

# **THE STATUS OF WEALTH DECLARATIONS BY PUBLIC OFFICERS IN KENYA: ARE WE GETTING ANYWHERE?**

by

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## 1. Background

The wealth declaration exercise has been conducted for the last two years. Officers who did not comply in 2003 were removed from the pay roll, in addition to being liable to facing other penalties. However, despite of many public officers failure to declare their wealth in 2004 no action has been taken. This is being misconstrued as lack of commitment by the Government to enforce the law.

The *Public officer Ethics Act, 2003* was intended to inculcate a culture of honesty, hard work and rejection of corruption in the public service. The wealth declaration schemes are meant to serve two distinct purposes:

- i) Preventive: The declaration requirements are meant to help Government anticipate potential conflicts of interest before any misconduct takes place.
- ii) Investigative: The declaration scheme is intended to help uncover actual wrongdoing and illicit enrichment after it occurs.

It is important that review procedures thoroughly address both the preventive and investigative functions. On the preventive side, Commission administrative schemes should include procedures for heading off potential conflicts of interest. For example, reviewers should be able to order civil servants to dispose of problematic investments or recuse themselves from certain decisions. These preventive measures should take care to ensure that public servants do not interpret the preventive measures as punishment.

Review procedures should also address the investigative function of wealth disclosure. Procedures should mandate automatic referral to the Kenya Anti-Corruption Commission or other authorities when a review uncovers evidence of possible abuse of office or other criminal activity. Procedures should also provide for internal disciplinary action when an official has acted improperly but law enforcement authorities either cannot prosecute the official or elect not to prosecute the official. The Ministry of Justice and Constitutional Affairs is developing regulations for the better implementations of the Act.

## 2. Status of Wealth Declarations

Following a request by the Cabinet Committee on Anti-Corruption, the Efficiency Monitoring Unit (EMU) in the Office of the President, monitored the declaration of income, assets and liabilities for 2003 with a view to gauging compliance by public officials with the *Public Officer Ethics Act, 2003*. Between January 6 and 12, 2005 the EMU conducted a similar exercise for wealth declarations for 2004. In May 2005 the Cabinet Committee on Anti-Corruption requested EMU to conduct another monitoring exercise with a view to updating the information gathered in January 2005.

Following the monitoring of the declarations made to the various responsible Commissions for 2004 the EMU made the findings detailed in the sub-sections below.

### 2.1 Powers and Privileges Committee of the National Assembly

The above Committee is the responsible Commission for the Code of Conduct and Ethics for Members of Parliament, Electoral Commissioners, Public Service Commissioners, Teachers Service Commissioners, the Controller and Auditor General and the Clerk of the National Assembly. Their forms are received in the Speaker's office. The submission of their forms by January and May 2005 are as tabulated below.

Category	Number Expected	No. Received by Jan. 2005	Total No. Received by May 2005	Number Outstanding
Members of Parliament	224	129	159	65
Electoral Commissioners	21	14	16	5
Public Service Commissioners	12	12	12	-
Teachers Service Commissioners	24	24	24	-
Controller and Auditor General	1	1	1	-
Clerk of the National Assembly	1	1	1	-
<b>Total</b>	<b>283</b>	<b>181</b>	<b>213</b>	<b>70</b>

Only 57.6% of the Members of Parliament and 66.7 % of the Electoral Commissioners submitted their declarations before December 31, 2004 respectively as required by law. It is disappointing to note that 95 Members of Parliament representing 42.4% of the total did not declare their wealth as at December 31, 2004 while 65 representing 29% of them had not submitted their forms by May 2005 which means that they have contravened a law they enacted.

The office of the Clerk of the National Assembly is the Commission responsible for employees of the Parliamentary Service Commission. The following is a summary of submission of wealth declarations by the staff:-

Number of parliamentary staff	440
Number of forms received as at 01/01/2005	410
Number of forms received after 01/01/2005	<u>30</u>
Number of forms received by May 2005	<u>440</u>

From the above returns, it means that 30 or 6.8% of the employees of Parliamentary Service Commission made their submissions after the December 31, 2004 deadline. However, by May 2005, all the staff had submitted their declaration forms, meaning 100% compliance.

### **2.3 The Public Service Commission (PSC)**

The Public Service Commission (PSC) is the responsible Commission for senior officers in the mainstream civil service, state corporations and local authorities. The PSC receives wealth declarations from officers at Job Group 'H' and above for civil servants (the Central Government), Scale 1 to 9 for officers working in the Local Authorities and for senior managers and the directors of state corporations. The Commission issued out 466,554 declaration forms for distribution to all cadres of staff.

As provided for in the *Public Officer Ethics Act, 2003*, the PSC has delegated powers and functions with regard to declarations and enforcement of the Code of Conduct and Ethics for the lower cadres (below Job Group 'H') to the Permanent Secretaries, Clerk to Local Authorities and Chief Executives of the state corporations.

In order to avoid the confusion such as the one which prevailed during the previous year, on October 12, 2004 the Secretary to the Public Service Commission issued a circular Ref. PSC. SEC.93/55 Vol. I/(17) to all the relevant offices directing that the declaration forms should reach the Secretary on or before December 15, 2004.

In order to reconcile the numbers and names of officers whose declaration forms they had received, in a letter Ref. PSC. SEC.93/55 VOL. I of January 7, 2005 the Secretary, Public Service Commission requested the offices to forward the following information.

- S Number of officers in payroll as at December 31, 2004.
- S Number of officers in JG 'H' and above or its equivalent and number of those in JG 'G' and below or its equivalent.
- S Number of declaration forms received and forwarded to PSC for officers in JG 'H' and above or its equivalent.
- S Number of declaration forms received and retained by their offices submitted by officers in JG 'G' and below or its equivalent.
- S List of officers who had not submitted their declaration forms indicating their personal numbers, job groups, designations and reasons for non-compliance.

The information was expected to reach the Secretary to the PSC on or before January 31, 2005. However, as late as June 2, 2005 the following had not submitted the required information:-

- S Office of the President (Provincial Administration).
- S Office of the Vice President and Home Affairs.
- S Ministry of Roads and Public Works.
- S Ministry of Gender, Sports and Social Services.

### **2.3.1 Senior Public Officers (Job Group "H" and above)**

By December 31, 2004 a total of 53,369 civil servants in Job Group 'H' and above had submitted their declarations while another 7,640 or 8% submitted after the deadline. This means that a total of 61,009 civil

servants had declared their wealth at June 2, 2005 against an expected total of 64,315.

It was noted that the Commission received wealth declaration forms from officers in only 93 state corporations against the expected total number of corporations, which is in the range of 130. Also, the Commission received wealth declaration forms for officers from only 139 local authorities. Investigations by EMU revealed that, currently there are 175 local authorities. A summary of the returns as at June 2, 2005 is as tabulated below.

Category	Number Expected	No. Received by Dec. 31, 2004	No. Received by May 2005	Not yet Submitted
Central Government	64,315	53,369	61,009	3,306
State Corporations	Not known	33,323	-	?
Local Authorities		1,479	-	?
<b>Total</b>		<b>88,171</b>	<b>95,811</b>	<b>?</b>

### 2.3.1 Junior Public Officers (Below Job Group “H”)

According to the PSC the submissions of wealth declarations by the public officers below Job Group “H” in the civil service and its equivalent in the state corporations and local authorities to their Accounting Officers who retained them was as follows:

Category	Number Expected	No. Received by May 2005	Not Submitted
Central Government	115,829	107,146	8,683
State Corporations	Not known	6,953	?
Local Authorities		19,276	
<b>Total</b>	<b>Not known</b>	<b>133,375</b>	<b>?</b>

### 2.4 Ethics Commission for Cooperative Societies

The above Commission is responsible for committee members and direct employees of cooperative societies. The officers who fall under

the Commission were required to have submitted their wealth declaration forms by December 15, 2004. However, all the officers did not comply with the deadline.

As the officers were submitting their forms after the deadline, sometimes in January 2005, the Minister for Cooperative Development ordered all the cooperative societies to conduct fresh elections. Because of that directive, it meant that, the former committee members who failed to win the elections ceased to be public officers while those who won the elections became public officers and were required to declare their wealth. As a result, the Commission directed all the officers who had submitted their forms earlier to re-submit them by April 31, 2005 together with those who had been elected afresh. At the time of carrying out this exercise, the Commission was sorting out the forms to establish if there were any officers who had not complied with the directive.

The Commission expected 21,055 wealth declaration forms from committee members and direct employees of the cooperative societies. A summary of the submission of wealth declaration forms by the officers is as shown in the following table.

Expected number of forms	21,055
Number of forms received as at 15/12/2004 deadline	8,671
Number of forms received as at February 16, 2005 following December 15, 2004 deadline	20,347
Number of forms received as at 31/04/2005 deadline	<b>Not sorted</b>

It was noted that, the Kenya Planters Cooperative Union (KPCU) which sometimes consider itself as belonging to the cooperative society movement has not submitted wealth declaration forms to the Commission since the enactment of the *Public Officer Ethics Act, 2003* which is a serious violation of the law.

## 2.5 Electoral Commission of Kenya

The above Commission is responsible for its own staff and councillors of local authorities.

### 2.5.1 Staff of Electoral Commission of Kenya

As at December 31, 2004 the Commission had 498 members of staff whose submissions of wealth declaration forms were as follows:

Number of staff as at 31/12/2004	498
Number of forms received as at 31/12/2004 deadline	424
Number of forms received after 31/12/2004 deadline	<u>74</u>
Total number of forms received as at 06/06/2005	<u><u>498</u></u>

It is clear that 85.1% of employees of the Commission submitted their declaration forms as at December 31, 2004 deadline while the rest, 14.9% submitted their forms after the deadline. As at June 6, 2005 all the employees (100%) had submitted their forms.

### 2.5.2 Councillors of Local Authorities

The records of the Electoral Commission indicated that, as at December 31, 2004 there were 3,057 councillors. The following is a summary of submissions of wealth declaration forms by the councillors:-

Total number of councillors as at 31/12/2005	3,057
Number of forms received as at 31/12/2004 deadline	1,389
Number of forms received after 31/12/2004 deadline	1,279
Total number of forms received as at 03/06/2005	<u>2,668</u>
Total number of forms <b>not</b> received as at 03/06/2005	<u><u>389</u></u>

Based on the records of the Electoral commission, it is clear that only 45.3% of the councillors submitted their declaration forms as at December 31, 2004 deadline while 41.8 %of them submitted their forms after the deadline. This means that by December 31, 2004 1,668 councillors had contravened the law while another 389 councillors or (12.7%) had not submitted their wealth declaration forms as at June 3, 2005. The Commission informed EMU Team that it had asked the respective local authorities to inform the councillors who had not declared their wealth that it was illegal for anyone not to comply with the *Public Officer Ethics Act 2003*.

The EMU was also informed that many councillors returned blank forms, which means that they did not comply with the law. The total number of blank forms and the names of those affected will be known when the forms are analysed by the Commission.

## 2.6 Teachers Service Commission (TSC)

The TSC is the responsible Commission for wealth declarations by teachers in public schools and the employees of its secretariat. According to January 2005 payroll, there were 228,528 teachers countrywide and 2,301 employees of TSC secretariat.

### 2.6.1 Teachers

The following is a summary of submissions of wealth declaration forms by teachers employed by the TSC:

Number of teachers as at 31/01/2005	228,528
Number of forms received as at 10/01/2005	Not sorted (not known)
Number of forms received as at 26/04/2005	<u>227,061</u>
Number of forms not received as at 26/04/2005	<u>1,467</u>

Almost all the teachers did not submit their declarations by the legal deadline i.e. December 31, 2004. It was explained that the reason was because they were involved either in the invigilation or marking of national examinations. However, 99.4% of the teachers had submitted their wealth declaration forms to the Teachers Service Commission as at April 26, 2005 while the rest (0.6%) had not.

### 2.6.2 Employees of TSC Secretariat

The following is a summary of submissions of wealth declaration forms by the staff of the TSC Secretariat.

Number of TSC Secretariat employees as at 31/01/2005	2,301
Number of forms received as at 10/01/2005	1,800
Number of forms received after 10/01/2005	<u>1,501</u>
Number of forms received as at 26/04/2005	<u>2,301</u>

As at January 10, 2005 only 78.2% of the secretariat staff had submitted their wealth declaration forms to the TSC while the rest had submitted theirs by April 26, 2005 implying 100% compliance.

## 2.7 Commission for Higher Education (CHE)

The Commission is responsible for receiving the declaration forms from the staff of its secretariat and employees of public universities. The Commission received forms as analysed below:-

Category	No. of Employees	Forms Returned as at Jan. 2005	Forms Returned as at June 2005	Unreturned Forms
Commission Staff	74	74	74	Nil
Nairobi University	4,374	4,222	4,289	85
Moi University	2,788	2,498	2,704	84
Kenyatta University	2,364	2,205	2,240	124
Jomo Kenyatta University of Agriculture and Technology	1,203	1,109	1,180	23
Egerton University	2,496	2,342(?)	2,339	157
Maseno University	798	755	782	16
Western University of Science and Technology	327	305	317	10
<b>Total</b>	<b>14,424</b>	<b>13,436</b>	<b>13,925</b>	<b>499</b>

As can be seen from the above table, all the staff of the Commission submitted their wealth declaration forms as at January 2005. As at June 14, 2005 a total of 499 officers who were reported to have been on study leave in all the seven (7) public universities had not submitted their forms. The numbers of officers who have not submitted their wealth declarations due to other reasons were not available to the EMU.

The Commission provided only the numbers of officers who were on study leave and left out those who due to other reasons had not declared their wealth. Furthermore, the figures appear to be unreliable because, like in the case of Egerton University, after computation, those who had submitted their forms by January 2005 are more than those who had done so by June 2005.

## 2.8 Judicial Service Commission (JSC)

The Commission is responsible for declarations by the Chief Justice, Judges, Registrar of High Court, Chief Court Administrator, Magistrates, Kadhis and Paralegal staff. The Commission has received declarations as shown below.

Category	No of Employees	No. of Forms Returned as at Jan. 31, 2005	No. of Declarations as at June 2005	Unreturned Forms
Chief Justice	1	1	1	Nil
Other Judges	59	56	56	3
Registrar of High Court	1	1	1	Nil
Chief Court Administrator	1	1	1	Nil
Magistrates	221	195	221	Nil
Kadhis	14	11	14	Nil
Paralegal staff	2,697	2,392	2,692	5
<b>Totals</b>	<b>2,994</b>	<b>2,657</b>	<b>2,986</b>	<b>8</b>

By December 31, 2004, three (3) judges who are on suspension and were supposed to declare had not submitted their wealth declaration forms and as at June 2005, the position was the same. All the Magistrates and Kadhis who had not submitted their wealth declaration forms as at December 31, 2004 have since submitted them by May 2005. By June 2005, only five (5) paralegal staff, two (2) of whom were reported to be on sick leave, had not submitted their forms.

## 2.9 Board of Directors of the Central Bank of Kenya

The Board of Directors of the Central Bank of Kenya is the responsible Commission for employees of the Central Bank of Kenya and five (5) other banks, which are registered under the *Banking Act* and are state corporations. The submission of the declarations are as detailed below.

## 2.9.1 Central Bank of Kenya

As at December 12, 2005 Central Bank of Kenya had a total of 1,300 employees. The following is a summary of submissions of wealth declaration forms by the staff:

Number of staff as at 31/12/2004	1,300
Number of forms received as at 31/12/2004 deadline	1,276
Number of forms received after 31/12/2004 deadline	19
Total Number of forms received as at 06/06/2005	<u>1,295</u>
Number of forms not received as at 06/06/2005	<u><u>5</u></u>

From the above table, it is clear that 24 (1.85%) officers had not submitted their forms to the Commission as at the deadline of December 31, 2004 while 19 (1.5%) officers submitted their forms after the deadline. Four (4) of the five (5) officers who had not submitted their forms as at June 6, 2005 were reported to be on study leave while the other was reported to be on long sick leave.

## 2.9.2 Other Banks

The five other banks which fall under the Commission are as shown below.

<u>Bank</u>	<u>No. of Employees</u>
National Bank of Kenya	901
Co-operative Bank of Kenya Ltd	784
Consolidated Bank of Kenya Ltd.	100
Industrial Development Bank Ltd.	48
Development Bank of Kenya Ltd.	<u>48</u>
	<u><b>1,881</b></u>

As at December 12, 2005 all the banks, except Consolidated Bank of Kenya Ltd. had submitted declaration forms for their employees to the Commission. The Consolidated Bank of Kenya Ltd. inadvertently submitted the declarations forms by their employees to the Public Service Commission of Kenya. The latter confirmed having received the forms and were in the process of sending them back to the Consolidated Bank of Kenya Ltd. for onward submission to the Board of Directors of the Central Bank of Kenya, the responsible commission.

It was noted with concern that as at January 10, 2005 the Commission had not sorted out the wealth declaration forms to establish those who might have not declared their incomes, assets and liabilities as required by the *Public Officer Ethics Act, 2003*. The position was found to be the same in June 2005, which implies that the secretariat was not bothered with the exercise.

## **2.10 The Defence Council**

The Defence Council is the responsible Commission for the members of the Armed Forces within the *Forces Act* and includes officers under the Kenya Army, Kenya Air Force and the Kenya Navy.

According to the information availed to EMU by both the Permanent Secretary and the Assistant Chief of General Staff, by January 2005, all the cadres of staff had submitted their wealth declaration forms except a few who were on foreign missions. As at June 7, 2005 all the staff were reported to have submitted their forms, meaning 100% compliance.

As at January 2005, the declaration forms for all the civilian staff working for the Armed Forces had been received and submitted to the Public Service Commission.

## **2.11 The National Security Intelligence Council**

The National Security Intelligence Council is the responsible Commission for officers employed by the National Security Intelligence Service.

According to the information availed to EMU by December 31, 2004 all the cadres of staff had submitted their wealth declaration forms, meaning 100% compliance. As is the case of the Defence Council, for security reasons, the number expected to declare cannot be disclosed.

## **3. Constraints and Problems**

The monitoring exercises by EMU revealed that there are many challenges, constraints and problems facing the process of wealth declarations, which include:

- i) General non-compliance with the legally stipulated deadlines for submitting wealth declaration by the public officers across most of the responsible Commissions.

- ii) The majority of the responsible Commissions do not know what to do with the declaration forms and if they know, they do not have the ability and capacity to deal with the problem.
- iii) Lack of capacity and ability to analyse, review and verify the information submitted in the wealth declaration forms to detect any falsification, incompleteness, disproportionate to income declared and improprieties or conflict of interest is lacking in almost all the commissions.
- iv) Some of the responsible Commissions do not know how many public officers fall under them. There is reluctance amongst ministries, state corporations and local authorities to indicate the number of their employees in spite of having been requested to submit the statistics.
- v) Non-provision of funds in the annual budget to cater for the cost of activities relating to the administration of the Code of Conduct and Ethics as spelt out in the *Public Officer Ethics Act, 2003*. Some areas were said to be inaccessible such as the case of teachers where, officers are forced to use their own funds to meet the cost of transporting the forms to and from various venues and in order to meet the deadline for submission.
- vi) Lack of storage space for storing the declaration forms. Considering that Section 31 of the Act demands that they be kept for at least thirty years after the officer ceases to be a public officer, storage in the future will be a major problem. For instance, the Teachers Service Commission (TCS) had to rent an extra office at a cost which was not budgeted for in its annual budget. Similarly, the Commission for Higher Education ended up constructing a strong room for storage of the returns and they feel that this expenditure should be reimbursed.
- vii) There is a feeling that compiling the returns takes a long time and thus they require at least a month after the deadline to compile the statistics on those who have submitted and those who have not.
- viii) The responsible Commissions do not have powers to prosecute those who fail to declare their wealth.
- ix) Existence of unfair arrangements whereby some designated Administrative Officers are appointed to handle the

declaration forms, including their own, which amounts to self-declaration.

- x) Cases where officers appointed to handle declaration forms feel uncomfortable with dealing with those of their superiors.
- xi) In 2003, the Ethics Commission for Cooperative Societies had to persuade and sensitise cooperative society committee members and their employees to convince them that they are public officers.
- xii) The Ethics Commission for Cooperative Societies does not know how it can enforce compliance with the Code of Conduct and Ethics among the committee members and the employees of the co-operative societies because they are not employees of the Commission.
- xiii) The staff turnover in the cooperative societies sector is so high that, each year, there are new entrants to the sector who will have not declared their income for the previous year.
- xiv) The councillors of local authorities have not clearly understood the contents of the declaration forms and therefore, the information filled did not reflect the incomes, assets and liabilities of some of the councillors.
- xv) Officers who are either on study or sick leave may not be able to meet the set deadlines for submission of the wealth declaration forms.
- xvi) The TSC feels that the exercise was being held when students were busy either preparing for examinations or sitting for them, which meant that the teachers are usually busy and thus the exercise should be held earlier, either in the month of August or September.
- xvii) The Commission for Higher Education feels that the forms do not contain adequate information and thus the CHE designed a similar serialized form, which contained all information without repetitions and included Identification Number and Personal Identification Number (PIN), which had not been included in the earlier format.

#### 4. General Observations

The EMU made the following observations:

- i) As enacted, the *Public Officer Ethics Act, 2003* fails to deliver the strong wealth-declaration scheme many citizens may have hoped for. However, the Act is not so flawed that it cannot serve as a starting point for more meaningful efforts.
- ii) There is general non-compliance with the legally stipulated deadlines for submitting wealth declarations across all the responsible Commissions.
- iii) Section 32 of the Act provides that, it is an offence for a person to fail to submit a declaration or to submit in a declaration, information he knows or ought to know to be false or misleading is guilty of an offence. Yet, the responsible Commissions did not report to the relevant authority to charge in a court of law all the public officers who did not submit their declarations and those who submitted blank forms. In spite of very many public officers failing to submit their declarations as required by the law, the responsible Commissions did not take any action. Therefore, by concealing an offence, the officers of the responsible Commissions have committed an offence.
- iv) Whereas the law requires wealth declarations by all the public officers, the Government seems to be concerned with wealth declarations by only senior officers (Job Group “H” and above and its equivalent) in the civil service, state corporations and local authorities. The declarations by junior officers to their Accounting Officers have not of concern and nobody knows the extent of compliance.
- v) The responsible Commissions do not know what to do with the declaration forms.
- vi) Section 33(1) of the Act stipulates that “each Commission shall establish procedures for the administration of Part with respect to the public officers for which it is the responsible Commission.” As such, in accordance with Section 33(2) of the Act, the Electoral Commission is expected to take action in line with administrative procedures, which it was expected to publish in the Gazette within ninety days after commencement of the Act. It is, however, not clear what action a local authority can take against a non-compliant councillor.

- vii) The system of wealth declarations, if properly managed, can effectively deal with the perennial problem of “ghost” workers in the public service.
- viii) All the responsible Commissions expressed concern that storage space for the declaration forms will become a problem in the near future, considering that Section 31 of the law demands that they be kept for at least thirty years after the officer ceases to be a public officer.
- ix) The capacity and ability to analyse, review and verify the information submitted in the wealth declarations to detect any falsification or incompleteness, disproportionate to income declared and improprieties or conflict of interest is lacking in all the commissions.
- x) The cost of activities relating to the administration of the Code of Conduct and Ethics as spelt out in the *Public Officer Ethics Act, 2003* have not been catered for in the national annual budgets.
- xi) The current arrangement whereby some designated Administrators are appointed to handle the declaration forms, including their own, appears to be unfair because it amounts to self-declaration as it has not been clarified as to who should handle their forms.
- xii) There are cases where officers appointed to handle declaration forms feel uncomfortable dealing with those of their superiors.
- xiii) Whereas the Act stipulates that the declaration of each officer is to be kept for at least 30 years after the officer ceases to be a public officer, Accounting Officers do not seem to communicate with the responsible Commissions when their officers cease to be public officers. This will imply that the Commissions will keep the many declarations indefinitely.
- xiv) There is need to have a centrally placed institution with the mandate to review and verify wealth declarations.
- xv) The current requirement that every public officer must declare his/her wealth has resulted to a large quantity of declarations, which are unmanageable. Whereas in Kenya, more than 700,000 public officials in JG “H” and above are required to declare to responsible commissions, not to mention another large number who declare to their accounting officers, in Uganda 16,000 so-

called leaders declare while in Tanzania only 5,400 make their declarations.

## 5. Conclusion

The *Public Officers Ethics Act, 2003* is rated as one of the landmark legislations by the NARC Government in its declared war against corruption. However, in spite of the Act having commenced in May, 2003 and the first declarations of wealth having been made at the end of 2003 and the second declarations by end of December, 2004, critics have pointed out that the Government is not sincere in the war against graft.

The knowledge that the Government is doing nothing with the declarations and is not enforcing the law will soon lead to lack of confidence in the Government. The public will view the Government decision to enact the Public Officers Ethics Act, 2003 as having been an attempt to make it appear as if there was seriousness in the fight against graft while actually it was meant to a ploy to appease its development partners. The declarations of wealth have also been criticized as a public relations exercise devoid of any commitment.

The monitoring exercise was therefore undertaken at a period when the public was doubtful about the seriousness of the Government to use wealth declarations as a means of fighting corruption. The exercise, however, served as an indication of whether the responsible Commissions are playing any useful role in achieving the intended purposes.

The exercise to monitor compliance with the *Public Officers Ethics Act, 2003* by EMU has revealed that, the many responsible Commissions do not appear to know what they are expected to do after receipt of the declarations. They have neither the resources nor the capacity to compile the returns to determine how many, leave alone, who did not submit his/her declaration or submitted false information. This partly explains why no administrative or legal actions have been taken against the many public officials who failed to submit their declarations.

A major but sad finding of the assignment was that, more than two years after the law became operational, the Government does not know exactly how many public officers in total or by grade are expected to submit their declarations, leave alone how many have not. Similarly, the Government may not be able to flush out ghost workers from the pay roll. This is more so with respect to the Public Service Commission (PSC) and the Ethics Commission for Cooperative Societies.

In spite of the PSC requesting ministries, state corporations and local authorities to indicate the number of their employees, many have not responded. And whereas there are 175 local authorities in the country, the record of the PSC shows 133 local authorities.

Another finding is that the various secretariats of the responsible commissions who received the declarations do not know what they are supposed to do with them. Although they received the forms, some have not bothered to compile the data to determine who did not declare. Six months after receipt, some had not sorted the forms. Almost all of them reluctantly compiled the data to determine how many officials did not comply only after the EMU requested for the data. By June 2005, the Central Bank of Kenya has not sorted the forms and therefore has not compiled the returns from the publicly owned commercial banks. Like the PSC, the CBK can not tell how many and the names of employees of publicly owned commercial banks who did not submit their declarations.

The directors and employees of the Kenya Planters Union (KPCU) do not declare their wealth. The union operate under the *Cooperative Societies Act* but they fail to make their declarations to the Ethics Committee for Cooperative Societies.

Much as many public officials complied with the law and submitted their wealth declarations, the returns are yet to be analysed or verified. The Government cannot tell whether public officers made accurate and reliable declarations. So far, none of the commissions is analysing or verifying nor has plans to analyse the forms. As pointed out earlier, even if the Commissions had intentions of making the analysis, they have neither the required resources nor the capacity to do so.

For the wealth declarations to serve their intended purposes, there is need to have a centrally placed institution with the mandate to review and verify wealth declarations. Given the massive number of declaration which are unmanageable, the Government should consider directing the department to commence with a pilot project for reviewing and verifying declarations by the most senior public officers.

Given limited resources and the need to take action earliest possible, the best alternative is for the Government to consider giving the responsibility to an existing department such as the Kenya Anti-Corruption Commission (KACC) or the Efficiency Monitoring Unit (EMU). A task force appointed by the Ministers for Justice and Constitutional Affairs considered the possibility of KACC or EMU taking the responsibility for verifying wealth declarations. The KACC cannot get

involved because neither the *Anti-Corruption and Economic Crimes Act, 2003* which established KACC nor the *Public Ethic Act, 2003* gave the mandate to the Commission. Having been established administratively, the government can mandate EMU with the function. However, for one reason or the other, the Government is not keen to give the function to EMU. The other alternative, though more expensive and time delaying is for the Government to establish a new and independent department with the mandate of reviewing and verifying the wealth declarations.

If the Government fails to make use of the declarations, it risks losing its credibility with the public and the development partners. Furthermore, public officials will view the shortcoming as lack of seriousness by the Government and stop to make the declarations or merely fill the forms with meaningless data as is the case of the many reported councillors who submitted blank declaration forms.

If the Government is to succeed in the fight against corruption and other vices, it should seriously consider harmonising all the existing legal instruments on personal details by developing a central personal identification system. This would mean adopting one unique Personal Identification Number (PIN) for all its citizens. For instance a citizen's national identity card, passport, tax number etc. should bear the same number, the PIN. Similarly, all registration numbers for any legal business should be based on the PIN followed by the coding the business undertaking would choose to adopt. Such a system would assist in tracking any suspected wealth accumulation and money laundering.

## **6. Recommendations**

In view of the foregoing, the following recommendations are made:

1. The Government should:
  - i) Establish or appoint an existing department mandated with the review and verification of wealth declarations and request the Minister to invoke Section 42 of the *Public Officer Ethics Act, 2003* to give the responsibility to the department.
  - ii) The department recommended under (i) above should develop a uniform computer system to store and analyse the details of the wealth declaration across all the responsible commissions.

- iii) The department recommended under (i) should network with other relevant Government agencies such as KRA, Commissioner of Lands, Registrar of Companies etc.
- iv) The department recommended under (i) above should second its officers to the responsible Commissions to be responsible for receipt of wealth declaration forms.
- v) Provide adequately resources to the department recommended under (i) above and organize specialized training for officers in the department dealing with the declarations.
- vi) Direct all the Commissions to budget for the activities relating to the administration and enforcement of the Codes of Conduct and Ethics.
- vii) Consider harmonising all the existing legal instruments on personal details by developing a central personal identification system in order to succeed in the fight against corruption and other vices. This would mean adopting one unique Personal Identification Number (PIN) for all its citizens. For instance a citizen's national identity card, passport, tax returns etc. should bear the be same number, the PIN. Similarly, all registration numbers for any legal business should be based on the PIN followed by the coding the business undertaking would choose to adopt. Such a system would assist in tracking any suspected wealth accumulation and money laundering.

2. The Ministry of Justice and Constitutional Affairs should:

- i) Organize training for public officers with a view to improving the quality of wealth declarations.
- ii) Review the period required for storage of information after those covered under the Act cease the public service. A period of five years is recommended instead of thirty years.
- iii) Demand that the Central Bank of Kenya ensure that they analyse declarations by employees of publicly owned banks with a view to determining who did not comply with the requirements of the law.
- iv) Give clear guidelines regarding the declaration of incomes, assets and liabilities by senior officers who have been

appointed to handle declaration forms, which include their own.

- v) Give clear guidelines regarding handling of declaration forms for senior officers by their juniors.
  - vi) Request all the responsible Commissions to delete from the payroll the names of officers who have not declared their incomes, assets and liabilities and report them to the relevant authority for legal action.
  - vii) In the future, demand that the responsible Commissions take the above actions by January 31 of every year.
  - viii) Request the Commission for Higher Education to submit an updated record of the total number of staff in each University as per December 2004 payroll, number of forms received to date, and account for all the officers who have not submitted their wealth declaration forms.
3. The Public Service Commission should obtain from the Permanent Secretary, Ministry of Local Authorities and the Inspector General (Corporations) the total number of the local authorities and state corporations respectively.
4. All the Commissions should organise workshops/seminars for their respective public officers in order to improve on the quality of the information submitted by them.
5. Parliament should:-
- i) Adopt legislation to strengthen the asset-declaration scheme.
  - ii) Reduce the number of persons who must file wealth declarations to a more manageable level.
  - iii) Expand and clarify declaration requirements to make sure that all crucial information is included.
  - iv) Require responsible Commissions to review asset disclosures and consider providing for in-depth auditing and inspection of selected disclosures.
  - v) Like in other countries, create a single body to handle the review, inspection and verification of wealth declarations.

In Uganda there is IGG while Tanzania has the Ethics Secretariat in the Office of the President.

- vi) Grant the necessary legal authority and funding to properly administer the declaration scheme.
- vii) Consider allowing the press and the public to access at least some of the information that top officials declare.
- viii) To protect public officials, make it a punishable offence for anybody who brings false information against public officials.