



# Illicit enrichment



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## What is illicit enrichment in a nutshell?

The definition of illicit enrichment can vary enormously from jurisdiction to jurisdiction.

At the international level, the United Nations 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”.

At a State level, however, the scope of illicit enrichment laws can differ somewhat from the UNCAC article. For instance, some laws cover private individuals as well as public officials. Some definitions take into account excessive standards of living in addition to disproportionate assets.

Many States don’t even use the term “illicit enrichment”. Instead they refer to the acquisition of “unexplained wealth” or “unexplained property”, or use other terms such as “unjust enrichment” or “illegal gains”.

Based on extensive analysis of international instruments, domestic laws, and jurisprudence from around the world for the book *Illicit Enrichment: a Guide to Laws Targeting Unexplained Wealth*, illicit enrichment can arguably be defined in a general sense as the enjoyment of an amount of wealth that is not justified through reference to lawful income.

## **Why are illicit enrichment laws useful in anti-corruption efforts?**

In the context of asset recovery mechanisms, illicit enrichment laws are quite unique as they do not require proof of a separate or underlying criminal activity before a judicial sanction can be imposed. Instead, courts only need to be satisfied that illicit enrichment has taken place – i.e. that a person has enjoyed some sort of wealth that has not been justified by their lawful sources of income.

These laws can be particularly useful in the context of corruption investigations.

In many cases, especially in cash economies and where small amounts of bribes are paid over time, it is almost impossible to prove every individual act of corruption. This means many corrupt officials are rarely prosecuted and get to keep the assets that they have acquired through their corruption.

By using illicit enrichment laws, investigators and prosecutors can still pursue corrupt officials in such situations if they are able to at least identify the results of their corrupt acts, such as a disproportionate purchase of expensive property or other high-value assets despite their modest legal income.

## **Is it a crime?**

While [Article 20 of the UNCAC](#) recommends that countries should criminalise illicit enrichment, legislative approaches to the concept vary wildly. Some countries have no laws. Some have illicit enrichment offences targeting public officials, such as in Mexico or Mongolia, while some have offences covering all individuals, such as Rwanda.

In other countries, such as Kenya or Mauritius, the illicit enrichment law is not a criminal offence but is in the form of a civil action. This means that the primary aim of an action under the law in these countries is not to prosecute the individual who has illicitly enriched themselves 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 Tanzania, the courts are only just starting to adjudicate the first illicit enrichment prosecutions.

## **Why is there some controversy?**

Some critics argue that illicit enrichment laws violate established legal rights by unfairly reversing the burden of proof and removing a presumption of innocence.

Similarly, there are some fears that illicit enrichment laws may violate an individual's right to silence and privilege against self-incrimination, two well-established legal principles that aim to guarantee fair judicial proceedings. An additional debate revolves around the principle against retroactive application, i.e. that a person should not be sanctioned for an action that was not defined as criminal at the time it was committed

However, the vast majority of legal challenges against illicit enrichment laws on these grounds have not been successful, and almost every court that has considered these issues have ruled that illicit enrichment laws do not unacceptably violate legal rights.

## **How is illicit enrichment investigated and prosecuted?**

As this area of law is comparatively new, standard procedures or best practices are still very much being developed.

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;
- a comparison between that income and 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 non-legal sources are subjected to legal proceedings.

A key tool for investigators and prosecutors seeking to prove illicit enrichment cases in court is Source and Application of Funds analysis. [Annex II of Illicit Enrichment](#) provides step-by-step guidance on how to conduct this analysis. Our [free eLearning course on Source and Application analysis](#) also provides a hands-on practical case to work through.

## **Are there any recent case studies?**

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.

Uganda also experienced a recent success in a [USD 1.25 million illicit enrichment case](#) involving an accountant in the Office of the Prime Minister. Cases can go right to the top: the former [President of El Salvador was recently convicted for illicit enrichment](#) that occurred while he was in power.

## 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.

Why? Because when drafted and enforced fairly, illicit enrichment laws can be an incredible weapon in the fight against corruption.

## Learn more

- *Illicit Enrichment: A Guide to Laws Targeting Unexplained Wealth* by Andrew Dornbierer is freely available on Basel LEARN alongside a database of illicit enrichment laws and step-by-step guidance on conducting Source and Application analysis. See [illicitenrichment.baselgovernance.org](https://illicitenrichment.baselgovernance.org)
- Hard copies are available to purchase at cost price via Amazon. See [baselgovernance.org/publications/illicit-enrichment-guide-laws-targeting-unexplained-wealth](https://baselgovernance.org/publications/illicit-enrichment-guide-laws-targeting-unexplained-wealth) for the relevant links.

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