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PLATFORM TO PROTECT WHISTLEBLOWERS IN AFRICA

WHISTLEBLOWERS IN COTE D'IVOIRE:

Overview of the Legal Framework and
Practices

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Whistleblowers in Cote d'Ivoire: 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 the financing of terrorism. The 5-year project started in 2019 and covers 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

AGRAC: Agency for the Management and Recovery of Criminal Assets

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

BCEAO: Central Bank of West African States

CENTIF: Financial Intelligence Unit

CPI: Corruption Perceptions Index

ECOWAS: Economic Community of West African States

FATF: Financial Action Task Force

GIABA: Inter-Governmental Action Group against Money Laundering in West Africa

IMF: International Monetary Fund

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

SPACIA: National Platform for the Prevention and Detection of Acts of corruption and related offences

WAMU: West African Monetary Union

WAEMU: West African Economic and Monetary Union

● Legal sources

[Constitution of Côte d'Ivoire](#)

[Labour Code](#)

Penal Code

Law of June 13, 2018, on the Protection of Witnesses, Victims, Whistleblowers, Experts, and Other Concerned Persons

Law of December 27, 2017, on the Legal Regime of Audiovisual Communication

Law of December 14, 2004, on the Legal Regime of the Press

Law of December 23, 2013, on Access to Information of Public Interest

Law No. 2018-657 of June 13, 2018, on the Legal Regime of Freezing Illicit Assets

Ordinance No. 2013-660 of September 20, 2013, on the Prevention and Fight against Corruption and Related Offences

Decree No. 2022-349 of June 1, 2022, determining the powers, organisation, and functioning of the Agency for the Management and Recovery of Criminal Assets

- **Executive summary**

In Côte d'Ivoire, whistleblowers are not explicitly protected by law. However, the law on the protection of witnesses, victims, whistleblowers, experts, and other concerned persons of June 13, 2018, seems to provide some protective measures. Although no one has used this law as a public whistleblower yet, it could apply to such a case.

In October 2021, the Ministry of Good Governance Promotion, Capacity Building, and Anti-Corruption expressed support for protecting whistleblowers, and draft laws were prepared. The ministry initiated work on adopting a whistleblower protection law and continues in collaboration with civil society. Subsequently, the bill will be presented to the National Assembly.

Freedom of expression and the media environment in Côte d'Ivoire have improved in recent years. The amended 2016 Constitution reaffirms that "freedom of thought and freedom of expression [...] are guaranteed to all." Journalists and opposition supporters are no longer subjected to the violent repression that characterised the first decade of the 21st century. However, the criminal sanctions applicable to defamation vary from one law to another, creating a potential bias in the prosecution of defamation cases.

1. ANALYSIS OF THE LEGAL FRAMEWORK

1.1 Whistleblower laws and policies

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

- **Law on the Protection of Witnesses, Victims, Whistleblowers, Experts, and Other Concerned Persons (2018)**

Côte d'Ivoire does not have a specific law for the protection of whistleblowers. However, in 2018, Côte d'Ivoire enacted a [law on the protection of witnesses, victims, whistleblowers, experts, and other concerned persons](#). This law, adopted on June 13, 2018, provides for protective measures that may be claimed by individuals needing protection. It applies to witnesses, victims, whistleblowers, experts, or any other concerned person whose "physical integrity or property (...) is in danger due to their collaboration or willingness to collaborate in a judicial or extrajudicial procedure to seek the truth." This also includes family members of the witness or a close associate.

The text establishes a protection body, the National Bureau for the Protection of Witnesses, Victims, Whistleblowers, Experts, and Other Concerned Persons, responsible for implementing the necessary protection measures. A decree determining the composition, attributions, organisation, and functioning of the National Bureau for the Protection of Witnesses, Victims, Whistleblowers, Experts, and Other Concerned Persons [was adopted on December 9, 2020](#), in a Council of Ministers meeting.

- **Measures Implemented by the Law**

The measures available to this bureau to protect an individual are provided for by the 2018 law. These measures are distinguished into three categories: judicial, extrajudicial, and post-procedural measures. The complete list of measures can be found in Chapter 5 of the law.

Among the most notable judicial measures are guaranteed anonymity, facilitated access and appearance of the persons to be protected, and the possibility of electing domicile at the address of the police station, gendarmerie brigade, or even the public prosecutor's office. Extrajudicial measures include organising meetings in discreet and safe places, temporary relocation, changing the workplace, and possibly establishing a new temporary identity. Finally, post-procedural measures include psychosocial support, financial assistance, and, if any other measure has proven ineffective, relocation and resettlement. The protective measures taken require the consent of the person to be protected.

In addition to the prescribed measures, persons to be protected are recognised as bearing several rights, including the right to protection against any form of harm to their physical and mental integrity, the right to protection of their identity, and the right to be informed of all ongoing procedures (Article 7).

Anyone who obtains information about the real identity of a protected person through participation in an investigation, judicial or extrajudicial procedure, is obliged to maintain confidentiality.

This law seems applicable to whistleblowers even if the notion does not appear in the body of the text. Theoretically, a whistleblower could approach the National Bureau of Witnesses, Victims, Whistleblowers, Experts, and Other Concerned Persons to request the application of certain protective measures according to their situation. As individuals collaborating or wishing to collaborate in a truth-seeking procedure, they fall within the scope of this law.

However, the application of this text and the establishment of the National Protection Bureau are not verified. No case of a whistleblower relying on this law or approaching this bureau is known to date.

- **National Platform for the Prevention and Detection of Acts of Corruption and Related Offences (SPACIA)**

A [decree](#) adopted by the Council of Ministers on April 13, 2022, established the National Platform for the Prevention and Detection of Acts of Corruption and Related Offences ([SPACIA](#)). This institution, officially launched on July 11, 2022, allows citizens to report an

act of corruption by phone or by mail. The information is processed and, if necessary, transmitted to the competent authorities upon referral from SPACIA.

- **Protection under Labour Law**

The [Labour Code](#) provides for reporting any serious and imminent danger to the life or health of the employee or others by the employee to the employer and the occupational health and safety committee. No protection measures are provided for the employee who reports a danger. They are simply protected against disciplinary sanctions and dismissal when, as a result of this danger, they have left their workplace.

Outside of this scenario, the code does not provide for reporting or protection for whistleblowers. Legitimate reasons for dismissal are ambiguous and include personal reasons such as "professional incompetence" or "misconduct" for indefinite-term contracts; therefore, it is difficult to determine if whistleblowing can be considered a legitimate reason for dismissal. While all forms of "psychological harassment" are prohibited, harassment as retaliation for reporting or disclosing information is not specifically addressed.

- **Ordinance of September 20, 2013: On the prevention and fight against corruption and related offences**

An obligation to report cases of corruption is provided for by the [ordinance of September 20, 2013](#), on the prevention and fight against corruption and related offences. According to this ordinance, individuals who become aware of facts that could constitute an act of corruption risk up to five years imprisonment and a fine of five million CFA francs. The same ordinance states that whistleblowers, witnesses, experts, victims, informants, and their relatives benefit from special protection from the state against possible acts of retaliation or intimidation. The details of this protection are not provided in this text and are to be specified in a decree. It is not indicated if the law of June 13, 2018, which provides for the protection of witnesses, victims, whistleblowers, experts, and other concerned persons, is the text to which the ordinance wishes to refer.

Finally, the supreme text, the Ivorian [Constitution](#), provides for the freedom to express and disseminate one's ideas. These freedoms "are exercised subject to respect for the law, the

rights of others, national security and public order". The Constitution was approved by referendum in October 2016 and consolidated in 2020.

- **Process of drafting a specific law for the protection of whistleblowers**

In Côte d'Ivoire, the process of drafting a law for the protection of whistleblowers is underway, initiated by the [Ministry of Good Governance Promotion and the Fight against Corruption](#). PPLAAF has provided expertise and technical assistance in the drafting of this law. Since 2022, awareness-raising activities on the concept of whistleblowing initiated by the Ministry have also taken place and are intended for law enforcement officials and journalists.

1.2 Laws and measures related to combating financial crime

This section focuses on the measures taken by the government of Cote d'Ivoire 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 Cote d'Ivoire.

- **Contextual elements on the state of corruption in Côte d'Ivoire**

According to the [France 24](#) news channel, in Côte d'Ivoire "corruption plagues most public services: public procurement, customs clearance, civil service recruitment competitions, etc." President [Alassane Ouattara](#) announced that he would make the fight against corruption one of the priorities of his new term of office in October 2020.

In its [2022 Corruption Perceptions Index \(CPI\)](#) report, Transparency International ranked Côte d'Ivoire 99th out of 180 countries with a score of 37/100. Côte d'Ivoire gained one point compared to 2021 but remains in the red zone despite the existence of several legal and institutional mechanisms to fight corruption.

- **Laws and measures related to the fight against corruption**

[Ordinance No. 2013-660](#) established the [High Authority for Good Governance](#). It is an entity within the framework of the prevention and fight against corruption and related offences.

This framework is part of the implementation of the National Plan for Good Governance and the Fight against Corruption. Among other tasks, this body is responsible for drawing up the national anti-corruption strategy, coordinating, supervising, and monitoring the implementation of anti-corruption prevention and control policies, investigating corrupt practices, identifying alleged perpetrators and their accomplices, collecting, centralising and exploiting reports and complaints referred to it, receiving asset declarations from all public officials, and referring cases to the Public Prosecutor.

It is also worth noting [Law No. 2018-573 of 13 June 2018](#) on the legal regime for freezing illicit assets. This law defines illicit assets as "all tangible or intangible, movable or immovable property as well as all legal deeds or documents attesting to the ownership of such property or rights relating thereto, acquired or suspected of having been acquired through acts of corruption or similar offences". Article 3 of this law states that the President of the High Authority for Good Governance is competent to order, by administrative decision, the freezing of illicit assets of persons suspected of having participated in acts of corruption or similar offences. The following articles detail the procedure for freezing illicit assets. Any holder or manager of illicit assets who hinders the execution of an asset freeze order duly notified to him shall be punished by "imprisonment of between 1 and 5 years and a fine of between 1,000,000 and 5,000,000 francs" (Article 14).

- **Fight against money laundering and terrorist financing**

[Law No. 2016-992 of November 14, 2016, relating to the fight against money laundering and terrorist financing](#), aims to prevent and suppress money laundering, terrorist financing, and the proliferation of weapons of mass destruction in Côte d'Ivoire (Article 2). 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 2008 Uniform Act, incorporated the 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. It 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.
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, Côte d'Ivoire has established the Agency for the Management and Recovery of Criminal Assets (AGRAC) since Decree No. 2022-349 of June 1, 2022.

The country's mutual evaluation was conducted by the International Monetary Fund (IMF) in late 2022-early 2023, and the evaluation report was discussed at the GIABA plenary in May 2023. The decision to include the country on the FATF grey list will be announced in 2024 or 2025.

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.

- **Legislation on Press Freedom and Media Rights**

Two laws regulate the media: [the law on the legal regime of the press](#) and [the law on the legal regime of audiovisual communication](#). These texts provide for the protection of journalists' sources of information as well as their right to access public interest information and public documents. The press law has abolished custodial sentences for offences committed through the press. These offences are now punishable by the payment of a fine.

The press law maintains the offence of insulting the President of the Republic, which is punishable by a fine of up to 5 million CFA francs.

Although the abolition of prison sentences for journalists is applauded, the penalties provided for in the legislation remain considerable, limiting journalists' freedom of expression. The

financial penalties for professional misconduct are hefty, up to 10 million CFA francs, and can force media companies to close down if convicted.

The Penal Code provides for stiffer penalties for defamation, with up to 10 years imprisonment for defamation on the grounds of race, ethnic group, or religion, and the penalties are doubled if the offence is committed through the press. Slandorous accusations addressed to any authority capable of prosecution or the employer of the person accused may be punishable by up to five years imprisonment. The publication of false news that may lead to disobedience or the discrediting of national institutions is punishable by up to three years imprisonment and a fine, with authors, publishers, vendors, and distributors liable. The discrepancy between the criminal code and media laws creates an ambiguity in which journalists are potentially punishable by unfair and unequal penalties.

Journalists reporting sensitive information are sometimes arrested for publishing false information, insulting the president, or defamation. The most famous case of a journalist being detained occurred in 2015 when the editor of the [newspaper *Aujourd'hui*](#) was held for a week after publishing accusations that the president was complicit in the 2015 electoral fraud conspiracy. The newspaper was also suspended for one month.

Two bills on the regulation of telecommunications media were passed by the government in March 2022. These bills provoked [strong reactions from civil society](#) and Internet users. In particular, they provide for bloggers, web activists, and influencers to be subject to the legal regime governing the press and audiovisual communication. They would be subject to the same strict ethical rules as journalists.

While the government is defending these plans, emphasising the importance of regulating social networks, civil society fears that the intention is to censor information providers on social networks. The text still has to be discussed and approved by the National Assembly.

- **Freedom of the press in Côte d'Ivoire: Between progress and persistent challenges**

In 2023, [Reporters Sans Frontières \(RSF\)](#) ranked Côte d'Ivoire 54th out of 180 countries, notably highlighting that "investigative journalists are often targeted by attempts at corruption, intimidation, or arrests, and their editorial offices can be subject to attacks...".

This ranking represents a drop of 17 places compared to the 2022 ranking, in which the country ranked 37th, after a year marked by improved security conditions for journalists who had not faced any judicial convictions in 2021.

According to RSF, the media landscape remains closely linked to the political landscape. One of the best-known television channels is Radiodiffusion Télévision Ivoirienne, which, before 2021, held a monopoly on private channels in Côte d'Ivoire. There are now three, all owned by close associates of the government.

The [Freedom House 2023 ranking](#) considers Côte d'Ivoire as "partly free" and assigns the country a score of 49/100. Freedom House notes improvements in the working conditions of the press and a decrease in severe attacks on journalists compared to 2021.

Despite some improvements, journalists continue to be victims of abuse, threats, and intimidation. Several press violations marked the 2020 electoral period. In August 2020, while covering an opposition demonstration, [Julien Adayé](#) from Deutsche Welle was assaulted by police officers and had his work equipment confiscated. André Sylver Konan, founder of the online news site Afriksoir, as well as Félix Diby Boni, a journalist at abidjan.net, faced [threats and verbal attacks](#) from political leaders due to their coverage of political events.

More recently, in June 2022, an Ivorian investigative journalist was placed in custody after refusing to reveal his sources. Despite the abolition of imprisonment penalties and the protection of sources, [Noël Konan](#) was questioned for several hours by police officers. Faced with his refusal and after a second interrogation, the journalist was detained until the following day.

1.4 The Access to Information Act and Secrecy Laws

In this section, we will discuss 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, thereby providing enhanced protection to whistleblowers and journalists who can rely on concrete facts when disclosing sensitive information.

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

Article 270 of the Ivorian [Penal Code](#) provides for imprisonment of three months to one year for individuals who, without authorisation or authority, make a copy of an administrative document held secret or confidential. The disclosure of military information related to national defence is punishable by imprisonment of up to 20 years under the Ivorian Penal Code. The prison sentence varies according to the intent of the perpetrator.

Revealing secrets entrusted by a "state or profession" is punishable by up to six months imprisonment. This penalty is accompanied by a fine of up to 500,000 CFA francs. Article 383 of the Criminal Code reads as follows: "Any person entrusted by status or profession or by temporary or permanent function with a secret entrusted to him, who, except in cases where the law obliges or authorises him to act as a whistleblower, reveals this secret, shall be punished by imprisonment of between one and six months and a fine of between 50,000 and 500,000 francs (...)". This provision is somewhat vague as it does not specify the professions or functions concerned by this prohibition, nor does it define what constitutes a "secret" within the meaning of the law.

Non-disclosure of an act of espionage or treason is punishable by up to 20 years imprisonment, subject to the obligation of professional secrecy.

A [law on access to information](#) allows public documents and "information of public interest" to be shared. However, "only the person concerned" has the right to access information relating to their behaviour, which could be harmful if shared more widely. Similarly, disclosures that breach the secrecy of government deliberations, national defence, foreign policy, monetary policy, legal proceedings, and commercial matters are prohibited. There are no imprisonment penalties for sharing non-disclosable information.

2. ANALYSIS OF THE FACTS: WHISTLEBLOWER CASES

This section aims to list known and public cases of whistleblowers to assess the treatment afforded to whistleblowers in the country.

There are no known cases of public whistleblowers in Cote d'Ivoire.

3. RECOMMENDATIONS: WEAKNESSES AND NEEDED REFORMS

In this section, the focus will be on suggesting 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.

- **Reflection on potential areas of improvement**
- **The Law of June 13, 2018**

The Law of June 13, 2018, while offering many protective measures, does not fully meet all the specific expectations regarding whistleblower protection. By enacting a law dedicated to protecting whistleblowers, Côte d'Ivoire could enhance their protection and encourage disclosures of public interest.

However, it appears that the government is aware of the need to protect these actors better, as evidenced by the [workshop held in October 2021 in Abidjan in collaboration with the United Nations Office on Drugs and Crime](#), focusing on whistleblower protection in the fight against corruption. During this workshop, the former Chief of Staff of the Ministry of Promotion of Good Governance, Capacity Building, and the Fight against Corruption, [Amadou Koné](#), [reiterated the importance of whistleblowers](#) and emphasised that the issue of their protection has been at the forefront of debates in recent years, both in Europe, America, and Africa.

This workshop enabled participants to identify international best practices in whistleblower protection, analyse the current system related to it, and highlight the shortcomings of current legislative and regulatory provisions to ensure their effective protection.

Recognising the issue's importance, the Ministry of Promotion of Good Governance, Capacity Building, and the Fight against Corruption is currently working on a draft law for the protection of whistleblowers, which will be presented to Parliament soon.

- **To better protect whistleblowers, several aspects of the Law of June 13, 2018 need to be reformed:**

The context in which this law is framed and the provisions it contains suggest that the legislator had whistleblower protection in mind when drafting it. Unfortunately, the term does not appear anywhere. This omission raises doubts about the applicability of the law to whistleblowers. To ensure the application of the protective measures provided in this text, it would be preferable to expressly mention them and define them precisely.

No provision of this law provides for the independence of the Bureau for the Protection of Witnesses, Victims, Whistleblowers, Experts, and other persons concerned. It is placed under the supervision of the Ministry of Justice. This oversight raises questions about the autonomy and independence of the national bureau and raises concerns about possible interventions by the Ivorian government regarding individuals who may benefit from protection measures. Ideally, a provision should ensure the institution's independence.

The text does not provide immunity or legal irresponsibility for the person providing information, nor does it condemn acts of retaliation against them. In the event of a report to the Bureau, the whistleblower remains criminally and civilly liable for the information provided – even though it is necessary for an investigation. This liability can deter whistleblowing as the whistleblower continues to fear prosecution. Provisions providing for criminal convictions should include the condemnation of acts of retaliation.

Similarly, the absence of provisions condemning acts of retaliation leaves whistleblowers vulnerable to those whose actions they denounce as contrary to the general interest.

Finally, to facilitate and encourage whistleblowing, the reporting process should be clarified. The law should specify the steps a whistleblower must take to comply with the current law.

This text thus offers significant potential protection for whistleblowers and their families but needs strengthening. It would also be appropriate for the State to guarantee the resources needed to apply the protection.

SPACIA

- Similarly, certain aspects of SPACIA could be improved. This platform, which has received several hundred reports since its launch, appears to be too dependent on the executive. Of the fourteen members of its steering committee, eight are government

representatives. The coordinator who heads the platform's management unit is appointed by decree by the Council of Ministers.

- To strengthen this tool in the fight against corruption and encourage individuals to use it, it would be preferable to ensure the independence of this institution. Too much of the executive's presence could suggest that acts of corruption committed by a member of this power could be ignored and that individuals reporting corruption could be subject to reprisals.
- **Media Rights and Journalists' Rights and Access to Information**

Finally, the repression faced by journalists and internet users weakens the efforts deployed to fight corruption.

- To establish genuine protection for whistleblowers, the rights of the media and journalists, as well as access to information, could be strengthened.

4. KNOWLEDGE, SUPPORT, AND ACTION CENTRES:

In this section, we will explore 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.

In Côte d'Ivoire, the NGO ["Initiative for Social Justice, Transparency, and Good Governance" \(Social Justice\)](#), set up in November 2009, aims to fight corruption, work to eradicate poverty in rural areas, promote transparency and the popularisation of the national budget, and encourage good governance and transparency in natural resources and raw materials. To achieve this, the NGO engages in significant advocacy work.

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