

Transparency in the Disclosure of Assets by Judges - Basic components of a disclosure law and what we can learn from other countries

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Dear Friends,

A few weeks ago we sent an email alert about the practice adopted in Argentina for disclosure of assets by members of the judiciary. We had promised more research on international practices. We now have some more examples of transparency from different corners of the planet. Not many countries have taken the necessary step towards public disclosure of assets of members of the judiciary. Apart from Argentina countries like the United States, Latvia, Mongolia and South Korea have laid down legal procedures for public disclosure of judges' assets. South Africa has amended its Judicial Service Commission Act in 2008 to provide for filing and public disclosure of judges' assets.

In countries like Philippines and Russia there are some restrictions but people have not been completely denied access to all assets disclosure filed by the judiciary.

Other countries like Ghana, Cameroon, Kenya and Thailand require judges to declare their assets but these declarations are not accessible to the people. However access is granted to courts if required in any litigation.

It must be noted that in some countries judges are required to disclose their assets under laws relating to public ethics or anti-corruption statutes applicable to all public officers. In countries like South Africa there are special assets declaration laws applicable to judges. Other laws regulate other South African public services on the issue of financial disclosure. On the basis of comparative research we believe a good assets disclosure law must have 10 basic components given below:

10 BASIC COMPONENTS OF A LAW REQUIRING FINANCIAL DISCLOSURES TO BE MADE BY JUDGES AND OTHER PUBLIC OFFICERS:

1) Obligation of Disclosure: The law must specify the nature of information that must be declared by a 'judge'. The coverage of the term 'judge' must be specified in the law. It must also clearly state whether the declarations should contain similar asset-related information for this/her spouse and dependents also. Good practice requires that the declarations contain assets-related information for the spouse and dependents also.

2) Periodicity of Disclosure: The law must clearly state the periodicity of the declarations to be made. In many countries a declaration is made soon upon entering judicial service and thereafter every year until retirement from service.

3) Disclosure to whom made: The law must clearly specify the authority competent to receive the assets declaration.

4) Depository of Disclosure: The law must clearly specify the depository or the custodian of such declarations. The details could be maintained in a register as provided for in the South Africa law. The authority competent to receive the declarations need not necessarily be the custodian of those documents.

5) Auditing the Disclosure and Sanctions against Wrongful Disclosure: The law must provide for an independent authority obligated to audit the declarations. Where discrepancies are found, there must be a specific course of corrective action to be taken against the declarants and the agency responsible for taking such action must be specified in the law. Sanctions must be specified in the law for wrongful disclosure that is *mala fide* in nature.

6) Extent of Public Disclosure: The law must clearly state which portions of the assets declarations will be made public. Some countries do not permit disclosure of personal information such as tax identity number or other personal information regards debtors and creditors.

7) Manner of Public Disclosure: The law must clearly indicate the manner in which the contents of the assets declarations will be made accessible to the people. Some countries like Mongolia publish the names of declarants and the contents of the declaration in their Official Gazette. In some countries written applications stating the reasons for seeking assets-related disclosure must be made for obtaining access.

8) Manner of Use and Sanctions against Unlawful use: The law must clearly state what use of the information is permissible and what is not permissible. The law must prescribe sanctions for unlawful use of the information contained in the assets declarations. For example some countries allow publishing of the information through the media but it cannot be used for commercial purposes or any unlawful activities. Unlawful use is made punishable.

9) Sanctions against Unlawful Disclosure of Confidential Information: The law must prescribe sanctions against disclosure of information contained in the assets declaration which according to the law must be kept confidential.

10) Power of courts/tribunals to require production: The law must empower the appropriate courts/tribunals to require production of the entire content of the declaration when required in any litigation.

Given below is a compilation of the situation in the countries mentioned above. We will come up with more details on these countries in a few days. However we are not claiming that the ground reality regards disclosure matches the legal provisions. This will require more extensive research in countries where English is not an official language. This is likely to take more time. Until then, we hope this comparative research will be of use to the ongoing debate on the disclosure of assets of judges in India.

In order to access our previous email alerts on the subject please click on: <http://www.humanrightsinitiative.org/programs/ai/rti/india/national.htm> You will find the links at the top of this web page. If you do not wish to receive email alerts please send an email to this address indicating your refusal to receive email alerts.

Thanks

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Disclosure of Assets Declarations Made By Judges

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Countries where judges' assets declarations are accessible to people

Country Name	Constitutional Obligations	Legislative Obligations	Remarks
Argentina	No constitutional provision	<p>All public officials in Argentina are required to file affidavits regards their assets with the appropriate authorities under the <i>Public Ethics Law (No. 25. 188)</i> enacted in 1999.</p> <p>ARTICLE 5- the following fall under the obligation to submit the affidavit... c) The judges of the Judiciary of the Nation ...</p> <p>ARTICLE 6 - The affidavit must contain a detailed list of all goods, the declarant's own, that of spouse, to integrate the marriage, the partner of those who integrate into the society of his case and made their minor children, at home or abroad. Especially those that will be detailed below...1[1]</p>	The Judicial Council (Consejo de la Magistratura) passed a resolution stating that judges will be required to file assets declaration in the same manner as other public officials in 2007.
United States	No constitutional provision	<p>Section 101-111 of the <i>Ethics in Government Act of 1978</i> requires that federal judges disclose personal and financial information each year. In terms of the Act, federal judges must disclose the source and amount of income, other than that earned as employees of the United States government, received during the preceding calendar year. Judges must also disclose the source, description, and value of gifts for which the aggregate value is more than a certain minimal amount, received from any source other than a relative; the source and description of reimbursements; the identity and category of value of property interests; the identity and category of value of liabilities owed to creditors other than certain immediate family members; and certain other financial information.2[2]</p>	<p>Section 105 of the <i>Ethics in Government Act, 1978</i> allows any person to submit a written application to access a copy of the declaration of assets. Access must be provided to declarations of judges of the federal judiciary if an application is made. 3[3]</p> <p>The <i>Judicial Code of Conduct</i> was passed in 1995. Amongst its main provisions is the following: d) A judge should regularly file reports of compensation received for law-related and extra judicial activities.</p>

1[1]ARTICULO 5 y 6. Date <http://www.profesorgentile.com.ar/leyes/25188.html> Accessed: July 20,2009.

2[2] http://www.deontologie-judiciaire.umontreal.ca/fr/textes%20int/documents/Judicial_Accountability_SOUTH_AFRICA.pdf
Accessed: July 29, 2009

3[3] http://www.law.cornell.edu/uscode/html/uscode05a/usc_sec_05a_00000105----000-.html; Accessed: 06 August 2009

South Korea	No constitutional provision	<p>Under the <i>Public Services Ethics Act, 1993</i> all high-ranking public officials, their spouses, and many of their lineal ascendants and descendants must disclose their ownership of real property, intangible property, and shares in nonpublic business entities. Judges are covered by this law.</p> <p>“(1) Any public official who falls under any of the following subparagraphs (hereinafter referred to as the "person liable for registration") shall register property under the provisions of this Act:...</p> <p>5. Judges and public prosecutors;” 4[4]</p>	<p>In addition to examination by a Public Ethics Committee, the property declarations of most of these public officials and their families are published in a public bulletin within one month of their submission.5[5]</p>
South Africa	No constitutional provision	<p>Until 2008 there was no law that required judges to submit declaration of their assets. In 2008 Parliament amended the Judicial Service Commission Act, 1994 to provide a mechanism for judges to disclose their 'registrable interests' as well as that of their spouses and dependents.6[6] The detailed provisions will be laid down in the regulations.</p>	<p>The Minister concerned is required to make Regulations determining what interests will be required to be disclosed. Regulations will be made to determine what parts will be kept confidential and what parts will be accessible to the people. Any person in South Africa will be able to access the disclosable interests after the Regulations are in place.</p>
Latvia	No constitutional provision	<p><i>Prevention of Conflict of Interest in Activities of Public Officials Act</i> states: Section 3.</p> <p>3) declaration of the financial status of public officials and a mechanism for the verification of the declarations of public officials.</p> <p>Section 4.</p> <p>(1) Public officials are: ...</p> <p>21) judges, prosecutors, sworn notaries and sworn bailiffs;7[7]</p> <p>Law "On Prevention of Conflict of Interest in Activities of Public Officials". Sec.26</p>	<p>The law allows public disclosure of the declarations except for the personal identification number of the judge making the declaration as well as that of the spouse, dependents and debtors or creditors mentioned in the declaration.8[8]</p>

4[4] *Public Service Ethics Act*: <http://unpan1.un.org/intrdoc/groups/public/documents/APCITY/UNPAN019099.pdf>. Accessed: July 27, 2009

5[5] <http://right2info.org/information-of-high-public-interest/asset-declarations>

6[6] <http://www.pmg.org.za/files/bills/081027a20-08.pdf> accessed on 06 August 2009

7[7] *Prevention of Conflict of Interest in Activities of Public Officials*: http://www.knab.gov.lv/uploads/eng/conflict_of_interests.pdf Accessed: July 27, 2009

8[8] <http://report.globalintegrity.org/Latvia/2007/scorecard/44>

Mongolia	No constitutional provision	<p>The <i>Law of Mongolia on Anti-Corruption 2006</i> requires members of the judiciary to declare their assets of assets. The specific provisions and the custodian</p> <p>10.1. Persons specified in Article 4.1. of this Law shall submit their assets and income declarations.</p> <p>4.1 The Following persons are subject to this Law:</p> <p>4.1.1. Officials holding political, administrative or special office of the state, whether appointed or elected, whether permanently or temporarily;</p> <p>4.1.2. Managers and administrative officials of state or locally-owned legal persons, or legal persons with state or local equity;</p> <hr/> <p>11.1.3. The General Council of Courts shall receive assets and income declarations of judges of all instances, except for the Supreme Court;</p> <p>11.1.5 Assets and income declarations of other officials shall be received by officials with the authority to appoint or supervise them. 9[9]</p>	<p>Article 14.1 of the law requires that the assets declarations of all judges be published in the Government News Magazine during the second quarter of every year and be placed on the Internet.</p> <hr/>
Countries where judges' assets declarations are accessible to people in a limited manner			
Philippines	<p>Since 1987, Filipinos have had the right to review financial disclosures of all public officials and employees, including their spouses and unmarried minor children. This right of the public is reinforced by the Constitution. Under the Constitution, Article XI (Accountability of Public Officers) Sec. 17. Financial disclosures, which must be "made available for inspection at reasonable hours," contain information about all real property, personal property, investments, liabilities, and business</p>	<p><i>Anti-Graft and Corrupt Practices Act, 1960</i> requires public officials to disclose their assets in the form of a declaration.</p>	<p>Except for asset statements of Supreme Court justices, the declarations of other members of the judiciary may be requested at the Clerk of Court or at the Office of Administrative Services of the Supreme Court. Inspection is allowed and the contents may be published in the media. However the information cannot be used for commercial purposes¹⁰[10]</p>

9[9] *Law of Mongolia, Anti-Corruption*: July 8, 2006 Ulaanbaatar city, <http://www.mongolianriverresources.mn/DOWNLOAD/laws/Anti-corruption.pdf> Accessed July 27, 2009.

10[10] Global Integrity Report Card: Philippines: <http://report.globalintegrity.org/Philippines/2007/scorecard/44> and Asst. Ombudsman Pelagio S. Apostol "The Experience of Assets Declaration in the Philippines: <http://www.oecd.org/dataoecd/5/54/39367966.pdf> Accessed: 06 August, 2009

	interests.		
Russia	No constitutional provisions	In November 2008, President Medvedev submitted a package of anti-corruption bills to the State Duma, which a few days later approved them on the first reading. Among other initiatives, the draft laws introduce mandatory asset and income control of judges (and members of their families) and judge-position applicants. ¹¹ [11]	Information on assets and income of judges can be made public. Only federal media can supply it. If such information is provided, it should be published within a week. An application by a media entity can be rejected if the publication can be used as a means to apply pressure on a specific judge. ¹² [12]
Countries where judges' assets declarations are not accessible to people			
Ghana	Constitution contains a disclosure requirement. <i>Article 286:</i> (1) A person who holds a public office mentioned in clause (5) of this article shall submit to the Auditor-General a written declaration of all property or assets owned by, or liabilities owed by, him whether directly or indirectly. (5) The public offices to which the provisions of this article apply are those of -... (e) Chief Justice, Justice of the Superior Court of Judicature, ¹³ [13]	Declaration of assets is obligatory on the part of all public office holders listed in Schedule 1 to the Public Office Holders (Declaration of Assets and Disqualification) Act (Act 550). Under this law judges have a duty to submit their assets declaration.	The declarations are not publicly accessible. The law requires that the declarations be kept confidential. Ghanaian Parliament rejected recent proposals to amend the law.
Cameroon	Constitution contains a disclosure requirement <i>Article 66</i> Judicial and Legal Officers ...shall declare their assets	Decree 95/048 of March 4, 1995, concerning the Statute of the Magistrature in Cameroon makes it necessary for judges to declare their assets twice during their career. ¹⁵ [15] Law passed by Parliament on Declaration of Property and Assets in 2006. ¹⁶ [16]	Citizens cannot access declarations of assets filed by judges

¹¹[11] Original source, <http://www.stavsud.ru/kraysud/zakon/status> . Summarized source, <http://report.globalintegrity.org/Russia/2008/scorecard/44> . Accessed: July 29, 2009

¹²[12] Ibid.

¹³[13] The Constitution of the Republic of Ghana, <http://www.psr.keele.ac.uk/docs/ghanconst.pdf> Accessed July 23, 2009

	and property at the beginning and at the end of their tenure of office.14[14]		
Kenya	No constitutional requirement.	26.(1) Every public officer shall, annually and as otherwise prescribed by section 27, submit to the responsible Commission for the public officer a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of 18 years.17[17] Judges are required to disclose assets under this Act.18[18]	Citizens cannot access the declarations as they are kept confidential "19[19]
Thailand	Constitution contains a disclosure requirement. Section 259. Persons holding the following political positions shall submit an account showing particulars of assets and liabilities of themselves, their spouses and children who have not yet become *sui juris* to the National Counter Corruption Commission on each occasion of taking or vacating office:20[20]	ORGANIC ACT ON COUNTER CORRUPTION, B.E. 2542 (1999) requires judges to make declarations of their assets. Section 39. The persons holding the following positions have the duty to submit to the N.C.C. Commission an account showing particulars of their assets and liabilities and those of their spouses and children who have not yet become <i>sui juris</i> upon taking office, every three years while being in office and upon vacation of office, in accordance with the form prescribed by the N.C.C. Commission. (7) judge of the Constitutional Court; (8) member of the State Audit Commission; (9) Vice President of the Supreme Court of Justice; (10) Vice President of the Supreme Administrative Court; (11) Chief of the Military Judicial Office; (12) judge of the Supreme Court of Justice; (13) judge of the Supreme Administrative Court;21[21]	Assets declarations of judges cannot be automatically accessible to people.

14[14] Constitution of the Republic of Cameroon, <http://confinder.richmond.edu/admin/docs/Cameroon.pdf> Accessed July, 24, 2009

15[15] Global Integrity Report, Cameroon <http://report.globalintegrity.org/Cameroon/2008/scorecard/44> Accessed: August 3, 2009.

16[16] http://www.iciwaza.com/index.php?option=com_content&view=article&id=62&Itemid=125&lang=en

17[17] *The Public Officer Ethics Act, 2003*,
http://www.marskenya.org/Reports/LawsandConventions/Kenya_PublicOfficer_Ethics_Act_2003.pdf Accessed: July 24, 2009.

17[18] *Public Officer Ethics Act*.
http://www.marsgroupkenya.org/Reports/LawsandConventions/Kenya_PublicOfficer_Ethics_Act_2003.pdf Accessed July 29, 2009

19[19] Global Integrity Report: Cameroon, <http://report.globalintegrity.org/Kenya/2008/scorecard/44> . Accessed: August 3, 2009

20[20] Constitution of Thailand: <http://www.nccc.go.th/en/constitution.pdf> Accessed: July 24, 2009

21[21] *Organic Act on Counter-Corruption*: <http://www.nccc.thaiqov.net/nccc/en/org1.php> Accessed: July 24, 2009