to gain a comprehensive picture of an official's financial situation and interests.

### **1.3.5. Comprehensive vs. targeted coverage: Important trade-offs to consider**

The extent and breadth of an AD system's coverage depends on the resources available, levels of perceived risk in different areas of public administration, and the overall objectives of the AD system (whether the system focuses exclusively or primarily on preventing COI or detecting illicit enrichment). While this guide does not propose ideal parameters for the coverage of an AD system, what is clear from the case studies is that it is imperative that governments craft an optimal approach that takes into account

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8. OSCE. *Best Practices in Combating Corruption*. OSCE, Vienna, Austria (2004), p. 39. See also case studies, on file with the authors.

9. Djankov, S., R. La Porta, F. Lopez-de-Silanes and A. Shleifer (2009), p. 1.

10. Demmke C., M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker and A. Salminen. (2007), p. 67.

certain trade-offs, such as limiting and targeting coverage so as not to overstretch the capacity of the implementing agency. Factors to consider in such risk-return trade-offs include:

- *Extent of Coverage?* (i.e. who and how many are required to file)
- *Comprehensiveness of the Asset Declaration?* (i.e. what information should be included and in how much detail)
- *Frequency of Filing?*
- *Verification of declarations?* (formal, random and/or risk-based)

### ***Extent of Coverage: Who is required to file?***

The legal framework determines which categories of civil servants and of appointed and elected officials are subject to AD requirements. The legal requirement and the approach taken to implementing the system are best conceived, however, with a view to enabling optimal results given current capacities and available resources. Thus an approach that scales up the scope of the system while building the capacity to implement may be more realistic in the short term, and achieve better results in the long term, particularly in countries where the institutional capacity of implementing agencies is limited. Prioritizing coverage is an ingredient of all systems (no agency could, or perhaps should even attempt to verify 50,000 declarations annually). As discussed in Chapter 2, AD systems that require all public servants to disclose their income generate massive amounts of information that is difficult and time-consuming to process and monitor. For this reason, most of the studies recommend coverage limited to high-level positions to ensure the ability of the country to adequately implement and monitor the system.

### ***Comprehensiveness of the Content of Asset Declarations***

While the content of declarations varies considerably among countries, an important prerequisite for a disclosure system to be credible is that it make clear precisely what information officials are required to declare, leaving no room for interpretation or prevarication as to what constitutes a full and accurate disclosure. Most systems require a declaration of assets, income and liabilities. The importance of requiring disclosure of the *source* of assets and income in addition to *values*, may depend on whether the system is geared towards the prevention of conflicts of interest, in which case sources of income have greater significance, or the detection of illicit enrichment, in which case both asset and income values and sources are important.

### ***Filing frequency requirements***

A similar risk-return analysis should be employed when deciding on the frequency of declarations, which includes the weighing of several factors including the need for

up-to-date information vs. overburdening the agency or imposing unduly onerous obligations on public officials, with a consequently greater risk of non-compliance. Chapter 2 describes in detail the varying methods by which different systems require filing including annual filing and ‘ad hoc’, but it is important to note that the limitations on filing frequencies should be weighed against the possibility of credibly verifying and handling the influx of information. Periodic filing is necessary in order to monitor potential conflicts of interest and/or to track changes in assets over time. Declarations upon taking up and leaving a post are fairly standard practice. What happens in between varies. Annual submission deadlines can result in fairly predictable cycles of work for the implementing agency, ad hoc filings (upon significant changes in assets) may impose less of a burden in terms of the volume of declarations, but may need to be weighed against greater non-compliance risks.

For example, the US system requires official to file at the beginning and end of their appointment, and to submit annually while in office. France also requires disclosure at the beginning and end of an official’s term, but instead of annual disclosures, officials are required to disclose significant changes in the value of their assets. Determining the threshold of what constitutes a significant change will determine the volume of ad hoc submissions. This question can be weighed against the capacity of the agency to handle certain volumes of work, but should also be weighed in terms of the system’s credibility (what constitutes a significant change in wealth?)

### *Targeted or risk-based verification of declarations*

A well-designed AD system requires timely review of the content of declarations by a qualified and impartial official. In countries where the AD legislation is designed primarily to prevent conflicts of interest, the review of declarations can assist agency staff to identify and help officials avoid potential situations of conflict of interest before they occur. In countries where the AD system is oriented to the prevention and detection of illicit enrichment, the review of the content of asset declarations can help detect asset theft or illicit enrichment after it has occurred. Given that systematic verification and rigorous cross-checking of every declaration is beyond the reach of any AD system, procedures that enable the targeting of verifications on the basis of categories of risk can provide *a credible threat of detection*, which aids in deterring officials from engaging in corrupt behaviors. Categories of risk could include the seniority of the officials, the agency or position in which they work (for example public revenue authorities) etc.

Some critics argue that corrupt officials can outwit the scrutiny provided by financial disclosure systems. Experience suggests that this is not necessarily the case. Individuals will often reveal illicit activity unwittingly or carelessly in their financial disclosures. Irregularities or inconsistencies within AD forms can alert an experienced reviewer to potential breaches of ethics or criminal behavior, particularly if

the law allows them to follow up and seek clarification or corroboration.<sup>11</sup> Irregularities can appear within a single declaration form, or can result in discrepancies between declarations over time. A careful review process can also reveal discrepancies between asset declarations and other sources of information on assets, such as property registries, tax declarations and other databases. To be effective, such reviews depend not only on the implementing agency having the authority and the capacity to conduct such checks, but also on the availability and reliability of the information from external sources; factors that lie beyond the purview of the AD regime.

An alternative, or complement, to external crosschecks is the detection of discrepancies between the official's declared assets and his or her perceived lifestyle.<sup>12</sup> AD implementing agencies tend not to conduct lifestyle checks themselves, however, but rely for that purpose on the media and on civil society organizations. If systematic or random content verifications are too difficult to perform in a specific country, it becomes even more important that citizen complaints or media allegations of corruption be acted upon by the AD agency in a timely manner.

### **1.3.6. The importance of proportionate and enforceable sanctions for non-compliance**

It is important that countries craft appropriate and proportionate sanctions, and that these be enforced. To meet this standard, sanctions and their effects need to be considered across multiple axes.

- First, what failures should face sanctions?
- Second, what types of sanctions should be available: fines, administrative sanctions, and/or criminal sanctions?
- Third, how severe should each of these sanctions be?
- Fourth, how do these sanctions reinforce the specific objectives of the AD system as a whole?
- Fifth, are the chosen sanctions enforceable?
- And finally, how will appropriate sanctions reinforce the credibility of the system?

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11. In one example, a reviewer noted that there were four sources of interest from income on the official's disclosure but only three financial institutions listed. When asked to explain the inconsistency, he stated that his wife held the account in an international bank, whose name he did not recall. After investigation, it was found that the wife's account produced at least a thousand times the interest declared, because the official was using the foreign account to hold income from bribes received in his country. In another example, an official claimed that sudden and unexplained wealth was the result of winning the lottery, but was unable to produce the winning ticket or any other evidence of having won the lottery (for e.g. a copy of a check or transfer from a legitimate lottery agency), an irregularity that prompted an investigation into illicit enrichment.

12. The possession of a house or cars well beyond the means of a public servant's salary, or the purchase of very expensive items could be signs of corruption. A luxury automobile with a license plate from another country, a foreign-registered boat, or frequent, unexplained foreign air travel may be indicators of illicit enrichment and international asset theft.

### *Types of Offense*

The first area to consider is which offenses warrant punishment. Sanctions generally fall into two categories: those targeted toward ensuring compliance with the requirement to declare in a timely fashion and those designed to ensure the veracity of submissions. These goals need not be incompatible or mutually exclusive. However, evidence suggests that many countries prioritize one over the other, with the majority focused on ensuring submission compliance.

Either way, it is important for the credibility of the system that sanctions be imposed for false disclosures. Otherwise, the AD system risks being a mere formality, with little deterrent effect and little credibility as an instrument for enhancing accountability.

The offenses examined in the case studies conducted for this guide were: late filing, non-filing, incomplete declarations, and false declarations. The first two are focused on the submission process while the second two on the content of declarations.

### *Types of Sanctions*

Sanctions may range from fines to administrative sanctions (such as reprimand, demotion, suspension from office, and dismissal) to criminal penalties. The key point to consider when establishing a sanctions regime for an AD system is how effectively the sanctions will be enforced. A timely and consistent response to filing failures can be more important than the severity of a sanction. And the severity of sanctions needs to be calibrated both to its enforceability and to its potential for deterring non-compliance. In other words, a prison term could be as ineffective as a small fine, if it is unlikely to be enforced.

### *Sanctions Proportionate to Offense*

The legal frameworks of the 87 countries examined for this study (PAM dataset) reveal a trend whereby AD regimes tend to utilize fines and administrative sanctions in cases of non-filing and late-filing, but tend to rely on criminal sanctions for false statements. Some of the countries examined in the in-depth case studies use escalating sanctions based upon the type of offense. For instance, late filing may result in a lesser charge than making a false declaration. And in cases of incomplete filing, the majority of AD laws provide for a “second chance,” meaning the declarant is allowed to submit additional information within a certain time frame.<sup>13</sup>

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13. Mongolia’s experience offers some insight on this front: if a covered official fails to declare his or her assets in a timely fashion, they are given one opportunity to explain their failure and to immediately comply. If they have a reasonable explanation, then they may only be suspended from office briefly. If, however, their failure is deemed willful or if they continue not to comply, then they are dismissed from office. The IAAC now records a 99.9% submission compliance rate.



### *Administrative Sanctions*

Administrative sanctions would appear to hold the greatest promise of ensuring compliance. There are multiple reasons for this, including anecdotal evidence that suggests that criminal sanctions, or sanctions that are very severe, are ineffective because they are rarely applied in practice. Administrative sanctions can consist of fines, or suspension of salary for late filing. The effectiveness of this approach may vary widely depending on the relative weight of the financial penalty in different country contexts.

Some administrative sanctions may carry a personal reputational or political cost that can be an effective means of compelling compliance. This can be achieved by publishing names of non-compliant officials, for example, (which could be done irrespective of whether the content of declarations are made public), or by linking compliance to individual performance assessments. The effectiveness of a reputational approach, however, relies on there being a generalized culture of compliance.

Serious administrative sanctions, such as suspension and dismissal may apply in cases of failure to file. Dismissal for a failure to abide by the regulations governing employment in the civil service or for holding elected office can be an appropriate and compelling remedy. Different categories of officials may, however, require the use of different administrative sanctions. Members of Parliament, Ministers, and Heads of State cannot generally be dismissed from office, reprimanded, or suspended from duty in the same manner as civil servants. A special set of issues applies in the cases, as they do with members of the Judiciary. In some countries the electoral code addresses this issue.

Reputational risk may also be a viable alternative, assuming certain underlying conditions hold. First, by linking compliance to individual performance assessments, individuals may be more inclined to comply. From an organizational perspective, linking employee compliance to their supervisor's performance evaluation can add a layer of pressure to the individual employees and encourage manager buy-in to the system. This logic can flow upward throughout the organization and can be leveraged by publishing results of compliance. The increased deterrent effect of this approach is that it poses a direct threat to an official's career prospects and, depending on how salaries are set, to his/her earnings. However, such a system of reputational risk combined with administrative sanctions is predicated on there being a generalized acceptance and enforcement of the standards, and, ideally, for government officials to see the AD requirement as a normal and regular part of their job.

### *Criminal Sanctions*

In addition to administrative sanctions, the AD law and the criminal code may also provide criminal sanctions for serious offenses under the AD regime. In some countries, lying on an official document constitutes a criminal offense. Moreover, the poten-

tial for prosecuting someone for intentionally lying on an asset declaration is particularly important if underlying acts of corruption are suspected and difficult to prove. In these circumstances, it is vital that general perjury laws either encompass lying on an asset disclosure or that a specific criminal sanction be provided for false statements on an asset disclosure. As will be discussed in the enforcement section below, reliance on criminal sanctions or fines may be fraught with challenges if the broader legal system cannot be relied upon to actually impose those sanctions. Without the ability to prosecute failures, such sanctions would become meaningless and undermine the credibility of the system.

As a general rule:

- A system designed to prevent and detect illicit enrichment can function on the basis of criminal sanctions (for e.g. for lying on the form) and on strict administrative sanctions (e.g. for late or not filing) to ensure truthful and on-time declarations.
- A system focused almost exclusively on identifying and preventing potential conflicts of interest will tend to rely on a more collaborative approach between the administering agency and the declarant. Severe or criminal sanctions for false statements are still appropriate, but the approach to enforcing sanctions should not impede open communication between the responsible agency and the filer.<sup>14</sup>

As alluded to above, the design of a sanctions regime needs to be tailored to achieve specific objectives within the political and economic context of the country. Identifying the behavior change desired may require deciding on a hierarchy of behaviors and focusing incrementally on these as implementing capacity and acceptance of the system improve. For instance, with the initial creation of the system, the emphasis may need to be on guaranteeing that all covered individuals submit their declarations completely and on time. Then, once this has largely been achieved, and the agency's capacity for verifying the content of declarations has been assured, the system can expand its focus to ensuring compliance with the accuracy and veracity of declarations. By including sanctions that are enforceable as well as proportionate, a country will gradually increase the credibility of the system with both the public and the filers themselves.

### **1.3.7. AD systems need to be anchored in a Code of Ethics and/or Criminal Code**

A successful asset declaration system does not exist in a vacuum—requiring completion of an asset disclosure form for no other purpose than its storage in the archives of the implementing agency. Rather, the objectives of an asset disclosure system—

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14. An official will typically be reticent to inquire about the probity of his or her actions or about potential conflicts of interest to the same agency charged with investigating or prosecuting those actions. Some governments provide separate agencies for guidance and enforcement (Canada), or separate departments (Hong Kong).

improving public integrity and maintaining the confidence of citizens in government institutions—are best achieved when the disclosure is “anchored” in a set of norms obligating public officials to behave in a certain manner. Such norms are commonly set out in criminal laws and/or in an ethics code. The latter has the benefit of avoiding some of the problems caused by a strictly criminal approach, which may disregard the cultural inculcation or socialization of ethical rules and result in a set of rules that practitioners find irrelevant.<sup>15</sup> An ethics code can broaden the categories of unacceptable behavior that would not be covered under a criminal statute, e.g. awarding contracts to brothers, cousins or close friends.

Provisions requiring asset declarations of public officers have usually been incorporated in one of two ways: included into a comprehensive set of anti-corruption laws or adopted as a stand-alone legislation or code of conduct. Whatever the approach, a clear nexus between either an ethics code or a criminal code and the asset disclosure system provides a number of advantages:

- **“Anchoring” asset disclosure to norms in a code of conduct or a criminal code provides the official with additional motivation to complete the form in a timely, complete, and accurate manner.** For their part, ethics codes can function as a professional statement, expressing the public service’s commitments to a specific set of moral standards.<sup>16</sup> Codes can help provide the pride of belonging to a group of professionals. Pride is a critical emotion in motivating individuals to see themselves as professionals, and makes it more likely they view asset disclosure as a duty-bound act rather than an empty bureaucratic exercise. Similarly, in the case of a criminal code, criminal penalties provide an added, strong deterrent effect owing to the stigma associated with criminality as well as to the more severe sanctions carried by criminalized behavior.
- **Linking the asset disclosure system with an ethics or criminal code provides technical parameters for asset disclosure.** For example, if a policy decision, as reflected in an ethics code or criminal code, only prohibits the acceptance of gifts by officials above \$50, the asset declaration form would not need to require disclosure of any smaller amounts. “Anchoring” would thus improve consistency between implementation of the asset disclosure system (i.e. what is actually required on the forms) and its legislative or regulatory mandate and provide clear guidance to the implementation agency on a system’s priorities.
- **“Anchoring” provides legitimacy for the enforcement of asset disclosure laws by creating an explicit link between the asset disclosure and the sanctions resulting from the prohibited unethical or criminal behavior.** For example,

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15. Philippine law, for example, provides for capital punishment in the case of “public plundering.” However, no one has ever been convicted, much less executed under the law.

16. Gilman, Stuart, *Ethics Codes and Codes of Conduct as Tools for Promoting an Ethical and Professional Public Service: Comparative Successes and Lessons*, pp. 10–11

sanctioning a large increase in an official's wealth due to an inheritance received from a deceased family member—and not from a source calling into question his integrity—would seem arbitrary and thus weaken respect for the asset disclosure system. Any such rule would appear all the more arbitrary were it not grounded in an ethical or behavioral norm. Where the sanction is justified, however, and explicitly identified in relation to a violation of an ethical rule (e.g. do not use your private office for public gain), the system gains legitimacy because the official more clearly understands why his transgression is unacceptable. This legitimacy in turn encourages compliance and respect for the rule of law.

- **A code provides the predicate for requiring disclosure of sensitive personal information.** By tying disclosure to a code, a filing official gains an understanding of why he must reveal sensitive personal information about his income or assets. Viewing this privacy encroachment in light of his ethical duty to serve the public interest, the official is more likely to comply with asset disclosure obligations because he appreciates the reasonableness of the rule.
- **“Anchoring” asset disclosure in a code of ethics or criminal provisions permits the asset disclosure system to continue to develop organically through the refinement of rules by judicial or administrative authorities.** Interpretation of criminal law provisions generally falls under the prerogative of a country's judicial authorities. Ethical codes of conduct are commonly clarified through advisory opinions issued by the regulatory body charged with the implementation of rules of ethics, as in the United States. The expanding body of rules emanating from these organs can thus ensure that the asset disclosure system remains current, fair, and rooted in the legal and constitutional principles of the particular country.

### **1.3.8. Effective enforcement of sanctions is vital to the credibility of AD systems**

If the necessary conditions are in place for an AD system to deter and detect illicit behavior, the final test of an AD regime lies in the application of sanctions for non-compliance. Cooperation and coordination between AD implementation systems, law enforcement agencies, and anti-corruption bodies is a key ingredient of the successful prosecution of acts of corruption.

In many countries, the agency in charge of implementing the AD system is separate from the enforcing agency and is therefore not ultimately responsible for ensuring successful enforcement or eventual prosecutions. In such cases, the AD agency is usually charged with reporting criminal violations to the prosecutor's office or other law enforcement agency for further action. Such investigations become part of the official record and can lead to or support successive investigations, often on a larger scale. The effectiveness of the AD regime depends therefore on inter-agency collaboration. The latter can take time to establish, is often politicized, and depends on political will and

a general culture of acceptance within the government that an effective AD system is indeed important.

Regardless of the emphasis of the enforcement and sanction regime, it is important that the agencies or government bodies responsible for each aspect of the enforcement process be credible and capable of imposing the appropriate sanctions. A regime in which outcomes are unpredictable undermines confidence in the system, both by the public that sees few results, as well as among filers who may feel emboldened to lie or to ignore the requirement to file.<sup>17</sup>

### **1.3.9. Implementation of the AD system: Institutional and technical considerations**

Enacting an Asset Disclosure law does not, by itself, create an effective AD system. A country that collects ADs every five years, locks them up in a cabinet without anyone looking at them, and allows them to be viewed only if a three-judge panel recommends to the president that a prosecutor can review them is hardly a model for an effective AD system. Given the functional requirements set forth in this guide, this kind of system is at best a first attempt that will need subsequent reform, both legislative and institutional, but that may provide a necessary initial step toward combating resistance and building capacity for an effective AD system. Building and strengthening the administration of the AD system may take considerable time. In the case of Argentina for example, it has been reported that during the initial 3–4 years of the system’s implementation, practitioners and administrators honed the system while learning from their own experience, by perfecting tools such as the software system for targeted audits and the electronic declaration form etc., and by working side-by-side with legal and accountancy experts.

There are considerable costs associated with developing an AD system, including those associated with ensuring that AD systems are run by qualified and trained personnel who have the independence to carry out the politically sensitive task of reviewing AD forms. For that reason, the UN Convention against Corruption mandates that anti-corruption authorities have:

. . . the necessary independence . . . to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.<sup>18</sup>

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17. Guatemala’s experience is relevant from this perspective. An internal recommendation soon to be implemented is that fines for non-compliance be tied to income levels. Currently, because fines (calculated cumulatively by each day of late filing) are often disproportionately high in relation to the civil servant incomes, most fines are challenged; some are reduced but they are rarely eliminated.

18. UN Convention against Corruption, Chapter II, Article 6, para. 2.

### *Facilities*

In addition to the management and policy structures of the enforcement system, facilities, technology and storage capacity are also crucial to consider. For instance, storage capacity of asset declarations can pose significant challenges. In Mongolia, for example, the implementing agency has only limited capacity on-site for the storage of AD forms. It therefore prioritizes the declarations of the highest-ranking 256 officials in the government, storing them on-site for two years, then transferring them to an archive for an additional three years. The rest of the declarations are stored by individual agencies, leading to a decentralized system. Such a system is perfectly reasonable as long as the constraints are understood and managed effectively. The key is to prevent instances where declarations are left on the street due to a lack of storage capacity, an event that has been alleged to occur.

### *Systems and Technology for Submission and Verification of asset declarations*

Creating ‘user-friendly’ submission systems not only facilitates the verification of content, but also reduces delays caused by incomplete or incorrect declarations. Providing the filing form both in electronic form and hard copy is an obvious means to facilitate timely and accurate filing. While electronic filing is found in some of the countries observed, however, it can be difficult and costly to add to a system, and consideration must be given to officials’ access to the required information technology.

Technology can be an important component to effective AD systems and technological improvements have benefited disclosure systems in a number of ways. Technological advances have worked to increase the efficiency and capabilities of such systems, while decreasing costs. Advanced systems often reduce human-resource requirements and human-related errors, as well as conserve physical resources (i.e. paper) and, in most contexts, are seen as more secure compared to paper forms.

Electronic AD review systems, equipped with data-mining software, enable implementing agencies to conduct random and risk-targeted verifications of asset declarations and to ‘red flag’ patterns or irregularities that might escape the notice of even the most diligent reviewers. Electronic submission and verification procedures thus significantly enhance the effectiveness of AD systems by enabling reviewers to select and prioritize specific risk categories. A system that can, for example, detect ownership of a single company’s stock by multiple public officials, can signal either a coincidence or a pattern, which an investigation would then seek to exclude or clarify.

It is worth noting, however, that electronic verification systems cannot substitute entirely for manual review processes. Electronic searches can identify declarations that merit further scrutiny, but they cannot verify either the accuracy or the presence of irregularities in the declaration of non-numerical data (such as property addresses, and makes and

models of cars, for example). An approach that combines the scope and flexibility of electronic searches, with rigorous manual oversight appears to deliver the best results.

An AD system focused on content verification or investigations requires, *inter alia*:

- i. a capable investigatory body with adequate authority to gather the information required for an effective investigation, and which is subject to sufficient oversight to keep risks of abuse of that authority suitably in check; and
- ii. a credible prosecution and court system to follow up on alleged cases of abuse exposed through investigations.

## 1.4. Establishing the Credibility of the System with Stakeholders

Credibility in government efforts to establish and enforce AD systems goes a long way toward establishing a “culture of integrity” that instills behavioral norms of ethics within government. The process of developing AD systems is often highly politicized, and managing expectations during what can be a lengthy process of debate and implementation can be vital to its successful adoption.

### 1.4.1. Managing expectations

*Inflated expectations of what can be achieved with an AD system may be met with mistrust and disbelief*

Clear expectations concerning the outcomes of an AD system will determine the degree of “buy-in” by all stakeholders. Unrealistic promises about potential outcomes may result in less support from key interest groups, particularly if past reform efforts have not yielded expected results. In addition, the adoption of an AD system may prove a source of conflict for governments, and if mismanaged could extend for years as politicians haggle over the precise elements that will be incorporated into a legal framework.

Most public attention is focused on the discussions leading up to the drafting of new AD legislation, when expectations are extremely high. Exaggerated statements about the ability of new programs to “wipe out corruption” can extinguish the good will associated with anti-corruption campaigns. Those who have lived through prior, unsustainable, attempts at reducing corrupt practices are likely to doubt the efficacy of this new effort. Fostering confidence in the AD system’s ability to enhance transparency can positively shift perceptions of corruption, which in turn influences behaviors.

*Unmet expectations can crush any forward momentum to ongoing anti-corruption campaigns*

As explained above, the failure of AD systems to live up to expectations, particularly if swift and comprehensive outcomes were promised, can ruin the sustainability of

reform efforts. For this reason, it is of fundamental importance that expected outcomes are *achievable*. Managing expectations requires a commitment to considering the political economy around the AD system and taking into account the necessary trade-offs for ensuring its effectiveness.

#### **1.4.2. Leadership is crucial to the successful adoption and administration of AD systems**

##### *Leadership is integral to the success of an AD system*

Leadership within an AD system is clearly multifunctional, but there are also roles specific to certain public officials. Politicians and legislators can provide visionary leadership to drive the introduction and development of an AD system. It may be necessary to create working coalitions for difficult reform efforts and to maintain working relationships that bring results may be necessary.

#### **1.4.3. Ensuring the stability of the system: the “ACT” Approach**

Stability is an often-overlooked component of an effective AD system. It underpins any attempt to develop norms and reform institutions in politically charged contexts. Stability allows a nascent AD system to withstand the stop-start character of reform efforts that aim to transform behavioral norms. It also ensures the sustainability of ongoing AD efforts. A stable AD system will also promote confidence in the entire AD framework, including its goals and methods. AD filers will be more likely to participate willingly in a stable AD system and eventually advocate for its importance.

##### *ACT: Accountability, Consistency, Transparency*

Based on the experiences of AD practitioners in building their own systems, the establishment of a stable AD system is most easily facilitated by adherence to three principles that underlie the whole AD regime.

##### *Accountability*

Accountability refers to the responsibilities that are understood to underpin the effective functioning of systems, which extends from minor procedural applications to the political accountability of public officials to their citizens. Accountability must first begin within the legal framework. Laws must clearly delineate institutional arrangements of responsibility, so that agencies are aware of their mandates. Clear lines of accountability in the legal framework also enhance efficiency and effectiveness, as there is less confusion over roles within the AD system and less opportunity to disregard rules.



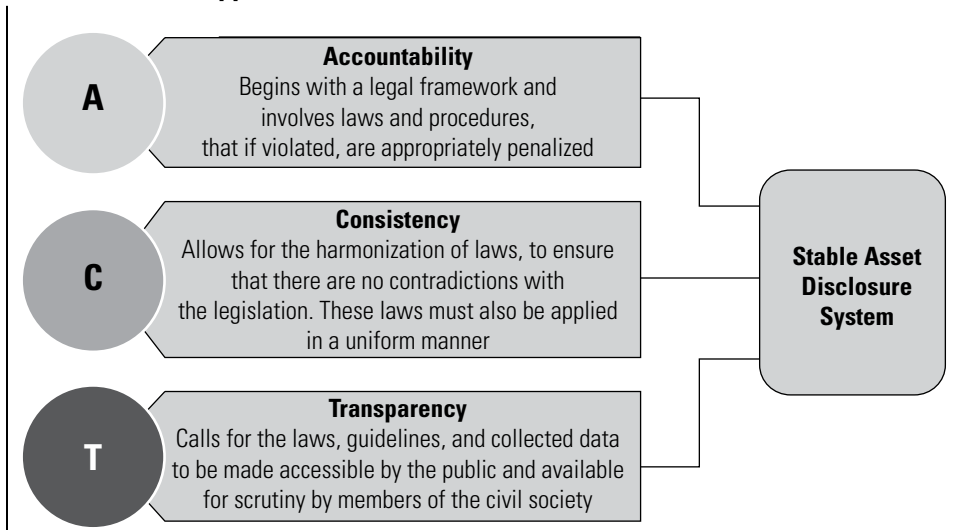
Accountability also refers to the primary function of public service, which is service for the public good.<sup>19</sup>

Officials must be asked to demonstrate their accountability to the public by participating in the AD system without requesting special treatment. Violations of procedures must be appropriately and swiftly penalized, so as to send a message that contravention of AD standards will not be tolerated. This response to violations should hold true for agencies as well as individuals; if a particular agency is willfully disregarding the tenets of an AD system by not performing assigned responsibilities, it may be the case that penalties or additional training (depending on the nature of the poor performance) are necessary to establish accountability throughout the AD system.

*Consistency*

Consistency is a characteristic of effective systems, whether political or otherwise. When consistent standards are set in place, individuals are more likely to perform better and be aware of their responsibilities within the system. In terms of the legal framework, consistency involves harmonization of laws, so that there are no contradictions within the legislation. Consistency within the legal framework sends a message that the government has a strong conceptual understanding of AD systems and is willing to frame the legislation appropriately. Legal harmonization of AD laws also enhances accountability within the system as a whole. Consistent treatment of declarants demonstrates

**Table 1. The ACT Approach**



19. See Article 7 of the UNCAC which describes what a merit based service should look like and how they should be trained to prevent corruption.

that the AD system is being fairly administered and is not a tool for political sabotage. This is particularly important in fragile political environments, where instability in the transfer of power is common.

Procedures within the AD system must also be consistently applied in order to eliminate expectations of bias or corruption. Procedures encompass various elements of an AD system, from guidance on how declarants must file to penalties for filing violations. In Mongolia, for example, regular reports are submitted to the Commissioner General, ensuring that all operational procedures were followed and that important stakeholders were included in the consultation process. These reports also refer to deadlines, AD data, integrity within the AD process itself, and proposals for improvements in AD procedures. Consistency in the application of procedures establishes regularity within the AD system that eventually provides the stability necessary for its sustainability.

### *Transparency*

Transparency is a hallmark of well-functioning democracies. It serves primarily to demonstrate the accountability of governments, agencies, and officials. While secrecy is warranted in specific circumstances and may be a preferred feature in certain contexts, it is not exclusive of public trust that must be fostered between government and citizens. For this reason, laws and guidelines in an AD system should be made publicly available for scrutiny by civil society and for the ongoing education of declarants.

Internal transparency mechanisms that affect the goals of the AD system are equally important. To ensure the transparency of the system, even when AD information is not made publicly available, public officials must trust the stability of the system, and of the implementing agency, to handle their declaration of assets, income, and liabilities responsibly. That trust must persist even through periods of political change.

Finally, procedural transparency must be an organizational goal of the AD system, i.e., both declarants and citizens must have access to data on how the process is functioning, through regular reports on the performance of the AD system. The release of data on submission compliance, audits, and investigations can generate support for a fledgling AD system and enhance the credibility of an established AD framework. It provides citizens with the opportunity to confirm the government's commitment to an AD system, as well as allowing citizen groups to review the performance data with respect to AD goals. The Mongolia IAAC struggles with the public perception that it does little with the declarations that it collects, which could be tempered by release of AD data and performance statistics that demonstrate the functioning of the IAAC internal procedures.

#### **1.4.4. The importance of communication for combating resistance and building buy-in**

Evidence from several countries shows that when confronted with the idea of filing AD forms, most officials' initial reaction is negative. They often view the process as cumbersome and unnecessary. Communication about the purpose and benefits of AD systems is vital therefore, and such awareness raising usually takes time. The purpose and functioning of the AD system must be communicated to declarants, public servants who administer the AD procedures, and citizens.



# Chapter 2. “In-Law” Study of Asset and Income Disclosure Systems

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## Introduction

This Chapter describes the findings of the “in-law” study of asset declaration systems, gathered through the WBG Public Accountability Mechanism (PAM) Initiative. The PAM initiative collected and analyzed AD laws and regulations covering

### BOX 2

#### **AD Legal Framework Analysis: Key Findings across 74 Sample Countries**

Most countries with an AD framework cover all four types of public officials captured by the PAM initiative (heads of state, ministers, MPs, and civil servants), and apply most of the “good practice” elements of an AD legal framework (discussed in this chapter). However, a comparative analysis of AD frameworks across the sample countries provides a useful statistical indication of where exceptions and gaps are present in the use of these elements. For example:

##### **Designated Agency for Monitoring Compliance**

- No more than 60% of countries identify an agency tasked with verification or review of declarations.

##### **Clear Criteria for Verifying Content of ADs**

- In less than 30% of countries the legislation specifies explicit criteria for the verification of the content of declarations.

##### **Public Access to Asset Declarations**

- Only 11% of countries with an AD framework require free provision of declaration content.
- 40% of countries fail to specify a location at which declaration content may be accessed.
- 61% of countries fail to specify any turnaround deadlines for posting AD data once declarations are submitted.
- 82% of countries fail to specify how long AD records must be maintained.

With respect to good practice elements **variance across countries** is generally modest, with a few striking exceptions:

- Heads of state in parliamentary monarchies are never covered within the PAM sample.
- Low-income countries are strikingly less likely (20%) to include public availability requirements than are other countries. Variance in this incidence between lower middle income, upper middle income and upper income countries is modest, ranging between about 50%-80%.

four types of public officials (heads of state, ministers, MPs, and civil servants) in over 74 countries, undertook extensive discussions with policy makers on good (and bad) practices, carried out fact-finding missions and case studies in several countries, and held regional and international consultation workshops. This chapter includes recommendations where good practices have been identified, and provides suggestions regarding the different alternatives available to legislators and policy-makers in particular circumstances. The list of countries that forms the sample for this study is provided in Annex 4.

## **2.1. History of AD Legislation**

Although the concept of asset and income disclosure has existed for some time, it is only recently that it has acquired prominence as a governance issue. In the United States (“U.S.”) for example, AD became a focus of attention in the wake of the Water-gate Scandal in the late 1970’s with two important pieces of legislation.<sup>20</sup> The US Government passed the Government Sunshine Act of 1976 and the Ethics in Government Act of 1978 as part of a push for more transparency in government.<sup>21</sup>

As indicated by Figure 1, a large spike in AD legislation occurred in the 1990s, most often as part of burgeoning anti-corruption frameworks. Many of those countries adopting such legislation were part of the former Soviet bloc, and as one-third of the sample used in this analysis consisted of countries from Europe and Central Asia, some of the increase indicated in the chart is a result of this configuration. Many African countries also passed anti-corruption legislation in the 1990s.

## **2.2. Asset Declaration In-Law Findings through the WBG Public Accountability Mechanisms (PAM) Initiative**

Based on the role of asset disclosure in fostering public trust and integrity in government, the WBG Public Accountability Mechanisms (PAM) initiative conducted research on the legal frameworks for asset disclosure in 74 countries worldwide. The PAM initiative is a work-in-progress that brings forward detailed and regularly updated data on countries’ efforts to enhance the transparency of governments and the accountability of public officials.<sup>22</sup> The focus on transparency and accountability stems from a belief that a clarification of the underlying institutional arrangements, i.e., *rules of the game*, along with a strengthening of organizational capacity to achieve mandates, will lead to better governance outcomes.

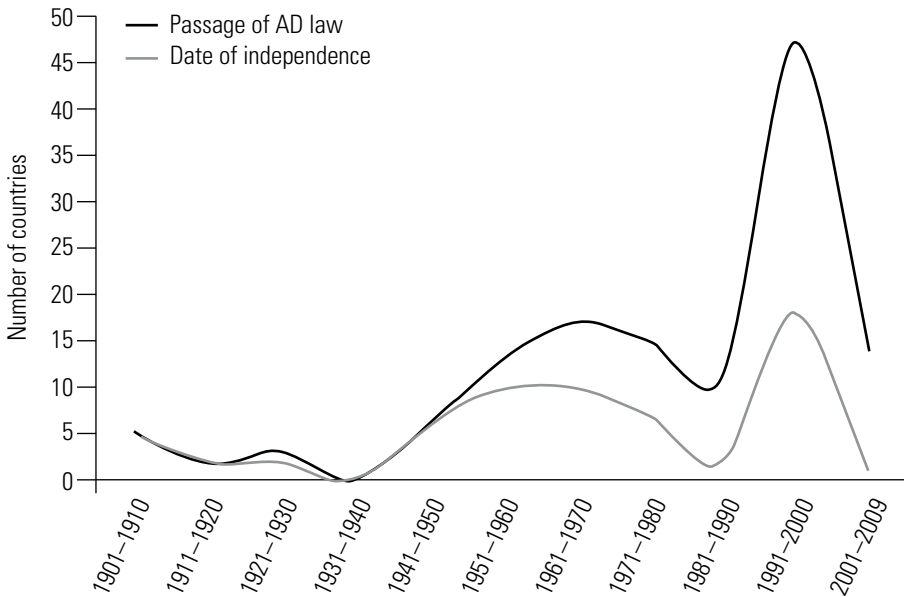
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20. Rohr, John. Public Service, Ethics, and Constitutional Practice. University of Kansas (1998), p. 46.

21. Office of Government Ethics. Public Financial Disclosure: A Reviewer’s Reference. Second Edition (2004), p. 12.

22. For more information on PAM methodology, see annex 2.

**Figure 1. History of Asset Disclosure Regulation in a Sample of 74 Countries.**  
(See Annex 5 for a List of Countries)



While AD systems vary across countries, the literature on AD systems (reviewed in Annex 1) illustrates commonalities in disclosure frameworks around the world. To lay the foundations of a sound AD system, all AD frameworks must address the following questions:

- Who is required to declare?
- What information must be disclosed, and how frequently?
- What filing and monitoring mechanisms should be employed?
- What agency should be charged with administering the system?<sup>23 24</sup>

The analysis that follows draws on assessments of legislation, decrees, and codes of conduct that were externally reviewed by experts in each country in the sample observed. The study captured data on the characteristics of legal frameworks of asset disclosure systems in 74 countries, and took into account laws enacted up until

23. "Having accepted the argument in favor of disclosure, several questions follow: to whom should disclosure be made? What matters should be included? How broadly should disclosure requirements apply to members of an official's family? What access should the media and members of the public have to these declarations? And, in the case of career public servants, what levels of seniority must be required to submit to this process? There are no simple answers to these questions." OSCE. *Best Practices in Combating Corruption*. OSCE, Vienna, Austria (2004), p. 39.

24. Any credible asset disclosure programme must clearly establish who should declare what to whom and how, provide for content verification and sanctions of intentional failure to declare as well as ensure public access to declarations Chêne (2008), p. 1.

January 1, 2009. AD requirements for four types of public official comprised the field of inquiry:

- Head of state,
- Ministers/Cabinet members,
- Members of Parliament,
- Civil servants (as defined by individual countries).

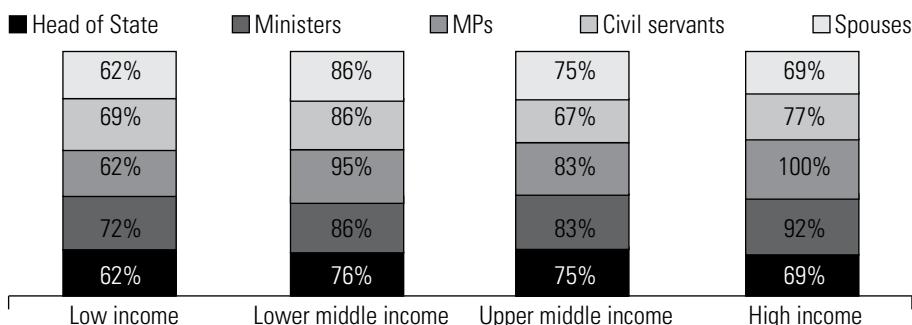
**2.2.1. Existence of AD legal framework**

*Within the sample, approximately 60–70% of low-income countries have AD legal frameworks; between 70–100% of high income countries also have legislation that obliges officials to comply with these requirements (see Figure 2). There is little demonstrable difference among presidential, parliamentary, and mixed systems regarding the existence of a legal framework for AD in the sample. The type of legal framework varies considerably across the sample, with asset disclosure laws being the most common type of framework, appearing in about 20% of countries (see Figure 4 below).*

The clear definition and codification of an asset disclosure system (legal description of the AD system in terms of its function, and its grounding in criminal, civil and administrative rules and sanctions) is necessary to its success and effectiveness.<sup>25 26 27</sup>

The formation and structure of legal requirements with respect to disclosure differ across countries. Some countries have enacted legislation within legal frameworks fo-

**Figure 2. Existence of Legal Framework for Asset Disclosure Using the World Bank Income Classification\***



\* Economies are divided according to 2007 GNI per capita, calculated using the World Bank Atlas method: low income, \$935 or less; lower middle income, \$936–\$3,705; upper middle income, \$3,706–\$11,455; high income, \$11,456 or more.

25. De Michelle (2004), p. 14.

26. Bigelow, Page. “From Norms to Rules: Regulating the outside Interests of Public Officials.” Proceedings of the Academy of Political Science 37(3): 141–157 (1989), p. 44.

27. OSCE. Best Practices in Combating Corruption. OSCE, Vienna, Austria (2004), p. 135.



cused on battling corruption. Other countries base AD on voluntary actions, with provisions regulating it as part of broader legislation on public service affairs. Regardless of the type of legal framework governing AD, grounding public disclosure requirements in law sends a message of a government’s commitment to transparency. Legislation governing disclosure must be clear as vagueness in the law can reduce the effectiveness of an AD system.

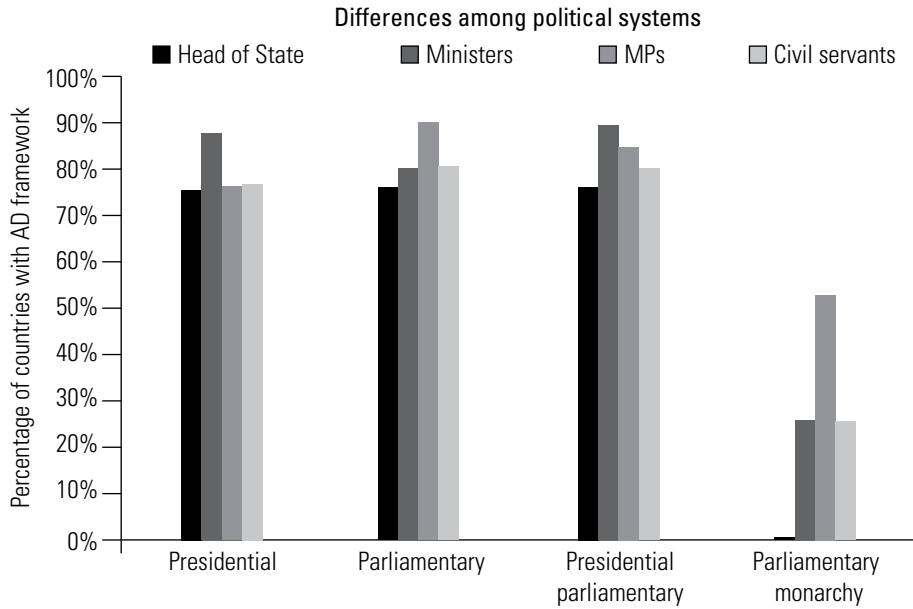
MPs are the most heavily regulated in terms of AD, with 100% of countries in the high-income bracket requiring disclosure of parliamentarians. Ministers are also widely covered by AD legislation in all country income classifications, with a range of 70–90% of countries requiring disclosure. Since policymaking occurs in the executive office, whether it is centered in the presidential cabinet or the council of ministers, it appears that many countries are taking this responsibility into account when designing an AD framework.

Despite the fact that ministers are often covered by AD laws, heads of state are only required to disclose assets in 60–75% of countries. This finding is worthy of note, given that heads of state are perhaps the single most significant policy making agents in most governments. The range of countries with coverage of civil servants in AD frameworks ranges from 60–85%, indicating that the inclusion of civil servants in AD frameworks, while common, is far from routine. It may be the case that the work of many civil servants is considered low-risk with respect to corruption or conflict of interest, or that the magnitude of potential malfeasance is considered too minor to warrant disclosure. In some countries, only certain categories of public servant, such as heads of parastatal organizations or director-level positions in state agencies, must comply with AD requirements. This focus on higher-level positions is reflected in the fact that all countries mandating disclosure for civil servants include the highest level of employee, with some countries targeting only this smaller group of officials. The United States is an example of this type of coverage.

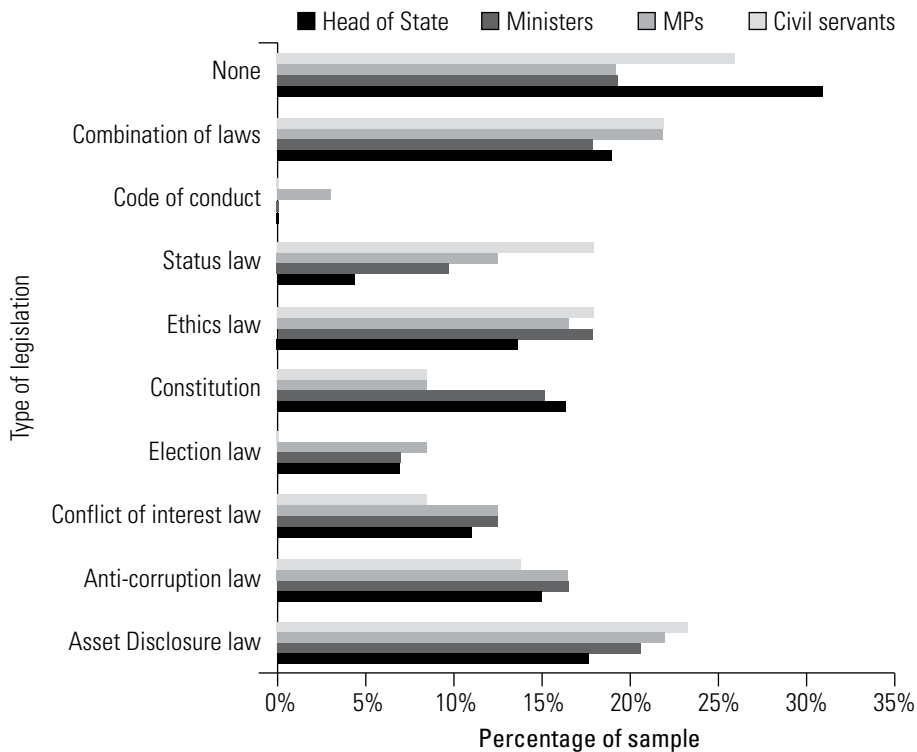
It appears that heads of state and civil servants are slightly less likely to be subject to AD requirements than MPs and ministers across the sample. Figure 3 indicates that a high percentage of countries with a presidential system (85–90%) enforce AD requirements on ministers. By contrast, countries with parliamentary systems mandate disclosure for MPs to a greater degree than ministers or heads of state. None of the parliamentary monarchies in this sample mandate AD for heads of state, but AD requirements exist for MPs in more than half these countries.

As indicated by Figure 4, the type of legal framework in the sample is fairly consistent across categories of public official. Asset disclosure laws are the most common type of framework, appearing in about 20% of country legal frameworks, although not always in isolation. Election laws for heads of state and MPs often contain prescriptions for AD filing as part of the candidature process. This is common in Eastern European

**Figure 3. Existence of AD Legal Framework across Political Systems and Category of Public Official**



**Figure 4. Type of Legal Framework**



countries. Status laws, which are laws that pertain specifically to certain categories of public official (civil service law, law for MPs, law on the presidency, etc), occasionally contain AD provisions.

In most countries where AD is legally mandated for civil servants, status laws for civil servants include asset disclosure requirements. However, it is uncommon for the civil service law, or any status law, to serve as the only framework for AD; often there is another AD or anti-corruption law that lays out the general AD architecture. In fact, AD for civil servants is occasionally regulated by a controlling anti-corruption or financial disclosure law and buttressed with a civil service law. Azerbaijan, the Slovak Republic, and Tajikistan are examples of this type of framework. In other cases, election laws require candidates for election to file asset declarations, such as in the Gambia.

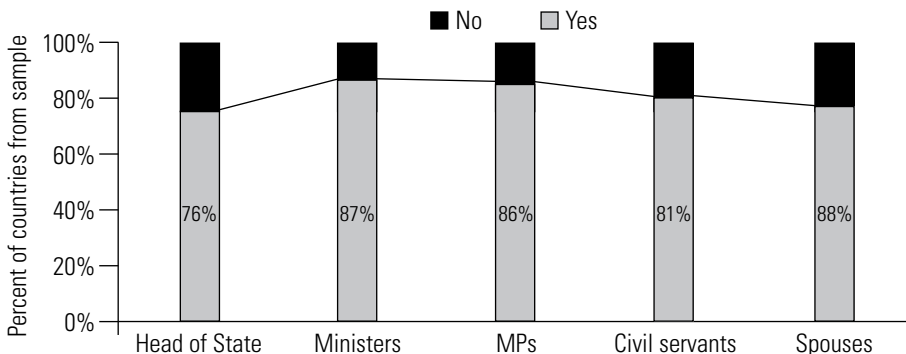
Constitutional provisions are more likely to be used with respect to heads of state and ministers, but in some cases, the lack of implementing legislation leads to vague AD frameworks. Very few countries use a code of conduct to govern AD frameworks, and in those countries where it is utilized, only MPs are subject to its provisions. Examples of this type of framework are the United Kingdom, Norway, and the United States.

**2.2.2. Coverage of the law**

*Most countries in the sample that have a legal framework for AD cover all four of these categories of public officials, with Head of State coverage being the lowest (76%), and the only category of public official with less than 80% coverage.*

Legal coverage varies from requiring all civil servants to file declarations to systems that require only senior officials to disclose their assets, however very few AD systems

**Figure 5. Coverage of Public Officials in Countries with Legal Frameworks Governing Asset Disclosure**



choose the former.<sup>28</sup> AD systems that require all public servants to disclose their assets and income produce massive amounts of very detailed information that is difficult and time-consuming to process and monitor.<sup>29</sup> Most of the experts recommend coverage limited to high-level senior positions, at least in a first phase, to ensure the ability of the system to adequately implement and monitor the AD requirement.<sup>30</sup>

Few countries in the sample (7) have no asset disclosure framework at all. Several countries have asset disclosure frameworks that apply only to selected groups of officials. Angola and the United Kingdom regulate asset disclosure only for Members of Parliament, while Zimbabwe requires both the Head of State and MPs to file asset declarations. Zambia mandates asset disclosure only for the Head of State and Ministers. No countries mandate asset disclosure by civil servants alone.

As Figure 5 demonstrates, for each category of public official, approximately three-quarters of the sample govern asset disclosure. Ministers and MPs are the most regulated of officials, with nearly 90% of countries mandating asset disclosure. Although studies recommend that asset disclosure systems be limited to high-level officials, fully 80% of the sample extends asset disclosure requirements to a broader category civil servants.<sup>31</sup>

### 2.2.3. Content and comprehensiveness of declarations

*Over 80% of countries in the sample provide clear definitions of the types of assets and income that must be declared. A majority of AD frameworks require declaration of each of the types of asset and income identified in Figure 7 (ranging between 75% and 90%).*

What and how much information is required in a declaration is one of the most discussed topics in the realm of AD. The content of declarations varies considerably among countries depending on the purpose of their AD system, perceived level of corruption, level of income and political systems. While experts cannot agree on every item to be included in declarations, there is general agreement on core categories: assets, income, and liabilities, and their sources.

In creating an effective AD system intended to prevent and identify conflicts of interest, the literature suggests that tracking the *sources* of assets and income is more im-

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28. Williams, Aled. *International Experience of Asset Declarations*. U4 Helpdesk, Transparency International (2006), p. 2.

29. Chêne, Marie. *African Experience of Asset Declarations*. U4 Helpdesk, Transparency International (2008), p. 3.

30. Mukherjee, Ranjana and O. Gokcekus. *Officials' Asset Declaration Laws: Do they prevent corruption?* (2007), p. 325.

31. Because the definition of civil servant varies across countries, it was not possible to ascertain whether covered civil servants were high-ranking, except in contexts where it was explicitly noted, as in the United States, Albania, and Macedonia.

portant than their value.<sup>32</sup> However, this is a relative function of different types of AD model employed in a given context (COI, illicit enrichment, or both).

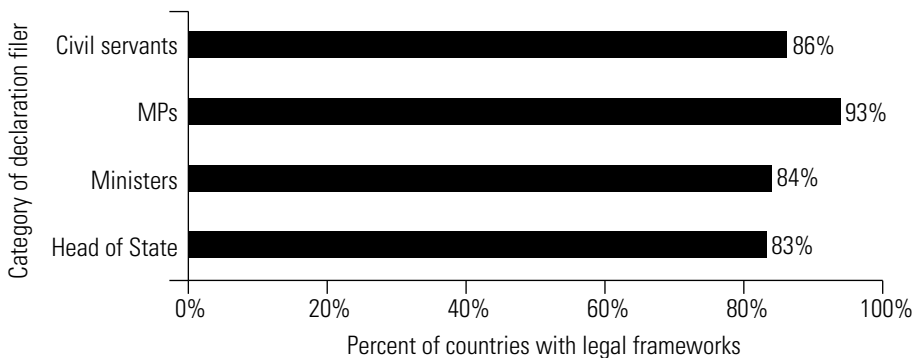
Although identification of items mandated in asset declarations is considered an important part of the overall framework, nearly 15% of countries with a legal framework for AD in the sample do not clearly define these items. Promulgation of these provisions is occasionally the responsibility of the implementing agency, whether through additional regulations or the publication of a standardized filing form with instructions, both of which may explain the absence of clarification in the main AD laws. Without guidance on the scope or detail of declaration contents, implementing agencies may be overburdened with the task of responding to numerous questions from AD filers, or be forced to issue ad hoc guidance in unofficial memos or circulars, increasing the chance that AD laws are not implemented as intended by lawmakers.

Figure 6 demonstrates that a majority of the declaration content is comprised of assets (property and savings), rather than liabilities and income.

- Approximately 80–85% of countries with an AD framework for heads of state, ministers, and civil servants mandate the disclosure of real estate, moveable assets, or cash;
- Approximately 70% of countries with an AD framework for heads of state, ministers, and civil servants require disclosure of earned and unearned (investment) income.

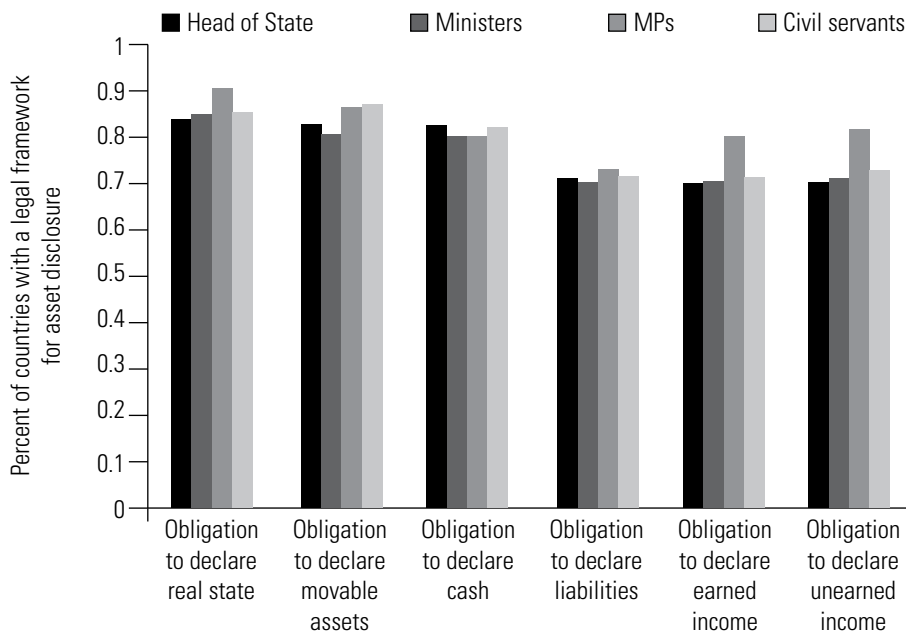
Regarding MPs, there is a consistent mandate for disclosure of all information, with the exception of liabilities, although this is still fairly high at nearly 75%. That is, 80% or more of countries with an AD framework for MPs require disclosure of property (real estate and movable assets), cash, and income (earned and unearned).

**Figure 6. Percent of Laws that Clearly Define Items in Asset Declarations**

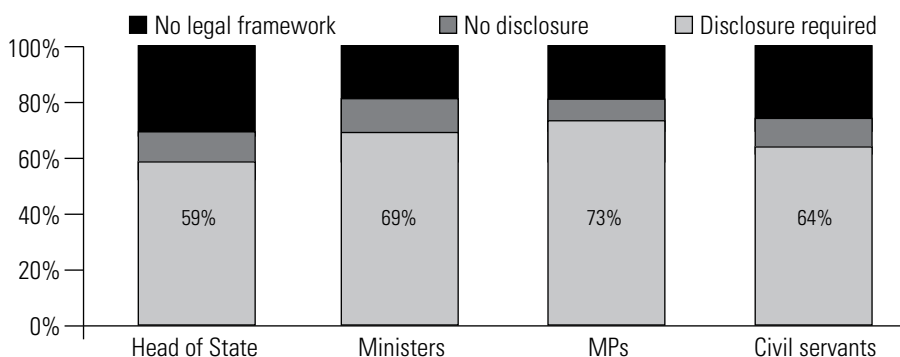


32. Djankov, Simeon; La Porta, Rafael; Lopez-de-Silanes, Florencio; Shleifer, Andrei. Disclosure by Politicians (3rd Draft) ( January 27th, 2009), p 4.

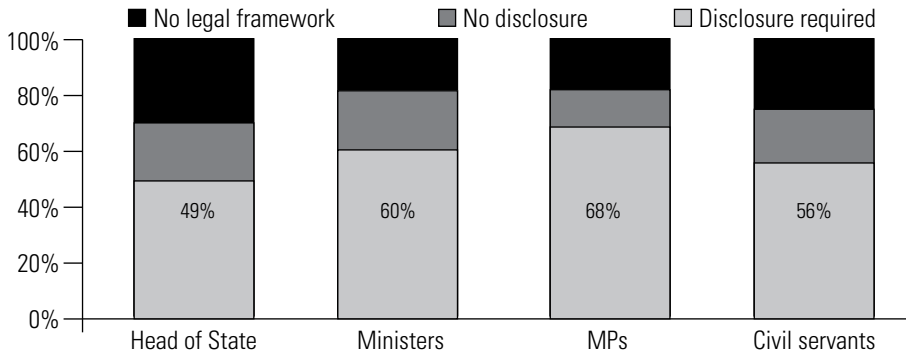
**Figure 7. The Content of Asset Declarations, with Precise Data Points Provided for MPs**



**Figure 8. The Obligation to Disclose Real Property**



Excluding MPs, the obligation to disclose real property exists in the AD frameworks of 60–70% of countries in the sample (see Figure 8), whereas the obligation to disclose earned and unearned income appears in the AD laws of only 50–60% of countries (see Figure 9). Whereas earned income is generated by salaries, unearned income includes dividends and interest, as well as profits, whether they be on savings accounts or from stocks (dividends), bonds (interest) or privately held firms (profits).

**Figure 9. The Obligation to Disclose Unearned (Investment) Income**

#### 2.2.4. Filing frequency requirement

*Filing frequency is clearly mandated in AD legislation: Over 95% of countries specify filing deadlines for all categories of official.*

Deciding on the frequency of declarations involves the weighing of several factors:

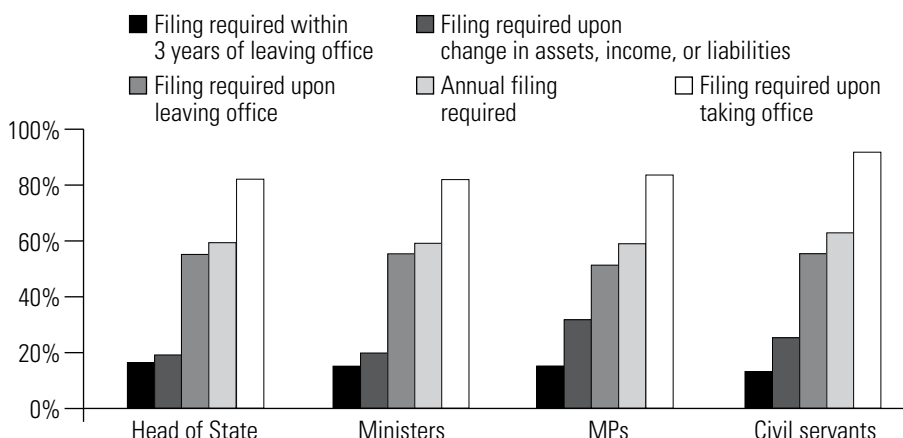
- the need for up-to-date information,
- the avoidance of an unduly onerous obligation and
- the risk of non-compliance.<sup>33</sup>

Disclosures are usually required when an official takes up and leaves office. Further declarations can be made at a fixed date (usually annually), or when a significant change in the value of assets occurs or a situation in which a potential conflict of interest may arise, referred to as “ad hoc.” A combination of the two approaches is also possible. Yearly disclosure is common practice in the majority of countries. Annual fixed date declaration requirements are beneficial when comparing declarations over time. Ad hoc disclosure also permits the tracking of changes in assets over time, placing the onus on the official to declare when such changes occur. The effectiveness of this approach can depend on the definition of a suitable threshold at which a significant change is deemed to have occurred (too low of a threshold could result in an excessive filing burden on officials and the agency). Ad hoc filing can also provide for a more timely response to potential conflicts of interest than fixed date declarations. Several countries require presidential and/or parliamentary candidates to file declarations, but do not mandate declaration once the candidate is elected.

The requirement to file a declaration upon taking up office is stipulated in over 90% of countries. Annual filings and declarations upon leaving office are also prevalent, with approximately 60–70% of countries requiring this type of filing. Filings required

33. Carney (1998), Section 3b p. 4.

**Figure 10. Filing Frequency for Public Officials**



upon a change in assets and within 3 years of leaving office are far less common (see Figure 10).

While important in helping establish the credibility of an AD system, filing frequency should also be related to the capacity of governments to handle the volume of information received. The US system requires annual submission, as well as filings at the beginning and end of an official’s appointment. France also requires disclosure at the beginning and end of an official’s term, but instead of annual disclosure, officials are required to make ad hoc submissions in the cases of significant increases in assets.<sup>34</sup> In both cases, where thousands of declarations are filed at any given deadline, there are ample personnel (and IT resources) to handle the vast amounts of information submitted as required by the AD legislation.

### 2.2.5. Sanctions for non-compliance

*60–90% of countries specify some form of sanction for filing violations. A sanction for failure to file is present in over 80% of countries with an AD framework, while false declarations are penalized in approximately 65–75% of AD systems.*

Late filing or filing incorrect information must be met with some form of sanction to confer legitimacy on the AD system.<sup>35</sup> It has been found that the perceived level of corruption was lower in countries whose declaration laws allowed for the prosecution of the offending officials.<sup>36</sup> However, caution must be exercised in assuming that sanctions lead to lower corruption.

34. Anti-Corruption Network for Eastern Europe and Central Asia 7th General Meeting, p. 31.

35. Mukherjee, Ranjana and O. Gokcekus. (2007), p. 3.

36. Chêne (2008) p. 2.

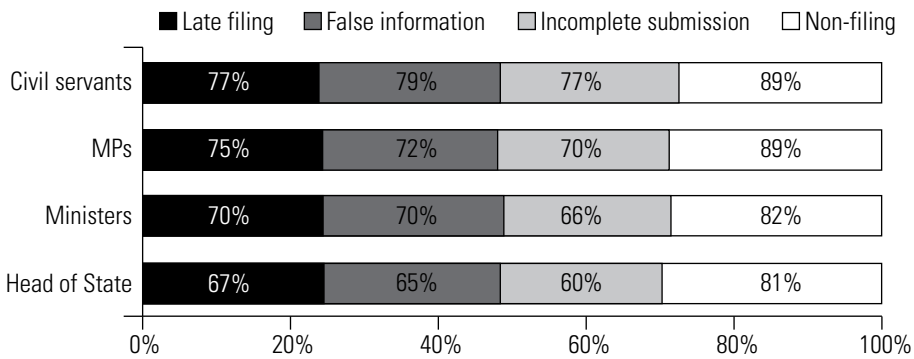


The types of sanctions usually range from fines for late filing to the dismissal from a position in cases where corrupt behavior is detected.

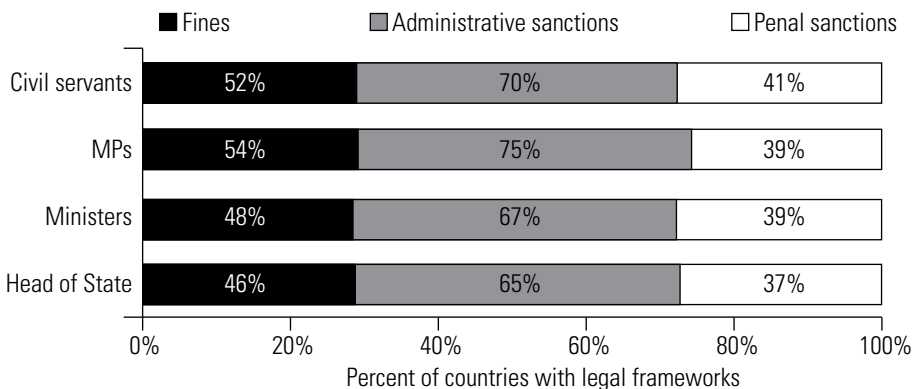
Sanctions are spread fairly evenly across filing violation in this sample of countries, with no one type of violation being penalized significantly more than others. It is clear from figure 7 that non-filing is penalized in the greatest number of countries, between 80–90%. Civil servants are penalized in 80–90% of countries for all types of filing violations, which stands in contrast to the case of heads of state, who are penalized in 60–80% of countries. Because of the nature of their positions, it may be easier for governments to target civil servants for filing violations than it would be to sanction elected officials.

An important aspect of asset disclosure systems is whether false disclosures are penalized, as this facilitates the prosecution of corrupt officials, particularly in cases where proving underlying acts of corruption is difficult. As Figure 11 shows, false disclosure is subject to sanctions in approximately the same percentage of AD regimes as are late filing and incomplete submission (between about 60% and 79%), while non-filing is

**Figure 11. Filing Violations across Categories of Public Official**



**Figure 12. Types of Sanctions Specified for Filing Violations**



somewhat more likely to be subject to sanctions (81% to 89%, depending on the type of public official).

Sanctions are prescribed by law in approximately 90% of countries, with administrative sanctions (dismissal, demotion, reprimand, etc) being the most common. Around half of the countries stipulate fines in the case of filing violations (non-filing or late filing), whereas only 40% of countries specify criminal sanctions. Whereas administrative sanctions are typically meant to be enforced by the implementing agency, enforcement of fines and penal sanctions require effective coordination with and intervention by outside bodies, i.e., judicial and/or enforcement mechanisms, in order to function properly.

Sanctions apply fairly consistently across different categories of public official, although administrative sanctions are prescribed in fewer countries for heads of state than MPs. This may be a result of the fact that administrative penalties are already included in the standing rules or orders of the legislature. Certain categories of officials may also be immune from dismissal or other administrative sanctions. Often the applicable rules are not laws, but codes by which the legislative body governs itself, and can be applied fairly easily to accommodate AD provisions.

### 2.2.6. Monitoring Compliance

*While almost 90% of countries with an AD framework specify a depository body for declarations, only 75% of countries identify an enforcement body.*

The task of monitoring and overseeing disclosure processes is interpreted differently across countries. In some countries, effective monitoring consists solely in ensuring that all officials have duly filed a declaration. In others, monitoring consists in ensuring that declarations are completed correctly, with the implementation agency following-up any gaps or errors in filing. Elsewhere, monitoring compliance consists in the above, and in verifying the accuracy of the information declared, detecting potential sources of conflict of interest, and in tracking changes in assets over time. Various combinations of the above approaches are used, depending on the stated objectives of the AD system and the resources and capacity for implementing the system. The nature and disposition of the agency responsible for these tasks also varies widely.

AD frameworks should specify which agency is responsible for monitoring filing compliance, as well as for verification and investigations. Experts suggest that the gathered information should be given to an independent committee or body for processing, verification and publication.<sup>37</sup> Additionally, it is often recommended that the investigation function should be separated from information monitoring and control.<sup>38</sup> In the case of Lithuania, for example, as well as in many other jurisdictions, there is no

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37. Mukherjee, Ranjana and O. Gokcekus. (2007), p. 3.

38. Carney (1998), Section 3f, p. 2.

clearly prescribed and independent body responsible for investigations. The Chief Official Ethics Commission is responsible for conducting investigations but may also ask the head of a specific agency to conduct an investigation.

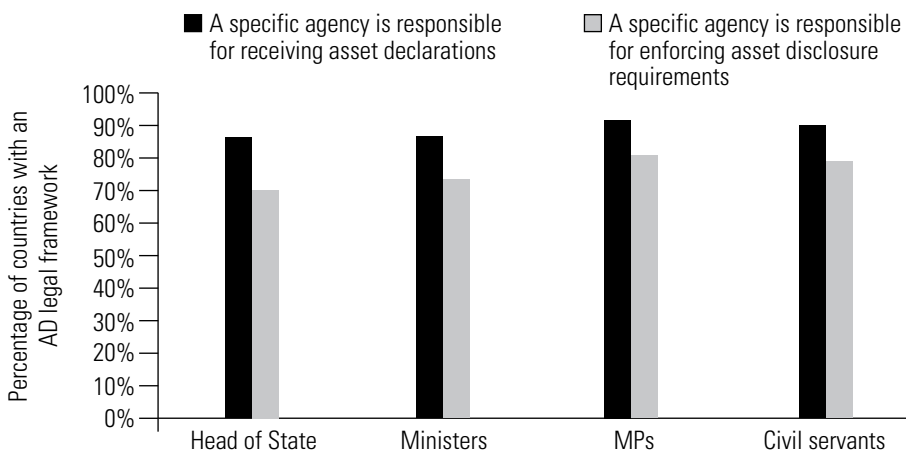
Agencies tasked with receiving asset declarations are specified by law in almost 90% of countries. Over 75% of countries with an AD framework also identify the body responsible for enforcement of AD provisions. Very few countries specify in law how investigations are to be conducted or which specific body is responsible for investigations, particularly when filing violations are criminalized or when anti-corruption provisions exist. In these contexts, cases warranting criminal investigation are referred to the appropriate authorities (public prosecutor, police, or other independent body).

When an AD system is oriented to the prevention of conflicts of interest and to detecting illicit enrichment, case studies suggest that it is preferable that a separate body or department be charged with conducting investigations, so as not to hamper the implementing agency's advisory role in helping officials detect potential COIs. Common practice in EU disclosure systems correlates with this suggestion, with external entities and institutions generally performing the monitoring function.<sup>39</sup>

**2.2.7. Content verification**

*Whereas nearly 60% of countries identify an agency tasked with verification or review of declarations, no more than 30% of countries specify explicit criteria in the legislation for this responsibility.*

**Figure 13. Designated Bodies for Receiving Declarations and Enforcing AD Provisions**



39. Demmke C., M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker and A. Salminen. (2007) pp 72.

Verification is an extremely important aspect of AD systems, and also one of the hardest parameters to implement. Without monitoring and verification of data the process of filling out declarations can easily become an “empty ritual.”<sup>40</sup>

The type of agency specified varies across context.

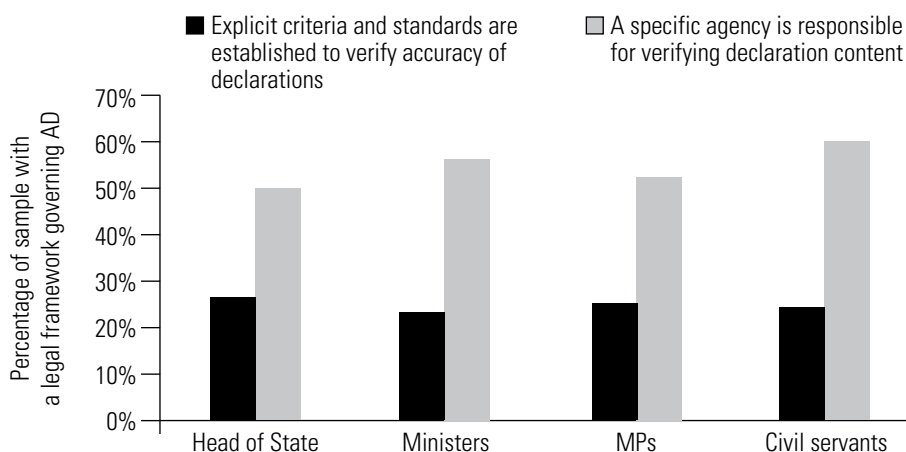
- For Heads of State, Armenia, FYR Macedonia, and Latvia name the tax authority for submission verification. Uganda and the United States specify the Supreme Audit Institution for the same task, while the Dominican Republic specifies the Treasury.
- Submission of asset declarations filed by MPs in the United Kingdom and Malawi are verified by Parliament, possibly posing a conflict of interest.
- Other types of agency specified are ethics commissions, financial disclosure commissions, anti-corruption commissions, the executive office, and the election commission.

The verification of the content of asset declarations is specified by law in only 55–65% of countries. Even fewer countries, approximately 30%, specify by law the criteria to conduct content verification, regardless of whether conflicts of interest are being reviewed or cases of illicit enrichment are being targeted. However, these criteria may be present in sub-legal instruments, procedural guidelines, or agency regulations that are specific to small groups of officials (e.g., procurement, customs, etc.).

### **2.2.8. Public access to declarations**

*While 50–80% of lower middle income, upper middle income and high-income countries specify by law that asset declarations be publicly available, only 20% of low-income coun-*

**Figure 14. Content Verification of Asset Declarations**



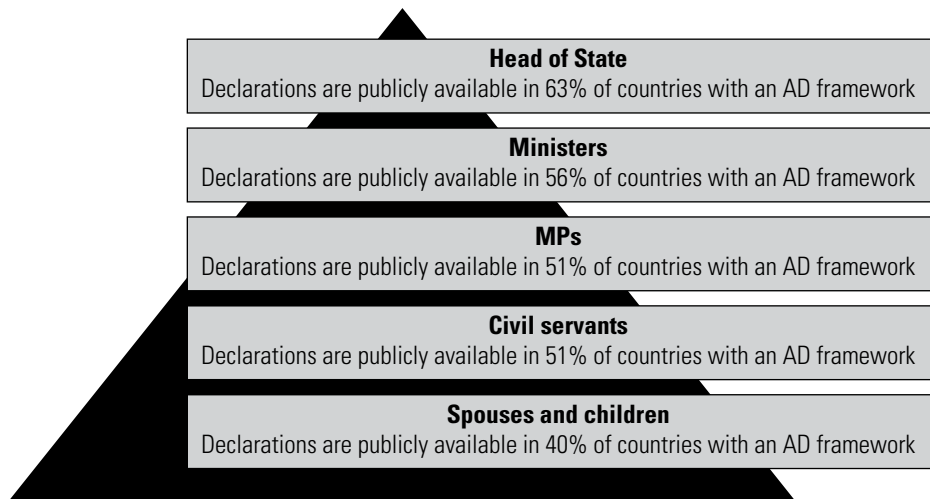
40. Mackenzie, G. Calvin and M. Hafken. (2002) p. 165.

tries specify public access. Only 11% of countries specify the free provision of declaration content, either online or in hard copy. Over half of the countries in the sample specify a location at which declaration content may be accessed. The timeliness of posting the declaration data is absent in over 60% of countries. (See Annex 1 for further analysis of the debate surrounding public access).

Between 50–65% of the countries in the sample PAM analyzed allow for public access to declaration content by law (excluding data from spouses and children); however these countries are concentrated in the higher income classifications. According to Figure 16, approximately 20% of low-income countries specify public access to the content of asset declarations. This contrasts sharply with the 50–80% of lower middle income, upper middle income and high-income countries that specify by law the public availability of asset declarations. (The public availability of AD data is not specified in 11% of countries.)

In several countries, the declarations filed by civil servants are protected under privacy provisions, possibly because they are not elected officials, or because they are less likely to be in positions that would allow them to significantly influence policies or divert public funds for personal gain. This is also true of the asset and income information provided by spouses and children. In those countries where declarations are not publicly available, thereby precluding an opportunity for civil society to hold public officials accountable through the AD framework, there may exist credible governmental mechanisms for content verification and prosecution of corrupt activities. Such is the case in France and Macau, where declarations can and are used in the course of an investigation into an underlying crime, or when suspicious findings arise.

**Figure 15. Public Availability of Asset Declarations across Category of Public Official**



**Figure 16. Public Availability of AD Data across the World Bank Income Classification**

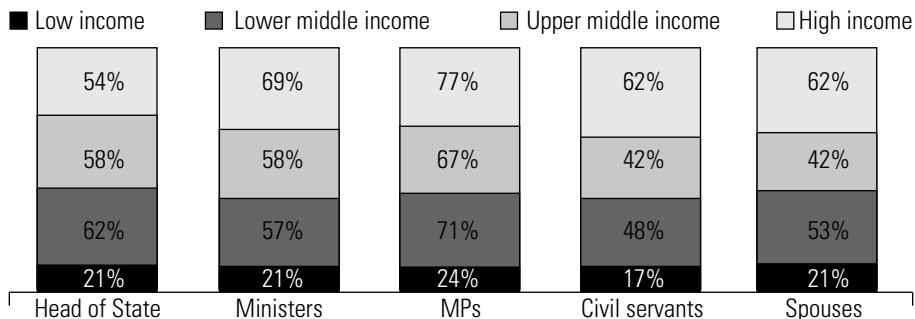
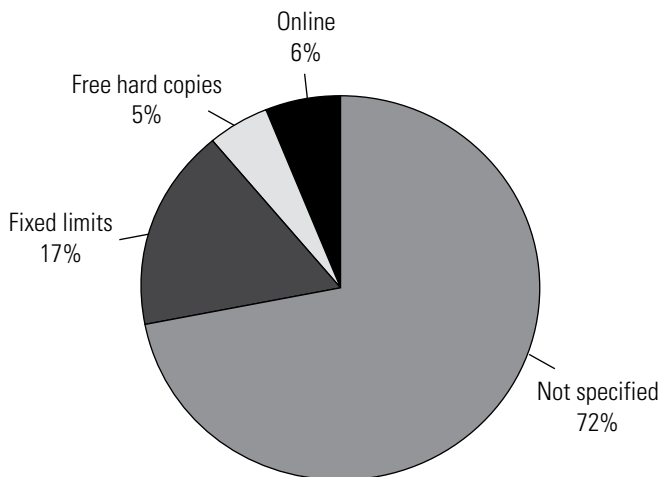


Figure 17 demonstrates that 70% of countries do not specify the fees to be charged for access to declaration content, which could result in excessive charges by individual agencies.

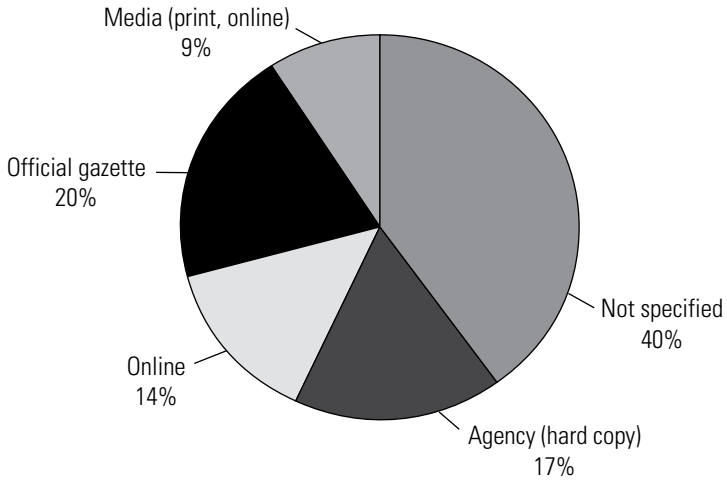
A fixed location (agency) is specified in 17% of countries in which AD data is publicly available, while online access is prescribed in 23% of countries. The official gazette is stipulated in 20% of countries as the means of access to AD data.

Nearly 20% of countries specify that AD data must be made available to the public within one month. In terms of records maintenance, 82% of countries fail to specify how long records will be maintained, although many countries stipulate that records may be kept indefinitely for the purpose of investigations into corrupt activities.

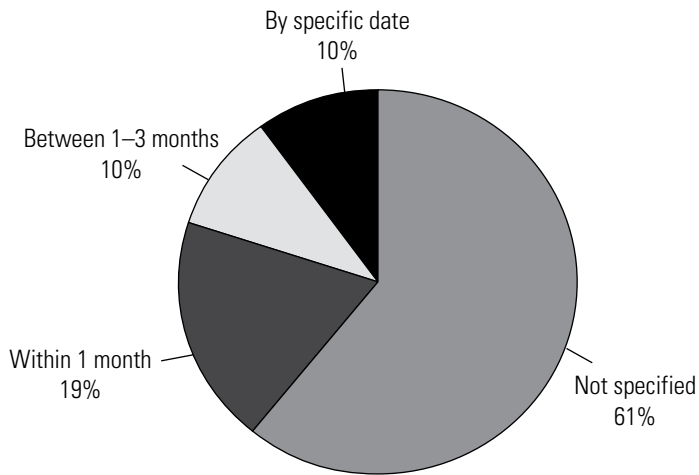
**Figure 17. Fees for Access to Asset Declaration Content**



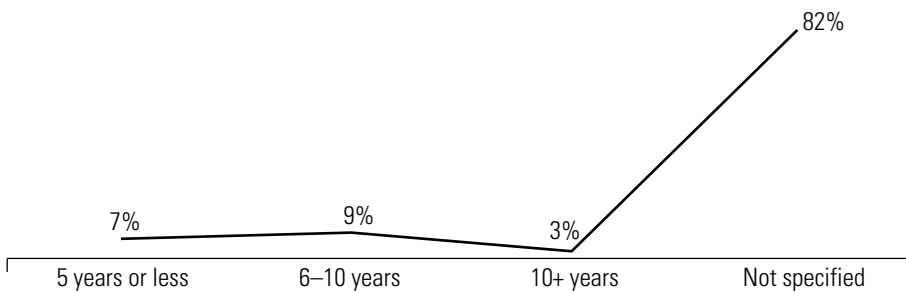
**Figure 18. Location at which the Public Can Access Declaration Content**



**Figure 19. Timing of AD Data Release**



**Figure 20. Length of AD Records Maintenance**







# Chapter 3. In-Practice Case Studies of Asset and Income Disclosure Systems

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## 3.1. Introduction

This chapter focuses on the “in-practice” elements of implementing and administering asset and income disclosure systems. The findings in this chapter are based on extensive conversations with practitioners on good (and bad) practices, fact-finding missions to complete case studies in several countries,<sup>41</sup> as well as on the results of a practitioners’ consultation workshop. The chapter provides recommendations where good practices have been identified, and suggestions regarding the different alternatives available to policy-makers and practitioners, in particular circumstances.

This chapter is divided into two sections that address the features that are necessary for a well-functioning AD system:

- i. *Management and Accountability*: facilities; technology; human resources; budget; regulatory oversight; and monitoring and reporting.
- ii. *Enforcement*: enforcement structures; submission compliance; verifying the content of declarations; investigations; and sanctions.

A set of in-practice indicators was developed (see Annex 4) to assist in profiling the functions and characteristics of asset disclosure systems in different countries. These indicators focus on the practical aspects of implementing and administering asset disclosure processes, including such elements as the physical facilities available to the implementing agency, human resources, the availability and use of technological resources; the procedures and mechanisms in place for monitoring submission compliance, verification of declarations, public access to the content of declarations, and the enforcement of sanctions. Profiling the structure and features of asset disclosure systems in different countries has also assisted in identifying the possible strengths and weaknesses of the implementation approach adopted in different countries, taking into account the existing constraints. Some of these indicators are highlighted in

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41. Case studies have been conducted in Mongolia, Kyrgyzstan, Croatia, USA, Argentina, Guatemala, Honk Kong, and Macau. Further case studies are due to be conducted in the Africa and MENA regions.

this chapter as key factors to consider in building an effective AD system. The full list of indicators, provided in Annex 4, could prove useful to practitioners and other stakeholders, not only in the design and enhancement of AD systems, but also to assist in monitoring performance and results.

### **3.2. Management and Accountability**

Underpinning any successful public accountability system are its management and accountability arrangements, capacities, and practices. Indicators of the adequacy and potential effectiveness of these arrangements include, *inter alia*, the facilities provided for their implementation, the resources devoted to them (including technological, human and budget resources) and the monitoring of the system's performance. This section describes key management and accountability considerations that need to be taken into account in the design and implementation of AD systems. Examples from the case studies are provided to illustrate the results or implications of certain approaches in different contexts.

#### **Facilities**

##### *Facilities need to be adequate to the systems' purpose and storage requirements*

Notwithstanding the advent in some jurisdictions of on-line submission of declaration forms, asset declaration systems typically produce very large amounts of paper documents that are usually required by law to be kept for several years. In Argentina, for example, declaration forms are mandated to be maintained for ten years after an employee has left office.<sup>42</sup> As AD systems mature, the scope of employees covered by disclosure laws may widen, compounding the need for physical space in which to store declarations. In addition, employees are needed to manage the ingress of forms, monitor submission, respond to technical inquiries from officials and access requests from the public, conduct verification inquiries, propose reforms, and provide technical support and supervision to the principal implementation staff. In order to effectively carry out the operational activities of an AD system, the implementing agency must have appropriate facilities.

Storage capacity of asset declarations remains a problem for many countries. In Mongolia, for example, the implementing agency has only limited capacity on-site for the storage of AD's.<sup>43</sup> It therefore prioritizes the declarations of the highest-ranking 256 officials in the government, storing them on-site for two years, and then transferring them to an archive for an additional three years.<sup>44</sup> The remaining 50,000+ declarations

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42. Argentina Case Study, p. 7 (on file with the authors).

43. Mongolia Case Study, p. 8 (on file with the authors).

44. In Kyrgyzstan, declarations are stored for seven years, then destroyed. Kyrgyzstan Case Study, pp 7 (on file with the authors).

are stored within the individual agencies where the filers work.<sup>45</sup> Aside from the question of whether such a large filing population is optimal, Mongolia's approach to its storage requirements prioritizes the highest-ranking officials, who are likely to warrant the closest scrutiny and to attract the greatest public interest.<sup>46</sup> However, this approach presents a significant obstacle to making the large majority of declarations easily accessible to the public. To date, no request for public access has ever been made regarding any official outside of the 256 highest-ranking officials.

In Argentina, officials report that available storage may soon become inadequate (the declarations of the top 5% of officials—around 1,600—are stored in a vault of the Ministry of Justice building that formerly served as a bank). The public versions of asset declarations (*anexos públicos*) when undergoing formal review or investigation are stored in the crowded offices of the Asset Declaration Unit (ADU) or the Investigations Department (ID), sometimes for indeterminate periods of time.<sup>47</sup> Officials report that working facilities are excessively cramped. The Investigations Department, for example, reports that it has outgrown the limited office space available, and has exceeded the building's safety limit for floor weight as a result of the build-up of paper archives in the nine years since the Department was created.

Predictably, establishing on-line submission of all declarations reduces the need for physical storage capacity.<sup>48</sup> In Argentina, for example, on-line filing has facilitated the ADU's access to the 95% of asset declarations that are stored (in hard copy) in the employer agencies of submitting officials.<sup>49</sup> These are accessed electronically by the central ADU for the purpose of content verification.

### *Facilities need to be secure*

Security of facilities is equally important for paper or electronic AD systems. Electronic storage of asset declarations with effective back-up can reduce the risk of destruction or theft. The requirements for "effective back-up," include features such as frequency of back-up, distinct locations and equipment for storage of the original and back-up data, as well as firewalls and other security requirements on both read and read/write access. These requirements obviously have their analogues for paper storage systems. In short, the risk of destruction or theft requires the same sorts of risk mitigation measures, regardless of whether the data is stored in hard copy or electronic form; the specifics of each measure, however, will differ between paper and electronic systems.

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45. Mongolia Case Study, p. 1.

46. Kyrgyzstan has also considered prioritizing the storage of political and special positions, maintaining the latter for an extended period of time. Kyrgyzstan Case Study.

47. Private annexes are kept 'under seal' and stored under lock and key in the ADU when current, after which they are sent to the archives in the MoJ for a period of ten years. Argentina Case Study.

48. E.g. Montgomery County, USA Case Study.

49. Argentina Case Study.

Macao's system, while not electronic, mitigates against this risk by producing forms that contain carbon copies.<sup>50</sup> There is currently an initiative to have copies stored in a separate building to guard against loss through fire or natural disaster.

Finally storage of AD declarations in the same facility where filing officials are employed may create an undue risk of tampering with or removing forms that contain information potentially damaging to the employee (e.g. if the declaration provides evidence of an acquisition of an unjustified asset). Facilities need to protect against such types of potential interference and to protect against the risk of sensitive information, such as the results of investigations in progress, being accessible to non-agency officials with a potential risk of data being leaked to the press or disclosed for political purposes.

### *Appropriate facilities enhance the credibility of the system*

In addition to supporting the logistical requirements of an AD system, the location and quality of the implementing agency's facilities can send a powerful message to government officials that the prevention and detection of corrupt activities is an essential undertaking, ranking in importance among other key government functions. The symbolic value of a government's prioritizing of facilities for an anti-corruption agency can provide a system with legitimacy and signal to officials covered by the law that failure to comply has serious consequences. The economic development of a country plays a role in determining the quality of the facilities. When anti-corruption agencies receive donor support, one of the priorities should be adequate facilities.

Hong Kong's facilities stand out in terms of modernity: the ICAC has its own, state-of-the-art HK\$700 million building containing modern offices, a cafeteria, a gym, detention facilities, and interrogation rooms.<sup>51</sup> While Guatemala's Comptroller General (*Contraloría General de Cuentas*) is housed in a modern building, its asset declaration bureau operates from an older building with no air-conditioning.<sup>52</sup> Where obtaining new or very modern facilities is unrealistic, a central location can achieve a similar effect. Croatia's agency, National Commission for the Prevention of Conflicts of Interest, is housed in elegant offices directly in front of the Parliament building; Macau's CCAC is also located in a central location.<sup>53</sup>

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50. Macao Case Study (on file with the authors).

51. Hong Kong Case Study (on file with the authors) While not directly involved with AD forms filing and storage functions, the institution is involved in the process, through its investigative authority to pursue allegations of corruption in both private and public sector. In addition, the particular AD units in HK and Macau visited by the team have excellent infrastructure.

52. Guatemala Case Study. The AD unit is housed in a historic building, formerly occupied by the first German Bank in Guatemala, making renovation difficult due to concerns about the preservation of a historic site.

53. Croatia Case Study, Macau Case Study.

## Technology

Technology is an important component of effective AD systems and technological improvements have benefited disclosure systems in a number of ways. Although there is little empirical evidence measuring the impact of AD systems technology on their

### BOX 3

#### Key Elements of the AD System in Mongolia

*Created by the 2006 Law on Anti-Corruption, the AD system in Mongolia is growing increasingly effective. The law created the Independent Agency Against Corruption (IAAC) which is responsible for the management of the AD program. Entering its third year of existence, the IAAC has achieved significant progress in relatively little time; reporting a 99.9% submission compliance rate. Despite its success on this front, the IAAC has faced some challenges with regard to resources and obtaining cooperation from outside agencies and banks. However, these challenges are slowly being overcome with increased coordination. Mongolia's experience is a good example of gradual implementation of an AD system at the early stages.*

#### Key elements of the system include:

- **Designed for detection and prosecution of illicit enrichment.** *The Law on Anti-Corruption and the IAAC were designed with the purpose of combating illicit enrichment. However, the IAAC has repeatedly expressed a desire to expand the system to include conflicts of interest which will require the adoption of a law by Parliament defining conflicts of interest and giving the IAAC power to monitor them.*
- **Decentralized submission system, centralized monitoring.** *Currently, only the top 256 government officials declare their assets directly to the IAAC. The remaining 50,000+ officials submit declarations to designated ethics officers in their individual agencies, enabling the IAAC to monitor submission compliance with a staff of nine. Given the resource constraints faced by the IAAC and government, this appears to have been an effective approach to ensuring compliance in the absence of electronic filing or submission systems.*
- **Verification procedures exist and trained staff investigate.** *The IAAC has the power to verify the content of any and all declarations, but currently only verifies content if an allegation of wrong-doing is made against an official. This is due, in part, to resource constraints, to the decentralized paper submission process, and presumably to the very large size of the disclosing population. The IAAC has plans to create an electronic submission and verification system which will streamline the process.*
- **Administrative sanctions for non-compliance are enforced.** *Administrative sanctions are the only sanctions available for failures related to the obligation to file or to be honest on a declaration, but they are enforced swiftly, with 50 civil servants dismissed in 2008 for failing to submit asset declarations. Criminal sanctions are available for underlying corrupt acts, and ADs have already been used in such prosecutions.*
- **Public Access to ADs granted.** *Access to modified versions of all asset declarations is granted to the public. These versions contain summaries of classes of assets and their total values which enable limited life-style checks should members of the public wish to perform such checks. However, despite access being free, the majority of the public seems to be unaware of the existence of these declarations and their content.*

respective jurisdictions,<sup>54</sup> the limited data available suggests that the impact is considerable. It has been stated that the “most effective system for processing declarations should involve IT solutions” as it can ensure effective procedures and help eliminate human error during verification.<sup>55</sup> Most importantly, technological advances have worked to increase the efficiency and capabilities of such systems, while decreasing costs. Advanced systems are seen as more secure when compared to paper forms as they often reduce human-resource requirements and human-related errors.<sup>56</sup>

*The use of technology can enhance filing compliance and the efficiency of submission processes*

As mentioned above, the development and implementation of electronic procedures for the submission of asset declarations significantly reduces the need for storage space in the agency charged with verifying submission. It also reduces the time burden on staff for the receipt of declarations, the transfer of data from paper to electronic form (as occurs in Guatemala and Croatia), filing and locating physical copies. It also reduces delays caused by late submission or incomplete submission. Without the need to regularly destroy older records to make room for new ones, electronic declarations can be retained and consulted for longer periods of time, thereby also extending the preventative impact of the system.

On-line submission may also increase compliance by reducing travel burdens and costs associated with physical presentation of the declaration (particularly where submissions must be received in person and/or the official is employed outside of the capital city where the implementing agency is generally located).

- The Anti-Corruption Office in Argentina redesigned the country’s financial disclosure system from a paper-based program to electronic forms using user-friendly software. The improved system was introduced in 2000 and produced significant impacts. The new legislation, and new system that resulted, enhanced public requests for access to information but also provided safeguards for privacy of personal information.<sup>57</sup> The electronic system is bifurcated between confidential and publicly available information, allowing public servants to submit and save both types of information.<sup>58</sup> Argentina’s introduction of its technologically

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54. Quantitative metrics of AD effectiveness tend to be limited to implementation of improved technologies, such as the cases of Argentina and Mexico, level of cooperation with the program, as in Kyrgyzstan, and operational activities, such as in the United States.

55. Anti-Corruption Network for Eastern Europe and Central Asia 7th General Meeting, p. 37.

56. Kossick, Robert. Mexico’s Declaranet System: Enhancing Public Sector Efficiency, Transparency & Accountability through the Automation & Disintermediation of the Patrimonial Declaration Process (2002) p. 10.

57. OECD. Managing Conflict of Interest in the Public Service: OECD Guidelines and Overview, p. 66.

58. Raille. Managing Conflicts of Interest in the Americas: A Comparative Review, p. 9.

improved system in 2000 produced significant impacts. The level of compliance increased from 67% to 96% and the estimated cost to the government per form decreased from \$70 to \$8. Additionally, the number of Conflict of Interest cases increased from 40 to 331, and the number of financial disclosure information requests increased from 66 to 823.<sup>59 60</sup> These disclosure requests have come from the media, non-governmental organizations and public officials.<sup>61 62</sup>

- In Argentina, another benefit derived from the introduction of electronic filing was a significant reduction in the number of errors or incorrectly filled-in AD forms, resulting in increased compliance rates and a reduced burden on the implementing agency in chasing up incomplete or incorrectly filed declarations. The specific design features of the electronic filing system are significant in this respect. For instance, Argentina's submission process employs an interactive electronic form (available on the Anti-Corruption Office website or in a CD-ROM pack) that requires the filer to complete all necessary fields before the form can be submitted, thereby reducing the incidence of incomplete forms.
- In Colombia, the Uniform Personnel Information System ("SUIP") is the general human resource system that assists the government in, among other things, detecting possible conflicts of interest. The system collects basic information regarding the CV, professional and academic experience of public servants and involves the participation of 201 national-level government agencies. The Colombian asset and income disclosure system ties into the SUIP system. The Information System for Sworn Statements ("SIDECS") is the Colombian electronic system responsible for handling, overseeing and monitoring the information in the assets and income statements. The organizations responsible for compiling and maintaining the SUIP (i.e. oversight bodies, the Public Prosecutor of the Republic, the National Registry of Vital Records) have access to the asset and income disclosure system. "Personnel heads in government offices may verify the submission of the statements" and randomly select others to verify their accuracy.
- Mexico has demonstrated interest in improving its technological capabilities with the development and implementation of its *Declaranet*, *Compranet*, and *Tramitanet* systems. The *Declaranet* system is the computer-based system through which public servants submit disclosures. The *Compranet* system allows for transparent government contracting by permitting citizens to know "what the government buys, from whom, at which prices, and under what conditions." The *Tramitanet* network allows the citizens to monitor public actions and to

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59. De Michelle, Roberto. The Role of the Anti-Corruption Office in Argentina, p. 19.

60. OECD. Managing Conflict of Interest in the Public Service: OECD Guidelines and Overview, p 66.

61. De Michelle, Roberto. The Role of the Anti-Corruption Office in Argentina, p. 19. (De Michelle's work quotes the increase number of disclosure requests at 664 and the OECD at 823)

62. OECD. Managing Conflict of Interest in the Public Service: OECD Guidelines and Overview, p. 66.

submit complaints. Citizens may also submit complaints via the *Sactel* telephone system and through the National System for Citizen Complaints, Whistle-blowing and Attention.<sup>63</sup>

- The implementation of Mexico's *Declaranet* system presented a number of challenges and solutions that should be noted. The institution of the electronic system met a poorly developed digital culture in Mexico, with public servants initially reluctant to abandon paper-and-ink disclosure forms in favor of the new on-line system. The government addressed this challenge by strengthening the capabilities and know-how of its public servants through effective and clear online instruction features, tutorial sessions, a toll-free call center and personal attention centers. Access to the internet also posed a challenge as some public servants were in locations so remote that internet access was not available. This was to be addressed by the Government's plan to create 10,000 rural community internet centers by 2006. Funding has proven an additional challenge to the *Declaranet* and similar systems. Despite the government's stated focus on such programs, funding has reportedly been "modest" and staff are "overextended." Within the organizational structure, "approximately 60 full-time staff members and 60 external consultants share the responsibility for simultaneously operating and maintaining the *Declaranet*, *Tramitanet*, and *Compranet* sites." Increased funding could enable staff to focus on a single project, possibly increasing efficiency and productivity.<sup>64</sup>

Despite their enormous potential for increased efficiency, on-line submission of declarations remains unavailable in many countries, including in Hong Kong and the United States. In Guatemala, where the transition remains incomplete (not all the functions of the new program have been activated), the agency remains burdened with the challenges of an unwieldy paper system.

Whether or not on-line submission is available, electronic record keeping is an important aspect of an efficient asset declaration system. It allows for quick retrieval of records, streamlines transfer of records between agencies (such as between the collection agency and the investigative agency), and by providing an electronic copy, decreases the likelihood that the asset declaration is lost or destroyed. Electronic records also permit efficient and targeted verification of the content of declarations (described under "enforcement" below).

### *Technology can facilitate public access to asset declarations*

The digitization of asset declarations can facilitate public access to declarations by making AD information available online, for free, to a wide audience. Even in coun-

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63. Raille. *Managing Conflicts of Interest in the Americas: A Comparative Review*, p. 12.

64. Kossick, p 7.



**BOX 4****Key Elements of the AD System in Argentina**

*The legal framework for AD in Argentina is one of the most ambitious examined. When passed in 1999, the Public Ethics Law sought to cover the 3 branches of government under the aegis of a single National Commission. In practice, the implementation of the system has achieved a more modest scope. The AD system for the Executive Branch (examined for this study), administered by the Ministry of Justice's Anti-Corruption Office, has achieved the greatest success of the 3 systems in putting the objectives of the law into practice. While the system has achieved a modest track record in enforcing sanctions—largely due to bottlenecks or resistance in the judiciary—some of its procedures are considered good practice in AD administration. Argentina's experience is also a good example of an AD system whose procedures have been adjusted and honed over time to enhance effectiveness, within the constraints of what is politically and institutionally achievable.*

**Key elements of the system include:**

- **A combined model designed for the detection and prosecution of illicit enrichment and the prevention of conflicts of interest.** *Specialists suggest that this combination can place unrealistic burdens on an implementing agency. In practice, the system allocates more human resources to detecting irregularities and tracking changes in assets over time than to COI prevention, which, though monitored, is chiefly supported through educational materials and advice to officials.*
- **Separate bodies for submission compliance and COI prevention** (the Asset Declaration Unit, ADU), **and for investigations** (the Investigations Department, ID). The ADU is responsible for formal verification of irregularities and potential COI and adopts a posture of assisting officials to comply. The ID seeks evidence to build a case after irregularities in the AD have been detected.
- **Centrally managed oversight system with decentralized functions** delegated to the approx 190 HR offices of the entities in which officials are employed. *This model permits the monitoring of filing compliance by 36,000 officials with a staff of 12 in the ADU.*
- **Electronic submission and verification processes.** ADs are submitted electronically and in hard copy. Hard copies are stored locally by HR offices, except for those of the most senior 5 percent of officials, which are sent to the ADU. *Electronic submission significantly reduced the incidence of non-compliance due to incorrect filing, and enabled electronic verification and targeted audits of ADs based on categories of risk. It also established a credible threat of detection to the 36,000 filers.* The top 5 percent (1,600) of ADs are systematically verified. The other 95% are verified according to categories of risk. In total, the ADU is able to conduct full verification of around 2,500 declarations a year.
- **Public access to ADs granted, but limited by the dual public/private submission process.** Officials submit a public and a private AD. The private declaration (*anexo privado*) is kept under seal except by court order. Access to a hard copy of the public annex (*anexo público*) is given *in situ* in the ADU; criminal penalties apply for misuse of information. *The dual submission system reduces officials' anxieties about public access to sensitive information, and enables the AD system to collect more information, of which sensitive data (addresses, bank account numbers, copy of tax declaration etc.) is kept private. Newspapers routinely publish the public ADs of prominent politicians.*
- **Severe criminal penalties apply for non-submission and for false declarations;** criminal penalties for non-submission or false declaration apply, but the judiciary has been reluctant to apply them in practice. It is conceivable that administrative sanctions would be more effective as more likely to be enforced. Non-enforcement diminishes the credibility of the system.

tries where electronic submission and/or record keeping are the norm, this is not standard practice as some allow access to ADs only in person and in situ. It is also important to note that not all countries have the necessary pre-requisites in place for electronic record keeping or full digitization to be feasible. In such cases alternative approaches are needed to ensure the accessibility of the data both to administrators (for compliance and verification purposes) and to the public where the law mandates access.<sup>65</sup>

In Croatia, where submission is in hard copy, support staff of the National Commission enters selected data on officials' assets on its website allowing public access to that information.<sup>66</sup> (Access to the complete declaration is available to individuals who apply in advance and present themselves at the Commission's premises on appointment). Croatia's approach to providing online access despite its paper submission system increases the accountability of public officials, which is particularly important since the system does not provide for verification of content. Journalists and other interested parties are able to access information online which, although lacking in detail, provides some measure of public scrutiny.

Although certain officials may be resistant to electronic submission of data, either because they are unfamiliar with information technology or wary of online data transfer, Argentina's introduction of an electronic on-line submission process, which has now become fully institutionalized, demonstrates that these problems can be overcome.<sup>67</sup> Currently, Mongolia and Kyrgyzstan only accept hard-copy declarations and then transfer the data into electronic form for easier use and analysis, but intend to permit online submissions in the future.<sup>68</sup>

### *Technology does not need to be cutting edge to achieve system objectives*

The use of a computer has obvious data management benefits for an asset declaration system, the majority of which can be accomplished with conventional software and only reasonably modern hardware.<sup>69</sup> However, one consideration when moving

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65. Where technological solutions are not feasible, initially requiring smaller numbers of officials to file, while the capacity of the system to verify compliance and content is developed and introduce public access mechanisms, can keep the data (and paper) volumes more manageable until resources are in place.

66. Croatia Case Study.

67. Argentina Case Study at 12. In its trial phase the online submission process was piloted in one Agency, the Federal Administration of Public Revenues (*Administración Federal de Ingresos Públicos*, AFIP). The Anti-Corruption Office installed a temporary bank of computers in the Agency's premises in the capital with officials on-hand to provide guidance.

68. Mongolia Case Study.

69. Faced with a trade-off between obtaining a less sophisticated computer for each employee and purchasing the most modern equipment in limited quantities, the former is thus preferable.

to an on-line submission system is the hardware capacity required to store and manage the electronic data. In Argentina, for example, where on-line submission has become the norm for the 36,000 filing officials, hardware that dates from the system's inception in 2000 has resulted in very slow processor speeds that hamper the ADU's management of its ever-increasing AD database.<sup>70</sup> A more sophisticated system also requires trained technical experts to ensure proper functioning of data management systems.

## Human Resources

Given that individuals seeking to conceal funds can often be senior level government officials with the means to seek the sophisticated advice of accountants and lawyers, an effective asset disclosure system requires qualified personnel to conduct the forensic analysis necessary to identify unjustified changes in assets. This is the case particularly where the agency's mandate includes review of asset declarations as a corruption prevention tool, such as Argentina's ADU and ID. The ADU and ID staff includes lawyers, accountants, and political scientists.<sup>71</sup>

### *The hiring and training of well-qualified staff are key to the agency's effectiveness and the system's credibility*

In countries where anti-corruption efforts are recent and/or the public's tolerance levels for corruption are high, a nascent anti-corruption agency may face a pronounced legitimacy challenge. Filling the ranks of the agency with qualified and well-trained professionals can therefore be desirable both in creating a pedigree for the agency and allowing it to continue to attract talented employees. The prestige of an agency is an indirect way of encouraging compliance by government officials. Given the need for public and institutional legitimacy and the central role of transparency in its mission, staffing of anti-corruption agencies should be on the basis of competitive hiring and provide reasonable pay. Mongolia's IAAC staff, for example, receives

#### **Some Key Human Resource Considerations**

- Does an accurate organigram of the agency staff exist?
- Are job descriptions of agency staff clearly written and available?
- Are operating manuals clearly written and available?
- Are newly hired personnel capable of using computer software such as Word, Excel, Outlook, Email, etc.
- What fraction of professional staff has at least four years of post-secondary education?
- Do personnel receive training in administrative processes?
- Do personnel receive general training in laws and regulations covering asset disclosure

70. Argentina Case Study.

71. Argentina Case Study. The ID has a team of 37; the ADU has 12 people on its staff (7 of whom are civil servants, 5 of whom are contractors) that review approximately 4000 asset declarations per year.

higher pay than civil servants of equivalent seniority, facilitating recruitment of higher qualified individuals and sending a message regarding government priorities.<sup>72</sup>

Training programs and the provision of educational information pertaining to policies and regulations has become common practice in many AD systems. In some OECD countries, induction training for new entrants is accompanied by in-service training, along with the dissemination of booklets, pamphlets, videos and electronic software aimed at making public employees and/or individuals aware of the principles, standards and regulations or the policy to which they are subject. In New Zealand, the State Services Commissioner provides a multimedia resource kit to public servants designed to facilitate discussion about values and how they should be applied to everyday situations.<sup>73</sup> A study carried out by the United States OGE found that the frequency of training was directly related to improved perceptions of an ethical culture within the Executive Branch.<sup>74</sup> Furthermore, while public officials need to be educated about the rules to which they are subject, “one-stop training” is not enough. “Effective implementation of a conflicts of interest policy will require the on-going education of all HPOs.”<sup>75</sup> Beyond merely training officials, in Argentina, the Anti-Corruption Office, among its other activities, provides training to civil society organizations, equipping the organizations with the skills needed to perform oversight functions and aid in the fight against corruption.<sup>76</sup>

When agencies are understaffed or staff is underpaid, evidence shows that proper training, which results in higher productivity, can be both effective and valued by the employees. Better understanding of personnel roles and a clarity of purpose can help reduce attrition rates and maintain productivity. Maintaining well-trained staff can also facilitate any future implementation of a more sophisticated electronic AD system.

- Hong Kong’s ICAC emerges as a model in terms of human resource development in the world of anti-corruption agencies.<sup>77</sup> The ICAC currently has a staff of approximately 1,300, unrivaled by most peer anti-corruption agencies around the world. All staff receive extensive training upon hiring, as well as periodic reviews and ongoing training. Hiring is performed on a competitive basis according to civil service hiring standards with all employees having a minimum of 4 years of post-secondary education and many having advanced graduate degrees. Personnel of the individual agencies and the Civil Service Bureau (CSB) must also be hired through a competitive process according to civil service regulations and law. Those officials designated as Ethics Officers receive additional

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72. Mongolia Case Study.

73. OECD. *Managing Conflict of Interest in the Public Service: OECD Guidelines and Overview*, p. 58.

74. OGE Executive Branch Employee Ethics Survey (2000), p. 8.

75. Demmke, p. 116.

76. Raille. *Managing Conflicts of Interest in the Americas: A Comparative Review*, p. 8.

77. Hong Kong Case Study.

training pertinent to their role in receiving and analyzing the declarations of employees in their agency.

- While Croatia's implementing agency has a very limited permanent administrative staff (two lawyers and two economists for approximately 1,800 officials), it hires up to an additional ten temporary staff members immediately following an election. Their task is typically to assist in entering AD data onto the public access website. This stopgap measure is not as appropriate for verification or investigation functions, as these require training and experience. Qualified staff is important for training officials in AD processes. In Croatia, for example, members of the National Commission and its qualified administrative staff, work together with the Public Ethics Office and donors in providing training programs to familiarize public officials with conflict of interest concepts and regulations.
- Developing countries, such as Mongolia, have also made commendable human resource achievements.<sup>78</sup> Mongolia's IAAC uses competitive recruiting to hire new staff; requires staff to have relevant work experience and a minimum 4 years of post-secondary education; provides in-depth orientation at the time of hiring, including in all administrative processes and relevant laws and regulations; conducts annual employee reviews; uses an organigram depicting administrative design of the agency; provides explicit job descriptions that clearly delineate staff responsibilities; and has produced operating manuals designed to familiarize both the agency staff and asset declaration filers with the declaration process.
- Guatemala's agency, on the other hand, suffers from insufficient training budget.<sup>79</sup> AD is a very specialized field and staff needs time to build skills mostly through learning by doing, especially when formal training opportunities are limited (absence of training manuals, training seminars, study tours, etc.). The lack of competitive recruitment and promotion processes are also reported. Productivity and performance are said to be hampered by working conditions (e.g. the lack of IT and comfortable and adequate office space).<sup>80</sup>

**Some Key Financial Resources Considerations:**

- Does the implementing agency have budgetary autonomy?
- Is the budget adequate to handle the volume of disclosures and number of procedures the agency will handle?
- What is the budget/personnel ratio (wage bill)?
- How does the average salary of staff compare to civil service/ private sector wages?

78. Mongolia Case Study.

79. Guatemala's two AD-related units, the DDJP and DAVIP, have fifteen and sixteen members, respectively.

80. Guatemala Case Study.

## Financial Resources

*An adequate budget that is independently managed is key to the system's effectiveness and credibility*

Without adequate resources even the best designed asset declaration system functions poorly. An asset declaration unit's budget should remain independent from other entities, provide for adequate resources to support the system, and ensure continuity of funding. An adequate agency budget should provide for sufficient numbers of staff in relation to the number of declarations and procedures to be managed and provide staff salaries that are competitive with the private sector.

- Mongolia's IAAC, for example, receives a budget of US\$ 2.9 million and is guaranteed a certain level of budget continuity by the Anti-Corruption Law of 2006. However, its anti-corruption law specifically dictates the number of staff, preventing the IAAC from hiring more than its mandated 9 personnel per approximately 53,000 annual declarations.<sup>81</sup> Krygyzstan's agency budget, is not deemed adequate given the high number of declarations it receives, and is not able to provide staff with salaries that correspond to the cost of living.<sup>82</sup> As expected, given Hong Kong's commitment to the fight against corruption, its agency currently has a yearly operating budget of \$700 million HK dollars (approximately US \$90 million).<sup>83</sup> Spread across the 1,300 personnel employed by the agency, this funding represents HK\$538,000 per employee (or US \$69,000). The U.S. OGE's has a budget of \$13.4 million. In theory, non-wage recurrent cost budget per declaration ratio would provide good evidence as to whether running costs are adequately provided for.
- Croatia's Commission for the Prevention of Conflicts of Interest does not have an independent budget, receiving funds under the Parliament's administrative budget. This lack of budget control, particularly given its oversight of Parliamentarians, could hamper its real or perceived independence. Argentina's budget, coming from its constitutive Ministry, is subject to similar risks. Guatemala's AD unit receives its budget from the decentralized anti-corruption agency, the CGC. While this ensures its independence, the reliability of future funding is subject to the CGC's discretion. Even more troubling, the CGC's budget itself has seen deterioration over the past few years and has constantly remained below the 0.7% of GDP mandated by law.<sup>84</sup> Besides the obvious implications in terms of overall quality of operations, budgetary shortfalls also highlight the dependence and potential vulnerability of the implementing agency to political interference.

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81. Mongolia Case Study.

82. Krygyzstan Case Study.

83. Hong Kong Case Study.

84. This number does not suggest that units should have a legally mandated budget as a percentage of GDP. Preferably, the unit's budget should be linked to the agency's workload, for example.

**BOX 5****Key Elements of Guatemala's Asset Disclosure System**

Guatemala's AD system is governed by the 2002 Probity Law, which created an Integrity Department (Dirección de Probidad, DP) within the Comptroller General's Office (Controlaría General de Cuentas, CGC). After initial difficulties stemming from corruption scandals, high personnel turnover especially at high level positions, budget and staffing constraints, and a lack of standards for submission and content verification, the AD system has made significant progress in the past 2 years. Submission rates, for instance, climbed from less than 40% to an estimated 75% in 2008, thanks to awareness campaigns organized by the DP to foster better responsiveness on the part of human resource directors of every agency covered by the law. The AD system in Guatemala is an example of a system that has overcome significant initial obstacles, but whose effectiveness continues to be hindered by legal, institutional, and budgetary constraints.

**Key elements of the system include:**

- **An AD Model focused on the detection of illicit enrichment.** While the Probity Law was originally conceived to detect and prevent conflicts of interest as well as illicit enrichment, in practice the institutional capacity and other constraints have resulted in a focus on illicit enrichment.
- **Separate bodies for submission compliance** (*Departamento de Declaración Jurada Patrimonial, DDJP*) **and for investigations** (*Departamento de Análisis, Verificación e Investigación Patrimonial, DAVIP*). The role of the DDJP is to ensure the timely and correct submission of declarations, to levy fines for non-compliance, and manage the storage of declarations. The role of DAVIP is to conduct investigations of the veracity of a sample of asset disclosures.
- **Paper submission and centralized administration processes** by the DDJP. A project to introduce on-line submission processes was initiated in 2004, though adoption of the system is still in progress. Declarations continue to be submitted in hard copy and in person at one of a handful of CGC offices across the country. These are sent to and stored at the central CGC archives in Guatemala City. *This arrangement means that effective monitoring of submission compliance is limited. A staff of 15, who devote substantial time to manual data entry at the DDJP, is responsible for monitoring submission by approximately 16,000 officials.*
- **Content verification on departure from office.** While officials are required to submit declarations on taking up and leaving a post, and as a result of significant changes in the value of their assets, verification of the content of a small sample of ADs occurs only when officials leave office. DAVIP compares the final AD to the employee's initial and subsequent declarations, to detect any significant or unjustified increases in assets. *While illicit enrichment models require the tracking of changes in assets over time, this approach is open to possible manipulation: In the absence of content verification at the start of employment, an official could inflate the value of his or her assets in the first declaration to avoid detection when leaving office.*
- **Asset declarations are confidential. No public access is granted.** The Probity Law stipulates that declarations are protected by a guarantee of confidentiality, prohibiting release except by court order.
- **Administrative sanctions apply in the form of fines for non compliance with submission deadlines.** The law stipulates severe fines, which in practice are frequently reduced at the discretion of the implementing agency. *The discretionary nature of sanctions can thus make enforcement of the AD laws appear arbitrary, reducing public confidence in the system.*

## Regulatory Management

*An AD agency with the authority to enact regulations can help ensure the relevance of AD procedures and their enhancement over time*

The implementing agency's ability to perform a regulatory function is important in ensuring the relevance of procedures as well as the enhancement over time of the normative guidelines governing the administration of an AD system. A regulatory function consists of the issuance of procedural guidelines, or in the recommendation of amendments to legislation governing the AD system. There is often a greater need for such adjustments early in the life of an agency or AD system, after which it can be then expected that the frequency would decline.

The creation of an AD system is often enacted as part of wider anti-corruption legislation or is couched in Constitutional obligations aimed at senior government officials. Afghanistan's Constitution, for example, explicitly calls for asset disclosure by the President, Vice-Presidents, Ministers, Members of the Supreme Court, and the Attorney General.<sup>85</sup> Without implementing legislation, the putative AD system is stillborn, lacking any funding and authority to request compliance, issue sanctions, or require cooperation from other government organs. It is important to ensure that an agency has the authority to design procedures within this general framework, particularly as agencies mature, take on greater roles, and replace existing processes with more sophisticated ones.

### Some Key Regulatory Management Considerations:

- Is the agency charged with regulatory authority identified, and designated by law?
- Is the implementing agency allowed to issue regulations?
- Is the implementing agency an independent regulatory authority?

- The level of procedural detail provided in the AD legislation varies from country to country. In Guatemala, for example, much of the operational framework related to asset declarations is already set out in significant detail in the *Reglamento de la Ley de Probidad y Responsibilidad de Empleados Publicos*, which was passed a few years after the initial law on corruption. Nevertheless, Article 33 of the *Reglamento de la Ley Orgánica de la Contraloría General de Cuentas* provides the independent agency to which the AD units are subordinate with the authority to apply and interpret laws in the area of anti-corruption, including those related to the implementation of the asset disclosure system.<sup>86</sup> Argentina's AD unit similarly relies on the Department for Transparency Policies in the Anti-Corruption

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85. Afghanistan Case Study.

86. Guatemala Case Study.



Office to enact regulations enhancing its procedures. Close coordination and a common overall mission between the units and the larger anti-corruption office ensure that policy reflects the concerns of the AD subsets.

- Croatia provides an example of the drawbacks that result from an agency lacking regulatory authority.<sup>87</sup> The Commission for the Prevention of Conflicts of Interest reports annually to Parliament, and to the National Commission Monitoring the Implementation of the national Anti-Corruption Strategy.<sup>88</sup> In its reports, the Commission can provide recommendations for changes to the AD system. The legislation has been modified on several occasions since first passed, but the Commission's role or contribution in guiding successive amendments is unclear. For example, it was reported that the Commission was not consulted on draft amendments to the Act governing the COI system and that amendments to the Act failed to address some of the key issues noted in the Commission's Annual Reports, such as, for example the inability of the Commission to achieve a quorum for several months of the year in the sessions that take place during Parliamentary recess.

*Training officials in AD law and processes will enhance compliance and increase the credibility of the system*

In addition to having the authority to issue regulations, the AD agency should make an effort to explain and clarify the asset disclosure process to the public and, in particular, to those obligated to submit a declaration. By raising awareness, the agency can promote trust in the system and encourage the public to report complaints or allegations of corruption.

- In the U.S., the Office of General Counsel in the OGE issues opinions in response to questions the OGE receives about the conflict of interest laws and regulations, the standards of conduct, and financial disclosure requirements in the executive branch.<sup>89</sup>
- Mongolia's IAAC, which has only been operational for less than three years, also issues clarifying memos to filers to assist them in the proper completion of forms.<sup>90</sup>
- Croatia's Commission has recently published guidelines on the definition of conflict of interest for officials and the wider public, and is working with

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87. Croatia Case Study.

88. The Commission comprises eleven members: six members of Parliament (of which three each from the ruling and opposition parties) and five from among the ranks of distinguished public servants (nominated by parliament). In addition, there are four permanent staff members (two lawyers and two economists), with up to ten additional temporary staff members hired immediately following an election.

89. USA Case Study.

90. Mongolia Case Study.

Transparency International and donors in providing training in public ethics and conflict of interest rules to officials.

- Mexico's Civil service secretariat encourages civil servants (as well as the internal control organs assigned to them) to participate in training courses designed to advise them on the correct completion of forms.<sup>91</sup>

### Monitoring and Reporting

*Strong AD systems include clear monitoring and reporting requirements, and provide public access to information about the performance of the system*

OECD Guidelines on asset disclosure systems argue that all policies should include an internal assessment mechanism in order to provide evidence-based feedback on the real impacts of the policy. Such assessment capabilities are needed if a system is to be dynamic, allowing policy-makers to fine-tune and further improve the policy standards. However, as noted in the OECD research, the vast majority of countries explicitly indicated an absence of diagnostic tools in assessing the implementation of conflict-of-interest policies. Only a few (Canada, Germany, Poland, Spain and the U.S.) indicated that they either use specific tools or employee feedback mechanisms in order to assess policy implementation.<sup>92</sup>

- Public consultation on draft amendments to the law are also key features of an accountable AD system. In the early 1990's, for example, when the U.S. Office of Government Ethics ("OGE") moved away from the limited regulations created in the 1960's and created a new set of regulatory standards, they published the drafted and internally reviewed standards for public comment. The OGE received over 1000 comments from interested parties, which were addressed in the final 1992 regulation.<sup>93</sup>

The OECD study found that while the vast majority of countries have not reviewed their existing laws in the last five years, some countries gave preference to the creation of new legislation to fulfill emerging needs rather than reviewing existing regulations.<sup>94</sup>

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91. Mexico Final Report (OAS material), p. 45.

92. OECD. Managing Conflict of Interest in the Public Service: OECD Guidelines and Overview, p. 64.

93. Raille, Eric. U.S. Office of Government Ethics. Managing Conflicts of Interest at the U.S. Federal Level (with emphasis on the Executive Branch). (2004), p. 7. Under the US Administrative Procedures Act, a regulation is issued as proposed and before it is finalized the agency must write a preamble which explains all of the recommendations which were accepted or rejected, and why. In this case, the preamble is more than 100 pages long.

94. The OECD Guidelines also discuss the importance of involving civil society in AD-related policy review; however the same literature notes the general lack of involvement of civil society in policy review processes. Except for programs in Poland, Canada, Czech Republic, and the United States, reviews of policy in OECD countries generally do not include the involvement of civil society. OECD. Managing Conflict of Interest in the Public Service: OECD Guidelines and Overview, p. 64.

In some contexts legislative reform may be seen by many practitioners as a last resort, particularly if the legislation was originally difficult and slow to pass.<sup>95</sup>

Thus, addressing shortcomings in the legal framework often results in two divergent courses of action, and the topic of much debate within the relevant literature:

1. remedy by amending existing laws or
2. creating new laws in an attempt to address arising issues and shore-up weaknesses.<sup>96</sup>

Even if a jurisdiction introduces new laws with the best of intentions, it must ask itself whether it has the necessary capacities and skills to properly implement, manage, monitor and enforce the rules which they have adopted.<sup>97</sup> Such situations may be even further exacerbated if requirements and filing obligations increase but where monitoring and control agencies usually remain weak and under-funded. Therefore, it is crucial that the costs and required resources (costs of regulations, management, monitoring, training, etc.) be taken into account when analyzing the effects of newly introduced rules and policies

AD agencies that provide public reports on the performance of the system contribute to the legitimacy of the system as well as to the evidence base for monitoring performance.

- Argentina demonstrates a number of good practices on the reporting front. Argentina publishes annual performance reports on the AO Website, including submission and investigation statistics. The ADU also publishes a list of the names of all officials required to disclose on the Website, indicating who has and has not complied with the requirement to file a declaration. As asset declarations are deemed public records, this list is published within ninety days of the annual submission deadline as well as in the official government publication (*Boletín Oficial*).<sup>98</sup> The

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95. For example, AD system development in Paraguay has reportedly been a difficult process and has highlighted a debilitating problem that can arise from a contested legal framework. A Civil Service Law of 2000 contained numerous legal provisions governing conflict of interest in government. Since its codification, however, “at least 418 provisions of that law have been subject to legal challenges before the Supreme Court of Justice as being unconstitutional.” Legal challenges have come from all three branches of government, as well as from oversight bodies and civil servant organizations. The ensuing temporary injunction put in place by the Supreme Court of Justice, along with additional complexities and complications, have confused the Organization of American States (“OAS”) Committee of Experts to a point where they were “unable to discern precisely which legal provisions and government positions were covered by the injunction and thus was unable to be extremely specific in its treatment of the issue.” The injunction might “be broad enough to effectively eviscerate all conflict-of-interest regulations but those established elsewhere concerning only special cases of conflicts of interest.” Raille. *Managing Conflicts of Interest in the Americas: A Comparative Review*. (Page: 13) 96. Demmke, pp. 112,114.

97. Demmke, p. 110.

98. Article 20, Decree 164/99; Argentina Case Study.

list, which is organized by agency, identifies officials by name, and identifies whether the declaration required was a first, last or annual declaration.<sup>99</sup> Publication of the list appears to have encouraged filing compliance: from a pre-publication compliance rate of 92.9% to a 95.4% post-publication rate.<sup>100</sup>

- In Kyrgyzstan, the Asset Disclosure Department publishes compliance statistics on the Civil Service Agency website and in its official bulletin. Moreover, as a sanction for non-compliance, the name of the offending official is published in the mass media and notice is sent to the President of Kyrgyz Republic, Prime Minister and Speaker of the Parliament of the Kyrgyz Republic.<sup>101</sup>
- The Mongolian AD body, the Supervision and Analysis Department, the IAAC, is required to issue regular reports to the Commissioner General verifying that: all operational procedures were strictly adhered to; stakeholders within and outside the public administration were consulted; all deadlines were met; the integrity of the report has been maintained at all times; and the report contains reasonable proposals and the data included has been verified.<sup>102</sup>
- Several signatories to the Inter-American Convention against Corruption have made significant improvements in the monitoring and reporting mechanisms within their AD systems. Colombia has made strides towards more effective accuracy and accountability by establishing an Information and Financial Analysis Unit (UAIF) with the function of preventing and detecting practices associated with money laundering, through compilation, systemization and analysis of information given by those individuals who are obligated to comply with asset declaration regulation. The UAIF stores the information in a database and, if there is suspicion of a crime, forwards the information to the Office of the Attorney General.<sup>103</sup> The UAIF is also empowered to disseminate the information

### Some Key Monitoring and Reporting Considerations:

- Is the agency charged with ensuring public access to information from and about asset declarations identified and designated by law?
- Are annual disclosure compliance statistics released?
- Are names of individuals and their compliance with disclosure requirements released?
- Are the results of verification procedures released annually?
- Are there mechanisms for making asset declaration information available on the internet, and in what time frame?
- Are there mechanisms for making asset declarations publicly available through means other than the internet (e.g., hardcopy, official gazette, etc.)?

99. Argentina Case Study.

100. Ibid.

101. Kyrgyzstan Case Study.

102. Mongolia Case Study.

103. Report of the Committee of Experts of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption, Colombia country report.

obtained in order to promote policies and develop instruments to prevent and control financial crimes, including administrative corruption.

**BOX 6**

**Key Elements of the AD System in the United States of America**

*Financial disclosure requirements for public officials in the United States (U.S.) at the federal level were established by the Ethics in Government Act (1978). The Act sets disclosure requirements for the executive branch (examined in this study), and the legislative and judicial branches of the federal government. The jurisdiction to supervise and monitor the implementation of the Act and compliance by the executive branch with the ethical standards stipulated by the Act is held by the Office of Government Ethics (OGE). The legislative and judicial branches are responsible for their own ethics programs. The AD system at the state level is regulated by the States, each of which is independent in its decision to have an ethics commission and financial disclosure requirement. The AD system for the Federal Government in the U.S. is well established, with high overall compliance to financial disclosure requirements.*

**Key elements of the system include:**

- **A model designed for the detection and prevention of potential conflicts of interest.** Financial disclosures are intended to enhance and to demonstrate transparency in government, and the independence of officials in public office. The system is designed to support public trust and confidence in the integrity of the government.
- **Separate bodies for submission compliance and investigations.** Neither the OGE, nor the 134 Designated Agency Ethics Officials (DAEOs) in the agencies in which officials are employed, verifies the accuracy of disclosures. Disclosures are reviewed for completeness and actual or potential conflicts of interest. If there is a complaint or the detection of a clear illegality on a disclosure form, the OGE or the DAEOs refer the case to the Office of Inspector General, the Federal Bureau of Investigation (FBI), or the Public Integrity Section of the Department of Justice.
- **Centrally managed oversight system with decentralized functions.** Officials submit their financial disclosures to the agency in which they hold a post. Each agency is the primary recipient and reviewer of its employee's disclosures. The OGE receives and reviews the financial disclosures of the President, Vice President and OGE Director, and is also a secondary review agency for other financial disclosures.
- **A user-friendly electronic and paper submission process.** Agencies have the choice whether to use an electronic filing system or hard copy. About 20 federal agencies have electronic filing in place. OGE retains a hard copy of all the financial disclosures it certifies.
- **Public access to ADs.** Each agency and the OGE (for Presidential nominees that require Senate confirmation) are responsible for making public financial disclosure reports available upon request by the public within 30 days of submission of the final report. Confidential financial disclosure reports for mid level employees that hold positions that pose higher risk of conflict of interest are not available to the public.
- **Sanctions for Filing Failures.** Criminal, civil, and administrative actions can apply for false information or failure to submit required information. Reports that are deemed incomplete are subject to requests for additional information. A late filing fee of \$200 is assessed if a report is more than 30 days late.

- Reporting also enhances the credibility of the system, supporting the notion that a credible threat of detection is an effective deterrent against corrupt practices. Since Mexico's roll-out of the online *Declaranet* system in 2001, "the average number of public servants administratively sanctioned for reasons related to their asset declarations has...dropped from the 1990–2000 rate of 52.65% to a current [2002] rate of 21.3%." One opinion inferred that this drop is attributable to "public servants' awareness of the ways in which the *Declaranet* system makes it easier to detect evidence and/or patterns of unjust enrichment."<sup>104</sup>

### 3.3. Enforcement

It has been noted that in a large number of countries, public officials regularly, and in some cases openly, flout AD laws. Not only are the laws ignored, but little if any effort is made to enforce them.<sup>105</sup> Without proper resources and supporting capacities, and without monitoring and enforcement, AD systems risk becoming completely ineffective.<sup>106</sup>

Much of the literature on AD policies in OECD countries focuses on the use of asset disclosure in a conflict of interest identification and prevention program. While there are clear similarities between AD systems targeting COI and those targeting illicit enrichment, there remain differences with important ramifications for approaches to monitoring the content of the declarations. For instance, OECD Guidelines (which emphasize the COI model for AD systems) prescribe the combination of "rigid legal instruments with flexible complementary management tools to communicate and inculcate the standards of conflict-of-interest policy" that are generally used in OECD countries. The key is in fostering an environment with open communication where the actual difficulties of implementing the conflict-of-interest policy can be openly raised and discussed.<sup>107</sup> AD systems that are oriented to the detection and prevention and prosecution of illicit enrichment require a slightly different approach with potentially more resources directed to verification procedures. The organizational structure of the agency may also significantly differ depending on the orientation of the system.

The implementing agency's ability to effectively define, communicate and enforce asset disclosure requirements is a *sine qua non* of any successful asset disclosure system. Without it, submission compliance is irregular, the system may fail to act as a deterrent of illegal activity, and the process becomes an empty bureaucratic exercise. In addition, if filers do not receive sufficiently clear and objective instructions backed by the "teeth" of meaningful sanctions, they may be tempted to obscure prohibited activity by sub-

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104. Kossick, p. 12.

105. OSCE. Best Practices in Combating Corruption, p. 29.

106. Williams, Aled. International Experience of Asset Declarations. U4 Helpdesk, Transparency International (2006), p. 2.

107. OECD. Managing Conflict of Interest in the Public Service: OECD Guidelines and Overview, pp. 57–59.

mitting a declaration with omissions or vague answers. Indeed, a poorly functioning compliance process undermines the larger aim of an AD system—preventing corruption through transparency—by permitting corrupt officials to point to their technical compliance as evidence of no wrong-doing. Institutional organization—the structure of the agency or agencies, and the way in which procedures are managed—is an important element of enforcement capacity.

## **Enforcement Structures**

### *Separate agencies for monitoring submission and for conducting investigations can enhance enforcement*

As noted in Chapter 1, an AD system may be geared towards the prevention of COI or the detection of illicit enrichment (or both). Where the system is geared, in whole or in part, towards the detection of illicit enrichment, the role of investigations carries even greater importance. Some systems house this function in a separate entity from the AD receiving agency, or at least as a separate department within the same agency. This division of labor can help a fledgling system build capacity, and provides a useful check on the authority and operations of the sister agency. Where the system is oriented towards the prevention of conflicts of interest, such an arrangement removes potential contradictions that may arise from the agency’s dual advisory and enforcement roles. It may also facilitate a better matching of qualifications and salary with responsibilities (e.g. investigations, for example, usually call for forensic analysis, requiring specialized knowledge of financial documents).

- For example, in Guatemala, where the system is designed primarily to detect illicit enrichment, the role of AD implementation falls on two separate and distinct units—the *Departamento de Declaración Jurada Patrimonial* (“DDJP”) and the *Departamento de Análisis, Verificación e Investigación Patrimonial* (“DAVIP”). In broad terms, the DDJP maintains the lists of parties obligated to submit declarations, ensures the timely and correct submission of declarations, levies fines for non-compliance, and manages the storage of declarations. In contrast, DAVIP performs investigations of a sample of declarations selected from a high-risk pool (about 1 percent of the total), and compares assets declared on entry into office and on departure from office, to detect any unjustified increases.
- Argentina, which makes both the prevention of conflicts of interest and illicit enrichment the object of its AD system, has also split the tasks of submission compliance/ formal review and investigations between the *Unidad de Control y Seguimiento de las Declaraciones Juradas* (AD unit) and the *Departamento de Investigaciones* (investigations unit), respectively. However, the ADU does fulfill a vital verification function. In addition to monitoring submission compliance, the ADU conducts formal verification to detect any irregularities in declarations (errors, omissions, indicators of unjustified enrichment, potential conflicts of

interest), seeks clarifications from officials in such cases. Where irregularities are suspected the ADU passes the case on to the Investigations Department, at which point the process becomes a potential criminal investigation.

- In the United States, on the other hand, where the primary purpose of the federal-level AD system is the detection and prevention of potential conflicts of interest, there is no distinct unit charged with verifying the veracity of declarations. The implementing agency, the Office of Government Ethics, and the Designated Agency Ethics Officials (DAEOs) are primarily charged with the management of declaration forms, referring a case to prosecutorial agencies (Inspector General's Office, the FBI, or the Public Integrity Section of the Department of Justice) when a complaint is received or an obvious illegality is detected on the declaration.

### Key Submission Compliance Considerations:

- Is the agency charged with submission compliance identified, and designated by law?
- Is there a registry of obligated parties and are there mechanisms for updating it?
- Are obligated parties identified by name or position?
- Does the filing form clearly reflect statutory requirements?
- Is the filing form available in hard copy and/or electronically?
- Do obligated parties receive official notices regarding submission, amendments, consultations, and investigations?
- Do agency staff receive training on AD procedures and declaration content that would enable them to provide advice on legal compliance?

## Submission Compliance

As suggested by AD systems in Hong Kong, the United States and, notably, Mongolia and Kyrgyzstan<sup>108</sup>, near 100% compliance is an attainable goal. Nevertheless, in a fledgling AD system with scarce resources and little experience, improving compliance numbers can be a frustrating exercise that requires prioritizing resources and outcomes.

- Guatemala offers a good example of a system initially marred by low-compliance rates, which following improvements, has seen submission compliance rates increase from 40% to 75%. During its first four years, Guatemala's AD system was undermined by corruption scandals, considerable budget and staffing constraints, and the absence of standards for formal review and content verification procedures. Over the past two years the DP has run awareness campaigns to foster better responsiveness on the part of human resource directors of every

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108. The Civil Service Agency in Kyrgyzstan completed four rounds of asset declarations by 2008 and is in its fifth round. As of March 2009, the Agency received 1,385 asset declarations of high-level officials, which represents 99.7% of the total number of 1,389 high level public officials.



agency covered by the law. (The awareness rate has reportedly increased from 40% in 2006–2007 to an estimated 80–90% in 2009.) Declaration forms have been improved to reflect more accurately the statutory requirements, and efforts have been made to address both technological and personnel constraints. These improvements have all contributed to enhanced compliance rates.

### *Declaration forms should be clear and accessible*

Although improved filing compliance is an indicator of the overall system's increased efficiency and effectiveness, there are specific measures that can be taken to facilitate submission and thereby enhance compliance. Whether paper or electronic, declaration forms should be clear and reasonably concise. Ideally they should be available electronically as well as in hard copy, and be supported by materials explaining filing requirements. A further consideration is whether to make declaration forms available in several languages. Macao, for example, provides filing forms in Portuguese and Cantonese (its two official languages) as well as in English, ensuring that the maximum number of officials can understand the form and its instructions.<sup>109</sup> Deadlines and applicable sanctions for failure to comply, or for the declaration of incomplete or inaccurate information, should be clearly stated.

- In Argentina in addition to introducing a more user-friendly electronic declaration process, annual submission deadlines were changed to coincide with the tax declaration season, and thereby avoid imposing an additional administrative burden on public officials.<sup>110</sup>

Although many factors contribute to improving submission compliance rates, building the implementing agency's capacity to monitor compliance is a vital first step, such as for example, in creating and maintaining an up-to-date registry of the officials obligated to declare. Invariably the implementing agency will require collaboration from other agencies in fulfilling this task.

### *Maintaining an up-to-date registry of officials obligated to file requires inter-agency collaboration*

Submission enforcement frequently depends on the assistance of the agencies in which declaring officials are employed, especially with regard to maintaining an up-to-date registry of the names of officials required to submit a declaration. Laws establishing an AD system generally enumerate the government posts that carry an obligation to disclose assets. The names of the officials occupying those posts are known to the human resources departments of the employing agencies. The responsibility of tracking the

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109. Macao Case Study.

110. Argentina Case Study.

names of all the obligated individuals thus falls on the AD implementing agency. Given the broad coverage of these laws (e.g. Argentina's law covers approximately 36,000 individuals, and the number has been increasing annually with the growth of the civil service), and the continuous turnover of filers (after elections, end of tenure, transfer etc.) the burden on the implementing agency is potentially overwhelming. Most countries thus place the onus on the employing agency to keep the AD implementation agency informed of the names of filers.

- Afghanistan's emerging AD system serves as an example of how a nascent agency is undertaking the task of compiling its initial lists of obligated officials.<sup>111</sup> The implementing agency (the HOO) has dispatched letters to employer agencies requesting identifying information for more senior officials (Deputy Ministers, Directors, National Advisors etc). Given the scope of the law (a potentially very large filing population, including many lower-ranking civil servants), and the currently limited capacity of the HOO (in terms of human, financial, and institutional resources), this policy of prioritization has mitigated concerns about the system's potential for credible enforcement. The HOO will create a database of the information received from employer agencies, and will dispatch asset registration forms to the identified officials. The responsibility for updating the names of officials obligated to disclose assets will fall on the employing agency. The HOO will provide training and briefing sessions to explain the forms and the kind of information that is required. As senior officials return their completed forms, the asset declaration information will be entered into an electronic database.

### *Decentralized submission functions can extend the reach and efficiency of an AD agency*

In certain countries, the HR departments of ethics offices of the agencies in which officials are employed take on a role that extends beyond assisting in the creation of an up-to-date registry of obligated individuals. In some cases the employer agency also carries out functions related to monitoring submission compliance. In some cases the human resources department, an ethics office or officer in the agency, has the responsibility to notify filers, to receive and to review disclosures.

- For example, Argentina employs a centrally managed AD system with some decentralized functions delegated to the HR offices of the entities in which officials are employed.<sup>112</sup> The HR offices are charged with ensuring that officials submit their declarations on time, and with formally notifying employees who fail to comply. They are also responsible for notifying the ADU when an individual leaves or takes up a post. The 190+ HR offices receive the 36,000+ declarations,

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111. Afghanistan Case Study.

112. Argentina Cast Study.

and maintain a list of the names of employees who have and have not complied. Within 30 days of the submission deadline, each HR office sends the compliance list to the ADU. HR offices do not review the content of declarations; that responsibility lies with the ADU. The ADU maintains an integrated and up-to-date list of individuals obligated to file, and annually publishes a list indicating who has and has not complied on the AO Website. The effectiveness of Argentina's system thus depends in part on the performance of HR departments in each agency. In practice, the ADU reports that a key part of its role is to monitor and follow-up the tasks delegated to HR offices, to whom the Anti-Corruption Office (AO) also provides training in AD procedures. The ADU is clear in its assessment that, even with Argentina's electronic AD filing system, effectively administering a declaring population of that size would not be possible without these decentralized functions.

- Exceptionally, the submission verification process can be almost entirely decentralized. In Hong Kong, for example,<sup>113</sup> submission compliance and the verification of asset declarations are the responsibility of the Ethics Officer in the agency in which officials are employed.<sup>114</sup> When a declaration is submitted, it is the responsibility of the Ethics Officer to examine its contents to identify any potential or existing conflicts of interest based on the investments declared and the employee's duties. The employing agency is also responsible for enforcing any applicable administrative penalties, such as a warning, a fine, or dismissal, depending on the severity of the offense. Each agency reports to the implementing agency, the ICAC, whether employees have complied or failed to comply and whether conflicts of interest have been detected. Any criminal sanctions are pursued by ICAC. These apply in cases of failure to declare a conflict of interest, even if no personal gain has occurred. The effectiveness of Hong Kong's decentralized system depends on extensive training provided to the Ethics Officers in each agency.<sup>115</sup>
- In Mongolia, the implementing agency, the IAAC, employs 6 officers, and the 120 employer agencies have approximately 1,190 staff responsible for collecting declarations. The IAAC is only directly responsible for receiving the declarations of the top 256 public officials (the President, MPs, Aimag Governors, and a few other positions provided by statute). The remainder of the 52,800 declarations (2009), are received by the agencies within which these other public officials work. These officials collect the asset declarations of all covered officials by February 15 of every year, then enter the data into Microsoft Excel spreadsheets and send these spreadsheets and reports to the IAAC by March 1st of every year.

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113. The US is almost entirely decentralized, except for the 500–600 most senior officials who file both at the agency and with the OGE.

114. Hong Kong Case Study.

115. Hong Kong Case Study.

## Verifying the Content of Declarations

For an AD system to function efficiently as a tool to curb corruption and prevent conflicts of interest it must have the means to review the content of declarations, to detect irregularities or changes in assets over time, and to verify the accuracy of declarations. The verification of asset declarations, however, has proven to be a difficult and challenging aspect of AD systems. Many countries lack efficient verification processes, thus calling into question the validity and effectiveness of the AD system. If the implementing agency lacks the capacity, or is not legally empowered to initiate and complete a verification process, AD systems are less effective in fighting corruption.

### *Verification procedures should provide a credible threat of detection*

An effective verification process should be designed to enable, if not the systematic verification of all declarations submitted by public officials, then a situation that poses *a credible threat of detection* to the entire declaring population, such as through targeted or risk-based audits.

- For example, in Argentina, the AD system is designed to enable the systematic verification of the declarations of the most senior 5 percent of public officials, and the targeted audit of the other 95 percent on the basis of categories of risk.<sup>116</sup> Due to the relatively strong institutional capacity of the agency, and its electronic filing and data mining system, the verification process is able to search large quantities of data for asset declarations that present potential irregularities or warning signs. Declarations that are flagged in this process are then closely examined. Though the digitization of the system has been instrumental in creating this capacity, the quality of the verification process does also depend on ‘manual’ verification by a small team of

### **Some Key Content Verification Considerations:**

- Is the implementing agency assigned the legal responsibility and authority to verify the accuracy of declarations by public officials?
- What is the primary aim of verification audits? (i.e.: to detect irregularities, to detect potential conflicts of interest, or both).
- Are there explicit criteria and/or standards established to verify the accuracy of declarations by public officials, and to prioritize declarations according to categories of risk?
- Given available resources, what percentage of asset declarations can the agency audit for accuracy and potential conflicts of interest?
- Is there a mechanism in place to prompt the verification of an asset declaration in response to external triggers (complaint or allegation from peer or citizen, media report, etc)?
- Are there criteria and procedures established to determine whether and how a suspicious finding should be forwarded to an investigatory body?

116. Categories of risk include ADs with significant changes in asset values over time, employees of certain agencies or ministries (internal revenue, customs etc). The search parameters can be adjusted to target specific kinds of risk.

3 or 4 accountants and lawyers (who cross check AD content with property or automobile registries etc.). The verification of non-numerical data (car models or registrations for e.g.) means that manual review processes are vital, either in the absence of, or as a complement to electronic flagging systems. Reviewing for potential conflicts of interest is also a manual task, which can be assisted by data mining software. Argentina's ADU has one member of its team of 12 dedicated to COI review.

- Similarly, the independent body in Mongolia (IAAC) is responsible for verifying the accuracy of asset declarations. The agency is granted authority to verify declaration at its discretion, but is specifically required to analyze declarations that contain clerical errors and to analyze the declarations of officials who have complaints lodged against them. The large number of filers in Mongolia (approx 52,800), along with a decentralized paper submission process, and the low number of officers available to administer the system (6), mean that verification is very limited in practice.<sup>117</sup>
- A system oriented solely to the prevention of conflicts of interest will dedicate fewer resources to content verification. However the review of asset declarations to detect conflicts of interest is a specialized task that requires suitably qualified personnel, and appropriate procedures to assist officials avoid potential conflicts of interest and to detect COIs where they have or might occur. The AD system in Hong Kong is focused primarily on identifying and preventing conflicts of interest and, thus, places greater emphasis on helping civil servants comply with the law than monitoring for inaccuracy or irregularities in ADs that might be indicators of unlawful behavior.<sup>118</sup>

**Some Key Considerations for AD Investigations:**

- Is the agency charged with investigatory authority identified and is actually the body designated by law?
- What is the nature of the investigatory body (prosecutor, police, internal investigations, anti-corruption commission, etc)?
- What is the nature of the investigation process?
- What is the ratio of number of cases investigated to number of information requests made to outside entities (banks, real estate agents, human resource departments, etc) by investigators?
- What is the percentage of responses to the agency's requests for information from outside entities (banks, real estate agents, human resource departments, etc)?
- What is the percentage of responses from filers to agency's requests for additional information regarding investigations?
- What is the percentage of cases in which the agency takes next steps as specified by law once additional information is received?

117. Mongolia Case Study.

118. Hong Kong Case Study.

## Investigations

An investigatory process is an important component of the effective prosecution of sanctions under AD systems. Generally speaking, in states that have an independent anti-corruption agency in charge of the AD process, the investigatory unit is a subsidiary of that agency. In systems that rely on government bureaucracy (e.g. a parliamentary committee) to implement the AD system, investigations are generally performed by law enforcement agencies such as the police or prosecutor's office.

Practices and approaches to AD investigations vary between countries. Investigations typically occur when irregularities have been detected in the course of formal verifications or the monitoring of submission compliance, or when an allegation of corruption or false filing is received. In countries where inaccurate disclosure is a criminal offence, investigations might focus on building evidence to demonstrate that a false statement has been made. Alternatively, investigations might look into underlying corrupt acts that have been flagged by irregularities in the asset declaration, or for which the declaration serves as supporting evidence.

### *A key factor in the success of investigations is effective coordination between AD departments and investigative or law enforcement bodies*

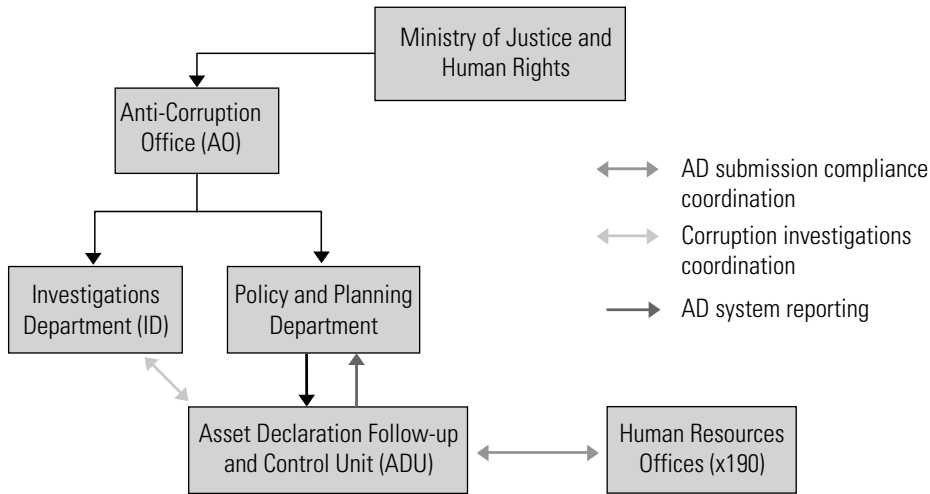
One model in which coordination between the verification and investigation functions of AD systems appears to work well, is when these separate entities are nonetheless housed in the same agency; for example, in an anti-corruption agency, which has the power to monitor and investigate non-compliance with asset declaration requirements, and to conduct investigations into underlying acts of corruption, in which asset declarations may play a part. Argentina is an example of this model (see its AD coordination structures illustrated in Fig. 21)

- Argentina's Investigations Department (ID) has a team of 37 investigators and support staff who focus exclusively on investigations into corruption, in which asset declarations may or may not play a part. The ID can initiate an investigation based on a finding of irregularities by the AD unit, as the result of an allegation of corruption, or as a result of inquiries initiated at its own instigation. The ID has opened over 7,000 investigations since the creation of the unit in 2000 (AO Annual Report 2008).<sup>119</sup> Although investigations into non-compliance with the asset declaration regime have yet to result in a conviction, a number of corruption investigations in which asset declarations are serving as evidence are currently pending trial.
- Mongolia's Investigations Department, which conducts investigations into corrupt acts by public officials, can also use asset declarations as a tool in its inves-

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119. Argentina Case Study 18.

**Figure 21. Structure of Argentina’s Anti-Corruption Office in the Ministry of Justice**



tigations. Officers within this department are not concerned with verifying the accuracy of asset declarations (this is handled by the submission compliance processes). Rather, investigations are designed to uncover evidence of corrupt acts. In 2008, five of the asset declarations made by the top 256 covered officials triggered further investigations, with one case ending in the prosecution and conviction of the official on charges of corruption and electoral code violations.<sup>120</sup>

- Croatia provides an example of an implementing agency that does not have a dedicated investigations unit. Croatia’s implementing agency is a Parliamentary Commission, the National Commission for the Prevention of Conflicts of Interest. It is charged with preventing and deciding on alleged cases of conflict of interest. It monitors submission compliance, but does not review or verify the accuracy of declarations. The Commission only looks into potential COIs if an allegation is made, in which case it determines whether the allegation has merit, and whether the implicated official’s behavior constitutes a violation of the Act for the Prevention of Conflicts of Interest. The Commission is granted the authority to seek out evidence from other state bodies (tax authorities, land registries, etc.) and from relevant witnesses. If it deems that a formal criminal investigation is warranted, the Commission is required to state the reasons for its decision, and to pass on the case to the State Attorney’s Office for the Suppression of Corruption and Organized Crime (USKOK). USKOK reports that it has employed asset declaration information in investigations.<sup>121</sup>

120. Mongolia Case Study.

121. Croatia Case Study.

- Hong Kong provides an excellent example of an independent anti-corruption agency (ICAC) coordinating with government agencies on the issue of asset declarations. The Civil Service Bureau, (CSB) which administers the AD system, and focuses solely on identifying and preventing conflicts of interest for civil servants, is supported by the Prevention Department of the ICAC (which advises it on the policies and procedures), and coordinates with the Operations Department of the ICAC, which holds broad authority to investigate corruption and suspected illicit enrichment.

*Successful verification and investigation depends on collaboration between the AD agency and other external agencies*

Effective verification and investigations processes depend on collaboration with other agencies, and on access to the data created or held by other agencies. Property, land, and vehicle registries are publicly available in many countries, and these can be a useful source of data for verifying or corroborating inaccuracies or omissions in declarations. Other useful data sources include a company securities registry (that records the identity of holders of company securities as well as membership on company boards or employment at executive levels of management), the tax authority, or international and domestic banks or other financial institutions. Countries with advanced IT capacities in the public and private sectors, such as in Macao, present greater opportunities for access to such information.<sup>122</sup> In countries where collaborative relationships are strong, but IT and other institutional capacities are limited, the benefits of external collaboration are much more limited. In Mongolia, for example, despite reportedly excellent cooperation between government agencies, deficiencies in the Land Registry and the tax service undermines the potential for the verification of asset declarations.<sup>123</sup>

In some countries, banking laws inhibit the ability of the investigative agency to obtain information for verification purposes.

**Key Inter-Agency Collaboration Considerations:**

- Does the implementing agency have authority to obtain information from relevant agencies, including the land and motor vehicle registries, tax authority, etc?
- Do the relevant agencies have electronic filing capacity?
- Does the implementing agency have mechanisms in place for making inter-agency requests regarding: financial records (bank accounts, taxes), public registries (land, motor vehicle), or corporate records (shares, boards, employment)?
- Does the implementing agency have mechanisms in place for responding to and information received from external agencies in what turnaround time?

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122. Macao Case Study.

123. Mongolia Case Study.



- Argentina's banking and financial privacy laws, for example, seriously limit the possibility of crosschecking the financial details of an AD form, and for investigative purposes there is no collaboration between the AO and the tax authorities.<sup>124</sup> Tax declarations and bank account information are only made available to the AO if a court order is issued to that effect (and a judge unseals the private annex of the asset declaration, which includes bank account numbers, and a copy of the filer's tax declaration).

Where the legal framework for the AD system does not direct relevant agencies to provide assistance, ad hoc inter-agency agreements can help fill such regulatory lacunae.

- In Croatia, for example, the USKOK signed an MOU with the tax authorities to obtain access to the tax administration database.<sup>125</sup>
- In Guatemala, the implementing agency faces a different challenge: while DAVIP has been provided with broad regulatory authority to confirm the contents of declarations for public servants leaving office, it is a very complex task in practice.<sup>126</sup> It is permitted to solicit pertinent information regarding bank accounts from the Superintendent of Banks without violating bank secrecy laws. However, in practice, this process is slow and cumbersome because banks claim protection for their clients under bank secrecy laws. DAVIP, however, does conduct verifications with access to land, vehicle, mercantile registries, and the tax agency.

### *International cooperation can help enhance the performance of the AD system*

It has often been acknowledged that international cooperation is critical in fighting corruption. In order to successfully fulfill its mission, the Anti-Corruption Office in Argentina for example maintains contact with several organizations, including the OECD, the Organization of American States (OAS), the World Bank, the United Nations Interregional Crime and Justice Research Institute (UNICRI) and the Inter-American Development Bank (IADB). Interaction and cooperation with these international institutions facilitated knowledge sharing as well as projects supporting the development of specific institutional and legal standards.<sup>127</sup> The Anti-Corruption Office in Argentina has been particularly active in signing both formal and informal agreements with other countries to facilitate technical assistance and cooperation activities in this area of conflict-of-interest management. The office stresses the importance of free-flowing information between entities with similar programs.<sup>128</sup>

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124. Argentina Case Study.

125. Croatia Case Study.

126. Guatemala Case Study.

127. De Michelle, Roberto. *The Role of the Anti-Corruption Office in Argentina*, p. 19.

128. Raille. *Managing Conflicts of Interest in the Americas: A Comparative Review*, p. 9.

## Sanctions

The establishment and effective enforcement of meaningful sanctions for non-compliance with asset disclosure laws can reasonably be expected to have a significant impact on compliance rates, supports the credibility of the system, and signals the government's commitment to the integrity principles that the AD system seeks to instill and enforce. Ideally, sanctions should exist for failure to submit a declaration, failure to do so within deadlines, and for omitting or falsifying information.

Sanctions can be criminal or administrative in nature, and depending on the seriousness of the breach, disciplinary sanctions can range from a warning and public reprimand, through fines and re-assignment of duties, to suspension and removal from office or, in the case of civil servants, dismissal from duty.<sup>129</sup> OECD Guidelines stress that sanctions should be set in proportion to the nature of the position that has been exploited. In Portugal, for instance, the penalty is “immediate cessation of office and return of all sums, which have been received for ministerial advisors,” and “fine and inactivity or suspension for civil servants and contractual staff.”

Non-disclosure of COI is generally considered a serious crime and results in disciplinary and often criminal penalties in countries including Austria, France, Ireland, Italy, Korea and Slovakia. In addition, some countries have enacted sanctions that can be used after an individual has been removed from his or her position, such as in Germany where up to 30% of a retirement pension may be withheld.<sup>130</sup> Criminal sanctions can also apply for false filing; a breach that may be easier to prove and to prosecute than the underlying act of corruption the omission may have sought to conceal.

- In Mongolia, officials who fail to declare their assets face immediate dismissal from office; the SAD has been able to implement this sanction in each of the 3 years it has now received declarations.<sup>131</sup> In 2009, 64 individuals submitted their asset declarations late, and 37 failed to submit their declarations (out of 52,800 filers). All 37 who failed to file were dismissed from their jobs, and the IAAC is, at the time of writing, investigating the 64 individuals who submitted their declarations late. If a valid reason is presented for the tardiness of submission, the individual may only face suspension of pay for a few months. However, most late-filers will be dismissed from the public service for their failure to abide by the deadline.

The use of fines as a disciplinary measure needs to be gauged to have a sufficiently meaningful impact on compliance (particularly if no other sanctions are available), though not to be so excessive as to become unenforceable.

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129. OECD. *Managing Conflict of Interest in the Public Service: OECD Guidelines and Overview*, p. 55.

130. OECD. *Managing Conflict of Interest in the Public Service: OECD Guidelines and Overview*, p. 56.

131. Mongolia Case Study.

- Guatemala's sanctions demonstrate the challenges posed by a system in which unrealistically onerous fines become unenforceable in practice. This resulted in a system in which the Head of the AD unit exercised discretion to ensure fines were reasonable and enforceable. The Head of the AD unit has recommended that fines for non-compliance be based on a matrix tied to income levels. Whether or not such an approach is practicable, currently, most of the fines are challenged and many are eventually reduced in part (rarely in whole).
- In Argentina, where the AD system presents the possibility of very serious consequences for officials convicted of corrupt acts, there is evidence that tough sanctions may actually undermine the effectiveness of the law.<sup>132</sup> Judges appear to be reluctant to contemplate custodial sentences for officials accused of failing to complete their asset declaration form completely or correctly. The proof of malicious intent that is required in such case is usually difficult to satisfy. Had the law contemplated a range of administrative sanctions for non-compliance it is conceivable that it could have resulted in a greater number of successfully enforced sanctions.

### Use of Public Access to Asset Declarations

Public access to asset declaration information is generally considered useful from the point of view of reducing the incidence of corruption, increasing transparency and accountability, and fostering public trust in the government. Nevertheless, countries strike different balances between these goals and the privacy concerns of declaring parties. In practice, countries employ public access mechanisms that range across a spectrum from full access, to selected access, to access permitted only in the case of a court order.

- Guatemala's Probity Law, for example, ensures complete confidentiality of asset declarations, except by court order.<sup>133</sup> This includes prohibition to reveal information disclosed in a declaration with other government entities, such as the Prosecutor's Office investigating acts of corruption.<sup>134</sup> Similarly, Macao's AD system remains completely confidential.<sup>135</sup> Belize's AD system is also confidential, requiring all its AD system officials to swear to a duty of confidentiality before a Magistrate or Justice of the Peace.<sup>136</sup> Certificates of submission are, however, published in its Official Gazette.

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132. Penalties include a prison sentence of 15 days to two years for failing to submit a declaration or willfully omitting or falsifying information therein. In addition, officials convicted under this law may be barred for life from public service. Costa Rica also utilizes as a sanction the disqualification from reappointment where a departing official has left the service without submitting a final declaration. Committee of Experts of the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption, Costa Rica Final Report (July 2004), p. 20.

133. Guatemala Case Study.

134. Guatemala Case Study.

135. Macao Case Study.

136. OAS Committee of Experts of the Mechanism for Follow-up on the Implementation of the Inter-American Convention Against Corruption, Belize Final Report (March 2006), p. 10.

- In Afghanistan, where the HOO is still in its infancy, the law provides for public access only “where needed” or “when required.”<sup>137</sup> The omission of any criteria setting out the trigger for publication, therefore, may preclude any public access. The HOO in Afghanistan, however, has expressed an intention to publicize the reports of key senior national leaders, such as the President, in order to demonstrate the importance of the system to top national leadership.<sup>138</sup>
- Hong Kong, Mongolia, and Kyrgyzstan employ a tiered public access model, granting public access depending on the seniority of the declaring official.<sup>139</sup> The more senior the position the more likely disclosure will be mandated. In Hong Kong, declarations for Tier I officials (posts that are centrally designated by the Government and consist of 24 key government positions) are made publicly available, while the declarations of Tier II officials remain confidential.<sup>140</sup> Tier I asset declarations are not available on the Internet, requiring interested parties to request a copy in person. The declarations are, however, free of charge to the public.
- Similarly, Kyrgyzstan’s Civil Service Agency publishes the summaries of 1,389 high-level officials on its website and in its official bulletin.<sup>141</sup> Asset declarations of all other civil servants can be requested by the public.
- In Mongolia, the IAAC publishes summaries of the asset declarations of its top-ranking 256 public officials annually in “Turiin medeelel,” the official government news magazine of Mongolia. Although they are not published in the media, the asset declarations of civil servants are required to be available, upon request, to the public.<sup>142</sup> Again, the IAAC is the responsible agency for facilitating the availability of these asset declarations, although the individual agencies within which any given official works physically maintains the asset declaration. The added effort of obtaining the government’s official journal and the lack of centralization of information, therefore, makes Mongolia’s system less accessible than it otherwise could be.
- In Croatia, income and asset declarations are deemed public information, and selected information from declarations is made available on-line.<sup>143</sup> The administrative staff of the Commission transcribes lists of assets declared by officials onto a public website, and when a request is made to view a complete declaration form, the Commission grants access to the original copy in its premises. Such requests are usually made by journalists.

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137. Afghanistan Case Study.

138. Afghanistan Case Study.

139. Brazil’s model retains confidentiality, except for officials seeking election to public office. Macao Case Study at 10 OAS Committee of Experts of the Mechanism for Follow-up on the Implementation of the Inter-American Convention Against Corruption, Belize Final Report (March 2006), p. 27.

140. Hong Kong Case Study.

141. Kyrgyzstan Case Study.

142. Mongolia Case Study.

143. Croatia Case Study.

- Argentina's system grants access to the *public annex* of asset declarations. The *private annex*, which contains more sensitive or personal information (the name of a bank or financial institution where assets are held, account numbers, information identifying the location of real estate, a copy of the tax declaration), remains sealed except by court order. ADU receives requests for access to hard-copy asset declarations in person, by phone and email.<sup>144</sup> The individual making the request is obligated to turn up in person to collect the requested copy. Requests can be turned down by the AO if they are considered counter to the purpose of the Law, and there are penalties for the improper use of information obtained from an AD form, such as for a commercial or illegal purpose. The use of a dual private-public submission process has enabled Argentina to implement a public access regime, while allaying some of the privacy concerns of public officials.

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144. Argentina Case Study.



# Conclusion

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This study, which is a work-in-progress, is intended to be of practical use to policy makers and practitioners who are interested in the legal and practical considerations involved in developing and implementing an AD regime or enhancing the credibility and effectiveness of an existing system. This study has not proposed an ideal or optimal model for building an effective asset declaration system. The diversity of experiences in the countries examined for this guide reinforces the need for such an approach. While recognizing that one size does not fit all, there are a limited number of core functional requirements that any good AD system should include, as well as a number of key considerations that need to be taken into account in designing and implementing the system. Different countries must address this challenge in line with the particular circumstances or constraints that they face. This study has sought to illustrate what is at stake in the various trade-offs that countries face in responding to this challenge, and to illustrate by example some of the approaches countries have taken in resolving or responding to them.

New types of conflicts of interest are continually emerging. Increasingly close relationships between the public, private, and non-profit sectors such as outsourcing, privatization of public services (i.e. utilities) and Public-Private Partnerships (“PPP”), are all new potential sources of conflicts of interest.<sup>145</sup> AD systems will need to adapt and evolve to face these new challenges and publications like this one will need to evolve to reflect these new challenges as well as the growing wealth of experience and expertise that is accumulated in the development and implementation of financial disclosure systems.

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145. OECD. *Managing Conflict of Interest in the Public Service: OECD Guidelines and Overview*, p. 67.





# Glossary

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**accountability.** The state of having an obligation or responsibility to account for one's actions.

**ad hoc.** A Latin phrases meaning “for this purpose. Usually used to signify a solution designed to address a specific problem or task.

**asset.** An item of economic value owned by an individual or corporation.

**asset.** *See* **property.**

**bond.** A debt security in which the authorized issuer owes the holder a debt and promises to pay both the principal and interest.

**civil servant.** A civilian or public sector employee or representative, working for a government entity.

**compliance.** The act or process of conforming to official requirements.

**conflict of interest.** Occurs when a person or individual participates in multiple activities, one of which could compromise the motivation to participate in another.

**declarant.** The person making a statement, usually written and signed by that person, under “penalty of perjury” pursuant to the laws of the state in which the statement, called a declaration, is made.

**declaration.** A document making certain types of information available to a third party.

**defendant.** Any party who is required to answer the complaint of a plaintiff in a civil lawsuit before a court, or any party who has been formally charged or accused of violating a criminal statute.

**demotion.** To relegate to a less important position.

**digitization.** The process of converting into electronic or digital format.

**disclosure.** *See* **declaration.**

**documents.** All information recorded in any form, visual or aural, and by and means, including photographic, mechanical, written, audio, and electronic form.

**enforcement.** The act of compelling compliance with laws.

**evidence.** Data presented to a court or jury in support of facts in issue.

**financial intelligence unit (FIU).** “A central, national, agency, responsible for receiving, analyzing and disseminating to the competent authorities, disclosures or financial information.

**forfeiture.** The loss of property or money, by order of the court or other competent authority, because of the breach of a legal obligation. This term is interchangeable with confiscation.

**illicit enrichment.** A criminal offense consisting of a significant increase in the assets of a government official that is unjustifiable or unlawful obtained. Illicit enrichment is considered an act of corruption.

**income.** Money earned through employment and/or investments.

**liability.** An obligation arising from past transactions or events.

**malfeasance.** Wrongdoing or illegal conduct committed by a public official.

**politically exposed persons (PEPs).** “Individuals who are or have been entrusted with prominent public functions in a foreign country, for example, Heads of State or of government, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials. Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves. The definition is not intended to cover middle ranking or more junior individuals in the foregoing categories.”\*

**prima facie.** Self-evident or obvious. In the legal context, prima facie signifies that there is sufficient evidence to establish a fact or raise a presumption that must be disprove or rebutted.

**privately held firms.** Refers to the ownership of a corporation by a small number of non-governmental persons or entities.

**probity.** Adherence to highest principles and ideals.

**property.** *See asset.*

**prosecution.** The act of carrying out a legal proceeding against a person.

**real property.** All land, structures, firmly attached and integrated equipment, anything growing on the land, and all “interests” in the property, which may include *inter alia* the right to future ownership, right to occupy for a period of time, the right to drill for oil, or an easement across another’s property.

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\* FATF Forty Recommendations, Glossary. [http://www.fatf-gafi.org/glossary/0,3414,en\\_32250379\\_32236889\\_35433764\\_1\\_1\\_1\\_1,000.html#34285860](http://www.fatf-gafi.org/glossary/0,3414,en_32250379_32236889_35433764_1_1_1_1,000.html#34285860)

**reprimand.** A severe or formal reproof.

**sanction.** A penalty that is imposed as a form of discipline or punishment.

**sine qua non.** A Latin term meaning “without which it could not be” or “but for...”

**stocks.** A unit of investment used to signify ownership in a corporation.

**suspicious findings.** Inconsistent information found in information provided to a government, regulatory or judicial body.

**transparency.** Characterized by visibility or accessibility of information.



# **ANNEXES**



# Annex 1. Review of Literature on Asset and Income Disclosure

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Requiring public officials to declare their wealth (assets, income and liabilities) through an asset declaration (“AD”) system is widely considered an effective measure to prevent corruption and ensure that public officials operate in the best interest of the public they serve.<sup>146</sup> AD systems work to bolster public confidence in their governing system by increasing government accountability and transparency.<sup>147 148</sup> Additionally, AD systems may contribute to better monitoring of, detection of, and punishment for filing false and misleading information.<sup>149</sup> Overall, AD systems help ensure public trust in the governing system and promote a better image of public officials when considering their commitment to transparency as noted in a recent study by Transparency International (“TI”).

In their comparative analysis of asset disclosure laws in 16 countries, TI found that “countries with a longer tradition of asset declarations by public officials had significantly lower perceived levels of corruption than countries with newer laws.”<sup>150</sup> This correlation could reflect the fact that AD laws contribute to corruption reduction in a cumulative fashion over time; however there are other causal relations that may exist. Countries that have adopted AD laws longer ago may have been less corrupt at the outset of the AD framework. Another interpretation is that earlier adoption of AD laws and low levels of corruption are both correlated with a third mechanism that reduces corruption over time. That is, countries that adopt AD laws also tend to adopt other anti-corruption measures following the adoption of the AD law, but these laws are adopted over time, rather than all at once, leading to greater reductions in corruption as time passes. Regardless of the type of causal mechanisms, AD laws have been shown to lead to lower perceived levels of corruption.

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146. Mukherjee, R and O. Gokcekus. *Officials’ Asset Declaration Laws: Do they prevent corruption?* (2007), p. 1.

147. Djankov, S. R. La Porta, F. Lopez-de-Silanes, and A. Shleifer. *Disclosure by Politicians* (3rd Draft), (2009), p. 2.

148. Chêne, Marie. *African Experience of Asset Declarations*. U4 Helpdesk, Transparency International (2008), p. 1.

149. Williams, Aled. *International Experience of Asset Declarations*. U4 Helpdesk, Transparency International (2006), p. 1.

150. Chêne (2008), p. 2.

AD is primarily discussed in the context of broader anti-corruption and public accountability issues. It is often viewed through the framework of political accountability, which includes election processes, voting, media and law enforcement. In this sense, AD is one of the technical tools used to ensure general public accountability by providing public scrutiny of information on officials' wealth, since "accountability of government officials for corruption relies on availability of information about their activities. By exposing inconsistencies between the politician's actual conduct and his reports about it, disclosure can influence both reporting in the media (and thus voting) and law enforcement."<sup>151</sup>

### Choices and Trade-offs in Asset Disclosure Regimes

No asset declaration system perfectly addresses the needs of the country for which it is designed. When designing an AD framework, choices must be made with regard to the purpose of the system, leading to trade-offs that are dependent on the context and the intended outcomes. One of the most important choices involves distinguishing between the two conceptual models of AD—conflict of interest and illicit enrichment—and whether the ideal AD system for a specific environment would involve a combination of the two models. Deciding between these models is a matter of policy priorities that ultimately reflects political reality and the manner in which a given country's governance institutions facilitate the transformation of political forces into policy priorities.

### Preventing Conflicts of Interest versus Combating Illicit Enrichment

Designers of an asset and income disclosure system should decide at the outset of the design of an AD framework if its intention is to prevent conflicts of interest, identify illicit enrichment, or a combination of both.<sup>152</sup> AD systems can require the disclosure of *sources* of income and business interests in order to prevent conflicts of interest. Alternatively, the system can require the disclosure of *levels* of income, consumption and wealth to identify illicit enrichment or the system may require individuals to disclose both types of information.<sup>153</sup>

The primary purpose of a disclosure system can vary with regard to a given country's particular context and the perceived needs of the AD system. In the US for example, the main purpose of public asset disclosure is the detection and prevention of potential conflicts of interest, as well as to increase public confidence in the government and demonstrate the level of integrity of the entire government system.<sup>154</sup>

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151. Djankov, S. R. La Porta, F. Lopez-de-Silanes, and A. Shleifer. (2009), p. 2.

152. Williams (2006) (Page: 1)

153. Djankov, S. R. La Porta, F. Lopez-de-Silanes, and A. Shleifer. (2009), p. 3.

154. Office of Government Ethics. Report to the President and to Congressional Committees on the Conflict of Interest Laws Relating to Executive Branch Employment. OGE: Washington D.C. (2006), pp. 28, 30.



The French framework for declaration of personal assets, based on the February 1995 law governing financial transparency in political life, is based on prevention of conflicts of interest and sanctions for abuses of integrity.<sup>155</sup> Generally, older members of the European Union (EU), which are often characterized by longer traditions of democracy, have fewer regulations and design their disclosure mechanisms to focus on prevention of conflicts of interest while newer members of the EU, are generally more regulated and shape their AD systems to both prevent conflicts of interest and combat illicit enrichment.<sup>156 157</sup>

*Conflict of Interest model:* A potential conflict of interest arises when a private interest of a civil servant precludes him or her from carrying out responsibilities objectively and in the best interest of the public.<sup>158</sup> The declaration of a person's interests and activities works to address potential conflicts before they occur, revealing where private interests can run counter to public interests and thus compromise the likelihood that the empowered person will act in the best interest of the public.<sup>159 160</sup> In this case, the declaration need not be concerned with actual amounts of income; rather it need only require that the official provide information on sources of income and income-generating activities. It is important to understand that disclosure does not prevent any conflicts per se; rather it facilitates monitoring and detection of possible conflicts.<sup>161</sup>

*Illicit Enrichment model:* Illicit enrichment-related activities can be divided into two broad groups: bribery-type offences and embezzlement-type offences.<sup>162</sup> The former involves a secret arrangement between two or more individuals, and the latter involves the siphoning of public funds. Prosecution can prove difficult in bribery-type offences, with individuals usually having to be caught "red-handed" as a result of an unsatisfied

155. Dufour, Patricia. French Government Policy on Ethics for Public Office Holders. Presentation to Anti-Corruption Network. 25–27 June 2008. (Slides: 2, 6).

156. Demmke C., M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker and A. Salminen. Regulating Conflicts of Interest for Holders of Public Office in the European Union. European Commission Bureau of European Policy Advisers (BEPA) (2007), p. 44.

157. Office of Government Ethics. Report to the President and to Congressional Committees on the Conflict of Interest Laws Relating to Executive Branch Employment. OGE, Washington D.C. (2006), pp. 7,28.

158. OECD. Managing Conflicts of Interests in the Public Service: OECD Guidelines and Overview. (2003), p. 8.

159. Chêne (2008), p. 4.

160. OECD. Policy Brief: Managing Conflict of Interest in the Public Service. OECD (2005), p. 1.

161. Carney, Gerard. Conflict of Interest: Legislators, Ministers and Public Officials. Transparency International (1998), (Section 3b p. 1, Section 3f p. 3) In other words, AD for COI purpose allows an official to step back and evaluate potential problems when reviewing the form, it allows the government to take an objective look and prevent abuse of office, and with respect to citizens and civil society, AD system helps assure the general public that officials are not working to protect their own interests but the public's at large.

162. Jorge, Guillermo. The Romanian Legal Framework on Illicit Enrichment. American Bar Association Central European and Eurasian Law Initiative (2007), p. 54.

party. Embezzlement-type activities can be successfully carried-out due to a lack of effective financial controls. Due to the difficulty of catching both types of crimes, many jurisdictions choose to put in place an AD system to focus on combating illicit enrichment by monitoring and flagging significant increases in public officials' wealth that cannot be explained by legitimate income.<sup>163</sup>

An AD system must choose whether to require the disclosure of *amounts* or *sources* of income and assets. As noted above, the choice will depend on whether the program is geared towards prevention of COI, in which case sources of income are more important, or detection of illicit enrichment, in which case amounts of income and assets are more important.<sup>164</sup> Once introduced, AD systems generate a baseline measurement of a person's wealth. Later disclosures can then be compared against the initial level of a person's wealth to detect any unjustifiable gains.<sup>165</sup> <sup>166</sup> Such an AD system can signal when an individual is living beyond his or her means. Authors argue that the information collected must be actively verified and monitored in order for such a detection function of an AD system to be effective.<sup>167</sup> <sup>168</sup>

### Breadth Versus Depth

Since resources that can be devoted to AD are not unlimited, countries face an unavoidable trade-off between breadth of coverage and depth of information required to be declared. Covering a larger set of public officials, holding constant the detail (depth) of each declaration and the size of the resource envelope, means stretching any given AD budget envelope across more declarations, which means that AD authorities must either devote fewer resources per declaration or triage declarations, devoting significantly less time and effort to handling low-risk declarations (with zero being the limit), in order to have enough resources to adequately review higher risk declarations. Conversely, increasing the detail of declarations, holding constant public officials coverage and the size of the resource envelope, poses a similar trade-off.<sup>169</sup> Thus there are 2 key considerations to address when finding and balancing between scope and depth:

- *Coverage: Who must disclose? (How many officials will be included in the reporting population?)*
- *Disclosure Content: How much information must they disclose? And in what level of detail?*

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163. Jorge (2007), p. 54.

164. Djankov, S., R. La Porta, F. Lopez-de-Silanes and A. Shleifer. (2009), p. 24.

165. Chêne (2008), p. 2.

166. Williams (2006), p. 1.

167. OSCE. Best Practices in Combating Corruption. OSCE, Vienna, Austria (2004), p. 38.

168. Williams (2006), p. 2.

169. Chêne (2008), p. 3.

## Coverage of Public Officials

Legal coverage varies from declaration requirements for all public officials to systems that require only senior officials to disclose their assets. However very few AD systems choose the former.<sup>170</sup> For instance, Albania requires that all public officials submit disclosure statements, while the system in Estonia covers local government officials, members of Parliament, the President, members of the Government, justices of the Supreme Court, and prosecutors.<sup>171</sup> AD systems that require all public officials to disclose their income produce massive amounts of very detailed information that is difficult and time-consuming to process and monitor.<sup>172 173</sup> Most of the experts recommend coverage limited to high-level senior positions to ensure the ability of the country to adequately implement and monitor the system.<sup>174</sup>

The breadth of disclosure coverage can be looked at as related to the purposes of an AD system. Systems oriented towards preventing conflict of interest may require disclosure only by those who are in a position to abuse their power.<sup>175</sup> Alternatively, AD systems focused on detecting illicit gains in countries with a high level of perceived corruption may end up with broader coverage, as the set of individuals in “at risk” positions may be quite large.<sup>176 177</sup> If detecting illicit gains is a primary objective, it may be more effective to target positions likely to be sources of illicit gains, such as individuals who handle money or who have authority to grant some benefit on behalf of the government. These types of positions may involve the granting of licenses, avoiding having to pay a traffic ticket, obtaining a zoning variance, obtaining a building permit, or altering a piece of legislation or a regulation.

Furthermore, extensive coverage is often impractical, unnecessary and may actually reveal weaknesses in an AD system’s implementation. AD regimes that have been too ambitious, requiring that all public officials file declarations, are often faced with a lack of human and technical resources. This situation results in a glut of unused information and an ineffective AD system, as an issue of information overload. Even with a large professional staff employed by the AD unit, efficacy of the system decreases as

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170. Williams (2006), p. 2.

171. Anti-Corruption Network for Eastern Europe and Central Asia 7th General Meeting, p. 35.

172. Chêne (2008), p. 3.

173. Messick, Richard. Practical Advice on Establishing and Administering an Income and Assets Disclosure Program. (2006), p. 2.

174. Mukherjee, Ranjana and O. Gokcekus. (2007), p. 325.

175. Office of Government Ethics. Report to Congress Evaluating the Financial Disclosure Process for Employees of the Executive Branch and Recommending Improvements to it. OGE, Washington D.C. (2005), p. 7.

176. OECD. Conflict-of-Interest Policies and Practices in Nine EU Member States: A Comparative Review. Sigma Paper No. 36 (2006), p. 11.

177. Demmke C., M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker and A. Salminen. (2007), p. 132.

the number of individuals required to file increases. Instead, targeting public servants reaching a certain level of seniority or being promoted into positions that offer potential for illicit enrichment has been often recommended.<sup>178</sup>

Rearranging and concealing sources and amounts of financial interest are damaging to the effectiveness of AD systems. The fact that the dishonest will simply hide their assets, putting them in their spouse's name or the name of an unrelated person undermines the intent and undermines the potential impact of disclosure systems.<sup>179</sup> Critics point out that it is difficult to keep up with criminally minded public officials, as they can continuously shift the titular ownership of funds and assets amongst their inner circle or through accounts abroad. In an attempt to address the issue of public officials hiding assets under the names of family members, some countries have begun to require separate disclosures by family members. Such is the case in Kenya, Tanzania, Uganda and Nigeria where public officials are required to submit separate declarations for spouses and children.<sup>180</sup>

Practitioners in the field of AD<sup>181</sup> have also noted that when a criminal seeks to launder proceeds of corruption, AD is not a 'bullet-proof' system to prevent that from happening. Assets may be hidden through family members, such as the spouse and/or the minor children and in those systems where they are required to file, too, assets may be hidden by close associates. Nevertheless, what AD are always achieving is increasing the cost of being corrupt for civil servants/public officials and increasing the likelihood of being discovered and prosecuted for the act of corruption itself and/or money laundering, when the predicate offense is corruption.

Some critics have argued that asset and income disclosure can negatively affect the work of public officials. However, research has shown that AD does not have any negative effect on any qualitative characteristics of officials' work.<sup>182</sup> After German parliamentarians complained of shifts in parliament composition and adverse effects on "quality of legislative work" resulting from newly introduced disclosure rules a study was conducted that successfully disproved accusations from the opposition. The study demonstrated that disclosure rules do not cause any significant shift in the proportion of lawyers and business people in parliament and do not affect the "quality of legislative work."<sup>183</sup>

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178. Chêne (2008), p. 3.

179. Messick (2006), p. 2.

180. Chêne (2008), p. 4.

181. See Argentina Case Study (on file with authors).

182. Aaken, A. and S. Voigt. Do Disclosure Rules for Parliamentarians Improve Political Outcomes? University of St. Gallen, University of Marburg (2009), 20.

183. Aaken, A. and S. Voigt. (2009), p. 20.

## Disclosure Content

The content of declarations varies considerably among countries depending on the purpose of their AD system, perceived levels of corruption, level of income and political systems.<sup>184 185</sup> While critics are not able to agree on every item to be included in declarations, they almost all agree on a basic list of items: assets, liabilities, and income sources.<sup>186</sup> Studies have demonstrated that identifying these listed items on disclosure statements is associated with lower perceived corruption. However, it is also possible that countries with lower levels of perceived corruption are willing to adopt less intrusive AD requirements. In creating an effective AD system intended to identify conflicts of interest it is noted that disclosure of the sources of such funds, whether they be assets, gifts, activities or income, is more important than the amount of the funds.<sup>187</sup>

The issue of level of detail in an AD system extends from the comprehensiveness of the legal framework to the level of clarity in processes and the allocation of resources. As discussed in Chapter 1, the tradeoffs inherent in AD systems must be carefully considered, in effect while balancing the purposes of the system against the realistic allocation of resources. In determining the level of detail in an AD system, the trade-off between depth and breadth is one of those considerations. For each of these characteristics, administrative resource allocations will differ. Critics of brief declaration processes claim that the reporting systems are usually too simplistic, as they merely require an official to report in a very general way. Simple processes are more easily understood and followed and require fewer resources, even though they may be too basic to be effective. However, when prompted to create a more sophisticated AD framework, bureaucracies have a tendency to address issues by adding regulations and thus increasing complexity.<sup>188</sup> The resources necessary to fulfill these increasingly sophisticated requirements may not be available. Programs may become too ambitious, with missions and intentions exceeding what their capabilities allow. Collecting, processing and verifying information requires that a capable and well-managed and professionally-staffed agency be in charge of those functions.<sup>189</sup>

Level of detail in the legal framework is another consideration that must be made when designing an AD system. In fact, comprehensive laws may be the best option

184. Global Corruption Report 2006. Transparency International (2006), p. 1.

185. Demmke C., M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker and A. Salminen. (2007), p. 11.

186. Djankov, Simeon; La Porta, Rafael; Lopez-de-Silanes, Florencio; Shleifer, Andrei. (2009), p. 12.

187. Djankov, Simeon; La Porta, Rafael; Lopez-de-Silanes, Florencio; Shleifer, Andrei. (2009), p. 24.

188. Demmke C., M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker and A. Salminen. (2007), p. 120.

189. Chêne (2008), p. 4.

when attempting to establish a new AD framework, particularly if communication across agencies is not effective. Clear institutional arrangements that are delineated in law are not only difficult to manipulate, they also establish an unambiguous foundation for implementation of the AD system. According to some experts, the main cause of failure in AD systems is that the process tends to be unclear, with failures caused by lack of detail about what assets, liabilities and interests public officials must disclose. The absence of legal requirements for the verification of asset declarations also undermines the effectiveness of AD structures. Further failure is caused by the lack of clarity over the prosecution of offenses.

Possibly the greatest force working against the success of AD systems is the general lack of resources in the face of overly complex AD requirements. Level of detail is important, but does not necessarily imply complexity, particularly in contexts where resources are constrained. While one can call for additional resources, it is important to recognize that resources will never be sufficient to satisfy all the demands of AD advocates. It is equally important to design an AD regime so that it can function as effectively as its resource envelope permits. This requires making sensible trade-offs between breadth and depth, as well as with respect to the incidence of both simple consistency checks of declarations and more detailed audits of declarations, including considering the use of risk-based targeting of either or both of these activities. The insufficient human, technical, and financial resources allocated for the implementation of AD systems can cause fledgling AD systems to fail. Other experts advise that AD systems should begin “slowly and build up capacity,” so as not to overload the agency and make the entire program ineffective.<sup>190</sup>

### **Public Access Versus Right to Privacy**

Some authors have argued that the effectiveness of an AD system is related to the public’s ability to access disclosed information.<sup>191 192 193</sup> Putting disclosed information in the public domain can be useful because it allows citizens to be informed and to make educated decisions at the ballot box.<sup>194 195</sup> Moreover, public disclosure can work to reduce politicians’ incentive to abuse the power entrusted to them.<sup>196</sup> Who monitors disclosure and how the information gained is kept and communicated are important questions to answer in order to ensure robust accountability of an official’s interests and profes-

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190. Messick (2006), p. 2.

191. Mukherjee, Ranjana; Gokcekus, Omer. (2007), p. 3.

192. Williams (2006), p. 2.

193. Anti-Corruption Network for Eastern Europe and Central Asia 7th General Meeting, p. 37.

194. Djankov S., R. La Porta, F. Lopez-de-Silanes, A. Shleifer. *Transparency and Accountability*. EDHEC Risk and Asset Management Research Centre (2008), p. 4.

195. Aaken, A. and S. Voigt. (2009), p. 5.

196. *Ibid.*

sional actions.<sup>197</sup> However, allowing public access to disclosure information in the absence of thorough monitoring of declarations may not be enough.<sup>198</sup>

The majority of researchers argue for unconditional publicity of disclosures, citing a number of benefits provided to society.<sup>199 200 201</sup> In fact, a recent study focused on disclosure by parliamentarians found that “it is the public disclosure of information, and in particular public identification of assets, liabilities, income, and conflicts, that is most closely associated with lower corruption. Our indicators of public availability of disclosure in practice are among the most powerful measures of political accountability.” However, in practice, information is often not available to the public because either the law does not require it or merely because officials do not comply. The same research also found that “on average, less than 10 percent of useful information about parliamentarians is available to their constituents in practice.”<sup>202</sup>

In their study to assess whether AD laws prevent corruption, Mukherjee and Gokcekus assessed the correlation between various aspects of AD laws and Transparency International’s 2004 Corruption Perceptions Index (“CPI”). The project found that there is an association between lower corruption and public access to asset disclosures: Countries that provide public access to disclosures have a significantly lower corruption index than countries that limit public access to the information. And countries that combine public access with the verification of the content of disclosures are correlated with an even greater reduction in perceptions of corruption.<sup>203</sup>

The US experience tends to emphasize the benefits of public access to asset disclosure information.<sup>204</sup> Yet, 90% of all filers at the federal level file confidential statements.

As explained above, the argument in favor of public disclosure is rooted in the premise that such openness improves public perceptions of government. Indeed, public disclosure may help bolster faith in the government by, *inter alia*, creating an informed public and possibly ending rumors surrounding government officials.<sup>205</sup>

Despite the general call for AD information to be made public, there is an ongoing debate as to whether the type, form and means of currently publicly available

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197. Williams (2006), p. 2.

198. OSCE. Best Practices in Combating Corruption. OSCE, Vienna, Austria (2004), p. 39. See also case studies, on file with the authors.

199. Djankov S., R. La Porta, F. Lopez-de-Silanes, A. Shleifer. (2008), p. 24.

200. Messick (2006), p. 1.

201. Carney, (1998), Section 3b p. 4.

202. Djankov. Transparency and Accountability, p. 3.

203. Mukherjee, R and O. Gokcekus. Officials’ Asset Declaration Laws: Do they prevent corruption? (2007), p. 327.

204. Anti-Corruption Network for Eastern Europe and Central Asia 7th General Meeting, p. 31.

205. Messick, Richard. Email to Ruxandra Burdescu regarding Advantages & Disadvantages of Requiring Public Officials to Disclose Personal Financial Information. On file with authors. (March 9, 2009), p. 1.

information are accessible to the public. Some experts argue that experience thus far suggests that disclosed information presented to the public for scrutiny is either not of interest or not understandable by the wider public.<sup>206</sup>

Countries have implemented programs aimed at increasing public disclosure as well as increasing public interest and participation in the AD system. Colombia has undertaken initiatives aimed at involving the public in the management of conflicts of interest and in public administration more broadly. One example is the Presidential Program to Combat Corruption's project named *Colombiemos*. The program involves the establishment of a citizen's network and citizen groups for oversight of public functions. Colombia also passed a law that allowed for the organization of civil society organizations interested in overseeing public matters. Additional civil transparency and accountability mechanisms have been put in place, but with little success. The Colombian government acknowledged that general public knowledge of and participation in these civil society control mechanisms has been limited, but the government continues to try to provide civil society with the necessary tools to fight conflicts of interest and other corruption.<sup>207</sup>

The importance of the media in combating illicit enrichment has been highlighted in countries where the media has taken publicly available information and used it to investigate and uncover illicit enrichment amongst public officials and civil servants. Such was the case in the Philippines where an investigative journalist found public servants living in homes far beyond their means and uncovered major discrepancies between the registered and beneficial owners of assets, such as luxury cars that were effectively owned by public officials but were technically registered to family members or associates.<sup>208</sup>

Similarly, Ukrainian newspapers identified discrepancies between the disclosures of the President and Prime Minister and the assets that they and their family members possessed.<sup>209</sup> However, other experts suggest that relying solely on civil society and media in absence of an enabling environment characterized by a strong rule of law is not enough. They raise concerns on a number of levels. First, civil society and the media may or may not always be equipped to investigate these declarations for accuracy and they may even be prone to making unsubstantiated claims. Second, these organizations are not capable of pursuing action against those with discrepancies in their declarations. The government must still take the initiative to prosecute and enforce AD system requirements. In particular, the government needs to establish credibility for the system and these authors argue that these groups pose a risk to that credibility. Indeed,

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206. Demmke, p. 116.

207. Raille. *Managing Conflicts of Interest in the Americas: A Comparative Review*, p. 11.

208. Messick, R. and R. Simpson. *Who Discloses What: Income and Asset Disclosure Around the World*. (May 2006), p. 12.

209. Djankov. *Transparency and Accountability*, p. 3.



there is also anecdotal evidence that portraying grand cases of corruption in the media, upon which the authorities never seem to act, actually has a counter-productive effect: it sends the wrong message to the public, lowering their expectations and raising their tolerance levels for formerly unacceptable behavior.

Despite the AD research community's general devotion to the idea of public access to disclosures, several case studies show that in most instances public access is still limited, restricted, or even non-existent. For instance, a recent study on AD practices demonstrated that of the 175 sampled countries, less than a third make all disclosures available to the public.<sup>210</sup> Opponents of public access to asset disclosures cite the need for privacy, arguing that revealing detailed information on a person's assets and income violates an individual's right to privacy.

*The legal debate about public access to AD information and the right to privacy.*

In several countries, financial disclosure laws have been the subject of heated debate and have been challenged as a violation of a constitutionally protected right to privacy. Legislation, often known as the Freedom of Information and Privacy Act in many countries, sets forth the statutory framework under which the privacy of individuals is preserved while government agencies, business and individuals share information, if the information provided is public.

While many courts have addressed an individual's right to information,<sup>211</sup> few countries have addressed the privacy implications inherent in requiring public disclosure of an official's finances. In Chile, Romania, Germany and the United States, courts have ruled that the interests served by the public disclosure of an official's finances outweigh the official's right to privacy.<sup>212</sup> Several countries are making judicial efforts to clarify the public policy concerns that continue to validate such asset disclosures. However, in most other countries, the analysis providing a hierarchy of rights does not expressly give priority to the right to information, but instead involves a case-by-case analysis of the interplay between privacy and conflicts of interest.

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210. Djankov, S., R. La Porta, F. Lopez-de-Silanes and A. Shleifer (2009), p. 1.

211. *Claude Reyes, et.al. v. Chile* (1 I.L.R. 41 (Sept. 19, 2006) was one of the first court cases in which the right to information was acknowledged as a fundamental human right. In this unanimous decision, the court held that the Chilean government violated Reyes' right to obtain government information by not providing a means by which this information could be accessed. This was interpreted to be a violation of chapter 13 of the American Convention of Human Rights and required the Chilean government to adopt a mechanism under which information could be made available to the public.

212. Rick Messick, "Income and Assets Declarations: Global Impact on Corruption," Conference on Evidence-Based Anti-Corruption Policy organized by Thailand's National Anti-Corruption Commission (Bangkok, Thailand June 5–6, 2009), available at [www.cmi.no/publications/file/?3396=income-and-assets-declarations](http://www.cmi.no/publications/file/?3396=income-and-assets-declarations)

The U.S. legal system for example has largely determined the validity of financial disclosure requirements for public officials through a case-by-case basis, using a balance-test approach.<sup>213</sup> The judicial balancing approach in the US system is originating in the German legal system. The German Federal Constitutional Court (FCC) created an international legal movement after the Lüth decision in 1948.<sup>214</sup> The Lüth court pioneered the use of judicial balancing language to justify their decisions on constitutional rights. International legal systems, such as the United States, followed the Lüth in using the judicial balancing language.<sup>215</sup> The determination of the right to privacy for public officials largely reduces to a conflict of competing interests; thus, the balance-test approach is an appropriate and widely accepted process of judicial reasoning for calculating these interests. A financial disclosure requirement may be valid if it does not overly intrude upon a public official's freedoms and fulfills the purpose of serving the public with accountability and integrity.

The dilemma of income disclosure versus personal privacy is very delicate. Some opponents want no information revealed while others simply want personal identification limited. Some authors argue that declarations made available to the public can be exploited and misused by sensationalist media sources, and can be used to generate rumors about public officials. Such exploitation of disclosed information can be seen as a hidden cost of a program and is counter to the purpose of an AD.<sup>216 217</sup> It should be noted, however, that public disclosure could just as easily help dispel unfounded rumors. Misuse of public information might also lead to harassment of an official or to commercial exploitation of information through mechanisms such as telemarketing and sales calls.<sup>218</sup> Critics go on to argue that any perceived weaknesses of AD systems, such as invasion of privacy, might work to invalidate the system and could discourage public service. Such protection might, on the other hand, bring more qualified people into politics by screening out those with something to hide.<sup>219</sup>

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213. As reflected in the cases of *Du Plantier* and *Carbo*, the right to financial privacy for public officials is not absolute and has been refined through diligent consideration of a number of relevant interests. US Courts aim to uphold the broadly defined Constitutional rights for individual privacy and the balancing-test approach employed in *Du Plantier* is an effective lens for determining whether mandating asset disclosure intrudes upon a public official's right to privacy. *United States v. Carbo*, No. 07-3576 (3d Cir. App. 2009); *Duplantier v. United States*, 606 F.2d 654 (1979).

214. BVerfGE 7, 198, 204 (the decision is translated in part in KOMMERS, pp. 361-369).

215. See e.g. *Dennis v. United States*, 341 U.S. 494 (1951), concurring opinion by Frankfurter J; *Barenblatt v. United States*, 360 U.S. 109 (1959); and *Konigsberg v. State Bar*, 366 U.S. 36 (1961).

216. Mackenzie, G. and M. Hafken. *Scandal Proof: Do Ethics Laws Make Government Ethical?* Brookings Institution Press (2002), p. 142.

217. Demmke C., M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker and A. Salminen. (2007), p. 116.

218. Messick (March 9, 2009), p. 1.

219. Djankov, S., R. La Porta, F. Lopez-de-Silanes and A. Shleifer (2009), p. 2.

In an attempt to resolve the tension between public access and privacy, some experts suggest clearly defining the distinction between public and confidential content submitted in declarations, citing evidence that confidential declarations often contain a longer list of required information than public declarations.<sup>220 221</sup> This seeks to address the issue of gathering sufficient information without infringing upon a person's privacy. Monitoring and investigation of possible infractions require detailed information, whereas the publication of such information may infringe upon a person's privacy.<sup>222</sup> It is this issue that the government of Mexico hopes to address with its *Declaranet* system. Mexico has the ability to publish a portion of gathered information by using the system to produce two types of declarations. One type of declaration contains detailed information and is sent directly to the monitoring agency, while the other contains limited information and is published in order to provide the public with a general understanding of an individual's level and sources of wealth.<sup>223</sup> Information that is publicized may exclude the addresses of real estate, and often, information on spouses and children, as this information is considered more sensitive. In fact, in COI models, the sources of assets and income are the subject of interest to citizen groups, while in models focusing on illicit enrichment, the levels of income and assets are the focal point.

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220. Chêne (2008), p. 6.

221. Kossick, Robert. Mexico's Declaranet System: Enhancing Public Sector Efficiency, Transparency & Accountability through the Automation & Disintermediation of the Patrimonial Declaration Process (2002), p. 5.

222. Demmke C., M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker and A. Salminen. (2007), p. 67.

223. Kossick, Robert. (Section b)



## Annex 2. PAM Methodology

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The link between efficient and well-functioning institutions and the economic development of a country has become the core of the good governance effort. Governance as understood in this context refers to the “essential parts of a broad cluster of institutions,”<sup>224</sup> and encompasses the methods that officials employ in policymaking and delivery of goods and services.<sup>225</sup> The focus on transparency and accountability as a means of improving those processes stems from a belief that a clarification of the underlying institutional arrangements, i.e., *rules of the game*, along with a strengthening of organizational capacity to achieve mandates, will lead to better governance outcomes.

Despite the prominence of governance and anti-corruption in the development agenda<sup>226</sup> and the tremendous progress that has been made in measuring governance and corruption<sup>227</sup>, far less effort has been made to systematically collect information on the specific policies and institutions that comprise governance and contribute to the control of corruption.<sup>228</sup> To be sure, significant recent efforts have been made to develop more disaggregated, actionable indicators of particular aspects of governance, and public administration in particular.<sup>229</sup> But gaps remain to be filled. Comprehensive,

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224. Acemoglu, Daron, “Interactions between development and growth.” *Governance, Growth, and Development Decision-Making*. The World Bank, 2008.

225. *Strengthening World Bank Group Engagement on Governance and Anticorruption*, The World Bank, March 21, 2007.

226. See, e.g., “Strengthening Bank Group Engagement on Governance and Anticorruption” (The World Bank, Washington, DC: September 2006); *Helping Countries Combat Corruption: The Role of the World Bank* (The World Bank, Washington, DC: September 1997); *Anticorruption in Transition: Who is Succeeding ... and Why?* (The World Bank, Washington, DC: 2006); *Reforming Public Institutions and Strengthening Governance: A World Bank Strategy* (R2000–91) (The World Bank, Washington, DC: November 2000); *Mainstreaming Anticorruption Activities in World Bank Assistance – A Review of Progress Since 1997* OED Report No. 29620 (The World Bank, Washington, DC: July 14, 2004).

227. See, e.g., Kaufmann, Daniel, Aart Kraay, and Massimo Mastruzzi, “Governance Matters V: Governance Indicators for 1996–2005.” World Bank Policy Research Working Paper 4012. (The World Bank, Washington, D.C.: September 2006). <http://www.worldbank.org/wbi/governance/>; Transparency International (TI). *Global Corruption Report* (2003); (2005); (2006). Berlin, Germany: TI.

228. An exception, upon which the work in this project will build is: Dorhoi, Ioana Monica, “Anti-corruption Strategies and Fighting Corruption in Central and Eastern Europe,” Ph.D. dissertation (Michigan State University, MI: July 2005).

229. See, e.g., “Doing Business” (The World Bank, Washington, DC: periodic): <http://www.doingbusiness.org/>; Public Expenditure and Financial Accountability (PEFA) Program: <http://intranet.worldbank.org/WBSITE/INTRANET/OPERATIONS/INTRANETFINANCIALMGMT/0,,contentMDK:20152640~menuPK:344278~pagePK:210082~piPK:210098~theSitePK:275851,00.html>; Global Integrity, *Global Integrity Index*: <http://www.globalintegrity.org/>; Maxwell School’s *Government Performance*

detailed and regularly updated data on institutional mechanisms for enhancing transparency and accountability of public administrations and public officials is still lacking, as is similar information on civil service management institutions. Asset declaration, conflict of interest, freedom of information and immunity protections for high public officials all appear in the UN Convention on Corruption. There is increasing demand for a wider range of actionable indicators, with some countries specifically calling for new or better laws in the areas that will be covered by this project.

To meet the demand for more effective monitoring of the policies and institutions that contribute to governance outcomes, the Public Accountability Mechanisms (PAM) initiative is a work-in-progress that brings forward detailed and regularly updated data on countries' efforts to enhance the transparency of governments and the accountability of public officials.<sup>230</sup>

## **Objectives of the PAM Initiative**

The overall aim of the PAM initiative is to provide timely information and assistance to World Bank operational teams working on transparency and accountability issues. This involves the facilitation of project designs that address issues of transparency and accountability. It also entails the creation of a pool of relevant indicators that can be utilized in monitoring the implementation of reform efforts. For both of these goals, the PAM initiative expects to develop actionable governance indicators (AGIs) that provide insight into how governance sub-systems function and which actions may produce better outcomes.

The data generated by the PAM initiative will also be useful to governments interested in establishing or modifying their own public accountability systems, to researchers focused on issues of transparency and accountability, and practitioners involved in governance projects.

An additional objective is to develop a set of indices for evaluating the progress of countries over time once it is clear that the characteristics for each mechanism are appropriate.

## **Scope of the PAM Initiative**

The initiative is focused on four types of public official: Head of state, Ministers/Cabinet members, Members of Parliament, and civil servants as defined by the individual countries. Spouses and children of each category of public official are also included. Five different types of transparency and accountability regime comprise the field of

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*Project:* <http://www.maxwell.syr.edu/gpp/> ; American Bar Association-Central and Eastern Europe Law Institute, *Judicial Reform Index* : <http://www.abanet.org/ceeli/publications/jri/home.html> .

230. This is part of a larger project to develop such Actionable Governance Indicators (AGIs).

inquiry: asset disclosure, conflict of interest, freedom of information, immunity protections, and ethics training.

**Asset disclosure (assets, income, liabilities).** The purpose of obtaining the declarations of public officials depends on the aim of the overall accountability regime. When focusing on conflict of interest, disclosures can be used to identify potential bias in public activities. For regimes that aim to prevent illicit enrichment, disclosures may be used to identify assets or incomes that are not attributable to salary, gift, or loan. These types of disclosure regimes aim to prevent the occurrence of financial misconduct in public office, such as bribery or theft, while also maintaining records of the financial activities of public officials for future use in prosecution.

**Conflicts of interest.** Conflict of interest refers to a situation in which an individual is in a position to exploit an official capacity for personal benefit, but *has not done so yet*. In short, the presence of a conflict of interest is not an indicator of improper conduct, but rather a warning of its possibility. The operating principle of a conflict of interest system is to assist public officials in avoiding situations where a conflict of interest can arise.

**Freedom of information.** Freedom of information laws guarantee right of access to information or records held by government bodies. They specify the procedures for access and outline exemptions for purposes of national security and other concerns. These laws establish a method of accountability for governments which is upheld by civil society and individual citizens.

**Immunity protections.** Most public officials are shielded from prosecution for duties performed in the capacity of the state. However, sweeping immunity laws prevent governments from holding corrupt actors to account and serve as obstacles to preventing further misconduct from taking place.

**Ethics training.** Ethics training is a preventative measure that provides information on acceptable activities to public officials through initial ethics orientations and ongoing trainings. This training covers asset disclosure procedures, conflict of interest provisions and penalties, freedom of information, and anti-corruption laws.

## Development of Actionable Governance Indicators (AGIs)

Disaggregated indicators measure the direct impacts of institutional reform efforts on how particular governance sub-systems function. These *actionable* indicators must be narrowly circumscribed and clearly defined, focusing on relatively specific aspects of governance, rather than broad dimensions. They provide greater clarity regarding the actions that governments can take to achieve better results on assessments of certain areas of governance. Indicators of this type also allow for monitoring and capturing of impacts within a relatively short span of time. In the PAM initiative, several types of actionable indicators are in development:

## **Implementation of Indicators (in Law)**

*Legislative* indicators are fact-based assessments of legislation and related laws, decrees, and codes of conduct that are externally reviewed by country technical experts. They are based on the content analyses prepared by lawyers regarding the country legal frameworks. These legislative indicators will capture data on the characteristics of legal frameworks of accountability within countries.

Legislative indicators regarding *asset disclosure* fall into eight broad categories:

1. Legal framework
2. Coverage of public officials
3. Comprehensiveness and content of declarations
4. Filing frequency requirements
5. Sanctions for non-compliance
6. Monitoring and oversight
7. Verification of declaration content
8. Public access to declarations

Legislative indicators regarding *conflict of interest* fall into nine broad categories<sup>231</sup>:

1. Legal framework
2. Coverage of public officials
3. Declaration requirement and contents
4. Explicit restrictions
5. Filing frequency requirements
6. Sanctions for non-compliance
7. Monitoring and oversight
8. Verification of declaration content
9. Public access to declarations

Legislative indicators regarding *freedom of information* fall into seven broad categories:

1. Legal framework
2. Coverage of information
3. Procedures for accessing information
4. Exemptions to disclosure requirements
5. Enforcement mechanism
6. Deadlines for release of information
7. Sanctions for non-compliance

Legislative indicators regarding *immunity* protections fall into six broad categories:

1. Legal framework
2. Coverage of public officials

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231. Indicators for conflict of interest are still being refined.



3. Extent of immunity
4. Duration of immunity
5. Immunity withdrawal/lifting procedures
6. Immunity withdrawal/lifting authority

Legislative indicators regarding *ethics training* fall into six broad categories<sup>232</sup>:

1. Legal framework
2. Coverage of public officials
3. Training requirements
4. Content and comprehensiveness of training
5. Training frequency
6. Training provider
7. Monitoring and oversight

### **Implementation of Indicators (in Practice)**

Implementation indicators are fact-based assessments of implementation processes, with data gathered by governments, WB country teams, and/or civil society organizations<sup>233</sup>. The characteristics for these types of indicators will depend on the mechanism under study, but broad functional categories are as follows:

*Management and accountability* arrangements, capacities and practices of the agents responsible for ensuring implementation of each mechanism. Such management and accountability indicators capture characteristics of the accountability, financial and human resource management systems of the agents responsible for implementing a given public accountability mechanism (e.g., asset and income disclosure), including, *inter alia*, design features of those management systems, resources devoted to them, technologies employed, as well as how they actually function.

*Enforcement* arrangements, capacities and practices of the agents responsible for ensuring implementation of each mechanism. Such enforcement indicators capture characteristics of the production technologies employed to implement or enforce the requirements of a particular mechanism, including, *inter alia*, design features of those production technologies, resources devoted to them, as well as how they actually function. Examples of the sorts of features to be captured might include regulatory capacities and practices, activities aimed at ensuring compliance with the mechanism rules and procedures, verification and investigations practices, inter-agency collaboration efforts, advisory activities, and monitoring/reporting of results.

232. Indicators for ethics training are still being refined.

233. Detailed implementation indicator descriptions for asset disclosure are available Annex 4. Indicators for other mechanisms are still being refined.

*Immediate impact* indicators capture the extent to which particular, well specified, immediate objectives of the accountability mechanism are being achieved. These intermediate outcome indicators do not capture performance in the sense of ultimate outcomes, such as reduced corruption, reduced state capture, or more ethical behavior of civil servants. Instead, these immediate impact indicators aim to capture compliance with the legal framework (by the officials covered by the legislation), signaling of government commitment to enforcement of legal provisions; and the extent to which the information covered by that legislation is being accessed by citizens or organized groups of citizens (i.e., evidence that access to that information has, in practice, been improved).

Within each of these categories, there are analytical sub-categories that provide insight into the accountability processes involved:

- *Institutional arrangements* are the formal and informal **rules** governing the actions of agents who are involved in the operation of a given governance system. These rules (i) assign responsibilities and authority across relevant agents or actors, (ii) specify permitted, required and/or forbidden activities by those agents or actors, and (iii) establish procedures governing the activities and behavior of those agents or actors. These rules create (better or worse) incentives for agents to perform their roles.
- *Capacity features* are characteristics of the **resources** employed by the relevant agents or actors assigned responsibilities under the asset and income declaration legal framework. Such indicators typically capture (i) the magnitudes of particular resources (money, personnel, equipment, facilities/buildings, etc.), and (ii) the quality of those resources (e.g., types of technology employed, quality of staff, etc.)
- *Practices* reveal the **performance** of the agents assigned particular asset declaration implementation responsibilities. The variance of the organizational behavior and practices sheds light on whether practices are likely to advance the underlying objectives of the asset declaration legal framework.

## Sample

### *Legislative indicators*

For the asset disclosure legislative indicators, legislation enacted and/or amended as of January 1, 2009 from 87 countries (53 IDA, 8 high-income) is included in the study. The sample size may be expanded in future rounds of data gathering or as work on other mechanisms is commenced. The scope and funding of the project required that IDA<sup>234</sup> countries be sampled, resulting in a larger portion of the sample being lower income countries.

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234. The International Development Association (IDA) is the part of the World Bank that helps the world's poorest countries. IDA complements the World Bank's other lending arm—the International Bank for Reconstruction and Development (IBRD)—which serves middle-income countries.

	<b>Countries</b>		
High-income (8)	France Germany Italy	Japan Norway Russia	United Kingdom United States
Europe and Central Asia (25)	Albania Armenia Azerbaijan Bosnia & Herzegovina Bulgaria Croatia Czech Republic Estonia Georgia	Hungary Kazakhstan Kyrgyz Republic Latvia Lithuania FYR Macedonia Moldova Poland Romania	Serbia Slovenia Slovak Republic Tajikistan Turkey Ukraine Uzbekistan
East Asia & the Pacific (14)	Cambodia Fiji Indonesia Lao PDR Mongolia	Palau Papua New Guinea Philippines Solomon Islands Taiwan	Timor-Leste Tonga Vanuatu Vietnam
Latin America & the Caribbean (5)	Bolivia Dominican Republic	Guyana Honduras	Argentina
Middle East and North Africa (2)	Algeria	Morocco	
South Asia (5)	Bangladesh India	Nepal Pakistan	Sri Lanka
Africa (28)	Angola Benin Botswana Burkina Faso Burundi Congo Congo (Democratic) Ethiopia Gambia	Ghana Guinea Kenya Madagascar Malawi Mali Mauritania Mauritius Mozambique	Namibia Niger Nigeria Senegal Sierra Leone South Africa Tanzania Uganda Zambia Zimbabwe

### ***Implementation indicators***

They study of implementation processes and impacts is intended to assist governments with the continued development of their country accountability systems. For this reason, data on implementation efforts is gathered in an *ad hoc* fashion, in response to country demand and research interest.

## Research Design for Legislative Indicators

### *Selection of primary sources*

Data sources for legislative indicators consist of laws, decrees, or codes of conduct that relate to the mechanism under study. Asset disclosure legislation is often found in separate, specific legislation dedicated to asset monitoring, or it may be part of a larger anti-corruption law. It may also be located in constitutions or less often, in codes of conduct. Freedom of Information legislation is usually found in separate, specific legislation dedicated to public records, data or information, laws on state secrets, classified documents, freedom of information/right to information, or administrative codes. It is also referred to in many constitutions. Immunity protection legislation may be found in constitutions, parliamentary rules, and administrative laws. In particular, commonwealth countries tend to have separate parliamentary privileges legislation. Often, the fastest means of identifying legislation is to search news sites for political scandals; these articles will usually reference the absence or violation of specific immunity legislation. Ethics training provisions are usually contained in codes of conduct or sections of larger, more comprehensive laws on public employment.

### *Analysis of legal frameworks*

Primary source documents (e.g., laws, decrees, codes, etc) are used to complete the analyses, in the original language if possible. All relevant legislation is included in the analysis, even if not specifically part of the mechanism framework, i.e., if the civil service law contains some sanctions for non-compliance, it is included in the analysis. No secondary sources are used in the analysis of country legal frameworks.

### *Reliability checks*

Data for each mechanism are collected using primary sources and peer reviewed by the team. Both the data and the summaries of each characteristic are then sent to an external reviewer for comments. This reviewer is intended to have either in-depth legal knowledge of the mechanism being examined in a specific country or expertise in a related field. Once feedback is received, the changes are incorporated into the data set for the country. To minimize both reliability and validity problems, data have also been sent to World Bank country offices for internal review.

## Research Design for Implementation of Indicators

Data on implementation efforts is collected through collaboration with country governments, World Bank country offices, and civil society organizations. In most cases, data is collected through interviews with relevant government officials and civil society representatives and through site visits to government offices. Addi-

tional communication with relevant officials may be conducted for clarification of data.

Data sources consist of governments and civil society, addressing both issues of organizational performance and impacts. Government-collected data will allow government agencies or donor projects to monitor design, implementation and performance regarding public accountability frameworks and the immediate impacts of reforms, as well as longer-term outcomes, such as anti-corruption and public ethics. Data may also be collected by civil society organizations; this data would provide insight into publicly-accessible and/or general processes involved in public accountability frameworks, such as prosecution of violations, access to information on agency budgets, and public availability of declarations. Because of the lack of capacity in monitoring and data gathering in certain country environments, the availability and/or completeness of precise data on implementation of legislation may be low. In these cases, data collection through civil society organizations would allow monitoring of government's progress in the implementation and maintenance of public accountability regimes, thus, either complementing, or substituting for, government data on reform progress.

### *Outputs*

The initiative intends to generate several inter-related products for assessing the quality of each of the above institutional mechanisms:

**Library of laws**, containing the relevant primary legislation; All legal citations are also made available with the data.

**Country contexts**, provided through historic timelines, descriptions of country economic and political environments, and specification of legal systems (civil, common, customary, etc).

**Links to country-specific institutions** that are responsible for the enforcement of accountability mechanisms.

**Actionable governance indicators** that capture data on (a) the characteristics of the legislative framework governing each institution, (b) the capabilities and performance of organizations responsible for implementing the legislation, and (c) the immediate impacts on behavior of targeted agents. This data will be available in *summaries* of the data associated with each characteristic, with citations to the appropriate legislation, if relevant.

**Descriptive statistics**, that showcase trends across countries, regions, and globally, with respect to legislative indicators.

**Case studies**, employing either the legislative or implementation indicators. These studies aim to provide a fuller picture of the political economy associated with country accountability mechanisms.

## **Contact**

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# Annex 3. In-Law Indicators

No.	Criteria	Description
<b>AD 1</b>	<b>Legal framework</b>	Legal framework requires public officials to disclose assets, income, and/or liabilities [referred to as “asset disclosure”]
AD 1a	Laws regulating AD	Specific laws require mandatory, systematic, and/or periodic asset disclosure.
AD 1b	Prior legislation	Prior legislation required asset disclosure within the country legal framework.
AD 1c	Constitutional requirement	Provisions exist within the constitution that require asset disclosure for public officials.
<b>AD 2</b>	<b>Coverage of Public Officials</b>	Breadth of coverage of asset disclosure requirements
AD 2a	Coverage of officials is explicit	Laws explicitly specify the public officials that must disclose assets, income, and/or liabilities.
AD 2b	Minimum coverage requirement	Coverage of top level public officials required to disclose assets, income, and/or liabilities
AD 2bi	Head(s) of State	Laws explicitly specify that Head(s) of State must disclose assets, income, and/or liabilities.
AD 2bii	Ministers/Cabinet members	Laws explicitly specify that Ministers/Cabinet members must disclose assets, income, and/or liabilities.
AD 2biii	Members of Parliament (MPs)	Laws explicitly specify that Members of Parliament must disclose assets, income, and/or liabilities.
AD 2biii	Civil Servants	Laws explicitly specify that at least some civil servants must disclose assets, income, and/or liabilities.
AD 2biv	Spouses and children	Laws explicitly specify that spouses and children of certain public officials must disclose assets, income, and/or liabilities.
AD 2c	Avoids excessive coverage	An asset disclosure legal framework avoids excessive coverage by limiting the number of public officials who must disclose assets, income, and/or liabilities. That is, the number of public officials required to file is appropriate for the capacity of bodies responsible for maintaining the disclosure system.

**Income and Asset Declarations: Tools and Trade-offs**

No.	Criteria	Description
<b>AD 3</b>	<b>Declarations content</b>	Types of assets, liabilities and/or incomes required to be disclosed
AD 3a	Public official	Types of assets, liabilities and/or incomes required to be disclosed by public officials
AD 3ai	Standardized filing form	A standardized filing form for Public officials exists.
AD 3aii	Assets, liabilities and income items covered are explicitly defined	There are explicit explanations of disclosable assets, liabilities and/or income items in the filing form and/or legislation for Public officials.
AD 3aiii	Meets minimum coverage requirements	Amount of information regarding assets, income, and liabilities that is disclosed by Public officials
AD 3aiii (1)	Assets	Types of assets to be disclosed by Public officials
AD 3aiii (1)a	Real estate	Public officials are required to disclose real estate or immovable property.
AD 3aiii (1)b	Movable assets	Public officials are required to disclose movable assets, such as automobiles.
AD 3aiii (1)c	Cash	Public officials are required to disclose cash, such deposit accounts or securities.
AD 3aiii (2)	Liabilities	Types of liabilities to be disclosed by Public officials
AD 3aiii (2)a	Loans and Debts	Public officials are required to disclose loans and/or debts.
AD 3aiii (3)	Income	Types of income to be disclosed by Public officials
AD 3aiii (3)a	Earned income	Public officials are required to disclose earned income, such as wages.
AD 3aiii (3)b	Unearned income	Public officials are required to disclose unearned income, such as interest received on investments.



No.	Criteria	Description
<b>AD 4</b>	<b>Filing Frequency</b>	Frequency of asset disclosure
AD 4a	Public official	Frequency and clarity of asset disclosure deadlines for Public officials
AD 4ai	Clear deadlines	There are clear filing deadlines for Public officials.
AD 4aii	Frequent and timely submission requirements	Time frames for submission of declarations established for Public officials
AD 4aii (1)	Upon taking office	Public officials must disclose assets, income, and/or liabilities upon taking office.
AD 4aii (2)	Upon leaving office	Public officials must disclose assets, income, and/or liabilities upon leaving office.
AD 4aii (3)	Within 3 years of leaving office	Public officials must disclose assets, income, and/or liabilities within 3 years of leaving office.
AD 4aii (4)	Annually	Public officials must disclose assets, income, and/or liabilities annually.
AD 4aii (5)	Upon change in assets	Public officials must disclose assets, income, and/or liabilities upon a change in assets, income, or liabilities situation.
AD 4aiii	Verifiable declaration	The disclosure of assets, income, or liabilities is performed through the submission of a written filing form. Public officials are not allowed to disclose assets, income, and/or liabilities through oral declarations only.
<b>AD 5</b>	<b>Sanctions</b>	Sanctions for various types of violations regarding disclosure of assets, incomes, and liabilities
AD 5a	Reverse penalties exist.	Penalties are applied to parties who file complaints or raise questions in the media regarding the accuracy of declarations. These can include penal sanctions on journalists and media who allege false declarations, on government officials who leak information to the media, or on citizens who file complaints requesting verification of declarations.
AD 5b	Appropriate penalties for non-compliance	Sanctions applied for failure to meet asset disclosure requirements across the set of public officials required to disclose assets, income, and liabilities.
AD 5bi	Public official	Sanctions applied for failure to meet asset disclosure requirements for Public officials
AD 5bi (1)	<b>Sanctions for key filing failures</b>	Types of violations by Public officials that trigger the application of sanctions

## Income and Asset Declarations: Tools and Trade-offs

No.	Criteria	Description
AD 5bi (1)a	Late filing	Sanctions are applied to Public officials for late filing of declarations.
AD 5bi (1)b	False information	Sanctions are applied to Public officials for inclusion of false information in declarations.
AD 5bi (1)c	Incomplete submission	Sanctions are applied to Public officials for incomplete submission of declarations.
AD 5bi (1)d	Non-filing	Sanctions are applied to Public officials for failing to file declarations.
AD 5bi (2)	<b>Range of sanctions allowed</b>	Types of sanctions that are applied for various filing violations by Public officials
AD 5bi (2)a	Fines	Fines are applied to Public officials for violations of disclosure requirements.
AD 5bi (2)b	Administrative sanctions	Administrative sanctions are applied to Public officials for violations of disclosure requirements.
AD 5bi (2)c	Penal sanctions	Penal sanctions are applied to Public officials for violations of disclosure requirements.
<b>AD 6</b>	<b>Monitoring and oversight</b>	Government bodies that are responsible for receiving declarations and enforcing compliance with the disclosure requirements.
AD 6a	Public official	Assignment of responsibilities for receiving declarations from Public officials and enforcing compliance of Public officials with the disclosure requirements.
AD 6ai	Depository body	A person, office, or agency exists to receive the declarations from Public officials.
AD 6aii	Enforcement body	A person, office, or agency exists to enforce disclosure requirements for Public officials.
<b>AD 7</b>	<b>Declaration verification</b>	Verification of compliance with asset declaration requirements.
AD 7a	Public official	Assignment of responsibilities for verification that Public officials comply with asset declaration requirements
AD 7ai	Submission verification	A department or agency is responsible for confirming the filing of declarations by Public officials.
AD 7aii	Content verification	Assignment of responsibilities for verification of the accuracy of declarations by Public officials
AD 7aii (1)	Some agency assigned legal responsibility and authority for verifying accuracy	A department or agency is assigned the legal responsibility and authority to verify the accuracy of declarations by Public officials.

<b>No.</b>	<b>Criteria</b>	<b>Description</b>
AD 7a 7a (2)	Explicit criteria and standards established to verify accuracy	Explicit criteria and standards are established to verify the accuracy of declarations by Public officials.
<b>AD 8</b>	<b>Public access to declarations</b>	Public availability of asset declaration content.
AD 8a	Public official	Public availability of the contents of declarations by Public officials
AD 8ai	Public availability	Information in the declarations of Public officials is publicly available.
AD 8a 8a ii	Timely posting	Information in the declarations of Public officials is made available in a timely fashion.
AD 8a 8a iii	Clearly identified location	Information in the declarations of Public officials is made available at a clearly identified location.
AD 8a 8a iv	Reasonable fees for access	Information in the declarations of Public officials is made available at a reasonable cost.
AD 8a 8a v	Length of records maintenance is specified	The amount of time that information in the declarations of Public officials is maintained in government archives is clearly specified.



# Annex 4. In-Practice Indicators

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Number Indicator	Data	Comments	
<b>ADPR-Gov 1</b>	<b>Facilities:</b> Appropriate working facilities for the implementing agency		
A	Institutional arrangements		
0	None		
B	Capacities		
1	Ratio of size of space to number of staff;		
2	Ratio of size of space to coverage of the law (number of declarations expected to be received/ reviewed/stored etc.)		
3	Heating, air conditioning/ fans, continuous electricity, etc.;		
4	Physical storage facilities		
5	Security measures to protect sensitive information (investigations related to FD)		

**Income and Asset Declarations: Tools and Trade-offs**

<b>Number Indicator</b>	<b>Data</b>	<b>Comments</b>	
6	Archives to organize information in order to provide efficient access to files by staff and the public when requesting AD.		
C	Practices		
0	None		
<b>ADPR-Gov 2</b>	<b>Technology:</b> Adequate technological means to manage the FDS.		
A	Institutional arrangements		
0	None		
B	Capacities		
1	Ratio of computers to personnel		
2	Percentage of work day that computers are used (lack of computer know-how, power shortages, faulty equipment, etc).		
3	Hardware is less than 10 years old.		
4	Software is less than 10 years old.		
5	Software for management of FDS is utilized (Excel, Access, SQL, html, etc)		

Number Indicator	Data	Comments	
6	Software for analysis of FDS is utilized (Excel, proprietary software, etc)		
7	Electronic submission of declarations is provided		
C	Practices		
0	None		
<b>ADPR-Gov 3</b>	<b>Human Resources:</b> Counting with personnel who are capable to operate the system and are periodically trained.		
A	Institutional arrangements		
1	An accurate organigram of agency staff exists.		
2	Job descriptions of agency staff are clearly written and available to staff.		
3	Operating manuals are clearly written and available to staff		
B	Capacities		
1	Competitive recruitment is used to staff the implementing agency		
2	Newly hired personnel know how to use computer software: Word, Excel, Outlook, Email, etc.		

**Income and Asset Declarations: Tools and Trade-offs**

<b>Number Indicator</b>	<b>Data</b>	<b>Comments</b>	
3	Fraction of professional non-administrative staff having at least 4 years of post-secondary education		
C	Practices		
1	Specialized personnel are hired for IT purposes.		
2	Personnel receive training in administrative processes upon hiring		
3	Personnel receive general training in laws and regulations governing asset disclosure.		
4	Personnel receive computer training upon hiring that covers all relevant software and hardware.		
5	Personnel receive ongoing computer training for implementation of new software and hardware.		
6	Personnel receive ongoing training on relevant laws and regulations		
7	Agency staff receive periodic performance evaluations.		
8	Staff turnover: 3 year turnover rates of staff recruited within the last 5 years.		
<b>ADPR-Gov 4</b>	<b>Financial capacity:</b> Capacity of the implementing agency to obtain and manage an adequate budget to achieve the expected results for the unit		



Number Indicator	Data	Comments	
A	Institutional arrangements		
0	None		
B	Capacities		
1	Budget is adequate in connection with the number of disclosures the agency is expected to receive		
2	Budget/personnel ratio (wage bill) is adequate.		
3	Ratio of average salary of staff to private sector wage.		
C	Practices		
0	None		
<b>ADPR-Gov 5</b>	<b>Regulatory management:</b> Capacity of the implementing agency to issue regulations to enhance its implementing authority, clarify statutory issues, etc.		
A	Institutional arrangements		
1	Agency charged with regulatory authority is identified and is actually the body designated by law (provide name of agency)		

**Income and Asset Declarations: Tools and Trade-offs**

<b>Number Indicator</b>	<b>Data</b>	<b>Comments</b>	
2	Implementing agency is legally allowed to issue regulations.		
B	Capacities		
0	None		
C	Practices		
1	Approximate number of regulations issued by the implementing agency in a year.		
2	Frequency of issuance of new regulations by implementing agency		
3	Frequency with which the implementing agency amends issued regulations		
4	Implementing agency regularly issues clarifications/memos on disclosure system.		
5	Percentage of clarifications/memos that deal with statutory requirements.		
6	Percentage of clarifications/memos that deal with procedural issues.		

# Annex 5. Sample of 74 Countries included in the Public Accountability Mechanisms (PAM) Analysis

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	<b>Countries</b>		
<b>High-income (8)</b>	France Germany Italy	Japan Norway Russia	United Kingdom United States
<b>Europe and Central Asia (24)</b>	Albania Armenia Azerbaijan Bosnia & Herzegovina Bulgaria Croatia Czech Republic Estonia Georgia	Hungary Kazakhstan Kyrgyz Republic Latvia Lithuania FYR Macedonia Moldova Romania Serbia	Slovenia Slovak Republic Tajikistan Turkey Ukraine Uzbekistan
<b>East Asia &amp; the Pacific (11)</b>	Cambodia Fiji Indonesia Mongolia Palau	Papua New Guinea Philippines Solomon Islands Taiwan Vanuatu	Vietnam
<b>Latin America &amp; the Caribbean (3)</b>	Bolivia Dominican Republic Honduras		
<b>Middle East and North Africa (2)</b>	Algeria	Morocco	
<b>South Asia (5)</b>	Bangladesh India	Nepal Pakistan	Sri Lanka
<b>Africa (21)</b>	Angola Benin Botswana Burkina Faso Congo (Democratic) Ethiopia	Mali Mozambique Namibia Nigeria Senegal Sierra Leone	Zimbabwe

**Income and Asset Declarations: Tools and Trade-offs**

	<b>Countries</b>		
	Ghana	South Africa	
	Guinea	Tanzania	
	Kenya	Uganda	
	Malawi	Zambia	

# Annex 6. Minutes of the Consultation with Practitioners Workshop of March 31, 2009 on Income and Asset Declaration Guide

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The workshop was chaired by Ruxandra Burdescu (PRMPS-StAR, TTL of the project) and attended by Stuart Gilman (StAR), Stephanie Trapnell (PRMPS-PAM), Francesca Recanatini (PRMPS-PAM), Joseph Gangloff (OGE), Wendy Pond (OGE), Larissa Gray (FPDFI), Kevin Stephenson (FPDFI), Matteo Vaccani (FPDFI), Nichola Dyer (EBC), Jean-Pierre Brun (FPDFI-FMI), Teresa Marchori (PRMPS-PAM), Dan Barnes (PRMPS-PAM), Syuzanna Simonyan (PRMPS-StAR-PAM), Claudia Oriolo (PRMPS-PAM), Sabina Dyussekeyeva (PRMPS-PAM), Monica Bascon (PRMPS) and participated via internet link by Robert Benson (UN), Julia Davis (NYC Conflict of Interest Board), Lyne Robinson-Dalpe (Parliament of Canada) and Dmytro Kotliar (OECD).<sup>235</sup>

The Chair welcomed the participants and presented the Agenda for the meeting. Stuart Gilman (StAR) and Francesca Recanatini (PRMPS-PAM) briefly presented the StAR and PAM initiatives. Following this introduction, the objectives of the meeting were presented, namely:

1. to collect information on implementation challenges and processes involved in the AD systems;
2. to pull together good practice examples in the area; and
3. to distill lessons of experience from practitioners in both developed and developing countries.

In this context, the specific processes explored were related to: 1. Infrastructure and organizational capacity, including facilities, technology, human resources, and financial, administrative and regulatory capacities involved in AD systems; and 2. Enforcement and immediate impacts, including compliance and verification capacity, investigatory authority, interagency collaboration capacity, monitoring and reporting capacity, filing compliance as well as public access to declarations.

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<sup>235</sup>. Please note that the connection with the Web was broken for a lengthy period of time and most inputs were limited to text notes.

## Minutes

The practitioners provided excellent insight on how the asset disclosure procedures are developed, implemented and enforced within their particular institution/organization pointing out what works best and what factors should be considered for effective and functional asset disclosure systems.

The discussion focused around the following issues:

### *Infrastructure*

*Facilities:* It is imperative to have appropriate working facilities for the implementing agency, particularly to have secure office space and ordinary working conditions, storage capacity/filing cabinets as well as adequate security measures for the safety of staff.

*Example:* During the Menem administration in Argentina, several hundred high ranking officials were required to file declarations and they failed to do so. In order to avoid embarrassment (because so few of those required to file had filed), the President issued an executive order requiring every civil servant in the country to file asset declarations. The floor of the building could not handle the weight of the boxes and with limited staffing they had no capacity physically to review them. The boxes of declarations were left on the ground outside the building and destroyed by a heavy rainstorm. What began as an exercise in accountability ended up as a means of concealing the non-compliance of its highest-ranking officials.

Logistics are also important to determine the role and power of the institution that is implementing the asset disclosure processes. Not only with regard to what agency/body it is part of, but also where it is physically located. In other words, the symbolism of where the agency is placed is important: in the office of the prime minister versus the basement of a rented building. However, it is also important to have enough physical space to accommodate the functions of the agency.

*Human Resources:* Most government offices responsible for receiving and holding asset declarations also have the responsibility of reviewing them either for completeness or accuracy, or both. Some governments use asset declarations only as enforcement devices. In this circumstance agencies have only collection and filing responsibilities, leaving the review of such documents to a competent legal authority if corruption allegations are received by law enforcement.

However, if the agency's mandate includes review of asset declarations as a corruption prevention tool, then competency of the staff is crucial in the effective use of the declarations. There must be procedures for filing and examining the documents filed and "protecting" their integrity in case they are used in a legal proceeding. The staff reviewing the declarations needs to have the technical capacity/knowledge ("financial so-

phistication”) to understand what is being reported (e.g., very complex pension plans), needs to have some level of financial knowledge and training. It is crucial to have a staff member in charge of verification and investigation of the reports.

### *Enforcement of Filing*

*Compliance Capacity (declaration submission):* Disclosure regimes vary widely in terms of what they cover (e.g., assets, loans, agreements) as well as detail (e.g., categories of amount, actual amount of value). In addition, disclosures systems vary widely in terms of when and how often individuals are expected to file. For some governments, disclosures once over a career or every five years are enough, although most regimes appear to prefer one or two year intervals. In addition, some governments require the filing of a disclosure whenever a person takes a new job in government and some even require a new disclosure filing when leaving government.

Importantly different approaches are used to ensure compliance with disclosure requirements—fines, administrative sanctions, reports to the management of the individual and penalties. The UN Convention against Corruption (Article 8) convention requires penalties for non-compliance. Without this a financial disclosure system has no “teeth” so it becomes little more than a bureaucratic exercise.

*Example: In Canada, three distinct regimes are administered—one for Members of Parliament, one for Public Office Holders and another for Civil Servants. Members of Parliament fall under a Code with no provisions for penalties. Public Office Holders are under an Act and are subject to penalties not only for filing but also for content of disclosure. These two regimes are administered by an independent Officer of Parliament (Office of the Conflict of Interest and Ethics Commissioner). The third regime is administered by a separate entity within the Federal Government.*

For the Canadian system it is important to resolve filing compliance issues at the lowest possible level, with the softest approach is the best; but at the same time there needs to be harsher sanctions available where the softer option proves ineffective. One participant noted that written notices usually are not as effective as informing the leadership and pursuing through that channel.

According to a number of participants, the most effective measure to ensure compliance is by impacting the person’s reputation at the work place. Two types of approaches were brought up.

- The first one is a “preventive” measure, where the employee is reminded to ensure filing of an asset declaration directly by his/her superior/manager.
- The second mechanism is to highlight that the non-compliance of one member of the team negatively affects the performance evaluation of the entire unit (or that of the manager). In other words, given how important the reputation is,

getting it on the managers' radar as someone who endangers or embarrasses the entire organization can be a very effective measure to obtain compliance.

*Examples: At the UN the annual filing period is 1 Mar-31 Mar. In 2007 the compliance rate was 92%, that is, 92% of the approximately 3200 participants filed their statements, but only after the Ethics Office expended a great deal of time communicating with each individual.*

*In 2008, instead of the Ethics Office communicating with each staff member, the Heads of Departments were informed of the non-compliers in their departments and they did the follow-up with their staff members. With this change in procedure, the compliance rate went up to 99.17%. As the Director of Ethics, I had been considering whether to introduce a 'sanction' for non-compliance, along the lines of what the World Bank has, that is, a fine until the form is filed. However, with the improvement in compliance, by means of communication, there appears to be a staff acceptance of the process rather than having a stick forcing the individual to comply. The idea of introducing a sanction during the filing process was dropped. However, for those members who do not file, at all, they are referred to the Administrative Law Unit for disciplinary action.*

*In Finland, ¼ of the evaluation of senior management is rated based on ethical environment they have created in their organization, which among other things includes the compliance of staff to asset disclosure requirements.*

*In NYC, in addition to fines for failure to file or filing late, a City employee cannot receive his/her last paycheck or lump sum until he/she has complied with all financial disclosure obligations.*

*In Australia, there is a 30 day grace period for not filing, during which the official has no signatory authority.*

Another important issue was the use of fines vs. criminal penalties as a method of increasing compliance. When the measure for compliance is a fine, once the person pays it, he/she might be unhappy but they can continue with their career. Where an agency exercises the use of criminal charges people will tend to use every resource at their disposal to fight it because of the threat to their career and livelihood.

#### *Verification capacity (content audit)*

The verification of the reports is another vital issue. Key to effectiveness of the system is the in existence of capable auditing bodies, which enable the investigators to identify discrepancies.

It is important to point out that to have effective verification the ratio of staff handling the filings vs. number of declarations needs to be reasonable. In the WB's own AD system, there is one staff person v. over 200 declarations, and in the Canadian parliament the ratio is 1:130.



*Examples: In Canada, there are 10 advisors reviewing disclosure statements of approximately 1000 full-time public office holders and 300 Members of Parliament. The Canadian disclosure process does not only address assets but also liabilities and outside activities.*

*The NYC Conflicts of Interest Board presently has 5 employees in its Financial Disclosure Unit. What has made the board's ability to review easier, and has helped with compliance, is that the filing is electronic. NYC has almost 8,000 filers.*

Depth of investigation may vary.

Example: In Albania, the High Inspectorate of Declaration and Audit of Assets has very strong investigative authority/capacity while in the US verification is based on public scrutiny.

Other issues discussed were:

- How do you select what to audit? Random audits are generally ineffective.
- Need of reality check mechanisms in place.
- Burden of proof (different in COI versus illicit enrichment systems).
- Compatibility of audits with COI

#### *Investigatory capacity*

Concerns were raised on the issue of addressing legal consequences of false or inaccurate declarations. Specifically, whether lying on the form is classified as crime under the country's legislation.

Further discussion was suggested on financial declarations as a tool for asset recovery. How do you know if the money came from illegal activity? Do you address the issue of international declarations?

In addition to background investigation before appointment to certain positions within the Government, the US officials in certain senior posts may be required to go through a full background investigation every 5 years. However, such background checks require significant resources and may ultimately dissuade individuals from joining the public service, so a balancing test must be applied when considering whether to implement this.

*Example: In NYC, most City employees have to undergo background investigations as a condition of employment. While there is some overlap with the financial disclosure report, they are administered by different agencies, and none of the background investigation is public.*

#### **Immediate Impacts**

*Filing compliance:* Measurement of the percentage of public official's compliance with legal requirements of asset disclosure, targeting in particular the coverage of public

officials who actually file an asset declaration in a given time period within the required deadline.

*Public access to asset declarations:* The issue of the public's access to declarations is very important and delicate—balance between the protection of privacy and transparency is a necessary step for a functional system. How do you decide what information should be publicly available? It was pointed out that sometimes compliance is better when the filers know that the declarations are kept confidential.

*Examples: The standard that the NYC Conflicts of Interest Board applies is determining whether "inspection of such item by the public would constitute an unwarranted invasion of filer's privacy or a risk to the safety or security of any person." The factors considered are: whether the item is of a highly personal nature, whether the item in any way related to the duties of the positions held by such person, including whether there are security or safety issues relating to such duties, whether the disclosure poses a risk to the security or safety of the reporting person or any other individual; and whether the item involves an actual or potential conflict of interest. Information about spouses and children is not part of the public portion of reports, but part of the confidential portion. Both portions ask about assets, liabilities, and outside activities.*

*The register of interests in South Africa publishes declarations on-line.*

*Italy posted each and every citizen's income declaration on-line. However, the system then crashed a few hours later due to inadequate IT capacity.*

*In Italy unmarried women do not have to disclose their assets.*

The question is what items in the declarations can be made available to public. How much time does it take to design the right form? How time-consuming is filling in the form for the filer? How detailed and how much irrelevant information does it include? End result is you want to promote public confidence towards integrity of the system.

How intrusive are you in getting information from filers, family members, spouses, and children? There is little privacy concern when the information is kept confidential, but it becomes a major concern when it is publicly available. Given cultural differences and sensitivities, as well as political concerns, it might create a security threat for the filer and his/her family (e.g. kidnapping family member for ransom). There have been some cases argued before the courts of different countries raising the constitutionality of the publicity requirement (in Romania, Argentina, US)

*Example: NYC has a build in electronic reports; they don't post it on-line, because the law requires giving a notice to filer. Sometimes filers ask for privacy and until there is a decision made NYC is not issuing anything.*

However, public access to declaration is crucial to:

1. build public confidence in the system and
2. allow public scrutiny.

*Example: In the Philippines NGOs do life style analysis/checks on asset declarations. The government does not undertake any efforts.*

### ***Issues regarding restrictions on employment after leaving the positions***

- Post employment restriction issues—certain kinds of activities, employment with certain organizations and companies that are prohibited on conflict of interest grounds.
- Outside employment issues.
- Assets in publicly held companies, bank accounts, proprietary liabilities, blind trusts, etc.
- Loans and agreements upon leaving government.

*Example: Civil servants in Kenya are prohibited to own any private business.*

### ***Other issues***

- To have a functional asset disclosure system the entity in charge needs to have the support of the leadership. There needs to be strong political will. Otherwise, the laws can be perfect on paper, but worthless in practice.
- Government needs to make a great deal of effort to explain the asset disclosure process to the public. By educating the public you make it an active participant in the process, which helps promote faith in the system and to encourage reporting when corrupt acts take place.
- There is only limited time to gain the public's support on this issue. If overly ambitious might end up as failure/can be lethal. You need to gain credibility with public. Surveys are very helpful. Surveys not only provide feedback and engage public in the process, but also become a mechanism to educate the public.
- It was suggested that having a PR within the agency that would assess the needs and address the questions with public would be a very useful tool to gain public's confidence and keep the public abreast of the latest developments.
- Importance of managing public expectation well (be clear on the purpose of the system you are putting in place).
- Design:
  - in case of COI systems, different regime should apply to different officials—executives should be held to stricter standard of COI than elected officials, as, for the latter, representation of a certain interest might be the very reason for their election and obliging them to divest such interest might deprive their constituency of the right to see its interest represented.

- Decision tree: devote a part of the manual to outline the natural cascade of decisions stemming from the initial choice of system design.

*Follow-up and Next steps*

The team plans to finalize the work on the guide/handbook by November 2009 for presentation during the Conference of State Parties. In addition to the guide/handbook, separate case studies are being developed, publication of which is expected next year calendar year. Preliminary findings from the case studies will be also included in the guide/handbook.

Also, as a follow-up to the completion of the guide, the team is exploring to partner with WBI and create a network of AD practitioners, including practitioners from developing countries, and to develop training curricula based on some of the materials produced.

# Annex 7. List of Contacts for Practitioners' Consultation

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Country	Name
<b>Albania*</b>	Rozarta Rrgallina High Inspectorate of Declaration and Audit of Assets Advisor of the Inspector General
<b>Argentina*</b>	Nicolas Dassen Former Anticorruption Commission officer
<b>Estonia*</b>	Ms. Mari-Liis Sööt Director of Criminal Analysis and Statistics Division Ministry of Justice
<b>Ethiopia</b>	Ali Sulaiman Commissioner Federal Ethics and Anticorruption Commission (FEAC)
<b>Honduras</b>	Juan Ferrera Coordinador Consejo Nacional Anticorrupción
	Roberto Herrera Asesor Consejo Nacional Anticorrupción
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<b>Kenya*</b>	Mr. Jesse Wachanga Lawyer KACC (Kenya Anticorruption Commission)
<b>Latvia*</b>	Latvian Corruption Prevention and Combating Ms. Inese Gaika, Head of International Cooperation Division

**Income and Asset Declarations: Tools and Trade-offs**

<b>Country</b>	<b>Name</b>
<b>Macedonia*</b>	Mr. Vladimir Georgiev Head of Sector Secretariat of the Commission State Commission for Prevention of Corruption of the Republic of Macedonia
<b>Namibia</b>	Adv. Taswald July Deputy Prosecutor
<b>Nepal*</b>	Meen B. Poudyal Chhetri, Ph.D. Under Secretary Member of the Steering Group of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific
<b>Romania*</b>	Mr. Codru Vrabie Civil Society Representative National Integrity Council; Board member Romanian Chapter of Transparency International
<b>Serbia</b>	Dr. Miroslav N. Milicevic Vice President Anti-Corruption Council
	Mrs. Milena Lazarevic Adviser Ministry of Interior and Public Administration
<b>Sierra Leone*</b>	Abdul Tejan-Cole Commissioner Anti Corruption Commission
<b>Slovak Republic*</b>	Mr. Jan Hrivnak Head of the Department of General Crime Office of Special Prosecution of the General Prosecutor's Office of the Slovak Republic Mr. Vladimir Turan vladimir.turan@genpro.gov.sk
<b>Solomon Islands</b>	Eric Muir Acting Auditor General Office of the Attorney General
<b>South Africa</b>	Ms. Fazela Mahomed South African Parliament
<b>Tanzania*</b>	Dr. Edward G. Hoseah Director General Prevention and Combating of Corruption Bureau
	Juventus Baitu Personal Assistant to the Director General Prevention and Combating of Corruption Bureau

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**Annex 7. List of Contacts for Practitioners' Consultation**

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	Ms. Susan Bisharira Inspectorate of Government
<b>UK</b>	Oonagh Gay UK House of Commons
<b>USA</b>	Ms. Jane Ley Deputy Director U.S. Office of Government Ethics
	Mr. Bill Corcoran U.S. Senate Select Committee on Ethics
<b>Zambia</b>	Patricia Jere Deputy Chief Parliamentary Counsel Ministry of Justice





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## Income and Asset Declarations: Tools and Trade-offs

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# Annex 9. Photographs of AD Facilities and Procedures

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*Asset Declaration forms and the process by which confidentiality is maintained in Macao*



*Waiting room for AD filers in Macau*

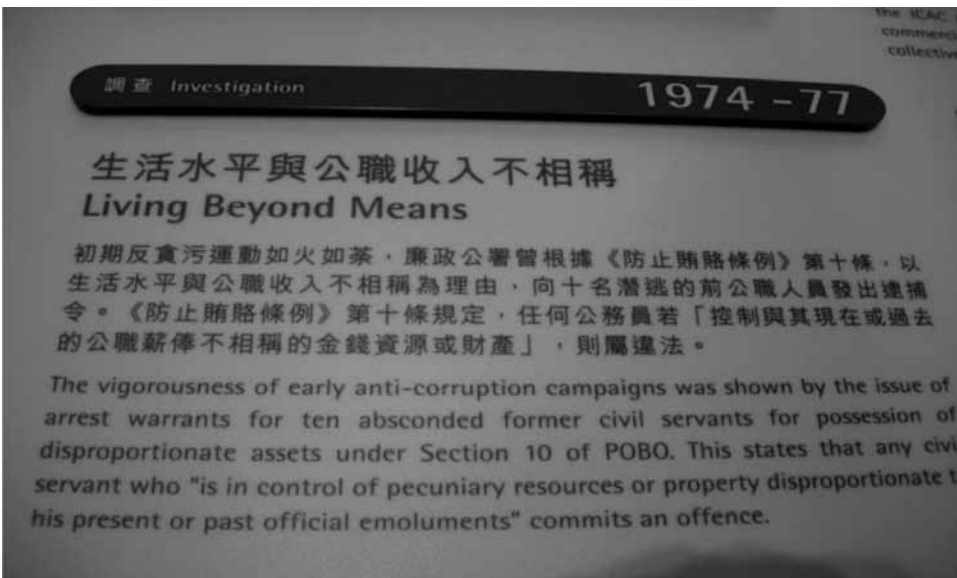


*Storage facilities in Macao*

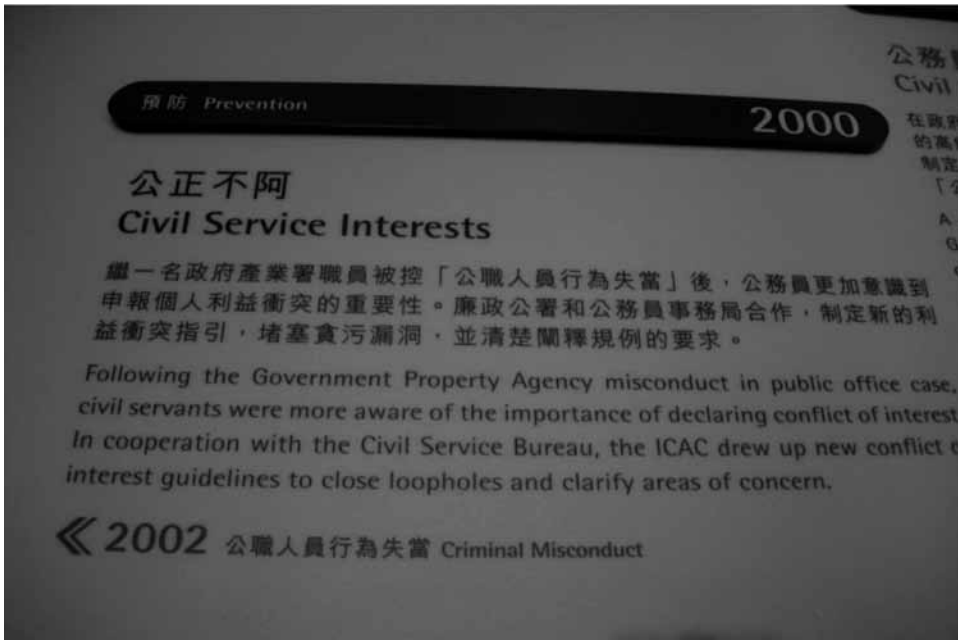




Storage facilities in Guatemala



Hong Kong: Anti-Corruption legal notice



Hong Kong: COI notice



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