



Illicit enrichment



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What is illicit enrichment in a nutshell?

The UN Convention Against Corruption (UNCAC) defines illicit enrichment as a “significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income”.

Also known as “unexplained wealth” or “unjust enrichment”, it legally applies in some countries to private individuals as well as public officials. It can refer to an amount of assets that a person has acquired as well as an excessive standard of living that they may be enjoying.

A successful legal action for illicit enrichment opens the door to asset recovery – i.e. returning the illegally acquired assets to the state.

What are the benefits for asset recovery?

In many cases, especially in cash economies and where small amounts of bribes are paid over time, it is difficult or impossible to prove individual acts

of corruption. This means many corrupt officials are never prosecuted and get to keep the assets that they have acquired through their corruption.

Using the mechanism of illicit enrichment, law enforcement officers use evidence that proves the *results* of the corrupt acts, such as an individual's purchase of expensive property and other high-value assets despite a modest legal income. In other words, rather than trying fruitlessly to prove the corrupt acts themselves, they can focus on proving the benefits obtained as a result of these acts and take action to recover their monetary value.

Is it a crime?

Illicit enrichment is covered by Article 20 of the UNCAC, but national laws vary wildly. Some countries have no laws. Some have laws targeting public officials only, such as in Malawi and Tanzania. Some have laws covering all individuals, for example several states in Australia, where it has been used to target drug dealers rather than corrupt officials.

In some countries, such as Kenya, illicit enrichment is not a criminal offence but a civil action. This means the primary aim is not to prosecute the individual but simply to recover the stolen assets.

The level of enforcement also varies. In Hong Kong, for example, there were already successful cases leading to asset recovery back in the 1970s. In Kenya, the courts are only just starting to finalise the first illicit enrichment cases.

Why is there some controversy?

Some critics argue that illicit enrichment amounts to finger-pointing, unfairly reversing the burden of proof and removing the presumption of "innocent unless proven guilty". The Ukrainian Parliament recently declared illicit enrichment unconstitutional for these reasons.

Others counter that as long as the primary responsibility for proving matters of substance against an accused rests with the state, then there is no unfair reversal of the burden of proof. In other words, as illicit enrichment cases still require prosecutors to prove the *actual existence* of unexplained wealth beyond reasonable doubt, then this is just like any other financial crime.

Arguably, if used responsibly and judged fairly, the mechanism of illicit enrichment has a lot of potential to help countries recover assets acquired through corruption that would otherwise remain in the hands of the criminals.

How is illicit enrichment investigated and prosecuted?

As this area of law is comparatively new, there are very few international standard procedures or best practices. The UK, for example, only incorporated unexplained wealth orders into law in January 2018.

Suspected cases of illicit enrichment often come about in the context of other ongoing corruption investigations. The initial lead may also come from newspaper articles or other regular intelligence channels.

For most cases, a solid approach would include a thorough financial investigation to determine how much money an individual might have had available over a certain period of time, and compare that to how much money they spent in that time to acquire assets or maintain a certain standard of living. The aim is to gather solid evidence – not guesswork – so that only individuals who have clearly acquired their assets from illegal sources of funds are questioned and prosecuted.

Are there any recent case studies?

The UK's first use of an unexplained wealth order last year caused a media stir when it was revealed that the wife of a former Azerbaijani state banker had spent GBP 16 million at Harrods, as well as purchasing a private aeroplane, golf course and expensive London property.

A successful case brought by Kenya's Ethics and Anti-Corruption Commission against Stanley Mombo Amuti, a former low-ranking public official who could not explain how he purchased around USD 400,000 worth of property in 10 months, has set a precedent in Kenya for further use of this mechanism.

What work does the Basel Institute do in this area?

The Basel Institute's International Centre for Asset Recovery (ICAR) works with partner countries to help enhance their capacity to recover stolen assets and combat corruption. As part of this wider effort, in some countries we are working to improve knowledge of illicit enrichment laws and how to use them responsibly and effectively.

When done properly, it can be an incredible weapon in the fight against corruption.

Learn more

- *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* is possibly the most comprehensive guide to illicit enrichment at the moment. It was produced in 2012 as part of a series by the Stolen Asset Recovery Initiative of the World Bank and UNODC.
- A US Department of Justice report from 2011, *Comparative Evaluation of Unexplained Wealth Orders*, offers an exhaustive comparison of different jurisdictions' use of illicit enrichment and related mechanisms in their legal systems.

- The Basel Institute's LEARN platform offers a free eLearning course on Source and Application, a method to prove illegal/unknown income with circumstantial evidence. See learn.baselgovernance.org

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