

Annex

To facilitate the provision of information on good practices and challenges with respect to the establishment of effective financial disclosure systems for appropriate public officials (inter alia information on legislation, policies, practices and institutions on establishing and maintaining effective financial disclosure systems for appropriate public officials, including measures as may be necessary to permit their competent authorities to share that information with the competent authorities in other States parties) the Secretariat has prepared the following questionnaire as a guide that States parties may wish to use.

The Secretariat also wishes to draw the attention of the Government to the note entitled “Asset and interest disclosure systems (article 8, paragraph 5, of the United Nations Convention against Corruption)” contained in document [CAC/COSP/WG.4/2018/3](#) that could be used as background material for the completion of the questionnaire.

Contact information

1. Basic information

1.1. Does your country have a financial disclosure system(s) for appropriate public officials in line with articles 8, paragraph 5 and 52, paragraphs 5 and 6 of the Convention? **YES**

If YES,

a. Please provide a broad overview of your country’s financial disclosure system(s) for public officials and list the relevant national legislation.

YES

Malawi has a legal framework which requires selected public officials, also known under the relevant law as Listed Public Officers (LPOs) to declare/disclose their Assets, Liabilities and Business Interests. This disclosure includes their finances and sources of those finances. This is regulated by the Public Officers (Declaration of Assets, Liabilities and Business Interests) Act. These listed officials are required by law to submit their declarations annually to The Office of the Director of Public Officers Declarations (ODPOD), the authority which is mandated to administer and manage these disclosures.¹

b. If your country has, in addition, ad hoc financial disclosure requirements, please provide a broad overview, including applicable categories of officials, sectors/activities, etc.

- ***This may be applicable and operationalized at institutional level in some institutions as a way of enforcing discipline amongst its staff e.g. Malawi Revenue Authority and the Reserve Bank of Malawi.***

a. What is the objective(s) of your country's financial disclosure system(s) (please select all that apply)?

Detection of illicit enrichment

¹ <https://www.declarations.gov.mw/?p=66> Date accessed 6th April 2023

- Prevention of conflicts of interest
- All of the above (combined system) YES*
- Other, please describe: _____

If NO,

- a. Please describe (cite and summarize) the alternative measures put in place to ensure full compliance with article 8, paragraph 5 and article 52, paragraphs 5 and 6 of the Convention or is planning to take, together with the envisaged time frame, if any.

1.2. Has your country criminalized “illicit enrichment” as foreseen under article 20 of the Convention? **YES**

If **YES**, please explain.

-Public Officers (Declaration of Assets, liabilities and Business Interests) Act, provides for sanctions and penalties emanating from established illicit enrichment. In addition

Malawi has criminalized illicit enrichment under the Corrupt Practices Act, section 32, “Possession of unexplained property” which mandates the Anti-Corruption Bureau to investigate any public officer where there are reasonable grounds to believe that the official obtained such property illicitly.

2. Targeted officials

2.1. Please list the categories of officials required to file a financial disclosure. Please select all that apply and provide the range of targeted officials in each relevant category.²

- Public officials, including representatives from all branches and agencies of government
 - Members of the legislative branch, please list: ***All***
 - Members of the judiciary and prosecution, please list: ***All***
 - Members of the executive branch, including armed forces and agencies subordinate to a minister, please list: ***All senior public officers***
 - Officials of independent government bodies (e.g., *standalone boards, commissions and agencies that fall outside the executive, legislative and judicial branches of government*), please list:
-Senior officers and other officers in vulnerable positions such as accounting and finance and procurement staff.
 - Officials at the supranational (high-level) bodies (e.g., *representatives of the country in regional and global organizations/bodies*), please list:
- High Commissioners and Ambassadors of Malawi to other countries
 - Officials at subnational levels of government (e.g., *officials at the level of local government, provinces and municipalities*), please list:
All Senior officials at District level which include, the District Commissioner, Directors, Heads of Sectoral departments, all accounts and procurement personnel and all Ward Councilors
 - Political party officials, please list:
-President or Leader of a Political Party with representation in Parliament and Treasurer General of their parties

² *ibid*

- Representatives of publicly owned (fully and partially) enterprises, please list:

Chief Executive and Deputy Chief Executive of a public body, parastatal, constitutional bodies and all other statutory bodies set up by an Act of Parliament, including all Senior officials in such organizations, such as directors and heads of departments, and all accounts and procurement personnel regardless of grade.

- Representatives of private entities, professional associations, foundations and similar bodies performing public functions and services of public interest, please list:

The Act requires a public official to declare their assets, liabilities and business interests. However, where they have interests in certain private entities, the Law requires that they list the names of the companies/businesses and persons with whom they're in business with.

- Other, please list:

2.2. What factor(s) shaped the decision on the targeted categories of officials? Please select all that apply.

- Objective of the system **Yes**
 Hierarchical level and position of officials **Yes**
 Corruption risk level of sectors and functions **Yes**
 Resources and capacity to manage and verify disclosure **No**
 Other.

2.2.1. Please elaborate on your response above. ***The framers of the law considered the nature of work for particular organizations, the risk of particular positions and how susceptible to corruption they are and the decision-making power of certain positions.***

2.3. Does any authority have the power to request any official who would usually fall outside the disclosure system to file financial disclosure (e.g., designate those in high-risk categories, those under investigation for corruption offences, etc.)? **YES**

If YES, please list the authority (ies), and explain the applicable criteria and procedures.

-The relevant Law provides powers to the Director of Public Officers' Declarations, through the Minister, to incorporate other positions deemed risky by way of subsidiary legislation.

2.4. How does your country create and update the list of filers?

-ODPOD callsl for Staff Returns from Ministries, Departments and Agencies as well as Profiles of Listed Public Officers.

2.5. Please provide the approximate number of filers. **13,000.**

3. Frequency of disclosure

3.1. When and how often are targeted officials required to file/submit financial disclosures? Please select all that apply.

- Upon entering office **Yes (Within 90 Days after assuming duties)**
 Upon leaving office **Yes (One month before leaving office)**
 Annually **Yes (Being Update)**
 Biennially (once every two years) **No**
 Once every three years **No**
 Some categories of officials are more frequently required to declare than the others **No**

- Other, please describe. _____ **Upon leaving Office, a Listed Public Officer must submit an Exit Declaration. However, if they have submitted one within 90 days, they need not do so when exiting the public service.**

3.2. Does the competent authority have the power to request targeted officials (filers) to submit ad hoc financial disclosures between the official submission periods? **NO**

If YES, please explain.

3.3. Are the targeted officials required to update/amend their financial disclosures between submission periods? **YES**

If YES, please provide the ground for updating/amending submitted disclosures and the relevant time frame. *The Law under section 12 (c) gives powers to the Director of ODPOD to ask a listed public officer to amend, within thirty days, any declaration that is procedurally or substantively defective*

4. Competent authority and disclosure process

4.1. Which authority/entity is responsible for collecting and maintaining financial disclosures? Please select all that apply.

Central competent authority **YES** (*Office of the Director of Public Officers' Declarations, ODPOD*).

- Entities employing the targeted officials
- Other authorities depending on the categories/levels** of officials (election Commissions, supreme courts, parliamentary committees, etc.). Please list:

4.2. How are the financial disclosures submitted?

Centralized submission directly to the central competent authority via:

- Electronic (online) submission system **NO** (*Not yet online*)

Submission using the paper submission **Yes**

Delegated submission using paper submission (e.g., to individual bodies, which store them and transmit them to the competent authority) **Yes** (*Only if organized at institutional level and submitted as a block*)

- Delegated submission using both paper and electronic (online) submission (*paper declarations are submitted to individual bodies while the electronic copies are submitted to a centralized online system of the competent authority*) **N/A**
- Other.

4.2.1. Please elaborate on your response above and describe the processes and methods of submitting the disclosures.... *LPOs file their disclosures on a prescribed form and hand deliver to the ODPOD, or in some cases LPOs at a particular public institution would designate an individual who collects the forms from all LPOs at that institution and block submit to ODPOD. The ODPOD is centrally located in the City of Lilongwe; as such during the month of collecting annual declarations (first 30 days of a new financial year) the ODPOD sets up temporary collection points in all the districts to cater for LPOs outside Lilongwe.*

4.3. If electronic submission is possible, please describe the online tools and platforms available for submitting financial disclosures. **N/A**

4.4. Please describe the measures implemented to ensure compliance and appropriate quality of information when completing and submitting the financial disclosure (e.g., disseminating information materials, training, awareness raising, etc.).

- *Issuance of a circular letter to each public institution informing on requirement to declare, each year*
- *Designing and dissemination of declaration manual*
- *Orientation of Desk Officers who in turn assist officers to fill*
- *Development and dissemination of Frequently Asked Questions for LPO's and Declaration Desk Officers*
- *Receive calls seeking guidance*
- *Orientation workshops for officers within institutions*

5. Scope of disclosures

5.1. Please list the assets and interests included in the financial disclosure forms, including categories of assets and other financial interests. Please also refer to the list below.

- Immovable and movable assets *Yes*
 - their value and source *Yes*
 - those (assets) held in the name of others *Yes*
- Income
- their source
- Securities *Yes*
- Investments *Yes*
- Savings *Yes*
- Bank accounts *Yes*
- Any other business relationships with financial institutions *N/A*
- Liabilities / loans / mortgage *Yes*
- Cash
- Gifts *N/A*
- Livestock *Yes*
- Ownership interests (*shareholdings*) in companies and other legal entities and arrangements *Yes*
- Business / outside activities (*business interests and financial connections*) *Yes*
- License(s) (*to carry out commercial activities*) *N/A*
- Usufruct rights (to use and benefit from an asset owned by others) *Yes*
- Information on all legal persons linked to the official in any way, individual economic activity, membership and position in undertakings, establishments, associations or foundations *N/A*

5.2. Is the requirement to disclose an asset dependent on its value (e.g., assets below a certain threshold do not need to be declared)? Please explain. **NO. There is no threshold set by the law, however they declare all assets deemed to have reasonably high value in the context of Malawi**

5.3. Does the information mentioned in question 5.1 include assets and relevant financial interests located both in and outside the country? **YES**

5.3.1. **If YES**, does it require the disclosure of an interest in or a signature or other authority over a financial account in a foreign country (please see article 52, paragraph 6, of the Convention)? *N/A*

5.4. Does your country's financial disclosure system include a declaration of beneficial ownership (of legal entities and arrangements, including nominee arrangements and trusts)?³ **YES**

Please explain.

Under the Companies Act, Companies (Beneficial Ownership) Regulations, 2022, a company must maintain a register of beneficial owners. This extends to situations where shares of such company are held by a company incorporated in and outside of Malawi.

5.4.1. Are the targeted officials required to declare assets and interests held, managed or controlled through such legal entities and arrangements? **YES**

If YES, please explain. ***These are businesses and or financial interests.***

5.5. Are targeted officials also required to submit information for their family members? **YES**

If YES,

a. Please describe the scope of the family members (spouse(s), registered/non-registered partner(s), children (minor, financially dependent, within the same household, age limits, etc.)).

- ***Spouse(s), registered/non-registered partner(s), close associates, agents, children (minor, financially dependent, within the same household, under the age of 18, etc.).***

b. Please describe the type of information that must be submitted for family members. Is it the same as of the public official? - ***The same as that of Public Official***

5.6. Does the financial disclosure system cover individuals other than the family members of the filers? **YES**

If YES, please list the applicable individuals and the type of information that needs to be submitted. - ***Close Associates and business partners. The type of information required ranges from the nature of the business, source of finance and estimated income/expenditure in a financial year.***

5.7. For subsequent regular financial disclosures, what is the extent of information included in such financial disclosures?

Information required in the disclosure includes only changes in the equity of the filer since the last disclosure **YES**

A complete new disclosure (i.e., a net worth statement). **NO**

Other, please describe: _____

5.8. Does your country's financial disclosure regime require declaring expenditures? **NO**

If YES, please provide an overview of the relevant features.

6. Access to disclosed information

³ On beneficial ownership, please refer to the conference room paper prepared by the secretariat entitled "Good practices and challenges with respect to beneficial ownership and how it can foster and enhance the effective recovery and return of proceeds of crime" ([CAC/COSP/WG.2/2022/CRP.1](#)).

6.1. Is the information on financial disclosure publicly available? **YES/YES IN PART**

If YES OR YES IN PART

- a. Please describe the measures in place to ensure public access to financial disclosure information (e.g., proactive publication on a central online platform and/or on relevant authorities' websites, ad hoc disclosure in a paper form upon request, etc.)

The disclosures filed with the ODPOD are treated as public information according to section 17 of the Declarations law, and may be accessed by the general public upon application to the Director on a specified application form.

The law also mandates the Director to publish annually in a gazette a summary of declarations filed by each LPO⁴

- b. If not all disclosures are publicly available, please list the categories of targeted officials whose disclosures are accessible and/or remain confidential. *N/A*
- c. If only part of the financial disclosure information is available, please list the type of information that is publicly available. *N/A*
- d. Does accessing financial disclosure information entail any costs? *NO*
- e. Does the publication of financial disclosure provide features to search information by different types of information, e.g., legally and beneficially held entities' names and business addresses, types of assets and interests? Please explain. *N/A*
- f. Do the means of enabling public access allow for a comparison of the targeted officials' assets and interests over a specific period? *N/A*
- g. Are any measures in place to protect the personal information of the targeted officials and their family members, when applicable? Please explain.

-Information disclosed is treated with utmost confidentiality and access is only by application where by Terms and Conditions are agreed to prevent abuse of the accessed information.

Beyond this, when publishing summaries of declarations in a Gazette, some information such as bank account details and addresses, are filtered. The Law has also prescribed some penalties for those who abuse the accessed information of a particular LPO.

- h. Please provide the link(s) to the online platform/resource where financial disclosure information is available to the public, if applicable. *N/A*

6.2. Do the relevant competent national authorities (law enforcement, FIU, tax and customs authorities, etc.) have access to the financial disclosures? **YES**

If YES or YES IN PART, please explain how such access is granted, including the list of competent national authorities that can access or request access. *-Access is through Application using Public Access Application Form. Authorities that can access include all investigative organs of government.*

7. Verification of financial disclosure information

⁴ <https://www.declarations.gov.mw/?p=489> Date Accessed 6th April 2023

7.1. Is the information disclosed verified? **YES**. This entails physical and documentary verifications.

If YES, please describe the procedures and practices in place to verify the content of financial disclosures, including:

- a. Competent authority that conducts the verification (centralized and/or delegated)
- b. Frequency (regularity) of verifications (ad hoc and/or systematic and routine)
- c. Extent of verification (verification of completeness, compliance with disclosure requirements and/or the analysis of the content of the disclosures)
- d. Verification processes and methodologies (e.g., manual examination, electronic checks undertaken against other databases or relevant information, etc.)

7.2. How does your country determine which disclosures to verify?

Annual verification plan(s)

Periodic mandatory verification of specific categories of officials

Random sampling of declarations

Media reports and/or complaints from the public

Requests from law enforcement / investigative units

Other, please describe: _____

7.3. If applicable, does the electronic financial disclosure mechanism(s) allow for automated verification (cross-checking) of information across various registers and databases held by the public and private entities, such as registries of various assets, company registers, HR, tax and real estate data, etc.? **NO** *We don't have electronic system.*

If YES, please explain.

7.4. Do the competent authorities have timely and direct access to databases and information necessary to verify information in the financial disclosure? **YES**

Please explain.

For example, Assets Declaration Law for Malawi provides for application and granting of information regarding disclosures.

7.5. Do competent authorities have access to the information held by financial institutions, including bank account records? **YES**

Please explain.

The ODPOD can only have access to some accounts upon request to such particular institution or through the Financial Intelligence Authority (FIA) which is also mandated to access such information from the banks.

7.6. Please provide the overall verification rate of financial disclosures in percentages for each applicable verification method.

Annual Declaration (Documentary). 80%. This is because the LPO's either fill incorrect or do not fill in all the required information at all. This is attributed to inadequate public education on how to correctly fill in the forms

Random Sampling (Physical). Less than 1%. Of the 13,000 declarants, the Office can only sample a few LPO's for physical verification.

8. Sanctions

- 8.1. Please provide an overview of sanctions for non-compliance with financial disclosure requirements, including the sanctionable conducts, type of sanctions, forms of sanctions (administrative/criminal) and targeted officials.

Section 18 of the Declarations Act outlines some sanctions as follows:

A listed public officer who, without reasonable cause, fails to submit the required declaration within the time determined by this Act shall, subject to the Constitution and any other written law, be liable to be dismissed from the public office.

A listed public officer who files a declaration which the public officer knows or believes to be inaccurate or misleading, or does not believe to be true, commits an offence and shall be liable on conviction to a fine of K500,000 and imprisonment for two years and shall, subject to the Constitution and any other written law, be dismissed from the public office.

In addition to the penalties prescribed under section 18, every listed public officer, who without reasonable cause, fails to submit a declaration or who knowingly submits an inaccurate or misleading declaration, shall (a) in the case of failure to submit a declaration, be disqualified from holding a public office for a period of three years; (b) in the case of submitting an inaccurate or misleading declaration and upon conviction, be disqualified from holding any public office for a period of seven years; and (c) be referred to the Director of Public Prosecutions(DPP), the Police or the Director of the Anti-Corruption Bureau(ACB) for further investigation⁵

- 8.2. Is there any applicable statute of limitations? *NO*

Please explain. *The Declarations law has no any statute of limitation, presumably because the ODPOD has no prosecutorial powers, it only refers cases to other competent authorities with prosecutorial powers, including the Anti-Corruption Bureau, Malawi Police, Director of Public Prosecutions.*

- 8.3. Please describe the powers available to the competent authority (responsible for verification of disclosures) to impose and enforce the sanctions described above.

The ODPOD does not have powers to enforce any sanctions with respect to verification, but rather only refers to other competent authorities like the ACB, or Police for further investigation where a listed officer is suspected to have submitted inaccurate or misleading declaration. The ODPOD also refers noncompliant LPOs to employment authorities recommending such sanctions as dismissals.

9. International cooperation and asset recovery

- 9.1. Does your country (proactively or at the request of another State party) share financial disclosure information with foreign States? *NO, as ODPOD we are yet to work with other states on issues of asset disclosure.*

If YES, please describe the channels and mechanisms for cooperation.

⁵ Ibid 1

- 9.2. Does your country cooperate and execute requests received from foreign authorities to assist them in the verification of information in their financial disclosures? ***NO, we are yet to receive a request on the same. However, the office is ready to cooperate if such a need arises***
If YES, please explain, including the channels used.
- 9.3. If applicable, please provide the contact details of the authority responsible for the above types of international cooperation (for exchanging financial disclosure information).

10. Good practices

- 10.1. Please provide examples of any good practices in connection with your country's financial disclosure regime that facilitated the recovery and return of proceeds of crime.

None at the moment, however the system has constantly supplied crucial information to the ACB, Police and other authorities to assist in several high profile investigations involving public figures on suspected corrupt practices.

- 10.2. Do you have any case studies or examples where the financial disclosure regime has enabled or facilitated the recovery and return of proceeds of crime in (or for) your country?

There are a lot of cases that the Anti Corruption Bureau is handling on unexplained wealth under section 32 of Corrupt Practices Act that are currently under investigations and prosecution.

- 10.3. Please provide examples of good practices concerning the operation of your country's financial disclosure system, including policies and measures adopted to enhance compliance with financial disclosure requirements.

Our system is very transparent as compared to systems in most countries in the sense that it allows public access and annually publicizes the summary of disclosures filed by LPOs, which is not the case in most jurisdictions. Public access, verification and publishing of declarations somehow, enhances compliance.

11. Challenges

- 11.1. What were the main challenges faced by your country when introducing the financial disclosure system(s)?

-Perception of the officers that it is a witch hunting regime.

-Inadequate human and financial resources to initiate and implement programmes for declaration of assets, liabilities and business interests such as Civic Education and Verification.

- Inadequate skills and technical know-how of staff in the ODPOD as it is a new concept in Malawi.

The ODPOD has one office located in the capital city of Lilongwe

- 11.2. In your opinion, what are the main challenges faced by competent authorities of your country to verify financial disclosures, including accessing information regarding assets and financial interests located abroad?

- ***One of the challenge associated with verification is lack of automated system to access and share information for verification with other registries.***

- *Inadequate human and financial capacity to conduct physical verification of assets, liabilities and business interests*
- *Lack of an international coordination strategy or forum specifically for asset disclosure authorities, to facilitate international cooperation and exchange of information*

11.3. What are the main challenges faced by your country when imposing and enforcing sanctions for non-compliance?

The main challenge is related to the legal framework itself, which stipulates that the ODPOD should only refer to other relevant government institutions for further investigation or recommend to the appointing authorities for dismissal. As such the ODPOD has no direct authority to impose sanctions, which somehow poses as a challenge, if the recommendation is not acted upon.

12. Follow-up to the special session of the general assembly against corruption

12.1. Please describe any other measures, if any, that your country may have taken to implement paragraph 7⁶ of the political declaration adopted by the General Assembly at its special session against corruption held in June 2021.

Malawi's disclosure system already allows public access to declarations filed by LPOs. We have had journalists accessing and publishing in the newspapers disclosures for politicians including the president. This time around, the office is trying to automate the system to make it electronic based from the current paper based system, to enhance accessibility of the same

13. Other

13.1. Please provide any other information you consider relevant to your country's legal framework and practices in connection with establishing an effective financial disclosure system that is not highlighted in the questions above.

- *Need to revise (amend the relevant law) to grant more authority to the Directorate to sanction defaulters as well as enhance the financial and manpower capacity of ODPOD. It is also important to establish and sustain coordination platforms/ mechanisms amongst law enforcement agencies and authorities.*

⁶ 7. We will strengthen our efforts to prevent, identify and manage conflicts of interest, including by assessing and mitigating corruption risks and through effective and transparent financial disclosure systems, with information disclosed by appropriate public officials made available as widely as possible, and we will use innovative and digital technology in this field, with due regard for data protection and privacy rights. In addition, law enforcement agencies have signed MOU's that aim to facilitate seamless flow and exchange of relevant data on financial disclosures which can further detect red flags.