



**MANAGEMENT REPORT ON THE
AUDIT OF ASSET DECLARATION
REGIME IN SIERRA LEONE**

2014 - 2016

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GLOSSARY OF TERMS

Technical terms

Bribery - Bribery is the act of offering someone money, services or other valuables, in order to persuade him or her to do something in return. Bribery is corruption by definition. Bribes can also be called kickbacks, baksheesh, payola, hush money, sweetener, protection money, boodle, gratuity etc. Bribery is widely criminalised through international and national laws. In particular, the bribing of foreign officials is outlawed by the OECD Convention on Combating Bribery of Foreign Public Officials.

Bureaucratic corruption (petty corruption)

Bureaucratic, administrative or "petty" corruption takes place at the implementation end of public policies, where members of the public meet public officials. Bureaucratic corruption is usually distinguished from "grand" and political corruption (to the extent possible to distinguish administration from politics). Bureaucratic corruption usually involves smaller amounts of money; but the damage may be significant, in monetary and political terms, if it is happening in a systemic manner.

Conflict of interest

Conflict of interest arises when an individual with a formal responsibility to serve the public participates in an activity that jeopardizes his or her professional judgment, objectivity and independence. Often, this activity (such as a private business venture) primarily serves personal interests and can potentially influence the objective exercise of the individual's official duties.

The Financial Intelligence Unit (FIU)

The FIU is a central national agency responsible for receiving (and as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information: (i) concerning suspected proceeds from crime and potential financing of terrorism, or (ii) required by national legislation or regulation, in order to counter money laundering and terrorism financing.

Fraud

Fraud is an economic crime involving deceit, trickery or false pretences, by which someone gains unlawfully. An actual fraud is motivated by the desire to cause harm by deceiving someone else; while a constructive fraud is a profit made from a relation of trust. Synonyms: swindle, deceit, double-dealing, cheat and bluff.

Illicit financial flows

Cross-border movements of money illegally earned, transferred, or utilised. Illicit financial flows generally involve the transfer of money earned through illegal activities such as corruption, dealings in contraband, criminal activities and efforts to shelter wealth from a country's tax authorities.

Politically Exposed Persons (PEPs)

Individuals who have been entrusted with a prominent public function. A PEP generally presents a higher risk for potential involvement in bribery and corruption by virtue of their position and the influence that they may hold.

Whistle blower

Successful law enforcement and anti-corruption strategies are largely dependent upon the willingness of individuals to provide information and/or to give evidence. Whistle-blowers are people who inform the public or the authorities about corrupt transactions they have witnessed or uncovered. These individuals often require protection from those they expose. Whistle-blower protection refers to the measures (administrative or legislative) taken to shield the informer from physical, social and economic retaliation.

Public Officer

An officer or member of a public body including a person holding or acting in an office in any of the three branches of government, whether appointed or elected, permanent or temporary, or paid or unpaid.

ABBREVIATIONS AND ACRONYMS

UNCAC	The United Nations Convention Against Corruption
AUCPCC	The African Union Convention on Preventing and Combating Corruption
ASSL	Audit Service Sierra Leone
SAI	Supreme Audit Institutions
IFF	Illicit Financial Flows
AFROSAI	African Organisation of Supreme Audit Institutions
GIZ	German Society for International Cooperation, Ltd.
FEPS	Financially Exposed Persons
PEPS	Politically Exposed Persons
ACC	Anti-Corruption Commission
ACA	Anti-Corruption Act
MDAs	Ministries Departments and Agencies
NACS	National Anti -Corruption Strategy
ISSAIs	International Standards of Supreme Audit Institutions
AFROSAI-E	African Organisation of English Speaking Supreme Audit Institutions

FOREWORD



In July 2016, at its 51st Governing Board in Windhoek, Namibia, the African Organisation of Supreme Audit Institutions (AFROSAI) decided to actively address the topic of Illicit Financial Flows (IFF) from Africa. Given that IFF is a cross-border phenomenon; a cooperative audit for AFROSAI member SAIs on illicit financial flows was adopted. It focused on corruption, specifically the domestication of international conventions against corruption, such as the United Nations Convention Against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption.

In connection with the above, in February, 2017 a working session meeting of the African Organization for Supreme Audit Institutions (AFROSAI) was convened in Nairobi, Kenya to consider ways the body could implement the cooperative audit. The outcome of that meeting was a Memorandum of Understanding (MoU) signed by thirteen Supreme Audit Institutions (SAIs) of AFROSAI to conduct a 'Cooperative Audit of Illicit Financials Flows' (IFFs) with a focus on corruption.

AFROSAI members present at this meeting agreed that the cooperative audit should focus on two thematic areas, Assets Declaration and Procurement.

Sierra Leone and six other SAIs opted to conduct an audit on the Assets Declaration Regimes of their respective countries.

In submitting this special audit report on the Asset Declaration Regime in Sierra Leone for tabling in Parliament, I refer to the Audit Service Act, 2014, Section 11(1) which sets out the role of the Audit Service as being, 'to audit and report on all public accounts of Sierra Leone and all public offices including the Judiciary of Sierra Leone, the central and local government institutions, the university of Sierra Leone and other public sector institutions of like nature, all statutory corporations, companies and other bodies and organisations established by an Act of Parliament or statutory instrument or otherwise set up wholly or in part out of public funds'.

Section 11 (2) (c) of The Audit Service Act, 2014 confers on the Audit Service the right to carry out value for money and other audits to ensure that efficiency and effectiveness are achieved in the use of public funds. In addition, the Public Financial Management Act, 2016, Section 95 (6) states that 'nothing in this section shall prevent the Auditor-General from submitting a special report for tabling in Parliament on matters that should not await disclosure in the annual report'.

In line with my mandate as described above, we have undertaken this special audit on the Assets Declaration Regime in Sierra Leone managed by the Anti-Corruption Commission.



Lara Taylor-Pearce (Mrs.) FCCA, FCA-SL
Auditor-General of Sierra Leone

EXECUTIVE SUMMARY

OVERVIEW OF THE AUDIT

The United Nations Convention Against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AUCPCC) heightened the need for countries to carve out mechanisms to prevent and curb corruption, as corruption is seen as one of the main drivers of IFFs. In Africa, corruption remains an issue of continuing concern as the general public can easily relate to it without having specialist knowledge. *In order to increase the confidence of the citizenry that their resources are being managed properly by those they have entrusted power to, and to enhance the developmental aspirations of African nations, Supreme Audit Institutions (SAIs) have a significant role to play by ensuring that they put in place strategies that would lead to sustainable measures to address corruption from the perspective of the domestication of the international commitments of our countries.* In this regard, and in order to accommodate the mandate of all SAIs and enable a wide reporting strategy, AFROSAI in July 2016 decided at its 51st Governing Board meeting in Windhoek, Namibia to actively address the topic of illicit financial flows (IFF) from Africa by conducting a cooperative audit focusing on corruption. In furtherance of this laudable venture, representatives from participating countries were invited to a planning workshop organised by the AFROSAI Knowledge Sharing Committee in partnership with GIZ. The main purpose of the workshop was to come up with methods of curbing IFFs; thus resulting in a compendium of common audit findings from all participating SAIs to enhance the visibility of AFROSAI as a pan African network.

The high-level panel on IFFs led by Thabo Mbeki defined IFFs as **“money that is illegally earned, transferred or utilised”**. These funds could emanate from a wide range of sources, for example:

- Undeclared profits and mis-invoicing to evade duties and taxes,
- Earnings from drugs and weapons trafficking, as well as money laundering, and
- Proceeds from corruption and bribes.

Statistics have shown that IFFs out of Africa is estimated at more than \$50 billion annually, increasing at an annual rate of over 8% - more than overseas development assistance and foreign direct investment coming into the continent. Therefore, as SAIs who are mandated to act as guardians of our respective citizenry, it is imperative that we have a system of checks and balances in place to help prevent the siphoning of our country's scarce resources and to better improve the lives of our citizens.

CONCLUSIONS

Legal and Institutional Framework of Asset Declarations in Sierra Leone

In 2000, the Government of Sierra Leone enacted the Anti-Corruption Act, paving the way for the establishment of the Anti-Corruption Commission. In 2008, following the ratification of the

UNCAC and the AUCPCC, the Anti-Corruption Act was amended. The amended Act has addressed the main concerns of the UN and AU conventions especially those bearing on establishing an Asset Declaration Regime. We noted during the course of the review, that the Act provides broad requirements for assets declaration. The Act was however not supported by a regulation which makes implementation and monitoring impracticable.

Obligations of public officials with regard Asset Declarations

In Sierra Leone, every public officer is required to submit a sworn declaration of his income, assets and liabilities to the Commission while in office and when leaving office. This requirement largely conforms to Article 7 of the AU Convention on Preventing and Combating Corruption. In as much as the law provides for all public officers to submit assets declarations, it is obvious that the Commission does not have the requisite capacity to handle all declarations submitted to it, as it is impractical to examine and investigate each declaration and cause action to be taken to sanction defaulters. In this regard, best practice dictates that a selected group of public officials should be required to declare their assets. These typically should include Politically Exposed Persons (PEPs).

Implementation provisions provided in the Anti-Corruption Act, 2008

Unlike other countries where a number of institutions have oversight responsibility for the Asset Declaration Regime, in Sierra Leone, the Anti-Corruption Commission is solely responsible for the administration of the Asset Declaration Regime. Due to the administrative independence that the Commission enjoys, we noted that it was able to perform its mandate with little interference or influence from the central government. Our review however revealed that the Commission was not financially independent from the central government, as it receives its budgetary allocation from the government in a similar manner as other line Ministries, Departments and Agencies (MDAs). It is therefore subjected to the same budgetary procedure as the other MDAs. However, once the Commission receives its allocation, it has total control of how these funds are utilised.

Effectiveness of the Anti-Corruption Commission in exercising its functions in respect of the Asset Declaration Regime

We noted during our review of the Commission's operation in relation to Asset Declaration, that the Commission's mandate in ensuring that public officers declare their assets and income is clearly spelt out in law and this responsibility was effectively carried out without any hindrance. Even though section 120 of the ACA 2008 gives the Commission the powers to investigate the particulars of the asset declaration submitted, we observed that the contents of the assets declaration forms received were not verified by the Commission. This was largely due to the fact that the department charged with this very important function was grossly understaffed to deal with the overwhelming number of assets declarations submitted to it. In this vein, the asset declarations were only reviewed when a charge was brought against a public officer for corruption offenses. In the instance when the public officer under investigation has not declared his or her assets, this forms part of the charges brought against him/her in court.

Effectiveness of the Asset Declaration Regime in Sierra Leone

During our review of the assets declaration statistics for 2014, 2015 and 2016, we observed a low rate of return of the assets declaration forms. There was however a marked improvement in the rate of returns in 2016 compared to the other years. The compliance rate was still low considering the fact that only 67.6% of the actual number of public officers were issued with forms to declare their assets, liabilities and income. From our interviews with the Commission, the low return rate was mainly attributed to the lack of sensitisation of public officers.

In a bid to increase the compliance rate, we noted that the Commission in 2017 has commenced the online assets disclosure. It is therefore anticipated that the compliance rate shall increase because declarants including officers in foreign missions will access and submit the form with ease in a secured manner. As a result, the Commission will gradually move away from the paper system of printing and archiving to an electronic version and maintaining a proper back-up system. However, there are no formal MOUs with the Human Resources Management Office and Public Service Commission to facilitate the completion and return of assets declaration forms. If and when administrative sanctions are considered, these institutions may also be of great help in implementing these sanctions.

RECOMMENDATIONS

We recommend the following:

1. The Commission formulates an Asset Declaration Regulation which underpins the provisions contained in the Anti-Corruption Act, 2008 that deals with Integrity in Public Life. The asset declaration manual must address the following issues which are highlighted in this report:
 - Reduce the coverage of the Asset Declaration Regime to focus on the Politically Exposed Persons.
 - Expand on Verification Powers of the Act; and the processes for verification must be clearly defined in the regulation. We advise that the verification process should be a blend of the risk-based verification process which is based on the exposure to potential conflict and the ex officio based verification is which a detailed verification of high level members of government and on suspected violations (*OECD, 2011*);
 - The regulation should also consider late submission and incomplete submission as violation of the provisions of the asset declaration regime; and
 - Administrative sanctions should also be considered in the regulation for violations/offences related to the duty to submit declarations.
2. The Commission must ensure appropriate handling procedure is formulated which ensures that all asset declaration received are examined for completeness and a database should be established to record the time the declarations are received.

3. Consideration must ensure that it is properly staffed to handle the responsibility given to them. Staff should also be properly trained to use the asset declaration guideline/manual.

ACTIONS TAKEN OR TO BE TAKEN

The ACC has set up a review committee in October 2017. The committee comprises of focal persons from the Financial Intelligence Unit, Human Resources Management Office, Public Service Commission and Audit Service Sierra Leone. The committee is charged with the responsibility to review section 119 of the ACA 2008 and formulate an Asset Declaration Regulation. The regulation is expected to address most of the lapses identified in this report. Since we are represented on the Committee, we intend to monitor the process and the eventual output. We will appraise whether the key recommendations are adhered to in designing the regulation.

CHAPTER 1: INTRODUCTION TO THE AUDIT AND THE SUBJECT MATTER

1.1 BACKGROUND OF THE AUDIT

The publication of the High Level Panel Report on Illicit Financial Flows from Africa, commissioned by the Economic Commission for Africa and the African Union, and headed by former President of South Africa, Thabo Mbeki, in February 2015 highlighted the challenges that Illicit Financial Flows (IFFs) currently pose to Africa's development.

Since this publication, the African Organisation of Supreme Audit Institutions – AFROSAI, has steadily stepped up its efforts to highlight SAIs' contributions to tackle IFFs from Africa, carving out the role of SAIs in this regard at the 50th AFROSAI Governing Board meeting in Maputo, Mozambique, as well as at the 10th Governing Board meeting of AFROSAI-E in Cape Town, South Africa.

During the 51st AFROSAI Governing Board held in July 2016 in Windhoek, Namibia, it was agreed that the topic of illicit financial flows (IFF) from Africa should be addressed. Given that IFF is a cross-border phenomenon, a cooperative audit for AFROSAI member SAIs on illicit financial flows with a focus on corruption, specifically, the domestication of international conventions against corruption, such as the United Nations Convention Against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption, was adopted. This will enable the organisation to have a division of labour among the different AFROSAI organs undertaking activities in relation to IFFs, with linguistic subgroups focusing on commercial drivers of IFFs. It is also a chance to showcase the added value of AFROSAI as an effective contributor to African and international discussions on Public Financial Management and Good Financial Governance.

In furtherance of the objective set by AFROSAI at its 51st Governing Board in Windhoek, an agreement was signed by representatives of the participating countries at a planning meeting held in Nairobi-Kenya on 27th February to 3rd March 2017.

Two main topics were selected during the planning meeting. The topics are Asset Declaration Regimes and Public Procurement.

As a participating SAI, the Audit Service Sierra Leone chose to look at the Asset Declaration Regime due to two main reasons:

- We had recently undertaken an audit of the Procurement Activities in selected public sector entities; and
- As a SAI, we have not done any previous audit of the Asset Declaration Regime in Sierra Leone .

1.2 BACKGROUND TO THE ASSET DECLARATION REGIME IN SIERRA LEONE

The Anti-Corruption Commission (ACC) was established in 2001 by the Government of Sierra Leone. It was set up primarily to investigate alleged instances of corruption and to prevent corrupt practices. The Anti-Corruption Act (ACA), 2008 repealed and replaced the Anti-Corruption Act (ACA), 2000 with the aim of strengthening the ACC to most effectively execute its functions and mandates. The new Act gives prosecutorial powers to the ACC, encourages integrity in public life and increases the corrupt offences to make corruption a high risk venture.

As a result of this, the Asset Declaration Regime was introduced as a “Preventive Tool” in the fight against corruption. Hence, Part VIII of the Act was introduced, captioned – Integrity in Public Life.

It was in observance of these provisions that the Asset Disclosure Regime started in 2009. The declaration exercise according to the ACA starts in January and ends on March 31st in each succeeding year. The promulgation of the ACA 2008 and the launching of the revised National Anti-Corruption Strategy (NACS) were manifestations of the national and political will in discouraging corruption so that it would not adversely affect the socio-economic development of Sierra Leone.

The Asset Declaration Unit is charged with the responsibility of issuing, receiving, and analysing filled asset declaration forms.

1.3 AUDIT SCOPE (PERIOD, DOMAINS COVERED, KEY AUDITEES)

The audit covered the legal framework for assets declaration in Sierra Leone, alignment of the legal framework to AU and UN conventions, and the extent of implementation of the legal framework in Sierra Leone. The Audit covered the period from when the AU and UN conventions on corruption were ratified by Sierra Leone and the date of enactment of ACA 2008 up to 2017.

However, the examination of data on asset declarations covered the last three annual declarations (2014, 2015 and 2016).

The audit however, did not cover specific declarations made by public officers as the Anti-Corruption Commission is restricted to share such information with the public.

The key auditee is the Anti-Corruption Commission since it is the body charged with the responsibility of administering the asset declaration system in Sierra Leone.

1.4 AUDIT OBJECTIVE(S) AND AUDIT QUESTIONS

The main objectives of the Asset Declaration Audit are outlined below:

- to ascertain the level of compliance by Sierra Leone in instituting frameworks in line with UN and AU conventions to implement an assets declaration regime.

- legislative compliance (this assesses whether the legislation are there and are working)
- assessing the alignment of the legislation to the conventions
- to assess the effectiveness of systems put in place by Anti-Corruption Commission to manage the assets declaration regime in Sierra Leone
 - implementation of the legislative framework
 - monitoring of the framework

The audit considered five main questions as presented in table 1 below:

TABLE 1 AUDIT QUESTIONS	
Question No.	Audit Questions
1	Does a legal and institutional framework exist that addresses AU and UN provisions on Asset Declarations?
2	What are the obligations of public officials with regard to Asset Declarations?
3	What implementation provisions are provided in the legislation?
4	Do oversight institutions exercise their functions effectively?
5	How effective are the provisions to ensure compliance?

1.5 AUDIT CRITERIA AND THEIR SOURCES

The assessment criteria as stated in table 2 below, were derived from the Anti –Corruption Act, 2000 (repealed and replaced in 2008), United Nations Convention Against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AUCPCC).

TABLE 2: AUDIT ASSESSMENT CRITERIA	
Source	Description of relevant aspects
The Anti - Corruption Act 2000 (amended in 2008)	The Act requires that every public officer shall, within three months of becoming a public officer, deposit with the Commission a sworn declaration of his income, assets and liabilities and thereafter not later than 31st March in each succeeding year that he is a public officer, deposit further declarations of his income, assets and liabilities and also while leaving office. These declarations should include the assets, income and liabilities of his spouse and his children.

CONTINUATION—TABLE 2: AUDIT ASSESSMENT CRITERIA	
Source	Description of relevant aspects
	<p>The Act also mandates the Commission to examine every declaration furnished to it and may request from the declarant any information or explanation relevant to a declaration made by him, which in its opinion, would assist it in its examination.</p> <p>The Act also gives the Commission the power to investigate any particular declaration made to it, if upon an examination the Commission is not satisfied that a declaration has been fully made or after a certificate has been published in the <i>Gazette</i> any person makes a written complaint to the Commission in relation to that certificate, the Commission may decide that the complaint can be investigated.</p> <p>In accordance with the Act, non-disclosure, false disclosure and failure to provide information required by the Commission are considered as offences and public officers who commit such offences shall be liable on conviction to a fine not less than twenty million Leones or to imprisonment for a term not less than one year or to both such fine and imprisonment</p>
United Nations Convention Against Corruption (UNCAC)	<p>Article 6 <i>Preventive anti-corruption body or bodies</i></p> <p>1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:</p> <p>(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;</p> <p>(b) Increasing and disseminating knowledge about the prevention of corruption.</p> <p>2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialised staff, as well as the training that such staff may require to carry out their functions, should be provided.</p> <p>Article 7 <i>Public sector</i></p> <p>4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.</p>

CONTINUATION—TABLE 2: AUDIT ASSESSMENT CRITERIA	
Source	Description of relevant aspects
	<p>Article 8 <i>Codes of conduct for public officials</i> 5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. 6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.</p> <p>Article 52 <i>Prevention and detection of transfers of proceeds of crime</i> 5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention. 6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.</p>
African Union Convention on Preventing and Combating Corruption (AUCPCC)	<p>Article 7 - <i>Fight against Corruption and related offences in the Public Service states</i> In order to combat corruption and related offences in the public service, state parties commit themselves to: 1. 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.</p>

1.6 METHODOLOGY

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs) and the Performance Audit Guidelines developed by the African Organisation of English Speaking Supreme Audit Institutions (AFROSAI-E). Those standards require that the audit is planned and performed in order to obtain sufficient and appropriate evidence to provide a reasonable basis for the findings and conclusions based on the audit objectives.

1.6.1 Document review

Various documents were reviewed to obtain an understanding of the requirements in the AU and UN conventions in relation to Asset Declaration requirements of public officers and to determine how the laws enacted in Sierra Leone have complied with these provisions. Documents such as strategic plans of ACC, manuals and other internal reports were reviewed to obtain an understanding of the Commission's legal mandate, general operations and activities, and to assess its performance against set targets. A list of document reviewed is shown in Table 3 below.

TABLE 3: DOCUMENTS REVIEWED AND REASONS FOR REVIEW

Document Reviewed	Reasons for Reviewed
The United Nations Convention Against Corruption	To review the provisions contained in the convention
The African Union Convention on Preventing and Combating Corruption	To review the provisions contained in the convention
The Anti-Corruption Act, 2008	To review the act and to determine the law on asset declaration
The Anti-corruption Strategic Plan 2010-2015	To have an understanding on the direction of the Commission
The Asset Declaration operational manual	To understand the process and procedures in place to handle asset declaration.
Annual reports of the Asset Declaration Unit	To review the progress of the Unit and to review data on asset declaration
The Internal Audit Reports of the Commission	To confirm whether the unit has conducted any audit on the asset declaration unit.
The Relevant Gazettes covering the period under review	To get statistics of public officials that annually declared their assets.
Government Payroll	To determine the number of public officers that should actually declare their assets.

Reports of the Asset Declaration Unit and gazette of declarant were reviewed to get statistics relating to the asset declarations distributed and received by the Commission. We did not review information contained in the returned assets declarations because the staff of the

Commission are restricted by the ACA 2008 not to divulge information contained in the declaration to third parties.

1.6.2 Interviews

Interviews were conducted with various officers of the Anti- Corruption Commission. Other official in various oversight institutions were also interviewed

Stakeholder	Personnel Interviewed
The Anti-Corruption Commission	The Commissioner
	The Manager – Asset Declaration Unit
	The Director of Internal Audit
	Other Staff of the Asset Declaration Unit
Parliament	Clerk of Parliament
Public Service Commission	Director, Public Service Commission
Human Resources and Management Office	Head of Civil Service
The Ministry of Foreign Affairs	Director
The Financial Intelligent Unit (FIU)	Director
Minister of Finance	Accountant General

CHAPTER 2: AUDIT FINDINGS

2.1 LEGAL AND INSTITUTIONAL FRAMEWORK OF THE ASSET DECLARATIONS REGIME IN SIERRA LEONE AND THE LEVEL OF COMPLIANCE WITH THE AU AND UN CONVENTIONS ON CORRUPTION

2.1.1 Ratification of Conventions

Article 23, 1-3 of the AUCPCC and Article 68, 1-4 of the UNCAC encourage member states of the both AU and UN respectively to sign, ratify, accept, approve or accede to the said conventions.

Sierra Leone is a signatory to both the UNCAC and the AUCPCC and has further ratified both conventions. It signed and ratified the UNCAC on 9th December 2003 and 30th September 2004 respectively. It also signed and ratified the AUCPCC on 9th December 2003 and 3rd December 2008 respectively.

2.1.2 Domesticated Legislation

The UNCAC and the AUCPCC require that countries establish an asset declaration regime which must be entrenched in its legal system. For instance, Article 8(5) of the UNCAC states that: Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

Similarly, Articles 4 and 5 of the AUCPCC require each state party to adopt legislative and other measures to establish as offenses acts of corruption.

In reaction to the provisions contained in these conventions, Sierra Leone has enacted laws relating to establishing an Asset Declaration Regime. In 2008, the ACA 2000 was revised and thus included provisions that addressed issues bordering on assets declaration. Therefore, Part VIII of the Anti-corruption Act (ACA) 2008 deals with Integrity of the Public Officer.

During the audit, we compared the provisions in part VIII of the ACA 2008 with the requirements of the UNCAC and AUCPCC, and found out that the provisions are by and large appropriate to be used as a preventive tool to curb corruption and the provisions are generally aligned to the provisions contained in the UNCAC and the AUCPCC.

Our indepth review of Part VIII of the ACA 2008, however, revealed that the provisions of the Act are broad requirements for assets declaration. Details of how these requirements should be executed and monitored are not clearly spelt out in the Act. A good practice in other countries is that the law is supported by a regulation which makes implementation and monitoring much practicable.

2.2 OBLIGATIONS OF PUBLIC OFFICIALS WITH REGARD TO ASSET DECLARATIONS

2.2.1 Coverage

Article 7(1) of the AUCPCC - 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.

In reaction to this, section 119 (1) of the ACA 2008, states that: ‘Every Public Officer shall deposit a sworn declaration of his income, assets and liabilities to the Commission.’ The definition of a ‘public officer’ in the Act covers the three arms of government, i.e. the Executive, the Legislative and the Judiciary, whether appointed or elected, permanent or temporary, paid or unpaid.

In view of this, the provision in the Anti-Corruption Act, 2008 by and large conforms to the requirement of the AU convention. However, if all public officials should annually make a declaration of their assets, income and liability, it will become an arduous task to manage the declaration regime. Hence, in as much as the Act conforms to the AU convention, good practice dictates that a selected set of public officials should be required to declare their assets. Coverage must be limited to high-ranking positions or high-risk functions, i.e. Politically Exposed Persons (PEPS). In our review of the effectiveness of the Commission in managing the assets declaration regime in section 3.4.2 below, showed that because the coverage is too wide, the system has not been effectively monitored.

2.2.2 Intervals for filing declarations

According to section 119 (1) of the ACA, 2008 declaration should be made in the following intervals:

- within 3 months of becoming a public officer
- not later than 31st March every year while in office
- when leaving office

The intervals of our asset declaration regime are in line with the AUCPCC and international best practice as public official are required to declare their assets upon assumption of office, while in office and when leaving office.

However, enforcing these intervals is also a point of concern as most public officers are not filling the necessary declarations in accordance with section 119(1) as discussed in section 3.5.1 of this report.

2.2.3 Content of Declaration

The AU and UN conventions do not state clearly what should be the content of the declaration; they speak broadly about assets and interests. In addition to personal and business assets disclosure, it is considered good practice for public officials to disclose sources of income, positions held in profit or nonprofit firms, debts, gifts, payments for travel, advances,

reimbursement as well as assets and income of spouse and dependant children (Marie Chêne, U4 Helpdesk-2008).

The Asset Declaration Regime in Sierra Leone conforms to international good practice and as such adequate provisions are made in the ACA 2008, clearly indicating the specific assets, income and liabilities that should be declared by public officers.

Section 119 (1) of the ACA 2008 requires public officers to declare all assets, incomes and liabilities. Subsection (5) states: ‘A declaration required under this Part shall include such particulars as are known to the declarant of the assets, income and liabilities of himself, of his spouse and of his children’

Even in the circumstance where a public officer holds money or other property in trust for another person he is required to state that fact in his declaration (subsection 8). Subsection 9 goes further to state that the income, assets and liabilities acquired, held or incurred by any other person as his agent or on his behalf should be disclosed in his declaration.

The Act does not give a clear description of the assets (i.e. whether fixed /real, floating, securities, investments, etc.) but the current asset declaration form captures all relevant categories of assets and liabilities to be captured by public officers when filing their asset declarations.

2.2.4 Public Audibility

AUCPCC Article 9: *Access to Information* states - Each State Party shall adopt such legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences.

The UNCAC also contains similar provisions with regard access to information by non-state actors such as the media and civil society. This is geared to lending credence to the integrity of public office and by extension to the asset declaration system.

With regards to “Public audibility”—public access to information contained in the Asset Declaration, the ACA 2008 clearly restricts official of the ACC to divulge any information contained in the declaration to the public, except in a situation of criminal proceedings in a competent court of law.

Section 119(13) hence states: ‘Subject to this Act, the Commissioner, Deputy Commissioner, Directors and other persons having an official duty under this Act, or being employed in the administration of this Act, shall deal with all documents and information, and all other matters relating to a declaration under this Part, as secret and confidential, except where a particular declaration or record is required to be produced for the purpose of, or in connection with any court proceedings against, or inquiry in respect of a declarant under this Act, the Commissions of Inquiry.’

Protection of privacy and security threat were the main reasons articulated by the Commission in

our interview when questions were asked regarding the above section.

2.3 IMPLEMENTATION PROVISIONS IN THE ANTI-CORRUPTION ACT, 2008.

2.3.1 Mandate and level of independence of the Anti-Corruption Commission

The asset declaration regime is under the purview of the Anti-Corruption Commission, the Commission is also charged with the responsibility to deal with all matters relating to corruption in Sierra Leone.

Unlike other countries where a number of institutions have oversight responsibility of the Asset Declaration Regime, the Commission is solely responsible for the administration of the Asset Declaration Regime in Sierra Leone.

Under the Anti-Corruption Act 2008, the Commission is mandated to:

- receive declarations
- examine every declaration furnished to it
- request from the declarant any information or explanation relevant to a declaration made by him/her, which in its opinion, would assist it in its examination,
- publish or cause to be published a certificate in the *Gazette* relating to a declaration(s) fully made,
- investigate particulars in declarations.
- prosecute defaulters in a competent court

From our review of its operations and its mandate, we observed that the Commission enjoys administrative independence. Hence, it is able to perform its mandate with no interference or influence from the central government.

Our review also revealed that the Commission is not totally independent financially from the central government. It receives its budget from the government in the same way as any other Ministry, Department or Agency (MDA). It is subject to the same budgetary procedure as other MDAs. However, once the budget is allocated to the Commission; it has total control as to how these funds are utilised.

2.3.2 Offences and sanctions for breach

Sanctions are an important tool to ensure compliance with the requirements of the declaration regime and Article 8(6) of the UNCAC requires that: 'Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.'

Similarly, Article 7(3) of the AUCPCC requires state parties to commit themselves to develop disciplinary measures and investigation procedures in corruption and related offences with a

view to keeping up with technology and increase the efficiency of those responsible in this regard.

In our review of the ACA 2008, we observed that the following violations are regarded as offenses:

- Non Submission
- False statements in declaration
- Failure to give such information or explanation as the Commission may require.

In these instances, the declarant is deemed to have committed an offence and shall be liable on conviction to a fine not less than twenty million Leones or to an imprisonment for a term not less than one year or to both such fine and imprisonment.

We observed that late submission and incomplete submission are not captured as violation in the Act, hence public official do not feel compelled to submit their declaration within the set timeframe. In our interview with officers of the Commission, we noted that, the only form of action that can be taken against public officers who do not submit on time is that their names can be published in the gazette or two widespread newspapers in line with section 119(5) of the Act.

Interestingly, the Act only makes provision for criminal sanctions as shown above. Criminal sanctions are not common in relation to asset declaration systems: to be in a conflict of interest is not a crime *per se*, but may lead to crimes. Besides, criminal sanctions require stronger evidence than administrative sanctions. (OECD (2011), *Asset Declarations for Public Officials: A Tool to Prevent Corruption*, OECD Publishing.)

2.4 THE EFFECTIVENESS OF THE ANTI-CORRUPTION COMMISSION IN EXERCISING ITS FUNCTIONS WITH REGARDS THE ASSET DECLARATION REGIME

2.4.1 Mandate of the Commission

From our review of the Commission's operation in relation to its Asset Declaration mandate, we noted that the Commission's mandate in ensuring that public officers declare their assets and income is clearly spelt out in law. We did not observe any hindrances in the independence of the execution of the mandate of the Commission in respect of its responsibility to manage the asset declaration regime. However, it seems that the asset declaration function is lost within the many functions of the Commission and the asset declaration has been relegated as subsidiary tool, used only when official are being investigated for other corruption offenses.

In our reviews, we noted that the assets declarations submitted are stored and are only reviewed when a charge is being brought against a public officer for other corruption offenses. In the instance when the public officer under investigation has not declared his or her assets, this

forms part of the charges brought against him/her in court.

2.4.2 Effectiveness of the Asset Declaration Unit

Article 6, paragraph 2 of the UNCAC requires each State Party to provide the necessary material resources and specialised staff, as well as the training that staff of oversight (body) bodies may require to carry out their functions.

Article 20, paragraph 5 requires each State Party to undertake or adopt necessary measures to ensure that national authorities or agencies are specialised in combating corruption and related offences by, among others, ensuring that the staff are trained and motivated to effectively carry out their duties.

Our review of the Asset Declaration Unit of the Commission revealed that the mechanisms put in place to ensure that the regime is used as a tool to curb corruption and corrupt practices are not effective. The following were noted:

- The Unit is grossly understaffed. During the audit, we observed that the Unit was staffed with four personnel, which comprised a manager and three officers. In terms of budget, they were also constrained as logistics such as vehicles to facilitate the easy movement of the staff to conduct outreach and visit public officials was also inadequate.
- The Commission has an operational manual developed by a consultant from the European Union.

However, we noted that operational manual was not used effectively. The procedures laid out in the manual were not implemented by the staff in carrying out their daily operations and handling and processing the assets declaration forms received.

- At the time of the audit, the Commission did not have clear and robust procedures to analyze the declarations it receives. As a matter of fact, declarations received are not analysed by the Commission.
- The Commission has a clear mandate to examine all asset declaration furnished to it by public officers, however, assets declaration forms received were not examined by the unit responsible. The current practice is that asset declaration forms are printed and distributed to MDAs who are then required to distribute it amongst the staff to fill and return certified copies to the ACC. Upon receipt, a database of public official who have returned the forms is then created.
- Contents of the assets verification forms received are not verified by the Unit even though section 120 of the ACA 2008 gives the Commission the powers to investigate the particulars of the asset declaration submitted.

2.4.3 Asset Declaration Forms Used

Although the conventions did not specific forms for use by State Parties, however, in current best practice, it is recommended that

- forms are user friendly
- forms clearly state what should be disclosed as required in the laws

- forms should have a background message stressing the importance of declaration
- forms should not be overly lengthy

From our audit review conducted we observed that the forms used are to a large extent user friendly. Declarants do not have to complete each section but only the sections applicable to them. It consists of 11 sections, ranging from the personal details of the declarant to the various categories of assets and liabilities. However, once the form has been completed for the first time, declarants are only requested to provide update in subsequent declarations.

From the limited feedback we received from public officers who had used the forms, we gather that the forms are easy to complete and are user friendly.

2.4.4 Mechanisms/tools to safeguard the disclosure, confidentiality and privacy of persons making Declarations

For an asset declaration system to be robust, the laws must strike a balance between the level of public disclosure and the privacy of the declarant/public officer. The provisions contained AU and UN conventions are not too clear on this issue.

Section 119(13) of the ACA 2008 requires the Commission to deal with the information contained in the declaration as secret and congenital except when such information it is need to be used in a court proceeding.

Section 119(14) of the ACA 2008 also requires ‘The Commissioner, Deputy Commissioner Directors and other persons referred to in subsection (13) shall make and subscribe such oath of secrecy as the Commission may prescribe’.

However, section 122(4) states: ‘For the purpose of investigation of a complaint under this section, the Commission may, on good cause being shown to its satisfaction, allow the complainant to have access to the declaration of the public officer concerned filed under this Act.’

For the period under review we noted there were no requests for information relating to information contained in the asset declaration forms received by the Commission.

2.5 EFFECTIVENESS OF THE ASSET DECLARATION REGIME IN SIERRA LEONE

2.5.1 Compliance with the Asset Declaration Regime

The Anti-Corruption Commission did not have a comprehensive database of all public officials who are required to declare their assets. The estimated figure given by the Commission is 80,000. Based on our audit we contacted the Accountant General’s Department which provided us with the number of public official on the payroll which summed up to approximately 76,800.

We observed that from the inception of the asset declaration regime that the practice has been that forms are printed by the Asset Declaration Unit and distributed to the MDAs so that the public officers would fill the forms, have them notarized by Justices of the Peace and then returned to the Anti-Corruption Commission's office.

For the period 2014 to 2016, we observed that the number of forms printed and distributed to MDAs was far less than the total number of public officers. Furthermore we observed that the percentage of forms filled and returned for the three year ranged from 35% to 65%. This indicated that many of the public officers were not complying with section 119(1) of the ACA 2008 which required that all public officers declare their income, assets and liability every year before the 31st of March. Our inquiries also revealed that there were only a few instances where public official leaving office declared their assets.

The compliance rate 2014 – 2016 is analysed in Table 3 below

Year	Estimated No. of Public Officers	Number of Forms Printed and Distributed	Number of Forms Returned	Percentage of Public Officer targeted	Compliance Rate (%)
2014	68,000	55,000	26,050	80.1%	38.3%
2015	70,000	57,000	19,757	81.4%	28..2
2016	77,000	54,000	35,235	70.1%	45.7

The table below gives an analysis of the return rate of the Asset Declaration form for 2014-2016

Year	No. of MDAs	Number of Forms printed and Distributed	Number of forms Re-turned	Return Rate
2014	111	55,000	26,050	47.3%
2015	120	57,000	19,757	34.7%
2016	Not provided	54,000	35,235	65%

From our interviews with the Commission, we noted that the low return rate is mainly attributed to the lack of sensitisation of public officers. The area in the Act that calls for public officials to submit sworn copies of their declarations to the Commission also slows down or hampers the collection exercise, and therefore contributes to the low compliance in the submission of forms. The amount charged by the Justices of the Peace and Commissioners of Oath is seen as an extra financial burden on declarants especially low paid officials and sometimes some do shy away from the process as they cannot afford it.

The Commission has also commenced the online assets disclosure this 2017. It is expected that it would have a huge benefit to the Commission and public officials as it will alleviate their sufferings of queuing all day long at their office to submit their forms while leaving their busy schedule behind. It is also expected to help the Commission move from the paper system of printing and archiving to an electronic version and maintaining a proper backup system. It is also assumed that the compliance rate shall increase because declarants in foreign missions will access and submit the form with ease in a secured manner.

2.5.2 Coordination and Collaboration with other Agencies and Partners

For the asset declaration regime to be effective, the Commission must be able to verify the contents of the declarations submitted to it and ensure that sanctions are meted out in an effective way. One essential mechanism to do so is to form partnership with other oversight institutions and law enforcement agencies.

Despite the fact that the Commission has an MOU with the Audit Service Sierra Leone, there is still no formal MOU with other Agencies such as the Financial Intelligence Unit (FIU), the Human Resources Management Office and the Public Service Commission.

Collaborating with the Public Service Commission and the Human Resources Management Office for instance, may help in ensuring that public servants return their assets declaration forms or fill them online as the case may be. If and when administrative sanctions are considered, these institutions may also be of great help in implementing these sanctions.

2.5.3 Enforcement of sanctions in the ACA 2008

Article 30(1) of the UNCAC states ‘each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence’.

Section 112 (a-g) of the ACA 2008 outlines the various offences in relation to asset declaration and states that any public officer who breaches these provisions ‘commits an offence and shall be liable on conviction to a fine not less than twenty million Leones or to imprisonment for a term not less than one year or to both such fine and imprisonment.’

We observed that the Commission has not been enforcing the sanctions in the ACA 2008. There has only been one instance where a successful charge was brought against a public officer with regards asset declaration offenses. The officer failing to declare his assets to the Commission played an integral role in the investigation and final conviction for an offence of ‘unexplained wealth’.

Aside from this instance, enforcement of the sanctions in the ACA 2008 has not been effective. This has greatly contributed to the low return rate of asset declarations distributed to public

officers.

From our investigation, the major reason for the non-enforcement of the sanctions contained in the ACA 2008 is due to the fact that the its only makes provision for criminal sanctions and considering the large number of non-compliance it will be over burdensome on the part of the Commission to prosecute all the offenders.

CHAPTER 3: CONCLUSION AND RECOMMENDATIONS

3.1 CONCLUSION

The Anti-corruption Commission is the principal organ of government responsible to take all necessary steps for the prevention, eradication or suppression of corruption and corrupt practices. As part of its mandate, the Asset Declaration System was introduced as a "Preventive Tool" in the fight against corruption and to enhance integrity in public office. The auditors noted the efforts made by the Commission to institute a credible asset declaration regime to foster integrity in public office and the tremendous efforts being made to enhance the system by introducing an online declaration system albeit at its inception stage. The findings of this report indicate that the legal framework of the asset declaration regime is not adequate to provide a viable asset declaration regime. Our observations also show that the asset declaration regime has not been effectively managed / implemented by the Commission. This has the potential to undermine the effectiveness of the regime to serve as a preventive tool in the fight against corruption.

The primary findings need to be addressed in order to avert this potential threat. These findings are:

- The coverage of the regime is too wide
- The lack of administrative sanctions
- Failure to enforce criminal sanctions prescribed by the ACA 2008,
- Ineffective examination of Declarations submitted
- Failure to implement powers to investigate particulars in assets declaration forms
- Resources constraint of the Asset Declaration Unit
- Public access to contents in the declaration forms

3.2 Recommendation

We recommend that:

1. The Commission formulates an Asset Declaration Regulation which underpins the provisions contained in the Anti-Corruption Act, 2015 that deals with integrity in public life. The asset declaration manual must address the following issues which were highlighted in the report:
 - Reduce the coverage of the Asset Declaration Regime to focus on the Politically Exposed Persons and Financially Exposed Persons
 - Expand on Verification Powers of the Act and the processes for verification must be clearly defined in the regulation. We advise that the verification process should be a blend of the risk-based verification process which is based on the exposure to potential conflict and the ex officio based verification is which a detailed verification of high levels officials of government and on suspected violations (*OECD, 2011*).
 - The regulation should also consider late submission and incomplete submission as violation of the provisions of the asset declaration regime.
 - Administrative sanctions should also be considered in the regulation for violations/offences related to the duty to submit declarations.

2. The Commission should develop operational policies and procedures to govern the administrative handling of the asset declarations received. It must ensure that all asset declaration received are examined for completeness and a database should be established which records the time the declarations are received.
3. The number of staff in the Asset declaration unit needs to be increased so that the unit will be able to handle the its responsibility. Staff should also be properly trained to use the asset declaration guideline/manual.
4. Since the introduction of the electronic declaration system is at its embryonic stage, the Commission must engage in a massive sensitisation drive to enlighten public officers on how use this new system. Furthermore the Commission must ensure that adequate internal controls are put in place to secure the integrity of the system, so as not to deter the public from using the electronic system. The ACC should also ensure that an offsite back up facility is identified to ensure business continuity in the event of disruption.

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