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PLATFORM TO PROTECT WHISTLEBLOWERS IN AFRICA

# WHISTLEBLOWERS IN BENIN:

Overview of the Legal Framework and  
Practices

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## Table of Contents

<b>Table of Contents.....</b>	<b>1</b>
● <b>List of Acronyms.....</b>	<b>2</b>
● <b>Legal Sources.....</b>	<b>3</b>
● <b>Executive Summary.....</b>	<b>3</b>
<b>1. ANALYSIS OF THE LEGAL FRAMEWORK.....</b>	<b>4</b>
1.1 Laws and measures related to whistleblowers.....	4
● Protection under laws and mechanisms related to the fight against corruption.....	4
● Protections under Labour Law.....	5
1.2 Laws and Measures Related to the Fight Against Financial Crime.....	6
● Fight Against Corruption.....	6
● Fight Against Money Laundering and Terrorism Financing.....	8
1.3. Media rights and Freedom of Expression.....	10
● Press freedom legislation and media rights.....	10
● Troubling decline in freedom of expression and press.....	11
● Adoption of the Digital Code: a new barrier to press freedom.....	12
● Political acts marking a setback in public freedoms.....	13
1.4 The Access to Information Act and Secrecy Laws.....	13
● Legislation on access to information and confidentiality.....	14
<b>2. ANALYSIS OF THE FACTS: WHISTLEBLOWER CASES.....</b>	<b>14</b>
<b>3. RECOMMENDATIONS: WEAKNESSES AND NEEDED REFORMS.....</b>	<b>14</b>
● Strengthening legislation on whistleblower protection.....	14
<b>4. KNOWLEDGE, SUPPORT, AND ACTION CENTRES.....</b>	<b>15</b>

## **Whistleblowers in Benin: Overview of the Legal Framework and Practices**

*The publication of this report was funded by the European Union as part of the OCWAR-M project, the West African response to money laundering and terrorism financing. The project, which spans over 5 years, began in 2019 and covers the ECOWAS Member States and Mauritania. Its main objective is to contribute to the understanding and effective implementation of international anti-money laundering and countering the financing of terrorism (AML/CFT) standards.*

*To this end, OCWAR-M works with civil society actors involved in the AML/CFT field. In partnership with PPLAAF, the project is implementing a training activity for investigative journalists and lawyers on whistleblower protection and cooperation with these key actors in the fight against financial crime, as part of which this report is published.*

### **● List of Acronyms**

ANLC: Authority for the Fight against Corruption

ANRACS: National Agency for the Recovery of Confiscated and Seized Assets

BEF: Economic and Financial Brigade

CENTIF: Financial Intelligence Unit

CIB: International Conference of Bar Associations

CRIET: Court of Repression of Economic Offences and Terrorism

ECOWAS: Economic Community of West African States

HAAC: High Authority of Audiovisual and Communication

AML/CFT: Anti-Money Laundering and Counter Financing of Terrorism

MFWA: Media Foundation for West Africa

NGO: Non-Governmental Organisation

OCWAR-M: Organised Crime: West African Response to Money Laundering and the Financing of Terrorism

PPLAAF: Platform to Protect Whistleblowers in Africa

RSF: Reporters Sans Frontières

UICA: International Union of CARPA (Councils of Lawyers and Lawyer Groups)

- **Legal Sources**

[United Nations Convention against Corruption \(2003\)](#)

[Constitution of Benin \(1990\)](#)

[Labour Code \(1998\)](#)

[Penal Code \(2018\)](#)

[Law on the Fight against Corruption and Related Offences \(2011\)](#)

[Law establishing the list of senior officials of the State \(2010\)](#)

[Law on the Fight against Money Laundering and Financing of Terrorism \(2018\)](#)

[Law on the Fight against Money Laundering and Financing of Terrorism \(2020\)](#)

[Decree establishing the conditions for special protection of whistleblowers, witnesses, experts, and victims of corruption acts \(2013\)](#)

[Information and Communication Code \(2015\)](#)

[Digital Code \(2017\)](#)

[Decree No. 2022-563 of October 12, 2022](#)

- **Executive Summary**

The Constitution of Benin guarantees the "right to freedom of thought, conscience, religion, worship, opinion, and expression in accordance with the public order established by law and regulations" and ensures "freedom and protection of the press". However, access to these fundamental freedoms has shown certain deficiencies in recent years.

The protections granted to whistleblowers are minimal and weak. [Law No. 2011-20 of October 12, 2011, on the fight against corruption](#) and the associated decree, prohibits retaliation against anyone reporting corruption practices to national authorities, but these measures do not provide any effective means of communicating information and disclosures to other entities are not protected.

In January 2015, the National Assembly adopted the [Information and Communication Code](#), which defines the rights and freedoms of journalists. Although defamation is no longer punishable by imprisonment, heavy fines can be imposed. The enactment of the [Digital Code](#) in June 2017 constitutes a new hindrance to freedom of expression, prohibiting certain opposition media and encouraging censorship practices.

## 1. ANALYSIS OF THE LEGAL FRAMEWORK

### 1.1 Laws and measures related to whistleblowers

Whistleblower protection is a crucial aspect of the fight against financial crime. This section explores the laws, measures, and mechanisms implemented in Benin to ensure the protection of whistleblowers. It examines the rights and guarantees afforded to whistleblowers, the protection mechanisms in place, and the persistent challenges related to this protection.

- **Protection under laws and mechanisms related to the fight against corruption**
- **Law on the Fight against Corruption and Related Offences (2011)**

[The law on the fight against corruption and related offences of 2011](#) provides whistleblowers, witnesses, experts, victims, and their relatives with "special protection", albeit limited, against potential acts of retaliation or intimidation for disclosing information on corruption. The definition of a "whistleblower" is "any person who reports, in good faith, an alleged act of corruption". This definition remains vague as it does not specify any viable means of communicating information, and disclosures to other entities are not protected.

This protection is defined in Decree No. 2013-122 of March 6, 2013, on the conditions for the special protection of whistleblowers, witnesses, experts, and victims, which specifies that no whistleblower, expert, or victim of a corruption-related crime can be harassed, reprimanded, or punished for disclosing or denouncing corruption (Article 4). Article 4 also provides the possibility to seek state protection in case of retaliation and/or harassment following collaboration with the National Authority for the Fight against Corruption.

The decree calls for the reintegration and/or compensation of employees sanctioned or dismissed for collaborating with national authorities in the fight against corruption. In case of threat or endangerment of a whistleblower, the Minister in charge of security or the Minister in charge of national defence must ensure the person's security through police services or security forces (Article 5). Furthermore, financial compensation may be allocated to cover the expenses incurred by the whistleblower or witness in the context of "truth-telling" (Article 10).

Whistleblowers also have the right to register the police station as their domicile, and if their life is in danger, a judge may authorise the anonymous collection of the whistleblower's statement. However, anonymity is "impossible" in cases where "knowledge of the person's identity is essential to the rights of defence," and the law specifies that "defamatory or false testimonies" can be prosecuted under other legislation. In addition, charges cannot be based on anonymous statements. Illegally revealing a whistleblower's identity is punishable by up to 10 years in prison.

- **Analysis and Processing Unit for Complaints and Reports (CPD)**

In addition to this mechanism, the country established the Analysis and Processing Unit for Complaints and Reports ([CPD](#)) in January 2022. It is a citizen reporting desk for corruption incidents established following a Council of Ministers. The role of the CPD is to receive complaints against public officials and conduct investigations for prosecution.

- **Protections under Labour Law**

The [Labour Code](#) does not include any provisions regarding whistleblowing, and although it is not listed as a reason for dismissal, dismissal for whistleblowing is not specifically identified as an unfair labour practice. Contracts can legitimately be terminated in cases of negligence or "objective and serious" reasons related to the employee's health, unsuitability for the position, or professional inadequacy. Acts that may constitute negligent conduct and may result in serious professional misconduct include refusal to perform tasks within the scope of employment activities, professional misconduct, assault, intoxication, and breach of confidentiality (Article 56). However, the law does not provide information on reporting illegal acts.

No example of a practice constituting wrongful dismissal is given, but it is noted that damages determined by the competent court based on the harm suffered may be awarded when wrongful dismissal is proven (Article 52). According to the [Labour Code](#), labour inspectors can investigate complaints and are required to keep information confidential.

Benin is, therefore, one of the few countries in West Africa to have legislation protecting whistleblowers, witnesses, experts, and victims in accordance with its obligations resulting from the ratification of the [United Nations Convention against Corruption](#).

## **1.2 Laws and Measures Related to the Fight Against Financial Crime**

This section focuses on the measures taken by the government of Benin to combat financial crime. It examines legislative reforms, policies, and initiatives aimed at promoting transparency, integrity, and accountability in the management of public affairs. While acknowledging the efforts made, it also highlights persistent challenges and prospects for improvement in the fight against financial crime in Benin.

- **Fight Against Corruption**
- **Laws and Mechanisms Related to the Fight Against Corruption and Other Related Offences**

Since taking office, President Patrice Talon has made the fight against corruption his main focus and several reforms and measures have been implemented. However, corruption still remains prevalent in the country, as evidenced by [corruption scandals](#) that shake the public sphere.

Nevertheless, corruption is severely punished by [Law No. 2018-16 of December 28, 2018](#), which establishes the Penal Code. Indeed, imprisonment sentences are provided for cases of active and passive corruption as well as fines (Articles 335 to 346). However, there is no public information regarding the application and effectiveness of these provisions.

High-ranking state officials and senior civil servants as defined by [Law No. 2010-05 establishing the list of senior state officials](#) are required to declare their assets at the beginning and end of service. This obligation also applies to elected officials and any state employee whose appointment obliges them to do so.

The offence of illicit enrichment is also punishable under Articles 360 to 362 of the [Penal Code](#) and is established when "any person holding an elective public office or a governmental position (...) cannot justify their lifestyle, the lawful origin of their resources, and their

assets." Individuals guilty of illicit enrichment face imprisonment from one to five years and a fine corresponding to the value deemed excessive compared to the value of the assets the accused is likely to possess. The penalties are doubled when illicit enrichment occurs during the exercise of a mandate.

In 2022, the Corruption Perceptions Index (CPI), the main global indicator of corruption in the public sector issued by the NGO [Transparency International](#), ranked Benin 72nd out of 180 with a score of 43/100 (the country gained one place compared to 2021).

- **Establishment of Public Institutions Responsible for Fighting Corruption**

In recent years, the government of Benin implemented public policies encouraging the fight against corruption. This includes the creation in July 2018 of the Court of Repression of Economic Offences and Terrorism (CRIET) responsible for judging financial crime cases (including [embezzlement](#)). However, this jurisdiction is accused of partiality and dependence on political and executive power by [several observers](#), as well as by a former judge, [Essowé Batamoussi](#), currently in exile. Indeed, the CRIET is criticised for having only charged opponents of the regime in place since its creation in 2018. Despite these accusations, CRIET continues its activities: on February 24, 2023, it detained five toll and weighing station agents on one of the country's roads for [embezzlement and abuse of power in the exercise of their duties](#).

Benin has also established the [High Commissioner for the Prevention of Corruption](#), which is expected to replace the Authority for the Fight against Corruption (ANLC). The project to create this authority was validated by the Council of Ministers on April 1, 2020, and sent to Parliament. According to the government, the structure is part of the "new dynamic aimed at strengthening the institutional framework and promoting measures of good governance, notably with the CRIET, the [Financial Intelligence Unit \(CENTIF\)](#), and the Economic and Financial Brigade (BEF)." Since the announcement of the creation of this authority, to date, it has not been [effectively established](#), and the ANLC still handles current affairs under the authority of the Secretary-General of the Presidency of the Republic.



- **Fight Against Money Laundering and Terrorism Financing**

The uniform AML/CFT law (see below) was transposed into Benin's legal system on July 25, 2018. [Law No. 2018-17 on the fight against money laundering and the financing of terrorism](#) determines measures aimed at identifying and preventing money laundering and the financing of terrorism. It also aims to facilitate investigations and prosecutions by the relevant authorities.

On 2 July 2015, the Council of Ministers of the WAMU zone adopted the draft uniform law on the fight against money laundering and terrorist financing. The eight member countries of WAMU and WAEMU had six months to internalise the law into their domestic legal order. Internalisation took place in various countries between December 2015 and December 2018. The 2015 Uniform Act, which replaced the previous 2008 Uniform Act, incorporated the new 2012 revisions of the FATF standards.

The new law made it possible to merge the texts relating to the fight against money laundering and terrorist financing and to take into account aspects relating to the proliferation of weapons of mass destruction.

Furthermore, the current law introduced the prohibition of cash transactions for amounts exceeding 10 million francs, and expanded the category of designated non-financial professional entities (DNFPEs), which are essentially non-financial institutions that could be used for money laundering or terrorism financing purposes due to their nature.

The AML/CFT law requires the country to establish a national AML/CFT framework covering several aspects, including:

1. The country must conduct its national risk assessment and identify vulnerabilities to money laundering (ML) and terrorist financing (TF).
2. Obligated entities (financial institutions and DNFBPs) must conduct their risk assessments.

3. Obligated entities must implement an effective AML/CFT framework to significantly mitigate ML/TF activities and submit suspicious transaction reports to the financial intelligence unit (CENTIF).
4. Obligated entities failing to meet their obligations must face administrative and disciplinary sanctions.
5. CENTIF must be autonomous, operational, and adequately resourced with technical, financial, and human resources to fulfil its missions. CENTIF is an independent administrative authority under the supervision of the Minister of Finance. Its mission includes processing and transmitting information for the fight against ML and TF. CENTIF also handles suspicious transaction reports and can oppose the execution of a transaction based on serious, consistent, and reliable information. When operations reveal facts that may constitute the offence of money laundering or terrorist financing, CENTIF submits a report to the Public Prosecutor, who must refer the case to the investigating judge. The composition of CENTIF was modified by [law n°2020-25](#) of September 02, 2020, amending [law n°2018-17](#).
6. The country must establish mechanisms to freeze the assets of terrorist individuals and organisations.
7. Both individuals and legal entities can be held criminally liable for offences related to money laundering and/or terrorist financing.
8. The country establishes mechanisms to seize, manage, and confiscate the assets of criminals. In this regard, Benin has set up, since [Decree No. 2022-563 of October 12, 2022](#), a National Agency for the Recovery of Confiscated and Seized Assets (ANRACS).

As part of the fight against money laundering and the financing of terrorism, a sensitisation workshop aimed at the Bar Association of Benin on AML/CFT and whistleblower protection was organised in June 2022 by [Expertise France](#) under the [OCWAR-M](#) project, in partnership with PPLAAF, the International Conference of Bar Associations (CIB), and the International Union of CARPA (UICA). This activity allowed lawyers to better understand the concept of

whistleblowing as well as the necessity of establishing a robust AML/CFT framework within the Bar Association.

### **1.3. Media rights and Freedom of Expression**

Freedom of expression, press freedom, and media rights play a crucial role in whistleblowing. These fundamental rights enable whistleblowers and journalists to disclose sensitive information safely, shed light on wrongdoing, and protect the public interest. Respecting these rights promotes an environment conducive to transparency, accountability, and the disclosure of information in the public interest.

- **Press freedom legislation and media rights**

[The Information and Communication Code](#) reaffirms that "freedom of speech and writing, printing and publishing, reading, and receiving information, ideas, thoughts, and opinions of one's choice are guaranteed in the Republic of Benin" (Article 6), while noting that "these freedoms are exercised in accordance with the law" and that "journalists refrain from any publication that incites regionalism, ethnocentrism, discrimination, hatred, xenophobia, violence, and debauchery" (Article 36).

[The High Authority for Audiovisual and Communication](#) (HAAC) is empowered to punish "media actors" who violate the Code, including through malicious insinuations, the use of offensive language, defamation, incitement to public disorder, compromising public interest, and violations of privacy.

Defamation against courts, tribunals, armed forces, or public administration is punishable by a fine of up to approximately \$18,000, as is defamation against government officials, the President, or foreign Heads of State. Defamation against other citizens incurs a less severe fine. Imprisonment sentences of up to three years can be imposed for the publication of documents aimed at diverting security forces from their duties or for the publication of false news likely to disturb "public peace" or undermine the "discipline and morale of the armed forces." Publishing documents inciting crimes against national internal security, such as murder, assassination, arson, or the destruction of homes, stores, and infrastructure, is punishable by up to five years in prison (Article 264).

[The Information and Communication Code](#) recognises that journalists are "bound by professional secrecy" and cannot be compelled to disclose the source and origin of confidentially received information (Article 35).

- **Troubling decline in freedom of expression and press**

[Freedom House](#), in its [2022](#) and [2023](#) reports, described Benin as a "partly free" country with a score of 59/100. In 2022, the organisation noted that "since President Patrice Talon took office in 2016, the country has begun using the judicial system to attack its political opponents, and [that] new electoral rules and repression against its political opponents have allowed it to consolidate its power in 2021. Deadly police violence during political protests, arrests of activists, and other restrictions on civil liberties have become increasingly problematic in recent years."

According to Freedom House, in Benin, defamation "remains a crime punishable by fines, and [that] media criticising the government are increasingly at risk of being suspended." In July 2021, the High Authority for Audiovisual and Communication (HAAC) lifted the ban on La Nouvelle Tribune, a newspaper that had been closed in 2018. Major television channels have also been closed by the HAAC and remain closed despite court decisions overturning these actions. In 2020, the HAAC banned all "unauthorised" online media outlets, temporarily suspending three outlets; the others ignored the order.

A 2017 law on digital media allows journalists to be prosecuted and imprisoned for allegedly false or harassing online content. In 2021, at least five journalists were arrested under this law. According to [Amnesty International](#), this law significantly restricts freedom of expression.

In this regard, [Freedom House](#) cites the editor-in-chief of a newspaper, [Casimir Kpédjo](#), who was arrested following a complaint from the [Autonomous Amortisation Fund](#), which depends on the Ministry of Economy and Finance. He was arrested in April 2019 for publishing "false" information about the national debt and was released on bail a month later.

Furthermore, activist and good governance advocate [Jean Kopton](#) was sentenced on January 18, 2021, to 12 months in prison and a fine of 200,000 FCFA for digital harassment. Today,

free, Kopton publicly denounced the rental cost of the Head of State's vehicle. He was declared guilty under the 2017 [Digital Code](#) of "harassment through electronic communication", an offence described as "vague and too broad" by the [UN Working Group on Arbitrary Detention](#).

In [2023](#), Reporters Sans Frontières (RSF) ranked Benin 112th in its World Press Freedom Index, a 9-place improvement over the previous year. Despite this improvement, the situation remains complex for journalists, whose "freedom of speech (...) has greatly diminished in recent years," as noted by RSF in its 2022 ranking.

In 2018, the organisation condemned the suspension of a radio station close to the opposition: [Radio Soleil FM](#) and [Sikka TV](#), owned by [Sébastien Ajavon](#). In 2022, Sikka TV remained off the air despite a [court decision](#) in May 2017 ordering its reopening.

- **Adoption of the Digital Code: a new barrier to press freedom**

[RSF](#) also highlights that since the adoption of the 2017 [Digital Code](#), press freedom has been weakened by certain repressive provisions allowing for the criminalisation of press offences.

In March 2020, journalist [Ignace Sossou](#) was sentenced to twelve months in prison, six of which were suspended, for "harassment through electronic means" after reporting on social media the statements made by the Republic's prosecutor during a workshop on disinformation. On March 13, 2020, in an unprecedented [tribune](#) initiated by RSF, over 120 media outlets and journalists from West Africa called for Ignace Sossou's release. During its 88th session, [the UN Working Group on Arbitrary Detention](#) found that Ignace Sossou had not received a fair trial, that his conviction was without legal basis, and that it had resulted from the exercise of his freedom of expression.

On December 7, 2021, [two journalists](#) from the daily "Le Soleil Benin Info" were sentenced under Article 550 "harassment through electronic communication" of the [Digital Code](#) to six months' suspended imprisonment and a fine of over 500,000 CFA francs. This is an "increasingly common accusation by the authorities against critical online publications," according to the [Media Foundation for West Africa \(MFWA\)](#). The complainant, a customs

inspector, had allegedly been defamed in a series of articles in the newspaper about a land dispute.

In 2022, the [MFWA](#) stated that since its adoption, more than 17 journalists, bloggers, and activists have been victims of Article 550 al. 1 of the Digital Code which establishes the offence of "harassment through electronic communication" and represents a real obstacle to freedom of expression and the press.

- **Political acts marking a setback in public freedoms**

Moreover, in July 2020, the HAAC ordered the [immediate suspension](#) of all publications of online news sites operating without authorisation, while the [Information and Communication Code \(2015\)](#) requires prior authorisation. The HAAC cited vague criteria such as a "morality investigation" regarding the conditions required to obtain authorisation to operate a news website.

In March 2020, the Constitutional Court of Benin notified the African Union of its withdrawal from the [Protocol on the African Charter on Human and Peoples' Rights](#) establishing the [African Court on Human and Peoples' Rights](#). According to Amnesty International, this withdrawal marks a [dangerous setback](#) and a significant regression in terms of human rights protection by blocking direct access by individuals and NGOs to the African Court according to Amnesty International.

#### **1.4 The Access to Information Act and Secrecy Laws**

This section discusses the importance of access to public information for whistleblowers and journalists. These individuals who expose illicit behaviours within the public administration require reliable information to support their disclosures. The right to access public information ensures transparency and accountability, providing enhanced protection to whistleblowers and journalists who can rely on concrete facts when disclosing sensitive information.

- **Legislation on access to information and confidentiality**

[The Information and Communication Code](#) provides broad access to state information and specifies that state agents may disclose and provide evidence of all illicit behaviours within the public administration. Except in cases of defamatory denunciation, they cannot incur any administrative or disciplinary sanctions. Consequently, the State must guarantee access to sources of information, particularly public ones, for everyone (Article 7). No individual can be prohibited or prevented from access (Article 8). Restrictions on the right of access to public information are "justified only in exceptional circumstances" such as public interest, defence secrecy, and confidential judicial procedures.

The [law on the organisation of national defence secrecy](#), declared enforceable by the Constitutional Court in June 2020, provides for prison sentences of up to 20 years for sharing documents essential to national defence secrets with an "or their transfer to justice or brought to the attention of the public" (Article 13).

## **2. ANALYSIS OF THE FACTS: WHISTLEBLOWER CASES**

The objective of this section is to list known and public cases of whistleblowers to assess the treatment afforded to whistleblowers in the country.

## **3. RECOMMENDATIONS: WEAKNESSES AND NEEDED REFORMS**

This section suggests areas for improvement for the State regarding the protection of whistleblowers, current legislation against financial crime, the government's commitment to combating this problem, and the respect for individual liberties, including the right to information, freedom of the press and expression, as well as media rights.

- **Strengthening legislation on whistleblower protection**

Legislation on whistleblowing in Benin is limited. There is no law protecting whistleblowers nor a clear procedure or mechanism guiding the disclosure of information. The protections offered are limited to disclosures made to national authorities only and are often incomplete (Article 4 of Decree No. 2013-122 of March 6, 2013). Whistleblowing in the workplace is not

supported by significant protection against retaliation, and employers are not obligated to follow up or accept complaints.

In February 2017, the Economic Community of West African States (ECOWAS) held [a meeting](#) with Benin civil society, the government, and the media, during which participants agreed on the importance of early warning systems and protecting whistleblowers in the fight against corruption, and encouraged the National Assembly to adopt comprehensive national legislation on whistleblower protection. However, online information does not indicate what follow-up actions were taken after this workshop.

- It would be opportune for these efforts to continue so that Benin can enact a law effectively protecting whistleblowers and providing a clear framework for the disclosure of information on actions contrary to the public interest.

#### **4. KNOWLEDGE, SUPPORT, AND ACTION CENTRES**

This section explores the landscape of civil society organisations, NGOs, and citizen movements that actively promote good governance. These entities represent valuable sources of knowledge and expertise, playing a crucial role in strengthening democratic practices.

[Social Watch Benin](#) is a network of NGOs and associations that promotes citizen control of public action at both the central and municipal levels in Benin. The activities of this network revolve around interventions related to the promotion of transparency, accountability, citizen control, advocacy, budget monitoring, and investments.

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