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ILLICIT Enrichment and Asset Recovery: Comparative Lessons and Legislative Pathways for Uzbekistan

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Abstract

This article analyses illicit enrichment under Article 20 of the United Nations Convention against Corruption (UNCAC) and Financial Action Task Force (FATF) guidance, comparing criminalization in different jurisdictions, as well as unexplained-wealth models worldwide. It highlights shared features, such as presumption of illicit origin, reasonable suspicion, and no need to prove a predicate offence. It argues that Uzbekistan should adopt a illicit-enrichment offence with asset-declaration enforcement to strengthen deterrence, asset recovery, and the rule of law.

Keywords: Illicit enrichment, predicate offence, suspicion, declaration, legal framework.

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1. Introduction

Asset recovery has emerged as a cornerstone of global anti-corruption strategies, reflecting the commitments of states under instruments such as the United Nations Convention against Corruption (UNCAC) and the Financial Action Task Force (FATF) recommendations. For Uzbekistan, a country undergoing profound legal and institutional reforms, effective asset recovery is a vital mechanism for safeguarding public resources, reinforcing the rule of law, combating corruption and strengthening public trust in government institutions.

According to the United Nations Office on Drugs and Crime (UNODC), less than one percent of global illicit financial flows are detected and recovered by states. This trend shows that it is a process full of challenges and restrictions.

Over the past decade, Uzbekistan has adopted a series of legislative and policy measures to address financial crime, improve transparency, and facilitate international cooperation in the tracing, freezing, confiscation, and repatriation of illicit assets. However important gaps remain between domestic practice and global standards. These gaps, which is ranging from establishing criminal liability for illicit enrichment to the procedure of asset recovery, limit the country's ability to fully realize the preventive and deterrent functions of combating corruption.

Article 20 of the UNCAC introduces the concept of illicit enrichment, defined 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", and calls each State Party to consider criminalizing such conduct when committed intentionally. This provision represents a pivotal, yet contested, instrument in the global fight against corruption. The offence of illicit enrichment

serves as a preventive and deterrent mechanism by targeting unexplained wealth accumulation that often signals bribery, embezzlement, or abuse of office.

The Republic of Uzbekistan acceded to the United Nations Convention against Corruption (New York, 31 October 2003) in 2008 by adopting the Law "On the Accession of the Republic of Uzbekistan to the United Nations Convention against Corruption". In this regard, the Republic of Uzbekistan did not enter any reservation or written declaration aimed at exempting the application of this article or altering its legal effect.

Notably, the draft Law "On the Adoption of the Criminal Code of the Republic of Uzbekistan" (ID-29646), developed by the Prosecutor's General Office of the Republic of Uzbekistan, proposed introducing liability for the offence of illicit enrichment as Article 271 of the new edition of the Criminal Code. However, it has not been adopted to date.

At the expanded meeting on anti-corruption measures held on 5 March 2025, the President of the Republic of Uzbekistan emphasized the need to consider introducing liability for illicit enrichment.

Comparative legal practice reveals a divergent landscape in how jurisdictions operationalize Article 20 of the UNCAC, reflecting different constitutional traditions and policy priorities. Several countries adopted direct criminalization of illicit enrichment, as exemplified by France, where Article 321-6 of the Penal Code imposes liability when an individual cannot justify the existence of assets consistent with their lifestyle or prove the lawful origin of property in their possession.

In China, Article 395 of the Criminal Code similarly targets "significant discrepancies" between lawful income and actual assets or expenditures. A civil servant must explain the source of such wealth; failure to do so renders the excess "illegal gains", subject to confiscation and criminal liability. Importantly, Chinese law adds a preventive layer by obligating officials to declare overseas bank deposits and sanctioning nondisclosure, thus directly addressing transnational concealment of corrupt proceeds.

Armenia's Criminal Code (Art. 310(1)) and its Law "On Public Service" introduce an offence of illicit enrichment triggered when declared wealth significantly outstrips legal income and is unaccompanied by evidence of a predicate offence. Kyrgyzstan's Article 340 follows a similar model but focuses on enrichment "within the last two years of service," including property transferred to relatives or third parties.

Other jurisdictions integrate illicit enrichment into special anti-corruption statutes. India's Prevention of Corruption Act, Part 13, characterizes as "criminal misconduct" any disproportionate asset accumulation by a public servant that cannot be reasonably explained. Hong Kong's Prevention of Bribery Ordinance (Cap. 201, Section 10) likewise criminalizes possession of unexplained property, defining the offence through the maintenance of a lifestyle or control of property beyond one's official emoluments, unless a satisfactory explanation is provided to the court. Bhutan adopts a nearly parallel approach in Section 60 of its Anti-Corruption Act, covering civil servants and employees of entities using public resources while offering an explicit exculpatory defense for those able to prove the lawful source of their wealth.

The necessity of establishing such liability has been substantiated by various scholars, and among national researchers the scientific works of O. Ismoilov , B. Zokirov , Sh. Jalolov , and B. Shamsutdinov can be particularly highlighted.

This issue has also been reflected in the works of researchers operating within the Commonwealth of Independent States (CIS) countries. Some of them have published scientific studies concerning the absence of such liability in national legislation or the necessity of its introduction, while others have addressed specific aspects of the practical application of such provisions.

In numerous studies by foreign researchers, various aspects of illicit enrichment have likewise been examined, and their views have been expressed regarding the criminalization of such acts.

Several matters should be addressed while introducing criminal responsibility for illicit enrichment in national legislations. The analysis of provisions established in the legislation of foreign countries regarding illicit enrichment shows that there is no requirement to prove the specific offence or related criminal activity (predicate offence) that led to the illicit enrichment. In other words, the mere possession of illicit assets is treated as an independent act and constitutes grounds for liability.

In the Decree of the President of the Republic of Uzbekistan No. PF-6252 dated 28 June 2021, the term

"predicate offences" was used in the context of combating the legalization (laundering) of proceeds of crime, meaning the underlying offences from which such proceeds subject to laundering are derived.

Through this term, it is established that any offence provided for in the Criminal Code of the Republic of Uzbekistan, the commission of which results in the illicit enrichment, is to be understood as a predicate offence.

According to the fifth-round monitoring report published in 2024 within the framework of the OECD Istanbul Action Plan, the absence of criminal liability for illicit enrichment and the fact that it is recognized only in connection with a predicate offence were identified as shortcomings.

The second important feature of such cases is the existence of "reasonable suspicion" (or prima facie evidence). This means that reasonable suspicion arises as to the lawful origin of all types of property owned by a person. Various circumstances may give rise to such reasonable suspicion. For example, Section 362B of the UK Proceeds of Crime Act presumes illicit origin when known lawful income is insufficient, or property exceeds £50,000. Switzerland's national legislation defines somewhat different concepts. For instance, Article 15 of the Federal Act on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons (PEPs) sets a presumption when wealth grows disproportionately amid high corruption.

In this regard declarations received by special authorities can be helpful. The 2022 Civil Service Law introduced mandatory income and asset declarations, but full implementation remains pending (the State Register of Civil Service Positions has not yet been approved). Draft laws establishing a comprehensive declaration regime and liability for illicit enrichment have not been adopted. While declarations alone are not sufficient, they are a critical early-warning tool when combined with verification and enforcement.

Another important issue in this regard relates to the process of asset recovery, namely the confiscation of these assets. According to Part 5 of Article 211 of the Criminal Procedure Code of the Republic of Uzbekistan, money and other assets acquired through criminal means shall, by court judgment, be used to compensate for the property damage caused by the crime. If the person who suffered the property damage is not identified, such funds and assets shall be transferred to the benefit of the state.

At the same time, within the scope of the committed crimes, any property, proprietary rights, or income derived from them that were directly or indirectly obtained as a result of criminal activity, as well as any property used as a weapon, means, or material base in the commission of the crime, must be confiscated to the benefit of the state in accordance with the established procedure.

In addition, Article 285 of the Criminal Procedure Code provides that money, items, and other assets acquired through criminal means by the accused shall, by court judgment, be used to compensate for the property damage caused. Any amount remaining after compensation must be transferred to the benefit of the state. Furthermore, if the property that constitutes the object of the crime is found in the possession of third parties, confiscated from them, and returned to its rightful owner, the money, items, and other assets obtained by the accused through the sale of such property shall, by court judgment, be transferred to state ownership. At the same time, the convicted person must be informed of the right to bring a civil claim, under civil court procedures, to recover damages resulting from the return of the property to the bona fide owner. In this context, it should be particularly emphasized that, in the process of recovering illicit assets, the primary requirement is to prove that the assets were obtained because of the commission of a crime.

Article 289 of the Criminal Procedure Code stipulates that if property whose private ownership is prohibited is recognized as material evidence in a case, and if such property was unlawfully acquired by the owner, it shall be confiscated. In other words, by a court decision and without compensation, the right to own, use, and dispose of such property shall be transferred to the relevant state body or legal entity authorized to possess it. According to Article 290 of the Criminal Procedure Code, to ensure the execution of the part of a judgment relating to a civil claim and other property-related recoveries, the investigator, inquiry officer, or court is obliged to seize the property of the suspect, accused, defendant, and civilly liable person, as well as property recognized as material evidence. It should also be noted that, to conceal the transfer of ownership, the accused or defendant may formally register such property in the name of third parties rather than in their own name. If no evidence is found to prove such circumstances, the issues of seizing and confiscating the property remain unresolved.

A distinct model appears in Western Australia, where Part 4 of the Criminal Property Confiscation Act 2000 introduces a civil-confiscation regime, also known as civil forfeiture or in rem forfeiture focused on "unexplained wealth". Section 144 measures the total value of a person's wealth against their lawfully acquired wealth, permitting confiscation without the need to prove a specific underlying crime. Although formally non-criminal (several researchers argue that such proceedings are criminal in nature), such regimes achieve a functional equivalent to illicit enrichment statutes by reversing the burden of proof in civil proceedings and by severing the link between criminal conviction and property deprivation.

Moreover, there is more useful tools in comparison with in personam proceedings such as non-conviction-based confiscation (NCB confiscation) possibilities. NCB confiscation is especially important for cases where a criminal trial cannot be held (death, flight, immunity, or lack of evidence for conviction). However, legislation of Uzbekistan does not have clauses related to civil confiscation nor NCB confiscation.

2. Conclusion

In conclusion, this comparative analysis reveals that successful criminalization of illicit enrichment transcends jurisdictional boundaries and legal traditions, offering Uzbekistan a proven framework for strengthening its anti-corruption architecture. The convergence of approaches across diverse system demonstrates that effective asset recovery depends not on uniform implementation but on shared principles: establishing rebuttable presumptions of illicit origin, requiring reasonable suspicion rather than proof of specific predicate offenses, and maintaining robust procedural safeguards.

For Uzbekistan, these international lessons carry importance given the country's ongoing legal reforms and the President's March 2025 directive to consider introducing liability for illicit enrichment. However, criminalization alone cannot address the systemic challenges of corruption and asset recovery.

The research demonstrates that effective anti-corruption regimes require a comprehensive three-pronged approach. First, Uzbekistan must adopt Criminal Code Article 271, incorporating comparative best practices while establishing proportional thresholds that capture meaningful corruption without criminalizing minor discrepancies. The provision should create clear liability triggers based on gross disproportionality between declared income and accumulated wealth, following successful models from China and Armenia.

Second, the theoretical asset declaration requirements introduced by the 2022 Civil Service Law must be operationalized through robust verification and enforcement mechanisms. This necessitates establishing a specialized declaration monitoring body with adequate resources and authority, supported by comprehensive databases that link declared assets with actual wealth patterns. Without effective implementation infrastructure, declarations remain mere formalities that provide neither deterrence nor detection capabilities.

Third, Uzbekistan's asset recovery toolkit requires fundamental expansion through the introduction of civil forfeiture and non-conviction-based confiscation mechanisms. These tools, successfully employed in jurisdictions such as Western Australia, enable authorities to target unexplained wealth without requiring criminal convictions, particularly crucial for cases involving deceased suspects, fugitives, or diplomatic immunity situations.

The integration of these reforms would position Uzbekistan to harmonize its national law with UNCAC and FATF standards, thereby enhancing cross-border asset recovery capabilities and strengthening international cooperation.

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