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**Assets Declarations by Public Officers in Zimbabwe  
as an Anti-Corruption Tool**

**by**

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## Table of Contents

Declaration.....	v
Acknowledgments.....	vi
Abbreviations and Acronyms.....	vii
Key Words.....	viii

### CHAPTER ONE

<b>INTRODUCING THE STUDY</b> .....	1
1.1 Introduction.....	1
1.2 Problem Statement.....	1
1.3 Zimbabwe’s Current Position on Assets Declarations.....	3
1.4 Objectives of the Study.....	6
1.5 Significance of the Study.....	7
1.6 Outline of the Remaining Chapters.....	7

### CHAPTER TWO

<b>THE IMPORTANCE OF AN ASSETS DECLARATION REGIME IN ZIMBABWE</b> .....	8
2.1 Introduction.....	8
2.2 Purposes of an Assets Declaration System.....	8
2.2.1 Detection and Prevention of Conflicts of Interests.....	9
2.2.2 Monitoring of Unexplained Wealth.....	10
2.2.3 Culture of Transparency and Accountability.....	12
2.2.4 Fostering Public Confidence in Government.....	12
2.2.5 Empowerment of Anti-Corruption Agencies.....	13
2.2.6 Asset Recovery Purposes.....	14
2.2.7 Encouragement of Foreign Direct Investment.....	14
2.3 The Impact of Assets Declaration Laws.....	15
2.4 Challenges.....	16
2.4.1 Lack of Resources.....	16
2.4.2 Assets Declarations and the Right to Privacy.....	17
2.4.3 Human Rights and Constitutional Challenges to Illicit Enrichment.....	17
2.4.4 Lack of Political Will.....	18

2.4.5	Unpunished Corruption .....	19
2.4.6	Independence of Assets Declarations Administrators .....	21
2.4.7	Absence of Common Enforceable Standards .....	21
2.4.8	Lack of Clarity .....	21
2.5	Conclusion.....	22

### **CHAPTER THREE**

	<b>ELEMENTS OF AN EFFECTIVE ASSETS DECLARATION REGIME FOR ZIMBABWE .....</b>	<b>23</b>
3.1	Introduction .....	23
3.2	Aims and Objectives of an Assets Declaration System .....	23
3.2.1	Conflicts of Interests .....	24
3.2.2	Illicit Enrichment .....	24
3.3	Subjects of the Assets Declaration Regime .....	25
3.4	Contents of the Declarations .....	28
3.4.1	Immovable Assets .....	29
3.4.2	Movable Assets .....	29
3.4.3	Other Positions, Businesses and Sources of Income .....	30
3.4.4	Official Salary .....	30
3.4.5	Gifts .....	30
3.4.6	Debts and Liabilities .....	31
3.5	Public Access to Declarations .....	31
3.6	Clear Declaration Forms and Procedure.....	35
3.7	Filing Frequency .....	36
3.8	Administration of Declarations.....	36
3.9	Monitoring Committee .....	38
3.10	Verification of Declarations .....	38
3.11	Sanctions for Non-Compliance .....	40
3.12	Protection of Whistleblowers .....	42
3.13	Financing of the Assets Declaration Regime.....	43
3.14	Conclusion.....	43

**CHAPTER FOUR**

**CONCLUSION AND RECOMMENDATIONS** ..... 45

4.1 Conclusion..... 45

4.2 Recommendations..... 47

    4.2.1 Start Slowly and Build Up Capacity ..... 47

    4.2.2 Training of Administrators and Declarants..... 47

    4.2.3 Criminalise Illicit Enrichment ..... 48

    4.2.4 Simplify the Declaration Process ..... 48

    4.2.5 Engage the Public and Promote Public Participation ..... 48

**BIBLIOGRAPHY**..... 50



## Declaration

I, **Jorum Duri**, declare that **Assets Declarations by Public Officers in Zimbabwe as an Anti-Corruption Tool** is my own work, that it has not been submitted for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

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## Abbreviations and Acronyms

ACCA	Anti-Corruption Commission Act
ADO	Assets Declaration Office
ALAC	Advocacy and Legal Advice Centre
AU Convention	African Union Convention on Preventing and Combating Corruption
OECD	Organisation for Economic Co-operation and Development
VID	Vehicle Inspectorate Department
UNCAC	United Nations Convention against Corruption



## **Key Words**

Accountability

Anti-corruption tool

Assets declarations

Conflict of interests

Corruption

Public interest

Public officer

Transparency

Unexplained Wealth

Zimbabwe





## CHAPTER ONE

### INTRODUCING THE STUDY

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#### 1.1 Introduction

Regarded as the “jewel of Africa” as well as the “breadbasket of Africa” in the 1980s, Zimbabwe has become a “begging basket” in recent years.<sup>1</sup> With the Zimbabwean economy languishing in depression, corruption has become an accepted and almost expected way of life, particularly in the public sector. Political and bureaucratic corruption has strained the economy of Zimbabwe as both senior and junior public officers resort routinely to corrupt activities.<sup>2</sup> Corruption by public officers has become ubiquitous, a condition summed up by the conviction of the head of the Zimbabwe Anti-Corruption Commission, a former high-ranking police officer, last year of corruption.<sup>3</sup> Public officers are known for abusing their offices to acquire assets unlawfully and for receiving bribes to provide better services.<sup>4</sup>

The absence of an assets declaration regime for public officers in Zimbabwe has facilitated looting with impunity. The purpose of this paper is to demonstrate the need for disclosure of assets by public officers in Zimbabwe. In doing so, it will deal also with the main elements of an assets declaration regime and how to ensure that the declaration measures are effective.

#### 1.2 Problem Statement

Zimbabwe is regarded as one of the most corrupt countries on the African continent. In 2015, Transparency International ranked Zimbabwe number 150 out of 168 countries, with first place signifying the least corrupt and 168th place the most corrupt.<sup>5</sup> On a scale of 0 (highly corrupt) to 100 (least corrupt) for public sector corruption, Zimbabwe scored 21, which has been its score since 2013.<sup>6</sup> Any score below 50 on the Corruption Perceptions Index indicates serious levels of public sector corruption, and a score of 21 clearly shows how widespread corruption is perceived to in Zimbabwe. During a survey in 2013 by

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1 Willems (2005) 100.

2 Goredema (2003) 27.

3 Nemukuyu (2015).

4 Tizora (2009) 10.

5 Transparency International Corruption Perceptions Index (2015).

6 Transparency International Corruption Perceptions Index (2013) & Transparency International Corruption Perceptions Index (2015).

Transparency International in Zimbabwe, 70% of the participants viewed the public sector as extremely corrupt, with 86% identifying the police as most corrupt, 69% the judiciary and 69% parliament.<sup>7</sup> Clearly the public views public officers as considerably more corrupt than people in the private sector.

Earlier this year, it was revealed that Zimbabwe lost US\$15 billion in the diamond sector through corruption.<sup>8</sup> For a country with a small economy, with a national budget of US\$4 billion for 2016,<sup>9</sup> and which has been unable to pay a huge US\$7 billion debt since 2000,<sup>10</sup> this loss showed how corruption in the public sector continues to injure an already crippled economy. In other words, the amount lost to corruption was sufficient to revive the economy of Zimbabwe, but, as always, corruption heavily affects the poorest sections of society who bear the cost of the distortions it produces.<sup>11</sup>

Corruption in the Zimbabwean public sector has been aggravated by the lack of preventive and accountability mechanisms, not least the lack of assets declaration laws. Most of the time, the extent of the asset holdings of public officers become known only when they are going through a nasty divorce or some other civil law suit, or when they simply brag about how rich they are. In 2010, the country was shocked when the wife of Doctor Ignatius Chombo, the Minister of Local Government, Public Works and Urban Development, claimed that she and her husband owned close to a hundred houses and business stands in Zimbabwe, 12 investment companies, more than 3000 hectares of farm land, 15 vehicles, various assets in South Africa, and mines, farms and safari lodges in Zimbabwe.<sup>12</sup> The Minister did not earn much money in the 1980s, before holding public office, and his is a good example of how public officers in Zimbabwe are exploiting the absence of assets declaration laws to loot the public purse and get away with it.

Another senior public officer, Obert Mpfu, who mysteriously owns thousands of hectares of land in Zimbabwe, bought a bank for more than US\$20 million and went on a real estate “shopping spree” when he was the Minister of Mines. It has been alleged that

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7 Transparency International Global Corruption Barometer (2013).

8 Magaisa (2016).

9 Majaka (2015).

10 Muvundusi (2014).

11 Doig & Theobald (2003) 1.

12 Matambanadzo (2010).

during his tenure there was mass looting of resources, especially in the diamond sector.<sup>13</sup> After he was removed from the post, he received a financial windfall, including the closure of the bank he had bought,<sup>14</sup> leading to many questions being asked about the legitimacy of his fortunes. However, there was no chance of remedial action because no official record of his assets ever existed.

### **1.3 Zimbabwe's Current Position on Assets Declarations**

In 1985, the parliament of Zimbabwe enacted the Prevention of Corruption Act in a bid to fight corruption which had already started infiltrating the newly independent country.<sup>15</sup> The Act provides for the prevention of corruption and the investigation of claims arising from dishonesty or corruption.<sup>16</sup> The Act is still the main legislative source of anti-corruption law in Zimbabwe. However, it has been criticised as being quite inadequate and for having many loopholes that have made it possible for corruption to thrive.<sup>17</sup> The Act does not provide in any way for assets declarations by public officers and this omission may be regarded as one of its chief inadequacies. Public officers have taken advantage of this loophole to amass resources, with no questions asked.

In 2004, the Anti-Corruption Commission Act (ACCA)<sup>18</sup> was enacted, which established the Zimbabwe Anti-Corruption Commission comprising members appointed by the President. The Anti-Corruption Commission has a mandate to fight corruption and makes recommendations to the government and to organisations on measures in this regard.<sup>19</sup> In terms of the Act, the members of the Commission, together with their spouses, are required to disclose to the President their assets as well as every occupation, service or employment in which they are involved and from which they receive any remuneration.<sup>20</sup> However, the Commission has been conspicuously ineffective, and also has been implicated

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13 Martin & Taylor (2012) 25.

14 Munyoro (2015).

15 Prevention of Corruption Act (Chapter 9: 16).

16 Long Title of the Act.

17 Goredema (2003) 27.

18 Anti-Corruption Commission Act (Chapter 9: 22).

19 Article 12 of ACCA.

20 Article 8(1) of ACCA.

itself in corrupt activities several times. Recently four managers of the Commission were suspended for alleged corruption.<sup>21</sup>

In 2007, Zimbabwe ratified the United Nations Convention against Corruption.<sup>22</sup> The Convention obligates States Parties to establish measures and systems requiring public officers to declare their assets, employment, investments and substantial gifts or benefits from which a conflict of interests may result with respect to their functions as public officers.<sup>23</sup> Nine years later, Zimbabwe has not yet established any assets declarations measures, which failure has aggravated corruption by public officers. Article 20 of UNCAC provides that States Parties shall consider establishing, as a criminal offence, any significant increase in the assets of a public officer that he or she cannot explain reasonably in relation to his or her lawful income. For this provision to be satisfied there is a need for a legislative enactment to obligate public officers to declare their assets.

Zimbabwe has ratified also the SADC Protocol against Corruption, which reaffirms the need to eliminate corruption by States Parties through the adoption of effective preventive and deterrent measures and through the strict enforcement of legislation to eliminate all types of corruption.<sup>24</sup> Article 4(1)(a) of the Protocol provides that States Parties must create standards of conduct for the correct, honourable and proper fulfilment of public functions, as well as mechanisms to enforce these standards.

Zimbabwe is also a member of the African Union Convention on Preventing and Combating Corruption. Article 7 of the Convention, stipulates that States Parties must require either all public officers or designated public officers to declare their assets at the time of assumption of office and after their term of office in the public service has ended.

Section 198 of the Constitution of Zimbabwe Amendment Act 20 of 2013 requires the enactment of national legislation regulating disclosure of assets by public officers and establishing codes of conduct to be observed by public officers. It also requires that there should be measures specifying the standards of good corporate governance to be observed by government bodies and other state-controlled commercial entities. This constitutional

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21 Maodza (2016).

22 United Nations Convention against Corruption (2003), hereinafter referred to as UNCAC.

23 Article 8(5) of UNCAC.

24 Preamble to the SADC Protocol against Corruption (2001).

obligation has not been implemented yet, as there is no assets declaration regime in place in the country.

Earlier this year, the Zimbabwe Parliament's Standing Rules and Orders Committee approved a draft Assets Declaration Register that is intended to require parliamentarians, together with cabinet members, to declare their assets in terms of the Constitution and of the House's Standing Rules and Orders.<sup>25</sup> According to the draft, all immovable assets must be declared, and such declaration must disclose the address and the country in which the asset is located, its year of purchase, the percentage of the asset owned and names of any co-owners.<sup>26</sup>

Movable properties that are subject to registration by law, such as cars, must be declared also, along with information encompassing a brief description of the asset, its location, year of acquisition and estimated value.<sup>27</sup> Other movable property, such as precious stones, jewellery, and coins valued in excess of US\$25 000 are to be declared, together with movable assets valued in excess of US\$15 000 and real estate alienated in the past 12 months. In addition, bank accounts, deposits, investment funds, any other savings systems and any debts and liabilities above US\$25 000 will have to be declared.<sup>28</sup> Part V of Annex 1 to the draft Assets Declaration Register provides that any gifts, services or advantages free of charge or subject to subsidies as compared to the market value received from persons, organisations, companies, autonomous administrations, national companies or foreign public institutions and worth more than US\$4 500 must be declared, recording the source of the gift, service or advantage. It is a criminal offence and contempt of Parliament for a public officer to make an inaccurate or incomplete declaration.<sup>29</sup>

The draft Assets Declaration Register is a step in the right direction, provided that it does not suffer stillbirth, as happened previously with similar steps meant to ensure disclosure of assets by parliamentarians. What is more, the draft cannot be regarded as sufficient in itself to fight corruption in Zimbabwe, bearing in mind that grand and bureaucratic corruption thrive in the country amongst public officers at all levels. Further,

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25 Gumbo (2016).

26 Annex 1 of the Asset Declaration Register Draft.

27 Part I of Annex 1.

28 Part IV of Annex 1.

29 Annexes 1 and 2.

the draft does not cover politically exposed persons such as senior government officers, judges and military leaders who hold important positions in the public sector.

From the above discussion, it is evident that Zimbabwe has failed in its obligation to formulate and implement a comprehensive assets declaration regime aimed at ensuring transparency and accountability in the public sector. This has aggravated corruption by public officers in the country, rendering the need for such a regime even more urgent. The Advocacy and Legal Advice Centre (ALAC) conducted a mini-survey on the need for an assets declaration regime in Zimbabwe. Some 98% of the respondents agreed that Zimbabwe should establish an assets declaration regime which should provide for public disclosure and that there should be follow-up in relation to false declarations.<sup>30</sup> The ALAC's mini-survey indicated clearly that an assets declaration regime is overdue in Zimbabwe.

#### **1.4 Objectives of the Study**

This paper has three cardinal objectives which are:

1. To analyse the importance of assets declarations as a tool to fight corruption by public officers in Zimbabwe;
2. To outline and examine the essential elements of an effective assets declaration system;
3. To make recommendations on how Zimbabwe can establish an effective assets declaration system to ensure transparency, accountability and openness in the public sector.

#### **1.5 Significance of the Study**

The absence of assets declaration measures in Zimbabwe has made it difficult to hold accountable public officers implicated in corruption and found in possession of unexplained assets. Corruption by public officers is hard to prove, especially when there are no measures to ensure official acknowledgement of their assets. This research is significant as it confronts an important gap in the anti-corruption laws of Zimbabwe and will provide recommendations on how this problem may be remedied.

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30 Mutonhori (2014).

## **1.6 Outline of the Remaining Chapters**

Chapter Two of the paper examines the importance of an assets declaration regime in the fight against corruption. Reference will be made to selected states which have used assets declaration systems to make progress in the fight against corruption.

Chapter Three will analyse the indispensable elements of an effective assets declaration regime. It will include specific reference to assets declaration laws in certain other jurisdictions which have been effective in the fight against corruption by public officers.

Chapter Four will offer recommendations for the formulation of an effective assets declaration system in Zimbabwe. It will explore also how best the system can be applied in harmony with other anti-corruption tools and bodies in the fight against corruption in the public sector.



## CHAPTER TWO

### THE IMPORTANCE OF AN ASSETS DECLARATION REGIME IN ZIMBABWE

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#### 2.1 Introduction

The plundering of resources by public officers in Zimbabwe is a serious issue which must be addressed immediately. Corruption thrives in most African states due to a lack of transparency and accountability measures, and it takes root where democratic institutions have been compromised.<sup>1</sup> One way of effectively addressing corruption is to require public officers to declare their assets.

In most countries public officers, particularly those holding positions susceptible to corruption, are expected to declare their assets and any other financial interests. If a public officer does not declare his assets or if the figures show an unreasonable or abnormal increase in assets, the officer could be prosecuted, his unexplained assets could be forfeited or he could be declared unfit to hold public office. The declaration system helps in the prevention and management of conflicts of interests involving public officers.

Establishing an assets declaration regime is fraught with challenges. The violation of the right to privacy of public officers and their families and the lack of political will are the two main challenges in this regard.

#### 2.2 Purposes of an Assets Declaration System

An assets declaration regime has two broad anti-corruption purposes, which are prevention and accountability. The preventive purposes include detection and prevention of conflicts of interests, and increasing transparency and integrity of institutions. The accountability purposes include the monitoring and detection of unexplained increase in the wealth of public servants, fostering citizens' confidence in public administration and providing much needed ammunition for anti-corruption agencies to prevent and combat corruption in public institutions. An assets declaration system also may help to attract foreign direct investment.

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1 Kofele-Kale (2006) 698.



### 2.2.1 Detection and Prevention of Conflicts of Interests

It is important to understand the nature of conflicts of interests as they are a *sine qua non* of corruption. A conflict of interests exists when there is a potential risk of abuse of official power for private gain, whilst corruption occurs when an official actually abuses his or her official position for private gain.<sup>2</sup> Therefore, it may be said that generally a conflict of interests is embedded in any corrupt activity.

A conflict of interests has been defined as a broad umbrella that comprises all sorts of tensions between official and private roles, that is, “an umbrella under which downright corruption and fraud are only the most obviously anti-social behaviours”.<sup>3</sup> Due to the high risk and detrimental effect of any conflict of interests, it is desirable that the conflict should be avoided in order to ensure transparency and impartiality in the public sector at all times.

A conflict of interests has been described as an indicator, a precursor and a consequence of corruption if left unbridled, and there is general agreement that the prevention of conflicts of interests plays a key role in the fight against corruption.<sup>4</sup> Such conflicts occur at all tiers of government and can influence decision-making in courts, parliamentary committees, town councils, international organisations, educational institutions, expert committees and the like, and therefore can hinder the proper functioning of the public sector.<sup>5</sup> The most unfavourable consequence of conflicts of interests is that the integrity of the government as a whole is brought into question, thereby decreasing public confidence and trust in the public sector.<sup>6</sup>

In Zimbabwe, public officers have become involved regularly in situations where their public duty conflicted with their personal interests. For example, in 2013, Supa Mandiwanzira, the owner of a broadcasting company, was appointed as the Deputy Minister of Information and Broadcasting Services, which is the ministry responsible for the administration and supervision of broadcasting companies.<sup>7</sup> This meant that the Minister was both stakeholder in and custodian of the media industry, entailing the possibility of abuse of power, corruption and unfair competition.

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2 Catchick (2014) 1, 3.

3 Auby, Breen & Perroud (2014) xiv-xv.

4 Vlassis (2008) 5.

5 Peters (2012) 3.

6 Davids (2008)

7 Kagara (2013).

An assets declaration system detects and prevents any apparent or potential conflicts of interests which a public officer may encounter. Hence its plays a pivotal role in the management of conflicts of interests. According to the OECD, even though it is the responsibility of public officers to manage their own conflicts of interests, assets declarations help in ensuring that such conflicts are prevented and properly managed by their superiors.<sup>8</sup> Bearing in mind that conflicts of interests are an inherent component of corruption, their prevention and management can play a significant role in the fight against corruption in Zimbabwe. An assets declaration regime would remind Zimbabwean public officers regularly to analyse their situations for any potential conflicts of interests, and guide them as to the identification and avoidance of such conflicts.<sup>9</sup>

In terms of Article 7(4) of UNCAC, States Parties are encouraged to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interests. An assets declaration law would contribute to fulfilling this hortatory obligation, since it is a purpose of an assets declaration system to ensure that the public sector is transparent and that any conflicts of interests are detected and prevented.

### **2.2.2 Monitoring of Unexplained Wealth**

Corruption by public officers is very difficult to prove as usually there is no trail for authorities to follow. Most of the time, the parties involved in a corrupt relationship are equally guilty and will not testify against one another. What is more, the crime of corruption usually has no obvious victim who could lodge a complaint concerning the violation of his or her rights. Given the absence of direct evidence and witnesses, law enforcement agencies have to rely upon circumstantial evidence in order to detect and prosecute corruption offences.<sup>10</sup> The only signal that corruption has taken place may be the abnormal or unusual increase in the assets of the public officer who, more often than not, will start living lavishly, buy expensive cars, establish businesses and build houses, at costs which his licit income cannot sustain. With an assets declaration regime, the prosecution and conviction of corrupt officers is rendered smooth and uncomplicated.<sup>11</sup>

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8 OECD (2015) 116.

9 Barnes *et al* (2012) 13.

10 Jahawickrama, Pope & Stolpe (2002) 24.

11 Messick (2009) 7.

Assets declarations are meant to record information that will expose any assets or income not attributable to salary or any other legitimate sources of income.<sup>12</sup> In Argentina, for example, the extraordinary 1155% increase in the declared assets of President Cristina Fernandez de Kircher led to many questions being asked regarding the spike in her wealth.<sup>13</sup> The declarations can be used as a special weapon by countries for the monitoring of assets owned by public officials.<sup>14</sup> The 1990 assets declaration law of Hong Kong was the first to be used for the purpose of assets monitoring.<sup>15</sup> In Albania, the assets declaration law emphasises that its purpose is the auditing and monitoring of the assets of public officers and their close relatives.<sup>16</sup>

In Zimbabwe, one need not to go beyond the car parks at government offices to establish a reasonable suspicion that public officers are living beyond their means. And if one does go beyond the car parks to the residential areas of public officers, the most obvious conclusion is that public officers are living a long way beyond their means. One good example is that of the Local Government Minister, Savior Kasukuwere, who built a 50-bedroom mansion in Glen Lorne, prompting people to ask “what miracle he performed” to raise the money required to build the mansion, considering that it could not have been financed by his salary and private business interests.<sup>17</sup>

It is worth noting that assets declarations can protect public officers from false accusations of unexplained wealth.<sup>18</sup> This is true especially of political leaders who might be targeted by political opponents in a bid to discredit them. Any unfounded allegations of unexplained wealth can be refuted by the assets declaration record of the public officer. Law enforcement agents can review the public officer’s assets declaration register if any suspicion arises concerning his assets or his financial behaviour.<sup>19</sup>

Given its monitoring function, an assets declaration regime may deter public officers from engaging in corrupt business. The fact that their assets are recorded and monitored

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12 Barnes *et al* (2012) 14.

13 Transparency International (2013).

14 OECD (2011) 30.

15 Messick (2009) 13.

16 Law on the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials No. 9049 of 2003.

17 The Zimbabwean Mail (2016).

18 OECD (2011) 12.

19 Messick (2009) 7.

gives fair warning to the officers that any unexplained increase in their assets will be revealed. Being called upon to prove the origin and legitimacy of his assets affects the reputation of a public officer, and many may avoid corruption in order to avoid going through the public and humiliating process of attempting to explain ill-gotten assets.

### **2.2.3 Culture of Transparency and Accountability**

Good governance is founded on a culture of integrity, transparency and accountability. A public sector without accountability and transparency mechanisms opens the door for corruption to thrive. Since public officers are vested with broad public power to decide on vital issues, it is essential that they are transparent and accountable in their official activities. United States Justice Stephen G Breyer, at the Global Forum against Corruption in 1999, stated the following:

As much as I hate filling out disclosure forms they are a reminder of my ethical responsibilities and my accountability to the public.<sup>20</sup>

An assets declaration regime promotes a culture of transparency and accountability and helps to ensure that scarce resources will be used honestly and wisely for the betterment of the public.<sup>21</sup>



In Kenya, unexplained or undeclared assets by judges, magistrates and police officers were used as the basis for the vetting of the officers.<sup>22</sup> Any vetted officer found in possession of unexplained or undeclared assets was regarded as unfit to continue holding his office. This example indicates clearly that an assets declaration system is an important tool in the establishment of a culture of integrity, transparency and accountability in the public sector.

### **2.2.4 Fostering Public Confidence in Government**

A duty is bestowed upon public officers to serve public interests, to be accountable and to commit to the democratic way of life. In order to foster and maintain public confidence in the government, it is of great importance to develop and maintain systems of accountability, impartiality and transparency.<sup>23</sup> Citizens expect public officers to be

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20 Barnes *et al* (2012) 7.

21 Burdescu *et al* (2009) 1.

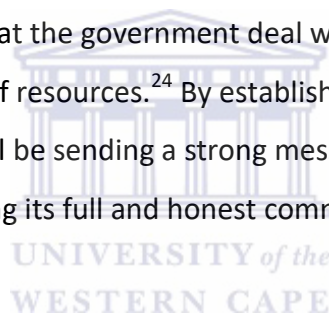
22 Transparency International Kenya (2014).

23 Larbi (2007) 205.

transparent and accountable in the performance of their public duties and not to misuse their public power for private gains. One of the systems developed by governments to promote public confidence is assets disclosure. By disclosing their assets, public officers declare that they have nothing to hide and that there will be no abuse of the power entrusted to them by the public.

Public confidence in government is boosted when citizens are aware that public officers are living within their means with nothing to hide, that any conflict of interests by public officers is being tracked and managed, and that the assets of the officers are being monitored closely.

The Zimbabwean government needs urgently to boost public confidence in the public sector. This year there have been massive protests in Zimbabwe both on social media (for example, #ThisFlag and #Tajamuka campaigns on Twitter and Facebook) and on the streets, by citizens demanding that the government deal with systemic corruption, bad governance and the plundering of resources.<sup>24</sup> By establishing an assets disclosure regime, the Zimbabwean government will be sending a strong message to its citizens that corruption will not be tolerated and signalling its full and honest commitment to the fight against corruption.



### **2.2.5 Empowerment of Anti-Corruption Agencies**

Anti-corruption agencies around the world have a common mandate to fight corruption. However, this fight is hindered by a lack of information about the assets of people vulnerable to corruption, making it difficult for the agencies to detect and investigate public officers for corruption.

It is submitted that an assets declaration regime gives much-required ammunition to anti-corruption agencies in the fight against public sector corruption by providing information regarding the assets and financial status of public officers. The anti-corruption agency will verify the information received and use it to monitor increases in the assets of public officers or to investigate allegations of corruption or suspicious behaviour by public officers. An agency operating in a country with an assets declaration regime should be able

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24 Transparency International Zimbabwe (2016). See also Reuters (2016).

to carry out its mandate more effectively than one operating in a country without a disclosure system.

In 2003, the Anti-Corruption Commission in Slovenia reported that senior political leaders did not declare valuable assets and potential conflicts of interests as required by the law, leading to a public outcry and calls for the resignation of said political leaders.<sup>25</sup> This example shows clearly that with an assets declaration system in place, anti-graft agencies can become more active and effective.

### **2.2.6 Asset Recovery Purposes**

Anti-corruption mechanisms support one another in the fight against corruption. Records of assets declarations may be used to identify and track any ill-gotten assets for the purposes of asset recovery. This idea is supported by UNCAC, which provides that States Parties may share information on assets declarations with relevant authorities in other States Parties for the investigation, claiming and recovery of proceeds of corruption.<sup>26</sup>

### **2.2.7 Encouragement of Foreign Direct Investment**

Foreign direct investment is beneficial to developing countries as it provides capital for investment, brings in foreign currency, creates job opportunities, increases competition in the local market and generates tax revenues for the government.<sup>27</sup> Foreign direct investment is distributed unevenly throughout the world. It is common knowledge that when a foreign investor is considering investing in a developing country, key factors considered by said investor is the level of corruption in the country and the mechanisms in place to fight corruption. Nobody wants to invest in a country where there is lack of transparency and accountability.

In a highly corrupt country, foreign investors will be required to pay bribes for licencing and other legal documentation, which ultimately will increase investment costs.<sup>28</sup> The cost of a damaged reputation for an investor implicated in a corruption scandal may force him to look for countries with lower levels of corruption.<sup>29</sup> Even worse, in countries

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25 Filipovic (2013).

26 Article 52(5) of UNCAC.

27 Quazi, Vemuri & Soliman (2014) 1.

28 Al-Sadig (2009) 269.

29 Zhao (2003) 46.

such as China and India involvement in corruption might result in serious legal action against the investor, including imprisonment and payment of huge fines.<sup>30</sup> Countries with high levels of corruption pose a risk to investment as there is potential for political instability and civil unrest.<sup>31</sup> Due to the high risks and uncertainties, foreign investors may shun such countries.

An assets declaration regime encourages foreign direct investment. Investors obtain the impression that efforts are being made by the government to ensure accountability and transparency in the public sector, thereby making the country a good investment choice. Zimbabwe currently is struggling to attract foreign direct investment. With an assets declaration regime, the risks and uncertainties caused by corruption may be minimised, and this may help improve Zimbabwe's potential as an investment destination.

### **2.3 The Impact of Assets Declaration Laws**

Transparency International's Global Corruption Report of 2006 contained a comparative study by Mukherjee & Gokcekus on whether assets declaration laws have an impact on preventing and combating of corruption.<sup>32</sup> The findings of the study are listed below:

- Countries with established assets declaration laws have lower perceived levels of corruption than countries which have enacted assets declaration laws recently.
- Perceived levels of corruption are lower in countries with assets declaration laws which provide for prosecution of offending public officers than in countries with assets declaration laws which do not provide for prosecution of offenders.
- Countries with verification mechanisms for assets declarations have lower perceived levels of corruption than countries which merely stockpile declarations and do not perform verifications.
- Countries which allow public access to assets declaration records, either by online posting or by allowing public inspection at declaration registry offices, have lower perceived levels of corruption than countries which restrict public access to declarations.

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30 Ravi (2015) 101.

31 Zhao (2003) 46.

32 Mukherjee & Gokcekus (2006) 325-327.

- There is no correlation between the level of officials required to declare assets and the perceived levels of corruption in the country.
- The inclusion of assets declaration provisions in a country's constitution does not reduce corruption. In other words, constitutional provisions demonstrating an intention to combat corruption cannot reduce corruption on their own. Thus, an assets declaration regime which is effective practically is required.

The findings of Mukherjee & Gokcekus demonstrate that an effective assets declaration regime can be a very powerful weapon in the fight against corruption. Zimbabwe may benefit from such a regime provided that it is drafted in an effective and credible manner. The first of the findings suggests that the longer assets declaration laws are in existence, the better their chances of success, and therefore Zimbabwe may have to wait for some years after enacting an assets declaration law to realise its impact on the levels of corruption in the country.



## **2.4 Challenges**

### **2.4.1 Lack of Resources**

Successful administration and monitoring of assets declarations require resources. Human resources are required to receive, verify and maintain assets declaration forms. Financial resources are required in order to remunerate staff responsible for the administration of assets declarations and for other related work. The Tunisian assets declaration system currently is facing problems of limited human and financial resources, rendering the system largely ineffective.<sup>33</sup>

The issue of resources poses a huge problem for Zimbabwe, which is on its financial knees. The Zimbabwean government has been struggling to pay civil servants this year, and has had to reschedule pay dates constantly.<sup>34</sup> The government might find it difficult to add more civil servants to and to cover the administrative costs incurred in the maintenance and management of assets declarations. This may result in an assets declaration system which is implemented with limited financial resources and human capital, and which, consequently, runs the risk of performing poorly.

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33 OECD (2016) 189.

34 Buchanan (2016).



#### **2.4.2 Assets Declarations and the Right to Privacy**

The right to privacy can be regarded as a major obstacle to the establishment of an assets declaration regime. There is an inherent tension between the right to privacy and the public interest in access to information concerning public officers. Assets declarations, whether public or confidential, infringe on public officers' right to privacy.<sup>35</sup> Even more, some disclosure laws require the spouses and minor children of public officers to declare their assets as well, which undoubtedly violate their right to privacy. Some public officers may use the right to privacy as a shield to avoid making assets declarations, and thus undermine this anti-corruption mechanism.<sup>36</sup>

There is great public interest in combating corruption, with assets declaration being one of the more effective ways of doing so. The public interest demands that public officers be accountable and that any conflict of interests be identified and managed effectively. However, Article 13(1)(d) of UNCAC provides for the restriction of access to information in terms of the law and "for the respect of the rights or reputation of others".

It is a huge task to find a proper balance between the right to privacy and the public interest in information contained in assets declarations. The variation in balancing these two contrasting interests is immense across countries. Some countries have confidential assets declarations which are accessible to the public only on good cause shown. Other countries require their public officers to declare their assets publicly and make the declarations readily available to the public. According to Neamtu & Dragos, all countries should strike a balance between fully disclosing assets declarations to the public for the sake of transparency and accountability on the one hand, and upholding the right to privacy on the other hand.<sup>37</sup>

#### **2.4.3 Human Rights and Constitutional Challenges to Illicit Enrichment**

UNCAC allows for the criminalisation of illicit enrichment, which it defines it as "a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income".<sup>38</sup> A public officer is guilty of illicit enrichment if he or she is

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35 De Speville (2002) 35.

36 Hatchard (2014) 45.

37 Neamtu & Dragos (2015) 152.

38 Article 20 of UNCAC.

found in possession of wealth disproportionate to his or her salary, and said officer is unable to provide a satisfactory explanation for the wealth. It is a very powerful anti-corruption tool, but one which is very controversial. In the prosecution of illicit enrichment cases, assets declarations may be used for investigating and generating evidence of inexplicable wealth.<sup>39</sup>

Human rights and constitutional challenges often arise in relation to the criminalisation and prosecution of illicit enrichment. It has been challenged for violating the constitutional presumption of innocence as it supposedly shifts the onus of proof from the state to the accused, who is required to prove his or her innocence.<sup>40</sup> Illicit enrichment has been criticised for violating the right against self-incrimination as well.<sup>41</sup> Failure by a public officer to explain a sudden increase in wealth results in automatic self-incrimination.

These objections to illicit enrichment have led to international anti-corruption instruments not creating a hard obligation for States Parties to criminalise it. States Parties with constitutional concerns need not criminalise it. Zimbabwe has not criminalised illicit enrichment despite calls by the media, non-governmental organisations and civil societies to do so. There is a collective right to a corruption-free society and the Constitution provides for the limitation of rights in a manner which is fair, reasonable, necessary, and justifiable in a democratic society.<sup>42</sup> Therefore, Zimbabwe may be able to criminalise illicit enrichment with little fear of serious constitutional and human rights challenges.

#### **2.4.4 Lack of Political Will**

The absence of political will in the fight against corruption results in a lack of commitment to the enforcement of anti-corruption laws and the punishment of corruption offenders.<sup>43</sup>

Politicians can change a culture of corruption because they are the lawmakers and are responsible for the allocation of funds for the enforcement of anti-corruption laws.<sup>44</sup>

Therefore, an assets declaration law is bound to fail in the absence of political will, as there will be no commitment by lawmakers to ensure the successful implementation of the law.

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39 Muzila *et al* (2012) 41.

40 Muzila *et al* (2012) 30.

41 Muzila *et al* (2012) 32.

42 Section 86(2) of the Constitution.

43 Stapenhurst, Johnston & Pelizzo (2006) 252.

44 Quah (2013) 153.

The lack of political will may result also in politicians not providing sufficient funds for the management and monitoring of assets declarations. Again, a poorly funded assets declaration system will result in the stockpiling of declarations which are not verified and monitored, and thus the system is doomed to failure.

Assets declaration laws target politicians as well and this may lead to their supporting reluctantly the establishment of an assets declaration system. In Zimbabwe, politicians are well-known for being corrupt and for possessing unexplained wealth. Therefore, they might hesitate to legislate an assets disclosure system which could be used against them. Perhaps this is why, despite several calls for the introduction of an assets declaration regime in Zimbabwe, there has been no material progress yet.

The mobilisation of parliamentarians to fight corruption and to enact effective anti-corruption laws is an important step in the establishment of an efficient anti-corruption system.<sup>45</sup> Johnston & Kpundeh observe correctly that the lack of political will result in anti-corruption measures becoming empty gestures or will camouflage continued abuses.<sup>46</sup>

#### **2.4.5 Unpunished Corruption**

Closely linked to lack of political will is the problem of corruption committed by politically connected individuals going unpunished. Unpunished corruption encourages further corruption, leading to its becoming widespread or systemic, and eventually to its being accepted as inevitable.

In Zimbabwe, impunity for corruption by senior public officers has been a huge issue since 1980. Some of the most famous unpunished corruption scandals in Zimbabwe are recorded below.

- The Willowvale Scandal of 1989 involved senior politicians and well-connected individuals who used a government platform to buy cars at factory prices, reselling them for profit on the black market.<sup>47</sup> President Mugabe stopped further

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45 Stapenhurst, Johnston & Pelizzo (2006) 253.

46 Johnston & Kpundeh (2005) 151.

47 Chivara (2010).

investigations by the Sandura Commission which was set up to deal with the scandal and later pardoned all the culprits involved in the scam.<sup>48</sup>

- The 1995 VIP Housing Scandal included the looting of contributions made by civil servants to a housing fund.<sup>49</sup> Instead of being used to help civil servants, the funds were diverted to an illegal housing scheme which built mansions for top government officials, including the commissioner of police, a judge and the First Lady, with some officials even being given loans. Needless to say, the contributing civil servants did not receive houses and, what is more, various construction projects were suspended nationwide.<sup>50</sup> Although the officials who benefited were pressurised into paying back the money, no one was prosecuted.
- The looting of the War Victims Compensation Fund in 1997 involved funds which were meant to compensate war veterans who were disabled physically during the liberation struggle. The Fund was looted by able-bodied politicians and senior public officers, including the police commissioner who claimed 90% disability compensation.<sup>51</sup> Despite the public outcry and a report from a commission of inquiry, not one person was prosecuted.
- The Zimbabwe Iron and Steel Company Scandal involved top government officials looting resources from the company. A report by the National Economic Conduct Inspectorate provided a list of the government officials implicated and exposed how funds were siphoned off by way of controversial tenders, expensive trips and dubious allowances given to top government officials.<sup>52</sup> Again, no prosecutions took place and the people incriminated, including the country's then Vice-President, continued to hold key government positions.

From the above examples, it is clear that impunity for corruption is a major issue which may hinder the establishment of an effective assets declaration system. Such a system requires zero tolerance towards corruption and a categorical commitment to accountability.

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48 Compagnon (2011) 198.

49 Chikuhwa (2013) 169.

50 Chikuhwa (2013) 169.

51 Laiton C (2014).

52 Muleya (2005).

#### **2.4.6 Independence of Assets Declarations Administrators**

The protection of officers who administer assets declaration against political and any other undue interferences is critical. The declaration office should be able to operate independently and without fear of any outside influence. In Zimbabwe, political interference is a common characteristic of anti-corruption work. For example, in March 2013 the Zimbabwe Anti-Corruption Commission obtained a search warrant from the High Court to raid and search the offices of three Ministers. However, this warrant was never executed because the investigating officials were arrested and later dismissed from the Commission.<sup>53</sup> In 2016, the Commission attempted to raid and search some government offices, but it was deterred by a strong warning from a senior government official.<sup>54</sup>

#### **2.4.7 Absence of Common Enforceable Standards**

The absence of minimum international standards or guidelines on the structuring and implementation of an assets declaration system is a challenge for countries wanting to establish such a system.<sup>55</sup> All the international anti-corruption laws contain provisions on the need for an assets declaration law, but they do not prescribe or suggest the form which such a law should take. This lacuna allows countries to design a system which suits their local circumstances. Ironically, it also empowers the politicians who are its targets to subvert the assets declaration system. In the absence of minimum standards or guidelines, lack of political will may lead to the establishment of an assets declaration system which is designed to fail.<sup>56</sup>

#### **2.4.8 Lack of Clarity**

Lack of clarity in assets declaration laws is a big issue. Questions concerning the public officers who are to make declarations, to whom declarations should be made and the assets to be declared have to be answered unambiguously.<sup>57</sup> If the law is not clear enough, corrupt officers may take advantage of the deficiency not to declare ill-gotten assets, and the declaration system may be rendered ineffective. Therefore, it is important that the drafters of an assets declaration law make it crystal clear who must declare what, when and how.

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53 Mutingwende (2016).

54 Share (2016).

55 Chapita (2015) 28.

56 Chapita (2016) 28.

57 Messick (2007).

## 2.5 Conclusion

This chapter has argued that an assets declaration regime is an essential anti-corruption tool. Despite the challenges likely to be faced in its establishment and application, such a regime remains a great resource for preventing corruption, promoting public confidence in the public sector and detecting unexplained wealth. The impact of an assets disclosure system in the fight against corruption should not be ignored by legislators. It is important, however, to note that an assets declaration system should not be seen and applied as a stand-alone anti-corruption measure, but as part of an integrated package of anti-corruption measures.<sup>58</sup>



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58 Larbi (2007) 212.

## CHAPTER THREE

### ELEMENTS OF AN EFFECTIVE ASSETS DECLARATION REGIME FOR ZIMBABWE

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#### 3.1 Introduction

The absence of international standards for an effective assets declaration regime has left countries with difficult questions regarding the establishment of such a regime. Some of these questions include: Who should be required to declare assets? What are the assets to be declared? How frequently should public officers be required to declare their assets? Who should be responsible for handling declarations? Should the public have access to the declarations? Should the declarations be verified and who should be responsible for the verification? What are the sanctions for non-compliance with assets declaration requirements?

The significant differences in assets declaration systems around the world indicate the difficulties countries have had in answering these thorny questions. The OECD recommends that countries take into account their legal traditions and past experiences, and evaluate current issues to determine the legal approach to assets declarations which most likely will generate support among politicians, public officers and the general public.<sup>1</sup>

It is inevitable that Zimbabwe will be faced with these critical questions when establishing an assets declaration regime. This chapter will attempt to engage some of these rather problematic issues.

#### 3.2 Aims and Objectives of an Assets Declaration System

The first step in the establishment of an effective assets declaration regime is to define clearly its aims and objectives.<sup>2</sup> An assets declaration regime which is not clear as to its purpose is doomed to fail, as nothing then would be known of what such regime intends to achieve. Although there may be a variety of purposes, an assets declaration system would be directed mainly at combating illicit enrichment, or at identifying and preventing conflicts of interests, or at both of these objectives.<sup>3</sup> According to the World Bank, the objectives of

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1 OECD (2011) 15.

2 Burdescu *et al* (2009) 6.

3 Burdescu *et al* (2009) xi.

the system should be determined by the behaviours which the system intends to address and by the institutional or political environment in which it will operate.<sup>4</sup>

### 3.2.1 Conflicts of Interests

An assets declaration regime which has the primary purpose of preventing and managing conflicts of interests does not intend to presume illegal behaviour on the part of the public official.<sup>5</sup> Rather, it offers assistance to avoid situations which may lead to such conflicts and to ensure that the declarant is not subjected to accusations or suspicions of bias or corruption. Here the responsible assets declaration agency would play an advisory role for preventive purposes.<sup>6</sup> This is an *ex ante* purpose.

The enactment and implementation of UNCAC has seen prevention of corruption being brought into the spotlight, with an entire chapter in the treaty dedicated to preventive measures.<sup>7</sup> This shift in approach has led to prevention of conflicts of interests becoming an important anti-corruption mechanism. There can be no doubt that conflicts of interests are at the heart of the abuse of power for personal gain in the public sector. Therefore, it would be difficult and unwise not to include prevention of conflicts of interests as a purpose in the establishment of an assets declaration regime.

### 3.2.2 Illicit Enrichment

A primary or even exclusive focus on illicit enrichment in an assets declaration system is preferable in countries or sectors where there are high levels of perceived corruption and impunity.<sup>8</sup> Zimbabwe's score of 21 on the 2015 Corruption Perceptions Index shows very high levels of perceived corruption.<sup>9</sup> Concern with illicit enrichment becomes even more desirable in the context of the huge unexplained wealth owned by so many public officers in Zimbabwe. With combating illicit enrichment as a primary purpose, the declaration office's main role would be to focus on the assets of public officials in order to detect unexplained wealth.<sup>10</sup> This is an *ex post facto* purpose since there is a concern with corruption which has

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4 Barnes *et al* (2013) 4.

5 Burdescu *et al* (2009) 6.

6 Barnes *et al* (2012) 9.

7 Chapter II of UNCAC.

8 Burdescu *et al* (2009) 6.

9 Transparency International Corruption Perceptions Index (2015).

10 Barnes *et al* (2012) 9.



occurred already and with the prosecution of those found in possession of unexplained wealth.

Both purposes, the first relating to illicit enrichment and the second to conflicts of interests, are essential components of an assets declaration regime for Zimbabwe. However, it must be understood that the country likely will face huge challenges in achieving both these purposes of assets declarations. It will have to contend with the problem of balancing the preventive and advisory role in relation to conflicts of interests with the enforcement role for the detection of illicit enrichment.<sup>11</sup> Deciding on either purpose is difficult. On the one hand, management of conflicts of interests is a fundamental anti-corruption tool which cannot be ignored in the establishment of an assets declaration regime in Zimbabwe. UNCAC even makes special reference to conflicts of interests as a purpose of assets declarations, thereby confirming its importance.<sup>12</sup> On the other hand, confronting illicit enrichment is equally important as it deals with unexplained wealth in the hands of public officers, which is a phenomenon especially common in Zimbabwe.

The objective of the assets declaration regime determines the human capital required for the assets declaration agency. For dealing with illicit enrichment, the administrators should be equipped with verification and investigation techniques to monitor and detect any unexplained wealth. For preventing conflicts of interests, the administrators should be familiar with conflict of interests rules and with the methods needed to detect and manage such conflicts.<sup>13</sup>

### **3.3 Subjects of the Assets Declaration Regime**

When determining which public officers are to declare assets, it is important to consider the availability of resources, the levels of perceived risk in different sectors of the public service and the overall objectives of the assets declaration regime.<sup>14</sup> Defining the subjects of the regime determines the human and financial resources required to implement the regime. Zimbabwe should consider carefully the costs and benefits of a broader coverage (which would encompass all public officers) or narrower coverage (applicable only to certain public

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11 Barnes *et al* (2012) 12.

12 Article 8(5) of UNCAC.

13 Burdescu *et al* (2009) 7-8.

14 Burdescu *et al* (2009) 10.

officers).<sup>15</sup> In this regard, it should be noted that assets declaration regimes which require all public officers to declare assets usually experience difficulties in the handling, verification and monitoring of the declarations.<sup>16</sup> For example, Cameroon requires all public officers to declare their assets but the exercise has been made difficult by a lack of resources and capacity, leading to the system being implemented poorly.<sup>17</sup>

An assets declaration regime should at least cover all senior public officers in all three branches of government. This is because these public officers possess significant decision-making authority and may find themselves in situations in which their public and private interests conflict.<sup>18</sup> They also possess discretionary powers and access to public funds, which make them susceptible to seeking profit from corrupt activities.<sup>19</sup> Junior public officers usually are involved in bureaucratic corruption as they demand or solicit small amounts of money to perform their duties. Such grease or speed money does not change the financial status of junior public officers to the extent that it can be detected by an assets declaration regime.<sup>20</sup> However, endemic bureaucratic corruption by junior public officers is unacceptable and should be addressed. Magistrates and some junior public officers, such as those in the vehicle inspection and customs and tax departments, occupy positions and enjoy discretionary powers which tend to predispose them towards corruption. For example, 32 officers from the Vehicle Inspectorate Departments (VID) depots in Zimbabwe were fired for corruption this year and 200 driving and provisional licences which were issued corruptly were cancelled.<sup>21</sup>

Zimbabwe is experiencing serious financial problems and to require all public officers to declare their assets may result in poor and uneven implementation of the assets declaration regime. The filing population in Zimbabwe should commence at a manageable size, by requiring disclosure from all senior public officers, from junior public officers occupying positions at high risk of corruption, and from members of the judiciary. This will be a good start and should suffice until such time when there are enough resources and sufficient capacity to require all public officers to declare their assets.

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15 Chene (2008) 14.  
16 Burdescu *et al* (2009) 11.  
17 Chene (2008) 3.  
18 Messick (2009) 10.  
19 Messick (2009) 11.  
20 Messick (2009) 11.  
21 Katongomara (2016).

Needless to say, an assets declaration system in Zimbabwe should include the President and Vice-Presidents, who are the heads of state and government.<sup>22</sup> This may encourage other public officers to declare their assets as well. All cabinet members and parliamentarians should be required to declare assets, given their discretionary powers and access to public funds. It should be kept in mind that there is a draft Assets Declaration Register available which is intended to require parliamentarians and cabinet members to declare their assets.<sup>23</sup> The draft does not provide for the declaration of debts and liabilities nor does it cover the assets and liabilities of the declarant's spouse and close family members. The draft should be repealed or amended by a comprehensive assets declaration regime which will cover the assets, debts and liabilities of the designated public officers as well as of their spouses and close family members.

In order to curb judicial corruption, all judges and magistrates should be required to file declarations, since they enjoy discretionary powers and their offices are vulnerable to corruption. Judicial corruption in Zimbabwe has increased in recent years, with a number of magistrates being found guilty of corruption and with a number of judges being involved in land-grabbing programmes by the ruling party.<sup>24</sup> Judicial corruption is especially worrisome as it undermines the rule of law and results in the miscarriage of justice. Article 11 of UNCAC recognises the crucial role of the judiciary in the fight against corruption, and places an obligation on States Parties to strengthen the integrity of the judiciary and to prevent opportunities for judicial corruption. Requiring disclosure of assets by judicial officers is one way of fulfilling this obligation, as there is detection and management of conflicts of interests and there is monitoring of the assets of judicial officers for illicit enrichment.

The Government of Zimbabwe runs several state enterprises and parastatals as a means to gain revenue and to provide essential services to the general public. These state-run enterprises provide avenues for creating jobs for friends and relatives, as well as for the abuse of power to accumulate wealth.<sup>25</sup> The Auditor-General, Mildred Chiri, revealed recently that Zimbabwe is losing tens of millions of dollars in corruption scandals that are

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22 Section 89 of the Constitution.

23 Gumbo (2016).

24 Chikuhwa (2013) 79-81.

25 Dashwood (2000) 100.

plaguing state enterprises and parastatals.<sup>26</sup> Due to the inclination to corruption in state enterprises and parastatals in Zimbabwe, senior officers must be required to declare their assets. In this connection, it is noteworthy that earlier this year, the Parliamentary Portfolio Committee on Public Accounts recommended that all board members of state enterprises and parastatals should be required to disclose their assets before assuming office.<sup>27</sup>

Corrupt public officers usually hide unlawfully obtained assets under the names of their spouses, children and close relatives.<sup>28</sup> The dread of invading the privacy of family members of public officers counts against extending the disclosures to them. However, there is a real danger that non-disclosure of their family members' assets will help public officers to evade assets declaration laws by registering their property as belonging to family members. It has been argued that assets of a couple are intertwined and that any separation is artificial, adding to the need for disclosure of the assets of a spouse.<sup>29</sup> The private interests of the family member may hold the same potential as the private interests of the public officer to interfere with the performance of public duties.<sup>30</sup> Some African countries, such as Kenya, Tanzania, Uganda and Nigeria, require public officers to declare the assets of their spouses and single or dependent children in a separate declaration in order to prevent concealment of assets.<sup>31</sup> It is submitted that the assets declaration law in Zimbabwe should include spouses, all dependent or single children and other close family members of the designated public officer. There should be a section in the declaration form of such public officers which provides for assets owned by the family members.

### **3.4 Contents of the Declarations**

An assets disclosure regime requires public officers to declare assets, income and other businesses or positions, gifts and liabilities. It is important that a disclosure regime be precise on the details to be declared and to leave no room for confusion and uncertainties. Lack of clarity regarding what is to be declared threatens the effectiveness of the assets

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26 *The Zimbabwean Mail* (2016).

27 Langa (2016).

28 OECD (2011) 14.

29 Messick (2009) 11.

30 OECD (2011) 54.

31 Chene (2008) 3.

disclosure regime.<sup>32</sup> At the same time, it has to be ensured that the regime does not require trivial declarations, for example, clothes and shoes, which may become a burden to both declarants and the declaration agency. A threshold value of assets to be declared should be determined to avoid this problem. When the sole purpose of the declaration regime is to prevent conflicts of interests, exact asset values need not be disclosed.<sup>33</sup> When the purpose of the disclosure regime is to monitor unexplained wealth, then asset values and exact amounts from all sources of income must be revealed.<sup>34</sup>

#### **3.4.1 Immovable Assets**

Zimbabwe should require all immovable assets owned partly or wholly by the designated public officer to be declared. Such declarations may help to divulge certain interests of the public officer. For example, property owned by a public officer in a certain area may show his or her personal interests in that area.<sup>35</sup>

In order to protect the privacy of the public officers, declarations containing the details of their residential houses should not be made public. However, the suburb in which the property is situated may be disclosed so as to differentiate one immovable asset from another. Any asset owned partly by the public officer should be declared, including the details of the co-owner. In Latvia, for example, public officers are required to declare assets permanently used by them, even though they are not the owners.<sup>36</sup> The estimated value of the assets should be declared also in order to ascertain the worth of the assets. A copy of the title deeds may be essential in determining whether the public officer is the legitimate owner of the property.

#### **3.4.2 Movable Assets**

Movable assets which are required to be registered by law, such as vehicles, vessels and livestock, should be declared, including details regarding their registration number, origin and year of acquisition. Other movable assets which do not require registration by law, such

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32 Chene (2008) 2.

33 Messick (2009) 12.

34 Messick (2009) 13.

35 OECD (2011) 63.

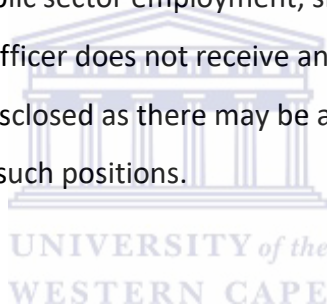
36 OECD (2011) 63.

as jewellery, art and precious metals, but which are worth in excess of a threshold amount, should be declared as well.

### **3.4.3 Other Positions, Businesses and Sources of Income**

Some public officers own businesses and obtain income from sources other than their remuneration as public officers. Requiring declaration of these other sources of income determines the officer's private interests and the value of such interests as shown by the declared amounts. Also, when compared to the official salary of the public officer, the other sources of income may allow for some assessment as to whether the public office represents a priority to the declarant.<sup>37</sup>

Income from other sources, such as financial investments, business assets, private sector employment, professional services, membership of boards and directorships, gambling or lottery and other public sector employment, should be declared.<sup>38</sup> Even positions from which the public officer does not receive any salary, such as volunteering in a charity organisation, should be disclosed as there may be a potential conflict between public interests and private interests in such positions.



### **3.4.4 Official Salary**

In 2014, it was revealed that the chief executive officer of Premier Service Medical Aid Society was receiving a basic monthly salary of US\$230 000 in a salary scam which rocked the state enterprise.<sup>39</sup> This is one of the examples indicating the dangers of the salaries of public officers not being disclosed to the public. Disclosing the salary helps in comparing it with the assets or lifestyle of the public officer. It also helps in the assessment of the role and significance of the public office itself in relation to the officer's other sources of income.

### **3.4.5 Gifts**

Gifts between people with a working relationship have been regarded as an occupational risk.<sup>40</sup> According to Mauss, receiving a gift creates a moral obligation to reciprocate.<sup>41</sup> This

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37 OECD (2011) 62.  
38 Martini (2011) 2.  
39 Chipunza (2014).  
40 Akerstrom (2013) 2.  
41 Mauss (2002) 17.

becomes a problem for public officers who might feel compelled to award contracts or other advantages in their official capacity in reciprocation for gifts received. Due to the influence of gifts upon decision making by public officers, there is a growing consensus that gifts above a given value must be declared. The main purpose of declaration of gifts is to prevent and manage conflicts of interests rather than to detect unexplained wealth.<sup>42</sup> UNCAC recognises this purpose by providing for declarations by public officials of “substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials”.<sup>43</sup>

Substantial gifts, advantages and other benefits, such as financial sponsorships and sponsored visits, should be declared.<sup>44</sup> A minimum value of gifts to be declared should be determined in order to avoid trivial declarations. Details such as the origin, reasons for and date of gifts, as well as other information, such as the address of gifted immovable assets or registration details of gifted movable assets, should be disclosed.

#### **3.4.6 Debts and Liabilities**

All debts, obligations, loans, credit cards, mortgages, guarantees and co-signatures ought to be declared.<sup>45</sup> Liabilities ought to be included in declarations as they are prone to abuse. For example, low interest rates or other appealing off-market terms and conditions for loans can be offered to public officers with a view to influencing their behaviour corruptly.<sup>46</sup>

#### **3.5 Public Access to Declarations**

Assets declarations either may be confidential or subject to public access. A confidential declaration regime which restricts public access poses a problem for many countries as it demands a politically neutral declaration office accompanied by confidence of citizens in the regime.<sup>47</sup> The continued political interference in anti-corruption work and low citizen confidence in the government makes confidential declarations undesirable for Zimbabwe. Therefore, an assets declaration regime for Zimbabwe should allow public access in order to achieve its objectives. UNCAC recognises the need for the support and involvement of the

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42 OECD (2011) 64.

43 Article 8(5) of UNCAC.

44 Martini (2011) 3.

45 Martini (2011) 2.

46 Fagan (2014) 2.

47 Messick (2009) 9.

public in the fight against corruption.<sup>48</sup> One way of involving the public is to ensure that it has access to assets declarations by public officers.

Striking a balance between public access to declarations and the protection of the privacy of filers remains a major issue in the establishment of an assets declaration regime. On the one hand, global experiences have shown that public access to declarations increases the impact and effectiveness of assets declaration regimes.<sup>49</sup> On the other hand, the right to privacy of filers is infringed by public disclosures.

Public access allows the public to scrutinise the declarations, giving investigative journalists, media, scholars and civil society groups a chance to become involved in the monitoring of public officers' assets.<sup>50</sup> In other words, public declarations enable the public to participate actively in the implementation of the assets declaration regime. The public usually is aware of the lifestyles of many public officers as the media publish stories of the luxurious habits and expensive tastes of these officers. This kind of information places the public in a good position to monitor the lifestyles of public officers and verify assets declared by them.

Public access to declarations signals the government's commitment to conduct business in a transparent and accountable manner. Public officers will be motivated to comply with assets declaration laws, knowing that they are subject to public scrutiny. This may result also in public officers refraining from looting and engaging in corrupt activities for fear of being questioned by the public. Public confidence in the government may be restored or enhanced as the public is made aware that public officers are living within their means and that their assets are being monitored by the relevant authorities, as well as publicly. In America, confidential declarations were replaced with public declarations soon after the Watergate Scandals in the late 1970s in order to restore the confidence of Americans in the government.<sup>51</sup>

However, public access to declarations has accompanying dangers. Requiring public officers to declare the details of their wealth can put their persons or lives in danger as targets for criminals. If criminals are made aware of their riches, they well may resort to

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48 Paragraph 10 of the Preamble to UNCAC.

49 Mukherjee & Gokcekus (2006) 327.

50 Chene (2008) 5.

51 Messick (2009) 9.



kidnapping the declarant or a family member for ransom. The need to protect the security of public officers has forced countries with high crime rates, such as Colombia and Haiti, to restrict public access to assets declarations.<sup>52</sup>

The second objection to public declarations is the infringement of the right to privacy. There is no doubt that the privacy of public officers is infringed as their private lifestyles and business are made public and subjected to public scrutiny. Even more, requiring spouses and children of public officers to declare their assets undoubtedly violates their right to privacy since they are under no legal obligation to be transparent in their private affairs.

This tension between the need for public declarations and the right to privacy poses a problem for the establishment of an assets declaration regime in Zimbabwe. According to Neamtu & Dragos, all countries should strike a balance between fully disclosing assets declarations to the public for the sake of transparency and accountability, and upholding the right to privacy.<sup>53</sup> In Zimbabwe, both the right to privacy and right of access to information are subject to limitation only in terms of a law of general application and in a fair, reasonable, necessary and justifiable manner.<sup>54</sup> Preventing conflicts of interests and exposing unexplained wealth of public officers are serious and legitimate public interests which legitimately may restrict the right to privacy. In several countries it has been argued that individuals have a choice to hold a public office and if they chose to do so, a part of the price they have to pay is to have public disclosure of their assets given priority over their right to privacy.<sup>55</sup> If the person is concerned to protect his or her privacy rights, then he or she should not stand for or hold any public office.

There are different ways in which assets declarations can be made available to the public. Access can be granted through the media, official gazettes or registers open to public scrutiny.<sup>56</sup> With this approach, there are no access requirements as the declarations are made available directly to the public. Registers at assets declaration offices can be accessed by any person during opening hours. To strike the balance between the right to privacy and

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52 Messick (2009) 9.

53 Neamtu & Dragos (2015) 152.

54 Section 86 (2) of the Constitution.

55 Messick (2009) 8.

56 Chene (2008) 5.

access to information, some countries, such as Mongolia, Hong Kong and Kyrgyzstan, rank declarations based on seniority, with high-level officers' declarations being accessible to the public and low-level officers' declarations being available upon request.<sup>57</sup>

Some countries require assets declarations to be kept in the assets declaration office and to be accessible to the public only upon request. This approach poses a problem for a country like Zimbabwe, where bureaucracy may slow down access to information. The Constitution of Zimbabwe provides for the right of access to information in the custody of the state or any government body insofar as the information is required in the interests of public accountability.<sup>58</sup> It further requires the enactment of national legislation which gives effect to this right, but which restricts access to information "to the extent that the restriction is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom".<sup>59</sup>

Zimbabwe has a statute which regulates the public's right of access to information and records held by a public body, as well as protection of the right to privacy.<sup>60</sup> The Access to Information and Protection of Privacy Act applies to all matters relating to access to information held by a public body, and it is superior to any law which is in conflict or inconsistent with it.<sup>61</sup> Every person has a right of access to information in the custody of a public body, subject to certain limitations, such as disclosures which endanger the safety of any person.<sup>62</sup>

Section 24 provides that the right to information may be limited if disclosure would harm the business interests of a third party. Further, section 25 provides that the right to information may be limited if the disclosure results in the unreasonable invasion of a third party's personal privacy. The section stipulates various grounds which must be considered in order to determine whether disclosure unreasonably will invade the privacy of the person. Therefore, before an assets declaration office may allow requests for documents, it must consider all the provisions of the Access to Information and Protection of Privacy Act. If the head of a public body intends to grant access to information concerning a third party, the

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57 Burdescu *et al* (2009) 82.

58 Section 62(1) of the Constitution.

59 Section 62 (4) of the Constitution.

60 Access to Information and Protection of Privacy Act 5 of 2003.

61 Section 3(1) & 3(2) of the Access to Information and Protection of Privacy Act.

62 Section 22(2) of the Access to Information and Protection of Privacy Act.

latter must be informed of the decision and given up to twenty days to contest such decision.<sup>63</sup> This poses a problem for the effectiveness of the assets declaration regime, as the public officer is given ample time to make the assets disappear. For example, if there is a tip off regarding a public officer's bank account containing large amounts of money, the money can be moved quickly before access to his or her declarations is granted.

For the sake of maintaining parity between the right to privacy and the right of access to information, Zimbabwe should allow the public access to declarations while ensuring that the registration numbers and location of the assets are not disclosed, in order to protect declarants. All the bank accounts details, debts and other liabilities of the public officers should not be made public as they are too sensitive and their disclosure would be an outright and unreasonable violation of the right to privacy. Access to confidential information should be governed by the Access to Information and Protection of Privacy Act.

It is important for the assets declaration law to criminalise any misuse or abuse of information obtained from the declarations. This will protect public officers from being intimidated or blackmailed on their basis of their declarations.

### **3.6 Clear Declaration Forms and Procedure**

The assets declaration forms must be clear and reasonably concise.<sup>64</sup> They should be in official languages understood by most people, which are Shona, Ndebele and English in Zimbabwe. The body to which the declarations must be submitted and other submission requirements should be made clear to the filers. The declaration forms should state the deadline for submissions and identify sanctions for the failure to disclose assets, for incomplete declarations and for inaccurate declarations.<sup>65</sup>

The widespread use of the Internet has made electronic submissions more desirable than a physical collection system.<sup>66</sup> Electronic submissions may result in increased compliance by declarants as the forms can be filled and submitted from any location with an internet connection. The declaration office will find it easier to handle electronic forms than

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63 Section 26(1) of the Access to Information and Protection of Privacy Act.

64 Burdescu *et al* (2009) 71.

65 Burdescu *et al* (2009) 71.

66 OECD (2011) 15.

paper forms, by use of an automated system which allows information to be entered directly into a database.<sup>67</sup>

### **3.7 Filing Frequency**

The frequency of filing declarations should be specified in the assets declaration law. Determining the filing frequency involves weighing up factors such as the need for up-to-date information, the avoidance of over-filing and the risk of non-compliance.<sup>68</sup> Three patterns common to filing frequency requirements are periodical, annual or biennial declarations; updating declarations whenever there is a significant increase in assets; and declaring assets upon entering and leaving public office.<sup>69</sup>

For Zimbabwe, the filing frequency must be decided bearing in mind the country's scarcity of resources and its limited capacity to handle many declarations. The ideal filing frequency, to begin with, would be to require a declaration of assets upon assumption of office in order to determine and prevent any potential conflicts of interests. The declaration regime should then require filing of declarations by the designated public officers annually, with a specific deadline set for submission. Also, public officers should be required to declare their assets upon leaving office, for whatever reason. Mandatory declarations should continue for a certain period after the individual leaves her or his position, in order to capture deferred illicit enrichment.<sup>70</sup>

### **3.8 Administration of Declarations**

The administration of declarations is a key feature in the establishment, implementation and maintenance of an effective assets declaration regime. Poor handling of declarations results in poor implementation of the declaration regime. Therefore, handling of declarations should be done by impartial, skilled and experienced administrators with no political interference.

If the sole purpose of the regime is to prevent and manage conflicts of interests, then declarations should be filed with superiors who have fullest knowledge regarding public officers' duties and whether a particular private interest will interfere with their

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67 OECD (2011) 15.

68 Burdescu *et al* (2009) 37.

69 Chene (2011) 2.

70 Fagan (2014) 5.

official duties.<sup>71</sup> Declarations may be administered internally, especially for legislators and judges who fear that an outside administration may compromise their independence.<sup>72</sup> However, internal administration may undermine transparency and the independence of administrators who might have a close working relationship with the declarant, resulting in reluctance on their part to manage conflicts of interests and to verify declarations.

Requiring the Zimbabwe Anti-Corruption Commission to administer declarations may mean burdening it with too many duties, which may affect the effectiveness of the regime. Also, the Commission is weak and characterised by political interference, which likely will affect the proper handling of declarations.<sup>73</sup> The best approach is for Zimbabwe to set up an independent office which has the sole responsibility of administering assets declarations. This approach will ensure the independence of administrators and may result in effective administration. For example, in Malawi the Office of the Director of Public Officers' Declarations has the single mandate of administration of assets declarations.<sup>74</sup> This Office is independent of any person or authority, and it is accountable only to the parliament of Malawi.<sup>75</sup> Zimbabwe may benefit from a similar independent assets declaration office (ADO) which is responsible solely for the administration of assets declarations.

The ADO's core functions should include receiving and verifying declarations. Office members should provide advice and technical assistance to declarants on the correct method of filing. There should be a reminder from the ADO to declarants notifying them of their obligation to submit declarations, including the corresponding procedure, benefits and penalties.<sup>76</sup> The ADO should publish names of compliant and non-compliant officers, together with a summary of their declarations. It should have the power to recommend sanctions for non-compliant officers to the relevant employment officer. It must have the authority to report any evidence or reasonable suspicion of criminal activity by a listed public officer to the relevant prosecutorial authorities after verification of declarations.

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71 OECD (2011) 36.

72 Messick (2009) 14.

73 Moyo (2014) 223.

74 Section 6(1) & 6(2) of the Public Officers (Declaration of Assets, Liabilities and Business Interests) Act No 22 of 2013 (hereinafter referred to as the Public Officers Act).

75 Section 6(3) of the Public Officers Act.

76 Barnes *et al* (2012) 55.

The ADO should be granted the resources and capacity needed properly to administer and verify declarations, and to monitor unexplained wealth of public officers. In this regard, it is important to note that ill-skilled and poorly trained administrators affect the effective implementation of the assets declaration system. The ADO should be staffed by professionals with a variety of skills and experience, in such areas as accounting, auditing, customs, banking, forensics, legal practice and law enforcement. It should include members from the Zimbabwe Republic Police, the Zimbabwe Revenue Authority, the Institute of Chartered Accountants of Zimbabwe, the Attorney General's Office, the Auditor General's Office, the Financial Intelligence Unit and the Zimbabwe Anti-Corruption Commission.

The political appointment and removal of the director and deputy directors of the ADO by the president should be avoided. Political appointments and dismissals undermine the independence of the declarations office as directors may be intimidated and coerced into serving the political interests of the ruling party rather than the public interest.

### **3.9 Monitoring Committee**

The Zimbabwe parliament ought to establish a monitoring committee which oversees the powers and functions of the ADO in order to ensure that it is independent and that there is no abuse of power.<sup>77</sup> The committee should receive annual reports from the ADO and should be able to take appropriate actions to enforce compliance by public officers.<sup>78</sup>

### **3.10 Verification of Declarations**

A legal requirement for the timely verification of declarations by qualified and impartial officials should be included in any well-designed assets declaration regime.<sup>79</sup> Verification assists in the identification and management of conflicts of interests and in the detection of unexplained wealth. Irregularities or inconsistencies in declarations can be picked up by an experienced verification officer, particularly if the law permits the officer to follow up and seek further clarification or confirmation.<sup>80</sup> The fact that assets declarations are verified may establish a credible incentive for officers truthfully to declare their assets. If declarants know that the declarations are not authenticated, there is a risk of the ADO accumulating useless

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77 See Section 13(1) of the Public Officers Act.

78 See Section 13(2) of the Public Officers Act.

79 Burdescu *et al* (2009) 12.

80 Burdescu *et al* (2009) 13.

information which does not represent the financial status of the declarants.<sup>81</sup> In Georgia, for example, verification includes the oversight body drawing a list of all non-compliant officers from the declarations register and posting the list online, which practice has led to increased compliance by public officers.<sup>82</sup>

An effective verification process may result also in the revelation of discrepancies between assets declarations and other reliable and available information regarding the declarant's assets, such as tax declarations and property registries. Terms such as "verify" and "investigate" need to be defined clearly, as prosecutors might claim that they are the only ones with the authority to investigate and may end up interfering in the work of anti-corruption agencies inquiring into the accuracy of a declarant's statement.<sup>83</sup>

Barnes *et al* provide for different approaches to the verification of assets declarations. Individual declarations may be verified for internal consistency in responses. A current declaration may be compared with previous declarations by the public officer to monitor changes in wealth over time. There may be cross-checking of declarations with external sources and databases, such as tax registries and deeds offices. Declarations may be analysed for any potential incompatibilities or conflicts of interests. The lifestyles of public officers may be checked to corroborate consistency with the declared assets.<sup>84</sup>

The verification approach or approaches chosen depends largely on the availability of resources and the existence of a legal provision requiring verification. Verification of large volumes of declarations should be avoided as it may result in very high costs with little accompanying revelations.<sup>85</sup> A risk-based approach by the ADO is recommended for concentrating on enhanced substantiation of declarations by public officers who are more susceptible to corruption. Risk-based verifications are better than random verifications, which may be perceived to be politically influenced.<sup>86</sup> Verification of assets declarations may be conducted also if there are any suspicions or complaints regarding the legitimacy or accuracy of declared assets, or when the public officer is under investigation for corruption or other economic crimes.

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81 OECD (2011) 71.

82 Hoppe (2014) 10.

83 Messick (2008) 43.

84 Barnes *et al* (2012) 60.

85 OECD (2011) 15.

86 Barnes *et al* (2012) 62.

Public disclosure allows the citizenry to be involved in the verification of declarations. Lifestyle checks may yield more reliable findings than other verification techniques if there is an effective complaints mechanism and public access to declarations, which allow citizens, civil society bodies and the media to scrutinise declarations and lifestyles. For example, in 2003 a Philippine reporter revealed false declarations by many public officers after comparing their expensive lifestyles to their public declarations.<sup>87</sup>

Zimbabwe should ensure that a legal requirement for timely verification of declarations is included in its assets declaration regime. The ADO should have the primary responsibility of confirming declarations received. In order to validate declarations effectively, the ADO should have access to documents or records from other public institutions and to data from banks and other commercial institutions. Further, it should have the authority to request an explanation from the declarant or other persons, to request verifications by any other institutions and to request an expert's opinion.<sup>88</sup> There should be an effective complaints mechanism to allow the public to file complaints and present useful information to the ADO regarding discrepancies between the declaration forms and the actual assets of the declarant.

An assets declaration regime in Zimbabwe should allow declarants to rectify information in the declaration forms within a stipulated period after submission. The opportunity to rectify information makes the declaration regime user-friendlier and avoids the application of sanctions for unintentional omissions or mistakes.<sup>89</sup> However, the system should not be too lenient as the effectiveness of the regime may be compromised by dishonest public officers presenting false information, knowing that in case of suspicion they can rectify with impunity.<sup>90</sup>

### **3.11 Sanctions for Non-Compliance**

The effectiveness of an assets disclosure regime is linked directly to its ability to provide credible warnings that those who do not comply with the disclosure requirements will be punished.<sup>91</sup> A regime with unpredictable outcomes undermines the confidence of the public

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87 Messick (2009) 9.

88 OECD (2011) 76-77.

89 OECD (2011) 74.

90 See OECD (2011) 74.

91 Barnes *et al* (2013) 5.



and of the declarants in it as there are no meaningful sanctions to back up clear and objective instructions.<sup>92</sup> The absence of sanctions or the imposition of light sanctions may tempt public officers to breach the assets declaration laws, with knowledge that there are little accompanying consequences.

There are two broad categories of violations of assets declaration requirements, namely, violations relating to the duty to declare and violations relating to the information filed.<sup>93</sup> The former category includes late submission and non-submission of declarations. The latter category includes unintentionally false declarations, deliberately false declarations and incomplete declarations.<sup>94</sup>

Sanctions for breaches of assets declaration laws should be proportionate to the violation but severe enough effectively to deter future violations. Criminal sanctions, fines, administrative sanctions and reputational penalties should be considered as part of a basket of effective punitive measures. Perceived levels of corruption are lower in countries with assets declaration laws which provide for criminal sanctions for non-compliant public officers.<sup>95</sup> In Zimbabwe, it is a criminal offence for a public officer intentionally to conceal from a principal any personal interest in a transaction.<sup>96</sup> However, illicit enrichment is not a criminal offence in Zimbabwe and there is a need for its criminalisation in order to hold accountable declarants in possession of unexplained wealth.

The penalties for criminal conviction may be imprisonment for a certain period, with an option to pay a substantial fine. In Pakistan, parliamentarians may be imprisoned for up to five years for filing false declarations.<sup>97</sup> Administrative sanctions, such as suspension or dismissal, may be imposed also. Reputational penalties include publication of the names of public officers who do not comply with assets declaration requirements.

The importance of political will for the imposition of sanctions should be emphasised. The success of any assets declaration regime depends on the existence of political will to enforce the laws. Zimbabwe has a culture of impunity for politicians and protection of political comrades against corruption allegations. For example, President

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92 Barnes *et al* (2012) 71.

93 OECD (2011) 80.

94 See OECD (2011) 80.

95 Chene (2008) 2.

96 Section 173 of the Criminal Law (Codification and Reform) Act of 2006 (Chapter 9: 23).

97 Martini (2013) 6.

Robert Mugabe reportedly blocked the Zimbabwe Anti-Corruption Commission from arresting the Minister of Higher and Tertiary Education, Jonathan Moyo, on corruption charges for allegedly siphoning off public funds to finance political campaigns.<sup>98</sup> This indicates a problem of political interference in the anti-corruption project and therefore undermines the efforts to hold senior political leaders accountable. There is a need for commitment to punish any person, at whatever level, power or influence, who does not comply with assets declaration laws. This will send a message of zero tolerance towards non-compliance with assets declaration laws and towards corruption at large.

The law should be clear about the institutions responsible for dealing with non-compliant officers. Unclear demarcation of power and mandates among anti-corruption institutions in Zimbabwe has led to weak inter-agency co-ordination and co-operation.<sup>99</sup> For example, in November 2016, the Constitutional Court of Zimbabwe suspended the arrest of Jonathan Moyo who is the Minister of Higher and Tertiary Education, Science and Technology after ruling that the Zimbabwe Anti-Corruption Commission did not have the power to arrest him.<sup>100</sup> This decision shows clearly that there was confusion regarding the powers of the Commission and there was no communication with other anti-corruption institutions such as the Prosecutor-General and the Zimbabwe Republic Police. Precise demarcation of power among anti-corruption institutions will result in effective investigation, prosecution and punishment of offenders.

### **3.12 Protection of Whistleblowers**

Whistleblowers are important in the fight against corruption as they expose otherwise clandestine corrupt activities. Even more, they are important to assets declaration systems as they report suspicions of false declarations, undeclared assets and unexplained wealth held by public officers. Hence, Zimbabwe must ensure that whistleblowers are protected by the assets declaration laws in order to encourage revelations and disclosures by citizens. For example, the Malawian assets declaration legislation provides for the protection of whistleblowers who may decide to make anonymous reports.<sup>101</sup> The legislation further

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98 Ncube & Chidza (2016).

99 Mutingwende (2016).

100 Munyoro (2016).

101 Section 20(2) of the Public Officers Act.

criminalises both the intimidation or victimisation of whistleblowers, and the disclosure of the identity of anonymous whistleblowers.<sup>102</sup>

Whistleblowers may be gripped with fear or doubt if no investigations are carried out regarding their reports. The fear or doubt worsens if feedback is not given even upon request by the whistleblower. This undermines the confidence of the public in coming forward with information regarding any wrongdoing of which they are aware. Therefore, there needs to be an effective, user-friendly and responsive whistleblowing platform which enables people to report corruption with confidence and in the knowledge that action will be taken, that their safety will be guaranteed and that feedback will be given upon request.

It is important to criminalise false whistleblowing aimed at ruining the reputation of the public officer or motivated by any other malicious purpose. Such criminalisation is meant to safeguard the whistleblowing platform against any form of abuse and to protect innocent public officers from vengeful adversaries.

### **3.13 Financing of the Assets Declaration Regime**

Without adequate financial resources any assets declaration system functions poorly.<sup>103</sup> A key consideration, then, is that financial resources be sufficient, stable and predictable so as to ensure the proper staffing and functioning of the system according to its mandate.<sup>104</sup> It is important that the financial budget of the ADO be independent in order to ensure minimum political interference with its operations.

### **3.14 Conclusion**

This chapter has shown that, in the absence of international standards, it is a difficult task to design an effective assets declaration regime. Establishing such a regime is a big step towards curbing corruption and therefore the drafters need to formulate a legal framework which is practicable and enforceable. An overambitious assets declaration regime may suffer enforcement deficit and may become unpopular. The drafters of the regime should take into account Zimbabwe's legal traditions and past experiences and also evaluate current issues in order to determine the legal approach which most likely will generate

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102 Section 20(5) & section 21 of the Public Officers Act.

103 Burdescu *et al* (2009) 60.

104 Barnes *et al* (2013) 4.

support amongst politicians, public officers and the general public. It is of great importance to consider broader legal frameworks, such as tax law and criminal law, when designing the assets declaration system.<sup>105</sup>



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105 OECD (2011) 15.

## CHAPTER FOUR

### CONCLUSION AND RECOMMENDATIONS

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#### 4.1 Conclusion

This research paper has discussed the need for an assets declaration regime in Zimbabwe as an anti-corruption tool. Corruption in Zimbabwe has become almost “normal”, with many public officers known for being corrupt and for possessing substantial unexplained wealth. According to Transparency International, Zimbabwe is perceived to be one of the most corrupt countries in Africa. The problem has been aggravated by the absence of an assets declaration regime in the country.

Zimbabwe has ratified international legal instruments against corruption but has been reluctant to adopt the anti-corruption measures provided by these instruments. Treaties such as UNCAC and the AU Convention stipulate the need for public officers to declare their assets as a measure to curb corruption in the public sector. Section 189 of the Constitution of Zimbabwe requires the enactment of national legislation regulating disclosure of assets by public officers and the establishment codes of conduct to be observed by public officers. The installation of an assets declaration regime in Zimbabwe is long overdue and should be addressed immediately as a measure to curb the corruption which has become endemic in the public sector.

This research paper has highlighted the importance of a country having assets declaration laws. An assets declaration regime helps with the detection and prevention of conflicts of interests. The assets of public officers may be monitored easily to detect any unexplained wealth. An assets declaration regime promotes a culture of transparency and accountability in the public sector and helps to ensure that scarce resources will be used honestly and wisely for the betterment of the public. The knowledge that public officers are living within their means with nothing to hide and that their assets are being monitored effectively fosters public confidence in the government. Civil society, the media and anti-corruption institutions in the country are empowered thereby, as the availability of information regarding the wealth of public officers helps them to detect and investigate corrupt activities. Assets declaration laws attract foreign direct investment and may be used to support other anti-corruption measures, such as asset recovery.

The findings of Mukherjee & Gokcekus show that an assets declaration regime can be a very powerful anti-corruption tool which may benefit Zimbabwe.<sup>1</sup> These findings indicate that perceived levels of corruption are lower in countries with established assets declaration laws than in countries with recent assets declaration laws. They show also that perceived levels of corruption is low in countries which require verification of declarations and which provide criminal sanctions for non-compliance with declarations.

The lack of political will is one of the main challenges to be faced in the establishment of an assets declaration regime. Lack of commitment from political leaders results invariably in an ineffective and porous regime which falls short on proper funding and effective enforcement. Therefore, it is imperative for political leaders to have strong political will to support the assets declaration regime and to provide it with adequate human and financial resources. There is a need for zero tolerance in the fight against corruption and any person in contravention of the assets declaration regime should be punished, regardless of political affiliation or governmental position.

One of the thorny issues considered in this research paper is the conflict between right to privacy for public officers and the public interest in the disclosure of assets owned by public officers. Requiring public officers to complete assets declaration forms which are accessible to the public is a clear violation of their right to privacy. At the same time, there is immense public interest in combating corruption, with disclosure of assets being one of the many ways to do so. Therefore, there is an urgent imperative to find a proper balance between the right to privacy and the public interest in information contained in assets declarations.

It was argued that Zimbabwe should require assets declarations from all senior public officers. Junior public officers who occupy positions vulnerable to corruption and the members of the judiciary should declare their assets as well. The declarants should be required to disclose other businesses and assets of a stipulated value, together with all liabilities. They should declare also the assets and liabilities of their spouses, dependent or single children and close family members. The declarations should be available to the public but with restricted access to liabilities and other private information of the public officers concerned. An independent assets declaration office (ADO) should be established which will

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1 See §2.3 above.

be responsible solely for administration of declarations. Declarations should be subject to verification and non-compliant public officers must be sanctioned.

Some assets declaration regimes have failed due to lack of clarity regarding the requirements for declarations. It is important that the law be clear on who is required to declare assets and to whom, what must be declared, what are the sanctions for non-compliance and who is responsible for the punishment of non-compliant officers.

## **4.2 Recommendations**

### **4.2.1 Start Slowly and Build Up Capacity**

After the enactment of an assets declaration regime in Zimbabwe, it is important for the responsible agency to start slowly and build up capacity. A common mistake is to establish the regime and soon thereafter to require thousands of civil servants to file a declaration form with the ADO within a short period. The ADO is unable effectively to handle and verify so many forms so early in its life. The assets declaration machinery should be given time to recruit and develop administrators with the expertise and experience to handle large volumes of declarations.

No matter how many officeholders are covered by an assets declaration law, it should be introduced gradually in order to ensure that the proper administrative arrangements are in place to manage the required submissions.<sup>2</sup> The verification procedures should be formulated and implemented after there is sufficient evidence that the submission mechanisms are working properly. The verification process should start with a fraction of the declarations being validated through a random or risk-based approach, until such time when there are enough resources and capacity to tackle all declarations.

### **4.2.2 Training of Administrators and Declarants**

The success of an assets declaration regime depends largely on the effective handling and verification of declarations by administrators. It is important that the administrators are trained before taking office as well as during their terms in office. A major challenge in the early stages of the implementation of an assets declaration regime is making public officers aware of the new requirements and achieving respect for and compliance with the

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2 Messick (2009) 11.

requirements.<sup>3</sup> Training of declarants will raise awareness and provide guidance regarding the correct and truthful completion and filing of declaration forms, and any inquiries or objections which may be raised will be addressed. The training should cover the importance of an assets declaration regime and public officers should be made aware of their importance in the fight against corruption.

#### **4.2.3 Criminalise Illicit Enrichment**

With so many public officers possessing unexplained wealth in Zimbabwe, it is desirable to criminalise illicit enrichment. Illicit enrichment is criminalised by Article 20 of UNCAC and by Article 4(1)(g) of the AU Convention. Possession of unexplained wealth may be the only tangible evidence indicating that corruption has taken place and, therefore, criminalising illicit enrichment will allow Zimbabwe to prosecute corrupt public officers and confiscate the unexplained wealth on the basis that it is derived from illegal sources. With regard to the assets declaration regime, any unexplained increase in the declared assets may result in the declarants being prosecuted for illicit enrichment and in the unexplained wealth being confiscated by the state. Criminals hate losing money and pursuing the unexplained wealth in order to confiscate it will help in reducing corruption amongst public officers.

#### **4.2.4 Simplify the Declaration Process**

The declaration process should be made as simple and as clear as possible. A complicated declaration process will result in declarants having difficulties in completing and filing the prescribed forms. A simple declaration process is the one most likely to be appreciated and followed by the declarants.

Electronic submission of declaration forms is desirable and may encourage compliance by declarants. The ADO will find it easier to handle electronic forms than paper forms, and the former may be stored in a database and can be retained for an indefinite period.

#### **4.2.5 Engage the Public and Promote Public Participation**

The government of Zimbabwe cannot fight corruption by itself. There is a need for assistance from and co-operation with non-state actors such as civil society organisations,

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3 OECD (2011) 100.



the media, non-governmental organisations and the public in general. If the public is not engaged and there is little interest from non-state actors, the assets declaration regime will not be implemented effectively.

Public sector corruption in Zimbabwe is recorded well by the media and by civil society. Public engagement promotes effective monitoring and oversight of the declaration regime. Non-state actors are important for verification of declaration forms and for the detection of unexplained wealth. For example, the media usually have information regarding the lifestyle of public officers which is important for verification of declarations. The government should engage the public in order to secure its co-operation for the proper implementation of the assets declaration regime. Engaging the public involves granting non-state actors access to declared information for the effective monitoring of declarations. There should be a platform which allows non-state actors and the general public to approach the ADO with useful information regarding the assets of a public officer.

An assets declaration regime can be a very powerful anti-corruption tool in Zimbabwe. However, the importance of political will for the success of the regime cannot be emphasised enough. There is a need for commitment from state and non-state actors to ensure that an assets declaration regime works, so that all corrupt public officers may be held accountable and that all illegally obtained assets may be forfeited.

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