

## Transparency International Anti-Corruption Helpdesk Answer

# Overview of lifestyle audits as an anti-corruption tool and country examples from Africa

**Author:** Guilherme France, [tihelpdesk@transparency.org](mailto:tihelpdesk@transparency.org)

**Reviewers:** Jorum Duri and Matthew Jenkins, Transparency International

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Lifestyle audits – also known as lifestyle checks or lifestyle monitoring – are an accountability tool that can be used to detect and prevent corruption. Such audits are typically conducted when the visible lifestyle or standard of living of an individual appears to exceed their known income level. The detection of such discrepancies can raise red flags warranting closer inspection.

In such instances, an assessment of the individual's income, assets and investments can be undertaken to determine if such seemingly extravagant expenditures could have come from illicit gains. If the audit shows a mismatch between a person's known income and assets compared to their lifestyle and spending patterns, then there is an increased risk that the person is deriving alternative income from sources that constitute a conflict of interest or illegal activity, including embezzlement and bribery. As verification often includes assessments of an official's household, the approach is particularly helpful in detecting whether corrupt proceeds could have been concealed under the names of family members or associates.

Lifestyle audits are best used systematically in conjunction with other anti-corruption measures, including the criminalisation of illicit enrichment, establishing obligations for regular declarations of assets, incomes and interests, as well as Unexplained Wealth Orders.

Yet despite the potential value of using lifestyle audits to curb corruption, there remain a number of challenges. Undertaking comprehensive lifestyle audits – especially of large numbers of public officials – is often considered impractical and resource intensive for an anti-corruption agency. Some agencies choose to rely on civil society organisations or investigative journalists to conduct such audits, flag discrepancies, and trigger more formal investigations. However, the viability of this approach is contingent on a number of other factors including public access to the content of asset and income declarations, and the interest and ability of civil society to engage in lifestyle audits.

The reliance on public access to declarations in itself gives rise to a number of contentious questions, particularly around public officials' right to privacy. This is compounded by the fact that the nature and scope of lifestyle audits, and the criteria for verification of declarations in general, are rarely specified by law, or are often fragmented across sub-legal instruments that target specific categories of officials. Finally, lifestyle audits have occasionally been politically and institutionally manipulated, which can undermine their legitimacy and lead to discriminatory profiling.

A number of African countries have established lifestyle audit frameworks in a host of different scenarios and which are being implemented with varying degrees of success. These include Kenya, Malawi, Namibia, Nigeria.

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Query: Could you please provide an overview of the use and good practices regarding 'lifestyle audits', including country examples in Africa?

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## Caveat

Lifestyle audits have not been the subject of wide-ranging comparative research across African countries, either on the legislation that authorises conducting them or on their implementation and effectiveness. Hence, the Helpdesk Answer chiefly relies, especially for country examples, on press articles from local media sources.

## Introduction

Corrupt schemes are, by their very nature, inconspicuous affairs. Often, the only indication that illicit activities took place is a sudden and unexplained change in an individual's behaviour, as he or she seeks to enjoy the proceeds from the criminal activities conducted.

With that in mind, the international community has promoted a series of tools that aim to not only identify early signs of illegitimate enrichment, but also to help with investigating and prosecuting these individuals and their wealth. One of these tools is the use of lifestyle audits.

## Main points

- A lifestyle audit is an accountability tool that measures a person's lifestyle – property and assets owned, spending habits, and way of living – against their legitimate wealth and income.
- It has been employed in a number of countries, especially in Africa. It is often presented as a panacea for corruption, but inherent limitations, including its resource-intensive nature, have led to varying degrees of success.
- A review of the evidence suggests that lifestyle audits should be chiefly reserved for top officials and linked to efforts to digitalize and publish officials' financial disclosure forms.
- Verification should be the responsibility of an independent nonpartisan agency able to apply sanctions where irregularities are substantiated.
- Lifestyle audits can be conducted through desk reviews of available information and/or field observation of the individual's day-to-day life. Lifestyle questionnaires have also proven useful. Civil society and journalists can play an important supporting role in the verification process.
- There are human rights-related concerns about how lifestyle audits may threaten privacy rights as well as the presumption of innocence, which is a fundamental component of the right to a

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A lifestyle audit is a process that measures a person's lifestyle – property and assets owned, spending habits, and way of living – against their legitimate income. They can be effective as part of an overall monitoring programme or to identify red flags that warrant investigation, but they are not adequate to make definitive assessments (Niven 2021).

Lifestyle audits are just one of a series of mechanisms that make up an effective income and asset disclosure system. Other relevant mechanisms are a well-established process for receiving and verifying declarations of assets, income and interests, internal audits, whistleblower protection laws, and reporting of suspicious transactions to the financial intelligence unit (Muzila et al. 2012).

Lifestyle audits are more likely than other means of verification to identify whether an individual is declaring all of their income and assets and whether they concealed corrupt proceeds under the names of family members and close associates not covered by disclosure requirements (World Bank & UNODC 2012). As such, even when there are no indications of a corrupt scheme being in place, a lifestyle audit can demonstrate that someone has been living beyond their legitimate means, which should lead to further investigations into their professional conduct.

A strong framework for conducting lifestyle audits and its effective implementation can serve as meaningful deterrent for people who find themselves under observation and who may be asked to explain the origins of their wealth. They are also useful in that they identify assets and goods, allowing authorities to freeze or sequester them while a full investigation is conducted, which increases the possibility of stolen assets being recovered (Niven 2021).

## Anti-corruption tools related to lifestyle audits

Besides lifestyle audits, the international community has developed and promoted several important mechanisms with the same goal of identifying signs of corruption, especially illegitimate wealth, and facilitating investigation and prosecution.

Integration between these mechanisms and lifestyle audits is essential for a well-functioning integrity framework. An independent illicit enrichment offence will be key to prosecute individuals when it is not possible to identify the corrupt conduct that generated the illegitimate wealth. Declarations of assets, incomes and interests provide a baseline against which lifestyle audits can identify inconsistencies in an individual's lifestyle. Where specific assets are shown through a lifestyle audit to be inexplicable, unjustified or otherwise incompatible with an individual's official income and wealth, Unexplained Wealth Orders can serve to confiscate these assets.

### Illicit Enrichment

Illicit enrichment has been defined as “the enjoyment of an amount of wealth that is not justified through reference to lawful income”, meaning that no evidence was presented to demonstrate the legitimate or non-criminal sources from which the enjoyed wealth was derived (Dornbierer 2021).

Establishing illicit enrichment as an offence allows the courts to impose sanctions when the above-mentioned scenario takes place without the need to prove or to establish that a separate and underlying criminal activity (from which the unexplained wealth supposedly originated) took place.

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In this sense, Article 20 of the [United Nations Convention against Corruption](#) (UNCAC) provides that:

“Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, 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”.

As the UNODC (2012) states, criminalising illicit enrichment is helpful insofar that it addresses the difficulty faced by prosecution in proving that a public official solicited or accepted bribes in cases where their enrichment is so disproportionate to their lawful income, that a *prima facie* case of corruption can be made.

Other international anti-corruption conventions also recognise the importance of criminalising illicit enrichment as it works both to facilitate prosecution and to deter public officials from engaging in corrupt behaviour. The [Inter-American Convention against Corruption](#) (art. 9) states that:

“Subject to its Constitution and the fundamental principles of its legal system, each State Party that has not yet done so shall take the necessary measures to establish under its laws as an offense a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions.”

Similarly, the [African Union Convention on Preventing and Combating Corruption](#) (Art. 8) defines illicit enrichment as a “significant increase in the assets of a public official or any other person which he or she cannot reasonably explain” and it determines that:

“Subject to the provisions of their domestic law, State Parties undertake to adopt necessary measures to establish under their laws an offence of illicit enrichment”

Both the African Union and the Inter-American conventions provide that, if illicit enrichment is criminalised, it should be considered an act of corruption. They also state, however, that even if such an offence is not established, States should engage in international cooperation, providing assistance and cooperation to requesting States.

Of note is the caveat included in the beginning of all the above-mentioned legal texts: these measures should be subject to each state’s Constitution, domestic law, fundamental principles of the legal system and so on.

Notably, this caveat is not included in the [ECOWAS Protocol on the Fight against Corruption](#), which simply states that “a significant increase in the assets of a public official that he cannot reasonably explain in relation to his lawful earnings shall be considered an illicit enrichment and an act of corruption” (Art. 6.3). Its inclusion serves as a reminder that this provision may not be applicable depending on the country’s legal system. In some jurisdictions, an illicit enrichment offence may be considered contrary to the right to be presumed innocent until proven guilty under the law. This understanding derives from the fact that the burden of proof is somewhat reversed, seeing as the defendant, in these cases, must provide a reasonable explanation for their significant increase in wealth (UNODC 2012).

Once the prosecution demonstrates the existence of an amount of wealth that is not commensurate, at least initially, to the defendant’s lawful income, there is rebuttable presumption of his/her guilt on the illicit enrichment offence. This presumption, nonetheless, does not apply to other criminal offences that may have produced the assets in question. The defendant must prove that said

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unexplained wealth is derived from a legitimate or legal source.

While the discussion around illicit enrichment has mostly focused on its criminalisation, this form of corruption can also be classified as a civil offence, leading to a compensatory-type order against a person. In total, 98 illicit enrichment laws have been identified and found to be in force around the world (Dornbierer 2021).

As stated, the goal of preventing, detecting, and combating illicit enrichment has prompted countries to employ a number of different tools, beyond simply defining and criminalising it, such as declarations of assets, interests and incomes, unexplained wealth orders and lifestyle audits. In particular, lifestyle audits, as it will be demonstrated below, have the potential to produce valuable information that can serve as evidence to prove illicit enrichment in criminal or civil proceedings.

## Declarations of Assets, Interests, and Income

Declarations of assets, interests and income are widely considered important tools in preventing and detecting corruption pertaining to public officials. They are helpful both in identifying and prosecuting illicit enrichment and at preventing conflicts of interests in the exercise of official duties. Income and asset disclosure systems also help to build a climate of integrity in public service and bolster public confidence in the integrity of government (World Bank & UNODC 2012).

Legislation instituting these declarations for public officials has been enacted in dozens of countries in the past few decades, bolstered by international anti-corruption conventions. The UNCAC requires States “to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employments, assets and

substantial gifts from which a conflict of interest may result with respect to their public functions as public officials” (Art. 8.5).

Similarly, the Inter-American Convention against Corruption lists as important preventive measures the establishment of “systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public” (Art. 3.5). The Organisation of American States (OAS) has developed a [Model Law on declarations of income, assets, and liabilities](#) to encourage States implementing said measures.

In the African Union Convention against Corruption, States commit to requiring all or designated public officials to declare their assets at the time of assumption of public office and after their term in office (Art. 7.1). The ECOWAS Protocol on the Fight against Corruption also includes, as anti-corruption preventive measures, “policies that oblige public officials to disclose assets, liabilities and copies of their tax returns. The disclosure rules should be extended to at least the spouses and dependent children of public officials.” (Art. 5.g).

However, not all international anti-corruption conventions mention declarations of assets, interests and incomes, as it is the case in the [2001 Southern African Development Community Protocol against Corruption](#).

A number of issues should be considered when setting up a disclosure system for assets, incomes and interests (Martini 2013):

- (i) who is covered by these rules, meaning who is subject to the legal obligation of presenting this information;
- (ii) the types of information that should be disclosed;
- (iii) how frequently these declarations must be filled out or updated;



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- (iv) monitoring and enforcement;
  - (v) sanctions; and
  - (vi) availability of information to the public.

In addition, the existence and relative strength of other oversight mechanisms should also be considered in order to reduce gaps in the country's integrity system.

There are often trade-offs when deciding these issues, especially considering the very limited resources usually available to agencies charged with receiving and processing declarations. For example, if the number of people required to fill out declarations increases, the harder it becomes to enforce compliance and monitor declarations for inconsistencies and irregularities. Disproportionate amounts of resources will be spent in managing and ensuring submissions, with little left for monitoring and enforcement (World Bank & UNODC 2012). Similarly, the more information is required in the declarations, the harder it will be to verify them, putting a premium on technology tools to automate part of this process. Some of these trade-offs are similar in the case of lifestyle audits.

There are several approaches to verifying the content of declarations, of which lifestyle audits are only one. Different approaches can be mixed and matched according to each circumstance and to the resources available. They include (World Bank & UNODC 2012):

- (i) checking individual declarations for internal consistency;
- (ii) comparing declarations in order to monitor changes (or lack thereof) over time;
- (iii) cross-checking declarations from people with pre-existing relationships (family members and close associates);
- (iv) analysing declarations for potential incompatibilities or conflicts between private interests and official duties.

Declaration of assets and incomes may serve as starting point for lifestyle audits, as one of the

initial steps of a lifestyle audit is to verify the accuracy of financial disclosure information provided by officials. It is worth bearing in mind that the disclosure of assets in declarations does not ensure that their origins are legal, while their description and worth may not correspond to reality. In general, declarations provide officials (and society, if they are public) with information that can be crossed and checked between the individual, their family members, and close associates.

If lifestyle audits demonstrate inconsistencies in the declarations provided by public officials, they can lead to civil, administrative and/or criminal proceedings, where sanctions are envisioned for non-compliance with disclosure requirements.

## Unexplained Wealth Order

Unexplained Wealth Orders (UWO) are a tool for non-conviction-based asset confiscation (civil forfeiture). It aims to deprive criminals from acquiring illegitimate wealth or benefiting from unlawful activities. As part of a civil proceeding, there is a lower standard of proof when compared to criminal proceedings (Martini 2015).

UWOs use aspects of illicit enrichment regulations by shifting the burden of proof to the asset owner who is required to provide evidence that the assets in question were acquired lawfully. UWOs also work as an investigative tool, as they enable authorities to gather intelligence on the origins of a persons' assets (OCCRP 2021).

Since this is not conviction-based, it provides for faster results, seeing as its proceedings focus on the assets in question, and not on proving a criminal offence took place. Linking assets to crimes (and its immediate proceeds) does not only take time but is often very challenging due to the intricate nature of financial transactions and the wide array of money laundering tools available.

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The way UWOs work varies from country to country, but, in general, it is a court-issued order requiring the defendant to present evidence that the assets in questions were obtained through legal means. The court's decision to issue the UWO depends on an enforcement authority making an application that must fulfil the legal requirements. Some of the requirements, not necessarily combined, usually found in national legislation are:

- Demonstrating a connection between an offence and the asset in question;
- Proving the value of the asset in question is greater than the minimum amount set forth in the law;
- Demonstrating that the person is in possession or control of the property;
- Demonstrating that the owner is part of a list of people subject to UWOs (for example PEPs in a particular country) or that he/she is suspected of committing a serious crime.

Some of these requirements can be met on the basis of information uncovered during lifestyle audits, which identify specific assets which appear disproportionate considering the person's legitimate income. Hence, lifestyle audits may lead to UWOs being issued with the goal of confiscating specific assets and obtaining more information.

UWOs are available in multiple countries, such as Australia, Ireland, the United Kingdom, Mauritius, Trinidad and Tobago, Zimbabwe and Bahamas (Dornbierer 2021).

## Lifestyle Audits

Generally speaking, lifestyle audits are inquiries into the lifestyle of an individual that aim to identify whether it is manifestly out of proportion to his or her known income. They usually involve an examination of the official's assets, activities and expenditures and may include the valuation of

property, verification of income, stocks, loans and payments. The audits can also go into detailed aspects of the person's day-to-day life, such as the schools attended by their children, their travel habits and other expenditures (Muzila et al. 2012).

Lifestyle audits are used to refer to one or both of the following processes:

- (i) A desk review in order to verify information contained in asset declarations, as well consideration of facts obtained from open source research that indicate discrepancies between the observable lifestyle and the assets declared;
- (ii) Observations in the field conducted to determine whether an individual – possibly including their family members or close associates – has assets and/or a lifestyle that do not match his/her officially declared wealth and income (UNDP 2016).

### Rationale for lifestyle audits

In government, lifestyle audits are a personal integrity assessment tool that follows from the presumption that public officials living extravagantly or apparently beyond their means may have acquired wealth from bribes or other types of corrupt behaviour (Martini 2012).

This presumption may be triggered – and lead to a lifestyle audit being conducted – by a number of circumstances. In places where the contents of declarations of assets, incomes and interest are made public, individuals, independent media and civil society organisations can report on apparent inconsistencies. An effective public complaint mechanism will allow enforcement authorities to focus their efforts on cases where there is a greater likelihood of identifying irregularities (World Bank & UNODC 2012).

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It should be noted that the effectiveness of the public complaint mechanism will also hinge on its ability to protect anyone who reports irregularities from unjustified treatment or reprimands. Allowing for and protecting the anonymity of whistleblowers encourages the reporting of irregularities, which could serve to trigger lifestyle audits and successful prosecutions (Muzila et al. 2012).

According to the World Bank and UNODC (2012), lifestyle audits are more likely than other means of verification to identify whether a public official is declaring all of their income and assets and whether they concealed corrupt proceeds under the names of family members and close associates not covered by disclosure requirements.

If effective, lifestyle audits can act as a meaningful deterrent for people who find themselves under observation and who may be asked to explain the origins of their wealth. Lifestyle audits are also useful in that they identify assets and goods, allowing authorities to freeze or sequester them while a full investigation is conducted. This increases the possibility of stolen assets being recovered (Niven 2021).

Lifestyle audits are also routinely used in some countries, such as South Africa, to target tax evasion (Business Insider 2020). By identifying previously undisclosed assets and sources of income, tax authorities can increase the revenue collected. Fines and interests are usually coupled with the tax charges. Audits may also be conducted by the tax authority on its own employees to identify fraud and corruption that, indirectly, lead to loss of revenue.

It should be noted that, while lifestyle audits and vetting procedures (also known as security vetting) both include the acquisition of lifestyle-related information, they serve different purposes and should not be mistaken. Vetting is usually conducted to ensure an individual does not pose a

security risk to the country or organisation if he or she is to be employed there (Cave 2021).

## Limitations

While lifestyle audits are a useful tool in the fight against corruption, “they are by no means a comprehensive answer to the anti-corruption agenda” (Niven 2021). There is a series of informational, administrative, and evidential restrictions that affect the ability of any investigator to assess an individual’s legitimate wealth.

Moreover, lifestyle audits are resource-intensive exercises, which increases the importance of carefully considering when and how to deploy them. Although lifestyle audits have been promoted as a panacea for corruption in several African countries, merely adopting legislation that allows law enforcement authorities to conduct these audits will not produce itself lead to lower rates of corruption.

A Transparency International (2020) report on ten countries’ implementation of the African Union Convention on Preventing and Combatting Corruption highlighted the gap between existing legislation and its implementation. Research demonstrated that the strengthening of national legal frameworks has not been followed by the enforcement of existing laws and regulations. As noted, “a combination of limited financial and operational independence of prosecutorial, judicial bodies and oversight bodies as well as lack of technical tools and skills and poor inter-agency coordination” led to sanctions either not being applied at all or being applied in an impartial manner (Transparency International 2020).

## Methodologies

There are several methods and mechanisms to determine if an individual is living beyond his or her (legitimate) means. The three main methods are (Ngumbi 2019):



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- (i) Net-worth analysis method, which focuses on the known assets and liabilities as well as changes that may have occurred over the years. An individual's liabilities are subtracted from their assets and, for the period in question, incomes and expenses are compared. The resulting net worth is compared with the known income.
  - (ii) Surveillance method, which involves field observations, i.e. a physical visit to the home and/or workplace of the individual, with the use of technological equipment to record and identify assets, spending habits, and so on.
  - (iii) Administration of lifestyle questionnaires, which usually includes questions about one's lifestyle, how they maintain it and the origins of the requisite funds.

As it relates to observations in the field, lifestyle audits may include the following activities: observing the movements of a public official; observing the home or assets outside the home; observing assets worn by the public official; taking pictures and videos (UNDP 2016).

Selecting the number of individuals subject to lifestyle audits and which type of process to undertake is affected by similar trade-offs to considerations about the scope of asset and income disclosure systems. The more individuals are theoretically subject to lifestyle audits, the harder it will be to verify them all, especially considering the limited resources available. More resource-intensive methods, such as field observations, may yield better results, but are difficult to scale-up to cover a high number of individuals.

While there are no definitive best practices on this specific issue, updated risk assessments could be

used to determine those individuals most at risk of corruption, who could then be prioritised in light of existing resources. Technology can also assist in crossing and checking available information and identifying red flags for further investigation. Databases on land, property and vehicle ownership, on beneficial owners of legal persons, asset and income declarations, election donations, and other relevant information are especially useful if they are available in open data.

Besides government-run databases, there are a number of private entities and NGOs which collect and publish large sets of relevant information on some of these aspects, such as company ownership.<sup>1</sup> For example, Ukraine-based Anticorruption Action Center launched a [Public Register of Politically Exposed Persons](#), using information from multiple databases, allowing the public and financial institutions to monitor PEPs and raise red flags for possible wrongdoings.

### **Institutions responsible for conducting lifestyle audits**

Lifestyle audits may be conducted both by public institutions and officials as well as private individuals and organisations.

When it comes to lifestyle audits, there is a broad diversity in institutional arrangements between different countries. This mirrors the national diversity found in agencies responsible for maintaining income and asset disclosure systems. The World Bank and UNODC (2012) observe that if the main objective of lifestyle audits is to monitor the veracity of asset and income declarations, it would make sense to empower the agency responsible for receiving financial disclosure information to also conduct the lifestyle audits.

Sometimes legislation attributes the responsibility of conducting lifestyle audits to a single institution,

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<sup>1</sup> For more details on the use of public and private databases for anticorruption purposes, see

<https://www.globalwitness.org/en/blog/open-data-can-make-world-better-place-only-if-we-know-how-use-it/>

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while in other countries multiple institutions are mandated to undertake this kind of audits. Institutions with the remit to conduct lifestyle audits range from tax authorities to prosecutors' offices, anti-corruption bodies or commissions and supreme audit institutions.

Employers, both private and public institutions, frequently grant themselves the power to conduct lifestyle audits on their employees in order to identify fraud and corruption. For example, in South Africa, auditing firm KPMG introduced lifestyle audits for every partner as part of an effort to detect possible abuses of internal processes and client contracts (Niven 2021).

While conducting lifestyle audits on public officials may be a function attributed to law enforcement agents or a specific government institution, they can also feasibly be conducted by capable and interested civil society organisations and by independent media. This will depend, however, on the availability of public information. Public databases (land, vehicle and property registries, beneficial ownership registries) for cross-checking information are also essential for non-official lifestyle audits (World Bank & UNODC 2012).

CSOs can play an important role in triggering or conducting lifestyle audits. They can both gather information by mere observation and by securing documents. When observing, citizens and CSOs should list known public officials, their corresponding salaries and other sources of income and their properties and other observations about their family's lifestyle. They should substantiate the information with further details and verify them with other observants. Making rough estimates about the known income and the costs of the observed lifestyle may lead to indications of inconsistencies, which should be reported to competent authorities, preferably in a written report (TAN 2007).

Documents are a stronger form of evidence to be used against corrupt individuals. Some documents

can be extracted from publicly available databases, such as real estate and vehicle registries and certificates of stocks and shares (TAN 2007).

Non-official investigators from civil society or the private sector face more challenges in obtaining information as they do not typically have legal powers to acquire bank statements, tax returns, and so on. As it relates to the surveillance method, private lifestyle audits may also be subject to increased restrictions with regards to the investigation techniques they are legally permitted to employ. Moreover, private organisations generally have little real power to compel individuals to comply with tools such as lifestyle questionnaires.

As with government agencies, lifestyle audits require a lot of resources and specific capabilities from CSOs. The Transparency and Advocacy Network (2007) lists the steps an organisation must take in conducting a lifestyle audit: map its available resources, draft a code of conduct of its members, observe and prepare documentation, expand documentation, document-gathering, interview of key informants, the beneficial owner test, and report writing.

## **Sanctions**

Lifestyle audits do not provide a definitive assessment as to whether (much less which) criminal activity took place. At most, its results demonstrate the need for further investigation into the inconsistencies between the individual's lifestyle and their legitimate income, as well as the origins of suspect wealth.

However, a lifestyle audit may prove that a person provided false or incomplete information in their declaration of assets and income. There is consensus on the need for income and asset disclosure systems to include appropriate and proportionate sanctions, which should be enforced consistently. Without effective enforcement, the

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process of submitting declarations may become an empty bureaucratic exercise, which undermines the public's confidence in the system and emboldens filers to lie or ignore the requirements to file the declarations (World Bank & UNODC 2012).

Sanctionable offences may be associated with the requirement to submit declarations in a timely fashion, or with the veracity of submissions.

Lifestyle audits are only useful as it relates to the latter. The range of possible sanctions include: (i) reputational penalties (e.g. publication of names or sanctions applied); (ii) administrative sanctions (reprimands, fines, temporary suspension of salary; demotion, suspension or removal from office; being barred from public service); (iii) criminal sanctions (including custodial sentences) (World Bank & UNODC 2012).

Hence, lifestyle audits may provide definitive evidence in criminal proceedings in countries where it is a crime to lie in a declaration of assets – either because general perjury laws encompass lying on an asset disclosure or because there is a specific criminal sanction for false statements in asset and income disclosures.

Theoretically, lifestyle audit results can identify specific assets that appear inconsistent with one's legitimate income. This may serve as the basis for an UWO, which seeks to freeze or confiscate said assets.

In criminal or civil proceedings, audit results may also serve as evidence of illicit enrichment, which, as previously noted, may constitute an autonomous offence. Depending on the circumstance and the depth of the audit, it may also provide detailed evidence of money laundering. In order, however, to determine which criminal activity produced the illegitimate wealth identified, law enforcement officials will need to conduct further investigations.

## Human rights challenges

There are concerns that lifestyle audits may lead to human rights violations. These concerns are not altogether different from the ones raised by the publication of assets, income, and interest declarations and by the criminalisation of illicit enrichment and UWOs.

Two specific rights are of particular concern when dealing with lifestyle audits: the right to privacy and the right to a fair trial, of which the presumption of innocence is a fundamental component.

Payi (2011), for example, argues that lifestyle audits constitute a violation of government officials' right to privacy and that the fact that many officials are corrupt is not a justification for providing different (and harsher) treatment to the rights of a group of citizens. He also questions the subjectivity of determining how far an investigation into the origin of a person's wealth may go. For example, to remove doubts about possible inconsistencies between income and assets, will it be enough to prove that a particular property was inherited from a close relative, or will it be necessary to prove that said relative lawfully obtained that property?

The right to privacy is an internationally recognised human right. The [Universal Declaration of Human Rights](#) states that "no one shall be subject to arbitrary interference with his privacy, family, home or correspondence, not to attacks upon his honour and reputation" (art. 12). The [International Covenant on Civil and Political Rights](#) reiterates that no one should be subjected to unlawful interference with their privacy (art. 17).

The [European Convention on Human Rights](#) also enshrines the right to privacy (art. 8), but it details how and when interference in said rights are admissible:

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“There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

There is a debate on how to balance privacy and the public's right to know as it concerns asset and income disclosure systems. Public access to declarations allows for public scrutiny, which is key in identifying inconsistencies, especially in countries where the official monitoring capabilities are limited. Reports of irregularities may trigger lifestyle audits, allowing for a more focused approach to circumstances where irregularities are more likely to have happened.

On the other hand, however, there is little doubt that the information contained in these declarations is, to different degrees, private. Concerns about privacy are coupled with concerns about the personal security of public officials. A solution found in some countries is to restrict public access to particular kinds of sensitive information usually contained in declarations – such as home address, manufacturer and model of car, account numbers, copies of tax declarations (World Bank & UNODC 2012).

As it relates to lifestyle audits, different types of concerns arise depending on the method in question. When discussing observations in the field, an initial consideration should be given to the need for judicial authorisation to conduct certain kinds of operations. For example, in most countries, a warrant is required before entering someone's home, even if the goal is to evaluate its contents. Search and seizure operations, however, are criminal investigation tools, which are not part of lifestyle audits. As it relates to desk review of information databases, public officials will have

access to more information than the general public. However, even for public officials, reviewing an individual's private information on restricted databases should be done in an objective and consistent manner, following legal statutes.

Restrictions on when to conduct the lifestyle audits are also helpful in preserving said rights. For example, enforcement authorities have to demonstrate that the monitoring is suitable for producing compelling evidence, that there are no less intrusive measures available, and that the suspicion is well-grounded (UNDP 2016). If covert surveillance operations are involved, they should concern themselves with the privacy of bystanders.

The presumption of innocence has also been enshrined as an essential component of the right to a fair trial – a fundamental Human Right – in multiple international treaties as well. The International Covenant on Civil and Political Rights, for example, states that “everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law”.

Differently from UWOs, there is no shift in the burden of proof when lifestyle audits are conducted. Enforcement officials are the ones that have to gather evidence about the inconsistencies in one's lifestyle and legitimate income in order to trigger further investigations or other proceedings.

However, submitting someone to a lifestyle audit may be considered an (early) indication of that person's guilt. That is why it is essential for the legal framework to clearly state what are the criteria for conducting lifestyle audits, i.e. the law should previously determine which persons may be subject to the audits and in which circumstances. This will also reduce the chances of lifestyle audits being used to conduct witch-hunts or to target political opponents.

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The relevance of the presumption of innocence is not restricted to criminal proceedings. The European Court of Human Rights, for example, has stated that all public officials, not only judges, must refrain from even suggesting that the accused is guilty (OSCE 2007). Accordingly, the European Directive 2016/343 requires that any public statement made by authorities do not refer to defendants as guilty unless they have been proven as such in accordance with the law (European Union Agency on Fundamental Rights 2021).

Subjecting someone to a lifestyle audit will, in general, communicate an increased concern in relation to that person's conduct. This concern may originate from a whistleblower report, from a red flag produced by automated information cross-referencing or even from the elevated risk to which they are subject due to the public office they hold. Either way, this concern should not be presented as an indication of guilt. Therefore, the decision on informing the public that lifestyle audits are being/were conducted should be taken in an impartial manner, respecting the presumption of innocence, and following previously established parameters.

The purpose and expectations of lifestyle audits results may also be misconstrued. They are not designed to make definitive findings about a person's guilt or innocence. If successful, they can detect red flags, which demand further investigation into the origins of the unexplained wealth (Niven 2021). However, lifestyle audits can be weaponised politically and institutionally to taint an individual's reputation. One should not underestimate the negative consequences, for example, of publicising the results of an audit pointing to inconsistencies in a person's lifestyle.

This is especially relevant considering there are multiple scenarios in which an individual's lifestyle may be *apparently* inconsistent with their income, but there is no illegality. A person may incur in substantial debts to acquire assets and/or to keep an extravagant lifestyle. There are also multiple

sources of wealth that are not traditional forms of income, but legitimate nonetheless. To mention a few: careful savings, inheritance, tax avoidance, wealthy relatives, strategic investments, gambling or lottery winnings and diversified income from side businesses (Niven 2021).

Furthermore, some people create an illusion of wealth for social and political purposes, especially in social media, but that does not mean they are actually wealthy or living beyond their legitimate means.

## Country examples

Countries in Africa and beyond have enacted laws to allow for lifestyle audits to be conducted in a host of different scenarios. They have been implemented with varying degrees of success, as discussed below. Research comparing legislation in these different countries and its implementation is nonetheless still very limited.

### Kenya

In Kenya, lifestyle audits have been presented as a panacea for corruption. They were announced by the current President when taking office in 2018, along with polygraph tests (The Elephant 2018), though the initiative encountered legal hurdles and other practical issues (Nation 2020). The presidential proclamation was not anchored in any existing legal framework, and it faced court challenges. Ultimately, only 20 of the 600 officials subjected to the audits failed (Ngumbi 2019).

Currently, in Kenya, lifestyle audits are regulated under a number of different legal frameworks, including the 2013 Public Officer Ethics Act, the 2003 Anti-Corruption and Economic Crimes Act (ACECA) and the 2012 Leadership and Integrity Act. Said provisions, however, are considered too weak and insufficient to make lifestyle audits an effective tool against corruption. The piecemeal nature of the legal framework underpinning lifestyle audits hinders its effectiveness. Each



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legislation envisions a different procedure and covers only a subsection of Kenyan public officials. There are also specific deficiencies – the ACECA, for example, requires investigators to previously determine what part of the subject’s wealth is suspect, the origin of said suspicion and the period of time related to the acquisition of that wealth. (Ngumbi 2019).

Since 2019, there have been debates around the [Lifestyle Audit \(no. 2\) Bill](#), which details the procedure for undertaking lifestyle audits, defined as an investigative audit of a person’s living standards to ascertain consistency with that individual’s lawfully obtained and reported income. This bill would grant the powers to undertake such audits to the Kenyan Revenue Authority, the Ethics and Anti-Corruption Commission and the Commission set up by the Public Officer Ethics Act.

Lifestyle audits are considered a by-product of [Kenya’s Constitution](#), which details, in Chapter 6, several measures designed to promote integrity and ensure the probity of public officials.

The Kenya Revenue Authority (KRA) published, in 2020, a [Case Study on Enhancing Staff Integrity in Revenue Administration](#), where it details the lifestyle audit procedures conducted on its employees, highlighting the number of audits conducted in past years. Audits were initially conducted on an *ad hoc* basis as part of an enhanced vetting process on staff members being promoted or transferred to critical areas. With the establishment of the Integrity Assurance Office, lifestyle audits became one of the three functions of that office, along with vetting and background checks.

The definition of the people subject to lifestyle audits is made using the following criteria: risk assessment, system assessment, identification, transaction analysis and elimination method. Several factors are considered in the audit, including the misuse of public property, undeclared

conflicts of interests with the KRA, hidden or undeclared assets, income or trusts. According to the procedures set forth, any unexplained wealth will be used as indirect proof of illegal activities, such as corruption, and a report will be made to competent authorities, including the Asset Recovery Agency, in order to identify, trace, freeze, seize and confiscate illegally acquired assets and funds (KRA 2020).

Lifestyle audits are also being conducted by private sector companies on their employees in Kenya with the goal not only of detecting fraud and corruption, but also of increasing public confidence and setting an example for public officials (Fair Planet 2016; PD Online 2020).

## Malawi

The [1996 Corrupt Practices Act](#) empowers the Anti-Corruption Bureau to investigate any public official when there are reasonable grounds to believe they “maintain a standard of living above that which is commensurate with his present or past official emoluments or other known sources of income”, or when they are “in control or possession of pecuniary resources or property disproportionate to his present or past official emoluments or other known sources of income”.

Similarly, the [2013 Public Officers \(Declarations of Assets, Liabilities and Business Interests\) Act](#) established the Office of the Director of Public Officer’s Declarations, which has the power to launch inquiries into alleged or suspected non-compliance with the Act. This includes the power to order the production of any information, documents or testimony relating to declarations filed by a listed public officer.

There is, however, a significant gap between anti-corruption law and practice in Malawi. This was one of the main findings of TI’s 2013 National Integrity System Assessment (Kukutschka 2014).

Media reports demonstrate that lifestyle audits are frequently presented by politicians as a measure

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that would solve the problem of corruption in Malawi (Nyasa Times 2018; Malawi Talk 2021). Similarly, efforts to expand the reach of asset disclosure obligations to the private sector and NGOs have gained ground despite criticism from anti-corruption NGOs who note that the 2013 legislation has barely been implemented (Chimjeka 2021). Amidst significant enforcement issues, widening its scope of application could back, as given the limited resources available this could reduce the capacity to conduct meaningful verification.

## Namibia

Lifestyle audits are a tool employed in Namibia by the Revenue Authority to target tax avoidance (Namibian Sun 2019). Besides questions about the legality of investigations into taxpayers' lives, a concern that may be valid in other countries seems to be the time and resource-intensive nature of this effort when relevant databases have not been digitised. Researching and comparing records manually is impractical and it may jeopardise other relevant institutional attributions (The Patriot 2016).

If, in some countries, lifestyle audits are presented as a panacea for corruption, in others, they are criticised. Namibia's President, Hage Geingob, recently declared that questions on the spending habits of individuals are racially biased:

"You want to tell me that there are no clean black people who are buying nice cars? All black people are corrupt by definition and so if they now have nice cars, they have stolen. This is self-hate."

This line of reasoning was criticised as an attempt to divert attentions from concerns about misappropriation of public funds and widespread corruption (The Namibian 2020a). Furthermore, it was considered a direct attack on lifestyle audits, which are an "uncommon and unpleasant, but necessary action to address the problem [corruption in Namibia]" (The Namibian 2020b).

## Nigeria

A government official recently announced plans by the Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC) to begin implementation of lifestyle audits in the country (Legit 2021). It was presented as a tool both to investigate corruption and to generate revenue through taxes on previously undeclared and undocumented assets.

It is not clear what the specific legal basis for conducting lifestyle audits is. The [1990 Code of Conduct Bureau and Tribunal Act](#) allows for verification of false statements made in declaration of assets by public officials. The [2019 Asset Tracing, Recovery and Management Regulations](#) allow the Attorney-General's Office to investigate illegally acquired assets.

There also seems to be some confusion between lifestyle audits and UWOs (see International Centre for Investigative Reporting 2021). While the former is an investigation into an individual's whole life (and their families and close associates), the latter is a confiscation tool, focused on particular assets whose origins will need to be explained.

An issue that was noted in Nigeria concerned the possibility of the police abusing the powers of relevant agencies to conduct lifestyle audits. Considering Nigerian police's record of malpractice and unwarranted profiling, lifestyle audits could provide an additional tool for officers to abuse their powers and threaten/blackmail citizens (Nairametrics 2021). This is a demonstration of the fact that when deciding which institution will be in charge of conducting the audits, it is importance to consider its history and its perception among citizens.

## South Africa

Lifestyle audits are considered a "critical and legitimate management tool and forms part of department's risk management system" in South Africa. The Department of Public Service and

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Administration (DPSA) developed a [Guide to Implement Lifestyle Audits in the Public Service](#), which is a useful resource into understanding how lifestyle audits are conducted in South Africa. It details the legislative framework upon which lifestyle audits find their legal basis, including all pertinent laws and rules.

The guide points to which institutions are responsible for conducting lifestyle audits, the principles for implementing them and the procedures to be followed. There are flow charts which are useful in providing an understanding about the process to be followed by the officials responsible for conducting the different types of audits. These flow charts provide information about how reports received from the public are handled, encouraging civil society's participation in this process (DPSA 2021).

The Guide details how different levels of analysis are used, with growing level of complexity: (i) lifestyle review, (ii) lifestyle investigations and (iii) lifestyle audits. Lifestyle reviews are the simplest form of analysis, made up of an "amalgamation of reports from a variety of databases" (shares, loan accounts, trusts, ownership of property and vehicles), which is compared to the remuneration of the employee. Triggers for review are reports and tip-offs (whistleblowing), financial disclosure and random sampling based on the ethics management strategy (DPSA 2021).

Lifestyle investigations are triggered by a lifestyle review which concludes that an individual's expenditures constantly exceed his income with no legitimate explanation. The investigation aims "to determine whether a person is living beyond their means, by identifying debt, assets, income, criminal records, trusts, hidden assets and undeclared income". Finally, the lifestyle audit is conducted with the help of an auditor to objectively evaluate the individual's standard of living in relation to their income and to deliver a formal opinion derived from audit sampling methods (DPSA 2021).

South Africa is one country where lifestyle audits have been widely used for tax collection. The South African Revenue Service (SARS) is empowered to conduct lifestyle audits when it suspects of tax avoidance. Such audits can be triggered by reports from third parties – and SARS actively encourages said reports (South African Revenue Service 2021) – by reporting institutions, such as banks, deeds offices and vehicle registration authorities or by its own internal monitoring system.

As part of the audit, SARS can ask taxpayers to complete a 'lifestyle questionnaire'. Its answers will be cross-referenced to the evidence collected from other sources. South African courts have decided individuals have an obligation to fill out these questionnaires, which include detailed questions on living expenses and may go back several years. If irregularities are found, SARS can charge up to 200% of the tax due on undisclosed income, plus interest, besides referring the case to prosecutors (Business Insider 2020).

## Zimbabwe

There are a number of media reports suggesting the use of lifestyle audits by different domestic institutions in Zimbabwe. Most notably, the [Zimbabwe Revenue Authority](#) uses audits to identify tax evaders and it keeps a running tab on the number of audits being conducted and their results.

The country's National Prosecution Authority (NPA) introduced lifestyle audits as a measure designed to identify prosecutors and public servants within its ranks living beyond their means. Anti-corruption measures adopted also include the requirement that new recruits declare their assets when joining the NPA. This information will serve as baseline for future audits. This follows a number of corruption scandals involving members of the NPA (Zimbabwe Situation 2021).

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There seems to be, however, some confusion between lifestyle audits and UWOs as the latter is mentioned as an “intensive” lifestyle audit (BBC 2020). Although both tools can be used in connection, they have different scopes and objectives.

### **Other countries in Africa**

In Uganda, the Uganda Revenue Authority conducted lifestyle audits on its own staff members in order to investigate allegations of tax fraud and other illegal activities (Daily Monitor 2018). This effort was funded, in part, by the European Union.

Similarly, the Rwandan Revenue Authority adopted lifestyle audits for its employees in order to reduce tax evasion and prevent further loss of revenue (The East African 2020).

### **Beyond Africa**

The 1987 Philippine Constitution states that public officials must lead modest lives, within their means. The Code of Conduct and Ethical Standards for Public Officials and Employees goes further in forbidding extravagant or ostentatious displays of wealth in any form. The Republic Act No. 1397 shifts the burden of proof on public officials which demonstrate to have acquired wealth out or proportion to their salaries and other forms of legitimate income: said wealth is presumed to have been unlawfully obtained (TAN 2007)

Lifestyle checks were introduced in the Philippines in the early 2000s, following the success of the investigative work conducted by the Philippine Center for Investigative Journalism exposing the ill-gotten wealth of former President Estrada. The ‘Lifestyle Check Coalition’ was set up, bringing together several government agencies and anti-corruption NGOs. Its goal was to conduct lifestyle audits on all government officials, gathering information and prosecuting accused public officials (UNDP 2012).

A number of government agencies are mandated to conduct lifestyle audits: the Office of the Ombudsman (OMB), the Presidential Anti-Graft Commission (PAGC) and the Revenue Integrity Protection Service (RIPS). Each agency has jurisdiction over a group of public officials within the government bureaucracy, though there is some overlap. While the RIPS conducts only fact-finding investigations, the PAGC may trigger administrative cases as a quasi-judicial body. The OMB may handle investigations, leading to administrative or criminal cases (TAN 2007).

The lifestyle audit framework in the Philippines also includes the verification of declarations based on desk review, a system that enables covert observation of public officials and a mechanism for launching financial investigations in the criminal sphere (UNDP 2016).

The participation of the public and civil society features prominently in this framework. A lifestyle check hotline was launched by OMB to offer a channel for receiving complaints from the public. The Transparency and Accountability Network (TAN), a civil society organisation, prepared the ‘[Lifestyle Check: a handbook for civil society](#)’ in order to provide the public with information on how to contribute towards these efforts, mainly by gathering information from observation and analysing documents.

TAN (2007) recognised that the assistance from the public is badly needed due to the lack of government resources and manpower. It noted that there are more than 1,4 million public officials, but under 300 investigators in the three agencies responsible for conducting lifestyle audits. This points to the capacity challenge often experienced by those implementing lifestyle audits.



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Transparency International  
International Secretariat  
Alt-Moabit 96  
10559 Berlin  
Germany

Phone: +49 - 30 - 34 38 200  
Fax: +49 - 30 - 34 70 39 12

[tihelpdesk@transparency.org](mailto:tihelpdesk@transparency.org)  
[www.transparency.org](http://www.transparency.org)

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