

**FINANCIAL DISCLOSURE AND
ASSET DECLARATION SYSTEM
IN LEBANON**

The Illicit Enrichment Law No. 154/1999

Me Victoria Cherfane

Beirut, Lebanon
December 2019

Table of Contents

INTRODUCTION	3
CORRUPTION IN LEBANON	3
WHY DON'T MORE PEOPLE REPORT CORRUPTION	3
HOW ASSET DISCLOSURE OF PUBLIC OFFICIALS PREVENT CORRUPTION	4
THE ROLE OF ASSET AND WEALTH DISCLOSURE IN ANTI CORRUPTION	5
INTERNATIONAL STANDARDS	5
THE IMPLEMENTATION BY LEBANON OF CHAPTER III OF THE UNCAC	7
KEY CONSIDERATIONS AND INTERNATIONAL PRINCIPLES IN ASSET	10
DISCLOSURE SYSTEMS	9
LEBANESE ILLICIT ENRICHMENT LAW NO. 154/1999	13
LEGAL FRAMEWORK	13
COVERAGE OF PUBLIC OFFICIALS	14
CONTENT OF DECLARATIONS AND FORMS	15
SUBMISSION OF DECLARATIONS AND FREQUENCY	16
COLLECTION AND ARCHIVING	17
VERIFICATION	18
CONTROLLING BODY & INTERAGENCY COLLABORATION	19
SANCTIONS	19
PUBLIC ACCESS TO DECLARATIONS AND CIVIL SOCIETY	21
EVALUATION	22
CONCLUSION	22
RECOMMANDATIONS	23
AN ELECTRONIC ASSET DECLARATION SYSTEM AS PART OF THE	
SOLUTION	24

INTRODUCTION

CORRUPTION IN LEBANON

For decades and to this day, Lebanon has been burdened with growing large budgetary deficits. This is a result of high-level corruption that has been invading the Lebanese bureaucracy ever since. According to the 2018 Corruption Perceptions Index reported by Transparency International¹, Lebanon is the 138th least corrupt nation out of 180 countries, with a score of 28/100. This score indicates the perceived level of public sector corruption on a scale of 0 to 100 (0 being highly corrupt and 100 being very clean).

A survey² on corruption conducted in 2019 on the Middle East revealed that Lebanese citizens were aware of the increasing levels of corruption in the country as 68% of Lebanese society thought corruption has increased in the previous 12 months. When asked about the Lebanese government's performance in tackling corruption, 87% answered that it is doing badly. The same report states that corruption can be defeated when the link between money and power is broken, particularly during elections; it has been disclosed that 41% of Lebanese citizens were offered bribes in exchange for their votes. This contributes highly to corruption and the protection of corrupt officials. The intervention of the country's politic with the absence of accountability and transparency weakens the integrity of the system as a whole. A lack of independence of the judicial system remains another major challenge.

Building a culture of transparency in a country dominated by corruption is an essential step to achieving trust. Transparency and financial disclosure are fundamental elements of a powerful governance framework. Citizens are best able to hold public officials to account when illicit enrichment is detected and when they have the freedom and capacity to act based on the information they obtain.

WHY DON'T MORE PEOPLE REPORT CORRUPTION

There are several laws in Lebanon that can be used to address the issue of corruption. The Lebanese legal framework against corruption includes, inter alia, the **Illicit Enrichment Law no.154 of 27/11/1999** which will be the main topic of this paper; provisions from the **Lebanese Criminal Code (LCC)** that apply to public servants who commit fraud or

¹Transparency International (2019). Corruption Perception Index 2018. Retrieved from_ <https://www.transparency.org/country/LBN>

²Global Corruption Barometer, Middle East & North Africa 2019, Citizens' Views And Experiences Of .Corruption. Transparency International. (p.8, 10, 25)

corruption; the **Whistleblower Protection Law no. 83 of 10/10/2018** which protects whistleblowers by securing confidentiality and guaranteeing their employment and personal safety; the **Access to Information Law no. 28 of 10/2/2017** which initiates state agencies to mandatorily publish on their websites specific information pertaining to their activities; and **Law no. 44 of 24/11/2015 on Fighting Money Laundering and Terrorist Financing**.

But the problem remains in the major loopholes in Lebanese laws that protect corruption and corrupt officials. A Financial Prosecutor expressed to the Daily Star³ his frustration over Lebanese laws inadequacy for protecting corrupt officials. He stated that numerous laws make it difficult to hold corrupt officials accountable. For example, when the prosecutor needs the relevant minister's approval to pursue corruption allegations against a ministerial employee, the minister would usually not answer his request.

These gaps, including the loopholes in the Illicit Enrichment Law no.154/1999, left the Lebanese people with the hopeless thought that there is no course of action in order to change the situation, and that corruption in Lebanon will continue spreading and flooding all levels of society, and that trying to resist it or even prevent it is simply useless.

Today, things are changing. Lebanese citizens are fully aware of the perceptible corruption plaguing the Lebanese government and the necessity to fight it. Therefore, it was one of the main accusations leveled against the regime and the entire political class by the Lebanese protesters who flooded the streets on October 17th 2019.

HOW ASSET DISCLOSURE OF PUBLIC OFFICIALS PREVENT CORRUPTION

Asset and wealth disclosure can help answer questions about the basic integrity of public officials as it can also hold them to account when the slightest ill-gotten gain is detected. The main purposes of asset declarations as stated by the OECD⁴ are (1) Increasing transparency and citizens' trust in public administration, (2) Helping prevent conflicts of interest among employees in public institutions and (3) Monitoring wealth discrepancies of politicians and civil servants, both to discourage them from misconduct and to protect them from false accusations or rumors.

³Prosecutor: Legal loopholes protecting the corrupt". The Daily Star (February 27, 2019). Retrieved " from: <https://www.dailystar.com.lb/News/Lebanon-News/2019/Feb-27/477572-prosecutor-legal-loopholes-protecting-the-corrupt.ashx>

⁴OECD (2011), Asset Declarations for Public Officials: A Tool to Prevent Corruption, OECD Publishing. <http://dx.doi.org/10.1787/9789264095281-en>

Bureaucrats are seen as the most corrupt, and some of them are more corrupt than others depending on the variations in the opportunities they get to use public funds for their private gain. According to the World Bank, asset declarations of public officials are regarded as a powerful tool to prevent corruption, detect illicit enrichment and identify conflict of interests. More than 150 countries, including Lebanon, have introduced asset disclosure requirements for their public officials and many of these countries, excluding Lebanon, make asset declarations available for public scrutiny. In our country, public officials declaring their wealth get to keep their declarations confidential (as per article 4 paragraph 5 of Law No. 154 of 1999 which states that “the declaration shall be submitted inside a confidential envelope, closed and signed”).

As most countries do, Lebanon should expect from its top "leaders" and public officials to publish information about their assets and wealth. If they restrain from doing so, or if their wealth figures don't add up when the information contained in their declaration upon assuming office is compared to the one upon termination of office, this should immediately lead to investigations followed by accountability. In Argentina⁵, for example, the surprising 1150% increase in the personal wealth of the ex-president Cristina Fernández de Kirchner has frustrated the public opinion. Although she has declared her assets, the increase remained unjustifiable, which created both public discontent and political instability.

The answer remains simple. Public officials' wealth accumulation during their tenure would identify whether they have carried out their duties in an objective, “clean” and transparent manner without any conflict of interest whilst ensuring that these public officials did not abuse their power for private gain.

THE ROLE OF ASSET AND WEALTH DISCLOSURE IN ANTI CORRUPTION

INTERNATIONAL STANDARDS

International best practices and the considerable worldwide attention on fostering transparency and reducing government secrecy, focuses on the importance of Asset Disclosure requirements.

⁵ Holding Politicians To Account: Asset Declarations. Transparency International. Politics and Government (January 17, 2013). Retrieved from: https://www.transparency.org/news/feature/holding_politicians_to_account_asset_declarations

The spread of declarations began with the **Inter-American Convention Against Corruption**⁶, which was adopted in 1996. Chapter III (4) of the said convention calls States Parties to consider the applicability of measures within their own institutional systems to create, maintain and strengthen: “Systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public.”

The **Arab Convention Against Corruption**⁷ of 2010 also specifies in Article 28(5) that, "each State Party may consider drawing-up effective methods for financial statement declaration, in accordance with its domestic legislation, in respect of public employees and set proper penalties for non-compliance."

The **African Union Convention on Preventing and Combating Corruption**⁸, adopted in 2003, expects state parties to “require all or designated public officials to declare their assets at the time of assumption of office during and after their term of office in the public service.”

The earliest European standard appeared in 2000 with the Council of Europe Model Code of Conduct for Public Officials. Article 14 of the **Recommendation Nr. R (2000) 10 of the Committee of Ministers to Member States on codes of conduct for public officials**⁹, requires that “the public official who occupies a position in which his or her personal or private interests are likely to be affected by his or her official duties should, as lawfully required, declare upon appointment, at regular intervals thereafter and whenever any changes occur the nature and extent of those interests.”

The Group of 20 leading economies (G20) adopted the **High Level Principles on Asset Disclosure by Public Officials**¹⁰ in Los Cabos, Mexico in 2012. A year later (2013), the Organization of American States (OAS) has prepared a **Model law on the declaration of**

⁶Article III, Paragraph 4 of the Inter-American Convention Against Corruption
http://oas.org/en/sla/dil/inter_american_treaties_B-58_against_Corruption.asp

⁷Article 28, Paragraph 5 of the Arab Convention Against Corruption
<https://star.worldbank.org/sites/star/files/Arab-Convention-Against-Corruption.pdf>

⁸Article 7, Paragraph 1 of the African Union Convention on Preventing and Combating Corruption
https://au.int/en/sites/default/files/AFRICAN_UNION_CONVENTION_PREVENTING_COMBATING_CORRUPTION.pdf

⁹Article 14 of the Recommendation Nr. R (2000) 10 of the Committee of Ministers to Member States on .codes of conduct for public officials
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806cc1ec>

¹⁰G20 High Level Principles on Asset Disclosure by Public Officials, Mexico 2012.
https://star.worldbank.org/sites/star/files/los_cabos_2012_high_level_principles_on_asset_disclosure.pdf

interests, income, assets and liabilities of persons performing public functions¹¹. This law has been seen by some experts as superior to the G20's High-Level Principles on Asset Disclosure by Public Officials.

Public officials' declarations are also part of the global standard included in the **United Nations Convention against Corruption (UNCAC)**¹², adopted in 2003. The said Convention is the only legally binding universal anti-corruption instrument. Articles 8(5) and 52(5) of the UNCAC, which call on States Countries to adopt legislation requiring public officials to declare their assets, are discussed in the next chapter.

Furthermore, several publications have been issued by The Organization for Economic Co-operation and Development (OECD) and the World Bank (**Asset Declarations for Public Officials: A Tool to Prevent Corruption**¹³ and **Public Office, Private Interests Accountability through Income and Asset Disclosure**¹⁴ respectively), covering asset declarations standards. These handbooks are intended as a guide for practitioners, policy makers and others with an interest in anti corruption tools and procedures.

THE IMPLEMENTATION BY LEBANON OF CHAPTER III OF THE UNCAC

Lebanon has ratified¹⁵ on April 22, 2009, the United Nations Convention against Corruption (UNCAC) under Act no. 33 of 16/10/2008; whereas Article 20 in Chapter III of the said convention stipulates that “each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment”. UNCAC also defines illicit enrichment 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**”.

Article 8(5) of UNCAC calls on state parties to establish systems that require **the declaration of their assets** and benefits from which a conflict of interest may result with

¹¹MODEL LAW ON THE DECLARATION OF INTERESTS, INCOME, ASSETS AND LIABILITIES .OF PERSONS PERFORMING PUBLIC FUNCTIONS
http://www.oas.org/juridico/PDFs/model_law_declaration.pdf

¹²United Nations Convention against Corruption. <https://www.unodc.org/unodc/en/corruption/uncac.html>

¹³ Asset Declarations for Public Officials: A Tool to Prevent Corruption. OECD.
<http://www.oecd.org/corruption/anti-bribery/47489446.pdf>

¹⁴ Public Office, Private Interests Accountability through Income and Asset DisclosureWorld Bank. .
<https://star.worldbank.org/sites/star/files/Public%20Office%20Private%20Interests.pdf>

¹⁵United Nations Treaty Collection
https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-14&chapter=18&lang=en

respect to their functions as public officials. Article 52(5) of the same convention expects state parties to establish **financial disclosure systems for public officials**. Thus it provides for **appropriate sanctions for non-compliance** and considers giving its competent authorities the permission to share that information with the competent authorities of other States Parties when investigation is needed. In other words, the UNCAC requires a legal framework for asset declarations of government officials.

In 2013, Lebanon has completed¹⁶ the assessment of Chapter III of the convention that deals with criminalization and law enforcement. This assessment enables countries to identify existing gaps between national laws and their obligations under the UNCAC.

Few years later, the country review report¹⁷ of Lebanon for the years 2010 to 2015 made by the United Nations Office on Drugs and Crime (UNODC), which reviews the implementation by Lebanon of the UNCAC, states that **generally, Illicit enrichment is criminalized in the Law of 1999**. However, the reviewing team notes that the content of the cited Articles 4 and 6 of the Law on Illicit Enrichment of 1999 referred only to the compulsory asset declaration, **the significant increase of the assets of public officials without reasonable explanation, has not been criminalized**. As stated in the report, it could not be confirmed that the requirements envisaged in Article 20 of UNCAC have been met.

The report also states that there are no sentencing guidelines in regards to the sanctions applicable to persons who have committed crimes related to corruption, as judges are free in the determination of the sanction. Furthermore, there is no centralized institution for combating corruption as per the requirements of the Convention (article 36). The relevant anti-corruption bodies are: the General Prosecution, Central Inspection Body, the Disciplinary Board, which is in charge of civil servants, the Court of Account and the Judiciary Inspection for judges. Some powers are extended by law to the Special Investigation Commission (SIC), Lebanon's Financial Intelligence Unit (FIU), which has the exclusive right to freeze bank accounts and lift bank secrecy pursuant to applicable conventions and laws on the fight against corruption.

To this day, Lebanon has not met most of the requirements put forth by the UNCAC. Some of the technical assistance needs required to improve the implementation by Lebanon of the UNCAC are: good practices, capacity building assistance, legislation

¹⁶Lebanon Finalizes Self-Assessment of UNCAC Implementation (April 28, 2015). Retrieved from <http://www.undp-aciac.org/resources/ac/newsDetails.aspx?nid=1205>

¹⁷Country Review Report of Lebanon. United Nations Office on Drugs and Crime (UNODC). https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2016_03_08_Lebanon_Final_Country_Report.pdf

drafting with regard to most articles of chapter III, and the establishment of a Model legislation for the management of seized and confiscated assets. It is clearly recommended that Lebanon should consider criminalizing illicit enrichment in accordance with Article 20 of the Convention.

10 KEY CONSIDERATIONS AND INTERNATIONAL PRINCIPLES IN ASSET DISCLOSURE SYSTEMS

According to the World Bank, asset declaration systems vary from one country to another. There is no ideal best-practice system that will achieve the best result. Despite these variations and based on the above-mentioned International Standards and previous LTA publications¹⁸, key considerations and principles have been identified as necessary for an effective asset disclosure system. They are summarized as follows:

I. LEGAL FRAMEWORK

What law should be implemented to asset declarations?

Asset declarations are usually regulated by a law that serves as accountability and anti-corruption tools. It helps prevent officials from taking decisions during their tenure that overlap with their personal interests and serve their private gain. Therefore, it is imperative to have a Legal Framework aiming for both the detection of Illicit Enrichment and Conflict of Interest.

II. COVERAGE OF PUBLIC OFFICIALS

Who should be required to declare?

The categories of covered public officials and public sector employees who are considered as public officials vary between countries. Asset declarations should be targeted at senior leaders and every person in positions at-risk for significant conflicts of interest or for illicit enrichment. These positions include: members of parliament (MPs), ministers, senior and political executives, judges at all court levels, other special categories of officials (special advisers, deputies, prime ministers and others). The asset declarations should also cover other individuals who are related to them, like spouses, household members, children and other family members. The reasons for requesting this information are to prevent public officials from hiding their income and assets under the

¹⁸ Transparency International, ASSET DECLARATIONS IN LEBANON ILLICIT ENRICHMENT AND CONFLICTS OF INTEREST OF PUBLIC OFFICIALS (Sweden, Transparency International, 2015).

names of their relatives hence preventing any conflict of interest.

III. CONTENT OF DECLARATIONS AND FORMS

What information should be declared and under what form?

The declarations content should contain information that provides a complete picture of the person's wealth and personal finances. It includes incomes from all sources, movable and immovable assets (houses, vehicles, jewelry, fine art, etc.), financial assets (bank accounts, stocks and bonds), expenses, pecuniary and non-pecuniary interests, debts owed and gifts. Some countries require the disclosure of assets when they amount to above a certain value (for example, Canadian parliamentarians need to only list assets greater than C\$10,000). Other disclosed information is used to monitor Conflict of Interest, like revealing any source of income from employment or a profession such as ownership interests in firms, in addition to corporate board membership or directorship, whether paid or unpaid.

Public officials are required to file electronic forms in an increasing number of countries while paper forms are still used in many other systems. The advantage of an electronic declaration is that information can be directly entered into a database. Thus making the amendments and comparisons of information a lot easier to access.

IV. SUBMISSION OF DECLARATIONS AND FREQUENCY

When and how frequently should declarations be made?

There are different time schedule in declarations. The most common pattern is upon assuming duties (which allows the detection of any accumulated wealth that might occur in the course of exercising the public function), then annually, and finally upon leaving duties. Another pattern requires filers to update their submission during the office tenure when there is a "significant" change in their wealth value, thus immediately preventing any conflict of interest. Other systems require less frequent submission; declarations are submitted upon taking and leaving office, which is usually found when declarations are non-public. Some countries have laws that combine one or more declarations frequencies.

V. COLLECTION AND ARCHIVING

How should declarations be collected and archived?

The collection of declarations can be executed in 2 methods¹⁹. It could be in a centralized way where a single body collects all declarations; or a decentralized one and in this case, public officials submit their declarations to the entity where they work or their direct superior body. Some systems use both methods. To prevent conflict of interest, a decentralized system is usually more effective since direct supervisors are already aware of the public official's personal interest and how it could be used for their personal gain. Whilst a centralized system could be more practical to monitor Illicit Enrichment knowing that financial auditing are performed in a general manner regardless of the institution in which the public official is working. The ideal would be to opt for both methods.

Declarations should be archived, kept as references and shouldn't be destroyed before being compared to the initial declarations.

VI. VERIFICATION

How should declarations be verified?

If public officials know that no entity will verify the submission of their declarations or that the information declared will most probably never be verified, they will most likely in their turn, take this task very lightly or they might even present useless or inaccurate information. The whole system would lose its integrity and will become purposeless. For this cause, the verification of the submission, completeness and accuracy of declarations is of great importance. All statements submitted by officials must be verified while focusing on the most senior officials. Moreover, declarations should be chosen randomly and by risk criteria and be subject to a financial audit. On a side note, some systems provide the possibility for public officials to rectify information in their statements, sometimes subject to a deadline.

VII. CONTROLLING BODY & INTERAGENCY COLLABORATION

How should declarations be controlled?

The effectiveness of asset declaration systems depends on an independent controlling body and interagency collaboration. The controlling institutions should have access to all kinds of data, whether public or individually provided. For example, it should have the

¹⁹Income and assets declarations: Issues to consider in developing a disclosure regime. Richard Messick. :U4 Issue (2009). Retrieved from https://www.academia.edu/23102068/Income_and_assets_declarations_Issues_to_consider_in_developing_a_disclosure_regime?auto=download

option to inspect assets on a case-by-case basis and to have access to every public official's bank information. Interagency collaboration relies on the cooperation provided by police units, financial intelligence units in order to investigate cases. The engagement of the tax administration would also play a crucial part in monitoring wealth and detecting Illicit Enrichment. An independent, anti-corruption oversight body should have the capacity to receive corruption allegations, investigate them, take enforcement and preventive actions and implement anti-corruption strategies.

VIII. SANCTIONS

Which sanctions are needed to enforce asset declarations?

Drafting appropriate and enforced sanctions is a necessary tool to ensure public officials' compliance with the requirements of declarations. Failure to comply with declaration rules or incomplete or late declarations should lead to penalties and disciplinary measures. Criminal sanctions should be imposed to more severe actions such as filing false information intentionally. Sanctions should also be applied to every public servant, including the elected officials, given that everyone is equally regarded by the law.

IX. PUBLIC ACCESS TO DECLARATIONS AND CIVIL SOCIETY

Should declarations be made available to the public?

Corruption is better fought when the information provided in declarations is **made available for public scrutiny**. Instead of adhering to the principle of confidentiality, a minimum right to privacy can be granted. Disclosed information can be limited. The controlling body's activities, investigations and reports should be published as well. This would allow citizens to make the right decisions at the ballot box. The electronic form of declarations would make it easier for media and civil society to fight corruption and hold officials liable.

X. EVALUATION

How should the declarations system be evaluated?

Asking public officials to declare their wealth and assets is not costless²⁰. The budget should be stable and sufficient in order to ensure proper staffing and functioning of the system. Therefore, asset and wealth declarations systems should be evaluated regularly. A number of factors should be taken into consideration for the evaluation process. Such

²⁰ Ibid

factors include the level of compliance with requirements to the submission of asset declarations and disciplinary actions or criminal investigations that have been made based on information provided in declarations.

LEBANESE ILLICIT ENRICHMENT LAW NO. 154/1999

LEGAL FRAMEWORK

Illicit enrichment provisions in Lebanon were first issued by Legislative Decree no. 38 of 2/18/1953 and the law of 4/14/1954. In 1999, both laws were replaced by the “Illicit Enrichment” law no. 154/1999 of 12/27/1999 (“Law no.154/1999”). The draft law of 2009 is currently under review.

Law no.154/1999 generally criminalizes Illicit Enrichment with the basic duty for public officials to disclose their assets. But ever since its first issuance, **no charges of Illicit Enrichment were ever brought against any public official**, although many of their enrichment aspects are mostly illegally made. The only exception might be the lawsuit alleging illicit enrichment charged by Public Prosecutor of Mount Lebanon against a former Prime Minister for illegitimate gains²¹. Filed in 2019, this lawsuit is still ongoing.

After ratifying the UNCAC, Lebanon declared that it has fully implemented the provision of Article 20, Chapter III of the Convention in relation to illicit enrichment. But as stated in the above chapter, the reviewing team of the UNODC found that **the significant increase of the assets of public officials**, without reasonable explanation, **has not been criminalized**. This creates a major loophole in the law. Although Lebanon was considering the criminalization of the said provision, it acknowledged²² that it has deficiency of existing normative measures, specificity in its legal system, limited capacity and resources for its execution.

On a side note, Law no.154/1999 focuses on detecting Illicit Enrichment without mentioning any provision on declarations in regards to conflict of interest thus creating another loophole in the system.

²¹Mikati, Bank Audi deny charges of ‘illegitimate enrichment’. The Daily Star (October 24, 2019). Retrieved from: <http://www.dailystar.com.lb/Business/Local/2019/Oct-24/494197-mikati-bank-audi-deny-charges-of-illegitimate-enrichment.ashx>

²² Supra note 17 (p.41)

- The Lebanese Council of Ministers had approved on June 18, 2009 the amended draft law²³ of illicit enrichment of law No. 154 of 1999. The draft law was referred on July 3, 2009 to the parliament. The Parliamentary Committee on Administration and Justice is currently reviewing the draft.
- Illicit enrichment is defined in conformity of Article 20 Chapter III of the UNCAC. This allows the significant increase of the assets of public officials, without reasonable explanation, **to be criminalized**.
- Illicit enrichment is defined as “any doubling or more of the financial disclosure **during any five consecutive years** during the job”. The “five consecutive years” term may lead to unfairness and confusion knowing that Members of the Parliament are elected to a **four-year term**.²⁴

COVERAGE OF PUBLIC OFFICIALS

The provisions of article 4 and 5 of Law no.154/1999 enumerate the categories of people who are required to submit declarations of their wealth and assets. It includes all judges and all employees of the third category or equivalent; controllers and auditors at the Ministry of Finance and employees of the Customs, all public service providers, head of directorates and heads of general directorates, government officials such as ministers and the President and all members of parliament.

The law includes family members more particularly spouses and minor children, but it excludes the teaching staff of the Lebanese University and public schools.

Do the provisions of articles 4 and 5 of Law no.154/1999 cover a range that is wide enough to fight corruption and detect illicit enrichment? The declaration obligation shouldn't be excluding any entity such as teachers working in official institutions. It should also cover private entities and individuals who provide public services through outsourcing and procurement.

On another note, corrupt officials usually tend to hide their assets under the names of their relatives or third persons, which are outside the range of spouses and minor children. In similar cases, the detection of illegal gains can be achieved through tax

²³Illicit Enrichment Amended Draft Law. UNDP. Anti-Corruption news (3 July 2009). Retrieved from: <http://www.undp-aciac.org/resources/ac/newsDetails.aspx?nid=914>

²⁴Illicit Enrichment Law" session by Judge Rana Akoum. Lebanese Transparent Association Seminar (26 " (January, 2020

systems and inter-agency cooperation without burdening the declaration system with additional number of people who are not in the public sector.

Amendments in the Current Draft Law of 2009

- Allow the seizure of third parties' monetary belongings in certain circumstances whilst taking into consideration people of goodwill.
- The definition of public employee is broader.
- The range of public officials remains the same and teaching staff is excluded.

CONTENT OF DECLARATIONS AND FORMS

Article 4(6) of Law no.154/1999 requires declarations to contain the movable and immovable funds owned by the filer, their spouses, and their minor children. Declarations are filed based on a template, which is annexed to the Law no.154/1999, as per the same Article. The template lists the assets and wealth that should be contained as follows:

- “Movable and immovable funds owned by them, their spouse, and their minor children along with the number of each real estate and the real estate zone.
- The movable property they own.
- All and any financial receivables and contracts.”

The requested information above could be subject to a broad interpretation specifically when compared to a following sheet. Other essential information is not listed (i.e. inheritance assets, which is the most common excuse to be given when asked about a sudden increase in wealth). A more detailed and clear template would be more effective for comparison purposes and for more accurate declarations. When figures are clear, the origin of big financial increases can't be debatable or argumentative; it's either legal or illegal. In other words, the filer won't be able to lie or find an escape justifying the increase.

Ideally, the declaration template should include salaries, rental income, given and received loans, gifts, financial bank accounts inside and outside of the country, owned vehicles, houses, jewelry, etc. It should also include information that monitors conflict of interest. For example, a judge shouldn't preside over a trial when one of the parties is a company which he owns shares in. As another example, when a member of the parliament declares owning a real estate in a particular city, any decision taken by him or unusual work established in that city, could be suspicious.

It is worth mentioning that public officials cannot hide behind banking secrecy. The provisions of Law no.44/2015 fight money laundering in cases of public funds embezzlement, illicit enrichment and corruption²⁵. A special investigation commission initiated before Banque Du Liban can lift the banking secrecy in Lebanon to be able to investigate suspicious accounts. This commission can also trace funds that have been “hidden” in bank accounts outside of Lebanon.

Amendments in the Current Draft Law of 2009

- Declarations should include the full patrimony and a complete statement of financial disclosure (including financial wealth owned inside and outside of Lebanon).
- The National Anti-Corruption Commission will provide the declaration forms.

SUBMISSION OF DECLARATIONS AND FREQUENCY

As per the provision of Article 4 of Law no.154/1999, public officials are required to submit their declarations upon their commencement of work. This declaration should state the movable and immovable funds owned by them, their spouses and their minor children. It should also be signed. Article 6 of the same law reads, “The declaration stipulated in Paragraphs (1) and (2) of Article 4 of this law is considered one of the conditions for undertaking public service. It targets the President of the Republic, the President of the Parliament, members of the Parliament, the President of the Council of Ministers, and ministers.” The problem remains with the absence of a controlling body and the fragile administration capacities to handle thousands of declarations in paper form (more than 76,000²⁶ declarations were collected in 2016).

Public officials are more likely to submit the declaration when assuming office for having to present a set of documents for bureaucracy purposes. On the other hand, **elected officials like members of parliaments, might assume position and leave without submitting any declaration.**

Law no.154/1999 didn't mention in its provisions how frequently declarations must be amended or submitted during the tenure of public officials. In Lebanon, public officials

²⁵Recovering stolen public funds, a priority for demonstrators. An-nahar. (11 November, 2019). Retrieved from: <https://en.annahar.com/article/1066338-recovering-stolen-public-funds-a-priority-for-demonstrators>

²⁶ The Illicit Enrichment Law, a lie that scuffs lies. (2019) (Arabic). Retrieved from: <https://www.alsadaranews.com/lebanon/news138377.html>

usually keep their positions until the age of retirement, which is set at 64 years old as per the Lebanese Labor Law. This means that employees are likely to keep the same job for more than 30 years. In a corrupt country like Lebanon and without any supervision or monitoring of their wealth, they could gather illegal fortunes. Therefore, periodical submissions of updated declarations would prevent illegal accumulations of wealth by public officials. In most countries, the update of declarations is done annually.

Amendments in the Current Draft Law of 2009

- Any judge or employee who fails to submit the declaration within a month of being asked to will be considered as resigned.
- Elected officials are asked to submit declarations when re-elected.
- Public officials, who do not produce evidence of submitting the second financial declaration upon termination of his duties, will not receive any indemnity, pension or end of service compensation.
- Declarations should be updated and submitted periodically every 3 years during time in office.
- Declaration forms should be submitted to the National Anti-Corruption Commission and the board of the latter should submit their declarations to the secretariat of the parliament.
- The Amendment also mentions that Declarations should be submitted **within 2 months** upon assuming duties. **The submission must remain as is, upon commencement of the work.**

COLLECTION AND ARCHIVING

Article 5 of Law no. 154/1999 defines 11 entities, which collect the declarations from public officials upon assuming their duties. A subsequent deposition of these declarations could be at the Central Bank of Lebanon, as per the provision of Article 5 that reads: “The above mentioned competent authorities shall retain the declarations at Banque du Liban (which shall function as a central depository) by the end of the specified time limit in each case.” With the absence of a controlling body, these **collected envelopes** might **never be opened**.

Law no.154/1999 does not stipulate any provision on the archiving of declarations. This issue could be **resolved** with an **electronic declaration system** given the spread of Internet use. Amongst the advantages of using technology, there is the possibility of storing declared information for decades.

Amendments in the Current Draft Law of 2009

- The National Anti-Corruption Commission will conduct the collection of declarations. (Lebanon seems to be opting for a centralized method).
- **Declarations remain confidential.**

VERIFICATION

Without the proper verification, the integrity of a declaration system would be lost. There is no purpose in declaring asset information if it won't be verified. The verification of information could be made randomly or on risk-base cases. Sometimes both methods could be used.

In Lebanon, with the absence of a controlling body, the verification task remains inapplicable. On a smaller scale, head of departments receive the envelopes from newly employed public officials. The latter can't verify that the templates have been correctly and entirely filled, and won't be able to identify any potential conflict of interest, because the envelopes are sealed. As per Article 4(5) of Law no.154/1999, "the declaration shall be submitted inside a **confidential** envelope, **closed** and signed (...)".

The absence of verification creates an additional loophole in the system. A public official, knowing that these envelopes won't be opened, could simply submit false information or declare big financial amounts that he doesn't own yet. The corrupt system is already known amongst citizens. Getting a job in some particular public entities is considered, to some, a lottery win!

To detect illicit enrichment and identify possible conflicts of interests, the controlling body shouldn't only ensure that public officials are submitting their declarations, but should also verify the accuracy of the information. Legislators have to include a methodology to the procedure of content examination and verification.

Amendments in the Current Draft Law of 2009

- Declarations will be submitted to The National Anti-Corruption Commission against receipts. This will allow tracing submission compliance and taking the necessary measures against defaulters in considering them as resigned.
- The Commission will send yearly reminders for the update and resubmission of declarations.
- A verification procedure on declarations content is missing.

CONTROLLING BODY & INTERAGENCY COLLABORATION

There is **no controlling body on declarations** in Lebanon. The only oversight that takes place is on declarations submission by the 11 above-mentioned entities. An effective controlling body needs budgetary and resource support. This includes staff with competency and experience. The interagency collaboration also plays an essential part in the process. Tax administration, the real estate register, other public registers and financial control bodies should be involved given that wealth monitoring is one of the main purposes of the declarations system.

On another hand, to be able to check declarations' accuracy, the controlling body should have access to external sources of data from state databases. Without these sources, the controlling body will need to focus greatly on public officials' lifestyle checks. In such cases, public complaints could trigger the interest of the controlling body in reviewing the reasons for their allegations and eventually start an investigation. A neutral media, civil society and non-profit organizations with an interest in anti-corruption could increase the effectiveness of this tactic.

Amendments in the Current Draft Law of 2009

- The National Anti-Corruption Commission will have the role of a controlling body with certain authorities. It will have the same powers given to the Public Prosecution in filing complaints against fraudulent public officials.

SANCTIONS

Article 10(1) of the Law no.154/1999 states that: “Any aggrieved person is entitled to submit a written complaint signed by them to the Public Prosecution or directly to the First Investigative Judge in Beirut.” And as per the Lebanese Criminal Procedure Law, **the plaintiff must have the requisite standing and status** in his application, otherwise it is not accepted. Noting that filing complaints in the matter of public money, having the requisite standing can hardly be proven²⁷.

Article 10(2) reads, “The plaintiff shall submit a bank guarantee in the amount of **25 million Lebanese pounds**.” Additionally, as per Article 15, if the plaintiff is found to be

²⁷ Supra note 17.

“in bad faith”, he can be subject to imprisonment and/or a fine amounting not less than **200 million Lebanese pounds**. This amount is equal to 296 times the current minimum wages (675,000 Lebanese pounds), and to 667 times the minimum wages when the law was amended in 1999. The plaintiff could also be sentenced to pay a compensation for the damages the defendant suffered as a result of the complaint. **In other words, filing a complaint of Illicit Enrichment is practically impossible.** To this day, no citizen has ever filed any complaint.

On the other hand, the law allows the Public Prosecution and the Investigative Judge to file a complaint without a bank guarantee. But in consistency with Article 12 of Law no.154/1999, the complaint would be based only on “presumption”; And as per the Lebanese Criminal Code, **presumption is not sufficient for prosecution nor for conviction**²⁸. In Law no.154/1999, only a provision on temporary seizure is mentioned (as per Article 13).

This being said, sanctions in Law no.154/1999 are based on statutory dismissal and criminal offences. They are applied for:

- **False data submission** in asset declarations, as per Article 6(4) of Law no. 154/1999 (which refer to Article 462 of the Lebanese Criminal Code).
- **Failure to submit** asset declarations, as per Article 6(2 and 3) of Law no. 154/1999.
- **Breach of confidentiality** of asset declarations, as per Article 7 of Law no.154/1999 (which refers to Article 579 of the Lebanese Criminal Code).
- **False accusation** of illicit enrichment as mentioned above, as per article 15 of Law no.154/1999.

Amendments in the Current Draft Law of 2009

- Illicit enrichment is defined in conformity of Article 20 Chapter III of the UNCAC. This allows the significant increase of the assets of public officials, without reasonable explanation, **to be criminalized**. Sanctions are therefore applied (imprisonment, seizure of assets, fine penalties amounting from 30 to 200 times the minimum wages and recovery of stolen assets).
- The National Anti-Corruption Commission can file a complaint without any guarantee.
- Public officials proven guilty of illicit enrichment are sentenced to imprisonment

²⁸ Supra note 24.

and a fine.

- **Partners in crime, lender of the perpetrator's name and people who encouraged such act are not sanctioned. In the case of death, inheritors are not prosecuted.**²⁹

PUBLIC ACCESS TO DECLARATIONS AND CIVIL SOCIETY

In Lebanon, asset and wealth declarations remain **protected by confidentiality** (as per Article 7 of Law no.154/1999). Any violator is subject to sanctions as per the same Article, which reads, “Violators shall be punished by the penalty stipulated in Article 579 of the Penal Code. The competent judicial authority is entitled to view the declarations if prosecution occurs.” As per Article 579 of the Lebanese Penal Code, the violator will be punishable by detention and subject to a fine.

While the controlling body has access to state databases, the public does not, which increases their attention to the bureaucrats’ way of life and can allow them to detect a sudden wealth growth. As per the OECD, the efficacy of asset and wealth disclosure systems is related to its access by the public, making it a collaborator in capturing office abuse. In addition, the value of anti-corruption by the officials expands when the public can obtain this information. **Lifting the veil of privacy to the public is key.**

In consistency with the UNCAC, the Lebanese government has passed the **Whistleblower Protection Law no. 83/2018 of 10/10/2018**, which makes the Lebanese government a more credible actor in the fight against corruption. This Law protects whistleblowers by securing confidentiality and guaranteeing their employment and personal safety. It also includes specific mechanisms for compensation. However, the Whistleblower Protection Law remains **inapplicable** given that the **National Anti-Corruption Authority hasn't been formed yet**. Once formed, citizens will be able to file complaints before it, in relation to illicit enrichment cases, without the above-mentioned financial guarantee while keeping an **anonymous** identity.

Amendments in the Current Draft Law of 2009

- **Confidentiality for asset declarations remains.**
- Civil Society will have a role in fighting against corruption once the National

²⁹Supra note 23

Anti-Corruption Commission is formed.

EVALUATION

The effectiveness of an asset declaration system doesn't only depend on its results, but depends as well on the financial fees carried out for the purpose of its implementation. If the asset declaration system were costly, the government would be losing twice as it would be spending money on a useless system. Ideally, every government should consider the continuous tracking payments versus the effectiveness of the system and find adequate solutions.

To this day, the **Illicit Enrichment Law no.154/1999** in Lebanon **hasn't been effective**. Not a single complaint has been raised, no public or elected official has been convicted and there is no evidence of submission compliance of asset declarations, which allowed corruption to reach its peak. Even if the current draft law is passed, in which **disclosed information is still bound with confidentiality** and **a controlling body is still not formed**, visible changes won't be seen in the near future or not even at all.

CONCLUSION

It is now clear that Lebanon hasn't met international standards on asset declarations. The Illicit Enrichment Law no.154/1999 seems to have loosened its credibility, given its total ineffectiveness. Combating corruption starts by designing better systems. Therefore, it is extremely important to stress the urgency of **the creation of a National Anti-Corruption Commission** and the **passage of the draft law of Illicit Enrichment of 2009**. The **Confidentiality condition** in this new Law must be categorically **removed**; otherwise, Lebanon won't get any step closer fighting against corruption.

The created link between transparency and corruption is subject to two important conditions, listed as follows:

1. The "**Publicity Condition**". In order for transparency to alleviate corruption, public officials don't only need to declare information related to their asset and wealth, but the disclosed information need to be **open for public scrutiny**.
2. The "**Accountability Condition**". If the release and spread of information to the public is to affect the behavior of potentially corrupt government officials, the

public must have some **sanctioning or reporting mechanism in its hands**. Transparency on its own by just making information available, will do little to prevent corruption.

RECOMMENDATIONS

The most efficient way to fight corruption is by preventing corrupt and unethical behavior from happening. **Citizens are best able to hold governments to account when they are well informed and have the capacity and freedom to act upon the information they obtain.** To put an end to corruption and hold public officials to account, the Lebanese Government and Parliament must opt for serious steps thus showing their determined will to fight corruption.

Recommendations for the Lebanese Parliament

The Lebanese Parliament should:

1- Review once again the Amended Draft Law of Illicit Enrichment Law no. 154 of 1999, approved in 2009.

The current Illicit Enrichment Amendment Draft Law of 2009 includes several loopholes that should be amended before the draft law is passed.

2- Amend Article 4(5) and 7 of the Law no.154/1999.

The parliament should remove the confidentiality condition on declarations and eliminate sanctions for breach of confidentiality. Information related to asset and wealth declarations of public and elected officials must be accessible and published for public scrutiny.

3- Pass the Illicit Enrichment Amendment Draft Law of 2009.

After amending the current Illicit Enrichment Amendment Draft law of 2009 and specifically removing the confidentiality condition, the parliament should pass the said draft law as an essential leading step to fighting corruption.

4- Pass the relevant law to establish the National Anti-Corruption Commission.

The parliament should establish the National Anti-Corruption Commission, which will serve for controlling and accountability purposes. Without it, there won't be a controlling body to investigate suspicious wealth increases, and the

Whistleblower Protection Law won't be applicable. Citizens would never dare to file any complaint against corrupt officials.

Recommendations for the Lebanese Government

The Lebanese Government should:

1- **Commit to Anti-Corruption actions.**

To win the Lebanese citizen's trust again, the government must adopt strict and preventive actions, in compliance with international standards, to stop corruption. Its relevant commitments must be publicly reported.

2- **Engage civil society and empower whistleblowers.**

The government must **protect** whistleblowers, activist citizens and courageous journalists who are exposing corrupt officials and standing in the way of corruption. This would be easily possible if the National Anti-Corruption Commission is established and is working independently.

3- **Increase transparency.**

The government must enforce the implementation of anti-corruption laws by proactively **publishing** public information such as asset declarations. Internet and technology must be used as a **force** for accountability. The norms of an **Electronic Asset Declaration System** must be launched and applied, as discussed in the following section.

AN ELECTRONIC ASSET DECLARATION SYSTEM AS PART OF THE SOLUTION

Lebanon is still implementing outdated mechanisms to fight illicit enrichment and corruption resulting in useless and ineffective outcomes. In its fight against corruption, Lebanon must apply strict measures. **In this age of technology, asset and wealth disclosure should be shared online.** The assistance of specialized anti-fraud and anti-financial crime professionals is also much needed.

Nowadays, a considerable number of countries around the world rely on technology in their asset declaration systems in order to achieve their objectives. **Using information technologies helps in preventing corruption,** avoiding conflict of interest and detecting

illicit enrichment. Citizens are therefore able to inspect government officials' wealth, **online** and **for free**, having the ability to hold them to account.

Electronic asset declarations system aims to achieve transparency, honesty, ethicality, civic engagement, accountability and even economic growth. This mechanism contributes significantly to the efficacy of the asset declaration system. It eliminates the errors in submission compliance. It is time consuming, easier to update and obtained information can be archived for longer periods of time.

Stored data through a centralized portal can also be linked to other governmental databases like tax administration and real estate registries, creating an algorithm to detect irregularities changes in assets compared with previous declarations (“**red flags**”). This mechanism would enable better verification and tracking by the controlling body. At a first stage, an electronic handbook that guides public officials in completing their declarations could be created. Training sessions can also be provided.

Online Asset disclosures marked success stories around the world. In 2016, the **Ukrainian** government launched its e-declaration system for all public officials as one of the world's most modern transparency schemes. Two years later, the country introduced an automatic verification module of electronic declarations, which was able to review 100,000 declarations within fifteen minutes³⁰. It is believed that the e-declaration system in Ukraine will have tangible results against corruption within the next three to five years.

The introduction of technology in **Argentina**³¹ also had a significant impact on the effectiveness of the asset declaration structure. As the country publishes asset declarations of prominent politicians in public records and newspapers, the number of requests of conflict of interest investigations and financial disclosure increased radically.

As Lebanon is falling apart, the Lebanese government is urgently recommended to immediately establish the National Anti-Corruption Commission and to pass the draft law of 2009 in which the confidentiality condition is replaced by the obligatory publication of public officials' declared information.

³⁰ Electronic Asset Declarations for Public Officials – two years after its launch. A panacea against corruption? UNDP Ukraine. (August 25, 2018). Retrieved from: <https://www.ua.undp.org/content/ukraine/en/home/blog/2018/the-expectations-and-reality-of-e-declarations.html>

³¹The use of technology for managing income and asset declarations. U4 Expect Answer. (September 18, Retrieved from: <https://www.u4.no/publications/the-use-of-technology-for-managing-income-and-asset-declarations.pdf> .(2015